Information Commissioner of Canada

Commissaire à l'information du Canada

ANNUAL REPORT

2016 | 2017

Respect

Excellence

Integrity Intégrité

Leadership

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June 2017

Senator George J. Furey
Speaker of the Senate
Ottawa ON K1A 0A4

Dear Mr. Speaker:

I have the honour to submit to Parliament, pursuant to section 38 of the *Access to Information Act*, the annual report of the Information Commissioner of Canada, covering the period from April 1, 2016, to March 31, 2017.

Yours sincerely,

Suzanne Legault
Information Commissioner of Canada

June 2017

The Honourable Geoff Regan, M.P.
Speaker of the House of Commons
Ottawa ON K1A 0A6

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MESSAGE FROM THE COMMISSIONER

As I reflect on the year that has passed, I can't help but recall the positivity I felt at the close of 2015–2016.

The Liberal government was elected on a platform of transparency and accountability, and repeatedly promised to significantly reform the *Access to Information Act*.

Spring 2016 saw the removal of all fees related to access apart from the five-dollar application fee, as well as a pledge to release government information in user-friendly formats. In addition, Budget 2016 included funding for transparency initiatives, and the government obtained a state-level seat on the Steering Committee for the Open Government Partnership.

The Office of the Information Commissioner had a successful year in 2016–2017 thanks to the addition of temporary funding. The OIC was able to hire additional investigators and resolve a record number of complaints. We hosted the Transparency for the 21st Century Conference, in partnership with the Department of Justice Canada, the Treasury Board of Canada Secretariat, Library and Archives Canada and the Canadian Commission for UNESCO, and developed the program in collaboration with others. This conference was designed to bring together the many stakeholders that work towards government transparency.

However, despite these constructive advancements and the hopeful tone I felt even into the beginning of 2016–2017, the year is ending with a shadow of disinterest on behalf of the government.

In March 2017, the government announced its plans to delay the first phase of the Act's reform, citing the need to "get it right". Our investigations reveal, once again, that the Act is being used as a shield against transparency and is failing to meet its policy objective to foster accountability and trust in our government.

Budget 2017 contained no funding for transparency measures and, sadly, there is no direction from the head of the public service regarding transparency, likely meaning there will be minimal impact on the culture of secrecy within the public service. To top it off, institutional performance in relation to compliance with the Act is showing signs of decline, while Canadians' demand for information increases.

Comprehensive reform of the Act is essential and long overdue, especially in the face of

the expanding information realities of the 21st century. A lot of work needs to be done before this government can meet its transparency promises.

2017–2018 is shaping up to be a year of change and challenge. In April 2017, I announced I would not seek reappointment as Information Commissioner when my term expires, and was appointed for an interim period of six months beginning on June 29, 2017. Hence, it is not yet time for me to offer a retrospective on the last eight years or give homage to the many extraordinary people who work tirelessly to advance transparency in Canada.

In the coming months, I will continue to work with dedication and passion as the OIC prepares for this transition.

I know I can count on the support of the OIC during this upcoming year. As always, their support and loyalty are unparalleled and their dedication to Canadians exemplary.

1 WHO WE ARE AND WHAT WE DO

The Information Commissioner is an Agent of Parliament appointed under the *Access to Information Act*.

The Commissioner protects and promotes access to information rights.

The Commissioner is the first level of independent review of government decisions relating to requests for access to public sector information. The Act requires the Commissioner to investigate all the complaints she receives. She is supported in her work by the Office of the Information Commissioner (OIC).

The OIC also supports the Commissioner in her advisory role to Parliament and parliamentary committees on all matters pertaining to access to information. The OIC actively makes the case for greater freedom of information in Canada through targeted initiatives such as Right to Know Week and ongoing dialogue with Canadians, Parliament and institutions.

The OIC engages all staff in building a healthy workplace.

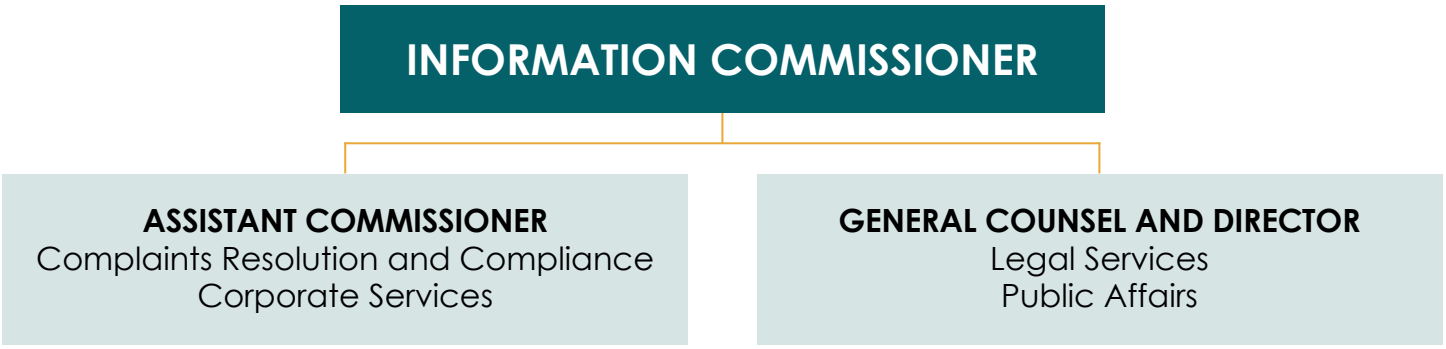
VISION
Open and accountable government

MISSION
We promote and protect access to information rights

LEADERSHIP COMMITMENT
We engage all staff in building a healthy workplace

OUR ORGANIZATION

The OIC's organizational structure is shown in the diagram below.



Complaints Resolution and Compliance mediates and investigates complaints about the processing of access to information requests and any issues related to requesting or obtaining access to records under the Act, and makes formal recommendations to institutions and heads of institutions, as required.

Legal Services represents the Commissioner in court as she seeks to clarify points of access law and uphold information rights. Lawyers provide legal advice on investigations and administrative and legislative matters, as well as customized reference tools and training on recent case law. Legal Services also monitors legislative developments to determine their possible effect on the Commissioner's work and access to information in general.

Public Affairs conducts communications and external relations with a wide range of stakeholders, notably Parliament, governments and the media. Public Affairs also provides input to the Treasury Board of Canada Secretariat on improving the administration of the Act. Public Affairs is responsible for the OIC's access to information and privacy function.

Corporate Services provides strategic and corporate leadership for planning and reporting, human resources and financial management, security and administrative services, internal audit and evaluation, and information management and technology.

2 HIGHLIGHTS

INCREASED BUDGET

In 2016–2017, the OIC received temporary funding for one year.

Putting this funding into maximum operation required a tremendous effort, including increasing the OIC's IT capacity and adding office space. A special thank you is extended to the Chief Electoral Officer who provided temporary space at no cost. This assisted the OIC greatly.

The OIC also had to hire additional investigators, train them and manage the increased investigative output.

Requests and complaints on the rise

Canadians today are more and more interested in what their governments are doing. Requests made under the *Access to Information Act* have been increasing every year.

- In 2010–2011, the government received approximately 41,600 access requests.
- In 2015–2016, the number of requests rose to approximately 75,400, up 81% from five years earlier.
- The OIC received over 2,000 complaints in 2016–2017.

As a result, the OIC resolved an unprecedented number of complaints. To continue to build on these results, the OIC is seeking additional funding for 2017–2018.

INVESTIGATIONS

There were a number of notable investigations in 2016–2017. These include the deletion of emails subject to an access request referring to the provincial and federal Liberal party (page 10); problems obtaining records in ministers' offices (page 11); a failure to document decisions related to the tasering death of Robert Dziekanski (page 13); difficulties obtaining information regarding the governments' interactions with SNC-Lavalin (page 15); and lengthy delays to access information related to an Indian Residential School (page 21).

Many of these investigations illustrate how the outdated *Access to Information Act is* used as a shield against transparency. The issues raised highlight the need to amend the Act to resolve long-standing deficiencies.

Access to Information Act reform: A broken promise?

"This winter, we'll table legislation that will bring forward significant improvements to the Act – improvements outlined in our mandate letters, along with improvements we will have identified through our consultations with Canadians, stakeholders and parliamentarians.

These measures will shed more light than ever before on the Government."

– President of the Treasury Board Scott Brison,
speaking at Carleton University for Right to Know Week, September 26, 2016
http://news.gc.ca/web/article-en.do?nid=1130259

"Brison said the government has run up against 'important considerations' in the efforts to broaden the access system to include ministers' offices, the Prime Minister's Office and the federal court system. Those considerations include 'the neutrality of the public service,' 'the independence of the judiciary' and Canadians' privacy rights, the minister said.

'These are important issues and we need to be prudent as we move forward,' Brison said."

– *Scott Brison explains delay in promised transparency reforms* – The Toronto Star, March 26, 2017
https://www.thestar.com/news/canada/2017/03/26/scott-brison-explains-delay-in-promised-transparency-reforms.html

Unfortunately, the government has announced indefinite delays to reform of the Act (See detailed chronology in Appendix A on page 62, "*Access to Information Act* reform: A broken promise?").

3 INVESTIGATIONS

In June 2016, Treasury Board approved temporary funding for one year to reduce the OIC's inventory of complaints. In November 2016, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI) confirmed this additional funding through Supplementary Estimates B.

The funding was used to increase the OIC's investigative capacity. The main areas of focus were the implementation of a simplified investigative process for delay complaints, with supporting advisory notices, and the roll-out of interest-based negotiations for investigations.

The OIC investigates two types of complaints.

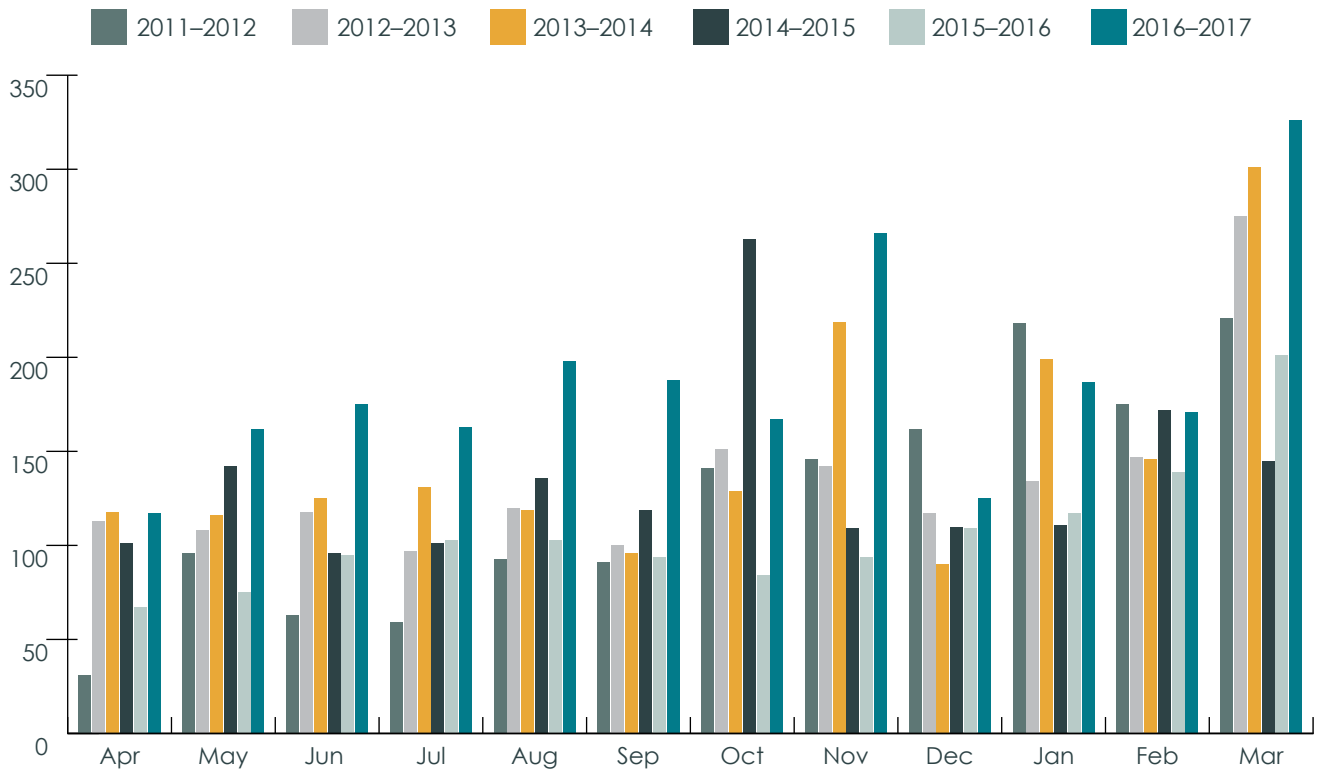
Administrative complaints typically relate to institutions extending or delaying timelines for responses to requesters.

Refusal complaints relate to institutions applying exemptions under the Act to refuse disclosure of information.

They typically require more time to investigate, as the OIC must examine whether or not exemptions were properly applied.

The increased resources and efficiencies put in place greatly improved the results attained by the OIC. The Office was able to close the largest number of complaints during the Commissioner's mandate – 2,245 complaints – a 75 percent increase over 2015–2016.

COMPARISON OF COMPLAINTS CLOSED PER MONTH: 2011–2012 TO 2016–2017



COMPARISON OF ADMINISTRATIVE COMPLAINTS CLOSED PER INSTITUTION: 2015–2016 TO 2016–2017

INSTITUTION	2015–2016	2016–2017
Canada Border Services Agency	56	85
Canada Revenue Agency	106	227
Correctional Service Canada	17	27
Department of Justice Canada	16	11
Global Affairs Canada	24	19
Health Canada	31	35
Immigration, Refugees and Citizenship Canada	59	53
National Defence	27	33
Privy Council Office	10	15
Public Services and Procurement Canada	6	11
Royal Canadian Mounted Police	66	88
Transport Canada	10	17
Treasury Board of Canada Secretariat	6	11
Others	171	168
TOTAL	**605**	**800**

COMPARISON OF REFUSAL COMPLAINTS CLOSED PER INSTITUTION: 2015–2016 TO 2016–2017

INSTITUTION	2015–2016	2016–2017
Canada Border Services Agency	11	102
Canada Revenue Agency	72	153
Correctional Service Canada	15	46
Department of Justice Canada	17	34
Global Affairs Canada	21	47
Health Canada	15	20
Immigration, Refugees and Citizenship Canada	57	147
National Defence	56	84
Privy Council Office	30	40
Public Services and Procurement Canada	10	48
Royal Canadian Mounted Police	73	144
Transport Canada	38	45
Treasury Board of Canada Secretariat	1	16
Others	260	519
TOTAL	**676**	**1,445**

The median turnaround time for closing complaints, as measured from the date they are assigned to investigators to the date they are completed, was also significantly reduced. For administrative complaints, the turnaround time went from 48 days in 2015–2016 to 36 days, a decrease of 25 percent. For refusal complaints, there was a 58 percent decrease in the turnaround time, from 166 days in 2015–2016 to 70 days.

Appendix B (page 64) contains detailed statistical information related to the complaints the Commissioner received and closed in 2016–2017.

DELETION OF RECORDS

In May 2016, **Shared Services Canada** (SSC) received a request for all emails that were sent, received or deleted by one of its employees and that mentioned the Liberal Party, federally or provincially, since November 1, 2015.

In August 2016, the Commissioner was notified by the President of SSC that the employee named in the request may have obstructed the right of access (per section 67.1 of the Act) in responding to this request. The Commissioner initiated an investigation.

The investigation revealed that:

- On May 17, the employee was tasked to respond to the request and advised of their obligations under the Act, including that all of their emails needed to be provided, and none were to be deleted as of the date of the request;
- On May 26, the employee provided 12 pages of records to the ATIP office for processing;
- On June 13, the employee was informed the release package would be sent to the requester that day;
- On June 13-14, the SSC President's Office initiated a backdoor security search, including a search of backup tapes, in relation to this request;
- On July 26, SSC retrieved deleted email records through its backdoor search;
- SSC determined 398 pages of deleted email records were responsive to the request, and provided these to the requester in September 2016.

Section 63(2) of the Act allows the Commissioner to disclose information to the Attorney General of Canada when she is of the view that she has evidence of an offence against a law of Canada or a province by a director, officer or employee of an institution.

Including this most recent example, she has referred matters to the Attorney General on four occasions.[1]

1. The three other occasions where the Commissioner referred a matter to the Attorney General related to the possible commission of an offence under section 67.1 are described in detail in 1) the *2009–2010 Annual Report*; 2) *Interference with Access to Information: Part 2* and 3) *Investigation into an access to information request for the Long-gun Registry*. "Without a trace", *2009–2010 Annual Report*, http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra_2009-2010.aspx; *Interference with Access to Information: Part 2*, April 2014, http://www.oic-ci.gc.ca/eng/ingerence-dans-acces-a-l%E2%80%99information-partie-2-interference-with-access-to-information-part-2.aspx; and *Investigation into an access to information request for the Long-gun Registry*, May 2015, http://www.oic-ci.gc.ca/eng/registre-armes-depaules_long-gun-registry.aspx.

- In its investigation, the OIC agreed the 398 pages of deleted email records were responsive to the request.
- SSC determined these email records were deleted between June 22 and July 11, after the response had been sent to the requester.

In May 2017, the Commissioner referred this matter to the Attorney General of Canada (per subsection 63(2)).

MINISTERS' OFFICES: A BLACK HOLE FOR ACCESS

In 2015, **Fisheries and Oceans Canada** (DFO) received a request for emails over a specific period of fifteen individuals, nine of whom were exempt staff of the Minister of Fisheries and Oceans.

DFO did not ask the Minister's office to retrieve responsive records. Instead, DFO asked the requester to exclude the exempt staff from the request. When DFO did not receive a response, it put the request on hold, claiming it was unable to proceed with the request as worded. The requester complained.

In her 2015 special report to modernize the *Access to Information Act*, the Commissioner recommends a spectrum of sanctions to address a broad range of prohibited behaviours. At one end of the spectrum would be the criminal offences related to obstruction, then administrative monetary penalties, then, at the other end, disciplinary proceedings.[2]

The two-part control test

In *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, the Supreme Court of Canada developed the following two-step test for "control" of records: The first step is to ask whether the record relates to a departmental matter. When it does not, that ends the inquiry.

When the record does relate to a departmental matter, the second step is to determine whether, based on all relevant factors, a senior official of the institution should reasonably expect to be able to obtain a copy of the record upon request.

Relevant factors include the substantive content of the record, the circumstances in which the record was created, and the legal relationship between the institution and the record holder.

2. Recommendations 7.5 to 7.8, *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*, March 2015, http://www.oic-ci.gc.ca/eng/rapport-de-modernisation-modernization-report_9.aspx.

While ministers' offices are not covered by the Act, some records located in ministers' offices are subject to the Act. The Supreme Court of Canada developed a two-part test for determining whether records physically located in ministers' offices are "under the control" of an institution and therefore accessible under the Act. (See box "The two-part control test" on page 11.)

DFO originally claimed that, because the exempt staffers were known not to be employees of DFO, the request couldn't be processed as worded. This is exactly what the Supreme Court stated should *not* occur: "While physical control over a document will obviously play a leading role in any case, it is not determinative of the issue of control. Thus, if the record requested is located in a Minister's office, this does not end the inquiry. The Minister's office does not become a "black hole" as contended. Rather, this is the point at which the two-step inquiry commences" (*Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 at para. 54).

During the investigation, DFO agreed to task the Minister's office and approximately 1,100 pages of records were identified as responsive to the request. The requester received a response a year later.

Implementation Report No. 115

Following the Supreme Court of Canada's decision in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, Treasury Board of Canada Secretariat (TBS) released Implementation Report No. 115. In this implementation report, access to information officials are instructed to consider whether there are reasonable grounds to believe that there are relevant records in the Minister's office that would be considered under the institution's control.

The Commissioner is of the view that the "reasonable grounds" test is not reflective of the Court's decision and causes delay in processing requests and risks records no longer being available.

The Commissioner has twice recommended to TBS that Implementation Report No. 115 be amended to accurately reflect the Court's decision. This recommendation has not been implemented.[3]

Ministers and their parliamentary secretaries, ministers of state and the Prime Minister are public office holders who make decisions that impact Canadians. These decisions also impact how tax dollars are spent. Ministers (and their staff) need to be accountable in disclosing information relating to the administration of their departments or other responsibilities.

For this reason, in her 2015 special report to modernize the *Access to Information Act*, the Commissioner recommends extending coverage of the Act to the Prime Minister's Office, offices of ministers and ministers of State, and parliamentary secretaries.[4]

3. The Commissioner first made this recommendation in her 2013 investigation on pin-to-pin messages. Although some amendments were made by TBS to the implementation report in response, the report continued to impose criteria not reflected in the Supreme Court of Canada decision. The Commissioner again recommended the report be amended in 2016, during her investigation into the processing of records that were in the possession of a former minister who had changed portfolios multiple times. See Office of the Information Commissioner, *Access to Information at Risk from Instant Messaging*, November 2013, http://www.oic-ci.gc.ca/eng/pin-to-pin-nip-a-nip.aspx and "The effort to access records in a ministers' office", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_3.aspx.
4. Recommendation 1.2, *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*, March 2015, http://www.oic-ci.gc.ca/eng/rapport-de-modernisation-modernization-report_3.aspx.

Managing records in ministers' offices

In the 2015–2016 Annual Report, an investigation into the processing of records that were in the possession of a former minister who had changed portfolios multiple times was documented. (See "The effort to access records in a ministers' office", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_3.aspx.)

At the close of that investigation, a series of recommendations were made to ensure ministers, as the heads of government institutions subject to the Act, are accountable throughout their terms in office, including when they change ministerial portfolios or leave office. These recommendations were, for the most part, accepted by the current President of the Treasury Board.

In October 2016, the President of the Treasury Board wrote to the Commissioner to provide her with an update on the implementation of her recommendations. He confirmed that a member of each Minister's office is now responsible for information management practices and that training for ministers' office staff on information management has been presented. This training was developed by TBS in partnership with Library and Archives Canada (LAC).

At the time of writing the letter, TBS was also working with LAC to develop new information management protocols for ministers' offices to complement existing guidance. As per his commitment, the President of the Treasury Board sought the Commissioner's views on these protocols before they were finalized.

NO RECORDS = NO ACCOUNTABILITY

In 2013, the **Royal Canadian Mounted Police** (RCMP) received a request for all communications of its decision to not proceed with a code of conduct investigation for perjury against one of the four officers who testified before the Braidwood Commission on the Death of Robert Dziekanski (commonly known as the Braidwood Inquiry).

While the RCMP disclosed some information regarding the decision-making process, there was no documentation of the RCMP's decision to not proceed with a code of conduct investigation. The requester complained.

When asked why no documentation existed, the RCMP explained a superintendent did evaluate the testimony of all of the officers involved in the Braidwood Inquiry, but his findings were presented to RCMP senior management verbally. After his findings were presented, senior management decided to engage external legal counsel to conduct a formal review of whether to move forward with a code of conduct investigation.

The RCMP could not locate the formal review mandate letter that they had sent to external counsel. During the investigation, external counsel was asked for records in his possession. The lawyer produced the mandate letter and the RCMP disclosed it to the requester.

The external counsel's resulting legal opinion was the only document the RCMP could reference that set out why a code of conduct investigation was not pursued. The RCMP refused to disclose the legal opinion to the requester on the basis that it was obtained in the course of a lawful investigation pertaining to the detection, prevention or suppression of crime. The OIC disagreed with this position. The RCMP eventually disclosed the entire legal opinion.

Regarding its decision to not pursue a code of conduct investigation, the RCMP could not point to a single document written by its own officials that set out its ultimate decision. This is a serious gap in the historical record of a tragic case that has a high level of public interest; a gap that raises accountability issues within the RCMP. This lack of documentation is especially problematic in light of the fact that the four officers at the centre of the inquiry were criminally charged with perjury by provincial authorities on the recommendation of a special provincial prosecutor.[5] Without documentation, it is difficult to ascertain what factors led the RCMP to come to such a different conclusion with respect to its code of conduct investigation.

In her 2015 report to modernize the *Access to Information Act*, the Commissioner recommends that a comprehensive legal duty to document, with appropriate sanctions for non-compliance, be established.

Such an obligation would protect information rights by:

- creating official records;
- facilitating better governance;
- increasing accountability; and
- ensuring a historical legacy of government decisions.[6]

5. The four officers were tried separately at the BC Supreme Court, with two officers convicted and the two others acquitted. Appeals so far have upheld these findings. Leave to appeal to the Supreme Court of Canada has been sought with respect to the two convictions.
6. Recommendation 2.1, *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*, March 2015, http://www.oic-ci.gc.ca/eng/rapport-de-modernisation-modernization-report_4.aspx.

SNC-LAVALIN REPAYS $15 MILLION

In September 2013, a request was made to **Public Services and Procurement Canada** (PSPC) for all amounts reimbursed by SNC-Lavalin for overbilling of work performed in federal government buildings. SNC-Lavalin's overbilling practices had received significant media attention by this time, but the precise amount it had agreed to repay under a settlement agreement was not publicly known.

PSPC disclosed some records, but withheld the total reimbursement amounts, claiming disclosure of this amount could interfere with the contractual or other negotiations of both PSPC and SNC-Lavalin (subsection 18(b) and paragraph 20(1)(d)). The requester complained.

PSPC claimed a confidentiality clause in the settlement agreement prohibited disclosure of the total amounts received. However, the Act takes precedence over contractual terms reached between the government and third parties.

"SNC-Lavalin had to reimburse $15 million to Ottawa due to overbilling over several years for maintenance work of federal buildings…

The response provided, which was partly redacted, indicates that SNC-Lavalin made a series of 15 reimbursements over a period of three years between 2010 and 2013. The amounts varied from $29,967 to $1.17 million for a total of almost $15 million...

La Presse finally received the information it had been asking for since September 2013 to find the amounts related to the overbiling ($15 million). To do so, the newspaper's employees had to file several requests and make a complaint in accordance with the *Access to Information Act* to finally obtain the amount." [translation]

Overbilling: SNC-Lavalin repaid $15 million to Ottawa – La Presse, February 23, 2017 http://affaires.lapresse.ca/economie/quebec/201702/22/01-5072251-surfacturation-snc-lavalin-a-rembourse-15-millions-a-ottawa.php (French only)

Since PSPC could not demonstrate that the disclosure of the withheld information could reasonably be expected to interfere with contractual or other negotiations of either party, it disclosed the total amount SNC-Lavalin had repaid – nearly $15 million.

SNC-LAVALIN'S CONDITIONS UNDER GOVERNMENT INTEGRITY REGIME

In early 2015, following charges of fraud laid against the company by the RCMP, SNC-Lavalin signed an administrative agreement under the federal government's Integrity Regime that set out the conditions with which SNC-Lavalin must comply in order to be able to continue to contract with the government. Both PSPC and SNC-Lavalin made brief public announcements about the agreement.

In December 2015, PSPC received a request for a copy of the agreement. PSPC refused to disclose the majority of the agreement, claiming parts of it were protected as confidential third party commercial information and disclosing these parts could reasonably be expected to interfere with its contractual or other negotiations (subsection 18(b) and paragraph 20(1)(b)).

PSPC applied the exemption for third party commercial information far too broadly in this case. A few clauses and part of one schedule of the agreement did contain commercial information of SNC-Lavalin and met the test for confidentiality. However, the rest of the information in the agreement did not warrant protection under this exemption. Some of the terms had even been made public by SNC-Lavalin itself.

PSPC also claimed that disclosure of some of the information could interfere with the government's ability to negotiate similar agreements. Other companies that are or could be subject to such agreements in the future could strategize whether operating under the agreement could still be profitable to them if they knew the extent of each clause of the Integrity Regime and PSPC's flexibility. While the OIC accepted this position on a few clauses, PSPC eventually released the majority of the agreement.

CANADA POST – INTERPRETATION OF SECTION 18.1 OF THE ACT

Canada Post Corporation (Canada Post) became subject to the *Access to Information Act* in 2007. At that time, an exemption was added to the Act to balance the need to protect Canada Post's commercial interests against the public interest in the transparency of its operations (see box on section 18.1).

Since 2007, the OIC has received 315 complaints against Canada Post. Sixty-five complaints remain outstanding in relation to section 18.1. These investigations are challenging because there has been no judicial interpretation of section 18.1 or of the exception for "general administration", and Canada Post operates in a complex, competitive environment.

Section 18.1 is a discretionary exemption that protects the trade secrets or financial, commercial, scientific or technical information that belongs to, and has consistently been treated as confidential by the following Crown corporations:

- the Canada Post Corporation;
- Export Development Canada;
- the Public Sector Pension Investment Board; or
- VIA Rail Canada Inc.

There are exceptions to this exemption. Information must be disclosed if it relates to the general administration of the Crown corporation. As well, Canada Post cannot refuse to disclose information that relates to any activity that is fully funded out of moneys appropriated by Parliament.

The following are two examples of Canada Post's application of section 18.1.

WHY AM I NOT GETTING MY MAIL?

An individual received a notice from Canada Post advising them they would have to move their mailbox to the front of their car shelter or clear a path around it to their mailbox. When the individual contacted Canada Post for further details, they were informed it was unsafe for the mail carrier to travel under a car shelter to deliver mail. The individual complied with the notice and, once mail delivery resumed, filed an access request with Canada Post for any rules or directives related to mail delivery to residences with car shelters.

Canada Post had a mail delivery manual, but stated it could not be disclosed because it consisted of confidential commercial information protected by section 18.1.

The requester complained to the OIC. The OIC disagreed with the application of section 18.1 to the manual, a document that was available to all mail carriers and at sorting facilities. Canada Post released the section of the manual dealing specifically with car shelters and the complaint was settled.

EXCERPT FROM CANADA POST MANUAL:	
If…	Then…
If an employee finds a car shelter in a private driveway that poses a danger	• try to make the delivery; • if the employee needs to pass through the shelter to deliver the mail, but the shelter's door is closed, return the items to the delivery facility and give them to the supervisor; • verbally inform the supervisor of the obstacle preventing delivery. [translation]

WHY IS MAIL CARRIER DATA CONFIDENTIAL?

Canada Post received requests for data on the number of male and female mail carriers, and the number of rural and suburban mail carriers. Canada Post withheld the data table because, in their view, it consisted of confidential commercial information protected by section 18.1. The requester complained.

The OIC disagreed with Canada Post's position. Canada Post provided no evidence this information was commercial, or that it was kept confidential. In fact, similar information was publicly available on Service Canada's website.

As a result of the OIC's intervention, Canada Post reviewed its position and disclosed the tables in their entirety.

VALUABLE RECORDS FROM CANADA'S WORLD WAR I HISTORY

The question of whether valuable historical records from Canada's past should be protected under the solicitor-client privilege exemption (section 23) arose during an investigation with **Library and Archives Canada** (LAC) in 2016–2017. In November 2012, LAC received a request for records from 1918 relating to Norman Earl Lewis's petition of *habeas corpus* against the Borden Government (see box "Who was Norman Earl Lewis?").

After consulting with the Department of Justice Canada (JUS), LAC refused access to historical memoranda and telegrams between counsel and the Deputy Minister of Justice because they claimed the information consisted of legal advice. The requester complained.

The OIC disagreed that most of this information qualified for legal advice privilege. Even if some of the information had consisted of legal advice at one time, LAC could not establish continuing confidentiality of the records. Finally, for any information that did qualify for protection, LAC did not provide evidence that it considered the age of the records or their historical value when exercising discretion to refuse disclosure.

After the OIC formally requested evidence from LAC on the above issues, LAC released all of the records.

Who was Norman Earl Lewis?

Norman Earl Lewis was a farmer from Beddington, Alberta.

Mr. Lewis was conscripted for service in World War I, but secured an exemption under the *Military Service Act* of 1917 because of his occupation.

However, in 1918, desperate for troops, the Borden Government rescinded these exemptions and Mr. Lewis was told to report for duty. Mr. Lewis followed this order.

At the same time, with the help of lawyer (and future Prime Minister) R.B. Bennett, he challenged the government's decision to rescind the exemptions from conscription. He filed a petition of *habeas corpus* claiming that, by being called up for duty as a soldier, the Borden Government was illegally holding him against his will.

Four judges of Alberta's Court of Appeal agreed with Mr. Lewis (only the Chief Justice dissented) and the order-in-council used to revoke the exemptions was declared invalid.

In her report to modernize the *Access to Information Act*, the Commissioner recommends imposing a 12-year time limit from the last administrative action on a file on the exemption for solicitor-client privilege, but only as the exemption applies to legal advice privilege.[7]

7. Recommendation 4.24, *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*, March 2015, http://www.oic-ci.gc.ca/eng/rapport-de-modernisation-modernization-report_6.aspx.

ARE TRAINING MANUALS AND GUIDELINES LEGAL ADVICE?

This year, three similar investigations were resolved where requesters wanted access to training manuals and guidelines from administrative decision-making bodies. In all three investigations, significant additional information was released.

Two of these investigations involved the **Canadian Human Rights Commission** (CHRC), where similar requests were made for policies and guidelines directing human rights complaint investigations. In response to one request, the CHRC refused to release training materials given by CHRC lawyers because the materials contained, in their view, legal advice. In response to the other, a complaint investigation guideline and a litigation manual were withheld, again, because CHRC maintained these were protected as legal advice. Complaints were made about both of these responses.

Not everything drafted by a lawyer qualifies for legal advice privilege. While some of the information in the records was legal advice, the majority of the information was not. For those records that did qualify for legal advice privilege, the CHRC's public education mandate weighs in favour of waiving privilege, as there is a clear benefit in helping the public understand how CHRC's investigations are conducted. The CHRC agreed during the investigations to disclose the majority of these documents.

> "GOVERNMENT LAWYERS WHO HAVE SPENT YEARS WITH A PARTICULAR CLIENT DEPARTMENT MAY BE CALLED UPON TO OFFER POLICY ADVICE THAT HAS NOTHING TO DO WITH THEIR LEGAL TRAINING OR EXPERTISE, BUT DRAWS ON DEPARTMENTAL KNOWHOW. ADVICE GIVEN BY LAWYERS ON MATTERS OUTSIDE THE SOLICITOR-CLIENT RELATIONSHIP IS NOT PROTECTED."
>
> *R. v. Campbell* (sub. nom. *R. v. Shirose*), 1999 1 SCR 565, at para 50

The **Immigration and Refugee Board of Canada** (IRB) also received a request for training material and guidelines, specifically those provided to members of the Refugee Appeal Division. It protected some of the requested information under the exemption for legal advice. The requester complained.

While many of the records were created by IRB's legal services, it was questionable whether the records actually contained legal advice. While the IRB maintained that legal advice privilege applied, it waived the privilege in order to release some of the records. After reviewing the supplemental release, the requester discontinued the complaint.

SEEKING CONSENT RESULTS IN DISCLOSURE

Under the *Access to Information Act*, an institution can release information if the individual or party to whom the information relates or belongs to consents to its disclosure. (See, for example, paragraph 19(2)(a) for personal information or subsection 20(5) for third party information.) However, investigations have uncovered that information is often withheld because institutions do not seek consent or seek consent unnecessarily. Complaints are resolved by simply directing institutions to seek consent to disclose the information from the appropriate parties.

Section 19 is the most frequently used exemption in the Act.

The TBS *Access to Information Manual* provides that institutions should "make reasonable efforts to seek consent of the individuals concerned and that what is reasonable must take into account the practical difficulties that may exist to find and locate the individuals."

https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/access-information/access-information-manual.html#cha11_13

JUST ASK

In July 2015, **Privy Council Office** (PCO) received a request for correspondence between Prime Minister Stephen Harper and the mayors of Montréal and Québec City during a set time period.

PCO found 12 pages of records, but refused to disclose them, claiming they were personal information (section 19). The requester complained.

PCO had not consulted with the mayors in question prior to its decision to withhold the requested records. During the investigation, PCO initiated consultations with the municipalities, who replied five months later with consent to disclose the information. As a result, the majority of the correspondence was disclosed on subjects such as Québec City's request to have the Québec Bridge named a UNESCO heritage site and Montreal's bid to host the secretariat of a new UN agency.

JUST ASK THE RIGHT PEOPLE

In September 2013, **Indigenous and Northern Affairs Canada** (INAC) received a request for a forensic audit of the Nisichawayasihk Cree Nation. INAC refused to release the report, claiming it was confidential third party information (paragraph 20(1)(b)). The requester complained.

The report had been prepared by a consulting group for INAC. During the processing of the request, INAC had consulted with this group as a third party regarding disclosure. However, the report did not belong to the consulting group. It belonged to INAC. Instead, the Nisichawayasihk Cree Nation who was the subject of the report should have been consulted.

When INAC consulted the Nisichawayasihk Cree Nation, they did not object to disclosure. INAC released the majority of the report, but applied section 19 to some information. The requester was satisfied with the disclosure.

In the Commissioner's 2015 special report to modernize the *Access to Information Act*, she recommends institutions be required to seek the consent of the individual to whom personal information relates, wherever it is reasonable to do so.

She also recommends requiring institutions to disclose personal information where the individual to whom the information relates has consented to its disclosure.[8]

ACCESS DELAYED ACCESS DENIED

Timely access is a fundamental part of the right of access.[9] Receiving a response in a timely manner ensures information is still relevant and that government can be held to account for their decisions at appropriate times.

Access requests require a response within 30 days, unless a reasonable extension is taken for one of three reasons set out in the Act.[10] Failure to respond on time is deemed to be a refusal of access.

Despite the importance of timely access, some institutions take lengthy and unreasonable extensions, ask requesters to resubmit requests for trivial matters, or don't respond at all.

ST. ANNE'S RESIDENTIAL SCHOOL – A VEIL OF SECRECY

In March and September 2014, the **Department of Justice Canada** (JUS) received two requests for information about St. Anne's Residential School and the Indian Residential School Settlement Agreement's Independent Assessment Process (IAP), including media lines, backgrounders, monitoring and analysis. JUS took extensions of 601 and 815 days, claiming there was a large volume of records and it needed to conduct consultations (paragraphs 9(1)(a) and (b)). The requester complained.

The Ontario Superior Court had issued an order limiting access to IAP records (the Fontaine order). JUS claimed the main cause of delay in both requests was due to a lengthy review to determine which records may be subject to the court order. JUS's position was that it was

8. Recommendations 4.15 and 4.16 *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*, March 2015, http://www.oic-ci.gc.ca/eng/rapport-de-modernisation-modernization-report_6.aspx.
9. *Information Commissioner of Canada v. Minister of National Defence, et al.*, 2015 FCA 56, rev'g 2014 FC 205 at para. 63.
10. (a) large number of records, (b) consultations within government, or (c) consultations with third parties. Section 9, *Access to Information Act*, http://laws-lois.justice.gc.ca/eng/acts/A-1/page-2.html#h-8.

unable to process records that were subject to the court order without risking being in contempt. It was also waiting for a decision from the Ontario Court of Appeal on this order.

JUS did not process the records. During the investigation, JUS eventually agreed that at least some of the responsive records were clearly beyond the scope of the order. Approximately 73,000 pages – about half of the total volume of responsive records – were identified by JUS as not subject to the order.

The extensions taken by JUS were unreasonable. JUS' decision to not process the records pending the outcome of the appeal unnecessarily delayed the processing of the requests.

Ottawa still keeping St. Anne's documents secret – Toronto Star, June 10, 2016
https://www.thestar.com/news/canada/2016/06/10/ottawa-still-keeping-st-annes-documents-secret-angus.html

Ottawa to release long-sought St. Anne's residential school documents – Toronto Star, April 7, 2017
https://www.thestar.com/news/canada/2017/04/07/ottawa-to-release-long-sought-st-annes-residential-school-documents.html

Feds release 1,200 pages of blacked-out emails about abuse at St. Anne's residential school – Toronto Star, April 12, 2017
https://www.thestar.com/news/gta/2017/04/12/feds-release-1200-pages-of-blacked-out-emails-about-abuse-at-st-annes-residential-school.html

The OIC negotiated quarterly interim releases: March 31 (which was met), June 16, September 29, and December 29, 2017, with final releases by February 14, 2018 and April 12, 2018. The Commissioner formally recommended to the Minister of Justice that these dates be respected.

In her reply, the Minister stated, "The Department is committed to processing these records as expeditiously as possible, and regrets that the complex circumstances related to these two requests have resulted in a delayed response to the requester… Please note that, since our last communication, an in-depth review by our Access to Information and Privacy analyst was conducted and an additional 6,799 pages were determined to be subject to the Fontaine order… The Department confirms that it will preserve the records and the rights of the requester in the event that the Supreme Court of Canada strikes down the Fontaine Order or otherwise clarifies the application of the ATIA to records within the scope of the Order."

CSC NEGLIGENT IN UNLOCKING ACCESS

In May 2012, **Correctional Services Canada** (CSC) received three requests related to the closure of the Kingston Penitentiary and two other facilities. Three years later, after making no progress on the requests, CSC asked the requester if they still wanted the information. The requester immediately confirmed their interest and complained.

Four months later, CSC still had not processed the requests, but contacted the requester again to suggest they should abandon the requests as so much time had passed, and submit new requests. The requester resubmitted the requests.

CSC then took extensions of 100 and 120 days for two of the resubmitted requests and did not provide any reply for the third.

"The office of Canada's Information Commissioner has found the Correctional Service of Canada negligent for not responding to an access to information request from CBC News for more than three years and taking another nine months to provide the documents in question.

That's a tad more than the normal requirement to respond to requests within 30 days."

– *Correctional Service of Canada 'negligent' on information requests, commissioner says,* CBC News, June 2, 2016, http://www.cbc.ca/news/politics/correctional-service-canada-information-request-1.3609436

CSC failed to process the requests for three years. CSC officials were negligent in their legislated duty to provide timely access and showed a flagrant disregard for the requester's rights under the Act.

In addition, it took numerous attempts by the OIC to get CSC to commit to a date for disclosure. When CSC did finally provide a date, the OIC did not find it to be reasonable. CSC eventually disclosed the documents in April and May 2016, nearly four years after the requests. Much of the information was by this time publicly available or outdated.

NEARLY 24 MONTHS FOR INFORMATION ON 24 SUSSEX

In August 2014, the **National Capital Commission** (NCC) was asked for information about the repairs, renovation work and maintenance at 24 Sussex Drive.

Two weeks after submitting the request, the requester removed the request for internal documents, instead focusing on just documents sent and received. Although the subject matter of the request remained the same, the NCC considered this minor change to be a "new" request and restarted the clock for responding. Just over a month later, it advised the requester it was taking a 90-day extension because the search for records would unreasonably interfere with its operations (paragraph 9(1)(a)).

At the time of the request, the former Prime Minister, the Right Honourable Stephen Harper, lived at 24 Sussex Drive and it was known the residence was in need of costly repairs. By the time the requester received a response, the new Prime Minister had chosen not to reside at 24 Sussex Drive.

In July 2015, roughly ten months after making their request, the requester still had not received a response. The requester complained.

NCC's decision to consider the revised request as a new request was inappropriate. Furthermore, despite having the records in their possession for ten months, the NCC had not consulted with the RCMP in that time.

The request was finally responded to in May 2016, nearly two years after the initial request.

OPEN GOVERNMENT?

FORMAT MATTERS

In November 2015, **Indigenous and Northern Affairs Canada** (INAC) received a request for data found in a specialized database about First Nations water and wastewater systems. The requester wanted the information in Excel spreadsheet format. INAC released a photocopy of a PDF, with parts of the photocopy cut off. The data was not provided in the format requested and was impossible to read. The requester complained.

INAC was concerned that releasing the data in the format requested would require it to alter the original record in order to protect exempted information in violation of section 67.1 of the Act (this section prohibits altering a record with intent to deny access). Once INAC was assured it would not be obstructing the right of access if it provided the data to the requester in the format requested with some information exempted, the OIC thought the complaint could be resolved.

In 2015–2016, the government introduced the Third Biennial Plan to the Open Government Partnership, committing to "expand and improve open data". In the plan, the government states, "data must be discoverable, accessible, and reusable without restriction so as to enhance transparency, enable better services to Canadians, facilitate innovation, and inform public participation."

Following through on that commitment, in May 2016, the government issued an *Interim Directive on the Administration of the Access to Information Act*, instructing all institutions to release information in user-friendly formats whenever possible.

However, INAC then stated that converting the requested data from the specialized database to an Excel file would be unreasonable pursuant to the Act's regulations and INAC's access to information processing software would not allow it to export to an Excel spreadsheet.

Once the government's own commitment to release data in open formats was re-emphasized to senior officials at INAC, it agreed to release the data in the format requested and the requester received an Excel spreadsheet six months after the request was made.

SENT ON A GOOSE CHASE FOR A MAP

In September 2012, a member of the public informally asked **Natural Resources Canada** (NRCan) for a map. NRCan explained the map was publicly available through the National Energy Board (NEB). The requester made multiple attempts to get more information from NRCan about the map (e.g., the full file name, the date it was created, the form in which it existed, etc.) so that they could get it at the NEB, with no response. They also followed up with the NEB, who was unable to find the map.

The requester made a formal access to information request to NRCan for the map. NRCan responded that since the map was publicly available, it was excluded from the Act (per section 68). The requester complained.

Open Data and maps

As part of its commitments under the Open Government Partnership, the government has placed a special effort on releasing open data to the public.

Geospatial information, especially maps, are highly sought after information and the government has created a webpage on the open.canada.ca portal called "open maps" to provide access to its geospatial information: http://open.canada.ca/en/open-maps

NRCan was the only institution that had the map. However, it only realized this when the NEB contacted it for more information. NRCan did send the requester a copy of the map when it realized NEB never had the map in its possession. By this time, the requester had been trying to get a copy of the map for a year.

At no point in dealing with the requester did NRCan verify the map was indeed publicly available at the NEB, causing the requester to call the referral to the NEB a "goose chase". NRCan's response to the requester was a failure of the duty to assist, which resulted in unnecessary delays and obstructed the requester's right of access.

4 PERFORMANCE OF INSTITUTIONS

The *Access to Information Act* directs all institutions to produce an annual report on their administration of the Act. The Treasury Board of Canada Secretariat also collects and annually publishes aggregate statistical data about the access to information program.[11]

The Commissioner uses these sources of publicly available data to analyze the health of the access to information regime.

The two primary indicators measured are the percentage of requests completed within 30 days and the percentage of requests for which all information was disclosed.[12]

Institutional report cards

Following the report cards in 2011–2012, performance related to timeliness increased from 55% to 65% until 2014–2015. 2015–2016 saw a decline in performance.

http://www.ci-oic.gc.ca/eng/rp-pr_stats-rep_rap-stats.aspx

SYSTEM-WIDE PERFORMANCE

From 2014–2015 to 2015–2016, there has been a 10 percent increase in the number of access to information requests received by institutions.

Overall institutional performance under the Act declined in 2015–2016. Most notable is the performance decline of a number of leading institutions that possess valuable information for Canadians. (See table "Performance of top 20 institutions" on page 32.)

TIMELINESS

One indicator of effective institutional performance under the Act is the percentage of requests completed within the statutory 30-day period.

Overall institutional performance

The 2015–2016 report of overall institutional performance shows 64 percent of requests were completed in the 30-day timeframe. This is a one percent decline from the 2014–2015 results.

11. Statistics on the Access to Information and Privacy Acts, https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/statistics-atip.html.
12. *Special Report: Systemic Issues Affecting Access to Information in Canada*, 2007–2008, http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2007-2008_25.aspx.

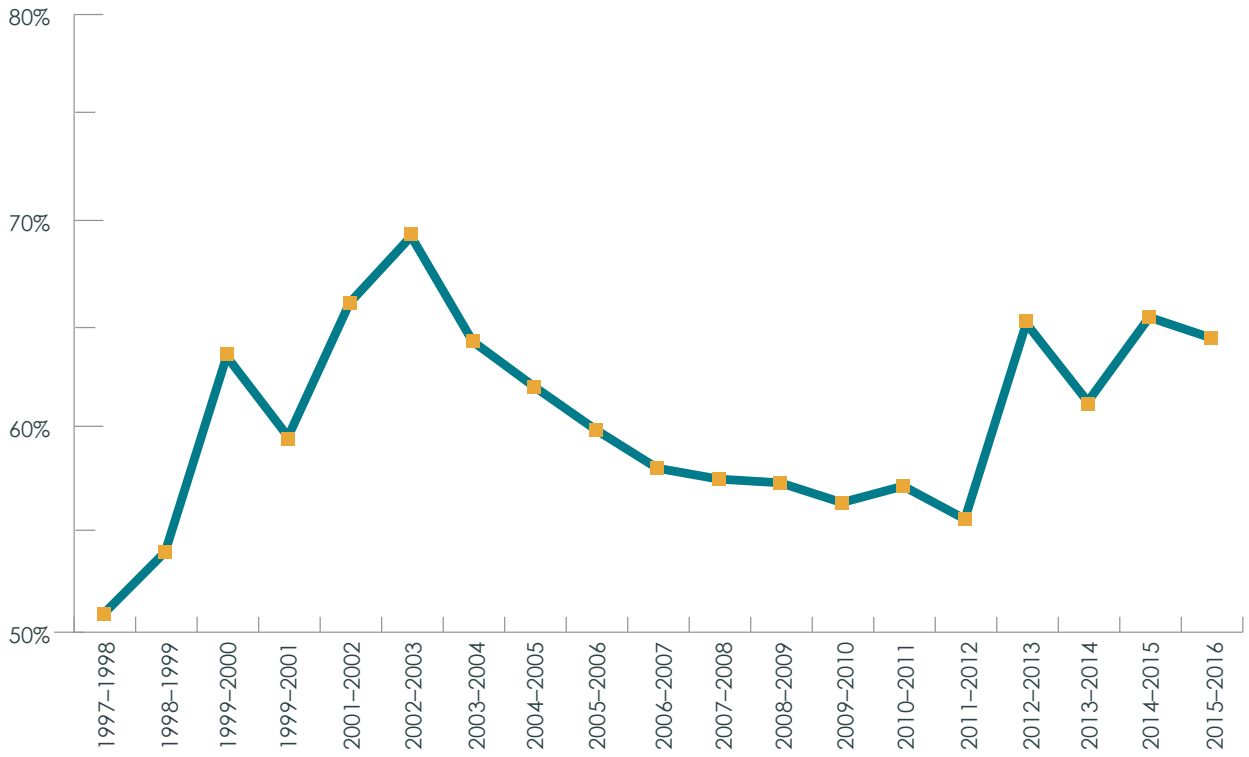
However, it is important to note Immigration, Refugees and Citizenship Canada (IRCC)'s impact on the system-wide figures. As is typically the case, IRCC received the majority (41,660 or 55%) of all new requests. When excluding this institution from calculations regarding timeliness, a slightly different picture emerges (see Table 1).

TABLE 1. REQUESTS COMPLETED WITHIN 30 DAYS

	2014–2015	2015–2016
Overall	65%	64%
IRCC	69%	71%
Overall, excluding IRCC	61%	56%

Sixty-nine percent is the highest percentage achieved for timeliness since the Act was established. The Commissioner is of the view that the target goal for timeliness should be at least 75 percent of requests responded to within 30 days. She made this recommendation to the President of the Treasury Board as part of the government's action plan 2.0 for open government.[13] The government has not accepted this recommendation.

PERCENTAGE OF REQUESTS CLOSED WITHIN 30 DAYS OR LESS, 1997–1998 TO 2015–2016



13. Letter to the President of the Treasury Board on Action Plan 2.0, November 2014, http://www.oic-ci.gc.ca/eng/lettre-plan-d-action-2.0_letter-action-plan-2.0.aspx.

INDIVIDUAL PERFORMANCE

Each year, a group of approximately 20 institutions receive around 90 percent of the access requests from Canadians.

Top performers: The top performing institutions for timeliness were the Privy Council Office (PCO), Canadian Security Intelligence Service (CSIS), the Treasury Board Secretariat (TBS) and Innovation, Science and Economic Development Canada (ISED).

Poor performers: Four of the 20 institutions examined had rates above 20 percent and were given an F grade. These institutions are the Royal Canadian Mounted Police (RCMP), Canada Revenue Agency (CRA), Correctional Services of Canada (CSC) and Global Affairs Canada (GAC).

The grading system

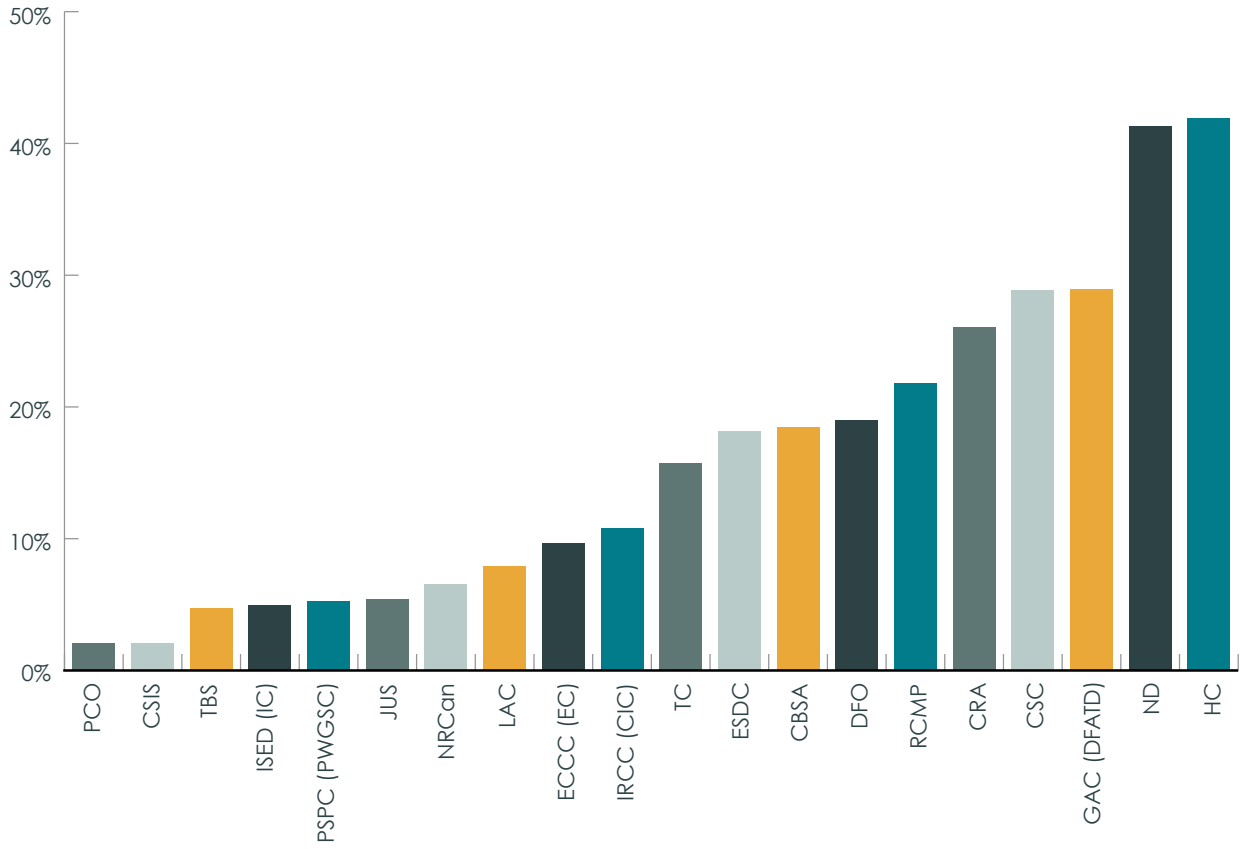
The grading system is based on the number of requests an institution closes past the statutory deadline divided by the number of requests closed during the report period.

The rating scale is: A=0–5 percent; B=5–10 percent; C=10–15 percent; D=15–20 percent; and F=more than 20 percent. "Red alert" is reserved for very high proportions of requests completed past the statutory deadline.

Red Alert: Red Alert status is given to institutions possessing rates of more than 40 percent. Both the Department of National Defence (DND) and Health Canada (HC) received Red Alert grades from the Commissioner for their refusal rates of 41 and 42 percent, respectively.

Officials from the OIC met with representatives from GAC, DND, CRA, HC, RCMP, and CSC concerning their performance and progress on files. The OIC will continue to work with these institutions to address their difficulties in meeting the obligations under the Act.

PROPORTION OF REQUESTS CLOSED PAST THEIR STATUTORY DEADLINE, 2015–2016



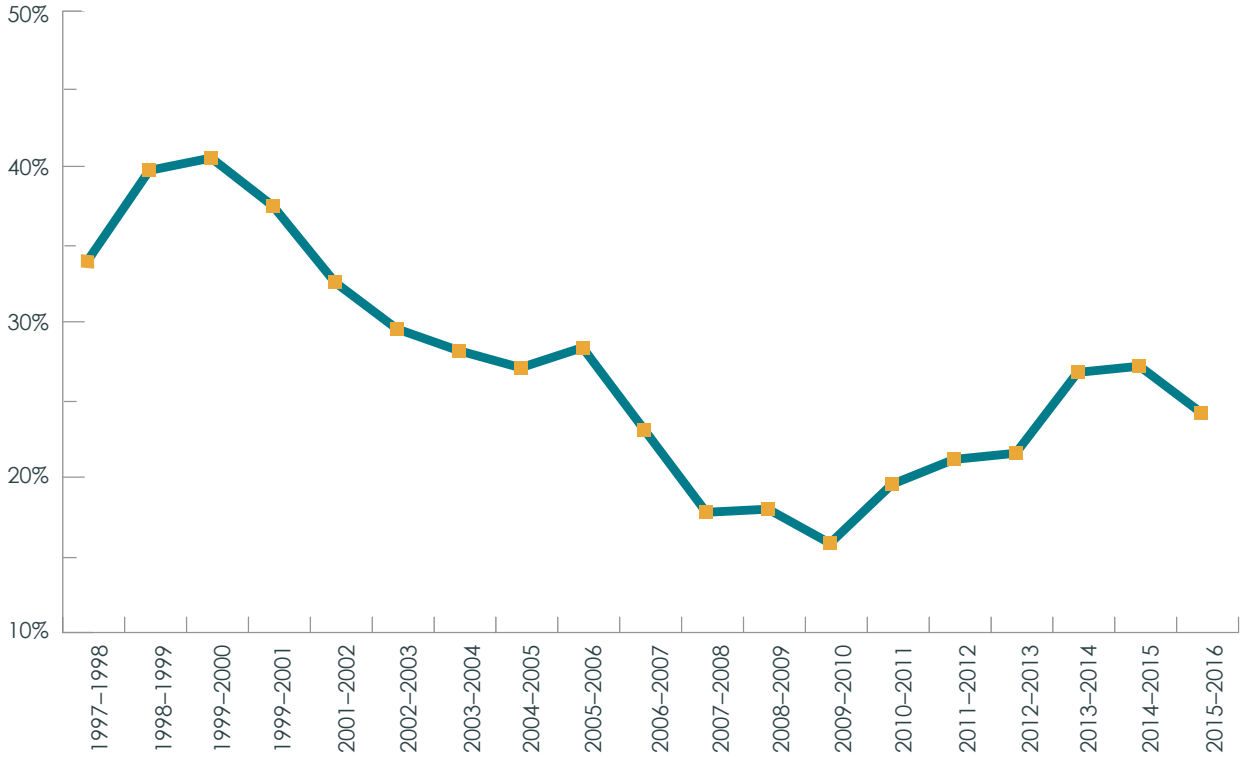
Disclosure

A second indicator of effective institutional performance under the Act is the percentage of completed requests where records were fully disclosed.

The OIC looks at the disclosure trend over a period of time to assess the level of disclosure given the Act has not significantly changed since its adoption. The OIC also recognizes that disclosure can be closely linked to the sensitivity of information that an institution possesses and mandatory restrictions in the Act that prohibit disclosure.

In 1999–2000, 40.6 percent of requests were disclosed in full, which represents the highest percentage for institutional disclosure since the Act was established.

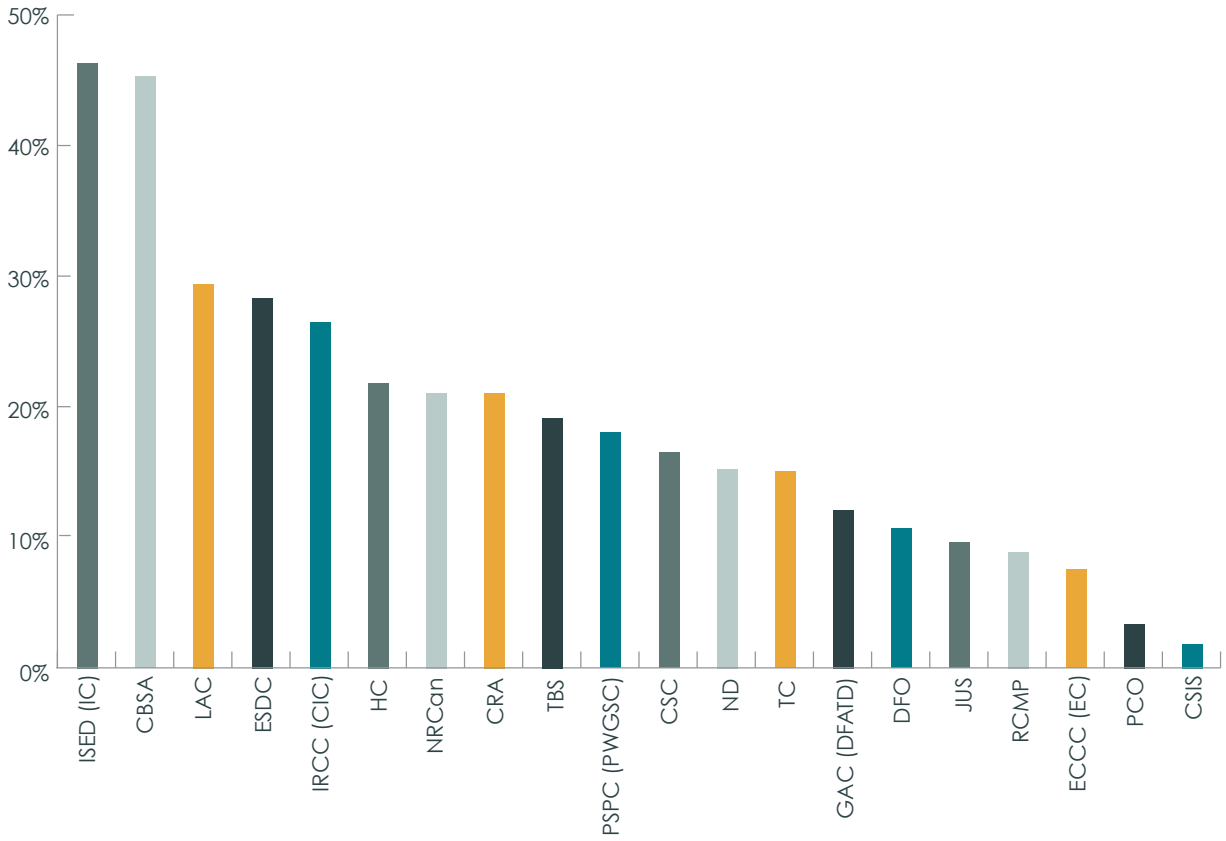
DISCLOSURE RATE, 1997–1998 TO 2015–2016



OVERALL INSTITUTIONAL PERFORMANCE

The 2015–2016 report of overall institutional performance shows 24 percent of requests were disclosed in full, which is a three percent decrease from 2014–2015.

PERCENTAGE OF REQUESTS FOR WHICH ALL REQUESTED RECORDS WERE DISCLOSED, 2015–2016



Conclusion

The results of institutional performance reporting for 2015–2016 show an increase in the volume of requests received by institutions, but a decrease in the overall performance of institutions. The results of 2015–2016 reporting period mean the government needs to focus and put in significant effort to achieve its goals of transparency and accountability. Otherwise, it risks going down a slippery slope of declining performance.

PERFORMANCE OF TOP 20 INSTITUTIONS

INSTITUTION	NUMBER OF REQUESTS RECEIVED (% CHANGE FROM PREVIOUS REPORTING PERIOD)		COMPLETION RATE		REQUESTS COMPLETED WITHIN 30 DAYS	
	2014–15	2015–16	2014–15	2015–16	2014–15	2015–16
IRCC (CIC)	34,066 (+16.34%)	41,660 (+22.29%)	90.17%	88.49%	69.33%	70.58%
CBSA	6,705 (+43.55%)	5,532 (-17.49%)	86.22%	75.73%	75.86%	64.19%
RCMP	3,343 (+93.23%)	3,858 (+15.41%)	84.58%	84.15%	59.95%	61.68%
CRA	3,006 (+9.27%)	3,139 (+4.42%)	74.23%	63.27%	52.81%	39.11%
DND	2,073 (-7.08%)	2,189 (+5.60%)	76.47%	76.11%	49.33%	47.61%
ESDC	1,160 (+34.72%)	1,572 (+35.52%)	80.11%	79.15%	42.37%	54.69%
ECCC (EC)	1,488 (+1.20%)	1,558 (+4.70%)	84.91%	84.53%	72.11%	75.31%
HC	1,569 (+0.38%)	1,222 (-22.12%)	62.53%	49.49%	52.04%	35.67%
GAC (DFATD)	871 (-24.85%)	1,086 (+24.68%)	71.88%	77.43%	33.74%	36.26%
TC	937 (-14.12%)	1,032 (+10.14%)	90.19%	78.43%	41.30%	33.99%
ISED (IC)	749 (-12.60%)	885 (+18.16%)	83.73%	88.45%	67.38%	70.58%
PSPC (PWGSC)	691 (-3.80%)	863 (+24.89%)	74.45%	81.81%	50.55%	51.81%
LAC	829 (-5.47%)	737 (-11.10%)	86.88%	88.04%	77.34%	71.24%
CSIS	366 (-59.50%)	669 (+82.79%)	75.85%	93.28%	66.24%	81.92%
CSC	555 (-11.90%)	646 (+16.40%)	75.84%	71.33%	59.38%	47.33%
JUS	520 (-5.10%)	574 (+10.38%)	87.05%	83.84%	74.41%	74.91%
PCO	646 (-28.77%)	559 (-13.47%)	73.03%	76.64%	39.14%	41.77%
TBS	427 (+41.86%)	503 (-17.80%)	83.63%	79.18%	75.18%	64.87%
NRCan	670 (-2.76%)	430 (-35.82%)	75.95%	84.01%	44.29%	43.47%
DFO	512 (+22.80%)	424 (-17.19%)	72.06%	87.68%	44.53%	47.13%
All institutions	**68 ,193 (+13.46%)**	**75,387 (+10.55%)**	**85.06%**	**83.32%**	**65.10%**	**64.13%**

INSTITUTION	PROPORTION OF REQUESTS CLOSED PAST THE STATUTORY DEADLINE		PROPORTION OF REQUESTS PAST THE STATUTORY DEADLINE: SCORE		REQUESTS FOR WHICH ALL INFORMATION WAS DISCLOSED	
	2014–15	2015–16	2014–15	2015–16	2014–15	2015–16
IRCC (CIC)	11.05%	10.79%	C	C	29.58%	26.55%
CBSA	6.48%	18.44%	B	D	59.84%	45.33%
RCMP	28.31%	21.85%	F	F	9.03%	8.91%
CRA	13.04%	26.09%	D	F	20.80%	21.07%
DND	28.14%	41.35%	F	Red alert	18.46%	15.25%
ESDC	24.27%	18.14%	F	D	27.01%	28.35%
ECCC (EC)	11.23%	9.64%	C	B	8.33%	7.56%
HC	14.58%	41.91%	C	Red alert	11.34%	21.83%
GAC (DFATD)	41.36%	28.97%	Red alert	F	9.15%	12.12%
TC	12.51%	15.73%	C	D	10.45%	15.07%
ISED (IC)	5.25%	4.98%	B	A	39.57%	46.35%
PSPC (PWGSC)	4.84%	5.30%	A	B	20.90%	18.06%
LAC	4.40%	7.92%	A	B	33.62%	29.42%
CSIS	0.32%	2.12%	A	A	0.96%	1.84%
CSC	22.63%	28.85%	F	F	23.79%	16.53%
JUS	7.62%	5.45%	B	B	8.71%	9.64%
PCO	4.73%	2.10%	A	A	4.58%	3.39%
TBS	4.06%	4.74%	A	A	10.74%	19.18%
NRCan	8.98%	6.53%	B	B	23.29%	21.08%
DFO	18.09%	19.04%	D	D	12.92%	10.72%
All institutions	**12.54%**	**14.07%**	**C**	**C**	**27.23%**	**24.19%**

5 COURT PROCEEDINGS

A fundamental principle of the *Access to Information Act* is that decisions on disclosure should be reviewed independently of government.

The Act sets out two levels of independent review. The Commissioner carries out the first review through the investigation process.

When the Commissioner concludes a complaint is well founded and the institution does not act upon her formal recommendation to disclose records, she may, with the complainant's consent, seek judicial review by the Federal Court of the institution's refusal.

A complainant may also seek judicial review by the Federal Court of a government institution's access refusal after receiving the results of the Commissioner's investigation.

The Act also provides a mechanism by which a "third party" (such as a company) may apply for judicial review of an institution's decision to disclose information. The Commissioner often seeks to be added as a party to these proceedings to provide assistance and expertise to the Federal Court.

KEY DECISIONS AND CASES

PROCEEDINGS BEFORE THE SUPREME COURT OF CANADA

Alberta's Information and Privacy Office cannot review records to which solicitor-client privilege is claimed

On November 25, 2016, the Supreme Court of Canada released its decision in *Information and Privacy Commissioner of Alberta v. The Board of Governors of the University of Calgary*, 2016 SCC 53.[14] This decision relates to whether the Information and Privacy Commissioner of Alberta can review records to which solicitor-client privilege is claimed. It turns on an interpretation of Alberta's *Freedom of Information and Protection of Privacy Act* (FOIPP Act).

The Commissioner, with the Privacy Commissioner of Canada, led a group of information and privacy commissioners as joint interveners. The commissioners intervened because their respective statutes contain similar provisions regarding their powers to require production of records to verify claims of solicitor-client privilege.

14. Background: "The Supreme Court of Canada to decide if Alberta's Information and Privacy Office can review records to which solicitor-client privilege applies", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_4.aspx.

The Supreme Court of Canada determined that Alberta's Information and Privacy Commissioner does not have the power to review records over which solicitor-client privilege is applied.

The Court concluded that solicitor-client privilege was a substantive, rather than an evidentiary, privilege. Because Alberta's FOIPP Act only provides its commissioner with the power to require production of a record "[d]espite any other enactment or any privilege of the law of evidence", records subject to solicitor-client privilege are excluded from this power.

One justice dissented. In his view, the phrase "any privilege of the law of evidence" of the FOIPP Act *does* include solicitor-client privilege in appropriate circumstances.

Impact of the Supreme Court of Canada's decision on the OIC's investigations

Following the release of the Supreme Court of Canada's decision, on December 8, 2016, the Commissioner wrote to the President of the Treasury Board and the Minister of Justice regarding the implications of this decision and highlighted the differences between the *Access to Information Act* and the FOIPP Act.[15]

She asked that institutions be instructed by the ministers to continue to provide the OIC with records over which either solicitor-client privilege or litigation privilege is claimed, in order for her to provide first-level independent review.

She also asked that, for greater certainty, the Act be amended as part of the government's first phase review of the Act to include language that provides for a clear and unambiguous legislative intent that the Information Commissioner's investigative powers, including her power to compel institutions to produce records, apply to records over which the exemption for solicitor-client privilege has been claimed.

Status: Neither the President of the Treasury Board nor the Minister of Justice has responded to the Commissioner's letter. The OIC continues to receive records over which solicitor-client privilege and litigation privilege is claimed.

15. Letter to the Minister of Justice and President of the Treasury Board regarding the impact of the Supreme Court of Canada's decision in *Information and Privacy Commissioner of Alberta v. The Board of Governors of the University of Calgary* on OIC investigations, December 2016, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_11.aspx.

Intervening in litigation related to Indian Residential School Settlement Agreement

The Commissioner has been granted leave to intervene in the appeal before the Supreme Court of Canada (*Fontaine et al. v. Canada (A.G.)*, (SCC 37037)). The appeal relates to records created for the purposes of independently adjudicating claims related to the Indian Residential School Settlement Agreement (IRSSA). At the core of this litigation is a balancing exercise between protecting personal information and transparency and government accountability.

The litigation before the Supreme Court of Canada is an appeal of a decision of the Ontario Court of Appeal (*Fontaine et al. v. Canada (A.G.)*, 2016 ONCA 241).

The majority of the Ontario Court of Appeal had determined that records created for the purposes of adjudicating claims under the Independent Assessment Process (IAP) were not government records subject to federal legislation, including the *Library and Archives of Canada Act*, the *Privacy Act* and the *Access to Information Act*.

The majority upheld (with minor variations) an order issued by the Ontario Superior Court that precluded anyone from using or disclosing IAP documents and IAP personal information for any purpose other than resolving IAP claims.

In dissent, Justice Sharpe concluded the IAP records were government records and were therefore subject to the *Access to Information Act*.

At the Supreme Court of Canada, the Commissioner will argue that, by removing the application of the *Access to Information Act* from IAP records, the accountability and transparency functions served by the Act are displaced. There is a public interest in applying the Act to these records, even if disclosure

What is the Indian Residential School Settlement Agreement (IRSSA)?
This Agreement is the consensus reached between former students of Indian Residential Schools, Churches, the Assembly of First Nations, other Aboriginal organizations and the Government of Canada to address the legacy of Indian Residential Schools.

What is the Independent Assessment Process?
The Independent Assessment Process (IAP) is an alternative dispute resolution mechanism created as part of the IRSSA to compensate residential school survivors who suffered serious physical, psychological and sexual abuse.

What are the records?
The records at stake are documentary evidence such as medical reports, hearing transcripts and reasons for decisions from the files of the almost 40,000 survivors who have made claims under the Independent Assessment Process.

A complete set of these records are in the possession of Indigenous and Northern Affairs Canada, but are subject to a destruction order.

What's at issue for Canadians?

An archive that documents the tragic legacy of the Indian Residential Schools is at risk of being inaccessible under the Act, and deleted from Canada's historical record.

There is a public interest in applying the *Access to Information Act* to these records. It allows for public scrutiny, accountability and building trust with the government in the context of reconciliation.

results in heavily redacted records. This still allows the public to scrutinize government actions. Such accountability is even more important in the context of reconciliation and building trust with the government, one of the fundamental aims of the IRSSA.

Removing the application of the Act from these records also removes independent review from government's decisions on disclosure regarding IAP records. This is contrary to Parliament's intent, which gave both the Information Commissioner and the Federal Court this independent review power.

Status: The appeal will be heard before the Supreme Court of Canada on May 25, 2017.

RAISING EXEMPTIONS AT THE 11TH HOUR

2016–2017 brought a decision from the Federal Court and an ongoing appeal at the Federal Court of Appeal that raised questions of when institutions may raise exemptions to prevent disclosure of information. Both matters impact requesters' right to timely access.

The decision from the Federal Court, *Information Commissioner of Canada v. Toronto Port Authority and Canadian Press Enterprises Inc.*, 2016 FC 683 stemmed from a request to the **Toronto Port Authority** (TPA) for its audit committee's meeting minutes.[16] TPA refused to disclose the minutes, claiming their release would harm the organization and reveal confidential third-party information. The Commissioner recommended the minutes be disclosed.

After the Commissioner issued her recommendation, TPA raised another discretionary exemption claiming the minutes should not be disclosed because they were possibly an account of consultations or deliberations. The Commissioner chose not to investigate the applicability of this exemption, given recommendations had already been made and investigating it would further delay this already lengthy investigation.

Federal Court litigation was initiated by the Commissioner, with the consent of the complainant, when TPA chose not to follow the Commissioner's recommendation to disclose the minutes.

In its reasons, released August 8, 2016, the Federal Court found certain discretionary exemptions applied to some of the minutes. However, it also found TPA had exercised its discretion unreasonably by considering irrelevant factors when it refused to disclose the

16. Background, "Withholding minutes of a public board", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_4.aspx.

minutes. The Court ordered disclosure of some of the minutes, and that TPA re-exercise its discretion over other parts.

The Court also confirmed the Commissioner is the master of her own procedure and has the discretion not to investigate an exemption invoked so late in the investigation process. The Court found that forcing the Commissioner to relaunch an investigation under these circumstances could potentially undermine the quasi-constitutional right of timely access.

Status: TPA reconsidered its discretion and released most of the contents of the minutes to the requester.

In a similar matter before the Federal Court of Appeal, **Defence Construction Canada** (DCC) raised a mandatory, rather than discretionary, exemption, five days before the hearing (*James Paul in his Capacity as President of Canada Defence Construction (1951) Limited and the Attorney General of Canada v. UCANU Manufacturing Corporation*, (A-414-15)).[17] Mandatory exemptions are fundamentally different than discretionary exemptions (see box "Mandatory vs. discretionary exemptions).

Mandatory vs. discretionary exemptions

Mandatory exemptions prohibit disclosure of information once it has been determined that the exemption applies. As a result, the institution in control of the information is under a legal obligation to refuse access.

Ex: personal information (section 19)

Discretionary exemptions permit an institution to refuse disclosure based on a two-step process. First, the institution must determine whether the exemption applies. Second, when it does, the institution must determine whether the information should nevertheless be disclosed based on all relevant factors.

Ex: advice and recommendations (section 21)

The litigation originates with a request made by the President of UCANU Manufacturing Corporation (UCANU) to DCC for information about the construction of a hangar.

The requester complained to the Commissioner about the application of the personal information and third party exemptions to the disclosed information. During the investigation, additional information was released, and the Commissioner concluded the exemptions were properly applied on the remaining information.

The requester then asked the Federal Court to review the application of the exemptions. Five days before the hearing, DCC raised a new mandatory exemption: section 24 of the Act, which incorporates by reference section 30 of the *Defence Production Act* (DPA).[18]

The Federal Court concluded DCC could not rely on this newly raised exemption to prevent disclosure (*UCANU Manufacturing Corp. v. Defence Construction Canada*, 2015 FC 1001).

17. Background, "Raising mandatory exemptions after the Commissioner's investigation is complete", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_4.aspx.
18. Section 30 of the DPA mandates that no information with respect to an individual business that has been obtained under or by virtue of the DPA, shall be disclosed without the consent of the person carrying on that business. If validly raised, the exemption would have served to withhold all of the records at issue.

The government appealed the Federal Court's decision and the sole issue is whether an institution should be permitted to raise additional mandatory exemptions post-investigation. The Commissioner intervened at the Federal Court of Appeal.

The Commissioner has argued that, as a general rule, all exemptions to the right of access must be raised prior to the completion of an investigation. This facilitates meaningful review by the Office of the Information Commissioner and protects requesters' right to timely access.

However, recognizing Parliament's intent in adopting mandatory exemptions, the Commissioner offered a framework to assess circumstances where an institution should be permitted to raise additional mandatory exemptions post-investigation. This framework would balance Parliament's intent in creating mandatory exemptions and litigants who could abuse the right to raise exemptions at the 11th hour. The criteria proposed to the Court are:

1. Could the government institution have reasonably raised the mandatory exemption sooner, for example:
   a. in the notice to the requester under subsection 10(1) of the *Access to Information Act* where access was initially refused;
   b. at any time during the Information Commissioner's investigation;
   c. at the earliest possible occasion in the court proceedings?
2. What is the underlying interest that the mandatory exemption seeks to protect and what are the consequences of disclosing the records at issue?
3. What is the prejudice to the requester and their access rights if the new exemption is considered at that stage of the proceedings?
4. Will allowing new issues to be raised at that stage of the proceedings unduly delay the hearing of the application and consequently, access to information for the requester?
5. Is it in the interests of justice to allow the exemption to be raised?

The hearing took place on November 1, 2016 in Ottawa.

Status: The parties await a decision.

ONGOING LITIGATION

Access to long-gun registry information and challenge to the constitutionality of the *Ending the Long-gun Registry Act*

In early 2016, the Minister of Public Safety sought the Commissioner's consent to suspend an application before the Ontario Superior Court challenging amendments to the *Ending*

the Long-gun Registry Act (ELRA) enacted by the *Economic Action Plan 2015 Act, No. 1* (*Information Commissioner of Canada and Bill Clennett v. Attorney General of Canada*, (OSCJ-15-64739)).[19]

The court challenge alleges these amendments unjustifiably infringe the right of freedom of expression protected in section 2(b) of the *Canadian Charter of Rights and Freedoms* and that, in their retroactive effects, contravene the rule of law.

The Commissioner and the complainant consented to suspend the Ontario Superior Court application for the purpose of settlement negotiations. An associated judicial review application in Federal Court is also suspended pending negotiations (*Information Commissioner of Canada v. Minister of Public Safety and Emergency Preparedness*, (T-785-15)).

Status: Negotiations to settle are ongoing.

Access to information: Senators' expenses

The Commissioner asked the Federal Court to review **Privy Council Office**'s (PCO) application of several exemptions to records created between specific dates "related to Senators Mike Duffy, Mac Harb, Patrick Brazeau and/or Pamela Wallin" (*Information Commissioner of Canada v. Prime Minister of Canada*, (T-1535-15)).[20]

PCO had released innocuous information in the records, such as signatures, date stamps, Government of Canada emblems and other letterhead elements, but argued the substance of the records should be withheld, claiming the exemptions for personal information, advice and recommendation and solicitor-client privilege (subsection 19(1), paragraph 21(1)(a) and section 23).

Regarding the personal information exemption, the Commissioner argued the alleged personal information should be disclosed as the public interest in its disclosure outweighs any invasion of privacy. In addition, the information constitutes a discretionary benefit of a financial nature, which is an exception to the definition of personal information. As a result, the exemption should not be applied.

The Commissioner has taken the position that the exemptions for advice and recommendations and solicitor-client privilege do not apply and that the exercise of discretion was unreasonable.

19. Background, "Access to long-gun registry information and challenge to the constitutionality of the *Ending the Long-gun Registry Act*", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_4.aspx.
20. Background, "Access to information: Senators' expenses", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_4.aspx.

The hearing for this litigation took place on November 29, 2016 at the Federal Court in Ottawa.

Status: The parties await a decision.

PERSONNEL RATES FOR GOVERNMENT CONTRACTS

In December 2015, the Federal Court released its public reasons in *Calian Ltd. v. Attorney General of Canada and the Information Commissioner of Canada*, 2015 FC 1392. In this decision, the Court found **Public Services and Procurement Canada** (PSPC) was required to exempt Calian Ltd.'s personnel rates from disclosure as third party information (paragraphs 20(1)(c) and (d)).[21]

Both the Commissioner and the Attorney General of Canada have appealed the Federal Court's decision (*Information Commissioner of Canada v. Calian Ltd.*, (A-31-16); *Attorney General of Canada v. Calian Ltd. et al.*, (A-20-16)).

In her appeal, the Commissioner argued it was an error to conclude that Calian's personnel rates were required to be withheld. Her appeal largely focuses on a misinterpretation of a provision in the Act that states an institution may disclose third party information with the consent of the third party (subsection 20(5)).

The Commissioner also argued the decision disregards the clear and unambiguous wording of a disclosure clause found in Calian's standing offer to PSPC, as well as judicial interpretations of similarly worded disclosure clauses, that should allow for the release of the personnel rates.

The Commissioner's appeal was heard together with the Attorney General's by the Federal Court of Appeal on January 26, 2017 in Ottawa.

Status: The parties await a decision.

THIRD-PARTY-INITIATED PROCEEDINGS

Third parties can ask the Federal Court of Canada to review institutions' decisions to disclose information (section 44). The Legal Services team monitors the issues in these proceedings. The Commissioner will ask to be added as a party where her participation would be of assistance to the Court.

21. Background, "Personnel rates for government contracts", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_4.aspx.

PERSONAL INFORMATION OF PRIVATE SECTOR EMPLOYEES

In *Suncor Energy Inc. v. Canada-Newfoundland and Labrador Offshore Petroleum Board and Information Commissioner of Canada*, (A-84-16) and *Husky Oil Operations Limited v. Canada-Newfoundland and Labrador Offshore Petroleum Board*, (A-75-16) third parties are challenging decisions by the **Canada-Newfoundland and Labrador Offshore Petroleum Board** ("the Board") to disclose records containing the names, telephone numbers and business titles of employees.

At issue

Should personal identifying information, such as the details that can be found on a business card, of employees who do business with the government, be protected from disclosure when that information is already available on social media?

The Federal Court decided the information qualified for the personal information exemption (section 19(1)) (See *Suncor Energy Inc. v. Canada-Newfoundland Offshore Petroleum Board*, 2016 FC 168 and *Husky Oil Operations Limited v. Canada-Newfoundland and Labrador Offshore Petroleum Board*, 2016 FC 117).[22] However, it also determined the Board reasonably exercised its discretion in deciding to disclose this information since these employees' association with the third parties was publicly available (within the meaning of paragraph 19(2)(b)). In one case the information was on LinkedIn, a social networking site for professionals, while in the other, on ZoomInfo.com.

Both parties have appealed the Federal Court decisions and the Commissioner continues to be a party to these proceedings.[23]

Status: The hearings are scheduled for June 27 and 28, 2017 in St. John's, Newfoundland.

PORTER DISCONTINUES TWO APPLICATIONS FOR JUDICIAL REVIEW ON THE EVE OF THE HEARING

In September 2015, Porter Airlines Inc. (Porter) asked the Federal Court to review two of **Transport Canada**'s (TC) decisions to release certain records concerning Porter's safety management system (*Porter Airlines Inc. v. Attorney General*, (T-1491-15) and (T-1296-15)).[24]

The Commissioner was added as a party to both these proceedings.

Both matters were set to be heard by the Federal Court on November 22, 2016 in Toronto. However, Porter discontinued the applications less than two weeks prior to the scheduled hearing.

Status: Transport Canada released the records.

22. Background: Personal information of private sector employees (1) and (2), *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_4.aspx.
23. There are numerous proceedings before the Federal Court involving both Suncor and Husky that involve the same legal issue of whether personal information is publicly available. Most of these proceedings have been stayed awaiting the decisions of the Federal Court of Appeal.
24. Background, Airline safety management systems (1) and (2), *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_4.aspx.

CHALLENGING THE INFORMATION COMMISSIONER'S PARTICIPATION IN COURT PROCEEDINGS

In fall 2015, Apotex asked the Federal Court to review a decision of **Health Canada**'s to release records in response to three identical requests.[25]

The Commissioner asked to be added to these proceedings because Apotex stated it intended to seek a reversal of the burden of proof. It wanted the government to have the burden of proof, rather than the third party (itself) opposing disclosure. Apotex opposed the Commissioner being added to the proceedings.

The Commissioner was added to the proceedings by a prothonotary's orders on April 4, 2016. Apotex appealed the prothonotary's orders to the Federal Court, asserting the legal test for the Commissioner to be added as a party is that of "necessity".[26]

Apotex's appeals to the Federal Court were dismissed on July 8, 2016 (*Apotex v. Minister of Health*, 2016 FC 776).

In its decision, the Federal Court found that requiring the Commissioner to prove her necessity in these types of proceedings "would undermine the intention of Parliament that the Commissioner may be granted leave to be added as a party."

The Federal Court noted that many previous orders made by prothonotaries and judges have added the Commissioner as a party to access to information proceedings. In rendering those orders, they applied the following test: whether the participation of the Commissioner would assist the Court to determine a factual or legal issue in the proceedings. The Federal Court affirmed this test.

Apotex appealed this decision to the Federal Court of Appeal and the appeal was heard on March 27, 2017 in Toronto.

Status: The parties are awaiting a decision.

In a similar matter, on June 1 and September 6, 2016, a pharmaceutical company, Teva Canada Limited (Teva), asked the Federal Court to review **Health Canada**'s decisions to disclose records relating to Teva's drug submissions (*Teva Canada Limited v. Canada (Minister of Health*), T-872-16 and T-1468-16).

25. Background, "Reversing the Burden in Third Party Applications", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_4.aspx.

26. This test comes from Rule 104 of the *Federal Courts Rules*.

The Commissioner sought to be added to both proceedings because Teva made arguments related to a lack of procedural fairness. It alleged Health Canada improperly placed the entire burden on Teva to establish the exemption. These were substantially similar issues to those raised by Apotex in the reviews to the Federal Court noted above.

Teva opposed the Commissioner being added to both these proceedings, arguing the necessity test was not met.

On December 1, 2016, the Prothonotary agreed with the Commissioner that the correct test for the Commissioner to be added as a party is: if her participation would assist the Court in determining a factual or legal issue in the proceedings.

However, based on the available evidence before the Court, the Prothonotary declined to add the Commissioner.

Status: The Prothonotary left open the possibility of the Commissioner becoming a party at a later time once affidavit evidence and memoranda of argument have been filed.

OTHER LITIGATION

Disclosure of report on Air Transat's quality and safety management system

On May 9, 2016, Air Transat asked the Federal Court to review a decision by **Transport Canada** (TC) to release information related to Air Transat's Quality and Safety Management System (SMS) and a report entitled "Transport Canada Regulatory Inspection of Air Transat" (*Air Transat A.T. Inc. v. Minister of Transport and Information Commissioner of Canada*, (T-739-16)).

This litigation results from a request that was made to TC in 2005. The requester had complained about TC's response. During the lengthy investigation, TC disclosed further records.

In 2015, the complainant agreed to focus the investigation on only the report at issue. During the investigation, TC and Air Transat claimed a number of exemptions (personal information, third party information, and advice and recommendations or deliberations within government (subsection 19(1), paragraphs 20(1)(a), (b), (c) and (d) and paragraphs 21(1)(a) and (b))).

The Commissioner reported her findings to the Minister of Transport on February 26, 2016 and recommended most of the report be disclosed. The Minister agreed with her recommendation and advised Air Transat of his intention to disclose the majority of the report. Air Transat initiated Court review of that decision, triggering this litigation.

In addition to asking the Court to review TC's decision, Air Transat also asked the Court to declare the Commissioner's recommendation to the Minister of Transport to be null and void.

Status: A hearing before the Federal Court is scheduled for June 13-14, 2017.

APPLICATION OF SECTION 18 OF THE *FEDERAL COURTS ACT*

Section 18 of the *Federal Courts Act* allows the Federal Court to compel any federal board, commission or other tribunal to execute certain actions (this is known as a *writ of mandamus*). On October 4, 2016, a complainant asked the Federal Court, under section 18, to compel the Commissioner to provide the complainant with reports of finding, concluding the investigations of two complaints that they had made to the Commissioner in January 2014 (*Sheldon Blank v. the Information Commissioner of Canada*, (T-1673-16)).

The investigations of these two complaints are ongoing.

The proceeding before the Federal Court is also ongoing. Both parties have served their affidavit evidence and cross-examinations on the affidavits took place on December 21, 2016.

Status: The Commissioner awaits the applicant's next step in this proceeding.

6 ADVISING PARLIAMENT

As an Agent of Parliament, the Commissioner provides advice to Parliament on important access-related matters and reports on the functioning of her office.

HOUSE OF COMMONS COMMITTEE STUDIES THE *ACCESS TO INFORMATION ACT*

The House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI) commenced a study of the *Access to Information Act* on February 25, 2016. The Information Commissioner appeared twice during this study.

In her first appearance, she discussed her special report, *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*.[27]

In her second appearance, in light of the government's proposal to move forward with reform in a two-stage process, she gave recommendations on priorities for the first phase based on their greatest impact on transparency.[28]

> "OUR *ACCESS TO INFORMATION ACT* IS CLEARLY OUTDATED AND SEVERELY OUTRANKED NATIONALLY AND INTERNATIONALLY. IT FAILS TO STRIKE THE RIGHT BALANCE BETWEEN THE PUBLIC'S RIGHT TO KNOW AND THE GOVERNMENT'S NEED TO PROTECT INFORMATION….NOW IS THE TIME TO TAKE BOLD ACTION TO ENSURE CANADIANS' ACCESS RIGHTS ARE PROTECTED."
>
> –Information Commissioner Suzanne Legault
> Appearance before the ETHI Committee, May 19 2016

27. *Striking the Right Balance for Transparency – Recommendations to Modernize the Access to Information Act*, March 2015, http://www.oic-ci.gc.ca/eng/media-room-salle-media_speeches-discours_2016_2.aspx.
28. "Priority recommendations during first phase reform", May 2016, http://www.oic-ci.gc.ca/eng/media-room-salle-media_speeches-discours_2016_6.aspx.

Priority recommendations during first phase reform

Coverage of the Act
- Extend the scope of the Act to ministers' offices and institutions that support Parliament and the courts.

Duty to document
- Establish a comprehensive legal duty to document, with appropriate sanctions for non-compliance.

Timeliness
- Address delays by implementing the series of recommendations found in *Striking the Right Balance for Transparency*, including:
  - limiting time extensions to what is strictly necessary based on a rigorous, logical and supportable calculation, up to a maximum of 60 days.
  - allowing longer extensions only with the permission of the Office of the Information Commissioner.
  - limiting delays stemming from consultations with other institutions, other jurisdictions and third parties.

Maximizing disclosure
- Amend the exemption for advice and recommendations (section 21) to give effect to the government's accountability and transparency agenda. This includes:
  - limiting the exemption's application to protect only the interest at stake, so the exemption applies only where disclosure would result in injury.
  - limiting the scope and duration of this exemption.
- Repeal the Cabinet confidences exclusion and replace it with a mandatory exemption that is limited to when disclosure would reveal the substance of deliberations of Cabinet.
- Include in the Act a general public interest override.

Oversight
- Strengthen oversight of the right of access by adopting a comprehensive order-making model.

Mandatory periodic review of the Act
- Require parliamentary review of the Act in 2018, and every five years thereafter.

The Commissioner also provided the ETHI Committee with four written submissions during its study, addressing:

- the use of criteria to determine coverage under the Act, specifically for entities that are funded in whole or in part by the government or that perform a public function;[29]
- how her proposed oversight model would work in practice;[30]
- her concerns with applying the oversight model currently in place in Newfoundland and Labrador to the Federal context;[31] and
- her recommendations related to entities that receive grants, loans and contributions, and how special delegation investigations are conducted at the Office of the Information Commissioner.[32]

The ETHI Committee tabled its report, which contains 32 recommendations, on June 16, 2016. The majority of these recommendations closely align with the Commissioner's, including a legal duty to document, order-making powers for the Information Commissioner, the ability of the Office of the Information Commissioner to review Cabinet confidences, and a stricter application of the exemption on advice and recommendations.[33]

The ETHI Committee requested a Government Response, which was tabled on October 17, 2016.[34]

BILL C-22, AN ACT TO ESTABLISH THE NATIONAL SECURITY AND INTELLIGENCE COMMITTEE OF PARLIAMENTARIANS

The Commissioner appeared before the House of Commons Standing Committee on Public Safety and National Security (SECU) as part of its study of Bill C-22 on November 24, 2016. This bill proposes to create a joint national security and intelligence committee of parliamentarians, mandated with overseeing national security and intelligence matters.

During her appearance, the Commissioner flagged serious concerns with the bill and provided solutions for the Committee (see "A review of Bill C-22" on page 50).[35]

29. Submission to ETHI, March 2016, http://www.oic-ci.gc.ca/eng/suivi-comparution-devant-ETHI-2016-02-25-ETHI-appearance-follow-up_6.aspx.
30. Submission to ETHI, June 2016, http://www.oic-ci.gc.ca/eng/pa-ap-appearance-comparution-2016_1.aspx.
31. Submission to ETHI, June 2016, *http://www.oic-ci.gc.ca/eng/lettre-a-ethi_letter-to-ethi.aspx*.
32. Submission to ETHI, June 2016, http://www.oic-ci.gc.ca/eng/pa-ap-appearance-comparution-2016_2.aspx.
33. Review of the *Access to Information Act*, June 2016, http://www.ourcommons.ca/DocumentViewer/en/42-1/ETHI/report-2.
34. Government response to the second report of the ETHI Committee, October, 2016, http://www.ourcommons.ca/Content/Committee/421/ETHI/GovResponse/RP8501560/421_ETHI_Rpt02_GR/421_ETHI_Rpt02_GR-e.pdf.
35. Remarks by the Information Commissioner on Bill C-22, November 2016, http://www.oic-ci.gc.ca/eng/media-room-salle-media_speeches-discours_2016_15.aspx.

> THE WORK OF THE COMMITTEE WILL BE A KEY PILLAR IN REGAINING THE TRUST AND INCREASING THE ACCOUNTABILITY FRAMEWORK OF OUR NATIONAL SECURITY AGENCIES….AT PRESENT, BILL C-22 DOES NOT STRIKE THE RIGHT BALANCE BETWEEN PROTECTING THE NATIONAL SECURITY INTEREST, AND TRANSPARENCY AND ACCOUNTABILITY. IN ITS CURRENT FORM, THE COMMITTEE WILL NOT BE ABLE TO ACHIEVE ITS GOAL.
>
> –Information Commissioner Suzanne Legault
> Appearance before the SECU Committee, November 24, 2016

The SECU Committee made substantial changes to Bill C-22 during its clause-by-clause study of the bill, some of which addressed the Commissioner's concerns. However, many of those changes were undone in the House of Commons when amendments to revert the bill more closely back to its original version were passed.

Bill C-22 passed third reading in the House Commons on April 4, 2017 and is now before the Senate.

MAIN AND SUPPLEMENTARY ESTIMATES

The Commissioner also appeared before the ETHI Committee to discuss the Main[36] and Supplemental Estimates[37] for the Office of the Information Commissioner of Canada for 2016–2017. The appearances occurred on May 10 and November 24, 2016, respectively.

36. Remarks by the Information Commissioner on the Main Estimates, May 2016, http://www.oic-ci.gc.ca/eng/media-room-salle-media_speeches-discours_2016_5.aspx.
37. Remarks by the Information Commissioner on the Supplemental Estimates, November 2016, http://www.oic-ci.gc.ca/eng/media-room-salle-media_speeches-discours_2016_13.aspx.

A REVIEW OF BILL C-22

Concerns	Solutions
1. The ministerial override of the Committee's review function • The Committee's broad mandate to review matters related to national security and intelligence is undercut by providing that the Minister of a department may override a review where the Minister determines it would be injurious to national security.	There should be no ministerial override of the Committee's review function.
2. The Committee's ability to obtain information • There are exclusions to the Committee's right to obtain information that undermine the review function. • They also include no explicit consideration of the public's interest in providing the Committee with this information.	Provide the Committee with robust access to records, with no limitations. • In the event that limitations on the Committee's access to information are determined to be necessary, add a public interest override.
3. The timeframes to provide information to the Committee • Information is to be provided to the Committee "in a timely manner." Language like this is vague and open to abuse.	There should be a precise number of days (30) to provide information to the Committee.
4. The private nature of the Committee's meetings • The threshold for when Committee meetings go *in camera* is unclear and could easily result in nearly all of these meetings being private.	State clearly that that the Committee's meetings will be public by default, and only go *in camera* where a clear threshold is met.
5. The limitations placed on other review bodies when collaborating with the Committee and • The direction that review bodies of the RCMP, CSIS and CSEC cooperate with the Committee is weakened by a clause that prevents these review bodies from sharing information that a Minister decided to withhold from the Committee.	There should be no limitations placed on other review bodies when collaborating and sharing information with the Committee.
6. The final nature of decisions made by ministers. • The Minister is the final decision making authority with respect to providing information to the Committee. This could lead to overly-broad interpretations of the law that favour non-disclosure to the Committee.	Decisions made by ministers should be reviewable by the Federal Court. • If it is determined that some exclusions to the Committee's access to information are necessary, any disputes about the application of exclusions should be subject to judicial review
7. Application of the *Access to Information Act* to the Secretariat • Although Bill C-22 proposes to extend coverage of the Act to the Secretariat of the Committee, the Bill proposes to exempt from the right of access any record that contains information created or obtained by the Secretariat or on its behalf in the course of assisting the Committee in fulfilling its mandate. This mandatory exemption is overly broad and could result in the Secretariat having only the veneer of transparency.	The exemption under the *Access to Information Act* for the Secretariat should be discretionary and focused on protecting only the information that is subject to the review function of the Committee.

7 PROTECTING AND PROMOTING ACCESS

The Office of the Information Commissioner (OIC) protects and promotes access to information rights through a number of outreach activities.

TRANSPARENCY FOR THE 21ST CENTURY

From March 21-23, 2017, the OIC hosted the Transparency for the 21st Century Conference.

Held at Library and Archives Canada, the conference brought together Canadian and international experts and advocates across various fields related to government transparency. The Commissioner's vision for the event was to:

- develop a strong transparency community by gathering all experts in one place;
- create a common understanding of the right of access as a fundamental human right;
- find a balance between transparency and required protections;
- rethink transparency platforms in light of new technologies; and
- facilitate an open dialogue for how access to information will keep pace with society.

The conference advanced each of these objectives, and best practices and future planning strategies were shared. The sense of community was apparent, and proved the group's knowledge and strength could be leveraged collectively to advance access rights. The OIC will continue to promote collaboration of transparency experts.

Gratitude is extended to the Department of Justice Canada, the Treasury Board of Canada Secretariat, Library and Archives, the Canadian Commission for UNESCO, the Canadian Committee for World Press Freedom, the Library of Parliament and Carleton University's School of Journalism and Communication for assisting with the conference.

A webcast of the two-day conference is available until March 2018 (Day 1 http://video.isilive.ca/oicci/2017-03-22_23/floor.html and Day 2 http://video.isilive.ca/oicci/2017-03-22_23/floor2.html).

> "I AM EXCITED TO GATHER ALL OF YOUR EXPERTISE AND YOUR COMMITMENT TO GOVERNMENT TRANSPARENCY IN ONE PLACE. ALL OF YOU WORK IN VARIOUS WAYS TO MAXIMIZE ACCESS TO INFORMATION. ACCESS TO INFORMATION SPECIALISTS, OPEN GOVERNMENT ADVOCATES, OPEN DATA ARCHITECTS, INFORMATION MANAGEMENT SPECIALISTS, ARCHIVISTS, HISTORIANS, JOURNALISTS, INDIGENOUS RIGHTS, CIVIL LIBERTIES AND HUMAN RIGHTS DEFENDERS NEED TO MEET AND SHARE BEST PRACTICES AND PLAN FOR THE FUTURE. THE WORK IS TOO IMPORTANT, AND TOO URGENT, TO CONTINUE TO WORK IN SILOS."

–Information Commissioner Suzanne Legault
Transparency for the 21st Century Conference, March 22, 2017

RIGHT TO KNOW WEEK

Every year, Right to Know Week is celebrated across Canada to raise awareness about the right of all citizens to access government information. The week celebrates and also promotes freedom of information as essential to both democracy and good governance.

This year, the celebrations were held from September 26-30, 2016, anchored by International Right to Know Day on September 28, 2016.

OPEN AND TRANSPARENT GOVERNMENT FOR ALL

The OIC's Right to Know Week celebrations began on September 26, 2016 with a seminar, "Open and transparent government for all". The event was organized with Carleton University's School of Journalism and Communication and the School of Public Policy and Administration.

2016 Grace-Pépin Access to Information Award Recipient

Elizabeth Denham, Information Commissioner for the United Kingdom, was the recipient of the 2016 Grace-Pépin Access to Information Award.

Ms. Denham has been a staunch advocate for access to information rights. She previously served as the Information and Privacy Commissioner for British Columbia. Throughout her 30-year career, Ms. Denham has made significant inroads to advance access to information. Notably, she increased access to the City of Calgary's archives, published a report "Access Denied" following the triple delete scandal in British Columbia, and issued countless recommendations on the issues of timeliness, proactive disclosure, and greater reporting of information in the public interest.

The seminar featured a keynote address by the Honourable Scott Brison, President of the Treasury Board. There were three panels with a diverse group of expert speakers who spoke about open government and access to information in the context of journalism, indigenous rights, national security, historical records, and at universities.

TORONTO STAR REPORTER STUDIES ACCESS

Jayme Poisson, a Toronto Star reporter, was the recipient of the 2016 Greg Clark Award, which offers working journalists a chance to explore an issue in-depth. The award allowed Ms. Poisson to study access to information to gain a better understanding of access legislation. She spent some time at the OIC during Right to Know Week.

COLLABORATING WITH FEDERAL, PROVINCIAL AND TERRITORIAL COMMISSIONERS

In November 2016, federal, provincial and territorial information and privacy commissioners convened in Toronto for their annual conference. Topics of discussion this year included legislative reform, challenges raised by changes in government, and extending access to information coverage to the offices of Ministers and the Prime Minister.

This conference allows the commissioners to share best practices, exchange information, and prepare joint resolutions on information rights of particular importance to Canadians.

THE INFORMATION COMMISSIONER'S BLOG

The Commissioner's blog, www.suzannelegault.ca, was launched in early 2016 to engage directly with Canadians. She uses it to address topical and pressing access to information issues. Her blogs for the past year include:

The Act is ripe for amendments, June 2016
(https://suzannelegault.ca/2016/06/07/the-act-is-ripe-for-amendments/)
The Commissioner sets out priority recommendations for the government's first phase of legislative reform of the *Access to Information Act*.

> "THE *ACCESS TO INFORMATION ACT* IS CLEARLY OUTDATED AND SEVERELY OUTRANKED NATIONALLY AND INTERNATIONALLY. COMPREHENSIVE REFORM OF THE ACT IS LONG OVERDUE AND SHOULD BE UNDERTAKEN PROMPTLY TO MEET THE INFORMATION REALITIES OF THE 21ST CENTURY."
>
> –Information Commissioner Suzanne Legault
> "The Act is ripe for amendments", June 2016

Latest News! Positive advancements for access, July 2016
(https://suzannelegault.ca/2016/07/14/latest-news-positive-advancements-for-access/)
The Commissioner shares the latest developments related to access, including a Parliamentary committee's report with 32 recommendations to reform the Act, Treasury Board's consultations on the government's third Open Government Plan, additional temporary funding for the OIC, and the OIC's new annual report.

> "THE NEXT TEST, HOWEVER, WILL BE FOLLOWING THROUGH ON THOSE COMMITMENTS IN THE FALL BY PASSING LEGISLATION THE GOVERNMENT HAS PROMISED. THAT LEGISLATION WILL NEED TO BOLDLY ADDRESS THE GROWING EXPECTATIONS OF THE COMMITTEE, INSTITUTIONS, AND ACCESS REQUESTERS."
>
> –Information Commissioner Suzanne Legault
> "Latest News! Positive advancements for access", July 2016

Spotlight on Right to Know Week, September 2016
(https://suzannelegault.ca/2016/09/15/access-to-information-spotlight/)
The Commissioner highlights upcoming Right to Know Week events, such as the 2016 Information Summit and the "Open and transparent government for all" seminar.

> "EVENTS OF THE WEEK RAISE AWARENESS OF ACCESS TO INFORMATION RIGHTS WHILE PROMOTING FREEDOM OF INFORMATION AS ESSENTIAL TO BOTH DEMOCRACY AND GOOD GOVERNANCE."
>
> –Information Commissioner Suzanne Legault
> "Spotlight on Right to Know Week", September 2016

Looking to a bold future for access, September 2016 (https://suzannelegault.ca/2016/09/28/guest-post-looking-to-a-bold-future-for-access/)
Toronto Star reporter, Jayme Poisson, shares her views on the critical need for the modernization of the Act and a culture shift in the government toward openness and accountability.

> "I HOPE OUR GOVERNMENT DOES DO BETTER, BECAUSE AN OPEN GOVERNMENT IS BETTER FOR CANADIANS. I REALIZE THESE CHANGES WON'T BE SIMPLE. BUT I HOPE THEY'LL BE BOLD."
>
> –Toronto Star Reporter Jayme Poisson,
> "Looking to a bold future for access", September 2016

Will Canada turn the corner? October 2016 (https://suzannelegault.ca/2016/10/28/320/)
Following the tabling of the Government Response to the Parliamentary committee's report on reforming the Act, the Commissioner notes the positive steps the government has taken towards transparency, and the work yet to be done.

> "IT HAS BECOME EVIDENT THAT SOMETHING NEEDS TO BE DONE. A SERIOUS "CULTURE OF DELAY" HAD SETTLED IN AND FEDERAL GOVERNMENT OFFICIALS REGULARLY DENIED ACCESS TO GOVERNMENT INFORMATION AND DOCUMENTS. SOMEWHERE ALONG THE WAY, LEGISLATION MEANT TO OPEN THINGS UP AND ENSURE THAT CITIZENS COULD BENEFIT FROM INFORMATION AND KEEP GOVERNMENT ACCOUNTABLE, HAS PRODUCED A SLOW AND ARCANE SYSTEM THAT SEEMS BENT ON DENYING ACCESS."
>
> –Information Commissioner Suzanne Legault
> "Will Canada turn the corner?", October 2016

Access to Information: Strengthening Participatory Democracy, November 2016 (https://suzannelegault.ca/2016/11/30/access-to-information-strengthening-participatory-democracy/)
The Commissioner reflects on access to information as a right that supports democracy and that protecting democracy requires building trust, resiliency and public participation.

> "THE STRENGTH OF A DEMOCRACY CAN BE RELATED DIRECTLY TO HOW MUCH INFORMATION IS IN PUBLIC HANDS. ACCESS TO INFORMATION HAS BEEN CALLED THE SINGLE MOST IMPORTANT INSTRUMENT (AFTER ELECTIONS) FOR ENSURING ACCOUNTABILITY IN A DEMOCRACY. MORE INFORMATION MEANS BETTER INFORMED CITIZENS PARTICIPATING IN THE DEMOCRATIC PROCESS."
>
> –Information Commissioner Suzanne Legault
> "Access to information", November 2016

OTHER ACTIVITIES TO PROTECT AND PROMOTE ACCESS RIGHTS

The Commissioner and her senior officials attended 26 speaking engagements and spoke to the media numerous times in 2016–2017. For a complete list of these and other outreach activities, see Appendix C on page 71.

Visits from international dignitaries

- October 5, 2016: The Commissioner met with Aruna Roy of India's Mazdoor Kisan Shakti Sangathan to discuss her oversight function.
- December 13, 2016: The Commissioner welcomed a delegation from Mali. She shared best practices with the head of the delegation, Her Excellency Diarra Raky Talla, Minister of Labour and the Public Service. Mali is set to implement a national law on transparency.

8 CORPORATE SERVICES

Corporate services at the Office of the Information Commissioner (OIC) provides strategic and corporate leadership for planning and reporting, human resources and financial management, security and administrative services, information management and technology, and internal audit and evaluation.

The support provided by corporate services is integral for program delivery. The corporate services team continued in 2016–2017 to ensure sound stewardship of the OIC's resources and to provide efficient operations.

WORKPLACE MENTAL HEALTH AND WELL-BEING

In fall 2016 a healthy workplace initiative was launched with a focus on the workplace mental health, safety, and well-being of employees.

A Workplace Mental Health Committee was established, made up of employees from various levels and branches. This committee has organized a number of activities aimed at raising awareness of workplace wellness-related issues and at sustaining a healthy workplace.

PROMOTING EXCELLENCE

TRAINING PROGRAM

All investigators go through the OIC's intensive three-week training program. This training ensures investigators have the tools they need early on to conduct high-quality investigations.

CAREER DEVELOPMENT

The OIC has a specialised career development program for investigators that was reviewed in 2016–2017.

For employees in the human resources and financial management categories, the talent management programs developed by central agencies were reviewed and adapted as appropriate.

INTERNAL HR SERVICES

In 2016–2017, the Human Resources team had three priorities: responding promptly to employees' Phoenix Pay System-related problems, fulfilling staffing actions in response to the OIC's temporary increase in funding, and updating staffing policies, internal business processes, systems and tools as a result of a new staffing direction for the federal public service.

OPEN GOVERNMENT IMPLEMENTATION PLAN

In 2016–2017, the OIC's Open Government Implementation Plan (OGIP) began to be put in place. The OIC's OGIP sets out the activities and deliverables it will achieve to meet the requirements of the government-wide *Directive on Open Government*.[38]

An inaugural meeting of the Open Government Steering Committee was held, and the terms of reference of the steering committee were addressed.

Identification of information for a data inventory is currently underway. Once this inventory is complete, the steering committee will identify what datasets can be published openly. These datasets will complement the existing proactive disclosure initiatives the OIC already has in place.[39]

INFORMATION TECHNOLOGY AT THE OIC

IMPROVING CASE MANAGEMENT

The OIC's case management system, InTrac, was upgraded in 2016–2017 to increase its robustness and interoperability.[40] Since the upgrade, the IM/IT group hosted representatives from the Office of the Information and Privacy Commissioner of Ontario to share knowledge on the capabilities of the improved system.

FORTIFYING IT SECURITY

In 2016–2017, an independent audit of the OIC's information technology (IT) security infrastructure was completed. The purpose of this audit was to assess the OIC's IT security posture.[41]

Recommendations from the audit included improvements to the IT security governance and policy framework. In response, a new governance model and policy framework for IT security was developed. Additionally, new key performance indicators were identified to better measure and report on the performance of the IT security program.

38. Background: "The Office of the Information Commissioner's Open Government Implementation Plan", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_7.aspx.

39. The OIC already proactively posts monthly complaints data; data about extension notices (section 9(2) of the Act); observations on the health of the access to information regime; correspondence with designated officials; and submissions to parliamentary committees.

40. Background: "An enabling IM/IT infrastructure", *Annual Report 2011-2011*, http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra_2010-2011_11.aspx.

41. Background: "Audit of the information technology security infrastructure", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_7.aspx.

REDUCING THE OIC'S ENERGY FOOTPRINT

In 2016–2017, the IM/IT group launched a datacenter consolidation initiative, which saw the organization leverage hyper-converged technology to significantly reduce the IT infrastructure's footprint and energy consumption.

AUDIT AND EVALUATION

The OIC's Audit and Evaluation Committee (AEC) meets four times a year to discuss the OIC's finances, caseload, litigation before the court, and human resources. The AEC provides the Commissioner with independent and objective advice, guidance and recommendations on the adequacy of the OIC's control and accountability processes, as well as the use of evaluation within the OIC, in order to support management practices, decision-making and program performance.

In 2016–2017, the AEC reviewed the results of the IT security audit (see page 57, "Fortifying IT security"). The AEC will continue to follow up on this audit to ensure all of the recommendations are implemented.

The AEC also closely monitored the financial situation of the OIC, with a special emphasis on the temporary funding, as well as the over and underpayments caused by the Phoenix Pay System.

ACCESS TO INFORMATION AND PRIVACY

For information on the OIC's access to information and privacy activities in 2016–2017, consult its annual reports to Parliament on these topics on the OIC's website.[42]

Appendix D (page 74) contains the annual report of the Information Commissioner *ad hoc*, who investigates complaints about the Office of the Information Commissioner's handling of access requests.

42. Annual Reports, http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx.

9 LOOKING AHEAD

The Information Commissioner's appointment will end on June 28, 2017. Her mandate has been extended on an interim basis until the end of December 2017.

In light of this, the Office of the Information Commissioner (OIC) will be preparing for transition to ensure corporate stability and transfer of knowledge.

INVESTIGATIONS

STRATEGIES

The OIC will continue to capitalize on the momentum gained as part of its simplified investigation process and interest-based negotiation.[43]

It will also continue to review the inventory of complaints to develop strategies for grouping complaints. Strategies for 2017–2018 include:

- the interpretation of the exemption for Canada Post (section 18.1) and complaints against this institution (see page 16, "Canada Post – Interpretation of section 18.1 of the Act" for further details);
- Cabinet confidences (section 69);
- responses to requests where an institution will neither confirm nor deny the existence of a record (subsection 10(2));
- the use of the personal information exemption (section 19) in compassionate disclosure situations; and
- the exercise of discretion in light of the Federal Court's decision in *Information Commissioner of Canada v. Minister of Transport Canada*.[44]

INVESTIGATION MANUAL AND CODE OF PROCEDURES

An investigation manual and code of procedures are being created to provide investigators, complainants and institutions with a better understanding of the OIC's processes and responsibilities. Where relevant, the manual will also include the OIC's interpretation of provisions of the Act.

43. Background: "Streamlining investigations at the Office of the Information Commissioner of Canada", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_3.aspx.

44. Background: "Proper exercise of discretion: Federal Court decision on disclosure of number of individuals on Canada's 'no-fly list'", *Annual Report 2015–2016*, http://www.oic-ci.gc.ca/eng/rapport-annuel-annual-report_2015-2016_2.aspx.

ADVISORY NOTICES

Advisory notices on the exercise of discretion, processing multiple complaints from one complainant, and investigations involving third parties are forthcoming.

ONLINE COMPLAINT FORM

An online complaint form is in development to simplify the complaint process for complainants and investigators. The form will be piloted in the coming months to ensure functionality, and will be officially launched in 2017–2018.

OTHER TECHNOLOGIES FOR INVESTIGATIONS

Optical character recognition (OCR) software will be implemented to ease searching through voluminous records. Dashboards will also be used to create links between investigation and litigation files.

WEBSITE UPDATE

The OIC's website is being updated to include renewed content and a refreshed, easier to navigate interface.

RIGHT TO KNOW DAY

Each year on September 28, over 40 countries and 60 non-governmental organizations celebrate International Right to Know Day during Right to Know Week. The purpose of this day and corresponding week is to raise awareness about the public's right of access to government-held information.

Right to Know Day 2017 will focus on access to information as a human right.

TIMING OF UPCOMING LEGISLATIVE AMENDMENTS REMAINS UNKNOWN

In March 2016, the government announced it would introduce a first phase of legislative reforms to the *Access to Information Act* in winter 2017, with a comprehensive review of the Act to occur in 2018.

The government has indefinitely delayed first phase reform to the Act, and it is not known when a comprehensive review will begin. (For a complete timeline, see Appendix A on page 62, "*Access to Information Act* reform: A broken promise?")

The Commissioner and the OIC remain ready to assist the government and Parliamentarians on much needed amendments to the Act and to implement them once adopted.

APPENDIX A

ACCESS TO INFORMATION ACT REFORM: A BROKEN PROMISE?

JUNE 11, 2014

MP Justin Trudeau tables Bill C-613:

- Requires government information to be open by default and available in user-friendly formats;
- Grants order-making powers to the Information Commissioner; and
- Requires a statutory review of the *Access to Information Act* every five years.

http://www.parl.ca/DocumentViewer/en/41-2/bill/C-613/first-reading

MARCH 31, 2015

The Information Commissioner tables her Special Report to Parliament, *Striking the Right Balance for Transparency*. The special report provides 85 recommendations to modernize the Act.
http://www.oic-ci.gc.ca/eng/rapport-de-modernisation-modernization-report.aspx

OCTOBER 19, 2015

The Liberal Party of Canada is elected on a platform of openness and transparency. The Liberals make the following promises for access to information:

- Make government data and information open by default in user-friendly formats;
- Eliminate all fees related to access, except the $5 filing fee;
- Grant the Information Commissioner the power to order disclosure;
- Ensure the Act applies to the Prime Minister's Office and Ministers' Offices, as well as administrative institutions that support Parliament and the courts; and
- Undertake a full legislative review of the Act every five years.

https://www.liberal.ca/realchange/access-to-information/

NOVEMBER 13, 2015

The Prime Minister publishes the Ministers' mandate letters. Each letter contains a broad commitment to government transparency and making information open by default. The letter to the President of the Treasury Board directs him to review the Act to:

- Ensure coverage of the Act is extended to the Prime Minister's office, Ministers' offices, and the administration of Parliament and the courts; and
- Provide the Information Commissioner with the power to order disclosure.

http://pm.gc.ca/eng/mandate-letters

FEBRUARY 25, 2016

The ETHI Committee begins a comprehensive review of the Act. The Information Commissioner appears before the ETHI Committee as its first witness to discuss the recommendations in her special report, *Striking the Right Balance for Transparency*.
http://www.ourcommons.ca/DocumentViewer/en/42-1/ETHI/meeting-3/evidence

MARCH 22, 2016

Budget 2016, *Growing the Middle Class*, is tabled. It includes a section entitled "Enhancing Access to Information" to fund government transparency initiatives.
http://www.budget.gc.ca/2016/docs/plan/budget2016-en.pdf

MARCH 31, 2016

At the Canadian Open Dialogue Forum, the President of the Treasury Board announces reform of the Act will follow a two-phased approach. Phase one will introduce legislation based on the commitments made in his mandate letter, and phase two will begin in 2018 and involve a more comprehensive review of the Act.
http://news.gc.ca/web/article-en.do?nid=1044759

MAY 1, 2016

The government launches a two-month long online public consultation for access reform.
http://open.canada.ca/en/consultation/revitalizing-ati

MAY 5, 2016

The President of the Treasury Board appears before the ETHI Committee regarding the Act and repeats his mandate letter commitments. He also states the government's plans to address the problems of frivolous and vexatious requests and improve performance reporting.
http://www.ourcommons.ca/DocumentViewer/en/42-1/ETHI/meeting-12/evidence

Following his appearance before the ETHI Committee, the President of the Treasury Board issues an *Interim Directive on the Administration of the Access to Information Act*. It directs government officials to waive all fees apart from the five dollar filing fee, and release information in user-friendly formats.
https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=18310

MAY 19, 2016

The Information Commissioner appears for the second time before the ETHI Committee as part of its review of the Act. The Commissioner outlines her key priorities for the government's first phase of reform:

- Coverage of the Act
- Duty to document
- Timeliness
- Maximizing disclosure
- Order-making model
- Mandatory periodic review

http://www.ourcommons.ca/DocumentViewer/en/42-1/ETHI/meeting-16/evidence

JUNE 16, 2016

The ETHI Committee presents its report on modernizing the Act, and provides 32 recommendations that closely align with the priorities identified by the Commissioner.
http://www.ourcommons.ca/DocumentViewer/en/42-1/ETHI/report-2/

JULY 15, 2016

The government publishes its Third Biennial Plan to the Open Government Partnership.[45] Modernization of the Act is included as one of its commitments.
http://open.canada.ca/en/content/third-biennial-plan-open-government-partnership

SEPTEMBER 26, 2016

At a Right to Know Week event, the President of the Treasury Board announces first phase legislation will be tabled in winter 2017.
http://news-nouvelles.gc.ca/web/article-en.do;jsessionid=2e3a1cefff0e34ca3efdcd2c32e8b1098decfb4808248a65ae0ef4b0a78da2b6.e34Rc3iMbx8Oai0Tbx0SaxuRbh50?mthd=tp&crtr.page=7&nid=1130259&crtr.tp1D=970

OCTOBER 17, 2016

The government responds to the ETHI Committee's report, and reiterates its plans to introduce first phase legislation in early 2017.
http://www.ourcommons.ca/Content/Committee/421/ETHI/GovResponse/RP8501560/421_ETHI_Rpt02_GR/421_ETHI_Rpt02_GR-e.pdf

FEBRUARY 13, 2017

The government releases its end of term self-assessment report on its objectives in the Action Plan on Open Government 2014–2016. The report restates the government's commitment to bringing forward changes to the Act in early 2017.
http://open.canada.ca/en/end-of-term-self-assessment-report-action-plan-open-government-2014-2016

MARCH 21, 2017

Canadian Press journalist Jim Bronskill publishes an article entitled, "Feds postpone initial Access to Information reforms, cite need to 'get it right'". In the article, a spokesperson for Mr. Brison states the government is "committed to taking the time to do it properly."
http://www.ctvnews.ca/politics/feds-postpone-initial-access-to-information-reforms-cite-need-to-get-it-right-1.3333560

MARCH 25, 2017

In media articles, the President of the Treasury Board added "important considerations" for delaying access reform, such as "the neutrality of the public service" and "the independence of the judiciary".
https://www.thestar.com/news/canada/2017/03/26/scott-brison-explains-delay-in-promised-transparency-reforms.html

45. The Open Government Partnership is an international initiative committed to making governments more accountable. Open Government Partnership, https://www.opengovpartnership.org/.

APPENDIX B
FACTS AND FIGURES

SUMMARY OF CASELOAD, 2009–2010 TO 2016–2017

	2009–2010	2010–2011	2011–2012	2012–2013	2013–2014	2014–2015	2015–2016	2016–2017
Complaints carried over from the previous year	2,514	2,086	1,853	1,823	1,798	2,091	2,244	3,010
New complaints received	1,653	1,810	1,460	1,579	2,069	1,738	2,036	2,077
New Commissioner-initiated complaints*	36	18	5	17	12	11	11	2
Total new complaints	**1,689**	**1,828**	**1,465**	**1,596**	**2,081**	**1,749**	**2,047**	**2,079**
Complaints discontinued during the year	575	692	641	399	551	407	353	828
Complaints settled during the year	–	18	34	172	193	276	71	101
Complaints resolved during the year**	–	–	–	–	–	–	67	467
Complaints completed during the year with findings	1,542	1,351	820	1,050	1,044	913	790	849
Total complaints closed during the year	**2,117**	**2,061**	**1,495**	**1,621**	**1,788**	**1,596**	**1,281**	**2,245**
Total inventory at year-end	**2,086**	**1,853**	**1,823**	**1,798**	**2,091**	**2,244**	**3,010**	**2,844**
Total new written inquiries***	–	–	208	258	248	431	448	468
Total written inquires closed during the year	–	–	186	263	236	235	633	426

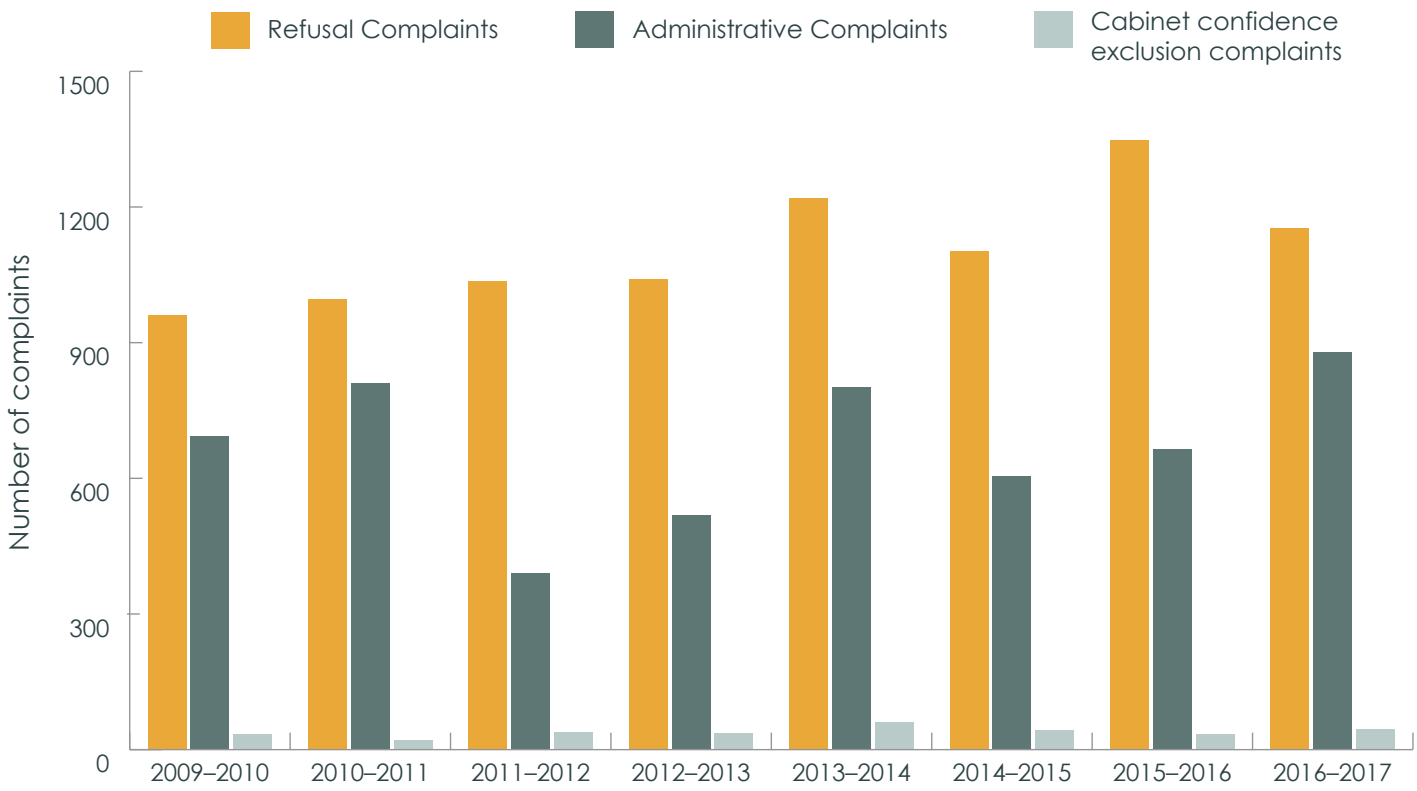
In 2016–2017, the Commissioner received 2,079 new complaints and closed 2,245. There are 2,844 complaints in the inventory as of March 31, 2017.

* The Commissioner may launch a complaint under subsection 30(3) of the *Access to Information Act*.

** The Commissioner introduced the "resolved" finding in March 2016. The Commissioner uses it when institutions send their final response to requesters during the initial stages of investigations into deemed refusal (delay) and extension complaints.

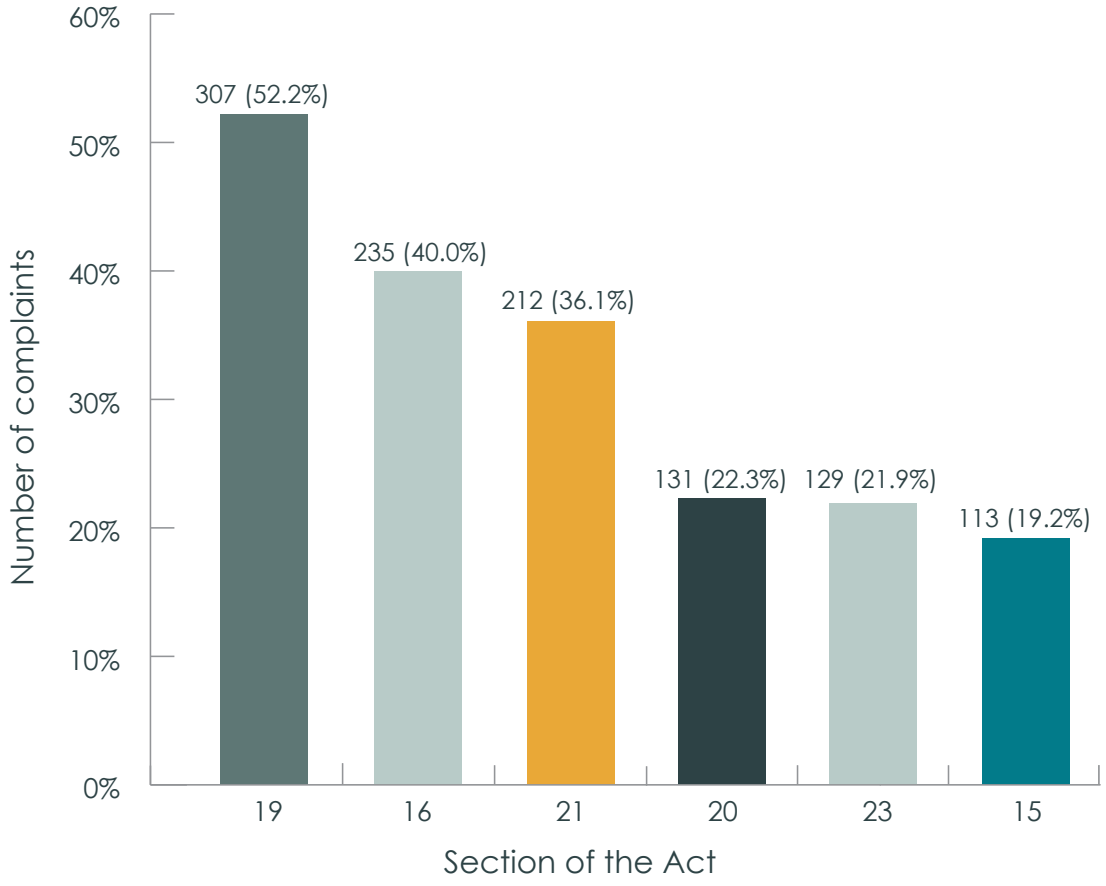
*** Written inquiries are correspondence the Office of the Information Commissioner (OIC) receives that may result in new complaints under the *Access to Information Act*. For example, the OIC must determine whether the matter falls within the Commissioner's jurisdiction before opening a complaint file. Even when a written inquiry does not become a complaint, the OIC must send a response. The OIC began tracking written inquiries in 2011–2012.

NEW COMPLAINTS, 2009–2010 TO 2016–2017



In 2016–2017, the Commissioner received 1,154 refusal complaints (commonly about the application of exemptions), 880 administrative complaints (about delays, time extensions and fees) and 45 Cabinet confidence exclusion complaints. Administrative complaints represented 42 percent of new complaints; the remaining 58 percent were either refusals or Cabinet confidence exclusion complaints.

COMMONLY CITED EXEMPTIONS IN REFUSAL COMPLAINTS, 2016–2017



Note: The sum of all percentages may exceed 100 percent, because a single complaint may involve multiple exemptions.

The most commonly cited exemption in refusal complaints in 2016–2017 was section 19 (personal information). The next most frequently used exemptions were sections 16 (law enforcement and investigations), 21 (advice and recommendations to government), 20 (third-party information), 23 (solicitor-client privilege) and 15 (international affairs and defence).

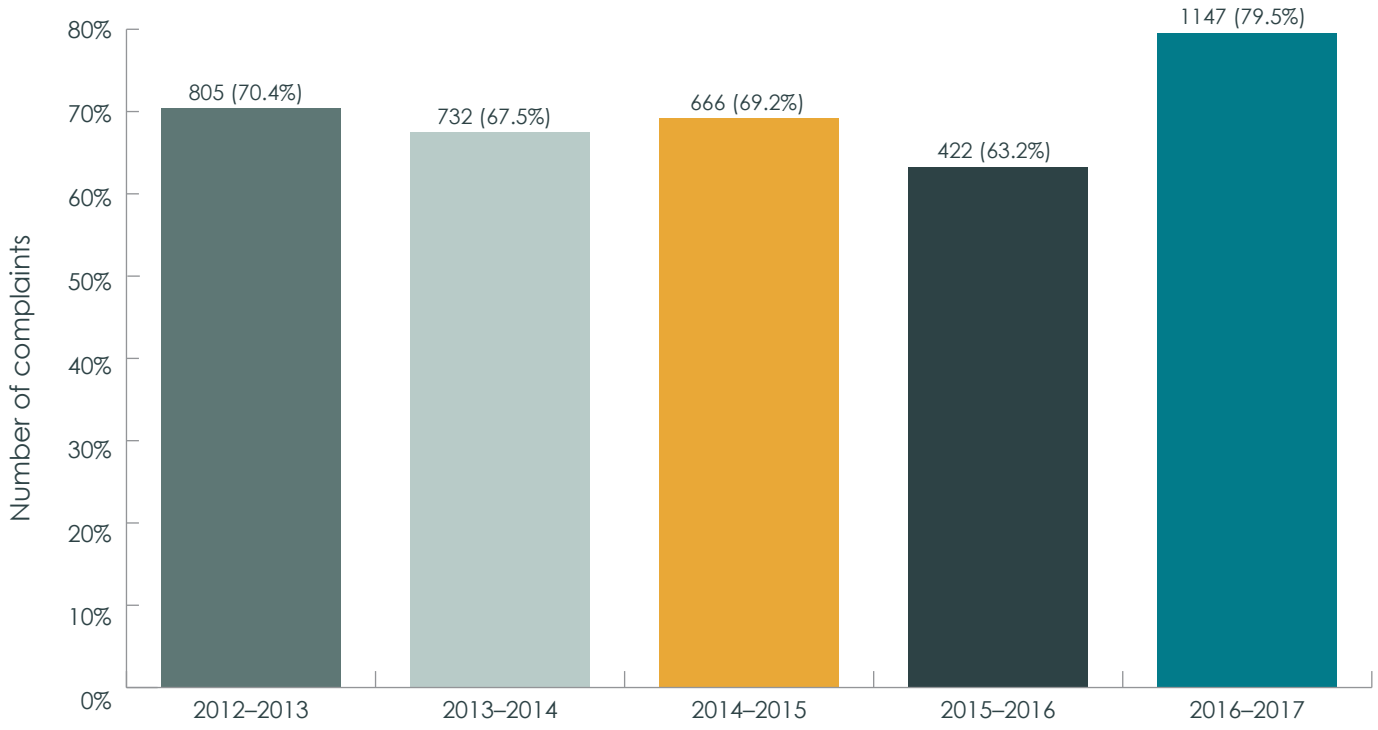
NEW COMPLAINTS BY INSTITUTION, 2009–2010 TO 2016–2017

	2009–2010	2010–2011	2011–2012	2012–2013	2013–2014	2014–2015	2015–2016	2016–2017
Canada Revenue Agency	261	502	324	336	283	221	271	367
Royal Canadian Mounted Police	68	69	68	125	185	178	235	274
Canada Border Services Agency	43	29	36	63	106	78	161	153
Immigration, Refugees and Citizenship Canada	72	84	66	109	305	246	181	127
National Defence	100	68	74	72	119	117	93	121
Privy Council Office	84	57	36	52	48	54	50	82
Transport Canada	112	77	30	72	83	87	57	81
Health Canada	37	81	49	37	48	65	32	60
Correctional Service Canada	53	82	65	57	56	33	59	52
Department of Justice Canada	32	30	47	24	51	44	44	49
Indigenous and Northern Affairs Canada	29	47	47	45	60	23	31	47
Global Affairs Canada	136	31	56	83	120	83	86	44
Public Services and Procurement Canada	43	88	45	35	28	26	78	43
Environment and Climate Change Canada	14	15	17	26	29	26	35	35
Department of Finance Canada	16	13	10	17	19	12	17	35
Canada Post Corporation	35	41	46	8	10	30	31	32
Canadian Security Intelligence Service	4	22	8	15	20	27	34	28
Social Sciences and Humanities Research Council of Canada	6	0	1	2	2	6	3	28
Fisheries and Oceans Canada	18	11	23	18	21	18	25	26
Employment and Social Development Canada	18	26	25	20	37	33	38	23
Others (number of institutions)	508 (61)	455 (52)	392 (68)	380 (69)	451 (66)	342 (65)	486 (65)	372 (69)
Total	**1,689**	**1,828**	**1,465**	**1,596**	**2,081**	**1,749**	**2,047**	**2,079**

The chart above shows the 20 institutions that were the subject of the most complaints in 2016–2017. Many institutions appear on this list from year to year.

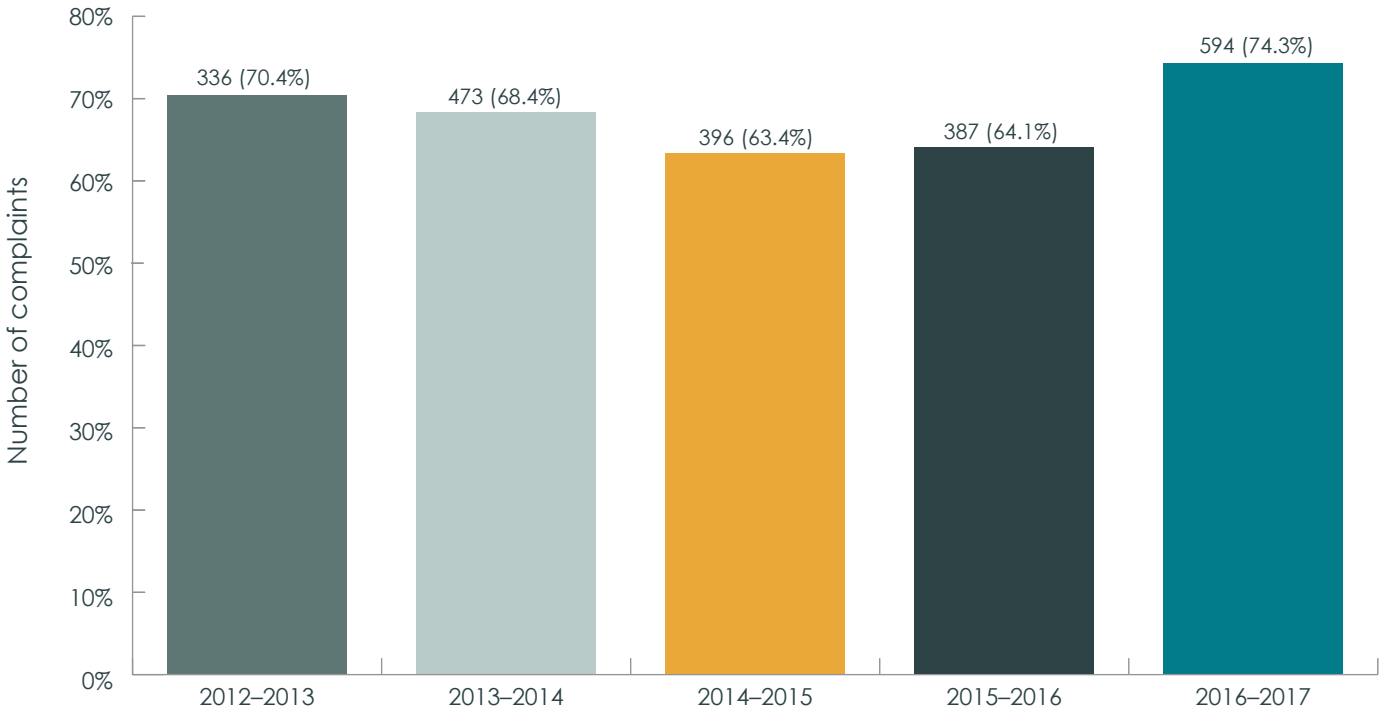
TURNAROUND TIMES FOR INVESTIGATIONS, 2009–2010 TO 2016–2017

REFUSAL COMPLAINTS CLOSED WITHIN NINE MONTHS



In 2016–2017, the Commissioner closed 79.5 percent of refusal complaints within nine months of their being assigned to an investigator. The median turnaround time, measuring from the date of assignment, was 70 days. This is a decrease of 96 days from 2015–2016. However, there is a delay of 222 days (median) before a refusal file can be assigned to an investigator.

ADMINISTRATIVE COMPLAINTS CLOSED WITHIN 90 DAYS



In 2016–2017, the Commissioner closed 74.3 percent of administrative complaints within 90 days of their being assigned to an investigator. The median turnaround time, measuring from the date of assignment, was 36 days. This is a decrease of 12 days from 2015–2016. There is a delay of 27 days (median) before an administrative file can be assigned to an investigator.

COMPLAINTS CLOSED BY INSTITUTION, 2016–2017

	Overall	With merit	Not well founded	Resolved	Settled	Discontinued
Canada Revenue Agency	380	89	63	162	5	61
Royal Canadian Mounted Police	232	64	45	24	2	97
Immigration, Refugees and Citizenship Canada	200	26	42	44	3	85
Canada Border Services Agency	187	34	16	59	45	33
National Defence	117	17	13	20	4	63
Public Service Commission of Canada	100	3	0	0	0	97
Correctional Service Canada	73	29	15	11	4	14
Global Affairs Canada	66	20	4	9	4	29
Transport Canada	62	21	5	9	1	26
Public Services and Procurement Canada	59	10	12	7	6	24
Privy Council Office	55	20	4	5	2	24
Health Canada	55	18	7	15	3	12
Department of Justice Canada	45	10	8	4	2	21
Indigenous and Northern Affairs Canada	40	10	2	6	1	21
Employment and Social Development Canada	37	11	4	4	2	16
Fisheries and Oceans Canada	36	10	0	8	3	15
Canadian Broadcasting Corporation	30	18	7	0	1	4
Environment and Climate Change Canada	28	8	4	4	1	11
Treasury Board of Canada Secretariat	27	10	3	1	0	13
Department of Finance Canada	25	7	1	5	1	11
Others (71 institutions)	391	95	63	70	12	151
Total	**2,245**	**531**	**318**	**467**	**101**	**828**

This chart lists the 20 institutions about which the Commissioner closed the most complaints in 2016–2017.

APPENDIX C

SPEAKING ENGAGEMENTS, PUBLICATIONS AND INTERACTIONS WITH THE MEDIA

SPEAKING ENGAGEMENTS

- April 22, 2016: The Commissioner gave a presentation to the Public Service Management Advisory Committee on the OIC's investigation process.
- April 28, 2016: The Commissioner gave a keynote address to the legal counsels working in the offices of Agents of Parliament for their 2016 Professional Development Workshop.
- May 3, 2016: During the Canadian Committee for World Press Freedom's 18th Annual World Press Freedom Day Luncheon, the Commissioner gave a keynote address on access to information and fundamental freedoms.
- May 10, 2016: The Commissioner met with the National Claims Research Directors to discuss recent developments on the access to information regime.
- May 27, 2016: The Commissioner spoke at the National Newspapers Canada Conference on freedom of information in Canada.
- May 30, 2016: The Commissioner participated in the panel "Access to Information: Historical Research under Bill C-59" at the Canadian Historical Association Annual General Meeting.
- June 1, 2016: A senior executive of the OIC gave a workshop on best practices for ombudspersons and social media during the Forum of Canadian Ombudsman Conference.
- June 16-17, 2016: The A/Assistant Commissioner gave a presentation on recent developments concerning the *Access to Information Act* at an access conference organized by University of Alberta IAPP Faculty of Extension.
- September 22, 2016: The Commissioner gave the keynote address at the BC Information Summit, "From Trickle to Tide: Preparing for a Wave of Transparency," organized by BC Freedom of Information and Privacy Association. She also participated in a panel on duty to document.
- September 27, 2016: The Commissioner spoke to federal access to information professionals at the ATIP Community Meeting.
- October 10, 2016: The General Counsel met with the National Claims Research Directors at their annual meeting.
- October 19, 2016: The General Counsel gave a presentation to students in the Faculty of Law at McGill University.
- October 25, 2016: The Commissioner participated in a panel, "One Year Later: The Liberal Government's Record on Transparency," organized by the Canadian Committee for World Press Freedom.
- October 27, 2016: The Commissioner attended the executive committee meeting of the Privacy and Access Law Section of the Canadian Bar Association.
- October 28, 2016: The Commissioner spoke at the Canadian Bar Association Access to Information and Privacy Law Symposium.

- November 8, 2016: The Commissioner participated in a webinar, "Access to Information at a Crossroad: The Implications of the Long-Gun Registry Case" organized by the Canadian Bar Association's National Constitutional and Human Rights Law Section.
- November 8, 2016: The General Counsel participated in a webinar, "Key Issues in Privacy and Information Management," organized by Osgoode Hall Law School's Professional Development at York University.
- November 21, 2016: The Commissioner gave a presentation on open government to Carleton University students.
- November 22, 2016: The Commissioner participated in the conference "Unpacking Participatory Democracy: From Theory to Practice, and from Practice to Theory" organized by the Institute for the Study of International Development at McGill.
- November 30, 2016: The Commissioner participated in the series "Les Grands communicateurs" where she spoke about transparency and communications. The series is organized by TÉLUQ and La Toile des communicateurs and broadcast on the Internet and Canal Savoir.
- December 2, 2016: The Commissioner met with the Public Service Management Advisory Committee to give an update on the OIC's investigation process.
- December 6, 2016: The Commissioner participated in a peer-to-peer learning session organized by the Access to Information Working Group of the Open Government Partnership.
- December 9, 2016: The Commissioner was part of the international panel "Leave No Trace: How to Combat 'Off the Record' Government" held during the Open Government Partnership Summit 2016.
- December 9, 2016: The A/Assistant Commissioner gave a keynote presentation on the OIC's activities at the Canadian Access and Privacy Association Conference. The General Counsel participated in a panel, "Changes to Access to Information Act", at this same conference.
- January 31, 2017: The General Counsel participated in an open government workshop, organized by the Public Policy Forum, where she discussed the importance of open information.
- March 31, 2017: The Commissioner participated on a panel that discussed the relationship between Parliament and the Agents of Parliament at the Canadian Study of Parliament Group.

PUBLICATIONS

December 6, 2016: The Commissioner wrote an opinion piece with Aruna Roy, founding member of India's Mazdoor Kisan Shakti Sangathan. "The Time is Right: Will Canada be a Leader in 'Open Government'?" was published in The Hill Times.

INTERACTIONS WITH THE MEDIA

The Commissioner is often asked to give interviews to print, radio, television and online media outlets. In 2016–2017, her media interviews were largely related to reform of the *Access to Information Act*. She gave eight interviews on this subject:

- April 26, 2016: CPAC
- April 27, 2016: The Hill Times
- June 16, 2016: iPolitics
- June 16, 2016: CTV Power Play
- October 18, 2016: The Hill Times
- October 18, 2016: CBC The House
- December 5, 2016: TVO's The Agenda
- March 24, 2017: CBC The House

APPENDIX D

ANNUAL REPORT OF THE INFORMATION COMMISSIONER *AD HOC*

It is my pleasure to report here on the activities of the Office of the Information Commissioner, Ad Hoc. On April 1, 2007, the Office of the Information Commissioner (OIC) became subject to the *Access to Information Act* (Act). This means that an access to information request can be made to the OIC as an institution to which the right of access to information applies.

The law that brought this about did not, however, create a mechanism separate from the OIC, which oversees government compliance with access requests, to investigate any complaints that access requests to the OIC have not been handled as the Act requires. Since it is a fundamental principle of access to information law that decisions on the disclosure of government information should be reviewed independently, the office of an independent Information Commissioner *Ad Hoc* was created and given the authority to investigate any such complaints about the OIC.

More specifically, pursuant to subsection 59(1) of the Act, the Information Commissioner has authorized me, as Commissioner, Ad Hoc:

> …to exercise or perform all of the powers, duties and functions of the Information Commissioner set out in the *Access to Information Act*, including sections 30 to 37 and section 42 inclusive of the *Access to Information Act*, for the purpose of receiving and independently investigating any complaint described in section 30 of the *Access to Information Act* arising in response to access requests made in accordance with the Act to the Office of the Information Commissioner of Canada.

OUTSTANDING COMPLAINTS FROM PREVIOUS YEAR

Our office had no outstanding complaints from the previous year.

NEW COMPLAINTS THIS YEAR

Four new complaints were received this year. These complaints were investigated and disposed of by the end of fiscal year.

The central issue in three of the complaints concerned the proper application of paragraph 16.1(1)(c) of the Act. This provision exempts from production information obtained or created in the course of an investigation by the OIC. Once the investigation and all related proceedings are finally concluded, however, the exemption is partially lifted. At that point, the exemption no longer applies to documents created during the investigation.

In each of the three cases, our investigation revealed that the disputed documents had been obtained during the course of the OIC's own investigations. I therefore found that the OIC properly applied the mandatory exemption in refusing to disclose the requested documents.

In the fourth case, the complainant alleged that he had been denied access to records. My investigation concluded that the records sought were not under the control of the OIC.

In the upshot, all of these complaints were found to be not well-founded.

In addition to these four complaints, this Office also received correspondence from a number of individuals who were dissatisfied with how the OIC had investigated their complaints and what they described as the OIC's delay in issuing findings regarding their complaints. This Office does not have jurisdiction to investigate concerns about how the OIC has investigated complaints made to it as the oversight body under the Act. Nor can my Office investigate concerns about delay by the OIC in processing such complaints. My mandate is limited to receiving and investigating complaints that an access request for a record under the control of the OIC itself may have been improperly handled.

CONCLUSION

The existence of an independent Information Commissioner, Ad Hoc helps to ensure the integrity of the OIC's handling of access requests made to it, as an institution, and therefore contributes to the proper functioning overall system of access to information at the federal level. My Office looks forward to continuing to play this part in access to information.

Respectfully submitted,

David Loukidelis, QC
Commissioner, Ad Hoc for the
Office of the Information Commissioner of Canada
April 2017