

Health 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 the continued progress of the department to maintain 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 Status Report of January 2004.

2. COMPLIANCE HISTORY

In the January 1999 Report Card, Health Canada (HCan) received a red alert grade of “F” with a 51.2% deemed-refusal to request ratio for requests received from April 1 to November 30, 1998. For the complete 1998-1999 fiscal year, the ratio was 61.8%.

The next year, for the period April 1 to November 30, 1999, the ratio improved dramatically to 3.1%, or an “A” grade. In addition, the backlog of deemed-refusal requests was entirely eliminated.

HCan had continued to achieve a grade of “A”, which signals ideal compliance with the *Access to Information Act*, for each of the reporting years since, with compliance ratios varying between 4.5-5% as in the last reporting period. However, the end of the fiscal year 2002-2003 found the department slipping to a 7.2% of deemed refusals, resulting in a grade of “B”.

In the 2004 Status Report, it was noted that HCan achieved a 5.4% deemed-refusal ratio for the period April 1 to November 30, 2004, signaling another grade of “B” and substantial compliance with the *Access to Information Act*.

3. CURRENT STATUS

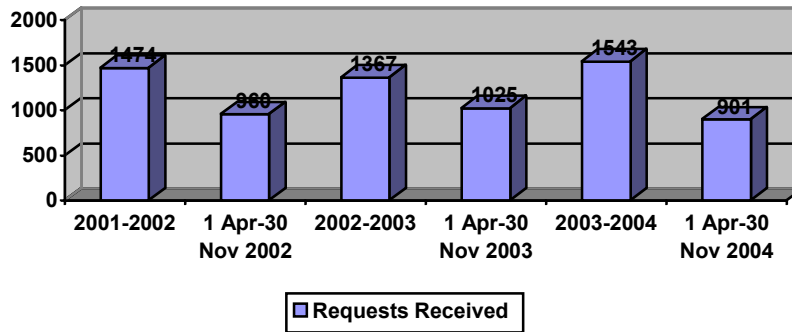
For the reporting period April 1 to November 30, 2004, those requests carried over from the previous year, as well as the number of requests already in a deemed-refusal status on April 1, were taken into consideration. Taking this into account, the department’s performance for April 1 to November 30, 2004, dropped to 17.2%, denoting below standard compliance and a grade of “D”. 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
5.4%	5.6%

Previous Formula Apr 1 – Nov 30, 2004	Current Formula Apr 1 – Nov 30, 2004
11.5%	17.2%

For the fiscal year 2002-2003, a total of 1,367 requests were received. In fiscal year 2003-2004, a total of 1,543 requests were received, for an additional 176 requests or an increase of 12.9%. The graph below shows the number of requests received by the department in the last few years.



As senior ATIP officials explained, the figure for the number of requests received for the period April 1 to 30 November 2004, is misleading because of the large number of informal requests (108) that were processed during the year. This means that requests for records/information that would have normally been treated formally, under the *Access to Information Act*, were now treated informally. This is a relatively new approach taken by the ATIP office, and this informal route for accessing information at HCan is encouraged as much as possible.

Last year's report stated that all aspects of the process including the delegation authority were open to review with a mind to enhancing productivity. Specific initiatives included the introduction of a higher level review of processed records to ultimately expand the knowledge base, increase communication amongst staff and improve consistency.

The new ATIP Director was able to attract experienced ATIP personnel to compliment her existing team of experts, to assist in re-organizing the office, as well as in assessing its core functions and procedures. The ATIP office has reviewed processes and

developed policy. There has also been an increase in communication within the ATIP office with the establishment of weekly staff meetings and introduction of new operating procedures and better use of computer software. A more consistent approach to work has been developed through improved use of specialized electronic tools to standardize letters produced by the office to ensure consistency in materials provided to third parties and to produce guidelines for analysts, support staff and OPIs for processing requests. Three ATI teams and one privacy team were formed with corresponding team leaders.

Increased dialogue with requesters and OPIs has been encouraged, as well as increased communications and negotiations with third parties in which 95% agreement can oftentimes be reached following a section 27 notification before having to send a section 28 notice to the third party. The ATIP office has provided more training to OPIs to strengthen the knowledge of the ATIP legislation within the department in order to get better responses to requests from OPIs.

4. FUTURE RECOMMENDATIONS

ATIP management recognized that ideal compliance achieved in the 2003 could not be maintained in 2004. It appears that, without additional funding to fully address the staffing shortfalls, attaining anywhere near ideal compliance will be difficult.

Recommendation #1

The ATIP office be provided with the necessary resources needed to re-attain ideal compliance with the *Access to Information Act*.

There are two organizations at HCan that currently have responsibilities for the administration of the *Privacy Act*. The overlap of responsibilities in this area has created challenges for the ATIP office in administrating both the *Access to Information Act* and the *Privacy Act*.

Recommendation #2

That the Delegation Order be amended to provide the ATIP Coordinator with similar delegated powers for the administration *Privacy Act* as for the administration of the *Access to Information Act*.

5. STATUS OF 2004 RECOMMENDATIONS

The following recommendations were made to support HCan's continuing efforts to process requests within the time requirements of the *Access to Information Act*:

Previous Recommendation #1

HCan ATIP office follow through on the development of a business plan to identify shortfalls in staffing and technological resources with an objective for 2004-2005 to maintain ideal compliance with the time requirements of the *Access to Information Act*.

Action Taken: A business plan has been developed in three areas to address the following: 1) the shortfall of ATI staff, 2) the situation faced with respect to the administration of the *Privacy Act*, and 3) technological improvements (i.e. the purchase of *ATIPimage*). As was reported in last year, the former Deputy Minister of HCan informed the Information Commissioner that additional funding would be provided to the ATIP office to meet resource needs. This funding permitted the ATIP Division to hire an additional four FTEs, although the division would have needed more FTEs to meet the actual and projected shortfall. Therefore, additional funding is required to meet short and long-term ATIP demands at HCan. The ATIP office spends \$70,000 to \$90,000 per year in overtime.

Previous Recommendation #2

HCan ATIP office consider upgrading their current technological tools and study the feasibility of introducing *ATIPimage* as a means of enhancing their production while reducing individual workloads in meeting the compliance objectives of the *Access to Information Act*.

Action Taken: *ATIPimage* has been purchased and any system hardware to accommodate *ATIPimage* will be in place by the end of fiscal year 2003-2004, including training of staff.

6. 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:	165	355
2.	Requests carried over from the prior fiscal — in a deemed refusal situation on the first day of the new fiscal:	15	112
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:	1543	901
4.A	How many were processed <i>within</i> the 30-day statutory time limit?	808	371
4.B	How many were processed beyond the 30-day statutory time limit <i>where no extension was claimed?</i>	53	13
4.C	How long after the statutory time limit did it take to respond <i>where no extension was claimed?</i>		
	1-30 days:	40	6
	31-60 days:	7	3
	61-90 days:	2	2
	Over 91 days:	4	2
5.	How many were extended pursuant to section 9?	566	433
6.A	How many were processed <i>within</i> the extended time limit?	261	245
6.B	How many exceeded the extended time limit?	68	43
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	42	30
	31-60 days:	19	11
	61-90 days:	7	1
	Over 91 days:	0	1
7.	As of November 30, 2004, how many requests are in a deemed-refusal situation?		48