



National Defence

**Report Card
On
Compliance with Response Deadlines Under the
*Access to Information Act***

— Information Commissioner of Canada —

MARCH 1999

National Defence (ND)

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National Defence (ND)

A. REPORT—MARCH 1999

I. Glossary of Terms

ATI Office: Access to Information unit. The ND acronym used throughout documentation in part B for the ATI office is DIA.

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.

3rd 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* 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 co-ordination 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, ND has shown poor performance in meeting response times under the *Access to Information Act*. The Information Commissioner has received and investigated more complaints of delay against ND than against any other department. The Information Commissioner has had to take cases to the Federal Court to force ND to answer requests. As well, the Information Commissioner has audited ND's policies and procedures in processing access requests and made numerous recommendations for improvement. It was not until last year, in his 1997-98 Annual Report to Parliament, that the former information commissioner felt able to praise ND for having "taken the problem of delay by the horns and making a good faith effort to wrestle it to the ground." He promised to do a follow-up review to see if the promised improvement actually would be delivered.

This report card contains the results of the Information Commissioner's review of ND's performance during the period April 1, 1998 to November 30, 1998.

III. Grading Standard

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. ND is, in this report card, assessed against the following grading standard:

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

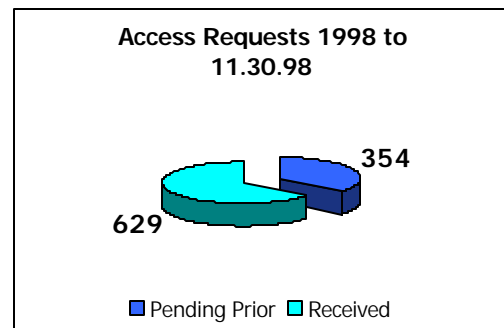
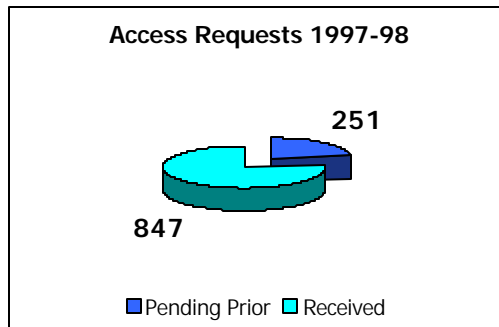
On this grading scale, ND rates **F***. Its performance is unacceptable. [This fiscal year to November 30, the ratio of new request to deemed-refusal is 629:438=69.6%. In 1997-98, the ratio was 847:807=95.3%.]

What follows is 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 and a set of recommendations to assist the department in this regard.

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.

IV. Statistical Information

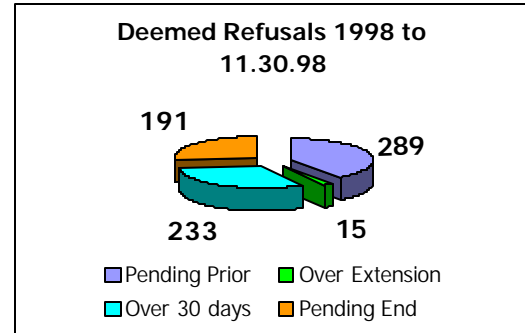
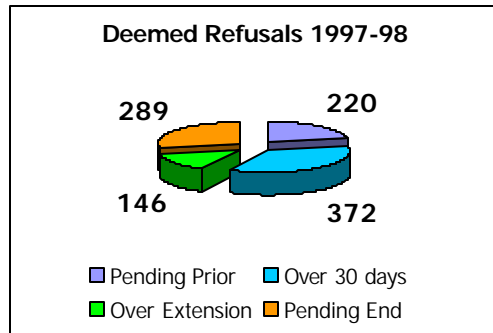
1. Requests



The charts above show the significance of ND's backlog.

Of note, National Defence was listed in the 1997-98 *InfoSource* Bulletin as having placed fourth highest of the ten institutions receiving the most requests. In 1997-98, ND received 7.1% of all access to information requests made to government during that reporting period.

* This grade solely reflects on the department's performance in meeting response deadlines. It should not be taken as a measure of the department's performance in the application of exemptions. In general, ND applies the exemption provisions of the act professionally and with restraint.



At the outset of the 1997-98 fiscal year, ND's Access to Information office had 251 unfinished requests—220 (87.6%) already in a deemed-refusal situation. The 1998-99 fiscal period started much the same with 354 outstanding requests—289 (81.6%) in a deemed-refusal situation. Considering the fact that 847 new requests were received in the 1997-98 fiscal period—629 to November 30 this fiscal period, these (Pending Prior) deemed refusals amount to approximately 1/4 of the yearly intake. Non-compliance considerations aside, this backlog is burdensome to the ATI office and must be eliminated.

The time taken to complete requests is equally distressing:

- In 1997-98, processing times for 372 requests completed beyond the 30-day statutory limit—without an extension:
 - 136 (36.6%) took between 1 to 30 additional days
 - 76 (20.4%) took between 31 to 60 days
 - 160 (43.0%) took more than 90 additional days
- In 1998 to November 30, 1998, additional processing times for 303 non-extended requests:
 - 95 (31.4%) took between 1 to 30 additional days
 - 55 (18.2%) an additional 31-60 days
 - 153 (50.5%) needed more than 90 additional days

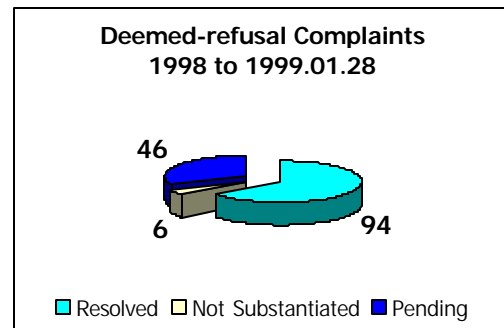
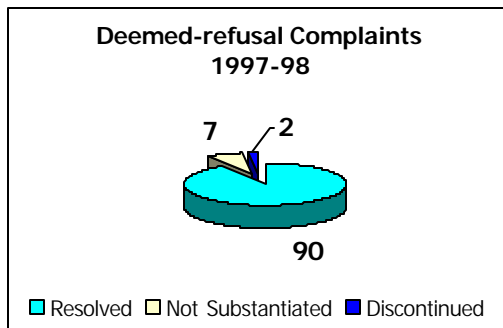
(This does not include completion figures for the deemed-refusal backlog, since the self-audit questionnaire did not ask ND's ATI office to provide that information.)

- In 1997-98, 206 time extensions pursuant to section 9 were applied—out of 847 requests received—146 (70.9%) bypassed the extended date:
 - 42 (28.8%) took an additional 1 to 30 days
 - 27 (18.5%) took an additional 31 to 60 days
 - 11 (7.5%) took an additional 61 to 90 days
 - 64 (43.8%) took over 90 additional days.

- In 1998 to November 30, 1998, there were 95 time extensions applied pursuant to section 9—out of 629 requests received—60 (63.2%) bypassed the extended date:
- 5 (8.3%) took an additional 1 to 30 days
 - 3 (5%) took an additional 31 to 60 days
 - 1 (1.6%) needed 61 to 90 additional days
 - 4 (6.7%) took over 90 additional days
 - 47 (78.3%) were still outstanding at the time the statistics were collected; the duration is not known.

As of November 30, 1998, 75 unfinished new requests were in a deemed-refusal situation. The duration for these outstanding requests is not known.

2. Complaints—Deemed Refusals



In 1997-98, the Office of the Information Commissioner received 99 deemed-refusal complaints against ND—most (90—90.9%) were upheld (resolved). If all requesters where responses were late had exercised the right to complain, the commissioner's office would have received 1,027 complaints.

As of January 28, 1999, the commissioner's office has received 146 complaints—out of the 100 completed complaints, 94 (94%) again most were upheld (resolved). The number of complaints (based on known statistics to November 30, 1998) could have been as high as 718.

3. ATI Office—Staff

ND's ATI Coordinator performs her duties on a full-time basis. The coordinator is responsible for the application and administration of the *Access to Information Act* and the *Privacy Act* (ATIP). At the time of this study, the staff of the ATIP office was comprised of fifty-two full-time employees: 26 officer-level—15 civilian, six military and five contract, and 26 support—20 civilian, four military and two contract.

4. ATI Office—Budget

The ATI salary dollar budget for 1998-99—excluding the recent PSAC settlement—is \$1,229,580 for 34 civilian employees, 9 military. The budget from 1997-98 was \$1,065,340 for 32 civilian employees, 12 military, slightly higher than the previous fiscal period, 1996/97, at \$1,064,172 for 37 civilian and 14 military. Of note, although the salary budget increased significantly between 1996/97 and 1998-99, the number of employees decreased by 3 civilian and 5 military; the ATI office does not receive funding dollars for military staff.

The ATI operating budget for 1998-99 is \$610,248, up from 1997-98, which was \$373,878, and 1996/97 at \$133,300. Training portions of those budgets: for 1998-99 is \$9,000, up from 1997-98, which was \$6,594, and both fiscal periods lower than training for 1996/97 at \$9,791.

5. Allotted Times for Request Processing

The 30-day statutory time limit allows 21-22 days for processing. The following deadlines were established to assist it in meeting the overall 30-day response deadline:

<u>Area</u>	<u>Turnaround Times</u>
ATI office	1 day—at receipt
OPIs (Operational units)	14 days—unless extension taken
ATI office	5 days—processing
Legal Services (PRAD)	10 days—5% of requests
Public Affairs—Media lines	2 days—90% of requests
Public Affairs—Corporate, or Land, Sea & Air	72 hours—approval of media lines
Deputy Minister's office	1-2 days—approval of media lines
Liaison Officer	2 days—pre-release review
Minister's office	72 hours—95% of requests
ATI office	1 day—final processing

V. Sources of Delay

There appear to be six primary reasons for the delay problem at ND: delays in operational areas where records are held, inadequate delegation of authority, outdated technology, a bottleneck in the approval process, poorly managed extensions, and the impact of chronic delays on the morale of the ATI office.

1. Operational Areas (OPIs)

Most of the initial 22 working days to process a request is taken by OPIs gathering records. The problem in the operational areas is rooted in attitude. Access requests have been seen as the lowest work priority. Many OPIs do not care if they are late. Operational officials are largely unaware of the mandatory legal obligations they are under to respond in a timely fashion.

ND's operating procedures give the operational areas, where requested records may be held, 14 days to return relevant records and make initial exemptions recommendations or to advise the ATIP office that an extension of time is required. In response to 30 per cent of all requests, the operational areas fail to respect the 14-day period. Further, for up to 20 per cent of all requests, opportunities to extend are missed because OPIs fail to provide the records in 30 days. OPIs are, thus, eroding the department's ability to meet either the 30-day deadline or to invoke an extension of time (which must be done within the initial 30 days).

On November 10, 1998, the Chief of Defence Staff and the Deputy Minister issued a directive to senior staff as a reminder of ND's obligations under *the Access to Information Act*. [See Part B. Section IV—*Access to Information Act* (AIA) – Timeliness of Replies to AIA Requests.] The directive fails to provide any mention of the ND's expected 14-day response limit for OPIs. The only mention of time restrictions gives the impression that OPIs have up to ten days to decide whether or not the records can be retrieved—*no mention of expected turnaround to actually retrieve them or that the ATI office should also be notified if there is a large volume not requiring an extensive search.*

ND/CF's commands, headquarters, bases, stations, and units, each has a designated senior staff officer responsible for the ATI function and administration of the *Access to Information Act* and *Privacy Act*. Each of these officers needs to be better educated concerning the mandatory legal obligation they are under to respond in a timely fashion. At present, responding to access requests is given a low priority.

Another reason for the delays in record retrieval is the deteriorating state of record management—a problem not unique to ND. After years of downsizing and restraint and with greater decentralized computing and record storage, ND is

no longer able to find relevant records in an efficient manner. Far too often we uncover, during an investigation, additional relevant records which the OPI had not found in the first place.

2. Delegation of Authority

The Access Coordinator holds the Minister's delegation to answer access requests. In reality, however, decision-making is exercised only after a top-heavy approval process. The coordinator is not, thus, the decider but only the person who recommends and acts on approvals obtained from above. Meeting deadlines is virtually impossible in this scheme because responsibility and accountability for answering is diffused.

3. Computer Tracking System

The department's ATI office currently uses a mail management system for case tracking purposes—the Correspondence Control Manager (CCM). This program is an excellent tool when used for its primary purpose—the control and flow of correspondence, but as a case tracking system it falls short. Compared to more sophisticated systems now in use at other ATI offices—for analysis, tracking and b.f. purposes—the CCM is a poor working tool.

The CCM stores and organizes information in databases. In other systems, databases are easily manipulated for reporting and statistical analysis purposes. But, although it is possible to use ND's CCM for manipulation and reporting purposes, the results are unreliable and, more often than not, incorrect. The reason for this, in information technology terms, is the reality of "garbage in, garbage out." The CCM can only produce information based on the field information stored in its databases, which is inputted through data entry. Reliable data is completely dependent on the consistent use of data fields and field contents. Everyone must enter data in all fields in exactly the same format. Unfortunately, since CCM permits any number of data entry variations, without enforcing set standards, this is not possible. This is not to suggest that ATI staff is deficient in the use of the system, simply, there is no room for any variations in human style or for human error.

The statistics requested for the purpose of this report, and produced by the ATI office, were unreliable and required several iterations. Frustrated by attempts to get the CCM to produce the required information, the ATI office ultimately resorted to a screen-by-screen printout of every CCM entry for the current and previous fiscal reporting periods. Employees then performed the necessary counts, laboriously, by hand.

4. Approval Process

ND's ATI Coordinator has full delegation of authority, but she does not have a full decision-making responsibility. Before documents are released, in 95 per cent of all requests, responsive records are screened for information the release of which may be "sensitive" and should be brought to the Minister's attention. This is to ensure that the Minister and his staff are briefed before answers are given.

At present, there are four steps in the review, which make no contribution to the processing of access requests. (Processing includes retrieval of records, review and application of exemptions, and preparation of records for release.) The four steps are: review by Public Affairs, review by ADM's Liaison Officer, review by Deputy Minister's office and review by Minister's office. The sole purpose of these four steps is to serve the communications needs of the Minister and department and to help the department respond to media interest which a disclosure could create. These four steps consume from ten days to four months and, as a result, it is impossible for ND to answer any but the most routine of requests within 30 days.

5. Poorly Managed Extensions

Up to 1/4 of all new requests are extended pursuant to section 9, and in most cases, the extended deadlines are currently not met.

In 1997-98, 206 time extensions were applied pursuant to section 9, which amounts to 24.3 per cent of the total number of requests received. Out of this number, the majority, 131 (63.6%) were extended for the purpose of consultations. Out of the total number of time extensions, 146 were missed, resulting in a deemed-refusal situation. This accounts for 17.2 per cent on the new request to deemed-refusal ratio for 1997-98, included in the table on page 4 of this report.

In 1998 to November 30, 1998, 95 requests, 15 per cent of the total number received, were extended pursuant to section 9—82 (86.3%) were extended for consultations. Out of the total number of extensions, 60 were missed, resulting in a deemed refusal. This added 9.5 per cent on the new request to deemed-refusal ratio for 1998 to November 30, 1998, included in the table on page 4 of this report.

Once operational areas come into compliance with the 14-day turnaround standard—providing notification to the ATI office, with dispatch, if there is a large volume of records or the need to search through a large volume of records, ND will be able to invoke more time extensions. By setting and meeting reasonable time limits, ND's delay ratio will go down significantly.

It is entirely within the ND's control to manage the duration of extensions for consultations. After selecting the period of extension, in consultation with the third party, or other jurisdiction, ND should proceed to answer the request whether or not the third party or other jurisdiction has responded to the consultation.

6. Burden on the ATI Office

The coordinator does not believe that ND can fully comply with the statutory time requirements of the *Access to Information Act*. In her words, "It can't be done." The workload has become so overwhelming that some applicants have even been told that they will only get more action if they complain to the Office of the Information Commissioner. The coordinator maintains that the ATI office's time is occupied trying to put out fires. "Receiving complaints, when trying to respond to requests is a double-whammy on the burden. We can't do it!"

ND's ATI staff is shouldering the burden of ND's chronic delay problem. Heroic efforts by ATI staff have not been enough to clear the backlog of requests and subsequent complaints. Morale is so low that desk officers are frustrated, even "in tears, " and members of staff have quit. Experienced personnel are leaving to work where there is a smaller workload, and less pressure. As a result, the coordinator has experienced difficulty in finding qualified personnel to fill ATI positions.

The ATI office may not be understaffed in relation to the number of requests received—officers are carrying heavy workloads of 75 to 100 requests. However, requests is not the not the only workload factor. In addition, there are privacy requests and informal requests. Further, OPI indifference to delays in the system also contributes to the workload. When OPIs are late providing records to the ATI office, too much time is spent chasing responses, and ATI staff is further burdened with the subsequent complaints made to the Office of the Information Commissioner. More staff will be necessary to relieve the current workload burden.

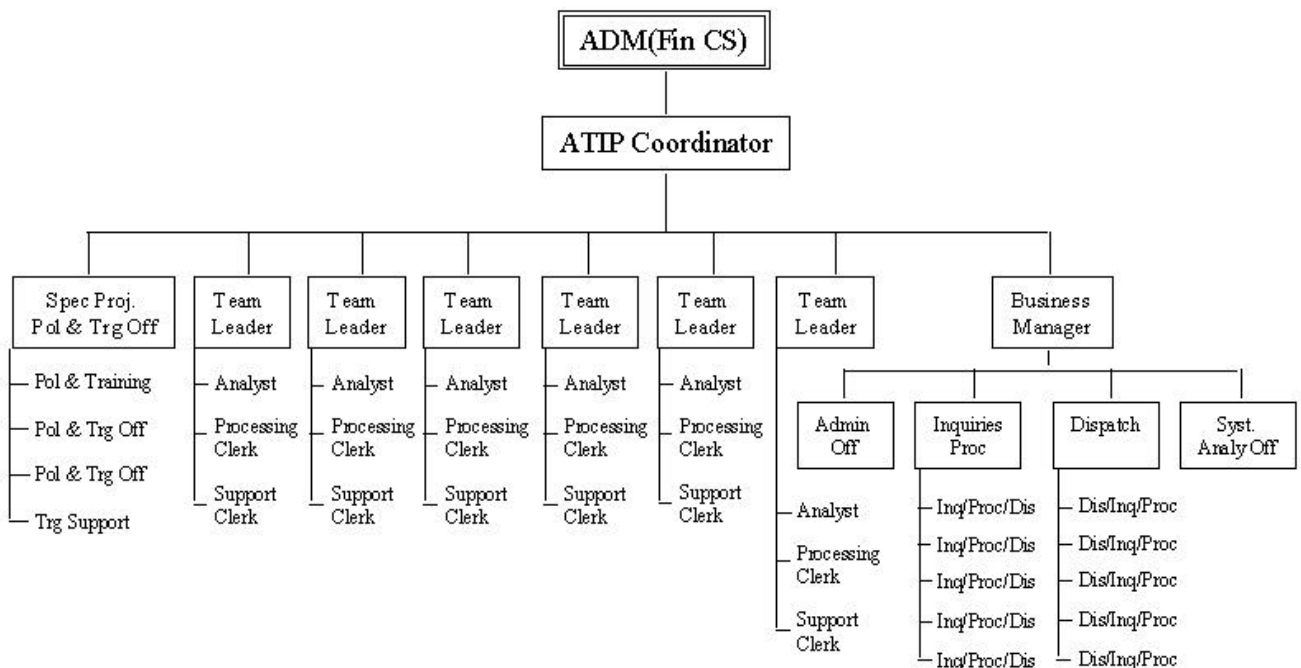
The burden of processing requests under the *Privacy Act* is unnecessarily heavy. Many of the formal privacy requests received by ND are for records that could and should be disclosed routinely. Attention to this problem would free up resources to be devoted to the growing volume of access requests.

VI. Management Response to the Problem of Delay

ND's senior management is well aware of the department's difficulties in meeting the statutory time obligations of the *Access to Information Act*. Effort has been made to identify problematic areas, changes have been implemented, and ND has pledged to continue making changes to improve compliance. These changes have resulted in a drop of deemed refusals from 95.3% in 1997-98 to 69.6% in 1998-98. The initiatives that have resulted in this improvement follow.

1. Restructuring of the ATIP Office

The reorganization of ND's ATIP office, intended to assist the department with its objective of compliance with the requirements of both the *Access to Information* and *Privacy Acts*, is a positive step towards improvements in efficiency.



In the past, ND's ATIP office operated as two separate, fully functional sections—one for privacy and the other for access to information. Effective April 1, 1998, ND started the process of amalgamating the two sections to allow for effective management of its resources by optimizing service to its clients. Under the new structure, the processing of requests under the *Privacy Act* and the *Access to Information Act* are handled by four teams. The team concept was developed to provide needed organization flexibility to optimize rapid adjustments to workload changes.

Prior to the final restructuring, during the 1997-98 fiscal period, the ATIP

Coordinator performed trials of the team approach. The first team was established on May 1, 1997, and a second team was put in place on June of the same year. Success with this approach persuaded the coordinator that a team approach would be beneficial.

Although the restructuring is now complete, the actual physical relocation of employees is still in progress. One third of the staff moved to the 8th floor on December 14, 1998 and the balance relocated to the 8th floor on January 7, 1999; however, the first third are again scheduled to move to the 7th floor on April 13, 1999, at which time the accommodation relocation will be complete.

The following are summaries of the various area included in the new organizational structure:

- **The Coordinator**

The Director, Access to Information and Privacy (DAIP) is accountable for the development, coordination and management of a policy and procedural framework encompassing the department's access to information and privacy program.

- **Special Projects, Policy & Training**

This area is responsible for training and ATIP-related operational guidelines and policies, as an integral component of departmental compliance. Next, work includes liaison with frequent requesters to discuss their information needs and to arrange for informal access whenever possible. And, finally, the section also manages the processing of requests, by receiving and assigning work to the various teams—taking into consideration expertise and workloads. (This unit is not fully staffed at this time.)

- **Integrated ATIP Teams**

Although ND's chart indicates that there are 6 teams, only 4 exist at this time. Each team processes both access to information and privacy requests.

- **Standalone Desk Officers**

Contractors are engaged on an "as required" basis for workload surges, or special issues. The employees function as standalone desk officers.

- **Business Manager & Designated Staff**

This area is the focal point for inquiries, processing and dispatching processes. It is responsible for the development, enhancement and maintenance of all information technology systems including Internet and the digitization of files and records. ND's Internet site for access to information—<http://www.dnd.ca/admfincs/ati/>—includes annual reports and subject listings of all completed access to information requests since 1997. The responsive records are not available on the Internet, but can be viewed in electronic form at ND's reading rooms in the national capital region.

2. Training and Training Materials

ND recognizes and has responded to the need for increased sensitization and training for staff at all levels. Training and/or briefings are now given to individuals directly involved in processing ATIP requests, or for career and developmental purposes. The Officer Professional Development Program, which junior officers must complete prior to promotion to the rank of major, now includes access and privacy training.

During the current fiscal period, 1,015 employees were briefed on ND's obligation under *Access to Information Act* and the *Privacy Act*, and 70 employees participated in two-day ATIP training sessions.

Once workload pressures in the ATI office are less hectic, a comprehensive ATIP Policy and Procedures Manual will be prepared. This proposed manual will include: desk procedures; descriptions for each step of request processing; workflow diagrams; responsibilities and performance standards, and an orientation and training package for new ATIP staff.

3. Computer Tracking System

Over the past two fiscal periods, the department has focused on standardizing its methods of request tracking and report generation, while electronically capturing costing and fee data. Unfortunately, because of the shortcomings of the existing CCM as a working tool, progress in this area has not resulted in any measurable performance improvements.

On a positive note, ND recognizes the fact that automated systems and extensive training are essential to progress, and plans to expand the use of automated working tools. The ATI office's Business Manager has been tasked to study available systems with a view of meeting the diverse needs of the ATIP office. Consideration includes the idea of scanning documents for electronic transmittal, but all changes will be measured against the objective of streamlining processes and maximizing the use of human resources.

It would be impractical for National Defence to implement, in one step, a new system capable of automating everything. A phased-in approach, starting with the immediate replacement of the CCM is preferable. It appears that ND's Deputy Minister is in agreement. The Business Manager has been tasked to acquire and put into place a replacement tracking system by May 1, 1999. The likely choice is the *ATIPflow* from MPR & Associates, which will work in conjunction with other complimentary automation tools that can be added on at a later time. *ATIPflow* has the following features:

- Is year 2000 compliant.
- Calculates due dates, days allowed and the number of days taken.
- The automated correspondence feature transparently extracts and merges information into word-processing software.
- Confidential text marking ensures requester confidentiality when uploading to CAIR.
- Electronic case history.
- Search options on applicant, full text, OPI, actions, etc.
- Standard reports include: active requests, status, and workload reports including the last action, progress report, on-time trends, BF by officer, annual statistical report and more.
- Allows extensive trend analysis.

4. Handling More Requests Informally

ND is treating more requests informally. In 1997-98, the ATI office processed 137 requests informally. In the current fiscal period to November 30, 1998, the number of informal requests was 237, which had already surpassed the prior fiscal period. As of March 24, 1999, that number had grown to 397 informal requests—three times the number of the previous fiscal period and equal to almost half of the yearly intake.

The Policy & Training area screens requests received by the ATI office for the potential as informal requests. If so identified, concurrence with the applicant is sought. If the applicant agrees, any application fee is returned, and the applicant loses the right to complain to the Information Commissioner. If not, the request is handled formally under the *Access to Information Act*, and the applicant maintains all rights afforded by the Act.

The major benefits of treating more requests informally are that complaints are not forthcoming from these requests, and the response deadlines are relaxed. However, it should be stressed that these informal requests still require work. Time is taken contacting the applicant, locating and retrieving responsive records, which still need to be reviewed and possibly severed. Therefore, workload and staffing considerations should not overlook the time and staff required to perform this service.

The coordinator points out that although the informal requests involve work, she is pleased to perform this service and applicants have expressed satisfaction.

5. Other

In the past, ND insisted on claiming fees from access requesters who had received unacceptably slow service. The department has implemented new fee

waiver guidelines for ATI staff on the waiver of fees for overdue requests to recompense applicants for any inconvenience. Nevertheless, the waiver of fees is subject to review, on a case-by-case basis, by the coordinator. The guidelines include a progressive schedule of waivers:

- Reproduction fees can be waived by 25% (overdue by 1-30 days); 50% (31-60 days); 75% (61-90 days) and 100% (more than 90 days.)
- Search fees can be waived by 50% if the delay is more than 90 days.

Although ND has amended its internal deadlines to assist in meeting the overall 30-day response deadline, the total number of days still exceeds the 21-22 working day limit:

<u>Area</u>	<u>Turnaround Times</u>
ATI office	1 day—at receipt
OPIs (Operational units)	10 days—unless extension taken
ATI office	5 days—processing
Legal Services (PRAD)	5 days—2% of requests
Public Affairs—media lines	4 days—90% of requests
Liaison Officer	2 days—pre-release review
Minister's office—media lines	2 days—95% of requests
ATI office	1 day—final processing

Finally, ND's Chief of Review Services has requested an audit of recent changes implemented in the ATI environment and in the integrated ATI office.

VII. Recommendations

ND, despite its best efforts, seems to have stalled near the starting gate in its ability to solve its delay problem. The reason, in our view, is its unwillingness to fully adopt the “coordinator-as-decider” model for answering access requests. It is preoccupied with maintaining a senior approval process designed to ensure that information disclosures are “managed” at all levels, including the Minister’s office. This institutional need is given priority over the legal rights of requesters.

ND must take the leap to a much more structured process, where OPIs gather, review and recommend severances in a timely manner, the ATIP group conducts consultations and applies exemptions, and all communications needs and reviews are handled in parallel and do not adversely affect response dates. Until the senior levels at ND take themselves out of the access-processing business, ND will not come into compliance with this law.

Against this general background, we recommend the following:

- ❖ The coordinator is directly responsible for ensuring compliance with the Access Act, and should take a strong leadership role in establishing a culture of compliance throughout RC. Such a role requires the unwavering support and endorsement of the Minister and the Deputy Minister.
- ❖ The coordinator should be directed by the Minister, in writing, to exercise the delegation to answer requests within deadlines whether or not the senior approval process has been completed.
- ❖ ND should start making use of extensions under section 9, and OPIs (including field offices) should be trained to identify records that would justify a valid extension. Further, OPIs should contact the ATI office without delay to indicate the request involves a large number of records, or a search through a large number of records. If the ATI office is aware of the need to extend, within the initial 30 days, a valid extension can be taken if the appropriate notice is sent on time.
- ❖ Allotted turnaround times should be tightened up, with some approval processes dropped or performed simultaneously. An information sheet, clearly showing the expected turnaround times for each stage in the access process, should be developed. This might help those not familiar with the request process to understand the tight timelines.
- ❖ OPI-specific training (and information packages), with a focus on timelines and other considerations, should be developed, and training sessions given.
- ❖ If a request is clarified or modified, the ATI unit should confirm, in writing, its understanding of the revised request—when the original wording of a

request does not provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record. The date clarified becomes the effective date of the request, and the requester should be informed.

- ❖ If an extended date will not be met, the ATI office should routinely contact the requester to indicate it will be late, to provide an expected response date and of the right to complain to the Information Commissioner. This will not impact the deemed-refusal status once the extension date is missed; however, it will alleviate some of the requester's frustration and perhaps avert a complaint.
- ❖ If an outstanding request is almost one year old, the ATI office should notify the requester about section 31, the one-year limitation on the right to complain.
- ❖ Performance contracts with operational managers should contain consequences for poor performance in processing access requests.
- ❖ Come into substantial compliance with the Act's deadlines no later than March 31 of 2000.
- ❖ Where possible, the ATI office should provide partial response releases for portions of records not involved in 3rd party or other consultations.
- ❖ Approach the overall delay problem by establishing milestones to reach pre-set targets for improved performance (i.e. move to a project management mode).
- ❖ ATI training should be mandatory for all new managers as part of their orientation and for all managers on a refresher basis.
- ❖ An information sheet, clearly showing expected turnaround times for each stage in the access process, should be developed. This might help those not familiar with the request process to understand the tight timelines.
- ❖ The delegation order now in force (April 5, 1995) empowers the Access coordinator, or in her absence the person holding the position of Staff Officer, DAIP 3-6 and the Assistant Deputy Minister (Finance and Corporate Services) to exercise all of the powers and perform the duties and function so the Minister under the Access to Information and Privacy Acts. It does not, however, make it clear who has the responsibility for decision-making under the Act. In practice, in all but the most straightforward cases, the responsibility seems to be a collective one. It should be made explicit where the responsibility for decision-making under the Act lies. Moreover, the delegated decider must be directed to exercise the delegation in accordance

with the Act.

- ❖ Once the new tracking system is in place, the coordinator should make use of the reporting capacity. Statistical and timeline-monitoring reports can help identify problematic areas.
- ❖ Cyclical, newsworthy issues can cause significant surges in the number and complexity of requests received by ND's ATI office. ND's priorities during military situations are, understandably, "The Safety of CF personnel and the integrity of military operations." However, access to information requirements cannot be dismissed. Therefore, consideration should be given to setting up an additional ATIP team, which can be trained to deal with major issue surges. Hiring consultants for this purpose is impractical because the expertise simply is not available. During periods of normal workflow, this team can deal with broad scope requests and/or assist with training.
- ❖ When extensions are necessary, 10 to 20 per cent of notices are not being sent within the initial 30 days. The ATI office should strive to provide all extension notices within the specified time limit. Copies of all such notices must be sent to the Office of the Information Commissioner.
- ❖ 3rd party notices should be routinely sent as soon as the need arises. The 3rd party time set out in section 28, currently not observed in 10 to 30 per cent of all cases, should be remedied. Strict guidelines should be written and followed.
- ❖ Remove Public Affairs, ADM's Liaison Officer, DM's office and Minister's office from the approval chain and deal with them in parallel.
- ❖ Remove all steps in the approval chain that do not add value to the response.
- ❖ The practice of holding-up responses until the Minister's communications needs have been served, should cease.

B. BASIS OF REPORT

I. INTERVIEW WITH ND'S ATIP COORDINATOR—JANUARY 4, 1999

On January 4, 1999, ND's ATIP Coordinator was interviewed for the purpose of this Report Card.

II. ND—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.		April 1/97 to March 31/98	April 1/98 to Nov. 30/98
1.	Outstanding from previous period:	251	354
2.	Requests carried over from the prior fiscal period—in a deemed-refusal situation on the first day of the new fiscal period:	220	289
Part B: New Requests — Exclude requests included in Part A.		April 1/97 to March 31/98	April 1/98 to Nov. 30/98
3.	Number of requests received during the fiscal period:	847	629
4.A	How many were processed within the 30-day statutory time limit?	254	156
4.B	How many were processed beyond the 30-day statutory time limit where no extension was claimed?	372	303
4.C	How long after the statutory time limit did it take to respond where no extension was claimed?		
	1-30 days:	136	95
	31-60 days:	76	55
	61-90 days:	—	—
	Over 90 days:	160	153

5.	How many were extended pursuant to section 9?	206	95
6.A	How many were processed within the extended time limit?	58	27
6.B	How many exceeded the extended time limit?	146	60
6.C	How long after the expiry of the extended deadline did it take to respond?		
	1-30 days:	42	5
	31-60 days:	27	3
	61-90 days:	11	1
	Over 90 days:	64	4
7.	As of December 1, 1998, how many requests are in a deemed-refusal situation?		75
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: <u>Institutional Considerations:</u> Among the institutional-based realities that arise from time to time to make timely and straightforward responses to AIA requests difficult, are those related to the disbursement of departmental and CF offices around the world, and the frequent movement of military and civilian officials in and out of key OPI positions. The former makes the collection of responsive records difficult, while the latter makes receipt of informed and defensible OPI exemption recommendations equally challenging.		
	<u>AIA Request-related Considerations:</u> DND receives a large number of AIA requests. Applicants have become increasingly sophisticated in their knowledge of the department, the CF, and the AIA. We have noticed that requests are seldom general in nature any more. Rather we have seen an increase in those that are extremely broad, involving coordinated multi-OPI tasking (resulting in staggering numbers of responsive records), and those that are highly specific (leading to increases in the amount of search time expended by OPIs.) Following as a natural consequence, just as requests have become complex, so have the series of consultations required to be made with indicated offices internal to the department/CF, other government departments, and private sector third parties. <u>Educational Considerations:</u> Educational considerations relative to		

AIA among our OPI community are many and varied. They range from lack of knowledge about the Act, its objectives, intent, spirit, and its requirements down to unfamiliarity with procedural considerations relative to the mechanical processing of, and responding to, AIA taskings they receive from this office. In an institution that has been downsized by approximately 30%, absence of AIA awareness and education leads to OPI selection of priorities perceived by them to have greater importance than AIA. The practical manifestations of this knowledge deficiency are missed response dates, missed opportunities for legal extensions, non-provision of records, poor/or no exemption recommendations, and associated complaints from applicants.

While the above is not intended to be an exhaustive list of the factors that contribute to difficulties experienced in AIA case management, it would not be representative of the challenges that are faced by ATIP staff if mention were not made, even in passing, of the added strain that is placed on an institution whose resources are stretched when requests are made in bulk, for disparate subjects, at deliberately inopportune times (e.g. receipt of over 50 requests toward the close of business two days before Christmas.)

THANK YOU FOR COMPLETING THIS QUESTIONNAIRE

III. ND—REVIEW QUESTIONNAIRE (DECEMBER 1998)

Review Questionnaire—December, 1998

Delegation of Authority:

1. **On the Delegation Order for your institution, which powers, duties and functions have been delegated and to whom? (Provide a current copy of the Delegation Order.)**

Designation Order *Access to Information Act and Privacy Act*

The Minister of National Defence, pursuant to Section 73 of the *Access to Information Act* and *Privacy Act*, hereby designates the person holding the position of Director Access to Information and Privacy to exercise the powers and functions of the Minister as the Head of the Department of National Defence and the Canadian Forces under the Acts.

In the absence of the Director Access to Information and Privacy, the Minister hereby designates the person holding the position of Staff Officer, DAIP 3-6 to exercise the powers and perform the duties and functions of the Minister under the Acts. In the absence of the

Director Access to Information and Privacy and Staff Officer, DAIP 3-6, the Minister hereby designates the person holding the position of Assistant Deputy Minister (Finance and Corporate Services) to exercise the powers and perform the duties and functions of the Minister under the Acts.

Dated: April 25, 1998
S.C. 1980-81-82-83, C111

Signed by: Hon. D.M. Collenette
Minister of National Defence

2. **Are the ATI roles and responsibilities for those with delegated authority clearly defined?**
X yes; ___ no
3. **Do officers with delegated authority actually exercise the delegation? Or, in practice, does the approval process require the approval or concurrence of officials who are not holders of delegated authority? (Explain.)**
ATIP Coordinator exercises delegation.

ATI Office:

1. **To which unit/division (and management level) of the institution does the ATI Coordinator report?**
 - a) **For operational purposes:**
Assistant Deputy Minister Finance and Corporate Services.
 - b) **For administrative purposes:**
Assistant Deputy Minister Finance and Corporate Services.
2. **Who (name and title) completes the coordinator's annual performance appraisal?**
R. Emond,
Assistant Deputy Minister Finance and Corporate Services.
3. **Does the ATI Coordinator have a clear mandate? (Provide all documentation which sets out the coordinator's goals, objectives, duties, responsibilities and authorization.)**
X yes; ___ no
Departmental references which identify and describe the ATIP Coordinator's role, and AIA processes to be applied in the ND/CF include a 1 October 1991 document titled You and the Access to Information Act, a 22 April 1991 document titled, Guide for Senior Managers, and a dated but for the most part current NDHQ Instruction numbered 3-91. [Portions of these documents have been included under the response to question 8.] Presently in the final stages of preparation is a ND/CF version of *InfoSource*, which updates elements of these references, and includes a condensed summary of their salient points.

The following is extracted from the position description for the Director, Access to Information and Privacy of National Defence, AS-08, dated April 1, 1996:

GENERAL ACCOUNTABILITY

The Director, Access to Information and Privacy, (DAIP), is accountable for the development, coordination and management of a policy and procedural framework encompassing the formulation of specific guidelines which effectively implements the Department's Access to Information and Privacy Program. The Director develops, disseminates and maintains operational policies and procedures to ensure consistent and efficient delivery of the ATIP programs. To achieve optimal efficiency and to ensure success, the Director proactively exercises substantive functional direction, coordination and technical support to the 5 ATIP Team Leaders, the Special Operations and Coordination Officer, the Policy and Training Officer and the Business Manager.

The Director ensures that the Department conforms and complies with the spirit and intent of acts, regulations and government ATIP initiatives and policies. The overall size and dispersion of the department's staff, its duality of culture, civilian and military, and the complexity and sensitivity of programs and their diverse operational components present a unique and demanding role for the position. The position embodies a level of authoritative expertise and advisory capacity to function at senior levels and is a regular conduit of information, advice and guidance to the DM/CDS as well as the Minister, on matters specifically involving the Access to Information and Privacy program for both the civilian employees of the department and members of the Canadian Forces (CF). Inherent to this role is the responsibility for melding the diverse interests, priorities and mandates within the department into a cohesive, coordinated and sensitized entity through the development, promulgation and enhancement of an integrated ATIP Program and policy that is understood and accepted.

As the Departmental ATIP representative possessing Ministerial signing authority, signs off highly significant access and privacy exemptions. The position regularly consults with the Information and Privacy Commissioners and participates in investigations, consults other departments and third parties and provides advice to peers and senior officials within other departments as well as providing the necessary expertise and authoritative advice to ND/CF senior leadership.

Paramount to the position's mandate is the organization and delivery of a current training, awareness, information and proselytization campaign to achieve the necessary buy-in and commitment of both senior civilian and military officials. To maintain credibility and restore confidence in the Chain of Command and ensure the promulgation of guidelines that are clear and concise as well as to offer the most complete ATIP program possible, the position must liaise with other contemporaries, both within the public and private sectors and attend, as well as speak at various forums.

NATURE AND SCOPE

[...]

The Access to Information and Privacy Program within the department despite this regulatory nature is a proactive program; and is couched in a framework to assist personnel to comply and better able to discern the vagaries of the *Access to Information and Privacy Acts*. It has

been designed to provide a number of tools and policies to assist commanders and managers in meeting the challenges they face under management renewal and Defence restructuring in a changing environment. The program is intended to educate as well as ensure compliance and conformity with legislated requirements by raising awareness of all concerning the environment within which their delegated authorities are exercised and to ensure that members are provided with the necessary information and understanding of these legislated requirements. The provision of adequate training to Group Coordinators, Directorate personnel and other Departmental staff minimizes delays in responding to requests and the release of erroneous information.

The role of the Director, Access to Information and Privacy is to deal with a large number and variety of contentious issues and problems which are often sensitive, under tight time pressures, drawing upon accumulated knowledge and experience so that appropriate and reasoned decisions are arrived at and implemented. It is essential that the Director establish an often delicate balance between the rights of privacy with the rights of access to information while protecting the interests of the department. The reputation of the department respecting ATIP matters is fostered and maintained through prudent oversight of the Directorate to ensure its ability to meet the legislated deadlines and that the necessary cost effectiveness and efficiency of the Directorate is achieved and enhanced through the Director's ability to manage and establish priorities, and standards of performance and compliance.

Failure to disclose information under access legislation exposes the department to legal, political and public relations consequences as well as scrutinization and investigation by the Information Commissioner. In addition, the release of inappropriate information can have an adverse effect on an individual's privacy and further expose the Department to an investigation of complaint by the Privacy Commissioner. It is the responsibility of the Director to promptly respond to investigations of the Information and Privacy Commissions and to discuss with investigators the complaints filed and negotiate the release of exempted information. The Director represents the Department during litigation before the Federal Court, with officers of provincial government agencies to discuss the release of information and the media to explain ATIP policy.

SPECIFIC ACCOUNTABILITIES

1. Develops and promulgates the Departmental Access to Information and Privacy policies, guidelines and procedures to conform with the *Access to Information Act* and regulations and the *Privacy Act* and regulations. Provides for an overall program framework and coordinates all CF/ND ATIP compliance activities.
2. Defines and communicates the strategic direction, policies, priorities and position of the Department on ATIP issues. Provides authoritative policy and strategic advice to the Minister, the DM/CDS, Assistant Deputy Ministers and the Commanders of the CF to better achieve the objectives of the Acts.
3. Manages the operations of the Access to Information and Privacy Directorate by developing strategic plans and establishing objectives and performance measures to ensure the prompt and adequate response to requests for information. Develops the authorities and approval mechanisms required to meet the policy and program directions of the Department. Plans, organizes, directs and controls the human, financial, and material resource requirements.

4. As the departmental resource and representative, investigates major complaints made by the public to the Access to Information and Privacy Commissioners; negotiates solutions which are agreeable to all parties. Reviews, analyzes and determines relevancy of sensitive cases which potentially could be referred as complaints to the Commissioners.
5. Regularly discusses with Departmental staff and officials involved with grievances, harassment complaints, and other issues, the content of specific records and their accessibility in whole or in part.
6. Authorizes, persuades and acquires from senior officials of various Departmental units and bases the prompt release of records.
7. Represents the Department in consultations with the public, inquisitors and researchers to explain the legislation and access rules and procedures, obtains their views and clarification of their specific requests for information, determines their propriety, articulates the Department's position and where feasible negotiates compromise arrangements which meet their requirements, adhering to the spirit of the legislation.
8. Evaluates major third party representations and determines the applicability of exemptions and whether they are legal and practicably defensible.
9. Analyzes and evaluates Court and Commission decisions to determine their relevance and applicability to the Department's practice in administering the Acts and develops where appropriate suitable modifications to policies and procedures. Interprets legal precedents and applies them to current situations to meet departmental and legislative requirements.
10. Assesses the potential economic, social, regional and/or national impact of the disclosure of information and defines and interprets the rights to exemption under the Acts. Develop ways of resolving differences of opinion on disclosure of information in response to influence from senior officials.
11. Promulgates policy to and achieves commitment from Commands and Group Principals and provides practical assistance and expertise on all ATIP matters.
12. Prepares reports and briefings, both oral and written, for the Minister, they Deputy Minister/Chief of Defence Staff, Commands and Group Principals; responses to Ministerial; planning documents and pertinent information for the Annual Report to Parliament.
13. Controls through adherence to the National Archives Act the retention and disposal of records maintained in the system as well as the personal information contained therein, according to the ATIP Acts and according to Treasury Board policies and relevant Departmental practice and procedure.

- 4. Is the ATI Coordinator performing his/her duties on a full-time basis? If not—in instances where the individual also performs duties under another position title—please indicate the percentage of time spent on ATI matters.**

Full-time.

5. **Does the ATI Coordinator have authority/control over ATI activities throughout the institution (i.e. headquarters, regions, etc.)?**
All formal requests are responded to by the Directorate Access to Information and Privacy.
6. **If not, who is responsible for the ATI activities in other areas? (If more than one other person, please identify each by name, title, and classification—ground level.)**
Not applicable.
7. **Please provide a breakdown of all employees in the ATI office, showing classification, full or part-time status, and number of years of experience.**

A: Officer Level:

<u>Classification</u>	<u>Full or Part-time</u>
Coordinator	AS-08
Policy Training, Special Project Officer	PM-05
Policy Training Officer	PM-03
Business Manager Officer	AS-03
Administration Coordinator	WO
System Analyst Officer	AS-01
Supervisor	Sgt
SA-5/Senior Analyst	PM-04 (2 employees)
SA-1/Senior Analyst	Contract
ATIP Senior Analyst	Contract (2 employees)
Team Leader-1/Senior Analyst	PM-04
Team Leader-2/Senior Analyst	PM-04
Team Leader-3/Senior Analyst	LCDR
Team Leader-4/Senior Analyst	Maj
ATIP Analyst	PM-02 (6 employees)
ATIP Analyst	MWO
ATIP Analyst	Capt
ATIP Junior Analyst	Contract (2 employees)

B: Support:

<u>Classification</u>	<u>Full or Part-time</u>
Training Support Clerk	CR-04
Administrative Assistant	Contract
ATIP Inquiries & Processing Clerk	CPL
ATIP Inquiries & Processing Clerk	CR-03 (8 employees)
ATIP Inquiries & Processing Clerk	Commissionnaire
ATIP Support	Contract
ATIP Support	CR-03 (6 employees)

ATIP Processing Clerk
ATIP Processing Clerk

Sgt (2 employees)
CR-04 (5 employees)

8. **Have written, internal procedures been developed and implemented to ensure that access requests are processed in accordance with the statutory provisions of the Act, Regulations and the Treasury Board Guidelines? (If yes, please provide copies.)**

X yes; ___ no

In addition to the references (reproduced below), detailed written instructions are conveyed to OPIs in each AIA tasking that is raised.

Departmental references concerning AIA processes to be applied in the ND/CF, excerpts of which have been reproduced below, include a 1 October 1991 document titled You and the Access to Information Act, a 22 April 1991 document titled, Guide for Senior Managers, and a dated but for the most part current NDHQ Instruction numbered 3-91. Presently in the final stages of preparation is a ND/CF version of *InfoSource*, which updates elements of these references, and includes a condensed summary of their salient points.

The following are excerpts from the document entitled, You and the Access to Information Act, dated 1 October 1991:

17. HOW ARE REQUESTS PROCESSED WITHIN ND?

ND uses both a centralized and a decentralized approach. Once the request is received by the Access Coordinator it is reviewed for completeness and clarity and then channeled to the Office of Primary Interest (OPI) responsible for the subject matter. The OPI will locate the record and make the initial determination as to whether any or all parts of the record may be released. Once the staff concerned has made the initial determination, their findings are presented in the form of a recommendation to be signed by the officer Commanding a Command or the NDHQ Group Principal concerned (See NDHQ instruction DG Exec Sec 3/91.)

The recommendation is then forwarded to the ND Access Coordinator who will review the case and consult as required. He will then grant or deny access when he has authority to do so. In all other cases he will refer the request to the Deputy Minister or the Minister.

18. WHAT ARE THE RESPONSIBILITIES OF THE OPI?

Managers are responsible for:

- a. locating records in their program or function area to satisfy a request;
- b. reviewing records recommending disclosure or non-disclosure as the case may be;
- c. notifying the ND Access Coordinator of all requests for access made under the Act that are received directly from the public; and

d. other responsibilities as listed at paragraph 8 of Annex B to NDHQ Instruction DG Exec Sec 3/91.

20. WHAT INTERNAL DOCUMENTS ARE REQUIRED RELATING TO THE PROCESSING OF A RECORD?

Because of the two-tiered review process under the Act, it is essential that all administrative actions taken at all stages of the access process be documented by the OPI and the ATI Section. Such documentation may become necessary as evidence during the review by the Information Commissioner or the Federal Court.

Exemption decisions must also be carefully documented. All reports, deliberations, consultations and decisions on invoking exemption provisions shall be recorded and filed with the access request to which they pertain.

21. IS IT NECESSARY TO REVIEW A REQUEST WHICH HAS BEEN DEALT WITH PREVIOUSLY?

The decision to release or withhold may change in view of diminution of injury because of time elapsed, of new circumstances and other factors. Consequently, each request for access must be assessed on its own merits using precedents only as guidelines in making a determination whether to disclose or exempt a record.

22. HOW MUCH TIME IS ALLOWED FOR PROCESSING A REQUEST?

The law sets out specific time limits and conditions under which an applicant must be notified about his request for access. Once a request has been received the department faces a 30 calendar day time limit in which it must notify the applicant whether or not he or she will be given access to all or part of the information requested and to give him or her that access if the department is not claiming an exemption. This means the department has approximately 22 working days in which to process an application and respond to the requester.

23. CAN THE TIME LIMIT BE EXTENDED BEYOND 30 DAYS?

The 30-day period may be extended only if the request is for a large number of records and meeting the original time limit would unreasonably interfere with the operations of the department; if consultation with another government institution is necessary and it cannot be completed within 30 days, (consultation in this context means with other government institutions and not internal consultations); and if notification must be given to a third party.

If an extension beyond the initial period of 30 days is required, the department is required to notify the applicant in writing. The notice will also inform the applicant of his or her right to complain to the Information Commissioner about the extension. If the required time extension is greater than 30 days the department must also notify the Information Commissioner.

The following excerpts are from the NDHQ INSTRUCTION DG EXEC SEC 3/91, dated 22 April 1991:

PART I
ACCESS TO INFORMATION ACT (AIA)

[...]

EXTENSION OF TIME LIMITS

21. The Minister may extend the 30-day limit for a reasonable period of time, having regard to the circumstances if the request is for a large number of records or the time required to search through a large number of records is such that meeting the original time limit would unreasonably interfere with the operations of ND, or if consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit. Notice of the extension shall be given to the requester within 30 days after the request is received. Consultations in the context of this provision refers to consultations with the applicant or other government institutions and not internal consultation. Where the extension is in excess of 30 days, notification must also be given to the Information Commissioner. (S.9)

[...]

PART II
POLICY AND GUIDELINES

POLICY

33. It is essential that ND act in accordance with the letter and the spirit of the legislation. To this end reasonable efforts will be made to assist the public in directing their requests for access to a record. This assistance includes, but is not limited to, assisting the public in framing requests, describing records of particular interest, clarifying vague or imprecise requests, making the record available for viewing when it is too voluminous to reproduce or recommending other and more appropriate sources of information. In short, artificial procedural obstacles shall be avoided and personnel concerned with the program must look for reasonable ways and means to make the requested information available to the public, except only in those cases where a denial of the information can be clearly justified on the basis of an exemption contained in the Act.

COORDINATION

34. DG Exec Sec is the overall ND AIA coordinator and is responsible for implementation of the program within ND.

35. Commands shall appoint an AIA Officer to be the contact point between command headquarters and NDHQ on matters relating to AIA within the command. DG Exec Sec shall be notified of the appointment and telephone number of the command AIA Officer.

CHANNELS OF COMMUNICATIONS

36. To preclude delays, direct communication on matters pertaining to requests for records under the AIA is authorized between NDHQ and commands, formations and units, bases and stations. Command AIA Officers shall be kept informed of any direct communication between NDHQ and commands, formations, units, bases and stations and copies of correspondence exchanged between them shall be forwarded to the parent functional command headquarters.

37. Requests for records under this Act received from the general public by bases, stations, or units shall be forwarded directly to NDHQ/DG Exec Sec with a copy, through normal channels of communication, to the parent functional command headquarters. An AIA request for a record received from the general public by a Command HQ or any element or individual in NDHQ shall be forwarded without delay to DG Exec Sec. Clearly, if the record is available at the point where the request was received the recipient should concurrently start to review the record in anticipation of a tasking from NDHQ.
[...]

ANNEX A
TO 1463-9 (DIA)
22 APRIL 1991

ADMINISTRATIVE AND STAFFING PROCEDURES
REVIEW PROCESS

NDHQ DIRECTORATES OR POINT OF EXPERTISE

3. A request for access to a record will be sent by the AIA Staff direct to the point of expertise, normally at the directorate level. The point of expertise (OPI) will be selected based upon the need to provide a coordinated recommendation to the AIA releasing authority (MND, DM or DG Exec Sec) from an office that has the greatest knowledge of the requested subject. Contributions of records and release recommendations to the OPI may be required from other ND/CF offices (OCIs).
4. On receipt of a request for access to a record, the office of expertise will be responsible to:
- a. initiate a search for, produce and review the record (it may be necessary for the office of expertise to obtain the records in whole or in part from other NDHQ Directorates, Command HQ, base, station or unit if no copy is held at the office of expertise);
 - b. if access to the record is to be given, forward it immediately with a covering memorandum, recommending disclosure, explaining the rationale for disclosure of the information, to DIA signed off by the appropriate group principle. The recommendation to release the unsevered portion is treated as the declassification authority for those classified portions;
 - c. if the record does not exist or cannot be found notify DIA by memorandum explaining why it is not available and what efforts, including inter and intra departmental consultations, were made to locate the record;
 - d. if additional time in accordance with paragraph 21 of NDHQ Instruction DG Exec Sec 3/91 is required to comply with the request, apply to DIA by memorandum requesting an extension of the time limit and, indicating the new date requested. The memorandum will state the reasons why an extension is necessary;
 - e. if access is to be denied, in whole or in part, send the original record to DIA together with a memorandum to DIA recommending that the record not be disclosed. The memorandum will -

- (1) indicate the section(s) of the Act under which it is proposed to deny access;
 - (2) specify, for each exemption, the injury which would result from disclosure or the reason the record/information is believed to belong in the class of record/information covered by the exemption (note that the rationale is essential for departmental purposes but will not be released to the applicant);
 - (3) indicate the inter and intra departmental coordination (if any) that has taken place (for example, the OPI is responsible to obtain verification from D Pers A if the record is believed to contain personal information.) Where coordination has occurred with other OCIs who may have produced or reviewed part of the record, comment on their release recommendations;
 - (4) include necessary sequential sign-offs; and
 - (5) include on the original, the originator's name and telephone number on the lower left side of the memorandum;
- f. if access is to be given to part of the record only, forward the entire record to DIA indicating those portions which are to be deleted and the exemptions which apply in each case;
- g. if notification of a third party is required, notify the DIA 3 staff officer in sufficient time to initiate third party consultations and invoke a time extension before the 30-day time limit;
- h. if the records contain information that originates from other departments or governments, or which affects them, advise DIA as soon as it is recognized during the search/review. This will permit timely consultation pursuant to subsection 13(2) of the Act;
- i. [No "i" is included in the version of Annex A provided.]
- j. ensure all requests for access to a record are actioned promptly, the log sheet is completed as directed, and the response is received by DIA within the specified time limit;
- k. consult DIA on any matter relating to interpretation of the Act;
- l. [No "l" is included in the version of Annex A provided.]
- m. if translation is necessary, arrange for translation to be made and advise DIA when the translated copy may be available; and
- n. advise Commands if release of a record by NDHQ is likely to have an impact on bases, stations or units in the Command.

SIGN-OFF LEVELS

5. While initial recommendations will normally be signed by the director/DCOS who prepared the response, and to whom sign-off authority may be delegated for what are considered to be routine matters, officers holding the following appointments are accountable for assessing the consequences of disclosing a record within their respective area of responsibility and for recommending whether the requested record should be released or disclosure refused on the basis of an exemption contained in the Act:

- a. VCDS;
- b. Commander of Command;
- c. Group Principal;
- d. JAG;
- e. CRS; and
- f. DG Exec Sec.

6. The sign-off process should not be a rubber stamp procedure. It requires the active participation of the signing officer who may be in a position to view the matter from a perspective not available to a reviewer at a lower level. In the review and sign-off process the rigid time constraints imposed by the legislation must constantly be borne in mind. The more sensitive the issue the more review may be required and in the most sensitive areas the AIA Coordinator may seek the views of the DM/CDS and ultimately the Minister, all of which must be done within the 30 calendar day time frame permitted by law. It is imperative that the review and sign-off process be carried out as quickly as possible and the response passed to the next level without delay.

REVIEW PROCESS

7. The underlying principle in applying most exemptions is weighing or balancing the right of access to government information against the injury that could ensue from disclosure of the information. The review process is intended to validate the recommendation of the OPI before it goes to DG Exec Sec for preparation of the final reply. Before that reply is drafted a further review will be conducted by the DIA AIA staff who may have a better understanding of the law and TB Directives and Guidelines but less familiarity with the subject than the OPI and the reviewing officers within the Group/Command.

8. The review should be a critical analysis to ensure that the final decision to grant or deny access, in whole or in part, is appropriate and defensible in the event of an investigation by the Information Commissioner or an appeal to the Federal Court.

9. Attached at Annex B is a table—[this table has not been reproduced for inclusion in this report]—which details the exemptions contained in the Act. A recommendation to deny access must specify the exemption which applies and indicate how it applies. The reviewing officer should consider the following points before signing-off the recommendation:

- a. Is this the record requested? Have we properly analysed the request and identified the correct record?
- b. Is the recommendation in keeping with the spirit of the Act? Are we being as open as we can in the circumstances?

- c. If it is proposed to exempt all or part of the record, is the specific exemption identified?
- d. If a class exemption is being claimed, are you completely satisfied that the information or the record being exempted properly falls within the class specified? Appendix 1 is an explanation of the class text.
- e. If an injury exemption is being claimed, does the OPI clearly indicate the harmful or damaging effect that would result from disclosure (reasonable expectation) and do you agree with that assessment? (Note: The rationale for denying access is intended for departmental use only and will not be released to the requester.) An explanation of the injury test is attached at Appendix 2.
- f. In those cases where the recommendation is to exempt the entire record, does the OPI indicate that a serious effort was made to sever exempt portions only before determining that severances are not possible or advisable? Do you agree? Appendix 3 is an explanation of the application of severability.
- g. Does the OPI indicate what inter or intra-departmental consultation took place, if any? Can you think of any other consultation which ought to have taken place?
- h. If the OPI proposes to release a classified document in whole or in part, has the necessary action been taken to declassify the record?

DIA ASSISTANCE

10. The DAI tasking memo invites the OPI to consult the AIA Staff officer named in the memo on any matter related to the request, the procedures or the Access to Information Act. Because of the complexities of this legislation and the limited time for responses, such consultation cannot be overemphasized as it is a practical means of avoiding wasted effort.

AVOIDANCE OF DELAY

11. The admonition to pass AIA requests quickly cannot be overemphasized. The due date shown on the tasking memo is the last date by which the recommendation must reach DIA AIA section but every effort should be made to respond at the earliest possible date.

[...]

The following excerpts are from 1463-1 (ND INQ), dated 26 July 1983:

1463-1 (ND INQ)
26 July 1983

GUIDE FOR SENIOR MANAGERS
ACCESS TO INFORMATION
REVIEW PROCESS

INTRODUCTION

1. The purpose of this aide-mémoire is to assist senior managers who are required to review and sign-off on responses to ATI request prepared by their staff. It is intended as a

guide only and may assist by indicating what to look for in the response. It is important to understand that only the MND, DM and in some cases the DG Exec Sec have the authority to grant or deny access to departmental records requested under ATI and the response from an OPI is only a recommendation which should take into account the right of the person making the request, the interests of the department (and the CF) and the provisions of the Act. Any review of an ATI response should only be made after reading NDHQ Instruction DG Exec Sec 6/82 which summarizes the Act and describes the exemptions in the legislation.

POLICY

2. The ATI Act is intended to give a right of access to government records so that the decision-making processes of government are made more open to examination by the public. The general philosophy of the legislation is that in case of doubt government institutions should favour more rather than less disclosure of information. The policy of the department is to be as forthcoming as possible.

SIGN-OFF LEVELS

3. While initial recommendations will normally be signed by the director/DCOS who prepared the response. Where the recommendation is for release because no exemption or exclusion is applicable no further sign-off is required. Mandatory denials must be signed-off at the DG/DCOS level to indicate agreement with the opinion of the OPI. The most difficult decisions are those where the Act allows some discretion in the application of an exemption. These require a sign-off at the Branch Chief/Deputy Commander level and may well be referred to the Group Principal/Commander if the issue is sensitive.

[...]

[Same as Administrative & Staffing Procedures, numbers 6 to 11.]

ADMINISTRATION

10. Senior managers should also be aware of two important administrative actions relating to the staffing of ATI requests. These are completion of the log that accompanies each ATI tasking and the necessity to document exemption decisions at all stages of the access process.

11. The purpose of the log is to capture data for inclusion in the quarterly report to TB and the Minister's annual report to parliament. It will also be used internally to justify any additional resources that may be required to administer the program.

12. Documentation of reports, deliberations and consultations leading to exemption decisions is important because such documentation may become necessary as evidence during the review process by the Information Commissioner or the Court. The information should be recorded in writing and placed on the ATI docket.

[....]

Requests:

9. **The Treasury Board Guidelines include that a copy of every access request—personal identifiers removed—should be submitted to the Coordination of Access to Information Requests (CAIR) System, Public Works & Government Services Canada within 24 hours of receipt. Is this being done? (Provide any other guidelines you follow in this regard.)**

Always, almost always, sometimes, rarely, never.

10. **If a request is clarified or modified, does the ATI office confirm, in writing, its understanding of the revised request—when the original wording of a request does not provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record? (Provide any other guidelines you follow in this regard.)**

Always, almost always, sometimes, rarely, never.

11. **When extensions are necessary, are notices sent to the requester within 30 days?**

Always, almost always, sometimes, rarely, never.

Percentage of requests: 80-90%.

If detail sufficient to support an extension claim is not received from OPI within thirty days, extension is not claimed.

12. **When notice is sent under subsection 9 (1), extending the time limit for more than thirty days, how often is a copy of the notice sent to the Office of the Information Commissioner?**

Always, almost always, sometimes, rarely, never.

Percentage of requests: 80-90%.

13. **Following an extension, if it is unlikely that the extended date will be met, does the ATI office contact the requester to indicate:**

- 1) **The response will be late**

Always, almost always, sometimes, rarely, never.

- 2) **Of an expected date for the final response**

Always, almost always, sometimes, rarely, never.

- 3) **Of the right to complain to the Information Commissioner**

Always, almost always, sometimes, rarely, never.

14. **If a request is almost one year old, does the ATI office notify the**

requester about section 31, and the one-year limitation on the right to complain— from the time the request is made? (Provide any written guidelines you follow in this regard.)

X Always, ___ almost always, ___ sometimes, ___ rarely, ___ never.
 Right to complaint is always provided regardless of time lines.

15.a) Are third-party notices sent as soon as the need for such notice is identified?

___ Always, x almost always, ___ sometimes, ___ rarely, ___ never.

b) Is the third-party timing process (as set out in section 28) observed?

___ Always, x almost always, ___ sometimes, ___ rarely, ___ never.
 Percentage of requests: 70-90%.

16. If consultations are necessary, are these sent out as soon as the need has been identified?

___ Always, x almost always, ___ sometimes, ___ rarely, ___ never.

17. Does the ATI office provide a partial release of the request for portions that are not involved in the necessary third-party (or other) consultations?

___ Always, ___ almost always, x sometimes, ___ rarely, ___ never.

18. Is there a tracking process in place to alert the ATI office if a request:

Has not been assigned?	X yes; ___ no
Will not be processed within the 30 days?	___ Yes; x no
Is nearing the end of the extension date?	___ Yes; x no
Is past the extension date?	___ Yes; x no
Is almost one year old?	___ Yes; x no

Please describe the nature of the tracking process and provide related documentation.

Standard tracking system is in place, which can provide data. Each team leader must activate individually.

Offices of Primary Interest

1. Are OPI's ATI responsibilities clearly defined? (Provide any written documentation.)

X yes; ___ no

Answers to previous questions refer. Please see enclosed documentation and samples for confirmation.

The coordinator provided the following samples:

MEMORANDUM

ATIP Control No:

Date:

To:

ACCESS TO INFORMATION (AIA) REQUEST

Refs: A. Request for record (enclosed)
 B. Access to Information Act
 C. NDHQ Instruction DG Exec Sec 3/91

SUBJECT:

1. A recommendation regarding the release of the record requested at ref A, staffed in accordance with refs B and C, is required at the AIA Section by ___ hrs, ___.
2. Please contact the following staff officer with 48 hours of receiving this request to discuss the procedures and the contents of the records that you have identified as relevant:

Name	Appointment	Tel Number
------	-------------	------------

Contact with the applicant or a third party shall be done through or after consultation with the staff officer named above.

3. Your response is to be staffed in accordance with para 45 of ref C [This refers to paragraph 45 of Annex A—reproduced in this report under ATIP office question 8.]
4. Additional instructions/remarks:

B.J. Petzinger
 ATIP Coord

Distribution List

ACCESS TO INFORMATION
LOG
RECORD OF ACTION
INSTRUCTIONS TO OPI

LOG SHEET

All the staffing process and date/time activities must be logged for accounting and legal purposes.

- a. DAIP is required to calculate the fees to be charged for each request together with the actual cost to DND. The costing information shall be completed by each OPI to identify the time spent on this request. This is required for auditing, costing and budgeting. We have an obligation to collect this information.

b. In the case of a complaint or legal challenge to a matter concerning any request, a total account of actions and time spent on processing must be available. The applicant can file a complaint about the denial of access, time delays over 30 days, fees assessed, refusal to translate records, the quality of copies provided, or any other perceived grievances. The complaint can be lodged with the Information Commissioner within one year of the original request.

DEFINITIONS

1. The LOG/JOURNAL must be filled out for each activity undertaken in response to a request. The entry is first dated and the military/civilian rank/grade inserted, and the line initialed. Each line must also show the time spent in any or all of the three activities:

- a. SEARCH: means the identification and hunting for records pursuant to fulfilling the intent of the request, and includes all activities leading to the physical retrieval of the records from storage. In the case of electronic records, it includes identifying them, but not printing them. **If the SEARCH is going to take more than five (5) hours, DAIP must be informed immediately!**
- b. REVIEW: means the entire process of examining the records to determine how it can be released, whether in whole or in part. This includes any consultation with individuals in DND or outside, and the intellectual process of deciding what must be protected from release and WHY. Review includes initial review by the OPI and review or verification by sign-off authorities. NOTE - this is not to be counted against the 5 hours search time. TB Guidelines and Gov't Policy prohibits the billing of review time.
- c. ADM: means the administrative time spent drafting/typing a response memo, and the act of physically noting proposed severances on the records. It also includes the time spent copying the records. Government regulation prohibits the billing of admin time.

MEDIA/OUTSIDE INTEREST

Material which is likely to generate media or other outside interest should be identified by the OPI, and possible questions and answers prepared for DGPA. Contact DGPA/DDPA at 992-7147 for guidance.

K:/ati/forms/loginfo
6 May 97

ACCESS TO INFORMATION ACT (AIA)

OPI ACTION CHECK-OFF

1. The AIA provides the right of access by the public to information in records held by the Federal Government and all its institutions. This is a core process of DND/CF under Federal law. If you are not familiar with the AIA or the provisions important to DND/CF, please read DG Exec Sec Instruction 3/91 (available from DAIP, 996-6696).
2. Contact the DAIP Staff Officer assigned to your case for further clarification of the request or additional information and guidance. By law, requests must be actioned within 30 days of receipt by ND, although extensions may be given for legally justifiable reasons.
3. Search your section/division/unit/directorate/NDRLS for the records which pertain to the request. Physically locate all records, including: paper, computer, photographic, video,

and any other pertinent to the request.

4. **Each request automatically gets five hours of search time. If it will take additional search time, you must notify DAIP immediately so that a fee estimate and bill can be prepared by DAIP and sent to the applicant. Do not continue work without further authorization for longer searches.**

5. Identify any records which did not originate in DND/CF. Inform DAIP immediately as outside consultation must be undertaken by DAIP with other Departments or companies. Do not do consultations yourself, as this slows the process and must be repeated by DAIP.

6. Complete the LOG/JOURNAL sheet underleaf for each activity.

7. Review the records. Mark the possible exemptions in pink highlighter by either covering discrete words or lines, or by circling complete paragraphs. Do not cross out pages or material, as this will not be machine readable. Use only the pink highlighter to mark the exemption number (see table below) beside marked material. Do not use pencil or ink. Review time is not counted as search time.

8. Prepare a reply memo justifying each exemption and have it signed by the appropriate signing authority. The memo should include the following points;

- a. enclosed are the records relevant to request #_____;
- b. exemptions applied and a brief justification for same;
- c. the material as annotated is recommended for release by the appropriate signing authority; and,
- d. recommend additional consultations or other sources of records.

This must all be done within two weeks (14 calendar days)

EXEMPTIONS	AIA SECTION	EXEMPTION INJURY/CLASS
Information obtained in confidence from foreign/provincial gov'ts or NGOs.	13(1)(a,b,c,d)	Mandatory/Class
Federal-provincial affairs and Defence	14(a,b)	Discretionary/Class
International affairs and Defence	15(1)(a-i)	Discretionary/Class
Law enforcement and investigations	16(1)(a,b,c,d) 16(2), 16(3)	Discretionary/Injury/Class
Safety of individuals	17	Discretionary/Injury
Economic interests of Canada	18(a,b,c,d)	Discretionary/Class
Personal information	19(1)	Mandatory/Class
Third party information (Corporate)	20(1)(a,b,c,d)	Mandatory/Class
Advice	21(1)(a,b,c,d)	Discretionary/Class

Testing and procedures, tests and audits	22	Discretionary/Class
Solicitor-client privilege	23	Discretionary/Class
Publication in near future (90 days)	26	Discretionary/Class
EXCLUSIONS		
Material published or in archives	68(a,b,c)	Discretionary/Class
Cabinet Confidences	69(1)(a,b,c,d,e,f,g)	Mandatory/Class

2. Do OPIs generally observe time limits for responding to the ATI office?

___ Always, ___ almost always, x sometimes, ___ rarely, ___ never.
Percentage of requests: 70%.

3. What action is taken when an OPI is late in providing records? (Provide any written documentation.)

1. Oral hastener.
2. Written hastener to OPI with copy to Group Principal.
3. Personal intervention by Assistant Deputy Minister Finance and Corporate Services.

Processing—Other Areas:

A. Legal Services:

1. Are ATI requests submitted to this area for review/approval/sign-off?

___ Always; ___ almost always; ___ sometimes; x rarely; ___ never
Percentage of requests: 5%.

2. What is the expected turnaround time for requests submitted to this area?(Provide any written documentation.)

10 days.

3. What action is taken when this area does not meet the turnaround date? If a follow-up is sent, indicate how many additional days are given for an expected response. (Provide any written documentation.)

Oral Hastener.

Written hastener with copy to Judge Advocate General.

B. Public Affairs /Communications:

1. **Are ATI requests submitted to this area for review/approval/sign-off?**
 ___ Always; x almost always; ___ sometimes; ___ rarely; ___ never
 Percentage of requests: 90%.

2. **What is the expected turnaround time for requests submitted to this area? (Provide any written documentation.)**
 48 hours.
 Preparation of Media Response Lines if required.

The coordinator provided a sample, covering memorandum. The text is as follows:

Protected A (undesignated without enclosures)

MEMORANDUM

1463-(A)98/0118 (DAIP SA-5)

DGPA

ACCESS TO INFORMATION ACT REQUEST

1. The enclosed records will be disclosed under the Access to Information legislation with 48 hours. The applicant has requested records pertaining to *alternate service delivery candidates for 1996-1998*.
2. It is requested that new MRL's be prepared, the yellow flags on the file indicated the types of issues that are of concern.
3. This file is forwarded to you for appropriate actions and return to DAIP SA-5 for onward transmission.
4. The officer responsible for this case is John Armstrong, 992-0259.

B.J. Petzinger
 ATIP Coord
 995-8393

Enclosure(s):

3. **What action is taken when this area does not meet the turnaround date? If a follow-up is sent, indicate how many additional days are given for an expected response. (Provide any written documentation.)**
 Bi-Weekly Review Committee—Tuesday and Thursday.
 Representatives from: MND, DM, CDS, DParl A, DGPA, DAIP.
 Meeting chaired by ADM (FinCS).

C. Minister's Office:

- 1. Are ATI requests submitted to this area for review/approval/sign-off?**
 Always; almost always; sometimes; rarely; never
Percentage of requests: 95%.
- 2. What is the expected turnaround time for requests submitted to this area? (Provide any written documentation.)**
72 hours.
- 3. What action is taken when this area does not meet the turnaround date? If a follow-up is sent, indicate how many additional days are given for an expected response. (Provide any written documentation.)**
Review Committee.

D. Deputy Minister's Office:

- 1. Are ATI requests submitted to this area for review/approval/sign-off?**
 Always; almost always; sometimes; rarely; never
Approval of Media Response Lines. Public Affairs Coordinates
Percentage of requests: 90%.
- 2. What is the expected turnaround time for requests submitted to this area? (Please provide any written documentation.)**
 days.
- 3. What action is taken when this area does not meet the turnaround date? If a follow-up is sent, indicate how many additional days are given for an expected response. (Provide any written documentation.)**
Review Committee.

E. If other areas are included in the processing/approval process of access requests, which ones? And provide the following information for each:

Computer requests are submitted to Public Affairs for preparation of Media Response Lines if deemed appropriate.

Cases are cleared by Review Committee bi-weekly.

- 1. Are ATI requests submitted to this area for review/approval/sign-off?**
 Always; almost always; sometimes; rarely; never

Percentage of requests: 90%.

2. **What is the expected turnaround time for requests submitted to this area? (Provide any written documentation.)**

72 hours.

3. **What action is taken when this area does not meet the turnaround date? If a follow-up is sent, indicate how many additional days are given for an expected response. (Provide any written documentation.)**

Intervention by Assistant Deputy Minister Finance & Corporate Services if ATIP Coordinator unsuccessful in attempt to expedite release.

Fees:

1. **Do you have a fee policy? (If yes, please provide a copy.)**

X yes; ____ no

Fee Waiver Guidelines for DAIP—AIA Requests

Purpose: The purpose of these guidelines is to provide general direction to DAIP staff on the waiver of fees in respect to the processing of AIA requests.

Authorization: The AIA and TB regulations authorize the waiver of any and all fees associated with the processing of an AIA request.

Policy: It is DAIP policy that fees will be waived for overdue requests to recompense the applicant for the inconvenience in the delay incurred.

Fees waiver table: The following table indicates the fees to be waived for graduated periods of delay:

If the Period of delay is overdue by	THEN the Reproduction Fees To Be Waived will be	AND the Search Fees To Be Waived will be
1-30 days	25%	0%
31-60 days	50%	0%
61-90 days	75%	0%
More than 90 days	100%	50%

Review of individual cases: Nothing in these guidelines is intended to preclude the review of circumstances of individual cases and base the decision on fee waiver

on the merits of the case.

Such cases are to be referred to the Director for evaluation.

FTE/Operating Budgets:

1. **Which division/unit is responsible for budget allocations for the ATI office?**
ADM (Fin CS).
2. **Are ATI activities (i.e. FTE allocations) included in the strategic planning of the institution?**
Yes.
3. **What is/was the salary dollar budget for the ATI office for the fiscal periods shown below?**
1998/1999: \$ 1,229,580; number of person years: Civilian 34, Military 9
1997/1998: \$ 1,065,340; number of person years: Civilian 32, Military 12
1996/1997: \$ 1,064,172; number of person years: Civilian 37, Military 14

DAIP is not provided funding \$ for military staff.
4. **What is/was the operating budget for the ATI office for the fiscal periods shown below?**
1998/1999: \$ 610,248
1997/1998: \$ 373,878
1996/1997: \$ 133,300
5. **If possible, please provide a breakdown of how much of the operating budget for the ATI office was used or set aside for training and/or training materials (manuals, information sheets, directives, etc) for the fiscal periods shown below?**
1998/1999: \$ 9,000
1997/1998: \$ 6,594
1996/1997: \$ 9,791

IV. ND's Correspondence

In a letter addressed to the Honourable John M. Reid, P.C., dated November 10, 1998, Mr. Jim Judd, Deputy Minister of National Defence, said the following:

Thank you for your letter of 6 October 1998, wherein you express concern about ND's ability to provide timely responses to requests made under the federal Access to Information Act.

I share your view that departmental leaders are instrumental in the administration of the Act and I fully agree that the influence of senior officials should be applied in specific areas. Like my predecessor, I shall continue to promote support of not only the letter but the spirit of the Access to Information Act. Within this context, I am enclosing a copy of a directive that the CDS (Chief Defence Staff) and I recently issued to senior management reiterating that the department must satisfy all provisions of the Act.

I am well aware of the challenges that ND has faced in coming to grips with improving its performance in respect of access to information. As you know, additional resources, process streamlining and a re-structuring of the access directorate along the lines recommended in January 1997 by Mr. A. Keehner, a consultant engaged by your predecessor, have been implemented. I believe that a solid foundation has been put in place, which can only benefit from continued cooperation between our respective staffs. Bob Emond, my Assistant Deputy Minister responsible for the Directorate of Information and Privacy, has requested an audit of the implementation of the changes following the Keehner Report, the results of which I would be pleased to share with you when they are available.

I look forward to having you come and address the members of the Department's Management Committee which includes all the senior officials reporting to both me and the CDS on access issues."

Text from the directive issued to senior staff is as follows:

10 November 1998
Distribution List

ACCESS TO INFORMATION ACT (AIA) - TIMELINESS OF REPLIES TO AIA REQUEST

Ref: *Access to Information Act*

1. The Department of National Defence continues to have problems in meeting the requirements set out in the AIA, and the recently appointed Information Commissioner has set out a new regime for bringing his concerns to the attention of Parliament. Specifically, he has indicated his intention to provide a separate performance report card to the appropriate Parliamentary committee in advance of our Minister's appearance on departmental estimates.
2. Accordingly, we would like to remind you and your staff of the nine AIA principles:
 - Government policy is designed to foster/promote the maximum access of information to Canadians subject to the Act's exemption provisions.
 - Applicants are entitled to quick processing of their requests (ie, within the 30-day period following receipt of a request).
 - Any and all documents on file, original material and/or copies, regardless of their security classification, are to be provided to the Director—Access to Information and Privacy (DAIP) for review and processing.
 - Documents must be provided without alteration (attached comments, margin notes, etc. must be included if already part of the file).
 - Documents/records include those in electronic form.
 - OPIs must review documentation for completeness and recommend severance where appropriate. All documentation must be forwarded, without severances or deletions, to DAIP staff for review and final decision on release.
 - If, after having actioned a request, it is subsequently determined that additional material exists, it must be provided immediately to the access coordination cell and chain of command.
 - 'Transient' notes (ie, personal notes taken at meetings) need not be retained; however, once placed on file, such notes become part of the public record.
 - Copies of material distributed for information which are not 'originals' may be disposed of as they are not part of the institutional record.
3. It is essential that staff also understand that on receiving a tasking, they must, within 10 calendar days, determine whether the records being sought can be retrieved or whether extensive search time will be required. Should a long search period be needed, they are to immediately inform DAIP staff to request an extension and to provide an estimate of the effort

required in excess of five hours so that fees can be determined and brought to the attention of the applicant.

4. Moreover, it is not sufficient for subject matter experts to simply retrieve relevant documents and forward them to the DAIP without identifying what information is, and is not, suitable for disclosure. While DAIP is staffed with capable and dedicated personnel, their knowledge of issues and ramifications associated with specific CF and departmental activities cannot substitute for that of OPIs. Further, when forwarding records to DAIP, OPIs are also to provide an indication of any sensitive issues that Level 1 Advisors should be aware of and of which the most senior levels of the institution may need to be informed.

5. In closing, we recognize that a great deal of work has gone into making our institution more open and transparent. Nevertheless, we must continue to make every effort to respect both the letter and spirit of the AIA.”

(The directive was signed by:
General J.M. G. Baril, Chief of the Defence Staff, and Mr. Jim Judd, Deputy Minister.)

(Distribution list: VCDS, ADM(Pol), DCDS, ADM(HR Mil), ADM(Mat), CMS, CLS, CAS, ADM(Fin CS), ADM(IE), ADM(HR Civ), CANMILREP NATO, DCINCNORAD, ND CIO, CRS, JAG, ND/CF Legal Advisor and DGPA.)

V. ND—Acronyms

ADM (FinCS): ND-specific acronym for Assistant Deputy Minister for Corporate Services.

CDS: ND-specific acronym for Chief, Defence Staff.

CF: ND-specific acronym for the Canadian Forces.

CRS: ND-specific acronym for Chief, Review Services.

DAIP: ND-specific acronym for the Director, Access to Information and Privacy, which is the coordinator’s position.

DIA: ND-specific acronym for the Access to Information Directorate, which is the ATI office.

DParl A: ND-specific acronym for Director, Parliamentary Affairs.

DPers A: ND-specific acronym for Director, Personnel Administration.

Group Principal: ND-specific term encompassing the Minister and Deputy (on

the same level), and the all Assistant Deputy Ministers on another. The term, Level one is also used within ND.

JAG: ND-specific acronym for Legal Services.

MND: Minister of National Defence.

OCIs: Other ND/CF offices, or point of expertise.

VCDS: ND-specific acronym for the Vice-Chief of Defence Staff.