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CANADA

# **Standing Committee on Access to Information, Privacy and Ethics**

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**EVIDENCE**

**Tuesday, May 11, 2010**

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**Chair**

**Mr. Paul Szabo**



## Standing Committee on Access to Information, Privacy and Ethics

Tuesday, May 11, 2010

• (1105)

[English]

**The Chair (Mr. Paul Szabo (Mississauga South, Lib.)):** Order. This is meeting number 14 of the Standing Committee on Access to Information, Privacy and Ethics. Our orders of the day, pursuant to Standing Order 108(3)(h)(vi), are a study on allegations of interference in access to information requests.

I'd like to advise the committee that the clerk has had conversations with Mr. Soudas, who is to appear before us today. Mr. Soudas has a very busy schedule and was concerned about coming here this morning, having to sit for the whole meeting, and not being able to appear. He wanted some certitude about how he could use his time.

I've given him the undertaking that we will suspend any matters going on at the committee no later than noon and will bring him in as a witness to hear from him for the last hour of our meeting. Or, should this part with our first witness terminate earlier, we will contact Mr. Soudas to come down to the meeting so that we use the maximum amount of our time.

We will start now with our witnesses. We have appearing Mr. Sébastien Togneri, former parliamentary affairs director, Department of Public Works and Government Services. He's accompanied by his lawyer, Jean-François Lecours, a lawyer from Beauvais Truchon.

Mr. Togneri, I want to simply remind you that you are still under oath and that you can consult with your lawyer but he is not permitted to address the committee. I'd also like to reaffirm, as you know, that anything you say before this committee cannot be used against you in any other judicial proceedings.

I'd also like to confirm to you and to the committee that all parties that I'm aware of have received copies of the letter from the Information Commissioner, dated yesterday, which addresses your situation. I think it speaks for itself. I think we can proceed on the basis that parliamentary privilege permits this committee to proceed with questioning of the witness.

That said, we're going to move immediately to the first round.

Mr. Easter, please.

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

You did mention the letter from the Information Commissioner.

So I would hope that today, Mr. Togneri, that we indeed can get some pretty straightforward answers. We need to go back to some questions that were asked at the last meeting.

At this committee you indicated that you recalled participating in meetings with the Prime Minister's Office's issues management branch. With regard to ATIP, you stated that you recalled being told that "we should be vigilant...do our job and review the access to information requests...".

When you intervened in the information request, did you believe that you had the authority from the PMO's issues management department to involve yourself in that access to information process?

**Mr. Sébastien Togneri (Former Parliamentary Affairs Director, Department of Public Works and Government Services, As an Individual):** I assume you're talking about the specific ATIP.

**Hon. Wayne Easter:** That you asked to be unreleased, that one, or, for that matter, any others.

**Mr. Sébastien Togneri:** No. Issues management.... When I said that issues management asked us to do our job, what they asked of us was, because we get ATIPs as information prior to their release, that we review the ATIPs and that we be ready to respond to questions, be they from media or questions that may be asked in the House.

So issues management don't ask us to intervene; they ask us to review the information and either go to communications or to communications people and ask them to create lines that can be used in the response of any question. But they never asked us to, you know, withhold information or to stop information. No.

**Hon. Wayne Easter:** So did they give you any advice, then, or information, on how to negotiate or persuade ATIP officers to release less information or delay the release of information?

**Mr. Sébastien Togneri:** No, that would not be the case. I would again say that issues management would ask us to be prepared for issues that may come up as a result of release of access to information files.

**Hon. Wayne Easter:** Did you get any advice on providing the PCO or the PMO with regard to intervening in the access to information request?

**Mr. Sébastien Togneri:** I'm sorry, Mr. Chair. I'm not exactly sure what the question means....

**The Chair:** Restate it, please.

**Mr. Sébastien Togneri:** Well.... Or maybe if you could be more specific...? I'm not sure what you mean.

**Hon. Wayne Easter:** Yes. Were you asked.... On access to information requests and in this case where you intervened and 137 pages became 30—I just forget the number of pages—were you asked to provide that information to PCO or PMO in terms of what was happening?

• (1110)

**Mr. Sébastien Togneri:** I never informed...well, I would never inform PCO. I don't have any contacts at PCO. But I never advised PMO on this ATIP file—

**Hon. Wayne Easter:** Would you—

**Mr. Sébastien Togneri:** —so I guess the answer would be no. There was no advice. I never informed them on that.

**Hon. Wayne Easter:** How many times would you have ordered a document requested under ATIP to be withheld or less information provided? Do you have any idea on those numbers?

**Mr. Sébastien Togneri:** I don't have the delegated authority to do that, so....

**Hon. Wayne Easter:** My last question, then, Mr. Chair.

Guy Giorno, the Prime Minister's chief of staff, appeared before this committee and was asked about instructions from the issues management branch no fewer than nine times, and at no point did Mr. Giorno state that exempt staff were to be vigilant requesting ATIP requests. He did say “political staff...are not told to do anything related to an access to information request”.

It therefore appears that your statements to this committee and those of Mr. Giorno place you and the chief of staff to the Prime Minister in contradictory positions. Can you square that circle for us?

**Mr. Sébastien Togneri:** I don't think they are contradictory. He might not have used the same language as I did at my last committee appearance, but again, issues management is.... We discuss issues, and if an ATIP is going to be an issue, then it's discussed. There's no strategy.... There was never.... As far as I know, there was never any strategy to delay or obstruct ATIPs. It was simply.... Issues management is simply there to make sure that we're ready to respond to issues that may arise in the media or the House or wherever. So I don't see how we contradict each other.

**The Chair:** Okay. Thank you.

I'm going to encourage questioners and the answers to be crisp. This is taking a little bit long....

But I'm going to move now to Madame Freeman, please.

[Translation]

**Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ):** Good morning, Mr. Togneri.

I want to ask you a question about your responsibilities further to your mandate. Do you know Tom Makichuk?

**Mr. Sébastien Togneri:** Yes.

**Mrs. Carole Freeman:** What were his duties?

**Mr. Sébastien Togneri:** I think he is director of access to information at the Department of Public Works and Government Services.

**Mrs. Carole Freeman:** Did you have dealings with him involving access to information requests?

**Mr. Sébastien Togneri:** Yes, I saw him from time to time.

**Mrs. Carole Freeman:** When would you see him?

**Mr. Sébastien Togneri:** I saw him at meetings.

**Mrs. Carole Freeman:** Did those meetings focus on certain access to information requests?

**Mr. Sébastien Togneri:** No. We would meet once a week regarding access to information requests.

**Mrs. Carole Freeman:** What was the purpose of those meetings?

**Mr. Sébastien Togneri:** They were to decide.... Since the Department of Public Works and Government Services had a number of access to information requests, we would discuss those the department wanted to see.

**Mrs. Carole Freeman:** Those that the minister's office wanted to see?

**Mr. Sébastien Togneri:** Yes, as well as the deputy minister's office.

**Mrs. Carole Freeman:** The deputy minister's office and the minister's office wanted to see certain access to information requests, and the access to information coordinator was the person appointed by the minister to administer the act in question in that department.

• (1115)

**Mr. Sébastien Togneri:** Is that a question?

**Mrs. Carole Freeman:** I am coming to my question. When you would meet, how would you determine when to intervene or examine access to information requests more closely? Did it depend on the identity of the requester or the nature of the request?

**Mr. Sébastien Togneri:** A bit of both. We had a list of files and.... Yes. So there were.... There are files that are not contentious....

**Mrs. Carole Freeman:** No, I am talking about the ones that are contentious.

**Mr. Sébastien Togneri:** Yes, so we....

**Mrs. Carole Freeman:** I will give you an example: the 132-page document you intercepted was censored on 30 pages. Who censored it?

**Mr. Sébastien Togneri:** I have no idea.

**Mrs. Carole Freeman:** You intercepted the document; who did you give it to?

**Mr. Sébastien Togneri:** Forgive me, but you will have to be more specific. I do not understand the question.

**Mrs. Carole Freeman:** You are here today because you recalled a document to keep it from being released in its original form. Are you aware of that?

**Mr. Sébastien Togneri:** I....

**Mrs. Carole Freeman:** You sent an email requesting that the document be retrieved from the mail.

**Mr. Sébastien Togneri:** I did not block.... I did not censor any document.

**Mrs. Carole Freeman:** You asked that the document be intercepted. Who was the document given to?

**Mr. Sébastien Togneri:** I do not understand: who was it given to....

**Mrs. Carole Freeman:** Mr. Togneri, you sent an email requesting that a document not be released, that it be recalled. No doubt, it was a document whose content might have been disturbing to some. So you intercepted it. In fact, you gave the order to have it intercepted. Once it was intercepted, who took possession of the document to censor it?

**Mr. Sébastien Togneri:** I have to say.... I....

The last time I was here, I said that I made an error in judgment and that I....

**Mrs. Carole Freeman:** I agree that you made an error in judgment. I am not questioning that.

**Mr. Sébastien Togneri:** Yes, but....

**Mrs. Carole Freeman:** What I want to know is this: Who was the intercepted 132-page document given to to be censored? You sent an email to have the document intercepted. So someone intercepted it and brought it to you. If the person did not bring it to you, who did they give it to to be censored?

**Mr. Sébastien Togneri:** I did not request that a document be censored. And....

**Mrs. Carole Freeman:** No, you asked that it be intercepted. You had a document intercepted so that it would be returned to your offices. Who was the document given to?

**Mr. Sébastien Togneri:** I do not know. I am not sure where the document went exactly.

**Mrs. Carole Freeman:** Do you know who censored the document?

• (1120)

**Mr. Sébastien Togneri:** I have no idea.

**Mrs. Carole Freeman:** You have no idea? You are admitting under oath that you have no idea what happened to the document that you requested be intercepted in order for it to be returned to the minister's office. You have no idea what happened to the document.

**Mr. Sébastien Togneri:** I do not know.

**Mrs. Carole Freeman:** You are not aware of anything?

**Mr. Sébastien Togneri:** I do not know what happened to the document.

**Mrs. Carole Freeman:** You did not handle the document? You did not read it, withhold it or make changes to it? You did not do anything to the document in question?

**Mr. Sébastien Togneri:** Thank you for your question.

Again, I do not know. The....

**Mrs. Carole Freeman:** That is interesting because you did not receive any order. According to your claims, according to your

testimony, you did not receive any directive to intercept the document. You intercepted it. The document came back to the minister's office. The 132-page document was censored on 32 pages. And you are not aware of anything that happened.

**Mr. Sébastien Togneri:** No, that is not....

**Mrs. Carole Freeman:** So who gave you the order? Someone gave you the order. You made a mistake, as you said. If it were just a mistake, you would have handed over the document, you would have given it back in its original 132-page form.

Did you receive a directive to retrieve the document so that it could be censored?

**Mr. Sébastien Togneri:** The document was not returned to the minister's office.

**Mrs. Carole Freeman:** Where did it go?

**Mr. Sébastien Togneri:** I do not know. I imagine....

I do not know, I really do not know.

**Mrs. Carole Freeman:** But, Mr. Togneri, you requested that the document be intercepted. Surely, you followed up on the document, did you not?

**The Chair:** Fine, thank you.

**Mr. Sébastien Togneri:** No. I do not know where it went.

[*English*]

**The Chair:** All right. I'm sure we're going to explore this.

Mr. Siksay.

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

Mr. Togneri, I have to continue with that same line of questioning because it's.... I appreciate Madame Freeman's frustration. Here we have a situation where, for some reason, you felt that this document needed to be recalled and you took the initiative to recall that document. Yet now you say you have no idea what happened to it after you took the initiative to recall that document. Is that correct?

**Mr. Sébastien Togneri:** That's correct.

**Mr. Bill Siksay:** So you felt that it was your job somehow to intercept that document, but you had no interest in what happened to it after you intercepted it?

**Mr. Sébastien Togneri:** If you'll allow me to explain myself.... Again, I made a mistake and I sent a hurried e-mail quickly after that happened. What happened with the specific ATIP was that it was a specific request, and when I received the request I gave it to someone in my office, who reviewed it, and I was told that they weren't sure what the answer had to do with the request. I asked that and I got an answer. And specifically, I was told that section—I believe it was chapter 11—had to do with the request, out of the entire document—

**The Chair:** Order.

Mr. Togneri—

**Mr. Sébastien Togneri:** Yes?

**The Chair:** —I think we seem to be rambling through some things. I think Mr. Siksay has precise questions. I think we had better let him satisfy himself on each element rather than you trying to anticipate his questions, okay?

So I'm going to turn it back to Mr. Siksay and maybe he can ask you the first question he wants you to answer.

**Mr. Bill Siksay:** Mr. Togneri, your answer is raising a number of other questions. You said that you delegated the responsibility for reviewing this document to someone else in your office. Who did you delegate that to?

**Mr. Sébastien Togneri:** To a policy adviser, Jillian Andrews, and—

**Mr. Bill Siksay:** Is she political staff or departmental staff?

**Mr. Sébastien Togneri:** She is political staff.

**Mr. Bill Siksay:** Okay. So more than one political staff person was involved in reviewing this particular ATI request.

**Mr. Sébastien Togneri:** Yes.

**Mr. Bill Siksay:** Okay.

You said that you realized you made a mistake and that's why you sought the recall of this document. What was the mistake that you made? How would you define the mistake that you made?

**Mr. Sébastien Togneri:** Well, my mistake was.... I thought what was going out.... I didn't realize—and I should have known this—that if part of a document is relevant, then the entire document is relevant, and I made the mistake that if section 11 was relevant, then the entire section was relevant. And that's.... You know, I sent those hurried e-mails.

• (1125)

**Mr. Bill Siksay:** But, Mr. Togneri, you've told us that you had no responsibility for reviewing the content of documents—only to prepare the minister for a response to what was released. So why were you even concerned about what was in the document other than in terms of it meeting some requirements? Why...? Were you not just working on a response for the minister, some lines for the minister?

**Mr. Sébastien Togneri:** I'm not really sure I understand the question....

**Mr. Bill Siksay:** You explained to us that you were involved in recalling the document because you believed that there was more information than was necessary, but is that question not outside of what your responsibilities were, as you've testified earlier?

**Mr. Sébastien Togneri:** It is, and that was my mistake.

**Mr. Bill Siksay:** Well, when I asked specifically what your mistake was, you said that there was more information in it than should have been, but then—

**Mr. Sébastien Togneri:** Well, that's what I thought. I was wrong. It was quickly explained.... After I had sent this e-mail, it was quickly explained to me that if part of a document is relevant, then the entire document is relevant. That was explained to me. I was fine with that.

It was also explained to me that they can explain this, they can.... They, as in the ATIP officers, can work with the requester to make sure they get exactly what they want. In cases where an ATIP file is voluminous, as it was in this case, they can work with them and say, "Well, we can give you just what you want or we can charge you extra and get the entire document". I suggested, well, perhaps that can be done; it would save the requester money. I made no directives after that. I made no orders or anything.

**The Chair:** Mr. Togneri—

**Mr. Sébastien Togneri:** So I accepted the fact that—

**The Chair:** Order, please.

**Mr. Sébastien Togneri:** —the request was complete—

**The Chair:** Order.

Okay. Mr. Togneri, I think we're going to have to shorten up these answers and focus on the questions that Mr. Siksay is anxious to get at. You've repeated a couple of things a couple of times and I think we should stop the repetition.

Okay. On a point of order, Mr. Holder.

**Mr. Ed Holder (London West, CPC):** Yes. Thank you very much, Chair.

It is my understanding that committee members have great latitude in asking our witnesses various questions. I would presume that if Mr. Siksay had a concern about how the questions were being answered, it would be incumbent upon him—versus you—to be able to bring that point forward, because you give us, as committee members, the latitude for all of these things. Presumably he has the latitude to respond, and if Mr. Siksay is not comfortable with it, I'd presume he would be the one to respond to that.

**The Chair:** Well, thank you. That's not a point of order.

Mr. Siksay, please.

**Mr. Bill Siksay:** Mr. Togneri, I am concerned that you do seem to be very involved in deciding exactly what gets released, not just preparing a response for the minister to respond to information that was released, and the decision having been made by departmental ATI officials. So I am very concerned.

I'm also kind of wondering why it was any concern of yours to save the requester money and why that would even be a consideration in this. Did somebody direct you to save requesters money as part of your job?

• (1130)

**Mr. Sébastien Togneri:** No, not at all. I had a conversation after I had sent this e-mail and that was brought up. I wasn't aware that, you know, ATI could work with the requester to get more specific and to do that.... But it was brought up, so....

**Mr. Bill Siksay:** Had you done this at other times? Did you have this kind of conversation about what would be released or make suggestions about saving other clients or other requesters money on other requests that came across your desk? Was that a regular part of how you functioned?

**Mr. Sébastien Togneri:** Sorry, your first part of your.... On the second part of your question, I had no idea about this before. I don't know how to answer the first part—

**Mr. Bill Siksay:** Surely this wasn't the only ATI request that you—

**The Chair:** I'm sorry, Mr. Siksay. I apologize.

We have to move on to Mr. Poilievre.

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** Thank you very much, Mr. Togneri, for appearing before the committee today and for offering testimony.

I'd like to start with the broader policy discussion on which this committee has focused for some time.

So let's start at the rudimentary level. Are you aware of the Federal Accountability Act?

**Mr. Sébastien Togneri:** Yes, I am.

**Mr. Pierre Poilievre:** Okay. Are you aware of the provisions contained therein regarding the Access to Information Act?

**Mr. Sébastien Togneri:** I'm vaguely aware, yes.

**Mr. Pierre Poilievre:** Sure. I mean, to be more specific, the Federal Accountability Act provided amendments to the Access to Information Act. Are you aware of some of those amendments?

**Mr. Sébastien Togneri:** I'm vaguely aware, yes.

**Mr. Pierre Poilievre:** Can you tell us about your knowledge of those amendments?

**Mr. Sébastien Togneri:** No, I can't.

**Mr. Pierre Poilievre:** I'm sorry—

**Mr. Sébastien Togneri:** I'm not that well versed on the Federal Accountability Act—

**Mr. Pierre Poilievre:** Fair enough—

**Mr. Sébastien Togneri:** —other than that more federal agencies are covered under the Federal Accountability Act. That's what I know the most, like Canada Post—

**Mr. Pierre Poilievre:** Right, and in fairness, I don't want to... This isn't a pop quiz, and if it were, you got the right answer. The Federal Accountability Act added a whole series of agencies and bodies of government that were not originally included under the Access to Information Act. Several dozen organizations are now covered by Access to Information that were not previously.

There's a broader discussion now about additional changes to the act that could be considered. The access to information commissioner has opinions. The previous commissioner, Mr. John Reid, had opinions on how the system should be amended. The Auditor General had made certain representations to the government about changes to the Access to Information Act.

I wonder, given your experience around the parliamentary system, if you have any suggestions for the committee.

**Mr. Sébastien Togneri:** Not being an expert in ATI...I don't think I'm an expert to respond to that. I would think that the committee is far more experienced to make suggestions to amend it than I am. I know that ATI at Public Works worked very well. I guess that's all I have to say. I'm not exactly sure of specific changes that need to be made, but....

**Mr. Pierre Poilievre:** In fact, Public Works did experience tremendous improvement in the ratings of the Information Commissioner in her report card that was recently released. I don't

have that report in front of me, but I will have it for my next round of questioning. Perhaps we could examine how the various departments could be making continual improvements in how they serve Canadians regarding access to information.

Tell us which ministries you have experience working in.

•(1135)

**Mr. Sébastien Togneri:** I have experience working in Public Works and now in Natural Resources.

**Mr. Pierre Poilievre:** In both of those ministries, obviously access to information is important to the Canadian people.

**Mr. Sébastien Togneri:** Yes, absolutely.

**Mr. Pierre Poilievre:** Would you say there is a high degree of priority given to transparency and openness at both of those ministries?

**Mr. Sébastien Togneri:** At Public Works, definitely.

I did not deal with ATIP for very long at Natural Resources, but they had some excellent people there. So I would say, despite the bad mark that Natural Resources had, I believe they're dedicated to transparency and to improving the record that the department has now.

**Mr. Pierre Poilievre:** Right.

Now, Chair, how much time do I have?

**The Chair:** One minute.

**Mr. Pierre Poilievre:** One minute?

Given that we are running low on time at this point, I'd like to seek your insights on how committees could better interact with ministers' offices and ministries in general. Do you have any suggestions given that you have now experienced both a ministry and a parliamentary committee?

**Mr. Sébastien Togneri:** Well.... I'm happy to be here and I respect Parliament in this case, but if I had my choice, I would prefer that ministers appear here instead of staff. But that's my personal view.

On how to improve communication, well, again, I'm not an expert on dealing with requests of committees. I think we answer our questions well for the committees and I think the ministers appear when they have something relevant to say, and I think that's a good job.

**The Chair:** Thank you very much.

We'll have to move on to Mr. Valeriote.

You have five minutes, sir.

**Mr. Francis Valeriote (Guelph, Lib.):** Thank you, Mr. Togneri, for appearing here today. It sounds to me like perhaps somebody else's conduct or judgment has put you in this hot seat today, but....

You answered a question from Mr. Easter and said you didn't have the authority to unrelease that report, but nevertheless you did it.

Nevertheless you did it. I'm wondering how many other times you may have exceeded that authority. Can you tell me how many other times you may have exceeded that authority?

**Mr. Sébastien Togneri:** My...this incident...I...it wasn't my intention to delay or obstruct or.... Again, I was wrong in the fact that I did not understand the law fully and that I thought I was....

**Mr. Francis Valeriote:** Okay. Are you telling us that's the only time you did it, Mr. Togneri? Is that the only time that you intervened, yes or no?

• (1140)

**Mr. Sébastien Togneri:** In my...yes, it's the only time that I... This was, you know...this was a mistake I made—

**Mr. Francis Valeriote:** Is it the only time you intervened, yes or no? You're taking up a lot of time, Mr. Togneri. Yes or no? Please.

**Mr. Sébastien Togneri:** I wanted to give exactly what the demand...what *le requérant* wanted, and in my mind, yes, the only time I intervened, but I don't have—

**Mr. Francis Valeriote:** Okay. You said you had no point of contact at the PCO. Who is your point of contact at the PMO's issues management office? And if there's more than one, please give me the names.

**Mr. Sébastien Togneri:** Could you be more precise on the timeframe?

**Mr. Francis Valeriote:** Who is the person with whom you communicate at the PMO's issues management office? You are in communication with them.

**Mr. Sébastien Togneri:** In what—

**Mr. Francis Valeriote:** In any capacity.

**Mr. Sébastien Togneri:** No, sorry. In what time period are you talking about?

**Mr. Francis Valeriote:** At that time period.

**Mr. Sébastien Togneri:** I believe it was Isabelle Bouchard.

**Mr. Francis Valeriote:** All right.

Now, have you ever suggested to an ATIP officer or departmental official that they have not applied the Access to Information Act correctly?

**Mr. Sébastien Togneri:** I don't recollect. I don't.... I don't know. I don't think so.

**Mr. Francis Valeriote:** You don't know. You don't think so. It may have happened, though.

**Mr. Sébastien Togneri:** Again, I don't think so.

**Mr. Francis Valeriote:** Have you ever urged an ATIP officer or departmental official to make greater redactions or to withhold documents that were not requested in a very specific manner?

**Mr. Sébastien Togneri:** I....

**Mr. Francis Valeriote:** Have you ever urged an ATIP officer or departmental official to make greater redactions or to withhold documents that were not requested in a very specific manner?

**Mr. Sébastien Togneri:** I don't recall. No, I don't think so. Either way, I didn't have delegated authority to do so.

**Mr. Francis Valeriote:** Yes, you've already told us that, yet you usurped that authority nevertheless.

How many ATIP requests did you or the ministerial exempt staff at Public Works suggest go to PCO under the guise of information release, harming provincial or international relations, during your time working for the minister?

**Mr. Sébastien Togneri:** I.... Can you repeat the question?

**Mr. Francis Valeriote:** How many ATIP requests did you or the ministerial exempt staff at Public Works suggest go to PCO under the guise of information release, harming provincial or international relations, during your time working for the minister?

**Mr. Sébastien Togneri:** I don't know if I did. I don't think so.

**Mr. Francis Valeriote:** All right.

So on your own volition, you took a 137-page document and unreleased it, which was ultimately reduced down to 30 or so pages. What prompted you to do that? Had you read the document before?

**The Chair:** Thank you—

**Mr. Sébastien Togneri:** I didn't do that. I don't redact documents. We get ATI files for our information. I don't know what happens to them after we see them, but.... So I didn't redact them. I didn't redact it to 30 pages. I didn't do that, so I—

• (1145)

**The Chair:** Thank you.

Thank you, Mr. Togneri.

You made a statement, and I wanted to understand your intent or your communication to the committee. You said, and I quote—and the research assistant has been keying this in as well—“...it wasn't my intention to delay or obstruct.... Again, I was wrong in the fact that I did not understand the law fully...”.

I want to make sure that this is not misinterpreted by anyone. It would appear to say that you understand that you delayed or obstructed, but because of your lack of information of the law, you inadvertently made that mistake. Is that what you're saying, sir?

**Mr. Sébastien Togneri:** Just to clarify, I thought that.... And again, I was ignorant of the law. I thought that because it was section 11 that had to do with their request, only section 11 should be released. I was wrong in that. And I was ignorant of the law in the sense that I didn't realize.... I had not been confronted with a situation before where it was...you know, if one section is relevant, then the entire section is relevant.

So in this case, I believe it was chapter 11 of a report, and I mean, I was wrong to think that only that section would be released. I was trying to make sure or.... I was trying to see if the...to make sure that the requester was getting what they were asking for. Again, I was wrong to think that only section 11 or chapter 11 of this report would be released instead of...instead of the whole report.



**The Chair:** Instead of the whole report. Okay. So for clarity, you say that your error was that you misinterpreted the law with regard to section 11 applicability to the whole thing. So we'll accept that.

But at the start you said that it wasn't your intention to delay or obstruct. That might be interpreted by some to be an admission that you did, either advertently or inadvertently, delay or obstruct. Is that the case?

**Mr. Sébastien Togneri:** I—

**Mr. Pierre Poilievre:** Mr. Chair, a point of order.

**The Chair:** I will get to it.

Answer the question, please.

**Mr. Pierre Poilievre:** I have a point of order.

**The Chair:** Okay. I will get to it as soon as we finish—

**Mr. Pierre Poilievre:** You're trying to make a statement on behalf of the witness—

**The Chair:** No, I've asked a question.

**Mr. Pierre Poilievre:** —which is—

**The Chair:** No, I've asked a question.

I'm asking the question.

**Mr. Pierre Poilievre:** You made a statement.

**Mr. Sébastien Togneri:** I'm sorry. Do I respond? Yes?

Okay. Can you just repeat it so that I have it clearly?

**The Chair:** Mr. Valeriote had asked this and your response was... I'm trying to get clarification as to what your intent was, to communicate to this committee what the meaning is of what you said. You explained the last part of it. But the first part of what you said was, and I quote, "...it wasn't my intention to delay or obstruct...".

• (1150)

**Mr. Sébastien Togneri:** Yes.

**The Chair:** Does that imply—and I'm asking you to please advise us—that you understand that you did delay or obstruct?

**Mr. Sébastien Togneri:** No. No, it doesn't. But—

**The Chair:** Okay. Sir, I'll take your answer—

**Mr. Sébastien Togneri:** —just to clarify, though, I didn't know what happened. I didn't know that it took two months, two and a half months, to release this. I didn't know that only part of a document would be released.

What I was told by ATI officers was that they could work with the requester to get either exactly what they wanted for the initial \$5 fee or they could charge the requester the amount of money it takes—which I think in this case was about \$30—for the entire report. I didn't know after that conversation that it would take two and a half months and, as it says in the media reports, the requester wasn't given the choice, wasn't contacted, and I don't know why that didn't happen.

**The Chair:** Okay.

**Mr. Sébastien Togneri:** So I didn't know that.

**The Chair:** Thank you, sir. I appreciate your clarifying that for the committee.

Mr. Rickford, please.

**Mr. Greg Rickford (Kenora, CPC):** Thank you, Mr. Chair.

Again, thank you to the witness for reappearing at this committee. I can assure the witness today that I'm going to ask questions and make commentary, and you're free to answer to the extent that I'm satisfied with the answer. I will not tolerate the chair intervening on that basis. I want you to feel comfortable with that.

I also want to apologize for some of the things that have been rather unusual, going back to the last meeting and in fact occurring at this meeting, to the extent that you were compelled to be sworn in. All witnesses at the committee have an obligation at law to speak the truth and the whole truth. So I apologize for the political charade that we appear to be going through.

Furthermore, the chair of this committee actually went public with comments to the media that you would be threatened with contempt. And today, as we've seen, he's actually denying your ability to give answers that at no point today have actually been interrupted by any of the members of this committee, except for one of my colleagues across the way. And the general tone of these questions has been heavily politicized. I might remark and add that the same level of courage, if you will, was not demonstrated when the minister was here, who's the one who's really supposed to be answering these questions and did so at previous meetings with respect to these issues. This kind of intimidation, sir, I apologize for, on behalf of all parliamentarians.

I appreciate, furthermore, the willingness of this government to have ministers and their staff come before this committee and answer questions in what we thought—and hoped for—would be in non-politicized way. I think it's fair to say that had we had this sort of transparency in years gone by, Canadians wouldn't be asking where the heck their \$39 million went in the Liberal Adscam. Unfortunately, that wasn't available to—

I'm timing it, Mr. Chair. It's okay. I have a sense of where I'm going with this....

Well, it's important, because the clock has been stopped when the witness has been consulting his lawyer, another unusual event, I think.

I have a series of questions here for you. You acknowledged at the last meeting and today that you made a mistake. Did you make a mistake?

**Mr. Sébastien Togneri:** I did make a mistake. Yes.

**Mr. Greg Rickford:** And you've also acknowledged that you did nothing of substance with the document. Is that correct?

**Mr. Sébastien Togneri:** That's right. Yes.

**Mr. Greg Rickford:** Is there anything you want to add to that?

**Mr. Sébastien Togneri:** I made a mistake. I don't know what happened to the documents. I don't redact. I never redact. I can't—

• (1155)

**Mr. Greg Rickford:** That's my next question, so this is an example of the committee member intervening. I'm satisfied with the answer that you gave me.

So you're saying for the record that you didn't redact the document.

**Mr. Sébastien Togneri:** That's right. Yes.

**Mr. Greg Rickford:** It sounds to me like you were going to add a few extra thoughts there.

**Mr. Sébastien Togneri:** No, not really, other than there was never any intention to delay or obstruct. So as far as I know...I'm just anxious to see the report of the Information Commissioner.

**Mr. Greg Rickford:** I believe you mentioned that this is the only time you had an experience like this.

**Mr. Sébastien Togneri:** Yes. Yes, in many different ways, but yes.

**Mr. Greg Rickford:** Okay. And that you did not engage ATIP officials at any point in this process?

**Mr. Sébastien Togneri:** Could you be more precise on...?

**Mr. Greg Rickford:** Well, I'm just reviewing what you described earlier—

**The Chair:** There's the fire alarm.

**Mr. Greg Rickford:** It's getting hot in here, I guess.

**Voices:** Oh, oh!

**The Chair:** Order.

Continue.

Okay. The time has expired.

In the event that this is a real fire alarm, we have to leave, but I want to indicate that the members still have questions, Mr. Togneri. As a consequence I am unable to discharge you from the summons, and it would appear that I can't give you a time to come back.

But the committee will advise you as to when you will be asked to reappear to complete the questioning by the members.

I'm going to suspend this meeting until we determine what's happening. Mr. Soudas is here, though.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

•

• (1220)

**The Chair:** Order. We have resumed the meeting.

Colleagues, our meeting is normally scheduled to end at one o'clock. Mr. Soudas is still with us and has agreed to spend one hour with us to make a brief opening statement, and we'll get in our two rounds of questions if we just keep everything nice and tight.

But extending the meeting time has to be with the concurrence of the full committee. Does the committee wish to go to 1:25?

**Mr. Pierre Poilievre:** No.

**The Chair:** No, Mr. Poilievre?

**Mr. Pierre Poilievre:** That's right.

**The Chair:** Okay. Unfortunately, then, we cannot do that.

Mr. Soudas, thank you. I apologize for the disruption. I certainly respect your time schedule, and I will be in contact with you to arrange another date after the break week, as we have other business on Thursday already scheduled.

Thank you, sir.

What I'd like to do, then, is spend a little bit of time reviewing with the committee what we're doing on Thursday.

I'm not sure if the clerk has this, but on Thursday, May 13, Mr. Sparrow is appearing as the first witness. Following, we have the officials, Ms. Valladao.... And then is it Mr. Trottier or is the other person back? There's also Mr. Larose, whom Ms. Valladao had asked to accompany her. They will appear as a panel in the second hour.

Then we have the break week. Our first meeting back would be June 1. I'm going to make every attempt to get Mr. Soudas to appear. He actually would be the last witness that we have on our approved witness schedule.

I would certainly inquire...or entertain that if there were any other witnesses the members feel are essential to have here before the committee, they certainly can raise that for the committee's consideration. You might want to give some thought to that.

We also have two other items that have been carried forward on our agenda. One is the Google Street View report, Mr. Poilievre's project, and Canpages. We have the draft report. To the extent that we have no witnesses with regard to the current study, we will first go to that.

Secondly, we will have Madame Freeman lead us through the issue that she has raised with regard to order-in-council matters. We'll have a little discussion, and I hope members will understand that when we get back from the break week, I want to discharge that request from the member, that we deal with it. You have handout documents, etc.

There is no other business, other than the Minister of Justice, from whom we have received the two reports on the quick fixes: one to the Privacy Act, and the second to the Access to Information Act. I think all members have those responses from the minister.

You will note that the minister did not, however, provide, as requested, dates. The committee had requested that he appear before us for one hour on each report, either at one meeting or two separate meetings, at his choice; we would give him some freedom.

I spoke to him personally yesterday. He said, "Oh yes, I remember, I'll put it in the hopper". So I will be writing to him again and offering him pretty well any of these dates for the balance before the summer, to give him the latitude to be able to schedule his affairs to appear before us on those two important reports, so we can tidy that matter up.

• (1225)

**Hon. Wayne Easter:** Chair, I just have a question.

How many times have you written him already? When a parliamentary committee asks a minister, we expect the minister to come. We see this at other committees, too. Why the reluctance?

**The Chair:** I can't answer on behalf of the minister. We can only request that the minister appear.

I'm confident that we will be able to find a time for him to be here. This is not overly time sensitive, but I certainly think the committee will want to have an opportunity to hear from him, to ask him any questions they have with regard to the reports, and if necessary, make a further report to the House on one, or both, or none of those reports. It's up to the committee as to what its intent would be.

There are a couple of other matters that are ongoing. Certainly, there is our work on the proactive disclosure, or maybe we'll have to rename that the "open government project". The researchers have given us some suggestions in terms of witnesses, and I would suggest that we are going to try to schedule so that we have work for at least that first week.

People were suggested from Treasury Board, I believe...?

**Ms. Alysia Davies (Committee Researcher):** There's a whole list, Mr. Chair. It's up to the committee.

**The Chair:** The key ones, but we will find internally as to the status of what work is going on in regard to open government issues or proactive disclosure.

Mr. Poilievre.

**Mr. Pierre Poilievre:** Yes, the nomenclature is important, because it determines the scope of our study. I understood we were studying proactive disclosure, which is a very precise policy area covered under the broader umbrella of access to information.

"Open government" is a very general term and could lead the study into all manner of directions. So I'm asking that we stay narrowly focused on the nature of the study as it was defined by the committee.

**The Chair:** I have a feeling that we're all going to discover that this whole area is enormous and that we have to be very realistic about what we can deal with.

**Mr. Pierre Poilievre:** That's right.

**The Chair:** I think we have to keep it focused. I agree with you. That's my reading of it. We should seek to somehow bring our initial thinking on this project to some sort of an interim conclusion and maybe make a brief report to the House with regard to what we've been studying and indicate—

•(1230)

**Mr. Pierre Poilievre:** Yes, on proactive disclosure.

**The Chair:** Yes, on proactive disclosure.

Then, over the summer, we would be able to give more detailed instructions to our support staff and the researchers to arrange a more comprehensive game plan for the committee to consider.

**Mr. Pierre Poilievre:** Right.

**The Chair:** That would be circulated before we return and we would come prepared to make commitments to meetings. When we come back after the summer, we would certainly also have a steering committee meeting, but I believe that with the annual report is still to

come.... I'm not sure when the five-year legislative review on the Lobbying Act is going to be referred to us from the House, but it may also be a matter that we can initially consider and give instructions to the researchers with regard to determining a proposed approach for doing the review for scheduling after the summer.

We're pretty flexible here. I probably will have a steering committee meeting on coming up with a recommendation for the consideration of the committee on the balance of the meetings up to June 22.

Mr. Siksay.

**Mr. Bill Siksay:** Chair, I just want to say that I don't believe the committee had intended to have a very narrow focus on the disclosure question. My understanding was certainly that we were talking about that broader discussion and not limiting it to the way the government defines proactive disclosure or has used the term "proactive disclosure".

I just want to be clear that we were looking at something broader, although I agree that we have to define that, and we haven't done that work yet. The steering committee would be the place to start focusing on some particular issues in that.

**The Chair:** Thank you for that. I think we do need to have that conversation so that everybody is onside as to exactly how we chunk this as we move forward; I think we have to take it in steps.

The first part would certainly be to educate ourselves, so that as we engage witnesses or travel to Washington or Quebec, say, we should be able to engage them on very detailed and specific matters based on the work we'll have done. The first part will certainly be education and helping us to define where we want to be.

Let's put it this way. This will be a living document, as it were. We're not defined very fully right now, but we will deal with it.

Madame Freeman, if you could come prepared after the break to lead a discussion on the area of order-in-council appointments, I would like to deal with that. I don't want it to sit on our agenda for very much longer. I've been very patient.

[Translation]

**Mrs. Carole Freeman:** No, it will not take very long.

[English]

**The Chair:** Okay. So we'll try to do it early after the break.

[Translation]

**Mrs. Carole Freeman:** But I just want to check something regarding proactive disclosure, so that it is clear. When will we discuss the issue? The steering committee has to meet. Since I had provided a rather comprehensive list of witnesses, I thought we would do an in-depth study of that issue as well, and not just spend one or two meetings on it.

What were you planning? When did you plan to discuss the matter?

[English]

**The Chair:** After the break week we have to slot in Mr. Soudas and Mr. Togneri and any other witnesses that may be considered.

[Translation]

**Mrs. Carole Freeman:** Yes.

[English]

**The Chair:** Then, as far as I understand and am aware of now, we will have completed the witness phase. I'm going to ask the researchers if they would begin over the break week to prepare a draft report of the witness summary, etc.

**Ms. Alysia Davies:** Do you mean a summary of the evidence, Mr. Chairman?

**The Chair:** Yes, a summary of the evidence that we have so far, and we will try to bring that matter to a report, because the motion did call for a report to the House.

• (1235)

[Translation]

**Mrs. Carole Freeman:** Very well.

[English]

**The Chair:** With regard to your item, once I get those two witnesses and the Minister of Justice in—I want to give them all the flexibility to plug those people in to our remaining meetings before the summer—I will be able to advise the committee of when we will have this discussion again, just a round table discussion, about the proactive disclosure, based on what was recommended by our steering committee and adopted by the committee.

Because we've had all this other activity, I think we have to just refresh ourselves about what we talked about, what we agreed to do, and how we will proceed from there forward. We do want to make sure that the meetings are used. Certainly one of the meetings would be to have one or two of the government departmental areas that are already doing work in relation to proactive disclosure. We want to see what they're doing, what those kinds of things are.

Mr. Poilievre, you had a point?

**Mr. Pierre Poilievre:** Yes. I know that I raised a point earlier about the nature of the committee's study. I don't want to put too fine a point on it, but the committee did make a specific decision on April 1, 2010, for which I do have the recorded minutes. They state, "It was agreed, — That the Committee undertake a study on Proactive Disclosure."

"Proactive Disclosure" is displayed as a proper noun, with a capital P and a capital D, meaning that it has specific properties to it.

The committee can study anything it wants. If the committee wants to put forward a new motion to study open government or the Ten Commandments or the BNA Act or the nature of democracy itself.... There are any number of broad subject areas that we can commence a study on, given that we are in fact the masters of our

own domain. The point is, we didn't decide to study any of those aforementioned things; we decided to discuss proactive disclosure.

**The Chair:** I think I raised that terminology of open government simply because when we had the Information Commissioner before us she tended to suggest that "open government" might be a better or more reflective terminology for what the intent is, for what target we're intending to address.

I guess it really comes down to how we change the administration of access requests to deal with backlogs and high volume, etc., so that in fact the matters which still must be requested are those where there is reason to believe they should not be fully released. It's a very good question. When we have our first open slot for that subject matter, those are the kinds of questions, I think, that we should review and reaffirm so that everybody's on the same wavelength, okay? I agree with you. We'll make your case there, let the members speak, and the committee will decide our course of action.

Is there anything further for the committee?

No? Good. We're adjourned—

Oh, sorry, Mr. Siksay.

**A voice:** We're unadjourning.

**The Chair:** I'm unreleasing—

**Mr. Bill Siksay:** Chair, since the Google Street View report has been on our agenda for weeks now and we still have time—and I don't think it's going to take a lot of time—could we not deal with that report now and try to sign off on it?

**Mr. Pierre Poilievre:** [*Inaudible—Editor*]...prepared on that.

**Mr. Bill Siksay:** But it's been on the agenda for weeks, Chair, and it's on the agenda for today as well.

**The Chair:** Yes.

**Mr. Bill Siksay:** It's on the agenda.

**The Chair:** It's been carried forward.

Mr. Siksay, I should have but couldn't have anticipated where we would be right now, and I think I can understand that the members probably don't even have their copy of the draft report here to do it justice.

But I do want to get that dealt with. I would encourage members to bring it to every subsequent meeting should we have 10 or 15 minutes to work with. Okay?

Thank you.

We're adjourned.







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