

National Energy
Board



Office national
de l'énergie

Annual Report
pursuant to the
Access to Information Act

1 April 2010 - 31 March 2011

Canada

National Energy Board

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Pursuant to the
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I. Introduction

Access to Information Act

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

In accordance with section 72 of the Act, the head of every federal institution is required to submit an Annual Report to Parliament on the administration of the Act following the close of each fiscal year. The Annual Reports are then tabled in Parliament pursuant to section 72 of the Act. This report describes how the National Energy Board (NEB or Board) fulfilled its access to information responsibilities during the fiscal year 2010-2011.

About the National Energy Board

The Board is an independent federal regulator established in 1959 to promote safety and security, environmental protection and economic efficiency in the Canadian public interest within the mandate set by Parliament for the regulation of pipelines, energy development and trade. The Board reports to Parliament through the Minister of Natural Resources. The Board regulates the following specific aspects of the energy industry:

- the construction and operation of interprovincial and international pipelines;
- pipeline traffic, tolls and tariffs;
- the construction and operation of international and designated interprovincial power lines;
- the export and import of natural gas;
- the export of oil and electricity; and
- Frontier oil and gas activities.

Other responsibilities include:

- providing energy advice to the Minister of Natural Resources in areas where the Board has expertise derived from its regulatory functions;
- carrying out studies and preparing reports when requested by the Minister;
- conducting studies into specific energy matters;
- holding public inquiries when appropriate; and
- monitoring current and future supplies of Canada's major energy commodities.

In addition to its responsibilities under the *National Energy Board Act* (NEB Act), the Board also has responsibilities under the *Canada Oil and Gas Operations Act*, the *Canadian Environmental Assessment Act*, the *Northern Pipeline Act*, and certain provisions of the *Canada Petroleum Resources Act*. As a result of the *Canada Transportation Act*, which came into effect on 1 July 1996, the Board's jurisdiction has been broadened to also include pipelines that transport commodities other than oil or natural gas.

For more information about the National Energy Board, please visit our website at:

www.neb-one.gc.ca.

II. Description of institution structure

The Access to Information and Privacy (ATIP) Office

Activities relating to the *Access to Information Act* during the reporting period were the responsibility of the Secretary of the Board, who had been designated by the Chair and CEO of the Board as the Coordinator. Organizationally, the Secretary and Regulatory Services Team are located under the Strategic Leader of Business Integration.

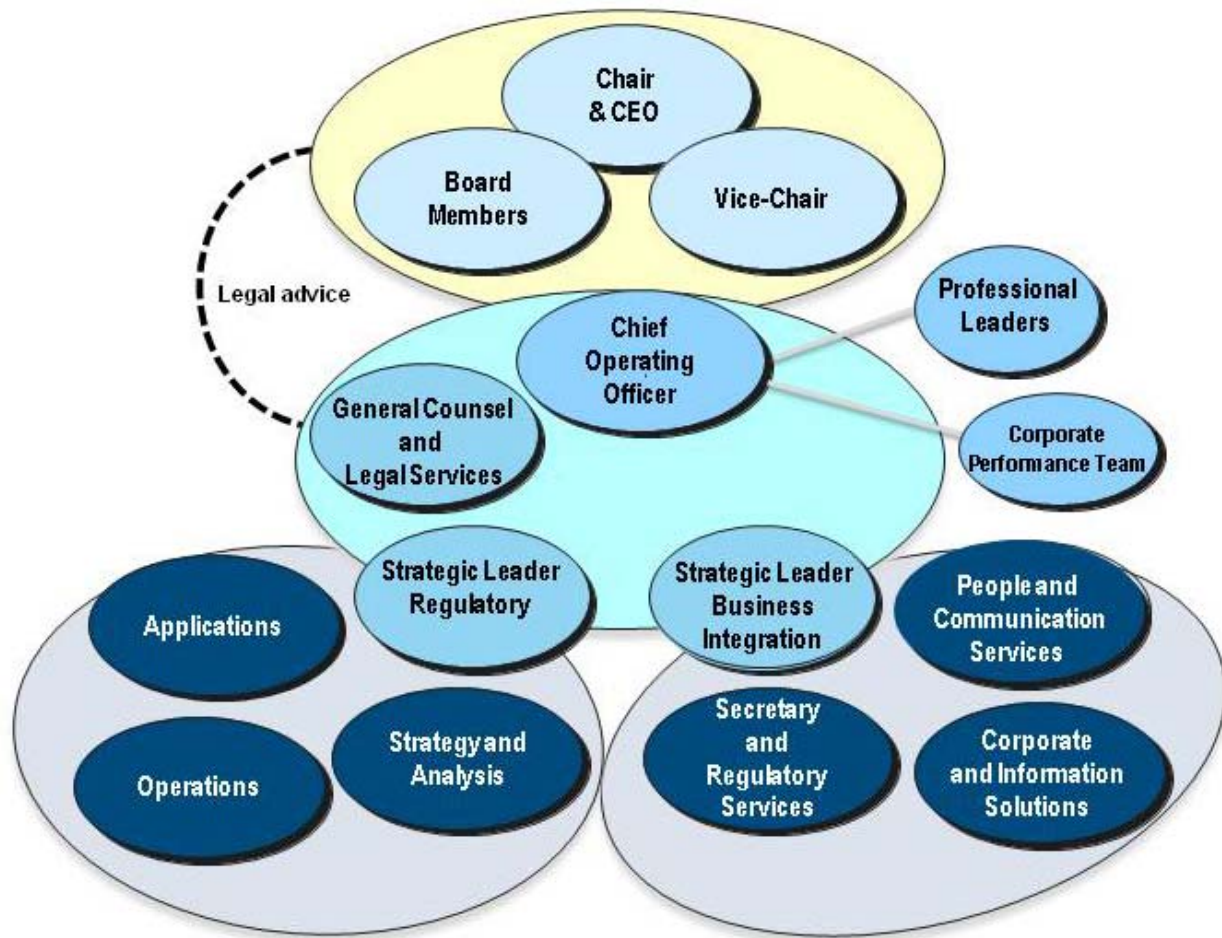
The Chair and CEO has overall responsibility for ensuring that the Board's policies, procedures and practices are compliant with the application and administration of the *Access to Information Act*. The National Energy Board has procedures in place to process all formal access to information requests. These requests are processed by the Access to Information and Privacy Coordinator who has the authority to access all records held by the Board. The ATIP Office works closely with Information and Document Services and Senior Management across the organization.

The ATIP Office, under the guidance of the Secretary, was comprised of one fulltime Officer in April 2010. Over the course of the year, due to a significant increase in the number of requests, the ATIP Office received additional permanent resources which resulted in staffing an Executive Support Advisor reporting to the ATIP Coordinator to oversee this team and an Administrative Assistant. A Senior ATIP Officer joined the team in February 2011 on a term assignment. In addition, the Board hired a contractor to assist part-time in the processing and coordinating of ATIP requests in May of 2010. There are currently 3 full-time equivalents (FTEs) in the Board's ATIP Office.

In addition to providing legal advice and guidance to the ATIP Office on all issues related to the application of the Act, the Board's Legal Services, in general, assist the offices of primary interest within the Board and the ATIP Division in the delivery of their program and activities having an *Access to Information Act* component.

The ATIP Office is responsible for the coordination and implementation of policies, guidelines and procedures to ensure the organization's compliance with the *Access to Information Act*. The office also provides the following services to the organization:

- Promotes awareness of the *Access to Information Act* within the organization
- Processes and manages access to information requests and complaints
- Manages the electronic tracking system
- Responds to access-related matters in the Management Accountability Framework
- Processes consultations received from other institutions
- Provides advice and guidance to employees and senior officials on access related matters
- Prepares an Annual Report to Parliament
- Coordinates updates to the Info Source publications
- Develops internal procedures
- Participates in forums for the ATIP community, such as the Treasury Board Secretariat ATIP Community meetings and working groups



Reading Room

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

National Energy Board Library
1st Floor, 444 – 7th Avenue SW
Calgary, AB T2P 0X8

Workload

Recruitment and training of new ATIP analysts, combined with the high volume of requests, made meeting prescribed timelines for responding to requests a challenge in 2010-2011. It is expected that, with more training and mentoring, and with increased retention of the current ATIP staff, compliance rates will increase in future reporting years.

III. Designation Orders

NATIONAL ENERGY BOARD

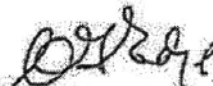


OFFICE NATIONAL DE L'ÉNERGIE

ACCESS TO INFORMATION ACT DESIGNATION ORDER

The Chairman of the National Energy Board, pursuant to Section 73 of the Access to Information Act* hereby designates the person holding the office of Secretary of the National Energy Board to exercise the powers and perform the duties and functions of the Chairman as head of a government institution under the Act save and except the power to refuse access to a record requested under the Act. Where the Secretary does not intend to give access to a record requested under the Act, he shall refer the request to the Standing Committee on Regulatory Process which Committee shall have the power to grant or refuse access to the record.

Dated at Ottawa this 18 day of March, 1983.


 C.G. Edge
 Chairman

* S.C. 1980-81-82 c. 111

National Energy Board

Office national de l'énergie

ACCESS TO INFORMATION ACT DESIGNATION AMENDMENT ORDER

The Acting Chairman of the National Energy Board, pursuant to Section 73 of the *Access to Information Act**, hereby amends the *Access to Information Act Designation Order* made on the 18th day of March 1983, at the City of Ottawa, in the Province of Ontario, by deleting the words "Standing Committee on Regulatory Process" in the text of the Order and substituting therefore the words "Executive Team".

Dated at the City of Calgary, in the Province of Alberta, this 27th day of May 1998.

A handwritten signature in black ink, appearing to read "K. Vollman".

Kenneth W. Vollman
Acting Chairman

* Access to Information Act R.S.C. 1985, c A-1, s. 1.

National Energy
BoardOffice national
de l'énergie


ACCESS TO INFORMATION ACT DESIGNATION REPLACEMENT ORDER

The Chairman of the National Energy Board (the Board), pursuant to Section 73 of the *Access to Information Act*, (the Act) hereby replaces the *Access to Information Act Designation Order* made on the 18th day of March 1983, at the City of Ottawa in the Province of Ontario, as modified by the *Access to Information Act designation Amendment Order* made on the 27th day of May 1998, at the City of Calgary, in the Province of Alberta by the following text.

The Chairman of the Board, pursuant to Section 73 of *the Access to Information Act** hereby designates the person holding the office of Secretary of the Board to exercise the powers and perform the duties and functions of the Chairman as head of a government institution under the Act save and except the power to refuse access to a record requested based on a discretionary exemption under the Act. Where the Secretary does not intend to give access to a record requested based on a discretionary exemption under the Act, he shall refer the request to the Executive Team which Team shall have the power to grant or refuse access to the record.

The Discretionary exemptions are introduced in the Act by the phrase "the head of a government institution may refuse to disclose..."

Dated at the City of Calgary, in the Province of Alberta, this 15th day of October 2002.



Kenneth W. Vollman
Chairman

* S.C. 1980-81-82 c.111

IV. Statistical Report



Government of Canada
Gouvernement du Canada

REPORT ON THE ACCESS TO INFORMATION ACT RAPPORT CONCERNANT LA LOI SUR L'ACCÈS À L'INFORMATION

Institution National Energy Board / Office national de l'énergie				Reporting period / Période visée par le rapport April / Avril 2010 - March / Mars 2011	
Source	Media / Médias 12	Academia / Secteur universitaire	Business / Secteur commercial 4	Organization / Organisme 7	Public 12

I Requests under the Access to Information Act / Demandes en vertu de la Loi sur l'accès à l'information		II Disposition of requests completed / Disposition à l'égard des demandes traitées	
Received during reporting period / Reçues pendant la période visée par le rapport	35	1. All disclosed / Communication totale	8
Outstanding from previous period / En suspens depuis la période antérieure	5	2. Disclosed in part / Communication partielle	13
TOTAL	40	3. Nothing disclosed (excluded) / Aucune communication (exclusion)	2
Completed during reporting period / Traitées pendant la période visée par le rapport	30	4. Nothing disclosed (exempt) / Aucune communication (exemption)	
Carried forward / Reportées	10	5. Transferred / Transmission	
		TOTAL	30

III Exemptions invoked / Exceptions invoquées			
S. Art. 13(1)(a)	1	S. Art. 16(1)(a)	
(b)		(b)	
(c)	1	(c)	
(d)		(d)	
S. Art. 14		S. Art. 16(2)	1
S. Art. 15(1) International rel. / Relations intern.		S. Art. 16(3)	
Defence / Défense		S. Art. 17	
Subversive activities / Activités subversives		S. Art. 18(a)	
		S. Art. 18(b)	
		(c)	
		(d)	
		S. Art. 19(1)	7
		S. Art. 20(1)(a)	
		S. Art. 22	
		S. Art. 23	1
		S. Art. 24	2
		S. Art. 26	

IV Exclusions cited / Exclusions citées			
S. Art. 68(a)	3	S. Art. 69(1)(c)	
(b)		(d)	
(c)		(e)	
S. Art. 69(1)(a)		(f)	
(b)		(g)	

V Completion time / Délai de traitement	
30 days or under / 30 jours ou moins	20
31 to 60 days / De 31 à 60 jours	4
61 to 120 days / De 61 à 120 jours	6
121 days or over / 121 jours ou plus	

VI Extensions / Prorogations des délais		
	30 days or under / 30 jours ou moins	31 days or over / 31 jours ou plus
Searching / Recherche	1	
Consultation	2	
Third party / Tiers	1	
TOTAL	4	

VII Translations / Traduction	
Translations requested / Traductions demandées	0
Translations prepared / Traductions préparées	
English to French / De l'anglais au français	
French to English / Du français à l'anglais	

VIII Method of access / Méthode de consultation	
Copies given / Copies de l'original	21
Examination / Examen de l'original	
Copies and examination / Copies et examen	

IX Fees / Frais			
Net fees collected / Frais net perçus			
Application fees / Frais de la demande	150	Preparation / Préparation	
Reproduction		Computer processing / Traitement informatique	
Searching / Recherche	510	TOTAL	660
Fees waived / Dispense de frais		No. of times / Nombre de fois	\$
\$25.00 or under / 25 \$ ou moins		6	\$ 30
Over \$25.00 / De plus de 25 \$			\$

X Costs / Coûts	
Financial (all reasons) / Financiers (raisons)	
Salary / Traitement	\$ 139,384.80
Administration (O and M) / Administration (fonctionnement et maintien)	\$ 120,624.30
TOTAL	\$ 260,009.10
Person year utilization (all reasons) / Années-personnes utilisées (raison)	
Person year (decimal format) / Années-personnes (nombre décimal)	2.5



Additional Reporting Requirements – *Access to Information Act*

The National Energy did not invoke any exemptions or cite any exclusions noted below during the reporting period.

Part III – Exemptions

Paragraph 13(1)(e)
 Subsection 16.1(1)(a)
 Subsection 16.1(1)(b)
 Subsection 16.1(1)(c)
 Subsection 16.1(1)(d)
 Subsection 16.2(1)
 Subsection 16.3
 Subsection 16.4(1)(a)
 Subsection 16.4(1)(b)
 Subsection 16.5
 Subsection 18.1(1)(a)
 Subsection 18.1(1)(b)
 Subsection 18.1(1)(c)
 Subsection 18.1(1)(d)
 Subsection 20(1)(b.1)
 Subsection 20.1
 Subsection 20.2
 Subsection 20.4
 Subsection 22.1(1)

Part IV – Exclusions

Subsection 68.1
 Subsection 68.2(a)
 Subsection 68.2(b)
 Subsection 69.1(1)

V. Interpretation / Explanation

Received During Reporting Period

During the reporting period, the Board received 35 requests under the *Access to Information Act*. Five requests were outstanding from the previous reporting period. Of the 40 requests, 30 were completed and 10 were carried forward to the next year. The Board also completed 18 consultations for other institutions.

Disposition of Requests Completed

The Board disclosed all documents in eight cases; in 13 cases, documents were disclosed in part; in two cases, nothing was disclosed due to exclusions; no requests were transferred; five could not be processed; two were abandoned by the applicant and none were treated informally.

Exemptions Invoked

The following exemptions were invoked during the processing of the Access requests during this period:

Section 13 – Information obtained in confidence
 Section 16 – Information that could facilitate the commission of an offence
 Section 19 – Personal information
 Section 20 – Third party information
 Section 21 – Advice
 Section 23 – Solicitor-client privilege
 Section 24 – Statutory prohibitions

Exclusions Cited

The *Access to Information Act* does not apply to published material, material available to the public for purchase or for public reference (section 68). Nor does it apply to confidences of the Queen's Privy Council, with some exemptions (section 69). Requests containing proposed exclusions under section 69 require consultation with the Privy Council Office. There were three requests received during the reporting period in which exclusions were applied pursuant to section 68(a) of the Act.

Completion Time

20 requests were completed within 30 days of receipt, while four requests were completed within 60 days of receipt. Six requests were completed within 120 days and ten requests were carried forward. The scope of Access requests received by the National Energy Board has become broader and requests have increased in complexity and number.

Extensions

Legal extensions were most frequently invoked to provide time to search through voluminous records. For the requests completed during the reporting period, four needed an extension of 30 days or less. In two cases, the Board invoked extensions of 30 days or less to complete consultations. For consultations with third parties, one request needed an extension of thirty days or less. For one request, an extension was needed to search a large volume of documents.

Method of Access

Of the 21 requests in which information was released, the requesters received copies of the information in all cases.

It should be noted that the data in this section reflect only requests for which information was *all disclosed* or *disclosed* in part and therefore not those abandoned, etc.

Translation

No translations were required to respond to 2010-2011 access requests.

Fees

The NEB is able to respond to requests to provide information on CD-ROM. This saves a requester significant amounts of money as it removes the need to charge for photocopies. No fees were assessed for photocopies in 2011-2012.

During the year, the Board collected \$150.00 in application fees and \$510.00 in search fees.

The application fees were waived for six requests. In some cases, these were deemed to be in the public interest; in others, the fees were waived to avoid hardship to the requester.

Costs

The costs incurred for handling Access requests and administrative matters are estimated to total \$260,009.10 for 4187.7 hours.

The Board estimates that 4187.7 hours equates to 2.5 person years.

The total salary costs associated with the program were \$139,384.80. Total operations and maintenance costs amounted to \$120,624.30 and included the costs of consultants.

VI. Description of Education and Training Activities

Training for ATIP Analysts

ATIP staff attended the ATIP Community Meeting in Ottawa in February 2011 and courses offered by the Treasury Board of Canada Secretariat regarding Personal Information Banks, Info Source and Parliamentary Reporting Requirements.

During the reporting period, Yvon Gauthier Info-Training provided three 2-day intensive training to all designated ATIP staff.

Training for National Energy Board Staff

The Board continues to deliver general training to raise employees' awareness of their responsibilities under the Act and specialized training to respond to client's needs. The ATIP Office provided general training on the provisions of the *Access to Information Act* and the *Privacy Act* and their impact on Board programs and initiatives.

ATIP staff also participated in orientation sessions where information was provided to new Board employees regarding obligations under the both Acts.

During the reporting period, Yvon Gauthier Info-Training provided three 2-day intensive training sessions for designated Board staff and eleven half-day mandatory training sessions for other Board staff. To date, 317 of the Board's roughly 400 employees have taken the ATIP training. The mandatory training is an ongoing initiative that will be carried on during the 2010-2011 fiscal year and reported upon at a later date.

In addition, the Board's Information and Document Services Team delivered sessions with colleagues in Records Management and Security Management highlighting horizontal linkages between ATIP, Security and Records Management. Employees who attend these sessions develop a complete awareness of their responsibilities and are more able to responsibly handle information at the National Energy Board.

A specialist from Natural Resources Canada also provided a briefing and a sharing of best practices to 30 Board employees about the Access to Information Program at Natural Resources Canada and how it was re-engineered.

VII. New or revised policies and guidelines

The National Energy Board implemented a standard policy and procedures guide during the reporting period. Procedures were endorsed by the head of the institution and posted for all Board employees on the internal website. New procedures developed during the reporting period include step-by-step instructional guides, forms and templates used in the processing of Access to Information requests.

VIII. Complaints / Investigations

The Office of the Information Commissioner (OIC) received one complaint regarding *Access to Information Act* requests addressed to and received by the Board during the 2009-2010 reporting period however the requester subsequently withdrew this complaint.

Enhancing Support and Sustaining Compliance

The substantial increase in the number of requests received has seriously impacted the organization's ability to respond within the legislated time limits. The Board is currently reviewing its internal processes to maximize the efficiency of its limited resources. An administrative assistant has been hired to take over some of the administrative tasks performed by the analysts and allow them to spend more time reviewing records. As well, the Board continues to staff positions and to increase the overall number of staff, especially those directly involved in the processing of Access to Information and Privacy requests.

An ongoing issue with both the maintenance of current staff levels, and any plans to increase staff and/or create new roles within the Board, is the continuing difficulty in finding and hiring qualified and experienced people. This is an intrinsic problem with government agencies located outside the national capital region.

Senior management at the National Energy Board is fully engaged in access to information issues. The development of a new procedures guide, mandatory training for all staff and increased staffing of the access to information office clearly illustrate that access to information is a priority for the Board. In addition, the Board's senior management has been actively supporting the transformation of access to information at the National Energy Board, an effort to address key compliance issues in a truly transformative and collaborative fashion.