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Chair

Mr. Tom Wappel

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● (1530)

[*English*]

The Vice-Chair (Mr. Pat Martin (Winnipeg Centre, NDP)): I will be chairing today, because neither the chair nor the official opposition vice-chair is available, so here I am. Thank you. It's an honour.

We're here today to begin the first meeting of a study the committee has agreed to undertake on the alleged disclosure of the names of access to information applicants. The committee felt that a good place to start would be to get the same base level of information on access to information as pertains to the Information Commissioner's office and to the Privacy Commissioner's office.

Therefore, we have witnesses here: the deputy information commissioner, Alan Leadbeater; his director general, investigations and reviews, Dan Dupuis; and Nadine Gendron, legal counsel for the Information Commissioner. Welcome.

Also, from the Office of the Privacy Commissioner, we have Mr. Wayne Watson, director general, investigation and inquiries branch; and Jan Peszat, manager, investigation and inquiries branch.

I think we should preface this with just one cautionary note. The chair and I have had a conversation about the Privacy Commissioner, represented here by her director general, not being able to answer specific questions about the investigation that is under way. I think we'll be interested in posing questions about the scope and magnitude of what you're allowed to do, perhaps, or if in fact an investigation is under way, but I think I would have to rule out of order any questions that get into the specifics of an investigation that may or may not be under way, so that you're not put in the awkward position of being forced to answer something that might compromise an investigation.

Having said that, I think we'll go in the order that is on the agenda and invite Mr. Leadbeater to give his opening remarks.

Mr. J. Alan Leadbeater (Deputy Information Commissioner, Office of the Information Commissioner of Canada): Thank you, Mr. Chairman.

I apologize for not having my remarks to distribute. I was notified on Friday of the session. I wrote diligently over the weekend, but I didn't have a chance to have it translated.

I thank you for your patience in letting me read my statement into the record.

I'm not able to offer evidence about the specific disclosure of Mr. Jim Bronskill's identity to operational officials, and a number of government organizations, or to exempt staff in the Prime Minister's Office. Apart from seeing a copy of the e-mail minutes of a meeting in which the disclosure of Mr. Bronskill's identity was made, a copy sent to me by a journalist—not by Mr. Bronskill, who had received a copy of the e-mail in response to an access request—I know no more about this particular incident than do the members of this committee. My office has not received a complaint about the matter, and the matter, as I understand, is under investigation by Mrs. Stoddart, the Privacy Commissioner. The Office of the Information Commissioner welcomes that investigation and looks forward to having the benefit of her findings and recommendations in due course.

On the more general issue of the importance of protecting the identities of access requesters from dissemination within government, I will make a few observations. My starting point must be the unanimous decision of the Supreme Court of Canada, written by Justice Gonthier in 2003 in the case of the Information Commissioner versus the Commissioner of the RCMP and the Privacy Commissioner.

Justice Gonthier, for the court, said this:

> s. 4(1) of the Access Act provides that every Canadian citizen and permanent resident "has a right to and shall, on request, be given access to any record under the control of a government institution." This right is not qualified; the Access Act does not confer on the heads of government institutions the power to take into account the identity of the applicant or the purposes underlying a request. In short, it is not open to the RCMP Commissioner

—and, may I add, to any head of institution—

> to refuse disclosure on grounds that disclosing the information...will not promote accountability; the Access Act makes this information equally available to each member of the public because it is thought that the availability of such information as a general matter is necessary to ensure the accountability of the state and to promote the capacity of the citizenry to participate in decision-making processes.

At tab 1 of the information I've handed out to you, I've included a copy of that decision of Justice Gonthier. If you're interested in looking up what I've just quoted, that paragraph is on pages 24 and 25 of the English and pages 26 and 27 of the French version.

Those strong words from the Supreme Court of Canada give us these unambiguous messages.

One, in order to make decisions about whether or not to disclose information requested under the Access to Information Act, it is neither necessary nor appropriate to take into account the identity of the access requester or the motivations of the requester.

The second unambiguous lesson is that the reason identities and motivations ought not be put into the decision-making mix is that the right of access must be afforded without discrimination to all if the purposes of the act are to be realized.

The third message is that the purposes that are at stake go to the very heart of a healthy democracy. They are to ensure the accountability of the government and to promote the capacity of the population to be informed and knowledgeable participants in our democratic institutions.

The current law of Canada restricts the disclosure of requests for identities to the use for which the identity was provided or uses consistent with that purpose.

If you look at tab 2 of the materials, you'll see sections 7 and 8 of the Privacy Act. I'll take you to section 7:

> Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except
>
> (a) for the purpose for which the information was obtained or compiled by the institution or for use consistent with that purpose;

● (1535)

Section 8 has a similar limit on disclosures of personal information. The name of an individual access requester is personal information. This is enshrined, the need-to-know principle, with respect to the identity of access requesters. The identity of an individual access requester may be used or disclosed without the consent of the individual only for the purpose of processing and answering the request.

For example, the $5 cheque that comes with an access request will be sent to the institution's finance department. In so doing, the finance department will learn the identity of the access requester. That disclosure is permitted. And the request will be assigned to an ATIP analyst, who will send the acknowledgement in reply and who may communicate with the requester to clarify the request, or transmit a fee estimate, or collect a deposit, or to notify of an extension of time and so forth. Disclosure of the requester's identity to the ATIP analyst is necessary to process the request and hence is permitted.

Beyond the ATIP and finance units and perhaps to legal services if there is a need to verify the eligibility of the requester to make a request, generally speaking there is no need for any other government official to be given the requester's identity without the consent of the requester. There is no need, for example, for those searching for the records to know the requester's identity; there is no need for those assessing the likelihood of harm from disclosure to know the requester's identity—that was made clear in the passage I read from the Supreme Court of Canada—there is no need for the public affairs group to know the identity in order to prepare the minister and department for any questions that may arise from the disclosure of the requested records; there is no need for any senior officials in the approval chain, including the minister, the Prime Minister and exempt staffers, to know the identity of access requesters.

What I have described is the legal protection that now exists in the Privacy Act for the identities of individual access requesters. However, there is in statute law no protection for the identities of access requesters who are legal persons rather than individuals. Corporations, NGOs, partnerships, and associations are also frequent users of the Access to Information Act. Businesses make up the largest user group—far more frequent users than individuals such as journalists, MPs, or academics.

That is why in the open government act that was tabled with this committee last fall, it is proposed that the Access to Information Act be amended to include specific protection for the identity of all access requesters. And if you look at tab 3 in the materials I've circulated, and if you look to subsection 4(5) on the second page, the proposal is that:

> The identity of a person making a request under subsection (1) may not be disclosed without the consent of the person unless
>
> (a) the disclosure is solely within the government institution to which the request is made; and
>
> (b) the person's identity is only disclosed to the extent that is reasonably necessary to process and answer the request

This provision did not make its way into Bill C-2, the Federal Accountability Act. However, Bill C-2 establishes a duty to assist access requesters without regard to their identity. While this new obligation is positive, it does not restrict the dissemination of requester identities. The Office of the Information Commissioner encourages the government to include the above-quoted open government act provision in any Access to Information Act reform bill it may bring forward.

Improper disclosures of requester identities can no longer be convincingly blamed on ignorance. The Treasury Board has issued guidance on this matter to all departments. And if you look at tab 4 of the materials I've issued to you, at the second page you'll see guidelines on treating the identity of a requester as personal information.

Reports have been made by information commissioners, government training programs remind officials not to disseminate requester identities, and the government's task force on access reform of 2002 reminded public officials of the need to protect the identities of access requesters. The reason for all of this is intuitively known to every public servant, elected official, and exempt staffer. Requester anonymity is necessary to ensure impartiality in the processing of access requests.

● (1540)

We have seen the effects of unnecessary disclosure of requester identity. One is retribution, such as loss of contracts by businesses, loss of access to the Prime Minister's aircraft by journalists, or career retaliation against employees. We have seen threats and bullying—for example, senior officials communicating directly to the access requesters their displeasure at being the targets of access requests. We have seen discriminatory treatment of the access request itself by it being improperly delayed, subjected to inflated fee estimates and 100% deposit demands, refusals of fee waivers, and overly broad application of exemptions to deny access.

In the hand-out, I have included materials that describe a case where disclosure of a requester's identity had some of these adverse effects. If you look at tab 5, that abstract from an annual report of the Information Commissioner had to do with a deputy minister-level official in the Government of Canada who was on secondment to the Tobin government of Newfoundland to help negotiate the Voisey's Bay nickel project. His former department, Fisheries and Oceans, had received access requests about him. You'll see on page 23 that the deputy minister, Mr. Rowat, wrote a letter to the access requester, and the letter said:

> It has come to my attention that you and/or your organization are collecting a comprehensive file on my personal and professional activities. Will you please:
>
> - notify me in writing if, in fact, you are preparing a file, which in any way concerns me.
>
> - If so, advise me of your intended purpose and use of that information.
>
> - Provide me with a copy of all current information you have in your files that pertains to me.
>
> - All requests or approaches you have in train to collect information on me and my activities, and provide me such information when it is received by you.
>
> I am providing a copy of this letter to the Canada Privacy Commissioner.

As you can imagine, the access requester found that to be rather intimidating. The full report, which involved litigation when the official refused to answer the question of who gave him the identity, is set out at that tab.

It has been our experience that this is a very difficult wrongdoing to satisfactorily investigate. It usually happens in oral communications, or by means of easily disposed of post-it notes on ATIP files. It usually happens among officials who are fully aware that their curiosity about identities is improper, hence there is little tendency to come clean under questioning.

ATIP coordinators are in a no-win position. The senior officials who want to know requester identities are those who decide the coordinators' career futures. Yes, there are some individuals with the strength of character to say no to superiors. But let's be realistic, that kind of courage is bound to be the exception, not the rule.

On our prescription, first pass the provisions previously quoted and proposed in the open government act. I refer to tab 3.

Second, pass the provisions proposed in the open government act requiring that decision-making under the Access to Information Act be delegated to the ATIP coordinators. Get it off the tables of the senior officials.

You may be interested to know, for example, that in the Privy Council Office the delegation to answer access requests resides at the assistant secretary level or above. The deputy minister and the minister, along with the ATIP coordinator, should by statute be made legally accountable for respecting the act's rights and obligations. Those suggested provisions are also at tab 3.

Third, when transgressions occur, ensure that there is appropriate discipline and that other public officials are made aware of the discipline.

I know there are two theories about discipline in the public service. The most prevalent is to keep it quiet so it's only known to the individual and the manager. We heard some of that in the testimony of Commissioner Zaccardelli earlier this week, but that has no pedagogical effect within the public service.

Fourth, establish a code of professional ethics for access to information and privacy coordinators, an important element of which is the obligation to protect requester identities.

● (1545)

To assist you in your deliberations, at tab 6 I have included an excerpt from the commissioner's annual report of 1997-98, where we have suggested what the elements of a code of ethics for access coordinators should be, including the requirement of a strict duty to keep confidential the identity of access applicants.

Finally, provide a greater measure of independence from institutional pressure for access to information and privacy coordinators in the same manner as crown counsel are given institutional independence from their departmental clients.

Thank you for giving me the opportunity to make these remarks.

The Vice-Chair (Mr. Pat Martin): Thank you very much, Mr. Leadbeater. I'm sure many of my colleagues will have questions for you.

We'll hear from the Office of the Privacy Commissioner first, and then take questions from other MPs.

Mr. Watson.

Mr. Wayne Watson (Director General, Investigation and Inquiries Branch, Office of the Privacy Commissioner of Canada): As per the committee's request, we are appearing today before you to give you an overview of the Office of the Privacy Commissioner's investigations process, since your committee is studying issues related to the alleged disclosure of the names of the access to information applicants.

It is our understanding that the Access to Information Act is silent on this front. In other words, there is nothing in the Access to Information Act that specifically indicates that the name of a requester cannot be disclosed. Since there is nothing that says you cannot name the requester, on the surface it would seem that it's not likely a contravention of the Access to Information Act. However, the matter could be a violation of the Privacy Act. This is where our office comes in.

Generally speaking, the name of a requester is considered personal information, and we can investigate to determine whether there has been an inappropriate disclosure of that personal information. The fact that the information happened to be disclosed in an ATIP request to us is incidental, though we do understand and appreciate the larger implications, of course. Whenever personal information is disclosed by a federal department or agency in any context, it may be subject to scrutiny under the Privacy Act.

[*Translation*]

When faced with any alleged breach, we need to investigate before coming to any kind of determination or conclusion, and each case has to be looked at on a case-by-case basis.

Up until recently, we have not investigated a similar matter for some time and, in the history of our Office, there has only been a handful of cases. Some well-founded, others not. It all depends on the circumstances.

At this point in time we are investigating a matter related to the naming of an ATIP requester and I'm sure you can appreciate that, given this, we are not at liberty to discuss the matter further. Section 33 of the Privacy Act states that our investigations shall be conducted in private, while section 63 of the Privacy Act tells us we have a duty of confidentiality with respect to any information we collect in relation to our investigations. That said, we understand that you would find it useful to have a better understanding of our investigation process under the Privacy Act.

Once we receive a complaint, we begin the process with an initial analysis of whether the allegations fall within our mandate — whether it's a matter related to the Privacy Act. Under that law, we can look at cases where a Government department may have improperly collected, used or disclosed an individual's personal information.

● (1550)

[*English*]

Once we've determined that the matter falls within our jurisdiction, we assign an investigator to the case. We then write to the complainant and the government institution in question to outline key issues in the complaint. We begin to gather all the facts. This process includes interviews with anyone who might have relevant information to offer. We also look at any appropriate documents. The commissioner has the power to summon witnesses, administer oaths, and compel the production of evidence if voluntary cooperation is not forthcoming.

Throughout the course of our investigation we collect all the facts of the case and then follow up with a thorough analysis of that information. The analysis may include discussions between investigators and officials from our legal services, research, and policy branches. The investigator then prepares recommendations to the Privacy Commissioner or her delegate. Those recommendations, along with a summary of the facts gathered during the course of the investigation, are passed on to the complainant and the relevant government department or agency. Both parties can make further comments at this point.

Our ultimate goal is to resolve complaints and stop further privacy breaches. We operate under an ombudsman model, encouraging resolution through negotiation and persuasion. Ultimately it is up to the Privacy Commissioner to objectively decide what the appropriate outcome of the case should be.

The Privacy Commissioner sends letters of findings to the parties and outlines any recommendations she may have.

The commissioner can make a few different kinds of findings. For example, "not well-founded" means she does not believe a person's privacy rights under the law have been breached; "well-founded" means a federal institution violated the Privacy Act; "well-founded but resolved" means there was a privacy breach and the government department has agreed to take steps to prevent a reoccurrence.

Unfortunately, beyond making recommendations, the Privacy Commissioner has no further powers to force government departments to ensure that they implement her recommendations. This is a major gap in the Privacy Act, which is now almost 25 years old and, as you know, badly in need of modernizing. Unlike the federal private sector privacy law, the Personal Information Protection and Electronic Documents Act, PIPEDA, we cannot take the matter to the Federal Court, and no real redress is available to the victim. The only court recourse is for denial of access under the Privacy Act.

The commissioner has outlined her proposal for reform of the Privacy Act in the paper submitted to your committee in June. She looks forward to the opportunity to meet with you again for more in-depth discussion of the Privacy Act reform.

Thank you, Mr. Chairman. I hope this has provided a clear picture of our investigation process. We are pleased to answer any questions.

Mr. Chairman, before continuing, seeing that I have been with the Office of the Privacy Commissioner for a mere seven weeks, although at times it feels like a lifetime, I've asked one of my experienced Privacy Act supervisors to accompany me so as to ensure that accurate information is passed on to the committee. If any question surpasses my present knowledge on a subject, I would, with your permission, defer to Ms. Jan Peszat.

Thank you.

The Vice-Chair (Mr. Pat Martin): Absolutely, Mr. Watson. Thank you very much. That would be most welcome, if questions of that nature come up.

We will start with Mr. Owen, for seven minutes.

Hon. Stephen Owen (Vancouver Quadra, Lib.): Thank you, Mr. Chairman.

Ladies and gentlemen, thank you for being here today and for your presentations.

Both Mr. Leadbeater and Mr. Watson, could you give me an idea of the coordination that may take place between your two offices with respect to the particular issue we're dealing with, and that's the disclosure of names.

I noticed in Mr. Leadbeater's presentation he referred to the Rowat case, which was a clear breach, by your analysis and by the Supreme Court of Canada's analysis. And I think that all of us reading the plain meaning of the Privacy Act would agree. I wonder if that incident and the comments in the Information Commissioner's annual report, there and at other times, has led to any investigations of the sort currently under way by the Privacy Commissioner. I'm trying to understand the interplay over time of the consequences of the Information Commissioner discovering and commenting publicly on the apparent breaches not only of the Privacy Act, with the release of personal information, but also of the Treasury Board guidelines. I would like to get some sense of how that works.

Second, I'd like to get your opinion on the difference between the frequency of practice of disclosing the general nature of—it was referred to in the newspaper this morning as amber lighting—a request for information that is about to be made public, so that officials, whether ministerial-level or senior public officials, can be prepared to answer in public, to provide information to be able to respond to concerns that may have arisen in the public domain.... Compare that practice with the actual practice of disclosing the name of a requester, which is the specific breach of the Privacy Act that's been mentioned. In commenting on the frequency of one or the other, comment also on the rightness or wrongness of the former, of the amber lighting.

I'd be very grateful for your opinion on whether that is an appropriate disclosure in order to have the wheels of government act responsibly and be accountable to the public for information that is in the public domain, or whether in some way that suggests an improper disclosure, where the name of the requester is not given.

Thank you.

● (1555)

Mr. J. Alan Leadbeater: There are quite a few things you've raised there. Maybe I'll deal with the last one first.

We have no objection to government communications functions or ministerial staff knowing what information is going to be released under the access to information so that they can be prepared with house cards and Qs and As and so forth, as long as the process of doing that does not prejudice the requester by either delaying the answer going out or by changing the amount of censoring that's in the document and so forth. That process, I think, can flow without there being any exchange of identities—and some departments do it very well.

So no, as long as timeframes are met under the statute and it is properly applied, we don't have any problem with "sensitive requests" being routed through the communications function of a department.

We do find there is an enormous amount of curiosity, and I don't know if it has to do with question period, the dynamics of question period, about the identities. When I first started in government, ministers seemed to be quite willing to say, "I don't know the answer to that, but I'll find out". Now there's a desire to know where these questions are going to come from, and how I am going to handle them, and that involves knowing who's going to ask the question. So if there's an access requester who's a member of Parliament who is always trying to get information on the gun registry, then there will be an interest on the part of the government in knowing which MP that is, whether the question can be anticipated from that person.

And there's also a tendency to categorize in such narrow categories that even if the identity is not disclosed, there is still a possibility of prejudicial treatment of the request. So the request will go to the communications function and say, here's what is going to be released, and it is from a media requester—or it is from a member of Parliament requester. And that itself may trigger a process that delays the answer going out . Even depersonalizing will sometimes lead to prejudicial treatment if too many senior levels in the department are involved in the process.

I'm not sure if that gets at the question you were asking or not.

● (1600)

Hon. Stephen Owen: I think that covers it. Thank you.

I will perhaps add to that. Was there a change in practice that you observed after 1999 and the Rowat case and the clarifying in Treasury Board guidelines of how improper it was to disclose requesters' names?

Mr. J. Alan Leadbeater: Yes. We did see better education, better understanding, but we also found more subterfuge, the use of post-it notes to transmit the identity of the requester. It wouldn't appear on the actual transmittal slips of the file that went forward, but it would be on yellow post-it notes, to be removed later, and so on.

There were two types of reactions. One was in some areas to be much more professional and careful, and in others it was just to be more devious.

The Vice-Chair (Mr. Pat Martin): Thank you. That's your time, Mr. Owen.

Madame Lavallée, will you speaking for the Bloc?

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): It appears to us that the simple fact of releasing the name of the requester, the actual identity of the individual, would be a violation, if not of the laws themselves, at least of the spirit of the Access to Information Act or the Privacy Act. It seems to me that you have just established that. We may even find this kind of prohibition in other pieces of legislation.

The practice of drafting a sort of list to be distributed to Ministers' offices — or more specifically, to political staff — is a rather unusual one. That list contains the name of people who have made access to information requests during the month, the quarter or the week.

Of course, you have just noted that releasing the name of a requester is prohibited by the legislation. Now you answered Mr. Owen's question, but as regards the list of requests themselves — in other words the subject matter of the requests — should that practice not simply be prohibited?

[*English*]

Mr. J. Alan Leadbeater: I don't disagree. The point I was making is that if there is a way to have the decisions about disclosure and about preparing ministers for their communications function made entirely devoid of who and what group of individuals may have made the access request—whether they're media...but especially who and what their motivation is, what they are looking for, whether they are doing a story on this or a documentary for that—I think it would lead to a fairer, more impartial application of the Access to Information Act.

The government runs a thing called CAIRS, computerized access to information request system. Every government institution that receives an access request is required to put into the system the subject of the access request, the date received, the department and so forth. The whole purpose of that system is to allow central agencies, the Privy Council Office in particular, to monitor what's coming into the entire system and to coordinate the responses. That is so that one department is not giving out things that another department is.

That system also includes categories for the requester. It does not have the name of the requester, but it has categories, in quite discrete forms. We worry that the system encourages discriminatory treatment. Some will come out—the media requests or the MP requests—and get a lot more hand-wringing, communications, and Qs and As. So they will be later and perhaps less forthcoming.

You have a point. It's not just an identity issue; it's an issue of being preoccupied with what groups as well as what individuals are making access requests.

● (1605)

[*Translation*]

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): Mr. Watson, in your presentation, you stated that under the Access to Information Act, according to your reading of it, nothing would prevent the name of a requester from being released, but that it's quite a different matter under the Privacy Act.

Doesn't that clearly point to the fact that one law violates the other? If we're talking about a situation where the Privacy Act prohibits the release of information and where, at the same time, the Access to Information Act does not create such a barrier, would you not agree that key aspects of these two pieces of legislation are contradictory as regards information and respect for privacy?

In your opinion, should we amend the Access to Information Act to ensure consistency between that law and the Privacy Act?

Mr. Wayne Watson: In my opinion, the two acts do not contradict one another. The Access to Information Act is simply silent on that particular matter. It does not say whether or not we have that right.

However, the Privacy Act very clearly stipulates that, not because it's an access to information request, but simply because no personal information can be released without the consent of the individual involved.

As to whether a specific clause should be added stating that this is a violation of the Act, I personally believe it would be a good idea. At the present time, only our legislation does that.

Mr. Jean-Yves Laforest: Thank you.

[*English*]

The Vice-Chair (Mr. Pat Martin): I would like to interject before you get started, Jason. I'm not satisfied that this contradiction has been addressed.

Mr. Watson, you opened up by saying that the Access to Information Act is silent on this issue, yet I read Mr. Leadbeater to say that with respect to personal information what could be more personal than a person's name? Section 19 of the Access to Information Act says that you won't disclose a document that has personal information.

Mr. Leadbeater, do you read the Access to Information Act to have a prohibition about disclosing the applicant's name?

Mr. J. Alan Leadbeater: I don't sense any daylight between us on this one. I think there's nothing particularly in the Access to Information Act, but there is an appropriate provision in the Privacy Act that protects personal information. I think what the investigation should conclude is whether that personal information—the requester's name—was properly disclosed or improperly disclosed; it depends on the circumstances. Maybe there was consent, or maybe it was already publicly known. I'm not sure what.... There may be some justification for it. I think the prohibition is there, but it is in the Privacy Act, and there are no penalties in either act. The prohibition is in the Privacy Act, and there are no penalties in either act.

The Vice-Chair (Mr. Pat Martin): Okay. I'm sorry to interfere.

Mr. Kenney is next.

Mr. Jason Kenney (Calgary Southeast, CPC): There was no interference, Mr. Chairman. Thank you, and congratulations on your elevation to the chair.

● (1610)

Mr. Pat Martin: Thank you. Now you're never going to get me out of here. I've settled in.

Some hon. members: Oh, oh!

Mr. Jason Kenney: You are very well suited to it.

Thank you to all the witnesses for appearing before us, particularly on short notice.

My first question is for the representatives from the Privacy Commissioner's office. First of all, please extend our regards to the commissioner in her absence. We understand she couldn't be here today.

The motion that was adopted by this committee was precipitated by news reports, the original being dated September 20, regarding an alleged distribution of the name of a requester of information with respect to the public security ministry. You obviously know the background of that, although you can't comment on particular cases. I gather that the ministers of public security and the Treasury Board may have called your commissioner to express concern and invite cooperation with her in this matter. Is that the case? Can you confirm whether your commissioner received contact from the ministers of public security and the Treasury Board shortly thereafter?

Mr. Wayne Watson: Yes, she has received calls, and advice was requested from her. I don't know about the Minister of Public Safety and Emergency Preparedness Canada, but I know that she has sat down with the Treasury Board. They've had a conversation in which her advice was sought.

Mr. Jason Kenney: Was that with respect to the matter that was in the media recently, or was it the issue in general as well?

Mr. Wayne Watson: Mr. Chair, I don't know exactly what was said, but—

Mr. Jason Kenney: Okay, thank you.

Mr. Leadbeater, you presented some interesting information about what would appear to be an ongoing practice in the original article that led to this hearing. I want to quote from a statement that was attributed to you; you can let us know if it's accurate. I think it seems to be consistent with what you just testified to.

You're quoted in an article in CanWest papers on September 20, saying:

> We see situations where representatives from the minister's office will meet on a regular basis, sometimes weekly, with the access to information people to find out what access requests have been received and what material is being released, and in the course of those meetings there is a tendency to share with the minister's staff the identities of the requesters.

Is that accurate?

Mr. J. Alan Leadbeater: Yes, it is.

Mr. Jason Kenney: You sort of embellished this view today, saying that this practice has led to threats and bullying and intimidation in the past, and you've identified ways these names have been passed on, ways you characterized as more devious methods, like post-it notes that aren't on formal paperwork. Are you able to quantify this practice and say how frequent or common it is, and in what percentage of files this may have occurred?

Mr. J. Alan Leadbeater: No, I'm not. I'm not sure of the degree to which the ongoing investigation will get into that, but I think it would be both very difficult to determine and very interesting to know. We do find, though, that when we do uncover it, it's not easy to get departments to change the practice. It's very quickly changed, which makes me think that perhaps it's public servants who sometimes don't do their job in telling ministers' staff that they're not entitled to that information.

I don't blame exempt staff for asking for it, because they're not educated in these matters in the way public servants are. It's really up to the public servants to say that they can understand you may want that, but you are not going to get it, and they cannot give it to you. When we point that out to public servants, they'll take a little bit of courage from our support and they'll stop doing it.

Mr. Jason Kenney: In particular, I'd like to draw your attention to the 1999-2000 annual report with respect to the Department of National Defence. On page 67, it says the Information Commissioner concluded that the special assistant did have access to the names and identities of all requesters and that on occasion he also informed members of the minister's office of the identities of requesters. This occurred particularly when requests came from the media or members of Parliament.

So clearly we have a specific case identified here, amongst others, where the Privacy Act seems to have been violated. Did you find any other cases in other government departments or agencies where similar practices were took place since 1999-2000?

Mr. J. Alan Leadbeater: Yes, we have.

Mr. Jason Kenney: Did you identify them in your reports?

Mr. J. Alan Leadbeater: I haven't gone through every one of the reports, but that's one of the difficulties. The statute says that the Information Commissioner, or anyone working for the Information Commissioner, shall not disclose any information learned during an investigation, except in reports under the act. So I'm happy to keep my testimony to the reports that we've issued.

But we issue many to individuals, and if they don't come forward and put them in the public domain, then it's something I'm prohibited from putting in the public domain. We have issued reports in the past to individuals who have had concerns about their identities being disclosed, and we've always had corrective action taken by the department.

Mr. Jason Kenney: As well, on September 20, CBC News reported, and I quote: “One former Liberal staffer told CBC News that the names of individuals who had made access requests were routinely obtained during the Jean Chrétien government”. Does this statement have the ring of veracity to it, the ring of truth to it, or would you contest this?

● (1615)

Mr. J. Alan Leadbeater: I'd like to stay away from adjectives. I know what road you're trying to take me down, but it happened too frequently. I've served in this business under five prime ministers, and in the terms of five prime ministers, it's happened too frequently in every one of them.

Mr. Jason Kenney: I have a memo that was furnished to the government with respect to the current issue, presumably before the Privacy Commissioner. This is a memo, which I'll read in full. There was a matter of some controversy from Dale Eisler, assistant secretary to cabinet at the Bureau du Conseil Privé. He says that with respect to the Bronskill matter:

> There was no knowledge of an ATI request by any specific reporter. We are never privy to that information. In this case, there was a discussion about ATI files that were being released on the issue of alleged CIA overflights.
>
> It was well known that Mr. Bronskill had already written several stories on the matter, and had been calling Public Safety and other agencies for comments and clarification. In this case, the assumption was that, given his particular interest in the subject, he would be writing another story.
>
> In retrospect, it was inappropriate that any such assumption was made.
>
> This was a discussion only among officials. There was no involvement by political staff and the summary report of the discussion by officials was a practice that predated this government. These type of summary reports were regularly shared with members of the previous government's Prime Minister's communications office.

So here we have a top PCO official basically describing public officials speculating on a name and then including it in the routine minutes of their meeting, which was distributed to political staff as well. Do you think this is evidence of prima facie and deliberate violation of the law by political staff? Either of you can comment on this.

A voice: You're saving the long discussion for the last.

Mr. Jason Kenney: Sorry.

The Vice-Chair (Mr. Pat Martin): Please answer very briefly, because Mr. Kenney was well over his time.

Mr. J. Alan Leadbeater: I just don't have enough facts to know. That would be part of the investigation, I assume.

The Vice-Chair (Mr. Pat Martin): I anticipate a similar answer—

Mr. Wayne Watson: The investigation has just started, and it would be highly inappropriate for us to make any comments right now. But to be honest with you, we don't know right now.

The Vice-Chair (Mr. Pat Martin): Thank you.

We're going to go to a second five-minute round, and Mr. Owen is on again.

Hon. Stephen Owen: Very quickly, Mr. Leadbeater, perhaps you could confirm that the five prime ministers you served under when you observed this request included three Conservative prime ministers and two Liberal prime ministers.

Mr. J. Alan Leadbeater: That would be correct, yes.

Hon. Stephen Owen: I believe, Mr. Chair, that what Mr. Kenney was just quoting from is the PCO official's statement that was read in the House by Mr. Kenney, and I believe he expressed some regret after having quoted that in the House for perhaps having misled the House into suggesting that the names of people rather than the circumstances or the issue being discussed were circulated.

So my question gets back to this point, and Mr. Watson last time didn't have a chance to answer this for me. When we're looking at past practice, in what proportion are we talking about people sharing information about the nature of requests that are going to lead to disclosure or whether they're actually identifying the people? I think that was the issue in the PCO document that was at least misunderstood from Mr. Kenney's answer in the House.

Mr. Wayne Watson: I'm not sure, Mr. Chair, I understand your question. If you're asking me if it's under our act, if we're talking about generalities, I would say no. A person's name is personal information, and unless it's personal information, our office would not be involved. I don't know if that answers your question.

Hon. Stephen Owen: Perhaps I'll go forward another way.

We had a progression from 1999 when there was this issue with the Department of Defence, as I gather, the minister's office, as well as the issue with Mr. Rowat. There was obviously some confusion before that time, because Treasury Board guidelines at that point were issued and people were regularly given knowledge of it and, I gather, dealt with if since then it had been infringed or it was found out that it was infringed.

I'm just trying to get a sense, and maybe Mr. Leadbeater can answer, of the frequency of this and the division between simply the circulation of information, which you've described as not being in violation of either act, and the actual identification of people.

● (1620)

Mr. J. Alan Leadbeater: In our office we only see things that go wrong, because we get complaints, so it seems to me as if it's frequent and too frequent. But I can't put that in the context of all the access requests that we never get a complaint about. The system gets 25,000 requests a year and we get 1,500 complaints, so I have a little window onto what really goes wrong.

Hon. Stephen Owen: But I'm really interested in the window. How big is the window, and when was the last time it was mentioned as a problem in a commissioner's report, either privacy or information, that names were being disclosed contrary to law?

Mr. J. Alan Leadbeater: Well, I think the most recent time we mentioned it is in our open government act. I think we wanted to raise it, as we are sufficiently concerned about the frequency of this that we think it needs to be articulated in the way we suggest in the statute, because we feel that not only is it the names of individuals—which is personal information protected—but it's the names of corporations and so forth. For example, it's the little contractor who wants to do some business with a port authority and decides to put in some access requests about the port authority, and then runs into the head of the port authority at a cocktail and the guy says, “You're not getting contracts if you keep putting access requests in here”—that kind of stuff. They don't get protection because they're businesses. That needs to be remedied in the statute.

Hon. Stephen Owen: Maybe as a final question on that, Chair, if I may, you've mentioned, both of you, that there aren't any penalties under either statute for what may be a breach of the law. Is it your opinion, or perhaps your counsel's opinion, that this would give rise to civil liability in the case you mentioned of a contractor apparently losing a contract because of an unlawful disclosure?

Mr. J. Alan Leadbeater: Absolutely. I think bad-faith action on the part of a government official can give rise to liability, but it's a very cumbersome way of enforcing a public duty, I think. I'm not sure that it requires a criminal penalty in the statute, but it does require, I think, some tough action by senior managers by way of discipline if they find this out, and that discipline should be made known in the system.

To this date, I know of no discipline ever meted out to anyone for disclosing identities, including Mr. Rowat after he refused to answer the question and was told by the court he had to answer the question or face contempt. He came back and said, I can't remember the name of the person who told me. He went back to the court, which laid on punitive penalties, and the government paid them. The government pays them for him.

What were the penalties, you ask? I'm not sure what the penalties were.

The Vice-Chair (Mr. Pat Martin): Bruce Stanton, five minutes, please.

Mr. Bruce Stanton (Simcoe North, CPC): Thank you, Chair. It's good to have you up there today, although we will miss your excellent questions from the other side—perhaps.

● (1625)

The Vice-Chair (Mr. Pat Martin): I miss them terribly too. I'll sneak in there now and then.

Mr. Bruce Stanton: And thank you to the witnesses.

My question for both representatives of commissioners here today is really more about when the breach actually occurs. I think I heard in Mr. Leadbeater's presentation that this information could be shared within government circles except, I think you mentioned, for exempt staff, which would include ministerial political staff, for lack of a better word. But would it be true to say that it's when that information is used in a fashion that would in some way prejudice the process, or complicate the process going forward, that the breach in fact occurs? I've just been trying to draw a line on that.

For example, I note a potential example of this from the Information Commissioner's report of 1998-99. I'll quote from page 8 of the report:

> The Prime Minister's department set a poor example by insisting from the beginning that the access system be sufficiently slow to enable PCO to continue to manage releases in a way most favourable to the government of the day. All politically sensitive requests require consultation with PCO before they are answered.

Is that an example of the "retribution—I think that is the term you used—or an example of when the mechanics of a request begin to have consequences, because of the sharing of that information? I wonder if you could expand on that a bit.

Mr. J. Alan Leadbeater: On the first thing you mentioned, about whether it can be shared within a department, the Privacy Act says only if it's for the purpose for which it was originally collected, or for a purpose consistent with that. So if you get the name of an access requester—it's on a form seeking access—you can disclose it to the extent necessary to process that access request, but not to serve the communications needs of the department or the minister, and so forth. That doesn't mean you can't tell the powers that be what may be released; just don't link it up with that identity.

So when you start having a separate little process for more sensitive requests, either because it's the individual and the individual is a thorn in the side of the government, or whether it's the subject of the thorn, that's when discriminatory treatment creeps in. It takes longer to answer that because more people are being consulted, and so forth.

That is the point I was trying to make, and I'm not sure if that gets to your question or not.

Mr. Bruce Stanton: It was really just to understand when the breach occurs. From what I've heard, in fact, it is a narrow view to what degree that personal information can be shared. So there could in fact be a breach of the Privacy Act, even if the information were shared for purposes not associated with the request that came forward.

Mr. Wayne Watson: Exactly. The fact that it's the tool and it's an ATIP request is incidental. Whenever personal information is disclosed without the consent of the individual, then you have the potential for a breach.

Mr. Bruce Stanton: Just for clarity, though, we've heard this has continued. This report was back in 1998-99. This is something that has continued on. I don't know if the question came up earlier, but can you put a measure on how broad this activity is within the public service?

Mr. Wayne Watson: As far as our office is concerned, I can state that we've had no complaints in many years, and in our history we've had very few complaints on similar matters. Some have been well founded; some have not. The reason might be that people don't know they can complain to our office or they just don't know that their name was revealed, but we've had very few complaints.

Mr. Bruce Stanton: In respect to going ahead now, we know that there will be consideration of amendments to the Access to Information Act coming forward. Is the Access to Information Act the right place to have those recommendations that you brought forward, or should that rather be in the amendments to the Privacy Act, as you mentioned that it's also in need of review? I'd be interested in where in fact that protection could come.

Mr. J. Alan Leadbeater: It's in the Privacy Act now and it's insufficient as far as we're concerned, and we're concerned specifically about giving protection to information about requesters who are not individuals. There is an issue with putting that in the Privacy Act, which is designed to protect information about individuals, but I think too you have to realize that the pressure to disclose requester identities comes mainly in the access to information world and not so much the privacy world.

When people ask for their own information under the Privacy Act, the communications function of the department is not triggered, the minister's office is not interested, and there aren't Qs and As. They're asking for their own income tax file or their own disciplinary file or information about themselves. It's when you get into access to information requests about broad policy issues, actions, expense accounts, and so forth that a department becomes interested in knowing who's asking for that, what they might do with it, and how can the department get ready to react to it.

● (1630)

Mr. Bruce Stanton: Thank you, Mr. Chair.

The Vice-Chair (Mr. Pat Martin): Thank you, Mr. Stanton.

Mr. Laforest, for five minutes.

[*Translation*]

Mr. Jean-Yves Laforest: I have read information with respect to privacy and I note that there are exceptions under which some information can be authorized for release.

If a federal institution intends to rely on such an exception, it must inform the Commissioner, who then assesses the situation. That institution can say that the organization in question should not be allowed to benefit from such an exception, since the right to privacy outweighs the public's right to know.

Does the Commissioner receive many requests of this type? Has she received many lately?

Mr. Wayne Watson: Are you referring to paragraph 8(2)(m)? I just want to be sure we're talking about the same thing.

Mr. Jean-Yves Laforest: I don't have the exact wording of the legislation in front of me. I'm talking about section 29. This is from background information we obtained regarding the Privacy Act where it talks about a "tool", rather than a "justification for secrecy". It makes reference to subsection 8(2) of the Act.

Mr. Wayne Watson I see. You're talking about paragraph 8(2)(m).

Mr. Jean-Yves Laforest

It reads as follows:

> Subsection 8(2) of the Act describes the specific cases where Government institutions can release an individual's personal information without his or her consent.

Mr. Wayne Watson: Yes, indeed, it's quite frequent. They are exceptional cases, however. Let me give you an example. When someone dies in prison, if the family wants information, either about the investigation that was conducted or personal information the prison may have about the individual who is deceased, we will be advised that, for humanitarian reasons, that personal information should be provided to the spouse or the family. When that happens, unless the requester is refused, we will agree to it by letter.

Mr. Jean-Yves Laforest: Is it necessary for the Commissioner to be informed in each and every case where an institution wishes to use that section of the Act?

Mr. Wayne Watson: Yes.

Mrs. Carole Lavallée: Mr. Leadbeater, I'd like to come back to the practice of releasing access to information requests to Ministers' offices or to the Prime Minister. We recently heard about an incident where the name of a journalist who had made an ATIP request was released.

Of course, this may not be the case for Liberals and Conservatives now, but it brought to light a practice that I was completely unaware of. I find this rather worrisome in terms of what it could lead to. Indeed, when someone files an ATIP request, whether it is a Member of Parliament or a reporter, that individual can be sure that this information request will circulate inside the department and within the Cabinet. Knowing that, it seems to me that people will be far less inclined to make an access to information request. It casts a shadow over the work we do. At the very least, it is an additional obstacle, not to mention the fact that it gives an undue political advantage to whatever office happens to have that information.

The Justice Department is currently reviewing the Access to Information Act. Rather than asking public officials to be courageous, could we not just add a section to the Act prohibiting this kind of practice?

[*English*]

Mr. J. Alan Leadbeater: I'm not sure that particular policy matter is something that I have much expertise on, but I actually do not agree that the government should be prevented from knowing what's being requested under access, because the government has an obligation to react as well. That's part of service to the citizens, being prepared to answer questions that may arise out of disclosures that come out under access.

So I'm not sure I would favour that it would lead to good governance to have a system whereby the political or public service leadership of a government department could never know what was being released from their department under access. I think that's going too far.

● (1635)

The Vice-Chair (Mr. Pat Martin): Thank you, Madame Lavallée.

Mrs. Gallant.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Thank you, Mr. Chairman, and through you to our witnesses.

Mr. Leadbeater, in response to Mr. Kenney's questions, you stated that the Privacy Act was being violated far too often in identifying ATI requesters to exempt staff. Have non-exempt staff ever complained that they were intimidated into providing identities to political staff?

Mr. J. Alan Leadbeater: If you mean formal complaints made under the act, no, but they have communicated to us feeling pressured to inform senior staff about the identities of access requesters, yes.

Mrs. Cheryl Gallant: In response to the 1998-99 report of your office, Mr. Leadbeater, you mentioned that there had been complaints of access to information being sufficiently slow to enable PCO staff to manage releases in a way more favourable to the government of the day. Did that process continue on after your office flagged it in 1998-99?

Mr. J. Alan Leadbeater: Yes, in PCO there has not been a move toward proactive disclosure to the same extent as in other government institutions. Many people seeking information are asked to go through access to information, and that's because there is a process in there for managing the time periods.

There is nothing illegal about that, but it is, I think, out of step. The trend in government now is to go more to proactive disclosures immediately, informal responses to requests, without having to go through the $5 and the search times and so forth.

Mrs. Cheryl Gallant: Aside from the PCO, were there any other departments or ministries participating in this kind of practice?

Mr. J. Alan Leadbeater: It tends to be central agency departments, or departments that are in the news from time to time and that have big files—for example, Health Canada when the issue was around wait times or the Canada Health Act, or bovine growth hormone or whatever. It depends; if there's a live issue at the time, that department will tend to close up and become more strict about having things formulated through the Access to Information Act.

Mrs. Cheryl Gallant: Has your office flagged this practice in subsequent reports—subsequent to 1998-99?

Mr. J. Alan Leadbeater: I'm not sure if we have or not. I would have to go and check.

Mrs. Cheryl Gallant: Did it continue with ministers as well as departmental staff—slowing things down on purpose?

Mr. J. Alan Leadbeater: We're in the process right now of investigating a very systemic complaint against government in general, although we've narrowed it down to about 22 departments. It was made by the Canadian Newspaper Association. They were alleging that, on a systematic basis, requests from the media were getting prejudicial treatment by being answered more slowly and less forthcomingly than other requests.

We have started our investigation. We've sent out questionnaires to all these institutions and we're getting back some statistics on how the various groups of requesters fare in the timeframes, for example. They have very detailed records in departments about how a media request is handled, how a request from a member of Parliament is handled, and so forth. We have those results back and we're doing some analysis.

We'll get representations from the government and from the Canadian Newspaper Association. That will give us a sense of whether there is a systemic problem around government or not, and if so, what some of the causes of that might be. We'll be making some recommendations.

● (1640)

Mrs. Cheryl Gallant: Since the 1998-99 report, have you found that ministries, agencies, PCO...or has your office observed any abuse in using the reason of breach of national security for not complying with a request?

Mr. J. Alan Leadbeater: Breach of national security is not an exemption of the statute. There are exemptions in the statute around section 15, which has to do with national defence, national security, a whole list of things. We are seeing it being used more often now, yes.

Mrs. Cheryl Gallant: Would you interpret that as an abuse?

Mr. J. Alan Leadbeater: Some we support and some we don't support.

The Vice-Chair (Mr. Pat Martin): Mr. Leadbeater, time is up for that.

This is the place where the NDP would normally have a question, and if you don't mind, I'm going to sneak in a brief one.

All of us want to know how widespread this practice may or may not be. I don't think you are the right witnesses to answer that question. We're going to be calling other witnesses who I hope can tell us what the common practice is in their workplaces.

You've already said you only hear about complaints that come forward. There's probably a reluctance to bring forward complaints. If fear of retribution is one of the aspects of having your name revealed, you're going to compound that concern by being the one who blows the whistle on the practice and files a formal complaint. I think it's common sense that you're not hearing of grievers that frequently.

I'd like to flesh out a little of what Mr. Owen started, the conversation about amber lighting or triage or initial adjudication that may treat one complaint differently from another. The survey you just mentioned, Mr. Leadbeater, will be of some use, but can we say with any degree of certainty that it is common practice to give an initial adjudication to a complaint that will either make it go more quickly through the system or more slowly through the system? Would you see that practice as being contrary to the intent, which is equal access to information for all applicants?

Mr. J. Alan Leadbeater: The practice is systemic, it's comprehensive, it's in every major government institution. They will classify requests as sensitive or non-sensitive. The sensitive requests get another treatment and that treatment involves a communications plan, Qs and As, higher levels of concurrence, and notification to ministers' offices. What we don't know with certainty is, does that separate tracking, which occurs in every department, prejudice the requester? Does it give them slower service or poorer service?

The Vice-Chair (Mr. Pat Martin): I would say that doesn't matter. If it's different service, don't you think that violates the spirit of the act, that all applicants shall be treated equally? We all have an equal right to freedom of information no matter what the source of the request is, whether we are journalists, MPs, or private citizens. If somebody is ranking them and treating one more quickly or more slowly based on its source, that in itself should be a concern for the committee. I think we can agree with some certainty that it is going on. The amber lighting is a fact. It is still to be determined that the revealing of the applicant's name is a widespread and common practice.

Mr. J. Alan Leadbeater: That's correct. If it results in slower service, of course that's inappropriate. What we have to determine is whether it is resulting in slower service. You can run an amber light system with a parallel. That means a package has to go up through communications, but it may run parallel with the processing and so not slow it down at all.

We've seen cases where it does slow it down, and we've seen departments where it is a systemic problem, but across the system we're not sure. We hope this will help it.

The Vice-Chair (Mr. Pat Martin): Not to be controversial, but it is sort of an irony that probably the only people who don't know how widespread the revelation of names is are Madame Lavallée and Monsieur Laforest and me, because the current government knows exactly how frequent it is, and the past government knows exactly how frequent it is. Those of us who have never formed a government nationally are at a bit of a disadvantage because, clearly, not everybody's putting all their cards on the table.

We could skip six weeks of hearings if you guys would just tell us what really goes on.

I've used my time. Mr. Peterson, do you want to go on now?

● (1645)

Hon. Jim Peterson (Willowdale, Lib.): Maybe they'd like to respond to what you said.

The Vice-Chair (Mr. Pat Martin): We have a moment left if anybody would like to respond. Don't you think it would be a breath of fresh air if everybody just told us what really happens out there instead of having to...? Trying to get this information is like pulling teeth.

We're going to have to put some civil servants on the spot in the witness chair, call them in under oath, remind them that they're under oath, and ask them really tough questions about whether they ever get called upon to reveal the names of those making these access to information requests.

Mr. J. Alan Leadbeater: The only reaction I can give is that it's a very difficult type of investigation, and I'm not sure you're going to be very satisfied.

I'm also not sure that even those who had been in government have an appreciation of how widespread it was, because it's something that operates very much at the officials' level. I can give you an example. I remember, I think, it was in the DND case. The minister then was Arthur Eggleton, and practically every request from that department was being flagged as sensitive. They were all going up, and the records were sitting in some special assistant's office and going nowhere, and the minister had no idea.

I believed him, because the assistant had never read any of the records, so obviously wasn't briefing the minister on what was going out the door. The documents were not even being read. We've seen that in other departments too, that the system suddenly kind of serves itself in a way, but doesn't really serve the minister.

So I'm not sure that even ministers and cabinets would know the extent of it.

The Vice-Chair (Mr. Pat Martin): Thank you, Mr. Leadbeater.

Mr. Peterson, you have five minutes.

Hon. Jim Peterson: There are different types of requests that go to a department. One could be as simple as just pulling out information on what type of filing system you use or something like that. Another could be something that has very sensitive implications for the entire department and for the minister. It's not unreasonable, in my opinion, to think that one request would take longer than another.

You've talked about amber lighting being an acceptable practice. I can't disagree with you, sir, that a deputy minister of the department would be very concerned about something that has serious implications for their programs or what they're doing, and they would take time to look at it and develop a communications strategy. I don't think we can overcome that type of activity, but maybe I'm wrong.

Could we legislate that every request be answered within a much shorter period of time regardless of the difficulty? If we wanted to legislate against that or act against that type of amber lighting, which may slow something down, how would we do it?

Mr. J. Alan Leadbeater: We advocate with departments what we call the default system. Under that system, every part of the organization, including the minister's office, that wants to be informed of what goes out under access will be given two or whatever number of days there are in the process to see the material in order to still meet the 30 days.

And by default, if that two days goes by and the minister's office hasn't looked at it or hasn't commented on it, by default the answer goes out. It doesn't matter. Some of the major departments use the default system and they're pretty courageous about it, and some of them don't. Some of them still say to the coordinator that when the minister's staff get to it, they'll let you know, and you can't give that out until they let you know.Those are the abuse cases.

I think there are ways of running a system so that ministers get appropriately informed about what's happening in their department without contravening the rights of the access requester.

Hon. Jim Peterson: A minister will be in the hands of his officials as to whether they're going to bring it to his chief of staff's attention or to the minister's attention as being something that does require an urgent response, and a lot of that would depend on the relationship the minister has with his public officials.

But your concept of best practices being pursued by every department, I think, is a good one.

● (1650)

Mr. J. Alan Leadbeater: I don't like to say generalized negative things, but exempt staff in ministers' offices sometimes aren't well enough educated about what their role is. They feel that in order to properly put wings and a halo on their minister, they need to know everything that might go out. But when they get it, they never read it, and they don't know what to do with it in the first place.

And the minister isn't helped at all. The minister is killed with kindness, because then we arrive on the doorstep and ask him why he is holding everything up in his office, and the minister replies that he didn't know he was holding everything up in his office, but that there's a keener down there who is just out of university who seems to be enjoying reading all those access papers, although he himself is not.

Yes, I think there is education that has to happen, and we'd be happy to meet with all the exempt staff of ministers whenever they change and just get them the facts of life. There's a law here, and if they want to get on board, well, get on board in a default system. If you don't read the records—

The Vice-Chair (Mr. Pat Martin): Are you finished, Mr. Peterson? Okay, thank you.

Mr. Kenney.

Mr. Jason Kenney: Thanks, Mr. Chairman.

We're doing this study based on a motion that asks us to review and report on the alleged disclosure of names of ATI requesters to political staff under the current and previous governments. That's the specific mandate we have.

We've heard from both offices that the release of these names to political staff is apparently a practice that has occurred—let's put it that way—at least in several instances, but we seem to lack specific, concrete cases and evidence that we can look at. This is a problem for the committee, I would say, with one exception being the Information Commissioner's report in 1998-99 on the receipt of these names by political staff in former Minister Eggleton's office. And then there's the Rowat case, but he was an official, not political staff. I gather that Mr. Rowat was a deputy minister seconded to the Newfoundland government.

So I'd like to take another run at this. The privacy office has said there haven't been complaints about these kinds of apparent breaches for a long time; that there have been a few, and some were rejected and some were accepted. Could you please provide this committee with a summary of those instances where complaints were accepted by your office in the past so we can look at concrete, specific instances?

Mr. Wayne Watson: Mr. Chair, the problem is that the investigation as well as the findings are confidential. If the individual who made the complaint and receives the findings agrees that he's willing to disclose the results of the investigation, that's a right he has, but our office cannot do that.

I'd like to tell you that they're in the annual report of such-and-such a year, but I really don't know if it's the case.

Mr. Jan Peszat (Manager, Investigation and Inquiries Branch, Office of the Privacy Commissioner of Canada): I can't recall any being in the annual report. The cases that we had are quite old. All of those files we have archived some time ago, so we don't have them at our fingertips, although we can get them.

I don't recall that we've put anything in the annual report since I've been there. We would have to look at the individual cases, which we may be able to dig up.

Mr. Jason Kenney: I hope without disclosing a confidential conversation, the President of the Treasury Board told me that in his conversation with Commissioner Stoddart, she identified two cases that had been accepted, both in the 1990s—I think 1994 and 1996 or 1997—or something like that. Can you at least provide us with that generic information?

Mr. Jan Peszat: That could very well be, and again, the files would be in archives. We could dig them up. We can't tie the specifics to the individual because of their identity, etc.

Mr. Jason Kenney: Understood. Perhaps I could just pose the same question to our officials from the Information Commissioner's office. We have the one case that I referred to, with Minister Eggleton's office in 1999-2000. You seem to have a lot of information about this happening, but can you help us with more concrete, specific cases?

● (1655)

Mr. J. Alan Leadbeater: If it's the will of this committee, I'm certainly happy to go back through our public reports and try to pull out anything we have on that. If there are reports that have been made public in the annual report and the individual complainants haven't made them public, then that's the best I can do, but I'm certainly willing to do it if that's the will of the committee.

I also want to say that people don't complain about this kind of thing because they don't know it happens. When we get a complaint, say, of a delay, we'll go and ask the department to give us the processing file for that delay complaint so we can determine where it went off the rails. It's in that context that we often see, “And by the way, this file retained the name of the requester all the way up through the chain”. So that's how we find out about it, not through the complaints.

Mr. Jason Kenney: I'd like to quickly ask one last question. I'm running out of time. I would like to try to reframe the question I asked in the first round.

PCO tells the government that the case before us was effectively government officials drawing inferences, making assumptions, and not deliberately circulating the name of a requester of information. Putting that case aside, hypothetically, if officials make such an assumption, if they make an inference about who the requester of information is and pass that along, but it's not actually a breach, would that constitute a breach of the law? They're not actually carrying the name forward from the application. They're just looking at a pattern. This is an issue that somebody has consistently requested on; therefore, they assume this is the requester.

Would that constitute, in your judgment, a breach of the law?

Mr. J. Alan Leadbeater: It depends on what action they took as a result of the inference. If they make an inference and then as a result change how they're going to process that request, that would all have to go into the mix.

Mr. Wayne Watson: The circumstances would dictate whether or not there was a breach. It's based on what, that they used this person's name? I take it there would be no consent, but we'd have to look at the circumstances. But it could very well be. It's a very good question.

The Vice-Chair (Mr. Pat Martin): You pose a very good question. Thanks, Jason, and thank you to our witnesses.

There are two matters dealing with this study that we'd like the committee to deal with before we adjourn. We'll thank and excuse our witnesses, then.

Thank you, Mr. Watson.

There are two things about the study. It would help us if we all started from the same base level of information, and that means I would like to have in my hands, and I think we should distribute to the committee, the actual access to information request that triggered this investigation, where the name of Jim Bronskill appears on the request. We know a little bit about it, but we haven't seen the actual document. So with your permission, I think we should ask the clerk to—

Mr. Jason Kenney: On a point of order, Mr. Chairman, I don't object in principle to that, but I am just wondering if that in fact would be a breach of the law on our part.

The Vice-Chair (Mr. Pat Martin): It was released. It's out there and the access act is such that once it's been released to one applicant within a period of days it's available to anyone else who may seek it, and they asked for it.

Mr. Jason Kenney: If I could then make a constructive—

The Vice-Chair (Mr. Pat Martin): If in fact we find that a breach of the law took place, we may be taking part in that breach of the law if we circulate it and publish it further. Is that what you're saying? That's an interesting point.

Mr. Jason Kenney: I'll let you consider that, Chair.

In the same vein, in terms of our all having access to the same information, I suggest that perhaps the clerk should circulate this e-mail, which was dated March 5, from Gregory Jack in the Ministry of Public Security.

Do you already have this?

The Vice-Chair (Mr. Pat Martin): I'm certainly aware of it. I'd love to see it.

Mr. Jason Kenney: I would be happy to table it, if you like, so you can circulate it.

The Vice-Chair (Mr. Pat Martin): Thank you.

The second point I'd like to raise is that next week is a break week, and I think on Wednesday of this week there are witnesses scheduled already. So maybe we should have a deadline for witnesses so that this study has some form and we're not adding witnesses as we go. I find it useful to have a deadline to submit names for witnesses, and that would give the clerk the break week to schedule them and coordinate who in fact will be witnesses.

Does that sound reasonable?

Some hon. members: Agreed.

The Vice-Chair (Mr. Pat Martin): Then on Friday we should all submit our suggested names of witnesses to the clerk.

That's all I have. Unless there's any other business, we'll call it a wrap.

The meeting is adjourned. Thank you.

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