

# JUSTICE CANADA

## Status report on the 2005 report card

### 1. BACKGROUND

Every department reviewed has been assessed against the following grading standard:

% of Deemed Refusals	Comment	Grade
0-5%	Ideal compliance	A
5-10%	Substantial compliance	B
10-15%	Borderline compliance	C
15-20%	Below standard compliance	D
More than 20%	Red alert	F

This report reviews Justice Canada's progress, since the previous report, in coming into compliance with the time requirements of the *Access to Information Act*. In addition, this report contains information on the status of the recommendations made in the Status Report of January 2005.

### 2. COMPLIANCE HISTORY

In fiscal year 2003-2004, the department received 362 new access requests. Of the completed requests received in 2003-2004, 92 were completed in a deemed-refusal situation while 43 were carried over to the next FY in a deemed-refusal situation. The deemed-refusal ratio including access requests carried over at the start of FY 2003/2004 was 477: 185 or 39% resulting in a "F" on the grading scale.

In the 2005 Report Card, Justice Canada received a red alert grade of "F". This was the first year that requests carried over from the previous year, and the number of requests already in a deemed-refusal status on April 1, were taken into consideration. As a result, for the reporting period April 1 to November 30, 2004, Justice's deemed-refusal ratio was 43%.

For fiscal year 2004-2005, Jus received a grade of "F", with a 52.7% request to deemed-refusal ratio.

### 3. CURRENT STATUS

For this reporting period, requests carried over from the previous year, and the number of requests already in a deemed-refusal status on April 1, were also taken into consideration. As a result, for the reporting period April 1 to November 30, 2005, Justice Canada's deemed-refusal ratio was 38.8%, earning the department a grade of "F".

Justice Canada's ATIP Office maintains that it has an expanded role that exceeds what is commonly seen in other government departments. In addition to processing requests, it argues that Justice Canada's ATIP Office responds to consultations from other government institutions and acts in a central agency role by reviewing solicitor-client information for the Government as a whole. In our view, Justice's ATIP role is neither more complex nor more unique than is the role of ATIP units in other departments of similar size.

This year, the number of access requests received has not significantly increased (153 vs. 151 last year). In 2004, Justice Canada reviewed 21,218 pages in responding to formal access requests. In 2005, the department reviewed 27,563 pages. The volume of incoming work is low by comparison with other institutions of similar size.

With respect to consultations with other departments, 442 were conducted in 2004. In 2005, the department received 601 requests for consultations, an increase of 33%. In the course of these consultations, the department reviewed 31,707 pages of documents, an increase of 30% from the previous year (22,584 pages).

The ATIP Office's other responsibilities include:

- Preparation of detailed analysis of files that are subject to review by the Federal Court, and assistance in the preparation of exhibits and affidavits to be used by counsel to develop the department's position and to present its defence;
- Reviewing harassment reports prepared by the Federal Centre for Workplace Conflict Management;
- Reviewing Parliamentary Returns (motions for the production of papers);
- Vetting audit reports prepared by Internal Audit for disclosure issues;
- Responding to requests for advice on access and privacy issues;
- Training the department's staff, in both headquarters and the regions, on their roles and responsibilities under the legislations;
- Coordinating interdepartmentally and ensuring that government's directions are followed (i.e. InfoSource, SIN usage, data matching, proactive disclosure);
- Conducting Privacy Impact Assessments (PIA's); and,
- Collaborating with the Offices of the Information Commissioner and the Privacy Commissioner to resolve complaints from requesters and, when required, explain and justify the department's decisions concerning any requests to the investigators.

In order to reduce delays in the treatment of access requests, Justice Canada purchased ATIP*image* in 2003-2004 and converted the processing of information from paper to

electronic format. This acquisition significantly reduced the time required to respond to access requests.

The department has also increased the use of contractors and full-time staff.

Finally, the department has established an action plan to respond to requests received in established timeframes.

The overall timeframe for the completion of all objectives provided in the plan will be March 2008. This is much too slow for a department which, for a third year in a row, has earned an “F” on the grading scale, and which was called to appear before the Standing Committee on Access to Information, Privacy and Ethics to explain last year’s poor performance. The failure by the department to come into compliance with the *Access to Information Act* is particularly concerning given its minister’s status as “designated minister” responsible for this law, the department’s obligation to show leadership in government for obedience to law, the simplicity of the management effort required to come into compliance and the fact that the ATIP program is one of the few (perhaps only) statutory programs of service to the public which Justice Canada administers.

#### **4. RECOMMENDATIONS**

That Justice Canada put in place immediately the resources, processes and management reporting to enable it to achieve a grade of “A” by December 2006. Since Justice Canada has failed to respect similar recommendations in previous reports, the department should provide quarterly performance management reports to the OIC.

Since Justice Canada has not followed all of the recommendations made in last year’s report card, many are repeated for this year.

#### **The Access Request Process**

***Recommendation 1.1:*** The reason(s) for flagging an access request as sensitive be documented.

***Recommendation 1.2:*** The completed access requests for FY 2004/2005 be reviewed to determine the reason(s) for delayed responses to access requests flagged as sensitive and measures be developed and implemented to eliminate the delays.

***Recommendation 1.3:*** The Assistant’s Manual of the ATIP Office be amended to include a requirement to notify a requester of the limitation of the right to complain when an access request is almost one year old.

**Recommendation 1.4:** The ATIP Office develop a fee waiver policy for access requests.

**Recommendation 1.5:** The ATIP Office document the criteria for categorizing an access request as abandoned or unable to process.

**Recommendation 1.6:** An ATI Officer's Manual for the ATIP Office incorporate criteria to consider treating an access request informally.

**Recommendation 1.7:** The ATIP Office produce a weekly report that provides information on access requests that are required to be completed at each stage in the request-processing model in order to proactively manage the deemed-refusal situation.

**Recommendation 1.8:** The ATIP Office review the access request process to eliminate numerous review stages in the process.

**Recommendation 1.9:** Where Justice Canada consults with or is consulted by a department routinely, the departments enter into a Memorandum of Understanding to cover timeframes and their responsibilities in the consultation process, including the provision of rationales for claiming exemptions.

**Recommendation 1.10:** The ATIP Office conduct an analysis of the completed access requests for FY 2003-2004 and FY 2004-2005 to determine the reasons for missed extension dates and develop a plan to resolve the situation.

**Recommendation 1.11:** If an extended date will not be met, the ATI office should routinely contact the requester in writing to indicate it will be late, to provide an expected response date and of the right to complain to the Information Commissioner. This will not impact the deemed-refusal status once the extension date is missed. However, it will alleviate some of the requester's frustration and perhaps avert a complaint.

**Recommendation 1.12:** The ATIP Office institute requirements for documenting the rationale for claiming all exemptions for the exercise of discretion and for the consideration of exceptions to mandatory exemptions.

## Deemed Refusals

**Recommendation 2.1:** The ATIP Office produce a monthly report that provides the ATIP Office and Senior Management at Justice Canada with information on how well timelines are met when responding to access requests. The reports will provide Senior Management, OPIs and the ATIP Office with information needed to gauge overall departmental compliance with the Act's and department's time requirements for processing access requests.

**Recommendation 2.2:** The ATIP Director should exercise the delegation to answer requests within deadlines whether or not the review process has been completed.

**Recommendation 2.3:** Justice Canada should come into substantial compliance with the Act's deadlines no later than December 2006.

## Resource Profile

**Recommendation 3.1:** The use of consultants to provide processing resources for long-term increases in the ATI workload should be discontinued as a staffing strategy.

**Recommendation 3.2 (Previous Recommendation #4.3):** The ATIP Office develop an *Advisor's Manual* on the policies and procedures for processing access requests.

**Recommendation 3.3 (Previous Recommendation #4.4):** Department OPIs providing advice on what might be exempt from disclosure under the *Access to Information Act* be made aware of their responsibilities for documenting the rationale for claiming an exemption and a demonstration of the proper exercise of administrative discretion.

**Recommendation 3.4 (Previous Recommendation #4.5):** The *User's Guide* be updated by the ATIP Office.

**Recommendation 3.5 (Previous Recommendation #4.6):** The ATIP Office develop criteria to consider for exercising discretion on whether or not to release information considered subject to a discretionary exemption.

**Recommendation 3.6 (Previous Recommendation #4.7):** The ATIP Office develop and implement an Access to Information Training Plan.

**Recommendation 3.7 (Previous Recommendation #4.8):** The ATIP Office review its use of ATIP*flow* to provide proactive management of ATIP administration.

## Information Management Framework

**Recommendation 4.1 (Previous Recommendation #5.1):** Justice Canada as part of the renewal of the Information Management Program determine categories of information that may be disclosed proactively.

## Conclusion

The last word for this report card relates to leadership. It is apparent that the Deputy Minister and Senior Management did not place sufficient priority on, or devote sufficient attention to, correcting a long-term problem of non-compliance with the *Access to Information Act*. The previous minister, of course, bears the ultimate responsibility for this failure. It is to be hoped that the new minister will make it one of his priorities to solve this problem and the Office of the Information Commissioner undertakes to work constructively with him to that end.

## 5. QUESTIONNAIRE AND STATISTICAL REPORT

<b>Questionnaire for Statistical Analysis Purposes in relation to official requests made under the <i>Access to Information Act</i></b>			
<b>Part A: Requests carried over from the prior fiscal period.</b>		<b>Apr. 1/04 to Mar. 31/05</b>	<b>Apr. 1/05 to Nov. 30/05</b>
<b>1.</b>	Number of requests carried over:	111	153
<b>2.</b>	Requests carried over from the prior fiscal C in a deemed refusal situation on the first day of the new fiscal:	63	78
<b>Part B: New Requests C Exclude requests included in Part A.</b>		<b>Apr.1/04 to Mar. 31/05</b>	<b>Apr. 1/05 to Nov. 30/05</b>
<b>3.</b>	Number of requests received during the fiscal period:	301	174
<b>4.A</b>	How many were processed <i>within</i> the 30-day statutory time limit?	92	83
<b>4.B</b>	How many were processed beyond the 30-day statutory time limit <i>where no extension was claimed?</i>	62	24
<b>4.C</b>	How long after the statutory time limit did it take to respond <i>where no extension was claimed?</i>		
	1-30 days:	26	15
	31-60 days:	12	6
	61-90 days:	3	1
	Over 91 days:	21	4
<b>5.</b>	How many were extended pursuant to section 9?	86	36
<b>6.A</b>	How many were processed <i>within</i> the extended time limit?	7	10
<b>6.B</b>	How many exceeded the extended time limit?	14	5
<b>6.C</b>	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	6	2
	31-60 days:	2	1
	61-90 days:	1	2
	Over 91 days:	8	0
<b>7.</b>	As of November 30, 2005, how many requests are in a deemed-refusal situation?	<b>20</b>	