



# Health Canada

## ***Access to Information Act***

## **Annual Report**

### **2011-2012**

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## Introduction

### I. Access to Information Act

The *Access to Information Act* (the *Act*) gives the Canadian public a right to access information contained in federal government records, subject to certain specific and limited exceptions.

The *Act* requires the head of every federal government institution to submit an Annual Report to Parliament on the administration of the *Act* following the close of each fiscal year. This annual report is prepared and is being tabled before each House of Parliament in accordance with section 72 of the *Access to Information Act*. This report provides a summary of how Health Canada has fulfilled its access to information responsibilities during the fiscal year 2011-2012.

### II. About Health Canada

Health Canada was established to help the people of Canada maintain and improve their health. Health Canada is also committed to improving the lives of all of Canada's people and making this country's population among the healthiest in the world as measured by longevity, lifestyle and effective use of the public health care system.

Health Canada develops implements and enforces regulations, legislation, policies, programs, services and initiatives and works with other federal partners, the provinces and territories. As administrator of the *Canada Health Act*, Health Canada ensures that the principles of Canada's universal health care are respected, allowing Canadians to be confident in the services they receive from the public health care system. The Minister of Health is responsible for direct administration of another 18 statutes including the *Food and Drugs Act*, the *Pest Control Products Act* and the *Controlled Drugs and Substances Act*. Health Canada also provides health services to First Nations peoples and to Inuit communities.

Health Canada has regional offices in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and the Atlantic and Northern Regions.

For more information about Health Canada, please visit our website at:  
<http://www.hc-sc.gc.ca/index-eng.php>

## Access to Information Infrastructure

### I. The Access to Information and Privacy (ATIP) Division

The Access to Information and Privacy (ATIP) Division within the Planning, Integration and Management Services Directorate, Corporate Services Branch is responsible for administering the *Access to Information Act* within Health Canada. In 2011-2012, administration of the Act was performed by 22.32 full-time equivalent (FTE) employees. These figures do not include administrative support, reporting, management, monitoring and policy resources nor their overhead cost which contributed to overall support of the Access to Information office.

The Access to Information responsibilities of the ATIP Division include:

- Responding to access to information requests;
- Providing advice and guidance to departmental staff on the application of the *Access to Information Act* and TBS Policies;
- Developing corporate-wide access to information protocols and practices to guide access to information process;
- Promoting staff awareness and providing training on the *Access to Information Act*;
- Ensuring that Health Canada's personal information holdings are published in Info Source;
- Preparing Annual Report to Parliament, Management Accountability Framework (MAF); and
- Liaising with the Information Commissioner, Treasury Board Secretariat, other government Federal departments and agencies, provincial ministries of health and other key stakeholders to develop Privacy policies, tools and guidelines.

### II. Reading Room

Section 71 of the *Access to Information Act* requires government institutions to provide facilities where members of the public may obtain information such as *Info Source*. The following Health Canada location in Ottawa has been designated as a public reading room.

Access to Information and Privacy Division  
1600 Scott Street, Holland Cross,  
Tower B, 7<sup>th</sup> Floor, Suite 700  
Ottawa, Ontario K1A 0K9

### Delegation of Authority

The Delegation Order is attached as Appendix A.

## Requests under the Access to Information Act - Statistical Figures and Interpretation and Explanation

### I. Statistical Report

Health Canada's statistical report summarizing *Access to Information Act* activity is attached as Appendix B and covers the period between April 1, 2011 and March 31, 2012.

### II. Number of Access Requests and Case Load

#### a) Number of Access Requests

The number of new access to information requests totalled 1,763 for 2011-2012 compared to 1,602 in the previous reporting period.

#### b) Source of Requests: Trends

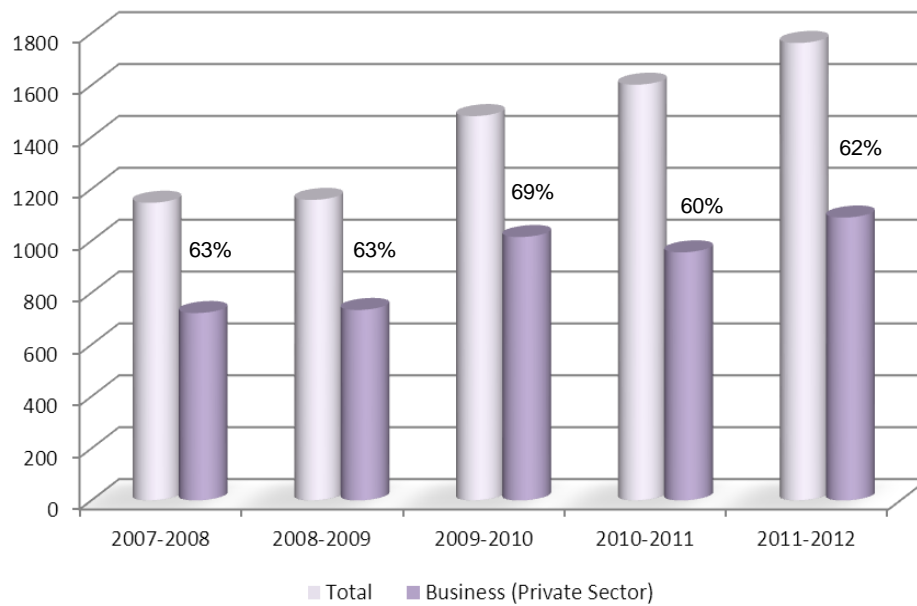
The largest number of new requests (1090) came from the business sector. The breakdown of requests follows:

<b>Business (Private Sector)</b>	<b>1090</b>
<b>Public</b>	<b>341</b>
<b>Media</b>	<b>267</b>
<b>Organization*</b>	<b>50</b>
<b>Academia</b>	<b>15</b>

\*Examples – Associations, Political Parties and Unions

An important trend at Health Canada is the domination of requests stemming from private sector (business) corporations. The percentage of requests from the private sector remains relatively consistent hovering at 63% over the last five reporting cycles. In 2011-2012, 62% of the Department's new request hailed from business, notably 57% related to drug, medical devices and natural health product information. As a result, Health Canada must execute a large number of third party consultations since the nature of these requests involve confidential business information. In some instances consultations with a third party may involve additional companies, hence making this consultation phase complex. The Department is dedicated to respecting the legislative timeframe and developing procedures for conducting multiple consultations with third parties concurrently. The graphic below identifies the total requests received from the business sector over a five year span. Health Canada fully expects this trend to continue.

## TOTAL REQUESTS RECEIVED FROM BUSINESS SECTOR 2007-2012



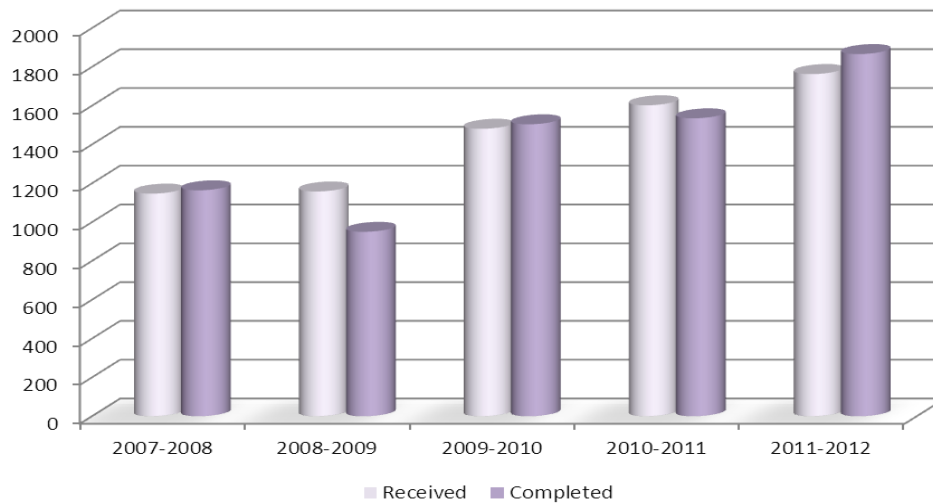
### c) Case Load

During fiscal year 2011-2012, Health Canada completed processing 1,866 of 2,375 (79%) active requests (active requests included 1,763 new requests and 612 requests carried over from fiscal year 2011-2012). The 509 remaining uncompleted requests (21%) were carried over into fiscal year 2012-2013.

Furthermore, an analysis of the statistical figures reveals an 18% increase in the number of requests that were completed (1,866) during fiscal year 2011-2012 compared to the number of requests that were completed (1,535) during fiscal year 2010-2011. Compared to last reporting year 103 less requests were carried forward at the end of fiscal year. (509 in 2011-2012 versus 612 from 2010-2011).



## ATI REQUESTS AND COMPLETED BY FISCAL YEAR

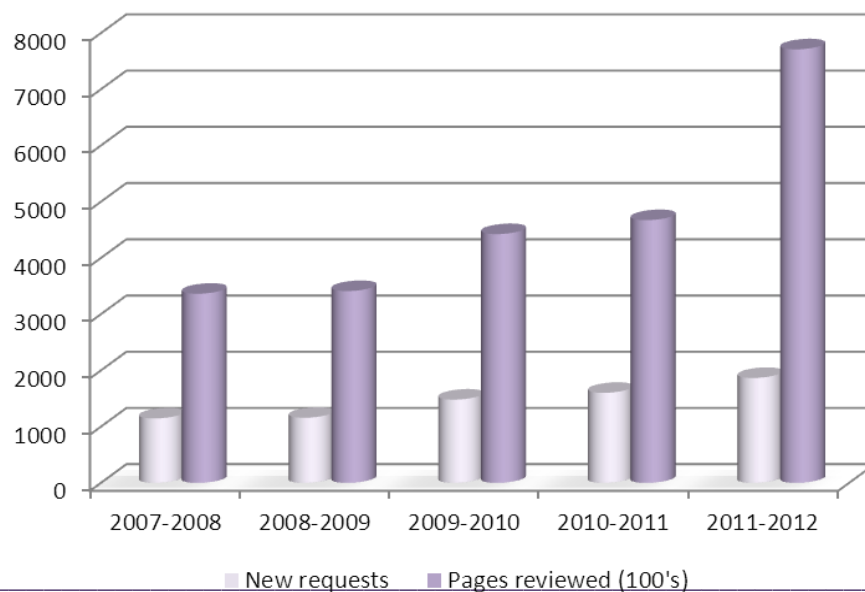


Note: More ATI requests are completed than received when the institution completes requests that were carried-over from previous years as well as those received within the fiscal year.

The volume of pages reviewed consisted of 771,188 pages in 2011-2012 compared to 467,172 in 2010-2011. This represents an increase of 65% in the productive effort of our staff.

The new statistical report requires departments to clearly identify the number of relevant pages which are the only pages which underwent a line-by-line review. Pages deemed to be duplicates and not relevant were excluded from the page count. The total of relevant pages for this reporting period is 456,619.

## ATI REQUESTS RECEIVED AND PAGES REVIEWED BY FISCAL YEAR



### Informal Requests

ATIP also received 56 informal requests compared to 82 in 2010-2011. Requests are treated informally when it has been determined, through consultation with the applicant that processing a formal request can be discontinued in favour of providing the information informally. As an example, requesters are directed to publically available information, such as printed material or websites. Requests treated informally are not considered to have been abandoned; rather they simply fall outside the scope of the *Access to Information Act*.

### Proactive Disclosures

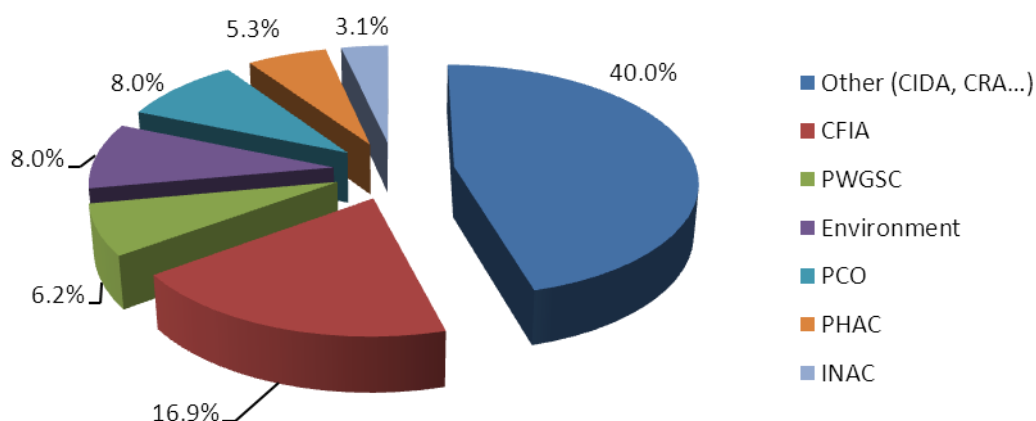
Outside the informal disclosure, Health Canada proactively posted on its website monthly summaries of completed access to information requests to assist and facilitate the right of access of Canadians to the Department's records. These proactive disclosures should not be confused with "treated informally" which are formal requests that were discontinued and transformed into informal requests. Health Canada has processed 214 of these proactive disclosures in 2011-2012.

#### d) Consultations Received from Other Institutions

##### Consultations Received

Other government institutions are defined as federal institutions other than Health Canada who are subject to the *Access to Information Act*. Health Canada has completed 234 consultations from these institutions compared to 224 in 2010-2011.

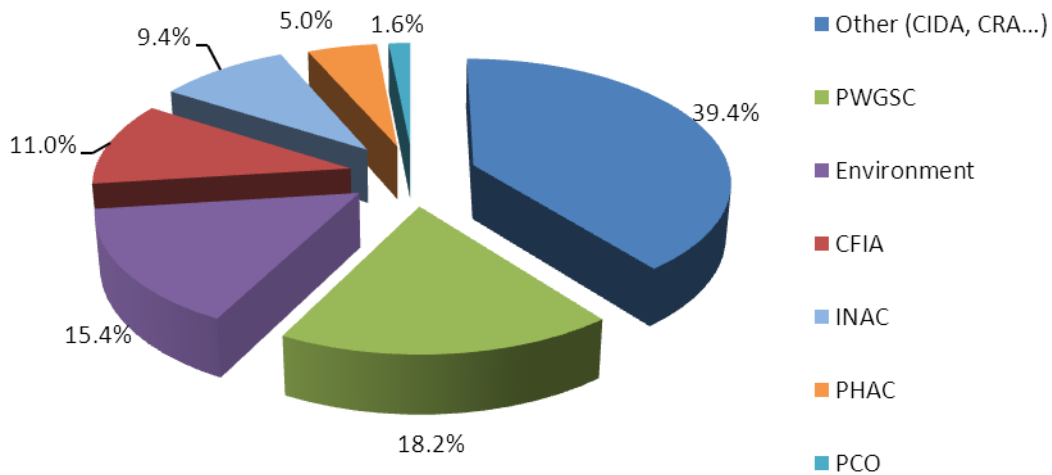
#### PERCENTAGE OF CONSULTATIONS RECEIVED FROM OTHER FEDERAL INSTITUTIONS



## Consultation Pages Received

The consulting institutions request Health Canada's input on documents they are considering for release in response to their processing of access to information requests. Of the 234 consultations, Health Canada's ATIP office processed 20,087 pages, as illustrated in percentages in the graph below.

### PERCENTAGE OF PAGES FOR CONSULTATIONS RECEIVED FROM OTHER FEDERAL INSTITUTIONS



### III. Disposition of Requests Completed

#### Completed requests were classified as follows:

**All disclosed** – Of the 1,866 completed requests; the requesters received full disclosure of relevant records in 279 instances (15.0%). In 2010-2011, Health Canada completed 1,535 requests; the requesters received full disclosure of relevant records in 151 instances (16.4%).

**Disclosed in part** – In 928 cases (49.7%), requesters received partial disclosure of relevant records. In 2010-2011, there were 811 disclosed in part records (52.8%).

**All exempted** – In 25 cases (1.3%) requesters were informed that Health Canada had no records. In 2010-2011, there were 35 all exempted records (2.3%).

**All excluded** – In 1 instance the applicant received no information because the record was excluded under the *Act*. In 2010-2011, there was one all excluded record released.

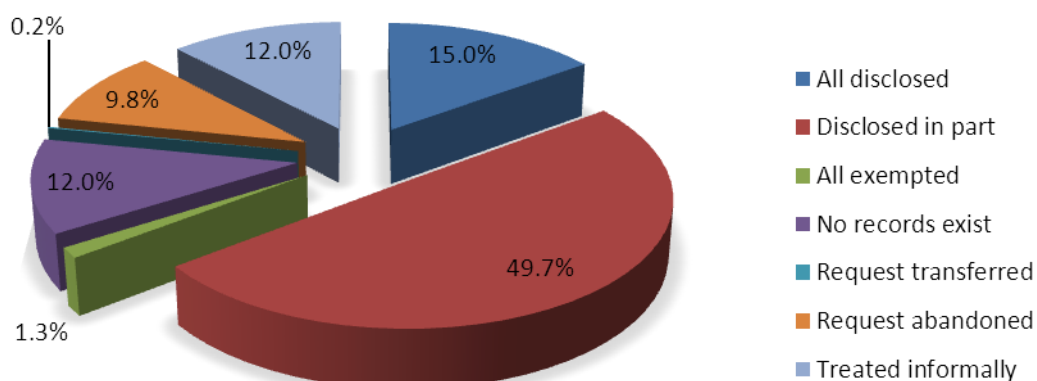
**No records exist** – Health Canada received 224 requests (12.0%) for which there were no records. In 2010-2011, the Department received 146 requests (9.5%) for which there were no records.

**Request transferred** – 3 requests (0.2%) were transferred to other government institutions because the relevant records were not under Health Canada's control. In 2010-2011, the Department transferred 17 requests (1.1%).

**Request Abandoned** – Applicants abandoned 182 requests (9.8%). In 2010-2011, there were 270 requests abandoned by applicants (17.6%).

**Treated Informally** – Health Canada treated 224 requests informally (12.0%). In 2010-2011, 4 requests were treated informally (0.2%).

**DISPOSITION OF REQUESTS COMPLETED  
BY PERCENTAGE, 2011-2012**



#### IV. Exemptions Invoked

This section categorizes the exemptions invoked to refuse disclosure by sections of the *Act* – which is comparable to what was reported in the Annual Report of 2010-2011.

#### PRINCIPLE EXEMPTIONS APPLIED, 2011-2012

Exemptions	Number of Times Applied
Section 19 – Personal information	823
Section 20 – Third party information	571
Section 21 – Advice	390
Section 23 – Solicitor-client privilege	72
Section 16 – Law enforcement and investigation	71
Section 14 – Federal-provincial affairs	42
Section 13 – Information obtained in confidence	20

#### V. Exclusions Cited

The *Access to Information Act* does not apply to published material, material available to the public for purchase or for public reference (section 68). Nor does it apply to confidences of the Queen's Privy Council (section 69). Requests containing proposed exclusions under section 69 require consultation with the Privy Council Office.

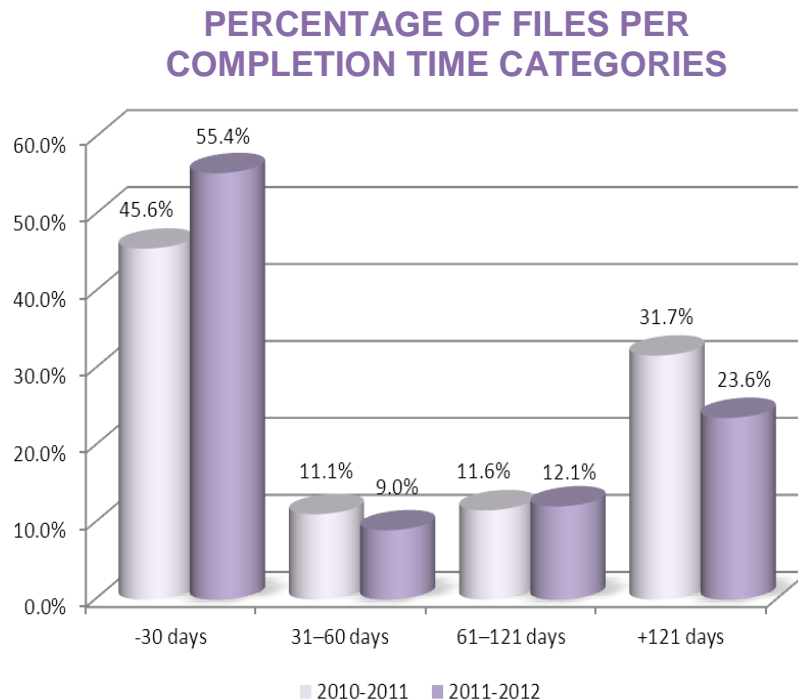
During the 2011-2012 reporting period, exclusions under sections 68 and 69 were invoked a total of 41 times.

#### VI. Disposition and Completion Time

Health Canada tracks the disposition of closed requests and the length of time taken to process them.

Health Canada was able to respond within 30 days or less in 1034 (55.4%) of completed cases which represents an increase from 2010-2011 where 700 requests were completed

within 30 days (45.6%). Requests completed within 31 to 60 days occurred in 167 cases (9%) representing a decrease from 2010-2011, where 171 cases (11.1%) were completed within 31-60 days. Within 61 to 120 days, 225 (12.1%) requests were closed in 2011-2012 compared to 178 (11.6%) in 2010-2011. Finally, requests processed in 121 or more days occurred in 440 cases (23.6%) a reduction from 2010-2011 where 486 (31.7%) requests were closed.



## VII. Extensions

Extensions were invoked in 832 cases to provide time to search through records of greater than 500 pages. One hundred and sixty three (163) requests (45%) needed an extension of 30 days or less, and 199 (55%) needed an extension of more than 30 days. To complete consultations, Health Canada invoked extensions of 30 days or less in 30 cases and extensions requiring 30 days or more in 109 cases. For consultation of Third Parties, 19 requests needed extensions of 30 days or less while 459 requests require extensions of greater than 30 days. These numbers remain constant compared to the reporting period of 2010-2011.

## VIII. Translations

No translation was required to respond to 2010-2011 access requests.

## IX. Format of Information Released

This section refers to the format in which applicants have received their records. Most of the information released was in paper format (857 requests which represents 71% of released documents). Health Canada has also released records in electronic format (29%). In January 2012, Health Canada began piloting an ePosting initiative. This initiative is an online mail service to deliver the release packages to the requesters in an electronic format in an effort to ensure the public receives information faster. This process was used when Health Canada was in possession of a requestor's email address. It was utilized on an average of 45 instances per month since the beginning of the pilot.

Health Canada's imaging software allows the Department to respond to formal ATI requests by Portable Document Format (PDF) on CD-ROM or by email. This saves the requesters' significant amounts of money, as it removes the need to charge for photocopies. There was no charge for photocopies in 2011-2012.

## X. Fees

The *Act* authorizes fees for certain aspects of processing formal requests under the *Act* (the fee structure is prescribed in ATI Regulations). However, Health Canada cannot charge fees for reviewing records, overhead or shipping, nor does it charge for the first five hours needed to search for a record or prepare any part of it for disclosure (required by section 11 of the *Act*).

During the year, Health Canada collected \$7,115.00 in application fees and \$4,703.00 in search fees. In total the Receiver General collected \$11,818.00 in fees. In addition, Health Canada waived \$6,539.00 in fees for 404 requests in accordance to its duty to assist applicants.

Health Canada established a fees policy in 2011-2012 aligned with its responsibilities under the "duty to assist" which focussed on granting the public easier and more affordable access to information. In 2010-2011, the Department collected more application and search fees totalling \$15,531.25. These actions demonstrate that fees are no longer barriers for Canadians in accessing departmental information.

## XI. Costs

Health Canada spent a total of \$3,197,343.00. Of this total: salaries accounted for \$1,582,997.00 and administration for \$1,614,346.00. Staffing for the fiscal year amounted to

22.23 full-time employees dedicated to access to information activities. These figures do not include administrative support, management, reporting, monitoring and policy resources nor their overhead cost which contributed to overall support of the operations of the Access to Information office and thus the application of the *Act*.

## Training and Awareness

### a) Training for ATIP Analysts

Health Canada's Access to Information and Privacy Division continues to use their core competencies tool to assist them in determining the training needs for their staff. The division emphasized the need to develop customized training sessions for its junior staff members, consisting of:

- Access to information Basics for ATI professionals
- Application of Exemptions and Time Extensions
- Information Management Basics
- Class of Records, Personal Information Banks and Info Source in an ATI Context
- Initiation to Permissible Disclosures of Personal Information under the *Privacy Act*
- Privacy Basics for ATI Professionals

In addition, Health Canada's ATIP professionals attended a series of training sessions delivered by Treasury Board Secretariat and the Canada School of Public Service.

### b) Training and Awareness Initiatives for HC employees

Health Canada continues to promote training and awareness sessions through the use of internal communications to all of its employees throughout the reporting period. This training raises employees' awareness of their responsibilities under the *Act*. The ATIP Division delivered 26 *ATI 101* training courses with 464 attendees during the 2011-2012 fiscal year. In addition, a customized training session for Executives was developed to raise awareness of their obligations under the *Access to Information Act*. A total of 20 training sessions were offered to EX level employees during the course of this reporting period representing 234 executives.

### c) Training and Awareness for the Health Portfolio

The ATIP Coordinator delivered Access to Information training at the Public Health Agency of Canada as part of a one day training session on information management and security.

### d) Training and Awareness for External Stakeholders

Health Canada's ATIP Coordinator was solicited by the Canadian Environmental Protection Act Industry Coordination Group (CEPA –ICG) to participate as keynote speaker to explain the federal government's perspective on what is considered to be confidential business information in the context of an ATI request.



## Info Source

Health Canada undertook a comprehensive review of its program records, in response to the Management Accountability Framework Report of 2010-2011. Changes were included in the 2011 Info Source publications. The entire class of records (56 in total) have been written to accurately reflect the contents of the records created to support the activities of the Department and to be aligned with the 2011-2012 Program Activity Architecture.

## New and / or Revised Institution-Specific Access to Information Related Policies, Guidelines and Procedures that were Implemented during the Reporting Period

### I. Development and Revision of Policies, Guidelines and Procedures

In 2011-2012, Health Canada has developed new and revised policies, guidelines and procedures to better assist access to information applicants.

#### a) Policies

**New Fees and Fee Waiver Policy:** Federal Institutions are to recover fees chargeable under the *Access to Information Act* for work done in processing requests. Health Canada established a fees policy in 2011-2012 aligned with its responsibilities under the “duty to assist” which focussed on granting the public easier and more affordable access to information. These actions demonstrate that fees are no longer barriers for Canadians in accessing departmental information.

#### b) Guidelines

In order to ensure consistency in the delivery of the access to information requests, Health Canada’s ATIP Division, in collaboration with the Departmental Office of Primary Interest Access to Information (OPI-ATI) working group, has developed and revised the following guidelines:

- New Guidelines on Extension under the ATI Act
- New Guidelines on Auditing ATI Processed Files
- New Guidelines on Statistical Reporting
- Revision of Guidelines on Closed Files with no Response to requests for clarification on Fees
- New Guidelines for Converting Records from ATIPimage to PDF format
- Revised Guidelines on Establishing if a Section 44 Federal Court Review has been filed

### c) Procedures

Health Canada continued to strive for efficiency in its processes and has introduced in 2011-2012 a series of new procedures:

- New Tasking Emails
- New Procedures for Access Request Management
- New Procedures for Processing Adverse Drug Reaction Request
- New Procedures for Processing Special Access Request
- New Procedures for Verbal Advice Received from a Third Party on No Objections to a Proposed Disclosure
- New Procedures for ATI request Mail outs

## II. Enhancing Support and Sustaining Compliance – The Access to Information (ATI) Transformation Plan

In June 2010, Health Canada's launched the ATI Transformation Plan identifying a five pronged approach aimed at upholding strong access to information practices and principles in order to facilitate optimal compliance. The Plan encompassed those activities most imperative to a successful access to information regime. Activities included an approach to reduce backlog files, the introduction of a new process for communication and notification of files of high public interest, a process to increase the Department's overall proactive disclosure activities, the promotion of effective communications with Offices of Primary Interest (OPI) and requesters in line with the Duty to Assist Principles and the development of a diligent monitoring approach intended to reduce any new requests from resulting in deemed refusal.

Since 2008, Health Canada has instituted an Early Intake Unit (EIU). It provides front line support to the public and tasks the retrieval of records within the Department thus allowing the ATI Analysts to concentrate on applying the *Act*. The employees working in the EIU have received client service training to better serve and assist the public. An outcome of this training has allowed EIU to effectively communicate with applicants in order to clarify requests thus ensuring a faster delivery of requested records.

In February 2009, HC established the Office of Primary Interest Access to Information (OPI-ATI) working group for program areas to collaborate with ATIP Division. The OPI-ATI working group is comprised of ATIP personnel and Branch contacts responsible for retrieving records. It is charged with the development of best practices for the administration and processing of requests received under the *Access to Information Act*. In 2011-2012, the OPI-ATI working group assisted the ATIP Division in identifying areas of improvement in internal processes. For instance, regions proposed and implemented

processes to expedite the transmittal of records to the ATIP Division for processing thus speeding up the release of records to the public.

These elements of the ATI Transformation Plan continue to be successful as it has raised its compliance rate to 91.5% from 84.2% last year and has lowered complaints to 3.5% from 5% last year.

The Information Commissioner has provided Health Canada with recommendations to improve timely responses to requesters. Health Canada will add these recommendations to its 2012-2013 ATI Transformation Plan.

The detailed results of the key actions undertaken by the ATI Transformation Plan are outlined below:

### **1) Reduction in Backlog Files**

Health Canada established a dedicated team and developed a backlog strategy to eliminate the carry over of requests from previous reporting periods. In April 2011, 91 of these backlog files remained opened. Over the next 12 months Health Canada successfully reduced the backlog by closing 81(89%) outstanding files and only 10 were carried forward to 2012-2013.

### **2) Communication and Notification**

Health Canada continued its effort in the implementation of internal reporting and notification procedures relating to requests it deemed of public interest. The purpose of this procedure was twofold. The first was to facilitate the department's compliance to legislative timelines for releasing access to information requests. The second consisted of enabling the preparation of necessary briefing and communication material in support of departmental operations. Eleven point three percent (11.3%) of received requests were identified as communication and notification for 2011-2012.

### **3) Proactive Disclosures**

In support of open government, the Department is looking to actively identify opportunities to make more data available to the public. In July 2010, Health Canada began the monthly posting of all completed access to information requests that resulted in a disclosure of records. This listing provides the public with the ease of requesting and obtaining information that has already been processed, consulted and disclosed into the public domain.

At Health Canada, 57% of accesses to information requests involve drug, medical devices and natural health product information. During this reporting period, the Department posted 1,162 (average 96.8 per month) brief summaries of an access to information request as proactive disclosures.

Health Canada has processed 214 of these requests in 2011-2012.

These proactive disclosures should not be confused with “treated informally” requests which are formal requests that were discontinued and transformed into informal requests.

#### **4) Duty to Assist**

In order to better assist applicants throughout the access to information process, Health Canada continues to work on improving the effectiveness of its communications with both the requesters and departmental employees.

To assist with this objective, HC has developed and provided training to its staff on the essential skills of proficient communications. As well, it has developed tools for its Early Intake Unit so that they can advise applicants on ways to clarify requests, therefore facilitating faster disclosure.

#### **5) Reduction of Late Files**

A pillar of the ATIP Transformation Plan and for ideal compliance is the reduction of files resulting in deemed refusal (late files). Health Canada stands firm in its obligation to improve its overall compliance objective, and remains committed to the reduction of deemed refusals.

The Department has reduced the number of new late files to an average of 9 files per month which represents a 20% reduction compared with 2010-2011, where the average late files per month was 11.

#### **Human Resources / Staffing**

The *Access to Information Act* was applied to all Crown Corporations in 2006. This resulted in a highly competitive market for qualified ATIP analysts. In response to this reality, the ATIP Division has moved away from vacancy management to an approach that supports Talent Management. Junior staff are partnered with more experienced employees. In addition, ATIP is working closely with academic institutions to identify the most appropriate students for ATIP positions. The Division is realigning its priorities with that of the Departmental HR Plan. A strong succession planning model has been developed to recruit, cultivate and retain staff.

## Complaints and Court Applications for Reviews

### I. Complaints to the Information Commissioner

During 2011-2012, 62 complaints under the *Access to Information Act* were filed with the Office of the Information Commissioner of Canada (OIC), compared with 81 in 2010-2011, representing a 23% decrease. Seventy three (73) complaints were carried over from the previous fiscal year. A total of 75 complaints were closed in this reporting period. Four complaints related to fees and 21 were recorded under delays or deemed refusals. The rest fell under exemptions and disclosures.

The Department is committed to reduce complaints and included this objective into its ATI Transformation Plan for 2011-2012. Health Canada successfully reduced complaints last fiscal year to 3.5% from 5% in 2010-2011. Concrete actions taken included offering client service training for ATIP staff, creating a backlog reduction team dedicated to completing old files, proactively posting monthly summaries of previously released access to information requests and including targets on efficiencies in the retrieval of requested records in executive performance agreements.

The findings from the OIC as a result of complaints are as follows: 40 were well founded, 7 were not well founded, 23 were discontinued and 5 were resolved with mediation.

### TOTAL NUMBER OF COMPLAINTS PROCESSED

Received in 2011-2012	62
Outstanding from 2010-2011	73
<b>Closed in 2011-2012</b>	<b>75</b>
Carried Forward to 2012-2013	60

## II. Types of Complaints and their Disposition Completed in 2011-2012

Subject of Complaint	Number of Closed Complaints	Final Disposition by OIC
Time Extension	4	<ul style="list-style-type: none"> <li>• 1 Abandoned; remedial action taken</li> <li>• 3 Well Founded; remedial action taken</li> </ul>
Deemed Refusal (delay)	21	<ul style="list-style-type: none"> <li>• 5 Abandoned; no action required</li> <li>• 10 Well Founded; remedial action taken</li> <li>• 6 Well Founded; no action required</li> </ul>
Cabinet Confidence Exclusion	0	
Disclosure	2	<ul style="list-style-type: none"> <li>• 1 Well Founded; remedial action taken</li> <li>• 1 Resolution Mediated; remedial action taken</li> </ul>
Fees	6	<ul style="list-style-type: none"> <li>• 2 Abandoned; no action required</li> <li>• 1 Not Well founded, no action required</li> <li>• 3 Resolution Mediated; remedial action taken</li> </ul>
Other	31	<ul style="list-style-type: none"> <li>• 9 Abandoned; no action required</li> <li>• 3 Not Well Founded; no action required</li> <li>• 1 Not Well Founded; remedial action taken</li> <li>• 16 Well Founded; remedial action taken</li> <li>• 1 Well Founded; no action required</li> <li>• 1 Resolution Mediated; no action required</li> </ul>
No Records	3	<ul style="list-style-type: none"> <li>• 3 Abandoned; no action required</li> </ul>
Exemption	8	<ul style="list-style-type: none"> <li>• 3 Abandoned; no action required</li> <li>• 2 Not Well Founded; no action required</li> <li>• 2 Well Founded; remedial action taken</li> <li>• 1 Well Founded; no action required</li> </ul>
<b>Totals</b>	<b>75</b>	<ul style="list-style-type: none"> <li>• <b>23 Abandoned</b></li> <li>• <b>7 Not Well Founded</b></li> <li>• <b>40 Well Founded</b></li> <li>• <b>5 Resolution Mediated</b></li> </ul>

### III. Health Applications/Appeals Submitted to the Federal Court or the Federal Court of Appeal

During this reporting period, five (5) notices of applications were filed by Third Parties with the Federal Court pursuant to section 44 of the *Act*. This section of the *Act* grants the right for judicial review challenging the decision by the Health Canada Delegate to disclose records.

### IV. Recent Decisions Issued by the Supreme Court of Canada

On February 3, 2012, the Supreme Court of Canada dismissed appeal filed by Merck Frosst Canada & Co. In its judgement, the Court provided clarification on the meaning of “trade secret” and re-affirmed the test to establish the degree of harm resting with the third party. The Court gave notice that it is incumbent on the delegated head to review line by line the records and provide recommendations for exemption prior to consulting with third parties. As a result, Health Canada has adapted new procedures to review and provide recommendations for exemption prior to consultations with Third Parties.

### V. Health Canada Responses to Recommendations raised by other Agents of Parliament (e.g. Auditor General)

There were no recommendations raised by other Agents of Parliament during fiscal year 2011-2012.