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• (1100)

[Translation]

The Chair (Mr. Pat Kelly (Calgary Rocky Ridge, CPC)): I call this meeting to order.

Welcome to meeting number 22 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

[English]

Pursuant to Standing Order 81(4), the committee is considering the main estimates for 2022-23: vote 1 under the Office of the Commissioner of Lobbying; vote 1 under the Office of the Conflict of Interest and Ethics Commissioner; vote 1 under the Office of the Senate Ethics Officer; and votes 1 and 5 under the offices of the Information Commissioner and Privacy Commissioner of Canada, referred to the committee on Tuesday, March 1, 2022.

Today's meeting is taking place in a hybrid format, pursuant to the House order of November 25, 2021. Members and witnesses are attending in person in the room and remotely using the Zoom application. I think everybody, including our witness today, would be familiar with the format.

Before we go to our witness today, we have an administrative point that we need to deal with. That is the budget for the study of the main estimates. This was distributed to everyone this morning.

Is it the pleasure of the committee to adopt the proposed budget?

Mr. James Bezan (Selkirk—Interlake—Eastman, CPC): I so move.

The Chair: Do we have any objections to this proposed budget being adopted?

(Motion agreed to [See Minutes of Proceedings])

The Chair: Thank you.

I would now like to welcome our witness from the Office of the Information Commissioner of Canada, Information Commissioner Caroline Maynard.

Ms. Maynard, you have up to five minutes for your opening statement.

[Translation]

Ms. Caroline Maynard (Information Commissioner, Office of the Information Commissioner of Canada): Good morning.

Thank you for inviting me today.

[English]

I have been looking forward to the opportunity to speak to this committee.

[Translation]

I am eager to answer your questions about how we, at the Office of the Information Commissioner of Canada, work to uphold the right of access through our investigations, the guidance we provide to complainants and institutions, as well as our observations regarding the access to information regime.

[English]

The year 2021-22 was a record year for the number of complaints submitted to my office. We registered nearly 7,000 complaints between April 1, 2021, and March 31, 2022. This represents an increase of 70% over the previous fiscal year.

My team remains 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. However, this steady and ever-increasing stream of complaints represents a major challenge for my office.

In response to this challenge, we have thrown everything we have at these complaints. Our extraordinary efforts to boost our performance have included putting capital expenditures, longer-term projects and all hiring, except for investigators, on hold in order to put more resources towards investigations and ultimately close nearly 6,800 files last year. This is well above the 4,400 files we are expected to close based on our current funding.

Even with our improvements in efficiency and our continuously improving results, we're not able to keep pace. Our backlog continues to grow. In concrete terms, this means that Canadians are not getting timely resolutions of their complaints for access to information requests related to contracts signed by the government during COVID.

• (1105)

[Translation]

It means that residents in your riding still don't have the information they are seeking on immigration applications for loved ones.

It also means that numerous first nations communities are still denied access to records that could help us move forward with reconciliation.

[English]

The scale of the challenge is such that we cannot innovate our way out of the situation. We are at risk of not being able to provide even the most basic minimum of service to Canadians. Additional resources for my office will be needed 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.

[Translation]

For some time, I have been sounding the alarm on issues with the access to information system that have grown worse since the onset of the pandemic. In March 2020, I stated that a properly functioning access system is critical to ensuring accountability, transparency and the trust of the public.

[English]

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 challenges it brought to our lives and to our work environments, yet COVID-19 continues to be used as an excuse for poor performance in the area of access to information.

This is not acceptable. Institutions must live up to their legislative obligations. In my meetings with ministers and senior leaders, I emphasize that they must make the right of access a priority.

[Translation]

There is no need to wait for legislative change to take action, especially considering that the review of the Access to Information Act the government was required by law to launch in 2020 has not yet concluded. The Treasury Board Secretariat's report on the review of the access regime was originally planned for the beginning of 2022. Unfortunately, it has not yet been released.

[English]

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. All of this paints a bleak picture of the state of access in 2022.

[Translation]

I will now be happy to take your questions.

[English]

The Chair: Thank you very much, Commissioner.

The first questions will go to Mr. Williams.

Mr. Ryan Williams (Bay of Quinte, CPC): Thank you very much, Ms. Maynard, and thank you for coming today.

I'm going to start with the budget, which you ended with.

Your budget this year was cut by over \$800,000 from last year's estimates, with over \$2.1 million in extra expenditures. You talked about how you processed over 6,800 files. That money was to pay for over 4,400, so obviously it's decreased. We're not getting what we need to take care of the files you have.

Did you request your budget to be reduced?

Ms. Caroline Maynard: My budget did not get reduced, actually. It was increased two years ago by \$3 million.

With respect to closing, the budget that was given to us was to close 4,400 cases a year. What I was saying is that, even though we got an increase in our budget, now that we're getting around 6,500 complaints a year, we're not able to keep up with the pace.

Mr. Ryan Williams: Ms. Maynard, I'm looking at the main estimates for 2022-23. Estimates to date for this year were \$16 million. I'm looking at program expenditures in the office of information and at estimates to be \$14.1 million. That's a difference of \$2.1 million.

• (1110)

Ms. Caroline Maynard: I think it's because we were able to carry forward \$1.8 million from a previous year that was not expended. Our funding has been the same for the last three years.

Mr. Ryan Williams: Did you ask for the same funding, or what funding did you request for this year coming up?

Ms. Caroline Maynard: For this year, we just started putting the numbers together. We're hoping to have a submission done by the end of the summer. Because of the increase by about 2,000 cases a year, plus all the infrastructure that we were not able to put in place because we didn't have enough money, I think it will be in the ballpark of \$3 million to \$5 million extra that we will be asking for.

Mr. Ryan Williams: Do you think that will catch up the backlog plus fulfill all the requests that you'll have coming in?

Ms. Caroline Maynard: Because we're able now, with the people I have, to close around 6,000 cases, I'm hoping that will keep pace. We'll have to increase that by about 2,000 cases a year, because we currently have 4,000 cases in our inventory. This is only going to increase. To give you an idea, this month we received 1,000 new complaints. If this continues for the rest of the year, if that's what it's going to be, I'm talking about 12,000 cases for 2022-23.

Mr. Ryan Williams: What's the backlog right now? What's the longest we have for someone waiting for a case to be resolved?

Ms. Caroline Maynard: When I was appointed in 2018, we had a backlog of 2,400 cases. Some cases dated back to 2010. Luckily now, out of those 2,400 cases pre-2018, we only have 400 cases left. We're doing really well. Those cases are the complex cases, unfortunately. However, we have about 4,000 cases pre-2022, so we have a backlog of 4,000 cases, which keeps growing.

Mr. Ryan Williams: Some of those are over two years old. Is that correct?

Ms. Caroline Maynard: Oh yes.

Mr. Ryan Williams: If they're complicated... How complicated are they that they take over two years? Are there some that are waiting that aren't two years but aren't complicated? Why do we have some that are certainly over two years old? Maybe you can let me know of an example.

Ms. Caroline Maynard: We have examples of cases where the types of documents are “secret” or “top secret”. Those are difficult to investigate. We have to have a special infrastructure and special delegation to investigate those cases because they're dealing with national security documents. Then, we have to also talk to the institution. Some of the analysts who were dealing with these requests have left, so sometimes we have to start from scratch in dealing with the institution and understanding why they redacted the documents.

Sometimes it's complex just because they have thousands of pages. We've had a case recently with the Department of Justice that had 22,000 pages. When you do a line-by-line, it does take a lot of time—

Mr. Ryan Williams: On the average ATIP that's done, what's a reasonable return from your department? What would your mandate be if you had everything, if you had all the funding you needed? Not for a complex one, but for an average request, what's the average return you'd get? What would you want?

Ms. Caroline Maynard: Our goal is to do an investigation within 90 days, but we are unable to do that.

We do that, the 90-day investigations, on cases that are out of time: institutions that didn't respond in 30 days for their requests or ask for an extension. We're trying to do those in three months.

For investigations on exemptions and redactions, we can take about six months to about year to do a normal long investigation.

Mr. Ryan Williams: What's the average right now? I don't know if you mentioned that. What is the average length of time right now for someone submitting a request for information to get that back?

Ms. Caroline Maynard: For the institutions to respond to requests, they have an obligation under the law to respond in 30 days. I think only 62% of requests are meeting those time lines. That's why I think we are getting more complaints to my office—because timelines are not being respected in 45% to 50% of the cases.

Mr. Ryan Williams: Thank you very much.

Ms. Caroline Maynard: You're welcome.

The Chair: Next we have Ms. Hepfner for up to six minutes.

Ms. Lisa Hepfner (Hamilton Mountain, Lib.): Thanks very much.

Thank you for being here today, Ms. Maynard, to answer our questions.

You mentioned in your opening statement that COVID-19 has become an excuse for poor performance, which is not acceptable. I agree, but I'm wondering if you can help us understand a bit about the impact of the pandemic on the entire system.

Did we see more FOI requests during that period? What were the impacts on the people trying to respond to those requests? Why are we seeing thousands more cases that you have to respond to?

• (1115)

Ms. Caroline Maynard: Thank you for the question.

In the first year of the pandemic, we saw a decrease in the number of requests. I think Canadians had other issues to deal with. It

was understandable that people were more worried about their health and security than access requests, but in the last year we've seen an increase in access requests.

The problem is that the government employees were not allowed to go back to their institutions to work on files. Often, ATIP units were asked to not connect on the server until late at night or during weekends so that the network was not being overwhelmed with people working.

At the beginning, in the first six months, it was very difficult and a challenge for analysts in the units to respond to access requests, because they didn't have the infrastructure or they didn't have access to paper copies of the documents that would be requested, or they simply were not getting responded to from the OPIs—the offices of primary interest—or from other people working in the institutions. Often, the last thing they want to do is respond to an access request. They have their program that they're dealing with and the operations. That's definitely something that these analysts were dealing with.

Now, after two years, we're saying that there are no more excuses. People are allowed to go back to the office.

We do. We have people coming to my office. We respect the restrictions and the health limitations, but we have to be able to do our work.

In the legislation under the act, there's no way to stop responding to access requests. This is an obligation under the act, and institutions have the responsibility to find ways to do it. There are some departments that used this opportunity to innovate and to put in place technology so that they were able to respond and still work from home. Other departments are taking a little longer in terms of taking this opportunity and these chances to improve their system.

Ms. Lisa Hepfner: That is a perfect segue to my next question.

When I was a journalist at the Hamilton Spectator, we almost had a mandate to file FOI requests and to look for things to file FOI requests. It was really burdensome. There was a lot of documentation. You had to file it away, send it away. It would come back with thick packages full of documents.

How has that changed over the past 20 years? Are we more digital now, and is there more we can do to digitize the system to make it more accessible and more transparent and easier for people to get the information they deserve?

Ms. Caroline Maynard: It's actually a double whammy. We are more digitalized now. Government is working electronically. Working from home has helped create documents electronically instead of having documents on paper. For that, we're better. I think we're also using emails to respond to access requests. We are using epost.

On the other side, the fact that we're now creating documents electronically and we're dealing with people by emails and texts has created a monster of information. Sometimes I give the example of an email exchange that four people have kept in their inbox. If you have an access request, normally what we say is that the main receiver of the exchange should keep the emails. The other ones should not have duplicates.

Most people don't erase emails, or they don't file those documents properly. I'm sure you and I are guilty of this as well. You end up with duplicates and numbers of pages. We are now dealing with access requests where maybe you would normally get 10 pages and now you're getting 500 pages in response to your request.

It has created a different challenge. Information management is definitely a big issue within the government, and not just our government. Most institutions have that problem. We're trying to encourage leaders to provide their employees with tools so they can erase, manage, clean up and only keep the corporate documents that are important, but we don't see that, so the requests are becoming bigger and bigger.

• (1120)

Ms. Lisa Hepfner: I have less than a minute.

I understand that your employees are able to work remotely. What's been the impact of that? Has it been overall positive, negative? Maybe reflect on that for a bit.

Ms. Caroline Maynard: It's been very positive for my office. I was very pleased. I was surprised, actually. We started working from home right away in 2020. Every file we have here has been digitized. We closed 6,800 cases last year. That's a record. We've never done more than 6,000 in one year. I think the fact that we're working from home and we're giving the tools to our employees to do that has been very helpful. The only files we have to do at the office are the secret files and the top secret files, so we have employees coming in for those.

The Chair: Thank you.

[Translation]

Mr. Villemure, go ahead for six minutes.

Mr. René Villemure (Trois-Rivières, BQ): Thank you very much, Mr. Chair.

Commissioner, thank you for joining us this morning.

I will begin by putting a question to you about the letter you sent on July 8, 2021, to Mr. Duclos, who was then president of the Treasury Board, to share with him your observations following meetings with various ministers. One of the things the letter talked about is the importance of implementing a declassification program.

I will provide you with some context. I have thoroughly analyzed the history of document declassification, and I realized that documents are often overclassified—in other words, documents are classified too often. You also talked about that earlier.

According to a recent article published in *Foreign Affairs* magazine, in a single year in the United States, 4 million people classified 50 million documents, for a total cost of \$18 billion. Of course,

that is done on a smaller scale here. In conclusion, the article says that most of those documents do not contain important secrets in reality, and that they are being classified only as a precaution or to avoid accountability.

What do you think about that?

Ms. Caroline Maynard: Your question pertains to two specific issues.

Documents can be classified as “secret” or “top secret”. What we are seeing is that some documents should not have been classified as such. As you say, when people see a document that is classified as “secret” or “top secret”, they often redact it as a security measure because they are afraid of letting secret information through. If classification was done better, some information would surely be transmitted more quickly.

Moreover, some documents that are 50 or 60 years old are still classified as “secret” or “top secret”. We would like there to be a program under which the government would look into those historical documents to determine whether they are really documents that are still secret or of a sensitive nature in 2022 or whether, on the contrary, they could be declassified so that people would have access to them more quickly.

Mr. René Villemure: So that would be declassification based on obsolescence, if you will. However, perhaps an effort must be made to not overclassify simply for fear of being afraid.

Ms. Caroline Maynard: It's a training issue. We definitely need a better system.

Mr. René Villemure: Of course, you and I both know that it's good to keep secrets, but not everything is a secret, actually.

Your office's mission is to foster transparency and accountability across the federal government. In a few words, you therefore rally confidence. How do you go about doing that?

You mentioned a few departments that are less cooperative than others. However, generally speaking, does the federal government try to stand in your way or is the relationship quite amiable?

Ms. Caroline Maynard: Actually, we have a very good relationship with the institutions we investigate. The challenge is that people are filing more and more ATIP requests. More and more people are asking questions about our government, its decisions and its spending.

The ATIP request system is very costly to my office, which must do investigations, and to the government, which must manage everything. If we want to reduce the pressure this system puts on the government, the government has to start disclosing information voluntarily. I'm talking about proactive voluntary disclosure and making information available in both official languages on the government website. Canadians shouldn't have to file an ATIP request when we know they should have access to the information in question.

This will also help with accountability, which I talked about earlier. Canadians will have more and more confidence in government if they have access to information that has been proactively made public, and they don't need to file an ATIP request. Often, people who file requests with my office think that the government wants to keep the information they seek secret and not disclose it. That's not the case. It's just that there's a lot of information out there. We want institutions to think about it and determine what information Canadians should have access to. That way, people wouldn't have to wait for a response to their ATIP request.

• (1125)

Mr. René Villemure: Could we propose a legislative amendment to force government agencies to make that effort, that is, to go through obsolete documents to do some tidying up and declassify some of them? Would that help you?

Ms. Caroline Maynard: Part 2 of the Access to Information Act already requires departments and ministers' offices to provide specific information, including information about spending. That's a good start.

What I'm suggesting would go even further. For example, in the United States, after three freedom of information requests on the same topic, the information is automatically made public. The Canadian government could legislate a similar mechanism. It could also take steps like that voluntarily, but it's not doing that right now.

Mr. René Villemure: I have under a minute left, so I'm going to ask you a quick question.

Does the RCMP cooperate when there are ATIP requests?

Ms. Caroline Maynard: The RCMP cooperates, but they have a significant backlog. We're currently working with them. Recently, we quickly resolved 50 complaints, so I think they are taking the situation seriously.

Mr. René Villemure: What's the longest response time for the RCMP to date?

Ms. Caroline Maynard: I don't know. I'd have to find out before I can respond. We have over 300 complaints about the RCMP, so surely there are a few that are five or six years old.

Mr. René Villemure: I would very much appreciate getting that information in writing.

Ms. Caroline Maynard: Sure, that's fine.

Mr. René Villemure: Thank you very much, Commissioner.

[English]

The Chair: Thank you.

Mr. Green, go ahead for up to six minutes.

Mr. Matthew Green (Hamilton Centre, NDP): Thank you.

I will follow up on that question in a bit of a rather rapid-fire way. I reference Mr. Michael Dagg, who has a request in to the RCMP and was told that he would have an 80-year turnaround on that.

Would you care to comment about the efficacy of a program that's supposed to be about open government when people who are looking for sensitive information have to wait 80 years for any kind of substantive information?

Ms. Caroline Maynard: The specific case you're referring to is actually a file from the RCMP that was transferred to Library and Archives. Library and Archives is the one that had requested an 80-year extension to respond to the request.

Library and Archives are in a very specific and difficult situation where they are in control and they have the documents with them, but they're often documents that were created by another institution. What they do is consult with the institution the information comes from. That consultation takes—

Mr. Matthew Green: Just for reference, this was on Project Anecdote.

While we have the RCMP up, there's another history. You referenced American examples. I will bring to your attention the work on COINTELPRO in the 1970s and what has been called administrative sabotage. In fact, Paul Marsden, the former military archivist for Library and Archives of Canada, said, "Something unique is slowly strangling Canadian history, and we should call it out" in these processes.

Could you perhaps comment and expand on why transparency on these types of sensitive archival records... I think with this particular file it references the sensitivity around FOLs of CSIS and the RCMP with specificity around the RG146 vault.

Can you talk about the need for the automatic declassification of information for the public interest?

Ms. Caroline Maynard: This is exactly what we were talking about earlier.

We need in Canada a program where these older files, which are secret, top secret or have sensitive information... Our history, with respect to some very specific national security documents that existed 50 or 60 years ago, is still classified as secret and top secret. If we don't have a program where a committee or a group or somebody looks at them after a certain number of years and declassifies them to make them available, we will continue to have access requests denied, like Mr. Dagg who received an 80-year extension.

The United States has a program right now on declassification. There's an automatic program where, after 20 or 25 years, documents such as Project Anecdote files are reviewed and declassified and then accessibility to those documents is a lot easier.

• (1130)

Mr. Matthew Green: Thank you.

I really do appreciate the candour.

What I heard in your statement and what I'm reading in your letter to the Treasury Board, with the candour with which you present it, is sobering. In fact, I would call it the canary in the coal mine. It's an indictment.

In your recommendations, recommendations 7 and 8 provide specificity around cabinet confidences. As a member of Parliament and somebody who believes that we have parliamentary privileges to be able to get to the bottom of our work and to have access to these documents, it's been my experience that the government, particularly this one, has a propensity to make everything a cabinet confidence or everything about national security and, therefore, nothing is accessible.

In your letter, you referenced that you had discussions with 12 of the 16 ministers. You talked about the need to set an example. I would agree that attitude reflects leadership. From that, how many of them have responded back to you with a subsequent plan for the development of a declassification program?

Ms. Caroline Maynard: I'm aware that right now the public safety department is doing a pilot project on some specific documents where they have a committee looking at declassification.

I've heard that TBS is looking at putting in place such a program, but there's nothing concrete so far. I'm hearing anecdotes and it's pretty much hearsay, but the public safety minister has one.

Mr. Matthew Green: Just for the record, will you confirm that it's two out of the 16 who have at least said they're initiating some type of project in this regard?

Ms. Caroline Maynard: No, the departments are not.... I think what we need is a program overall for the federal government. If each department starts its own, it's not going to accomplish much. I think they have to get together.

Most of the institutions don't deal with those types of documents, but we have Library and Archives, Global Affairs, PCO, DND, RCMP, Public Services—

Mr. Matthew Green: With my time remaining and the answer being short, I'll ask you this. In your list of recommendations, do you feel that you have adequately captured the direction and recommendations for this committee to ensure that, leaving this study, we would have the basis for the recommendations to ensure that there is a government-wide declassification program? Is that something you'd like to add in addition?

Ms. Caroline Maynard: I would like to refer you to my special report that I tabled two weeks ago for Library and Archives on a systemic investigation where we made recommendations with respect to declassification.

We also did a report a couple of years ago on that specific topic. It is accessible and I can send you the link after my appearance, if you would like.

Mr. Matthew Green: Mr. Chair, just as a point of administration, could we just request that those documents be submitted in

writing, so they could be for the consideration of our analysts for final recommendations?

Thank you.

The Chair: Your request is noted.

We'll go to Mr. Kurek now for five minutes.

Mr. Damien Kurek (Battle River—Crowfoot, CPC): Thank you very much, Chair.

Thank you, Commissioner, for coming to this committee.

I'm a firm believer that one of the hallmarks of a well-functioning democracy is an effective, efficient and trustworthy access to information regime. Would you agree with that?

Ms. Caroline Maynard: Totally, yes.

Mr. Damien Kurek: Since being elected in 2019, my office has filed a little over 300 ATIPs. About 50 or 60 are outstanding.

My question is very much related to a letter that you shared with Minister Duclos when he was minister of a different portfolio. I'll read from it: "As you are aware, the pandemic did not suspend the right of access. If anything, it increased the need for government transparency—an effort that calls for the collective leadership of all members of cabinet."

Commissioner, have you seen that leadership over the course of the pandemic?

Ms. Caroline Maynard: We have not been able to see real actions. I know that there are some actions being put together by TBS, but we are still waiting for a report with respect to the legislative review of the system. Some departments are doing really well. I would say that the Canada Revenue Agency has put in place a lot of innovation to be able to respond to access requests that were increasing in numbers because of CERB and all of the benefits that they put in place. As a whole, it's very difficult to pinpoint action.

• (1135)

Mr. Damien Kurek: Thank you very much. I appreciate that.

Library and Archives, according to the information that's provided, shows that 80% of requests did not comply with the timelines in the act. There are other departments as well, the RCMP, CRA and others. I know you wrote to 16.

What is the solution? Do there have to be further penalties? Is it resources? Could you sum it up in 30 seconds? I know time is short. What is the solution?

Ms. Caroline Maynard: It's a culture of openness and moving away from secrets, like we talked about earlier. More resources will be needed, but better management of information.... There are a lot of different factors that need to be considered. It's not just one thing.

Definitely I think that leaders need to give the direction that they want to be open and transparent and then match their words.

Mr. Damien Kurek: Thank you very much for that.

I would note that this was an issue that certainly came up in the 2015 election. The government seemed to claim victory, but certainly, from what you've described today, that's not a victory that anybody should be proud of.

Madam Commissioner, have you ever noted political interference in any access to information requests?

Ms. Caroline Maynard: We have not had any complaints with respect to that type of interference. I understand that Madame Legault, the commissioner before me, had an investigation with respect to that. There's a report on our website with respect to that type of interference, but that was previous to me.

Mr. Damien Kurek: Thank you.

Has there ever been a note of access to information officers being chastised, disciplined or released, because of performance that may have been related to the information they released through access to information requests?

Ms. Caroline Maynard: I wouldn't be able to tell you. I'm not aware of anything. If we see in our investigation that somebody has been trying to interfere or intervene and that it could also be intentional, I cannot investigate those types of actions. I can refer them to Minister Lametti, who can investigate criminal action. I know we referred six of those, and I don't think there's ever been an investigation by the RCMP or by this government with respect to those.

Mr. Damien Kurek: Just to clarify in the short time I have left, you've referred six cases like that to the Minister of Justice, but there's never been any investigations.

Ms. Caroline Maynard: As far as we're aware, there were six by me and former commissioners that never led to charges.

Mr. Damien Kurek: Thank you very much, Commissioner.

The Chair: Thank you, Mr. Kurek.

Now we have Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you very much, Chair.

Thank you to the commissioner for coming in today and her openness to answering questions.

I know that Mr. Green made the assertion that he feels that everything is a cabinet confidence.

Perhaps, Commissioner, I'll start by asking if there is evidence to prove that there's any substance to what Mr. Green has said, that everything seems to be a cabinet confidence.

Ms. Caroline Maynard: I'm only aware of the cases that are referred to me through complaints. We receive files where there is some cabinet confidence information that's been redacted. Unfortunately, I don't have the authority to look at those documents. I have to rely on the words of our institutions when they say that the documents are under cabinet confidence.

It is not the majority of our documents. We have just a small number of cases that deal with cabinet confidence. I wouldn't be able to tell you if that's something being used by the institutions.

Ms. Iqra Khalid: Out of the 6,000 some cases that you've received over the past couple of years, how many of those deal with cabinet confidence?

• (1140)

Ms. Caroline Maynard: I would not be able to tell you right away. I don't think more than 5% of our cases deal with cabinet confidence.

What often happens is that requesters know they're not entitled to those documents, so they will remove that from the scope of their requests, saying, "I want everything but cabinet confidence." We often deal with complaints dealing with personal information or advice and recommendations. When there's cabinet confidence, like I said, we're not entitled to see them, so it's difficult for us to acknowledge if they are real cabinet confidences or not.

Ms. Iqra Khalid: My friend and colleague, Mr. Kurek, said that since 2019, since he's been elected, he has submitted ATIP requests about 300 times.

Out of the 6,000 that you've received over the past year or couple of years, how many of the claims that you deal with were vexatious claims or fishing expeditions?

Ms. Caroline Maynard: We don't look at what the intentions of the requesters are. We are asked to review to make sure the request has been responded to in time, or that the redactions are appropriate. We do have a section in the act now that institutions can try to refuse to respond to a vexatious request or one made in bad faith, but they have to ask my permission to do so. In the last two years, we've received maybe a dozen of those requests, and we only said yes to one or two.

Ms. Iqra Khalid: ATIP requests and freedom of information are a huge part of building trust in public institutions and governance. Since 2015, our government invested about \$50 million in expanding that transparency within our government.

Do you think this is something we should be expanding on? Are we headed in the right direction? Is there any advice you would give to us on how to continue to build that public trust?

Ms. Caroline Maynard: I totally agree that we need to increase resources within institutions. They need more trained analysts. They need human resources, but also technology to respond to the increase in demand. There are definitely some investments that need to be made, but like I said earlier, there are all kinds of factors that are impacting the system as a whole.

My submission to Treasury Board deals with both the legislation recommendations and how we can improve the system. I encourage you to read the submission. I will send the document if you want in writing. Resources are one, but the direction from our leaders to have transparency, openness and proactive disclosure is definitely the way to go.

Ms. Iqra Khalid: Thanks very much for that.

Out of the ATIP and FOI requests you receive, do you keep track of which department those FOI requests are going to or requesting information from? Do you have that information accessible to us?

Ms. Caroline Maynard: We only track the number of complaints we receive. The TBS is the administrator of the act, per se, so it receives the annual report from each institution, so it knows which institutions is getting what number of requests.

Based on my statistics, I can tell you that Immigration Canada is at the top of the number of complaints we receive, but it also receives over 120,000 requests a year. We have about 4,000 cases right now with respect to IRCC. The CBSA is the second institution we receive the most complaints about. The RCMP is third. CRA is fourth. PCO is fifth.

We keep track of the institutions with respect to the number of complaints we get, but not the number of requests they receive.

Ms. Iqra Khalid: Thanks for that.

Lastly, we've had a conversation in this committee today about classified information, about top secret information. Do you think that there is...? Obviously, when we redact information, it's to protect national security and to ensure public safety. Where is that balance, in your mind, in providing access to information to the public while also maintaining the security of Canada?

• (1145)

Ms. Caroline Maynard: The act provides a good test. You have to prove the harm. By providing the information, is there going to be some kind of harm to our relationship with other countries, or with respect to the information itself? As time goes on, sometimes the sensitivity of that information diminishes. That's why we're talking about a program of declassification.

Sometimes, as you create the document, the information is very sensitive, but if it was created 10, 20 or 50 years ago, that sensitivity is gone. We can tell you that we have seen documents that were published by other countries and Canada is still not releasing them. We often question that. It's already public through a different country, so why is this not something that Canada is willing to release?

The Chair: Thank you, Commissioner. I lost track of the clock and allowed that round of questions to go significantly over time.

I apologize to the other committee members for that.

With that, we'll go next to Mr. Villemure.

[Translation]

Mr. René Villemure: Thank you, Mr. Chair.

Commissioner, if possible, I'd appreciate it if you could send us details in writing on the last item you shared with us. I'm talking about information that remains classified here but is available in other countries or even on the Internet.

Now I want to talk about reasons for refusal. If someone makes a request for access and it's refused, there is a process to review the request. If it's refused a second time, is there an appeal process outside your office or does it all happen within your office?

Ms. Caroline Maynard: We are the first stage of review in the federal government. If someone isn't satisfied with my office's investigation or investigation report, they can go to federal court.

Mr. René Villemure: So that's the way to go.

How easy is it for everyday people to get to federal court?

Ms. Caroline Maynard: As an attorney, I'd say that it's not easy for someone who isn't represented by an attorney.

Mr. René Villemure: Someone in my constituency just wrote that to me.

Earlier you talked about the lack of leadership, or at least the need to show leadership. Can you describe what kind of leadership you'd like to see in this area?

Ms. Caroline Maynard: We have an access unit that works very hard to convince the government or the departments concerned to release information. These individuals apply the law to try to encourage disclosure of information. Some officials are more reluctant, however. We'd like ministers, deputy ministers and assistant deputy ministers to give permission to disclose, to delegate to public servants their authority to disclose information, and invite or encourage them to disclose information.

For example, when one deputy minister I've spoken to write briefing notes, they circle information that is already public and should be disclosed immediately. That way, people use their authority to release information and eliminate the need for review.

However, we often see the exact opposite happening: When looking at a document, people think about the information they can't disclose, rather than what they can.

We want institutional leaders to encourage transparency. We want that message to be clear, so that people aren't afraid to disclose information.

Mr. René Villemure: We could recommend practices like that, for example.

Ms. Caroline Maynard: Yes.

Mr. René Villemure: All right.

Thank you, Mr. Chair.

[English]

The Chair: Thank you.

Go ahead, Mr. Green.

Mr. Matthew Green: Thank you.

I want to note that we are here on the estimates. I appreciate that we've turned it into a grand inquisition. I'll try to go back to that frame.

This past January, your office concluded the systemic investigation into Library and Archives Canada's delayed responses to access requests. You found that almost 80% of the requests completed by Library and Archives did not comply with the time frames as set out in the act.

Your report provided several recommendations to the Minister of Canadian Heritage. However, in your evaluation of the minister's response you said:

The Minister's response fails to address or identify strategies to tackle the accumulated backlog. Rather, the response prioritizes requests categorized as urgent or those related to class action lawsuits first.

The Minister's response does not convince me that he has an understanding of the critical situation at LAC and I continue to urge the Minister to ensure that the backlog is dealt with in the most efficient way possible.

You talked about:

Developing streamlined work processes, innovative approaches, setting timelines and goals...one would expect to be considered and implemented by LAC and the Minister.

That's quite a statement and, I think, indicative of the overall malaise. Can you further elaborate on these concerns and whether anything has occurred to change your opinion?

• (1150)

Ms. Caroline Maynard: I tabled that report very recently.

I understand there's a plan of action being prepared that will be shared with us and the public within the next six months. They're working on obtaining more human and financial resources, which they definitely need. Whether or not we'll see a change... We haven't so far, because we continue to receive complaints and put these actions in place. I'm hopeful they heard me loud and clear.

Mr. Matthew Green: We heard some try to deflect or diminish, perhaps, the impact of cabinet confidence on transparency and accountability. You have two recommendations in this regard. Can you elaborate on why you decided to put those in?

Ms. Caroline Maynard: We are one of the only countries in the Commonwealth that does not have an agency independent of the government to review cabinet confidence documents. Like I said earlier, requesters understand they are not entitled to those documents. It's difficult for me to tell them whether or not the redacted documents are cabinet confidence, so they will often scoop that out of the complaint.

I saw a case where cabinet confidence was mistakenly imposed on documents that were not. We also see that with legal opinions sometimes. They use legal opinion—the exemption in section 23—for documents about discussions between lawyers, or about policy advice that's not legal advice.

I always thought that having someone independent of the government to review those documents, so you can tell the requester, "Trust me, it's cabinet confidence", would increase the trust of Canadians in our government. There's nothing worse than being told you cannot—

The Chair: Thank you. We went significantly over time on that round, but not quite as badly as with other ones. That was an important answer.

Next is Mr. Bezan, followed by Mr. Bains.

Mr. James Bezan (Selkirk—Interlake—Eastman, CPC): Thank you, Mr. Chair.

I want to thank Commissioner Maynard for joining us today and for her testimony.

I want to back up a bit. You're saying you referred six cases to the Attorney General. Over what time frame were these six cases referred? What were some of the circumstances under which departments refused to answer, and why did they need to get that type of legal opinion?

Ms. Caroline Maynard: I cannot get into the specifics of the complaints or the investigations per se. When we see actions that could be interpreted as intentionally trying to hide or erase or take away from somebody's access, I cannot investigate whether it was intentional criminally, so I refer it to the Attorney General. I think I've referred two or three during my term, and there were a few before me.

Mr. James Bezan: Do you know if they are being investigated, Commissioner, or did they just go into file 13?

Ms. Caroline Maynard: We're not informed. There's no follow-up with my office if it has been.

Mr. James Bezan: By legislation, you have to refer it to the Attorney General, not the public prosecutor's office.

• (1155)

Ms. Caroline Maynard: We have to refer it to the Attorney General.

Mr. James Bezan: They would have the option of handing it over to the Public Prosecution Service of Canada.

In your opinion, which department is performing the best right now, in terms of meeting access to information requests?

Ms. Caroline Maynard: I probably don't have any complaints against them, so I wouldn't be able to tell you. We know which ones are not doing well, but at the same time, having a number of complaints—

Mr. James Bezan: Let's do it in reverse, then.

Which are the worst offenders? Can you give us departments, how long they're taking to fill requests and how many complaints are against them because they refused?

Ms. Caroline Maynard: In my annual report every year, we list the top 10 or 20 institutions. Most of the time, it's the same ones: IRCC, CBSA, RCMP, CRA, PCO and Library and Archives. The number of complaints are usually at the highest. Whether or not they are well founded is a different subject.

I can tell you that IRCC is definitely having a hard time responding to 120,000 access requests from clients who are trying to figure out the status of their immigration or refugee file. That was what led me to do a systematic investigation last year. I did a special report on IRCC and came up with a number of recommendations. Increasing the information they provide to their clients will definitely diminish the number of access requests and complaints, as a result.

Mr. James Bezan: Have those departments and the government in general invested heavily enough in having enough information officers to meet the level of requests they're receiving?

Ms. Caroline Maynard: I know that IRCC is really investing in their technology to provide more information and in changing the system, such as the portal they have on their site, but I think that plan of action is on a three-year term because of the amount of work that needs to be done. We still haven't seen any tangible results from those changes. The RCMP also has a very strict plan to try to respond to access requests.

It often is almost overwhelming. Even for me—I have 4,000 complaints in my backlog. When you close one and receive three, what do you do? It's really difficult. That's why our government has to do something else. We have to look at ways to provide information outside of the access requests. The system is overwhelmed.

Mr. James Bezan: You mentioned that a number of departments have been able to adapt to the pandemic and adapt by using technology. Why weren't best practices used across all departments when you looked at who performed well during difficult times and who used it as an excuse?

Ms. Caroline Maynard: I know that TBS is using best practices, and they're sharing with all of the institutions, but like anything else, we're pretty much on our own. Even in my office we have our own access unit, because I'm subjected to the act as well. At one point....

It's really difficult to work with other institutions and to share. We're trying to do that too. When I do meetings with ATIP units, I tell them to go talk to CRA, which has epost now to provide requests, and maybe they would want to join that, or they could look at artificial intelligence to do research. We're giving them best practices, but it's really up to the manager and the minister in a department to put those things in place.

Mr. James Bezan: It all comes down to leadership—or the lack thereof.

The Chair: Thank you, Mr. Bezan.

Now we go to Mr. Bains.

Mr. Parm Bains (Steveston—Richmond East, Lib.): Thank you, Mr. Chair.

Thank you to our witness for joining us today.

iPolitics reported that well-known ATIP expert Dean Beeby is strongly in favour of updating the ATIP system, notably by the tender to replace paper-based or manual processes with a more digitalized system. Are you in favour of this work?

Ms. Caroline Maynard: Yes. Totally. I understand that TBS is now putting in place a system for online requests and online responses, which we are part.... It's like a pilot project. I think that

will help for sure, as long as institutions join the pilot project. Hopefully, that will increase other types of innovation.

• (1200)

Mr. Parm Bains: Okay.

Before the government reformed the law, many requests were for information that is now proactively published. I think you mentioned something around that earlier.

Do you think proactive publication reduced the number of access to information requests, since Canadians could get more online? On the flip side, do you think it increased the average complexity of requests, since such simple requests aren't being filed anymore?

Ms. Caroline Maynard: I would say that part 2 of the act, which provides proactive disclosure.... It's mandatory legislative proactive disclosure. It used to be a policy. It was followed by all of the ministers' offices, so it didn't really change anything. This information was usually proactively provided without having it in the legislation.

It hasn't, in our experience, reduced the number of requests because that's not really what Canadians are after. I think a lot of Canadians are asking for information right now about expenses, about COVID, about vaccines. That's not information that is on the list of proactive disclosure.

Mr. Parm Bains: Okay.

My next question is around the power to order institutions to disclose information. Since 2019 your office has had the power to order institutions to disclose information. How often have you used this power, and has it helped to improve the transparency?

Ms. Caroline Maynard: It has really helped. We have used it over 40 times. What helps is to tell the institutions that we are about to order disclosure. Sometimes that has really helped discussions and compliance with the act, without having recourse to issuing an order.

The other thing that has really helped is the authority to publish our reports. I never had the authority to publish the results of our investigations prior to 2019. We are lacking 35 years of precedents from our office that we were not able to publish until an annual report, like summaries in the annual report. Now we can publish the full reports. They are accessible on our website. We have a database.

It doesn't have to be an order. It could be a recommendation. It really helps, because we can refer institutions to those reports and say, "See? Your case is exactly like that", or we can refer complainants to those cases. It really helps resolve cases informally.

Mr. Parm Bains: Finally, can you explain the challenge of declassification and what the government is doing about it?

Ms. Caroline Maynard: The challenge is that we don't have, right now, a declassification program. In those cases we were talking about earlier, sometimes historical national security documents are still classified as secret or top secret and the process of going through an access request when those documents are considered sensitive is even harder for the analysts, and it's harder for our investigators because we have to demonstrate that the information is public or is already out there or that the sensitivity is not there anymore. It doesn't mean because it's classified it cannot be disclosed. It just adds that level of complexity.

Mr. Parm Bains: Your budget has increased by two-thirds since 2015. What has this increase allowed you to do?

Ms. Caroline Maynard: It allowed me to finally hire about 25 new investigators full time instead of having consultants and letting them go at the end of the year. We now have retention plans and development plans, so we have a bigger group of investigators dealing with our cases.

Mr. Parm Bains: Thank you.

Ms. Caroline Maynard: Thank you.

The Chair: All right.

[Translation]

Mr. Villemure, you have the floor for two and a half minutes.

Mr. René Villemure: Thank you very much, Mr. Chair.

Ms. Maynard, thank you for your answers, which are always clear.

I only have two and a half minutes, so we have to try to keep it short.

Does the Commissioner's office's mission included educational component for both departments and agencies and the public? Essentially, do you educate people or departments about what constitutes privileged information or what is secret, for example? Do you provide that kind of training?

Ms. Caroline Maynard: Yes, we do. The act that governs my office doesn't specifically give me that authority, unlike the act governing the Privacy Commissioner, for example, which gives him a mandate to educate on that issue, but I do it anyway, because I feel it's important.

That's one of the reasons we had asked for the authority to release our reports. We set guidelines and we put them up on our website. That way, people can see that we're consistent in our decisions and they better understand the process we follow in our investigations.

• (1205)

Mr. René Villemure: So the departments and the public have access to some of the education you provide.

Ms. Caroline Maynard: Yes. We do it through guidelines.

Mr. René Villemure: All right.

In your own words, how would you define what should be considered a secret?

Ms. Caroline Maynard: There are various reasons why information should be kept secret. Certainly, there are good reasons related to national security, but there are also times when the content of certain meetings in which people in government have decisions to make are kept secret because that lets them speak freely, without feeling they need to pay attention to what they are saying. However, as you said earlier, it should be limited to very sensitive documents or subjects.

Mr. René Villemure: Thank you very much.

To finish up, I'd like to talk about your investigation of IRCC, which was on your list of rogue agencies, so to speak. Is the slow pace at the Office of the Commissioner—I am not in any way targeting you when I say that—in turn slowing down the immigration system?

Ms. Caroline Maynard: No. The complaints we receive about IRCC are usually addressed within 30 days. IRCC officials respond very quickly to requests; they do not get it done within 30 days, but they often do within 60 days. So oftentimes, someone will file a complaint with our office, but before we begin to review it, they receive the information they requested. So those are matters that we close quickly, as far as IRCC is concerned.

Mr. René Villemure: All right.

Thank you very much.

Ms. Caroline Maynard: Thank you.

[English]

The Chair: Thank you.

We'll go to Mr. Green for two and a half minutes.

Mr. Matthew Green: Thank you.

I can't help but notice in your program expenditures your main estimates of 2021 were about \$14.9 million, yet in these estimates that we have before us for 2022-23 they're about \$14.1 million. I'm just wondering. We've talked about increases but we're showing a decrease here of around \$815,000, and I've also noted that in your departmental plan you've talked about the increase of complaints, yet you don't seem to have plans to increase your human resources over the next three years.

How do you reconcile those two things?

Ms. Caroline Maynard: Our funding was based on closing 4,000 cases approximately per year. Like I said, our complaints are now almost double that. What we did is invest in our people, invest in training and invest in templates and process, but like I said in my opening remarks, innovating is now at its limit. We did everything we could. We've provided all the tools that we could and now we need more people and we need fewer complaints.

Mr. Matthew Green: I don't know that we're going to get fewer complaints unless we change the legislation and improve transparency on the government side.

Just to be clear, am I reading this correctly? Are you actually asking for \$815,000 less in the 2022-23 estimates than you did in 2021?

Ms. Caroline Maynard: I think the \$800,000 was a lapse, again from the previous year, which we didn't use, so we asked the government to give it back to us so we could spend it last year. Now we're going to be looking at asking for more money to increase our resources and our IT infrastructure.

Mr. Matthew Green: Those would come in the supplementaries.

Ms. Caroline Maynard: Yes, in the next six months.

Mr. Matthew Green: Do we get a taste for what that might look like?

Ms. Caroline Maynard: You mean how much money I want?

Mr. Matthew Green: Sure.

I was on public accounts previously. Very clearly, the question is—

Ms. Caroline Maynard: We don't know. We're just starting to look at numbers, and we think it's going to be over \$3 million.

Mr. Matthew Green: What do you need to get the job done is essentially the question I'm asking.

Ms. Caroline Maynard: We got \$3 million to hire 25 people. I will need at least another 25, so a minimum \$3 million, but that doesn't pay for my corporate services to support these people and the translation bureau that we need to publish more reports and publish more guidelines.

All of this has to be really well calculated this time, so that the impact of increasing my office is also not felt on the other sectors.

Mr. Matthew Green: Thank you for your leadership and your candour.

Ms. Caroline Maynard: Thank you.

The Chair: Before we go back to Mr. Bezan, I'm going to exercise my prerogative as chair. I have a few questions.

Commissioner, this is the first time that I've had the opportunity to question you as commissioner. However, I did question your predecessor early in the 42nd Parliament, and what I found striking about your opening statement was just how little the issue seems to have changed over the past several years.

I think this goes to issues that span successive governments. The issues that were alive and presented to the committee by your predecessor came from the time before. Here we are, and you said you have been sounding the alarm bells that there is a collapse of the system or an overwhelming of the system.

This is exactly what Commissioner Legault complained about in 2016. We did an investigation of the whole system in that committee, and witness after witness after witness talked about an overall pervasive culture of secrecy that has existed for decades. Can you comment on that?

• (1210)

Ms. Caroline Maynard: Yes. We are seeing similar issues. It hasn't gotten better.

I think some departments are definitely better. However, overall, Madame Legault said it and we're saying it again: Canadians are asking for more and more information from their government. The requests have increased by 225% in the last six years. The resources to support that system have not gone up to support it.

The Chair: What will it take for government to actually live up to the promise of openness by default?

The experience of the witnesses we heard in those studies—and it appears not much has changed—is to deny. That seems to be the first reaction: Which grounds can we use to deny this ATI, or how long can we drag out this ATI? These are things that haven't changed, it would seem, for a very long time. I'm sure I could look back into testimony at this committee 10 years ago, 20 years ago, and find some of the same issues.

What is it going to take to change the culture of government to actually buy into the concept of openness by default?

Ms. Caroline Maynard: As you know, culture takes a very long time to change. We definitely need more serious leaders with directions to their people, to their public servants, to disclose by default, as you say. We need a more robust legislation. We need to reduce the impact of some sections.

Some of the exemptions, such as section 21 on “advice or recommendations”, are overly used and abused throughout the government, because anything is advice and anything is a recommendation, but really, the fact findings.... There are so many things that we can release on those documents where section 21 is being used. That's one of the recommendations I made in my submission to TBS. Section 21 definitely needs to be limited to the very specific cases so that the institution does not have the discretion anymore. They have to apply the act as it is.

There are ways to make the act more specific and less easy to interpret. It's supposed to be more specific.

We also need to encourage discretion. The use of discretion for legal opinions, for example, is really rarely used. Even if the legal opinion was written 60 years ago.... Sometimes I'm questioning whether it is really important still to protect that document at this time, but it's very difficult for me to say to a minister, “Your use of discretion is not reasonable.”

We have to look at the facts. We have to look at the public interest. That's another thing that the act doesn't really provide. The information we are hiding, should it be released because there's a public interest element to it...?

The Chair: Thank you.

I've gone way longer than I had intended, but I have a specific question just really quickly.

Your predecessor actually described Bill C-58 in quite a remarkable meeting that took place at this committee and suggested that it was a step backward, not forward. Do you agree with her?

Ms. Caroline Maynard: At the time, I did agree that it was not enough, but we did make a lot of changes. Unfortunately, on Bill C-58, there was not a lot of consultation when it was first tabled.

If you look at the first draft of Bill C-58 and what was actually passed, there were a lot of changes, and those changes were actually very helpful for my office and for the system as well. It was a good start.

• (1215)

The Chair: A good start, okay, but more work to be done....

We'll go to Mr. Bezan.

Mr. James Bezan: Thank you, Mr. Chair.

You stole a little bit of my thunder there. I also want to go down this path with the commissioner about what types of legislative changes you need to give you the power and the authority to ensure that transparency is being respected, that information is being shared in a timely manner and that we're not seeing an abuse of authority, where government is trying to use secret or top secret classifications or cabinet confidences for things like issues surrounding the purchase of PPE and declaring that's a national security issue when you're buying things such as masks, gloves and respirators.

I just ask again.... As a committee, we want to be looking at doing things proactively. What exact legislative changes do we need to incorporate into the act to ensure you have the power to do everything to compel the department to report and to make sure that fines are levied and whether or not it's put into the hands of the right authorities as to whether or not there need to be charges laid?

Ms. Caroline Maynard: I would invite you to read my submission and recommendations to Minister Duclos back in 2020 with respect to the legislative review and also the system as a whole. I have very specific recommendations in there, but the main issue—

Mr. James Bezan: Just for the purposes of this committee today, can you highlight again what the top-level changes are that have to happen and why the Treasury Board and the government haven't acted upon those recommendations?

Ms. Caroline Maynard: They were supposed to issue their report early this year, but apparently it's been delayed until December.

Very specifically, there are things in the act that need to be changed. The 30-day timeline is fine, but the timeline doesn't take into consideration the consultation that happens between institutions. There must be limits on the number of consultations or the amount of time those consultations take, because right now the extensions that are being taken by institutions are often because of those consultations, which are not mandatory, by the way. The institution does not have to consult, but often they feel that they have to.

We need to have access to those cabinet confidences in my office, so that somebody—as I said earlier—who's independent from the government can review them and make our Canadians confident that the documents are under cabinet confidence.

The ordered power that I have is really helpful, but if an institution does not respond to the order—it hasn't happened yet—I don't have any mechanism to make sure that my order is being respected. I would like to have a certification process so I can go to the Federal Court and get the order certified. That would have another impact on the institutions, if they refuse to do anything about the orders or respond to the orders.

Also, all the exemptions and exclusions need to be reviewed with the goal of reducing their impact and making them more strict so that we are really limiting the reduction to the minimum.

We need to expand the act, too, to subcontractors and to third parties that are providing public services for the federal government. Right now they are not subject to the act. I think that Canadians would really appreciate that.

Mr. James Bezan: Thank you.

Talking about the issue of cabinet confidences, is that something that's happening on an increasing level along with the use of “secret” and “top secret” so government can wiggle their way out of meeting a request for access to information?

Ms. Caroline Maynard: As I said earlier, it's really difficult for me to say because we do not have access to cabinet confidences, and requesters will often agree not to request those. They will let it go because they know that nobody can tell them if the documents that have been redacted as cabinet confidence are actually cabinet confidence. We can't look at them. We haven't seen an increase or a decrease because we don't see them.

• (1220)

Mr. James Bezan: When I was over on the national defence file, we saw a practice there where department officials were using code words and code names to get around access to information requests. Have you witnessed that in other departments?

Ms. Caroline Maynard: I don't believe that I have. I've seen acronyms used, but—

Mr. James Bezan: We're famous for acronyms. Every time you start a new portfolio, you have to learn all the acronyms first.

The Chair: Thank you, Mr. Bezan.

With that, we go to Ms. Khalid for up to five minutes.

Ms. Iqra Khalid: Thank you so much, Chair.

Thank you, Commissioner, for keeping up with our questions and for providing such great answers. I appreciate that.

Online summaries of completed access to information requests are removed after two years. Do you think it would be helpful for the government to keep them online longer, or what is the justification for those two years?

Ms. Caroline Maynard: I would have to ask you to check with the Treasury Board because this is a part of the Treasury Board policy with respect to what an institution must do when they respond to access requests. I do have some complainants who are telling me that some of these requests that they've made are not even published on the website of the institution. It's something that we may look into. I know people are complaining about it, but it hasn't come to us as a specific complaint per se.

I think it would be helpful for people to have access to those longer. That's something maybe your committee can look into, a good timeline for this access. After a while, some of the information is maybe not relevant anymore, but is two years too short?

Ms. Iqra Khalid: Thanks for that. It's really helpful.

I know that members have been asking—and obviously this whole meeting is—about the spending of your office. Prior to our government taking over in 2015, you had spending authorities for \$9.9 million, out of which you spent \$9.3 million. Last year, 2021-22, you had spending authorities of \$14.9 million, which is a significant increase, and you spent \$14.5 million. This year you have \$16.3 million in spending authorities.

These are significant increases, and we're seeing that the number of staff is increasing as well. Do you think that these increases are helpful to how we're building that public trust within government, which is a significant role that your office fulfills?

Ms. Caroline Maynard: Totally.

We definitely needed more people and resources with respect to the new authorities with Bill C-58. Some of the money you see in the increase comes from that.

We requested additional funding for four years in a row through a submission to Treasury Board. That was given to us on a temporary basis for three years, but finally I got it on a permanent basis two years ago. That's definitely helpful because with temporary funding, all you can do is hire people and let them go at the end of the year. There is no retention possibility. Now we have a more permanent base, but as I said earlier, it's already not enough, unfortunately.

Ms. Iqra Khalid: I appreciate that. Thank you.

As things are getting more digitized, we're seeing information being stored online.

How does that impact your office? How does that impact the whole regime of access to and freedom of information?

Ms. Caroline Maynard: When the information is already public, an institution can use this as a reason to not respond to an access request and just refer the requester to that information. More information that is published will definitely lead to fewer access requests or more specific access requests. People may see some information and may ask for specifics based on that.

Right now, we see that the information that's provided is not what Canadians are asking for. Unfortunately, they can't find the information that they want, so they have to go through the access request system.

Ms. Iqra Khalid: How does that interplay with privacy laws within our country?

• (1225)

Ms. Caroline Maynard: I'm not sure I understand.

Ms. Iqra Khalid: When we request ATIPs or freedom of information, if it's with respect to a certain individual or a certain file versus what some have classified as cabinet confidence, how does that impact privacy laws of an individual person, if somebody can use FOI for somebody else's private information?

Is there legalisation? Is this a concern of your office?

Ms. Caroline Maynard: Actually, there's an exemption right now under the Access to Information Act, where personal information is redacted unless you have consent or the information is public. It's probably the most used exemption through access requests that we see.

It's rarely questionable. Our institutions understand what privacy and protection of information is. We have a few cases where we don't agree with the institution, but that's really rare and we take that very seriously. We do have a good report from the Privacy Commissioner on those types of cases.

Le président: Thank you.

[*Translation*]

Mr. Villemure, you have the floor for two and a half minutes.

Mr. René Villemure: Thank you very much, Mr. Chair.

How would you define confidence, Commissioner?

Ms. Caroline Maynard: Confidence is knowing that the information we're allowed to give to people is right and complete, and they can use it to state their views or make decisions on certain subjects.

Mr. René Villemure: Thank you very much.

Now, let's go a little higher up the ladder and talk about the government in general. I have often defined confidence as not needing to prove anything at all.

Do the people have confidence in the government?

Ms. Caroline Maynard: You should ask Canadians that question. There was an election recently. I think people are curious and they ask a lot of questions. I personally have three young boys and they often ask some pretty tough questions. I think that's where this generation of Canadians is at.

Mr. René Villemure: Social media have definitely made it easier to ask questions.

Do you see a connection between confidence in government and the number of substantiated requests your office receives?

Ms. Caroline Maynard: I don't know that any connection should be made with the number of substantiated ATIP requests. However, I can tell you that if the government can give them the information they are requesting quickly, Canadians will be less likely to turn to sources that are not very reliable or to social media, which can provide false information.

That's why the government has a responsibility to provide the requested information as quickly as possible. That way, even if they do not agree about some information or certain decisions, at least people have a better understanding of what was done and the circumstances under which it was done.

Mr. René Villemure: This explains very well the second part of your mission, which involves government-wide accountability. If more information were disclosed, at least we would know that the information disclosed is true, unlike the misinformation often conveyed on social media, in particular. At least we would have a chance to get the real facts and have the right discussion.

Is that accurate?

Ms. Caroline Maynard: That's right.

Mr. René Villemure: We will follow your recommendations on that.

Thank you very much.

[English]

The Chair: Thank you.

Now we go to Mr. Green for two and a half minutes.

Mr. Matthew Green: Thank you.

I see here that according to your office, you are looking at and giving special attention to gender-based analysis plus in your departmental plan. The plan says, "In terms of whether the OIC's program contains any barriers to access, the OIC is assessing how best to collect disaggregated data on complaints from members of GBA+ groups." I bring that up because I know there's a specific issue regarding a Black class action lawsuit, and I think you have alluded to the way in which Crown privilege tends to obstruct some of the information that goes and flows.

I wonder if you're currently investigating on behalf of Black public service workers the concealing of critical disaggregated data from the period of 1991 to 2018.

Ms. Caroline Maynard: I wouldn't be able to tell you specifically if we have a complaint or what our investigations are on. The other limitation we have is that we usually don't know who our requesters or complainants are unless they tell us. I'm not allowed to ask whether someone is a person from the Black community or somebody from a first nation.

Sometimes we see from the cases being looked into who we're dealing with, but it's really interesting when people are telling us and we are able to prioritize some of those cases, especially when

there's an urgent need for the information. Unfortunately, as you can see, with 6,000 cases that we investigate every year—

• (1230)

Mr. Matthew Green: I have only a minute left. You did, I believe, reference in your opening remarks some particular struggles that first nations were having with getting information. Again, I would believe that in a fair, good-faith, nation-to-nation negotiation process as relates to land claims and as relates to other agreements, there would be an openness by this government.

Could you perhaps expand upon the ways in which first nations are particularly impacted by some of the barriers presented within this process?

Ms. Caroline Maynard: They're particularly impacted. Actually, I met with the director of national claims and research this week. They are using, most of the time, the informal process. If they don't get the information they want, then they have to go through the formal process to make a complaint to my office. It's those delays that are added to everything.

I was happy to see that Minister Miller was talking about providing more information and dealing with reconciliation and those claims that members of indigenous communities have. I'm hoping there's some light at the end of the tunnel on this.

Mr. Matthew Green: Thank you.

The Chair: With that, we'll now go to Mr. Kurek.

Mr. Damien Kurek: Thank you very much.

I appreciate your candour with us here today, Commissioner.

One of the challenges that I've noted over the course of the last two and a half years or so is a huge shortage of ATIP officers. There are just not enough staff within departments to fulfill ATIPs. Is that something that's consistent, in your experience and understanding, across the whole of government?

Ms. Caroline Maynard: It totally is. Some institutions have told us that they actually have the financial means to hire more people, but they just can't find people to work in that field. It's a very difficult job because you are always between the person who wants the information yesterday and the institution that doesn't want to give it or that is taking time to gather the information, and then you're fighting back and forth.

It's not an easy position, and it's also very difficult to get training. I heard that TBS is now starting a project in which they're going to be hiring a pool of candidates so they can share with institutions and hopefully provide training for these individuals. I'm hoping that's going to work and alternatively will help institutions.

Mr. Damien Kurek: You've referenced the use of technology, using things like artificial intelligence and that sort of thing. Are there comparable jurisdictions around the world to which we can point to say that they're doing that well, jurisdictions whose legislation, policy, practice or that sort of thing we could possibly emulate?

Ms. Caroline Maynard: I'm not aware of any specific country that would have better technology. I'm sure there are some. It's really difficult to compare sometimes with some other countries. We know that we have departments like the Department of Fisheries and Oceans that have put in place some systems that really help them respond to access requests in a timely manner. CSIS is actually pretty good. I know they're not providing a lot of information, but finding the information for them is not a question. There are good practices here in Canada.

Mr. Damien Kurek: There's a reason to make sure those good practices are forwarded across government.

I know over the course of some of the ATIP requests that I've done, there are gaps, in part, because there will have been a presentation that was done where information was referenced maybe in an email or a letter, but that information is not available in an ATIP request. Phone calls are made. An email says, "Give me a call and we can discuss further." How do we ensure that there is that openness and transparency, when, whether intentional or not, there are ways to circumvent the system?

• (1235)

Ms. Caroline Maynard: Right now, our federal government does not have a legislated duty to document, so our institutions are left to document what they want. They are encouraged to always take notes and make sure that big policy decisions are being saved somewhere, but there are no consistencies. Now with working from home, it's even worse.

We've had our first case where somebody asked for a videotaping of a team meeting, which is new to our government. The team meeting was not recorded, and nobody took the time to even take minutes during that meeting. This is new, and people have to find ways. You don't have to record, but you still have to have somebody take minutes at meetings. You still have to make sure it's filed properly so that when there's an access request, you can find it. A duty to document in legislation would definitely help that.

Mr. Damien Kurek: I appreciate that, and the acknowledgement of the fact that those gaps do currently exist. Because there's currently very little documentation, I would suggest it's impossible to know how much information is lacking because of that gap.

In terms of COVID and the "working from home" side of things and the huge increase in access to information requests, in your letter to Minister Duclos, you talk about how there's a lack of understanding of the act and the duties associated with that. Is an effort needed across government to make sure that understanding is brought to a level consistent across all of government?

The Chair: Mr. Kurek, you really did start a lengthy question with only a few seconds left, so I will allow the witness to answer briefly, if she cares to, or perhaps let that come out in additional testimony.

Ms. Caroline Maynard: I understand that Minister Duclos and his office have informed the institutions that they cannot stop working with.... They have a legislative obligation to respond to access requests, and we've done the same thing. We've seen that some units completely shut down during COVID, and that was unacceptable.

The Chair: Thank you.

We have Ms. Saks for up to five minutes.

Ms. Ya'ara Saks (York Centre, Lib.): Thank you, Mr. Chair.

I want to thank you, Madam Maynard, for joining us today. It's been a really important discussion. We've moved beyond the estimates, but I think this is the best place to unpack how we best serve you with the budgets that are before us.

I want to take note that since 2015, the government has invested over \$50 million in incremental funding to improve Canadians' access to information, but we've talked today about the backlogs and the increases to the budget, in some years quite significant. With \$50 million in investments when we're looking here in 2022, do we see more transparency than we did, let's say, 10 years ago, 20 years ago, or are we still doing this delicate balance, because the volume is so high that the investments are keeping us at the same level of transparency decade after decade?

Ms. Caroline Maynard: I think because the number of requests has increased so much—like I said earlier, 225% in six years—there is definitely more information out there. There are a lot more requests. There's a lot more interest, but we can definitely do more, and it's not just by putting money in units. We need to provide voluntary disclosure, proactive disclosure. We have to invest in other means because we're never going to have enough resources if we can't give the information without having recourse to an access request.

My office is never going to be big enough and institutions are never going to be sufficiently resourced to respond to the surge.

Ms. Ya'ara Saks: Thank you.

We've also talked about how when individuals make requests there's a hesitancy or they almost gate themselves in terms of cabinet confidentiality, saying I can't ask for this. They're saying, I know I can't ask for this so I'm not going to ask for this. It's going to be a two-part question.

First, why is cabinet confidentiality important? Second, since cabinet confidentiality currently is a fundamental element of the system of government that we have, do you think it's important that this candour be protected? First, why is it important and why is it part of the system that we have, and second, what would more openness look like?

• (1240)

Ms. Caroline Maynard: I really think I agree that it's important for ministers and cabinets to be able to discuss frankly and openly policies, legislation and changes to what's going to happen to Canada in a protected way.

When I ask for the authority to review those cabinet confidences, it's not to disclose them. That's the thing I think most people don't understand. It's really to make sure that we are using the exclusion as cabinet confidence appropriately. Right now there's no way to challenge that.

What I would like is to continue to protect cabinet confidence, but have some review mechanism so we know that any government is doing it appropriately and not abusing this exemption.

Ms. Ya'ara Saks: In the recommendations that you put forward previously, has there been some discussion of that in setting up the parameters of a framework of what could be considered, or have we not gotten there yet?

Ms. Ya'ara Saks: Okay.

How much time do I have, Mr. Chair?

Ms. Caroline Maynard: No, we're not there yet.

The Chair: You have a minute and 15 seconds. You can split your time, if you like.

Ms. Ya'ara Saks: I'm going to split my time with my colleague, Ms. Hefner.

The Chair: You have a minute and 10 seconds.

Ms. Lisa Hefner: Thank you, Mr. Chair.

I would like to move the motion that I gave oral notice of, I believe, a week or so ago. I'll read it out if that's appropriate. I move:

That, pursuant to Standing Order 108(2), the committee undertake a study that examines the issue of digital surveillance by employers of Canadians who work from home, including the prevalence of digital surveillance by employers, what type of surveillance is being collected, how personal surveillance data is being stored and secured, what rules are in place to protect employees' privacy rights while working from home and data collection disclosure and permission rights of employees; and that the committee report its findings and recommendations to the House.

I know that there was discussion at the time that this seemed to some members to be similar to the AI study that we proposed, but it's actually totally different. It's not just about AI. It's about the fact that more and more people are working from home and employers seem to be taking greater liberties in what sorts of intrusions they can make into people's privacy. It's about the bigger issue of people working from home and what sort of privacy they are afforded and what sort of privacy they're due and how we protect those privacy rights when people are isolated from their other employees and their unions and working on their own at home.

What my colleague Michael Coteau has found is that there's been a significant increase in surveillance by employers over their employees working from home. It's not just about AI. It's about how we protect the privacy of people who are working from home. It's become a big issue because of the pandemic with so many more people working remotely. I think it's important and I think it's beyond AI.

I'll finish with that. Thanks.

The Chair: Is there any debate? There being no debate, we'll vote on the motion.

I think I saw Mr. Bains's hand.

Ms. Iqra Khalid: Mr. Chair, can we have a recorded vote?

(Motion negatived: nays 6; yeas 5)

The Chair: Ms. Hefner, I had about 45 seconds left in your speaking round if you wish to put a question to the Commissioner. Otherwise, we will go with the next speaker.

• (1245)

Ms. Lisa Hefner: You can go with the next person.

The Chair: Thank you.

Mr. Williams, go ahead.

Mr. Ryan Williams: Thank you, Mr. Chair.

I'd like to move a motion that I gave notice for a few weeks back. I'll read into the record.

I move:

That, pursuant to Standing Order 108(3)(h)(vii), the Committee conduct a study into the Access to Information and Privacy system, which routinely violates its own mandate for open government through delays and mismanagement; that the study consist of no fewer than five meetings; and that the committee report its findings to the House.

The Chair: The motion is in order.

Is there debate?

We'll go to Mr. Kurek, followed by Ms. Khalid.

Mr. Damien Kurek: Thank you, Mr. Chair.

I would move an amendment and acknowledge some consultations. I move that we strike the words "which routinely violates its own mandate for open government through delays and mismanagement" from the motion.

The Chair: The amendment is in order.

Is there debate on the amendment? I see none.

(Amendment agreed to)

The Chair: Is there any discussion on the main motion as amended?

Seeing none—

Ms. Iqra Khalid: I'm sorry, Chair. Can you read the motion as amended?

The Chair: I'll ask the clerk to do so.

Mr. James Bezan: We all have it.

The Chair: Have you all got a copy? Is it translated?

A voice: Yes.

The Chair: Ms. Khalid asked that it be read as amended, but do you now have it with sufficient clarity for the question?

I'm going to have the clerk read it anyway.

Go ahead, Madam Clerk.

• (1250)

The Clerk of the Committee (Ms. Nancy Vohl): Thank you, Mr. Chair.

The motion as amended would be:

That, pursuant to Standing Order 108(3)(h)(vii), the Committee conduct a study into the Access to Information and Privacy system, which routinely violates its own mandate for open government through delays and mismanagement; that the study consist of no fewer than five meetings; and that the committee report its findings to the House.

The Chair: Is there any discussion?

Seeing none, all those—

Ms. Iqra Khalid: You have to give us a few moments. We're trying to—

The Chair: I kind of did. That was the few moments.

Ms. Iqra Khalid: That was a few seconds, unfortunately.

Thank you, Chair.

The Chair: If you have an intervention, please go ahead now.

Ms. Iqra Khalid: I do.

I wanted to ask a question through you, Chair, to Mr. Williams. This seems to be a very broad study. What, specifically, is the objective of this?

I know that we haven't really debated this motion much. I would very quickly like to ask the member that.

Mr. Ryan Williams: I think we've seen it today, Mr. Chair. I think the testimony speaks for itself and I think this study will further investigate and make sure that we're not only hearing the evidence, but we're putting recommendations through to Parliament to make the changes needed.

I think that over two years or 80 years, as some of the evidence has suggested, is far too long. This is a mandate that Canadians want to see. This is a good study to get some good recommendations to Parliament in order to fix that. Thank you.

The Chair: Thank you.

Is there any other discussion on the motion?

Ms. Iqra Khalid: I want to clarify again. The whole office is very vast and big. We saw through our questioning today just how many different aspects there are. I'm very much in support of doing this study. I'm just wondering if the member wants to narrow the scope of that study at this time. This would be a good time to do it.

The Chair: You may think so but, in fact, the member would not be able to procedurally, because it would require an amendment to his own motion. If you have a suggestion for how to narrow it, you could put it forth in the way of an amendment. Otherwise, the question is the question. That's what we'll have to vote on.

Ms. Iqra Khalid: You can ask the question, Chair.

The Chair: All right.

Is there any other debate on the motion?

I see no other requests to further intervene in debate.

(Motion as amended agreed to)

The Chair: We have a few moments left. If anyone else wishes to put a question to the commissioner, this is your time.

Go ahead, Mr. Kurek.

Mr. Damien Kurek: Thank you, Commissioner.

If I could, do you have any numbers regarding statistics for the tenure of ATIP officers across government? If not, is that something that you'd be able to table with the committee?

Ms. Caroline Maynard: Are you asking me?

Mr. Damien Kurek: I'm sorry. It's kind of been jumping around here, but yes, I'm asking you.

Ms. Caroline Maynard: I'm sorry.

I know it's seven years under the legislation for our term of appointment. I think most of the commissioners had a few extra years, but I can come back to you with the actual numbers from each commissioner in the past.

Mr. Damien Kurek: I'm sorry. In the midst of the confusion... I'm more interested in the tenures of ATIP officers within departments, not so much the—

Ms. Caroline Maynard: That's not something I would know. I know there's a big turnaround. Maybe TBS would have some statistics on that.

Mr. Damien Kurek: Thank you.

The Chair: In going once around, I have another speaker.

Go ahead, Ms. Khalid. I think that will probably be the end of it. We're just about out of time.

Go ahead, Ms. Khalid, with the last word.

Ms. Iqra Khalid: Thanks, Chair.

I was just wondering if the commissioner is able to provide us information as to how many members of Parliament over the past six years have requested FOIs and if that's information they can provide to the committee.

• (1255)

Ms. Caroline Maynard: I would not be able to tell you. We don't keep those. We just have general statistics on whether it's a member of the public or journalists. I can give you those statistics, but I don't think they are specific to members of Parliament.

Ms. Iqra Khalid: I would appreciate those statistics, Mr. Chair.

The Chair: All right.

With that, we are adjourned.

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