Health Canada

Report Card
On
Compliance with Response Deadlines Under the *Access to Information Act*

— Information Commissioner of Canada —

MARCH 1999

Health Canada (HC)

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I. Glossary of Terms

ATI Coordinator:

Each institution is required, by Treasury Board policy, to designate an official known as the Access to Information coordinator. The Access to Information coordinator is responsible for receiving access requests. Coordinators may also be delegated authority, from the heads of institutions, to levy fees, claim extensions, give notices and invoke exemptions. The scope of a coordinator's authority varies from institution to institution.

Complaint Findings:

- Well-founded—Complaints well-founded but not resolved, where the Commissioner sought consent from the requester to pursue the matters in Federal Court.
- Resolved—Well-founded complaints resolved by remedial action satisfactory to the Commissioner.
- Not Substantiated—Complaints considered not to be well-founded.
- Discontinued—Complaints discontinued, on request from the complainant, prior to a final resolution of the case.

Deemed Refusal:

10.(3) Where the head of a government institution fails to give access to a record requested under this Act or a part thereof within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access.

Extension:

9. (1) The head of a government institution may extend the time limit set out in section 7 or subsection 8(1) in respect of a request under this Act for a reasonable period of time, having regard to the circumstances, if

(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution,

(b) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or

(c) notice of the request is given pursuant to subsection 27(1) by giving notice of the extension and, in the circumstances set out in paragraph (a) or (b), the length of the extension, to the person who made the request within thirty days after the request is received, which notice shall contain a statement that the person has a right to make a complaint to the Information Commissioner about the extension.

HC: Health Canada.

Notice of Extension to Information Commissioner:

9. (2) Where the head of a government institution extends a time limit under subsection (1) for more than thirty days, the head of the institution shall give notice of the extension to the Information Commissioner at the same time as notice is given under subsection (1).

OPI: Office of primary interest or the location in the department responsible for the subject matter to which the access request relates.

Pending:

Unfinished requests or complaints.

- Pending Previous—Requests or complaints that were unfinished at the close of the previous fiscal year, and thus carried forward into the reporting period (the fiscal period indicated on the pie chart).
- Pending at year-end—Requests or complaints that are unfinished at the end of the reporting period (the subject fiscal year), which will be carried into the next fiscal period.

Processing Time:

The time taken to complete each stage in the access process, from the date the access request is received to the time a final response is given.

3rd Party:

"Third party," in respect of a request for access to a record under this Act, means any person, group of persons or organization other than the person that made the request or a government institution.

Treasury Board Guidelines:

"The *Access to Information Act* is based on the premise that the head of each government institution is responsible for ensuring that their institution complies with the Act, and for making any required decisions. There is also provision for a designated Minister to undertake the government-wide co-ordination of the administration of the Act. The President of the Treasury Board fulfils this role.

"One of the statutory responsibilities of the designated Minister is to prepare and distribute to government institutions directives and guidelines concerning the operation of the *Access to Information Act* and regulations. The policy contained in this volume constitutes the directives referred to in the Act, and along with the Act and the Regulations establishes the minimum requirements for subject institutions. The guidelines are intended to provide an interpretation of the requirements and guidance on the application of the Act, the Regulations and the policy."

II. Background

In his 1997-98 Annual Report to Parliament, the former information commissioner raised concerns about HC's poor performance in meeting the deadlines set out in the *Access to Information Act* for responding to requests for information. A study conducted in 1994 had revealed that Health Canada missed deadlines 80 per cent of the time. The situation had not improved and this prompted the Information Commissioner to keep HC's performance under scrutiny.

This report card contains the results of the Information Commissioner's review of HC's performance statistics during the period April 1, 1998 to November 30, 1998.

III. Grading Standard

Since Canadians have a right to timely access to information (i.e. 30 days or within extended times under specified conditions), a delayed response is equivalent to a denied response. Parliament articulated this "timeliness" requirement in subsection 10(3) of the Act, which states:

> 10.(3) Where the head of a government institution fails to give access to a record requested under this Act or a part thereof within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access.

As a result, the Information Commissioner has adopted the following standard as being the best measure of a department's compliance with response deadlines: percentage of requests received which end as deemed refusals. HC is, in this report card, assessed against the following grading standard:

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

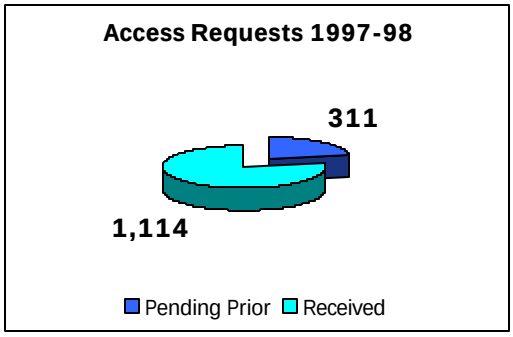
On this grading scale, HC rates **F***. Its performance is unacceptable. [This fiscal year to November 30, the requests to deemed-refusal ratios are: 1) based strictly on new requests, 645:330=51.2%, and 2) based on new and pending prior requests, 1,116:720=65.5%.]

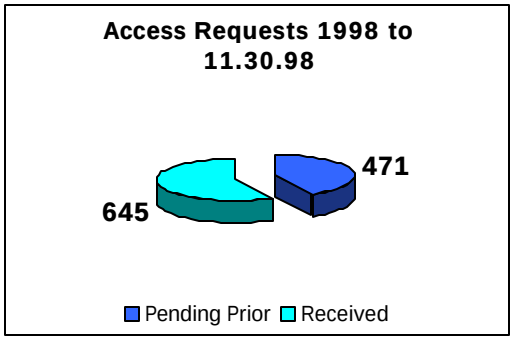
What follows is an analysis of the statistical data, an explanation of the reasons for the performance record, a description of the steps being taken by management to improve performance and a set of recommendations to assist the department in this regard.

Attached to the report (Part B) are the various questionnaires and responses which formed the basis for the grading, observations and recommendations in this report card.

IV. Statistical Information

1. Requests

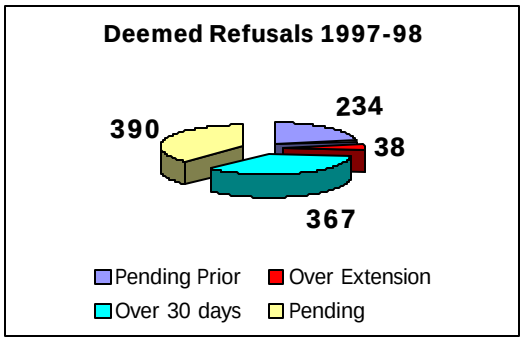


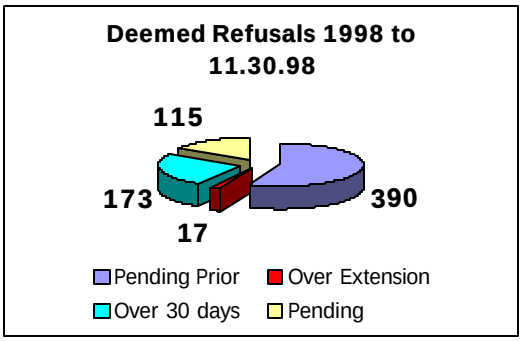


The charts above show the significance of HC's backlog.

Of note, Health Canada was listed in the 1997-98 *InfoSource* Bulletin as having placed third highest of the ten institutions receiving the most requests. In 1997-98, HC received 9.1% of all requests made during that reporting period—1,114 requests.

* This grade solely reflects on the department's performance in meeting response deadlines. It should not be taken as a measure of the department's performance in the application of exemptions. In general, HC applies the exemption provisions of the act professionally and with restraint.





At the outset of the 1997-98 fiscal year, HC's Access to Information office had 311 unfinished requests—234 (75.2%) of which were already in a deemed-refusal situation. The 1998-99 fiscal year started much the same with 471 outstanding requests—390 (82.8%) in a deemed-refusal situation. Considering the fact that 1,114 new requests were received in the 1997-98 fiscal year—645 to November 30 this fiscal year, these (Pending Prior) deemed refusals amount to approximately 1/4 of the yearly intake. Non-compliance considerations aside, this backlog is burdensome to the ATI office and must be eliminated.

The time taken to complete requests is equally distressing.

- In 1997-98, processing times for 367 requests completed beyond the 30-day statutory limit—without an extension were:
  - 178 (48.6%) took 1-30 additional days
  - 82 (22.3%) took an additional 31 to 60 days
  - 35 (9.5%) took an extra 61 to 90 days
  - 72 (19.6%) took more than 90 additional days

- In 1998 to November 30, 1998, additional processing times for 173 non-extended requests were:
  - 117 (67.6%) took 1-30 additional days
  - 30 (17.4%) took an additional 31-60 days
  - 14 (8.1%) took between 61 to 90 additional days
  - 12 (6.9%) needed more than 90 additional days

  (This does not include completion figures for the deemed-refusal backlog, since the self-audit questionnaire did not ask HC's ATI office to provide that information.)

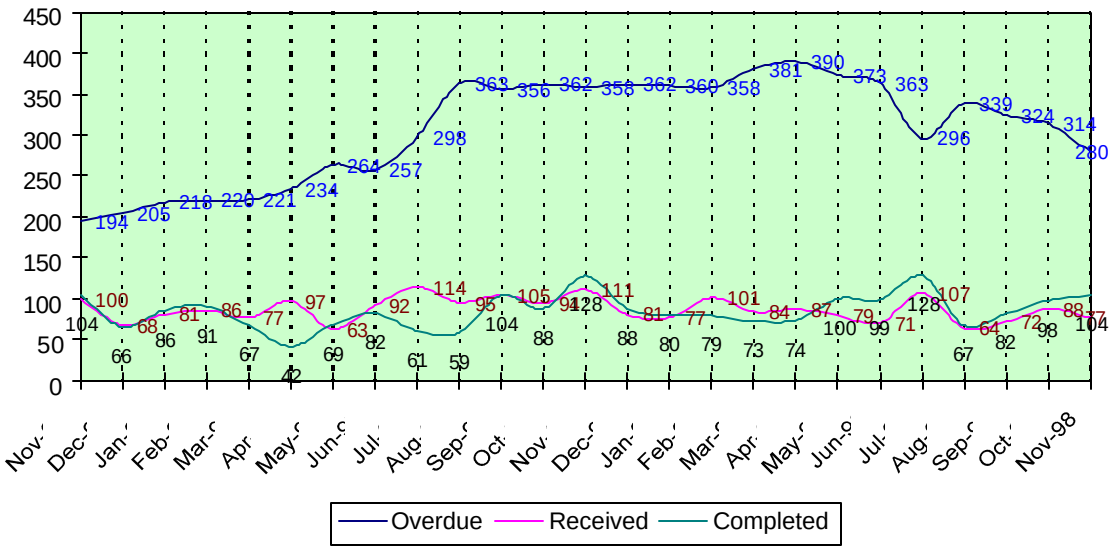
Time extensions pursuant to section 9 were consistently low in both reporting periods.

- In 1997-98, only 44 extensions were applied out of 1,114 new requests received—38 bypassed the extended date:
  - 10 (26.3%) took 1-30 additional days
  - 6 (15.8%) an additional 31 to 60 days
  - 4 (10.5%) 61-90 additional days
  - 18 (47.4%) took over 90 additional days

- In 1998 to November 30, 1998, there were 18 time extensions out of 645 new requests received—17 bypassed the extended date:
  - 5 (29.4%) took 1-30 additional days
  - 4 (23.5%) an additional 31 to 60 days
  - 5 (29.4%) 61-90 additional days
  - 3 (17.7%) took over 90 additional days

The coordinator provided a bar chart showing the number of requests received, completed and overdue from November 1996 to November 1998 (reproduced below):

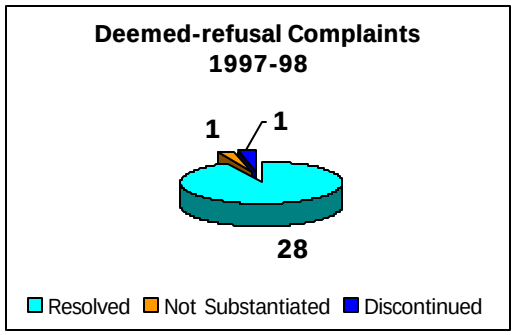
HC's ATI Status Report--Nov. 1996 to Nov. 1998

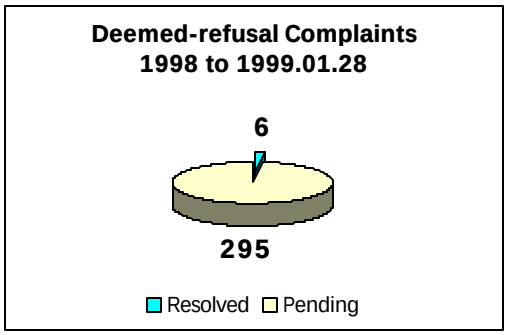


In June of 1998, overdue requests peaked with 390. Since then, as the coordinator pointed out, there has since been a steady decline. He calls this a "hopeful trend" and expects the decline will continue.

As of November 30, 1998, 140 unfinished new requests were in a deemed-refusal situation. The duration for these outstanding requests is not known.

2. Complaints—Deemed Refusals





In 1997-98, the Office of the Information Commissioner received 30 deemed-refusal complaints against HC—most (28—93.3%) were upheld (resolved). If all requesters where responses were late had exercised the right to complain, the commissioner's office would have received 1,029 complaints.

As of January 28, 1999, the commissioner's office had received 32 deemed-refusal complaints and initiated 269—out of the 6 complaints completed all were upheld (resolved). The number of complaints (based on known statistics to November 30, 1998) could have been as high as 720.

3. ATI Office—Staff

HC's ATI Coordinator devotes 80 per cent of his time to access and privacy duties. The coordinator is responsible for the application and administration of the *Access to Information Act* and the *Privacy Act* (ATIP). The staff of the ATI Unit is comprised of twelve employees—six full-time and three part-time officer-level, and three part-time support staff. The ATI Unit has increased staff by one, each of the last 3 years. Current plans for 1999-00 include an additional PM-03.

In addition to the ATI Unit, the Therapeutic Products Programme (TPP) has 10 full-time ATI employees. TPP is HC's largest OPI and the source of most of the deemed-refusal problems. TPP receives about 60% of requests. Hiring of additional staff is planned for 1999-00. The ATI Coordinator does not have a direct supervisory role over access staff in the TPP area.

4. ATI Office—Budget

HC could not provide the ATI salary dollar budgets for 1998-99, 1997-98, 1996/97. The number of positions were 14, 13 and 12 respectively.

The ATI operating budgets and training allocations for 1998-99, 1997-98 and 1996/97 are also unknown. The coordinator reports that an answer is not possible because: "Budget allocations have not been assigned below the Directorate level for several years."

HC's special $150,000 allocation for each of 1998-99 and 1999-00 is being used for additional staff to help eliminate the backlog of unanswered access requests. The allocation has also been extended for another year.

5. Allotted Times for Request Processing

The 30-day statutory time limit allows 21-22 days for processing. HC's internal follow-up times are computer-controlled and generated. No comprehensive written procedures exist in the ATI Unit. The following deadlines are general deadlines established to assist it in meeting the overall 30-day response deadline:

Area	**Turn-around Time**
Corporate, ATI Unit	1 day (at receipt)
OPIs (Operational Units)	15 days (unless extension taken)
➢ TPP, ATI Unit	- included with OPI time
Public Affairs	3 days (only 5% go to this area)
Minister's or Deputy Minister's Office	3 days (only 5% go to this area)
ATI Unit	7-8 days final processing

V. Sources of Delay

There appear to be three primary reasons for HC's delay problem: confusion of roles between the Corporate ATIP Office and the ATI Unit in the Therapeutic Products Programme (TPP), poorly managed consultations with third parties, and poorly documented and monitored procedures.

1. Confusion of Roles

In excess of 60 per cent of all requests received by Health Canada relate to records held by TPP. Many of the requests are for potentially sensitive scientific information contained in submissions made by pharmaceutical firms for new drug approvals. TPP maintains a group of approximately 10 persons to handle access requests. This group is separate from the ATI Unit, which is headed by the departmental ATI Coordinator. Staff of the TPP, ATI group work in the Proprietary and Scientific Information Assessment Unit (PSIA) in TPP's Bureau of Policy and Coordination. The rationale for having this ATI group in TPP is threefold: first, the large volume of requests justifies the allocation; second, the scientific nature of the requests requires specialist reviews and, third, since many of the requests require consultations with third parties it is felt that communications will be more candid and productive if the ATI staff are fully familiar with the culture of the TPP branch and the industry it regulates.

Whether this satellite ATI group approach is sensible is open to question. There is a concern about regulatory capture and the tendency of those who form part of a line organization to accept more readily its perceived need for secrecy. As well, in HC's case in particular, there is a confusion of responsibility and communication between the Corporate ATI group and the TPP ATI group. The extent of this confusion is reflected in a recent consultant's recommendation that management of TPP and the Corporate ATIP group should retain a professional specialist in organization conflict to assist in improving relations between the two ATI groups.

There is no doubt that the current ATI structure entails inefficiencies, which contribute to the problem of delay. First the staff of the TPP access group hold no delegated authority from the Minister to take decisions under the Act. Their role is to ensure that relevant records are searched for, located and reviewed; to make recommendations for exemptions; and to assist in conducting consultations with third parties. However, the work of this group must be reviewed by the Corporate ATI Unit, which has a coordinator and six assistant coordinators who do hold delegated decision-making authority. There is significant confusion of responsibilities when it comes to the conduct of consultations with third parties.

A consultant has recommended that HC delegate more power to the TPP access group, that the roles and responsibilities be clarified in written procedures and

that communications between the two groups be improved. The only action taken by HC in response, at this writing, is that the TPP, ATI group has drafted some procedures and started mapping the ATI process.

It should also be noted that, in 1994, the Information Commissioner recommended that HC develop an ATI manual to codify the roles, procedures and policies given the ATI function. Five years later, this has yet to be done.

Overall, HC has one of the most complex, inefficient and time-consuming processes for access request processing. A consultant hired by HC to study the matter estimates that there were some 63 different stages in HC's processing of access requests.

2. Poorly Managed Consultations with Third Parties

As mentioned previously, there are no clear guidelines concerning the conduct of consultations with third parties. The consultation process is not being conducted in accordance with the timeframes set out in the Act. Rather, HC has taken upon itself to modify the law's requirements in order to take every precaution to protect confidential, third-party information and provide a more "hospitable" environment for third-party pharmaceutical firms. A senior official stated that, if HC were to abide by the law, drug companies might decide not to introduce new drugs into the Canadian market in a timely fashion.

Whatever be the merits of this argument—and they appear to be of little realistic merit—they do not empower HC to change the law by fiat.

Health Canada simply has no legal choice but to follow the requirements that third-party consultations be conducted within the times specified in sections 27 and 28. Those times are as follows:

1) Notice to 3rd party within 30 days of receiving the request (or within properly extended time).
2) Require response from 3rd party within 20 days of notice.
3) Decide on the disposition of exemptions within 30 days from the date of the notice to 3rd party, and give notice to the 3rd party of intention to disclose.
4) Disclose the record within 20 days of the notice of intention to disclose unless the 3rd party has commenced action in Federal Court to block disclosure.

Steps 2-4, by statute, may take no longer than 50 days. HC is not respecting the law in this regard. Indeed, HC has introduced an alternate dispute resolution process (ADR) designed, ostensibly, to speed up answers by forestalling court actions by third parties that object to proposed disclosures. This process appears to have no beneficial effect (for requesters). Rather, it further delays responses and, thus, caters solely to the interests of third-party firms.

ADR at Health Canada is not defined nor is it governed by written guidelines concerning when it is appropriate, how it should be conducted, and how its efficiency should be evaluated. It was undertaken despite the specific objections of the Information Commissioner. In operation, it is no more than a series of unstructured, uncontrolled negotiations with third parties where third parties get a chance to further delay disclosure. There is no evidence that the ADR process has helped to educate third parties to the requirements of the law and, hence, reduce the incidence of specious arguments from third parties in future cases. There is no evidence that there would be more court cases in the absence of ADR (there were very few before ADR was instituted). There is no evidence that ADR has improved the quality of decision-making under the Act.

3. Inadequately Documented and Monitored Practices and Procedures

i) Extensions:

It is clear that HC is not taking advantage of the legitimate opportunities to extend time for responding to access requests. In 1997-98, HC received 1,114 new access requests. In only 94 of these cases did HC claim an extension of time—10 for searches through large volumes of records, 9 for consultations with other government institutions and 75 for consultations and notices to third parties. In the period April 1, 1998 to November 30, 1998, 645 requests were received and only 18 extensions were taken.

TPP, which receives some 60 per cent of the HC requests, estimates that 40 per cent of those it receives involve a large volume of records and the vast majority require third-party consultations. One would expect that extensions of time could be properly claimed much more often than is now the case.

It appears that HC does not well-understand the circumstances in which extensions may be claimed. There are no written guidelines on this topic.

However, it will not be possible for HC to claim valid extensions (even when 9(1)(a) is properly interpreted) unless the various bureaux within TPP cooperate and comply with the Corporate ATI Unit. Such cooperation is essential because extensions of time must be claimed within 30 days of the receipt of a request. The line staff who are tasked to search for records must determine, with dispatch, whether a search through a large volume of records is required, whether there are other operational imperatives which make it impossible to meet the 30-day deadline, whether the records contain information emanating from other government institutions or from third parties requiring consultations. Operational units cannot be expected to accomplish this initial task unless they are provided with, and trained in, the procedures and policies governing the

claiming of extensions of time. As well, operational units must be provided with a checklist with timelines for all phases in the processing.

ii) Fees:

The cooperation of operational units is also required with respect to fee assessments. If more than five hours of search and preparation time are estimated, the requester can be informed and asked to pay a deposit or to narrow the request. The processing clock stops until the deposit is received.

Because HC's processes are not well documented and communicated, it not only loses valuable opportunities to extend time, it also loses opportunities to reduce its workload by encouraging narrower requests and, of course, it loses the opportunity to collect the fees which the law allows.

4. Processing—Computer Tracking System

The DOS-based system used by Health Canada, until recently, was outdated as a case tracking system. It was excellent, in its time, for producing statistics for *InfoSource* reporting purposes. According to the completed questionnaire, the system "is very sophisticated and provides virtually any capability needed to track, analyze, and report on our caseload. But it is DOS-based and we are now in the process of moving to a new system."

Despite claims about the reporting capabilities of the current system, it was difficult for the ATI Unit to provide some of the numbers for the statistical questionnaire (Part B. III of this Report). Initially, numbers provided were based on a sample. The difficult questions were those that ask for the length of time it took to respond to late responses. A footnote read, "As was indicated last year, it is not possible, without great programming effort if at all, to obtain these figures from our computerized tracking system. Figures indicated ... were obtained from analyzing a sample of 50 cases." The ATI Unit eventually made the effort to provide the figures.

It has been the experience of other ATI Units that detailed reports can assist management to identify specific areas where delay is prominent, along with other delay factors and trends. Awareness can be extremely useful in devising strategies and solutions.

VI. Management Response to the Problem of Delay

The nature of HC's senior management response to the problems causing delay can be most easily communicated by noting what it has not done to solve the problems. In 1994, the Information Commissioner reviewed HC's performance and found that some 80 per cent of all requests were not answered within deadlines. Specific recommendations reviewed by Probus Consulting and Audit services during the recent, Therapeutics Products Programme study (August 1998), found the status to be as follows:

Selected Recommendations and their Current Status from the OIC Review of Health Canada Practices and Procedures—ATI Act, 1994	
Selected Recommendations	**Current Status**
The coordinator be delegated the power to decide on the release of records and to exercise all the exemptive provisions of the Act	Partly implemented.
An ATI manual should be produced to improve consistency, ensure adherence to HC ATI policies, and speed the learning program for new staff.	Not done.
Regular meetings should be held with ATI staff.	Unclear.
Formal training sessions should be instituted on a regularly scheduled basis.	Not done.
Written guidelines should be prepared for use by all ATI personnel and be updated as policies or procedures are changed.	Not done.
More structured and regular meetings to consider ongoing problems concerning processing requests should be held between ATI staff and program personnel.	One meeting held between the Corporate ATI Unit, & the TPP, ATI Unit (PSIA) in May; no follow-up meeting planned.
Branch personnel involved in processing ATI requests should, on a mandatory basis, receive formal training on departmental procedures and the requirements of the ATI Act.	Not done.
Departmental policies on ATI should be created.	Not done.
Within the Corporate ATI Unit, office procedures should be developed and notices of any changes to them should be in hard copy, in addition to the computer notes now used to disseminate them.	Not done.
Training and education in ATI should be based on the revised departmental policy.	Not done.
The department should follow the Act's	

extension requirements instead of the "Letter of Regret" approach.	Not done.
A continuing education and training program should be established to educate branch personnel in the application of exemptions and the criteria which must be met to justify recommendations.	Not done.

In 1997-98, $150,000 of new money was approved to augment staffing to assist with processing access requests and that amount is continuing in 1998-99.

When HC was asked to provide a plan as to when and how its backlog of unanswered requests (some as old as three years) would be cleared—it was unable so to do. Health Canada has not yet shown that it understands the magnitude of the problem it faces nor the effort, especially at senior levels, which it will take to solve the problem. Against that background, what follows are the initiatives that HC has taken to improve its response-time performance.

1. Therapeutic Products Programme

In the DM's view, HC's best strategy is "to reduce the number of formal requests coming into the system and plans to do so by putting more information in the public domain." The TPP is releasing information on HC's Website—such as product monographs, and more is forthcoming. (ATI resources are not being used for this purpose. Another group is involved.)

Initiatives in the TPP include additional staffing; a request clarification unit—it can also assess fees and invoke time extensions; a backlog study—some recommendations are being implemented and an internal working group is considering others; a process streamlining workshop was held to increase efficiency, and corresponding procedures and guidelines were developed.

2. Computer Tracking System

HC has made its decision on a new tracking system: The ATIP*flow* from MPR & Associates—currently used by FAIT, and the likely choice for C&I. The new system was in place by March of 1999.

ATIP*flow* has the following features:

- Is year 2000 compliant.
- Calculates due dates, days allowed and the number of days taken.
- The automated correspondence feature transparently extracts and merges information into word-processing software.
- Confidential text marking ensures requester confidentiality when uploading to CAIR.
- Electronic case history.
- Search options on applicant, full text, OPI, actions, etc.
- Standard reports include active requests, status, and workload reports including the last action, progress report, on-time trends, BF by officer, annual statistical report and more.
- Allows extensive trend analysis.
- Captures annual report statistics automatically as the request is processed.

Once the new system is in operation, management reports can be produced that will help HC to identify delay areas and factors, which can assist in finding problem-solving solutions and strategies.

3. Other

The ATI Unit is currently reviewing long-term backlog requests and developing a project plan to eliminate the backlog within a reasonable period of time.

HC is considering a management study or a formal audit of the administration of the ATI function in fiscal year 1999-2000.

The ATI Unit recently conducted information sessions designed to strengthen network ATI contacts within HC's program branches, there will be a one-day workshop in the application of section 20, as it pertains to Health Canada, and an internal ATI course will be conducted later this fall.

HC has ceased its alternate dispute resolution initiative.

VII. Recommendations

This review recommends the following:

- In August of 1998, Probus consulting and Audit Services submitted to HC a report entitled: Report of the Review of the Access to Information Process—Therapeutics Products Programme, Health Canada. That study made many sensible recommendations for solving HC's ATI problems. The Office of the Information Commissioner endorses (with some modifications) recommendations 1-5, 10-14, and 16-19 of that study.

  However, experience in other institutions shows that it is unusual for an ATIP group, with decision-making authority, to be located within the operational area which receives the bulk of access requests. While there is, in HC's case an obvious need for scientific expertise, there is also an arguably greater need for objectivity in reviewing records for possible exemptions. The tests for exemption are objective and arguments for secrecy should be readily apparent even to non-experts—if not, chances are the exemptions are being applied in an overbroad fashion. HC must avoid entrenching its past tendencies to administer the access to information law in a way most hospitable to third-party firms.

  - HC's senior management should retain an organizational conflict interest specialist to work with the ATI Coordinator, and an appropriate official from TPP—attended by a senior official of HC's management—to resolve differences, and to clarify and define the roles and inter-unit relations of the ATI Unit and TPP's ATI Unit. (From Probus Recommendation 3, 4 & 5.)

  - The ATI Coordinator, while soliciting input from TPP, should take the lead in defining and documenting ATI request processing, clearly defining the roles of each unit at every step. (From Probus Recommendation 1.)

  - The ATI Coordinator should develop, in consultation with TPP, a framework of policies and standard operating procedures for the ATI process at HC. (From Probus Recommendation 2.)

  - HC should adopt a policy of openness regarding the rationale for its position when negotiating severances with third parties. (From Probus Recommendation 10.)

  - Using the TPP'S ATI Unit's third-party guide as a base, the ATI Coordinator should produce a guide suitable for wide distribution to third parties. This guide should also be approved by Legal Services. (From Probus Recommendation 11.)

- TPP'S ATI Unit should make the clarification of all requests with the requester a standard step where there is a possibility that clarification will allow faster processing. (From Probus Recommendation 12.)

- Under the guidance of the coordinator, TPP's ATI Unit should charge fees in accordance with the ATI Act. (From Probus Recommendation 13.)

- Under the guidance and supervision of the coordinator, TPP's ATI Unit should, when the backlog is reduced, claim appropriate extensions. (From Probus Recommendation 14.)

- TPP'S ATI Unit should eliminate the review by the senior reviewer (TPP, ATI Unit) of the information selected by the 1st reviewer as requiring third-party notification. (From Probus Recommendation 16.)

- The coordinator should set up a database within TPP'S ATI Unit. This system, for internal use, would include ATI precedents and legal opinions, and could be used for rapid communications to third parties and to justify positions. Preferably, this need can be met with the new computer system. (From Probus Recommendation 17.)

- TPP'S ATI Unit should make more use of electronic and CD-ROM databases in order to more quickly identify information in the public domain. (From Probus Recommendation 18.)

- TPP'S ATI Unit should maintain its Internet access and its access to General Query Language for TPP databases. (From Probus Recommendation 19.)

- Selected staff of the TPP'S ATI Unit should be provided with Internet search courses in order to speed up information searches. (From Probus Recommendation 20.)

- TPP'S ATI Unit should be provided with electronic (read-only) access to bureau LANs in order to speed up the processing of product monograph requests. (From Probus Recommendation 21.)

- TPP should appoint a Head of TPP'S ATI Unit or relocate two of the current Corporate, ATI Unit's Assistant Coordinators to TPP's ATI Unit. This could provide a link between the ATI Coordinator and TPP, and would give that unit ready access to persons with delegated authority, which could hasten some procedural steps. These assistant coordinators should continue to report directly to the ATI Coordinator as should the Head of TPP's ATI Unit. (From Probus Recommendation 22.)

- The coordinator should oversee the development of training materials and

procedures for training new staff in TPP'S ATI Unit. (From Probus Recommendation 23.)

- TPP'S ATI Unit should adopt a team-based approach to processing its ATI requests. However, the team approach does not work well in some other institutions and it should be carefully evaluated. (From Probus Recommendation 24.)

- TPP should require each Bureau to appoint a senior officer, preferably reporting to the Director, to oversee the identification and remittance of all Bureau files in response to TPP ATI Unit's requests. (From Probus Recommendation 25.)

- The coordinator, in conjunction with TPP'S ATI Unit, should prepare a short description of the responsibilities of the TPP's Bureau ATI contacts. (From Probus Recommendation 26.)

- The DG, TPP should communicate to all TPP staff to remind them of the need to provide all relevant information to TPP'S ATI Unit in a timely fashion in response to ATI requests through TPP Bureau ATI contacts. (From Probus Recommendation 27.)

- TPP should continue to increase the volume of information made available outside the ATI process. (From Probus Recommendation 28.)

- The coordinator should ensure that the new computer tracking system will generate the work statistics reports required by TPP's ATI Unit, in a suitable format designed to eliminate manual generation of work statistics. (From Probus Recommendation 29.)

What follows are additional recommendations not drawn from the Probus report:

- The coordinator is directly responsible for ensuring compliance with the Access Act, and should take a strong leadership role in establishing a culture of compliance throughout RC. Such a role requires the unwavering support and endorsement of the Minister and the Deputy Minister.

- The coordinator should be directed by the Minister, in writing, to exercise the delegation to answer requests within deadlines whether or not the senior approval process has been completed.

- HC should start making use of extensions under section 9, and OPIs (including field offices) should be trained to identify records that would justify a valid extension. Further, OPIs should contact the ATI office without delay to indicate the request involves a large number of records, or a search

through a large number of records. If the ATI office is aware of the need to extend, within the initial 30 days, a valid extension can be taken if the appropriate notice is sent on time.

- Allotted turnaround times should be tightened up, with some approval processes dropped or performed simultaneously. An information sheet, clearly showing the expected turnaround times for each stage in the access process, should be developed. This might help those not familiar with the request process to understand the tight timelines.

- OPI-specific training (and information packages), with a focus on timelines and other considerations, should be developed, and training sessions given.

- If a request is clarified or modified, the ATI unit should confirm, in writing, its understanding of the revised request—when the original wording of a request does not provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record. The date clarified becomes the effective date of the request, and the requester should be informed.

- If an extended date will not be met, the ATI office should routinely contact the requester 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.

- If an outstanding request is almost one year old, the ATI office should notify the requester about section 31, the one-year limitation on the right to complain.

- Performance contracts with operational managers should contain consequences for poor performance in processing access requests.

- Come into substantial compliance with the Act's deadlines no later than March 31 of 2000.

- Where possible, the ATI office should provide partial response releases for portions of records not involved in 3rd party or other consultations.

- Approach the overall delay problem by establishing milestones to reach pre-set targets for improved performance (i.e. move to a project management mode).

- ATI training should be mandatory for all new managers as part of their orientation and for all managers on a refresher basis.

- An information sheet, clearly showing expected turnaround times for each stage in the access process, should be developed. This might help those not familiar with the request process to understand the tight timelines.

- Health Canada should come into immediate compliance with the third-party consultation timeframes set out in sections 27 and 28 of *the Access to Information Act*.

- The delegation order now in force (April 5, 1995) gives routine administrative responsibilities to the position of Assistant Access to Information Coordinator; authority for most exemptions to the Access to Information Coordinator, and authority over some exemptions—sections 14, 15, & 21—to the Director General, Health Policy & Information Directorate. The DM has a few vested responsibilities—e.g. subsection 20(6). It does not, however, make it clear who has the responsibility for decision-making under the Act. In practice, in all but the most straightforward cases, the responsibility seems to be a collective one. It should be made explicit where the responsibility for decision-making under the Act lies.

- TPP's new procedures and guidelines should be given to the ATI Unit. These can be reviewed, and perhaps used as a base to write processing procedures pertaining to all ATI areas. Clear instructions should be include the appropriate use of subsection 9(1). All ATI staff should be fully knowledgeable about the treatment of requests, especially those that involve a large number of records, or a search through a large number of records. Detailed third-party procedures should be established and followed.

- Caution should be taken to ensure that procedures do not fast-track routine or "easy" requests to the detriment of the more complex and/or difficult requests.

- The coordinator should use the ATIP*flow* system's reporting capabilities to monitor OPI turnaround times. Problematic areas should be reported to Senior Management.

- Remove Public Affairs from the approval chain and deal with that office in parallel.

- Give the ATIP Coordinator a specific budget for which he is responsible and accountable.

B. BASIS OF REPORT

I. Interview with HC's ATIP Coordinator—December 17, 1998

On December 17, 1998, HC's ATIP Coordinator was interviewed for the purpose of this Report Card.

II. HC—Pre-interview Self-audit Questionnaire

Questionnaire for Statistical Analysis Purposes
In relation to official requests made
Under the Access to Information Act

Part A: Requests carried over from the prior fiscal period.	April 1/97 to March 31/98	April 1/98 to Nov. 30/98
1. Outstanding from previous period:	311	471
2. Requests carried over from the prior fiscal period—in a deemed-refusal situation on the first day of the new fiscal period:	234	390

Part B: New Requests — Exclude requests included in Part A.	April 1/97 to March 31/98	April 1/98 to Nov. 30/98
3. Number of requests received during the fiscal period:	1,114	645
4.A How many were processed within the 30-day statutory time limit:?	364	253
4.B How many were processed beyond the 30-day statutory time limit where no extension was claimed?	367	173
4.C How long after the statutory time limit did it take to respond where no extension was claimed?		
1-30 days:	178	117
31-60 days:	82	30
61-90 days:	35	14
Over 90 days:	72	12
5. How many were extended pursuant to section 9?	44	18

6.A	How many were processed within the extended time limit?	6	1
6.B	How many exceeded the extended time limit?	38	17
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	10	5
	31-60 days:	6	4
	61-90 days:	4	5
	Over 90 days:	18	3
7.	As of December 1, 1998, how many requests are in a deemed refusal situation?		140

Part C: Contributing Factors

8.	Use this area to describe any particular aspect about a request or type of request that may impact on the difficulty or time necessary to complete a request:
	1) We get a large number of requests from one particular requester. Many of his requests are vague and difficult to interpret. Then, because they are so vague, it is very difficult to figure out where the records would be located across the department. Once we start finding the records, there is usually no way of being sure the search is complete. Another problem is that he tends to file a large number of requests at the same time. His requests, on average, would cost us about 20 person days of work. So if he files 10 requests on the same day, we must somehow find an extra person year to complete them all on time, which is not possible.
	2) Another problem for us is that some of the "drug files" can involve thousands of pages of records. It is absolutely not possible to review these requests in the 30 days allotted, nor is it possible for the third party to respond to the first notice in 20 days. Nor would it be justifiable for us to take extensions for these requests—the problem is not with search, but with review.

THANK YOU FOR COMPLETING THIS QUESTIONNAIRE

III. HC—REVIEW QUESTIONNAIRE (DECEMBER 1998)

Review Questionnaire—December, 1998

Delegation of Authority:

1. On the Delegation Order for your institution, which powers, duties and functions have been delegated and to whom? (Provide a current copy of the Delegation Order.)

1) Routine administrative responsibilities are delegated to ATI officers
2) Most exemptions are delegated to the ATI Coordinator
3) Some ATI exemptions (e.g. S14, S15, S21) are delegated to next level; and
4) A very few responsibilities are vested with the DM - e.g. S 20(6)

Comment: For full information, the current Designation Order follows:

National Health and Welfare

Access to Information Act

Designation of Employees or Officers
of the Department of National Health and Welfare
with respect to the *Access to Information Act*

The Minister of National Health and Welfare, pursuant to section 73 of the *Access to Information Act*, hereby makes the following Order respecting the designation of certain officers or employees of the Department to exercise or perform the powers, duties and function of the Minister for the purposes of the *Access to Information Act*.

Ottawa, April 5, 1995

Short Title

1. This order may be cited as the Department of National Health and Welfare *Access to Information Act* Designation Order.

Interpretation

2. In this Order: "Act" means the *Access to Information Act*; "Department" means the Department of National Health and Welfare; and "Minister" means the Minister of National Health and Welfare.
3. Where in sections 4, 5 and 6 of this Order an employee or officer is designated, the superiors of the employee or officer are also designated.

Designation

4. The Minister, pursuant to Section 73 of the Act, hereby designates the persons holding the positions of Assistant Access to Information Coordinator (or equivalent), including on an Acting basis, to exercise or perform those powers, duties and functions of the Minister, as head of the Department for the purposes of the Act, under the sections of the Act set out in Schedule 1 to this Order.

5. The Minister, pursuant to Section 73 of the Act, hereby designates the person holding the position of Access to Information Coordinator, including on an Acting basis, to exercise or perform those powers, duties and functions of the Minister, as head of the Department for the purposes of the Act, under the sections of the Act set out in Schedule 2 to this Order.

6. The Minister, pursuant to Section 73 of the Act, hereby designates the person holding the position of Director General, Health Policy and Information Directorate, Policy and Consultation Branch, including on an Acting basis, to exercise or perform those powers, duties and functions of the Minister, as head of the Department for the purposes of the Act, under those sections of the Act set out in Schedule 3 to this Order.

Revocation

7. All other Designation or Delegation Orders previously made by any Minister in relation to the Act are hereby revoked and replaced by this Order, effective on the date of the signing of this Order, as indicated below.

The Honourable Diane Marleau
Minister of National Health and Welfare

Date: April 5, 1995

Authority delegated to the Assistant Access to Information Coordinator (or equivalent):

Department of National Health and Welfare
Access to Information Act Designation Order
SCHEDULE 1

Powers, duties and functions delegated by the Minister to the employees or officers holding the position of Assistant Access to Information Coordinator (or equivalent).

Section of the Act	Powers. Duties. Functions
7	Give access to a record, where a decision has been made that access to that record shall be given.
9	Extend time limits for search or consultation; give notice to the Information Commissioner of extensions of over 30 days.
11	Administer the collection of fees.
27(1)	Make decisions to give written notice to a third party of the Department's intent to disclose records that may contain third party information; give

	written notice to the third party.
27(4)	Extend the time limit for third-party notification.
28(1)(b)	Give written notice to a third party of the Department's decision to disclose records containing information pertaining to that third party.
28(2)	Waive the requirement for a written representation by a third party.
28(4)	Disclose records for which a notice has been issued to a third party of the Department's decision to disclose those records, unless the third party seeks a Court review of the decision under section 44.
29(1)	Give written notice to the applicant and to any involved third party of the Department's decision to disclose information on the recommendation of the Information Commissioner.
33	Advise the Information Commissioner of any TPs involved when the Information Commissioner has given notice of an investigation.
43(1)	Give written notice to a third party of an application for a Court review under section 41 or 42.
44(2)	Give written notice to an applicant of an application by a third party for a Court review under section 44.
7 1(2)	Exclude any exempt information contained in manuals before the manuals are inspected by the public.

Authority delegated to the Access to Information Coordinator:

Department of National Health and Welfare
Access to Information Act Designation Order
SCHEDULE 2

Powers, duties and functions delegated by the Minister to the Access to Information Coordinator.

Section of the Act	Powers. Duties. Functions
8	Transfer a request to the government institution with greater interest; give written notice of the transfer to the applicant.
10(1)(b)	Where access is refused, make a decision as to whether to state whether a record exists.
12(2)(b)	Cause the translation of a record, when in the public interest.
12(3)(b)	Cause a record to be converted in an alternative format, when necessary and reasonable.

19	Make decisions concerning the disclosure or denial of personal information.
20	Make decisions concerning the disclosure or denial of third party information.
22	Make decisions to deny information relating to testing procedures.
23	Make decisions to deny information subject to solicitor-client privilege.
24	Make decisions to deny prohibited information.
26	Make decisions to deny information that is to be published.
28(1)(b)	Make decisions concerning the disclosure or denial of third party information after the third party has been given the opportunity to make representations.
37(1)(b)	Give notice to the Information Commissioner of any action taken or proposed to be taken to implement a recommendation of the Commissioner.
52(2)	Request that an application for a Court review under section 41 or 42 or an appeal thereof be heard in camera and determined in the National Capital Region.
68, 69	Deny information that is excluded from the Act.
71(1)	Provide facilities for the public to inspect manuals.
72(1)	Cause the preparation of an Annual Report on the administration of the Act for submission to Parliament.

Delegated authority of the Director General, Health Policy and Information Directorate, Policy and Consultation Branch:

Department of National Health and Welfare
Access to Information Act Designation Order
SCHEDULE 3

Powers, duties and functions delegated by the Minister to the Director General, Health Policy and Information Directorate, Policy and Consultation Branch.

Section of the Act	Powers. Duties. Functions
13	Make decisions concerning the disclosure or denial of information obtained in confidence from other governments.
14	Make decisions to deny information relating to federal-provincial affairs.
15	Make decisions to deny information relating to international affairs or defence.
16	Make decisions to deny information relating to law enforcement and

	investigations.
17	Make decisions to deny information that could threaten the safety of individuals.
18	Make decisions to deny information relating to the economic interests of Canada.
21	Make decisions to deny information relating to the operations of government.
37(4)	Make decisions to disclose information to a complainant on the recommendation of the Information Commissioner.

2. Are the ATI roles and responsibilities for those with delegated authority clearly defined?
X yes; ___ no

3. Do officers with delegated authority actually exercise the delegation? Or, in practice, does the approval process require the approval or concurrence of officials who are not holders of delegated authority? (Explain.)
The delegated officials are fully responsible. Of course, they rely on other individuals to make recommendations for each file.

ATI Unit:

1. To which unit/division (and management level) of the institution does the ATI coordinator report?
a) For operational purposes:
b) For administrative purposes:
For both purposes, the ATI Coordinator is an EX-1 level Director responsible for a Division of the Health Policy and Information Directorate, Policy and Consultation Branch. He reports to an EX-3.

2. Who (name and title) completes the coordinator's annual performance appraisal?
Abby Hoffman, Director General, Health Policy and Information Directorate.

3. Does the ATI Coordinator have a clear mandate? (Please provide all documentation which sets out the coordinator's goals, objectives, duties, responsibilities and authorization.)
X yes; ___ no

The coordinator's job description is currently under review. The following is a draft.

DRAFT

TITLE:	**Director, Information Access & Coordination Division**
POSITION NUMBER:	PPHI - 47
EFFECTIVE DATE:	October 2, 1995
DEPARTMENT:	Health Canada
BRANCH:	Policy and Consultation Branch
DIRECTORATE:	Health Policy and Information Directorate
LOCATION:	Ottawa, Ontario

GENERAL ACCOUNTABILITY:

The Director, Information Access & Coordination Division is accountable for the provision of advice, information and support to Senior Branch Managers of the Health Policy and Information Directorate and Senior Officials of the Health Canada Department including the Minister of Health with respect to the application of the provisions of the *Access to Information Act* and the *Privacy Act* (ATIP). The Director establishes and maintains effective communication channels within Health Canada and externally with organizations including Statistics Canada and the Canadian Institute for Health Information (CIHI) and is responsible for the collection, handling and dissemination of all health related information for the Directorate. The Director administers the Directorate's Information Systems Development Program and provides functional guidance for the Branch Informatics Unit.

ORGANIZATIONAL STRUCTURE:

The position is one of three positions reporting the Director General, Health Policy & Information Directorate. The two other positions are: Director, Health Determinants Division and Director, Health Economics and Systems Analysis Division.

NATURE AND SCOPE:

[....]

The Health Policy and Information Directorate is also responsible to provide economic and health analysis and policy advice to the Minister and senior officials concerning a wide range of health policy issues that affect Canada's health care system and the general health and well-being of Canadians. The Directorate must also administer and coordinate a variety of activities related to the *Access to Information Act* and *The Privacy Act* on behalf of Health Canada, and is responsible for data acquisition and coordination and informatics support.

The Health Policy and Information Directorate provides the Federal Minister of Health and other senior Health Canada officials with viable and effective public policy options and strategies in respect of major health issues and challenges facing Canada's health system.

[....]

The Director, Information Access & Coordination Division is fundamentally and primarily responsible for the application and administration of the *Access to Information Act* and the *Privacy Act* (ATIP) for Health Canada.

Other areas of responsibility include establishing and maintaining effective information coordination mechanisms within Health Canada and with external agencies such as Statistics Canada and the Canadian Institute of Health Information (CIHI). The incumbent ensures that Health Canada meets all its corporate obligations and requirements for the approval of all information collection initiatives. The incumbent directs the administration of the information systems development program as it relates to the operational requirements of the Health Policy and Information Directorate.

Within the primary area of responsibility for the *Access to Information Act* and the *Privacy Act* legislation (ATIP) is the requirement for exercising various authorities and responsibilities related to the disclosure or denial of Health Canada records. Formal authority is delegated directly to the Director, Information Access & Coordination from the Minister of Health, as well as responsibility for the formulation, direction and control of policies, procedures and practices governing the application of the ATIP legislation within Health Canada.

The Director is responsible for planning, directing and controlling the activities of the Access to Information and Privacy Centre by determining priorities, setting work objectives, evaluating the performance of the Centre and providing leadership, motivation and guidance to ATIP staff members.

The Director provides leadership and develops training and information programs for senior officials, managers and others engaged in the application of ATIP legislation, policies and programs. Provides persuasion, motivation and guidance in achieving ATIP objectives and provides functional guidance to others.

Based on a formal **Access To Information Designation Order,** the Director, Information Access & Coordination makes ATIP decisions independently and reviews recommendations forwarded by senior officials to ensure that the legislation has been interpreted correctly and is being applied in a consistent and appropriate manner.
The Director reviews recommendations from departmental program managers and senior branch officials for compliance with the legislation, negotiating compromises where feasible, justifiable and legitimate.

The Director monitors the progress of special cases which may arise from areas within HC Corporate or Regional offices and makes final decisions to ensure that information disclosed is presented in accordance with legislation, policies and procedures and sound administrative practice. Coordinates discussions, negotiations and other communications with applicants to ensure the rights of individuals are respected.

The Director monitors and identifies trends in the application of ATIP policies within HC and in other jurisdictions and provides expert advice and counsel in recommending changes to policies in such areas as delegation of authority etc. Prepares formal reports on ATIP activities within Health Canada for submission to Access and Privacy Registers (InfoSource) and the Annual Reports to Parliament. Coordinates the resolution of complaints against Health Canada and develops responses to investigations by Information or Privacy Commissioners.

The Director participates, in conjunction with Legal counsel, in the preparation of documents in support of legal defence arguments for use in judicial reviews by Federal Courts. Keeps track of decisions by the Federal Court of Canada and the findings and recommendations of the Information and Privacy Commissioners relating to the interpretation and application of ATIP legislation.

The Director, Information Access and Coordination is responsible for establishing effective lines of communication between internal HC users of health information and the external suppliers of health information including Statistics Canada and the Canadian Institute of Health Information (CIHI). The incumbent plans, organizes and directs the acquisition of data, the development of information sources, and the maintenance of data libraries to provide data and information on social and economic conditions in Canadian society to support health policy and program development.

The Director ensures that the division has the capability to act as a focal point in the Branch and Department for the acquisition of health data and in particular survey data from Statistics Canada, other data bases from CIHI, HC surveys and private survey sources in areas of demographic change, mobility, incomes, expenditures, economic well-being, health status, lifestyles, health risk factors and fitness etc. The incumbent manages, plans and directs projects for the analysis of survey data and other health and socio-economic data to de fine trends for use in policy development and strategic planning activities.
The Director represents the Branch and Department in meetings and consultations with senior officials of other federal departments and agencies, provincial & territorial governments, the academic sector and private survey and polling companies.
The Director assists and supports the Assistant Deputy Minister on two senior data acquisition and coordination committees namely, the Health Canada Information Committee and the Health Canada Statistics Canada Liaison Committee and frequently chairs or co-chairs meetings of these committees. The incumbent is the formal Health Canada point of contact in managing the new relationships that must be developed and fostered with the Canadian Institute on Health Information (CIHI).

The Director ensures that effective and efficient mechanisms are in place for the collection, analysis and distribution of health information where such information may include public opinion survey information related to major Health Canada studies in the areas of health care, health systems renewal, determinants of health, risks. services and so on.
[....]

The Director oversees the preparation of regular and periodic reports on the extent, nature and cost of information collection activities and public opinion research surveys in Health Canada, and prepares formal briefs and submissions for senior managers up to and including the Minister of Health Canada.

The Director manages the Health Canada Information Systems Development Program, which encourages the development of improved computerized information systems by provinces and national organizations in the health field.
[....]

The Director reviews project proposals in order to make recommendations to the Deputy Minister for projects to be funded and participates in project steering committees with senior officials of recipient organizations to review and manage the approval of expenditure claims.

The Director is responsible for the functional management of the informatics in the Policy and Consultation Branch by providing day-to-day functional management for the Manager of the PCB Informatics Unit. While this Unit is part of the Corporate Services Branch, the incumbent advises senior Branch managers on informatics requirements, services and resource requirements and ensures that PCB has available up to date hardware, software and

communications services and technology products. The incumbent chairs the Branch Informatics Committee and represents the Branch on the two main corporate level informatics committees, namely the Departmental Administration Systems Steering Committee (DASSC) and the Information Management Advisory Committee (IMAC).
[...]

SPECIFIC ACCOUNTABILITIES:

1. Responsible for the application and administration of the *Access to Information Act* and the *Privacy Act* for Health Canada.
2. Within ATIP, provides advice and counsel, training programs, reviews case recommendations, prepares statistical trend reports and participates in complaint investigations and legal case preparations.
3. Responsible for establishing and maintaining effective information coordination and data acquisition mechanisms within Health Canada and with external agencies such as Statistics Canada and the Canadian Institute of Health Information (CIHI).
4. Ensures that Health Canada meets all of its corporate and central agency obligations and requirements with respect to all health information collection initiatives, including all public opinion research studies.
5. Directs the administration of the Health Canada Information Systems Development Contribution Program.
6. Provides functional direction for all informatics planning, project management, and operational matters in the Branch.

November 03, 1995

4. Is the ATI Coordinator performing his/her duties on a full-time basis? If not—in instances where the individual also performs duties under another position title—please indicate the percentage of time spent on ATI matters.

If the question is, "Does the ATI Coordinator have other duties?" the answer is yes. Refer to draft job description. In practice, the ATI duties occupy by far the majority of his time. No exact figure is available, but a reasonable estimate would be well over 80%.

5. Does the ATI Coordinator have authority/control over ATI activities throughout the institution (i.e. headquarters, regions, etc.)?

Yes.

6. If not, who is responsible for the ATI activities in other areas? (If more than one other person, please identify each by name, title, and classification—ground level.)

Not applicable.

7. Please provide a breakdown of all employees in the ATI unit, showing classification, full or part-time status, and number of years of experience.

A: Officer Level:

Classification		Full or Part-time	Yrs Experience
EX-I	Director, ATI Coord.	Part-time (.8)	10
EX-I	Temporary Secondment	Full-time	3
PM-4	Senior Assist. Coord. (ATI)	Full-time	15
PM-4	Senior Assist. Coord. (Privacy)	Part-time (.5)	8
PM-3	Assistant ATI Coordinator	Full-time	9
PM-3	Assistant ATI Coordinator	Full-time	6
PM-3	Assistant ATI Coordinator	Full-time	6
SI-5	Senior Statistical Analyst	Full-time	6
EG-5	Project Coordinator	Part-time (.5)	10

B: Support:

Classification		Full or Part-time	Yrs Experience
CR-4	ATIP Administrative Assistant	Part-time (.5)	1
SI-3	Research Assistant	Part-time (.5)	2
SCY-2	Divisional Secretary	Part-time (.5)	1

NOTE: The largest OPI, Therapeutic Products Programme, to which about 60% of requests are directed, has a group of 10-12 staff devoted full time to ATI.

8. Have written, internal procedures been developed and implemented to ensure that access requests are processed in accordance with the statutory provisions of the Act, Regulations and the Treasury Board Guidelines? (If yes, please provide copies.)

___ Yes; ___ no

The processing of requests is largely driven by our computerized tracking system. This system, and its documentation, make other types of written procedures largely unnecessary. A new, improved system is now being implemented. The need for other written procedures will be reviewed again once the new system is operational.

Requests:

9. The Treasury Board Guidelines include that a copy of every access request—personal identifiers removed—should be submitted to the Coordination of Access to Information Requests (CAIR) System, Public Works & Government Services Canada within 24 hours of receipt. Is this being done? (Please provide any other guidelines you follow in this regard.)

We are unable to find time to download every day. We estimate that the CAIR download is done about every two weeks. (We question the continuing requirement for this system.)

10. If a request is clarified or modified, does the ATI unit confirm, in writing, its understanding of the revised request—when the original wording of a request does not provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record? (Please provide any other guidelines you follow in this regard.)

If the question is whether we confirm these matters in writing for internal purposes such as record search, the answer is yes. If the question is whether we confirm these matters in writing with the applicants, the answer is not always—only when considered necessary.

11. When extensions are necessary, are notices sent to the requester within 30 days?

Time extension notices are usually sent out (within 30 days of the receipt of a request) when justifiable for search. But for many of our most difficult requests time extensions for search would not be justified since the records are relatively easy to locate.

12. When notice is sent under subsection 9 (1), extending the time limit for more than thirty days, how often is a copy of the notice sent to the Office of the Information Commissioner?

X Always, ___ almost always, ___ sometimes, ___ rarely, ___ never.
Percentage of requests: 100%

13. Following an extension, if it is unlikely that the extended date will be met, does the ATI unit contact the requester to indicate:

1) The response will be late

___ Always, ___ almost always, x sometimes, ___ rarely, ___ never.

2) Of an expected date for the final response

___ Always, ___ almost always, x sometimes, ___ rarely, ___ never.

3) Of the right to complain to the Information Commissioner

___ Always, ___ almost always, x sometimes, ___ rarely, ___ never.

14. If a request is almost one year old, does the ATI unit notify the requester about section 31, and the one-year limitation on the right to complain— from the time the request is made? (Provide any written guidelines you follow in this regard.)

___ Always, ___ almost always, ___ sometimes, ___ rarely, x never.

15.a) Are third-party notices sent as soon as the need for such notice is identified?

X Always, ___ almost always, ___ sometimes, ___ rarely, ___ never.

b) Is the third-party timing process (as set out in section 28) observed?
___ Always, ___ almost always, x sometimes, ___ rarely, ___ never.
Percentage of requests: _____%

16. If consultations are necessary, are these sent out as soon as the need has been identified?
X Always, ___ almost always, ___ sometimes, ___ rarely, ___ never.

17. Does the ATI unit provide a partial release of the request for portions that are not involved in the necessary third-party (or other) consultations?
___ Always, x almost always, ___ sometimes, ___ rarely, ___ never.

18. Is there a tracking process in place to alert the ATI unit if a request:

Has not been assigned?:	x yes; ___ no
Will not be processed within the 30 days?:	x yes; ___ no
Is nearing the end of the extension date?:	x yes; ___ no
Is past the extension date?:	x yes; ___ no
Is almost one year old?:	__yes; x no

Please describe the nature of the tracking process and provide related documentation.

Our existing computerized tracking system, CAPTAIN, is very sophisticated and provides virtually any capability needed to track, analyze, and report on our caseload. But it is DOS-based and we are now in the process of moving to a new system. Documentation can be provided at a later date.

Offices of Primary Interest

1. Are OPI's ATI responsibilities clearly defined? (Provide any written documentation.)
X yes; ___ no
See instruction sheet that accompanies every request when sent to an OPI.

INSTRUCTIONS FOR ATI REQUEST
RECORD SEARCH—ATI FOLDER

The cover of this folder indicates:

1. The ATI REQUEST NUMBER;
2. The NAME and TELEPHONE NUMBER of the ATI officer responsible for this request in the ATIP Centre;

3. And the DUE DATE for the record search to be completed.

   Also, inside the folder is a copy of the actual request that will indicate the nature of the records required.

INSTRUCTIONS

1. If you are not sure precisely what records are being requested, please contact the ATI officer.
2. If you think that records on this subject may be located in another area of the Department, and we have not informed you that we are already searching there, please let the ATI officer know.
3. If you cannot have the search for records completed within the search due date, please contact the ATI officer.
4. If you expect that the actual time spent on record search will exceed four hours, please contact the ÄTI Officer before you proceed further; we may need to request the payment of fees from the applicant.
5. If the search results in more than 125 pages of records, please contact the ATI officer before you proceed further; we may need to request the payment of fees from the applicant.
6. When your work has been completed, send two (2) copies of all the records back to the ATIP Centre in this folder. If you are including comments about exemptions or sensitive material, etc., please make them on the "work" copy and leave the second copy clean.

NOTES

1. A "record" includes any correspondence, memorandum, ..., including machine readable records ... or any extract or copy thereof.
2. We must respond to each request within 30 days. The only valid reasons for an extension of the time limit are: a) where a very large number of records are involved and meeting the original time limit would unreasonably interfere with operations, or b) where external consultations are required.
3. We may charge $0.20 per page for photocopying. And we may charge $10 per hour for search and preparation time beyond the initial free allocation of 5 hours, one hour of which is required by the ATIP Centre to prepare the information for disclosure.

IN ORDER TO HELP US KEEP TRACK OF ATI FOLDERS, PLEASE SEND AN E-MAIL MESSAGE TO THE ATI OFFICER WHEN YOU GET THIS FOLDER, EVEN IF YOU DO NOT FORESEE ANY PROBLEMS. PLEASE INCLUDE THE REQUEST NUMBER (yy-A-nnn) IN THE SUBJECT FIELD.

Instructions for record search, 24-4-97

2. Do OPIs generally observe time limits for responding to the ATI unit?
___ Always, ___ almost always, x sometimes, ___ rarely, ___ never.
Percentage of requests: NOT KNOWN

3. What action is taken when an OPI is late in providing records? (Provide any written documentation.)
All OPIs (except TPP, Health Protection Branch, where they have a large backlog) are sent reminders by email.

Processing—Other Areas:

A. Legal Services:

1. Are ATI requests submitted to this area for review/approval/sign-off?
___ Always; ___ almost always; ___ sometimes; ___ rarely; x never

2. What is the expected turnaround time for requests submitted to this area?
____ Days. (Provide any written documentation.)
Requests are not submitted to Legal Services.

3. What action is taken when this area does not meet the turnaround date? If a follow-up is sent, indicate how many additional days are given for an expected response. (Provide any written documentation.)
Not applicable.

B. Public Affairs /Communications:

1. Are ATI requests submitted to this area for review/approval/sign-off?
___ Always; ___ almost always; x sometimes; ___ rarely; ___ never
Percentage of requests: 5%

2. What is the expected turnaround time for requests submitted to this area? (Provide any written documentation.)
3 days.
All turnaround timeframes are generated from our computer system.

3. What action is taken when this area does not meet the turnaround date? If a follow-up is sent, indicate how many additional days are given for an expected response. (Provide any written documentation.)
We start with an email reminder from the file manager. If not successful, the Director sends an email to the communications officer, with a copy to the supervisor. If not successful, the Director goes, in person, to ask that the file be returned without the Communication review completed. This usually results in the work being done quickly. The timeframes for these procedures vary a bit

depending on the circumstances.

C. Minister's Office:

1. Are ATI requests submitted to this area for review/approval/sign-off?
___ Always; ___ almost always; ___ sometimes; x rarely; ___ never
Percentage of requests: 5%

2. What is the expected turnaround time for requests submitted to this area? (Provide any written documentation.)
3 days.

3. What action is taken when this area does not meet the turnaround date? If a follow-up is sent, indicate how many additional days are given for an expected response. (Provide any written documentation.)
The ATI office send a weekly reminder email, via the DM's Office, to the Minister's Office giving a list of all files awaiting final review.

D. Deputy Minister's Office:

1. Are ATI requests submitted to this area for review/approval/sign-off?
___ Always; ___ almost always; ___ sometimes; x rarely; ___ never
Percentage of requests: 5%

2. What is the expected turnaround time for requests submitted to this area? (Please provide any written documentation.)
3 days

3. What action is taken when this area does not meet the turnaround date? If a follow-up is sent, indicate how many additional days are given for an expected response. (Provide any written documentation.)
It never happens. In fact, most files are returned in one day or less.

E. If other areas are included in the processing/approval process of access requests, which ones? And provide the following information for each:
NONE

Fees:

1. Do you have a fee policy? (If yes, please provide a copy.)
____ Yes; ____ no
We charge the fees called for by regulation.

FTE/Operating Budgets:

1. Which division/unit is responsible for budget allocations for the ATI unit?

Budget allocations have not been assigned below the Directorate level for several years.

2. Are ATI activities (i.e. FTE allocations) included in the strategic planning of the institution?

No.

3. What is/was the salary dollar budget for the ATI unit for the fiscal periods shown below?

1998/1999: $ unknown; number of person years 14
1997/1998: $ unknown; number of person years 13
1996/1997: $ unknown; number of person years 12

4. What is/was the operating budget for the ATI unit for the fiscal periods shown below?

1998/1999: $ unknown
1997/1998: $ unknown
1996/1997: $ unknown

5. If possible, please provide a breakdown of how much of the operating budget for the ATI unit was used or set aside for training and/or training materials (manuals, information sheets, directives, etc) for the fiscal periods shown below?

1998/1999: $ —-
1997/1998: $ —-
1996/1997: $ —-

Answer: Not possible.

IV. HC's Correspondence

In a letter addressed to the Honourable John M. Reid, P.C., dated November 12, 1998, Mr. David A. Dodge, Deputy Minister of Health Canada, said the following:

> Thank you for your letter of October 6, 1998, informing me that your office intends to conduct a review of the administration of the *Access to Information Act* here at Health Canada. I understand that this review will update and build on similar work done by your office last year, as described in you 1997-98 Annual Report.

I welcome this review. Since starting in my position here at Health Canada, I have become aware that the department is having considerable difficulty in meeting its various obligations under the *Access to Information Act* on time, and that we are currently facing a significant backlog of requests.

The Therapeutic Products Programme (TPP-formerly known as the Drugs Directorate), which handles about two-thirds of the ATIA requests in Health Canada, currently has a large majority of the department's backlog as you reference in your letter.

As a science-based organization, regulating the highly competitive drug and medical device industries, many of the requests addressed to TPP require searches of literally thousands of pages of technical, scientific documents. These complex, large volume requests, which require input from scientifically trained staff, make up about 40 per cent of the TPP workload. Many of these are linked to industrial advantage and they often result in lengthy third-party consultations and disputes and in some cases, court actions. The TPP is involved in eight court actions so far this year.

I feel our best strategy is to reduce the number of formal requests coming into the system and plan to do so by putting more information in the public domain. The TPP is already making extensive use of the Website to do this, but will now take steps to release even more information. This will however take time, as it certainly requires consultation with our stakeholders and perhaps even regulatory change. In the meantime, I would like to explore with you any recommendations that you or your officials may have in this regard.

When you commence the review, you will find that the department has already undertaken several measures designed to improve our situation. For example:

- In TPP, two senior scientific officers with advanced training have been hired on an indeterminate basis, three junior scientific officers have been hired for two-year terms, and two proprietary officers have joined the section on long-term appointments.

- Also in TPP, a management firm was hired to study the backlog situation, resulting in the proposal of a number of recommendations (both short- and long-term). The same consulting firm has now been contracted to implement some of these recommendations, and an internal working group has already started developing others.

- TPP has also undergone a Process Mapping Workshop and is currently, with the help of the consulting firm, streamlining processes to increase efficiency by removing non-value-added steps. A variety of processes have been mapped, and corresponding Standard Operating Procedures and guidelines were developed.

- A 'screening unit' has also been established within TPP to scrutinize and clarify requests with applicants (if necessary), as well as to assess fees and invoke time extensions where justified.

- At the corporate level, consideration is being given to conducting a management study or a formal audit of the administration of the ATI function later this fiscal year.

- The Health Canada ATI Centre has recently conducted very useful information sessions designed to strengthen the network of ATI contacts we have in all the program Branches;

- Plans are underway to conduct another internal ATI course later this fall.

- We are well on the way to making a decision on selecting a supplier for a project to update and enhance our computerized request tracking and management system, already one of the best of its type in Ottawa, but now in need of certain technical improvements.

- The ATI Centre is currently doing a case-by-case review of the long-term backlog, to see what can be done concerning the management of these requests, and the early success in clearing some of the backlog is encouraging.

- The department is planning to conduct a one-day Workshop in the application of Section 20 of the Act as it pertains to Health Canada, and we will be inviting support from your office in this regard.

- Finally, the ATI Centre is preparing to implement new procedures designed to make request handling more efficient and secure by using more extensive use of modern email techniques.

Thank you again for your letter. The contact for you study will be Mr. Hank Schriel, the department's ATI Coordinator, who has worked closely with your office on numerous matters.

For the convenience of your officers, attached are two copies of Health Canada's ATIP Annual Report for 1997-98.

V. Therapeutics Products Programme—Review 1998

At the request of the Therapeutics Products Programme (TPP), Probus Consulting and Audit Services performed a study. In August of 1998, Probus Consulting and Audit Services submitted to HC a report entitled: Report of the Review of the Access to Information Process—Therapeutics Products Programme, Health Canada. That study made many sensible recommendations for solving HC's ATI problems. The Office of the Information Commissioner (OIC) endorses revised versions of recommendations 1-5, 10-14, and 16-19—revisions are found in the recommendation section, Part A of this report. The following are the recommendations as listed the aforementioned report. (Numbers that appear in strike-out print below are not endorsed by the OIC.)

1. TPP and the ATIIP Centre should work together to define and document a process for processing ATI requests that clearly defines the role of each unit at each step.

2. ATIIP Centre should develop, in cooperation with TPP, a framework of policies and standard operating procedures for the ATI process at HC.

3. Appropriate senior management of TPP and the ATIP Centre should work together to oversee the definition of the roles of the ATIP Centre and PSIA.

4. The management of TPP and the ATIP Centre should consider jointly retaining a professional specialist in organizational conflict to assist in improving relations between the

ATIP Centre and the PSIA.

5. The management of TPP and the ATIIP Centre should devote the necessary time to improve the clarity of roles and inter-unit relations, and provide encouragement and support to their staffs to avoid poor communications.

6. ~~An Assistant ATIP Coordinator should be appointed to the PSIA.†~~

7. ~~The ATIP Centre, in cooperation with TPP, should evolve the alternative dispute resolution process into an optional, one-time negotiation stage, and should develop a documented policy, criteria for its use, and a procedure for the stage.~~

8. ~~PSIA should communicate directly with requesters and third parties (TPs) in keeping with its new role, and should keep the ATIIP Centre informed as appropriate.~~

9. ~~PSIA should adopt an approach where each senior reviewer works with a defined group of TPs over time to allow the reviewer to build a relationship based on credibility and mutual respect with the TPs.~~

10. HC should adopt a policy of openness regarding the rationale for its position when negotiating severances with TPs.

11. The PSIA should adapt its guide on severances for TPs into a format suitable for release and in cooperation with ATIP Centre, obtain Legal Services' approval and distribute the document widely to TPs.

12. PSIA should make the clarification of all requests with the requester a standard step where there is a possibility that clarification will allow faster processing.

13. The PSIA, in cooperation with the ATIP Centre, should charge fees in accordance with the ATI Act.

14. The PSIA, in cooperation with the ATIP Centre, should, when the backlog is reduced, claim an extension for lengthy requests and requests involving third-party notifications or consultations with other institutions.
15. ~~The PSIA should prepare the TPP recommendation and provide it directly to the DG, TPP, for signature.~~

16. PSIA should eliminate the review by the senior reviewer of the information selected by the 1st reviewer as requiring TP notification.

17. PSIA should set up a database for internal use of past ATI precedents and legal opinions on file or disk for rapid communications to TPs to justify its positions.

18. PSIA should make more use of electronic and CD-ROM databases in order to more quickly identify information in the public domain.

19. PSIA should maintain its Internet access and its access to General Query Language for TPP

† An Assistant ATI Coordinator position is delegated by the Minister the power to make decisions on working-level issues such as the issue of first and second notices to third parties, the extension of time limits and the provision of fee estimates.

databases.

20. Selected PSIA staff should be provided with Internet search courses in order to speed up information searches.

21. PSIA should be provided with electronic (read-only) access to bureau LANs in order to speed up the processing product monograph requests.

22. TPP should appoint a Head of PSIA immediately.

23. The PSIA should develop materials and procedures for training new staff.

24. PSIA should adopt a team-based approach to processing its ATI requests.

25. TPP should require each Bureau to appoint a senior officer, preferably reporting to the Director, to oversee the identification and remittance of all Bureau files in response to PSIA's requests.

26. The PSIA and the ATIP Centre should in cooperation prepare a short description of the responsibilities of the Bureau ATI contacts.

27. The DG, TPP should communicate to all TPP staff to remind them of the need to provide all relevant information to PSIA in a timely fashion in response to ATI requests through their Bureau ATI contacts.

28. TPP should continue to increase the materials available outside the ATI process.

29. The ATIP Centre, in cooperation with PSIA, should ensure that the upgrade of the automated work tracking system will generate the work statistics reports required by PSIA with a format and content to minimize manual generation of work statistics.