

Public Works and Government Services 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 Public Works and Government Services Canada's (PWGSC) progress in maintaining and building on substantial compliance with 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 February 2003, the Office of the Information Commissioner issued a Report Card on PWGSC's compliance with the statutory time requirements of the *Access to Information Act*. The Report Card contained a number of recommendations on measures that could be taken to reduce the number of requests in a deemed-refusal situation. In the 2003 Report Card, the department received a red alert grade of "F" with a 26.3% request to deemed-refusal ratio for access requests received from April 1 to November 30, 2002. PWGSC's record slipped further to a ratio of 29.9% for the fiscal year 2002-2003.

The department made considerable improvements in a number of areas. All of these initiatives led to a substantial turnaround in the deemed-refusal situation resulting in borderline compliance with the time requirements of the *Access to Information Act*. The new request to deemed-refusal ratio improved to 14.5% for the period from April 1 to November 30, 2003, for a grade of "C".

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's performance for April 1 to November 30, 2004, dipped to 17.7%, a grade of "D", denoting 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
14.5%	17%

Previous Formula Apr 1 – Nov 30, 2004	Current Formula Apr 1 – Nov 30, 2004
15.7%	17.7%

In the period April 1 to November 30, 2004, there were 618 requests received compared with 531 for the same period last year. This is an additional 87 requests or a 16.4% increase, which is significant.

OPI response times, while not as serious as in past years, are still a contributing factor to the overall delay. However, as reported last year, the following factors had a positive influence:

- Full staffing of approved manning levels;
- More flexible management of resources to better accommodate workload;
- Team structure providing better control of workload;
- More focus on meeting timelines in dealing with third parties;
- Better communications within the department;
- Better monitoring of overall process;
- Enhanced training;
- Introduction of higher-level reports.

To enable these factors to come into play, PWGSC implemented a number of measures with a view to meeting the compliance requirements. These included, first and foremost, a dedicated ATIP Improvement Plan that introduced the following during the 2003-2004 reporting period:

- Weekly timeline reports;
- A number of reviews of the ATI program were conducted to determine root causes for the departmental deemed-refusal situation, which identified two primary issues:
 - Insufficient resources with the ATI program;
 - Government-wide shortage of knowledgeable and experienced professionals;
- A fee waiver policy has been put into effect;
- Enhanced training/briefing sessions for ATIP liaison officers;
- Introduction of an ATIP module in departmental orientation courses for both employees and managers;

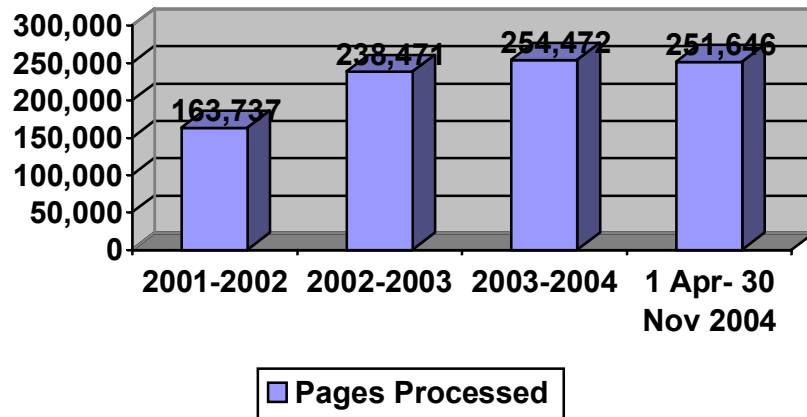
- Development of an ATIP module in departmental orientation courses for employees.

The following issues were also addressed:

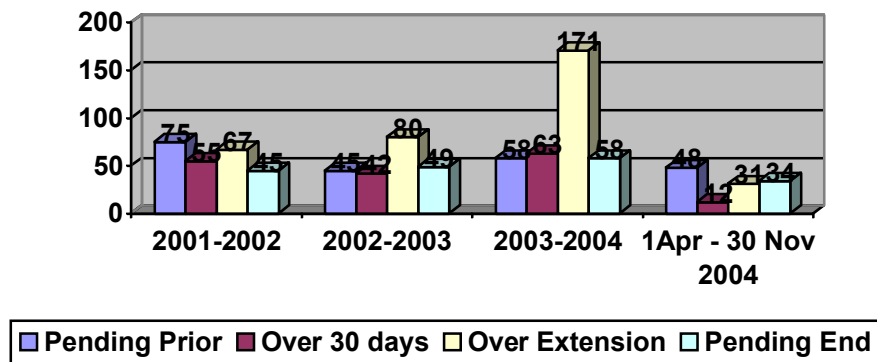
- Further development of quarterly timeline reports;
- Improved desk procedures for travel and hospitality, expense and contracting requests;
- Implementation of the enhanced training for departmental employees;
- A new long-term contract for hiring consultants was established;
- Ongoing review of the ATIP Improvement Plan.

PWGSC's workload and performance for the past four years is reflected in the follow graphs:

Yearly Workload



Deemed-Refusals



The following staff-related initiatives are now in place for 2005-2006:

- EX performance agreements;
- Work descriptions for managers and ATIP liaison officers;
- Generic ATIP work descriptions;
- New employee orientation program;
- Fun-format ATIP training sessions for PWGSC employees.

4. FURTHER RECOMMENDATIONS

A number of extenuating circumstances, such as an increase in ATI requests, the Gomery inquiry into the sponsorship and advertising activities, reorganization within the department, etc., did not enable PWGSC to achieve a minimum of substantial compliance with the time requirements of the *Access to Information Act*. Therefore, this recommendation is again made for next year.

Recommendation #1

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

The ATIP Directorate reported that 600 employees at PWGSC received training in 2004-2005. This training took place in the National Capital Region and in Toronto. The goal is to have all regions within PWGSC receive ATIP training in 2005-2006.

Recommendation #2

All regions within PWGSC receive ATIP training during 2005-2006.

The ATIP Director reported that, because of organizational changes within the department in the last year, the ATIP Directorate was unable to determine if turnaround times from OPIs have actually improved for all OPIs. These figures should be available in 2005-2006.

Recommendation #3

OPI timeline compliance is to be made available for 2005-2006 to determine if turnaround times from OPIs have improved, as well as to identify any problem areas.

5. STATUS OF 2004 RECOMMENDATIONS

In the 2004 Status Report, the following recommendations were made to support PWGSC's efforts to process requests within the time requirements of the *Access to Information Act*:

Previous Recommendation #1

PWGSC address the staffing shortfall of the ATIP Directorate with a view to increasing resources as required.

Action Taken: Since the previous report, seven new positions were added to the ATIP Directorate for a total of 30 FTEs, plus the seven consultants. The FTE allotment can fluctuate more or less from year to year depending on the ATIP Directorate's budget. The seven new positions are as follows: 1 term PM-6 position, 3 PM-2 positions, and 3 PM-3 and PM-4 positions. There is a certain turnover of staff that occurs regularly due to the competition process, term appointments, assignments, etc.

The ATIP Director wants to develop staff and put in place an accelerated development program that would see the hiring of university graduates to PM-01 Officer positions and, among other training activities, enrolling them in the University of Alberta ATIP Program.

Previous Recommendation # 2

Senior management at PWGSC confirm a commitment to maintain and build on substantial compliance with the statutory time requirements of the *Access to Information Act* by communicating to OPI's that records for access requests is a priority of the department.

Action Taken: The ATI Improvement Plan that was implemented in 2003-2004 was put in place to address the various OIC recommendations. The 2004-2005 ATI Improvement plan documents senior management's involvement as follows:

Tasks	Responsibilities	Deliverables	Milestones	Accomplished
1) The ATIP Directorate to prepare an e-mail message from the DM to all employees endorsing the objectives of the ATIP program	1) ATIP Directorate	1) Biannual e-mailing of support from the DM to all employees	1) Dec 2004- Mar 2005	1) Dec 2004
2) DM to approve message	2) Deputy Minister	2) To approve e-mail	2) Dec 2004- Mar 2005	2) Dec 2004
3) Ministerial Services to send the DM's message	3) Ministerial Services	Employees' receive Minister's and DM's message of support for the ATIP program	3) Dec 2004- Mar 2005	3) Dec 2004
4) When Branch timeline performance falls below 90%, the appropriate EC member to raise compliance issues at their management table	4) Executive Committee	4) Timeline compliance rate of 90% in each Branch/Sector/Region	4) Apr 2004 and ongoing	4) Apr 2004 and ongoing

Although compliance with the time requirements of the *Access to Information* was well communicated to staff, as the above table indicates, organizational changes at PWGSC in the last year did not enable the ATIP Directorate to determine if turnaround times from OPIs have actually improved for a number of OPIs. OPIs are asked to provide a response to the ATIP Directorate in 10 days.

The ATIP Directorate provided the following OPI Compliance Report for the period April 1 to December 31, 2004:

Branch	% On Time	Times Tasked	On Time	2 Days Late	3-5 Days Late	6-10 Days Late	10+ Days late
Finance, Accounting Banking and Compensation Branch	83%	59	49	3	4	2	1
Acquisitions Branch	90%	367	330	7	12	7	11
Audit and Ethics Branch	77%	31	24	2	1	3	1
Consulting and Audit Canada	85%	26	22	0	2	0	2
Corporate Services, Human Resources and Communications Branch	83%	162	135	2	12	5	8
Government Information Services Branch	83%	52	43	1	2	1	5
Information Technology Services Branch	93%	27	25	1	1	0	0
Inquiry Records Centre (Sponsorship Records)	36%	42	15	0	2	1	24
Real Property Branch	67%	63	42	2	9	6	4
Service Integration Branch (Regions)	80%	164	132	1	9	10	12
Service Integration Branch (HQ)	88%	42	37	0	1	3	1
Service Integration Branch (All)	82%	206	169	1	10	13	13
Translation Bureau	100%	6	6	0	0	0	0
Public Works Government Services Canada	83%	1,041	860	19	55	38	69

Previous Recommendation # 3

PWGSC set an objective of achieving at least substantial compliance with the time requirements of the *Access to Information Act* for 2004-2005.

Action Taken: PWGSC did not achieve substantial compliance for 2004-2005. The ATIP Directorate identified four aspects about a request that may impact on the difficulty to complete a request within the time requirements of the *Access to Information Act*.

- Volume of Pages

The average access request requires the ATIP Directorate to obtain relevant records from two OPIs and the review of more than 300 pages of records. Approximately 7% of requests received require the review of well over 1,000 pages of records, extensive discussions with OPIs, consultations with other government departments and notification of third parties.

- Third-Party Consultations and Notifications

As PWGSC is the major provider of central and common services to the Government of Canada, more than 60% of requests pertain to business-related matters. The ATIP Directorate is therefore obliged to conduct numerous consultations and notifications with third parties in relation to sections 20 and 24 (section 30 of the *Defence Production Act*) of the *Access to Information Act*. On average, 60% of all requests received require a minimum of one third-party consultation or negotiation, while 40% of all requests received require multiple consultations or notifications (third parties and other government departments).

In certain cases, an unanticipated delay in meeting the legislated timeline is caused by the need to engage in lengthy discussions with third parties for the purpose of clarifying the basis of their objections to disclosure and presenting the department's position to them.

- Consultations with other Government Departments

In most instances, PWGSC lacks the expertise and/or authority to make decisions on a subject matter without input from the consulting department and must wait for the department's disclosure recommendations. As a result, PWGSC cannot always anticipate during the first 30 days of receipt of the request the time required by the receiving department to conduct its own review of the records.

- Sponsorship Program

The intense scrutiny the sponsorship program led to the announcement of public and forensic investigations into sponsorship and advertising activities, the dismantling of Communications Canada and the transfer of Communications Canada's sponsorship-related matters to PWGSC. Delays in processing formal access to information requests ensued as these events caused:

- An unforeseen and sudden influx of sponsorship-related requests during the first half of the fiscal year;
- The diversion of some ATIP staff to new activities, including the provision of timely and consistent advice to management, as well as rapid hiring of qualified but scarce ATIP consultants;
- The diversion of all OPI resources away from the processing of ATI requests for a 3-month period in order to manage a voluminous number of requests for information made by the Gomery inquiry and police investigators;
- The unforeseen need to consult the Sureté du Québec on certain sponsorship contracts; and
- The disclosure decisions to become more complex as the investigation proceeded because previous decisions to release or withhold information changed over time. Further, the *Access to Information Act* did not allow for legal time extensions to be taken to permit ATIP officers to compare information collected in relation to an ATI request (or, information previously withheld) against records the Gomery inquiry placed in its public registry on a regular basis.

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:	208	262
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	47	59
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:	832	619
4.A	How many were processed <i>within</i> the 30-day statutory time limit?	330	202
4.B	How many were processed beyond the 30-day statutory time limit <i>where no extension was claimed?</i>	14	15
4.C	How long after the statutory time limit did it take to respond <i>where no extension was claimed?</i>		
	1-30 days:	10	10
	31-60 days:	4	3
	61-90 days:	0	2
	Over 91 days:	0	0
5.	How many were extended pursuant to section 9?	440	348
6.A	How many were processed <i>within</i> the extended time limit?	174	122
6.B	How many exceeded the extended time limit?	62	25
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	30	19
	31-60 days:	17	4
	61-90 days:	6	1
	Over 91 days:	9	1
7.	As of November 30, 2004, how many requests are in a deemed-refusal situation?	57	