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Chair

Mr. Tom Wappel

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• (1530)

[English]

The Vice-Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Ladies and gentlemen, I'd like to call the meeting to order.

This is the Standing Committee on Access to Information, Privacy and Ethics, meeting number 11, Wednesday, October 18, 2006.

The order of the day, pursuant to Standing Order 108(2), is a study on issues related to the alleged disclosure of the names of applicants for access to information.

We have four witnesses today. Before we proceed, gentlemen, and I thank you for coming, I'd just like to remind the members of the committee that I'm suggesting that at five o'clock, or earlier, if we finish earlier, we would have committee business. We would plan future business. We would also deal with the motion of Madame Lavallée at that time. That's what I'm suggesting, unless the committee wants to do otherwise.

We have with us today Professor Alasdair Roberts, Public Administration, Syracuse University. We have, from the Department of Justice, Denis Kratchanov, director and general counsel, Information Law and Privacy Section. We have two witnesses from the Privy Council Office: Dale Eisler, Assistant Secretary to the Cabinet, Office of the Assistant Secretary to the Cabinet, Communications and Consultation; and Gregory Jack, who is the senior analyst, Office of the Assistant Secretary to the Cabinet, Communications and Consultation.

Good afternoon, gentlemen, and thank you for coming. You know the topic we've asked you to assist us on and provide your comments. Normally we allow our guests up to ten minutes. I hope you don't all take ten minutes, or we're going to be here a while, because I know all members of the committee will have some questions for you. So I will ask for your indulgence, and try to keep your opening comments to a minimum.

Professor Roberts, you may start, sir. Thank you for coming, sir.

Professor Alasdair Roberts (Public Administration, Syracuse University, As an Individual): Thank you.

My name is Alasdair Roberts. I'm an associate professor of public administration at the Maxwell School of Syracuse University. I am a Canadian and a specialist on freedom of information law or access to information law, and I've done an extensive amount of research on the operation of the Canadian federal law. That's the subject I'd like to address today.

I think we can all agree that Canadians have a right to equal treatment under the law, and that includes equal treatment under the Access to Information Act. We also agree that Canadians have a right to privacy. The major point I'd like to make today is that the methods presently used to administer the Access to Information Act pose a threat to both of these rights. Let me describe these methods.

First, there is technology. Each major federal department uses case management software, also known as tracking software, to manage the inflow of requests for access to information. This software allows departments to classify incoming requests by the occupation of the requester. In doing this classification, every federal department uses a few standard categories, including the media category. However, many departments define other categories as well. For example, I found in a 2005 study that the Department of National Defence used 17 categories to classify incoming requests: academia; business; consultant; dependant; ex-military; historian; lawyer; media; member; organization; other department, which I thought was curious; other government; Parliament; political party; public; public service; and reserves.

I've looked at case management practices in nine federal departments over the last few years. Every federal department that I looked at used a category it described as either political party or Parliament as well.

In addition to departmental software, there is a government-wide database known as CAIRS, the coordination of access to information requests system. Each department is required to enter incoming requests into the government-wide database. Requests from journalists and Parliament are explicitly identified as being in those categories in this database. Research in 2004 showed that the search capabilities of that database were used principally by central agencies, Privy Council Office and Treasury Board Secretariat.

Major departments also have routines for identifying and handling politically sensitive requests. These bureaucratic routines are often well developed and rely on the capabilities of the departmental tracking software. Incoming requests are assessed according to political risk and labelled within the departmental database. The labels vary among departments. Requests may be amber-lighted or coded as red files or purple folders or sometimes as interesting requests.

It appears that requests from journalists, opposition MPs, and party researchers are routinely tagged in this way. The process of tagging appears typically to be undertaken after a regular consultation with ministerial and communications staff. Lists of incoming requests from journalists and opposition parties are regularly generated from the departmental databases and circulated within departments as part of this tagging process.

All of what I have described is now public knowledge. For example, the Gomery inquiry documented this process at work in the Department of Public Works and Government Services.

These practices clearly threaten the right to equal treatment. In a 2002 study, I examined over 2,000 requests handled by HRDC over three years and found that requests from the media or political parties routinely had longer processing times, even after other considerations were taken into account.

In a 2005 study I examined the handling of 25,000 requests received by eight departments over three years. I again found that requests from journalists and political parties were handled more slowly than other requests. This suggests a systemic problem of unequal treatment. There is nothing in the access law that permits requests to be treated differently based on the occupation of the requester. Indeed, a federal report in 2000 said, "Neither decisions on disclosure nor decisions on the timing of disclosure may be influenced by the identity or profession of the requester...." Yet from what I have just said, it is clear that departments routinely flout this rule.

• (1535)

These practices also pose an unnecessary threat to privacy. As I have noted, the occupation of requesters is routinely distributed within departments and across government through CAIRS. The distribution of this information makes it easier for government officials to guess the identity of requesters.

In 2004 I conducted a small test of this hypothesis. I took a random set of requests from CAIRS that were identified only as "media requests". I gave the list to two graduate students, both American, with no knowledge of Canadian politics. I told my students to identify the requester using only news stories published before the request was filed. One request, sent to the Department of Foreign Affairs, was about policy on national identity cards. The next day my American student guessed, after reviewing earlier news stories, that the requester was Joan Walters of *The Hamilton Spectator*. I called Joan, who confirmed the guess.

Another request, also sent to the Department of Foreign Affairs, was about an aspect of the softwood lumber controversy. My American student guessed that the requester was James Baxter of CanWest news. I called James, who also confirmed the guess.

If American students, having only access to the Internet but cued as to the occupation of the requester, can make these guesses, how much easier is it for a communications specialist or ministerial aid, once they are told the occupation of the requester?

There are, of course, many instances in which the actual names of requesters have been discussed within the ATI process. The Information Commissioner has identified cases, the Supreme Court has considered a case, the Gomery inquiry examined yet another

case, and I understand that this committee heard an additional case in earlier testimony. But even if we did not have these stories, it would be clear that current procedures create unnecessary risks to the right to equal treatment and the right to privacy.

There are at least four steps that could be taken to remedy these difficulties. I identified some of these in my background paper for the Gomery inquiry. They are not radical. The first is discontinuance of the practice of circulating the occupational categories for requests within and among departments. The second is a requirement that departments publish, perhaps on their website, the internal procedures that are used to process requests. The third might be a requirement that departments notify requesters if their requests have been tagged for special handling. The fourth would be explicit recognition of the role of access coordinators within the Access to Information Act so that they are better positioned to defend the law. And finally, there needs to be reform to the funding of the Office of the Information Commissioner so that it has the resources to act quickly against cases of excessive delay and investigate systemic discrimination against certain types of requesters.

In the last decade, over forty countries have adopted their own access laws, often looking to Canada as a model. Many of these countries now watch the work of this committee to see how a mature democracy protects the right to information in practice.

Thank you.

• (1540)

The Vice-Chair (Mr. David Tilson): Thank you, Mr. Roberts.

Mr. Kratchanov, do you have a few brief comments?

[Translation]

Mr. Denis Kratchanov (Director / General Counsel, Information Law and Privacy Section, Department of Justice): My comments will be very brief, Mr. Chairman.

Good afternoon, my name is Denis Kratchanov. I am Director of the Information Law and Privacy Section at the Department of Justice.

On behalf of the department, I would first like to thank you for this opportunity to discuss the operation of the Access to Information Act and the Privacy Act, as well as the department's role with regard to them.

[English]

The Minister of Justice serves, as you know, as the legal adviser to all government departments. Counsel within the Department of Justice provides legal advice on the interpretation of the Access to Information Act and the Privacy Act. The role of the information law and privacy section within the Department of Justice is to serve as a centre of expertise in this area to help ensure that the legal advice provided by the Department of Justice to all its clients is consistent and delivered as efficiently as possible.

In addition, the section offers formal and informal training sessions to justice lawyers on matters related to the interpretation and the application of both acts. This section works in close collaboration with officials of the Treasury Board Secretariat responsible for access to information and privacy policies. As such, the section's legal advice is often sought by these officials when they have to respond to a situation that requires them to inform and educate the ATIP coordinators about their role, responsibilities, and best practices. This section also participates in training sessions offered to ATIP coordinators across the government.

[Translation]

Mr. Chairman, that concludes my remarks. I will be pleased to answer your questions.

[English]

The Vice-Chair (Mr. David Tilson): Thank you, sir.

Mr. Eisler, do you have some comments?

Mr. Dale Eisler (Assistant Secretary to the Cabinet, Office of the Assistant Secretary to the Cabinet (Communications and Consultations), Privy Council Office): Yes, thank you.

Mr. Chair, committee members, thank you for the opportunity to be here with you today as part of your deliberations.

[Translation]

I am Dale Eisler, the Assistant Secretary to the Cabinet, Communications and Consultations Secretariat, at the Privy Council Office. I would like to describe very briefly the role of the Communications Secretariat at PCO.

[English]

As part of PCO's support function to the Prime Minister, the cabinet, and the clerk, we focus on providing oversight and advice on government communications. In so doing, we work to ensure that government communications are coordinated and reflect the government's priorities.

• (1545)

[Translation]

There are two dimensions to that responsibility, one external and the other internal.

[English]

The external role is to work with departments in the planning and execution of government communications. The internal role is to support the Prime Minister's Office in achieving the government's communications objectives. In this regard, after September 11, 2001, weekly calls with security-affected departments were initiated to better coordinate the government's response to media calls on security-related issues, which obviously became a very predominant public issue.

[Translation]

The aim of these teleconferences was to discuss communications questions and ensure that the communications people were in a position to respond to media calls in as timely a manner as possible.

[English]

Part of that process led to one of the issues the committee has been discussing.

To provide greater detail and clarity on the subject, I'll ask my colleague Greg Jack, who works in my office on communications relating to security matters, to outline the facts pertaining to this issue.

Mr. Gregory Jack (Senior Analyst, Office of the Assistant Secretary to the Cabinet (Communication and Consultations) Privy Council Office): Mr. Chair, members of the committee, thank you for the opportunity to speak to you today.

As Mr. Eisler said, my name is Greg Jack, and I'm a senior analyst in the Communication and Consultations Secretariat at the Privy Council Office.

If it pleases the committee, I would like to speak briefly about two matters—the calls on security-related issues in the media, which Mr. Eisler mentioned, and the summary I wrote of one of those calls, dated March 15, 2006.

On the issue of the calls generally, in the spring of 2005 I began preparing informal summaries of these calls, which were chaired by Public Safety and Emergency Preparedness Canada. The summaries were sent to security and intelligence analysts in the Privy Council Office, certain communications officials in the Privy Council Office, and the Prime Minister's Office.

The written summaries were to ensure that Privy Council Office policy officials could verify the accuracy of the responses. They were also intended to keep the Prime Minister's Office informed of emerging issues should they receive calls on the same subjects. As Mr. Eisler said, these weekly calls to departments dealt with communications issues and helped to ensure that media calls were responded to as promptly as possible.

If access to information requests were ever raised on these calls, it would only have been in cases where the release of the documents could be expected to require a communications response. I have never been, nor am I now, privy to the names of requesters.

On the second matter, I would like to provide you with some specific background on the call summary dated March 15, 2006, in which the issue of alleged CIA overflights was mentioned. Mr. Jim Bronskill of the Canadian Press had written numerous stories about this issue, beginning in November 2005. In fact, he was one of very few journalists in Canada writing about this issue on a regular basis, and was certainly writing about it with the greatest frequency.

In fact, when the issue of the summary first arose in the media, our quick check showed that he had written about eight to ten stories between November 2005 and February 2006. During that time period, he had even called me personally on this subject, as I was spokesperson at the time for the Privy Council Office.

During the March 15 conference call when Public Safety and Emergency Preparedness noted that they would shortly be releasing an access to information request on the issue of alleged CIA overflights, it was assumed that Mr. Bronskill could be writing a story on the issue. It was this assumption that was reflected in the communications summary.

The assumption was based on the reporter's well-documented interest in the issue and was in no way based on any information received from the access to information office at PCO or anyone else about the identity of the requester. Again, I have never been, and I am not now, privy to the names of requesters.

Thank you.

The Vice-Chair (Mr. David Tilson): Thank you, Mr. Jack.

We will now have questions from the committee—at least I trust we will.

I'm sure you know the process. In the first round, each caucus has up to seven minutes, which includes the questions and answers.

We will start with Mr. Peterson.

Hon. Jim Peterson (Willowdale, Lib.): Professor Roberts, I wasn't able to get all of your detailed recommendations as to what we should be doing. Will you be supplying the committee with written notes on what those are? Okay.

You suggested that when a requester is political, or a party, or a journalist, requests are handled more slowly than normal. How much more slowly?

• (1550)

Prof. Alasdair Roberts: In the first study I did of the processing of requests in one department, HRDC, in 2002—putting aside other considerations, such as how complicated the request was, and so on—the extra time for a media request was 22 days and for a political party request it was 24 days.

If it was also tagged as sensitive in the database, there was an additional sort of 14-day delay, attributable to that consideration.

In my later study of eight departments, the results vary by department. But in Citizenship and Immigration, if the request was from the media, putting aside other factors, you were looking at another 48 days in processing time. If it was a party request, from a member of Parliament or a political party, it was an extra 34 days. In Foreign Affairs, it was an extra 20 days if you were a journalist, and an extra 45 days if you were a party requester.

It varied from department to department.

Hon. Jim Peterson: But that defeats the whole purpose of the necessity for timely disclosure. The law requires that one responds within 30 days.

Prof. Alasdair Roberts: The law does allow extensions of time in extenuating circumstances.

The underlying problem here is the tension between any government's desire to coordinate its communication strategy and the predicament posed by any right-to-information law, which is that it creates the opportunity for uncontrolled dissemination of information. What frustrates requesters, in particular media and

party requesters who want the information in a timely way, is the layer of bureaucratic routine, designed to ensure the coordination of messaging, and the delays this causes and the lack of an effective remedy in those cases.

Hon. Jim Peterson: Our deputy commissioner for information informed us it's common practice to make sure that requests are made known to the minister and/or his staff, so they could have a response when asked by the media, in question period, in a scrum, or whatever. Of course you're confirming that this happens.

Do you have any problem with the minister being informed of requests for information?

Prof. Alasdair Roberts: No, and there's nothing wrong with allowing a department to prepare some sort of response to the consequences it anticipates from the disclosure of information. The problem is that departments, left to their own accord, will take an inordinate amount of time to do that work. This defeats the right to equal treatment and the right of timely access to information.

Hon. Jim Peterson: Do you have any problem with central agencies or agencies such as the PCO or PMO being apprised of requests for information?

Prof. Alasdair Roberts: If it were possible for a central agency to do that, without compromising the right to equal treatment and the right of timely access to information, I would have no objection to it.

Hon. Jim Peterson: Surely with technology, timely access to information can be achieved. I mean, even if it has to go to...

Prof. Alasdair Roberts: Technology has changed, but bureaucracy has not.

Hon. Jim Peterson: Surely through information and educational programs, and through pressure, those processes could be speeded up. Just because you have to go to a minister's office, as opposed to leaving it in the department and sending it out, you should not be required to wait an extra 34 or 48 days.

On your study of Citizenship and Immigration, I'm shocked that media requests required an extra 48 days.

Prof. Alasdair Roberts: I should say that if you ask for cabinet records, putting aside the delays I just attributed, the added delays relating to cabinet records vary from 60 to 260 days for departments, because of clearance processes within the PCO. That's outside the remit of today's discussion, but whenever you have coordination processes or clearance processes at a high level, you run into these blockages that cause a long delay.

Hon. Jim Peterson: Would you just like to repeat some of your recommendations as to what we do to speed that up, then? Timely disclosure is critical.

Prof. Alasdair Roberts: The points I made were, first of all, to discontinue the practice of circulating the occupation of requesters both within departments and to central agencies, because it is unnecessary. It's not necessary for the proper administration of the law, and it creates a potential threat to privacy.

The second was a requirement that departments notify requesters if their requests have been tracked into special processes, whether we're going to call them amber lighting or processes for interesting requests, or so on.

The next two really have to do with bolstering the enforcement mechanisms in cases where there are lapses in compliance. The first is to improve the status of the access to information coordinator by formally acknowledging that role within the legislation, in order to give them more clout in enforcing the principles of the law within the department. And the last recommendation was reform of the funding mechanism for the Office of the Information Commissioner, which I believe this committee may have addressed earlier.

This may seem a long way off the topic, but if there were effective remedies in cases of delay, or if there was an external organization—such as the Office of the Information Commissioner—able to monitor problems of systemic discrimination, we might not worry so much about these practices. The problem is that we have departments investing heavily in bureaucratic routines to coordinate their responses to the requests, and an overseer, a commissioner, who is starved of the resources necessary to police the system.

● (1555)

The Vice-Chair (Mr. David Tilson): Thank you, Mr. Peterson.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): My first question is for Mr. Roberts.

You said that, in some Canadian departments, there were 17 request categories. Did I understand you correctly?

[*English*]

Prof. Alasdair Roberts: Yes. I believe it's Treasury Board policy that all departments should use a limited number of categories. I believe there are five or six categories of requester: business, media, organization, public, and maybe lawyer. The software, the computer programs used by each department, is designed so that the departments are able to add their own categories, and most of them do. For example, all of the departments that I have examined have added a category known as “political party” or “Parliament”, so that they can classify those requests that are coming in.

Other departments have developed other categories for their own internal purposes as well. The one case that I mentioned was the Department of National Defence, which in its system has seventeen different categories for classifying incoming requesters.

[*Translation*]

Mrs. Carole Lavallée: In that case, why did the representative of the Information Commissioner who testified before the committee approximately two weeks ago confirm on numerous occasions that there were five categories: corporations, the public, organizations, the media and requests from the academic world? He said that categorically, no pun intended. And yet you say that the studies you have done show 17 categories. Those studies appear to be quite recent, and I'd like you to give me the year when they were done. The purposes of those 17 categories is to inform the minister about information requests, which may be acceptable, but they also have the effect of delaying the requests.

[*English*]

Prof. Alasdair Roberts: I'm unable to address directly the question of the Information Commissioner's position, but I can say

quite affirmatively that departments do use other categories. The difficulty may be in a question of interpretation.

As I understand it, Treasury Board policy is that every department should use that limited number of basic categories. In the annual reports regarding the operation of the Access to Information Act, that limited number of categories is used. But as I have said, based on my research published in 2005 and earlier, it is clearly the case that departments use other categories, and the one category that is used by every other department that I have examined essentially captures political requests. The label may be “member of Parliament” or “political party” or “Parliament”.

Indeed, if you look at the monthly reports of incoming requests that are maintained by an organization called Open Government Canada—I just checked the August 2006 report before I came in to this session—you can see requests identified as coming from Parliament. It's unambiguously a current practice.

● (1600)

[*Translation*]

Mrs. Carole Lavallée: I said earlier that the categorization of requesters slowed down the requests, but its purpose was also to provide as many indicators as possible in order to recognize the requesters. Is that correct?

[*English*]

Prof. Alasdair Roberts: The original intention of creating the categories and requiring departments to divide by category many years ago may have been to improve public knowledge about the understanding of the act. But since the software was designed to allow the refinement of categories, it has become used as a tool for managing requests internally, and in particular as a mechanism for separating requests that are thought to be politically risky. The irony is that this mechanism has been changed in its purpose over time.

A reasonable question might be why any government department needs to categorize requests for its internal purposes. What legitimate purpose pertaining to the operation of the law is served by the categorization of requests by occupation?

[*Translation*]

Mrs. Carole Lavallée: In one of your proposals for correcting the situation, you suggested informing the requesters. When requesters are informed, couldn't they be told to whom their identity has been revealed? Under our act, the minister is entitled to request the name of the requester. When the requested information is transmitted to the requester, couldn't the requester be informed that his or her name has been disclosed to such and such an official or minister?

[*English*]

Prof. Alasdair Roberts: Sometimes transparency is a good remedy for a problem. Departments that process a large number of requests have established procedures for doing the sort of activity I describe—that is, for undertaking a risk assessment regarding a request or for undertaking consultations regarding sensitive or interesting requests. They have these things written down.

I suggested that if there is an internal procedure or guideline governing the operation of the law and affecting requester rights, that guideline or procedure should simply be published on their website. The website should say that these are the internal procedures used to process requests. If it's innocuous, there's no reason why that material could not simply be published on a departmental website. Privy Council Office could explain the processes it uses to deal with requests it calls "red files".

The next step might then be to tell a requester that their request has been identified as a red file and is being treated in that way. I think the disclosure of information would help to avoid some of the awkwardness or confusion we may be seeing in the current discussions, and it would also encourage departments to use those practices parsimoniously.

The Vice-Chair (Mr. David Tilson): Thank you, Professor Roberts.

Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Chair, and thank you, witnesses.

I'd like to start with Mr. Jack. Mr. Jack, you stated pretty flatly that you have never have asked for or been given the names of applicants. But it's your name that's on the top of this e-mail we all have. You circulated the name of the applicant in this case. You published it. Even if it wasn't you who asked for it, you are party to it, maybe inadvertently, even innocently. But you circulated this to a list of people. I'm not sure who all these people are, the people you sent it to. I recognize Sandra Buckler's name.

The point isn't whether you asked for or wanted the name of the applicant. The point is that you took part in circulating it far and wide. So the issue isn't even how easy it is to figure out who the applicant was, as Mr. Roberts mentioned. Sometimes it's not a difficult task, as evidenced by the students in the U.S. who knew very readily who the applicant was. The issue is what people like Sandra Buckler would do with that information once it's circulated to them—that's what worries us at this committee.

If you have the right to equal treatment and timely access, I would argue that you also have the right to the expectation of privacy as an applicant. If you're in the media, or you're a different type of applicant, you have a legitimate fear of reprisals if people find out who's asking these annoying questions.

I'm not being overly critical of you, Mr. Jack. I don't accuse you of taking part in anything untoward here, but you were party to circulating this information that I argue should never have been circulated to this list of people or anybody else.

Do you agree, basically, that the name of the applicant shouldn't be circulated far and wide, the way it was in this e-mail?

•(1605)

Mr. Dale Eisler: Could I offer a comment?

Mr. Pat Martin: I didn't see your name associated with this, Mr. Eisler. I don't know who called you as a witness, but we did call—

The Vice-Chair (Mr. David Tilson): Mr. Martin would like to hear from Mr. Jack, Mr. Eisler. You could comment after that, but I think that since the question was directed to Mr. Jack, he is the one

who should respond. If you wish to add something afterwards, you can.

Mr. Gregory Jack: I'm happy to respond, Mr. Martin.

I agree that we should not be circulating the names of access to information applicants far and wide. In this case, that's not what happened.

First of all, Mr. Bronskill was writing stories about this issue fairly frequently, as I mentioned. We knew that. It was known to anybody who was paying attention to the newspaper. That does not mean we knew the name of the ATIP applicant. We did know that Mr. Bronskill was in possession of the documents from an ATIP, because he phoned me about that very issue on February 22, when I was the media spokesperson. He said he had an ATIP released by PCO, and asked if I could tell him about it.

So I knew that he was in possession of documents released by my office under access to information. That doesn't mean we knew he was the applicant for the PSEPC ATIP on the top of that e-mail. Indeed, the assumption was merely that he would likely write another story, given that documents were coming out under access to information.

Perhaps this was not the right assumption to make. We might instead have said that documents were going out on the issue of alleged CIA overflights. In the past, when documents on this issue have gone out, articles from individuals such as Mr. Bronskill have resulted. Therefore it was likely that it would happen again in this case.

However, there's a distinction between assuming that the documents being released are going to result in an article and having knowledge of the ATIP requester. I want to say once more: I'm not and have never been privy to the names of requesters. I was not privy to the name of the requester pertaining the PSEPC ATIP. There was a PCO ATIP that was released. I knew that Mr. Bronskill had those documents because he told me so himself.

The Vice-Chair (Mr. David Tilson): Would you like to add to that, Mr. Eisler?

Mr. Dale Eisler: No. My colleague has said that an assumption was inappropriately made. We shouldn't make those kinds of assumptions. However, in the context of the time, the nature of the issue, and the coverage it had been receiving, it was not an illogical assumption to make.

Mr. Pat Martin: It was widely circulated to at least this list. The way it's spelled out here, it's pretty clear that Bronskill has been filing ATIP requests on this issue.

Mr. Roberts, do you agree that if information on the names of the applicants is too widely spread it could create a chill on the user groups? Would certain types of frequent users, or even infrequent users, be less likely to use the freedom of information service if they knew their names were not really subject to any right to privacy and were going to be released?

•(1610)

Prof. Alasdair Roberts: I should make it clear that I have limited knowledge of the subject of the circulation of names of requesters. But if it were the practice to circulate the names of requesters, it would have a chilling effect.

I also think that the clear and expansive practice of circulating the occupation of requesters has a chilling affect. The total effect is to undermine the legitimacy of the law; the belief that the law is an effective device for obtaining information held by government.

Mr. Pat Martin: The anonymity of the applicant is key and integral to the integrity of the whole process.

You might be interested to know we had a witness at our last meeting, Mr. Ken Rubin, who is a frequent user. Not only his name, but a whole profile of who he is, what type of research he's known to undertake.... I don't know who he worked for, but there was an actual profile of the person making the application.

Do you agree that is fundamentally wrong and would constitute a violation of a person's right to privacy, as it pertains to the access act?

Prof. Alasdair Roberts: I'm not able to comment on the specifics because I'm not familiar with them, but it strikes me that sort of practice, if it actually occurred, would be completely extraneous to the point of the law. It's not necessary for the administration of the access law.

The Vice-Chair (Mr. David Tilson): Thank you, Professor Roberts.

Mr. Kenney.

Mr. Jason Kenney (Calgary Southeast, CPC): Thank you, Mr. Chairman.

Thanks to all the witness.

Because we're here as a result of the controversy that flowed from this March 15 e-mail, I'd like to focus my questioning on it.

First of all, just to be clear—to Mr. Jack or Mr. Eisler—did any members of the politically exempt staff in the Prime Minister's Office ask for the information provided here about Mr. Bronskill?

Mr. Dale Eisler: They did not.

Mr. Gregory Jack: No.

Mr. Jason Kenney: You're both responsible for more than just public security issues in terms of communications in the PCO.

Mr. Dale Eisler: Right. As assistant secretary I'm sort of head of the secretariat itself. Greg manages the security intelligence files, among other things. So I have sort of overall authority in the communication secretariat.

Mr. Jason Kenney: We've established that neither the PCO nor the political staff who received this e-mail had access to the requesters's name. Is that correct?

Mr. Dale Eisler: That's right.

Mr. Jason Kenney: An assumption was made based on information Mr. Jack had, apart from the ATI request, on the prospective identity of the requester. Is that correct?

Mr. Dale Eisler: That's correct.

Mr. Gregory Jack: It was the prospective identity of the person who would possibly write an article. Again, you need not be the requester to have the document.

Mr. Jason Kenney: Do either of you believe that the inclusion of Mr. Bronskill's name in this memo or the mentioning of his name during a conference call constituted a breach of the Privacy Act?

Mr. Dale Eisler: I don't believe that, because this was not based on any knowledge of him as the requester; it was simply an assumption. It was not based on any knowledge that would have been a breach of the Privacy Act.

Mr. Jason Kenney: Have political staff in the current Prime Minister's Office asked you to make such assumptions about the names of requesters?

Mr. Dale Eisler: They have not.

Mr. Jason Kenney: Have they asked you to violate the law in any way with respect to the privacy of the names of ATIP requesters?

Mr. Dale Eisler: No.

Mr. Jason Kenney: I would like Mr. Jack to answer that question as well.

Mr. Gregory Jack: Absolutely not.

Mr. Jason Kenney: Has there been any pressure placed on you from political staff to do anything of that nature?

Mr. Gregory Jack: None.

Mr. Jason Kenney: I'd like to read you some statements and get your true or false responses to these.

Members of the Prime Minister's political staff, including his director of communications, have illegally received the name of a reporter who filed a confidential access to information request. This is not only improper, it is against the law.

This is a statement characterizing the circulation of this e-mail. Do you agree that this e-mail was against the law and illegally received?

Mr. Gregory Jack: I do not.

Mr. Jason Kenney: Another statement is:

The Prime Minister's director of communications gets the names of people who make access to information requests.

Is this true?

•(1615)

Mr. Dale Eisler: That's not true.

Mr. Jason Kenney: Disclosing the name of the person requesting access to information is unacceptable. It's against the law. Presumably you would agree with that.

"Staff in the office of the Minister of Public Safety identified to the Prime Minister's Office a journalist who made an access to information request, a clearly illegal act." Is that accurate in this instance? Was it staff of the minister's office who released this information?

Mr. Gregory Jack: I don't know what the staff in Mr. Day's office are doing. As it pertains to that e-mail, it is an improper characterization of the e-mail, because I don't work for Mr. Day.

Mr. Jason Kenney: All right.

"People in the Prime Minister's Office were illegally in receipt of this information"—your e-mail—"about a journalist for more than six months." Again, is it your judgment that this information constituted an illegal transfer of information?

Mr. Dale Eisler: No.

Mr. Jason Kenney: "The Prime Minister's staff committed serious breaches of the Privacy Act." In this instance, is that accurate, in your judgment?

Mr. Dale Eisler: No.

Mr. Jason Kenney: In any other instance you are aware of, is it true?

Mr. Dale Eisler: No.

Mr. Jason Kenney: "Since we have learned that staff in the Prime Minister's Office had committed serious breaches of the Privacy Act regarding access to information...." That is essentially the same statement.

All right, those are the kinds of allegations that were made about this. We have gone through this. I really don't know where to proceed with my questioning except to ask if there is any information you'd like to share that could substantiate these very serious allegations that political staff have been illegally in receipt of the names of ATIP requesters, now or in the past. That is the mandate of the study we're currently engaged in.

Mr. Dale Eisler: Based on my own experience and my own knowledge, absolutely not. We are not privy to the names of requesters, as I have said and Mr. Jack has said. We aren't now and we never have been, and we have never, therefore, passed this sort of information along. Nor have we ever, in my experience with either this government or the previous government, been asked for that kind of information.

Mr. Jason Kenney: Mr. Leadbeater of the ATIP commissioner's office has told us that the practice of political staff receiving the names of ATIP requesters is widespread and common. In fact, he said in the September 20 article that led to all of this:

We see situations where representatives from the minister's office will meet on a regular basis, sometimes weekly, with the access to information people to find out what access requests have been received and what material is being released, and in the course of those meetings there is a tendency to share with the minister's staff the identities of the requesters.

Do you have any knowledge about this allegedly common practice?

Mr. Dale Eisler: I have no knowledge of that. In my experience, that never occurs. People respect the confidentiality of the Privacy Act as it applies to ATI files, and that information is not requested, sought. Simply, we are not privy to it.

Mr. Jason Kenney: A hypothetical question: What would you do, either of you, if a member of the political staff of the Prime Minister's Office were to call you up and say, "We're a little concerned about a journalist who's been making these ATIP requests, could you please tip us off if he makes a request on such-and-such an issue"? What would your professional obligation be in response?

Mr. Dale Eisler: It would be to say no, and first of all, I wouldn't know if a journalist had made a request. I'm not privy to that information. We're not privy to that information. That is something the ATI people would deal with, the people who take in the requests and process the requests. There is no need for us to know.

The Vice-Chair (Mr. David Tilson): Mr. Kenney and Mr. Eisler, thank you.

That concludes the first round. We now have the second round, which is five minutes per caucus.

Mr. Peterson.

Hon. Jim Peterson: Just following up on what Mr. Kenney was talking about, disregarding PCO, Mr. Leadbeater said it was okay for the minister and/or the staff in a minister's office to know the identity of a requester and the contents of that request. Does that concur with what all of you consider to be the law?

• (1620)

Mr. Dale Eisler: I am....

Sorry, Denis.

Mr. Denis Kratchanov: Perhaps I can jump in here.

A minister is the head of the institution under the act, and decisions about access are made in his name and under his delegated authority. So if he wants information about a particular access request and how it's been handled, yes, he is entitled to know. The practice I'm aware of is that ministers don't seek that information and neither do their staff. ATIP officers are very well aware that the names of ATIP requesters should not be distributed widely. They should be kept within the ATIP office for the most part. There might be exceptions, but it is not a practice to share it widely.

Hon. Jim Peterson: But under the law, the minister and/or staff are entitled to know the contents of the request and the identity of the requester.

Mr. Denis Kratchanov: Yes, a minister, if he or she wants to know that.

Hon. Jim Peterson: I agree with you.

Professor Roberts is saying that should not be the case. The minister should not know the identity of the requester and/or the category of the requester, and the department should probably not know it either. The department will slow down the request and the whole system will bog down even when the category of the requester is made known. Is that correct?

Prof. Alasdair Roberts: I should clarify that I didn't make any statement as to whether the minister should be entitled to know the name of the requester.

Hon. Jim Peterson: No, no.

The Vice-Chair (Mr. David Tilson): Let him finish, Mr. Peterson.

Prof. Alasdair Roberts: But it is unambiguous that it is standard practice to disseminate the occupation of the requester.

The underlying issue is the bureaucratic procedure that has built up over years and continues to exist, which threatens the right to equal treatment and also creates the opportunity for the right of privacy to be violated.

Hon. Jim Peterson: Do you feel, Professor Roberts, that the name of the requester should not be made known to the minister and/or staff?

Prof. Alasdair Roberts: I don't have any particular answer to that question at the moment. I would be a little leery about beginning to tell ministerial staff the name of a requester.

Hon. Jim Peterson: I'll go back to our questions on Monday. My concern is that there's a lack of timely disclosure or a lack of timely information. I think the public has a right to know.

I would like to find ways, maybe following some of your suggestions, Professor Roberts, in which we could have more timely disclosure. I think your suggestions are ones we should take into consideration.

If Mr. Eisler, Mr. Jack, or Mr. Kratchanov have any suggestions as to how we could speed up the process and get the requests out within 30 days, I would welcome that.

I was a little shocked when I heard that some of the requests were 48 days overdue. On Monday we heard how some were five months overdue in terms of responses.

Do you have any suggestions, Mr. Eisler, on how we could speed this up? Mr. Roberts says it gets bogged down in the bureaucracy at so many levels.

Mr. Dale Eisler: Well, I'm not an expert on the ATI system. I haven't studied it, as Professor Roberts has, so I'm reluctant to offer too many suggestions. I would say the number of ATI requests that the government receives is always increasing and it's a huge operational burden.

From my experience, I think people put their best efforts into this and are simply trying to manage the system as best they can. I know we're working at PCO to always do better on our ATI.

Hon. Jim Peterson: Do you need more staff at PCO?

Mr. Dale Eisler: I don't think it's my place to determine that. But I know that from my experience, people put their best efforts into this, recognize the importance of it, and respect the act.

Hon. Jim Peterson: But it can take a lot of time when you have 25—

The Vice-Chair (Mr. David Tilson): Mr. Peterson, you'll have wait for the next round.

Hon. Jim Peterson: Fine. Thank you.

The Vice-Chair (Mr. David Tilson): Mr. Kenney.

Mr. Jason Kenney: Thank you.

On the practice that led to the speculation about Mr. Bronskill having made an ATIP inquiry, in this instance, on the March 15 call, is this a practice speculating on the names of journalists or others who have made ATIP requests, or is this more or less an isolated incident? Is it a general practice, an isolated incident, or somewhere in between?

• (1625)

Mr. Gregory Jack: Thanks for your question, Mr. Kenney.

The speculation in the e-mail was not that Mr. Bronskill was the requester. It was that he may end up writing a news article about the information that has been released.

Mr. Jason Kenney: Right. Thank you for correcting me.

Mr. Gregory Jack: I would say that speculation as to the likely result of news articles based on ATIs is not a common practice.

Mr. Jason Kenney: In the whole controversy surrounding this, for some reason, there was an article that with some suspicion raised the fact that two members of the Prime Minister's staff—I think it was Christine Csversko and somebody else—in an e-mail circular that you made, Mr. Jack, asked to be added to this distribution list. Do you recall that?

Mr. Gregory Jack: Mr. Kenney, the two individuals you're referring to are Ms. Croy and Ms. Thompson. The article was published in *The Gazette*, I regret. I do not recall specifically any instance when they would have asked to be added, but that doesn't mean that they didn't.

Mr. Jason Kenney: Okay. So to the best of your recollection or your documentary record on this incident, their request to be added to this distribution list had nothing to do with an effort to seek the names of ATIP requesters, as the article implied.

Mr. Gregory Jack: No, sir, because the call summary that was being distributed in fact had nothing to do with the circulation of ATIP requesters and was a legitimate summary of a phone call on communications issues that pre-dated the current government and I would consider to be common practice. Therefore, no.

Mr. Jason Kenney: So you were offering to broaden the circulation list to people on the grounds that they would be presumably interested in the content of these conversations dealing with pandemic and security-related issues. That's the rationale of the call and of your minutes that get circulated. It's not about ATIP requesters. It's about pandemic issues and security-related issues.

Mr. Gregory Jack: Can you clarify? I'm not exactly sure what you're asking.

Mr. Jason Kenney: The purpose of your call and the minutes that you take and then circulate is to summarize current issues with respect to pandemics and security matters, and not ATIP requesters' names. Is that correct?

Mr. Gregory Jack: Yes.

Mr. Jason Kenney: Do you have anything else you'd like to clarify, anything you've seen in the media about this story? This has been blown up into some huge matter of deliberate violation of the law. I'm interested to see if those who have written these stories will now issue corrections or retractions. But do you have anything you'd like to add?

Mr. Gregory Jack: I don't want to add anything, except to thank the committee for the opportunity to appear and to reiterate that in fact we are not privy to the names of requesters and never have been.

Mr. Dale Eisler: I would just reiterate that. We aren't privy to this information, and allegations that we are are not true.

I would also add that just as an operating principle for us, for myself at least, on access to information requests, it's really irrelevant who it goes to. I don't need to know that. I don't want to know that. I just work from the assumption that this is information that's going into the public domain, and therefore, we should assume it will be public information and we will need to deal with that and just work from that level playing field on all of them. There's no need to differentiate even what categories they're going to. It's just not relevant information, in my mind.

The Vice-Chair (Mr. David Tilson): Thank you very much.

Mr. Laforest.

[Translation]

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): My question is for Mr. Eisler.

Last weekend, the *Ottawa Citizen* reported that there is a computer system that, in a way, is designed to conceal from the public certain information forwarded to the minister.

[English]

Mr. Mike Wallace (Burlington, CPC): On a point of order, is that why this witness was called, to deal with this item? I think it's another item on the agenda and not this particular item. So is it fair that he ask a question that has absolutely nothing to do with why this person was called?

It's just a question of the clerk.

[Translation]

Mrs. Carole Lavallée: I haven't even finished my question.

[English]

Mr. Mike Wallace: I'm just asking, Madame, if it's in order or not.

• (1630)

The Vice-Chair (Mr. David Tilson): Order.

Have you finished?

Mr. Mike Wallace: Yes, sir.

The Vice-Chair (Mr. David Tilson): Monsieur Laforest, do you have any comment on that?

[Translation]

Mr. Jean-Yves Laforest: I'd simply like to finish my question. I raised a subject that concerns access to information.

[English]

The Vice-Chair (Mr. David Tilson): All right, let's go very briefly. We are talking about the alleged disclosure of names in access to information. The topic you've raised is mentioned in a notice of motion that was filed by Madame Lavallée.

I agree that it is slightly off topic. I'm going to allow you to go, but I'm not going to let you spend a lot of time on it.

[Translation]

Mr. Jean-Yves Laforest: I'm quickly coming to my question.

The *Ottawa Citizen* reported that there was a computer system designed to conceal from the public certain information transmitted to ministers. I believe that's part of the same dynamic. Mr. Roberts said that a number of categories enable the system, the government, to understand and to know the existence of the requesters. The Privy Council says that it doesn't request it, but when you observe the entire process, you nevertheless wind up knowing the names of the requesters. In a way, the system shields the information from the public.

Mr. Eisler, is the Privy Council using this computer system to directly shield information? This also concerns all the departments.

Mr. Dale Eisler: I read that same article on the weekend. I'm not an expert in government access to information processes. So I can't give you an opinion on that.

Mr. Jean-Yves Laforest: You don't work in communications and consultations at the Privy Council?

[English]

Mr. Dale Eisler: Yes, I am, but this is a system-wide issue relating to access to information, and I'm not responsible for that.

[Translation]

Mr. Jean-Yves Laforest: So you don't know the scope of that.

Thank you.

[English]

The Vice-Chair (Mr. David Tilson): Mr. Roberts, go ahead, please.

Prof. Alasdair Roberts: I would like to make a minor note about the disclosure of occupations within PCO.

In 2004 I did a little study of a request that had been sent to PCO for consultation on security grounds. After September 11, guidance was given to federal government departments that certain requests would be pulled out for review by PCO on security grounds, given the new circumstances. PCO later told me that it had undertaken 184 security-related access consultations between September 2001 and March 2003. My calculation was that three-quarters of those security-related consultations by PCO pertained to requests submitted by journalists, members of Parliament, or representatives of political parties. It was straightforward to make that calculation because PCO's own list of referrals included those categories on the list.

The Vice-Chair (Mr. David Tilson): Are there any questions, government?

Mr. Peterson?

Hon. Jim Peterson: I haven't heard anything that would indicate there was a breach of the regulations or law with respect to the disclosure of Mr. Bronskill's name. I'm far more concerned about how we can make this system work better, how we can speed it up so things don't get bogged down.

I repeat my question to Mr. Eisler. From what you've seen in the PCO, do you think there are ways that we could speed this up? Professor Roberts has said that any time it goes outside of the small group in the ministry that has to respond to requests, the bureaucracy really is layered on and time limits are broken.

Mr. Dale Eisler: It's difficult for me to respond to that, Mr. Peterson.

I see only a small piece of access to information, and I see that in the context of PCO's own access files. So system-wide, I can't really offer an opinion. It's just not my responsibility. I am speaking about this specific access issue that we've been addressing.

I know from my colleagues that efforts are being undertaken and progress is being made to improve the system. I think everybody agrees more work needs to be done and we need to improve, but I don't think I should be the one who should offer any views on what we should or shouldn't be doing.

• (1635)

Hon. Jim Peterson: Thank you.

The Vice-Chair (Mr. David Tilson): Madame Lavallée, go ahead, please.

[Translation]

Mrs. Carole Lavallée: My question is for each of you.

The people from the Privy Council Office tell us they've never heard of a person who requested the name of a requester. Doesn't the existence of such specific categories make it pointless to request who is the requester because we've already guessed it? Doesn't the note signed by Mr. Jackal and sent by e-mail illustrate the fact that we know who access to information requests come from because we know their category? It becomes so specific that we don't even need to request it.

[English]

Prof. Alasdair Roberts: I often make requests under freedom of information laws in different countries. An argument you sometimes get back from government agencies that don't want to give you information is called the mosaic effect. The argument is that the information I have asked for is innocuous, but if I attach that piece of information to other pieces of innocuous information I would end up with a result that would actually be quite harmful.

The argument I am making in this circumstance I think is somewhat similar. The disclosure of the occupation of a requester within a department or between departments or two central agencies may seem by itself to be innocuous, but put together with other pieces of information in the public domain, it can have an effect that undercuts the right to privacy, and that also leads to undue delays for certain kinds of requesters.

[Translation]

Mrs. Carole Lavallée: There are a number of different categories for each department, including five basic categories, I suppose,

together with sub-categories. Couldn't there be sub-subcategories, that is, for example, a written request coming from a particular media organization, province, region and, while we're at it, city? Then you would only need to identify the family name.

[English]

Prof. Alasdair Roberts: I don't have any evidence that there are subcategories, but as a journalist once said to me, the number of Canadian journalists is small to start with. When you break it down by region and specialty, it gets smaller still. When you see a request come in on some topic pertaining to some region on a specific issue, and you know it's a journalist's request, sometimes it's very easy to figure out who the individual filing the request is.

[Translation]

Mrs. Carole Lavallée: Couldn't we conclude that that's because they already know that no one in a cabinet or any minister requests the names of requesters?

[English]

Prof. Alasdair Roberts: I'm in no position to know what ministerial aides or communications persons do with regard to actually asking for names. The point I would emphasize is to ask what legitimate purpose, pertaining to the law, is served by the routine disclosure of occupations within government.

[Translation]

Mrs. Carole Lavallée: Thank you very much.

[English]

The Vice-Chair (Mr. David Tilson): Mr. Kenney, you have a turn next. I'm not going to say it's closing; we'll see what the opposition has to say. But you may speak, sir.

Mr. Jason Kenney: I am going to smuggle in a statement under the guise of a question here.

Obviously government members of the committee have an interest in establishing that the government—that is to say, political staff and ministers—did not act irresponsibly or illegally in this matter. I think that's been established. But I think it's equally important that in our report we respect the integrity of our public servants. And I just wanted to put on the record, for consideration when we come to drafting a report, the professionalism and the conduct of both Mr. Jack and Mr. Eisler. I think this whole unfortunate matter is the result of media misinterpretation of an innocent comment in an e-mail and should in no way be held against the author of that e-mail, which in this instance was Mr. Jack.

I will certainly, in drafting the report, ask that we reflect on that so that there's no cloud hanging over Mr. Jack's head for having acted responsibly in this matter.

• (1640)

The Vice-Chair (Mr. David Tilson): Madame Lavallée.

[Translation]

Mrs. Carole Lavallée: Are you giving Mr. Kenney the main points of the report, or are we going to discuss them at another time?

[English]

The Vice-Chair (Mr. David Tilson): I don't want to get into a debate here. You're going to address questions through the chair, and members at this particular point in time can make statements and they can ask questions, and Mr. Kenney may or may not answer your question.

[Translation]

Mrs. Carole Lavallée: Mr. Chairman, I apologize. You caught me out, and I ask your forgiveness.

I am not very familiar with the committee's habits. I know we haven't had the opportunity to produce a lot of reports. I want to ensure that we establish the main points of this report at another time. Obviously, we won't be doing it before our guests, who have kindly agreed to be here. I will make my comments at that time.

[English]

The Vice-Chair (Mr. David Tilson): I don't want any debate here. The chair takes the position that each member has, in this particular case, five minutes, and they can ask questions, they can go on a rant—as long as it's a relevant rant—and that's it.

So I'm not going to allow a debate here between you and Mr. Kenney.

[Translation]

Mr. Jason Kenney: Since I have five minutes at my disposal...

[English]

The Vice-Chair (Mr. David Tilson): And here we go. I get debate.

[Translation]

Mr. Jason Kenney: ...I'd simply like to say that...

[English]

The Vice-Chair (Mr. David Tilson): Actually, it's not. It's Madame Lavallée's, but you can come back.

[Translation]

Mrs. Carole Lavallée: Mr. Chairman, since I am subject to and obey your rules, I'll withhold my comments. I'll simply say that I'm not sure it's the media's fault in this particular case.

[English]

The Vice-Chair (Mr. David Tilson): Thank you, Madame Lavallée.

Mr. Kenney.

[Translation]

Mr. Jason Kenney: No, I made the statement precisely about our current study, and I believe it was entirely relevant. I did it before the senior officials and the media who are here today and who, I suppose, will soon lose interest in the subject.

I'd like go on the record saying that, in my view, the officials did not break the law.

[English]

The Vice-Chair (Mr. David Tilson): It appears we're finished.

I want to thank the four of you for making your presentation and for answering some very difficult questions. Thank you, gentlemen.

Ladies and gentlemen, we now have committee business. I've had it both ways, where we go into private session or where we've had it in public session. I'm going to suggest a public session unless someone suggests otherwise.

There are two items. One is what we will do next. Secondly, there is a motion by Madame Lavallée that I guess falls into the category of what we will do next.

I draw to the committee's attention that by November 10 this committee must have completed the estimates of the three commissions. Having sat here in a previous session and watched the three commissions being dealt with in one day, and having heard the former clerk, Mr. Marleau, make a statement that we don't spend enough time on estimates—and I think he's right—the chair is suggesting that this committee should spend a day on each commission.

We have those to deal with, and there may be more. We have the report to deal with, and we'll have to give our people time to prepare our report. There may be a possibility that we discuss the new funding formula in conjunction with the estimates. This committee spent a great deal of time on the proposed new funding formula. As I understand it, that hasn't taken effect yet, but we may want to hear from Treasury Board or someone with respect to their comments on that. And we have PIPEDA, the review of which we have to at least start prior to the end of the year, so that can wait as long as we at least start it before Christmas.

Ladies and gentlemen, because we are still on the topic of the orders of the day, I'm going to give the floor to Madame Lavallée in regard to whether we will proceed with further witnesses or whether we will tell the staff to commence preparing a report.

Madame Lavallée, you have a motion you have served us with. If you read the motion, you can then make some introductory comments with respect to that motion.

• (1645)

[Translation]

Mrs. Carole Lavallée: Thank you very much, Mr. Chairman.

The article on the front page of the *Saturday Ottawa Citizen* referred to a confidential computer at the Treasury Board Secretariat making it possible to circumvent access to information legislation. The article revealed that there was apparently a confidential computer system expressly designed to keep ministerial documents, including contracts, so as not to have to let them go or make them public in cases where they would be subject to an information request.

I distributed that article to you. You've no doubt read it, because it was very interesting. I prepared a motion for us to meet with Mr. Wouters, who is the Secretary of the Treasury Board. I apologize: he's identified in the motion as deputy minister, but he is indeed the Secretary of the Treasury Board. We could ask him exactly what's going on, if there is indeed an independent server at the Treasury Board. Perhaps that's not the case; perhaps this is a matter raised by the media, as Mr. Kenney would say.

Hon. Jim Peterson: That's not a problem for me.

Mr. Paul Zed (Saint John, Lib.): Me either.

[English]

Mr. Jason Kenney: Mr. Chairman, first of all, I have a question. Is it Madame Lavallée's intention that this witness be called under the aegis of the current study that we're engaged in, or is it a separate matter?

The Vice-Chair (Mr. David Tilson): I interpret it to be part of this process, but I could be mistaken.

Madame Lavallée, perhaps you could inform the chair whether this is a separate motion apart from the study that this committee is under today, or whether it's your intention that it be.... What is your intention?

[Translation]

Mrs. Carole Lavallée: The purpose was in fact to conduct a separate study, but I won't get sick or break out in a rash if we decide to include it in the study under way. I'd like us to meet with Mr. Wouters to determine what's at the origin of the *Ottawa Citizen* article.

[English]

Mr. Jason Kenney: That answered my question.

On debate, then, I would confirm Madame Lavallée's prediction that I would not agree with the media report in this matter. The notion that there is a secret server for this information is about as big a secret as the existence of the Peace Tower.

As Mr. Peterson will know as a former minister, it's a well-established public practice that each government department has a separate server as an administrative tool. The opposition knows that under the Access to Information Act, documents within a minister's office are exempt from the act, and they always have been. The use of a separate server is merely an administrative convenience, because if we were to keep all department information on the server, it would be a lot more work for the ATIP coordinators to separate out documents from ministerial and departmental staff.

At the end of the day, it doesn't matter where the information is stored, it's what affects whether it is accessible under the ATI Act or not. I would therefore suggest respectfully that this matter is not worth the committee's time, given that it's a request to study a matter that's a longstanding, open, and transparent practice. To that effect, Mr. Chairman, I'd like to table the great secret here.

[Translation]

I've brought copies in both languages. I've already made copies for all members. These are the Guidelines for Ministers' Offices. At page 55, Part 10, "Information Management", the document states:

Ministers should maintain separate information systems for Cabinet documents, institutional records, ministerial records, and personal and political records.

That's indeed the information Ms. Lavallée is looking for.

•(1650)

[English]

The Vice-Chair (Mr. David Tilson): We'll just get these distributed, and then we'll have a chat.

Have you concluded, Mr. Kenney?

Mr. Jason Kenney: I'm done, Mr. Chair.

The Vice-Chair (Mr. David Tilson): Madame Lavallée.

[Translation]

Mrs. Carole Lavallée: If it was an open secret, it was well kept. You'll agree with me that the *Ottawa Citizen* is a credible newspaper and that Tim Naumetz is no mean journalist. He's been covering Parliament Hill for longer than you and I have been here, Mr. Kenney.

The Bloc québécois did not know that existed, nor did Mr. Naumetz of the *Ottawa Citizen*. Since the *Ottawa Citizen* decided to put this on its front page on Saturday morning, I think it would be helpful to hear from Mr. Wouters in order to clarify the situation. Not only will we all know the truth and it will no longer be an open secret, but the public will know it as well. We'll know what this private server is used for and what it contains.

[English]

The Vice-Chair (Mr. David Tilson): Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chairman.

I'm not going to be supporting the motion. The issue that Madame Lavallée is bringing forward is that this is a secret item. Obviously it's not a secret. It's printed on Government of Canada paper. It has been around for many years. I understand that other ministers from other governments have used this server in their departments.

It's printed, it's public, there's no secret to it. I can understand that maybe the Bloc didn't know it existed. I didn't know it existed until I found out the information. I appreciate her bringing it forward, but we have a lot to do as a committee, particularly before we're due on these estimates. Spending billions of dollars or millions dollars of taxpayers money is a priority for this committee, and I think the wise thing to do is to say we have got the information, thank you very much. I would say the press may have gotten in slightly wrong on the weekend, and we should move on to the real work that this committee needs to be doing.

The Vice-Chair (Mr. David Tilson): Thank you, Mr. Wallace.

Mr. Laforest.

[Translation]

Mr. Jean-Yves Laforest: What I'm reading in the two documents doesn't appear to be the same thing at all. Mr. Kenney distributed a document to us that talks about computer systems in ministers' offices for managing their own records.

Ms. Lavallée's motion, which refers to the *Ottawa Citizen* article, refers to a confidential computer system designed to hold ministerial documents, whereas Mr. Kenney's document refers to a number of computer systems of a number of ministers' offices. That's not at all the same thing. It would be appropriate for us at least to hear from the Secretary of the Treasury Board so that he can tell us why we're in this situation. If that's consistent with what Mr. Kenney is saying, we'll really have shed some light on the matter.

[*English*]

The Vice-Chair (Mr. David Tilson): Thank you, Mr. Laforest.

Mr. Peterson.

Hon. Jim Peterson: I have a slight suggestion here. I'm not sure whether what Mr. Laforest said is absolutely right or not. To save the committee time, I would suggest, Mr. Chairman, that with the permission of everybody, of course, we might pass this motion that we'll ask them to appear, but that the Bloc be given time to reconsider in the light of what Mr. Kenney has distributed to maybe arrange meetings with the appropriate officials privately. And that way the witness may not have to come, but if the Bloc is not satisfied after those meetings, then he will come.

• (1655)

Mr. Jason Kenney: Mr. Chairman, I would just like to reply.

[*Translation*]

With all due respect to my Bloc colleagues,

[*English*]

I am not seeking to limit the ambit or study of this committee on this important issue of ATI. I think it's a legitimate general issue. But I think we have to efficiently manage our time, and that's the spirit of my intervention.

It's not seeking to put up barriers here to important issues, but simply if a matter is in the public domain we don't need to spend hours studying it deeply.

The Vice-Chair (Mr. David Tilson): Mr. Peterson, the chair's difficulty is that the motion says that—

Hon. Jim Peterson: I would propose an amendment, and I won't do it in writing because I don't want to...

The Vice-Chair (Mr. David Tilson): We either carry it, we defeat it, or it's tabled.

Hon. Jim Peterson: I can make an amendment.

The Vice-Chair (Mr. David Tilson): You certainly can make an amendment.

[*Translation*]

Mrs. Carole Lavallée: At least we can hear the amendment.

[*English*]

Hon. Jim Peterson: The amendment would be to the effect that we pass the motion as subject to the right of Madam Lavallée to withdraw it after she has had an opportunity to further consider the matter and perhaps meet with officials provided by Mr. Kenney.

Mr. David Tilson: The clerk is going to have a hard time with that one, Mr. Peterson, and I do too. I question whether it's in order.

Do you have a point of order, Mr. Zed?

Mr. Paul Zed: Yes. I'd like to know why it's not in order, Mr. Chair.

The Vice-Chair (Mr. David Tilson): We're saying maybe the clerk would call Mr. Wouters or maybe not. Maybe we'll call him, maybe we won't. We're asking the clerk to do something, and I quite frankly—

Hon. Jim Peterson: No, I'm sorry, we're asking the clerk to consult with Madam Lavallée after she has had a chance to further look at this issue to see whether—

Mr. Mike Wallace: Why don't we table, and then she can go to her meeting.

[*Translation*]

Mrs. Carole Lavallée: I have a suggestion that everyone might like.

We could wait a week. I could introduce my motion in a week, gather information and meet with Mr. Wouters. Mr. Kenney could make it so that I can meet Mr. Wouters, together with Mr. Laforest and any other committee members who wish to meet him.

[*English*]

The Vice-Chair (Mr. David Tilson): It's tabled for a week.

The clerk and I both need direction as to where we're going next. We're still on this report. Will we have further witnesses, or will we direct the staff to prepare a report? I need direction.

Mr. Zed.

Mr. Paul Zed: I have a point of information.

Is the chair assuming the chair for a period of time, or—

The Vice-Chair (Mr. David Tilson): No, he's not. Mr. Wappel will be returning on Wednesday. He did speak to me, Mr. Peterson, Mr. Zed, and he told me that he would be returning Wednesday.

I will be in the chair on Monday.

Mr. Mike Wallace: Mr. Chair, I move that we direct staff to prepare a report, and this study will then be finalized.

The Vice-Chair (Mr. David Tilson): All those in favour?

(Motion agreed to)

The Vice-Chair: The staff tell me they need instruction.

Mr. Mike Wallace: Write them out, and I'll tell you what they are.

Oh, you want what the report will say?

The Vice-Chair (Mr. David Tilson): The chair is going to go in camera if you're going to get into that. I believe those types of discussions should be held in camera. We still have time to do that today. We will proceed in camera to deal with that part of it.

The clerk will need instructions, and presumably a report would be available subject to the staff's comments. Presumably that would be presented next Wednesday. Is that fair?

A voice: It depends.

The Vice-Chair: It depends. Okay, we'll play that by ear.

Ladies and gentlemen, I'm going to suggest that, as we're getting into tricky areas, we adjourn to in camera proceedings. *[Proceedings continue in camera]*

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