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Chair

Mr. Paul Szabo

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•(1105)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): Order, please. This is the seventh meeting of the Standing Committee on Access to Information, Privacy and Ethics. Our orders of the day, pursuant to Standing Order 32(5), are as follows: the special report of the Interim Information Commissioner, entitled “Out of Time: Report Cards 2008-2009 and Systemic Issues Affecting Access to Information in Canada”. This was referred to the committee on Tuesday, April 13, 2010.

This morning our witnesses are from the Office of the Information Commissioner of Canada: Suzanne Legault, Interim Information Commissioner; Andrea Neill, assistant commissioner for complaints resolution and compliance; and Josée Villeneuve, director of systemic issues, policy and parliamentary relations.

Thank you kindly for accepting our invitation to appear, Commissioner. I understand that you have some opening remarks. We will welcome your comments now.

Mr. James Bezan (Selkirk—Interlake, CPC): I have a point of order, Mr. Chair, please.

The Chair: Mr. Bezan.

Mr. James Bezan: I have just a quick point of order based on Tuesday's meeting. There was one time that I tried to intervene on a point of order and you wouldn't recognize me. I believe that is a violation of my own rights and privileges here at the House. I'm not going to go into any great detail here, but under Standing Order 19 and on pages 632 and 633 in O'Brien and Bosc, your role as chair is to recognize points of order, and then to determine whether or not it's a point of order and rule on that point of order.

So I do ask that during this meeting, if there are going to be any points of order made by any member here, you respect the rights and privileges that we enjoy as members to be recognized, not be censored.

The Chair: Thank you, Mr. Bezan.

In that meeting, we had another couple of points of order. We were in a questioning thing, and there was some debate going on. First of all, the chair has the discretion to wait until an appropriate time to hear a point of order, but I felt at the time that the problem we were facing, and that caused you to express your concern by calling for a point of order, actually resolved itself.

But I do understand. The role of the chair is to try to keep the good order in the meeting and to keep it going. I understand your point. I know that you don't do these frivolously, that you've done your

homework, and I appreciate that. I will try to be a little more vigilant or clear on my actions.

We also were in a position where we were down to the last dregs of time and trying to be fair to all members to get through, and the chair, maybe in his haste to try to keep the questioning going, probably used his discretion not to your advantage.

But I understand your point and I appreciate it.

Mr. James Bezan: It does go to the matter of how we function as a committee, Mr. Chair. If you're going to have order and decorum and you're going to do your job of directing debate, then you need to recognize points of order. Otherwise, it's just going to be anarchy. I just ask that you respect the right of all members here to raise points of order.

The Chair: Okay. Anarchy is not a good thing. Let's not do that. Thank you very much for raising this.

Madam Legault, please.

Ms. Suzanne Legault (Interim Information Commissioner, Office of the Information Commissioner of Canada): Thank you, Mr. Chairman.

I'm very thankful for the opportunity to discuss with you in greater detail this year's special report, which provides an assessment of delays and examines the compliance of federal institutions with the Access to Information Act.

The purpose of the report cards is not to chastise institutions. This process is a tool at my disposal to affect greater compliance with the requirements of the act. It allows me to see compliance issues in their full context and to recommend meaningful solutions.

This year's report concludes that, although timeliness is the cornerstone of the act, chronic delays continue to be its Achilles heel. In 2008-09, only 57% of all requests received across the federal government were responded to within 30 days. Almost half of the complaints my office received in the same period dealt with delays, and three out of four of these complaints completed with a finding were resolved with merit.

• (1110)

[Translation]

Clearly, this is not what the legislators had envisioned when they established 30 days as the appropriate length of time to respond to a request. It is now imperative to tackle this issue head-on. This is why the Three-Year Plan I announced last summer focuses on assessing the root causes of delays so that solutions can be found. This year's report cards are the first step under this plan.

To obtain a sound, fact-based assessment, I expanded this year's sample from 10 to 24 institutions. These 24 institutions received 88% of all access requests. The assessment therefore provides a reliable picture of the overall situation. We rated the institutions globally: we assessed not only their statistical compliance with statutory timelines but also looked at practices and policies that impact on their performance. For individual institutions, I have made recommendations that are tailored to their unique situations and challenges. In addition, I am making recommendations to the Treasury Board Secretariat as the central agency responsible for the administration of the Act.

[English]

With the evidence collected during the process, we have confirmed the continued presence of system-wide issues that we identified last year. These include: lack of leadership; inappropriate use of time extensions; time-consuming consultations; insufficient resources; and deficiencies in records management.

We have also discovered that flawed or ill-enforced delegation orders within institutions may constitute another significant obstacle to timely access to information. A leading cause of delay is the extensive or inappropriate use of time extensions. In fact, institutions' use of time extensions account for 31% of complaints to my office.

I also want to emphasize that frequent and lengthy consultations between institutions represent a major problem. Federal institutions often consult other institutions before determining whether to exempt, exclude, or disclose information.

The time needed to complete the consultation then also depends on the efficiency and goodwill of the institution being consulted, yet only the consulting institution is responsible under the act for completing the request within the statutory timelines. For some institutions, such as Foreign Affairs and International Trade, the Department of Justice, and the Canadian Security Intelligence Service, these mandatory consultations represent more than half of their workload.

[Translation]

Although a persistent issue, there is little known about the impact of these mandatory consultations because there are no statistics or no studies available to assess their impact. I am concerned that this lack of data fails to assign responsibility where it belongs. Despite previous warnings and recommendations, our findings show that little progress has been achieved to remedy delays across the system. Of the 24 institutions assessed this year, 13 performed below average or worse. These poor performers accounted for 27% of the requests made to the federal government in 2008-09, which represents roughly 9,000 requests.

[English]

In terms of deemed refusals, nine institutions present rates ranging from 20% to 60%. The average time to complete requests varies between 34 days for Citizenship and Immigration to 163 days for Foreign Affairs and International Trade.

However, there is a silver lining in this year's special report. Two institutions, Citizenship and Immigration and the Department of Justice, achieved an outstanding score due to senior management's ongoing support for a compliance-prone culture. Since last year's assessment, we have also witnessed some very impressive results at the Canada Border Services Agency, the Royal Canadian Mounted Police, and Public Works and Government Services.

These institutions have adopted a strategic approach to their access to information program and have therefore substantially improved service delivery to Canadians. This is proof that the system is not irrevocably broken.

We need to look more closely at the challenges that impede the performance of the institutions that did not perform well. I also believe that the Treasury Board Secretariat must establish strong standards to guide institutions and collect more detailed statistics to adequately monitor and measure institutional compliance. I think these measures are crucial to strengthen institutions' accountability pending legislative reform.

• (1115)

[Translation]

Mr. Chairman, I want to acknowledge the collaboration of the subject institutions and particularly from the access coordinators and their staff in this process.

[English]

Before closing, Mr. Chairman, I'd like to clarify my office's activities in relation to recent allegations of political interference.

As I announced on March 2, my office is conducting three priority investigations into complaints we received over specific allegations of political interference with requests made under the Access to Information Act. My objective is to conclude these investigations promptly.

In addition to these investigations, my office will undertake a systemic investigation into delays and time extensions, as announced in the three-year plan published last July. The scope and focus of this systemic investigation will be expanded to examine whether there is interference, political or otherwise, in the processing of access requests and whether this is a cause of delay or it unduly restricts disclosure under the act. My goal is to complete that investigation within 18 months.

[Translation]

Thank you, Mr. Chairman.

We are now ready to answer your questions.

[English]

The Chair: Thank you very much.

We'll move right to questions.

Ms. Foote, please.

Ms. Judy Foote (Random—Burin—St. George's, Lib.): Thank you.

Welcome back as witnesses before this committee.

On page 10 of your report, you mention recent “high-profile complaints” concerning the interference of political staff in the access to information process. Are you aware of any other instances that have not yet been made public of where political staff have interfered in the ATIP process?

Ms. Suzanne Legault: I am not aware of any, Mr. Chairman. I only have these three complaints. I am going to do the systemic investigation and we'll look at whether there is any evidence.

Ms. Judy Foote: In reading your report, it's clear that in several instances.... I look at the natural resources department, where it says, “All but the most routine requests are held up in the minister's office”.

Now, on Tuesday, we had the PMO chief of staff, Mr. Giorno, before this committee, and he stated quite clearly that when ministers' offices receive information on ATIP requests it is for information purposes only. However, if you look at the Canadian Food Inspection Agency, it clearly states, “All records on topics of great public interest had to be approved by the president...”. But Giorno said it was for information purposes only, so what's your understanding of the situation?

Ms. Suzanne Legault: The reason I mentioned the delegation of authority in the special report this year is that there were these few instances where we received testimony of such occurrences as part of our research in doing the report cards. At this stage, I do not have any documentary evidence, aside from the testimonial evidence we gathered through the special report, but I was sufficiently concerned such that it's going to be part of the systemic investigation.

As a matter of information, I can tell you that as far as the Canadian Food Inspection Agency is concerned, during the process of the report cards I had personal conversations with the head of that agency, and that practice has stopped. The delegation order has already changed as part of the report cards exercise.

With respect to Natural Resources Canada, we have to meet with them and look into their processes in detail. As you can see from the result of Natural Resources Canada's report cards, there is a lot of improvement that needs to be done in that department.

We'll be working closely with all of the departments that received failing grades.

Ms. Judy Foote: Could you elaborate on what you meant in your press release that the report reveals a new and very significant obstacle to timely access to information? You noted “the flawed or ill-enforced delegation of authority for access-to-information decisions within institutions”.

Based on your review, can you tell me to what extent the PMO and ministers' offices and/or political staff are implicated in this?

• (1120)

Ms. Suzanne Legault: The head of the agency, the minister, is responsible for access to information, and that's delegated through

the institution. With this process of report cards this year, we found that the delegation authority documents within each institution vary significantly.

In some institutions, there is full delegation of authority to the access to information coordinator. In some institutions, there are very widespread delegations of authority, so a lot of people in an institution can sign off. In other institutions, there is a very strong vertical line of approval processes all the way up, sometimes to the minister's office. That's the way they are structured. There is nothing in the legislation that says it has to be done one way or another.

The Treasury Board Secretariat has just finalized best practices for delegations of authority, so we'll see whether these get implemented.

In some institutions, such as Natural Resources Canada, we could see that it adds to the delays. In other institutions, like Public Safety, they are telling us that it's not adding to the delays, but we don't know yet.

Ms. Judy Foote: But did you find that in fact in instances like those in CIDA or Natural Resources approvals were done at the minister's office instead of by the person to whom this was delegated, whether it was senior management or the ATIP officer?

Ms. Suzanne Legault: In these two institutions, it would go all the way up.

Ms. Judy Foote: And the approvals would be done in the minister's office?

Ms. Suzanne Legault: Yes, we were told that it was for information.

Ms. Judy Foote: So they were being held up in the minister's office, but it was just for information purposes. We were told by Mr. Giorno on Tuesday that in fact they would go for maybe three or four days in the minister's office, but it would appear from your report that this wasn't the case.

Ms. Suzanne Legault: Yes, but I do not have a clear diagnostic of the time delay that's resulting, and that's why we need to add it to the systemic investigation. We're going to need to really look in detail into the processing of the files.

At this point in time, I don't have a clear diagnostic because I don't have all the data in terms of additional delays that are caused by this. Obviously the report card indicated that these institutions take a very long time. Natural Resources Canada and CIDA have a very long average completion time and we think that this is an indication of the reason why.

Ms. Judy Foote: Let me go back. I just want to make sure that I heard correctly. You did say for approval at the ministers' offices.

Ms. Suzanne Legault: No. Josée Villeneuve, who is here, just corrected me. She says that it's going there for information.

Ms. Judy Foote: Okay. In your report, you note that your process “uncovered oral evidence of delegation orders with multiple layers of review and approval which, in some instances, resulted in additional and unwarranted delays”.

Can you explain where those delays came from? Did the delegation orders come from the PMO, from the minister's office, or from political staff?

Ms. Suzanne Legault: First of all, it's just within each institution, and we do know that within some of them, like Natural Resources Canada, Health Canada, and CIDA, it does add additional delays.

The Chair: Madam Faille, please.

[*Translation*]

Ms. Meili Faille (Vaudreuil-Soulanges, BQ): Thank you, Mr. Chair.

First, I want to ask a question relating to two aspects of your statement.

As I am one of those who fill out access to information requests every week and who probably complain about time extensions, the issue of chronic delays is one of my concerns. I can testify to the fact that we are often able to resolve several requests rather quickly once they have been submitted to the coordinator and once they have been explained in detail.

I wonder however about the way access to information requests are prioritized. Currently, the departmental coordinator is the person deciding which requests will be dealt with and in which order. There are no very specific rules, guidelines or legal framework. The concern we have and that many professionals have when they put access to information requests is related to the way one can, in the public interest, obtain information to clarify situations, point to mistakes or poor management, or even explore an issue in depth when a problem appears.

I would like you to clarify this. You referred to leadership. Some officers, perhaps due to a lack of training, tell us that non-controversial requests for information seem to be dealt with more quickly than others. However, about the way the requests are prioritized, there does not seem to be any specific framework or precise system. Have you looked at how those decisions are made in the various institutions?

• (1125)

Ms. Suzanne Legault: No, Mr. Chair. Since those issues are related to the management of access to information requests and since my role is to deal with complaints, it might be better to put those questions to the Treasury Board Secretariat. It is not an issue that we have dealt with in the report.

Ms. Meili Faille: In the case of the more controversial requests I have submitted, departments were quick to use various clauses allowing them not to disclose information. This seems to be rather systemic. First, they ask for an extension to have more time to answer. Then, they use various causes of the Act to avoid giving us the information we have requested. Then, when we challenge them, they give us what we want.

Based on your study, would you consider setting up some kind of priority list for the access to information requests submitted by certain persons or by parliamentary committees? For instance, the Finance Standing Committee and the Public Accounts Standing Committee can put requests to the parliamentary budget officer. When those committees submit requests, they have priority over other committees.

Have you considered how, in the public interest, it would be possible to improve the process or the Act in order to allow for

quicker access to information when we want to throw some light on some issues?

Ms. Suzanne Legault: I will try to answer this question, Mr. Chair.

From 2005 to 2008, the Information Commissioner carried out an investigation after having received a complaint from the Book and Periodical Council. After this investigation, we concluded that some departments were prioritizing complaints considered highly visible or sensitive—a red or amber light. There were several levels of priority. We were able to establish that there was no specific or negative priority given to the media but that there was indeed some priority given to other groups, among them parliamentarians. Our recommendation was that even if, for communication purposes, the institutions have to identify the requests, they have to make sure that this would not lead to additional delays.

In a follow-up to this investigation that we did last year, we found that only Health Canada stated that there were still some additional delays related to the identification of some requests. This year, through those report cards, Health Canada stated emphatically that there have been no additional delays anymore since November 2009.

I hope this answers your question.

Ms. Meili Faille: Yes.

Do I have some time left? Can I give that time to my colleague?

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good morning, Mrs. Legault. Thank you for being here.

Is the comparison between institutions assessed in 2007-08 and 2008-09 reliable or should we wait for the next report to be able to make significant comparisons and to assess if there has been progress or not?

• (1130)

Ms. Suzanne Legault: Last year, we covered 10 institutions because of changes in our process. It was the first time that we were preparing this kind of report cards. Those 10 institutions represented 28% of all access requests, which was a rather small sample. This year, the 24 institutions represent close to 90% of all requests. I am therefore very satisfied that the diagnostic is excellent and is truly based on data. The sample is very large and represents close to all the access to information requests.

I look at all the annual reports of those institutions. They have to send them to me. I have no concern about the other institutions because most of them receive very few requests. The only exceptions would be the new Crown corporations such as the CBC, Canada Post and VIA Rail for which we will produce report cards covering this financial year. That is the group missing from this year's report.

[*English*]

The Chair: We'll have to come back to you in the next round.

Mr. Siksay, please.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Chair.

Welcome back, Commissioner. It's good to have you here. Thank you for the work you've done on these report cards.

I want to come back to Ms. Foote's line of questioning around the delays in ministers' offices. I particularly want to ask you about your report with regard to CIDA. It goes back to this issue about whether the minister's office was approving the release of documents. Clearly, the language in your report does say that in the case of CIDA, "All but the most basic disclosure packages are sent to the minister's office", and it says "for approval".

So I think we need to clarify if it's just for information only, if there is some kind of process happening in the minister's office, and what you meant by "for approval".

Ms. Suzanne Legault: Thank you, Mr. Siksay. I was also looking at these notes after answering Madam Foote. I just want to make sure with Josée, who did the interviews, that she can clarify exactly what she found.

Mrs. Josée Villeneuve (Director, Systemic Issues, Policy and Parliamentary Relations, Office of the Information Commissioner of Canada): The approval process or the review process, in a sense, it goes to the minister's office. Ninety-eight per cent of all packages go there. In practice it stays there until the coordinator gets the go-ahead for release.

We will clarify that, Suzanne, and make sure that we convey the message to the committee about the proper process.

Mr. Bill Siksay: It does appear, though, that there is some need for a sign-off by the minister or the minister's staff before this information is released, so that there is some kind of approval process. It's not just a matter of informing the minister's office that this is about to happen; it's that the minister's office has played some direct role in the timing or whether that information is even released. That would be the implication.

Ms. Suzanne Legault: What we know for sure at CIDA is that it does create additional delays. What I don't know is whether it has any impact on the amount of disclosure that comes out of it.

This is the same thing for other institutions, which I'll tell you have very long lists within the institutions, with senior levels of bureaucrats. On whether it leads to longer delays, some have told us yes and some have told us no. On whether it leads to a difference in the disclosure that comes out, some have told us yes and some have told us no in terms of the senior bureaucrats.

That's why this is clearly something that has to be looked at as part of a systemic investigation, Mr. Chairman, because the information was given to us orally. We did not verify it. I did not go through the processing files. I do not have that information. I have sufficient concerns to mention it because we found this in more than one institution. For some of the institutions where we found this, there are long delays. Therefore, this is something that we really need to look at.

The Treasury Board Secretariat, on our recommendation following the CNA investigation, did issue best practices for delegation of authorities. If those are not out publicly, they are supposed to be out today or the next day. I do have a copy of them. They have been issued and hopefully that will put some decorum into this delegations of authority.

Mr. Bill Siksay: Were you consulted about those best practices that are about to be released?

Ms. Suzanne Legault: Yes.

Mr. Bill Siksay: Okay. I can appreciate why you'd be disturbed about this approval situation in ministers' offices.

I want to ask a couple of other questions, specifically with regard to the report on Foreign Affairs and International Trade, which I think is glaringly appalling. Do you believe that the Minister of Foreign Affairs and the Minister of International Trade are living up to the letter and spirit of the law when dealing with requests for information?

• (1135)

Ms. Suzanne Legault: One of the key components of success in transparency is definitely a strong commitment to transparency from the minister and the senior bureaucrats in each institution.

The Department of Foreign Affairs and International Trade obviously has a particularly difficult situation with the types of information they're holding, but in my view, they are significantly under-resourced to actually respond to the workload they have, not only with regard to requests but also with regard to their consultations. The concern I have with this department in particular is that they have almost a central agency role because they receive these mandatory consultations.

Most institutions that we have surveyed this year complain about the length of the consultations with the Department of Foreign Affairs, so it is a red alert because of these factors, but also because their performance, which was already given an "F" last year, has declined so significantly that I really wanted to alert the system that this is something that needs to be looked at. Because it really does have a systemic effect across the system.

If we're going to look at one thing, and if one thing is going to be fixed in this fiscal year, I would suggest that DFAIT has to be looked at as a priority.

Mr. Bill Siksay: Do you see the ministers at Foreign Affairs and International Trade taking all necessary actions to meet deadlines and consulting with other departments?

Ms. Suzanne Legault: I can tell this committee that I have met senior officials at the Department of Foreign Affairs. I have met with Minister Cannon on this matter. I know that Foreign Affairs has made a request for additional funding. I know that they've hired a consultant this year to look at their whole access to information regime.

We at the office, particularly Assistant Commissioner Neill and I, have engaged in dialogue with the Department of Foreign Affairs in order to see how we can improve the situation. I'm hopeful and optimistic that things will improve.

Mr. Bill Siksay: In terms of offences against the act, I know that there is section 67 of the act, which deals with, I guess, individuals offending, individuals who delay or prevent the release of information. I believe that when a specific request is delayed, there can sometimes be an appeal to the Federal Court, and I know that the report card functions as an accountability mechanism in terms of calling on departments to review and respond to your suggestions about their performance.

But is there any other way that specific ministers are held accountable, legally accountable, for instance, for not upholding the provisions of the Access to Information Act?

Ms. Suzanne Legault: Not that I know of.

The Chair: Okay. We'll leave it at that.

Mr. Poilievre, please.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Thank you.

Mr. Siksay quite rightly raised some concerns about the ratings at Foreign Affairs. I do want to point out for the sake of historical accuracy that the deemed refusal rate at Foreign Affairs and International Trade in this report is exactly where it was in the last year of the Liberal government. That is not the place where we aspired to be. Nor is this a problem that has appeared suddenly since the arrival in office of this government.

Part of the best way to judge how we're doing, though, is to compare to past results, so I'm going to ask some questions that focus on present and past results. Putting it all into context, though, how many access to information requests does the government get in a year?

Ms. Suzanne Legault: Last year, the total number of requests was roughly 34,000—34,041.

• (1140)

Mr. Pierre Poilievre: There were 34,000?

Ms. Suzanne Legault: Yes.

Mr. Pierre Poilievre: What percentage of requests get a response within 30 days?

Ms. Suzanne Legault: According to the Treasury Board statistics, it's 57.1%.

Mr. Pierre Poilievre: How many get a response within 120 days? Or what percentage, I should say.

Ms. Suzanne Legault: Within or after 120 days, Mr. Chair...?

Mr. Pierre Poilievre: Before the 120-day deadline.

Ms. Suzanne Legault: Before?

Well, you'll have to help me with the math, Mr. Chair. It's 57, plus 20, plus 10, so it's roughly 87%.

Mr. Pierre Poilievre: It's 87%. so you have this enormous process where there are 34,000 questions being asked, many of these questions requiring dozens of pages of information. More than half of those questions are getting an answer within 30 days and 88% are getting a response within 120 days.

Ms. Suzanne Legault: That's true, Mr. Chairman.

One of the things we highlighted in the special report is the fact that the statistics from the Treasury Board Secretariat need to be looked at somewhat in the context of Citizenship and Immigration Canada.

Citizenship and Immigration Canada receives 14,000 of those 34,000 requests every year. They have fairly simple types of requests that deal with personal information, so they're easily exempted and easily processed. In fact, that's reflected in their performance. Their average response time is 34 days, so 14,000 out of the 34,000 get a responded to in 34 days by CIC, so—

Mr. Pierre Poilievre: Right, I appreciate that. But because now we are wandering quite far from the question, if you're going to put into context some of the departments that have an easier process of response, then I will counter that by pointing out the obvious fact that there are departments that are going to have, necessarily, difficulties in responding.

Foreign Affairs often has to get approval from foreign governments because information is jointly proprietary. Therefore, that would bring the average down.

There are also access requests that are broadly written in a way that makes it difficult for any department to produce a comprehensive response. For example, someone might ask for all of the internal e-mails on the ecoENERGY program. Well, what about the week when 20 public servants were trying to arrange a meeting and they exchanged 75 e-mails in determining the time, the place, the location, and agenda of that meeting. All of those e-mails have to be considered for potential release, and none of them is really of any interest to the questioner.

So in those instances, there's a whole complication that has literally nothing to do with the desire to disclose, but has an impact on the time it takes to do so. If you're going to give examples of how the average might be improved by one particular department, I would like to point out there are factors that would cause the average to be extended. I would say that of 34,000 requests, if 88% of them get a response within 120 days, I think we're doing very well.

I want to compare that, though, with past years. For the last year for which you have comparable data, how does that 88% score compare?

Ms. Suzanne Legault: Mr. Chairman, what I do see from the statistics from 2002 is that the percentage of requests responded to within 30 days was 69% in 2002. What we have seen steadily over the years since 2002 is that there's no specific larger gap or larger change, except that steadily since 2002 the number has come down, to 57%. So we have had a decrease of 12% in the number of requests responded to within 30 days and I do have concerns about that in terms of performance.

The other factor that I think is a focus of the report is the extension factor and whether or not the extensions are taken appropriately under the legislation. If you look at the same statistics from 2002 to now, you will see that they're only disaggregated between those below 30 days and those above 30 days. Those are strictly the extensions that are taken, which are a large focus of the report cards.

What we see is that the amount of extensions that are for more than 30 days, for a search through a large volume of records, which is one of the exemptions that can be taken, has gone from 58% to 70% year over year since 2002. Again, it's a steady increase of time. For consultations, they've gone from 40% in 2002 for the ones that are for more than 30 days to 81% in this past year. There has been an increase of over 40% in terms of consultations. Similarly, third-party consultations have gone up by 10%.

This is really where the delays are occurring. Furthermore, as I stated in the report, this generates almost half of the volume of complaints—

• (1145)

Mr. Pierre Poilievre: Right—

Ms. Suzanne Legault: —and three out of four of those complaints are found to be justified.

Mr. Pierre Poilievre: All right. I—

The Chair: We're at seven and a half minutes already. I have to be fair.

Mr. Pierre Poilievre: All right—

The Chair: We'll be back to you, though.

Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): Thank you, Mr. Chair.

I want to turn to the Privy Council Office, but before I do, I want to come back to the question of approval versus information, which Mr. Siksay and Ms. Foote were on. On page 11 of your report, where you're taking stock of systemic issues, you mention the concerns over “political interference and delays that may stem from inappropriate or ill-enforced delegation orders”. You go on to talk about how the amount of time it takes for “senior management and ministerial review and approval” generates delays as well.

When Mr. Giorno was here before the committee, he stated that, “No political staff member has received a delegation of authority under the act...”. He said further, “Political staff members do not have authority to be making those decisions, to be interpreting and applying the act”. But increasingly.... One of the reasons we have a motion before this committee to call certain staff, such as Mr. Sparrow and the chief of staff for the Prime Minister, Mr. Giorno, is that increasingly we believe that approval is actually taking place, versus just providing information.

Can you clarify? I know that you turned to Josée at one point. I'm still confused on what is happening within the system. There are two agencies, I believe, and one department that are using an approval process, while others are doing it appropriately. Can you expand on that a little?

Ms. Suzanne Legault: In terms of CIDA, Josée just passed me the exact language, and basically what it says is that the review process provided packages to the minister's office for review, but the delay in review amounts to approval because the package is not released until the minister's office has had a chance to review. So it basically creates a long delay; as for whether there's any impact on the amount of disclosure, at this point, we don't know.

Hon. Wayne Easter: Okay. I think we'll just operate on the assumption that that's really an approval process.

On the PCO, you highlight in a section in your report card that you do have concerns regarding the “delegation order” in the Privy Council Office. Could you explain precisely what those concerns are and whether that involves, to the best of your knowledge, political staff?

Ms. Suzanne Legault: At the Privy Council Office, the information we got is really that it is within the Privy Council Office. We have no information whatsoever that it involves political staff. What we have been told as well by the Privy Council Office is that as far as they are concerned this does not result in any additional

delays. They do so because they need to have the expertise of the people reviewing it.

We heard a similar story at Public Safety, where there's quite a diffused delegation of authority, with quite a few people having the delegated authority to review the documents. I've met with senior officials there as well. They've told us that they consider this is necessary given the type of information that has to be reviewed. They also consider this does not add additional delay.

• (1150)

Hon. Wayne Easter: Yet in your report you also talk about staffing issues at the Privy Council Office. I mean, there is any number of ways in which you can delay access to information. One could be by just not having enough staff in place to do the job. That's a great concern.

Has PCO been consulting on a greater number of ATIP requests over recent years? Are these consultations taking longer? Are greater consultations coming out of PCO that are in fact creating these delays?

I'd make the point that they have one of the worst records in town and this is the arm of the Prime Minister's Office. There are 198 complaints.

Ms. Suzanne Legault: The Privy Council Office has had years where it has had an F. It now has a D.

In terms of the consultation, Mr. Chairman, I wasn't clear whether the member was referring to cabinet confidence or to consultations with the access to information office. I'm assuming it's cabinet confidence—

Hon. Wayne Easter: Yes, it is.

Ms. Suzanne Legault: —because that is the core of the consultation at the Privy Council Office. There are no statistics in terms of cabinet confidences and the delays and timelines of cabinet confidences.

In fact, I believe that this year in this report card is the first time we have had statistics. They have a very large number of consultations—1,700—and there are four people working there at the review period. Obviously that's going to generate delays.

The Chair: Mrs. Block, please.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chair.

Welcome to our witnesses this morning.

Your report card grades for certain departments earned media exposure for those grades this last week—certainly the red alerts—but I want to turn our focus onto another one a little more closely. I'm looking at the RCMP. You gave them a C this year. They received an F in 2005, under the previous Liberal government.

In fact, in your opening remarks you said, “Since last year's assessment, we have also witnessed some very impressive results at the Canada Border Services Agency, the Royal Canadian Mounted Police...”. It goes on. You went on to say, “These institutions have adopted a strategic approach to their access to information...”.

Can you talk about those approaches? Can you talk about why we see such changes and what factors helped to improve their grade?

Ms. Suzanne Legault: Yes, certainly. In fact, I was astounded by the Canada Border Services Agency's report this year. They have made tremendous strides. They went from a deemed refusal rate of over 60% to 30% and to very low this year—I think it's 4.7%. So there is hope for the Department of Foreign Affairs if they can follow the same curve, because CBSA also has quite complex types of information.

But really, the recipe for success essentially is the leadership at both the ministerial level and with the senior officials of the institution; adequate resources being put into the access to information section of the department; ongoing training, not only of the access professionals but within the institution, so that there is a culture of transparency that gets developed and sustained; and full delegation to the coordinator of access, which we strongly believe in—we don't believe in diffuse delegation orders. We think this is the recipe for success.

By the way, what they've done at the RCMP is that the person in charge of making the decisions is someone who has intricate knowledge of law enforcement, so the person there is not only an expert on access to information but also an expert on the subject matter of the institution. That, we think, is a recipe for success.

The duty to assist a requester is part and parcel of the culture of the access office. The consultation processes are given great support and they are respected. So they respect the consulting institution and the timeliness of it, and they work very hard at having sound information management practices.

That's the recipe for success. When you have all of these practices, usually institutions do very well.

• (1155)

Mrs. Kelly Block: Thank you very much.

In terms of my second question, as I look through your report I see that you gave the Department of Justice an A again this year.

In fact, in your opening remarks, you said that “there is a silver lining in this year's special report”. You said, “Two institutions, Citizenship and Immigration and the Department of Justice, achieved an outstanding score...”. Do you recall what their grade was in 2005, under the previous Liberal government?

Ms. Suzanne Legault: For the Department of Justice?

Mrs. Kelly Block: Yes.

Ms. Suzanne Legault: The justice department, from 2004 to 2006, had an F.

Mrs. Kelly Block: Okay. So we've gone from an F to an A in the last five years.

Can you tell the committee why we see such a significant change under our Conservative government?

Ms. Suzanne Legault: I don't know that it has anything to do with any specific government. I certainly did not study that in my report cards. It was very much an institution-by-institution process.

What we have found at the Department of Justice is that this recipe for success was very much put in place. I met with both the

minister and the deputy minister at the time—there has recently been a change in deputy ministers—and there is a very, very strong commitment to access to information at the Department of Justice.

Mrs. Kelly Block: I just have one further comment. You did mention that leadership was part of that recipe—

Ms. Suzanne Legault: Yes.

Mrs. Kelly Block: —and I would suggest that our Conservative government has been providing that leadership to that department.

Thank you.

The Chair: I just had a thought. Maybe we should transfer the responsibility for the act to DFAIT and their score would go up, too. In any event....

Madame Thi Lac, s'il vous plaît.

[Translation]

Mrs. Ève-Mary Thāi Thi Lac: My colleague will ask the first question and I will follow her.

Ms. Meili Faille: Earlier, the parliamentary secretary made a statement that made me think about one aspect of the issue. At Foreign affairs and International trade, they seem to have the bad habit of closing files on the basis of section 13 and section 15.

Could you tell me which institutions are used to acting in this manner? Does it mean that departmental people try to clarify in advance what in the requests they would be able to disclose or not?

I have some experience with Public Works and Government Services Canada. When we talk to the coordinators, we are usually able to agree, after a brief negotiation, on what types of information will be disclosed to us and what will not be, and the requests are thus clarified. At Foreign affairs, there seems to be a problem.

Also, I find that the system is not necessarily the same in all departments. In some, everything works well whereas, in others, it does not.

Especially at Foreign Affairs, they use section 13 relating to information obtained on a confidential basis, and section 15 relating to information from foreign governments.

Ms. Suzanne Legault: Mr. Chair, we have seen that at Foreign Affairs, as well as in the other departments which consult Foreign Affairs, when there are requests relating to section 13 or section 15, that is to say relating to international affairs, practices have developed to avoid the consulting institution having to obtain a deemed refusal. However, that institution is the one having to answer for its performance — if it replies on time. That is why we are very concerned by delays.

In such situations, the Department of Foreign Affairs and International trade as well as other departments will close part of the file, or even the whole file, and will advise requesters that they will disclose what they can and that, for the rest, there will have to be a consultation by the Department of Foreign Affairs. If information is disclosed later on, they will get back to those requesters.

These procedures are a source of concern. Especially for us, if we have complaints and that the file is closed, the process becomes somewhat complicated. The issue is that this type of consultation usually takes a lot of time. What we hear from Foreign Affairs is that, when they have to consult foreign governments, those have no compulsion to answer in any given time. So, it is difficult for them to assess the time it will take to provide an answer.

What we do not know is what kind of follow-up there is by Foreign Affairs. Do they call back? Do they tell those foreign governments that they will disclose the information if they do not receive an answer within a given time? We have absolutely no information about this whole process of consultation. That is why we will have to have a closer look. As I said earlier, no statistics or details are available on this. It is not entered in the technological system and therefore we have no data on those consultations.

• (1200)

Ms. Meili Faille: Do you recommend that the Act be improved?

Ms. Suzanne Legault: I believe it is quite clear that the issue of time extensions, as I see it, would probably be better dealt with through amending the legislation. My point is that, pending such amendments to the Act, I believe we should look very closely at the issue of interdepartmental consultations because there are systemic delays in obtaining access to information.

Ms. Meili Faille: Earlier, in one of your recommendations, you also stated that the Treasury Board Secretariat should establish a better framework for prioritizing the access to information requests. That is what I understood.

My question was related to the prioritization of requests. You have talked to the Treasury Board Secretariat.

Ms. Suzanne Legault: They have issued best practices in order to avoid any additional delays being caused by prioritization in the departments. That was our recommendation.

[English]

The Chair: *Merci.*

Mrs. Davidson, please.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thanks very much, Mr. Chair.

Again, Commissioner, thank you for being here with us today.

We've certainly all been looking forward to seeing this report card. It has some very positive things in it and it also has some things in it that need more work. I think everybody recognizes that with access to information, and the strong commitment to that by the government, there certainly is more work to be done. We welcome your report.

We certainly know that, under this government, the Access to Information Act now applies to far more institutions than it did previously. We have discussed that with you several times in the past.

In relation to my colleague's questions, I think you stated that there was a total of roughly 34,000 requests in 2008-09—and that is the report card year—57% of which were dealt with within the 30-day timeframe. In some of the information we've had previously, I

note that in 2004-05 we were looking at 24,000, we're looking at 10,000 more requests than we were four years ago. I think that volume contributes to some of the issues—certainly not all of them, but to some of the issues of numbers that show the increase in percentages.

We get a lot of comments that this government is slower to respond to access to information requests than others. How would you relate that...? We know that the number for those dealt with within 30 days is slightly lower, but we also know that the number of requests has increased significantly. Do you see any relation in those...? Are the numbers themselves causing some of the issues with the percentages? Or is it all other issues?

Ms. Suzanne Legault: Mr. Chairman, I think the best way to answer the question—and it's the way we tend to approach it as well—is that it's easier when one looks at each specific institution to see either how they address an increase in volume of requests or how they handle a change of circumstances.

For instance, at DFAIT, one of the key components of their challenge is that their consultation requests are far higher in terms of volume than their actual requests for information. They get about 665 requests themselves, but they have to respond to over 1,000 consultations. I would suggest that probably their level of resourcing has not kept up with this demand.

The Treasury Board Secretariat obliges other departments to consult with the Department of Foreign Affairs, so in a way they have become a sort of central agency in matters of access to information. I would say in looking at that, for instance, that it's a good example of where the increase in workload has probably not been addressed by appropriate resourcing, so there hasn't been a correlation.

If, for instance, you look at another one—was it NRCan?—that has had a large turnover of staff in the last year or so, then you'll see that this will have an impact on its performance.

On the overall increase in the volume of requests, it hasn't gone from 20,000 to 30,000 in a year; it's basically a steady increase year over year. So I don't think that this in itself is a major problem. I think it's best to look at it institution by institution and how their own circumstances are being addressed.

• (1205)

The Chair: You have time left.

Mrs. Patricia Davidson: We recognize, certainly, that the public's right of access to information needs to be balanced against the legitimate need to protect sensitive information. We've had a fair amount of criticism lately about censored documents. It's my understanding that there is no statistical data to support the conclusion that there are more censored documents. Is that correct?

Ms. Suzanne Legault: The only thing that we have is the statistics collected by Treasury Board Secretariat in terms of the percentage of documents where all the information is disclosed as opposed to partially disclosed. As I stated the last time I was here, this has gone down. We used to disclose all the information, at the rate of basically 30% in 2002; now it is at about 18%. There has been a decline. If you look at what has been partially disclosed and what has been all disclosed year over year, those two statistics together seem to be consistent.

Mrs. Patricia Davidson: Thank you.

The Chair: Mr. Siksay.

Mr. Bill Siksay: Thank you, Chair.

I will continue with the whole question of the consultation process and how that seems to be a bottleneck in the system, Commissioner. In some of the public news reporting on the whole question of political interference, there was a very clear implication that referrals for consultation to Foreign Affairs were a way of delaying or denying access to information. I think the phrase that the reporter quoted a staff person using was that it gets sent for a consultation and Foreign Affairs works their magic; I think that was the phrase used.

Will the consultation process be one of the focuses of your investigation into political interference?

Ms. Suzanne Legault: The systemic investigation that I'm going to do this fiscal year does look at the extensions and consultations, and we're also going to look at the delegation of authority. We are also going to look at whether there is political or other interference at the senior levels in terms of causing delays or reducing what should be disclosed under the legislation. We're going to look at all of these things.

Mr. Bill Siksay: I would assume, as you mentioned in your remarks this morning, that the Department of Justice is also an institution that has to do a lot of consultations, yet somehow they seem to do them successfully. Is there something they are doing that could be applied to these other departments, specifically on the consultation process?

• (1210)

Ms. Suzanne Legault: The justice department has completely turned around its performance, for sure, and consultation was one of the issues with them. They have MOUs with several of the institutions that they deal with on a regular basis. To be fair, institutions like the Department of Foreign Affairs would tell you that it's easier to make a decision on solicitor-client privilege types of consultations than it is in terms of international relations, because they have to go outside.

Even National Defence, in terms of the consultations they have to make, don't have a great record, but they have a better record. One thing I could tell you is that I have had a suggestion from Minister Cannon in terms of getting more detailed information on these consultations with foreign countries, and I told him I would seriously consider doing a comparative analysis. That was his suggestion. I thought that was a very good one, and if we could get this information that way, it would add more context to the systemic investigation.

Mr. Bill Siksay: Other countries must run into these same kinds of situations in terms of needing to consult with foreign governments

on their access requests. Are there other countries that have better models on this?

Ms. Suzanne Legault: That's what I don't know. That's what Mr. Cannon's suggestion was, which I thought was a very good one, if we can do it.

Mr. Bill Siksay: I want to come to the question of staffing and retention of staff. It seems to be an issue in a number of the departments. I'm just wondering what the issues are there that you see when you look at this as an excuse for a delay or a reality of the delays that some departments are experiencing.

Ms. Suzanne Legault: It's definitely a reality of the delays. I'm quite convinced of that. In fact, last year we did make a recommendation to have an integrated human resources strategy for access to information professionals. This has not been acted upon.

I know that the Treasury Board Secretariat is developing competencies to assist institutions, but in most of the institutions that we have reviewed, that we speak to on a regular basis, they are almost constantly in a staffing process and that takes them away from their job of answering access to information requests or consultations.

I would recommend—and I did recommend again this year—that there be a central role for human resources for access to information professionals at the federal level. This is clearly an administrative step that can be taken. It would make a difference for the regime as a whole.

Mr. Bill Siksay: This morning, in your remarks, you say, "This community represents a unique culture within government, as their mandate is transparency amid an environment that tends to be risk averse".

Is that environment causing people to not want to take jobs as ATIP officers or in access to information departments because they realize the difficulties that's potentially going to set up for them with their careers or that it's going to set them up for conflict within the department where they work?

Ms. Suzanne Legault: Access to information analysts and coordinators really have a difficult time of it in the government, I would say. Between the requester, the senior officials within their own organization, all of the other areas that they have to get information from to respond to an access to information request, and the investigators in my office, it's not an easy task.

That being said, the secretariat did a survey—I believe it was last year, about 15 months ago—with the community and most of them indicated that they really liked their work. They liked the challenge of it. They liked the fact that they learned new things all the time, so it wasn't a negative survey of the community.

But there aren't enough of them. I think we should really... If we had an integrated human resources strategy, we could staff from outside the government. This could be part of the retention, renewal, and recruitment of new public service recruits. I think we could definitely see an initiative there from the government to bolster those numbers.

The Chair: Ms. Foote.

Ms. Judy Foote: Thank you.

I want to go back to my initial line of questioning. In your report on page 10, you talked about recent high-profile complaints concerning the interference of political staff in the access to information process. You mentioned that there are three cases that you're going to be looking at. Can you provide the committee with the names and the circumstances around those three cases, please?

• (1215)

Ms. Suzanne Legault: Well, there's one that's in the public domain because it was reported by *The Canadian Press*. It involves Mr. Togneri, who at the time was a staffer for Mr. Paradis, who was the Minister of Public Works at the time. That is one of them.

There is another one that is partly in the public domain that is directed at the Department of National Defence, and this came from a complaint by the New Democratic Party. That's in the public domain.

There is a third one—

Ms. Judy Foote: May I ask who's implicated in that one?

Ms. Suzanne Legault: The other details are not in the public domain, Mr. Chairman, so because of the confidentiality and the privacy provisions within my legislation, I'm not at liberty to disclose those details.

With the third investigation, to my knowledge, there is nothing in the public domain either. So for the same reasons, Mr. Chairman, I would ask for the indulgence of the committee so that I can keep that information confidential.

Ms. Judy Foote: Is the PMO aware of those? Are you aware of that?

Ms. Suzanne Legault: Not that I'm aware of. I've received these complaints and I am investigating them in a confidential manner, as I always do. All of the details of the investigation are confidential. I'm not sharing that with anyone at this point.

Ms. Judy Foote: I have one other question, then, with respect to that. On the third case, can you tell me where the complaint originated from?

Ms. Suzanne Legault: I'm not at liberty to disclose that information, Mr. Chairman.

Ms. Judy Foote: I had to try.

I'm wondering if you could provide the committee with a list of all of the individuals who have delegated authority to review ATIP requests within each government department and agency.

Ms. Suzanne Legault: Mr. Chairman, the delegation of—

Ms. Judy Foote: You could do that in writing, of course. I wouldn't expect you to give it to me here today.

Ms. Suzanne Legault: Of course, but the committee might be satisfied with the fact that all of the delegations of authorities are actually published by the various institutions as part of their annual reports. That usually doesn't tell you the name of the individuals, simply because people change in those functions. It basically lists the various functions that have delegated authority and all the details in terms of which provisions of the act they have authority for.

I'm just wondering whether the committee researcher may...

Are they on the Internet?

A voice: [*Inaudible—Editor*]

Ms. Suzanne Legault: They are tabled. They're tabled in Parliament, actually, every year, as part of their annual reporting requirement.

Ms. Judy Foote: Thank you.

I want to go back to the Canadian Food Inspection Agency as well. You say in your report that, "The delegation of authority was diffuse. All records on topics of great public interest had to be approved by the president prior to release."

You did say, "to be approved". I'm assuming that someone within your department spoke with whomever had delegation of authority within CFIA. But then you say that you need to talk to the president of CFIA.

In the report, you reference "all records on topics of great public interest". Which files, what subject areas, are you specifically referring to there? For instance, does it include the listeriosis and food inspection issues?

Ms. Suzanne Legault: Mr. Chairman, I was just consulting with Josée because she did the specific interviews, and I don't have all of those details.

During that time when we were doing the report cards, as I mentioned earlier, I had a conversation with the president of the CFIA about this delegation of authority, because I thought this was causing additional delays. In fact that was changed right after this conversation, as we were going through the process of the report cards.

You know, on whether the listeriosis cases or any other cases went to the president because they would have been of high interest, I would say yes, but I don't have this information in front of me, so I'm a little bit uncomfortable, Mr. Chairman, with—

• (1220)

The Chair: That's okay—

Ms. Judy Foote: Is that something you could provide to the committee—a list of the topics?

Ms. Suzanne Legault: I could. I could ask the Canadian Food Inspection Agency to provide us with that information.

The Chair: Okay. Thank you.

Mr. Poilievre.

Mr. Pierre Poilievre: The average score for departments last year was...or in the last year, the comparable year, was what?

Ms. Suzanne Legault: The average score?

Mr. Pierre Poilievre: Yes. Like, you have an A, B, C, D, E.

Ms. Suzanne Legault: I didn't average it out, Mr. Chairman, for last year, but I can provide the committee with ratings for last year. We only had ten last year.

If I remember correctly, last year six out of ten performed below average. That's what I remember. Justice got an A last year.

I think the best thing, Mr. Chairman, is to provide the committee with the rates from last year.

Mr. Pierre Poilievre: For the last comparable year, please; for the last comparable year.

Ms. Suzanne Legault: There is no other comparable year, Mr. Chairman, because these report cards were only done these last two years. The only—

Mr. Pierre Poilievre: Okay. I'll just leave you to do the best you can. We just don't have the time to have the whole history of the process; just the best comparable time comparison we can give.

My Liberal colleague was concerned about Privy Council Office and the rating it received. On page 56 of your report, you address Privy Council Office. The rate of refusal this year was 23%.

In the last year of the Liberal government, it was actually 32%.

In other words, the rate of refusal has declined by almost a third since—

Hon. Wayne Easter: Mr. Chair, I have a point of order.

The Chair: Okay. Please state your point of order.

Hon. Wayne Easter: I wonder, could he tell me what year the last year of the Liberal government was? I believe there have been two elections since then.

The Chair: Order.

Hon. Wayne Easter: That's ancient history, Mr. Chair.

The Chair: Order.

That's not a point of order.

Mr. Poilievre.

Mr. Pierre Poilievre: That is a decline of roughly a third in the rate of refusal since the 2005 year—to refresh my colleague's memory as to when that was.

The RCMP actually received a great improvement in this year's report, now at C. It was at an F under the previous Liberal government, when Mr. Easter was in fact the minister. He did serve as the minister responsible for the RCMP, as Solicitor General, and the Liberal government secured a solid F during that time.

On to the question of political staff: do political staff have the ability to block the release of access to information requests?

Ms. Suzanne Legault: Mr. Chairman, as this committee knows, I am currently investigating a specific allegation of political interference from a staffer in a minister's office.

Mr. Pierre Poilievre: I'm not asking about a particular investigation. I'm asking about the broad authorities that exist in the system.

Ms. Suzanne Legault: There are currently no delegations of authority in place within federal institutions that provide a delegation of authority under the Access to Information Act to political staffers.

Mr. Pierre Poilievre: Right. So what capacity would they have in practice to block the release of access to information?

Ms. Suzanne Legault: They have no authority under any delegation of authority that currently exists in the federal access to information regime.

Mr. Pierre Poilievre: Okay. They would have no practical ability to block the release of an access to information request.

The Chair: Is this one of those issues of whether they “can” or whether they “may”? I mean, anybody can do anything they want. It's whether they may do it or are permitted to do it. This is where I think we're getting—

Mr. Pierre Poilievre: Well, thank you for contributing your insight to my questioning, Mr. Chair. I think I have the best answer I'm going to get to that particular question.

I noticed, though, that you want to remove immigration, CIC, from your overall grading because, you said, it has particular ease in carrying out rapid responses to access to information. You went on to say there are particular difficulties for DFAIT in releasing information promptly because of some of the practical realities of that kind of department.

I'm curious as to why you never thought to remove DFAIT from your overall grading of the aggregate, given that it, too, is an outlier—just on the other side.

• (1225)

Ms. Suzanne Legault: The question is whether it should be such an outlier or not; it's the same thing for other institutions such as CIDA, for instance, that have very long average completion times. I don't think they should have such long average completion times.

Mr. Pierre Poilievre: But do you acknowledge, though, that DFAIT, for example, which does have to work with foreign governments and collaborate in the release of jointly held information, might have more difficulties in being prompt than, for example, CIC?

Ms. Suzanne Legault: They would. Yes.

Mr. Pierre Poilievre: Yes.

The Chair: Sorry—

Mr. Pierre Poilievre: This is the point I'm going to close on, because you took some of my time, Chair, so I'll just take it back.

I'll point out that you wanted to remove CIC from the aggregate because it would unfairly improve the picture, but you do not want to remove DFAIT because it would worsen the picture. If you're going to have an aggregate, then it has to include everybody. If you're going to take out outliers, you have to take out all the outliers.

Ms. Suzanne Legault: It's a very good point, Mr. Chairman.

Part of the problem with Citizenship and Immigration Canada and the statistics as a whole is that because their requests are able to be processed so quickly, it's not giving us a true picture of where the real delays are in the system. And yes, the purpose of the report cards—and the member is quite right—is to look at where the delays are, because that's what we want to improve. We want to improve the timeliness of responses, which is part of the duty to assist the requester that was put into the act in 2006.

The Chair: Thank you.

Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair.

In response to a comment by the Parliamentary Secretary to the Prime Minister, did I hear you say, before he cut you off, that you're currently investigating interference by a staffer in the Prime Minister's Office? Was that what I heard you say?

Ms. Suzanne Legault: If that's what you heard me say, that's not what I wanted to say.

Hon. Wayne Easter: Okay. What did you say?

Ms. Suzanne Legault: I referred to the case that's already in the public domain, the case involving Mr. Togneri, who was the staffer for Mr. Paradis when he was the Minister of Public Works.

Hon. Wayne Easter: Okay. Clearly, if it's shown to be accurate, it's a clear violation.

Ms. Suzanne Legault: It depends on what the evidence uncovers, Mr. Chairman.

Hon. Wayne Easter: That doesn't seem to bother the Prime Minister when it comes to some criminal investigations. That's not a question for you; it's just a comment. We're seeing that insinuations out of the Prime Minister's office don't seem to bother him, even when—

Mr. James Bezan: Point of order, Mr. Chair.

Hon. Wayne Easter: —when he's throwing one of his own ministers under the bus.

The Chair: [*Inaudible—Editor*]...Mr. Easter.

On a point of order, Mr. Bezan.

Mr. James Bezan: Under Standing Order 18, I refer to O'Brien and Bosc, chapter 13, starting on page 614:

Remarks directed specifically at another Member which question that Member's integrity, honesty or character are not in order. A Member will be requested to withdraw offensive remarks, allegations, or accusations of impropriety directed towards another Member.

The Chair: Standing Order 18 has actually been in place since the beginning of our country, and the wording is somewhat archaic, but the member is quite right—

Mr. James Bezan: Mr. Chair, I referred to O'Brien and Bosc.

The Chair: The member is quite right and I think we all want to be careful about how we characterize others. But I must admit, the rule is not enforced in the chamber. That doesn't give me the right, though, to....

Mr. Easter, I think we have to refrain from characterizing or speaking ill will against any member of the place. Let's move on.

• (1230)

Hon. Wayne Easter: If it's a serious concern, Mr. Chair, I'll withdraw.

On page 58 in your report, you say, “The OIC is concerned that” the Privy Council Office's “access to information delegation order accords more power to senior management...”. Then you go on to say, “The delegation order was updated in June 2008, but does not concentrate authority with the director of PCO-ATIP, as officials said it would” during previous House of Commons testimony.

Is PCO giving you any reasons why they're not moving in that direction and updating the delegation order?

Ms. Suzanne Legault: It essentially is related to the expertise that the institution believes rests with senior officials. That's why also at Public Safety they have decided to exercise their delegation of authority that way. There is nothing in the law or in Treasury Board mandatory policy that says delegations of authority have to be done in one specific way.

The OIC always strongly recommends...and our experience shows that departments that do best are the ones where the coordinator has full delegated authority and makes the decisions for disclosure.

Hon. Wayne Easter: That we can add to the evidence, that comment that it makes sense to go that way. You recommend that.... I guess going back to Guy Giorno when he was here, he recommended that ministers' offices follow the delegated authority order to eliminate inappropriate levels of approval.

Do you have any evidence to date...? I know that your strategic review is going to take some time, but do you have any evidence to date, other than what is in the public domain, of where there may be inappropriate levels of approval?

Ms. Suzanne Legault: Inappropriate levels of approval would be if that results in additional delays or a whether it results in a reduction in the amount of disclosure that should be disclosed under the legislation. These would be, in my view, inappropriate approval levels.

What I have found in the report cards is that I have concerns, because in some institutions the delegation of authority is either widely spread across the organization or has several vertical layers, which could cause delays. This is what I need to investigate further to confirm whether this is inappropriate or whether the way that institutions have organized themselves suits their needs and does not result in any kind of reduction or negative impact on requesters' rights.

The Chair: We'll stop there.

Mr. Bezan, please.

Mr. James Bezan: Thank you, Mr. Chair.

I want to thank the commissioner for her report and for the time she is giving to the committee today.

I want to go back to some of the discussion we've had about this delegation of authority. You've already said that under the act there is no ability to provide that authority to a political staffer, so I'm assuming, then, that all of the delegations of authority right now are being given to officials within the departments.

Ms. Suzanne Legault: Yes.

Mr. James Bezan: You said that CFIA, the Canadian Food Inspection Agency, as an example, was having some difficulties and the president of CFIA was approving all of the final releases of information. As president of CFIA, he is an official of the department.

Ms. Suzanne Legault: Of course. The president was a she at the time, yes, she was a senior official, of course.

Mr. James Bezan: Now you're saying that Treasury Board is working on the adapting of best practices for the delegation of authority and for how we streamline the system so that we can meet the timelines, which you believe need to be improved upon. Did you say there have been some changes made already at CFIA that will start to address some of this?

• (1235)

Ms. Suzanne Legault: Yes. During the report cards process, the president agreed that it was best if the delegation of authority was put further down into the organization.

Mr. James Bezan: Okay.

Now, you're currently evaluating, on an ongoing basis, about 24 agencies so far?

Ms. Suzanne Legault: Yes.

Mr. James Bezan: A few years ago, when our side of the House was in opposition, we asked for the expansion of access to information to other crown corporations. It was voted against by the Liberal government at that time. Would you have the resources and ability if we did expand access to information so that all crown corporations were subject to the act?

Ms. Suzanne Legault: Mr. Chairman, I'm not sure how many more that would be. We would have to see.

In 2006 the Federal Accountability Act added 69 institutions. We had a big jump in complaints the first year, with in excess of 500. In the second year there were a little over 200. But things seem to be tempering down this year to more normal levels in terms of complaints.

We would have to see, Mr. Chairman. In 2007-08 we came before the panel to request additional funding because of the additional institutions. That seems to be working fine.

Mr. James Bezan: One of the statistics we've looked at here is that the number of requests that are getting processed annually by the government has increased substantially—by almost a third. Is there any logic for or reason why we are seeing such an increase in ATI requests?

Ms. Suzanne Legault: As I said, Mr. Chairman, there has been such a constant increase. Every year it increases by about 5% or 6%. It has been very regular in terms of an incremental increase every year. There hasn't been any specific spike that I can see from the statistics. Maybe just.... People are becoming more aware of the legislation, perhaps. I really do not have any kind of analysis of that, Mr. Chairman. Maybe the secretariat would.

Mr. James Bezan: Is there any specific department that has experienced a greater increase versus others?

Ms. Suzanne Legault: Well, definitely after it became subject to the Access to Information Act, the CBC received a significant amount of complaints. I don't exactly know their level of requests, but in the first year I think it was 536, and in the second year it was 221. I stand to be corrected.

Mr. James Bezan: How much time...? I have one minute left, Mr. Chair?

Madam Commissioner, you said that you've already met with Minister Cannon and have talked about improvements over at

Foreign Affairs, and that you're happy with the way those discussions were taking place and with their evaluation of their process.

You mentioned Treasury Board, of course, coming out with their best practices for delegation of authority in ATI. Have you met with the Treasury Board president to talk about that process, as well as the Clerk of the Privy Council to see how they coordinate this overall?

Ms. Suzanne Legault: Yes, Mr. Chairman, I have met with the Clerk of the Privy Council. I've met with the President of the Treasury Board. I've met with Mr. Cannon, as well as with senior officials from all of these agencies and departments. I have not met with all of the institutions' representatives that are covered by the report card, but I will definitely do so.

My goal, as I said before, is really to improve the access to information system. My focus will be to work very hard with the certain institutions that need improvement and to follow closely the ones that are showing some strong indication that they will do better. CSIS is one of them. I think the next time it will do really well. There is National Defence. I'm still very hopeful about National Defence. We have met with them. It's all about deciding that there are things to fix and making the commitment to fix them.

[Translation]

The Chair: *Madame Thi Lac, s'il vous plaît.*

Mrs. Ève-Mary Thāi Thi Lac: Thank you again, Mrs. Legault. We appreciate making yourself available to answer all these questions.

According to our colleagues across, things have improved since they came into power. I would like to know if the problems that we face or the solutions that have been implemented during the past year are related to the culture of the public service or if they are more of a political nature.

• (1240)

Ms. Suzanne Legault: Mr. Chair, I have not made any comments related to the culture of the public service during this process of report cards. When I was asked about this in the press conference, I stated that I would like to see the same kind of initiative as that taken by president Obama in the US. I am referring to the whole issue of open government. Some initiatives have also been taken in Australia.

From what I understand, your committee is going to look at this issue and I am anxious to contribute to this exercise. I am truly convinced that our future is really based on a culture of openness. I believe that that is the real issue for us. What we should ask is how each one of us can improve the situation in terms of openness.

Mrs. Ève-Mary Thāi Thi Lac: Which of your recommendations do you believe should be most urgently implemented?

Ms. Suzanne Legault: Thank you, Mr. Chair.

That is an excellent question. The Department of Foreign Affairs definitely has to improve. That has a systemic impact. I would also say that the issue of human resources in the institutions has to be dealt with. These are the two very major priorities I would bring to the attention of your committee. I also believe that we should have a closer look at the issue of compulsory consultations to see if it would be possible to set up some safeguards in order to ensure some discipline and accountability.

Mrs. Ève-Mary Thāi Thi Lac: You have referred to steps taken in the US and in Australia that it might be useful to implement here also. Among those, which ones would you like to see implemented here?

Ms. Suzanne Legault: With your permission, Mr. Chair, I would like to answer that question the next time I appear before the committee, in two weeks. I would like to be better prepared. The issue is complex. I would like to be able to provide a comprehensive answer. What is being done in the US is very extensive. We are not in the US but we do have to look at what the other countries are doing.

Mrs. Ève-Mary Thāi Thi Lac: As a commissioner, do you find it normal that access to information requests would be channeled to PCO before answers are provided to requesters?

Ms. Suzanne Legault: As far as cabinet confidences are concerned, it is in the Act. According to the policy of the Treasury Board Secretariat, consultation is compulsory about cabinet confidences before disclosing the contents of the documents. I believe they should be exempted instead of excluded, which would give me a right of review. From my position as Commissioner, that would be what would make the most difference.

Mrs. Ève-Mary Thāi Thi Lac: Thank you.

[English]

The Chair: Thank you.

Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair.

Chair, I wonder if the analyst, the clerk, or maybe the commissioner could make sure we get a copy of the document from Treasury Board on the best practices for delegation of authority when it's available so that we can all have a look at that document, since it's been an important part of our discussions. Could that be distributed to members of the committee? Thank you.

Commissioner, I want to go to the section on the Privy Council Office in particular. Starting on page 59, there are various recommendations you made and their responses to those. Can you tell me about that process of making a recommendation and obtaining the response?

Ms. Suzanne Legault: Perhaps I can ask Josée to explain this in more detail.

Mrs. Josée Villeneuve: We received a response from the Privy Council Office through a questionnaire, and then we had a face-to-face meeting with representatives from the Privy Council Office. We analyzed that information, we turned it into a draft, and we turned it over to PCO to correct any inaccuracies. Also, at that point, the recommendations are in the draft and we're asking them to respond, basically.

●(1245)

Mr. Bill Siksay: So with regard to these specific recommendations, it seems like you and the Privy Council Office quite clearly don't agree on a number of them.

Certainly, the first one is a very broad and pretty fundamental one, where you recommend "that the Clerk of the Privy Council demonstrate leadership in establishing access to information as an institutional priority without exception". That's pretty clear and straightforward. The response kind of says, yes, we sort of do that, but it doesn't.... Do you find it an acceptable response? I guess that's my question.

Ms. Suzanne Legault: These are the responses of the institutions; it's not just the Privy Council Office. Each institution has its own response to the recommendations. We print them in their entirety for transparency purposes. They're telling us that they're committed to it, and it's in writing, so that's their commitment to this committee as well.

Mr. Bill Siksay: Is there anything in the specific response to that question that you hadn't taken into consideration when you were doing your evaluation, your report card on the Privy Council Office? Is there any new information provided there?

Ms. Suzanne Legault: I will ask Josée.

Mrs. Josée Villeneuve: No.

Mr. Bill Siksay: Okay.

With regard to the second one about the delegation of authority to the ATIP officer for cabinet confidences, can you talk about the argument they make about why this isn't appropriate? Clearly it's a strong recommendation you've made that has been committed to in the past. A response to their response...?

Ms. Suzanne Legault: Delegation of authority is really the prerogative of each institution. As I said before, our preference, our experience, basically indicates that the best-performing institutions have the full delegation to the coordinator or the director of access to information. Our concern is whether it adds additional delays or whether it results in less disclosure. The response here tells us that it doesn't add additional delays and that this is, from their perspective, satisfactory.

I'm going to look at this in more detail as part of the investigation, because the report cards are very much questions and answers, you know; we look at some documents but we don't do a real investigation. But because I have concerns, I need to have the data before I can come back and make a really sound diagnostic on this issue.

Mr. Bill Siksay: The third recommendation is that "PCO-ATIP develop a clear plan to tackle the backlog of access requests". Now clearly if you're making that recommendation, you believe that there isn't a clear plan there. Does their response satisfy you that a clear plan is going to be put in place to address that?

Ms. Suzanne Legault: You know, I'm satisfied that they are really working to deal with their situation, their backlog and their number of requests. They do have quite a lot of staffing issues at the Privy Council Office. In fact, you will find that at the institutions where they have a large backlog or a large consultation workload, it's difficult to keep staff. It's a very competitive market for access to information professionals, so the harder the situation is at an institution, the more difficulty they have in keeping their staff.

As soon as they get better and better, as soon as their situation improves, the staff do tend to stay. I mean, if you look at Justice, they have very good stability. Other institutions that are doing well have more stability. So definitely the Privy Council Office's staffing to address their workload is an ongoing issue.

Mr. Bill Siksay: So a clear plan with regard to staffing would help address that recommendation?

Ms. Suzanne Legault: Yes.

The Chair: Thank you.

I have a little bit of business to do, but Mr. Easter said he did have one last wee question.

Quickly, please, Mr. Easter.

Hon. Wayne Easter: Yes, it relates to the issue you've just been on. It has come up several times: the difficulty of staffing, understaffing, and how it slows down the process. You're just mentioning that Privy Council is habitually understaffed. They've had 17 full-time staff all along, although they're approved for 27 full-time equivalents.

This was during the good times when the government was basically spending the country into deficit. Now we have a deficit and we have a freeze imposed. Has the government given you any indication of how they're going to deal with this staffing issue when they have the freeze in place? Or is the understaffing that's already there going to become a problem?

• (1250)

Ms. Suzanne Legault: Mr. Chairman, I must say that I did look at the amount of money for the 24 institutions that have been subject to the report cards this year. I looked at their main estimates and how much money they lapsed last year. They all have lapsed significant

amounts of money, in the range of millions of dollars. If I remember correctly, PCO lapsed \$12 million last year.

I have no indication that people will not be able to—the \$12 million is correct, by the way— staff within their current contingency, but a few institutions did indicate that the freeze might cause them issues. But the information on the main estimates reassures me that if there is a will, there should be a way, money-wise, with these institutions.

The Chair: There is another committee coming in for one o'clock, so we do have to wind it down. I simply want to note that your predecessor, Commissioner, made the statement that 30 days has become the exception rather than the norm, which I think was prophetic, in that.... He had some other comments.

But you both agreed on one thing and that was the need for leadership among the ministries and the directors to show the culture of transparency. I guess we're going to have to continue to work on it, but I appreciate it very much that you and your team have done the report. I think it was a helpful report for us to continue to monitor. I know that Mr. Poilievre raised the idea of tracking or trending. I think it's going to be very important for us to have an institutional memory.

Now, just for the benefit of the members, here's what's happening in our coming meetings. Next week, we have the Commissioner of Lobbying on Tuesday for the estimates, and on Thursday we have the Ethics Commissioner for the main estimates. The following week, we have the Privacy Commissioner on Tuesday, the 27th, and then the Information Commissioner will be back before us two weeks from today and will be helping us put some meat on the bones for our proactive disclosure discussions and projects. I will have the clerk circulate this information to you, but I wanted you to know at least for preparation purposes that we have lobbying on Tuesday and ethics on Thursday.

For our items on Google's Street View and the draft report, which you have, as well as the issue on order-in-council appointments that Madam Freeman raised, we're going to carry those forward at each meeting, so that should there be any excess time, we will try to deal with them.

Thank you kindly. We're adjourned.

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