



Information
Commissioner
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Commissaire
à l'information
du Canada



A Special Report to Parliament by

Suzanne Legault

Interim Information Commissioner of Canada

April 2010

Out of Time

2008–2009 Report Cards

Systemic Issues Affecting Access to Information in Canada

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April 2010

The Honourable Peter Milliken, M.P.
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 *Out of Time: 2008–2009 Report Cards and Systemic Issues Affecting Access to Information in Canada*.

This report is part of my office's ongoing work to shed light on how federal institutions comply with the Act. Following up last year's report on chronic delays and pervasive access issues, we monitored the implementation of our recommendations and resulting action plans, and we enlarged our sample of institutions to provide more quantitative and qualitative data for this year's report cards. Our findings show that little progress has been achieved so far to remedy the root causes of delay across the system. Of the 24 institutions assessed this year, 13 performed below average or worse. This report documents once again key issues that Parliament may wish to address to improve the performance of the access system.

Sincerely,

Suzanne Legault
Interim Information Commissioner of Canada



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April 2010

The Honourable Noël A. Kinsella, Senator
The Speaker
Senate
Ottawa ON K1A 0A6

Dear Mr. Kinsella:

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This report is part of my office's ongoing work to shed light on how federal institutions comply with the Act. Following up last year's report on chronic delays and pervasive access issues, we monitored the implementation of our recommendations and resulting action plans, and we enlarged our sample of institutions to provide more quantitative and qualitative data for this year's report cards. Our findings show that little progress has been achieved so far to remedy the root causes of delay across the system. Of the 24 institutions assessed this year, 13 performed below average or worse. This report documents once again key issues that Parliament may wish to address to improve the performance of the access system.

Sincerely,

Suzanne Legault
Interim Information Commissioner of Canada

Contents

Message from the Interim Commissioner	2
Executive summary	3
Introduction	5
1. The evidence of delay	6
2. Taking stock of systemic issues	11
3. OIC commitments	18
4. Institutional report cards	20
Follow-up on an institution assessed in 2007–2008	22
Library and Archives Canada	23
Institutions assessed in 2007–2008 and reassessed in 2008–2009	24
Canada Border Services Agency	25
Department of Justice Canada	29
Foreign Affairs and International Trade Canada	33
Health Canada	39
National Defence	45
Natural Resources Canada	51
Privy Council Office	55
Public Works and Government Services Canada	63
Royal Canadian Mounted Police	69
Institutions assessed in 2008–2009	74
Canada Revenue Agency	75
Canadian Food Inspection Agency	81
Canadian Heritage	85
Canadian International Development Agency	89
Canadian Security Intelligence Service	93
Citizenship and Immigration Canada	97
Correctional Service of Canada	101
Environment Canada	105
Fisheries and Oceans Canada	109
Human Resources and Skills Development Canada	113
Indian and Northern Affairs Canada	117
Industry Canada	121
Public Safety Canada	125
Telefilm Canada	129
Transport Canada	133
Appendix A	137
Appendix B	147

Message from the Interim Commissioner

I am pleased to submit to Parliament this special report, which is part of my office's Three-Year Plan for Report Cards and Systemic Issues. This plan takes a comprehensive approach to the assessment of delays in responses to access requests in order to better identify and address the issues at play.

Despite warnings and recommendations, delays continue to be the Achilles' heel of the access to information system and have yet to be appropriately addressed across the government. Chronic delays are generating an increasing number of complaints, which compound the pressure on institutions, particularly those that are under-resourced. As a result, delays continue to erode requesters' right to timely access to information.

This right is at risk of being totally obliterated because delays threaten to render the entire access regime irrelevant in our current information economy. Ever-evolving information and communications technologies have increased expectations for a quick dissemination of information enabling content creation and innovation. The government should be leading this new development or, at the very least, keeping up with the pace.

In preparing the report cards, we sought the representations of access coordinators—key players within institutions—about what contributes to or inhibits their operations. The process has largely benefited from the collaboration and experience of the coordinators and their staff. These public servants have a unique perspective as their mandate is about ensuring transparency, yet they work within an increasingly risk averse environment.

We have enlarged our sample of institutions this year to obtain a sound, fact-based assessment of the extent and sources of access delays across the government.

Where institutions are doing well, strong leadership overwhelmingly predicates success. These are institutions that have actively committed to transparency through the development and execution of comprehensive plans for their access programs, which typically take several years to fully realize their objectives. This is a realistic approach that requires focused and sustained support from the executive cadre.

However, these institutions represent the minority. Elsewhere, the continued denial of timely information to Canadians results from a number of factors. Insufficient resources, poor information management, misuse of time extensions, frequent and lengthy consultations, protracted review and approval processes, and inappropriate or ill-enforced delegation orders can delay the release of information for months on end.

Last fall, in response to the report from the House of Commons Standing Committee on Access to Information, Privacy and Ethics proposing legislative changes to the *Access to Information Act*, the government indicated that any legislative amendments must be examined in the context of administrative alternatives.

Accordingly, this report analyzes issues that have direct and significant impact on the ability of institutions to meet their statutory deadlines for responding to access requests. I have recommended various measures for the Treasury Board of Canada Secretariat to implement as

the policy centre for the administration of the Act. Some of these are new measures; others reiterate recommendations from last year's report cards process. These are sound, straightforward and overdue measures that will improve accountability while ensuring that access to information does not fall victim to the next wave of budgetary restraints.

The status quo whereby citizens want information that the government wants to control no longer works. The technical arcana of bureaucracy are neither a reasonable explanation nor an excuse for increasingly lengthy delays. As the custodians of information that belongs to Canadians, Parliament, the Information Commissioner and government must work with all stakeholders to achieve dynamic solutions that embrace democracy through the free flow of information.



Executive summary

This special report is part of the Office of the Information Commissioner's Three-Year Plan for Report Cards and Systemic Issues.¹ This Plan aims to assess and investigate the extent and root causes of chronic delays across federal institutions in handling access to information requests.

Pursuant to the *Access to Information Act*, institutions have 30 days to complete access requests, or may claim a time extension in limited and specific circumstances. In 2008–2009, 44 percent of all complaints received by the Office of the Information Commissioner related to delays and time extensions. And of those delay-related complaints that were completed with a finding, three out of four were resolved with merit.

We enlarged our sample for this year's report cards process to 24 institutions, which represent 88 percent of all access requests submitted in 2008–2009. We selected all institutions against which we had received at least five delay-related complaints (requests completed late and problems due to the time extensions that institutions claimed to process requests) during the reference period. This sample generated enough statistical data and information on contextual factors for a sound, fact-based assessment of delays.

Access delays

For a detailed assessment of delays, we used three indicators, which together expose different facets of timeliness. Looking at the **deemed refusal rate**—i.e. the percentage of requests that have exceeded the statutory timelines—we found a very large range between institutions, from 0 percent for Telefilm Canada to 59.6 percent for Foreign Affairs and International Trade Canada (DFAIT).

As for the **average completion time**, only one institution—Citizenship and Immigration

Canada with 34 days—managed to come close to the 30-day timeframe. The figure reached as high as 157 days on average for the Privy Council Office and 163 days for Foreign Affairs and International Trade Canada. This is of great significance given the high number of mandatory consultation requests these two institutions process.

We also looked at **the number of requests responded to after statutory deadlines** have been missed as an indicator of institutions' commitment to assist requesters as promptly as possible. We found that over one-fourth (27 percent) of all overdue requests took more than 60 days to close after their original due date (either 30 days or an extended deadline).

Our analysis clearly confirmed the increasing misuse of time extensions as well as the number and duration of inter-institutional consultations as the most common causes of delay. Under-resourced institutions are increasingly using extensions as an administrative measure to cope with heavy workloads, which in our view is contrary to the spirit of the Act and the intent behind the provision for extensions. The increasing number of consultations creates bottlenecks within the system. At the time of going to press, recent complaints also highlighted the risk of delays stemming from alleged interferences in the processing of requests or delegation authorities.

Institutional report cards

As this year's report cards indicate, timeliness was once again an issue for all institutions. Of the 24 institutions assessed this year, 13 had a below average or inferior performance in 2008–2009.

Both **Citizenship and Immigration Canada** and **Department of Justice Canada** achieved a perfect score

primarily due to senior management's ongoing support for a compliance-prone culture. Three institutions achieved greater success than in the previous reporting year. The **Canada Border Services Agency** and **Public Works and Government Services Canada** had an above average performance due to effectively implementing three-year action plans aimed at improving compliance. The **Royal Canadian Mounted Police** substantially improved its performance by introducing procedures to reduce turnaround time for record retrievals and reducing its deemed refusal rate.

Twelve institutions performed at a below average or unsatisfactory level. They accounted for 9,047 (or 27 percent) of all the access requests made to the federal government in 2008–2009. (This percentage increases to 45 percent if we remove the large share of requests sent to Citizenship and Immigration Canada.) Most of them had deemed refusal rates of well over 20 percent, reaching a high of nearly 60 percent, as indicated above. Their poor performance resulted from the following factors to varying degrees: insufficient resources, dispersed delegation orders, drawn out review and approval processes, high staff turnover, and extensive or inappropriate use of time extensions. Some of these institutions also had a major impact on the access system as a whole given their pivotal role in the mandatory consultation process. **Foreign Affairs and International Trade Canada's** performance was so poor that the OIC could not rate it against its established criteria.

Systemic issues

Our holistic approach to assessing delays in responses to access requests enables a more in-depth analysis of recurring and system-wide issues facing most institutions.

¹ http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_3_yrs_plan.aspx

This year's report cards process confirmed across a wider spectrum of institutions the presence and persistence of the five systemic issues that were identified last year. It has also highlighted flawed or ill-enforced delegation orders as another significant obstacle to timely access.

Delegation orders set out the powers, duties and responsibilities that are being delegated by the institutional head for administering the Act within the organization. Our process uncovered oral evidence of delegation orders with multiple layers of review and approval which, in some instances, resulted in additional and unwarranted delays. Given this evidence, we will examine through a systemic investigation whether these practices further delay responses to access requests or whether they have a negative impact on the amount of information disclosed. Greater guidance is also required to achieve appropriate, efficient and transparent delegation orders and prevent improper influence on the processing of access requests.

Leadership is clearly the single most important determinant of how well institutions fulfill their obligations under the Act. Senior management's commitment to the access regime determines the level of resources allocated to their access program as well as the degree of institutional openness. The criteria under the Management Accountability Framework must be revised to adequately measure institutional compliance, which will serve to hold institutional heads and senior managers accountable for their performance.

As stated earlier, the misuse of **time extensions** represents an important cause of delay within the system. We observed an inconsistent application of paragraph 9(1)(a), which provides for the use of time extensions in specific circumstances. Contrary to the spirit of the Act, under-resourced institutions are

increasingly using extensions as an administrative measure to cope with heavy workloads. The OIC will closely monitor the use of time extensions through the extension notices it receives. These notices are the only means of accountability for extensions provided for by the Act aside from complaints. Better statistics are also required to accurately track the use and length of time extensions and thereby hold institutions accountable.

Inter-institutional consultations represent a definite challenge for the timely delivery of information. Only the institution subject to the request is currently accountable for meeting the requirements of the Act. This compounds the problem of bottlenecks resulting from the increasing number of mandatory consultations. There are still no data to measure the magnitude and impact of consultations.

Evidence shows that insufficient **resources**—funds, staff and tools—undermine the effectiveness of access to information. This deficiency also creates excessive risks, including the erosion of requesters' right to information. Sustained compliance can only be achieved with permanent and qualified staff and proper tools. An integrated human resources action plan is urgently required to address the shortage of staff.

Finally, access to information relies heavily on sound **records management**. Institutions that are unable to effectively manage information requested under the Act face time-consuming retrieval of records, uncertain, incomplete or unsuccessful searches, as well as the risk of substantial delays and complaints. Long-term initiatives have been undertaken to address information management deficiencies across government, but they require sustained efforts and commitment to achieve the expected results.

Recommendations and commitments

Despite warnings and recommendations to individual institutions as well as the Treasury Board of Canada Secretariat, little progress has been achieved so far to remedy the root causes of delay across the system. As mentioned, there is an urgent need for an **action plan** to address the current shortage of access to information staff. In the absence of legislated reform, **more detailed and reliable information** is also required—notably on time extensions, consultations, workload and outcomes—to accurately measure institutions' overall performance in meeting their obligations under the Act and improve **accountability mechanisms**.

For its part, the Office of the Information Commissioner has fulfilled the commitments contained in last year's report. Specifically, revised disposition categories for closed complaints will soon be introduced to provide a more accurate picture of institutional performance. We have also taken steps to begin measuring the degree to which institutions are releasing records in accordance with the Act. After updating our Three-Year Plan² in light of recent developments, we will move ahead with a thorough systemic investigation into the causes and sources of delays across the system.

As the Interim Commissioner stated before the House of Commons Standing Committee on Access to Information, Privacy and Ethics, the Office of the Information Commissioner will work closely with institutions to better understand the challenges they face in providing greater access to information. It will provide **greater guidance** through practice directions and other means to improve the timeliness of responses to access requests and accelerate the resolution of complaints.

² http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_3_yrs_plan.aspx

Introduction

This year's special report takes timeliness as its chief focus. It looks at how well 24 federal institutions—representing 88 percent of all access requests—handled those requests in 2008–2009 and examines the factors that affect the capacity of the system as a whole to deliver timely service to Canadians.³

The results of the previous report cards process⁴ had showed that timeliness is no longer the norm for federal institutions, nor an ideal, in answering access to information requests. In light of this, the Office of the Information Commissioner (OIC) set as the goal for its Three-Year Plan on Report Cards and Systemic Issues⁵ to probe the root causes of this problem in order to devise appropriate solutions.

This year's exercise—unprecedented in scope—is meant to offer a fact-based assessment of the situation with a view to improving timeliness. In the absence of legislated reform, it is imperative to gather reliable and detailed information to accurately assess institutions' compliance with the Act and to develop better mechanisms for holding institutions accountable before the Canadian public.

This is particularly timely, since the Minister of Justice indicated to the House of Commons Standing Committee on Access to Information, Privacy and Ethics in October 2009 that the government would look at administrative alternatives to remedy the shortcomings of the Act. We strongly recommend that the

government make it a priority to address the rampant problem of delays, which can be significantly reduced through administrative measures with the concerted will of all key players.

Chapter 1 of the report provides a fact-based assessment of the extent and immediate causes of delay across the system. **Chapter 2** takes stock of the progress achieved in implementing last year's recommendations to deal with various issues that have a significant impact on timeliness across government. This chapter also reports on another systemic issue impeding access, which surfaced during this year's exercise. **Chapter 3** describes actions that the OIC will undertake within its mandate to address delay issues. **Chapter 4** presents the report cards of the 24 institutions assessed this year.

The information in this report comes from a number of sources, including institutions' responses to our questionnaire,⁶ which asked for both statistics and narrative answers to specific questions, as well as from interviews with key access to information officials following up on their answers to the questionnaire. We supplemented that information with printouts from institutions' case management systems, institutions' annual reports on access to information, and our own files. Our conclusions stem from our analysis of all the information these sources brought to light.

The *Access to Information Act* gives Canadian citizens, residents and companies the right to request and receive information that federal institutions have, including documents, pictures, letters, emails and memos. There are some limitations, however: for example, institutions may withhold all or portions of records that contain personal information, Cabinet confidences or information that, if released, could harm Canada's security.

The Office of the Information Commissioner helps ensure that federal institutions respect the Act and provide timely access to information, to keep the federal government accountable to Canadians.

³ Figures provided to Treasury Board of Canada Secretariat by 241 federal institutions subject to the *Access to Information Act* show that they received 34,041 requests in 2008–2009. The 24 institutions we surveyed this year account for 88 percent or 29,845 of that total. See www.infosource.gc.ca.

⁴ http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2007-2008.aspx

⁵ http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_3_yrs_plan.aspx

⁶ http://www.oic-ci.gc.ca/eng/rep-pub-spec_rep-rap_spec-quest-2008-2009_questionnaires.aspx

1. The evidence of delay

Timeliness is the cornerstone of the *Access to Information Act*. This obligation was reaffirmed a few years ago by the passage of the *Federal Accountability Act*, which introduced a duty for federal institutions to assist requesters and respond to their requests for information without delay.

The 2008–2009 statistical report published by the Treasury Board of Canada Secretariat (TBS) states that 57.1 percent of all requests⁷ are responded to within the statutory period of 30 days. This is clearly not the performance that the legislator had intended. Actually, we often hear from access to information commentators that it is taking increasingly longer to process access requests, a sign that the system is broken.

TBS collects information on how institutions administer the Act.⁸ This data is published once a year in aggregated form. Federal institutions also table their individual statistical reports to Parliament annually. This is the only publicly available data set on access to information requests that offers a glimpse into the way federal institutions administer the Act.

The problem with aggregated data is that it evens out the performance of institutions, subsuming the performance of those that fare well with that of less performing ones. This results in a rather skewed picture of the situation. For instance, Citizenship and Immigration Canada received 41 percent of all requests made in 2008–2009. On average, CIC responded to requests within 34 days. As shown below (Figures 1 and 2), the picture worsens when CIC statistics are not counted.

The disadvantage of this aggregated data is that it does not provide the level of detail required to compare and contrast the performance of institutions. It does not give any insight into the number and the duration of delays, and whether they were legitimate. Nor does it provide any information on what happens to requests that have not been completed beyond 121 days.

In fact, 44 percent of the complaints received by the Office of the Information Commissioner in 2008–2009 related to delays and the time extensions that institutions had taken to process requests. Moreover nearly three out of four delay-related complaints completed with a finding in 2008–2009 were resolved with merit.

How do we explain this performance? What is the extent of delays in responding to access requests? And what are the reasons?

Figure 1 Time to complete a request in 2008–2009

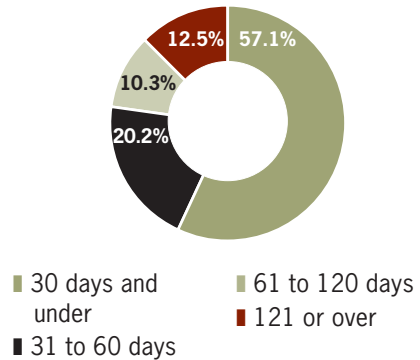
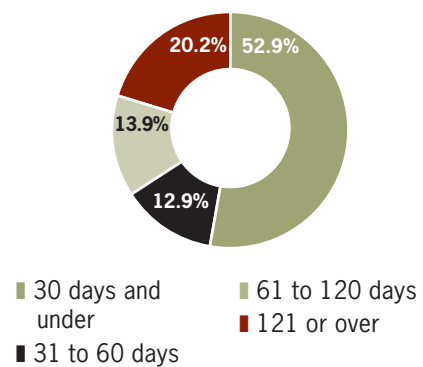


Figure 2 Time to complete a request in 2008–2009, without statistics from CIC



⁷ According to TBS statistics, in 2008-2009, 57.1 percent of all requests received by 241 institutions were completed within 30 days; 20.2 percent were completed between 31 and 60 days; 10.3 percent between 61 and 120 days; and 12.5 percent beyond 120 days. See <http://www.infosource.gc.ca>.

⁸ <http://www.infosource.gc.ca>

To supplement existing data and derive enough information to further analyze the issue, the Office of the Information Commissioner expanded the sample of institutions this year to 24 institutions. This sample accounts for 88 percent of all access requests made to the federal government. The quantitative data came from institutions' responses to our questionnaire⁹ and printouts from each institution's case management system.

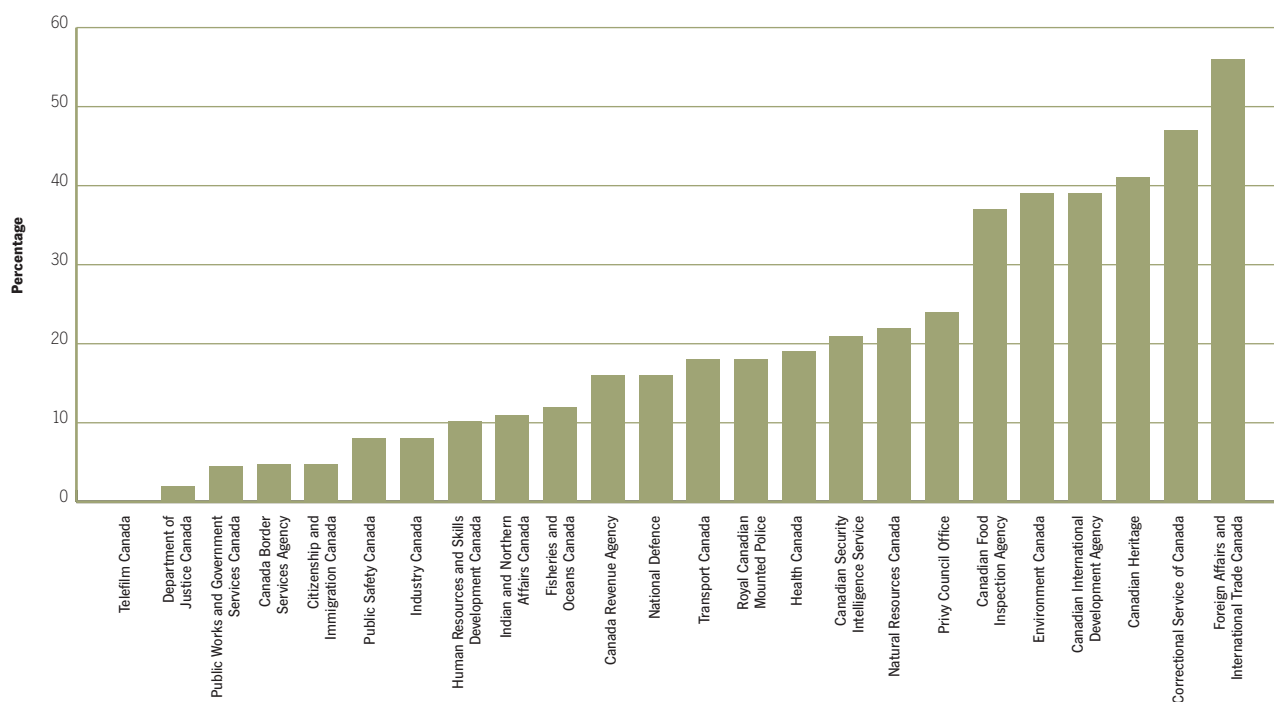
The questionnaire included three time indicators, namely the deemed-refusal rate, the average completion time and the number of requests the institution

responded to after the statutory deadlines. These indicators taken together expose different facets of timeliness.

The OIC has long used the **deemed refusal rate** to measure an institution's compliance with statutory timelines. Pursuant to the Act, requesters have a right to timely access to information. As a result, a delayed response is considered to be a deemed refusal. In 2008–2009, the OIC received 261 complaints about deemed refusals; among those that were completed with a finding, 80 percent were resolved with merit.

The goal for institutions is to have as few deemed refusals as possible. As illustrated in Figure 3, the range of deemed refusals between institutions is large. This variance may be attributable to a number of factors including the level of resources, the length or complexity of approval processes as well as records management practices within the institution. Most institutions, however, mention inter-institutional consultations as an important factor in delays and a great source of frustration, because this delay is often out of their control. These factors are discussed at greater length in the following chapter on systemic issues.

Figure 3 Deemed refusal rate, 24 institutions, 2008–2009



⁹ http://www.oic-ci.gc.ca/eng/rep-pub-spec_rep-rap_spec-quest-2008-2009_questionnaires.aspx

Deemed refusals signal delays. However, they provide little information about the **duration of delays**. Figure 4 provides an additional level of information about institutions' response time. As illustrated, Canadians may frequently have to wait much more than 30 days to receive a response to their requests. Of the 24 institutions surveyed, 7 responded to access requests within 31 and 60 days on average; 6 responded between

61 and 90 days; 6 more responded between 91 and 120 days, while the last 5 institutions reached levels as high as 157 and 163 days on average. The complexity of requests has an obvious impact on the time an institution takes to process those requests, as do consultations and the volume of pages to review. However, time extensions are the main culprit for average completion time beyond 30 days.

The **number of requests responded to after the statutory deadlines**—and how late those responses were—is a critical indicator of an institution's commitment to complete requests as quickly as possible. We found that once a response to a request is late, there is no guarantee that it will be answered quickly after that.

Figure 4 Average time to complete a request, 24 institutions, 2008–2009

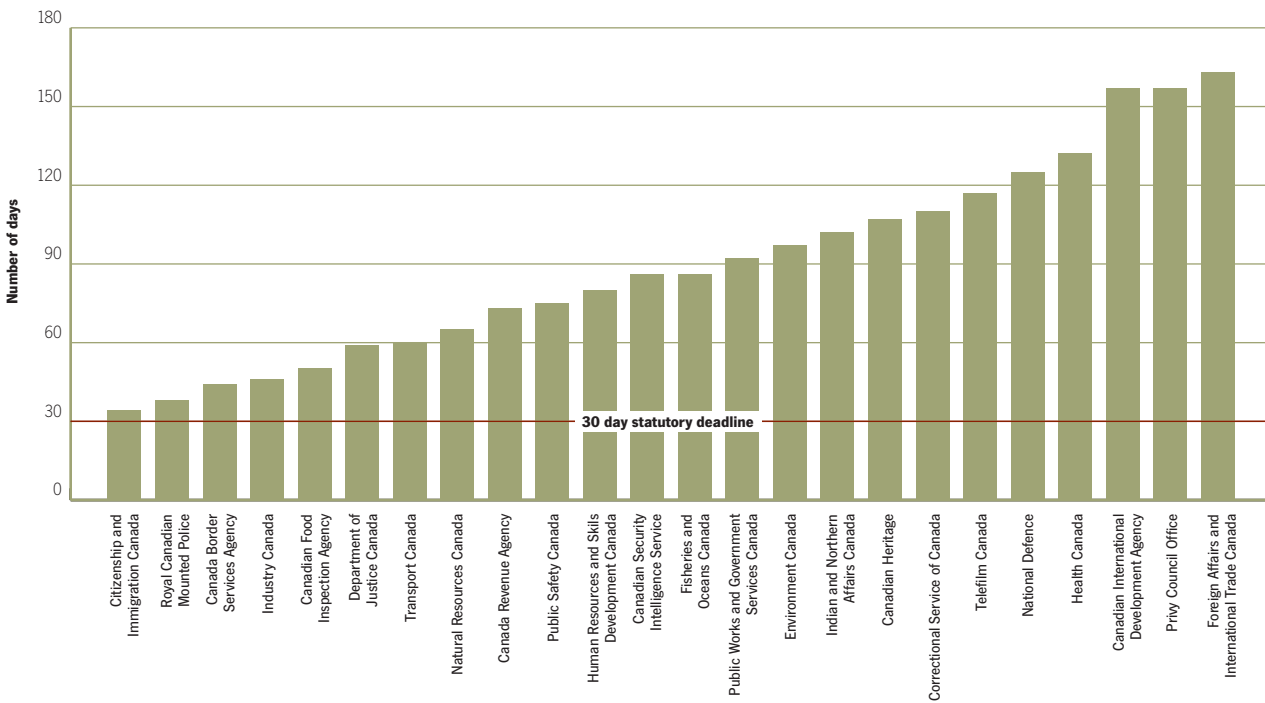
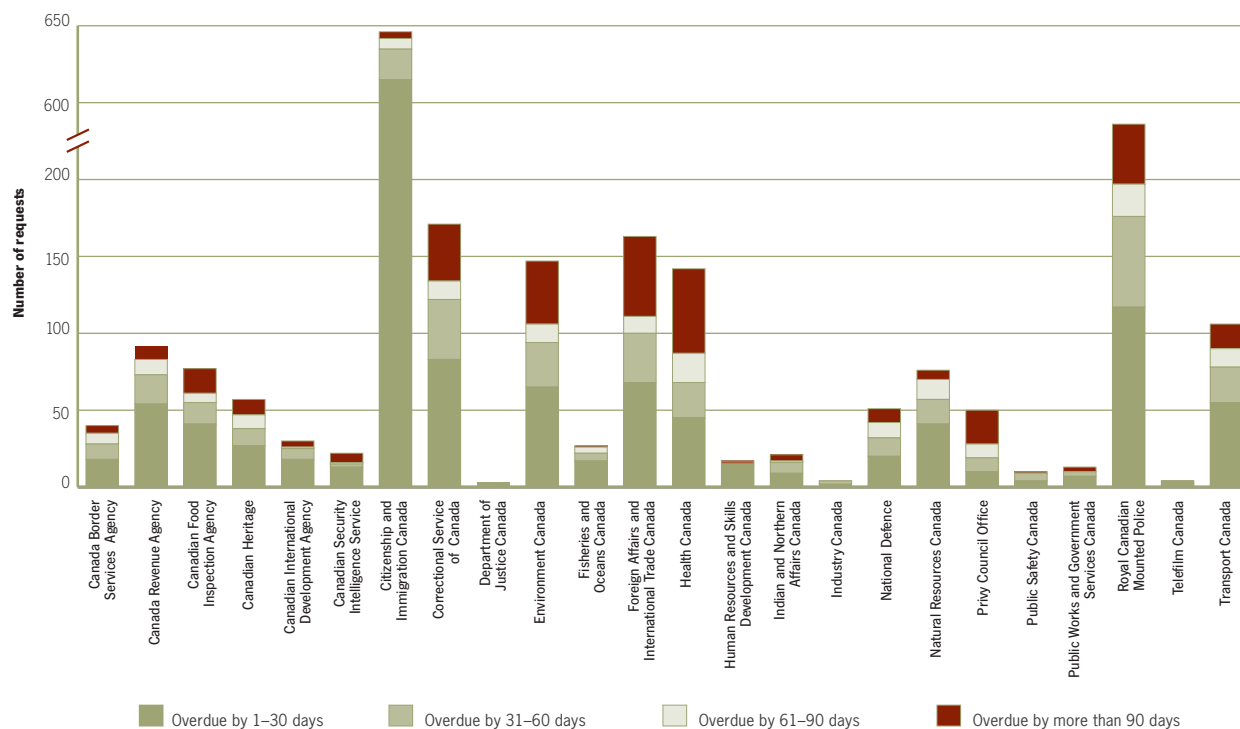


Figure 5 How long requests completed late were overdue, 24 institutions, 2008–2009

As illustrated in Figure 5, of the 2,216 requests that the 24 institutions completed after their original due date (either 30 days or an extended deadline), 594 (27 percent) took more than 60 days to close. During interviews, officials from at least one institution said that they are likely to choose to complete a request that is still on time over one that is already late, in order to improve their report card rating. We find this practice somewhat troubling and we are concerned that there could be more instances of institutions placing less emphasis on overdue requests than on more recent requests.

Overall, looking at the results from this year's report cards, some institutions

(with ratings between 4 and 5) are performing well with respect to the timeliness of their responses to access requests. They have sound and efficient processes in place and make the best of the tools at their disposal. As a result, they have provided timely services to requesters with limited meritorious complaints. By contrast, about half of the institutions surveyed have had a below average or unsatisfactory performance.

What are the immediate causes of delay in responding to access requests?

The **inappropriate use of time extensions** is a leading and well recognized cause of delays. Federal institutions must complete access

requests within 30 days of receipt. Extended time may be claimed if there are many records to examine, other federal institutions to consult or third parties to notify. The legislators' intent was that extensions would be for a "reasonable" period of time, so that requesters would still have timely access to information. However, the Act sets no limits on how long an extension can be and does not prescribe criteria for what constitutes "reasonable." It leaves it to institutions to determine what would be reasonable based on the particular circumstances of the request.

With limited scrutiny, time extensions have become more frequent and longer over the years. Looking at complaints registered in 2008–2009, institutions' use of time extensions is the most important ground for complaining (31 percent) to the Information Commissioner. For 70 percent of the complaints completed with a finding, time extensions were not applied appropriately. The Office of the Information Commissioner will probe the use and duration of time extensions as part of the systemic investigation that it is conducting pursuant to subsection 30(3) of the Act.

As mentioned earlier, **inter-institutional consultations** are also a well recognized source of delays. Federal institutions frequently consult other institutions before determining whether to exempt, exclude or disclose records. In order to do so, they may claim a time extension to allow the other institution(s) to provide their views. The time needed to complete the consultation in order to release the information to the requester then depends on the efficiency and goodwill of the institution being consulted. There are currently neither requirements nor incentives to quickly process consultation requests, even where required by government policy.

Prolonged delays due to consultations have therefore given rise to various circumventing tactics to manage the risk of delays, which are cause for concern. For example, institutions may routinely take longer time extensions than warranted to ensure that requests requiring consultations are completed within the set timelines. They may encourage requesters to narrow the scope of their requests to exclude records rather than risk lengthy delays due to consultations—a tactic that, in some cases, might also limit the information to which requesters may be entitled. Alternatively, institutions may choose to close request files before consultations are completed, therefore jeopardizing future follow-ups on the request.

It is difficult at this time to accurately assess the impact of inter-institutional consultations on delays because there are still no statistics on this issue. We will examine the volume of consultations, particularly mandatory consultations, as part of our systemic investigation into delays and time extensions.

Recent high-profile complaints to the Information Commissioner have highlighted yet another source of delays in responses to access requests. The scope of our systemic investigation into

delays and time extensions will therefore be expanded to examine alleged political or other improper **interferences** with the processing of access requests and with established delegated authorities.

Last year's special report called on TBS to improve the scope of statistics collected annually, particularly regarding completion time, extensions and consultations. Although the Secretariat has carried out some groundwork to collect additional statistics in 2010–2011, implementation has been delayed. In practical terms, informative and comparative data on performance will not be publicly available in the near future. Yet this information is crucial to holding institutions accountable for their performance under the Act.

Based on the information derived from this year's expanded report cards process, the next chapter provides an in-depth look at a number of significant issues that affect the performance of the access to information system, particularly in providing timely service delivery to Canadians.

2. Taking stock of systemic issues

A systemic issue is a system-wide development that affects the capacity of institutions to fulfill their obligations under the *Access to Information Act*. If not properly addressed, it may become the norm and negatively impact the system as a whole, translating into less government accountability and greater infringements of requesters' rights to access information.

Five systemic issues were identified in last year's special report: leadership, as the most determining factor; time extensions and consultations, the immediate causes of delay as discussed in Chapter 1; resources; and records management. The Office of the Information Commissioner (OIC) made several recommendations to the Treasury Board of Canada Secretariat (TBS) and the Canada School of Public Service in order to address these issues. As the update below shows, much remains to be accomplished and therefore, the same issues have resurfaced this year.

This year's process has also uncovered oral evidence that delegation orders have a direct and significant impact on the ability of institutions to meet the statutory deadlines for responding to requests for information.

Delegation orders

Pursuant to the Act, the head of each institution is responsible for the administration of the Act within the institution. Through a delegation order, he or she delegates specific authorities to officials to ensure that decisions are efficiently implemented at the proper level.

A key player is the access to information coordinator. Ideally, the coordinator receives full delegated authority for the access program. In reality, the roles and responsibilities of coordinators, their levels within the management structure and the amount of authority they have for administering the Act vary widely across government. Some institutions have expansive delegation, with various people involved in approvals and sign-offs, which protracts the approval process. In other cases, the coordinator may have the authority on paper but in practice others intervene in the process or question the coordinator's decisions on which records to release.

At the time of going to press, the OIC had undertaken to investigate a series of complaints highlighting the risks of political interference and delays that may stem from inappropriate or ill-enforced delegation orders.

An appropriate delegation of authority is crucial to a well functioning access to information program. A delegation order requiring multiple layers of senior management and ministerial review and approval heavily taxes senior management's time and is likely to generate delays. If the delegation order requires senior managers to apply exemptions and exclusions, they may not have the expertise to interpret these provisions of the Act and may be ill-prepared to defend their decisions before the OIC during an investigation. The greater risk, however, is the potential to negatively impact requesters' rights to be given timely access to records and to obtain all the information to which they are entitled under the Act.

It follows that a delegation order must be appropriate, efficient and transparent. This means that responsibilities should be delegated to officials who have full knowledge of the legislation and jurisprudence. Associated review and approval processes should not cause any delay in the processing of access requests or unduly restrict disclosure under the Act.

The President of the Treasury Board recently finalized a study of best practices for access to information requests subject to special processing. This study stems from a recommendation made in the Canadian Newspaper Association investigation.¹⁰ Among the 18 best practices listed in the TBS report, the first one recommends that the coordinator be delegated full authority by the head of the institution for the administration of the Act.

Recommendation 1

That the Treasury Board of Canada Secretariat assess the extent to which institutions implement the best practices on the delegation of powers, duties and functions pursuant to section 73 of the *Access to Information Act* with the view to achieving appropriate, efficient and transparent delegation orders.

¹⁰ http://www.oic-ci.gc.ca/eng/syst-inv_inv-syst_do_secret_rules_lead_to_delays.aspx

Leadership

Executive leadership is the key to how well institutions fulfill their obligations under the Act. As the policy centre, the Treasury Board of Canada Secretariat is responsible for giving institutions the guidance they need to implement the Act correctly. Within institutions, it is the head and the officials with delegated authority who are ultimately accountable.

Throughout the research phase for this special report, it became apparent that a large number of institutions still do not

Best practices

After a number of years struggling with substandard compliance with the *Access to Information Act*, Canada Border Services Agency, the Department of Justice Canada and Public Works and Government Services Canada developed multi-year plans to bring about significant improvement. The plans received strong support from senior officials and have resulted in stronger performances.

give access to information the priority it deserves as a legislated responsibility. Where deputy heads have fully assumed their responsibilities, their institutions have demonstrated high levels of compliance or drastic improvements in recent years. Employees in both the access to information offices and the program areas took their cues from leaders who

have made clear and strong statements about the importance of access to information. However, judging from specific actions that undermine the system—such as funding cuts and acceptance of poor performance ratings—it would seem that many officials do not fully recognize the significance of the Act and the principles of freedom of information.

A successful access to information program depends, above all, on leadership. Therefore, recommendations must be directed to the officials who have the authority to implement them. In many instances, the OIC recommended to the head of the institution that he or she take a strong leadership role in establishing a culture of compliance and proactive disclosure. Going one step further, a strong message to support an institution's careful and responsible stewardship of access to information obligations would be to include access to information in managers' performance agreements.

Last year's special report also recommended that TBS review the current criteria in the Management Accountability Framework (MAF) to ensure that they adequately measure institutions' performance in meeting their obligations under the Act. TBS has reviewed the compliance assessment methodology used for the MAF and will include new ATIP-related statistical data to refine its performance monitoring capability. (See Appendix A for the TBS response to OIC recommendations.)

Round VI of the MAF¹¹ provided an assessment of whether the statutory and regulatory requirements of the Act were

met in 2008. Except for Telefilm Canada, all institutions surveyed this year in the report cards process are subject to the MAF requirements on access to information. No institution scored a "strong performance." Only 4 of the 23 institutions (Canadian Heritage, Citizenship and Immigration Canada, Industry Canada and Privy Council Office) were deemed to have an "acceptable performance," where no significant deficiencies were observed and the indicators met TBS expectations. For the other 19 institutions, however, moderate deficiencies pointed to an "opportunity for improvement" with respect to their reporting requirements.

Whether or not an institution complies with reporting requirements offers little insight into their actual performance in providing timely access to information. Indicators under the Management Accountability Framework (MAF) should measure the overall performance of federal institutions in meeting their obligations under the Act. As a result, we reiterate the recommendation from last year's special report about the necessity to have stronger indicators in the MAF.

Recommendation 2

That, as part of the Management Accountability Framework, the Treasury Board of Canada 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*.

¹¹ The methodology used by TBS during Round VI primarily looked at the public reporting aspect of institutional performance, namely the submission of an annual report to Parliament, compliance with all mandatory reporting requirements in the annual report, publication of the institution-specific classes of records in accordance with TBS requirements, and publication of the institution's information holdings, programs, activities and related information in the 2008 Info Source.

Time extensions

The *Access to Information Act* allows institutions to extend the time limit they have to complete a request in specific and limited circumstances and for a reasonable period of time.

This year's report cards process once again revealed numerous instances of institutions' using time extensions in a manner that the drafters of the Act never intended, thereby creating unnecessary delays. The OIC has observed an **inconsistent application** across institutions of paragraph 9(1)(a), which provides for time extensions when a request involves a search through or for a large volume of records and would unreasonably interfere with operations. This results from varying interpretations of what constitutes a "large volume of records" per request. Institutions are also using this type of extension to manage access to information workloads rather than resourcing offices properly to ensure there is enough staff to handle the volume of requests.

The OIC will publish a practice direction to clarify how it interprets paragraph 9(1)(a) of the Act. (See Chapter 3, Commitment 1.)

The OIC remains concerned with the lack of checks and balances needed to ensure that all extensions are legitimate, appropriately applied and well documented. The fact that the Act contains no time limits for time extensions and no sanctions for this or any other practice that leads to delays certainly further exacerbates the situation.

Last year's special report offered several recommendations to TBS about time extensions. In particular, in the absence of legislated reform, we need more and better statistics in order to accurately assess institutions' performance and hold institutions accountable before Canadians. Due to delays in implementation, TBS will not start collecting these improved statistics in 2010–2011, as recommended. (See Appendix A.)

We reiterate the recommendations from last year's special report about the necessity to collect stronger data to strengthen accountability.

Recommendation 3

That the Treasury Board of Canada Secretariat collect annual statistics in accordance with Recommendations 3, 4 and 5 included in the 2007-2008 Special Report.¹²

¹² http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2007-2008_25.aspx

Consultations

Institutions regularly consult with one another about information in records subject to an access to information request, to confirm what information may be released or exempted (paragraph 9(1)(b)). Treasury Board (TB) policy requires federal institutions to consult on requests involving the application of exemptions relating to international affairs, defence and national security (section 15), and exemptions relating to law enforcement and penal institutions (section 16). TB policy also requires institutions to consult the Privy Council Office (PCO) to confirm whether records are Cabinet confidences. These are called “mandatory consultations.”

Best practices

Contacting the institution being consulted to mutually determine how long the consultation will take is a best practice more institutions should adopt. It is standard procedure at the Canadian Food Inspection Agency, Industry Canada, and Canadian Heritage.

The volume of these mandatory consultations has grown over the years such that it now accounts for a significant part of some institutions’ workloads. (See the workload distribution below in the institutions most frequently consulted.) As a result, many institutions no longer quickly respond to consultation requests. This in turn affects the speed at which

the consulting institution can close the associated access requests and release the information to requesters.

Consultations with other federal institutions represent a definite challenge because the institution in receipt of the request remains responsible for completing the request within the statutory timelines. However, it is entirely dependent upon the efficiency and goodwill of the consulted institution to complete the consultation in a timely fashion.

Institutions that receive mandatory consultation requests like those in Figure 1 have an additional responsibility to ensure that their performance does not significantly affect the workings of the access to information program. A poor performance on their part creates bottlenecks that have rippling effects across the system and negatively affect requesters’ rights.

Due to the lack of information on consultations, the current system does not place responsibility for action where it belongs. There is no incentive in law, in policy, in performance agreements or under the Management Accountability Framework for the consulted institution to respond quickly or to treat a consultation as a priority.

All institutions in this year’s report cards process reported that the turnaround time for consultations is increasing and deadlines for responses are often being missed. This is particularly the case when dealing with Foreign Affairs and International Trade Canada and the PCO Cabinet Confidences Counsel.

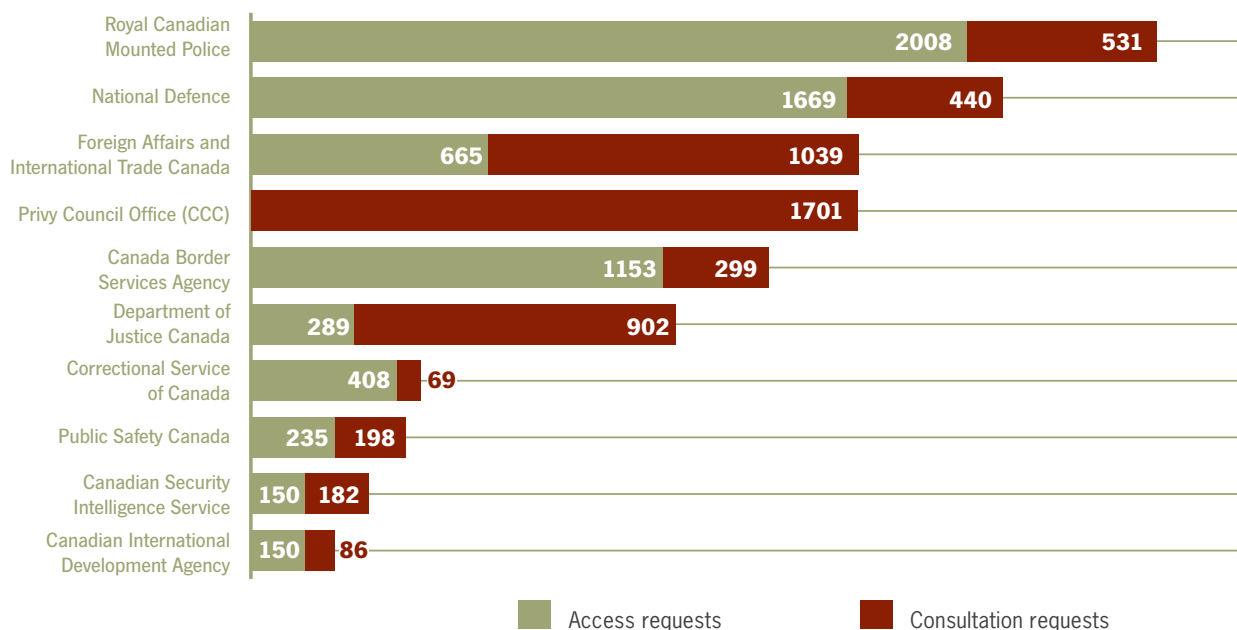
In the case of mandatory consultations, much of the time a file stays with the institution being consulted is spent waiting in queue to be processed. This forces consulting institutions to adopt circumventing tactics to manage the risk of delays resulting from the consultation process. Institutions claim long, blanket time extensions as a contingency, to ensure that the requests are completed

Best practices

Public Safety Canada has adopted a firm stance against situations where the institution consulted fails to respond on time. It uses its own judgment to decide what to release, applying the necessary exemptions itself.

The Canada Border Services Agency, the Department of Justice Canada, Citizenship and Immigration Canada and the Canadian International Development Agency have developed protocols with the institutions they consult frequently, to expedite the consultation process.

within the timelines. Many accept the response times set by their counterparts (in cases where they ask) and do not challenge unreasonable turnaround times when circumstances would sensibly warrant this (such as for very small or straightforward records packages).

Figure 1 Workload distribution in institutions receiving mandatory consultation requests

Some institutions have also implemented a practice of closing files before the consultation is completed in order to avoid any negative effect on their compliance rate.

In last year's special report, the OIC recommended that TBS assess the magnitude of consultations, including mandatory consultations, and their impact on the workloads of institutions. TBS reported that it has examined the issue. However, no specific action was taken during the reference period to assess the impact of consultations. The Proposed Directive on the Administration of the *Access to Information Act* mentions the importance of timely consultations. In addition, the new

statistical data will track the volume of consultations. However, none of these measures are in force at this time. (See Appendix A for the TBS response to OIC recommendations.)

We reiterate the recommendation from last year's special report about the necessity to assess the magnitude and impact of consultations.

Recommendation 4

That the Treasury Board of Canada Secretariat, together with relevant institutions, assess the magnitude of consultations between federal institutions and the impact of such consultations on institutions' workloads with a view to allocating appropriate resources for this function.

Resources

A fully compliant access to information program requires adequate resources. These include stable funding, a sufficient number of qualified employees and modern tools to do the work on time and efficiently.

Last year's special report included three recommendations for TBS on human resources and training. These called for developing and implementing an integrated human resources action plan, an extensive training program for access to information specialists, and an integrated learning strategy for all employees of the public service.

It is in the area of **training** that most progress has been achieved. After a successful pilot in the summer of 2009, the Canada School of Public Service launched its new three-day access to information course for the federal public service in the summer of 2009. To date, four sessions have been delivered to 73 participants. Additional sessions are planned for the regions and online at the end of fiscal year 2009–2010. The

Best practices

Library and Archives Canada considers access to information as a mandatory service to Canadians. Senior officials recognize, support and adequately fund the access to information function. They also take a business-like approach to ensuring that requests are dealt with the greatest efficiency.

course will also be tailored for employees of Crown corporations that became subject to access legislation under the *Federal Accountability Act*.

The Canada School has added access to information into its information management curriculum which underscores the inextricable link between access and information management. Other courses for managers will be revised similarly.

TBS organized a number of activities to support the access to information community, including community meetings and awareness events. It is also exploring new training opportunities with the Canada School. Both institutions are working together to implement the Five-Year **Integrated Learning Development Strategy** for information management and access to information.

In contrast, TBS has been silent on the development of an integrated **human resources** action plan. It is looking to develop competency profiles for the access to information community, which will support recruitment and developmental activities. (See Appendix A for the TBS response to OIC recommendations.)

We have heard on numerous occasions that access to information offices across government are severely under-resourced. A realistic allocation of resources constitutes a key feature of a well functioning access to information program. Without the necessary resources, the effectiveness of the program is compromised.

The risks from inadequate funding are abundant, from the failure to meet legal requirements of the Act to declining performance, exhaustion of staff and an increase in complaints to the Information Commissioner. The ultimate risk is the erosion of requesters' right to information. These risks, if realized, would create negative public perceptions about the transparency and openness of government as a whole.

In many instances during this year's report cards process, the OIC recommended that senior officials devote

the necessary personnel and financial resources in order to comply fully with the Act. Some have faced major increases in their workload, which has had an important impact on the timeliness and quality of their responses to access requests. It is therefore crucial to develop an effective long-term strategy for access to information operations. Sustained compliance can only be achieved with permanent and qualified staff. Many institutions surveyed have faced, over the years, successive increases in the volume of requests and pages to review without equivalent increases in their resources. They have often approached the problem with short-term or temporary funding to deal with the overflow.

In addition, all institutions interviewed this year mentioned difficulties in staffing their analyst positions due to a shortage of qualified and experienced personnel. Retention of qualified staff is also a great challenge for institutions. As a result of capacity gaps, access to information offices often had to invest considerable time in staffing and training, causing further delays in responding to access requests. There is an urgent need to develop a recruitment, renewal and retention strategy for access to information officers. We therefore reiterate another recommendation from last year's special report about the necessity to develop and implement urgently an integrated human resources action plan.

Recommendation 5

That the Treasury Board of Canada 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.

Record management

Information management goes hand in hand with access to information. Poor information management makes the retrieval of records time consuming, uncertain and incomplete. It also increases the cost and the level of efforts associated with access to information.

The OIC recommended that TBS assess the state of information management across government and develop an action plan to address institutional deficiencies in this area, including training on information management practices for the access to information function. TBS reports that it carried out a myriad of initiatives under the Government of Canada's Information Management

Strategy and Action Plan, including a new Directive on Recordkeeping.¹³ It is also working towards developing an information management certification program for information management functional specialists. These activities are promising but will be implemented over a five-year period. (See Appendix A for the TBS response to OIC recommendations.)

In 2009–2010, Library and Archives Canada collaborated with TBS in implementing the Directive on Recordkeeping.

It will be interesting to see if these initiatives will actually translate into more effective access to information. About six percent of all complaints received by the OIC are about incomplete searches or no records found. We have often found a correlation

between poor information management and this type of complaint.

During the course of the report cards process, we have heard from institutions that their current practices have been developed out of operational needs without consideration to facilitating retrieval and disclosure of records. As a result, all but a few signalled difficult retrieval of records. The OIC will follow developments with great interest.

¹³ <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=16552§ion=text>

3. OIC commitments

New commitments

Time extensions to prevent interference with the institution's operations due to a search through or for a large volume of records.

During the report cards process, we noted an important variance in institutions' interpretation and application of paragraph 9(1) a). The last guidance the Office of the Information Commissioner (OIC) offered on the application of this paragraph was in 1999.¹⁴ Given the increasing use of this type of extension and the length of time often claimed, we feel that it is time to clarify our interpretation of the meaning of "large number of records," and "unreasonably interfere with operations of the government institution" in the course of our investigations in paragraph 9(1)(a).

Commitment 1

In 2010–2011, the Office of the Information Commissioner will publish a practice direction on time extensions taken by institutions under paragraph 9(1)(a).

Notices of extension

Institutions are required by law to notify the Information Commissioner of any time extension they take for more than 30 days. This notice informs us about the use and duration of time extensions longer than 30 days at the same time as requesters find out about the extension. As the individual report cards show, institutions do not consistently comply with this requirement. In addition, the notices that institutions send vary in terms of content and how they justify the extensions taken. More compliance and clarity are required to give this monitoring tool the usefulness which was intended by the legislator as a check and balance mechanism in the absence of legislated timelines. Some institutions suggested that the OIC introduce an electronic means of submitting the notices. This would allow institutions to keep better track of the notices they send and also mean they would be submitted and received in real time, not after the fact.

Commitment 2

The Office of the Information Commissioner will develop and implement by the end of 2010–2011 a template for the notification of time extensions that will provide sufficient information for monitoring their use and length. It will also explore ways to make the notification process more efficient by using electronic tools.

Commitment 3

In 2010–2011, the Office of the Information Commissioner will publish a practice direction on the notification procedures under paragraph 9(2) of the Act.

Commitment 4

The Office of the Information Commissioner will assign an official to review and assess the extension notices that institutions file with the OIC, and will carry out follow-up actions, as required.

¹⁴ http://www.oic-ci.gc.ca/eng/med-roo-sal-med_speeches-discours_1999_1.aspx

Follow-up on previous commitments

Classification of complaints

The OIC committed to reviewing the disposition categories it uses for closed complaints to provide a more accurate picture of institutional performance. Following a consultation with various stakeholders, including access to information coordinators and users, the OIC will implement the revised disposition categories for fiscal year 2010–2011.

Releasing information under the act

This year we conducted a preliminary measurement on a small sample of refusal complaints that were closed with a finding in 2009–2010 to determine whether the level of disclosure within institutions increased after the OIC intervened. The sample of files reviewed showed that, as a result of the investigation, the number of pages withheld in their entirety decreased by 35 percent and the number of pages fully released increased by 117 percent.

Therefore, starting in April 2010, we will routinely capture data in investigation files to track the overall degree of disclosure subsequent to complaints submitted to the OIC. In particular, we will track the release of additional pages and the timing of the release.

Report cards process

To be as open and transparent as possible, the OIC committed to publishing a three-year plan¹⁵ for report cards. The plan we published in July 2009 sets out the report cards process for the three fiscal years from 2008–2009 to 2010–2011 as well as a planned systemic investigation into delays and time extensions. This plan will be updated in April 2010 to take into account recently announced budgetary restraints and reporting burden on institutions. The scope of the systemic investigation will also be revised in light of recent allegations of political interference with the processing of access requests.

¹⁵ http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_3_yrs_plan.aspx

4. Institutional report cards

For the period 2008–2009, the Office of the Information Commissioner (OIC) selected a large sample of 24 institutions covered by the *Access to Information Act* to analyze their performance in terms of the timeliness of their responses to access requests. This group of institutions received 88 percent of all federal access requests in 2008–2009. They were selected on the basis of complaints the OIC received during the reference period. All institutions against which we received at least five delay-related complaints (requests completed late and problems due to the time extensions that institutions claimed to process requests) were selected. The institutions' responses to our assessment questionnaire¹⁶ are posted on the OIC website.

We followed up on the 10 institutions surveyed for our 2007–2008 Special Report¹⁷ in order to report on their implementation of action plans to address issues that were identified last year.

The table below provides the 2008–2009 rating by institution. Scores ranging from one to five stars (or from F to A), as explained in Appendix B, have been assigned to institutions based on their overall compliance. In response to feedback from institutions, our assessment framework retained both the deemed refusal rate and the letter grade. We also looked at a broader picture of institutional compliance, such as whether institutions met their statutory obligation to notify the Information Commissioner every time they invoked a time extension for more than 30 days and the length of time it took to process overdue requests after the due date.

For 2008–2009, the Department of Justice Canada and Citizenship and Immigration Canada (CIC) achieved a perfect score. The former maintained its performance from last year. As the institution that received the largest volume of access requests of any federal government institution, CIC tied first place.

Three institutions achieved greater success in 2008–2009 than in the previous reporting year: Canada Border Services Agency, Public Works and Government Services Canada and the Royal Canadian Mounted Police. The goal for these institutions is to sustain their efforts, as there is room for additional improvements.

Institutions that scored an average and above average performance all faced varying challenges during the year but were able to maintain a reasonable performance.

The performance of 12 institutions was below average or unsatisfactory in 2008–2009 for a variety of reasons. These institutions accounted for 9,047 (or 27 percent) of a total of 34,041 access requests made to the federal government. (This percentage increases to 45 percent if we remove the large share of requests sent to CIC, the majority of which are privacy-related and as such can be processed more expeditiously.) Most of these institutions struggled with increases in requests, insufficient resources, and/or drawn-out review and approval processes. They also made extensive use of time extensions, many of which were applied inappropriately.

Foreign Affairs and International Trade Canada's performance was so poor that the OIC could not rate it against its established criteria. This is all the more troublesome given the high number of mandatory consultations that this department receives. As a result, other institutions and requesters are held hostage by the department's dismal performance.

Finally, following the review process, the OIC decided not to rate Telefilm Canada on its compliance with the Act in 2008–2009, which was an atypical year for the institution. In particular, since 33 of the 39 complaints against Telefilm Canada were pending at the end of the year, the OIC did not have a complete set of data on which to base its assessment.

¹⁶ http://www.oic-ci.gc.ca/eng/rep-pub-spec_rep-rap_spec-quest-2008-2009_questionnaires.aspx

¹⁷ http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2007-2008.aspx

2008–2009 Rating by institution

Institutions	Rating	Letter grade	Overall performance rating
Department of Justice Canada	5	A	Outstanding
Citizenship and Immigration Canada	5	A	Outstanding
Public Works and Government Services Canada	4.5	B	Above average
Canada Border Services Agency	4.5	B	Above average
Industry Canada	4	B	Above average
Public Safety Canada	3.5	C	Average
Royal Canadian Mounted Police	3	C	Average
Fisheries and Oceans Canada	3	C	Average
Indian and Northern Affairs Canada	3	C	Average
Human Resources and Skills Development Canada	3	C	Average
Transport Canada	2.5	D	Below average
Canada Revenue Agency	2.5	D	Below average
National Defence	2.5	D	Below average
Canadian Security Intelligence Service	2	D	Below average
Health Canada	2	D	Below average
Canadian Food Inspection Agency	2	D	Below average
Privy Council Office	2	D	Below average
Natural Resources Canada	1	F	Unsatisfactory
Canadian International Development Agency	1	F	Unsatisfactory
Correctional Service of Canada	1	F	Unsatisfactory
Canadian Heritage	1	F	Unsatisfactory
Environment Canada	1	F	Unsatisfactory
Foreign Affairs and International Trade Canada	0	Off chart	Red alert
Telefilm Canada	n/a	n/a	n/a



Follow-up on an institution assessed in 2007–2008

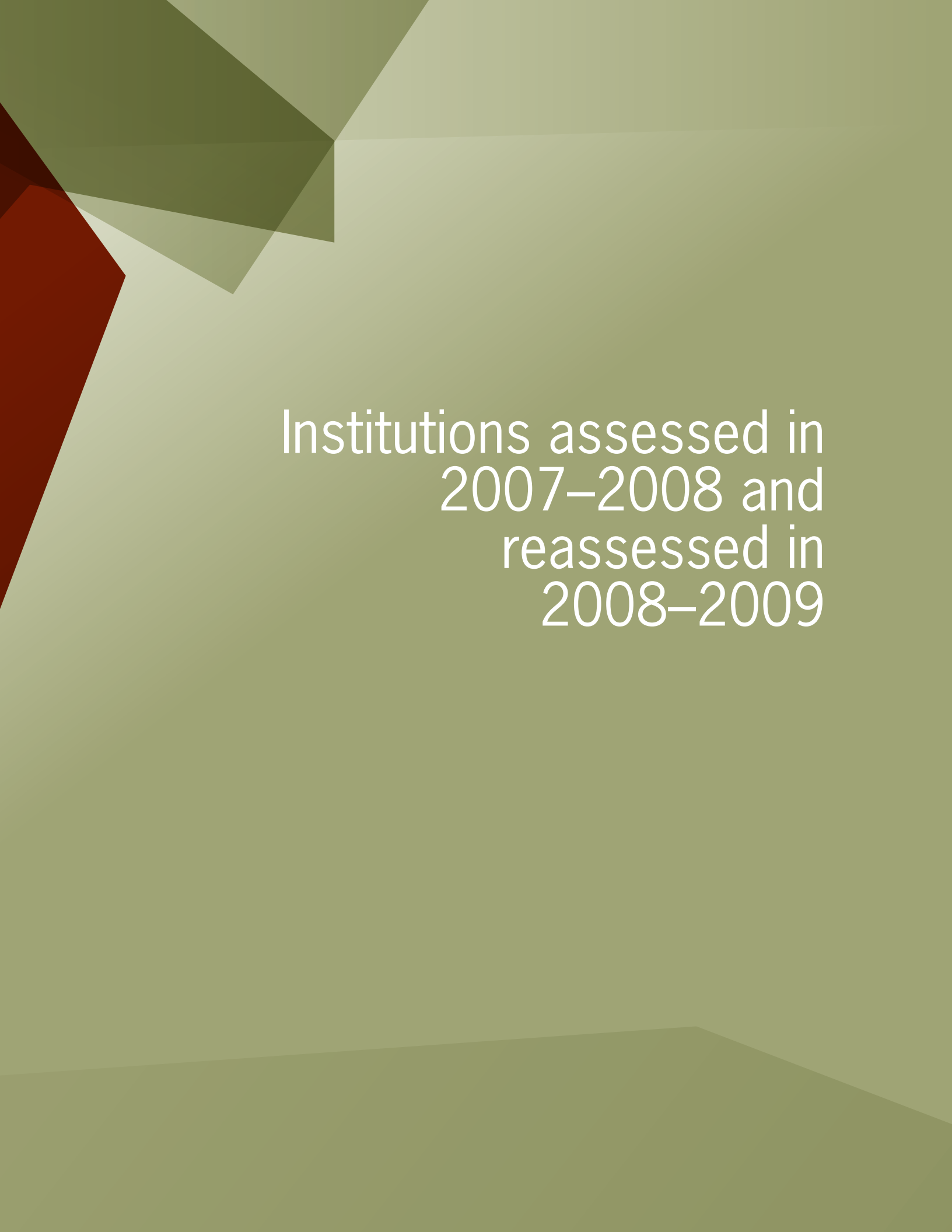
Library and Archives Canada

Library and Archives Canada is responsible for preserving the documentary heritage of Canada for the benefit of current and future generations, serving as a source of enduring knowledge accessible to all. Library and Archives Canada facilitates Canada's cooperation among communities involved in the acquisition, preservation and diffusion of knowledge, and serves as the memory bank for the Government of Canada and its institutions.

Follow-up on 2007–2008 report card

Library and Archives Canada received a strong report card in 2007–2008, with an above average rating of 4.5 stars and a deemed refusal rate of just 2.1 percent, which was the best of all the institutions surveyed. The Office of the Information Commissioner (OIC) said, however, that the institution's ample use of time extensions might have contributed to this impressive result. The OIC recommended to Library and Archives Canada that it reduce its reliance on lengthy time extensions for consulting with other federal institutions, which it did in 2008–2009 by continuing to work in close collaboration with National Defence and the Canadian Security Intelligence Service. This close collaboration is, indeed, a good practice that shortens consultation time. The institution also worked on implementing an information management strategy to facilitate the retrieval of records and actively participated in developing Treasury Board's Directive on Recordkeeping. Library and Archives Canada's success may also be attributed to its treating requests informally whenever possible. The bottom line at Library and Archives Canada is that access to information is a mandatory service to Canadians; hence, senior officials recognize, support and fund the access to information function. The access to information office also takes a business-like approach to ensuring that requests are dealt with in the most effective and efficient manner. Overall, the OIC is satisfied with how Library and Archives Canada implemented the recommendations in the 2007–2008 report card.

Given Library and Archives Canada's excellent progress in ensuring compliance with the *Access to Information Act*, and the small number of delay-related complaints (complaints about requests completed late and problems associated with time extensions that institutions take to process requests) to the OIC during 2008–2009, the OIC did not select this institution for this year's report card process.



Institutions assessed in
2007–2008 and
reassessed in
2008–2009

Some facts about access to information operations at CBSA in 2008–2009

• Number of requests carried over from 2007–2008	157
• Number of new requests	1,155
• Number of requests completed	1,148
• Deemed refusal rate	4.7%
• Average time to complete a request (in days)	44*
• Number of consultation requests	299
• Number of complaints registered with the Office of the Information Commissioner	36
• Number of complaints the Office of the Information Commissioner resolved	7**
• Number of full-time equivalents in access to information office, as of March 31, 2009	20.9

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Canada Border Services Agency

The Canada Border Services Agency (CBSA) manages the access of people and goods to and from Canada, in the interests of national security and public safety. CBSA carries out operations related to customs, immigration and the importation of food, plants and animals. It also administers international trade agreements and collects duties and taxes on imported goods.

2008–2009 report card at a glance



- Deemed refusal rate of 4.7 percent, which is the third best among institutions surveyed; in comparison, the rates for 2006 and 2007–2008 were 69 percent and 33.5 percent, respectively.
- Strong leadership led to the development and implementation of initiatives under a three-year plan, which came to fruition in 2008–2009: backlog reduction, staffing and new practices and procedures.
- Reduced average completion time for requests from 135 days in 2007–2008 to 44 in 2008–2009, while experiencing a 72 percent increase in requests over several years.
- CBSA's complaints record has improved in recent years: the number of complaints related to requests delayed beyond the timelines set out in the *Access to Information Act* decreased from 429 in 2006–2007 to 4 in 2008–2009. Over the same period, the Office of the Information Commissioner found an increasing number of complaints related to time extensions to be not substantiated.
- The access to information coordinator has full delegation of authority.
- Information management is an ongoing challenge due to legacy systems. CBSA has committed to completing an analysis of its records and information management functions in 2010–2011. This analysis will form the foundation of an improved information and records management system.
- CBSA has to consult other institutions on 75 percent of the requests it receives.
- 13 percent of the extensions CBSA took in 2008–2009 were for more than 120 days.
- CBSA submitted the required notices of extensions longer than 30 days to the Office of the Information Commissioner 59 percent of the time.

Canada Border Services Agency

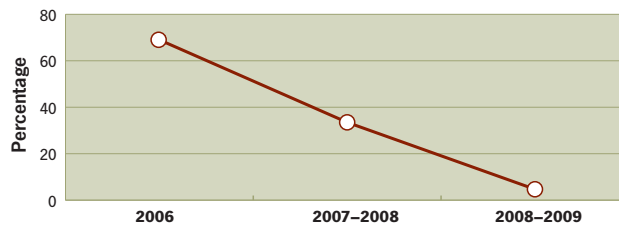
Follow-up on 2007–2008 report card

The Canada Border Services Agency's (CBSA) compliance with the *Access to Information Act* in 2007–2008 showed the effects of the institution's continued growing pains (it was created in late 2003), although it did cut its deemed refusal rate in half from the previous year. A significant factor for CBSA over the last several years has been the increasing number and complexity of the requests it receives, and the growing number of files associated with litigation and sensitive matters, or for which it must consult other institutions. This, combined with a significant and unexpected shortage of employees, due to delays in the staffing process, set the stage for CBSA to receive a failing grade in 2007–2008. The institution had already committed to securing the required resources and did so; however, due to further staffing delays this was only possible in 2008–2009. Although a very tight fiscal situation at the institution threatens the gains CBSA has made, the Office of the Information Commissioner (OIC) is encouraged by CBSA's response to the recommendations in the 2007–2008 report card.

2008–2009 report card

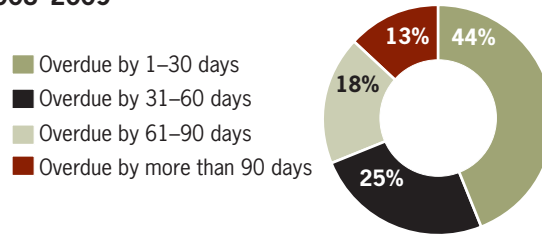
CBSA continued to move toward full compliance with the *Access to Information Act* in 2008–2009, achieving a deemed refusal rate of just 4.7 percent, third best among all the institutions surveyed this year. This is a significant improvement from 2007–2008, when CBSA's

Deemed refusal rate, 2006 to 2008–2009



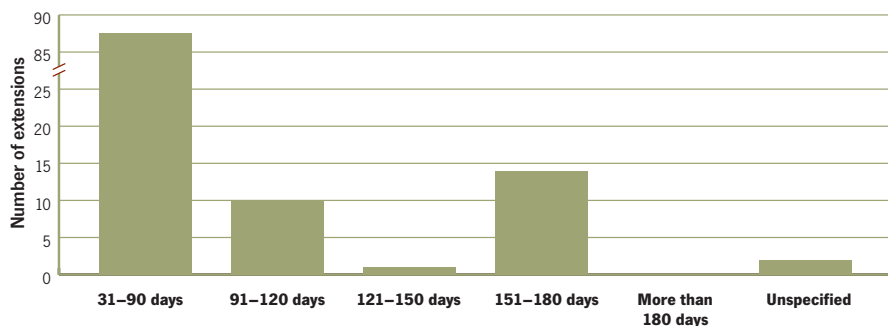
This graph shows the deemed refusal rate for CBSA for the last three reporting periods. This is the percentage of carried over and new requests CBSA delayed each year beyond the deadlines (30 days and extended) set out in the *Access to Information Act*.

How long requests completed late were overdue, 2008–2009



CBSA reported that it completed 40 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline. It is of concern that 56 percent of these requests were late by more than 30 days.

Number and length of time extensions reported in 2008–2009



This graph shows the number and length of the time extensions CBSA reported to have taken in 2008–2009. CBSA supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. CBSA submitted the notices 59 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

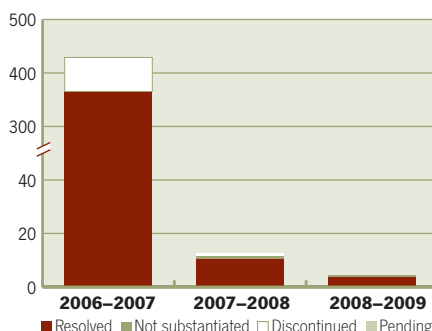
deemed refusal rate was 33.5 percent. The institution deserves praise for its turnaround.

After receiving a first failing grade in 2006–2007, the institution made a conscious effort to improve its compliance, developing an action plan to

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

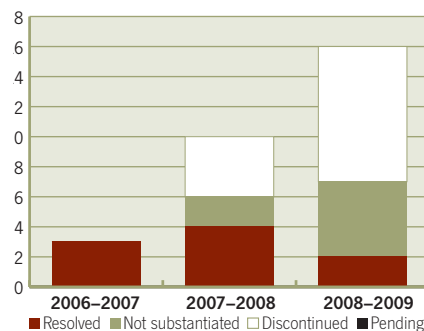
These graphs show the number and outcome for two types of complaint registered against CBSA in the last three reporting periods: complaints about deemed refusals (access to information requests that CBSA delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about CBSA's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



CBSA went from generating 429 complaints about deemed refusals in 2006–2007 to only 4 in 2008–2009.

Time extension complaints



The number of time extension complaints increased over the last three years (3; 10; 16). The OIC found an increasing number of these complaints to be not substantiated (0; 2; 5).

address the OIC's concerns, as noted in the 2007–2008 special report. CBSA had nearly fully implemented the plan by the end of 2008–2009, and the institution's dramatically improved compliance rate is clear proof of the effectiveness of this plan.

The turnaround stemmed from several initiatives. CBSA continued to reduce its backlog of requests, staffed additional indeterminate positions in 2008–2009, and introduced several new practices and procedures. For example, it developed a checklist for records holders to follow when retrieving records, including providing severing recommendations early in the process and getting sector management sign-off of the proposed package prior to submitting it to the access to information office.

Training for access to information staff covering how and why to properly document each stage of the processing of a request, as well as the full delegation authority of the access to information coordinator, also contributed to CBSA being able to reduce its average completion time for requests from 135 calendar days in 2007–2008 to 44 in 2008–2009. CBSA did this at the same time that it faced a 72 percent increase in requests over a period of several years.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against CBSA in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	367	7	64	0	438
Refusals	7	7	2	2	18
Cabinet confidences	0	0	0	0	0
Total	374	14	66	2	456
2007–2008					
Administrative	15	3	5	0	23
Refusals	9	1	21	7	38
Cabinet confidences	0	0	0	0	0
Total	24	4	26	7	61
2008–2009					
Administrative	6	6	9	0	21
Refusals	1	2	3	8	14
Cabinet confidences	0	0	0	1	1
Total	7	8	12	9	36

Since 2006–2007, the overall number of complaints has decreased significantly (456; 61; 36). This was also true of administrative complaints (438; 23; 21) and resolved complaints (374; 24; 7).

The vast majority of these requests were actually privacy requests submitted under the *Access to Information Act* by individuals seeking reports on their interactions with the institution, for example, as a result of a stop at the border.

The number of complaints to the OIC about CBSA has decreased significantly in the last three years—from 456 in 2006–2007 to 36 in 2008–2009—freeing up analysts to respond to access requests.

CBSA has committed to improving its compliance rate in 2009–2010 and tackling several outstanding issues. Among these are the longer-than-necessary retrieval time for records and the challenges associated with finding all the records relevant to requests. CBSA does not have a centralized records management system, and the institution's many older legacy systems are not integrated. This means that records holders have difficulty quickly searching for and locating relevant records.

Due to the subject matter, CBSA consulted other institutions on more than 75 percent of the requests it received. For its part, CBSA has adjusted its procedure for handling incoming requests for consultations from other institutions. The access to information office now makes consultations an equal priority to access requests, and employees are trained accordingly.

The OIC notes with concern that 13 percent of the extensions CBSA took in 2008–2009 were for more than 120 days.

CBSA reports that a tight fiscal situation has already meant that the access to information office has lost support positions and that there is less money than might be ideal to carry out certain activities such as training. The OIC is concerned that this diminished funding will compromise CBSA's ability to comply with the law.

CBSA was first part of the report card process in 2006, and has made great strides since then in improving its compliance. The OIC will watch with interest how the access to information office and the institution as a whole work to sustain its high level of achievement.

Recommendations

1. The Office of the Information Commissioner recommends that Canada Border Services Agency strive to reduce its deemed refusal rate to zero.

Response

CBSA supports this recommendation in the context of the volume of requests we receive. CBSA has improved its compliance with legislated timeframes compared to previous years. This was due to the reduction of the backlog from previous years, the introduction of new practices and procedures (including further delegation of responsibilities to team leaders), and reorganization and growth of the Access to Information and Privacy and Disclosure Policy Division. Taken together, we anticipate these measures will further reduce the number of deemed refusals.

2. The Office of the Information Commissioner recommends that Canada Border Services Agency identify and implement the necessary enhancements to records management systems to ensure a quick and proper search of records in response to an access to information request.

Response

CBSA supports this recommendation. The Information Management Program within the Innovation, Science and Technology Branch has committed, in 2010–2011, to completing its analysis of the records management and

information management domains within the agency. This will act as the foundation for the implementation of processes and tools that will better equip the staff to provide more timely and accurate search capabilities.

3. The Office of the Information Commissioner recommends that Canada Border Services Agency document and review the criteria it uses for extensions to ensure that the extensions are reasonable and legitimate.

Response

CBSA supports this recommendation. It has documented its criteria for extensions and incorporates those criteria in ongoing advice, guidance and direction to production staff. The criteria are reviewed on an ongoing basis and will also be examined annually in light of the OIC report card.

4. The Office of the Information Commissioner recommends that Canada Border Services Agency comply with the *Access to Information Act* and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

CBSA supports this recommendation. New staff directives and ongoing reminders were implemented. In 2009–2010, further training is being provided to ensure consistent compliance with this requirement.

Some facts about access to information operations at the Department of Justice Canada in 2008–2009

• Number of requests carried over from 2007–2008	69
• Number of new requests	289
• Number of requests completed	305
• Deemed refusal rate	3.6%*
• Average time to complete a request (in days)	59
• Number of consultation requests	902
• Number of complaints registered with the Office of the Information Commissioner	29
• Number of complaints the Office of the Information Commissioner resolved	2**
• Number of full-time equivalents in access to information office, as of March 31, 2009	18.9

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Department of Justice Canada

The Department of Justice Canada oversees all matters relating to the administration of justice at the federal level. It provides a range of legal advisory, litigation and legislative services to government departments and agencies, and supports the Minister of Justice in advising Cabinet on all legal matters, including the constitutionality of government initiatives and activities.

2008–2009 report card at a glance



- Deemed refusal rate of 3.6 percent.
- Leadership on the part of senior officials helped ensure a second consecutive A rating, after three consecutive F ratings.
- The Department of Justice received nearly three times as many consultation requests as access requests.
- Support for access to information from senior management has created a culture of compliance across the organization.
- The access to information coordinator has full delegation, which is respected throughout the institution.
- Only three requests were completed after their due date, and each was closed within 30 days of that deadline.
- The Office of the Information Commissioner resolved 2 out of 29 complaints, finding 14 of them to be not substantiated.
- The Department of Justice submitted notices of extensions of more than 30 days in 82 percent of cases.

Department of Justice Canada

Follow-up on 2007–2008 report card

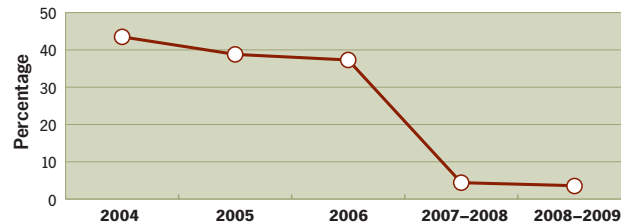
The Department of Justice Canada's strong report card in 2007–2008 came on the heels of several years of poor ratings, starting in 2004. Through leadership at senior levels and by implementing numerous process improvements, the institution's deemed refusal rate in 2007–2008 was just 4.4 percent, which put it among the top institutions surveyed. A significant factor in any year for the institution is the number of consultation requests it receives; in 2007–2008, these outnumbered access requests three to one for the Department of Justice. Nonetheless, the institution responded to them in 16 days on average, through fast-tracking procedures and memoranda of understanding with numerous institutions. One area of concern for the Office of the Information Commissioner (OIC) was the Department of Justice's practice of closing access requests that had outstanding mandatory consultations. Access to information officials assured the OIC, however, that these situations were limited and specific and, most importantly, that officials advise requesters that additional records could be forthcoming, as well as of their redress rights. The OIC has not received complaints on this practice. The Department of Justice generally complied with the OIC's recommendations in the 2007–2008 report card.

2008–2009 report card

The Department of Justice had another successful year in 2008–2009, with only

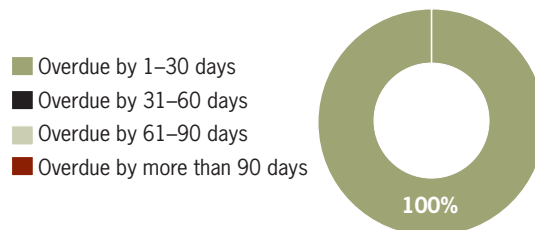
3.6 percent of its requests falling into the deemed refusal category. Moreover, it completed only three of the requests it received in 2008–2009 after their due

Deemed refusal rate, 2004 to 2008–2009



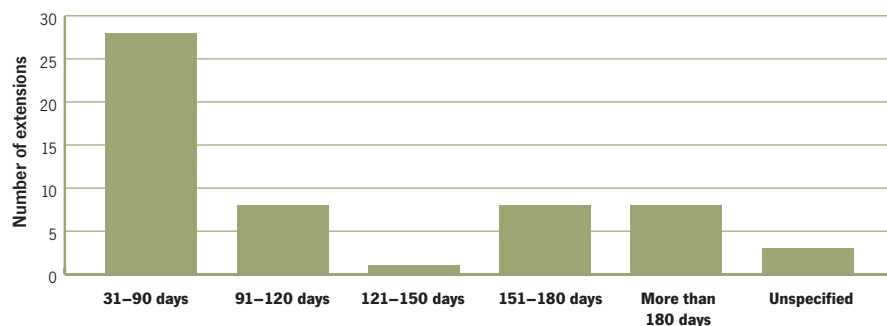
This graph shows the deemed refusal rate for the Department of Justice for the last five reporting periods. This is the percentage of carried over and new requests delayed each year beyond the deadlines (30 days and extended) set out in the *Access to Information Act*.

How long requests completed late were overdue, 2008–2009



The Department of Justice reported that it completed only three of the requests it received in 2008–2009 after their due date. This graph shows that the institution closed all three of them in fewer than 30 days.

Number and length of time extensions reported in 2008–2009

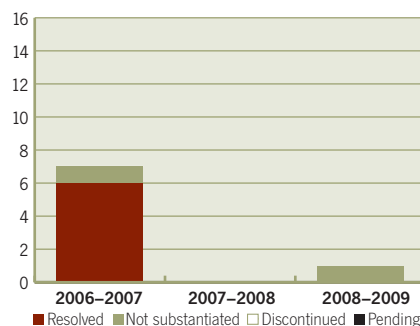


This graph shows the number and length of the time extensions the Department of Justice reported to have taken in 2008–2009. The institution supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. The Department of Justice submitted the notices 82 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

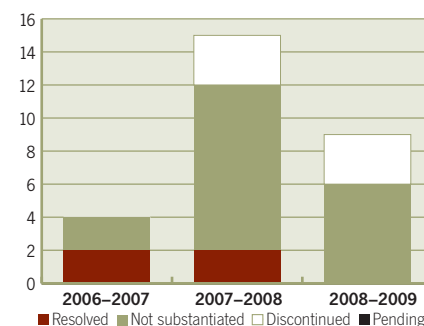
These graphs show the number and outcome of two types of complaint registered against the Department of Justice in the last three reporting periods: complaints about deemed refusals (access to information requests that the Department of Justice delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about the Department of Justice's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit, and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The number of deemed refusal complaints decreased significantly from 2006–2007 to 2008–2009 (from seven to one). In 2008–2009, the Office of the Information Commissioner found the one deemed refusal complaint to be not substantiated.

Time extension complaints



There were two resolved time extension complaints in each of the first two reporting periods; there were none in 2008–2009.

date, and closed them all within the subsequent 30 days. The institution has shown considerable determination in maintaining its now two-year track record of excellent compliance, and the OIC acknowledges this accomplishment.

As testament to the notion that a successful access to information operation depends on the support of institutional leadership, the Department of Justice access to information office counts on firm commitment from its senior management, which is well communicated throughout the institution.

The access to information coordinator has full delegated authority, which is respected throughout the institution. Further, there is confidence in the access to information office, which has a number of experienced employees and reportedly healthy staff morale. Given these positive features and the strong institutional support, it would seem to follow that the Department of Justice would have the edge in attracting and retaining staff. However, it reported that it, too, has fallen victim to the aggressive recruitment that takes place among institutions competing for qualified personnel. Competitive processes involving two employees were concluded when both successful

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against the Department of Justice in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	8	3	1	0	12
Refusals	1	7	3	4	15
Cabinet confidences	0	0	0	0	0
Total	9	10	4	4	27
2007–2008					
Administrative	3	18	4	0	25
Refusals	6	5	3	5	19
Cabinet confidences	0	0	0	3	3
Total	9	23	7	8	47
2008–2009					
Administrative	0	12	4	0	16
Refusals	2	2	2	5	11
Cabinet confidences	0	0	1	1	2
Total	2	14	7	6	29

The total number of complaints decreased significantly from 2007–2008 to 2008–2009 (47 to 29). The overall number of complaints the OIC resolved also decreased in that period (9; 9; 2). Each year, the proportion of resolved complaints to overall complaints decreased (33 percent; 19 percent; 7 percent). Not substantiated complaints equalled nearly one half of all complaints in 2008–2009 (14 out of 29).

candidates decided to remain with their current employer.

The Department of Justice reports frustration with other institutions for lengthy consultation processes on some files, and continues to close partial release files, ensuring that applicants are advised that more records may be forthcoming, at which time complaint rights will still be in effect. In addition, the institution suggests to requesters that they could get their information faster by not asking for records likely to contain Cabinet confidences. The OIC has concerns about this practice, given its potential to diminish the number of records requestors would otherwise have a right to receive or to compromise requestors' rights. The Department of Justice should exercise considerable caution if it chooses to continue this practice. A better approach in the OIC's view would be for it to follow the required procedure and consult with the Privy Council Office on records containing any potential Cabinet confidences, bearing in mind court decisions that require certain information, such as background material, and analysis of problems or policy options, to be severed from records containing Cabinet confidences.

The access to information community is well aware of the Department of Justice's success, and the OIC is encouraged to learn that federal institutions, as well as their provincial counterparts in Quebec, have approached the institution to find out more about its success. Initiatives such as memoranda of understanding, service standards for consultation turnaround times and a streamlined approval process—all within a very structured and supported environment—position this institution for continued success.

Recommendations

1. The Office of the Information Commissioner recommends that the Department of Justice Canada cease suggesting to requesters that they eliminate potential Cabinet confidences from their requests and follow due process to ensure that requesters receive all the documents to which they are legally entitled.

Response

The Department of Justice informs the applicant when the majority of the records are subject to Cabinet confidences (i.e. draft bills and memoranda to Cabinet). This is done with the assistance of the office of primary interest within the department.

In addition, the institution is being transparent by giving requesters the opportunity to provide informed consent as to how to proceed throughout the process. It also provides them with options when volume or search time is at issue. To assist requesters, and as part of the "duty to assist," an overview of the content of the records is provided up front. Moreover, this practice is consistent with our service standards, which are posted on the Department of Justice website, under "Principles for Assisting Applicants."

2. The Office of the Information Commissioner recommends that the Department of Justice Canada reduce its deemed refusal rate to zero.

Response

It has always been the Department of Justice's goal to reduce its deemed refusal rate to zero. It will continue to strive to achieve that goal.

3. The Office of the Information Commissioner recommends that the Department of Justice Canada reduce its average completion time for requests.

Response

It has always been the Department of Justice's goal to reduce the average completion time. It will continue to strive to achieve that goal.

4. The Office of the Information Commissioner recommends that the Department of Justice Canada comply with the Act and notify the Office of the Information Commissioner of the extensions it takes for more than 30 days.

Response

It is the Department of Justice's practice to notify the OIC of the extensions it takes for more than 30 days. A reminder will be sent to all employees of the access to information office.

Foreign Affairs and International Trade Canada

Some facts about access to information operations at DFAIT in 2008–2009

• Number of requests carried over from 2007–2008	459
• Number of new requests	665
• Number of requests completed	739
• Deemed refusal rate	59.6%*
• Average time to complete a request (in days)	163
• Number of consultation requests	1,039
• Number of complaints registered with the Office of the Information Commissioner	93
• Number of complaints the Office of the Information Commissioner resolved	29**
• Number of full-time equivalents in access to information office, as of March 31, 2009	24.9

Foreign Affairs and International Trade Canada (DFAIT) is responsible for Canada's foreign policy and all matters relating to Canada's external affairs. DFAIT's specific areas of responsibility include international peace and security, global trade and commerce, diplomatic and consular relations, administration of the foreign service and Canada's missions abroad, and development of international law and its application to Canada.

2008–2009 report card at a glance



- DFAIT's deemed refusal rate was 59.6 percent, compared to 34.7 percent in 2007–2008.
- The average time to complete a request was 163 days, the highest among the institutions surveyed.
- DFAIT received more consultation requests than access requests and started the year with a backlog of 459 cases.
- DFAIT's compliance affects the entire system because of its role with regard to mandatory consultations about records pertaining to Canada's international relations. While DFAIT provided no data on the actual amount of time it takes to respond to these consultation requests, nearly all of the other institutions surveyed complained about the length of consultations with DFAIT.
- Delay-related complaints (those involving overdue requests and problems with time extensions) more than doubled from 2006–2007 (27) to 2007–2008 (62) but stabilized in 2008–2009 (58).
- With the hiring of 12 new staff members, and having consultants to work on the backlog, DFAIT processed 1,000 more files in 2008–2009 than it had the previous year. The consultants, however, had to be let go due to budget constraints in 2009–2010.
- With the assistance of a senior consultant, DFAIT thoroughly reviewed its management of and approach to access to information in order to seek improved processes and partnerships in the future.
- In light of its critical central role, DFAIT is working with central agencies to secure additional funding to fulfill its access to information obligations.
- DFAIT submitted 9(2) notices in 95 percent of the cases in which it took extensions of more than 30 days.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Foreign Affairs and International Trade Canada

Follow-up on 2007–2008 report card

Foreign Affairs and International Trade Canada's (DFAIT) ability to comply with the *Access to Information Act* in 2007–2008 was severely hampered by its overwhelming workload associated with requests related to the mission in Afghanistan and mandatory consultations from other institutions. Consultation requests have increased significantly in recent years, to the point that they outnumber access requests. Clearly, DFAIT did not have the internal capacity to meet such demand in 2007–2008, given both its deemed refusal rate of 34.7 percent and its average completion time for consultations of 75 days. The institution committed to continuing to search for the permanent resources it needed to successfully handle both aspects of its workload and received funding to hire 12 full-time equivalents in 2007–2008. The growth in workload, however, more than outpaced the capacity of even the augmented staff complement. Despite the fact that DFAIT developed a case management strategy and improved its rate for submitting notices under subsection 9(2) of the Act, the Office of the Information Commissioner (OIC) finds the situation of DFAIT's continuing non-compliance to be critical. The OIC is gravely concerned about the effect on the overall compliance of all federal institutions that must consult with DFAIT and the negative impact on Canadians' right to know.

2008–2009 report card

The situation at DFAIT went from bad to worse in 2008–2009, with its deemed refusal rate approaching 60 percent, a

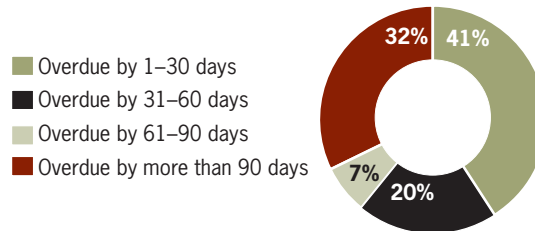
level the institution had not seen since 2005. This is the worst record among the institutions surveyed for the 2008–2009 report cards and suggests quite clearly that the institution's compliance

Deemed refusal rate, 2004 to 2008–2009



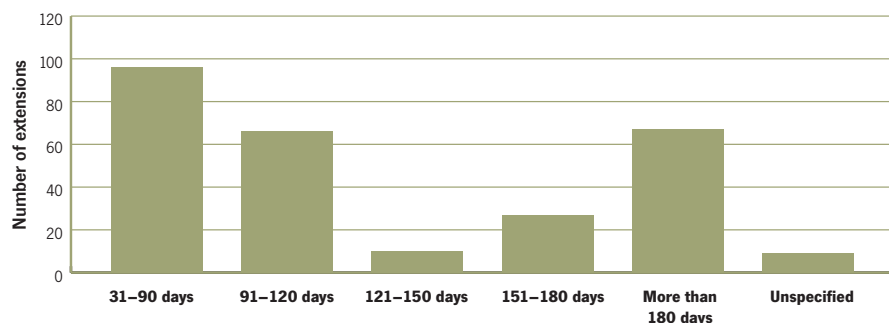
This graph shows the deemed refusal rate for DFAIT for the last five reporting periods. This is the percentage of carried over and new requests DFAIT delayed each year beyond the deadlines (30 days and extended) set out in the *Access to Information Act*.

How long requests completed late were overdue, 2008–2009



DFAIT reported that it completed 163 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline. It is of concern that 59 percent of these requests were late by more than 30 days.

Number and length of time extensions reported in 2008–2009

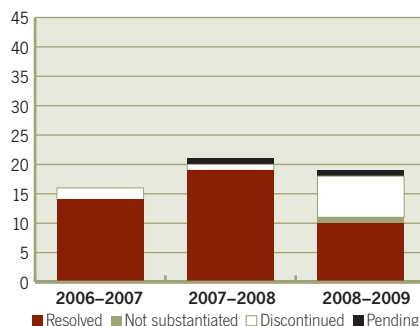


This graph shows the number and length of the time extensions DFAIT reported to have taken in 2008–2009. The institution supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. DFAIT submitted the notices 95 percent of the time in 2008–2009.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

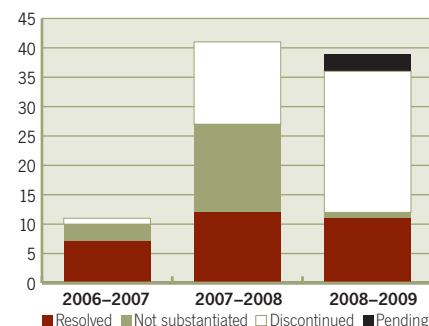
These graphs show the number and outcome of two types of complaint registered against DFAIT in the last three reporting periods: complaints about deemed refusals (access to information requests that DFAIT delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about DFAIT's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit, and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The number of resolved deemed refusal complaints decreased from 2007–2008 to 2008–2009 (from 19 to 10). However, the proportion of resolved complaints to the total was high in each of the three years (88 percent; 90 percent; 53 percent).

Time extension complaints



The total number of complaints increased significantly from 2006–2007 to 2007–2008 (from 11 to 41), as did the number of resolved time extension complaints (from 7 to 12). The respective totals were about the same the following year (39; 11).

with legal obligations of the *Access to Information Act* is not a high priority. The OIC's concern about DFAIT's deeper slide into non-compliance cannot be understated.

DFAIT received more than 1,000 consultation requests in 2008–2009, on top of the ordinary access workload of 665 new requests. Moreover, with 459 requests carried over from 2007–2008, DFAIT faced close to the equivalent of a full year's work at the start of the new fiscal year. The fact that nearly 60 percent of overdue requests were late by more than 30 days shows just how dire the situation has become.

DFAIT reports an increase in the complexity of the requests and consultations it receives. In particular, more and more requests involve multiple stakeholders, including foreign governments, sensitive information with the potential for serious harm if it were improperly released, and records being processed in parallel with litigation and public inquiries. DFAIT is also hampered by so much of its workforce being rotational, which limits the development of consistent and long-term knowledge that would facilitate the processing of access requests, as well as by having no means at its disposal to ensure prompt

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against DFAIT in each of the last three reporting periods. Resolved complaints are those that the OIC finds have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	23	4	4	0	31
Refusals	16	0	3	3	22
Cabinet confidences	0	5	0	0	5
Total	39	9	7	3	58
2007–2008					
Administrative	31	15	15	1	62
Refusals	2	5	2	19	28
Cabinet confidences	0	0	1	1	2
Total	33	20	18	21	92
2008–2009					
Administrative	26	7	32	10	75
Refusals	3	1	1	12	17
Cabinet confidences	0	1	0	0	1
Total	29	9	33	22	93

The number of resolved administrative complaints was very high each year (23; 31; 26), while the number of resolved refusal complaints decreased significantly from 2006–2007 to 2007–2008 (from 16 to 2) and remained low (3) in 2008–2009. The OIC discontinued 33 complaints in 2008–2009 at the request of complainants.

turnaround of consultation requests by foreign governments.

Nearly every institution the OIC surveyed reported being extremely frustrated with the lengthy turnaround times for consultations with DFAIT, particularly since they are accountable for processing the associated requests, yet powerless to hasten the consultation process. In response, institutions have increased the length of the extensions they take.

At the same time, DFAIT has been counselling other government institutions to close files when there is the prospect of certain exemptions under the Act. The OIC is concerned about this practice, since it might compromise requesters' rights to records that might otherwise be available to them. The OIC calls on DFAIT to cease this practice and instead follow the mandatory consultation process in a timely manner.

DFAIT stabilized its staff complement by funding permanently the 12 new staff members it brought on in 2007–2008, but this improvement was not adequate to manage the ballooning inventory of requests. Consultants were hired to work on the backlog to allow staff to concentrate on the new requests, and DFAIT reports that it processed 1,000 more files during the reporting period than the previous year, as a result of the increased capacity. With this caseload, however, employee recruitment and retention has become even more of a challenge, which has had an impact on the access to information office's overall operations and morale.

DFAIT is an internationally focused federal institution, but it should be more responsive to Canadians through rigorous support for access to information operations, fortified with stable resourcing. Responding to information requests

promptly is the law and DFAIT must act accordingly. The OIC believes that DFAIT could take a more proactive approach to sharing information with Canadians, for example, in regard to its role in Afghanistan. This could at least somewhat stem the influx of requests, and eliminate the duplication of work from responding to similar applications by simply directing requesters to an established resource. In fact, in January 2008, the Independent Panel on Canada's Future Role in Afghanistan recommended that "the Government should provide the public with franker and more frequent reporting on events in Afghanistan, offering more assessments of Canada's role and giving greater emphasis to the diplomatic and reconstruction efforts as well as those of the military."

DFAIT's compliance translates into increased complaints to the OIC. Although DFAIT provides good cooperation at the intake stage of a complaint when the OIC requests documents, collaboration in advancing investigations is very difficult. For example, DFAIT will not provide commitment dates to respond to requests that the OIC determines to be overdue. The OIC also disagrees with two of DFAIT's practices in responding to requests: taking lengthy extensions automatically (e.g. 180 days) and refusing to waive fees after a request is overdue. DFAIT does not concur with the OIC's view of these practices.

DFAIT did make a number of process improvements in 2008–2009, such as reporting monthly access statistics at executive meetings as a way to engage the senior officials of each program area in addressing their obligations, and DFAIT reports improvements to internal response times as a result of this. DFAIT also reports having streamlined its approvals and communication process for sensitive

requests. However, none of these improvements has yet had a dramatic impact on DFAIT's compliance rate or processing time. DFAIT is also working with central agencies to secure funding for its access program; however, those efforts had yet to come to fruition in the fall of 2009.

A development that may have greater impact in the short term is the comprehensive report on DFAIT's access to information operations that the institution commissioned from the experienced consultant Andrée Delagrave. The report, completed in May 2009, makes specific recommendations for improved compliance with the Act. Unless DFAIT, which has been subject to the report card process each year since it began in 1999, takes meaningful steps to implement them, however, a continued lack of resources—both financial and human—will undoubtedly hinder its operations and, in turn, those of other institutions into 2009–2010 and beyond.

Recommendations

When formulating the following recommendations, the OIC was mindful of the pressures affecting DFAIT and has, consequently, limited its recommendations to those that DFAIT can immediately implement to reverse the increase in the deemed refusal rate while officials formulate a comprehensive, long-term and achievable plan to improve the institution's compliance with the Act.

1. The deputy ministers of Foreign Affairs and International Trade Canada must immediately devote the necessary personnel and financial resources, both in the access division as well as in the program areas, in order to comply fully with the *Access to Information Act* and, more specifically, enable staff to deal

with the backlog, new requests and consultations alike.

Response

The department will *continue* its active review of the allocation of resources to build the required capacity to meet all its legislative access obligations. To that end, the department did in fact increase its operational funds for access to information in 2008–2009 and as a result processed almost 1,000 more access requests and brought forward many other improvements to the function.

Access officials will follow up with senior departmental officials to address the ongoing need for long-term resource commitments.

2. The Office of the Information Commissioner recommends that the deputy ministers of Foreign Affairs and International Trade Canada, as well as the appropriate assistant deputy ministers, directors general and directors, comply with the Act, including their responsibility to respond to mandatory consultations, and that these responsibilities be included in their performance agreements.

Response

The senior departmental officials will *continue* their efforts to meet legislative obligations and will *continue* to have this commitment reflected in senior management performance management agreements across DFAIT. We should add that the introduction of Monthly ATIP Performance Reports at the senior level did result in improved turnaround times from the program areas.

Access officials will follow up with senior departmental officials.

3. The Office of the Information Commissioner recommends that Foreign Affairs and International Trade Canada immediately cease counselling other government institutions to close files when there is the prospect of section 13 or section 15 exemptions, and follow through instead with the mandatory consultation process in a timely manner.

Response

The department will *continue* its efforts to respond to consultations in a timely manner and will no longer suggest to other institutions to close their files when awaiting DFAIT's recommendations vis-à-vis sections 13 and/or 15 of the Act. We should add that DFAIT has always followed through on consultations received from other government departments, but that foreign governments sometimes take one to three years to respond and, more importantly, are not legally obliged to respond at all. As such, when consultations are anticipated to be lengthy due to the sensitive or complex nature of the issues, DFAIT will support other departments' interim partial release, where possible, to ensure the applicant's legitimate request for information is met at the earliest possible time.

The Access to Information and Privacy Division has already modified its response templates for other government departments accordingly.

4. The Office of the Information Commissioner recommends that Foreign Affairs and International Trade Canada adopt a collaborative approach with the OIC to respond to complaints, in accordance with the specific points enumerated by the OIC in DFAIT's report card.

Response

The department will *continue*, as it has always done, to collaborate with the OIC in order to resolve complaints as expeditiously as possible. Current access to information office policy is to respond to all calls and emails from the OIC within 24 hours. In addition, the access office consistently meets the OIC's 10-day deadline for providing requested records.

The access to information office will *continue* to assess each complaint on a case-by-case basis in order to come to a mutually agreeable solution. In addition, in cases in which the applicant responds to the fee estimate and wishes to re-scope, the access office will accept to continue with the processing of that initial request if the applicant responds within the specific deadline in the fee notice. Should an applicant respond after a file has been closed, the applicant will be invited to submit a new request to proceed with the modified text.



Some facts about access to information operations at Health Canada in 2008–2009

• Number of requests carried over from 2007–2008	359
• Number of new requests	1,158
• Number of requests completed	950
• Deemed refusal rate	19.3%*
• Average time to complete a request (in days)	132
• Number of consultation requests	204
• Number of complaints registered with the Office of the Information Commissioner	43
• Number of complaints the Office of the Information Commissioner resolved	9**
• Number of full-time equivalents in access to information office, as of March 31, 2009	19.5

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Health Canada

Health Canada helps Canadians maintain and improve their health. In partnership with provincial and territorial governments, Health Canada develops health policy, enforces regulations, promotes disease prevention and enhances healthy living for all Canadians. It also ensures that health services are available and accessible to First Nations and Inuit communities.

2008–2009 report card at a glance



- The deemed refusal rate was 19.3 percent; it has been approximately 20 percent since 2004.
- The average time to complete a request was 132 days.
- Health Canada carried over 359 files into 2008–2009; the carry-over into 2009–2010 was 494 files.
- 68 percent of overdue requests were completed more than 30 days after their due date.
- Health Canada submitted the required notices of extensions of more than 30 days 72 percent of the time.
- Until November 2009, Health Canada had a protracted approval process and delayed the release of records deemed to be of “high sensitivity.” Health Canada reported that it eliminated this process in November 2009.
- More than half (52 percent) of all the extensions Health Canada took were under paragraph 9(1)(a) and 31 percent of these were for more than 90 days.
- The access to information office had a 50 percent staff turnover in 2008–2009.
- Health Canada senior management endorsed the three-phase Access to Information Transformation Action Plan in February 2009.
- An early intake unit was created in the access to information office in late 2008–2009.
- Health Canada is in the process of implementing a number of institutional records management initiatives.

Health Canada

Follow-up on 2007–2008 report card

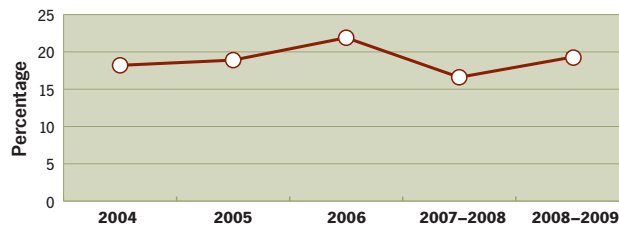
Health Canada's compliance with the *Access to Information Act* has been below average in recent years, following two years of good grades (2002 and 2003). The institution managed a slight improvement in 2007–2008, which brought its deemed refusal rate down to 16.6 percent, the lowest in four years, despite a 97 percent increase in the number of pages it had to process. The institution committed to continuing to make process changes in an effort to improve compliance. In particular, Health Canada committed to developing and introducing a new case processing model that respects the timelines set out in the *Access to Information Act* and ensures more efficient management of requests. Health Canada routinely delayed requests categorized as sensitive, due to problems getting the release package to senior officials promptly for review and only giving the package to communications officials on the day it was to be released. Health Canada committed to reviewing its processes to determine where efficiencies could be introduced to bring them within legislated timelines. Health Canada started 2008–2009 looking forward to a pilot test of a new document management system, which officials hoped would help reduce the time required for records holders to retrieve records. The Office of the Information Commissioner (OIC) is encouraged that Health Canada has addressed several of the shortcomings identified in the recommendations in the 2007–2008 report card. However, at the

end of 2008–2009, the OIC was still not satisfied that Health Canada has ceased to delay the processing of files its dubs "high sensitivity."

2008–2009 report card

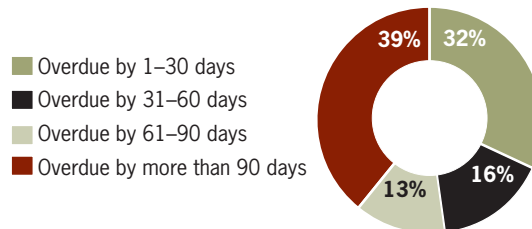
Despite the promise of various initiatives, Health Canada's deemed refusal rate slipped

Deemed refusal rate, 2004 to 2008–2009



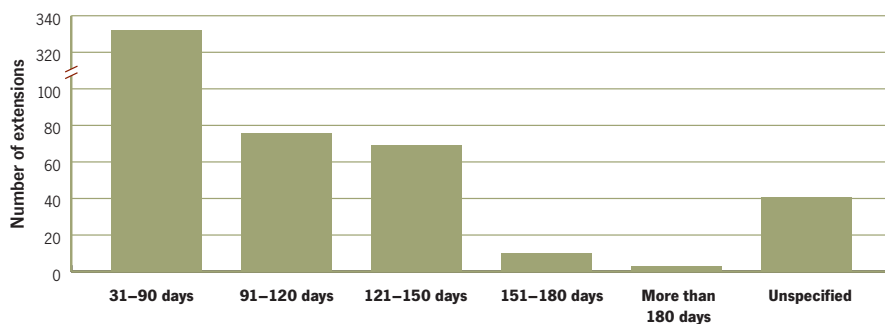
This graph shows the deemed refusal rate for Health Canada for the last five reporting periods. This is the percentage of carried over and new requests Health Canada delayed each year beyond the deadlines (30 days and extended) set out in the *Access to Information Act*.

How long requests completed late were overdue, 2008–2009



Health Canada reported that it completed 142 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline. It is of concern that 68 percent of these requests were late by more than 30 days.

Number and length of time extensions reported in 2008–2009

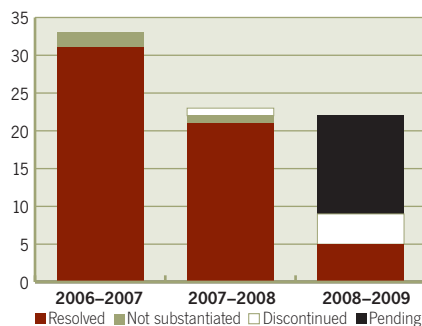


This graph shows the number and length of the time extensions Health Canada reported to have taken in 2008–2009. The institution supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. Health Canada submitted the notices 72 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

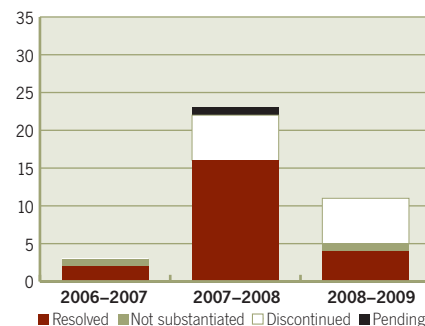
These graphs show the number and outcome of two types of complaint registered against Health Canada in the last three reporting periods: complaints about deemed refusals (access to information requests that Health Canada delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about Health Canada's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The total number of deemed refusal complaints decreased from 2006–2007 to 2007–2008, and then remained about the same in 2008–2009 (33; 23; 22). The number of resolved deemed refusal complaints decreased each year (31; 21; 5), particularly between 2007–2008 and 2008–2009, but the OIC discontinued 4 complaints at the request of complainants and 13 complaints were pending at the end of 2008–2009.

Time extension complaints



The number of time extension complaints increased significantly from 2006–2007 to 2007–2008, and then decreased the subsequent year (3; 23; 11). The number of resolved time extension complaints was highest in 2007–2008 (16), and subsequently decreased to 4 in 2008–2009.

to 19.3 percent for 2008–2009, negating the gains of the previous year. More disturbing is the institution's inability to make any significant improvement on that figure. Health Canada's deemed refusal rate has been around 20 percent since 2004.

A backlog of access to information requests continued to hamper Health Canada's ability to improve its compliance. The institution did clear the backlog of its oldest files (from 2004 to 2006) in 2008–2009 but must now process the files from 2007 onwards, as well as the 494 requests it carried over into 2009–2010.

As the OIC observed during numerous complaint investigations, including the Canadian Newspaper Association complaint¹⁸ Health Canada has a particularly long approval process for what it calls "high sensitivity" files. These represent approximately 10 percent of the requests it receives. The access to information coordinator has fully delegated authority to issue responses. However, once a release package is signed off by the coordinator, it is sent

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against Health Canada in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	38	5	0	0	43
Refusals	8	3	1	2	14
Cabinet confidences	0	0	1	0	1
Total	46	8	2	2	58
2007–2008					
Administrative	38	2	7	3	50
Refusals	2	1	4	8	15
Cabinet confidences	0	1	0	0	1
Total	40	4	11	11	66
2008–2009					
Administrative	9	1	10	14	34
Refusals	0	1	0	7	8
Cabinet confidences	0	0	0	1	1
Total	9	2	10	22	43

The number of administrative complaints (which includes complaints about overdue requests and time extensions) the OIC resolved was very high in both 2006–2007 and 2007–2008 (38 of 43; 38 of 50) but decreased in 2008–2009 (9 of 34). At the end of 2008–2009, 22 complaints were pending.

¹⁸ http://www.oic-ci.gc.ca/eng/syst-inv_inv-syst_do_secret_rules_lead_to_delays.aspx

to the deputy minister for review. Prior to November 2009, the release package could be sent out only after receiving the approval of the deputy minister. Health Canada reported that this process was abolished as of November 2009; senior management no longer approves releases, except in exceptional circumstances.

The OIC notes two problems with Health Canada's use of extensions under paragraph 9(1)(a) of the *Access to Information Act*. First, these extensions account for 52 percent of all extensions. According to access to information officials, this stemmed from analysts' large workloads and the effects of the backlog. Officials acknowledged that they should not have taken such extensions, and have stopped the practice. Second, the OIC was concerned that 31 percent of extensions under paragraph 9(1)(a) were for more than 90 days—a sign that the institution was not able to manage the volume of requests in 2008–2009, which Health Canada attributed to a 50 percent turnaround in staff that year. The institution has since made it a priority to document all justifications for extensions, including reasons for their length. Extensions taken under paragraph 9(1)(a) now require approval, typically from a team leader.

Information management continues to be a challenge for Health Canada. Access officials noted that employees at all levels rely heavily on email and common drives to store documents, which makes locating relevant records difficult. The access to information office is actively working with the institution's information management group to strengthen proper information management practices. Health Canada as a whole is in the process of implementing

a number of initiatives to improve records keeping.

The access to information office adopted a new business model that saw the creation of an intake unit late in 2008–2009. Health Canada designed this new unit to take over the front-end administrative functions associated with access requests, which would leave analysts to focus on files. While Health Canada was optimistic about the efficiencies this would bring, it was too early to have measurable results in 2008–2009.

The OIC is especially concerned that Health Canada has gone many years showing only limited improvements in its compliance with the *Access to Information Act*. The OIC questions whether there is a clear message coming from the senior levels of Health Canada that access to information must be a priority. However, Health Canada's senior management endorsed a three-year plan to transform the access to information function at the institution in February 2009. The OIC expects that the implementation of this plan will bear fruit in terms of improved compliance in the coming years.

Recommendations

1. The Office of the Information Commissioner recommends that the deputy minister of Health Canada continue to take a strong leadership role in establishing a culture of compliance throughout the institution. Such a role requires the unwavering endorsement of the minister.

Response

Since February 2009, senior management at Health Canada has been fully engaged in access to information issues in the department. Senior Management Board's endorsement of an access to information action plan for the department, and its continual support of the access to information function, clearly illustrate that access to information is a priority for the department.

Since February 2009, Health Canada's senior management has been actively supporting the transformation of access to information at Health Canada and ensuring that key compliance issues are being addressed in a truly transformative and collaborative fashion.

2. The Office of the Information Commissioner recommends that Health Canada strictly follow the delegated authority of the access to information coordinator and eliminate additional levels of approval.

Response

Health Canada continues to follow the delegated authority of the access to information coordinator and has eliminated additional levels of approval.

Health Canada eliminated the HI-SENS approval process. This practice has been replaced with a notification process that results in overall improved compliance.

3. The Office of the Information Commissioner recommends that Health Canada develop a clear plan to tackle the backlog of access requests.

Response

Health Canada continues to address its backlog of access requests via a two-fold approach:

- Health Canada has maintained its concentrated effort on the closure of all outstanding 2007 files. It began the fiscal year with 73 outstanding files and now has only 17 files left to complete.
- Health Canada has established a fast-track request processing stream, and will be dedicating a resource to access to information timelines management.

These efforts will decrease the number of new deemed refusals and will provide the continued concentrated effort required to tackle the growth of the backlog.

4. The Office of the Information Commissioner recommends that Health Canada document and review the criteria it uses for extensions to ensure that the extensions are reasonable and legitimate.

Response

Health Canada has examined and reviewed the criteria it uses when invoking extensions to ensure that they are reasonable and legitimate.

Health Canada has implemented a graduated approval process for the invoking of extensions, and requires that its staff both document and justify any time extensions taken.

This review was undertaken last year and the focus on the appropriate taking of extensions continues to be a focus of Health Canada.

This recommendation is not necessary.

5. The Office of the Information Commissioner recommends that Health Canada identify and implement the necessary enhancement to records management systems to ensure a quick and proper search of records in response to an access to information request.

Response

Health Canada is in the process of implementing a number of departmental records management initiatives. These would support more efficient search and retrieval responses for records related to access to information requests and include the following:

- a storage management strategy, in line with the Government of Canada information management guidelines;
- testing of a powerful search engine in January 2010 that, if supported, may increase office of primary interest search capability;
- building a new business enterprise software that has single instance storage and a potential file classification system for data over the next two years; and
- implementing the Directive on Recordkeeping announced by Treasury Board of Canada Secretariat/ Library and Archives Canada.

6. The Office of the Information Commissioner recommends that Health Canada strive to reduce its deemed refusal rate to zero.

Response

Health Canada continues to strive to reduce its deemed refusal rate to zero.

Since the fall of 2008, the department has seen an 85 percent increase in files closed year-to-date, compared to last fiscal, closing 1,072 files between April 1, 2009, and January 8, 2010, compared to 579 files the previous year.

The access to information office has also experienced a significant drop, from 50 percent to 10 percent, in turnover of operations staff (projected to be 20 percent by year-end).

Health Canada developed the three-phase Access to Information Transformation Action Plan. Implementation began in the fall of 2008.

The action plan addresses challenges in meeting legislative requirements and includes governance of access to information at Health Canada, partnerships with both internal clients and other government institutions, supporting release readiness and teamwork, integration of collaborations with offices of primary interest, and the need to strengthen the access to information operations workforce.



Some facts about access to information operations at National Defence in 2008–2009

• Number of requests carried over from 2007–2008	674
• Number of new requests	1,669
• Number of requests completed	1,761
• Deemed refusal rate	15.8%*
• Average time to complete a request (in days)	125
• Number of consultation requests	440
• Number of complaints registered with the Office of the Information Commissioner	226
• Number of complaints the Office of the Information Commissioner resolved	81**
• Number of full-time equivalents in access to information office, as of March 31, 2009	61

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

National Defence

National Defence complements the role of the Canadian Forces and is responsible for policy, resources, interdepartmental coordination and international defence relations. The Canadian Forces command, control and administer all military strategy, plans and requirements.

2008–2009 report card at a glance



- The deemed refusal rate was 15.8 percent, which is only a slight improvement from 2007–2008.
- The average time to complete a request was 125 days.
- National Defence took extensions under subsection 9(1) of the *Access to Information Act* for 66 percent of the requests it received in 2008–2009. 76 percent of the extensions DND took were under paragraph 9(1)(a) of the Act; 80 percent of the extensions were for more than 90 days.
- 80 percent of the complaints the Office of the Information Commissioner registered against National Defence in 2008–2009 were delay-related (about either requests completed late or problems associated with time extensions). 77 percent of these were about time extensions.
- National Defence decreased its backlog by 34 percent.
- National Defence fully complied with the requirement to submit a notice to the Office of the Information Commissioner each time it took an extension of more than 30 days.
- The Information Support Team review process was streamlined and shortened; however, it still adds time to the processing of requests.
- National Defence continues its good practice of listing topics of previously released records on the Internet and allowing requestors to access these records informally.
- Access officials and senior management support ongoing efforts to increase compliance, such as training and hiring more staff.

National Defence

Follow-up on 2007–2008 report card

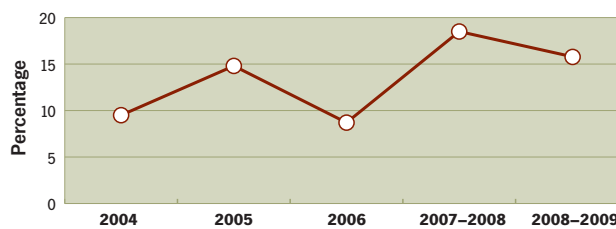
National Defence faced a significant increase in workload in 2007–2008, at a time when the nature and sensitivity of its files were already causing the institution to add layers to the access to information process and, consequently, increasing the time it took to respond to requests. This led to National Defence's receiving 2.5 stars on its 2007–2008 report card, with a deemed refusal rate of 18.5 percent. The institution subsequently committed to improve its process—and therefore its overall compliance with the *Access to Information Act*—to achieve what it views as the best possible balance between the security requirements of its work and the imperative to respect requestors' rights. A critical factor identified for improved compliance was National Defence's ability to eliminate its considerable backlog of outstanding requests, which increased in 2007–2008. The Office of the Information Commissioner (OIC) expressed concern in its 2007–2008 report card about National Defence's use of extensions under paragraph 9(1)(a) of the Act—not only the number of such extensions but also the criteria the institution used for taking them. National Defence agreed that its use of extensions had increased but suggested that, in terms of interpreting the law, it was merely following standard guidance from the Treasury Board of Canada Secretariat. Nonetheless, National Defence agreed in 2008–2009 to look at its criteria for such extensions and related process improvements.

2008–2009 report card

National Defence's compliance with the Act improved slightly in 2008–2009, with

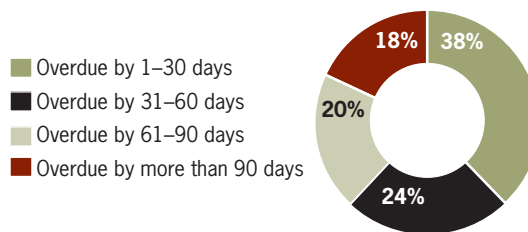
its deemed refusal rating dropping to 15.8 percent. National Defence completed 220 more requests in 2008–2009 than it did in the previous year. It also

Deemed refusal rate, 2004 to 2008–2009



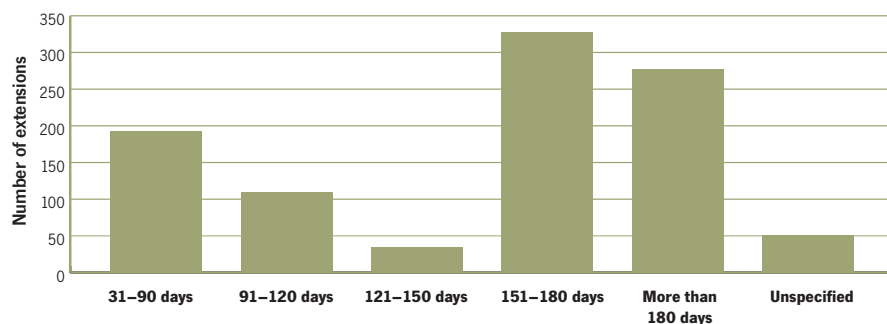
This graph shows the deemed refusal rate for National Defence for the last five reporting periods. This is the percentage of carried over and new requests National Defence delayed each year beyond the deadlines (30 days and extended) set out in the *Access to Information Act*.

How long requests completed late were overdue, 2008–2009



National Defence reported that it completed 51 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline.

Number and length of time extensions reported in 2008–2009

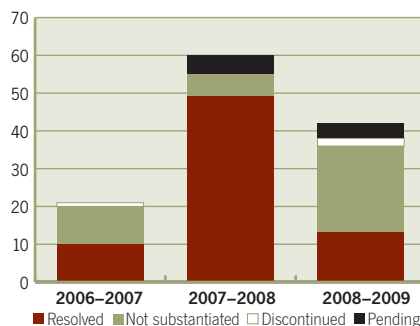


This graph shows the number and length of the time extensions National Defence reported to have taken in 2008–2009. National Defence supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. National Defence fully complied with the requirement to submit these notices to the OIC in 2008–2009.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

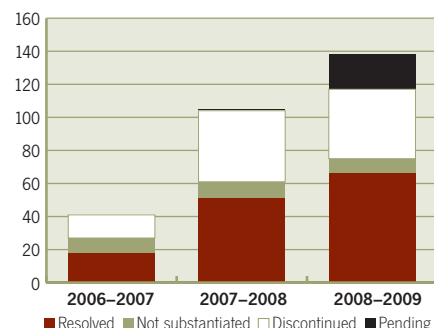
These graphs show the number and outcome of two types of complaint registered against National Defence in the last three reporting periods: complaints about deemed refusals (access to information requests that National Defence delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about National Defence's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The number of delay complaints hit a three-year high of 60 in 2007–2008 and then decreased to 42 in 2008–2009. Similarly, the number of resolved delay complaints was highest in 2007–2008 at 49 and then decreased to 13 the subsequent year.

Time extension complaints



The number of time extension complaints increased significantly over the three years (41; 105; 138). The number of resolved time extension complaints also rose (18; 51; 66).

reduced its backlog by 34 percent, carrying 674 requests over into 2008–2009 but 443 into 2009–2010. Nonetheless, that large backlog is still a significant burden for National Defence, given that it equals about 27 percent of the volume of requests it received in 2008–2009.

The OIC has concerns with the frequency and duration of the extensions National Defence took in 2008–2009. It extended 66 percent of the 1,669 new requests it received, and 80 percent of these extensions were for more than 90 days.

The vast majority (80 percent) of the 226 complaints the OIC received about National Defence in 2008–2009 were administrative complaints, all of which were delay-related (about either requests completed late or problems associated with time extensions).

The OIC and National Defence continue to disagree about the latter's regular use of extensions under paragraph 9(1)(a) (76 percent of the extensions it reported in its 2008–2009 annual report). Also in 2008–2009, the OIC registered 138 complaints about National Defence's use of time extensions and resolved 48 percent of them.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the complaints the OIC registered against National Defence in each of the last three reporting periods. Resolved complaints are those that the OIC finds have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	39	24	34	0	97
Refusals	16	10	8	10	44
Cabinet confidences	1	4	1	0	6
Total	56	38	43	10	147
2007–2008					
Administrative	100	17	43	6	166
Refusals	20	24	9	28	81
Cabinet confidences	2	4	2	0	8
Total	122	45	54	34	255
2008–2009					
Administrative	79	32	44	25	180
Refusals	2	13	2	26	43
Cabinet confidences	0	0	0	3	3
Total	81	45	46	54	226

There was a significant increase in the number of administrative complaints over the three-year period (97; 166; 180). The number of resolved administrative complaints decreased from 2007–2008 to 2008–2009 (from 100 to 79). Each year, there were a number of discontinued (43; 54; 46) and pending complaints (10; 34; 54).

National Defence reported two factors related to records retrieval that contributed to delays and the need for extensions on occasion. First, bulk requests for similar records resulted in certain recipient sectors being overwhelmed, and contributed to legislative deadlines being missed. For instance, between May and August 2008, one sector received approximately 125 requests from a single requestor. Second, record holders involved in military operations were not always able to retrieve records in a timely manner, although National Defence reported that this was not a frequent problem.

National Defence reduced to four the number of days that its dedicated Information Support Team has to review files related to military operations. National Defence facilitated this by having its access to information office collate all the returned records and prepare a consolidated release package containing only records it deemed necessary for the team to review. This improvement is encouraging, since one of the OIC's recommendations in its 2007–2008 report card was aimed at the additional delay caused by consultations with the Information Support Team.

This is certainly a step in the right direction, but the OIC still has fundamental concerns about the Information Support Team, since its review adds time to the release process.

National Defence has been at the forefront of providing informal ways for requesters to access previously released records. It continues to post on its website a list of selected topics on which records have been released. Requesters interested in these topics can request the records free of charge and without making a formal access request.

Access to information officials and senior managers at National Defence noted ongoing efforts to continue to reduce the backlog (it decreased 34 percent in 2008–2009), hire more staff to decrease workload, and train employees to promote efficiency. The OIC hopes that these efforts bear considerable fruit; however, National Defence, which has been part of the report card process since the beginning, was only able to make a small dent in 2008–2009 in its increased deemed refusal rate from 2007–2008. The OIC expects much more substantial progress next year.

Recommendations

1. The Office of the Information Commissioner recommends that National Defence carry through on its commitment to review the criteria for taking extensions, reduce the number of those extensions and implement process improvements to ensure that extended requests are completed on time.

Response

National Defence has conducted a review of the criteria for taking extensions. National Defence uses the criteria of the *Access to Information Act*, including “interference with operations” and “large volume of records,” along with Treasury Board *Implementation Report No. 67* as guidance.¹⁹ National Defence and the OIC remain in disagreement on the interpretation of “large volume of records” as well as whether the workload of the access to information office can be considered as a factor in determining extensions pursuant to paragraph 9(1)(a) of the Act.

National Defence takes extensions as necessary based on the above criteria, and this will likely continue as long as National Defence has significant overseas operations.

In terms of completing extended requests on time, it should be noted that National Defence was late for only 51 extension requests that were completed in this reporting period out of a total of 1,097 extensions.

The access to information office's tasking team is undertaking training to better hone their skills at estimating appropriate extensions as part of ongoing initiatives to improve performance.

National Defence will strive to improve conditions that result in unreasonable interference with the operations of the institution and that result in unnecessary searches through a large volume of records. Initiatives will include efforts to continue to reduce the backlog of access requests, increase staff levels to reduce workload and conduct training with the tasking team. This training will aim to improve the team's ability to identify requests that do not comply with section 6 of the Act [which requires requests to be in writing and in sufficient detail] and appropriately assist requesters to re-scope requests so that they are manageable by the institution and accurately reflect the records sought by the requester.

2. The Office of the Information Commissioner recommends that National Defence begin immediately to apply paragraph 9(1)(a) of the *Access to Information Act* properly—by taking extensions under this provision only when it can justify both the interference with operations and the large volume of pages to review.

Response

National Defence does apply paragraph 9(1)(a) properly. Both requirements of the Act—unreasonable interference as well

¹⁹ <http://www.tbs-sct.gc.ca/atip-aiarp/impl-rep/impl-rep2000/67-imp-mise-eng.asp>

as large volume of records—are considered when applying paragraph 9(1)(a). A common understanding of what constitutes a “large volume” of records between the OIC and National Defence would be helpful in allowing National Defence to address the concern.

National Defence will continue to apply both requirements under the Act when taking extensions.

3. The Office of the Information Commissioner recommends that National Defence dedicate resources at the records-holding level to ensure that operations do not, as much as possible, compromise timely retrieval.

Response

National Defence continues to strive to retrieve records in a timely manner. However, operations (primarily in Afghanistan) do make the quick retrieval of some records difficult. However, this does not affect a large number of requests, and this situation will not continue indefinitely. The fact of ongoing operations should be considered a temporary mitigating factor in retrieval of records in theatre.

National Defence will strive to retrieve records in a timely manner.

4. The OIC recommends that National Defence further streamline its process so that review by the Information Support Team does not delay the release of records in any way.

Response

National Defence has streamlined the Information Support Team (IST) review process considerably since it first began. The turnaround time has improved considerably, and cooperation in balancing security and speed of review continues.

The Information Support Team provides expert consultation in the area of operations security, the conditions of which are subject to change as the in-theatre situation develops. Considering the risks involved, including threat to life and limb as well as to security of intelligence that could be useful to the enemies of Canada, consultations with IST are both proper and prudent. Consultations, by their nature, are likely to delay the processing of requests to some degree. However, unless the delay is beyond legislated timelines or improper in some way, this should not be a concern for the OIC.

Cooperation on more efficient review between IST and the access to information office will continue, with the aim of improving turnaround time and impacting processing time as little as possible.

5. The Office of the Information Commissioner recommends that National Defence develop a clear plan to tackle the backlog of access requests.

Response

During this reporting period, National Defence reduced the backlog of requests by more than one third, dropping from 674 to 443, as noted by the OIC in this report card. Clearly, the National Defence plan to reduce the backlog is working.

National Defence will continue to implement its effective plan to reduce the backlog.



Natural Resources Canada

Natural Resources Canada (NRCan) encourages innovation and expertise in earth sciences, forestry, energy and minerals and metals to ensure the responsible and sustainable development of Canada's natural resources.

Some facts about access to information operations at NRCan in 2008–2009

• Number of requests carried over from 2007–2008	72
• Number of new requests	365
• Number of requests completed	370
• Deemed refusal rate	22.4%*
• Average time to complete a request (in days)	65
• Number of consultation requests	170
• Number of complaints registered with the Office of the Information Commissioner	11
• Number of complaints the Office of the Information Commissioner resolved	1**
• Number of full-time equivalents in access to information office, as of March 31, 2009	5.6

2008–2009 report card at a glance



- Deemed refusal rate was 22.4 percent. This is more than double the rate for 2007–2008.
- The average time to complete a request was 65 days, but this is an improvement over the 2007–2008 average of 88 days.
- NRCan informed the Office of the Information Commissioner about extensions of more than 30 days 17 percent of the time.
- The access to information office had four access to information coordinators in two years.
- Delegation of authority is diffuse, with assistant deputy ministers having the same authority as the access coordinator and, consequently, signing off on release packages.
- All but the most routine requests are held up in the minister's office.
- NRCan introduced a graduated progression program to recruit and retain staff.
- NRCan reports that its information management structure is strong, allowing for ease of records retrieval.
- With additional funding for three new positions, NRCan believes it is now staffed adequately for the workload.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Natural Resources Canada

Follow-up on 2007–2008 report card

Natural Resources Canada (NRCan) spent 2007–2008, the year of its first report card, trying to cope with a several-year increase in requests of 79 percent without a corresponding increase in capacity. The institution ended the year with a deemed refusal rate of 10.7 percent. The increase in requests was due in part to the Chalk River nuclear reactor issue and the growing public and media interest the environment. NRCan committed to reviewing its entire process in light of the Office of the Information Commissioner’s (OIC) concern about the surge in numbers of requests deemed “highly sensitive” and also to find efficiencies in its cumbersome approval process. It was imperative that NRCan improve its zero notification rate to the OIC of extensions of more than 30 days. The OIC is not satisfied that an overall, meaningful effort was undertaken to improve compliance with the *Access to Information Act*, in response to the recommendations in the 2007–2008 report card.

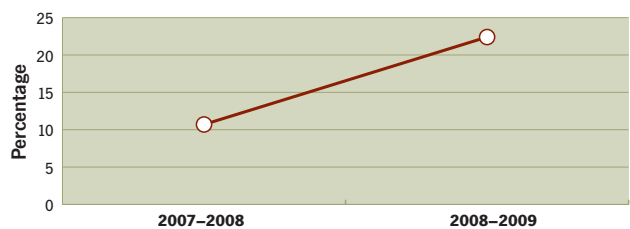
2008–2009 report card

The combination of staffing instability, a diffuse delegation of authority and senior officials being inappropriately involved in approvals resulted in an unacceptable level of access to information compliance at NRCan in 2008–2009. The deemed refusal rate doubled from 2007–2008.

There were four coordinators and a 50 percent staff turnover in two years. At one point, the access to information office was without a coordinator for two

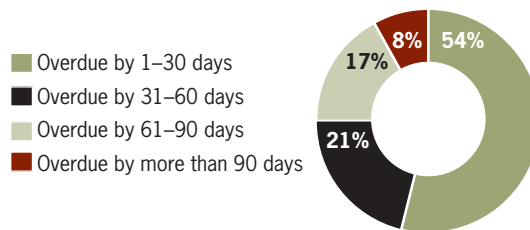
months, requiring senior management to step in. The coordinator’s position was subsequently reclassified downward, from director to manager.

Deemed refusal rate, 2007–2008 to 2008–2009



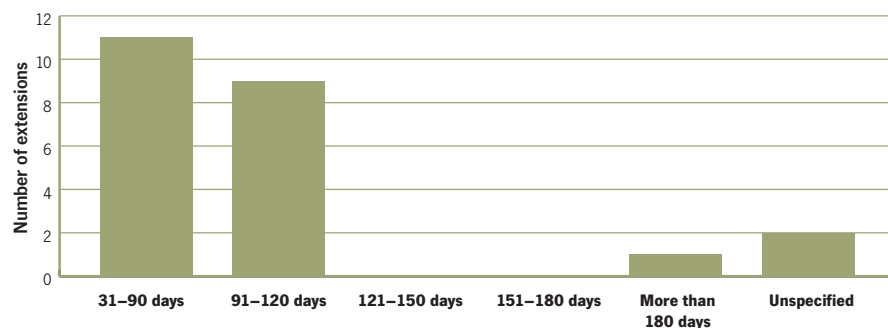
This graph shows the deemed refusal rate for NRCan for the last two reporting periods. This is the percentage of carried over and new requests delayed each year beyond the timelines set out in the *Access to Information Act*.

How long requests completed late were overdue, 2008–2009



NRCan reported that it completed 76 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline.

Number and length of time extensions reported in 2008–2009

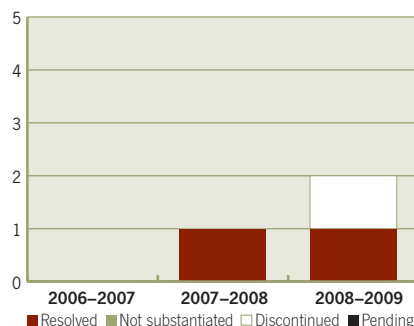


This graph shows the number and length of the time extensions NRCan reported to have taken in 2008–2009. NRCan supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. NRCan submitted the notices 17 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

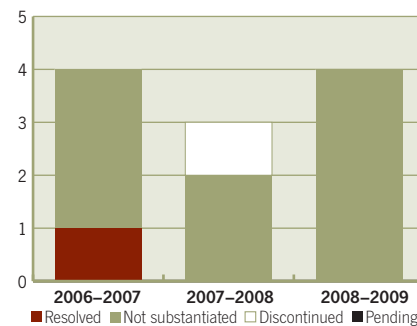
These graphs show the number and outcome of two types of complaint registered against NRCan in the last three reporting periods: complaints about deemed refusals (access to information requests that NRCan delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about NRCan's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



There were very few deemed refusal complaints against NRCan in the last three reporting periods (0; 1; 2).

Time extension complaints



There were very few time extension complaints against NRCan in the last three reporting periods (4; 3; 4). All of these complaints were either not substantiated or discontinued in 2007–2008 and 2008–2009.

There is evidence of requests being delayed within the delegated assistant deputy ministers' offices. These senior officials have the same authority as the coordinator and must sign off proposed release packages. In addition, the minister's office holds up all but the most routine requests for approval. This is inappropriate.

Despite these considerable challenges, NRCan was able to complete about half of the new requests it received in 2008–2009 in fewer than 30 days and reduce its average completion time for a request to 65 days, from 88 days in 2007–2008. It also took almost no extensions under paragraph 9(1)(a) of the Act to account for the impact of large requests on operations. While the overall number of complaints to the OIC increased from 2007–2008 to 2008–2009, more than one third (36 percent) were unsubstantiated. Delay-related complaints (those involving overdue requests and NRCan's use of time extensions) increased slightly over the last three fiscal years, with four each in 2006–2007 and 2007–2008, and six in 2008–2009.

The access to information office has begun to recruit and retain staff with

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against NRCan in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	1	3	0	0	4
Refusals	1	1	3	4	9
Cabinet confidences	1	0	0	1	2
Total	3	4	3	5	15
2007–2008					
Administrative	2	2	1	0	5
Refusals	1	0	0	0	1
Cabinet confidences	0	0	0	0	0
Total	3	2	1	0	6
2008–2009					
Administrative	1	4	1	0	6
Refusals	0	0	0	3	3
Cabinet confidences	0	0	0	2	2
Total	1	4	1	5	11

Nine of the eleven complaints registered against NRCan in 2008–2009 were either not substantiated or pending at year-end. Only one was resolved.

a graduated progression program. In recent months, the staffing situation has stabilized, with an almost full staff complement and a new coordinator in place in the fall of 2009.

NRCan reports a strong information management structure, including a Wiki-type central registry for administrative documents, to which access to information staff have access, and from which records can be retrieved.

Access staff acknowledge that it will take time to make access to information a priority at NRCan. The OIC notes that this should not be at the expense of requesters. It will monitor NRCan's compliance carefully, and look for improvement in the coming years.

Recommendations

1. The Office of the Information Commissioner recommends that the Natural Resources Canada minister's office strictly follow the delegated authority order in order to eliminate inappropriate levels of approval.

Response

Briefing sessions have been held with the minister's staff on the *Access to Information Act*. NRCan is reviewing its processes to ensure maximum efficiency.

2. The Office of the Information Commissioner recommends that the deputy minister of Natural Resources Canada allocate the necessary human and financial resources, both in the access to information office, as well as in the program areas, in order to comply with the *Access to Information Act*.

Response

The Access to Information and Privacy Secretariat is now adequately resourced for the volume of requests that it receives. Additional funding for three positions was provided in 2008–2009. NRCan is closely monitoring resources levels.

3. The Office of the Information Commissioner recommends that Natural Resources Canada continue to reduce its average completion time for requests.

Response

Completion time has been reduced substantially. Further reductions in processing time will require a commitment from other departments to complete the consultation process in a timely fashion. NRCan will continue its commitment to processing requests as quickly and effectively as possible. Recommendations will be provided to the departmental senior management committee before the end of the fiscal year.

4. The Office of the Information Commissioner recommends that Natural Resources Canada reduce its deemed refusal rate to zero.

Response

While staffing has stabilized, it occurred late in this fiscal year. The trend in compliance will likely continue into the next report card cycle before the improvement from this stabilization will be noted. NRCan will continue to strive to improve its compliance rate.

5. The Office of the Information Commissioner recommends that Natural Resources Canada comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

Unfortunately, this administrative issue was not identified until late this fiscal year, so this issue is likely to continue to be noted in next year's report card process. This will be corrected immediately.

Privy Council Office

Led by the Clerk of the Privy Council, the Privy Council Office (PCO) facilitates the operations of Cabinet and the Government of Canada by implementing the Government's policy agenda and coordinating responses to issues facing the country. PCO oversees the federal public service.

Some facts about access to information operations at PCO in 2008–2009

• Number of requests carried over from 2007–2008	260
• Number of new requests	650
• Number of requests completed	674
• Deemed refusal rate	24%*
• Average time to complete a request (in days)	157
• Number of consultation requests	405
• Number of complaints registered with the Office of the Information Commissioner	198
• Number of complaints the Office of the Information Commissioner resolved	8**
• Number of full-time equivalents in access to information office, as of March 31, 2009	17.1

2008–2009 report card at a glance



- Rating is for the PCO access to information office.
- Deemed refusal rate was 24 percent.
- Average completion time was 157 days.
- PCO extended nearly three quarters of all requests it received to consult with other institutions. And, 61 percent of extensions were for more than 120 days.
- Delegated authority for access to information is widely shared across the institution, and the delegation order gives more power to senior management than it does to the director of the access to information office.
- Staffing is an ongoing challenge in the access to information office. The access to information office conducts training among its operational areas to educate all staff about both legal and administrative obligations under the Act.
- PCO has recently switched to electronic scanning of records, reducing its paper burden and realizing production efficiencies.
- The Office of the Information Commissioner registered 198 complaints against PCO in 2008–2009, but resolved only 8; 13 were not substantiated; 106 were discontinued; and 71 were pending at year-end.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Privy Council Office

Follow-up on 2007–2008 report card

Access to information office

The Privy Council Office's access to information office (PCO-ATIP) improved its compliance in 2007–2008 from the previous year but it was still not as good as the Office of the Information Commissioner (OIC) would expect from the institution that is at the centre of government. PCO-ATIP undertook a reorganization, staffing actions, and process and software improvements, none of which appear to have been accomplished completely. It committed to continuing to streamline its processes and upgrade its technology, although the latter effort was significantly delayed due to concerns about software and its applicability to PCO's case management needs.

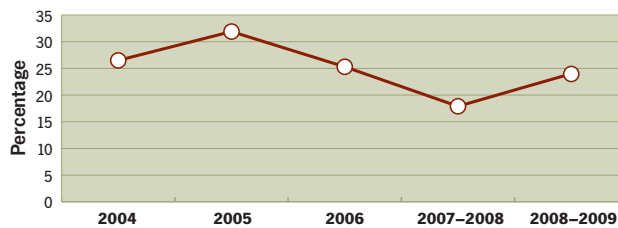
Cabinet confidences counsel

The OIC recommended that PCO's Cabinet confidences counsel office (PCO-CCC) develop a tool to track the progress of its consultation requests for section 69 exclusions, and the institution responded that its legal schedules provide such a tracking function. Treasury Board guidelines for processing Cabinet confidence consultations recommend that an institution's legal counsel act as its conduit to PCO-CCC, which necessitates these schedules. Rather than adding work, PCO-CCC reports that this assists institutions by facilitating the consultation; their own legal representatives are

apprised of potential issues and are often able to respond to access staff about technical concerns and in response to

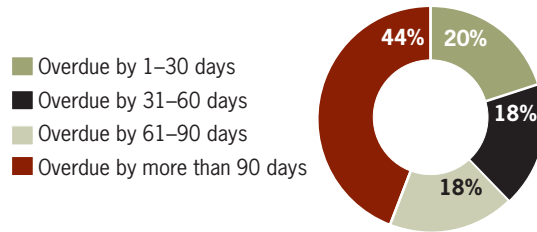
questions, rather than having to go to PCO-CCC for interim advice. Further, PCO-CCC reported that the historical and

Deemed refusal rate, 2004 to 2008–2009



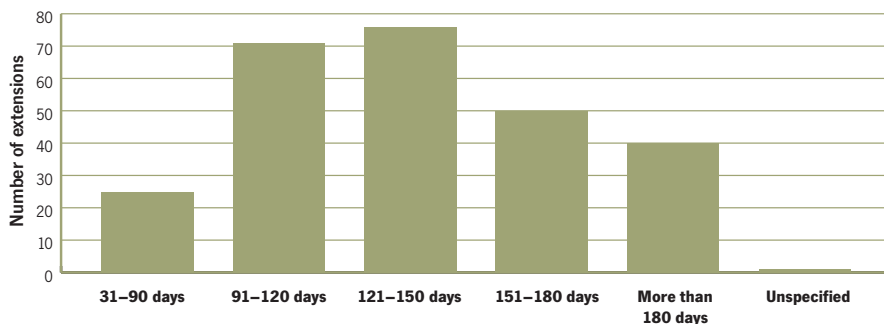
This graph shows the deemed refusal rate for PCO-ATIP for the last five reporting periods. This is the percentage of carried over and new requests PCO-ATIP delayed each year beyond the timelines set out in the *Access to Information Act*.

How long requests completed late were overdue, 2008–2009



PCO-ATIP reported that it completed 50 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline. It is of concern that 80 percent of these requests were late by more than 30 days.

Number and length of time extensions reported in 2008–2009

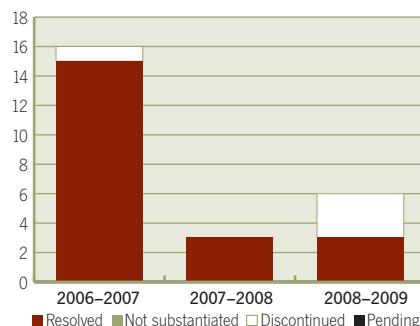


This graph shows the number and length of the time extensions PCO-ATIP reported to have taken in 2008–2009. The institution supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. PCO submitted these notices 90 percent of the time; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

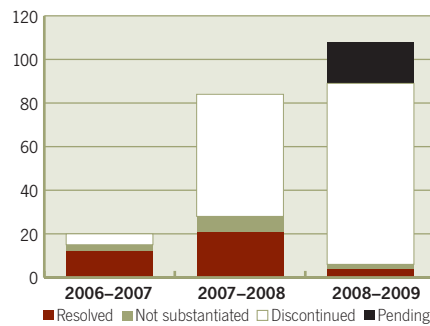
These graphs show the number and outcome of two types of complaint registered against PCO-ATIP in the last three reporting periods: complaints about deemed refusals (access to information requests that PCO-ATIP delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about PCO-ATIP's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The OIC resolved all but 1 of the 16 deemed refusal complaints in 2006–2007, 3 of this type of complaint in 2007–2008, and 3 out of 6 in 2008–2009.

Time extension complaints



The number of time extension complaints increased each year (20; 84; 108), although many of these complaints were discontinued in both 2007–2008 and 2008–2009 (56; 83).

horizontal research that some requests required continued to affect processing times. PCO-ATIP is one of PCO-CCC's main clients, but despite a recommendation that a protocol be struck between the two for the sake of expediency, PCO-CCC continues to require PCO-ATIP to submit its consultation request as does any other institution.

2008–2009 report card

Access to information office

As the institution responsible for managing Cabinet business and the government's policy priorities, PCO-ATIP is a hub of information. This centralization of government data should constitute a pivotal resource from which Canadians receive an integrated and efficient response to their access requests. Consequently, it is of concern to the OIC that PCO-ATIP's deemed refusal rate was 24 percent in 2008–2009 and has been no better than 17.9 percent in recent years.

Due to its central role, it is not uncommon for PCO-ATIP to need to consult upwards of 15 institutions for their

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against PCO-ATIP in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	27	6	6	0	39
Refusals	2	5	7	10	24
Cabinet confidences	3	15	26	0	44
Total	32	26	39	10	107
2007–2008					
Administrative	31	10	56	3	100
Refusals	9	7	5	40	61
Cabinet confidences	1	24	43	3	71
Total	41	41	104	46	232
2008–2009					
Administrative	8	2	86	23	119
Refusals	0	3	4	36	43
Cabinet confidences	0	8	16	12	36
Total	8	13	106	71	198

The total number of complaints more than doubled between 2006–2007 and 2007–2008 (from 107 to 232) but decreased the subsequent year (198). The total number of administrative complaints increased significantly over the three years (39; 100; 119); however, there were a large number of pending files at the end of 2008–2009 (71) and 106 files the OIC discontinued at the request of complainants.

representations pertaining to a single request. Not surprisingly, the immediate impact on requesters is that the request process has to stop until consultations are complete. PCO-ATIP extended nearly three quarters of all requests it received to consult with other institutions. In addition, 61 percent of extensions were for more than 120 days beyond the initial 30-day deadline. PCO-ATIP also took more than 30 days to complete 80 percent of its 50 overdue requests. It took 90 days to complete nearly half of them.

PCO-ATIP insists that its priorities are Canadians' priorities, yet the case must be made that Canadians value government transparency by virtue of the fact that they file access requests and expect records to be forthcoming in a timely manner. PCO-ATIP's average completion time for requests in 2008–2009 was 157 days.

When it comes to Cabinet confidences, PCO-ATIP has to consult PCO-CCC to have these vetted. Both groups within PCO reject the suggestion of a protocol that would recognize the central role of PCO and facilitate faster turnaround time for requests at the centre of government.

The OIC is concerned that PCO's access to information delegation order accords more power to senior management in the branches than it does to the director of the access to information office. PCO-ATIP reports no evidence of delay from this structure. The delegation order was updated in June 2008, but does not concentrate authority with the director of PCO-ATIP, as officials said it would during testimony to the House of Commons Standing Committee on Access to Information, Privacy and Ethics in June 2005.

Staffing issues affected PCO-ATIP as much as other institutions, and not only in the access to information office. PCO-ATIP

had 17 full-time staff, despite the fact that it is approved to 27 full-time equivalents. The institution reports, however, that it is difficult to attract and retain competent staff and, despite ongoing efforts to maintain a full complement, it finds itself habitually understaffed.

Employee turnover is constant throughout the rest of the organization, as well, to the extent that an estimated one third of its staff is in transition at any given time. PCO-ATIP recognizes that solid comprehension of access to information within the operations groups is paramount to its success and has a dedicated training manager to provide awareness sessions. PCO-ATIP gave formal training and awareness sessions on access to information to 267 staff in 2008–2009. Total indeterminate staff in the institution is 849.

PCO-ATIP has recently switched to electronic scanning of records, reducing its paper burden and realizing production efficiencies. Given its responsibility for the flow of Cabinet documents, PCO as a whole has a disciplined and localized information management capacity, which enhances its efficiency in responding to requests.

The Office of the Information Commissioner registered 198 complaints against PCO-ATIP in 2008–2009, but resolved only 8 and found 13 to be not substantiated; 106 were discontinued (mostly at the request of one complainant) and 71 were pending at year-end.

PCO-ATIP reports that it has vastly improved its processes, and felt over-audited as it responded to another edition of the OIC report card. The OIC will continue to assess this office, largely due to its central role in the access to information system, and as long as its deemed refusal rate and average completion time do not dramatically improve.

Cabinet confidences counsel

PCO-CCC certifies Cabinet confidences contained within the records held by institutions. Its operations remain challenged by staffing issues because of the unique combination of qualifications it requires its staff to have related to the access to information legislation and broader, legal capabilities to determine Cabinet confidences.

As of the fall of 2009, there were only four staff to manage the entire workload. Most federal institutions have reported continued frustrations with the review process, in terms of procedures and delays.

PCO-CCC reviews documents for the application of Cabinet confidences in strict accordance with guidelines established by Treasury Board in 1993. These guidelines specify that the required consultations be managed through an institution's legal representative, a requirement that is criticized by many institutions as overly bureaucratic and resulting in added administrative burden. However, PCO-CCC reports that it has significantly improved the quality of the schedules institutions submit to PCO-CCC. The OIC is of the view that, given the dissatisfaction with the consultation process, PCO-CCC should review the consultation process with the access to information community. It should also show greater flexibility in responding to consultations from other institutions.

PCO-CCC has a triage system whereby each incoming request is reviewed on the day it arrives to determine whether further research and documentation is required to certify whether the records contain Cabinet confidences. PCO-CCC estimates the turnaround time for submitted documents; however, it reported that factors such as litigation and multi-institutional involvement make it difficult to do so with a consistent level

Response time for the 1,549 consultation requests to PCO-CCC in 2008–2009, of 1,701 received

Fewer than 7 days	8–90 days	91–180 days	More than 180 days	Total
403 (26%)	870 (56%)	156 (10%)	120 (8%)	1,549

of accuracy. This has a ripple effect on the compliance rates of the consulting institutions.

PCO-CCC stands by its approach because it ensures equal treatment among consulting institutions, and allows them to do their work instead of responding to countless questions that the institution's own legal counsel can perhaps answer.

Recommendations

1. The Office of the Information Commissioner recommends that the Clerk of the Privy Council demonstrate leadership in establishing access to information as an institutional priority without exception. Access to information is a mandatory program and its associated legislated duties within a federal institution must be paramount.

Response

The Clerk of the Privy Council is committed to access to information as a core activity of government, and to ensuring that corporate responsibilities under the *Access to Information Act* are met. With the full support of the Clerk and PCO Executive Committee, PCO completed its comprehensive reorganization of the Access to Information and Privacy Division in the fall of 2007. This action was reported by the OIC in the 2007–2008 OIC report card. Major process improvements in areas such as document review and reporting were finalized by the end of 2007 and continue as an

“evergreen” initiative. Staff turnover and skill shortages are endemic to the field and adequate staffing is never “accomplished completely.” PCO launched its ATIP Officer Development Program in 2007 and, to date, has had nine officers in the program. PCO's redaction capacity was transformed by the acquisition of modern on-screen software in 2008. However, a further software upgrade was postponed until 2010, due to technical concerns.

The report card comments on overall turnover of the department and, although it may tangentially affect performance, the ATIP training program for departmental staff proactively promotes compliance. During the reporting year, 267 employees received training and awareness sessions, and several awareness events were conducted on a department-wide basis.

PCO-ATIP

2. The Office of the Information Commissioner recommends that the Clerk of the Privy Council amend the delegation of authority pursuant to section 73 of the *Access to Information Act* so that the access to information director has the authority to approve the release of records.

Response

PCO does not agree with this recommendation. Under section 73 of the *Access to Information Act*, it is the prerogative of the head of a government institution to designate who may exercise functions or powers of the Act. It should be noted that other government organizations operate with a delegation structure similar to PCO. Access to information requests to PCO, which are often complex and horizontal in nature, require a strong consultative relationship between records holders and the access to information authority, which the delegation provides. PCO would retain such consultation and consensus regardless of the structure of the delegation. As stated in the PCO access to information process timeline, offices of primary interest are allotted four days for review and approval of the records package. Finally, internal monitoring of the PCO approval process has provided no evidence that its delegation of authority creates delay, and the OIC has not brought forward data to support the assertion.

3. The Office of the Information Commissioner recommends that PCO-ATIP develop a clear plan to tackle the backlog of access requests.

Response

PCO has assigned specific resources to the completion of backlogged requests. Of the 688 requests received in 2007–2008, there were 135 backlogged requests at the end of that year. By comparison, of the 650 requests received in 2008–2009, there were a total of 34 backlogged requests at the end of 2008–2009. Completion of all outstanding requests remains a departmental priority.

4. The Office of the Information Commissioner recommends that PCO-ATIP document and review the criteria it uses for extensions to ensure that the extensions are reasonable and legitimate.

Response

The *Access to Information Act*, Treasury Board guidance, annual reports by the Information Commissioner and past experience shape the criteria for PCO in its use of extensions. As reported by PCO in the 2007–2008 OIC report card, extensions taken are backed by written rationales. PCO extensions are designed to provide clients with a realistic expectation of when their requests will be complete.

PCO fully complies with OIC guidance such as its 1999–2000 annual report, in which the OIC acknowledged that experience and judgment should inform the use of extensions, stating that “the duration of extensions should be consistent with historical experience in the institution in processing similar requests.”

By maintaining a working dialogue with its consultation partners, PCO also follows the OIC recommendation in its 2007–2008 report card that “ideally this [extension for consultation] is consensually determined with the consulted institution.”

Media requests represent the majority of PCO’s access to information volume, at 56 percent, followed by requests from the public at 17 percent and from business at 9 percent. It is PCO’s experience that media requests tend to be complex and multi-departmental in scope, driving up requirements for consultation and for attendant extensions. Considerations of national security, international affairs, federal-provincial relations and the government’s

decision-making process routinely arise in the review of PCO records.

Further to the issue of extensions and the “Length of Extension” graph, PCO’s database indicates that during 2008–2009 a total of 355 extensions under section 9 were taken: 54 under paragraph 9(1)(a), 276 under paragraph 9(1)(b), and 25 under paragraph 9(1)(c). “Volume” extensions during 2008–2009 were taken less than 15 percent of the time. This conflicts with the impression given by the report. There is also no comparison of these statistics with other years.

The majority of complaints against PCO have related to extensions taken. The department has explained to the OIC why extra time was necessary, and the OIC has largely supported these extension rationales in its complaint findings, and found in PCO’s favour.

5. The Office of the Information Commissioner recommends that PCO-ATIP reduce the average completion time for requests.

Response

PCO is committed to the timely completion of access requests. It further acknowledges that any on-time performance rate of less than 100 percent is unacceptable. The department will continue to work towards this goal using all available resources, although factors that are government-wide, such as rising workload, staffing challenges and the heavy traffic of consultations, will have an impact.

The statement that “PCO-ATIP’s average completion time for requests in 2008–2009 was 157 days” requires context. The *Access to Information Act* addresses

and allows for time extensions. As noted in the response to recommendation 4, extensions are determined in compliance with the guidance provided by the Act, Treasury Board, the OIC and past experience.

The report card notes that “approximately one in three requests to PCO’s access to information office results in a complaint,” which implies that all complaints are well-founded, which is not the case. Also, as the OIC has previously reported, complaints are increasing for all departments, up by 80 percent in 2007–2008.

Referencing the report card table, of the total of 198 complaints received in 2008–2009, 13 were not substantiated and 106 were discontinued, with 71, or 90 percent, pending.

6. The Office of the Information Commissioner recommends that PCO-ATIP comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

PCO’s data indicates a 100 percent compliance rate in providing written notifications of extensions in 2008–2009. Written notification to the OIC on extensions taken is a standard procedure in the PCO access to information process. This procedure has been in place since the reorganization and renewal of the Access to Information and Privacy Division in 2007.

PCO-CCC

7. Given its pivotal role in the processing of access requests and its endemic effect on the compliance rate of the entire federal government, the Office of the Information Commissioner recommends that the Clerk of the Privy Council take a leadership role to make PCO-CCC responsive to consultation requests in a timely manner, and report its progress, as all other federal institutions do, directly to Parliament.

Response

The Clerk of the Privy Council, as the custodian of Cabinet records, most certainly takes a leadership role. As such, PCO-CCC has been delegated to ensure the review and response to requests for consultation in a timely manner. With respect to reporting progress to Parliament, PCO believes that the current process, which allows for information to be included within the annual report to Parliament prepared by the PCO access to information office, adequately reflects accountability.

8. The Office of the Information Commissioner recommends that PCO-CCC identify and target recruitment sources of Privy Council officers, and develop a retention program to ensure that a full staff complement is available to facilitate faster turnaround time for consulting institutions.

Response

PCO-CCC is working on recruiting qualified personnel. As previously stated, however, there is a scarcity of personnel across government with the acquired skill set to do the work at the level required. In addition, there have been further staffing issues surrounding the hiring of skilled support staff for this very technical work,

which has led to added delays in the processing of requests.

9. The Office of the Information Commissioner recommends that PCO-CCC review its consultation process in collaboration with the access to information community and adopt a more flexible approach with consulting federal institutions.

Response

PCO-CCC believes that given the measures it has implemented within the past two years (including revised procedures), the quality of work has improved. Added to this is the one-on-one departmental training that PCO-CCC has provided to both access to information offices and legal counsel throughout government. For example, from April 8, 2008, to March 12, 2009, 12 training sessions were provided to approximately 250 attendees. This is in addition to the daily calls received from counsel with specific queries relating to Cabinet confidentiality.



Public Works and Government Services Canada

Some facts about access to information operations at PWGSC in 2008–2009

• Number of requests carried over from 2007–2008	148
• Number of new requests	584
• Number of requests completed	611
• Deemed refusal rate	4.5%*
• Average time to complete a request (in days)	92
• Number of consultation requests	245
• Number of complaints registered with the Office of the Information Commissioner	52
• Number of complaints the Office of the Information Commissioner resolved	16**
• Number of full-time equivalents in access to information office, as of March 31, 2009	18

Public Works and Government Services Canada (PWGSC) is a service agency for the Government of Canada's various departments, agencies and boards. It provides guidelines and policies, and carries out certain administrative and management functions on behalf of the federal government.

2008–2009 report card at a glance



- Deemed refusal rate was 4.5 percent.
- Average completion time was 92 days, which is high in light of its otherwise improved compliance.
- Strong leadership from the deputy minister and the commitment of access to information officials helped to dramatically improve PWGSC's compliance.
- A three-year action plan to improve access to information operations brought numerous benefits. For example, PWGSC's carry-over of overdue requests has gotten steadily smaller in the past three years.
- Status of access to information as a program rather than a corporate service has brought stable funding and autonomy.
- Stability among key staff, successful recruitment and retention, and a manageable workload enabled PWGSC's access to information office to meet its obligations.
- PWGSC has enhanced its career development program.
- PWGSC submitted notices to the Office of the Information Commissioner of extensions of more than 30 days 60 percent of the time.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Public Works and Government Services Canada

Follow-up on 2007–2008 report card

PWGSC proposed a comprehensive three-year action plan to address its below average compliance in 2007–2008 (see pp. 130–133 of the 2007–2008 special report).²⁰ Of note, PWGSC hired a number of consultants to clear its backlog of late requests by the end of March 2008, being of the view that doing so would lead to a dramatic increase in compliance in 2008–2009. PWGSC revamped its officer development program to include access staff at the PM-01 to PM-03 levels, and subsequently launched competitions for several PM-02s and PM-03s. These and other staffing actions brought in a number of new employees in 2008–2009. PWGSC requires any employees hired under the officer development program to enroll in the University of Alberta’s access to information and privacy certification program. PWGSC’s action plan—and the work the institution has done to implement it—reflects the deputy minister’s commitment to access to information and the institution’s commitment to bringing its compliance back up to optimum levels.

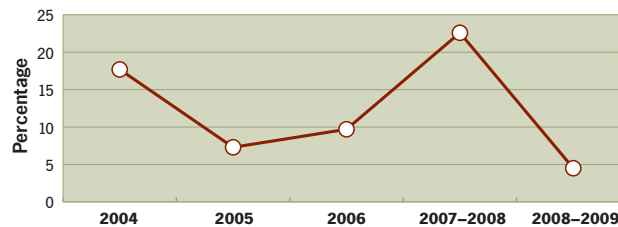
2008–2009 report card

PWGSC’s dramatic improvement in compliance in 2008–2009 illustrates what is possible through a combination of planning, commitment, execution and leadership. The institution achieved a deemed refusal rate of 4.5 percent in 2008–2009 (compared to 22.6 percent in 2007–2008), mid-way into its three-year

action plan that was developed in 2007–2008. This plan was instrumental in this turnaround.

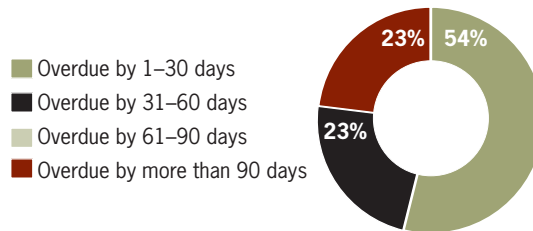
There were other factors that contributed to PWGSC’s accomplishment, namely starting off 2008–2009 with no backlog

Deemed refusal rate, 2004 to 2008–2009



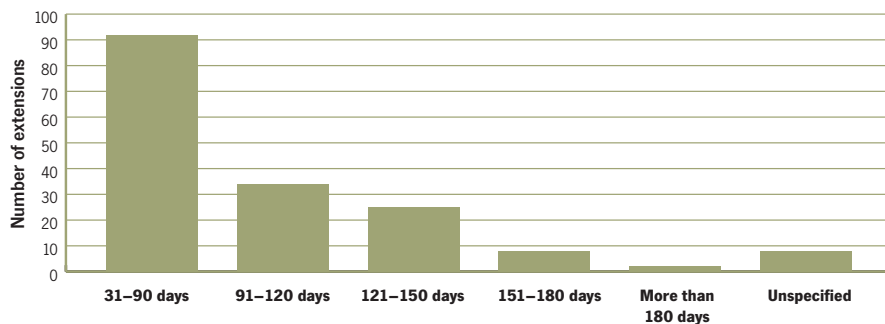
This graph shows the deemed refusal rate for PWGSC for the last five reporting periods. This is the percentage of carried over and new requests PWGSC delayed each year beyond the deadlines (30 days and extended) set out in the *Access to Information Act*.

How long requests completed late were overdue, 2008–2009



PWGSC reported that it completed 13 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline.

Number and length of time extensions reported in 2008–2009



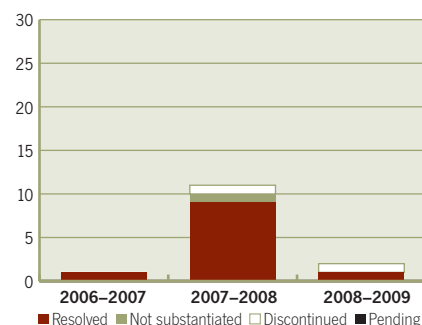
This graph shows the number and length of the time extensions PWGSC reported to have taken in 2008–2009. PWGSC supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. PWGSC submitted the notices 60 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

²⁰ http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2007-2008_24.aspx

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

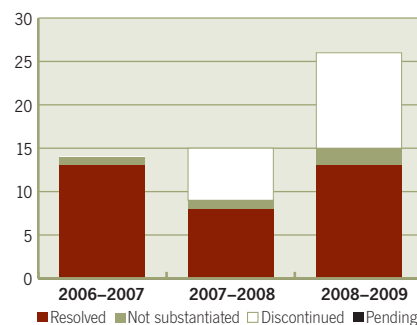
These graphs show the number and outcome of two types of complaint registered against PWGSC in the last three reporting periods: complaints about deemed refusals (access to information requests that PWGSC delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about PWGSC's use of the time extensions allowed under the Act. Resolved requests are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The number of deemed refusal complaints reached a three-year high in 2007–2008 at 11. The number of resolved deemed refusal complaints was a large but decreasing proportion of the total number of complaints received each year (100 percent; 82 percent; 50 percent).

Time extension complaints



The number of time extension complaints increased significantly between 2007–2008 and 2008–2009 (from 15 to 26). The OIC discontinued 11 files in 2008–2009.

of overdue requests, which allowed staff to respond promptly to new access requests. There was stability among analytical staff, and new direction at the director general and coordinator level, which created a positive blend of experience and energy.

PWGSC considers access to information to be a program rather than a corporate service. This distinction has translated into more autonomy and stable funding for the access to information office.

PWGSC turns around incoming consultation requests from other institutions in an average of 25 days, but does not always receive the same response time when it sends out its own consultations. It is a considerable source of frustration for PWGSC, which is trying to achieve maximum compliance, yet control over its work is taken out of its hands.

The Office of the Information Commissioner (OIC) is concerned about PWGSC's use of extensions, which may explain how it simultaneously achieved a 4.5 percent deemed refusal rate and a 92 day average completion time. The OIC stresses that any extensions should be reasonable and legitimate.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against PWGSC in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	15	2	2	0	19
Refusals	4	6	5	3	18
Cabinet confidences	0	3	0	0	3
Total	19	11	7	3	40
2007–2008					
Administrative	18	3	8	0	29
Refusals	0	7	0	11	18
Cabinet confidences	0	1	0	0	1
Total	18	11	8	11	48
2008–2009					
Administrative	15	2	13	1	31
Refusals	1	3	0	14	18
Cabinet confidences	0	0	0	3	3
Total	16	5	13	18	52

The number of refusal complaints was identical (18) each of the three years. The number of resolved refusal complaints was a small proportion of those complaints each year (22 percent; 0 percent; 5 percent). In each of those years, the bulk of complaints were administrative (19 of 40; 29 of 48; 31 of 52); these include complaints about overdue requests and PWGSC's use of time extensions. Each year, a large, but decreasing, proportion of these requests were resolved (79 percent; 62 percent; 48 percent)

PWGSC has been part of the report card process since 2002, and its compliance has varied over the years. The OIC acknowledges PWGSC's considerable improvement in compliance in 2008–2009, particularly within the context of increased scrutiny of government stewardship of public funds, and calls on the institution to take all possible measures to maintain that achievement.

Recommendations

1. The Office of the Information Commissioner recommends that Public Works and Government Services Canada continue to follow its three-year plan and revise it, if necessary, with specific initiatives that respond to emerging issues to ensure continued top performance and compliance with the Act.

Response

PWGSC is continuing to adjust and implement the activities outlined in its plan.

The Access to Information and Privacy Directorate will revise the plan to include the actions needed to respond to this report card, and any other activities deemed appropriate, with a view to further improving the access to information program.

2. The Office of the Information Commissioner recommends that Public Works and Government Services Canada document and review the criteria it uses for extensions to ensure that the extensions are reasonable and legitimate.

Response

Given the nature and mandate of the department, the records requested generally concern procurement-related activities and contain sensitive government and/or third party commercial information.

Time extensions are therefore required to undertake the necessary consultations with client departments and third parties in order to obtain their representations prior to making final disclosure decisions under the Act.

Based on the volume of records to be reviewed, the number of parties to be consulted and/or the operational realities, it is believed that the time extensions taken are reasonable and legitimate. When an extension is 90 days or more, the requester is assured in the notice of extension that a response will be provided earlier than anticipated if the consultations and document review are completed before the extended due date.

The reasons for the time extensions are documented in the case management system.

The Directorate will review and document the criteria for time extensions. For example, for X number of pages, Y days are required; for consultations with department Z, Y days are required. The best practices of other institutions demonstrating ideal compliance in this regard will also be examined.

3. The Office of the Information Commissioner recommends that Public Works and Government Services Canada reduce the average completion time for requests.

Response

The Directorate makes every effort to ensure that requests are completed in an efficient and timely manner. As a result, the average number of days taken for all requests completed to date in this fiscal year is 66 days. This is a 28 percent decrease compared to 2008–2009.

Through its Quality Circle, the Directorate will continue to review issues and suggestions raised by access to information management and staff to improve its systems and processes.

4. The Office of the Information Commissioner recommends that Public Works and Government Services Canada strive to reduce its deemed refusal rate to zero.

Response

While the departmental compliance target has been set at 95 percent for 2009–2010, we are very pleased with our performance since April 2009, having attained 98.2 percent compliance as of December 31, 2009. This is an improvement of 2.7 percent compared to last fiscal year.

The department will strive to reduce deemed refusals and sustain a compliance rate of 95 percent or more. However, the complexity and number of requests make it difficult to attain 100 percent compliance.

The Directorate will continue to closely monitor the department's performance and report regularly to senior management.

5. The Office of the Information Commissioner recommends that Public Works and Government Services Canada comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

The Directorate has procedures in place in this regard, and a cc to the OIC is already included on its extension notice templates. The process consists of sending a notice letter by mail to the OIC.

The Directorate is reviewing its case files to confirm that a cc was sent to the OIC for all extensions of more than 30 days, as the report notes that the OIC only received notice of 60 percent of these extensions.

In consultation with the OIC the Directorate will modify its current process to confirm that extension notices have been sent to the OIC in compliance with subsection 9(2) of the Act.

The Directorate will reiterate to its staff the necessity of complying with this legislative requirement and the expected results.



Some facts about access to information operations at the RCMP in 2008–2009

• Number of requests carried over from 2007–2008	256
• Number of new requests	2,008
• Number of requests completed	1,976
• Deemed refusal rate	18.3%*
• Average time to complete a request (in days)	38
• Number of consultation requests	531
• Number of complaints registered with the Office of the Information Commissioner	105
• Number of complaints the Office of the Information Commissioner resolved	15**
• Number of full-time equivalents in access to information office, as of March 31, 2009	19.05

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Royal Canadian Mounted Police

The Royal Canadian Mounted Police (RCMP) enforces throughout Canada laws made by or under the authority of Parliament, with the exception of the Criminal Code, the enforcement of which is delegated to the provinces. The RCMP provides police services in all provinces (except Ontario and Quebec) and territories, and in 180 municipalities.

2008–2009 report card at a glance



- Deemed refusal rate was 18.3 percent. This rate has decreased steadily each year since 2005.
- Average completion time was 38 days.
- Officials from the RCMP reported that the access to information office has yet to reach its full potential for compliance.
- The RCMP submitted the required notices to the Office of the Information Commissioner for extensions of more than 30 days 49 percent of the time.
- The RCMP received 21 percent more requests in 2008–2009 than in 2007–2008. Despite this, the RCMP kept its backlog from increasing.
- The access to information office introduced a new triage unit. This meant that the policy unit could take over responsibility for answering large number of informal queries relating to access to information matters (mostly from serving members) and for delivering access awareness sessions across the institution.
- Low staff turnover led to an optimal workload at any one time of between 6 and 10 files per analyst.
- A new procedure facilitates 48-hour turnaround time for records retrieval.

Royal Canadian Mounted Police

Follow-up on 2007–2008 report card

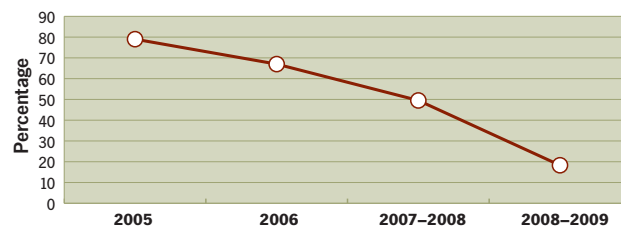
The Royal Canadian Mounted Police (RCMP) continued to improve its compliance with the *Access to Information Act* in 2007–2008, although with a deemed refusal rate of 49.5 percent, it was still far from being fully compliant. As part of ongoing efforts to improve compliance, the RCMP's access to information office completed staffing actions for 13 full-time equivalents at the end of the fiscal year and made a concerted effort to train officers in detachments and offices across the country, in order to shorten response times. Challenges remain, however, since the institution's records are held in nearly 900 locations, many of which are small detachments, which must focus their time and energy on law enforcement as well as compliance with the *Access to Information Act*. Access to information officials committed to working with these offices to facilitate prompt records retrieval. They also committed to making process improvements, including tracking the length of the time extensions taken under the Act and promoting the practice of releasing records informally to shorten response times. Since the RCMP's deemed refusal rate was 79 percent in 2005 (its first year being subject to the report card process) and the institution has subsequently made steady progress lowering it, the Office of the Information Commissioner (OIC) watched its progress with interest in 2008–2009, in the hope that it continued. The OIC is satisfied with the RCMP's response to the recommendations in the 2007–2008 report card.

2008–2009 report card

The RCMP is moving in the right direction on most access to information fronts.

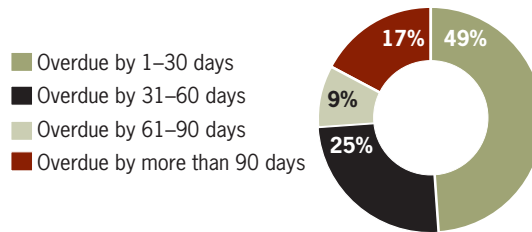
The institution brought its deemed refusal rate down to 18.3 percent. Moreover, access to information officials reported

Deemed refusal rate, 2005 to 2008–2009



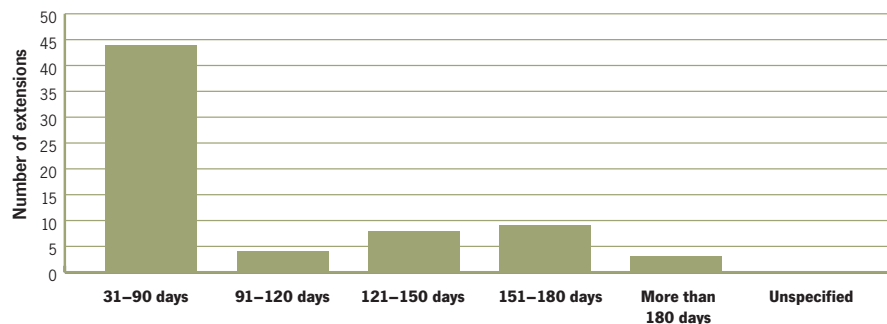
This graph shows the deemed refusal rate for the RCMP for the last four reporting periods. This is the percentage of carried over and new requests the RCMP delayed each year beyond the deadlines (30 days and extended) set out in the *Access to Information Act*.

How long requests completed late were overdue, 2008–2009



The RCMP reported that it completed 236 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline. It is of concern that 51 percent of these requests were late by more than 30 days.

Number and length of time extensions reported in 2008–2009

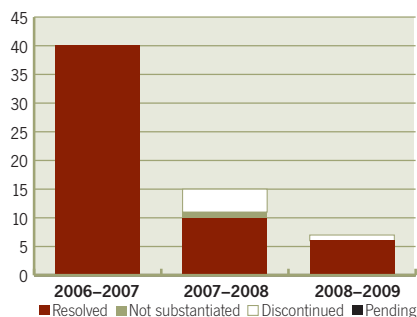


This graph shows the number and length of the time extensions the RCMP reported to have taken in 2008–2009. The RCMP supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. The RCMP submitted the notices 49 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

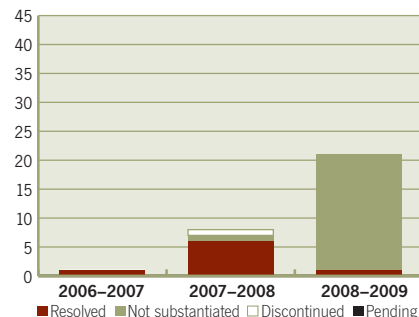
These graphs show the number and outcome of two types of complaint registered against the RCMP in the last three reporting periods: complaints about deemed refusals (access to information requests that the RCMP delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about the RCMP's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The number of deemed refusal complaints decreased significantly each year (40; 15; 7). The proportion of resolved complaints to the total was high each year (100 percent; 67 percent; 86 percent).

Time extension complaints



The number of time extension complaints increased each year (1; 8; 21); however, the proportion of resolved time extension complaints to the total number of such complaints decreased significantly over the same period (100 percent; 75 percent; 5 percent).

that the institution had yet to reach its full potential for compliance.

The RCMP received 21 percent more access requests in 2008–2009 than it did the previous year, while continuing to tackle its backlog. The OIC notes that the RCMP was successful in processing these requests without allowing the backlog to increase significantly: it was nearly identical in size at the beginning and the end of the year.

The RCMP approved a new business case in 2003 to expand the access to information office. Staffing of the new positions was completed in 2007 and 2008. With these new staff on board, the RCMP was able to create a triage unit to deal more effectively with complex requests and the increasing volume of formal requests. The access to information policy unit was subsequently better able to handle informal requests for information, since analysts could concentrate on reviewing records. It was further possible to offer access awareness training across the RCMP. The augmented workforce, and the fact that there was practically no staff turnover, also allowed for an ideal caseload of 6 to 10 files per analyst at any one time.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against the RCMP in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	43	5	2	0	50
Refusals	17	20	5	2	44
Cabinet confidences	0	0	1	0	1
Total	60	25	8	2	95
2007–2008					
Administrative	20	5	7	0	32
Refusals	19	42	7	29	97
Cabinet confidences	0	0	0	0	0
Total	39	47	14	29	129
2008–2009					
Administrative	14	21	3	1	39
Refusals	1	13	5	47	66
Cabinet confidences	0	0	0	0	0
Total	15	34	8	48	105

The overall number of resolved complaints decreased each year (60; 39; 15). There was a significant increase in the number of administrative complaints the OIC found to be not substantiated from 2007–2008 to 2008–2009 (from 5 to 21). There were many refusal complaints pending at the end of both 2007–2008 and 2008–2009 (29; 48).

The RCMP has developed a new process to ensure prompt records retrieval: the detachment commander and/or records manager are responsible for responding to requests for records within 48 hours, regardless of staff availability.

With its deemed refusal rate on a solid downward track, the RCMP is clearly doing something right. The OIC encourages the RCMP to work to bring that rate down to zero.

Recommendations

1. The Office of the Information Commissioner recommends that the Royal Canadian Mounted Police strive to reduce its deemed refusal rate to zero.

Response

The RCMP agrees with this recommendation. The performance exemplified by the access to information program in recent years attests to the RCMP's commitment to this important function of the government. The RCMP has invested significant resources and efforts into the program and will continue to do so. As a result, the RCMP is confident that its compliance will continue to improve.

2. The Office of the Information Commissioner recommends that the Royal Canadian Mounted Police comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

The RCMP agrees with this recommendation. In 2009, the Access to Information and Privacy Branch developed a new systematic process that automatically alerts the analyst to the notification requirement for all the extensions he or she takes for more than 30 days. The RCMP is confident that this will considerably boost our compliance in that regard.

3. The Office of the Information Commissioner recommends that the Royal Canadian Mounted Police continue with its improvement plan to achieve optimal compliance with the Act.

Response

The RCMP agrees with this recommendation. As stated above, the Royal Canadian Mounted Police has invested significant resources and efforts into the access to information program. Despite the marked increase in volume of requests in recent years, the RCMP's compliance has steadily been improving. New initiatives aimed at improving processes and overall compliance are being put in motion, and the RCMP is confident that its ability to fulfill its legislative obligations will continue to peak.





Institutions assessed
in 2008–2009

Canada Revenue Agency

The Canada Revenue Agency (CRA) administers the federal *Income Tax Act*, as well as the tax laws for most provinces and territories. It also delivers economic and social benefit and incentive programs through the tax system.

Some facts about access to information operations at CRA in 2008–2009

• Number of requests carried over from 2007–2008	690
• Number of new requests	1,770
• Number of requests completed	1,540
• Deemed refusal rate	15.1%*
• Average time to complete a request (in days)	73
• Number of consultation requests	125
• Number of complaints registered with the Office of the Information Commissioner	302
• Number of complaints the Office of the Information Commissioner resolved	110**
• Number of full-time equivalents in access to information office, as of March 31, 2009	44

2008–2009 report card at a glance



- Deemed refusal rate was 15.1 percent.
- Average time to complete a request was 73 days.
- CRA's backlog grew to more than 900 files by the end of the year.
- CRA's delegation order gives authority to approve the release of records to multiple senior managers.
- CRA extended one quarter of new requests under paragraph 9(1)(a) of the *Access to Information Act* to accommodate operational pressures; 52 percent of these extensions were for more than 90 days.
- The Office of the Information Commissioner resolved 89 out of 96 complaints it registered against CRA about its use of time extensions in 2008–2009.
- CRA cited the increasing volume of pages to review (650,000 pages in 2008–2009) and the impact on operations of bulk requesters as enormous challenges.
- CRA is introducing an intake unit to triage requests, dedicating new resources to the backlog and exploring technological innovations, such as a common information platform for easy information records storage and retrieval, to improve compliance.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the *Access to Information Act*. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Canada Revenue Agency

2008–2009 report card

The Canada Revenue Agency (CRA) was assessed as part of the report card process each year from 1999 to 2004 and achieved various rates of compliance with the *Access to Information Act* during that time. In response to recommendations contained in the Office of the Information Commissioner's (OIC) 1999 report card, CRA began to improve its compliance through concerted attention, resources and effort. The institution reported that a change in culture, the addition of substantial and permanent human resources, sound technology and training initiatives were key to its success in achieving optimal compliance ratings from 2003 through 2005. Fast forward to 2008–2009 and, given some challenging circumstances, the institution's compliance worsened, such that its deemed refusal rate in 2008–2009 was 15.1 percent. To compound the problem, the backlog of requests grew rapidly, with CRA carrying 920 requests over into 2009–2010 (representing 808,000 pages).

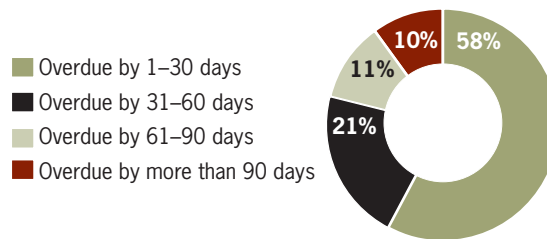
CRA defines its workload as increasingly complex, since it engages with the provinces and territories in tax-related matters. The number of pages to review has also significantly increased in the last few years. The workload has largely been due to two frequent requesters, who accounted for 35 percent of CRA's backlog at the start of 2008–2009. Strategies to manage the workload include a triage system, through which CRA handles incoming requests informally, if possible, to cut down on unnecessary administration.

Although the current practice at CRA is to have the access to information coordinator and sub-delegates sign off on the majority of access requests, the August 2009 delegation order gives signing authority to a long list of senior officials, including the commissioner, deputy commissioner, assistant commissioners, deputy assistant commissioners, chief audit executive, director general of program evaluation, and the directors

and assistant directors of the access to information office.

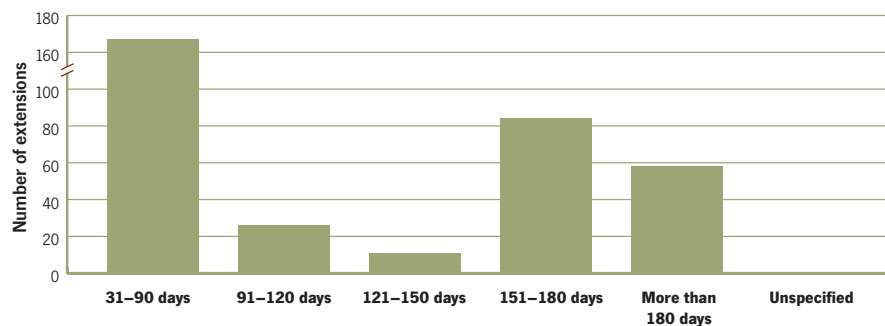
The OIC is concerned with CRA's use of extensions under paragraph 9(1)(a) of the Act, which allows an institution to extend the deadline for responding to an information request that involves a large volume of records (or a search through a large volume of records) such that meeting the 30-day limit would impose

How long requests completed late were overdue, 2008–2009



CRA reported that it completed 92 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline.

Number and length of time extensions reported in 2008–2009

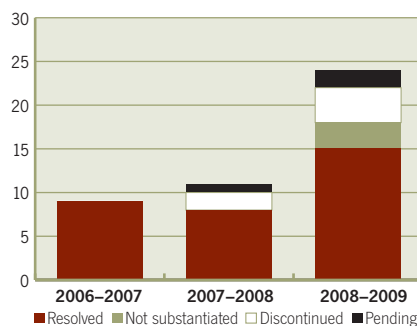


This graph shows the number and length of the time extensions CRA reported to have taken in 2008–2009. CRA supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. CRA submitted the notices 85 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

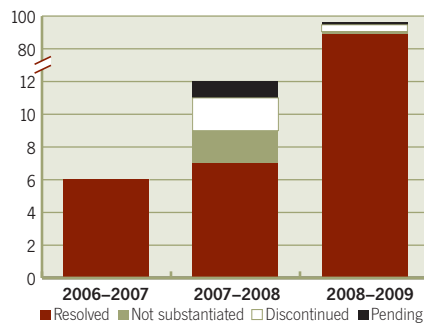
These graphs show the number and outcome of two types of complaint registered against CRA in the last three reporting periods: complaints about deemed refusals (access to information requests that CRA delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about CRA's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The number of deemed refusal complaints increased significantly from 2007–2008 to 2008–2009 (11; 24). The proportion of these complaints that the OIC resolved was high each year (100 percent; 73 percent; 63 percent) but was decreasing.

Time extension complaints



The number of time extension complaints rose from 12 in 2007–2008 to 96 in 2008–2009. The proportion of these that the OIC resolved was high in each of the three years (100 percent; 58 percent; 93 percent).

an undue burden on the institution's program operations. Of the 1,770 new requests CRA received in 2008–2009, it extended 25 percent under paragraph 9(1)(a). According to the notices CRA submitted to the OIC, 52 percent of these extensions were for more than 90 days. CRA reported that it uses these extensions to compensate for operational pressures in the access program, citing Appendix A of Treasury Board of Canada Secretariat's *Implementation Report No. 67*²¹ as the basis for doing so.

There has been a clear increase in the number of complaints to the OIC about CRA's use of time extensions. In 2008–2009, the OIC resolved 89 of 96 such complaints. Complaints the OIC resolved about requests being completed late nearly doubled (from 8 to 15) from 2007–2008 to 2008–2009.

Despite the CRA's worsening compliance, there is demonstrated commitment within CRA's access office and among senior officials to address the challenges. Access officials report that they have set up an intake unit to assist with the efficient processing of files and have dedicated two full-time resources to reducing the backlog. CRA also has satellite access

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of complaints the OIC registered against CRA in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	17	5	0	0	22
Refusals	4	4	8	24	40
Cabinet confidences	0	0	0	0	0
Total	21	9	8	24	62
2007–2008					
Administrative	29	4	4	3	40
Refusals	6	12	6	52	76
Cabinet confidences	0	0	0	0	0
Total	35	16	10	55	116
2008–2009					
Administrative	106	5	10	20	141
Refusals	4	1	10	146	161
Cabinet confidences	0	0	0	0	0
Total	110	6	20	166	302

The number of complaints against CRA that the OIC resolved has risen by more than five times since 2006–2007 (21 to 101). In 2008–2009, the OIC resolved more than one third of the complaints it registered against CRA (110 of 302), although 166 complaints were pending at year-end. Administrative complaints accounted for 96 percent of the resolved complaints in 2008–2009 (106 of 110).

²¹ <http://www.tbs-sct.gc.ca/atip-ai/prp/impl-rep/impl-rep2000/67-imp-mise-eng.asp>

to information offices in Vancouver and Montréal. Away from the National Capital Region, these have stable staffing situations, which could be a model for other institutions.

Recommendations

1. The Office of the Information Commissioner recommends that the Minister of National Revenue amend the delegation order to ensure greater autonomy of the access to information coordinator.

Response

CRA recognizes that the delegation order may lead to the assumption that all those listed in the schedules exercise their delegations. However, in practice, those who exercise this delegation are limited to those directly involved in access to information operations, namely, the access to information director, assistant directors and managers, and the assistant commissioners of the Pacific and Quebec regions, the two regions where CRA's access to information satellite offices are located.

The access to information office will review the delegation order in light of the OIC's comments to determine whether it should be amended. Following this review, the office will bring forward the analysis to senior management for a decision regarding appropriate delegations. The OIC will then be provided with our assessment for their feedback.

2. The Office of the Information Commissioner recommends that the Canada Revenue Agency review and continue to document the criteria it uses for extensions taken under paragraph 9(1)(a) of the Access to Information Act to ensure that the extensions are reasonable and legitimate.

Response

CRA agrees that extensions taken under paragraph 9(1)(a) should be reasonable and legitimate, and will continue to explore the means of reducing the use of these extensions.

The access to information office recognizes that extensions of greater length were claimed in 2008–2009; however, the use of extensions is in large part attributable to the exponential growth in the page volume of requests over the past several years. In the first six months of the current fiscal year, for instance, the pages equivalent to the access requests received exceeded one million—greater than the total pages (more than 650,000) received in 2008–2009.

CRA believes that putting aside other critical work in order to direct all possible efforts to avoid time extensions would interfere unreasonably with the processing of other requests and addressing other legislated requirements.

It should also be noted that the use of extensions under section 9 in such circumstances has been legitimized by the Treasury Board of Canada Secretariat in Appendix A of *Implementation Report No. 67*²², which states the following:

“The interference with your institution's operations may be considered ‘unreasonable’ if processing the request within 30 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 access to information office will scrutinize the use of paragraph 9(1)(a) to ensure the extensions are reasonable and legitimate, and to examine whether improvements can be made to existing processes and procedures to expedite the processing of requests. In particular, access to information officials will consult with the OIC to discuss ways to mitigate the impact of bulk requests, which currently strain our operations and impact our ability to comply with the Act within legislated timeframes. Moreover, the access office will closely monitor the effectiveness of new initiatives, such as the introduction of an intake unit, to make any necessary adjustments to its operations.

3. The Office of the Information Commissioner recommends that the Canada Revenue Agency develop a clear plan to tackle the backlog of access requests.

Response

CRA agrees with this recommendation, and notes that it has already taken concrete steps to address the backlog with notable success. In October 2009, the access to information office diverted

²² <http://www.tbs-sct.gc.ca/atip-ai/prp/impl-rep/impl-rep2000/67-imp-mise-eng.asp>

two full-time employees and dedicated two additional temporary resources to processing the backlog. As a result of these measures, of the 920 backlog files noted in this report, 515 have been closed—a reduction of 56 percent.

Diverting resources within the office to address the backlog must continually be balanced with the need to respond to incoming requests. Within this context, the office will continue to explore innovative ways to reduce the backlog, including process and technology improvements. Towards this end, CRA will consult with other access to information offices across government to consider best practices for possible implementation within its office. CRA will also work with the OIC to seek innovative means to mitigate the impact of bulk requesters upon our operations.

In its review of the delegation order, the access to information office will explore the feasibility of expanding delegations within the office to expedite the processing of the backlog.

The office recognizes that reducing the backlog will, in part, depend on having the necessary staff to undertake the processing in a timely manner. Towards this end, the office will undertake the staffing processes outlined in its staffing plan to ensure vacancies are quickly filled with candidates from the resulting pools.

Success of these actions will be carefully monitored, and regular updates on progress will be provided to senior management.

4. The Office of the Information Commissioner recommends that the Canada Revenue Agency strive to reduce its deemed refusal rate to zero.

Response

CRA will continue to strive to reduce its deemed refusal rate. Our continued efforts to reduce our backlog will, over time, result in a reduction in our deemed refusal rate. Given the exponential increase in pages being processed, however, CRA recognizes that progress towards this goal will be incremental. Under the circumstances, the access to information office will strive to ensure that the deemed refusal rate does not increase.

By reducing the backlog, as outlined above, the office will incrementally reduce the deemed refusal rate. Within this context, the office will continue to explore innovative ways to maximize efficiencies through process, procedural and technology improvements. Towards this end, the CRA will consult with other offices across government to consider best practices for possible implementation within the office.

As well, in its review of the delegation order, the office will explore the feasibility of expanding delegations within the office to expedite the processing of requests.

The office recognizes that reducing the deemed refusal rate will hinge on ensuring it has the necessary staff to process requests in a timely manner. Towards this end, the office will undertake the staffing processes outlined in its staffing plan to ensure vacancies are quickly filled with candidates from the resulting pools.

Success of these actions will be carefully monitored, and regular updates on progress will be provided to senior management.

5. The Office of the Information Commissioner recommends that the Canada Revenue Agency comply with the Access to Information Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

CRA fully agrees with this recommendation and will put further processes in place to ensure complete compliance with this recommendation. It is our understanding that the OIC calculated our compliance rate for 2008–2009 to be 85 percent; however, according to our records, our compliance rate is 91 percent. CRA will work with the OIC to clarify why the CRA and OIC calculations are based on different methodologies, in order to rectify this discrepancy.

The access to information office will consult with the OIC to ensure the reporting methodology used by both institutions is synchronized. As well, internal processes and procedures will be reviewed, and best practices will be implemented and communicated to staff through a variety of communication vehicles. CRA will implement necessary measures to ensure that it is fully compliant with the Act in this regard.



Canadian Food Inspection Agency

Some facts about access to information operations at CFIA in 2008–2009

• Number of requests carried over from 2007–2008	56
• Number of new requests	472
• Number of requests completed	327
• Deemed refusal rate	35.8%*
• Average time to complete a request (in days)	50
• Number of consultation requests	74
• Number of complaints registered with the Office of the Information Commissioner	12
• Number of complaints the Office of the Information Commissioner resolved	3**
• Number of full-time equivalents in access to information office, as of March 31, 2009	6

The Canadian Food Inspection Agency (CFIA) provides inspection services and regulatory oversight for food production, and plant and animal health products, and delivers consumer protection programs relating to the food system in Canada. CFIA enforces Health Canada policies and standards governing the safety and nutritional quality of all food sold in Canada and verifies industry compliance with federal acts and regulations.

2008–2009 report card at a glance



- Deemed refusal rate was 35.8 percent.
- Average completion time was 50 days.
- CFIA submitted the required notices of extensions longer than 30 days to the Office of the Information Commissioner 61 percent of the time.
- A series of crises, such as incidents of bovine spongiform encephalopathy (BSE) and listeriosis, overwhelmed CFIA's access program, without an equivalent increase in resources to respond efficiently. There had been no time extension complaints against CFIA in the two years preceding these crises.
- The backlog grew: CFIA carried 201 requests over into 2009–2010 (compared to 56 files from 2007–2008).
- The delegation of authority was diffuse. All records on topics of great public interest had to be approved by the president prior to release.
- Senior executives have subsequently taken a number of steps to improve compliance:
 - conducted internal and external reviews of access to information operations;
 - allocated \$500,000 to consultants to reduce the backlog;
 - developed a multi-year plan to address problems raised in the external review report;
 - revised the delegation order to streamline the approval process;
 - upgraded software; and
 - hired two new permanent staff members.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Canadian Food Inspection Agency

2008–2009 report card

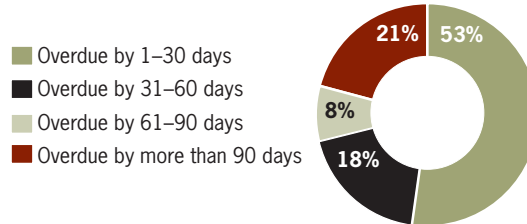
Interest in the information holdings of the Canadian Food Inspection Agency (CFIA) has increased in recent years, which has meant a significant and steady increase in the volume, size and complexity of requests. This, combined with high-profile incidents of bovine spongiform encephalopathy (BSE) and listeriosis, led CFIA to score an alarming 35.8 percent deemed refusal rate for 2008–2009, when CFIA was subject to its first report card. The backlog of requests also grew rapidly, with 201 requests carried over into 2009–2010. These numbers illustrate that CFIA was unable to meet its obligations under the *Access to Information Act*. The high deemed refusal rate resulted in CFIA receiving the 2008 Code of Silence award from the Canadian Association of Journalists.

CFIA's rate of compliance in the last fiscal year results from a number of factors. All requests of great interest to the public went to the president's office for final approval. While access staff did not report any delays resulting from this approval process, the fact that the president, the minister's office and the public affairs division received copies of each of the proposed release packages created an administrative burden that detracted access staff from processing requests. Further, the delegated authority shared between the president, the executive vice-president, vice-presidents and associate vice presidents of operational areas further diminished the access coordinator's control over the timely advancement of requests.

CFIA extended 175 of the 472 new requests it received in 2008–2009. More than three quarters (78 percent) of the extensions it took were for third-party consultations. CFIA was only able to complete one third of its extended requests within the longer time frame.

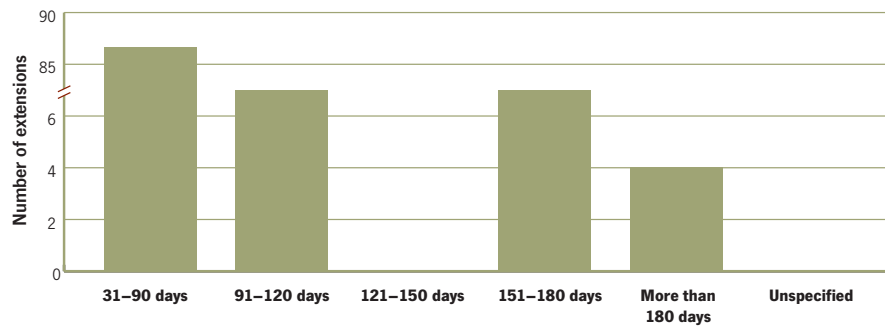
In terms of human resources, CFIA needs more capacity in order to manage its growing volume of requests. The institution brought in consultants to manage the backlog and regular workloads, but this is not a sustainable strategy, both fiscally and in terms of long-term compliance. In an attempt to

How long requests completed late were overdue, 2008–2009



CFIA reported that it completed 77 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline.

Number and length of time extensions reported in 2008–2009

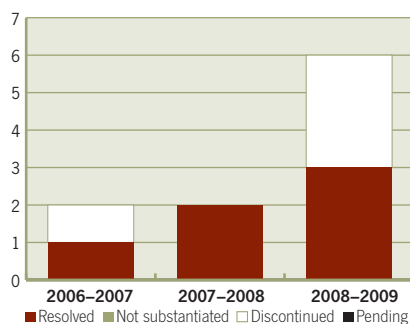


This graph shows the number and length of the time extensions CFIA reported to have taken in 2008–2009. CFIA supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. CFIA submitted the notices 61 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

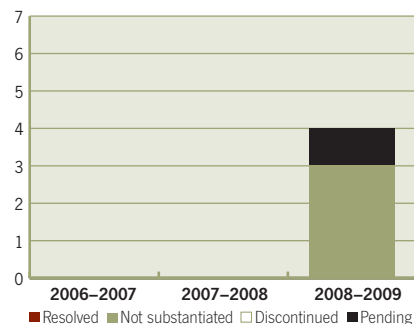
These graphs show the number and outcome of two types of complaint registered against CFIA in the last three reporting periods: complaints about deemed refusals (access to information requests that CFIA delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about CFIA's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



In each of the last three years, the OIC resolved 50 percent or more of the deemed refusal complaints registered against CFIA (50 percent; 100 percent; 50 percent).

Time extension complaints



In 2008–2009, the OIC found three out of the four complaints about time extensions to be not substantiated.

combat staff turnover rates, the CFIA has introduced a career development program for its current staff, and has coordinated staffing competitions for other institutions to establish a recruitment pool of qualified personnel.

CFIA also needs to develop a more focused approach to tasking. Already, it has minimized the number of contact points within branches to help ensure greater oversight and coordination in program areas. It is also implementing new redaction software that will better track documents to ensure consistency and help streamline processing.

Information management in general contributed to difficulty in retrieving records, due in part to the remote inspection operations across the country and limited connectivity.

Senior management launched many initiatives to improve compliance in 2009–2010, such as undertaking a comprehensive study of the institution's access operations. This was validated through an external expert review (completed in July 2009). CFIA also revised the delegation order to give full authority to the access to information coordinator to approve the release of

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of complaints the OIC registered against CFIA in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	1	1	1	0	3
Refusals	0	1	0	0	1
Cabinet confidences	0	0	0	0	0
Total	1	2	1	0	4
2007–2008					
Administrative	3	0	0	0	3
Refusals	1	0	0	6	7
Cabinet confidences	0	0	0	0	0
Total	4	0	0	6	10
2008–2009					
Administrative	3	3	3	1	10
Refusals	0	0	0	2	2
Cabinet confidences	0	0	0	0	0
Total	3	3	3	3	12

The number of administrative complaints (including deemed refusal and time extension complaints) against CFIA increased significantly from 2007–2008 to 2008–2009 (from 3 to 10). However, CFIA's record on resolved refusal complaints was good (only one in three years), suggesting that the institution applies exemptions under the Act well.

records, and approved the staffing of additional permanent positions.

The Office of the Information Commissioner (OIC) anticipates a far more transparent approach to access to information as a result of the new commitment of resources, and commends the demonstrated leadership of CFIA to improve its compliance.

Recommendations

1. The Office of the Information Commissioner recommends that the president of the Canadian Food Inspection Agency allocate sufficient resources on a permanent basis to stabilize access to information operations and ensure a full complement of access staff.

Response

A business case was first developed by CFIA's access to information office and subsequently considered by an independent expert in the context of an external review. This review, completed in July 2009, confirmed program improvements along with resource requirements. A total of \$500,000 was allocated toward hiring consultants to address the backlog of requests. Six consultants were hired in 2009–2010 and there is a process under way to engage more consultants to help reduce the backlog.

CFIA is currently finalizing its 2010–2011 budget allocations for all programs and areas. This includes a recommendation to provide adequate and stable resources for the access to information office in 2010–2011 and future years.

2. The Office of the Information Commissioner recommends that the Canadian Food Inspection Agency formulate and implement a clear, comprehensive and multi-year plan to improve the delivery of access to information services, eliminate the backlog and improve compliance, along the lines of the expert report commissioned in 2009.

Response

A comprehensive, multi-year plan was developed in conjunction with the access to information business case and was updated to reflect the recommendations made in the external expert's report completed in 2009. The multi-year action plan outlines the steps to be taken and resources needed in order to improve CFIA's compliance with the Act and to work toward eliminating the backlog of requests.

CFIA will strive to implement the multi-year action plan developed to improve its overall compliance with the *Access to Information Act*, in line with agency priorities and available resources.

3. The Office of the Information Commissioner recommends that the Canadian Food Inspection Agency strive to reduce its deemed refusal rate to zero.

Response

CFIA is committed to reducing its deemed refusal rate and has already taken steps such as hiring consultants and revising the delegation of authority.

As noted, CFIA is implementing an action plan, designed to build a solid foundation for the access to information office, to

ensure the agency's ability to minimize its deemed refusal rate.

Further to the report card recommendations, the access to information office is currently revising its internal procedures on extensions in order to ensure all extensions taken are more precise and sufficient in length.

4. The Office of the Information Commissioner recommends that the Canadian Food Inspection Agency comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

It is the established practice of CFIA access to information officials to send all extension letters (more than 30 days) to the OIC. In order to help better ensure the delivery and receipt of notices, the agency will begin sending the notices to the OIC by fax. The OIC may also wish to consider establishing a dedicated email account for such notices. Additionally, to enhance our ability to track these notices, we will create a new field in our tracking database.

The CFIA is pursuing discussions with the OIC to explore ways of improved tracking of the extension notification process.

The agency will start sending notifications by fax or email to help confirm receipt of notices by the OIC. The access to information office will also track the extension notices in our case management database to better verify compliance with section 9(2) of the Act.

Some facts about access to information operations at Canadian Heritage in 2008–2009

• Number of requests carried over from 2007–2008	93
• Number of new requests	294
• Number of requests completed	239
• Deemed refusal rate	40.8%*
• Average time to complete a request (in days)	107
• Number of consultation requests	106
• Number of complaints registered with the Office of the Information Commissioner	25
• Number of complaints the Office of the Information Commissioner resolved	13**
• Number of full-time equivalents in access to information office, as of March 31, 2009	5.4

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Canadian Heritage

Canadian Heritage is responsible for national policies and programs that promote Canadian content, foster cultural participation, active citizenship and participation in Canada's civic life, and strengthen connections among Canadians.

2008–2009 report card at a glance



- Deemed refusal rate was 40.8 percent.
- The average time to complete a request was 107 days; 35 percent of requests took more than 120 days to complete.
- Processing of records is delayed at the records retrieval and review stages, due to a two-step review process. Moreover, this process involves assistant deputy ministers, who do not have delegated authority for access to information at the institution.
- The access to information function was funded on an ad hoc basis, which contributes to instability.
- The access to information office was very short-staffed during the reporting period. Among other impacts, access officials were unable to take a proactive approach to providing awareness training to Canadian Heritage employees.
- Canadian Heritage submitted the required notices of extensions longer than 30 days to the Office of the Information Commissioner 62 percent of the time.
- The Office of the Information Commissioner resolved 13 out of the 25 complaints it registered against Canadian Heritage in 2008–2009. All the resolved complaints had to do with delays getting information to requesters.
- Recent developments are a step in the right direction:
 - The access office brought in new employees on special assignments.
 - Canadian Heritage is now reviewing the resources required for the access function.
 - A senior analyst is now dedicated to closing requests in the backlog.
 - In 2009–2010, access officials offered more access awareness sessions than previously and are developing a plan for enhanced training throughout the institution.

Canadian Heritage

2008–2009 report card

Despite the fact that access to information is a statutory requirement, access to information officials at Canadian Heritage reported during the interview for this report card that the function is given considerably less priority than the institution’s mandate-related programs.

Canadian Heritage took more than 120 days to complete 35 percent of the requests it received in 2008–2009; its overall average completion time was 107 days. The institution’s approach to retrieving and reviewing documents is delaying the processing of requests. Records holders retrieve the records, make severing recommendations and then send the proposed package to their own assistant deputy minister before it goes to the access to information office for processing. Then, the assistant deputy minister sees the records again in their final, highlighted version. Canadian Heritage reports that this two-step process creates an administrative burden, takes analysts away from the business of handling other requests and makes it harder to meet its legislated deadlines.

This review process involving assistant deputy ministers has too many layers and is questionable in light of the delegation order, which gives only the deputy minister, corporate secretary and director of the access to information office full delegated authority to approve and release information. The one mitigating factor in terms of delays is that when several assistant deputy ministers are involved in reviewing documents, their

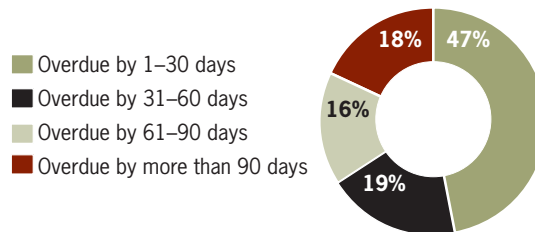
input is sought concurrently, not consecutively, as was formerly the case. The proposed disclosure package is also sent to communications and the minister’s office for information purposes only.

The Office of the Information Commissioner (OIC) registered 25 complaints against Canadian Heritage in 2008–2009 and

resolved 13 of them. All the resolved complaints had to do with delays getting information to requestors.

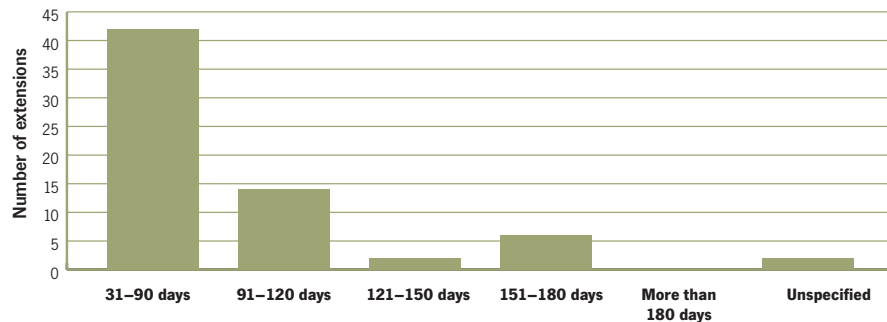
Access to information officials said that Canadian Heritage funds the access to information office on an ad hoc, rather than a fixed, basis, which compromises its stability.

How long requests completed late were overdue, 2008–2009



Canadian Heritage reported that it completed 57 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline. It is of concern that 53 percent of these requests were late by more than 30 days.

Number and length of time extensions reported in 2008–2009

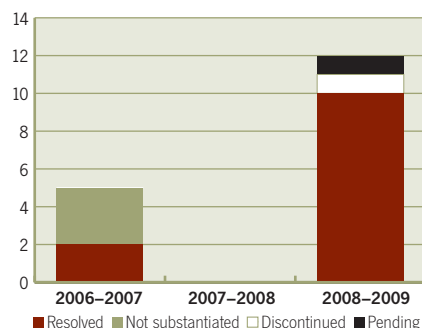


This graph shows the number and length of the time extensions Canadian Heritage reported to have taken in 2008–2009. Canadian Heritage supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. Canadian Heritage submitted the notices 62 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

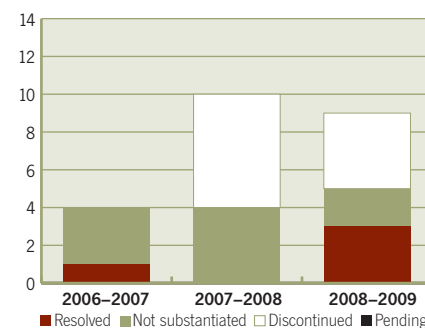
These graphs show the number and outcome of two types of complaint registered against Canadian Heritage in the last three reporting periods: complaints about deemed refusals (access to information requests that Canadian Heritage delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about Canadian Heritage's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The OIC resolved 10 out of the 12 deemed refusal complaints registered against Canadian Heritage in 2008–2009.

Time extension complaints



The number and outcome of time extension complaints against Canadian Heritage were mixed in the last three years.

The access to information office was very short of staff in 2008–2009 after a complete turnover. Given the shortage, a temporary staff member was hired to work on the backlog, which Canadian Heritage acknowledged was not a sustainable strategy but was necessary.

The personnel shortage meant that access officials were unable to take a proactive approach to access awareness training across the institution. This compounded the overall problem of compliance, since lack of organizational awareness is detrimental to the success of any access program. Canadian Heritage's access to information trainer reported that employees are sometimes surprised when apprised of their responsibilities under the *Access to Information Act*.

As a staffing strategy, Canadian Heritage subsequently took advantage of a federal program (the Special Assignment Pay Plan) to bring experienced public servants into the access office on special assignments to quickly augment the access staff team.

Canadian Heritage reports that it is taking a number of steps to improve compliance with the *Access to Information Act*. This is encouraging; however, the institution's poor compliance in 2008–2009, which

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the Office of the Information Commissioner registered against Canadian Heritage in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	3	6	0	0	9
Refusals	3	0	1	2	6
Cabinet confidences	0	2	0	0	2
Total	6	8	1	2	17
2007–2008					
Administrative	0	4	6	0	10
Refusals	0	0	1	1	2
Cabinet confidences	0	0	1	0	1
Total	0	4	8	1	13
2008–2009					
Administrative	13	2	5	1	21
Refusals	0	0	0	4	4
Cabinet confidences	0	0	0	0	0
Total	13	2	5	5	25

Each year, administrative complaints, which include those about delays and time extensions, accounted for the majority of the complaints (9 of 17; 10 of 13; 21 of 25). The number of resolved administrative complaints rose sharply from 2007–2008 to 2008–2009 (from 0 to 13). In contrast, there were no resolved refusal complaints in either 2007–2008 or 2008–2009.

was the first year it was part of the report card process, indicates that there is an urgent need for further efforts to streamline the document retrieval and review process, to stabilize funding, and recruit and train new staff.

Recommendations

1. The OIC recommends that Canadian Heritage senior executives strictly follow the delegated authority order to eliminate inappropriate levels of approval.

Response

The delegated authority is followed by the institution.

The program areas with their expertise in the subject matter review the material and provide recommendations; they do not approve the application of exemptions.

The communications branch and the minister's office are provided with release packages of requests for information purposes only.

2. The Office of the Information Commissioner recommends that the deputy minister of Canadian Heritage allocate the necessary human and financial resources in order to comply with the *Access to Information Act*.

Response

The deputy minister has supported the increase in resources in the Access to Information and Privacy Secretariat to properly administer the *Access to Information Act*.

A review of the financial and human resources requirements of the Secretariat is currently being conducted.

3. The Office of the Information Commissioner recommends that Canadian Heritage develop and implement a multi-year plan to improve compliance with the Act, with particular attention to eliminating its backlog.

Response

Canadian Heritage has initiated several changes in procedures to improve compliance.

Several strategies to reduce the backlog have been established. A senior officer is dedicated full time to the backlog.

Processes will continue to be reviewed for further streamlining possibilities.

Timeliness of responses from program areas will continue to be closely monitored.

4. The Office of the Information Commissioner recommends that Canadian Heritage develop a training plan for access to information staff and records holders.

Response

Canadian Heritage supports increasing the awareness of the access to information and privacy legislation within the institution.

Staff in the Secretariat have learning plans and are encouraged to continuously develop their skills.

An increased number of training sessions for program areas have taken place this fiscal year.

Access to information is discussed in the Working @ PCH orientation sessions for employees who are new to the department.

A training plan is being developed that includes the following:

- updating learning tools on the access to information and privacy intranet site;

- creating a training session for program access to information and privacy liaisons; and
- establishing joint training sessions with the department's information management and information technology groups for departmental employees.

5. The Office of the Information Commissioner recommends that Canadian Heritage comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

Notifying the Office of the Information Commissioner when extensions are taken for more than 30 days is part of the procedures of the Secretariat.

The Secretariat will ensure that the procedures are followed.

Canadian International Development Agency

The Canadian International Development Agency (CIDA) delivers Canada's official development assistance around the world, working to reduce poverty, promote human rights and support sustainable development.

Some facts about access to information operations at CIDA in 2008–2009

• Number of requests carried over from 2007–2008	102
• Number of new requests	150
• Number of requests completed	168
• Deemed refusal rate	37.7%*
• Average time to complete a request (in days)	157
• Number of consultation requests	86
• Number of complaints registered with the Office of the Information Commissioner	11
• Number of complaints the Office of the Information Commissioner resolved	4**
• Number of full-time equivalents in access to information office, as of March 31, 2009	8.29

2008–2009 report card at a glance



- Deemed refusal rate was 37.7 percent.
- Average completion time was 157 days.
- All but the most basic disclosure packages are sent to the minister's office for approval.
- Lengthy extensions of more than 30 days were common: 45 percent were for more than 90 days.
- Difficulty retrieving records, due to the international scope of CIDA's work, complicates the tasking process.
- A backlog of 102 cases had accumulated from the previous fiscal year, which CIDA reduced by 18 in 2008–2009.
- The number of pages reviewed doubled in 2008–2009.
- CIDA set up agreements with its key partners—Foreign Affairs and International Trade Canada, the Department of Justice Canada, National Defence and the Privy Council Office—to facilitate timely consultations.
- Recognizing that its compliance was not satisfactory in 2008–2009, CIDA has instituted a comprehensive action plan to address many of the issues that negatively affected its compliance rate, including taking the following actions:
 - changing the approval process, such that the minister's office will be informed of a disclosure of documents 72 hours before release; and
 - allocating additional resources for new staff to eliminate the backlog, reduce individual workload and deliver training for access to information staff and awareness sessions for employees.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Canadian International Development Agency

2008–2009 report card

Much of the effort of the new management and staff in the access to information office at the Canadian International Development Agency (CIDA) in 2008–2009 was spent instituting policies and procedures to reassure members of the minister’s office about release packages in order to reduce the level of approvals required for the majority of them. The minister’s office saw all but the most basic administrative requests, amounting to about 98 percent of the 150 requests CIDA received. The fact that the minister’s office had to approve the release of documents had an impact on CIDA’s ability to meet its legislative deadlines and ran counter to the access to information coordinator’s fully delegated authority. CIDA access to information officials, however, reported that they do not allot any extra time for the minister’s approval. This institution had a deemed refusal rate of 37.7 percent in 2008–2009—its first year as part of the report card process—along with an average completion time of 157 days and a backlog of 102 cases (although it did reduce the latter by 18 cases in 2008–2009). Lengthy extensions were common: 45 percent of the extensions CIDA took in 2008–2009 were for more than 90 days.

CIDA officials reported that their access to information capacity was challenged considerably once Canada entered the war in Afghanistan. While a staff of two could previously handle all of CIDA’s requests, it now requires 10 permanent staff members to manage the caseload.

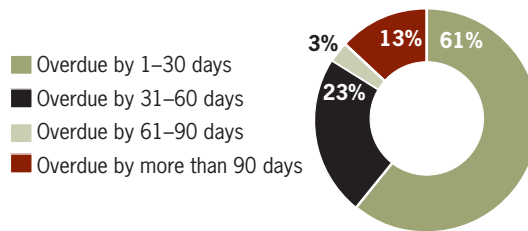
The number of pages processed doubled, even though the number of requests stabilized. The nature of CIDA’s wide-spread, international operations sometimes makes finding records difficult.

CIDA frequently needs to consult with other institutions, other countries and foreign agencies. The requests with an international scope are particularly time-consuming to process and contribute to delays. The situation has been no

better domestically, since consultations with other federal institutions are so prolonged that CIDA releases whatever records are ready and closes files before knowing the results of the consultations. CIDA took steps to address this in 2009 by setting up agreements with key partners to facilitate timely consultations.

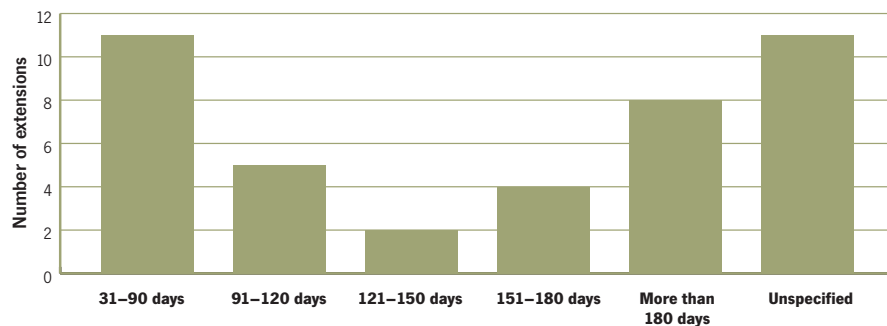
CIDA has launched an action plan that leverages the full support of management to establish standards, and train

How long requests completed late were overdue, 2008–2009



CIDA reported that it completed 30 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline.

Number and length of time extensions reported in 2008–2009

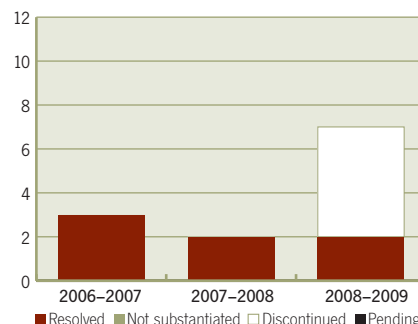


This graph shows the number and length of the time extensions CIDA reported to have taken in 2008–2009. CIDA supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. CIDA submitted the notices 79 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

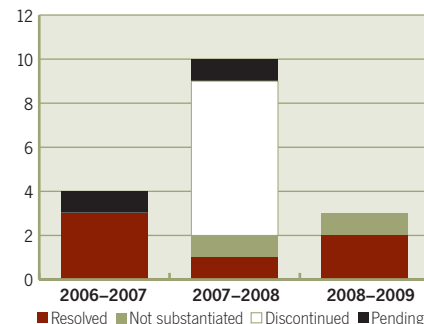
These graphs show the number and outcome of two types of complaint registered against CIDA in the last three reporting periods: complaints about deemed refusals (access to information requests that CIDA delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about CIDA's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The number of deemed refusal complaints increased from two in 2007–2008 to seven in 2008–2009; however, only two (29 percent) of the latter requests were resolved.

Time extension complaints



The number and outcome of time extension complaints against CIDA were mixed in the last three years.

and educate staff at all levels, in order to build confidence in access to information operations. It is hoped that this plan will help improve operations that limit compliance, including changing the approval process.

Now that it has stable funding for 10 staff, CIDA hopes to retain them through a career development program that involves, among other things, introducing analysts to progressively more complex files and not promoting employees beyond their capabilities until their skill sets are sufficient.

Information management is another area that has received attention recently. CIDA renewed its hardware and software to standardize document storage. There is also a newly instituted communications process: the communications division manages requests for further public enquiry concurrently with the access to information process so as not to delay the release of records.

Despite its currently poor level of compliance, CIDA access to information officials said that they are confident they will be able to demonstrate the achievements of the action plan as it unfolds. The Office of the Information (OIC) expects to see the fruits of this plan in the coming years.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the complaints the Office of the Information Commissioner registered against CIDA and completed in each of the last three reporting periods. Resolved complaints are those that the OIC finds have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	6	0	0	1	7
Refusals	0	1	0	0	1
Cabinet confidences	0	0	0	0	0
Total	6	1	0	1	8
2007–2008					
Administrative	3	1	8	1	13
Refusals	0	3	2	0	5
Cabinet confidences	0	0	0	0	0
Total	3	4	10	1	18
2008–2009					
Administrative	4	1	5	0	10
Refusals	0	0	0	1	1
Cabinet confidences	0	0	0	0	0
Total	4	1	5	1	11

The proportion of resolved complaints to the total was high in 2006–2007 at 75 percent. There were no resolved refusal complaints in any year, although one case was pending at the end of 2008–2009.

Recommendations

1. The Office of the Information Commissioner recommends that the office of the Minister for International Cooperation strictly follow the delegation order in order to eliminate inappropriate levels of approval.

Response

CIDA has consulted with other government departments and has identified best approvals practices.

A new process will be put in place whereby the minister's office will be informed of a disclosure of documents 72 hours before release.

2. The Office of the Information Commissioner recommends that the Canadian International Development Agency develop and implement a multi-year plan to improve compliance with the *Access to Information Act*, with particular attention to eliminating the backlog.

Response

CIDA's access to information program has proactively taken steps to improve compliance and eliminate its backlog.

CIDA is developing a multi-year plan to improve compliance with the Act and prevent a future backlog. CIDA is concurrently implementing focused measures to eliminate the backlog by the end of the 2009–2010 fiscal year.

In the short term, CIDA hired (in July 2009) two consultants to work on the backlog. In addition, senior management is actively involved in updating internal procedures, carrying out proper staffing actions, restructuring the access to information office, and delivering awareness and training sessions to CIDA's managers and staff.

On an ongoing basis, CIDA will put new procedures, training and awareness initiatives in place and update the multi-year plan to improve compliance with the *Access to Information Act* on an annual basis.

3. The Office of the Information Commissioner recommends that the Canadian International Development Agency develop protocols with other federal institutions to facilitate timely consultations.

Response

CIDA's access to information program has come to agreement with other federal institutions to facilitate timely consultations. Access advisors are asked to discuss extensions for some types of request for consultations with other federal institutions, when required, and to follow up with the consultee on a regular basis once the deadline has been reached.

We have already reached agreement with key partners: Foreign Affairs and International Trade Canada, National Defence and the Department of Justice Canada. An agreement has been in place with the Privy Council Office with regard to exclusions since December 15, 2009.

4. The Office of the Information Commissioner recommends that the Canadian International Development Agency's director of access to information ensure that, when closing access request files related to outstanding mandatory consultations, requesters are informed that additional records may be forthcoming, that they will be informed of the outcome of the consultations even if no additional records were to be released, and that they have the right to complain to the Office of the Information Commissioner at each stage of the process.

Response

A process to inform requesters when closing access request files with outstanding mandatory consultations and informing them of their right to complain to the OIC at each stage of the process has been in place since the fall of 2009.

A special paragraph is included in the response to inform requesters whether there are any outstanding records in consultations, and all of our correspondence includes the paragraph informing requesters that they have the right to complain to the OIC at each stage of the process.

5. The Office of the Information Commissioner recommends that the Canadian International Development Agency contact the institution it intends to consult for an estimate of the turnaround time and only extend the request by the specified amount of time.

Response

Refer to our response to recommendation 3, above.

6. The Office of the Information Commissioner recommends that the Canadian International Development Agency comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

A process notifying the OIC of all the extensions of more than 30 days has always been in place.

CIDA will continue to follow the notification process, which includes informing the OIC of all the extensions it takes for more than 30 days.

Canadian Security Intelligence Service

Some facts about access to information operations at CSIS in 2008–2009

• Number of requests carried over from 2007–2008	37
• Number of new requests	150
• Number of requests completed	140
• Deemed refusal rate	20.9%*
• Average time to complete a request (in days)	86
• Number of consultation requests	182
• Number of complaints registered with the Office of the Information Commissioner	13
• Number of complaints the Office of the Information Commissioner resolved	6**
• Number of full-time equivalents in access to information office, as of March 31, 2009	15

The Canadian Intelligence Security Agency (CSIS) collects, analyzes and retains information and intelligence about activities that may threaten the security of Canada, and reports to and advises the Government of Canada on these matters.

2008–2009 report card at a glance



- Deemed refusal rate was 20.9 percent.
- Average time to complete a request was 86 days.
- Staffing instability may have contributed to administrative errors, which negatively affected the compliance rate.
- CSIS submitted notices to the Office of the Information Commissioner about extensions of more than 30 days 57 percent of the time.
- The Office of the Information Commissioner resolved five out of six delay-related complaints registered against CSIS in 2008–2009.
- CSIS receives more consultation requests than access to information requests.
- CSIS has a strong information management structure.
- The access to information office was successful in recruiting new staff after a large turnover, despite high security requirements.
- One employee now plays a quality assurance role, overseeing both individual release packages and access operations in general.
- CSIS proactively releases regularly requested records.
- A software upgrade was scheduled for January 2010.
- A compliance officer monitors the advancement of files and notifies the coordinator, as required.
- CSIS carried eight overdue requests over into 2009–2010.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Canadian Security Intelligence Service

2008–2009 report card

The Canadian Security Intelligence Service's (CSIS) compliance with the *Access to Information Act* in 2008–2009, its first year as part of the report card process, was disappointing. Its deemed refusal rate was 20.9 percent, and the average time to complete a request was 86 days. In addition, more than one quarter of the requests CSIS completed late were overdue by more than 90 days. However, CSIS also received more consultation requests than access requests in 2008–2009, essentially doubling the workload for the 15 full-time equivalents in the access to information office.

CSIS started the year with a significant staff turnover, but was able to recruit up to nearly a full staff complement as the year progressed. CSIS's operating environment requires access personnel to have high security clearances. Access officials reported that this hampers recruiting efforts, which are already a challenge, given the shortage of qualified candidates.

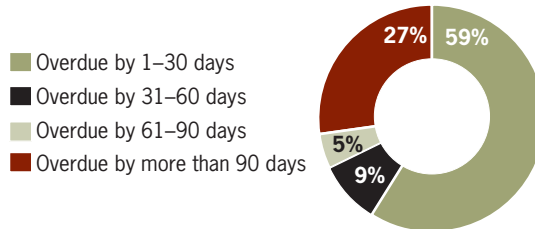
The unfamiliarity of new staff with the case management system resulted in administrative errors. There is now a quality control function within the access to information office to oversee the integrity of both the disclosure packages and access to information operations as a whole, to avert further administrative mishaps. In addition, the coordinator reports that reinvigorated support across

the organization for the access program will result in better staff retention.

CSIS has instituted a proactive approach to dealing with records that are requested regularly, and has allotted a full-time resource to this function. CSIS reports that it has already seen its deemed refusal rate go down in 2009–2010.

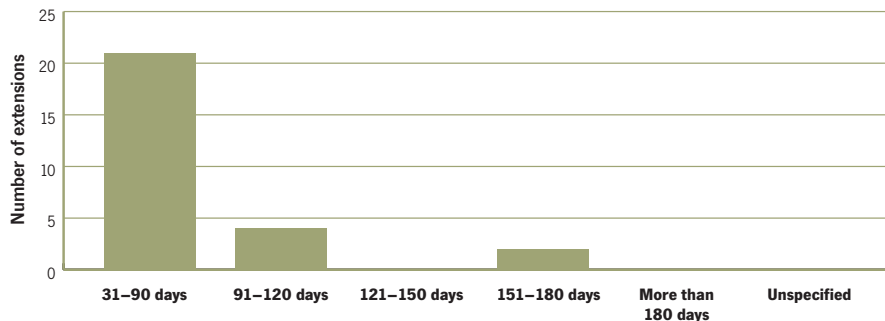
The institution's information management practices contribute positively to the access to information function. CSIS employees must pre-code every record they create—right down to each email—for security and classification requirements. This facilitates easy retrieval in most cases.

How long requests completed late were overdue, 2008–2009



CSIS reported that it completed 22 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline.

Number and length of time extensions reported in 2008–2009

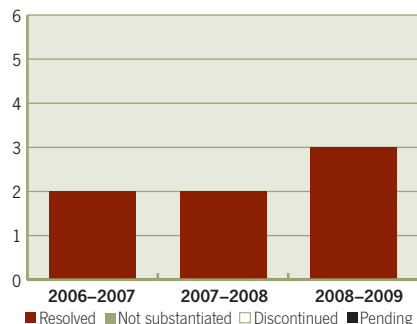


This graph shows the number and length of the time extensions CSIS reported to have taken in 2008–2009. CSIS supplied this information in the notices it sent to the Office of the Information Commissioner (OIC) under subsection 9(2) of the *Access to Information Act*. CSIS submitted the notices 57 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

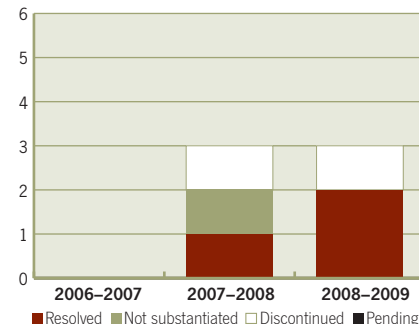
These graphs show the number and outcome of two types of complaint registered against CSIS in 2008–2009: complaints about deemed refusals (access to information requests that CSIS delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about CSIS’s use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner’s satisfaction.

Deemed refusal complaints



The OIC resolved every deemed refusal complaint registered against CSIS in the last three years (7).

Time extension complaints



The number and outcome of time extension complaints against CSIS were mixed in the last three years.

CSIS has what should be an administrative advantage in the form of the Integrated Threat Assessment Centre. This consolidated, on-site group of representatives from federal, provincial and territorial institutions should smooth the consultation process on intergovernmental requests. Nonetheless, CSIS reports that consultations do contribute to its high deemed refusal rate and that it has developed a proactive process to improve the situation.

CSIS has recently undertaken training to help staff avoid administrative errors, upgraded its software and introduced the quality control function, all of which should help improve CSIS’s compliance in 2009–2010. CSIS itself has set as its goal to achieve a five-star rating for 2009–2010.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the complaints the OIC registered against CSIS in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner’s satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	2	0	0	0	2
Refusals	2	2	0	0	4
Cabinet confidences	0	0	0	0	0
Total	4	2	0	0	6
2007–2008					
Administrative	3	1	1	0	5
Refusals	1	2	0	1	4
Cabinet confidences	0	0	0	1	1
Total	4	3	1	2	10
2008–2009					
Administrative	5	0	1	0	6
Refusals	1	2	1	3	7
Cabinet confidences	0	0	0	0	0
Total	6	2	2	3	13

The overall number of complaints registered against CSIS increased in the last three years (6; 10; 13).

Recommendations

1. The Office of Information Commissioner recommends that the coordinator of the Canadian Security Intelligence Service access to information office ensure that its staff receives the administrative training necessary to avoid technical mishaps.

Response

During the period under review, 40 percent of CSIS access to information analysts were new and were not intimately familiar with all of the features of the ATIP Flow software. They have become more experienced with the software and the technical mishaps noted during the review ought not to recur.

In January 2010, CSIS will be migrating to the next generation of processing software, Access Pro. All access to information staff will receive formal training.

The review brought to the fore the need for analysts to better understand ATIP Flow, in particular the use of the Stop Clock feature. It is expected that the two two-day training sessions, in addition to the close mentoring that is already underway, will remedy this shortcoming.

All access to information employees were reminded of the ATIP Flow software Stop Clock feature, more specifically on how not to remove the action accidentally.

2. The Office of the Information Commissioner recommends that the Canadian Security Intelligence Service reduce its deemed refusal rate to zero.

Response

The carry over of eight outstanding requests in deemed refusal from the 2008–2009 reporting period has made it impossible to achieve the ideal OIC compliance rate of less than five percent in 2009–2010. Nonetheless, CSIS

remains committed to reducing its deemed refusal rate, which currently stands at seven percent. This figure includes the eight requests already in deemed refusal from the last reporting period. If it were not for these eight requests, the deemed refusal rate would stand at one percent, which is very close to the OIC's ideal compliance rate.

The progress of all requests is closely monitored by the access compliance officer. All requests nearing the time limit are brought to the attention of the access coordinator.

The Stop Clock feature of the ATIP Flow software is utilized to its fullest. The legislated time period allowed to process the requests has been optimized.

Time extensions are more realistic and are tailored accordingly.

During our access to information training sessions, key stakeholders and offices of primary interest are reminded of our legislative obligations and of the necessity of providing timely responses and document turnaround.

3. The Office of the Information Commissioner recommends that the Canadian Security Intelligence Service reduce the average amount of time it takes to respond to requests.

Response

In many instances, the content and sensitivity of the records requested require extensive internal and external consultations. Although the access to information office has some control over the internal consultations, we do not set the priorities of other departments. Nevertheless, efforts will be made to remind our partners to respond to our consultation requests in a timely manner.

It is important to consider that despite the high staff turnover and various long-term absences among some staff, CSIS has no request backlog to deal with. Ninety-nine percent of all requests received by CSIS after April 1, 2009, have been processed within the legislated time limits.

Considerable effort has been devoted to reducing the average time required to process a request. This average currently stands at 38 days, which is a marked improvement over last year's average of 86 days.

CSIS anticipates that the results achieved from implementation of the actions described under recommendation 2, above, will reduce the average amount of time to respond to requests.

4. The Office of the Information Commissioner recommends that the Canadian Security Intelligence Service comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

This shortcoming has been explicitly addressed with access to information staff during the course of regular meetings. All access to information employees were reminded of the obligation to notify the OIC of all extensions that go beyond 30 days.

The access compliance officer will conduct regular audits to ensure that the OIC notifications are not overlooked in the future.

As an additional safeguard, the access coordinator will receive a weekly status report from the access clerk on this specific task.

Citizenship and Immigration Canada

Some facts about access to information operations at CIC in 2008–2009

• Number of requests carried over from 2007–2008	1,192
• Number of new requests	14,034
• Number of requests completed	13,616
• Deemed refusal rate	4.7%*
• Average time to complete a request (in days)	34
• Number of consultation requests	161
• Number of complaints registered with the Office of the Information Commissioner	51
• Number of complaints the Office of the Information Commissioner resolved	5**
• Number of full-time equivalents in access to information office, as of March 31, 2009	45.65

Citizenship and Immigration Canada (CIC) selects and processes foreign nationals as permanent and temporary residents, and offers Canada's protection to refugees. CIC develops Canada's admissibility policy, sets the conditions for entering and remaining in Canada, and screens potential permanent and temporary residents to protect the health, safety and security of Canadians.

2008–2009 report card at a glance



- Deemed refusal rate was 4.7 percent.
- Average completion time was 34 days. The fast-track process CIC instituted for 96 percent of the requests it receives (which are essentially privacy requests and straightforward to process) is a major contributing factor to this low completion time.
- CIC received by far the most access requests of any federal institution.
- CIC extended five percent of requests for more than 30 days.
- The number of administrative complaints that the Office of the Information Commissioner resolved has decreased over the past three years.
- Some record holders did not have sufficient resources to handle periodic instances of many requests arriving at the same time.
- 82 percent of extension notices were submitted to the OIC under section 9(2) of the Act.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Citizenship and Immigration Canada

2008–2009 report card

Citizenship and Immigration Canada (CIC) continued to receive the largest volume of access to information requests of any institution in 2008–2009. CIC received 14,034 requests, nearly all (96 percent) of which were requests for clients' personal information—from consultants and lawyers representing non-citizens who have had dealings with CIC on matters of immigration or citizenship.

CIC designated such files as “fast track” requests, since processing them is straightforward. Given this and the volume of these requests, CIC’s average completion time for all requests was 34 days, the shortest time of the institutions surveyed for this year’s report card. CIC refers to the remaining four percent of access requests as “complex”; these are similar to requests other institutions receive, typically for policy documents. CIC has divided its access to information unit into two sections to process the two types of request.

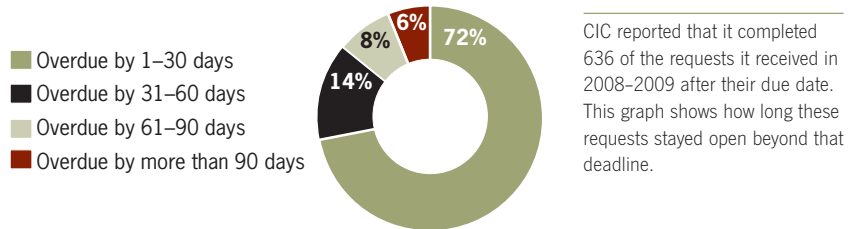
CIC’s deemed refusal rate for 2008–2009 was 4.7 percent, which is among the best of the institutions surveyed. It is also noteworthy that CIC extended only five percent of all requests for more than 30 days. The number of administrative complaints (involving delayed requests and problems with time extensions) against CIC that the Office of the Information Commissioner (OIC) resolved decreased over the past three years.

CIC felt the effects of periodic instances of certain missions, such as Chandigarh, Beijing and New Delhi, receiving a large number of requests all at once. Additionally, some records holders (such as the mission in Chandigarh) had limited resources and no specific funding for access to information and privacy duties. While recognizing the extent of CIC’s overseas operations, the OIC is concerned about retrieval of records at the

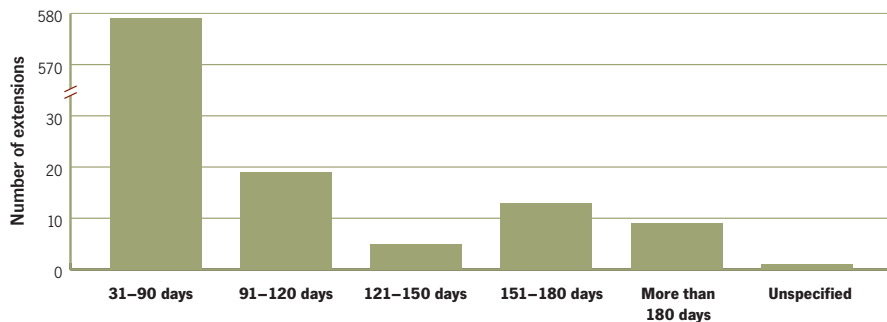
institution, particularly since CIC reported having sent records using a variety of traditional means, including mail, courier and diplomatic bag, which, on occasion, could take weeks to reach Ottawa.

Access to information staffing levels were adequate at the beginning of the reporting period, but CIC reported that they were insufficient to effectively handle the 23 percent increase in

How long requests completed late were overdue, 2008–2009



Number and length of time extensions reported in 2008–2009

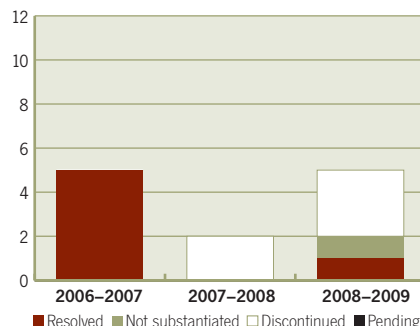


This graph shows the number and length of the time extensions CIC reported to have taken in 2008–2009. CIC supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. CIC submitted the notices 82 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

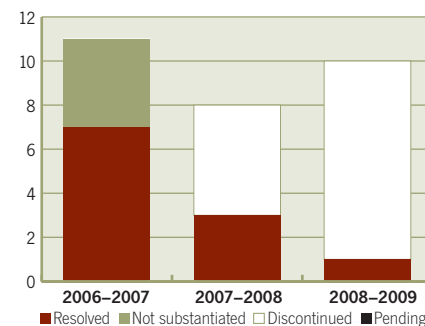
These graphs show the number and outcome of two types of complaint registered against CIC in the last three reporting periods in 2008–2009: complaints about deemed refusals (access to information requests that CIC delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about CIC’s use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner’s satisfaction.

Deemed refusal complaints



The number of delay-related complaints registered against CIC equalled a very small percentage of the total number of requests the institution received each year (0.1 percent in 2008–2009, for example).

Time extension complaints



The number of delay-related complaints registered against CIC equalled a very small percentage of the total number of requests the institution received each year (0.1 percent in 2008–2009, for example). The number of time extension requests that the OIC resolved decreased over the last three years (7; 3; 1).

requests over the course of the year. Furthermore, CIC inherited the multiculturalism portfolio from Canadian Heritage during the year, and some of these files were already delayed beyond the deadlines in the *Access to Information Act* when CIC received them.

The 2008–2009 report card marks the 10th that the OIC has done on CIC. The institution has made admirable progress over the years, moving from poor to excellent compliance with the *Access to Information Act*. The OIC looks to CIC to implement its recommendation to facilitate records retrieval from its remote missions and to maintain its high compliance rating.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of complaints the OIC registered against CIC in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner’s satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	14	4	0	0	18
Refusals	6	16	0	0	22
Cabinet confidences	0	0	0	0	0
Total	20	20	0	0	40
2007–2008					
Administrative	4	0	7	0	11
Refusals	7	22	9	4	42
Cabinet confidences	1	1	0	0	2
Total	12	23	16	4	55
2008–2009					
Administrative	3	1	12	0	16
Refusals	2	4	3	22	31
Cabinet confidences	0	0	0	4	4
Total	5	5	15	26	51

The number of resolved complaints as a proportion of overall complaints registered against CIC decreased each year (50 percent; 22 percent; 10 percent).

Recommendations

1. The Office of the Information Commissioner recommends that Citizenship and Immigration Canada strive to reduce its deemed refusal rate to zero.

Response

CIC is the most accessed department, receiving 14,034 requests. CIC strives to attain a refusal rate of zero; however, this is not always attainable due to the high volume of requests.

CIC will continue to strive towards a refusal rate of zero.

2. The Office of the Information Commissioner recommends that Citizenship and Immigration Canada ensure that all records held in remote locations are sent to the access to information office using secure, more technologically advanced means than traditional mail or courier.

Response

CIC is in a unique position, whereby many of its records are located at missions abroad. As a result of the remote location, this is an obstacle that has resulted in our inability to attain ideal compliance. CIC currently uses scanners in some of its high-volume missions, in order to send information via email. However, this is not always feasible, depending on the size of the file being sent over the system, the bandwidth limitations and the classification level of the documents. In addition, CDs have been used to reduce the bulk of the records and make them easier to transmit

via diplomatic bag. More technological means are not always possible in remote locations, due to costs and security of information that is, for the most part, personal information.

CIC will continue to look at new and innovative technological techniques to obtain information from remote locations while taking into account the provisions of the *Privacy Act*.

3. The Office of the Information Commissioner recommends that Citizenship and Immigration Canada comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

CIC continues to notify the OIC of all extensions taken for more than 30 days.

CIC will ensure that a copy of the extension letter is provided to the OIC.

Some facts about access to information operations at CSC in 2008–2009

• Number of requests carried over from 2007–2008	126
• Number of new requests	408
• Number of requests completed	455
• Deemed refusal rate	47%*
• Average time to complete a request (in days)	110
• Number of consultation requests	69
• Number of complaints registered with the Office of the Information Commissioner	57
• Number of complaints the Office of the Information Commissioner resolved	14**
• Number of full-time equivalents in access to information office, as of March 31, 2009	10.5

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Correctional Service of Canada

The Correctional Service of Canada (CSC) manages correctional institutions of various security levels housing offenders serving sentences of two years or more. CSC also supervises offenders under conditional release in the community. CSC contributes to public safety by actively encouraging and assisting offenders to become law-abiding citizens, providing programs for them during their sentences.

2008–2009 report card at a glance



- The deemed refusal rate was 47 percent.
- The average time to complete a request was 110 days.
- There was a major reorganization of the access to information office.
- Analysts worked on both access and privacy requests. The high number of privacy requests meant less time was available to process access files. (This problem has since been fixed by having analysts working on either access or privacy requests, but not both.)
- Almost 50 percent of requests were completed late; 22 percent of these were completed more than 90 days after their original due date.
- CSC had no redaction software.
- Records retrieval was not always prompt. CSC officials report that responding to access requests was not always a top priority for middle management, given their competing duties.
- CSC submitted the required notices of extensions longer than 30 days to the Office of the Information Commissioner 45 percent of the time.
- 2008–2009 was a transition year, in the middle of a three-year improvement plan: CSC hired and trained a number of new staff, and reorganized and relocated the access to information office.
- Senior management demonstrated its commitment to compliance with the *Access to Information Act*, allocating new resources to the access to information office: \$1.7 million in funding and 22 new positions as of April 1, 2008.
- CSC's commissioner and assistant commissioner responsible for access have committed to taking steps to emphasize to senior management and staff the importance of respecting the provisions of the *Access to Information Act*, meeting the legislated timelines and following correct procedures.
- CSC reports that measures it has taken recently have led to better compliance in 2009–2010. CSC is aiming for significant improvement within two years.

Correctional Service of Canada

2008–2009 report card

Access to information officials at the Correctional Service of Canada (CSC) acknowledged that its unacceptably high deemed refusal rate of 47 percent in 2008–2009 was due, in large part, to a reorganization of the access to information office. In addition, analysts worked on both privacy and access requests in 2008–2009, and an increase in workload associated with the former affected their ability to process access requests in a timely manner.

The average completion time for requests in 2008–2009 was 110 days. Moreover, almost 50 percent of the requests CSC received and completed in 2008–2009 were still open beyond their due date, and it took more than 90 days after that deadline to complete 22 percent of those requests. The Office of the Information Commissioner (OIC) is very concerned to see CSC letting a large percentage of files become overdue and then not completing those files quickly.

CSC’s access to information office did not use electronic redaction software in 2008–2009, relying instead on a manual method, coupled with redacting photocopiers. Access officials confirmed that they intend to start using case management software in 2010–2011 to improve efficiency.

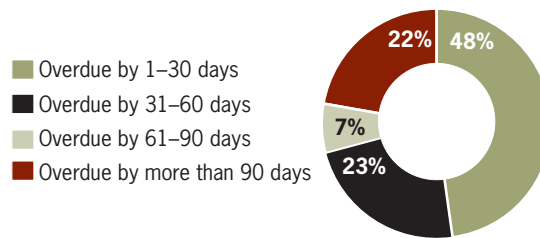
Prompt records retrieval is a problem for CSC. Access to information officials reported that middle managers do not

always make responding to access to information requests their top priority, given other competing interests related to the safety and security of the public, offenders and employees. The OIC is concerned that these officials do not understand their obligations under the *Access to Information Act*, particularly related to releasing records on time, and looks to CSC’s senior management and

the minister to clearly communicate the importance of meeting these legislated requirements.

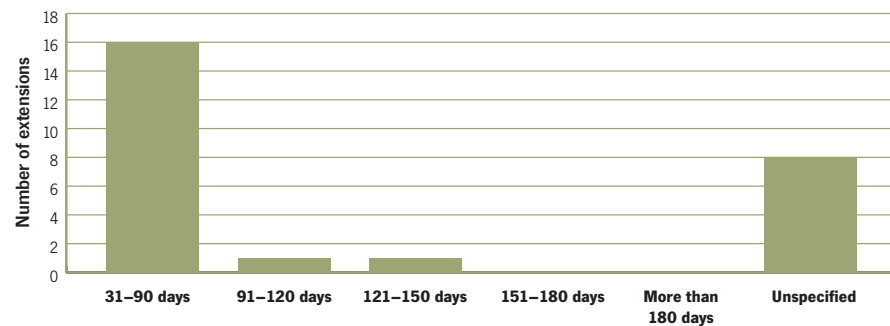
CSC access to information officials reported that they emphasize during staff access awareness sessions that access to information responsibilities are governed by legislation and that access requests are to be considered a priority.

How long requests completed late were overdue, 2008–2009



CSC reported that it completed 171 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline. It is of concern that 52 percent of these requests were late by more than 30 days.

Number and length of time extensions reported in 2008–2009

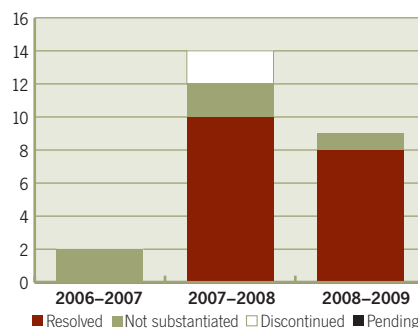


This graph shows the number and length of the time extensions CSC reported to have taken in 2008–2009. CSC supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. CSC submitted the notices 45 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

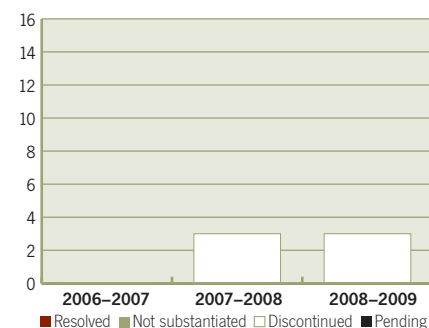
These graphs show the number and outcome of two types of complaint registered against CSC in the last three reporting periods: complaints about deemed refusals (access to information requests that CSC delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about CSC's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



There was a large increase in deemed refusal complaints between 2006–2007 and 2007–2008 (from 2 to 14). Although the total went down (to 9) in 2008–2009, it did not return to the 2006–2007 level, and the proportion of complaints the OIC resolved remained large (89 percent in 2008–2009).

Time extension complaints



CSC had no resolved time extensions complaints in the last three reporting periods, but three complaints were pending at the end of both 2007–2008 and 2008–2009.

As a result of a business case developed in 2006–2007, the access to information office is in the middle of a three-year plan that has seen it increase its number of staff by 22 (for both access to information and privacy operations). This hiring has meant orienting new staff to the organization, delivering intensive training and physically relocating the access to information office to bigger accommodations.

In CSC's view, it has overcome the worst of the obstacles it faced to achieving better compliance with the *Access to Information Act*, and it has been able to focus on gaining efficiencies in access to information processes. More staff helped reduce the average workload per analyst, freeing up senior staff to provide additional training to employees in the program areas. CSC—which was first part of the report card process in 2002—aims to significantly improve its compliance within two years. The OIC will follow up on this transition, in the hope that CSC soon returns to the excellent level of compliance it achieved in 2003–2004 and 2004–2005.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against CSC in each of the last three reporting periods. Resolved complaints are those that the OIC finds have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	2	6	2	0	10
Refusals	5	7	0	4	16
Cabinet confidences	0	0	0	0	0
Total	7	13	2	4	26
2007–2008					
Administrative	12	10	5	0	27
Refusals	3	2	5	14	24
Cabinet confidences	0	0	0	0	0
Total	15	12	10	14	51
2008–2009					
Administrative	10	1	5	3	19
Refusals	4	3	2	28	37
Cabinet confidences	0	0	0	1	1
Total	14	4	7	32	57

There has been an overall increase in complaints of 119 percent since 2006–2007, and an increase in refusal complaints of 131 percent. The number of resolved complaints doubled over the same period (from 7 to 14). In 2008–2009, refusal complaints accounted for nearly two thirds of the total (37 of 57). That same year, the OIC resolved one quarter of the complaints overall and 53 percent of the 19 complaints in the administrative category, which included delay-related complaints (about overdue requests and time extensions).

Recommendations

1. The Office of the Information Commissioner recommends that the commissioner of the Correctional Service of Canada continue to take a strong leadership role in establishing a culture of compliance throughout the Correctional Service of Canada. Such a role requires the unwavering endorsement of the minister.

Response

The commissioner approved the allocation of \$1.7 million to the Access to Information and Privacy Division, effective April 1, 2008. As a result, the number of full-time equivalents in the Division increased by 22. In 2008–2009, the division undertook a massive hiring process, delivered intensive training and physically relocated to improved accommodations.

The commissioner will send a memorandum to the members of the executive committee stressing the importance of respecting the provisions of the *Access to Information Act* and setting out his expectations that timelines and procedures are to be respected.

2. The Office of the Information Commissioner recommends that the Correctional Service of Canada senior management communicate its clear expectation that the Correctional Service of Canada must achieve full compliance with the *Access to Information Act*.

Response

CSC understood that compliance in 2008–2009 would be a challenge, while the Division was being reorganized and rebuilt. The Division is now fully staffed with trained analysts, and compliance rates have steadily increased in 2009–2010: 77 percent in the first quarter,

89 percent in the second and 92 percent in the third.

The assistant commissioner responsible for access to information will issue a memorandum providing detailed instructions on the procedures and timelines to provide responses to the Access to Information and Privacy Division to achieve full compliance with the Act.

3. The Office of the Information Commissioner recommends that CSC organize the Access to Information and Privacy Division to process privacy requests in such a way that access to information compliance is not jeopardized.

Response

This has already been completed. As a result of the increased funding, the Division created PM-04-level positions and dedicated the senior analysts to processing access to information requests. This has resulted in increased compliance rates in 2009–2010.

4. The Office of the Information Commissioner recommends that the Correctional Service of Canada reduce the average completion time for requests.

Response

CSC's compliance rate of meeting legislated timeframes has increased significantly to date in 2009–2010 (see above).

Offices of primary interest will be reminded of the requirement to respect timelines to provide records to the Access to Information and Privacy Division. Analysts have been reminded of their role in ensuring that legislated timeframes are met. Compliance rates will be monitored on a weekly basis by

the division's management team and on a monthly basis by the director general, rights, redress and resolution.

5. The Office of the Information Commissioner recommends that the Correctional Service of Canada comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

We agree with this recommendation. Analysts will ensure that the copy generated in the template is sent to the OIC for every extension over 30 days.

Some facts about access to information operations at Environment Canada in 2008–2009

• Number of requests carried over from 2007–2008	276
• Number of new requests	892
• Number of requests completed	914
• Deemed refusal rate	36.9%*
• Average time to complete a request (in days)	97
• Number of consultation requests	212
• Number of complaints registered with the Office of the Information Commissioner	54
• Number of complaints the Office of the Information Commissioner resolved	20**
• Number of full-time equivalents in access to information office, as of March 31, 2009	8.8

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Environment Canada

Environment Canada's mandate is to preserve and enhance the quality of the natural environment, conserve Canada's renewable resources, conserve and protect Canada's water resources, forecast weather and environmental change, enforce rules relating to boundary waters, and coordinate environmental policies and programs for the federal government.

2008–2009 report card at a glance



- The deemed refusal rate was 36.9 percent.
- The average completion time was 97 days.
- It took an average of 26 days to retrieve records, due in large part to a reorganization that led to the responsibility for records changing.
- 28 percent of overdue requests were completed more than 90 days late.
- Environment Canada had a large backlog, although it did reduce it, through the work of consultants.
- Environment Canada submitted notices of extensions of more than 30 days 47 percent of the time.
- The total number of complaints increased significantly from 2007–2008 to 2008–2009 (from 35 to 54), as did the number of administrative complaints (from 16 to 38).
- An increase in interest in environmental issues has led to a corresponding increase in requests and pages reviewed in recent years.
- The access to information office is sufficiently resourced but was staffed at only half of its capacity at times during the year. Environment Canada has created a professional development program to recruit and retain access staff.
- Senior management supports the access to information office by pushing for continuous staffing actions and the hiring of consultants.
- A new document collaboration and storage system is currently being implemented.
- Environment Canada no longer has to process access to information requests on behalf of Parks Canada, since Parks Canada created its own access to information office on April 1, 2009.

Environment Canada

2008–2009 report card

Environment Canada’s access to information office described the last three years as challenging. This period coincides with an increase in public interest in environmental matters, which translated in 2008–2009 into a 35 percent increase in requests and a 55 percent increase in the number of pages reviewed from the year before. There was also a sizeable backlog of 276 files. The institution did not have the internal capacity to meet its legislated access to information obligations on a consistent basis in 2008–2009. It had a deemed refusal rate of 36.9 percent and its average completion time was 97 days. More than one quarter (28 percent) of the overdue files were completed more than 90 days after their original due date. Finally, Environment Canada only notified the Office of the Information Commissioner (OIC) of extensions of more than 30 days 47 percent of the time.

Reorganization at the institutional level resulted in a significant loss of corporate knowledge, including among senior management. The responsibility for records often changed, which contributed to delays in searching for and locating records. It took an average of 26 days to retrieve records, which is unacceptable.

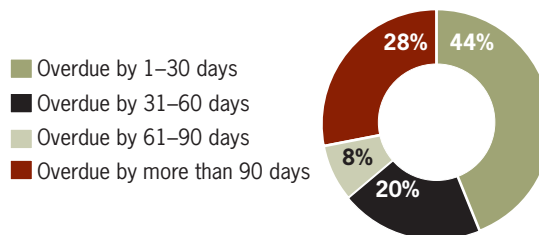
The problems with records retrieval were a major factor hampering Environment Canada’s ability to achieve greater compliance. Access to information officials stated that they probably should have claimed more time extensions under paragraph 9(1)(a) of the *Access to Information Act* than they did, but in too many

instances the deadline for extending a request had already passed before that became apparent.

The OIC resolved 18 delay-related complaints (those about overdue requests and problems with time extensions) against Environment Canada in 2008–2009. These accounted for all but two of the resolved complaints for the year.

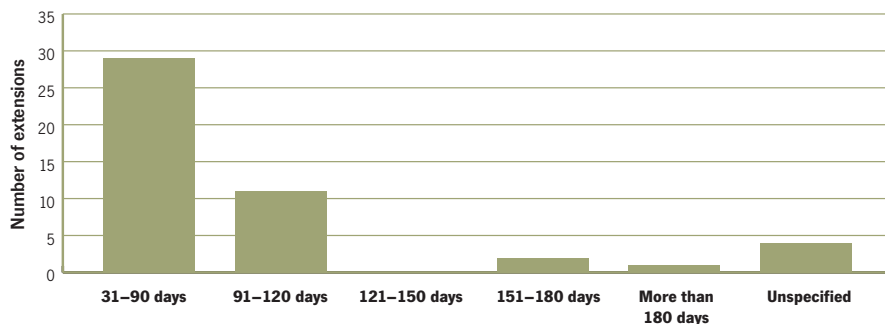
Staffing affected Environment Canada’s compliance in 2008–2009; at times, only 9 of the available 18 positions in the access to information office were filled. In the view of access officials, finding and retaining qualified access to information staff is the biggest challenge they face to achieving better compliance. It should be noted that the office did complete continuous staffing actions to address these shortages. And, while it has so far

How long requests completed late were overdue, 2008–2009



Environment Canada reported that it completed 147 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline. It is of concern that 56 percent of these requests were late by more than 30 days.

Number and length of time extensions reported in 2008–2009

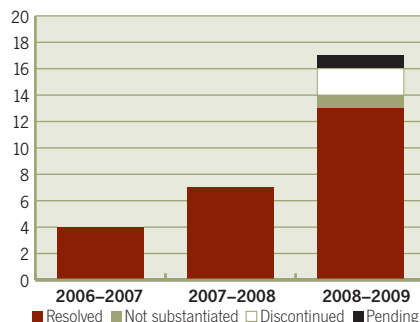


This graph shows the number and length of the time extensions Environment Canada reported to have taken in 2008–2009. Environment Canada supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. Environment Canada submitted the notices 47 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

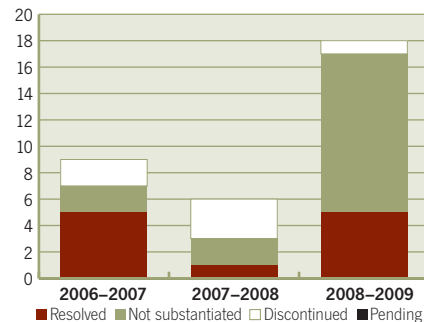
These graphs show the number and outcome for two types of complaint registered against Environment Canada in the last three reporting periods: complaints about deemed refusals (access to information requests that Environment Canada delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about Environment Canada's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The total number of deemed refusal complaints increased over the three years (4; 7; 17). The OIC resolved all of these complaints in 2006–2007 and 2007–2008, and 76 percent of them in 2008–2009.

Time extension complaints



The number of time extension complaints tripled between 2007–2008 and 2008–2009 (from 6 to 18); however, the OIC found 12 out of the 18 time extension complaints in 2008–2009 to be not substantiated.

been unable to fill all its vacant positions, the institution did design and implement the ATIP Professional Development Program. Environment Canada is also using the services of consultants to process requests.

Looking ahead from this first report card, the OIC expects to see improved compliance on the part of Environment Canada in future years, particularly as interest in the environment is unlikely to wane. As of April 1, 2009, the institution no longer processes access requests for Parks Canada, which set up its own access to information office. This should help Environment Canada manage its workload; however, a full staff complement and improved records management systems are crucial to any dramatic improvement in compliance.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the complaints the OIC registered against Environment Canada in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	10	5	4	0	19
Refusals	3	5	3	2	13
Cabinet confidences	0	0	0	0	0
Total	13	10	7	2	32
2007–2008					
Administrative	9	3	4	0	16
Refusals	4	4	0	8	16
Cabinet confidences	0	2	0	1	3
Total	13	9	4	9	35
2008–2009					
Administrative	19	13	4	2	38
Refusals	1	4	1	9	15
Cabinet confidences	0	1	0	0	1
Total	20	18	5	11	54

The total number of complaints increased significantly from 2007–2008 to 2008–2009 (from 35 to 54), as did the number of administrative complaints (from 16 to 38). The number of resolved complaints was the same in the first two years (13) but increased by 54 percent to 20 in 2008–2009.

Recommendations

1. The Office of the Information Commissioner recommends that the deputy minister of Environment Canada allocate sufficient resources on a permanent basis to stabilize and ensure a full access to information staff complement and meet the requirements of the *Access to Information Act*.

Response

Environment Canada recognizes that in order to meet the requirements of the *Access to Information Act*, financial resources and qualified access to information personnel are required. Despite ongoing efforts, the access to information office has been unable to fill all its vacant positions through selection processes due to high staff turnover (retirement, relocation, promotions in other government departments) and a government-wide shortage of access to information personnel. Recognizing this situation, the Corporate Secretariat has designed and implemented the ATIP Professional Development Program while pursuing ongoing staffing actions. Environment Canada is also using the services of consultants to process requests.

Two PM-04 senior advisors were hired in November 2009 and one junior policy analyst was hired on January 4, 2010. Four junior analysts recruited through the ATIP Professional Development Program are expected to be in place by early February 2010. A new selection process is being launched to increase capacity at the PM-04 level.

2. The Office of the Information Commissioner recommends that Environment Canada develop a clear plan to tackle the backlog of access requests.

Response

Environment Canada recognizes the need to reduce the backlog of requests and has hired consultants to focus on processing older files. While progress has been made, this project will be ongoing, since many files require consultations with other government departments or third parties.

Until Environment Canada has sufficient personnel to take over the processing of the backlog files, it will continue to use the services of consultants to accomplish this task.

3. The Office of the Information Commissioner recommends that Environment Canada identify and implement the necessary enhancements to records management systems to ensure a quick and proper search of records in response to an access to information request.

Response

Records Management Services is in the rebuilding process at Environment Canada.

A new chief of records management services has been hired for February 1, 2010. Policies and procedures, awareness sessions and training are being rolled out across the department. A SharePoint technology-based document collaboration and storage system is currently being implemented across the department.

4. The Office of the Information Commissioner recommends that Environment Canada comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

Environment Canada has an established procedure to send copies of extensions of more than 30 days to the Office of the Information Commissioner.

Particular attention will be given to ensure compliance with the established procedures.

Fisheries and Oceans Canada

Fisheries and Oceans Canada (DFO) is a national and international leader in marine safety and in the management of oceans and freshwater resources. DFO develops and implements policies and programs in support of Canada's scientific, ecological, social and economic interests in oceans and fresh waters, and works towards ensuring these resources benefit current and future generations.

Some facts about access to information operations at DFO in 2008–2009

• Number of requests carried over from 2007–2008	103
• Number of new requests	396
• Number of requests completed	409
• Deemed refusal rate	13.2%*
• Average time to complete a request (in days)	86
• Number of consultation requests	155
• Number of complaints registered with the Office of the Information Commissioner	33
• Number of complaints the Office of the Information Commissioner resolved	11**
• Number of full-time equivalents in access to information office, as of March 31, 2009	18.8

2008–2009 report card at a glance



- Deemed refusal rate was 13.2 percent.
- Average time to complete a request was 86 days. At the same time, more than 50 percent of the extensions DFO took to consult with other institutions were for more than 150 days.
- This average level of compliance is consistent with report card assessments in several other years.
- DFO has a backlog, but it did reduce it in 2008–2009 and is striving to eliminate it by the end of March 2010.
- Leadership supported hiring and training access to information staff:
 - DFO launched a recruitment and retention program to attract and retain staff, and filled several positions in 2008–2009.
 - The access to information office, through a strong training committee, also delivered training, both for its own staff and for employees throughout the institution.
- A plan has been launched to modernize the technology used in the access to information office. As part of this plan, DFO is upgrading its case management software. The institution has also launched a five-year plan to improve information management systems.
- DFO fully complied with the requirement to submit notices of extensions of more than 30 days to the Office of the Information Commissioner.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Fisheries and Oceans Canada

2008–2009 report card

Access to information officials at Fisheries and Oceans Canada (DFO) stated during the report card interview that access to information is endorsed at all levels, starting with senior management, yet it was unclear to the Office of the Information Commissioner (OIC) whether the institution has a concrete plan in place specifically designed to achieve better compliance with the *Access to Information Act*. The institution has been assessed as part of the report card process almost every year since 1999, and has never achieved the optimal level of compliance.

In 2008–2009, DFO's deemed refusal rate was 13.2 percent. DFO continued to operate under the burden of a backlog of access to information requests in 2008–2009. The files that remain are requests for large volumes of records, or large batches of requests from a single requestor.

It is commendable that DFO decreased its backlog in 2008–2009 (and hopes to eliminate it by the end of March 2010), through the work of consultants. This is particularly noteworthy since DFO's average number of pages per request is between 1,000 and 1,500. Furthermore, DFO continued to process upwards of 20 requests that each involved 30,000 pages.

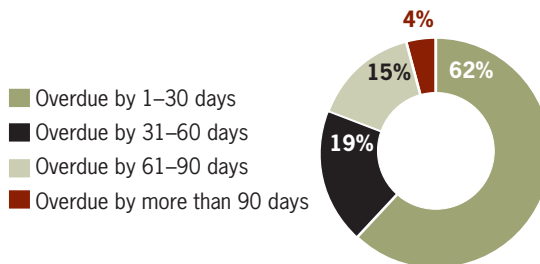
The institution stressed that it experienced a chronic shortage of experienced senior access to information analysts in 2008–2009. In response, DFO initiated a recruitment and development program to

aid retention of knowledgeable access to information staff, and completed several staffing actions in 2008–2009. A portion of the senior access to information staff time was spent training junior analysts in 2008–2009. The institution has a strong access to information and privacy training committee to provide training to all DFO staff.

Information management was a challenge for DFO in one regard. A portion of its records are located primarily in the regions.

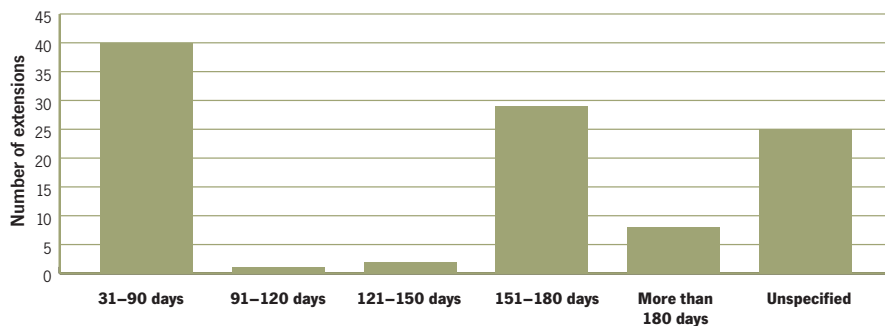
When certain key employees left records-holding units last year, institutional knowledge (such as where records were located) was lost with them. The entire process for searching for records was compromised by such circumstances. DFO launched a three-year plan to improve the technology used in the access to information office, including its case management software, as well as a five-year plan to improve information management systems across the institution.

How long requests completed late were overdue, 2008–2009



DFO reported that it completed 27 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline

Number and length of time extensions reported in 2008–2009

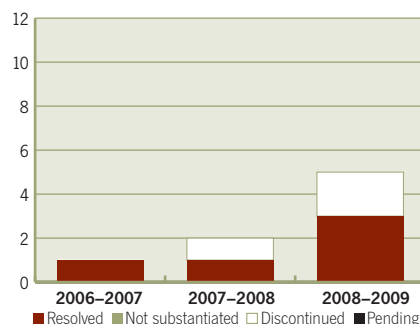


This graph shows the number and length of the time extensions DFO reported to have taken in 2008–2009. DFO supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. DFO fully complied with the requirement to submit these notices.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

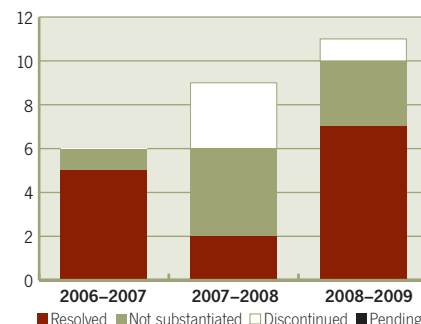
These graphs show the number and outcome for two types of complaint registered against DFO in the last three reporting periods: complaints about deemed refusals (access to information requests that DFO delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about DFO’s use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner’s satisfaction.

Deemed refusal complaints



DFO received a small but increasing number of deemed refusal complaints each year (1; 2; 5). The proportion of resolved deemed refusal complaints to the total was high in each of the three years (100 percent; 50 percent; 60 percent).

Time extension complaints



The total number of time extension complaints increased each year (6; 9; 11). In contrast, the number of resolved complaints decreased by 60 percent from 2006–2007 to 2007–2008; however, it more than tripled by 2008–2009 (from 2 to 7).

DFO’s average completion time of 86 days is of some concern to the OIC, as is the fact that more than 50 percent of the extensions it took under paragraph 9(1)(b) of the Act to consult with other institutions were for more than 150 days.

Individual initiatives at DFO seem to the OIC to hold the promise of improved compliance in coming years. However, the institution’s track record has not been stellar. The OIC calls on the leadership at DFO to make a concerted and organized effort to improve compliance and for senior managers to clearly communicate to all employees the importance of timely responses to access to information requests.

Recommendations

1. The Office of the Information Commissioner recommends that the deputy minister of Fisheries and Oceans Canada continue to take a strong leadership role in establishing a culture of compliance throughout the institution. Such a role requires the leadership of the minister.

Response

Agreed. DFO’s access to information office is fortunate to have the continuing support of both the deputy minister and the minister.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the complaints the OIC registered against DFO in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner’s satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	6	1	1	0	8
Refusals	10	12	2	3	27
Cabinet confidences	6	1	0	0	7
Total	22	14	3	3	42
2007–2008					
Administrative	3	5	4	0	12
Refusals	6	2	1	10	19
Cabinet confidences	0	2	0	1	3
Total	9	9	5	11	34
2008–2009					
Administrative	11	4	4	1	20
Refusals	0	1	2	10	13
Cabinet confidences	0	0	0	0	0
Total	11	5	6	11	33

The total number of administrative complaints against DFO increased each year (8, 12, 20), and the number of resolved administrative complaints increased from 3 in 2007–2008 to 11 in 2008–2009.

DFO's training and awareness initiatives, targeting every level of the organization, will highlight the importance the minister and deputy minister attach to this commitment.

2. The Office of the Information Commissioner recommends that Fisheries and Oceans Canada strive to reduce its deemed refusal rate to zero.

Response

Agreed. DFO has a strategy in place with the objective of continuous improvement of our compliance rate and reducing our deemed refusal rate.

The ongoing strategy includes the following:

- a recruitment and retention program to address the shortage of trained analysts in the federal access to information community; DFO is building its capacity in order to achieve enduring results;
- a review and streamlining of process flows;
- a national training program for DFO staff across the department to build awareness of access and privacy;
- a working group comprised of the department's access to information, information management, library services and communications groups to review and promote awareness of information management and access to information, especially with respect to record-keeping practices at DFO;
- the access to information and privacy modernization three-year capital plan initiated in 2009 to evaluate and procure replacement software for current and obsolete case management and redaction system; it is anticipated that the new system will allow such things as the provision of records from the program electronically, and faster searching and

processing capabilities; and

- ensuring access to information staff have the tools they need to work efficiently and effectively.

3. The Office of the Information Commissioner recommends that Fisheries and Oceans Canada develop and implement a clear plan to tackle the backlog of access requests.

Response

Agreed. DFO has been working systematically to reduce the backlog of requests in deemed refusal and was in fact successful in closing more than 20 overdue files last fiscal year, consisting of more than 118,000 pages of records.

DFO plans to continue the systematic reduction of files in a deemed refusal state, and has invested additional resources to do so. The Access to Information and Privacy Secretariat is working towards a goal of eliminating the backlog by March 31, 2010.

4. The Office of the Information Commissioner recommends that the deputy minister of Fisheries and Oceans Canada devote the resources to meet the time requirements of the Access to Information Act and reduce the average completion time.

Response

Agreed. The deputy minister has consistently supported the Access to Information and Privacy Secretariat through the appropriate annual resource levels, and the provision of additional resources when requested through a substantiated business case.

DFO's average completion time is mainly affected by delays in obtaining responses from other government departments. Eliminating the backlog mentioned above

should significantly reduce the department's average completion time.

5. The Office of the Information Commissioner recommends that Fisheries and Oceans Canada identify and implement the necessary enhancements to records management systems to ensure a quick and proper search of records in response to an access to information request.

Response

Agreed. Information management has been recognized as a departmental priority for 2010–2011.

DFO has established a five-year strategy for information management and is planning to adopt next-generation information solutions. The department's vision for information is "Information used for decision-making and program delivery at DFO/Canadian Coast Guard is accurate, relevant, comprehensive and timely." The strategy includes a strengthened evaluation function to provide advice on performance measurement and to evaluate the effectiveness of programs producing objective information for decision making. In addition, DFO has established a strategy for identifying and addressing any gaps between its current Info Source submission and annual report, and Treasury Board of Canada Secretariat expectations.

Human Resources and Skills Development Canada

Human Resources and Skills Development Canada (HRSDC) is the focal point for social policies and programs in Canada. The institution is responsible for strengthening Canada's social foundations by fostering the welfare of citizens, families and communities, as well as their participation in society.

Some facts about access to information operations at HRSDC in 2008–2009

• Number of requests carried over from 2007–2008	78
• Number of new requests	295
• Number of requests completed	406
• Deemed refusal rate	10.2%*
• Average time to complete a request (in days)	80
• Number of consultation requests	129
• Number of complaints registered with the Office of the Information Commissioner	11
• Number of complaints the Office of the Information Commissioner resolved	4**
• Number of full-time equivalents in access to information office, as of March 31, 2009	15

2008–2009 report card at a glance



- Deemed refusal rate was 10.2 percent.
- Average completion time was 80 days.
- The merger of the access to information functions of Service Canada and HRSDC resulted in initial problems in processing access requests, as was expected by the institution. However, officials said that they believe the merger will be beneficial for requesters over the long term.
- Amalgamation of the two offices resulted in some staff departures, but the staffing levels have since stabilized.
- The backlog inherited from Service Canada affected HRSDC's overall compliance; however, the backlog has since been cleared.
- The delegation of authority was diffuse; however, in September 2009, HRSDC's corporate secretary communicated to all senior executives that access to information officials retain the delegated authority for releases.
- HRSDC submitted the notices to the Office of the Information Commissioner about extensions of more than 30 days 98 percent of the time.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Human Resources and Skills Development Canada

2008–2009 report card

Human Resources and Skills Development Canada (HRSDC) experienced an atypical year in 2008–2009: its access to information office merged with that of Service Canada three months into the year. The case of HRSDC illustrates the challenges to an institution of a merger, particularly when there is little time to plan.

HRSDC's merger meant that physical and human resources as well as distinct administrative processes had to be reconciled, all while still having to process requests. HRSDC also inherited a large backlog from Service Canada. HRSDC reported that records related to an access request were left behind during the move but were later recovered.

The integration of the two institutions' access to information functions required the amalgamation of two teams of analysts with varying levels of experience and expertise. The reorganization led to staff departures, including at the management level, which resulted in HRSDC having three successive access coordinators in a year.

At the time of the merger, the access to information and privacy operations unit comprised 26 employees, which later stabilized at 22, in terms of both management and staff. HRSDC indicated that the merger will be beneficial for requesters over the long term.

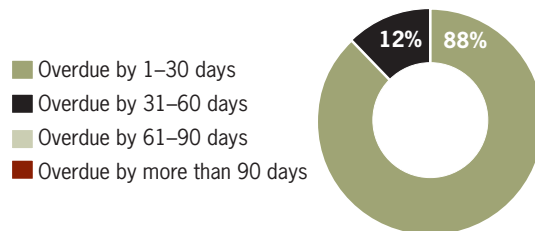
Although the merger and the physical move led to delays in processing

requests, the Office of the Information Commissioner (OIC) is encouraged to see that HRSDC sustained at least an average level of compliance; its deemed refusal rate was 10.2 percent. However, the OIC is concerned that this may have been possible through the use of time extensions under paragraph 9(1)(a) of the *Access to Information Act*, which allow institutions to take more time for requests

that involve searches through or for a large volume of records that result in “unreasonable interference with operations.”

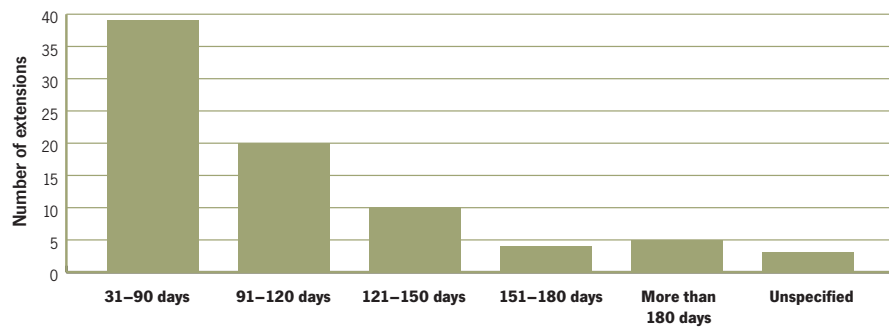
The OIC is also concerned about HRSDC's delegation order, which gives everyone from the deputy ministers to the director and manager of the access office the authority to release records, which can cause delays. However, in

How long requests completed late were overdue, 2008–2009



HRSDC reported that it completed 17 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline.

Number and length of time extensions reported in 2008–2009

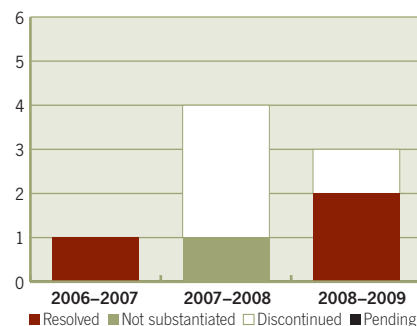


This graph shows the number and length of the time extensions HRSDC reported to have taken in 2008–2009. The institution supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. HRSDC submitted these notices 98 percent of the time.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

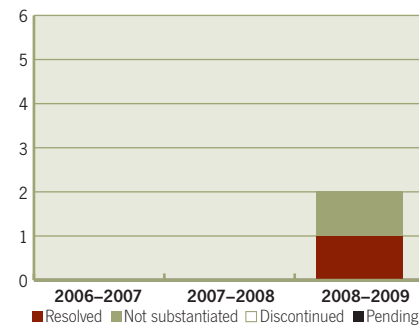
These graphs show the number and outcome of two types of complaint registered against HRSDC in the last three reporting periods: complaints about deemed refusals (access to information requests that HRSDC delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about HRSDC's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



In 2008–2009, the OIC resolved two out of three deemed refusal complaints it registered against HRSDC.

Time extension complaints



HRSDC received no time extension complaints in the first two reporting periods and only two in the third.

September 2009, HRSDC's corporate secretary communicated to all senior executives that access to information officials retain the delegated authority for releases.

HRSDC has been assessed as part of the report card process on a number of occasions, most recently in 2004–2005, and with varying success. While recognizing that 2008–2009 was an odd year for the institution, the OIC expects its compliance to improve in coming years. A first encouraging sign is that HRSDC virtually eliminated its backlog in January 2010.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against HRSDC in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	2	1	1	1	5
Refusals	2	1	0	1	4
Cabinet confidences	0	0	0	0	0
Total	4	2	1	2	9
2007–2008					
Administrative	1	1	3	0	5
Refusals	1	4	1	0	6
Cabinet confidences	0	0	0	0	0
Total	2	5	4	0	11
2008–2009					
Administrative	3	1	1	0	5
Refusals	1	0	0	4	5
Cabinet confidences	0	0	0	1	1
Total	4	1	1	5	11

The overall number of complaints against HRSDC varied little over the three years (9; 11; 11), as did the number of resolved complaints (4; 2; 4), although there were 5 files pending at the end of 2008–2009.

Recommendations

1. The Office of the Information Commissioner recommends that Human Resources and Skills Development Canada revise the delegation order to clearly show that the access to information coordinator and officers have the delegated authority without reference to other officials for decisions made under the *Access to Information Act*.

Response

HRSDC's practice is that decisions on the release of information in response to access requests are largely taken at the access director and manager level, as provided for in the current delegation instrument.

Senior officials are also named in the instrument. In a department the size of HRSDC, and one with its complex structure (responsible for a wide range of policies, programs, services, and having a national headquarters in the National Capital Region, as well as several diverse local and regional offices throughout Canada), the access director is well served by having the support of senior portfolio management.

In September 2009, the corporate secretary of HRSDC communicated to all senior executives that "the Director, Access to Information and Privacy (ATIP) Division retains the authority to determine whether documents should be released, as per the delegation signed by the Minister of HRSD."

An enhanced protocol was prepared and communicated to all senior staff on their responsibilities with respect to scoping and providing records in response to

access requests in an effective and timely manner.

It is noteworthy that HRSDC continues to be proactive with regard to the exercise of authority at the director level.

2. The Office of the Information Commissioner recommends that Human Resources and Skills Development Canada develop a clear plan to tackle the backlog of access requests.

Response

The backlog has been cleared.

As of January 14, 2010, eight active requests were in deemed refusal status, generally due to unusually large volumes and/or extensive required consultations, for example with the Privy Council Office.

HRSDC will continue to proactively manage access to information operations in order to ensure that appropriate action is taken on all requests and to avoid backlogs.

3. The Office of the Information Commissioner recommends that Human Resources and Skills Development Canada strive to reduce its deemed refusal rate to zero.

Response

HRSDC continues to strive to reduce its deemed refusal rate to zero and maintains its zero tolerance policy for late responses.

The following activities as well as other approaches to facilitate awareness and compliance will continue into the future:

- Reports on access to information re distributed weekly to all senior executives and presented weekly to the senior management table.
- In October 2009, the quarterly access to information management report was implemented and is distributed, as above, to all executive heads.
- In the summer of 2009, a protocol was developed and forms were updated to assist offices of primary interest in meeting their objectives with respect to access-related deadlines, as mentioned above.

4. The Office of the Information Commissioner recommends that Human Resources and Skills Development Canada review the criteria it uses for extensions taken under paragraph 9(1)(a) to ensure that the extensions are reasonable and legitimate.

Response

Generally, HRSDC determines whether or not a 9(1)(a) extension is warranted based on volume of records to review. The benchmark used is 300 pages of records (as per an approach suggested by the OIC in the past). Input will be sought from the OIC on best practices in this regard.

Indian and Northern Affairs Canada

Some facts about access to information operations at INAC in 2008–2009

• Number of requests carried over from 2007–2008	80
• Number of new requests	378
• Number of requests completed	373
• Deemed refusal rate	11.6%*
• Average time to complete a request (in days)	102
• Number of consultation requests	139
• Number of complaints registered with the Office of the Information Commissioner	13
• Number of complaints the Office of the Information Commissioner resolved	2**
• Number of full-time equivalents in access to information office, as of March 31, 2009	13

Indian and Northern Affairs Canada (INAC) is responsible for meeting the Government of Canada's obligations and commitments to First Nations, Inuit and Métis, and for fulfilling the federal government's constitutional responsibilities in the North. INAC supports Aboriginal people and northerners in their efforts to improve social well-being and economic prosperity, develop healthier, more sustainable communities, and participate more fully in Canada's political, social and economic development.

2008–2009 report card at a glance



- Deemed refusal rate was 11.6 percent.
- Average time to complete a request was 102 days.
- INAC completed 47 percent of access to information requests in 30 or fewer days. 16 percent of requests took more than 120 days to complete.
- INAC submitted notices of extensions of more than 30 days to the Office of the Information Commissioner 14 percent of the time, which is the worst rate among the institutions surveyed.
- Records retrieval is hampered by documents being stored in a variety of media, including very old technology, such as microfiche.
- Occasions of mid-manager-level resistance at the retrieval stage have also been a problem; however, the access to information office has provided training to emphasize the importance of a culture of openness at the institution.
- The deputy minister is committed to transparency and intends to increase the use of the Internet and the intranet to disseminate information.
- INAC has successfully diverted requests from formal to informal request routes.
- The access to information office is undergoing a workload analysis to look at ways of streamlining its process.
- The institution is increasing the number of access to information awareness training sessions offered to all employees, as well as the training provided to access to information staff.

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Indian and Northern Affairs Canada

2008–2009 report card

Indian and Northern Affairs Canada (INAC) achieved an 11.6 percent deemed refusal rate in 2008–2009—its first year as part of the report card process.

INAC mirrored a trend across the federal government in which a significant portion of requests resulted in a very long response time. For example, INAC completed only 46 percent of access to information requests in 30 or fewer days. Furthermore, 16 percent of requests took more than 120 days to complete. INAC provided the Office of the Information Commissioner (OIC) with notifications for extensions of more than 30 days under subsection 9(2) in only 14 percent of cases, the worst record among the institutions surveyed.

INAC reported that it offers alternative methods to access certain types of records informally. For example, requesters were able to approach the genealogy unit directly, rather than putting in a formal access to information request. The institution also allows individuals to request records informally for the purposes of claims research.

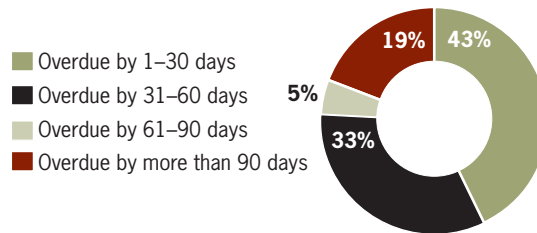
INAC officials emphasized that senior management supports a culture of openness and the efficient processing of access requests. In those few cases in which internal resistance was encountered, it usually involved a middle manager. Some managers did not fully trust the access to information staff's expertise in determining what records could be released. Such

situations inevitably led to delays in getting records to the access to information unit. Access to information awareness sessions were delivered in an attempt to overcome such resistance. This is a positive development; however, the OIC suggests that officials at the most senior levels, including the minister, make it clear that access to information should be a priority for everyone in the institution,

particularly because it is a legislated obligation.

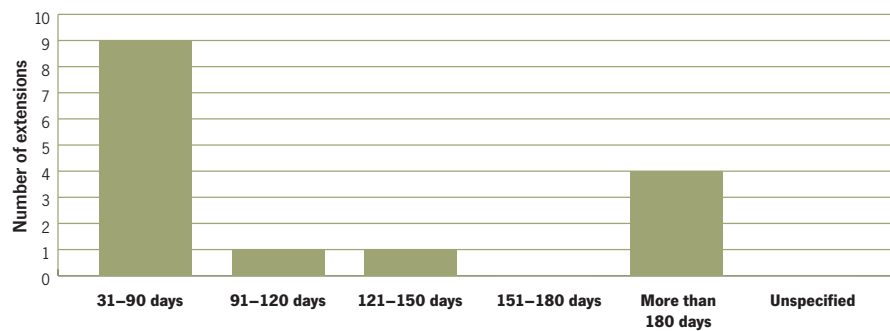
Access officials voiced concern about the current state of the institution's information management systems, noting that certain types of records in its possession are not easily searchable. In some cases, the institution continues to use difficult and archaic record systems, such as

How long requests completed late were overdue, 2008–2009



INAC reported that it completed 21 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline. It is of concern that 57 percent of these requests were late by more than 30 days.

Number and length of time extensions reported in 2008–2009

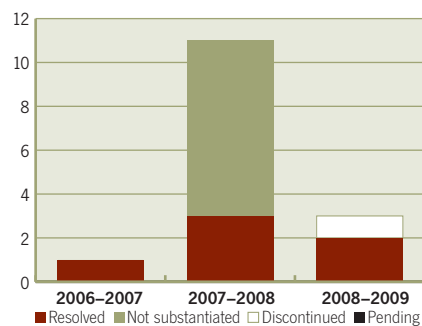


This graph shows the number and length of the time extensions INAC reported to have taken in 2008–2009. INAC supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. INAC submitted the notices 14 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

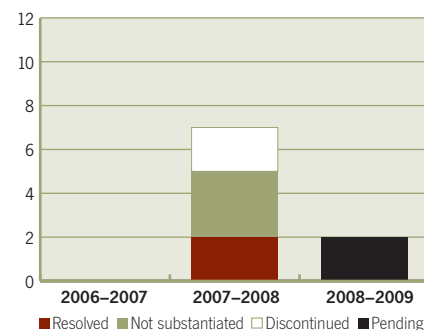
These graphs show the number and outcome of two types of complaint registered against INAC in the last three reporting periods: complaints about deemed refusals (access to information requests that INAC delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about INAC's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



There was a significant increase in the number of deemed refusal complaints from 2006–2007 to 2007–2008, and a decrease the next year (1; 11; 3). The number of resolved deemed refusal complaints varied little over the three years (1; 3; 2).

Time extension complaints



The total number of time extension complaints decreased from seven in 2007–2008 to two in 2008–2009. These two complaints were pending at the end of the year.

microfiche. Such systems are time consuming to search, which leads to delays in getting the records to the access to information unit quickly. The institution does not currently have a plan in place to improve this aspect of information management.

The institution absorbed the former Indian Residential Schools Resolution Canada (IRSRC) in June 2008. Since most of IRSRC's access to information staff were junior privacy analysts, substantial training was needed on the access side. Officials said that, as much as possible, they treated requests inherited from IRSRC informally.

In order to achieve optimal compliance, INAC officials said they required additional full-time equivalent positions in the access to information office. INAC continued to find it difficult to locate and retain experienced analysts, and has started to recruit junior analysts from outside of the access to information field. INAC used consultants sparingly in 2008–2009.

The OIC views INAC compliance in 2008–2009 with some concern, since it was only average, and there are signs of a growing backlog, and a long average completion time. Although the institution has a number of good measures in place,

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against INAC in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	1	0	0	0	1
Refusals	2	4	0	2	8
Cabinet confidences	0	1	1	0	2
Total	3	5	1	2	11
2007–2008					
Administrative	6	13	2	0	21
Refusals	1	2	1	6	10
Cabinet confidences	1	0	0	0	1
Total	8	15	3	6	32
2008–2009					
Administrative	2	0	1	3	6
Refusals	0	1	0	6	7
Cabinet confidences	0	0	0	0	0
Total	2	1	1	9	13

The total number of complaints increased significantly from 2006–2007 to 2007–2008 (from 11 to 32), as did the total number of administrative complaints (from 1 to 21). The number of these complaints decreased significantly in 2008–2009 (to 13 and 6, respectively). The number of resolved refusal complaints decreased each year (2; 1; 0).

solving the information management challenge and making other, larger changes may be required to maintain that performance or, better, improve it.

Recommendations

1. The Office of the Information Commissioner recommends that the deputy minister of Indian and Northern Affairs Canada continue to take a strong leadership role in establishing a culture of compliance throughout the institution. Such a role requires the unwavering endorsement of the minister.

Response

INAC agrees that the deputy minister's and the minister's active engagement are important in ensuring compliance with the *Access to Information Act*. Senior management is apprised weekly on the administration of access requests. The minister continues to support full compliance with access requirements.

It is the intent of the department to look at improved measures of accountability, including the finalization of a monthly report for the Senior Executive Committee regarding late responses from program areas.

It is the intent to increase the use of the Internet for disclosure of information frequently requested through the access process. The deputy minister will use the intranet information website to convey notices on access matters.

2. The Office of the Information Commissioner recommends that Indian and Northern Affairs Canada strive to reduce its deemed refusal rate to zero.

Response

INAC will ensure that access requests are processed in a timelier manner. Should more extensions be required to avoid being in a position of deemed refusal, they will be taken in accordance with the Act.

To avoid deemed refusals, extension of time to process requests may be instituted more regularly.

In addition, INAC's access to information office is undertaking a workload analysis to examine the way we do our business and will be increasing its training.

3. The Office of the Information Commissioner recommends that Indian and Northern Affairs Canada identify and implement the necessary enhancements to records management systems to ensure a quick and proper search of records in response to an access to information request.

Response

Records management is a challenge with respect to the administration of the Act. INAC is currently looking at improving the manner in which program areas provide records to the access information office in a timelier manner.

The access office will support the Information Management Branch in developing practices to better manage program area information holdings.

4. The Office of the Information Commissioner recommends that Indian and Northern Affairs Canada comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

INAC agrees with this recommendation.

INAC will copy the OIC on all notices of extension over 30 days effective immediately.

5. The Office of the Information Commissioner recommends that Indian and Northern Affairs Canada reduce its average completion time for access requests.

Response

Reducing the completion time to process access requests is impacted by various factors (i.e. response time from program areas in providing records, complexity of requests, number of qualified staff to process requests, etc.). These challenges do not go unnoticed and are examined on a regular basis by all stakeholders.

INAC's access office is conducting a workload analysis. This assessment will examine the number of requests being processed by access staff and the time it takes to process an average request with a view to identifying ways to streamline processing and reviewing. More opportunities for access training will be provided to INAC employees.

Some facts about access to information operations at Industry Canada in 2008–2009

• Number of requests carried over from 2007–2008	118
• Number of new requests	660
• Number of requests completed	526
• Deemed refusal rate	8.7%*
• Average time to complete a request (in days)	46
• Number of consultation requests	135
• Number of complaints registered with the Office of the Information Commissioner	79
• Number of complaints the Office of the Information Commissioner resolved	15**
• Number of full-time equivalents in access to information office, as of March 31, 2009	14

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Industry Canada

Industry Canada's mission is to foster a growing, competitive and knowledge-based Canadian economy. Industry Canada works to improve conditions for investment, improve Canada's innovation performance, increase Canada's share of global trade, and build a fair, efficient and competitive marketplace.

2008–2009 report card at a glance



- Deemed refusal rate was 8.7 percent.
- Average completion time was 46 days.
- Requests increased by 93 percent from 2007–2008.
- Industry Canada completed 58 percent of new requests in 30 days; four requests were overdue.
- Industry Canada submitted notices of extensions it took for more than 30 days 83 percent of the time.
- Industry Canada is implementing a comprehensive information management agenda to enhance this capacity and facilitate efficient records retrieval.
- Industry Canada has developed and implemented a number of practices for records holders to facilitate the efficient retrieval of records and processing of requests.
- Industry Canada negotiates with applicants to streamline their requests and thereby reduce costs. It also releases responses to requests on CD-ROM.

Industry Canada

2008–2009 report card

Industry Canada's compliance with the *Access to Information Act* was good in 2008–2009, despite the institution's having experienced a 93 percent increase in requests. Its deemed refusal rate was 8.7 percent and it took, on average, 46 days to complete a request. Industry Canada was able to complete 58 percent of its requests within the 30-day statutory time limit in 2008–2009. However, it carried a backlog of 252 requests over into 2009–2010.

A new delegation of authority as of July 2009 added a layer of approval for access requests at the senior executive level. Industry Canada assured the Office of the Information Commissioner (OIC) that, nonetheless, the authority to release information packages remains with the director and managers of the access program. The OIC is of the view that delegation orders should be appropriate, efficient and transparent. Industry Canada should ensure that any additional level of approvals does not lead to delays.

Industry Canada reported being delayed by other federal institutions' turnaround times when doing mandatory consultations, citing, for example, an average turnaround time of 120 days with the Privy Council Office. Industry Canada took 52 percent of its time extensions for longer than 90 days. Industry Canada reports that time extensions taken are based on multiple factors, such as the number of consultations required on a given file, the volume of information to be reviewed, previous similar cases, and the need to

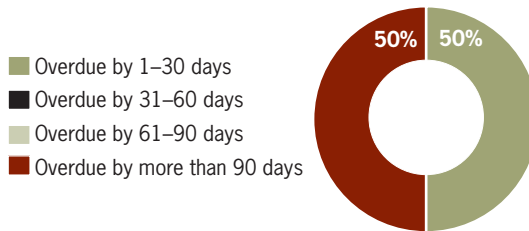
confirm the timing of consultations with certain key organizations.

Information management continues to be a challenge at Industry Canada, since the institution has no central registry for its vast and diverse record holdings. Industry Canada is implementing a comprehensive information management agenda, designed to enhance its capacity in this area and improve access to information and records.

To improve efficiency and clarity at the records retrieval stage, Industry Canada has records holders use a template to identify information requiring consultations and possible severances, and any other information germane to the request.

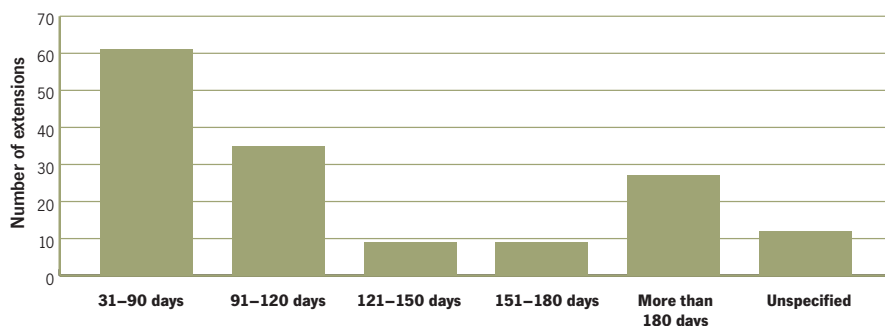
It also asks records holders to write out a rationale for any exemptions, consultations or possible severances, rather than simply quoting the relevant subject of the

How long requests completed late were overdue, 2008–2009



Industry Canada reported that it completed only four of the requests it received in 2008–2009 after their due date. This graph shows that the institution closed two of them in fewer than 30 days but that it took more than 90 days to close the other two.

Number and length of time extensions reported in 2008–2009

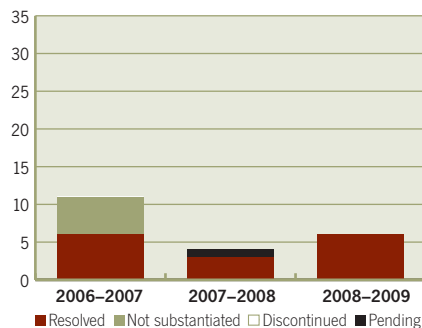


This graph shows the number and length of the time extensions Industry Canada reported to have taken in 2008–2009. Industry Canada supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. Industry Canada submitted the notices 83 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

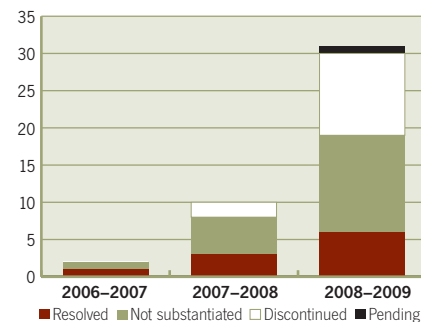
These graphs show the number and outcome of two types of complaint registered against Industry Canada in the last three reporting periods: complaints about deemed refusals (access to information requests that Industry Canada delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about Industry Canada's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The overall number of deemed refusal complaints decreased from 2006–2007 to 2007–2008, then increased slightly the subsequent year (11; 4; 6). The proportion of resolved deemed refusal complaints to the total was high in all three years (55 percent; 75 percent; 100 percent).

Time extension complaints



The number of time extension complaints increased significantly each year (2; 10; 31), while the proportion of resolved complaints to the total decreased (50 percent; 30 percent; 19 percent).

Access to Information Act. This allows records holders to provide any useful context and background that may affect decisions made about the release of records.

Industry Canada had a failing grade on its first report card in 2003–2004, so its four-star rating, and its low deemed refusal rate and average completion time in 2008–2009 are noteworthy. The OIC looks to the leadership at Industry Canada to maintain and, in fact, improve on that record. In coming years, the OIC will look to see what effect the new delegation order, the information management initiatives, the hiring of a consultant to work on the backlog, and the growing number of requests have on Industry Canada's ability to comply with the Act.

Recommendations

1. The Office of the Information Commissioner recommends that, given the additional level of authority added to the delegation order, Industry Canada's access to information coordinator ensure that requests are approved and released with no additional delays.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against Industry Canada in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	7	7	0	0	14
Refusals	3	2	1	0	6
Cabinet confidences	0	0	0	0	0
Total	10	9	1	0	20
2007–2008					
Administrative	10	5	2	1	18
Refusals	1	3	1	3	8
Cabinet confidences	0	3	0	3	6
Total	11	11	3	7	32
2008–2009					
Administrative	15	13	11	2	41
Refusals	0	0	2	36	38
Cabinet confidences	0	0	0	0	0
Total	15	13	13	38	79

In each of the three years, there was a near-even split between resolved and not substantiated complaints (10:9; 11:11; 15:13). The number of resolved refusal complaints declined over the three years (3; 1; 0), but 36 refusal complaints were pending at the end of 2008–2009.

Response

In keeping with Treasury Board of Canada Secretariat policy and recommendations, Industry Canada has implemented a delegation instrument that includes specific senior executives for purposes of providing support and advice to the executive management of the department, if and when required.

For practical and functional purposes, the director and managers of Information and Privacy Rights Administration (IPRA) exercise full authority for all powers, duties and functions pursuant to access legislation that are required to perform the daily operations and to ensure compliance.

The delegation instrument currently provides full autonomy to the director and the managers of IPRA. In reviewing Industry Canada's business practices and approval processes there has been no change or impact in responding to access requests as a result of the existing delegation order.

2. The Office of the Information Commissioner recommends that Industry Canada develop a clear plan to tackle the backlog of access requests in order to improve overall compliance with the Act.

Response

IPRA has developed a strategy and implemented various initiatives to address the backlog situation. However, given the large backlog, any results in reducing it will take some time before taking effect.

For example, in the short-term, the department is doing the following:

- hiring a consultant to help with the backlog;
- communicating with applicants to confirm continued interest in requests received prior to 2008;

- negotiating with applicants to reduce scope and/or volume of material on large files;
- amalgamating requests when possible to maximize efficiency and processing; and
- authorizing overtime for staff to focus on specific files.

In the long-term, the department has initiated the following:

- staffing actions to fill vacant positions;
- ongoing review and streamlining of internal business practices to reduce delays;
- continuing negotiations with applicants to better respond to requests in more timely fashion; and
- increasing communication and awareness with Industry Canada employees to improve response times and deliverables.

3. The Office of the Information Commissioner recommends that Industry Canada strive to reduce its deemed refusal rate to zero.

Response

Industry Canada continues to endeavour to respect compliance and to reduce the number of deemed refusal cases. Actions that have been implemented to date:

- negotiating with applicants to reduce scope and offering alternatives, be it previously released information, publicly accessible documentation or informal discussions with program officials;
- increasing access awareness and training with Industry Canada employees to improve response times and deliverables;
- working closely with program officials to develop workplans and strategies for improving responses to requests;
- communicating and negotiating with third parties and other stakeholders

(i.e. other jurisdictions) concerning the disclosure of their information in response to requests;

- providing applicants with information on CD-ROM; and
- updating the access case management tool to improve efficiency.

4. The Office of the Information Commissioner recommends that Industry Canada review and continue to document the criteria it uses for extensions to ensure that they are reasonable and legitimate.

Response

Industry Canada determines reasonable legal time extensions based on multiple factors on a case-by-case basis. For example, the department will consider the number of consultations required on a given file, the volume of information to be consulted, and the time taken on previous similar cases. Industry Canada will also confer with certain key organizations on the timeliness of their consultation responses. As a standard practice, IPRA advisors will document the supporting facts as noted for each request.

5. The Office of the Information Commissioner recommends that Industry Canada comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

Industry Canada has an established business practice of sending copies of extension notices to the OIC when extensions for more than 30 days are taken, except in cases when extending pursuant to paragraph 9(1)(c). Existing form letters automatically include the cc to the OIC.

Some facts about access to information operations at Public Safety Canada in 2008–2009

• Number of requests carried over from 2007–2008	59
• Number of new requests	235
• Number of requests completed	241
• Deemed refusal rate	8.5%*
• Average time to complete a request (in days)	75
• Number of consultation requests	198
• Number of complaints registered with the Office of the Information Commissioner	18
• Number of complaints the Office of the Information Commissioner resolved	4**
• Number of full-time equivalents in access to information office, as of March 31, 2009	6.5

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Public Safety Canada

Public Safety Canada coordinates and supports the efforts of federal organizations to ensure national security and the safety of Canadians. It works with various stakeholders on issues of emergency management, national security, law enforcement, crime prevention and the protection of Canada's borders.

2008–2009 report card at a glance



- Deemed refusal rate was 8.5 percent.
- Average completion time was 75 days.
- Access officials report a significant increase in requests over the past two years.
- Delegated authority is diffuse. The new delegation order implemented in 2009 extends authority for one exemption to the coordinator, but the approval process remains protracted.
- Large staff turnover (50 percent) had a negative effect on compliance.
- Narrow interpretations of requests led to many responses to requests of “no records found.”
- Extensions taken under section 9(1)(b) accounted for 93 percent of extensions overall: 61 percent were for more than 90 days.
- Public Safety Canada applies the necessary exemptions when responses to consultation requests are delayed.
- The institution submitted the required notices of extensions of more than 30 days to the Office of the Information Commissioner 82 percent of the time.
- The number of administrative complaints decreased over three years. The number of resolved complaints decreased over the same period.

Public Safety Canada

2008–2009 report card

Public Safety Canada achieved a deemed refusal rate of 8.5 percent for 2008–2009. This is a noteworthy achievement in its own right, since the volume of consultation requests Public Safety Canada received was 84 percent of its request volume. During the report card interview, access to information officials noted that the number of requests it receives has grown substantially over the past several years. The 2008–2009 deemed refusal rate is also a considerable improvement from the grades the institution's predecessor, Emergency Preparedness Canada, received in the past.

The authority to sign off on release packages remains with the deputy minister, the associate deputy minister, all assistant deputy ministers, and other senior officials, as set out in the delegation order. The average completion time of 75 days reflects a protracted approval process. Public Safety Canada subsequently gave authority for one type of exemption to the access coordinator but is still very clearly of the view that senior managers are the best placed to approve release packages.

A 50 percent turnover in staff had a negative impact on Public Safety Canada's ability to process files efficiently. Access officials reported that training new staff was time-intensive, and it resulted in an increased workload for the remaining staff.

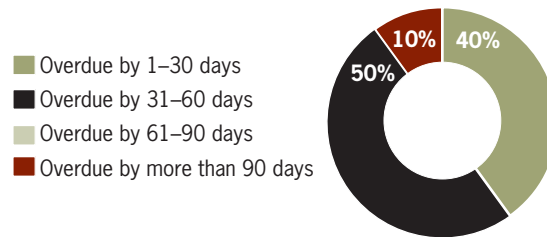
Narrow interpretations of requests led to many responses of "no records found," when, according to access officials, there would have been responsive records had

the request been interpreted more broadly. The access to information office challenged such narrow interpretations and provided training to help employees respond to access requests within the spirit of the Act.

The access to information office uses time extensions under paragraph 9(1)(a) of the Act in fewer than five percent of cases. However, Public Safety Canada officials said that they often consult other

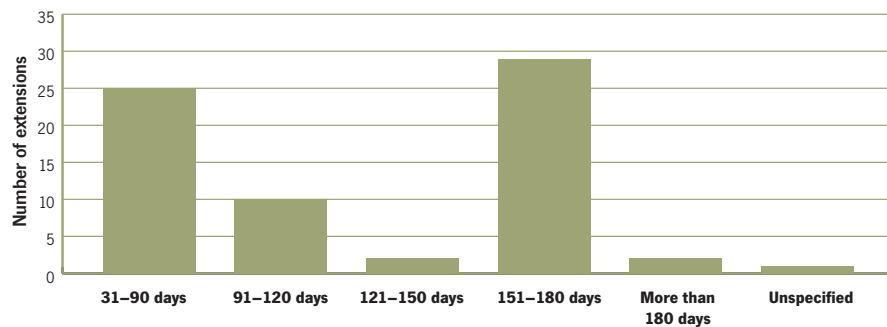
federal institutions within the public safety portfolio (93 percent of all extensions were taken under paragraph 9(1)(b) of the *Access to Information Act*), as well as with other federal, provincial and municipal institutions, which is often time consuming: 61 percent of the extensions taken to consult with other institutions were for more than 90 days. In light of this, Public Safety Canada has adopted a firm stance concerning consultations it sends to other institutions when the other institution fails

How long requests completed late were overdue, 2008–2009



Public Safety Canada reported that it completed 10 of the requests it received in 2008–2009 after their due date. This graph shows that the institution closed four of them in 30 or fewer days, five of them in 31 to 60 days and one in more than 90 days.

Number and length of time extensions reported in 2008–2009

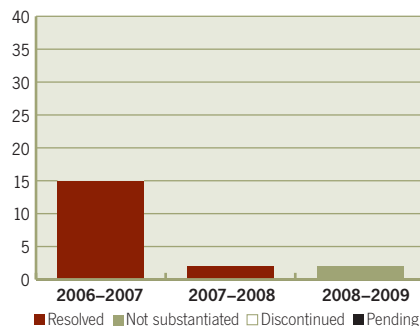


This graph shows the number and length of the time extensions Public Safety Canada reported to have taken in 2008–2009. Public Safety Canada supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. Public Safety Canada submitted the notices 82 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

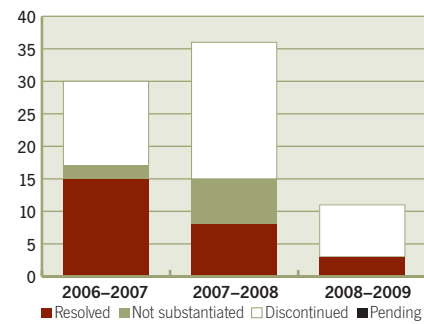
These graphs show the number and outcome of two types of complaint registered against Public Safety Canada in the last three reporting periods: complaints about deemed refusals (access to information requests that Public Safety Canada delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about Public Safety Canada's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The total number of deemed refusal complaints decreased over the three-year period (15; 2; 2). All of the deemed refusal complaints were resolved in 2006–2007 and 2007–2008.

Time extension complaints



The number of time extension complaints decreased from 2007–2008 to 2008–2009 (36; 11), while the number of resolved time extension complaints decreased in all three years (15; 8; 3).

to respond in time: Public Safety Canada will, when reasonable, use its own judgment and apply the necessary exemptions itself.

Public Safety Canada has considerably improved its compliance with the *Access to Information Act*, since receiving a failing grade in 2005. With the number of requests growing, however, the Office of the Information Commissioner (OIC) encourages Public Safety Canada to monitor its progress and ensure it can maintain, or even improve, its compliance.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against Public Safety Canada in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	30	3	14	0	47
Refusals	1	3	5	2	11
Cabinet confidences	0	0	0	0	0
Total	31	6	19	2	58
2007–2008					
Administrative	10	7	21	0	38
Refusals	7	4	1	7	19
Cabinet confidences	0	1	0	4	5
Total	17	12	22	11	62
2008–2009					
Administrative	3	2	8	0	13
Refusals	1	1	1	1	4
Cabinet confidences	0	0	0	1	1
Total	4	3	9	2	18

The number of administrative complaints decreased over three years (47; 38; 13), as did the overall number of resolved complaints (31; 17; 4).

Recommendations

1. The Office of the Information Commissioner recommends that the minister revisit the delegation order to ensure greater autonomy of the access to information coordinator in the release of records and eliminate additional levels of approval.

Response

The minister revised the delegations in 2009. The new delegations clarify the administrative authorities for the access to information coordinator. The access to information coordinator was also given the authority to exempt personal information in accordance with section 19 of the Act.

However, Public Safety Canada believes that the appropriate officials to exercise delegated authority for most exemptions are the assistant deputy ministers responsible for the subject matter of the records.

Public Safety Canada has improved the timeliness of its approval process by tracking approvals much more closely. This has resulted in fewer delays at the approvals stage.

2. The Office of the Information Commissioner recommends that Public Safety Canada strive to reduce its deemed refusal rate to zero.

Response

The department has made significant improvements since receiving a grade of "F" in 2005, and has sustained 90 percent on-time responses over the past two reporting years. Public Safety Canada shares the goal of reducing deemed refusals to zero and will continue to examine and refine its processes with the ultimate goal of full compliance. Public Safety Canada will resume the

practice of making timely access to information performance a commitment in the performance management agreement of each executive in the department. Public Safety Canada will establish processes for ensuring accountability for the completeness of records retrieval and the interpretation of requests.

3. The Office of the Information Commissioner recommends that Public Safety Canada develop protocols with other federal institutions to facilitate timely consultations.

Response

Informal arrangements are already in place with many of the departments with which we consult on a regular basis. Public Safety Canada will examine the feasibility of developing such protocols with agencies in the public safety portfolio, and departments with which we regularly consult.

4. The Office of the Information Commissioner recommends that Public Safety Canada develop a training plan for its employees.

Response

Public Safety Canada values access to information training and sees it as an essential component in improving the quality and timeliness of our access to information process. This fiscal year, the coordination of access to information training sessions is being managed through the department's Learning and Development Centre, ensuring the widest possible dissemination of the availability of this training within the institution. Since July 2009, the Access to Information and Privacy Unit has delivered training to 113 employees, 80 of whom received access training.

The materials that form the basis of our training are also available to all departmental employees on our intranet site. Training for departmental officials having delegated responsibilities is available upon request. Employees of the unit continually attend training, through Treasury Board of Canada Secretariat and other avenues, and funding for the International Association of Privacy Professionals' Certification Program is also made available. The unit has committed to delivering 10 awareness sessions over the current year (2009–2010).

5. The Office of the Information Commissioner recommends that Public Safety Canada comply with the Act and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

The unit has procedures in place to ensure notification to the Office of the Information Commissioner of extensions beyond 30 days. The time extension template includes a copy to the Office of the Information Commissioner. Public Safety Canada was unaware of any deficiency in this area until receipt of the OIC's report. A reminder of this statutory requirement has been issued to all employees of the unit.

Telefilm Canada

In partnership with the Government of Canada, Telefilm Canada provides financial and other support to the Canadian film, television and new media industries. Telefilm Canada meets the diverse needs of these industries through a wide range of programs to support the development to the marketing of finished products in Canada and abroad.

Some facts about access to information operations at Telefilm Canada in 2008–2009

• Number of requests carried over from 2007–2008	34
• Number of new requests	46
• Number of requests completed	65
• Deemed refusal rate	0%*
• Average time to complete a request (in days)	117
• Number of consultation requests	5
• Number of complaints registered with the Office of the Information Commissioner	39
• Number of complaints the Office of the Information Commissioner resolved	4**
• Number of full-time equivalents in access to information office, as of March 31, 2009	1.3

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

2008–2009 report card at a glance

No Rating

The Office of the Information Commissioner decided not to rate Telefilm Canada on its compliance with the Act in 2008–2009, which was an atypical year for the institution. In particular, since 33 of the 39 complaints against Telefilm Canada were pending at the end of the year, the Office of the Information Commission did not have a complete set of data on which to base its assessment.

- The deemed refusal rate was 0 percent and the average completion time was 117 days.
- In the past two years, Telefilm Canada has received an exceptionally high number of requests. The institution hired an external consultant as well as an additional employee to deal with this increase.
- The institution required extensions for more than 43 percent of requests to handle the volume and consult with other federal institutions.
- The institution submitted a notice of extension of more than 30 days to the Office of the Information Commissioner 60 percent of the time.
- According to the 12 notices of extension the Office of the Information Commissioner received, all extensions were for 180 days or more, with 660 days being the maximum.
- Telefilm Canada managed to cut its backlog in half by the end of the year.
- At the end of 2008–2009, 33 complaints were pending. Consequently, the sample of resolved files was insufficient to determine Telefilm Canada's compliance.
- The complexity of the requests received has grown in the past two years.
- The situation returned somewhat to normal in 2009–2010. Telefilm Canada aims to respond to most requests within the 30-day time limit.

Telefilm Canada

2008–2009 report card

Although Telefilm Canada has been subject to the *Access to Information Act* since its enactment, this is the first time a report card is being prepared for the institution. Telefilm Canada is a small Crown corporation that generally receives a low and steady number of access to information requests—20 or so per year—that it deals with informally for the most part. However, the volume doubled in 2007–2008, with most requests originating from the same group of requesters. This increase slowed slightly in 2008–2009. Telefilm Canada began the year with a considerable backlog of requests, but managed to cut it in half by the end of the year.

Telefilm Canada did not have sufficient staff to handle the surge in requests within the time limit set out by the Act. As a result, the institution hired an external consultant as well as an additional employee. To tackle this significant challenge, Telefilm Canada also required extensions for more than 43 percent of the requests received to consult with other institutions and to offset the serious hindrance to its operations as a result of the large number of documents requested or the extent of research required.

The Office of the Information Commissioner (OIC) received 39 complaints in total against Telefilm Canada during the reporting period, which accounts for 85 percent of the requests received by the institution. Most of these complaints pertained to exemptions under the Act

(refusal complaints), followed by complaints about extensions. By the end of the period, 33 complaints were pending. Consequently, the sample of resolved files is insufficient to determine Telefilm Canada’s performance.

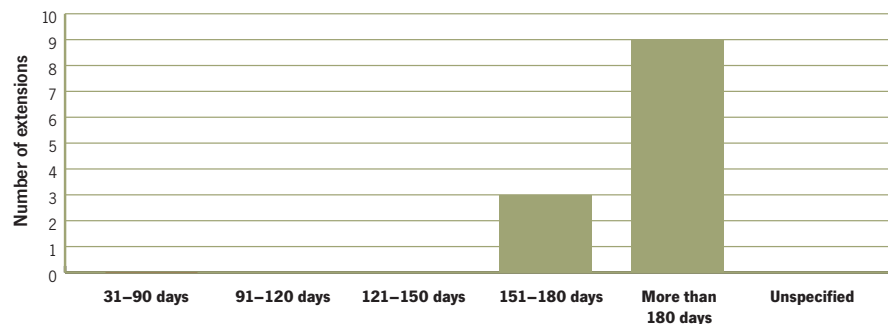
According to 12 notices of extension the OIC received, all extensions were for 180 days or more, with 660 days being the maximum. The OIC received six complaints about extensions, resolving four and with two pending at the end of the period.

The institution generally handles access requests informally and only responds formally to a handful per year. Telefilm Canada submits that this approach follows the “duty to assist” principle, since the institution attaches additional information to documents to provide clarity and to better serve the needs of the requesters.

Telefilm Canada finds that the requests it has been receiving recently are increasingly complex, often requiring interpretation of multiple pieces of legislation, archival research and international consultations.

The past two years have been unusual for Telefilm Canada in terms of the volume of requests. The institution put in place temporary measures to offset this surge. The situation returned to somewhat normal at the beginning of 2009–2010, with a substantial drop in the number of requests. Telefilm Canada indicated that its performance, particularly the average time it takes to complete requests, will improve in 2009–2010. Telefilm Canada aims to respond to most requests within the initial 30-day time limit. The OIC will follow this progress with great interest.

Number and length of time extensions reported in 2008–2009

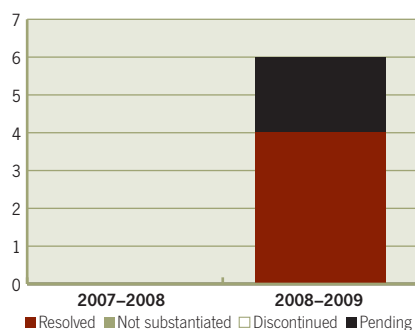


This graph shows the number and length of extensions Telefilm Canada reported to have taken in 2008–2009. Telefilm Canada supplied this information in the notices it submitted to the OIC under subsection 9(2) of the *Access to Information Act*. Telefilm Canada submitted the notices 60 percent of the time 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC (2007–2008 to 2008–2009)

This graph shows the number and outcome of complaints registered against Telefilm Canada in the last two reporting periods about its use of the time extensions allowed under the Act. Resolved complaints are those that the Office of the Information Commissioner finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Time extension complaints



Telefilm Canada received no extension complaints in 2007–2008. The considerable increase in the use of extensions by Telefilm Canada in 2008–2009 led to six complaints that year.

Number and outcome of complaints to the OIC, 2007–2008 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against Telefilm Canada in each of the last two reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2007–2008					
Administrative	0	0	0	2	2
Refusals	0	1	0	6	7
Cabinet confidences	1	0	0	0	1
Total	1	1	0	8	10
2008–2009					
Administrative	4	0	0	4	8
Refusals	0	1	1	29	31
Cabinet confidences	0	0	0	0	0
Total	4	1	1	33	39

Telefilm Canada did not receive any complaints in 2006–2007. In 2007–2008, the OIC received a total of 10 complaints; this jumped to 39 in 2008–2009. Most of the complaints (7 of 10; 31 of 39) pertained to refusal of access (application of exemptions). Nearly all the complaints in 2008–2009 (33 of 39) were pending at the end of the year.

Recommendations

1. The Office of the Information Commissioner recommends that Telefilm Canada review and continue to document the criteria it uses for extensions to ensure they are legitimate and reasonable.

Response

Telefilm Canada reviewed each complete request received by the institution as soon as possible. In each case where it was determined that a notice of extension of the completion time was necessary, Telefilm Canada sent the applicant, within 30 days of receipt of the complete request, a notice of reasonable extension in accordance with the criteria set out in section 9 of the *Access to Information Act*.

Telefilm Canada will continue to review each request and document the criteria it uses for extensions. It will also continue to exercise caution and diligence by taking into consideration the OIC's requirements that a file be completed within the time limit set out in the notice of extension.

2. The Office of the Information Commissioner recommends that Telefilm Canada reduce its average completion time for requests.

Response

Telefilm Canada is a small Crown corporation with roughly 200 employees, and generally receives around 20 requests per year. These require less than one person/year to handle. In 2008–2009, Telefilm Canada handled 65 formal access to information requests, a 325 percent jump in volume. To manage the increase, Telefilm Canada used an external consulting company and added one person/year to the resources it dedicates to handling access to information files. The nature of most requests

appears to be more complex due to the need to interpret several pieces of legislation, conduct archival research, and hold national and international consultations. Also, the systematic filing of complaints (39 in 2008–2009 alone) by a small group of applicants on the heels of the vast majority of requests had a hard-hitting effect on Telefilm Canada's already crippled capacity to deal with the sudden surge in requests. Given this phenomenal workload and the necessary consultations, Telefilm Canada was forced into longer extensions, in accordance with section 9 of the *Access to Information Act*. Without these extensions, our institution's operations would have been seriously hampered.

Barring the unexpected, Telefilm Canada anticipates the volume of new requests to gradually return to normal in 2009–2010. In the first nine months of the 2009–2010 fiscal year, Telefilm Canada received 15 new access to information requests, most of which were completed in less than 30 days. Telefilm Canada plans to continue its commitment to process documents required for an access request as soon as possible. Unless the volume and/or complexity of requests changes or consultations are required, for instance, Telefilm Canada expects to complete most requests it receives within the initial 30-day time limit.

3. The Office of the Information Commissioner recommends that Telefilm Canada institute requirements for documenting the rationale for claiming all exemptions, for the exercise of discretion and for the consideration of exceptions to mandatory consultations.

Response

For each request, Telefilm Canada incorporates the information required to apply the relevant provisions of the *Access to Information Act* and is strict in doing so for all its files. The files need only be consulted for answers to questions about exemptions, discretion and consultations.

Telefilm Canada plans to continue to document its files to be able to justify all requests for claiming exemption, for the exercise of discretion and for the consideration of exceptions to mandatory consultations.

4. The Office of the Information Commissioner recommends that Telefilm Canada comply with the Act and notify the OIC of all extensions exceeding 30 days.

Response

Telefilm Canada systematically and regularly mails to the OIC copies of all notices of extension sent to the applicant in cases for which an extension beyond 30 days was necessary.

To more conclusively monitor the transmission and reception of notices of extension exceeding 30 days, Telefilm Canada proposes to systematically send the notices to the OIC by fax or courier in future.

Some facts about access to information operations at Transport Canada in 2008–2009

• Number of requests carried over from 2007–2008	221
• Number of new requests	1,069
• Number of requests completed	1,043
• Deemed refusal rate	17.6%*
• Average time to complete a request (in days)	60
• Number of consultation requests	178
• Number of complaints registered with the Office of the Information Commissioner	52
• Number of complaints the Office of the Information Commissioner resolved	8**
• Number of full-time equivalents in access to information office, as of March 31, 2009	16.4

* Percentage of carried over and new requests delayed beyond the deadlines (30 days and extended) set out in the Access to Information Act. (See Appendix B for the formula the Office of the Information Commissioner used to calculate this rate.)

** A complaint is resolved when the Office of the Information Commissioner finds it has merit, and the institution resolves it to the Commissioner's satisfaction.

Transport Canada

Transport Canada is responsible for transportation policies and programs. It ensures that air, marine, road and rail transportation are safe, secure, efficient and environmentally responsible. Transport Canada works with other government departments and jurisdictions, and with industry to ensure that all parts of Canada's transportation system work well.

2008–2009 report card at a glance



- Deemed refusal rate was 17.6 percent.
- Average completion time was 60 days.
- Severe staffing problems have hampered compliance rates: approximately half of the staff in the access to information office departed in 2008–2009.
- While the access office was short of staff, access officials could not make any progress reducing the backlog of requests; nor could they deliver widespread training across the institution.
- Transport Canada began to recruit new candidates from within the institution who had transferable skill sets. Training about access to information will be required, but not to develop institutional knowledge.
- Transport Canada submitted the required notices of extensions of more than 30 days to the Office of the Information Commissioner 47 percent of the time.
- The access to information office is represented at senior executive meetings, during which outstanding files are discussed, with the intention of advancing them.
- Transport Canada has a strong delegation order that gives the access to information director and chief exclusive authority to release records.
- Senior management has identified the access program as a critical needs area. This has resulted in additional resources for new staff, a dedicated team to address the backlog and an increased budget for 2010–2011.

Transport Canada

2008–2009 report card

Transport Canada achieved only average compliance with the *Access to Information Act* in 2008–2009, with a 17.6 percent deemed refusal rate. However, this does not accurately reflect the current state of the institution’s access to information program. Transport Canada acknowledges that its statistics are inflated because of “pleasure craft” requests, which seek the identity of a boat’s owner and are more straightforward to process than other access requests. Consequently, these requests substantially raised Transport Canada’s “completed” request figure for the first six months of the fiscal year, until the institution stopped treating them as access requests in September 2008.

Transport Canada faced serious human resource problems in 2008–2009, when approximately half of the staff in its access to information office departed. Concerned with the reason for the exodus, senior management conducted exit interviews. These identified office morale as the predominant reason for the departures. Subsequently, the access to information office began recruiting new personnel from other areas of the institution, focusing on pertinent skills and competencies rather than technical expertise in administering the Act. This strategy will require significant training of employees, yet simultaneously deliver the institutional knowledge lacking in new access to information staff transferring in from other institutions.

As access staff dealt with a significant backlog of requests in 2008–2009, in addition to the usual stream of new

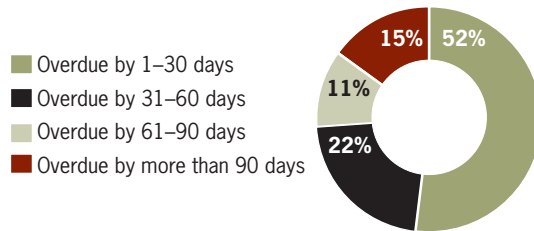
requests, they had to decline numerous requests from program branches for training. Access officials recognize the importance to their success of access awareness at all levels of the institution, and have sought additional resources to fund an educational component to meet this important demand.

Mandatory consultations with certain institutions are a source of frustration for Transport Canada officials who report

that, even though they contact the institutions with which they must consult for an estimate of how much time it will take to review the records, these institutions often do not meet these deadlines. This affects Transport Canada’s compliance rate, since the institution does not close these files until it gets a response to its consultation request.

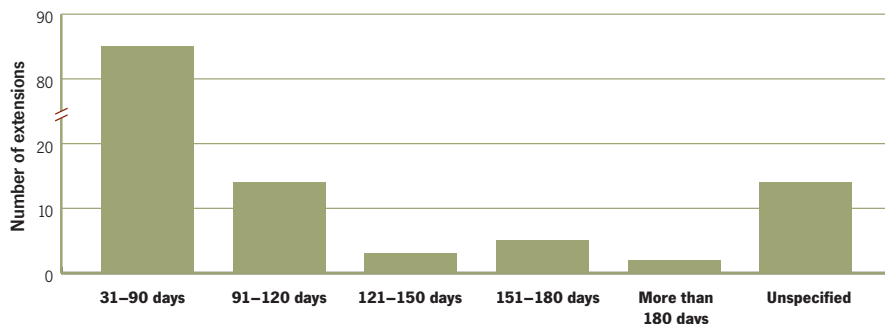
The access to information office is represented at Transport Canada’s senior

How long requests completed late were overdue, 2008–2009



Transport Canada reported that it completed 106 of the requests it received in 2008–2009 after their due date. This graph shows how long these requests stayed open beyond that deadline.

Number and length of time extensions reported in 2008–2009

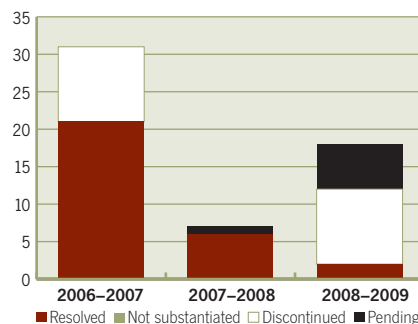


This graph shows the number and length of the time extensions Transport Canada reported to have taken in 2008–2009. Transport Canada supplied this information in the notices it sent to the OIC under subsection 9(2) of the *Access to Information Act*. Transport Canada submitted the notices 47 percent of the time in 2008–2009; the OIC expects this figure to be 100 percent in 2009–2010.

Number and outcome of delay-related complaints to the OIC, 2006–2007 to 2008–2009

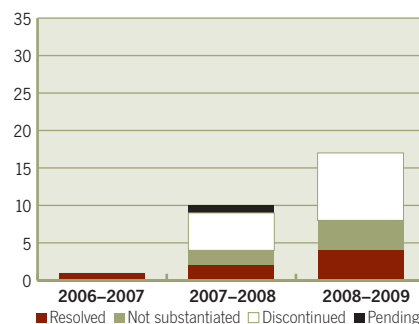
These graphs show the number and outcome of two types of complaint registered against Transport Canada in the last three reporting periods: complaints about deemed refusals (access to information requests that Transport Canada delayed beyond the deadlines—30 days and extended—set out in the *Access to Information Act*) and complaints about Transport Canada's use of the time extensions allowed under the Act. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

Deemed refusal complaints



The number of deemed refusal complaints decreased significantly over the first two years (from 31 to 7), but increased again the subsequent year to 18. The number of resolved deemed refusal complaints decreased over the period (21; 6; 2).

Time extension complaints



The number of time extension complaints rose (1; 10; 17) each year; however, the proportion of resolved complaints to the total decreased significantly from 2006–2007 to 2007–2008 (from 100 percent to 20 percent) and then remained steady (at 24 percent).

executive meetings, at which outstanding access requests are identified to the responsible branch executive in order to elicit the necessary aid to advance them. Transport Canada also has a strong delegation order, which fosters autonomy for the access function, giving the access to information director and chief exclusive authority to release records.

Transport Canada was part of the Office of the Information Commissioner's (OIC) inaugural report card process in 1999, and in several subsequent years. It has never fully complied with the *Access to Information Act*, and its compliance in 2008–2009 was not as good as it had been in the past. In order for Transport Canada to bring about meaningful change, sustained support from the senior executive cadre and increased awareness of access legislation at the working level across the institution are necessary. The OIC calls on Transport Canada to implement measures to address these issues and bring about improved and sustainable compliance as soon as possible.

Number and outcome of complaints to the OIC, 2006–2007 to 2008–2009

This table sets out the number and outcome of the complaints the OIC registered against Transport Canada in each of the last three reporting periods. Resolved complaints are those that the OIC finds to have merit and that the institution resolves to the Commissioner's satisfaction.

	Resolved	Not substantiated	Discontinued	Pending	Total
2006–2007					
Administrative	22	2	13	0	37
Refusals	6	1	1	4	12
Cabinet confidences	0	0	0	0	0
Total	28	3	14	4	49
2007–2008					
Administrative	11	2	6	2	21
Refusals	5	5	0	9	19
Cabinet confidences	0	1	0	0	1
Total	16	8	6	11	41
2008–2009					
Administrative	6	4	19	7	36
Refusals	2	2	1	8	13
Cabinet confidences	0	0	0	3	3
Total	8	6	20	18	52

The number of overall complaints decreased from 2006–2007 to 2007–2008 (from 49 to 41) but increased again the following year to 52; the number of administrative complaints followed the same pattern (37; 21; 36). The proportion of resolved complaints to total complaints decreased each year (57 percent; 39 percent; 15 percent).

Recommendations

1. The Office of the Information Commissioner recommends that the deputy minister ensure that Transport Canada's effort to rebuild the access to information office is well supported and monitored through strong leadership.

Response

The deputy minister has provided her full support to rebuilding efforts. It should be noted that, effective January 4, 2010, the access to information organization now reports to the departmental chief information officer. The deputy minister has a keen interest in access to information issues and also indicated support to implement measures identified as necessary to improve operational performance. In addition, the deputy minister receives regular reports on the backlog in order to monitor progress in that area.

Following the reorganization, the access to information office was integrated into the Information Management Services Directorate. This move will provide additional resources and operational support to the access to information office. The Treasury Board of Canada Secretariat has commented on this as a positive development.

2. The Office of the Information Commissioner recommends that Transport Canada strive to reduce its deemed refusal rate to zero.

Response

Transport Canada is committed to complying with the legislation.

The access to information teams are structured to deal with current files. The work strategy is to meet statutory deadlines by working on these files on a priority basis.

3. The Office of the Information Commissioner recommends that the access to information coordinator at Transport Canada allocate resources to eliminate its backlog of requests.

Response

A backlog team was formed after the new staff were in place.

We are anticipating hiring a senior analyst from another department to complete the team. Other access to information analysts working on current files are expected to contribute on a limited basis to processing backlog files.

4. The Office of the Information Commissioner recommends that Transport Canada develop protocols with other federal institutions to facilitate timely consultations.

Response

This is being contemplated as a last-resort solution, since the problem is not widespread.

The access to information office works closely with other institutions to reduce the time taken to complete consultations. Some departments, given their own internal complexities and interdependencies, will take longer to respond.

5. The Office of the Information Commissioner recommends that Transport Canada comply with the *Access to Information Act* and notify the Office of the Information Commissioner of all the extensions it takes for more than 30 days.

Response

The lapses in notification were mainly due to inexperience and the lack of a coordinated approach.

New procedures and practices are being implemented. The new team structure ensures consistency in processing, since team leaders meet regularly with the director and chief to discuss processes and methodology.



Appendix A

Status Update from Treasury Board of Canada Secretariat on Systemic Issues as of December 2009

Information Commissioner's Recommendations (December 23, 2008)	Response of the Treasury Board Secretariat (Secretary, January 23, 2009)	Status
<p>Information Management</p> <p>Recommendation 1</p> <p>That the Treasury Board Secretariat in collaboration with the relevant institutions</p> <ol style="list-style-type: none"> conduct an assessment of information management practices in federal institutions; develop an action plan to address deficiencies in information management in federal institutions; measure the federal institutions' performance on the use of effective information practices on an ongoing basis; and ensure that federal institutions are properly resourced to develop and sustain effective information management practices. <p>Recommendation 2</p> <p>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.</p>	<p>Response to recommendation 1 and 2</p> <p>The Treasury Board Secretariat acknowledges the importance of the management of government information in its vision statement:</p> <p style="text-align: center;"><i>"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."</i></p> <p>In 2007, the Secretariat developed the <i>Framework for the Management of Information in the Government of Canada</i> 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.</p> <p>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).</p> <p style="text-align: right;"><i>(continued on next page)</i></p>	<p>Significant progress has been made on the implementation of the Government of Canada's Information Management Strategy (GC IM Strategy) and Action Plan. Activities in support of the GC IM Strategy over the last two years have included the development of over 40 horizontal IM initiatives across government, endorsed by the Committee on Information Management in Business (CIMB) which consists of CIOs from departments across government.</p> <p>Key to the GC IM Strategy, new policy instruments under the <i>Policy on Information Management</i> were issued in 2009, including the <i>Directive on Recordkeeping</i>, the <i>Standard on Geospatial Data</i>, and the <i>Information Management Basics</i> guideline for GC employees.</p> <p>The IM Initiatives Inventory (IMI) currently houses data on nearly 700 information management initiatives from over 100 different organizations (http://initiatives.tbs-sct.gc.ca/) and supports departments in identifying best practices for their own IM activities.</p> <p>As planned, the <i>Competencies of the Federal Government Information Management Community</i> (CGSB-192.2) was published in March 2009. This work will provide the foundation for development of an IM Certification Program for information management functional specialists.</p> <p>In addition, revised content on IM policies to support IM curriculum has been provided to the Canada School of Public Service (CSPS), with updates to be completed by end of the current fiscal year.</p> <p>To support TBS capacity to monitor and assess departmental IM activities, the methodology for Management Accountability</p> <p style="text-align: right;"><i>(continued on next page)</i></p>

Information Commissioner's Recommendations (December 23, 2008)	Response of the Treasury Board Secretariat (Secretary, January 23, 2009)	Status
	<p>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 <i>Policy on Information Management</i> and the <i>Directive on Information Management Roles and Responsibilities</i>. 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 <i>Policy on Information Management</i> for the next five fiscal years. As we move forward, an assessment of the progress made by institutions on the implementation of the <i>Directive on Recordkeeping</i>, which is currently under development, will be key for MAF.</p> <p>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 <i>Policy on Information Management</i>, both at the departmental level and government-wide.</p> <p style="text-align: right;"><i>(continued on next page)</i></p>	<p>Framework (MAF) Round VII in 2009-10 introduced a new line of evidence focusing on information management practices by individual departments to measure compliance with the new Directive on Recordkeeping.</p> <p>In addition, a Five-Year Roadmap for the IM Area of Management under MAF has been developed and aligned with the implementation plan for the Directive on Recordkeeping. This document will be updated based on the results of the current TBS-wide review of MAF assessment methodologies.</p> <p>Furthermore, a framework for measuring IM performance in departments is to be completed by the end of the current fiscal year. Ongoing in 2010-11, planned activities include development of evaluation instruments to allow departments to assess their capacities in the context of the new IM Services profiles.</p> <p>Recent work has focused on the definition of standardized IM services consisting of a normalized set of common activities. Costing tools are being developed to help departments more accurately define their resource requirements for IM against these IM services (Note: departments have experienced difficulty in accurately assessing the cost of effective IM within their organization as expenses associated with these IM services are spread across multiple responsibility centres within their organizations.)</p> <p>Work to complete the IM Resourcing Framework will be completed by the end of the fiscal year. This work has been directly supported by the parallel activity of the Internal Service Strategy Development Councils (including the IM Council) which draws together ADMs from across government to focus on developing a framework for making</p> <p style="text-align: right;"><i>(continued on next page)</i></p>

Information Commissioner's Recommendations (December 23, 2008)	Response of the Treasury Board Secretariat (Secretary, January 23, 2009)	Status
	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.	decisions regarding the management and delivery of internal services within the Government of Canada.
<p>Collection of Statistics</p> <p>Recommendation 3</p> <p>That the Treasury Board Secretariat collects the following additional annual statistics, starting in fiscal year 2010-2011:</p> <ol style="list-style-type: none"> the number of pages reviewed for requests: in total and on average per request; the number of pages reviewed for incoming consultations requests: in total and on average per consultation request; the number of pages disclosed in part or in total; the number of requests completed within statutory timelines; the average time to complete a request. <p>Recommendation 4</p> <p>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:</p> <ol style="list-style-type: none"> number of requests extended pursuant to section 9; <p style="text-align: right;"><i>(continued on next page)</i></p>	<p>Collection of statistics</p> <p>Response to recommendations 3, 4 and 5</p> <p>Since the coming into force of the <i>Access to Information Act</i> 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 <i>Federal Accountability Act</i> 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.</p> <p>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</p> <p style="text-align: right;"><i>(continued on next page)</i></p>	<p>Significant progress has also been made in the last year to expand on the statistical data collected by the Treasury Board Secretariat. While the review of statistical data collection was initially launched as a result of amendments introduced in the <i>Federal Accountability Act</i>, much attention has been given to the elements recommended by the Office of the Information Commissioner (OIC).</p> <p>Equally important to the data collection itself, is the manner by which it is collected. To that end, TBS officials met with ATIP software providers to present the proposed statistical data and to assess any implementation challenges.</p> <p>TBS also maintained an open dialogue with the OIC and met with OIC officials to discuss the proposed statistical data elements. TBS followed up with a formal consultation with the Information Commissioner in October 2009.</p> <p>Further, TBS presented the proposed statistical data elements to the ATIP Community to identify and resolve any remaining operational issues. The Secretariat also maintained ongoing communications with Department of Justice officials on the proposed statistical elements.</p> <p style="text-align: right;"><i>(continued on next page)</i></p>

Information Commissioner's Recommendations (December 23, 2008)	Response of the Treasury Board Secretariat (Secretary, January 23, 2009)	Status
<p>b. for each reason for the extension (searching, consultations, third party), the length of the extension:</p> <ul style="list-style-type: none"> 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. <p>c. for each reason for the extension (searching, consultations, third party), the average actual time it took to receive a response.</p> <p>Recommendation 5</p> <p>That the Treasury Board Secretariat collect annual statistics, starting in fiscal year 2010–2011, on consultations pursuant to paragraphs 9(1)(b) and 9(l)(c):</p> <ul style="list-style-type: none"> a. For consultation requests sent to other federal institutions: <ul style="list-style-type: none"> i. number of consultation requests sent; ii. number of mandatory consultation requests sent pursuant to: <ul style="list-style-type: none"> 1) section 15; 2) section 16; 3) section 69; iii. number of pages sent for review; iv. average time to receive a response; <ul style="list-style-type: none"> 1) overall; 2) for mandatory consultations; b. For consultation requests received from other federal institutions: <ul style="list-style-type: none"> i. number of consultation requests received; ii. number of pages reviewed; iii. average time to respond; <p style="text-align: right;"><i>(continued on next page)</i></p>	<p>be most useful to all parties, while at the same time ensuring that an undue administrative burden is not placed on government institutions.</p> <p>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.</p> <p>As next steps, consultations will be undertaken with software providers to ensure that the proposed collection is achievable. The Secretariat will continue to consult our office and the Office of the Privacy Commissioner.</p> <p>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.</p> <p>Extensions</p> <p>The Secretariat issued additional guidelines on the use of extensions in September 1999 in its <i>Implementation Report No. 67</i>. 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.</p>	<p>The President of the Treasury Board has formally approved the statistical data elements that are to be included in a revised access to information statistics collection form. With this approval, TBS officials are proceeding to finalize this form as well as the associated training and guidance documents to assist the 250 government institutions subject to the <i>Access to Information Act</i> with their new reporting requirements during this transition phase.</p>

<p>Information Commissioner's Recommendations (December 23, 2008)</p>	<p>Response of the Treasury Board Secretariat (Secretary, January 23, 2009)</p>	<p>Status</p>
<p>c. For consultation requests sent to third parties (pursuant to paragraphs 9(l)(b) and 9(1)(c):</p> <p>i. number of consultation requests sent;</p> <p>ii. average time to receive a response.</p>		
<p>Recommendation 6</p> <p>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.</p>	<p>Response to recommendation 6</p> <p>It is recognized that the consultative process is an important part of the work conducted by institutions to respond to requests made under the <i>Access to Information Act</i>. 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 <i>Access to Information Act</i> within his or her institution.</p>	<p>TBS specifically examined this issue as part of its statistics review project and recognizes the importance of timeliness in the consultation process as a key issue in ensuring the effective administration and processing of access to information requests. The new statistical data elements will be instrumental in tracking volume of consultation from federal institutions and as such, will assist in identifying workload issues associated with consultations.</p> <p>In addition to the work on the statistical data elements, the implementation of the proposed <i>Directive on the Administration of the Access to Information Act</i> will also serve to reinforce the importance of ensuring a timely review when consultations are received from other government institutions.</p>
<p>Recommendation 7</p> <p>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.</p> <p>Recommendation 8</p> <p>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.</p>	<p>Response to recommendations 7, 8 and 9</p> <p>The Treasury Board Secretariat recognizes the importance of organizing and providing training and development opportunities related to the <i>Access to Information Act</i>. 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 <i>Directive on the Administration of the Access to Information Act</i> 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.</p>	<p>The Treasury Board Secretariat plays an active role in supporting and leading the ATIP community. Since 2007, it has worked on renewing seven ATIP mandatory policy instruments. Also, the Secretariat provides ongoing support activities for the ATIP community. On an annual average, TBS:</p> <ul style="list-style-type: none"> • responds to some 2250 enquiries from government institutions; • reviews and approves close to 220 personal information banks; • reviews 250 government institutions' descriptions of program activities and related information holdings; • issues guidance to the ATIP community; and • delivers 60 awareness and learning events to members of the ATIP community. <p style="text-align: right;"><i>(continued on next page)</i></p>

Information Commissioner's Recommendations (December 23, 2008)	Response of the Treasury Board Secretariat (Secretary, January 23, 2009)	Status
<p>Recommendation 9</p> <p>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.</p>	<p>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.</p> <p>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.</p> <p>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</p> <p style="text-align: right;"><i>(continued on next page)</i></p>	<p>TBS is also looking to develop competency profiles for the ATIP community which will aid in recruitment and developmental activities. Also, the Secretariat is working collaboratively with the Canada School of Public Service (CSPS) to explore new training opportunities for ATIP community. To this end, discussions are underway regarding the development and delivery by the CSPS of specific courses for ATIP specialists. TBS also revamped the CSPS's ATIP I-703 Overview Course for the broader Public Service. The course was successfully piloted from June 9 to June 11, 2009 and is now part of CSPS course offerings. TBS and CSPS continue to work collaboratively on the completion of a Five-Year Integrated Learning Development Strategy for IM/ATIP that is being led by CSPS. In addition to the above, TBS also strengthened ATIP governance. In 2009, membership of the Committee on Information Management in Business (CIMB) was expanded to increase the representation of ADMs that hold responsibility for both ATIP and IM. The renewed structure ensures ongoing executive oversight of key ATIP policy and operational issues and allows for leveraging shared interest in terms of community development and training between the Information Management and ATIP communities.</p> <p>Also, to ensure focus on ATIP specific questions, an ATIP DG Committee was established in September 2009. The purpose of the ATIP DG Committee is to review and provide strategic advice to the Executive Director of the Information and Privacy Policy Division and the Chief Information Officer of Canada on overarching ATIP policy and operational questions. The ATIP DG Committee has specifically identified ATIP community development as one of its main priorities initiatives. As a first step in terms of developing models and standardizing HR practices related to</p> <p style="text-align: right;"><i>(continued on next page)</i></p>

Information Commissioner's Recommendations (December 23, 2008)	Response of the Treasury Board Secretariat (Secretary, January 23, 2009)	Status
	<p>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 <i>Access to Information Act</i> and the <i>Privacy Act</i> 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.</p> <p>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.</p>	<p>ATIP, TBS has undertaken an analysis of the essential qualifications for ATIP related positions advertised on Publiservice. In addition, the Secretariat will review and assess organizational structures of ATIP offices with a view to developing, in consultation with the ATIP community, various management models for ATIP operations in government institutions.</p>

Information Commissioner's Recommendations (December 23, 2008)	Response of the Treasury Board Secretariat (Secretary, January 23, 2009)	Status
<p>Recommendation 10</p> <p>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 <i>Access to Information Act</i>.</p>	<p>Response to recommendation 10</p> <p>Parliament put in place a mechanism to ensure accountability for the administration of the <i>Access to Information Act</i>. 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).</p> <p>As part of the MAF, activities related to the administration of the <i>Access to Information Act</i> 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.</p> <p>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.</p>	<p>TBS continues to review the compliance assessment methodology used for MAF on an annual basis. For MAF Round VII (2009–2010 assessment year), 49 institutions have been assessed.</p> <p>The Secretariat recently launched a project to review the current MAF compliance assessment framework and develop options for assessment methodologies for future MAF rounds and other compliance assessment tools. This will include the use of new ATIP-related statistical data which will be used to refine TBS's performance monitoring capability.</p>








Appendix B

How the OIC determined the rating for each institution

A global rating is attributed to each federal institution as a means to measure its 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 the practices and processes used by the institution that may impact, positively or negatively, on its capacity to fulfill its obligations under the Act. Among these practices and processes, we have considered the average completion time and good practices. Contextual factors, such as variations in workload, will also be taken into account.

Overall Grade	Factors
<p>★★★★★ (Outstanding)</p>	<ul style="list-style-type: none"> • 5% or less deemed refusals • In the case of deemed refusals, we will look at the delay to respond to requesters: most within 30 days • Compliance with subsection 9(2) (85% and more of extensions beyond 30 days were notified to the OIC) • Appreciation of the overall use of time extensions and average completion time: 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)
<p>★★★★☆ (Above Average)</p>	<ul style="list-style-type: none"> • 10% or less deemed refusals • In the case of deemed refusals, we will look at the delay to respond to requesters: most within 30 days • Compliance with subsection 9(2) (85% and more of extensions beyond 30 days were notified to the OIC) • Appreciation of the overall use of time extensions and the average completion time: 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

Overall Grade	Factors
 (Average)	<ul style="list-style-type: none"> • 20% or less deemed refusals • In the case of deemed refusals, we will look at the delay to respond to requesters: most within 30 days • Compliance with subsection 9(2) (85% and more of extensions beyond 30 days were notified to the OIC) • Appreciation of the overall use of time extensions and the average completion time: 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
 (Below Average)	<ul style="list-style-type: none"> • 20% or more deemed refusals • In the case of deemed refusals, we will look at the delay to respond to requesters: most beyond 30 days • Compliance with subsection 9(2) (less than 85 percent) • Concerns with the overall use of time extensions and the average completion time • 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
 (Unsatisfactory)	<ul style="list-style-type: none"> • 20% or more deemed refusals • In the case of deemed refusals, we will look at the delay to respond to requesters: most beyond 30 days • Compliance with paragraph 9(2) (less than 85 percent) • Concerns with the overall use of time extensions and the average completion time • 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

How the OIC calculated the deemed refusal rate for each institution

The deemed refusal rate is the percentage of requests that the institution did not complete within the deadlines (30 days and extended) set out in the *Access to Information Act*. There are four categories of overdue request: requests

entering the year overdue, requests completed after 30 days with no extension, requests completed after their extension expired, and requests that were still open at year end and past their due date. The deemed refusal rate

is calculated by dividing the total number of overdue requests by the total number of requests open during the year. Here is an example:

Overdue requests carried over into 2008–2009	47
Requests completed after 30 days with no extension	18
Requests completed after their extension expired	24
Overdue requests carried over into 2009–2010	52
Total overdue requests	141
Requests carried over into 2008–2009	256
New requests in 2008–2009	1,259
Total open requests	1,515

Deemed refusal rate: $141 \div 1515 = .093 \times 100 = 9.3$ percent