

Industry Canada

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

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

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

Industry Canada (IC) was selected last year for review. The department had been one of a number of institutions subject to review because of evidence of chronic difficulty in meeting response deadlines. When the Office of the Information Commission receives a high number of deemed-refusal complaints about a department, it may be symptomatic of a greater response deadline problem within the department.

This report reviews the department's progress in attaining an acceptable level of compliance with the time requirements of the *Access to Information Act*, since the department was issued its first report card last year. In addition, this report contains information on the status of the recommendations made in the Status Report of January 2004.

2. COMPLIANCE HISTORY

In the Report Card of January 2004, it was reported that IC's performance was unacceptable after the department obtained a grade of "F", red alert, for the period April 1 to November 30, 2003. The new requests to deemed-refusal ratio stood at 25%.

3. CURRENT STATUS

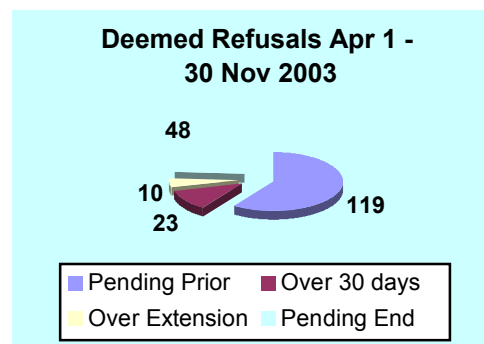
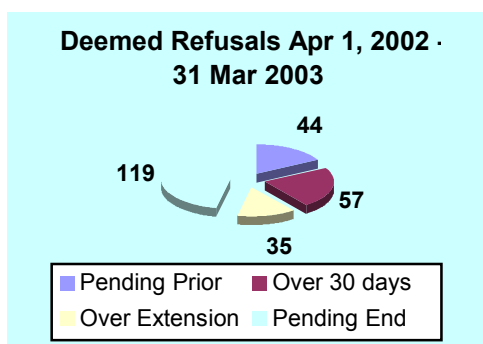
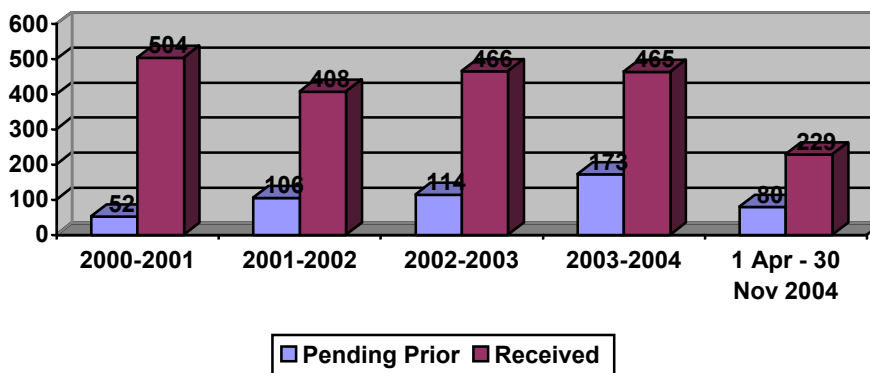
For the reporting period April 1 to November 30, 2004, those requests carried over from the previous year, as well as the number of requests already in a deemed-refusal status on April 1, were taken into consideration. As a result, the department's performance for April 1 to November 30, 2004, was 16.1%, a grade of "D" and below standard compliance. Since this is the first year that the figures were calculated differently, the following will show the compliance levels utilizing both the previous and current formulas for last year's and this year's status reports.

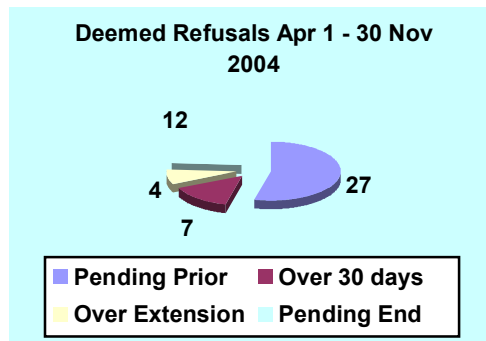
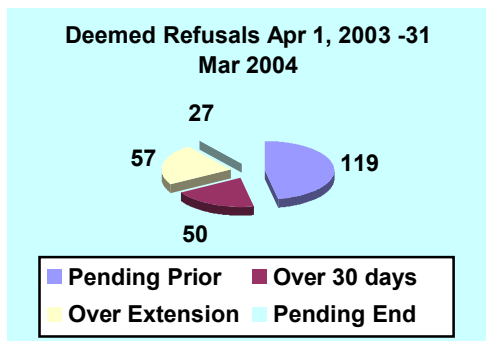
Previous Formula Apr 1 – Nov 30, 2003	Current Formula Apr 1 – Nov 30, 2003
25%	40.1 %

Previous Formula Apr 1 – Nov 30, 2004	Current Formula Apr 1 – Nov 30, 2004
10%	16.1%

Although IC attained a below standard compliance for the period April 1 to November 30, 2004, the department's performance was a considerable improvement over last year in its attempts to attain a higher level of performance.

The following charts show IC's request backlog for the periods indicated:





The processing of requests made under the *Access to Information Act* is the responsibility of the Information and Privacy Rights Administration (IPRA). IPRA is also responsible for processing requests under the *Privacy Act*. IPRA provided basic administrative and advisory services to the former Ethics Counsellor’s Office in the form of case tracking and correspondence. The former Ethics Counsellor’s Office was abolished and, in April 2004, a new Ethics Commissioner’s Office was created that reports directly to Parliament. The Ethics Commissioner’s Office is not subject to the *Access to Information Act*.

There are currently 15 FTEs working in IPRA comprised of 1 PM-06, 4 PM-05s, 6 PM-04s, 2 PM-03s, 1 PM-02 and 1 PM-01. The PM-05s are Senior Advisors and team leaders in charge of quality control units. The Director of IPRA is contemplating the creation of a formal ATIP developmental program as a means to recruit and retain staff.

The *Access to Information Act* allows for 30 calendar days for processing access requests where an extension is not claimed. IC’s current planned turnaround times are listed below.

ATIP OFFICE MILESTONES	CALENDAR DAYS
ATIP request received <ul style="list-style-type: none"> Reviewed by ATIP Director/Senior Advisors Assigned to Advisor 	Day 1 to 2 (usually same day)
Call-out to Sectors (OPIs)	Day 1 to 2 (usually same day)
E-Mail notice to Minister's Office (MINO), Deputy Minister's Office (DMO) and Communications Branch (CMB) of new requests received and identifying ones of interest *	Day 1 to 2
Receipt of fee estimate from OPI	Day 2 to 8
Receipt of records/ recommendations from OPI	Day 2 to 12 (no more than 3 day extension)
Records/recommendations reviewed by Advisors ----- <ul style="list-style-type: none"> Consult further with OPIs/obtain missing records Prepare final ATIP recommendations on release/non-release of records (advisory) Includes scanning documents and processing * QP Card expected from Sector	Day 12 to 19 (depending on volume, complexity and other activities) ----- → Negotiations may be required
Review by ATIP Senior Advisor – quality control and approval of routine files	Day 19 to 21
Final review/approval by ATIP Director on requests of interest	Day 21 to 22
Circulate release package and QP card to CMB, ADM Business Law, MINO for information	Day 22 to 29 7 days provided (or less depending on legal due date)
Provide response to applicant	Day 30
OTHER ACTIVITIES	Impact on Legal Due Dates
Consultations and Extensions ----- <ul style="list-style-type: none"> Third parties (TP) Other government departments 	Within the first 30 calendar days ----- → 60 calendar days maximum → 30 calendar days on average (depending on the volume of records and number of parties)
Receipt of replies to consultations <ul style="list-style-type: none"> Third parties Other government departments 	→ 20 days → 10 to 20 days
Second review of TP representations (response to consultations)	10 days
Negotiations with third parties	20 days

3. FURTHER RECOMMENDATIONS

Many positive measures have been put into place to improve IC's compliance with the time requirements of the *Access to Information Act*. Continued attention to timelines, however, is needed to attain a minimum of substantial compliance.

Recommendation #1

IC attain a minimum of substantial compliance with the time requirements of the *Access to Information Act* for 2005-2006.

The Director of IPRA has engaged a consultant to formally map out all the processes involved in treating access requests. The results of this study are expected shortly and will permit IPRA to identify any problem areas.

Recommendation #2

IPRA conduct an in-depth review of the mapping process study undertaken by the consultant and make appropriate changes to the ATIP processes as required.

Historically, full delegated authority for the administration of both the *Access to Information Act* and the *Privacy Act* has been provided to a few key positions at IC, one being the Director of IPRA. A new delegation instrument was approved by the current Minister.

Recommendation #3

The Director of IPRA exercise her delegated authority to ensure that the time requirements of the *Access to Information Act* are respected.

4. STATUS OF 2004 RECOMMENDATIONS

As a follow-up to the in-depth review that was conducted by the OIC last year, as described in 2003-2004 Annual Report, the following recommendations were made to support IC's objective in attaining an acceptable level of compliance with the time requirements of the *Access to Information Act*.

Previous Recommendation #1

The ATIP Director is directly responsible for ensuring compliance with the *Access to Information Act* and should take a strong leadership role in establishing a culture of compliance throughout IC. Such a role requires the unwavering support and endorsement of the Minister and the Deputy Minister. Senior management support for the development and monitoring of an ATI Improvement Plan is one method of making a commitment to comply with the time requirements of the Act.

Action Taken: In 2003-2004, the Senior General Counsel has repeatedly raised ATIP concerns with senior management and has underlined the importance of continued support and improving compliance. Both the former Deputy Minister and Minister encouraged and supported the measures undertaken to ensure that compliance is achieved. The Director of IPRA has already taken a strong leadership role and is conveying the same message to executives of the department. In short, this recommendation has already been partly implemented.

In 2004-2005, the Senior General Counsel continued to raise awareness with senior management as required. The Minister, the Minister of State Offices, and Deputy Minister were supportive and encouraged support from the executives of the department in complying with the *Access to Information Act*.

About 20-25 information and training sessions have been delivered in HQ and regional offices. These sessions continue to be highly sought by departmental officials. Increased awareness of departmental officials has helped to improve compliance. The ongoing promotion and awareness of the obligations of the legislation at all levels of the department has been positive.

The Minister and Deputy Minister support the modified ATIP procedures established for requests of interest to the Minister. The Minister has also approved and delegated full authority to the Director of IPRA for the administration of the *Access to Information Act*.

As a result of IPRA's initiatives in response to the OIC's comments, the department has implemented a number of measures that have formed the basis of an overall ATI improvement plan.

Previous Recommendation #2

Routine reporting on planned versus actual time taken to process access requests and the status of measures taken to reduce requests in a deemed-refusal situation should be instituted. The reports will provide senior management, OPIs and IPRA with information needed to gauge overall departmental compliance with the Act's and department's time requirements for processing access requests.

Action Taken: In 2003-2004, IPRA prepared and provided various reports at regular intervals to the department at large. For example, OPIs were provided with bi-weekly reports on the status of

their requests. Daily reports were provided to MINO, DMO, OCS and CMB on all access requests received and deemed of interest to the Minister's Office. Quarterly reports were provided to OPIs on their overall performance.

In 2004-2005, ATIP training and information sessions provided to OPIs have increased awareness of their roles and responsibilities with respect to the *Access to Information Act*, resulting in improved compliance. Increased one-on-one communication with applicants and third parties has resulted in less complaints, better understanding, and increased compliance in response times. In addition, bi-annual reports are provided to OPIs on their overall performance in responding to requests. The ATIP office also monitors, on a monthly basis, the overall departmental compliance noting any areas of concern and informs senior management when action is required.

Previous Recommendation #3

IPRA should develop an ATI Training Plan for 2004-2005 for OPIs and IPRA staff and incorporate the introduction of the User Manual (ATI guidelines) into the training provided to OPIs.

Action Taken: In 2003-2004, several ATIP training and awareness sessions were delivered to departmental officials at all levels, including exempt staff. There were two distinct presentations, one consisting of a general overview of the ATIP legislation which was delivered jointly with IC Legal Services, and another consisting of information sessions tailored to the specific needs of OPIs. Between September 2003, and April 2004, a total of ten general sessions were delivered within the National Capital Region (NCR) with another three completed in the western regional offices and one of the Quebec regional offices. In May and June 2004, two more general sessions were held plus three other sessions in the Ontario, Atlantic and Montreal regional offices. In addition, the Director of IPRA delivered several specifically tailored training sessions to various OPIs within the NCR. As for IPRA employees, they were encouraged to participate in TBS ATIP sessions, departmental training courses, in addition to being paired with a senior advisor (team leader) for coaching purposes.

In 2004-2005, resourcing was completed later than anticipated which meant that much energy was used to finalize staffing and training of ATIP employees. Meetings are also held to discuss approaches, interpretation, jurisprudence, etc, regarding the application of the *Access to Information Act*.

The IC user manual or *ATIP Directives* has been condensed and simplified into the ATIP guidelines. These guidelines are attached to every new request to assist OPIs in responding. The guidelines are also used during training sessions.

Previous Recommendation #4

The Minister should direct the Director of IPRA, in writing, to exercise the delegation to answer requests within deadlines whether or not the approval process has been completed.

Action Taken: This was considered in the course of implementing corrective measures. However, it was determined that it was not necessary because the approval/information process is already in writing and has recently been modified to streamline the processes to ensure faster turnaround. The Minister and Deputy Minister support the modified ATIP procedures established for request of interest to the Minister. The Minister has also delegated full authority to the Director of IPRA for the administration of the *Access to information Act*.

Previous Recommendation #5

The approval process should be process mapped and reviewed to remove steps that do not add value to the process, particularly the allocation of time in the process to the Communications Branch and ministerial review. At the same time, the Delegation Order should be reviewed to determine if further delegation is appropriate within IPRA.

Action Taken: The Director of IPRA initiated a contract with a consultant to formally map out all the processes involved in treating access requests, and the results of the mapping process are anticipated shortly. While awaiting the consultant's report, the ATIP processes have been simplified and have proven to be more effective. As mentioned, the new delegation order gives full delegated authority to the Director of IPRA. The approval process has been streamlined while allowing for quality control and monitoring. Delegation of responsibility from the ADM to senior managers has been implemented in OPIs and has helped in improving response times. Routine files are approved by IPRA team leaders (senior advisors) and non-routine ones are approved by the Director of IPRA. The allocation of time for the Minister's Office and Communications Branch has been reviewed and is being respected.

Previous Recommendation #6

The specific reasons for the requests in a deemed-refusal situation from April 1 to November 30, 2003, should be identified and remedial measures developed for subsequent years for incorporation into the ATI Improvement Plan.

Action Taken: One reason that contributed in part to the non-compliance was the lack of resources in IPRA. This was rectified with both additional funding and the completion of a number of staffing actions. Coupled with improved tools within IPRA, this has helped in improving monitoring and compliance. As identified under other recommendations, a number of measures have been implemented to improve the department's compliance. Many of the measures implemented have encouraged and solidified the trust and confidence with IPRA officials in performing their jobs.

Previous Recommendation #7

A firmer structure should be implemented whereby the timelines of extensions are adhered to and incorporate a hastener system when due dates are approaching when no replies have been received to consultations.

Action Taken: With the new resources, four new teams were created, each headed by a team leader. This means smaller teams and more effective monitoring and quality control. One-on-one training and coaching is also proving to be more effective and has resulted in improved compliance with legal timeframes, case management as well as time management. The mapping process, once completed, will also provide for a means to assess legal extensions more accurately. Tracking tools are being used more effectively and follow-ups are done via telephone, e-mail, fax, and by letter.

Previous Recommendation #8

The manner in which consultations are conducted, especially those involving third parties, must be readdressed to ensure that they follow the tenets of the *Access to Information Act* and that the legislated rights of third parties are not being circumvented.

Action Taken: Both informal and formal third-party consultations are being conducted. Determination is dependent on the number of parties involved, the volume of material and its complexity. Third parties are provided with their legal rights and the department still has opportunity for negotiation without resorting to the court system.

A request for interpretation on third-party process has been submitted to Treasury Board Secretariat (TBS). A positive response was received from TBS. Further analysis will be required before incorporating any changes to IC's third-party consultation practices. The mapping process, anticipated shortly, should also help in establishing monitoring parameters.

In the fiscal year 2003-2004, a total of 178 access requests required consultations with other government departments and third parties. For the period April 1 to November 30, 2004, there were 79 requests requiring consultations.

The criteria used by IC to estimate the time required to complete requests is based on the volume of pages and the number of consultations required. In some cases, when consulting other departments, such as the Privy Council Office, Justice Canada and Foreign Affairs and International Trade, a telephone call is made to discuss response times.

5. Questionnaire and Statistical Report

Questionnaire for Statistical Analysis Purposes in relation to official requests made under the <i>Access to Information Act</i>			
Part A: Requests carried over from the prior fiscal period.		Apr. 1/03 to Mar. 31/04	Apr. 1/04 to Nov. 30/04
1.	Number of requests carried over:	173	80
2.	Requests carried over from the prior fiscal — in a deemed refusal situation on the first day of the new fiscal:	119	27
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/03 to Mar. 31/04	Apr. 1/04 to Nov. 30/04
3.	Number of requests received during the fiscal period:	465	229
4.A	How many were processed <i>within</i> the 30-day statutory time limit?	219	131
4.B	How many were processed beyond the 30-day statutory time limit <i>where no extension was claimed?</i>	50	7
4.C	How long after the statutory time limit did it take to respond <i>where no extension was claimed?</i>		
	1-30 days:	30	6
	31-60 days:	9	1
	61-90 days:	7	0
	Over 91 days:	4	0
5.	How many were extended pursuant to section 9?	178	75
6.A	How many were processed <i>within</i> the extended time limit?	59	32
6.B	How many exceeded the extended time limit?	57	4
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	30	6
	31-60 days:	9	1
	61-90 days:	7	0
	Over 91 days:	4	0
7.	As of November 30, 2004, how many requests are in a deemed-refusal situation?		12