



House of Commons  
CANADA

# **Standing Committee on Access to Information, Privacy and Ethics**

---

ETHI • NUMBER 037 • 1st SESSION • 38th PARLIAMENT

---

**EVIDENCE**

**Tuesday, October 18, 2005**

**Chair**

**Mr. David Chatters**

All parliamentary publications are available on the  
``Parliamentary Internet Parlementaire'' at the following address:

**<http://www.parl.gc.ca>**

## Standing Committee on Access to Information, Privacy and Ethics

Tuesday, October 18, 2005

• (1120)

[English]

**The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** Order, please.

Good morning, ladies and gentlemen. We'd like to start the meeting. This is the Standing Committee on Access to Information, Privacy and Ethics.

The orders of the day are pursuant to Standing Order 32(5), a report of the Information Commissioner for the fiscal year ending March 31, referred to committee on Monday, June 6, 2005.

We have a number of witnesses before us. I've briefly spoken to them. There are three groups, and I'll let each group introduce themselves. I've asked each group to speak for no more than 10 minutes—we're already running behind—so that members of Parliament can ask a few questions.

The first group is from the Privy Council Office, the second group is from the Department of Foreign Affairs and International Trade, and the third group is from the Department of Justice. Mr. Borbey is first.

Good morning, sir. You can introduce your colleagues.

**Mr. Patrick Borbey (Assistant Deputy Minister, Corporate Services, Privy Council Office):** Good morning, Mr. Chair and members of the committee. Bonjour. Thank you for inviting me and our director of access to information and privacy, Mrs. Ciuneas Boyle, to discuss the Privy Council's performance in responding to access to information requests.

I would prefer to be able to report better news, but the Privy Council Office had a very challenging year in 2004-05, and our performance was rated very negatively by the Information Commissioner.

[Translation]

This is clearly an unacceptable result, for which I take full responsibility.

[English]

All of us at PCO are disappointed in this result, even more so given the fact that we had achieved an A in 2003-04, thanks to a corporate-wide effort.

[Translation]

We probably became a bit complacent following that success.

[English]

We also did not properly anticipate the spike in workload that 2004-05 would bring, and its impact on our ability to sustain a strong compliance rate.

[Translation]

We are here today to explain how this happened and, more importantly, how we are going to rectify our performance.

We have begun to implement an improvement plan which we are confident addresses all the findings of the Information Commissioner and will set PCO on a path of stronger performance in Access to Information.

[English]

First, please allow me to share with you the factors that contributed to this situation.

Last year brought significant new challenges to the Privy Council Office. We assisted the government in a second transition in less than one year. We reorganized PCO to meet the needs of the new government. We supported the launch of two new commissions of inquiry, which included an extensive search through thousands of records.

[Translation]

We supported a very ambitious government agenda, as demonstrated in the October 2004 Speech from the Throne. We provided advice and support to the expenditure review process.

[English]

Two first ministers meetings were held, and policy advice was provided to the Prime Minister and cabinet on a wide range of critical issues, including health care reform, aboriginal policy, smart regulations, the national security review, and the international policy statement.

[Translation]

We also saw a steady increase in the number of requests under Access to Information. As the attached table demonstrates, our requests have doubled in the last six years. Data so far this year show that we can expect another significant increase.

[English]

While our total numbers may be low compared to some departments, most of these requests are very complex, and many deal with matters of cabinet confidence and national security. They sometimes require the careful review of thousands of pages, a process that can be extremely time-consuming for both the ATI staff and the PCO content experts.

[Translation]

Furthermore, a large number of the requests we receive involve extensive consultations with other departments and agencies, as PCO is quite often not the originator of the information held in its records. All this takes time, energy and resources.

[English]

Given the horizontal nature of PCO's mandate and the central role it plays in supporting the government, it is understandable that our ATI requests cover a very wide range of subject matter, which further complicates our work. The staff of the ATI director cannot possibly be experts in all this subject matter, and we need to heavily rely on our managers and policy advisers.

Unfortunately, ATI requests did not always get the priority attention they deserved. Likewise, our ATI delegation order only provided delegated authority to approve the release of information to the Clerk of the Privy Council, the associate secretary to cabinet, and me, the ADM of corporate services. This created bottlenecks that also slowed down our response.

[Translation]

The PCO Access to Information and Privacy Office has been struggling to make statutory requirements in the face of all these challenges. It has a total staff of 18. This staff complement has remained constant since 2002, notwithstanding an increase of 60 per cent in workload.

• (1125)

[English]

So what are we doing to turn things around and improve our performance?

I would like to start by saying that this is a matter of grave concern at all levels of the Privy Council Office. The clerk has made it a personal priority and has insisted that this be the case for all of the PCO. Progress is already being made.

We have developed an improvement plan that includes several main components. First is more people to do the work. Second is a commitment to clear the backlog.

[Translation]

Third, a better process to deliver results. Fourth, mandatory training at all levels.

[English]

Fifth is top-level commitment to the plan. Sixth is more thorough and regular reporting. And finally, there is communications and cultural change.

[Translation]

Let me briefly elaborate on each of these.

[English]

First, we are putting more ATI officers to work on files. While it took longer than we wanted because of the high demands for these skills in the public service, I am pleased to report that we have recently hired two new officers and that we will be hiring two more in the coming weeks.

We have also engaged three consultants to work exclusively on clearing the backlog of some 127 files that carried over from last year.

[Translation]

This allows our employees to concentrate on the implementation of our improvement plan. So far, this investment is paying off, as we have now reduced our backlog by close to half. We are also on the verge of issuing a request for proposals so that we can engage additional contractors.

[English]

With respect to the backlog, we are confident that these additional resources will allow us to complete all outstanding requests by March 31, 2006. We will be providing the Information Commissioner with specific commitment dates for each request on October 31, 2005.

We are also taking measures to improve our access to information process. The most important improvement is a new delegation instrument that will provide our access to information director with full authority to approve the release of information. This approach is entirely consistent with the practice advocated by the Information Commissioner and in place in many departments and agencies.

I am confident that this change will result in a streamlined process and better results.

[Translation]

The third component of our plan is training. Up until now, we have offered a voluntary one-hour training session on ATIP to senior officers and managers. Effective immediately, that training will be expanded and made mandatory for all officers and senior managers, including assistant secretaries and deputy secretaries. Training will also be provided to ATIP contacts in all our PCO secretariats. We will invite the Office of the Information Commissioner to participate in the development of these training sessions.

[English]

I have talked earlier of the clerk's commitment to access to information. That commitment is shared by all our managers, and as such, every one of our executives has the improvement of our response to ATI requests as a key commitment in his or her performance agreement for 2005-06.

We are counting on their support, as they are the ones who know the content of our records and who already do the lion's share of the work in collecting and reviewing the information before it's released.

[Translation]

In the area of performance reporting, all secretariats now receive a weekly report on their current workload and performance. I am providing monthly updates to our senior management committee on performance and the ATIP director is meeting quarterly with the secretariats to review progress and discuss specific concerns. I am also personally following up with my colleagues as soon as I am alerted that a request is at risk of not meeting the statutory deadline.

[English]

The final component of our plan is communications and cultural change. The clerk has already delivered the message to all PCO employees that improving our ATI performance is a top priority. That message is being sustained through briefings and notices.

We have been working on the development of this plan with the Office of the Information Commissioner and have made every effort to incorporate all of their recommendations. I am pleased to report that they have endorsed our plan and that we will work closely together on its implementation.

[Translation]

In closing, I want to reiterate our strong commitment to improving our performance.

• (1130)

[English]

I am confident that we have the right plan, the right resources, and the right support to go from an F to an A. We demonstrated that we could do it in 2003-04, and we will do it again in the future.

I would be very pleased to answer your questions.

Thank you. Merci beaucoup.

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Borbey.

I think we'll leave our questions until we've heard all of the presentations.

We have Mr. Calcott and Ms. Sabourin. You have up to five minutes to make a presentation.

**Mr. Michael Calcott (Director General, Executive Services Bureau, Department of Foreign Affairs):** Thank you.

Madam Sabourin is the director of the access to information and privacy protection division in the department.

I would like to thank the standing committee for the opportunity to review the compliance issues on responding to access to information requests at the Department of Foreign Affairs and International Trade and to explain what the department is doing to improve its compliance rate.

First, I should acknowledge the rather roller-coaster performance of the department over the last four years. From a D in 2001, DFAIT achieved a B in 2002, only to fall back to a D in 2003 and, most recently, an F in 2004. I joined DFAIT in April 2003, when we were basking in the recent awarding of the B mark, so I guess I have some explaining to do about the subsequent two years and the persistent delay situation.

Although the department has had fluctuations in the grading, the overall compliance has been consistently substandard. When we analyzed the steps that had been taken by the department that led to the B rating in 2002, we realized that such an approach was unsustainable. In fact, by the end of 2002, DFAIT's grade had already fallen to a C and was on its way to the D that it obtained in 2003.

Basically what the department had done was to considerably increase the operation budget of the ATIP unit to allow for the hiring of more consultants. At the same time, a decision was taken to maximize the use of extensions in processing. I should make it clear that these requests for extensions were completely legitimate, but I believe that as an operating procedure, the consistent use of extensions undermines the essential purpose of the Access to Information Act. The increased reliance on the services of consultants was effective in the short term, and there will always be a need to use consultants in certain situations, but they will always be a temporary remedy and not a permanent one.

Finally, the volume and complexity of requests increased and compliance rates began to decline. On the increasing complexity of requests, I am specifically referring to a number of high-profile consular cases—names that you know, such as Sampson, Kazami, and Arar. These requests involve thousands of pages of documentation retrieved from missions abroad and headquarters and that contained a great deal of personal information. As you can imagine, these cases demanded detailed and highly sensitive processing.

[Translation]

Once we realized that we had earned a "D" from the Information Commissioner for 2003, we approached the deputy minister and proposed that an evaluation of the ATIP function be undertaken so that we could understand all of the issues that were leading to a situation of persistent non-compliance not only under the Access to Information Act but also under the Privacy Act. That evaluation, by Consulting and Audit Canada, began in early 2004. Unfortunately, there were several delays in its production and it was finally completed by the Evaluation Division at DFAIT in March 2005.

A key observation contained in the evaluation is worth repeating here:

Given that the department cannot control the inputs nor reduce the quality of the outputs or the deadlines, the only way to deliver the ATIP functions well is to embed their requirements into the organization's culture and to ensure that those entrusted with the delivery have the tools and resources to operate effectively.

The review underlined the need for training across the department to support the ATIP function and the lack of available technology. The workload of the employees compared with those in other departments clearly demonstrated that improvements could only come with additional staff. We took the results of the review to heart and designed a comprehensive action plan that was formally adopted by the department's management committee on June 14, 2005.

There are a number of intended outcomes that guided the findings of the evaluation. They are: a sustained departmental capacity to support legislative obligations; a stable and reliable source of privacy expertise for departmental staff and to be in compliance with the Treasury Board Secretariat policy requirements; better informed departmental staff to improve results and reduce stress and anxiety; better support and assistance to departmental officials with ATIP requirements; address key recommendations made by the Office of the Information Commissioner over the years; discontinue the long-term use of ATIP consultants; adequate succession planning in order to gain and retain in-house expertise; records processed electronically and improved quantity and quality of case management; achievement of an ideal compliance Grade A by fiscal year 2007/2008.

We believe that the plan that we are now putting into effect will lead to these outcomes in the long term.

• (1135)

[English]

As was mentioned above, the workload on the department's ATIP staff is a major factor in our inability to meet the legislative deadlines. Currently each DFAIT officer is handling 142 files; this compares with 35 per officer at Industry Canada and 55 at Health Canada. Obviously the human resource issue must be addressed.

The plan proposes adding 15 employees to the division, which more than doubles its current size of 13 employees. Preparations for hiring are now under way, and the 15 new employees will be phased in—10 this fiscal year and five more the next fiscal year. The workload will remain heavy, even with this considerable increase in staff, but we believe that other changes will mitigate the burden on employees.

Some of these actions include the development of a structured ATIP awareness program to educate departmental employees on their roles and responsibilities, a program that will include senior management, to build a network of knowledgeable officials at every level; implementation of new procedures for the review of documents by the division, which will eliminate most return visits by ATIP staff, and in addition, the ATIP process has been carefully mapped and is being redesigned to increase its effectiveness; purchasing the ATIP image software application, already been in use for a number of years in most departments—DFAIT has deployed all the necessary technical resources and is currently finalizing the installation of the software; building a permanent capacity to screen departmental documents before sending them to Library and Archives Canada, thereby allowing greater informal access to our information; and development of a memorandum of understanding with Passport Canada to ensure that their particular needs, especially relating to privacy issues, are addressed.

Although work on these activities is now under way, it will take time to complete the hiring and training of staff, to develop and roll out the ATIP awareness training across the department, and to deal with the existing backlog of files before the additional employees are in place. We are truly talking of culture change over the long term within the department, and changing culture always takes time. However, I believe that by approving this action plan, the most senior levels of the department have demonstrated a clear

commitment to making compliance with the Access to Information Act a reality within the Departments of Foreign Affairs and International Trade.

Thank you.

**The Acting Chair (Mr. David Tilson):** Thank you very much, Mr. Calcott.

Mr. Wilson, you have up to five minutes. Thank you for coming, and good morning to you.

**Mr. Randle Wilson (Director General, Strategic Trade Policy Division, Department of International Trade):** Thank you, Mr. Chairman. I am Randle Wilson, the director general of strategic policy and the senior departmental official responsible for access to information requests in the realm of international commerce.

In the interests of saving time, I shall abridge my comments. I will first skip straight to adding some detail to Mr. Calcott's comments on how we are working to reverse the decline in performance and, in particular, to enable the longer-term changes that will prevent us from ever again registering such an unacceptable rate of compliance with the act.

[Translation]

By way of background, let me note that International Trade receives approximately 17 per cent of all Access to Information requests to the Department of Foreign Affairs and International Trade, and responds to some 65 per cent of these within the prescribed 30 days. Where we need to improve is clearly in the remaining 35 per cent.

As our colleague, Mr. Borbey, said so well, our information-rich environment is becoming more and more complex. This phenomenon explains, to a large extent, why this number is so high. Furthermore, a high percentage of this international trade information comes from foreign governments, international organizations and Canadian companies. Screening such information is therefore that much more complicated.

[English]

Against this background, Mr. Chairman, let me tell you more about how we plan to improve our compliance with the Access to Information Act.

The doubling of front-line resources in Madame Sabourin's ATIP division, as Mr. Calcott mentioned, is an important and necessary step, even though, as noted, it will take time to recruit and phase in these people while at the same time reducing our backlog, addressing complaints, and improving service to new requesters. However, it's not enough to invest merely in the front end of the process, Mr. Chairman. All public servants have an obligation to respect the intent and the word of the Access to Information Act; therefore, my colleagues at the table and I, working across Foreign Affairs and International Trade, also plan to drive forward hard with those parts of the action plan that will reinforce that culture of respect within the department.

I'm talking, Mr. Chairman, about a nuts and bolts process that has to unfold at the same time as we bring the new ATIP officers onstream. We need, for example, to revisit how we handle the recurring complex cases that take time and provoke delays. We need to track every step of the process so that consultations and approvals do not cost precious time. We need to hold senior managers to account for their units' performances in responding to access requests, just as I am personally accountable for International Trade's compliance rate overall.

• (1140)

[Translation]

I cannot pretend that any of this will be easy, Mr. Chairman. If it were, we would not be explaining an "F" grade from the Information Commissioner to you today.

But I can assure you that everyone—from the Minister of International Trade, to senior management, to the ATIP case workers and the policy and program officers of the department—is committed to doing better to meet the requirements of the act and the expectations of Canadians at large.

Mr. Chairman, my colleagues Mr. Calcott and Ms. Sabourin and I would be pleased to respond to any questions you or the members of the committee have.

Thank you.

[English]

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Wilson.

We are now left with the Department of Justice. We have Monsieur Bouchard and Ms. Clark.

I notice that everybody is right on the button, so perhaps you could continue with that, Monsieur Bouchard.

[Translation]

**Mr. Michel Bouchard (Associate Deputy Minister, Department of Justice):** Thank you, Mr. Chairman. I can assure you that my presentation will not take up the full five minutes.

As you all know, in late 2004, the Department of Justice's Access to Information and Privacy Office was selected by the Information Commissioner for a report card review. The review, which was the first report card for this department, focused primarily on compliance with statutory response deadlines to access to information requests.

On June 6, 2005, the Information Commissioner tabled his report card in Parliament and the Department of Justice received the lowest possible rating, namely an "F".

At the outset, I would like to mention that, although we are clearly committed to taking concrete steps to correct the situation, there are reasons—which cannot be construed as excuses—that explain why the department obtained an "F" rating. Allow me to explain.

As soon as the department realized that it was in a critical delay situation with respect to its statutory response deadlines, it began to address the problem long before the commissioner decided to do the review. We therefore tried to resolve the critical delay problem before the commissioner intervened and before receiving this very mediocre grade.

In 2004, we developed a business case and requested additional funding for the team under our director, Ms. Kerri Clark, who has accompanied me here this morning.

Initially, this funding was temporary because of our financial constraints. It did, however, enable us to eventually obtain permanent funding, making it possible to add eight new positions at the ATIP office. In addition to these resources—four employees are already in position and four others will be hired shortly—we acquired digital imaging software in 2003-2004. As a result of these additional positions and this new technology, we have, rest assured, improved our situation. But we did not stop there. We are conscious of the fact that we need to make significant efforts to remedy the situation.

We therefore determined that the commissioner's recommendation that we develop an action plan should be followed on a priority basis. We felt that this was the first step to take. We developed an ATIP action plan for the next three years, namely until the end of 2008. Clearly, this plan includes, at the outset, some very significant challenges which I will go back to in a few moments. It contains specific objectives and strategic goals that need to be achieved.

Speaking of challenges, you need to understand—and this partially explains the departmental delays—that we have a special role as a central agency that we need to fulfil. We cannot simply restrict ourselves to answering requests for information on departmental activities. We also support other government departments in drafting the replies that they must provide. This increases the workload at the Department of Justice.

We therefore defined, in our action plan, strategic goals so that we can improve our compliance rate and improve the process for retrieving material and, in addition, develop our capacity to recruit and retain a team of experts.

In our opinion, in order to significantly turn this situation around, it is not enough to have people working on the files. In addition, we have to have people who like working here and who wish to remain part of this team. We will address this issue over the next few months.

The permanent funding we obtained in July 2005 will enable us to grow our team from 15 to 23 individuals, which will obviously help us a great deal.

We also obtained a commitment from departmental senior management that it would convey, to the lowest levels, the importance that the department must give to requests for information.

• (1145)

This is why managers in our department find included, in their annual performance evaluation, the duty to contribute and assist the department and the government in meeting their obligations under the Access to Information Act and the Privacy Act. Each manager will therefore be assessed, yearly, on the support and contribution they have provided, as well as the leadership they have shown within their team, in achieving the objectives set in our action plan.

To conclude, ladies and gentlemen of the committee, speaking on behalf of the department, I cannot make any promises to you this morning that we will achieve an “A” the next time we are evaluated. However, I can personally promise you that we will never again receive an “F”.

Thank you very much.

[English]

**The Acting Chair (Mr. David Tilson):** Thank you very much to you, sir, and all members who have spoken. We will now have some questions.

I've got to tell you that when I was a little boy and I went to elementary school and came home with an F in spelling, I got in big trouble. But here we are.

**A voice:** And look where he ended up.

**The Acting Chair (Mr. David Tilson):** I know. No, spellcheck hasn't helped at all.

We have some questions. Before we get into that, I'd like to remind members of the committee that at one o'clock we have representatives from the Privy Council Office respecting the possible merger of the offices of the information and privacy commissioners. This portion of the meeting will have to terminate sometime prior to then. Please keep that in mind with your questions.

Mr. Lukiwski, please.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you very much.

I'd like to start my questioning with Mr. Borbey, if we can. I understand we have seven minutes, Mr. Chair.

Just off the top, maybe we can get this point of clarification from you. How many years had you received an F?

**Mr. Patrick Borbey:** This was the first year. The year before that we had received an A. There was an F earlier on, I think, in the report from the commissioner. In previous years, we did receive an F.

**Mr. Tom Lukiwski:** Okay, thank you very much.

I note in your report you mentioned that one of the elements of improving your performance level would be to provide monthly

updates to the senior management committee. Frankly, I think performance evaluation at any level is a good idea. Would you be prepared to submit monthly reports to this committee?

• (1150)

**Mr. Patrick Borbey:** That's a fairly onerous commitment, and it's a lot of material I would have to provide to this committee. I'd have to take that under advisement. If that's the wish of the committee, obviously I would do so.

**Mr. Tom Lukiwski:** I'm just wondering, if you're submitting monthly internal evaluations basically in any event, whether that information would be available to this committee.

**Mr. Patrick Borbey:** We can make it available, if that's the wish of the committee.

**Mr. Tom Lukiwski:** Okay. So that you don't have to write an additional report for the benefit of the committee, could we see the internal reports you're submitting?

**Mr. Patrick Borbey:** You understand this would be a very succinct report. This is probably one page, very much a summary in terms of the performance to date.

**Mr. Tom Lukiwski:** Understood. But it might give a little better insight to members of this committee as to what is happening in terms of compliance with the information reported and trying to improve it.

One of the things I want to bring forward, if I may, sir, is a specific example of an ATI request that went into your office. I don't know if I want to categorize it as a concern, but my questions surround the thought process that goes into determining how long it would take to comply with an ATI request, or whether you have considered this to be out of scope and a request that is, due to cabinet confidentiality concerns or security concerns, something that you can't or will not reply to.

If I may give you a specific example, it was an ATI request that was submitted to your office on August 9. It deals with the appointment of Mr. Gerald La Forest as a special adviser to the Minister of Justice. The request was to ask you for the terms of reference of his appointment, his mandate and his salary. To my mind's eye, it would appear this would be a fairly straightforward and simple request, one that shouldn't really obligate you to do anything but respond in a very quick and efficient manner.

While that request was made on August 9, it took until September 14 to receive a response. I simply want to quote you one line from the response letter. It said “In processing your request, we found it necessary to consult other government institutions”. And then you went on—I shouldn't say you, sir, but Ms. Boyle, who's coordinator of the access to information and privacy in the PCO, responded, and this was her letter—“As a result, an extension of up to 75 days beyond the 30-day statutory deadline is required to complete your request”.



My point is, on this particular request, I'm puzzled first as to why your department felt it necessary to consult with other government institutions. Again, as I mentioned, I think this is a pretty straightforward request. I do not see why this would require an additional 75-day extension period, since I don't see it really as a matter of confidence. This is something that should be a matter of public record.

My point is, if this is the type of response we're getting from your office, could that be considered one of the main reasons your performance level has been graded as it has? If a simple request like this takes over 30 days to respond to by letter, first, and then in the letter you request an additional 75 days, I think you've got a far larger problem than merely the problems you've indicated in your report here. If you cannot respond to a request this straightforward in a timely fashion, how would you possibly be able to respond within a 30-day time limit for somewhat more complex and sensitive matters?

I'd like to get a bit of an explanation on this particular example from you, sir.

**Mr. Patrick Borbey:** Certainly. I would be pleased. I'll make a few comments and then I'll ask Ms. Boyle to add to that.

I think it's difficult to look at the performance of an organization that receives 500-plus requests a year through the mirror of one single request. I mean, this has to go into an overall workload for an office that's already understaffed. We're trying to beef it up and give them the resources to meet that capacity.

In this particular case, yes, we did receive a complaint and we have responded to the complaint. We've provided the information as of yesterday's close of business. But in doing so, we did have to bring people in on the weekend to work through the weekend to be able to review the files and apply the Access to Information Act.

So on an individual case, yes, through concerted effort we can accelerate the process. But again, we're dealing with a workload of 500-plus. We've had an increase again this year that's ranging close to 20% vis-à-vis last year, which was a record year.

But in terms of the specifics of the case, maybe I can ask Ms. Boyle to add a bit.

• (1155)

**The Acting Chair (Mr. David Tilson):** You have about 10 seconds.

**Mr. Tom Lukiwski:** May I ask, Ms. Boyle, before you—

**The Acting Chair (Mr. David Tilson):** We've asked the question. Maybe we should let Ms. Boyle have her brief say.

**Ms. Ciineas Boyle (Director, Access to Information and Privacy, Privy Council Office):** Thank you.

When we received the records for this request, we determined that among the records in there were records that required consultations with other departments, which the act provides for. There are a lot of cabinet confidences in there and there were records from another department. We took the extension that we thought we needed to do so. Certainly people can complain about the extensions to the Information Commissioner and the Information Commissioner will

say, very frankly, yes, I think they took too long, and he feels we took too long, and the matter is closed.

**The Acting Chair (Mr. David Tilson):** You'll have to carry on in another round, Mr. Lukiwski. We've run out of time.

Mr. Laframboise.

[Translation]

**Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ):** Thank you, Mr. Chairman.

I would like to ask you a question, Mr. Borbey. I'm looking at the old form, not the new one. In 2003, you achieved an "A" according to the old form. However, you now find yourselves with an "F". I can understand your situation, but the fact remains that the situation is a result of an increase in the number of requests. Could you tell us, in figures, what this was from 2003 to 2004 and from 2004 to 2005?

**Mr. Patrick Borbey:** If you were to look at the table distributed along with my notes for an address, you would see an increase in the number of requests over the past ten years. Things were quite stable during the first four years. Between 1995 and 1998, we received approximately 200 requests per year. Starting in 2000, there was an increase, then a slight decrease. However, in 2002-2003 and in 2003-2004, we had to deal with significant increases. In 2003-2004, we managed, because of a concerted effort, to achieve an "A" grade.

The number of requests jumped the following year, namely last year. Unfortunately, this particular year was not so successful for us.

**Mr. Mario Laframboise:** Most of the additional requests that you received are related to the sponsorship scandal. Correct me if I am mistaken.

**Mr. Patrick Borbey:** Indeed, a high percentage of the requests that we received were related to the sponsorship program. We also received requests pertaining to the Arar case. We are currently dealing with many requests on hot issues. There has, therefore, been a significant increase in the number of requests. Moreover, we have assigned one person full time to the Arar case so that we can answer the requests for access to information pertaining to this file. The workload was so heavy that this person's health suffered.

**Mr. Mario Laframboise:** You have given us a remedial plan. However, during the sponsorship scandal, you must have been receiving one request right after the other.

Did you not foresee what was going to happen and ask for additional personnel immediately?

**Mr. Patrick Borbey:** The last time the staff numbers in Ms. Boyle's group were increased was in 2002. I seem to recall that two additional staffers were assigned at that time. From that point on, as with all departments, we were asked to make do with the limited means at our disposal, which is what we set about to do. As it turned out, we did need additional resources.

We are not simply talking about a one-time increase but rather ongoing measures. Ongoing measures must be taken. In the meantime, we are implementing temporary measures. We have engaged the services of a number of consultants to help us as soon as possible. Nevertheless, we want to ensure that Ms. Boyle's team will continue to receive the necessary additional resources in the future.

• (1200)

**Mr. Mario Laframboise:** A number of the observations made by the Information Commissioner in his report are harsh. In relation to your departments, he states, among other things, that:

Chronic tardiness in the retrieval of records due to poor records management and staff shortages in offices of primary interest;

top-heavy approval processes, including too much “hand-wringing” over politically sensitive requests and too frequent hold-ups in ministers' offices [...]

In the course of your work, have you also observed any cases of unjustified interference on the part of ministers' offices?

**Mr. Patrick Borbey:** I could ask Ms. Boyle to explain the process to you. However, as far as this process is concerned, we don't foresee any hold-ups as a result of the involvement of deputy ministers' or ministers' offices. Consultations will take place, and we will ensure that all communications considerations are dealt with in the case of files including a large communications component. This is all being done simultaneously, and we are trying to prevent hold-ups with any particular files.

**Mr. Mario Laframboise:** The fact remains that you were given one of the worst grades as far as hold-ups are concerned. You have a refusal rate of 26.5 per cent. We have been told that tardy responses constitute refusals. This means that in a quarter of all cases, you have denied requests.

It may be that the ministers' offices are putting a wrench in the works. I am not the one suggesting this, the Information Commissioner stated himself that “top-heavy approval processes, including too much “hand-wringing” over politically sensitive requests [...]” is part of the problem.

**Mr. Patrick Borbey:** I can personally guarantee you—and I will ask Ms. Boyle to confirm this—that I have never had to deal with such interference myself. Clearly, part of our role is to provide them with information, to help them and support them from a communications standpoint. However, in my opinion, this doesn't constitute an example of interference.

[English]

**Ms. Ciuneas Boyle:** Pardon me if I'm not understanding you. Are you saying that there are delays in getting records from ministers' offices? Is that what you are saying? Interference?

[Translation]

**Mr. Mario Laframboise:** No. In the Information Commissioner's report, on page 18 in the French version, it says: “There appear to be five main causes of delay in processing access requests:” One of the main causes is: “top-heavy approval processes, including too much “hand-wringing” over politically sensitive requests [...]”

The commissioner noted this in the course of his work. As the Privy Council and Foreign Affairs are the most harshly criticized departments in the report, I am well within reason when I say that the commissioner's statements point the finger at you. The commissioner

remarked that one of the causes for delays in the processing of applications is precisely interference by the offices of ministers or deputy ministers.

Can you confirm this?

[English]

**Ms. Ciuneas Boyle:** I don't believe that's the case, though. We don't go to ministers' offices to seek records. They're not involved. Deputy ministers, *sous-ministres*, are not involved in producing records. So I'm not sure of the origin of that.

[Translation]

**Mr. Mario Laframboise:** I'm going to ask the representative from the Department of Foreign Affairs the same question. The Privy Council doesn't come under any department, however you do.

Now, given that the Information Commissioner went to the trouble of making these remarks and in light of the fact that your department is one of the furthest behind as far as processing requests is concerned, do you feel that interference by the offices of ministers or deputy ministers has led to hold-ups?

**Mr. Michael Calcott:** This question was asked by the Office of the Information Commissioner two years ago. There was an inquiry to determine whether hold-ups were the result of ministers' offices' interference. At the end of the day, after having reviewed the process, it was noted that ministers' offices only sought information pertaining to records and that they weren't involved, nor did they interfere, in the processing of requests. So, we came to the conclusion, with the Office of the Information Commissioner, that deputy ministers' and ministers' offices did not interfere and that they were in no way tied to hold-ups in the processing of requests made to the department.

[English]

**The Acting Chair (Mr. David Tilson):** Mr. Laframboise, you will have to wait for another round.

Madame Jennings.

[Translation]

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Thank you, Mr. Chair.

I'd also like to thank the witnesses for appearing today and for the statements and explanations they have submitted to this committee. I am one of the members of this committee who sought your presence here today.

I sincerely regret how poorly your departments measured up and I appreciate the explanations you have given us. This brings me to the following questions. You said that the number of requests lodged with the Privy Council had gone up. This increase has resulted in a greater workload and the need to adequately process these rather complex requests has meant that we have had to wade through thousands and thousands of pages of text, etc.

In 2004-2005, I sat on the Standing Committee on Public Accounts which studied the Auditor General's report on the sponsorship program. We lodged a number of requests with the Privy Council Office in order to access records, reports and the minutes of various meetings.

Firstly, did these requests substantially increase the Privy Council Office's workload? Secondly, you said that you were short-staffed, even prior to the year you got this poor grade, and that you took steps to hire new staff.

I see that the recent annual report of the Public Service Commission notes a tendency or a culture whereby temporary workers are hired and that external competitions are held at a later stage. The person who ends up filling the position is the candidate ranked first in the competition. In Ms. Barrados' opinion, this is a way of getting around the requirement for transparency, fair access, etc. I would like to know what steps you have taken to swell your ranks. I can see that one particular office secured ongoing funding as of July 2005.

Furthermore, you said that you hired four or five new employees. In the process of employing new staff, did you take into consideration visible minorities, which constitute one of the target groups as far as employment equity is concerned?

Mr. Chair, how much time do I have left?

• (1205)

[English]

**The Acting Chair (Mr. David Tilson):** You have been on the air for three and a half minutes.

[Translation]

**Hon. Marlene Jennings:** Okay, I'll be another 30 seconds, so that I can give the witnesses three minutes to respond. If you're not able to respond today, you can always send the chair your answer in writing.

[English]

**The Acting Chair (Mr. David Tilson):** You can speak, whatever you wish.

[Translation]

**Hon. Marlene Jennings:** My final question is about the 30-day time period allowed for a response. Do you believe that this is fair? This timeframe applies to everybody, regardless of how complex the request is. Now, if you believe that it should remain 30 days, regardless of the complexity of the request, would you agree that some departments or services will need more staff and money than others in order to meet such a deadline?

Thank you.

**Mr. Patrick Borbey:** I will try to be concise in my answer. As far as sponsorships are concerned, the workload is definitely greater. The increased workload as a result of access to information requests is calculated differently.

Requests from committees or members must also be processed in the same way and they are equally complex, but are not included when calculating our workload. So, you are right when you say that it leads to a heavier workload.

**Hon. Marlene Jennings:** Committee and member-generated requests were not included, and yet they had an impact on your service's capacity to deal with the requests which are recorded.

**Mr. Patrick Borbey:** In the area of human resources, we have implemented the proper merit-based staffing procedures. Unfortu-

nately, no one qualified for level PM-5 as we would have hoped. This is something that seems to be occurring in the public service currently and we need to slightly broaden out horizons and recruit people from elsewhere. We also need to find a way of upgrading our employees' skills. Employees recruited at lesser levels could upgrade their skills through programs such as those offered by the University of Alberta which were developed in partnership with the Office of the Information Commissioner. We have looked at this approach. For the time being however, we have used existing methods which, unfortunately, have not been producing the desired results.

As far as employment equity is concerned, I can show you that all staffing at the Privy Council Office must be justified on the basis of our performance. If there are gaps or deficiencies in a particular area, competitions should initially be open to all public servants and to those for whom employment equity considerations apply. We have taken fairly pragmatic steps in this regard.

What was the third question again?

• (1210)

**Hon. Marlene Jennings:** It was about the 30-day deadline.

**Mr. Patrick Borbey:** That's the law. We have to follow it and make sure we have the resources in order to do so. Canadians and parliamentarians expect it. When there are legitimate delays, we need to go through the usual legal channels, advise the applicant that there are complications and request an exemption. In some cases, such requests are considered reasonable; in others, as in the case we referred to earlier, a request for an exemption is deemed unreasonable, and the commissioner, in that particular case, asked us to speed things up.

[English]

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Martin.

**Mr. Pat Martin (Winnipeg Centre, NDP):** Thank you, Mr. Chair, and thank you to all the witnesses.

I sense a genuine regret from all of you that you received this terrible grade, and I sense a genuine feeling of contrition even from some of your presentations, but more and more in Ottawa we're hearing and feeling that it's the culture of secrecy that has allowed corruption to flourish in every aspect of life here in Ottawa.

I'm generally concerned. If I'm to understand the PCO's brief, the quests for information in the Gomery commission and the Maher Arar inquiry have led to a deterioration in the compliance rate with the access to information in other regards. Have you made that connection, that you're so busy helping the public get the information that we crave at the inquiries that the general public is being shortchanged in their routine access requests? Is there a connection within the timeframes that we're dealing with here?

**Mr. Patrick Borbey:** It is one of the factors. There are many other factors, including general workload that fell on PCO over the last year, as I explained—all of the changes that took place. At the end of the day it's not just the people who work in Ms. Boyle's office who are responsible for delivering on the act. It's also all of our officers and managers who actually have the records and have to review or search the records. So as the workload increased all across PCO, it did have an impact on our ability to meet our compliance rates. It's a complex response to the problem.

**Mr. Pat Martin:** In that context, though, you're getting more requests than you can handle, obviously, or you wouldn't be falling back. Is there a triaging that's taking place? If I filed an access to information request on the same day as a private citizen did and a journalist did, who would get priority, or would the Gomery commission's request get priority? Are you triaging or ranking them or prioritizing them that way?

**Ms. Ciuneas Boyle:** If I may, there is no provision for triaging. I should just say that—

**Mr. Pat Martin:** So it's first-come, first-served, strictly?

**Ms. Ciuneas Boyle:** Yes, you just try to handle them as they come in. You assign them as soon as they come in, and that person then goes looking for records and then gets the records.

To my great regret, if you're early on a file there's no way to bank those early days and offset them against the late days, but we do finish some requests early.

Half of our applicants are journalists, another third are parliamentarians, and then the rest can be law firms, public interest advocates and so on. So our obligation is to each file as it comes in. Sometimes it's manageable and it gets done, and then we do follow-up on the late files, so everybody gets treated the same way.

**Mr. Pat Martin:** Is that right? So about half are journalists, you feel. Is that typical for the other witnesses, do you believe, or have you broken it down in that regard?

• (1215)

**Ms. Kerri Clark (Director, Access to Information and Privacy Office, Department of Justice):** It's about one-third for media at the Department of Justice.

**Mr. Pat Martin:** And how about DFAIT?

**Mr. Michael Calcott:** It isn't 50%.

**Mr. Pat Martin:** No. What about private citizens, just while you're finding that figure—individuals, the general public?

**Ms. Jocelyne Sabourin (Director, Access to Information and Privacy Protection Division, Department of Foreign Affairs):** The public and the media are almost equal and they—

**Mr. Pat Martin:** Equal at what level?

**Ms. Jocelyne Sabourin:** Half. So both of them together are half.

**Mr. Pat Martin:** Where would MPs' offices come in? I understand from PCO about one-third is members of Parliament?

**Ms. Ciuneas Boyle:** Half of our applicants are media, about one-third are parliamentarians or researchers or their assistants, and the other grouping could be law firms seeking information, private individuals, organizations of all kinds, so they would fit into that smaller category.

**Mr. Pat Martin:** The minister responsible for the Access to Information Act is the President of the Treasury Board. Have you had direct communication from the Office of the President of the Treasury Board to compel you to put in place the action plans that you're announcing today?

Most of you have come here with fairly concrete steps about either adding staff or giving yourselves deadlines to up your grade, as it were. Is this coming from the President of the Treasury Board directly?

**Mr. Michael Calcott:** In our case at Foreign Affairs, no. It was an internal decision, because we were completely dissatisfied with the report and also had long conversations with representatives of the Information Commissioner's office. But it wasn't Treasury Board.

**Mr. Pat Martin:** So you're going to have to go to Treasury Board somehow to ask for more resources to meet your goals, ultimately. If you're applying 15 more staff people, will that involve the minister responsible?

**Mr. Michael Calcott:** Currently, we're not planning on going to Treasury Board. We think we can reallocate internally, but that could be a requirement down the road.

**Mr. Pat Martin:** I would suggest that you should, with our backing. We should all be going to the President of the Treasury Board saying we want open government and it's going to cost something. You would have some of our support, surely, on that kind of approach.

I don't know how my time is, but—

**The Acting Chair (Mr. David Tilson):** You have a little less than a minute.

**Mr. Pat Martin:** There were 61 complaints. I don't know the process all that well, but I believe it was Foreign Affairs that tracked 61 complaints in the last complete year in your report. When a complaint is filed, at what threshold do people file a complaint that you're not in compliance? Is it if you just exceeded the waiting time period, or what constitutes a complaint in your itemization?

**Ms. Jocelyne Sabourin:** Complaints are filed with the Information Commissioner, and we have no powers to do the intervention. Frankly, it can be just about anything. I even had a complaint about the envelope being all torn up by the dog when it was received, so it can range from a lot of things.

**Mr. Pat Martin:** Yes, so it isn't just timeliness, it can be content or lack of information or results.

Thank you, Mr. Chair.

**The Acting Chair (Mr. David Tilson):** Thank you very much, Mr. Martin.

Mr. Harris.

**Mr. Richard Harris (Cariboo—Prince George, CPC):** Mr. Epp's going to take this time.

**Mr. Ken Epp (Edmonton—Sherwood Park, CPC):** Thanks very much.

I have a question about whether it would be possible to give some very specific information to the committee today, or in writing in the next little while, and on an ongoing basis, say monthly. The information is really very simple. I would like to have from each of you, every week, a little spreadsheet that says how many files have been opened, how many files have been closed this week or this month, and how many are now outstanding; in other words, the balance at the beginning, new ones coming in, and how many are outstanding. That should be very simple.

I wonder whether you would be willing to give that, and perhaps, for the sake of the record, go back to March 31, just to show the trends. We should be able to get that. I wonder whether you would be willing to give us that backlog. Included in that, I would like another column that would say how many files have been deemed refused. In other words, you are saying you will not give the information, or you've delayed it long enough that it becomes a refusal. I think it would help to give our committee a good sense of what's going on, on an ongoing basis, because we're interested, as you have all said, in putting things into process to help improve it. But we want to see the results, by whatever method you are going to get them.

I would also like to know how many complaints are registered with the Information Commissioner against your department. These are complaints that have actually gone to the Information Commissioner from people who have made these requests and you haven't complied with them. That would be another row in this report: how many complaints you have received and how you are dealing with them.

Since my time in this round is so limited, could we have this on a monthly basis, showing how you're reaching those milestones?

Would you be willing to do that? I'd like to ask each one.

• (1220)

**The Acting Chair (Mr. David Tilson):** You've asked four questions, and you have about a minute to answer.

**Mr. Ken Epp:** Well, it's pretty well a yes or no.

**The Acting Chair (Mr. David Tilson):** Why don't we see how we can do?

**Mr. Michael Calcott:** On instruction of the committee, we could produce such a document.

**Mr. Ken Epp:** Okay, and the rest of you?

**Mr. Patrick Borbey:** If it's the instruction of the committee, we certainly will provide that.

**Mr. Ken Epp:** The rest of you? All say yes. So what you need is a motion from this committee.

I will be proposing that motion a little later, Mr. Chairman.

**The Acting Chair (Mr. David Tilson):** Okay. Your time is up.

Monsieur Desrochers.

[Translation]

**Mr. Odina Desrochers (Lotbinière—Chutes-de-la-Chaudière, BQ):** Thank you, Mr. Chairman.

I'd like to come back to the report on the Privy Council Office. When the Standing Committee on Public Accounts began its work, a certain political willingness to deal with these issues was present, and many records were requested. Many records were provided without necessarily going through the Office of the Information Commissioner. Is that correct?

**Mr. Patrick Borbey:** The records that were provided...

**Mr. Odina Desrochers:** ...to the Standing Committee on Public Accounts did not go through the Office of the Information Commissioner. Is that right?

**Mr. Patrick Borbey:** They were processed by another body. I'm sorry, but I'm not an expert on the topic. We did, however, process a request from the committee to circulate documents throughout government.

**Mr. Odina Desrochers:** Mr. Martin said that he would take the necessary steps to ensure that the information would be released to the Privy Council Office. Was the process whereby information was obtained the responsibility of your organization?

[English]

**Ms. Ciineas Boyle:** May I just explain?

That committee had the authority to see cabinet documents, so it was the cabinet document section of the Privy Council Office that reviewed documents and provided those. We assisted. There were timelines to produce documents, so we assisted them.

Subsequent to that—the same as with the Gomery commission—they were all producing documents. We received all kinds of access requests on all aspects of Gomery—costs of the lawyers and any number of things like this. So in addition to the documents that were given to the commissions through other processes, from PCO and from other departments, I think we all received access requests on various aspects of that.

[Translation]

**Mr. Odina Desrochers:** I want to know about requests from the Standing Committee on Public Accounts. Mr. Martin said at the time that he would authorize the disclosure of some documents. Who decided which documents would be released? Was it done automatically? Or were employees from your service addressing the Standing Committee on Public Account's requests?

[English]

**Ms. Ciineas Boyle:** The counsel section of our department did the review of those documents. We helped them with such mundane things as photocopying—with that aspect of it.

[Translation]

**Mr. Odina Desrochers:** Thank you. You also mention that...

•(1225)

[English]

**The Acting Chair (Mr. David Tilson):** You have about 30 seconds.

[Translation]

**Mr. Odina Desrochers:** Okay. In response to question 5 on page 6, it states: "A commitment, at the highest level, to the Plan". Who is at the highest level and who should be focussing more on leadership so that you have more leeway in how you do your work?

**Mr. Patrick Borbey:** A commitment begins with the clerk. As I explained earlier, one of the performance objectives for each senior manager at the Privy Council Office includes making an undertaking to...

**Mr. Odina Desrochers:** Why are you asking for greater commitment? Is it because you're dissatisfied with the commitment offered by your superior?

**Mr. Patrick Borbey:** No. After seeing our performance, we conferred with our steering committee and got the support of our clerk. Doing this became a key commitment for all of our managers.

[English]

**The Acting Chair (Mr. David Tilson):** Thank you.

Ms. Jennings is next.

[Translation]

**Hon. Marlene Jennings:** Thank you, Mr. Chair. During the first round of questions, I asked several questions. Mr. Borbey had the opportunity to answer them, however Mr. Bouchard, Mr. Calcott and Mr. Wilson did not. So I would like to start with Mr. Bouchard. We have five minutes.

**Mr. Michel Bouchard:** Thank you. Now, more specifically...

[English]

**The Acting Chair (Mr. David Tilson):** You have three minutes.

[Translation]

**Hon. Marlene Jennings:** Don't we have five minutes?

[English]

**The Acting Chair (Mr. David Tilson):** You've got three minutes.

**Hon. Marlene Jennings:** Oh.

[Translation]

**Mr. Michel Bouchard:** You gave the example of the eight new hires. Here's how you can explain the situation faced by the Department of Justice. Of the eight additional positions, four were quickly filled by new staff, two of whom came from other government organizations. We're talking about permanent positions and access to information experts.

The other two positions were also permanent. These new employees also came from outside the Department of Justice. They, however, are not experts in the area, however they will become so. The remaining four positions will be competition-based.

**Mr. Michael Calcott:** At Foreign Affairs, the staffing process still hasn't begun. There will be a competition open to all public servants, but stealing top-notch employees from other departments will not be permitted.

**Some voices:** Oh, oh!

**Hon. Marlene Jennings:** There are some at the Department of Justice.

Mr. Wilson.

**Mr. Randle Wilson:** As our services are joined, my answer is the same as Mr. Calcott's.

**Hon. Marlene Jennings:** Be careful, Mr. Bouchard!

Do I have any time left?

[English]

**The Acting Chair (Mr. David Tilson):** You do.

No, she's got a minute.

**Hon. Marlene Jennings:** This is the last question.

On the issue of the 30-day delay and the possibility that you can ask for an extension, I come back to my point. The 30-day delay and even a possibility of an extension do not necessarily take into account that certain requests can be extremely complex. Are your plans taking into account the increasing number of complaints that require quite complex responses, and the possibility that you therefore need to have maybe not just a doubling of your staff to deal with them, but maybe a tripling of the staff? Is that being taken into consideration in the plans you're putting forward to better your performance—yes, no, maybe so?

**Mr. Michael Calcott:** Yes, it was certainly part of the evaluation, because of the number of consular cases we deal with. They are very difficult to process, but we feel it has been adequately built into the action plan we put in place. But that's because we're doubling the number of staff.

**Hon. Marlene Jennings:** Okay, Mr. Wilson.

**The Acting Chair (Mr. David Tilson):** Very quickly, sir.

**Mr. Randle Wilson:** There is another bottleneck. It is, of course, that it's not possible to double all the policy staff across an entire department. These requests do ultimately go back to the authors to determine what information was received from another government, what from an international organization, what from a province, or what from a company. That has to be addressed by some of the other means we've discussed today.

**The Acting Chair (Mr. David Tilson):** Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you very much, Mr. Chair.

I want to go back to my original line of questioning, and perhaps Ms. Boyle or Mr. Borbey can respond to this. The example I cited was a request that was made of your office to provide information that I felt was pretty straightforward—again, mandate, terms of reference, salary of a special adviser hired. My first question, with a quick answer: would you agree with me that this would be considered by your office to be a fairly simple request to respond to?

**Ms. Ciuneas Boyle:** I believe it was all documentation or all records around, but you can't really tell until you get the records. Yes, on the face of it, it is quite a logical question. It's when the records come in and you look at the records. That's what you have to address.

• (1230)

**Mr. Tom Lukiwski:** All right, I'm trying to get my head around that. But it would seem that a request is made to, in this case, the Department of Justice to provide information—salary, terms of reference, mandate—and I think that would be fairly simple. I'm kind of piggybacking a little bit on what Ms. Jennings has said, that if you cannot respond to what I would consider an extremely simple requests within 30 days, how could you possibly respond to anything within the 30-day timeline that has been imposed upon all of you?

**Ms. Ciuneas Boyle:** It really depends on the nature of the records that are unearthed, and there are a lot of cabinet confidences in that particular file. They have to be verified by the counsel section of the Privy Council Office, which provides that service for all of government, as it is required to do. So we can't predict what the records will be. Then we take the extension that we think is required to complete it and we tell you about that extension and we tell you that you have the right to complain, which happened. It's all part of the process.

We do finish a number of requests on time, clearly. If we're an F at a certain percentage, there's another 60% to 70% that we do finish on time, and we hope to do better.

**Mr. Tom Lukiwski:** Perhaps, then—and it seems as if I'm beating a dead horse here—if I make a further request for the terms of reference, the mandate, and someone's salary, would that be considered a request that is not going to be answered within 30 days? Again, I simply can't understand why there would be such a delay.

**Ms. Ciuneas Boyle:** As you say, if it's specific it should certainly be manageable, because there are certain particular documents. But if it's all records around those kinds of issues, then that turns up all kinds of other records that perhaps you hadn't thought of or realized existed, but in fact end up being part of the package we have to deal with.

**Mr. Patrick Borbey:** I think one of the responsibilities we have is to go back to the requester and clarify when it is not as clear and simple as you might want, in terms of the very specific documents that are requested. Sometimes it's the wording of the request that leads to a much broader search than would be necessary. So that's also part of the process that we have to follow.

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Lee.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** Thank you.

I assume that the new resourcing put into ATI comes from reallocation or new money and it's maybe \$250,000 or \$500,000, which we'll willingly pay for on behalf of our constituents. But I was curious about whether or not.... Let me just reference the existence of the parliamentary mechanism for asking for documents.

It has shrunk in importance, of course, since the introduction of access to information, and it's not used as much. But it is still used.

Can I ask if the administration in the Privy Council—and perhaps the other departments have a view on this too—that handles ATI requests is the same one that handles motions for papers that come from the House of Commons; and if that is the case, what rules are used, what guidelines are used for the House as opposed to what are used for ATI requests?

**Mr. Patrick Borbey:** Essentially it's the same group that handles the requests with respect to what documents PCO would have. There is also a group elsewhere in PCO that ensures coordination across government to ensure that we're meeting deadlines. So if it's a request that goes across government, we would contribute our share of that response, and of course there are statutory deadlines that have to be met there, and we do everything we can to meet those deadlines.

**Ms. Ciuneas Boyle:** If I may, it is in my shop in PCO, and with regard to the rules that are followed, they're the rules in Marleau and Montpetit regarding the production of papers, and we're guided by that.

**Mr. Derek Lee:** And that's fair enough, except Marleau and Montpetit didn't write the rules and the House didn't write the rules. They were arbitrarily imposed by a government, as a suggestion, some thirty or forty years ago. Is that what you're calling the rules?

**Ms. Ciuneas Boyle:** I'm saying what's in the book, sir.

**Mr. Derek Lee:** We didn't write the book; Mr. Marleau and Mr. Montpetit wrote the book. Is that a statutory instrument? Is it a regulation? You've just decided to adopt those rules?

**Ms. Ciuneas Boyle:** They are guidelines, I believe.

**Mr. Derek Lee:** Who wrote the guidelines?

**Ms. Ciuneas Boyle:** I'm sorry, I don't recall. I think it was back in the 1970s, wasn't it?

**Mr. Derek Lee:** It was somebody in PCO, probably. Your predecessors wrote the rules. That's okay, someone had to write a rule sometime. The House obviously did not.

• (1235)

**The Acting Chair (Mr. David Tilson):** Pierre Trudeau.

**Mr. Derek Lee:** Actually, you're probably right. I recall the year. I think it was some time in the 1970s. Anyway, I'll just leave that.

So you're still working on these old purported rules drafted by a Privy Council functionary, with the cooperation of the Department of Justice, back in the 1970s. The House has never approved them, but those are the rules you follow.

**Ms. Ciuneas Boyle:** Yes.

**Mr. Derek Lee:** Okay.

Thank you.

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Laframboise.

[Translation]

**Mr. Mario Laframboise:** Thank you, Mr. Chair.

I'd like to come back to the question I asked you initially. On page 18, in the French version of his report, the commissioner made the following remarks: There appear to be five main causes of delay in processing access requests:

One of these is:

Top-heavy approval processes, including too much "hand-wringing" over politically sensitive requests.

You said that you were not aware of this, however on page 4 of your own presentation, you state:

Furthermore, a large number of the requests we receive involve extensive consultations with other departments and agencies, as PCO is quite often not the originator of the information held in its records. All this takes time, energy and resources.

I would tend to agree with the Information Commissioner, several records were submitted to departments late because ministers and deputy ministers, wanting to see the documents to be released, have got involved. Isn't that the impression you get? The other possibility is that what the commissioner is saying isn't true. What I have trouble with is that the Privy Council Office deals with several departments. You said it yourself: you're not in possession of all this information, it's the departments that give it to you.

Is the commissioner right in saying that interference by ministers and deputy ministers is in part responsible for these hold-ups?

**Mr. Patrick Borbey:** I read the paper. And you're right, it does say that, but I don't necessarily think that it refers directly to the Privy Council Office. It's more of a general comment, an opinion expressed by the commissioner.

As far as I'm concerned, in the organization I run, I haven't seen any political interference.

If, for example, we come across a document from the Department of Foreign Affairs in our files, we have to contact the department to make sure that we are applying the legislation fairly and evenly across all departments. Ms. Boyle looks after this, ministers and deputy ministers do not.

**Mr. Mario Laframboise:** Except that you state that a great many of the requests—you point it out—require information from the departments. The commissioner tells us that one of the reasons for the delays is the interference from deputy ministers and from ministers, and he is perhaps right to say so.

You are perhaps unaware of this, but the fact remains that if it takes time for you to get the documents, it's because someone is dragging their feet somewhere.

**Mr. Patrick Borbey:** No, no. What I am trying to explain is that officials in other departments must be consulted as regards documents that they may have produced and that would be held in our files. We are a central agency; you can imagine that many of the documents we have on file are not produced by us. We consult access to information specialists in the other departments. Following that, these people consult with the agents and directors of their

department in order to ensure that the legislation is applied in the same way in both departments.

**Mr. Mario Laframboise:** Except that it is possible that the commissioner is right and that he may quite rightly have observed that some departments are dragging their feet. It is one of the five recommendations.

[English]

**The Acting Chair (Mr. David Tilson):** We're way over.

Mr. Powers, I'm sorry.

**Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.):** Thank you. I would like to go further in the question of Mr. Lee—perhaps to Mr. Calcott, Mr. Wilson, and Mr. Bouchard.

On the methods used, the reference was how it's done in the PCO. Are there established practice procedures? Is it an approved parliamentary process? Is there commonality across the departments, whether you talk that way or not?

Perhaps we can hear from Mr. Bouchard, Mr. Calcott, and Mr. Wilson, in that order.

**Ms. Kerri Clark:** With respect to motions for production of papers, at the Department of Justice the majority of that process is handled in our parliamentary affairs unit. The only portion that touches the access to information office is the actual informal review of the documents with the spirit of the Access to Information Act in our review.

As for timeframes, we are somewhat guided by the dates that are given to us by our parliamentary affairs group. Normally it's a fairly short turnaround. We definitely try to show good faith to work on it as soon as we get it and get it out as soon as we can.

But I feel that I'd be misrepresenting if I were to try to explain what we do in our department other than the process in the access to information office.

● (1240)

**Mr. Russ Powers:** Thank you.

Mr. Calcott.

**Mr. Michael Calcott:** The treatment at Foreign Affairs is exactly the same. We use the parliamentary affairs bureau, and then there is an informal review done by the access to information office on the material that's collected.

**Mr. Randle Wilson:** Yes, it's the same procedure. We distinguish between the access stream and the parliamentary stream.

**Mr. Russ Powers:** Okay, so perhaps in the future we should take a look at the parliamentary process, since there appears to be a commonality, certainly in those departments, with regard to this parliamentary review. It's just something to put on the back burner for the future.

Thank you.

**The Acting Chair (Mr. David Tilson):** Mr. Martin, please.

**Mr. Pat Martin:** Is this a three-minute round, Mr. Chair?

**The Acting Chair (Mr. David Tilson):** Yes, it is.



**Mr. Pat Martin:** I have a very brief question to ask each of you to answer as briefly as you can.

One of the adverse, or perverse, consequences of better freedom of information is that it drives information underground to where it creates an oral culture, and people are worried about writing things down that may be accessed later. I'm asking all of you directly, have you ever heard of or do you have any knowledge of a directive given in your purview, anywhere in your agency, where someone has asked somebody to keep something verbal and not write it down so it doesn't ever get ATIPed?

Do you have any knowledge of that whatsoever, even second-hand?

**Mr. Michel Bouchard:** Personally, no. My answer is no.

**Mr. Pat Martin:** Never?

**Mr. Michel Bouchard:** Never.

**Mr. Michael Calcott:** Nor have I. I have never heard that.

**Mr. Randle Wilson:** No, I've never heard of any directive being issued in that vein, either as lead senior official or as an analyst.

**Mr. Pat Martin:** That's interesting. I know this is a problem I've had raised with me with some of the provincial jurisdictions, that in fact people are consciously making sure certain things aren't written down. It's interesting, your views on that.

We have one example, in fact, that went through question period recently of a contract with the Department of Indian Affairs where the contractor was specifically asked to give an oral report, not written, supposedly for that reason.

I'm going back to the triage idea. When you're shooting pool, there's a rule that you take your easy ones first because you might not get back to them later. If there is a simple request that would probably be two hours' work, but it's tenth in line and there is one in front of it that's going to take 30 days of work, is there not some way you can prioritize the easy ones to get them out quickly, or do you simply take them as they come?

**Ms. Ciuneas Boyle:** I think actually each officer, when they have their workload and they're juggling their workload, thinks of those things, such as what they can get out quickly—they'll work on that now so that tomorrow they can work on the other ones. They do have some understanding of how they're managing their files, and they do want to get the quick ones out. If it's a quick and easy file, it's very difficult to understand why it's late. So they do have some kind of internal triage, probably, with the 40 files they're handling, for how to try to meet this deadline and meet that deadline, or whether they can extend on a deadline.

They would be reviewing it in that regard, I believe.

**Mr. Patrick Borbey:** May I add that one of the things that worry me is that with the 30-day period, once you're late by one day you might as well be late by 30 days or 60 days, because it counts as a deemed refusal. It's difficult to motivate people in an organization to say, "Okay, you know what? You only have another two days' worth of work to finish this one, but it's late and I don't want the other one to be late tomorrow". So it creates a situation where there's not the motivation to accelerate the ones that are almost done but

unfortunately are late, because at the end of the day it just counts towards that grade of F.

If there were a way to have some kind of different gradation to recognize that, it would create the motivation within the organization to accelerate the work on those that unfortunately are late but should be completed quickly.

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Borbey.

Mr. Lee.

**Mr. Derek Lee:** Thank you.

We're probably going into an ATI reform phase shortly, and I'm just curious. To be sure, from your departmental perspective, there will be ATI requests that are perceived to be a nuisance or crazy. For example, somebody wants to know how many paper clips were used on Wednesdays for the last 20 years. There isn't a lot of that, but are there requests, from your point of view, of that nature that are harassing, stupid, a nuisance? I know you treat every request with respect, but are there requests of that nature that you feel could be addressed as part of the ATI reform?

● (1245)

**Ms. Ciuneas Boyle:** May I start? I'm sure we probably all have similar feelings.

I really haven't seen those. There are huge requests that you negotiate with the applicants, asking if they are sure they need those records for 30 years, and would it be more useful to them to have them more current so we can finish it faster? We do that kind of thing. I've been in the business a long time and really haven't seen that.

I have to tell you about one request. It was for the Prime Minister's thoughts on a particular issue. It was really an access to records act, so I got out the Oxford English Dictionary and wrote back that until they're recorded in some form, they're not accessible; they don't exist. He complained to the Information Commissioner, and fortunately the Information Commissioner agreed with us that until they were recorded.... So that was just a misunderstanding. But I haven't seen the other kinds of requests.

**Ms. Kerri Clark:** No, not with respect to the Department of Justice. We haven't seen it.

**The Acting Chair (Mr. David Tilson):** Mr. Harris.

**Mr. Richard Harris:** Thank you very much.

I notice that what's happened is that you've all gone from a better rating to an F, with the exception of the justice department, for which I can't see a previous rating. There have been some explanations and promises to do better, and I appreciate that. It sounds awfully similar to the response we get from ministers when the Auditor General has raked them over the coals: we recognize the problem and we promise we're going to do better the next time. I hope you do.

There seems to be one common link between the failing scores and the better performance, and that appears to be the current Prime Minister and the current government. You all did better prior to 2004-05.

I have some questions. In the case of the Department of Foreign Affairs, I don't see a spike at all in activity in 2004-05. If we continue in the current pattern, you should end up somewhere around 301 ATI requests, for example, which is down from 2003-04 and considerably down from 2002-03. And yet we've gone from a D to an F. In the case of the Privy Council Office, there is a spike to about 183 in the first nine months of 2004-05, and that's up from 73 the previous year and 85 the year prior to that. Mr. Borbey, you've cited some explanations, including congratulating the government on its throne speech. The common link appears to be the current Prime Minister and the current government.

Also, may I mention that my colleagues have indicated very clearly to me that they have never seen more whiteouts on responses, on documents coming to them that they've requested. You probably won't like my saying this, but I have to believe that perhaps we're just getting more intervention by the current government than ever before. Can that possibly be a symptom of these failing scores?

**The Acting Chair (Mr. David Tilson):** Mr. Harris, you have 12 seconds left.

**Mr. Richard Harris:** Thank you.

**Mr. Patrick Borbey:** I can only reiterate what I said earlier. There has been absolutely no political interference. In fact, we've had nothing but support with respect to improving our performance.

**The Acting Chair (Mr. David Tilson):** The final word will go to Mr. Desrochers, please.

[Translation]

**Mr. Odina Desrochers:** Thank you, Mr. Chairman.

Mr. Borbey, on page 7 of your document, you say that at a certain time, you were obliged to hire some consultants. Could you provide me with the name of that consulting firm?

• (1250)

**Mr. Patrick Borbey:** The consultants that we hired were casual employees. They did not come from any particular firm.

**Mr. Odina Desrochers:** Why do you refer to them as "consultants"?

**Mr. Patrick Borbey:** They do not fall under the definition of "employee".

We are getting ready to post an invitation to tender in the government contracting system. Businesses will be able to offer their services. This is for a contract up to a value of \$200,000 which will help us to carry out our work, particularly as regards the backlog.

**Mr. Odina Desrochers:** In the backlog, are there many requests related to the sponsorship scandal? Are there many requests that are pending? Has everything been settled?

**Mr. Patrick Borbey:** It goes back to...

**Mr. Odina Desrochers:** Yes, but there could be further requests. There are questions in the House of Commons on the fact that there are more documents...

**Mr. Patrick Borbey:** That is not the case.

**Mr. Odina Desrochers:** I would like to come back to the leadership that you are seeking from the chief clerk. Was this situation noticed after the sponsorship scandal? Did you feel that the clerk was less rigorous in his approach, so that you ask for more leadership in order to be able to do a better job?

**Mr. Patrick Borbey:** I am trying to understand your question.

**Mr. Odina Desrochers:** The sponsorships scandal breaks out, and you experience certain difficulties. We know this is a very political issue. You then ask the clerk to give you more flexibility, and to show greater leadership. Is this because of some past event, some occurrence? Why are you asking for this today?

**Mr. Patrick Borbey:** I can only speak to my recent experience because I have only been at the Privy Council since February, 2005. I can only assure you that the clerk's reaction and that of our senior management committee are in response to the general access to information situation and to our performance as pointed out by the commissioner. This was the motivation behind our action plan as well as the commitment of the clerk and of senior management.

**Mr. Odina Desrochers:** That is fine. Thank you.

[English]

**The Acting Chair (Mr. David Tilson):** Thank you. I think that concludes our time with you this morning, and I want to thank you all for coming and making your presentation to us and answering the questions.

Before I recess, though, I'm going to ask Monsieur Bouchard and Ms. Clark a question about our agenda in the future.

We have asked the Minister of Justice to appear on October 27. You may not be able to answer this, but if you could take the message back, he was coming to talk to us about the proposal to reform the Access to Information Act and the potential merger of the two commissions. He was approached two weeks ago. He hasn't gotten back to us. We need to know whether he's coming.

**Mr. Michel Bouchard:** The minister's office is still considering the invitation and will be able to give an answer shortly.

**The Acting Chair (Mr. David Tilson):** I hope shortly soon, because we have to firm up what we're doing in the days ahead.

Thank you very much. We're going to recess for about five minutes before the next presentation comes. Thank you all for coming.

• (1253)

\_\_\_\_\_ (Pause) \_\_\_\_\_

• (1302)

**The Acting Chair (Mr. David Tilson):** I would like to reconvene the meeting. Thank you very much.

For approximately the next hour, we have representatives of the Privy Council before us with respect to the potential merger of the offices of the information and privacy commissioners.

Ms. Santi and Mr. Hill, thank you very much for coming. We have your written presentation and we have a press release. If you could address the committee, then perhaps some of the members would have some questions.

**Ms. Roberta Santi (Assistant Secretary to the Cabinet, Machinery of Government, Privy Council Office):** Thank you, Mr. Chair.

Good afternoon to members of the committee.

[Translation]

I would first like to introduce my colleague Patrick Hill, who is here with me today; he is a senior policy advisor in the Machinery of Government Secretariat of the Privy Council Office.

We are pleased to be here today in response to the committee's motion and its study of the potential merger of the Offices of the Information and Privacy Commissioners.

We understand from the clerk of the committee that the committee is interested specifically in the timing and mandate of Mr. La Forest's review.

[English]

I have prepared some short remarks and will be pleased to answer any questions the committee may have.

There are two main issues that I'd like to touch on in my opening remarks. The first is on the role and mandate of the machinery of government secretariat, which we represent with respect to the issue at hand, and the second is on Mr. La Forest's mandate and the timing of his review.

I will begin by setting out the role of the machinery of government secretariat. Briefly put, the mandate of the secretariat is to aid the Prime Minister with the broad structural issues of government organization as well as other matters that, in our Westminster system of responsible government, fall within the Prime Minister's area of responsibility. At the risk of simplifying the mandate somewhat, this includes providing public service advice with respect to changes to the organization of government, including the creation, alteration, or wind-up of governmental bodies. These responsibilities are discharged in two ways: first, by developing options and proposals for the Prime Minister's consideration; and second, by exercising a challenge function in assessing proposals that are brought forward by other ministers, departments, Parliament, or others. I should add that our role is often a supporting role, as machinery issues will arise in a variety of circumstances.

With respect to the Access to Information Act and the Privacy Act, the policy centre is the Department of Justice, and as a result, the access reform initiative within government is led by that department. The Treasury Board Secretariat has a lead responsibility for the implementation and the administration of these two acts across government, and our own role is limited to providing advice and support with respect to structural issues that may arise in the context of access or privacy reform generally.

Let me turn now to the appointment of the external reviewer. As you may recall, on June 30, 2005, the Prime Minister announced the decision to establish an arm's-length review to examine the merits of combining the Information Commissioner and the Privacy Commissioner into a single office, as has been done in numerous provincial jurisdictions. He indicated at that time that the review would be conducted by an eminent person, whose mandate would be to assess the successes and challenges of the current model, to review the models used in other jurisdictions, and to develop options for the government's consideration.

At that time he also announced an extension of the term for the Information Commissioner, Mr. John Reid, while the review was being conducted. This was followed by an announcement by the Prime Minister on July 25, 2005, that Mr. La Forest had been appointed as a special adviser to the Minister of Justice to conduct the review and that he would report to the Minister of Justice in November 2005. This announcement also further extended the appointment of Mr. Reid to March 31, 2006, to provide adequate time for Mr. La Forest's review and for any follow-up.

● (1305)

[Translation]

I have provided copies of Mr. La Forest's terms of reference in the hand-outs provided to the committee this afternoon. The role of the Machinery of Government Secretariat will be to review and assess any recommendations that the Minister of Justice may make to the Prime Minister in respect of Mr. La Forest's findings and recommendations.

Before I conclude, I would like to make some very brief comments on the question before Mr. La Forest.

[English]

As many of you will know, the question on whether the current dual commissioner model should be replaced by a single commissioner model has been posed repeatedly since the Access to Information Act and the Privacy Act were passed in Parliament in 1982 and the first commissioners appointed in 1983. The debate has engaged various governments of different stripes, Canadians, parliamentarians, and information and privacy commissioners over the years.

By appointing Mr. La Forest to conduct his review, the intention is to bring an independent perspective to bear on this important question of public policy and good governance. This is a timely exercise, given that the government, this committee, and Mr. Reid are reviewing the Access to Information Act. In addition to the views and recommendations of Mr. La Forest, the work and recommendations of this committee on this question will certainly be of assistance to the government in formulating a response to the review.

[Translation]

I would be pleased to answer any questions you may have.

[English]

Thank you.

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you, Mr. Chair.

I thank you both for appearing here.

I have a number of questions. I'll try to get to them right away. We have a limited amount of time.

Are you aware of the personal thoughts of Mr. Reid and Ms. Stoddart on the concept of merging the two offices?

**Ms. Roberta Santi:** I'm aware of some of the views that Mr. Reid has made public. I'm not aware of the views of Ms. Stoddart.

**Mr. Tom Lukiwski:** Could you share with us your understanding of Mr. Reid's opinion on this matter?

**Ms. Roberta Santi:** My understanding of Mr. Reid's opinion on the matter is that I believe in 2003 he set forth a very strong position paper that both offices should be merged and provided a number of strong reasons why that should take place. I believe that, possibly in testimony before this committee or in a public speech, he has now recanted that position. I believe it was in October 2005. He is now of the view that the public interest would best be served by keeping the dual model in place.

**Mr. Tom Lukiwski:** Have you had a chance to speak with Mr. Reid as to why he has recanted, and could you share that with this committee?

**Ms. Roberta Santi:** I haven't had an opportunity to speak with Mr. Reid.

**Mr. Tom Lukiwski:** Are you aware, either through media reports or public appearances, of the reasons he has recanted?

**Ms. Roberta Santi:** That is the only source of my information, yes.

**Mr. Tom Lukiwski:** Could you share with the committee your understanding of those reasons?

**Ms. Roberta Santi:** For his position in 2003 or for his reversal?

• (1310)

**Mr. Tom Lukiwski:** His current position.

**Ms. Roberta Santi:** My understanding is that he feels the access values and the privacy values are actually in conflict with one another, and it's best to keep two streams and separate organizations. He generally feels it would serve the public interest to keep this separation.

I think he has also raised the issue of workload if the two commissions were combined, but I'd have to go back to the material I've read.

**Mr. Tom Lukiwski:** Can you share with this committee the current concept...? Even though I know that, as you've indicated in your brief, some provincial jurisdictions have merged these two functions, where's the genesis of this idea for merging these two functions? Was this the Prime Minister's initiative, or did this come from another government department? Was the Privacy Commissioner the one who brought that forward, to your knowledge?

**Ms. Roberta Santi:** As I alluded to in my initial comments, there has been a debate about this since the access laws actually came into being.

**Mr. Tom Lukiwski:** Sure, but action is being considered now. What was the impetus for this?

**Ms. Roberta Santi:** As you know, there's a review of the access to information legislation right now, and so the issue of the structure of the organization—whether there should be a single commissioner or whether the two organizations should be merged—is a linked question with respect to that.

As well, as you know, the Access to Information Act and the Privacy Act do allude to the appointment of a single commissioner. In section 55 of the Privacy Act, Parliament has provided for the Information Commissioner to also be appointed as the Privacy Commissioner.

**Mr. Tom Lukiwski:** The justice minister tabled a discussion paper with this committee in early April of this year, but there was no mention of a consideration to merge these two offices. Is there any reason this wasn't discussed? This would be a fairly significant move, yet there was no mention in this discussion paper of the potential consideration of this. Do you have any idea why there was no mention of it?

**Ms. Roberta Santi:** Broadly speaking, I would say that in broad structural terms, in terms of machinery of government, ministers normally go to the Prime Minister and seek the Prime Minister's views as to whether machinery and structural issues should be reviewed. So it's very understandable that Mr. Cotler, in his access to information paper, would not have included that, but that the Prime Minister actually went out with an announcement in July indicating that the government would be looking at this issue and would be bringing on stream an eminent person to review the matter.

**Mr. Tom Lukiwski:** How much time do I have, Mr. Chair?

**The Acting Chair (Mr. David Tilson):** A couple of minutes.

**Mr. Tom Lukiwski:** This brings me to my next line of questioning, the eminent person, and Mr. La Forest's appointment. To your knowledge, how many other candidates were considered for this appointment?

**Ms. Roberta Santi:** From the Privy Council's perspective, I don't deal with appointments in any way. So I really don't have any information as to who was considered. The machinery of government doesn't deal with those issues at all in terms of specific individuals. So I really can't help you on that front.

**Mr. Tom Lukiwski:** So you're unaware of any other individuals who might have been considered for this? There was no search committee established; there was no selection review committee established. This, to your knowledge, was the first and only choice?

**Ms. Roberta Santi:** I don't know if he was the first or only choice. I just don't have information on that.

**Mr. Tom Lukiwski:** Would you be able to find that out and provide that to this committee?

**Ms. Roberta Santi:** I could look into the question. I could also indicate that discussions and advice with respect to GIC appointments are considered to be advice, so I will look into the issue of what can or cannot be provided to the committee.

**Mr. Tom Lukiwski:** Regardless of the selection process...who drafted or who developed the mandate for Mr. La Forest's review?

**Ms. Roberta Santi:** You're referring to the specific terms of reference?

**Mr. Tom Lukiwski:** Yes.

**Ms. Roberta Santi:** The Privy Council Office did provide some advice on the terms of reference for the issue of the future of both commissions. That advice was provided to the Prime Minister, and the Prime Minister took a decision on the terms of reference. The terms of reference that were decided upon are the terms of reference you have before you today.

**Mr. Tom Lukiwski:** And when were they developed? Prior to the appointment of Mr. La Forest, I would assume?

• (1315)

**Ms. Roberta Santi:** I'm sorry, I'd have to check on that. I don't have my timelines in my head right now.

Yes, they would have been, obviously. It's very logical.

**Mr. Tom Lukiwski:** We had previous questions to a previous witness about requesting the terms of reference, the mandate, the salary of Mr. La Forest. We seem to have had quite a delay from the Privy Council Office as to whether or not they would be able to provide that information, so I was wondering whether or not there was a delay because a mandate had not been established or a salary had not been established.

**Ms. Roberta Santi:** I don't know issues of salary, as I say, because I don't deal with that, but I did hear last Thursday for the very first time, from the chair of the committee indirectly, that the committee was expressing concern that they didn't have access to the terms of reference. We were actually quite surprised by this because we thought they had been on the website. We immediately spoke to officials from the Department of Justice. There apparently was an administrative oversight, and I understand it's now up on the website.

**The Acting Chair (Mr. David Tilson):** Monsieur Laframboise.

[Translation]

**Mr. Mario Laframboise:** Thank you, Mr. Chairman.

Thank you for being here today. I'm having trouble understanding. I have not been a member of this committee long enough to have had the opportunity of hearing the commissioners for access to information and privacy. These are two worlds that are increasingly different: the protection of privacy is increasingly being taken over by state-of-the-art technologies. Ms. Stoddart was telling us that we would need more and more specialized staff to be able to work with the new technologies. It is not easy to train staff on the job, but for access to information, it is an issue of government relations. These are two completely different worlds that are moving farther and farther apart.

Have you already produced, for the Prime Minister's Office, an accounting analysis, budgets, and economies of scale that could be achieved by merging these two organizations?

[English]

**Ms. Roberta Santi:** *Merci pour la question.*

In terms of the next steps for machinery of government in terms of the Privy Council Office and the advice we would provide to the Prime Minister, we are awaiting the review by Mr. La Forest and the Minister of Justice's recommendations on that particular review.

We did not, prior to considering potential terms of reference, look in any detail at the resource implications, but we will of course be looking at these issues prior to finalizing our advice to the Prime Minister following the receipt of Mr. La Forest's review.

There have been reviews of the resource implications in the public domain going back to the late 1980s, and there is discussion on both sides of that. There is an argument that says the resource implications are not significant, and there's another argument that says there could be reduced costs by having a single commissioner or by merging the commissions. One of the things we need to be aware of is that when you look at the total resources going into the Information Commissioner's office and the Privacy Commissioner's office—and I stand to be corrected—you'll see that right now there are about 150 people all together who are employed in both commissions and their budget is somewhere in the vicinity of \$14 million. Any analysis around the resource implications would have to be set against that universe, if you will.

What we also need to perhaps look at a little more closely is whether there are any efficiencies that could be achieved by moving to common services for administrative purposes, for example. My understanding is that at one time the information and privacy commissions had common services; they shared support in terms of financial and human resources, etc., and now it's split. There would need to be an analysis of what the resourcing implications would be.

[Translation]

**Mr. Mario Laframboise:** That means that an analysis was done at one point in time. That is why I had understood that at a given time, there was a shared administration of sorts. Now it has been separated. It is the Privy Council Office that has carried out this analysis; at the time, it was probably your recommendation to split it.

[English]

**Ms. Roberta Santi:** As I say, going back to when the acts were both established, advice has been provided and analysis done from time to time inside and outside of government, but in terms of the review that's currently under way, we have not done any analysis at this point. Of course, we'll have to do that in terms of providing public service advice to the Prime Minister once the recommendations are received and once the Minister of Justice has declared his views on this study as well.

I totally agree that it is certainly one of the considerations that would be looked at, amongst others.

• (1320)

[Translation]

**Mr. Mario Laframboise:** In my opinion, that is a lot of money for an analysis that we could have done ourselves. The committee could have made recommendations following the report that you have already produced. I feel that it is a great waste to have an independent person paid to do an analysis. You have yet to produce your documents. He will probably ask for external analyses. Will he ask for them? Will he ask for budgetary analyses? What will he do? Are his terms of reference clear on this issue? Is there a budget? Do we know how much he will spend before making a recommendation?

[English]

**Ms. Roberta Santi:** Well, Mr. La Forest may very well be looking at this particular issue, and I would think that if he is meeting with the Information Commissioner and the Privacy Commissioner, this would be one issue to pursue. It's certainly a question we will need to look at once we do get the views of Mr. La Forest, the Minister of Justice, and this committee as well if it's going to pursue this matter.

[Translation]

**Mr. Mario Laframboise:** Up until now, has he asked you for a business report or a budget analysis of the mergers? Has he made those requests?

[English]

**Ms. Roberta Santi:** We haven't done that recently, and I think one of the reasons is that there really have been no specific recommendations coming forward. The government has not pronounced on the way ahead, so we are really looking at what options will be put on the table.

**The Acting Chair (Mr. David Tilson):** The government has no idea how much this is going to cost?

**Ms. Roberta Santi:** I think it really depends on the options that come back from Mr. La Forest. There are various options included in his terms of reference. The government has asked him to consider a number of options, so depending on the option that is put on the table, there would be a resource cost attached to it. For example, as you know, the legislation currently provides for the appointment of a single commissioner. Under that model, instead of having two commissioners you could have one commissioner but still have the two separate organizations.

**The Acting Chair (Mr. David Tilson):** No. My question was... this investigation, this inquiry, this review, the government has no idea what it is going to cost.

**Ms. Roberta Santi:** Oh, the cost of the actual review? I don't know what the budget is, what the per diem is for Mr. La Forest. I'm sure that information is available from the Department of Justice, but that is not something we are dealing with at the Privy Council Office. Those are questions you could pose to the Minister of Justice or the Department of Justice.

**The Acting Chair (Mr. David Tilson):** We have the per diem, but that's all we have. Will it be more than that?

**Ms. Roberta Santi:** I don't know, because as I am saying, we're not providing secretariat services to the review, Mr. Chair. That is the Department of Justice, and I don't have that information.

**The Acting Chair (Mr. David Tilson):** Mr. Bains.

**Hon. Navdeep Bains (Mississauga—Brampton South, Lib.):** Thank you very much, Mr. Chair.

The question I had was with respect to the initial question that was brought forth by Mr. Lukiwski with respect to Mr. Reid's position. Initially he had lobbied and advocated and even argued for the merging of the two commissions and now he has changed his position on it. From your perspective and from the PCO perspective, what are the benefits you see of the two, based on his position paper and your reading up on his public statements and through your experiences? What are the benefits in terms of the synergies associated? Is there going to be a savings in terms of the reduction in

personnel, maybe a reduction in other areas as well? I know there's a cost associated with, first of all, looking into the possibilities and then there's the initial costs of the change, but long term, have we calculated the savings of those changes?

**Ms. Roberta Santi:** I have to underline that the Privy Council Office has not landed on a view or done an analysis of what it thinks of Mr. Reid's view. We haven't conducted that analysis. What I can say is that in the public domain there are clear arguments for and against this issue. In terms of the arguments for a merger, people argue that it would encourage a balancing of the interests between access and privacy values, that the legislation is intended to be read together, that administratively it's handled as one piece of legislation. For example, when you look at an access to information request, you also ask yourself questions about whether there are any privacy issues associated with that.

Many people point to the fact that it would provide a single point of contact for Canadians, especially where they have issues around whether they've been denied information or whether their privacy rights have been infringed upon. Another argument that is used is that the provinces and all three territories actually have single commissioners to administer information and privacy. When you look at other Westminster governments, you find the United Kingdom has a single commissioner and so does Australia. Ireland and New Zealand have separate information and privacy commissioners.

In terms of the arguments against the merger, people say that these really aren't complementary pieces of legislation; they are pieces of legislation that are inherently in conflict with one another. So to put them together, you would either reduce the voice of the privacy interests or the information interests. The other arguments that have been put forward by experts in privacy commissioners is that by combining the work under one commissioner or merging the commissions, you would add to the workload and that would create significant issues. They also argue that the resource savings are really not significant, whether you merge or don't merge.

Those are some of the key arguments for and against, and as I say, we are awaiting the options before we do our own analysis and provide our own advice.

● (1325)

**Hon. Navdeep Bains:** From your experience, the savings and resources—that's where I wanted to focus my attention, because that's the area of expertise in your manner.... In your previous experiences, when mergers have taken place in the past, can you cite an example of where something similar to this has taken place and there have been savings in resources, or is that something that does not take place?

**Ms. Roberta Santi:** Well, there's a clear understanding that when you put two organizations together, especially given the small size of both commissions.... It's a well-known fact that common services always reduce costs. There are very often up-front costs to get to that point and to converge two systems, but over the longer haul it is more efficient to provide common services, so there's a sense that there would be savings there. We would certainly want to look at the views of both the Privacy Commissioner and the Information Commissioner in terms of whether there would be any potential savings for a merger, in terms of whether there is any potential to use expertise within both organizations for a common frame, for the synergies, etc.

We would need to explore that, but I think it's important to explore that not in a theoretical context, but actually to explore it with people who run both organizations, and to really test what can and can't be done.

**Hon. Navdeep Bains:** How am I doing on time?

**The Acting Chair (Mr. David Tilson):** You have about a minute and a half.

**Hon. Navdeep Bains:** You had initially mentioned that certain options were being looked at. Were there various options in terms of the mergers? Is that what you were alluding to before?

**Ms. Roberta Santi:** No. I was indicating that the mandate La Forest has is to look at possible options for the government to consider, and I was just beginning to say there's a range of options, from status quo to legislative change and everything in between, and we're waiting to see what Mr. La Forest comes out with in terms of possible options for the government to consider.

**Hon. Navdeep Bains:** Thank you.

**The Acting Chair (Mr. David Tilson):** When did he get his instructions?

**Ms. Roberta Santi:** I don't know the exact date, because he does report to the Minister of Justice and the Department of Justice handled all that. So I know when the press release and the announcement took place, but I don't know exactly when he started work and was given his terms of reference. That would have been handled by the Department of Justice.

**The Acting Chair (Mr. David Tilson):** We need to know when he's going to finish.

**Ms. Roberta Santi:** The press release has indicated that he will be completing his report in November 2005, and I stand to be corrected, but I understand that somewhere around mid-November is the target date for the completion of the report.

**The Acting Chair (Mr. David Tilson):** Yes, November 15.

Mr. Martin.

**Mr. Pat Martin:** Thank you, Chair.

I actually came here thinking that we were just going to be debating the appointment of Mr. La Forest and not necessarily the merits of merging the two offices, but I'm glad if we have some latitude to do that. It's just as well.

First of all, I think we should be honoured that somebody of Mr. La Forest's reputation and stature would agree to undertake this, because it's a thorny issue in that it's two competing rights, isn't it? I

think you put it very well, that your right to freedom of information is going to, by definition, butt heads with and run afoul of someone else's right to privacy, and I think it's an impossible situation to put somebody in. I'm very surprised that so many provinces have that structure.

So certainly my view has always been that those two rights are best served with a strong advocate for one of those rights arguing with a strong advocate for the other right, and that's how we'll come to a resolve over each individual issue.

Is it your understanding, your view, of the history of the two offices, and do you agree with us—or me at least—that the two offices were separated more or less at the request of Radwanski because he didn't want the information on what was going on with his office to be revealed? They used to share administrative support, and it was during his tenure that he demanded they have separate physical plants.

So the one single efficiency that would be fairly quick and easy in fact would be to recompose that shared administrative support regime that did in fact exist and operate quite well, and still keep the independence of the two officers of Parliament.

Is that your understanding of the history of how the split took place?

• (1330)

**Ms. Roberta Santi:** You are correct when you say that initially the common services were split and then they were brought together. Again, this is different from bringing the organizations together, but the administrative core was a shared service, if you will, and I believe it was during the period of time that Mr. Radwanski was Privacy Commissioner that the common services were pulled apart and they had separate common services. Then I understand that the interim Privacy Commissioner, Mr. Marleau, when he took over from Mr. Radwanski, looked at the issue of common services, and I understand, just from public pronouncements on the issue, that he felt they had essentially gone from the common service to establishing their own administrative services and he thought it would be, at least at that point in time, disruptive to go back to doing the common services.

So it could be contextualized. It could be because of context as well. We all know that it does take time for an organization to move to common services, and it takes time to get out of it. So there would be this initial cost and this initial focus that would have to be placed on the issue if we went back to common service.

But it is the way that government is increasingly looking at administrative services right across the government.

**Mr. Pat Martin:** Yes, I think that is the first place we could look, if there could be an economy of at least merging those neutral administrative and technical support services and keeping the files separate. I think there's a way to keep the independence of the investigation of individual activities of the two officers of Parliament quite unique and separate.

**Ms. Roberta Santi:** It will be very helpful, actually, to have the views of this committee on the common service issue as well.

**Mr. Pat Martin:** They are in fact complementary, as you said. They're complementary subjects, the freedom of information and the right to privacy, but competing at the same time. So I think there's a good argument for a shared office, but the independence and the individuality of the two officers I feel strongly about. I guess we'll be able to assess that in more detail as we go forward with this study.

Thank you.

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Martin.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you.

I want to go back to an earlier discussion we were having about Mr. La Forest's mandate. We spoke of the fact that it just seems imminently logical that the mandate would be established before the appointment was made, otherwise why would we be paying someone's salary if they didn't really know what their job was?

There seems to be some confusion about that. I'm not suggesting, Ms. Santi, that you were involved in any way with the establishment of the mandate, but we had submitted an access to information request, and the information was somewhat delayed, but we did receive information, hand-delivered last night, that indicates that at the time of Mr. La Forest's appointment there was no mandate established.

I wonder if you can comment on why that might be.

**Ms. Roberta Santi:** I have no information on that. I don't know what documents you're referring to.

**Mr. Tom Lukiwski:** We can provide the documents if you wish, but again, a request was made for the terms of reference, mandate, and his salary. The information that was provided last night indicates that as of July 25, which was subsequent to Mr. La Forest's hiring, there had been no mandate established, that it would be forthcoming. I'm wondering if that is common practice.

• (1335)

**Ms. Roberta Santi:** As of July 25th.... As I say, I don't know the exact details. I know the date of the announcement, but I don't know exactly when he showed up for work, if you know what I mean, and when he was given the terms of reference. We don't really have those dates. Those aren't in our bailiwick, but the Department of Justice would have them.

**Mr. Tom Lukiwski:** With respect to his salary, you mentioned that you're not sure; you're not privy to that information. But within the Order in Council, the remuneration is fixed between, I believe, \$440 and \$520 a day, according to the annexed schedule. Would you be able to provide this committee with a copy of that annexed schedule?

**Ms. Roberta Santi:** That's the order. I thought the question earlier was, how much will the review cost? I think his per diem is one aspect of the review.

**Mr. Tom Lukiwski:** Yes. I'm just looking specifically for his per diem, his salary.

**Ms. Roberta Santi:** I don't have that information, but the Department of Justice does. As I say, the financial arrangement between Mr. La Forest is with the Department of Justice; it's not with

the Privy Council Office. But there was an order that did establish what his rate of pay would be.

**Mr. Tom Lukiwski:** In light of recent discussions in the House of Commons, do you have an indication of whether or not there would be any severance package detailed in it?

**The Acting Chair (Mr. David Tilson):** You know—

**Ms. Roberta Santi:** I'm not the expert on severance packages. I can affirm that—

**Mr. Tom Lukiwski:** I'll withdraw that question.

**The Acting Chair (Mr. David Tilson):** We let almost anything go here, but I think we'll have to draw the line at that.

Monsieur Desrochers.

[Translation]

**Mr. Odina Desrochers:** Mr. Chairman, I have in hand the Privy Council document. It says the following:

[...] terms of reference ending November 15, 2005 [...] a daily rate in the range of (\$440 to \$520), and authorizes the refunding of travel costs incurred by the Honourable Gérald Laforest in the carrying out of his duties [...]

However, there is not much in this statement that explains what Mr. La Forest is doing, apart from the press release from Mr. Martin. The terms of reference are vague. Do you have that document in hand?

[English]

**Ms. Roberta Santi:** There's a mandate description in the press release, but there are also the terms of reference that were circulated today. I don't know if the committee members have those in front of them.

[Translation]

**Mr. Odina Desrochers:** Does Mr. La Forest have a team, or is he doing this work alone?

[English]

**Ms. Roberta Santi:** I don't have information on the arrangements with Mr. La Forest. As I say, it's with the Department of Justice, and we don't have anything to do with that.

Would the committee or the chair like us to circulate the terms of reference? I'm not sure if all the committee members have these before them.

**The Acting Chair (Mr. David Tilson):** We got the mandate yesterday.

**Ms. Roberta Santi:** The terms of reference?

**The Acting Chair (Mr. David Tilson):** Well, is there a difference between the mandate and the terms of reference? I have a document entitled "Mandate and Terms of Reference".

[Translation]

**Ms. Roberta Santi:** That is in French, it is the same document.

[English]

In English, it's called "Terms of Reference", and it's four paragraphs long.

Okay, I see that you have it.



**The Acting Chair (Mr. David Tilson):** Oh, I'm sorry, we have it in French and English; that's why I was confused. We do have a document called "Terms of Reference" in English, and "Mandate" in French.

[Translation]

**Mr. Odina Desrochers:** I'd like to know what the overall budget for this contract is and also whether or not it supposes there will be a team, in order to know how much this exercise will cost, this exercise which at first blush appears to me to be useless.

[English]

**Ms. Roberta Santi:** I'm sorry, but the Department of Justice is providing some administrative support to Mr. La Forest, but I don't know of the details and I don't know who or what or the cost. It's all being handled by the Department of Justice, not by the Privy Council Office.

**The Acting Chair (Mr. David Tilson):** I think we'd like to know that.

[Translation]

**Mr. Odina Desrochers:** Mr. Chairman, if this continues, we will have to ask the access to information office for the terms of Mr. La Forest's contract. We may find the truth in that way.

[English]

**The Acting Chair (Mr. David Tilson):** I'm looking for other questions, and we appear to have run out of steam.

Thank you very much, Ms. Santi and Mr. Hill, for coming.

**Mr. Derek Lee:** Mr. Chair, just on a procedural point, are we relying on the witness to provide this information or are we going to ask separately for this? It wasn't clear.

**The Acting Chair (Mr. David Tilson):** I just made a little aside; I'm not saying anything. Monsieur Desrochers and I asked the same question, and the witness has said she doesn't have that information. Obviously, there are at least two members of the committee who would like to see it.

**Mr. Derek Lee:** Well, you both appear satisfied right now, so that's good enough for me.

Thank you.

**The Acting Chair (Mr. David Tilson):** I'm not satisfied and neither is Monsieur Desrochers. But you asked the question, and there appear to be only two of us who are interested right now.

Thank you very much for coming and answering the questions and making a presentation.

The meeting is adjourned.

---





**Published under the authority of the Speaker of the House of Commons**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

**Also available on the Parliamentary Internet Parlementaire at the following address:  
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :  
<http://www.parl.gc.ca>**

---

**The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.**

**Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.**