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Chair

Mr. Blaine Calkins

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•(0845)

[Translation]

The Vice-Chair (Mr. Joël Lightbound): Ladies and gentlemen, good morning and welcome to this meeting of the Standing Committee on Access to Information, Privacy and Ethics.

Today, we are happy to welcome Stefanie Beck, Assistant Deputy Minister, Corporate Services, Department of Citizenship and Immigration, as well as Michael Olsen, Director General, Corporate Services Sector, Department of Citizenship and Immigration.

We are also hearing from two representatives of the Department of National Defence: Larry Surtees, Corporate Secretary; and Kimberly Empey, Director, Access to Information and Privacy Directorate.

Thank you very much for joining us today to tell us about the Access to information Act and answer our questions.

Without further ado, we will start things off with the representatives of the Department of Citizenship and Immigration for 10 minutes. Afterwards, we will hear from the representatives of the Department of National Defence for another 10 minutes. Following that, we will have a question period with the committee members.

Go ahead, Ms. Beck.

Ms. Stefanie Beck (Assistant Deputy Minister, Corporate Services, Department of Citizenship and Immigration): Thank you very much, Mr. Chair. We are also very pleased to be joining you this morning.

[English]

My name is Stephanie Beck. As the chair has said, I'm the assistant deputy minister of corporate services, so among other things, ATIP is in my portfolio. My director general responsible for corporate affairs at IRCC is here beside me.

[Translation]

Thank you for the opportunity to speak with the committee today about the Access to Information Act and how it is applied, specifically at IRCC. I want to emphasize that there are aspects of IRCC's access to information model that are unique to IRCC and would not necessarily be applicable in other government departments.

[English]

I should note that as your study relates only to the Access to Information Act, I will not be commenting today about the work our

department does in relation to the Privacy Act, although it is very significant, too.

I will start by discussing the impact of the current legislation on IRCC before moving into a discussion about our department's performance and costs with regard to ATI requests; then I will address some of the operational impacts of the recommendations put forward by the Information Commissioner in her recent report.

The ATIP division administers the Access to Information Act at IRCC and is led by a director who acts as the ATIP coordinator for the whole department. The division is divided into three units, each led by a manager. These units are operations; complex cases and issues; and the privacy, policy, and governance unit.

[Translation]

In addition to approximately 70 staff working within the division itself, IRCC maintains a network of access to information and privacy, or ATIP, liaison officers across the branches and regions of the department. They provide assistance in request processing by performing searches, collecting records and providing a response to ATIP requests on behalf of branches and regions.

Moreover, program officials throughout the department retrieve relevant records, and provide recommendations on disclosure of those records to the ATIP liaison officers.

In 2014-2015, our most recent reporting year, IRCC received more access to information requests than any other federal institution. IRCC accounts for roughly half of all access to information requests received by the federal government. I believe that is why we are appearing before you today.

[English]

During 2014-15, we received a record-breaking 34,066 requests, an increase of 16% from the previous year, and we are on track to receive an even higher number in 2015-16. The numbers so far are showing a 22% increase year over year.

Despite this increase in volume, we maintained a compliance rate of 87.81%. Less than 1% of all results completed during the reporting period resulted in complaints to the office of the Information Commissioner.

Roughly 95% of ATI requests are processed by our operations unit of the ATIP division and relate to immigration, citizenship, or passport case files. We are able to maintain a high rate of compliance in this area because the ATI analysts in the operations unit have access to the database that houses the case file records.

[Translation]

This set-up for the vast majority of our requests is unique in government and not necessarily transferable to other institutions. In order to facilitate the review of those records and the application of the law, we have given analysts direct access, so that they can respond to requests without needing to obtain recommendations on disclosure from departmental program officials. This greatly reduces the time it takes analysts to process request.

[English]

As well, because these records are housed electronically, analysts can work through a secure network, giving them the flexibility to do their work while safeguarding the client information. They do not have to rely on paper copies.

Our department also sees a surge in requests when there is a change in programs or a new one launched, as we have recently seen with the Syrian refugee operation.

We have been able to achieve a high compliance rate despite an ever-increasing number of requests by undertaking a number of initiatives to improve internal processes and client service.

Our senior officials are strong believers in the act and encourage a culture in the department of access to information, and of course, privacy. For instance, we run a number of proactive training activities, including in-person and online training, workshops, both mandatory and voluntary training courses, and awareness sessions. These are held across Canada in both online format and in classroom.

We are continuously looking for ways to improve client service delivery and find efficient ways to carry out this important work. I believe you are aware of our ATIP online access process that is held in our department. We currently manage over 30 clients who use the ATIP online process.

The duty to assist is taken very seriously at IRCC, and the ATIP division notifies requesters of possible delays in service. We hope that by acting proactively we can minimize the number of complaints.

In terms of costs associated with enforcing the acts, in 2015 and 2016, the delivery of the ATIP program in IRCC totalled \$4.231 million. I can give you exact numbers if you want, but the breakdown is \$3.856 million dedicated to salary and \$375,000 for operations. These costs are solely the funding for the ATIP division itself to conduct the work it completes every year. They do not take into consideration the costs associated with departmental ATIP liaison officers or the departmental officials searching for and

producing documents, nor the cost associated with conducting consultations both internal to the department and externally.

● (0850)

[Translation]

In terms of the recommendations put forward by the Information Commissioner, I will just highlight a few that we feel would have an operational impact on our work.

First, recommendation 2.4 proposes that institutions be allowed to refuse to process requests that are frivolous, vexatious or an abuse of the right of access.

[English]

The operational impact for our department would be the ability for our resources to focus on meeting the legislated timelines on serious requests versus spending time processing frivolous or vexatious requests.

Recommendation 4.15 would require that institutions seek the consent of the individual to whom the personal information relates wherever it is reasonable to do so. IRCC holds the personal information of literally millions of individuals, both Canadians and foreign nationals from all over the world. We have this because of the passport data that we retain, the citizenship information that we have, and of course the immigrations files, be they for temporary residents or permanent residents in Canada.

When IRCC processes an access to information request, documents collected in response to our request frequently contain personal information of individuals other than the requester. That personal information is regularly protected from disclosure. In fact, Mr. Chair, last year, IRCC protected personal information from disclosure in 14,579 access to information requests. This reflects 43% of completed requests. Therefore, the recommendation to seek consent would have operational impact on IRCC's ability to meet a vast majority of legislated timelines.

[Translation]

Next, recommendation 2.3 suggests extending the right of access to all persons. Currently, 70% of our requesters use a representative or third party to submit requests because they themselves are not present in Canada.

For IRCC, if individuals were to be able to submit a request without having to go through a Canadian representative, the operational impact would lie in the potential resource implications, as it could lead to a large influx of requests. A huge increase of this nature could impact our ability to meet legislated compliance deadlines.

I want to thank you again for the opportunity to provide IRCC's input into your study and for welcoming us here today.

We are ready to answer any questions.

● (0855)

The Vice-Chair (Mr. Joël Lightbound): Thank you very much, Ms. Beck.

I now give the floor to the representative of the Department of National Defence.

[English]

Mr. Larry Surtees (Corporate Secretary, Department of National Defence): Good morning and thank you very much, Mr. Chair and members of the committee, for the invitation to describe the framework that National Defence has put in place to comply with the Access to Information Act. It is always an honour to meet with distinguished members and colleagues before the committee and to answer your questions. This morning, I am joined by the director of access to information and privacy, Ms. Kimberly Empey.

Mr. Chair, before describing the access to information framework at Defence, I believe it would be helpful to provide a bit of context. The Department of National Defence and the Canadian Armed Forces are together the largest federal government organization. Together they form the defence team, which comprises over 100,000 employees, including 66,000 regular force members, 23,000 reserve force members and 22,000 civilian employees. Defence operates at bases and stations throughout Canada and has the largest land holdings of any organization in the Government of Canada. The Canadian Armed Forces conduct operations throughout the world. The department is involved in billions of dollars of acquisitions activities annually, including large, multi-year, major capital projects. In summary, Defence is a very large and complex organization.

Mr. Chair, I would now like to share a few statistics from Defence fiscal year 2014-15 annual report to Parliament on the Access to Information Act. Total volume of files for the year was 2,635, which was slightly lower than in fiscal year 2013-14, and this was the first decrease in four years. Of these, 2,029 were closed during the year, with 49% closed within 30 days, and an additional 17% closed within 60 days.

For this reporting period, Defence employed 38 full-time employees and three part-time employees as well as two consultants to do the access to information business, and we spent just over \$3 million to manage that business.

Mr. Chair, to manage the requests it receives under the Access to Information Act, Defence has put in place a four-step framework, anchored in internal policies, instructions, and training, that identifies the procedures and processes for handling requests for information under the act.

First, requests are received and assessed by a tasking group that often works with the applicant to clearly define the request and then identify the internal organization responsible for the records in question.

Second, these organizations provide the records to specially trained staff in the directorate of access to information and privacy, who further assess the request with respect to administrative requirements, such as the need for further consultation or an extension. They validate proposed exclusions and seek legal advice where required.

In the third step, two days are given to allow the department to assess the requirements and form a communication plan to support the release of the information.

Finally, the requested records are sent to the applicant and a summary of the completed request is posted online so that other members of the public may request the same information.

For simple requests, this process is completed in 30 days. As you can see, while we absolutely respect the public's right to information and we take our responsibilities seriously and endeavour to provide information with the minimum delay possible, the size, complexity, and mandate of the Defence organization sometimes introduce complications not seen in other organizations. In fact, given the nature of our organization, I believe we perform reasonably well.

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

Thank you.

[Translation]

The Vice-Chair (Mr. Joël Lightbound): Thank you, Mr. Surtees.

We will now move on to the first round of questions. The Liberal Party representative has seven minutes.

Mr. Massé, go ahead.

Mr. Rémi Massé (Avignon—La Mitis—Matane—Matapédia, Lib.): Thank you, Mr. Chair.

I want to thank the witnesses for participating in the committee's work. It is greatly appreciated.

My questions are mostly for the representatives of the Department of Immigration, Refugees and Citizenship.

You talked about the high number of access to information requests you have received, 34,000 of which were submitted over the course of last year. Could you explain, in general terms, why there are so many requests?

● (0900)

Ms. Stefanie Beck: Ninety-five per cent of requests come from people who are asking questions about their application to immigrate or a visa. For example, someone may be wondering what stage their spouse's file has reached. Is the file at the end of the process? Most of the requests have to do with the status of their application.

Mr. Rémi Massé: Can they obtain that information in another way instead of using the Access to Information Act?

Ms. Stefanie Beck: It depends. If the information was submitted in hard copy, it's not accessible electronically. However, people who have submitted their documents more recently in electronic format can check.

The delays can sometimes be a few months, such as in the case of an immigration process. After two or three months, people start to wonder how far along their application is because the information is not really accessible electronically.

In April, we will make changes to give people an option to create their own account, even if they sent their documents in hard copy. That way, they will be able to check what is happening with their file. We hope that change will help us with request processing.

Mr. Rémi Massé: When we compare the number of complaints to the total number of requests, it's not negligible. The figure is even significant. You received 243 complaints.

Could you tell us about the nature of those complaints? Of course, you will tell us about delays. So you could also explain to us what in particular leads to those delays.

Ms. Stefanie Beck: It is interesting to note that half of the complaints the commissioner has received are from one individual.

We can see that some people are satisfied with the current format. Their problems are resolved, and this format meets their needs. Therefore, the number of complaints may appear to be higher than it really is.

The cases that most often lead to delays are those that are complex or those for which documents are in foreign missions. We have to physically pick up the documents, bring them back to Canada, sort through them and consult other departments. That is what leads to delays. In those cases, the delays exceed 30 days. Complaints are often caused by the fact that the individual who submitted the request does not accept the response related to the delay.

[English]

Is there anything you want to add, Michael?

Mr. Michael Olsen (Director General, Corporate Services Sector, Department of Citizenship and Immigration): We get temporary resident applications. Often, if the applicants are refused, they want to know why. Generally, the letter that goes out to them explaining the refusal is very general, so the ATIP seeks more details on their refusal.

[Translation]

Mr. Rémi Massé: In the same vein, can you tell us about communication mechanisms with embassies around the world? Are there any mechanisms that make it easier to share information? You said that hard copies have to be sent, and that explains some of the delays. Have you considered mechanisms that could accelerate the processing and response process?

Ms. Stefanie Beck: The more complete our electronic files are, the easier the task becomes. If people scan their documents and add them to the case management system, it is much easier for those working here in Ottawa, in ATIP management, to have access to the information at all times.

It may appear very substantial, but people send a lot of documents to explain their case and provide justifications. For example, in the case of an immigrant family, relevant information for each of the children must be added. That's a lot of documentation.

Mr. Rémi Massé: I am curious. You talked about mechanisms that could increase efficiency. You said that analysts have access to one or several databases.

Explain that mechanism to us. It strikes me as rather peculiar. Do analysts have access to a database to facilitate processing only in immigration cases?

I would like to find out a bit more about this.

Ms. Stefanie Beck: Since my answer will be technical, I will use English.

[English]

We have a global case management system that manages all of our cases. Literally millions of files are input into that process right from the beginning. The client will appear, apply, and fill out the basic information forms. The interview is held. The interview notes are added. Our security and medical checks are done. That information is added into the case management system. Any other requirements, such as diplomas and language testing, go into the gigantic case management system.

The ATIP officers have access to that. They can go in and look. They can't do anything with the information, of course. They can't change it. But they can go in and see, and then extract and send to the requester exactly the parts they're asking for. The more access to information we can give to our ATIP analysts here in Ottawa, the faster it is for them to be able to process it.

We're also looking at setting up the system the way it's formatted so that it's really clear what is accessible information and what we would not be able to release, for instance, security information. It should be clear for the analyst which portions are out and which ones aren't. The faster we can do that, the better it is for the client.

● (0905)

The Vice-Chair (Mr. Joël Lightbound): *Merci.*

We'll move now to Mr. Jeneroux.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you so much for being here today. You run two of the biggest departments here. Thank you again for taking the time to come.

To quickly clarify the comments from you, Mr. Surtees, about three-quarters of the way through the third paragraph you say there were 2,029 closed cases during the year and that 49% of them were closed within 30 days and 17% within 60 days. Are we to assume, then, that 66% of these were closed within 60 days and that the remaining number, other than the 66%, took longer than that?

Mr. Larry Surtees: That's absolutely correct.

Mr. Matt Jeneroux: Also, at the end of that same paragraph you say you spent more than \$3 million on the access to information business line. Is that specific to staff salary? Does it include other resources?

Mr. Larry Surtees: That's all resources combined.

Mr. Matt Jeneroux: Do you have the breakdown of staff?

Mr. Larry Surtees: Yes, I do.

Mr. Matt Jeneroux: Do you mind putting it on the record too?

Ms. Kimberly Empey (Director, Directorate Access to Information and Privacy, Department of National Defence): The total amount for salaries was \$2,756,070; for goods and services, \$324,689; for professional services, \$276,569; and \$48,120 went for "other".

We can provide the number.

Mr. Matt Jeneroux: That's good. You have it on record, so we can find it.

Going back to some more of my questions now, do you have a formula or a metric to support those costs? Do you react to the increase in costs? Do you plan to have a set way to do it ahead of time?

That question is for both of your departments.

Mr. Larry Surtees: If you don't mind, I'll address it.

What we do is based on historical volumes of work and the complexity mix that we have. At National Defence, the first point is that most of our data is paper-based, so we have to go out and research, then get the data brought in. It needs to be scanned in so that we can then do our work. One of our challenges at Defence is that it's predominantly paper-based.

With respect to the complexity, we are also taking a look at our international agreements and third party agreements. We have to take a look at all of the exemptions that are provided for under the act to make sure that we are in fact in compliance with the act.

Based on our complexity mix and on the volumes and the indication of where the volumes are going, we will estimate how many people we need. It's basically based on that, a guess from which we work the costs forward; it depends on what has happened in the past and our attempt to project the future. There is a little bit of art involved in it.

The metrics we use are how many files an individual at a specific competency level can complete. We have those, and that's what we bear in mind. Then, if we have really complex files or ones that require a lot of investigation, or if we require input from third parties or other countries, we will often give some of them to consultants. The consultants can walk them through, and we are able to focus our staff on doing the less complex files, which they can do in a shorter period of time. We are basing it on metrics and our performance.

You will have noticed in the statistics and what we say in our annual report is that if we notice that our backlog is increasing, we will surge in a given year to drive the backlog down to a more reasonable number of files. We've just completed a year in which we have surged since December to drive our backlog down so that we can start the year at a more reasonable rate.

• (0910)

Mr. Matt Jeneroux: I guess we could say it's both.

You saw a decrease last year. Would it impact the year going forward?

Mr. Larry Surtees: It depends.

A one-year decrease of a couple of hundred files is not necessarily going to change things. If we noticed that there is a downward trend, we'd do some analysis as to why. Based on that analysis, we would do an adjustment.

In our organization, we try to balance the workload dealing with the Privacy Act and that dealing with the Access to Information Act. It's often the same training that's required, but with a little different expertise. We have some flexibility to adjust between them, unless they are both growing dramatically in a given year.

Ms. Stefanie Beck: Our situation is very similar. We benefit, if you will, from the fact that the case processing is much more straightforward than processing the complex files that we have. We know that we will have growth every year of probably 16% to 20%. We've done analysis of what this means, what kinds of cases these would be and thus what kinds of skills and people we would need. It's safe to say we assume generally that we won't have any more money to do this, so our focus tends to be on being more efficient and, as we were discussing earlier, on making things more electronic, on making processes more rigorous, such that we know where to go for the information, get it quickly, get it clearly, and get it out to the requesters.

Mr. Matt Jeneroux: I guess, based on that, the commissioner has made a recommendation in her report, recommendation 2.3, to extend the right of access to all persons. Currently the right to access is only for Canadian citizens, permanent residents, and individuals and corporations present in Canada. I'd like to get your opinion on how you think this will affect your department, particularly in its effects on staffing and financial resources. I know you may not have enough time, but hopefully you can touch on it at some point through your presentation.

Ms. Stefanie Beck: It could be huge. This is the issue, isn't it? We process literally millions of applications every year. If all of those people abroad had the right to access that information, we wouldn't be looking at 40,000 requests a year, we would be looking at many more than that. We would have to rethink how we do this, because it simply wouldn't be possible to hire enough people, and it wouldn't be a good business way of dealing with it, would it? We would have to think of a completely different approach to make sure that everything was out there.

Mr. Michael Olsen: I referred earlier to the temporary resident visas that we get requests on. We get requests on why people were refused. The numbers are increasing, certainly the number of temporary resident visa applications that we get, but typically in a year we approve roughly 1.8 million, I think it is, and refuse about 300,000. It's the vast minority of people who were refused who are actually submitting requests through representatives. If the access were applied to everyone, we would anticipate a large increase in the number of requests we get. I couldn't quantify it at this point, but we would imagine a large increase.

Mr. Matt Jeneroux: Would it also be safe to say that you would see more complex and possibly not more efficient requests as well, because they wouldn't be just going through the Canadian representatives?

Mr. Michael Olsen: I don't know whether the requests would be more complex. If they're related to case files, typically they're easier—not that they're easy, but they're easier to handle than other requests are. But just the volume.... We could probably anticipate a doubling of our volume in one year, possibly. We haven't done any sensitivity analysis at this point, but that would likely be the outcome.

•(0915)

Ms. Stefanie Beck: At the moment, the immigration consultants—the third parties, the representatives—charge for those requests. If we were to permit anybody around the planet to make these requests, they would lose that business method, if I can put it like that. In many cases, immigration consultants charge literally hundreds of dollars for what is a \$5 request.

The Vice-Chair (Mr. Joël Lightbound): Thank you.

We'll move now to Mr. Dusseault.

[Translation]

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Thank you, Mr. Chair.

I want to thank the witnesses for agreeing to appear before us today.

My questions will first be more specifically for the representatives of the Department of National Defence.

In one particular case, it took more than three years to respond to an access for information request. To justify that delay, which it deemed reasonable, the department defended itself in the federal court, invoking the circumstances, and the number of files, documents and pages that were requested.

Do you still maintain that the three-year delay in responding to an access to information request was reasonable? Is there another reason for it aside from the fact that the department is different from others and more complex?

[English]

Mr. Larry Surtees: On this request in particular, we were involved with another country. There was information that had to come from another country to be able to identify whether or not we could release all or part of the material. It involved a court case, so there were legal ramifications as well. We were working through the Department of Global Affairs to deal with a third party in South America. We were dealing with a legal case that was at play. We didn't know what the impact of all of this would be on what we could or could not release.

We made our best estimate of how long that would take to come forward, and were in fact able to release it before that full period of time.

This is one case among all of the thousands of cases that we deal with. Sometimes we end up with really complex cases that involve security at levels higher than secret, so we have to deal with that. They often involve international treaties and negotiations that we have with our Five Eyes partners or other members of the defence community. They will involve third parties, such as companies and other organizations. We can't release the information without checking with the individual to get a right of release. Then, we have to look at what exemptions need to be applied as we work through it.

In some circumstances we try to do a partial release to the individual, but the risk in so doing is that we don't know if there is anything in that release that the third party, another government

party, or another government would have an issue with. Some of the ones we deal with are long and complex.

In this case we used our best judgment. We will be looking at future cases to try to refine the decisions that are made regarding staff. We've also escalated the authority within the department, so that if there are extensions being taken for a significant number of days, the approval for that is higher up in the organization than it has been in the past.

[Translation]

Mr. Pierre-Luc Dusseault: That process obviously includes consulting various departments and even various governments around the world. Do you take into account the Information Commissioner's opinion when she deems delays to be unreasonable? The Information Commissioner has a mandate under the Access to Information Act. Do you continue to proceed in the same way even if she feels that the delays are unreasonable?

[English]

Mr. Larry Surtees: I understand that the Information Commissioner didn't agree with the decision we made, and in a number of circumstances we don't agree with the Information Commissioner. In those circumstances, we end up going to court, and the court ends up interpreting a law which has been around for quite a considerable period of time. It was put in place in an era that is not the current era of computers, social media, and all of that.

We're taking our disagreements with the commissioner to court to get amplification around an older law, which is actually the democratic process that we have here in Canada. On occasion, if we don't agree, we'll go to that extent so that we get some interpretation.

With the legal interpretation, we will absolutely comply with what the courts have come forward with.

•(0920)

[Translation]

Mr. Pierre-Luc Dusseault: If the commissioner's interpretation is different from yours, are the same resources used to defend the case before the courts? Are the resources different? What is your estimate of the resources available to you for those kinds of court cases related to access to information?

[English]

Mr. Larry Surtees: We don't make the decision to take an item to court independently. We consult with our colleagues at the Department of Justice, and if the determination is made that it is a reasonable approach to take, the Government of Canada will take that approach with the Department of Justice, and we will challenge the opinion of the Information Commissioner.

[Translation]

Mr. Pierre-Luc Dusseault: You said yourself that the Department of National Defence was the largest federal government organization. Can you briefly explain the difference between the Department of Immigration, Refugees and Citizenship and your department in terms of the percentage of responses to access to information requests? As you said, your department has the largest number of resources of all federal departments.

[English]

Mr. Larry Surtees: We get access requests that cover a gamut of different requirements. We get them related to a major capital project in which people are looking for information on all the communication that has been done within that organization for the last six months or the last year. We have thousands of pages of documents that we're scanning in, reviewing, assessing as to whether there's third party involvement, whether there are cabinet confidences. We're taking a look within the act at what exemptions could and would be applied.

We go from that complexity to very simple cases in which people are looking for a list of all the briefing notes that have been given to the Minister of National Defence in the last month. That's a common request that we get: for all of the senior officials in Defence, people are looking for a monthly list of all the briefing notes. Then, following that, we get half a dozen requests that are for the specific briefing notes of the individuals.

This is a completely different type of access business than what has been described by our colleagues.

[Translation]

Mr. Pierre-Luc Dusseault: As my time is up, I will come back to this later.

The Vice-Chair (Mr. Joël Lightbound): Thank you.

I now give the floor to Mr. Saini.

[English]

Mr. Raj Saini (Kitchener Centre, Lib.): Thank you very much for coming here today. I want to ask a question that I find very curious, Mr. Surtees. Yours is the largest federal organization, and yet you only have 2,600 requests a year. That seems interesting to me, because defence, I think, is a very fascinating topic. Part of my question—and this is to follow up on Mr. Jeneroux's point—is that out of 2,600 requests per year, you've mentioned that 2,029 were closed. Were the other roughly 606 closed?

You also mentioned that it takes longer than 60 days to close them. Maybe not getting into specifics, if there are any kinds of secrets involved, but can you give us an overview of what types of cases you get that take such a long time?

Mr. Larry Surtees: Closing within 30 days, or closing within the time we have available to us—because we can take extensions for specific periods of time based on volume, complexity, the amount of consultation we can do....

We can take extensions beyond the 30 days to be able to deliver the response. Those would not be completed within 30 days, but from our perspective they would be completed in the amount of time we estimated we would need to do them. When we do an extension, we advise the person who has made the application that for such and such reasons we are doing an extension and expect that the information will be coming out at a later date.

With that information put in place, we in fact are meeting what I would call our completion date in the range of 78% to 80% of the time, but in accordance with the regulation, it's 30 days. This is one of the complexities that goes around this sort of activity.

The nature of the requests often requires us to consult with other government departments. It will require us to consult with the lawyers with respect to cabinet confidences to make sure we aren't breaking them. It may require going through thousands and thousands of pages. We just sent a release out this past week on one of those more complex ones. We had more than 6,000 pages.

Just the time involved in reviewing that material at the working level at which the documents were produced in order to make a recommendation as to what can be included and what can't, and then in reviewing it a second time through our experts, and then determining whether we have to go out to anybody else to confirm that we can release the information.... That's the sort of complexity that leads to the amount of time we have to take.

• (0925)

Mr. Raj Saini: I'm sure part of the complexity also may have to do with dealing with foreign governments. You alluded to that in your opening comments. Certain foreign governments that you may be dealing with may not have the same data capture or data storage abilities we have. How do you deal with that frustration, or is that part of the delay that also impacts the cases you're looking at?

Mr. Larry Surtees: What we will do is provide the information we have that has been given to us by a third party. We would come up with this when we're reviewing the documents and have information that has been included in a briefing note, a situational awareness report, or an "after actions" report that relates to an activity of another government department.

For instance, when we were in the Afghanistan conflict, we were working with partners. If we were involved in an incident that involved any of our partners, we would say, this is the information we are looking to release. We would then send that information through channels to the appropriate country and get their agreement to do so or not. We aren't asking them to dig up information; we aren't putting an access request on them for a whole bunch of information. What we're doing is saying that we have included this information in our records and are asking whether they agree or not that we can release it.

Mr. Raj Saini: You mentioned Afghanistan. If you have three or four participants in the theatre at that time and a request is made to you, and one of the participants says "we don't want this information to be released", what is the result? Is the information not released?

Mr. Larry Surtees: That results in the information not being released. We use an exclusion or an exemption that is provided for under the act. There is one that relates to security. We would use one of those exclusions that are currently provided for under the act, and the act provides that if a third party or a third party government doesn't authorize the release, there are specific sections within the act that allow us to redact that information when we do the release. We will do a release, but that information is blanked out and is not available to the applicant.

Mr. Raj Saini: To sum up, this committee will be studying some of the recommendations that have been made by the Information Commissioner. I know Madam Beck has highlighted one recommendation with which she has some challenges. Is there anything in the recommendations that have been made by the Information Commissioner that stands out for you that would impair or impede your ability to satisfy the requirements under the act?

Mr. Larry Surtees: Mr. Chair, with respect, the President of the Treasury Board is the person responsible for interpretation and for providing regulations and directions to departments on how to deal with the act and as to who would be responsible for moving forward with any recommendations on it.

We're working with them. I don't have any specific opinions one way or another with respect to the recommendations that have been made by the Information Commissioner.

The Vice-Chair (Mr. Joël Lightbound): We'll move now to Mr. Kelly for five minutes.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): Thank you, Mr. Chair.

I'd like to address some questions to you, Ms. Beck. I notice in the summary performance for 2013-14 that the department received almost 30,000 requests and that this represented a 17% increase from the year before. A significant number of these requests were closed after the statutory deadline, if I understand correctly. From this I assume that the department may be slowly becoming overwhelmed by the sheer number of requests.

First of all, perhaps I'll ask you to quickly comment on what percentage of your department's overall resources are devoted to handling ATIP.

• (0930)

Ms. Stefanie Beck: The department has about 7,000 employees. If we are 70-odd dealing with ATIPs full-time as analysts, it is a very small number. It does not include, however, the staff within the department who would be reacting to ATIP requests on a daily basis; that is, doing their own searches.

Mr. Pat Kelly: Has this proportion been expanding over the last five years along with the increasing number of ATIPs? Have you been expanding your staff along the way?

Ms. Stefanie Beck: It has increased, but not exponentially.

Mr. Michael Olsen: It has not increased at the same rate as the number of requests we've received. At the same time, we've taken steps to improve the efficiencies through which analysts can process requests that we receive.

Mr. Pat Kelly: Regarding the proposals of the commissioner's report, "Striking the Right Balance for Transparency", I understand that you have concern that this would increase the level of resources needed to cope.

Ms. Stefanie Beck: There would certainly be challenges.

Mr. Pat Kelly: Okay, and in particular if the non-citizen recommendation is adopted?

Ms. Stefanie Beck: Anything that would increase the volume of requests would be a challenge for us. As I said earlier, I do not think that we would be seeing an increase in available funding to be able to deal with them, so we would need to look at other ways of doing business.

Mr. Pat Kelly: Would a more proactive disclosure model reduce the amount of work going into responding to requests?

Ms. Stefanie Beck: I think that's where we're headed with the online access to people's own case requests. The more that we can put up and have available so that someone can go into their own

MyCIC account, log in, and check the status of their case, the more this is going to be of assistance. There will always be parts that we won't release, such as the security information and things like that.

In what we did most recently with the Syrian refugee operation, I don't think we've ever put up so much information online. I hope all of you checked our website regularly. We tried to do exactly what you're suggesting, and we proactively put out as much as we possibly could, including the number of refugees coming in per day, points of entry, and where they were going in Canada. We put out information on demographics—the technical briefings we did for the media—and I think all of that helped. First, of course, it's open and transparent government, but also, I think it helped in reducing the number of ATIPs that we could have received. It's absolutely a good option.

Mr. Pat Kelly: Thank you.

I'd like to move to the Department of National Defence and again talk about this recommendation for opening up requests to non-citizens and how this might affect Canada's security.

For non-citizen inquiries, how would you address the issue of abuse of process? I'm not sure how much you've thought about it or how much attention or resources you've put into the implications of all of the recommendations of the report. If non-citizens, foreign governments, foreign non-government organizations, and foreign citizens were able to have the same access to information, how would you deal with either frivolous or actually hostile acts that abuse our processes?

Mr. Larry Surtees: As I mentioned, we're working with the Treasury Board to address any changes that might be coming forward to the Access to Information Act. In fact, that is the organization that is going to address any of the concerns moving forward. We have not studied, and I'm not able to offer opinions with respect to, the comments that have been provided by the Information Commissioner in her report.

• (0935)

Mr. Pat Kelly: At first glance, does it sound like something that would be a concern for you?

Mr. Larry Surtees: There are currently exemptions within the act that allow us to exempt security issues and to exempt information such as operational information or operational plans. There are current exemptions within the act that allow us to restrict that sort of information from going out. We'd have to do it today anyways, because you don't have to be a foreign national to be after that sort of information. The act does provide us with the protection we need to be able to deal with that.

The Vice-Chair (Mr. Joël Lightbound): Thank you, Mr. Kelly.

We'll move now to Mr. Long for five minutes.

Mr. Wayne Long (Saint John—Rothesay, Lib.): Thank you, everybody, for being here today.

I'll start with Deputy Minister Beck on the Information Commissioner's recommendations for amending the act. She recommends strengthening the oversight of the access to information regime. Do you believe the current oversight of the access to information regime is adequate? Why? Can you elaborate on that for me?

Ms. Stefanie Beck: We have a very close relationship with not only the Information Commissioner but also the Privacy Commissioner. As we approach every ATIP request, we have in mind what the act requires and what our obligations are. Our training and our awareness are dedicated to making sure that not only we, who are the experts in ATIP, are well aware of these obligations but that the rest of the department is also well aware of their obligations. That process is ongoing and comprehensive.

The commissioner regularly contacts our department, formally and informally, and it's perhaps as a result of the size of our operation. It might not be the case with other smaller agencies or other smaller departments, but from our perspective, we know that we are closely observed and we do our best to respond to and indeed pre-empt any complaints, as we outlined earlier.

Mr. Wayne Long: Do you think or how do you think the oversight should be strengthened?

Ms. Stefanie Beck: I think the Treasury Board Secretariat, as my colleague has mentioned, is looking into all of those things. What is always best in terms of oversight—and I speak more generally here—is that those doing the oversight are very familiar with the source of the information and with the information they're looking at. Subject matter expertise makes a difference when you're performing an oversight function.

Mr. Wayne Long: Thank you.

Mr. Surtees, are you able to comment on that question?

Mr. Larry Surtees: Not specifically, no, but in general. We also work very closely with the Information Commissioner to make sure that she and her team understand why we have done the things that we have done, and we do that as we work through complaints.

To me, the complaint process is not a problem. The complaint process is an attempt to identify areas that might need to be addressed in the future, and we welcome that. A review of the types of complaints and a review of the types of court cases would be very informative as to what the concerns are that citizens have with respect to the current act, if I may....

Mr. Wayne Long: Thank you.

I'll go back to Deputy Minister Beck. Another of the Information Commissioner's recommendations is "that the government be required to consult with the Information Commissioner on all proposed legislation that potentially impacts access to information". Do you agree with this recommendation?

Ms. Stefanie Beck: I'm sorry. On that one I just don't have enough information to be able to comment, and the secretariat would be coordinating for all of government.

Mr. Wayne Long: Okay, fair enough.

I know that you've mentioned some of the recommendations, including recommendations 2.4, 2.3, and 4.15. Do you have any other recommendations for amending the act? Is there anything else that you'd like to see?

Ms. Stefanie Beck: We are in constant discussions with the secretariat over what we would like to see, because I think it's fair to say that we all have views on what we would like to see in the act,

but what would apply well in my department is not necessarily something that would be useful across government.

• (0940)

The Vice-Chair (Mr. Joël Lightbound): We'll move now to Mr. Kmiec for five minutes.

Mr. Tom Kmiec (Calgary Shepard, CPC): Thank you very much to the witnesses for coming in today for a very fulsome discussion.

In a previous life, I was the registrar for the HR profession in Alberta. Access to information and ethical conduct of members were very important to us. I also wrote the code of ethics and the standards of professional conduct dealing with information like this, so I know that "category of employee" typically generates a lot more interest.

First, I have a question in regard to exempt staffers in ministers' offices. My question is for Ms. Empey and Mr. Surtees from National Defence.

For exempt staffers in a minister's office, for other emails, correspondence, and anything they might have communicated on with the department previous to their employment, anything between them and the department they're in, is that subject to an exemption? Or are they required to provide those emails and correspondence or documents?

Ms. Kimberly Empey: In our department, and I think in all departments.... There was a court case a while ago, in 1999, that looked at what was covered in ministers' offices. We take a two-step approach in looking at what's covered. In ministers' offices, there are ministers' offices exempt staff, and basically we look at whether the contents of whatever is in the record relate to some kind of departmental matter, such as, for example, some kind of program that the department is working on.

That's one test for us: is it a record that would be covered by access to information? The second is, could a senior official of the government reasonably expect to obtain such a record? If those two tests are met, we would say that a record would reasonably be accessible or part of ATIP. This is something that we've worked on with our ministers' offices, but that's in the current act.

Mr. Tom Kmiec: I have a question to CIC about a very high volume of ATIP requests. You said that an increase of 16% to 20% annually is your forecast. I was doing just the rough math here, and that's \$124.21 per ATIP, roughly speaking. That's just a business metric, and kind of crude, but I think it shows you what may happen.

You also mentioned that when a department has programs that change, you see an increase there. I know that with a new government there's a tendency to start changing programs, to introduce new things, and to eliminate old programs. As well, if you were to adopt this recommendation to allow anybody anywhere in the world this access, then an increase of 16% to 20% seems kind of conservative. What type of percentage increase would you expect if those two scenarios were to happen?

Ms. Stefanie Beck: As Michael referred to earlier, I think that if we were to have close to two million temporary visa requests a year, you can see right away that there will be a number in there. We even have people doing requests for information on visas that were accepted, because they want to know why they were accepted, inasmuch as they want to know why others were refused.

We regularly get requests from people in the business of immigration. They want to see our operational bulletins. They want to see how we make decisions so that they can better advise their clients. That's understandable. If those requests could come from anywhere around the globe, that could also be a source of increased requests.

Mr. Tom Kmiec: I have a question for Mr. Surtees and Ms. Empey, on National Defence.

This is just a ballpark figure. I'm not looking for any specifics here. I know that you deal with a lot of information with regard to our allies and whatever operational theatre they're in. What do you think would be the cost to us, to our reputation or otherwise, if we were to inadvertently release a document that we weren't supposed to release? Whether it's in regard to the armour on our armoured personnel carriers or the electronics in our aircraft, what would be the ballpark figure for the damage?

Mr. Larry Surtees: We would put people's lives at risk. I don't think there's a higher damage that we could do. So it's very important that we do our job properly and that in the department we work with our colleagues and the department to make sure that we are doing the job properly to prevent that.

Ms. Kimberly Empey: That's what I think about every day: making sure that I keep our Canadian Armed Forces protected.

• (0945)

The Vice-Chair (Mr. Joël Lightbound): We'll now move to Mr. Bratina.

Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.): These are both very positive presentations today, and I appreciate hearing them.

I have a couple of things, though, Ms. Beck, on the recommendation that institutions be allowed to refuse to process requests that are frivolous, vexatious, and so on. You're saying no, so what do you do with something that is obviously frivolous or vexatious? You must get them.

Ms. Stefanie Beck: Yes, we occasionally get what would be deemed frivolous and vexatious requests, and on those here's what we try to do. The ATIP analyst has permission, the right, to go back to the requester and try to clarify what the request is, particularly when they're asking for what looks like a fishing expedition, such as "I want every memo from the last six months or anything that starts with 'P'". If we can go back and refine...

Often, I think it's what you referred to earlier, Mr. Chair, in that if we can put out more information proactively, then they won't be asking for it. The more we can put up online that's unclassified and that will not cause problems from a security perspective or a health and safety perspective, I think that's appropriate.

We certainly do see frivolous and vexatious requests, and they do take up a lot of time.

Mr. Bob Bratina: On the notion of the work that both of you do, this is a very stressful topic at the constituency level. There's stress when we get a letter from someone who is saying, "This is what they told me, so what do we do with this?" I really enjoyed the positive nature of the presentation, but what would you say to the level of stress? Where I'm aiming at is resources, so tell me about that.

Ms. Stefanie Beck: Overall, we accept far more applications than we refuse, so right away, you're only seeing a small percentage of those applicants, for either permanent immigration or temporary immigration. When that's all you see, that skews the perspective, and it seems that we spend our days saying no. We actually don't.

The other processes that we try to put into place are to beef up our call centre so that somebody is answering the telephone when the clients call and they can get information directly from a voice, instead of in an ATIP request when you do it online and you don't actually speak to anybody. Actually, we also have, as I think you know, a special phone line for members of Parliament to help with this, so that constituency offices can call in directly or email directly.

We've actually spent a lot of time over the last few months looking at how we can funnel all of the calls or emails, all of the client service approach, into one part of the department, so that we will have cohesion and consistency across the approach, by phone, or by email, or through ATIP, and as well so that people are getting the same responses, because we also find that there's some "answer-shopping". If I try phoning, do an ATIP, and then if I get a lawyer, maybe I can get a different answer. Ideally, again, to come back to it, the more we can put out there up front, the more time it will save all of us later.

But some people just won't be happy, right? They got denied a visa.

Mr. Bob Bratina: Right.

Mr. Michael Olsen: Perhaps I could answer that as well.

We also want to understand better why people are making ATIP requests. Everybody has a different reason. They fall under broad categories. If we can understand better why people are making requests when they are making requests, we can more proactively respond, if you will, to those concerns up front.

It will take resources to understand better why they're making the request, but as we have a better understanding of that, we'll be able to address it and perhaps reduce, I hope, or even keep constant the number of requests we're getting.

Mr. Bob Bratina: Mr. Surtees, could you comment on this notion of the resources and workplace stress, in terms of what you do?

Mr. Larry Surtees: At Defence we are also looking at what we can put out proactively under open government. From our perspective, that moves the access to information workload to the front end of the exercise, because we still have to make sure that the document going forward complies with the law and that we take the exemptions.

Either way we have a fair amount of business to do, but most of it isn't of the same nature as the questions coming in to our colleagues. There's not as much stress on the specific individuals. We get a lot of requests from media and we get a lot of requests from organizations that are looking for information. We turn those around as quickly as we're able to so that it can be dealt with appropriately.

• (0950)

Ms. Kimberly Empey: Perhaps I could add to that.

In IRCC we do sometimes get requesters who are frequent requesters. Year-over-year fluctuations can see us with 10% coming from one requester. We do have that same thing, because at this point under the act, there is no limit to how many they can send in.

Ms. Stefanie Beck: I would add one more thing.

We also have requesters who obtain information from us and then sell it. That happens often. They have a repetitive request that comes in, they take the information, and then they put it up for sale.

Mr. Bob Bratina: Is that something that needs to be remedied in some way?

Ms. Stefanie Beck: That would be your job.

Voices: Oh, oh!

Mr. Bob Bratina: Write that down.

Ms. Stefanie Beck: I guess if you're looking at the intent of the act, is it part of the intent of the act that any government provides information that can be used for resale? Myself, I doubt that would be the intent of the act.

The Vice-Chair (Mr. Joël Lightbound): Thank you.

We'll now move to Mr. Dusseault for three minutes.

[Translation]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

Ms. Beck, one of the solutions could be to proactively disclose and to post on your website all the responses you have provided on access to information that are already available for free.

Ms. Stefanie Beck: Yes, that could help, but I also think that the people who do that take the information and put it on their own website. They want to have an analysis next to a ruling. They compare with other information. Sometimes, it's slightly adjusted based on the audience.

Mr. Pierre-Luc Dusseault: I understand.

I would like to come back to the Department of National Defence.

I spent a lot of time on the ruling rendered by the Federal Court. You said yourself that the Access to Information Act was quasi-constitutional.

I will read paragraph 8 of the judgment rendered by Justice Kane. I only have the English version. The following is stated:

[English]

“Despite this outcome, the applicant has effectively highlighted that the remedies for non-compliance with the Act are limited and that legislative change would be the only way to provide more options and remedies.”

[Translation]

Do you agree with what Justice Kane said?

[English]

Mr. Larry Surtees: That is the judge's opinion, and I'm not arguing with the judge's opinion.

[Translation]

Mr. Pierre-Luc Dusseault: Do you think that providing more resources to the Department of National Defence to respond to access to information requests could be a way to reduce response delays?

[English]

Mr. Larry Surtees: No. I believe we will be improving our processes and our procedures to try to address those issues. I don't believe it's an issue of resources. It's an issue of coming up with a better process so that we deal with these issues up front. It's also an issue of telling people why we're doing what we're doing. I think that goes a long way to addressing this situation. And when I say “people”, I mean telling the Information Commissioner up front that here's an issue and here's how we're dealing with it, and telling the applicant. I believe with open communication we help deal with the potential for complaints.

[Translation]

Mr. Pierre-Luc Dusseault: I will come back to the immigration issue.

My understanding was that more requests were made by the commercial sector—I am not sure whether this was the exact term used. That means lawyer firms and immigration consultancy firms are submitting the most access to information requests. The requests are not made directly by individuals.

Ms. Stefanie Beck: People who live abroad and are not Canadian citizens have to use a representative in Canada. They hire them and pay for their services.

Mr. Pierre-Luc Dusseault: If I remember correctly, the fee for an access to information request is \$5, but consultants charge their clients much more than that.

Ms. Stefanie Beck: Yes, they charge more than that. However, to be fair, I should remind you that consultants and lawyers add their own opinion and provide more context. They provide much more information than we do following an investigation. The prices vary greatly.

Mr. Pierre-Luc Dusseault: Thank you.

[English]

The Vice-Chair (Mr. Joël Lightbound): Thank you, Mr. Dusseault.

That concludes our second round of questioning. Considering that we have a few more minutes, I would open the floor to members who may wish to speak. I myself will start with a quick question.

One of the recommendations of the commissioner, which she has discussed at length in front of this committee, is that currently she operates under an ombudsperson model whereby she can make only non-binding recommendations. She wishes to move to an order-making model, which is somewhat the norm, I think, for access to information commissioners. I'd just like to have your take on how it would impact your relationship with the commissioner if we were to move to an order-making model.

• (0955)

Ms. Stefanie Beck: If you decide that is what the role of the Information Commissioner should be, we will of course comply and do whatever she orders. At the moment, she does not have that role, which gives us, I guess, a little more flexibility in areas where there are concerns. I think we have the most concerns about security and safety, and health and safety issues. We would want to ensure that the Information Commissioner was very well briefed before she made decisions that might have an impact on those kinds of very serious issues. I would include in that, by the way, cybersecurity and information security issues, not just issues of health and safety, because eventually that is what that would mean. Treasury Board Secretariat is reviewing what that recommendation might imply for us if you were to go ahead and make that change.

The Vice-Chair (Mr. Joël Lightbound): Thank you.

Mr. Larry Surtees: I really have nothing further to add to that. That's a nice job of it. Thank you very much.

The Vice-Chair (Mr. Joël Lightbound): Mr. Dusseault.

[Translation]

Mr. Pierre-Luc Dusseault: I have another question about the commissioner's powers.

When you justify a refusal to provide certain information in compliance with the exclusions or exemptions under the law, would it be acceptable for you if the commissioner could see the documents in question to determine whether the reasons you gave are well-founded?

[English]

Mr. Larry Surtees: That happens today. We provide the commissioner with all of the information, including what we've redacted and why. We often get complaints from people saying that we've taken things out that they don't feel we should, and we have that frank discussion with the commissioner today, so that exists under the current operation.

[Translation]

Mr. Pierre-Luc Dusseault: That goes for exemptions, but is it any different for exclusions?

[English]

Mr. Larry Surtees: No, it's the same thing. If there's a complaint, we are fully open with the commissioner to resolve the complaint and to explain the rationale for why we have chosen to do what we've done.

[Translation]

Mr. Pierre-Luc Dusseault: Thank you.

[English]

The Vice-Chair (Mr. Joël Lightbound): Mr. Simms.

Mr. Scott Simms (Coast of Bays—Central—Notre Dame, Lib.): Thank you, Chair.

For the past probably six or seven years, the issue of redaction and whether it's necessary or not and the compliance issue have certainly been in the forefront for a lot of people, especially in the realms of journalism, for commercial reasons, and so on and so forth.

Both of you could weigh in on this subject, but Mr. Surtees, I'm going to go to you, because obviously the sensitivity in your department is that much higher, and as was pointed out by Ms. Empey, people's lives are at stake here. What happens when you have an issue with redaction of your department? If they redact something, do you have the right to say to them, "I don't think you're complying with the act here"? Do you have that conversation with them? If there is that—not so much by a client, by the person asking, but by the department itself, and you have a disagreement, do you have that power and ability? Or, if the Department of National Defence says, "We're sorry but that cannot go into documents", do you then take that to the client?

Mr. Larry Surtees: We are part of the Department of National Defence, and the access to information and privacy organization has the ultimate decision. If there's a disagreement, we escalate it within the department to resolve it. We will challenge recommendations that come up from within the department. That's our role. Our people are much better trained than the staff who are supporting each of the parts of the organization. In fact, we train those people. We keep them up to date on the various things.

But the ultimate decision can only be made by someone who's delegated by the minister, and the minister has delegated the deputy minister, me, Ms. Empey, and a number of her staff to make those decisions on behalf of the department. Everything we do is based in that delegation. A senior departmental official can in fact not overrule us because they aren't delegated.

• (1000)

Mr. Scott Simms: That's very interesting.

Ms. Beck, do you want to answer that as well?

Ms. Stefanie Beck: It's exactly the same in our department.

There are very few people who have the authority to release or redact. Of course, our ATIP analysts do. In addition to those people, I, Michael, and the deputy do, and I think that's it. Nobody else can authorize. They may say that redactions should be done under this exemption or that exclusion. We would have a discussion with them: Is there some context that we're unaware of? Is there a third party involved that we need to know? Was this information obtained in confidence so we should not be releasing it because there might be an impact on health and safety?

The decision, though, ultimately rests with only those in the department who have the authority.

Mr. Scott Simms: Right.

So all the redacted material that is provided to a client... You stand by that redacted material as being in the public interest, to keep it out of the public realm for these reasons. Obviously in your case, it's far more sensitive.

Ms. Stefanie Beck: That's right.

Mr. Scott Simms: For commercial sensitivity, obviously procurement is a massive subject. I take, for example, fixed-wing search and rescue right now, which has been going on for a while.

If I want to find out information on one of the bidders to a certain procurement, would that go through you or Public Works?

Mr. Larry Surtees: That would go through the Public Works, as you mentioned. It goes through the procurement specialists who consult with us. They have the lead on the procurement aspects.

Mr. Scott Simms: Are the specialists in your department?

Mr. Larry Surtees: Yes.

They would consult with specialists with our department, if they felt the need to do so.

The Vice-Chair (Mr. Joël Lightbound): Mr. Jeneroux.

Mr. Matt Jeneroux: Quickly, on a couple of points of clarification and going back to my line of questioning, when you calculate the staff salary piece, I'm assuming that doesn't include pensions.

A voice: No.

Mr. Matt Jeneroux: No? Okay.

I just wanted to get that—

Ms. Stefanie Beck: Whether they have pensions depends on whether they're indeterminate employees. With casuals, contractors, it would all be different.

Mr. Matt Jeneroux: Right.

There would be some sort of benefit compensation if they're not permanent employees.

Ms. Stefanie Beck: It would be hard to count that.

If you're trying to figure out what the overall cost is, they might leave before their pension comes. It would be easier to go on operating, like in-year, costs.

Mr. Matt Jeneroux: Sure, fair enough.

I have one other point to quickly clarify, if we could. You both deal with incredibly highly sensitive information, as we've learned even more so today.

With recommendation 2.6, the Information Commissioner has indicated five points “in which confirming or denying an existence of a record could reasonably be expected” when these are at play. The five points being: injure a foreign state or...any state allied or associated with Canada...with information in confidence;

injure the defence of Canada or any state allied or associated with Canada, or the detection, prevention or suppression of subversive or hostile activities;

injure law enforcement activities or the conduct of lawful investigations;

threaten the safety of individuals; or

disclose personal information, as defined in section 3 of the Privacy Act.

Those are the five instances that the Information Commissioner has suggested in recommendation 2.6.

Does that suffice? Is there something else you'd like to add to that? Are those hurdles in any way in either of your departments?

Mr. Larry Surtees: I'll take that one on. The current act does not prescribe areas underneath that. One of the circumstances we have is that to acknowledge that there's a record is an issue. It's not just the things that she was talking about. If someone's looking for information about a court martial case and they want all the information on the court martial case, but it is a matter of national security, then to acknowledge information in a certain way could in fact indicate that there's a problem just by the very fact that we say we have records. From my perspective, the act, as it's currently put in place for that, does in fact allow us to impose the appropriate level of protection that might need to be on information, merely acknowledging the existence of which could create a problem.

•(1005)

Ms. Stefanie Beck: The other thing is that we keep that at a certain level, like some of the other aspects of the act, so I see all those.

Ms. Kimberly Empey: For us similarly, I could imagine an instance in which there was an ATIP request by someone looking for information on a refugee claimant. Again, the mere fact that we say we have a file could put that person's life in danger.

The Vice-Chair (Mr. Joël Lightbound): Mr. Saini.

Mr. Raj Saini: Mr. Surtees, you raised a very intriguing point. I just wanted to get some clarity. You said that whenever there's a discussion about redaction that it escalates up until there's a resolution. Can that process itself be subject to an access to information request?

Mr. Larry Surtees: We do get access requests asking us to describe the process and to list all the emails and everything around a specific determination that was made. We do, and they are subject to it.

Mr. Raj Saini: So there would be a redaction within a redaction then?

Mr. Larry Surtees: There can be redactions on that information if there's a need. If we went to the lawyers to seek legal advice on it, there would be solicitor-client privilege, so that information would be redacted.

Mr. Raj Saini: Do you ever have a situation in which you've redacted material and the requester is not happy and a complaint is made and the Information Commissioner gets involved? Has there ever been that kind of issue that has gone to court?

Mr. Larry Surtees: There have been a number of issues that have gone to court. Specifically around our engagement in Afghanistan, there are a number of cases that deal with the detainee issue. There was an applicant who was trying to get specific information regarding who the detainees were. We contended that was not releasable information because it infringed on the privacy of the individuals and in fact potentially put them at risk. If memory serves me correctly, we were successful in that court challenge and it went forward. So in answer to your question, yes, and there are examples in the case law.

Mr. Raj Saini: As my colleague Mr. Lightbound mentioned at the outset, there is the difference between an order-making model and an ombudsman model. One of the issues the Information Commissioner had highlighted was the fact that when it goes to Federal Court, the process has to start *de novo*, meaning it has to start from the beginning, and there's a lack of efficiency with that because you're reintroducing the same material. Do you think that process should change? I'm asking because if you reintroduce the same thing, there's a time lag and then the requester is waiting for the information. I think the point he tried to make earlier was on that being one of the efficiencies or one of the benefits of using the order-making model as compared to the ombudsman model.

Mr. Larry Surtees: All I can say is that the Information Commissioner has her position with respect to that, and the department working with Treasury Board will come up with the application of whatever decision we make on that.

Mr. Raj Saini: Do you have a personal position on that?

Mr. Larry Surtees: I'm not really in a position to answer that question from a personal perspective, because I'm here as an official representing the department.

Mr. Raj Saini: Thank you.

The Vice-Chair (Mr. Joël Lightbound): I wish to thank our witnesses today, Madame Beck, Mr. Olsen, Mr. Surtees, and Madame Empey. Thank you for being here and answering our questions.

We will suspend the debate and after our witnesses have left, we will reconvene in camera.

[Proceedings continue in camera]

- _____ (Pause) _____
-

[Public proceedings resume]

- (1015)

[Translation]

The Vice-Chair (Mr. Joël Lightbound): Order, please. We are continuing the public meeting.

Have all the committee members received the motion in question?

Mr. Dusseault, go ahead.

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

I would now like to put forward the following motion:

[English]

That the Standing Committee on Access to Information, Privacy and Ethics invite the National Revenue Minister, the Honourable Diane Lebovillier, the Access to

Information and Privacy Coordinator for the Canada Revenue Agency (CRA), Marie-Claude Juneau, and the Privacy Commissioner of Canada, Daniel Therrien, to appear before the Committee to brief it and respond to questions regarding the CRA's transfer of 155 000 files of Canadians citizens to the Internal Revenue Service of the United States of America on September 30th 2015.

[Translation]

I will explain why I am moving this motion.

Thanks to an answer I received as part of a question on the Order Paper, the public learned that the Canada Revenue Agency had asked the Privacy Commissioner for an opinion on the transfer of information planned under the U.S. legislation, the Foreign Account Tax Compliance Act.

The agency asked for the Privacy Commissioner's opinion on August 27, 2015. It received the commissioner's response on January 4, 2016. In the meantime, on September 30, 2015—so before receiving the commissioner's recommendations—the Canada Revenue Agency still transferred 155,000 files to the U.S. Internal Revenue Service.

I propose to the committee that we hold a meeting on the matter to obtain more details on the privacy-related processes at the Canada Revenue Agency.

- (1020)

The Vice-Chair (Mr. Joël Lightbound): As far as I know, the transfer was done on that date because it was the deadline under the agreement with the U.S. to transfer the files. However, those are questions we could put to the minister when she appears before the committee.

Do the committee members give their consent for the moving and adoption of Mr. Blaikie's motion put forward today by Mr. Dusseault?

(Motion agreed to)

The Vice-Chair (Mr. Joël Lightbound): We have unanimous consent.

Thank you.

I now suggest that we go back in camera to discuss committee business.

Mr. Pierre-Luc Dusseault: I have no major objection to going back in camera for discussions on the number of meetings and the witnesses. I see no issue with that.

[Proceedings continue in camera]

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