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

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**EVIDENCE**

**Tuesday, May 29, 2007**

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**Chair**

**Mr. Tom Wappel**

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

Tuesday, May 29, 2007

•(0905)

[English]

**The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)):** Good morning, colleagues. Welcome to meeting number 49.

Today we're continuing our investigation of the internal report entitled "Afghanistan 2006: Good Governance, Democratic Development and Human Rights".

We have with us today, from the Department of Foreign Affairs and International Trade, Lillian Thomsen, director general, executive services bureau; and Jocelyne Sabourin, director, access to information and privacy protection division.

Welcome, to our witnesses.

Before I get to the witnesses, I want to remind members that I received, and you should all have received, a copy of a letter from the Deputy Minister of Foreign Affairs. I want to remind members of the contents of that letter, which I will précis.

Basically, he is advising me as the chair of this committee that the Standing Committee on Foreign Affairs and International Development passed a motion at its meeting at which it requested a full and uncensored version of the document that we are considering. He obviously refused to provide that, and his reasons are that he believes he has to abide by his interpretation of the Access to Information Act.

The reason I bring this to your attention is that we can deal with this at another time, but obviously the witnesses who are before us will be following the advice given by their deputy minister in respect of whether or not they are able to provide us or talk to us about an uncensored version of the report.

I bring this to your attention because members may or may not be wanting to question that way, and they may get frustrated, but given the letter of the deputy minister, either we may have to deal with this through him, or it may be very pertinent questioning for our witnesses on Thursday, who are the Information Commissioner and our general counsel, Rob Walsh. We may want to ask advice from our general counsel, for example, on Thursday about the situation. There are plenty of other things that we can ask our witnesses today.

Mr. Martin, did you want to make a comment before we start?

**Mr. Pat Martin (Winnipeg Centre, NDP):** Just for the record, Mr. Chairman, on that subject, it really isn't up to the deputy minister to say what questions witnesses will or will not answer. I don't want any senior government bureaucrat dictating what witnesses will answer. If a member of this committee from either side, government

or opposition, poses a question to the witnesses, we expect an answer. We can't have them say, "My boss says I shouldn't answer that question." That's not satisfactory for this tribunal.

**The Chair:** You misunderstand what I said. The foreign affairs committee had asked for an uncensored version of the report, and the deputy minister has indicated that he's not going to provide that to the foreign affairs committee. Clearly then, he's providing it to me so that as chair of the committee I can advise you that's their position. It has nothing to do with questioning of the witnesses. I'm just telling you that's the position of the Department of Foreign Affairs.

Now, for example, if you were to put a question, "What does line 1, which is blacked out, say?", to the witness, that's a different issue, and that's what I'm getting at. So I'm asking you to be judicious in your questioning.

Madame Lavallée.

[Translation]

**Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):** When the steering committee met, we had a discussion with our legal advisors as to how our committee could gain access to the uncensored version of this document.

Mr. Chairman, would it be possible to look at the "blues" in order to see exactly what that procedure was? I can't always depend on my memory, but I believe it involves making an official request to the House of Commons.

If so, would it be possible to begin the necessary procedures for obtaining access to that uncensored version?

[English]

**The Chair:** Well, I guess my answer would be this. We already had a discussion about the fact that the subcommittee report was in camera. We are going to have Mr. Rob Walsh here as a witness on Thursday, and I suggest that committee members ask him that question directly and get his legal advice for us as to how and if we can obtain an uncensored version of the report, and under what circumstances. At that time, we can deal with it. On Thursday, he'll be here in open session, and he can give us whatever advice he wishes to give us.

*Oui, madame.*

[Translation]

**Mrs. Carole Lavallée:** I remember very well that we put that question to him. He replied that an official request had to be made to the House of Commons. If we wait until Thursday, there will be yet another delay and as you know, there is probably very little time left within this parliamentary session. I'm afraid that we might run out of time.

I want to draw your attention to other documents this morning. There is an article in the *National Post* that states that the Conservatives have a guide to political stalling tactics. This is a secret guide that they use to make us waste our time. I will hand this article around. I would hope this would be an example of what not to do. Furthermore, I would like to speed things up so that we can obtain this report on Thursday, if possible.

[English]

**The Chair:** I don't think we can do anything else. My recollection is as good as yours, in the sense that I cannot accurately regurgitate word for word what the advice of Mr. Rob Walsh was, and even if I were able to do that after the meeting, I would have no authority from the committee to proceed, because they don't know what he said, and therefore the committee cannot instruct me. So I'm afraid we're going to have to wait until Thursday, hear what he has to say, and then make a decision at that time.

Of course, if the session is adjourned, we certainly can meet if we wish. If this particular session is prorogued, it's a different matter. But that's out of our hands.

Anyway, this is just a little bit of housekeeping.

I'm sorry, witnesses, I just wanted to get things straightened out. I want to welcome you, I want you to relax, I want you to feel you are in our living room here. You've heard what the members have said. It's important that you listen to the questions and answer them to the fullest degree you possibly can. I'll be listening for the questions and the answers. If you have some kind of question or problem or something, you could express it, and then I'll make a ruling, or I'll guide you or offer some advice, or whatever the case may be.

Let's get into it. I believe you have an opening statement, Ms. Thomsen. Is that right?

• (0910)

**Ms. Lillian Thomsen (Director General, Executive Services Bureau, Department of Foreign Affairs and International Trade):** That's correct.

Thank you, Mr. Chairman, and good morning, ladies and gentlemen. I'm the director general of the executive services bureau at the Department of Foreign Affairs and International Trade, which includes the access to information and privacy protection division.

With me today is Madame Jocelyne Sabourin, who has been the director of this division since September 2003. Ms. Sabourin and I welcome the opportunity to provide the standing committee with information and clarification regarding the processing of access to information requests within the department.

After I have provided general background and information on this subject, Ms. Sabourin and I will be pleased to answer questions from members of the committee.

The Access to Information Act and the accompanying regulations set out the legal requirements for processing access requests that the head of each government department or agency is responsible for applying within his or her organization. At the department, the act is administered by the access to information and privacy protection division, and the director, Ms. Sabourin, is the access to information and privacy protection coordinator for the department.

At present, the division consists of 17 access to information and privacy protection analysts, who are also responsible for requests under the Privacy Act, plus support personnel. As of today, the division is processing over 500 access case files, representing over 63,000 pages of information to be reviewed, as well as 200 other files, including requests under the Privacy Act.

Under the Access to Information Act, the overall compliance of the department in meeting its obligations has been consistently substandard in the past years, as determined by the Information Commissioner in his report cards on the department's performance and as reported to Parliament in his annual report. As a result of an action plan implemented in 2006 and with the support of the deputy minister and senior management, the department has doubled the staff of the access to information and privacy protection division and has also obtained and put into use the most up-to-date technology for processing requests.

As a result, there has been a substantial improvement in the department's performance. In March 2006, the department was only able to respond to 39.1% of its access requests under the statutory deadline. By March 31, 2007, the department was responding to 81.3% of the access requests within the timeframe. This has been recognized by the Information Commissioner as a "very significant improvement" in the department's performance under the act, despite the fact that there was a 30% increase in the volume of access requests during the past year.

[Translation]

Mr. Chairman, I would now like to say a few words with respect to the processing of access requests.

When a request is received, a file is opened and is reviewed by the team leaders in the Access to Information and Privacy Protection Division, who then determine to which analyst the file will be assigned.

As a first step, the analyst prepares and sends a standard letter of acknowledgement to the client. The analyst then determines what information is being requested and canvasses the various offices of primary interest he or she has identified to determine whether and where records are held. When the search for documents proves to be extensive or the number of documents is voluminous, the division will advise the client that an extension to the normal 30-day time period is required and the Office of the Information Commissioner is also advised.

Once documents are collected and input is received from the office of primary interest, the information in the documents is reviewed line-by-line by the analyst who will make a recommendation as to which, if any, information classifies for an exemption or exclusion under the provisions of the act. The redacted document is then reviewed by the team leader, who performs a challenge function on the redactions. Once redactions are agreed upon, a final review is conducted by the director of the division, or in her absence, the deputy director, before the information is released to the client.

The minister's office and the department's Communication Bureau are provided, on a weekly basis, with a list of the titles of new access requests at which time they may indicate an interest in receiving a copy of the final redacted package. If they do indicate an interest in a particular request, they receive a copy of the redacted information at the end of the process so they may prepare the minister and the department for possible questions in the House or media queries on the subject matter. Neither the minister's office nor the department's Communication Bureau are provided with the identity of the requester.

● (0915)

[English]

If a client is not pleased with the length of time the department takes to respond to his or her request, with the exemptions taken by the department under the act and redacting the information, or with any other aspect of the administration of his or her file, he or she is entitled to file a complaint with the Office of the Information Commissioner.

The Information Commissioner will then initiate an investigation that will normally include interviewing officials in the access to information and privacy protection division who handled the file, and any other officials who may be able to assist him, including officials from the office of primary interest. Once he has completed his investigation he provides his findings and recommendations to the minister or his delegate. I understand the committee will be hearing from the Information Commissioner at one of its subsequent meetings.

As you are aware, both Mr. Jeff Esau and Professor Amir Attaran submitted access to information requests to the department, and they discussed these requests at length when they appeared before this committee at its last session. One of these requests has been the subject of a complaint to the Information Commissioner and is under investigation by him.

Ms. Sabourin and I will be pleased to take questions from the members of the committee on the processing of access to information requests by the department. On the requests of Mr. Esau and Professor Attaran, we will be pleased to respond to questions to the extent that we believe we can do so without violating the confidential nature of the investigation now being conducted by the Information Commissioner in the department.

I thank you for your attention.

**The Chair:** Thank you very much.

The procedure is fairly simple. We'll go from party to party in an opening round. But before we do, I have just a couple of clarifying questions, if you don't mind.

The report we're considering, among other things, is entitled, "Afghanistan 2006: Good Governance, Democratic Development and Human Rights". I just want to confirm a few things before we get to the questioning.

It says "Confidential CEO". Could you tell us what CEO means?

**Ms. Lillian Thomsen:** CEO stands for "Canadian eyes only".

**The Chair:** Thank you.

At the end of the document, it says "Prepared by Bloodworth". Who is Bloodworth?

**Ms. Lillian Thomsen:** Bloodworth would be the officer of the department...well, one of the people who wrote the document.

**The Chair:** Do you know that person's full name?

**Ms. Lillian Thomsen:** No.

**The Chair:** Would you get it for us and provide it to us, please?

It says, "Consulted O'Connor/CIDA". Who's O'Connor?

**Ms. Lillian Thomsen:** Again, I don't know. I'm assuming it's an employee of CIDA, but I don't know the full name.

**The Chair:** Will you check it out and advise us, please?

Also, it says "Approved by Colvin". Who's Colvin?

**Ms. Lillian Thomsen:** I believe that's another officer of the department.

● (0920)

**The Chair:** You don't know?

**Ms. Lillian Thomsen:** I don't have the first name, no.

**The Chair:** Okay, but will you find that out for us, please?

Do you know for whom the document was prepared?

**Ms. Lillian Thomsen:** The human rights reports are prepared for the department. I'm not an expert on the preparation of the reports, but I can tell you that on an annual basis a number of our posts abroad are tasked with preparing human rights reports. We don't do human rights reports on every single country in the world. It's a selective process. There are criteria. I'm not the director general of the human rights bureau in the department, so I can't speak to the criteria, and the criteria may very well change on an annual basis. But there is an annual exercise calling for human rights reports from a select number of countries.

**The Chair:** Thank you for that answer, but what I was asking was for whom the document was prepared. If you don't know, can you give me a name of someone we should call who could answer that question?

**Ms. Lillian Thomsen:** It's prepared for the department.

**The Chair:** Is that the department in general, or for whose eyes?

**Ms. Lillian Thomsen:** In the first instance, it's prepared for the people who have tasked the preparation of the document, which is the division responsible for human rights in the department and the director general responsible for that division. So it's tasked, and the response goes back to the person who tasked it, or the group that tasked it.

**The Chair:** Thank you.

Mr. Peterson.

**Hon. Jim Peterson (Willowdale, Lib.):** Who in DFAIT decided which lines should be blacked out? Can I get an answer to that, please, Mr. Chair?

**Ms. Jocelyne Sabourin (Director, Access to Information and Privacy Protection Division, Department of Foreign Affairs and International Trade):** Yes, I will be answering this.

I, as Mrs. Thomsen rightly said, am the delegated authority for the Department of Foreign Affairs and International Trade.

**Hon. Jim Peterson:** Did you make the decision as to what was blacked out?

**Ms. Jocelyne Sabourin:** Yes, I did. I have the authority to do so.

**Hon. Jim Peterson:** Thank you very much.

I have before me the report on Afghanistan for 2005. Paragraph 1 says: "Extrajudicial executions, disappearances, torture, and detention without trial are all too common". That was blacked out. Under what grounds would you black that out?

**Ms. Jocelyne Sabourin:** The process is that we go to the program, once we get a request. We ask the program to find relevant documentation. In this case, we found these documents. I have a team of analysts who review the information based on their expertise. In this case they did a line-by-line review and made the determination, along with—

**Hon. Jim Peterson:** Was it done under subsection 15(1) of the Access to Information Act?

**Ms. Jocelyne Sabourin:** I don't know if that was the section. I don't have the—

**Hon. Jim Peterson:** That's what it says here, subsection 15(1).

**Ms. Jocelyne Sabourin:** If it says that I used subsection 15(1) for that paragraph, then that's—

**Hon. Jim Peterson:** Subsection 15(1) has been used for every one of these, and subsection 15(1) reads, for the record, something "which could reasonably be expected to be injurious to the conduct of international affairs". Why would the revelation of torture, executions, detention without trial be injurious to international affairs or the conduct thereof?

**Ms. Jocelyne Sabourin:** The process is that my team needs to review the information, and of course we follow the principles of access as the driving force. We look at the limitations, the 13 exemptions—

**Hon. Jim Peterson:** I'm asking you a very specific question. Why would subsection 15(1) apply to extrajudicial executions, disappearances, torture, and detention without trial? Why is revelation of that fact with respect to Afghanistan going to hurt our international relations?

**Ms. Jocelyne Sabourin:** The provision of section 15 is a discretionary exemption that is based on an injury test, and it states that it "could reasonably be expected to be injurious to the conduct of international affairs".

**Hon. Jim Peterson:** With whom?

**Ms. Jocelyne Sabourin:** The officials look at this information, look at the provisions of the act, and make a match with—

**Hon. Jim Peterson:** I understand the process. Would you explain to me why a revelation of torture is injurious to international relations? Amnesty International talks about it all the time.

**Ms. Jocelyne Sabourin:** I make the final decision about the exemptions based on the recommendations the officials send, that in our view there's information in there that needs to be protected under the provision.

• (0925)

**Hon. Jim Peterson:** Why? You have to do so within the confines of the law.

**Ms. Jocelyne Sabourin:** That's what we use, sir. We use the confines of the law.

**Hon. Jim Peterson:** Well, will you explain to me why a revelation of torture and extrajudicial killings is harmful or injurious to the conduct of international affairs? Surely Canadians have a right to know what is going on there.

**Ms. Jocelyne Sabourin:** Canadians have a right to seek information under the provisions of this legislation, and rightly do so. We look at the information. I have a legal obligation to ensure that the documents do not contain information that could be subject to an exemption. In this particular case, the decision was made that this information was to be protected.

**Hon. Jim Peterson:** Why? Explain why it would be injurious to international affairs.

**Ms. Jocelyne Sabourin:** Well, that's my view, sir.

The other thing you have to understand is that—

**Hon. Jim Peterson:** Do you have a legal opinion that states that this would be injurious to the conduct of international affairs?

**Ms. Jocelyne Sabourin:** I don't necessarily need a legal opinion to make that determination, sir, and it's well documented in the file.

The other thing is that the matter is under investigation. I can understand the frustration of Canadians when I do reply to them and invoke certain provisions to block information. But I am bound by this obligation under the act to look at this information and make decisions like that.

I do have—

**Hon. Jim Peterson:** Thank you very much. I have very little time.

Why was it stated by the department on March 22 that there were no records? This was in response to the January 24 request by the professor.

**Ms. Jocelyne Sabourin:** I'm sorry, could you repeat that for me?

**Hon. Jim Peterson:** There was an access to information request made by Professor Attaran on January 24 of this year. There was one by reporter Esau of *The Globe and Mail*. On March 22, the department stated that there were no such records dealing with human rights abuses.

**Ms. Jocelyne Sabourin:** Okay, so we're talking about two different requests. Is the request by Mr. Esau the one you want me to speak about?

Then I think our response was that the records requested didn't exist.

**Hon. Jim Peterson:** And yet records such as these go back for years. How could your department have made that mistake?

**Ms. Lillian Thomsen:** Again, speaking without the files in front of us, Mr. Esau's original request to the department was for a global report. The access to information division went to the division responsible for human rights. They came back and said we don't do such a report, similar to the type of global report that the United States and the United Kingdom produce.

The ATIP division then challenged that by also consulting the legal bureau in the department, which also has a section that covers international humanitarian law and human rights law; they similarly said.

We went back to the client and advised that there was no such report. The file was essentially closed.

Subsequent to that, there was an exchange of e-mails, and I believe some phone calls, between Mr. Esau and officers in the ATIP division that further clarified the question. Mr. Esau said he had thought at one point—I'm paraphrasing slightly—that there was a global report with chapters in it. He mentioned specifically a chapter on China and a chapter on Iran, I think.

We don't do a global report like that. We told him we do reports on individual countries. We also explained that if he wished to have the reports on all the countries we do, an extensive search, then at that point the client has to pay. But he was told that if he wished to identify a country or other countries or a number of countries that he wished to have reports on human rights searched for—and the years, obviously—we would be pleased to accommodate him. At that point, if I recall correctly, he advised that he had already submitted a separate request for the human rights report on Afghanistan.

Thank you.

• (0930)

**The Chair:** Madam Lavallée.

[*Translation*]

**Mrs. Carole Lavallée:** I would like Ms. Sabourin to tell us, from her perspective, exactly what stages were involved in Mr. Attaran's access to information requests.

**Ms. Jocelyne Sabourin:** Yes, absolutely.

**Mrs. Carole Lavallée:** I would also like to have dates. Furthermore, contrary to Ms. Thomsen, you were providing the names of the individuals you spoke to, and not simply the names of the services.

Thank you.

**Ms. Jocelyne Sabourin:** You understand that I do not have the file at my fingertips.

**Mrs. Carole Lavallée:** No, I do not understand why you do not have the file at your fingertips.

**Ms. Jocelyne Sabourin:** Then may I—

**Mrs. Carole Lavallée:** We didn't invite you to come before us to talk about the temperature outside. We had you come here so that you could discuss Mr. Attaran's and Mr. Esau's files with us. Therefore, I do not understand at all.

**Ms. Jocelyne Sabourin:** In fact, we received a request on January 29, an access to information request from Mr. Attaran. We read the request just as we do for all other requests, that is the 500 or 1,000 other requests that I deal with in my office.

**Mrs. Carole Lavallée:** Who read the request?

**Ms. Jocelyne Sabourin:** The team leader.

**Mrs. Carole Lavallée:** What was his name?

**Ms. Jocelyne Sabourin:** The team leader in that case was Jennifer Nixon. She is responsible for considering the request and referring it to someone. She must first look at it herself and make sure that the request is for information that is in fact held by the Department of Foreign Affairs.

She then assigns the file to someone. I believe she kept it for a certain amount of time before assigning it to someone because there was considerable staff turnover. The file was finally referred to the Mr. Gary Switzer, the analyst responsible for that file.

My office then sent a message to administration.

**Mrs. Carole Lavallée:** Did you send it?

**Ms. Jocelyne Sabourin:** No, I was not the one who sent it.

**Mrs. Carole Lavallée:** Who in your office sent it?

**Ms. Jocelyne Sabourin:** The team leader sent the request.

**Mrs. Carole Lavallée:** What was her name?

**Ms. Jocelyne Sabourin:** Her name is Jennifer Nixon.

**Mrs. Carole Lavallée:** Fine, that's perfect.

**Ms. Jocelyne Sabourin:** There are several programs. The most appropriate program for that request is the Human Rights Division, and they set about collecting relevant documents.

**Mrs. Carole Lavallée:** Who exactly in that section?

**Ms. Jocelyne Sabourin:** Excuse me?

**Mrs. Carole Lavallée:** Who exactly did she send it to? Who did she make that request to?

**Ms. Jocelyne Sabourin:** It was sent to the division office.

**Mrs. Carole Lavallée:** You don't have a name?

**Ms. Jocelyne Sabourin:** We do not have—

**Mrs. Carole Lavallée:** Who is the director?

**Ms. Jocelyne Sabourin:** The director of the Human Rights Division?

**Mrs. Carole Lavallée:** Yes.

**Ms. Jocelyne Sabourin:** Gwyn Kutz.

**Mrs. Carole Lavallée:** She is the one who received it?

**Ms. Lillian Thomsen:** I would just like to clarify a point. When we send a request for documents, we usually send it to the general electronic mailbox of the division or the office because there is always an administrative assistant in that office. People are often absent, especially in small teams: one individual may be absent, one may be travelling, or one may be temporarily assigned elsewhere.

**Mrs. Carole Lavallée:** Then who is the administrative assistant who received it? What is her name, Ms. Thomsen?

[English]

**The Chair:** Excuse me.

Madam Lavallée, it's very difficult to follow the evidence, particularly when it's being translated, if both people are speaking at the same time. I would appreciate it if we could let the witness finish, and then you can ask your question.

Are you finished, Ms. Thomsen?

[Translation]

**Mrs. Carole Lavallée:** Mr. Chairman, I constantly have to follow debates in another language when people are interrupting each other and I don't complain.

So, Ms. Sabourin.

**Ms. Lillian Thomsen:** May I speak?

**Mrs. Carole Lavallée:** Go ahead.

**Ms. Lillian Thomsen:** The administrative assistant decides who, amongst those individuals who are present, can take on the file.

**Mrs. Carole Lavallée:** Who took care of this?

**Ms. Jocelyne Sabourin:** What do you mean by "took care of it"?

**Mrs. Carole Lavallée:** We're talking about Mr. Attaran's file, about his access to information request. We were at the following stage: Ms. Jennifer Nixon had sent the request to the Human Rights Division. It was done through anonymous e-mail, but supposedly an administrative assistant took care of this. That individual—I imagine we'll find out the name eventually—passed it on to another individual whose name I'm asking you for.

**Ms. Jocelyne Sabourin:** The e-mail was sent to the general mailbox because that's how these things are done. Under our process, directors and directors general are responsible for gathering and providing the documents that are relevant to the request.

We received the documents from the program. This file, meanwhile—

• (0935)

**Mrs. Carole Lavallée:** I'm sorry. Who sent you the documents? You said that you received them from the program.

**Ms. Jocelyne Sabourin:** We received the relevant documents from the director.

**Mrs. Carole Lavallée:** What is her name?

**Ms. Jocelyne Sabourin:** Her name is Gwyn Kutz.

**Mrs. Carole Lavallée:** Fine. Thank you.

**Ms. Jocelyne Sabourin:** Thus we received the documents and they were passed on to Gary Switzer for his consideration. He examined the documents, he—

**Mrs. Carole Lavallée:** At that point in time the report was not censored. You received the report in it entirety. Fine.

**Ms. Jocelyne Sabourin:** We examined it. The program makes some observations and recommendations with respect to the sensitivity of the documents or the content of the documents and we then take those comments into consideration when we are doing our examination.

**Mrs. Carole Lavallée:** Was Mr. Switzer responsible for censoring?

**Ms. Jocelyne Sabourin:** Mr. Switzer made a recommendation to me with respect to that document.

**Mrs. Carole Lavallée:** You haven't provided us with any dates for each of these requests. I would like to make an official request that you write to us again and provide us with a calendar including the date on which you received your request, who you sent these to and what the outcome was.

At first, you did not respond to Mr. Attaran. Between January 27 and the time he laid his complaint with the Information Commissioner, I do not know what you were doing but he feels that you were refusing to respond, that you had told him that the document did not exist. Under the act, when you do not respond, that is equivalent to saying that the document does not exist. You look like an experienced woman, you're familiar with the Access to Information Act. Can you explain why you did not respond?

**Ms. Jocelyne Sabourin:** Thank you very much for the question. Ms. Thomsen referred to this at the beginning of her opening remarks, that is, that the department was having difficulty in meeting the deadlines contained within the act.

**Mrs. Carole Lavallée:** That was in 2006, not in 2007. You said that you were managing to respond in time to 80% of requests.

**Ms. Jocelyne Sabourin:** We did achieve 80%, which is very good, because that means we answered in—

**Mrs. Carole Lavallée:** It is not very good. The act requires that you respond in a timely manner to 100% of the inquiries, Ms. Sabourin. A figure of 80% is not good. The act requires a response rate of 100% within the prescribed time limits. So you should stop smiling and congratulating yourselves.

**Ms. Jocelyne Sabourin:** May I continue?

**Mrs. Carole Lavallée:** Please do.

**Ms. Jocelyne Sabourin:** Thank you.

It is true that there is room for improvement. Mr. Attaran's request was probably part of the 20% for which my office was unable to provide an answer in time.

So I acknowledge that we did not measure up in the case of this request. I would like to apologize publicly to Mr. Attaran for the delay in processing this request. I cannot give you any other reason for it.

**Mrs. Carole Lavallée:** Have you—

**The Chair:** Thank you, Ms. Lavallée, your eight minutes are up. [English]

Mr. Martin.

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

I will try to build off the previous questions of my colleagues and not be repetitious, but I am puzzled about why you didn't come here with complete files and records on both of these inquiries. You delayed your presence here by two weeks so that you would have time to prepare. Our argument at the time was.... And I was very frustrated that you said no to our invitation to attend, because frankly, it doesn't take a lot of preparation to tell the truth about what happened.

I'm very frustrated that now, two weeks later, you're not here with the very files that we're asking questions about, because I have specific questions about specific dates. Now I don't know how to go about this.

Let me just summarize what our problem is here. Time after time after time, the Minister of Foreign Affairs and the Minister of National Defence stood up in the House of Commons and denied any knowledge of any Afghan detainees being mistreated or tortured. Over and over again, "we have no knowledge of that", "we have no record of that", "nobody ever told us of any prisoners being treated badly or we wouldn't have handed them over to the Afghans". That's what our frustration is.

Then we learn that for five consecutive years in a row they were getting very specific information that extrajudicial executions, disappearances, torture, and detention without trial have been a consistent problem, from 2002, 2003, 2004. So they were lying to us.

So you can't blame us for thinking that this information from the access to information was blacked out to save embarrassment to the government—nothing to do with national security. That's what's going through our minds here, and that's what our frustration is.

So my question is, list for me again the names of the people who would have contributed first to denying the existence of the reports at all, and secondly, who helped you black out which lines and choose the excuses. List all of them, all of those names. And I wish you had your files here because you probably would have it documented in those files. I can see you writing in a foolscap notebook now. But tell us, please, to the best of your recollection, who was involved with blacking out these paragraphs and the misinformation that no such documents exist.

• (0940)

**Ms. Jocelyne Sabourin:** First of all, I'd like to say for the record that we did get an access to information request dealing with the 2006 Afghan reports and the other human rights reports, and that we did not deny the existence of the human rights reports in Afghanistan. They were all duly processed.

**Mr. Pat Martin:** Excuse me. As a point of clarification, on what date did the office of primary interest notify you that these documents existed? Can you tell me the date that you received information back from the office of primary interest?

**Ms. Jocelyne Sabourin:** For which request? Professor Attaran's?

Professor Attaran made a request for the human rights reports, and we would have got the records some time in March.

**Mr. Pat Martin:** The exact date, please? I need an exact date.

**Ms. Jocelyne Sabourin:** I have no idea. I'll have to check the records.

**Mr. Pat Martin:** And your records aren't here.

**Ms. Jocelyne Sabourin:** No, I haven't—

**Mr. Pat Martin:** You'll have to come back with the records. This really, really fries me, frankly. Two weeks you had to prepare these records. Where are they? What's the matter with you people? For crying out loud, were we not clear? This is ridiculous.

**The Chair:** Mr. Martin, the question was a date, and the witness undertook to provide you with the date.

**Mr. Pat Martin:** The exact date that the office of primary interest told you that such documents existed. I want that date delivered to me by the end of today.

**The Chair:** First of all, it won't be delivered to you. It will be delivered to the committee, and we'll ask that it be delivered ex-post-haste.

**Mr. Pat Martin:** Through you, then.

**The Chair:** Thank you.

**Mr. Pat Martin:** But I need to know that because later... I believe I know the date, and I also believe that later on that same month you told another applicant that no such documents existed.

**Ms. Jocelyne Sabourin:** Can we intervene?

First of all, yes, we will send to the committee the information that you're seeking.

Madame Lavallée has also requested a chronology, if I recall correctly, so that will be provided to the committee.

**Mr. Pat Martin:** Can you answer simply why—

**The Chair:** That would a chronology of both the Esau request and the Attaran request, because sometimes people are mixing up the facts of the two cases, and it would be very helpful if we had the chronology of both cases and specifically what was asked for and what the answers were.

We've already been advised by Mr. Esau that he'll provide us with his documentation, but we don't yet have it. So of course you, naturally, would have copies of his documentation in your file, as well as your responses, and they would all have dates, would they not? And you'll provide those and the chronology for both. Correct?

**Ms. Jocelyne Sabourin:** Yes.

**The Chair:** Thank you.

Mr. Martin.

**Mr. Pat Martin:** Let me simply say that the subsection 15(1) exemption is supposed to be a national security exemption, not a national government embarrassment exemption. It seems to me that these paragraphs were exempted so as not to embarrass the ministers who were standing up and giving false information in the House of Commons month after month after month. That's the conclusion we're rapidly coming to.

Did anybody tell you to come here without those files?

**Ms. Jocelyne Sabourin:** No.

**Mr. Pat Martin:** I'm just wondering what thought process would go through the mind of a senior bureaucrat when they're appearing before a House of Commons standing committee about a very specific narrow question, the access to information requests of two individuals. Why in God's name would you not bring those files with you?

• (0945)

**Ms. Jocelyne Sabourin:** I'll tell you two things.

First of all, it's absolutely unusual for an ATIP coordinator to come into a public forum to speak about specific ATIP requests. These are very protected, and it is the confidentiality that I'm very concerned with. The fact that Mr. Esau and Mr. Attaran have come to this committee and conveyed to you that they had made requests makes me a little bit more at ease in talking about these requests.

I usually speak frankly and openly with the Office of the Information Commissioner with these files, and as I said, I hope you understand that it is quite unusual for me to be in such a public forum to talk about very private—

**Mr. Pat Martin:** It's irrelevant to the question I asked you.

Why would you not bring the files in question? I don't care if it's unusual or not. It's unusual for us to have to drag senior bureaucrats before this committee.

**Ms. Jocelyne Sabourin:** I'm concerned with the confidentiality.

The other point I need to make is that there is an ongoing investigation with one of these files, and I'm cooperating fully with the Office of the Information Commissioner to conduct its business.

**Mr. Pat Martin:** With all due respect, the Information Commissioner answers to this committee. We have primacy over this investigation, frankly. You could at least have those documents with you and look to the appropriate page and say, "I can't give you this date because of some other reason." But you didn't even bring the files with you. I think that shows some disrespect for the work that we're doing here, frankly.

I'm extremely disappointed.

**The Chair:** Mr. Martin, I'm afraid you're out of time.

Ms. Sabourin, I must say that it would have been helpful if you had brought your files, whether you're concerned with confidentiality or not. It's not that you would have had to reveal your files necessarily; it's that the files would have been there for you to be able to answer specific questions about dates and names without having to undertake to get back to us. It may be necessary for you to come back here a second time in a process that you acknowledge to

be very unusual and no doubt uncomfortable, and we wouldn't want to put you through that a second time.

So it is inappropriate that you did not bring your files with you. But hey, those things happen, and we'll do the best we can. It may be necessary for you to come back and it may be necessary for you to bring your files at that time, depending on what kinds of answers you give us in writing to the questions that you cannot answer today.

We'll go to Mr. Reid, please.

**Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC):** Thank you, Mr. Chairman, and thank you to both of our witnesses for being here today.

Madam Sabourin, how long have you been working in the access to information field and the privacy section at Foreign Affairs?

**Ms. Jocelyne Sabourin:** I've been working in the access and privacy field since 1989.

**Mr. Scott Reid:** In your experience, and I'm thinking back now to your full experience since you began in 1989, have you ever received direction from any minister's office—that would take you back through two Conservative administrations and one Liberal administration—with regard to the redaction of any documents that were the subject of an access to information request?

**Ms. Jocelyne Sabourin:** Thank you very much for the question.

I have in fact worked with different administrations throughout the years. The Access to Information Act has a provision for the minister to delegate this function to officials. In all these instances, this function was delegated to the office that I would have worked in or in whose management I would have participated. Right now, I'm the delegated authority for Foreign Affairs and International Trade. In the previous year, I would have been a simple officer doing work.

The officials who work in access take their obligations very seriously. When I say "officials", I mean I am part of this responsibility. This is a legally based provision of information. I would have examined the exemptions to make sure the exemptions were well documented and they in fact met the provisions of the act.

I'm aware there are processes in which we serve notification to the minister's office. For new requests or when there's a release, those requests are provided in terms of the disclosure package so that the minister's office can in fact prepare in the event of any questions.

With regard to being directly told by a minister's office to redact, I am not aware of such a practice. We are at arm's length, and it doesn't happen.

• (0950)

**Mr. Scott Reid:** On the statement you just made, to the best of your knowledge—and I'm obviously only referring to your own experience—would this be a practice that has essentially been true since 1989, when you were first involved in this?

**Ms. Jocelyne Sabourin:** Yes.

**Mr. Scott Reid:** Okay. Let me ask you another question.

More specifically, because you are in the foreign affairs department, you would therefore only be responsible to your own minister and not to other ministers. Have you ever received political direction from Minister MacKay, his ministerial staff, or his political staff? Has anyone been directed by them to redact documents for which an ATIP request has been made?

**Ms. Jocelyne Sabourin:** The redactions are done with the involvement of the program area. In my office, I'm the delegated authority. At the end of the day, I'm the one making the decisions on disclosure. The minister's office is not involved in any of the review.

**Mr. Scott Reid:** I know I've asked you a complex question. But would it be unfair to say the answer to the question I asked you is no?

**Ms. Jocelyne Sabourin:** That's correct.

**Mr. Scott Reid:** Thank you very much.

I was going to ask the clerk if Mr. Tilson can take the rest of the time.

**The Chair:** You can ask me.

**Mr. Scott Reid:** Oh, I'm sorry. All right. Yes, I asked if it was in order, but you're quite right, Mr. Chairman. I'm now asking you.

**The Chair:** Mr. Tilson.

**Mr. David Tilson (Dufferin—Caledon, CPC):** I'm interested in a couple of things.

To either of you, *The Globe and Mail* in Toronto printed page 1 of the Afghanistan 2006 report. Underneath they had a part, and the first one had sections blacked out or redacted. The second page was completely clean, the page in the report. I don't know whether the second page was in fact the real page or not, but it's the story they gave.

Do you have any comments on what happened there? Do you have any information for the committee as to how *The Globe and Mail* appeared to get that information?

**Ms. Lillian Thomsen:** No, we don't know how *The Globe and Mail* got the information it has, nor do we know exactly what *The Globe and Mail* has.

**Mr. David Tilson:** Was it indeed the actual page?

**Ms. Lillian Thomsen:** One would have to address that question to *The Globe and Mail*.

**Mr. David Tilson:** We may never find out. Well, maybe we will.

Some members of Parliament claim they have a report that is blacked out or redacted. As a member of Parliament, it's another word I've learned. I've always liked the words "blacked out". But some members say they have an area that's greyed out and you can actually see through the colour. In other words, it's different from this

one. Do you know anything about that? Have you ever seen the document?

One of the questions was asked here this morning. Someone said they could read through it. I don't have that. Where did they get it from?

**Ms. Jocelyne Sabourin:** I have no idea.

**Mr. David Tilson:** Okay. You've gone through the process, and I appreciate how you come to a conclusion that there should be a redaction of certain paragraphs.

In addition to the sections in the act, which are given, are there any policies or regulations that guide you, Ms. Sabourin, in coming to those conclusions?

• (0955)

**Ms. Jocelyne Sabourin:** Absolutely.

We have the act. We have its regulations. We have Treasury Board Secretariat guidelines that are quite extensive. Mind you, we'd like them to be updated to reflect court precedents, so that they're updated based on the current court decisions. We are guided by this guideline, which is about four inches thick. It helps us to confirm the application of exemptions.

**Mr. David Tilson:** Thank you.

**The Chair:** Thank you, Mr. Tilson.

Mr. Pearson.

**Mr. Glen Pearson (London North Centre, Lib.):** I would like to thank you both for coming in.

I'm just trying to understand the process here, so please forgive me if I'm going over some old ground.

When a document is released by the Department of Foreign Affairs, is a communication assessment done on it before it is released?

**Ms. Lillian Thomsen:** It depends on the document.

As I indicated in my statement, we advise both the minister's office and the department's communication bureau of the titles of access requests that have been received. Irrespective of the nature, either or both may wish to prepare a House card for use by the minister, or media lines, if they anticipate that once the client, whoever he or she might be, receives the package, he or she will generate an article in the newspaper, a letter-writing campaign to the minister, and queries in committees such as this one.

It's not for every single one, no.

**Mr. Glen Pearson:** In the case of both of these requests, both the first one and the second one that came in, was there a communication assessment done?

**Ms. Lillian Thomsen:** On the access requests themselves, there was not.

For most issues of high international profile, if there's an access request for them, there are usually media lines or a House card developed. The existing House card for use by the minister in the House, let's say on Sudan, may be updated to take account of the redacted contents of a released package, but not in the case of every single access request. For many of them, the answer is no.

**Mr. Glen Pearson:** Who is briefed when you decide to do a communication assessment, and when exactly does that happen?

**Ms. Lillian Thomsen:** It's at the very end of the process. It's not a question of briefing; it's a question of the communication bureau and/or the minister's office receiving, as I indicated in my statement, the redacted package and saying, oh, we'd better update the minister's House card on whatever the subject of the access is, or, we don't need to change anything, the material we have covers it. It's standard preparation for Parliament. It's the communication bureau that normally does the writing of the media lines.

**Mr. Glen Pearson:** Was Minister MacKay briefed prior to this release of the first document?

**Ms. Lillian Thomsen:** You're talking about the human rights report?

**Mr. Glen Pearson:** No. I mean the first request that came in, which asked that this document be released. Was he briefed that this request had come in?

**Ms. Lillian Thomsen:** As I explained in my statement, the minister's office put an alert and indicated that they wished to see the package when it was ready to go out. But, no, he was not briefed that a request had come in. As I explained in my statement, we have, I think, over 500 requests right now.

**Mr. Glen Pearson:** He was briefed when the document went out?

**Ms. Lillian Thomsen:** Lines were prepared. Quite frankly, lines on Afghanistan are prepared every day.

**Mr. Glen Pearson:** I just wanted to go over what Mr. Reid brought up just to be sure.

The minister's office, or Minister MacKay, did not ask that any of these lines be excised?

**Ms. Lillian Thomsen:** That's correct.

**Mr. Glen Pearson:** Thank you, Mr. Chair. That was all I had.

**The Chair:** Thank you.

Mr. Tilson.

**Mr. David Tilson:** Thank you, Mr. Chair.

Professor Attaran came to us the last day the committee met and he made a number of statements that, quite frankly, were derogatory toward your office. I don't know whether you had a chance to look at the transcripts, but I'll bet you did.

The most serious one of all, I thought, was an exchange with Chairman Wappel. I'm going to read you the portion and ask you whether you have any comments. I found this the most serious of all. This is the professor speaking:

I would also like to raise the point that there seems to be here, in this set of events as I've just described them, a pattern of concealing the 2006 and earlier Afghan human rights reports, and possibly concealing the U.S. human rights reports. If so, that is a criminal matter under section 67.1 of the Access to Information Act. To conceal a record is a criminal offence. I'm not making an allegation against anyone personally. I

do not know who might have been involved in such concealment, although I do believe the circumstances show that it has possibly happened and there is need for a criminal investigation.

I would recommend, as a further step, that the RCMP and the Director of Public Prosecutions be involved at this stage to investigate whether any persons, be they civil servants or political figures, were involved in concealing information arising out of my request. I won't say to include Mr. Esau's request, because that's up to him, but I think the three or four requests together—I've lost count—do show a constellation of facts that indicate concealment went on.

Now, he just thinks this. He doesn't really have any facts, but it's his personal feeling. But it's a serious allegation. Have you had the time to think about those allegations and do you have any response to that? It really is a slam against your office—not necessarily you personally, but against your office.

• (1000)

**Ms. Jocelyne Sabourin:** First of all, for the record, I would like to confirm to the committee that there was no pattern of concealment with regard to the Afghan human rights reports. This request came into my office and was examined, we sought the records, we obtained the records, and we processed the records, all in accordance with the provisions of the act. Mind you, we didn't meet the deadline. As I said, I'm very apologetic about the fact that we didn't meet that deadline. Yes, we were dead in the water, but we continued the processing.

At the end of the day, on April 23, we provided him with both a response on the Afghan reports and a response to the effect that the U.S. report did not exist. We did a search, and that particular record does not exist within our department.

**Mr. David Tilson:** Okay.

On a completely different question, Mr. Chairman, it has been mentioned that there's an investigation going on by the Information Commissioner. What happens to your office?

My colleague Mr. Martin has raised an issue, that you didn't appear with your files. I expect on the one hand you've got the Access to Information Act and on the other hand you have the Privacy Act, and on the other hand you know you've got comments made that you don't want to prejudice applications that are being investigated by the Information Commissioner.

My question is, when the Information Commissioner begins an investigation, what's the process, from your office to the Information Commissioner?

**Ms. Jocelyne Sabourin:** Thank you for that question.

What happens is that first we are served notification. My office has received notification. It's a written notification from the Office of the Information Commissioner that there is a complaint. The next thing will be a meeting with the investigator. The investigator will serve the office with a complaint summary that indicates the issues that need to be clarified, from missing records, to the exemptions, to the inclusions, to just about anything about the administration of the act. We've received a notice from that office and we are working with that office to provide all the information from witnesses, files, or paper that the Information Commissioner wishes to review under his powers.

I understand you'll possibly be meeting with that office this week. You may wish to ask for more details from the Information Commissioner, and maybe he'll be at liberty to provide the details.

• (1005)

**The Chair:** Thank you, Mr. Tilson.

Monsieur Vincent.

[Translation]

**Mr. Robert Vincent (Shefford, BQ):** Thank you.

Are you Ms. Sabourin's supervisor, Ms. Thomsen? Is that why you are watching her in this way? Are you the person in charge of communication with the minister's office? Are you the direct contact with the minister?

[English]

**Ms. Lillian Thomsen:** I report to the deputy minister. I have dealings on a daily basis with the minister's office, but not on ATIP. I have responsibility as well for the parliamentary unit in the department.

[Translation]

**Mr. Robert Vincent:** But you do not discuss access to information, reports or anything of that type with the minister: so what do you talk about: the weather?

**Ms. Lillian Thomsen:** No, no. I do not meet with the minister personally. I am involved in meetings from time to time, but I do not have occasion to speak to the minister as part of my day-to-day activities. I assume my responsibilities as director general within the office. I am responsible for access to information, the parliamentary unit, ministerial correspondence—not only that of Mr. MacKay, but also the correspondence of the secretary of state, the parliamentary secretary and the deputy minister—and of a unit that prepares all the briefing books used by the minister when he travels, when he appears before parliamentary committees, and so on. So I'm responsible for not just for access to information, but for a whole range of matters.

**Mr. Robert Vincent:** I would prefer to concentrate on the report. I would like to know what direct link there is between you and the minister's office. In addition, I am having difficulty understanding that as Ms. Sabourin's supervisor, you do not discuss the files. You say you talk about nothing, that nothing is said.

**Ms. Lillian Thomsen:** I must say that I speak to Ms. Sabourin almost every day. In order to improve our access to information performance, we had to develop an action plan. So we developed a procedure to improve our performance—

**Mr. Robert Vincent:** I am going to be very clear, Ms. Thomsen. I would ask you to try to be both clear and brief.

You are Ms. Sabourin's supervisor. You have discussions in the minister's office and you must definitely talk about the specific issue involved here today—Afghanistan. You say you discuss nothing. So please explain to me why it is that you monitor what Ms. Sabourin says.

When the commissioner appeared before us, he said that the last person authorized to make any suggestions or do anything to have documents blacked out was the minister. The minister has the last word. The fact that the commissioner strikes out sections of a

document under subsection 15(1) or some other provision does not change the fact that the last person to read the document is the minister. If there is something else he does not like, he censors it. That is what we were told.

Is that the way things work? No?

[English]

**Ms. Lillian Thomsen:** No. The minister does not—

[Translation]

**Mr. Robert Vincent:** Then explain to me why the word "torture" appeared in the 2003-2004 documents that were provided, while today, in 2007, there is an article in *Le Devoir* that quotes excerpts from an article that appeared in the *Globe and Mail* that said:

The first, which was censored, was obtained after the newspaper complained to the Information Commissioner, and a second, uncensored version, that we managed to obtain.

That means there were two versions and the newspaper managed to obtain both. Ms. Sabourin, you said that the existence of this document had never been denied. That is strange, particularly given that the article states:

The newspaper said it inquired first about the existence of a report on human rights in early March. At the time, the Department of Foreign Affairs replied that there was no such report. Two weeks later, the Access to Information Branch specified that Canada did not write reports on this subject, as is done in the United States and the United Kingdom.

It is really very strange, is it not? You have just told me that no one ever denied that such a report existed. So they call your office and the answer is that there is no such report. Who are we supposed to believe? Why did the paper have two versions? There was a reference to torture, but that was censored. Can you explain that for me? Does torture have any impact on subsection 15(1)?

• (1010)

**Ms. Jocelyne Sabourin:** May I explain the situation? It is important that you understand that I am the person who makes the decisions. I am delegated to do that. The minister cannot make—

**Mr. Robert Vincent:** Fine. So you are the person who makes the decisions? Tell me why the word "torture" was blacked out in the two documents and why in subsection 15(1)... why was it that in previous files, this word was not blacked out, but it was in this case? I will tell you why. In 2005, there was an agreement with Mr. Martin whereby Canada would deliver the people taken prisoner. In 2006-2007, the Harper government was in power. So please explain to me why things were done in this way.

[English]

**The Chair:** Monsieur Vincent, you've gone on quite a bit.

The question was, I believe, why was the word "torture" removed in the 2006 document when it apparently was not removed in the 2005 document?

[Translation]

**Ms. Jocelyne Sabourin:** The documents were reviewed in light of the act. My office and my team made a recommendation regarding the exceptions that apply. I agree, and we applied the provisions of the act.

The second point that I would like to make is that we should not confuse the requests. The request regarding reports on human rights in Afghanistan, which you have—I don't know how you got the documents, but you have shown them to me—were processed under the act. We responded to this request.

As Ms. Thomsen explained, there is no overall report. No such report exists. We do not produce a report of this type. Our response was that these reports do not exist, because they do not exist. They do exist for individual countries, and those are the requests we processed.

**Mr. Robert Vincent:** What reports are these?

**Ms. Jocelyne Sabourin:** Those on Afghanistan. The request was specific; I responded to the request.

[*English*]

**The Chair:** Madame Sabourin, you've said that twice now. You don't need to say it again.

You said you responded. When did you respond to Mr. Esau?

**Ms. Jocelyne Sabourin:** Mr. Esau? On the fact that he asked for this global report?

**The Chair:** When did you give him a copy of the report that we're discussing?

**Ms. Jocelyne Sabourin:** He made a second request—

**The Chair:** When did you give it to him?

**Ms. Jocelyne Sabourin:** I think May 15.

**The Chair:** Thank you.

Mr. Stanton.

**Mr. Bruce Stanton (Simcoe North, CPC):** Thank you, Mr. Chair.

Thank you to our witnesses for coming today to shed some light on this topic.

In our meeting of May 17, one of the witnesses, Mr. Esau, talked about the culture within the department, about his experience working in the ATIP environment when he was working for, I believe, the Department of National Defence. I don't want to paraphrase him, so I'm going to use some of his words. Then I'd like to ask you a question.

He essentially said the following:

...when you're working in the federal civil service, either in uniform or as a civil servant, and you see your minister being zeroed in on day after day about a certain issue, then it tweaks an extra level of sensitivity and caution around that.

He went on to qualify that by saying:

Quite apart from getting into any speculation of nefarious motives, which I'm not convinced exist here, I think it's just—and somebody used the word earlier—an abundance of caution. I think people freeze up a bit when these things happen.... Documents on detainees that I received in June

—I assume that's June 2006—

are much less redacted than detainee-related documents that I'm getting now.

So he refers to this sense that when circumstances are confronted by a department, the suggestion is that somehow that translates into perhaps a different approach. But again, I don't want to paraphrase.

Based on your vast experience working in the access to information environment within the department, could you comment on this phenomenon that Mr. Esau explains?

• (1015)

**Ms. Jocelyne Sabourin:** All I can say, really, is that the provisions of the act have remained the same, but there have been court decisions that guide us in the application of certain provisions. When we get a request, we look at the documents in the context of today, and we try to understand what this information means. To me, a piece of paper is a piece of paper. But when you start to look at it, my office and I need to look at the legal obligations, the legal framework, that will allow me to make a decision on disclosure.

The principle is access, and there is openness, and that's the way we view it. All the officials have ingrained in them that “access” is the primary word here. What we do is look at the information, line by line, and we make a match with possible exemptions or with the exemptions provided by the act, and then we make a decision based on them.

Obviously we think that is it. That's my opinion about a document. And at the end of the day, when the response is sent out, the applicant can complain. Yes, we do have complaints about exemptions and about just about anything on the files. That's where the Information Commissioner comes in and makes a decision or a report on the use of these exemptions and whether the institution or the federal department made the right decision.

There has been an evolution of the provisions of the act. But at the end of the day, that is the legal framework upon which we base it. And it is all case by case, line by line.

**Mr. Bruce Stanton:** Thank you for that.

I have a smaller question about the process.

Once a complaint comes back from a requester saying that the person is not satisfied, for example, with the information that has been provided, and once this complaint goes to the Information Commissioner, how does that confine you in terms of your ability to respond? Could you describe briefly what implications that has for you, as a department, in this ATIP request?

**Ms. Jocelyne Sabourin:** When there is an investigation, the commissioner's powers take over, really. They'll do the collection of the information they need to conduct their investigation. They will also liaise with the complainant as to where the file is and its status. This is an investigative process, and it is done with confidentiality, which the Information Commissioner will keep from the applicant's point of view and from the department's point of view, until such time as his report is provided to me or, on occasion, to the minister.

**Mr. Bruce Stanton:** Thank you very much.

**The Chair:** We'll go to Mr. Martin.

**Mr. Pat Martin:** Mr. Stanton was on an interesting line of questioning. I'm not sure you answered what he was asking.

When Professor Attaran finally received his information, he wasn't satisfied. He thought that too much had been blacked out. So he asked you to reconsider the exemptions. Prior to going to the Information Commissioner and filing a complaint, there is an avenue of recourse by which the applicant can come back to the ATIP coordinator and ask that you reconsider those exemptions or provide further explanation.

To whom did you take all the names involved in the reconsideration, then?

• (1020)

**Ms. Jocelyne Sabourin:** First of all, Mr. Attaran gave me sort of an ultimatum: I had 24 hours to review. I proceeded to pull the file out from wherever it was—it's stored in my office—and I had a very brief review of the records, and I felt that the application of the exemptions was properly invoked, from my perspective.

**Mr. Pat Martin:** You'll have to speed it up, madam. I get only a few brief minutes.

Who else did you consult on the exemptions, all the names?

**Ms. Jocelyne Sabourin:** No one.

**Mr. Pat Martin:** Can you explain, then? Seeing it was you who did the redaction, let me read a paragraph that was not redacted, a paragraph that was allowed free and clear, in 2002.

**It says, in 2002:**...a number of extrajudicial and summary executions continue to be carried out with impunity. [...] Arbitrary detention, beatings and the use of torture to extract expressions of guilt continue to be wide spread. The Human Rights Watch report on intimidation, arbitrary arrest and torture in the western region of Herat is believed to be applicable equally to other areas of Afghanistan....

That's a quote from the "Afghanistan 2006: Good Governance, Democratic Development and Human Rights" report.

Yet in the 2005 report—and I believe the exact same language exists in the 2006 report—it says that "extrajudicial executions, disappearances, torture and detention without trial are all too common". That was blacked out.

So why was it okay to tell the previous government that torture was being used, but now it seems, arbitrarily, almost the identical language is now not allowed under national security reasons?

**Ms. Jocelyne Sabourin:** The records, again, were looked at line by line with regard to the possible exemptive provisions, and the decisions were made that these paragraphs were going to be released and the other ones would be protected under the provision of exemption.

**Mr. Pat Martin:** That just seems to be very, very generously applied. But you also use exemptions 21(1)(a) and 21(1)(b) to delete sections of not only the 2006 report but the 2004 report that I have here. Under whose guidance do you invoke the ministerial protection clauses?

**Ms. Jocelyne Sabourin:** There's a provision under the act, as advice and recommendation. That is not guided by anyone, but it's the legal framework that has this particular provision, and we felt that exemption met the criteria.

**Mr. Pat Martin:** This is a very good point. The law did not change between 2002, 2004, or 2006. In fact, the law hasn't been

reviewed in 23 years, which has been a bone of contention with this committee.

**Ms. Jocelyne Sabourin:** Both provisions, I believe, are based on injury. The test that we use, in accordance with the Treasury Board Secretariat guidelines, is an injury test.

**Mr. Pat Martin:** Who would be injured if we knew that Afghans were torturing Afghan prisoners? Other than perhaps saving the injury of Afghan prisoners from being tortured...who would be injured by knowing that? The public has a right to know these things. It's not up to you to arbitrarily deny people their right to know these things.

**Ms. Jocelyne Sabourin:** It's up to me to make decisions within the legally based framework, which is the Access to Information Act, and I do this all the time.

**Mr. Pat Martin:** I would argue that it's arbitrarily based, not legally based.

You've seen the unredacted, uncensored version, and obviously we all have the censored version. Can I ask you, in the one last minute I have remaining, will you verify that this is the language that you blacked out? It's too bad you don't have your files with you or you could actually look at them: "Extrajudicial executions, disappearances, torture, and detention without trial are all too common and the freedom of expression is still not widely observed."

Did you blank that out, in paragraph 1 of page 1 of the document, "Afghanistan 2006: Good Governance, Democratic Development and Human Rights"? Did you black out those words or not?

• (1025)

**Ms. Jocelyne Sabourin:** First of all—

**The Chair:** There is a point of order. Stop the clock.

**Mr. Pat Martin:** Don't start your stunts. Is that in your manual? What page in your manual is it?

**The Chair:** Come on, Mr. Martin. It's a point of order and I'll hear it.

Mr. Tilson.

**Mr. David Tilson:** Mr. Chairman, my point of order is, with this question, are we inadvertently asking the witnesses to violate the law? If we're asking them to quote what has been redacted, are we inadvertently asking them to violate the legislation?

**The Chair:** I don't know about inadvertence and violating. Madame Sabourin has indicated numerous times that she is dealing with things in accordance with the law. That phrase has been used many times, so I'm sure that she'll either decline to answer or answer the question.

The question was a proper, so either you answer it or decline to do so.

**Ms. Jocelyne Sabourin:** The redactions were done in accordance with the act.

I wonder what you're reading from. You seem to have a copy of a document that you can see through, or whatever. It's certainly not my office that provided you with that copy, because I don't know what document you have.

And yes, I will decline on that basis. We collected the information, and we made decisions on disclosure, which came from my office.

**The Chair:** So that we're clear, because this question has now been asked by two questioners, can you give us any explanation for the logic of allowing the word "torture" in one report and taking it out of another? Presumably you were the head of the section in both cases.

**Ms. Jocelyne Sabourin:** The documents were reviewed line by line.

**The Chair:** Numerous times. Can you give the committee an explanation as to why the word "torture" is used in one report and taken out of the other?

**Ms. Jocelyne Sabourin:** Not at this time. But I can take it on notice to provide you with an explanation, if you wish.

**The Chair:** Yes, please take it on notice that we would like an explanation.

**Ms. Jocelyne Sabourin:** The other thing is that this explanation is provided in the context of this investigation to the Information Commissioner, and he will have full access to—

**The Chair:** We understand that, but we're not the Information Commissioner. You will give us whatever answer you give us, and then the committee will decide what its next step is, based on whatever legal rights it has.

Mr. Dhaliwal.

**Mr. Sukh Dhaliwal (Newton—North Delta, Lib.):** Thank you, Mr. Chair.

Thanks to the panel for coming out here and answering some of the questions facing our reputation on the international level at this point in time.

My understanding is that the request came into your office for the information on human rights in Afghanistan, and your department had no paper trails.

**The Chair:** Mr. Dhaliwal, I'm sorry, we have two people who made requests. Because these people are very careful about how they answer—and that's not a disrespectful comment—please refer specifically to the one you're talking about.

Mr. Esau and Mr. Attaran made requests.

**Mr. Sukh Dhaliwal:** In fact, it's both.

**The Chair:** Okay.

**Mr. Sukh Dhaliwal:** When we look at this, we see that your department has no trails of the delays that happened. The way I read this, it was January 24, January 29, and then over 30 days, and nothing until March. Also your department, outside of updating a House card, had no other communication with the minister's office.

Do you not see something wrong with this picture?

**Ms. Jocelyne Sabourin:** You're speaking about Professor Attaran's request with regard to the specific human rights reports in Afghanistan.

This request was received in my office on January 29, although he dated it January 24, I believe. We did the processing of this file. I admitted to administrative errors and delays. Unfortunately, we

could only provide him with the information on April 23. So finally we completed this file, and I apologized to Mr. Attaran about the lateness.

• (1030)

**Mr. Sukh Dhaliwal:** But you still haven't answered my question on the whole thing.

Now you are saying that you apologized, but the way I see it is, did you not see that something was really going wrong when you had all those things that I mentioned? So yes or no? I would like to see....

**Ms. Jocelyne Sabourin:** We have thousands of files on the floor. We have tracking systems; we have systems of imaging to help us process. It's just a capacity issue, in my view. Unfortunately, Mr. Attaran's request was one of those to which we were not able to respond in time.

We're cognizant of the fact that certain files are late. Weekly reports are done to help us manage late files. So we try. With the team leaders, my team tries to address these to the best...but in this case, for the reason that I stated before, we were late.

**Mr. Sukh Dhaliwal:** That was on Attaran's. But on Mr. Esau's request, did you not see something a little bit...*[Inaudible—Editor]*... about the department's response, when you knew you had the country-by-country information he needed? If we weren't going through the ATIP challenge, he would never have received anything on Afghanistan—when your department knew; you had been compiling this information for years. Isn't that the situation?

**Ms. Jocelyne Sabourin:** Mr. Esau made two requests simultaneously. One was for a global report and the other was for the Afghanistan report. On the global report, the department did answer that these records did not exist. As for the specific Afghanistan reports, we did provide Mr. Esau with a response.

**Mr. Sukh Dhaliwal:** I was also listening to the other speakers that you had.... I came to this committee and listened to you, and Jocelyne Sabourin, you were right there. I think there was only one minister who had the chance to.... When these ATIP requests come in, they go directly to the minister's attention. The way I see it is that you did not inform the minister about this request. Is that true?

**Ms. Jocelyne Sabourin:** This is correct.

Mr. Peterson, have we ever met?

**The Chair:** It may be an interesting question, but it's for us to ask you the questions. Nice try, though.

Thank you, Mr. Dhaliwal.

We'll go to Mr. Wallace.

**Mr. Mike Wallace (Burlington, CPC):** Mr. Chairman, I'll be very quick and I'll have yes or no answers for most of my questions so I can get them all in.

First of all, congratulations. Contrary to what the opposition is saying, in one year increasing from a 40% rate in making the deadlines to 80% is pretty good. I congratulate you on that.

You were clear that Mr. Esau had two requests. One was no, because it didn't exist. Is that an accurate statement, yes or no? That's yes, good.

There have been appeals to the Information Commissioner on the documents that have been provided. Is that correct?

**Ms. Jocelyne Sabourin:** That's correct. There is an ongoing investigation on one of the files.

**Mr. Mike Wallace:** There is an ongoing investigation on one of the files. Based on that information, you're not entitled to tell everything. That investigation needs to go to fruition, and there'll be a decision by the Information Commissioner if there needs to be any change to that. Is that correct?

**Ms. Jocelyne Sabourin:** Correct.

**Mr. Mike Wallace:** Other documents of this report on Afghanistan have been mentioned previously. I did a line count, and about 30% of it is blacked out or redacted. The vast majority, 70% of it, is not. I haven't seen the previous documents.

Do you have any sense of whether that would be similar to what had been done to this report, in previously requested timeframes?

• (1035)

**Ms. Jocelyne Sabourin:** Are we talking about all the Afghanistan...?

**Mr. Mike Wallace:** No, just the ones of this particular "good government" report, or whatever it's entitled.

**Ms. Jocelyne Sabourin:** You're asking me if I received other human rights report requests in the past?

**Mr. Mike Wallace:** Have you had that report requested before, in other years? 2002 is quoted and 2004 is quoted. I'm assuming parts of that were redacted, or do you know?

**Ms. Jocelyne Sabourin:** To my recollection, my office has not processed a request like that in previous years. I've been there since 2003.

**Mr. Mike Wallace:** I want to be clear, you are in your 17th year of doing this type of work. Is that accurate?

**Ms. Jocelyne Sabourin:** Yes.

**Mr. Mike Wallace:** I'm sorry to bring that up.

The other thing you're quoted as saying, and in the blacked-out document, is that section 15 was used and section 21 in the summary section, which is advice to the minister. People didn't like my doing it, but I did it anyway. I read through those sections at a previous meeting, and under International Affairs and Defence, eight subsections apply that may have caused your decision-making. Is that the area of the legislation you look at, the exemptions for responsibilities of government under International Affairs and Defence? Is that the section you used to black out that document?

**Ms. Jocelyne Sabourin:** The proper provision to invoke is subsection 15(1). The paragraphs that are listed below that, paragraphs a, b, and c, are illustrative and they are not exhaustive. Whenever we have to invoke this provision, it's properly invoked when we refer to it as subsection 15(1).

**Mr. Mike Wallace:** Thank you.

There has been reference, and I know you're not a lawyer... I have seen now a copy of the redacted version, but I understand there are copies—or some people claim they have copies—of the non-redacted version. As an ATIP analyst, if that has not been released, would you consider that as having that information on an illegal basis? Is there a legal issue around having that information if you haven't released it?

**Ms. Jocelyne Sabourin:** I can only speak about the documents that I release under the act. I am not aware of other releases, and the conclusion could be that these documents...where they are, I don't know.

**Mr. Mike Wallace:** So if you've made a decision about redacting a section, and then somebody in your department that you're responsible for releases a section that you've made a decision on, what are the personnel implications of that happening? Is there a code of conduct that those in your department have to abide by?

**Ms. Jocelyne Sabourin:** [*Inaudible—Editor*]...and as public service officials we are bound to protect and to use the information that is available to us within the security policy. That's correct.

**The Chair:** Thank you, Mr. Wallace.

Mr. Peterson.

**Hon. Jim Peterson:** We haven't met personally, Madam Sabourin, but I must say you looked after me very well when I was minister, and I thank you for that.

Before responding to either Mr. Esau or Professor Attaran and giving them this redacted, edited 2006 report, did you or any of your staff have conversations with anyone in the minister's office?

**Ms. Jocelyne Sabourin:** No.

**Hon. Jim Peterson:** How did you communicate to the minister's office, or to the minister, the release of this redacted report?

• (1040)

**Ms. Jocelyne Sabourin:** There's a process where, as Ms. Thomsen mentioned, at the beginning of every week we provide electronically a list of new ATIP requests that we receive, and that is sent electronically to staff in the minister's office.

**Hon. Jim Peterson:** The request for this information was communicated to the minister's office before you responded to either applicant?

**Ms. Jocelyne Sabourin:** It's a list of requests, yes.

**Hon. Jim Peterson:** But no conversations were ever had, no communications?

**Ms. Jocelyne Sabourin:** It was all done electronically.

**Hon. Jim Peterson:** That's a communication.

**Ms. Jocelyne Sabourin:** Oh. Well, not conversations, but it was done electronically.

**Hon. Jim Peterson:** So the minister's office was fully aware of this request for information?

**Ms. Jocelyne Sabourin:** Not the documents, just the requests.

**Hon. Jim Peterson:** The requests for information.

**Ms. Jocelyne Sabourin:** That's correct.

**Hon. Jim Peterson:** When did the minister get a copy of the documents that were sent out?

**Ms. Jocelyne Sabourin:** Again, it's an e-mail message. It's called a notification, and it was sent on April 17, with a copy of the released package.

**Hon. Jim Peterson:** Thank you.

You have the ultimate authority as to what gets blacked out?

**Ms. Jocelyne Sabourin:** Correct.

**Hon. Jim Peterson:** Will you explain to me under what section of the act you felt that references to torture must be exempted from disclosure?

**Ms. Jocelyne Sabourin:** Again, I must say to you that my office made recommendations to me, and I looked at the information and I feel and I believe, with the experience that I have, that this information merits exemption.

**Hon. Jim Peterson:** I'm asking you—because you've had the ultimate authority, you're the expert—which section of the act entitled you to exempt the word “torture” from disclosure?

**Ms. Jocelyne Sabourin:** We invoked sections 15, 13, 17, and 21 on this particular file, and the stamp of the exemption is in the—

**Hon. Jim Peterson:** I just asked you what section, that's all; I don't mean to cut you off.

Under section 13, was this information obtained from the government of a foreign state? Is that what you felt? Afghans had told Canada that they were using extrajudicial measures and torture?

**Ms. Jocelyne Sabourin:** I'd have to go back to look at the rationale. I believe the committee has asked for the rationale.

**Hon. Jim Peterson:** Under subsection 15(1), how could the disclosure of torture be injurious to the conduct of international affairs, unless our government sanctions torture, which it doesn't? So how could this be injurious to the conduct of our international affairs? You're the expert. Tell me how.

**Ms. Jocelyne Sabourin:** I make those decisions, and we did make the decision. I will provide the committee with the rationale.

**Hon. Jim Peterson:** I'm sure you remember. This was made only a short time ago. I'm sure you know the answer. You're the expert. You've been doing this for so long, and you've served me so well.

**Ms. Jocelyne Sabourin:** We do review line by line, and I can't talk about just words; we have to talk about the whole of the information, the context in which this information is—

**Hon. Jim Peterson:** The context was the fact that the government was saying it had no idea that any torture was going on in Afghanistan, in terms of detainees who were transferred to the Afghans.

**Ms. Jocelyne Sabourin:** I don't speak for the government. I can only speak to the—

**Hon. Jim Peterson:** You knew that. You knew that the government had denied that it had any knowledge of torture or extrajudicial killings.

**Ms. Jocelyne Sabourin:** I am very buried in my files, and I look at the information for its value in the context of what's in front of me.

I do a line-by-line review and use the legal framework to make decisions.

**Hon. Jim Peterson:** But you said you do look at the context. Does that mean you never watch question period, never read the newspapers, never watch television?

**Ms. Jocelyne Sabourin:** Well, again, I think Mr. Wappel mentioned the fact that addressing specific redactions, which obviously you might have knowledge of, in itself might reveal the specifics of the information. I feel I'm not at liberty to speak about that.

**The Chair:** Madame Sabourin, I flipped through the document. I can't find any reference to section 17 as a justification for taking it out. I have found one reference to section 13, and I do see subsection 15(1) and I do see section 21. I can't see section 17 anywhere. If you know that you used section 17, could you advise the committee at some point what paragraph or paragraphs it was used for?

•(1045)

**Ms. Jocelyne Sabourin:** Are we just speaking about the 2006 Afghan report?

**The Chair:** Yes, that's what I thought you were talking about.

**Ms. Jocelyne Sabourin:** Well, that particular request was from Mr. Attaran. There were 105 pages of Afghan reports from 2001 or 2002 and on, so I was talking about this collection.

**The Chair:** Thank you very much.

Mr. Tilson.

**Mr. David Tilson:** Ms. Thomsen, in your introductory comments, which I appreciate, you indicated that as of today the division is processing over 500 access case files, representing over 63,000 pages of information to be reviewed, as well as 200 other files, including requests under the Privacy Act.

My question is whether you would say the quantity of applications is on the increase or remaining the same, from your past experience.

**Ms. Lillian Thomsen:** Jocelyne is better placed to give more specifics, but no, there are two areas of growth. One is in the sheer number of files and the applications, the requests under the act, and the other is in the complexity and the range of the requests being made, particularly under the Access to Information Act. So there's an increase in the volume, and also, when the documents within individual files are collected, there are many more of them. This is a simple byproduct of the growth of electronic technology and the ability to produce a lot of documents.

**Mr. David Tilson:** The reason I ask that question is that if one is slow in responding to an application—whatever it is, whichever official it is—because it is perhaps very difficult to analyze whether an issue fits into such and such exclusion, or because the number of applications has increased, if that's a problem, then this committee should look at that.

**Ms. Lillian Thomsen:** It's both. For example, when we take an extension on a file, there's a standard phrase in the letter that goes to the client: that it's disruptive to the operations of the department.

For example, we have a task force in Afghanistan. I consider I work long hours, but I don't work anywhere near as long, nor am I under the same stresses, as our Afghan task force is.

If you look at the lists of requests the department gets on topics of international issues, they tend to be the issues that are on the front pages of the newspapers. So it's Darfur, so it's Afghanistan, so it's Haiti. There is a direct correlation. It's the same subject-matter experts who are being tapped over and over again.

So as Ms. Sabourin pointed out, there are capacity issues, and there's a very significant increase in volume and complexity of the files.

**Mr. David Tilson:** The question has been raised that the timeframe wasn't met in some cases, in the cases that we're discussing and in other cases. I understand that; piles of paper occur on all our desks.

Have you any recommendations to make to the committee as to how that issue can be rectified, either by more staff, by extending the time, or something else?

**Ms. Lillian Thomsen:** Extending the time is not within our purview, because that's in the act and the regulations.

We have worked very assiduously in the department to try to improve what was a pretty appalling performance. We're sharing best practices with other colleagues. More people would help, but there's a very simple fact: there's a shortage in the labour market right now of qualified people at the mid-level. We can recruit and grow our own—and we're establishing a developmental program to do just that—but bilingual, security-cleared employees with enough experience that they can be what we call a team leader, responsible for a team of more junior analysts, are in very short supply. It's not only a problem that other departments are facing, but it's a problem that the Information Commissioner acknowledged in his last report to Parliament. So there's a labour market problem as well.

• (1050)

**Mr. David Tilson:** The final question I have is this. Of the 500 access case files that are existing, and you mentioned 200 other files, can you estimate—maybe it's impossible to do—what percentage of those applications are (a) the press, (b) politicians, and (c) other members of the public?

**Ms. Jocelyne Sabourin:** It's about a third media, a third public, and a third others—that is, academia, organizations, and businesses.

**Mr. David Tilson:** Thank you, Mr. Chairman.

**The Chair:** Thank you, Mr. Tilson.

Monsieur Vincent.

Madame Lavallée.

[*Translation*]

**Mrs. Carole Lavallée:** Thank you.

Ms. Sabourin, the Access to Information Act is very important legislation for consumers, for the population, for citizens and for voters. The act was created for them and it is an act that is intended to ensure government transparency.

For the last little while, you have said repeatedly that you have restricted your criteria, that you have drafted your own guidelines in order to impose limits on yourselves. You also say that in 2006, you eliminated the word "torture" because it would have been illegal to disclose the fact that there had been torture in Afghanistan. On the other hand, in 2004, you kept that word. Was it in 2004 or in 2006 that you were yourselves in an illegal position?

Then, you boast about the fact that 81.3% of the requests you receive were dealt with on time, whereas the legislation demands 100%. That is another form of illegality. You arrived here without files; I cannot believe it. You do not even have a copy of the legislation in hand. It seems incredible to me. I do not know who advised you before your appearance, Ms. Sabourin, but I must tell you that I am very disappointed.

Moreover, you told Mr. Attaran that this kind of a report does not exist whereas you know that these reports are produced by country, and he asked for a global human rights report. You did not even tell him that such country-by-country reports exist. That is the worst response that a citizen could get. You know and yet you did not tell him. You were waiting for the precise question, as if this were a quiz. That is unacceptable.

What is really bizarre in your case, Ms. Sabourin, is that you are drawing all of the blame upon yourself. It is as if you are preparing to experience a very difficult, even dramatic, I would say, final stretch in your career. It seems that for the last little while, you have been attempting to show us that you are incompetent. Mr. Wallace's congratulations would be the Judas kiss of the Conservatives. I'm telling you that they are not real congratulations.

I cannot believe that you are whipping yourself like this in public and that you have decided to end your career on the issue of the Department of Foreign Affairs' internal report on the prisoners tortured in Afghanistan. I cannot believe that. I imagine that you must have received marching orders from someone. It is not possible. When did you or someone on your team decide to review your guidelines in order to delete the word "torture"? When did you decide to do that? Do you have a document or some e-mail to submit to us on the issue? Do you have the minutes of a meeting, perhaps, that it would be in your best interest to send us? Can you swear to me—because you are under oath—that the people who participated in this decision did not speak to anyone in cabinet directly or indirectly? Are you absolutely sure that throughout the whole process, there was no political interference of any kind?

In subsection 15(1)—I know that you do not have a copy of the legislation with you, as you go to war without a gun—there are exactly 10 paragraphs, from (a) to (i). The first deals with military tactics or strategy. Could torture fit into that definition? Is it part of defence materiel? No. Is it part of the characteristics, capabilities, performance, potential, deployment, functions or role of any defence establishments? No. Could we find the reason in paragraph (d): information obtained or prepared for the purpose of intelligence relating to the defence of Canada? No. Is it part of the information for the purpose of intelligence respecting foreign states? No. I could read them all. There is no reason.

The only reason I can imagine is that some political person said that it would not be very good if Canada and our ministers were aware of the fact that Afghan prisoners had been sent to Afghan prisons and were tortured with the full knowledge of this country, because that goes against the Geneva Convention. That is the only reason why we might believe, Ms. Sabourin, that you or someone on your team would have suddenly decided... If you are the one who did it, I can assure you that it was not very bright.

•(1055)

**The Chair:** I'm sorry Ms. Lavallé, you have used up your five minutes.

[*English*]

I'll give Madame Sabourin an opportunity to answer.

[*Translation*]

**Ms. Jocelyne Sabourin:** First of all, for the benefit of the committee, I would like to say that I have been working in the area of access to information for 16 years. I deal with thousands of requests and I'm proud to tell you that I take those responsibilities very seriously. I'm aware of the implications of these requests and of the right to access that these people have and exercise. I comply fully with the legislative framework that is in place. Furthermore, I'm very proud to have helped provide Canadians with the information they have requested. However, the act is clear: there are exceptions. That is when a decision concerning disclosure arises, because there are exceptions that are invoked pursuant to the act.

[*English*]

**The Chair:** Thank you, Madame Sabourin.

We're very close to the end of our meeting, colleagues. As you can see, there is another committee pushing us already.

Mr. Van Kesteren, you've been very patient. If you have a very short question, please go ahead.

**Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC):** Thank you, Mr. Chair.

Thank you, witnesses, for coming. It has been a difficult morning; I can see that.

One of the things that have to be brought out is the fact that your responses have reached 80%, but there has also been a 30% increase in requests. I want to give you a chance to answer a few questions, yes or no, because I think you may have been attacked somewhat unfairly.

Are you duty bound by the act, the law, to make your decisions? Let me ask you this. Would you knowingly comply with the wishes of a minister if he were ever to ask you to break those laws or to do something that wasn't right?

**Ms. Jocelyne Sabourin:** I make decisions with regard to the act.

**Mr. Dave Van Kesteren:** Have you ever been asked by a minister to black out sections?

**Ms. Jocelyne Sabourin:** I make decisions under the act.

**Mr. Dave Van Kesteren:** Okay.

**The Chair:** Have you ever been asked by a minister to block out sections of a report?

**Ms. Jocelyne Sabourin:** No.

**The Chair:** Thank you.

**Mr. Dave Van Kesteren:** If you did, and this is hypothetical, would this come out in an investigation by the Information Commissioner?

**Ms. Jocelyne Sabourin:** I would presume so, because my files are well documented. We have a tracking system; it's well documented.

**Mr. Dave Van Kesteren:** I think that's all. I just want to thank you.

**The Chair:** Thank you very much.

We did ask you a number of questions for which you undertook to provide us with answers. We would appreciate it if you would review your notes after the meeting and respond as quickly as reasonably possible.

Committee members, on Thursday we have the Information Commissioner and the legal counsel to the House of Commons. I would urge you to allow about half an hour at the end of the meeting to discuss future witnesses. I'd like to report to the committee on some of the efforts we have made on some of the witnesses. There may be other people we wish to hear on this matter. I'd like to try to deal with that so we can line them up for Tuesday and Thursday of next week. I know we'll have questions for the Information Commissioner and Mr. Walsh, but perhaps we could be very focused so we leave some time at the end, so we can make a work plan for next week.

I thank our witnesses very much—under interesting circumstances. As you say, it's unusual. We look forward to your written responses.

I adjourn the meeting.







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