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Chair: Ms. Rachael Harder



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• (1530)

[English]

The Chair (Ms. Rachael Harder (Lethbridge, CPC)): Welcome, everyone. We will get started.

Mr. Damien Kurek (Battle River—Crowfoot, CPC): Madam Chair, on a point of order, I just want to express my appreciation to the clerk for once again getting a televised room. I know they're in short supply on the Hill. I do express my appreciation to the clerk and all of those who work hard to make sure that we can be held accountable to the highest extent within our parliamentary duties.

Thank you.

The Chair: Thank you, Mr. Kurek.

Mr. Charlie Angus (Timmins—James Bay, NDP): Madam Chair, on a point of order, I wanted to bring this up because I was very uncomfortable about a tweet that you sent regarding a vote by one of the members.

I voted with the Conservatives because I believe this ethics issue deserved to be heard, but it was voted down, and it was voted down because of the right of every member to vote according to how they see the issue. I think it's vital that we have trust in the chair to be non-partisan. The chair has to have our support. I have to know that when you rule against something, you are doing it because you are the chair, not because of a particular interest.

I think this tweet was very unprecedented, and I am concerned that it was an attempt to intimidate a member of our committee. I think we need to address this. I would hope that you would be willing to address it as well.

The Chair: Mr. Angus, thank you very much. There was no tweet, for the record; however, there was a Facebook post. I will take full responsibility for that. I did in fact post something with regard to the member from the Bloc Québécois. To her, I will apologize. As chair, it was a misstep. I certainly apologize, and it has been taken down.

With that, we will go on to hear from our witness today, Ms. Maynard, who will serve as our witness for the next hour.

You have 10 minutes for opening remarks, and then we'll proceed with questions from members.

[Translation]

Ms. Caroline Maynard (Information Commissioner of Canada, Office of the Information Commissioner of Canada): Thank you, Madam Chair.

[English]

Thank you for inviting me here today.

[Translation]

I am pleased to be able to speak to you about my role and to meet some of you for the first time.

I have been the Information Commissioner of Canada since March 2018. With two years under my belt, I feel that I am in a good position to provide some perspective on my mandate, and offer you some insight as to what's on the horizon.

I expect your analysts have already provided you with an overview of the mandates of the officers of Parliament relevant to your committee, so I'll speak briefly on my mandate and my office, followed by my priorities. I will then touch on some of the changes that have been front and centre at the Office of the Information Commissioner, or OIC, as well as some of the challenges we face as an organization.

[English]

At the outset, let me emphasize an important point and a frequent source of confusion. The overall administration of the Access to Information Act and the policy instruments and tools that support its administration all fall under the authority of the Treasury Board Secretariat. This means that the TBS oversees the handling of access to information requests within the federal institutions.

My role is to investigate complaints relating to these requests, normally because the institution is late in responding or because requesters are not satisfied that they have received all of the information they are entitled to.

While my office receives thousands of these complaints a year, I also have the power to initiate a complaint myself. In addition, I can initiate and intervene in court proceedings when necessary. My office has done this a couple of times.

As an agent of Parliament, I report annually on my activities, and I can also issue special reports to Parliament in respect of important issues that fall within my powers and functions.

• (1535)

[*Translation*]

The commission has approximately 120 employees, with about 70% of them working in investigation and governance. I am supported by three deputy commissioners, responsible for the following sections: investigation and governance; corporate services, strategic planning and transformation services; and legal services and public affairs.

My goal is to maximize compliance with the act using the full range of tools and powers at my disposal.

[*English*]

The role of the office is of critical importance, because Canada's freedom of information legislation gives Canadians the right to access information about their government—the activities it undertakes, the decisions it makes and the money it spends. The Supreme Court of Canada has called this right of access a quasi-constitutional right.

You won't be surprised to hear that Canadians are submitting more and more requests because they want to know how decisions in government are made and how the government is using public funds. This knowledge promotes trust in our institutions and their leaders. I can attest that the thirst for this knowledge will not be going away.

I will now speak briefly about the four priorities that have been the focus of my first two years of my mandate. They form the basis of my soon-to-be-launched strategic plan, which will carry me through the rest of my seven-year term.

My first priority is to optimize openness and transparency within my own organization. One of the ways we've done this is by publishing guidance regarding our investigations so that complainants can understand how and why we are reaching certain conclusions. We now have a searchable database of decisions as well. Both the database and the guidance documents are available on our website.

[*Translation*]

Another priority for me has been to foster collaboration with stakeholders. With complainants specifically, I have worked diligently on ensuring timely communications, which has led to a better understanding of their needs and what they are seeking, and ensuring better follow-up on their files. We have made some progress, but we have a long way to go.

[*English*]

I also meet regularly with the federal access community. These are the public servants who process requests within federal institutions subject to the act. I consult with them and encourage them to flag issues and present new ideas for innovation. In addition, I meet regularly with the heads of institutions and their senior management teams. I let them know what is working and what is not working in their approaches to managing access requests.

My third priority has been to implement recent changes to the Access to Information Act. The act came into force in 1983. Amendments passed by Parliament last June included important modifications. These amendments gave me additional tools. For ex-

ample, I now have order-making powers. This means that I can order an institution to take specific actions, including disclosing more records, when I find that the complaint is well-founded. I can publish these orders and my recommendations in all of my final reports on my website. In fact, the first final report was published just last week.

Institutions can also now seek my permission to decline to respond to a request that is vexatious, made in bad faith, or otherwise an abuse of the right of access. As the bar for approving this type of application is high, I have granted it only once to date.

Last, but certainly not least, it has been my priority to tackle my office's inventory of active complaints. The inventory has proven to be quite a challenge. Even though we are closing more files and reducing the inventory of old complaints, there has been a marked increase in new complaints. By this time last year, we had received about 2,200 complaints. This year so far, we have received 5,900 new complaints. Importantly, while we have closed more than double the number of files this year, our inventory keeps increasing rapidly.

This leads me to another significant challenge facing the OIC: our funding. We are grateful for the \$1.7 million that we received when the amendments to the act came into force last June. However, every year, for the last four years, the former commissioner and I have had to ask for more funding to deal with an ever-increasing workload for our investigators.

While temporary funding has been helpful, it has also resulted in staffing challenges for my office, as we are not able to offer permanent jobs. We find that we invest resources into training new recruits and hiring consultants, only to lose them to offers of more permanent positions elsewhere. It makes planning difficult and sustaining any momentum impossible.

ATIP units within federal institutions are also faced with their own resource challenges. Staff turnover in this field is high. They need additional resources. It is a very difficult sector to work in. They need the additional resources to deal with the ever-increasing number of requests and to be able to respond to the demand from my own office.

I stress that additional resources are required across the system, if Canadians are to be well served by their access to information regime. If the government is serious about its commitment to transparency, as highlighted in ministerial mandate letters, the access to information system, which plays a key role in ensuring government transparency, must be supported and prioritized.

• (1540)

[*Translation*]

I want to assure you, however, that the employees at my office are dedicated and are doing amazing things despite limited resources and an ever-expanding workload. They believe in the work they do and I feel very supported.

This concludes my opening remarks.

I would like to leave you with the message that my door is always open to you and your staff. I will be pleased to appear before you whenever I am called. I am very open to meet and engage with you in individual or group discussions.

Access to information is a critical component of government openness, transparency and accountability. It promotes trust between our institutions and our citizens.

Thank you.

I will now answer any questions you may have.

[*English*]

The Chair: Thank you, Ms. Maynard.

We will proceed to our first question from Mr. Barrett. You have six minutes.

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): Thanks very much, Madam Chair.

Ms. Maynard, it's a pleasure to meet you. I didn't shake your hand before the meeting, because we're not doing that these days, but an air high-five or an elbow bump.

There are a couple of things from your opening comments that I'd like to discuss with you. One is the tool that you have for order-making powers. In your words, that was to be able to give an order to an institution to take specific actions including disclosing more records if you find a complaint to be well founded.

An individual who has testified at this committee in the past, Mr. Vincent Gogolek, who is the former executive director of B.C. Freedom of Information and Privacy Association, said, "If someone in government wants a record to disappear, all they have to do is call it a Cabinet confidence."

I expect that you'll see where my question is going.

He goes on to say:

There's no reason to keep this black hole in the Act... Many provincial governments have allowed their Information commissioners to examine these records for years without any problem—there isn't any reason the federal government couldn't do the same.

We've seen from other commissioners, other officers of Parliament, that this has been a hindrance to their work when they've been investigating a well-founded complaint. Broadly on the subject of cabinet confidences in respect to how you're able to do your work or not do your work, I'm wondering if you can give me some context. Has that been a barrier to you?

Ms. Caroline Maynard: In my work, we see this happening in response to requests for information when the package that is received has documents that are blacked out because they're exempted under cabinet confidence. Cabinet confidences currently under the act are excluded and not subject to the act.

In our investigations we request that departments provide certain information to confirm or to make sure that those documents are cabinet confidences.

I will agree with you. Canada is one of three levels of government where we are not allowed, as commissioners, to see the documents confirming cabinet confidence. In any other country, com-

missioners are allowed to see documents that confirm cabinet confidence.

In some of our investigations in the past, we were able to conclude that the cabinet confidence stamp was put on documents that were not such confidences, and should have been released.

It's not easy to make that determination when you don't see the document, and so I would recommend at the next review of the act that this be amended so that we can at least be able to see those documents.

• (1545)

Mr. Michael Barrett: Thank you for that.

What recourse do you have when you have made a determination that the cabinet confidence seal has been misapplied?

Ms. Caroline Maynard: If we have come to that conclusion, we talk to the institutions and explain why we arrived at that conclusion. In the past, we were only able to make recommendations to the institutions. Now I can order an institution to disclose a document.

If I were to disagree with the institution, it could result in a final report to the minister explaining why the document is not a cabinet confidence, but it's really difficult under the current act because we don't see the documents. We have to rely on the indexes that are provided by the institution that created the cabinet confidence document, and it's often very difficult to conclude that it's not.

Mr. Michael Barrett: Have you published the metrics or statistics on when you came to that determination that the seal of cabinet confidence had been misapplied to a document during your two-year tenure?

Ms. Caroline Maynard: I would say that it's probably only happened once.

Mr. Michael Barrett: You've noted that your funding is obviously essential to doing your job, and you do a lot with a small but determined team. This work is important for Canadians. I certainly appreciate your work and, as I'm sure we all agree, it's very valuable.

How are your resources concentrated to ensure that the most number of Canadians receive the best quality of information?

Ms. Caroline Maynard: Currently, in a budget of \$13 million a year, \$11 million is spent on salaries and 70% of that is all on investigation. Less than 20% of our expenses are spent on internal services, such as corporate services, HR, finance. We also have a small amount on legal services and communication outreach. The majority of our spending is on hiring investigators. We currently have, I think, 69 investigators full-time.

Mr. Michael Barrett: What percentage or proportion of your investigations are self-initiated versus complaint driven?

Ms. Caroline Maynard: Right now, I have two self-initiated complaints that I have done myself. They are systemic investigations. That's when we see an issue as seeming to be broader than one file because we see it in more than one file. In that case, I initiated a systemic investigation. I know that the former commissioner initiated a few. I don't know how many, but it was not many.

Mr. Michael Barrett: Okay.

Ms. Caroline Maynard: It's usually because there's an issue that is of public interest or that will have an impact not just on the institutions but on the system overall.

The Chair: Ms. Brière.

[*Translation*]

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Good afternoon.

Thank you, Commissioner, for your presentation.

One of the recommendations in the report prepared by the committee in the previous Parliament was to limit the amount of data and to clarify the consent rules for the exchange of personal information between government departments and agencies.

Have you begun to follow this recommendation in your work?

Ms. Caroline Maynard: I am not sure I understand what you are speaking about. It was probably a recommendation pertaining to the Privacy Commissioner.

My work involves access to information requests. You will be meeting my colleague Mr. Therrien, the Privacy Commissioner, this week or next. His job is to ensure that the privacy of employees and Canadians is not violated. He also makes sure that anyone who requests access to their own information can obtain it.

I have, however, in the course of my investigations, seen redacted personal information. We do work rather closely with Mr. Therrien, but I have not heard about the matter you mentioned. Mr. Therrien will probably be able to answer your question.

• (1550)

Mrs. Élisabeth Brière: All right.

I have a similar question. How can people be confident that their information is not used for purposes other than those for which they gave their consent?

Ms. Caroline Maynard: Mr. Therrien will be able to tell you. He probably encounters that frequently in the course of his investigations.

There is one thing I get frustrated about. As an example, let's say there is an access to information request from the person who submitted that very information, perhaps someone who has applied for refugee status.

He will be asked to supply personal information about his wife and family. However, when he submits an access to information request, all he will receive is the information pertaining to him. The institution is required to redact even personal information about his wife and family, which generates additional work.

I made a recommendation about this to the Department of Justice because it is currently studying amendments to the Privacy Act. In

such situations, when the requester is the person who supplied the information, it should be provided without requiring our institutions to do additional work. They have enough access to information work, and there is no reason why we should add to their workload.

Mrs. Élisabeth Brière: Okay.

What are the Office of the Information Commissioner's priorities for the coming year?

Ms. Caroline Maynard: The top priorities are definitely to reduce the backlog of complaints and to work with the complainants and the institutions to find solutions other than access to information. By this, I mean proactive disclosure.

When I meet heads of institutions, I often ask whether they have a list of frequently requested access to information items and whether they take this into consideration in their publications. In some countries, when a document has been requested three times, it is automatically published on the institution's website.

We have no such principle in Canada. I try to encourage the institutions to do this on their own. There is no need for a mandatory list. Those institutions that know which requests they receive frequently should disclose them proactively on their own.

This would significantly reduce the workload for our very small access to information units. The number of access to information requests is incredible, and growing every year.

Mrs. Élisabeth Brière: In your presentation, you underscored the importance of reducing the backlog of complaints. I would imagine that this is a major challenge, for example, in terms of the number of employees and the available funds.

Ms. Caroline Maynard: Indeed, we are trying to obtain additional funds so that we can hire more people.

Moreover, the problem is really government-wide. Even if I had 45 new investigators, I would not be able to get answers concerning my investigations from the institutions, because they do not have the required resources either. Within the institutions, the same team handles access requests, provides answers to my complaints, and often handles proactive disclosure on behalf of the institution. Employees have priorities. I am often at the bottom of the list because the access request is a priority.

These people also have to handle requests from other institutions. Consultations between institutions are horrible, and that is often why there are more delays. Once again, it's the same small team that has to manage all of that. It is essential to invest in the system, in information management, and in solutions other than just improvements to access to information.

Mrs. Élisabeth Brière: I would imagine that this must be done in a secure manner.

Ms. Caroline Maynard: Yes, that's right, to prevent any invasion of privacy, as we mentioned earlier.

Mrs. Élisabeth Brière: There is therefore data sharing between the various government authorities.

Ms. Caroline Maynard: This sharing occurs when a record is to be disclosed to the person who requested it.

Let us assume that the record comes from two institutions involved in the same case, such as National Defence and Foreign Affairs. They will speak to one another to make sure that they are in agreement about providing the information requested. That is the level at which the exchange takes place. Such consultations are rarely about personal information, but rather matters like national security, legal opinions or justice issues that are to be turned over to an institution. The two will speak to one another to make sure that they agree on what can be disclosed and what cannot.

• (1555)

Mrs. Élisabeth Brière: Thank you, Ms. Maynard.

[*English*]

The Chair: Ms. Gaudreau, you have six minutes.

[*Translation*]

Ms. Marie-Hélène Gaudreau (Laurentides—Labelle, BQ): Thank you, Madam Chair.

I would like to thank you for your presentation, Ms. Maynard.

It was helpful, but I would like to know more. I was interested in one of the details in an example you mentioned.

In terms of the process when an access to information request is received—let's say from a journalist—how long would it take? How does it all work in practice, given that there are staffing issues and a growing number of complaints?

I'd like to hear what you have to say about this.

Ms. Caroline Maynard: The Treasury Board is responsible for administering access to information, but the act states that an access application requires a response within 30 days.

If the requester does not receive a response within 30 days, a complaint can be submitted to my office. Institutions may request an extension. This often happens when the number of pages exceeds 500 or 1,000. Often, 30 days is not enough time for revision, because other institutions may be in possession of records that deal with several people. They can therefore ask for an extension. If the person making the access request is not satisfied with the record received, with the request for an extension or with the response time, that person can file a complaint with our office.

The process can differ depending on the institution. Some institutions are very well equipped, but others still rely on paper records. When a request is received, the person receiving it has to go and see someone else in their office because this particular file is that person's responsibility, and ask for the relevant emails and paper records. After obtaining the paper records, the access to information employee needs to scan them or, as often happens, write them out by hand. This adds time to the handling of the request. We are trying to encourage institutions to purchase software that can speed up the technological process of exchanging emails and to find a more efficient way of managing emails.

Let's take the example of a Canadian who wants to know how a particular decision was made with respect to a government policy,

and the reply consists of 10 million pages, 5 million of which are emails and exchanges among managers because people often work via email. Five people who receive the same email will supply the very same email in response to a request for access. There is an enormous amount of document duplication, and the need for investment and employee training when it comes to information management is huge. This would greatly reduce costs and delays for the poor employees who have to work on these 10 million pages.

Then, for the investigation, we do the same thing, because it has to be looked at one page at a time. After that, we speak to the people at the institution. It creates an enormous amount of work.

Ms. Marie-Hélène Gaudreau: Based on what I have heard, then, because of the increased number of complaints in recent years and the 30-day time limit, the current problem is staffing. You spoke earlier about turnover.

Ms. Caroline Maynard: Yes.

Ms. Marie-Hélène Gaudreau: Is there a connection?

Ms. Caroline Maynard: Treasury Board statistics indicate that over the past six years, access to information requests have increased by 225%. Last year, the government received approximately 120,000. One institution has already received 120,000 since the start of the year, which will mean a doubling in demand. Access requests have increased by 225%. Complaints to us are also continuing to increase. Yes, there is a correlation. However, resources have not kept pace. There is therefore a need throughout the entire system.

• (1600)

Ms. Marie-Hélène Gaudreau: Right.

Have I used up all my time?

[*English*]

The Chair: You still have two more minutes.

[*Translation*]

Ms. Marie-Hélène Gaudreau: Very good.

Commissioner, if you had only one extremely important recommendation to make, what would it be?

You mentioned funding and staffing, but in view of the bills passed in recent years, including the latest, Bill C-58, what would be your main recommendation?

Ms. Caroline Maynard: The act provides for a new stage of legislative review next year. My team is currently examining every provision of the act. We would like to make sure that the recommendations we make will be based on the complaints we have received, our investigations and our observations on what works and what does not.

Consultations between institutions are a major problem, because there is no specified time limit. There is a 30-day period to respond to an access to information request. However, if you consult another institution because you believe that it is essential to do so, because it is a matter of national security or important information, that institution is not required to do so within a specified time period. There are instances in which the institution consulted took six months or a year to respond. However, it is the institution receiving the request that is required to comply with the act.

We are going to look into what is done elsewhere. The fact is that we are not the only ones to have federal access to information legislation. Nonetheless, I think that it will be important to set a time limit for the individuals or institutions required to respond to a consultation request. The absence of a limit is definitely a problem. It leads to a failure to meet deadlines.

Ms. Marie-Hélène Gaudreau: Thank you very much. That was very helpful.

[*English*]

The Chair: Thank you.

Mr. Angus, you have six minutes.

Mr. Charlie Angus: Thank you for being here. Your role is vital to our democracy. My former colleague Pat Martin used to say that access to information was the oxygen and lifeblood of the democratic process. With every government that comes in, including this latest one, its first promise is open government. Then the first thing they do, when they realize that open government means that people can ask questions about bad decisions, is to start to try to find all manner of ways not to have open government.

There are a number of tricks. Cabinet confidence, I think, is section 23. No, that's solicitor-client confidence; that's the second one. There's solicitor-client confidence, cabinet confidence, and then the great black hole of ministerial offices. That used to drive the former commissioner, Madame Legault, crazy, how it could be that anything that goes on in a minister's office had to be protected from the public finding out. That's where all the decisions are made.

Under Bill C-58, did any of that change?

Ms. Caroline Maynard: Under Bill C-58, there's a part 2 now, about proactive disclosure. What they've done is codified, basically, the policy that existed before on proactive disclosure. It is also applied to a number of new institutions, including the ministers' offices, the Senate, judges—

Mr. Charlie Angus: The Senate, yes.

Ms. Caroline Maynard: Proactive disclosure is one way to open up, and it was something that was added. But there's a difference between my role under part 1 to investigate access requests and part 2, proactive disclosure, which is outside my mandate.

One thing was added, and I thought I was going to be happy with this, but they added the names of the staffers of ministers' offices and their titles. That's no longer considered private or personal information. The problem is that they're not considered as public servants. All you can receive is the name of the staff and their title, but if there's other information related to that person, they're not considered a pure public servant. The information about public ser-

vants under the Privacy Act—their name, title, opinion and anything related to work and what's related to the business—is not considered personal information.

They've made a difference between the two.

Mr. Charlie Angus: There's a difference between proactive disclosure and the right to access documents. I would refer my colleagues back to 2011, when Tony Clement managed to get \$50 million in border security money diverted to Muskoka to spend on gazebos and sunken boats. All of that was under ministerial privilege. We couldn't find out how he spent a dime until we went to the municipalities. Thanks to their access to information act, we found they had homemade applications for spending money. That's how that got out, but if it was under the minister's office, we knew nothing.

Is making sure that we have access or at least giving you the right to decide.... I think that's the fundamental question. I can't say if it's cabinet confidence. You can. It seems to me that it's interfering with your work if you don't have the right to decide whether those documents do fall under that or they're just being needlessly protected.

• (1605)

Ms. Caroline Maynard: I agree. I think it should be like solicitor-client privilege, which is one of the most protected privileges, but I'm still entitled to see the document. I can tell you that Canadians trust somebody who is not in the institution. If we have a document in front of us and we tell the person, yes, what you've received is blacked out, that it's redacted because it's a legal opinion, or it's protected by section 23, like you say, it reassures Canadians.

I think the same thing would happen with cabinet confidence. If we were able to confirm, to see it and not release.... We don't release documents. We ourselves would never disclose a document. We talk to the institutions and ask them to release it, or we make an order, and if they don't agree with my order or my recommendation, they can go to court. There's nothing disclosed until a final decision is made.

Mr. Charlie Angus: Let's talk about that, because in 2014 I asked the government, which was then a Conservative government, for notes regarding the political decision to withhold the 10,000 pages of police evidence of the crimes that were committed against children at St. Anne's residential school. I was not looking for those police documents; I don't have a right to them. I was asking for the emails—for the political decision that went into that act—which should have been covered. It was delayed and delayed, and then the Liberals came in and just said, "No, we're not going to let you see them at all."

Your predecessor took them on. We spent many years on it. In fact, she threatened to take them to court. They agreed, finally, to give me the documents in three batches. I'll bring them in, if you people want to see them. There were three batches of blacked out documents of every email saying "Hey, Mary, how's it going?"—blacked out—or "Hey, Bob!"—blacked out.

It strikes me that the justice department just waits out.... I mean, we fought this battle over seven years. They were threatened with going to Federal Court and they still blacked out the documents to protect the minister. With your order-making powers, could you have changed that decision? Or do they have that power to defy and not turn over documents that should be within the public realm?

The Chair: You have 20 seconds.

Ms. Caroline Maynard: I can order the production of documents, except for the cabinet confidences, but I can also.... Yes, if I make an order that the disclosure should be done or that exemption should not be applied, the onus is on the institution to go to court, not on me to fight the decision.

Mr. Charlie Angus: Thank you.

The Chair: Continuing with the five-minute rounds, we're going to Mr. Gourde.

[*Translation*]

Mr. Jacques Gourde (Lévis—Lotbinière, CPC): Thank you, Madam Chair.

I would like to thank the commissioner for being here today.

You touched upon a subject earlier that surprised me. You mentioned best practices used in other countries, but not here. If we were to compare ourselves to other countries, we might not look so bad. In any event, are there countries whose notable access to information practices deserve our attention?

Ms. Caroline Maynard: Yes. We have had our act for 36 years now. Canada was the 12th country in the world to enact access to information legislation, making it one of the first countries, one of the leaders. Today, 120 countries have access to information legislation. Of course, the most recent statutes provide more powers and fewer exemptions.

The act itself can certainly be amended and improved, but its application also needs to be reviewed. Some countries have very liberal statutes, but their institutions or governments fail to enforce them to the extent we do. Here, the government appears to have a good understanding of exemptions and exclusions.

When we recommend legislative amendments, we look at what other governments do. In Canada, the provinces have their own information commissioners and their own statutes. They often have practices that could be adopted. We have also looked at what Australia is doing, which is to publish any records for which three access requests have been received. I believe another country also does this.

One constraint in Canada that does not exist in other countries has to do with our official languages. The institutions tell me that they would like to provide more information, but that the need to provide it in both languages requires resources and additional costs.

We are trying to find solutions to this in order to see whether there might be another way of giving access, for example by publishing records or preparing summaries. Canadians are clearly entitled to receive information in both languages. When they submit an access request, though, what they will receive is the record in the language in which it was written. This means that there are constraints as a result of the fact that we are a bilingual country.

• (1610)

Mr. Jacques Gourde: You said that there was a major increase in the number of complaints. Do you know why this is the case? This is really recent. A 225% increase is enormous. It seems to me that an annual 10% to 20% increase would already be significant.

Ms. Caroline Maynard: One of the theories is that the increase has come about because I now have the authority to issue orders. I believe that Canadians are increasingly impatient or fed up with waiting. Some of the complaints submitted to us come from people who have been waiting for information for several months or even several years. They know that I can now order the institution to deal with the record or the file, particularly for complaints about how long the process is taking.

On the other hand, there has not been much of an increase in complaints about exemptions. By this, I mean denials or requests people are complaining about because they have not received all of the information to which they are entitled. The figures are fairly similar.

This year, we received 4,000 complaints about one particular institution, all of which had to do with processing delays. This institution received 120,000 access to information requests, so inevitably there are going to be complaints. The number of access requests has increased to such an extent that it is impossible for the institution to respond to them within the 30-day time limit. It's a problem.

Mr. Jacques Gourde: Would an access to information request have to be made to find out the name of the institution that is receiving so many complaints? If Canadians' rights are being violated, then, there is truly a problem at that institution.

Ms. Caroline Maynard: When I see something like that and it becomes clear that the problem is more widespread, I have the authority to launch an investigation. In the case mentioned, I launched a system-wide investigation of Immigration, Refugees and Citizenship Canada. The department receives a huge number of requests and works very hard to respond to them. By the time we receive the complaint, there has often already been a response to the request. We would like to know why it is receiving so many requests and what they are about. We would like to know what the challenges are, and how we could help them and ourselves, because the commissioner's office cannot handle 5,000 more requests per year.

Mr. Jacques Gourde: I might have a small piece of advice. As we are receiving many—

[*English*]

The Chair: I'm sorry, Mr. Gourde. Your time is up.

[*Translation*]

Mr. Jacques Gourde: Okay. I will come back to it later.

[*English*]

The Chair: We'll move to Ms. Shanahan, for five minutes.

[*Translation*]

Mrs. Brenda Shanahan (Châteauguay—Lacolle, Lib.): Thank you very much, Commissioner.

Like my colleague Mr. Gourde, I am trying to understand the scope of your work.

I believe that everyone has received the document concerning the backlog. That is very helpful. We like the tables. However, can you explain to me why it only goes back to 2018?

The numbers clearly show that there will be a backlog every year, unless it is eliminated, but, then, there will always be a backlog for the various reasons that you mentioned.

You said that there were approximately 2,000 complaints for 120,000 access to information requests to date. That amounts to between 1% and 2%, does it not?

• (1615)

Ms. Caroline Maynard: The number of requests was 4,000, Ms. Shanahan.

Mrs. Brenda Shanahan: Okay.

I expect that you're going to go into more detail about the table, but I am trying to understand. Is it 1% or 2% of the total number of requests for which a complaint was made?

Ms. Caroline Maynard: A complaint was made for fewer than 3% of access to information requests. That is not a very large number. The table that I provided is designed to demonstrate that, when I was appointed commissioner in 2018, there was a backlog of 3,489 cases. I was just taking up the job and there were already 3,400 complaints and investigations pending.

On April 1, 2019, after a year of work, we had lowered this figure to 3,300, but the grey shaded area in the table shows what remained from my initial backlog, whereas the pink section represents new complaints. Then, in 2020, we further reduced the number of older cases. We are continuing to work on the cases from the previous year, but, then, we received 5,900 new complaints this year and we still have 2,400 to deal with.

I checked this morning and found that we had processed 5,200 complaints this year. That is unheard of. Last year, we processed 2,600 and the year before that we handled 2,400. We generally deal with most of our complaints informally, but we will never be able to manage the demand with the resources we currently have.

Mrs. Brenda Shanahan: That's interesting.

When you speak about resolving complaints, there are really only three options, are there not? The complaint must either be unfounded, founded and dealt with regularly, or founded but much more difficult to—

Ms. Caroline Maynard: In which case, I set the official process in motion.

Mrs. Brenda Shanahan: Yes.

Ms. Caroline Maynard: Currently, we no longer wait. We receive solid collaboration from the institutions, who now understand the challenges we face. We speak to one another and try to resolve the complaints in a friendly and informal manner. We speak to the complainant. Sometimes we agree to disagree, and that's all right. That is my work. If an act says something and I come to the conclusion that it was not complied with, I make a recommendation or issue an order, and then we decide whether to take it further and go to court.

Unfortunately, last year, with the amendments made to the act, we were allowed to publish our investigation reports for the first time. There are 35 years of precedents and complaints that were investigated and settled. No information had ever been published, except in the annual reports. This caused me a great deal of frustration, particularly when I was getting ready to apply for the position. I was looking for information about the institution and could find nothing about the number of decisions and all the investigations. The first thing I decided was that we would begin to prepare summaries and provide case summaries so that people could at least know that we were being consistent.

When I issue a decision concerning National Defence and cite a specific section, I interpret it in exactly the same way as I would for any other institution. We have begun to publish our guidelines, including guidelines on our interpretation of the act, and we are beginning to gradually finalize our investigations. We've been able to publish these only since June, so the more investigations we can complete—

[English]

The Chair: Ms. Maynard, I'm sorry but I have to call time on that.

Ms. Caroline Maynard: Okay.

The Chair: Mr. Kurek, you have five minutes.

Mr. Damien Kurek: Thank you very much, Madam Chair.

Thank you, Commissioner for coming in and sharing about your office and the important work that you do.

Help me a little here. I've made ATIP requests before, and I've been involved with receiving them. I've always found the process to be quite good, but I've always wondered about those documents. Whether it's a word that was spelled wrong or some document being missed, what procedures and protocols do you have in place to ensure that those documents that might be vital to an access request don't fall through the cracks?

• (1620)

Ms. Caroline Maynard: We call those investigations of no record. You will receive a document and you know something is missing. Often the applicants will say that there should be something more. We will ask the institutions, "What search was done? What are the words that were searched? Where was it done? Who did them? Who was tasked with finding those records?"

Sometimes we find it's either an analyst who was a junior analyst, who didn't ask the right person. We often find them. When we don't find them and there should be something... I think the former commissioner issued a report at one point when a crucial decision was made by a federal institution, and there was no record, just the decision. Clearly, there was a lack of recording.

We currently have a policy on business records. You're supposed to keep records of your decisions and of how you make them, but doing that is not legislated. It's really difficult to manage that. I think it's something that should be imposed on institutions, the way we do for financial expenditures. We have to have evidence showing that we searched for the best, most reasonable travel arrangements, let's say, and then we have controls in place to make sure the authorities are signing that. It should be the same thing for very important business decisions. There should be mandatory recording of those.

Mr. Damien Kurek: Thank you. That's always been a question, and because I have the commissioner in front of me, I appreciate the opportunity to ask it.

We live in a world where not that many years ago the primary forms of communications were letters and phone calls, and then letters and emails, and now there are text messages, WhatsApp, and other secure messaging services. I know there are a tremendous variety of ways in which people communicate with each other. There's an understanding within professional workplaces that there are reasonable ways to communicate back and forth.

What steps have your office and investigators taken, and what tools do they have to make sure that text messages and WhatsApp messages are covered in this? Sometimes the gap can be very much due to the fact that it went from an email chain to a text message chain, and then went back to email, perhaps after a decision was made over a text message.

Ms. Caroline Maynard: It's difficult. The former commissioner issued a report on this as well, and I agree with her. Those apps should not be used for government business. We emphasize that when we meet with public servants, with their leaders, and with deputy ministers, but it's really difficult to know when it is used or not. Often it's by mistake that we find out.

If we see evidence that there was something other than emails—and personal emails are another one—we will push and get that information. Again, I have all kinds of tools. I'll order the production of tapes. I can order the production of documents. I can ask that they research these texts and these other apps, but it's one of those things, and either we're lucky or we're not. We hope that the government is implementing its policy of not using these apps for business records.

Mr. Damien Kurek: I think this will increasingly become an issue. For example, each of us around this table has a Facebook page. My Facebook page is owned by me but it's used for parliamentary purposes. There's an ambiguity even in the ownership of that information and its different uses.

I appreciate that. I'm sure there'll be lots more work done in that regard.

The Chair: Mr Kurek, I'm sorry, but that's your time.

Mr. Fergus will be our last member asking questions, for five minutes.

[Translation]

Mr. Greg Fergus (Hull—Aylmer, Lib.): Ms. Maynard, I would like to begin by thanking you for your presentation and your work as the Information Commissioner.

My questions are related to those of Mr. Gourde and Ms. Shanahan about the incredible increase in the number of complaints received this year. Can you tell us something about the nature of these complaints? Can you put them into categories?

• (1625)

Ms. Caroline Maynard: Yes. As I was saying just now, most of our complaints are about administrative delays. The complainants find that the extensions being requested are too long or that the institutions have exceeded the 30-day time limit without providing an explanation or sending a letter. People complain to us so that we can look into why there was no response to the access request within the time limit specified in the act, which is to say, 30 days following the request.

This year, we received approximately 4,900 administrative complaints of this kind. The others pertain to the use of exemptions. These are investigations into refusals, where access to the information was refused on the basis of various provisions of the act. For these, we investigate whether the provision of the act was applied correctly and whether additional information should have been disclosed. There are usually fewer of these, but it is generally more difficult to investigate them.

As for administrative complaints, we often try to come to an agreement with the institution about when it will be ready to disclose the information.

Mr. Greg Fergus: That raises a question.

Are the institutions required to inform you when they request an extension of the deadline prescribed by the act?

Ms. Caroline Maynard: Yes.

We ask them why they exceeded the prescribed time period. They will often cite the number of pages at issue and the number of consultations required of them. Sometimes, it is a complex subject such as national security and archives. These are the kinds of reasons that lead to a failure to meet the deadline.

Mr. Greg Fergus: Are you and your colleagues more or less satisfied with the cogency of these extension requests? Would you say that a half or a third are justified?

Ms. Caroline Maynard: It's hard to say.

Immigration, Refugees and Citizenship Canada, for example, will disclose the information within a certain time period. It might be 15 or 20 days late, but the institution receives an incredible number of requests. Nevertheless, it has a very large team and the requests are often minor. They are not requests for access to 1,000 pages. In other institutions, however, the response to each request involves more than 1,000 pages, so it is really difficult to say.

As I was saying earlier, when we find that a problem is systemic, we begin by contacting the deputy minister. At these meetings, I have come to realize that often, the deputy ministers do not even know that there is an access to information problem. Some deputy ministers ask for information and statistics at each of their management meetings, and genuinely want to be informed. Others wait until the problem is brought to their attention.

I prefer not to wait and I go to see them. At each meeting, I point out problems with their institution, the things we have noticed in our investigation work and improvements that they could make. Delays are often the result of a shortage of resources or poor information management. Issues like these occur frequently.

Mr. Greg Fergus: When the departments respond much later than the specified time frame, they surely must inform you in advance.

Ms. Caroline Maynard: They must ask for an extension within 30 days. They have 30 days to assess the request and the number of files. After that, they advise us if they cannot comply within the 30-day period and request an extension of 30 or 60 days. I recently received an application for a four-year extension for a request in-

volving 75 million pages. It is up to us to determine whether these extensions are reasonable.

Mr. Greg Fergus: There was a request for 75 million pages? Does that meet your definition of a request...

• (1630)

Ms. Caroline Maynard: I have not yet completed my investigation.

[*English*]

The Chair: Mr. Fergus, that's your time.

I want to thank you very much, Ms. Maynard, for coming today and being so obliging in your opening statement, and then, of course, for taking questions from members around the table. We certainly appreciate your participation here today, so thank you.

Ms. Caroline Maynard: Thank you very much.

The Chair: With that, for the next round, we'll suspend to go in camera, so I ask that we take the next two minutes to clear the room as quickly as possible.

[*Proceedings continue in camera*]

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