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• (1635)

[Translation]

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

Welcome to meeting No. 38 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

[English]

Today's meeting is taking place in a hybrid format, pursuant to the House Order of June 23, 2022. Therefore, members can attend in person in the room or remotely using the Zoom application.

This meeting is pursuant to Standing Order 108(3) and the motion adopted by the committee on Monday, May 16, 2022. The committee is commencing its study of access to information and privacy systems.

I would now take a moment to welcome today's witness. Caroline Maynard is the Information Commissioner of Canada.

The floor is yours for an opening statement. Go ahead, Commissioner.

[Translation]

Ms. Caroline Maynard (Information Commissioner of Canada, Offices of the Information and Privacy Commissioners of Canada): Thank you, Mr. Chair.

Thank you for inviting me to address you once again.

[English]

Last May, when I appeared before this committee, I painted a rather bleak picture of the state of access to information in 2022. I was pleased that at the conclusion of my appearance, this committee voted to undertake a study of the access to information and privacy system.

I would recommend that any such study begin with a review of the findings of previous parliamentary committees, as this is far from the first time that access to information has been the subject of such a study. Unfortunately, past studies have resulted in only a few concrete changes. I also note that we are still waiting for a report regarding the review of the access to information regime launched by the government in 2020.

On this subject, I would invite the committee to consult my submission to this review, which contains 18 recommendations for changes to the act. Among other things, it recommends that cabinet confidence be subject to the act, as well as ministers' offices and the

Office of the Prime Minister. It also includes recommendations to help with response timelines and to limit the scope of exemptions.

[Translation]

My recommendations also contain four suggested areas of focus not requiring legislative change, all of which I would be happy to discuss in detail today: leadership, and, by extension, culture; the need for innovation and more resources; duty to document and information management; and declassification.

[English]

I would like to emphasize that respecting the law as it currently exists would represent an important first step to improving the state of access to information. Right now, 30% of access to information requests are not responded to within the legislated timeline, even taking into account extensions, a number that is increasing year after year. However, Canada's Access to Information Act provides no dispensation from its requirements, even in extraordinary circumstances.

In my meetings with ministers and senior officials, I often hear about a shared commitment to the right of access, but at the end of the day, actions speak louder than words. Leaders must ensure that their institutions live up to their legislative obligations.

This is why, this year, my statement for the Right to Know Week was focused on the theme of accountability. Leaders must be held accountable for their institutions' performance in the area of access to information. My provincial and territorial counterparts echoed this at the conclusion of our annual meeting, held in mid-September, calling on leaders of public institutions to play their role of upholding the right of access and promoting transparency.

[Translation]

If there is any hope of improving things, leaders across government institutions must redouble their efforts, ensure that their organizations treat access to information as a collective responsibility, and treat the right of access as the quasi-constitutional right it is.

In closing, as you undertake this study, I will be pleased to appear again before this committee at any time to elaborate on any matter that could potentially help create a better access system for Canadians.

Thank you.

[English]

I will be happy to answer your questions.

The Chair: Thank you for those opening remarks.

First is Mr. Bezan. Go ahead for up to six minutes.

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

I want to thank the commissioner for taking the time to meet with us and help us with the study we're undertaking.

Treasury Board Secretariat is doing a statutory review. Should it be done by unelected officials, or should it be done by parliamentarians, who are accountable to the people and are often the ones asking for this information?

Ms. Caroline Maynard: Under the current act, with the amendments made in 2019, there are two legislative reviews that are mandatory: one by Parliament and one by Treasury Board, the government. The first one was supposed to start a year after the act was approved, and then after that they would be every five years.

As I said earlier, TBS launched the review in 2020, and we are waiting for a report on their findings. Apparently, it's supposed to be tabled at the end of this fiscal year. I am not sure whether a parliamentary review has been started, unless this is it. I believe this could be it, because you are opening a review of the system, and for me, the system includes the act.

• (1640)

Mr. James Bezan: So maybe we should be including a review of the act while we're undertaking this study.

When you list the departments that are complying with the access to information rules versus those that are laggards, where does Treasury Board actually rank in that? They are the ones actually doing the review of your office and the act itself. How are they providing access to information that's been requested by Canadians?

Ms. Caroline Maynard: I have the list here. Treasury Board is not in my top 20, so they're not doing badly at all, but none of the departments are doing great. Everybody is having difficulties meeting the 30-day time limit, and there are a lot of issues with extensions. My office has received 70% more complaints this year than last year.

I think it's just a question of leadership. I think the departments where the leaders believe in access and are showing it and giving the resources appropriate to respond to the access requests they receive are doing better, but again, this year we're seeing another increase. I think at this time, I may receive up to 10,000 complaints this year if it continues the way it has.

Mr. James Bezan: So that's a record.

Ms. Caroline Maynard: Yes, every year it's a record, and not a good record.

Mr. James Bezan: That's unacceptable.

I know that on top of the length of time to get responses back.... I'm looking at one here that took 270 days to get, so the 30 days plus 240, from a number of different departments.

I have one access to information request here. It's from the Department of Justice. The question was about Minister Mendicino's involvement in the potential falsification of records as to when the College of Immigration and Citizenship Consultants Act was brought into force. All the documents from the Department of Justice are redacted, under claims of solicitor-client privilege. Is that proper for access to information? Even the subject lines are redacted. All we have are the email addresses of who it was between and maybe "I hope you have a great weekend." That's all that was available to the public.

Ms. Caroline Maynard: As you can expect, if you are asking the Department of Justice for information, most of their information is protected by solicitor-client privilege, under section 23. However, that being said, not all communication between lawyers is. I am a lawyer and I do a lot of communication that is not subject to solicitor-client privilege. We see that more and more. We would have to review the case itself. I would say that 75% of the time, it's properly applied, but we still have to review the documents to see.

Mr. James Bezan: You don't know whether it's obfuscation, abdication or cover-up.

Ms. Caroline Maynard: It really depends on the case. We have to look at the documents themselves, which I have the authority to do.

Mr. James Bezan: Do you?

Ms. Caroline Maynard: I do, so if you make a complaint—

Mr. James Bezan: If there's a complaint put in to you—

Ms. Caroline Maynard: —I can compare the two documents and I can tell you.... Complainants really like that, because we are an independent review body, so we can tell them on the phone, "This is a legal opinion, and you're not going to get it" or "Yes, this is something we will have to push a little bit more."

Mr. James Bezan: Essentially, what we have here is that 150 pages have been redacted or completely removed under section 23 of the act, which is the solicitor-client privilege case. I wonder what type of faith Canadians will have when they go to the Department of Justice or.... This is even worse than the stuff we get from Privy Council. When we do an access to information request to the Privy Council, stuff will be whited out or darked out and redacted, but it goes beyond the pale that they're taking everything that might be inconsequential to the information we're seeking. You can't read between the lines when you can't even see the lines.

Right now, your responsibility really applies only to government departments. What about Crown agencies? Some currently don't fall under the act. Nav Canada comes to mind.

• (1645)

Ms. Caroline Maynard: In my submissions to Treasury Board, I believe I actually made a recommendation that any organization that functions on behalf of the government and is using public funds to do service for Canadians should be subject to the act. That would make both Crown corporations and private entities that are sometimes contracted to work for the government subject to the act.

The Chair: Thank you. We're out of time.

Now we have Ms. Hefner for up to six minutes.

Go ahead.

Ms. Lisa Hepfner (Hamilton Mountain, Lib.): Thank you, Chair.

Thank you to the witness for being here today to share her expertise.

I was a journalist in my former life, and I filed many what we called “FOI requests” back in the day. At the Hamilton Spectator in the late 1990s, it was mandated that reporters would file a certain number of requests. It was seen as a good way to dig up information. Some members of Parliament opposite do it a lot as well.

Things have changed a lot since then. Back in those days, it could cost hundreds of dollars to get that information. It still took months, and then you'd get a bill for how much it was expected to cost, depending on how many documents would come back. Today, I understand there is a base fee of \$5 and I'm wondering how much that has changed the work of your commission.

How much has it changed the work, the type of work and the number of requests you get?

Ms. Caroline Maynard: I believe in freedom, and I believe that it should be free. To me, \$5 is very reasonable, and I think Canadians are very lucky to be able to access information for no fees at all.

The problem is that because we're not very good at managing our information and because some requesters are asking for enormous numbers of documents, that has created a huge, sometimes very overwhelming, amount of paper and documents to go through for institutions.

It used to be, because you were charging, that the requester would scope down their requests because they didn't want to spend \$1,000. Now we don't have that, so our institutions are telling us that they are dealing with requests that are over thousands and thousands of pages. To me, one of the key things is managing our information. If we were to clean up our email box.... Sometimes we see a request that asks for certain decisions made and there are 500 pages of an email chain going back and forth. If somebody had just kept the three or four pages that were really relevant, you wouldn't have that extra problem of dealing with this extra amount of paper.

We do have unreasonable requesters and we have unreasonable people. This is why the government has also changed the act and added a provision that if you are dealing with a request that is frivolous or made in bad faith, you can ask my authority to not respond to that request. It has not been used very much, which is great because it's an exceptional method, but if it's something that the institutions feel is completely unreasonable, is made in bad faith or is not a right use of the access act, they can use this. It has been used and it's been accepted a couple of times in the last two years.

Ms. Lisa Hepfner: Do you think there should be more of a framework around that? I understand that people can request every document in a department, which is absolutely unreasonable and impossible for whatever department. Should there be a framework so that it's more balanced and the process is more nuanced?

Is there a way, or is the current way we're handling it with your authority enough?

Ms. Caroline Maynard: The act is there to make government accountable and to improve our democracy. Who will be judging whether the request is made with that intent? It's really difficult. For a journalist, yes, you're asking sometimes for more than you want because maybe you're looking for stories or you want to make sure you don't miss anything. It would be difficult to start saying what kind of intention should be behind the request. Keeping it global, the way it is, there is freedom. It's giving Canadians as much as we can.

There may be more and more limitations, which we already have, in terms of unreasonable requests that are made in bad faith, because people will start to know my decisions. I'm publishing my decisions right now in order to give guidelines to institutions as to when to use it and when not to use it. I'm hoping that's going to reduce the number of those types of cases.

• (1650)

Ms. Lisa Hepfner: Thank you.

I know that our government has proactively released a lot of documents that previously would have been covered under the legislation. Has that changed the work of your commission at all?

Ms. Caroline Maynard: The legislation now is requiring proactive disclosure of a lot of the information that was already covered by policies before. The one thing that's been added, and it's very useful, is the list of titles for briefing notes. At the same time, when you see the title, what happens is that the requesters are now asking for the document they want to see, or people are very creative in the title so it doesn't really say what the briefing note is about. That's something I think would be interesting to know, how much of that has resulted in more access requests.

What I would like institutions to do is to proactively disclose information that is requested by Canadians and is not on that list. Call it proactive disclosure or voluntary disclosure, but if you get three requests about the same thing, COVID contracts or vaccine...just publish it and then you won't get the access request later.

That's where I think our institution needs to do a better job of determining what it is that people are asking for.

Ms. Lisa Hepfner: That's helpful. Thank you.

I think that's my time.

The Chair: You went a bit over, but not bad. We have some time today. Mr. Bezan also went a bit over.

Go ahead, Mr. Villemure.

[Translation]

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

Good afternoon, Ms. Maynard. Thank you for being here today.

At your last appearance, which was very informative, you said there were numerous delays because of the volume of requests. Would you say that the Government of Canada has a culture of privacy?

Ms. Caroline Maynard: I think you mean a culture of secrecy.

Again, it really depends on the organization in question and its deputy minister, directors general and staff. Each organization is different. As I was saying, none of them is perfect. However, we see a huge difference when the leader asks for statistics about access to information in order to know where the bottlenecks are.

In the case of the Canada Revenue Agency, its commissioner asks what is happening with respect to access to information every two weeks. We have seen huge progress in that agency and we cite this kind of practice as an example with other organizations.

There is a culture of secrecy in the sense that when staff receive an access to information request, they think about what information to delete and not what information to disclose. It is very difficult to change that mindset.

We strongly encourage institutions to do training, not just with their access to information unit, but also with all their staff, who should, collectively, have a sense of responsibility, as I was saying. They are part of the public service and they are involved in processing access to information requests and examining the documents they produce, and how to protect them, as part of their job. These staff have to keep in mind that the goal is to disclose information insofar as possible, and not to conceal it.

Mr. René Villemure: What reasons do you think justify not disclosing a contract in the name of national security?

Ms. Caroline Maynard: That really depends on how the contract was drafted. Sometimes, it contains confidentiality clauses. It is really hard to name the reasons off the top of my head, because each case is different.

At the Office of the Commissioner, we encourage people who prepare contracts to be as transparent as possible and let the contractor know that the information is going to be accessible to Canadians, who want to know where their money is going and how decisions are made.

If a contract does raise national security issues, it is processed differently. However, the aim must really be to avoid a danger or a breach of trust.

• (1655)

Mr. René Villemure: So that should be the exception.

Ms. Caroline Maynard: Claiming the exemptions provided in the Access to Information Act should always be the exception.

There are several criteria. Often, we see that two criteria apply, but not the third. Unfortunately, the investigation that is needed to reach that conclusion sometimes takes two or three years.

Mr. René Villemure: Is the Canada Border Services Agency particularly secretive or transparent?

Ms. Caroline Maynard: There are a lot of complaints about that agency relating to immigration applications, as there are in the case of Immigration, Refugees and Citizenship Canada. In both cases, they tend to be complaints relating to delays in processing access to information requests rather than to the exemptions claimed.

Mr. René Villemure: Earlier, you mentioned the Canada Revenue Agency, which could improve.

Ms. Caroline Maynard: All of the institutions can improve, but given the number of access to information requests it received, the Agency is very innovative and takes access to information seriously. It employs 250 access to information analysts, double the number of employees in my office.

Mr. René Villemure: If I understand correctly, you recommend that contracts be made properly and that they be released. Ultimately, you advocate a culture of openness rather than of secrecy.

Are we moving in that direction?

Ms. Caroline Maynard: Once again, each institution is different. Health Canada, for example, is making huge efforts. Since one of the things people frequently ask about is the results of laboratory tests, the department is starting to publish them, in response to that interest.

Institutions could look at the requests they receive each year and determine what ten kinds of information are most requested, in order to publish them. In the United States, after three requests, the information is published. We could do that in Canada and make a list of what is requested rather than waiting to receive an access request each time. I think these requests should always be a last resort and the information should already be public. We are talking about information that belongs to Canadians.

Mr. René Villemure: That is so, yes.

In one of your recommendations, you talked about cabinet confidences. We are finding that the number of these documents that are not published is rising. What can you tell us about this?

Ms. Caroline Maynard: Unfortunately, I do not have jurisdiction over those documents and they are excluded from the Access to Information Act at present. All my office receives is a confirmation by the institution that certain pages requested are covered by that exclusion.

In the past, I have recommended an independent review mechanism and that my office be authorized at least to see these excluded documents, to be able to confirm that they are actually cabinet confidences. This kind of situation arises, as in the case of certain documents denied on the ground that they are covered by solicitor-client privilege under section 23 of the act. When we review those documents, we can confirm that they do not involve a legal opinion.

In the case of cabinet confidences, I would like to be able to make sure that this exemption is being applied genuinely.

Mr. René Villemure: As members of the public, we cannot know that. We rely on you.

Ms. Caroline Maynard: Yes, but I do not disclose anything. All I do is determine whether or not the exemption has been properly applied.

Mr. René Villemure: Right. Thank you.

Ms. Caroline Maynard: It's my pleasure.

[English]

The Chair: Thank you.

Now we'll go to Mr. Green for six minutes.

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

I would like to welcome you back to this committee, Ms. Maynard. It's very timely that you're here.

In your opening remarks, you spoke about access to information as being almost fundamental to freedom. I believe you used the word "freedom" multiple times. Could you perhaps, from your perspective, give us your value statement or your reasons why you believe that in a democratic system access to information is a fundamental part of our freedom?

Ms. Caroline Maynard: To me, without information, without knowing what decisions are being taken on what facts and on what data, and what money is being spent, Canadians are not aware. We keep talking about Canadians losing trust in our democracy and losing trust in our governments. Interestingly enough, the municipal levels are the most public. They do hearings with the public, and Canadians can go and listen to the decisions being made at the municipal level. At the provincial and federal levels, it's very difficult to obtain information.

This is why I think we need to be proactive in our sharing of the information, because Canadians are asking more and more questions. They know their rights, and if they don't have the information from our own institutions, they're going to turn to other sources of information, which will lead to misinformation.

This is why I think the more you give them, even if they don't agree.... That's why democracy is so important: They don't have to agree with you. They don't have to agree with the other party, but at least they understand. It's the same with our kids. They ask us questions, and we explain. They don't have to agree.

• (1700)

Mr. Matthew Green: I do agree with that sentiment.

I reflect on stories about the Prime Minister's Office using dozens of secret orders in council. I reflect upon my work at the Emergencies Act review committee, where senior cabinet members are refusing to disclose basic information to the committee, contrary, in my opinion, to our parliamentary privilege. In fact, some senior staffers are actually saying outright, both at this committee through the RCMP and at other committees, that they will not give us the most basic information. In fact, there was a situation where....

Can you please pause my time? Can we make sure that all of the sound is off from the staffers? It happens from time to time, but it does throw you off.

The Chair: Okay.

You have about three minutes and 20 seconds left.

Mr. Matthew Green: I'll take those three minutes. Thank you very much.

I'll pick up on the notion that this government ran on being open by default. In fact, in 2018, it implemented a Ministry of Digital Government. For three years, it had a Ministry of Digital Government, which it then canned unceremoniously in 2021. In my opinion, there is a very secretive culture of obscuring the facts from the general public and the House of Commons.

As a member of Parliament, when I hear someone say they're either unwilling to give us notes—you talked about briefing notes, and I would reference my interaction with the Deputy Prime Minister, who outright refused to give basic briefing notes, which should have been made available to the committee—or they're not even accessing it—which was the Minister of Public Safety, Mr. Bill Blair at the time.... The right to access cannot exist without actual records.

In your opinion, would departments' and institutions' failure to keep adequate records infringe on the rights of Canadians to access information?

Ms. Caroline Maynard: You're touching on another recommendation I made in my submission, which is to legislate the duty to document. Without records, as you just mentioned, there's no access.

Right now we have a policy that is sometimes followed and sometimes not followed. It's becoming more and more difficult to know what is being discussed and what is being decided with a hybrid model of work. People are working from home. People are on Teams. They're texting. This has always been a concern for all commissioners around Canada. We drew up a resolution in 2016 on that subject. B.C. is the only province that has a legislative duty to document.

Mr. Matthew Green: I do have a couple more questions in my limited time.

I think about the secret work of COINTELPRO, which involved the infiltration of civil rights movements. Documents that were released by the American government decades ago are still being withheld by the Canadian government.

Are the differences between that country and Canada simply legislative, or is there a difference in the culture and education of those working in governments and these related institutions?

Ms. Caroline Maynard: There's definitely a difference between the United States and Canada in terms of declassification of documents. They have a program. Every 20 years, documents that are secret or top secret go through a review. If they are declassified, they are a lot easier to—

Mr. Matthew Green: Would your recommendation be that we do that?

Ms. Caroline Maynard: We have a recommendation as well that the Government of Canada should have a program, whether it's 15 years, 20 years or 50 years. Pick a number. Right now we have none, so—

Mr. Matthew Green: This is the last question.

On the topic of this Ministry of Digital Government, during the very short and, to me, bizarre life of which this government purported to be open to access to government, to be an open government, did you see any improvements, material improvements or, in your opinion, have things become worse since they unceremoniously disbanded and abandoned that mandate within the government?

• (1705)

The Chair: Could you give us a very brief answer, please?

Ms. Caroline Maynard: I haven't seen any impact specifically with respect to the Ministry of Digital Government.

Mr. Matthew Green: So for three years it really wasn't doing anything anyway.

Ms. Caroline Maynard: There are more demands than ever.

Mr. Matthew Green: Thank you.

The Chair: Thank you, Mr. Green.

Mr. Kurek, you have five minutes.

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

Thank you, Commissioner, for joining us here today to emphasize the importance of access to information as being fundamental to democracy, freedom and accountable government.

I will start with the duty to document. Certainly I've seen some concerns about missing information and loopholes that were obviously...or getting access to information requests for phone calls, sticky notes, voice mail messages or recordings. Is that what you're referring to when it comes to the idea of the duty to document?

Ms. Caroline Maynard: What I'm referring to is making sure that after a meeting, for example, minutes are taken and saved properly so they are easy to retrieve and find. Right now we are in an environment of electronic documents and meetings over Teams. If nobody is taking the time to properly document what's happening, the decisions that are being made, and putting that in a place where the next analyst coming after you will find it, the right to access doesn't exist because there are no records.

Mr. Damien Kurek: I appreciate that.

Regarding analysts, I'm curious whether you have numbers as to how many ATIP officers are working at home versus back in the office.

Ms. Caroline Maynard: I don't know, because institutions have their own rules right now. I believe it's pretty much hybrid everywhere in government. I don't know.

Mr. Damien Kurek: Would that information be helpful for your office to be able to determine efficiencies and accountability?

Ms. Caroline Maynard: At the beginning of COVID, it was really difficult to work and to do investigations, because most analysts didn't have access to their servers or to any information. Now we're saying that COVID is not an excuse anymore. You should have access to your server, to documents, and the OPI should be able to give you the information.

It's rarely the analyst's fault when something is late. It's usually the public servant who has the document in his office and doesn't give it much time.

Mr. Damien Kurek: Do you have any numbers regarding the number of contractors versus analysts who are employed by the government on a full-time basis? Do you have any information on that?

Ms. Caroline Maynard: No. The TBS would maybe have that information, but that's not something that we investigate.

Mr. Damien Kurek: It would be good to know the cost. I know there are hundreds of thousands of dollars, possibly millions of dollars, for contractors who are being paid to fulfill access to information requests, and it would be good to know. That's certainly a question for TBS.

I have a couple more questions. With regard to whistle-blowers, I believe I asked you this question when you appeared before the committee before. I'm hoping to give you a brief opportunity to talk about the need for whistle-blower protections within Canada.

Ms. Caroline Maynard: I always believe in that, but it's totally not within my jurisdiction. If they are protected somehow... Definitely we need protection, but it's not within access to information per se.

Mr. Damien Kurek: I'm curious whether you've ever noted a difference in terms of the length of time to give a response with different ATIP filers, depending on who files the ATIP. For example, if it is a journalist versus an MP versus a member of the public versus another government organization, have you ever noticed any difference in the timelines for those responses?

Ms. Caroline Maynard: I don't know how the institutions are treating these requests. They're not supposed to look at who's asking for the information. In terms of statistics, I know 65% of all requests are being made by the public in general, which was surprising to me. When I became commissioner, I thought for sure that journalists would be the biggest part, or political parties. Canadians know they have a right and they're using it.

They're not supposed to be classifying in terms of who it is. It's first in, first out.

Mr. Damien Kurek: I have one last question in the 40 seconds I have left.

On cabinet confidence, certainly I've found that this not only adds significant delays, but also seems to be a commonly used excuse not to disclose information. Can I ask you to comment on what changes are needed to ensure that something like cabinet confidence cannot be used to keep documents from being disclosed?

• (1710)

Ms. Caroline Maynard: Cabinet confidence right now is not under my jurisdiction. I am not able to see cabinet confidence documents. What I have recommended is to at least have the first level of independent review of these documents that are being claimed as cabinet confidence, so that we can tell you it is cabinet confidence.

Mr. Damien Kurek: Thank you.

The Chair: Thank you.

Next is Mr. Bains for five minutes.

Go ahead.

Mr. Parm Bains (Steveston—Richmond East, Lib.): Thank you, Mr. Chair, and thank you to our guest for joining us today.

In your 2021-22 annual report, you note a dramatic increase in the number of complaints—the highest since the office was created. How can we reduce the number of complaints that the commissioner receives each year?

Ms. Caroline Maynard: We have to do better in responding to access requests in time.

The act provides 30 days, and you can ask for an extension. Right now, we're seeing more and more institutions asking for extensions, not meeting the extension or not responding within the 30 days, or not responding at all. We have cases where complainants say they've been waiting for months and months with not even an acknowledgement. We have to do better in responding to access requests.

The complaints are increasing every day. We are already at 4,900 for this year. We need to do better in responding. We need to give resources to units. We have to make people aware that this is part of their duties. It is a collective duty. The leaders have to pass the message on to their institutions.

We have to do better in managing our information, as I was saying earlier. Requests are becoming more and more voluminous, so they take more time. If you do better at recording the information, erasing the transitory documents but keeping the key corporate documents so that we have a good response, that would be key to responding in a timely manner.

Mr. Parm Bains: In your annual report, you state that “adopting specialized technological tools” will improve the ATIP system. Were there specific technologies you've encountered that the government should take note of?

Ms. Caroline Maynard: I invite the committee to invite IRCC. Since my systemic investigation... They were receiving 160,000 access requests per year, and there are now over 200,000 access requests at IRCC. They have used robots to find the information faster and to treat it. It's amazing. They did a presentation to the provincial and territorial commissioners at a conference.

They are still far from being perfect, but providing information on their portal voluntarily instead of having to wait for an access request would definitely help. Technology like artificial intelligence to find similar information in the document, instead of having somebody manually do it, is also helpful, and we have some institutions using that.

Mr. Parm Bains: Thank you.

Can you speak to the unique ways that access to information affects indigenous peoples and how that could be improved?

Ms. Caroline Maynard: We're definitely seeing that it's affecting reconciliation. There is so much information at the government that we still need to provide them with respect to what happened historically, for them to understand what happened. The commission was very helpful, but we need to share more of that information.

Luckily, a lot of institutions are giving them proactively... They are giving them information through an informal regime so they don't have to do access requests and pay for the information, but there are still a lot of documents that indigenous people are requiring and that are still outstanding—for example, legal opinions.

I know that Minister Miller said that they were talking with the justice department to make sure that some of that information is going to be shared. I don't know where that is at, but I'm hoping it's going to result in more information being shared with our first nations and indigenous people.

Mr. Parm Bains: Has your office had engagement with indigenous people?

Ms. Caroline Maynard: Well, when they do a complaint, it has, for sure. My office is involved only when there's a complaint and we have to do an investigation. We have seen some cases, and we're trying to put those as a priority in terms of investigations because of the timelines and the amount of information and the sensitivity of the documents. Often, it's just a question of delays. If they were to get the information, it would be a first step.

• (1715)

Mr. Parm Bains: What's the level of complaints from indigenous peoples?

Ms. Caroline Maynard: Well, again, it would be either because they made a request and didn't receive the information or because of an exemption being used—for example, section 23, the solicitor-client privilege—on documents that were used by the justice department on cases involving indigenous people. The question is whether discretion could be used in that case by the Minister of Justice to allow the information to be provided. Those are the kinds of conversations we have with departments, including the Minister of Justice.

The Chair: Thank you.

[Translation]

Mr. Villemure, the floor is yours for two and a half minutes.

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

Commissioner, are you familiar with the study that was published by *Foreign Affairs* about the criteria used by the United States for documents classified as "Secret", "Top Secret", and so on?

Ms. Caroline Maynard: No.

Mr. René Villemure: It said that the officials responsible for classifying the documents took additional precautions so as not to be blamed. Is this somewhat like what we see here as well?

Ms. Caroline Maynard: We can certainly wonder whether certain documents should have been classified "Secret" or "Top Secret".

We try to show officials that the fact that a document is marked one of those things does not mean that the exemptions in the Access to Information Act have to apply. Contrary to what some people think, the classification "Secret" or "Top Secret" has to be taken into consideration, yes, but it should not automatically result in the application of the national security exemption. They have to pay attention and apply the act as it is written, not based on how the document is classified.

Mr. René Villemure: It is a different classification system.

Ms. Caroline Maynard: Exactly.

Mr. René Villemure: What criteria that are cited for not disclosing do you consider to be invalid?

Ms. Caroline Maynard: We think that one of the provisions of the act that gets overused is section 21(1)(a) concerning advice or recommendations, resulting in completely redacted documents. In those cases, we order the institution to disclose the factual or statistical information that does not contain advice or recommendations. The briefing notes often contain several pages of that kind of information, which should have been disclosed.

In our submission to Treasury Board, we recommended including a list of information in the act to which the exemption provided in section 21(1)(a) should not apply. We see that kind of clarification in the equivalent Ontario act and it helps the provincial officials a lot in applying that exemption more consistently.

Mr. René Villemure: This exemption should not be used to prevent people from understanding.

Ms. Caroline Maynard: That's right.

Mr. René Villemure: Right.

It should enable people to understand.

Ms. Caroline Maynard: We should at least get the basis, even if we don't know what was recommended or what the advice was. We should at least know whether the right facts were used.

Mr. René Villemure: Yes. That would then enable people to understand.

Ms. Caroline Maynard: That's right.

Mr. René Villemure: Right. Thank you.

[English]

The Chair: Thank you.

Now we have Mr. Green.

Mr. Matthew Green: Thank you very much.

You recommend that the Canadian government follow the lead of countries like the United States and that the information be made public when there are three or more information requests on the same topic. In your 2021-22 annual report, you note the increased number of complaints. How many of those could have been solved, in your opinion, had that been instituted?

Ms. Caroline Maynard: It's impossible to tell. We don't do statistics on what kinds of information are requested. I wish I could, but with 7,000 complaints a year—

Mr. Matthew Green: Let me just ask you more generally, if that were in place, might you have reduced your caseload?

Ms. Caroline Maynard: There are lessons learned from access to information. If you know there's a crisis, like COVID, and if you know it's going to come and the briefing notes on this will be requested, why not do a standard document? This will be released and this is not going to be released, but you can have the drafting of those documents already with a view to access.

Mr. Matthew Green: That's right.

In your letter to the President of the Treasury Board in July 2021, you emphasized "the need to take immediate and concrete action, rather than waiting for legislative change." A year later, could you share with us what concrete actions and immediate measures the President of the Treasury Board has taken in that time?

• (1720)

Ms. Caroline Maynard: I would invite you to talk to the Treasury Board for specifics. I know there's a staffing pool that was created by TBS, which was going to be shared by institutions for trying to hire new analysts. That's something I was told was done recently, and it's something that's definitely needed, because every institution is in need—

Mr. Matthew Green: Just so we're clear, in your opinion, in terms of immediate and concrete actions, is it safe to say that more steps need to happen? If so, which immediate and concrete steps would you demand from the Treasury Board on a move-forward basis?

Ms. Caroline Maynard: We need more resources. We need a classification program. We need training. When I talk about resources, it's not just human resources, but financial resources, innovations.

Mr. Matthew Green: Thank you.

The Chair: Thank you.

We will now go to Mr. Williams for up to five minutes.

Mr. Ryan Williams (Bay of Quinte, CPC): Thank you, Chair, and thank you, Commissioner Maynard, for joining us today.

I want to focus for a few minutes on Bill C-58. The last time the recommendations were made in Parliament, this bill was supposed to correct some of the problems we saw. It's been three years since that bill was implemented and changes were made to the ATIP system.

Has that helped or hindered your work and the work of the Privacy Commissioner?

Ms. Caroline Maynard: As you know, there were not a lot of changes, but one of the changes that really helped was giving me the authority to issue orders instead of only recommendations. I can tell you that when institutions know that an order is coming, they're moving a little faster. So it has helped us to deal with files and get informal resolutions.

Also, when we don't arrive at an informal resolution on a case—the complainant is still not satisfied or we issue an order—I love the fact that we can now publish these reports. That's something we couldn't do before. We were missing about 35 years of jurisprudence from my office, with all kinds of cases that were investigated and positions that were taken that were not publicized until the annual report. Once a year is not enough.

Now we can publish all of the reports we are issuing. It has helped us explain to complainants, “This is a very similar case to yours, and this is what's going to happen”, or explain to institutions, “This is a position that the commissioner has taken, and she will probably take the same position with your case because it's very similar.”

It really helps to resolve cases. The publishing has been a great improvement.

Mr. Ryan Williams: Do you have all the resources you need for that aspect?

Ms. Caroline Maynard: No.

Mr. Ryan Williams: Do you have a backlog on that process right now?

Ms. Caroline Maynard: We are funded now to be closing 4,000 cases. We have 7,000 cases, and we're going to about 10,000, so we're definitely going to need more resources.

I'm going to be in the process of asking for extra funding soon, including for our publishing capacity, because you have to translate everything. We want to make sure that those documents are properly written so that anybody can understand them. It's not easy to write a report on access to information when you cannot provide the information that's being exempted. You have to find ways to provide the information that's going to help everybody, and as many as possible.

Mr. Ryan Williams: How many times would you be involved in asking for those reports, then? Of the 7,000, how many of those would you need to be personally involved with?

Ms. Caroline Maynard: It would be about 15%. Those are results and orders, or reports that—

Mr. Ryan Williams: That's over 1,200 a year.

Ms. Caroline Maynard: Yes.

Mr. Ryan Williams: Okay.

How many can you do, given the funding you have right now?

Ms. Caroline Maynard: Last year, we did 6,500. A lot of those were informally resolved.

We put all of our money into our investigations last year. We cannot sustain that. We have to help our corporate services, legal services and translation services.

Knowing also that this is increasing, our statistics show that if we don't get extra funding.... We may get to about 15,000 complaints within the next two years.

Mr. Ryan Williams: Bill C-58 allowed departments to reject ATIP requests with your permission. I see in the report that you received 36 requests and approved just two. Why were just the two

approved, and was there a massive spike in requests for rejection last year?

• (1725)

Ms. Caroline Maynard: Most of the time it's because the institutions didn't do their homework before they asked for a permission not to disclose.

The duty to assist is very important. When somebody is asking for an enormous number of files, it's not because there are a lot of documents that the request itself is unreasonable. Sometimes the institution doesn't go back to the requester to try to scope it down and explain to them that they're going to receive 22 million pages. What we often tell the institutions is to start with the duty to assist and talk to the requester to make sure they've done those steps first, and then come to us.

I think that's a learning step. The ones we agree to give are because the requests were clearly made in bad faith. Somebody had already received all the documents and asked for them again—things like that.

Mr. Ryan Williams: Okay.

This is my last question.

Over the last few years, you've heard reports of departments deliberately evading ATIP requests by using code names. One case was that of Vice-Admiral Mark Norman. They used a code name for the vice-admiral specifically to evade ATIPs.

Are there recommendations that we need to make to avoid this in the future?

Ms. Caroline Maynard: There is already a provision under the act that if you are doing anything—changing a document, erasing a document, destroying a document—it could be a criminal offence. If I see evidence of intentional measures to take away access, I can refer it to the Attorney General.

Mr. Ryan Williams: Would you be the one to refer that personally?

Ms. Caroline Maynard: Yes.

Mr. Ryan Williams: Okay, thank you.

The Chair: Thank you.

Now we'll got to Mr. Fergus.

[*Translation*]

Hon. Greg Fergus (Hull—Aylmer, Lib.): Thank you for being here today, Ms. Maynard. I think your testimony before this committee is always interesting and you give us a lot to think about.

My office has studied certain data. Earlier, you had mentioned the enormous number of access to information requests received by the Department of Citizenship and Immigration. The analysis done by my office shows that access to information requests made to that department nine year ago amounted to a little less than half the total number of requests to federal institutions. Now, they represent nearly three quarters.

What could explain this huge increase in the number of access to information requests? We know from the earlier appearances by representatives of the Department of Citizenship and Immigration that the department has problems and is developing a new data processing system to automate the process. Do you think that will really help reduce the number of access to information requests?

Ms. Caroline Maynard: As you said, we receive an enormous number of complaints relating to access to information requests made to the Department of Citizenship and Immigration, to the point that two years ago, I initiated a systemic investigation. From that, we saw that the information systematically requested by agents representing immigrants or refugees is often information that should be available on the department's portal.

It was as if each time you wanted to get information about your notice of assessment from the Canada Revenue Agency, you had to make an access to information request. It would be completely unreasonable to ask Canadians to make an access to information request to get information about their own tax file. And yet that is what is happening at Immigration, Refugees and Citizenship Canada. To find out where their immigration application is, or the reasons why it has been refused, people have to make an access to information request, because that information is not accessible on the department's portal.

In response to the findings of my systemic investigation, the department is putting a new system in place that offers more information, as you said. As well, its officials have changed the way their decision letters are written, to offer more details. With time, we hope that immigration agents will see that the portal and these letters give them the information they are looking for, and the number of access requests will decline. That has not happened yet.

Hon. Greg Fergus: I am going to come back to the question of disclosure, another subject that may not be related.

In your testimony today, you talked about unreasonable requests in some cases, and you also said that officials should be smarter in dealing with their emails and electronic documents.

Can you tell us a little more about this? How can the government file electronic documents better, to facilitate the disclosure of information? Instead of having a chain of 100 emails, could be limit ourselves to two or three pages?

● (1730)

Ms. Caroline Maynard: My office has issued a guideline on this subject, to help people better understand their responsibilities in relation to emails. It is entitled "9 Tips for ATIP-Friendly Email Management".

We find that this is a problem even in our own office, in fact. We often allow employees a half-day to clean up their email inboxes because we have run out of memory. That should not be something that should be required; employees should do it systematically.

For example, if five of you are exchanging emails, we recommend that one person, the author of the original email, retain the chain of emails. Otherwise, if an access to information request is made and the five people have kept the chain, the five of them will have to respond to the request and you will have the same email exchange five times.

It would be preferable to establish clearer rules concerning who should keep emails and what documents are considered to be transitory. This does not mean deleting all the content in email inboxes; it means filing the necessary documents on a drive where they can be retrieved, instead of putting it on your own drive, where no one but yourself will have access in your absence.

Hon. Greg Fergus: I have one last question.

[English]

The Chair: You're quite a bit over, Greg. I'm sorry, but we will have more time.

We just completed two full rounds. I'm just going to propose to committee members another rubric of time allocations for members. I propose to do another one in which we would have five and five; two and a half, two and a half; five and five. We would get through our rounds of questioning at approximately six o'clock. I want to have a couple of minutes after the rounds of questions for a couple of minor housekeeping matters. That would also let our witness off a little bit early.

Are there any objections to proceeding that way? Okay.

Mr. Matthew Green: Can we just go back to the beginning and start over?

The Chair: I won't quite do that. I will, maybe, give it one final call after doing the rounds so that no members are left without a chance to get all of their questions out.

We'll go now to Mr. Bezan.

You will have five minutes.

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

Commissioner, you just mentioned to Mr. Williams the issue of someone potentially trying to obstruct. I believe that's under section 67.1 of the act.

Have you ever prosecuted anyone for obstruction of an ATIP?

Ms. Caroline Maynard: I don't have the authority myself to do a criminal investigation. My investigations are administrative. However, as soon as I have evidence that a potential criminal offence has taken place, I can refer it to the prosecutor, who will then decide whether they do further investigation.

I've referred—

Mr. James Bezan: Do you refer it to the Crown prosecutor or the public prosecutor?

Ms. Caroline Maynard: I'm sorry. It's the Attorney General, for them to decide whether they want to pursue it.

I've done this approximately seven times since the beginning of my—

Mr. James Bezan: They have to make a decision whether or not to prosecute, but you don't—

Ms. Caroline Maynard: They can refer it to the RCMP for investigation.

Mr. James Bezan: As an example, in those seven cases that you've been involved in, what type of obstruction was involved? Was it altering documents or refusing to turn over documents? As we saw with Vice-Admiral Mark Norman, he was—

Ms. Caroline Maynard: What we see the most is destruction of documents. These are documents that we know existed and have disappeared.

• (1735)

Mr. James Bezan: Okay.

You were talking about the statutory review of the act. We have subsection 67.1(1), which lists all the obstructions, ways that would be considered obstruction of access to information. What changes do you need to see in legislation to give you more powers to investigate, or to make direct referral to the RCMP?

Ms. Caroline Maynard: I don't think my jurisdiction should include investigation of criminal offences, because you have to be able to separate those two.

What I would like to be able to do is directly send more information.... Right now, the act says that all of the information is confidential, so I have a very limited amount of information that I can share with these bodies and the Attorney General. I also would like to be able to refer directly to either provincial or federal levels of police forces instead of having to go through the Attorney General. This is something that I think would be very helpful and more direct.

Mr. James Bezan: You want to be allowed to go directly to the RCMP.

Ms. Caroline Maynard: That's it.

Mr. James Bezan: Okay, we'll make a note of that.

One of the other things I'm looking at are the ways that ATIPs are skirted around by departments and ministerial offices. We talked already about the solicitor-client privilege and making use of that. We talked about using cabinet confidences as a way to get around it. We often see that they stamp it “secret”, and then they cannot redact the document because they put the “secret” stamp on it. Under procurement, I know sometimes they say, “Well, those are proprietary rights. You can't look at it.”

What do we need to do in the act to give you the power and resources to scrutinize those types of ATIPs and whether or not documents should be released for public consumption?

Ms. Caroline Maynard: I already have access to legal opinions and solicitor-client privilege documents that are claimed to be privileged. I do not have access to cabinet confidence at this point, so that's something. Canada is one of only a few commonwealth countries that don't have an independent review of cabinet confidence. I think this is something that Canadians would appreciate.

Again, it's about increasing the trust of Canadians in our government. I keep saying that I'm not issuing those documents or disclosing the documents. I'm only reviewing and making a determination on whether or not the exclusion has been properly applied. This is something that I think would be very helpful.

With respect to the other exemptions, we already have access to all the documents, and we can compare the redaction with respect to the full documents.

Mr. James Bezan: Do you have the ability now to look at secret and top secret documents?

Ms. Caroline Maynard: I can review all the documents, yes.

Mr. James Bezan: That's including the ones that they might say are proprietary information.

Ms. Caroline Maynard: Well, sometimes we have to ask them to go and get it from a contractor or another private entity. If there's a contract between those two and there are functions being done for the institutions, I believe that the institutions are entitled to get those documents as well.

Mr. James Bezan: What type of enforcement do we need to shorten the timelines? It's supposed to be 30 days; in one example, as I said, the Department of Justice took 270 days. I got a call from National Defence on one that I filed two years ago; they still haven't filled it yet.

What do we do to make sure that there are penalties in place for foot-dragging?

Ms. Caroline Maynard: I think we just need more resources. We need more innovation, and we definitely need more leaders who believe in access and tell their institutions that they should have the resources for that.

Mr. James Bezan: Thank you.

The Chair: Thank you. You were out of time before that question began.

Mr. James Bezan: It was a good question.

The Chair: Well, they're all good questions.

[*Translation*]

Mrs. Marilène Gill (Manicouagan, BQ): Mr. Chair, I would like to have 30 seconds to speak, if possible, and ask a question about the committee meeting today.

You said you wanted this meeting to end at 6:00. The notice of meeting did not say anything about us discussing the committee's work. So I am wondering whether it would be possible instead to allow members to ask questions in another round, like the last one we had.

[*English*]

The Chair: The chair does have a fair bit of discretion in how we allocate this. I don't want members to be denied the opportunity to ask questions. I'm going to complete the round as per the rubric that was adopted by parties at the beginning. When we get through this, I think there will be time beyond that, if members do wish to ask other questions. That is why I said I would do a final call before adjourning the meeting. We'll try to make sure that all members can ask their questions.

With that, I will go to Mr. Fergus, and after that we'll carry on.

Go ahead, Mr. Fergus.

• (1740)

[*Translation*]

Hon. Greg Fergus: Thank you for these "Bezan-style" five minutes, Mr. Chair.

Thank you as well, Ms. Gill.

Ms. Maynard, I would like to talk some more about what we were discussing earlier. I have two questions for you and I might interrupt you during your first answer so I can ask you my second question.

My first question is this. What percentage of the information that is provided in response to access requests is repeated? Is it five per cent, ten per cent, 20 per cent, or more?

Ms. Caroline Maynard: I would say it is a majority of requests, now.

Hon. Greg Fergus: Is it more than 50 per cent?

Ms. Caroline Maynard: Yes, because it is rare for a person to request a particular briefing note. Instead, they ask for a briefing note, an email, a text message, or a video on a particular subject. The person then receives a large volume of information in which there are often a number of duplicated items.

[*English*]

Hon. Greg Fergus: Then, following that, your recommendation was talking about good email management—good email hygiene, I think, would be the term—making sure that you would move from.... You know, if you were five in the office and you're all on an email chain, the person responsible should be the one who keeps it and keeps it in a place where it's referenced and can be easily found afterwards, and everybody else should delete the emails.

I'm just thinking practically. You're a public servant. No one wants to make a headline; no one wants to be on your bad side. Let's say that four of the five delete their emails, but maybe there was a cross-discussion that happened with one of those four. They didn't even think about it; they just erased their emails. When you come in and do an investigation, doesn't it look like they were hiding something or they were erasing information so that it wouldn't be there for an ATIP? Isn't that the uncharitable interpretation that could happen? Wouldn't that put amazing pressure on that individual public servant who, really, in good faith, thought that all the information was copied and that they were safe to eliminate that information?

Ms. Caroline Maynard: We have to make sure that the documents being saved have corporate value. The other thing we see is that there are conversations that have no corporate value.

Hon. Greg Fergus: I'm guilty of that.

Ms. Caroline Maynard: Personal emails creep in sometimes too: "Are you coming for lunch?"

We have to make sure we capture what the discussion was about. You don't have to keep the emails if you go back and make a memo out of it that says, "We discussed this. This is what was taken into consideration, and this is the decision that was made." The email is just a conversation. It's like having a meeting. You don't record the meeting; you record minutes at the end.

I understand what you're saying. Somebody could be worried about erasing something, but, again, you have to look at the chain and see what the corporate value is. Do you have to keep all of your emails about everything? No. There are things that would lead to somebody understanding a decision or why there's a policy change. If I see that four people discussed it, and you have the chain kept by at least one person, I don't see how I could be mad at the other three for doing proper management of information.

[*Translation*]

Hon. Greg Fergus: Thank you for your answer, Ms. Maynard. It adds an important detail for the consideration of my colleagues.

Can you send us your guide for how to process information? At the least, it will be useful to committee members in producing our report.

• (1745)

Ms. Caroline Maynard: I will send you that.

Hon. Greg Fergus: On that point, Mr. Chair, I am going to do the opposite of what my friend Mr. Bezan did, and cut my questions short in order to get back on schedule.

[*English*]

The Chair: Thank you.

I was actually a bit sloppy with the clock there, so I wasn't certain.

[*Translation*]

Ms. Gill, the floor is yours for two and a half minutes.

Mrs. Marilène Gill: Thank you, Mr. Chair.

Ms. Maynard, you said that 60 per cent of access to information requests were made by the public. I imagine that the rest of the requests come from other sources such as elected representatives, or indigenous people, as Mr. Bains talked about earlier.

Would it be possible to do a study of the various sources of access requests? I know it would be very complex and the research required would be incredible, given the many supports that exist and the subjects and organizations to which requests relate. But it might let us know what has to be improved, to untie the knots or eliminate the bottlenecks you were talking about.

Ms. Caroline Maynard: In an access request, there is a place where people have the choice of whether or not to say they are a member of a particular group. Treasury Board, which is responsible for access requests, could add to the list of groups, obviously, if it considered it appropriate in the present circumstances.

Regarding bottlenecks, we see these more within institutions.

Mrs. Marilène Gill: Two and a half minutes go by very fast, so I am going to ask you my second question, which is about language, a subject you referred to earlier.

In some fields, particularly in translation and interpretation, it is hard to find workers. Is that an impediment to access to information for people who want to obtain information in French?

Ms. Caroline Maynard: Our statistics show that there are not huge numbers of complaints concerning the language in which documents are provided in response to access requests. It is very rare for people to complain about not getting a document in their language.

The impediment lies more in the area of proactive disclosure. Institutions will often say that they cannot publish a document because they would have to do it in both languages, but they do not have the resources needed for translating it. That is unfortunate, because if those documents were published automatically, there would be fewer access to information requests.

Mrs. Marilène Gill: Thank you, Ms. Maynard.

[English]

The Chair: Thank you.

With that, for two and a half minutes, we now have Mr. Green.

Mr. Matthew Green: Thank you very much.

You contemplated the relationship between the solicitor and the client. I think about the recommendations of the former attorney general, Jody Wilson-Raybould, about separating out the Ministry of Justice and the Attorney General.

In your response to one of the questions around prosecuting the destruction of documents, what I'm curious to know is this: How many cases have you referred to the Attorney General for investigation?

Ms. Caroline Maynard: There have been about seven.

Mr. Matthew Green: How many were pursued?

Ms. Caroline Maynard: I don't have that information.

Mr. Matthew Green: On the face of it, it seems like there's a pretty significant inherent conflict of interest when the government is acting as both a solicitor and a client at the same time and when decisions on investigations of this nature are not handled with impartiality, particularly when you talk about the destruction of documents. I referenced the mess that's happening in the States and the sacrosanct way in which we should be maintaining government records. The government side wanted to attribute perhaps more benevolent reasons as to why these things might go missing.

To your knowledge, is there any way for this committee to be able to request the results of the seven cases referred to the Attorney General?

Ms. Caroline Maynard: You are welcome to ask him directly.

Mr. Matthew Green: In your opinion, do you think there could be a legal advantage, given your subject matter expertise around the law in this particular field, of decoupling the role of the Attorney General and the Department of Justice to perhaps allow a bit more independence between the two? Or do you think that as it is now, status quo, it doesn't present any legal questions?

Ms. Caroline Maynard: My recommendation is to jump over the step of the Attorney General referral and go directly to the po-

lice force, who I believe would be better placed to do the investigation.

• (1750)

Mr. Matthew Green: But ultimately, an RCMP investigation would give a recommendation to a prosecutor, which would then, to my understanding, end up in the purview of the Department of Justice. We're right back to the same kind of.... I'll call it "grey area", to be charitable to the government.

Mr. Chair, I know that my time is up, but I'm wondering if there's some way in which this committee, through its reflection on this testimony, can request from the Department of Justice and the Attorney General what happened to those seven cases and what their rationale is for not pursuing them for the criminality they were flagged for.

The Chair: Thank you. That request is noted.

Commissioner Maynard, if you'd like to respond, you may, but it sounded like Mr. Green was making a document request.

Mr. Matthew Green: I'm not going to put you in those crosshairs.

The Chair: All right.

With that, for the final two we have Mr. Williams followed by Ms. Khalid. Then we'll have one last chance and a little bit of housekeeping. We should be off a little after six o'clock.

Go ahead, Mr. Williams.

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

I'd like to follow up on my colleagues' questions.

What recommendations can you make...or how do you ensure that your position is never compromised by being politicized?

Ms. Caroline Maynard: I have to say that I feel very confident that my office is very independent of the government. We have issued investigations against all departments, including PCO, which is under the purview of the Prime Minister. The only part that is not clean, in my view, is the funding. We have not been able to obtain an independent process under which we can get appropriate funding.

I say "we" because a lot of agents of Parliament, such as the Auditor General, are in the same boat as me. Right now, if we want more funding, we have to go through Treasury Board and Finance, two departments that we investigate on a daily basis, so—

Mr. Ryan Williams: How would you correct that? What recommendation would you make?

Ms. Caroline Maynard: I think there was a recommendation at one point for an independent parliamentary committee to review funding requests from agents of Parliament. We report to Parliament, so I think that would be the appropriate venue.

You can look at the integrity commissioner. He has a specific independent process under which he can obtain some funding. The Canada elections chief also has his own process. So it's feasible. It would render my office completely independent from our government, at that point.

Mr. Ryan Williams: Okay. That's a good recommendation.

You discussed some innovation—I'm really big on innovation—and AI being used in IRCC. Are there other countries doing more innovation? Are there other models that we can look to in Canada to better the process to be able to catch things up?

Ms. Caroline Maynard: Well, those innovations are mainly privacy-related issues, but one thing I find.... I went to visit the U.K. commissioner and the Scottish commissioner, and they have a monitoring capacity on institutions directly instead of having the administration done by a government institution like TBS. The reporting of the institutions goes directly to the commissioner. When you see after three months that somebody is struggling, that an institution is struggling with requests, the commissioner has the authority to intervene.

I think those types of jurisdictions are interesting, because you don't wait for the complaint; you can have proactive action and an outreach kind of jurisdiction. That authority would be nice.

Mr. Ryan Williams: Are there other countries that do that?

Ms. Caroline Maynard: I'm sure there are, but everybody has a different act and a different type of jurisdiction. There are ombudsmen and there are commissioners. We try to keep up with what's going on, but it's really the institutions that have to invest in those innovations and look at what can help them. Technology is always a solution, for sure.

Mr. Ryan Williams: You talked before about proactive disclosure. Are other governments using any technology to do that? You talked about the municipal level. I came from that level. Sometimes they're not proactive, either.

What's the best recommendation you can make for that, based on other countries or on what you think we need to be implementing?

• (1755)

Ms. Caroline Maynard: I think that is definitely something that's internationally equal. Everybody is pushing their government to do more proactive disclosure. We all agree that more information given, without us having to go through the access system, which is already overwhelmed, is key.

One issue we have in Canada.... Well, it's not an issue. We're privileged, but we have to provide the information in two languages, so it adds some challenges. A lot of other countries don't have that to deal with, including the United States, which is providing a lot of information proactively.

Mr. Ryan Williams: Mr. Chair, am I out of time? I have another question.

The Chair: You have half a minute, if you'd like.

Mr. Ryan Williams: I'll go quickly, then.

At your last appearance, you talked about the departments with the worst ATIP records right now: IRCC, CBSA, RCMP, CRA and PCO. Have you spoken to any of these institutions since, and are you encouraged by their progress?

Ms. Caroline Maynard: I am very encouraged by IRCC. They are doing an action plan in response to the systemic investigation. The results are not there, but I think they're coming. We will see some improvement. Unfortunately, we're not seeing it now, but it's something.

I had to do a systemic investigation of Library and Archives, because we were not seeing any improvement at all. Luckily, that led to them obtaining substantial help, financially. I'm looking forward to seeing the action plan and how it will impact their unit, as well.

Mr. Ryan Williams: Thank you.

The Chair: Thank you.

For the last round within the normal schedule of rounds—and I said I'd do one last check afterwards—Ms. Khalid has the last five minutes.

Go ahead.

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

Thank you, Ms. Maynard, for taking the time today to answer our very extensive questions.

I have two questions.

First and foremost, have you felt that the addition of a complaint button on your website and through social media has been a good-news story, with impact on how your office operates? Has that led to an increase in the number of ATIPs your office receives?

Ms. Caroline Maynard: Do you mean the online complaint form?

Ms. Iqra Khalid: Yes.

Ms. Caroline Maynard: I think it has helped to reduce the number of complaints. As you go through it, our website and the complaint form provide some information on whether or not you're too late, or whether it's the appropriate place to put in a complaint. The online complaint form has opened up the accessibility, but we use it as a tool, as well, to educate and properly inform our complainants about the rules with respect to the complaint system.

Ms. Iqra Khalid: Thank you for that.

With respect to malicious ATIPs, do you find that's a reality? Do you find that people put in ATIP requests asking for an obscene number of documents, or because of political ideologies or motives people may have, or for any other gains? How does that impact your office?

Ms. Caroline Maynard: Well, it has more impact, I think, on the institutions themselves, which have to deal with those types of requests, and yes, they are real. We all have that one requester or two requesters who, for some reason, have a chip on their shoulder, and they decide to overwhelm with a number of requests or a request that is frivolous.

Unfortunately, before 2019, there was no way to deal with those types of requests—not requesters, but requests. Now that we do have the authority not to respond to those, with my authorization, I think it will help institutions, hopefully, because one of those unreasonable requests can have a huge impact on the operation of an ATIP unit or the operation of an institution.

We're hoping that with time, and with some jurisprudence, because I'm publishing those decisions as well.... I have to be careful, because under the act right now, which is another recommendation, by the way.... I want to publish more of those cases, but under the act, I can only publish reports on investigations. Those types of decisions are not supposed to be published, so what I do is summarize them so that we don't give the institution's name or too much of the facts, but at least we give some guidelines about what types of cases we see that are frivolous and in bad faith, and other cases where you're not there, at the threshold, so that institutions better understand those rules.

• (1800)

Ms. Iqra Khalid: How much of a drain is that on your resources in any given year, when you receive vexatious, malicious or frivolous ATIPs?

Ms. Caroline Maynard: It has a huge impact. My office has only three people dealing with our own access requests. Last year, we received a request that ended up with 33,000 pages. We ourselves had to request an extension, because we are subject to the act as well. We don't want to say "no" to access requests, but sometimes we are realizing that it's difficult to negotiate or to try to understand what is behind the request.

I am sure that institutions, as I said, all have their one or two or three requesters who are difficult or who are asking for information where, at the end of the day, you wonder, "What are you going to do with those 22 million pages?"

Ms. Iqra Khalid: Thank you so much for that, Ms. Maynard.

Chair, with my remaining time, I'd like to move a motion, if that's okay with you:

That, pursuant to Standing Order 108(3)(h), the committee undertake a study on children's digital privacy, to ensure that the data of Canadian children is adequately protected; that the committee review existing privacy frameworks, emerging technologies such as age-appropriate design codes, and emerging best practices from comparable jurisdictions, including those implemented by the United Kingdom; and that the committee devote a minimum of three meetings to this study and report its findings to the House.

As more and more children are using devices and have access to a lot of the digital world, I really think it is pertinent for our gov-

ernment to ensure that we're really taking a deep dive and a deep look into how these companies or these data apps and channels are taking that information of a very sensitive nature of children of a very tender age and their online practices and how that data is used. I think it is very important for us to take on this study and ensure that we are doing right by Canadian kids as digital reality becomes more and more a reality within our households.

Chair, I put it to you. I would love our committee to support this.

The Chair: Okay. The motion is in order. It was on notice, so it is in order.

Is there debate?

Go ahead, Mr. Williams.

Mr. Ryan Williams: Chair, at this point, as you know, our party is going through a shadow shuffle, and we're going to want ample time to discuss this when we return from the break. I think we're going to need some time for that.

I am going to make a motion right now. I move to adjourn the meeting and to see this when we return.

Thank you.

The Chair: Okay.

We have a motion to adjourn, which is not debatable. We'll go immediately to a vote.

Do any oppose adjournment?

Ms. Iqra Khalid: I'm sorry, Chair.

That was quite long. I'm not sure if that's in order. I thought dilatory motions were literally succinct to those words.

The Chair: I heard the succinct part of "I move to adjourn." He had some remarks before he moved to adjourn. The motion to adjourn is in order.

There is no debate. We will go to a vote.

(Motion agreed to: yeas 6; nays 4)

The Chair: The meeting is adjourned.

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