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Mr. Blaine Calkins

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● (0845)

[*English*]

The Chair (Mr. Blaine Calkins (Red Deer—Lacombe, CPC)): Good morning everyone. This is the 15th meeting of our committee and the last full day of witnesses for our review of access to information. I will remind colleagues that on Thursday we have the commissioner coming back for one more hour, and then we will be spending the last hour or so providing drafting instructions to our analyst. We are getting near the end.

We are really pleased to have with us today Mr. Robert Marleau, former Information Commissioner of Canada. We certainly appreciate your being here, sir.

The committee asked to hear from ATIP coordinators from various departments. We see that we have, from the CBSA, Mr. Dan Proulx, who has brought Mr. Mundie with him. From Shared Services Canada, we have Monique McCulloch, and from the CRA, we have Marie-Claude Juneau. Thank you very much. From the Department of Employment and Social Development Canada—it used to be HRSDC—we have Cheryl Fisher. From the Department of Justice, we have Francine Farley. Thank you, Francine. She has also brought Marie-Josée Thivierge, who is no stranger to committees at all.

We thank you all for being here this morning.

We are going to start with Mr. Marleau and his opening comments. Normally, we would have 10 minutes, but in this particular case, because we have so many witnesses at the table today.... Mr. Marleau, you have up to 10 minutes if you like, sir, and then for each of the ATIP coordinators who were asked to come here, if you could keep your remarks to somewhere in the two- to five-minute ballpark, I think that's what was requested. Then we will proceed to our rounds of questioning to elicit the great debate that we all want.

Mr. Marleau, please, the floor is yours.

Mr. Robert Marleau (Former Information Commissioner of Canada, As an Individual): Thank you, Mr. Chair.

[*Translation*]

Thank you for your invitation, Mr. Chair. I'm delighted to be with you this morning, and particularly pleased that my tenure as Information Commissioner of Canada, and in the House of Commons, is remembered here.

[*English*]

I have a very brief overview of the recommendations I made to this committee in 2009. I believe the clerk has circulated that statement to you. I will just cover those very briefly and leave it up to you for questions.

In March 2009 I tabled before the committee a report with 12 recommendations. Why 12 instead of 80-something, such as are in the current report by the current commissioner? It was because it was a minority Parliament. It was going to be a short time frame, and these were also identified, as part of the stakeholder consultations that we had done in the office, as the quick hits. What could we fix quickly to move the legislation along from its aging situation? These 12 recommendations were reviewed by the committee, 11 of which were adopted and recommended to the government in the report to the House. One was recommended for further study. I'll just go very, very quickly.

All of these recommendations and variations thereof are in the current report that you're considering from Commissioner Legault. First, there was that the call that the committee support the recommendation suggesting first and foremost that the government proceed with amendments to the legislation, and that access be given to all persons whether they're citizens or not. The committee supported that.

Order-making powers for the commissioners were also recommended, but we only went half way, or I only went half way, only for administrative matters. There was great reluctance—and there probably still is great reluctance within certain circles of government—to see the commissioner having order-making powers, despite the practices in all of the provinces, particularly B.C., Alberta, and Ontario. So we thought we would experiment with order-making powers on the basis of the administrative matters, things like fees, translation, delays, and those kind of issues.

Another one was to try to grant the commissioner some discretion in looking at investigating complaints, things like vexatious frivolous complaints and large volume complaints. They give the commissioner some discretion in evaluating those. It was somewhat resisted by stakeholders, and probably still is today.

We also felt that the commissioner should have an education and research mandate parallelling what goes on for PIPEDA in the privacy office. It cannot just be left to Treasury Board Secretariat to promote and inform on this statute.

Also an advisory mandate for the commissioner was recommended and approved by the committee to look at proposed legislative initiatives and, in part, that came out of the privacy impact assessment experience in the privacy office.

I also recommended, as the previous commissioner had recommended before me, that the act cover the general administration of Parliament and the courts.

Recommendation eight was the one that the committee did not support by way of recommendation but asked the government to look into further, and that is that the act apply to cabinet confidences. I'm sure you'll have questions about that.

Recommendation nine was that the commissioner be given the authority to approve extensions beyond sixty days. Extensions were a big issue and continue to be an issue under the statute as it is now.

Recommendation ten was that the act specify certain time frames for completing administrative investigations. The substantive investigations are a different category, but for administrative purposes, they should be done within, say, 120 days.

● (0850)

Also, as called for by a large number of stakeholders, I recommended that the complainant be given direct access to the Federal Court. As it is now, as it was then, before a Federal Court can be seized of a file, the commissioner has to complete his investigation, which sometimes can be quite lengthy. For certain requesters, they wanted that direct access for quicker resolution before the courts.

Finally, I recommended that the commissioner be allowed to look at and combine some of the multiple simultaneous requests, particularly those where we allowed for some time extensions.

There is a strategy among certain requesters to flood an organization from time to time, with a large numbers of requests and give the commissioner some discretion on how to manage that. The act requires the commissioner to investigate complaints—it says, “shall receive and investigate complaints”. It didn't tell me when to investigate, and so depending on the nature of those kinds of complaints, I took the position back then that they might be moved around in the queue, using a discretion that's technically not there in the legislation, but one that I did exercise.

By way of closing, Mr. Chair, I'd like to comment on four of the components in the existing act that Commissioner Legault has underlined.

The concept of reforming the access model from one that eliminates exclusions and goes strictly to an exemptions model, with an injury test, I think, would be a good move forward. Full order-making powers for the commissioner, I think, are long overdue. There is plenty of practice in B.C., Alberta, Ontario, that supports this as being a very positive model, particularly given that over time, you do build a certain amount of jurisprudence that becomes a reference on what to release and when to release it for the ATIP coordinators sitting around me.

The duties document, I think, is a concept that goes hand in hand with the duty to assist that was introduced in the act in 2006 with the FAA. It's overdue as a concept. There are provisions that should deal with destruction of documents and that sort of thing. I think when we look at the context of instant messaging, it's an issue, but there could be some situations that occur where we deliberately do not create documents, which I think has to be addressed in the legislation. Of course, extending the coverage to ministers' offices, and Parliament, and the courts is one that I support.

The reason I didn't recommend back in 2009 that it could be extended to ministers' offices is that the case was before the Federal Court at the time, and we are still waiting for a decision from the Federal Court. Of course, the Federal Court did rule, I think in 2011, that the act didn't apply to those offices as written, so I think it's time for Parliament to review that and initiate that kind of coverage.

I'll leave it at that, Mr. Chair. I have the dubious distinction of being the only one alive who sat in both chairs—privacy and ATI—so I hope that I can bring a certain perspective to your questions that you may find useful.

[*Translation*]

Thank you very much.

● (0855)

[*English*]

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

For those of you at the committee who may not know, the procedure book that we use now for our House of Commons is now called O'Brien and Bosc, but it used to be called Marleau and Montpetit. That's because Mr. Marleau was the former clerk of the House of Commons for about what, 13 years or so?

Mr. Robert Marleau: Yes, 13 years.

The Chair: We thank you very much for your wisdom at this table. I'm sure it will come in very handy.

We'll now move in the order in which I introduced the witnesses. I'll move to Mr. Mundie, please.

Mr. Robert Mundie (Director General, Corporate Secretariat, Canada Border Services Agency): I'm the director general for the corporate secretariat of CBSA. With me is Mr. Proulx, who is the access to information director for access to information and privacy.

The ATIP division is responsible for oversight of the access to information function at the agency, which includes fulfilling and administering all legislative requirements for the act related to processing of requests, interacting with the public, CBSA employees, other government institutions, and with the Office of the Information Commissioner regarding investigations and audits, and implementing measures to enhance our capacity to process access to information requests.

I'll briefly outline the CBSA's access to information function, how the agency performs against established service standards, and highlight some of the successes and challenges we experience in our administration of the act.

[*Translation*]

The Canada Border Services Agency is the second largest law enforcement organization in the federal government. It is responsible for border functions related to customs, immigration enforcement, and food, plant and animal inspection.

The agency administers and enforces two principal pieces of legislation: the Customs Act, which outlines the agency's responsibilities to collect duties and taxes on imported goods, interdict illegal goods, and administer trade legislation and agreements; and the Immigration and Refugee Protection Act, which governs the admissibility of people into Canada, and the identification, detention and removal of those deemed inadmissible under the act.

[*English*]

To give you a sense of the scope of our activities, the agency also enforces over 90 other statutes on behalf of federal departments and agencies.

Given the numerous daily activities and interactions the agency has with both businesses and individuals on a variety of matters, we are no strangers to access to information requests. Within the division for which I have responsibility, the access to information division, we have approximately 50 employees who work in ATIP, and 34 of them are dedicated to the processing of access to information requests and privacy requests. In addition, the division also has an internal network within the agency of 17 liaison officers, who provide support within the agency's branches at headquarters and in the regions across the country.

The CBSA's operating expenditures to run its access and privacy program totalled approximately $5.2 million in 2014-15, with $4.2 million dedicated to salary and $1 million to non-salary expenditures. This includes the the cost of administering both the Privacy Act and the Access to Information Act, as the work is done concurrently.

With respect to volumes, the CBSA received just over 6,700 requests in 2014-15. This is the second-highest number within the Government of Canada. It represents an increase of 43.5% from the previous year. In addition, we received approximately 12,800 privacy requests in the same fiscal year.

These high volumes are largely attributable to individuals seeking copies of their history of arrival dates in Canada. In fiscal year 2014-15, 60% of all of our requests came from individuals seeking their traveller history reports, which are used to support residency requirements for programs administered by Immigration, Refugees and Citizenship Canada and by Service Canada.

Despite this increase in volume, we were able to maintain a compliance rate of 93.5% for completed requests, because ATI analysts in our case-processing units have direct access to the databases with which they can create these traveller history reports. Also, these reports and the application of the law related to them are fairly standard, which allows analysts to complete these requests without needing to obtain recommendations on disclosure from other departmental officials, which is largely the case with most of the other access to information requests we receive. This greatly reduces the time it takes them to process these types of requests.

● (0900)

[*Translation*]

In fiscal year 2014-15, a total of 71 complaints were filed against the CBSA with the Office of the Information Commissioner, a decrease of 25% from the previous year. Given the large volume of requests the CBSA processes, this number represents a very small proportion of total requests closed. Nonetheless, we continue to aspire to serve requesters better.

Our success reflects the CBSA's commitment to ensuring that every reasonable effort is made to meet the obligations set out in the Access to Information Act.

[*English*]

The CBSA strives to provide Canadians with the information to which they have a right in a timely and helpful manner by balancing the right of access with the need to protect the integrity of border services that support national security and public safety objectives. Innovative approaches and careful planning will help the agency to continue this success into the future.

In closing, we welcome the review of the Access to Information Act and will fully support and adopt any new measures that are introduced by the Treasury Board Secretariat in support of the amendments to the act.

I want to thank you, Mr. Chair, for the opportunity for us to provide input to you today. We look forward to questions that members may have.

The Chair: Thank you very much for coming, Mr. Mundie and Mr. Proulx. It's much appreciated.

Let's move around the table rather than going through the list. That way we're not jumping back and forth.

I've got either Madam Farley or Madame Thivierge on behalf of the Department of Justice. Who would like to go?

Ms. Marie-Josée Thivierge (Assistant Deputy Minister and Chief Financial Officer, Office of the Assistant Deputy Minister and Chief Financial Officer, Department of Justice): Good morning, Mr. Chair and members of the committee. We're pleased to appear before the committee today to explain how the Department of Justice administers the Access to Information Act.

My name is Marie-Josée Thivierge, and I'm the assistant deputy minister of the management sector and chief financial officer at the Department of Justice. I'm joined today by Francine Farley, director of our access to information and privacy office. The ATIP office is one of many organizations within my sector.

Mindful of the interest of the committee in the reform of the Access to Information Act, and the fact that work is currently being led by the president of the Treasury Board, my colleague and I, the administrators at Justice, are here today to talk about the administration of the act, and we'd be happy to answer any questions you may have.

Before I briefly describe the department's access to information function and our experience with the administration of the act, I think it might be helpful if I provided a bit of context on the department.

The Department of Justice has three distinctive roles within the Government of Canada. It acts as a policy department with broad responsibilities for overseeing all matters relating to the administration of justice. In this capacity it helps to ensure a fair, relevant, and accessible justice system for all Canadians. It also is a provider of a range of legal advisory, litigation, and legislative services to government departments and agencies, and is a central agency responsible for supporting the minister in advising cabinet on all legal matters. Justice Canada is a department of close to 4,400 FTEs. Approximately half our employees are lawyers, and many are located in client departments to provide legal advice.

In administering the Access to Information Act, the department strives to give full disclosure of information requested by Canadians, but we do so recognizing important exceptions provided under the act. For example, when processing requests, the Department of Justice often applies the solicitor-client privilege exemption, section 23 of the act. In 2013, the Supreme Court of Canada said that the protection of solicitor-client privilege should be as close to absolute as possible because it is a cornerstone of Canada's legal system.

Also, Justice, as many other departments, will exclude cabinet confidences, section 69; and protect personal information, section 19; and advice on operations of government, section 21, where warranted.

Another role of the ATIP office at Justice is to provide advice and training to other federal departments on the application of the solicitor-client privilege.

● (0905)

[*Translation*]

Having provided the context, I propose to move on to a few highlights from 2014-15.

The Department of Justice received 520 access to information requests, a slight decrease from the previous year. It also received 587 ATI-related advisory requests, the vast majority of which were about solicitor-client privilege. Although this is a 36% decrease from the previous year, the fact remains that the number of advisory matters was greater than the number of ATI requests from the public. The importance ascribed to the solicitor-client privilege exception is one reason for this.

The Access to Information and Privacy Office also handles what are known as informal requests, aimed at having information in the department's possession made public. In 2014-15, a total of 148 of these unofficial requests were processed. The departmental entity that administers the Access to Information Act employs 19 full-time equivalents and two consultants, who work closely with other officials to ensure compliance with the act.

Before the Treasury Board's recent interim directive was issued, our department was applying a reproduction fee waiver policy in cases where the number of pages to be disclosed to the requester was less than 400 pages, or where the requester wished to receive documents in CD format. Going forward, no fees, other than application fees, will be billed. And in 2014-15, the total of the $5 application fees, collected on account of requests received, was $2,625.

Even though the number of applications received by the Department of Justice is lower than what other departments tend to receive, our department continues to improve performance with a view to ensuring that its services meet the highest standards of quality.

In 2014-15, our ATIP office joined an online ATIP request pilot project. Thanks to this project, Canadians can submit applications online under the act and pay the $5 fee electronically. This avoids the need to submit a cheque with each application.

In addition, we have implemented a web application platform for the transfer of information with offices of primary interest.

In keeping with the 10 Principles of Fair Information Practice in place at our ATIP office, and with the Treasury Board Secretariat's directives and policies, our department continues to post its annual reports to Parliament, as well as summaries of completed requests, on its website, as part of our effort to improve communications with requesters, and to increase transparency.

In the realm of education and training, our staff regularly provides department employees with advice and training on the application of the act. In 2014-15, more than 500 employees received training sessions.

● (0910)

[*English*]

In closing, Justice has been an active member in the community of access to information administrators, which has led to the sharing and the adoption of best practices, all with a view to ensuring that government information is available to the public consistent with the spirit and the letter of the act.

Mr. Chair, committee members, we would be pleased to answer any questions the committee may have.

[*Translation*]

Thank you very much.

[*English*]

The Chair: Now we'll move to Madame Juneau from the Canada Revenue Agency.

[*Translation*]

Mrs. Marie-Claude Juneau (Director, Access to Information and Privacy, Canada Revenue Agency): Good morning.

Thank you, Mr. Chair.

My name is Marie-Claude Juneau, and I'm the director of access to information and privacy, ATIP, at the Canada Revenue Agency. I would like, once again, to thank all of you for inviting us this morning to describe the access to information framework within our agency.

I'd like to start by giving you a bit of background on how the ATIP program operates at the CRA.

The CRA is one of the largest organizations in our government. It has more than 40,000 employees. These employees administer and manage vast amounts of information—including taxpayer information—all of which may become the subject of an access to information request.

The CRA processes one of the largest volumes of ATI requests each year. In 2014-15, it received the fourth largest number of ATIP requests among all federal institutions and processed more than 1.3 million responsive pages—the second largest number among federal institutions.

Like other institutions, the CRA has experienced considerable growth in page volumes over the past 10 years. In 2005-06, the agency reviewed nearly 350,000 pages. In 2014-15, less than 10 years later, this figure has more than tripled, to 1.3 million.

The volume challenge at the CRA is compounded by the high complexity of the requests we receive. They frequently involve records related to tax litigation or require consultation with third parties such as provincial, federal, or international bodies.

Collection of documents, consultations, and the review and severing of thousands of pages, cannot always be completed in the default time frame of 30 calendar days. Over the past five years, 79% of all requests received by the CRA were completed within that 30-day limit or, if an extension was taken, within the extended deadline. The CRA had to apply extensions longer than 60 days to more than 3,000 requests.

To process such requests, ATIP analysts must continuously consider our agency's current legal environment, the interplay between the provisions of the Access to Information Act and the information and confidentiality provisions of the CRA's program legislation—for example, the Income Tax Act and Excise Tax Act—and our information exchange agreements with third parties, so that it can sever files appropriately. In particular, section 241 of the Income Tax Act and section 296 of the Excise Tax Act prohibit the disclosure of client-specific information and take legal precedence over the disclosure provisions of the Access to Information Act. These confidentiality provisions are critical to safeguarding and protecting client-specific information, recognizing that the disclosure of such information could be seriously injurious to an individual or organization.

In response to this environment of increasing complexity and volumes, the CRA has significantly increased its investment in the ATIP function. Our total budget has grown from $6.1 million in 2010-11 to $9.7 million in 2014-15. This represents a 59% increase in funding over the last five years. lt is important to note that these numbers only reflect direct costs within the ATIP program itself. They do not include the significant costs associated with retrieving these records and the time that employees spend providing recommendations to ATIP to support the processing of requests.

The CRA has complemented this investment with expanded efforts to provide access to information through other channels, such as the My Account and My Business Account channels. We also provide Canadians with a great deal of information through our charities website.

The CRA's Open Government Implementation Plan outlines the many ways the CRA is expanding access to information. These include the provision of anonymized data sets through the Open Data portal and the recent introduction of a virtual library on the CRA website, where frequently requested information is posted.

● (0915)

I hope I have provided committee members with a flavour of the complexity and operational challenges that the CRA is addressing in its ATI function.

I would be pleased to answer any questions you may have.

Thank you.

[*English*]

The Chair: Thank you, Madame Juneau.

We now move to Ms. McCulloch from Shared Services Canada for up to five minutes.

Ms. Monique McCulloch (Director, Access to Information and Privacy, Shared Services Canada): Thank you, Mr. Chair, and members of the committee, for the invitation to describe the framework that Shared Services Canada has put in place to comply with the Access to Information Act. We are pleased to be joining you this morning.

My name is Monique McCulloch, and I am the director of the access to information and privacy protection division, which is within the corporate services branch at Shared Services Canada. I act as the coordinator for the whole department and am responsible for administering all ATIP, legislative, and policy obligations.

Mr. Chair, before describing the access to information framework, I would like to provide some context on the mandate of Shared Services Canada.

[*Translation*]

Shared Services Canada was created to modernize information technology infrastructure services to ensure a secure and reliable platform for the delivery of digital services to Canadians.

The department aims to deliver one email system, consolidated data centres, reliable and secure telecommunications networks, and non-stop protection against cyber threats.

[*English*]

Shared Services Canada currently provides information technology infrastructure services across 43 departments, 50 networks, 485 data centres, and 23,000 servers. For fiscal year 2014-15, while still growing its capacity, the ATIP office employed six full-time employees and one casual employee, as well as one consultant, to carry out the Access to Information Act business. Shared Services Canada spent just over $785,000 to administer the Access to Information Act portion of the ATIP program.

Since its creation in August, 2011, Shared Services Canada has put in place a framework anchored by internal policies, instructions, and training that identifies the procedures and processes for handling requests for information under the act. Specifically, the ATIP division introduced an ATIP management framework that sets out a comprehensive governance and accountability structure. This reflects Shared Services Canada's responsibilities under both the Access to Information Act and the Privacy Act with respect to access rights and with regard to the collection, use, disclosure, retention, and disposal of personal information.

The ATIP division is responsible for developing, coordinating, implementing, and monitoring compliance with effective ATIP-related policies, guidelines, systems, and procedures across Shared Services Canada. This enables the department to meet the requirements and to fulfill its obligations under the Access to Information Act and the Privacy Act.

In terms of the volume of work, I would now like to share some statistics from the fiscal year 2014 annual report on the Access to Information Act.

There were 362 files in total, including formal requests for records and consultations under the Access to Information Act, as well as informal requests for previously processed files. Consultations with our 43 partner organizations, as well as third-party vendors, is an important component of the ATIP work given the department's enterprise-wide scope and significant procurement mandate. The volume of requests received was comparable to the previous reporting period. However, due to interest in records relating to procurement and cybersecurity files, the number of pages processed increased eight times to 183,023 pages processed in 2014–15, from 22,438 pages processed in 2013–14.

The Shared Services Canada ATIP division weekly tracks its turnaround times in processing requests and monitors the timeliness of their completion. Performance reports are communicated to senior management each month.

● (0920)

[*Translation*]

In fiscal 2014-15, all requests under the Access to Information Act were processed within the timelines permitted by the act. Overall, 63% of requests were processed in 30 days, and 37% were the subject of extensions permitted by the act. During this reporting period, only two complaints were filed with the Office of the Information Commissioner of Canada on this subject. It should be noted that one of the complaints was withdrawn and that the other was determined to be unfounded.

[*English*]

The majority of the Access to Information Act requests processed by Shared Services Canada relate to procurement and vendor relations, cybersecurity, transformation initiatives, and briefing products to the president and minister. These access requests can be complex given the requirement for both internal and external consultations with Government of Canada customers, central agencies, and external companies and organizations.

In 2014, Shared Services Canada was also part of the initial ATIP online pilot project led by the Department of Citizenship and Immigration, and the Treasury Board of Canada Secretariat, to facilitate and expedite Canadians' rights of access. Today, the majority ATIP requests received by the departments are made online as part of open government initiatives.

Mr. Chair, this ends my opening remarks. I would be pleased to respond to any questions the committee may have.

The Chair: Thank you very much.

We now go to our last witness, Ms. Fisher, from Service Canada, for up to five minutes. Thank you.

Ms. Cheryl Fisher (Corporate Secretary, Corporate Secretariat, Department of Employment and Social Development): Thank you very much.

[*Translation*]

Good morning Mr. Chair and members of the committee.

I am very pleased to appear before you today, along with my colleagues from other departments, to take part in this study of the Access to Information Act.

[*English*]

My name is Cheryl Fisher, and I am the corporate secretary at the Department of Employment and Social Development Canada. Among the responsibilities I have in my area of the portfolio is the responsibility for the administration of access to information and privacy, known as ATIP.

Thank you for the opportunity to speak to you today. I will discuss the administration of the current legislation in our department, our performance in this regard, and the costs associated with processing the ATI requests. I will address a couple of the recommendations of the Information Commissioner, their operational implications for our department, and our path going forward.

I wanted to give you a brief sense of the scope and context of the mandate of our department at Employment and Social Development Canada. As you may know, ESDC, as we're called, is at the heart of service delivery to Canadians. We're responsible for the administration of many programs that touch Canadians at various points in their lives.

The list of services is long, and you're familiar with many of them. Some of the central responsibilities are carried out by a workforce of some 23,000 employees across the country. About 80% of our employees are in regions across the country, or coast to coast to coast, as we say.

[*Translation*]

Our department's main responsibilities are as follows: providing support for families and children; operating the Canada Student Loans Program; providing job training and retraining programs in partnership with provincial and territorial governments; administering the employment insurance program, the old age security program and the Canada Pension Plan; ensuring our labour law promotes good working conditions and the means to settle disputes between employees and employers; and providing access to a multitude of federal programs and services through Service Canada, whether online, in person, or over the phone.

[*English*]

The fact that we have not one but three ministers leading the department is also a good indication of the scope of our responsibilities.

● (0925)

[*Translation*]

We have responsibilities both to Canadians and to employers.

[*English*]

As you can imagine, given the nature of the services we provide, our department receives a large number of access to information requests. We believe in the right of access to government records and work hard to make records available in a timely manner, within the legislative provisions of the Access to Information Act.

We now live in a world where information is available at the touch of a finger, the swipe of a screen, and in the seconds it takes to compose a tweet or send a quick email. Today the quest and desire for information is greater than ever, and we have seen this interest through the growth of access to information requests in our department. The expectations of Canadians have also shifted, and we are seeing that the speed of information sharing and access is a key driver for access to information strategies going forward.

[*Translation*]

We've noticed a substantial increase in the number of information requests received and the number of pages examined by our team. We've also noticed that the information requests received tend to be more complex.

[*English*]

Over the course of the last several years, the number of our requests, which I'll refer to as ATI requests, have increased significantly, and we expect continued growth in this fiscal year. For example, five years ago, in fiscal year 2011-12, we received just 579 access to information requests, and by fiscal year 2014-15 the number had climbed to 1,160 requests. We're seeing the volume of requests continuing to climb to this day.

In addition, the volume of pages that our ATI team has reviewed is also on an upward trend, as other colleagues have mentioned. For example, in 2013-14 we received just over 100,000 pages associated with requests to review that year. In 2014-15, that number rose to 139,000. And in 2015-16—for which numbers are not yet published—the number of pages reviewed has reached over 250,000. It's worth noting that as volumes of pages grow, there is increased complexity in applying the required exemptions and exclusions under the act.

The makeup of the ATI requesters varies. In 2014-15, over one third, or about 390, of the requests were from businesses and the private sector. Another quarter of the requesters, or almost 300, identified themselves as members of the general public. Others identified themselves as organizations, media, and academia, and 4% declined to identify themselves. We note that a few requesters are often responsible for large numbers of requests, which can lead to spikes in volumes of requests. This can affect our ability to meet the legislated timelines for everyone else.

You may be asking what kinds of information are being requested at ESDC This varies as well. Some of the most common requests are for labour market impact assessments or labour market opinions, briefing note lists, briefing notes, briefing materials, reports, operational procedures manuals, correspondence, and communication plans and strategies.

The access to information operations team under me at ESDC consists of about 20 full-time employees, and between four and six temporary employees, who are either consultants or casuals. We have an overall operating budget of $1.7 million, of which approximately $1.6 million is salary costs. This budget does not include the access to information liaison coordinators in each of our program areas across the various responsibilities. Nor does it include the time it takes for officers in our program areas to search for, retrieve, and review the relevant records.

All access to information requests that come into our department are tasked out to particular liaison officers and their responsible areas. They're responsible for the timely search and retrieval of records. Then they work with our ATI operations team and the liaison officers to determine whether documents can be fully disclosed, whether some exemptions or exclusions need to be applied, and whether any consultations need to take place.

[*Translation*]

At our department, the exemptions and exclusions most frequently applied are as follows: personal information, covered by section 19; law enforcement and investigation, covered by section 16; advice and recommendations, covered by section 21; third party information, covered by section 20; solicitor-client privilege, covered by section 23; and confidences of the Queen's Privy Council, covered by section 69.

● (0930)

[*English*]

Once documents have been reviewed, they're redacted, if required, using software that has been developed for this purpose, and we send an advance release notice in the department—usually four days—and then the documents are released.

ESDC understands that responding to an access request is a priority that requires all stakeholders to carry out their roles and responsibilities and meet timelines in order for the department to meet its performance objectives. There is no question that the increase in volume, size, and complexity of requests has affected the department's compliance rate—that is, our performance—in responding to access requests. While our performance is falling short of where we would like it to be, in 2014-15 the department still managed to respond to 75% of all ATI requests within legislated timeframes.

To further improve our performance, we've looked at a number initiatives, some of which have been mentioned by my colleagues. The department has redesigned its business process for requests, to simplify and improve the process and ensure quality. We've increased our efforts in training. We're benchmarking ourselves and looking at best practices from other departments for us to make further improvements. We continue to engage our dedicated and skilled team to ensure that they're well supported in their roles as they face significant increases in ATI requests. We're also looking to initiatives, such as open government and open information, to modernize our access to information practices and make high-demand areas for information available more proactively.

In terms of the recommendations of the Information Commissioner, I'll highlight two that I believe could have implications.

The Chair: You've already gone over 10 minutes, Ms. Fisher—

Ms. Cheryl Fisher: Pardon me. Thank you.

The Chair: —so what we'll do then is to hope that maybe some of the things you wanted to get to will arise in the question and answer portion. Thank you very much for your presentation.

We'll move to that now and go to Mr. Lightbound, for up to seven minutes, please.

[*Translation*]

Mr. Joël Lightbound (Louis-Hébert, Lib.): First of all, thank you everyone for being here.

My question is for all the witnesses. I will try to be as brief as possible.

Several people have come before this committee to speak to us about the importance of the role of coordinators, given that they manage most ATI requests. For example, Professor Drapeau, of the University of Ottawa, opined that ATIP coordinators should have more independence. He feels they should perhaps be appointed by the Governor in Council and therefore report directly to the minister, who would have ultimate responsibility.

Other witnesses have expressed reservations about this process but agree that coordinators should have as much independence as possible.

I would like to hear your views on that. Could you describe the position of coordinators within your institutions' hierarchies, state whether coordinators should have more independence in the performance of their duties, and describe, concretely, how this might be brought about?

The floor is yours.

[*English*]

Maybe you'll go from left to right, or from right to left.

The Chair: Ms. McCulloch seems ready.

Ms. Monique McCulloch: Sure.

[*Translation*]

Thank you for the question.

[*English*]

Personally, I find that the position of director of access to information and privacy has the delegated authority and is recognized as the position that occupies the discretionary authority to make the day-to-day decisions. We make great efforts to ensuring that it's an arm's-length approach, so that all decisions that are made are based on the provisions of the legislation and that we don't allow ourselves to be influenced contrary to the spirit and intent of the legislation. With the full delegation of authority that I have from the president of Shared Services Canada, I am able to do the day-to-day work of administering both the Access to Information Act and the Privacy Act and all related Treasury Board policies. I find that I have the independence to do the job that I'm asked to do. I'm able to challenge when necessary.

I don't think that having additional independence would really make a difference at this time.

Thank you.

● (0935)

[*Translation*]

The Chair: It's your turn, Ms. Juneau.

Mrs. Marie-Claude Juneau: The delegation at the CRA is nonetheless limited. Further to the decision from the minister's office, the minister herself is responsible for delegation to a limited number of employees, despite the fact that the agency has a very large number of employees. I have such responsibility, along with some of my managers and assistant directors.

To continue along the lines of what my colleague Ms. McCulloch said, it is also my view that we have all the room necessary to apply ATIP legislation appropriately and non-arbitrarily. I do not think that having the coordinators appointed by the Governor in Council would result in any change from the way we currently operate.

[*English*]

The Chair: Mr. Marleau.

Mr. Robert Marleau: Just briefly, Mr. Chair, thank you.

[*Translation*]

To respond to your question, I can say, as a former commissioner, that I never saw the problem that way. The minister delegates in an independent manner. I don't recall any particular report mentioning that there was a problem in this area.

This structure exists at other departments, under other functions, and with other rights granted by legislation, wherein various individuals are delegated a duty that is independent of the organizational and supervisory structure of a department. Based on my experience, ATIP coordinators would be the first people to express confidence in the system's capacity to serve the public, and they are able to carry out their duties with all the necessary latitude and in a completely forthright manner.

Accordingly, the suggestion made by the witness to whom you refer seems rather strange. In my view, the creation, by order in council, of all kinds of mini-commissioners throughout the system, with supposedly increased independence, within a departmental administrative structure, would be unhelpful in terms of continuity of service for Canadians.

Ms. Marie-Josée Thivierge: Ms. Farley might wish to add something to what I've stated. Ms. Farley, as director, has full delegation in administrative matters from the minister. Within this framework, she can make all day-to-day decisions in a completely objective and independent manner. Although she is part of my organization, the entity she heads is seen as set apart from the department as a whole. Given the situation, I believe that objectivity in the administration of the legislation is fulfilled.

I'm not sure whether Ms. Farley would like to add anything.

Mrs. Francine Farley (Director, ATIP Operations, Management and CFO Sector, Department of Justice): Under both the Access to Information Act and the Privacy Act, I feel totally comfortable to challenge certain cases where I feel the recommendations might be going too far. It's my role to do that. I do not feel any constraints in that regard. It was never called into question.

[*English*]

Mr. Dan Proulx (Director, Access to Information and Privacy Division, Canada Border Services Agency): Similar to the situation at CRA, at the CBSA, the delegation of instruments is set up in such a way as to limit it to certain individuals. I have full delegated authority and so do some of my managers. I'm very independent. I've been director of ATIP since 2010 and I have overseen probably 80,000 to 100,000 requests, both access to information and privacy requests, and I am completely independent in what I do.

We do look at recommendations from the offices of primary interest, but we have the final decision. We have the final say. I'd have to say that it's working very well. I've spent my career in access to information and privacy. I've done so for 20 years. I see no need for such a change. We're independent, and that part of the system, I believe, works quite well.

Thank you.

The Chair: That takes us to seven and a half minutes, Mr. Lightbound.

It looks like one well-worded question is all that we're going to get in on a seven-minute round.

Mr. Jeneroux, go ahead for up to seven minutes, please.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): I had better make it worth it then.

Thank you, everybody, for coming and also to your staff here scattered around the room for taking the time to prepare for today.

I hope I can get in a couple of questions, but we'll start with one. To Justice, you mentioned that with the $5 fee, you had collected approximately $2,615. Do you have any idea what the cost to administer that was?

● (0940)

Ms. Marie-Josée Thivierge: That's a very good question.

Mr. Matt Jeneroux: Is it over $2,615?

Ms. Marie-Josée Thivierge: One thing to keep in mind is that the Department of Justice a few years ago decided to forgo a number of the fees that are currently provided for reproduction purposes or for providing information on CDs. So really our only fees are tied to the $5 fee. Even in that circumstance, and you may recall the numbers, some of those fees are even waived in certain circumstances because those fees can be waived. So that represents a fairly small volume.

As you saw from my presentation, we received about 520 requests altogether. So for us, this is not a very large part of our operations. As far as the actual cost goes, we could take this back and see if we could provide that to you.

Mr. Matt Jeneroux: I guess we'll decide by the end of my questioning if we want to take you up on that offer.

I'm wondering if this is enough of a deterrent for frivolous and vexatious requests, that $5 fee, but part of the recommendations is to eliminate the fee. I'm trying to get a sense from those of you who are working there how necessary this $5 fee is.

I open this up to the other departments, perhaps starting with Ms. Fisher. You didn't get a chance to highlight your recommendations, which I thought were the meat of your presentation.

Ms. Cheryl Fisher: In fact, one of the things I wanted to highlight in the recommendations was the proposal that institutions be allowed to refuse to process requests that are frivolous or vexatious.

In terms of the $5 fee, we're getting an increase in requests even though there is a $5 fee. I don't know how much of a deterrent that really is in and of itself. We, like others, also waive many of the search fees and whatnot that could be applied. We track them but we end up waiving them.

From our standpoint, there would be an operational impact, I think, for the department to be able to have an approach for frivolous or vexatious requests. I think it could help out with some of our workload peaks. We sometimes get the equivalent of a weeks' worth of ATIP requests from a single requester all at once. It leads to a spike and it reduces performance.

I don't know if it's so much tied to being able to leverage, but that would, I think, allow us to address overall performance as opposed to addressing the performance against a single requester.

Mr. Matt Jeneroux: If I could jump over to you folks, how much of this is more of an unnecessary collection of fees versus how much it actually mitigates a frivolous or vexatious request?

Mr. Robert Mundie: It's fair to say that the $5 fee, which was implemented at the beginning of the act, is something that we're obliged to collect, but it probably has little to no impact in terms of volume of requests, as was mentioned. We are seeing a spike in requests. Whether a different fee would deter that is very hard for us to determine.

Mr. Matt Jeneroux: Mr. Marleau.

Mr. Robert Marleau: The $5 was worth $12 in 1983, if you factor in inflation. Over the years we've gone from $12 to $5.

In 2009 I advocated abolishing the fee. I don't see it as a deterrent to vexatious and frivolous requests. You can address that by amending the legislation to deal with vexatious and frivolous requests frontally and brutally, if you want to, by extending those clauses to deal with that.

I think that in my 2009 testimony at this committee, I said that the $5 was actually costing departments $55 to process. Now that's a cheque. You'll hear the argument that it may only be 75¢ now if you do it electronically, but it has to be booked. It has to be accounted for, and somewhere down the line, it has to be internally audited—and potentially by the Auditor General. The cost of doing that has reached the point of being a bit ridiculous, if you look at other regimes and what they do with fees.

Thank you.

● (0945)

The Chair: Ms. McCulloch, please.

Ms. Monique McCulloch: Yes, in fact, the estimate I heard a few years ago was that a $5 cheque cost approximately $75 to process.

The $5 fee would act as somewhat of a deterrent, for example, for someone with insomnia in the middle of the night just flipping one request online after another and bombarding a department. If there were a $5 fee on each one of those, that would definitely act as a deterrent.

Personally, I think that, if there were a provision in the legislation to allow a department to decide whether the number of requests filed by the same individual in a 24-hour period goes beyond the duty to assist applicants, and if there were a recourse mechanism to challenge the department in those decisions, then it could certainly prove successful. Definitely, there's a trade-off here. We would need a provision to protect departments from being bombarded, but—

Mr. Matt Jeneroux: I have about 10 seconds left. Quickly, on the ATIP online pilot project that you spoke of from 2014, is that still ongoing? Is that wrapped up?

Ms. Monique McCulloch: Yes, very much so.

Mr. Matt Jeneroux: Is there a mandate to that?

Ms. Monique McCulloch: In fact, Shared Services Canada was one of the three pilot departments, and there are about 33 federal government institutions currently. The bulk of the ATI Act requests that are made to the federal government at this time are made online through the larger departments with this portal, and yes, the five dollars is still a requirement through this online portal.

The Chair: It's important to note that at Pizza Hut you can get extra pizzas for five bucks, so....

Mr. Boulerice, you have up to seven minutes, please.

[*Translation*]

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you very much, Mr. Chair.

I would like to thank all the witnesses for being here with us this morning. Since there are many of you, I will direct my questions to specific people, rather than creating a seven-person panel.

Mr. Marleau, a Canadian Press article that I read in French two days ago has me a bit worried. Based on this article, after agreeing to give order powers or binding powers over administrative matters to the Information Commissioner, the Liberal government is now toying with the idea of a ministerial veto on disclosure and on the decisions of the Information Commissioner.

Does this worry you? And do you agree that what is being given with one hand could be taken away with the other?

Mr. Robert Marleau: It does worry me.

If I were a minister, the last power I would want would be a power to veto an access to information request. This would undermine the independence of the officials to whom the power has been delegated. I think there would even be a conflict of interest in a delegated power context. The idea was instituted in England and did not prove successful. I think it's inconsistent with our political culture.

Mr. Alexandre Boulerice: I have another question, Mr. Marleau.

In your 2009 recommendations, you proposed that the Access to Information Act apply to cabinet confidences. Let me turn my previous question on its head, to some degree. I am wary of governments conducting things in secret, but I also believe that certain cabinet documents and discussions should not be made available. I can understand why they need to remain confidential.

Mr. Robert Marleau: I completely agree that a considerable share of cabinet documents, especially those involving discussions between ministers, must remain confidential in our system, which is based on the Westminster model.

However, what I deplore—and I believe the current commissioner deplores it too—is the absence of a review power. The mere fact that a document is from cabinet is enough to make it inaccessible, and no third party, not even the Federal Court, has the power to confirm that assertion.

A right of review would not mean that all kinds of cabinet confidences would be released into the public domain or that open disclosure would become the norm. It would simply give the commissioner the same oversight, in relation to such documents, as she has with all other documents.

We are talking about an exclusion. And, now that I'm a private citizen, I do not simply take elected representatives or ministers at their word. I would be much more comfortable if my access right were protected by a third party, with the power to confirm or dispute it.

● (0950)

Mr. Alexandre Boulerice: Ms. Juneau, if the documents before me are correct, I believe you've pointed out that 30% of the complaints received by the Canada Revenue Agency were from a single individual?

Mrs. Marie-Claude Juneau: Yes. Several of my colleagues can attest to the same situation. There are individuals who send us a high volume of requests; they are commonly known as frequent requesters. In 2014-15, one such person accounted for 30% of complaints received.

Mr. Alexandre Boulerice: Would you say that those requests were frivolous and pointless, or did they have merit?

Mrs. Marie-Claude Juneau: I cannot comment specifically on the types of complaints associated with a given individual, but I can say that there are, indeed, various categories.

Mr. Alexandre Boulerice: In your report, which is also before us, you state that you have to request an extension for 41% of the requests sent to you. That's a lot. It means that, practically half the time, the 30-day principle is not systematically complied with. I find that number very worrying.

Do you have all the resources necessary to give effect to the legislation and to stay within the 30-day timelines?

Mrs. Marie-Claude Juneau: For approximately 41% of requests, we did, indeed, have to request an extension exceeding 60 days. Considering the nature of the matters that come before us, their complexity, and the number of pages associated with some of the requests, it is difficult for us to finish everything within a 30-day period.

Does this mean we are short of resources?

In my presentation, I mentioned that we've received additional resources in recent years. In order to answer the question directly, I would, perhaps, have to enter the realm of the hypothetical. But I can say that we constantly review our practices. And we are also looking at how informal disclosure can be improved.

Mr. Alexandre Boulerice: Thank you very much.

Ms. McCulloch, I see from your report that requests have not increased considerably, but that much of the volume reflects a new interest in cybersecurity matters. As an everyday citizen and consumer, when I hear talk of potential cybersecurity problems, I get concerned. I suspect that this type of problem would worry many of our fellow citizens, as well.

Could you give us some examples that involve these issues?

Ms. Monique McCulloch: Over the course of fiscal 2014-15, certain ATIP requests, concerning an attack against the government's information technology infrastructure, were submitted. I'm sure that everyone remembers Heartbleed. Since part of Shared Services Canada's mandate is to manage the Government of Canada's infrastructure, we were heavily engaged in the situation. We therefore received requests involving Heartbleed.

The incident involving the National Research Council also gave rise to some requests.

Some of the request volume was attributable to these security-related incidents, but we also received requests involving service delivery—specifically, matters involving contractual arrangements, which added considerably to the page count.

● (0955)

[*English*]

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

We'll now move to Mr. Erskine-Smith for seven minutes, please.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks to you all for your presentations.

Mr. Marleau, my first question is with respect to extending coverage under the act. The current Information Commissioner has proposed extending coverage to bodies that receive public funding. Her proposal, when we got down to it, was effectively that where bodies receive $5 million of public funding and/or where they receive over 50% of their funding from the federal government, they ought to be subject to the Access to Information Act.

I wonder what your thoughts are on that.

Mr. Robert Marleau: I support the recommendation as to the level of funding, the composition of boards, and that sort of thing. I leave that to her to argue for.

The principle is this: follow the money. It's one that the Auditor General doesn't hesitate to do. Is government business being transacted? If government business is being transacted, then I think it should be accessible. You can have a discussion about how much funding, and about the composition, such as whether a majority of the board is appointed by the government. Those are the kinds of the details you'd work into legislation. But the principle is government business and follow the money.

Mr. Nathaniel Erskine-Smith: If we're following the money, let's talk about the Board of Internal Economy and court administration. A lot of money is spent on those bodies—support for Parliament, support for the courts. Can you explain to this committee why it's important to extend coverage to those bodies?

Mr. Robert Marleau: These are the bodies that, on the one hand, pass legislation, and on the other, interprets it over time. They're large administrations.

I'm a former secretary to the Board of Internal Economy, still bound by my oath of secrecy and so I can't go into any great detail, but I can tell you that there is no reason that the administrative functions of Parliament—which include the Governor General by the way, as there are three constituent parts to government—should not be covered by access to information.

Maybe in the context of the Duffy case, we might have had a different path through that administrative issue that ended up before the courts. It's not a guarantee, but we might have had earlier disclosures of some elements there in terms of expenses, policies, and administration.

You have to protect parliamentary privilege and for that, if you're going to structure this in a statute, I would make it a separate structure of the statute—not just an addendum to the list and the schedule, as Parliament or the House of Commons and the Senate would be. I think it has to be articulated fairly carefully in terms of protecting parliamentary privilege. Your legislative function, your function as a member, and constituency documents, those sorts of things have to be included.

Mr. Nathaniel Erskine-Smith: To pick up on that, the proposal is to extend coverage to administrative bodies supporting Parliament and the courts, to ministers, and parliamentary secretaries, and perhaps the Prime Minister's Office. There is a worry that too much information is going to be out there that should be confidential. Can you speak to the difference between exclusions and exemptions, and give comfort to this committee that confidential information will remain confidential?

Mr. Robert Marleau: Exclusion means, at least in the current statute, means that it's just not available—not even for review. Whoever claims it to be an exclusion is absolute, and therein lies the flaw.

I have no assurance as a Canadian citizen that this is being done properly. I don't mean being done in bad faith, but that it is being done properly—and the courts can't review it either.

With an exemption you would apply the same sort of logic: the injury test and a series of other disclosure tests as to whether it should be disclosed or not. If it is your political function, it should be fairly obvious as compared to the cost of getting you from A to B.

I feel quite confident, even as a former parliamentary officer, that those exemptions would be more than adequate to protect the confidentiality of the politically partisan party and legislative functions.

Mr. Nathaniel Erskine-Smith: Where the Information Commissioner reviews an exemption and determines that information ought to be disclosed, the minister would be able to appeal that decision to a court and a court would be able to review that same information and make a determination. Do you think the court should have that final say, or do you think the minister's office should have a notwithstanding clause or a veto power over an ultimate decision, even of a court?

● (1000)

Mr. Robert Marleau: I think it should go to the Federal Court as an independent judicial review. As I said earlier in my response to another member, I wouldn't want to be the minister who has to exercise that veto because there's no way I'll ever be able to explain it properly, or defend it politically.

Mr. Nathaniel Erskine-Smith: But then that's a political question, not a legal question, as to whether they ought to have that power?

Mr. Robert Marleau: That's right. In that kind of context I have some concerns about order-making powers by the commissioner to Parliament. You have a creature of Parliament now ordering Parliament. For parliamentary privilege, I think you'd have to set up in that separate part of the statute an independent review outside of the Federal Court. At the outset, appoint a retired Supreme Court judge to there to review any order he or she might make that might contravene the intention for parliamentary privilege.

Mr. Nathaniel Erskine-Smith: Ms. Fisher, you've suggested that the Department of Employment and Social Development Canada look to other departments for best practices. I wonder if all of you around the table could identify the department that exemplifies best practices and give an example or two of those best practices.

Ms. Cheryl Fisher: Many of us have our own best practices. The idea with best practices is that we can share them with others. We've shared some of ours. We've done a business process redesign that we think has resulted in some internal economies to allow us to handle higher volumes.

I'll give you one example, the IRCC—Immigration, Refugees and Citizenship Canada—and Border Services have the same strategy of allowing their access to information employees or officers direct access to documents held in the program areas. We're thinking that could provide some significant benefit to shorten turnaround time. We also think that looking at available briefing note lists could shorten some of our turnaround time.

Those are a couple of very specific examples to contribute to operational efficiency.

The Chair: Now we'll move to the five-minute round.

Mr. Kelly, please.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): I'd like to begin with a question that perhaps picks up from where we left off with Mr. Lightbound's question on the appointment of ATIP coordinators by the Governor in Council.

In the recommendation from Professor Drapeau, which many have disagreed with, I didn't take it so much that he was motivated by wanting to ensure the independence of an ATIP coordinator, as much as he was talking about the accountability of the system. By making a minister responsible for the appointment of a coordinator, you now have the minister who is actually responsible for what happens, and a minister cannot simply wash his or her hands and say, "It's an independent person who has made this decision and my hands are off it." The minister is then actually accountable, and in a democracy that's how we have democratic accountability.

I have a second question, so maybe I could get just a very quick answer on the issue of accountability for decision-making.

I'll keep it quick and ask Mr. Marleau to answer that question and then I'll move on.

Mr. Robert Marleau: Mr. Chair, in my view, you, the accountability is already stated in the statute in terms of delegations that take place and the arm's-length relationship between the minister and the ATIP coordinator. That's been a long-standing practice. We also have the Information Commissioner who has oversight and looks over this issue of accountability.

The first thing that we check in an investigation is the delegations. I'm sure that the ATIP coordinators will confirm that we ensure that the right delegations are in place and correctly done.

I still don't see what is gained by a Governor in Council appointment, which I think would create a disconnect in the knowledge factor, as well in providing service to Canadians, in terms of what the department holds. GIC appointments may well be made from within these ranks, I suppose, and for a period or a term, but I don't think it increases accountability. It may create a perception of more independence, but I don't think it's factual.

● (1005)

Mr. Pat Kelly: I'd like to shift and ask each coordinator to comment on how much of your own workload would be reduced or eliminated by proactive disclosure?

Particularly, for the CBSA, I understand that 60% of your requests are from people simply requesting their own information. Through proactive disclosure, how much could you reduce the workload by?

The Chair: We'll start with Mr. Mundie.

Mr. Robert Mundie: That's a very good question but a difficult one to measure.

We did take steps to deal with a surge of requests on travel history. It's a fairly complex set of databases that need to be accessed. Through the Customs Act, Immigration, Refugees and Citizenship Canada has access to that database. It gets the consent of the applicant and that information is retrieved by the department itself. We could look at ways of automating that process, and we've had some discussions internally about doing so.

The other thing in terms of proactive disclosure is that the President of the Treasury Board and the Treasury Board Secretariat have proactive disclosure of briefing notes going to the president and the secretary of the Treasury Board as one way of reducing the number of requests that come to us practically on a weekly basis, if not a daily one, for the lists of briefing notes that go forward. That is one means of reducing the number of requests, but it's very hard to quantify—

Mr. Pat Kelly: We're short on time. I'll maybe have to let Justice jump in, if they have an answer.

Mrs. Francine Farley: As Mr. Mundie said, Treasury Board has guidelines on this. The spirit of the act is to provide access to government records, not to limit it. Access to information requests are supposed to complete the process and not limit it. It's about seeing what kinds of records can go online and view what can be provided in a quick fashion.

The Chair: Ms. McCulloch, I would be curious to hear your answer on this, given the different nature of Shared Services and the CBSA, which I think gets more private requests for information. You would be the exact opposite.

Ms. Monique McCulloch: The question was particularly about whether it would reduce the workload. The reality is that, whether it is a formal Access to Information Act request or something to be published on the departmental website as a result of proactive disclosure, the ATIP divisions are always asked to review the information to ensure that there is no information there that could prove injurious if released—injurious to the government, to the national interests, or to individuals. Are there cabinet confidences included? Is there solicitor-client information? Is there any vendor, private, or commercial information? We would still be reviewing the information.

The Chair: Good.

We have gone significantly overtime. That is partly my fault.

Mr. Saini, I will be very generous here as well.

Mr. Raj Saini (Kitchener Centre, Lib.): Mr. Marleau, I specifically want to ask some questions regarding your 2009 report, because you made some very clear recommendations. Recommendation number three was about the order-making power of the commissioner. We know that 68% of jurisdictions domestically and internationally have an order-making power for the Information Commissioner. The one jurisdiction I find intriguing is Newfoundland, where they have a hybrid model. I would like to get your viewpoint or commentary, because you were very clear in your 2009 recommendation that this is the way it should go. I would like you to give us a bit of background on what you feel should be the right approach, or the advantages and disadvantages of both.

● (1010)

Mr. Robert Marleau: I am familiar with the Newfoundland regime that is now in place. It hasn't been there that long. I don't want to be disparaging of Newfoundland and Labrador, in the context of its being a much smaller community, if I could put it that way, in terms of volume.

What I recommended for administrative matters only at the time was to try to introduce the order-making power. Before an order is issued, there are going to be all of the same types of conversations between ATIP officers and the investigations, if a complaint has come in. Then there may even be a level of mediation before you take it up a notch to adjudication, to order-making.

If you take Alberta as an example, I think they have had some 600 orders in their 13- or 14-year period when order-making powers were granted to the commissioner. That is about 30-odd a year. These become a body of reference for future requests. Every time an order is made, you are probably reducing further complaints, and certainly investigations, by just point outing that the order stands and is now part of the jurisprudence.

That was the rationale and is still the rationale I see. It is a progressive, if you like, process to finally, at one point, get to an order made.

Mr. Raj Saini: The next question I have is for everybody else, if anyone can enlighten me on this. I am not sure, but some of your departments you must have requests from foreign governments or share information with foreign governments. Is that true or not?

CBSA...?

Mr. Robert Mundie: Not for the Access to Information Act....

Mr. Raj Saini: No? Nobody shares any information for any requests.

Mr. Robert Mundie: It has to be a resident of Canada who makes a request.

Mr. Raj Saini: Okay. I will just go to question three.

In terms of education for the public, do your departments have any kind of proactive way of educating the public as to what your departments do, what information is available, and how they can seek that information?

[*Translation*]

Mrs. Marie-Claude Juneau: As a public information measure, the Canada Revenue Agency recently updated its website with information on how to make access to information requests.

We have also indicated what kind of information can be obtained without making an access to information request. For example, we refer to My Account and My Account for Businesses as information sources. These are ways in which we try to inform, as much as possible, members of the public who need information from the Canada Revenue Agency.

Thank you.

[*English*]

Mr. Raj Saini: Does anybody else have any comments? I have one final quick question, if I may.

The Chair: Ms. McCulloch.

Ms. Monique McCulloch: All federal government institutions would have very similar public-facing websites that would provide Canadians with information about how they can obtain information, whether it's formally under ATIP legislation or informally through reference material, publications, and proactive disclosure. There's a wealth of information that's already readily available on departmental websites, and we pretty well all have the same look and feel on our public-facing websites.

Mr. Raj Saini: I wanted to follow up on what my colleague Mr. Kelly said about proactive disclosure. We know the Pareto principle of 80-20. I'm just wondering if 80% of your work is from 20% of requesters or 20% of similar questions. For streamlining and efficiency, once you get a case and you see that there's a similarity between other requests that you're getting, would it not be better to more proactively disclose that? Would that be helpful, do you think?

[*Translation*]

Mrs. Marie-Claude Juneau: At the CRA, the reverse is true: 80% of the requests we receive are from individuals. So it's not necessarily the kind of information we can openly disclose, given that it contains a lot of personal information.

As for the other 20% of requests, our agency has already put in place a virtual library that provides access to what we consider to be frequently requested documents. The library includes policies and information manuals. Proactive disclosure can be applied to that 20% of requests, but our landscape tends to involve personal information that we cannot disclose automatically.

● (1015)

[*English*]

The Chair: That takes us to the end of your time, Mr. Saini.

Colleagues, we have a parliamentary problem. We have 30-minute bells. We are currently at 28 minutes. I would need unanimous consent from the committee to continue. We could get through the last two questioners in the five-minute round. That should give us 10 minutes. That would still give us 18 or so minutes to get to the House.

Do I have unanimous consent to do that? If not, I have to adjourn the meeting

Some hon. members: Agreed.

The Chair: I have unanimous consent.

Okay, Mr. Kelly, five minutes, please.

Mr. Pat Kelly: I lost my train of thought for a moment there with the vote coming up. Perhaps I could ask each of the coordinators to maybe let us know very quickly if they believe they currently have sufficient resources to address an opening up of ATIP requests to non-Canadians, which has been recommended.

Mr. Robert Mundie: I think it would be very difficult for us to estimate the number of access requests that would come in as a result of broadening the eligibility. We do know that non-Canadians do use Canadian agents to access information. So for us, it's very hard to estimate what the impact would be. Clearly, if you did open up access, there would be greater transparency, but there is a cost to that evidently.

Ms. Marie-Josée Thivierge: Similarly, I think one also has to be mindful that if the government were ultimately to open or broaden the scope of the act and at the same time make a number of other changes, one of the reasons that it's difficult now to assess what the impact would be is that it depends on what the cumulative effect of all the different changes would ultimately be.

If all were to remain the same and you were to indeed open it up, one would expect that the volume would go up and that, as a result, resources would be required. But if, on the whole, there are a number of changes being introduced and they balance off, then it could well be that we'd be able to manage within existing resource levels. But it's premature to say which it would be, unless we have a full understanding of the scope of the changes being made or being recommended.

[*Translation*]

Mrs. Marie-Claude Juneau: I share that view. It would be difficult to speak to the merits of such an initiative at this stage.

[*English*]

Ms. Monique McCulloch: That would be difficult to assess, but I personally don't expect that there would be a huge increase. There hasn't been. I worked at the Department of Foreign Affairs for a number of years. There are other channels for other countries to obtain information from the Government of Canada. I don't think they would necessarily be using the Access to Information Act . There has been talk of universal access for the past 30 years, so I'm all for it, but I don't think it would have a huge direct impact on our current situation.

Ms. Cheryl Fisher: I have nothing further to add to my colleagues' comments.

The Chair: You have a couple of minutes left.

Mr. Pat Kelly: Well, my next question is probably not answerable in that length of time, so in the interest of keeping our speed up, unless Matt has anything to say, I'm done.

The Chair: It's up to you.

Mr. Pat Kelly: Okay. Go ahead, then.

The Chair: Mr. Long.

Mr. Wayne Long (Saint John—Rothesay, Lib.): I'd like to move that we adjourn, please, Mr. Chair.

The Chair: That's non-debatable.

(Motion agreed to)

The Chair: Thank you very much to our witnesses. We appreciate your coming here. We will take your comments into consideration. We look forward to producing a report. I encourage you to follow the progress of the committee and to keep us up to date, and to make sure we have captured everything that was said here perfectly with our report. Thank you very much.

The meeting is adjourned.

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