



Information
Commissioner
of Canada

Commissaire
à l'information
du Canada



A SPECIAL REPORT TO PARLIAMENT BY

Suzanne Legault

Information Commissioner of Canada

March 2011

Open Outlook, Open Access

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March 2011

The Honourable Peter Milliken, M.P.
The Speaker
House of Commons
Ottawa ON K1A 0A6

Dear Mr. Milliken:

Pursuant to section 39 of the *Access to Information Act*, I have the honour to submit to Parliament a special report entitled *Open Outlook, Open Access—2009–2010 Report Cards*.

This report is part of my office's ongoing work to shed light on how federal institutions comply with the *Access to Information Act*, with a specific focus on delays in responding to requests. Last year, my office looked at a large sample of institutions, representing 88 percent of all the requests the federal government received in 2008–2009. I made recommendations to all institutions on areas for improvement. This report contains a summary of the work accomplished on those recommendations by last year's worst performers as well as by the Treasury Board of Canada Secretariat on addressing systemic issues affecting access to information.

This year's cohort comprises five Crown corporations and three Agents of Parliament, which were brought under the Act in 2007 as a result of the *Federal Accountability Act*. The report cards confirm that, with the right tools, resources and attitude, full compliance is possible. Above all, the most important ingredient for success remains the commitment of organizations to embrace the principles embedded in the Act.

Sincerely,

Suzanne Legault
Information Commissioner of Canada



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March 2011

The Honourable Noel A. Kinsella, Senator
The Speaker
Senate
Ottawa ON K1A 0A6

Dear Mr. Kinsella:

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This report is part of my office's ongoing work to shed light on how federal institutions comply with the *Access to Information Act*, with a specific focus on delays in responding to requests. Last year, my office looked at a large sample of institutions, representing 88 percent of all the requests the federal government received in 2008–2009. I made recommendations to all institutions on areas for improvement. This report contains a summary of the work accomplished on those recommendations by last year's worst performers as well as by the Treasury Board of Canada Secretariat on addressing systemic issues affecting access to information.

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Sincerely,

Suzanne Legault
Information Commissioner of Canada

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Message from the Commissioner



I am pleased to submit to Parliament this special report, which includes report cards on the performance of eight institutions in responding to

access to information requests in 2009–2010. One of my goals during my tenure as Information Commissioner of Canada is to improve the state of access to information and reverse the decline in timeliness and disclosure. Report cards have proven to be instruments of change in this regard, as demonstrated by the positive work initiated by institutions my office surveyed last year and the advances reported by the Treasury Board of Canada Secretariat.

The 2009–2010 report cards follow the Three-Year Plan for Report Cards published in 2009. Under this plan, my office set out to take an in-depth look at delays in responding to access requests—to find the root causes and implement solutions to reverse the problem. We selected eight institutions that only became subject to the *Access to Information Act* in 2007 as a result of the *Federal Accountability Act* (FedAA)—namely five Crown corporations and three Agents of Parliament, including my office. Previous report cards were done on institutions that have been subject to the federal access law since its inception, close to 28 years ago.

The scheme put in place under the FedAA increased the number of institutions the *Access to Information Act* covers and, at the same time, introduced specific exemptions and exclusions that prevent the Act from being generally applied to all the records these institutions hold. Although

some exemptions are warranted to protect certain information from disclosure under particular circumstances, the ones specific to new institutions constitute an additional layer of secrecy and complexity in the Act. The FedAA also failed to make all institutions that spend taxpayers' money or perform public functions subject to the access legislation. This piecemeal approach is in stark contrast with the stated purpose of the *Access to Information Act*, which is to ensure universal access to records under the control of federal institutions, except in very limited circumstances, as well as the stated goal of the FedAA, which was to bring more transparency to government. Moreover, the FedAA-related limitations are among the amendments to the Act that, while seeming innocuous in isolation, are gradually and subtly eroding Canadians' right to access government records.

It is within this context that my office undertook the 2009–2010 report cards. I am pleased that six of the eight institutions surveyed performed at a high level. Although this year's cohort accounted for only a small portion of the access to information requests received across the government in 2009–2010 (less than 2 percent), their performance proves that compliance with the Act is possible when the right ingredients are in place. It starts with the right attitude toward openness, which is intrinsically linked to leadership at the highest institutional level, the right tools and sufficient resources, and continues with a sound approach to responding to access to information requests. This year's optimal performers are beacons of excellence among the access to information community. With this report, I would like to recognize them and celebrate their accomplishments.

The picture is not perfect, however. Two institutions scored very low ratings: the Canadian Broadcasting Corporation received an unsatisfactory grade, while the Canada Post Corporation's performance was off the chart, with some of the longest delays my office has ever seen. Together, the two institutions were the subject of 10 percent of the complaints my office registered in 2009–2010. Apprehension on the part of these institutions to disclose information resulted in significant internal delays, protracted review and approval processes, and ultimately poor service to Canadians.

This report provides valuable information on how to improve the administration of the current access to information system to help ensure institutions are providing more timely and more complete responses to requesters. This is just one step in the overall improvement that access to information in Canada requires. As this report shows, federal institutions have acknowledged that more work is needed and they are taking steps in that direction. The Treasury Board of Canada Secretariat is addressing the systemic issues affecting access to information, in particular responding to recommendations my office has made in recent special reports. However, in light of changes introduced by the FedAA and the subtle erosion of Canadians' rights to access information, I am more than ever convinced that the winning strategy to reverse the decline in timeliness and disclosure of information must include a modernization of the Act and its administration.

Executive Summary

This special report is the result of work during the second year of the Office of the Information Commissioner's (OIC) Three-Year Plan for Report Cards. This plan set a course for identifying the root causes of delays in responding to access to information requests and determining solutions for reversing the problem.

This year's report focuses on eight institutions that became subject to the *Access to Information Act* in 2007 as a result of the *Federal Accountability Act*. These institutions are Crown corporations and Agents of Parliament, each of which was selected because the OIC has received five or more complaints about them during the time they have been covered by the Act. Among these institutions is the OIC, whose report card was prepared by the Information Commissioner ad hoc.

The context for the report cards on these institutions is the scheme of not only expanded coverage but also increased exemptions and exclusions the *Federal Accountability Act* ushered in. This has resulted in limited benefits for transparency, despite the intentions of the government when it introduced these changes. For example, while the new institutions that were added accounted for about 2 percent of all the access requests the federal government received in 2009–2010, they were the subject of nearly 12 percent of the

complaints the OIC received that year. In addition, these new institutions are releasing proportionally less information than are their federal counterparts, likely because of the new exemptions and exclusions that allow or mandate them to refuse to release information.

As part of the report card process, the OIC also asked the 13 worst performing institutions for 2008–2009 to provide a progress report on their work to respond to the OIC's recommendations. There are numerous positive developments, with institutions finding new resources to support the access function, improving their delegation of authority orders and implementing better procedures. This bodes well for the results of the re-assessment the OIC will do next year of these institutions and the 11 others surveyed for 2008–2009.

The Treasury Board of Canada Secretariat also reports progress on responding to the OIC's recommendations from the past two years in many areas. Of particular note are the initiatives that will be launched in 2011–2010 to collect more statistical information about access to information workload from all institutions. Finally, the OIC provides an update on its work to live up to the commitments it made in last year's special report.

As for the 2009–2010 report cards, they tell a tale of some of the best and worst performers the OIC has seen since it began preparing these assessments in 1999. Six of the eight institutions performed better than average, with four receiving an A grade and four having a deemed refusal rate of zero percent—meaning that they met the legislated deadline for all the requests they completed in 2009–2010. The story is not perfect, however. Canada Post had one of the worst deemed refusal rates in the history of the report cards, and together it and the Canadian Broadcasting Corporation (CBC)—this year's other poor performer—were the subject of 10 percent of the complaints the OIC received in 2009–2010. The OIC issued a number of recommendations for both Canada Post and the CBC in an effort to help them improve their performance in future years and release information to requesters more quickly.

For the institutions with records of good performance, it is clear that optimal compliance with the *Access to Information Act* is possible. It starts with the right attitude toward openness, which is intrinsically linked to leadership at the highest institutional level, the right tools and sufficient resources, and continues with a sound approach to responding to access to information requests.

Introduction

In the Three-Year Plan for Report Cards, the Office of the Information Commissioner (OIC) set out to take an in-depth look at delays in the response of federal institutions to requests under the *Access to Information Act*.¹ In the first year of the plan, the OIC examined a large sample of federal institutions, which accounted for 88 percent of all the requests the government received in 2008–2009. That exercise confirmed that chronic delays had yet to be properly addressed and continued to erode requesters' right to information. This report contains a progress report on the work undertaken by the institutions who were the worst performers among the 2008–2009 cohort to improve their compliance with the Act.

In the second year of the plan, the OIC selected for review Crown corporations and Agents of Parliament that were brought under the *Access to Information Act* as a result of the *Federal Accountability Act*. These institutions, listed below, have never been reviewed before and were selected because the OIC had received more than five complaints about them since they had become subject to the Act in 2007:

- Atomic Energy Canada Limited
- Canada Post Corporation
- Canadian Broadcasting Corporation
- National Arts Centre Corporation

- Office of the Auditor General of Canada
- Office of the Information Commissioner of Canada (report card prepared by the Information Commissioner ad hoc)
- Office of the Privacy Commissioner of Canada
- VIA Rail Canada Inc.

Chapter 1 examines the changes to the *Access to Information Act* introduced by the *Federal Accountability Act*—the new institutions covered and the exemptions and exclusions added. **Chapter 2** offers a progress report on the implementation of the recommendations the OIC made to institutions that performed below average or worse in 2008–2009 and to the Treasury Board of Canada Secretariat, as well as actions that the OIC undertook to improve in some of its areas of responsibility. Finally, **Chapter 3** presents the report cards for the eight institutions assessed for 2009–2010.

The information in this report comes from a number of sources, including institutions' responses to the OIC's questionnaire, which asked for both statistics and narrative answers to specific questions, as well as interviews with key access to information officials to follow up on their answers to the questionnaire.² The OIC supplemented that information with printouts from institutions' case management systems, institutions' annual reports on access to

The *Access to Information Act* gives Canadian citizens, residents and companies the right to request and receive information that federal institutions hold, including documents, pictures, letters and emails. The right of access is limited by a number of exemptions and exclusions that permit, and in some instances require, institutions to withhold portions of records requested under the Act. These exemptions and exclusions balance freedom of information with the need to protect individual privacy, commercial confidentiality, national security and the frank communications necessary for effective policy-making.

The Office of the Information Commissioner helps ensure that federal institutions respect the Act and provide timely access to information, to keep the federal government accountable to Canadians.

information and its own files. The OIC brings a unique perspective to its assessment of institutions' overall performance. The conclusions in this report stem from its expertise and analysis of all the information these sources brought to light.

¹ Three-Year Plan: http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_3_yrs_plan.aspx

² Responses to OIC questionnaire: http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2009-2010_questionnaires.aspx

Chapter 1: The *Federal Accountability Act*: Limited Benefits for Transparency

The *Access to Information Act* provides Canadians with a general right of access to federal government information. To protect this right and encompass the entire spectrum of records institutions hold, the Act must rest on strong foundations, including broad coverage, explicit and narrow safeguards to protect sensitive information, and a compliance model that ensures timely, accurate and complete responses to access requests.

The *Federal Accountability Act* (FedAA), which received Royal Assent on December 12, 2006, introduced incongruous amendments to the access law—increasing the number of institutions covered while adding institution-specific exemptions and exclusions that limited its scope. These changes introduced a patchwork regime to the *Access to Information Act* that is gradually eroding its status as a law of general application and moving it away from modern access to information regimes.

NEW INSTITUTIONS

The desired coverage of access to information legislation has long been a subject of study and debate in Canada, and has been called “the most complex, amorphous and perplexing topic in [Freedom of Information] theory and practice.”³ There are no commonly agreed upon criteria, in Canada or on the

part of international organizations, for determining which bodies should be covered by access laws. Commentators usually advocate for general definitions that reflect the principles of openness and accountability embedded in access to information laws. As a result, the criteria governments use to define organizations subject to these laws tend to be general enough to ensure broad coverage—taking into account how organizations are constituted, their functions or the services they provide, how they are funded and the degree of control the government has over them.

In Canada, the institutions covered by the *Access to Information Act* are listed in Schedule I or are Crown corporations (and any of their wholly owned subsidiaries), as defined in section 83 of the *Financial Administration Act*.⁴ The *Access to Information Act* does not set out criteria for including institutions in Schedule I, nor are any listed in a policy as a guideline. As a result, it remains unclear how the government chose the new institutions that were to be covered due to the FedAA. As it turned out, seven Crown corporations, six Agents of Parliament, five foundations and a number of other organizations that spend taxpayers' money or perform public functions were added.⁵ Most of the new institutions introduced are wholly

A principled-approach to entity coverage

In Canada, criteria used to determine which institutions are covered by the *Access to Information Act* should reflect the principles of openness and accountability embedded in the Act and its quasi-constitutional nature. The Act should be amended to explicitly prescribe criteria to be used in determining entity coverage along the following lines:

- institutions publicly funded in whole or in part by the Government of Canada, including those with the ability to raise funds through public borrowing;
- institutions publicly controlled in whole or in part by the Government of Canada, including those for which the government appoints a majority of the members of the governing body; and
- institutions that perform a public function, including those in the areas of health and safety, the environment and economic security.

³ *Fallen Behind: Canada's Access to Information Act in the World Context*, Stanley L. Tromp, 2008, p. 78: <http://www3.telus.net/index100/report>.

⁴ Schedule I of the *Access to Information Act*: <http://laws.justice.gc.ca/eng/A-1/page-8.html#anchors:1>

⁵ The Office of the Lobbying Commissioner, an Agent of Parliament, only became subject to the Act in July 2008.

owned subsidiaries of Crown corporations. As a group, these institutions accounted for about 4 percent of all requests the government received in 2007–2008, 3 percent in 2008–2009 and 2 percent in 2009–2010.

Even now, not all organizations that spend taxpayers' money or perform public functions are covered by the Act. For example, the House of Commons, Senate and courts are not covered—in contrast to a recommendation from a parliamentary committee made as early as 1987 that they be included.⁶ Former Information Commissioner Robert Marleau also advocated in favour of their inclusion in 2009.⁷

Beyond these are numerous other institutions that are not covered by the Act (see Appendix A for more details). These are institutions—known as “other corporate interests”—in which the federal government has an interest or of which it participates in the oversight, including mixed enterprises, joint enterprises, international organizations, shared governance corporations and corporations under the terms of the *Bankruptcy and Insolvency Act*. The *Annual Report to Parliament—Crown*

Table 1. Current number of “other corporate interests” of the Government of Canada

Type	July 31, 2010	July 31, 2009
Mixed enterprises	–	–
Joint enterprises	2	2
International organizations	15	15
Shared governance corporations	97	99
Corporations under the terms of the <i>Bankruptcy and Insolvency Act</i>	55	50

Source: Treasury Board of Canada Secretariat

Corporations and Other Corporate Interests of Canada 2010, published by the Treasury Board of Canada Secretariat, defines these terms and lists these institutions.⁸ The OIC could not assess through public documents the amount of funding the Government of Canada provides to these organizations each year.

It is when looking at which of these institutions are covered by the Act that the patchwork approach to the coverage becomes most noticeable. Only 15 percent of the organizations in which the government has a corporate interest are

covered by the Act. For example, the Canadian Wheat Board, the International Centre for Human Rights and Democratic Development, and port authorities across Canada are covered. However, the Canada Health Infoway Inc., airport authorities and the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games are not. Of perhaps greater concern is that none of the joint governance corporations in the environment and health portfolios—areas in which Canadians should expect a high degree of transparency—are covered by the Act.⁹

⁶ *Open and Shut: Enhancing the Right to Know and the Right to Privacy*, Report of the Standing Committee on Justice and Solicitor General on the Review of the Access to Information Act and the Privacy Act, 1987, Recommendation 2.3, p. 9.

⁷ *Strengthening the Access to Information Act to Meet Today's Imperatives*, presentation to the House of Commons Standing Committee on Access to Information, Privacy and Ethics, March 9, 2009: http://www.oic-ci.gc.ca/eng/pa-ap-atia_reform_2009-march_2009-strengthening_the_access_to_information_act_to_meet_todays_imperatives.aspx

⁸ *Annual Report to Parliament*: <http://www.tbs-sct.gc.ca/reports-rapports/cc-se/2010/cc-se09-eng.asp#Toc014>

⁹ The Access to Information Review Task Force recommended in 2002 that these organizations be covered by the Act. See *Access to Information: Making it Work for Canadians*, June 2002, p. 24, Recommendation 2.1.: <http://www.atirtf-geai.gc.ca/report/report38-e.html>

NEW EXEMPTIONS AND EXCLUSIONS

*The purpose of the Access to Information Act is to codify the right of access to information held by the government. It is not to codify the government's right of refusal. Access should be the normal course. Exemptions should be exceptional and must be confined to those specifically set out in the statute.*¹⁰

Typically, when expanded coverage of access legislation is considered, new institutions argue in short order that the existing exemptions may not adequately protect their interests. Limitations on access to records under the control of any institution to be added to the Act were advocated by the Access to Information Review Task Force in 2002.¹¹

Once the government determined which institutions would be covered by the Act through amendments introduced in the FedAA, it proposed a number of new and institution-specific protections that limited access to information holdings, justifying them on the basis of their unique characteristics. As shown in Table 2 (next page), these limitations included 10 new exemptions. Seven are mandatory, do not require the institution to show that injury would result from disclosure of the information in question, are not time-limited and contain no public interest or consent overrides (see above box,

Exemptions under the Access to Information Act

The *Access to Information Act* contains two types of exemptions, commonly referred to as mandatory and discretionary. **Mandatory exemptions** begin with the phrase, "The head of the institution *shall* refuse to disclose." **Discretionary exemptions** begin with, "The head of the institution *may* refuse to disclose."

In addition, the Act contains two types of test, commonly referred to as a class test and an injury test. A **class test** is used to identify categories of information to which certain exemptions of the Act may be applied. An **injury test** is used to determine whether a record contains information the disclosure of which could reasonably be expected to cause injury.

The Act also contains **consent and public interest overrides** in specific circumstances. This means that the head of the institution, after being satisfied that an exemption applies, may disclose the information with the consent of the person to whom the information relates or when the disclosure is in the public interest.

"Exemptions under the *Access to Information Act*"). Three exemptions are discretionary but contain no injury test, and one of these two protects records for 15 years. The FedAA also added two new institution-specific exclusions.

Representatives from some of the institutions that the OIC surveyed for the 2009–2010 report cards appeared before the House of Commons Legislative Committee on Bill C-2 (the Federal Accountability Act), as well as the Senate Standing Committee on Legal and Constitutional Affairs to discuss the

implications of their institution becoming subject to the *Access to Information Act*. Among the concerns expressed by these officials was the need to protect journalistic and programming activities, commercial competitive activities, and audit and investigation records.

Most of the exemptions and exclusions listed in Table 2 parallel other limitations already in the Act that apply to all government institutions. The need for specific limitations is questionable when a more general scheme exists. For example, the Act now contains two ways

¹⁰ *Canada (Information Commissioner) v. Canada (Minister of Employment and Immigration)*, [1986] 3 F.C. 63 (T.D.)

¹¹ *Making it Work*, op. cit., note 9, p. 25.

Table 2. Exemptions and exclusions added to the Access to Information Act by the Federal Accountability Act

New exemptions		
Mandatory		
Section	Exemption	Institutions
16.1	Records relating to investigations, examinations and audits	Auditor General Commissioner of Official Languages Information Commissioner Privacy Commissioner
16.2	Records relating to investigations	Commissioner of Lobbying
16.4	Records relating to investigations or conciliation	Public Sector Integrity Commissioner
16.5	Records relating to the <i>Public Servant Disclosure Protection Act</i>	All government institutions
20.1	Advice or information relating to investments	Public Sector Investment Board
20.2	Advice or information relating to investments	Canada Pension Plan Investment Board
20.4	Contracts for the service of a performing artist or the identity of a donor	National Art Centre Corporation
Discretionary		
16.3	Investigations, examinations and reviews under the <i>Canada Elections Act</i>	Chief Electoral Officer
18.1	Economic interest of certain government institutions	Canada Post Corporation Export Development Canada Public Sector Pension Investment Board Via Rail Canada Inc.
22.1	Draft internal audits	All government institutions
New exclusions		
Section	Exclusion	Institutions
68.1	Information that relates to journalistic, creative or programming activities	Canadian Broadcasting Corporation
68.2	Information that is under the control of the institution other than about general administration or operation of any nuclear facility	Atomic Energy of Canada Limited

of dealing with investigative records, depending on from which institution information is requested. On the one hand, all institutions that carry out investigative functions may apply various discretionary exemptions with and without an injury test. On the other, Agents of Parliament have their own mandatory exemption for records associated with investigations that provides more than the general protection the other exemptions offer. This is despite the fact that the investigative functions of Agents of Parliament are similar to those of other institutions. In the months preceding the adoption of the FedAA, former Information Commissioner John Reid said in a special report that “the contention that the newly added institutions require more secrecy for their investigative and audit function than do our police, security and intelligence agencies, has no merit.”¹² Similar dual regimes were introduced for records related to economic interests and third-party information.

The net effect has been an additional level of complexity in the Act. This has also caused uncertainty in the legal interpretation of these new limitations and, consequently, an increase in complaints and litigation. For example, the new institutions accounted for 26.1 percent of all the complaints the OIC registered in 2007–2008, 14.6 percent in 2008–2009 and 11.7 percent in 2009–2010.¹³ A large proportion of these complaints were

¹² Response to the Government's Action Plan for Reform of the Access to Information Act: http://www.oic-ci.gc.ca/eng/pa-ap-atia_reform_2006.aspx

¹³ Including complaints registered against the Office of the Information Commissioner.

against the Canadian Broadcasting Corporation (CBC). The OIC has put its investigations into some of these complaints on hold due to legal proceedings brought by the CBC. The institution is challenging the Commissioner's powers in relation to the investigation of these complaints. At the time of writing, 181 complaints against the CBC were on hold pending resolution of this litigation.

All in all, the new limitations in the Act erode the general principle of there being a universal right of access to information under the control of federal institutions. The exemptions and exclusions also run counter to the common direction that modern access to information legislation is taking, with all limitations being discretionary and including an injury test and a public interest override.

A principled approach to the right of access

In order to reflect the principles of openness and accountability embedded in the *Access to Information Act*, as well as its quasi-constitutional nature, exemptions to a universal right of access should have the following characteristics:

- They should be discretionary.
- They should require a demonstration that a defined injury, harm or prejudice would probably result from disclosure.
- They should be subject to a public interest override.

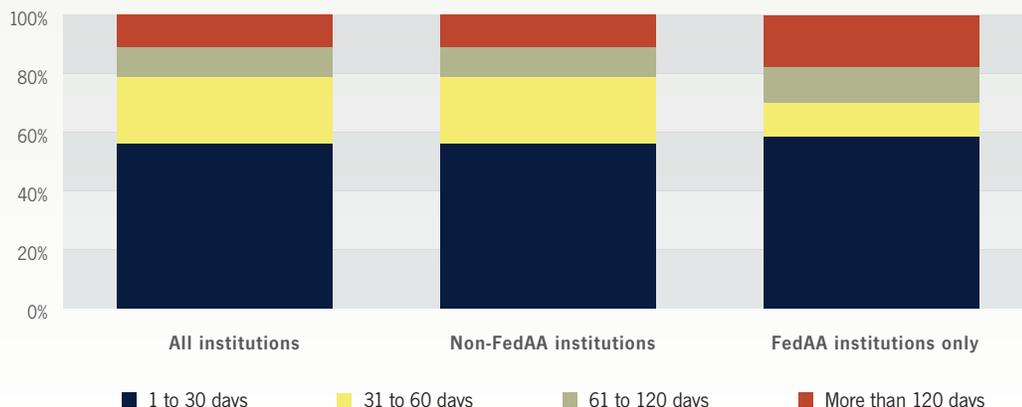
Although the FedAA was a laudable effort to expand coverage of the Act, it did not go far enough to include all institutions that spend taxpayers' money or perform public functions. This was the result of the government taking a piecemeal approach to expanding coverage rather than following guiding principles that

respect the basic tenets of the Act. Most troubling is the addition of new exemptions and exclusions that shelter a portion of these new institutions' information from access and create dualities throughout the Act. Overall, the changes brought in by the FedAA have led to limited benefits for transparency.

A COMPARISON

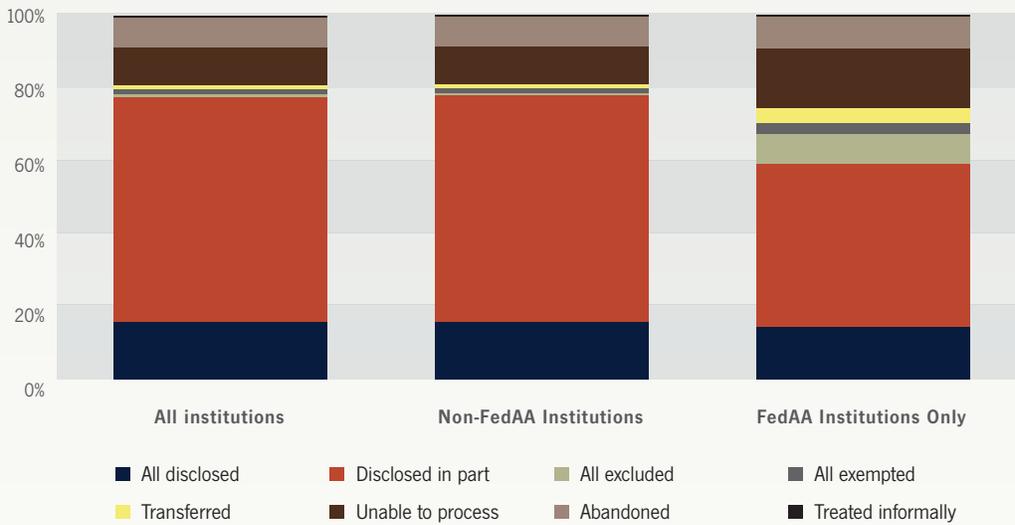
How does the performance of the new institutions compare to that of the others? As illustrated by Figure 1, while the new FedAA institutions answered a larger proportion of requests in 30 days or fewer than their federal counterparts in 2009–2010, they also responded to proportionally more in 61 days and longer.

Figure 1. Completion time, 2009–2010



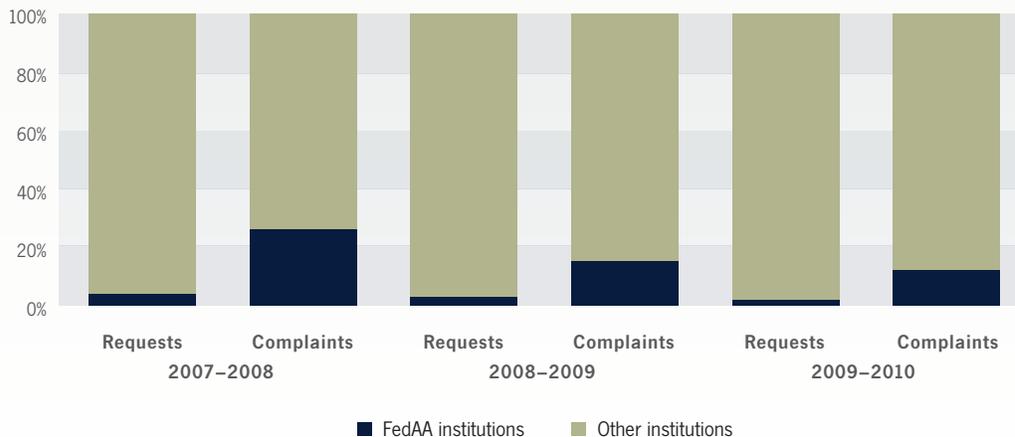
In terms of how much information is disclosed, Figure 2 illustrates that the FedAA institutions tend to release proportionally less information than do the others, which likely reflects the new exemptions and exclusions introduced for these institutions under the FedAA. Chapter 3 provides detailed information on the exemptions and exclusions of the eight institutions surveyed for 2009–2010.

Figure 2. Release of information, 2009–2010



Although the FedAA institutions account for only a small percentage of the requests the federal government receives annually, they are the subject of a larger proportion of registered complaints with the OIC than that request volume would suggest (Figure 3).

Figure 3. Requests and complaints, 2007–2008 to 2009–2010



Chapter 2: Turning Things Around: Progress Report on Previous Recommendations and Commitments

In last year's special report, the Office of the Information Commissioner (OIC) made recommendations to institutions on how to improve their performance and to the Treasury Board of Canada Secretariat to address systemic issues across the government. The OIC also made commitments to improve in some of its areas of responsibility. The following offers a progress report on each of these items.

2008–2009 REPORT CARDS

The OIC began preparing report cards to measure institutional performance with the *Access to Information Act* in 1999. In 2007, the OIC redesigned the process to gather information that would provide a more complete picture of each institution's performance and allow the OIC to make more targeted recommendations.

Last year, the OIC assessed the performance of 24 federal institutions and made recommendations to each to improve performance. The institutions responded with plans for how they would proceed to achieve better results. Of the 24 institutions assessed, 13 performed below average or worse. The OIC asked these 13 to provide a progress report on their efforts to respond to the recommendations.

Table 3. Progress implementing recommendations in the 2008–2009 report cards*

Institutions	Delegation order	Leadership	Time extensions	Consultations	Resources	Records management	Compliance rate	Extension notices	Backlog	Complaints	Training	Improvement plan
Canada Revenue Agency	●		●				●	●	●			●
Canadian Food Inspection Agency	●	●			●		●	●	●		●	●
Canadian Heritage	●	●			●			●	●		●	●
Canadian International Development Agency	●			●			●	●	●			●
Canadian Security Intelligence Service							●	●			●	
Correctional Service of Canada		●			●		●	●				●
Environment Canada					●	●		●	●			
Foreign Affairs and International Trade Canada		●		●	●				●	●		
Health Canada	●	●	●			●	●		●			●
National Defence			●		■		●		●			
Natural Resources Canada	●	●		●	●		●	●			●	●
Privy Council Office	■	●	●		●			●	●		●	
Transport Canada		●		■	●		●	●	●		●	

Initiated ● Not initiated ■

*The recommendations are organized into the themes. Some recommendations cover more than one theme. In addition, some institutions did not receive a recommendation under one or more themes. Finally, the three red "not initiated" squares reflect recommendations with which the institution did not agree. The OIC will reassess all 24 institutions next year, including the "not initiated" items. The complete institution responses are available here: http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2009-2010_5.aspx

Highlights of progress towards greater compliance with the Act

The following are highlights of the positive work reported by the institutions with below average of worse performance for 2008–2009.

Increase in resources

- Foreign Affairs and International Trade Canada re-allocated \$2.7 million to access to information functions. The institution also hired nine experienced consultants to work on reducing the large backlog of unanswered requests and created 10 new full-time positions.
- Transport Canada and Correctional Service of Canada now have a full complement of staff.

Improvements in response times

- The Canadian Security Intelligence Service (CSIS) and Natural Resources Canada (NRCan) reported having significantly improved their deemed refusal rate during 2010–2011. As of October 2010, CSIS had completed 100 percent of requests on time. During the third quarter, NRCan completed approximately 93 percent of requests on time.
- The Privy Council Office (PCO) and National Defence reported having significantly reduced their average request completion time. The PCO average decreased from 157 days in 2008–2009 to 94 days in 2010–2011. National Defence reduced its average completion time from 125 days to 86, as of October 2010.

Change in the delegation order

- The President of the Canadian Food Inspection Agency and the Commissioner of the Canada Revenue Agency each approved a revised delegation of authority order that provides more authority to the respective institution's access to information coordinator.

Streamlining review and approval processes

- Health Canada replaced its Hi-SENS approval process with a notification process, and reports that this change has resulted in increased timeliness and improved compliance.
- The Canadian International Development Agency implemented a new process whereby the Minister's Office is informed of records to be disclosed 72 hours in advance, but does not approve the release package.

Backlog reduction

- Environment Canada and the Canadian International Development Agency (CIDA) reported having significantly reduced their backlog of unanswered requests, with CIDA having completed 99 of 102 such requests and planning to complete the three remaining files by March 31, 2011.

Closer monitoring of performance

- The Canada Revenue Agency developed a comprehensive redress plan to address issues of staffing, training, processing of requests and the backlog.
- The Canadian Food Inspection Agency reported having made significant progress on the deliverables outlined in the multi-year action plan it updated in 2009. These measures include allocating adequate resources to the access function, fully delegating authority for access decisions to the access to information manager, reducing the backlog of unanswered requests by 50 percent, and taking a more streamlined approach to processing requests.

Table 3 summarizes those reports. The full text can be viewed on the OIC's website.¹⁴ Although it is too early to estimate or fully measure the progress towards stronger compliance with the Act, work is clearly under way to implement most of the recommendations.

The OIC will re-assess all 24 institutions next year, including reviewing the practices about which the OIC and institutions have differing views.

RECOMMENDATIONS TO THE TREASURY BOARD OF CANADA SECRETARIAT

The OIC identified a number of systemic issues in last year's special report: delegation orders, leadership, time extensions, consultations and resources, and made several recommendations to the Treasury Board of Canada Secretariat (TBS) to address them. Appendix B contains the full TBS response. The following is a summary.

Delegation Orders

The OIC recommended that TBS assess the extent to which institutions implement best practices related to the delegation of powers, duties and functions under section 73 of the *Access to Information Act* with a view to achieving appropriate,

efficient and transparent delegation orders.¹⁵ TBS reports that it has reviewed the delegation orders of the 24 institutions the OIC assessed last year and found that the delegation order is not a determining factor in meeting timelines but can eliminate unnecessary levels of approval.

Leadership

The OIC recommended that TBS develop criteria as part of the Management Accountability Framework to ensure it is measuring the overall performance of federal institutions in meeting their obligations under the *Access to Information Act*. TBS responded that it has added new requirements focusing on governance and capacity that are intended to evaluate the ability of institutions to administer the access program.

Time Extensions

In the last two special reports, the OIC recommended that TBS collect enriched annual statistics to provide a more accurate picture of institutions' use of time extensions. Beginning in April 2011, TBS will be expanding its requirements for statistical data. It will compile and publish the results in the fall of 2012.

Consultations

In the last two special reports, the OIC recommended that TBS assess the magnitude of the consultations that federal institutions carry out with each other in the course of responding to access requests and the impact of such consultations on institutions' workloads, with a view to allocating appropriate resources to this function. TBS took no specific action in 2009–2010 to assess the impact of consultations. As part of the new requirements for the collection of statistical data, however, institutions will report on consultations. The results will be published in the fall of 2012.

Resources

In the last two special reports, the OIC recommended that TBS develop and implement an integrated human resources action plan to address the government-wide shortage of access to information staff. TBS launched an initiative in the spring of 2010 to develop work descriptions and competencies to standardize the work across the public service. It also plans to launch a collective staffing process.

¹⁴ Institutions' progress reports: http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2009-2010_5.aspx

¹⁵ Best practices: <http://www.tbs-sct.gc.ca/atip-aiprp/tools/practices-pratiques-eng.asp>

OFFICE OF THE INFORMATION COMMISSIONER COMMITMENTS

Classification of Complaints: New Disposition Categories

In its 2007–2008 special report, the OIC committed to reviewing the way it classifies complaints to develop and implement a new set of disposition categories.¹⁶ The OIC uses these categories to describe the outcome of complaint investigations.

In 2009–2010, the OIC consulted its employees, access to information coordinators and members of the public regarding proposed categories. The new disposition categories are simpler, more accurate and adhere to the terminology of section 37 of the *Access to Information Act*.¹⁷ The following are the categories the OIC began using on April 1, 2010:

- Well founded
 - well founded with recommendations—resolved
 - well founded with recommendations—not resolved
 - well founded, resolved without recommendations

- Not well founded
- Settled
- Discontinued

The OIC is confident that these new dispositions will yield better reporting data for future report cards, given the more precise classifications.

Practice Direction on Time Extensions

In its 2008–2009 special report, the OIC committed to publishing a practice direction on time extensions taken by institutions to prevent interference with the institution's operations due to the need to search through or for a large volume of records (as per paragraph 9(1)(a) of the Act).¹⁸ Following consultations with various stakeholders, including access to information coordinators and requesters, the OIC will publish the practice direction by the end of March 2011.

Extension Notices

In the 2008–2009 special report, the OIC observed that institutions did not consistently comply with the statutory requirement in paragraph 9(2) of the Act to notify the OIC of all time extensions longer than 30 days. In addition, the notices that institutions did send varied in terms of content and the justifications for the extensions taken. The OIC concluded that more compliance and clarity were required to make this monitoring tool as useful as was intended, and made the following three commitments in that regard:

- to develop and implement a template for the notification of time extensions and explore ways to send notices using electronic tools;
- to publish a practice direction on the notification procedures under paragraph 9(2) of the Act; and
- to review and assess the extension notices.

¹⁶ 2007–2008 special report to Parliament, *Report Cards and Systemic Issues Affecting Access to Information in Canada*: http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2007-2008_25.aspx

¹⁷ New disposition categories: http://www.oic-ci.gc.ca/eng/inv-inv_disposition-categories-des-plaintes.aspx

¹⁸ *Out of Time: 2008–2009 Report Cards and Systemic Issues Affecting Access to Information in Canada*: http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2008-2009.aspx

As part of the initiative to improve the reporting of time extensions, OIC employees who are responsible for processing the notices were trained to identify irregularities and to consistently input the information the notices contain into a database. The OIC also reviewed and assessed the extension notices it received during 2009–2010. The monitoring of the notices yielded valuable information regarding individual

institutions' use of time extensions. The OIC will begin to publish this information online, in a reusable format, in April 2011. This will allow institutions to track their own performance and monitor their progress compared to other institutions. Table 4, below, contains an example of the aggregated information about time extensions, which the OIC will also begin to publish this spring.

The OIC will develop a template notification form. The OIC is also exploring electronic notification options to facilitate notification as well as the processing of the notices, with a view to implementing an electronic filing process in 2011–2012.

Table 4. Extension notices, 2010–2011 (first, second and third quarters)

	Apr.	May	Jun.	Q1	Jul.	Aug.	Sept.	Q2	Oct.	Nov.	Dec.	Q3	Total
Number of notices received	489	469	495	1,453	436	505	430	1,371	534	512	617	1,663	4,487
Average number of days per extension notice	134	113	112	120	105	101	113	106	86	86	91	94	103
Number of individual extensions reported*	631	562	568	1,761	517	596	536	1,649	613	591	708	1,912	5,322
Reason: 9(1)(a)	214	185	166	565	196	250	169	615	323	359	389	1,071	2,251
Reason: 9(1)(b)	248	250	254	752	214	230	263	707	174	178	224	576	2,035
Reason: 9(1)(c)	170	126	145	441	102	113	104	319	114	97	110	321	1,081

*Some notices do not mention the reason for the extension.

Chapter 3: A Tale of Best and Worst Performers: 2009–2010 Report Cards

For the 2009–2010 report cards, the Office of the Information Commissioner (OIC) examined institutions that had only recently become subject to the *Access to Information Act*. The new institutions are different in a number of regards from the departments and agencies the OIC usually assesses and bring a different perspective on access to information operations.

This year's cohort comprises Crown corporations and Agents of Parliament. Crown corporations operate in a largely private sector environment and have both commercial and public policy objectives.¹⁹ These corporations are wholly owned by the Crown but are managed by a board of directors appointed by the government. They obtain public funds through various funding vehicles, depending on their governing statute and the *Financial Administration Act*. In 2010, total parliamentary funding for all Crown corporations was \$6.666 billion.²⁰ Of the five the OIC assessed, Atomic Energy Canada Limited, the Canadian Broadcasting Corporation and the National Arts Centre Corporation each receive part of their funding through

parliamentary appropriations. VIA Rail Canada Inc. receives its funding from the Government of Canada based on cash flow requirements, and the Canada Post Corporation receives compensation for certain programs it undertakes on behalf of the government, such as the Food Mail Program, and may also borrow funds from the Government of Canada's Consolidated Revenue Fund.

Agents of Parliament, such as the Auditor General and Information and Privacy Commissioners, are independent officers who scrutinize the activities of government in relation to duties assigned to institutions by statute. They report directly to Parliament, not to an individual minister, and receive their funding through parliamentary appropriations.²¹ The appointment of these Agents usually involves the House of Commons, the Senate or both, who deliberate on recommendations by the government.

The OIC selected for assessment institutions about which it had received more than five complaints since they had become subject to the Act. Despite having varying fiscal years, each institution reported their results for the

report card process from the period from April 1, 2009, to March 31, 2010, as per a Treasury Board of Canada Secretariat directive. The institutions' complete responses to the OIC questionnaire are posted on the OIC website.²²

GENERAL FINDINGS

Table 5 provides the 2009–2010 ratings by institution. The OIC assigned scores ranging from A to F, based on how well the institutions met a series of criteria (see Appendix C). These include timeliness and compliance with statutory obligations, as well as qualitative data.

The institutions falls into two groups in terms of their performance in 2009–2010: the National Arts Centre Corporation (NAC), Office of the Auditor General (OAG), Office of the Information Commissioner, Office of the Privacy Commissioner (OPC), Atomic Energy of Canada Limited (AECL) and VIA Rail Canada Inc. which achieved an above average or better rating; and the Canadian Broadcasting Corporation (CBC) and Canada Post Corporation, which received an unsatisfactory grade or worse.

¹⁹ A Crown corporation can either be an agent or a non-agent of the Crown. Agent corporations are conferred the immunities, privileges and prerogatives of the Crown, such as immunity from taxes. Atomic Energy of Canada Limited, Canada Post and the Canadian Broadcasting Corporation have agent status. The National Arts Centre Corporation and VIA Rail Canada Inc. are non-agents. See Treasury Board of Canada Secretariat, *Agent status and Crown corporations*: <http://www.tbs-sct.gc.ca/gov-gouv/agent-mandataire/agent-mandataire-eng.asp>.

²⁰ *Annual Report to Parliament—Crown Corporations and Other Corporate Interests of Canada 2010*: <http://www.tbs-sct.gc.ca/reports-rapports/cc-se/2010/cc-se09-eng.asp#Toc014>.

²¹ Ibid

²² Institutions' questionnaire responses: http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2009-2010_questionnaires.aspx

Table 5. Rating for institution assessed, 2009–2010

Institutions	Letter grade	Overall performance rating
National Arts Centre Corporation	A	Outstanding
Office of the Auditor General of Canada	A	Outstanding
Office of the Information Commissioner of Canada*	A	Outstanding
Office of the Privacy Commissioner of Canada	A	Outstanding
Atomic Energy Canada Limited	B+	Above average
VIA Rail Canada Inc.	B	Above average
Canadian Broadcasting Corporation	F	Unsatisfactory
Canada Post Corporation	Off chart	Red alert

*The performance of the Office of the Information Commissioner was assessed by Mario Dion, the Information Commissioner ad hoc at the time of reporting.

Although this year's cohort is small and accounts for less than 2 percent of all access requests the federal government received in 2009–2010, it features the largest proportion of top performers since the OIC started issuing report cards in 1999. The six institutions with above average or higher ratings exhibited many of the key components that the OIC has identified in previous report cards as being directly responsible for enhanced access to information compliance—notably, strong leadership, appropriate delegation orders and adequate resources. These institutions have also demonstrated distinctive characteristics and approaches that contributed to the strong compliance levels they were able to achieve.

On the other hand, it would seem that the CBC and Canada Post did not fully recognize the significance of the Act and the principles of freedom of information. This translated into high rates of requests being completed beyond the legislated deadline (known as deemed refusals), lengthy average completion times and protracted approval processes, all of which put them at the bottom of the performance scale. Much improvement is required.

No new systemic issues emerged.²³ As noted, the best performers have the right ingredients in place to fulfil their obligations under the Act, including, above all, leadership. The worst performing institutions did not give access to information the priority it deserves as a legislated responsibility.

Requesters have the right under the Act to timely access to information. Consequently, a delayed response is considered to be a deemed refusal to release the requested information. The Act allows 30 days to complete a request in normal circumstances and makes it possible to extend that period in specific situations. Since institutions must comply with the law, a deemed refusal rate of zero—that is, all requests are completed within 30 days or within the extended time period—should be the universal goal. The cohort of institutions surveyed for 2009–2010 includes some of the best and the worst deemed refusal rates since the OIC started doing report cards (see Figure 4).

²³ In the previous special reports, the OIC identified six systemic issues: leadership, time extensions and consultations, resources, records management and delegation orders.

Figure 4. Deemed refusal rate, 2009–2010

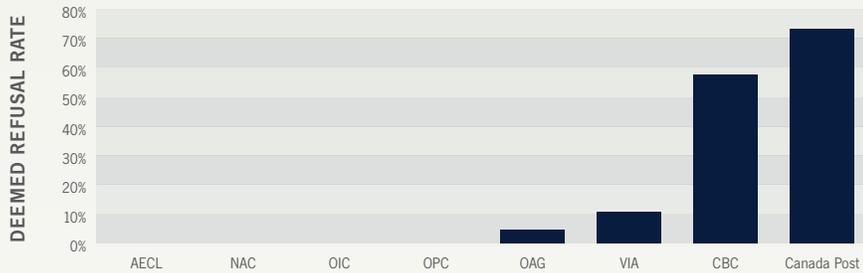


Figure 5. Average time to complete a request, 2009–2010

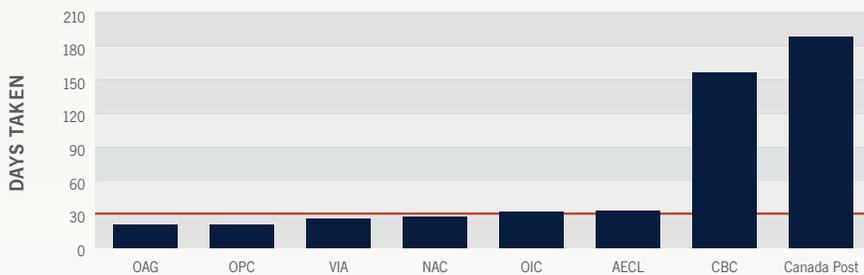
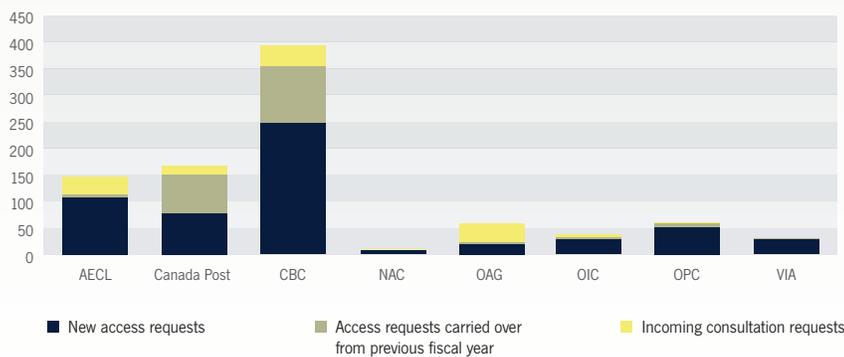


Figure 6. Workload, 2009–2010



As illustrated in Figure 5, access to information requesters can expect a quick turnaround on their requests from most institutions surveyed this year. In many cases, turnaround times are less than the basic deadline of 30 days set out in the Act. The CBC's and Canada Post's average completion times were much longer, but extensions were not a factor. The CBC, in fact, only took one extension in the reporting period. Canada Post reported that it did not take extensions to manage its workload. Internal delays in the processing of access requests are the main culprit in the delays.

Finally, in terms of workload, as Figure 6 illustrates, the CBC dealt with a much higher workload than the others, with AECL and Canada Post distant seconds. None of the institutions surveyed this year commented on lacking resources to fulfill their obligations under the Act.

BUILDING CAPACITY

In addition to reviewing whether these selected institutions responded to their requests in a timely fashion, the OIC collected, through its questionnaire and follow-up interview, valuable information on their start-up efforts, including the challenges they encountered being newly subject to the Act.

In particular, the OIC looked at how institutions managed in terms of finding and training staff, developing the tools necessary for an effective access program and fostering internal support for the function.

Personnel

Several institutions hired an experienced access coordinator and staffed the analyst positions with employees who were familiar with institutional operations: analysts could readily locate records and the coordinator could ably apply the Act, resulting in an efficient approach to responding to requests. Citing a lack of in-house expertise when initially subjected to the Act, three of the institutions (AECL, Canada Post and VIA) engaged consultants to establish their access offices and operations. This included establishing budgets, networks and communication processes, and delivering training to staff. In some cases, the consultants remained with these institutions to process incoming requests or to play training and advisory roles that continue to this day.

Training and Tools

Institutions universally reported that training was an immediate priority. However, who delivered the training and how varied greatly, as did the target audiences. Institutions offered various

levels of training—ranging from that aimed at access to information analysts who needed specific instruction on how to apply the Act, to general training for senior executives and liaison officers. In certain institutions, access officials reported that they had to familiarize all staff about the obligations associated with access to information legislation. However, given time constraints and workload, this was not always accomplished, leading to gaps in employee familiarity with the need for efficient responses to tasking requests for records—gaps that persist in some institutions. Access staff usually posted policies, procedures and guidelines on the institution's intranet site as easily accessible resources for employees. Most institutions developed their own policies, guidelines and procedures or are in the process of doing so.

Internal Support

The culture of the subject institutions, since they are new to the Act, was of considerable interest to the OIC. Each member of this year's cohort has had historically to report on its business and results each year, but has never had to reveal the details of its operations. Becoming subject to the Act has changed that, since details of their operations and decisions can suddenly be made public.

The Office of the Privacy Commissioner and the OIC reported that it was not a great stretch for them to become subject to the Act because an appreciation of the value that information has for its holders was already part of the corporate culture. Similarly, the Office of the Auditor General reported that the access to information function complemented its mandate, since auditors expect a high level of transparency from the organizations they audit. As a result, it was quite amenable to exposing its own organization to the same level of scrutiny. The open outlook inherent in the mandates of these three institutions had a direct and positive impact on their performance. The outlook at both Canada Post and the CBC was different. Officials there emphasized that their operations were unique and more complex than those of other institutions and, consequently, required additional protections—for competitive commercial activities, and journalistic and programming activities, respectively. An evident apprehension about disclosing information resulted in significant delays in responding to access to information requests at both institutions.



Atomic Energy of Canada Limited

Atomic Energy of Canada Limited (AECL) supplies nuclear technology and services to utilities, and designs and builds CANDU reactors. AECL also provides research and development support and construction management services, designs and engineers specialized technology, manages nuclear waste and decommissions reactors.

2009–2010 REPORT CARD AT A GLANCE

Rating: **B+** (Above average)

- AECL completed all of its requests by their due date, for a deemed refusal rate of zero percent.
- The average request completion time was 33.08 days.
- AECL benefited in 2009–2010 from having eliminated the previous year the backlog of requests that had been growing since 2007, when the corporation first became subject to the *Access to Information Act*.
- AECL proactively released information, resulting in fewer formal access requests.
- AECL held training sessions for some third-party stakeholders to explain the Act, which facilitated outgoing consultations.
- AECL had three complaints registered against it with the Office of the Information Commissioner, all of which are pending.
- There were no administrative complaints against AECL in the last two years, compared to 22 in 2007–2008. This significantly reduced AECL's access to information workload, enabling the corporation to provide better service to requesters.
- AECL could better ensure it receives timely responses to its outgoing consultations by contacting the institution being consulted at the outset of the consultation period rather than close to the deadline.
- AECL did not notify the Office of the Information Commissioner of any of the 13 extensions it took that were for more than 30 days.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the *Access to Information Act*. (See Appendix C for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Quick Facts

Number of requests carried over from 2008–2009

4

Number of new requests

108

Number of requests completed

111

Deemed refusal rate*

0%

Average time to complete a request (in days)

33.08

Number of incoming consultation requests

35

Number of pages reviewed for requests completed

12,521

Number of complaints registered with the Office of the Information Commissioner

3

Number of complaints the Office of the Information Commissioner resolved**

0

Number of full-time equivalents responsible exclusively for access to information, as of March 31, 2010

1.5

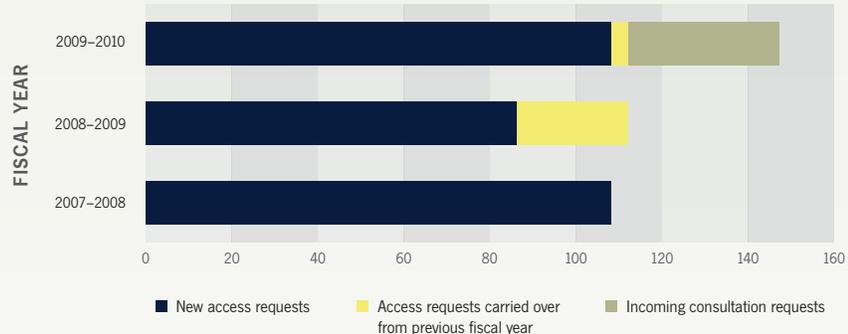
2009–2010 Report Card

Atomic Energy of Canada Limited (AECL) had a successful year in access to information in 2009–2010. Having spent the previous year clearing the backlog that had built up in 2007–2008 and carrying over only four requests into 2009–2010, AECL was in a good position to take on 108 new requests. Access staff completed all but one of the total caseload of 112 requests during the year, and completed each request by its due date (including 16 extensions), for a deemed refusal rate of zero percent. The average request completion time was 33.08 days. AECL had 1.5 full-time employees working exclusively on access to information in 2009–2010, which the corporation deemed adequate for managing the workload.

AECL's access to information staff encountered difficulties in 2007–2008, the first year the institution was subject to the *Access to Information Act*. Senior executives were concerned about releasing records pertaining to Canada's nuclear energy administration into an unknown public environment. Scientists were equally concerned about protecting the integrity of their research. Compounding the problem, requests were delayed in the shipping/receiving area because there was no formal access to information office and no one knew where else to send them. This lack of organization created a general uneasiness that, in turn, led AECL management to route all responses through the corporation's communications unit in Toronto.

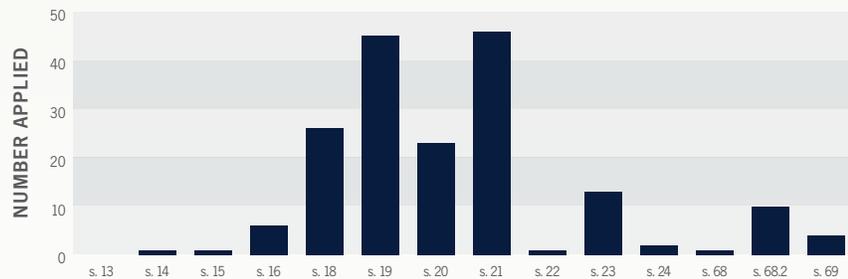
The situation changed for the better when AECL hired an experienced access

Access to information workload, 2007–2008 to 2009–2010



This graph shows the sources of AECL's workload since it became subject to the *Access to Information Act* on September 1, 2007. AECL carried over a large backlog into its second year of operation, but was subsequently able to bring it down to a manageable level. This allowed AECL to handle its new request caseload in 2009–2010, which had increased 28 percent from the previous year.

Exemptions and exclusions applied by the institution, 2009–2010



The total number of exemptions and exclusions often exceeds the number of requests completed in a single year, since more than one may apply to a single request.

This graph shows how often AECL applied the various exemptions and exclusions in the Act to the records it released in 2009–2010. AECL used the exemptions under section 21 (advice) and section 19 (personal information) the most often. Its application of exclusions was limited, with the exception of its own exclusion (section 68.2), which it used 10 times during the year. Section 68.2 excludes from release all records AECL holds, with two exceptions: information about its general administration and about the operation of nuclear facilities regulated by the Canadian Nuclear Safety Commission.

coordinator who was familiar with AECL. AECL employees were trained in the legal and administrative implications of the Act, which went a long way to reducing the collective level of concern, particularly among senior executives and members of the board of directors. The access to

information office was eventually moved from External Relations and Communications to the office of the General Counsel and Corporate Secretary, which AECL reports has helped diminish excessive scrutiny of files.

With a gradually better understanding of the law, an open channel of communication between the access coordinator and the executive cadre, a smaller volume of new requests in 2008–2009, which allowed access staff to get ahead of the backlog, an experienced coordinator and growing confidence in the process on the part of senior management, the institution evolved to achieve above average performance in 2009–2010. The improvement in access operations is also shown in the number and type of complaints the Office of the Information Commissioner (OIC) received about AECL over the last three years: the OIC received only three exclusion complaints in 2009–2010 (all pending), compared to 22 administrative complaints in 2007–2008 (all of which were resolved). There was one mark against AECL, however, and that is that it did not notify the OIC of any of the extensions it took in 2009–2010 that were for longer than 30 days, as required by the Act.

AECL has its own exclusion under the Act. Section 68.2 excludes from release all records AECL holds, with two exceptions: information about its general administration and about the operation of nuclear facilities regulated by the Canadian Nuclear Safety Commission. In light of this exclusion, AECL was initially reluctant to allow the OIC to review any excluded records that were the subject of a complaint. The OIC worked with the access to information coordinator during 2009–2010 to

Number and outcome of complaints received by the OIC, 2007–2008 to 2009–2010

	Resolved	Not substantiated	Discontinued	Pending	Total
2007–2008					
Administrative	22	0	0	0	22
Refusals	2	2	0	0	4
Cabinet confidences	0	0	0	0	0
Total	24	2	0	0	26
2008–2009					
Administrative	0	0	0	0	0
Refusals	0	1	0	2	3
Cabinet confidences	0	0	0	0	0
Total	0	1	0	2	3
2009–2010					
Administrative	0	0	0	0	0
Refusals	0	0	0	3	3
Cabinet confidences	0	0	0	0	0
Total	0	0	0	3	3

This table sets out the number and outcome of the complaints the OIC registered against AECL in each of the three reporting periods since AECL became subject to the Act on September 1, 2007. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction. In 2009–2010, the OIC received three refusal complaints against AECL, all of which are still under investigation. Since there were also only three complaints in 2008–2009, it may be that the volume has stabilized. In any event, the number of complaints in these two years is a noteworthy improvement from 2007–2008, when the OIC received 26 complaints about AECL. Also noteworthy is that AECL was not the subject of any administrative complaints in 2008–2009 and 2009–2010, after receiving 22 in 2007–2008. This reduction in complaints likely reflects AECL's growing familiarity with the Act, and has significantly reduced AECL's workload, enabling it to provide better service to requesters.

correct the misperception that AECL was not required to provide the OIC with all the records it needs to investigate complaints.

A minor concern is AECL's approach to outgoing consultations. Currently, access officials do not negotiate a timeline with the institution being consulted at the start of the consultation period. Rather,

they only get in touch when the deadline is near, which may result in unnecessary delays. Natural Resources Canada also responds to requests related to the nuclear energy sector, such as those pertaining to medical isotopes, and it was the source of the majority of the 35 consultation requests that AECL received in 2009–2010.

AECL has put a number of measures in place that have led to the efficient processing of requests. For example, the offices that hold the records submit their responsive documents to the access office with no initial recommendations, but receive a copy of the proposed disclosure package, which they accept, according to AECL, without question in an estimated 95 percent of cases. There are also five days built into the process for any senior management review of potentially sensitive files, after which the coordinator releases the information. The coordinator has fully delegated authority for access to information decisions, with two exceptions: the President and CEO retained the authority to release personal information that is publicly available (under paragraph 19(2)(b) of the Act), and the President and CEO may also decide to release third-party information, in areas such as public health and safety, and the protection of the environment, that would otherwise be exempt under subsection 20(6).

AECL has made outreach efforts in communities where it has a presence. This best practice has resulted in access officials being able to save both time and resources. For example, AECL met with community leaders and residents of Port Hope, Ontario, who wanted more information about the remediation of soil

contaminated with low-level radiation. In response, AECL made both institutional and personal information accessible informally, promoting transparency, assisting citizens and also averting numerous formal access and privacy requests. AECL also delivered training to some of its third-party stakeholders to apprise them of the implications of the Act, which facilitated consultations.

The access to information and privacy office has seen its overall workload increase due to an influx of privacy requests from its own employees, specifically with regard to AECL's historical radiation testing. Employees are seeking their personal dosimetry records, which indicate radiation absorption levels. These records are also subject to provincial health records legislation, which has meant that AECL staff has had to undertake negotiations on behalf of employees to get them released.

Continued diligent stewardship of AECL's access to information office will ensure its future success. Its current approach to its obligations has earned AECL an above average performance rating of B+ for 2009–2010.

RECOMMENDATIONS

1. The Office of the Information Commissioner recommends that Atomic Energy of Canada Limited comply with the Act and notify the Office of the Information Commissioner of the extensions it takes for more than 30 days.

RESPONSE

The access to information office will ensure that it provides a copy of any extension notices of more than 30 days to the Office of the Information Commissioner.

2. In order to more accurately estimate an appropriate turnaround time for consultations and avoid delays, the Office of the Information Commissioner recommends that the Atomic Energy of Canada Limited access to information office implement a procedure to contact, at the earliest opportunity, institutions that it will be consulting to negotiate a response date.

RESPONSE

In order to avoid any delays, the access to information office will put into procedure that it will contact any institution within five business days after sending a consultation notice in regards to release.

Canada Post Corporation

Canada Post Corporation operates Canada's postal delivery service, running more than 6,600 post offices across the country and processing 45 million pieces of mail per business day.

2009–2010 REPORT CARD AT A GLANCE

Rating: **RED ALERT**

- Canada Post's deemed refusal rate was 73.5 percent, the highest of any institution reviewed this year, and one of the worst rates the Office of the Information Commissioner has seen since it started publishing report cards in 1999.
- Canada Post took 190 days on average to complete an access to information request, and completed 73 percent of its new requests in more than 30 days.
- Canada Post had a significant backlog of requests at the beginning of 2009–2010, 78 percent of which were already beyond their due date.
- Canada Post notified the Office of the Information Commissioner of three of the nine extensions it took for more than 30 days.
- Canada Post has a low ratio of access employees to workload compared to other institutions: seven full-time employees reviewed a total of 9,815 pages of records in response to requests that were completed in 2009–2010.
- The access to information coordinator is not delegated any authority for access to information decisions.
- Review and approval processes are multi-layered and cause delays.
- Requesters filed 35 complaints to the Office of the Information Commissioner about Canada Post in 2009–2010. This is equivalent to nearly half (48 percent) of all the new requests it received that year. Of the 15 complaints about Canada Post's use of exemptions, 12 involved section 18.1, Canada Post's own exemption.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the *Access to Information Act*. (See Appendix C for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Quick Facts

Number of requests carried over from 2008–2009

73

Number of new requests

78

Number of requests completed

84

Deemed refusal rate*

73.5%

Average time to complete a request (in days)

190

Number of incoming consultation requests

15

Number of pages reviewed for requests completed

9,815

Number of complaints registered with the Office of the Information Commissioner

35

Number of complaints the Office of the Information Commissioner resolved**

9

Number of full-time equivalents responsible for both access to information and privacy, as of March 31, 2010

7

2009–2010 Report Card

Canada Post Corporation was unable to meet its access to information obligations in 2009–2010:

- It took an average of 190 days to complete a request. Moreover, it was only able to complete 27 percent of the new requests it received within 30 days.
- Canada Post’s deemed refusal rate was 73.5 percent, one of the worst rates the Office of the Information Commissioner (OIC) has seen since it started publishing report cards in 1999.
- Canada Post carried a backlog of 73 requests over into 2009–2010, which was nearly equivalent to its new caseload of 78 requests, and represented 28,000 pages to be reviewed. More than three quarters (78 percent) of these requests were already beyond their due date at the start of the year.
- Of the 17 new requests Canada Post completed after their due date, 24 percent took more than 90 days to finish.

During 2009–2010, Canada Post completed 84 requests, for a total of 9,815 pages. This is a low volume for an office that employs seven full-time equivalents. Canada Post also received 15 consultation requests from other federal institutions. Canada Post took nine extensions for more than 30 days, primarily to accommodate searches for and through large volumes of records and interference with the operations of the institution. Canada Post notified the OIC of only three of these extensions.

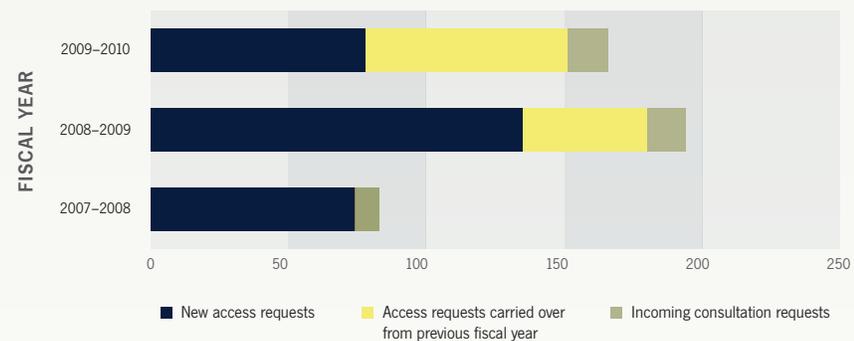
The OIC received 35 complaints about Canada Post in 2009–2010, which equals almost half the number of requests it received during the same period and increased the institution’s workload.

How long requests completed late were overdue, 2009–2010



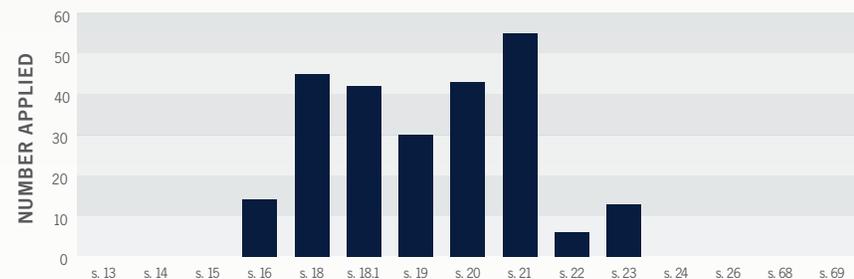
Canada Post reported that it completed 17 of the requests it received in 2009–2010 after their due date. This graph shows how long those requests stayed open beyond that deadline. It is of concern that 64 percent of these requests were late by more than 30 days.

Access to information workload, 2007–2008 to 2009–2010



This graph shows the sources of Canada Post’s workload since it became subject to the *Access to Information Act* on September 1, 2007. Even though it received significantly fewer new requests in 2009–2010 than it did the year before, Canada Post’s large backlog significantly increased its workload.

Exemptions and exclusions applied by the institution, 2009–2010



The total number of exemptions and exclusions often exceeds the number of requests completed in a single year, since more than one may apply to a single request.

This graph shows how often Canada Post applied the various exemptions and exclusions in the Act to the records it released in 2009–2010. Canada Post used exemptions under section 21 (advice) and section 18 (commercial/financial information) the most often. Canada Post used its own exemption under paragraph 18.1(1)(d) 42 times in 2009–2010.

Canada Post earns more than half its revenues in a competitive market and operates on a self-sustaining basis. Parliament accorded Canada Post its own exemption when it became subject to the *Access to Information Act* in 2007, even though Canada Post's then-president, Moya Greene, had deemed existing exemptions sufficient during representations she made to Parliament a full year before the institution came under the Act. The exemption protects Canada Post's proprietary information (i.e. trade secrets, and financial, commercial, scientific or technical information). Nonetheless, Canada Post remains extremely concerned about releasing any information that could impact its competitive position. As a result, it follows a scrupulous review and approval process to prevent inadvertent disclosure. However, the lengthy response times this process entails are affecting Canadians' right of access to information.

During her presentations to Parliament, Ms. Greene also expressed concern about how to familiarize 71,000 employees with the process of responding to access requests. To that end, Canada Post hired consultants to train access employees, conduct institution-wide orientation sessions, develop policies and create document templates. The institution also created a network of 200 offices of primary interest and appointed liaison officers throughout the institution so that records in diverse locations could be retrieved quickly. The new access to information office was staffed by analysts with knowledge of the institution and

Number and outcome of complaints received by the OIC, 2007–2008 to 2009–2010

	Resolved	Not substantiated	Discontinued	Pending	Total
2007–2008					
Administrative	21	1	0	0	22
Refusals	0	4	1	3	8
Cabinet confidences	0	0	0	0	0
Total	21	5	1	3	30
2008–2009					
Administrative	18	2	2	0	22
Refusals	1	11	0	17	29
Cabinet confidences	0	0	0	0	0
Total	19	13	2	17	51
2009–2010					
Administrative	8	0	2	6	16
Refusals	1	2	1	15	19
Cabinet confidences	0	0	0	0	0
Total	9	2	3	21	35

This table sets out the number and outcome of the complaints the OIC registered against Canada Post in each of the three reporting periods since Canada Post became subject to the Act on September 1, 2007. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction. In 2007–2008, 73 percent of complaints against Canada Post were of an administrative nature, indicating delays in processing requests. However, in the subsequent two years, a larger proportion of complaints dealt with the substance of the disclosure package (refusals). In 2009–2010, 60 percent of the complaints were pending at the end of the year.

headed by an experienced access coordinator, in an effort to strike a balance between strong access capacity and corporate knowledge. Canada Post even held a dry run to test the institution's readiness to process access requests using the straightforward process the consultants had designed.

With the onset of real requests, however, Canada Post defaulted to a multi-layered review of each disclosure package. This involves receiving severance advice from multiple operational areas, including, at

any given time during the processing of the request, the liaison officers, the offices of primary interest, consulted institutions, senior management, senior analysts and the coordinator. On occasion, additional severance advice may be required from the "specialist group," which includes communications and legal services, to ensure that sensitive business information is protected. Additional internal consultations may be ongoing during the processing of records. The proposed release package is then sent up through the chain of

approval, first to the General Manager, Access to Information, and then to the Vice-President, Compliance, who must approve every package before it can be released. Communications is provided with a courtesy notice 48 hours prior to any release. Based on the OIC's experience and analysis of data, this multi-layered review and approval process unquestionably causes undue delay.

The process reflects Canada Post's delegation order, which divides responsibility for access to information decisions between the General Manager, Access to Information, and the Vice-President, Compliance, with no responsibility delegated to the coordinator. The Vice-President is delegated many administrative functions, such as providing notice of access to or refusal of records, requesting transfers of requests to other institutions and taking time extensions for searching for or through large volumes of records. The General Manager has the authority to take other types of extensions, along with exemptions and exclusions. It is the OIC's experience, in contrast, that administrative operations are efficient and timely when delegated to the coordinator or below.

Also of concern to the OIC is Canada Post's observation that the chief worry of operational areas is to avoid disclosing proprietary information. It is the OIC's view that this attitude tends to lead to

officials broadly interpreting exemptions and providing liberal severance advice to the access to information office. Canada Post reports that when this occurs, access officials work with colleagues in the operational area to endeavour to balance the differing interests, which, although laudable, also causes delay.

As they have become more familiar with their legislative obligations, access officials report that they have learned to communicate with requesters to better understand what they are seeking. Early on, the access to information office experienced many changes, including a high turnover. It is currently staffed predominantly with analysts with institutional knowledge but limited access to information experience.

Canada Post realized the importance of sound record keeping when it became subject to access legislation and encountered difficulty in retrieving records. With access to information as the catalyst, a records management program was established to account for existing records and provide a protocol for new ones. The protocol remains in effect, with positive results reported by the access office.

Canada Post states that its operations, culture and commercial base make it distinct from other institutions that are subject to the Act, and cites this distinction from other institutions as the key reason

for its lack of timely responses to access requests. With a limited number of external consultations (14), the prolonged turnaround time for requests at Canada Post points to internal delays. The OIC is deeply concerned about Canada Post's performance and has issued a red alert for 2009–2010.

RECOMMENDATIONS

1. The Office of the Information Commissioner recommends that the President of Canada Post Corporation demonstrate leadership in establishing access to information as an institutional priority without exception. Access to information is a mandatory program and its associated legislated duties within a federal institution must be paramount.

RESPONSE

The administration of the *Access to Information Act* (ATIA) at Canada Post is a complex and challenging task, given the size and nature of the Corporation and the competitive business context in which it operates.

Canada Post is committed to access to information and to ensuring that its corporate obligations under the ATIA are met. The President and CEO will reinforce to all employees of the company the importance of respecting the ATIA and the timelines and procedures set out by the access to information office.

- 2.** The Office of the Information Commissioner recommends that the President of Canada Post Corporation formulate and implement a clear, comprehensive and multi-year plan to improve the delivery of access to information services and improve compliance, including a plan to tackle the backlog of access requests.

RESPONSE

Canada Post is committed to improving its performance and will undertake a thorough analysis and develop a multi-year action plan to better understand and address the issues causing delay.

- 3.** The Office of the Information Commissioner recommends that the President of Canada Post Corporation revise the delegation order to ensure greater autonomy of the access to information coordinator in the release of records and remove additional levels of approval, with a view to eliminating delays and providing timely access to requesters.

RESPONSE

The Corporation is committed to reviewing the delegation order and approval processes with a view to enhancing efficiency, while maintaining the level of review necessary to manage the risks associated with its commercially sensitive information.

- 4.** The Office of the Information Commissioner recommends that Canada Post Corporation comply with the Act and notify the Office of the Information Commissioner of the extensions it takes for more than 30 days.

RESPONSE

Notifying the Office of the Information Commissioner when extensions are taken for more than 30 days is part of the procedures of Canada Post's access to information office, and it will ensure that these procedures are followed. All access to information employees have been reminded of the obligation to notify the OIC, and the coordinator will conduct regular audits to ensure that these notifications are not overlooked in the future.

- 5.** The Office of the Information Commissioner recommends that Canada Post Corporation reduce its deemed refusal rate to zero.

RESPONSE

Canada Post will strive to improve its deemed refusal rate in 2010–2011 through the development and execution of an action plan to improve our level of compliance to the Act.



Canadian Broadcasting Corporation

The Canadian Broadcasting Corporation (CBC) is Canada's national public broadcaster. It produces, procures and distributes Canadian programming in English, French and eight Aboriginal languages.

2009–2010 REPORT CARD AT A GLANCE

Rating: **F** (Unsatisfactory)

- The CBC's deemed refusal rate was 57.7 percent.
- The CBC took an average of 158 days to complete a request. It completed only 39 percent of new requests within 30 days.
- The Office of the Information Commissioner received 134 complaints against the CBC, the most among the institutions reviewed this year.
- The CBC notified the Office of the Information Commissioner in the one case in which it took an extension of more than 30 days.
- The CBC has had difficulty recruiting experienced access to information employees.
- The CBC had a significant backlog of requests at the beginning of 2009–2010, which it had reduced by 60 percent by the end of the year.
- The number of administrative complaints against the CBC has dropped significantly over the three years it has been subject to the *Access to Information Act*: from 456 in 2007–2008 to 29 in 2009–2010.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the *Access to Information Act*. (See Appendix C for the formula the Office of the Information Commissioner used to calculate this rate.)

** Includes complaints from 2007–2008, 2008–2009 and 2009–2010

*** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Quick Facts

Number of requests carried over from 2008–2009

108

Number of new requests

247

Number of requests completed

315

Deemed refusal rate*

57.7%

Average time to complete a request (in days)

158

Number of incoming consultation requests

38

Number of pages reviewed for requests completed

44,054

Number of complaints registered with the Office of the Information Commissioner

134

Number of complaints on hold pending litigation, as of March 31, 2010**

108

Number of complaints the Office of the Information Commissioner resolved***

36

Number of full-time equivalents responsible for both access to information and privacy, as of March 31, 2010

7.63

2009–2010 Report Card

Despite some signs of improvements in performance over previous years, the Canadian Broadcasting Corporation (CBC) still did not live up to its access to information obligations in 2009–2010. It took an average of 158 days—more than five times the legislated 30 days—to complete a request and had a deemed refusal rate of 57.7 percent. It completed only 39 percent of requests within 30 days. It also reported that it completed 99 requests after the due date. Of these, 22 percent were late by more than 90 days.

The large backlog of 108 requests the CBC faced at the beginning of 2009–2010 increased its access to information workload by nearly half. In all, the CBC processed more than 44,000 pages over the year and responded to 38 consultation requests from other federal institutions. The institution's caseload was further compounded by the 134 complaints the Office of the Information Commissioner (OIC) received against the CBC, of which 105 were about its refusal to release records.

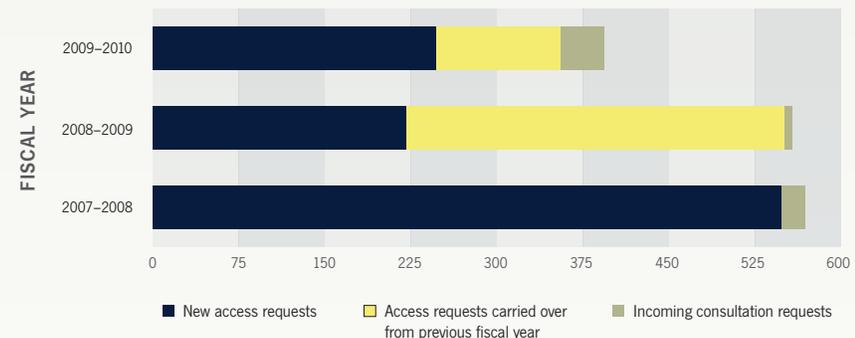
The CBC extended only one request for more than 30 days and did not notify the OIC, as it is required to do under the Act. Having taken a limited number of extensions overall and only consulting other federal institutions occasionally, the prolonged turnaround time for requests at the CBC points to an initial unfamiliarity with these provisions of the Act, internal delays in the retrieval, review and approval processes as well as the age of the requests in its backlog.

How long requests completed late were overdue, 2009–2010



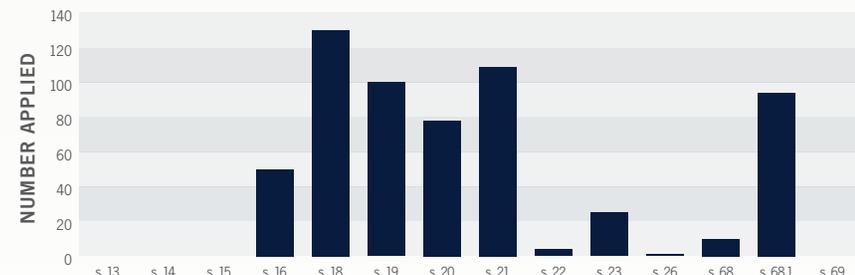
The CBC reported that it completed 99 of the requests it received in 2009–2010 after their due date. This graph shows how long these requests stayed open beyond that deadline. It is of concern that 62 percent of these requests were late by more than 30 days, and 22 percent by more than 90 days.

Access to information workload, 2007–2008 to 2009–2010



This graph shows the sources of the CBC's workload since it became subject to the *Access to Information Act* on September 1, 2007. The backlog of requests the CBC carried over into 2008–2009 outnumbered the new requests it received that year and had a significant impact on its workload. The situation improved in 2009–2010, with the number carried over dropping considerably.

Exemptions and exclusions applied by the institution, 2009–2010



The total number of exemptions and exclusions often exceeds the number of requests completed in a single year, since more than one may apply to a single request.

This graph shows how often the CBC applied the various exemptions and exclusions in the Act to the records it released in 2009–2010. The CBC used the exemptions under section 18 (economic interest) and section 21 (advice) most often and applied its section 68.1 exclusion 94 times. This exclusion pertains to records concerning the CBC's journalistic, creative or programming activities.

The CBC reported that information management continues to challenge the access function, with office locations spread out across the country and no central system to facilitate records retrieval. Despite the fact that the network of access to information liaisons has been in place since the CBC became subject to the Act on September 1, 2007, and has made progress, CBC access officials said the access function is still new to the organization, and there continues to be a learning curve for all involved. The CBC access coordinator provided training sessions to senior management and the network of liaison officers to promote awareness and impart an understanding of the legislative obligations under the Act. However, there was little training for other working levels across the CBC.

The CBC estimated in the lead-up to becoming subject to the Act that it would receive 40 requests per month, and prepared to respond to this volume of requests. It staffed its access office with an experienced manager, two experienced analysts and one part-time support staff. As it happened, the CBC received 335 requests in its first month alone. Amid its struggle to process these requests, the CBC issued a news release a few months later to describe the steps it was taking to try to meet its obligations. The situation was compounded when waiting requesters complained to the OIC about the delays. The CBC engaged additional employees to process requests but others left, given the difficult circumstances.

Number and outcome of complaints received by the OIC, 2007–2008 to 2009–2010

	Resolved	Not substantiated	Discontinued	Pending	Total
2007–2008					
Administrative	411	28	7	10	456
Refusals	0	21	1	56	78
Cabinet confidences	0	0	0	0	0
Total	411	49	8	66	534
2008–2009					
Administrative	32	6	2	0	40
Refusals	19	4	5	153	181
Cabinet confidences	0	0	0	0	0
Total	51	10	7	153	221
2009–2010					
Administrative	3	1	0	25	29
Refusals	33	0	3	69	105
Cabinet confidences	0	0	0	0	0
Total	36	1	3	94	134

This table sets out the number and outcome of the complaints the OIC registered against the CBC in each of the three reporting periods since the CBC became subject to the Act on September 1, 2007. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction. Of all the institutions that became subject to the Act in 2007, the CBC has the highest aggregate number of complaints, at 889. It also had the highest number of complaints for 2009–2010 (134). More than three quarters (78 percent) of complaints in 2009–2010 were for refusal to disclose records. Most of the refusal complaints are still under investigation, but 91.6 percent of those that were completed were resolved. Three were discontinued. The number of administrative complaints against the CBC has significantly dropped over the last three years: from 456 in 2007–2008 to 29 in 2009–2010. This reduction in complaints has significantly reduced the CBC's access to information workload. During 2009–2010, the OIC received 33 complaints on the CBC's use of the section 68.1 exclusion, and this number has increased steadily since then. At the time of this writing, 181 such complaints were on hold due to legal proceedings. In *Canadian Broadcasting Corporation (CBC) v. the Information Commissioner of Canada*, the CBC maintained that, since the records were excluded under the Act, the Commissioner did not have a right to examine them during the investigation of a complaint. The Federal Court did not agree, ruling that the Commissioner has the authority to order the CBC to produce records if it would not do so willingly. The Federal Court decision is currently under appeal.

Also in these early months, the CBC commissioned a report from an access to information expert that outlined the key challenges ahead. The expert noted that the range and nature of requests received were not unique to CBC and could be expected to continue. As it

turned out, however, the number decreased: after receiving 547 requests in seven months in 2007–2008, the CBC received fewer than half as many (221) in 2008–2009 and only slightly more (247) in 2009–2010, indicating that the volume of requests may have stabilized.

In its 2009–2010 Freedom of Information Audit, the Canadian Newspaper Association found the CBC to be one of the least-open federal institutions. Access officials report that staff at all levels put a priority on programming but, overall, the institution is growing increasingly respectful and supportive of the legislation.

The access coordinator (whose full title is Compliance Officer, Associate Corporate Secretary and Access to Information and Privacy Coordinator) and director share fully delegated authority for access to information decisions, with the important exception that only the coordinator may apply the CBC-specific exclusion that protects information of a programming, creative or journalistic nature (section 68.1). The CBC delegated identical authority to the two positions to ensure that the function is properly covered at all times, but it remains unclear to the OIC how this works in daily operations.

In terms of approvals, the access to information office forwards the relevant part of each proposed disclosure package to the appropriate vice-president—none of whom have delegated authority—for review before it is released. The CBC reported that the two-day turnaround for this step receives significant respect but also acknowledged that there are many competing pressures for attention at the executive level. There is a procedure by which the access to information director follows up when the two-day period expires, but with no clear indication that the files are released even when the vice-president does not meet this deadline, the OIC questions whether the consultation is for review or approval.

The access office staff has grown to include more than seven full-time equivalents, including a director with access experience in other government institutions. CBC notes that it is difficult to recruit experienced access to information employees. Access officials are currently developing a policy and procedures manual as well as a training program so that all employees can better understand their obligations.

Although the OIC is concerned with the CBC's overall performance for 2009–2010, there are indications that the institution is trying to improve its operations to increase its compliance with the Act. The CBC reduced its backlog of access requests by 60 per cent in 2009–2010. In addition, the average completion time for new requests in 2010 to date is 51 days, and delay complaints have diminished significantly recently.

Nonetheless, the OIC has assessed the CBC as having an F rating for 2009–2010, due to the very high deemed refusal rate and long average completion time.

RECOMMENDATIONS

1. The Office of the Information Commissioner recommends that the President of the Canadian Broadcasting Corporation demonstrate leadership in establishing access to information as an institutional priority without exception. Access to information is a mandatory program and its associated legislated duties within a federal institution must be paramount.

RESPONSE

The President of the Canadian Broadcasting Corporation has, and continues to demonstrate leadership in establishing access to information as an institutional priority. The Corporation's proactive electronic posting is a recent example of this.

The President's strong personal commitment to ensuring that transparency and accountability remain institutional priorities will be cascaded on an ongoing basis to all levels of the Corporation through its vice-presidents and their teams of senior managers. To re-emphasize the importance attached to the *Access to Information Act* (ATIA) by the Corporation, the President will continue to post electronic bulletins to employees during the new fiscal year explaining access to information developments and underlining the importance of the Act and his expectation that it will be complied with.

2. The Office of the Information Commissioner recommends that the Canadian Broadcasting Corporation formulate and implement a clear, comprehensive and multi-year plan to improve the delivery of access to information services and improve compliance, including clarification of the retrieval, review and approval processes.

RESPONSE

In the slightly more than three years since becoming subject to the ATIA, the Corporation has quantifiably improved its delivery of access to information services and its compliance with the Act. The reduction in delay complaints made

against the Corporation from 388 in 2007–2008, to 8 in 2009–2010 and to 0 as of December 8, 2010, reflects this. To ensure this progress continues, we have already implemented detailed quarterly reporting to the Chair of our Board of Directors, the President, and all vice-presidents and equivalents, on the status of all requests in their areas of responsibility, and we have also established monthly access to information newsletters to disseminate best practices across the organization.

A multi-year plan is being developed to ensure that internal ATIA processes for retrieval, review and approval are streamlined and as efficient as possible; that related process manuals used by access to information office staff and the Corporation's network of access to information liaison officers remain current; that timely dissemination of best practices continues to occur; and that ATIA awareness, education and training products are systematically developed, maintained and delivered.

3. The Office of the Information Commissioner recommends that the Canadian Broadcasting Corporation initiate training to promote access to information awareness across the entire institution.

RESPONSE

As confirmed in this report, training was provided to senior management and our network of access to information liaison officers throughout the Corporation in the period leading up to September 1, 2007, when we became subject to the ATIA. This year the access to information office began, and will continue, producing and disseminating a monthly newsletter to our internal network of access to information liaison officers, with the request that they distribute it further in their respective business areas.

As part of the multi-year plan referred to above, broad ATIA awareness and training needs will be assessed and a plan to respond to them will be developed by the end of the first quarter of the coming fiscal year. In the meantime, the access to information office will continue to respond to requests for awareness and training sessions.

4. The Office of the Information Commissioner recommends that the Canadian Broadcasting Corporation reduce its deemed refusal rate to zero.

RESPONSE

We agree with the aim of this recommendation. This said, mistakes will inevitably occur that will cause some files to be answered late in spite of all best measures and practices. A deemed refusal rate of less than 5 percent appears to be a realistic target.

Reports detailing on-time and not on-time performance will continue to be submitted to the access to information coordinator on a weekly basis. Bi-weekly one-on-one meetings between the director and individual team leaders/analysts to review active requests and the timeliness of their processing will continue.

Our most recent newsletter to our internal network of access to information liaison officers dealt with extensions under the ATIA and explained when, why and how such extensions are to be asked for through the access to information office.



National Arts Centre Corporation

The National Arts Centre Corporation (NAC) operates the National Arts Centre, the only multidisciplinary, bilingual performing arts centre in North America. The corporation also develops performing arts in the National Capital Region and helps the Canada Council for the Arts foster the performing arts in Canada.

2009–2010 REPORT CARD AT A GLANCE

Rating: **A** (Outstanding)

- The NAC's deemed refusal rate was zero percent.
- The average completion time for an access to information request was 28 days.
- The NAC's access to information coordinator has fully delegated authority for access to information decisions.
- Senior management support for access to information has created a culture of transparency within the organization.
- The Office of the Information Commissioner resolved one of the two complaints it received about the NAC, with the second complaint being discontinued.
- The NAC has a stable access to information office, sufficient resources and a manageable workload, enabling it to comply with the legislation.
- The institution did not notify the Office of the Information Commissioner in one of the two cases in which it took an extension of more than 30 days.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the *Access to Information Act*. (See Appendix C for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Quick Facts

Number of requests carried over from 2008–2009

0

Number of new requests

7

Number of requests completed

7

Deemed refusal rate*

0%

Average time to complete a request (in days)

28

Number of incoming consultation requests

2

Number of pages reviewed for requests completed

8,175

Number of complaints registered with the Office of the Information Commissioner

2

Number of complaints the Office of the Information Commissioner resolved**

1

Number of full-time equivalents responsible for both access to information and privacy, as of March 31, 2010

1

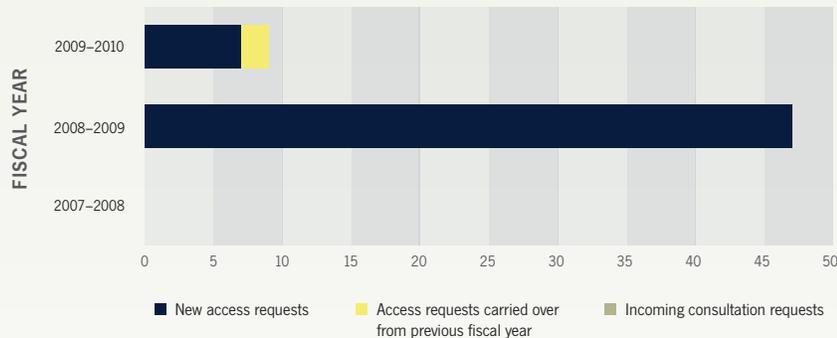
2009–2010 Report Card

In its 2001 strategic vision, the National Arts Centre Corporation (NAC) described its internal culture as “...too bureaucratic, too internally focused and too passive,” and it resolved to change. Its efforts to become more dynamic and open to Canadians have had a profound effect on all parts of the institution, whether in its programming or its access to information function. For 2009–2010, the NAC achieved a 28-day average request completion time and completed all its requests before their due date. Though the organization has some distinct advantages, such as receiving very few requests and having all its operations in one location, the NAC’s commitment to access to information must be commended.

The NAC took various steps to prepare to come under the *Access to Information Act* on September 1, 2007. The original access to information coordinator participated in quarterly briefing sessions held by the Treasury Board of Canada Secretariat, as well as government-sponsored training and meetings. The NAC held sessions to inform employees of their responsibilities under the Act and other applicable legislation, regulations and guidelines. NAC officials also stressed in presentations to House of Commons and Senate committees the importance of protecting both fundraising and artist contract information. Section 20.4 of the Act exempts the terms of artist contracts and the identity of donors, and is, according to access officials, essential to the fulfillment of the NAC’s mandate.

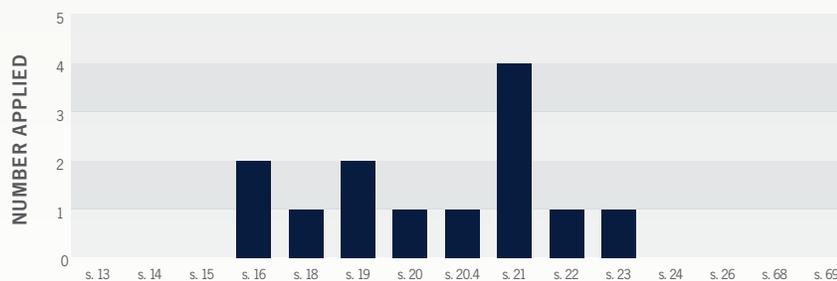
The largest investment the NAC made was creating a full-time position to carry out the access to information and privacy

Access to information workload, 2007–2008 to 2009–2010



This graph shows the sources of the NAC’s workload since it became subject to the *Access to Information Act* on September 1, 2007. In 2009–2010, the number of requests the NAC received decreased significantly from the previous year. No request volume statistics are available for the NAC’s first year of operations under the Act. The NAC received two consultation requests in 2009–2010; consultation figures for the previous two years are not available.

Exemptions and exclusions applied by the institution, 2009–2010



The total number of exemptions and exclusions often exceeds the number of requests completed in a single year, since more than one may apply to a single request.

This graph shows how often the NAC applied the various exemptions and exclusions in the Act to the records it released in 2009–2010. The NAC used the section 21 exemption (government operations) most often, and its own exemption (section 20.4) only once.

functions. The NAC received a significant number of requests in 2008–2009 and was able to respond to most of them. Subsequently, the request volume has subsided to a more stable level. Accordingly, the NAC reduced the full-time coordinator position to part time within the communications department. Nonetheless, the NAC maintains the full budget for the function, to cover ad-hoc

expenses, such as outside legal advice, and to allow the institution to hire additional staff should the number of requests increase.

The access coordinator stated that document retrieval runs smoothly, due to a network of liaison officers in each sector of the institution and a strong information management policy. The

coordinator has fully delegated authority for the access function and reported no interference by senior management nor having to consult with senior officials about high-interest files. The NAC's small size, which gives the coordinator easy access to managers and decision-makers, lends itself to a streamlined approval process, according to the coordinator. Senior officials may review the proposed disclosure packages, but are not reported to impede the release of information.

The NAC receives few requests for consultations from other institutions and sends out few of its own. In the case of one such consultation with a central agency, the NAC found the suggested redaction to be excessive and chose to send out more information than the agency had recommended. In terms of volume, the NAC was unable to report the number of consultations it had received in its first two years of operations under the Act, which may indicate the need for some attention to record keeping on the part of the access office. Request volume statistics for the NAC's first year were also unavailable.

The coordinator confirmed treating access requests informally whenever possible and partially releases documents to ensure a timely response while awaiting consultation results. The coordinator has also assisted requesters by contacting them to discuss the scope of their requests.

From the top down, the NAC demonstrates a culture of openness and transparency. This is exhibited in a variety of ways: the CEO posts his

Number and outcome of complaints received by the OIC, 2007–2008 to 2009–2010

	Resolved	Not substantiated	Discontinued	Pending	Total
2007–2008					
Administrative	1	4	0	0	5
Refusals	1	1	1	0	3
Cabinet confidences	0	0	0	0	0
Total	2	5	1	0	8
2008–2009					
Administrative	0	0	0	0	0
Refusals	0	0	0	0	0
Cabinet confidences	0	0	0	0	0
Total	0	0	0	0	0
2009–2010					
Administrative	1	0	0	0	1
Refusals	0	0	1	0	1
Cabinet confidences	0	0	0	0	0
Total	1	0	1	0	2

This table sets out the number and outcome of the complaints the OIC registered against the NAC in each of the three reporting periods since the NAC became subject to the Act on September 1, 2007. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction. The OIC received the largest number of complaints against the NAC in 2007–2008, although the vast majority of these were found to be not substantiated or were discontinued. 2009–2010 saw a small increase in complaints from the previous year, when the OIC received no complaints about the NAC.

quarterly report throughout the building for employees to see, and the institution holds a public meeting each year and puts its annual access to information report on its website. In the view of the Office of the Information Commissioner (OIC), however, that site should include more detailed information about the access to information process.

The OIC commends the NAC for meeting its obligations under the *Access to Information Act*, and for its strong culture of transparency. Overall, the NAC is well positioned to continue to meet its

obligations at the current level of compliance. For 2009–2010, the NAC receives a grade of A.

In light of the NAC's outstanding performance, the OIC challenges it to assume a leadership role in the access to information community. Sharing its established best practices and publishing completed requests online will contribute to progress community-wide.

RECOMMENDATIONS

1. The Office of the Information Commissioner recommends that the National Arts Centre Corporation comply with the Act and notify the Office of the Information Commissioner of the extensions it takes for more than 30 days.

RESPONSE

The recommendation is being implemented now.

2. The Office of the Information Commissioner recommends that the National Arts Centre Corporation provide on its website more detailed information for requesters on the access to information process.

RESPONSE

The NAC will add contact information on its website for the access to information coordinator, and will provide a template for requesters to follow. The NAC will implement this new measure by the end of January 2011.

3. The Office of the Information Commissioner recommends that the National Arts Centre Corporation develop a procedure to accurately capture access to information statistics.

RESPONSE

The NAC's access to information statistics report form has been modified to capture all statistics required by the Office of the Information Commissioner and Treasury Board of Canada Secretariat statistical reports.

Office of the Auditor General of Canada

The Auditor General is an Officer of Parliament, who is independent from the government and reports directly to Parliament. The Office of the Auditor General of Canada (OAG) conducts legislative auditing and, in certain cases, monitors federal departments and agencies, Crown corporations, territorial governments and other entities. The OAG's main legislative auditing duties involve carrying out financial audits, performance audits, special examinations, sustainable development monitoring and environmental petitions, and assessments of agency performance reports.

2009–2010 REPORT CARD AT A GLANCE

Rating: **A** (Outstanding)

- The OAG's deemed refusal rate was 4.5 percent, having completed one request after its due date. The OAG sent a partial release of information to the requester while awaiting the results of a consultation.
- The OAG's average request completion time was 20.8 days.
- The OAG received almost twice as many consultation requests as access requests.
- The access to information coordinator has fully delegated authority for access decisions, which is respected throughout the institution.
- The institution did not take any extensions of more than 30 days, and therefore had no obligation to notify the Office of the Information Commissioner.
- The OAG has a stable access unit and sufficient resources to continue to comply with the legislation.
- The OAG has made a significant investment in software, enabling the coordinator to process requests efficiently.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the *Access to Information Act*. (See Appendix C for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Quick Facts

Number of requests carried over from 2008–2009

3

Number of new requests

19

Number of requests completed

20

Deemed refusal rate*

4.5%

Average time to complete a request (in days)

20.8

Number of incoming consultation requests

36

Number of pages reviewed for requests completed

2,613

Number of complaints registered with the Office of the Information Commissioner

7

Number of complaints the Office of the Information Commissioner resolved**

6

Number of full-time equivalents responsible exclusively for access to information, as of March 31, 2010

0.95

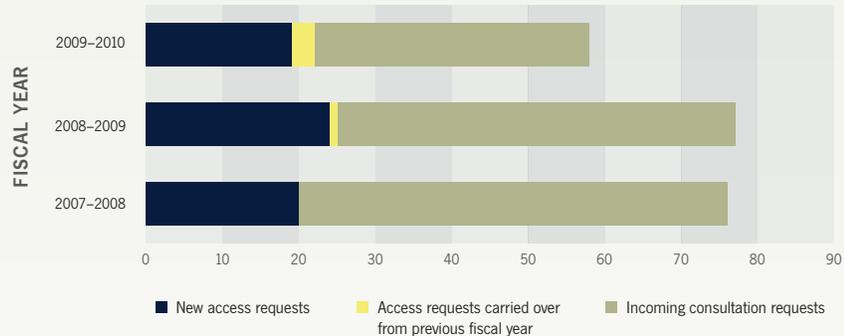
2009–2010 Report Card

The Office of the Auditor General of Canada's (OAG) access to information office demonstrated commendable performance in fulfilling its responsibilities under the *Access to Information Act* in 2009–2010. It had an average request completion time of 20.8 days and required no time extensions to complete requests. It reported that it completed only one request after its due date, the result of consultation-related delays. In that case, the OAG provided a partial release of information to the requester while awaiting the results of the consultation.

The OAG made a smooth transition to being subject to the Act. In the months leading up to the April 1, 2007, start-up, the OAG's executive committee developed a framework and vision for the new access to information office. In building its capacity, the institution consulted frequently with the Treasury Board of Canada Secretariat, as well as with access to information coordinators in other institutions. The OAG posted information on its intranet on access to information processes and guidelines. It also posted contact information for the access to information office on its website; however, the Office of the Information Commissioner (OIC) is of the view that this web presence should be expanded to provide the public with more comprehensive information about access.

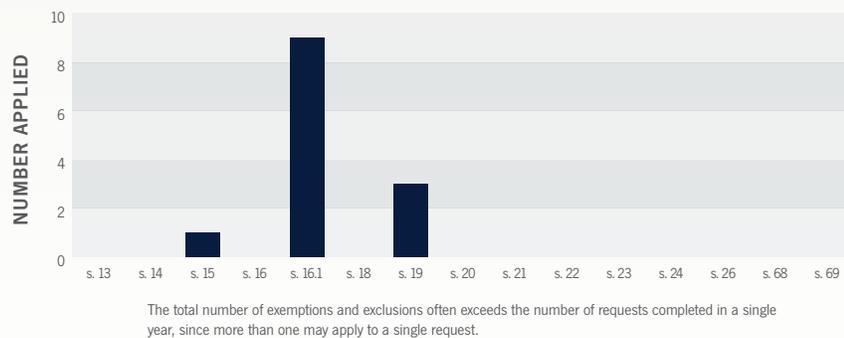
The access office is staffed with one full-time resource, who had worked in access to information prior to coming to the OAG. The office also has a back-up resource who can help when the OAG receives a larger than expected volume of requests and who covers vacation periods. A consultant provided initial

Access to information workload, 2007–2008 to 2009–2010



This graph shows the sources of the OAG's workload since it became subject to the *Access to Information Act* on April 1, 2007. In 2009–2010, the OAG received fewer new requests than it did the previous year, but carried over more requests. Requests for consultations from other institutions greatly contributed to the OAG's workload each year. In 2009–2010, the OAG received almost twice as many consultation requests as access requests.

Exemptions and exclusions applied by the institution, 2009–2010



This graph shows how often the OAG applied the various exemptions and exclusions in the Act to the records it released in 2009–2010. It used the section 16.1 exemption (investigations) most often.

training on access to information, but the coordinator now delivers training to a broad spectrum of employees, including new employees and senior management. The access office reports to the Director, Knowledge Services and Access to Information and Privacy, and is overseen by the Chief Knowledge Officer, reflecting the cultural importance of information to the OAG. With recent investments in

access and information management software, the unit is well resourced.

The OAG has its own exemption under paragraph 16.1(1)(a) of the *Access to Information Act*, under which no audit-related documents may be disclosed. At the same time, the OIC must be able to investigate complaints against the OAG and be satisfied that access

officials have used the exemption properly—a task made particularly challenging due to the large number of documents involved in most audit-related requests. In March 2010, the OIC and the OAG developed a protocol requiring the OAG to provide the OIC with only a sample of documents when the paragraph 16.1(1)(a) exemption is involved, which the OIC then reviews. Under the protocol, the OIC reserves the right to obtain or review additional documents when required. The application of this protocol is in the preliminary phases, and will be reviewed as needed.

Prior to the OAG coming under the Act, the Auditor General emphasized the importance of the exclusion of audit documents to the House of Commons Legislative Committee on Bill C-2. The Auditor General noted that, without the exclusion, the OAG's ability to audit and provide a comprehensive and reliable product to Parliament would be compromised, and that, if audit records could be disclosed, the OAG might not receive the required level of candour and openness from those interviewed during audits.

As soon the OAG became subject to the Act, it began to receive requests for audit material, suggesting that requesters might have been attempting to obtain information about other institutions via requests to the OAG. The number of such requests has subsequently decreased, an indication that requesters may now understand that audit documents are exempted from release.

Number and outcome of complaints received by the OIC, 2007–2008 to 2009–2010

	Resolved	Not substantiated	Discontinued	Pending	Total
2007–2008					
Administrative	0	0	1	0	1
Refusals	0	1	1	0	2
Cabinet confidences	0	0	0	0	0
Total	0	1	2	0	3
2008–2009					
Administrative	0	0	0	0	0
Refusals	0	0	0	0	0
Cabinet confidences	0	0	0	0	0
Total	0	0	0	0	0
2009–2010					
Administrative	0	0	0	0	0
Refusals	0	0	0	7	7
Cabinet confidences	0	0	0	0	0
Total	0	0	0	7	7

This table sets out the number and outcome of the complaints the OIC registered against the OAG in each of the three reporting periods since the OAG became subject to the Act on April 1, 2007. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction. The OIC received seven complaints about the OAG in 2009–2010, an increase from the three complaints it received over the two previous years. Six of the 2009–2010 complaints have since been found to be not substantiated, with the outcome of the seventh pending.

The OAG has a streamlined records retrieval process, an efficient records system and a network of collaborative, cooperative and disciplined employees throughout the organization that help respond to requests. The OAG's culture of accountability and transparency—resulting from the organization's auditing role, which requires free access to information in a timely manner—bolsters the work of the access office.

The access to information coordinator has fully delegated authority for access decisions, and reports that the

organization has no formal approval process for or interference with release packages. The coordinator informs the Chief Knowledge Officer of any sensitive files but ultimately decides what is released. This, combined with a manageable workload, contributes to the timely release of documents. Although the OAG received twice as many consultation requests as access requests (due to it auditing so many organizations that are themselves subject to the *Access to Information Act*), this apparently does not have a negative effect on performance.

Senior management at the OAG considers release of information as its default activity and recognizes that transparency is an essential feature of public sector accountability. This attitude is reflected in the organization's access to information statistics. Based on a favourable average request completion time, a commitment of resources and a model system for retrieval and release of records, the OAG receives a grade of A for 2009–2010.

The OIC commends the leadership of the OAG for meeting its obligations under the *Access to Information Act*, and for its strong culture of transparency. The OAG is well positioned to continue meeting its commitments.

In light of the OAG's outstanding performance, the OIC challenges it to assume a leadership role in the access to information community. Sharing its established best practices and publishing completed requests online will contribute to progress community-wide.

RECOMMENDATIONS

1. The Office of the Information Commissioner recommends that the Office of the Auditor General reduce its deemed refusal rate to zero.

RESPONSE

In the 2011–2012 fiscal year, the OAG will continue to work toward a deemed refusal rate of zero.

2. The Office of the Information Commissioner recommends that the Office of the Auditor General provide requesters with more detailed information about the access to information function on its website.

RESPONSE

- The OAG will continue to expand its access to information presence on its external website.
- The OAG will consult with other federal government departments and review the access information made available on their websites.
- The OAG will review the Treasury Board of Canada Secretariat's recent recommendations and make changes to its web presence. The goal is to have this review completed and implemented by the end of May 2011.

Office of the Information Commissioner of Canada

Mario Dion, the Information Commissioner ad hoc at the time of reporting, prepared this document at the request of the Information Commissioner, to ensure that a completely independent review of the Office of the Information Commissioner's access to information operations was carried out. In preparing this assessment, the Information Commissioner ad hoc used the same methodology as was used for other organizations reviewed in this year's process to ensure consistency in approach and comparability of results.

The Office of the Information Commissioner of Canada (OIC) investigates complaints about federal institutions' handling of access to information requests. The Commissioner also provides arm's-length oversight of the federal government's access to information practices and advocates for greater freedom of information in Canada.

2009–2010 REPORT CARD AT A GLANCE

Rating: **A** (Outstanding)

- The OIC's deemed refusal rate was zero percent.
- The average completion time for an access to information request was 32.97 days, since a long extension (180 days) was required to complete a file of more than 50,000 pages.
- One of the three extensions taken was for more than 30 days, and the Information Commissioner ad hoc was notified, as is required.
- Only one complaint against the OIC was filed with the Information Commissioner ad hoc in 2009–2010, and it was found to be not substantiated.
- The access to information office is autonomous and provides strong leadership within the OIC to ensure access requests are dealt with efficiently in the spirit of the greatest possible access.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the *Access to Information Act*. (See Appendix C for the formula the Information Commissioner ad hoc used to calculate this rate.)

** The office of the Information Commissioner ad hoc was established in 2007 to receive and independently investigate any complaint made under section 30 of the *Access to Information Act* arising in response to access requests made in accordance with the Act to the Office of the Information Commissioner.

*** A complaint is resolved when the Information Commissioner ad hoc finds it has merit, and the institution resolves it to the Commissioner ad hoc's satisfaction.

Quick Facts

Number of requests carried over from 2008–2009

5

Number of new requests

28

Number of requests completed

31

Deemed refusal rate*

0%

Average time to complete a request (in days)

32.97

Number of incoming consultation requests

4

Number of pages reviewed for requests completed

55,589

Number of complaints registered with the Information Commissioner ad hoc**

1

Number of complaints the Information Commissioner ad hoc resolved***

0

Number of full-time equivalents responsible exclusively for access to information, as of March 31, 2010

4

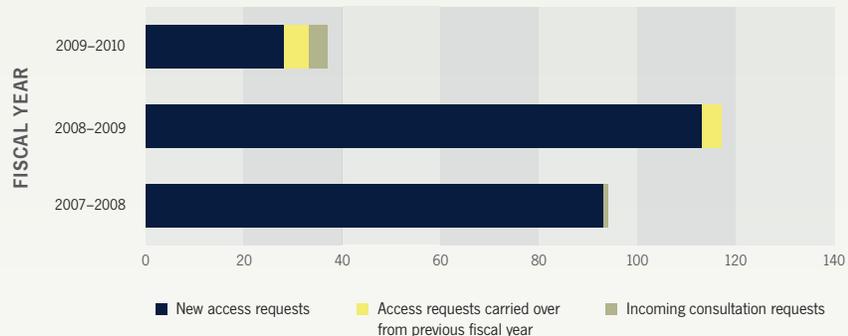
2009–2010 Report Card

The Office of the Information Commissioner of Canada's access to information office had an excellent year in 2009–2010. The investments made in previous years to recruit a sufficient number of qualified officers and develop an efficient case management system, coupled with a corporate culture favourable to the access legislation, led to optimum performance in 2009–2010. The OIC received 28 new requests. Although this was a marked reduction from the 113 requests it received in 2008–2009 and the 93 in 2007–2008, one of the requests required 50,000 pages to be reviewed, which very significantly increased the workload in the first half of the year. In addition, the OIC carried over five requests from 2008–2009 and received four consultation requests.

The OIC had a deemed refusal rate of zero percent for 2009–2010 and took only three extensions, of 14, 15 and 180 days—the latter to deal with that very large request. The OIC notified the Information Commissioner ad hoc of that extension in keeping with the requirement in the *Access to Information Act* to do so. There was only one complaint filed against the OIC during the year, and the Commissioner ad hoc found it to be not substantiated.

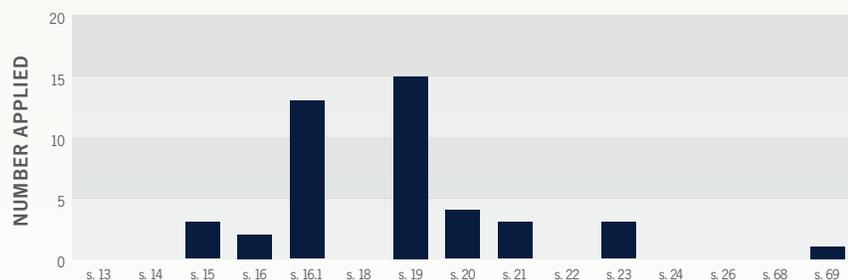
The OIC recognizes the value of information to Canadians and has adopted a number of measures to foster active support for the access function. All members of the executive category have in their performance agreement a standing commitment to actively contribute to the OIC's successful administration of the access requests submitted to the OIC. The OIC has also adopted six pillars of access

Access to information workload, 2007–2008 to 2009–2010



This graph shows the sources of the OIC's workload since it became subject to the *Access to Information Act* on April 1, 2007. The OIC received a large number of requests in the first two years it was subject to the Act, but kept its backlog at five or fewer requests throughout the period.

Exemptions and exclusions applied by the institution, 2009–2010



The total number of exemptions and exclusions often exceeds the number of requests completed in a single year, since more than one may apply to a single request.

This graph shows how often the OIC applied the various exemptions and exclusions in the Act to the records it released in 2009–2010. The OIC used the mandatory exemption under subsection 19(1) (personal information) the most often. It is interesting to note, however, that the number of times the OIC used this exemption could have been higher had it not sought consent of individuals to disclose their information whenever possible under the exception contained in subsection 19(2). The other exemption that regularly applies to records the OIC produces falls under paragraph 16.1(1)(c). This requires the OIC to exempt from disclosure any record that contains information that was obtained or created in the course of an investigation, while the investigation is ongoing. The OIC applied this exemption 13 times.

program delivery, including the full implementation of the duty to assist requesters, the application of discretionary exemptions only when the harm is identifiable and imminent, and the minimal use of extensions. The previous Commissioner ad hoc stated in his

2009–2010 annual report that the OIC sets an example for other federal institutions in effectively processing requests.

Upon becoming subject to access legislation, the OIC's senior management communicated to employees the

importance of responsiveness and compliance with the Act. Individual access training for each employee was delivered in advance of the April 1, 2007, start-up date. The OIC placed the access to information function in the Policy, Communications and Operations Branch to avoid conflicts of interest, since it was likely that most requests would relate to the investigations the OIC conducts. The access to information office is part of the Information Management Division but manages its own budget.

In the lead-up to becoming subject to the Act, the OIC developed policies and procedures, and distributed them to all employees. To preserve the integrity and the independence of the process and ensure that all complaints are properly addressed, an Information Commissioner ad hoc was delegated the authority to deal with complaints made under the Act about the OIC's handling of its own access requests. This office has always functioned with ad hoc commissioners without a statutory or regulatory basis formally referring to such a position. As noted by previous commissioners ad hoc, it is necessary to maintain this office to ensure that someone independent investigates the complaints against the OIC. The former Commissioner ad hoc also noted last year that it was time to consider a formal legal basis for this position.

The OIC received funding from the Treasury Board of Canada Secretariat to assist with start-up and the ongoing costs of its access function. Guidelines were also developed to assist the access

Number and outcome of complaints received by the Information Commissioner ad hoc, 2007–2008 to 2009–2010

	Resolved	Not substantiated	Discontinued	Pending	Total
2007–2008					
Administrative	0	3	2	3	8
Refusals	1	1	0	0	2
Cabinet confidences	0	0	0	0	0
Total	1	4	2	3	10
2008–2009					
Administrative	0	0	0	2	2
Refusals	3	7	0	1	11
Cabinet confidences	0	0	0	0	0
Total	3	7	0	3	13
2009–2010					
Administrative	0	0	0	0	0
Refusals	0	1	0	0	1
Cabinet confidences	0	0	0	0	0
Total	0	1	0	0	1

This table sets out the number and outcome of the complaints the Information Commissioner ad hoc received about the OIC in each of the three reporting periods since the OIC became subject to the Act on April 1, 2007. Overall, the number of complaints against the OIC was low, including only one in 2009–2010, which was found to be not substantiated.

office in interpreting the new provision found in paragraph 16.1(1)(c).

Access officials report that all areas of the institution cooperate fully in retrieving requested records within the very short standard deadline of five days set out in internal policy. Final disclosure is unfettered in terms of reviews and approvals. A status report on all active access to information requests is delivered to all senior managers weekly for their information.

The access to information office consists of four full-time employees who work autonomously, and a director, who is also

responsible for two other groups within the OIC. It is interesting to note that the resources assigned to the access to information office provide support to other parts of the OIC when the workload declines. The office has the full confidence of the head of the institution. There is no two-step process by which the originating office reviews the final proposed disclosure package. The access coordinator is delegated to administer all exemptions under the Act, including exclusions under section 69 for Cabinet confidences.

REPORT CARD RESPONSE

From its inception, the OIC Access to Information and Privacy (ATIP) program has been of paramount importance to the OIC. As such, we have invested resources to ensure that the appropriate tools are made available to personnel, that we have the full complement of staff required, that full delegation is accorded to the ATIP coordinator so the decision-making process remains free of interference, and that our ATIP program is a model of exceptional timeliness.

We have also moved rapidly to ensure the necessary institutional support to the ATIP program. That is, prior to becoming subject to the Act, we created an Information Management Division to maximize synergies between the ATIP Secretariat, Records Management and Information Technology. This partnership has been a successful one and has resulted in enhanced adaptation of technology, sound records management, and improved access to information—all of which constitute the backbone of the effective delivery of our ATIP program.

During the year 2010–2011, which was not covered by the report cards, we have further embraced transparency at the OIC, through various initiatives to support open government and open data. For example, the OIC website now has a summary list of all completed access requests, and copies can be requested electronically. We are also posting on our website real-time statistics on our investigations in both a permanent and a re-usable format in keeping with open data. We will also be consulting with our stakeholders and the general public to determine which of our corporate documents are of interest, in order to proactively provide access to that information.

We remain committed to fulfilling our obligations under the Act. We will continue to operate in the most transparent way possible and to ensure that our ATIP program meets the highest standards of service delivery to Canadians.

Office of the Privacy Commissioner of Canada

The Office of the Privacy Commissioner of Canada (OPC) works to protect and promote individuals' privacy rights. The OPC oversees compliance with both the *Privacy Act*, which covers the personal information-handling practices of federal departments and agencies, and the *Personal Information Protection and Electronic Documents Act*, Canada's private sector privacy law.

2009–2010 REPORT CARD AT A GLANCE

Rating: **A** (Outstanding)

- The OPC's deemed refusal rate was zero percent.
- The OPC took 20.88 days on average to complete an access to information request.
- The institution did not take any extensions of more than 30 days, and therefore had no obligation to notify the Office of the Information Commissioner.
- The OPC had to re-direct 50 percent of the requests it received to other institutions.
- Three complaints against the OPC were filed with the Office of the Information Commissioner.
- The access to information office runs essentially autonomously from the rest of the institution.
- Access to information officials report a strong culture of transparency at the OPC.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the *Access to Information Act*. (See Appendix C for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Quick Facts

Number of requests carried over from 2008–2009

6

Number of new requests

52

Number of requests completed

57

Deemed refusal rate*

0%

Average time to complete a request (in days)

20.88

Number of incoming consultation requests

2

Number of pages reviewed for requests completed

8,175

Number of complaints registered with the Office of the Information Commissioner

3

Number of complaints the Office of the Information Commissioner resolved**

0

Number of full-time equivalents responsible exclusively for access to information, as of March 31, 2010

0.97

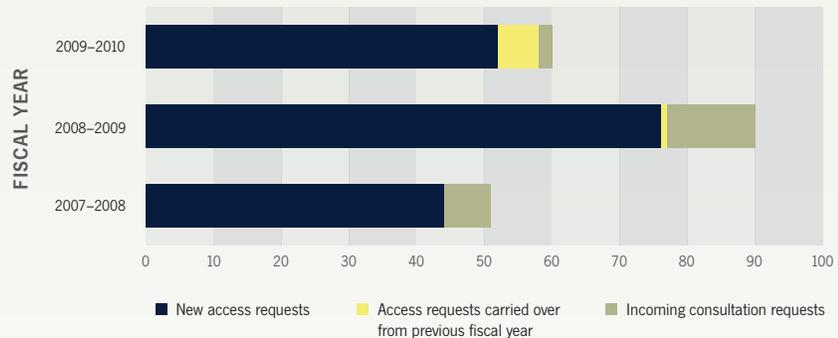
2009–2010 Report Card

The Office of the Privacy Commissioner of Canada (OPC) capitalized on being a small, localized organization with a culture conducive to meeting the spirit and goals of the *Access to Information Act* to achieve optimum performance in 2009–2010. The OPC had a deemed refusal rate of zero percent for the year. Coupled with the fact that the OPC took only four extensions, all of which were for just 30 days, this led to a very short average request completion time of 20.88 days.

The OPC received 52 new requests in 2009–2010, which was down from the 76 it received in 2008–2009, but up from the 44 in 2007–2008. In addition, the OPC carried over six requests from 2008–2009 and received two consultation requests. Since the OPC took no extensions for longer than 30 days, it did not have to notify the Office of the Information Commissioner (OIC). The OIC received only three complaints about the OPC in the reporting period (two refusal complaints, one that was not substantiated and one that was discontinued), and one complaint about OPC’s response that there were no records that matched the request, which is still under investigation.

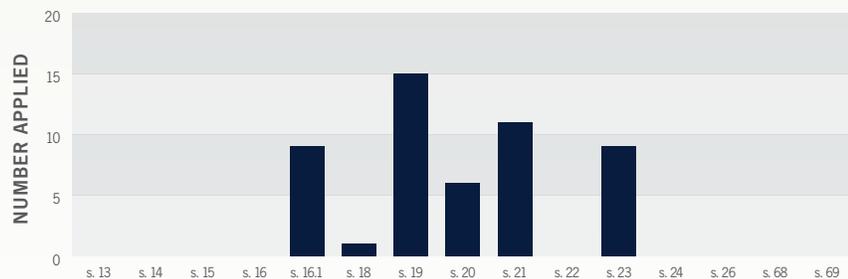
The OPC recognizes the value of information to Canadians. As a result, there is a strong corporate disposition toward transparency, as evidenced by the organization’s optimal access performance and its emphasis in its corporate communications on the rights of requesters under both access and privacy legislation. Access officials describe their operating environment and culture as being autonomous from the rest of the institution, disclosure-oriented and collaborative—

Access to information workload, 2007–2008 to 2009–2010



This graph shows the sources of the OPC’s workload since it became subject to the *Access to Information Act* on April 1, 2007. The OPC saw a significant increase in requests in its second year under the Act, resulting in a backlog of six requests at the outset of 2009–2010.

Exemptions and exclusions applied by the institution, 2009–2010



The total number of exemptions and exclusions often exceeds the number of requests completed in a single year, since more than one may apply to a single request.

This graph shows how often the OPC applied the various exemptions and exclusions in the Act to the records it released in 2009–2010. Under paragraph 16.1(1)(d), the OPC must exempt from disclosure information that was obtained or created in the course of an investigation, while the investigation is ongoing. The OPC applied this exemption nine times in 2009–2010. The exemption the OPC used most frequently was section 19, which restricts the disclosure of personal information.

with requesters, third parties and other government institutions alike.

In the lead-up to becoming subject to the Act in 2007, the OPC’s senior management communicated to employees the importance of responsiveness to and compliance with the legislation. Access training for all employees was mandatory and delivered in advance of the

April 1, 2007 start-up date. The OPC had already received several requests by then, and processed them immediately as a test run of the institution’s ability to respond, rather than waiting until the official date.

Other preparations included seeking document retention advice from Library and Archives Canada and determining a

process for treating privacy complaints lodged against the OPC. It also developed a comprehensive policy and guidelines manual, which is used in the University of Alberta's Information Access and Privacy Protection course.

Currently, all areas of the institution are reported as cooperating fully in the retrieval of requested records, and are also as liberal as possible when recommending what information may be released. The fact that OPC's records are now subject to the Act is not a reported concern for employees in the course of their daily work. Final disclosure is unfettered in terms of reviews and approvals. In fact, the access coordinator only informally advises senior executives about requests that might spark media or public interest.

Other government institutions seek advice from OPC access officials about the privacy implications of various aspects of their work. The OPC access office also receives numerous misdirected requests, usually due to requesters' misunderstanding of OPC's role. Out of the 52 new requests OPC received in 2009–2010, it transferred 26 (50 percent) to other institutions. The OPC has a contingency budget that will allow the access office to bring in extra help if the institution ever experiences a spike in access requests.

The access to information and privacy office consists of two full-time employees who work autonomously and focus on releasing as much information as possible with less review and approval than is evident in other institutions. Areas of the institution that have

Number and outcome of complaints received by the OIC, 2007–2008 to 2009–2010

	Resolved	Not substantiated	Discontinued	Pending	Total
2007–2008					
Administrative	1	1	0	0	2
Refusals	0	2	0	0	2
Cabinet confidences	1	0	0	0	1
Total	2	3	0	0	5
2008–2009					
Administrative	0	0	0	0	0
Refusals	0	0	0	0	0
Cabinet confidences	0	0	0	0	0
Total	0	0	0	0	0
2009–2010					
Administrative	0	0	0	0	0
Refusals	0	1	1	1	3
Cabinet confidences	0	0	0	0	0
Total	0	1	1	1	3

This table sets out the number and outcome of the complaints the OIC registered against the OPC in each of the three reporting periods since the OPC became subject to the Act on April 1, 2007. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction. Overall, complaints against the OPC have been minimal, with five in the first year of operations, none in the second and three in the third. Of those the OIC received in 2009–2010, one was not substantiated, one was discontinued and one is pending.

responsive records send them to the access office with recommendations for information that should be severed. There is no two-step process by which the originating offices review the final proposed disclosure package. The access coordinator is delegated authority for all exemptions under the Act, except for Cabinet confidence exclusions (authority for which the Commissioner has maintained).

The OIC commends the OPC for meeting its obligations under the *Access to Information Act*, and for its strong culture of transparency. The short average

completion time, absence of requests completed after their due date and a culture that promotes transparency have earned the OPC an A rating for 2009–2010. The OPC is well situated to continue meeting its access to information commitments.

In light of the OPC's outstanding performance, the OIC challenges it to assume a leadership role in the access to information community. Sharing its established best practices and publishing completed requests online will contribute to community-wide progress.

REPORT CARD RESPONSE

In order for the access to information office to achieve these results, many factors were required. We believe that a fully compliant access to information program requires stable funding, qualified resources, modern tools in order to be timely and efficient, good information management, clear policies and procedures, ongoing training and proper delegation, and the OPC has achieved its performance because of those key factors.

Another factor that leads to good performance is good “client service,” and the access to information office of the OPC takes its responsibility for duty to assist very seriously. We strive to have good relationships with our requesters as well as third parties and all other government institutions.

This past November, we did our first information management week, where

there were presentations on different topics such as access to information and privacy, awareness sessions on security, information management sessions and a records clean-up morning, which was a success and very much appreciated by employees of the OPC.

We are looking into posting all closed access requests as proposed by the Treasury Board of Canada Secretariat and the OIC in order to be as open and transparent as possible. We are also preparing to provide regular training and awareness sessions for all employees in order for everyone to be informed of their responsibilities under the *Access to Information Act*, since we believe that shared knowledge and communication are very important.

We trust that we are well situated to meet our commitments pursuant to the Act and will strive to do so.

VIA Rail Canada Inc.

VIA Rail Canada Inc. operates the nation's passenger rail services on behalf of the Government of Canada, providing intercity passenger services, and maintaining regional and essential remote passenger rail transportation. VIA works to provide a safe and efficient rail passenger service in Canada.

2009–2010 REPORT CARD AT A GLANCE

Rating: **B** (Above average)

- VIA's deemed refusal rate was 10.7 percent, stemming from three requests it completed after their due date.
- The average completion time for a request was 26.1 days.
- VIA has committed to increasing the number of access to information awareness training sessions it holds for employees.
- VIA did not take any extensions of more than 30 days, and therefore had no obligation to notify the Office of the Information Commissioner.
- Turnover in key positions has been a challenge for VIA's access to information office.
- VIA plans to launch a standardized information management system.
- VIA has made comprehensive information about the access to information process available to the public on its website.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the *Access to Information Act*. (See Appendix C for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Quick Facts

Number of requests carried over from 2008–2009

0

Number of new requests

28

Number of requests completed

28

Deemed refusal rate*

10.7%

Average time to complete a request (in days)

26.1

Number of incoming consultation requests

0

Number of pages reviewed for requests completed

1,815

Number of complaints registered with the Office of the Information Commissioner

2

Number of complaints the Office of the Information Commissioner resolved**

0

Number of full-time equivalents responsible for both access to information and privacy, as of March 31, 2010

1.5

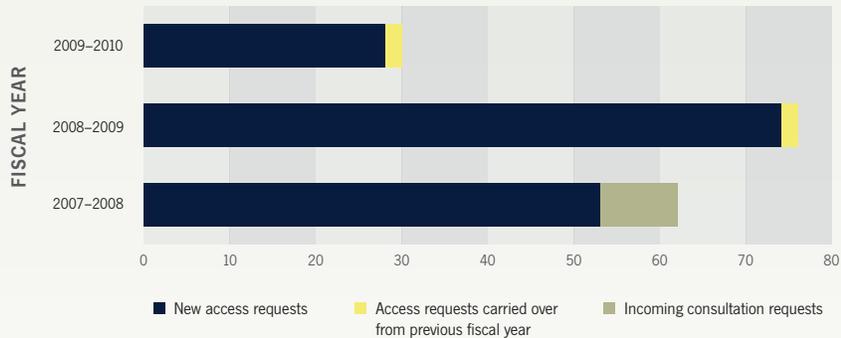
2009–2010 Report Card

VIA Rail Canada Inc. had to contend with significant budget cuts in 2009–2010, which, in combination with a decreasing number of access requests, forced it to restructure its access to information operations. The coordinator role, which was initially a full-time position, was absorbed into the legal division, such that the General Counsel and Secretary is now the third coordinator VIA has had since it became subject to the Act on September 1, 2007. VIA had an excellent average request completion rate of 26.1 days for the year. However, it did complete three requests past their due date, which equals a deemed refusal rate of 10.7 percent. VIA responded to these three late requests within 30 days of their due date.

When it became subject to the Act, VIA engaged a consultant to train management and those employees directly involved in or affected by access to information requests. These efforts have been sporadic over the three years, with senior members of the access office only receiving training in 2010–2011. Consequently, although they have been able to efficiently respond to the majority of access to information requests, they did not know about some standard procedures, such as preparing partial releases of records while waiting for the results of a consultation. Access officials report that they plan to impose more thorough and company-wide training by early 2011.

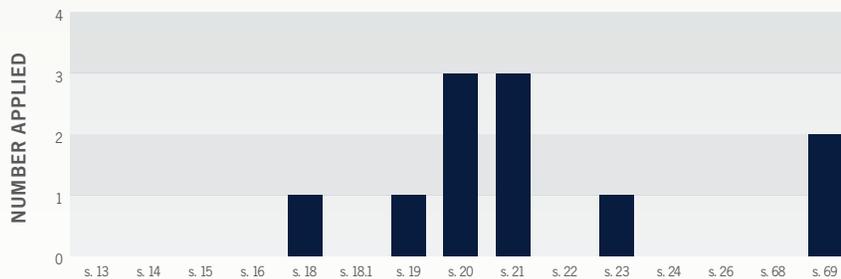
VIA developed a very comprehensive manual on access to information policies and procedures, which also includes information about training, forms, and copies of the delegation order and the

Access to information workload, 2007–2008 to 2009–2010



This graph shows the sources of VIA's workload since it became subject to the *Access to Information Act* on September 1, 2007. In 2008–2009, VIA's first full year under the Act, it received a large number of new requests. In 2009–2010, VIA's access to information workload dropped by more than half.

Exemptions and exclusions applied by the institution, 2009–2010



The total number of exemptions and exclusions often exceeds the number of requests completed in a single year, since more than one may apply to a single request.

This graph shows how often VIA applied the various exemptions and exclusions in the Act to the records it released in 2009–2010. More than half of the exemptions VIA used were under sections 20 (third-party information) and 21 (advice).

Access to Information Act. The Office of the Information Commissioner (OIC) considers this thorough guide, in particular the section providing a step-by-step process for completing a request, a best practice. VIA is also to be commended for making detailed information available to the public on its website, including a basic explanation of the Act, a downloadable request form

and instructions on how to make a formal request. VIA posted this information as soon as it became subject to the Act, as a service to its customers.

Access officials note that, before commencing the retrieval of any documents, they clarify all requests, via email or telephone. They then send call-out forms to the appropriate

departments within VIA. At the same time, they informally ask departments to identify any other groups that might be holding the requested information. The officials report that the majority of employees are accommodating and cooperative, and promptly comply with their requests.

VIA does not have a case management system. Instead, it keeps manual track of all its case-specific data. Access officials did report that the company has a strong information management culture. In particular, an archivist has preserved the institution's documentation since VIA's inception in 1978. There are plans to set up an integrated, institution-wide system to reflect the archival process. This will introduce a common way of coding and organizing corporate information that will be conducive to easy records retrieval.

The access coordinator has fully delegated authority for access decisions and, as a member of the executive cadre, is in a good position to instill access awareness at the very top levels of the institution. The message is that transparency equates to good governance. Review and revision of VIA's delegation order is required, however, since the President has delegated powers, duties and functions that are under the OIC's jurisdiction not VIA's. These include responsibilities under section 32 of the *Access to Information Act* (notice of intention to investigate).

There is no sign-off from departments as part of the approval process. The access coordinator makes the final decision on the information to be released. The

Number and outcome of complaints received by the OIC, 2007–2008 to 2009–2010

	Resolved	Not substantiated	Discontinued	Pending	Total
2007–2008					
Administrative	0	0	0	0	0
Refusals	0	1	0	1	2
Cabinet confidences	0	0	0	0	0
Total	0	1	0	1	2
2008–2009					
Administrative	0	0	0	0	0
Refusals	0	0	2	0	2
Cabinet confidences	0	0	0	0	0
Total	0	0	2	0	2
2009–2010					
Administrative	0	0	0	0	0
Refusals	0	0	0	2	2
Cabinet confidences	0	0	0	0	0
Total	0	0	0	2	2

This table sets out the number and outcome of the complaints the OIC registered against VIA in each of the three reporting periods since VIA became subject to the Act on September 1, 2007. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction. There have been two complaints against VIA each year. As of the end of 2009–2010, there were three complaints pending, while the other three were either discontinued or found to be not substantiated.

communications department is informed when there is a sensitive issue at hand, but VIA reports no interference in the release of documents.

Following a large volume of requests in 2008–2009, VIA's workload levelled off to a more manageable level in 2009–2010: 28 new requests, the majority of which came from the media or corporations. VIA carried no requests over from the previous fiscal year and received no consultation requests. VIA access officials report that they have adequate resources to manage the volume of

requests that have come in so far in 2010–2011. There are also resources available should they require external assistance.

VIA sees Canadian taxpayers as its shareholders and considers itself accountable to them, demonstrating this by, among other ways, granting access to its records. VIA also aims to avoid expensive and time-consuming court proceedings through the prompt release of as much information as possible. An additional benefit of this approach is that officials spend less time dealing with

complaints to the OIC than they otherwise would. In 2009–2010, two complaints were filed against VIA, both pertaining to responses indicating that there were no records that matched the request. The outcome of these two complaints is pending.

Overall, VIA has exhibited a solid commitment to comply with the *Access to Information Act*. With a stable access to information office, the institution will become more knowledgeable about using time extensions and procedures such as the partial release of documents, which will help them complete all their requests by the due date and get more records out to requesters more quickly. Based largely on an average completion time of 26.1 days and the institution's dedication to provide timely access to information, VIA's rating for 2009–2010 is B.

RECOMMENDATIONS

1. The Office of the Information Commissioner recommends that VIA Rail Canada Inc. reduce its deemed refusal rate to zero.

RESPONSE

VIA Rail will review its current procedures in order to streamline its process and curtail delays.

2. The Office of the Information Commissioner recommends that VIA Rail Canada Inc. review its delegation instrument, since certain powers, duties and functions have been delegated that do not come under VIA's jurisdiction.

RESPONSE

VIA Rail will update and modify its delegation instrument.

Appendix A: Other Corporate Interests of the Government of Canada

The institutions marked with an asterisk (*) are covered by the *Access to Information Act*.²⁴

JOINT ENTERPRISES

Natural Resources

Lower Churchill Development Corporation Limited

Western Economic Diversification

North Portage Development Corporation (operating as The Forks North Portage Partnership)

INTERNATIONAL ORGANIZATIONS

Canadian Heritage and Official Languages

World Anti-Doping Agency

Environment

International Lake Memphremagog Board

International Lake of the Woods Control Board

North American Commission for Environmental Cooperation—Joint Public Advisory Committee

Finance

European Bank for Reconstruction and Development

International Bank for Reconstruction and Development

International Development Association

International Finance Corporation

International Monetary Fund

Multilateral Investment Guarantee Agency

Foreign Affairs and International Trade

African Development Bank

Asian Development Bank

Caribbean Development Bank

Inter-American Development Bank

International Joint Commission

SHARED-GOVERNANCE CORPORATIONS

Agriculture and Agri-Food

Canadian International Grains Institute

Canadian Livestock Records Corporation

* Canadian Wheat Board, The

PrioNet Canada Networks of Centres of Excellence

Canadian Heritage and Official Languages

Calgary Olympic Development Association

Canada Commonwealth Legacy Fund

Canada Games Council

Canada Media Fund (formerly Canadian Television Fund)

Canadian Sport Centre Ontario

Centre national multisport—Montréal

Coaching Association of Canada

Sport Dispute Resolution Centre of Canada

Terry Fox Humanitarian Award Inc.

The Halifax 2011 Canada Games Host Society

The Prince Edward Island 2009 Canada Games Host Society Inc.

The Toronto Organizing Committee for the 2015 Pan American and Parapan American Games

TV5 Québec Canada

Vancouver Organizing Committee for 2010 Olympic and Paralympic Games

Environment

Canadian Foundation for Climate and Atmospheric Sciences

Lake of the Woods Control Board

Ouranos Consortium

Porcupine Caribou Management Board

Wildlife Habitat Canada

Finance

Waterfront Toronto

Fisheries and Oceans

International Fisheries Commissions Pension Society

²⁴ The list is from *Annual Report to Parliament—Crown Corporations and Other Corporate Interests of Canada 2010*: <http://www.tbs-sct.gc.ca/reports-rapports/cc-se/2010/cc-se10-eng.asp#Toc017>

The Office of the Information Commissioner added the highlighting to indicate institutions covered by the *Access to Information Act*.

Foreign Affairs and International Trade

- ★ Asia Pacific Foundation of Canada
- ★ International Centre for Human Rights and Democratic Development
- Roosevelt Campobello International Park Commission

Health

- Canada Health Infoway Inc.
- Canadian Agency for Drugs and Technologies in Health
- Canadian Centre on Substance Abuse
- Canadian Institute for Health Information
- Canadian Partnership Against Cancer Corporation
- Canadian Patient Safety Institute
- Health Council of Canada
- Mental Health Commission of Canada

Indian Affairs and Northern Development

- Aboriginal Healing Foundation
- ★ First Nations Financial Management Board
- ★ First Nations Tax Commission

Industry

- ★ Canada Foundation for Innovation
- Internal Trade Secretariat Corporation
- ★ Pierre Elliott Trudeau Foundation, The

Natural Resources

- Association of Canada Lands Surveyors
- ★ Canada Foundation for Sustainable Development Technology
- ★ Canada-Newfoundland Offshore Petroleum Board
- ★ Canada-Nova Scotia Offshore Petroleum Board
- Canadian Energy Research Institute
- FPIInnovations
- Maritime Forestry Complex Corporation
- Petroleum Technology Research Centre Inc.

Privy Council

- Nature Trust of British Columbia, The
- Vanier Institute of the Family, The

Public Works and Government Services

- Milit-Air Inc.

Transport, Infrastructure and Communities

- Aéroport de Québec inc.
- Aéroports de Montréal
- ★ Belledune Port Authority
- Buffalo and Fort Erie Public Bridge Authority

- Calgary Airport Authority
- Charlottetown Airport Authority Inc.
- Edmonton Regional Airports Authority
- Gander International Airport Authority Inc.
- Greater Fredericton Airport Authority Inc.
- Greater London International Airport Authority
- Greater Moncton International Airport Authority Inc.
- Greater Toronto Airports Authority
- Halifax International Airport Authority
- ★ Halifax Port Authority
- ★ Hamilton Port Authority
- ★ Montréal Port Authority
- ★ Nanaimo Port Authority
- NAV CANADA
- Oshawa Harbour Commission
- Ottawa Macdonald-Cartier International Airport Authority
- ★ Port Alberni Port Authority
- Prince George Airport Authority Inc.
- ★ Prince Rupert Port Authority
- ★ Québec Port Authority
- Regina Airport Authority Inc.
- ★ Saguenay Port Authority
- Saint John Airport Inc.
- Saint John Harbour Bridge Authority
- ★ Saint John Port Authority
- Saskatoon Airport Authority
- ★ Sept-Îles Port Authority
- St. John's International Airport Authority
- ★ St. John's Port Authority
- St. Lawrence Seaway Management Corporation
- Thunder Bay International Airports Authority Inc.
- ★ Thunder Bay Port Authority
- ★ Toronto Port Authority
- ★ Trois-Rivières Port Authority
- ★ Vancouver Fraser Port Authority
- Vancouver International Airport Authority
- Victoria Airport Authority
- ★ Windsor Port Authority
- Winnipeg Airports Authority Inc.

Veterans Affairs

- Last Post Fund

Appendix B: Status Update from the Treasury Board of Canada Secretariat on Systemic Issues

OIC RECOMMENDATION 1

That the Treasury Board of Canada Secretariat (TBS) assess the extent to which institutions implement the best practices on the delegation of powers, duties and functions pursuant to section 73 of the *Access to Information Act* with the view to achieving appropriate, efficient and transparent delegation orders.

Context

In the Commissioner's April 2010 Special Report to Parliament it was noted that the Commissioner's office uncovered oral evidence that delegation orders have a direct and significant impact on the ability of institutions to meet the statutory deadlines for responding to requests for information. The Report also referenced the best practices developed by the Treasury Board Secretariat. Among the 18 best practices, one recommends that ATIP Coordinators be delegated full authority by the head of the institution for the administration of the Act.

TBS RESPONSE

In the spring of 2010 TBS issued a number of best practices, which included the following regarding delegation:

- That the Access to Information Coordinator be given full delegated authority by the head of the institution for the administration of the Act; and
- That the head of the institution delegate functions as far down within the Access to Information Office as possible. For example, extension and third party notices can be delegated to Access to Information Officers, as well as to the Coordinator.

In response to the Commissioner's recommendation, TBS reviewed the delegation orders of 24 institutions that were assessed by the Office of the Information Commissioner for the period 2008–2009 as part of its Report Card initiative. It also analyzed statistical data provided by the same institutions.

It was found that in most institutions ATIP Coordinators have full delegation. It was also found that delegation by itself is not a determinant factor in meeting statutory timelines. Delegation is, however, an important element and can eliminate unnecessary levels of approval.

To ensure that delegation is properly addressed, the *Policy on Access to Information* requires heads of institutions to consider whether any of their powers, duties or functions under the Act should be delegated. Furthermore, the *Directive on the Administration of the Access to Information Act* requires heads to respect certain principles when delegating, such as:

- Heads can only designate officers and employees of their government institution;
- Powers, duties and functions are delegated to positions identified by title, not to individuals identified by name;
- Persons with delegated authorities are to be well informed of their responsibilities;
- Powers, duties and functions that have been delegated may not be further delegated; and

- The delegation order is to be reviewed when circumstances surrounding the delegations have changed.

OIC RECOMMENDATION 2

That, as part of the Management Accountability Framework, the Treasury Board of Canada Secretariat review current criteria to ensure that they are measuring the overall performance of federal institutions in meeting their obligations under the *Access to Information Act*.

TBS RESPONSE

The Management Accountability Framework (MAF) sets out the Treasury Board Secretariat's expectations of senior public service managers in a number of areas for good public service management, including on the administration of the *Access to Information Act*.

Activities related to the Act's administration have been assessed under MAF since fiscal year 2005–2006. Assessments comprise a review and analysis of institutions' annual reports to Parliament, their Info Source chapters and a number of other reports to determine if institutions are providing complete, comprehensive and up-to-date descriptions of their functions, programs, activities and related information holdings.

This year, the Secretariat added new requirements that are focused on governance and capacity, which are intended to evaluate the ability of institutions to administer the ATIP program, including the way institutions are organized to respond to ATI requests, whether procedures are established for

ATI specialists and program officials and whether training is being delivered and taken. Areas assessed are reviewed on an annual basis to ensure the continued effectiveness of MAF.

It is, however, important to note that MAF is not the only assessment tool. Parliament put in place a mechanism to ensure accountability for the administration of the *Access to Information Act*. Section 72 of the Act requires the head of each government institution to present to Parliament an annual report on the administration of the Act within their institution. TBS also collects, in accordance with the Act, statistical data to assess institutions compliance. Data collection will significantly be expanded in the coming year. Further details on this point are provided in the TBS response to recommendations 3 and 4.

TBS is committed to continue working with the Office of the Information Commissioner and institutions in order to ensure the effectiveness of reporting and compliance activities.

OIC RECOMMENDATION 3

That the Treasury Board of Canada Secretariat collect annual statistics in accordance with Recommendations 3, 4 and 5 included in the 2007–2008 Special Report.²⁵

OIC RECOMMENDATION 4

That the Treasury Board of Canada Secretariat, together with relevant institutions, assess the magnitude of consultations between federal institutions and the impact of such consultations on institutions' workloads with a view to allocating appropriate resources for this function.

TBS RESPONSE TO RECOMMENDATIONS 3 AND 4

TBS has been collecting statistical data from institutions on their application of the *Access to Information Act* and the *Privacy Act* since the Acts came into force in 1983. Data is consolidated and published yearly in the Info Source Bulletin.²⁶

Beginning in April 2011, TBS will be expanding its requirements for the collection of annual Access to Information statistical data. Institutions will be required to compile and report annually on new data elements, such as number of pages processed, timelines, extensions, consultations and delays. The new data will provide a better understanding of the workload of institutions, the complexity of requests, causes of delay and will enable TBS to better assess compliance of institutions with the *Access to Information Act*. The results of the new data elements will be published in fall 2012 edition of the Info Source Bulletin.

TBS will continue to work closely with institutions to assist them with the transition to the new data collection requirements.

OIC RECOMMENDATION 5

That the Treasury Board of Canada Secretariat, in collaboration with relevant institutions and agencies, develop and implement, as a matter of urgency, an integrated human resources action plan to address the current shortage of access to information staff.

TBS RESPONSE TO RECOMMENDATION 5

The Access to Information and Privacy Community is comprised of dedicated professionals who strive to provide good service to Canadians.

TBS has actively been supporting the ATIP Community in a variety of ways. It meets with the Community regularly, develops tools and guidance and offers a wide range of awareness sessions on ATIP-related topics. Since April 1, 2008, 134 sessions have been delivered, with 1,617 participants attending. Another 26 sessions are planned for this coming year.

In addition, the Secretariat launched last spring an initiative to address the recruitment and retention challenges of the Community to ensure it has the capacity to deliver ATIP services now and in the future.

With key stakeholders and several representatives from ATIP offices across the federal public service, generic organizational models, work descriptions, and competencies to standardize the work across the public service are being developed. These tools will form the basis for the launch of a collective staffing process, as well as the design and implementation of a broader community development and learning strategy.

²⁵ 2007–2008 special report: http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2007-2008_25.aspx

²⁶ Info Source Bulletin: <http://www.infosource.gc.ca/bulletin/2009/b/bulletin32b/bulletin32b00-eng.asp>

Appendix C: How the OIC Determined the Rating for Each Institution

A global rating is attributed to each federal institution as a means to measure its performance. This rating for the reporting period is based on several factors. As a starting point, we are assessing compliance with statutory requirements, namely whether requests were responded within statutory timelines

(deemed refusal ratio) and whether notices under subsection 9(2) were sent to the Information Commissioner.

In addition to these statutory requirements, we are taking into account the practices and processes used by the institution that may impact, positively

or negatively, its capacity to fulfill its obligations under the Act. Among these practices and processes, we have considered the average completion time and good practices. Contextual factors, such as variations in workload will also be taken into account.

Overall grade	Factors
<p>A (Outstanding)</p>	<ul style="list-style-type: none"> • 5% or less deemed refusals • In the case of deemed refusals, we will look at the delay to respond to requesters: most within 30 days • Compliance with subsection 9(2) (85% and more of extensions beyond 30 days were notified to the OIC) • Appreciation of the overall use of time extensions and average completion time: deemed appropriate • Comprehensive set of good practices in place to ensure that access requests are responded in a timely manner (proactive disclosure; informal disclosure; partial release; collaborative instruments, absence of requests categorization or no delay created by it, focus on service to the requesters, etc.) • Other elements which may impact the institution's capacity to comply with the Act and measures taken to deal with them (for example, increase in the workload of the institution and high volume of consultation requests received)
<p>B (Above average)</p>	<ul style="list-style-type: none"> • 10% or less deemed refusals • In the case of deemed refusals, we will look at the delay to respond to requesters: most within 30 days • Compliance with subsection 9(2) (85% and more of extensions beyond 30 days were notified to the OIC) • Appreciation of the overall use of time extensions and the average completion time: in most instances, deemed appropriate • Comprehensive set of good practices in place to ensure access requests are responded in a timely manner • Other elements which may impact the institution's capacity to comply with the Act and measures taken to deal with them

Overall grade	Factors
<p>C (Average)</p>	<ul style="list-style-type: none"> • 20% or less deemed refusals • In the case of deemed refusals, we will look at the delay to respond to requesters: most within 30 days • Compliance with subsection 9(2) (85% and more of extensions beyond 30 days were notified to the OIC) • Appreciation of the overall use of time extensions and the average completion time: to some degree, deemed appropriate • A number of good practices in place to ensure access requests are responded in a timely manner • Other elements which may impact institution's capacity to comply with the Act and measures taken to deal with them
<p>D (Below average)</p>	<ul style="list-style-type: none"> • 20% or more deemed refusals • In the case of deemed refusals, we will look at the delay to respond to requesters: most beyond 30 days • Compliance with subsection 9(2) (less than 85 percent) • Concerns with the overall use of time extensions and the average completion time • Limited good practices in place to ensure access requests are responded in a timely manner • Other elements which may impact institutions' capacity to comply with the Act and measures taken to deal with them
<p>F (Unsatisfactory)</p>	<ul style="list-style-type: none"> • 20% or more deemed refusals • In the case of deemed refusals, we will look at the delay to respond to requesters: most beyond 30 days • Compliance with paragraph 9(2) (less than 85 percent) • Concerns with the overall use of time extensions and the average completion time • Practices in place to ensure access requests are responded in a timely manner are insufficient • Other elements which may impact institutions' capacity to comply with the Act and measures taken to deal with them

How the OIC Calculated the Deemed Refusal Rate for Each Institution

The deemed refusal rate is the percentage of requests that the institution did not complete within the deadlines (30 days and extended) set out in the *Access to Information Act*. There are four categories of overdue request: requests entering the year overdue, requests completed after 30 days with no extension, requests completed after their extension expired, and requests that were still open at year-end and past their due date. The deemed refusal rate is calculated by dividing the total number of overdue requests by the total number of requests open during the year.

Here is an example:

Overdue requests carried over into 2009–2010	47
Requests completed after 30 days with no extension	18
Requests completed after their extension expired	24
Overdue requests carried over into 2010–2011	52
Total overdue requests	141

Requests carried over into 2009–2010	256
New requests in 2009–2010	1,259
Total open requests	1,515

Deemed refusal rate: $141 \div 1,515 = .093 \times 100 = 9.3$ percent

