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Chair

Mr. Tom Wappel

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Standing Committee on Access to Information, Privacy and Ethics

Tuesday, June 19, 2007

• (0905)

[English]

The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)): Good morning, everyone.

I call meeting 55 to order. We are continuing our study of “Afghanistan 2006: Good Governance, Democratic Development and Human Rights”.

We have with us this morning the deputy minister, Mr. Leonard J. Edwards.

Before I call upon him, when I walked in I received a copy of a letter from the Minister of Foreign Affairs. I don't know if you've seen it. I find it curious, but I'm going to pass it on.

Dear Mr. Wappel:

I am writing with respect to the scheduled appearance by officials of Foreign Affairs and International Trade Canada (DFAIT), including Mr. Leonard J. Edwards, Deputy Minister of Foreign Affairs, before the Standing Committee on Access to Information, Privacy and Ethics on June 19, 2007.

I understand that Mr. Edwards and the DFAIT officials accompanying him will answer the questions put to them by members of the Committee to the best of their abilities and explain the policies and procedures of the Canadian government in the carrying out of their responsibilities, as these pertain to the Committee's study of the access to information requests for DFAIT's internal report entitled *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*.

I'd like committee members to listen carefully to this paragraph:

I am sure that as Chair of the Committee, you will see to it that the witnesses are treated with due courtesy and respect as public servants and citizens of Canada. I was personally distressed by the reports conveyed to me of the treatment accorded to DFAIT officials who appeared before the Committee on May 29, 2007, by a few members of the Committee, and would hope that such conduct would not be repeated.

I wish to thank you in advance for your cooperation in this respect,

Sincerely,

Peter G. MacKay

I simply bring that to your attention, as it was brought to my attention.

Before I recognize Mr. Martin, I will remind committee members that last week, in camera, we discussed this issue of the questioning of witnesses.

Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): I'd like to point out that we don't need a dressing-down by the minister to remind us to do our jobs with professionalism and courtesy. Personally, I don't like the tone or the content of this letter.

If you see fit, I would like to recommend that you draft a letter to him on behalf of the committee recommending that he talk to some of his officials about coming to a parliamentary committee—when they're summoned to a committee—with the documentation we're obviously going to need. We don't want to go through another zoo story like we did when his ATIP coordinator showed up without even a hint of any of the paperwork that might have been needed for a two-hour interview by this committee.

So if anybody should be offended, it should be members of this committee, by the way we were treated by officials from DFAIT under the auspices of that minister.

The Chair: Thank you, Mr. Martin.

I'll take that under advisement. We'll see how the meeting goes today. That might be an idea if we don't get very far. Perhaps the minister would like to attend and observe himself. Of course, there's nothing preventing him from doing that now.

In any event, let's not waste a lot of time. We have the deputy minister here. He has other things to do.

Mr. Leonard J. Edwards, deputy minister, good morning, sir. Do you have an opening statement?

Mr. Leonard Edwards (Deputy Minister, Department of Foreign Affairs and International Trade): I do, Mr. Chairman.

The Chair: Please go ahead.

Mr. Leonard Edwards: Mr. Chairman, good morning. Good morning, ladies and gentlemen.

I am appearing before you today on your study of the access to information requests for the department's internal report entitled “Afghanistan 2006: Good Governance, Democratic Development and Human Rights”.

I am accompanied by a number of officials from the department who were more directly involved in the subject of your study. They will be meeting with the committee at a later stage this morning to provide you with more details.

The Minister of Foreign Affairs is responsible and accountable to Parliament for all aspects of the department. As deputy minister, I have delegated responsibility for public servants in the department and I am accountable to the minister for their work.

The minister has asked that my officials and I cooperate fully in providing the factual information to the committee that you are requesting and in answering your questions fully and frankly, consistent with our responsibilities not to disclose confidential information and guided by the Access to Information Act, the Privacy Act, and our oath as public servants.

● (0910)

[Translation]

I am here to set the general context for the department's work in the areas of human rights and Access to Information, and, as befits a deputy minister, to offer the departmental officials also appearing today my support for the work they are doing in the public service of Canada and to demonstrate my full confidence in their ability to carry out their responsibilities.

[English]

I would like to stress at the outset, Mr. Chairman, that I have the highest respect for the committees of Parliament and the work they do, including this committee. As a public servant and a deputy minister for many years, I have had many opportunities to appear before parliamentary committees and to work closely with parliamentarians inside and outside the House, and I have always valued the principles of openness, transparency, and cooperation that have characterized these relations and the relations generally between the public service and Parliament.

With respect to the department's work in the area of human rights, let me say a few words about the human rights reports that have been the object of so much attention of late, both in the media and in this and other committees of the House. Like many other countries with a strong tradition of promoting human rights, Canada has, through its Department of Foreign Affairs and International Trade, developed a practice of preparing various annual human rights reports on specific countries. These reports are internal working documents of the department that are used in the preparation, as needed, of policy advice to the minister on specific human rights issues or on Canada's relations with individual countries or in developing the instructions for Canadian delegations to various international fora, such as the Third Committee of the United Nations or the Human Rights Council, particularly before voting on resolutions.

The reports themselves are prepared by the staff at the Canadian mission in those countries for which a human rights report has been requested by headquarters. They are the assessment of that mission. They are expected to be full and frank in their content and, reporting as clearly as possible the observations of these staff members on information gleaned from various sources, they serve the government in the formulation of policy. They are prepared annually, normally towards the end of the calendar year, and forwarded to Ottawa early in the following year.

Last year, the department requested 111 such country-specific reports. Unlike some countries, Canada does not prepare a single global report, nor, given the use to which these reports are put in providing policy advice and instructions to Canadian delegations, are they intended for public release. Ms. Kutz can provide you with more detail on these reports and their use later.

With respect to the Access to Information Act, I am the senior delegated authority in the department, Mr. Chairman. Ms. Thomsen and Ms. Sabourin, whom you met with on May 29, are also delegated authorities under the act, and Ms. Sabourin, as you are aware from her testimony, is the ATIP coordinator for the department.

The department handles a very heavy load of access to information and privacy requests, as well as a growing volume of access consultation requests from other government departments and agencies. Last year the department received a total of 2,263 requests, of which 648 were requests under the Access to Information Act; 202 requests under the Privacy Act; 766 requests for consultation under both acts; and 464 privacy requests from investigative bodies, principally police forces conducting criminal investigations. All told, a total of 173,635 pages were processed by the department's access to information and privacy protection division in 2006.

I give you those statistics just as context to the discussion we're going to have.

● (0915)

[Translation]

The volume of access to information requests has increased 10% annually on average over the past five years, but in this past fiscal year there was a significant 31% increase. In addition, the files are becoming, not surprisingly in an environment of information technology, increasingly voluminous and complex. The requirement for trained ATIP personnel is growing commensurately in the labour market as is, at the same time, the shortage of qualified and interested personnel.

[English]

The department processes requests under the Access to Information Act under a process that Ms. Thomsen described in her remarks on May 29 and that I will not repeat here. I would like to emphasize two points, however.

First, recommendations as to redactions to be made in any text are the initial and primary responsibility of the office of principal interest. The ATIP analyst is responsible for exercising a challenge function, when necessary, and for identifying the sections of the act that may be used in claiming an exemption or an exclusion. So you have the two points in the department that deal with it: the office of principal interest that looks at the text initially, and then the ATIP analysis that exercises a challenge function on the suggested redactions and provides the sections of the act under which such exemptions can be justified.

The processes in place at the department are in keeping with those used in other government departments and agencies and in keeping with the policies and guidelines developed by the Treasury Board, which has the general responsibility for overseeing the government's implementation of the provisions of the act, and with that, of course, you are very familiar. With respect to section 15 of the act, which has been the subject of much discussion in this committee, under section 15 the department can exempt from disclosure information that would impair Canada's ability to effectively conduct international relations now and in the future.

Secondly, I can assure members of the committee that the procedures followed by my department do not allow for any political engagement in the redaction of documents, and I can state categorically that in my many years as a public servant, which span the full period since the act was adopted in 1983, I have never seen evidence of inappropriate ministerial involvement in the release of information, nor has any such involvement been brought to my attention.

[Translation]

In conclusion, I would just like to say a few words about the four specific access requests which the committee is studying. I will leave the discussion of their specific involvement in these files to Ms. Nixon, Ms. Archambault, and Mr. Switzer respectively.

[English]

I would simply wish to state the following. As you are aware, one of these requests from Professor Attaran has been the object of two formal complaints to the Information Commissioner. We have now received a copy of the Information Commissioner's response to one of the complaints filed by Professor Attaran. In his letter to the professor, copies of which I can provide to the committee today in both official languages, Mr. Marleau finds that the department was late in responding to the professor's request. This is clear. In her testimony before this committee, Ms. Sabourin acknowledged this tardiness and apologized to the committee publicly for it, as she had earlier apologized to Professor Attaran in a letter.

Mr. Marleau concludes his letter to the professor with the following statement:

DFAIT responded to your request on April 23, 2007, resolving the delay complaint. It is my view that DFAIT's general handling of your request was done neither maliciously nor intentionally to prevent you from obtaining access to the records you requested. That said, I will record your complaint as resolved. In your representations to my investigator, you allege that DFAIT concealed records, an obstruction of a right of access under paragraph 67.1.(1)(c) of the Act. Our investigation determined that there was no evidence to support that allegation against DFAIT with respect to your particular request.

Mr. Chairman, those are my comments, my opening statement. I understand that later this morning other members of my department will be appearing before the committee. So I will conclude at this point. Thank you very much.

• (0920)

The Chair: Thank you, sir.

Before I call on committee members, yes, we would ask you to table the documentation that you mentioned in the last two paragraphs of your remarks, namely Mr. Marleau's correspondence with you. We would appreciate that. That would be helpful.

Speaking of tabling documents, on Friday, June 15, I read an article in the *Globe and Mail* headlined, "Human rights not on radar of senior Tories, MacKay says". I think that's an inflammatory headline. However, the point is that both the Minister of Foreign Affairs and the Minister of Defence, according to the newspaper, tabled written responses in the House of Commons on Thursday. One presumes that if they were tabled in the House of Commons, they were tabled in both official languages. I called my clerk and asked him to obtain copies of those documents for the members of the committee for today's meeting. I don't have them. I would

appreciate it if, while you're giving your evidence, perhaps you could have one of your officials see if they could obtain copies of the reports that were tabled by the Minister of Foreign Affairs and the Minister of Defence in this regard.

Yes, Mr. Tilson.

Mr. David Tilson (Dufferin—Caledon, CPC): The *Globe and Mail* printed a retraction today on page 2 of that story.

The Chair: About what? About the fact that—

Mr. David Tilson: It's about just what you're talking about.

The Chair: That the minister did not—

Mr. David Tilson: I'm just saying, Mr. Chairman, before we get going on this issue that you should look at that retraction. Otherwise, we're going to get off on a red herring that has nothing to do with trying to improve a system with the deputy minister. I'm interested in hearing what facts he has to give us to improve the system, and this has nothing to do with anything.

The Chair: Mr. Tilson, my question was whether the minister's office could obtain copies of the reports that were filed with Parliament. I'm not going anywhere else.

Mr. David Tilson: I'm just saying that before we go down that path—

The Chair: Mr. Tilson, are you saying that the retraction by the *Globe and Mail* was that the minister did not table responses?

Mr. David Tilson: I'm simply saying that before you make this an issue, you should look at that retraction.

The Chair: I'm not making it an issue. I'm asking the minister—

Mr. David Tilson: You're doing a pretty good job at it, Mr. Chairman.

The Chair: I'm asking the minister for copies of those reports. It's pretty simple: either there are or there aren't.

Now someone just whispered in my ear that they apparently were faxed to the office, and it appears as if we haven't had them. I thought it might be of some interest to the committee to read what the minister said in the House of Commons. I wouldn't quote the *Globe and Mail* if my life depended on it. I'm asking about reports that were tabled in the House of Commons—not what the *Globe and Mail* says, but whether reports were tabled, and if so, whether we can get them.

I'll leave it at that. The deputy minister will do the best he can, but obviously since they refer specifically to what we're talking about, it would be helpful if we had them.

Having said that, Deputy Minister, the reason you're there and you don't have your officials with you—and I want everybody to understand this, including the officials who are there—is that in your letter to me responding to the committee's request to hear certain people, and obviously, that request by the committee to hear certain people was declined by the department, you said, and I quote:

After careful consideration, I have come to the conclusion that if the Committee wishes to hear from other officials of DFAIT, I would be best placed to appear. The officials whom you have asked to appear before you do not have delegated authority under the Act and are therefore not well placed to provide the Committee with insights into the administration of the *Access to Information Act* by DFAIT.

That's why you are here—because you said you were the person whom we should ask the questions of. That's why I've asked you to be here, and I guess the committee will test your statement as to whether or not you are in fact the person we want to hear from.

I should advise everybody that there is no guarantee that the committee will want to hear from anyone else, depending on what your answers are. However, given the way this thing has transpired, the committee had no choice but to summon the witnesses and have them available should it transpire that the committee is of the view that your answers are not sufficient.

But I don't want people to think there is an automatic presumption at this point, notwithstanding what's on the agenda, that we will hear from people. If we do hear from people, I don't want there to be an automatic presumption that some or all of that evidence will be in public.

Okay, we'll call the first round, which is for seven minutes. We'll go first with Mr. Dhaliwal *suivi par* Madame Lavallée.

• (0925)

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Mr. Chair, and welcome, Mr. Edwards.

Last week your department provided us at last with the timeline for when the requests were received and when they were actually responded to. Why was Ms. Sabourin not given this before she appeared?

Mr. Leonard Edwards: Thank you.

I have to say I'm not familiar with the precise timelines that were involved in all of this, but when I sent my letter to the committee last week, I included these documents, and they took some time to put together. As I recall, in your testimony on the 29th, you specifically asked for those documents, and that is the reason they are now available to you.

Mr. Sukh Dhaliwal: Further to the chair's comments, in your letter you stated that you alone would be qualified to answer the questions as to the authorization to black out sections of the report. Are you aware that Ms. Sabourin directly contradicted you, insisting she made this decision herself?

Mr. Leonard Edwards: When I say that I am the delegated authority for the exercise of discretion under the ATIP, that is simply the formal delegation that goes with the deputy minister and down through Ms. Thomsen and Ms. Sabourin. She has the delegated authority to make those judgments. That's what she does.

The wording of my letter had more to do with the other officials being asked to appear who do not have those delegated authorities. I was not only trying to protect them, because they don't have the delegated authorities, but I also wanted to ensure that you had someone here with delegated authority to best conduct your business.

Mr. Sukh Dhaliwal: In other words, you are saying that Ms. Sabourin had the dedicated authority to appear here?

Mr. Leonard Edwards: I'm sorry.

Mr. Sukh Dhaliwal: Did she have the delegated authority to appear on your behalf?

Mr. Leonard Edwards: Yes, she does.

Mr. Sukh Dhaliwal: You say that she has the delegated authority. What other responsibilities does she have in her executive position?

Mr. Leonard Edwards: Well, as the head of the ATIP unit in the department, she is responsible for the oversight of the 17 or so analysts. She has management responsibilities to ensure that the ATIP requests are processed in a prompt manner according to the law, that they are handled appropriately in terms of being distributed to the offices of principal interest, and to maintain a system of follow-up and so forth so that these requests are dealt with in accordance with the act. In addition, she does have the delegated authority to make final approvals with respect to redactions that are recommended by those in the office of principal interest.

Mr. Sukh Dhaliwal: So when she came to this committee, she should have been fully prepared. If you say she has the delegated responsibility, then she should have had those dates with her that I had asked for earlier.

Mr. Leonard Edwards: I was unaware that the committee had asked her to come with such dates. She came with the material she had at the time.

As a result of the request of the committee, these schedules were produced.

• (0930)

Mr. Sukh Dhaliwal: You mentioned something about the global report in your deliberations today.

I'm certain that you have read transcripts of prior meetings where Ms. Sabourin stated that Mr. Esau's request was initially misunderstood because he had asked for a global report. This is not true. He had requested countries around the world....

Could you comment on this, please?

Mr. Leonard Edwards: Are you referring to request 605, which was submitted on March 13?

Mr. Sukh Dhaliwal: I'm talking about when he requested the human rights report on countries around the world. Ms. Sabourin said at that time that there was no such report.

Could you comment on this? Why was that misunderstood, or was it done intentionally by your department?

Mr. Leonard Edwards: Well, I think in the context in which the request was read there was an assumption on the part of the department that he was requesting a global report analogous to the reports that are produced in the United States.

Mr. Sukh Dhaliwal: When he requested it, he clearly stated, "countries around the world".

Do you think your department had some obligation to clarify with him before saying you didn't have any such report?

Mr. Leonard Edwards: I think the chronology indicates that this was subsequently done and that in the end the requester received the information he was seeking.

The Chair: Three seconds.

Mr. Sukh Dhaliwal: Next round. Thank you.

The Chair: Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): First of all, Mr. Edwards, thank you for coming here. It is really very nice of you to join us. Last week, 33 people were waiting on you. Following that meeting, a Canadian Press wire reported—these are not my words or those of any committee member—that committee members had been “brushed off by Leonard Edwards”. I am not exactly sure of what “brushed off” means here, but I am fairly certain that it is not very good. CP also reported that some committee members likened the experience to “a slap in the face”. I know what that means. I was not the one who made these comments last week. The fact remains, however, that this is what is written in a CP wire story. I have not checked to see if these comments were published. The reporter goes on to say that you apparently said the decision to appear or not before the committee was yours to make. I was rather surprised to read this wire story.

As I said, 33 people were waiting for you to put in an appearance last week. Many felt that your absence showed a lack of courtesy. When I receive a letter from the minister—a letter that the chairman makes an effort to read to us—advising us to be nice to the people he is sending to appear before us, I have to believe that he is projecting his feelings. Do you know what projection is in psychology? It means accusing someone else of actions that oneself is guilty of. That said, as you know, not only did the main witness who testified on May 27 fail to bring along documents, she had not prepared her testimony either. Rather, it seemed she was prepared to tell us that she had nothing to say. Moreover, she has already promised—and I refer you to pages 14 to 16 of the transcripts of the May 27 meeting—to explain why the word “torture” was censored. I am waiting for a written explanation. I just want you to know that I have yet to receive one. I have checked with the chairman and an explanation has not been provided yet.

In your opening statement, you indicated that last year the department had received a total of 648 requests under the Access to Information Act. According to page 29 of the Information Commissioner's 2006-2007 report, 600 is not an excessively high number of requests. He mentions a relatively low number of requests for consultation, fewer than 600 per year. He also noted that decision-makers are not inclined to really show transparency and that too much discussion within offices delays the processing of the requests.

If we look at the chronology of events associated with Professor Attaran's request as set out by Ms. Sabourin, we see that on April 17, the release package was forwarded to Alain Latulippe in the Minister's office for review before April 20, 2007. On April 23, a full six days later, a response was provided to the requester. That means that the Minister's office had six days to examine the file. In French, the word “examiner” can mean criticize or discuss. What I am saying here is that one could indeed be inclined to think that there was some kind of political interference. You can contrast my statement with that of Ms. Lilian Thomsen who testified to the committee that the Minister's office was informed at the very end of the process. I do not think that six days before providing a response qualifies as the end of the process.

My question for you, sir—because you are the Deputy Minister of Foreign Affairs—is as follows: did you read, or see the report

drafted by a certain Mr. Bloodworth before it became public? This report contained references to torture. We read in the *Globe and Mail* how Afghan prisoners were treated. On closer examination, one might be inclined to think that Canada was violating the Geneva Convention. Did you set eyes on this document before it was released to the public?

• (0935)

[*English*]

The Chair: Mr. Edwards, before you answer, just so the record is clear, we were provided with the information that the author was Catherine Bloodworth, who consulted with Rory O'Connor, and the document was approved by Richard Colvin. All of those people are based in Kabul, Afghanistan.

Mr. Leonard Edwards: Thank you, Mr. Chairman.

The questioner asked whether I had read the report that was written by Ms. Bloodworth, and my answer is yes, I have read the report. I read it about six weeks ago, subsequent to the filing of the request for access to it. That's the answer to your question.

The issues involved in that report are of course of a confidential nature. I can't engage in a discussion about what that report contains. I can talk about what the redacted version contains, but I can't talk about what the original version contains.

[*Translation*]

Mrs. Carole Lavallée: Hypothetically then, if a document reporting on the torture of Afghan prisoners had existed and had been submitted by Canada to Afghan authorities, as a general rule, it should not have been passed on so quickly, in keeping with the organization chart, before you had an opportunity to see it and before someone could point out to you that Canada may have violated the Geneva Convention. Is that what you are saying?

[*English*]

Mr. Leonard Edwards: Mr. Chair, in answering that question I have to say that an assumption is being made by the member of Parliament that Canada is responsible for torture. First of all, I don't think that's an assumption that can go unchallenged, but it's not something I'm here to really talk about.

What happens when these reports come into the department is they are used for various purposes. They are used to inform memos to the government and to the minister with advice on different issues. They are used, as I said, to inform us in coming up with representations and votes at the UN Human Rights Council or UN committees on human rights. They are used to help form positions on government policy.

In that respect, all of the content, whatever that content would be—and you have speculated on what that content might be—would all be filtered into the advice that goes forward to the government.

• (0940)

The Chair: Thank you, Madame Lavallée.

Just so we're clear on this, I think what Madame Lavallée was asking was that if such a report contained information that prisoners who were being controlled by Canada were turned over to authorities and that they subsequently alleged torture, would that report not be brought to your attention immediately?

Mr. Leonard Edwards: It would be up to the officers involved with the report to bring it to my attention. I would hope they would do so, yes.

The Chair: Thank you.

Go ahead, Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chair.

First of all, I'd just like to perhaps frame things, Mr. Edwards. You were asked to come here today. Well, actually, you weren't asked to come here, but people working for you were asked to come here originally. You made up our minds for us that we didn't need to hear from them; we needed to hear from you. I don't like that, personally, and I'll state that for the record. When we call witnesses, you don't get to decide if they have something valuable to share with us. We'll decide that.

Having said that, you're called here today to talk about the administration of and the compliance with the Access to Information Act by DFAIT. Essentially that's what we called you here for.

I hardly know where to start. Let me begin by saying, Mr. Chairman, that it should be common knowledge that day after day after day in the House of Commons opposition party members would ask the Minister of Foreign Affairs and the Minister of National Defence if they had any knowledge of or were aware of any mistreatment of Afghan detainees. In various forms and combinations that question must have been asked 25 times.

Now, your testimony and others' testimony to this committee is or has been, first of all, that no such information exists. That was the original answer given to that question by your department. I have a letter here—actually, testimony of this committee—signed by Jocelyne Sabourin, March 22, to say that “no such report on human rights performance in other countries exists”. Yet another access to information request to the NDP's defence critic, Dawn Black, says clearly that in 2006, DFAIT requested human rights reports from 111 countries. It goes on further to say:

The human rights reports are not normally copied to the Minister of Foreign Affairs, nor is the Minister briefed on their content....

I guess my first question to you then is this. If your minister has been asked 10, 12, 15 times in the House of Commons about the human rights situation of the detainees in Afghanistan, would it not be your job, or somebody in your department, to make him aware of these human rights reports that you've been getting for the last five years? Even if it's not common practice to make him aware of these annual human rights reports citing specific torture of detainees, isn't it your job to make him aware so that he can stand up in the House of Commons and be forthright and honest about what Canada knows?

Mr. Leonard Edwards: Well, I will go to your first point. When they come in, these reports are not, as you said, made available to the minister. They haven't been drafted with that in mind. They are drafted and prepared to provide information to the department more generally on human rights conditions in countries. Now—

• (0945)

Mr. Pat Martin: But when your minister is being hung out to dry in the House of Commons day after day on this very question, and you're sitting on a pile of annual reports, five in a row, that all made specific reference to the condition of detainees, wouldn't you advise

your minister, “By the way, Minister, that thing that happened in question period today, well, in fact, we do have information about that”, and brief him on it? Did you ever have that conversation with the minister?

Mr. Leonard Edwards: Well, I didn't have to have that conversation because the information in these reports is fed into all of the advice and everything that is provided.

Mr. Pat Martin: Well, then, he's not being truthful when he stands up in the House and says he has no knowledge of it, if you've been providing that information to him year after year.

Mr. Leonard Edwards: As I recall, your question had to do with detainees. The general conditions with respect to human rights in different countries are a bit of a different matter.

Mr. Pat Martin: No. Afghanistan is one country. If you're producing these reports on countries starting from A to Z, well, one of the very first countries you would do would be Afghanistan. And you didn't redact the word “torture”; you didn't censor “torture” out of the 2002, 2003, and 2004 reports. The word is clearly there. You only started crossing it out in 2005 and 2006. So you've been sitting on that information and not even censoring it, and circulating it, but without advising either of your ministers? Somebody's not doing their job very well if they're not briefing their ministers on the facts, letting them be embarrassed day after day in question period and maybe being caught up in a colossal cover-up.

Mr. Leonard Edwards: Let me start by saying there's no colossal cover-up. I wouldn't want to let any allegation like that not be responded to.

The advice we give the government is based on the information we have that comes in through these reports and other reports. That information then informs various communications we have with the minister and so on.

I am not at liberty to provide you with the advice the minister has been given on this issue; it's privileged information. In any event, in this particular case, I think what we're talking about—

Mr. Pat Martin: We think the minister must have known, or should have known, what his own departmental officials, you, must have known, that five years in a row these very common human rights reports that you denied the existence of, or your staff did on your behalf, said specifically that these detainees were being tortured, that there were extrajudicial killings, etc. The human rights situation in Afghanistan, which has been very publicly talked about in the United States, for instance, was being hushed here.

Maybe it's because I'm going to run out of time, Mr. Edwards, but can you answer a question? Why is it that when we—

The Chair: I'm sorry, Mr. Martin. You interrupted Mr. Edwards in the middle of his answer.

He's not at liberty to talk about the advice given, and we don't know what's in the minister's head, but please let him finish his answer to your first question.

Mr. Leonard Edwards: Perhaps the member wouldn't mind repeating the first question.

The Chair: It was about giving advice to the minister that you get—not you but the department, as it filters through—and Mr. Martin's incredulity that five years' worth of documentation that mentions torture apparently did not come to the attention of the minister.

Mr. Leonard Edwards: In this particular case, I guess I would have to resort to a question of timelines on this. I'm not exactly sure what we're talking about when you talk about the minister denying in the House that he had any access to such information.

The Chair: I don't think he was denying access; I think he was denying knowledge.

Mr. Pat Martin: Denying any knowledge, and also saying that we've sent over Corrections officers. No knowledge exists, essentially, of this treatment of detainees. But—

The Chair: You're at eight minutes now, believe it or not, even with my intervention. But there will be another round.

We now go to Mr. Tilson.

Mr. David Tilson: Mr. Chairman, I'm interested in two issues, which I've expressed in the past. One is with respect to improving the system, and the other is the topic of discretion of officials.

This whole thing started because of allegations that records were being concealed, there was obstruction of access, political interference—and there's no evidence of that. There's no evidence of that in this committee, and that's been confirmed by you, sir, by Ms. Sabourin, and other officials, and finally, it's been confirmed by Commissioner Marleau.

So I'm on to something else. The opposition is having a lot of fun trying to suggest bad things, but I'm interested in a couple of issues.

Ms. Sabourin has acknowledged, and, as you've said, indeed she apologized for, the delay to two of the witnesses. She explained that this is complicated stuff. You have to have trained officials. I think she used a signal as to how thick the regulations were. You have to have people who are knowledgeable to understand those regulations, or guidelines, I guess they are.

Having received that acknowledgement, my question to you is, have you got any advice for this committee as to recommendations it can make to Parliament as to how this delay issue can be dealt with?

● (0950)

Mr. Leonard Edwards: I think as previous witnesses have testified, if we want to adhere to the act, meet the deadlines and so forth—which we all do, as that is our objective—with the huge increase in the number of requests for access to information or action on privacy, the problem, frankly, is finding trained resources to deal with them. As I think my officials have explained on previous occasions, there's a huge problem in finding trained people. Every other government department is facing the same major increase. The delays are caused by processing. It's a simple fact that you cannot process this number of requests within the timeframes allowed in the act, even with the best will.

There's another issue, of course, and it's related. Not only do you have the 17 or so officials in my department responsible for the handling of the ATIP requests, but there are also all of those people who are working in the offices of principal interest who have to put aside their daily work to deal with a request for a document that they are responsible for. They do their very best as well. They are called in many different directions during the course of the day. It's not their primary job. I emphasize in meetings with my senior managers that ATIP requests are to be given top priority, but even with the best of will there are delays.

It certainly is my intention, which I was able to do as deputy of agriculture, to get the ATIP requests back into line with what I would call an A grade from the Information Commissioner. That's my objective—an A grade from the Information Commissioner. With continuing work, much of which has already begun by my ATIP section, I'm hopeful we can get there in the next year or so.

Mr. David Tilson: Mr. Edwards, I seem to recall one of the people who works with you saying there doesn't seem to be any process to review the guidelines. I could be mistaken, but I think someone said that.

The Chair: It was Treasury Board.

Mr. David Tilson: Treasury Board said that. Thank you, Mr. Chairman.

Is that an issue? You get one of these applications in, you look at it, and decide if something should be redacted or not. You look at the guidelines; you look at the knowledge in your head, I suppose. There's a certain amount of discretion in all of these things, but if you're looking at a stack of guidelines this thick, maybe we need to simplify it somehow.

Mr. Leonard Edwards: Yes, you're probably right.

Mr. David Tilson: Have you started that process?

Mr. Leonard Edwards: Again, these are Treasury Board guidelines.

Mr. David Tilson: You're asked to enforce these things. You can make recommendations.

Mr. Leonard Edwards: That's right, we can, and I think we should. I agree with you entirely. I agree with those who have said that these guidelines could use a look. It's up to me and to my other deputy colleagues around town to take a look at these guidelines and see whether they continue to fit the context in which we're now working.

● (0955)

Mr. David Tilson: Mr. Chairman, on the topic of discretion, I'm still not clear. Again, if one of your officials gets an application for information in, my assumption is that they look at the guidelines and the act—and section 15 was referred to a lot—but I expect there's a certain amount of discretion. I don't know whether there is or not. Maybe there's no discretion. In other words, it's always alleged that things are blacked out and that maybe they shouldn't be blacked out, whether it's for this or any other type of information.

My question is whether you and your staff ever talk about the topic of discretion—personal discretion, individual discretion.

Mr. Leonard Edwards: You put your finger on a very important factor, and that is that our ATIP officials, and all our officers, try to use their very best judgment. I think that's the case right across government. The legislation gives authority to officials to exercise discretion with respect to exemptions under the act. You have the office of principal interest that is providing some advice. You have the ATIP people on the other side who are doing a challenge function. There's a certain amount of creative discretion-making going on there with these two. The ATIP people are there representing the interests of the legislation and are challenging the requests that come from the other offices.

At the end of the day, it's always a judgment. We have in our department ATIP officers, many of whom have had a long time in the department, and I trust their judgment. That's what they are there to do, that's what they do, and they do it well. Would you have the same answer from two different officers at two different times? The answer might be yes. It does come down to judgment and discretion. So it's not a perfect system.

As I recall, you had some testimony from a Mr. Kratchanov, of the Department of Justice, who talked about it not being a scientific process; it's more art than science. I think that really puts one's finger on the issue when you describe it that way.

We can go back to the question asked earlier by Mr. Martin, and that is why some things were redacted in earlier reports that aren't redacted in current reports. Time has changed, the context has changed, and the individuals have changed. There is a discretionary element there as well.

Mr. David Tilson: That testimony is....

The Chair: Mr. Tilson, we're over time.

Mr. David Tilson: Thank you, sir.

The Chair: Mr. Edwards, just for clarification, the office of principal interest in this particular investigation, if I am correct, is the GHH in your department.

Mr. Leonard Edwards: Yes, that's correct.

The Chair: I don't know what it stands for; I just remember GHH.

Mr. Leonard Edwards: Yes, that's right, Mr. Chair.

The Chair: We'll go to Mr. Pearson, please, for five minutes.

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

Deputy Minister, thank you for coming in. We appreciate it.

There are always political dynamics going on in this place, but we're also trying to figure out the process and what happened here with these requests. It does seem to me that there have been some failures. I think it was helpful that Ms. Sabourin said she felt the guidelines should be updated in light of more recent court cases and other things—legal precedents. And you referred to that, again, just a few minutes ago.

I would like to know, for future cases when this happens, how you will go through that process of updating. And what is the timeline for that?

Mr. Leonard Edwards: I can't answer your question because I don't know. Maybe one of the officials who comes before you a little later can answer that question. What I'll do is get back to you on that, if I might. I know there has been some discussion about it, but I'm not sure there is yet a process, and I would like to be able to satisfy myself to get you the correct answer.

Mr. Glen Pearson: Thank you.

As a senior person in charge of it, though, we would like to ask you to move on that post-haste, because it does reflect on future cases that might come up.

Mr. Leonard Edwards: Okay.

When you talk about guidelines, these are guidelines for the government as a whole.

Mr. Glen Pearson: That's correct, yes. Thank you.

When Professor Attaran and Mr. Esau were here, they felt there was what they termed a "chill" going through major departments on the issue of torture and detainees in Afghanistan. That was their sense because of the delay in getting things they wanted. Can you comment on that?

•(1000)

Mr. Leonard Edwards: I don't know where they would have gotten the impression that there was a chill, because the handling of their requests was still consistent with the handling of all our requests. That could well have been their interpretation of the material when they got it, but I can assure you that there has not been any change of attitude inside my department with respect to handling these requests.

I can't speak for them, of course. They may have other evidence on the matter that they feel is important, and I wouldn't wish to presume anything about that.

Mr. Glen Pearson: I understand.

Mr. Edwards, would you agree with the statement that there was too much delay in getting back to them on their request for information and that that perhaps led to the impression they had?

Mr. Leonard Edwards: Yes, there certainly was a delay with respect to the request from Professor Attaran, which, you will recall, Madam Sabourin apologized for on May 29 and which I again referred to in my opening statement.

Mr. Glen Pearson: All right.

As somebody who's interested in human rights work, my final question concerns a criterion that is chosen by your department. Indeed, we had Lillian Thomsen from the Department of Foreign Affairs before us and she talked about how certain criteria were used to select these countries that are to go into the human rights report. May I ask you how that criteria is determined?

Mr. Leonard Edwards: That criteria will be set more or less on an annual basis. The human rights people will get together with different of our geographic units and others and discuss what the current issues of the day are, where have there been reports of particular difficulties, and where do we need to know more about certain conditions in certain countries because of instability in the region. We may have to deal with a crisis in that area. Usually, these things are well known. The developments globally are public. By that I mean that everyone will understand that, say, there is a heating up of a situation in Africa—

Mr. Glen Pearson: I'm sorry, I don't have much time. Would they be selected in part on the basis not only of what's happening in Africa, or wherever, but on how they impact the present government? For instance, if we're involved in a conflict situation such as Afghanistan, would that be part of the criteria upon which an accurate report would be produced?

Mr. Leonard Edwards: Yes, absolutely.

Mr. Glen Pearson: Thank you, Mr. Chair.

The Chair: Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chairman, and thank you, Deputy Minister, for coming.

First of all, I'd like to start by saying something in opposition, I guess, to what Mr. Martin said. I do appreciate that the senior staff member...maybe the tone of the letter could have been a little bit different, but the fact that you wanted to be here to represent your department and to take responsibility I think says a great deal about your managerial abilities, and I actually appreciate it when management steps up to the plate to represent the staff.

The question I have for you is regarding the information that was provided by a letter from the Information Commissioner. There is another complaint, I believe, in front of the Information Commissioner. Do you know if that's accurate or not, or what else is outstanding on this particular issue?

Mr. Leonard Edwards: The same request has another complaint against it from Mr. Attaran, having to do with the information that was provided; in other words, that the redactions themselves were improper.

Mr. Mike Wallace: So it would be completely inappropriate for us to be talking about any report, whether it's redacted or not, until that.... The Information Commissioner can come back saying the department was completely accurate in what they did, that it needed to make some changes, or it needed to make a lot of changes. Is that an accurate statement?

Mr. Leonard Edwards: I wouldn't presume to agree whether or not it's appropriate for you to have that discussion. All I will say is that this is the process that protects the requester across the board, that the Information Commissioner serves as a court of not even last resort, but a way by which requesters can have the discretion that's exercised by officers in a supplying department, to have those judgments examined by an outside officer, and an officer of Parliament.

• (1005)

Mr. Mike Wallace: Okay.

All your ATIP people are familiar, then, with these access to information guidelines from the Treasury Board.

Mr. Leonard Edwards: They would be familiar with that, yes.

Mr. Mike Wallace: Maybe you can explain to us what “delegated authority” means. What does that mean in terms of dealing with these issues?

Mr. Leonard Edwards: Formally?

Mr. Mike Wallace: Yes.

Mr. Leonard Edwards: It means that an officer is given the authority to sign, to say that this material can be released, or should be released, and I approve the redactions that have been made and the selection of documents, and it represents to the best of our knowledge and ability the material that's been requested by the requester.

Mr. Mike Wallace: Okay, so you have delegated authority. Is that correct?

Mr. Leonard Edwards: I do, but it's like a chain. I get it, I pass it down to Ms. Thomsen, and she passes it down to Ms. Sabourin.

Mr. Mike Wallace: And that's where it stops?

Mr. Leonard Edwards: That's where it stops.

Mr. Mike Wallace: There has been some view from some, and I think you were fairly clear in your opening statement, that there has been no political interference on this particular file or any other access to information issue that you have been familiar with in your career as a government official. Is that an accurate statement?

Mr. Leonard Edwards: Yes, that's what I said in my opening statement.

Mr. Mike Wallace: There has also been discussion, and I think it's obvious that there was some confusion on the wording, that when somebody makes a request for a global report, the interpretation of that was that there was one human issues report that dealt with the whole world; that doesn't actually exist, but there are reports that are done in the field, it would appear, on individual countries. Is that an accurate statement?

And I'd like to know what the comparison is with the United States, where there may have been the confusion.

Mr. Leonard Edwards: The United States—and I have seen these reports over time, but I haven't read one recently—prepares a global report, and that report is public from the moment it is written. It's written for public consumption by those who prepare it.

That's the difference with our reports. First of all, they aren't written for the public consumption point of view. These things are written with confidential sources, with a full and frank assessment of the situations in different countries, not intended for public consumption.

So if you look at one of these reports—and again, I haven't seen one recently—as I recall, they tend to be almost statements of media reports of violations of human rights in a country, and so forth, some of them not even verified but simply quotations of individuals who have alleged there to have been, and that sort of thing.

So they're not rigorous, but they do represent to the governments that produce them a compendium of observations that they believe serve a useful public purpose.

Mr. Mike Wallace: And that is not the case in these reports.

The Chair: Monsieur Vincent.

[Translation]

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

Mr. Edwards, a report such as this which deals with torture and that kind of thing and which is censored both by senior officials and by yourself, because it goes through you, could have significant repercussions for Canada, since the terms of the Geneva Convention may have been violated. You stated that the Minister was unaware of this report and that the Prime Minister was not involved in the decision-making process. If the report was released one day, would you be the person people would contact?

[English]

Mr. Leonard Edwards: I guess I'm a little confused by the question, because it has to do with what advice—

• (1010)

[Translation]

Mr. Robert Vincent: Fine then. Let me put my question another way. You indicated that as a result of section 15(1), Canada might find itself in a rather embarrassing position. If the report was redacted because potentially it could have embarrassed Canada, did you advise the Minister of this fact?

[English]

Mr. Leonard Edwards: Again, I'm somewhat confused about—

The Chair: It's a theoretical question, a hypothetical question.

If someone in your department comes across documentation that may be potentially embarrassing to Canada or involve international relations under one of the sections that have been quoted, would you, in the course of your business, notify the minister?

Mr. Leonard Edwards: If that's what I'm here to do, to testify on these sorts of questions—and I am not absolutely sure that's why I'm here—I am prepared to make a comment. That is, in the course of information that we get around the world from many, many sources, there will be information that comes into the department, some of which will go to the minister, some of which will not go to the minister, and I rely on the judgment of the officers who work in my department to decide what information should go in different formats.

In cases where the judgment of the officer—and you're talking about officers at the desk level, director level, and director general level who will make these determinations; in some cases material goes up and in some cases it doesn't.

[Translation]

Mr. Robert Vincent: I see.

Moving on to the topic of transparency, we have been told that 111 US human rights reports and hundreds of others are available on the Internet. What do we have to hide? Why are Canadian reports not available on the Internet? Why must we censor our reports, whereas other countries make their reports accessible? For the past two years,

Canada has been boasting that it operates in a transparent manner, but we seem to be hiding everything. Why is that?

[English]

Mr. Leonard Edwards: That's a very interesting question and one that I think—

[Translation]

Mr. Robert Vincent: ...that begs an interesting answer.

[English]

Mr. Leonard Edwards: —could use some discussion.

In the case of the United States, for example, these reports are prepared, as I said earlier, with public consumption in mind. We have not been preparing such reports in Canada. Indeed, our preference in the use of our officers' limited time at our missions abroad is to prepare these confidential reports for the government for use in advising and in preparing policy.

At the end of the day, one might think—and I can understand why many people do think—that these documents should or could be made available. The fact is that they are entirely different in terms of their purpose. They are different in terms of the source material. They are documents that will have the Government of Canada's imprimatur on them, so they are seen to be official opinions and views of the Government of Canada. That is an entirely different type of situation from what you get with respect to other reports; again, maybe I can refer to the American reports, which are drafted at source to be for public consumption.

When we do get these reports from our own people, we need to look at them carefully before we make them public to ensure we are not releasing information that might jeopardize a source. Sometimes those sources might well be put at risk by that. Sometimes even just what might seem to be an innocuous reference in a report can, by—

• (1015)

[Translation]

Mr. Robert Vincent: That is what I wanted to ask you.

The Chair: Thank you, Mr. Vincent.

[English]

Mr. Stanton is next.

Mr. Bruce Stanton (Simcoe North, CPC): Good morning, Mr. Edwards.

In terms of context and background here, how many years have you been in a situation in senior levels of a department of the federal government in which you've had an ATIP unit under your charge? You mentioned, for example, that you were in Agriculture for a while. How many years have you been involved in this business?

Mr. Leonard Edwards: Well, I was Deputy Minister of International Trade for three years. Then I was three years at Agriculture, and for the last four months I've been in Foreign Affairs. So if you add that all up, I get pretty close to six and a bit years.

Mr. Bruce Stanton: We know the Access to Information Act has been around since 1983. If you were to comment on the nature of, and describe for me, in your experience, changes in the access to information environment looking back, say, to the late 1990s, when perhaps you were involved and seeing how...

You've made reference to the Information Commissioner's reports and so on, and on different report cards and different departments. In your experience, how is Canada—the Government of Canada, specifically—evolving in its management of and dealings with access to information requests?

Mr. Leonard Edwards: You're forcing me to get into my memory banks here a bit, but over time, of course, the main feature has been the increased use of the legislation to have access to information. So just the increase of requests has multiplied.

Over time, of course, the government, and I'm thinking here of the public service—let me say the public service—has occasionally revisited its processes and so forth to ensure that we were still meeting the requirements of the act, that we were being prompt enough, and that we had the right people, and so forth. I think that is a constant process that has been part of what senior managers of the public service have been doing.

I think it's a continual challenge to try to keep ahead of the demand, which has grown, I'd say, exponentially, and particularly over the last year or so. We simply have to keep ahead of the game. That's all I can say. So we need to continue to sit down with other senior public servants and try to find ways to do that, and talk to the information commissioner and ensure that we are doing as best we can to meet the requirements of the act.

I don't think anyone in the public service thinks for a minute that these requirements are going to go away. In fact, they are probably going to increase, and we have to be ready for that.

Mr. Bruce Stanton: Does the management of the ATIP environment within your department...? Maybe you could shine some light on what component that has, for example, in your regular meetings of department heads. Is this becoming an evolving and increasing part of the culture within the management of your operations?

Mr. Leonard Edwards: Yes, it is. Since arriving at the department I have tried to do something I did in Agriculture, which is to have a weekly review of ATIP requests at the senior management level, and we're getting there. The issue in my department is that the ATIP requests are vastly larger in number than they were at Agriculture, so the management of that process is very much more difficult. But what I want to do is remind, on a weekly basis, my senior managers at the assistant deputy minister level what our record is, where we stand in terms of our percentage of late shows, and so on, so that we can do better and better. I think that sort of exposure to the realities of where we are in terms of meeting these requests is an important management tool.

Mr. Bruce Stanton: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you very much, Mr. Stanton.

Mr. Martin.

Mr. Pat Martin: Thank you, Chair.

Let me get back to this idea that we've had users of the access to information system cite a chill, that they sense a noticeable chill in terms of accessing information. That's of primary concern to this

committee. We're all about freedom of information and knocking down the barriers to freedom of information.

In 2002, the following language was not censored from the annual reports on Afghanistan: "Arbitrary detention, beatings and the use of torture to extract confessions of guilt continue to be wide spread." That was not redacted or censored.

In 2003, this was not censored: If you don't give up your house... "don't insist other wise you will be jailed and tortured". This is from the AIHRC report, your report of 2003 that came to your office.

In 2004, this language was not censored or redacted:

The monitoring reports of AIHRC state that torture continues to take place as a routine part of...procedure, particularly at the investigation stage.... [In one example is a man named] Qajkol, arrested...following the abduction of three UN workers.... [He] died while in...custody. AIHRC investigated and concluded that Qajkol died as a result of...torture, [even though his death was] cited as "death due to natural causes". [His] five year old son...[when interviewed] following Qajkol's death in custody said, "Somebody had taken out my father's finger nails".

That was in 2004, in the annual reports that your office gets, and it was not censored at all.

But the 2005 report, which came to your office on January 31, 2006, after the federal election... This is from an access to information request from your office. You've given me the dates that you received these reports, so you received your 2005 report on January 31, 2006. Now, in that report—I have it right here—all references to torture are censored. I know they're censored because they're only greyed out; they're not blacked out. That's the document everybody is saying shouldn't exist. It does exist. It's in the public domain.

In the 2006 report, which was received in your office January 17, 2007, all references to torture are censored and blacked out.

Jump forward to March 22, 2007. You're telling people that no such reports even exist. Is that not a prima facie case of a chill or a demonstrable difference in the administration of access to information from DFAIT from the previous Liberal administration to the current Conservative administration?

Do you see the point I'm making here?

• (1020)

Mr. Leonard Edwards: I see the line of your questioning, yes.

First of all, I thought we had established that the requests we had in 2007 were not for the same report. We in fact have provided the 2006 report.

Mr. Pat Martin: There is no 2007 report. The 2006 report has been provided completely blacked out. That's right.

The Chair: Not completely.

Mr. Pat Martin: All reference to torture of Afghan prisoners has been blacked out.

Mr. Leonard Edwards: I don't know. I don't have that document, and I was not aware that anyone in the committee should have access to that document.

Mr. Pat Martin: Just for clarification—

Mr. Leonard Edwards: I'm not prepared to discuss that document, Mr. Chairman.

The Chair: Excuse me, folks.

We have no way, Mr. Martin, of knowing what's behind the blackout. He does, but it's his job to maintain his view of the Access to Information Act, which he made clear in a previous letter.

Mr. Pat Martin: But he's made the arbitrary choice that all reference to torture should be blacked out. We're not saying that this is being in compliance with the Access to Information Act?

The Chair: Mr. Martin, I'm sorry. For him to answer that question, he would have to agree that there are references to torture, which would mean he would be discussing blacked out aspects of the report, which he's already indicated he won't do.

Mr. Pat Martin: Mr. Chairman, my only question then is, why is it okay to admit that the torture of detainees is happening regularly in Afghanistan in 2002, 2003, 2004, and 2005, but in this administration, 2006 and 2007, all reference to torture has to be deleted?

•(1025)

The Chair: Just a minute, Mr. Martin.

Mr. Bruce Stanton: A point of order, Mr. Chair. Isn't this line of questioning out of order, in the sense that we've established and we've seen now, even from the Information Commissioner, that there has been no evidence of any kind of political interference? These insinuations are really.... That's in the history books now. We're moving on; we're talking about the process. We're trying to shed light on how we can improve the process of access to information. This continued witch hunt around notions of political interference is completely out of order. We've moved on. We even have this report now from the Information Commissioner that says even the allegations with respect to denial of access are unfounded.

Mr. Chair, with greatest respect, I do think we need to move on and try to use our time in a productive way.

The Chair: I don't see that there's a point of order there, but I will remind members that I only saw reference to political interference extremely peripherally in that question. I think the question was directed to the department. Of course, when Mr. Martin said "you", he didn't mean Mr. Edwards personally.

This question was put to Madame Sabourin, and my recollection is that Madame Sabourin did agree to provide us with an explanation as to why—as I recall it, and we'd have to check the transcripts—in certain circumstances torture is included in some of the reports and not in the others, or words to that effect. So I think Mr. Martin's question was simply how is it that the references to torture are in some but not all references...? To put it another way, in the document that we have there's nothing that talks about torture, and he wants to know why that is. I suppose there are at least two reasons. One of them could be that the report contained no reference to torture because there's no further torture in Afghanistan. I think that would be a stretch, but that's at least a possibility. That's why there would be no reference to torture. If there is reference to torture, the deputy minister has already said he's not going to talk about it because that's behind the black.

In any event, we're right on five minutes for Mr. Martin, but I do have another point of order from Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: I have a point of order, Mr. Chairman. First of all, our Conservative colleagues have stated on two occasions that we are here to examine the Access to Information Act and to see how we can improve upon it. I am very sorry, Mr. Stanton, but I suggest you reread the motion. This isn't the case at all. I can read it again for you, if you like, but it is rather long. We have convened to hold an emergency debate on DFAIT's internal report, to examine this matter, to hear from witnesses, and to shed light on the Access to Information Act, the provisions of which may have been violated in several ways.

As far as the word "torture" is concerned, we have seen the uncensored portions of the report in the *Globe and Mail*, Mr. Chairman, and until such time as a deputy minister or someone else, officially says that these reports are inaccurate, I will consider the facts reported to be the truth.

Thank you, Mr. Chairman.

[*English*]

The Chair: Again, that's not a point of order, but thanks for reminding us about the terms of reference we have. I do appreciate that.

I think what we had discussed was that we were looking at the access to information portion because we hadn't heard any direct evidence of political interference. I think the deputy minister specifically made that point in his opening remarks, but whether we believe that or not is a different issue. That doesn't prevent people from asking those questions. I appreciate that the Conservative members would like us to focus on—and frankly, so would I at this point, but that's just me—the manner in which the department exercises its access to information responsibilities.

Having said all that, we don't have any points of order. We do have, however, a question from Mr. Dhaliwal, and we will have more opportunity for people to ask questions.

Mr. Dhaliwal.

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

Back to Mr. Edwards again, where Mr. Martin left off. When we look at Canada, you mentioned that we had reports on 111 countries when it comes to human rights. When we look at the U.S., they have 100 and they're all on the Internet. Those 111 reports are all secret, you said. What I personally see is that Canada is trying to hide the human rights...the torture situation. In fact, by making it confidential the way you say, I think we're trying to help the torture and the human rights situation in other countries. Would you like to comment on this?

•(1030)

Mr. Leonard Edwards: I see your point, and I don't disagree with the fact that when you have reports that are done for public consumption from the outset, and reports that are done for confidential purposes and the use of governments, you're going to get two different kinds of reports. That is simply a fact.

The reports that are prepared for government use, we want to ensure are as frank as possible, that we use the best possible sources and so forth, so that we make sure our government has the best possible advice from its public servants on the basis of confidential reporting. I'm not just talking about the current government. I'm talking about any government, because this is the way we work in the international world, in foreign affairs and international trade.

If that reporting were to become public, or to be known to become public, automatically our sources would dry up. We would have extreme difficulty getting information. I can state this categorically: where there were serious problems in terms of human rights, we would find our ability to speak to those governments—and therefore our effectiveness—of the unpleasantness of their behaviours circumscribed.

There really are two different purposes that drive these two reports, Mr. Dhaliwal. While it is a question of transparency—and I understand that completely—and while the Canadian public deserves transparency, our duty to the public is also to provide good government and good advice to the government of the day. For a public servant, this is always an extremely difficult balance.

That's why, in this particular case, we have the legislation that allows the Information Commissioner to be someone to whom requesters can go after they receive that information to have it tested. The crafters of that legislation certainly saw that. Eventually a court is also a final tribunal to which requesters can go.

Mr. Sukh Dhaliwal: You said that you provide the best advice to the minister, so does the minister get security briefings that would contain the allegations in those reports? Particularly when I look at the sequence of reports, as Mr. Martin said, from the time of the previous Liberal government, those words, “torture” and “human rights”, were not blacked out or whitewashed, whatever word you want to use. But coincidentally, when the Conservatives took power, these words were blacked out or whitewashed. We looked at the report, and it seems as though it is all whitewashed.

Was the minister receiving briefings on these reports from time to time?

Mr. Leonard Edwards: No, the minister was not receiving briefings on these reports.

Let me go to the point about blacked out and not blacked out. I want to back away from this particular case and just talk about what happens when redactions are done. A person looking at a report to decide what to redact out and what to keep in will look at things such as how old the information is, how important that information is. By releasing it, would we perhaps endanger our ability to deal with the government about whom we're speaking? Would it compromise somebody from whom that information came and so on? There is a time element there that is evident in what you are citing here with these particular reports, but I'm backing away from that and just talking about generic reports.

As I said earlier, there is time. There is circumstance. There is context. There is what we are trying to do vis-à-vis a particular country or in a particular country and how the release of that information might compromise our ability to do it, and there is the discretion of the individual officer. All of these things play into it.

It doesn't surprise me that you can read one from 2003 and one from 2004 and find some things in and some things out.

• (1035)

The Chair: Thank you.

Mr. Tilson.

Mr. David Tilson: Thank you.

I'd like to return to the area I was questioning you on earlier.

You've had a number of different positions as a deputy minister—I think you mentioned six years—and that makes you experienced. You may not like to think like that, but that makes you experienced.

In your statement, the area that gives me the greatest concern is where you say that annually information requests have increased 10%. You said in this past year there's been a 31% increase. You've also said the files are becoming more voluminous, more complex. Finally, you said there's a shortage of qualified and interested personnel—that one paragraph that you've put in writing to us in which you say that gives you the greatest concern.

Now, this committee, of course, is interested in improving the information legislation, and we will deal with that in due course.

My question to you is, and I tried to get into it during the last time I had, whether at this time you have any recommendations—you as the deputy or through discussions with your staff—to improve the legislation, to improve the guidelines, to improve the process. Obviously, one alternative is to hire more staff, if you can find them, and the other is to improve the legislation to make the system move smoother.

Can you give the committee any advice?

Mr. Leonard Edwards: I have to be absolutely honest with you and say that I have not thought about improvements to legislation. Maybe that's a factor. I haven't had time to think about these things.

Mr. David Tilson: I understand, and I anticipated that answer, actually.

Mr. Leonard Edwards: We will continue to face these pressures from our open and responsible government, as we should, so I would see probably that if the requirements are going to go anywhere, they're going to increase rather than diminish. Maybe it's a question of going back to these guidelines, which we talked about earlier, and seeing how they can perhaps be streamlined or simplified to provide a less work-intensive environment, perhaps, so we can do more things quicker in terms of clearing requests.

But I haven't thought about what legislative changes would be required. I'd be pleased to give it some thought and to provide some advice, if you're still interested, in a week or two.

Mr. David Tilson: Yes.

Personally, sir, based simply on the testimony that's been given by you and Ms. Sabourin and other officials, I believe the delay issue is going to continue, not through any negligence on your part, but because of that one paragraph that I just read out. I mean, it has to. So we're going to hear about more problems of delays.

The legislation says answers must be given in such and such a period of time. Clearly, that can't be met. So somehow along the line we have to figure out how to deal with that.

So I understand. I appreciate your answer. I'm just saying that probably down the line this committee is going to be looking at these and other issues with respect to information, and I ask that you and your staff consider recommendations.

Thank you, sir.

The Chair: Thank you. My turn.

I'd like to go through Mr. Esau's request, ending in 605. I'm troubled by the amount of time the committee has taken up on what I think could have been dealt with interdepartmentally, Mr. Edwards. I'd like to walk you through it.

I think we can both agree that the request by Mr. Esau is extremely broad. He's asking for an annual or semi-annual report on human rights in countries around the world. He makes that request on March 13. It goes to the office of principal interest, GHH, and the office of principal interest replies on March 22 that Canada does not produce an annual human rights report analogous to the reports produced by, for example, the U.S. or the United Kingdom. By the way, I note that neither of those countries was mentioned in the request. Therefore, no such report on human rights performance in other countries exists.

You said today in your opening remarks that annually there are many reports like this on individual countries, and indeed last year there were 111 country-specific reports.

You then go to the access to information manual that is produced by Treasury Board. At tab 2-4, on page 2, we read the following. This is, by the way, guidance for your officials:

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.... Well handled requests may reduce the incidence of complaints.

I want to underscore that, Mr. Deputy Minister: "Well handled requests may reduce the incidence of complaints."

When the GHH advised, I'm curious as to how they could give advice that no such human rights report on other countries exists when they know in their own division that last year there were 111 country-specific reports. It would have seemed to me the simplest matter in the world to pick up the phone—I'm an old guy, so I pick up the phone, but I suppose the new way is to e-mail the requester—and say, "Gee, that was a broad request. Do you have anything specific you're looking for?" I would presume that Mr. Esau would have said, "Yes, I'm looking for Afghanistan."

Since by your own testimony we know there were 111 country-specific reports, somebody at GHH could have said, "Yes, we have one for Afghanistan for 2006. Is that what the requester wants?" The answer would have been yes, the document would have been provided—never mind the redaction issues—and we wouldn't be going through all this. That's how I see it. I sure hope you see it that way, because that would have obviated an awful lot of hassle for everybody.

What really bothers me after that is the note you have in your chronology of April 10, 2007. Gwyn Kutz, director of GHH, talks about different things, and I quote:

The Division does produce reports following certain situations that may develop in individual countries (i.e. Afghanistan or Haiti). If Requester wants Division to search for each report, it would take 'hundreds' of hours to locate all the reports.

I find that absolute baloney. We already know there are country-specific reports per year. They have to be filed alphabetically; otherwise how would you ever find them? Afghanistan is at the beginning of the alphabet. I don't understand how this person could have reported that it would take hundreds of hours to find a specific report on Afghanistan when you yourself have said that the GHH knows perfectly well that 111 country-specific reports were produced in the last year. That answer was then provided to Mr. Esau, because he gave the committee testimony that he was shocked that he would be required to pay for hundreds of hours of searching.

All of this inquiry on this aspect—not the blacking out at all—could have been obviated by a simple question: "Hey, Mr. Esau, what are you looking for? Afghanistan? Which year do you want? Here it is."

● (1040)

Now, on the issue of what was blacked out and what was not blacked out, that's fair enough; that's between the department and the requester, and if the requester doesn't like it, he goes to the Information Commissioner. But we've been spending an awful lot of Parliament's time on something your department could have dealt with in two simple questions, and I don't understand why they didn't do it.

Mr. Leonard Edwards: You'd like a response.

The Chair: Yes.

Mr. Leonard Edwards: Well, I have to say this one has troubled me as well, Mr. Chairman, because I too was concerned about some aspects of this chronology. As I understand it, having talked to my staff as late as yesterday about this, I could see how, in looking at the nature of the request, they could have come to the conclusion about the global reports and so on. Again, it's a contextual thing.

Could we have done better on this one by asking some probing questions? Perhaps. I don't disagree with you on this one, but when you look at the context.... I don't have the material here; maybe we could provide that to you, if you like. I'm sorry if I'm sounding apologetic for my people, but they have a lot of requests coming across their desks. They're trying to handle them in a hurry; they see this, they take a quick read, and they say he's looking for a global report. They send it off—let's see what we can get. I think there's some aspect of that there.

On the issue you talked about farther down—April 10, and taking hundreds of hours to locate the reports—I'm not sure that.... Again, Ms. Kutz is here and will speak for herself later, but I think probably what she's saying is not to locate all the reports; I suspect she's saying it's 100 hours if he wants all the reports, and that it's going to take hundreds of hours to go through them and redact them.

● (1045)

The Chair: The word is "locate" all the documents—

Mr. Leonard Edwards: I know it does, but I'm just wondering if that's really what's meant here, because like you, I know it shouldn't take hundreds of hours to locate.

The Chair: You can see, Deputy Minister, why we wanted to call Ms. Kutz.

Mr. Leonard Edwards: Yes.

The Chair: Okay, my time's up.

Mr. Van Kesteren is next.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, sir, for appearing. I think it shows great character that you would come here to represent your staff, because—and we've discussed this at length too—it must be extremely stressful to appear before a committee. I know you're used to this, but I know that for most of them this is probably something they wouldn't relish.

Most of us are satisfied with the process that's in place. It is slow, but I think it's working. As Mr. Tilson and some others said, I think most of us are focusing on improvement to access to information.

There have been a number of questions about ATI performance, and maybe this has been asked, but do we need more staff? Is that part of the solution—we just have to hire more people?

Mr. Leonard Edwards: Yes.

The Chair: It's very dangerous to ask a deputy minister if he needs more staff.

Mr. Dave Van Kesteren: I know, I know.

We've had testimony—and our chairman has a mind like a steel trap; he'll probably remember who it was. There was a program involving ATI people at the universities. I forget who brought that testimony forward—

The Chair: It was the Information Commissioner, in Calgary.

Mr. Dave Van Kesteren: There he is. I told you, the man is just amazing.

Should we be introducing a degree from our universities that would specifically train ATI people? Should we go one step beyond that? Is that part of the problem—that you need to train these people, and we have some...?

Mr. Leonard Edwards: I think you've put your finger on an important aspect of it, which is that we need to create opportunities that make this sort of work interesting enough and attractive enough for people to want to go into it. That means providing incentives in terms of training and so forth that are quick off the mark. I hate to cast a pall over the whole proceeding in a way, but the fact is that we need ATI people, access to information people. We need accountants. We need financial people. The job market these days is extremely difficult for all aspects of the public service, not just this particular area; it's a broader issue than simply here, but to the extent that we can, what we should be doing is making these jobs attractive, with good pay and good job security and good training as they need it.

Mr. Dave Van Kesteren: For the last part of my question, I really think it's necessary that we remove this cloud of doubt. I think the proceedings have produced that, to the effect that, possibly, some of the ATI people....

I guess I want to ask this. In the ATI circles, when ATI people are taken before committee, dragged before committees and really grilled, how does this get out to other staff? Would it actually slow down ATI requests as a result? Would it put a fear into your people? Is it working counter-productively?

I'm not suggesting that we shouldn't be investigating. When there's wrongdoing, we need to get to the bottom of that. But in a particular case like this, what's happening within the ATI? Would people who might possibly be interested in that career look at this and say, "Forget that, I don't need to have this kind of...?"

• (1050)

Mr. Leonard Edwards: You ask a pretty tough question. Those of us who work in the public service do so because we're motivated by public service. Right? It's not because we're afraid of being criticized. It's not because we don't look forward to moments such as this, when we get senior positions, to meet face to face with parliamentarians. Not at all.

I do worry that there is sometimes a fear of failure, a fear of taking risk and so on. But what I say to my staff is, "Look, you're not perfect. No one is perfect. You will make mistakes from time to time. The system is tolerant of those mistakes that are made from time to time. You learn from the mistakes and you move on." And as we were discussing with the chair, there's probably one area that could have been handled a little bit better. Next time it will be handled better.

We are not dealing with incompetent people here. In fact, I would bristle at any suggestion that my people are incompetent. They're far from incompetent. They are very competent people. But yes, sometimes things don't go quite as well as we all hoped. We fix it, get it behind us, and go forward.

Mr. Dave Van Kesteren: Thank you, sir.

Again, I want to thank you for coming before the committee and for doing such a good job representing your staff.

The Chair: Thank you, Mr. Van Kesteren.

We have Madame Lavallée next.

[Translation]

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

Mr. Edwards, did you in fact state that were appointed Deputy Minister of Foreign Affairs and International Trade three months ago?

Mr. Leonard Edwards: Yes, I have been in this job for three months.

Mrs. Carole Lavallée: So then, you were appointed on March 19, or thereabouts. According to the chronology of events, the initial access to information requests were made on January 29, that is one and a half months before you took over your new duties. Is that correct?

You said that you were the best person to answer questions. There is something I do not understand, but it is only a minor point, nothing serious. DFAIT received the report on January 17. I learned this fact from a Justice Department document which states that officials submitted this report to the department on January 17, 2006.

The Globe and Mail reported in its April 26 edition that the following portions of paragraph 14 had been censored. I will read what it says to you in English, even though my English is not that good.

[English]

Military intelligence and police forces have been accused of involvement in arbitrary arrest, kidnapping, extortion, torture and extra judicial killing of criminal suspects.

[Translation]

Mr. Deputy Minister, unless you are denying that this is actually in the report...This was published one and a half months ago, and so far, no one has denied that this is in fact what the report says. Had the facts reported been false, I am certain the minister himself would have gladly issued a press release saying that the Globe and Mail report was inaccurate.

That said, since no one has denied the Globe and Mail report, I have to believe that it is the truth. My intelligence and my logical mind lead me to believe that is the case.

DFAIT received a report on January 17 describing instances of kidnappings, extortion, torture and summary executions. By your account, someone then shelved this report. I believe what you are saying. You claim that neither you nor the minister saw the report. I also believe you are telling the truth about this.

What guidelines are being followed? You are the new deputy minister. You approve and review guidelines. Which guidelines were mainly followed and which will be followed in the future in the case of a report such as this, which violates the Geneva Convention? Earlier, I forgot about the International Convention Against Torture. An eminent professor from the University of British Columbia, Mr. Byers, even said that with this report, Canada demonstrated that it was guilty of war crimes. That is no small thing! Yet, no one from DFAIT called the then deputy minister or contacted the minister's office. Are you telling us that no one took it upon himself to do that?

• (1055)

[English]

Mr. Leonard Edwards: Mr. Chairman, again, we seem to be moving, with all respect to the member, well beyond the discussion of ATIP requests and into the functioning of the department and the providing of advice to the minister.

First of all, to go to your point about confirming or denying, I can neither confirm nor deny what's in that report for the reasons the chair has already explained and I explained in my letter. I'm prepared to appear before the committee and discuss the issues that have to do with ATIP, but the question I've been asked has a lot more to do with what kind of advice I provided to the minister and when it was provided to the minister, based on this report, which I cannot discuss.

The Chair: Could you stop the clock, please?

Mr. Edwards, I think this is a perfect example. Members of Parliament, of course, do not work in the public service. They have no way of knowing, really, by way of experience, how a department works, what a chain of command is, what kind of information goes to whom and when. I think the question here is one of frustration, of trying to understand the process of how information flows. So let's take the minister out of it for the moment, because I think we can all agree that what advice is provided to the minister, well, that's advice for the minister.

But I think Madame Lavallée was also inquiring about what information flows to you so that you are aware of what's happening in your department. And of course floating around in all of this is the word "torture" and the allegations of torture, and we have the difficulty of a report apparently being leaked in a non-redacted form. No one, of course, can confirm or deny whether that's the report in its non-redacted form without, of course, commenting on the report. Nonetheless, as Madame Lavallée pointed out, it's in the paper, it hasn't been denied, so there's an air of credibility, an air of believability about it, that there were reports to us—us being Canadians—about torture of people in Afghanistan who, at one time, were under our control.

On a hypothetical basis, so that we can understand, I think Madame Lavallée was asking, what is the flow of that type of information, and does it get to you?

Mr. Leonard Edwards: Hypothetically. Mr. Chairman, I want to be helpful. Please don't get me wrong. I'm prepared to take the approach you're suggesting, although it does not seem that we're now talking about the Access to Information Act request and how we dealt with these particular requests we're discussing.

By and large, what happens in the process is that this information comes into the department. It will come, usually, to the director level or below, and it usually comes in the form of telegrams or e-mails and classified and non-classified material. So we collect this information, and at some point someone makes a judgment call that this is worth telling their boss about, and that might be the director general. Then that person will look at it and say they think this is sensitive enough that it needs to go farther up the line.

So it can either be a specific piece of information or it could be something that rolls into a broader analytical piece that they're doing in terms of developing a policy toward a particular country or an issue, and so on.

All along the line judgment calls are made that determine how a piece of information is going to be used. Sometimes it ends up on my desk and doesn't go any further, because I say the minister doesn't need to know this. Sometimes it comes to my desk, and I say they're to do another note to the minister. Sometimes I don't get it at all. An ADM might say it doesn't have to go any further.

That's how the system works. Is it a perfect system? As I said before, no system is perfect. We try to make sure we make the right judgments here and there and everywhere, but sometimes we don't.

The Chair: Thank you. I think that was the gist of the question. I think you've answered it as well. That's the second time we've heard judgment calls, both on the ATIP side and on the "information moving up the chain" side. Fair enough. We're all human.

I have Mr. Martin, Mr. Dhaliwal, Mr. Pearson, and that's going to be it. I'm not even going to be able to get beyond that. I'll try to get those people in. So let's try to be brief.

Mr. Martin.

• (1100)

Mr. Pat Martin: Thank you, Mr. Chairman. I will be brief.

That overview was helpful, Mr. Edwards, but I just can't get past this point that on some things you make a judgment call that the minister should be made aware of. If your minister were standing in the House of Commons being battered with questions demanding to know the state of detainees in Afghanistan, surely the deputy minister or somebody underneath you would say they'd better make the minister aware of this; he's getting the crap kicked out of him day after day in question period.

Let me summarize what we think went wrong here. When the original requests were made, your office tried its best to deny the existence. Mr. Esau went back. When you say the question was a little too global, too vague, let me tell you, Mr. Esau went back and said, and this is a quote from his e-mail:

If the records do exist but I failed to use the precise title of the reports, please let me know. I'm hearing from other sources that DFAIT does in fact produce human rights reports and I just want to confirm DFAIT's position on this, that human rights reports DO NOT exist and that my request was not interpreted with undue narrowness...

In other words, he did his best to negotiate with the ATIP officer to say that if he didn't use quite the right language, could he please be helped to phrase it in a way that he might use the right language. That was pretty serious. She got back and said she'd do some digging and get back to him. But then she said they felt they'd answered the letter of request.

So he got jerked around two or even three times by not using the magic words. This is where we used the Rumpelstiltskin reference. What does it take, some magic word before the information starts to flow? It's not supposed to be like that. The chairman read Treasury Board guidelines that they're supposed to err on the side of the applicant, not on the side of a minister who's trying to preserve himself from being embarrassed.

Then, when you had to admit these reports do exist, they started to get censored like crazy, in a way they were never censored before. This is what really concerns me.

The only question I have is a specific one. Who directed the censorship of the 2005 report, which was released in 2006, and the 2006 report, which was released in 2007? Who directed the blacking out of all reference to torture in those two documents?

The Chair: [*Inaudible—Editor*]...question, who directed the blacking out.

Mr. Pat Martin: What is that?

The Chair: That's your question.

Mr. Pat Martin: Why that clarification, Mr. Chair?

The Chair: Because we don't know what's in the document about torture.

Mr. Pat Martin: All right.

The Chair: And you keep repeating it. You may be 100% right, but just so we don't keep repeating the same thing and having the witness repeat the same thing, the question is, who directed the redaction of the documents in the last two years?

Mr. Pat Martin: Yes, "who". All right.

Please, go ahead.

The Chair: Thank you.

Mr. Edwards.

Mr. Leonard Edwards: Well, I guess, Mr. Chairman, I'll probably end up repeating myself as well.

Mr. Pat Martin: Could you answer in as short a time as you can? I'm getting flashbacks—

The Chair: Can you tell us who directed it? Was it one person or was there a chain?

Mr. Leonard Edwards: The thing is, it's the word you're using: "directed". That sounds as though somebody said, "Thou shalt take out these items". The process is much more iterative than that. The process is one through which the document is sent to the office of principal interest. In that office they look through it and they say which items would be okay to have in the public domain and which parts should not be in the public domain, for the reasons set out—

Mr. Pat Martin: But that came back on March 13. The officer of primary concern got back on March 13 and told your staff that, yes, those documents do exist. Right? So that much we know. That took place.

But Jocelyne Sabourin was taken off the case—

The Chair: No, no, Mr. Martin, I'm sorry.

• (1105)

Mr. Leonard Edwards: You asked me a question—

The Chair: There was no admission of any documents at that time. In fact, there was a denial of documents on March 13, i.e., that there was no global report.

But let's not get caught up in that. The witness was explaining to us that the GHH takes a look at it and decides, in their opinion, what parts of the report can be made public.

Then it goes to whom?

Mr. Leonard Edwards: Then it goes back to the ATIP section and they—different officers there, and you're aware of who they are in these individual cases—challenge the officers in the GHH as to what they have recommended to ensure that they have good sound reasons for eliminating them.

At that point, the document then goes to Ms. Sabourin, as the delegated authority, and she signs off.

Mr. Pat Martin: She's not the one, though, who answered. It was taken out of her hands by the time of these other negotiations. So who took over the file when Ms. Sabourin was—

The Chair: No, Ms. Sabourin is the director of ATIP. She signed off on it.

Mr. Pat Martin: But she didn't sign the letters to Mr. Esau, saying that—

Mr. Leonard Edwards: That was one of her staff.

The Chair: One of the letters was signed by her, but not directly by her. It said, “for”, and I gather she wasn't in the office at the time.

Anyway, that's it.

Mr. Dhaliwal, if you have anything new, maybe you could make it shorter, please. And then we'll have Mr. Pearson, and that's it.

Thank you.

Mr. Sukh Dhaliwal: Certainly, Mr. Chair.

Just following up on what you said, that we should not use those words, “torture”, “killings”, and all that stuff, I have a question to the deputy minister. I'm going through this *Globe and Mail* article of April 26, 2007. Have you looked at this story on this particular day, which says, “Ottawa denies allegation of a cover-up”? Have you read this story in the paper?

Mr. Leonard Edwards: I'm sure I read it at the time, but I haven't read it since. I'm not familiar with its contents.

Mr. Sukh Dhaliwal: But you might have read it?

Mr. Leonard Edwards: I might have read it.

Mr. Sukh Dhaliwal: Okay. So if you might have read it, would you, being a deputy minister, being the top bureaucrat responsible for the department, being a responsible public servant certainly, go back to your office and see if the facts of this report were factual or just done arbitrarily?

Mr. Leonard Edwards: When there are news articles and stories and so forth in the media that impact upon the department, of course they are immediately looked at and we investigate. By “we”, I mean the department officials look into it to see what the truth of the matter is. Then we prepare media responses and so forth. So in that sense, yes, I would have gone back to my office to see what our response was and to check into the facts of the matter.

Mr. Sukh Dhaliwal: So did you check that this report...? What was blacked out was reported on by the *Globe and Mail*. Have you gone back and checked whether what the *Globe and Mail* reported on that day was correct?

Mr. Leonard Edwards: What I went back and determined for myself was that what we have been discussing here is an apparent misunderstanding between the requester and the ATIP officers as to what Mr. Esau was requesting. The chairman has discussed this case already, and in fact the ATIP officers thought he was asking for a global report.

Mr. Sukh Dhaliwal: I'm not even going there, Mr. Chair. All I'm asking you is a yes or no question. The thing is, I'm looking at it as if I'm running the department, as you are right now, and you are advising your minister, who is, as Mr. Martin said, hanging out to dry in the House of Commons. We have the *Globe and Mail* reporting this, all the killings, tortures, and the Canadian reputation on the international scene at risk. I'm simply wondering if you have verified that whatever article appeared in the *Globe and Mail* is true, or were there some contradictions?

Mr. Leonard Edwards: Your question—

Mr. Sukh Dhaliwal: Yes or no.

The Chair: Mr. Edwards, go ahead.

Mr. Leonard Edwards: Your question has to do with more than whether or not there's a single report or a number of reports. I went back to determine whether or not the allegation was true in the report, that they had been denied access to a report. That's what I went back to check.

Mr. Sukh Dhaliwal: Maybe things change, sir. You took over in the last four months.

Even though the Information Commissioner might have said it, because there's no concealment under subsection 67(1), clearly, the way I see it, when the previous government left office and the Conservative government took over, all this blacking out of torture and human rights situations came in. So it seems like it's a clear concealment of the records.

If a criminal investigation comes into play...the committee wanted those employees to appear, but instead you felt you should be the one who should be answering, even though you do not have the full information because you are so new to the office in this particular department. Would you cooperate in future? How would you handle that situation?

• (1110)

The Chair: That will be it, Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Okay.

Mr. Leonard Edwards: Well, as I said in my opening comments, the reason I wrote the letter was to make sure you had the delegated authority here, and people with delegated authority, rather than those who didn't have it, and those who are familiar with responding to questions like this. The fact is that as a deputy minister of my department I carry on the responsibilities of my predecessor. It's a bit like a minister of the Crown whose responsibility for his predecessor's actions continues. So I'm here, not only in my personal capacity but in my institutional capacity as the deputy minister of the department.

The Chair: Thank you.

Mr. Pearson.

Mr. Glen Pearson: Thank you, Mr. Chair.

Once again, Mr. Edwards, I have the last question. Thank you for coming, on behalf of all of us.

The Chair: Not the last. Actually, Monsieur Vincent has caught my eye.

Mr. Glen Pearson: Okay, sorry.

It has been stated here earlier that in spite of the difficulties we've had, overall the thing seems to be working. I would like to say that depends on who you ask. If you were to ask a detainee, I don't think the system is working. If you were to ask a Canadian soldier in Afghanistan, many of whom I have talked to who have come back home, who worry that some of the people they turned over might have had the kind of treatment we as a country would not have wanted them to receive, I would suggest to you, sir, that this system might not be working as well as we think.

The access to information, it seems to me, is for us as a committee...our responsibility is to make sure that sometimes when government moves along and it does its thing, people get information they need to help keep us accountable.

I totally agree with what you said. I look at them all here. There are public servants in this room, many of them, who 100% want to serve the Canadian interest. I understand that and I accept that. But I think it's also true that sometimes the human element gets lost in the process of this.

I would like to suggest, sir, that being here—and I'm the most recent member of this committee—I don't have a lot of confidence in what has resulted from the last number of interviews we have had. I'm not talking about political interference; I'm not talking about any of that stuff. I simply think that obviously a request was made and somebody was told—it started that way—that no such document existed, and from that point on it got worse.

My question, sir, because I don't have much time, is that for the sake of these other people, including the soldiers and the detainees as well as people who are trying to advocate for them, all of you, as public servants, need to come forward with these recommendations as to how we can help you to do better. But you also have to be conscious of the fact that we can't screw around with this. There are lives at stake here and serious issues.

So I would ask you, sir, to come forward as fast as you can, through working with your department and all the people who are here—and I mean this—with these recommendations so that we as a committee can help you get the stuff you need to move this process along further. I would also ask that you and your people do due diligence about this, sir, because it's really important; it does involve the lives of others.

Thank you, Mr. Chair.

The Chair: Thank you.

Did you want to offer any comment? You don't have to.

Mr. Leonard Edwards: All I'll say, Mr. Chairman, is that I completely share the sentiments that our processes in this area have to be top-notch. We have to be able to respond to the requirements of the act, and so forth. We must continuously be on our toes to ensure that our systems are up to handling the volume and dealing with the issues he referred to, which do have important implications for a lot of people.

The Chair: Thank you.

Monsieur Vincent.

[*Translation*]

Mr. Robert Vincent: Thank you.

In conclusion, I would like to ask a proper question so that everything is quite clear. According to the report that was issued, the Geneva Convention was violated. In such instances, do you inform your minister? Do you tell him there is a problem and that, according to the report, the terms of the Geneva Convention were violated? Do you tell him that if the report is made public, questions will be raised? Do you ask him which portions of the report you can delete,

how you should go about doing that and what parts should or should not be made public? Is that something you are supposed to do?

•(1115)

[*English*]

The Chair: Mr. Vincent, I don't think it's a proper question to ask the witness what advice he specifically gave to the minister.

[*Translation*]

Mr. Robert Vincent: Mr. Chairman, may I point out that the question was put to the witness. I have nothing against your interjecting, but I think the witness was about to respond and it is not for you, Mr. Chairman, to make any assumptions or to direct the debate in an arbitrary fashion.

I feel that my question was legitimate. The witness is the Deputy Minister and he advises the minister. Therefore, he is the one who decides whether or not to inform the minister, and he decides whether or not to censor the report, or what portions to delete. That being the case, he is the right person to answer this question. I would like to know what this person—and we already know that she had the report in hand—did with the report and how far she went with it. Did Ms. Sabourin comply with the act's provisions? When the minister received the report, had it been formally censored? Did the Deputy Minister play a role in all of this? According to the Globe and Mail, other parts of the report were censored as well. Was this done in the Minister's office or in the deputy minister's office? Who decided to give the client more than he bargained for when this document was censored? I think this is a legitimate question, one that deserves an answer. Was there any political interference in this matter? That is why we are here, that is what we want to know, and I think that if we do not ask these questions, we will skirt some of the issues that the committee has with the minister or deputy minister. Who made these decisions and who overstepped his mandate?

[*English*]

The Chair: Thank you, Mr. Vincent.

As chair of the committee, it's my responsibility, to the extent I can, to keep order and to determine what questions are relevant and whether there's repetition.

In my judgment, the question of asking the deputy minister what advice he gave to the minister is not an appropriate question. In any event, he's already indicated that he would not give such testimony. You asked a series of other questions, most of which, I believe, have been answered, including a statement, both in writing and orally, by the deputy minister that there was no political interference. That question was asked subsequently by at least two members. Again, the deputy minister specifically stated there was no political interference in this matter.

You then went on, in your address to me, to talk a little bit about Madame Sabourin, and that's a different question. So in the remaining time that you have, if you have a specific question with respect to Madame Sabourin and her authority, or anything of that nature, please direct it to the witness.

[Translation]

Mr. Robert Vincent: You leave me no choice, Mr. Chairman. You are setting the tone of this debate, and from what I can see, you are also deciding which questions are relevant. We have here in our midst a deputy minister, Mr. Chairman. We do not ask a deputy minister just any old question. We have called him here to give testimony and to ask him questions about his job as deputy minister. If the deputy minister advises the minister, then I think it is legitimate to ask what kind of discussions he had with the minister over the report. He is here, so we need to put the question to him. Nothing happens at the lower echelons because no one knows anything. The decision was made higher up, in that...

[English]

The Chair: Mr. Vincent, excuse me. You can disagree with me as much as you want; that's your right. But you're eating up the time of the committee to discuss legitimate questions of the witness and/or other witnesses we have to deal with.

I've already made my ruling. If you have another question, I'll give you an opportunity to ask a specific question that hasn't been asked already. You had raised one about Madame Sabourin, if you want to ask that now. But please don't argue with me, because it's just taking up the time of the committee and you're not going to win the argument.

• (1120)

[Translation]

Mr. Robert Vincent: Did you discuss with Ms. Sabourin the possibility of deleting additional material from the already censored document she initially submitted to you? She gave you this censored document so you could check to see if everything was in order or whether other parts needed to be censored. Did you in fact read the report twice: a first time, before it was censored, and a second time, after the fact? Did you read both versions of the report?

[English]

Mr. Leonard Edwards: I can answer those questions; they don't involve advice to the minister.

I was a little confused by how you worded your initial question, because Madame Sabourin didn't deliver documents to me at any point in the process. Because she is the delegated authority under the act to approve the redactions and the release of the document, she did so without checking with me. It is her delegated authority to do so.

Subsequently, I did request and saw the two documents, the original document—which I said earlier I did see—and the redacted version, because I wanted to understand what the concern was.

The Chair: Thank you, colleagues.

Deputy Minister, thank you very much for appearing. Thank you for staying beyond the allotted time. We appreciate that.

Committee members, we have the four witnesses we have summoned, but I would like to take a five-minute suspension, first of all, for our staff. Second, I would then like to come back in camera to discuss which of those witnesses—if any or all—we wish to hear, and in what manner, that is to say, in public or in camera.

Then we can proceed. I don't want to take a lot of time doing that, but I want to be fair to the discussions we had last week.

So I would ask those witnesses who have been summoned to appear to remain here. No one else has to remain here, but you're welcome to, as it's a public meeting at this point until I declare it in camera. Actually, I'll hold it in camera as soon as we come back. So why don't you come back here after we're in public again, once the adjournment is over. But Ms. Kutz, Ms. Nixon, Madame Archambault, and Mr. Switzer have to remain within the confines of this room—not outside this room, basically—until we're ready for them.

Once again, Deputy Minister, thank you very much.

The meeting is suspended for five minutes.

[Proceedings continue in camera]

• _____ (Pause) _____

•

[Public proceedings resume]

• (1130)

The Chair: We're ready to go. Let us resume the meeting.

We have with us four individuals who we've summoned to appear. I understand that none of them have any opening statements, but they're going to introduce themselves and, I hope, indicate what they do insofar as access to information is concerned within the foreign affairs department.

We will then go to questions, ladies and gentlemen. What I'm going to ask each member to do is to be very specific as to who they want to answer their particular question, because we do have four people here and we have a limited amount of time. The other thing I'd like to do, to the extent that I can do so, is urge that questions be asked as opposed to statements be made—but all I can do is urge.

In no particular order, but I know that Ms. Kutz is the head of GHH, or I believe her to be so, and I presume therefore that she would be the senior person of the four up there, so I'll ask her to first of all let me know if I'm correct and secondly to introduce herself and her position.

• (1135)

Ms. Gwyn Kutz (Director, Human Rights, Gender Equality, Health and Population Division, Department of Foreign Affairs and International Trade): Thank you, Mr. Chairman.

My name is Gwyneth Kutz. I am a career foreign service officer. I joined the Department of Foreign Affairs and International Trade in 1988. I am currently the director of the human rights, gender equality, health and population division in the global issues branch of DFAIT, and I have held this position since August 2006.

The responsibilities of this division include the advancement of rights and well-being of people through policy development and advice advocacy, standards setting, and other actions. The human rights section has a responsibility and an overall mandate for promotion and protection of human rights internationally. My division is responsible, amongst other things, for coordinating the annual human rights reporting process.

Upon receipt of an access to information request, my division searches for and conducts a review of the relevant documents that have been requested. As the director, I make the recommendations to the delegated ATIP authority on any exemptions that should be made under the Access to Information Act. My division was the office of primary interest for three of the requests: files A-2006-00466, A-2006-00604, and A-2006-00605.

Thank you.

The Chair: Thank you.

Ms. Nixon.

Ms. Jennifer Nixon (ATIP Team Leader, Access to Information and Privacy Protection Division, Department of Foreign Affairs and International Trade): Thank you.

My name is Jennifer Nixon, and I am a team leader with the access to information and privacy protection division of the Department of Foreign Affairs and International Trade. I've been working in the access to information area for approximately five years and at Foreign Affairs since October 2006. I worked on access file numbers A-2006-00466 and A-2006-00605.

For file A-2006-00466, I prepared and signed the letter acknowledging the request. I tasked the request to GHH, as well as two other divisions. I granted a five-day extension to GHH to gather the records. I assigned the file to Gary Switzer and received and returned voice mails and e-mails from the requester concerning the status of his request.

With regard to file A-2006-00605, I reviewed the file from a quality control perspective before it was signed off on by the deputy director.

Thank you.

The Chair: Thank you.

Madame Archambault.

Ms. Francine Archambault (Senior ATIP Analyst, Access to Information and Privacy Protection Division, Department of Foreign Affairs and International Trade): Thank you.

My name is Francine Archambault, and I'm a senior analyst with the access to information and privacy protection division of the Department of Foreign Affairs and International Trade. I've been working in the access to information area for the last 15 years and at DFAIT itself since December 6, 1976.

I've worked on the access file A-2006-00605. I was responsible for identifying the relevant offices of primary interests, which would be Ms. Kutz and another division. I asked them to provide any responsive documents to the ATI requests. They advised me that there were none to the specific request. I advised the director that neither OPI identified any existing responsive records.

Thank you.

The Chair: Thank you.

Mr. Switzer.

Mr. Gary Switzer (ATIP Consultant, Access to Information and Privacy Protection Division, Department of Foreign Affairs

and International Trade): Thank you, Mr. Chair and committee members.

My name is Gary Switzer. I'm an analyst in the access to information and privacy protection division of the Department of Foreign Affairs and International Trade. I've been working in the access field for seven years, but I just started with the Department of Foreign Affairs and International Trade on January 2, 2007.

I worked on access files 466, 604, and 649. On 466 I was responsible for collecting the documents from the office of primary interest, for accessing their recommendations for the exemptions applied under the act, and for preparing the resulting recommendations for the director's approval. On files 604 and 605, the division had determined that the information being requested was already being produced or looked at in file 466, so I prepared a duplicate of that file and gave it to the director for her approval. And for 649, I believe it was, we told the individual requester that we would be giving him the information he was requesting in 466.

Thank you.

• (1140)

The Chair: Thank you.

All right. Well, you were in the room, I believe, most of you, if not all of you, so you know the procedure. You know how the questioning goes.

We'll start, then, with the seven-minute round and Mr. Dhaliwal. Again, I'll remind people to, if possible, ask some questions.

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

I would like to welcome all the public servants who are here today and who are appearing to clear up some of the questions we have. Welcome.

My first question is to Ms. Kutz. You said you are responsible for preparing the reports on human rights on the international scene. Is that true?

Ms. Gwyn Kutz: If I could clarify, Mr. Dhaliwal, my division is responsible for coordinating the process, the global process, for the annual human rights report.

Mr. Sukh Dhaliwal: I'm not clear about what the process is. When you say you coordinate the process, could you explain in 30 seconds what that means?

Ms. Gwyn Kutz: Certainly. Every year my division issues a call to posts around the world that we believe should send a human rights report back to the department. The list of the countries from which we are requesting reports is determined through a consultation process with the geographic areas of the department and with the posts themselves.

The call normally goes out in the fall of every year with the request that the reports be returned to the department by the end of the calendar year.

Mr. Sukh Dhaliwal: So you were very well aware that there were human rights situations and torture in Afghanistan.

Ms. Gwyn Kutz: I am aware that we have reports on the human rights situation in Afghanistan.

Mr. Sukh Dhaliwal: When we talk about this report, who does this blackout stuff? Is it you who decides, when you issue the reports?

Ms. Gwyn Kutz: When my division receives a request from the ATIP office for documents, we conduct a review of the document requested, we apply the provisions of the Access to Information Act, and we make recommendations. I sign off on specific recommendations to the delegated departmental authority, who in this case is the ATIP director, who you've already spoken with.

Mr. Sukh Dhaliwal: Are you the one who made the decision for subsection 15(1)?

Ms. Gwyn Kutz: I authorized the recommendations under subsection 15(1), yes.

Mr. Sukh Dhaliwal: Could you tell me why that would be any different from the year 2004 to 2006, when you made those decisions, when it came to torture and the human rights situation?

Ms. Gwyn Kutz: Mr. Dhaliwal, our officers apply the provisions of the Access to Information Act in a consistent manner. They look at what exemptions are allowable under the act and they apply them consistently.

Mr. Sukh Dhaliwal: When we look at consistency, to me, to the committee, and to Canadians, it's pretty clear that we were not consistent when we look at the reports from 2001 all the way to 2006. Would you like to comment on that inconsistency?

Ms. Gwyn Kutz: When we review a report we look at it under section 15 in the context of whether release of the information could reasonably be expected to be injurious to the conduct of international affairs. This evaluation is done in context and with reference to the information provided within the reports. It is not a simple process where the automatic appearance of a single word means that something stays in or goes out. The process is very carefully looked at to ensure that it is allowable under the act and justifiable when challenged under the law.

• (1145)

Mr. Sukh Dhaliwal: Why would that injury test have been any different when the Liberals were in power than when the Conservatives took over? It's very coincidental.

Ms. Gwyn Kutz: There was no difference in that injury test.

Mr. Sukh Dhaliwal: My next question is to Ms. Archambault.

When those ATIP requests come in, how do you identify them as being of timely interest?

Ms. Francine Archambault: Based on the subject matter of the request, I identify which division is responsible. I use my knowledge of the department—after being there for 30 years—in some cases. In other cases, with reorganizations happening and things like that, I consult our phone book, different databases, or websites to identify them. Ultimately, if I'm not sure I go to the assistant deputy ministers—not them personally but their assistants—and ask if this is part of their responsibility. Then I identify who it belongs to and send the request to them.

Mr. Sukh Dhaliwal: Thank you.

Thanks again to all four of you for coming here.

The Chair: Thank you, Mr. Dhaliwal.

Madame Lavallée, s'il vous plaît.

[Translation]

Mrs. Carole Lavallée: First of all, I want to thank you very much for joining us. It is a great pleasure to meet you and to put questions to you directly. By the way, I know that it is not easy coming here and testifying, but please be assured that we always treat our witnesses with the utmost respect. I have some questions for you, in the hopes that you can shed more light on the subject and add to the information I already have.

I assume all of you have seen the chronology of events surrounding the request submitted by Amir Attaran. It is not signed, but we believe it was prepared by Ms. Sabourin, because she was the one who received the request. If you refer to the entry of February 16, 2007, you will see that there is a reference to one Serge Lebel. To whom does this individual report? Does he perhaps report to you, Ms. Nixon?

[English]

Ms. Jennifer Nixon: He works in our office.

[Translation]

Mrs. Carole Lavallée: Does he report to you?

[English]

Ms. Jennifer Nixon: No.

[Translation]

Mrs. Carole Lavallée: Does he report to one of you?

[English]

Ms. Jennifer Nixon: No. He's one of our systems analysts.

[Translation]

Mrs. Carole Lavallée: According to the chronology, Serge Lebel flagged the request with a MINA ALERT in the tracking system. As I understand it, MINA means “minister's office”. Is that correct?

[English]

Ms. Jennifer Nixon: The minister's office flags the request when they want to see the release package.

[Translation]

Mrs. Carole Lavallée: According to the translation, the minister's office decides how the request will be processed. Is that in fact what you said?

[English]

Ms. Jennifer Nixon: That's not correct.

[Translation]

Mrs. Carole Lavallée: Could you repeat it for me in English, so that the interpreter can provide a proper translation. They are efficient, but we ask a great deal of them. I want to make sure that there is no ambiguity whatsoever where this matter is concerned.

• (1150)

[English]

Ms. Jennifer Nixon: The minister's office receives a report of all the requests that are received in the office and decides which ones it wants to see the release packages of when they're ready to go out to the requesters.

[Translation]

Mrs. Carole Lavallée: So then, on February 13, Ms. Hiseler sent the list of new access to information requests to Mary Ann Strik in the Minister's office. Subsequently, one Josée Lessard phoned — I am assuming she phoned, because it does not say she sent an e-mail — to ask to see the proposed release package. Serge Lebel from the Access to Information Division tagged the request with a MINA ALERT in the tracking system, meaning that the Minister's office wanted to see the proposed release package. Is that correct?

[English]

Ms. Jennifer Nixon: Yes.

[Translation]

Mrs. Carole Lavallée: I assume that a MINA ALERT means that access to information requests are contained in a shared computer file that each one of you can access. So then, for example you can type “current access to information requests” and you will see that a file is flagged with a MINA ALERT.

Does that mean that each time you open a computer file, you will find that it has been flagged in this manner. Is that how it works?

[English]

Ms. Jennifer Nixon: Not necessarily—that's not the process.

[Translation]

Mrs. Carole Lavallée: How is it that Serge Lebel can flag a file with a MINA ALERT? Who sees this?

[English]

Ms. Jennifer Nixon: It's indicated in our electronic tracking system on the particular file when you open the file.

[Translation]

Mrs. Carole Lavallée: That is what I meant. Perhaps I did not use the correct terms, but that is what I meant.

Are many files flagged in this manner? What percentage of all access to information requests are flagged this way?

[English]

The Chair: Over what period of time, Ms. Lavallée?

[Translation]

Mrs. Carole Lavallée: Can I just ask the witness to answer this one last question?

[English]

Ms. Jennifer Nixon: I'm not sure of the exact percentage.

[Translation]

Mrs. Carole Lavallée: Are we talking about 100%, 50% or 10%?

[English]

Ms. Jennifer Nixon: I would say more than 50% and less than 100%.

[Translation]

Mrs. Carole Lavallée: Thank you.

The Chair: Have you anything further, Mrs. Lavallée?

Mrs. Carole Lavallée: Did you not say that I was out of time?

The Chair: You have two minutes remaining.

Mrs. Carole Lavallée: So then, anywhere from 50% to 100 of the files are flagged in this manner, which means that the minister, or someone from the minister's office, has asked to see the proposed release package.

[English]

Ms. Jennifer Nixon: He wants to see the package going out.

[Translation]

Mrs. Carole Lavallée: Does the overall information pertain to the redacted version or to the uncensored version?

[English]

Ms. Jennifer Nixon: No, only the redacted version.

[Translation]

Mrs. Carole Lavallée: Further on, we read that on April 17, all of the files in the proposed release package were sent to the Minister's office, to Mr. Alain Latulippe, for review before April 20, 2007.

Why did you send these files so far in advance of their release?

[English]

Ms. Jennifer Nixon: I'm not sure what they do with it when it gets to their office.

[Translation]

Mrs. Carole Lavallée: The fact is that the name of the individual who sent the information is not listed. However, we do have the name of the person who received the documents. So then, we know that the documents in the proposed release package were sent, but we do not know who took this action.

Can one of you tell me who sent the release package on April 17 to Alain Latulippe in the Minister's office? No one can answer the question. Do you have any idea of which employee on your team, in your division, may have been responsible for doing this?

Ms. Francine Archambault: Maybe I can answer your question. When a file is flagged with a MINA ALERT and the proposed release package is sent to the Minister's office, the person responsible for doing that is this analyst. That is part of our job.

• (1155)

Mrs. Carole Lavallée: I see. So then, you were the analyst in charge of this file?

Ms. Francine Archambault: No, this file was not assigned to me.

Mrs. Carole Lavallée: To whom was it assigned then?

Ms. Francine Archambault: That would be to Mr. Switzer.

Mrs. Carole Lavallée: I see.

Mr. Switzer, did you send the proposed release package to the minister's office?

The Chair: Your time is up, Mrs. Lavallée.

Mrs. Carole Lavallée: Is it really up this time?

The Chair: Yes.

Mrs. Carole Lavallée: Thank you.

[English]

The Chair: I'm sorry. Is the person who is handling the ATIP request the person who sends the documents that are about to be released to the minister's office?

Ms. Francine Archambault: That is correct, sir.

The Chair: Thank you.

Mr. Martin.

Mr. Pat Martin: Thank you.

Thank you, witnesses, for doing all you can to help us with this investigation. For the record, I think you do wonderful work, especially the tracking of human rights issues across the world. It's important and valuable work, and we appreciate it. Our questioning with respect to this access to information regime is in no way a reflection or a criticism of the valuable work that you do.

But let me ask you this. We had witnesses say they believe there's a chill regarding freedom of information, specifically concerning the treatment of Afghan detainees. We had one witness testify that he has been told there are special teams to deal with requests that relate to detainees, that these requests are specially treated. Is there such team work dealing with special types of requests about Afghan detainees?

The Chair: Who are you asking?

Mr. Pat Martin: The ATIP teams.

I have other questions for Ms. Kutz.

The Chair: Shall we start with Ms. Nixon?

Mr. Pat Martin: Ms. Nixon, is there a team approach to specific types of ATIP questions regarding Afghan detainees?

Ms. Jennifer Nixon: No.

As team leaders, when we're assigning files to an analyst, we'll try to keep requests of similar subject matter with the same analyst for consistency purposes, but there is no...

Mr. Pat Martin: I will go to Ms. Kutz now.

Did you ever respond that no such documents exist? At the time of the original, more global request, was it your opinion that no such document of the type this person was asking for existed?

Ms. Gwyn Kutz: Thank you, Mr. Martin. I really do appreciate this opportunity to clarify this point. I think it is important that the committee have a clear understanding of how this was processed.

When I received the request about whether there was a 2005-06 or a semi-annual or an annual report on human rights performance in countries around the world, this sounded to me like a request from someone who was very familiar with the kind of reporting that is done on human rights situations around the world. To me, it sounded like the requester was informed, that he was someone who knew about the kinds of human rights documents that exist out there, such as the ones produced by the United States and the United Kingdom. For that reason, in my response I indicated that Canada does not produce a report on the global situation of human rights around the world analogous to the kind of report that the U.K. or the U.S. produces.

My understanding that this was in fact what the requester was looking for I think you'll find is confirmed by his second request where he said that he assumed there was a document—

I am assuming that every year there is some kind of "state-of-the-world" summary or report prepared for the Minister...that describes progress and problems with human rights in various parts of the world...

—with chapters on different countries' situations.

Mr. Pat Martin: Right.

Ms. Gwyn Kutz: So that confirmed my original understanding.

Mr. Pat Martin: Were you aware that he was going back and forth by e-mail with somebody at Foreign Affairs saying that he assumed there must be some type of report produced by somebody somewhere in DFAIT about issues concerning Afghanistan? He quoted a specific report, "Afghanistan 2006: Good Governance, Democratic Development and Human Rights".

He obviously clarified what he wanted then.

● (1200)

Ms. Gwyn Kutz: Yes, sir, he clarified what he wanted. In fact, he submitted a request on the Afghan report prior to his submission of a request for a global report.

If you look at your chronologies for the two requests put forward by Mr. Esau, the 604 request was for the specific Afghan report. The processing of that request was underway when he made the second request—the 605 request, which follows in the numbering system—for a copy of DFAIT's 2005 and 2006 annual or semi-annual reports on the human rights situation around the world.

In fact there was a response underway for his specific request on Afghanistan.

Mr. Pat Martin: Going to the censoring, you say that using subsection 15(1), if it was "injurious to the conduct of international affairs", seems to be the most frequent justification for stamping out, for most of the blacking out.

How is it that all references to torture in 2002, 2003, and 2004 seem to be freely circulated information that was not injurious to the conduct of international affairs, but in the 2006 and 2007 reports, all references to torture are blacked out?

When did that policy shift occur? Why would the administration of that particular exemption have changed so dramatically with a change of government?

Ms. Gwyn Kutz: If I could refer to the application of subsection 15(1), the reports are viewed according to the act. In the interpretation of subsection 15(1), we look to see whether the release of information could reasonably be expected to be injurious to the conduct of international relations. That review is not word specific.

Mr. Pat Martin: Maybe you could help us with the rationale, specifically in this context. What was the rationale this time?

Ms. Gwyn Kutz: Mr. Martin, I'm not able to speak to specific redactions made in the 2006 report—

Mr. Pat Martin: What about in the 2005 report?

Ms. Gwyn Kutz: —or to what was taken out of the other reports.

I can speak to you about the rationale for redactions, and I would be very pleased to do so.

Mr. Pat Martin: Without admitting that the word “torture” was censored, let's say the word “torture” came up. What would be the rationale for blacking it out?

Ms. Gwyn Kutz: In any sentence, the reviewer would look at the information and determine whether its release would be injurious to the conduct of international affairs.

Now whatever the language is, whatever the text is in the document, the reviewer would look to see whether the release of that information could bring risk to the source or whether the release could cause a source to no longer be willing to provide information to diplomats abroad.

The reviewer would look to see whether the release of that information would negatively affect Canada's capacity to carry out its functions in the country in question.

Mr. Pat Martin: That's—

The Chair: Thank you, Mr. Martin.

Ms. Kutz, just so we're clear, are you in agreement that the 2002, 2003, and 2004 reports made reference to torture in the redacted versions?

Ms. Gwyn Kutz: Yes, Mr. Chairman, parts of the released text use the word “torture”.

The Chair: Are we agreed that the 2005 and 2006 redacted reports made no reference to torture?

Ms. Gwyn Kutz: I would need to reread those reports to see whether the word “torture” appears.

The Chair: Okay. I would suggest to you that they don't. I'm simply asking if you would agree with that. If you have to reread it, that's fine. Maybe you can have a few minutes to skim through it.

This is one of the things the committee is curious about. Whether you can respond or not is irrelevant. It's a fact that there are references to torture in three of the reports about Afghanistan and there are no references to torture in two of them. That's all I'm saying.

Mr. Tilson.

• (1205)

Mr. David Tilson: Something was just said in regard to dealing with Mr. Esau's.... I don't know who I'm asking this to, so anybody can jump in.

Mr. Esau had two requests going, as I understand it. One was this global request and the other was specifically on Afghanistan. Were these made together or were they made separately? I wonder if you could just elaborate, because that's an issue that was raised to the committee when he was giving testimony. I'd like to hear your version of what those two inquiries were all about and what your response was to those two inquiries.

The Chair: You said, Mr. Tilson, that you didn't know who to direct that question to.

Mr. David Tilson: Well, I'll look at Ms. Kutz, because she nodded her head; she gave it away.

The Chair: All right, Ms. Kutz.

Ms. Gwyn Kutz: Both of those requests came to my division as the office of primary interest, so it was my division that responded to the request from the access to information office. Now, because the second request made no reference to Afghanistan, I think they may have been assigned to different case officers within the ATIP office. So they came from two different officers, channelled to my office, to deal with both requests on a substantive basis.

Thank you.

Mr. David Tilson: This is to Ms. Kutz, I guess, unless someone else has some comments.

How does one determine whether there should be a redaction or a blacking out? How do you do that? I know we have guidelines and we have an act and we have...something in your head?

Ms. Gwyn Kutz: The officers review the text looking at the redactions that are allowable under the ATIP law that would apply to the Department of Foreign Affairs.

As we look at the document, some of the considerations we look at in terms of things that would be injurious to the capacity of Foreign Affairs to carry out its functions or would be harmful to the integrity of the diplomatic process are questions as to whether release of that information would bring danger to an individual, whether the release of that information would harm our capacity to continue to interact with the government in reference, whether the release of that information would be contrary to a confidential agreement with another government to protect information that is provided in confidence, or whether the release of information would apply to information that would be deemed to be privileged in nature by the person providing it. The release of information under all of those kinds of situations—and those are not exhaustive—would hamper the diplomatic service's capacity to continue to collect information from a wide variety of sources. Sometimes they are within the government in the country where the embassy is. Sometimes they are members of other foreign governments that are in that country. Sometimes they are individuals associated with international organizations operating in that country. Sometimes they are private citizens who typically are at greatest risk should the information be released.

Does that sufficiently answer your question?

Mr. David Tilson: That's helpful, yes.

Again, to anyone...let's try Mr. Switzer. How are you all made aware of changes to the law when you're assessing whether there should be redactions or you're reviewing applications? I mentioned guidelines. You've heard the testimony, I'm sure, and read everything. But there are, from time to time—I think Ms. Sabourin referred to that in her testimony—changes to the law.

Maybe it's unfair that I'm picking on you, so to anyone, how are you all made aware of those changes? Are there reports that come out, or do you have meetings? What's the process on that?

•(1210)

Mr. Gary Switzer: One of the most recent changes came about because of the Federal Accountability Act, which added a section in the Access to Information Act. I believe it's the Information Commissioner or Treasury Board that then notifies the departments that these changes have been made. It's then up to the delegated authority—and also the analysts working on the file—to make sure they're aware that these sections are there and what it might mean to you when you're reviewing a file.

I believe that's the process.

Mr. David Tilson: Okay.

Sorry.

Ms. Gwyn Kutz: One of the common methods—and it's not the only one by which departmental officials become aware of any changes in any kind of legislation—is through the system of broadcast messages, whereby the employees of the department who would be affected by changes to legislation are all advised of relevant changes to that legislation. Subsequently, offices of particular interest that have a very specific interest in that legislation would also be notified.

Mr. David Tilson: There has been considerable testimony that you're all very qualified, expert people, which I'm sure you'll remind them when you're talking about salaries for the next increase. My question to you is this: is there a form of continuing education that Treasury Board or anyone offers you, collectively?

Ms. Gwyn Kutz: The department has an ongoing training program for a wide variety of issues of importance to the department. There are training courses on information technology. There are training courses on substantive issues. There are training courses targeted to different kinds of employees who are performing different functions throughout the department. There is informatics training. There is professional training. So there is a vehicle for the training of employees throughout the department, yes.

Mr. David Tilson: With respect to these two applications that the committee has been discussing, do you have any facts that you can relate to the committee as to whether there has been a leak?

Ms. Gwyn Kutz: I have no information regarding any leak, sir.

Mr. David Tilson: The other three people?

You're all shaking your heads no.

The Chair: Thank you, Mr. Tilson.

Mr. David Tilson: Thank you.

The Chair: A good way to end.

Mr. Pearson.

Mr. Glen Pearson: Thank you, Mr. Chair.

Thank you for coming in, all of you.

Ms. Nixon, when you gave your introduction you talked about how, when it came back to you, you did a “quality report”. Could you just tell me exactly what that is? Does that include a communications assessment?

Ms. Jennifer Nixon: A communications assessment how?

Mr. Glen Pearson: One of the other witnesses said that when these things come back, they do a communications assessment for how it's going to be released. Is that part of what you do?

Ms. Jennifer Nixon: No, not from a quality control—

Mr. Glen Pearson: So what is the quality control?

Ms. Jennifer Nixon: It's ensuring that the letter going to the requester is appropriate. It's ensuring that the steps that have been taken in the file are appropriate as well.

Mr. Glen Pearson: Thank you.

Ms. Kutz, I'm sure you can tell our confusion around 2002, 2003, 2004, and then the last two. I think we're still trying to get our heads around it. It seems to us that something has obviously changed in those two different timeframes. You were saying that you have done an injury test on all of them to stay consistent with all of that, but I'm trying to understand, then, what changed in world affairs between, let's say, 2004 and 2006. If the injury test that you have applied is the same, why was it appropriate to not release some of the things in 2006 that were released in 2004, specifically things like torture? If the consistency test remained the same and was consistent, what has changed in the world in international affairs?

Ms. Gwyn Kutz: Thank you for the question.

The package of reports to which you refer was reviewed as a package, so the same test was applied to all of those years at the same time.

Now, about the single appearance of a word in one report—you refer to the existence of the word “torture”, which was released in some of the early reports—I heard the quoting from one of the members this morning, I'm not certain which one, of a significant passage that contained that word. That passage would have been reviewed in accordance with the act. The reference to torture in that passage was in fact contained in a public report that had been issued by the Afghan human rights committee. So that was information that was public and had been released as such by that institution.

•(1215)

Mr. Glen Pearson: Ms. Kutz, because we look at things like torture as a war crime, you can see how the access to information is so important to Canadians who look to committees like this to make sure we do our job. So you're trying to weigh an injury test for certain individuals and sources and others, and there's also the broader issue of something like war crimes. This is probably impossible for you to answer, but it's something I've wrestled with. How do you wrestle with that when you choose what to release and what not to release?

How do you wrestle with that yourself? Does that go into your prioritization of what you will release and what you don't release?

Ms. Gwyn Kutz: The issue you're referring to is certainly a question of great importance to Canadians, and I fully agree with that, but the question here is related to the annual human rights reports and their purpose and function.

The annual human rights reports are used as an internal working document to inform the policy process, to provide the background and the backdrop to recommendations and to programming and to the work of the department. Whether this is the sole or the best source of information for the public on questions of torture or on the Canadian government's stance on torture is a very different question.

These reports are not designed to be a public government statement on human rights situations in a particular country. They are designed to be working tools providing assessments, frank information, and recommendations to the policy process.

Other vehicles are more appropriate for the kinds of purposes to which you refer.

Thank you.

Mr. Glen Pearson: Thank you.

The Chair: Mr. Stanton.

Mr. Bruce Stanton: Thank you, Mr. Chair, and thank you to our witnesses.

I have a couple of specific questions. First to Mr. Switzer and perhaps to Madame Archambault, but we'll start with Mr. Switzer.

In the outline, the timeline that involved the request 605, which I understand was the general request put forward by Mr. Esau, Mr. Switzer, it indicates in here that you reviewed the approach to certain exemptions in that report on or about the middle of March and that you undertook, in fact you requested, to review these exemptions, if I can call them that. "Redaction" is another word that has been used. You got a copy of the unmarked document to go through that review, and ultimately you finished that review on or about April 13, so almost a month's time went by in the course of this review where you're essentially looking at a document, reviewing the exemptions that took place.

Could you describe what sort of dialogue went on between you and, in this case, Mr. Bryan from GHH to go through the process of giving yourself, as the reviewing officer, the comfort level you needed that the redactions were consistent and proper and in accordance with the act?

• (1220)

Mr. Gary Switzer: If I can just correct you—

Mr. Bruce Stanton: By all means.

Mr. Gary Switzer: —the file I worked on was 466.

Mr. Bruce Stanton: I'm sorry.

Mr. Gary Switzer: It has nothing to do with 605.

Mr. Bruce Stanton: I'm sorry.

Thank you.

Mr. Gary Switzer: But you are right about the timeframe.

Mr. Bruce Stanton: Please proceed.

Mr. Gary Switzer: I received the documents from GHH and proceeded to send them to our clerks downstairs to put on our electronic system—it makes it easier for giving out to the requesters. They are very busy, so it took a few days. They got back to me and said they couldn't scan these documents into our system because they were highlighted in different colours. What we ask our OPIs is

to highlight in yellow if they have a recommendation for protection, because when that goes into our system it doesn't pick up the yellow; it's a clean document and it appears like any page.

Unfortunately, in this case there was green and blue and some handwriting, so I had to go back and ask them if they would get cleaner copy, which happened, but it took them some time. It's my understanding that the reason this file is partially late is because GHH had very few staff members. The director, Gwyn, I believe, was in and out of the office—in and out of the country, I believe—and she is the sign-off individual, so it was difficult for them to get everything together to get back to us.

In the meantime, I have approximately 30 to 40 requests. To give you the process, the very first priority on a request is to go out and task for documents. You can't work on a file if you don't have something to work on. If you're getting two or three of these a day and you have to go out to different areas to task, that becomes your priority. There are going to be times when this is going to get set aside because the priority is here.

Mr. Bruce Stanton: So you've got 30 or 40 of these files sitting on your desk at any one time, active?

Mr. Gary Switzer: Yes.

Mr. Bruce Stanton: Then there's this exchange of information.

Did you get the sense that GHH is doing all it can? Obviously, we've heard that there are some practical barriers here to moving this process along. Obviously, this isn't the only file you're working on in the course of several weeks in March and April.

Mr. Gary Switzer: Nor is it the only one that has this delay because of.... It depends on the number of documents you're going to get. If you get one document, one page, that's not very difficult to deal with. But if you get 1,000 pages, and I have dealt in the past with records containing 15,000 pages, well, when you're trying to do that and maintain the rest of your files, because the bottom line is... and I think Mr. Tilson referred to this earlier this morning. Well, what can you do to change the act? I don't know. The timeframe is 30 days. That's not working days; that's calendar days. So on Saturday and Sunday when nobody is in the office, or on a holiday when nobody is around, that day counts toward the timeframe. So there are times when you're not going to meet that timeframe. That's part of the reason, and the fact that they had to be sent back.

When I got the documents back, I proceeded to work on them at that point in time.

Mr. Bruce Stanton: Do I have any more time, Mr. Chair?

The Chair: No. Thank you, Mr. Stanton.

Monsieur Vincent.

[*Translation*]

Mr. Robert Vincent: You stated that you were the one who verified the document. You received it on March 14 and conducted a preliminary examination. Between March 11 and March 19, you discussed a possible exemption with Gerry Brian. On March 26, you received the original documents without any annotations and you finished reviewing them on April 13.

Once you completed your examination, to whom did you send the file?

[English]

Mr. Gary Switzer: Do you mean when I finish working on the file and then send them for processing? I sent them to my manager at the time—his name is Chuck Melvin—for his review of the information, making sure that the letter was appropriate and that I had done everything I was supposed to do in the file.

It's my understanding that from there it goes to the director. She is the sign-off authority. She's the delegated authority to sign off on all ATIP requests. When she's not in the office, the deputy director does it. But she is the delegated authority for signing off, whether she agrees or disagrees with my—

• (1225)

[Translation]

Mr. Robert Vincent: So then, Ms. Kutz was the individual who signed off on the file. Correct?

[English]

Mr. Gary Switzer: No, that would be Ms. Sabourin.

[Translation]

Mr. Robert Vincent: Once you finish your work and make your recommendations, do you always track the files that you process? Did you in fact see the final version of the report released on April 23 last? I am talking here about the file turned over to the requester on April 23 at 3 p.m. Between April 13 and April 23 of this year, did you in fact see the censored version of the file, before either the media or Mr. Attaran did, a file that you had in fact commented on?

[English]

Mr. Gary Switzer: No, that's not my place.

Once the delegated authority, the director, signs off on the file, I don't see the file again. It's my presumption at the time that if she signs the file and delivers it to the requester, she has agreed with my recommendations under the access act to protect the information. If she doesn't, before it ever gets to the requester she would come back. She might come back and say, "You might want to look at something else in this file." That's when that might happen. But once it goes to her for final review and she signs off on the letter, that's the end of it. I don't see it again—unless there's a complaint filed.

[Translation]

Mr. Robert Vincent: When you examined this file, did you know that a MINA alert was on the file? How did you react when you discovered this fact? In terms of analysing the file, how did this change your perception or alter your view of what should be changed, or kept, in the file?

[English]

Mr. Gary Switzer: That doesn't change my perception in the analysis of the document whatsoever. When the MINA alert is on a file, what that says to me is that ministerial correspondence would like to see this file before the information is given to the requester. For whatever reasons that happens—and some, I believe, are questions and answers, but I don't work there, so I'm not sure—it means nothing to me until the end of the file, before I give it to my manager or Madame Sabourin. It has no effect on how I process the file whatsoever. It's just at the end. It just means I have one more step I have to take at the end of the file.

[Translation]

Mr. Robert Vincent: Could you explain to me what this final step entails?

[English]

Mr. Gary Switzer: Excuse me, I didn't get that.

[Translation]

Mr. Robert Vincent: You mentioned a final step. When a file is flagged with a MINA ALERT, once your job is completed, there is one final step to be taken, or so you say. What is this final step?

[English]

Mr. Gary Switzer: What I would do is finish the file, take it down for review, prepare an e-mail to MINA that says this file is being sent out. At the time the director is looking at it, that MINA has probably gone forward, because she approves the fact that the MINA should go forward. Then she signs off on the file. There is no other step for me to take until the date we have told them it's going to be sent out.

The Chair: Thank you, Monsieur Vincent.

Just so we're clear, Mr. Switzer, it's pretty simple, I guess. If there's no MINA, then you don't have to send a letter to the minister's office. If there is a MINA, then you have to send a letter to the minister's office, and that's what you're talking about as the extra step.

Mr. Gary Switzer: Yes. You basically have to notify them that this is ready to go for disclosure.

• (1230)

The Chair: Good.

Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chairman.

I want to thank you for appearing in front of us today and for doing an absolutely fabulous job.

We've been criticized on our side of the bench here a little bit on a couple of issues, and I think you've done a very good job of clarifying some of the things.

Ms. Kutz, what was news to me, or new to me—and maybe I should have known about it—is when you said that you had correspondence from an individual making a request that he wanted a report on something to do with the state of the world. Was that what he actually said, "state of the world"? Can you read it again for me?

Ms. Gwyn Kutz: Just to clarify, the office of primary interest is never in direct contact with the requester. The requests are always channelled through the ATIP office. So the requester is anonymous to the persons who are processing the file.

However, I note that in the chronology that has been provided and in the letter that was sent by Mr. Esau to the ATIP office in his follow-up request on the report, it says, "I am assuming that every year there is some kind of "state-of-the-world" summary...."

Mr. Mike Wallace: Okay. I appreciate that.

We heard earlier today from the chair, actually, who indicated that maybe we—not we but the staff—should have been more aggressive in making the call saying, “Do you really mean this instead of what’s in front of us?” I think you’ve been very clear that, in black and white, it asks for a “state-of-the-world”....

Would you like an opportunity to comment on that, whether you’ve learned anything from this experience? Would you have done anything different, or have you put anything in process that’s any different from that, based on the information you have in front of you?

Ms. Gwyn Kutz: Certainly, Mr. Wallace. This has been an interesting learning experience I think for all of us. I would say that in future situations where I am not able to find a report, even if it is what I believe to be a very specific report, I would ask the ATIP person with whom I’m in contact to perhaps probe a little bit more to find out whether I was wrong in my assumption of what the requester was asking.

Mr. Mike Wallace: So on the comments about us denying there was a report, that certainly didn’t happen at your level, at the director level. The information that you were provided of what the person wanted just actually does not exist, and that’s why it was denied, because you can’t support something that doesn’t exist. Would that be an accurate statement, then?

Ms. Gwyn Kutz: That is correct. The department never denied the existence of the Afghan reports and was in fact in the process of processing a couple of requests at the time the information that no global report exists was provided to the second requester.

Mr. Mike Wallace: It is a very busy department, obviously, in all areas but particularly in this area, with subsection 15(1) likely applying to a lot of things that happen in the Department of Foreign Affairs. But the Information Commissioner has a complaint, and they will rule on those complaints.

I don’t want to talk to you about this specific complaint, but I’m sure there have been other complaints that have happened. What happens? With the Information Commissioner, the process—and I think appropriately set up—is that a third party comes in and looks at all the information that has been available, has been provided, what’s been blacked out, what hasn’t, and where we’ve gone wrong. We have a letter here saying it may have been a bit slow but you did the right thing, that the department wasn’t trying to do anything to stop that information. It was a bit slow, but they’ve resolved that issue.

What do you do? Do you as a director look at what happens and what the Information Commissioner may report on? What happens to that information? Do you try to implement that? Do you have any history of what happens with that information once the Information Commissioner rules on something?

Ms. Gwyn Kutz: This falls outside my area of immediate expertise. It might be better directed to the delegated authority.

Mr. Mike Wallace: So it would be further up the authority ladder that this would happen.

Ms. Gwyn Kutz: The delegated authority for access to information requests or the deputy minister would be a better place to answer that. It’s outside my area of expertise.

Mr. Mike Wallace: What does delegated authority mean to a staff member, then? I asked this previously.

• (1235)

Ms. Gwyn Kutz: The delegated authority is when the responsibility has been given to an individual to be able to sign on behalf of.... If it is an authority that is delegated from the deputy minister, then the delegated authority is the responsibility of the person who has been given that authority to sign on behalf of the department.

Mr. Mike Wallace: Do you have delegated authority for anything?

Ms. Gwyn Kutz: I do not have delegated authority for access to information requests. This is why they are processed through the unit that is headed by Madame Sabourin.

The Chair: Thank you, Mr. Wallace.

Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chair.

I’d like to go back to the MINA alert designation, when files are stamped “MINA alert”. That means the minister should be made aware not only that this particular request has been made, although not by whom—I understand that’s confidential—but that the finished version will be given to the minister’s office so that they’re aware of what is sent out. Is that accurate?

Ms. Jennifer Nixon: Yes. The only thing is that it’s not sent to the minister; it’s sent to the minister’s office. It’s the minister’s office that wants to see it.

Mr. Pat Martin: I understand, to the minister’s office. So the censored version, the finished package, is sent out to the minister’s office?

Ms. Jennifer Nixon: Yes.

Mr. Pat Martin: So that was the case with the document, “Afghanistan 2006”; it was flagged “MINA alert”.

There’s another access to information package that’s been in circulation that has the 2002, 2003, 2004, and 2005.... Do you know if that was stamped “MINA alert” in its censored version?

Ms. Jennifer Nixon: I’m not familiar with the document.

Mr. Pat Martin: You’re not familiar with the document?

The Chair: Do you have the numbers?

Mr. Pat Martin: I only have the page numbers on the bottom.

The Chair: On the top there’s usually an access request number. Is there any chance of having that?

Mr. Pat Martin: No, I do not have that number. The codes at the bottom of the page indicate simply the number of pages, is it? For instance, at the bottom of “Afghanistan 2006”, which everybody agrees is released, is a “000086”. What is that an indication of? It’s page 1, so I don’t think it’s just a numerical counting of the pages.

The Chair: Does anybody know?

Ms. Francine Archambault: May I respond to that, please. The darker page numbers on the bottom with the multiple zeros in front indicate the page number of the release package. It's not necessarily the page number of the report. So let's say you ask me for whatever information; I give you a release package of 100 pages, and that page I might be page 50 of those documents that I gave you.

Mr. Pat Martin: Okay, that's it.

The fact that these packages went to the minister's office, to my mind, removes any last vestige of doubt that ministers and senior officials knew that torture and abuse were rife in Afghan jails. How could they not know? How could the minister's office not be aware that torture and abuse were rife in Afghan jails if these reports were sent to them as "MINA alerts"? Even if the annual reports are not routinely given to ministers, by virtue of the access to information requests being given to the minister's office, they're made aware of it. Is that a fair conclusion to draw?

Ms. Gwyn Kutz: The package that is provided to the office of the minister at the end of the redaction process—if the minister's office has flagged the report for notification prior to release, which is what the "MINA alert" means—is the redacted package.

Mr. Pat Martin: It isn't the minister who flags it "MINA alert". Somebody in the ATIP coordinating section flags it "MINA alert".

Ms. Jennifer Nixon: It's the minister's office that flags the ones they want to see.

Mr. Pat Martin: But the minister's office hasn't seen it.

Ms. Jennifer Nixon: We send them a report every so often—I'm not sure exactly the time period—that states the new requests that we've received, the text of them only, and they indicate which ones they want flagged as "MINA alert".

Mr. Pat Martin: I see. So the access to information requests asking for information about torture of Afghan detainees the minister's office flagged as "MINA alert"?

The Chair: They didn't ask about torture. The word "torture", as far as I know, is not in any of the requests. They asked for specific reports.

• (1240)

Mr. Pat Martin: The human rights.... I'm sorry, were you finished answering?

Ms. Jennifer Nixon: I am.

Mr. Pat Martin: We were interrupted by others.

It seems to me that the human rights reports that were requested by Professor Attaran and Jeff Esau...were they both flagged as "MINA alert"? I don't know the numbers. You had the three numbers of the cases that you made reference to frequently here. Were all of those flagged "MINA alert"?

Ms. Jennifer Nixon: Two were: 466 and 605 were.

The Chair: And 604 as well.

Mr. Pat Martin: So all of this ultimately wound up in the minister's office?

Ms. Jennifer Nixon: Redacted.

Mr. Pat Martin: The redacted version.

Now—

The Chair: That's five minutes, Mr. Martin.

It's my turn. I'm curious about timelines and the reference to 604.

Mr. Switzer, you worked on that one. On April 12, GHH advises that responsive records are already being gathered from a previous request. It's obvious that we're referring to Professor Attaran.

Mr. Gary Switzer: Yes.

The Chair: On April 23, 11 days later, Professor Attaran gets his CD-ROM.

Why did it take until May 16, that is, after or about the time Mr. Esau appeared before this committee, for him to get the same material?

Mr. Switzer.

Mr. Gary Switzer: You would have to address that question to Madame Sabourin. It was in her hands before that, so I cannot answer.

The Chair: All right. I might as well ask Ms. Nixon or Ms. Archambault. Can either of you answer that specific question?

Ms. Jennifer Nixon: No, it would have to be her.

Ms. Francine Archambault: It would have to be her.

The Chair: Thank you very much.

Ms. Kutz, in reference to 605, on March 22 a response letter was sent to the applicant stating, "Therefore, no such report on human rights performance in other countries exist." If I recall the e-mail sequence we've received, that is the wording that GHH sent to ATIP. ATIP then quoted that wording to the requester. You've already told us you were the author.

What do you mean by "no such report on human rights performance in other countries exist", when we've already heard from the deputy minister that there were 111 different country reports last year alone?

Ms. Gwyn Kutz: Thank you, Mr. Chairman.

The sentence with the words "no such report" refers to the immediately preceding sentence—which was also part of my response—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". Therefore, when I referred to "such", I was referring to the sentence immediately preceding that referring to the kinds of global reports produced by other countries.

The Chair: Thank you.

In the correspondence on the same file of April 10, Mr. Esau was trying to explain what he was getting at. On April 5 he was asking for a "section/chapter/case summary entitled "Afghanistan-2006: Good Governance, Democratic Development and Human Rights". He got it almost exactly right, except it wasn't a chapter, section, or case summary; it was a separate report. You're indicating in your response in this chronology that it would take hundreds of hours to locate all the reports.

What could you possibly mean by that?

Ms. Gwyn Kutz: Mr. Chairman, the specific wording of the follow-up request did not come directly to me. It was conveyed to me over the telephone that there was a follow-up request asking about the original request for the 2005-06 report. I reiterated that we didn't produce such a report. When challenged and pressed by the ATIP officer who was looking to further fulfill Mr. Esau's request, I elaborated to explain that, yes, we do produce these other reports—as Mr. Esau would have known, since he in fact had an active request for the 2006 report in the system.

•(1245)

The Chair: My question is that he specifically asked for “Afghanistan 2006”. As far as I can read from the chronology, your response was, “If Requester wants Division”—and I presume that means GHH—“to search for each report”—and I don't know what you mean by “each report”, as he asked for “Afghanistan 2006”—“it would take 'hundreds' of hours to locate all the reports”.

I don't understand what your response was, when it was clear that Mr. Esau was then looking for “Afghanistan 2006”. Why didn't you just give it to him?

Ms. Gwyn Kutz: When I received the follow-up request, I did not receive this text from the requester. I received a request for confirmation that Canada does not produce the overall report—the initial report he had asked for. I then indicated that we do produce the annual country reports but that given the volume we would need to know exactly what it was he was looking for. Because of the volume of reports and the number of years, without some clarification it would take hundreds of hours to search for and produce all the reports.

The Chair: Ms. Archambault, you were working on this file. Did you let Ms. Kutz or anyone in her division know what Mr. Esau said on April 5?

Ms. Francine Archambault: Yes, I did. If you will read further... Maybe I didn't.

The Chair: Well, you answered my question.

Ms. Francine Archambault: He was giving the Afghanistan report as an example of what he was looking for. He wasn't reiterating that he wanted it at this particular point.

The Chair: Yes, he was giving it as—

Ms. Francine Archambault: It was as an example, and that's what I went back to Ms. Kutz with.

The Chair: All right.

So, Ms. Kutz, it's back to you. You were told, as an example, that he wanted “Afghanistan 2006”, and he named the report exactly as it's called. Why did you not provide that at that time?

Ms. Gwyn Kutz: I do not recall being advised that he wanted the Afghan report. Had I been asked for that Afghan report I would certainly have provided it, as I had in response to his earlier request and the request of Mr. Attaran, both of which were in the system. Had there been a clear request that was conveyed to me as a request, I would have responded in kind.

The Chair: I guess we'll have to agree to disagree. It seems like a very clear request to me.

Madame Archambault, do you want to comment?

Ms. Francine Archambault: Excuse me, sir. What I'm trying to say is that when I pushed Mr. Esau, when I discussed with Mr. Esau what he was looking for, he gave that one as an example. When I asked, “Do you want that one?”, he said that he already had a request in for it, so I didn't have to ask her for another copy of that report. It was an example of the fact that he knew that there were other kinds of human rights reports that were done by the department.

The Chair: By the way, Ms. Archambault, thank you very much, in my view, for doing what this manual says, and that is carrying on a conversation with the requester. It's just unfortunate that it didn't occur before the first answer went out that there was no such report. I congratulate you for what, in my view, is adhering to the paragraph I read earlier.

Ms. Francine Archambault: Thank you, Mr. Chair.

The Chair: Thank you.

We'll have Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

I thank the witnesses for coming.

Coming from the private sector, one of the things that has struck me is the level of professionalism in the public sector, and I really want to tell you that. You obviously take your jobs very seriously. It's unfortunate that every once in a while these sorts of things have to come up.

I wanted to ask, however, Ms. Nixon, how many years you have been in the public service.

Ms. Jennifer Nixon: Do you mean in the public service all told? It has been eight years.

Mr. Dave Van Kesteren: I'll ask Ms. Kutz.

Ms. Gwyn Kutz: It'll be 19 years in December.

Mr. Dave Van Kesteren: Ms. Archambault.

Ms. Francine Archambault: Thirty and a half years.

Mr. Dave Van Kesteren: Wow. And you, Mr. Switzer?

Mr. Gary Switzer: It has been twenty-four years.

Mr. Dave Van Kesteren: Twenty-four, wow.

As they say, nations rise and nations fall, and I suppose governments come and governments go.

Have you ever had government interference in your duties? In all your years of service, have you ever had what you would consider government interference, political government interference? I'll ask you all individually.

•(1250)

Ms. Jennifer Nixon: No.

Ms. Gwyn Kutz: No.

Ms. Francine Archambault: No.

Mr. Gary Switzer: No.

Mr. Dave Van Kesteren: The last question I wanted to ask is whether, should that ever happen, there is an avenue to protect your integrity. Is there somewhere you can go? Is there protection for you in case this ever did happen?

Ms. Kutz.

Ms. Gwyn Kutz: One would automatically go to one's supervisor.

Mr. Dave Van Kesteren: So there is an avenue to make sure that this....

Ms. Gwyn Kutz: Yes, there is an avenue.

Mr. Dave Van Kesteren: Good. That's the only thing I wanted to ask. I just think we needed to clear some of the air.

The Chair: Thank you, Mr. Van Kesteren.

We'll have Mr. Dhaliwal, followed by Mr. Tilson.

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

To all the public servants who are here today, I'll carry on with Mr. Van Kesteren's question.

When we talk about no political interference, the way we see the present government bullying its own members, kicking them out, do you see...?

An hon. member: [*Inaudible—Editor*]

Mr. Sukh Dhaliwal: Mr. Wallace, can you give me a minute to ask a question? You had all your time. If you really want to follow your minister's letter, then let me pay due respect to the honourable public servants we have here. I thought you were much more mature than this.

Mr. Chair—

The Chair: Whatever insults you want to trade, would you please trade them through the chair?

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

The Chair: Would you ask your question, please?

Mr. Sukh Dhaliwal: First of all, I'd like to make the record clear. We got this bullying letter from the minister today, so his caucus members should pay due respect to it.

Second, we should act very professionally. I come from a professional background, and when members on the other side speak, you will never hear me intervening. I would like the same respect to be given by the other side so we can show our witnesses that we are serious about this matter.

This is a very serious matter where Canada's reputation is at stake. It's a situation with human rights where there are departures happening—so alleges the corrupt Karzai government in Afghanistan. So we should be very serious.

To Ms. Kutz again, you said when you applied subsection 15(1)... I'm not very clear about this. When you said there were risks to the source, what did you figure out were the risks for blacking out those...?

Before I go there, I would like to show you a piece of paper I have from the *Globe and Mail* from April 26, 2007. There was a story on the cover-up. There were some sections that were shown in this story that were blacked out in that report.

What was the situation like in your office on that day when you first read this story in the paper?

Ms. Gwyn Kutz: I don't recall what the situation in my office was. We were probably very busy dealing with our day-to-day work.

There would have been a request in the system for a Q and A response and to respond to media about that article or the ongoing issue. But that's a normal part of our everyday business. We respond to questions and answers on a daily basis on multiple issues.

Mr. Sukh Dhaliwal: When I look at this, the government was out of shape on that day. On this issue, the minister and the government were hung out to dry in Parliament. You say your department had no reaction to this story in the *Globe and Mail*.

Ms. Gwyn Kutz: Excuse me, I did not say the department had no reaction to the article. I said it reacted to that article in the same way it reacts to all kinds of articles that appear in the paper that are items of interest to our department and for which we may expect questions in the House or questions to the department for further information.

• (1255)

Mr. Sukh Dhaliwal: You know what the original version of the report was. How would the original version of the report have been a risk to the source—which is Afghanistan in this case—if you had not blacked out the words “torture”, “killings” and “injustice” happening there?

Ms. Gwyn Kutz: I am not at liberty to discuss specific references to the report that were redacted, as this is not before the committee. However, let me advise again that the rationale applied under section 15 is sometimes with reference to injury to the source, if a source is identified who could come under physical threat or injury, be put on a black list, or have his visas denied, etc. That is one of several rationales that may be given. Other ones refer to whether the release of that information would endanger or jeopardize the relationship with someone who provides information—

Mr. Sukh Dhaliwal: We have already listened to this answer.

My question is that torture in 2002—

The Chair: I'm sorry, we've gone over that. You're at six minutes now, and I notice that we have four minutes left and two questioners.

Mr. Sukh Dhaliwal: Mr. Chair, if we cannot get the answer to this question, we are—

The Chair: We can always bring the witnesses back if we feel that's necessary.

But I'm mindful of the time and I'd like to give the other three members at least a chance to ask one question before we call it a day.

Mr. Sukh Dhaliwal: Thank you, Chair.

The Chair: Thank you, sir.

I'll go to Mr. Tilson, Madame Lavallée, and Mr. Stanton. I would appreciate it if you would ask one question each.

Mr. David Tilson: My question has to do with the issue of delay and how that can be avoided. Do you anticipate new technologies that could alleviate the delay? Second, are you asked to perform administrative tasks that take you away from the main work you're doing?

The Chair: Ms. Nixon.

Ms. Jennifer Nixon: With respect to the technology, as far as I'm aware, we have the standard for the field. We're always aware of new technologies coming out, but I think what we have is what's in use right now.

What was the second part of your question?

Mr. David Tilson: The second question was whether you're being asked to do certain administrative tasks that perhaps you shouldn't be doing and that take you away from the principal work you're required to do.

Ms. Jennifer Nixon: I think the two analysts are better equipped to answer that.

Mr. David Tilson: Okay, let's move to them.

The Chair: Ms. Archambault.

Ms. Francine Archambault: I would say that we are. Because we are so short-staffed, we have to. If we were staffed ideally, then there would be certain administrative processes that I wouldn't be doing; I would be doing a strict review of the documents. But because we are short-staffed and we have so many requests, it's a matter of having to do it in order to try to get the requests responded to as quickly as possible.

Mr. David Tilson: Thank you, Mr. Chairman.

The Chair: Mr. Switzer, anything further on that?

Mr. Gary Switzer: I might make the point that I don't believe everybody speed reads. You can only read so many pages in a day. Every time you do something else, clerical or whatever, it takes away from that time you can look at a document. These documents have to be read word for word, line by line. I think there's an idea out there that you can do 150, 250 pages in a day, but it depends on what the information is. If it's very, very serious, very sensitive, then it's going to take you longer. That's part of the problem as well.

I usually say to people, "I'm not R2-D2. I can only read so much in a day, and I can only do so much in a day."

That does have an effect on the timeframes you're talking about.

• (1300)

[Translation]

The Chair: Thank you.

Mrs. Lavallée.

Mrs. Carole Lavallée: It surprises me that if we look at the sequence of events surrounding the requests of Mr. Attaran and Mr. Esau, we see that even though a MINA ALERT was placed on both files, only Mr. Attaran's request was forwarded to the minister's office on April 17 last. I was not able to find any evidence that the same was done with request 604 from Mr. Esau. Therefore, I assume that file was not sent to the minister's office.

On April 17, six days before the documents were released to the public, the file was sent to the minister for review—the French version refers to a review, not to an approval process, so I think the two versions are different—as if they were waiting on the minister's approval, going on the assumption that if no comments were forthcoming, then he approved the matter.

My question is for Ms. Kutz. When exactly did the minister's office request the uncensored version from you?

[English]

Ms. Gwyn Kutz: The minister's office did not ask me for the non-censored report. I do not recall—

[Translation]

Mrs. Carole Lavallée: Never?

[English]

Ms. Gwyn Kutz: I do not recall receiving a request from the minister's office for that report, no.

[Translation]

Mrs. Carole Lavallée: Are you saying the minister never saw the uncensored version of the report?

[English]

Ms. Gwyn Kutz: I cannot confirm that, because he could have received it from other offices within the department. I do not specifically recall a request from the minister's office for the full report. I can check my records and go back and verify that.

Normally the reports are used as raw material and data that are used by officers and their supervisors to feed relevant information up to the minister in the context of policy recommendations and formation.

The reports can be quite long. A volume of 100 reports would be very daunting. The department uses the information contained within those reports to provide context and to improve their recommendations and advice to the minister to shape the programs and the policy. They're not usually read by the minister.

The Chair: Thank you.

Madam Kutz, thank you very much. We would appreciate it if you could do as you said and let us know in due course.

So that I'm clear for the committee's evidence, when a minister's office flags a particular request, the material that is to be sent to the requester is the same material that is sent to the minister's office a few days before it is sent out to the requester. Is that correct?

Ms. Jennifer Nixon: Yes, that's correct.

The Chair: There is no difference between the material given to the minister's office and to the requester. Is that correct?

Ms. Jennifer Nixon: That's correct.

The Chair: Thank you.

The last questioner is Mr. Stanton.

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

The Chair: Very briefly, Mr. Stanton, thank you.

Mr. Bruce Stanton: Yes, and before I do that, I want to state for the record that Mr. Dhaliwal took some liberties in his first line of questioning to suggest that all the members of the committee are somehow unanimous in their sense of dismay about the handling of these ATIP requests. I can tell you, from my point of view, and certainly I think it's shared by our members, that in fact what we see here is the handling of a very intricate and complex set of issues that's been handled very well under a serious workload. That's essentially the context of my question.

Perhaps this to the analyst. You're dealing with a situation here where you have to review and consider redactions to intricate information, sensitive information. You're asked, in fact charged, under the act to apply certain redactions and you've got to weigh the importance of not only providing information to requesters but at the same time protecting certain sensitive information that's allowed to you under the act. How do you come at the question of being able to make that kind of important and, as has been expressed here, in some cases, life-involving redactions, comments, in helping the government make these kinds of determinations? How do you keep yourself prepared to make those kinds of determinations so that the information going to requesters, and in this case ultimately when these reports are provided as advice...? How do you prepare for that type of very delicate preparation of these documents?

• (1305)

The Chair: Let's go with Madame Archambault, who has the most experience, first.

Ms. Francine Archambault: Thank you, Mr. Chair.

The way I do it is...because I work for Foreign Affairs and International Trade, I try to keep abreast of what's happening globally. Therefore, if I see something where an office of primary interest will try to protect something when I know it's factual, it's already in the public domain because the government has released it, I can make the argument that it can't be protected.

However, as you say, my job is to look at the recommendations from the OPI. Do they match with the exemptions under the act? If I'm not satisfied that they do, I will go back to directors like Gwyn and ask for rationale, to give me something to show me why I can't release this.

Mr. Bruce Stanton: Excellent.

Ms. Francine Archambault: Sometimes they will. Sometimes they won't, and we agree to release. It's an ongoing process, and it can change from one week to another. I can see a document today and next week the recommendations she made really apply, whereas today they don't. It's an evolving situation.

Mr. Bruce Stanton: It's kind of an evolving circumstance.

Ms. Francine Archambault: That's right.

Mr. Bruce Stanton: Okay. We've heard that before, actually. Thank you.

Ms. Francine Archambault: It definitely is, and it's the same.... I think most analysts in the ATIP world try to keep themselves abreast of what's going on. As well, Treasury Board offers certain training sessions or refresher courses on certain exemptions, as to when to apply them, what they really mean, and what's considered proper as far as what that exemption means. For example, number 18, is a financial situation. Most analysts will take advantage of that and keep themselves current.

The Chair: Mr. Switzer and Ms. Nixon, any comment beyond what Madame Archambault has said?

Mr. Gary Switzer: I might add that the Information Commissioner sometimes gives out information. There are judicial things that you would look at, legal opinions that also help you to look at how you would interpret the act, and those things are taken into consideration as well.

Mr. Bruce Stanton: Excellent. Thank you for your answers.

The Chair: Ms. Nixon, do you have any comment? Okay.

Ladies and gentlemen, I do want to thank you on behalf of the committee for coming here today. I sincerely hope that the experience was not as bad as you thought it would be. We do appreciate your comments and your candour. We'll continue our deliberations. I'm hopeful that the committee will be able to make some recommendations that will help the situation so that we don't have this kind of thing taking up parliamentary time again, although one never knows.

Committee members, we don't know what the situation is with the House. If the House is sitting on Thursday, I thought we would have a meeting about 9:30 in the morning just to figure out where we go from here. If the House is not sitting on Thursday, we already agreed that we would try to set up a summer meeting to deal with this issue before we come back, so that we could go on to identity theft. That's how I'm proposing to play it. It'll just depend on what happens with the adjournment of the House.

Again, on behalf of the committee, I'd like to thank everybody from the Department of Foreign Affairs for being here today. I want you folks to notice that the deputy minister was here all the way through to listen to what you had to say, and I guess to back you up in case we were too mean. So thank you, everyone.

We're adjourned.

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