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Chair

Mr. Tom Wappel

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Standing Committee on Access to Information, Privacy and Ethics

Tuesday, June 5, 2007

• (0900)

[English]

The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)): I call the meeting to order.

We are continuing our study of the access to information request for the Department of Foreign Affairs and International Trade internal report entitled “Afghanistan 2006: Good Governance, Democratic Development and Human Rights”.

Today, from the Department of Justice we have Denis Kratchanov, director and general counsel from the information law and privacy section. He has been here before. Welcome, sir.

From the Treasury Board Secretariat we have Jim Alexander, deputy chief information officer; and Donald Lemieux, executive director of information, privacy and security policy. Welcome to you as well.

Does anyone have an opening statement? Okay, both of you do, so we'll let you both go.

I just want to remind everybody that we're here looking at that document, but particularly about the access to information issues surrounding it, including the request, how it was responded to, and what the government's policies and Treasury Board policies are surrounding that. Perhaps opening remarks can more or less focus on those things.

Mr. Alexander, go ahead.

Mr. Jim Alexander (Deputy Chief Information Officer, Treasury Board Secretariat): Thank you, Mr. Chair.

[Translation]

My name is Jim Alexander. I am the Deputy Chief Information Officer at Treasury Board Secretariat. I am accompanied by Donald Lemieux, who is Executive Director of the Information and Privacy Policy Division at Treasury Board Secretariat.

On behalf of the Secretariat, I would like to begin by thanking the committee for this opportunity to discuss the policy role that Treasury Board Secretariat plays with respect to access to information across the Government of Canada.

[English]

We've been invited by the committee to offer our knowledge of the access to information policy, for which TBS is the lead department. I'd like to take a few minutes to give a quick overview of the policy to help clarify the different aspects of it and its role in identifying the responsibilities of government departments and

agencies in carrying out the requirements of the Access to Information Act.

It's important to note the shared responsibility of the Treasury Board Secretariat and the Department of Justice in providing Canadians with right of access to the federal government's records. In this respect the access to information policy issued by the Treasury Board Secretariat supports and enhances the Access to Information Act and its associated regulations, the broad overview of which falls under the responsibility of the Minister of Justice.

[Translation]

The legislative framework of the Access to Information Act provides a general right of access to information that is held by the Government of Canada. It was proclaimed into force on July 1, 1983.

With respect to the Access to Information Act, Canada has a parliamentary officer: the Information Commissioner. The role of this agent of Parliament is to investigate complaints pertaining to the Access to Information Act and report back to Parliament annually on these investigations.

The Treasury Board Secretariat does not have an audit function with respect to monitoring the administration of the act.

[English]

The Treasury Board Secretariat does not have an audit function with respect to monitoring the administration of the act. The secretariat relies on annual reports and other departmental documents to monitor compliance with policy. Beyond this, Treasury Board policy indicates that internal audit groups are responsible for examining the institution's success in meeting legal and policy requirements. It's also important to note that the heads of institutions are responsible for ensuring that their organizations comply with the Access to Information Act.

The President of the Treasury Board, as the designated minister under the act, is responsible for developing and issuing policies and guidelines governing the operation of the Access to Information Act and its associated regulations.

• (0905)

Treasury Board Secretariat supports the president in this role by developing these policies and guidelines and providing ongoing training to the access to information and privacy or ATIP community. More information on the role of the secretariat can be found in the introduction of the access to information manual that committee members have received this morning.

From a policy perspective, TBS has issued the access to information policy: it applies to 180 institutions that are covered by the legislation. The policy reinforces information management principles inherent in the management of government information policy and the security policy. The access to information policy, which is built on the foundations set out in the act, is there to ensure the effective and consistent administration of the Access to Information Act and regulations on a government-wide basis.

The policy specifies the roles and responsibilities of government departments and agencies to carry out the spirit and requirements of the Access to Information Act in a manner that recognizes the duty to inform as the essential principle underlying the access legislation and discloses to requesters the maximum information possible that is not injurious to the public and private interests identified in the exemptions in the legislation, and does so in the most timely and consistent manner, given the nature and the scope of the request.

As heads of institutions are responsible for ensuring that their organizations comply with the Access to Information Act, deputy ministers and heads of agencies are responsible for ensuring that their organizations comply with the access to information policy.

Now, from a training and development perspective, the secretariat is the functional lead for training the ATIP community. Parliamentarians and the Library of Parliament are among the regular users of the service provided by this ATIP community across the federal departments, and you're familiar with the work and professionalism of these valued public servants.

These qualified individuals have a mandate to provide access to government records to all Canadians. They're also in charge of upholding the legislative and policy requirements for each request, and they do this on an ongoing basis. For example, last year the government's access to information and privacy community processed an astonishing 60,000 requests, which translates into approximately 25,000 access to information requests and 36,000 privacy requests.

Their daily work is founded on a thorough understanding of the laws and policies at hand and their application and the judgment and discretion needed to carry out access to information and privacy files, and ensuring the rightful access of Canadians to information while upholding the exemptions legislated under the Access to Information Act and the legislative framework of the Privacy Act.

Now, given the importance of their mandate, throughout the years Treasury Board Secretariat has adopted different measures to help federal institutions adhere to the policies and standards issued across access and privacy. For example, Treasury Board Secretariat provides ongoing training to the ATIP community. We do this through a variety of means, such as developing training materials and hosting training sessions. Last year we held a total of 23 distinct ATIP training sessions, and so far this fiscal year we've already held 17 training sessions, involving 225 participants.

We hold regular community meetings, often in conjunction with the Department of Justice, and at these meetings we share issues of interest and best practices and advise the community of any changes to the policies. We respond to calls and written requests from ATIP practitioners who have questions or concerns or who require

assistance regarding training. We get an average of 50 calls and e-mails a month for interpretation of ATIP policies and guidelines, and then as well we prepare and distribute guidance documents to the ATIP community and maintain things like the manual that we have just distributed.

Finally, we publish the annual *Info Source* bulletin, which contains the statistics of requests made under access to information and privacy and summaries of Federal Court cases of relevance.

• (0910)

[Translation]

While the Secretariat plays an important role in establishing the policies and guidelines and providing guidance to the ATIP community, it remains the case that heads of institutions are ultimately responsible for the administration of the acts within their respective institutions.

Heads of government institutions are responsible for ensuring that their organizations comply with Access to Information legislation and with Treasury Board policies and guidelines that support the legislation to ensure access to government information. Each institution is responsible for putting in place a process to respond to requests in a manner that is both consistent with policy and complies with legislative requirements.

[English]

The responsibility for responding to access to information and privacy requests within institutions is generally delegated to ATIP coordinators.

The Access to Information Act is an important means for the public to obtain information on government operations and decision-making and is a means through which Canadians can hold the government to account. The government is strongly committed to access to information and its principles of openness, transparency, and accountability. We're also strongly committed to the protection of individual rights to privacy.

I'm confident that we have the legislative framework, policy frameworks, and the tools needed to ensure departments and agencies and crown corporations provide Canadians with access to the maximum information possible that is not injurious to the public and private interests identified in the exemptions in the legislation.

This is an issue that we take very seriously, and as leaders of the ATIP community, I'm confident the same can be said of all ATIP coordinators and their personnel across agencies, departments, and crown corporations.

Ultimately, the government's goal with respect to access to information is to ensure the continued accessibility of information to Canadian citizens and businesses and upholding the act. As such, I can assure you that the Treasury Board Secretariat is committed to supporting the administration of the Access to Information Act and to endorsing the strong and competent community that day in and day out upholds Canadian laws—the Access to Information Act and the Privacy Act—and serves all Canadians in a professional and dedicated manner.

We'll continue to provide all departments, agencies, and crown corporations with guidance on related policy issues as well as arising issues and concerns, and to support the ATIP community across government and across Canada and the essential responsibility this community has in providing more transparency and openness to government in Canada.

Mr. Chairman, this brings me to the end of my statement. I believe Mr. Denis Kratchanov, from the information law and privacy section at the Department of Justice, has a short opening statement as well. Following that statement, we would be very pleased to respond to questions from members of the committee on our role.

Thank you so much.

The Chair: Thank you, sir.

Mr. Kratchanov, please go ahead.

[*Translation*]

Mr. Denis Kratchanov (Director / General Counsel, Information Law and Privacy Section, Department of Justice): Thank you, Mr. Chairman.

I am pleased to appear before the committee this morning to help you understand the role played by the Department of Justice in the enforcement of the Access to Information Act.

First of all, I would like to say that I have not seen the document entitled "Afghanistan 2006: Good governance, democracy and human rights". I was also not asked to provide legal advice to the Department of Foreign Affairs and International Trade regarding this document or any other similar document. Consequently, I am not in a position to provide you with any opinion about the way the document was processed as regards the enforcement of the Access to Information Act, even if it were my role to do so.

[*English*]

In reading the transcripts of your last two meetings, I have noted that the committee has some questions regarding the application and the interpretation of some provisions of the Access to Information Act. I would be pleased to answer your questions in this regard if it may help your understanding of the legislation.

As counsel with the Department of Justice, however, it would not be appropriate for me to provide you with legal advice on a particular question, but I will do my best to give you clear and precise answers. Before answering your questions, however, there are two general points that I want to make in respect of the Access to Information Act.

The application of the act is not a scientific process that leads to a predetermined answer. The context in which information exists and

the divergent interests that must often be balanced make it a process that is more art than science. The law and the guidelines adopted by the Treasury Board give some structure to that process. But at the end of the day, it is understandable, in my view, that in applying exemptions and exclusions, two competent ATIP officers would come to a slightly different result. This is why there are review mechanisms built into the legislation.

Also, understanding why a particular exemption has been applied may also require the further disclosure of confidential information. This is why the investigations of the Information Commissioner are conducted in private and why the act puts limitations on the information that he can include in his report to a requester. Similar limitations exist in relation to court proceedings relating to the access act.

• (0915)

[*Translation*]

Mr. Chairman, that concludes my remarks. I would be pleased to answer any questions you may have.

The Chair: Thank you very much.

[*English*]

We have a full first round.

We'll start with Mr. Pearson, for seven minutes.

Mr. Glen Pearson (London North Centre, Lib.): Thank you, Mr. Chair.

Thank you, too, for coming in this morning.

As you know, this has been a fascinating subject for us over the last few days, and I'm trying to understand the process of it.

Mr. Esau, when he was in front of us and giving testimony, talked about how the Treasury Board had certain guidelines that were applied to this whole idea about access to information and that these guidelines provided guidance to the ATIP coordinators.

I was wondering, because we are trying to figure out exactly what happened here, if you could perhaps take us through some of those guidelines that you would see, because I'm not sure what they all are, and how they might apply in this case.

Mr. Donald Lemieux (Executive Director, Information, Privacy and Security Policy, Treasury Board Secretariat): Maybe I can just start by explaining that the guidelines we're talking about are what was handed out this morning. There are actually two parts: the policy and the guidelines.

The general scheme is that the policy and guidelines reflect what the law says. So it's very close to the legislation. It certainly does not detract from what's in the legislative framework.

From what I gather from reading the blues with respect to the hearings you've been having, there has been some discussion about the processing of a request—in fact, two requests. And there is an issue about what Mr. Kratchanov alluded to, that there seems to be one document that was handled differently over time.

The guidelines that we provide are with respect, in this particular case, to how you would apply section 18 of the Access to Information Act, which has to do with the Departments of Foreign Affairs and National Defence.

Other exemptions that were mentioned concerned section 13, which has to do with documents obtained in confidence from another government; I believe section 17 was mentioned, concerning safety of individuals, although I'm not sure whether or not that provision would actually apply; and section 21, which is advice and recommendations.

I understand, again from the hearings, that those exemptions were applied to this file by Foreign Affairs.

What we provide, as far as guidance goes, is interpretation about, for example, injury and how to interpret those various provisions. It also lays out a framework as to roles and responsibilities, for example, what the ATIP coordinator should be doing.

It covers the scheme, and that's why it's so voluminous. It covers the whole scheme. In fact, it's a manual right now. This is what the ATIP community uses in doing their job, so it's quite extensive.

That's supported by what we call a cold call function. Mr. Alexander referred to the fact that we field approximately 58 questions a month to try to assist the ATIP community.

That's the way I would sum up, in broad strokes, what the guidelines are, what the policy is, and what we do.

Mr. Glen Pearson: Thank you.

And in the area of the Access to Information Act, when a request is made, the act requires that a response be given within 30 days; otherwise it is deemed that there has been a refusal. Section 9 of the act allows institutions to extend that deadline, which I believe happened in this case.

Are there Treasury Board guidelines that apply specifically to that? I think you just alluded to them, but could you just clarify?

Mr. Donald Lemieux: Yes, there are.

Mr. Chairman, there is a reference in the guidelines with respect to extensions under the act. Those are dealt with in paragraphs 9(1)(a), 9(1)(b), and 9(1)(c). Basically, they deal with consultations with other government institutions if there are a large number of requests. Paragraph 9(1)(c) has to do with access requests dealing with commercial information where you're engaging a third party.

So there are guidelines that explain to the ATIP community how to extend. As you correctly pointed out, there is a 30-day mandatory period to respond, but there is the opportunity to extend beyond that.

The objective, of course, is for the ATIP office to respond by the target date that they've assessed as being reasonable to process that request.

• (0920)

Mr. Glen Pearson: Go ahead, Mr. Alexander.

Mr. Jim Alexander: Just to reference the document we've provided you this morning, under tab 2.4, around pages 15 and 16 and so on are where it actually talks about time limits and extensions. So this is really the manual that any ATIP officer would

be using to go through that, and it really talks them through each subject, like the ones Mr. Lemieux has just covered.

Mr. Glen Pearson: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much.

Thank your for coming and welcome to our committee.

First and foremost, Mr. Pearson asked you a question about the type of direction and guidelines you provided. If I understood correctly, you said that basically they reflect the content of the act. Is that correct?

Mr. Donald Lemieux: Generally speaking, Mr. Chairman, the guidelines and policy reflect the legislative framework. In other words, for each exception under the Access to Information Act, there will be a provision regarding the guidelines and policy. So in that regard, the guidelines and policy reflect the legislative framework.

Mrs. Carole Lavallée: I imagine that the guidelines you provide are always in accordance with the Access to Information Act. I have no doubt about that. I just wanted to understand the type of direction you provided. Give me an example of a direction you have provided to a person responsible for implementing access to information.

Mr. Donald Lemieux: For instance, we explain why section 18 is a discretionary exemption.

Mrs. Carole Lavallée: What is section 18?

Mr. Donald Lemieux: The legislative scheme under the Access to Information Act provides for exemptions. As a general rule, there is a right to access to information, but there are some exemptions and exclusions to this right. For the time being, I am working specifically on exemptions. There are two types of exemptions, one of which is mandatory. Under section 13, which I mentioned earlier on, we could be dealing with documents obtained from other countries. Personal and commercial information could fall under mandatory exemptions. However, most exemptions under the act are discretionary.

In some cases, we must also examine if it could be injurious. Section 18, which was referred to in the committee's report, is a discretionary exemption involving injury. It is not enough to say that we are consulting this information. It must be injurious. There is also the discretionary power to disclose information or not, even if it falls under this request.

With respect to the legislative framework, I cannot say too much. If you want further information, that matter would fall within the purview of the Department of Justice.

Mrs. Carole Lavallée: I would simply like us to continue focusing on the type of guidelines you provide. You gave the example of section 13, which is rather clear in the case of information coming from another country. If I've understood you correctly, information coming from another country may be disclosed so long as the disclosure is not injurious to the other country.

Mr. Donald Lemieux: Some documents under section 15 may not contain information on another country. I am not an expert in this area. That would be for Foreign Affairs. Why did the government decide to provide a specific exemption for section 13, for instance, to deal with draft treaties with other NATO countries? Given the nature of such documents, the government decided it had to be mandatory.

Mrs. Carole Lavallée: That falls under section 13. For instance, the disclosure of a draft treaty sent to us by Afghanistan could be injurious to ongoing negotiations.

Did you want to add something? I see you are on the edge of your seat.

Mr. Donald Lemieux: Section 13 deals with information provided to us by another country or a province. For instance, a third country forwards information to us stating that it is confidential. In that case, the section 13 exemption would apply. This exemption is not discretionary, it is mandatory. The access to information coordinator does not have a choice, when the country providing the information states that this information is confidential. It only affects the information forwarded to us by that country.

Moreover, information as to Canada's thoughts on another country do not come from that country. In that case, the information would not be protected under section 13. That would be the information we generated ourselves based on sources other than a foreign country. Section 13 would not apply to this second category of information.

Mrs. Carole Lavallée: Can you give us an example?

Mr. Donald Lemieux: For instance, it could be analyses produced by Foreign Affairs officials on—

• (0925)

Mrs. Carole Lavallée: If, for instance, we believe a given country was preparing to go to war.

Mr. Donald Lemieux: That could be an example.

Mrs. Carole Lavallée: That would simply be the findings of one analyst.

Mr. Denis Kratchanov: It could also have to do with elections in other countries.

Mrs. Carole Lavallée: If it is felt that an individual is in a good position to win the elections. That would be something that would have to be disclosed.

Mr. Denis Kratchanov: No. That information is not protected by section 13. It could be covered by another exemption. Section 15 could be applicable. It protects information, whether from another country or not, that could be injurious to our international relations.

Mrs. Carole Lavallée: Does Treasury Board policy require that access to information officers indicate the subsection of section 15 that was used to redact a sentence?

Mr. Denis Kratchanov: I might be able to answer that question.

In fact, there is case law dealing with section 15 in particular. I am referring to a 1990 Federal Court ruling, *Information Commissioner of Canada v. Minister of National Defence*. In that case, it was alleged that the department had not indicated which paragraph of subsection 15(1) applied. The Court found that the paragraph in question did not need to be referenced, insofar as one of the three areas included in subsection 15(1) was affected.

Mrs. Carole Lavallée: There are nine paragraphs.

Mr. Denis Kratchanov: Before getting to the paragraphs, there is the introductory text of subsection 15(1).

Mrs. Carole Lavallée: The subsection begins with: "15.(1) The head of a government institution..."

Mr. Denis Kratchanov: That's correct. The first paragraph includes three areas that are protected by the section: the conduct of international affairs, the defence of Canada or the detection, prevention—

Mrs. Carole Lavallée: —of hostile activities.

Mr. Denis Kratchanov: The 1990 Federal Court ruling on this issue stated that the access to information coordinator had only to indicate which of those three areas was affected by the documents. The Court added that, even though it was not necessary, it could be advisable, in some cases, to indicate one of the paragraphs.

The paragraphs are only numbered as indication. Paragraph 15(1) ends with the words "any such information." That means that they are examples of areas protected by one of the three areas listed in the introductory paragraph.

Mrs. Carole Lavallée: There might be others.

The Chair: Thank you, madam.

Thank you, Mr. Kratchanov.

Mr. Dewar.

[English]

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair.

Thank you to our guests.

I am substituting for my colleague Mr. Martin. As Treasury Board critic, I have a particular interest in this area.

Starting with Treasury Board, your presentation was clear, but I do have some questions in terms of structure and function. You're responsible for the policy, that's pretty clear. I know my way around Treasury Board, and it makes sense. But I would turn to page 3 of your presentation, where you say that you don't have an audit function in terms of monitoring the act, and you rely on annual reports.

Under the part entitled "The Role of the Treasury Board Secretariat", you say this:

The President of the Treasury Board, as Designated Minister under the Act, is responsible for developing and issuing policies and guidelines governing the operation....

So we get a picture here that you're not in the minutiae of every single day, keeping an eye on every single file, but you have, if you will, the big picture. That makes perfect sense from a structure and function point of view.

In some of the witness statements we heard here at committee, there were concerns around the policy. We talked about the policy, about exemptions, and national security being important, but...

Well, let me put it bluntly: there seems to be a concern from witnesses and others, and certainly I've seen this, that it's not credible to say that national embarrassment is worthy of a policy for exemptions. Would you agree with that?

In other words, if the government is looking bad on an issue, that's not worthy of an exemption in terms of the policy of Treasury Board. And I'm not trying to.... I mean, I know you're public servants; I'm just saying that's not good enough, that's not a reason for exemption.

● (0930)

Mr. Jim Alexander: Mr. Chair, on that, if I can respond, as we write the policy, and as the policy is developed, we actually cannot and do not change anything that's actually established in the legislation.

With regard to how section 15 is phrased in the legislation, we may provide some guidelines on how that particular section is administered, but we actually don't change the definition of what's there in section 15 or anything.

Mr. Paul Dewar: I hear what you're saying. National embarrassment isn't in that, so I would concur with you on that.

There seems to be a pattern emerging. Certainly, with Mr. Esau, there were some concerns about his case. I'm going to turn to that in a second.

I have in my hand the annual report of the Information Commissioner. As you said in your report, you rely on officers of Parliament, like the Information Commissioner. It depends on whether you're looking at the glass as half empty or half full—mine is at about a third. I guess I look at the report card, and we have some problems. We have to acknowledge them—not exacerbate them, but acknowledge them—and get moving on them.

I look at this report and I see that we have some frequent flyers here. We have the Department of Justice, we have the RCMP, we have PCO, and we have DFAIT—they've gone up from an F to a D, but in my house that wouldn't be acceptable. As a former teacher, I'd be wanting to do some remediation with that student.

I guess I want to know your response to this report. And I know you just got this. How can we do better to clarify this issue of exemptions? I know that with Mr. Esau and others there's a lot of frustration. There seems to be a lot of “guess what I'm thinking” going on. I'm just curious as to your response, as a policy developer—not you personally—in terms of where you're going with this report. What is the response to date?

Mr. Jim Alexander: Mr. Chair, the report, as has been pointed out, is a very valuable piece of information and one that I think we take very seriously—it and the internal audit reports and any other reports that are happening. I guess the other big piece of data and the sources we get are through the contacts we have with the ATIP community. Through the training sessions or those calls at the help desk we run, we get a pretty good sense of where the pressure points are, where the organizations are, and where there are systemic issues, I'll call them, where the professionals may be having some difficulty

dealing with things because of whatever the changing circumstances may be. Or, as you pointed out, some organizations may be having more difficulty than others in meeting the standards as set. What we'll do is look at training sessions that can broadly help the organizations. We will work with organizations where they're having difficulty.

One of the other key things we're doing, especially with the expansion of the coverage of access to information under the Federal Accountability Act, is an awful lot in terms of developing capacity in the community. All those extra organizations we've added have really put a fair amount of pressure on trained professionals, and we are making sure that there are—

● (0935)

Mr. Paul Dewar: Does that include changing guidelines?

Mr. Jim Alexander: We would provide clarifications to guidelines, especially, as I think has been referenced in previous testimony, if there are court cases or judgments that come down. Then we will reflect those in the guidelines and reflect what that now means in terms of how the judgment should be applied.

Mr. Paul Dewar: Mr. Chair, the last question I have is about the individual case that was heard here at committee.

Mr. Esau's case scenario—I have the documents here, and he's waived his right to privacy to share these e-mails—paint a picture of... There's remediation needed here, and certainly, I would suggest, there's a need for a change in guidelines when you have this situation where he's asked for human rights reports and he gets back that they don't have reports on human rights. As I said before, there's this kind of “guess what I'm thinking” game going on, when in fact, as he establishes, we know that DFAIT would have reports on human rights in the Afghanistan file. He was told that they don't write formal reports. So it's a game of nomenclature as opposed to substance.

I guess the frustration, from my end, in terms of the policy is that there seems to be this disconnect, and I go back to it. It seems to be more concerned about embarrassment than about divulging.

Are you aware of his case, and are you concerned that he is being blocked in the access to information that all citizens should have? That's in terms of a policy, not you individually, because that's not your job, I understand.

Mr. Jim Alexander: Mr. Chair, yes, we are aware of the case, mostly through the press and reading the previous sessions of this committee. There is an investigation under way, and the Information Commissioner, when he does report on that...it would be something we're very interested in following up. If there are issues he does identify through that, and if it is a broader issue in terms of duty to assist or clarification, if that's where it leads us, then as a policy centre we would be providing additional guidance and working with the community on that.

Mr. Donald Lemieux: Currently, the guidelines we do have on helping requesters, at chapter 2-0, page 4, encourage ATIP coordinators and ATIP personnel in general to speak to requesters to be able to provide them with the best service possible. That will be augmented in September with the formal duty to assist as a result of the Federal Accountability Act. That is the legislative recognition; ATIP coordinators will formalize that in the legislation. They're doing it now for the most part. There will be some guidelines around that provision.

The Chair: Thank you, Mr. Lemieux.

Just one thing, following from Mr. Dewar, if government embarrassment is not a ground, then you must agree that ministerial or bureaucratic embarrassment is not a ground for withholding information, correct?

Mr. Denis Kratchanov: Embarrassment is not a ground for refusal. There are exemptions; none of them refer to embarrassment.

The Chair: You quoted page 4, Mr. Lemieux, of chapter 2?

Mr. Donald Lemieux: What I have here is chapter 2-0, page 4, a reference to our guidelines on helping requesters.

The Chair: I'm drawing the attention of the committee for any questioners to chapter 2-4, page 2, access to information, in the middle. That's just a heads-up, if anybody wants to look at it.

Mr. Tilson.

Mr. David Tilson (Dufferin—Caledon, CPC): I'm interested in the issue that was raised by Mr. Esau and Mr. Attaran on the issue of delay. They both spoke of delay in providing these reports. I questioned the director of access to information and privacy protection division of the Department of Foreign Affairs, Jocelyne Sabourin. I addressed her on that. She acknowledged there was a delay in getting the reports out.

However, I got the impression, having acknowledged that, and it was admirable of her to do that, that her primary concern was making certain that the release of certain information would not be injurious to the country. That was the impression I got.

I asked her questions about how she made her decisions. She indicated there were regulations that one had to learn, one had to observe, and that part of the problem was the issue of staff. This requires a very specialized training to read the regulations, understand them, and be able to apply those regulations to any kind of document, particularly items that could be injurious to the country.

My question is with respect to training staff. That seems to be one of the issues: acquiring staff. They're specialized, they're well-trained, and there seems to be some difficulty in acquiring that staff.

Can you comment on that issue, or if indeed it is an issue?

● (0940)

Mr. Jim Alexander: Yes, Mr. Chair, I can begin with that, and Mr. Lemieux may have some more details to add to it.

Generally, when one looks at the manual, and Ms. Sabourin was referring to the document that we distributed to you today, and as Mr. Kratchanov indicated in his opening remarks as well, this isn't a science, but there's an awful lot of judgment there. However, it's

judgment that is circumscribed by the legislation, the regulations, and then the case law that has evolved since 1983.

Generally, access to information professionals start off in some assisting role, possibly in a larger department, or they may actually be working in a sector within a department coordinating with the access to information coordinator, the lead, on it. They will develop their expertise primarily through experience, through working with other professionals who know the practice better, and then through the training sessions that we offer, the various pieces that are there.

It is something that really requires us then to grow access to information professionals, because it's based on our legislation. The legislation differs in provinces, so it's not even something that's necessarily easily transferable from another jurisdiction.

This is something where our ATI coordinators and the ATI leads in departments really grow, and it's something we are focusing on pretty strongly right now with this expansion of institutions due to the revisions under the Federal Accountability Act. It is putting greater pressure on it, and that is one of the reasons why we've run 17 training sessions so far this fiscal year, just really to bring more people up to speed and help them move up that learning curve more rapidly, which is primarily, it seems, an experience learning curve. It's a case of "I've applied this exemption before, this exclusion before, this injury test before; I've got experience in it, or I phone people who have more experience in it and work on it that way."

So it is very much growing a profession that doesn't exist very strongly outside the federal government and its agencies.

● (0945)

Mr. David Tilson: So you're confident this issue will be resolved. It's just going to take some time.

Mr. Jim Alexander: We are confident that it will be resolved, because in the end the leads of each—an ATIP coordinator, the equivalent of Ms. Sabourin in all the other departments—are the ones who have lots of experience. They've grown up there. They may have a slightly greener team for a period of time, but that's why we're there as a policy centre to provide additional assistance with the help desk calls, to assist them in that proper administration of the policy and the legislation.

Mr. David Tilson: I think you indicated you've read some of the transcripts. I'm going to read to you something Ms. Sabourin said, and this was an answer in response to a question I had asked on the regulations. Essentially, she's raising the issue as to whether they should be updated. She says:

Absolutely. We have the act. We have its regulations. We have Treasury Board Secretariat guidelines that are quite expensive.

I don't know whether she meant expansive or not, but it says "expensive". Mind you, maybe they are expensive. That's what it says.

Mind you, we'd like them to be updated to reflect court precedents so that it's updated with the current court decisions. We are guided by this guideline, which is about four inches thick. It helps us to confirm the application of exemptions.

Can you comment—Treasury Board, in particular—on this issue as to whether or not these guidelines should be updated?

Mr. Jim Alexander: Yes, Mr. Chair, I'd be pleased to do so.

We agree with that statement, and broadly, across all of the Treasury Board policies, including this particular policy that we're speaking of here and the associated guidelines and so on, we are under way in something that we've called "policy suite renewal", which is looking at all of the Treasury Board management policies, updating them all to really clarify deputy head accountability and then make sure that the additional documents underneath the policies, whether they be directives or standards or the more optional guidelines that are there, are very clear and very easy to access.

So we would agree with those statements that Ms. Sabourin made. It is our intention to have the policy revised by the end of this fiscal year, and we will be continuing to work on the directives and the guidelines that fall under that.

The Chair: That's it, thanks.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Mr. Chair, and thanks to the panel for coming.

Consistency is very, very important—whether we are in the private sector or whether we're with the government—when we are doing things.

Could you explain to us why subsection 15(1) was not invoked in the previous years, but it was used in 2006, particularly with all this language, when they whitewashed or blacked out those sections, and taking into consideration that it will be impacting international affairs?

Ms. Sabourin, when she was here, was adamant about an injury test. Could you explain it to us?

Mr. Denis Kratchanov: I can't speak about the particular document, but I can tell you that from my experience, and especially with respect to an injury-based exemption, an ATIP office will assess the injury or the existence of an injury at the time it receives the access request. International relations evolve over time. There might be a situation where with respect to one country a few years ago we had very good relations, and perhaps these relations have evolved over time—and here I'm not talking again about the particular DFAIT circumstances.

My point is that an answer that is given, or the existence of an injury found in the access act, may evolve over time where perhaps last year disclosing a particular document would not have caused injury, but circumstances on the ground have changed so that releasing the same document today would cause injury. So that might be an explanation of the situation.

Another explanation is that the act gives discretion with respect to section 15, so that even if there is a possibility of injury, there is discretion to disclose. That discretion is to be exercised at the time the access request is received. It might be possible for this, again, over time, to exercise the discretion differently. Frankly, if it weren't exercised differently or if it weren't really exercised each time an access request is received, probably this would be seen as an improper exercise of discretion.

I hope that answers your question.

● (0950)

Mr. Sukh Dhaliwal: That should be fine.

Mr. Dewar was mentioning that Mr. Esau said this, and it was also mentioned in Parliament—the duty to assist. The people who are working in the access to information department are not legally obligated to assist. "Not legally obligated" might only mean that they are not to assist...? If we look at the e-mail trail, this is quite evident.

Mr. Denis Kratchanov: The act has been changed to make it express.... Certainly, even without that particular provision in the act, we've always encouraged good communications between ATIP offices and requesters to clarify, when it's required, the exact nature of information that's requested. Obviously, there is a lot of judgment and discretion in doing that.

If there is any doubt from the ATIP office as to what is being requested or if the scope is not clear, as is often the case from the sorts of requests that are made, then ATIP officers, in my experience, do not hesitate to pick up the phone and talk to the requester.

Mr. Sukh Dhaliwal: When we say we're not obligated to assist, in this particular case, when we look at reports prior to 2006 and in 2006, to me it seems that it's a clear case of concealment.

Would you explain how this paragraph 67(1)(c) will come into effect?

Mr. Denis Kratchanov: Subsection 67(1) is a provision that was added to the act in 1999. It created a criminal infraction for concealing, destroying or hiding a document that's subject to the act with the purpose of denying the right of access. From a purely criminal law point of view, it requires evidence of the action, the concealment, and it also requires proof of intent of wanting to avoid or prevent the exercise of the right of access. There has been no case law in that provision. To my knowledge, no one has ever been charged with it. It's a bit difficult to assess exactly how that would play out in the courts, but it would certainly be subject to the whole criminal law rules with respect to obtaining a conviction that includes the proof of what we call in law the *mens rea* and the *actus reus*.

The Chair: Mr. Stanton.

Mr. Bruce Stanton (Simcoe North, CPC): Thank you, Mr. Chair, and thank you to our panel here this morning.

My first question is directed to Mr. Kratchanov. You appeared before this committee back in October when the committee was dealing with another issue. As a point of context here, through the course of this consideration that the committee has been dealing with on this Afghanistan report, there have been allegations and assertions of political interference. In fact, that's been one of the central themes that the opposition has dealt with.

Back in October, you said, "A minister is the head of the institution under the act, and decisions about access are made in his name and under his delegated authority." On the whole subject of political and/or ministerial involvement, I am wondering what you counsel ATIP coordinators in this respect.

As a second point, what is your experience with this kind of...? I am sure there may have been allegations in the past, and I'm sure this is a regular occurrence, but in actual practice, how would you comment on these types of assertions? In fact, what plays out at the practical level when ATIP coordinators are making these types of decisions?

• (0955)

Mr. Denis Kratchanov: From my experience, ATIP coordinators with delegated authority make the decision on their own. I can't say that I'm aware of cases.... Obviously, ministers are the ones under whose name the decision is being made, and they have the power to make that decision themselves if they want to, but from my experience, this is not a power that's being exercised, certainly not on a frequent basis.

Mr. Bruce Stanton: Do you have any such situation that has occurred, in fact, where there has been a specific case of ministerial or political interference with regard to ATIP coordinator decisions on, for example, the degree to which a document is redacted?

Mr. Denis Kratchanov: Not that has come to my attention.

Mr. Bruce Stanton: Okay.

Moving along on this question, we've had considerable testimony—it's been referenced here a couple of times—with regard to Madame Sabourin, and I'll put this generally. Of the 25,000 access requests per year, DFAIT handles approximately 500 or so a year. Of the 50-odd e-mails or questions that come your way at Treasury Board, do you find that DFAIT is part of that mix? In other words, do you get activity coming your way, questions from DFAIT ATIP officers inquiring about the legal and/or procedural guidelines they should be following?

Mr. Donald Lemieux: Mr. Chair, maybe I can answer that question.

I'd say in the past two years, a rough estimate would be perhaps half a dozen, but there are questions of all types, and not necessarily questions. For somebody like Madame Sabourin, who has been in the ATIP field for so long, it is often to simply double check to see where things are at, whether or not things have evolved, that kind of thing. But like every department, we get questions of a general nature. It would be to qualify them. It's not as if Madame Sabourin is phoning frequently, and not just Madame Sabourin, but also her

staff. It's not necessarily only the ATIP coordinator that would be phoning.

Mr. Bruce Stanton: Would that level of activity, for example, be consistent with the proportion of which DFAIT is dealing with the overall universe of ATIP requests?

Mr. Donald Lemieux: Yes, I would say so. There's nothing unusual about that.

I would qualify DFAIT, from my experience, as being a department with difficult files, because at the record retrieval stage it's very difficult to go and get the material that you need to assess, because you're dealing with embassies and things outside of the country. That's a big issue for them; it's complicated simply dealing with the records, getting the records and then dealing with them.

No, I wouldn't say that DFAIT is a big user as far as that's concerned.

Mr. Bruce Stanton: Your department offers much in the way of training programs and information available to ATIP coordinators and their staff.

Has DFAIT participated in these types of training programs this year and last year?

Mr. Donald Lemieux: Yes, I would say so.

We have community meetings, and there are always representatives from DFAIT staff, as far as I know. Obviously, once you've taken the basic training, you've got that under your belt.

Madame Sabourin is quite knowledgeable. As I say, I get calls on the odd occasion on stuff, as do my staff. So yes, they do participate.

[Translation]

The Chair: Mr. Vincent, the floor is yours.

Mr. Robert Vincent (Shefford, BQ): Thank you, Mr. Chairman.

My first question is for Mr. Kratchanov.

First of all, you said that you had not seen this document and that you had not worked on it. At the outset, you told us that you did not know this document.

Has anyone else in your section worked on this document?

Mr. Denis Kratchanov: To my knowledge, no. I have asked my work colleagues whether they have been consulted on the issue. As far as I can tell, there were no consultations by the Foreign Affairs Access to Information Office when the access request was processed.

•(1000)

Mr. Robert Vincent: Very well.

Once an access request is made, the document is checked, section by section, so see what can be redacted or blacked out.

Is the document sent to your section to ensure that the data has been or will be redacted pursuant to the law, section 15 or other subsequent sections? Is it then sent to your section to determine whether the person who worked on the document did so in compliance with the law?

Mr. Denis Kratchanov: Generally speaking, the answer is no. The government receives approximately 25,000 access requests. There are many more requests made under the Privacy Act.

The access to information and privacy offices ask for legal opinions from the Department of Justice on only a very small percentage of access requests. Access offices process the vast majority of requests without obtaining a particular legal opinion.

Mr. Robert Vincent: This is a controversial document, and I think that people hesitated to distribute it because doing so would cause problems.

Furthermore, given the controversy it could generate, the document was inspected by several people. I imagine that was why there was such a delay, given the scope of the impact it could have had. There was no request for a legal opinion from the Department of Justice to see whether things would be done or not in this document.

Mr. Denis Kratchanov: No, not to my knowledge.

Mr. Robert Vincent: I have a question for Mr. Alexander, from Treasury Board.

If there are things you do not appreciate in the document and you are not sure whether the right section of the act was used to redact parts of the document, how can you know whether the person was justified in redacting or blacking out sentences in the document?

[*English*]

Mr. Jim Alexander: Mr. Chair, on any particular file, we really do not have involvement at all on reviewing how the file was treated. Much as Mr. Kratchanov was saying concerning the Department of Justice, we do not get involved in the review of individual files or the assessment as to whether the exemptions and exclusions were properly applied. We provide general assistance and guidance but do not see individual files from other departments.

Thank you, Mr. Chair.

[*Translation*]

Mr. Robert Vincent: According to the latest report by the Office of the Information Commissioner, you are the first to challenge rulings by that organization. You are the ones who do so most regularly. You therefore have experience in the matter.

If I am not satisfied by the decision made, given what has been blacked out in the document, I would like you to tell me, based on your experience challenging decisions, how I can check whether the law was upheld.

Mr. Denis Kratchanov: If you are not satisfied with the answer you received from the department to which you sent an access to information request, you have to contact the commissioner.

Mr. Robert Vincent: I am not satisfied with the document and the fact that 25 pages have been blacked out. I do not know what those pages contained.

What I read in the annual report was that all the challenges heard by the tribunal came from Treasury Board. Someone therefore is challenging things.

We now have a person who says he is applying the law, but how can we know that that is really the case when 25 people worked on the document and asked that such and such a part should be blacked out? As an ordinary citizen, how can I know whether the law was applied or, on the contrary, whether people wanted to hide things from citizens and protect the government?

•(1005)

Mr. Denis Kratchanov: As I said before, you have to file a complaint with the Information Commissioner, who is authorized to read the document in its non-redacted form. The commissioner can judge whether the exemptions and exclusions were properly applied and to talk with the people at the department in question.

Mr. Robert Vincent: What department are you referring to?

Mr. Denis Kratchanov: In this case, the Department of Foreign Affairs, given that they received the request and processed it.

Discussions are held between both parties, and they often lead to further disclosure by institutions. In the vast majority of cases, that is how complaints are settled, to the satisfaction of the Commissioner of Information.

You said that the government sometimes challenged the commissioner's decisions or recommendations. That had indeed occurred on occasion.

Mr. Robert Vincent: That has occurred approximately 80 times last year.

The Chair: I apologize, but your time is up.

Thank you.

[*English*]

Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

Thank you for coming. I know my questions will be a bit of a summary of what you've told us here.

You indicated a couple of times that you know the ATIP person responsible for this at the end of the day. She was a witness for us in a previous meeting. I believe she stated that she started this type of work in 1989, so she's been around for a number of years. Is her level of experience high in the government for this type of work, or is it average? Could you comment on her experience level?

Mr. Donald Lemieux: I'd say it would be quite high for someone who was in the field that long, who worked their way up to being a coordinator and worked in more than one department, which I think is quite important because you get to see different issues. Different exemptions apply to different departments.

Mr. Mike Wallace: I took the time—much to the chagrin to some of my colleagues—to go over the exemptions that were in the act. I hope you didn't read those blues. So there are exemptions. The one that deals with international relations would have a particular interest to this department. Is that an accurate statement?

Mr. Donald Lemieux: That is correct.

Mr. Mike Wallace: Okay.

So on her experience in making decisions delegated to her in the end, this would not necessarily be something new to her, based on her years of experience as an ATIP coordinator. Is that correct?

Mr. Donald Lemieux: That is correct.

Mr. Mike Wallace: There was also a discussion at our committee on whether these new people are trained. Where do they come from, and so on? I just want to be clear that this document, which I think was asked for at the meeting by the chair, is sort of a training manual that every access to information officer would have.

Mr. Donald Lemieux: It's policy and guidelines. Basically it's an annual.... It's a how-to for the ATIP community.

In addition to that, there is general training that is provided globally. There's a three-day course that's given, I believe, at the Canada school, and there's also specific training on specific issues presented throughout the year.

Mr. Mike Wallace: My next question is a combination question.

My understanding of how the process works.... The Treasury Board helps with the training and the policy side of things, in conjunction with Justice, and the additional work that Justice does is legal advice to ATIP coordinators and people in that field.

Is that an accurate statement of the type of work you do? You're not an appeal body of any sort. Is that correct?

Mr. Denis Kratchanov: That's correct. We're not there to make the decision for them or to review their decision. When we give legal advice, we'll give them a risk assessment of the application of certain exemptions. The ultimate decision to apply to the site, to apply an exemption, is made by the client, by the institution, not by the lawyer.

Mr. Mike Wallace: I appreciate the work you have provided us. I think this is an excellent overview of how the system actually works. My view of what we should have been doing at this committee.... If you have an appeal, if you're not satisfied, as Monsieur Vincent was indicating in his questioning, you go to the Information Commissioner for that response. That is the mechanism we have set up for a complaint. Is that not correct?

• (1010)

Mr. Denis Kratchanov: Yes. There's nothing that prevents a requester from having further discussion with the institution directly, if he wishes, but certainly if he's not happy with the answer, he should be going to the commissioner.

Mr. Mike Wallace: My view was that this committee should not deal with the item, because we know there is an appeal—I don't know if you'd call it an appeal, but a request for further information to the commissioner, or a complaint, let me put it that way, to the commissioner. Once that commissioner, who is a third independent body and reports directly to Parliament, reports, if we have

permission from the complainant to release the information, we can discuss that, as a committee? Is that an accurate statement? Or the government...?

Mr. Denis Kratchanov: I don't think it's for me to tell the committee what it should or should not be doing.

Mr. Mike Wallace: No. I'm talking about the process. From a process point of view, is that accurate? The commissioner will deal with the complaint and then will report to Parliament on that complaint?

Mr. Denis Kratchanov: He will report to the complainant and to the institution, that's certain. Whether he reports to Parliament, it's up to him to decide what he will put in his annual report. He certainly does not report on every single investigation.

Mr. Mike Wallace: For us to deal with it...we would need the complainant to give us permission to deal with whatever decision he or she had heard directly from the Information Commissioner, or the department could release that information. I want to know what the law is on that.

Mr. Denis Kratchanov: The department can certainly release information that it has received from the commissioner, but in doing so, it must certainly not disclose the identity of a requester who has not been otherwise made public.

A department will, of course, be careful as well in not disclosing information in the commissioner's report to it that may itself contain confidential information, because in the commissioner's investigation you will have access to more confidential information, information that perhaps the government would not want to release if it was requested. And that will be taken into account by the government department in deciding what to release.

The Chair: Thank you.

Mr. Dewar.

Mr. Paul Dewar: Thank you, Chair.

Thank you, again, to our guests.

I'm not sure who I address this question to. Maybe I'll pose it and decide. I think it might be for my friend at Justice.

At DFAIT, or for that matter at any other department, what are the provisions, if you will, for quality control, essentially, to ensure that Canadians get the information they're entitled to by law?

We have the Information Commissioner, but in terms of the department—I guess I'm going back to this business of a report card here—is there an independent audit at the year's end? Is there a review by some other decision-maker? Sometimes, in order to shed some light on problems or concerns, you might need that—getting a second opinion, if you will, which we all do when we're not sure of something or we want better service.

Is there an independent year-end audit? Is there a review by some other decision-maker, and then getting a second opinion, where there are difficulties or controversial documents? We've heard references sometimes to other agencies.

I don't know if that's my friend at Treasury Board or Justice.

Mr. Donald Lemieux: Mr. Chair, as far as an additional decision-maker is concerned, I think the decision-maker is initially the institution, subject to a complaint to the Information Commissioner, as was mentioned, and further to the Federal Court if it's not resolved at that stage, and of course it can go up in the court system.

Mr. Paul Dewar: That's an appeal as opposed to an audit. I'm talking about—

Mr. Donald Lemieux: Correct.

When it comes to audits, what Mr. Alexander referenced was that we do not have an audit function. The thinking is that there is the regime that Parliament set up with the Information Commissioner to review specific complaints.

We do, however, have statistics, and we have a new responsibility under the Federal Accountability Act with respect to the Access to Information Act, where we will be keeping additional statistics that will assist us in looking at trends.

Mr. Paul Dewar: Maybe I'll just leave this. This might be just a comment from me, and if you see it as a question, then so be it.

What I'm seeing here is that we have the policy oversight obviously taking in information and perhaps making some suggestions on guidelines. We have Justice keeping an eye on things. In terms of an actual independent audit function, that's what this is, but there seems to be a gap, and that is, what happens after this?

We talked a little bit about you talking to people who are in the ATI community, and keeping an eye on the court, obviously, and you need to follow up on those things. But in terms of an audit within the department to make sure their performance is brought up to service levels, I'm going to say that I think there's a gap. And I'm also going to suggest that....

I remember when I was on the Bill C-2 committee with my colleague, Mr. Martin. We said at the beginning, and then we were promised by the government, that we'd have ATI reform.

Maybe I'll put my question to my friend from Justice. Do we have, from the minister, a document on ATI reform?

●(1015)

Mr. Denis Kratchanov: I can't speak to that.

Mr. Paul Dewar: But as far as you know—not you.

Mr. Denis Kratchanov: The previous Minister of Justice produced to this committee, I believe in April of last year, a document. There has been no other document that's been prepared that I'm aware of.

Mr. Paul Dewar: Okay. Thank you for that.

There was a discussion paper before on an open government act, in fact. I guess we would hope that we'd see this, and maybe that's to my friends on the government side. I recall clearly during the debates on Bill C-2 that we were promised...and as we said from our end, access to information is the oxygen for open government and transparency.

So when we look at how that's done...I'll give you another last point, Chair. How materials are gathered concerns me greatly because.... I'll give you an example.

I know Ms. Sabourin, as Mr. Wallace pointed out, was a very experienced person. She was giving advice and feedback directly on some of the cases that were in front of us. She was doing that on her BlackBerry, and she was very involved in the files. I think she was probably working very hard. I know that many public servants have a lot on their plates these days. I hear it on a regular basis. But you have a level of experience of someone like Ms. Sabourin, who is handling this directly.

I'm just wondering, is that typical practice, and is it common to have someone who is at that high a level dealing with a file of this nature directly? Maybe I'd ask you.

Mr. Denis Kratchanov: From my reading of the transcript, I thought she said the file had been assigned to one of her officers who had prepared the work that she had reviewed afterwards. But that's my reading of the transcript. So she was not alone working on that file.

The Chair: Thank you, Mr. Dewar.

My colleagues have given me the Liberal slot, so I'll ask some questions.

Forget about exemptions. My interest at this point is the process. We know for a fact that there have been numerous Afghanistan reports prepared. We know this because Professor Attaran received a disc with about five years' worth of them. So we know that is a fact.

On March 14 of this year, DFAIT received a request from Mr. Esau, who used the following words:

A copy of DFAIT's 2005-2006 annual or semi-annual report, or the 2006-2007, if it's been drafted, on human rights performance in countries around the world.

I referenced before chapter 2-4, page 2 of the guidelines, and it says:

Often the request is expressed in broad terms because of a lack of knowledge about government operations. An employee of the institution experienced in the area of access should contact the requester to clarify the nature of the request or help the requester to understand any difficulties which may be encountered in processing....

We all agree, as you've said so often, that Madame Sabourin is an experienced person. She did not follow, as far as I can see, this guideline, because eight days after the request was made, she answered by saying:

Please be advised that Canada does not produce an annual human rights report analogous to the reports produced by, for example, the United States or the United Kingdom.

And here's the important part:

Therefore, no such report on human rights performance in other countries exists.

That's exactly what she said seven days after the request, clearly not following the guidelines by calling Mr. Esau and asking him what he meant.

Am I seeing the facts as you see them, or do you see them in a different way?

• (1020)

Mr. Jim Alexander: Mr. Chair, on that one, I hear the facts as you're stating them to me. I understand there is an investigation by the Information Commissioner into all of the context around it, and he or his officials will be involved in that. I really don't feel that I can comment on the specifics of that. I think your reading, again, of chapter 2-4 emphasizes something that Mr. Lemieux indicated as well, that 2-4 is actually phrased as a "should" as opposed to a "shall". I think one of the things the Federal Accountability Act brought in is the duty to assist, and we're working on the exact details of that to put the—

The Chair: You're right, it doesn't say "shall". But it doesn't say "could" and it doesn't say "can"; it says "should".

Interestingly, after the response by Madame Sabourin, Mr. Esau does what Mr. Kratchanov suggested, and that is, he begins a conversation with the department to see if he can flesh out his request. I would say, reviewing the material that I've seen, that Madame Archambault, her assistant, tried her best, as far as I can tell. But what's interesting is that everybody went to the human rights gender equality health and population division of the Department of Foreign Affairs. According to Madame Archambault's e-mail, they state—that department—the exact wording that Madame Sabourin put in her letter. I have to assume that the wording from Madame Sabourin was obtained from GHH. I have great difficulty in believing that the department in DFAIT that works on these issues would not have known that there were at least five years' worth of reports pertaining to human rights in Afghanistan.

Is it not GHH's responsibility to properly advise the ATIP officers when they inquire about something?

Mr. Kratchanov.

Mr. Denis Kratchanov: Obviously, when an access request is received, the ATIP office doesn't know everything that's in the department. So it relies on a centre of expertise to tell them. They have a general knowledge, obviously—the department—and they know where they should be looking, and they will go to these centres and ask them if they have such a document. Obviously, the people who are in charge of a certain area would have more particular knowledge, and then they would provide an answer to the ATIP office. That's how it would proceed, and the ATIP office would typically take that answer and then have a discussion with that unit, have a discussion with other units in the department, and then decide if it has information that's relevant to the request.

The Chair: Thank you. My time is up.

Mr. Tilson.

Mr. David Tilson: Determining the national security of this country—I'm getting to this issue of the series of reports that I think Mr. Martin gave to some members, but not to me at least. I'm getting to the issue of the regulations or the guidelines. Are they general enough for the people who are making assessments?

I'm dealing specifically with Afghanistan, but facts that may have existed in 2000 might be quite different from the facts existing in

2006 or 2007. Therefore, something that might be blacked out or redacted in 2006 might not have been blacked out in 2000.

I don't know if I'm properly expressing what I mean, but times change.

The Chair: Sorry to interrupt, but that's exactly what Mr. Kratchanov already said.

Mr. David Tilson: I want to ask the question in my way.

• (1025)

Mr. Denis Kratchanov: You're correct, Mr. Chair. I think I provided the same comment in response to a question earlier. Yes, the facts change, and the injuries are assessed at the time the access request is processed. Over time, the same document might be requested several times. Perhaps in 2000 it was judged that there was injury and that it should not be disclosed. A new request for the same document is made in 2007 and the decision will be made that there is no injury today, so it will be disclosed. That's how the decisions are made at the time the access request is received.

Mr. David Tilson: Mr. Alexander, along the line of questioning as to whether or not the guidelines should be updated—there is consideration for that, and you indicated that they should—Ms. Sabourin referred to the effective case law and the fact that it would have an effect on the guidelines. Could you comment on that issue?

Mr. Jim Alexander: I'll start on it, and if necessary, Mr. Lemieux could add more.

When there is a case and when there is some clarification, through the courts, of the application of a particular aspect of the legislation, that is shared immediately with the access to information coordinators through things like these monthly or bimonthly meetings that we have with the coordinators. Depending on the import and the broad impact, we may send out a particular notice on it as well. It would then make it into this document. This document is the thing to which people should always turn, and that's the thing we need to keep more updated. We need to do a general updating now, because it's been a number of years since we've done it beginning to end. We're doing that under policy suite renewal. The case law then, very specifically, would be reflected in exactly how the guidelines would be applied in that particular section, subsection, or whatever.

Mr. David Tilson: Is there a process, or should there be a process, for the timing of the updating of guidelines and regulations?

Mr. Jim Alexander: Mr. Chair, that's a very valuable comment. I think there should be a process, and it should be something that we attempt to keep up to date as much as possible. There are limited resources, as is the case with a number of areas in government. It's really a question of which hot issues that particular policy centre may be dealing with—things like the Federal Accountability Act, some of the changes there, and the involvement of the policy centre. We're very involved in the training going on for all the new institutions, and those are just some of the workload pressures that hit and may affect how things are updated.

Mr. Lemieux.

Mr. Donald Lemieux: Mr. Chair, if I can just add a few things, I think what Madame Sabourin was mentioning was that in the existing format these guidelines and policy—if you notice at the bottom, it's 1993—are updated regularly in what we call implementation reports. If there's a new issue that comes up or a new guideline that needs to be issued, that is done independently of this. The ATIP community would have access to those implementation reports or notices, as Mr. Alexander mentioned. In the context of policy suite renewal, we are trying to take a rigid format for the policy, directives, and standards, and the guidelines will follow as well.

Specifically on the court decisions, I should say that Mr. Kratchanov's group attends bimonthly community meetings. If case law comes up, there's a section where it's updated. We update a certain area in terms of the access to information practice for ATIP coordinators, and they are advised or given a summary of that court case.

The ATIP community does have access to that. Can it be presented in a better way? I think the answer is yes. That's acknowledged.

The Chair: Thank you.

Mr. Dhaliwal, followed by Mr. Albrecht, followed by Madame Lavallée.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

We're talking about 25,000 requests, and it sounds as if there's no clear process to prioritize those requests.

A request like this, where there were human rights issues, issues to do with torture.... A request like this that would have saved a couple of lives can be delayed for some time. Was there never any process of best practices applied to this particular request?

• (1030)

Mr. Jim Alexander: Let me begin, and Mr. Kratchanov can add more if necessary. The legislation gives very clear timelines and processes, but the legislation doesn't have anything that I'm aware of that says this subject area is higher priority than that subject area and therefore should go to the front of the queue. The deadlines and how they must be treated are there. Whether it's something of significant import or a very small request, both are there.

I think the standard—and this is what the Information Commissioner reports against—is a time standard. These must be met within that timeline, and if not, they are late and those are reported.

Mr. Sukh Dhaliwal: Do you have something to add, Mr. Kratchanov?

Mr. Denis Kratchanov: I can only add that the act doesn't provide for a particular process that depends on the nature of a request or a document that has been requested. It's really up to the ATIP office to decide what sort of consultation they need. Sometimes it's with another department that has an interest in the issue, or with the Treasury Board or the Department of Justice. It's up to them to decide if they need assistance in dealing with that request.

There's no process in place, except that the services are available and the people who do the work are aware of their existence.

Mr. Sukh Dhaliwal: Taking this case into consideration, do you think these centres of expertise within those departments will work in future to prioritize requests like this, or do you think it will still keep dragging on forever?

Mr. Denis Kratchanov: It's difficult to know what's going to happen. Mrs. Sabourin was here. She said, herself, that the time delay was not acceptable. I take it that she wants to avoid these things from happening. I'll take her at her word. I know that every ATIP office in town tries its best to achieve that.

Mr. Sukh Dhaliwal: Do I have some time?

The Chair: You have one and a half minutes.

Mr. Sukh Dhaliwal: We see that the Information Commissioner is having an inquiry now. All he is looking at is whether the process was followed. When it comes to concealment and a criminal investigation, would it be wise for the criminal investigation to be put on hold, or should it go simultaneously, in a case like this?

Mr. Denis Kratchanov: If the police receive a complaint of a criminal act, they'll decide what to do with it. I'm not going to tell them whether they should or should not be investigating. The commissioner has received a complaint; he is doing his own investigation under the act. If the commissioner believes that some infraction has been committed, he has the power to so inform the Attorney General of Canada under the act.

Mr. Sukh Dhaliwal: But would that affect his investigation? If the criminal investigation comes right at the same time, would it in any way interfere with the way he or she is doing the investigation?

Mr. Denis Kratchanov: Without talking about any particular instance under section 67(1), there's always a danger, when there's some sort of public process that is investigating or looking into the same things a criminal investigation is undertaking, that it might spoil the evidence that might be used in a criminal trial. That's a danger that always exists. I'm not one who specializes in that area to say how it should be handled or not handled. I think those who do the criminal investigations are the ones who are responsible for deciding what to do. In this case, the Information Commissioner is the one to decide how far he wants to take his own investigation.

• (1035)

The Chair: Mr. Albrecht.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Mr. Chair, as you and the committee members will know, I'm not a regular member of this committee. I may be asking a question that's been covered previously, but I ask for your indulgence.

Mr. Kratchanov, you indicated that it's not a scientific process, that it's oftentimes more art than science, indicating that there are divergent interests that need to be balanced in providing information and still protecting privacy.

You also mentioned that two different ATIP coordinators might come to a slightly different result, so there's a process of appealing to the Information Commissioner. Section 2-9 of section 1 states:

The role of the Commissioner is to attempt to mediate a resolution of complaints in order to avoid, if possible, costly and time-consuming recourse to the Federal Court.

Could you give us an idea of what percentage of the 25,000 information requests, or what number, might actually go to the Information Commissioner? Maybe that's already in the information and I haven't read it. Of that number, what percentage would go on to Federal Court for adjudication?

Mr. Denis Kratchanov: Last year, the commissioner reports I think that he received around 1,200 complaints, as a ballpark figure. Last year, I think he said he did not take the government to court on a single one of those complaints. In past years, most complaints—99% of the complaints that he received—were resolved, as far as he was concerned, and less than 1% were not resolved to his satisfaction. In those cases, he decided to take the government to court.

Mr. Harold Albrecht: Thank you for that information. I certainly wasn't aware of the answer. I wasn't asking it because I knew, but I think it should be encouraging to the Canadian public to know that this process is in fact working. It may not be perfect, but it seems to be working well.

Thank you. That's all for my questions.

The Chair: Thank you.

You should also know that the commissioner told us that his success rate in court, when he does go to court, is well over 90% against the government.

Thank you for your questions.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: Thank you, Mr. Chairman.

Before asking my questions, I would like to know whether someone from the office of Ms. Sabourin or the Department of Foreign Affairs asked you or someone in your circle for an opinion on the specific case of the Afghanistan internal report.

Mr. Donald Lemieux: No, not at Treasury Board.

Mrs. Carole Lavallée: You were never asked for an opinion and you never heard that anyone in your entourage had been asked to express an opinion?

Mr. Donald Lemieux: Exactly.

Mrs. Carole Lavallée: Does the same go for you, Mr. Alexander?

Mr. Jim Alexander: Yes, exactly.

Mrs. Carole Lavallée: Mr. Kratchanov?

Mr. Denis Kratchanov: Yes.

Mrs. Carole Lavallée: I see.

I will continue the discussion we were having earlier.

You told me, Mr. Kratchanov, that section 13 and subsection 15(1) used the word "injurious". Could you tell me what that means for a government?

Mr. Denis Kratchanov: It is a reasonable expectation that something will likely be injurious. That probably does not help you much.

Mrs. Carole Lavallée: I will tell you quite frankly that it does not help me at all.

Mr. Denis Kratchanov: This is what the courts have identified as the legal test. This is the expression used by the court and which all the lawyers have to work with.

Mrs. Carole Lavallée: Could you repeat that please.

Mr. Denis Kratchanov: It is a reasonable expectation something will likely be injurious to the interest defined in the act.

Mrs. Carole Lavallée: But what is meant by "injurious"?

Mr. Denis Kratchanov: The issue is whether the disclosure of the information in question will be harmful to the interest protected by the exception. When we say that something is likely injurious, we are distinguishing it from something that is potentially injurious, something that is feared to be injurious. It has to be more than something that is vaguely apprehended to be injurious. There must be facts involved.

In practice, this means that when there is a challenge about the enforcement of an exemption or a test as to what is injurious, we have to present evidence to the court to convince the judge, who will judge not only the law but also the facts and will decide whether we have done what was required of us.

In access to information cases, I must confess that this is a problem, for those of us who work in the field, when the government manages to prove that something is likely to be injurious. To do this, the government often uses information that is confidential and that would be injurious to disclose. This information is disclosed to the court in confidence. The court has full access to the information, and in its judgment, which is public, if the court agrees with the government, will not reveal the exact nature of the evidence to the extent that this would disclose the confidential information.

Mrs. Carole Lavallée: I apologize for interrupting, but we also know that the government loses all these cases, or almost all of them, where the Commissioner of Information is involved. I think the percentage is 98%. You can refer to your book, but we both know that that is about right. Even though it is embarrassing for the government, that means that somewhere, there are people who are quick to use the black-out pen, and use it often.

Mr. Denis Kratchanov: I think you are trying to embarrass me.

Mrs. Carole Lavallée: No, not at all, I am trying to understand. I would just say in all sincerity that I do not understand at all. However, it is my impression that some people are quick to decide that something may be injurious, and claim that something may likely be injurious in an apprehended way or whatever, and decide that if something could embarrass the government, it could be injurious. This is a mistaken way of looking at things. It is a mistake not to distinguish between embarrassing the government and determining what is injurious. It seems to me that this is quite a generalized practice, something done not just by public servants acting in good faith, but involving political decisions as well. I imagine when the government decides to challenge a decision made by the Information Commissioner, there must be a political decision involved somewhere. In any case, the minister must be consulted.

That is all I am trying to determine. I'm also trying to see what exactly would be injurious in the case of torture. It is true that this would embarrass the government, but in my opinion, that is not what is injurious.

I'm going to come back to what you told me earlier. You said that generally, when an access to information officer applied subsection 15(1), he or she would have to define which of the three grounds is the most at issue. But how does the official do that? I have a document here, and 15(1) has been written in everywhere. Nowhere do I have a choice between the defence of Canada, the conduct of international affairs or the detection and prevention of certain activities. I do not know where these three grounds appear.

Mr. Denis Kratchanov: I have not seen the document. I've also not seen the covering letter that often is included with this type of release of information by the Access to Information Office.

• (1040)

Mrs. Carole Lavallée: That was in the covering letter.

The Chair: Your time is up.

Mrs. Carole Lavallée: It is up already? Are you sure I had five minutes?

The Chair: Yes, you had 5 minutes and 47 seconds.

Mrs. Carole Lavallée: What an abuse!

The Chair: Mr. Dewar has a brief question.

[*English*]

Mr. Paul Dewar: Thank you, Chair.

I just want to follow up on my line of questioning from the last round. One thing I want to state is that notwithstanding the importance of having experienced people, for some it can be at times a double-edged sword in terms of perception. And no, I'm not casting aspersions on anyone here, or accusations, but you could see that someone could be very experienced at concealing information as well as revealing. It could go both ways in terms of someone's experience. You know the tricks of the trade, so to speak.

At any rate, we monitor delay. We look at timelines. The policy certainly outlines the importance of looking at timely response. But to go back to my question, we don't really have a mechanism for what I'll call quality control. Let's talk about numbers, for instance. What are the percentages of correct decisions made? You know, look at the positive. Look at that facet—not just the time, but the content.

I guess my question is on the propositions, on the suggestions as to possible policy or procedural or legislative reform that might deal with this issue of quality control. As the chair mentioned earlier, this question we had posed by Mr. Esau, on chapter 2-4, is really critical. What we're talking about here is this: do you understand what I'm asking for, and if so, why aren't you forthcoming?

So perhaps I can ask you for some suggestions or ideas on policy on procedural reform and legislative reform that would help deal with this issue.

• (1045)

Mr. Jim Alexander: Mr. Chair, maybe I'll start with that.

I would like to just mention broadly the community and those ATIP coordinators. Before I had this role, I was in a department

working with ATIP coordinators as one of the subject matter experts in a program area. Since I've been in this role, I guess I've been extremely impressed. Those ATIP coordinators are very much the champions of access to information. They are the community that's really, really pushing for that.

So I couldn't necessarily agree with it being a double-edged sword. I think they really are probably some of the best allies. They are the ones working with their departments to make sure it does work the way the legislation says.

In terms of policy and legislation and the possible reform that we could do, I would hate to actually start to make that up as I'm sitting here, but I know we carry out conversations with the Information Commissioner. With the new Information Commissioner, we've had some very good conversations already in terms of how we can work cooperatively.

In the context of the legislation, those complaints that come in to the Information Commissioner are extremely valuable sources of things that haven't worked in individual instances. That's about 5% or so, something like that. That's a good sample there. As well, the data that we would be gathering as part of...[*Technical difficulty—Editor*]...the statistics that we will be gathering, we're also looking with the Information Commissioner on what sorts of statistics would be valuable so that we can actually start to get insight into where things aren't working, either from his perspective or from the perspective of citizens and businesses as they're going at it.

Mr. Paul Dewar: On content as well as—

Mr. Jim Alexander: On content as well as time, yes.

Mr. Paul Dewar: That's helpful.

Just to follow up on that, I guess I would go back to the need for not only a debate on this but some action by the government. I want to look toward how things are coordinated.

We look back to Mr. Esau's experience, and we have correspondence with DFAIT and correspondence with PCO. Is there a team approach on this? If there are similar files, who would call who in terms of the access to information officers? Would it be, for instance, DFAIT calling over to PCO when they share similar files? How does that coordination work? Are they siloed? Do they call each other up and ask if they have the same request on human rights in Afghanistan? Do they share that information?

Mr. Donald Lemieux: The last time we were here, Mr. Chairman, we did mention the coordination of access requests. There is the CAIRS tracking system, where departments are required by policy to list requests. That's a tool that's useful in putting a department in touch with another department where there are like access requests.

Mr. Paul Dewar: Is there a protocol or guideline on who calls who first? In the case of PCO, would they call over to DFAIT? Or do we know how that works?

Mr. Donald Lemieux: No, Mr. Chair, there is no protocol. ATIP coordinators not only feed into CAIRS but they also review CAIRS, as does Treasury Board Secretariat. So if the need requires—I'm not saying in this specific case, because I have no knowledge—Treasury Board Secretariat might call in departments to try to facilitate that.

The Chair: Mr. Dewar, it's amazing how two small questions become five minutes and 55 seconds.

Mr. Pearson.

• (1050)

Mr. Glen Pearson: Thank you, Mr. Chair, for accommodating this question.

Mr. Tilson stole my notes and asked the question I wanted to ask, but I think for both he and I this whole idea of procedure and how this works is important.

As a committee we were on a whole other stream. This event came along. We're trying to study it. Now it appears as though investigations are going on, certain things are happening. Perhaps we're slowly running our course on this, I don't know. But as a committee, this has introduced us to some new realities. For instance, if I hear the word "redacted" one more time, I've learned I probably won't be able to stand it.

But obviously there are some flaws I think that we have seen as a result of this, the last few weeks of testimony we have had. One was indicated by Ms. Sabourin, who said that when a request came in she tried to follow certain guidelines that come from the Treasury Board. As a result of some of these guidelines perhaps not being updated, she voiced that she thought they should be. I think you, Mr. Alexander, said you concurred with that. I think Mr. Dewar was talking about an audit and similar types of things. I presume that is going to be done. After this particular case is over, we have to move ahead as a committee on to other things. But we want to make sure we tidy up whatever is seen to be perhaps some weakness here.

Could I ask you, if you were going to update these guidelines, how long a process that is? I'm not going to ask you what you do because I think Mr. Lemieux answered some of that.

Mr. Jim Alexander: Mr. Chair, we've committed to the President of the Treasury Board that we would have the policy revised by the end of the fiscal year. In looking at all of these implementation reports and this document and then pulling those ones together, Mr. Lemieux and I, in discussions on how long that could take and the timing of it, we would see that as something we would be tackling in the coming fiscal year, so beginning in April 2008. Exactly how long it will be will depend a little bit on what some of the other priorities are. But my sense of a document like this that will require the updating, and some consultation, and running it through some of the ATIP coordinators, is that it's a good chunk of a year to actually get one of these things fully done, consulted around to make sure that from a Justice perspective it's not wandering into any areas that it shouldn't have. So that's the approximate timing. It's under two years, but not a lot.

Mr. Glen Pearson: That's a bit of a concern to me. I wish it were shorter. I'm sure you understand. But we'll be very interested in committee to make sure that is firmed up because it is something that as a committee we feel a responsibility for.

Thank you, Mr. Chair.

The Chair: Thank you, sir.

Mr. Stanton.

Mr. Bruce Stanton: Thank you, Mr. Chair.

I have more of a comment than anything. I'm just picking up on Mr. Dewar's line of questioning in regard to quality as a measurement, not just the kinds of indications we've seen here.

I'm reminded as I look through the annual report from the commissioner to the 2006-07 report...I notice here there are about 31 complaints that the commissioner found to have merit out of the 500-some-odd requests that DFAIT actually received. That seems to be about a 6%, or put better, a 94% batting average, when you consider from a quality point of view that it's actually the requester who is ultimately the judge of whether the department has satisfied their request vis-à-vis that information. I think 94% is pretty good, but I think as we go forward, looking at the quality side, it really is the requester who makes that determination.

Thank you, Mr. Chair.

The Chair: Thank you.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: I'm very pleased to have the floor again. I want to make sure that we have a few minutes to talk about the witnesses who will be appearing before us on Thursday.

[*English*]

The Chair: There are no witnesses on Thursday; we're going to talk on Thursday about further witnesses. That's what we agreed to last week. I was going to wrap up with that.

I may as well mention it now. Thursday's meeting will begin with carrying on the discussion we ended last week. It will be in camera because the previous discussion was in camera. I've also asked the clerk to put the fifth report of the subcommittee on the agenda, so if we deal with the subject of witnesses and what future business we're going to do with respect to this subject matter, then we can deal with the fifth report of the subcommittee, and that would not be in camera.

That's where we're going to go. So there won't be any discussion of witnesses today. We'll deal with that on Thursday.

Do you have any questions?

[*Translation*]

Mrs. Carole Lavallée: Questions for you?

The Chair: No, for the witnesses.

Mrs. Carole Lavallée: Of course I have questions for the witnesses, but I also have some for you. I thought we had decided to subpoena the employees from the Department of Foreign Affairs. Did I dream that?

[*English*]

The Chair: We did not agree. We did discuss it; we did not agree. Those conversations were in camera, so let's leave them there at that time. But you've said what you've said.

[*Translation*]

Mrs. Carole Lavallée: I withdraw what I said, Mr. Chairman.

The Chair: Take it easy, please.

Mrs. Carole Lavallée: I would like to go back to the famous subsection 15(1). We were interrupted by the chair, but it is true that my time was up.

While my colleagues were speaking to you, I got the covering letter included with the department's internal report. Actually, I see that this is not the covering letter that was sent to Mr. Attaran. It is the letter that was sent here, to the chair. It states that some parts of the text were protected in accordance with certain provisions of the Access to Information Act.

I'm not sure that Mr. Attaran received the same letter, but we can assume that he did. This letter refers to subsection 13(1) and was signed by Leonard J. Edwards. The letter states that subsection 15(1) reads as follows:

The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs...

I cannot assume, particularly now that I know that this letter was sent to Mr. Wappel, that this was one of the three reasons Ms. Sabourin gave Mr. Attaran for not disclosing the passages of subsection 15(1). Even though there is no reference to the conduct of international affairs, the passage was taken from the beginning of subsection 15(1).

If I understand correctly, Mr. Kratchanov—and I do not know whether Ms. Sabourin is the person who signed the letter, the person responsible for access to information must provide one of the three points you spoke about and that are mentioned at the beginning of subsection 15(1) when he or she sends out a document. Is that correct?

● (1055)

Mr. Denis Kratchanov: The court has decided that providing one of the three items was adequate and that it was not necessary to include all of the remaining paragraphs in the section.

Mrs. Carole Lavallée: Do you not think it would be advisable to amend the Access to Information Act in this regard? It needs to be strengthened and modernized. We have called on your minister to bring forward a draft bill on a number of occasions. We even set a deadline—December 15, 2007, but we never heard back from him. He did not even bother to reply to our letters.

Do you not think that the act should be amended in this way?

Mr. Denis Kratchanov: I do not think it is up to me to say what should or should not be amended in the act at this point. I would just point out that given the way the act is structured at the moment, since the paragraphs are merely illustrations, it is possible that the exception may apply but that it is not included in any of the paragraphs.

The Chair: It is 11:00 a.m., Ms. Lavallée.

Mrs. Carole Lavallée: I would just like to ask one more question.

The Chair: You may ask a very brief question.

Mrs. Carole Lavallée: When the Information Commissioner does his investigation, do you think he will go to see the employees of the Department of Foreign Affairs and talk to them about the specific sentences that mention torture and tell them how that could be injurious? Is that what he is going to do with the employees who wielded the marking pen?

Mr. Denis Kratchanov: From my experience, I would say that the commissioner asks this type of questions. I do not know whether he will do it in this way in this case.

[*English*]

The Chair: Mr. Kratchanov, if you are aware of any cases that the courts have decided from 2000 to the present giving guidance to the departments as to what criteria they use in deciding which sections they quote for purposes of not providing access to those particular documents or particular sections of documents, would you please provide them to the committee?

Thank you.

Mr. Denis Kratchanov: Okay.

The Chair: Thank you.

Thank you very much, witnesses. It's nice to see you again. We appreciate the two hours. As usual, it goes by quickly. Thank you very much.

We'll see the committee members on Thursday.

The meeting is adjourned.

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