

Transport 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

This report reviews Transport Canada's (TC) progress in attaining at least substantial compliance with the time requirements of the *Access to Information Act*, since the previous report. In addition, this report contains information on the status of the recommendations made in the January 2004 Status Report.

2. COMPLIANCE HISTORY

In early 2000, the Office of the Information Commissioner issued a Report Card on Transport Canada's compliance with the statutory time requirements of the *Access to Information Act*. In the Report Card, the department received a red alert grade of "F" for its compliance with the statutory time requirements of the *Access to Information Act*. The grade represented a 30.6% new request to deemed-refusal ratio for access requests received from April 1 to November 30, 1999.

Some improvement was noted the following year. Between April 1 and November 30, 2000, the new request to deemed-refusal ratio was to 23.7%, but still a grade of "F".

In January 2002, a further Status Report reviewed the progress of the department to come into substantial or ideal compliance with the time requirements of the *Access to Information Act*, since the January 2001 report. To the department's credit at the time, a grade of "C" for the period April 1 to November 30, 2001, was attained. However, the grade dropped to a "D" for the fiscal year 2001-2002.

In January 2003, it was reported that Transport Canada (TC) had received a grade of "D" denoting below standard compliance with the time requirements of the *Access to Information Act*. This level of compliance slipped even further with the final statistics indicating a 29.9% ratio of deemed refusals in relation to requests received for the fiscal year 2002-2003.

In the Status Report of January 2004, the department continued to experience problems in attaining a level of substantial compliance. The new request to deemed-refusal grading remained at a “D” level, although the ratio did improve marginally to 17.2% for the period from April 1 to November 30, 2003.

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. The department attained a 7.2% deemed-refusal ratio, denoting substantial compliance and a grade of “B” for the period April 1 to November 30, 2004. This is a marked improvement from last year and shows continual improvement over the years. 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
17.2%	24.4%

Previous Formula Apr 1 – Nov 30, 2004	Current Formula Apr 1 – Nov 30, 2004
6.3%	7.2%

The ATIP Division at TC reported that requests made to the department are generally for records related to third parties; therefore, extensions are required in order to consult the third parties. The emphasis on security, in view of potential terrorist threats to the transportation industry, has increased the complexity of the review process and added to the workload of the ATIP Division since most access requests require consultations with other key government departments. Extensions are taken for this process as well.

On April 1, 2004, the Navigational Waters Protection section of Fisheries and Oceans Canada was transferred to TC. This has brought a significant increase in the workload and required the ATIP Division to familiarize itself with this new type of information holding.

There are currently 11 FTEs in the ATIP Division; however, one position is vacant and one employee is on language training. A total of 50,409 pages were reviewed for the period April 1 to November 30, 2004, for an average monthly total of 6,300 pages. Unexpected events have created a situation in which the ATIP Division always seems to have 1-2 positions vacant for short periods of time. This results in other employees having to carry additional workload. The ATIP Division has also been involved in several Privacy Impact Assessments which also draws on the division’s resources.

It was reported last year that the ATIP Division endeavored to improve its record through a number of training-related initiatives:

- Ongoing training workshops and awareness sessions to departmental employees;
- Inclusion of an ATIP module in the departmental employee orientation session with participation from the ATIP Division;
- Two-day training course delivered during the year in all Regions and the Safety and Security Group at National Headquarters;
- Ongoing participation by the ATIP advisors in training sessions and seminars organized by other government departments and private organizations.

The acting ATIP Coordinator stated that there are plans underway to set up two teams in the ATIP Division to better manage the workload and improve efficiency. Because the new Minister of Transport wants to see more access files before disclosures are made, the Minister's Office (MO) staff and Deputy Minister's Office (DMO) staff are briefed by the ATIP Coordinator on sensitive/political files. The ATIP Division provides, upon request from the MO and DMO, any disclosed records that are deemed non-sensitive. This is done at the same time as the non-sensitive records are disclosed to the applicant.

4. FURTHER RECOMMENDATIONS

By attaining substantial compliance with the time requirements of the *Access to Information Act*, the department can now attempt to achieve ideal compliance or at least maintain substantial compliance.

Recommendation #1

TC attain ideal compliance or at least maintain substantial compliance with time requirements of the *Access to Information Act*.

During the fiscal year 2003-2004, the department received 500 access requests compared to 641 for the previous fiscal year. However, 544 access requests were received for the period April 1 to November 30, 2004, compared to 326 for the same time period last year. This is an additional 218 requests and a 66.9% increase, which is quite substantial. This is an indication that access requests are on the rise and that, projecting ahead for the fiscal year 2004-2005, the number of access requests received will significantly surpass the number of requests received in fiscal year 2002-2003. Therefore, in order to maintain at least substantial compliance and work towards achieving ideal compliance, additional ATIP staff will be required.

Recommendation #2

Conduct an assessment of ATIP Division's ongoing resource needs and present a business plan to senior management for additional ATIP staff.

5. STATUS OF 2004 RECOMMENDATIONS

In the 2004 Status Report, the following recommendations were made to TC:

Previous Recommendation #1

TC implement the ATI Improvement Plan to bring the department into at least substantial compliance with the time requirements of the *Access to Information Act*.

Action Taken: In September 2004, the ATIP Division produced a document entitled, “Steps in the Processing of a Request under the *Access to Information Act*”. In keeping with the 30 calendar-day prescribed deadline (20-21 working days), the following milestones in the processing of requests was produced (the complete document describes each step in detail):

Time allocated	Steps	Working Day
1 day	1. ATIP Division receives request and sends Retrieval Notice to ATIP Liaison Officer(s)	1
8 days 9 days Regions (may be increased if a legal extension is allowed)	2. ATIP Liaison Officer sends Retrieval Notice to OPI(s) 3. OPI retrieves records 4. OPI identifies Issues and Sensitivities 5. ATIP Liaison Officer checks the package of records received from the OPI 6. ADM/RDG delegated authority concurs with the Issues and Sensitivities identified by the OPI Note: Depending on the program/region's internal process, step 6 may precede step 5	9/10
5 days (may be increased if a legal extension is allowed)	7. ATIP Advisor reviews records and makes recommendations	14/15
1 day	8. ATIP Coordinator approves recommendations of the ATIP Advisor	15/16
2 days	* 9. ATIP Advisor sends approval package to Program/Region for concurrence with release of the records	17/18
Steps 10 & 11 are required for Sensitive files only		
2 days	* 10. Communications provides media assessment	19/20
2 days	11. DMO/MO reviews ATIP Release Advisory package	21/22
	12. ATIP Advisor sends records to the requester – file is closed	

*** Files that have a 30-day deadline will be routed simultaneously to Communications and to the Program/Region as indicated in steps 9 and 10.**

Previous Recommendation #2

The department implement the delegation to the ATIP Coordinator and officers for decision-making under the *Access to Information Act*.

Action Taken: On January 15, 2004 (updated October 18, 2004), full delegation for the administration of the *Access to Information Act* was given to the ATIP Coordinator.

Previous Recommendation #3

The department continue to review the access-request process to identify stages in the process that can be handled in parallel rather than sequentially and/or that can be eliminated because value is not added to the decision-making required under the *Access to Information Act*.

Action Taken: The newly revised steps in the processing of access requests (outlined above), have been implemented. The acting ATIP Coordinator explained that, when records pertaining to a particular request are not too voluminous, they are sent at the same time (in parallel) to the OPI and Communications Branch. In addition, where responses to access requests are the same or similar to cases previously handled, the records are not sent to the Deputy Minister's Office (DMO) or the Minister's Office (MO). In such cases, the DMO and MO are instead apprised, by email or in person, that the same or similar exemptions will again be applied.

Previous Recommendation #4

The department review the staffing requirements of the ATIP Division and increase the human resources to an appropriate level as previously recommended.

Action Taken: No action was taken again this past year. The ATIP Division is operating with 11 ongoing FTEs, with a possible addition of 2 FTEs. The acting ATIP Coordinator stated that a business plan will be submitted to senior management in 2005-2006 for two additional FTEs.

6. QUESTIONNAIRE AND STATISTICAL REPORT

Questionnaire for Statistical Analysis Purposes in relation to official requests made under the <i>Access to Information Act</i>			
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:	165	91
2.	Requests carried over from the prior fiscal — in a deemed refusal situation on the first day of the new fiscal:	61	12
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:	500	544
4.A	How many were processed <i>within</i> the 30-day statutory time limit?	233	369
4.B	How many were processed beyond the 30-day statutory time limit <i>where no extension was claimed?</i>	38	6
4.C	How long after the statutory time limit did it take to respond <i>where no extension was claimed?</i>		
	1-30 days:	19	6
	31-60 days:	10	0
	61-90 days:	0	0
	Over 91 days:	9	0
5.	How many were extended pursuant to section 9?	211	118
6.A	How many were processed <i>within</i> the extended time limit?	94	49
6.B	How many exceeded the extended time limit?	46	15
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	17	11
	31-60 days:	10	3
	61-90 days:	5	1
	Over 91 days:	14	0
7.	As of November 30, 2004, how many requests are in a deemed-refusal situation?	13	