



Information
Commissioner
of Canada

Commissaire
à l'information
du Canada

REPORT CARDS **2007-2008**
SYSTEMIC ISSUES AFFECTING ACCESS TO INFORMATION IN CANADA



THE OFFICE OF THE INFORMATION COMMISSIONER OF CANADA

7th Floor, Place de ville, Tower B
112 Kent Street
Ottawa ON K1A 1H3
Tel.: 613-995-2410
Toll-free: 1-800-267-0441
TDD: 613-947-0388
Fax: 613-947-7294
Email: general@infocom.gc.ca
Website: www.infocom.gc.ca

©MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA 2009

Cat. no. IP4-4/2009
ISBN 978-0-662-06109-0



PRINTED ON PAPER CONTAINING OVER 10% TOTAL RECOVERED FIBRE. ALL POST CONSUMER FIBRE.

REPORT CARDS 2007-2008
SYSTEMIC ISSUES AFFECTING ACCESS TO INFORMATION IN CANADA
A SPECIAL REPORT TO PARLIAMENT
BY ROBERT MARLEAU
INFORMATION COMMISSIONER OF CANADA
FEBRUARY 2009

February 2009

The Honourable Peter Milliken
The Speaker
House of Commons
Ottawa ON K1A 0A6

Dear Mr. Milliken:

Pursuant to section 39 of the Access to Information Act, I have the honour to submit to Parliament a special report entitled *Report Cards 2007-2008 and Systemic Issues Affecting Access to Information in Canada*.

This report, which covers my first full year as Information Commissioner, reflects the introduction of a new process for establishing the report cards of institutional performance in responding to requests for access to information. I am confident that this new process will prove its usefulness to Parliament in helping to increase the transparency and accountability of Canada's public institutions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Marleau', with a stylized flourish at the end.

Robert Marleau
Information Commissioner of Canada

February 2009

The Honourable Noël Kinsella
The Speaker
Senate
Ottawa ON K1A 0A6

Dear Mr. Kinsella:

Pursuant to section 39 of the *Access to Information Act*, I have the honour to submit to Parliament a special report entitled *Report Cards 2007-2008 and Systemic Issues Affecting Access to Information in Canada*.

This report, which covers my first full year as Information Commissioner, reflects the introduction of a new process for establishing the report cards of institutional performance in responding to requests for access to information. I am confident that this new process will prove its usefulness to Parliament in helping to increase the transparency and accountability of Canada's public institutions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Marleau', with a stylized flourish at the end.

Robert Marleau
Information Commissioner of Canada

CONTENTS

- Message from the Commissioner** 3
- Executive summary** 5
- Introduction** 9
- Chapter 1: Systemic issues** 11
- Chapter 2: Office of the Information Commissioner commitments** 25
- Chapter 3: Institutional report cards** 27
 - Canada Border Services Agency 29
 - Department of Justice Canada 41
 - Department of National Defence 53
 - Foreign Affairs and International Trade Canada 63
 - Health Canada 75
 - Library and Archives Canada 85
 - Natural Resources Canada 95
 - Privy Council Office 105
 - Public Works and Government Services Canada 119
 - Royal Canadian Mounted Police 135
- List of recommendations** 145
- Annex: Rating of institutions' performance** 155

MESSAGE FROM THE COMMISSIONER

This special report on the performance of federal institutions under the *Access to Information Act* (the *Act*) covers my first full year as Information Commissioner. It also introduces important changes to OIC's report cards process.

Shortly after taking office, through discussions with members of the access to information community, I came to realize that this process – as useful as it was – could be improved by providing the whole picture of institutional compliance while reflecting efforts by institutions to improve their performance. More importantly, it could shed light on contextual factors affecting the capacity of institutions to fulfill their obligations under the *Act*, and help to identify system-wide issues beyond the control of any given institution.

Consequently, I have introduced an enhanced assessment framework which allows us to examine such issues while uncovering best practices which would deserve to be more widely replicated. We focused our efforts this year on analyzing factors that create delays across the system, such as the rising number of consultation requests, the use of lengthy extensions and multi-layered approval processes.

As Information Commissioner, I am often asked about my views on the state of the access to information regime and on ways to improve it. Although I would caution readers that this year's assessment does not constitute a scientific audit, I do believe that its results provide a grim picture of the federal government's access to information regime.

The most significant and wide-reaching finding attests to the fact that the 30-day period intended by Parliament to be the norm in responding to information requests is the exception. The prevalence of extensions and consultation requests has significantly slowed down the treatment of requests, to the point that some institutions take an average of 120 days to respond to requesters. This is unacceptable.

Our assessment identified significant information management challenges which greatly influence the capacity of institutions to provide complete, accurate and timely responses to information requests. It has also confirmed important shortcomings with respect to staffing and training in the area of access to information.

The current context clearly mandates a more sophisticated compliance model for access to information, which will include adequate performance incentives. Modernizing the legislative framework and the administrative process will not be sufficient. As the report suggests, a stronger regime requires the will and leadership necessary to guide a cultural change away from a tendency to withhold information to a true climate of openness. Government officials must be empowered and learn to act in the spirit as well as the letter of the law when it comes to access to information.

It is my hope that the recommendations contained in this report will generate the kind of action and debate required to update and strengthen Canada's access to information regime, which is so critical to upholding our democratic way of life.



Robert Marleau
Information Commissioner of Canada

EXECUTIVE SUMMARY

As part of its mandate to promote open and transparent government, the Office of the Information Commissioner of Canada (OIC) reviews selected federal institutions to assess their compliance with the *Access to Information Act* (the *Act*) and identify any problem areas that should be corrected.

The Special Report for 2007-2008 reflects the introduction of a new process for establishing the report cards, which make them more relevant and useful to Parliament in increasing accountability and transparency. The enhanced process provides more information on various contextual factors that affect the performance of an institution. It also allows us to examine important system-wide issues which confront most institutions yet are beyond their immediate control.

In this report, the OIC makes various recommendations to the Treasury Board Secretariat (TBS) and to the individual institutions in order to address these issues.

SYSTEMIC ISSUES

In carrying out its system-wide assessment, the OIC has identified five closely related areas of concern, namely: information management, time extensions, consultations, human resources and training as well as leadership.

Information management

Access to information depends heavily on information management practices. If institutions cannot effectively manage their information, they will most likely have difficulty in responding to information requests in a timely, complete and consistent manner.

Therefore, it is of particular concern that standards for information management seem to be poorly applied across the federal government. Outmoded, inconsistent or inefficient records management practices and systems tend to slow down the process of finding and retrieving records. This year's process also uncovered irregularities and inconsistencies between the information that institutions provided the OIC and data collected by TBS.

Clearly, the federal government has not succeeded in addressing the challenge that the modern digital information environment presents. There is now an urgent need for leadership and government-wide action in this area, including developing and maintaining state of the art information management practices and resources.

Time extensions

A second area of concern is the use of time extensions when institutions are unable to fulfill an access to information request within the statutory 30-day limit.

Contrary to the original intention of the *Act*, it would seem that extensions have become the norm rather than the exception. The OIC's analysis shows a trend toward greater use of time extensions and for longer periods of time. Some of the institutions reviewed this year took an average of 120 days to respond to requesters.

There is a variety of possible reasons for this trend. Part of it can be legitimately attributed to the ever-increasing complexity and interdependency of government work, which call for more partnerships and consultations. There could also be underlying challenges – such as a lack of resources – that make it difficult for institutions to respond to requests on a timely basis. Finally, it could be the case that institutions are relying on extensions as a tactic to avoid a poor performance record as measured by deemed refusals.

Also of concern to the OIC is the lack of checks and balances needed to make sure the system is not being abused and that all institutions using extensions are doing so for legitimate and documented reasons. There is currently little guidance on the use of time extensions and their duration. There are limited powers to enforce the existing requirements, and there is no sanction provided in the *Act* for poor performance.

There is no doubt that more discipline is required on the use of time extensions. Although irregularities and inconsistencies in the data available on extensions do not allow us to draw any definitive conclusions at this point, the OIC has sufficient evidence that the use and duration of time extensions have significantly slowed down the treatment of requests. The OIC will closely monitor the situation while undertaking a systemic investigation of the use of extensions across federal institutions.

Consultations

Consultations have now become an issue of concern for two reasons: first, their increasing volume and impact on institutions' workload; second, the delays and resulting risk management practices.

Because so much of the government's work today is shared across several institutions, the sheer number of consultation requests is rapidly increasing and, therefore, adding to the workload of institutions. Yet, this burden on institutions is not currently recognized, measured or appropriately resourced.

Moreover, only the institution subject to the request is currently accountable for meeting the requirements of the *Act*. Other institutions that might be consulted are not held to any standard. Institutions have therefore adopted practices in order to manage the risk of long delays resulting from consultations requests.

The magnitude of consultations requests clearly needs to be better documented with a view to allocating adequate resources for this function.

Human resources and training

Because of an acute shortage of experienced personnel in the area, institutions have had a difficult time attracting and keeping qualified professionals to manage access to information operations. They are attempting to cope with the shortage by hiring consultants – a practice which is unsustainable over the long term.

As a matter of urgency, the OIC reiterates its recommendation that the federal government set standards for recruiting access to information specialists and recognize them as professionals pursuant to a certification process.

It is also worth noting that there is currently no mandatory staff training on access to information in federal institutions, despite the high payoff in terms of raising awareness about the *Act* and improving the processing of access to information requests.

Therefore, the OIC recommends that the Treasury Board Secretariat work with the Canada School of Public Service to develop an integrated learning strategy for all employees of the public service.

Leadership

Leadership is a crucial factor in determining how well an institution meets its obligations under the *Act*. When a senior manager sends a clear message that access to information requests deserve full and efficient co-operation, performance standards improve. Unfortunately, that leadership currently depends on responsible and committed managers stepping forward. If these managers move on to other institutions, there is no guarantee that their standards will be upheld.

The OIC expects that TBS will fulfill its responsibility and exercise the high-profile and forceful leadership which is required in the area of access to information. To this end, the Office also recommends that TBS review its current criteria to measure institutional performance.

INSTITUTIONAL REPORT CARDS

The system-wide issues discussed in this report emerge from a detailed analysis of the performance of ten federal institutions covered by the *Act*. The institutions were sampled according to specific criteria including: their previous performance, the number of consultations with other institutions on access requests, their use of extensions, the approval process, and good practices.

The assessment framework used for this year's report has been expanded to provide a broader picture of institutional performance. Where appropriate, the report card includes a description of contextual factors – such as changes in workload, capacity, process or leadership – which might have impacted the ability of the institution to fulfill its obligations under the *Act*.

Institutions received a score – ranging from one to five stars – according to their overall performance. For 2007-2008, the Department of Justice Canada achieved the best score despite significant challenges, such as a steep increase in the number of consultation requests from other departments. This outstanding performance results from new practices introduced in recent years which have allowed the department, among other things, to complete two thirds of the new requests received during the year within 30 days and to fulfill most extended requests within 90 days. Library and Archives Canada maintained a high level of performance from the previous review period and succeeded in responding to roughly three quarters of requests within 30 days. However, it was determined that the length of the vast majority of time extensions could not be justified.

Two institutions had a fair level of compliance in 2007-2008: the Privy Council Office and Natural Resources Canada. Although the OIC assessed the performance of the Privy Council Office's ATIP Office on many occasions in the last decade, it is the first time the performance of the Privy Council Office's Cabinet Confidences/Counsel was reviewed. This group is responsible for determining whether records containing Cabinet confidences should be protected from disclosure. There is much criticism expressed by federal institutions about mandatory consultations with Cabinet Confidences/Counsel and the time it takes to receive a response. The questionnaire used this year only provided a glimpse into the consultation process related to Cabinet confidences. A more precise tool will be developed for future assessments.

The remaining six institutions performed at a below average level in 2007-2008 for a variety of reasons. Most institutions struggled due to a significant increase in their workload (the number of requests received, the number of pages reviewed and/or the number of requests for consultation received). Some also made great use of prolonged time extensions, have convoluted approval processes and lack expediency in responding to consultation requests.

The Canadian Border Services Agency and Public Works and Government Services Canada have elaborated and implemented a three-year improvement plan, which allowed them to reduce significantly their backlog of requests during the review period and improve various elements of their operations.

Health Canada and the Royal Canadian Mounted Police also put a lot of efforts to reduce their backlog of requests. However, Health Canada needs to review and streamline its processing model to avoid additional delays and the Royal Canadian Mounted Police should enhance its case management system to monitor more closely all aspects of its operations.

The Department of Foreign Affairs and International Trade Canada's overall workload significantly increased during the review period, especially considering the volume of consultation requests it received from other federal institutions. Due to limited resources, its turnaround time on consultation requests is on average 75 days. Prolonged consultations are a major concern to the OIC because of their effects on the access to information system.

Finally, Canada's mission in Afghanistan and the associated complexity of processing records stemming from an ongoing mission continued to be a challenge for the Department of National Defence. This situation has led to an increase in the workload as well as in the use of time extensions to alleviate this increase, and the creation of an internal task group to review sensitive information related to the ongoing mission. Overall, the access process has been delayed.

OFFICE OF THE INFORMATION COMMISSIONER COMMITMENTS

In implementing its new report cards process, the OIC has devised ways to further improve its own work. As a result, it will review the classification used to describe the outcome of complaints so that it provides more useful and fairer information about institutions' responses. Moreover, by 2009-2010, the Office will implement criteria for measuring the degree to which institutions are releasing information in compliance with the *Act*. It also commits to better inform federal institutions about the report card process and its requirements well ahead of time.

INTRODUCTION

The Office of the Information Commissioner (OIC) helps to ensure that federal institutions respect the *Access to Information Act* (the *Act*) and make information more readily available in order to keep the federal government accountable to Canadians.

The *Act* gives any Canadian citizen, permanent resident, individual or incorporated entity present in Canada, the right to request and receive information that federal institutions have. This could include documents, pictures, letters, emails and memos. There are some limitations, however: Cabinet documents; information that could harm Canada's security or economy, federal-provincial relations or international affairs; as well as personal information about individuals.

Once an institution receives an access to information request, it must answer within 30 days, or justify a time extension. For example, the institution might need to consult with another institution, particularly about records which might involve Cabinet confidences or about records that if released, might affect Canada's international relations. If it fails to answer within 30 days, or the extended time, the institution is deemed to have refused to give access (deemed refusal). In this and other cases where it is believed that the institution is not complying with the provisions of the *Act*, requesters can complain to the OIC.

The Office also conducts annual reviews of samples of federal institutions to assess their overall compliance with the *Act* and identify any problem areas that should be corrected. A new report cards process with an enhanced assessment framework was introduced for 2007-2008.

In addition to the usual data on deemed refusals and time extensions, the new framework includes contextual factors such as changes in workload, capacity, process or leadership, which provide a broader picture of institutional performance. The process has also allowed us to identify and analyze five issues that impact the ability of most institutions to fulfill their obligations under the *Act*. These system-wide issues are: information management, time extensions, consultations, human resources and leadership.

Based on a range of specific criteria, we selected a sample of ten institutions, including: Canada Border Services Agency; Department of Justice Canada; Department of National Defence; Foreign Affairs and International Trade; Health Canada; Library and Archives Canada; Natural Resources Canada; the Privy Council Office; Public Works and Government Services Canada; and the Royal Canadian Mounted Police.

These institutions were asked to complete a questionnaire about their access to information activities from April 1, 2007 to March 31, 2008.¹ OIC staff met representatives of each institution to gather qualitative contextual information. A copy of each institution's report card was then sent to the key access to information officials in that institution, asking for clarifications where needed and for an action plan to respond to our recommendations.

Note:

1 The questionnaire and the responses provided by all ten federal institutions can be consulted on line, on the OIC's Web site.

Chapter three contains the report card for each institution, along with a discussion of key challenges which have affected its performance in responding to access requests. It also includes our recommendations to help the organization improve its performance as well as the institution's response. The analysis of system-wide issues is provided in Chapter one. While refining our assessment framework, we also looked for additional ways to improve the report cards process. Chapter two details our commitments in this regard.

SYSTEMIC ISSUES

This chapter brings to light system-wide trends that are affecting the capacity of institutions to fulfill their obligations under the *Access to Information Act*. We describe five system-wide interconnected issues that emerged from information obtained from the institutions selected for this year's review: information management, time extensions, consultations, human resources and training, as well as leadership.

INFORMATION MANAGEMENT

If institutions are not able to efficiently manage information requested under the *Act*, then it follows that they will have difficulty in responding to requests in a timely and complete manner. In fact, we have observed a definite trend toward an increase in the volume of pages reviewed by institutions, some of which appears to be the result of poor information management retaining multiple copies of electronic mail messages, for example. Poor information practices such as this increase exponentially the time taken to complete information requests since each of these multiple records must be reviewed in the absence of a single, authoritative archived email.

There are many similar examples of the challenges the federal government must confront to adapt its access to information regime to a dynamic, fast-paced and digital environment. This regime was shaped in the 1970s and developed in the 1980s around the realities of the government at that time. It has not kept up with dramatic changes to the context it is required to operate in that were brought about mainly by advancements in technology, such as the Internet. Too much continues to be done conventionally. Not only does this digital divide affect the delivery of services and information to requesters, it also has a tremendous impact on the capacity of federal institutions to provide complete, accurate and timely responses to requesters. Outmoded, inconsistent or inefficient records management practices and systems, for example, slow down the process of finding and retrieving records and also puts into question the thoroughness of the search. As one representative from an institution observed, “the information management challenge has not yet been solved.”

On the other hand, work to improve records management is under way. In 2002, the Access to Information Review Task Force said that “there cannot be better access to information without better information management.”² We concur but note that seven years later there is an even more urgent need for leadership and government-wide action in this area.

Note:

2 *Access to Information: Making it Work for Canadians*, June 2002, p. 5.

Recommendation 1

That the Treasury Board Secretariat, in collaboration with the relevant institutions

- a. conduct an assessment of information management practices in federal institutions;**
- b. develop an action plan to address deficiencies in information management in federal institutions;**
- c. measure the federal institutions' performance on the use of effective information practices on an ongoing basis; and**
- d. ensure that federal institutions are properly resourced to develop and sustain effective information management practices.**

Recommendation 2

That the Treasury Board Secretariat develop and maintain state of the art training on information management practices and tailor such training to the needs of the Access to Information regime.

Response to recommendations 1 and 2

The Treasury Board Secretariat acknowledges the importance of the management of government information in its vision statement:

"In the Government of Canada, information is safeguarded as a public trust and managed as a strategic asset to maximize its value in the service of Canadians."

In 2007, the Secretariat developed the *Framework for the Management of Information in the Government of Canada* to achieve this vision. With the framework as a foundation, the Secretariat launched the Government of Canada's Information Management Strategy and Action Plan in 2008, which identifies a series of specific, concrete deliverables to be developed each year to support improved information management across the Government of Canada.

The Secretariat's activities in support of the Strategy and Action Plan include the launch, in June 2008, of an inventory of initiatives and best practices, as well as the ongoing development of an Outreach and Engagement Plan to raise employee awareness of their information management responsibilities and the value of information management in improving the delivery of service in the Government of Canada. The Secretariat recently completed the Information Management Competency Standards which will be published by the Canadian General Standards Board in the coming months. The Secretariat is working closely with the Canada School of the Public Service to develop an action plan to facilitate the Canada School's review of information management course materials to incorporate best practices and emphasize responsibilities related to access to information and privacy (ATIP).

In addition, the Secretariat obtains data on information management practices within individual departments through the annual Management Accountability Framework (MAF) assessment process. The MAF process is used to monitor departments' compliance with the *Policy on Information Management and the Directive on Information Management Roles and Responsibilities*. Departments are required to demonstrate that they have an information management strategy in place to reduce complexity and duplication, promote alignment, interoperability and information sharing, and optimize service delivery within the organization and across the Government of Canada. Furthermore, departments need to demonstrate that they are making progress on the implementation of that strategy. The Secretariat is developing a roadmap for MAF that will establish the evolving approach to measure compliance with the *Policy on Information Management* for the next five fiscal years. As we move forward, an assessment of the progress made by institutions on the implementation of the *Directive on Recordkeeping*, which is currently under development, will be key for MAF.

Furthermore, the Secretariat developed an Information Management Internal Services Profile that will allow institutions to assess the relative effort required and their capacity to support information management as an internal service and will lead to the development of service standards and key performance indicators associated with information management as an internal service. The Secretariat has also initiated the development of a framework for measuring information management performance in departments subject to the *Policy on Information Management*, both at the departmental level and government-wide.

Finally, in the summer of 2008, the Secretariat established the Resourcing Working Group. Composed of Assistant Deputy Ministers, the mandate of the working group is to explore options, such as reallocation of funds and establishing shared services, for resourcing ongoing improvement in information management capacity across government. An Information Management Resourcing Framework is currently in development.

Data gathering for the review period has given rise to serious concerns about the quality of the information the OIC obtained from institutions.

The combination of greater emphasis on contextual factors and our interest in qualitative information, along with the traditional quantitative data, created challenges for institutions in responding to the questionnaire and for us in analyzing the data.

We recognize that this situation was due in part to relatively short notice we gave institutions about the type and scope of information we were gathering. We also recognize that some institutions were not able to provide this information without undue interference with their operations. At a minimum, we were able to obtain similar information to what is provided annually to the Treasury Board Secretariat³, but we did uncover irregularities and inconsistencies between this data and what institutions provided to us, which is a cause of concern.

We conclude that the data collected by the Treasury Board Secretariat does not provide an accurate picture of the performance of institutions and that more and better data is essential to properly assess individual and systemic performance.

Recommendation 3

That the Treasury Board Secretariat collect the following additional annual statistics, starting in fiscal year 2010-2011:

- a. the number of pages reviewed for requests: in total and on average per request;**
- b. the number of pages reviewed for incoming consultations requests: in total and on average per consultation request;**
- c. the number of pages disclosed in part or in total;**
- d. the number of requests completed within statutory timelines;**
- e. the average time to complete a request.**

Note:

3 Treasury Board of Canada, *Report on the Access to Information Act*, <http://www.tbs-sct.gc.ca/tbsf-fsct/350-62-eng.asp>

TIME EXTENSIONS

The review process for 2007-2008 specifically focused on institutions' use of time extensions to gather evidence on the impact it has on delays. Federal institutions must complete access to information requests within 30 days of receipt or take a time extension.⁴ This can only be done if specific conditions described in section 9 of the *Act* apply (see box below for more information). The length of these extensions is not constrained by any statutory limitation. The only norm is for the extension to be for a "reasonable period of time."

Paragraph 9(1)(a) allows an institution to extend the deadline for responding to an information request that involves a large volume of records (or a search through a large volume of records) such that meeting the 30-day limit would impose an "undue burden" on the institution's operations.

Paragraph 9(1)(b) allows an institution to extend the deadline if consultations that are required in order to respond to the request cannot be completed within 30 days.

Paragraph 9(1)(c) allows an institution to extend the deadline in cases where notice of the request and of the federal institution's intent to disclose information must be given to a third party pursuant to section 27.

A requester unhappy with delays due to time extensions can complain to the OIC but, beyond that, checks and balances on the use and length of time extensions are limited and the compliance model in the *Act* is weak. Federal institutions are only required by law to notify the Information Commissioner of any extension beyond 30 days (as per paragraph 9(2) of the *Act*). Further, there is no sanction provided in the *Act* for failure to provide this notice. As observed during the review of notices received during 2007-2008, institutions did not consistently comply with this requirement.

There is also limited guidance on the use of time extensions and their duration. The TBS Manual indicates that "extensions should be geared to the amount of work required in processing a request and be for as short a time as possible."⁵ Jurisprudence from the Federal Court indicates that the institutions must state cogent, genuine reasons for the extension, and for its length.⁶

Note:

- 4 In terms of the *Act*, completing an information request means to give written notice to the requester as to whether or not the requested record will be released in whole or in part, and, if access is to be given, to provide the record in whole or in part.
- 5 Treasury Board Policy Suite/Requests/Extensions, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13779§ion=text#cha14>
- 6 *Canada (Information Commissioner) v. Canada (Minister of External Affairs)* [1990] 3 F.C. 514, at 526.

The OIC looked at historical trends in the timeliness of responses to information requests, bearing in mind the *Act's* intention is that institutions will normally respond to requests within 30 days. We started with the premise that extensions should only be required for a small number of requests and be as short as possible under the circumstances. Although we cannot draw firm conclusions from the data we gathered as to whether extensions were justified in all cases, our analysis shows a trend toward greater use of time extensions and for longer periods of time. This trend is not explained by overall growth in the number of information requests that occurred during the same period. We would have hoped to see, at worst, that the growth in the use of extensions was no greater than growth in the number of information requests. In fact, we mostly saw the opposite.

The OIC must be cautious about drawing firm conclusions on the basis of a three-year set of data drawn from a small set of institutions. There are also some irregularities and inconsistencies in the data available on extensions. Our conversations with individual institutions produced several plausible explanations for the growing significance of extensions over the past several years. Nonetheless, we have gathered sufficient evidence to question whether the degree to which extensions are being used can be fully justified under the *Act*.

For instance, some institutions have made significant gains in improving their deemed refusal scores, while simultaneously making greater use of time extensions. This may of course be perfectly legitimate. Indeed, some cases of deemed refusals in previous years might have been due to institutions not taking extensions in circumstances in which it

would have been appropriate to do so. Having said that, we cannot help but wonder whether the coincidence of improved deemed refusal scores and increased use of extensions is evidence of institutions focusing more on their report card scores than on fulfilling the fundamental objectives of the *Act*. The use of long extensions as an insurance policy against having requests fall into deemed refusal status (by being delayed beyond the statutory timelines in the *Act*) is a tactic we learned about in our interviews.

The OIC is also concerned that institutions are using extensions as a way to cope with chronic understaffing of access to information units and with deficiencies in records management. As noted earlier, extensions should be the exception rather than the norm for a unit that is adequately resourced and has an efficient information management framework. When one or both of these elements are not present, and this is often the case, federal institutions may be tempted to use extensions to help them manage their workload while at the same time keeping within statutory timelines.

More discipline is required on the use of time extensions. The OIC will closely monitor the notices institutions submit to us, comparing them to the number of extensions they report to the Treasury Board Secretariat as having taken during the year. We will also undertake a systemic investigation of the use of extensions across federal institutions.

There is also a need for better and stronger data on extensions in order to assess whether their use is consistent with the objectives of the *Act*.

Recommendation 4

That the Treasury Board Secretariat clarify the methodology for reporting on time extensions and, starting in 2010-2011, break down the reporting requirements of extensions into the following categories:

- a. number of requests extended pursuant to section 9;**
- b. for each reason for the extension (searching, consultations, third party), the length of the extension:**
 - i. less than 30 days;**
 - ii. 30–60 days;**
 - iii. 61–90 days;**
 - iv. 91–120 days;**
 - v. 121–150 days;**
 - vi. 151–180 days;**
 - vii. 181–210 days;**
 - viii. 211–250 days;**
 - ix. above 250, by units of 50 days.**
- c. for each reason for the extension (searching, consultations, third party), the average actual time it took to receive a response.**

CONSULTATIONS

Consultations create challenges for the administration of the *Act*. Yet they have not received the special attention they deserve. The whole question of consultations has largely flown under the radar as evidenced by the fact that statistics are not collected on the volume of consultation requests institutions handle each year. Apart from case-by-case information gathered in complaint investigations and through this report cards process, there is no data on how consultation requests are treated by institutions.

Responses to our questionnaire and our interviews with institutions suggest that there are two aspects of concern with respect to consultation requests: the first is the volume and their impact on institutions' workload; the second is the delays caused by consultation requests.

The volume and impact of consultations is of particular interest. The need to consult arises from system-wide interdependencies between institutions, which are a natural consequence of the growing connectedness or horizontality of government operations. It is becoming increasingly rare for any one particular policy or operational issue and the documents related to them to be of interest solely to one federal institution. As a result, consultation requests are increasing the workload of institutions. For example, requests for consultation sent to the Department of Foreign Affairs (DFAIT) represent as much as 58 percent of their overall workload; for Justice Canada, it is as high as 75 percent. This burden on institutions is not currently recognized, measured or appropriately resourced.

The second aspect relates to delays resulting from consultations particularly mandatory consultations that create a noteworthy system-wide bottleneck.⁷ The institution in receipt of the request remains responsible for completing the request within the statutory timelines and is dependent upon the efficiency and goodwill of the consulted institution. Whenever an institution determines that consultation is necessary, it will invoke an extension based on an estimate of the time to complete the consultation. Ideally, this estimate is consensually determined with the consulted institution. If the time required for consulting is underestimated, the responsible institution will very likely find itself in violation of the statutory timelines. If it is overestimated, the request will take longer than necessary. Our finding, in the case of some institutions, of a sizeable gap between the length of time claimed for an extension for the purpose of a consultation and the actual time taken to get a response from the consulted institution, is troubling in this regard.

Institutions have developed and adopted various practices in order to manage the risk of long delays resulting from consultation requests. For example, an institution might release the information not subject to consultation and consider the matter closed.

There is no shortage of good ideas for institutions to pick from to improve consultations. We have observed effective or expeditious consultations where institutions work closer together. For example, Justice Canada and Library and Archives Canada use collaborative instruments such as memoranda of understanding to expedite the processing of requests subject to consultations. National Defence instituted a tasking team to concentrate on incoming and outgoing consultations. Justice Canada also introduced a fast-track process to respond to low-risk requests for consultations on solicitor-client privilege.

It stands to reason that, if an institution has to choose between allocating scarce resources to an information request for which it is accountable, or handling a consultation request from another institution for which it is not accountable, the institution is likely to focus on its own information request in order not to jeopardize its performance rating. But what is optimal for the institution when considered in isolation is not necessarily optimal for the access to information system as a whole. One institution's risk management strategy becomes another institution's problem, as well as a problem for the information requester.

Note:

- 7 The Treasury Board Secretariat requires all requests involving matters relating to international affairs, defence or national security (section 15) and matters relating to law enforcement and penal institutions (section 16) to consult with relevant institutions. Matters related to Cabinet confidences (section 69) are also subject to mandatory consultations.

Recommendation 5

That the Treasury Board Secretariat collect annual statistics, starting in fiscal year 2010-2011, on consultations pursuant to paragraphs 9(1)(b) and 9(1)(c):

- a. For consultation requests sent to other federal institutions:**
 - i. number of consultations requests sent;**
 - ii. number of mandatory consultation requests sent pursuant to:**
 - 1) section 15;**
 - 2) section 16;**
 - 3) section 69;**
 - iii. number of pages sent for review;**
 - iv. average time to receive a response;**
 - 1) overall;**
 - 2) for mandatory consultations;**
- b. For consultation requests received from other federal institutions:**
 - i. number of consultation requests received;**
 - ii. number of pages reviewed;**
 - iii. average time to respond;**
- c. For consultation requests sent to third parties (pursuant to paragraphs 9(1)(b) and 9(1)(c):**
 - i. number of consultation requests sent;**
 - ii. average time to receive a response.**

Response to recommendations 3, 4 and 5

Collection of statistics

Since the coming into force of the *Access to Information Act* in 1983, the Treasury Board Secretariat has been collecting statistical information through institutional annual reporting, which it then publishes on a yearly basis in the Info Source Bulletin. More recently, the *Federal Accountability Act* broadened the mandate of the President of the Treasury Board with respect to statistics. In this regard, the Treasury Board Secretariat is in the process of reviewing the collection of statistics to ensure that they are useful and provide a comprehensive picture of the government's access to information and privacy (ATIP) program. The Secretariat is striving to achieve a balanced approach that will encourage sound practices within institutions to foster quality and timeliness.

As an initial step in this project, the Secretariat reviewed provincial and international jurisdictions with similar access to information and privacy regimes to examine approaches and the collection of statistical information. It was found that the Canadian Government is at the forefront in the area of reporting on its overall performance. The Secretariat also consulted the ATIP community, the Office of the Privacy Commissioner and your office to determine what data would be most useful to all parties, while at the same time ensuring that an undue administrative burden is not placed on government institutions.

Next, the expertise of Statistics Canada was sought to assist in a review of the proposed data collection and the content of the new statistical reporting forms. In addition, the Secretariat is chairing a working group that provides ongoing feedback and will participate in a pilot project to test the feasibility of the proposed collection. At this time, the Treasury Board Secretariat is considering the collection of additional data related to delays, consultations and extensions, among others. As next steps, consultations will be undertaken with software providers to ensure that the proposed collection is achievable. The Secretariat will continue to consult your office and the Office of the Privacy Commissioner. It is expected that the collection of additional statistics will begin in 2010-2011. The Secretariat will then be in a better position to assess the compliance of government institutions with the provisions of the Act and the Regulations.

Extensions

The Secretariat issued additional guidelines on the use of extensions in September 1999 in its Implementation Report No. 67. In addition, detailed guidance is provided in the training session on extensions offered to the ATIP Community by the Treasury Board Secretariat. Also, as part of the Policy Suite Renewal initiative, the Secretariat is in the process of reviewing all guidance documents. It will further revise the guidance on extensions during that exercise. Moreover, as part of its project on the collection of statistics, the Secretariat will develop a user's guide on the methodology for reporting all data elements.

Recommendation 6

That the Treasury Board Secretariat, together with relevant institutions, assess the magnitude of the consultations between federal institutions including mandatory consultations pursuant to sections 15, 16 and 69 of the Act, and their impact on the workload of these institutions with a view to allocate resources to this function.

Response

It is recognized that the consultative process is an important part of the work conducted by institutions to respond to requests made under the *Access to Information Act*. It is for this reason that the Secretariat is taking a careful look at including consultations in its revised statistical requirements. The data will help identify areas requiring greater attention. Ultimately, the head of each government institution is responsible for the administration of the *Access to Information Act* within his or her institution.

HUMAN RESOURCES AND TRAINING

Every institution interviewed for this report referred to the difficulty of identifying, attracting and retaining staff qualified to work in access to information units. The general view is that demand for access to information staff far outstrips the supply. As an illustration of the instability of the access to information workforce, four out of the ten coordinators working for the institutions reviewed this year changed during this report cards process.

The human resource shortage has become especially acute following the proclamation of the *Federal Accountability Act*, which created a sudden demand for staff to serve in access to information units by increasing the number of institutions subject to the *Act* by 37 percent. More than 250 institutions are now subject to the *Act*.

Many access to information coordinators reported that they are attempting to cope with this problem over the short term by hiring consultants to deal with especially time-consuming files and/or to reduce information request backlogs. While access to information managers observed that the use of consultants has its place, especially with respect to highly technical files where outside expertise may be required, they would prefer not to use consultants as a means to manage the normal workload. They regard the practice as unsustainable over the long term, from the perspectives of both human and financial resource management. They express concern about the long-term human resource capacity of their institution, and of the Government of Canada in general, to meet its obligations under the *Act*.

The need for training access to information staff was a recurring theme during this year's report cards process. Some institutions have put forward initiatives such as mentoring and coaching programs as well career development initiatives. These programs, however, even if they eventually achieve their goals, will not provide system-wide relief. We believe the way forward is to set standards for recruiting access to information specialists and recognize them as professionals, according to a certification process. In April 2007, during an appearance before the Standing Committee on Access to Information, Privacy and Ethics, the Information Commissioner said:

“If I can just make a parallel here with internal audit, the Government of Canada, Treasury Board, has set standards for recruitment of internal auditors. They set standards for recruitment of financial officers, and certification is required. I believe the same thing should apply to ATI coordinators, so that a deputy minister who gets a report from his coordinator's office that says “This has to be divulged” can look at that report with the same kind of confidence as if he were getting it from an SFO or from an internal auditor.”⁸

Note:

8 Evidence before the 39th Parliament, 1st Session, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2875419&Language=E&Mode=1&Parl=39&Ses=1>

A year later, in its *Access To Information Request For The Department Of Foreign Affairs And International Trade Internal Report Entitled "Afghanistan 2006: Good Governance, Democratic Development And Human Rights,"* the Standing Committee recommended that the Government provide mandatory and extensive training to access to information and privacy coordinators, such as the Information Access and Protection of Privacy Certificate Program at the University of Alberta, and be certified pursuant to national standards.⁹ In its formal response, the Government of Canada indicated that the Treasury Board Secretariat was currently renewing its curriculum of courses as well as exploring various training and certification options.

We trust that the Standing Committee will follow up on its recommendations early in the 40th Parliament. We feel strongly that training and certification are integral parts of any solution to the staffing shortage. It is also a major factor in the retention of qualified people in the access to information and privacy community in the public service.

Recommendation 7

That the Treasury Board Secretariat, in collaboration with relevant institutions and agencies, develop and implement, as a matter of urgency, an integrated human resources action plan to address the current shortage of access to information staff.

Recommendation 8

That the Treasury Board Secretariat accelerate its review, development and implementation of an extensive training program for access to information specialists, and establish certification standards for federal professionals.

Access to information officials in several institutions described how their offices had undertaken training programs to raise awareness among colleagues about the Act in general and about the role and functions of the access to information unit. Their general impression is that, by helping to build understanding of and eliminate misconceptions about the Act and the methods of the ATI unit, these training programs have helped improve relations between the access to information unit and other parts of the organization and have led to more efficient processing of information requests. One interviewee said that "these efforts have a high payoff. They reduce considerably the back-and-forth between the access to information unit and offices of primary interest." In this regard, it is worth noting that there is currently no mandatory staff training on access to information in federal institutions.

Recommendation 9

That the Treasury Board Secretariat in collaboration with the Canada School of Public Service and the Office of the Information Commissioner of Canada develop an integrated learning strategy for all employees of the public service.

Treasury Board Secretariat

Response to recommendations 7, 8 and 9

The Treasury Board Secretariat recognizes the importance of organizing and providing training and development opportunities related to the *Access to Information Act*. To this end, the Policy on *Access to Information* contains a requirement for heads of institutions to make their employees aware of the policies, procedures and legal responsibilities under the Act. *The Directive on the Administration of the Access to Information Act* will contain more specific requirements to increase awareness for all employees and to provide opportunities for officials who have functional responsibility for the administration of the Act to gain greater knowledge of the Act.

Note:

9 Report of the Standing Committee on Access to Information Privacy and Ethics, April 2008, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3369467&Mode=1&Parl=39&Ses=2&Language=E>

The Secretariat has for several years offered a training program to meet the specific needs of the ATIP community, providing on an ongoing basis, free of charge and in both official languages, sessions on a variety of ATIP-related topics. The Secretariat's commitment to training is evident in its efforts. Since April 1, 2008, 51 sessions have been delivered, with 628 participants attending. Another 26 sessions are planned for this fiscal year, and additional sessions may be added depending on registration. As the common learning provider to public servants, the Canada School of Public Service will assume the responsibility of delivering the ATIP Community training program. In addition, the Canada School, with the expertise of the Treasury Board Secretariat, will undertake the development of new courses to meet the growing needs of the ATIP Community.

Further, the Treasury Board Secretariat conducted a survey of the ATIP community to better understand the challenges it faces, assess its strengths and identify its needs. The conclusions drawn from the responses to the survey provided information that will be crucial in terms of the continued improvement of training program and examining how to alleviate difficulties affecting the community. The Secretariat, in collaboration with CSPS, is also examining broader issues related to community development, including competency profile development and, in the longer term, the possible professionalization of all ATIP practitioners within the Government of Canada.

The Canada School and the Treasury Board Secretariat will undertake further work towards identifying federal employee learning needs with respect to Access to Information within the first quarter of the 2009-2010 fiscal year. This should culminate in the establishment of an integrated learning strategy. A cornerstone is the Access to Information and Privacy overview course which is currently under development by the Canada School with the support of the Secretariat. The course, which will be piloted during the summer months, should be available across Canada in both official languages by September 2009. Also, commencing 2009/2010 fiscal year, the Canada School will be reviewing and updating all of its courses which have components related to Access to Information and Privacy Acts to ensure they reflect changes brought to the ATIP legislation, recent jurisprudence as well as the new policy instruments. Specifically, the Canada School will be targeting training to ensure a learning continuum that starts with the Orientation of all new public servants, and the four mandatory Authority Delegation Training courses for public service managers. The Canada School maintains attendance records for all authority delegation training courses and is in a position to provide statistical information on the successful completion of the mandatory online assessment tools that aim at confirming the knowledge acquisition through this training.

In addition, the Secretariat prepared an introductory presentation on ATIP for senior officials. The presentation was sent to all Deputy Ministers to assist them in briefing their Ministers' Offices. The Secretariat also offers individual briefings on access to information and privacy to Governor in Council appointees. Finally, the Secretariat provides strategic advice and support to the ATIP community by issuing guidance documents on emerging issues and by holding regular community meetings. It also offers immediate assistance to ATIP officials on specific issues through its toll-free number or by electronic mail.

Canada School of Public Service Response to Recommendation 9

The Canada School and the Treasury Board Secretariat will undertake further work towards identifying federal employee learning needs with respect to Access to Information within the first quarter of the 2009-2010 fiscal year. This should culminate in the establishment of an integrated learning strategy. A course, which will be piloted during the summer months, should be available across Canada in both official languages by September 2009.

More specifically, the Canada School will continue its work with representatives of the Treasury Board Secretariat to identify the nature and scope of training and the field of Access to Information required by employees of the public service. Furthermore, work is in progress in collaboration with the Treasury Board Secretariat to redesign a course that will provide a sound knowledge base for public servants. This course will certainly be an important part of the integrated learning strategy.

Currently, the Canada School offers a continuum of required training courses spanning from the Orientation to the Public Service program for all new public servants, to four mandatory Authority Delegation Training courses for public service managers at all levels. These courses convey key information on Access to Information from a legislative perspective, articulating roles and responsibilities, formal disclosure processes and the function of Access to Information units within departments and agencies. The School, with the support of the Treasury Board Secretariat, intends to review these courses during the 2009-2010 fiscal year at which time the ATIP components will be updated.

LEADERSHIP

Many access to information coordinators remarked on the critical importance of executive leadership to their institution's performance. For example, one official observed that attitudes in his institution toward access to information compliance shifted significantly after the executive team sent a clear message to all staff that there would be zero tolerance for anything less than full co-operation with requests for information under the *Act*. Another official observed that a significant increase in resources for his access to information unit would not have been possible without firm support from the Deputy Minister. Unfortunately, there are also examples of inadequate leadership and this has a ripple effect in an institution, leading staff to believe that access to information is not a priority. One official observed that many senior executives are still unaware of their institution's obligations under the *Act*.

We have also heard from some access to information coordinators that a culture of openness is completely dependent on who makes the decisions in the institution and how well the organization supports its leaders. A good performance on access to information in the past would be no guarantee of future good performance if the leadership were to change.

Since the Treasury Board Secretariat has overall responsibility within the federal government for ensuring that all federal institutions subject to the *Act* implement their responsibilities properly, we would expect to see it exercising high-profile and forceful leadership in this area. Specifically, as suggested by the recommendations above, we would expect the Treasury Board Secretariat to be playing a much stronger role in undertaking data gathering and analysis of how the access to information system is working, including trends brought to light in this report, and developing a government-wide approach to dealing with the shortage of staff, deficiencies in records management, the need for a learning strategy and professional development for all employees on access to information. We would also expect the Treasury Board Secretariat to monitor closely the compliance of federal institutions with respect to their responsibilities under the *Act*.

Recommendation 10

That, as part of the Management Accountability Framework, the Treasury Board Secretariat review current criteria to ensure that they are measuring the overall performance of federal institutions in meeting their obligations under the *Access to Information Act*.

Response

Parliament put in place a mechanism to ensure accountability for the administration of the *Access to Information Act*. Section 72 of the Act requires the head of every government institution to table an annual report on the administration of the Act within their institution before the House of Commons and the Senate. While this legal requirement applies to all 255 institutions subject to the ATIP legislation, only 20% of those institutions are assessed pursuant to the Management Accountability Framework (MAF).

As part of the MAF, activities related to the administration of the *Access to Information Act* have been assessed since fiscal year 2005-2006. The Treasury Board Secretariat assessed the performance of 53 institutions in the first year and is currently assessing the performance of 49 institutions for fiscal year 2007-2008. This evaluation comprises a review and analysis of the institution's annual report, its Info Source chapter, Departmental Performance Report, Report on Plans and Priorities, Program Activity Architecture structure and website to determine if the institution is providing complete, comprehensive and up-to-date descriptions of its functions, programs, activities and related information holdings. The annual report of the Information Commissioner is also reviewed to establish if issues specific to an institution were identified.

The methodology used for the assessments is reviewed each year and revised as required. It is anticipated that the ongoing review and refinement of the MAF methodology will continue in the future to ensure alignment with new policies, directives as well as the new statistical data collected. This refinement process will ensure the harmonization of all compliance assessment processes and reduce the administrative burden on institutions.

OFFICE OF THE INFORMATION COMMISSIONER COMMITMENTS

CLASSIFICATION OF COMPLAINTS

As noted previously, this is a transition year for the report cards process. It marks a first attempt to introduce a significant change to the performance assessment framework. The OIC is confident that the new framework will represent a major improvement over what we have used until now. During the course of the process, we have identified additional areas for improvement.

A common concern focused on the way the OIC classifies the outcomes of our investigations. These outcomes fall into one of three disposition categories:

- resolved: the complainant has a justifiable complaint and the institution has resolved the complaint to the Commissioner's satisfaction;
- not substantiated: the applicant's complaint was dismissed as unjustifiable and the institution took no further action; and
- not resolved: the complaint was found to have merit but resolution would only be achieved by way of court action.

Institutions have argued that the resolved category comprises too many types of outcomes. Some of these cases may indeed be instances of improper application of the *Act* by an institution, for example, withholding of information that should not have been exempted or excluded. But in many cases, a resolved complaint may be one in which the reasons for withholding information have changed with the passage of time or in which minimal additional information is released as a result of the intervention of our office. It has been argued that describing all investigations that lead to additional disclosure of information as having been resolved does not appropriately reflect the dialogue that takes place between the OIC and the institution as we work to resolve a complaint. It may also give a misleading impression of the institutional performance.

Commitment 1

The Office of the Information Commissioner will review how closed complaints are classified with a view to developing and implementing by 2009-2010 a new set of disposition categories that provide a more accurate picture of institutional performance.

RELEASING INFORMATION UNDER THE ACT

There are many detailed questions regarding institutional performance under the *Act* that we could examine. Consider, for example, the duty to assist provision:

“The head of a government institution shall, without regard to the identity of a person making a request for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested.”

In other words, the spirit of the legislation can be summarized by three obligations that institutions must fulfill:

- make every reasonable effort to assist requesters;
- release as much information as possible; and
- release information as quickly as possible.

The OIC had set out to assess how well institutions are doing on the latter two points in this report cards process. Whether we were looking broadly at system-wide issues related to the *Act*, or focusing on the performance of the ten selected institutions, our primary objective was to shed light on the extent to which institutions are releasing as much information as the *Act* permits and are getting that information to Canadians as quickly as the *Act* allows. To the extent that institutions fail to live up to the spirit and letter of the *Act*, we wanted to understand the root causes and make suggestions for improved performance.

The OIC had planned to derive from an analysis of investigative files whether an institution released to requesters the maximum amount of information that would be required by the Act. After examining a sample of complaint files, we concluded that the information was not sufficient for a reliable review of completeness and accuracy.

Commitment 2

The Office of the Information Commissioner will develop and implement by 2009-2010 criteria for measuring the degree to which an institution is releasing information in compliance with the *Access to Information Act*, and will document the OIC complaint files appropriately.

REPORT CARDS PROCESS

Institutions commented on the lack of notice they received about the type and scope of information we gathered as part of the process, which, for the most part, they were not able to generate from their case management systems. Quite understandably, without knowing the specifics, institutions felt that they were not able to prepare adequately and allocate resources accordingly.

The report cards exercise is about providing constructive criticism to encourage each institution to become more effective in meeting its obligations under the *Act*. We believe that institutions will fare better if we advise them in advance of areas that require improvements.

Commitment 3

The Office of the Information Commissioner will prepare and widely publish a triennial plan for institutional performance reviews.

INSTITUTIONAL REPORT CARDS

For this assessment, as for previous ones, the OIC selected a small sample of ten institutions covered by the *Act* and undertook a detailed analysis of their performance in responding to information requests.

In selecting the institutions, the OIC considered various factors, namely the rate of deemed refusals in 2006,¹⁰ the institution's complaints profile, trends of interests (such as anecdotal use of extensions, the institution's processing model and its interconnectedness with other federal institutions), and the institution's record of efforts to improve its compliance with the *Act*. We looked for a set of institutions that had a mixed record, with some having a history of problematic performance and others having a reputation for being among the best performers in relation to the *Act*.

The data used to prepare this report card came from:

- institutions' responses to our questionnaire, which was sent out in May 2008;
- the Treasury Board Secretariat's database on access to information activities;
- institutions' reports to Parliament on their access to information activities;
- individual communications with access to information staff in the institutions under review; and
- a review of our internal database on time extension notices and complaint files.

This year's assessment does not constitute a scientific audit. The OIC has noted irregularities and inconsistencies in the data received from institutions, beyond those that can be explained by the shortcomings of the questionnaire. We are, however, confident that the assessment provides a fair appreciation of institutional performance.

The assessment framework we used retained the deemed refusal ratio but also looked at a broader picture of institutional performance such as its compliance rate with the statutory obligation to notify the Information Commissioner every time it invokes a time extension for more than 30 days. We also paid particular attention to data on the use and duration of time extensions. We did a qualitative analysis of processes used by institutions to respond to requests and the practices in place that ensure timely response. This analysis provides insight into, among other things, the extent to which institutions are fulfilling their obligations under the *Act*. We also included a description of contextual factors, such as major changes in workload and availability of human resources, that affect the capacity of institutions to fulfill their obligations under the *Act*.

Scores ranging from one to five stars, as explained in Annex A, have been assigned to institutions based on their overall performance in responding to access to information requests. The rating guide was modified during the 2007-2008 process when it became obvious that the information available for a reliable review of completeness and accuracy was not sufficient.

Note:

10 Grading from previous years is for the period of April 1st to November 30th.

CANADA BORDER SERVICES AGENCY

Overall performance in 2007–2008

Below average: 2.5 stars

In 2007-2008, the Canadian Border Services Agency (CBSA) continued to struggle to meet its obligations under the *Act*. Some of its challenges have included a significant increase in the number of new requests and the number of pages reviewed, as well as an important staff turnover. Yet, the CBSA was successful in substantially reducing its carry-over of requests from 2006-2007. It also completed almost two thirds of all new requests within 30 days. This is in line with its action plan, which will be fully implemented by March 31, 2009. If these efforts are maintained and the recommendations contained in this report card are implemented, the Office of the Information Commissioner (OIC) is hopeful that the institution's overall performance concerning access to information will improve in 2008-2009.

Although it is the second year that the CBSA received a failing grade, it has improved significantly its performance, from a 69 percent deemed-refusal rate to a 33.5 percent rate, the second most important improvement among the institutions reviewed.

An area of concern for the OIC is CBSA's large increase in the number of time extensions it took in 2007–2008, compared to 2005–2006. CBSA is taking increasingly more extensions under paragraph 9(1)(a) for a period from 30 to 90 days, however those taken for more than 180 days are growing.

The CBSA had an unacceptably low rate of compliance with subsection 9(2) of the *Access to Information Act*, which requires institutions to notify the OIC of extensions it takes beyond 30 days.

The CBSA must also be faulted for taking an average of 93 days to respond to consultation requests it received from other institutions. This is the highest average completion time of the nine institutions for which information was available.

CANADA BORDER SERVICES AGENCY

Factors considered in assessment of overall performance

Workload

- Significant increase in the number of new requests (54 percent)
- Limited human resources capacity; consequently, extensive use of consultants to reduce the backlog of requests and review complex requests

Completion time for new requests

- Within the statutory timelines: 87 percent
- Within 30 days: 64 percent
- Average: 135 days

Carry-over of requests

- Significant decrease in the carry-over of requests

Time extensions

- Very large increase in the number of time extensions under subsection 9(1) over three years, greater than the increase in the number of requests received over the same period
- Majority of time extensions are for fewer than 90 days but getting longer
- Poor compliance with subsection 9(2) (notice of extension): 28 percent

Deemed refusals

- 33.5 percent of new and carried-over requests fell into deemed refusal status (grade: F)

Consultation requests received from other federal institutions

- Average completion time: 93 days

Consultation requests sent to other federal institutions

- *Best practice.* Established a protocol with Citizenship and Immigration Canada to improve the timeliness of their consultation responses
- *Needs improvement.* The OIC recommends that the CBSA prepare partial releases as early in the access process as possible and inform requesters that additional records may be forthcoming, that they will learn the outcome of the consultation requests even if no other records are released, and that they have the right to complain to the OIC at every step of the process

Process

- Categorization of requests delays the processing of requests in some instances
- Continued investment in software to improve the processing of access requests and the reporting mechanisms

Senior management leadership

Training

- Delivered access to information awareness training to more than 830 CBSA employees, which contributed to timely searches and improved the quality of recommendations on sensitive files

Complaints

- The OIC received 71 complaints (out of 1,354 requests processed or 5 percent) about the CBSA's handling of requests

CANADA BORDER SERVICES AGENCY

Created in December 2003, the Canada Border Services Agency (CBSA) had problems in its early years achieving full compliance with the *Access to Information Act* in terms of responding to access requests in a timely manner (see Table 1). Early on, it accumulated a backlog of requests that had a multi-year impact on the CBSA's performance.

Table 1. Compliance history

	2006	2007–2008
Percentage of deemed refusals (delays beyond the statutory timelines)	69%	33.5%
Grade	F	F

This led the Office of the Information Commissioner (OIC) to launch a systemic investigation in 2006–2007 into the CBSA's handling of access requests. The CBSA's performance in 2007–2008 was affected by the requirement stemming from the Commissioner's investigation to work through a large backlog of requests that were delayed beyond the timelines in the Act (known as deemed refusals).

The following sets out the CBSA's key performance-related challenges and actions in 2007–2008, provides baseline information about the CBSA's access to information activities in its fourth year of operations and analyzes various factors to come to an overall performance assessment out of five stars. The report concludes with several recommendations and the CBSA's response to them.

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Workload

- Larger workload than expected
- Challenges related to requests filed in bulk by one requester

Consultations

- Frequency and complexity of mandatory consultations with federal institutions (the Privy Council Office about records involving Cabinet confidences and with the Department of Foreign Affairs and International Trade (DFAIT) about requests for information that might, if released, affect Canada's international relations)

Human resources

- Limited number of experienced, indeterminate senior analysts to deal with workload
- Expected increase in staff (from 17 to 43 full-time equivalents) did not happen due to staffing process delays
- Lengthy staffing process

Records management

- Cumbersome process for retrieving records from the CBSA offices across Canada

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Human resources

- Used consultants to reduce the backlog and review complex requests (the access to information office's 2007–2008 operational budget for consultants was three times its salary budget)
- Changed delegation of authority to reduce the backlog of requests

Consultations

- Established protocols with Citizenship and Immigration Canada to improve the timeliness of their consultation responses

Processing requests

- Continued to invest in software (amounting to \$500,000 over a number of years)

BY THE NUMBERS

In 2007–2008, the CBSA’s access request workload increased significantly from 2005–2006, as shown in Table 2. The number of pages the institution reviewed increased very significantly.

Table 2. Requests received and completed, and number of pages reviewed

	2005– 2006	2006– 2007	2007– 2008	Change from 2005–2006
Requests received	670	945	1,030	+54%
Requests completed	402	1,064	1,197	+198%
Number of pages reviewed for completed requests	23,366	181,017	267,229	+1,044%
Average number of pages reviewed per completed request	58	170	223	+284%

The CBSA received 1,030 new access requests in 2007–2008 and carried over 324 requests from 2006–2007 (204 of which were deemed refusals), for a total of 1,354 requests. It completed 87 percent of the new requests within the timelines set out in the *Act* either within 30 days or within the extended timelines listed in section 9. It completed approximately two thirds within 30 days. The CBSA reported that it took 135 days on average to complete a request.

In its 2006–2007 report card on the CBSA, the OIC acknowledged that the CBSA’s huge backlog of requests, “constitutes a serious problem that must be dealt with to comply with the requirements of the *Act*.” As part of its three-year action plan, which should be fully implemented by the end of March 2009, the CBSA was successful in 2007–2008 in significantly reducing its carry-over of requests from 2006–2007, including reducing the carry-over of deemed refusals to 6 percent of the total from 63 percent the year before.

Nevertheless, for 2007–2008, the CBSA’s deemed refusal ratio (the percentage of new requests and requests carried over from 2006–2007 that fell into deemed refusal status during the year) was 33.5 percent. This earned the CBSA a grade of F on the scale that the OIC used for many years to rate institutions’ performance but is phasing out this year. This is the second year for which the CBSA received a failing grade; however, there was a significant improvement in percentage terms from 2006–2007.

The OIC received 71 complaints against the CBSA in 2007–2008, 15 of which were about deemed refusals. Of these 15 complaints, 10 were resolved (meaning that the OIC found them to have merit and that the institution resolved them to the Commissioner’s satisfaction), 1 was not substantiated, 3 were discontinued and 1 is pending. See Table 1 in Appendix A.

In addition to access requests, the CBSA received 268 requests for consultations from other federal institutions, which added 13,485 pages to the number of pages to review (equal to five percent of the total page count for the year).

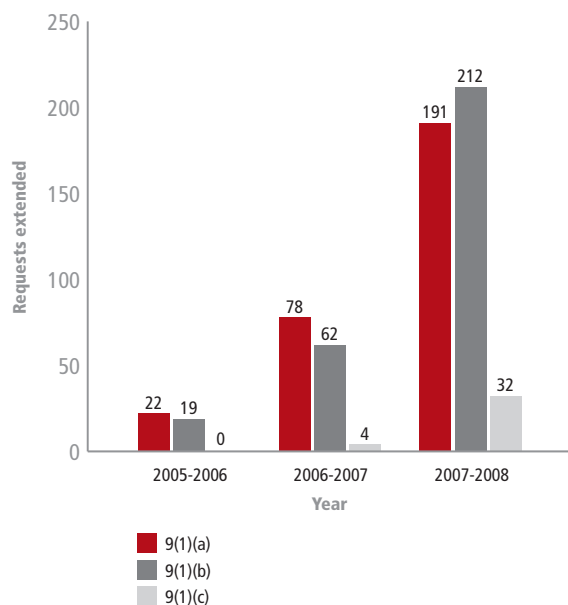
ASSESSMENT OF PERFORMANCE IN RESPONDING TO ACCESS REQUESTS

The OIC’s assessment of a federal institution’s performance in responding to access to information requests is based on the institution’s ability to respond to requests within the timelines set out in the Act but also on other practices that affect timeliness, such as requesting the shortest time extensions possible. The OIC also reviewed whether each institution documented its justifications for taking time extensions.

Time extensions

The CBSA had a very large increase in the number of time extensions it took in 2007–2008 compared to 2005–2006 (see Figure 1), far greater than the increase in the number of requests it received over the same period. The CBSA suggested that the increase in the number of time extensions it took was due to having enough staff to review files and take extensions in the initial 30 days of the access process, rather than letting requests fall into deemed refusal status.

Figure 1. Number of requests for which extensions were taken under subsection 9(1)



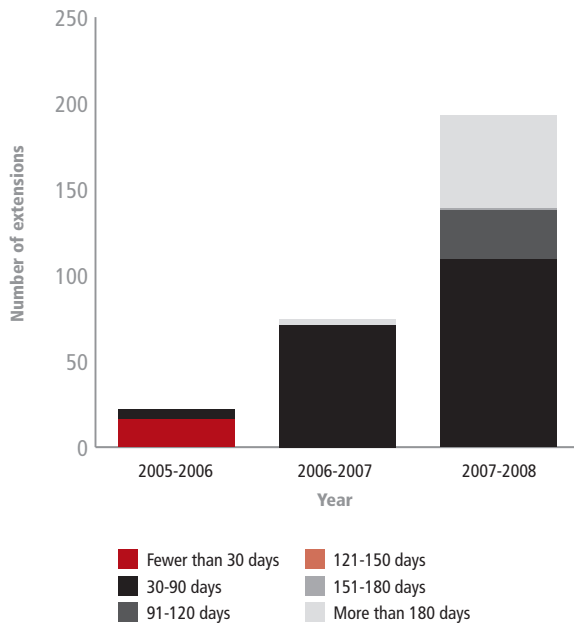
Under subsection 9(2), federal institutions must send a notice to the Information Commissioner every time they invoke an extension beyond 30 days. In 2007–2008, the Commissioner received 70 notices of extension from the CBSA, despite the fact that it extended 251 requests beyond 30 days. This represents a 28 percent compliance rate.

Of the 71 complaints the OIC received about the CBSA in 2007–2008, 12 were about the CBSA’s use of time extensions. Of these 12 complaints, 4 were resolved, 1 was not substantiated, 2 were discontinued and 5 are pending (See Table 1 in Appendix A).

Time extensions under paragraph 9(1)(a)

In 2007–2008, the CBSA had a very large increase in the number of extensions it took under paragraph 9(1)(a) (searches for large volumes of records and interference with the operations of the institutions) for more than 30 days (see Figure 2). The majority of these extensions are still for 30 to 90 days; however, the proportion of extensions the CBSA took for more than 90 days is growing, particularly those for more than 180 days. The OIC was able to corroborate that the majority of extensions were for 30 to 90 days by reviewing the notices of extension it had received from the CBSA over the year, but not the prevalence of the longer extensions.

Figure 2. Length of time extensions under paragraph 9(1)(a)

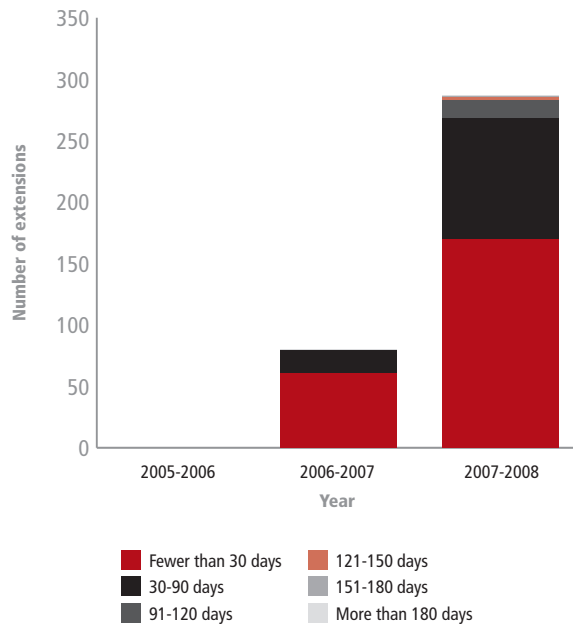


As an organization that is only a few years old, the CBSA continues to work towards effective records management. Timely and thorough searches for relevant information have been a challenge. To help remedy this, the CBSA completed an information management strategy in the fall of 2008. The strategy calls for the acquisition of an electronic document management system.

Time extensions under paragraph 9(1)(b)

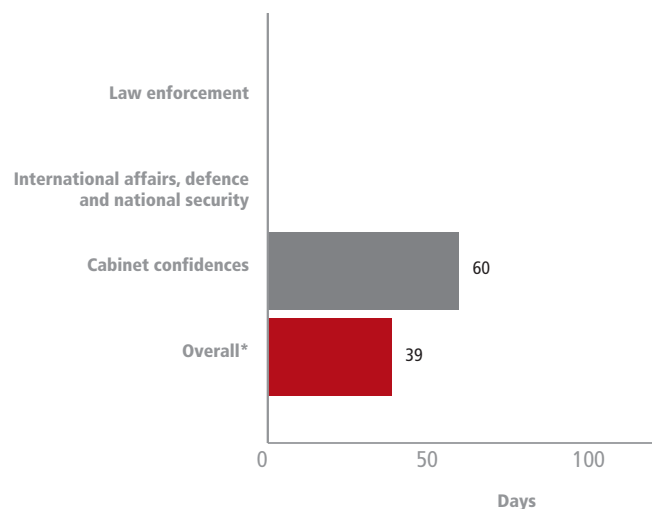
The number of time extensions the CBSA took under paragraph 9(1)(b) (consultations) for more than 30 days increased in 2007-2008 over the previous year (see Figure 3). It completed most of the requests it sent for consultation to other federal institutions within 30 days, except those it sent to the Privy Council Office (PCO) about records involving Cabinet confidences and to DFAIT about requests for information that might, if released, affect Canada's international relations. However, the length of time extensions is growing but remains at less than 90 days. The OIC corroborated this data by reviewing the notices of extension it had received from the CBSA over the year.

Figure 3. Length of time extensions under paragraph 9(1)(b)



The CBSA reported that it is difficult to accurately evaluate the length of the time extensions required to complete consultation requests. Consequently, it runs the risk of requests falling into deemed refusal status if the consultations are not completed within the anticipated time.

Figure 4. Average response time for consultation requests sent to other federal institutions in 2007-2008



Note: The CBSA's case management system could not provide data on the average time to receive responses for consultation requests related to law enforcement matters and penal institutions or for those related to international affairs, defence and national security.

*"Overall" refers to the average response time for all consultation requests, which includes more than just those shown here.

The CBSA does not favour preparing partial releases of information while waiting for the results of consultation requests sent to other federal institutions because putting together such releases is time-consuming and involves a risk that information might be disclosed in error. The CBSA is of the view that with its current resources and practices, it reasonably expects to meet the timelines associated with time extensions, although there are exceptions, and it considers files on a case-by-case basis. For example, when there is a time constraint on the part of the requester, such as an upcoming court case, the CBSA usually prepares a partial release.

Partial releases are also possible for mandatory consultations with PCO and DFAIT. To avoid deemed refusal situations, the CBSA considers closing requests by assuming, when it is unlikely that further disclosure will occur, that all information sent for consultation is exempt or excluded. In certain circumstances, the CBSA is advised by DFAIT to do so. When consultation responses indicate that there is, in fact, further information that may be released, the CBSA follows up with requesters. This practice has contributed to reducing the number of deemed refusals resulting from consultation requests with PCO and DFAIT.

The CBSA has used this practice as a way to manage its workload and to provide a more accurate picture of its performance. The OIC is concerned that, due to this practice, requesters may not be aware that additional records may be forthcoming resulting from outstanding consultations or of their right to complain to the OIC. The OIC recommends that partial releases be prepared as early in the access process as possible. It also recommends that the CBSA inform requesters, in the letter sent to them with the release, that additional records may be forthcoming resulting from outstanding consultations, that they will be informed of the outcome of the consultation requests even though no additional records may be released, and that they have the right to complain to the OIC at each step of the process. The OIC is concerned that if the CBSA and other institutions do not follow this procedure rigorously, requesters' right to complain may be compromised.

Finally, the OIC is aware that such a practice already exists in a number of institutions and is concerned that federal institutions overuse this practice as a way to circumvent a more serious problem: delays resulting from consultations.

Time extensions under paragraph 9(1)(c)

The CBSA does not send many requests for consultation to third parties under paragraph 9(1)(c) (only 16 in 2007–2008). The CBSA reported that those consultations with third parties that it does send out tend to cause long delays in the access process.

Categorizing requests

In very specific circumstances, the CBSA categorizes access requests it receives as either “Director to View” or for “Communications Review,” using the former in situations involving high-profile or contentious files. Of the requests the CBSA completed in 2007–2008, only 3.3 percent (39) were categorized as “Director to View.”

The director of the access to information office decides which files to categorize as “Director to View.” CBSA reported that the “Director to View” action usually starts concurrently with other stages of the access process. In 2007–2008, it took 47 days on average to complete (including the time files were on hold when clarifications from requesters were required) and, according to the CBSA, did not significantly delay the release of information.¹¹ Of the 39 requests the CBSA categorized as “Director to View” in 2007–2008, 21 were completed within the statutory timelines.

Of the 1,197 requests it completed in 2007–2008, 21 percent were categorized as requiring “Communications Review.” A communications advisor decides on this categorization. The review takes place concurrently with the approval process and, according to the CBSA, does not delay the release of information.

The OIC’s view is that the whole process associated with categorizing requests as “Director to View” or “Communications Review” and then doing the review should not in any way delay the access process. Also, the OIC recommends that the CBSA undertake to measure the actual time it takes to complete categorized requests, as well as any resulting delays.

Informal treatment of requests

In 2007–2008, the CBSA treated formally most of the written requests it received. It reported that informal treatment of access requests is encouraged and referred to in access to information training sessions as well as in its access to information reference manual. The OIC reminds the CBSA that when it considers processing access requests informally, it should inform requesters of this possibility and ensure it protects requesters’ rights. The final decision on whether to process a request formally or informally rests with requesters.

Responding to requests for consultation from other federal institutions

Currently, the CBSA does not treat consultation requests from other federal institutions any differently than it does access requests. The CBSA’s processing model allows 15 days to complete consultation requests. However, in 2007–2008, the CBSA took up to 93 days on average. Given that these consultation requests only increased the total number of pages reviewed during the year by five percent, the OIC is of the view that the CBSA should allocate sufficient resources to respond to such requests and establish specific timelines to ensure the deadlines are met. The current delay is unacceptable, since it causes a ripple effect throughout the access to information system.

Note:

- 11 The findings of OIC’s investigation into a complaint filed by the Canadian Newspaper Association against all federal institutions regarding the existence of special rules for processing requests from the media cover the period from April 1, 2003, to March 31, 2005. During the investigation, OIC identified CBSA as one of the institutions that labelled access requests, but concluded that this did not contribute to any delays experienced.

The CBSA acknowledged that it has found it difficult to meet the timelines for consultation requests it received from other federal institutions. However, it reports that so far in 2008–2009 it has been better able to respond promptly to the consultation requests and expects that its average completion time for the year will be 15 days.

Documenting extensions

As part of the report card questionnaire, the OIC asked federal institutions whether they documented on their request files justifications for taking extensions under subsection 9(1). The CBSA reported that it always does. To verify this, the OIC reviewed the files on its investigations into three complaints about the CBSA's use of time extensions (The OIC closed these complaints as resolved in 2007–2008; see Table 2 in Appendix A). The OIC found that the CBSA had indicated in the case management system at the time it processed the requests that it had taken extensions for them but had not necessarily documented the justifications for taking them in every case.

THE OIC RECOMMENDATIONS AND THE INSTITUTION'S RESPONSE

- 1. The CBSA should allocate adequate resources on a permanent basis to its access to information office, considering its overall workload (access requests and requests for consultation), to avoid undue delay in processing access requests.**

Response

The CBSA is committed to respecting the requirements of the *Access to Information Act*. The Agency will review operational requirements and adjust resource requirements as necessary.

- 2. In light of the Treasury Board Secretariat policy on mandatory consultations for information related to law enforcement and penal institutions, the CBSA should review its case management framework to ensure that dedicated resources are assigned to handling all these requests for consultation to avoid undue delays in processing them.**

Response

With respect to mandatory consultations, the CBSA will further streamline the assignment of new requests to take advantage of the experience of existing staff, while it trains and supports new members of the Access to Information, Privacy and Disclosure Policy Division.

3. **The CBSA access to information office should review the criteria it uses to invoke time extensions under subsection 9(1) of the *Access to Information Act* to determine the length of these extensions and ensure they are reasonable and legitimate.**

Response

The CBSA will ensure its internal policy direction is respected, that is, extensions are to be reasonable and justifiable. It will continue to be informed by the findings of the Office of the Information Commissioner when they process formal complaints – when the use of extensions has been an issue, or otherwise.

4. **CBSA should undertake to avoid delaying the processing of categorized access requests and should measure the actual time it takes to complete these requests as well as any resulting delays.**

Response

The CBSA agrees and has already established policy direction that requires that review processes should not cause processing delays. The policy is widely available on the CBSA Intranet. The issue of delay is also raised during ATIP awareness sessions.

5. **The access to information office, when it closes access request files related to outstanding mandatory consultations, should inform requesters that additional records may be forthcoming, that they will be informed of the outcome of the consultation requests even though no additional records may be released and that they have the right to complain to the OIC.**

Response

The CBSA informs requesters when another institution may have additional records that are relevant to a request. It informs requesters that they have a right to complain when exemptions have been taken.

6. **The access to information office should review the current timelines in place and track more systematically the average number of days taken to complete each stage of the access process to ensure requests are being responded to in a timely manner.**

Response

The CBSA supports the recommendation and will provide further guidance to staff to ensure data are properly captured, so that the CBSA is able to properly assess whether its standards are being met.

7. **The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.**

Response

The CBSA supports the recommendation and will provide further guidance to staff to ensure that rationales for taking an extension are noted in the case management system. However, we note that at times the rationale may be evident when considering the nature of the materials and the exemption being invoked.

8. **The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.**

Response

The CBSA will provide further guidance to staff to ensure that the legislated requirement of providing the Information Commissioner with information about extensions that are longer than 30 days, is met in a timely manner. The CBSA has made modifications to the ATIP software to facilitate this requirement.

CANADA BORDER SERVICES AGENCY

Appendix A. Complaints to the Office of the Information Commissioner

Table 1. Complaints received in 2007–2008

(These complaints may refer to requests made prior to 2007-2008)

OIC findings, as of November 27, 2008					
Category of complaint	Received in 2007–2008	Resolved	Not substantiated	Discontinued	Pending
Refusal to disclose (exemption/exclusion)	16	4	0	0	12
Delay (deemed refusal)	15	10	1	3	1
Time extension	12	4	1	2	5
No records/incomplete search	26	0	0	0	26
Fees	1	0	0	0	1
Miscellaneous	1	0	0	0	1
Total	71	18	2	5	46

Table 2. Complaints closed in 2007–2008

(Including new complaints received in 2007–2008 and complaints from previous years)

OIC findings, as of March 31, 2008				
Category of complaint	Closed in 2007–2008	Resolved	Not substantiated	Discontinued
Refusal to disclose (exemption/exclusion)	10	6	3	1
Delay (deemed refusal)	20	16	1	3
Time extension	3	3	0	0
No records/incomplete search	4	2	2	0
Fees	0	0	0	0
Miscellaneous	6	1	5	0
Total	43	28	11	4

DEPARTMENT OF JUSTICE CANADA

Overall performance in 2007–2008

Outstanding: 5 stars

The Department of Justice Canada (Justice Canada) is the only institution that achieved optimal compliance with the *Access to Information Act* in 2007–2008. The Office of the Information Commissioner (OIC) commends this performance, particularly since Justice Canada received a failing grade in each of the previous three years.

Justice Canada completed approximately two thirds of the new requests it received in 2007–2008 within 30 days and that the average completion time for non-extended requests was 20–22 days. When Justice Canada did need to take an extension, most were for fewer than 90 days. Justice Canada also followed through on the extensions by filing a notice of extension with the Information Commissioner in 83 percent of cases.

Justice Canada's outstanding performance came in a year of significant challenges. For example, although there was a moderate increase in the number of new requests Justice Canada received, there was a very large increase in the number of pages reviewed. In addition, for each new request Justice Canada received in 2007–2008, it received three consultation requests from other federal institutions. Nonetheless, Justice Canada was able to respond to consultation requests within 16 days on average.

One area of concern is Justice Canada's approach to mandatory consultations that involve long delays. Justice Canada's practice has been to close those requests. The OIC recommends that Justice Canada does this in a precise manner to ensure requesters' rights are satisfied by preparing any partial releases as early in the access process as possible, informing requesters in the letter that accompanies the release that additional records may be forthcoming resulting from outstanding consultation requests, that they will be informed of the outcome of the consultations even though no additional records may be released, and that they have the right to complain to the OIC at each step of the process.

Justice Canada's outstanding performance is the result of many of the practices the institution put in place in recent years, with the support of senior management, to help it respond to requests in as timely manner as possible. It is the OIC's expectation that Justice Canada will maintain this level of excellence and share best practices with the access to information community.

DEPARTMENT OF JUSTICE CANADA

Factors considered in assessment of overall performance

Workload

- Limited increase in the number of new requests (21 percent) but a very large increase in the number of pages reviewed (289 percent)

Completion time for new requests

- Within statutory timelines: 79 percent
- Within 30 days: 61 percent
- Average for non-extended requests: 20–22 days

Carry-over of requests

- Maintained a small carry-over of requests

Time extensions

- The number of requests received for which time extensions under subsection 9(1) were taken has varied in recent years but increased in 2007-2008 compared to 2005-2006
- Majority of time extensions are for fewer than 90 days
- Compliance with subsection 9(2) (notice of extension): 83 percent

Deemed refusals

- 4.4 percent of new and carried-over requests fell into deemed refusal status (**grade: A**)

Consultation requests received from other federal institutions

- *Best practice.* Consultation requests treated expeditiously (within 16 days on average) to avoid deemed refusals for the consulting institutions
- *Best practice.* Fast-track process for reviewing records related to solicitor-client privilege for legal advice or litigation helps avoid unnecessary delays and provides better client service
- *Best practice.* Memorandum of Understanding between Justice Canada and 18 federal institutions in place to try to speed up the consultation requests process

Consultation requests sent to other federal institutions

- *Needs improvement.* The OIC recommends that Justice Canada prepare partial releases as early in the access process as possible and inform requesters that additional records may be forthcoming, that they will learn the outcome of the consultation requests even if no additional records are released, and that they have the right to complain to the OIC at every step of the process

Process

- No evidence that categorization of requests delays the processing of requests
- Favours informal treatment of requests (completed within 16 days on average)

Senior management leadership

- Approved and communicated guidelines and governance structure to all employees
- Delivered training and awareness sessions to employees across the institution on the guidelines
- Created the ATIP Liaison Strategic Working Group to ensure timely and strategic management of access to information issues at appropriate levels across the institution

Complaints

- The OIC received 52 complaints (out of 409 requests processed or 13 percent) about Justice Canada's handling of requests

DEPARTMENT OF JUSTICE CANADA

The Department of Justice Canada (Justice Canada) fared very poorly on its first three report cards from the Office of the Information Commissioner (OIC), receiving a failing grade each time (see Table 1).

Table 1. Compliance history

	2004	2005	2006	2007–2008
Percentage of deemed refusals (delays beyond the statutory timelines)	43.5%	38.8%	37.3%	4.4%
Grade	F	F	F	A

This report card sets out Justice Canada's key performance-related challenges and actions in 2007–2008, provides baseline information about Justice Canada's access to information activities that year and analyzes various factors affecting performance to come to an overall rating out of five stars. The report concludes with several recommendations and Justice Canada's response to them.

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Consultations

- Delays due to mandatory consultations with the Department of Foreign Affairs and International Trade (DFAIT) and the Department of National Defence (National Defence) on Afghanistan-related requests, and with other federal institutions (the Privy Council Office [PCO] about records involving Cabinet confidences, and with DFAIT and National Defence about records that might, if released, affect Canada's international relations)

Human resources

- Difficulty maintaining full complement of experienced access to information staff
- Lack of experienced access to information specialists
- Aggressive recruitment by other federal institutions of knowledgeable access to information staff

Records management

- Difficulty to efficiently retrieve information due to the movement of staff around the institution

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Consultations

- Developed fast-track process for reviewing records related to the application of solicitor-client privilege for legal advice or litigation

Human resources

- Staffed four additional positions

Process

- Continued informal treatment of access requests and partial release of information to speed up the process and improve client relations
- Streamlined the approval process
- Reviewed and updated guidelines on applying the *Access to Information Act*
- Defined roles and responsibilities as well as accountabilities of all employees (including upper management) in access to information governance structure

Leadership of senior management

- Communicated guidelines and governance structure to all employees
- Delivered training and awareness sessions to employees across the institution on the guidelines
- Created the ATIP Liaison Strategic Working Group to ensure timely and strategic management of access to information issues at appropriate levels across the institution

BY THE NUMBERS

In 2007–2008, Justice Canada’s access request workload increased moderately compared to 2005–2006, as shown in Table 2. In addition, there was a very large increase in the number of pages reviewed, as compared to 2005–2006.

Table 2. Requests received and completed, and number of pages reviewed

	2005– 2006	2006– 2007	2007– 2008	Change from 2005–2006
Requests received	286	355	345	+21%
Requests completed	301	431	340	+13%
Number of pages reviewed for completed requests	64,234	294,723	249,993	+289%
Average number of pages reviewed per completed request	213	684	735	+245%

Justice Canada received 345 access requests in 2007–2008 and carried over 64 requests from 2006–2007 (6 of which were deemed refusals – requests delayed beyond the times set out in the *Act*), for a total of 409 requests. It completed 79 percent of the new requests within the timelines set out in the *Act* either within 30 days or within the extended timelines listed in section 9. It completed about 60 percent of new requests within 30 days. Justice Canada did not provide the average completion time for all requests completed during the review period. However, it noted that it took 22 business days on average to process completed requests that were not extended under section 9.

Justice Canada was able to keep its carry-over of requests very small. As a result, Justice Canada’s deemed refusal ratio (the percentage of new requests and requests carried over from 2006–2007 that fell into deemed refusal status during the year) for 2007–2008 was 4.4 percent. This earned Justice Canada an A on the scale the OIC used for many years to rate institutions’ performance but is phasing out this year. This represents a significant improvement from previous years, when Justice Canada received a failing grade.

The OIC received 52 complaints against Justice Canada in 2007–2008. Of these, none were about deemed refusals. See Table 1 in Appendix A.

In addition to access requests, Justice Canada received 1,009 requests for consultation from other federal institutions, which added 56,920 pages to the number of pages to review. It completed 997 of these consultation requests in 2007–2008, for a total of 53,047 pages reviewed (equal to 17.5 percent of the total page count for the year).

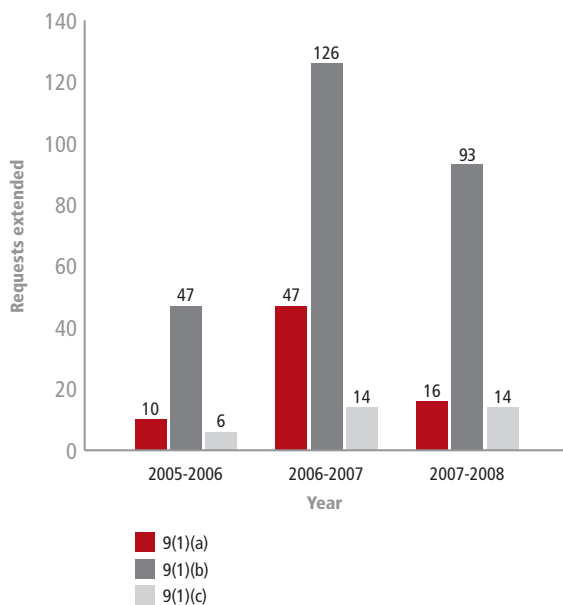
ASSESSMENT OF PERFORMANCE IN RESPONDING TO ACCESS REQUESTS

The OIC’s assessment of a federal institution’s performance in responding to access to information requests is based on the institution’s ability to respond to requests within the timelines set out in the *Act* but also on other practices that affect timeliness, such as requesting the shortest time extensions possible. The OIC also reviewed whether each institution documented its justifications for taking time extensions.

Time extensions

Justice Canada’s use of time extensions has varied in recent years, but increased in 2007–2008 compared to 2005–2006 (see Figure 1). This increase is greater than the increase in the number of new requests Justice Canada received over the same period.

Figure 1. Number of requests for which extensions were taken under subsection 9(1)



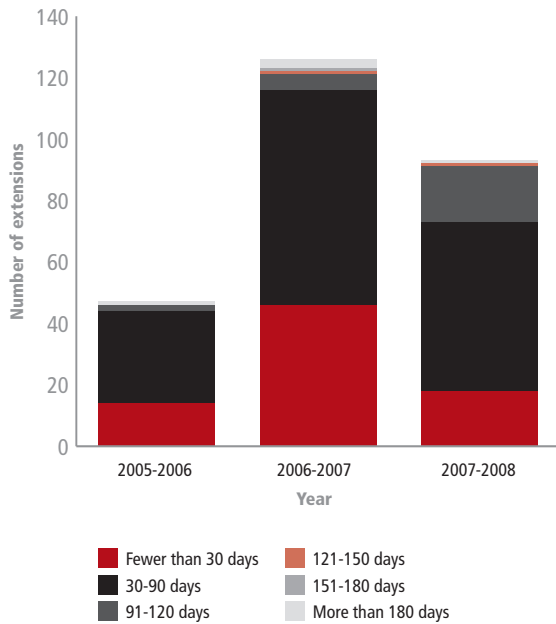
Under subsection 9(2), federal institutions must send a notice to the Information Commissioner every time they invoke an extension beyond 30 days. In 2007–2008, the Commissioner received 79 notices of extension from Justice Canada for 95 requests, which represents a 83 percent compliance rate.

Of the 52 complaints the OIC received about Justice Canada in 2007–2008, 16 were about time extensions. Of these 16 complaints, 2 were resolved (meaning that the OIC found them to have merit and that the institution resolved them to the Commissioner’s satisfaction), 9 were not substantiated, 2 were discontinued and 3 are pending. See Table 1 in Appendix A.

Time extensions under paragraph 9(1)(b)

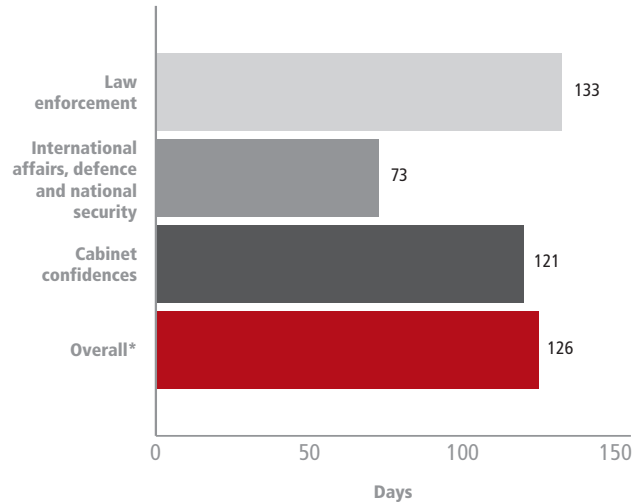
The number of time extensions that Justice Canada has taken under paragraph 9(1)(b) (consultations) for more than 30 days (see Figure 2) has varied over the last three years. There was a very large increase compared to 2005–2006 but a slight decrease compared to 2006–2007. Justice Canada reported that the majority of time extensions are still for fewer than 90 days. The OIC corroborated this fact by reviewing the notices of extension it had received from Justice Canada during the year.

Figure 2. Number of extensions under paragraph 9(1)(b)



Justice Canada reported that it is difficult to accurately evaluate the length of the time extensions required to complete consultation requests sent to other federal institutions. Consequently, it runs the risk of requests falling into deemed refusal status if the consultation requests are not completed within the anticipated time. The length of the time extensions required for mandatory consultations with National Defence and DFAIT on Afghanistan-related matters as well as for consultations with the PCO on Cabinet confidences is particularly difficult to evaluate.

Figure 3. Average response time for consultation requests sent to other federal institutions in 2007-2008



Note: The average response times are for requests formally closed in 2007-2008. Pending consultation requests are not reflected.

**“Overall” refers to the average response time for all consultation requests, which includes more than just those shown here.

The OIC notes a discrepancy between the length of the time extensions Justice Canada took in 2007-2008 (Figure 2) and the consultation response times (Figure 3), which would suggest that many requests would fall into deemed refusal status. However, Justice Canada has a low deemed refusal rate. This inconsistency is a result of a practice implemented by Justice Canada to partially release records that are not subject to the consultation and close requests before it receives a response from the consulted institution. It assumes, when it is unlikely that further disclosure will be allowed, that all information sent for consultation is exempt or excluded. When consultation responses indicate that there is, in fact, further information that may be released, Justice Canada follows up with requesters. This practice has contributed to reducing the number of deemed refusals at Justice Canada resulting from consultations with DFAIT, National Defence and PCO.

Justice Canada has used this practice as a way to manage its workload and to provide a more accurate picture of its performance. However, the OIC is of the view that this practice should not replace discussions between institutions to accurately determine the appropriate length of extensions. Justice Canada reported that it does communicate with the institutions being consulted to determine how long time extensions should be but that some institutions do not respect those deadlines.

The OIC is also concerned that, due to this practice, requesters may not be aware that additional records may be forthcoming resulting from outstanding consultations or of their right to complain to the OIC. On the latter point, Justice Canada reported that it does inform requesters, in its correspondence with them, of their right to complain to the OIC.

The OIC recommends that partial releases be prepared as early in the access process as possible. Also, it recommends that Justice Canada inform requesters, in the letter sent to them with the release package, that additional records may be forthcoming resulting from outstanding consultations, that they will be informed of the outcome of the consultation requests even though no additional records may be released, and that they have the right to complain to the OIC at each step of the process. The OIC is concerned that if Justice Canada and other institutions do not follow this procedure rigorously, requesters' right to complain may be compromised.

Finally, the OIC is aware that such a practice already exists in a number of institutions and is concerned that federal institutions overuse this practice as a means to circumvent a more serious problem: delays resulting from consultation requests.

Informal treatment of requests

As set out in its access to information guidelines, Justice Canada usually processes requests for the following information in an informal manner: information that has already been released in response to previous access requests for documents releasable without exemptions, and call-ups against standing offers for temporary help services. These requests are completed within 15 days. The OIC reminds Justice Canada that when it considers processing an access request informally, it should inform the requester of this possibility and be sure to protect requesters' rights. The final decision on whether to process a request formally or informally rests with requesters.

Categorizing requests

Justice Canada systematically categorizes each access request it receives as either a "File of Interest" or "Routine." The former category comprises requests that Justice Canada considers sensitive, such as requests for records related to horizontal class actions, extradition matters and public inquiries. In contrast, "Routine" requests are those for such records as policy guidelines or those related to the administration of a program, as well as any other requests that are not flagged "File of Interest."

Justice Canada's access to information guidelines refer briefly to the categorization of requests received, merely noting that the access to information liaison officer, the contact person in the office of primary interest (OPI) as well as the OPI subject area experts are together responsible for informing the access to information office whether the request should be flagged "File of Interest." The access to information governance structure includes specific information on the treatment of "File of Interest" and "Routine" requests, including roles and responsibilities.

When a “File of Interest” request is at the approval stage, the access to information office sends an information notice with the records to be released to the Deputy Minister’s and the Minister’s offices for information purposes. Justice Canada reported that this does not delay the release of the information package.

In 2007–2008, Justice Canada categorized a majority of the requests it received (57 percent or 195) as “File of Interest” and the remainder as “Routine” (43 percent or 150). It is the OIC’s view that this allocation with fewer requests being categorized as “Routine” than “File of Interest” indicates that Justice Canada should review and revise its categories as well as the criteria it uses to assign requests to the two categories.¹²

The OIC recommends that Justice Canada, when it categorizes or labels access requests, continue to maintain its commitment to not delaying the access process. Also, Justice Canada should undertake to measure the actual time it takes to complete categorized requests as well as any resulting delays.

Responding to requests for consultation from other federal institutions

Justice Canada receives numerous requests for consultation from other federal institutions related to legal matters, particularly solicitor-client privilege for legal advice and litigation. Justice Canada treats these consultation requests as priorities to avoid putting the original requests into deemed refusal status. On average, Justice Canada completed consultation requests received from other federal institutions within 16 days in 2007–2008.

Justice Canada developed practices that have resulted in more seamless and timely processing of these requests. The OIC recognizes the following two practices as good examples that other institutions should consider emulating.

Justice Canada has a fast-track process for responding to low-risk consultation requests related to solicitor-client privilege for legal advice or litigation. It uses this process to avoid unnecessary delays when the records in question may be released in their entirety (for example, litigation documents that have already been made public). Justice Canada reported that the fast-track process enhanced its ability to help institutions meet the statutory timelines and to provide better client service.

There are currently memoranda of understanding in place between Justice Canada and 18 federal institutions regarding the consultation process. These agreements cover institutions’ responsibilities during that process and provide the timelines in which institutions can normally expect to receive responses from Justice Canada. It also sets out Justice Canada’s specific requirements for the information to be provided with consultation requests. When originating institutions do not meet these requirements, Justice Canada returns the documents to them. According to Justice Canada’s access to information director, this process has worked very well with some federal institutions and has contributed considerably to speeding up consultations.

Note:

- 12 The findings of OIC’s investigation into a complaint filed by the Canadian Newspaper Association against all federal institutions regarding the existence of special rules for processing requests from the media cover the time between April 1, 2003, and March 31, 2005. During the investigation, OIC identified Justice Canada as one of the institutions that labeled access requests as “sensitive.”

Documenting extensions

As part of the report card questionnaire, the OIC asked federal institutions whether they documented on their request files justifications for taking extensions under subsection 9(1). Justice Canada indicated that it has in place practices to document the use of time extensions and in fact does so in the case management system. To verify this, the OIC reviewed the file on its investigation into one complaint about Justice Canada's use of time extensions (the OIC closed this complaint as resolved in 2007–2008; see Table 2 in Appendix A). The OIC found that Justice Canada had indicated in the case management system at the time it processed the request that it had taken an extension for it but not necessarily the justification for doing so.

OIC'S RECOMMENDATIONS AND THE INSTITUTION'S RESPONSE

- 1. The Justice Canada access to information and privacy (ATIP) office should narrowly define its categories of requests deemed of interest, such that requests represent a minority of exceptional requests.**

Response

Justice Canada does not delay the processing of requests deemed of interest. However, due to the nature of the requests, i.e. constitutional issues, litigation or government priority matters in the delivery of services, these issues are more conducive to media lines.

- 2. The ATIP office should maintain its practice of not delaying the processing of categorized requests and should measure the actual time it takes to complete these requests as well as any resulting delays.**

Response

Justice will continue its practice of not delaying the processing of requests in general, regardless of the category.

3. **The ATIP office, when it closes access request files related to outstanding mandatory consultations, should inform requesters that additional records may be forthcoming, that they will be informed of the outcome of the consultations even if no additional records may be released, and that they have the right to complain to the OIC at each stage of the process.**

Response

As discussed, the letters sent to the applicant with the requested information already mention the right to complain to the Office of the Information Commissioner of Canada.

However, for the purpose of transparency, Justice Canada has modified its response letters. The letters mention Justice Canada's intention to sever information subject to the application of the Act further to consultation responses received by some institutions. Primarily, the goal is to obtain and negotiate a realistic target date without undue prejudice on the operations of the Government of Canada. Justice Canada also informs the applicant that additional information may be forthcoming if the information can be disclosed.

4. **The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.**

Response

The practice is to document extensions in the case management system at the time the decision is made. Justice Canada will remind employees of the ATIP Office of this practice.

5. **The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.**

Response

The practice is to send a copy of the notice of extension to the Office of the Information Commissioner when an extension over 30 days is taken. Justice Canada will remind employees of the ATIP Office of this practice.

DEPARTMENT OF JUSTICE CANADA

Appendix A. Complaints to the Office of the Information Commissioner

Table 1. Complaints received in 2007–2008

(These complaints may refer to requests made prior to 2007-2008)

OIC findings, as of November 27, 2008					
Category of complaint	Received in 2007–2008	Resolved	Not substantiated	Discontinued	Pending
Refusal to disclose (exemption/exclusion)	18	3	1	2	12
Cabinet confidence exclusion	3	0	0	0	3
Delay (deemed refusal)	0	0	0	0	0
Time extension	16	2	9	2	3
No records/incomplete search	5	1	0	1	3
Fees	9	1	7	0	1
Miscellaneous	1	0	0	0	1
Total	52	7	17	5	23

Table 2. Complaints closed in 2007–2008

(Including new complaints received in 2007–2008 and complaints from previous years)

OIC findings, as of March 31, 2008				
Category of complaint	Closed in 2007–2008	Resolved	Not substantiated	Discontinued
Refusal to disclose (exemption/exclusion)	13	7	5	1
Cabinet confidence exclusion	1	1	0	0
Delay (deemed refusal)	1	1	0	0
Time extension	3	1	2	0
No records/incomplete search	2	0	2	0
Fees	8	1	7	0
Miscellaneous	0	0	0	0
Total	28	11	16	1

DEPARTMENT OF NATIONAL DEFENCE

Overall performance in 2007–2008

Below average: 2,5 stars

The Department of National Defence's (National Defence) performance declined in 2007–2008. The Office of the Information Commissioner (the OIC) would be remiss if it did not note that National Defence faced a significant increase in its workload.

Many of the requests associated with military operations are complex and could prejudice ongoing operations and endanger the safety of Canadian and allied personnel. This explains in part why National Defence requires that an internal task group review any sensitive information related to Canadian Forces missions to ensure that the missions would not be compromised if that information were released. This extra review step delayed the access process by 33 days on average in 2007–2008. The OIC has concerns with this practice, but National Defence has taken note of the OIC's concern and indicated that adjustments have been made or considered.

Overall, National Defence was unsuccessful in reducing its carry-over of requests or even maintaining it at the same level. Instead, there was a very large increase in 2007–2008. This is particularly worrisome in the case of deemed refusals, which grew from 10 at the end of 2006–2007 to 176 at the end of 2007–2008.

The use of time extensions is another area of concern. National Defence relied heavily on time extensions to respond to requesters, extending 63 percent of new requests. Most extensions are for 30 to 90 days, but the proportion of extensions for more than 90 days is growing.

DEPARTMENT OF NATIONAL DEFENCE

Factors considered in assessment of overall performance

Workload

- Significant increase in the number of new requests (57 percent) but a significant decrease in the number of pages reviewed (-41 percent)
- Limited human resources capacity

Completion time for new requests

- Within the statutory timelines: 52 percent
- Within 30 days: 30 percent
- Average: 86 days

Carry-over of requests

- Significant increase in the carry-over of requests

Time extensions

- Unprecedented use of time extensions
- Paragraph 9(1)(a) is cited for three quarters of the extensions invoked
- Majority of time extensions are for 30 to 90 days but the portion of extensions taken for more than 90 days is growing (26 percent for more than 150 days)
- Near perfect compliance with subsection 9(2): approximately 96 percent

Deemed refusals

- 18.5 percent of new and carried-over requests fell into deemed refusal status (**grade: D**)

Consultation requests received from other federal institutions

- Average completion time: 41 days
- *Best practice.* Assigned a deputy director in the access to information office to ensure consultation requests are treated as priorities

Process

- *Needs improvement.* National Defence should strive to limit undue delays (33 days on average) resulting from internal group reviewing all requested records that contain information related to Canadian Forces operations
- *Best practice.* Put a "tasking team" in place to free access to information analysts on the ATI Operations Teams to concentrate on responding to requests and conducting consultations
- *Best practice.* Devoted more time to communications with requesters to narrow and refine requests
- *Best practice.* Practice of publishing titles of previously released information and treating subsequent requests for the same information informally. (completed within 30 days on average)

Senior management leadership

- Created Employee Development Program to retain employees through opportunities within the access to information office
- Human resources*
- Increased staffing levels to address growing workload as well as to coach and mentor junior analysts

Complaints

- The Office of the Information Commissioner received 263 complaints (out of 2,215 requests processed or 12 percent) about National Defence's handling of requests

DEPARTMENT OF NATIONAL DEFENCE

The Department of National Defence (National Defence) has never achieved full compliance with the *Access to Information Act* in terms of responding to access requests in a timely manner. However, it has been able for some years, except in 2005, to achieve substantial compliance with the *Act* (see Table 1).

Table 1. Compliance history

	2002	2003	2004	2005	2006	2007–2008
Percentage of deemed refusals (delays beyond the statutory timelines)	–	–	9.5%	14.8%	8.7%	18.5%
Grade	B	B	B	C	B	D

The following sets out National Defence’s key performance-related challenges and actions in 2007–2008, provides baseline information about National Defence’s access to information activities for that year and analyzes various factors to come to an overall performance assessment out of five stars. The report concludes with several recommendations and National Defence’s response to them.

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Workload

- Access requests related to the mission in Afghanistan and the associated complexity of processing records stemming from an ongoing mission
- Requests filed in bulk by serial requesters on the same or similar subjects and usually assigned to only a few offices of primary interest (OPIs), which are then overburdened, as is the access to information office

Human resources

- Lack of experienced analysts at intermediate levels and lengthy developmental process to train new staff given the subject matter areas of the institution;
- Difficulties in staffing positions because of security clearance requirements
- Limited space to accommodate new employees

Retrieval of records

- Difficulty to access records in a war zone
- Limited use of new technologies due to security considerations

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Workload

- Increased staffing levels to address growing workload as well as to coach and mentor junior analysts
- Implemented a “tasking team” to free analysts on the ATI Operations Teams to concentrate on reviewing records and conducting consultations

Human resources

- Created the Employee Development Program to retain employees by providing greater opportunities within the access to information office (for example, promoting entry-level employees without competition based on achieving specific performance goals)

BY THE NUMBERS

In 2007–2008, National Defence’s access request workload significantly increased compared to 2005–2006, as shown in Table 2. In contrast, the number of pages reviewed for these requests decreased significantly over the same period. National Defence has suggested three factors that could explain the reduction in the number of pages reviewed:

- prior to 2007–2008, it received many requests involving large volumes of records;
- there is a trend towards more requests that are smaller and more detailed; and
- OPIs and access to information analysts have gotten better at sending fewer records unrelated to the requests, since these should not be recorded as pages reviewed.

Table 2. Requests received and completed, and number of pages reviewed

	2005– 2006	2006– 2007	2007– 2008	Change from 2005–2006
Requests received	1,131	1,808	1,779	+57%
Requests completed	1,237	1,597	1,541	+25%
Number of pages reviewed for completed requests	295,123	245,485	175,326	-41%
Average number of pages reviewed per completed request	239	154	114	-52%

National Defence received 1,779 new requests and carried over 436 requests from 2005–2006 (of which 10 were deemed refusals – requests delayed beyond the times set out in the *Act*), for a total of 2,215 requests. It completed 52 percent of the new requests received within the timelines set out in the *Act* either within 30 days or within the extended timelines listed in section 9. It completed only 29 percent within 30 days. National Defence reported that it took 86 working days on average to complete a request.

National Defence has been unable to reduce its carry-over of requests and, in fact, increased it significantly in 2007–2008. Consequently, National Defence’s deemed refusal ratio (the percentage of new requests and requests carried over from 2006–2007 that fell into deemed refusal status during the year) for 2007–2008 was 18.5 percent. This earned National Defence a grade of D on the scale the Office of the Information Commissioner (OIC) used for many years to rate institutions’ performance but is phasing out this year.

The OIC received 263 complaints against National Defence in 2007–2008, 63 of which were about deemed refusals. Of these 63 complaints, 30 were resolved (meaning that the OIC found them to have merit and that the institution resolved them to the Commissioner’s satisfaction), 2 were not substantiated, 5 were discontinued and 26 are pending. See Table 1 in Appendix A.

In addition to access requests, National Defence received 411 requests for consultation from other federal institutions, which added 41,969 pages to the number of pages to review (equal to 19 percent of the total page count for the year).

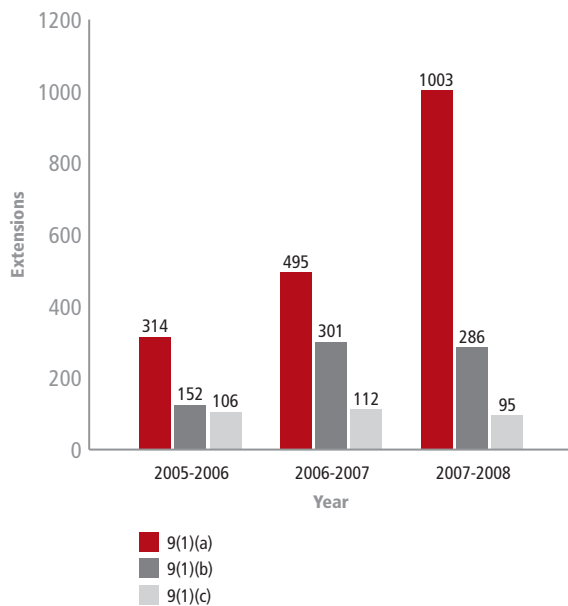
ASSESSMENT OF PERFORMANCE IN RESPONDING TO ACCESS REQUESTS

The OIC’s assessment of a federal institution’s performance in responding to access to information requests is based on the institution’s ability to respond to requests within the timelines set out in the *Act* but also on other practices that affect timeliness, such as requesting the shortest time extensions possible. The OIC also reviewed whether each institution documented its justifications for taking time extensions.

Time extensions

In 2007–2008, National Defence’s use of time extensions reached the highest level compared to 2005–2006 (see Figure 1). This increase is greater than the increase in the number of new requests National Defence received over the same period.

Figure 1. Number of time extensions under subsection 9(1)



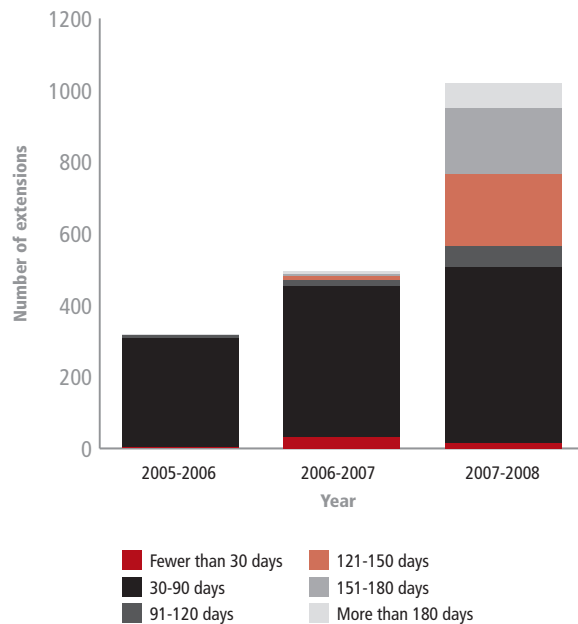
Under subsection 9(2), federal institutions must send a notice to the Information Commissioner every time they invoke an extension beyond 30 days. In 2007–2008, the Commissioner received 1,050 notices of extension from National Defence. This represents a near perfect compliance with this requirement (approximately 96%).

Of the 265 complaints the OIC received about National Defence in 2007–2008, 108 were about National Defence’s use of time extensions. Of these 108 complaints, 46 were resolved, 8 were not substantiated, 3 were discontinued and 51 are pending (See Table 1 in Appendix A).

Time extensions under paragraph 9(1)(a)

National Defence cited paragraph 9(1)(a) (searches for large volumes of records and interference with the operations of the institution) for approximately three quarters of the extensions it took in 2007–2008. And, as shown in Figure 2, the length of those extensions has increased substantially in recent years. Most of the extensions National Defence took in 2007–2008 were for 30 to 90 days (47 percent). However, the proportion of extensions taken for more than 90 days is growing. For example, 45 percent of the extensions taken were for a period of more than 120 days, which causes the OIC concern since it is of the view that the use of long time extensions should be the exception rather than the norm.

Figure 2. Length of time extensions under paragraph 9(1)(a)



Two factors that may be affecting the length of the time extensions National Defence took under paragraph 9(1)(a) are worth noting.

First, National Defence usually takes time extensions under paragraph 9(1)(a) for longer than 30 days, although it does assess them on a case-by-case basis. It then considers additional factors, such as internal consultations, current workload and the number of active files, and adds further time to the extension accordingly. National Defence acknowledged that the determination of the length of time extensions is problematic.

Second is the creation within National Defence of the Information Support Team (SJS/IST), which is part of the Strategic Joint Staff and known in the media as Tiger Team. SJS/IST reviews, prior to their being released, all documents subject to an access request that contain information related to Canadian Forces operations. In particular, SJS/IST recommends exemptions and exclusions for information that could prejudice the success of these operations and endanger the safety of Canadian and allied personnel.

National Defence's request processing model allocates 14 days for Office of Primary Interest (OPI) to retrieve records and make preliminary recommendations on their disclosure, including having SJS/IST review them. The access to information office was unable to provide accurate figures, for the review period, on the average time it takes to consult this group since, it contends, this part of the process is handled by the OPIs, but it did suggest that it could be as long as 33 days on average. This raises two issues of major concern for the OIC. First, consulting SJS/IST appears to take on average 2.5 times longer than the time allocated in the processing model. This clearly demonstrates that the review significantly delays the processing of access requests. Second, it is a concern that the access to information office is unaware of the time it takes to complete this stage of a request. National Defence should ensure that the institution respects the time allocated to the various stages of the access process so that timely responses are the norm. National Defence indicated that the access to information office changed its procedures in 2008–2009 which require that all consultations with SJS/IST are first reviewed by the ATIP office. Only the information intended for disclosure is sent to SJS/IST. With these new procedures in place, the ATIP office reported that the new procedures in place will allow keeping a closer track on these consultations and the time they take as well as reducing the volume of records to be reviewed by the SJS/IST.

Time extensions under paragraph 9(1)(b)

Although National Defence saw an increase in the number of extensions it took in 2007–2008 under paragraph 9(1)(b) (consultations), this increase is lower than the growth of requests received over the same period. For the last three years, National Defence has not taken any extensions for fewer than 30 days (see Figure 3). In addition, the length of time extensions increased in 2007–2008 compared to 2005–2006 and 2006–2007. Most of the extensions were for 30 to 90 days (65 percent). However, the proportion of extensions taken for more than 90 days is growing.

Figure 3. Length of time extensions under paragraph 9(1)(b)

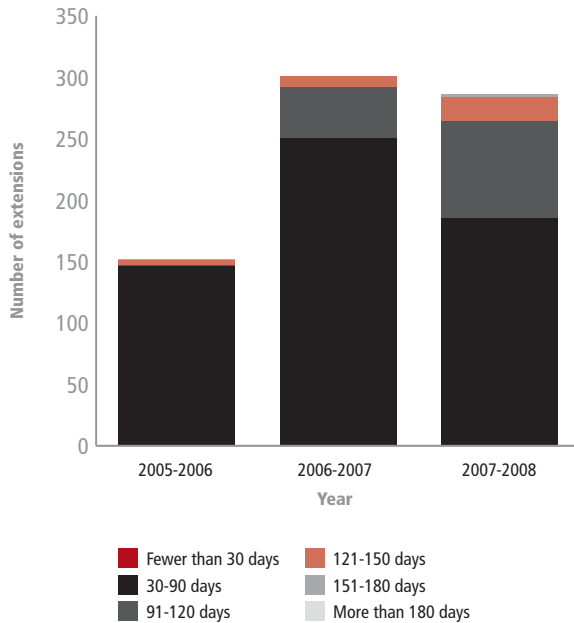
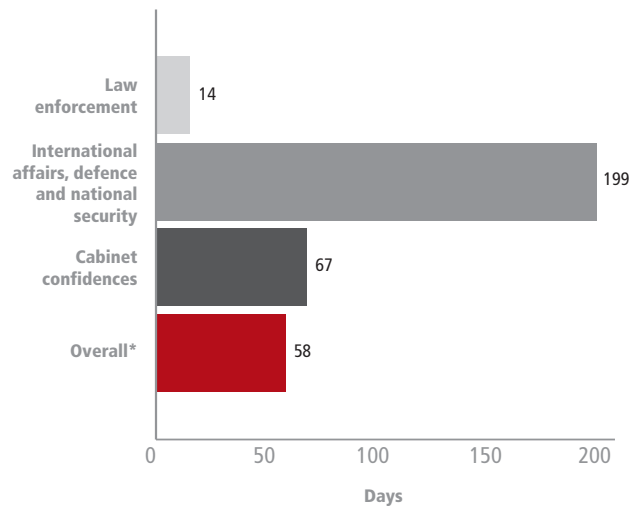


Figure 4 shows the average time it took to receive responses to consultation requests National Defence sent to other federal institutions in 2007-2008.

Figure 4. Average response time for consultation requests sent to other federal institutions in 2007-2008



*“Overall” refers to the average response time for all consultation requests, which includes more than just those shown here.

Consultation requests with the Department of Foreign Affairs and International Trade (DFAIT) took the longest to complete, particularly when they involved foreign governments.

National Defence no longer prepares partial releases of records on a regular basis while waiting for the results of consultation requests. It will, however, if requesters specifically ask it to do so. National Defence reported that, in its experience, partial releases add to its workload and in some occasions, have resulted in the premature release of information later exempted or excluded by the consulted institution.

Informal treatment of requests

The *Standard Operating Procedures Manual* describes the type of information that is generally processed informally within National Defence (inside and outside the ATIP office). For example, titles of previously released requests are posted on the institution's website and subsequent requests for the same information are treated informally, free of charge. In 2007–2008, National Defence completed 656 informal requests for such documents, generally within 30 days. This good practice, in effect, deflected a significant amount of work from the formal access process. National Defence may also, with the permission of the requester, process an access request informally. Five such requests were treated in 2007–2008.

Responding to requests for consultation from other federal institutions

National Defence reported it treats consultation requests received from other federal institutions as priorities, and a deputy director in the access to information office is responsible for ensuring this. National Defence completed consultation requests within 41 days on average in 2007–2008.

Documenting extensions

As part of the report card questionnaire, the OIC asked federal institutions whether they documented on their request files justifications for taking extensions under subsection 9(1). National Defence reported that it prepares a justification for every extension it takes under paragraph 9(1) and records it in the case management system and the paper file, or both. To verify this, the OIC reviewed the files on its investigations into 11 complaints about National Defence's use of time extensions (the OIC closed these complaints as resolved in 2007–2008; see Table 2 in Appendix A). The OIC found that National Defence had indicated in the case management system at the time it processed the requests that it had taken extensions for them but did not necessarily document the justifications for taking them in every case.

OIC'S RECOMMENDATIONS AND THE INSTITUTION'S RESPONSE

- 1. National Defence's ATIP office should review the criteria it uses to invoke time extensions under paragraph 9(1)(a) (search for large volume of records and unreasonable interference with the operations of a federal institution), including ATIP office workload, to ensure the criteria are reasonable and legitimate and that extensions do not delay the processing of access requests.**

Response

The ATIP office recognizes that more extensions of greater length were claimed in fiscal year 2007–2008 than in the past. The amount of backlog within the directorate and the Offices of Primary Interest (OPIs) is at a critical level, and National Defence is working on addressing this problem but it will take time. In the meantime, National Defence believes that putting aside other critical work in order to direct all possible efforts to avoid time extensions would unreasonably interfere with the institution. If, for example, National Defence ceased operations in the privacy group in order to address the backlog in access files, then it could reduce the amount and length of 9(1)(a) extensions, but this is not reasonable given its obligations under the *Privacy Act*.

Treasury Board Implementation Report #67 contains Appendix A, "Guidance on the Application of Section 9 of the *Access to Information Act*," which contains the following under the heading "Reasons for Extensions":

“...The interference with your institution’s operations may be considered ‘unreasonable’ if processing the request within thirty days would require...such a high proportion of the resources of the ATIP office that it would have a significant negative impact on the processing of other requests.”

The Directorate of Access to Information and Privacy (DAIP) will review the criteria and determine whether improvements can be implemented in order to speed the processing of requests. Additionally, as DAIP reduces the backlog of requests through the implementation of initiatives described below, the length and frequency of 9(1)(a) extensions will decrease.

2. **National Defence should undertake not to delay the processing of requests, particularly those requiring internal consultations with the Information Support Team and measure the actual time it takes to complete those requests and any resulting delays.**

Response

This recommendation is understood to mean that National Defence should take action to speed the processing of requests, particularly regarding those requiring internal consultations with SJS/IST.

Due to the nature of National Defence, operations security, including the security of our troops, is a critical consideration. Accordingly, DAIP must continue to work with SJS/IST and strive to strike a balance between security and timely access. In recognition of this, IST in collaboration with DAIP, has recently issued a new directive, which will see all files sent to DAIP directly. DAIP will collate returns from all OPIs and send IST a consolidated package for review.

DAIP also continues to explore other methods of expediting this review process, including sending IST the release package with exemptions already applied to reduce the amount of material for review.

DAIP is also exploring other areas in order to expedite requests in general, including the possibility of adding new staff and obtaining increased accommodations.

3. **The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.**

Response

Justifications for extensions are and will continue to be appropriately documented by the ATIP office. However, DAIP is prepared to work with the OIC to develop criteria for more detailed justifications.

4. **The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.**

Response

The ATI office does notify the Information Commissioner of extensions beyond 30 days in every case.

DEPARTMENT OF NATIONAL DEFENCE

Appendix A: Complaints to the Office of the Information Commissioner

Table 1. Complaints received in 2007–2008

(These complaints may refer to requests made prior to 2007-2008)

OIC Findings, as of November 27, 2008					
Category of complaint	Received in 2007–2008	Resolved	Not substantiated	Discontinued	Pending
Refusal to disclose (exemption/exclusion)	50	11	4	9	26
Cabinet confidence exclusion	9	2	1	2	4
Delay (deemed refusal)	63	30	2	5	26
Time extension	108	46	8	3	51
No records/incomplete search	32	2	5	1	24
Fees	0	0	0	0	0
Miscellaneous	1	0	0	0	1
Total	263	91	20	20	132

Table 2. Complaints closed in 2007–2008

(Including new complaints received in 2007–2008 and complaints from previous years)

OIC findings, as of March 31, 2008				
Category of complaint	Closed in 2007–2008	Resolved	Not substantiated	Discontinued
Refusal to disclose (exemption/exclusion)	26	18	3	5
Cabinet confidence exclusion	9	5	4	0
Delay (deemed refusal)	30	17	13	0
Time extension	18	17	1	0
No records/incomplete search	18	6	10	2
Fees	5	4	1	0
Miscellaneous	6	0	0	6
Total	112	67	32	13

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Overall performance in 2007–2008

Below average: 2 stars

The Department of Foreign Affairs and International Trade (DFAIT) plays a crucial role in the access to information system, since other federal institutions must consult it about requests for information that might, if released, affect Canada's international relations. Consequently, it is disappointing to report that DFAIT's performance declined in 2007–2008.

A significant contributing factor, to be certain, was the very large increase DFAIT saw in both the number of new requests it received and the number of pages it had to review. It also received more consultation requests than new access requests in 2007–2008.

Nonetheless, DFAIT's practices have a ripple affect across the whole system, so poor performance affects everyone.

For new requests, DFAIT had the lowest rate for completion of requests within the statutory timelines (30 days and within the extended deadlines set out in the *Access to Information Act*) among the institutions reviewed for the 2007–2008 report cards. Moreover, the average completion time for a new request was a very long 132 days. At the same time, it took DFAIT 75 calendar days on average to complete consultation requests. This lengthy response time could be adversely affecting other federal institutions' timelines.

DFAIT has tried various strategies to reduce its workload and backlog (files that have passed the statutory time limits) with varying degrees of success.

The number of requests for which time extensions under subsection 9(1) were taken increased in recent years, and, although the majority are still for 30 and 90 days, longer extensions are a growing proportion of the total.

Clearly, DFAIT faces considerable challenges in the area of access to information, particularly because it receives so many consultation requests. This extra workload, which is not expected to lessen in the future, is taxing DFAIT's access to information staff. The access to information office has requested funding for more resources, which may help ease the load somewhat.

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Factors considered in assessment of overall performance

Workload

- Very large increase in new requests (65 percent) and number of pages reviewed (358 percent)
- Insufficient permanent resources to respond to current and expected workload

Completion time for new requests

- Within the statutory timelines: 32 percent
- Within 30 days: 24 percent
- Average: 132 days

Carry-over of requests

- Substantial increase in the carry-over of requests

Time extensions

- Very large increase in the number of time extensions taken under subsection 9(1) compared to 2005-2006
- Paragraph 9(1)(a) is cited for two thirds of the extensions invoked
- Majority of time extensions are for 30 to 90 days but are getting longer
- Compliance with subsection 9(2) (notice of extension): 83 percent

Deemed refusals

- 34.7 percent of new and carried-over requests fell into deemed refusal status (**grade: F**)

Consultation requests received from other federal institutions

- Average completion time: 75 calendar days
- Assigns dedicated analysts to consultation requests

Consultation requests sent to other federal institutions

- *Needs improvement.* The Department of Foreign Affairs and International Trade (DFAIT) should prepare more partial releases for consultation requests while awaiting responses from consulted institutions

Process

- Categorizing requests does not delay the process
- Reviewed the access to information manual as well as procedures and guidelines
- Took measures to improve employee morale and continued to use consultants to ease the backlog
- Streamlined the tasking process across the institution to make better use of existing resources
- *Needs improvement.* DFAIT should work to lessen delays in obtaining records and recommendations from program areas

Case management

- Departmental working group addressing various IM/IT issues
- Worked with IM/IT officials to streamline the access to information process and facilitate retrieval of electronic documents and physical records
- Implemented a revised case management strategy to align resources with requirements to address carried-over, new and expected access and consultation requests

Senior management leadership

- Developed a professional development program for succession planning purposes
- Developed a new business case to obtain resources for policy development and training as well as an additional processing team to address the production shortfall
- Developed an access to information awareness program for officials across the institution
- A team in the access to information office ensures that all necessary training, mentoring and coaching is provided to divisional staff and that necessary tools are available

Complaints

- The Office of the Information Commissioner (OIC) received 109 complaints (out of 1,000 requests processed or 11 percent) about DFAIT's handling of requests

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

The Department of Foreign Affairs and International Trade (DFAIT) has never achieved full compliance with the *Access to Information Act* in terms of responding to access requests in a timely manner. It has also had a difficult time in recent years returning to the level of compliance it achieved in 2002.

Table 1. Compliance history

	2002	2003	2004	2005	2006	2007–2008
Percentage of deemed refusals (delays beyond the statutory timelines)	–	–	28.8%	60.1%	17.2%	34.7%
Grade	B	D	F	F	D	F

The following sets out DFAIT’s key performance-related challenges and actions in 2007–2008, provides baseline information about DFAIT’s access to information activities for that year and analyzes various factors to come to an overall performance assessment out of five stars. The report concludes with several recommendations and DFAIT’s response to them.

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Workload

- Number of requests and consultation requests received increased substantially
- Greater complexity and sensitivity of requests

Human resources

- Limited pool of experienced access to information specialists across the federal government
- Substantial time and cost implications for the development of access to information analysts
- Insufficient permanent resources to respond to current and expected workload

Retrieval of records

- Delays in obtaining records and recommendations from DFAIT program areas

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Human and financial resources

- Created a professional development program for succession planning purposes
- Took measures to improve employee morale, such as reducing analyst workload, and continued to use consultants to help with the backlog of requests
- Developed a new business case to obtain resources for policy development and training as well as an additional processing team to address the production shortfall
- Developed a streamlined access to information tasking process across the institution to make better use of existing resources

Training

- Developed an access to information awareness program for officials across the institution, including developing an online tutorial, which was initiated in 2007–2008

Records management

- Initiated discussions with IM/IT officials to streamline the access to information process and facilitate retrieval of electronic documents and physical records

Case management

- Reviewed the access to information manual, procedures and guidelines
- Introduced monthly departmental performance reports to senior management to improve overall understanding and commitment to access to information compliance
- Implemented a revised case management strategy to align resources to requirements to address the workload related to carried-over, new and expected access and consultation requests

BY THE NUMBERS

DFAIT had a very large increase in its access request workload over the last three years, in the number of new requests it received and, especially, in the number of pages it reviewed, as shown in Table 2. These increases clearly exceeded DFAIT's internal capacity to respond, which must be taken into account when assessing DFAIT's performance in 2007–2008.

Table 2. Requests received and completed, and number of pages reviewed

	2005–2006	2006–2007	2007–2008	Change from 2005–2006
Requests received	447	648	736	+65%
Requests completed	479	515	541	+13%
Number of pages reviewed for completed requests	51,801	67,338	237,279	+358%
Average number of pages reviewed per completed request	108	131	439	+306%

DFAIT received 736 new requests in 2007–2008 and carried over 264 requests 2006–2007 (74 of which were deemed refusals – requests delayed beyond the times set out in the *Act*), for a total of 1,000 requests. It completed 32 percent of the new requests within the timelines set out in the *Act* either within 30 days or within the extended timelines listed in section 9. It completed only 23 percent within 30 days. DFAIT reported that it took 132 days on average to complete a request.

DFAIT was unable to continue to reduce its carry-over of requests, as it had in 2006–2007. In fact, 2007–2008 saw a substantial increase in it. For 2007–2008, DFAIT's deemed refusal ratio (the percentage of new requests and requests carried over from 2006–2007 that fell into deemed refusal status during the year) was 34.7 percent. This earned DFAIT a grade of F on the scale that the Office of the Information Commissioner (OIC) used for many years to rate institutions' performance but is phasing out this year.

The OIC received 109 complaints against DFAIT in 2007–2008, 31 of which were about deemed refusals. Of these 31 complaints, 13 were resolved (meaning that the OIC found them to have merit and that the institution resolved them to the Commissioner's satisfaction), 4 were discontinued and 14 are pending. See Table 1 in Appendix A.

In addition to access requests, DFAIT received 1,025 consultation requests from other federal institutions (1.4 times the number of new requests it received), which added 78,370 pages to the number of pages to review (equal to 25 percent of the total page count for the year).

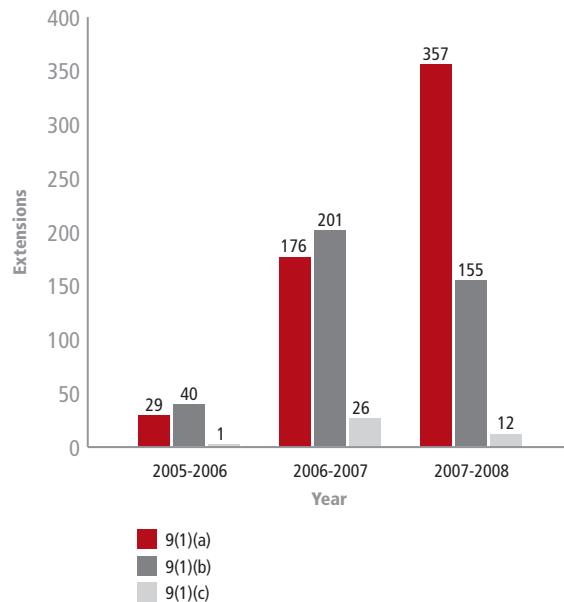
ASSESSMENT OF PERFORMANCE IN RESPONDING TO ACCESS REQUESTS

The OIC’s assessment of a federal institution’s performance in responding to access to information requests is based on the institution’s ability to respond to requests within the timelines set out in the *Act* but also on other practices that affect timeliness, such as requesting the shortest time extensions possible. The OIC also reviewed whether each institution documented its justifications for taking time extensions.

Time extensions

In 2007–2008, DFAIT had a very large increase in the number of time extensions it took compared to 2005–2006 (see Figure 1). This increase is much greater than the increases in the number of requests DFAIT received and the number of total pages it reviewed over the same period. Taking the three categories of time extensions in subsection 9(1) into account, since some requests may be subject to more than one of them, DFAIT took time extensions for more than half (56 percent) of the new requests it received in 2007–2008. DFAIT explained that it is now able to invoke time extensions within the initial 30 days of the access process. Previously, access to information staff were so busy that requests would fall into deemed refusal status before an extension could be claimed.

Figure 1. Number of time extensions under subsection 9(1)

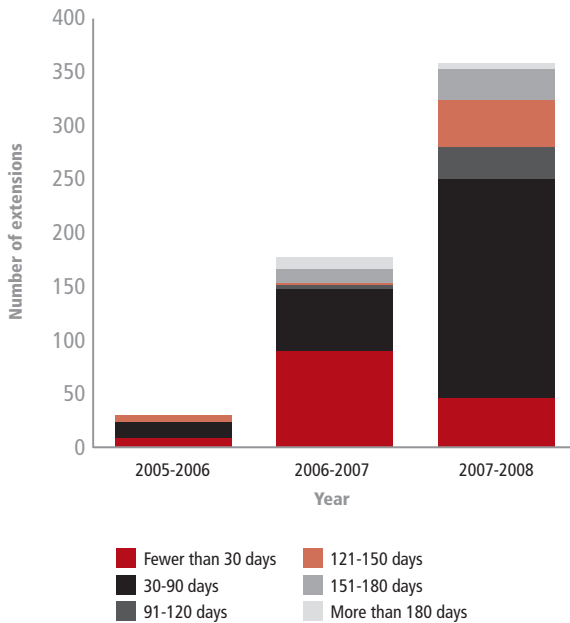


Under subsection 9(2), federal institutions must send a notice to the Information Commissioner every time they invoke an extension beyond 30 days. In 2007–2008, the Commissioner received 299 notices of extension from DFAIT for 359 requests which represents a 83 percent compliance rate.

Time extensions under paragraph 9(1)(a)

There has been a very large increase in the number of time extensions DFAIT took under paragraph 9(1)(a) (searches for large volumes of records and interference with the operations of the institution) for more than 30 days over the last three years (see Figure 2). The majority of extensions are still for 30 to 90 days. However, overall DFAIT is taking longer extensions. DFAIT reported that the next largest categories of extensions comprised extensions for fewer than 30 days, and for 121 to 150 days. The smallest categories of extensions comprised extensions that are for 91 to 120 days and 151 to 180 days.

Figure 2. Length of time extensions under paragraph 9(1)(a)

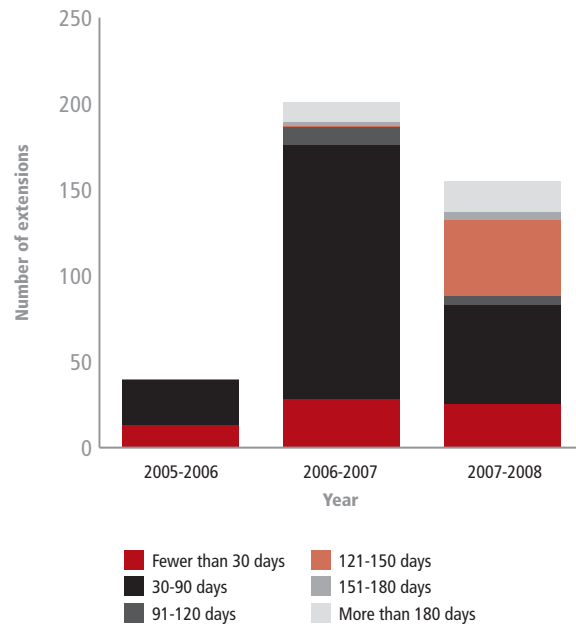


DFAIT indicated that its increasing use of extensions was largely due to the Afghanistan mission. DFAIT received 150 requests related to this military operation. Responding to these requests involved a single office of primary interest (OPI), whose operations were hindered by the demand. DFAIT also reported significant difficulties in retrieving records from program areas.

Time extensions under paragraph 9(1)(b)

The number of time extensions DFAIT has taken under paragraph 9(1)(b) (consultations) has varied over the last three years. There was a very large increase in 2007-2008 compared to 2005-2006 but a moderate decrease compared to 2006-2007. However, DFAIT has been taking extensions for increasingly longer periods, as shown in Figure 3. DFAIT reported that the majority of time extensions it took were for 30 to 90 days, followed very closely by extensions for 121 to 150 days.

Figure 3. Length of time extensions under paragraph 9(1)(b)

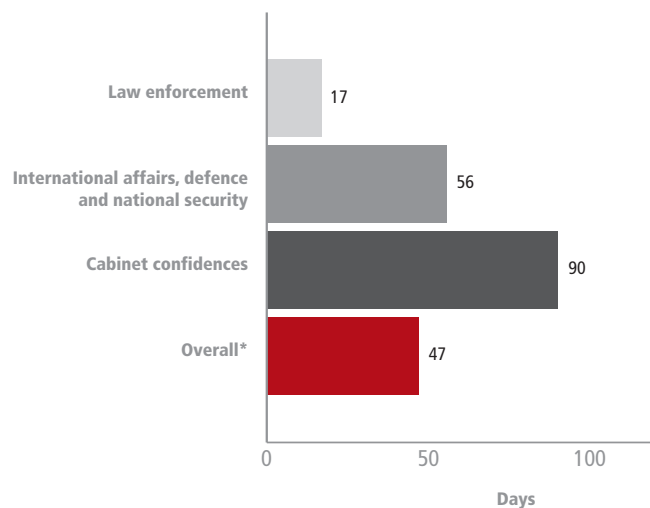


DFAIT is required to seek information on many of its files from foreign governments and organizations (there were 249 such cases in 2007-2008), which can cause delays. In 2007-2008, the average response time from foreign governments and organizations was 148 calendar days (for consultation requests for which DFAIT received a response in that fiscal year). Some take even longer. In order to avoid delays of this magnitude, DFAIT provides interim releases to institutions and suggests that federal institutions

invoke sections 13 (confidential matters) and 15 (matters relating to international affairs) while DFAIT is awaiting responses from foreign governments.

When DFAIT had to consult other federal institutions on defence and national security matters, the average response time was 56 days (for consultation requests closed and for which responses were received from other federal institutions) as shown in Figure 4. The overall average response time was 47 days, due in part to delays in receiving responses from the Privy Council Office on consultation requests about records involving Cabinet confidences.

Figure 4. Average response time for consultation requests sent to other federal institutions in 2007-2008



*“Overall” refers to the average response time for all consultation requests, which includes more than just those shown here.

DFAIT reported that it sometimes provides partial releases to requesters while awaiting final responses from consulted institutions at which time DFAIT will provide, when applicable, additional information to the requesters. The OIC reminds DFAIT that when it prepares partial releases of information, it must ensure that it always protects requesters’ rights. The final decision about whether to accept partial releases rests with requesters.

The OIC recommends that partial releases be prepared as early in the access process as possible. It also recommends that DFAIT inform requesters, in the letter sent to them with the release, that additional records may be forthcoming resulting from outstanding consultations, that they will be informed of the outcome of the consultations even though no additional records may be released, and that they have the right to complain to the OIC at each step of the process.

Of the 109 complaints the OIC received against DFAIT in 2007-2008, 44 were about DFAIT’s use of time extensions. Of these 44 complaints, 7 were resolved, 13 were not substantiated, 1 was discontinued and 23 are pending. See Table 1 in Appendix A.

Categorizing requests

DFAIT categorizes requests it receives as either “Routine” or “Communications Alert.” In the latter case, the access to information office provides the Communications Branch with a copy of the release package three days in advance of the release to allow the Branch time to produce any necessary communications materials. DFAIT reported that this step runs concurrently with the approval process and does not delay the release.¹³

Note:

13 The findings of OIC’s investigation into a complaint filed by the Canadian Newspaper Association against all federal institutions regarding the existence of special rules for processing requests from the media cover the time from April 1, 2003, to March 31, 2005. During the investigation, OIC identified DFAIT as one of the institutions that labelled access requests, but concluded that this did not contribute to any delays experienced.

In 2007–2008, DFAIT categorized 38 percent (282) of the 736 requests it received as “Routine.” It is the OIC’s view that this allocation with fewer requests being categorized as “Routine” than as “Communications Alert” indicates that DFAIT should review and revise its categories as well as the criteria it uses for assigning requests to them. DFAIT reported that it is currently revisiting the criteria for the “Communications Alert” category.

The OIC recommends that DFAIT, when it categorizes or labels access requests, ensure that this continues to cause no delays. Also, DFAIT should undertake to measure the real time it takes to complete categorized requests as well as any resulting delays.

Responding to requests for consultation from other federal institutions

DFAIT plays a special role in the access to information system, since other federal institutions must, as required by TBS policy, consult DFAIT about requests for information that might, if released, affect Canada’s international relations. As such, DFAIT bears added responsibility to ensure that its practices do not significantly affect the workings of the access system. This is particularly important because DFAIT can, in any given year, receive more consultation requests from other federal institutions than new access requests, as was the case in 2007–2008. In many instances, DFAIT must also consult with foreign governments or organizations.

DFAIT stated that it treats all requests with the same priority, whether they are formal access requests or consultation requests. DFAIT has dedicated resources for the treatment of consultation requests. However, due to its high volume of work, it has for some time advised federal institutions that it takes 75 calendar days on average to respond to a consultation request and that they should take a time extension under paragraph 9(1)(b) to accommodate this time frame or, as mentioned above, close the request under the terms of sections 13 and 15 while awaiting a follow-up response from DFAIT.

In addition, DFAIT cautioned that, although it has assigned dedicated analysts to handling consultation requests, it can do little to speed up consultations with foreign governments and organizations.

The OIC views DFAIT’s turnaround time on consultation requests with great concern since it impacts the entire access to information system. Most of the institutions reviewed as part of the report card process reported that requests involving mandatory consultations with DFAIT are often delayed.

Documenting extensions

As part of the report card questionnaire, the OIC asked federal institutions whether they documented on their request files justifications for taking extensions under subsection 9(1). DFAIT reported that access to information officials provide a justification about the use of time extensions, in the form of e-mails, notes or records of telephone calls, which are documented in the case management system. To verify this, the OIC reviewed the files on its investigations into five complaints about DFAIT’s use of time extensions (the OIC closed these complaints as resolved in 2007–2008; see Table 2 in Appendix A). The OIC found that, in four of these cases, DFAIT had indicated in the case management system at the time it processed the requests that it had taken extensions for them but did not necessarily document the justifications for taking them in every case. For the fifth complaint, DFAIT only did the documentation during the OIC investigation.

OIC'S RECOMMENDATIONS AND THE INSTITUTION'S RESPONSE

1. **DFAIT should allocate adequate resources on a permanent basis to its access to information office, considering its overall workload (access requests and requests for consultation), to avoid undue delays in processing access requests across the federal government.**

Response

Agreed. The DFAIT Access to Information and Privacy (ATIP) office has grown in size over the past few years including the addition of 12 new positions in 2007–08. However, these new positions continue to be cash managed with in-year funds. In June and November 2008, the ATIP Office asked the DFAIT Resource Management Committee for additional resources in an attempt to ensure that the required permanent capacity is in place to meet all ATIP obligations. While the Department was able to provide additional in-year funds to hire more ATIP consultants to help with the backlog, no ongoing permanent resources could be funded internally. DFAIT is currently making additional efforts to find a permanent source of funding to address the growth in ATIP requests.

2. **In light of the Treasury Board Secretariat policy that DFAIT must review for other federal institutions any information subject to an access request the release of which might affect Canada's international affairs, DFAIT should review its case management framework to ensure that dedicated resources are assigned to handling all these requests for consultation to avoid undue delays in processing them.**

Response

DFAIT has dedicated resources for the processing of consultation requests and has developed a case management strategy, but the demands are beyond the current capacity. The business case currently being drafted includes additional resources for processing requests for records under DFAIT control and consultation requests from other government departments, as well as for a Policy and Training team in order to build the required permanent ATIP capacity at DFAIT to meet all legislative and TBS policy obligations for both the *Access to Information Act* and the *Privacy Act*.

3. **The ATIP office should continue to pursue solutions to deal effectively with current information management problems related to the retrieval of documents, paying particular attention to electronic documents.**

Response

Agreed. In fact, DFAIT has already created an intra-departmental IM/IT/ATIP working group whose goal is to further improve the process of records retrieval for both hard-copy and electronic records. The DFAIT ATIP Manager of Business Practices and Systems also continues to be a primary contributor to the ATIP Systems Users inter-departmental working group. In addition, the new streamlined tasking process, the monthly departmental ATIP performance reports and the departmental-wide ATIP Awareness Training program, once fully implemented, will no doubt contribute to addressing the delays in obtaining records from the program areas.

4. **The DFAIT ATIP office should narrowly define its categorization of access to information requests deemed “Communications Alert,” such that requests represent a minority of exceptional requests.**

Response

Agreed. DFAIT recently addressed the amount of access requests being flagged as Alert files for communication products and streamlined this process in order to reduce the administrative burden on the ATIP Office. It is important to emphasize, however, that the “Communications Alert” process at DFAIT is not an approval process that adds further delays to releases. DFAIT’s COMM Alert process happens in parallel to the final stage of the ATIP process, which gives the Department the opportunity to prepare communication products 72 hours prior to release of *ATI Act* responses.

5. **The DFAIT ATIP office should maintain its practice of not delaying the processing of categorized access requests and should measure the real time it takes to complete these requests as well as any resulting delays.**

Response

DFAIT does intend to maintain this practice. The “real time” taken to complete requests has also always been captured and reported.

6. **The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.**

Response

Agreed. ATIP Analysts need to document the rationale for the extension claimed. While this has been done most of the time, the ATIP Office will ensure that it is a common practice for all access requests.

7. **The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.**

Response

Agreed. These notices should always be sent, but there appears to have been some inconsistencies. The ATIP Office will ensure that the corrective measure is instituted.

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Appendix A. Complaints to the Office of the Information Commissioner

Table 1. Complaints received in 2007–2008

(These complaints may refer to requests made prior to 2007-2008)

OIC findings, as of November 27, 2008					
Category of complaint	Received in 2007–2008	Resolved	Not substantiated	Discontinued	Pending
Refusal to disclose (exemption/exclusion)	22	2	2	1	17
Cabinet confidence exclusion	2	0	0	0	2
Delay (deemed refusal)	31	13	0	4	14
Time extension	44	7	13	1	23
No records/incomplete search	8	0	1	0	7
Fees	1	0	0	0	1
Miscellaneous	1	0	0	0	1
Total	109	22	16	6	65

Table 2. Complaints closed in 2007–2008

(Including new complaints received in 2007–2008 and complaints from previous years)

OIC findings, as of March 31, 2008				
Category of complaint	Closed in 2007–2008	Resolved	Not substantiated	Discontinued
Refusal to disclose (exemption/exclusion)	20	17	3	0
Cabinet confidence exclusion	4	2	2	0
Delay (deemed refusal)	13	12	0	1
Time extension	20	6	14	0
No records/incomplete search	2	1	1	0
Fees	0	0	0	0
Miscellaneous	2	1	1	0
Total	61	39	21	1

HEALTH CANADA

Overall performance in 2007–2008

Below average: 2 stars

Health Canada slightly improved its performance in 2007–2008. Health Canada was successful in significantly reducing its carry-over of requests in a deemed refusal situation. Although Health Canada received fewer new requests, it saw a very large increase in number of pages reviewed compared to 2005–2006.

Only 34 percent of new requests were completed within 30 days. At the same time, Health Canada did make greater use of time extensions than previously. The Office of the Information Commissioner (OIC) suggests that Health Canada monitor its use of time extensions, particularly in light of the fact that it extended nearly two thirds of new requests.

The OIC is concerned that Health Canada is taking twice as long on average as the time allocated in the processing model to retrieve records in program areas. Similarly, the categorization of requests as “High-Sens” is causing unacceptable delays (19 days on average). The OIC recommends that Health Canada review and streamline its processing model to avoid the current situation of having the actual time required to go through the stages vary significantly from the model.

Finally, the OIC acknowledges that Health Canada has undertaken initiatives to improve the processing of access requests in 2007-2008. If these efforts are maintained and the recommendations contained in this report card are implemented, the OIC is hopeful that Health Canada’s overall ATI performance will improve in 2008-2009.

HEALTH CANADA

Factors considered in assessment of overall performance

Workload

- Moderate decrease in the number of new requests (-38 percent) but very large increase in the number of pages reviewed (97 percent) as well as in the average number of pages reviewed per completed requests
- Shortage of qualified personnel to fill analyst positions which results in a significant ratio of requests per worker

Completion time for new requests

- Within the statutory timelines: 63 percent
- Within 30 days: 34 percent
- Average: 75 days

Carry-over of requests

- Very large decrease in carry-over of requests in deemed refusal status

Time extensions

- Increase in the total number of time extensions under subsection 9(1) over three years
- Majority of time extensions are for 30 to 90 days
- *Needs improvement.* When extensions are taken for the purpose of consultation requests with other government institutions, Health Canada does not consult the other institutions prior to determining the length of the extension required
- Compliance with subsection 9(2) (notice of extension): 77 percent

Deemed refusals

- 16.6 percent of new and carried-over requests fell into deemed refusal status (**grade: D**)

Consultation requests received from other federal institutions

- Consultation requests from other federal institutions are treated the same way as formal access
- Average completion time: not available

Consultation requests sent to other federal institutions

- Prepares partial releases of information for access requests requiring consultations

Process

- *Needs improvement.* Health Canada should take steps to limit delays in the process caused by categorizing some requests as "High-Sens" (19 days on average)
- *Best practice.* Takes portfolio approach to cases to foster stronger working relationships between the access to information office and program areas, and promote greater understanding of subject areas, resulting in more accurate interpretation of the Act by program areas and higher quality advisory services by analysts

Senior management leadership

Training

- Tailored training and awareness sessions for program areas, which resulted in informed recommendations from program areas

Complaints

- The Office of the Information Commissioner received 59 complaints (out of 1,520 requests processed or 4 percent) about Health Canada's handling of requests

HEALTH CANADA

Health Canada achieved full compliance with the *Access to Information Act* in 2002 in terms of responding to access requests in a timely manner, but its performance steadily declined until 2006 (see Table 1).

Table 1. Compliance history

	2002	2003	2004	2005	2006	2007–2008
Percentage of deemed refusals (delays beyond the statutory timelines)	–	–	18.2%	18.9%	21.9%	16.6%
Grade	A	B	D	D	F	D

The following sets out Health Canada’s key performance-related challenges and actions for 2007–2008, provides baseline information about Health Canada’s access to information activities that year and analyzes various factors to come to an overall performance assessment out of five stars. The report concludes with several recommendations and Health Canada’s response to them.

First, however, the Office of the Information Commissioner (OIC) notes that it has concerns about Health Canada’s data-gathering and reporting practices. There were numerous errors in key data Health Canada provided in its response to the report card questionnaire this year, such as the number of requests it completed within the timelines set out in the *Act*.

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Human resources

- Staff retention and turnover of ATIP employees and OPI specialized in drug review (subject matter expert for more than 60% of all access requests)
- Shortage of qualified staff across the public service
- High caseload-to-employee ratio

Retrieval of records

- Large and complex requests slowed down retrieval of records from offices of primary interest (OPIs)

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Workload

- Made substantial efforts to reduce the backlog of requests to improve future performance
- Implemented a portfolio approach (assigning analysts to specific program areas, which allows specialization, and fostering stronger relations with OPIs)

Training and staffing

- Implemented programs to improve the overall experience of the access to information community, in collaboration with other science-focused institutions
- Provided training to OPIs to improve processing times and increase understanding of the access to information process

BY THE NUMBERS

In 2007–2008, the number of access requests received by Health Canada decreased compared to 2005–2006, as shown in Table 2; however, there was a very large increase in the number of pages reviewed over the same period as well as in the number of pages reviewed per completed requests.

Table 2. Requests received and completed, and number of pages reviewed

	2005– 2006	2006– 2007	2007– 2008	Change from 2005–2006
Requests received	1,842	1,442	1,147	-38%
Requests completed	1,538	1,644	1,164	-24%
Number of pages reviewed for completed requests	171,131	357,913	336,435	+97%
Average number of pages reviewed per completed request	111	218	289	+160%

Health Canada received 1,147 new requests in 2007–2008 and carried over 373 requests from 2006–2007 (143 of which were deemed refusals – requests delayed beyond the times set out in the *Act*), for a total of 1,520 requests. It completed 63 percent of the new requests within the timelines set out in the *Act* either within 30 days or within the extended timelines listed in section 9. It completed 34 percent within 30 days. Health Canada reported that it took 75 days on average to complete a request.

Health Canada made significant progress in reducing its carry-over of deemed refusals from 2006–2007 (from 143 to 20 requests). For 2007–2008, Health Canada’s deemed refusal ratio (the percentage of new requests and requests carried over from 2006–2007 that fell into deemed refusal status) was 16.6 percent. This earned Health Canada a grade of D on the scale that the OIC used for many years to rate institutions’ performance but is phasing out this year.

The OIC received 59 complaints against Health Canada in 2007–2008, 13 were about deemed refusals. Of these 13 complaints, 7 were resolved (meaning that the OIC found them to have merit and that the institution resolved them to the Commissioner’s satisfaction), 1 was not substantiated, 1 was discontinued and 4 are pending. See Table 1 in Appendix A.

In addition to access requests, Health Canada received 184 requests for consultation from other federal institutions, which added 6,622 pages to the number of pages to review (equal to two percent of the total page count for the year).

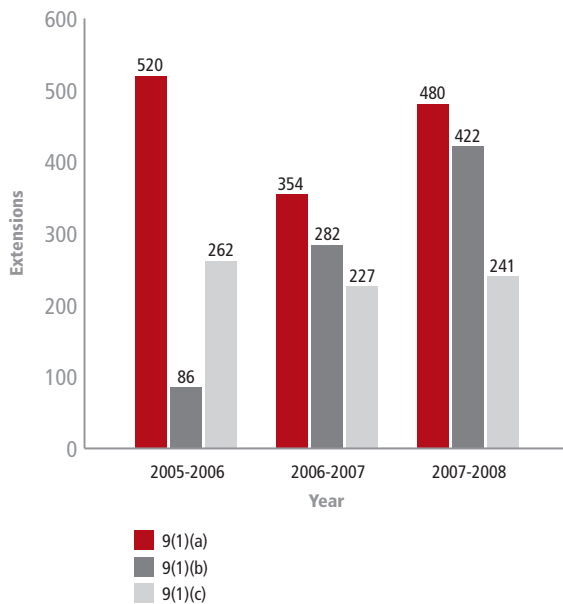
ASSESSMENT OF PERFORMANCE IN RESPONDING TO ACCESS REQUESTS

The OIC’s assessment of a federal institution’s performance in responding to access to information requests is based on the institution’s ability to respond to requests within the timelines set out in the *Act* but also on other practices that affect timeliness, such as requesting the shortest time extensions possible. The OIC also reviewed whether each institution documented its justifications for taking time extensions.

Time extensions

Health Canada increased its use of time extensions in 2007–2008 compared to 2005–2006 (see Figure 1). By contrast, the number of new requests Health Canada received in 2007–2008 decreased, while the number of pages reviewed per completed request increased over the same period.

Figure 1. Number of extensions under subsection 9(1)



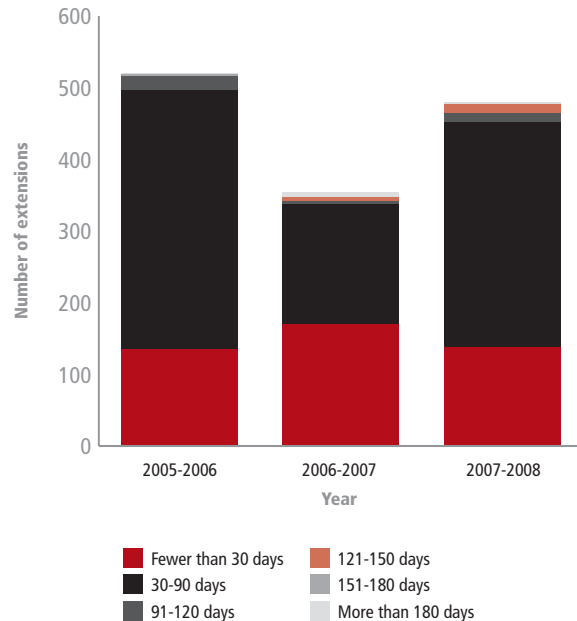
Under subsection 9(2), federal institutions must send a notice to the Information Commissioner every time they invoke an extension beyond 30 days. In 2007–2008, the Commissioner received 533 notices of extension from Health Canada for 692 requests, which represents a 77 percent compliance rate.

The OIC received 59 complaints against Health Canada in 2007–2008, 23 of which were about Health Canada’s use of time extensions. Of these 23 complaints, 14 were resolved and 9 are pending. See Table 1 in Appendix A.

Time extensions under paragraph 9(1)(a)

The number of time extensions Health Canada has taken under paragraph 9(1)(a) (searches for large volumes of records and interference with the operations of the institution) for more than 30 days has varied significantly in recent years (see Figure 2). However, these extensions have generally continued to be for 30 to 90 days. The OIC corroborated these facts by reviewing the notices of extension it had received from Health Canada over the year.

Figure 2. Length of time extensions under paragraph 9(1)(a)

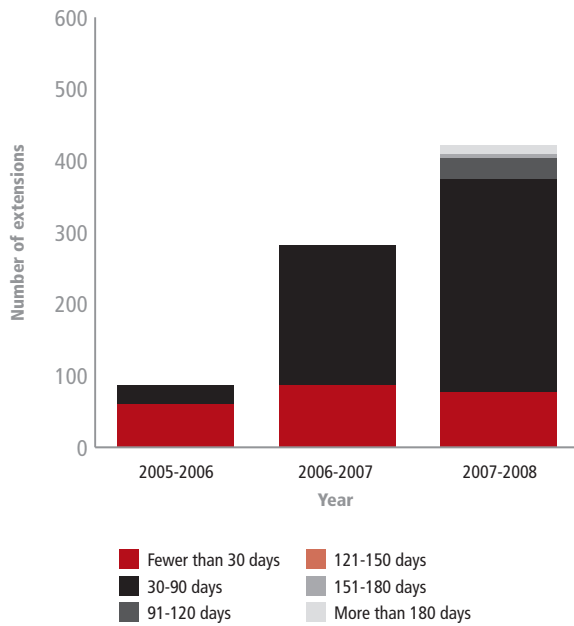


Health Canada determines the length of an extension based on the number of records to review and its workload, noting that retrieving records in program areas takes twice as long on average as the time allocated in the processing model. Health Canada attributes these delays to the large volumes of records and complexity of searches.

Time extensions under paragraph 9(1)(b)

The number of time extensions Health Canada took under paragraph 9(1)(b) (consultations) for more than 30 days significantly increased in 2007–2008 compared to 2005–2006 (see Figure 3). However, these extensions generally continued to be from 30 to 90 days. The OIC corroborated these facts by reviewing the notices of extension it had received from Health Canada over the year. One reason for the increase is the growing number of “horizontal” projects Health Canada is working on with other science-focused institutions.

Figure 3. Length of time extensions under paragraph 9(1)(b)



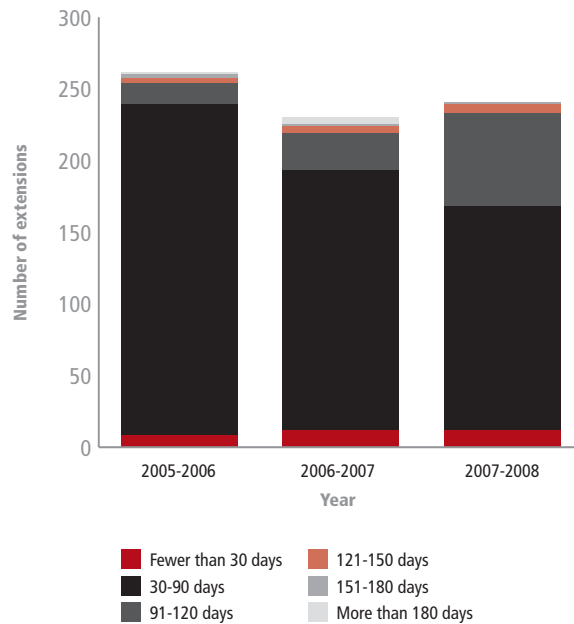
Health Canada determines the length of extensions with other institutions based on which institution is being consulted, an estimate of the number of pages involved and the time it will take for the institutions to review them. The OIC reminds that there should be pre consultation discussions with the other institution to accurately determine the appropriate length of extensions.

Health Canada reported that it does offer to prepare partial releases for portions of the request that are not involved in the consultation request while awaiting consultations results. The OIC recommends that partial releases be prepared as early in the access process as possible. Also, it recommends that Health Canada inform requesters, in the letter sent to them with the release, that additional records may be forthcoming resulting from outstanding consultations, that they will be informed of the outcome of the consultations even though no additional records may be released, and that they have the right to complain to the OIC at each step of the process.

Time extensions under paragraph 9(1)(c)

The number of time extensions Health Canada took under paragraph 9(1)(c) (consultations with third parties) has remained stable over the last three years. And while most of the extensions continue to be for 30 to 90 days, the proportion of even longer extensions is growing (see Figure 4). Consultations with third parties tend to cause long delays since there are limited incentives for third parties to respond within the time extension taken by the institution under paragraph 9(1)(c). Usually, third-parties will respond just before the time extension ends.

Figure 4. Length of time extensions under paragraph 9(1)(c)



Processing model

It is not obvious from Health Canada's processing model which stages of the access process run concurrently. Hence, it appears that the number of days for all the stages combined equals more than the 30 days allowed in the *Act*. In addition, the actual time required to go through the stages varies significantly from the model. For example, retrieval of records takes on average twice the time allocated. This results in delays for requesters in receiving a response to their access to information requests.

Categorizing requests

Health Canada categorizes few of the requests it receives as "High-Sens" (about 10 percent).¹⁴ When doing so, it adds five days to the schedule to allow review by the Deputy Minister's Office and for preparation of communications material. These additional steps took, in actual fact, 19 days on average, which resulted in delays for some requests in 2007–2008.

In the 2006 Health Canada report card, the OIC noted that this practice of having the Deputy Minister's Office review sensitive files goes against the access to information coordinator's delegation of authority order. The OIC is concerned that this practice continues two years later. It is also the OIC's view that the review of sensitive requests should not in any way delay the processing of those requests. The OIC also recommends that Health Canada undertake to measure the actual time it takes to complete categorized requests and any resulting delays.

Responding to requests for consultation from other federal institutions

Health Canada reported that it treats the consultation requests it receives from other federal institutions in the same manner as any other access requests, and not as priorities. Health Canada was unable to determine the average processing time for consultation requests since its case management system currently does not track this data.

Documenting extensions

As part of the report card questionnaire, the OIC asked federal institutions whether they documented on their request files justifications for taking extensions under subsection 9(1). Health Canada indicated that it only documents justifications for taking extensions when they require complex interpretation of the legislation. The OIC was unable to corroborate this information through a complaint files' review because no complaints about Health Canada's use of time extensions were closed in 2007–2008 (see Table 2 in Appendix A). The 14 complaints that were received and resolved in 2007–2008 were in fact closed in 2008–2009 and, as a result, were not included in the OIC files review.

Note:

- 14 The findings of OIC's investigation into a complaint filed by the Canadian Newspaper Association against all federal institutions regarding the existence of special rules for processing requests from the media cover the period between April 1, 2003, and March 31, 2005. During the investigation, OIC identified Health Canada as one of the institutions that labelled access requests as "sensitive. Health Canada was part of the larger group which used labeling systems and which process slows down the processing of the request."

OIC'S RECOMMENDATIONS AND THE INSTITUTION'S RESPONSE

1. **Health Canada's ATIP office should review its processing model to identify clearly any stages that take place concurrently and to ensure that it reflects the proper powers of the ATIP coordinator for the administration of the *Access to Information Act*.**

Response

Health Canada completed an assessment of its processing model and identified stages that take place concurrently in order to ensure that the workflow process reflects legislative requirements and enables more effective management of requests. The new model is being finalized and Health Canada is working with another government institution to validate its changes.

2. **Health Canada should cease immediately to delay the processing of requests categorized as "Hi-Sens" and should measure the actual time it takes to complete these requests as well as any resulting delays.**

Response

Health Canada will continue to develop efficiencies in order to resolve delays associated with the processing of requests by:

- 1) Improving the internal tracking of Hi-Sens review timelines and follow-ups; and
- 2) Delivering information sessions to Offices of Primary Interest (OPIs) to increase awareness of the legislative framework and process.

3. **The ATIP office should review the criteria it uses to invoke time extensions under subsection 9(1) to ensure they are reasonable and legitimate.**

Response

Health Canada is updating the guidance document for ATIP staff to ensure application of all extensions taken under subsection 9(1) is appropriate and can be substantiated.

Health Canada has implemented an internal process requiring analysts to log a detailed rationale on all extensions.

4. **Health Canada should continue to pursue solutions to deal effectively with current records management problems related to the retrieval of documents.**

Response

Health Canada is rolling-out a Departmental RDIMS system as a pilot scheduled for completion March 2009. A detailed implementation plan for the rest of the Department will follow.

Also, Health Canada will continue delivering information sessions to OPIs to further education and to support the managing of the ATIP process, including the timely retrieval of records.

5. **The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.**

Response

Health Canada has implemented the practice of logging detailed justifications and rationales for extensions.

6. **The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.**

Response

Health Canada will provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days. Our understanding is that the OIC calculates our compliance rate for 2007-2008 to be at 77%.

Health Canada will ensure that this practice is consistently applied by all staff to achieve full compliance.

HEALTH CANADA

Appendix A. Complaints to the Office of the Information Commissioner

Table 1. Complaints received in 2007–2008

(These complaints may refer to requests made prior to 2007-2008)

OIC findings, as of November 27, 2008					
Category of complaint	Received in 2007–2008	Resolved	Not substantiated	Discontinued	Pending
Refusal to disclose (exemption/exclusion)	13	1	1	0	11
Cabinet confidence exclusion	2	0	1	0	1
Delay (deemed refusal)	13	7	1	1	4
Time extension	23	14	0	0	9
No records/incomplete search	4	1	0	1	2
Fees	2	0	0	0	2
Miscellaneous	2	0	1	0	1
Total	59	23	4	2	30

Table 2. Complaints closed in 2007–2008

(Including new complaints received in 2007–2008 and complaints from previous years)

OIC findings, as of March 31, 2008				
Category of complaint	Closed in 2007–2008	Resolved	Not substantiated	Discontinued
Refusal to disclose (exemption/exclusion)	5	4	1	0
Cabinet confidence exclusion	0	0	0	0
No records/incomplete search	5	3	1	1
Delay (deemed refusal)	28	27	1	0
Time extension	0	0	0	0
Fees	0	0	0	0
Miscellaneous	5	4	1	0
Total	43	38	4	1

LIBRARY AND ARCHIVES CANADA

Overall performance in 2007–2008

Above average: 4.5 stars

Given its mandate, Library and Archives Canada finds itself in a unique position. It is required to preserve archives from across the federal government, some of which are potentially subject to access requests. However, it has no control over records other federal institutions produce. Some archival records are designated classified and as such require mandatory consultation with those institutions.

The Office of the Information Commissioner (OIC) commends Library and Archives Canada's performance in maintaining, for a second year in a row, a very low deemed refusal rate. The OIC notes a number of factors that made it possible, namely that Library and Archives Canada was able to complete roughly three quarters of the new requests it received in 2007–2008 within 30 days. Library and Archives Canada reduced its carry-over of requests to a very low level.

The OIC observed one key factor that has mitigated Library and Archives Canada's performance and prevented it to reach a 5* grade in 2007-2008. It is the OIC's review of 43 out of 48 complaints against Library and Archives Canada about time extensions closed in 2007–2008 which concluded that although Library and Archives Canada was justified to undertake consultation requests with Canadian Security and Intelligence Service, the length of the vast majority of these extensions taken by the institution was too long to be justifiable.

Overall, however, Library and Archives Canada is characterized by its ongoing commitment to customer service, such as favouring informal treatment of requests and working with requesters to refine requests.

LIBRARY AND ARCHIVES CANADA

Factors considered in assessment of overall performance

Workload

- Moderate decrease in the number of new requests (-33 percent) and a limited decrease in the number of pages reviewed (-11 percent) compared to 2005-2006. The number of pages reviewed increased by more than 100 percent compared to 2006-2007

Completion time for new requests

- Within the statutory timelines: 86 percent
- Within 30 days: 72 percent
- Average: 29 days

Carry-over of requests

- Reduced its carry-over of requests to a very low level

Time extensions

- Very large increase in the number of time extensions under subsection 9(1) taken over three years while the number of requests received decreased
- Majority of time extensions are for more than 90 days (more than half for more than 180 days)
- *Needs improvement.* Library and Archives Canada should reduce to a reasonable and legitimate level the length of time extensions it takes under paragraph 9(1)(b), to avoid delaying the process
- Compliance with subsection 9(2) (notice of extension): 75 percent

Deemed refusals

- 2.1 percent of new and carried-over requests fell into deemed refusal status (**grade: A**)

Consultation requests received from other federal institutions

- Very low number of consultation requests (0.4 percent of total page count)
- *Best practice:* Consultation requests treated expeditiously (within 16 days on average) to avoid deemed refusals for consulting institutions

Consultation requests sent to other federal institutions

- Partial release of information for requests requiring consultations
- Memorandum of Understanding with Canadian Security and Intelligence Service (CSIS) requiring Library and Archives Canada to consult CSIS before releasing any records relating to it
- *Best practice.* Close collaboration between Library and Archives Canada, National Defence and CSIS related to processing consultation requests on restricted archival records more rapidly and more efficiently

Process

- *Best practice.* Focus of access to information analysts and managers is on delivering quality service to requesters and the public: processing requests informally; ensuring requesters receive the information they are seeking; and helping requesters narrow the scope of their requests

Complaints

- The Office of the Information Commissioner received 31 complaints out of 617 requests processed or 5 percent) about Library and Archives Canada's handling of requests

LIBRARY AND ARCHIVES CANADA

Library and Archives Canada has had a dramatic turnaround in recent years in terms of responding to access requests in a timely manner under the *Access to Information Act*. In 2004 and 2005, the institution failed to comply with the terms of the *Act*, while in 2006 it achieved an exemplary grade (see Table 1).

Table 1. Compliance history

	2005	2006	2007	2007–2008
Percentage of deemed refusals (delays beyond the statutory timelines)	70%	55.5%	3.8%	2.1%
Grade	F	F	A	A

The following sets out Library and Archives Canada’s key performance-related challenges and actions in 2007–2008, provides baseline information about Library and Archives Canada’s access to information activities for that year and analyzes various factors to come to an overall performance assessment out of five stars. The report concludes with several recommendations and Library and Archives Canada’s response to them.

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Financial and human resources

- Budget restrictions prevented the staffing of seven vacant positions (due to departures, acting appointments, and maternity and care and nurturing leave).

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Human resources

- Hired additional resources, including a consultant to deal with the backlog of requests and three co-op students to review and process requests
- Allowed some overtime by staff

Process

- Continued informal treatment of access requests, with a focus on service to requesters
- Prepared partial releases of information, whenever possible, for requests involving time extensions for consultation with other federal institutions
- Broke down large requests into parts, which may result in several complaints from the same requester

BY THE NUMBERS

In 2007–2008, Library and Archives Canada had a decrease in the number of new requests it received compared to 2005–2006. It experienced a limited reduction in the number of pages reviewed compared to 2005–2006, although it represented a more than 100 percent increase compared to 2006–2007, as shown in Table 2.

Table 2. Requests received and completed, and number of pages reviewed

	2005–2006	2006–2007	2007–2008	Change from 2005–2006
Requests received	745	744	498	-33%
Requests completed	823	715	552	-33%
Number of pages reviewed for completed requests	392,249	156,648	350,500	-11%
Average number of pages reviewed per completed request	477	219	635	+33%

Library and Archives Canada received 498 new requests in 2007–2008 and carried over 119 requests from 2006–2007 (of which 6 were deemed refusals – requests delayed beyond the times set out in the *Act*), for a total of 617 requests. It completed 86 percent of the new requests within the timelines set out in the *Act* either within 30 days or within the extended timelines listed in section 9. It completed 72 percent within 30 days. Library and Archives Canada reported that it took 68 calendar days on average to complete a request (including new requests received in 2007–2008 and requests carried over from the previous years).

Library and Archives Canada was able to reduce its carry-over of requests to a very low level. For 2007–2008, Library and Archives Canada’s deemed refusal ratio (the percentage of new requests and requests carried over from 2006–2007 that fell into deemed refusal status during the year) was 2.1 percent (very similar to last year’s figure). This earned Library and Archives Canada a grade of A on the scale that the Office of the Information Commissioner (OIC) used for many years to rate institutions’ performance but is phasing out this year.

The OIC received 31 complaints against Library and Archives Canada in 2007–2008, none of which was about deemed refusals. See Table 1 in Appendix A.

In addition to access requests, Library and Archives Canada received 18 requests for consultations from other federal institutions, which added 1,350 pages to the number of pages to review (equal to 0.4 percent of the total page count for the year).

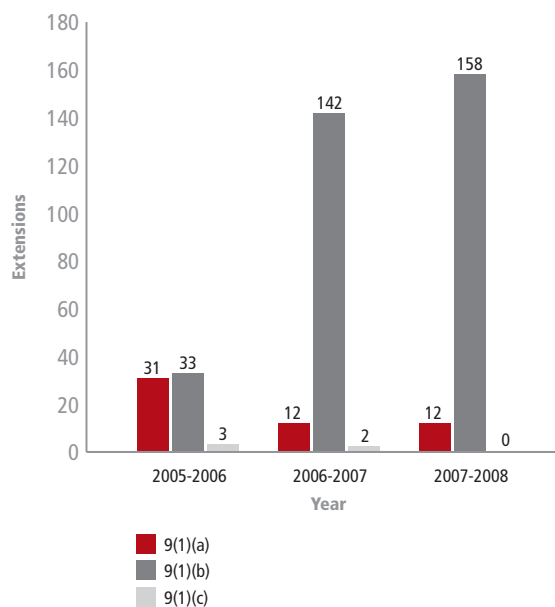
ASSESSMENT OF PERFORMANCE IN RESPONDING TO ACCESS REQUESTS

The OIC’s assessment of a federal institution’s performance in responding to access to information requests is based on the institution’s ability to respond to requests within the timelines set out in the *Act* but also on other practices that affect timeliness such as requesting the shortest time extensions possible. The OIC also reviewed whether each institution documented its justifications for taking time extensions.

Time extensions

Library and Archives Canada had a very large increase in the number of time extensions it took in 2007–2008 compared to 2005–2006 (Figure 1). This is in contrast to the number of new requests which decreased in 2007–2008.

Figure 1. Number of extensions under subsection 9(1)



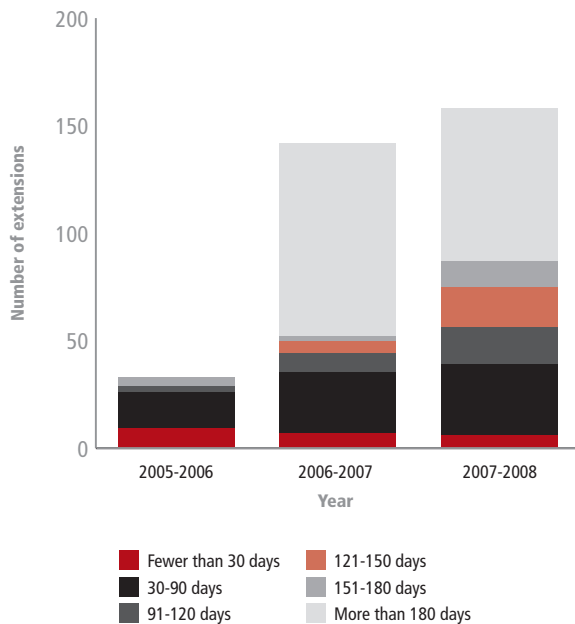
Under subsection 9(2), federal institutions must send a notice to the Information Commissioner every time they invoke an extension beyond 30 days. In 2007–2008, the Commissioner received 117 notices of extension for 156 requests, which represents a 75 percent compliance rate.

The OIC received 31 complaints about Library and Archives Canada in 2007–2008. According to the OIC records, 14 complaints were about time extensions. Of these 14 complaints, 4 were not substantiated, 9 were discontinued and 1 is pending. See Table 1 in Appendix A.

Time extensions under paragraph 9(1)(b)

In 2007–2008, Library and Archives Canada had a very large increase in the number of time extensions it took under paragraph 9(1)(b) (consultations) for more than 30 days compared to the number it took in 2005–2006 (see Figure 2). Library and Archives Canada reported that the majority of extensions were for more than 90 days, with 45 percent being for more than 180 days.

Figure 2. Length of time extensions under paragraph 9(1)(b)



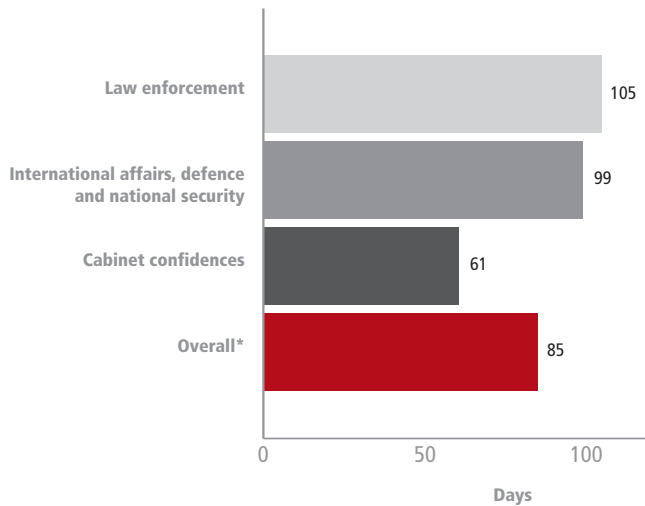
Library and Archives Canada reported that extensions taken under paragraph 9(1)(b) have presented a particular challenge, namely that it has been difficult to accurately evaluate the length of the extensions required to complete consultation requests. Consequently, Library and Archives Canada runs the risk of requests falling into deemed refusal status if the consultation requests are not completed within the anticipated time.

According to Library and Archives Canada, the length of these extensions is determined in consultation with the institutions being consulted and is based on an estimate of the number of pages involved and the time it will take the institutions to review them. When the end of a time extension approaches, the access to information analyst communicates with the institution being consulted to determine whether the response will be sent back on time. If not, a manager or director takes over the file to help facilitate the return of the material on time.

The OIC notes a discrepancy between the length of the time extensions Library and Archives Canada invoked in 2007–2008 (Figure 2) and the actual time it took to receive responses from institutions (approximately 85 calendar days) (Figure 3). This discrepancy suggests that Library and Archives Canada takes much longer time extensions than required to receive responses from consulted institutions. It also largely reduces the likelihood that requests will fall into deemed refusal status, which may have contributed to Library and Archives Canada’s very low deemed refusal rate (2.1 percent) in 2007–2008.

This discrepancy also suggests to the OIC that these time extensions may not be reasonable and legitimate within the meaning of paragraph 9(1)(b). To verify this, the OIC reviewed 43 of the 48 complaints against Library and Archives Canada about time extensions closed in 2007–2008, which includes complaints from 2007–2008 and previous years. The OIC found that, although Library and Archives Canada was justified to undertake consultations, the length of the vast majority of these extensions taken by the institution was too long to be justifiable.

Figure 3. Average response time for consultation requests sent to other federal institutions in 2007-2008



*“Overall” refers to the average response time for all consultation requests, which includes more than just those shown here.

Some of the records Library and Archives Canada holds are classified or designated archival records, all of which require mandatory consultations with other federal institutions prior to release.

Library and Archives Canada indicated in its 2007–2008 annual report to Treasury Board Secretariat on access to information activities that it has been working in closer collaboration with the Department of National Defence and the Canadian Security and Intelligence Service (CSIS) to process more rapidly and more efficiently consultation packages concerning restricted archival records. Library and Archives Canada is committed to continuing these collaborations in 2008–2009.

Library and Archives Canada currently has a Memorandum of Understanding with CSIS, under which it must consult CSIS before releasing any record relating to it. About two-and-a-half years ago, Library and Archives Canada sent a large volume of records (more than 40,000 pages) to CSIS for review. The extensions invoked for these consultation requests were lengthy (more than 300 days). It took about 18 months for CSIS to respond to them all.

Library and Archives Canada almost always prepares partial releases of records, except when it is uncertain what the results of the consultation requests will be. Its experience is that generally it is safer to wait until the full results of the consultation are known, because there are often discrepancies in the results when received in parts.

The OIC recommends that any partial releases be prepared as early in the access process as possible. Also, it recommends that Library and Archives Canada inform requesters, in the letter sent to them with the release, that additional records may be forthcoming resulting from outstanding consultations, that they will be informed of the outcome of consultation requests even though no additional records may be released, and that they have the right to complain to the OIC at each step of the process.

Informal treatment of requests

Library and Archives Canada often processes requests informally. For example, any written requests for personnel records that do not explicitly refer to making a request under the *Access to Information Act* are treated informally. In 2007–2008, Library and Archives Canada treated approximately 9,150 requests for personnel records this way. The OIC reminds Library and Archives Canada that when it considers processing an access request informally, it should inform the requester of this possibility and ensure that the process is carried out in a manner that protects requesters’ rights. The final decision on whether to process a request formally or informally rests with the requester.

Records management for non-archived records

Library and Archives Canada defines non-archived records as operational records. It notes that for these records it has weak record management practices that vary across the institution and recognizes the need to improve them. Nonetheless, non-archived records represented only one percent (approximately five requests) of Library and Archives Canada's volume of requests in 2007–2008.

Responding to requests for consultation requests from other federal institutions

Currently, Library and Archives Canada prioritizes consultation requests received from other federal institutions, completing them within 16 calendar days on average.

Documenting extensions

As part of the report card questionnaire, the OIC asked federal institutions whether they documented on their request files justifications for taking extensions under subsection 9(1). Library and Archives Canada reported that it documents on the case management system the paragraph of subsection 9(1) under which it is taking time extensions, as well as the number of days the other institution requires to respond to consultation requests. To learn more about Library and Archives Canada's practices in this area, the OIC reviewed the files on its investigations into 43 complaints about Library and Archives Canada's use of time extensions (the OIC closed these complaints as resolved in 2007–2008; see Table 2 in Appendix A). The OIC found that Library and Archives Canada had indicated in the case management system at the time it processed the requests that it had taken extensions for them but did not necessarily document the justifications for taking them in every case.

OIC'S RECOMMENDATIONS AND THE INSTITUTION'S RESPONSE

- 1. The Library and Archives Canada access to information and privacy (ATIP) office should review the criteria it uses to invoke time extensions under paragraph 9(1)(b) to ensure the criteria are reasonable and legitimate and that the time extensions do not delay the processing of access requests.**

Response

Library and Archives Canada (LAC) has taken two major steps to improve services and processes with our consultation departments (DND, CSIS, DOJ, VAC, and soon the RCMP and INAC).

First, it has established monthly key stakeholder meetings. As you know, LAC does not have sufficient control over consultation extensions due to the unique nature of its mandate. (LAC's mandate is to preserve the documentary heritage of Canada for the benefit of present and future generations; to be a source of enduring knowledge accessible to all, contributing to the cultural, social and economic advancement of Canada; to facilitate in Canada co-operation among communities involved in the acquisition, preservation and diffusion of knowledge; and to serve as the continuing memory of the government of Canada and its institutions.) This means Library and Archives Canada holds archived information from other departments that may still remain protected (i.e. CSIS and DND documents).

In September 2008, Library and Archives Canada initiated stakeholder meetings with specific departments that it heavily depends on for consultation purposes. The goal of these meetings was to keep these departments engaged, share resources and best practices and continuously improve the way Library and Archives Canada operates with these stakeholders. Library and Archives Canada will be meeting every month and engage staff in working groups as necessary.

Second, Library and Archives Canada is in the middle of deploying a system upgrade. LAC/ATIP&PR Division has acquired a system upgrade to ATIPFlow application called AccessPro Redaction from Privasoft. The new system will bring new improvements to help manage information, provide better collaboration among team members and facilitate requests more effectively. The system upgrade also has the capability of communicating with our stakeholders for consultation efforts, but this feature might only be operable by 2010, due to system infrastructure required to deal with the sensitivity of the information. Key feature improvements are automated tracking and reporting (helps manage and build process efficiency), detailed audit log, integrated time management (manage timers for each request), and image encryption.

- 2. Library and Archives Canada should carefully review its processes for managing non-archived records to ensure that retrieving those records does not delay the processing of access requests.**

Response

Library and Archives Canada defines non-archived records as its operational records. These records represent one percent (approximately five requests) of our ATIP&PR volume request for 2007–2008.

However, Library and Archives Canada recognizes the need to enhance its record management practice. LAC's functional authority in this matter has taken steps to move the department towards an improved record management services and corporate file classification plan to develop a file naming convention.

- 3. The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.**

Response

The Library and Archives Canada's Access to Information Division has implemented a Procedure Review Committee in October 2008. This committee will update and communicate key information to analysts such as documenting rationale. In 2006, the Division went through an extensive business process mapping exercise that established a base for documenting procedures and processes. The Procedure Review Committee is now responsible in maintaining and improving this information.

- 4. The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.**

Response

Library and Archives Canada, Access to Information Division has noted this comment and has tasked the Procedure Review Committee to put in place corrective measures.

LIBRARY AND ARCHIVES CANADA

Appendix A. Complaints to the Office of the Information Commissioner

Table 1. Complaints received in 2007–2008

(These complaints may refer to requests made prior to 2007-2008)

OIC findings, as of November 27, 2008					
Category of complaint	Received in 2007–2008	Resolved	Not substantiated	Discontinued	Pending
Refusal to disclose (exemption/exclusion)	8	0	3	0	5
Delay (deemed refusal)	0	0	0	0	0
Time extension	14	0	4	9	1
No records/incomplete search	9	0	0	0	9
Fees	0	0	0	0	0
Miscellaneous	0	0	0	0	0
Total	31	0	7	9	15

Table 2. Complaints closed in 2007–2008

(Including new complaints received in 2007–2008 and complaints from previous years)

OIC findings, as of March 31, 2008				
Category of complaint	Closed in 2007–2008	Resolved	Not substantiated	Discontinued
Refusal to disclose (exemption/exclusion)	16	3	13	0
Delay (deemed refusal)	0	0	0	0
Time extension	48	45	3	0
No records/incomplete search	1	1	0	0
Fees	0	0	0	0
Miscellaneous	1	1	0	0
Total	66	50	16	0

NATURAL RESOURCES CANADA

Overall performance in 2007–2008

Average: 3.5 stars

This is the first report card for National Resources Canada (NRCan). It was selected for review based on its best practices and previous efforts to improve its compliance with the *Access to Information Act*.

With environmental issues becoming of greater importance to Canadians, NRCan has been receiving more requests in recent years. There was also a surge of requests in 2007–2008 related to the shutdown of the medical isotopes reactor at Chalk River. As with many other institutions surveyed for the report card process, NRCan has struggled to attract and retain knowledgeable and experienced ATIP staff. Nonetheless, NRCan has managed to maintain fair performance under increasing pressure.

In 2007–2008, NRCan had a substantial increase of its workload but did not have adequate human resources to meet it. Consequently, there has been an increase in the number of requests under subsection 9(1) for which time extension were taken. Also, extensions were for longer periods.

Although the Office of the Information Commissioner (OIC) hopes for improvements in performance in future years, it would be remiss not to mention the numerous practices NRCan already follows that contribute to its processing requests in a timely manner. For example, it communicates regularly and proactively with requesters to help them narrow and refine their requests, it does not invoke time extensions under paragraph 9(1)(a), it has strong records management practices and makes extensive use of collaborative technologies.

NATURAL RESOURCES CANADA

Factors considered in assessment of overall performance

Workload

- Substantial increase in the number of new requests (79 percent) and moderate increase in the number of pages reviewed (20 percent)
- Limited human resources capacity

Completion time for new requests

- Within the statutory timelines: 73 percent
- Within 30 days: 45 percent
- Average: 88 days

Carry-over of requests

- Significant increase in the carry-over of requests from 2006–2007 and a very large increase of the carry-over of deemed refusals

Time extensions

- Slight increase in the number of requests received for which time extensions under subsection 9(1) were taken
- Length of time extensions: majority are for 91 to 120 days
- *Best practice.* Does not generally use extensions under paragraph 9(1)(a) (only once in three years)
- NRCan did not comply with subsection 9(2) (notice of extension): 0 percent

Deemed refusals

- 10.7 percent of new and carried-over requests fell into deemed refusal status (**grade: C**)

Consultation requests received from other federal institutions

- Consultation requests treated as priorities based on due date and completed within 17 days on average

Consultation requests sent to other federal institutions

- *Needs improvement.* The Office of the Information Commissioner (OIC) recommends that NRCan prepare partial releases as early in the access process as possible and send a letter with the release package noting that additional records may be forthcoming resulting from outstanding consultations, that requesters will learn the outcome of mandatory consultations even if no additional records may be released, and that requesters have the right to complain to the OIC at every step of the process

Process

- Categorizing requests does not contribute to delays in the processing of requests. If NRCan can do it so can other institutions
- *Best practice.* Pursuing proactive communications with requesters at each stage of the process to help ensure timely responses: encouraging requesters to determine a reasonable scope for their requests and suggesting to requesters “piggyback” on previous requests for similar information
- *Best practice.* Put process in place to favour informal treatment of requests (completed within 30 days on average)
- Current review of entire process to cope with future surges in access requests
- *Best practice.* Implemented portfolio approach favouring specialization of analysts in specific program areas
- *Best practice.* Has strong records management practices and uses new collaborative technologies such as Wiki to ensure any non-classified information is easily identified and retrievable

Complaints

- The OIC received 7 complaints (out of 419 requests processed or 2 percent) about Natural Resources Canada’s handling of requests

NATURAL RESOURCES CANADA

This is the first report card the Office of the Information Commissioner (OIC) has prepared about Natural Resources Canada (NRCan). It was selected for review based on its performance in best practices and efforts to improve its compliance with the *Act*.

Table 1. Compliance history

	2007–2008
Percentage of deemed refusals (delays beyond the statutory timelines)	10.7%
Grade	C

The following sets out NRCan’s key performance-related challenges and actions in 2007–2008, provides baseline information about Natural Resources Canada’s access to information activities for that year and analyzes various factors to come to an overall performance assessment on a scale of five stars. The report concludes with several recommendations and NRCan’s response to them.

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Workload

- Unprecedented volumes in requests related to the Chalk River matter

Human resources

- Lack of experienced access to information analysts available in the community
- Turnover in access to information staff

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Workload

- Encouraged the provision of documents electronically on CD
- Re-examined the entire access process to cope with future surges in requests
- Used the Resource Wiki to ensure any non-classified information is easily identified and retrievable

Human resources

- Adopted a portfolio approach, comprising specialization of analysts in specific program areas and succession planning

BY THE NUMBERS

In 2007–2008, Natural Resources Canada’s access requests workload increased substantially from previous years, as shown in Table 2. Also, there was an increase in the number of pages reviewed in 2007–2008 compared to 2005–2006.

Table 2. Requests received and completed, and number of pages reviewed

	2005–2006	2006–2007	2007–2008	Change from 2005–2006
Requests received	205	300	366	+79%
Requests completed	194	285	343	+77%
Number of pages reviewed for completed requests	59,205	82,683	70,982	+20%
Average number of pages reviewed per completed request	305	290	207	-32%

NRCan received 366 new requests in 2007–2008 and carried over 53 requests from 2006–2007 (of which 4 were deemed refusals – requests delayed beyond the times set out in the *Act*), for a total of 419 requests. It completed 73 percent of the new requests within the timelines set out in the *Act* either within 30 days or within the extended timelines listed in section 9. It completed approximately 45 percent within 30 days. NRCan reported that it took 88 days on average to complete a request.

NRCan was unable to maintain its carry over of new requests and deemed refusals at a low level and, in fact, saw a very large increase in it in 2007–2008. Consequently, Natural Resources Canada’s deemed refusal ratio (the percentage of new requests and requests carried over from 2006–2007 that fell into deemed refusal status during the year) for 2007–2008 was 10.7 percent. This earned NRCan a C on the scale the Office of the Information Commissioner used for many years to rate institutions’ performance but is phasing out this year.

The OIC received seven complaints against NRCan in 2007–2008 only one was about deemed refusals. This complaint was pending as of November 27, 2008. See Table 1 in Appendix A.

In addition to access requests, NRCan received 122 requests for consultations from other federal institutions, which added 4,070 pages to the number of pages to review (equal to about 5 percent of the total page count for the year).

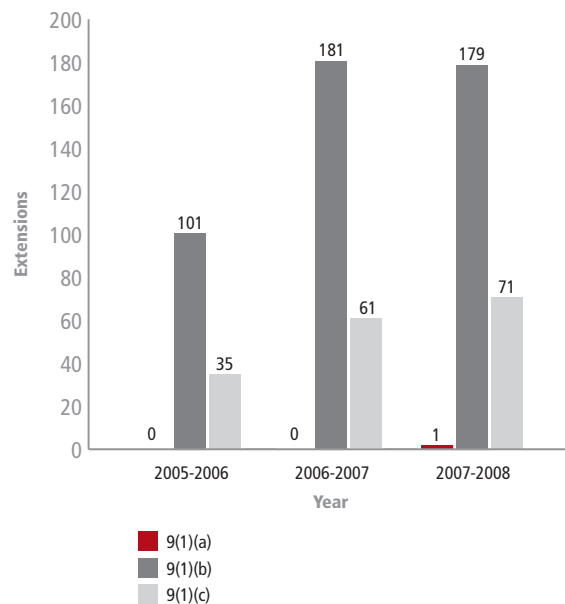
ASSESSMENT OF PERFORMANCE IN RESPONDING TO ACCESS REQUESTS

The OIC’s assessment of a federal institution’s performance in responding to access to information requests is based on the institution’s ability to respond to requests within the timelines set out in the *Act* but also on other practices that affect timeliness, such as requesting the shortest time extensions possible. The OIC also reviewed whether each institution documented its justifications for taking time extensions.

Time extensions

NRCan experienced a substantial increase in the number of time extensions it took compared to 2005-2006, as shown in Figure 1. This increase (85 percent) is very similar to the increase in the number of requests received (79 percent) over the same period.

Figure 1. Number of extensions under subsection 9(1)



Under subsection 9(2), federal institutions must send a notice to the Information Commissioner every time they invoke an extension beyond 30 days. According to NRCan’s 2008 report to Treasury Board Secretariat on its access to information activities, it extended 172 requests for more than 30 days. However, in 2007–2008, the Commissioner did not receive any notices of extension from Natural Resources Canada, which means that NRCan was 100 percent non-compliant with subsection 9(2).

Of the seven complaints the OIC received about NRCan in 2007–2008, four were about Natural Resources Canada’s use of time extensions. Of these four complaints, one was discontinued and three were pending. See Table 1 in Appendix A.

Time extensions under paragraph 9(1)(a)

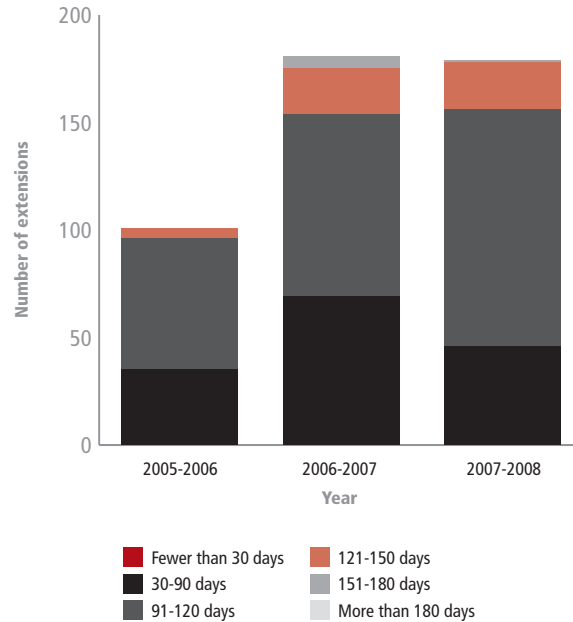
The OIC commends NRCan's practice of only invoking extensions under paragraph 9(1)(a) (searches for large volume of records and interference with the operations of the institution) in exceptional circumstances. It has used it only once in three years. This is unique among the institutions the OIC assessed this year, but should be the rule, and can be attributed to NRCan's strong records management practices and its use of new collaborative technologies.

Time extensions under paragraph 9(1)(b)

Natural Resources Canada's use of extensions under paragraph 9(1)(b) (consultations) substantially increased in 2007-2008 compared to 2005-2006. The proportion of time extensions NRCan took under paragraph 9(1)(b) for more than 30 days increased as well, as shown in Figure 2 and the extensions are getting longer, the majority are for 91 to 120 days.

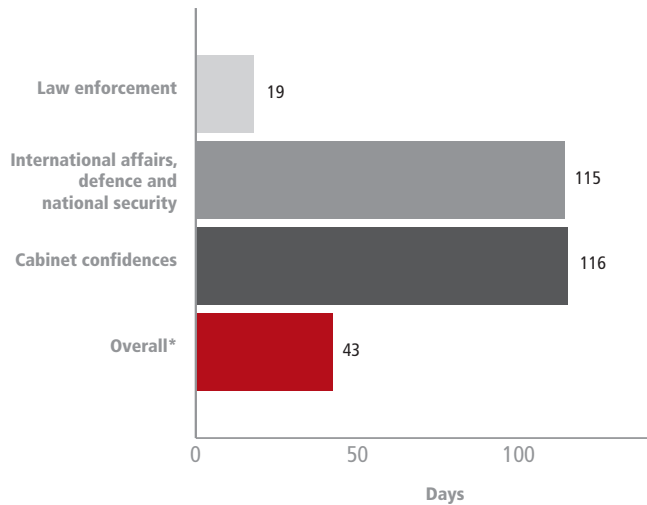
NRCan reported that it is involved in horizontal projects with other science-focused institutions, which explains the increase in the number of consultation requests sent to other federal institutions. These consultations involved 56,089 pages to review, which equals an astonishing large proportion (79 percent) of the total number of pages NRCan itself reviewed over the same period.

Figure 2. Length of time extensions under paragraph 9(1)(b)



NRCan reported that it is difficult to accurately evaluate the length of the time extensions required to complete consultation requests sent to other federal institutions. Consequently, it runs the risk of requests falling into deemed refusal status if the consultation requests are not completed within the anticipated time. This situation arises most often for consultations involving the Privy Council Office for records involving Cabinet confidences and the Department of Foreign Affairs and International Trade (DFAIT) for information that might, if released, affect international relations. These consultations take the longest time, as shown in Figure 3.

Figure 3. Average response time for consultation requests sent to other federal institutions in 2007-2008



*“Overall” refers to the average response time for all consultation requests, which includes more than just those shown here.

To avoid having requests fall into deemed refusal status when consulting with DFAIT, NRCan first communicates with DFAIT by telephone or email to determine whether DFAIT will be able to meet the extension time limit. When NRCan does not receive a response by the due date, it exempts the information based on its own assessment, releases the information package and closes the file. It then forwards to the requester any information that DFAIT subsequently allows to be released. NRCan has used this practice as a way to manage its workload and to provide a more accurate picture of its performance.

The OIC recommends that partial releases be prepared as early in the access process as possible. It also recommends that NRCan inform requesters, in the letter sent to them with the release, that additional records may be forthcoming resulting from outstanding consultation requests, that they will be informed of the outcome of consultation requests even though no additional records may be released, and that they have the right to complain to the OIC at each step of the process. The OIC is concerned that if NRCan and other institutions do not follow this procedure rigorously, requesters’ right to complain may be compromised.

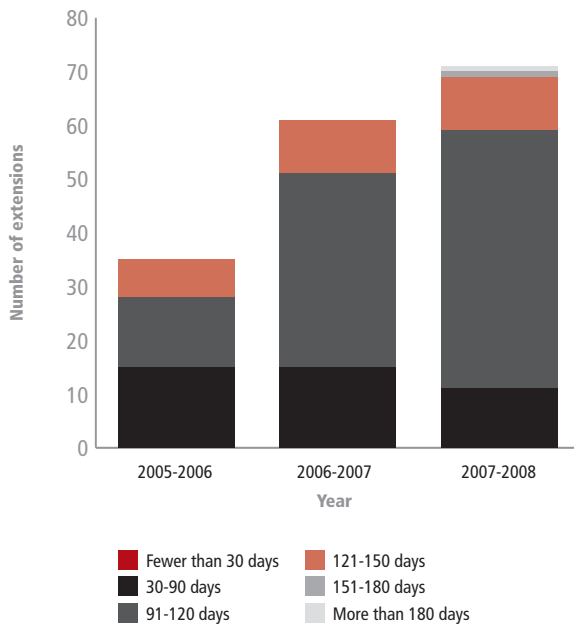
Finally, the OIC is aware that such a practice already exists in a number of institutions and is concerned that federal institutions overuse this as a means to circumvent a more serious problem: delays resulting from consultation requests.

Time extensions under paragraph 9(1)(c)

The number and length of extensions NRCan has taken under paragraph 9(1)(c) (consultations with third parties) have also increased in recent years (see Figure 4). In 2007–2008, the majority of extensions were for 91 to 120 days, while a small portion was for more than 120 days. NRCan reported that some third parties are located remotely and, consequently, that consultations require more time, making it a challenge to meet the timelines in the *Act*.

The OIC is of the view that consultations with third parties should not cause long delays. Extensions under paragraph 9(1)(c) should not normally be longer than 60 days, since the *Act* sets out timeframes for third-party consultations of 50 days, with up to 10 additional days for the third-party to receive the associated notices from the institution.

Figure 4. Length of time extensions under paragraph 9(1)(c)



Service to requesters

For many years, NRCan has communicated with requesters at each stage of the access to information process to help ensure timely responses. For example, NRCan has long encouraged requesters to determine a reasonable scope for their requests. More recently, NRCan has begun suggesting to requesters that they “piggyback” on previous requests for similar information to speed up the process.

Categorizing requests

NRCan systematically categorizes access requests it receives into two categories: “Routine” and “Sensitive.” “Routine” requests are usually for records related to temporary help call-ups or contracts.

The way NRCan processes requests depends on how they are categorized. There are extra steps for “Sensitive” requests, including review by Communications and approval by the Director General of the office of primary interest, Assistant Deputy Minister and review by Deputy Minister and

Minister’s office. The OIC is of the view that these additional steps could frustrate the access to information coordinator’s delegated authority. The OIC is also of the view that such a categorization should not delay the release package. NRCan indicated that designating a request as “Sensitive” does not lead to delay but it is nonetheless currently revising its approval processes and will implement changes in the near future.

In 2007–2008, NRCan designated 90 percent of the requests it received as “Sensitive.” It is the OIC’s view that this lopsided allocation indicates that NRCan should review and revise its categories as well as the criteria it uses to assign requests to the two categories.

The OIC recommends that NRCan should, when it categorizes or labels access requests, undertake not to delay the process and should measure the actual time it takes to complete categorized requests and any resulting delays.

Responding to requests for consultations from other federal institutions

NRCan reported that it treats consultation requests as priorities, based on due date, and completed them within 17 days on average.

Documenting extensions

As part of the report card questionnaire, the OIC asked federal institutions whether they documented on their request files justifications for taking extensions under subsection 9(1). NRCan indicated that the extent of notations made to justify time extensions on access requests varies from analyst to analyst. To learn more about NRCan’s activities in this area, the OIC reviewed the investigation file for one complaint about NRCan’s use of time extensions (the OIC closed this request as resolved in 2007–2008; see Table 2 in Appendix A). The OIC found that NRCan had indicated in the case management system at the time it processed the requests that it had taken extensions for them but did not necessarily document the justifications for taking them in every case.

OIC'S RECOMMENDATIONS AND THE INSTITUTION'S RESPONSE

1. **Natural Resources Canada's Access to Information and Privacy (ATIP) office should narrowly define its categorization of access to information requests deemed sensitive, such that sensitive requests represent a minority of exceptional requests**

Response

The majority of NRCan active requests are considered sensitive due to the subject matter and require additional approval. NRCan is reviewing its process and categorization standards in order to determine if a larger percentage of requests can be deemed routine.

2. **Natural Resources Canada's ATIP office should clearly state that it must not delay the processing of categorized requests and should measure the actual time taken to complete these requests as well as any resulting delay.**

Response

All requests go through an identical full approval/review process prior to release which includes the originating sector and subsequent review by senior officials. The only exception is call ups which have no approval outside of the ATIP office.

3. **The ATIP office should review its processing model to identify clearly any stages that take place concurrently and to ensure that it reflects the proper powers of the ATIP Coordinator for the administration of the *Access to Information Act*.**

Response

The Assistant Deputy Minister's approval is required prior to subsequent Branch area sign-offs as NRCan has a shared delegation of authority between the various Assistant Deputy Ministers and the Coordinator. Other area sign-offs are then done concurrently. NRCan is reviewing its approval process at this time for further efficiencies.

4. **The ATIP office, when it closes access requests related to outstanding consultations, should inform requesters that additional records may be forthcoming, that they will be informed of the outcome of the consultation requests even if no additional records may be released, and that they have the right to complain to the OIC at each step of the process.**

Response

NRCan has commenced with partial releases to requesters. NRCan will continue with the policy of partial releases earlier in the process where practical while awaiting the result of outstanding consultations.

5. **The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.**

Response

NRCan is required to consult with other institutions on records originating from those institutions. It is difficult to accurately estimate the length of time needed to complete the consultation process. NRCan will continue communicating with other institutions involved in this process and will further document on the request files information relating to the length of time invoked.

6. **The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.**

Response

This is a requirement under the *Act* and NRCan has recently instituted this procedure to provide notice to the OIC each time an extension of more than 30 days is invoked.

NATURAL RESOURCES CANADA

Appendix A. Complaints to the Office of the Information Commissioner

Table 1. Complaints received in 2007–2008

(These complaints may refer to requests made prior to 2007-2008)

OIC findings, as of November 27, 2008					
Category of complaint	Received in 2007–2008	Resolved	Not substantiated	Discontinued	Pending
Refusal to disclose (exemption/exclusion)	1	0	0	0	1
Delay (deemed refusal)	1	0	0	0	1
Time extension	4	0	0	1	3
No records/incomplete search	0	0	0	0	0
Fees	0	0	0	0	0
Miscellaneous	1	0	0	0	1
Total	7	0	0	1	6

Table 2. Complaints closed in 2007–2008

(Including new complaints received in 2007–2008 and complaints from previous years)

OIC findings, as of March 31, 2008				
Category of complaint	Closed in 2007–2008	Resolved	Not substantiated	Discontinued
Refusal to disclose (exemption/exclusion)	1	1	0	0
Delay (deemed refusal)	0	0	0	0
Time extension	1	1	0	0
No records/incomplete search	0	0	0	0
Fees	0	0	0	0
Miscellaneous	0	0	0	0
Total	2	2	0	0

PRIVY COUNCIL OFFICE

Overall Performance in 2007-2008

Average: 3 stars (ATIP operations)

The Privy Council Office (PCO) ATIP office improved its performance responding to access requests in 2007–2008, in the face of a steady increase in the number of new requests it receives each year. At the same time, the number of pages it reviewed noticeably decreased in 2007–2008, after a slight increase the year before.

The Office of the Information Commissioner (OIC) commends PCO ATIP Office for making significant progress in reducing its carry over of deemed refusals – from 44 percent of the carry-over on April 1, 2007, to 17 percent on April 1 2008.

PCO has also been experiencing a decrease in the number of requests received for which time extensions were taken in recent years: from extending 49 percent of new requests in 2005–2006 to 35 percent in 2007–2008.

PCO plays another role in the access to information system by being the primary point of contact with all federal institutions regarding issues involving Cabinet Confidences. A review of the operations and performance of Cabinet Confidences/Counsel is included in this card. However, given the different functions of Cabinet Confidences/Counsel, no rating was provided this year.

PRIVY COUNCIL OFFICE

Factors considered in assessment of overall performance

Workload

- Moderate increase in the number of requests received (28 percent) with a reduction in the number of pages reviewed (-39 percent)
- Limited human resources capacity (Cabinet Confidences/Counsel)

Completion time for new requests

- Within the statutory timelines: 73 percent
- Within 30 days: 56 percent

Carry-over of requests

- Significant decrease in the carry-over of requests in deemed refusal status

Time extensions

- Moderate increase in the number of time extensions taken over the previous years
- Length of time extensions: majority are for 91 to 120 days
- Full compliance with subsection 9(2) (notice of extensions)

Deemed refusals

- 17.9 percent of new and carried-over requests fell into deemed refusal status (**grade: D**)

Consultation requests received from other federal institutions

- Consultation requests treated as priorities, based on the due date (441 requests (other than those involving Cabinet Confidences) or 22 percent of total page count for the year)
- Undertook a detailed review of procedures to improve performance and consultation response times

Consultation requests sent to other federal institutions

- The Privy Council Office prepares partial releases when it is operationally feasible, to more quickly provide requesters with information not subject to consultations

Process

- The Privy Council Office revised its processing model and established strict timelines for tasking, records search and review, final review and approvals; it then communicated to employees about these changes through training sessions, the access to information manual and the Intranet

Case management

- New case management software will improve response times and lessen administrative burden on access to information staff (implementation delayed to 2008–2009)

Senior management leadership

- *Best practice.* Reorganized access to information office into three functional areas of responsibility to improve efficiency and performance

Staffing

- Specific staffing actions undertaken to fill positions in the access to information office
- Opened competitions to the public to fill officer development positions
- Developed and implemented a human resources plan, resulting in six new officers joining the staff
- Developed and implemented an ATIP Officer Development Program

Training

- Delivered access to information training program to the Privy Council Office officials

Complaints

- The Office of the Information Commissioner received 188 complaints (out of 921 requests processed or 20 percent) about the Privy Council Office ATIP Office's handling of requests

PRIVY COUNCIL OFFICE

The roles and responsibilities of the Privy Council Office (PCO) with regard to access to information operations are twofold:

- The Access to Information and Privacy office (ATIP) processes access to information requests from the public and responds to requests for consultations from other federal institutions, except for consultation requests about records involving Cabinet confidences under section 69 of the *Access to Information Act*.
- Cabinet Confidences/Counsel is the primary point of contact with all federal institutions regarding issues involving Cabinet confidences to determine whether there are Cabinet confidences in those documents that should be protected from disclosure.

PCO administers these two functions separately. Historically, the Office of the Information Commissioner (OIC) has only assessed the performance of the ATIP office, which has only once (in 2003) fully complied with the *Access to Information Act* in terms of responding to access requests in a timely manner (see Table 1).

Table 1. Compliance history

	2002	2003	2004	2005	2006	2007–2008
Percentage of deemed refusals (delays beyond the statutory timelines)	–	–	26.5%	31.9%	25.3%	17.9%
Grade	D	A	F	F	F	D

The following sets out PCO’s key performance-related challenges and actions in 2007–2008, provides baseline information about PCO’s access to information activities for that year and analyzes various factors to come to an overall performance assessment on a scale of five stars. The report concludes with several recommendations and PCO’s response to them.

This is the first time the OIC is looking at both areas of responsibilities. Given the different functions of these two divisions and the use of an assessment tool developed primarily to assess ATIP operations, this year’s rating will not rate the performance of the Cabinet Confidences/Counsel. However, PCO will work with the OIC to develop an adapted assessment tool.

Since all federal institutions must consult with Cabinet Confidences/Counsel for records involving Cabinet confidences, it is vital to the access to information system as a whole that Cabinet Confidences/Counsel reports on its specific obligations under the *Act*. Any delay in the review records involving Cabinet confidences has a direct impact on federal institutions’ ability to respond to access requests in a timely manner and as such has a ripple effect across the access to information system. Most of the institutions surveyed for the report card process indicated that they experienced long delays in responses from Cabinet Confidences/Counsel.

1. ATIP OFFICE

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Workload

- Increase in the number of requests received

Consultations

- Increase in the number of requests for consultation received from other federal institutions

Human resources

- Creation of additional officer positions approved by PCO but several remain unfilled due to scarcity of experienced staff
- Recruitment by other federal institutions of knowledgeable employees

Information technology

- Outdated technology used to process requests (for example, at the beginning of 2007–2008, severance of documents was still being done manually)

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Organizational structure

- ATIP office reorganized into three functional areas of responsibility to improve efficiency and performance: ATIP Policy and Processes, Operations and Client Services

Human resources

- Opened competitions to the public to fill officer development positions
- Developed and implemented a human resources plan, resulting in six new officers joining the staff
- Developed and implemented an ATIP Officer Development Program

Consultations

- Undertook a detailed review of procedures to improve performance and consultation response times
- Improved communications with other federal institutions to more accurately predict extension times

Service delivery

- Streamlined access request process to make it more efficient, and updated the procedures manual accordingly
- Installed new case management software to improve response times and lessen administrative burden on officers
- Developed and delivered an access to information training program to PCO officials, including publishing extensive access to information material on the PCO Intranet.

BY THE NUMBERS

In 2007–2008, the number of access requests received by the PCO ATIP office increased compared to 2005–2006, as shown in Table 2. In contrast, there was a decrease in the number of pages reviewed over the same period¹⁵.

Note:

- 15 The ATIP office reported that due to a transition period in terms of standardization of the ATIP office procedures, the reported number of pages reviewed for completed requests may not have been reliably recorded.

Table 2. Requests received and completed, and number of pages reviewed

	2005–2006	2006–2007	2007–2008	Change from 2005–2006
Requests received	539	592	688	+28%
Requests completed	577	536	660	+14%
Number of pages reviewed for completed requests	74,883	82,464	45,829	-39%
Average number of pages reviewed per completed request	130	154	69	-47%

The ATIP office received 688 new requests in 2007–2008 and carried over 233 requests from 2006–2007 (of which 103 were deemed refusals – requests delayed beyond the timelines set out in the *Act*), for a total of 921 requests. It completed 73 percent of the new requests within the timelines set out in the *Act* either within 30 days or within the extended timelines listed in section 9. It completed approximately 56 percent within 30 days. The data for the average completion time for requests in 2007–2008 was not available in PCO’s database.

The ATIP office significantly reduced its carry-over of deemed refusals. However, its deemed refusal ratio (the percentage of new requests and requests carried over from 2006–2007 that fell into deemed refusal status during the year) for 2007–2008 was 17.9 percent. This earned the ATIP office a grade of D on the scale that the OIC used for many years to rate institutions’ performance but is phasing out this year.

The OIC received 188 complaints against the ATIP office in 2007–2008 (or one for every four new access requests), 5 of which were about deemed refusals. Of these 5 complaints, 2 were resolved (meaning that the OIC found them to have merits and that the institution resolved them to the Commissioner’s satisfaction), 2 were discontinued and 1 was pending. See Table 1 in Appendix A.

In addition to access requests, the ATIP office received 441 requests for consultations from other federal institutions (other than those involving Cabinet confidences), which added 12,805 pages to the number of pages to review (equal to 22 percent of the total page count for the year).

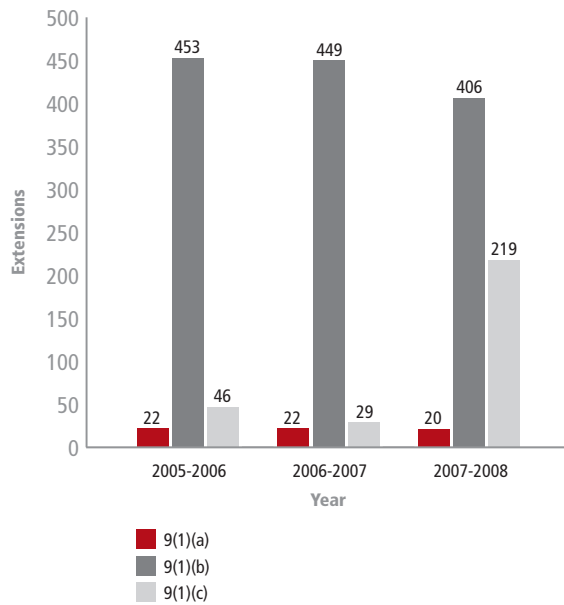
ASSESSMENT OF PERFORMANCE IN RESPONDING TO ACCESS REQUESTS

The OIC’s assessment of a federal institution’s performance in responding to access to information requests is based on the institution’s ability to respond to requests within the timelines set out in the *Act* but also on other practices that affect timeliness, such as requesting the shortest time extensions possible. The OIC also reviewed whether each institution documented its justifications for taking time extensions.

Time extensions

The ATIP office had a moderate increase in the number of time extensions it took over the last three years, as shown in Figure 1. It is similar to the increase in the number of new requests received over the same period. The ATIP office clarified that the decision to take extensions and the determination of their length is based on a variety of factors such as the volume and complexity of requests, impact on operations, overall volume of active requests, available staff and the requirement to consult with other federal institutions or Cabinet Confidences/Counsel.

Figure 1. Number of time extensions under subsection 9(1)



The OIC was unable to assess whether these extensions were longer than those taken previously because the ATIP office did not have complete data on the length of the extensions. The ATIP office’s case management system only collects data required by TBS. However, the OIC reviewed the notices PCO, and all federal institutions, must send to the Information Commissioner under subsection 9(2) every time they take an extension beyond 30 days, to learn more about the ATIP office’s use of extensions. The OIC found that the majority (51 percent) of extensions were for 91 to 120 days, while 30 percent were for 31 to 90 days and 19 percent for more than 121 days (with 6 percent for more than 180 days).

In 2007–2008, the Information Commissioner received 216 notices of extension from the ATIP office, which represents full compliance with the requirement pursuant to subsection 9(2).

Of the 188 complaints the OIC received about the PCO ATIP office in 2007-2008, 86 were about the ATIP office’s use of time extensions. Of these 86 complaints, 16 were resolved, 5 were not substantiated, 2 were discontinued and 63 were pending. (See Table 1 in Appendix A).

Time extensions under paragraph 9(1)(b)

The number of time extensions the PCO ATIP office took under paragraph 9(1)(b) (consultations) has remained stable over the last three years. These extensions include those for consultation with Cabinet Confidences/Counsel for requests involving Cabinet confidences.

When the ATIP office sends a consultation request to another federal institution, it obtains an estimate of the response time. For consultations with institutions with large workloads, such as the Department of Foreign Affairs and International Trade (DFAIT), National Defence and PCO Cabinet Confidences/Counsel, the ATIP office verifies whether a previously recommended consultation period is still accurate. Of note is that the ATIP office usually takes a 120-day time extension under paragraph 9(1)(b) to consult with PCO Cabinet Confidences/Counsel, since there is no special arrangement between the two PCO offices to expedite review. The ATIP office reported that many of these requests, nonetheless, fall into deemed refusal status.

The ATIP office also prepares partial releases to requesters for the information not subject to the consultation requests when it is operationally feasible. Among the criteria PCO uses to determine whether it will consider partial release are pressures from the OIC, the requester or both, the amount of time required to complete the file, the lateness of the file, whether there is sufficient substance for the interim release, and whether the records are segmented in a way that disclosure can proceed on one portion while awaiting the response to consultations on the remainder.

Informal treatment of requests

The ATIP office rarely processes access requests informally. When it does, the requests tend to be for records that may be provided to the public through routine channels or information that has been previously disclosed. The PCO ATIP office reported that requesters rarely ask for requests to be treated informally, since it deprives them of their right of complain to the OIC as well as of a deadline for their request to be completed.

Delegation of authority and approvals

The OIC is concerned that the various approvals required before information is released may affect the ATIP office's ability to respond to access requests in a timely manner. However, the OIC could neither confirm nor invalidate this concern with the available data. As reported by the OIC in PCO's 2006 report card, the ATIP Director does not hold full delegation of authority to respond to requests; he or she may only invoke mandatory exemptions. Delegated authority to apply discretionary exemptions rests with the senior officials of the office of primary interest.

The PCO ATIP office indicated that delays are related to consultation requests and related approvals involved rather than its delegation structure. In 2007–2008, the ATIP office revised its processing model to establish strict timelines and clear expectations for tasking, records search and review, final review and approvals. These deadlines are communicated to employees through various tools, such as training sessions, meetings and the ATIP manual. The ATIP office reported that these strict timelines have contributed to improving timeliness.

Responding to requests for consultations from other federal institutions

The ATIP office reported that it treats consultation requests as priorities and makes every effort to respond to the consulting party within the deadline to complete the request. The ATIP office has in place procedures that explain how to conduct a consultation request.

Documenting extensions

As part of the report card questionnaire, the OIC asked federal institutions whether they documented on their request files justifications for taking extensions under subsection 9(1). The PCO ATIP office indicated that officers are expected to document the rationale for time extensions. To verify this, the OIC reviewed its investigation files for seven complaints about the PCO ATIP office's use of time extensions (the OIC closed these complaints as resolved in 2007–2008; see Table 2 in Appendix A). The OIC found that the ATIP office had indicated in the case management system at the time it processed the requests that it had taken extensions for them but did not necessarily document the justifications for taking them in every case. The ATIP office clarified that under its new access requests procedures, justifications for extensions are consistently recorded by ATIP officers.

2. CABINET CONFIDENCES/COUNSEL

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Workload

- Increase in the volume, scope and complexity of requests for consultation
- Team of only 15–20 employees available to manage consultation requests on Cabinet confidences and carry out many other functions, such as drafting legislation, reviewing security and intelligence issues and participating in commissions of inquiry
- Difficulty to recruit qualified and experienced staff to deal effectively with consultation requests
- Receipt of large volume of records not related to Cabinet confidences

Training

- Insufficient training of federal institutions' ATIP office staff and consultants on processing requests for consultations about records involving Cabinet confidences to improve the quality of material sent and the timeliness of responses

Records management

- Large volume of records to review due to improper disposal of transitory records

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Process

- Strictly enforced TBS's policy requiring that consultation requests sent to Cabinet Confidences/Counsel go through institutions' Justice Legal Counsel

Training

- Provided regular training sessions to institutions to improve the quality of material sent as well as the timeliness of responses

BY THE NUMBERS

Cabinet Confidences/Counsel supports the Clerk of the Privy Council in its role of the custodian of the Cabinet confidences of all prime ministers. In 2007–2008, it received 1,807 consultation requests, equaling 140,773 pages to be reviewed.

In 2007–2008, Cabinet Confidences/Counsel completed 2,087 consultation requests files, for a total of 148,259 pages.

Table 3 provides a breakdown of the time taken by Cabinet Confidences/Counsel to complete and return these files from their date of receipt. This indicates that 60% of these files are completed and returned to the institutions within 90 days. These numbers seem to be consistent with data obtained from institutions consulted during this report card process about the average response time for consultation requests with Cabinet Confidence/Counsel (not available for all institutions).

Table 3. Response time for consultation requests received by Cabinet Confidences/Counsel in 2007-2008

Less than seven days	8-90 days	91-180 days	more than 180 days	Total
358	943	475	311	2,087
17%	43%	23%	15%	100%

ASSESSMENT OF PERFORMANCE IN RESPONDING TO CONSULTATION REQUESTS

The main criticism expressed by the federal institutions about mandatory consultations on records involving Cabinet confidences is how long it takes Cabinet Confidences/Counsel to respond. These delays make it particularly difficult for federal institutions to evaluate accurately the time extensions required to complete the consultation requests, and there is great frustration among institutions about having requests fall into deemed refusal status as a result of inaccurate estimates. On the other hand, Cabinet Confidences/Counsel reported that the time required for review is difficult to evaluate and that too often they receive the packages from institutions a few days before the deadline expires or once it has expired.

All institutions surveyed during the report card process, including the PCO ATIP office, reported that delays in the treatment of requests for consultation on records involving Cabinet confidences negatively affect their ability to respond to requesters on time. Cabinet Confidences Counsel plays a key role in the access to information system, since federal institutions must consult with this group to exclude information under section 69 of the *Access to Information Act*. Consequently, PCO bears added responsibility to ensure that its practices do not unduly affect the workings of the system.

Cabinet Confidences/Counsel acknowledged that the time required to process consultations has grown due to the volume, size and complexity of files as well as a result of court decisions. However, Cabinet Confidences/Counsel also argues that incomplete consultation packages submitted by federal institutions contribute to the delay.

At the end of this year's report card review period (January 2008), Cabinet Confidences Counsel issued a document entitled Procedures for the Review of Documents for the Application of section 69 of the *Act* and section 70 of the *Privacy Act*. These procedures are aimed at enforcing the Treasury Board Guidelines of 1993 on the review of Cabinet confidences and the requirement to consult Cabinet Confidences/Counsel through departmental Justice legal counsel. Cabinet Confidences/Counsel reported that these procedures have had a positive impact on the review of the document.

Cabinet Confidences/Counsel has recognized the importance of, and is engaged in, providing training to institutions' ATIP office staff to improve the quality of the material submitted and, in turn, improve timeliness in responding to these requests.

OIC'S RECOMMENDATIONS AND THE INSTITUTION'S RESPONSE

1. **The Clerk of the Privy Council should closely monitor all the activities related to access to information for which he or she is responsible for, including ATIP office operations and consultations with Cabinet Confidences/Counsel, and report to Parliament on these activities under section 72 of the *Access to Information Act*.**

Response

The Privy Council Office exercises senior oversight on all internal access to information activities. The Director, Access to Information and Privacy briefs the Assistant Deputy Minister, Corporate Services weekly on operational issues. PCO Executive Committee is briefed on ATIP issues regularly during the year. As part of our broader commitment to accountability, the PCO Access to Information Delegation Order was renewed on June 13, 2008 to reflect the government of the day, and the 2007–2008 PCO Annual Report to Parliament on the *ATI Act* was expanded in content. The Director, Cabinet Confidences/Counsel, briefs regularly the Deputy Secretary to the Cabinet, Legislation and House Planning, Machinery of Government and Counsel to the Clerk of the Privy Council, on operational issues in relation to consultations for the application of section 69 of the *Access to Information Act*.

2. **PCO should have a dedicated team and allocate adequate resources on a permanent basis to Cabinet Confidences/Counsel, to avoid undue delay in processing requests for consultations for records involving Cabinet confidences.**

Response

PCO allocates the necessary resources to Cabinet Confidences, but recruitment of qualified and experienced staff is an ongoing challenge as in any other organization. Senior positions have been filled on an indeterminate basis in the last year. There are vacant positions at the intermediate level but several remain unfilled due to scarcity of qualified and experienced staff.

3. **The PCO ATIP office and Cabinet Confidences/Counsel should develop a protocol to elaborate on their respective responsibilities relating to PCO's mandatory obligations to report to Parliament on the *Access to Information Act*, especially with regards to Cabinet Confidences/Counsel review of consultation requests received from other federal institutions about records involving Cabinet confidences.**

Response

PCO disagrees. The responsibilities of these divisions are well understood by all areas of PCO. The PCO internet site hosts a description of the Secretariats in the document entitled “The Role and Structure of the Privy Council Office.” The ATIP Office and Cabinet Confidences/Counsel are two distinct divisions with different roles and responsibilities. While the ATIP Office is the focal point for access to information and privacy within PCO, Cabinet Confidences/Counsel is the primary point of contact with all federal departments and agencies regarding issues involving Cabinet confidences, including the review under s. 69 of the *Access to Information Act* (ATIA), of documents requested from all departments and agencies, including PCO, to determine whether there are Cabinet confidences in those documents that should be protected from disclosure. That role as it relates to the application of s. 69 of the ATIA is defined in the Treasury Board (TB) Guidelines on the review of Cabinet confidences, which were approved by Ministers in 1993. In January of 2008, PCO issued the Procedures for the Review of Documents for the application of s. 69 of the *Access to Information Act* and s. 70 of the *Privacy Act* (copies of these procedures were sent to the OIC, the Office of the Privacy Commissioner, Departmental Legal Services Units and the Treasury Board Secretariat). These procedures were aimed at enforcing the TB Guidelines in order to ensure that departments receive the necessary legal support in relation to the exclusion of Cabinet confidence information from the ATIA. Note that the TB Policy was enforced on the advice and with the encouragement of the OIC.

4. **PCO should review the Delegation Order to determine how further delegation can be made to both the ATIP coordinator and to team leaders in the ATIP Division.**

Response

It is the position of ATIP Division that PCO’s delegation of authority and approval process do not affect its ability to respond to access requests in a timely manner. In ATIP Division experience, PCO Offices of Primary Interest carry out their functions promptly, and treat ATIP responsibilities seriously. The OIC did not provide evidence to support the statement that the existing delegation of authority affects timeliness.

5. **The ATIP office should enable the case management system to track and report on statistical data, as requested in the OIC’s 2007–2008 report card questionnaire.**

Response

The OIC 2007-2008 Report Card Questionnaire contains newly added questions, particularly on consultations and extensions, which PCO could not anticipate. Many of the new questions require calculations that cannot be extracted from ATIP Division’s case management software. While every effort is made to meet the OIC requirements, PCO ATIP office – and all government organizations subject to the Act – deserve advance notice from the OIC on format changes and what criteria will be added or expanded, so that they can be met.

6. **The ATIP office should review the current timelines in place and track more systematically the average time actually taken to complete each stage of the access process to ensure requests are responded to in a timely manner.**

Response

Tracking of average actual days taken to complete each stage of processing requests is limited by current case management software. An upgrade to Public Works and Government Services Canada - approved software has been delayed approximately 14 months by the failure of the manufacturer to meet operational requirements. ATIP Division expects improved reporting capability when this migration is complete.

7. **The ATIP office should establish strict timelines for all stages of the access process, including all approvals.**

Response

In the spring of 2007, ATIP Division work processes were reviewed and streamlined as part of a broader restructuring and renewal of the organization. The review indicated that performance delays were related to the consultative and approval processes involved, rather than the delegation structure. As a result, a strict five-stage timeline was established, based on working days versus calendar days, and giving clear expectations as to time allotted for tasking, records search and review, final review and approvals. These deadlines are laid out in training sessions, meetings, handouts, in the Divisional procedures manual and on the PCO Intranet. The strict timelines established have resulted in significant improvements in performance. In FY 2007–2008, PCO improved its on-time performance to 91%, an improvement of 15% over the previous FY.

8. **The ATIP office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.**

Response

As part of new procedures established by ATIP Division, justifications for extensions are consistently documented.

9. **Cabinet Confidences/Counsel, in collaboration with the Office of the Information Commissioner, should develop a tool to assess their operations as they relate to the mandatory consultations on the review of Cabinet confidences pursuant to section 69 of the *Access to Information Act*.**

Response

PCO understands that this recommendation is made in the context of a systemic review of the scope of the consultation process and its impacts on the access to information in general. In the past years, Cabinet Confidences/Counsel has developed various tools measuring its operational activities. These tools are updated as necessary and can be further developed to achieve different purposes within parameters which would remain reasonable taking into account the roles and mandates of PCO respective offices.

PRIVY COUNCIL OFFICE

Appendix A. Complaints to the Office of the Information Commissioner

Table 1. Complaints received in 2007–2008

(These complaints may refer to requests made prior to 2007-2008)

OIC findings, as of November 27, 2008					
Category of complaint	Received in 2007–2008	Resolved	Not substantiated	Discontinued	Pending
Refusal to disclose (exemption/exclusion)	37	0	1	5	31
Cabinet confidence exclusion	75	1	15	46	13
Delay (deemed refusal)	5	2	0	2	1
Time extension	86	16	5	2	63
No records/incomplete search	29	3	2	0	24
Fees	1	0	0	0	1
Miscellaneous	12	0	1	0	11
Total	245**	22	24	55	144

**This figure includes 188 complaints about the performance of the ATIP office and 57 about the exclusion of records involving Cabinet confidences directed at CCC. In October 2008, OIC stopped notifying PCO ATIP office about the latter.

Table 2. Complaints closed in 2007–2008

(Including new complaints received in 2007–2008 and those from previous years)

OIC findings as of March 31, 2008				
Category of complaint	Closed in 2007–2008	Resolved	Not substantiated	Discontinued
Refusal to disclose (exemption/exclusion)	2	1	1	0
Cabinet confidence exclusion	48	20	20	8
Delay (deemed refusal)	10	9	0	1
Time extension	13	11	1	1
No records/incomplete search	7	1	6	0
Fees	0	0	0	0
Miscellaneous	0	0	0	0
Total	80	42	28	10

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

Overall performance in 2007–2008

Below average: 2 stars

The performance of Public Works and Government Services Canada (PWGSC) in responding to access to information requests declined in 2007-2008. Despite receiving fewer new requests, it saw a large increase in the number of pages reviewed compared to 2005-2006. It has also faced high staff turnover in 2007–2008. Despite this, it was successful in significantly reducing its carry-over of requests from previous years, particularly of deemed refusals as a percentage of the whole (from 33 percent to 14 percent).

In 2007-2008, PWGSC completed approximately two-thirds of the new requests it received within 30 days but given the backlog of cases, the average completion time for a request was 126 days.

There has also been some concern about the security of information after PWGSC discovered in the first half of 2007–2008 that records that were exempted had been inadvertently released due to a technical problem, which has since been corrected.

Finally, PWGSC has developed a Three-year ATIP Improvement Plan to improve its performance in terms of compliance with the *Access to Information Act* and started its implementation in the last quarter of the review period. The elements of this plan are promising. As a first stage, as noted above, PWGSC has significantly reduced its backlog of requests. As most of the elements of the plan are intended to be put into action after the end of the review period, the Office of the Information Commissioner (OIC) is hopeful that, should PWGSC continue the implementation of the plan as proposed, and implements the recommendations contained in this report card, its performance should significantly improve in 2008-2009.

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

Factors considered in assessment of overall performance

Workload

- Moderate decrease in the number of requests received (-30 percent) but a significant increase in the number of pages reviewed (46 percent)

Completion time for new requests

- Within the statutory timelines: 76 percent
- Within 30 days: 60 percent
- Average: 126 days

Carry-over of requests

- Significant decrease in the carry-over of requests

Time extensions

- 53% of new requests are extended pursuant to subsection 9(1)
- Length of time extensions: majority are for fewer than 90 days
- Compliance with subsection 9(2) (notice of extension): 79%

Deemed refusals

- 22.6 percent of new and carried-over requests fell into deemed refusal status (**grade: F**)

Consultation requests received from other federal institutions

- Consultation requests treated as priorities and completed within 24 days on average

Consultation requests sent to other federal institutions

- Prepares partial releases of information for requests requiring consultations with other federal institutions and with third parties

Process

- *Needs improvement.* PWGSC needs to take steps to avoid delays (6–11 days on average) in the processing of access requests categorized as “Interesting” and “High Profile”
- Prepares partial releases of information while processing large requests or in response to complaints to the Office of the Information Commissioner (OIC)

Senior management leadership

- PWGSC proposed a three-year ATIP Improvement Plan to improve PWGSC’s performance under the Act

Complaints

- The OIC received 54 complaints (out of 849 requests processed or 6 percent) about PWGSC’s handling of requests

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

Public Works and Government Services Canada (PWGSC) has never achieved full compliance with the *Access to Information Act* in terms of responding to access requests in a timely manner, although it has improved until 2006 its rating considerably since receiving a failing grade in 2002. In the last quarter of 2006-2007, PWGSC experienced a decline in its capacity to respond to access requests which significantly increased the number of requests carried over into 2007-2008.

Table 1. Compliance history

	2002	2003	2004	2005	2006	2007–2008
Percentage of deemed refusals (delays beyond the statutory timelines)	–	–	17.7%	7.3%	9.7%	22.6%
Grade	F	C	D	B	B	F

The following sets out PWGSC's key performance-related challenges and actions in 2007–2008, provides baseline information about PWGSC's access to information activities that year and analyzes various factors to come to an overall performance assessment on a scale of five stars. The report concludes with several recommendations and PWGSC's response to them.

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Workload

- Carry-over of requests in deemed refusal status (those delayed beyond the timelines in the *Act*)
- Heavy workload related to requests and consultations
- Requests filed in bulk by individual requesters

Human resources

- High employee turnover
- Lack of experienced access to information specialists
- Training requirements
- Overly lengthy staffing process, which saw successful candidates receive offers from other federal institutions before receiving PWGSC's offer

Records management and IT

- Security incident related to the inadvertent release of information due to a technical problem in the creation of a release package in electronic format
- Lack of space for current files in the access to information office due to accumulation of files from previous years.

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Human resources

- Hired consultants to process files
- Created an additional manager position to share workload

Three-year ATIP Improvement Plan (implemented in November 2007; see Appendix B for more details)

- Reduce the backlog of late requests
- Increase the number of employees and organizational capacity
- Improve performance monitoring and productivity
- Improve the workplace environment
- Upgrade IT infrastructure
- Get additional funding approved

BY THE NUMBERS

In 2007–2008, PWGSC’s access request workload decreased compared to 2005–2006, as shown in Table 2. However, there was a significant increase in the number of pages the institution reviewed over that same period.

Table 2. Requests received and completed, and number of pages reviewed

	2005– 2006	2006– 2007	2007– 2008	Change from 2005–2006
Requests received	832	869	586	-30%
Requests completed	809	815	700	-13%
Number of pages reviewed for completed requests	295,421	329,691	431,980	+46%
Average number of pages reviewed per completed request	365	405	617	+69%

PWGSC received 586 new requests in 2007–2008 and carried over 263 requests from 2006–2007 (of which 86 were deemed refusals – requests delayed beyond the times set out in the *Act*), for a total of 849 requests. It completed 76 percent of the new requests within the timelines set out in the *Act* either within 30 days or within the extended timelines listed in section 9. It completed approximately 60 percent within 30 days. PWGSC reported that it took 126 working days on average to complete a request.

PWGSC made significant progress in reducing its carry-over of requests from 2006–2007. However, PWGSC’s deemed refusal ratio (the percentage of new requests and requests carried over from 2006–2007 that fell into deemed refusal status during the year) is 22.6 percent. This earned PWGSC a grade of F on the scale that the Office of the Information Commissioner (OIC) used for many years to rate institutions’ performance but is phasing out this year.

The OIC received 54 complaints against PWGSC in 2007–2008 of which 12 were about deemed refusals. Of these 12 complaints, 9 were resolved (meaning that the OIC found the complaints to have merit and that the institution resolved them to the Commissioner’s satisfaction), 2 were discontinued and 1 is pending (See Table 1 in Appendix A).

In addition to access requests, PWGSC received 276 requests for consultations from other federal institutions, which added 24,801 to the number of pages to review (equal to about five percent of the total page count for the year).

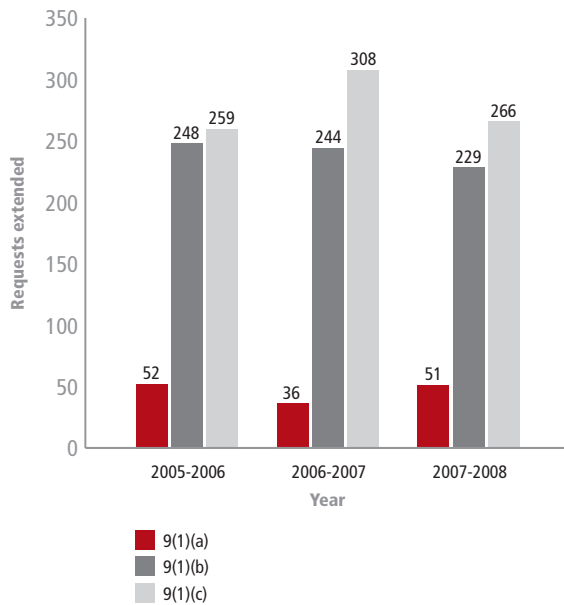
ASSESSMENT OF PERFORMANCE IN RESPONDING TO ACCESS REQUESTS

The OIC’s assessment of a federal institution’s performance in responding to access to information requests is based on the institution’s ability to respond to requests within the timelines set out in the *Act* but also on other practices that affect timeliness, such as requesting the shortest time extensions possible. The OIC also reviewed whether each institution documented its justifications for taking time extensions.

Time extensions

Taking the three categories in subsection 9(1) into account, since some requests may be subject to more than one reason for the extension, PWGSC extension profile remained relatively the same over the previous years, as shown in Figure 1. In 2007–2008, PWGSC extended 53% percent of the new requests it received.

Figure 1. Number of time extensions under subsection 9(1)



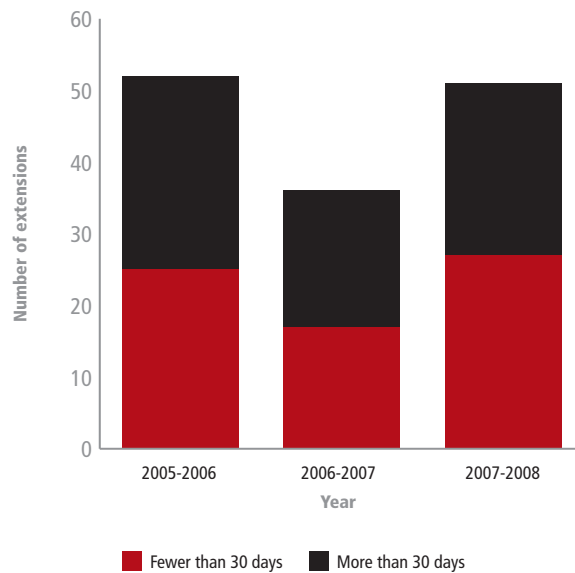
PWGSC case management system could not generate detailed information about the length of the time extensions it took in each of the three categories listed in subsection 9(1) (see Figures 2, 3 and 5), giving instead figures for two broad time frames: “less than 30 days” and “more than 30 days.” However, all categories together, 60% of extensions are for 30 to 90 days and 27% for 91 days to 120 days. The OIC reviewed the notices PWGSC, and all federal institutions, must send the Information Commissioner under subsection 9(2) every time they take an extension beyond 30 days to learn more about the ATIP office’s use of extensions. The OIC corroborated these numbers.

In 2007–2008, the Information Commissioner received 211 notices of extension from PWGSC for 266 requests extended beyond 30 days. This represents a 79 percent rate of compliance with subsection 9(2).

Time extensions under paragraphs 9(1)(a)

The number of new requests for which PWGSC took time extensions under paragraph 9(1)(a) (searches for large volumes of requests and interference with the operations of the institution) remained stable compared to 2005–2006, as shown in Figure 2.

Figure 2. Length of time extensions under paragraph 9(1)(a)

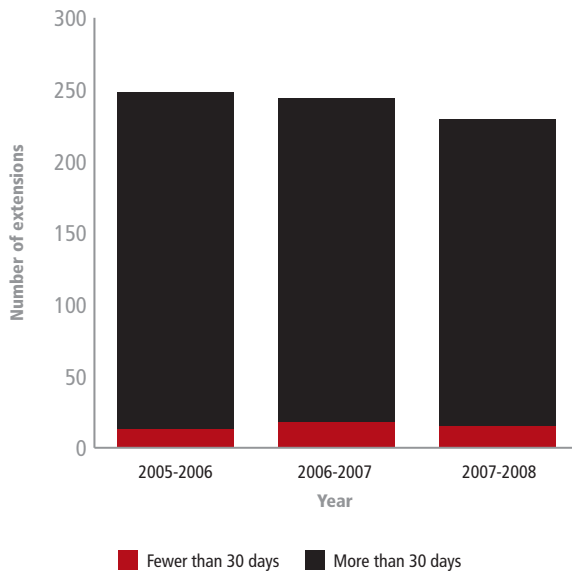


PWGSC bases the length of extensions on an estimate of the time required for search, the volume of records or both. The offices of primary interest are responsible for informing the access to information office, as quickly as possible whether the retrieval process will interfere with their operations. The access to information office then takes necessary time extensions and notifies the requesters.

Time extensions under paragraphs 9(1)(b)

The number of new requests for which PWGSC took time extensions under paragraph 9(1)(b) (consultations) remained stable compared to 2005–2006, as shown in Figure 3.

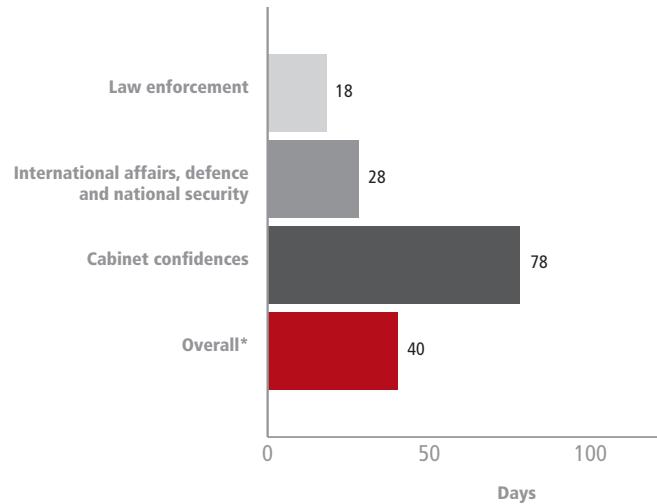
Figure 3. Length of time extensions under paragraph 9(1)(b)



PWGSC bases the length of these extensions on various factors, such as the volume of records and the number and type of organizations to be consulted. The vast majority of the time extensions PWGSC took were for more than 30 days. Through its review of PWGSC’s notices of extension, the OIC found that the majority of the extensions were for 31 to 90 days, followed by 91 to 120 days.

PWGSC reported that it is difficult to accurately evaluate the length of the time extensions required to complete consultation requests sent to other federal institutions. Consequently, it runs the risk of requests falling into deemed refusal status if the consultation requests are not completed within the anticipated time. On average, it took 40 days to receive a response to consultation requests and 78 days on average to receive a response from the Privy Council Office on consultation requests related to records involving Cabinet confidences (see Figure 4).

Figure 4. Average response time for consultation requests sent to other federal institutions in 2007-2008

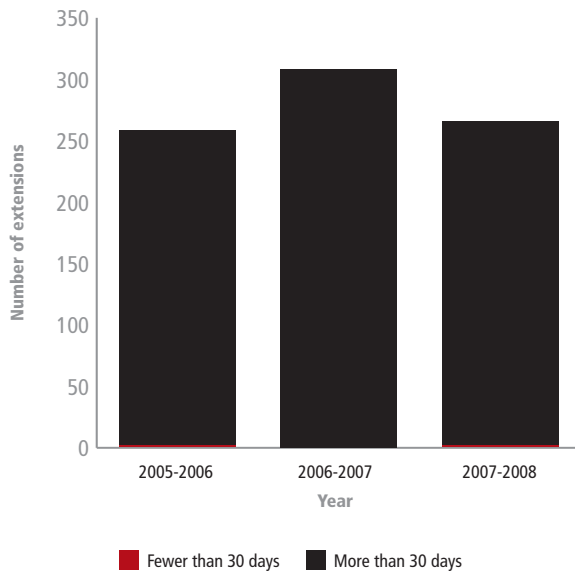


*“Overall” refers to the average response time for all consultation requests, which includes more than just those shown here.

Time extensions under paragraph 9(1)(c)

The number of new requests for which PWGSC took time extensions under paragraph 9(1)(c) (consultations with third parties) remained stable compared to 2005–2006, as shown in Figure 5. Due to the nature of information over which PWGSC has control, including commercially sensitive information, it has to consult with third parties regularly when processing access requests. PWGSC reported that consultations with third parties cause delays, since there are few incentives for third parties to respond within a reasonable time. The fact that all the extensions PWGSC took under paragraph 9(1)(c) in 2007–2008 were for more than 30 days supports this statement, particularly since the Act allows 50 days for third-party consultations. Through its review of PWGSC’s notices of extension, the OIC found that the majority of the extensions were for 31 to 90 days, followed by 91 to 120 days.

Figure 5. Length of time extensions under paragraph 9(1)(c)



In the interests of client service, PWGSC considers preparing partial releases of information when extensions for consultations with other federal institutions or third parties are for a long period or when the due date is not likely to be met. PWGSC also prepares partial releases when processing large requests or in response to a complaint to the OIC. PWGSC also noted that they inform requesters that additional records may be forthcoming resulting from outstanding consultations, that they will be informed of the

outcome of the consultations, and that they have the right to complain to the OIC at each step of the process. The OIC recommends that PWGSC prepare partial release as early in the process as possible.

Of the 54 complaints the OIC received about PWGSC in 2007–2008, 15 were about PWGSC’s use of time extensions. Of these 15 complaints, 7 were resolved, 1 was not substantiated and 7 are pending. See Table 1 in Appendix A.

Proactive disclosure

PWGSC access to information office provides an informal review service to various organizations with PWGSC – most frequently the human resources, audit and evaluation and real property branches – to help them respond more quickly to inquiries, in particular, requests for internal audit reports.

Categorizing requests

PWGSC systematically categorizes each request it receives into one of three categories: “Routine” (regular requests; 59 percent or 348 requests in 2007–2008), “Interesting” (sensitive or of interest to the Deputy Minister’s and Minister’s offices; 39 percent or 232 requests) and “High Profile” (highly sensitive and may require preparation of communications products; 2 percent or 6 requests).¹⁶ “Interesting” requests are allotted five calendar days in PWGSC’s processing model for review by the Deputy Minister’s and Minister’s offices, while seven calendar days is allowed for review of “High Profile” requests. The number of days allocated have changed to 6 working days in 2008-2009. PWGSC reported that 60.6 percent of the “Interesting” and “High Profile” requests were reviewed by senior management within the five to seven days allowed.

Note:

16 The findings of OIC’s investigation into a complaint filed by the Canadian Newspaper Association against all federal institutions regarding the existence of special rules for processing requests from the media cover the period between April 1, 2003 and March 31, 2005. During this investigation, OIC identified PWGSC as one of the institutions that labelled access requests as “sensitive.”

For those that were not reviewed within the allotted time, it took an average of 6.1 and 11.4 days, respectively, in 2007–2008 to review them. However, PWGSC stated that for most of these requests, they were either completed on time or had already fallen into deemed refusal status. For a small portion of these requests, the categorization delayed the release of information such that it was late.

PWGSC also reported that categorizing requests as “Interesting” and “High profile” is done primarily on a case-by-case basis but occasionally to a specific type or category of request, such as those related to sponsorship during the sponsorship scandal.

The OIC’s view is that the whole review process associated with “Interesting” and “High Profile” requests should not in any way delay the process.

ATIP Improvement Plan

In November 2007, PWGSC has initiated a three year ATIP Improvement Plan to address its performance in responding to access requests within the statutory timelines of the *Access to Information Act*. PWGSC reported that it plans to implement specific initiatives in 2008–2009 and to achieve an outstanding performance in 2008–2009. The plan has five key components: (1) reduction of the backlog of late requests; (2) increase of human resource and organizational capacity; (3) improvement in the monitoring of performance and productivity; (4) upgrade in IT infrastructure; and (5) improvements in workplace environment. The OIC views this plan as a strong step in the right direction and, if implemented as planned, will yield positive results.

Recruitment and training

Recruitment and training of access to information office staff continue to be challenging for PWGSC. PWGSC staff reported that initiatives to improve performance that were put in place in previous years have proven ineffective. For example, the ATIP Development Program, intended to facilitate the recruitment of two candidates with post-secondary education per year, has been in place since October 2006 but has yielded minimal results, since the staffing actions to hire new recruits under this program were delayed due to other priorities. Similarly, the Training Team devoted to training and mentoring new employees and junior ATIP staff was deemed ineffective and discontinued because the training was not structured. A revised ATIP Development Program is currently being developed as part of the ATIP Improvement Plan. It will require all employees enrolled in the Program to graduate from the University of Alberta ATIP Certification Program. PWGSC has also offered staff to take this course on a voluntary basis.

Responding to requests for consultations from other federal institutions

PWGSC reported that it processes consultation requests from other federal institutions as soon as it receives them, completing within 24 days on average.

Documenting extensions

As part of the report card questionnaire, the OIC asked federal institutions whether they documented on their request files justifications for taking extensions under subsection 9(1). PWGSC reported that access to information officers are not systematically documenting in the case management system the justifications for the time extensions or the factors taken into consideration. To verify this, the OIC reviewed its investigation files for nine complaints about PWGSC’s use of time extensions (the OIC closed these complaints as resolved in 2007–2008; see Table 2 in Appendix A). The OIC found that PWGSC indicated in the case management system at the time it processed the requests that it had taken extensions for them but did not necessarily document the justifications for taking them in every case.

OIC'S RECOMMENDATIONS AND THE INSTITUTION'S RESPONSE

1. **PWGSC should cease immediately to delay the processing of requests categorized as “Interesting” or “High Profile” and should measure the actual time it takes to complete these requests and any resulting delays.**

Response

The Department has put in place procedures for not delaying the processing of access to information requests, including those that are categorized as “Interesting” and “High Profile.”

To that effect, a new practice was adopted to allocate 6 working days for the review of these requests by the Assistant Deputy Ministers, the offices of the Deputy Minister and the Minister. Compliance with the policy is monitored by the ATIP Directorate and is regularly reported on to the department’s senior management.

2. **The PWGSC Access to Information and Privacy (ATIP) office should implement measures for data entry and/or reporting in the case management system to track the length of time extensions taken for more than 30 days, as requested in the OIC 2007–2008 report card questionnaire.**

Response

The case management system, Access Pro Case Management (APCM), does track the length of time extensions over 30 days, but the specific data requested could not be generated. A manual count would have been required.

Due to the nature of PWGSC’s mandate extension of the time limit set out in the Act is required in several cases, since consultations with client departments and third parties are necessary because the records generally relate to procurement-related activities and contain commercially sensitive information of the third parties.

The ATIP Directorate will contact the vendor to explore the possibility of having new reports created in order to be able to generate the specific data requested by the OIC with respect to time extensions.

3. **PWGSC should fully implement the initiatives set out in its ATIP Improvement Plan during the next review period, or be at least well advanced in their implementation, and be able to demonstrate the progress made and results achieved.**

Response

The PWGSC ATIP Directorate will continue to implement the initiatives set out in the ATIP Improvement Plan during 2008–2009 and 2009–2010.

PWGSC have provided to the OIC (see Appendix B) a status report detailing the activities undertaken/to be undertaken as part of the ATIP Improvement Plan with the timelines for their completion.

- 4. The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.**

Response

The ATIP Directorate will follow this recommendation and put in place procedures to ensure that it be done in all cases.

- 5. The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.**

Response

The PWGSC ATIP Directorate has procedures in place to that effect. The time extension notice template includes a copy to the Information Commissioner. The ATIP Directorate will remind its staff of the statutory requirement to notify the Information Commissioner of all extensions taken beyond 30 days, and will ensure that the notices are sent.

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

Appendix A. Complaints to the Office of the Information Commissioner

Table 1. Complaints received in 2007–2008

(These complaints may refer to requests made prior to 2007-2008)

OIC findings, as of November 27, 2008					
Category of complaint	Received in 2007–2008	Resolved	Not substantiated	Discontinued	Pending
Refusal to disclose (exemption/exclusion)	16	0	2	1	13
Cabinet confidence exclusion	1	0	1	0	0
Delay (deemed refusal)	12	9	0	2	1
Time extension	15	7	1	0	7
No records/incomplete search	5	0	1	0	4
Fees	2	0	0	2	0
Miscellaneous	3	1	0	0	2
Total	54	17	5	5	27

Table 2. Complaints closed in 2007–2008

(Including new complaints received in 2007–2008 and complaints from previous years)

OIC findings as of March 31, 2008				
Category of complaint	Closed in 2007–2008	Resolved	Not substantiated	Discontinued
Refusal to disclose (exemption/exclusion)	17	9	5	3
Cabinet confidence exclusion	1	0	1	0
Delay (deemed refusal)	5	5	0	0
Time extension	9	9	0	0
No records/incomplete search	13	4	6	3
Fees	0	0	0	0
Miscellaneous	4	0	2	2
Total	49	27	14	8

Appendix B. PWGSC ATIP Improvement Plan Strategies

Activity	Target Dates		Status	Date Completed
	Start	Completion		
I. REDUCE BACKLOG OF LATE REQUESTS				
<ul style="list-style-type: none"> Clear backlog 	Jan 2008	March 31/08	<ul style="list-style-type: none"> Backlog of late requests successfully reduced (155,400 pages reviewed), positioning the Department to achieve a 95% compliance in 2008-2009 	March 31/08
II. INCREASE HUMAN RESOURCE AND ORGANIZATIONAL CAPACITY				
Increase Number of ATIP Consultants				
<ul style="list-style-type: none"> Hire two ATIP consultants to work on the backlog 	Dec 2007	Dec 2007	<ul style="list-style-type: none"> Call-ups issued for 2 new consultants 	Dec 17/07
<ul style="list-style-type: none"> Extend two ATIP consultants to work on the backlog 	Dec 2007	Jan 2008	<ul style="list-style-type: none"> Call-ups for 2 consultants extended until end of March 2008 	Jan 04/08
<ul style="list-style-type: none"> Hire seven ATIP consultants through competitive contracts and temporary help services (THS) 	Dec 2007	March 2008	<ul style="list-style-type: none"> 7 consultants hired under THS and 2 competitive contracts awarded in March 2008 (include above 4 consultants) Two additional consultants hired in June and July 2008. 	Apr 07/08
Increase Number of PM-04 ATIP Officers				
<ul style="list-style-type: none"> PM-04 Competition #1 for 6 positions <ul style="list-style-type: none"> Hire staffing consultant Develop evaluation tools Evaluate candidates Appoint successful candidates 	Jan 2008 Jan 2008 March 2008 April 2008	Jan 2008 Feb 2008 March 2008 April 2008	<ul style="list-style-type: none"> Competition advertised in Dec 2007 and closed Jan 28, 2008 Evaluation tools developed in March 2008 Candidates evaluated in May and June <ul style="list-style-type: none"> 4 successful candidates 3 hired and 1 declined offer 	June 30/08
<ul style="list-style-type: none"> PM-04 Competition #2 for 5 positions <ul style="list-style-type: none"> Hire staffing consultant Develop evaluation tools Evaluate candidates Appoint successful candidates 	March 2008 March 2008 May 2008 June 2008	March 2008 April 2008 May 2008 June 2008	<ul style="list-style-type: none"> Competition advertised and closed in June 2008 Staffing consultant hired in July 2008 Evaluation tools being developed 	
<ul style="list-style-type: none"> Cyclical Staffing <ul style="list-style-type: none"> PM-02 Competition for 2 positions PM-03 Competition for 3 positions CR-04 Competition for 3 positions 	May 2008	Dec 2009	<ul style="list-style-type: none"> Competitions advertised and closed in June and August 2008 Evaluation tools being developed by staffing consultant 	
Organizational Review of the ATIP Directorate				
<ul style="list-style-type: none"> Organizational Review <ul style="list-style-type: none"> Award of Contract Review and Analysis Submission of Report 	Jan 2008 Jan 2008 March 2008	Jan 2008 March 2008 March 2008	<ul style="list-style-type: none"> No proposals received from THS consulting firms MOU signed with Government Consulting Services (GSC) in May 2008 Interviews and survey of staff completed in May and June 2008 Benchmarking exercise with other federal institutions conducted in July and August 2008 Draft report submitted in September 2008 	
<ul style="list-style-type: none"> Development and implementation of new organizational design, including best practices 	March 2008	May 2008	<ul style="list-style-type: none"> Not yet initiated 	

Activity	Target Dates		Status	Date Completed
	Start	Completion		
ATIP Officer Training and Development				
<ul style="list-style-type: none"> University of Alberta ATIP Certification Program 	Sept 2008	Ongoing	<ul style="list-style-type: none"> Included in Individual Learning Plans completed in May 2008 11 ATIP officers registered to the winter session 	Ongoing
<ul style="list-style-type: none"> Revised ATIP Development Program 	April 2008	June 2008	<ul style="list-style-type: none"> Program revised to integrate existing and new ATIP Officers at the PM-01 to PM-03 levels. Revised program submitted to HR for review and comments May 1, 2008 HR comments incorporated and resubmitted to HR for final review and approval June 23, 2008 ATIP Development Program approved Dec. 15, 2008 As a result, ongoing processes for the PM-2 and PM-3 and selected candidates will be part of the program 	Dec 2008
III. IMPROVE PERFORMANCE MONITORING AND PRODUCTIVITY				
<ul style="list-style-type: none"> New "Zero Tolerance" Policy 	Jan 2008	Jan 2008	<ul style="list-style-type: none"> Policy presented at the Departmental Policy Committee (DPC) July 14, 2008 and immediately implemented Policy will be incorporated in Departmental Policy 002 on ATIP, which will be revised by March 31, 2009 	July 14/08
<ul style="list-style-type: none"> Delegation of Authority 	April 2008	June 30/08	<ul style="list-style-type: none"> Proposal for ATIP Delegation of Authority to ATIP Chiefs and ATIP Officers sent to Finance in Aug 2008 to obtain Minister's approval. 	
Performance Reporting to Senior Management				
<ul style="list-style-type: none"> ATIP Weekly Report 	Feb 2008	Weekly	<ul style="list-style-type: none"> Projected yearly compliance and number of cases per officer provided in ATIP Weekly Report to ADM-CSPCB and DMO 	Ongoing
<ul style="list-style-type: none"> OPI Compliance for Document Retrieval 	Feb 2008	Quarterly	<ul style="list-style-type: none"> 2007-2008 OPI compliance completed in June 2008 and presented at DPC July 14, 2008 OPI compliance for 1st quarter of 2008-2009 completed in Aug 2008 OPI compliance for 2nd quarter of 2008-2009 completed in Nov 2008 Mid-Year statistics will be presented at DPC in Jan/Feb 2009 	Ongoing
<ul style="list-style-type: none"> Senior Management Compliance for the Interesting Requests Process 	Feb 2008	Semi-annually	<ul style="list-style-type: none"> Mid-Year compliance for 2008-2009 will be presented at DPC in Nov 2008. 	Ongoing

Activity	Target Dates		Status	Date Completed
	Start	Completion		
Review of all ATIP policies, procedures, and training material				
• Interesting Requests Process	May 2008	June 30/08	• DMO and MO proposed change in April 2008 to include ADM review in the Interesting Request Process • Improved presented at DPC July 14, 2008 and immediately implemented	July 14/08
• Departmental Policy (DP) 002 on ATIP	Nov 2008	March 2009	• DP 002 to be revised to be in line with TBS Directives on ATIP expected to be implemented by April 1, 2009.	
• DP 014 on Protection of Personal and Private Information in the Workplace	Sept 2008	March 2009	• DP 014 reviewed and revised to reflect PWGSC organizational changes; no further modifications required.	Oct 07/08
• DP on PIA	Nov 2008	March 2009	• DP on PIA to be revised to be in line with TBS Directive on PIA expected to be implemented by April 1, 2009	
• ATIP Training for PWGSC Employees	Dec 2008	March 2009		
• ATIP Liaison Training	Dec 2008	March 2009		
• ATIP Security Manual	April 2009	March 2010		
• ATIP Officer Procedures	April 2009	March 2010		
• ATIP Liaison Handbook	April 2009	March 2010		
IV. UPGRADE IT INFRASTRUCTURE				
• New Computer equipment	Jan 2008	March 31/08	• New computers purchased Jan 2008	
• APCM – Electronic ATIP Request Tracking System Upgrade - Improve Correspondence Function - Enhance Statistical Reporting Capability and User Functionality		Dec 2007 June 2008	• Completed Jan 16, 2008 • Several versions of APCM tested between April and September and rejected as there were critical failures • New version being tested and scheduled for implementation in Jan 2009	
• Laserfiche – Electronic Document Imaging System Upgrade – Upgrade to v.7.2 to address user and security concerns		June 2008	• Testing completed in May 2008 • To be implemented in Jan 2009 following contract award	

Activity	Target Dates		Status	Date Completed
	Start	Completion		
V. IMPROVE WORKPLACE ENVIRONMENT				
<ul style="list-style-type: none"> Office Cleanup - Records and Classified waste 	Dec 2007	May 2008	<ul style="list-style-type: none"> Pickup of boxes by Central Records ongoing 2 CR-4s hired in June 2008 and to help with boxing of files 	Ongoing
<ul style="list-style-type: none"> ATIP Quality Circle 	April 2008	June 2008	<ul style="list-style-type: none"> Two employees volunteered to represent staff at the Quality Circle First meeting held June 18/08 to discuss mandate, etc Terms of Reference completed June 2008 	Ongoing
<ul style="list-style-type: none"> Floor Redesign <ul style="list-style-type: none"> - Construction of mobile shelving for files - Reconfiguration of workstations - Purchase of new chairs 	March 2008	Oct 2008	<ul style="list-style-type: none"> Project initiation meeting held March 31, 2008 with Corporate Services Mobile shelving constructed end of Sept 2008 Workstations reconfiguration and new chairs delivered Oct 14, 2008 	Oct 14/08

ROYAL CANADIAN MOUNTED POLICE

Overall performance in 2007–2008

Below average: 2 stars

Although the Royal Canadian Mounted Police (RCMP) continued to struggle in 2007-2008 to meet its statutory obligations under the *Access to Information Act* (namely responding to requests within statutory timelines and notifying the Office of the Information Commissioner (OIC) for extensions beyond 30 days) due to a significant increase in the number of requests received as well as staff turnover, it was able to substantially reduce its carry-over of deemed refusals from 2006–2007. As well, the OIC gives the RCMP credit for completing two thirds of the new requests it received in 2007–2008 within 30 days. This is a marked improvement from 2005–2006, when only four percent of new requests were completed within that time frame. The RCMP also distinguished itself from the other institutions in 2007–2008 by making only limited use of time extensions to complete requests.

The RCMP had an unacceptably low rate of compliance with subsection 9(2) of the *Access to Information Act*, which requires institutions to notify the Information Commissioner of extensions it takes beyond 30 days.

Finally, due to limitations in its case management system, the RCMP is unable to track the length of the time extensions it takes beyond 30 days. These limitations also meant that the RCMP was unable to report completely to the OIC on its access to information activities as part of the report card process.

ROYAL CANADIAN MOUNTED POLICE

Factors considered in assessment of overall performance

Workload

- Substantial increase in the number of new requests (77 percent)

Completion time for new requests

- Within the statutory timelines: 67 percent
- Within 30 days: 63 percent
- Average: fewer than 30 days

Carry-over of requests

- Substantial decrease in the carry-over of requests in deemed refusal status

Time extensions

- Use of time extensions under subsection 9(1) is the exception rather than the norm (less than 10% of the requests)
- Half of time extensions are for less than 30 days
- Low compliance with subsection 9(2) (notice of extension): 19%

Deemed refusals

- 49.5 percent of new and carried-over requests fell into deemed refusal status (grade: F)

Consultation requests received from other federal institutions

- *Best practice.* Consultation requests treated expeditiously (within 10 days on average) to avoid deemed refusals for the consulting institutions

Process

- Currently reviewing the access to information manual

Case management

- *Needs improvement.* The RCMP's case management system, which currently only captures data required by Treasury Board Secretariat, should be enhanced to allow the RCMP to monitor the access process more closely and to track the length of time extensions beyond 30 days

Senior management leadership

Training

- Hold series of access to information awareness and training sessions across Canada
- Developed and implemented a training plan for access to information staff

Human resources

- Laid the foundations for a career development path for existing employees

Staffing

- Obtained additional resources to support the access to information function

Complaints

- The Office of the Information Commissioner received 145 complaints (out of 1,900 requests processed or 8 percent) about the RCMP's handling of requests

ROYAL CANADIAN MOUNTED POLICE

The Royal Canadian Mounted Police (RCMP) has never achieved full compliance with the *Access to Information Act* in terms of responding to access requests in a timely manner (see Table 1).

Table 1. Compliance history

	2005	2006	2007–2008
Percentage of deemed refusals (delays beyond the statutory timelines)	79%	67%	49.5%
Grade	F	F	F

Each year, the Office of the Information Commissioner (OIC) has found serious and persistent problems with the way the RCMP runs its access to information operations. The Information Commissioner's 2006–2007 annual report, while recognizing the RCMP's large workload, noted that the measures the RCMP had taken to monitor its performance were inadequate.

This report card sets out the RCMP's key performance-related challenges and actions in 2007–2008, provides baseline information about the RCMP's access to information activities that year and analyzes various factors affecting performance to come to an overall rating out of five stars. The report concludes with several recommendations and the RCMP's response to them.

First, however, the OIC notes that it was not satisfied with the data the RCMP provided in response to the report card questionnaire this year, since it did not allow the OIC to thoroughly assess the RCMP's performance. The RCMP only collects data required by the Treasury Board Secretariat.

KEY PERFORMANCE-RELATED CHALLENGES IN 2007–2008

Consultations

- Some delays due to mandatory consultations with federal institutions (the Privy Council Office) about records involving Cabinet confidences and with the Department of Foreign Affairs and International Trade about requests for information that might, if released, affect Canada's international relations)

Workload

- Increase in the volume of requests

Human resources

- Staffing problems resulting from high employee turnover and a lack of experienced access to information specialists

Records management

- Some challenges in efficiently retrieving records such as e-mails as well as information from offices of primary interest (OPIs) and detachments

KEY PERFORMANCE-RELATED ACTIONS IN 2007–2008

Client service

- Made more use of proactive disclosure
- Structured access to information section of the RCMP website to better inform the public about the Act and to help requesters

Human resources

- Carried out new staffing actions to fill vacant positions and retain existing employees
- Obtained additional resources to support the access to information function, including completing the staffing process for 13 FTEs (full-time equivalents) in the last months of 2007–2008
- Laid the foundations for a career development path for existing employees

Process

- Began reviewing revisions to the RCMP access to information manual
- Continued preparing partial releases of information whenever possible

Training

- Improved the response times of OPIs by conducting access to information awareness and training sessions across Canada
- Developed and implemented a training plan for access to information staff

BY THE NUMBERS

In 2007–2008, the RCMP's access request workload increased substantially compared to 2005–2006, as shown in Table 2. The RCMP was not able to provide a figure for the total number of pages it reviewed in 2005–2006 and 2006–2007, since this would have required counting them by hand.

Table 2. Requests received and completed, and number of pages reviewed

	2005–2006	2006–2007	2007–2008	Change from 2005–2006
Requests received	937	911	1,662	+77%
Requests completed	860	1,168	1,650	+92%
Number of pages reviewed for completed requests	–	–	388,394	
Average number of pages reviewed per completed request	–	–	235	

The RCMP received 1,662 new requests in 2007–2008 and carried over 238 requests from 2006–2007 (222 of which were deemed refusals – requests delayed beyond the times set out in the *Act*), for a total of 1,900 requests. It completed 67 percent of the new requests within the timelines set out in the *Act* either within 30 days or within the extended timelines listed in section 9. It completed approximately 63 percent within 30 days. This is a substantial improvement in performance over previous years: in 2005–2006, the RCMP only completed 4 percent of requests within 30 days, while the 2006–2007 completion rate was 28 percent. The RCMP reported that it took fewer than 30 days on average to complete a request.

In 2007–2008, the RCMP took measures to substantially reduce its carry-over of deemed refusals from 2006–2007. This accomplishment is particularly noteworthy, since the RCMP also saw a very large increase in the number of requests it received in 2007–2008 compared to previous years.

For 2007–2008, the RCMP's deemed refusal ratio (the percentage of new requests and requests carried over from 2006–2007 that fell into deemed refusal status during the year) was 49.5 percent. This earned the RCMP a grade of F on the scale that the OIC used for many years to rate institutions' performance but is phasing out this year. This is the third year in a row that the RCMP has received a failing grade.

The OIC received 145 complaints against the RCMP in 2007–2008, 17 of which were about deemed refusals. Of these 17 complaints, 10 were resolved (meaning that the OIC found them to have merit and that the institution resolved them to the Commissioner's satisfaction), 1 was not substantiated and 6 were discontinued. See Table 1 in Appendix A.

In addition to access requests, the RCMP received 581 requests for consultations from other federal institutions, which added 33,141 pages to the number of pages to review (equal to eight percent of the total page count for the year). One third of these consultation requests related to records on law enforcement and penal institutions.

ASSESSMENT OF PERFORMANCE IN RESPONDING TO ACCESS REQUESTS

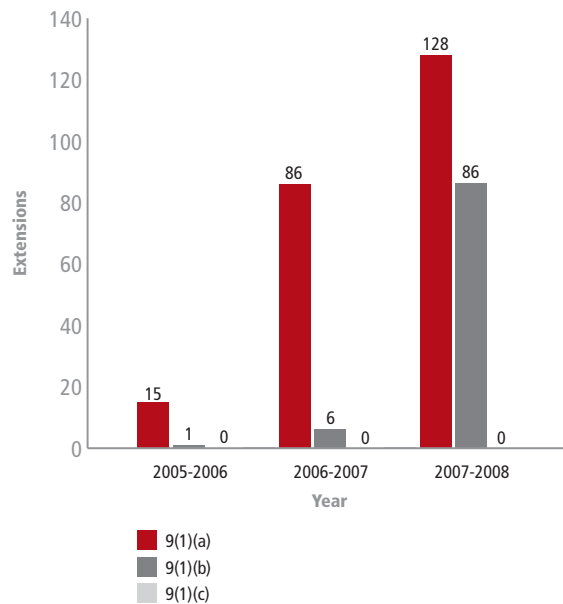
The OIC’s assessment of a federal institution’s performance in responding to access to information requests is based on the institution’s ability to respond to requests within the timelines set out in the Act but also on other practices that affect timeliness, such as requesting the shortest time extensions possible. The OIC also reviewed whether each institution documented its justifications for taking time extensions.

Time extensions

In 2007–2008, the RCMP took time extensions for only a small portion of the new requests it received (9.5 percent or 158 out of 1,662 requests). This compares favourably to the corresponding figures for the other federal institutions.

Nonetheless, the RCMP had a very large increase in the number of extensions it took in 2007–2008 compared to 2005–2006 (see Figure 1), although the increase pales in comparison to the substantial increase in the number of requests the RCMP received over the same period. By way of explanation, the RCMP noted that it had a large and long-standing backlog of deemed refusals in 2005–2006 and 2006–2007 for which it was not allowed to take extensions because these requests were, by definition, already delayed beyond the initial 30 days within which institutions may take extensions. Since the RCMP essentially eliminated its backlog in 2007–2008, it was then able to consider and take, when justifiable, time extensions for requests before the 30-day deadline. This may account for the increase in the use of extensions.

Figure 1. Number of extensions under subsection 9(1)



The OIC was unable to assess whether the extensions the RCMP took beyond 30 days were for longer periods than previously, because the RCMP did not provide complete data on the length of extensions.

Under subsection 9(2), federal institutions must send a notice to the Information Commissioner every time they invoke an extension beyond 30 days. In 2007–2008, the Commissioner received 15 notices of extension from the RCMP. However, the RCMP noted in its 2007–2008 report to TBS on its access to information activities that it had taken extensions of more than 30 days for 75 requests. This means that the RCMP only complied with subsection 9(2) for approximately 20 percent of requests.

Of the 145 complaints the OIC received about the RCMP in 2007–2008, 9 were about the RCMP’s use of time extensions. Of these 9 complaints, 6 were resolved and 3 are pending. See Table 1 in Appendix A.

Time extensions under paragraph 9(1)(a)

The number of time extensions the RCMP took under paragraph 9(1)(a) (searches for large volumes of records and interference with the operations of the institution) in 2007–2008 increased exponentially compared to the number it took in 2005–2006. According to the RCMP’s 2007–2008 Annual Report to TBS, most of these extensions were for more than 30 days (extensions taken for 61 out of 101 requests).

Time extensions under paragraph 9(1)(b)

In 2007–2008, the RCMP had a very large increase in the number of time extensions it took under paragraph 9(1)(b) (consultations) compared to the number it took in 2005–2006. According to the RCMP’s 2007–2008 report to Treasury Board Secretariat, most of these extensions were for fewer than 30 days (extensions take for 40 out of 54 requests). The RCMP indicated anecdotally that most of the consultation requests it sends to other federal institutions under paragraph 9(1)(b) are completed within the time limits, although some institutions on occasion exceed the allocated time for responding.

The OIC could confirm neither that most consultation requests are completed on time nor whether the RCMP is taking longer than necessary extensions to accommodate the consultation requests. The analyst responsible for completing the consultation monitors the time it takes to get a response back from the institution; this is not an automated task.

The RCMP prepares partial releases to requesters for a variety of situations. It does so, however, primarily when requesters ask for it: some requesters wish to receive partial releases whereas some prefer to receive a complete release package. Where time is of the essence, the RCMP reported that frequent requesters will often ask to receive the information that is not subject to a consultation and forego receiving any additional information. In large files, the RCMP will do several partial releases of the information processed to date. The OIC recommends that partial releases be prepared as early in the access process as possible and to inform requesters, in the letter sent to them with the release, that additional records may be forthcoming resulting from outstanding consultations, that they will be informed of the outcome of the consultations even though no additional records may be released, and that they have the right to complain to the OIC at each step of the process.

Informal treatment of requests

The RCMP reported that it treated the vast majority of the written requests it received in 2007–2008 formally, treating only 0.4 percent informally. This figure contradicts additional information gathered from the RCMP’s access to information coordinator as well as from its 2007–2008 report to TBS, both of which indicated that access to information managers and the RCMP senior management encourage and endorse the informal treatment of access requests. The RCMP suggested that while the number of “recorded informal requests” is relatively low, many more informal disclosures are made daily across the institution.

Responding to requests for consultations from other federal institutions

The RCMP reported that it treats consultation requests on a priority basis and usually responds within 10 days. It noted that some of the consultation requests received did not relate to the RCMP's work, which put a burden on operations, although the volume of extra pages to review did not significantly add to the workload.

Documenting extensions

As part of the report card questionnaire, the OIC asked federal institutions whether they documented on their request files justifications for taking extensions under subsection 9(1). The RCMP reported that, as a matter of practice, it does document the justifications for extensions in its case management system. To verify this, the OIC reviewed the file on its investigation into six interrelated complaints from the same requester about the RCMP's use of time extensions (the OIC closed these complaints as resolved in 2007–2008; see Table 2 in Appendix A). The OIC found that the RCMP had indicated in the case management system at the time it processed the requests that it had taken extensions for them but had not documented the justifications for taking them in every case. However, it did provide the justifications during the OIC's investigation.

OIC'S RECOMMENDATIONS AND THE INSTITUTION'S RESPONSE

- 1. The RCMP's Access to Information and Privacy (ATIP) Branch should implement measures to enhance data entry in its case management system to allow it to monitor more closely every step of the access to information request process and to track the length of time extensions of more than 30 days, as the OIC requested in its 2007–2008 report card questionnaire.**

Response

The ATIP Branch has always promoted and emphasized the appropriate documentation of every step of the access to information request process. While there may be room for improvement in that regard, the importance of proper and timely documentation is stressed upon every single analyst as he or she joins the Branch. It is also regularly discussed and strongly encouraged by the coordinator and all team leaders, who closely interact with the analysts.

While the RCMP ATIP Branch does not currently have a system allowing it to automatically track the length of time extensions, every analyst is responsible for ensuring that responses for consultations are received within the prescribed timelines. The RCMP case management software provides valuable assistance with this task. Follow-up correspondence and phone calls are made with institutions that are about to or have gone beyond the return date. This approach has been successful, and the RCMP strongly believes that it adequately addresses the OIC's concern in that regard.

The RCMP is currently looking into the acquisition of new case management software that would likely assist with the automated monitoring of consultations.

The coordinator and team leaders will continue to promote the close monitoring of all consultations to ensure legislative timelines are respected.

The coordinator and team leaders will continue to promote and insist on the proper documentation of each step of the access to information request process.

The recent classification and future staffing of a new quality control manager will assist with the implementation of these measures.

2. The ATIP Branch should continue to pursue solutions to deal effectively with current record management problems related to the retrieval of records.

Response

The RCMP agrees with this recommendation. In fact, the RCMP will continue to work with its many detachments and policy centres in order to further improve the effective retrieval of records from the OPIs.

It is important to point out that the RCMP differs somewhat from many other government institutions with regard to the efficient retrieval of records. The RCMP keeps records from one coast to the other, in more than 880 detachments and 10 directorates. The individuals gathering the information on behalf of ATIP are often individuals actively investigating matters or tied up in court cases. They are often the subject-matter experts who are responding to these requests and need to produce specific and relevant material, such as notebooks, e-mails, reports, etc., which often are under their exclusive control for obvious continuity reasons. Though the RCMP is cognizant of its obligations pursuant to the *Access to Information Act*, investigative responsibilities by the OPIs sometimes interfere with the swift submission of records to the RCMP ATIP Branch. Given the nature of the business the RCMP is in, this is a situation that is unique to the organization and that must be recognized.

3. The ATIP Branch should fully implement its policy of promoting and encouraging informal treatment of requests, when it is possible to do so, as a means of providing the requested information in a timely manner.

Response

The RCMP endorses this recommendation and in fact, has already implemented it. The ATIP Branch has an ongoing presentation circuit that, among other topics, speaks specifically to the issue of informal access. It is strongly encouraged and was even endorsed by the Commissioner of the RCMP in a broadcast to all his health services officers and human resource officers in March 2006.

The RCMP has an administrative policy that explains to employees how to request “informal” access (Admin. Manual III.11). The policy goes on to explain how employees treat such requests and even provides a vetting instruction guide. While the number of “recorded” informal requests is relatively low, a much more significant number of informal disclosures of information are made on a daily basis across the entire organization. However, outside of the ATIP Branch, it is very difficult to determine what “informal” access is permitted to clients every day because this is not a statistic that is generally tracked. However, based on personal experience, it is done almost daily and includes, for example, the release of statements, photos, reports, etc. Further, the RCMP also has divisional guidelines dealing with informal access to information. Some of this informal disclosure is based on cost recovery.

But this isn't all. For example, the Adjudication Branch routinely releases access requests to various requesters. The RCMP HR Central Region gives employees informal access to their employee file. The RCMP Policy Unit regularly coaches the field on how to deal with informal access requests. In compassionate situations, the ATIP Branch occasionally makes arrangements with detachments, to provide grieving clients with a right of access.

The ATIP Branch will continue to make presentations to its membership and speak specifically to the issue of informal access.

Through a number of means, the ATIP Branch will continue to promote the informal access of information to its membership, whenever possible.

The RCMP ATIP Branch is planning an update of its administrative policy on access to information with a view to improving its overall service to its members and clients. This would include the further clarification of the informal process.

- 4. The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.**

Response

The RCMP agrees with this recommendation and has immediately taken steps to ensure that appropriate documentation of extension justifications is made for every extension taken.

- 5. The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.**

Response

The RCMP agrees with this recommendation and has immediately taken steps to ensure that 9(2) notices are provided to the Information Commissioner Office as per the Act. The ATIP Coordinator and team leaders will continue to monitor this step of the ATI process.

ROYAL CANADIAN MOUNTED POLICE

Appendix A. Complaints to the Office of the Information Commissioner

Table 1. Complaints received in 2007–2008

(These complaints may refer to requests made prior to 2007-2008)

OIC findings, as of November 27, 2008					
Category of complaint	Received in 2007–2008	Resolved	Not substantiated	Discontinued	Pending
Refusal to disclose (exemption/exclusion)	87	5	12	2	68
Delay (deemed refusal)	17	10	1	6	0
Time extension	9	6	0	0	3
No records/incomplete search	23	1	3	2	17
Fees	6	2	0	0	4
Miscellaneous	3	0	1	0	2
Total	145	24	17	10	94

Table 2. Complaints closed in 2007–2008

(Includes new complaints received in 2007–2008 and complaints from previous years)

OIC findings, as of March 31, 2008				
Category of complaint	Closed in 2007–2008	Resolved	Not substantiated	Discontinued
Refusal to disclose (exemption/exclusion)	20	11	7	2
Delay (deemed refusal)	22	19	1	2
Time extension	6	6	0	0
No records/incomplete search	12	3	8	1
Fees	0	0	0	0
Miscellaneous	6	0	5	1
Total	66	39	21	6

LIST OF RECOMMENDATIONS

TO TREASURY BOARD SECRETARIAT

Recommendation 1

That the Treasury Board Secretariat, in collaboration with the relevant institutions

- a. conduct an assessment of information management practices in federal institutions;
- b. develop an action plan to address deficiencies in information management in federal institutions;
- c. measure the federal institutions' performance on the use of effective information practices on an ongoing basis; and
- d. ensure that federal institutions are properly resourced to develop and sustain effective information management practices.

Recommendation 2

That the Treasury Board Secretariat develop and maintain state of the art training on information management practices and tailor such training to the needs of the Access to Information regime.

Recommendation 3

That the Treasury Board Secretariat collect the following additional annual statistics, starting in fiscal year 2010–2011:

- a. the number of pages reviewed for requests: in total and on average per request;
- b. the number of pages reviewed for incoming consultation requests: in total and on average per consultation request;
- c. the number of pages disclosed in part or in total;
- d. the number of requests completed within statutory timelines;
- e. the average time to complete a request.

Recommendation 4

That the Treasury Board Secretariat clarify the methodology for reporting on time extensions and, starting in 2010–2011, break down the reporting requirements of extensions into the following categories:

- a. number of requests extended pursuant to section 9;
- b. for each reason for the extension (searching, consultations, third party), the length of the extension:
 - i. less than 30 days;
 - ii. 30–60 days;
 - iii. 61–90 days;
 - iv. 91–120 days;
 - v. 121–150 days;
 - vi. 151–180 days;
 - vii. 181–210 days;
 - viii. 211–250 days;
 - ix. above 250, by units of 50 days.
- c. for each reason for the extension (searching, consultations, third party), the average actual time it took to receive a response.

Recommendation 5

That the Treasury Board Secretariat collect annual statistics, starting in fiscal year 2010–2011, on consultations pursuant to paragraphs 9(1)(b) and 9(1)(c):

- a. for consultation requests sent to other federal institutions:
 - i. number of consultation requests sent;
 - ii. number of mandatory consultation requests sent pursuant to:
 - 1) section 15;
 - 2) section 16;
 - 3) section 69;
 - iii. number of pages sent for review;
 - iv. average time to receive a response;
 - 1) overall;
 - 2) for mandatory consultations;
- b. For consultation requests received from other federal institutions:
 - i. number of consultation requests received;
 - ii. number of pages reviewed;
 - iii. average time to respond;
- c. For consultation requests sent to third parties (pursuant to paragraphs 9(1)(b) and 9(1)(c)):
 - i. number of consultation requests sent;
 - ii. average time to receive a response.

Recommendation 6

That the Treasury Board Secretariat, together with relevant institutions, assess the magnitude of the consultations between federal institutions including mandatory consultations pursuant to sections 15, 16 and 69 of the Act, and their impact on the workload of these institutions with a view to allocate resources to this function.

Recommendation 7

That the Treasury Board Secretariat, in collaboration with relevant institutions and agencies, develop and implement, as a matter of urgency, an integrated human resources action plan to address the current shortage of access to information staff.

Recommendation 8

That the Treasury Board Secretariat accelerate its review, development and implementation of an extensive training program for access to information specialists, and establish certification standards for federal professionals.

Recommendation 9

That the Treasury Board Secretariat in collaboration with the Canada School of Public Service and the Office of the Information Commissioner of Canada develop an integrated learning strategy for all employees of the public service.

Recommendation 10

That, as part of the Management Accountability Framework, the Treasury Board Secretariat review current criteria to ensure that they are measuring the overall performance of federal institutions in meeting their obligations under the *Access to Information Act*.

OFFICE OF THE INFORMATION COMMISSIONER:

Commitment 1

The Office of the Information Commissioner will review how closed complaints are classified with a view to developing and implementing by 2009–2010 a new set of disposition categories that provide a more accurate picture of institutional performance.

Commitment 2

The Office of the Information Commissioner will develop and implement by 2009–2010 criteria for measuring the degree to which an institution is releasing information in compliance with the *Access to Information Act*, and will document the OIC complaint files appropriately.

Commitment 3

The Office of the Information Commissioner will prepare and widely publish a triennial plan for institutional performance reviews.

TO THE CANADA BORDER SERVICES AGENCY (CBSA):

Recommendation 1

The CBSA should allocate adequate resources on a permanent basis to its access to information office, considering its overall workload (access requests and requests for consultations), to avoid undue delay in processing access requests.

Recommendation 2

In light of the Treasury Board Secretariat policy on mandatory consultations for information related to law enforcement and penal institutions, the CBSA should review its case management framework to ensure that dedicated resources are assigned to handling all these requests for consultation to avoid undue delays in processing them.

Recommendation 3

The CBSA access to information office should review the criteria it uses to invoke time extensions under subsection 9(1) of the *Access to Information Act* to determine the length of these extensions and ensure they are reasonable and legitimate.

Recommendation 4

The CBSA should undertake to avoid delaying the processing of categorized access requests and should measure the actual time it takes to complete these requests as well as any resulting delays.

Recommendation 5

The access to information office, when it closes access request files related to outstanding mandatory consultations, should inform requesters that additional records may be forthcoming, that they will be informed of the outcome of the consultations even though no additional records may be released and that they have the right to complain to the OIC.

Recommendation 6

The access to information office should review the current timelines in place and track more systematically the average number of days taken to complete each stage of the access process to ensure requests are being responded to in a timely manner.

Recommendation 7

The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.

Recommendation 8

The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.

TO THE DEPARTMENT OF JUSTICE CANADA:**Recommendation 1**

The Justice Canada access to information and privacy (ATIP) office should narrowly define its categories of requests deemed of interest, such that requests represent a minority of exceptional requests.

Recommendation 2

The ATIP office should maintain its practice of not delaying the processing of categorized requests and should measure the actual time it takes to complete these requests as well as any resulting delays.

Recommendation 3

The ATIP office, when it closes access request files related to outstanding mandatory consultations, should inform requesters that additional records may be forthcoming, that they will be informed of the outcome of the consultation requests even if no additional records may be released, and that they have the right to complain to OIC at each stage of the process.

Recommendation 4

The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.

Recommendation 5

The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.

TO THE DEPARTMENT OF NATIONAL DEFENCE:

Recommendation 1

National Defence's ATIP office should review the criteria it uses to invoke time extensions under paragraph 9(1)(a) (search for large volume of records and unreasonable interference with the operations of a federal institution), including ATIP office workload, to ensure the criteria are reasonable and legitimate and that extensions do not delay the processing of access requests.

Recommendation 2

National Defence should undertake not to delay the processing of requests, particularly those requiring internal consultations with the Information Support Team and measure the actual time it takes to complete those requests and any resulting delays.

Recommendation 3

The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.

Recommendation 4

The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.

TO THE DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA (DFAIT):

Recommendation 1

DFAIT should allocate adequate resources on a permanent basis to its access to information office, considering its overall workload (access requests and requests for consultations), to avoid undue delays in processing access requests across the federal government.

Recommendation 2

In light of the Treasury Board Secretariat policy that DFAIT must review for other federal institutions any information subject to an access request the release of which might affect Canada's international affairs, DFAIT should review its case management framework to ensure that dedicated resources are assigned to handling all these requests for consultation to avoid undue delays in processing them.

Recommendation 3

The ATIP office should continue to pursue solutions to deal effectively with current information management problems related to the retrieval of documents, paying particular attention to electronic documents.

Recommendation 4

The DFAIT ATIP office should narrowly define its categorization of access to information requests deemed "Communications Alert," such that requests represent a minority of exceptional requests.

Recommendation 5

The DFAIT ATIP office should maintain its practice of not delaying the processing of categorized access requests and should measure the real time it takes to complete these requests as well as any resulting delays.

Recommendation 6

The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.

Recommendation 7

The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.

TO HEALTH CANADA:**Recommendation 1**

Health Canada's ATIP office should review its processing model to identify clearly any stages that take place concurrently and to ensure that it reflects the proper powers of the ATIP coordinator for the administration of the *Access to Information Act*.

Recommendation 2

Health Canada should cease immediately to delay the processing of requests categorized as "Hi-Sens" and should measure the actual time it takes to complete these requests as well as any resulting delays.

Recommendation 3

The ATIP office should review the criteria it uses to invoke time extensions under subsection 9(1) to ensure they are reasonable and legitimate.

Recommendation 4

Health Canada should continue to pursue solutions to deal effectively with current records management problems related to the retrieval of documents.

Recommendation 5

The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.

Recommendation 6

The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.

TO LIBRARY AND ARCHIVES CANADA:

Recommendation 1

The Library and Archives Canada access to information and privacy (ATIP) office should review the criteria it uses to invoke time extensions under paragraph 9(1)(b) to ensure the criteria are reasonable and legitimate and that the time extensions do not delay the processing of access requests.

Recommendation 2

Library and Archives Canada should carefully review its processes for managing non-archived records to ensure that retrieving those records does not delay the processing of access requests.

Recommendation 3

The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.

Recommendation 4

The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.

TO NATURAL RESOURCES CANADA:

Recommendation 1

Natural Resources Canada's Access to Information and Privacy (ATIP) office should narrowly define its categorization of access to information requests deemed sensitive, such that sensitive requests represent a minority of exceptional requests.

Recommendation 2

Natural Resources Canada's ATIP office should clearly state that it must not delay the processing of categorized requests and should measure the actual time taken to complete these requests as well as any resulting delay.

Recommendation 3

The ATIP office should review its processing model to identify clearly any stages that take place concurrently and to ensure that it reflects the proper powers of the ATIP Coordinator for the administration of the *Access to Information Act*.

Recommendation 4

The ATIP office, when it closes access requests related to outstanding consultations, should inform requesters that additional records may be forthcoming, that they will be informed of the outcome of the consultation requests even if no additional records may be released, and that they have the right to complain to the OIC at each step of the process.

Recommendation 5

The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.

Recommendation 6

The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.

TO THE PRIVY COUNCIL OFFICE (PCO):

Recommendation 1

The Clerk of the Privy Council should closely monitor all the activities related to access to information for which he or she is responsible for, including ATIP office operations and consultations with Cabinet Confidences/Counsel, and report to Parliament on these activities under section 72 of the *Access to Information Act*.

Recommendation 2

PCO should have a dedicated team and allocate adequate resources on a permanent basis to Cabinet Confidences/Counsel, to avoid undue delay in processing requests for consultations for records involving Cabinet confidences.

Recommendation 3

The PCO ATIP office and Cabinet Confidences/Counsel should develop a protocol to elaborate on their respective responsibilities relating to PCO's mandatory obligations to report to Parliament on the *Access to Information Act*, especially with regards to Cabinet Confidences/Counsel review of consultation requests received from other federal institutions about records involving Cabinet confidences.

Recommendation 4

PCO should review the Delegation Order to determine how further delegation can be made to both the ATIP coordinator and to team leaders in the ATIP Division.

Recommendation 5

The ATIP office should enable the case management system to track and report on statistical data, as requested in the OIC's 2007–2008 report card questionnaire.

Recommendation 6

The ATIP office should review the current timelines in place and track more systematically the average time actually taken to complete each stage of the access process to ensure requests are responded to in a timely manner.

Recommendation 7

The ATIP office should establish strict timelines for all stages of the access process, including all approvals.

Recommendation 8

The ATIP office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.

Recommendation 9

Cabinet Confidences/Counsel, in collaboration with the Office of the Information Commissioner, should develop a tool to assess their operations as they relate to the mandatory consultations on the review of Cabinet confidences pursuant to section 69 of the *Access to Information Act*.

TO PUBLIC WORKS AND GOVERNMENT SERVICES CANADA (PWGSC):

Recommendation 1

PWGSC should cease immediately to delay the processing of requests categorized as “Interesting” or “High Profile” and should measure the actual time it takes to complete these requests and any resulting delays.

Recommendation 2

The PWGSC Access to Information and Privacy (ATIP) office should implement measures for data entry and/or reporting in the case management system to track the length of time extensions taken for more than 30 days, as requested in the OIC 2007–2008 report card questionnaire.

Recommendation 3

PWGSC should fully implement the initiatives set out in its ATIP Improvement Plan during the next review period, or be at least well advanced in their implementation, and be able to demonstrate the progress made and results achieved.

Recommendation 4

The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.

Recommendation 5

The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.

TO THE ROYAL CANADIAN MOUNTED POLICE (RCMP):

Recommendation 1

The RCMP’s Access to Information and Privacy (ATIP) Branch should implement measures to enhance data entry in its case management system to allow it to monitor more closely every step of the access to information request process and to track the length of time extensions of more than 30 days, as the OIC requested in its 2007–2008 report card questionnaire.

Recommendation 2

The ATIP Branch should continue to pursue solutions to deal effectively with current record management problems related to the retrieval of records.

Recommendation 3

The ATIP Branch should fully implement its policy of promoting and encouraging informal treatment of requests, when it is possible to do so, as a means of providing the requested information in a timely manner.

Recommendation 4

The access to information office should document on their request files, at the time the request is processed, justifications for taking an extension. These justifications should include detailed rationale for being invoked.

Recommendation 5

The access to information office should provide the Information Commissioner a notice pursuant to subsection 9(2) every time it extends a request beyond 30 days.

ANNEX

RATING OF INSTITUTIONS' PERFORMANCE

A global rating is attributed to each federal institution as a means to measure its overall performance. This rating for the reporting period is based on several factors. As a starting point, we are assessing compliance with statutory requirements namely whether requests were responded within statutory timelines (deemed-refusal ratio) and whether notices under subsection 9(2) were sent to the Information Commissioner.

In addition to these statutory requirements, we are taking into account practices and processes used by the institution that may impact, positively or negatively, on their capacity to fulfill their obligations under the Act. Among these practices and processes, we have considered the overall use and duration of time extensions; and good practices such as proactive and informal disclosure to requesters, partial release of records and collaborative instruments to deal efficiently with consultations. Contextual factors, such as variations in workload have also been taken into account.

% of deemed-refusals	Comment	Grade
0-5%	Ideal Compliance	A
5-10%	Substantial Compliance	B
10-15%	Borderline Compliance	C
15-20%	Below Standard Compliance	D
More than 20%	Red Alert	F

Overall Grade	Factors
5 ★★★★★ (Outstanding)	<ul style="list-style-type: none"> • 5% or less deemed refusals (A) • Compliance with subsection 9(2) (80% and more of extensions beyond 30 days were notified to the OIC) • Appreciation of the overall use and duration of time extensions (for example: extensions under subsection 9(1)(a) taken exceptionally): deemed appropriate. • Comprehensive set of good practices in place to ensure that access requests are responded in a timely manner (proactive disclosure; informal disclosure; partial release; collaborative instruments, absence of requests categorization or no delay created by it, focus on service to the requesters, etc.) • Others elements which may impact the institution's capacity to comply with the Act and measures taken to deal with them (for example, increase in the workload of the institution and high volume of consultation requests received)
4 ★★★★ (Above Average)	<ul style="list-style-type: none"> • 10% or less deemed refusals (A, B) • Compliance with subsection 9(2) (80% and more of extensions beyond 30 days were notified to the OIC) • Appreciation of the overall use and duration of time extensions: in most instances, deemed appropriate. • Comprehensive set of good practices in place to ensure access requests are responded in a timely manner • Others elements which may impact the institution's capacity to comply with the Act and measures taken to deal with them.
3 ★★★ (Average)	<ul style="list-style-type: none"> • 20% or less deemed refusals (A, B, C) • Compliance with subsection 9(2) (+/- 80%) • Appreciation of the overall use and duration of time extensions: to some degree, deemed appropriate. • A number of good practices in place to ensure access requests are responded in a timely manner • Others elements which may impact institution's capacity to comply with the Act and measures taken to deal with them.
2 ★★ (Below Average)	<ul style="list-style-type: none"> • 20% or more deemed refusals (A, B, C, D, F) <i>*if F, institution made significant efforts to improve performance e.g. significant reduction in backlog of requests.</i> • Compliance with subsection 9(2) (less than 80 percent) • Concerns with the overall use and duration of time extensions • Limited good practices in place to ensure access requests are responded in a timely manner • Others elements which may impact institutions' capacity to comply with the Act and measures taken to deal with them.
1 ★ (Unsatisfactory)	<ul style="list-style-type: none"> • 20% or more deemed refusals (A, B, C, D, F) • Compliance with paragraph 9(2) (less than 80 percent) • Concerns with the overall use and duration of time extensions • Practices in place to ensure access requests are responded in a timely manner are insufficient • Others elements which may impact institutions' capacity to comply with the Act and measures taken to deal with them.