

ANNUAL REPORT

2021-2022



Information
Commissioner
of Canada

Commissaire
à l'information
du Canada

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CAROLINE MAYNARD
Information Commissioner of Canada

MESSAGE FROM THE COMMISSIONER

I am pleased to submit this report highlighting the work of the Office of the Information Commissioner (OIC) during the 12-month period covering April 2021 to March 2022. The report details our continuing efforts to uphold the right of access to information through our investigations, the guidance we provide to complainants and institutions, as well as our observations and advice to Parliament regarding the access to information regime.

I am now past the midway point of my seven-year mandate as Canada's Information Commissioner. Like every journey, there have been surprises and hurdles to overcome—the global pandemic being the most obvious example. My team has faced these challenges head-on, and we remain committed to ensuring that the *Access to Information Act* is properly applied and that requesters are able to access the information to which they are entitled.

That said, the next phase in the journey will likely not be smooth. With 2021–22 being a record year for the number of complaints submitted to the OIC, our ability to deal with an ever-increasing volume of complaints is being challenged. Additional resources will be needed if we are to continue to reduce the number of complaints in our inventory, while at the same time ensuring that new complaints are dealt with in a timely manner.

Since the beginning of the pandemic, I have consistently stated that a properly functioning access system is critical to ensuring accountability, transparency, and the trust of the public. Across the federal access to information regime, government institutions have had more than two years to adapt to the reality of a pandemic and the inherent challenges it brought to our daily lives and our work environment. Realistically, COVID-19 can no longer be used as an excuse for not living up to legislative obligations in the area of access to information.

According to the Treasury Board of Canada Secretariat's (TBS) statistics on institutions' capacity under pandemic restrictions, 79 institutions were fully capable of processing secret and top secret electronic records at the end of the fiscal year 2021–2022. However, a full 65 institutions had no capacity or only partial capacity to process these files. As well, access to information and privacy (ATIP) staff in 28 institutions had no access, or limited on-site access for processing physical files. This indicates to me that a number of institutions are not meeting their legislative obligations, while some appear to consider them as optional. Obviously, many are still not giving Canadians' right to government information the importance it deserves.

Issues related to innovation and the allocation of sufficient resources towards access to information also persist. And yet, experience has shown that adopting specialized technological tools results in more efficient use of financial and human resources. Simply put, if the technology is out there, we should make use of it. The government also needs to adequately invest in human resources by creating pools, hiring sufficiently qualified staff and developing appropriate ongoing training for employees. While I find it troubling that many access to information and privacy teams are still in critical need of additional qualified staff, it is heartening to see that TBS is in the process of launching an external selection process to support ATIP offices in filling human resource gaps.



Across the federal access to information regime, government institutions have had more than two years to adapt to the reality of a pandemic and the inherent challenges it brought to our daily lives and our work environment. Realistically, COVID-19 can no longer be used as an excuse for not living up to legislative obligations in the area of access to information.

In recent times, we have seen many concrete examples of the role government transparency plays in safeguarding the public trust. On issues such as vaccines and public health measures, broad-based support grounded in openness and transparency helps provide government with the social licence to implement measures aimed at managing major disruptions and improving our lives. We have also seen what happens when people lose trust in official sources of information: they may turn to unreliable sources, where misinformation and disinformation can flourish. This has profound effects on our society.

I have often voiced these concerns in my meetings with ministers and parliamentarians. In my office's day-to-day dealings with institutions, we also emphasize that institutional leaders must make the right of access to information a priority. This is why I was dismayed to discover that when the President of the Treasury Board's mandate letter was published last December, specific commitments relating to upholding this right were conspicuous by their absence. This is all the more troubling in light of the fact that TBS's report on the review of the access regime, which originally was to have been published at the beginning of 2022, has been further delayed. In addition, in spite of clear evidence that institutional capacity to process access to information requests has degraded overall, the recent budget offered very little funding to bolster this capacity.

These are just some of the facts that lead me to call into question the Government's commitment to access to information. The Government must not only acknowledge that it has a fundamental duty to safeguard the quasi-constitutional right of access—it must act accordingly. Parliament also has a role to play in recognizing the urgency of giving the poor state of access within the federal system the attention it deserves. Canadians' trust in their institutions depends on it.

CAROLINE MAYNARD

Information Commissioner of Canada

2021–2022: A CHALLENGING YEAR FOR THE RIGHT OF ACCESS TO INFORMATION

**APR
2021**

Investigators from across Canada share best practices

The Information Commissioner helps organize a two-day conference for access to information and privacy investigators. More than 190 participants from 14 federal, provincial and territorial jurisdictions across Canada attend the virtual conference. The Commissioner serves as the moderator for a session on *Approaches to Early Case Resolution*, and participates in a panel discussion on *Increasing Efficiency/Reducing Backlogs*. A second conference is planned for November 2022.

**MAY
2021**

An increase in permanent funding yields early results

The Commissioner appears before the [Standing Committee on Access to Information, Privacy and Ethics](#) to highlight the advances the OIC has made following an increase to its permanent funding. She highlights how the OIC's operations have evolved, including the adoption of longer-term human resources planning to ensure stability. As 2021–2022 has been a record year for the OIC in the number of complaints received, additional resources will be needed to contend with the increasing volume as well as with its inventory of complaints.

Challenging the status quo

The Commissioner's special report, [Access at issue: Challenging the status quo](#), is tabled in Parliament. The report details the results of her investigation into systemic issues affecting Immigration, Refugees and Citizenship Canada's (IRCC) handling of access to information requests. The lack of alternate means for obtaining information as well as insufficient resources within the institution are among the issues highlighted that are impacting IRCC's ability to respond to access requests in a timely manner.

Promoting transparency internationally

During the 5th Gathering of the ParlAmericas Open Parliament Network, the Commissioner participates in the [Inter-American Model Law 2.0 webinar on access to public information](#), discussing the promotion of transparency and access to information in Canada and the relationship between her office and the Parliament.

JUNE 2021

A call to improve Canadians' privacy and access to information rights

During their annual meeting, the federal, provincial and territorial information and privacy commissioners and ombudsman adopt 11 access to information and privacy principles and issue a joint resolution, calling on their governments to show leadership by implementing them and making the modernization of legislative and governance regimes around freedom of information and privacy a priority.

Information Commissioners around the world highlight the importance of transparency

The 12th International Conference of Information Commissioners urges governments responding to the ongoing global pandemic to pay due regard to the common information access principles and practices around the proactive publication of information held by government or public institutions. In a joint statement, they remind governments around the world that the public's right of access to information relating to the COVID-19 pandemic is of critical importance to the effectiveness of the public health response.

Highlighting the pressing need to allocate resources to the access system

The Information Commissioner appears before the Standing Committee on Health, explaining her role of investigating complaints relating to access to information requests. During the meeting, she notes that in the last six years, the number of access requests has increased by 225%, but the resources within units responding to those requests have not increased in the same proportion.

Gender equality and access to information: the Canadian perspective

The OIC participates in an international panel discussing the importance of incorporating the gender perspective into systems of access to public information in order to promote equal rights and opportunities. This event is organized by the Latin American Transparency and Access to Information Network and EUROsocial+.

JULY 2021

Following up with the President of the Treasury Board

Following meetings with ministers on the state of Canada's access to information regime, the Commissioner outlines her observations in a letter to the President of the Treasury Board. She notes that, based on her conversations with them, many ministers appear to recognize that the pandemic has exacerbated flaws in the access system and that there is a pressing need to do better. Ministers also acknowledge the importance of having a declassification program, and assert that they understand the value of sharing best practices across institutions in order to help to unburden the system.

**AUG
2021**

Commissioner Maynard laments the state of access

In an [interview in the *Ottawa Citizen*](#), the Commissioner laments the lack of preparedness on the part of the government to deal with access to information requests during the pandemic. She also highlights the low priority given to access to information by public servants—not necessarily within ATIP units, but among employees tasked with providing requested records.

**SEPT
2021**

The right of access must be safeguarded as a fundamental pillar of our democracy

In her annual statement to mark Right to Know Week, the Commissioner reminds Canadians that the right of access must be safeguarded as a fundamental pillar of our democracy, even in the midst of a crisis. Referring back to the findings of her systemic investigations, she warns that the right of access continues to be imperiled by the deficiencies of the system, including [a lack of tools and processes to support access to information, issues related to leadership and organizational culture, and the need to provide information through alternative means](#).

Declassification of government documents: a key topic for anyone concerned about transparency

The OIC joins a group of academics, archivists and policymakers in a [discussion hosted by the University of Toronto's Bill Graham Centre on the state of the declassification of government documents in Canada](#), a topic of importance to historians and those concerned about transparency in the making of national security policy.

**OCT
2021**

The Commissioner speaks to her largest audience ever

The Commissioner met virtually with more than 4,000 employees of the Canada Revenue Agency to talk about the importance of their role in upholding the right of access to information and the importance of sound information management practices.

**NOV
2021**

COVID-19 still cited for delays in access request processing

The *Hill Times* reports that government institutions are still citing COVID-19 as the cause for delays in processing access to information requests, even though the pandemic has been ongoing for more than 20 months. The article cites an [OIC report released in September](#) concerning nine separate complaints about delays in processing requests by Global Affairs Canada, in which the Commissioner found all the complaints to be well founded.

**DEC
2021****Meeting the new Minister**

During her first meeting with Treasury Board President Mona Fortier, the Commissioner emphasizes the need to take immediate action to address the problems facing the access to information system.

A conversation with a counterpart

The Commissioner appears on a [podcast with the Saskatchewan Information and Privacy Commissioner](#), to talk about the state of the federal access system and the importance of taking concrete steps without waiting for the outcome of the review of the access system.

**JAN
2022****The review of access to information delayed**

Following news that the release of the final report on the review of access has been pushed back until mid 2022, the Commissioner sends a letter to the Chair of the Standing Committee on Access to Information, Privacy and Ethics, inviting the Committee to focus its attention on this urgent topic.

**FEB
2022****The post-pandemic “new normal”**

The President of the Treasury Board issues a [statement](#) on the easing of workplace restrictions. This measure is expected to have a positive effect on the processing capacity of ATIP units. TBS also promises to follow up with institutions to discuss plans, with a focus on those with larger backlogs or capacity limitations, as well as providing support and guidance to institutions that require assistance in achieving full capacity.

**MAR
2022****Disclosing information on “compassionate grounds”**

In a ruling against [a mother seeking information from the RCMP on her daughter's death in a car accident](#), the Federal Court refers to the Commissioner's investigation of a complaint against the RCMP. The Commissioner submitted recommendations to the government to make changes to section 26 of the *Privacy Act* and section 19 of the *Access to Information Act* to give the head of an institution the discretion to disclose personal information to a spouse or close relative about a deceased person for compassionate reasons, as long as the disclosure does not constitute an unreasonable invasion of the deceased's privacy.

Removal of messaging citing pandemic as cause of access delays

TBS removes messaging related to the impacts of the pandemic on processing requests from the [access to information page on Canada.ca](#). The banners warning of possible delays in treating requests are also removed from the [Service Initiation Page](#) and from the [Access to Information and Personal Information Request Service](#). Institutions are encouraged to remove similar messaging from their own websites.



**ON THE
INVESTIGATIONS
FRONT**

A RECORD YEAR

The OIC recorded 70 percent more complaints in 2021–2022 compared to the previous year. As of March 31, 2022, the OIC had registered 6,945 complaints, of which 83% were administrative complaints. In fiscal year 2020–2021, the OIC registered 4,068 complaints and in 2019–2020, 6,172 complaints.

This increase in complaints is likely attributable to a growing interest in government decisions made during the pandemic, on such topics as vaccinations and government assistance programs to business and individuals—something the Commissioner had foreseen and publicly commented upon on more than one occasion. Assuming this trend continues, it is clear that current resources will not be sufficient to respond to the increased demand and will not enable the OIC to reduce its inventory of complaints.

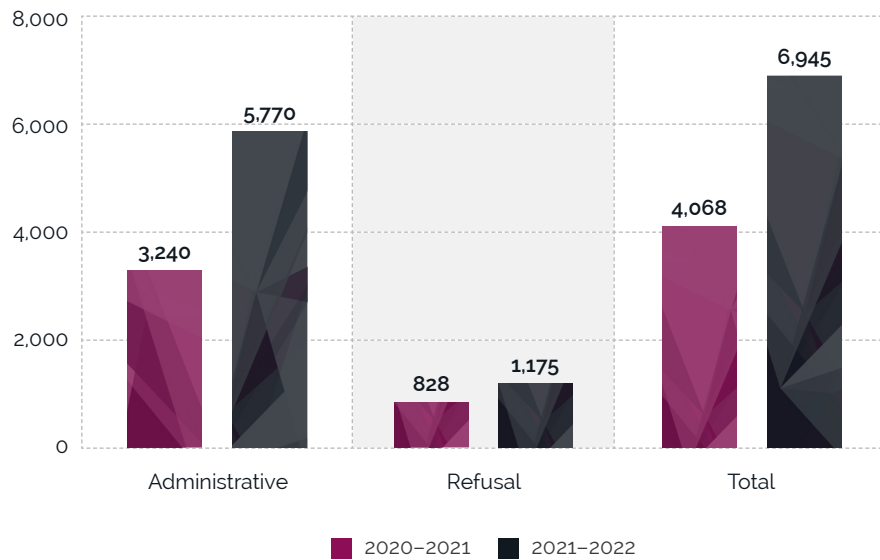
In spite of this, thanks to the hard work and commitment of its employees working in collaboration with institutions and complainants, the OIC managed to keep pace with the increased volume of complaints and succeeded in closing 67% more complaints than the previous fiscal year.

The OIC investigates complaints from requesters who believe institutions did not respect their rights under the Act.

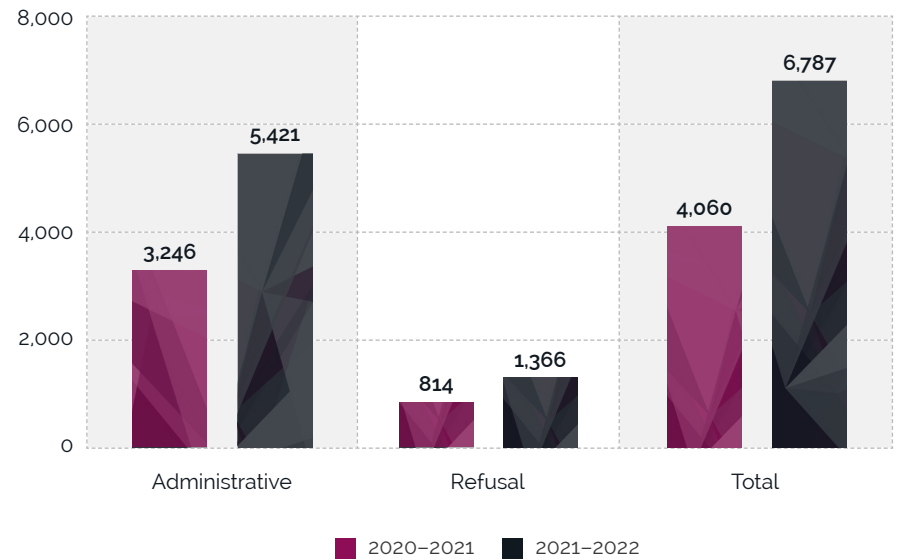
Administrative complaints generally relate to institutions extending or delaying timelines for responses to requesters. Complainants have not yet received a response to their request.

Refusal complaints relate to institutions applying exemptions or exclusions under the Act to refuse disclosure of information. Complainants are not satisfied with the information they receive.

Complaints registered

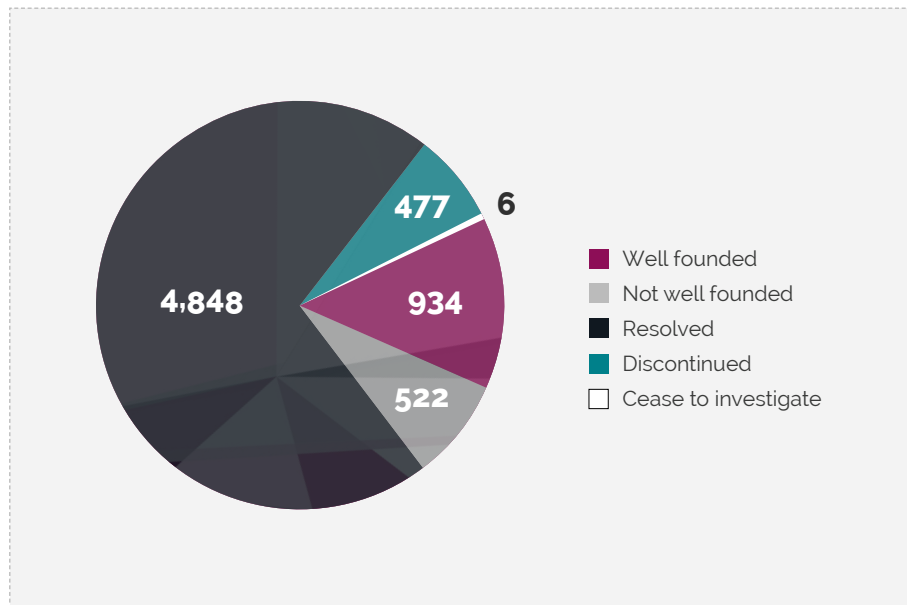


Complaints closed





Complaint outcomes 2021-2022

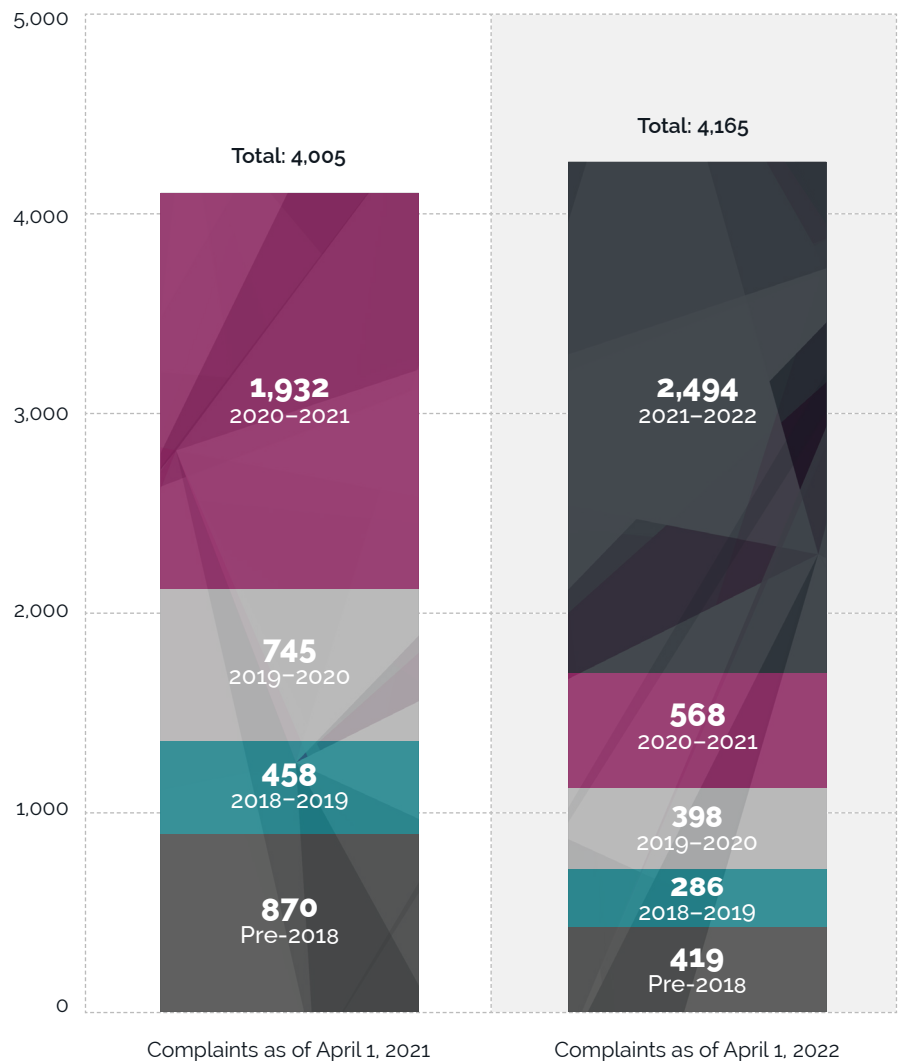


Outcomes	2020-2021		2021-2022	
Well founded	643	16%	934	14%
Not well founded	225	5%	522	8%
Resolved	2,867	71%	4,848	71%
Discontinued	325	8%	477	7%
Cease to investigate	0	0%	6	0.08%
Total	4,060	100%	6,787	100%





Total inventory of complaints, per year received



COMPLAINT ACTIVITY IN 2021-2022

	Active complaints in 2021-2022			Investigations completed in 2021-2022			Outcomes					
	Active complaints as of April 1, 2021	Complaints registered between April 1, 2021 and March 31, 2022	Total	Complaints registered before April 1, 2021	Complaints registered between April 1, 2021 and March 31, 2022	Total	Well founded	Not well founded	Resolved	Discontinued	Cease to investigate	Total
Immigration, Refugees and Citizenship Canada	846	4,198	5,044	765	3,616	4,381	185	26	4,101	69	0	4,381
Canada Border Services Agency	184	789	973	77	241	318	57	17	232	12	0	318
Royal Canadian Mounted Police	258	458	716	164	198	362	105	45	181	31	0	362
Canada Revenue Agency	452	153	605	333	54	387	59	256	41	30	1	387
Privy Council Office	241	110	351	72	42	114	42	12	18	42	0	114
Library and Archives Canada	221	90	311	27	18	45	20	3	19	3	0	45
National Defence	173	69	242	97	34	131	68	25	16	22	0	131
Department of Justice Canada	152	62	214	101	14	115	32	14	6	63	0	115
Correctional Services Canada	98	93	191	64	30	94	40	9	32	13	0	94
Global Affairs Canada	114	72	186	55	19	74	46	6	18	4	0	74
Public Services and Procurement Canada	86	96	182	37	10	47	20	8	13	6	0	47
Transport Canada	80	58	138	17	17	34	8	2	19	5	0	34
Parks Canada	110	8	118	34	0	34	21	0	12	1	0	34
Department of Finance Canada	78	34	112	50	7	57	32	4	7	14	0	57
Health Canada	60	48	108	35	8	43	14	2	12	14	1	43
Environment and Climate Change Canada	60	36	96	20	5	25	14	2	7	1	1	25
Canadian Security Intelligence Services	61	30	91	25	12	37	4	17	0	16	0	37
Employment and Social Development Canada	46	43	89	26	12	38	19	5	10	4	0	38
Innovation, Science and Economic Development Canada	47	40	87	17	10	27	13	3	5	6	0	27
Indigenous Services Canada	46	32	78	30	4	34	19	1	3	11	0	34
Fisheries and Oceans Canada	35	42	77	14	13	27	7	4	8	8	0	27
Public Safety Canada	46	11	57	34	2	36	3	6	5	22	0	36
Crown Indigenous Relations and Northern Affairs	41	11	52	18	5	23	10	2	7	4	0	23
Natural Resources Canada	29	10	39	12	3	15	4	8	2	1	0	15
Canada Energy Regulator	32	0	32	20	0	20	17	2	1	0	0	20
Sub total	3,596	6,593	10,189	2,144	4,374	6,518	859	479	4,775	402	3	6,518
Other Institutions	409	352	762	190	79	269	75	43	73	75	3	269
Total	4,005	6,945	10,951	2,334	4,453	6,787	934	522	4,848	477	6	6,787



SYSTEMIC INVESTIGATIONS: EXPECTATIONS AND RESULTS

Library and Archives Canada: The challenge of accessing our collective memory

Among the thousands of investigations completed this year, the Information Commissioner conducted a systemic investigation into Library and Archives Canada's (LAC) inability to provide timely access to the information under its control. The investigation found several issues impeding the institution and concluded it is not meeting its obligations under the Act.

The Commissioner initiated this investigation due to the significant and growing public criticism of LAC by journalists, academics and others who have grown increasingly critical of the excessive wait times and lack of responses that characterize LAC's management of access requests.

Over the last few years, the OIC has collected evidence through complaint investigations confirming that LAC has not been responding to access requests within legislated timelines. The current situation is further complicated by a stream of new complaints about delayed responses during the pandemic, together with an absence of concrete action by LAC's leadership to address the underlying problems.

In January 2022, the Commissioner relayed her findings and ten recommendations to the Minister of Canadian Heritage—the minister responsible for LAC. While the Minister acknowledged the serious challenges that prevent LAC from meeting its legislated obligations under the Act, the Commissioner found that his response lacked any sense of urgency nor was she confident that it would yield concrete results. In spite of this, she looks forward to reading the biannual updates on the measures to implement the recommendations as outlined by the Minister in his response, and she hopes that these will result in the necessary improvements.

Aside from bringing to light numerous issues specific to LAC, the investigation also drew attention to two of the broader challenges facing Canada's access to information system:

- the manner in which consultations on access requests are conducted between institutions; and
- the lack of a Government-wide framework for the declassification of records.

These issues were addressed in more detail in a [special report](#) tabled in Parliament.

The Commissioner also received updates from each of the institutions investigated during previous systemic investigations carried out during the first half of her mandate. When asked to provide status updates on progress against the measures undertaken, each institution provided a response, summarized below:

Immigration, Refugees and Citizenship Canada: Challenging the status quo

In 2020–2021, the Information Commissioner [investigated Immigration, Refugees and Citizenship Canada's \(IRCC\) processing of access to information requests](#) to better understand and address the dramatic increase in requests the institution received from April 1, 2017, to February 26, 2020, as well as in complaints registered by the OIC against IRCC.

IRCC reports that since the tabling of the Commissioner's special report, it has taken a number of steps to meet its access-related obligations and commitments, posting progress made on a [Management Action Plan](#) (MAP) on its website.

IRCC states that it has moved forward on several of the initiatives outlined in its MAP and is addressing the Commissioner's recommendation of exploring alternate approaches to obtaining information and decreasing the need for access requests. Advancements in the area of communicating with clients include:

- To assist clients in tracking their application, IRCC initiated use of a Case Status Tracker Tool for the Citizenship and Permanent Residence Family Class lines of business. This tool is designed to improve communication of the status of immigration case information to clients through MyAccount.
- The launch of a new iteration of the Temporary Resident Visitor Refusal Letter provides clients with more clarity on the reason(s) for refusal. It is expected that the refusal letters will eventually include more detail as to why applications were refused, with the goal of reducing the need for clients to submit access requests to obtain this information.
- Continued improvements to generic web content.

IRCC also reports the completion of projects aimed at creating efficiencies within its ATIP Program, including:

- The completion of phase one of the review of the ATIP online request form. The review will include consideration of potential solutions that allow requesters to further narrow the scope of their requests and reduce unnecessary processing of records within the client immigration file.
- The design, development, implementation and integration of robotics process automation (RPA or "Bots") into the processing of ATIP requests. This involved identifying processes that were routine, data-entry based and high in volume, allowing an automation solution to complete the required tasks.

Royal Canadian Mounted Police: The need for leadership

Following the [Commissioner's systemic investigation into the Royal Canadian Mounted Police \(RCMP\) in 2020](#), this institution developed a [strategy and action plan](#) to modernize its ATIP program, to be implemented over a five-year period.

The RCMP highlights that it has devoted resources to modernize its access program, including a reorganization of the structure of the ATIP Branch that has resulted in a doubling of its size. The Branch now includes three streams (Privacy, Information Access and Operational Support), enabling it to focus within specialized fields.

The RCMP also reports that it has developed a new ATIP Fundamentals course on its internal training website, launched in mid-November 2021 for all RCMP employees. Almost 6% of the RCMP workforce has successfully completed the training within four-and-a-half months.



AIDAN SCOTT
Investigator

In addition, the RCMP reports having introduced a number of employee tools, including:

- an ATIP reference manual, covering the basics of the *Access to Information Act* and *Privacy Act* requests, complaints, Privacy Impact Assessments and privacy breaches;
- an ATIP frontline contact card providing guidance as to what information can be shared with the public while ensuring that necessary safeguards are in place; and
- materials for RCMP divisions to educate staff on the importance of ATIP, including encouraging enrollment in the ATIP Fundamentals course.

National Defence: Nine recommendations regarding the processing of access requests

The Information Commissioner's 2020 [systemic investigation into the Department of National Defence's \(DND\) ability to process access requests](#) resulted in the introduction of a management action plan to address the issues raised in the report. DND reports that the implementation of the plan has led to improvements to its access system, including the adoption of an electronic retrieval model, streamlining processes and fostering good relationships with Tasking Liaison Officers.

According to DND, these have all contributed to improving "access compliance rates", as has awareness of access obligations across the institution through the distribution of monthly progress reports to Offices of Primary Interest and to senior management. The implementation of the action plan was coordinated by the Directorate of Access to Information and Privacy team, while concurrently adjusting to a remote work posture and a decreased workforce due to COVID-19.

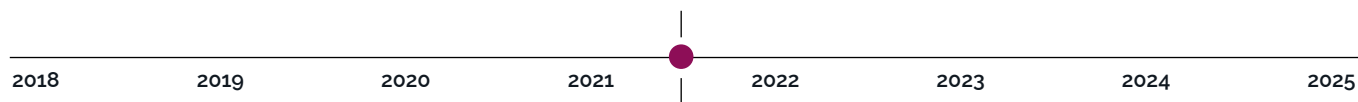
While the Commissioner welcomes these improvements, she will continue to monitor the progress of these institutions as well as the impact of their initiatives on complaints.



**MID MANDATE
CHECK-IN**

A SNAPSHOT ON PROGRESS

Commissioner Maynard began her seven-year term on March 1, 2018, making September 2021 the mid-point mark in her mandate. This milestone provides a good opportunity to look back at her initial priorities and assess progress made to date.



Eliminating the backlog of complaints

Commissioner Maynard's first priority when she arrived at the OIC was to address the inventory of complaints she inherited, while continuing to investigate new complaints. When she was appointed in March 2018, the OIC had a backlog of approximately 3,500 complaints.

Given its size and limited resources, the OIC had to be creative in improving its performance if it was to have any success in chipping away at the backlog, even as it dealt with an increasing number of new complaints. The first step to address the delays that had plagued the investigation process was to create an Early Intervention Team to review new complaints and verify complainant's expectations. In addition, the OIC consolidated all of the production aspects of its investigations in the Registry, tasked with the reception and validation of each complaint, registering investigations, ensuring better consistency in investigation-related correspondence and reports.

During the first half of the Commissioner's mandate, investigations teams were re-organized to investigate specific types of complaints and to work with institutional portfolios. This approach has limited the number of investigators and managers interacting with an institution at any one time, allowing stronger relationships to be created. This has helped build expertise among investigators in specific areas or on specific types of complaints, thereby improving overall efficiency and productivity. Legal counsel are also now involved with files at the early stages to identify any legal concerns or avenues for resolution. In addition, the creation of a team responsible for updating and creating guidance tools and processes for investigators, as well as standardizing training has helped the OIC deliver on this priority.

Since March 2018, the OIC has also upgraded its online complaint form, transitioned to paperless investigations and adopted the practice of grouping and investigating similar complaints together for greater efficiency.

THE COMMISSIONER'S INITIAL PRIORITIES

- Eliminating the backlog of complaints
- Implementing reforms to the Act
- Ensuring that the day-to-day work of the OIC is open and transparent
- Collaborating with institutions

New complaints continued to grow, with 2021–2022 being a record year that saw 6,945 complaints registered—an increase of 70% from last year. Despite this rise, the OIC has managed to clear almost 90% of the backlog since the start of the Commissioner's mandate: there are now 406 pre-March 2018 complaints remaining in the OIC inventory.



ESPÉRANCE KAYISINGA
Policy Analyst

Implementing reforms to the Act

The Commissioner’s second priority was to prepare for the implementation of Bill C-58, the first bill to significantly amend and update the federal *Access to Information Act* (the Act) since it first became law in 1983.

Once the amendments came into force in June 2019, there were two changes to the law that most directly affected the OIC’s operations. The first change allowed [institutions to refuse to process an access request](#) if, in the opinion of the head of the institution, the request is deemed vexatious, made in bad faith or otherwise an abuse of the right to make a request for access to records. Under this new provision of the Act, an institution cannot refuse to process a request without the Information Commissioner’s approval. Applications from institutions seeking the Commissioner’s approval to decline to act on a request under [subsection 6.1\(1\)](#) of the Act need to be reviewed quickly. Decisions should be rendered as soon as possible to ensure requesters’ right to timely access.

Over the last three years, the Commissioner received 48 such applications from institutions. Permission was granted in three cases, including [one for a request](#) regarded as part of a pattern of behaviour that involved repeated access requests for substantively the same information. The Commissioner determined that repetitive requests can unduly burden institutions to the potential detriment of the legitimate exercise of others’ rights under the Act.

Outcomes of applications to decline to act on an access request (6.1(1))
- from June 2019 to March 31, 2022

	Applications received	Applications withdrawn	Permission granted	Permission denied	Applications carried over to the next fiscal year
2019-2020	6	0	1	4	1
2020-2021	6	5	0	1	1
2021-2022	36	4	2	29	2

The second significant change in the Act provided the Commissioner with the right to issue orders rather than be limited to issuing recommendations when a complaint is determined to be well founded. For complaints submitted to the OIC on or after June 21, 2019, the Commissioner may make any order or recommendation she considers appropriate when complaints are well founded. For complaints before that date, only recommendations can be made.

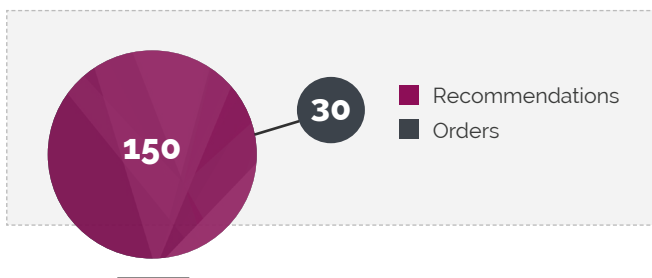
After the Information Commissioner was granted order-making powers, the OIC began operating under a hybrid system. The Commissioner has since issued both recommendations and orders, depending on the date and circumstances of each complaint. To date, she has issued approximately 150 recommendations and 30 orders. With the inventory of pre-June 2019 files diminishing steadily, it is anticipated more orders will be issued.



Orders issued to institutions since June 2019

	Administrative investigations	Refusal investigations
2019–2020	1	0
2020–2021	2	0
2021–2022	25	2

Given to date: Recommendations vs. orders



Ensuring that the day-to-day work of the OIC is open and transparent

The Commissioner’s third priority was to provide clear guidance on her interpretation of the Act and the approach of her office when conducting investigations, to ensure both complainants and institutions easily understand the OIC’s position.

To do this, the OIC published and updated [guidance on its website](#). Complainants can also better understand the [possible outcomes of their complaints](#) by consulting the OIC’s website.

Since the 2019 amendments to the Act, the Information Commissioner can publish final reports setting out the results of her investigations as well as any orders or recommendations. She does so on an increasingly frequent basis on the [OIC’s website](#) when she judges that a report is deemed to be of value in providing guidance to both institutions and complainants. These reports are also available on the [Canlii](#) database, which provides access to decisions from all Canadian courts as well as numerous tribunals.

Final reports published since June 2019

2019–2020	2
2020–2021	22
2021–2022	32



THE OIC'S GUIDING PRINCIPLES ON INVESTIGATIONS

- 1 When we begin an investigation, we complete it within a reasonable timeframe.
- 2 We investigate complainants' allegations as stated or as clarified at the beginning of the investigation and according to the parameters of the access request.
- 3 We prioritize discussions with the parties to complete investigations promptly.
- 4 We seek representations promptly to not delay investigations. We conclude investigations even when the parties do not provide representations within the time period allocated.
- 5 We diligently follow up on files without waiting between steps.
- 6 Our analysis in published final reports is as complete as possible, to serve as a reference for completing other investigations.



ASMAA ZARBAL
Administrative Assistant

The OIC has also established a [searchable decisions database](#) to enable its website users to search reports outlining the reasons and principles behind the Commissioner's decisions and filter them using a variety of criteria. The publications in this database are updated regularly and the database will continue to grow as more reports are published.

The database is becoming a useful tool that provides clarity as to the OIC's position regarding particular complaints. Increasingly, both complainants and ATIP units are referencing published final reports in their representations. OIC investigators refer both complainants and institutions to the database as a tool to help resolve files, and reference

published final reports when representations are requested from the parties. In addition, at the complaint intake stage, the OIC's Registry has begun sending links to published final reports, which helps the complainant to determine whether they wish to pursue their complaint. These are just some of the practical uses of the database in supporting the OIC's operations and assisting both institutions and complainants.

It is worth noting that the publication of those reports has had a notable impact on the OIC's operations: as a new line of business for a small organization, training, templates and guides had to be developed to enable investigators to write the reports correctly. As well, the OIC's publishing capacity had to be reinforced, including translation and web services.



GINO GRONDIN
Deputy Commissioner,
Legal Services and Public Affairs



FRANCE LABINE
Deputy Commissioner, Corporate
Services, Strategic Planning and
Transformation Services



LAYLA MICHAUD
Deputy Commissioner,
Investigations and Governance

Collaborating with institutions

The Commissioner's fourth and final priority was to work with institutions to help them meet their obligations under the Act and to address barriers in the system. With this in mind, she has sought opportunities to dialogue with the leadership of institutions and meet with a variety of stakeholders, including access to information and privacy professionals, as well as provincial and territorial counterparts.

In order to improve transparency and overall collaboration, the OIC has initiated the practice of scheduling regular meetings with government institutions. In 2021-2022, meetings were held with various institutions, including Transport Canada, Public Services and Procurement Canada, the RCMP, Health Canada and the Public Health Agency of Canada.

In 2020-2021, the Commissioner also held meetings with ministers whose portfolios include institutions subject to the most access to information complaints, as well with the RCMP Commissioner, the Canada Revenue Agency's Executive Committee and the Interim Clerk of the Privy Council. The Commissioner encouraged these leaders to set an example and communicate the importance of upholding the right of access to information, ensuring the diligent management of information, as well as providing timely responses to all access requests. She also highlighted the need to take immediate and concrete action, rather than waiting for legislative change, and stressed the importance of having the necessary resources, processes and tools in place for institutions to meet their obligations under the Act. In addition, she invited them to voluntarily disclose useful and relevant information as access requests should complement, but not replace, proper mechanisms allowing Canadians to directly and effectively obtain the information they need.



**SPOTLIGHT
ON INNOVATION**

SPOTLIGHT ON INNOVATION

As the Commissioner has noted several times in the past, the federal access regime is plagued by a heavy reliance on paper and outdated systems for managing requests. These problems are compounded by poor information management practices leading to large volumes of records. The result is clear: under-resourced access units are overwhelmed by increasing workloads and longer timelines, making increased delays in responding to access requests inevitable.

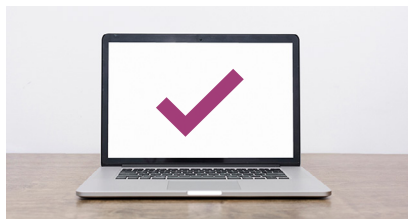
This accounts for the overall government-wide deterioration in the system. However, the OIC's investigations and interactions with ATIP units have highlighted a few examples of institutions bucking this trend, by taking the initiative and adapting to the new reality brought on by the pandemic:

1

The Canada Revenue Agency (CRA) launched a reengineering initiative to tackle its backlog, address growing numbers of access requests and put in place long-term continuous improvement solutions for their access to information and privacy programs. This has resulted in a 56% reduction in the backlog, and a compliance rate of 85%. CRA is also working to reduce ATIP requests by leading requesters to use existing self serve portals where information can be retrieved directly.

2

IRCC designed, developed, implemented and integrated robotics process automation into the processing of ATIP requests. The system identifies processes that were routine, data-entry based and high in volume, allowing for an automation solution to complete the required tasks.



3

ATIP services for both Health Canada and the Public Health Agency of Canada (PHAC) are provided as a shared service by the ATIP Operations Division situated within Health Canada's organization. Since the start of the pandemic, the volume of Health Canada's access to information requests have increased by 6%, while PHAC's requests have increased by 393%. Over the last two years, the ATIP Operations Division has substantially increased its capacity through targeted, public post-secondary recruitment campaigns. In addition to meeting its own hiring needs, the list of qualified candidates is made available to other institutions, helping to increase capacity across government.

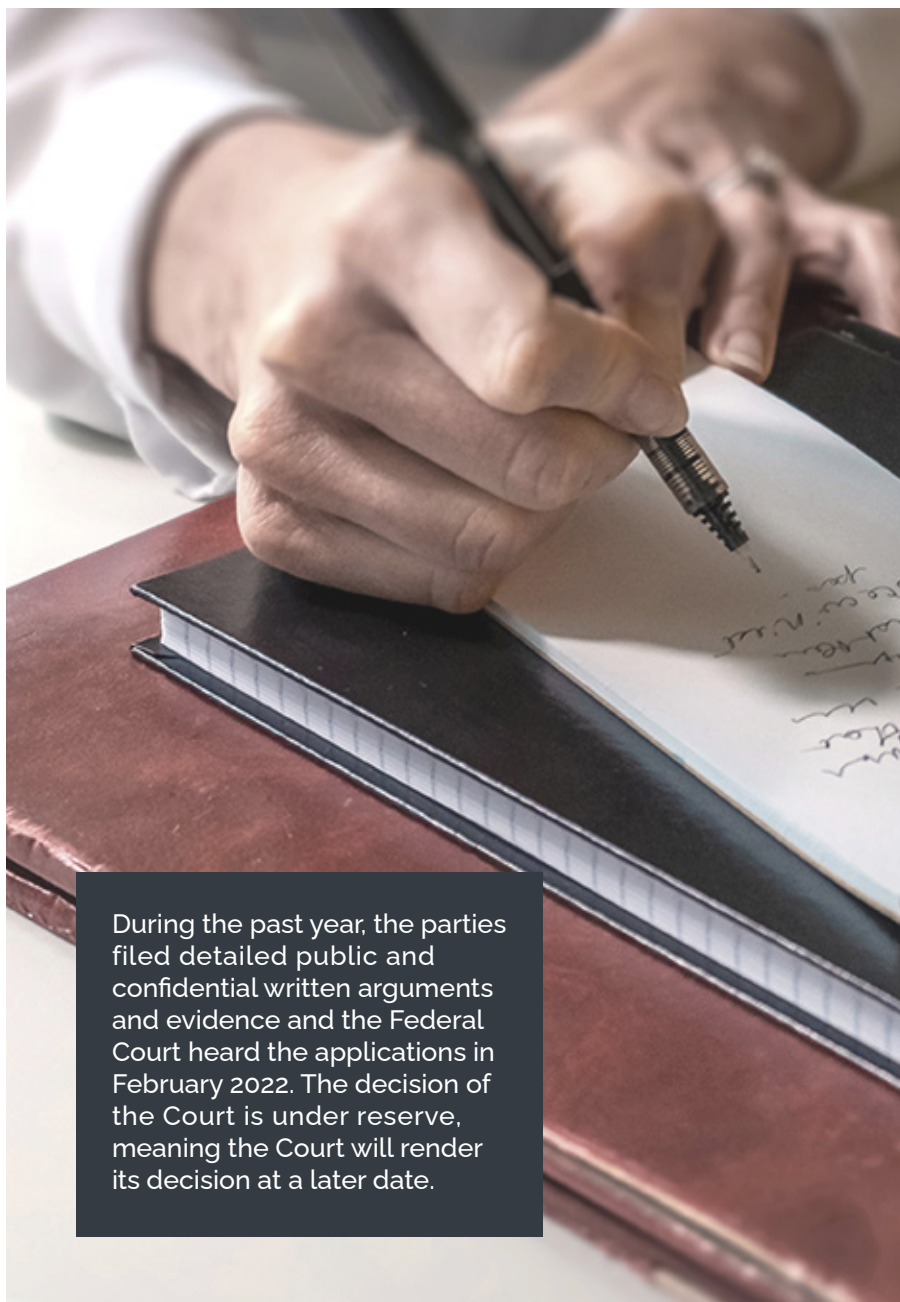
The Commissioner salutes the individuals and units responsible for these innovations, and remains hopeful that in the coming months and years, other institutions will take a cue from their trailblazing ways.



BURCU GURKAN
Investigator



**UPDATE
ON LITIGATION**



During the past year, the parties filed detailed public and confidential written arguments and evidence and the Federal Court heard the applications in February 2022. The decision of the Court is under reserve, meaning the Court will render its decision at a later date.

UPDATE ON LITIGATION

Three consolidated applications are currently before the Federal Court in a case regarding whether individuals are identifiable from general geographical data. The case is related to a Health Canada program that permits certain individuals the right to grow and use medical marijuana.

In responding to the access request, Health Canada disclosed only the first character of postal codes. The institution claimed that any additional characters of postal codes as well, as city names, are personal information exempt from disclosure.

The Information Commissioner has appeared in Court on behalf of the requesters, contesting Health Canada's claim that the data constitutes personal information. The Commissioner had investigated the requester's complaints against Health Canada and found that most of the second and third characters of postal codes and names of cities do not constitute personal information, as their disclosure would not render individuals identifiable.

Health Canada claims that releasing the withheld data would render individuals identifiable. Health Canada points to its previous releases under the Act, and other information that can be used to make links with the withheld data—as creating a serious possibility that individuals could be identified, either through the withheld data alone or in conjunction with other available information.

The requesters and the Commissioner disagree, arguing that second and third characters of postal codes and names of cities in this case correspond to populations that are too large to enable a serious possibility that individuals could be identified. Therefore, in the Commissioner's view, the legal test for personal information is not met.



**INVESTING
IN OUR RESOURCES**

INVESTING IN OUR RESOURCES—NOW AND FOR THE FUTURE

In the last year, the OIC has continued to focus its efforts on building the capacity required to respond to an increased volume of complaints, as well as securing the permanent resources required to maintain a viable and sustainable investigations program.

Recruitment efforts, combined with the use of the OIC's existing Professional Development Program designed to support career progression, were the main elements of the stabilization phase of the OIC's long-term staffing strategy. The result is a permanent complement of 135 full-time equivalents (FTEs), enabling the OIC to more effectively support the Commissioner in fulfilling her mandate. The OIC also pushed forward initiatives to assist its workforce in fulfilling day-to-day functions. These include continuing to move towards cloud technology and the employment of artificial intelligence software to develop a translation memory tool that increases efficiency and consistent terminology in documents published in both official languages.

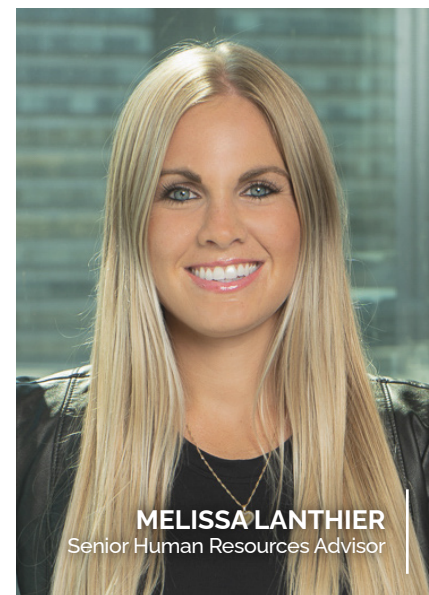
Notwithstanding the many efforts deployed in these areas, the OIC's ability to deal with an ever-increasing volume of complaints continues to be tested, with a record year number of complaints submitted in 2021–2022. Additional resources will be needed to ensure that the gains in efficiency the OIC has achieved are not lost, should the numbers of complaints continue to increase.

Remaining an employer of choice

The OIC is applying an integrated approach where people, technology and the work environment intersect to reflect its aspiration of being favored among peer organizations as an employer of choice. Partly through the planning and designing of the OIC's future workplace—a hybrid environment that gives employees the flexibility to adopt a work arrangement based on their needs—the OIC is creating the conditions that will enable employees to perform their best.

Building a safe, healthy, positive and inclusive workplace

In 2021–2022, the OIC initiated three-year plans aimed at building upon the institution's mental health and equity, diversity and inclusion commitments (EDI). The primary goals and associated initiatives of the mental health plan are to create a flexible work environment, where two-way communications are the norm and employees are recognized for their contributions to the OIC's success. Initiatives related to EDI focus on promoting a workplace where conversations about equity, diversity and inclusion are encouraged and supported, while building an organization that reflects Canada's diverse population and linguistic duality.



MELISSA LANTHIER
Senior Human Resources Advisor

The results of the Public Service Employee Survey and the OIC Mental Health Survey indicated a strong sense of belonging among OIC employees. Overall, employees are happy and feel valued, believing that the organization offers them opportunities to provide input into decisions affecting their work, which in turn contributes to the overall achievement of the OIC's goals.



**ABOUT THE OFFICE
OF THE INFORMATION
COMMISSIONER**



ABOUT THE OFFICE OF THE INFORMATION COMMISSIONER

The overall purpose of Canada's *Access to Information Act*, which came into force in 1983, is to protect the public's right to access records under the control of government institutions, while ensuring that the use of exemptions and exclusions is limited and specific. The Act also entrusts the Information Commissioner of Canada with the independent review of any decisions on the disclosure of information. The OIC was established to support the Information Commissioner in her capacity role as an independent agent of Parliament.

The OIC seeks to enforce the Act, using the full range of tools, activities and powers at the Commissioner's disposal. These include negotiating with complainants and institutions and making recommendations or issuing orders to resolve matters at the conclusion of investigations.

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

The Information Commissioner is supported by a staff of 135 employees led by three deputy commissioners responsible for investigations and governance, legal services and public affairs, and corporate services, strategic planning and transformation services.

The Information Commissioner carries out confidential investigations into complaints about government institutions' handling of access requests, giving both complainants and institutions the opportunity to present their positions.

* All participants were in compliance with health measures in effect at the time photographs were taken.



ANNEX

ANNUAL REPORT OF THE AD HOC INFORMATION COMMISSIONER

During the April 2021 to March 2022 recording year, I received many requests for assistance from individuals concerned about ongoing Office of the Information Commissioner's (OIC) complaint investigations or their outcomes. Many were disheartened with delays encountered to obtain results on their files during a second, equally difficult pandemic year of restrictions and workplace disruptions. Despite these odds, I believe all persevered and did their best in the circumstances.

In my role as Ad Hoc Information Commissioner, I answered the call by providing a small measure of support wherever I could, giving explanations on the process, describing steps on how to file a complaint, and of course, by carrying out investigations in complaint cases. Those complaints resulted from access to information request processes with the OIC that left the requesting individual dissatisfied with its handling or outcome.

It bears repeating that, according to the legislation, I can only investigate complaints against the OIC. While seventeen (17) complainants have asked me to review the handling or outcomes of the OIC's complaint investigations involving other public bodies, this is not my role. However, I do take steps in informing those individuals as to why I cannot act and redirect them to the correct process. I also received eight (8) complaints: one was investigated and was found as not well founded, three (3) did not need to be investigated and four (4) are still under investigation.

Case Highlight

In each of my Annual Reports, I try to highlight some of the interesting aspects of the legislation to provide the public with lawful access to information. The sole investigation concluded this year involved a complaint regarding an OIC's decision to take more time to respond to a request beyond the statutory limit of 30 days.

Under the *Access to Information Act*, every person has the right to request and be given access within 30 days of receipt of the request (section 7). However, [section 9](#) allows an institution, including the OIC, to extend the time frame for responding to a request if certain conditions are met.

In this case, I was required to examine the OIC's decision to extend the time limit by 180 days beyond the initial 30 days, which was not an insignificant period of time. The OIC relied upon a single condition for the extension—that of having to process a large number of records. The case revealed that there was indeed a large number of records—in excess of 17,500 pages to be searched and reviewed—making it impossible to respond within 30 days. As a result, I qualified this as an "exceptionally large request".

Having examined all the circumstances surrounding the handling of the request, I found that the extra time required to process and respond to this very large request was reasonable, but more importantly, I also found that the OIC had approached the processing of the request with the same care and attention as in all other requests it received. Staff had also shown respect towards the requester who had filed other separate requests during a four-month period, all of which were processed on time. In the final analysis, there was no proof that the OIC had acted in a manner other than without bias or subjectivity and applied its discretion to extend the time limit by 180 days reasonably. I found the extended time limit, although six months beyond the initial 30-day time limit, to be both reasonable and lawful in that case.

Conclusion

I hope that my Annual Report has communicated helpful insights into the work I do as Ad Hoc Information Commissioner. I look forward to concluding the ongoing complaint investigations and continue to be of service to those who seek my assistance in the coming year.

Respectfully submitted,

ANNE E. BERTRAND, Q.C.

Ad Hoc Information Commissioner

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