

**Investigation into an access to information request for
the Long-gun Registry**

Investigation Report – 3212-01427

**Special Report to Parliament
by Suzanne Legault
Information Commissioner of Canada
May 2015**

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Letter to the Speaker of the Senate

May 2015

Senator Leo Housakos
Speaker of the Senate
Ottawa ON K1A 0A4

Dear Mr. Speaker:

Pursuant to section 39 of the *Access to Information Act* (the Act), I have the honour to submit to Parliament a special report on an investigation into an access to information request for the Canadian Long-gun Registry.

As Information Commissioner, it is incumbent upon me to inform Parliament about my investigation which findings can be found in Appendix 1.

The genesis for the complaint was a request made on March 27, 2012, before the coming into force of the *Ending the Long-gun Registry Act*, for:

An electronic copy of: a) all records in the Canadian Firearms Registry related to the registration of firearms that are neither prohibited firearms nor restricted firearms and are under the control of the Commissioner of Firearms; and b) all records related to the registration of firearms that are neither prohibited firearms nor restricted firearms that are under the control of each chief firearms officer.
[translated]

The request was further clarified to “I would like to have access to the Firearms Registry database.” [translated]

On April 13, 2012, I wrote to the then Minister of Public Safety and Emergency Preparedness, the Honourable Vic Toews, to inform him that any records for which a request had been received under the Act were subject to the right of access and could not be destroyed until a response had been provided under the Act and any related investigation and court proceedings were completed. Minister Toews responded on May 2, 2012 providing assurances that the RCMP would abide by the right of access described in section 4 of the Act. See Appendix 2.

Between October 25 and October 29, 2012, the RCMP destroyed all electronic records of non-restricted firearms, with the exception of those belonging to Quebec residents.

On January 11, 2013, the RCMP provided a response to the requester.

On February 1, 2013, my office received a complaint alleging that additional records should exist following the response provided by the RCMP. Specifically the complaint made three allegations:

1. That the information provided was incomplete (missing both columns and registrations);
2. That the RCMP did not justify the incomplete response;
3. That by destroying the responsive records, the RCMP obstructed his right of access, pursuant to section 67.1 of the Act.

After a lengthy investigation, I concluded that the response was incomplete. I made the following recommendations to the Minister of Public Safety and Emergency Preparedness, the Honourable Steven Blaney on March 26, 2015:

- Process the information relating to the registration of non-restricted firearms in the province of Quebec (64 fields identified in the course of my investigation) and include this information in a new response to the requester.
- Process all images of the registration and transfer applications that still exist within the Canadian Firearm Information System (CFIS) pertaining to non-restricted firearms and include this information in a new response to the requester; and
- Preserve these records until the conclusion of my investigation and any related proceedings.

The Minister's response can be found in Appendix 3.

I also concluded that the RCMP destroyed records responsive to the request with the knowledge that these records were subject to the right of access guaranteed by subsection 4(1) of the Act. As a result, as well on March 26, 2015, I referred the matter to the Attorney General of Canada for possible obstruction of the right of access under section 67.1 of the Act. I have not received a response to this letter of referral.

In order to preserve the rights of the complainant, pursuant to section 42 of the Act, I will also file a court application before the Federal Court.

On May 7, 2015, the government introduced Bill C-59 in Parliament, entitled the *Economic Action Plan 2015 Act, No. 1*. Sections 230 and 231 of the Bill amend the *Ending the Long-gun Registry Act* (the ELRA). Section 29 of the ELRA authorized the destruction of records in the Canadian Firearms Registry related to the registration of firearms that are neither prohibited firearms nor restricted firearms (commonly referred to as the Long-gun Registry).

Section 230 of Bill C-59 amends section 29 of the ELRA to exclude the operation of the *Access to Information Act* (the Act) retroactive to October 25, 2011, the date on which the ELRA was introduced in Parliament. It ousts the application of the Act, in particular the provisions guaranteeing the right of access (s.4), the right to make a complaint (s.30), the Commissioner's investigative powers (s.36), the Commissioner's power to make recommendations and report on the findings of an investigation (s.37), and the right of requesters and the Information Commissioner to seek judicial review before the Federal Court (ss. 41, 42 and 46). It also retroactively ousts the offence of obstructing the Commissioner in the performance of her duties and functions (s.67) and the offence of obstructing the right of access, including by destroying records (s.67.1).

Section 230 also requires that any request, complaint, investigation, application, judicial review, appeal or other proceeding under the *Access to Information Act*, in existence on or after October 25, 2011, must be determined in light of the fact that the ELRA, as amended, retroactively excludes the operation of the Act. This would effectively render any action taken under the Act in relation to the Long-gun Registry void.

Section 230 also provides that the ELRA retroactively supersedes any other Act of Parliament in the event of any inconsistency and that the destruction of the records shall take place despite any requirements to retain the records or copies contained in any other Act.

Finally, section 231 provides that no administrative, civil or criminal proceedings lie against the Crown for the destruction of the records related to the Long-gun Registry from the date the ELRA came into force, April 5, 2012. This section also provides that no administrative, civil or criminal proceedings lie against the Crown for any act or omission done in purported compliance with the Act between October 25, 2011 and the coming into force of section 231.

The proposed changes in Bill C-59 will deny the right of access of the complainant, it will deny the complainant's recourse in court and it will render null and void any potential liability against the Crown.

Bill C-59 sets a perilous precedent against Canadians' quasi-constitutional right to know.

I submit this special report to Parliament in the hopes that parliamentarians will carefully consider the implications of Bill C-59. I am available to appear before any committee considering Bill C-59.

Yours sincerely,

Suzanne Legault
Information Commissioner of Canada

Letter to the Speaker of the House of Commons

May 2015

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

Dear Mr. Speaker:

Pursuant to section 39 of the *Access to Information Act* (the Act), I have the honour to submit to Parliament a special report on an investigation into an access to information request for the Canadian Long-gun Registry.

As Information Commissioner, it is incumbent upon me to inform Parliament about my investigation which findings can be found in Appendix 1.

The genesis for the complaint was a request made on March 27, 2012, before the coming into force of the *Ending the Long-gun Registry Act*, for:

An electronic copy of: a) all records in the Canadian Firearms Registry related to the registration of firearms that are neither prohibited firearms nor restricted firearms and are under the control of the Commissioner of Firearms; and b) all records related to the registration of firearms that are neither prohibited firearms nor restricted firearms that are under the control of each chief firearms officer.
[translated]

The request was further clarified to “I would like to have access to the Firearms Registry database.” [translated]

On April 13, 2012, I wrote to the then Minister of Public Safety and Emergency Preparedness, the Honourable Vic Toews, to inform him that any records for which a request had been received under the Act were subject to the right of access and could not be destroyed until a response had been provided under the Act and any related investigation and court proceedings were completed. Minister Toews responded on May 2, 2012 providing assurances that the RCMP would abide by the right of access described in section 4 of the Act. See Appendix 2.

Between October 25 and October 29, 2012, the RCMP destroyed all electronic records of non-restricted firearms, with the exception of those belonging to Quebec residents.

On January 11, 2013, the RCMP provided a response to the requester.

On February 1, 2013, my office received a complaint alleging that additional records should exist following the response provided by the RCMP. Specifically the complaint made three allegations:

1. That the information provided was incomplete (missing both columns and registrations);
2. That the RCMP did not justify the incomplete response;
3. That by destroying the responsive records, the RCMP obstructed his right of access, pursuant to section 67.1 of the Act.

After a lengthy investigation, I concluded that the response was incomplete. I made the following recommendations to the Minister of Public Safety and Emergency Preparedness, the Honourable Steven Blaney on March 26, 2015:

- Process the information relating to the registration of non-restricted firearms in the province of Quebec (64 fields identified in the course of my investigation) and include this information in a new response to the requester.
- Process all images of the registration and transfer applications that still exist within the Canadian Firearm Information System (CFIS) pertaining to non-restricted firearms and include this information in a new response to the requester; and
- Preserve these records until the conclusion of my investigation and any related proceedings.

The Minister's response can be found in Appendix 3.

I also concluded that the RCMP destroyed records responsive to the request with the knowledge that these records were subject to the right of access guaranteed by subsection 4(1) of the Act. As a result, as well on March 26, 2015, I referred the matter to the Attorney General of Canada for possible obstruction of the right of access under section 67.1 of the Act. I have not received a response to this letter of referral.

In order to preserve the rights of the complainant, pursuant to section 42 of the Act, I will also file a court application before the Federal Court.

On May 7, 2015, the government introduced Bill C-59 in Parliament, entitled the *Economic Action Plan 2015 Act, No. 1*. Sections 230 and 231 of the Bill amend the *Ending the Long-gun Registry Act* (the ELRA). Section 29 of the ELRA authorized the destruction of records in the Canadian Firearms Registry related to the registration of firearms that are neither prohibited firearms nor restricted firearms (commonly referred to as the Long-gun Registry).

Section 230 of Bill C-59 amends section 29 of the ELRA to exclude the operation of the *Access to Information Act* (the Act or ATIA) retroactive to October 25, 2011, the date on which the ELRA was introduced in Parliament. It ousts the application of the Act, in particular the provisions guaranteeing the right of access (s.4), the right to make a complaint (s.30), the Commissioner's investigative powers (s.36), the Commissioner's power to make recommendations and report on the findings of an investigation (s.37), and the right of requesters and the Information Commissioner to seek judicial review before the Federal Court (ss. 41, 42 and 46). It also retroactively ousts the offence of obstructing the Commissioner in the performance of her duties and functions (s.67) and the offence of obstructing the right of access, including by destroying records (s.67.1).

Section 230 also requires that any request, complaint, investigation, application, judicial review, appeal or other proceeding under the *Access to Information Act*, in existence on or after October 25, 2011, must be determined in light of the fact that the ELRA, as amended, retroactively excludes the operation of the Act. This would effectively render any action taken under the Act in relation to the Long-gun Registry void.

Section 230 also provides that the ELRA retroactively supersedes any other Act of Parliament in the event of any inconsistency and that the destruction of the records shall take place despite any requirements to retain the records or copies contained in any other Act.

Finally, section 231 provides that no administrative, civil or criminal proceedings lie against the Crown for the destruction of the records related to the Long-gun Registry from the date the ELRA came into force, April 5, 2012. This section also provides that no administrative, civil or criminal proceedings lie against the Crown for any act or omission done in purported compliance with the ATIA between October 25, 2011 and the coming into force of section 231.

The proposed changes in Bill C-59 will deny the right of access of the complainant, it will deny the complainant's recourse in court and it will render null and void any potential liability against the Crown.

Bill C-59 sets a perilous precedent against Canadians' quasi-constitutional right to know.

I submit this special report to Parliament in the hopes that parliamentarians will carefully consider the implications of Bill C-59. I am available to appear before any committee considering Bill C-59.

Yours sincerely,

Suzanne Legault
Information Commissioner of Canada

Appendix 1: Final Report of Facts and Findings and Recommendations

On March 27, 2012, the complainant made the following request for records to the RCMP under the *Access to Information Act* (the Act):

An electronic copy of: a) all records in the Canadian Firearms Registry related to the registration of firearms that are neither prohibited firearms nor restricted firearms and are under the control of the Commissioner of Firearms; and b) all records related to the registration of firearms that are neither prohibited firearms nor restricted firearms that are under the control of each chief firearms officer.
[translated]

As the complainant pointed out to the Office of the Information Commissioner (OIC), the language of the request mirrors the language of section 29 of the *Ending the Long-gun Registry Act* (ELRA) which came into force on April 5, 2012.

On April 13, 2012, the Information Commissioner of Canada (the Information Commissioner) wrote to the Minister of Public Safety and Emergency Preparedness (the Minister) and stated:

[A]ny records under the control of the Commissioner of Firearms and/or the Canadian Firearms Program, for which a request has been received under the Act before the coming into force of subsection 29(1) of the new Act are subject to the right of access and cannot be destroyed until a response has been provided under the Act and any related investigation and court proceedings are completed.

On May 2, 2012, the Minister responded to the Information Commissioner, and copied the Director of Access to Information and Privacy, RCMP, and stated:

With respect to your question on destruction of records in the CFIS, please be assured that the RCMP will abide by the right of access described in section 4 of the Act and its obligations in that regard.

On July 25, 2012, the Information Commissioner received the complaint concerning the fees applied to the processing of the request. The RCMP had notified the complainant 10 days earlier that a fee estimate of \$1150 was applicable for the processing of the request. The RCMP also indicated that it would only process the request if the complainant agreed to pay the applicable fees. The complaint was settled after the complainant clarified the request to: "I would like to have access to the Firearms Registry database." [translated] The RCMP agreed not to charge fees.

Between October 25 and October 29, 2012, the RCMP destroyed all electronic records of non-restricted firearms, with the exception of those belonging to Quebec residents.

On January 11, 2013, the RCMP responded to the complainant and provided 16 columns of information and 8,016,810 rows of records.

The Investigation

On February 1, 2013, the OIC received the complainant's complaint alleging that additional records should exist following the response provided by the RCMP on January 11, 2013. Specifically the complainant made three allegations which are dealt with in this report:

1. That the information provided is incomplete (missing both columns and registrations);
2. That the RCMP did not justify the incomplete response;
3. That by destroying the responsive records, the RCMP obstructed the complainant's right of access, pursuant to section 67.1 of the Act.

In investigating these issues, the OIC received numerous documents, sought and obtained the representations of the complainant and those of the RCMP. The OIC visited the office of the Canadian Firearms Program (CFP) and viewed the Canadian Firearm Information System (CFIS) in its production environment. The OIC examined individuals from the RCMP involved in the destruction of the records relating to the registration of non-restricted firearms. The examinations were conducted under oath and transcribed by a court reporter. In addition, all persons examined were represented by counsel.

Incomplete response

Upon examination of the request, and the clarification of October 25, 2012, it is the Information Commissioner's view that the request sought all information pertaining to the registration of non-restricted firearms in the CFIS.

The RCMP's response of January 11, 2013, was a copy of the records provided in a response to another previous request. A review of the information provided by the RCMP in the response to the complainant shows that the RCMP released the following columns of information: Make, Model, Manufacturer, Type, Action, Class, Barrel Length, Calibre, Shots, Registration Date, Province, Postal Code, Client Type, Firearm Stolen Date, Firearm Loss Date, and Recovered Date.

During the course of the Information Commissioner's investigation, she reviewed the information required to register a firearm as well as a copy of a Firearm Registration Certificate. Upon review of these documents, it is clear that the complainant did not receive the columns identifying the: Serial Number, Firearm Identification Number, and the Registration Certificate Number. These columns are used to assist the RCMP to identify owners of long-guns in the CFIS and therefore relate to the registration of non-restricted firearms.

The Information Commissioner's investigation also determined a total of 64 columns of records are responsive to the request.

Furthermore, based on the testimony provided by the witnesses interviewed and the on-site visit by investigators from the OIC to view the CFIS database, the Information Commissioner determined that scanned images of all registration and transfer applications received by the CFP

were accessible through the CFIS. The Information Commissioner is of the view that these images of the registration and transfer applications are related to the registration of non-restricted firearms, are available electronically in the CFIS, and are, therefore, also responsive to the request.

Consequently, the Information Commissioner is of the view that the RCMP's response to the access request was incomplete.

The RCMP did not justify the incomplete response

The RCMP is of the view that they have provided the complainant with a complete response. Consequently, the RCMP did not provide a justification.

The RCMP obstructed the complainant's right of access pursuant to section 67.1 of the Act

In conducting an investigation, subsection 63(2) of the Act gives the Information Commissioner discretion to disclose information to the Attorney General where she is of the opinion that there is evidence of the possible commission of an offence.

Subsection 63(2) of the *Access to Information Act*, states:

The Information Commissioner may disclose to the Attorney General of Canada information relating to the commission of an offence against a law of Canada or a province by a director, an officer or an employee of a government institution if, in the Commissioner's opinion, there is evidence of such an offence.

The information and evidence obtained during the Information Commissioner's investigation has led her to conclude that the RCMP destroyed records responsive to the request with the knowledge that these records were subject to the right of access guaranteed by subsection 4(1) of the Act. In particular, the following factual information relates to the elements of the offence set out in paragraph 67.1(1)(a):

- the RCMP destroyed records contained in the CFIS database that related to the access to information request made on March 27, 2012; the request was made prior to the coming into force of the ELRA;
- the RCMP destroyed these records with the knowledge that they related to the outstanding access request as well as an ongoing investigation;
- the RCMP destroyed these records despite the Information Commissioner's letter, dated April 13, 2012, to the Minister of Public Safety, copying the Commissioner of the RCMP, which clearly stated that these records are subject to the right of access guaranteed by the ATIA and may not be destroyed until a response has been provided to the complainant and any related investigation and court proceedings are completed; and

- as the Information Commissioner has determined in her investigation into the complaint, millions of the records destroyed by the RCMP were responsive to the access request, which remain outstanding.

Based on the information that the OIC has gathered in the context of this investigation the Information Commissioner is of the opinion that there is a possibility that an offense in contravention of section 67.1 of the Act has been committed. On March 26, 2015, the Information Commissioner referred this matter to the Honourable Peter MacKay, P.C., Attorney General of Canada.

Recommendations

On March 26, 2015, the Information Commissioner also wrote to the Minister of Public Safety and Emergency Preparedness pursuant to subsection 37(1) of the Act and reported to him that she found the complaint to be well founded. The Information Commissioner recommended to the Minister that he take the following actions:

- Process the information relating to the registration of non-restricted firearms in the province of Quebec (64 fields identified in the course of her investigation) and include this information in a new response to the complainant.
- Process all images of the registration and transfer applications that still exist within the CFIS pertaining to non-restricted firearms and include this information in a new response to the complainant; and
- Preserve these records until the conclusion of her investigation and any related proceedings.

The Information Commissioner's first recommendation was made on the basis that the RCMP, at the time of her March 26, 2015, letter was still in possession of those records pertaining to Quebec residents. The Information Commissioner had also obtained assurances from the RCMP that they would retain a backup copy of the records should the Supreme Court of Canada's decision, *Quebec (Attorney General) v. Canada (Attorney General)*, result in the destruction.

It would appear that on the weekend of April 10 to 13, 2015, after the recent decision of the Supreme Court of Canada, that the RCMP has destroyed its live database of records relating to non-restricted firearms for Quebec residents.

On April 30, 2014, the Minister informed the Information Commissioner that pursuant to the representations already made to her by the RCMP, the Minister is of the view that the complainant has already received the responsive records that were requested. Therefore, the Minister informed the Information Commissioner that he has no intention of pursuing her first two recommendations.

With respect to the third recommendation, the Minister acknowledged that the RCMP had already provided the Information Commissioner with assurances that a backup copy of the records would not be destroyed.

Based on the foregoing, the Information Commissioner has recorded the complaint as well-founded, with recommendations made to the head of the institution, not resolved.

Recent Events

On May 7, 2015, the Information Commissioner became aware of provisions in the *Economic Action Plan 2015 Act, No. 1* (Bill C-59) that propose amending the *Ending the Long-gun Registry Act* (ELRA) to prevent the application of the *Access to Information Act*. These provisions apply retroactively to the date the ELRA was introduced in Parliament, which was October 25, 2011.

Bill C-59 states that, retroactive to October 25, 2011, the *Access to Information Act* (the Act) does not apply to any records and copies of the Canadian Firearms Registry related to the registration of firearms that are neither prohibited firearms nor restricted firearms. Bill C-59 further specifies that any ongoing action (request, complaint, investigation, application, judicial review, appeal) or other proceeding under the Act since October 25, 2011 must be determined in accordance with the section of the Bill that provides that the Act does not apply.

The Bill also provides that the ELRA prevails over any other Act of Parliament in case of inconsistencies and that the destruction of the records shall take place despite any requirements to retain the records or copies. Finally, Bill C-59 absolves the Crown of any liability for the destruction or any act or omission done during this period in purported compliance with the Act.

Next Steps

In accordance with subsection 37(5) of the Act, upon receiving this report the complainant has the right to apply to the Federal Court, pursuant to section 41 of the Act, for a review of the decision of the Minister of Public Safety and Emergency Preparedness to refuse to disclose portions of the record at issue.

In addition, paragraph 42(1)(a) authorizes the Information Commissioner to apply to the Court for a review of a refusal to disclose a record with the consent of the complainant. In the present instance, the Information Commissioner was prepared, pursuant to this provision and with the consent of the complainant, to bring an application for judicial review of the refusal by the Minister of Public Safety and Emergency Preparedness to disclose parts of the record at issue.

On May 13, 2015, the complainant provided the Information Commissioner with his consent for the introduction of an application for review. Such consent does not preclude the complainant from appearing as a party in the application initiated by the Information Commissioner pursuant to subsection 42(2) of the Act.

The Information Commissioner will file an application to the Federal Court pursuant to section 42 of the Act.

Timeline of Events

On March 27, 2012, the RCMP received the complainant's request for records under the Act:

An electronic copy of: a) all records in the Canadian Firearms Registry related to the registration of firearms that are neither prohibited firearms nor restricted firearms and are under the control of the Commissioner of Firearms; and b) all records related to the registration of firearms that are neither prohibited firearms nor restricted firearms that are under the control of each chief firearms officer.
[translated]

On April 5, 2012, the ELRA received royal assent.

On April 13, 2012, the Information Commissioner wrote to the Minister of Public Safety and Emergency Preparedness and stated:

[A]ny records under the control of the Commissioner of Firearms and/or the Canadian Firearms Program, for which a request has been received under the Act before the coming into force of subsection 29(1) of the new Act are subject to the right of access and cannot be destroyed until a response has been provided under the Act and any related investigation and court proceedings are completed.

On May 2, 2012, the Minister responded to the Information Commissioner, and copied the Director of Access to Information and Privacy, RCMP, and stated:

With respect to your question on destruction of records in the CFIS, please be assured that the RCMP will abide by the right of access described in section 4 of the Act and its obligations in that regard.

On July 5, 2012, the RCMP notified the complainant that, pursuant to subsection 11(2) of the Act, a total of \$1150 in fees applied to the processing of the request. The RCMP indicated that it would process the request if the complainant agreed to pay the applicable fees.

On July 25, 2012, the complainant complained to the Office of the Information Commissioner (OIC) concerning the fees applied to the processing of his request by the RCMP.

On October 25, 2012, an investigator from the OIC wrote to the RCMP Access to Information and Privacy (ATIP) Branch to advise that the complainant had clarified the request to seek electronic records contained in the CFIS pertaining to the registration of non-restricted firearms. The investigator also sought representations from the RCMP. The clarified wording of the request reads as follows:

I would like to have access to the Firearms Registry database. [translated]

Between **October 25 and October 29, 2012**, the RCMP destroyed its live database of non-restricted firearm records, with the exception of those belonging to Quebec residents.

On November 1, 2012, the media reported that the RCMP confirmed that it had destroyed all electronic records of non-restricted firearm registrations in the CFIS, excluding Quebec.

On December 17, 2012, the Information Commissioner wrote to the Minister and asked:

[W]hether in fact the government has destroyed records that were under the control of the RCMP as of the date of the request, namely March 27, 2012, or whether an integral copy of the long-gun registry has been preserved in order to protect the requester's right of access under subsection 4(1) of the Act.

On January 11, 2013, the RCMP responded to the complainant and provided 16 columns of information (Make, Model, Manufacturer, Type, Action, Class, Barrel Length, Calibre, Shots, Registration Date, Province, Postal Code, Client Type, Firearm Stolen Date, Firearm Loss Date, and Recovered Date) and 8,016,810 rows of records.

In January 2013, the RCMP published the “Audit of the Destruction of Electronic Records Pertaining to the Transitional Provisions in the *Ending the Long-gun Registry Act*”.

On February 1, 2013, the complainant complained to the OIC alleging that additional records should exist following the response provided by the RCMP on January 11, 2013.

On February 5, 2013, in response to the Information Commissioner's letter of December 17, 2012, the Minister informed her that:

With respect to your question on destruction of records in the CFIS, I am assured by the RCMP Commissioner that the RCMP will abide by the right of access described in section 4 of the Act and its obligations in that regard.

On February 14, 2013, the OIC reported that all parties agreed to consider the fee complaint as settled.

On February 22, 2013, the RCMP was notified that the OIC had received and registered the February 1, 2013, complaint alleging that the RCMP had failed to provide all records responsive to the request made under the Act.

On February 22, 2013, the OIC requested that the RCMP provide all records related to this complaint.

On April 19, 2013, investigators from the OIC met with officials from the RCMP. During this meeting, the RCMP provided an overview of the CFIS.

On April 22, 2013, the RCMP provided the OIC with a copy of the administrative file associated with the request, including all emails and notes.

On June 18, 2013, the OIC requested that the RCMP provide it with copies of emails concerning the processing of the request between September 1, 2012 and June 18, 2013, in the email accounts of specific RCMP employees.

On July 2, 2013, the RCMP provided the OIC with an electronic copy of the records requested on June 18, 2013.

On July 8, 2014, the Information Commissioner issued an order for the production of records pursuant to paragraph 36(1)(a) of the Act and a further production order on July 28, 2014. The RCMP completed its response to these production orders on October 31, 2014.

On December 18, 2014, investigators from the OIC interviewed two RCMP employees with direct knowledge of the CFIS through their responsibilities for conducting the audit and implementation of the destruction of the electronic records pertaining to the long-gun registry and who were present during the deletion of data from the CFIS that took place between October 25 and 29, 2012.

On December 29, 2014, these same investigators visited the Canadian Firearms Program (CFP), viewed the CFIS in its production environment and recorded several screen shots of the current state of the CFIS.

On January 19, 2015, the Information Commissioner wrote to the Commissioner of the RCMP to provide him with an opportunity, pursuant to paragraph 35(2)(b) of the Act, to make representations with respect to Information Commissioner's preliminary findings. The Information Commissioner also requested assurances from Commissioner Paulson that the RCMP would take steps to ensure that the records the Information Commissioner had identified as being responsive to the request would be preserved.

By email dated **February 3, 2015**, counsel for the RCMP provided the Information Commissioner with assurances on behalf of Commissioner Paulson that the RCMP would preserve the records identified by the Information Commissioner as being responsive to the request.

On February 20, 2015, the office of the Chief Strategic Policy and Planning Officer provided representations on behalf of the RCMP.

On March 26, 2015, the Information Commissioner wrote to the Minister pursuant to subsection 37(1) of the Act to report the results of the Information Commissioner's investigation of the complaint and to make recommendations to him as the head of the RCMP for the purposes of the Act. The Information Commissioner requested that the Minister inform her by April 10, 2015, as to whether he intended to implement her recommendations.

On March 26, 2015, pursuant to subsection 63(2) of the Act, the Information Commissioner referred, to the Attorney General of Canada, evidence of the possible commission of an offence in relation to the processing of the request listed at section 67.1 of the Act. The Information

Commissioner notified the Minister and the Commissioner of the RCMP that the referral had been made.

On April 2, 2015, the Minister requested an extension of 20 days, until April 30, 2015, to respond to Information Commissioner's letter of March 26, 2015. On the same day the Information Commissioner granted the extension on the understanding that a response would be received no later than April 30, 2015.

On April 30, 2015, the Minister informed the Information Commissioner that, pursuant to the representations already made to her by the RCMP, the Minister is of the view that the complainant has already received the responsive records that were requested. Therefore, the Minister informed the Information Commissioner that he has no intention of pursuing the first two recommendations. The Minister also acknowledged that the RCMP had already provided the Information Commissioner with assurances that a backup copy of the records would not be destroyed pursuant to the Information Commissioner's third recommendation.

On May 7, 2015, the Information Commissioner became aware of provisions in the *Economic Action Plan 2015 Act, No. 1* (Bill C-59) that propose amending the ELRA to prevent the application of the *Access to Information Act*. These provisions apply retroactively to the date the ELRA was introduced in Parliament (October 25, 2011). Bill C-59 proposes the following amendments:

230. Subsection 29(3) of the *Ending the Long-gun Registry Act* is replaced by the following:

Non-application
— *Library and Archives of Canada Act*

(3) Sections 12 and 13 of the *Library and Archives of Canada Act* do not apply with respect to the destruction of the records and copies referred to in subsections (1) and (2).

Non-application
— *Access to Information Act*

(4) The *Access to Information Act*, including sections 4, 30, 36, 37, 41, 42, 46, 67 and 67.1, does not apply, as of October 25, 2011, with respect to the records and copies referred to in subsections (1) and (2) or with respect to their destruction.

Non-application
— *Privacy Act*

(5) The *Privacy Act*, including subsections 6(1) and (3) and sections 12, 29, 34, 35, 41, 42, 45 and 68, does not apply, as of October 25, 2011, with respect to personal information, as defined in section 3 of that Act, that is contained in the records and copies referred to in

230. Le paragraphe 29(3) de la *Loi sur l'abolition du registre des armes d'épaule* est remplacé par ce qui suit :

(3) Les articles 12 et 13 de la *Loi sur la Bibliothèque et les Archives du Canada* ne s'appliquent pas relativement à la destruction des registres, fichiers et copies mentionnés aux paragraphes (1) et (2).

(4) La *Loi sur l'accès à l'information* — notamment les articles 4, 30, 36, 37, 41, 42, 46, 67 et 67.1 — ne s'applique pas, à compter du 25 octobre 2011, relativement aux registres, fichiers et copies mentionnés aux paragraphes (1) et (2) ni relativement à leur destruction.

(5) La *Loi sur la protection des renseignements personnels* — notamment les paragraphes 6(1) et (3) et les articles 12, 29, 34, 35, 41, 42, 45 et 68 — ne s'applique pas, à compter du 25 octobre 2011, relativement aux renseignements personnels, au sens de

Non-application
— *Loi sur la Bibliothèque et les Archives du Canada*

Non-application
— *Loi sur l'accès à l'information*

Non-application —
Loi sur la protection des renseignements personnels

subsections (1) and (2) or with respect to the disposal of that information.

For greater certainty

(6) For greater certainty, any request, complaint, investigation, application, judicial review, appeal or other proceeding under the *Access to Information Act* or the *Privacy Act* with respect to any act or thing referred to in subsection (4) or (5) that is in existence on or after October 25, 2011 is to be determined in accordance with that subsection.

Non-application of other federal Acts

(7) In the event of an inconsistency between subsection (1) or (2) and any other Act of Parliament, that subsection prevails to the extent of the inconsistency, and the destruction of the records and copies referred to in that subsection shall take place despite any requirement to retain the records or copies in that other Act.

No liability — destruction

231. Section 30 of the Act and the heading before it are replaced by the following:

30. (1) No administrative, civil or criminal proceedings lie against the Crown, a Crown servant, the Commissioner of Firearms or a chief firearms officer, or any person acting on behalf of or under the direction of any of them, with respect to the destruction, on or after April 5, 2012, of the records and copies referred to in subsections 29(1) and (2).

No liability — access to information and privacy

(2) No administrative, civil or criminal proceedings lie against the Crown, a Crown servant, the Commissioner of Firearms, a chief firearms officer, a government institution or the head of a

l'article 3 de cette loi, versés dans les registres, fichiers et copies mentionnés aux paragraphes (1) et (2) ni relativement au retrait de ces renseignements.

Précision

(6) Il est entendu que toute procédure existante le 25 octobre 2011 ou après cette date — notamment toute demande, plainte, enquête, recours en révision, révision judiciaire ou appel — relative à tout acte ou toute chose mentionnés aux paragraphes (4) ou (5) et découlant de l'application de la *Loi sur l'accès à l'information* ou de la *Loi sur la protection des renseignements personnels* est déterminée en conformité avec l'un ou l'autre de ces paragraphes, selon le cas.

Non-application de toute autre loi fédérale

(7) En cas d'incompatibilité, les paragraphes (1) et (2) l'emportent sur toute autre loi fédérale et la destruction des registres, fichiers et copies qui sont mentionnés à ces paragraphes a lieu malgré toute obligation de conserver ceux-ci en vertu de cette autre loi.

231. L'article 30 de la même loi et l'intertitre le précédant sont remplacés par ce qui suit :

30. (1) La Couronne, ses préposés, le commissaire aux armes à feu, les contrôleurs des armes à feu et les personnes qui agissent pour le compte de l'un ou l'autre d'entre eux ou sous leur autorité bénéficient de l'immunité en matière administrative, civile ou pénale relativement à la destruction le 5 avril 2012 ou après cette date des registres, fichiers et copies mentionnés aux paragraphes 29(1) et (2).

Immunité : destruction

(2) La Couronne, ses préposés, le commissaire aux armes à feu, les contrôleurs des armes à feu, les institutions fédérales, les responsables d'institution fédérale et les personnes qui

Immunité : renseignements personnels et accès à l'information

government institution, or any person acting on behalf of or under the direction of any of them, for any act or omission done, during the period beginning on October 25, 2011 and ending on the day on which this subsection comes into force, in purported compliance with the *Access to Information Act* or the *Privacy Act* in relation to any of the records and copies referred to in subsections 29(1) and (2).

Definitions

(3) In subsection (2), “government institution” and “head” have the same meanings as in section 3 of the *Access to Information Act* or the same meanings as in section 3 of the *Privacy Act*, as the case may be.

agissent pour le compte de l’un ou l’autre d’entre eux ou sous leur autorité bénéficiant de l’immunité en matière administrative, civile ou pénale pour tout acte ou omission commis, pendant la période commençant le 25 octobre 2011 et se terminant le jour de l’entrée en vigueur du présent paragraphe, en vue de l’observation présumée de la *Loi sur l’accès à l’information* ou de la *Loi sur la protection des renseignements personnels* relativement à tout registre, fichier et copie mentionnés aux paragraphes 29(1) et (2).

Définitions

(3) Au paragraphe (2), « institution fédérale » et « responsable d’institution fédérale » s’entendent au sens de l’article 3 de la *Loi sur l’accès à l’information* ou de l’article 3 de la *Loi sur la protection des renseignements personnels*, selon le cas.

Appendix 2: Letter to the Honourable Vic Toews on April 13, 2012 and May 2, 2012 Response

April 13, 2012

The Honourable Vic Toews, P.C., M.P.
Minister of Public Safety and Emergency Preparedness
Public Safety Canada
Minister's Office
269 Laurier Avenue West
Ottawa, Ontario K1A 0P8

Our file: 3211-01340
RCMP file: GA-3951-3-00183/12

Dear Minister Toews:

I write to you in your capacity as head of the Royal Canadian Mounted Police (the RCMP) pursuant to the *Access to Information Act* (the Act) with regard to a complaint under the Act that I am currently investigating. That complaint relates to a request made to the RCMP on December 28, 2011, for “a copy of the Canadian Firearms Information System (the gun registry database) with the same level of information released in A-2008-04874 but from the inception of the registry under December 19, 2011.”

On January 20, 2012, the RCMP replied to the request, informing the requester that a total of \$1,500.00 had been assessed under subsection 11(2) of the Act for search and preparation of the responsive records.

On February 29, 2012, my office received a complaint from the requester about the RCMP's assessment of fees and on March 20, 2012, the RCMP was provided with a notice of intention to investigate and summary of complaint in relation to this complaint. Also, we requested that the RCMP provide specific information and records to this office in relation to the complaint.

While we have not, at this time, requested a copy of the records responsive to the underlying request, I am writing to you now to ensure that these records are preserved pending a substantive response to the request and the expiry of any time period to make a complaint on the response to my office and any related court proceedings.

I am aware that the *Ending the Long-gun Registry Act, 2012, c. 6* (the new Act) received Royal Assent on April 5, 2012, and will come into force on a day or days to be fixed by Order in Council. Upon coming into force, this new Act will amend the *Criminal Code* and the *Firearms Act* to remove the requirement to register firearms that are neither prohibited nor restricted. It will also provide for the destruction of existing records, held in the Canadian Firearms Registry and under the control of firearms officers, which relate to the registration of such firearms.

Indeed, pursuant to subsection 29(1) of the new Act, the Commissioner of Firearms will have the responsibility of ensuring the destruction as soon as feasible of all records in the Canadian Firearms Registry related to the registration of firearms that are neither prohibited nor restricted, and all copies of those records under the Commissioner's control.

Given the impending coming into force of this new legal requirement, I thought it prudent to write to you at this time to alert you to the fact that any records responsive to requests made under the Act prior to the coming into force of this provision are subject to the right of access to any record under the control of a government institution recognized by subsection 4(1) of the Act. This is to say that any records under the control of the RCMP, including those under the control of the Commissioner of Firearms and/or the Canadian Firearms Program, for which a request has been received under the Act before the coming into force of subsection 29(1) of the new Act are subject to the right of access and cannot be destroyed until a response has been provided under the Act and any related investigation and court proceedings are completed. This, of course, applies to the records responsive to the above-noted request.

I request that you inform me by **April 30, 2012**, whether you agree not to destroy any records in the Canadian Firearms Registry related to the registration of non-prohibited and non-restricted firearms and that are responsive to requests under the Act received by the RCMP before the coming into force of subsection 29(1) of the new Act.

Should your officials wish to discuss any aspect of this matter before **April 30, 2012**, they may communicate with Emily McCarthy, Acting Assistant Commissioner at (613) 995-2665.

Yours sincerely,

Suzanne Legault

c.c.: Commissioner of the RCMP
RCMP ATIP Coordinator

Ms. Suzanne Legault
Information Commissioner of Canada
112 Kent Street
Ottawa, Ontario K1A 1H3

Dear Ms. Legault:

Thank you for your correspondence of April 13, 2012, regarding a complaint filed under the *Access to Information Act* related to a request for information pertaining to the Canadian Firearms Information System (CFIS).

I have provided a copy of your correspondence to the Royal Canadian Mounted Police (RCMP) and have been advised that they will contact your office directly to assist with the resolution of this complaint in a timely manner.

With respect to your question on destruction of records in the CFIS, please be assured that the RCMP will abide by the right of access described in section 4 of the Act and its obligations in that regard.

I trust that this information addresses your concerns.

Yours sincerely,

Vic Toews, P.C., Q.C., M.P.

c.c.: Superintendent Yves Marineau
Officer in charge, RCMP Access to Information and Privacy Branch

Appendix 3: Response from the Honourable Steven Blaney to our recommendations

[translation]

Minister of Public Safety and Emergency Preparedness
Ottawa, Canada K1A 0P8

April 30, 2015

Ms. Suzanne Legault
Information Commissioner of Canada
30, Victoria Street
Gatineau Quebec K1A 1H3

Dear Ms. Legault:

I have received your letter dated March 26, 2015, pertaining to the result of your investigation into a complaint made against the Royal Canadian Mounted Police (RCMP) with regard to the access to information request number A-2012-00085.

I am providing you a response pursuant to section 37 of the *Access to Information Act* (Act) as the head of the RCMP for the purpose of the Act. As indicated in the letter dated February 20, 2015, sent to you by the RCMP, it is submitted that the requester received the records that are responsive to the request. Consequently, given the RCMP's assessment, I do not intend to follow-up on your two first recommendations and require the RCMP to process additional information. It would seem that the RCMP has responded to your third recommendation by preserving a copy of the relevant files, which is not available to law enforcement services or to the chief firearms officers, to assist in your investigation.

I trust that this information will address your report.

Steven Blaney, P.C., M.P.
Minister of Public Safety and Emergency Preparedness

c.c.: Commissioner Bob Paulson
Royal Canadian Mounted Police