Information Commissioner of Canada

Commissaire à l'information du Canada

Annual Report Information Commissioner 2003-2004

Annual Report
Information Commissioner
2003-2004

"This initiative of bringing transparency and accountability to government has always been an initiative of all members of the House, regardless of party. It has not been an initiative of government."

Mr. John Bryden, M.P.
(Ancaster-Dundas-Flamborough-Aldershot, CPC)
Speaking on second reading of his Private Members' Bill C-462,
Monday, April 26, 2004

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“The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exemptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.”

Subsection 2(1)
Access to Information Act

June 2004

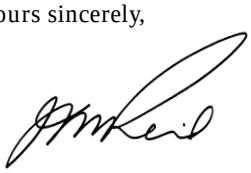
The Honourable Daniel Hays
The Speaker
Senate
Ottawa ON K1A 0A4

Dear Mr. Hays:

I have the honour to submit my annual report to Parliament.

This report covers the period from April 1, 2003, to March 31, 2004.

Yours sincerely,



The Hon. John M. Reid, P.C.

June 2004

The Honourable Peter Milliken
The Speaker
House of Commons
Ottawa ON K1A 0A6

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I have the honour to submit my annual report to Parliament.

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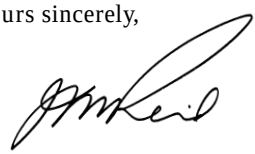
Yours sincerely,



The Hon. John M. Reid, P.C.

2003-2004 ANNUAL REPORT

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MANDATE

The Information Commissioner is an ombudsman appointed by Parliament to investigate complaints that the government has denied rights under the *Access to Information Act*--Canada's freedom of information legislation.

The Act came into force in 1983 and gave Canadians the broad legal right to information recorded in any form and controlled by most federal government institutions.

The Act provides government institutions with 30 days to respond to access requests. Extended time may be claimed if there are many records to examine, other government agencies to be consulted or third parties to be notified. The requester must be notified of these extensions within the initial timeframe.

Of course, access rights are not absolute. They are subject to specific and limited exemptions, balancing freedom of information against individual privacy, commercial confidentiality, national security and the frank communications needed for effective policy-making.

Such exemptions permit government agencies to withhold material, often prompting disputes between applicants and departments. Dissatisfied applicants may turn to the Information Commissioner who investigates applicants' complaints that:

- they have been denied requested information;
- they have been asked to pay too much for requested information;
- the department's extension of more than 30 days to provide information is unreasonable;
- the material was not in the official language of choice or the time for translation was unreasonable;
- they have a problem with the Info Source guide or periodic bulletins which are issued to help the public use the Act;
- they have run into any other problem using the Act.

The commissioner has strong investigative powers. These are real incentives to government institutions to adhere to the Act and respect applicants' rights.

Since he is an ombudsman, the commissioner may not order a complaint resolved in a particular way. Thus, he relies on persuasion to solve disputes, asking for a Federal Court review only if he believes an individual has been improperly denied access and a negotiated solution has proved impossible.

CHAPTER I
A COMMISSIONER'S ADVICE TO A NEW PRIME MINISTER

Governments make skeptics of Information Commissioners. Time after time, régime after régime, scandal after scandal, government leaders raise expectations by promising to be more accountable and transparent. Just as routinely, governments maintain their deep addiction to secrecy, spin, foot-dragging and decision-making by nods and winks. When it comes to honoring the public's "right to know", governments have found it profoundly challenging to "walk the walk".

Since the coming into force of the *Access to Information Act*, on July 1, 1983, one Conservative administration (that of Brian Mulroney) and one Liberal administration (that of Jean Chrétien) have struggled, with varying degrees of success, to respect (or ignore--depending on perspective) the letter and spirit of Canada's "right to know" law. During those two decades, three successive Information Commissioners have made annual reports to Parliament describing the poor state of health of the public's right of access to government-held records. In those reports, commissioners recommended administrative actions governments should take to make the access law work with the vigor Parliament intended, and legislative amendments Parliament should pass to strengthen the law in the light of changing forms of governance and new information and communications technologies. Alas, as one former commissioner opined, Information Commissioner reports might just as well be put on a rocket ship to outer space, for all the effect they have on governments.

In this reporting year, the tenure of a new Prime Minister, Paul Martin, began. Prime Minister Martin came to office with an express intention to improve the quality of Canada's democracy--including the transparency of its federal government institutions. Words such as "openness", "transparency", "accountability", "integrity" are on his lips. Is there reason for optimism? Will Prime Minister Martin's government be sufficiently self-confident, courageous and honest to beat the secrecy addiction to which governments fall victim? Early in the game, there are some positive signs.

For example, the Martin government announced a policy of proactive disclosure of the travel and hospitality expenses of ministers, their staff and senior public servants. As well, in response to the Auditor General's report concerning the sponsorship program, the Martin government announced that it

would study the issue of making Crown Corporations subject to the *Access to Information Act*.

With respect to Crown Corporations, action is long overdue. The issue was carefully assessed by a committee of the House of Commons in 1986 and resulted in a unanimous recommendation that Crown Corporations be made subject to the right of access; every intervening Information Commissioner has made the same recommendation; 13 private members' bills have been introduced seeking to make Crown Corporations' subject to the right of access; Auditors General have recommended that Crown Corporations be made transparent. Only government insiders--and Crown Corporations--resist. Kudos, then, to the Martin government for getting on with it!

As well, there have been some signals from the government that it will end the foot-dragging on making all officers of Parliament (the Auditor General, the Chief Electoral Officer, the Commissioner of Official Languages, the Privacy Commissioner and the Information Commissioner) subject to the *Access to Information Act*. The scandal surrounding the actions of former Privacy Commissioner Radwanski, and some of his officials, gave graphic testimony to the imperative of removing the shroud of secrecy which covers these important institutions. In this regard, there was a backward step when Parliament recently passed a bill creating a new Officer of Parliament, the Ethics Commissioner, which would not be subject to the right of access. The irony of this move is that the Office of the Ethics Counsellor, which is to be replaced by the Ethics Commissioner, was subject to the right of access.

While the Martin government did not signal whether or not it would be open to general review and reform of the *Access to Information Act*, there has been a clear recognition by his government that a vibrant access law is a key ingredient to the recipe for ensuring accountable government.

In this regard, it should be remembered that the Supreme Court of Canada has pointed out that the purpose of the access law is to hold public officials accountable. And, too, it should be remembered that the access law has been instrumental in enabling MPs, journalists, academics and researchers to bring to light wrongdoing and mismanagement in government, including the so-called "billion dollar boondoggle" at HRDC, the cost overruns at the Firearms Registry, the former Prime Minister's dealings with the Business Development Bank and the recent sponsorship scandal at Public Works and Government Services. There is simply no question that a strengthened Act will lead to a higher degree of accountability and integrity on the part of elected and appointed public officials.

A decade ago, in his 1993-94 Annual Report to Parliament, former Information Commissioner John Grace reflected on a year not unlike this reporting year--

this was the end of the 34th Parliament, a general election and a change of Prime Minister. Commissioner Grace summed up the performance of the outgoing Mulroney régime as follows:

> "Alas, guided by often hostile ministers and a foot-dragging bureaucracy, some departments began to manage exemptions rather than promote openness. Access to some information previously routinely available was shut down: ostensibly to protect the privacy of individuals and corporations. Politicians and bureaucrats looked to the access law with its, at times, legalistic, ponderous approach, as the baseline for responding to the public. One ploy, used in the Privy Council Office and elsewhere, when dealing with a troublesome client was to force the individual to make a formal request and to draw out the process as long as possible." (Annual Report 1993-94 at p. 4)

Substitute the name Chrétien for Mulroney and the words are just as apt a summary of the Chrétien government's performance. It is interesting to note that, in the 1993-94 report, former Commissioner Grace threw this challenge to the new Chrétien government: "Have the self-confidence to be scrutinized and the fortitude to be forthright. No government can safely or successfully ignore the truism that an accountable government is an open government." (Annual Report 1993-94, at p. 4) And now, in 2004, as Parliamentary Committees, public inquiries and the RCMP work to sort through the entrails of scandal from the Chrétien years, it seems clear that Dr. Grace's challenge fell on deaf ears. Indeed, the Chrétien government made unprecedented, targeted efforts in the courts and, by withholding adequate funding, to cripple the effectiveness of the Information Commissioner's office. More on that later.

The "déjà vu" is also felt when one recalls the 1993 Liberal Party platform "Creating Opportunity" (the so-called red book). It described "openness" as the "watchword of the Liberal program" and it recognized that "people are irritated with governments that do not consult them, or that disregard their views, or that try to conduct key parts of the government business behind closed doors." Nothing undermined the right of access more, in the past twenty years, than the disdain shown for it by two long-serving Prime Ministers. Their destructive example spread like a cancer through successive PMOs, PCOs and the senior bureaucracy. For twenty years, Canadians seeking information--especially about any subject the government considered "sensitive"--have been met by a wall of obstruction, obfuscation and delay. Recently, Mr. Charles Guité testified under oath, before the Public Accounts Committee, that sponsorship records were not kept in order to evade the *Access to Information Act*.

To his credit, Prime Minister Martin began to confront, head on, the attitude in influential places that the *Access to Information Act* is a pain in the neck and that

openness is something to be avoided even to the point of abandoning the professional duty to keep good records. He has been clear that ends do not justify the means, that good record-keeping is essential to good governance and that politicians and bureaucrats should be open about the public's business.

It is true that investigations by the Information Commissioner (and, even, the government's own internal studies) show that departments often don't bother with reasons to support secrecy, unless and until there is a complaint. Departments have often not taken seriously their obligation to follow a two-step approach before applying discretionary exemptions. Too often, departments have been content to address only the question: "May the requested records be kept secret?" The new Prime Minister has made it clear, as does the access law, that officials should also be asking: "Even if they may, why should the records be kept secret?" Most troubling, too many senior officials (elected and appointed) consciously evade public accountability by making sure there is no paper trail.

For a new government to be successful in achieving a culture of openness, it will have to dispel the myths that senior officials--and past Prime Ministers--have held and perpetuated. The major myths are these: the law is being abused; government is being overwhelmed by requests; the law is too expensive and the law interferes with the giving of unreserved advice on a full range of options.

Perhaps some facts will help a new Prime Minister cut through the mythology which is likely to find its way into the briefings he receives from the bureaucracy.

First, Canadians are highly responsible users of the right of access. It took ten years before the government received, in cumulative total, the number of access requests (50,000) that it planned to receive in the first year. At present, all departments and agencies of government receive less than half that predicted annual number of requests. In 2002-2003, some 23,000 access requests were received by government.

Second, Canadians make focused requests for small numbers of records. A study in 2002 showed that eighty percent of all access requests result in the release of fewer than 100 pages. Only one percent of access requests were for more than 1,000 pages of records. Moreover, ninety percent of requesters make fewer than seven access requests per year--most make only one request. Indeed, only thirty-five percent of requesters make more than one request per year.

Third, less than ten percent of requests result in complaints to the Information Commissioner, and the total cost of the whole system--including the Commissioner's office--is less than one dollar per year per Canadian.

Despite this outstanding record of user responsibility, a recent report prepared by government insiders proposed that using the *Access to Information Act* be made harder, more expensive, slower and more controlled by government. Resistance to openness has no shame!

We can only hope and urge a new government to ignore the self-serving folklore within the bureaucracy and reject the initiatives the bureaucracy is proposing to penalize a user community which, the statistics clearly demonstrate, has been restrained and responsible.

The myth that the *Access to Information Act* removes the ability of public servants to give ministers private advice is the most widespread and pernicious of all. It has no foundation in law, yet it is used by public officials to justify increasing reliance on oral briefings, decreasing the keeping of meeting agendas and minutes and broadening an official zone of secrecy for public officials.

In fact, the *Access to Information Act* now has a very strong protection for the confidentiality of advice and recommendations developed by officials for ministers. The exemption, set out in section 21 of the Act, is the third most frequently used of the Act's 13 exemptions to justify secrecy. It has been the subject of litigation, and the Federal Court of Appeal has rendered decisions which have confirmed that this is a strong exemption. The Act recognizes and supports the need for candour between officials and ministers as an element of ministerial accountability, which is a core element of the Westminster style of parliamentary democracy.

Yet, despite the clarity of the law on this point, and despite the reality that advice and recommendations are rarely disclosed (and, then, only when ministers want to make such information public), the myth persists. An eminent scholar, author and adviser to Prime Minister Martin (Professor Donald Savoie) gave a radio interview on March 1, 2004, in which he asserted that "speaking truth to power" is far more difficult for deputy ministers in the context of our access to information régime. He went on to say that, before the *Access to Information Act*, advice to ministers used to be private; whereas, now, it is in the open. Professor Savoie may be correct that officials find it more difficult to speak truth to power, but he is simply wrong to assert that the reason is because the access law removed a pre-existing zone of secrecy as between ministers and senior officials.

Making Progress on the Fundamentals

The minister responsible for the administration of the *Access to Information Act* across government is the President of Treasury Board. In this reporting year, the Access to Information and Privacy Policy Centre in the Treasury Board Secretariat (TBS) was integrated with the Information Policy Centre under the umbrella of the Chief Information Officer Branch.

This integration is a positive development, coming as it does on the heels of Treasury Board's approval of a new policy on the management of government information. TBS has recognized the vital link between effective information rights (i.e. right of access and right to privacy) and effective records management. A key element of the TBS information management policy is that public officials must create records to document decisions and decision-making processes throughout the evolution of policies, programs and service delivery.

TBS also took the lead in implementing the government's policy to proactively disclose, on websites, travel and hospitality expense information for senior public officials. It is examining the possibility of making other categories of information available on a proactive basis, such as information on contracts, grants and contributions. These are positive initiatives. However, TBS has been reluctant to undertake proactive on-line disclosure of its database on access to information requests which is used by central agencies to monitor and coordinate responses to requests. The system, known as CAIR (Coordination of Access to Information Requests), is technically ready for public on-line access, but TBS continues to resist "throwing the switch". If public officials across government have the ability, through access to CAIR, to know what access requests are being made, why shouldn't members of the public? The most recent information from TBS is that the matter is under study until June 2004.

Much good work is underway within TBS and elsewhere in government to document the information management "deficit" and to identify best practices, audit tools, skills, training, and needed resources to address the "deficit". Some six million dollars over two years have already been earmarked for accelerated implementation of the information management policy. Representatives from 18 departments and agencies comprise the "IM Leadership Initiative" to keep priority focus on addressing the information management deficit.

For an Information Commissioner, all this is cause for optimism. The designated minister responsible for delivering the right of access understands the need to focus on information infrastructure, skills and training. This is not the kind of "sexy" work that earns ministers good press or public recognition; it is, however, vital to delivering quality governance: good decision-making and accountability through transparency. Kudos to Minister Reg Alcock, and the

former Minister, Lucienne Robillard, for rolling up their sleeves and getting to work on the fundamentals!

The Federal Court Decides

As described in previous annual reports, the Chrétien government, for the past four years, has pursued some 27 applications in Federal Court against the Information Commissioner, seeking to curtail his investigative powers. Those 27 applications may be grouped into seven categories of applications seeking to:

1) remove the commissioner's powers to have access to records held in ministers' offices during his investigations;

2) remove the commissioner's powers to subpoena ministers and members of a minister's staff during his investigations;

3) remove the commissioner's power to review records, which the government claims to be subject to solicitor-client privilege, unless the commissioner can show that such access is "absolutely necessary";

4) remove the commissioner's powers to ask government witnesses to express opinions about matters of government policy;

5) remove the commissioner's powers to make and keep copies (until the end of the investigation or related court proceedings) of records provided to it by government during investigations;

6) remove the power of the commissioner to impose confidentiality orders upon witnesses who are questioned during investigations; and

7) remove the power of the commissioner to complete an investigation before the matter under investigation may be brought before the court for determination. In this case, the government asked the court to decide that records held in ministers' offices are not subject to the right of access.

Before a judgment on the merits was issued by the Federal Court Trial Division, some four years of litigation intervened. Procedural issues were dealt with by six judges of the Trial Division, six judges of the Court of Appeal and three judges of the Supreme Court of Canada. Most recently, on March 25, 2004, Justice Dawson of the Trial Division issued a 179-page decision disposing of the merits of the five remaining issues, i.e. items 3-7 described above. Items 1 and 2 were disposed of at earlier stages, in the commissioner's favour. In other words, government may not prevent the commissioner from reviewing records held in the offices of the Prime Minister or ministers and may not prevent the commissioner from compelling oral evidence from ministers or ministerial staffers.

With respect to issues 3-7, Justice Dawson found as follows:

3) Right of Access to Solicitor-Client Material

The government asked the court to find that the Information Commissioner may only compel production of records which are covered by solicitor-client privilege, if he can demonstrate that such access is "absolutely necessary" to the related investigation. Justice Dawson based her decision on an examination of the purpose of the Act, the role of the commissioner and the words of subsection 36(2) of the *Access to Information Act*.

The purpose says that decisions on the disclosure of government information should be reviewed independently of government. Justice Dawson concluded that the "absolute necessity" test would impose a significant restriction on the ability of the commissioner to conduct his investigation and independent review.

With respect to the role of the commissioner, the court noted that he is under a strong statutory obligation of confidentiality and has no power to order disclosure of government records. According to the court, there is no loss of privilege when solicitor-client records are provided to the commissioner. For this second reason, then, Justice Dawson rejected the "absolute necessity" test.

Finally, the court looked at the words of subsection 36(2), which provides that the commissioner is to have access to any record he requires, "notwithstanding any other Act of Parliament or any privilege under the law of evidence". Justice Dawson concluded that to impose the "absolute necessity" test in the face of these clear words would circumvent the intention of Parliament.

4) Propriety of Questions

The government asked the court to find that the commissioner had exceeded his authority when questions were put to Jean Pelletier and the Honourable Art Eggleton calling for opinions on a matter and, in one case, inviting comment on the opinion of another witness.

Justice Dawson declined to impugn the questions (some had been answered, some withdrawn) because there was no allegation that the questions went beyond the commissioner's jurisdiction or were asked for an improper purpose. As well, since the objection to the questions was based on "relevance", that is an evidentiary ruling which should not be challenged until the end of an investigation when it can be seen whether or not improper evidence was relied upon. Justice Dawson summed up her rejection of the government's application on this point, as follows: "I see no public interest which would warrant determining the issues raised in these applications". (paragraph 324)

5) Power to Make Copies

The government asked the court to find that the commissioner has no right to make copies of records he obtains during his investigations. In the government's view, the commissioner may only keep records for 10 days after a request for their return is made by government.

Justice Dawson interpreted the provision of subsection 36(5) of the Act (requiring the commissioner to return records within 10 days of a request for return being made) as applying only to original records. She concluded that this provision does not preclude the commissioner from making and keeping copies of records to facilitate his investigations. Justice Dawson expressed her ruling on this point, as follows:

> "… considering the efficiency and benefits that derive from allowing documents to be photocopied, I am satisfied that the power to photocopy documents is required as a matter of practical necessity for the accomplishment of the commissioner's responsibilities under the Act." (paragraph 280)

6) Confidentiality Orders

During his investigations, the commissioner sometimes issues confidentiality orders to Crown counsel (for the purpose of ensuring that their only loyalty is to the witness and not the witness' employer) and to witnesses (to avoid tainting of evidence, to protect the confidentiality of evidence, to protect witnesses from improper influence and retaliation, to protect the integrity and privacy of the investigation). The government did not challenge the commissioner's power to issue confidentiality orders to counsel. However, it did challenge the commissioner's jurisdiction to issue confidentiality orders to witnesses. The government argued that such orders constitute an unreasonable limit upon witnesses' Charter right to freedom of expression.

Justice Dawson noted that section 35 of the *Access to Information Act* requires the commissioner's investigations to be conducted "in private". She concluded that "in private" has the same meaning as "in camera" and that these terms may place various obligations on witnesses. She found, however, that these words do not go so far as to constitute a "blanket regime which precludes a person from communicating <u>for all time any</u> information touching upon their testimony and appearance before the commissioner". (paragraph 154) According to Justice Dawson, a blanket regime of this sort would constitute an unreasonable infringement of the 2(b) Charter right to freedom of expression.

However, Justice Dawson also noted that Parliament, in section 34 of the Act, gave the commissioner virtually unfettered discretion to determine the procedure to be followed in the performance of his duties and functions. In her

view, this broad discretion authorizes the commissioner to determine, in appropriate circumstances, that some form of confidentiality order should be imposed upon a witness. Justice Dawson found that the imposition of a confidentiality order is a procedure which the commissioner may follow when exercising the power in paragraph 36(1)(a) to compel a person to give evidence. In her words: "…the confidentiality orders are a procedural tool used to ensure a proper and fair investigation of the right of access". (paragraph 182)
She also found:

> "… the objectives sought to be achieved (by the confidentiality orders) relate to pressing and substantial concerns in a free and democratic society. I conclude that the objectives (of the confidentiality orders) are of sufficient importance as to warrant, in some circumstances, overriding the constitutionally freedom of expression". (paragraph 209)

Although the court found that the commissioner has the authority to issue confidentiality orders, it also found that the orders issued in this case were too broad. Justice Dawson noted that the confidentiality orders:

1) did not have a definite termination date; and

2) did not make it clear that they only covered questions asked, answers given and exhibits shown.

However, the court declined to immediately quash the confidentiality orders for being overly broad, pointing out that it does not know the commissioner's investigation plan, which witnesses may need to be recalled, what further witnesses will be required, or which, if any, conflicts exist in the testimony given to date. Instead, Justice Dawson decided as follows:

> "In my view, the public interest in preserving the integrity of the commissioner's investigations justifies making an order quashing the confidentiality orders, but on terms that the operation of such order be suspended for a period of 30 days from the date of these reasons. Such date may be extended by the court if so convinced on proper motion brought by the commissioner. The purpose of this suspension is to permit the commissioner to consider the need for confidentiality orders and, if still required, to issue orders which are not overbroad in scope and which are demonstrably justified". (paragraph 244)

7) Are Records in Ministers' Offices Subject to the Right of Access?

This was the main issue for the government in its attack on the jurisdiction of the commissioner. It asked the court for a declaration that records held in the office of the Prime Minister and ministers are not records under the control of the departments over which these public officials preside. It was the government's contention that the court should not have to wait for the

commissioner's investigative finding on this very issue before making a ruling. In other words, the government believed that it could avoid the rigors of the commissioner's investigations by asking the court to issue a pre-emptive ruling on the very issue under investigation by the commissioner.

Justice Dawson refused to grant the declaration sought by the government. She reasoned that the issue of "control" of records is not to be determined solely on the basis of the "geography" of where records are held. Rather, she found that the issue of "control" is a question of mixed fact and law and, among other facts to be considered, is the content of the records themselves (in this case ministerial and prime ministerial agendas and notes of meetings of the M5 Committee, a regular meeting of the most senior officials of National Defence). Justice Dawson noted that the government had not filed any of these records with the court.

Justice Dawson also found that granting the declaration sought by the government would be inconsistent with the scheme of the *Access to Information Act*. In particular, she found that it is up to the commissioner to make the initial determination of threshold jurisdictional issues, such as "control". Under the Act's scheme, the commissioner may only make recommendations; consequently, Justice Dawson found that the government would not suffer any prejudice from allowing the commissioner to finish his work and from allowing the issue of control to come before the court, if at all, by the route set out in sections 41 and 42 of the *Access to Information Act*. In this latter regard, Justice Dawson reaffirmed that any preemptive declarations of the sort sought in this case by the government would, if granted, deprive the government, complainants and the court of the benefit of the commissioner's investigation and report.

Next Steps

As directed by Justice Dawson, the Information Commissioner issued new confidentiality orders to witnesses which will end when the related investigations end and which cover only the questions asked, answers given and exhibits shown. For its part, the government has appealed the portion of the judgment dealing with the commissioner's authority to compel production of records alleged to qualify for solicitor-client privilege. As well, it has launched new court actions seeking to quash the new confidentiality orders issued by the commissioner.

CHAPTER II
DELAYS IN THE SYSTEM – REPORT CARDS

Again, in this reporting year, the office monitored the performance of departments in respecting the response deadlines contained in the *Access to Information Act*. A positive trend continued in the reduction of the number of delay complaints which access requesters made to the Information Commissioner. Last year, 20.6 percent of complaints related to delays. This year 14.6 percent were delay complaints.

However, when we consider the performance of individual departments in meeting response deadlines, the results are mixed--some do very well, some do very poorly, and many are "somewhere in between".

In this reporting year, a report card or report card updates were completed on twelve government institutions. As in the past, the grade depended on the percentage of access requests received which were not answered within statuary deadlines (i.e. 30 days or any extended period properly claimed). The Act refers to late answers as "deemed refusals". Here is the grading scale which was used:

% 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

Using this grading scale, the results achieved by the twelve government institutions reviewed this year (during the period April 1 to November 30, 2003) are set out in Table 1.

Table 1: New Request to Deemed-Refusal Ratio - April 1 to November 30, 2003

Department	% of Deemed Refusals	Grade
Canada Revenue Agency	6.4%	B
Citizenship and Immigration Canada	15.4%	D
Correctional Service Canada	3.2%	A
Fisheries and Oceans Canada	1.9%	A
Foreign Affairs and International Trade	17.0%	D
Health Canada	5.4%	B
Human Resources Development Canada	39.2%	F
Industry Canada	25.0%	F
National Defence	6.3%	B
Privy Council Office	3.8%	A
Public Works and Government Services Canada	14.6%	C
Transport Canada	17.2%	D

Table 2: New Request to Deemed-Refusal Ratio

Department	Grade for Apr. 1, 2002 to Mar. 31, 2003	Grade for Apr. 1 to Nov. 30, 2003
Canada Revenue Agency	B	B
Citizenship and Immigration Canada	A	D
Correctional Service Canada	F	A
Fisheries and Oceans Canada	A	A
Foreign Affairs and International Trade	C	D
Health Canada	B	B
Human Resources Development Canada	F	F
Industry Canada	-	F
National Defence	C	B
Privy Council Office	F	A
Public Works and Government Services	F	C
Transport Canada	F	D

As can be seen from Table 2, five government institutions improved their performance over last year, four showed no change and two received lower grades than last year. The institution reviewed for the first time (Industry Canada) received a failing grade. Kudos are due to the Privy Council Office and Correctional Service Canada for jumping from “F's” last year to “A's” this year. However, Citizenship and Immigration and Human Resources Development are of special concern. The former fell from an “A” last year to a “D” this year, whereas the latter institution has not budged from the failing grade it obtained last year.

Canada Customs and Revenue Agency and National Defence have plateaud at a grade of “B” over the past two years and should press ahead into ideal compliance category. Fisheries and Oceans Canada has shown the remarkable ability to earn an “A” in each of the past two years; it deserves honourable mention and the respect of Canadians for its determination to respect the legal obligation to provide timely responses.

Table 3 - from April 1 to November 30

	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
CRA	F	F	C	B	A	B
CIC	F	F	D	C	A	D
CSC	-	-	-	-	F	A
F&O	-	-	F	F	A	A
DFAIT	F	F	F	D	B	D
HCan	F	A	-	-	A	B
HRDC	-	A	-	-	D	F
IC	-	-	-	-	-	F
ND	F	F	D	C	B	B
PCO	F	A	-	-	D	A
PWGSC	-	-	-	-	F	C
TC	-	F	F	C	D	D

Table 3 shows how difficult it is to maintain consistently high performance in meeting response times. For example, there should not be such wild fluctuations in results from the Privy Council Office. Industry Canada was graded for the first time this year. It has work to do, and the new Minister of Industry has given personal assurances to the commissioner that her

department will solve its poor record of respecting response deadlines. The commissioner's office will continue to monitor progress in the expectation that there will be a more positive story to report next year.

Of most concern, when we look at the performance since 1998-99, are Citizenship and Immigration (it had only one acceptable grade); Foreign Affairs and International Trade (a poor record, only one grade above a "D"); HRDC (a poor performance in recent years) and Transport Canada (consistently low or failing grades). They will be asked for a detailed work plan to bring themselves to an "A" grade by next year.

The reviews undertaken this year show, again, that there are five main causes of delay in the access system:

- Slow retrieval of records, due to poor records management and staff shortages;
- Poorly managed consultations with third parties and other government institutions;
- Inadequate resources and training;
- Top-heavy approval processes, including too much "hand-wringing" over politically sensitive requests and too frequent holdups in ministers' offices; and
- Poor communications with requesters to clarify and narrow requests.

Many institutions have solved their delay problems; all institutions know what needs to be done to solve such problems. None of the solutions are inordinately complex or expensive and there is a wealth of practical experience in the system to assist the improvement efforts. The institutions where delays persist simply haven't demonstrated the institutional will and the management leadership to get the job done.

The complete text of the twelve reviews conducted this year is included in Chapter VII.

CHAPTER III
INVESTIGATIONS AND REVIEWS

Workload Statistics

In the reporting year (2003-2004), 1,338 complaints were made to the commissioner against government institutions and 970 investigations were completed (see Table 1). Table 1B indicates 14.5 percent of all complaints received concerned delay. Last year, by comparison, 20.6 percent of complaints concerned delay. This drop in the number of delay complaints is indicative of a generally improving performance by government in meeting response deadlines. In addition to the complaints received this year, the office responded to over 3,000 inquiries.

Table 2 shows the outcome of the 970 completed investigations. Of the cases which were not discontinued (withdrawn) or dismissed, over 99 percent were resolved without resort to the courts. The eight complaints which could not be resolved concerned only three issues: solicitor-client privilege, 1911 census records, and legal fees. The resulting litigation is described in Chapter V.

As seen from Table 3, the median overall turnaround time for complaint investigations increased to 5.57 months from 5.42 months last year. Table 3A illustrates the effect on completion time of the increasing percentage of workload in the more complex, difficult complaint categories. However, even this breakdown illustrates the deterioration in turnaround times for both standard and difficult cases.

Table 1 reminds us that there continues to be a troubling number of incomplete investigations. Last year it was 657, this year it is 1,025. Of this number, 728 have been under investigation for a period which indicates that they are backlogged as compared with 365 last year. The modest progress reported last year in both improving turnaround times and reducing backlog was not possible to sustain in the face of severe resource constraints. As discussed at pages 76 to 77, the ability of the commissioner's office to deliver timely, thorough investigations and to be an effective watchdog over the access system is now in real jeopardy. This office accepts the need for public institutions to be lean and prudent with public funds, yet, the current financial anorexia it is experiencing is depriving members of the public of an important democratic right.

Table 4 shows the distribution of completed complaints across 56 government institutions. Some 62 percent of all complaints were made against only ten government institutions. This phenomenon corresponds with the access requests received by government as a whole: a few institutions account for the bulk of all requests.

Of the complaints closed this fiscal year, the top ten "complained against" institutions are:

1.	Canada Revenue Agency	84
2.	National Defence	68
3.	Public Works and Government Services Canada	64
4.	Transport Canada	63
5.	Justice Canada	62
6.	National Archives of Canada	60
7.	Citizenship and Immigration Canada	57
8.	Foreign Affairs and International Trade	55
9.	Royal Canadian Mounted Police	47
10.	Privy Council Office	46

Being on this list does not necessarily mean that these institutions performed poorly. To better assess "performance", one must look at the number of complaints against each institution which were found to have merit versus the number which were not substantiated.

Nevertheless, if one were to list the "top ten" institutions against whom complaints were made which the commissioner found, in this reporting year, to have merit (resolved or well-founded), the list would be:

1.	Canada Revenue Agency	63 of 84
2.	Transport Canada	55 of 63
3.	National Defence	55 of 68
4.	Public Works and Government Services Canada	48 of 64
5.	Justice Canada	47 of 62

6. Foreign Affairs and International Trade	45 of 55
7. Citizenship and Immigration Canada	41 of 57
8. National Archives of Canada	41 of 60
9. Royal Canadian Mounted Police	33 of 47
10. Industry Canada	30 of 40

Service Standards

As promised last year, the Information Commissioner instituted timelines for investigative activities designed to bring investigations to completion by fixed target dates or "standards". These service standards make demands of both investigators and departmental ATIP staff. The standards are described in detail in the commissioner's 2002-03 Annual Report at pages 54 to 58.

It is difficult to assess the effectiveness of these standards in an environment of inadequate resources and after only one year of operation under a mixed caseload, where a significant number of investigations were commenced before the introduction of the standards. However, the preliminary results are encouraging and show a real decline in the time taken by investigators to complete their investigative work across all types of complaint investigations.

The commissioner is grateful to both his investigators and departmental ATIP officials for making a good faith effort to meet service standards even in the context of heavy caseloads.

Table 1 STATUS OF COMPLAINTS

	April 1, 2002 to March 31, 2003	April 1, 2003 to March 31, 2004
Pending from previous year	677	657
Opened during the year	986	1338
Completed during the year	1006	970
Pending at year-end	657	1025

Table 1B COMPLAINTS RECEIVED BY TYPE

Category	April 1, 2002 to March 31, 2003		April 1, 2003 to March 31, 2004	
Refusal to disclose	539	54.7%	724	54.1%
S. 69 Exclusion	48	4.9%	127	9.5%
Delay (deemed refusal)	203	20.6%	194	14.5%
Time extension	96	9.7%	188	14.0%
Fees	39	4.0%	47	3.5%
Miscellaneous	61	6.2%	58	4.3%
Total	986	100%	1338	100%

Table 2 COMPLAINT FINDINGS
April 1, 2003 to March 31, 2004

Category	Resolved	Not Resolved	Not Sub-stantiated	Discon-tinued	TOTAL	%
Refusal to disclose	291	8	128	20	447	46.1%
S.69 Exclusion	9	-	24	8	41	4.2%
Delay (deemed refusal)	213	-	7	8	228	23.5%
Time extension	126	-	27	-	153	15.8%
Fees	22	-	18	8	48	4.9%
Miscellaneous	22	-	28	3	53	5.5%
TOTAL	683	8	232	47	970	100%
100%	70.4%	0.8%	23.9%	4.9%		

Table 3 TURNAROUND TIME (MONTHS)

Category	2001.04.01 – 2002.03.31		2002.04.01 – 2003.03.31		2003.04.01 - 2004.03.31	
	Months	Cases	Months	Cases	Months	Cases
Refusal to disclose	8.58	690	7.17	590	7.36	447
S.69 Exclusion	-	-	-	-	8.02	41
Delay (deemed refusal)	5.00	349	3.44	164	4.06	228
Time extension	4.39	78	4.77	125	3.45	153
Fees	3.88	68	4.22	48	5.15	48
Miscellaneous	5.97	50	4.37	79	5.10	53
Overall	6.84	1235	5.42	1006	5.57	970

Table 3A TURNAROUND TIME (MONTHS)

Category	2001.04.01 – 2002.03.31				2002.04.01 – 2003.03.31				2003.04.01 - 2004.03.31			
	Standard		Difficult		Standard		Difficult		Standard		Difficult	
	Months	%	Months	%	Months	%	Months	%	Months	%	Months	%
Delay (deemed refusal)	5.00	26	7.36	3	2.99	10	4.73	6	3.63	18	9.37	6
Time extension	3.91	5	5.06	2	2.96	5	8.61	7	2.47	10	6.18	6
Fees	3.48	5	10.85	1	2.61	2	5.42	3	4.64	3	6.67	1
Miscellaneous	4.77	3	7.96	1	2.40	5	8.68	3	3.55	4	12.67	2
Subtotal - Admin Cases	4.44	38	6.84	6	2.86	22	6.31	19	3.27	34	7.25	15
Refusal to Disclose	7.64	47	15.25	8	5.46	45	16.57	13	5.59	34	16.96	13
S. 69 Exclusion	-	-	-	-	-	-	-	-	8.04	4	7.07	0
Subtotal – Refusal Cases	7.64	47	15.25	8	5.46	45	16.57	13	6.12	38	16.93	13
Overall	6.28	86	12.77	14	4.34	67	8.93	33	4.67	72	10.36	28

Notes: 1. Difficult Cases - Cases that take over two times the average amount of investigator time to resolve.

2. Refusal Cases take on average four times as much investigator time to resolve as administrative cases.

Table 4 COMPLAINT FINDINGS (by government institution)
April 1, 2003 to March 31, 2004

GOVERNMENT INSTITUTION	Resolved	Not Resolved	Not Sub-stantiated	Discon-tinued	TOTAL
Agriculture and Agri-Food Canada	6	-	2	-	8
Atlantic Canada Opportunities Agency	8	-	1	1	10
Belledune Port Authority	-	-	1	-	1
Business Development Bank of Canada	0	1	1	-	2
Canada Mortgage & Housing Corporation	2	-	1	-	3
Canada Newfoundland Offshore Petroleum Board	1	-	-	-	1
Canada Revenue Agency	63	-	19	2	84
Canadian Environmental Assessment Agency	1	-	-	-	1
Canadian Film Development Corporation	1	-	-	-	1
Canadian Firearms Centre	1	-	1	-	2
Canadian Food Inspection Agency	4	-	8	-	12
Canadian Forces Grievance Board	2	-	1	-	3
Canadian Heritage	5	-	11	-	16
Canadian International Development Agency	3	-	-	2	5
Canadian International Trade Tribunal	1	-	-	-	1
Canadian Museum of Civilization	2	-	-	1	3
Canadian Nuclear Safety Commission	3	-	-	1	4
Canadian Radio-Television and Telecommunications Commission	1	-	-	-	1
Canadian Security Intelligence Service	1	-	2	-	3
Canadian Space Agency	4	-	2	-	6
Citizenship & Immigration Canada	41	-	14	2	57
Communications Canada	1	-	-	-	1
Correctional Service Canada	19	-	7	1	27
Environment Canada	25	1	9	3	38
Finance Canada	11	-	11	-	22
Fisheries and Oceans Canada	16	-	8	-	24
Foreign Affairs and International Trade	45	-	9	1	55
Health Canada	15	-	4	-	19
Human Resources Development Canada	8	-	9	3	20
Immigration and Refugee Board	2	-	-	-	2
Indian and Northern Affairs Canada	17	-	2	-	19
Indian Residential Schools Resolution Canada	5	-	2	-	7

Table 4 COMPLAINT FINDINGS (by government institution)
April 1, 2003 to March 31, 2004 (continued)

GOVERNMENT INSTITUTION	Resolved	Not Resolved	Not Sub-stantiated	Discon-tinued	TOTAL
Industry Canada	30	-	8	2	40
Justice Canada	43	4	13	2	62
National Archives of Canada	41	1	16	2	60
National Capital Commission	2	-	2	-	4
National Defence	55	-	7	6	68
National Parole Board	1	-	-	-	1
National Research Council Canada	1	-	-	-	1
Natural Resources Canada	4	-	2	1	7
Natural Sciences and Engineering					
Research Council of Canada	1	-	-	-	1
Office of the Correctional Investigator	3	-	-	-	3
Office of the Superintendent of Financial Institutions	2	-	1	-	3
Ombudsman National Defence & Canadian Forces	1	-	-	-	1
Parks Canada Agency	1	-	-	-	1
Privy Council Office	20	-	21	5	46
Public Safety and Emergency Preparedness Canada	13	-	1	1	15
Public Service Commission of Canada	1	-	1	-	2
Public Works and Government Services Canada	48	-	12	4	64
Royal Canadian Mounted Police	33	-	13	1	47
Social Science and Humanities					
Research Council of Canada	1	-	-	-	1
Statistics Canada	1	2	1	-	4
Transport Canada	55	-	3	5	63
Transportation Safety Board of Canada	-	1	-	-	1
Treasury Board Secretariat	10	-	4	1	15
Western Economic Diversification Canada	1	-	1	-	2
TOTAL	681	10	231	47	970

Table 5 GEOGRAPHIC DISTRIBUTION OF COMPLAINTS (by location of complainant) April 1, 2003 to March 31, 2004

	Rec'd	Closed
Outside Canada	15	19
Newfoundland	22	24
Prince Edward Island	8	1
Nova Scotia	36	18
New Brunswick	8	4
Quebec	109	82
National Capital Region	569	396
Ontario	325	243
Manitoba	44	31
Saskatchewan	25	16
Alberta	52	36
British Columbia	119	94
Yukon	1	0
Northwest Territories	4	5
Nunavut	4	1
TOTAL	**1338**	**970**

CHAPTER IV
CASE SUMMARIES

1. How Much Was Repaid?

Background

In July 2000, a citizen asked Industry Canada to disclose information about the performance of the department's Technology Partnerships Program. The program was established in 1996 to provide repayable contributions to small and medium-sized enterprises to encourage research, development, and innovation. The Technology Partnerships Program operates in a similar manner to the Atlantic Canada Opportunities Agency (ACOA), Western Economic Diversification (WED) and Canada Economic Development for Quebec Regions. The requester wanted to know, among other things (such as the distribution of contributions by political riding), how much of the $1.6 billion given by the program was actually repaid. The requester also made similar requests for repayment information to ACOA and WED.

The department agreed to disclose the total amount of repayments (as it turns out, less than two percent had been repaid in the five years since the program's inception); however, in December 2000, it refused to provide a breakdown by individual firm. The government argued that disclosure of the repayment record of individual recipients could lead the public to make erroneous judgements about the financial or managerial competence of these firms. The requester, on the other hand, could not understand why loans had been given to large corporations such as Pratt & Whitney and Bombardier and she felt the public should know whether or not these firms had ever repaid the loans. The requester was also puzzled as to why ACOA and WED had no difficulty disclosing the company-specific repayment information which IC wished to keep secret.

As a result, in March 2001, the requester complained to the Information Commissioner about the matter.

Legal Issues

To justify its refusal to disclose the breakdown of repayments by individual company, Industry Canada relied upon paragraphs 20(1)(b) and (c) of the *Access to Information Act*. In particular, the department argued that the repayment

information was confidential commercial, financial information provided by the companies to the department (paragraph 20(1)(b)). As well, it argued that the level of repayment could give competitors an insight into how close to being ready for market a new technology might be and, hence, be prejudicial to the recipient companies' competitive positions (paragraph 20(1)(c)).

The commissioner rejected the paragraph 20(1)(b) argument for two reasons: first, the repayment information had not been "supplied" by third parties to the government. Rather, it was a tabulation from the department's own accounts owing. Second, there was no evidence that the amount of repayment was confidential in nature. The mere assertion that information is confidential is insufficient to discharge the onus of justifying the paragraph 20(1)(b) exemption.

With respect to the paragraph 20(1)(c) argument, the commissioner insisted that the companies themselves give detailed explanations of how disclosure of their repayment records could reasonably be expected to result in competitive harm to them. Given that other federal contributions programs had released very similar information about many of the same firms, the commissioner was not prepared to accept the department's assertions that disclosure could harm the companies that had received loans.

It was not until April 2002 that Industry Canada agreed to consult all third parties. All of the companies agreed to disclosure or did not take advantage of their right to take action in the Federal Court to resist disclosure. Consequently, in February 2003, Industry Canada disclosed to the requester the amounts repaid by each company in receipt of a contribution from the Technology Partnerships Program.

The requester, as might be expected, found the time excessively long between her initial request for information (July 2000) and the release of the information (February 2003). However, she expressed the view that the long process was worthwhile as a necessary reminder to government and those who receive government contributions that taxpayers expect and deserve transparency and accountability in the administration of funding programs.

Lessons Learned

The protections for commercially sensitive information contained in section 20 of the Act are both broad and mandatory. However, there is also a heavy onus on government institutions not to refuse disclosure under these sections based on mere assertions of commercial confidentiality or competitive harm from disclosure. Rather, there must be evidence of harm, at the level of a probability, and concrete evidence that the information in question is of a confidential nature. However, even when information is confidential in nature, it cannot be

kept secret under paragraph 20(1)(b) unless a third party has supplied it to government. Where the information is compiled by government through inspections, audits or accounting materials, paragraph 20(1)(b) may not be invoked to justify a refusal to disclose requested records.

It is regrettable that the public interest override contained in subsection 20(6) is limited and does not authorize government to weigh the public interest in accountability and transparency of public expenditures against the competitive interests of third parties. This is an omission that Parliament should remedy by legislative amendment.

2. Policy Versus The Law

Background

An individual made two requests under the *Access to Information Act* to the Department of the Solicitor General (SGC) for records concerning two other people. The access requester enclosed with the request a consent form signed by the other persons, authorizing the government to disclose information about them to the requester.

SGC refused to process and answer the access requests. It returned the requests with this explanation: "It is the policy of this department that individuals wishing to have access to their personal information should submit their own requests under the *Privacy Act*." The department not only refused to answer the access requests, it failed to inform the requester of his right to make a complaint to the Information Commissioner. However, the requester was aware of his right and complained to the commissioner.

Legal Issues

There is, under the *Privacy Act*, a mechanism for individuals to make requests for access to information about themselves. Does the existence of that mechanism mean that requests for personal information must be made under the *Privacy Act*, or may such requests also be made under the *Access to Information Act*? Is it required that individuals apply for access to information about them, or may they give consent for someone else to apply for them? These were the issues raised by this complaint.

In defense of its refusal to process and answer these two access requests, the department argued that there was some doubt as to the legitimacy of the consents. It argued that this doubt was an acceptable reason to insist that the individuals, who allegedly gave consent, submit their own requests under the *Privacy Act*. The department insisted on its right to refuse to process these

access requests in order to protect the privacy of the individuals whose information had been requested.

The commissioner concluded that there is no requirement that requests for access to personal information must be made under the *Privacy Act* or that they must be made by the person to whom the information relates. He found that, should individuals wish to request access to personal information about themselves or about someone else, they also have a right to do so under the *Access to Information Act* upon payment of the associated fees (there are no fees for requests made under the *Privacy Act*). If the request is for information about someone else, disclosure may only be made under the Access Act if:

1) there is consent from the person to whom the requested information relates;

2) the information is publicly available; or

3) disclosure of the information without consent is authorized by section 8 of the *Privacy Act* (for example, to serve the best interests of the person to whom the information relates, to serve the public interest, to enable a member of Parliament to help the person, for a use consistent with the purpose for which the information was compiled).

The commissioner concluded that, if a department decides that a consent is not valid (presumably after taking representations from the requester and, if necessary, verifying directly with the person to whom the information relates), the proper course of action is to refuse disclosure, pursuant to the personal information exemption in the Access Act (section 19), and to inform the requester of his or her right of complaint to the Information Commissioner.

The SGC accepted the obligation to answer the requests. It sent letters to the person whose information was requested, seeking confirmation of their consents and conducted searches for relevant records. In the end, no records relevant to the requests were located, and the requester was so informed.

Lessons Learned

If an access request is properly made (i.e. it meets the clarity requirement of section 6 and is accompanied by the five dollar fee) then there is a mandatory, legal obligation on government institutions to answer the request (section 7), to answer within specific deadlines (sections 7 and 9), to give reasons for refusal of access (section 10), and give written notice of the right of complaint to the Information Commissioner (section 10).

Privacy concerns (for example, whether or not a consent to disclose personal information is valid) never justify a refusal to fulfill the above-described obligations. Such concerns, if they have some merit after reasonable inquiry by

the government institution, may, of course, justify a refusal to disclose personal information, which refusal may then be the subject of a complaint to the Information Commissioner.

3. Yes! You Can Have It On CD

Background

In October 2001, an articling student at a Vancouver law firm made an access request to Fisheries and Oceans Canada (F&O) for a CD-ROM copy of an electronic database (known as the Habitat Enforcement Database). The database contains court judgments arising from *Fisheries Act* prosecutions, case summaries of the judgments and information about the impact of the court decisions on future prosecutions.

In response, F&O refused to disclose the CD-ROM or any of its contents in any format, on the basis that the information requested was subject to solicitor-client privilege and, hence, exempt from the right of access, pursuant to section 23 of the Access Act.

In February 2002, the requester complained to the Information Commissioner about the matter. The complainant could not understand how a database comprised largely of publicly-known information, i.e. court decisions and summaries thereof, could qualify for solicitor-client privilege.

Early in the investigation, it became clear that the refusal to disclose the CD-ROM was based on two additional reasons which had not been communicated to the requester in the department's response. First, the department's refusal to disclose the text of court judgments was also based on section 68 of the Act, which excludes publicly available records from the right of access. Second, the department took the view that an access requester had no right to dictate the format in which information is disclosed. At the time of the request, the database existed in hard copy and in an internal on-line database, but it did not exist on CD-ROM.

Legal Issues

Three issues arose in this case: first, can court decisions and summaries thereof qualify for solicitor-client privilege? Second, can court decisions be withheld on the basis that they are published material and, hence, excluded from the right of access by section 68 of the Act. Finally, does an access requester have a right to request access be provided in a particular format?

The irony of the first two issues was not lost on the commissioner. The department argued both that court decisions are a matter of confidence and, at the same time, published material. The commissioner did not accept that the court decisions and summaries qualify for solicitor-client privilege. He found that this information is public and he noted that the decisions were not selected or presented as foundation for particular legal advice. They were simply a compendium of decisions on a particular topic. Consequently, he concluded that section 23 of the Act did not justify a refusal to disclose the database.

With respect to the second issue, the commissioner noted that, while court decisions are public, this national compendium of decisions is not published or available for purchase by the public. A requester would have to do a search in every court across Canada to compile the database and, in the commissioner's view, the section 68 exclusion was not intended to force Canadians into that hardship to get access to a set of records which already exist in government files and which tax dollars paid to compile. Consequently, he concluded that section 68 of the Act did not justify the refusal to disclose the database.

With respect to the third issue, choice of format, the commissioner took note of the admission by F&O that the CD-ROM version can be easily and cheaply produced. He also took note of the decision of the Federal Court Trial Division in *Yeager* v. *Correctional Service Canada*, 2001 FCT 434. The court found that there was an obligation to create a record in a new format if, in the words of subsection 4(3) of the Act, the record "… is capable of being produced using the computer software and expertise normally used by CSC."

Consequently, the commissioner rejected the department's contention that requesters have no right to obtain access to records in their preferred format.

The department accepted the commissioner's views and disclosed a CD-ROM version of the Habitat Enforcement Database to the requester. Regrettably, from the date of the access request to the date of disclosure, two years had elapsed and all that delay for entirely non-sensitive information!

Lessons Learned

This is a classic case of a department looking for ways to say "no disclosure" rather than asking itself "why not disclosure." There was enormous information and negligible cost to put it on a CD-ROM; yet, for two years, the department insisted on secrecy.

An attitude of service to access requesters is the frame of mind the Access Act requires public servants to take in answering access requests. Parliament has made it an express obligation to create records from electronic databases if it is reasonably possible to do so. It is not open to public servants to dictate to

access requesters the format in which they will receive access to government records.

4. Government Can't Complain About Requesters

Background

For the first time since the coming into force of the *Access to Information Act* (1983), the Information Commissioner received a complaint from a government institution, Canadian Air Transportation Security Authority (CATSA). CATSA was created in 2002 to be responsible for security at Canadian airports.

After a senior official of CATSA was fired for harassment, the official made 14 access requests to CATSA (over a one-month period) for records on a variety of subjects. Three of the requests concerned, in part, individuals whose allegations of harassment had led to the requester's firing.

CATSA formed the view that the requester's use of the Access Act amounted to a continuing form of harassment and, in its complaint to the Information Commissioner, it asked the commissioner to endorse CATSA's view that it is under no obligation to answer access requests which are being made as a form of harassment.

The requester was notified by CATSA of the complaint. He took the view that the Information Commissioner has no jurisdiction to investigate a complaint from a government institution.

Legal Issues

The matters which the Information Commissioner is authorized to investigate are set out in subsection 30(1) of the *Access to Information Act*. CATSA argued that paragraph 30(1)(f) governs this case. It provides:

> "Subject to this Act, the Information Commissioner shall receive and investigate complaints
> (f) in respect of any other matter relating to requesting or obtaining access to records under this Act."

In CATSA's view, this is a broadly worded jurisdiction which, unlike some other paragraphs of subsection 30(1), is not limited by the words "from persons". CATSA also drew a connection between the words in paragraph 30(1)(f) and the broad powers in paragraph 37(1)(a) which authorize the commissioner to make "any recommendations that the commissioner considers appropriate." In CATSA's view, these provisions require the commissioner to investigate a

complaint alleging that specific access requests are acts of harassment and give him broad latitude to recommend how CATSA should react, including a recommendation that access requests from a specific individual not be answered.

The requester did not agree that paragraph 30(1)(f) would allow a complaint from a government institution. He pointed out that, if Parliament had contemplated complaints from government institutions, it would not have used the phrase "relating to requesting or obtaining access." Rather, Parliament would have also used the terms "receiving" access requests and "granting" access.

Second, the requester asked the commissioner to look at the scheme of the Act as reflected in Parliament's directions as to how investigations are to be conducted and reported. For example, it was pointed out that subsection 35(2) requires the commissioner, in the course of an investigation, to give the following persons a reasonable opportunity to make representations:

- the person who made the complaint;
- the head of the government institution concerned; and
- any third party having a section 20 (commercial confidentiality) interest in a record that might be recommended for disclosure.

The requester pointed out that there is no mention here of an obligation to give the access requester a right to make representations when the person who makes the complaint is also the head of the government institution concerned. This omission, according to the requester, is evidence that Parliament did not intend that government institutions could make complaints to the commissioner.

The requester also referred the commissioner to section 37 of the Act, which requires the commissioner to report the results of investigations to:

- the head of the government institution;
- the complainant;
- third parties with respect to commercial confidentiality issues.

Again, there is no mention of an obligation to report results to an access requester because, according to the requester's argument, Parliament did not intend that government institutions could also be complainants.

As a counter to these arguments concerning the inherent limits in sections 35 and 37, CATSA pointed out that the commissioner would have natural justice obligations to take representations from, and report to, the access requester in the circumstances of this case.

The commissioner agreed with CATSA that his investigative jurisdiction under paragraph 30(1)(f) is broad. However, he also agreed with the requester that, when one considers the scheme of the Act and its purpose, as set out in section 2, it becomes clear that Parliament did not intend to authorize the commissioner to investigate complaints by government institutions against access requesters. Consequently, the commissioner reported to the parties that he had no jurisdiction to investigate CATSA's complaint. He also informed the parties that the requester had the right to complain to the commissioner about CATSA's failure to answer his access requests.

Lessons Learned

Absent legislative change, government institutions that question the motives of access requesters cannot, by making a complaint, compel the Information Commissioner to investigate the matter. In this case, the commissioner did not consider the merits of the complaint, i.e. whether there are circumstances in which government institutions may refuse to answer access requests because of the motives of the requester or the effect requests have on employees of the receiving institution.

5. You Can Waive Your Rights

Background

A former employee of the Canadian Space Agency entered into an out-of-court "settlement agreement" with the employer which contained a clause wherein the former employee agreed not to make access requests in the future in respect of his employment with the Canadian Space Agency. Some seven months after the agreement was signed, the former employee asked the Information Commissioner to review the appropriateness of the portion of the agreement preventing future access requests relating to employment issues. The former employee alleged that his agreement had been obtained under duress and that his rights under the Access Act should take precedence over any private agreement.

Legal Issue

May a person's rights under the *Access to Information Act* be removed or modified by private agreement between the Crown and an individual? That was the issue before the commissioner in this case. The Space Agency argued that the "no more requests" clause was limited (to matters of employment) and reasonable in the circumstances of a mutual agreement to end an employment relationship. It pointed out that the agreement had been signed by the former

employee's authorized union representative and endorsed in writing by the former employee.

The commissioner concluded that the "no more requests" clause did not contravene any provision of the *Access to Information Act*. He pointed out that the clause does not prevent government institutions from receiving access requests--indeed, they would be required to process any such request. However, the commissioner pointed out that, were the former employee to make access requests to his former employer about his former employment, he might face repercussions from the Crown for breach of contract. In such a circumstance, it would be open to the former employee to raise the issue of duress in his defence. The commissioner declined to express any view as to whether or not duress was a factor in this case.

Lessons Learned

Individuals may, by private contract, waive their rights to make access requests or complaints to the Information Commissioner. While the commissioner would be concerned if it were to become a standard practice for the Crown to insist on such clauses in employee-employer settlements, such clauses do not contravene the *Access to Information Act*.

6. Confidentiality Versus Public Interest

Background

The Canadian Institute of Health Research awarded funds to the University of British Columbia to conduct research on the health risks to healthcare workers of certain disinfectant products. As part of the research, a UBC researcher made an access request to Health Canada for toxicological data on a disinfectant known as CIDEX OPA solution, manufactured by Johnson & Johnson.

Health Canada disclosed some information, but withheld most details in order to protect the manufacturer from commercial and competitive injury.

The researcher complained to the Information Commissioner arguing that the public interest in determining the risks of the product to public health and safety should override the manufacturer's commercial and competitive concerns.

Legal Issue

Did Health Canada properly exercise the discretion given to it by subsection 20(6) of the *Access to Information Act*? That provision authorizes government to disclose commercially sensitive information "if that disclosure would be in the

public interest as it relates to public health, public safety or the protection of the environment and, if the public interest in disclosure clearly outweighs in importance any financial loss or gain to, prejudice to the competitive position of or interference with contractual or other negotiations of a third party."

The researcher seeking disclosure argued that disinfectants, like CIDEX OPA solution, might have an adverse effect on the health of healthcare workers. She argued that the goal of the research--that of comparing the relative health impacts of various products--was supported by the Workers' Compensation Board of B.C., the Occupational Health and Safety Agency for Healthcare in B.C., healthcare management associations, and labour union members.

For its part, Health Canada took the position that the requester had not shown that the product in question poses any threat to public health or safety. Health Canada and the product's manufacturer took the view that the approved labeling and package insert for the product ensure that the product is handled and used safely. In the absence of some evidence to the contrary, they argued that disclosure would not promote any public interest and, hence, would not outweigh the likely commercial prejudice to the manufacturer from disclosure of the toxicological data.

The commissioner agreed with Health Canada and Johnson & Johnson that this was not a case where the public interest in health and safety outweighed the commercial and competitive interests of Johnson & Johnson. The commissioner found that Health Canada had carefully weighed the factors for and against disclosure and that there was good reason to insist on secrecy in this case. The complaint was recorded as not substantiated.

Lessons Learned

Government institutions are under a mandatory obligation to refuse to disclose information if disclosure could harm private firms. They are also under an obligation to consider the subsection 20(6) public interest override before refusing access. This discretion to disclose in the public interest must be exercised in good faith and there must be evidence that relevant factors for and against disclosure were weighed. If the discretion to disclose in subsection 20(6) is exercised in good faith, it is not for the commissioner or a reviewing court to seek to substitute its judgment for that of the head of the government institution which received the access request.

7. Delays In The Minister's Office

Background

A requester asked the Department of Foreign Affairs and International Trade (DFAIT) for access to records showing the expense reimbursement claims (relating to travel and hospitality) for four DFAIT officials. Before the legal response deadline, DFAIT asked the requester if he would accept an expense summary prepared by the department in lieu of the actual expense claim records. The requester agreed. Then the wait began--no response, not even the summary, was given. When the requester pestered the department for an explanation, he was told that the proposed release package had been in the minister's office awaiting approval for over a month. He was told that there was nothing departmental employees could do but wait until the minister and his staff had given approval for disclosure. The requester complained to the Information Commissioner.

Legal Issue

Is a minister (and his office staff) entitled to insist that his or her approval be obtained before access requests are answered even if waiting for approval means that legal response deadlines are missed?

The investigation showed that this was not the only case held up, beyond response deadlines, awaiting the approval for release from the minister's office. The departmental staff felt they could not answer requests until the minister's approval had been obtained. The minister's office felt that the departmental staff were wrong to wait for their approval if it meant response deadlines would be missed. It seemed a classic case of miscommunication--and access requesters were the losers caught in the middle.

The Information Commissioner determined that a previous minister had delegated his authority to answer access requests to the department's deputy minister and Access to Information coordinator. That delegation of authority remains in force since it has not been countermanded by the current minister. In law, then, the minister's staff have no lawful authority to approve access responses and departmental staff have the legal authority (and responsibility) to proceed to answer access requests without waiting for ministerial approval.

The commissioner advised the minister to clarify, in writing, his expectation that the right of individuals to receive timely answers to access requests be respected--even if that means that the minister may not always get an advance "heads up". While there is nothing unlawful about giving ministers advance warning and explanations about what will be released under the Access Act, the

"heads up" process should be selective and must not result in missed response deadlines.

The commissioner also took the occasion to urge the minister to solve a longstanding record of poor performance by DFAIT in meeting access response deadlines. While delays in the minister's office contributed to the overall problem, other causes have been identified by the commissioner's report card (see the results for 2003-04, at pages 116 to 124). As a department which receives relatively few access requests, there is no excuse for further procrastination in coming into full compliance with the law's response deadlines.

Lessons Learned

Meeting the access response deadlines on a consistent basis requires careful attention and leadership from the minister and deputy minister. The minister's communication needs must not be allowed to take precedence over legal rights to timely responses. Only ministers can make this priority clear to ministerial staff and departmental officials, who are prone to put the minister's interest above all else.

8. No Special Status For Lawyers

Background

A Vancouver immigration lawyer made a request to Citizenship and Immigration Canada (CIC) under the *Access to Information Act* for information about one of his clients. CIC refused to process the request until a written consent was provided by the client, authorizing disclosure of the client's personal information to the lawyer. The lawyer obtained his client's consent (from China); however, CIC rejected the consent because it had not been dated. The lawyer felt that CIC was imposing unnecessary "red tape" and complained about the matter to the Information Commissioner.

Legal Issues

Is a government institution justified in refusing to disclose personal information to the subject's legal counsel unless the lawyer provides a signed and dated consent from the client? The lawyer argued that lawyers are bound by fiduciary duties to their clients. Consequently, where a lawyer advises in writing that he or she represents an individual, it should be presumed that the lawyer is acting with the client's authorization. The lawyer pointed out that he is a member of the Quebec Bar and, if he were to falsely claim that he represented a client, he would be subject to sanctions, including revocation of his license to practice law.

For its part, CIC pointed out that, while there is no specific requirement under the *Access to Information Act* for written consent for disclosure of personal information to a third party, there is a specific requirement for written consent under the *Privacy Act*. CIC argued that it is reasonable and prudent for it to put the burden on all access requesters seeking personal information about others to provide a current, signed consent for the disclosure.

The commissioner concluded that CIC is under a duty, under both the *Privacy Act* and the *Access to Information Act*, to take all reasonable precautions to avoid unauthorized disclosure of personal information. Taking into account the fact that section 10 of the Privacy Regulations requires consents to be in writing, the commissioner concluded that it is reasonable for CIC to insist upon written consents before disclosing personal information to a third party under the *Access to Information Act*. Similarly, the commissioner concluded that it is reasonable for CIC to ask that consents be dated in order to ensure that consents are current and related to the information which is the subject of the request to which the consent relates.

Finally, the commissioner concluded that these requirements are no less reasonable when the requester is a lawyer. If Parliament had intended to give lawyers a special status in this regard, it could have done so, as it did for members of Parliament, in paragraph 8(2)(g) of the *Privacy Act*.

While the commissioner did not support the lawyer's complaint on this ground, he did inform CIC that it had not answered the lawyer's request properly. Since the lawyer had made a request under the *Access to Information Act* and paid the $5 fee, he had a right to an answer. It was simply not open to CIC to refuse to answer the request. During the investigation, CIC corrected its error by invoking paragraph 10(1)(b) to refuse to confirm or deny whether or not it held the requested information and indicating that, if such information did exist, it would be exempt from the right of access as personal information under subsection 19(1) of the *Access to Information Act*.

The lawyer provided written, dated consent from his client and obtained access to the information.

Lessons Learned

Anyone may make a request under the *Access to Information Act* for personal information about someone else. The receiving institution has an obligation to take reasonable steps to ensure that personal information is not disclosed to someone else without authorization. For this purpose, it is reasonable to ask for a signed and dated consent from the person who is the subject of the requested information.

If no written, dated consent is provided, it is not open to the receiving institution to refuse to process the request. Rather, the proper course is to refuse access based upon subsection 19(1) of the Act and to inform the requester that the institution could not disclose personal information without the signed and dated consent of the subject.

9. Privacy For Public Employees?

Background

In November 2002, an individual filed an access request with the Solicitor General of Canada (SGC) for a list of names of persons who had accepted an offer from SGC of term or casual employment in the National Capital Region. SGC refused to disclose the names on the basis that the requested information is "personal information" and subject to a mandatory exemption.

The requestor made similar requests to 30 other government institutions. Some withheld the names, others gave the names but refused to disclose whether the individual was a "term" or "casual". These responses were based on advice provided to the departments by the Treasury Board Secretariat.

These refusals prompted complaints to the Information Commissioner.

Legal Issue

Is the name and federal government employment status of an individual "personal information" for the purposes of the subsection 19(1) exemption in the *Access to Information Act*? That was the issue on which the outcome of this complaint turned.

However, the answer to this question depends on a related question: Is the name and status (i.e. term or casual) of a federal employee covered by paragraph 3(j) of the *Privacy Act*? If the answer to this latter question is "yes", then the answer to the first question must be "no". The reason for this relationship between paragraph 3(j) of the *Privacy Act* and subsection 19(1) of the *Access to Information Act* is that the former provision describes information which may not be withheld under the latter provision.

Paragraph 3(j) of the *Privacy Act* provides as follows: "For the purposes of … section 19 of the *Access to Information Act* (personal information) does not include:

> (j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual…"

The requester argued that "terms" and "casuals" are employees and their status has a relation to their functions. The government agreed that these individuals are employees, but argued that their employment status has nothing to do with their positions or functions and, hence, must be protected as "personal information".

The commissioner's deliberations were made much easier when, in March 2003 (two months after the complaint was made), the Supreme Court of Canada issued its judgment in the case of *Canada (Information Commissioner)* v. *Canada (Commissioner of the R.C.M.P.),* [2003] SCC No. 8. That judgment deals with a refusal by the RCMP to disclose information about, inter alia, the employment status of certain RCMP officers. The Supreme Court found that such types of information "… relate to the general characteristics associated with the position or functions of an RCMP member. They do not reveal anything about their competence or divulge any personal opinion given outside the course of employment. Rather, they provide information relevant to understanding the functions they perform…" (paragraph 39)

In addition to taking into account this decision of the Supreme Court, the Information Commissioner also took note of the fact that the Privacy Commissioner had concluded that the names and status of term and casual employees fall within paragraph 3(j) of the *Privacy Act* and, hence, do not qualify for exemption under subsection 19(1) of the *Access to Information Act*.

Finally, during the investigation, the Treasury Board Secretariat informed the Information Commissioner as follows: "While we continue to believe that the advice we received from Justice was legally sound, we will no longer be recommending that government institutions continue to exempt the names of government term and casual employees as personal information."

The commissioner concluded that the withheld information did not qualify for exemption from the right of access under subsection 19(1) of the Act and recommended that it be disclosed. SGC released the information.

Lessons Learned

By means of paragraph 3(j) of the *Privacy Act*, Parliament expressed its intent to narrow privacy protection for public employees so that the purpose of the Access Act--accountability of elected officials and public servants--would not be undermined. This goal has been reinforced by the Supreme Court of Canada in the RCMP decision. The court has made it clear that paragraph 3(j) of the *Privacy Act* is intended "… to ensure that the state and its agents are held accountable to the general public…" (paragraph 29)

Thus, government institutions must be very cautious before asserting privacy protection for government officials or employees to ensure that secrecy does not undermine the public's right to hold government and its employees to account through the right of access.

10. On-Line Access to Databases

Background

Shortly after the *Access to Information Act* came into force in 1983, the government adopted an electronic tracking system for access requests. Known as CAIR (Coordination of Access to Information Requests), the system was developed for the Treasury Board Secretariat (TBS) and maintained by Public Works and Government Services Canada (PWGSC). All institutions subject to the Act upload to the system information about requests submitted under the Access Act. This allows TBS and the Privy Council Office (the main clients of CAIR) to monitor requests, ensure consistency of responses, and facilitate consultations among institutions.

When individuals seek access to CAIR, they are unable to do so on-line. Rather, they are asked to make an access request, pay the associated fees, wait at least 30 days--usually longer--and accept a paper printout or diskette in severed form. One regular requester, an academic with an interest in using CAIR to facilitate his research into the workings of the federal access regime, became upset about the inability to obtain on-line access to CAIR and complained to the Information Commissioner.

Legal Issues

Does the government have the right to refuse on-line access to CAIR? The TBS' view was that it need only give a paper or electronic copy of the content of CAIR, but not real-time access to the system. In support of this view, TBS referred to subsection 12(1) which requires that a person who is given access must "…be given an opportunity to examine the record or part thereof or be given a copy thereof." TBS argued that this provision authorizes it to make snapshot copies of the CAIR database in response to an access request.

TBS also took the position that, if CAIR was made available on-line, it should only permit public access to closed requests, not new or active requests. No provision of law was cited to justify this limitation.

For his part, the requester referred to subsections 4(1) and 4(3) arguing that they afford a right of access to records as they exist at the time of the request. Only if the record does not exist do institutions have the right to create a record derived from an electronic database.

The commissioner made the following observations:

1) CAIR is technically capable, at virtually no cost, of being open to public, on-line access;

2) CAIR does not contain the names of access requesters or other personal information. On-line access poses no threat to privacy;

3) As a working tool, it is mandatory that CAIR be available to public servants in both official languages. Thus, there is no additional incremental cost to produce CAIR in both official languages for the purposes of on-line, public access, a requirement of the *Official Languages Act*.

4) In the current process, access is given to the paper or electronic copy of both closed and open/active access requests.

Taking into account these factors, as well as subsections 4(1) and 4(3) of the Act and the purpose of the Act in section 2, the commissioner concluded that the complaint was well-founded. He recommended that CAIR be made available to public, on-line access.

The commissioner also took note of the new government's announced intention to become more pro-active about information disclosure and to increase on-line access to government records. The President of Treasury Board has already issued directions requiring on-line access to the travel and hospitality expense claims of senior officials. He also announced the intention to put information about grants, contributions and contracts on-line. In these circumstances, where CAIR contains non-sensitive information and no incremental cost to go on-line, the commissioner urged TBS--quite apart from the legalities--to use this case to show tangible leadership to the rest of government with respect to pro-active information disclosure.

At the time of this writing, TBS had not agreed to follow the commissioner's recommendation.

Lessons Learned

When government institutions find themselves creating records from a database in response to an access request, they should ask whether or not on-line or real-time access to the database would be desirable and feasible. There is no reason, in law or policy, for forcing individuals to make repeated access requests for access to information which is an electronic database to which public, on-line access can readily be given.

Index of the 2003-04 Annual Report Case Summaries

Section of ATIA	Case No.	Description
10(3)	(07-04)	Delays In The Minister's Office
19(1)	(09-04)	Privacy For Public Employees?
20(1)(b)(c)	(01-04)	How Much Was Repaid?
20(6)	(06-04)	Confidentiality Versus Public Interest
23)	(03-04)	Yes! You Can Have It On CD
30(1)(a)	(10-04)	On-Line Access to Databases
30(1)(f)	(02-04)	Policy Versus The Law
30(1)(f)	(04-04)	Government Can't Complain About Requesters
30(1)(f)	(05-04)	You Can Waive Your Rights
30(1)(f)	(08-04)	No Special Status For Lawyers

Cumulative Index of Case Summaries from 1994-2002 is listed in the Information Commissioner's 2001-2002 Annual Report at pages 59-74.

Index of Case Summaries for 2002-2003 is listed in the Information Commissioner's 2002-2003 Annual Report at page 79.

CHAPTER V
LEGAL SERVICES

Chapter A – The *Access to Information Act* in the Courts

A. The Role of the Federal Court

A fundamental principle of the *Access to Information Act*, set forth in section 2, is that decisions on disclosure of government information should be reviewed independently of government. The commissioner's office and the Federal Court of Canada are the two levels of independent review provided by the law.

Requesters dissatisfied with the government's responses to their access requests first must complain to the Information Commissioner. If they are dissatisfied with the results of his investigation, they have the right to ask the Federal Court to review the department's response. If the Information Commissioner is dissatisfied with a department's response to his recommendations, he has the right, with the requester's consent, to ask the Federal Court to review the matter.

This reporting year, the commissioner's office completed investigations of 970 complaints. Only eight cases could not be resolved to the commissioner's satisfaction and these resulted in three new Applications for Review being filed by the commissioner. Three applications for court review were filed by dissatisfied requesters. Third parties opposing disclosure filed 13 applications.

Case Management Access Litigation in the Federal Court

This year, with respect to access litigation, the Federal Court of Canada issued 12 decisions, the Federal Court of Appeal issued 3 decisions and no decisions were issued by the Supreme Court of Canada. Summaries follow of the decisions in which the Information Commissioner is or was a party.

B. The Commissioner in the Courts

I. Cases Completed

The Information Commissioner of Canada* v. *The Attorney General of Canada and Janice Cochrane (SCC 29892) Supreme Court of Canada
(See 2001-2002 Annual Report p. 80 and Annual Report 2002-2003 p. 86 for details of the proceedings in the Trial and Appeal Divisions)

Nature of Action

This was a motion for leave to appeal to the Supreme Court of Canada by the Information Commissioner. The commissioner wished to appeal a decision of the Federal Court of Appeal dismissing the commissioner's appeal of a decision rendered in the context of applications under section 18.1 of the *Federal Court Act*, R.S.C. 1985, c. F-7, in which two subpoenas *duces tecum* issued by the commissioner were quashed on the basis that the commissioner lacked jurisdiction.

Factual Background

In reviews brought by the former Deputy Minister of Citizenship and Immigration (CIC) pursuant to section 18.1 of the *Federal Court Act*, the Trial Judge ruled that the commissioner had exceeded his jurisdiction when, upon concluding that a three-year extension of time claimed by CIC to respond to a number of access requests was unreasonable, the commissioner issued two subpoenas *duces tecum* as part of an investigation of a "deemed refusal". The Trial Judge reasoned that, no matter how unreasonable an extension of time may be, an extension cannot constitute a deemed refusal to provide access, nor can the Information Commissioner self-initiate a complaint and investigation under subsection 30(3) of the *Access to Information Act*, until the extension of time elapses.

The Information Commissioner filed a Notice of Appeal of the Trial Judge's ruling. In advance of the hearing before the Court of Appeal, all the access requests were answered. As a result, the Crown brought a motion at the commencement of the hearing of the appeal requesting that the appeals be dismissed as being moot. The Crown argued that, because the access requests had been processed and responded to at the time of the appeal, there was no longer a live controversy between the parties.

The Information Commissioner disagreed. He argued that the Trial Judge's determination contained a declaration that unreasonable extensions of time cannot constitute deemed refusals under the *Access to Information Act*, thereby preventing the commissioner from self-initiating a complaint and investigation

and depriving requesters of any effective recourse or remedy for unreasonably long extensions of time to answer access requests. It was argued by the commissioner that this issue of statutory interpretation remains a live controversy regardless of whether in the instant case the requests were processed prior to the hearing of the appeal.

The Court of Appeal concluded that "the underlying issue" involved the validity of the two subpoenas and that this issue was essentially fact driven. Noting that the requests had been answered, the court held that there was no longer any *lis* between the parties. On this basis, the court granted the Crown's motion from the bench, dismissing the appeals on the basis of mootness. No order was made as to costs.

The Decision of the Supreme Court of Canada

On January 29, 2004, the Information Commissioner's leave application was denied. As is its practice, the court did not give reasons for the refusal.

The Attorney General of Canada et al.* v. *The Information Commissioner of Canada (T-582-01, T-606-01, T-684-01, T-763-01, T-792-01, T-801-01, T-877-01, T-878-01, T-880-01, T-883-01, T-891-01, T-892-01, T-895-01, T-896-01, T-924-01, T-1047-01, T-1049-01, T-1083-01, T-1448-01, T-1909-01, T-1910-01, T-1254-01, T-1255-01, T-1640-00, T-1641-00, T-2070-01)
(See Annual Report 2001-2002 p. 88 and Annual Report 2002-2003 p. 89 for more details)

Decisions in these cases have been given by Justice Dawson of the Federal Court Trial Division. A review of her decisions can be found at pages 9 to 13.

The Attorney General of Canada and Mr. Ian Wilson* v. *The Information Commissioner of Canada, (Court file T-661-04)

In this application, the applicants challenged the validity of the subpoena issued by the Deputy Information Commissioner to Mr. Wilson, the National Archivist. After discussions, the matter was resolved upon the appearance of the National Archivist with his counsel before the Deputy Information Commissioner. A Notice of Discontinuance was filed shortly thereafter.

The Attorney General of Canada and M. Morris* v. *The Information Commissioner of Canada, (Court file T-887-01)
(See 2001-2002 Annual Report p. 88-90 for details of the proceedings in Trial Division)

Nature of Action

This was an Application for Review brought pursuant to section 18.1 of the *Federal Court Act* by a witness asking for a declaration that the Information Commissioner lacks jurisdiction to ask certain questions about the handling of access requests for the agendas of a previous Minister of National Defence.

Factual Background

This was one of 27 Applications for Review filed against the Information Commissioner in investigations concerning records held in the offices of the Prime Minister and/or ministers. This particular application arose out of the commissioner's investigation of the head of the department of National Defence's refusal to provide access to records concerning "M-5 meetings".

Issues Before the Court

The principle issue raised in this application was whether the Information Commissioner, or his delegate, has the jurisdiction to ask a witness particular questions in the context of his investigation into an access refusal and to order that the witness answer the same under oath.

Findings on Each Issue

The within application for review was discontinued on July 17, 2003.

The Information Commissioner of Canada* v. *The President of the Business Development Bank of Canada (T-2342-03) Federal Court

Nature of Action

This was an application by the Information Commissioner for judicial review under section 42 of the *Access to Information Act* of a refusal, by the President of the Business Development Bank (BDC), to release records regarding fees and honorariums of legal, financial communications, or other advisors incurred by the BDC and in the conduct of BDC's legal proceedings against François Beaudoin, the former President of the BDC. In refusing disclosure, the president relied on section 23 of the Act, which authorizes secrecy for information which qualifies for solicitor-client privilege.

Factual Background

In the fall of 1999, the BDC and François Beaudoin finalized a severance package. On November 3, 2000, François Beaudoin filed a "Requête en homologation d'une transaction" seeking to compel the BDC to respect the transaction signed. The judicial saga ended on February 6, 2004, with the judgment of Mr. Justice André Denis of the Quebec Superior Court. From the

beginning of the proceedings, the story was publicized and reported in the newspapers. On April 9, 2001, a journalist requested access to records regarding fees or honorariums of legal, financial communications, or other advisors incurred by the BDC in relation to the proceedings against Mr. Beaudoin. Relying on section 23 of the Act (the solicitor-client privilege exemption), the president refused disclosure. After investigating the resulting complaint, the Information Commissioner recommended disclosure of the total amounts paid to lawyers and other advisors. The BDC refused to follow the commissioner's recommendation. On December 10, 2003, the Information Commissioner filed an Application for Judicial Review of the president's decision. During the month of February, the commissioner filed his affidavit evidence in support of the application.

Outcome

On Friday, March 5, 2004, the BDC decided not to defend its refusal in court and released the withheld records, showing that the proceedings against François Beaudoin resulted in a total sum of 4.3 million dollars spent on legal fees, disbursements and fees paid to experts. The application for judicial review was discontinued thereafter.

II. Cases in Progress - Commissioner as Applicant/Appellant

The Information Commissioner of Canada* v. *The Attorney General of Canada and Jean Pelletier (A-268-03) Federal Court of Appeal
(See 2001-2002 Annual Report p. 88-90 for more details in the proceedings in Trial Division)

Nature of Action

This is an appeal from an interlocutory order rendered within the context of an application under section 18.1 of the *Federal Court Act*.

Factual Background

Within the context of an application under section 18.1 of the *Federal Court Act*, in which the applicants seek a declaration that six specific documents are under the control of the Office of the Prime Minister and are not records under the control of the Privy Council Office within the meaning of subsection 2(1) of the *Access to Information Act*, the Attorney General and Jean Pelletier brought a motion to file certain evidence on a confidential basis.

This evidence consists of an affidavit attaching as exhibits a subpoena *duces tecum* issued by the Information Commissioner to Mr. Pelletier, listing and

describing six documents ordered to be produced during the course of the commissioner's investigation and a letter which accompanied the transmittal of these documents to the commissioner.

Because the application as against the commissioner was brought under the *Federal Court Act* and not the Access Act, the applicants could not rely on the protection offered by section 47 of the *Access to Information Act*, but instead were required to meet the test for the filing of materials on a confidential basis under the Federal Court Rules. Jurisprudence under these Rules makes clear that confidentiality orders go against the constitutional imperative of an open court and should only be issued where there are compelling, justifiable reasons to do so based on evidence before the court.

The commissioner opposed the motion on the basis, *inter alia*, that the only ground relied upon to support the purported need for confidentiality is a bald contention that, if the Applications Judge ultimately determines that requested records are not subject to PCO's control, then not even a description of those records would be made public. The commissioner maintained that there is a distinction between records subject to an access request, not yet determined to be subject to release, and a document which provides only identifying information concerning those records. In support of this position, the commissioner relied on the SCC's decision in *Babcock* which makes clear that a description of records is required even for "Cabinet Confidences" protected by a certificate issued under the *Canada Evidence Act*. The commissioner also pointed out that, in parallel proceedings T-1640-00 and T-1641-00, the Crown has identified the records being the subject of the Application for Review.

While the commissioner adopted the position that a confidentiality order was not needed with respect to the evidence filed, the commissioner argued that, if a confidentiality order was in fact deemed necessary, it should be granted subject to a direction that information with respect to the date, title, author and recipient of records subject to the applicants' prayer for declaratory relief is not confidential.

Unconvinced, Mr. Justice MacKay granted the applicants' motion on May 28, 2003. The reason provided was his conclusion that one of the purposes of the Application for Review is to determine whether information in issue is subject to disclosure under the *Access to Information Act*.

The commissioner has appealed this interlocutory order. He maintains *inter alia* that the evidence did not support either the subjective or objective test for filing information on a confidential basis as required by Rule 152(2) and that Mr. Justice McKay erred in fact and law when concluding that, when information relates to records alleged not to be subject to disclosure under the

Access to Information Act, the material should be treated as confidential, notwithstanding the public interest in an open and accessible court.

However, whether there will be any need to pursue legal remedies, the appeal will require an assessment of the outcome of proceedings consolidated under Court File: T-582-01. Accordingly, the Information Commissioner brought a motion on consent requesting that the time for filing an agreement as to the contents of the appeal book be extended and the appeal be held in abeyance until the final determination of the applications consolidated under court file T-582-01. This motion was granted by Chief Justice Richard on January 5, 2004. The decision has now been rendered in the consolidated proceedings (see report at pages 9 to 13) and the commissioner will decide soon whether or not to proceed with this appeal.

The Information Commissioner of Canada* v. *The Executive Director of the Canadian Transportation Accident Investigation and Safety Board and NAV Canada, (T-465-01, T-650-02, T-888-02 and T-889-02) Federal Court
(See Annual Report 2001-2002 p. 87, Annual Report 2000-2001 p. 116 and Annual Report 2002-2003 p. 88 for more details)

During the reporting year, the Information Commissioner's motion for leave to amend the Notices of Application was granted. The Attorney General filed its evidence on the constitutional issue and the added respondent, NAV Canada, filed supplementary evidence. Cross-examinations were held in the fall of 2003 and the parties filed their respective memoranda in the following months. The proceeding will continue before the Federal Court and results will be reported in next year's annual report.

The Information Commissioner of Canada* v. *The Minister of Industry Canada, (T-0053-04) Federal Court

Nature of Action

This is an Application for Judicial Review under section 42 of the *Access to Information Act* of a refusal, by Statistics Canada, through the delegated authority of the Minister of Industry Canada, to release some returns from the 1911 Census.

Factual Background

On May 29, 2002, a citizen requested access to the 1911 Census records for two specific regions in Ontario. Arguing that the records are exempt from disclosure pursuant to sections 19 and 24 of the Act, which makes reference to section 17 of the *Statistics Act*, Statistics Canada refused disclosure. After investigating the resulting complaint, the Information Commissioner recommended disclosure of

the requested records. Statistics Canada refused to follow the commissioner's recommendation.

On January 12, 2003, the Information Commissioner of Canada filed an Application for Judicial Review of the decision to refuse access. During the month of February, the commissioner filed his affidavit evidence in support of the application.

Issues Before the Court

1) Did the respondent err in relying on section 24 of the Act and section 17 of the *Statistics Act* to refuse to disclose the Perth County, Ontario Census nominal returns for 1911?

2) Are the privacy interests in historical census records determined by paragraphs 19(2)(b) and (c) of the *Access to Information Act*, by paragraph 8(2)(j) and subsection 8(3) of the *Privacy Act* and section 6 of the Privacy Regulations?

This proceeding will continue before the Federal Court, and results will be reported in next year's annual report.

The Information Commissioner of Canada* v. *The Minister of Industry Canada,
(T-0421-04) Federal Court

Nature of Action

This is an Application for Judicial Review by the Information Commissioner under section 42 of the *Access to Information Act* of a refusal, by Statistics Canada, through the delegated authority of the Minister of Industry Canada, to release the 1911, 1921, 1931 and 1941 Census records. Statistics Canada relied on section 24 of the Act as well as section 17 of the *Statistics Act* to justify the refusal to disclose.

Factual Background

On November 2, 2001, a native claim researcher requested access to the 1911, 1921, 1931 and 1941 Census records for specific districts in Quebec and Ontario. Arguing that the records are exempt from disclosure pursuant to section 24 of the Act, which makes reference to section 17 of the *Statistics Act*, Statistics Canada refused disclosure. After investigating the resulting complaint, the Information Commissioner recommended disclosure of the requested records. Statistics Canada refused to follow the commissioner's recommendation.

On February 26, 2004, the Information Commissioner filed an Application for Judicial Review of the decision to refuse access. During the month of February, the commissioner filed its affidavit evidence in support of the application.

Issues Before the Court

i) Did the respondent err in relying on section 24 of the Act and section 17 of the *Statistics Act* to refuse disclosure of the Census returns?

ii) To the extent that the information is subject to section 17 of the *Statistics Act*, did the respondent properly exercise his discretion under subsection 17(2) of the *Statistics Act*?

iii) Are the 1911 Census records deemed to be publicly available pursuant to paragraph 19(2)(b) of the Act?

iv) Is access to the Census returns of 1911, 1921, 1931 and 1941 authorized pursuant to paragraph 19(2)(c) of the Act by reference to paragraph 8(2)(k) and subsection 8(3) of the *Privacy Act* and section 6 of the Privacy Regulations?

The proceeding will continue before the Federal Court, and results will be reported in next year's annual report.

III. Cases in Progress - The Commissioner as Respondent in Federal Court

Shawn Bruce Cliche* v. *Royal Canadian Mounted Police and Information Commissioner, (T-0059-04) Federal Court

The RCMP provided a response to the access requester on November 24, 2003. The RCMP refused to disclose portions of the requested records by relying upon sections 13 and 16 of the *Access to Information Act*.

The requester subsequently brought an Application for Review against the RCMP and the Information Commissioner pursuant to section 41 of the Act. The Act requires that such a review be undertaken after a complaint against the government institution's refusal has been filed with the Information Commissioner and the results of the investigation of the complaint by the Information Commissioner have been reported to the complainant. No such complaint has been filed and no investigation was ever conducted by the Information Commissioner regarding the application of these exemptions by the RCMP. Consequently, the Application for Judicial Review could not stand. As a result, the access requester filed a Notice of Discontinuance on February 17, 2003.

Daniel Martin Bellemare* v. *The Attorney General of Canada and the Information Commissioner of Canada, (T-1073-99) Federal Court, (A-443-03) Federal Court of Appeal

On June 21, 1999, Daniel Martin Bellemare applied for judicial review of two decisions of the Information Commissioner pursuant to section 41 of the *Access to Information Act*.

Before the application was heard, the Attorney General of Canada brought a motion to have it struck out as it was not filed within the prescribed timeline. The Attorney General's motion was granted in part by Pinard J., of the Federal Court Trial Division.

The Attorney General successfully appealed Justice Pinard's decision before the Federal Court of Appeal. The Information Commissioner intervened at this stage and joined the Attorney General in arguing that the Application for Review cannot proceed as it was directed against the decisions of the Information Commissioner, which are not open to judicial review under section 41 of the *Access to Information Act*. Noël J.A., writing for the court, held that section 41 does not provide a recourse against the Information Commissioner, but against the government institution's refusal. The application was entirely struck by the Federal Court of Appeal and costs were awarded to the Attorney General before the Trial and Appeal Divisions. In its judgment issued on November 30, 2002, the Federal Court of Appeal further stated that the Information Commissioner shall bear his own costs as well as the disbursements of the respondent, Mr. Bellemare, resulting from his intervention.

On May 16, 2003, Assessment Officer Michelle Lamy issued two cost certificates for the Attorney General, totaling $4,659.60. The applicant sought a review of that assessment before the Trial Division, arguing that the May 9, 2000, order of Mr. Justice Décary, wherein the commissioner's motion to intervene was granted, should prevail over the direction given by the Federal Court of Appeal in its judgment of November 30, 2002. This order provides that the commissioner is "liable to the respondent, Bellemare, for the costs of the appeal and of this motion in any event of the appeal".

Mr. Bellemare's review before the Trial Division was unsuccessful. Mr. Justice Blanchard held that Mr. Bellemare's argument is without merit and that the order of May 9, 2000, and the Federal Court of Appeal's judgment of November 30, 2002, are not conflicting. The applicant was ordered to pay the Attorney General's costs at both the trial and appeal levels.

The applicant is now appealing this decision in File A-443-03. The appellant has cited the Information Commissioner as a respondent, but seeks no relief against him. As a result, the Information Commissioner has brought a motion seeking

to be removed from the proceeding and to amend the style of cause accordingly and has obtained the parties' consent to this end. No judgment has been rendered yet on this motion.

Stephen Byer* v. *The Hon. John M. Reid (The Information Commissioner of Canada) and Others, (T-1221-02) Federal Court
(See Annual Report 2002-2003 p. 89 for further details)

Nature of Action

These proceedings involved five motions arising out of an Application for Review by Mr. Byer brought pursuant to both section 41 of the *Access to Information Act* and section 18.1 of the *Federal Court Act*.

Factual Background

In the applications, Mr. Byer sought a review of a) the Information Commissioner's "decision" to accept a decision by the Treasury Board Secretariat (TBS) refusing access to portions of requested records and b) seeking an order of *mandamus* to compel both the TBS and the commissioner to provide access to the impugned records.

In essence, Mr. Byer alleged that, by not recommending that TBS disclose a requested record, the commissioner acted in bad faith and should be required to *inter alia* produce and/or make available to Mr. Byer those portions of the requested records which TBS refuses to release. The reason bad faith was alleged is that the commissioner had recommended partial disclosure of a similar record in another case.

In response, on August 21, 2002, the Information Commissioner filed an objection to Mr. Byer's request for materials in the Information Commissioner's possession and a motion to strike the Notice of Application or ordering that it proceed as two separate applications or in the further alternative that the court direct that the matter proceed to mediation. In response, Mr. Byer brought a motion to rule on the commissioner's objection to his request for production. Thereafter, TBS brought two motions, namely: seeking leave to file a confidential affidavit of one of the respondents, and amending the designation of the responding parties.

The case was sent to mediation, which failed to resolve the matter. Accordingly, five main motions were heard by Prothonotary Tabib.

Issues Before the Court

1. Should the Application for Review as against the Information Commissioner be struck on the basis that it is bereft of any chance of success and/or seeks more than one form of relief?

2. Should the court dismiss Mr. Byer's motion to reject the commissioner's objection to Mr. Byer's request for production thereby ordering the commissioner to disclose records subject to a government refusal under the access regime?

3. Should TBS be entitled to file a confidential affidavit?

4. Should the style of cause be amended to reflect the only proper respondent being the president of TBS?

Findings on Each Issue

Should the Application for Review as against the Information Commissioner be struck on the basis that it is bereft of any chance of success and/or seeks more than one form of relief?

Prothonotary Tabib noted that Mr. Byer did not seek an order which would allow the Information Commissioner to reinvestigate his complaint against the TBS's refusal and concluded that the original application against the Information Commissioner should be struck on the basis that it was bereft of any chance at success.

In reaching this decision, Prothonotary Tabib pointed out that there is no jurisdiction to review the commissioner's findings and recommendations under section 41 of the ATIA. Further, while the commissioner's investigations may be subject to judicial review under section 18.1, in the present case, the sole relief sought by Mr. Byer against the commissioner was a review of his "decision" and an order directing, *inter alia*, that the commissioner release information requested from the TBS. Prothonotary Tabib determined that a review of the commissioner's recommendations would serve no useful purpose and that the relief of *mandamus* as against the commissioner must fail because the Information Commissioner has no authority to disclose or provide access under the Act.

Should the court dismiss Mr. Byer's motion to reject the commissioner's objection to Mr. Byer's request for production thereby ordering the commissioner to disclose records subject to a government refusal under the access regime?

Having already determined that the application as against the commissioner is struck, Prothonotary Tabib rejected the motion opposing the commissioner's objection to producing records subject to TBS's access refusal.

Should TBS be entitled to file a confidential affidavit?

Mr. Byer did not file any written representations in response to TBS's motion for leave to file a confidential affidavit of communications between the commissioner and TBS concerning the processing of Mr. Byer's access request. Accordingly, she allowed TBS's motion.

Should the style of cause be amended to reflect the only proper respondent being the President of TBS?

After again noting that Mr. Byer had not filed a responding record and / or made arguments at the hearing with respect to TBS's motion to amend the style of cause, Prothonotary Tabib determined that the only proper respondent to the application was the President of the Treasury Board. She therefore ordered that the style of cause be amended so as to name him as the sole respondent.

Future Action

Subsequently, Mr. Byer has appealed the decisions rendered by Prothonotary Tabib, on the basis *inter alia* that she lacked jurisdiction to order the relief. The hearing of this application has been set for June 23, 2004. The outcome will be reported next year.

Sheldon Blank* v. *The Information Commissioner of Canada, (T-2324-03) Federal Court

The applicant, Sheldon Blank, brought an application for a *mandamus* order on December 9, 2003, requiring the Information Commissioner to issue his report to the applicant pursuant to section 37 of the *Access to Information Act*. The applicant submits that his complaint has not been investigated and reported on in a timely manner.

The Information Commissioner has filed a Notice of Appearance in this proceeding. By letter dated February 20, 2004, Mr. Blank was informed that the Information Commissioner of Canada had reported the results of his investigation and his recommendations to the head of Justice Canada and that a report will be issued to him forthwith as soon as the head of Justice Canada advises whether it will follow, or not, the Information Commissioner's recommendations.

The Information Commissioner issued his report to Mr. Blank in March 2004, and will argue before the court that the application for *mandamus* is now moot.

IV. The Information Commissioner as an Intervener

The Attorney General of Canada* v. *H.J. Heinz Co. of Canada Ltd. and the Information Commissioner of Canada, (T-1470-00) Federal Court, (A-161-03), Federal Court of Appeal
(See Annual Report 2002-2003 p. 113 for more details)
The court has not yet rendered its decision in this case.

The Canadian Tobacco Manufacturers' Council* v. *Minister of National Revenue, September 8, 2003, Russell J.
(See Annual Report 2002-2003 p. 94, 2001-2002 Annual Report p. 91 and 2000-2001 Annual Report p. 119 for further details)

Nature of Action

This was an application for an order requiring the Minister of National Revenue to refuse to disclose certain third-party information and records pursuant to section 44 of the *Access to Information Act,* as well as for an order protecting the confidentiality of these records, including the names of the authors, pursuant to section 47 of the Act.

Factual Background

The applicants in this application are the Canadian Tobacco Manufacturers' Council (CTMC), an incorporated non-profit organization, and two consulting firms whose names were kept confidential.

Following three private meetings with the CCRA, the CTMC agreed to commission two consulting firms to conduct studies and reports on contraband tobacco. Two reports, Reports A and B, were completed and sent to the CCRA in August 1998.

In October 1998, Mr. Cunningham made an access to information request to the CCRA on behalf of the Canadian Cancer Society. He requested access to the records sent to, and received from the tobacco industry or their representatives, including the CTMC, since February 1, 1998, with respect to marking/stamping on packages of tobacco products.

Following the denial of his request by the CCRA, Mr. Cunningham complained to the Information Commissioner. Thereafter, the CCRA sent letters to the Information Commissioner stating that the requested information was exempted from disclosure pursuant to paragraph 20(1)(b) of the Act and that there were "documents in the case file that fell outside the actual subject matter of the request". The CCRA made further representations to the Information Commissioner in which it proposed to disclose, with the CTMC's agreement, those portions of Report B that contained information pertaining to the subject

matter of the request, that is "marking/stamping on packages of tobacco". The CCRA extracted portions of Report B that it proposed to disclose, subject to further severances pursuant to paragraph 16(1)(c), subsection 16(2) and paragraph 20(1)(b) of the Act. The CCRA also noted that it agreed with the CTMC that Report A had no relevance to Mr. Cunningham's request.

On April 28, 2000, the applicants were provided with notice of the intention of the CCRA to release the Transmittal Letters and the Reports. The applicants then applied to the Federal Court of Canada.

On July 5, 2000, the Information Commissioner reported the results of his investigation. He concluded that all the records identified by CCRA were relevant to the access request and that the records should not have been exempted pursuant to subsection 20(1) or section 16 of the Act. He recommended disclosure of the records to the requester.

Issues

The following legal issues were raised in this application:

1. Are the records identified relevant to the access to information request?

2. Are the records exempted from disclosure under paragraphs 20(1)(a), (b), (c) or (d) of the Act?

Findings

Are the records relevant to the access to information request?

The applicants relied on section 6 of the Act, stating that it requires government departments to search for and disclose only those documents relevant to the information requested. The applicants submitted that only a small portion of Report B, that is the portion dealing with Tobacco Package Markings, and Appendix D, are relevant. As a result, the balance of Report B, Report A, and the Transmittal Letters should not be disclosed. In addition, they pointed out that those portions which are in fact relevant are further exempted from disclosure under subsection 20(1) of the Act.

The respondents argued that relevance is not an exemption which may be invoked by a third party. As a result, the applicants do not have standing as a third party to assert that the records sought are irrelevant to a particular request for information.

The court disagreed with the submissions of the applicants, stating that there is no exemption available to the applicants based upon relevancy. With respect to the interpretation of section 6, the court wrote:

> "The wording of section 6 contains no prohibition against disclosing documents that are not relevant to the request. In fact, section 6 does not address the concept of relevancy. It merely stipulates that the request must be made in writing and must provide sufficient detail to allow identification of the record requested. It would take a substantial amount of reading in to conclude that this imposes an obligation on the government institution to refrain from disclosing information that is not relevant to the request."

Although there is no authority which clearly determines the rights of third parties to raise exemptions other than those referred to in section 20, the court relied on a Treasury Board of Canada note of December 4, 1992, in which it was made clear that "lack of relevance is not a ground for exemption as exclusion of a portion of a record under the Act" and "[d]etermining what is or is not relevant to a request is, of course, up to the institution".

The court further indicated that, in the event it was wrong in its interpretation of section 6 of the Act, the records requested were in any event relevant to the information request. Although the request deals at first glance with stamping and marking only, the context in which it was made clearly shows that the issues of marking and stamping were part of a broader concern with contraband and smuggling.

The court concluded that the Information Commissioner was right to determine that "an unduly narrow interpretation of the access request was taken and that none of the records at issue should have been withheld on the basis that they were not relevant to the request". As a result, lack of relevance was not regarded as a ground for ordering non-disclosure in this application.

Are the records exempted from disclosure under paragraphs 20(1)(a), (b), (c) or (d) of the Act?

In addition to relevancy, the applicants stated that the records should be exempted pursuant to the various exemptions in subsection 20(1) of the Act.

Paragraph 20(1)(a)

With respect to paragraph 20(1)(a), the applicants argued the records contain proprietary trade secrets of a peculiar value to them. The trade secret component of Report A resides in its unique methodology, while Report B contains propriety procedures, methodologies and techniques of analysis of unique value to applicant B.

In quoting with approval the decision of Strayer J. in *Société Gamma Inc.* v. *Canada (Department of Secretary of State)*[1], the court stated that, in order for

[1] [1994] F.C.J. No. 589.

paragraph 20(1)(a) to apply, the applicants need to demonstrate that the information contains "something of a technical nature…which is guarded very closely and is of such peculiar value to the owner of the trade secret that harm to him would be presumed by its mere disclosure."

The court determined that, in this case, no evidence brought the records within the trade secret category of paragraph 20(1)(a). The court indicated that the term "trade secret" has a narrow and technical sense which it interpreted to involve or pertain to the mechanical arts and applied sciences. In the case at bar, the applicants were only able to show that they had analytical know-how gleaned over years of considerable experience. This knowledge, however, is not sufficient to suggest proprietary methodology which might fit within the definition of a "trade secret" under paragraph 20(1)(a) of the Act.

Paragraph 20(1)(b)

The applicants also argued that the records contain financial and commercial information supplied to a government institution in confidence by a third party that has been treated consistently in a confidential manner by the third party.

Upon a review of the records at issue, the court determined that the records did not constitute in their entirety commercial or financial confidential information. Even if the information were held to be of a commercial or financial nature, the court indicated that this information is not confidential within the meaning of paragraph 20(1)(b). The court cited with approval the decision of Layden-Stevenson J. in *Brookfield Lepage Johnson Controls Facility Management Services* v. *Canada (Minister of Public Works and Government Services)*[2], in which it was determined that information is not confidential simply because it has been treated as such. Similarly, although undertakings of confidentiality may be taken into account, they cannot override or trump the express statutory provisions of the Act. The court relied on the following excerpt from *Ottawa Football Club* v. *Canada (Minister of Fitness and Amateur Sports)*[3]:

> "[I]t is not enough to state that their submission is confidential in order to make it so in an objective sense. Such a principle would surely undermine much of the purpose of this Act which in part is to make available to the public the information upon which government action is taken or refused. Nor would it be consistent with that purpose if a minister or his officials were able to exempt information from disclosure simply by agreeing when it is submitted that it would be treated as confidential."

As a result, the information must be regarded as confidential on an objective standard. In the case at bar, the court agreed that the information was provided

[2] [2003] F.C.J. No. 348 (F.C.T.D.).

[3] [1989] 2 F.C. 480 (F.C.T.D.).

by parties who had consistently treated the information as confidential. However, this information is not confidential on an objective standard and cannot be treated as such within the meaning of paragraph 20(1)(b) as it was submitted to the government for the purpose of addressing issues affecting public policy on tobacco. Denying access to the public would leave the public with no means of responding to the policies and would entirely defeat the purpose of the Act.

Paragraph 20(1)(c)

The applicants further submitted that disclosure of the records would materially help competitors of the two consulting firms retained in bidding against them in the future. Their competitors would have access to their confidential technologies. In addition, the consulting firms would see their reputation harmed if it were known that they had performed work for the tobacco industry. In contrast, the respondents submitted that the applicants did not demonstrate a reasonable expectation of probable harm.

The court quoted with approval the words of Gibson J. in *SNC Lavalin Inc.* v. *Canada (Minister of International Cooperation)*[4]:

> "[…] It is simply not sufficient for the applicant to establish that harm might result from disclosure. Speculation, no matter how well informed, does not meet the standard of reasonable expectation of material financial loss or prejudice to the applicant's competitive position."

Further, the court agreed with the respondents' submissions to the effect that the applicants' evidence was merely speculative. They did not discharge the burden required to show that a reasonable expectation of probable harm within the meaning of paragraph 20(1)(c) could result from disclosure.

Paragraph 20(1)(d)

The applicants also argued that disclosure of the records could reasonably be expected to interfere with contractual or other negotiations. The court stressed that, for paragraph 20(1)(d) to apply, the applicants must show that "there is a probability, and not a mere possibility or speculation, that the disclosure of the information might interfere with contractual or other negotiations". The court also distinguished between paragraphs 20(1)(c) and 20(1)(d), noting that paragraph 20(1)(d) imports an obstruction or thwarting of contractual negotiations. The court came to the conclusion that the applicants' evidence was speculative in nature and did not meet the burden required.

[4] [2003] F.C.J. No. 870 (F.C.T.D.).

Outcome

The application was denied in its entirety. Costs were awarded to the respondents and added parties. The records at issue were disclosed to the representative of the Canadian Cancer Society.

C. Legislative Changes

Changes Affecting the *Access to Information Act*

The Government public Bill C-25, entitled *An Act to Modernize Employment and Labour Relations in the Public Sector and to Amend the Financial Administration Act and the Canadian Centre for Management Development Act and to Make Consequential Amendments to Other Acts*, received royal assent on November 10, 2003, and will come into force on proclamation. This bill will amend:

- Subsections 55(4) and 57(4) of the Act by replacing the expression "Public Service of Canada" by "federal public administration", wherever it occurs in the English version. (Section 224)

- Subsection 55(3) of the Act by replacing the expression "Public Service" by the expression "public service" wherever it occurs in the English version, other than in the expressions "Public Service Corporation", "*Public Service Employment Act*", "Public Service Pension Fund" and "*Public Service Superannuation Act*". (Section 225)

The Government public Bill C-8, entitled *An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence*, passed Third Reading on March 29, 2004. Upon its coming into force, this bill will replace paragraph 68(c) of the *Access to Information Act* by the following :

(c) material placed in the Library and Archives of Canada, the National Gallery of Canada, the Canadian Museum of Civilization, the Canadian Museum of Nature or the National Museum of Science and Technology by or on behalf of persons or organizations other than government institutions. (Section 23)

(2004, Bill C-8, Section 23, re-introduced in the House of Commons on February 11, 2004, read and referred to Committee in the Senate on February 18, 2004)

Proposed Changes to the *Access to Information Act*

The Government public Bill C-11, entitled *An Act to give effect to the Westbank First Nation Self-Government Agreement*, proposes to replace subsection 13(3) of the *Access to Information Act* by the following: Definition of "aboriginal government":

- 13(3) The expression "aboriginal government" in paragraph (1)(e) means:
  - (a) Nisga'a Government, as defined in the Nisga'a Final Agreement given effect by the *Nisga'a Final Agreement Act*; or
  - (b) the council, as defined in the Westbank First Nation Self-Government Agreement given effect by the *Westbank First Nation Self-Government Act*. (Section 16)

  (2004, Bill C-11, Section 16, read, passed and referred to Committee February 13, 2004; reported with amendments March 12, 2004)

The Government public Bill C-31, entitled *An Act to give effect to a land claims and self-government agreement among the Tlicho, the Government of the Northwest Territories and the Government of Canada, to make related amendments to the Mackenzie Valley Resource Management Act and to make consequential amendments to other Acts*, proposes to replace subsection 13(3) of the *Access to Information Act* by the following: Definition of "aboriginal government":

- 13 (3) The expression "aboriginal government" in paragraph (1)(e) means:
  - (a) Nisga'a Government, as defined in the Nisga'a Final Agreement given effect by the *Nisga'a Final Agreement Act*; or
  - (b) the Tlicho government, as defined in section 2 of the *Tlicho Land Claims and Self-Government Act*. (Section 98)

  (2004, Bill C-31, Section 98; received first reading March 31, 2004)

Bill C-462, a private member's bill, entitled *An Act to amend the Access to Information Act and to make amendments to other Acts*, affects the Act as a whole. For details see full text of Bill.

(2004, Bill C-462, re-introduced and read on February 2, 2004, debated at Second Reading on February 24, 2004)

All three Bills died on the Order Paper at prorogation on May 23, 2004.

Amendments to Schedules I and II

Sections 127 and 128 of the *Yukon Environmental and Socio-economic Assessment Act* (S.C. 2003, c. 7) came into force on May 13, 2003. (See Annual Report 2003 p. 115)

Schedule I to the Act was amended by adding the following in alphabetical order under the heading "Other Government Institutions": Canadian Firearms Centre. (Canada Gazette Part II, SOR/2003-148, in force April 14, 2003)

Schedule I to the Act was amended by adding the following in alphabetical order under the heading "Other Government Institutions": Department of Human Resources and Skills Development. (Canada Gazette Part II, SOR/2003-423, in force December 12, 2003)

Schedule I to the Act was amended by adding the following in alphabetical order under the heading "Other Government Institutions": Department of International Trade. (Canada Gazette Part II, SOR/2003-428, in force December 12, 2003)

Schedule I to the Act was amended by adding the following in alphabetical order under the heading "Other Government Institutions": Canada Border Services Agency. (Canada Gazette Part II, SOR/2003-435, in force December 12, 2003)

Schedule I to the Act was amended by adding the following in alphabetical order under the heading "Other Government Institutions": Public Service Human Resources Management Agency of Canada. (Canada Gazette Part II, SOR/2003-440, in force December 12, 2003)

Schedule I to the Act was amended by striking out the following under the heading "Other Government Institutions": Communication Canada. (Canada Gazette Part II, SOR/2004-24, in force April 1, 2004)

The Government public Bill C-6, entitled *An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for filing, negotiation and resolution of specific claims and to make related amendments to other Acts (Specific Claims Resolution Act)*, received royal assent on November 7, 2003, and will be in force upon proclamation. Upon its coming into force, section 78 of this bill will amend Schedule I to the Act by adding the "Canadian Centre for the Independent Resolution of First Nations Specific Claims" under the heading "Other Government Institutions". Section 79 will amend Schedule II by adding a reference to the "*Specific Claims Resolution Act*" and a corresponding reference to sections 38 and subsections 62(2) and 75(2) of that Act.

The Government public Bill C-25, entitled *An Act to Modernize Employment and Labour Relations in the Public Sector and to Amend the Financial Administration Act and the Canadian Centre for Management Development Act and to Make Consequential Amendments to Other Acts*, received royal assent on November 10, 2003. Section 246 came into force on November 20, 2003 (Canada Gazette, Part II, SI/2003-178). This section amends Schedule I to the Act by

adding, in alphabetical order, "Public Service Staffing Tribunal" under the heading "Other Government Institutions". Sections 88, 251 and 252 will come into force upon proclamation. These provisions will amend:

- Schedule I to the Act by replacing the reference to "Public Service Staff Relations Board" with a reference to "Public Service Labour Relations Board". (Section 88)
- Schedule I to the Act by striking out the "Canadian Centre for Management Development" under the heading "Other Government Institutions". (Section 251)
- Schedule I to the Act by adding the "Canada School of Public Service" in alphabetical order under the heading "Other Government Institutions". (Section 252)

The Government public Bill C-6, entitled *An Act respecting assisted human reproduction and related research*, received royal assent on March 29, 2004. Upon its coming into force, this bill will amend Schedule I by adding in alphabetical order "*Assisted Human Reproduction Agency of Canada* " under the heading "Other Government Institutions". It will further amend Schedule II by adding "*Assisted Human Reproduction Act*" and a corresponding reference to subsection 18(2) of that Act.

The Government public Bill C-4, entitled *An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts* in consequence, received royal assent on March 31, 2004, and will come into force upon proclamation. Upon proclamation, section 5 of this bill will amend Schedule I to the Act by striking out "Ethics Counsellor" under the heading "Other Government Institutions".

The Government public Bill C-16, entitled "*An Act respecting the registration of information relating to sex offenders, to amend the Criminal Code and to make consequential amendments to other Acts*, received royal assent on April 1, 2004, and will come into force upon proclamation. Upon its coming into force, this bill will amend Schedule II to the Act by adding, in alphabetical order, a reference to the *Sex Offender Information Registration Act* and a corresponding reference to subsections 9(3) and 16(4) of that Act.

Proposed changes to Schedules I and II

During the 2003-2004 fiscal year, new government institutions became subject to the *Access to Information Act* while others, which had been abolished, were struck out. The following amendments were made to Schedules I and II of the Act.

The Government public Bill C-7, entitled *An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety*, proposes to amend Schedule II to the Act by replacing the reference to "subsections 4.8(1) and 6.5(5)" opposite the reference to the *Aeronautics Act* with a reference to "subsections 4.79(1) and 6.5(5)".
(2004, Bill C-7, s. 107, re-introduced in the House of Commons February 11, 2004, received First Reading in the Senate February 11, 2004, debated in the Senate in February and March; referred to Committee March 11, 2004; reported without amendment April 1, 2004)

The Government public Bill C-8, entitled *An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence*, proposes to amend Schedule I to the Act by striking out the following the "National Archives of Canada" and the "National Library" under the heading "Other Government Institutions". It also proposes to amend Schedule II by adding "Library and Archives of Canada" in alphabetical order under the heading "Other Government Institutions".
(2004, Bill C-8, sections 24 and 25, re-introduced in the House of Commons on February 11, 2004, read and referred to Committee in the Senate on February 18, 2004)

The Government public Bill C-23, entitled *An Act to provide for real property taxation powers of first nations, to create a First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute and to make consequential amendments to other Acts*, proposes to amend Schedule I to the Act by adding the following under the heading "Other Government Institutions": First Nations Financial Management Board; First Nations Statistical Institute; and First Nations Tax Commission. It further proposes to amend Schedule II to the Act by adding a reference to the "*First Nations Fiscal and Statistical Management Act*" and a corresponding reference to section 106 of that Act.
(2004, Bill C-23, introduced and read March 10, 2004; deemed read, referred to Committee (Aboriginal Affairs, Northern Development and Natural Resources) and reported on March 10, 2004)

The Government public Bill C-25, entitled *An Act to establish a procedure for the disclosure of wrongdoings in the public sector, including the protection of persons who disclose the wrongdoings*, proposes to amend Schedule I to the Act by adding the following under the heading "Other Government Institutions": Public Sector Integrity Commissioner.
(2004, Bill C-25, section 48; received first reading March 22, 2004)

The Private Members' Bill C-302, entitled *An Act to amend the Access to Information Act* (crown corporations and Canadian Wheat Board), proposes to make all crown corporations and the Canadian Wheat Board subject to the *Access to Information Act*.

This bill, which was initially introduced, read and printed November 18, 2002, has been retained in the 3rd session of the 37th Parliament pursuant to Provisional Standing Order 86.1 of February 2, 2004.

The Private Members' Bill C-462, entitled *An Act to amend the Access to Information Act and to make amendments to other Acts*, proposes to amend Schedules I and II of the Act. Section 27 of Bill C-462 proposes to amend Schedule I of the Act by adding the following in alphabetical order under the heading "Other Government Institutions": Atomic Energy of Canada Limited; Canada Post Corporation; Canadian Broadcasting Corporation; Canadian Wheat Board; Export Development Canada; National Arts Centre Corporation; Office of the Auditor General of Canada; Office of the Chief Electoral Officer; Office of the Commissioner of Official Languages; Office of the Information Commissioner; and Office of the Privacy Commissioner. Section 28 of Bill C-462 repeals Schedule II of the Act.
(2004, Bill C-462, re-introduced and read on February 2, 2004, debated at Second Reading on February 24, 2004)

The Private Members' Bill C-507, entitled *An Act to establish and maintain a national breast implant registry*, proposes to amend Schedule I to the Act by adding the following under the heading "Other Government Institutions": The Registrar, *The Breast Implant Registry Act*. It further proposes to amend Schedule II to the Act by adding a reference to the *Breast Implant Registry Act* and a corresponding reference to section 11 of that Act.
(2004, C-507, sections 19 and 20; received First Reading March 29, 2004)

Amendments to Heads of Government Institutions Designation Order

The Schedule to the *Access to Information Act Heads of Government Institutions Designation Order w*as amended by adding in numerical order, under Column I, "20. Canadian Firearms Centre" and, under Column II, "Chief Executive Officer". (SI/2003-98, in force April 14, 2003)

The Schedule to the *Access to Information Act Heads of Government Institutions Designation Order* was amended by replacing the portion of item 20 appearing under Column II by the following: "Commissioner of Firearms". (SI/2003-116, in force May 30, 2003)

The Schedule to the *Access to Information Act Heads of Government Institutions Designation Order* was amended by adding in numerical order, under Column I, "34.1 Department of Human Resources and Skills Development" and under Column II, "Minister of Human Resources and Skills Development". (Canada Gazette Part II, SI/2003-207, in force December 12, 2003)

The Schedule to the *Access to Information Act Heads of Government Institutions Designation Order* was amended by adding in numerical order, under Column I, "34.2 Department of International Trade" and under Column II, "Minister for International Trade". (Canada Gazette Part II, SI/2003-213, in force December 12, 2003)

The Schedule to the *Access to Information Act Heads of Government Institutions Designation Order* was amended by adding in numerical order, under Column I, "10.1 Canada Border Services Agency" and, under Column II, "Solicitor General of Canada to be styled Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness". (Canada Gazette Part II, SI/2003-220, in force December 12, 2003)

The Schedule to the *Access to Information Act Heads of Government Institutions Designation Order* was amended by adding in numerical order, under Column I, "85.1 Public Service Human Resources Management Agency of Canada" and, under Column II, "President of the Queen's Privy Council for Canada". (Canada Gazette Part II, SI/2003-225, in force December 12, 2003)

Bills That Died on the Order Paper and That Were Not Subsequently Introduced

Section 144 of Bill C-19, entitled *An Act to provide for real property taxation powers of first nations, to create a First Nations Taxation Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute and to make consequential amendments to other Acts*, proposed to amend Schedule I of the Act by adding "First Nations Financial Management Board", "First Nation Statistical Institute" and "First Nation Tax Commission" under the heading "Other Government Institutions". Section 145 proposed to amend Schedule II by adding, in alphabetical order, a reference to the *First Nations Fiscal and Statistical Management Act* and a corresponding reference to section 106 of that Act. This Bill has died on the Order Paper on November 12, 2003, and has not been re-introduced since.

Section 24 of the Senate public Bill S-6, entitled *An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers*" proposed to amend Schedule II to the Act by adding the following in alphabetical order "*Public Service Whistleblowing Act* section 10, subsection 14(4) and section 20." This bill has died on the Order Paper November 12, 2003, and has not been re-introduced since.

CHAPTER VI
CORPORATE SERVICES

The Corporate Services function provides administrative services (financial, human resources, information technology, general administrative and library services) to the Information Commissioner's office. Its objective is to support those who administer the program.

Since fiscal year 2002-2003, the Office of the Information Commissioner of Canada has had to provide its corporate services independently, after the former Privacy Commissioner's unilateral decision to terminate the shared service model based on service usage.

Therefore, during 2003-2004, the Corporate Services function had to acquire additional resources to compensate for the increased workload and reduced economies of scale resulting from the former Privacy Commissioner's decision.

In spite of the many challenges faced by the Corporate Services Branch, it was able to address and improve several important aspects of its services.

Financial Services

Improvements in financial services initiated by the Senior Financial Officer (SFO) included preparing comprehensive policies and procedures governing the application and monitoring of financial delegation of funds to managers. These policies and procedures supported a new delegation document that updated limits on the authority of OIC managers to expend funds on such items as hospitality, office supplies and contracts. A formal briefing package based upon these policies and procedures and the new delegation document was also developed and provided to responsibility centre managers.

The SFO also initiated a review of the progress made towards implementing Modern Comptrollership across the organization, using the management framework as set out by Treasury Board Secretariat in its Managing for Results publication. The results of the review demonstrated that, except for a few aspects, Modern Comptrollership is fully implemented in the OIC. An Action Plan has been approved and, subject to available resources, will be undertaken in 2004-2005 to fully implement those aspects needing improvement.

Human Resources

In a letter dated July 11, 2003, the Public Service Commission indicated its satisfaction with the manner in which the OIC respects staffing values in the use of its delegated staffing authorities. The PSC recognized the good practices already in place and, in response to its recommendations, the Corporate Services Branch provided all OIC employees with a course on Staffing Values and training on Public Service Values and Ethics.

As well, during 2003-2004, the Corporate Services Branch developed, published, and implemented a process and guidelines for dealing with wrongdoing in the workplace and disseminated information advising all new employees of the code and their responsibilities toward it.

During the fiscal year, the branch began work on a functional plan for human resources management, along with a communications strategy, which will ensure that both the plan and important values such as competency, fairness, equity and transparency are understood. The branch also developed plans and allocated appropriate funds for training for each human resources specialist to ensure that they were equipped to provide ongoing advice on process and values to managers and employees.

Information Technology

Efficient technology is needed to adequately track, store and report upon the status of enquiries, complaints and their related events on a case-by-case basis. The Corporate Services Branch developed and implemented an effective and efficient case tracking system for investigations (the Integrated Investigations Application) and for legal cases (the Legal Tracking System). As well, in the same period, the branch installed an automated telephone inquiries system.

These systems, together with repatriation from external vendors of the technology support services, such as e-mail, intranet and internet web hosting, has further improved the levels and quality of these services, at an acceptable cost.

Administrative and Library Services

During 2003-2004, the OIC continued to provide a public reading room through its library services and updated all of its policies and procedures contained in a comprehensive and current Administrative Manual through its administrative services. As well, to comply with the government's disaster recovery initiative, work commenced on a business continuity plan.

Financial Information

The Information Commissioner's operating budget for the 2003-2004 fiscal year was $4,639,670. Actual expenditures for 2003-2004 were $4,636,083 of which $60,238 is reimbursable to the department through Treasury Board Vote 5.

Personnel costs of $3,668,039 accounted for 79 percent of all expenditures; whereas, the remaining $968,044 covered all other expenditures, including other professional services, transportation and communication.

Expenditure details are reflected in Figure 2 (Resources by Activity) and Figure 3 (Details by Object of Expenditure).

Figure 2: Resources by Activity (2003-2004))

	FTE's	Percent	Operating Budget*	Percent
Access to Government Information	40.8	75%	$3,634,280	78%
Corporate Services	13.7	25%	$1,001,803	22%
Total Access Vote	54.5	100%	$4,636,083	100%

*Excludes Employee Benefit

Figure 3: Details by Object of Expenditures (2003-2004)

	Access to Government Information	Corporate Services	Total
Salaries	2,934,091	733,948	3,668,039
Transportation and Communication	75,757	79,499	155,256
Information	59,029	2,493	61,522
Professional Services	395,765	98,821	494,586
Rentals	20,100	10,656	30,756
Repairs and Maintenance	12,373	28,888	41,261
Materials and Supplies	28,946	40,093	69,039
Acquisition of Machinery and Equipment	103,601	5,836	109,437
Other Subsidies and Payments	4,617	1,568	6,185
Total	3,634,280	1,001,803	4,636,083

Notes:
1. Excludes Employee Benefit Plan (EBP).
2. $58,145 of salary expenditures are reimbursable to the Office of the Information Commissioner of Canada through Treasury Board Vote 5.
3. Expenditure figures do not incorporate final year-end adjustments.

The Resource Challenge

In the last decade, resources have not kept pace with workload. With respect to the investigator group, the office has been unable to replace retiring or departing investigators and has a current investigator complement of 23, which is well below the number of investigators required to complete the forecast annual workload of received complaints. On top of this deficit, there is a backlog of incomplete investigations, which is equivalent to a year's workload for the office.

With respect to the non-investigator group, the office has seriously depleted its capacity in the past 10 years in order to transfer resources to the investigator group. The office has moved from two assistant commissioners to one deputy commissioner; from an Executive Director of Operations and two directors of investigations to a Director General of Investigations and Reviews and a Director of Operations; and from a Director of Legal Services and Director of Litigation Services to a combined Director of Legal Services.

As well, the office had to give up its public affairs, research, education and training capacity entirely in order to put resources towards an increasing workload of investigations.

Despite repeated efforts to convince the Treasury Board to properly fund the full range of the commissioner's mandate--including several exhaustive reviews by independent consultants, jointly with the Treasury Board Secretariat--emergency and partial funding only has been forthcoming.

This resource crisis was a matter of discussion by the Parliamentary Committee on Government Operations and Estimates during the Information Commissioner's appearance this year to defend the 2004-05 budget estimates. Some members asked whether the inadequacy of resources may be the government's way of weakening the commissioner's ability to investigate and expose cases of improper government secrecy; is the government using its authority to grant and withhold resources to undermine the commissioner's effectiveness and independence.

The commissioner did not find it necessary to impute bad faith to make the point that there is a real problem of inadequate funding and the result is a weakened ability to do the job Parliament has asked the Information Commissioner to do.

The commissioner will make another try this year to convince a new government to do what the Chrétien government would not--properly fund the Office of the Information Commissioner. The commissioner will also work with Parliament and the other Officers of Parliament to find a new funding mechanism which will be more independent of government. The approach taken by Parliament to the funding of the Ethics Commissioner provides an interesting alternative. In that approach, the Ethics Commissioner will propose a budget to the Speaker of the House of Commons. Once the Speaker is satisfied (likely after review by the Board of Internal Economy), the budget will be forwarded to Treasury Board which will, without change or reduction, be included in the government's spending estimates and the funding made available to the Ethics Commissioner.

CHAPTER VII
REPORT CARDS

Table of Contents

Canada Revenue Agency

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

For several years, a number of institutions were subject to review because of evidence of chronic difficult in meeting response deadlines. In his 1996-97 Annual Report to Parliament, the former information commissioner reported that delays in responding to access requests had reached crisis proportions.

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. 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 Status Report reviews the continued progress of Canada Revenue Agency (CRA) 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 2003.

2. COMPLIANCE HISTORY

In the 1999 Report Card issued by the Office of the Information Commissioner, Canada Revenue Agency's (CRA) (formerly Canada Customs and Revenue Agency) compliance with the statutory time requirements of the *Access to Information Act* was rated as a red alert grade of "F", with an 85.6% new request to deemed-refusal ratio.

In January 2000, the statistics showed that from April 1 to November 30, 1999, the deemed-refusal ratio for access requests improved to 51.5%, although still a grade of "F".

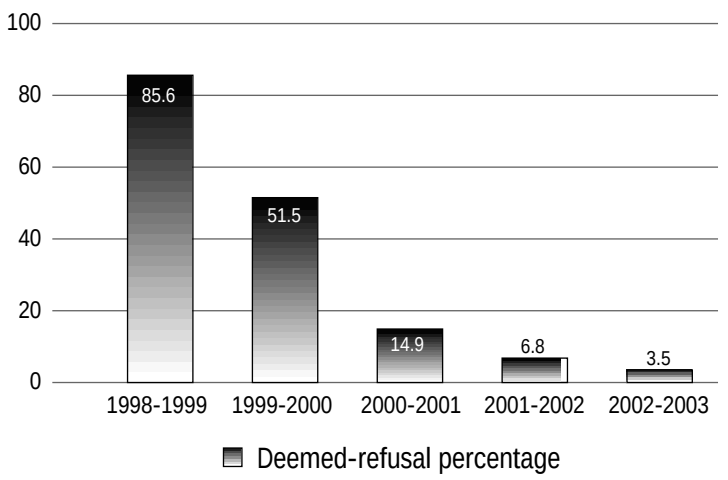
In January 2001, for the period April 1 to November 30, 2000, CRA was reported as having attained a borderline compliance with the Act, for a grade of "C" with a 14.9% ratio.

The January 2002 report saw CRA continuing to make impressive progress in reducing the deemed-refusal situation. For the period of April 1 to November 30, 2001, the Agency achieved a grade of "B" with a 6.8% new request to deemed-refusal ratio.

For the 2002-2003 reporting period, CRA made further strides in improving their performance having attained a 3.5%, or a grade of "A" deemed-refusal ratio, with that performance slipping marginally to 5.2% for the full fiscal year, or a grade of "B".

The following graph shows the steady and dramatic improvement experienced by CRA in their efforts to reach ideal compliance with the time requirements of the *Access to Information Act*.

PERFORMANCE SINCE 1998



3. CURRENT STATUS

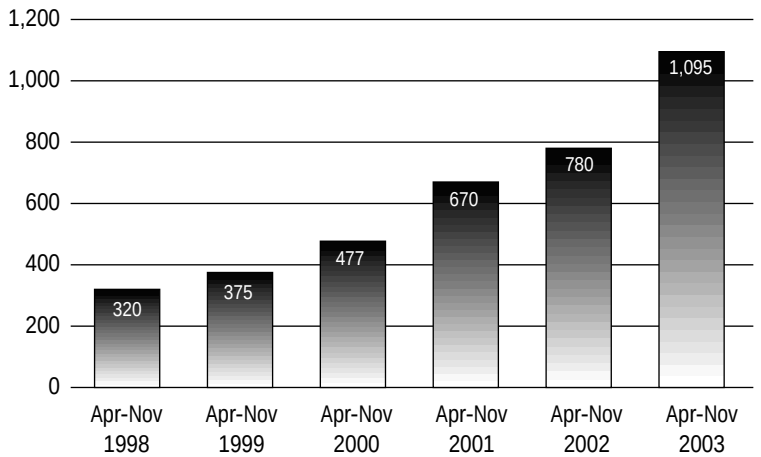
For the reporting period of April 1 to November 30, 2003, CRA achieved a grade of "B" that denotes "substantial compliance" in meeting the time

requirements of the *Access to Information Act*. The new request to deemed-refusal ratio for the period was 6.4%.

Although this gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period, it does not take into consideration those requests carried over from the previous year, nor the number of requests already in a deemed-refusal status on April 1. In future reports, these figures will be taken into consideration; however, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the results for April 1 to November 30, 2003, would be 6.5%, still resulting in a grade of "B".

While the "ideal compliance" ratio had not been maintained, the professionalism and dedication of the ATIP staff was evident in allowing the Agency to perform as well as it did considering the significant increase in the number of requests it has received. Like many federal institutions, CRA has experienced a steady increase of requests over the last five years. However, the 40% increase in new requests experienced by CRA during this reporting period was substantial. This ever-increasing number of requests is reflected in the chart below, which reveals a 242% increase in the number of ATIA requests received by CRA during the period indicated.

Requests received by reporting period



During the course of this review, the Director and Deputy Director identified a number of initiatives put in place during 2003 that were instrumental in maintaining the substantial compliance:

- Weekly tracking of statistics to allow managers to stay on top of workload with monitoring at all levels of management. Additional management reporting tools are currently under construction. Indicative of the involvement of senior management, future performance evaluations for ATIP managers will include performance objectives relating to on-time response rates for ATIA requests.

- Processes related to the opening of new requests now include a triage review. The purposes of this review is not only to identify and resolve administrative issues related to the receipt of new requests, but to identify whether the information asked for by the applicant under the ATIA is available informally and more conveniently to him or her from Agency program offices.

- The establishment and staffing of an officer-level position to review requests to determine if they can be handled informally, as well as the continued identification of information disclosed through previous access requests, which could be responsive informally to requests. In November alone, 17 such requests were processed. This is an encouraging development. During FY 04/05, CRA will be conducting an Agency-wide review of records/manuals, daily activities, etc., to identify further opportunities for the routine, proactive disclosure of information.

- Expanded awareness Agency-wide of roles and responsibilities has been incorporated in the guidance manual, with further enhancements planned to include online reference.

4. FUTURE CONSIDERATIONS AND FURTHER RECOMMENDATIONS

Recently, there has been considerable restructuring within CRA including the departure of the former CCRA Customs Branch. What impact these will have on workload and CRA's capacity to continue responding on time to ATIA requests is unknown at this time.

CRA has made tremendous strides in improving its performance record since the initial Report Card. Nevertheless, CRA is encouraged to continue to review processes, resources, and look at newer methods and technologies as they become available. The following recommendations are made to support the continued efforts of CRA to process access requests within the statutory time requirements of the *Access to Information Act*.

4.1 Sustain Achievement

The achievement of ideal compliance with the time requirements of the *Access to Information Act* requires constant attention to the access process. The Agency is encouraged to continuously improve its access process activities, build on its achievements and devote the resources needed to once again achieve ideal compliance with the *Access to Information Act*.

Recommendation #1

CRA is encouraged to continually review its process with a view to attaining ideal compliance with the time requirements of the *Access to Information Act*.

4.2 Informal Access

The Agency continues to identify information that was disclosed through previous access requests over a twelve-month period to assist applicants in deciding whether they wish to file formal requests. Additionally, funding has been approved for an Agency-wide analysis of operationally based opportunities for informal disclosure. This study is planned to be conducted during the coming fiscal year. This analysis is intended to identify opportunities for making information routinely available to the public rather than through the access process.

Recommendation #2

CRA is encouraged to complete the analysis of information to determine if there are additional opportunities to routinely make information publicly available.

4.3 Process

In conjunction with an internal review of the ATIP process that is already underway, CRA intends to develop external processing standards for the guidance of Agency OPIs.

Recommendation #3

CRA is encouraged to proceed with the analysis and development of their processing standards to provide employees and OPIs with guidance on their roles and responsibilities throughout the access to information process.

5. STATUS OF 2003 RECOMMENDATIONS

In January 2003, recommendations were made to CRA on measures to further reduce the number of access requests in a deemed-refusal situation. The action taken on each recommendation is described below, following the text of the recommendation:

Previous Recommendation #1

CRA is encouraged to maintain ideal compliance with the time requirements of the *Access to Information Act*.

Action Taken: While CRA was unable to maintain the "A" grade for ideal compliance for this reporting period, considering the increased number of requests received and the relative success experienced over the past year, it is anticipated that CRA will quickly be able to achieve ideal compliance. A caveat in this regard is the extent to which CRA's ATIP office remains adequately resourced and supported.

Previous Recommendation #2

CRA is encouraged to complete the analysis of information disclosed through access requests to determine if there are opportunities to routinely make information publicly available.

Action Taken: CRA continues to review its previously released records, as well as other departmental records that may be routinely released, to further reduce request workload by provided records informally. Staff resources have been put in place to focus specifically on this issue.

Previous Recommendation #3

CRA is encouraged to proceed with the analysis and development of Transparency Guidelines to provide employees with instructions on what information can routinely be released to clients and the public.

Action Taken: Continuous review of all aspects of the departmental process is underway, with internal and external process standards under development. Enhanced communications between the ATIP office and OPIs have furthered better understanding of roles and responsibilities of all parties in meeting time constraints.

6. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	142	419
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	11	27
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	1,137	1,095
4.A	How many were processed within the 30-day statutory time limit?	694	387
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	7	24
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	6	20
	31-60 days:	1	3
	61-90 days:	0	1
	Over 91 days:	0	0
5.	How many were extended pursuant to section 9?	472	384
6.A	How many were processed within the extended time limit?	200	146
6.B	How many exceeded the extended time limit?	25	23
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	17	19
	31-60 days:	4	1
	61-90 days:	3	3
	Over 91 days:	1	0
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**24**

EXCERPT FROM COMMISSIONER'S RESPONSE TO STATUS REPORT

"Last year we were very pleased with the "A" rating given by your office in recognition of our efforts to comply with the response requirements of the *Access to Information Act* (ATIA). While we worked hard this year to maintain that level of performance, the number of ATIA requests received by the CRA increased beyond our capacity to do so. This said, the workload reality that you have accurately described in your report is one that we are committed to addressing. During the upcoming year, for example, we will be proceeding with our plan to examine ways by which we might increase opportunities for Canadians to receive information informally from us – without obliging them to file formal ATIA requests. In a resource-scarce environment, we have also taken note of your recommendation that the necessary resources be devoted so that the CRA may again achieve ideal compliance with the on-time response requirements of the ATIA.

In closing, I would like to assure you of our continued commitment to the values of openness and transparency fostered by the ATIA, and to thank you for your recognition of efforts that we have taken to support them."

Citizenship and Immigration Canada

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

For several years, a number of institutions were subject to review because of evidence of chronic difficult in meeting response deadlines. In his 1996-97 Annual Report to Parliament, the former information commissioner reported that delays in responding to access requests had reached crisis proportions.

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. 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 Status Report, for the period April 1 to November 30, 2003, reviews the progress of the department to come into ideal compliance with the time requirements of the *Access to Information Act* since the January 2003 Status Report. In addition, this report contains information on the status of the recommendations made in the January 2003 report.

2. COMPLIANCE HISTORY

In early 1999, the Office of the Information Commissioner issued a Report Card on the department's compliance with the statutory time requirements of the *Access to Information Act*. In the 1999 Report Card, the department received a red alert grade of "F" with a 48.9% request to deemed-refusal ratio.

In January 2000, the Office of the Information Commissioner reviewed the status of the recommendations made in the Report Card and made further recommendations for measures to reduce the number of access requests in a deemed-refusal situation. From April 1 to November 30, 1999, the deemed-refusal ratio for access requests improved to 23.4%, still a grade of "F".

In January 2001, the Commissioner's Office review reported that the department had set an objective in 2000-2001 of completing 70% of access requests within the timelines of the Act. The view of the Office of the Information Commissioner was that the objective fell short of what was needed to comply with the time requirements of the Act. The actual performance of the department for 2000-2001 was a 19.6% new request to deemed-refusal ratio resulting in a grade of "D", denoting below standard performance.

In January 2002, the Commissioner's Office issued another Status Report and recommendations. For the period April 1 to November 30, 2001, the new request to deemed-refusal ratio was reduced to 13% denoting a grade of C. The momentum was sustained for the full fiscal year of 2001-2002, achieving a grade of "C" with a new request to deemed-refusal ratio of 12%.

The January 2003 review reported that Citizenship and Immigration Canada (CIC) had joined a select group of departments who have achieved a grade of "A" that denotes ideal compliance with the statutory time requirements of the *Access to Information Act*. For the period from April 1 to November 30, 2002, the new request to deemed-refusal ratio was 3.8%, with that ratio slipping only marginally to 4.9% for the full fiscal year, still a grade of "A".

This constitutes is a significant achievement by CIC departmental staff and management dealing with the access request process. The department was highly commended for its efforts and encouraged to maintain this performance.

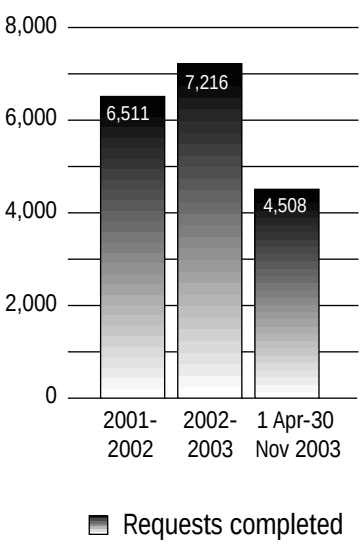
3. CURRENT STATUS

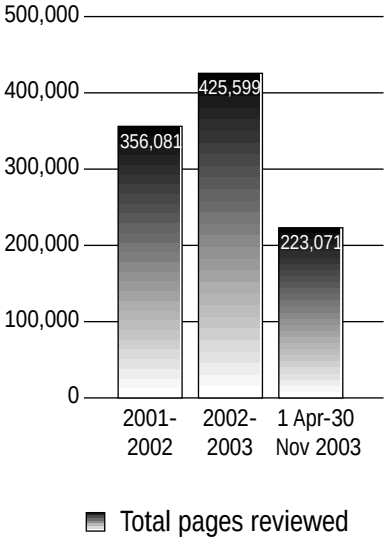
In the past, CIC has made steady progress in reducing the number of access requests in a deemed-refusal situation; however, the department has slipped considerably in its performance for this reporting period. For the period April 1 to November 30, 2003, CIC's deemed-refusal to requests received ratio was 15.4% for a grade of "D", reflecting below standard performance.

Although this gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period, it does not take into consideration those requests carried over from the previous year, nor the

number of requests already in a deemed-refusal status on April 1. In future reports, these figures will be taken into consideration; however, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the results for April 1 to November 30, 2003, would be 14.1%, a grade of "C".

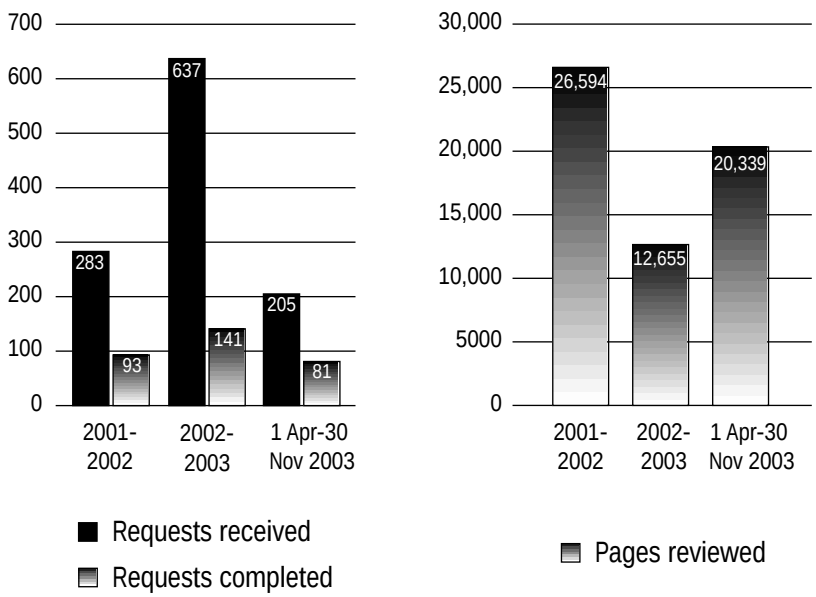
During the course of the interview for this report, the Acting Director indicated a number of issues that the Division has faced over the past year that have impacted on their overall performance. Along with an ever-increasing number of requests, the increase in the number of pages being reviewed was one consideration. The following graphs demonstrate that aspect of the workload over the past three years, also indicating the number of requests from one requester.





The workload that was dedicated to one requester is included in the above statistics of requests processed. That volume is broken down in the following charts:

Single Requester



The intricacies in managing these requests alone, necessitating the review of large lists of the records sought, has taxed the resources of the Division. The list must be processed, like any other record, for exemptions and/or exclusions. Once a list is finalized, it is provided to the applicant who in turn selects specific records to subsequently access. With that the process starts again. CIC feels it is in fact processing two requests while statistically accounting for one and, in the process, finds itself in a position of not applying extensions perhaps as judiciously as it should.

In an effort to improve the overall situation, CIC has realigned workloads to dedicated analysts to handle specific clients, in an effort to make the processing of records more consistent and manageable. Communication with the applicants has expanded in an attempt to lessen the formal workload.

Staffing appears to be adequate with a full complement of 27 operational ATIP staff plus support. The current breakdown includes 8 senior analysts, (one position currently rotating through the position of Acting Director; 11 junior analysts and 8 consultants). As in most departments, the ATIP Division is also involved in Privacy Impact Assessments (PIAs), information-sharing projects, Info Source review, Annual Reports and new employee training.

4. FUTURE ISSUES AND FURTHER RECOMMENDATIONS

CIC, as are a number of departments, is undergoing considerable structural changes in function and organization with the creation of the Canada Border Services Agency (CBSA). What effect the total reorganization is going to have on the ATIP workload is unclear at this time. What is anticipated is that some resources may well have to be given up to the new organization. At the moment, improvements to the process are limited until roles and responsibilities are clearly identified as a result of this transition.

Nevertheless, ongoing initiatives include review of the CIC processing manual, which is currently only in hardcopy, but is being considered for inclusion on the department's intranet. This is expected to occur on April 1, 2004. This should provide OPIs with hands-on information and guidance in responding to tasking, thereby reducing response times.

The attainment of at least substantial compliance with the time requirements of the *Access to Information Act* will be a noteworthy achievement for CIC.

The following recommendations are made to assist the department in its continuing efforts to reduce deemed-refusal access requests:

Recommendation #1

CIC review its current practice in which it deals with bulk requesters (information brokers) to determine whether or not the current extension practices are the most appropriate manner to deal with the volume of records being sought.

4.1 Substantial Compliance

CIC is encouraged to once again attain at least substantial compliance with the time requirements of the *Access to Information Act*. Sustainability requires a commitment by management and staff who are involved in the access process to meet or exceed their responsibilities in the process.

Recommendation #2

CIC make a commitment to attain substantial compliance with the time requirements of the *Access to Information Act*.

4.2 Progress Monitoring

Table 1: Time to Respond to Non-Extended Requests in a Deemed-Refusal Situation

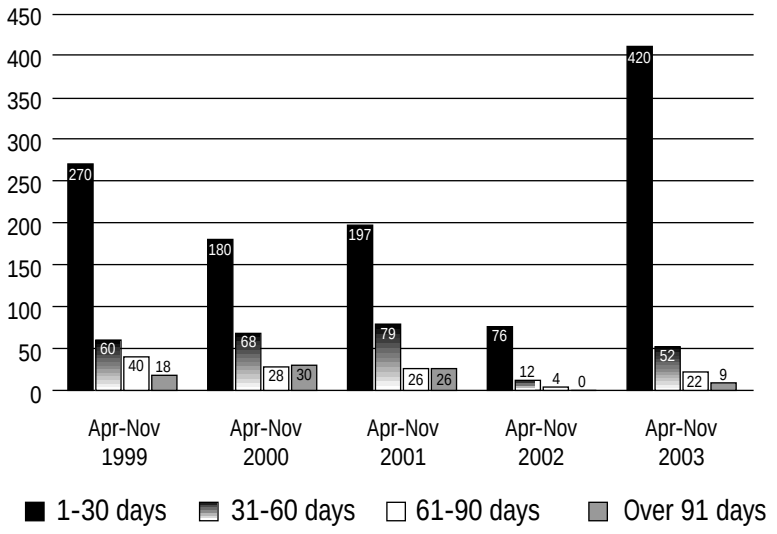
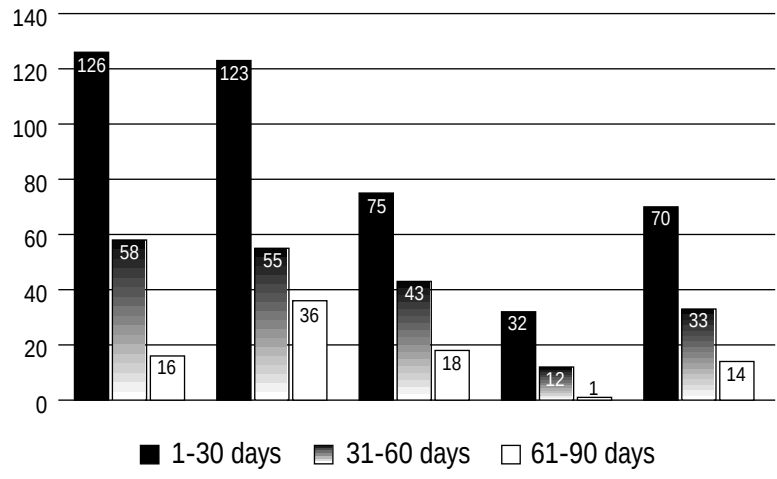


Table 2: Time to Respond to Extended Requests in a Deemed-Refusal Situation



Except for last year when the department was so successful in reducing its deemed-refusal ratio, the number of requests exceeding the time constraints is again on the increase. While the ratio for the requests where an extension has been taken has improved over the last three years, there is still room for improvement.

Recommendation #3

CIC review its procedures to initiate a more stringent monitoring mechanism to track the progress of requests to improve the deemed-refusal to new requests ratio.

5. STATUS OF 2003 RECOMMENDATIONS

In January 2003, recommendations were made to CIC on measures to further reduce the number of access requests in a deemed-refusal situation. The action taken on each recommendation is described below, following the text of the recommendation.

Previous Recommendation #1

CIC set a target of 10% or better for the new request to deemed-refusal ratio for 2002-2003. CIC make a commitment to maintain ongoing ideal compliance with the time requirements of the *Access to Information Act*.

Action taken: While intentions were good, reality prevented CIC from maintaining the "A" grade of compliance. However, the shortfall has been recognized and the institution continues to strive to meet the requirements of the Act.

Previous Recommendation #2

CIC is encouraged to determine through an analysis of the reasons for requests in a deemed-refusal situation if there are systemic measures to be taken to assist in maintaining ideal compliance.

Action Taken: There is currently an ad-hoc system in place to track taskings. The reliance is on the analyst to follow-up at the OPI/responsible officer level, although the process is continually under review.

Previous Recommendation #3

A semi-annual ATIP report be provided to the CIC Senior Management Committee to engage management in the maintenance of ideal compliance with the time requirements of the *Access to Information Act*.

Action taken: No formal reporting mechanism has been put in place to date. A number of factors have affected its delay, not the least being the departmental transition as well as the rotational situation of the Director's position within the ATIP Division. However, the measure is currently being worked on and it is anticipated that it will be fully implemented for the next reporting period.

6. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	858	1,085
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	127	85
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	7,444	5,153
4.A	How many were processed within the 30-day statutory time limit?	4,943	2,784
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	190	503
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	135	420
	31-60 days:	33	52
	61-90 days:	12	22
	Over 91 days:	10	9
5.	How many were extended pursuant to section 9?	1,999	1,149
6.A	How many were processed within the extended time limit?	1,188	527
6.B	How many exceeded the extended time limit?	88	126
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	56	70
	31-60 days:	20	33
	61-90 days:	5	14
	Over 91 days:	7	9
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**165**

6. QUESTIONNAIRE AND STATISTICAL REPORT (continued)

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:
	Over the past year, the Director of Public Rights Administration Directorate has been on assignment to the Director General's position. During this time, the Director's position was staffed in an acting capacity by a rotation of senior ATIP officers. It has been challenging to ensure continuity, and certain planned discretionary activities to address response-time improvements have been delayed. This situation will be addressed in the new fiscal year, with the objective being to continue to move forward with best practices and allocation of resources.
	With each Acting Director rotation, one senior officer was unavailable to respond to the duties of his/her own position. Experienced staff to backfill those positions was not always available. The ATIP community is small and competitive. Staffing is supplemented100% by term employees and by contractors.
	Citizenship and Immigration Canada was affected on December 12, 2003, by the creation of the new Canada Border Services Agency, which has absorbed some of CIC's responsibilities and activities. Considerable attention continues to be needed to evaluate the effects on workload volumes consistent with this realignment, preparation of statistical reports, review of delegations of signing authorities, and to working with the transition team toward a seamless transfer of responsibilities and requests.
	Over the past year, ATIPimage (a document imaging technology to improve efficiencies in handling ATIP treatment of electronic records) has been implemented with a trial group of records, and increasing volumes of records are being reviewed with the use of this system. Proper use of this system eliminates some of the administrative in-house delays and also assists in identifying duplicate records. Additional progress in fully utilizing this software to best advantage is expected in 2004-2005, with the goal of further streamlining the challenging transit times for records within CIC. PRAD follows-up on its call-outs and flags delayed response to senior officers and to the Director who regularly provide feedback on responses to program groups. To the extent possible, extensions of time are taken based on the information which can support them, including in situations where operational considerations are significant.
	CIC has 5 bulk requesters (also called "information brokers") each year. While CIC receives annually the highest number of Access to Information requests of all federal government departments and agencies, this department devotes the services of 5 full-time staff members to process the responding records, as well as needing support services and program group involvement to prepare the records for release to these requesters. As there is no limit to the number of requests from a single source, under the *Access to Information Act*, CIC has no control over its intake or the regularity of requests.
	THANK YOU FOR COMPLETING THIS QUESTIONNAIRE

EXCERPT FROM DEPUTY MINISTER'S RESPONSE TO STATUS REPORT

"Our Public Rights Administration Division continues to use your recommendations as a guide to improve CIC's practices with respect to the application of the legislation.

I remain proud of my Department's achievements in the handling of both access to information and privacy requests in the past year, regionally as well as nationally, and in the face of considerable pressure. As you know, CIC has undergone substantial change over the past three years, implementing new processes and policies to reflect the changes mandated by the *Immigration and Refugee Protection Act*, both domestically and abroad.

More recently, CIC and the newly created Canada Border Services Agency have been working together to rationalize the working relationship between the two entities as it relates to both access to information and privacy. This has proved to be no small task, as I am sure you appreciate, and is ongoing.

My Department has been greatly assisted by its long-term vision and strategic objectives set particularly for its Access to Information and Privacy (ATIP) program. Your recommendations have, and will, continue to contribute to this effort. We also continue to implement our various initiatives based on these objectives, maintaining our focus on a combination of medium and long-term productivity measures, and on technology improvements.

In the latter regard, you may be interested to learn that CIC has almost fully implemented ATIPimage, an advance that we hope will eventually speed file transmission and review of both domestic and overseas files. Moreover, on April 1, 2004, Public Rights Administration launched a comprehensive website on the CIC intranet, CICExplore. Work has now commenced on a world wide web-based site. I am confident that these sites will provide clarity surrounding ATIP issues for CIC staff and clients alike.

As you know, Treasury Board funding has been critical to help CIC improve its results and has been integral to our ability to achieve and maintain a grade of "A" in your deemed refusal status report. CIC no longer has the benefit of supplementary ATIP funding from Treasury Board. Still, our funding requirements for ATIP continue to be significant and are expected to rise.

It remains a true challenge for my department to achieve substantial compliance while continuing to receive increasing volumes of requests. Your deemed refusal report is a useful reference for CIC as it continues to meet the challenges presented by ever-increasing workload and limited funding."

Correctional Service Canada

Status report on access requests in a deemed-refusal situation

I. BACKGROUND

For several years, the Office of the Information Commissioner has received complaints from requesters about requests in a deemed-refusal situation. It is likely that, across government, the number of complaints on requests in a deemed-refusal situation represents only a portion of the actual number of requests processed outside of the time requirements of the *Access to Information Act*. The unacceptable high level of requests in a deemed-refusal situation has been illustrated in previous Report Cards issued since 1999 by the Commissioner's Office.

As part of the proactive mandate of the Commissioner's Office, each year a department (or departments) is selected for review. The review is conducted to determine the extent to which the department is meeting its responsibilities for complying with the statutory timeframes for processing access requests established by the *Access to Information Act*.

Correctional Service Canada (CSC) was one of two departments selected last year for review. The department was subject to review because of evidence of chronic difficulty in meeting response deadlines. When the Commissioner's Office receives a high number of deemed-refusal complaints about a department, it may be symptomatic of a greater response-deadline problem within the department.

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. 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 Status Report reviews the progress of the department to attain substantial compliance with the time requirements of the *Access to Information Act* since the initial report. In addition, this report contains information on the status of the recommendations made in the Report Card of January 2003. This then is a report of the review of CSC's performance statistics for the period April 1 to November 30, 2003.

2. COMPLIANCE HISTORY

In the Report Card of January 2003, it was reported that CSC attained during the reporting period a rating of "F"[1], [the new request to deemed-refusal ratio was 50.6%]. Its performance was unacceptable. Subsequent review indicated that, through to the end of the fiscal year, the final statistics did in fact reflect some improvement to 38.9% of deemed refusals in relation to requests received, although the grading remained an "F".

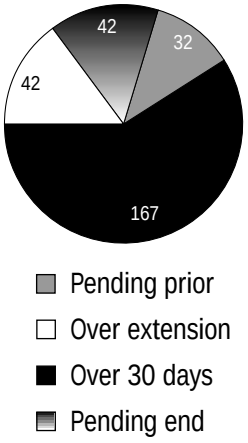
3. CURRENT STATUS AND FURTHER RECOMMENDATIONS

The department has made tremendous strides in a number of areas to improve on the previous record. All of these initiatives have led to a remarkable turnaround in the deemed-refusal situation over the past year resulting in ideal compliance with the time requirements of the *Access to Information Act*. The new request to deemed-refusal ratio improved to 3.2% for the period from April 1 to November 30, 2003, for a grade of "A".

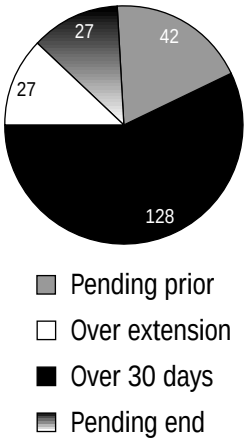
While this gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period, it does not take into consideration those requests carried over from the previous year, nor the number of requests already in a deemed-refusal status on April 1. In future reports, these figures will be taken into consideration; however, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the results of deemed refusals from April 1 to November 30, 2003, would be 8.8%, resulting in a grade of "B". How substantial a turnaround this was is evidenced by the following graphs reflecting the last three years' performance.

[1] This grade solely reflects on the department's performance in meeting response deadlines to November 30, 2002. It is not a measure of the department's performance in the application of exemptions. In general, CSC applies the exemption provisions of the Act professionally and with restraint.

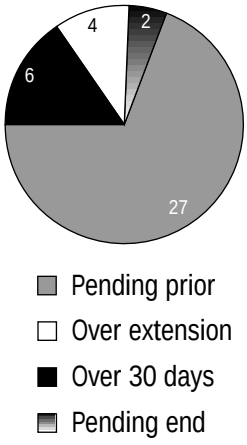
Deemed Refusals Apr. 1, 2001 to Mar. 31, 2002



Deemed Refusals Apr. 1, 2002 to Mar. 31, 2003

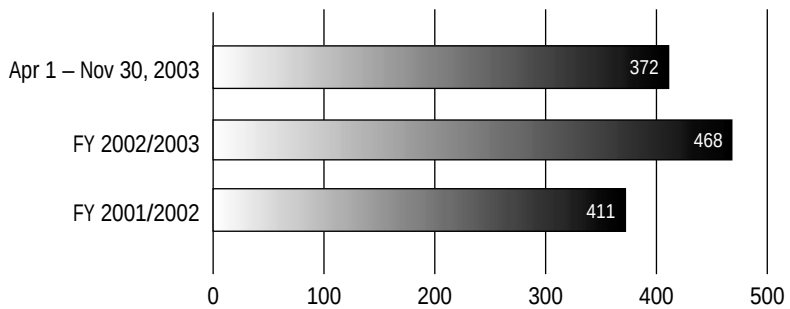


Deemed Refusals Apr. 1, 2003 to Nov. 30, 2003



This progress is in direct relation to a steady flow of requests as indicated in the following chart:

Requests received by year



CSC followed through on many of the recommendations that were made in the January 2003 Report Card. The measures and incentives that have been put in place and are ongoing include:

- The primary focus as a result of the Report Card was to eliminate the outstanding backlog of 2002-2003 overdue files. This was accomplished.
- Monthly monitoring of requests and reporting to Senior Executives of CSC was implemented.

- ATIPflow upgrade has been implemented as well as delivery of training to ATIP staff relating to the use and data entry into ATIPflow.
- Staff increases – since 2000-2001 to the present, staffing levels have increased from 17 indeterminate positions to 30.
- Delegation Order adjustments to include the Deputy Director.
- Communications' requirements are met as a parallel function rather that a sequential step in the access process.
- A compliance manual has been developed and delivered to all sectors at the National Headquarters as well as the Regions.
- Ongoing weekly meetings between the ATI Liaison Officers and Sector OPIs are held with the Director and Deputy Director.
- Internal weekly monitoring of requests in progress.
- ATIP training has been delivered to staff and senior management at the National and Regional Headquarters.

3.1. Objective for 2004-2005

While a number of steps have been taken since the Report Card, the department continues to refine its procedures, expand its training and look at additional methods to maintain or improve its overall compliance performance. Some of these include:

- Continued updating of the Guidelines manual as policies or procedures are changed.
- Continued and expanded training program for ATIP Division personnel in the application of exemptions and the criteria that must be met to justify recommendations.
- Develop a fee policy.
- Continue training within the organization as a whole.

The department has shown a commitment to make changes to support the reduction of access requests in a deemed-refusal situation and achieve ideal compliance with the time requirements of the *Access to Information Act*. CSC is encouraged to maintain a grade of "A" and set an objective for 2004-2005 of maintaining a request to deemed-refusal ratio of 5% or less.

Recommendation #1

CSC set an objective for 2004-2005 to maintain ideal compliance with the time requirements of the *Access to Information Act*.

CSC is continually reviewing its fee structure. With the introduction of copying records to CD rather than paper, paper costs, including postage, have been reduced as well as employee time spent at the photocopier. The introduction of

ATIPimage may allow CSC to realize additional savings in human and support resources.

Recommendation #2

CSC assess the impact and cost effectiveness of related information technologies, such as ATIPimage to further assist in maintaining ideal compliance of the *Access to Information Act*.

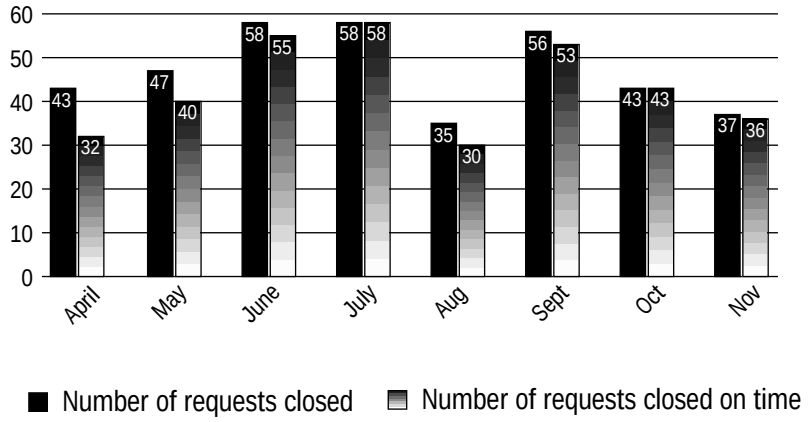
4. STATUS OF 2003 RECOMMENDATIONS

In the January 2003 Report Card, a number of recommendations were made to CSC in an effort to assist the department in turning around its record of compliance to *Access to Information Act* requests. The actions and measures described above have enabled CSC to fully meet those objectives. A few of the more significant follow-up actions to the January 2003 recommendations have been:

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 CSC. 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.

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 the ATIP Division with information needed to gauge overall departmental compliance with the Act's and department's time requirements for processing access requests.

   Action Taken: A monthly status report to senior management was initiated in April. This report is specific in its detail highlighting not only delays in the process but also where the delay occurs. Through this initiative, which emphasizes compliance requirements and its results, the departmental responses to tasking have improved dramatically, from 74% in April to 95-100% in four of the last five months. This report is then followed up monthly by a letter to the Executive Committee from the Assistant Commissioner responsible for the ATIP division indicating the department's record for that month. The graphic below reflects the department's record for this reporting period.



3. The ATIP Division should develop an ATI Training Plan for 2003-2004 for OPIs and ATIP Division staff and incorporate the introduction of the *User Manual* into the training provided to OPIs.

4. ATI training should be mandatory for all new managers as part of their orientation and periodic training updates should be provided to all managers.

   Action Taken: Dedicated training visits are now conducted at all five regions, at a two-tier level (line staff and senior managers) as well as throughout headquarters. The training includes presentations and discussion sessions in which the process manual has been introduced. ATIP training has also been introduced at the Cornwall facilities for all deputy and assistant wardens, focusing on levels of responsibilities, and has become a permanent part of the syllabus.

   Ongoing internal training and informal review sessions has been instrumental in bringing all staff to a level of expertise and developing consistency in the application of the Act. With the full support of senior management, resources have increased and staffing has stabilized, allowing for a developmental position as well as a full complement of experienced analysts. As a result of the more balanced workload, morale has also improved. To further enhance the overall situation, ATIPflow has been upgraded, and expanded training has been introduced for all staff and managers as an integral part of case management.

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 Parliamentary Relations and Communications review. At the same time, the Delegation Order should be reviewed to determine if further delegation is appropriate within the ATIP Division.

   Action Taken: A major change incorporated in the process was the parallel integration of the Communications and Parliamentary Affairs involvement at the outset of the review of records by the OPI. This is in contrast to being a specific step in the final approval process. Additionally, minor revisions have been made to the Delegation Order to provide added powers to the position of Deputy Director.

5. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	112	69
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	42	27
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	468	372
4.A	How many were processed within the 30-day statutory time limit?	219	263
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	128	6
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	76	4
	31-60 days:	23	1
	61-90 days:	11	1
	Over 91 days:	18	0
5.	How many were extended pursuant to section 9?	84	62
6.A	How many were processed within the extended time limit?	26	43
6.B	How many exceeded the extended time limit?	27	4
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	15	2
	31-60 days:	8	2
	61-90 days:	2	0
	Over 91 days:	2	0
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**2**

EXCERPT FROM COMMISSIONER'S RESPONSE TO STATUS REPORT

"Your positive findings and comments regarding our progress, as well as the recommendations you have made to maintain the efficiency of our service to citizens who make Access requests are appreciated. Our action plans responding to these new recommendations follow.

Recommendation #1: CSC set an objective for 2004-05 to maintain ideal compliance with the time requirements of the *Access to Information Act*.

Response: Subsequent to your review period ending in November 2003, CSC has maintained the ideal timeframe compliance rate. An objective contained in the Performance Agreement of the Director, Access to Information and Privacy, directs that this ideal level be maintained for 2004-05. In addition, the time frame compliance of all CSC Assistant Commissioners and Deputy Commissioners is monitored and action is taken where required.

Recommendation #2: CSC assess the impact and cost effectiveness of related information technologies, such as ATIPimage to further assist in maintaining ideal compliance of the *Access to Information Act*.

Response: The CSC Access to Information and Privacy Branch has made preliminary inquiries to other Departments which utilize ATIP Image in an effort to determine the advantages of using this technology in the CSC workplace. In view of the associated capital costs, and the unique demands experienced by CSC, continued examination of the utility of adopting this system is required. CSC will complete an examination of the potential impacts and cost effectiveness of the purchase and training of this system in the next six months.

As you have indicated, CSC has made significant strides to improve its provision of Access to Information services to Canadians over the past year through improved monitoring and accountability mechanisms, as well as increased staffing levels and a number of training initiatives. These advances will be maintained and improved upon wherever possible. We look forward to continuing to work closely with your officials to ensure the early identification of areas which may require improvement in the future."

Fisheries and Oceans Canada

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

For several years, a number of institutions were subject to review because of evidence of chronic difficult in meeting response deadlines. In his 1996-97 Annual Report to Parliament, the former information commissioner reported that delays in responding to access requests had reached crisis proportions.

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. 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

Initially, six institutions were the focus of this review, with six having since been added, including Fisheries and Oceans Canada (F&O). This then is a report of the review of Fisheries and Oceans Canada's performance for the period April 1 to November 30, 2003.

This Status 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 2003.

2. COMPLIANCE HISTORY

The Report Card of January 2001, the first year in which Fisheries and Oceans Canada was reviewed for compliance with the statutory time requirements of the *Access to Information Act*, reported a red alert grade of "F", with a 32.8%

new request to deemed-refusal ratio for the period April 1 to November 30, 2000. For the complete 2000-2001 fiscal year, the percentage rose to 38.7%.

The January 2002 Status Report, for the period from April 1 to November 30, 2001, reflected the new request to deemed-refusal ratio had actually increased to 42.2%, a red alert grade of "F", in contrast to the previous year. This report, as had the previous year's Report Card, made a number of recommendations to the department to assist with the achievement of substantial compliance with the *Access to Information Act*'s time requirements.

In the last review, January 2003, it was reported that Fisheries and Oceans Canada had achieved a very significant turnaround in its performance results for access requests in a deemed-refusal situation. For the period from April 1 to November 30, 2002, a grade of "A" was achieved and that constituted ideal compliance with the time requirements of the *Access to Information Act*. Further review confirmed that this level of compliance was maintained to the end of the fiscal year with the final statistics indicating a 1.03% of deemed refusals in relation to requests received. This is in stark contrast to previous years.

3. CURRENT STATUS AND FURTHER RECOMMENDATIONS

The department continues to maintain this remarkable turnaround in the deemed-refusal situation over the past three years resulting in ideal compliance with the time requirements of the *Access to Information Act*. The new request to deemed-refusal ratio was 1.9% for the period from April 1 to November 30, 2003, for a grade of "A".

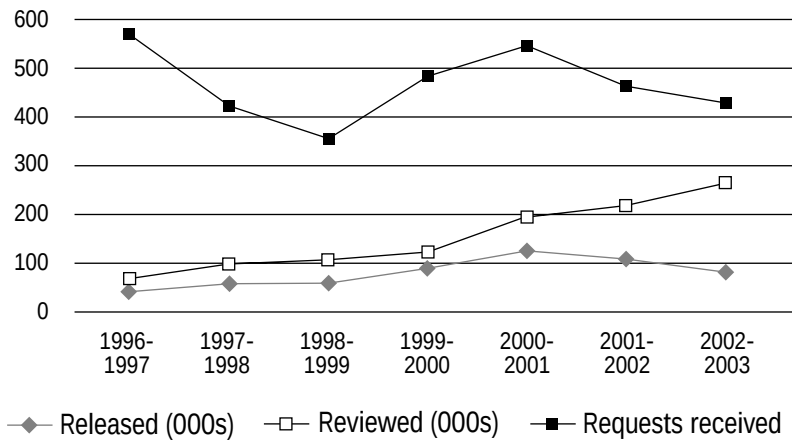
While this gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period, it does not take into consideration those requests carried over from the previous year, nor the number of requests already in a deemed-refusal status on April 1. In future reports, these figures will be taken into consideration; however, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the results of deemed refusals from April 1 to November 30, 2003, would be 3.9%, still a grade of "A".

Even though, a number of steps were taken after the Report Card was received in January 2001, the department continues to refine not only its procedures but also its structure.

A major reorganizing of the department in July 2003, for example, resulted in a change in the reporting mechanism whereby the ATIP Division now reports to the Executive Secretariat, which in turn comes directly under the DM. This provides a more direct line of command and in no way impedes the processing of records as the Coordinator has full delegated authority.

While this reorganization has had a direct benefit to the ATIP office, other departmental restructuring, the creating of area offices in addition to regional offices over the last couple of years, has added another source of records to be reviewed. This is evidenced in the following graph that indicates that, while the total number of requests has decreased, the actual number of pages reviewed has increased substantially.

Pages Released, Pages Reviewed and Requests Received per Fiscal-Year



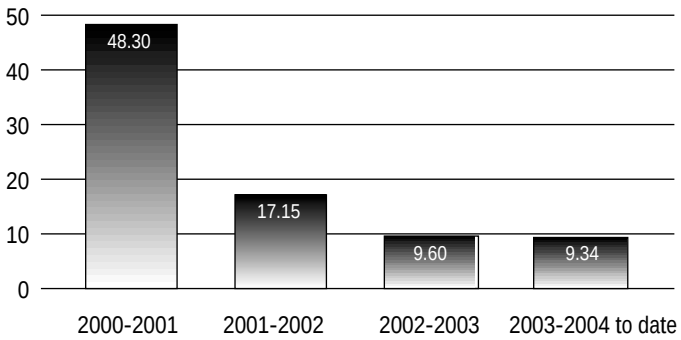
As reported last year, a number of programs had been implemented and have since been expanded or improved:

- The ATIP staff recruitment and retention program and classification review of the ATIP office staff has been a particular success. It has allowed the ATIP office to establish a number of levels within the office providing for promotion possibilities, focused training and an enhanced supervisory capacity. Not only has this increased the overall competency of the staff but has also improved morale.

- Other initiatives--the national training program for headquarters and regional staff and OPIs, and the introduction of follow-up communications to OPIs--have resulted in one of the most tangible benefits. By increasing the level of understanding of the Act and its requirements by the OPIs, the ATIP office has seen a dramatic improvement in the response times by OPIs. Another component of the process was the introduction of the 9- and 12-day memo, wherein the OPIs are provided a reminder one day prior to the initial due date of a response. If the records are not received or the OPI does not reply to the reminder, a follow-up is sent on day 12 with information copies

also provided to Senior Management. The practice, while providing the analyst with a most useful tool in monitoring response-time limits given to OPIs, also provides a management tool for the Coordinator to verify that the analysts were maintaining positive control of the flow of requests. The following graph demonstrates this most effectively. Three years ago, response times averaged over 48 days; the time has now been reduced to just over 9 days.

OPI Response Time (days)



While the human and functional aspects of the office have seen significant improvement, the introduction of technological enhancements has contributed significantly to the institution's ability to maintain its "A" grade of compliance.

The implementation of and expanded utilization of ATIPflow has provided ATIP management and analysts a comprehensive electronic tracking and case management system to track and control due dates for various parts of the access process. In addition, the introduction of ATIPimage has had a significant impact on the overall time spent on the review and preparation of records for release; hence, the ability to respond in a timely manner.

Although there has been tremendous improvement in the institution's ability to comply with the time requirements of the Act and the overall productivity of the office, there is a constant monitoring of procedures to further improve F&O's performance.

The following recommendations are made to support the efforts of F&O to sustain ideal compliance with time requirements of the *Access to Information Act* for the remainder of this fiscal year and beyond.

3.1 Objective for 2004-2005

The department has shown a commitment to make changes to support the reduction of access requests in a deemed-refusal situation and achieve ideal compliance with the time requirements of the *Access to Information Act*. F&O is encouraged to maintain a grade of "A" and set an objective for 2004-2005 of maintaining a request to deemed-refusal ratio of 5% or less.

Recommendation #1

F&O set an objective for 2004-2005 to maintain ideal compliance with the time requirements of the *Access to Information Act*.

3.2 Informal Access

F&O has expanded its use of the website to provide access to released records and other releasable material in a proactive manner and continues to identify and analyze situations where records may be provided as a matter of routine rather than through a request under the *Access to Information Act*. The department is encouraged to continue its review to provide greater access to clients through informal procedures without recourse to the formal access process under the *Access to Information Act*.

Recommendation #2

F&O is encouraged to continue its investigation of methods of improving informal access to information to the public.

4. STATUS OF 2003 RECOMMENDATIONS

In the January 2003 Status Report, recommendations were made to F&O to set objective to maintain ideal compliance with the time requirements of the Act. The actions and measures described above have enabled F&O to fully meet those objectives.

5. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	112	79
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	48	10
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	468	362
4.A	How many were processed within the 30-day statutory time limit?	302	217
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	5	2
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	3	1
	31-60 days:	1	1
	61-90 days:	1	0
	Over 91 days:	0	0
5.	How many were extended pursuant to section 9?	142	106
6.A	How many were processed within the extended time limit?	79	52
6.B	How many exceeded the extended time limit?	5	2
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	3	1
	31-60 days:	0	1
	61-90 days:	0	0
	Over 91 days:	2	0
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**3**

EXCERPT FROM DEPUTY MINISTER'S RESPONSE TO STATUS REPORT

"I am pleased that the Department has maintained an 'ideal compliance rate' for the second year in a row.

I appreciate that you have noted in your report the significant improvement in response time from the offices of primary interest (OPIs). The employees of this Department have worked diligently to ensure that documents subject to a request are provided to our ATIP Secretariat within the deadlines set out in our process. Without this improvement the Department would be unable to achieve such success. The recent recognition of our ATIP staff at the annual Treasury Board conference is a reflection on the great job being done by the Department as a whole.

Over the past few years your staff has worked closely with our ATIP Unit to resolve differences in a spirit of cooperation. This cooperation has significantly contributed to the level of success that the Department has enjoyed, as reported in recent years and I look forward to the continuation of this relationship to the mutual benefit of both parties."

Department of Foreign Affairs and International Trade

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

For several years, a number of institutions were subject to review because of evidence of chronic difficult in meeting response deadlines. In his 1996-97 Annual Report to Parliament, the former information commissioner reported that delays in responding to access requests had reached crisis proportions.

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. 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

2. COMPLIANCE HISTORY

In early 1999, the Office of the Information Commissioner issued a Report Card on the Department of Foreign Affairs and International Trade's (DFAIT) 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 1999 Report Card, the department received a red alert grade of "F" with a 34.9% request to deemed-refusal ratio for access requests received from April 1 to November 30, 1998.

In December 1999, the review assessed the status of the recommendations made in the Report Card and made further recommendations for measures to reduce

the number of requests in a deemed-refusal situation. At that time, the statistics showed that, from April 1 to November 30, 1999, the deemed-refusal ratio for access requests improved to 20.6%.

The progress in reducing the number of requests in a deemed-refusal situation regressed for the reporting period in 2000-2001; the deemed-refusal ratio moved back to 29.3%, or a red alert grade of "F" while the fiscal year to deemed-refusal ratio increased to 31.3%.

The January 2002 report noted that DFAIT had made substantial progress in meeting the time requirements of the *Access to Information Act* for the period from April 1 to November 30, 2001. The new request to deemed-refusal ratio improved to 17.7%, a grade of "D". Subsequently, the percentage of requests in a deemed-refusal situation increased to 22% for the 2001-2002 fiscal year that again constituted a grade of "F".

The January 2003 report indicated that DFAIT continued to make progress in reducing the number of requests that are answered beyond the time requirements of the *Access to Information Act*. DFAIT had achieved a grade of "B" with a new request to deemed-refusal ratio of 7.9% for the period from April 1 to November 30, 2002. This grade represented substantial progress by the department, although it degraded slightly for the full fiscal 2002-2003 to 10.1%, a grade of "C".

This report reviews the progress of DFAIT to come into substantial compliance with the time requirements of the *Access to Information Act* since the January 2003 Status Report. In addition, this report contains information on the status of the recommendations made that report.

3. CURRENT STATUS

For the period April 1 to November 30, 2003, DFAIT was unable to maintain the "B" grading of the past year, regressing with a new request to deemed-refusal ratio of 17%, for a grade of "D".

While this gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period, it does not take into consideration those requests carried over from the previous year, nor the number of requests already in a deemed-refusal status on April 1. To give a true indication of a department's performance, these figures will be taken into consideration in future reports. However, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the results for April 1 to November 30, 2003, would be 15%, retaining the grade of "D".

The fact that DFAIT was able to achieve the level of compliance that it had in the past year was attributed to the amount of overtime that was utilized over a concentrated timeframe. This year, those resources were not available. Additionally, the year did not get off to a good start for the ATIP staff: in April, the Director accepted a position elsewhere in the department and, in May, the Assistant Director left for training and subsequently left the division. It was further pointed out that, not only were the two managerial positions vacant, which necessitated two of the senior analysts to step up to fill those positions thereby reducing their output, there were also staff losses at the analyst level. The staffing level of 11 positions (there are two frozen positions) is hard pressed to meet the demands based on the volume and complexity of requests received. A vacant analyst's position was filled in August while the ATIP Director's position was filled by the incumbent in early September.

Though the responsibility for the ATIP function of the Passport Office (a Special Operating Agency) has always come under the control of DFAIT, there has been a significant increase in the number of privacy requests and the internal requests for advice and guidance on privacy matters.

With the introduction of the TBS Privacy Impact Assessment Policy in May 2002, the ATIP office was required to become involved in some significant department-wide projects being undertaken during the reporting period. Most of these projects were at the Passport Office and required active involvement throughout the summer of 2003, including participation in meetings and planning groups, etc., without additional resources being provided. Some of these projects are still ongoing.

The projects have incorporated issues surrounding the passport security initiatives, including facial recognition and biometrics information collection being developed in support of the Passport Office as well as the verification of vital statistics and information-sharing with provinces. Additional PIA-related projects over the year include assisting records management in the development of the RDIMS project, as well as all other departmental project PIAs and their implementation along with associated departmental stakeholder meetings.

The ATIP office is also involved in providing advice on an ever-increasing basis to departmental representatives responding to matters such as human resources initiatives and to petitions from the Office of the Auditor General on environmental issues related to activities in which the department is involved in some manner.

The department had to deal with a number of extraordinary high profile cases over the past year that resulted in complex access requests necessitating detailed operational involvement. While the actual request numbers do not

appear that high, over the same timeframe, the ATIP office was also involved in reviewing a large number of records in support of certain consular activities dealing with distressed Canadians abroad. Distressed Canadians include anyone who is arrested in a foreign country, lost their passport while abroad, was the victim of a criminal act or a myriad of circumstances that necessitated consular staff coming to their assistance and subsequently having to provide information to next of kin in Canada.

4. FUTURE CONSIDERATIONS AND FURTHER RECOMMENDATIONS

For the 2004-2005 fiscal year, planning is already in place for dedicated briefing sessions to departmental staff, a project that was begun in the fall of 2003 and credited by other divisions in the department as being informative and very useful. As well, training sessions for new ATIP staff have been developed, including on-the-job and interactive training as caseloads permit. Internal ATIP reorganization introducing a more comprehensive team approach has been introduced since October and is continually being reviewed.

A procedures manual has been developed, approved and implemented within the ATIP unit. This is an ongoing project, which is continuously being improved upon.

These initiatives should enhance the confidence level and consistency in processing to reflect an overall improvement in responding on time in the coming year. However, there are many other areas that remain to be improved.

This report makes the following recommendations to assist DFAIT in its efforts to maintain its progress in meeting the time requirements of the *Access to Information Act*.

4.1. Resources

The current staffing provides for 11 positions, which include three support staff, one Deputy Director and one Director. Of the remaining staff, 5 are dedicated to Access to Information and one of these is the senior ATIP officer. Two of the staff positions are rotational within the department. There are also three ATIP consultants, one of whom is dedicated to reviewing historical records. In light of the volume of work and increasing non-specific external tasks required of this unit, it would appear that the ATIP office is severely understaffed.

Recommendation #1

DFAIT conduct a staffing/funding review of the ATIP office with a view to increasing resources as required.

4.2. OPI Retrieval of Records

ATIPflow is still not being used to produce meaningful data on OPI actual versus allocated time for records retrieval. While the procedures manual notes that the OPI has seven days to provide either the documents or an estimate of number of hours to search for relevant documents, there does not appear to be any formal higher level involvement should this timeframe not be met. Although production meetings are held weekly, senior management must get involved where OPI responses are negatively impacting on the ability of the ATIP office to respond to requests in a timely manner. In that vein, the recommendations made last year remain.

Recommendation #2a

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

Recommendation #2b

DFAIT review the ATIPflow process for file control and data entry to determine how OPI information on allocated versus actual time taken to retrieve records can be routinely reported to OPIs and senior management.

4.3 Compliance Objective

Last year, the Commissioner's Office recommended that DFAIT set an objective of maintaining a grade of "B" that constitutes substantial compliance with the time requirements of the *Access to Information Act*. The department, however, was not able to attain that goal. Nevertheless, it is further encouraged to attain at least substantial compliance with the time requirements of the *Access to Information Act* for the fiscal year 2004-2005.

Recommendation #3

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

5. STATUS OF 2003 RECOMMENDATIONS

In January 2003, recommendations were made to DFAIT on measures to further reduce the number of access requests in a deemed-refusal situation. The action taken on each recommendation is described below, following the text of the recommendation.

Previous Recommendation #1

DFAIT set an objective of achieving ideal compliance with the time requirements of the *Access to Information Act* for 2003-2004.

Action Taken: DFAIT failed to maintain the previous year's grading of "B", resulting in this year's recommendations being made with a view to assisting the department in achieved at least a grade of "B" for 2004-2005.

Previous Recommendation #2

DFAIT conduct an analysis to determine the specific reasons for each request in a deemed-refusal situation where an extension under section 9 of the Act was taken for the period April 1 to December 30, 2002, to determine if measures can be instituted to achieve ideal compliance in 2003-2004.

Action Taken: No new initiatives were introduced over the past year to enhance the responses from OPIs, apart from the development of the procedures manual and expanded training sessions.

Previous Recommendation #3

Recommendation #3a

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

Recommendation #3b

DFAIT review the ATIPflow process for file control and data entry to determine how OPI information on allocated versus actual time taken to retrieve records can be routinely reported to OPIs and senior management.

Action Taken: Again, no specific initiatives have been put in place to date; however, with the introduction of the procedures manual, production meetings and expanded training sessions for departmental staff, it is anticipated that improvements will be reflected in next year's performance.

6. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	142	213
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	31	26
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	537	312
4.A	How many were processed within the 30-day statutory time limit?	170	122
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	4	8
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	1	6
	31-60 days:	2	2
	61-90 days:	1	0
	Over 91 days:	0	0
5.	How many were extended pursuant to section 9?	326	159
6.A	How many were processed within the extended time limit?	126	28
6.B	How many exceeded the extended time limit?	30	15
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	18	11
	31-60 days:	12	3
	61-90 days:	9	1
	Over 91 days:	2	0
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**30**

EXCERPT FROM DEPUTY MINISTER'S RESPONSE TO STATUS REPORT

"Since the commencement of your office's annual review of our performance in 1998, steps have been taken to improve our capacity and to strengthen our compliance. This included some additional resources, streamlining of processes, training and renewed awareness of obligations. Although our performance gradually improved to achieve substantial compliance in 2002 (Grade of B), we have regressed in 2003 to a Grade of D, which is unacceptable.

Although the number of requests received over the past 3 years remains relatively stable, the complexity of the requests has increased as has the number of pages being processed. Furthermore, the annual volume of consultations from other departments has increased to the point that it is now equivalent to the number of access requests processed. These consultations require comparable resources to direct requests, directly jeopardizing our ability to respond expeditiously.

We are also making every effort to respond to an increase in the number of requests received under the *Privacy Act*. Indicative of the growing public interest in and attention to privacy issues, there is a growing number of issues upon which the Access to Information and Privacy Protection Division has been required to provide advice to departmental officials and senior management, including consular and Passport services policy issues and the requirements of the Privacy Impact Assessment Policy.

The Department also continues to support, with the National Archives of Canada, a screening program to ensure that the maximum number of archives departmental files are declassified and available to researches and academics. Under this program, a total of 200,000 pages of information was reviewed this year. Informal access is also given to a unique outreach program which gives post-graduate students, university professors and scholars the ability to review screened files dealing with Canada's international relations. These efforts, while not recognized or captured under the aegis of formal access under the Act, represents a departmental commitment in support of the principles which underpin the Act.

Your Status Report on Access Requests confirms concerns that had already been identified internally. In order to deal more effectively with the processing of formal requests, we have undertaken a number of steps to ensure consistency in the quality of our responses while maximising the efficiency of operations. For example, last fall, we realigned our procedures to create a team structure to better share information within the unit and to ensure consistent quality control

measures. In addition, we provided training to 265 departmental officials. Although we believe that these actions have improved the overall quality of our responses and have increased departmental awareness, they have not resulted in improved turnaround times.

Consequently, we have decided to undertake an independent review of the Access to Information, Privacy and historical / screening functions in order to properly assess the organizational, human and financial resources elements involved in the process, along with accommodations and technology requirements. This review will focus on key functions and will identify actions to be taken to bring these functions in line with the objectives of the division, the directorate, the Department and the Acts. We intend to provide you with a copy of the results of this review along with the action plan upon its completion.

The recommendations made in the 2003 Report Card have been reviewed and the department agrees with all of them. They, along with the action plan arising from the evaluation, will assist the Department in identifying ways to build a stronger, sustained function…

I would like to thank you for the opportunity to comment on this report and to provide your office with our response. The Department recognizes its legal obligations under the *Access to Information Act* and it is our intention to develop solutions to the persistent deemed refusal issues identified in your Report."

Health Canada

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

For several years, a number of institutions were subject to review because of evidence of chronic difficult in meeting response deadlines. In his 1996-97 Annual Report to Parliament, the former information commissioner reported that delays in responding to access requests had reached crisis proportions.

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. 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

Initially, six institutions were the focus of this review, one being Health Canada (HCan).

This Status Report, for the period April 1 to November 30, 2003, reviews the continued progress of the department to maintain substantial compliance with the time requirements of the *Access to Information Act*. In addition, this report contains information on the status of the recommendations made in the Status Report of January 2003.

2. COMPLIANCE HISTORY

In the January 1999 Report Card, Health Canada 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, 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 following reporting years, with compliance ratios varying between 4.5% and 5% as in the last reporting period. However, the end of the 2002-2003 fiscal year found the department slipping to a 7.2% of deemed refusals, resulting in a grade of "B".

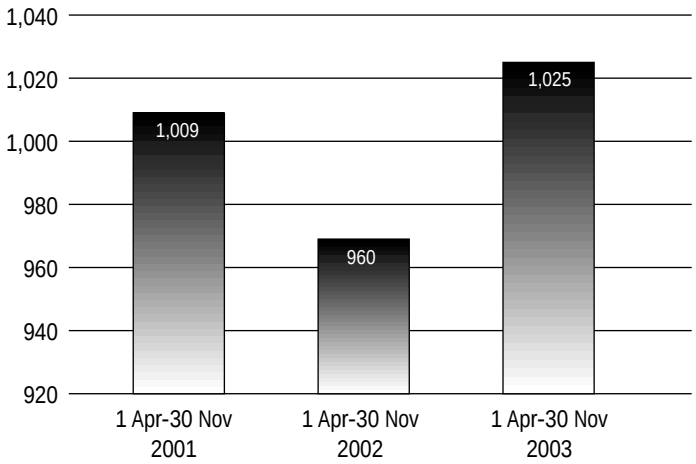
3. CURRENT STATUS

HCan this year has achieved a grade of "B"(5.4%), which signals substantial compliance with the *Access to Information Act*, for the time period covered by this report.

While this gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period, it does not take into consideration those requests carried over from the previous year, nor the number of requests already in a deemed-refusal status on April 1. In future reports, these figures will be taken into consideration; however, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the results of deemed refusals from April 1 to November 30, 2003, would be 6.0%, still a grade of "B".

This year's result is attributed directly to the dedication and professionalism of the ATIP staff of HCan. The challenges to maintaining this standard were considerable in that the ATIP office saw a higher-than-average turnover of staff. While the number of requests received in 2001-2002 had been the highest to date, indications are that this year will exceed that number. 2003 saw challenges, not the least being the SARS epidemic, resulting in many related access requests. All of these factors, combined with the need to conduct extensive and at times lengthy consultations with third parties and other government departments, put additional strain on the HCan ATIP resources. In addition, privacy requests have increased by 20%.

Requests Received



3.1 Objective for 2004-2005

ATIP management recognizes that the status quo cannot continue, especially with the current workload where staff members are in some cases working as many as 80 hours of overtime a month. In an attempt to address challenges, a business plan is being developed for presentation to senior management. With possible increases in staffing resources and upgrades to technology, it is anticipated that HCan should be able to maintain an ideal compliance.

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*.

In line with the constant review of the processing of requests, HCan may need to consider alternate methods of processing records, specifically the upgrading of ATIPflow with expanded training to all staff in its use. Furthermore, reducing the reliance on manually processing of records may ultimately ease the workload on analysts. One such method may be utilizing ATIPimage; many of the departments currently using this tool now see it as invaluable in meeting their compliance objectives.

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*.

4. STATUS OF 2003 RECOMMENDATIONS

In the January 2003 Status Report, recommendations were made to HCan to set objective to maintain ideal compliance with the time requirements of the Act. In principal, this objective has been met; nevertheless, all aspects of the process including the delegation authority are still open to review with a mind to enhance productivity. Specific initiatives include the introduction of a higher level review of processed records to ultimately expand the knowledge base, increase communication amongst the staff and improve consistency.

5. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	164	261
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	17	17
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	1,367	1,025
4.A	How many were processed within the 30-day statutory time limit?	874	560
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	31	17
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	22	15
	31-60 days:	6	1
	61-90 days:	1	0
	Over 91 days:	2	1
5.	How many were extended pursuant to section 9?	405	346
6.A	How many were processed within the extended time limit?	248	166
6.B	How many exceeded the extended time limit?	50	21
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	30	15
	31-60 days:	15	5
	61-90 days:	2	1
	Over 91 days:	3	0
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**17**

EXCERPT FROM DEPUTY MINISTER'S RESPONSE TO STATUS REPORT

"As you state in our report card, Health Canada ha[s] had a number of challenges in 2003. The Access to Information and Privacy (ATIP) Division, not unlike the Department as a whole, saw its own set of issues arise which have impacted our performance. Some of these issues have resulted in the decline of our grade from an "A" rating in previous years to a "B".

As departmental officials have indicated to your members, the ATIP Division is in a transition period. Health Canada's intake of formal requests under the Act has increased sharply and steadily over the last ten years. Requests received in fiscal year 1993-94, have jumped from 648 to a record high of 1,543 during this last reporting period. In line with your recommendation, the ATIP Division recently completed a business plan addressing resource implications. As a result, I am pleased to inform you that, effective immediately, $225,000 in salary has been reallocated to the ATIP Division. In addition, Health Canada has committed to modernizing the Division's technological tools, including the acquisition of the ATIP*image* (document imaging and severing software).

Coupled with the increase in resource allocation, the ATIP Division is also engaged in a detailed review of its internal practices, as well as of those within the Department which relate to the processing of requests to ensure consistency and proper application of the legislation, to improve the quality of responses and to identify efficiencies which could improve performance. During this transition period, I anticipate that we may experience a decline in our grade, however, I am confident that the changes will improve Health Canada's capacity to continue to meet the requirements of the Act over the long term.

I appreciate the opportunity for these exchanges with your office, and I would like to reiterate my personal commitment to the administration of the Act within Health Canada."

Human Resources Development Canada

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

For several years, a number of institutions were subject to review because of evidence of chronic difficult in meeting response deadlines. In his 1996-97 Annual Report to Parliament, the former information commissioner reported that delays in responding to access requests had reached crisis proportions.

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. 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

Initially, six institutions were the focus of this review, with six having since been added, including Human Resources Development Canada (HRDC). This, then, is a report of the review of Human Resources Development Canada's performance for the period April 1 to November 30, 2003.

This Status 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 2003.

2. COMPLIANCE HISTORY

Human Resources Development Canada was the first department to achieve a grade of "A" in its initial Report Card. In January 2000, HRDC reported that all access requests completed between April 1 and November 1, 1999, were

processed within the time requirements of the *Access to Information Act*. At that time, the department had in their words a "zero tolerance policy" for access requests in a deemed-refusal situation.

In fiscal year 2000-2001, two events created an extraordinary volume of access and privacy requests. A Grants and Contributions Audit Report generated a large volume of access requests. From a typical volume of approximately 450 requests, 1,443 access requests were processed. In addition, events around the Longitudinal Files generated some 70,000 privacy requests. The volume of requests overwhelmed the department's access process and the Access to Information and Privacy Directorate. At one point, 150 additional employees were working in two shifts to process requests.

In fiscal year 2000-2001, the new request to deemed-refusal ratio was 53.4%. In fiscal year 2001-2002, the ratio was 39.5%. In each of these fiscal years, the ratio represented a grade of "F".

One response to the high volume of requests and processing time constraints was the creation of a Review Committee to ensure that the information to be disclosed for an access request was consistent with the information requested. Each request was reviewed as part of the access process but independent from the ATIP Directorate for what ended up to be essentially a communications review. The added review resulted in delays to the access process and access requests in a deemed-refusal situation. Recently, the review group–the Analysis Unit–was relocated to the ATIP Directorate.

April 1 to November 30, 2002, saw HRDC receive a grade of "D", for a new request to deemed-refusal ratio of 19.7%. This was an improvement from the grade of "F" for the new request to deemed-refusal ratio for the previous two fiscal years. However, for the full fiscal year, that grading once again sank to a ratio of 32.7% or a grade of "F".

3. CURRENT STATUS

The department continues to struggle in attaining an acceptable standard for the deemed-refusal ratio. The new request to deemed-refusal ratio remains at 39.2% for the period from April 1 to November 30, 2003, for a grade of "F".

This gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period; however, it does not take into consideration those requests carried over from the previous year, nor the number of requests already in a deemed-refusal status on April 1. In future reports, these figures will be taken into consideration; however, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the ratio of deemed refusals from April 1 to November 30, 2003, would be 40.2%, still a grade of "F".

During the course of the interview, the Director cited a number of activities over the past year that adversely affected the Division's performance.

- 2003 saw a major reorganization take place in HRDC. A department-wide Corporate Services review resulted in a number of divisions being realigned and restructured, including the Access to Information Division. This reorganization also realigned regional units, affecting timely OPI identification. This was particularly troublesome where responsibilities moved to regional divisions without the transfer of personnel. A considerable amount of training had to take place resulting in a slowdown of services and responses.

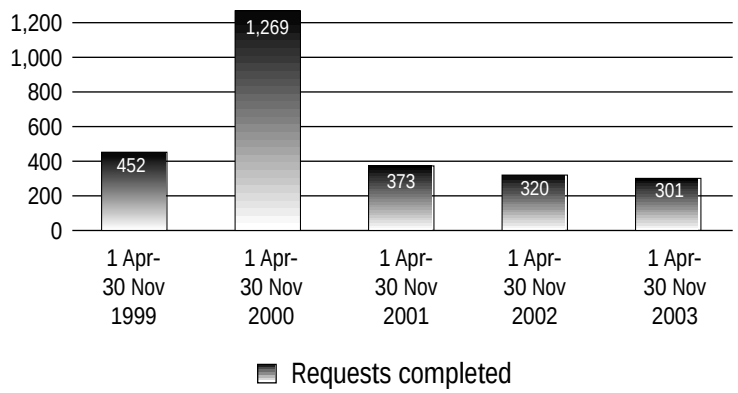
- The volume of requests in concert with the transition, and the fact that many of these requests were very complex in nature involving a large number of pages, impacted negatively on the overall process in meeting timeframes. The number of pages reviewed during the reporting period (April 1 to November 30) was approximately twice as much as in each of the two previous years for the same period. There are 33 FTE's administering both Access and Privacy Acts.

While the transition has resulted in some disruption to the ATIP operation, some aspects have had a positive effect as noted below:

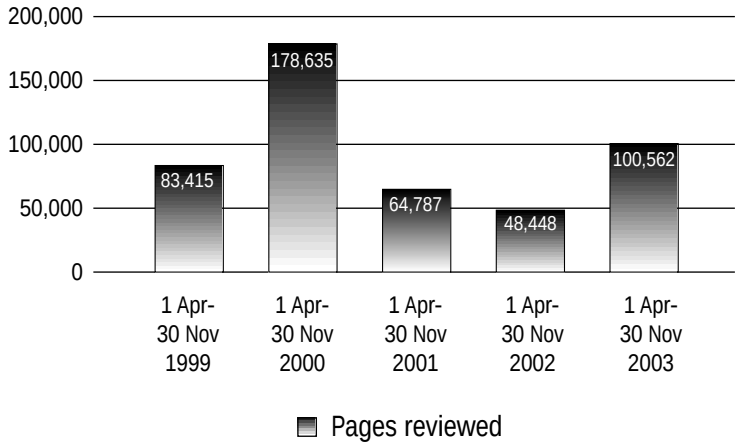
- The ATIP Division was moved under the responsibility of Communications. This move had positive effects on the access process as the ADM responsible for Legislative Requirements now also had the responsibility for Communications, leading to an increased promotion of the ATI Act, a streamlining of the process, and a decrease in the need for communications activities.

The workload and resulting deemed-refusals results is depicted in the following charts:

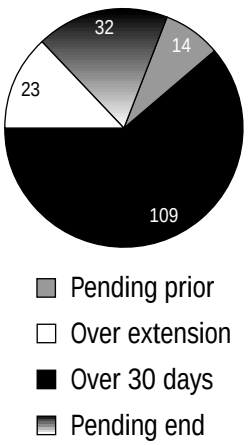
Request History



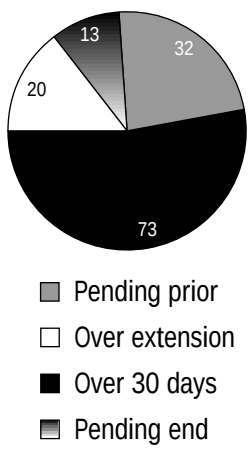
Resulting Workload



Deemed Refusals Apr. 1, 2002 to Mar. 31, 2003



Deemed Refusals Apr. 1, 2003 to Nov. 30, 2003



4. FUTURE CONSIDERATIONS AND FURTHER RECOMMENDATIONS

Notwithstanding the internal issues, ongoing Federal Government restructuring involving HRDC and other departments will necessitate a considerable realignment of functions and responsibilities. What impact this will have on HRDC's ability to improve its performance in the new fiscal year is only speculative at best.

However, recognizing the necessity to monitor performance, the division has continually reviewed its workload. While there had been fairly consistent improvement in response times, the third-quarter of the past year saw a decline associated with the transition. To bring the newly appointed OPIs and their liaison staff up to a level of understanding, a one-week in house ATIP training program has been put in place.

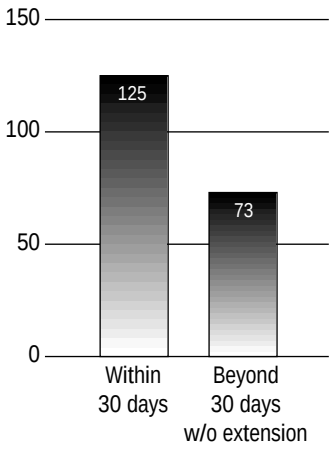
It should be noted that HRDC no longer exists. On December 12, 2003, HRDC was divided into two departments: Social Development Canada and Human Resources and Skills Development Canada. This has lead to the ATIP Directorate being divided into two distinct entities, one for each department. Further, the Analysis Section of the former HRDC ATIP Directorate has been integrated into the Operations Section for each department. This integration, the quarterly oversight report, as well as the Directorate's continuous success in streamlining the process to remove sign-offs in several instances, should contribute to increase compliance with the time limits established in the Act by both departments.

A number of other initiatives have or are being introduced, including:

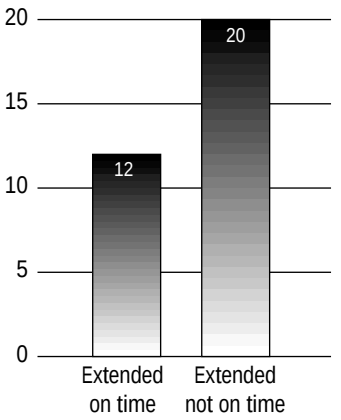
- a dynamic tracking system for regional and executive heads
- the development of guidelines regarding the collecting of records appropriate to a request, as well as clarification on analyzing requests, and OPIs roles and responsibilities
- improved assistance by the ATIP staff for OPIs in their role in review and recommendations.

Each ADM has an ATIP liaison staff member. A meeting is held every two weeks to follow-up active requests in addition to the oversight report. Additional reports have been initiated to identify ADM level responsibilities in relation to requests including a performance review in responding to taskings, ATIP process performance and time spent in follow-up approval.

Requests Processed Apr. 1, 2002 to Nov. 30, 2003



198 completed requests



46 extended requests (14 extended requests still active)

In light of the fact that 37% of completed requests without extensions did not meet the time requirements of the Act, some review of the process must be instituted whereby better control is maintained of the timely processing of requests. The recommendation made last year must be made again.

Recommendation #1

The ATIP Director is directly responsible for ensuring compliance with the *Access to Information Act* and should continue to take a strong leadership role in establishing a culture of compliance throughout HRDC. Such a role requires the unwavering support and endorsement of the Minister and the Deputy Minister. The department should reinstate its exemplary "zero tolerance" policy for deemed refusals.

Further training is planned on an annual basis whereby ATIP staff will be going out to regions as well as providing regular in-house training for new OPIs, their staff, contacts and managers.

Recommendation #2

HRDC set an objective for 2004-2005 to attain at a minimum substantial compliance with the time requirements of the *Access to Information Act*.

5. 2003 RECOMMENDATIONS

As part of this report, the recommendations in the January 2003 Report were reviewed to determine their status. Action taken on the previous recommendation follows the text of the recommendation.

Previous Recommendations #1 and #2

The ATIP Director is directly responsible for ensuring compliance with the *Access to Information Act* and should continue to take a strong leadership role in establishing a culture of compliance throughout HRDC. Such a role requires the unwavering support and endorsement of the Minister and the Deputy Minister. The department should reinstate its exemplary "zero tolerance" policy for deemed refusals.

The ATIP Director provide for Senior Management's approval an ATI Improvement Plan with an objective of regaining ideal compliance with the time requirements of the *Access to Information Act* in 2003-2004.

Action Taken: The action plan has been submitted to Senior Management focusing on timelines in anticipation of improved performance for the 2004-2005 timeframe, which incorporates the following:

- The oversight report
- ADM originated lateral guidelines on responsibilities and roles to all other ADMs and regions
- Additional training
- ATIP liaison officers response sheet introduced to ensure consistency and clarify status on records at issue.

Previous Recommendation #3

HRDC institute an access process that does not contain multiple sign-offs and revise the Delegation Order to clearly show that the ATIP Director and officers have delegated authority without reference to other departmental officials for decisions made under the *Access to Information Act*.

Action Taken: The Delegation Authority has been amended to remove redundancies and streamline the process including the removal of the sign-off process in several instances.

Previous Recommendations #4a and #4b

4a - HRDC review the tasks assigned to the Analysis Unit to eliminate any duplication of work within the ATIP Directorate.

4b -HRDC take measures to reduce the actual time taken to complete communications activities to the allotted time.

Action Taken: A review has been conducted of the two functions of the ATIP unit. This review did not identify any major duplication but did improve the process for identification of those types of requests requiring briefings, etc., to management while fast-tracking routine requests.

Previous Recommendation #5

HRDC as a component of an ATI Improvement Plan investigate methods of providing informal access to information to the public and provide a copy of the resulting report to the Office of the Information Commissioner.

Action Taken: Lists of Grants and Contributions are now being placed on the Internet after an ATIP review, on a routine basis. Additional records include audits, evaluations, call-ups, manuals and guidelines; these are now available to the public. This is continually being reviewed for additional informal releases. This has had a twofold benefit: reducing numerous routine requests of the past while the requests that are now coming in are very focused and specific and less time-consuming to identify and task.

Previous Recommendation #6

HRDC develop in an ATI Improvement Plan measures to improve the performance of participants in the access process who are not meeting their responsibilities for complying with HRDC's time allocation for processing access requests.

Action Taken: Quarterly oversight reports have been introduced to highlight divisional and regional performance in response times and processing.

6. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	65	73
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	14	32
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	501	270
4.A	How many were processed within the 30-day statutory time limit?	271	125
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	109	73
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	90	70
	31-60 days:	13	3
	61-90 days:	2	0
	Over 91 days:	4	0
5.	How many were extended pursuant to section 9?	88	46
6.A	How many were processed within the extended time limit?	26	12
6.B	How many exceeded the extended time limit?	23	20
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	14	14
	31-60 days:	5	5
	61-90 days:	1	1
	Over 91 days:	3	0
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**13**

EXCERPT FROM DEPUTY MINISTER'S (HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA) RESPONSE TO STATUS REPORT

"I appreciate your indicating that the department has taken action on all your recommendations from last year. In addition, as acknowledged in the report card, HRDC underwent major reorganizations and the workload in the Access to Information and Privacy Directorate was considerable last year in comparison with the previous two. Your understanding and support in this matter is valued.

We believe that your current recommendations, in addition to Human Resources and Skills Development Canada's evolving improvement plan, including the establishment of the zero-tolerance policy for late responses, will have a beneficial impact on my department's compliance with the response deadlines."

EXCERPT FROM DEPUTY MINISTER'S (SOCIAL DEVELOPMENT CANADA) RESPONSE TO STATUS REPORT

"I appreciate your indicating that the Department has taken action on all your recommendations from last year. In addition, as acknowledged in the report card, HRDC underwent major reorganization and the workload in the Access to Information and Privacy Directorate was considerable last year in comparison with the two previous ones.

We believe that your current recommendations, in addition to Social Development Canada's (SDC) commitment to handle requests diligently, including the establishment of a zero-tolerance policy for late responses will have a beneficial impact on my Department's compliance with the response deadlines.

In closing, I wish to take this opportunity to express that Social Development Canada takes this matter very seriously."

Industry Canada

Report card on compliance with response deadlines under the *Access to Information Act*

A. REPORT—January 2004

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.

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.

Third 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* [the 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 coordination 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

For several years, the Office of the Information Commissioner has received complaints from requesters about requests in a deemed-refusal situation. It is likely that, across government, the number of complaints on requests in a deemed-refusal situation represents only a portion of the actual number of requests processed outside of the time requirements of the *Access to Information Act*. The unacceptable high level of requests in a deemed-refusal situation has been illustrated in previous Report Cards issued since 1999 by the Commissioner's Office.

As part of the proactive mandate of the Commissioner's Office, each year a department (or departments) is selected for review. The review is conducted to determine the extent to which the department is meeting its responsibilities for complying with the statutory timeframes for processing access requests established by the *Access to Information Act*.

Industry Canada was selected this year for review. The department has been one of a number of institutions subject to review because of evidence of chronic difficulty in meeting response deadlines. When the Commissioner's Office receives a high number of deemed-refusal complaints about a department, it may be symptomatic of a greater response deadline problem within the department.

III. Grading Standard

This Report Card contains the results of the Information Commissioner's review of IC's performance statistics from April 1 to November 30, 2003.

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. IC is assessed in this Report Card 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

On this grading scale, IC rates "F" *. Its performance is unacceptable. [This fiscal year to November 30, 2003, the new request to deemed-refusal ratio is 25%.]

Part A of the report consists of:

- 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
- A set of recommendations to assist the department.

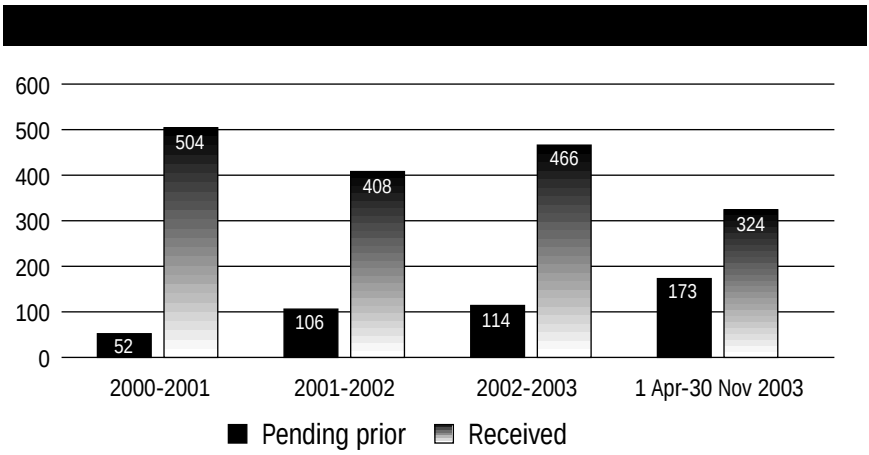
Attached to the report (Part B) are the various questionnaires and responses, which formed the basis for the grading, observations and recommendations in this Report Card.

* This grade solely reflects on the department's performance in meeting response deadlines to November 30, 2003. It is not a measure of the department's performance in the application of exemptions. In general, IC applies the exemption provisions of the Act professionally and with restraint.

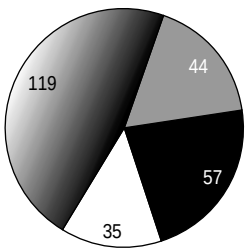
IV. Statistical Information

1. Requests

These charts present a graphic representation of IC's request backlog.

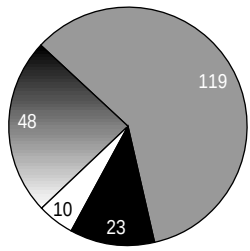


Deemed Refusals Apr. 1, 2002 to Mar. 31, 2003



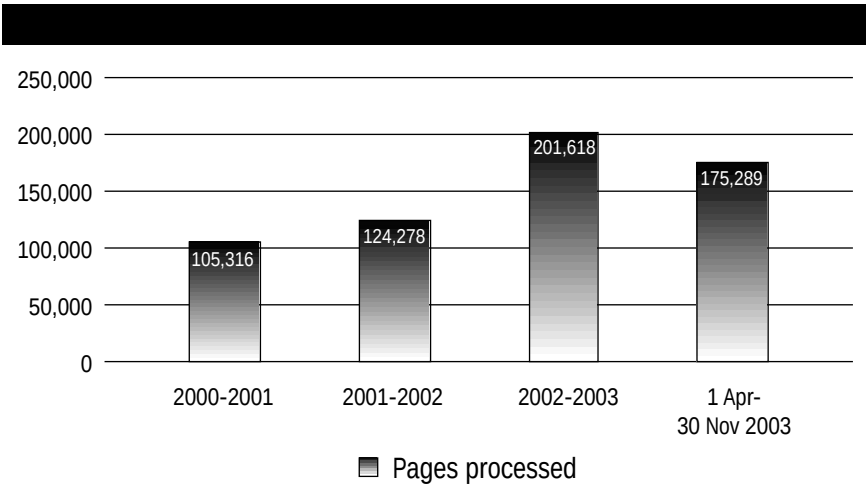
Pending prior
Over extension
Over 30 days
Pending end

Deemed Refusals Apr. 1, 2003 to Nov. 30, 2003



Pending prior
Over extension
Over 30 days
Pending end

The workload in pages processed is projected in the following chart:



At the outset of the 2002-2003 fiscal year, IC's ATIP Office, known as Information and Privacy Rights Administration (IPRA), had 44 outstanding requests which were already in a deemed-refusal situation. The 2003-2004 fiscal year shows an increasing backlog at the start of the year with outstanding requests of which 119 are in a deemed-refusal situation.

With 466 new requests received in the 2002-2003 fiscal period and 324 new requests received in 2003-2004 to November 30, a trend of an increasing backlog of requests in a deemed-refusal situation at the start of the year represents a burden to IPRA. Non-compliance considerations aside, this backlog must be eliminated.

The time taken to complete new requests, however, does reflect some positive efforts to get the backlog under control. Nonetheless, the number of requests not processed within the time constraints is too high especially in relation to those completed within the legislated time limits.

- In 2002-2003, processing times for 57 requests completed beyond the 30-day statutory limit without an extension were:
  - (52.6%) took an additional 1-30 days to complete
  - (15.8%) took between 31 to 60 additional days
  - (8.8%) took between 61 to 90 additional days
  - (22.8%) were completed in over 90 additional days

- From April 1 to November 30, 2003, additional processing times for 23 non-extended new requests were:
  - (73.9%) took an additional 1-30 days
  - (8.7%) took between 31 to 60 additional days
  - (13.0%) took between 31 to 90 additional days
  - (4.3%) were completed in over 90 additional days

- For extensions taken and not met, the following time delays occurred:

In 2002-2003, of the 131 time extensions, 35 (26.7%) exceeded the extension of time as follows:

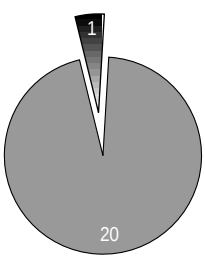
- (57.1%) took an additional 1-30 days
- (11.4%) took between 31-60 additional days
- (5.7%) took between 61-90 additional days
- (25.7%) were completed in over 90 additional days

- For completed requests, received from April 1 to November 30, 2003, of the 125 requests that were extended, 10 requests (8%) exceeded the extension of time as follows:
  - (60%) took an additional 1-30 days
  - (20%) took between 31-60 additional days
  - (10%) took between 61-90 additional days
  - (10%) were completed in over 90 additional days

As of November 30, 2003, 48 unfinished new requests were in a deemed-refusal situation. The duration of time beyond the time requirements of the Act for these outstanding requests is unknown.

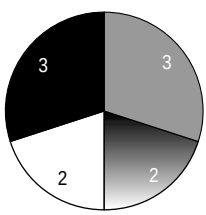
2. Complaints—Deemed Refusals

2002-2003



Resolved
Ongoing

April 1 - November 30, 2003



Resolved
Ongoing
Discontinued
Cancelled

In 2002-2003, the Office of the Information Commissioner received 21 deemed-refusal complaints against IC of which 20 (95%) of the completed complaints were upheld (resolved).

From April 1 to November 30, 2003, the Information Commissioner's Office received 10 deemed-refusal complaints, 2 of which were discontinued plus 3 that were cancelled. Of the 3 completed complaints, all (100%) were upheld (resolved).

3. ATI Office—Staff

The processing of access requests is the responsibility of IPRA under the direction of the Director. The office is also responsible for processing requests under the *Privacy Act*. In addition, the IC ATIP Office provides general advice and basic administrative control of Access to Information requests received by the Ethics Counsellor, in the form of case tracking and correspondence.

At the onset of this reporting period, the staffing level of IPRA was comprised of 13 employees including the Director. This was increased in August 2003 to 15. The current complement includes 7 experienced ATIP advisors, 3 analysts in developmental or other non-clerical positions and 2 administrative support positions, all dedicated to ATI. There are currently five vacant positions. At no time over the past three years has the IPRA been fully staffed. Attempts have been ongoing to fill the vacant positions through secondments, assignments / deployments and the competitive process. Additionally, consultants have been utilized when financially possible.

4. ATI Office—Budget

IPRA salary budget for 2003-2004 is $700,000 or 15 full time employees (FTEs). The 2002-2003 budget was $511,482 for 11 person years and the 2001-2002 salary budget was $410,774 for 9 person years.

The IPRA operating budget for 2003-2004 is $206,327. For 2002-2003, the budget was $286,404 and for 2001-2002 it was $198,176.

Between $10,000 and $15,000 has been budgeted annually for ATIP staff training. The Director along with legal counsel have conducted training for departmental organizations and the costs have been incorporated in IPRA's operating budget. The Director has also conducted tailored ATIP information sessions to departmental officials.

5. Allotted Times for Request Processing

The 30-day statutory time limit in the *Access to Information Act* allows 20 working days for processing access requests where an extension is not claimed. IC's current planned turnaround times are listed below. The processing model conforms to the Act's time requirements and allows 22 working days to respond to a request (without an extension).

ATIP OFFICE MILESTONES	Working Days
Receipt IPRA/Review by Dir/Senior Advisor/Advisor Assigned	Day 1-2
Call-out to sectors/Notice to Communications Branch * (CMB)/Request for QP card and/or other communications material	Day 1-2
Receipt of fee estimate from Sector	Day 3-5
Receipt of records/recommendations from Sector (OPI)	Day 5-8
Records/recommendations reviewed by Advisors(provides time for further consultation with Sectors/obtain missing records/prepare final ATIP recommendation on releases/exemptions of records (advisory)/scanning documents and processing)	Day 9 to 13
1st review by Senior ATIP Advisor & Final review/approval by ATIP Director	Day 13-14 (2 days)
Provide to CMB – Executive Services (re finalize QP card)	Day 15-16 (2 days maximum)
Circulate to Senior General Counsel (Bus. Law) and MINO for information	Day 16 – 22 - 7 days provided (may be less depending on legal due date)
Provide response to applicant	Day 22

OTHER ACTIVITIES	Impact on Calendar Days
Consultations & extensions required - third party (TP) - other government departments	Within the first 30 calendar days - 60 days maximum (calendar days) - 30 calendar days on average (will depend on the volume of records and number of parties)
Receipt of replies to consultations - third parties - other government departments	 - 20 days - 10 to 20 days
2nd review of TP representations (response to consultations)	10 days
Negotiations with third parties	20 days

* For requests deemed of interest to the Minister's Office

V. Sources of Delay

The Report Card was initiated as a result of the number of complaints received leading up to this period and the number of requests in a deemed refusal identified by the department. The situation had gotten to the point that the Information Commissioner self-initiated a complaint to investigate 111 requests that were in a deemed-refusal situation at the end of FY 2002-2003. There appears to be a number of factors that contribute to the delay problem at IC.

This Report Card is based on the deemed-refusal situation, as it existed during the reporting period of April 1 to November 30, 2003. However, the issue of delays and deemed refusals has been a concern of Industry Canada and, in an effort to identify and improve the department's performance, a departmental audit was conducted in September 2002. IC has addressed some of the observations and begun implementing a number of the recommendations contained in the audit in order to improve compliance with the time restraints of the Act. For example, additional funding for resources was approved and staffing is being finalized. ATIP electronic tools and equipment were also updated to assist IPRA employees in meeting their obligations. IC has already seen improvements on the processing of records as a result of governmental reorganization that occurred last fall. However, the comparison of statistical information on deemed refusals on the "Pre-Interview Self-Audit Questionnaire" (Section B II) indicates that there is still some work to do.

1. ATIP Office

The access process includes a number of steps in IPRA, which is staffed with dedicated employees. The program is supported by automated processes that enhance efficiency and provide the necessary tools for performance measurement and reports. However, while workload volume has increased considerably, ATIP resources have not. As noted in the audit review, a workload comparison found the IC ATIP workload to be almost double that of other departments reviewed for comparative purposes.

The processing of the vast number of requests involves considerable third-party consultations and, because of the nature of the department, there are usually numerous third parties involved. The large workload of each advisor puts considerable strain on the limited number of experienced advisors to adequately fulfill the consultative process within the legislative timeframe allowed. Even with the provision extensions, there is often such an overlap of files being processed that individual milestones are not met. Anticipated staffing should be completed by April 2004.

This burden of excessive workload was recognized by the audit, and the requirement for additional resources was one of the primary recommendations. Two additional positions were authorized in August 2003. Efforts to fill those positions, as well as the three positions that were already vacant, on a permanent basis, are ongoing as noted earlier in this report.

2. Ministerial Involvement

Routine files are processed and approved with IPRA. The departmental milestone chart above reflects that, once a file deemed of interest to the Minister's Office has been processed, it is sent to the Senior General Counsel then to the MINO for information. The process chart indicates up to seven days may be necessary for this level of review. However, records show that, over the past four years, some records have remained in this review stage for as long as three months. It must be noted that, since the new Minister has arrived, the number of files so tagged has been reduced significantly, and the seven-day turnaround is being respected.

There is a need to reinforce at all levels of staffing that the timelines outlined in the departmental milestones must be adhered to in order for the department to improve its deemed-refusal performance.

3. Approval Delegation

The IC Delegation Order establishes the authority and process for making recommendations and decisions on access requests. The Delegation Order is currently being revised due to the restructuring of the Office of the Ethics Counsellor with little effect expected on the ATIP Office directly. The current and new Delegation Order provides full delegation authority to the Director, IPRA.

4. Communications Function

The Director states that the consultation with the Communications Branch is done in parallel with the request processing, with a notice to the CMB very early in the process. This is done prior to the file being sent to the Minister's Office. While that is the formal process, indications are that, over the past two years especially, there has been considerable involvement in the review / approval process by the Minister's Office. Efforts to highlight delays in file processing apparently had little effect and was a substantial contributor to the overall record of deemed refusals for at least the earlier part of the current reporting period. Ministerial changes and the resulting adherence to the modified formal process have resulted in positive improvements and indications are that this will continue to improve over the next year.

5. Operational Areas (OPIs)

OPIs are required to search for and retrieve records to respond to access requests. The OPIs are required to provide records to IPRA within 5 to 8 working days. The Director, IPRA, believes that the delivery of records from the OPIs has impacted somewhat in the overall poor performance in meeting the time requirement of the Act. There is insufficient data to objectively measure this fact against the performance. The Access to Information Review Task Force in its report *Access to Information: Making It Work* recommended that responsibilities related to access to information and information management be included in the job descriptions of officers and managers.

6. Training

For OPIs to complete their part of the access process, ATI training and documented procedures including timelines are required on an ongoing basis. IPRA staff must keep current on developments in the interpretation of the *Access to Information Act*. ATIP staff are provided the opportunity to attend various training sessions and information sessions provided both commercially and by Treasury Board as well as the annual CAPA organized events. IPRA Office is structured into teams, whereby junior and inexperienced IPRA employees are paired with a senior advisor (team leader). The team leader becomes a coach and advisor assisting their team member in their development and training, be it the application of the legislation as well as the department. Although this is an ongoing exercise, on average a new employee takes about 12-18 months to acquire sound knowledge about Industry Canada. However, the high number of inexperienced analysts puts added pressure on the Director to ensure that IPRA employees have the appropriate level of guidance and the right tools to do their work and meet their obligations.

OPIs expect strong support from IPRA in training to understand precisely what their responsibilities are under the *Access to Information Act*, particularly with respect to timelines and extensions. In addition, the OPIs need procedural and instructional information on how to carry out tasks assigned to them as part of the process for responding to access requests. IPRA has produced a User Manual for OPIs for the *Access to Information Act*. IPRA has simplified and condensed its User Manual into practical guidelines, which are provided to OPIs with every request. These guidelines provide useful and practical tips on the responsibilities and how to respond to access requests.

IPRA is in the best position to identify training priorities and needs. IPRA understands the level of knowledge of OPIs on the *Access to Information Act* through interaction on access requests including reasons for deemed-refusal situations. The office is aware of complaints about problems in meeting the requirements of the Act and is aware of departmental issues that may impact on

the Act. ATIP training is provided upon request and through general sessions. Once staffing is completed with IPRA, a national ATIP awareness and training plan will be developed and formalized for departmental officials.

IPRA should also develop a Training Plan for staff in the office. The plan could be based on an assessment of the work requirements of IPRA in dealing with access requests and complaint results from the Office of the Information Commissioner to identify skill gaps. Team Leaders within IPRA have more responsibility in the training of their team members. Overall, ATIP business approaches and structures are kept simple and shared with IPRA employees. Each employee is required to prepare their own training plan in conjunction with the Director and Team Leader.

7. Consultations

The nature of the function of Industry Canada and the resulting access requests necessitate numerous consultations with other government departments as well as third parties. Through the course of processing many of these requests, the Director has stated that an informal consultation mechanism is utilized where possible. Because of the high volume of requests and the large number of consultations required, she is of the opinion that this allows her office to fulfill her response obligations while better managing the workload.

The consultative process, especially as it relates to third parties, is clearly outlined in the Act and does not allow for variances. At present, the informal process appears to fall short when the third party either does not respond in a timely fashion or does not fully agree with the release of their information. In many cases, this necessitates the introduction of formal consultations following the provisions of the Act and, by this time, not only has the original due date been missed but so has any extension.

8. Extensions

Hand-in-hand with the consultative process is the invoking of extensions to enable departments to complete the necessary consultations with third parties and other government departments or organizations as necessary. When these extensions are taken, the timelines and due dates must be monitored to ensure they are adhered to. ATIPflow, the tracking system used by most departments as well as IC, provides a fairly comprehensive BF system, but it must be followed. While it is appreciated that the workload experienced over the past few years has impacted heavily on the experience levels of the ATIP staff, the Director must ensure that the analysts are not only trained on the systems at their disposal but that deadlines are met.

VI. Management Response to the Problem of Delay

The ATIP Director has been working over the past year to improve staffing and departmental understanding of the requirements of the Act. Staffing increases have been approved and actions are currently underway to fill the vacancies that have been created. The department is channelling more financial resources into staffing in IPRA.

There are other changes in development or planned that are expected to result in improved performance and a reduction in the number of access requests in a deemed-refusal situation. To date, IPRA has prepared ATI guidelines, which should improve consistency, ensure adherence to IC ATI policies, and speed the learning program for new staff and OPIs.

VII. Recommendations

There are a number of departments that have found themselves in an "F" grade, red alert situation, with regard to the new access request to deemed-refusal ratio. Through deliberate commitment, well-planned and executed measures and in timeframes as short as two years, other departments have attained substantial and ideal compliance. With these possibilities in mind, this review recommends the following:

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.

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.

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

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

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.

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.

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.

8. The manner in which consultations are conducted, especially 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.

B. BASIS OF REPORT

I. Interview with IC's ATIP Director

On January 22 and 23, 2003, IC's ATIP Director was interviewed for the purpose of this Report Card.

II. IC—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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	114	173
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	44	119
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	466	324
4.A	How many were processed within the 30-day statutory time limit?	208	131
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	57	23
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	30	17
	31-60 days:	9	2
	61-90 days:	5	3
	Over 91 days:	13	1
5.	How many were extended pursuant to section 9?	131	125
6.A	How many were processed within the extended time limit?	29	25
6.B	How many exceeded the extended time limit?	35	10
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	20	6
	31-60 days:	4	2
	61-90 days:	2	1
	Over 91 days:	9	1
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**48**

II. IC—PRE-INTERVIEW SELF AUDIT QUESTIONNAIRE (continued)

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:
	Requests that involve multiple consultations (largely third parties) and volume. Subject matters are diverse and complex. Difficulties may arise when trying to ensure that legal extensions are adequate to complete requests. A large component involves the time required to oversee, handle and monitor the administration, follow-up and tracking of these consultations, for example, monitoring and tracking 150 third-party consultations on one file alone. This is particularly challenging when it must also be completed within legally prescribed delays (as described in sections 27/28 of the Act).
	THANK YOU FOR COMPLETING THIS QUESTIONNAIRE

EXCERPT FROM THE DEPUTY MINISTER'S RESPONSE TO REPORT CARD

"The Minister and I fully support Industry Canada's Access to Information program and our common goal is to ensure that Industry Canada improve its response time under the Access to Information Act.

Industry Canada recognizes and takes seriously its obligations under the legislation and as such, every effort is being made to improve the department's response time in compliance with the Act. In fact, the department has already successfully implemented a number of measures which have resulted in a significant improvement in its compliance. Some of the actions taken include increasing the resource base for the ATIP Office, streamlining some of the processes, and delivering more awareness sessions to departmental officials.

Please rest assured that Industry Canada will review and give careful consideration to your recommendations. As noted above, many of these recommendations are being implemented. We look forward to providing you with a more detailed response concerning both the recommendations and action undertaken by the department."

Department of National Defence

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

For several years, a number of institutions were subject to review because of evidence of chronic difficulty in meeting response deadlines. In his 1996-97 Annual Report to Parliament, the former information commissioner reported that delays in responding to access requests had reached crisis proportions.

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. 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

2. COMPLIANCE HISTORY

In January 1999, the Office of the Information Commissioner issued the first Report Card on the Department of National Defence's (ND) compliance with the statutory time requirements of the *Access to Information Act*. In that report, ND received a red alert grade of "F", with a 69.6% request to deemed-refusal ratio for access requests received from April 1 to November 30, 1998. The report included a number of recommendations on measures that could be taken to reduce the number of requests in a deemed-refusal situation.

From April 1 to November 30, 1999, the deemed-refusal ratio for access requests improved to 38.9%, although still a grade of "F".

In January 2001, ND received a grade of "D" with a new request to deemed-refusal ratio of 17% for the period April 1 to November 30, 2000. This report noted that the trend lines for reducing the number of access requests in a deemed-refusal situation were steadily improving.

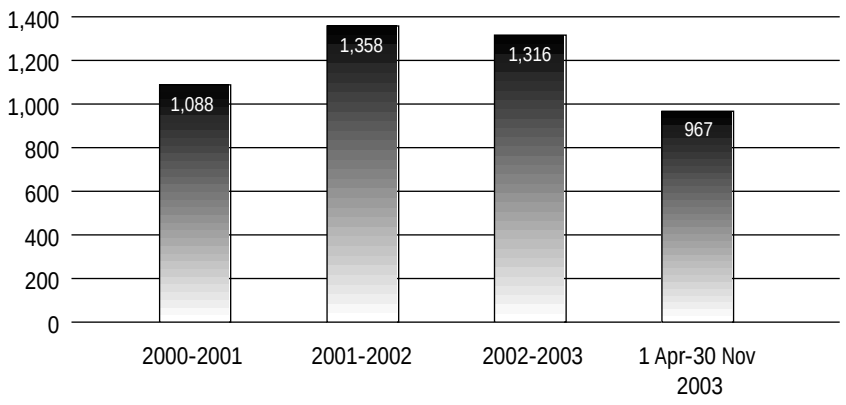
ND continued to improve its performance in meeting the time requirements of the Act, achieving a grade of "C" with a new request to deemed-refusal ratio of 11.8% for the period from April 1 to November 30, 2001. However, that improvement was not maintained for the full fiscal year; while the grade remained the same at a "C", the ratio of 12.7% declined slightly.

For the 2002-2003 reporting period, the department attained a new request to deemed-refusal ratio of 9.1% for a grade of "B", with this ratio slipping to a 12.7% ratio and a grade of "C" for the full fiscal year.

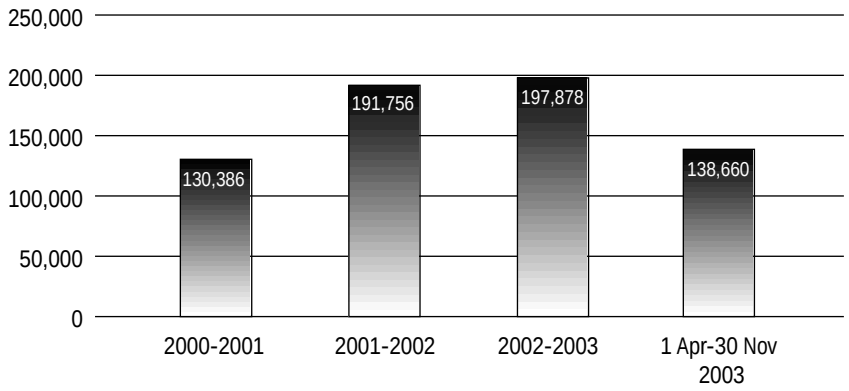
3. CURRENT STATUS

The department continues to strive to attain an ideal compliance ratio in the deemed-refusal situation. While the department has maintained a grade of "B", the actual percentage has improved for this reporting period. The new request to deemed-refusal ratio improved to 6.3% for the period from April 1 to November 30, 2003, in comparison to 9.1% of a year ago. This is representative of the efforts by ND to reduce as much as possible the number of requests in a deemed-refusal situation especially in light of an ever-increasing number of requests and resulting number of records to be processed. The following charts reflect the last three years statistics in that regard.

Requests Processed



Pages Processed



Although this gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period, it does not take into account those requests carried over from the previous year, nor the number of requests already in a deemed-refusal status on April 1. In future reports, these figures will be taken into consideration; however, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the results for April 1 to November 30, 2003, would be 9.1%, still resulting in a grade of "B".

While a review was conducted on the root cause of delays, the primary focus at the onset of the year was to clear up the backlog of overdue responses. This was a conscious decision with knowledge that this action may result in a large number of deemed refusals for this year. In addition to cleaning up the backlog, better control of ongoing cases resulted as well in fewer deemed refusals. Additionally no overtime was utilized in achieving this objective.

The focus on the backlog, while contributing to the improved performance, was not the singular factor. Better management through enhanced sharing of responsibilities with the Deputy Coordinator / Chief of Operations was a significant influence. Better utilization of the management tools available and a better understanding of their capabilities proved invaluable, specifically ATIPflow and its reporting mechanisms.

Another factor was an increase in training and development both of ATIP staff and employees of ND and CF members. This occurred both in-house and off-site. One limiting factor in off-site training in the past was the expense to bases / units. To improve the opportunity and knowledge, the ATIP Directorate has absorbed the training costs, and this has resulted in increased audiences, better communications with outside units and reduced response times for requested records.

Stable staffing resources has enhanced the dynamics of the division. Team building activities, including social events, have shown to be a valuable tool in improving morale and overall performance in meeting time constraints.

A reduction on the use of contract employees / consultants has allowed for the addition of three positions. While this has had a short-term impact on the overall level of expertise, it is felt to provide tremendous long-term benefits.

While all of these factors have combined to create a more efficient productive workplace as well as responsive department, the one factor that was felt to have contributed most significantly was the utilization of ATIPimage in the process. Processing time, material costs, as well as records analysis, have been positively influenced by this application.

An increase in the number of informal requests, over 322 to date, has been a workload factor, and improvements in the handling of these have not interfered with the overall situation. Again, technological enhancements have contributed significantly to timely and cost-effective response. Reducing the reliance on hard copies by putting the requested records on CD has reduced paper requirements, time spent at photocopiers, and postage costs, all part of the concept of working smarter.

4. OBJECTIVES FOR 2004-2005 AND FURTHER RECOMMENDATIONS

The department continues to review its structure, tools and procedures to support the reduction of access requests in a deemed-refusal situation and achieve ideal compliance with the time requirements of the *Access to Information Act*. Closer management of cases is anticipated with better utilization of consultations and appropriate extensions. While there are no major changes planned for the next two years, the overall process is under constant review, including the development of performance standards.

ND is encouraged to continue its efforts in attaining a grade of "A" and set an objective for 2004-2005 of reaching a request to deemed-refusal ratio of 5% or less.

Recommendation #1

ND set an objective for 2004-2005 to attain ideal compliance with the time requirements of the *Access to Information Act*.

4.1 Informal Access

ND continues to expand its use of the website to provide access to released records and other releasable material in a proactive manner and continues to identify and analyze situations where records may be provided as a matter of routine rather than through a request under the *Access to Information Act*. The department is encouraged to continue its review to provide greater access to clients through informal procedures without recourse to the formal access process under the Act.

Recommendation #2

ND is encouraged to continue its investigation of methods of improving informal access to information to the public.

5. STATUS OF 2003 RECOMMENDATIONS

In the January 2003 Status Report, recommendations were made to ND to set the objective to maintain ideal compliance with the time requirements of the Act. The action taken on each recommendation is described below, following the text of the recommendation.

Previous Recommendation #1

ND set a target of 5% or better for the new request to deemed-refusal ratio for 2003-2004.

Action taken: While the complete target has not been attained, ND has improved its deemed-refusal to requests received ratio by three percentage points, which indicates positive efforts being made to achieve ideal compliance.

Previous Recommendation #2

ND determine the reasons for delays in responding to access requests in a deemed-refusal situation from April 1 to November 30, 2002, to identify improvements that can be made to the access process to reduce future delays.

Action Taken: All aspects of the ATIP Directorate's operation were reviewed with a view to improving timeframe compliance. Staffing to fill resources, delegation of managerial responsibilities, focus on clearing up the backlog of requests, as well as many of the measures already mentioned, all contributed significantly to allowing the institution to improve its record with this reporting period. The linear information / review process was also looked at for streamlining; however, any post-review functions were not felt to have a significant impact on the overall timeframe of responses. The upper level reviews are time sensitive, with a hard 48-hour turnaround, and are for information purposes only.

6. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	222	280
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	32	53
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	1,316	967
4.A	How many were processed within the 30-day statutory time limit?	602	460
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	27	8
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	23	5
	31-60 days:	2	3
	61-90 days:	2	0
	Over 91 days:	0	0
5.	How many were extended pursuant to section 9?	613	409
6.A	How many were processed within the extended time limit?	328	249
6.B	How many exceeded the extended time limit?	87	30
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	56	19
	31-60 days:	22	3
	61-90 days:	3	7
	Over 91 days:	6	1
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**22**

6. QUESTIONNAIRE AND STATISTICAL REPORT (continued)

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:
	ND received an increase in the number of requests due to the Iraq War and environmental litigation. The increasing number of requests for Briefing Notes creates much internal consultation throughout the department. ND also consulted externally on more files this year. Many delays were due to the consultations with PCO, as they are backlogged.
	THANK YOU FOR COMPLETING THIS QUESTIONNAIRE

EXCERPT FROM DEPUTY MINISTER'S RESPONSE TO STATUS REPORT

"I am very pleased with the maintenance of the grade of B and the recognition that we have decreased our deemed refusal rate by 3%.

As you noted in your report, DND has made some significant effort to comply with the deadlines legislated by the Act. We will continue to work toward continuous improvement in our performance, with the goal of 5% or less deemed refusals.

You also recommended that we continue investigation of methods for improving formal access to information to the public. We are actively working to expand our scope of informal access and expect to have a work plan in place by the end of the 2004/2005 fiscal year."

Privy Council Office

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

For several years, a number of institutions were subject to review because of evidence of chronic difficult in meeting response deadlines. In his 1996-97 Annual Report to Parliament, the former information commissioner reported that delays in responding to access requests had reached crisis proportions.

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. 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 Status Report, for the period April 1 to November 30, 2003, reviews the progress of PCO to comply with the time requirements of the *Access to Information Act*, including the status of the recommendations made in the Status Report issued in January 2003.

2. COMPLIANCE HISTORY

The Privy Council Office (PCO) was one of the first departments to achieve a grade of "A" in its efforts to comply with the time requirements of the *Access to Information Act*. The purpose of this follow-up report is to determine if PCO was able to maintain this achievement.

In the 1999 Report Card, PCO received a red alert grade of "F" with a 38.9% new request to deemed-refusal ratio for requests received from April 1 to November 30, 1998. For the complete 1998-1999 fiscal year, the ratio was 47.1%.

In the following year's review, it was reported that, for requests received from April 1 to November 30, 1999, the ratio improved remarkably to 3.6% and a grade of "A".

The achievement was not sustained for the 2001-2002 reporting period. During the fiscal year 2001-2002, the new request to deemed-refusal ratio increased to 28.4%, a grade of "F".

However, for last year's report for the period from April 1 to November 30, 2002, the ratio improved to 17.5%--a grade of "D", constituting below standard performance with the time requirements of the *Access to Information Act*. This ratio slipping to a 21.9% ratio, a grade of "F", for the full 2002-2003 fiscal year.

3. CURRENT STATUS AND FURTHER RECOMMENDATIONS

The statistical report for PCO reflects a substantial improvement in the institution's record. For the period April 1 to November 30, 2003, PCO achieved a 3.8% ratio for the new requests to deemed refusals, resulting in a grade of "A". That constitutes ideal compliance with the time requirements of the *Access to Information Act*.

While this gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period, it does not take into consideration those requests carried over from the previous year, nor the number of requests already in a deemed-refusal status on April 1. In future reports, these figures will be taken into consideration; however, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the results for April 1 to November 30, 2003, would be 12.8%, resulting in a grade of "C".

The Coordinator ascribed much of the improvement to two specific areas: an increase in resources to 18 PYs from the previous 12-16 permanent positions, and the introduction over the past year of a more comprehensive weekly report. With the added resources, although the number of requests has increased, 266 versus 240 for the same timeframe, an improved support staff to analyst ratio has taken much of the administrative burden away from analysts, allowing for more productivity in regards to processing those requests. The report also allows senior management to be aware of the workload and any subsequent compliance issues.

Although it was a recommendation last year, no formalized improvement plan has been developed. However, more descriptive reporting tools developed in concert with Privisoft have enabled ATIPflow to be enhanced, allowing the managers to be more aware of ongoing activities during the process rather than after a deemed-refusal status has been reached.

The Coordinator's view remains that senior management approval of release packages does not constitute a delay in the process. Her view is that the time allocated to OPIs in the access process is being exceeded and constitutes a major cause for access requests in a deemed-refusal situation. Partly to blame for this is the high turnover of personnel in the OPI areas. However, to further assist OPIs, the comprehensive user manual *Access to Information in the Privy Council Office* is available online as well as in hard copy. While statistics are not available to quantify any specific improvement, it is felt that this assisted in allowing PCO to achieve the level of compliance that they are now experiencing.

4. COMPLIANCE OBJECTIVES

PCO is encouraged to maintain ideal compliance with the time requirements of the *Access to Information Act*. PCO is encouraged to set an objective of 5% or better for the new request to deemed-refusal ratio for 2004-2005.

Recommendation #1

PCO is encouraged to set an objective of 5% or better to maintain the grade of "A" for the new request to deemed-refusal ratio for 2004-2005.

4.1 ATI Improvement Plan

An overall ATI Improvement Plan is an essential component of a strategy to be in compliance with the time requirements of the *Access to Information Act*. A plan should identify the specific sources of the delays and include targets, tasks, deliverables, milestones and responsibilities to achieve ideal compliance. Uncoordinated efforts to reduce the number of requests in a deemed-refusal situation are likely not as effective as an integrated group of measures established as a result of an analysis of the situation.

Recommendation #2

PCO develop an ATI Improvement Plan based on an analysis of deemed-refusal access requests to bring the department into ideal compliance with the time requirements of the *Access to Information Act* by April 1, 2004.

4.2 OPI and the Access Process

PCO maintains that the access process of three stages of OPI involvement has not had a significant impact on delayed responses to requests. Nevertheless, this three-step process involving the OPIs would appear to be a burdensome feature of the PCO access process. During the final review, the OPI authorizes the disclosure of information and mandatory exemptions.

Recommendation #3a

PCO continue to review their process to determine how the access process can be streamlined to reduce multiple referrals to OPIs.

Recommendation #3b

PCO review their Delegation Order to provide more delegated powers to the Coordinator as in many other departments.

5. STATUS OF 2003 RECOMMENDATIONS

In January 2003, recommendations were made to PCO on measures to strive to attain ideal compliance with the time requirements of the *Access to Information Act*. The action taken on each recommendation is described below, following the text of the recommendation.

Previous Recommendation #1

PCO is encouraged to set an objective of 5% or better for the new request to deemed-refusal ratio for 2003-2004.

Action taken: PCO attained a 3.8% ration of deemed-refusals to requests received for an ideal performance with the time requirements of the *Access to Information Act*.

Previous Recommendation #2

PCO develop an ATI Improvement Plan based on an analysis of deemed-refusal access requests to bring the department into ideal compliance with the time requirements of the *Access to Information Act* by April 1, 2004.

Action taken: An enhanced reporting process has been developed allowing managers and analysts to better manage ongoing request activity and keep deemed refusals to a minimum.

Previous Recommendation #3

PCO investigate how the access process can be streamlined to prevent multiple referrals to OPIs.

Action taken: PCO maintains a three-stage access process with OPIs. However, the Coordinator feels that, with better training and available online reference material, the secondary reviews are not considered to be a burden to the overall process of meeting the timely requirements of response.

Previous Recommendation #4

Recommendation #4a

PCO undertake to have ATIPflow produce performance management statistical information on the access process.

Recommendation #4b

The ATIP Office distribute a performance report on allocated versus actual time taken in the access process to OPIs and to senior management.

Action taken: A more comprehensive report is now provided weekly to senior management allowing them to become more aware of workload and compliance issues.

6. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	66	118
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	34	39
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	384	266
4.A	How many were processed within the 30-day statutory time limit?	181	143
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	12	1
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	9	1
	31-60 days:	3	0
	61-90 days:	0	0
	Over 91 days:	0	0
5.	How many were extended pursuant to section 9?	161	101
6.A	How many were processed within the extended time limit?	50	50
6.B	How many exceeded the extended time limit?	33	3
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	14	2
	31-60 days:	6	0
	61-90 days:	3	1
	Over 91 days:	10	0
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**6**

EXCERPT FROM DEPUTY MINISTER'S RESPONSE TO STATUS REPORT

"You have noted that the PCO has improved its performance to a grade of A for the period of April 1st to November 30, 2003.

We are gratified by this performance record particularly in light of the high workload experienced throughout PCO this past fiscal year. Moreover, our ATIP office received 457 requests this past year as contrasted with 384 the year before, an increase of 19%.

I believe this is an indication of PCO's commitment to Access to Information, and the quality work of our staff in the Access to Information and Privacy Office, as well as all of our staff who deal with access requests across the department.

Please be assured that we will make every effort to achieve a similar record in the current fiscal year."

Public Works and Government Services Canada

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

For several years, a number of institutions were subject to review because of evidence of chronic difficulty in meeting response deadlines. In his 1996-97 Annual Report to Parliament, the former information commissioner reported that delays in responding to access requests had reached crisis proportions.

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. 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

2. COMPLIANCE HISTORY

In February 2003, the Office of the Information Commissioner issued a Report Card on Public Works and Government Services Canada's (PWGSC) 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.

This report reviews the progress of PWGSC to come into substantial compliance with the time requirements of the *Access to Information Act* since the January 2003 Status Report. In addition, it contains information on the status of the

recommendations made in that report. PWGSC did a tremendous job in preparing for the ensuing interview, providing a comprehensive report along with statistics responding to all of the issues raised in the previous Report Card.

3. CURRENT STATUS

The department has made considerable improvements in a number of areas. All of these initiatives have led to a substantial turnaround in the deemed-refusal situation over the past year resulting in borderline compliance with the time requirements of the *Access to Information Act*. The new request to deemed-refusal ratio improved to 14.6% for the period from April 1 to November 30, 2003, for a grade of "C".

While this gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period, it does not take into consideration those requests carried over from the previous year, nor the number of requests already in a deemed-refusal status on April 1. To give a true indication of a department's performance, these figures will be taken into consideration in future reports. However, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the results for April 1 to November 30, 2003, would be 10.6%, a substantial percentage improvement, representing a grade of "C".

There still remain numerous issues that result in PWGSC not being able to attain "ideal compliance" in the deemed-refusal to new request ratio. OPI response times, while not as serious as in past years, are still a contributing factor to the overall delay. The following chart focuses on responses for the current reporting period.

Branch Timeline Compliance Performance for the period April 1 to November 7, 2003

Branch	% On Time	Times Tasked	On Time	1-2 Days Late	3-5 Days Late	6-10 Days Late	10+ Days Late
ABC	64	50	32	1	2	10	5
ACQ	73.13	67	49	2	6	3	7
AEB	68.18	22	15	1	2	2	2
CAC	64.29	14	9	0	1	3	1
Communications	86.67	15	13	0	1	1	0
CPIB	83.84	99	83	5	4	2	5
HRB	71.88	32	23	1	2	2	4
OPS – HQ	82.16	426	350	7	33	23	13
OPS - Regions	75.63	160	121	9	5	14	11
RPP	90	20	18	0	1	1	0
TIP	91.67	12	11	0	0	1	0
Translation	84.21	19	16	1	2	0	0

A number of factors have had a positive influence on the improvements achieved so far:

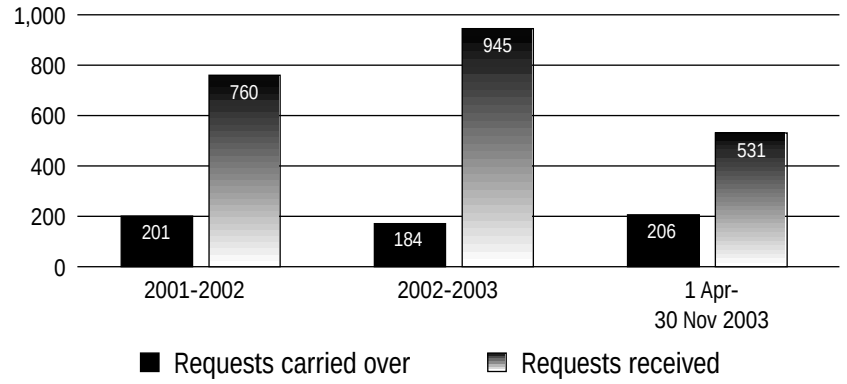
- Full staffing of currently approved manning levels
- More flexible management of resources to better accommodate workload
- Team structure providing better control of workload
- More focus on meeting timelines in dealing with third parties
- Better communications within the department
- Better monitoring 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 as recommended in last year's Report Card. These included a dedicated ATIP Improvement Plan that introduced the following during the 2003-2004 reporting period:

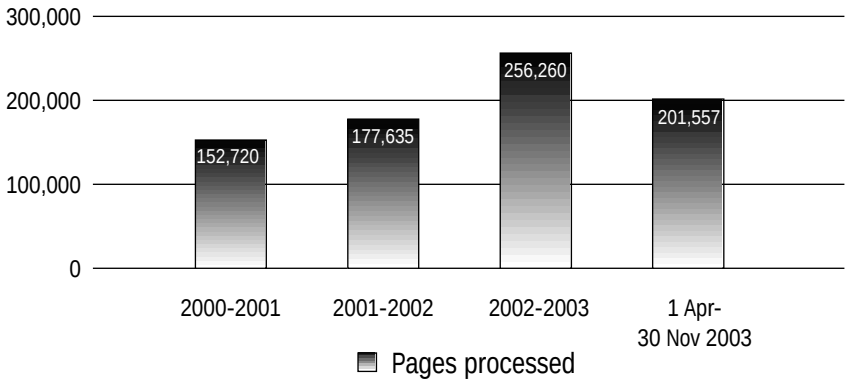
- Weekly timeline reports
- A number of reviews of the ATI program were conducted to determine root causes for the departmental deemed-refusal situation, which identified two primary issues:
  - Insufficient resources within the ATI program;
  - Government-wide shortage of knowledgeable and experienced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

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

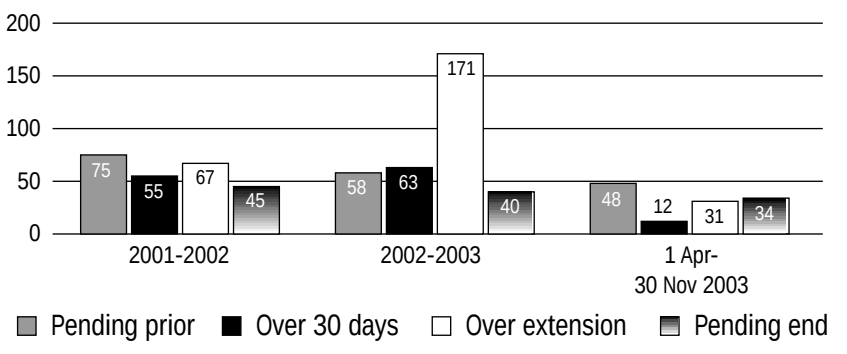
Access Requests by Year



Yearly Workload



Deemed Refusals



4. FUTURE CONSIDERATIONS AND FURTHER RECOMMENDATIONS

Even with all of the measures implemented so far, there are a number of issues yet to be addressed. The ATIP Directorate has planned additional enhancements and measures for the upcoming fiscal year. These include:

- Further development of quarterly timeline reports
- Improved desk procedures for travel and hospitality expense and contracting requests
- Continue implementing the enhanced training plan for departmental employees
- A new long-term contract is being established as the existing competitive contract is expiring shortly
- Ongoing review of the ATIP Improvement Plan.

4.1 Resources

The current staffing provides for 22 FTEs broken down into four teams headed by a PM-5. Even with the staffing level that was approved for the 2001-2002 fiscal year, a 2003 review has indicated that, with the increasing volume of requests and associated workload, the Directorate is under resourced.

Recommendation #1

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

4.2. OPI Retrieval of Records

Although various meetings and information sessions have been conducted over the past years, record retrieval and timely OPI response still appears to be an issue. In that vein, the recommendation made last year remains.

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 OPIs that records for access requests is a priority of the department.

4.3 Compliance Objective

Last year, the Commissioner's Office recommended that PWGSC set an objective of maintaining a grade of "B" that constitutes substantial compliance with the time requirements of the *Access to Information Act*. The department,

however, was not able to attain that goal but is further encouraged to attain at least substantial compliance with the time requirements of the *Access to Information Act* for the fiscal year 2004-2005.

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.

5. STATUS OF 2003 RECOMMENDATIONS

In January 2003, recommendations were made to PWGSC on measures to further reduce the number of access requests in a deemed-refusal situation. The action taken on each recommendation is described below, following the text of the recommendation.

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 PWGSC. 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: A comprehensive ATI Improvement Plan has been developed for not only the reporting period but also the following fiscal year. The tasks, deliverables and milestone are continually monitored and reviewed for applicability as well and completion.

Previous Recommendation #2

Routine reporting to senior management 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 the ATIP Directorate with information needed to gauge overall departmental compliance with the Act's and department's time requirements for processing access requests.

Action Taken: A weekly timeline report has been developed and utilized while a quarterly timeline report for OPIs, ATIP Liaison officers, etc., is currently under review with an early 2004 rollout.

Previous Recommendation #3

The Delegation Order should be revised to reflect any delegation of decision-making within the ATIP Directorate. The department is encouraged to delegate administrative decisions under the Act to ATIP team leaders and officers and to review whether or not decisions about any exemptions can also be delegated.

Action Taken: The Director, ATIP, has full delegated authority under the ATI Act. Amendments to the delegation of authorities are being considered at the ministerial level in relation to providing the ATIP Chiefs with limited delegated authority.

Previous Recommendation #4

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

Action Taken: No specific action was taken associated with this recommendation; however, the process is constantly under review and, with the updated delegation authority, improvements in response times are anticipated.

Previous Recommendation #5

The approval process should be reviewed to remove multiple review stages within the process.

Action Taken: With the departmental realignment in November 2003, the approval process was further streamlined to reduce the number of review stages in the process.

Previous Recommendation #6

PWGSC should develop an ATI Improvement Plan. The Plan should identify the sources of the delays in responding to access requests and include targets, tasks, deliverables, milestones and responsibilities. The Senior Management Committee of the department should monitor the Plan.

Action Taken: An Improvement Plan has been developed for 2003-2004 and 2004-2005, addressing all of the issues identified in the 2003 Report Card.

Previous Recommendation #7

The specific reasons for the access requests in a deemed-refusal situation for this fiscal year should be identified and remedial measures developed for incorporation into the ATI Improvement Plan.

Action Taken: A comprehensive review was conducted over the past year, with a number of issues having been identified, including insufficient resourcing of the ATI program as well noting a government-wide shortage of knowledgeable and experienced ATIP professionals. Corrective measures resulting from the review have either been introduced or are planned for the near future.

Previous Recommendation #8

A training strategy should be developed for 2003-2004 that includes priorities, PWGSC staff identified as benefiting from new or additional training, number and location of sessions and ATIP responsibilities for delivery of the training.

Action Taken: A comprehensive training program has been developed for all levels of employees involved in any capacity in the ATIP process. This includes training and information sessions for OPIs, various management sectors and branches, briefing sessions for ATIP Liaison Officers, and ATIP modules for the employee orientation courses. The module for the Management Orientation course has been in place since fiscal year 2001-2002.

Previous Recommendation #9

PWGSC should set an objective of coming into substantial compliance with the Act's time requirements for 2003-2004 and an ideal compliance objective for 2004-2005.

Action Taken: While not fulfilling this objective, considerable improvement has been realized in meeting the target by attaining a level of "C" for this reporting period. The department set a timeline compliance target rate of 80% for fiscal year 2003-2004 and 90% for fiscal year 2004-2005.

Previous Recommendation #10

ATI training should be mandatory for all managers, including new managers, as part of their orientation.

Action Taken: The mandatory training has formed part of the departmental management orientation course since fiscal year 2001-2002.

Previous Recommendation #11

The use of consultants to provide processing resources for long-term increases in the ATI workload should be reviewed to determine what the best value for money is for staffing.

Action Taken: The existing long-term competitive contract provides flexibility in meeting the timeline requirements of the Act, particularly when there are unforeseen influxes of a high volume of requests. The contract will expire in September 2004 and will be replaced with a new long-term competitive contract.

Previous Recommendation #12

The department should develop a fee policy in determining when to waive fees under the *Access to Information Act*.

Action Taken: A formal fee policy has been developed and is in effect.

Previous Recommendation #13

Responsibilities for access to information should be included in the job description of officers and managers where relevant. Performance contacts should measure to what degree the responsibilities are met.

Action Taken: Still under consideration.

6. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	183	206
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	58	48
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	945	531
4.A	How many were processed within the 30-day statutory time limit?	349	231
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	63	12
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	34	9
	31-60 days:	9	3
	61-90 days:	8	0
	Over 91 days:	12	0
5.	How many were extended pursuant to section 9?	502	258
6.A	How many were processed within the extended time limit?	169	85
6.B	How many exceeded the extended time limit?	171	31
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	74	19
	31-60 days:	47	10
	61-90 days:	20	2
	Over 91 days:	30	0
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**34**

6. QUESTIONNAIRE AND STATISTICAL REPORT (continued)

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:

The Average PWGSC ATI Request:

On average, each formal ATI request requires the retrieval of 302 pages of records and requires consultations with two (2) government departments/other governments and two (2) third parties. On any given day, each ATIP officer manages roughly 18 ATI requests simultaneously. Based on FY 2002-03 statistics, each individual associated with the ATI program managed the processing of 43 ATI requests.

Sensitive Requests:

During the period April 1 to November 30, 2003, a significant number of requests were made for sensitive information pertaining to the Sponsorship Program, the procurement process to replace the Maritime Helicopter, the purchase of Challenger jets, the awarding of the contract to Royal LePage Realty for the relocation of DND personnel, and the Canadian Search and Rescue Helicopter project. Although these requests accounted for only 7% of the overall ATI requests received, they had a high impact on workload. They represented 60% of the complaints filed with the Office of the Information Commissioner of Canada.

Third-Party Notices:

PWGSC manages the procurement associated with about 50,000 contracts, totalling eight billion dollars, annually. Approximately 40% of the requests received by PWGSC relate to procurement activities, many of which require the issuance of third-party notices. As the Act prescribes strict timelines associated with the issuance of third-party notices, it is frequently difficult to complete the process with those timelines when dealing with complex requests having voluminous documents. For FY 2001-02 and FY 2002-03, the ATIP Directorate conducted 710 and 788 third-party notices, respectively.

ATI Consultations From Other Government Departments:

A continuing trend is the increase in the number of incoming ATI consultations from other government departments.

Fiscal Year	# Consultations	# Pages Reviewed	Annual % Increase in Number of Pages Reviewed
FY 1999-2000	141	4,596	48
FY 2000-2001	169	6,846	32
FY 2001-2002	186	13,751	50
FY 2002-2003	195	15,956	14
Apr 1 – Nov 30 2003	173	13,910	0.1 *

*Compared with the period of April 1, 2002 to November 30, 2002

PWGSC must respond to the incoming consultations request within very short timelines or risk causing the issuing department to have delays in the processing of their own ATI requests. This workload issue has resource impact on PWGSC, yet it is not factored into PWGSC's timeline compliance rate.

THANK YOU FOR COMPLETING THIS QUESTIONNAIRE

EXCERPT FROM DEPUTY MINISTER'S RESPONSE TO STATUS REPORT

"I would like to thank you for the work you have done. Allow me to assure you that we are fully committed to improving our timeliness with respect to responding to Access to Information (ATI) requests, and that steps will be taken to rectify the situation.

Further, decisions taken at a January 2004 Management Committee meeting set a compliance rate of 90 percent for Financial Year 2004-2005 and additional resources have been allocated to the ATIP Directorate. We will also streamline the Delegation of Authorities to include the ATIP Chiefs in the decision-making, increase management accountabilities and reporting activities, as well as enhance the training being given to all employees with respect to the processing of ATI requests.

Please be assured that Public Works and Government Services Canada is continuing its efforts to implement your recommendations and to achieve a substantial compliance rate in Financial Year 2004-2005."

Transport Canada

Status report on access requests in a deemed-refusal situation

1. BACKGROUND

For several years, a number of institutions were subject to review because of evidence of chronic difficult in meeting response deadlines. In his 1996-97 Annual Report to Parliament, the former information commissioner reported that delays in responding to access requests had reached crisis proportions.

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. 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

Initially, six institutions were the focus of this review, with six having since been added, including Transport Canada (TC). This then is a report of the review of Transport Canada's performance for the period April 1 to November 30, 2003, and the institution's progress to attaining 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 2003.

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 Act. The grade represented a 30.6% new request to deemed-refusal ratio for access requests received from April 1 to November 30, 1999.

In January 2001, the report reviewed the department's progress during 2000 in meeting the time requirements of the Act. Between April 1 and November 30, 2000, the new request to deemed-refusal ratio improved to 23.7%, still grade "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 Status Report. To the department's credit at the time, TC achieved a grade of "C" for the period April 1 to November 30, 2001. Subsequently, the grade dropped to a "D" for the fiscal year 2001-2002.

In the last review, January 2003, it was reported that 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% of deemed refusals in relation to requests received for the fiscal year 2002-2003.

3. CURRENT STATUS

The department continues to experience problems in attaining even a level of substantial compliance in the deemed-refusal situation. 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.

Although this gives an accurate assessment of the deemed-refusal ratio to requests received within the above-noted reporting period, it does not take into consideration those requests carried over from the previous year, nor the number of requests already in a deemed-refusal status on April 1. In future reports, these figures will be taken into consideration; however, for this report, the grading resulting from that inclusion is provided for information purposes only. In this instance, the results for April 1 to November 30, 2003, would be 24.4%, resulting in a grade of "F".

The structure of the department, or more appropriately of former components of the department, still comes into play in dealing with some requests. At the time that NAVCAN was created, a number of agreements were in place with regards to records control. While there was an understanding in place, when it came to gaining access to certain past departmental records, the transition has been less than smooth.

A heavy concentration of requests from a single requestor on complex single-focused issues has tied up a considerable amount of the ATIP Directorate's limited resources in consultation and administrative work exceeding the actual ATIP-related function.

In an attempt to address some of the recommendations made in previous reviews, TC contracted a consultant to review the department's processes and make recommendations for improving performance. To date, all of the recommendations have been acted upon, except for the improvement in the human resources area. While the study recommended a staff of 16, the actual staffing is at 1999-2000 levels, during which time the unit also received an "F" rating.

Notwithstanding the results reported above, the ATIP office has 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 to managers and OPIs in all regions and to 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.

4. OBJECTIVES FOR 2004-2005 AND FURTHER RECOMMENDATIONS

In addition to the training, which has already taken place, more is planned for the coming year with sessions scheduled for January and February. In regards to the recommendations of the previously mentioned consultant's study, a review of the procedures was conducted with a view to improving responses, with emphasis being placed on the major outstanding issues. With that in mind, a number of recommendations are made.

In May 2003, TC developed an ATI Improvement Plan based on an analysis of deemed-refusal access requests. As this plan included a recommendation to change the delegation of authority, the new procedures were scheduled for implementation in April 1, 2004.

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*.

4.1 Delegation of Authority

For this reporting period, the ATIP Coordinator had still not been delegated any decision-making authority under the *Access to Information Act*, with the exception of certain administrative decisions and decisions under sections 7 and 19. As was stated last year, experience shows that delegation of decision-making to the individual with the knowledge to make decisions under the Act reduces the time taken to respond to requests. Other departments have delegated routine administrative decisions to officers reporting to the Coordinator.

Recommendation #2

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

4.2 Approval Process

The department's process for approving a response to an access request continues to be cumbersome and in need of review. In last year's review, comments were made regarding the time taken by the various regions and divisions to retrieve records as well as follow-up review time. There has been some improvement in response times contributing to the marginal overall improvement.

Table 1 illustrates if a request to retrieve records was completed on time by the Region / Branch that the request was sent to and if the internal consultation (concurrence) was achieved on time. Table 1 also provides information on how other departmental participants in the access process fared in meeting their allocated time requirements.

TABLE 1: PERFORMANCE REPORT ATI Requests FISCAL YEAR 2003-2004 - as at November 30, 2003

On-Time Performance -Fiscal Year 2003-2004 - as at November 30, 2003
Respect des échéances – année financière 2003-2004 - en date du 30 novembre 2003

		Retrieval of Records / Recherches documentaires			Internal Review / Consult Examen interne / Consultation		
Group/Region Groupe/Région		**TOTAL**	**On-Time Exécution à temps**	**% On-Time % à temps**	**TOTAL**	**On-Time Exécution à temps**	**% On-Time % à temps**
Safety & Security / Sécurité et Sûreté	AA	149	148	99%	41	36	88%
Policy / Politiques	AC	58	53	91%	14	11	79%
Programs & Divestitures / Programmes et Cessions	AH	57	56	98%	15	14	93%
Corporate Services / Services généraux	AD	94	91	97%	66	63	95%
Communications	AE	2	0	0%	120	107	89%
Atlantic / Atlantique	MX	39	25	64%	19	11	58%
Quebec / Québec	NX	53	48	91%	9	9	100%
Ontario / Ontario	PX	49	47	96%	15	13	87%
Prairie & Northern / Prairies et NordPacific	RX	32	32	100%	11	11	100%
Pacific/Pacifique	TX	39	32	82%	17	17	100%
TOTAL		572	532	93%	327	292	89%

Recommendation #3

The department continues 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*.

4.3 Human Resources

Throughout the year, numerous events have resulted in the staffing level of the ATIP division being reduced to 1998 levels. As previously mentioned, a consultant conducted a study of the division and its processes. One of the recommendations not implemented as of yet is that additional positions be created and staffed to meet the workload requirements.

Recommendation #4

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

5. STATUS OF 2003 RECOMMENDATIONS

In January 2003, recommendations were made to Transport Canada on measures to reduce the number of access requests in a deemed-refusal situation. The action taken on each recommendation is described below, following the text of the recommendation.

Previous Recommendation #1

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

Action taken: The ATIP Coordinator has not been delegated any decision-making authority under the *Access to Information Act*, with the exception of certain administrative decisions and decisions under sections 7 and 19. However, at the time of writing this report, the new delegation order had been approved.

Previous Recommendation #2

The department process map and 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: A study was conducted to process map and review the access process to eliminate duplication of effort or determine steps in the process that can be handled in parallel rather than sequentially. In May 2003, TC developed an ATI Improvement Plan based on an analysis of deemed-refusal access requests. As this plan included a recommendation to change the delegation of authority, the new procedures were scheduled for implementation in April 1, 2004.

Previous Recommendation #3

The Communications requirements associated with the access request process be completed in parallel with the process.

Action taken: The Communications function continues to be part of the access process as a sequential step. However, at the time of writing this report, in order to improve the communications aspect of the process, TC had implemented weekly meeting between the ATIP unit and senior officials, including representatives from the Communications Branch.

Previous Recommendation #4

TC should develop an ATI Improvement Plan based on an analysis of deemed-refusal access requests to bring the department into substantial compliance with the time requirements of the *Access to Information Act* by April 1, 2003. The plan should include the identification of the sources of delays and include tasks, targets, deliverables and responsibilities.

Action taken: The ATIP Coordinator reported that TC contracted a firm to review the delegation of authority, identify and make recommendations on resource issues and ATIP processes. At the time of writing this report, all the proposals put forward in the review were approved for implementation where additional resources were not required. The new process will be implemented April 1, 2004.

6. QUESTIONNAIRE AND STATISTICAL REPORT

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.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
1.	Number of requests carried over:	93	165
2.	Requests carried over from the prior fiscal — in a deemed-refusal situation on the first day of the new fiscal:	13	64
Part B: New Requests — Exclude requests included in Part A.		Apr. 1/02 to Mar. 31/03	Apr. 1/03 to Nov. 30/03
3.	Number of requests received during the fiscal period:	641	326
4.A	How many were processed within the 30-day statutory time limit?	273	154
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	45	16
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	35	9
	31-60 days:	6	4
	61-90 days:	3	0
	Over 91 days:	1	3
5.	How many were extended pursuant to section 9?	277	132
6.A	How many were processed within the extended time limit?	78	42
6.B	How many exceeded the extended time limit?	83	18
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	22	9
	31-60 days:	10	6
	61-90 days:	10	0
	Over 91 days:	41	3
7.	As of November 30, 2003, how many requests are in a deemed-refusal situation?		**22**

6. QUESTIONNAIRE AND STATISTICAL REPORT (continued)

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:
	In consideration of the fact that most of TC's requests concern other third parties and/or agencies or federal departments, extensions are oftentimes required. Also, in light of potential terrorist threats to the transportation industry, security has been enhanced; therefore, more scrutiny is required when reviewing requested documents, sometimes necessitating extensive consultations with Justice, PCO, RCMP, DFAIT and/or CSIS. Extensions are also required for these purposes. Significant time was spent in the processing of numerous requests from one requester (97), most of which concerned the former TC Minister's travel, which included who travelled with him. The administrative work in seeking consent from Ministers and their exempt staff for the disclosure of their travel information was extensive. Further to complaints in the cases of non-disclosure of this information where consent was not provided, TC determined a public interest disclosure was required.
	THANK YOU FOR COMPLETING THIS QUESTIONNAIRE

EXCERPT FROM DEPUTY MINISTER'S RESPONSE TO STATUS REPORT

"As indicated in your report, during the reporting period, TC developed an ATI Improvement Plan which included a recommendation to change the delegation of authority. I am pleased to report that this plan was implemented, as scheduled, on April 1, 2004, and the ATIP Coordinator now has full authority for the approval of exemptions under the Act. At the same time, authority for routine administrative decisions was delegated to the Senior Analyst positions.

Furthermore, upon implementing the Improvement Plan, certain processes have been eliminated and others are now handled in parallel rather than sequentially. We will continue to monitor these processes over the coming year to ensure that best practices are in place.

In spite of competing pressures and priorities, your recommendation concerning ATIP resources will be taken into consideration.

In closing, I wish to assure you that we will continue to do our best to meet the requirements of the *Access to Information Act*."