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Chair

Mr. Paul Szabo

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•(1535)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): Order, please.

This is the seventh meeting of the Standing Committee on Access to Information, Privacy and Ethics. Pursuant to Standing Order 108 (2), today we have before us the Office of the Information Commissioner of Canada. We have the Information Commissioner, Mr. Robert Marleau; Andrea Neill, assistant commissioner, complaints resolution and compliance; and Suzanne Legault, assistant commissioner, policy, communications and operations.

Welcome to you all.

Colleagues, just to clarify how we might proceed here, as you know, the Information Commissioner was invited, along with the other commissioners, to come before us with regard to their annual report, and to brief us on matters of urgency for our attention. Last week, you also know, the commissioner tabled a report card on ten departments. The information has been circulated to you all, and we hope to be able to address both, but maybe concentrate first of all on the commission itself, the act, and some of the priorities. Then maybe we can get into the report more specifically.

I can also report to you that after discussion with other members, the commissioner has agreed to reappear before this committee next Monday to more fully receive our questions and concerns with regard to recommendations for improvement of the act pursuant to that report, and to consider other matters related to improving the whole regime of access to information.

So we do have some work we're going to proceed with here. I've asked the clerk to make inquiries of the availability of the Minister of Justice, who is the minister responsible for the Access to Information Act. I've also asked Mr. Marleau to consider making recommendations to us on whether there may be two or three witnesses who may be helpful, people who are very much up to date on the current status of access legislation in other jurisdictions and assessment of the condition of our current act and our situation.

That said, we certainly appreciate the opportunity, Mr. Commissioner, to hear from you, as this committee has not, since 2006, had an opportunity to address specifically any of the concerns or recommendations from the commissioner's office due to other work. We make that commitment now and we welcome you here.

I understand you have opening comments, so why don't we proceed with that so we can get on with our work.

•(1540)

Mr. Robert Marleau (Information Commissioner, Office of the Information Commissioner of Canada): Thank you very much, Mr. Chairman.

I must say I'm delighted to be back among you today to tell you what my office has been working on and outline our priorities for what I believe is going to be a very busy and eventful year for all of us.

As you mentioned in your opening remarks, I'm accompanied today by Suzanne Legault and Andrea Neill.

[Translation]

These are exciting times for access to information. Two bills have been tabled in the House of Commons and there is a recommendation from this committee for the government to introduce a bill to modernize and strengthen the Access to Information Act by May 31 of this year.

These recent developments tell me that we have reached a pivotal moment in the access to information regime.

[English]

I believe the committee wanted to discuss the issue of resources as well as the measures I put in place to significantly reduce our backlog. I'll also outline some of the issues that I believe require the committee's attention in the coming months.

I've distributed two documents. One provides some background information on my office, and the other provides our recommendations on modernizing the act.

Last year one of our priorities was to begin a renewal process to improve the effectiveness of our service delivery. This year this work continued in full force and will remain a major priority for the office.

In 2007-08 we saw the number of complaints we received increase by 81%, and as a result, our backlog has continued to grow. In order to reduce this historical backlog and conduct more timely investigations, we've introduced some new initiatives to strengthen and streamline the complaint-handling process and better manage our workload. These include the creation of an intake and early resolution unit as a pilot project, and a new separate team that is focused on tackling all of our older cases. Our goal continues to be to eliminate or significantly reduce the current backlog by the end of next year. We'll also want to prevent the recurrence of such a backlog.

I'm happy to report that already we are seeing promising improvements in our complaint-handling process and response time, but I'll be in a better position to attest to this at the end of this fiscal year, as some of these measures have been put in place only in the last few months. We'll continue to test our new workload management model and make necessary adjustments to keep us on track.

[Translation]

Mr. Chairman, the last time I was here, I indicated that one of our priorities was to review our approach to the report cards to ensure that contextual elements that may affect the performance of selected institutions are taken into account.

This year, we have come up with a new process that allowed us to examine the performance of institutions and provide a broader picture of institutional compliance with the act.

As you mentioned, a few days ago I tabled my special report on the performance of federal institutions to Parliament. The results provide a grim picture of the federal government's access to information regime.

[English]

The most significant finding indicates that requesters are right to be frustrated by the system. The 30-day period has indeed become the exception rather than the norm, and quite frankly it is just not acceptable. The prevalence of extensions and consultation requests have significantly slowed down the treatment of requests, to the point that some institutions take an average of 120 days to respond to requesters. As I have publicly stated, these are systemic problems; it's not just a departmental performance issue.

I firmly believe that central agencies, such as the Treasury Board Secretariat, have to exercise leadership to provide federal government departments with the resources they need to fulfill their obligations under the act. I also fundamentally believe that Canada needs a better compliance model for access to information, with adequate performance incentives.

As this committee has stated on numerous occasions, the need to modernize the legislative framework is urgent. The round-table discussions held by the Office of the Information Commissioner on the reform of the Access to Information Act, last June, demonstrated that the modernization of the ATIA is a priority for all.

Mr. Chairman, the document I'm providing to the committee contains a series of recommendations on this matter. It is the result of my reflection over the past year. For instance, I recommend the review of the legislation by Parliament every five years, universal access, a greater coverage of the act, and measures to improve timeliness, strengthen the compliance model, and improve public education. Although I support the open government act, which was developed by my predecessor, the recommendations outlined in this document should be implemented without further delay.

Mr. Chairman, should this committee decide to pursue legislative reform, rest assured that I and my office will make it our first priority to assist you in your deliberations.

• (1545)

[Translation]

Another issue I would like to briefly touch on is inherent weaknesses that are significantly limiting my ability to carry out my mandate and my new responsibilities stemming from the Federal Accountability Act.

I will be appearing before the Advisory Panel on the Funding and Oversight of Officers of Parliament on March 12 to discuss our financial requirements.

In order to address the resource issue, my office undertook an A-base review to identify what our needs are and how to make efficiency improvements to our operations. The review revealed a lack of capacity of my office to support the role of ombudsman and officer of Parliament.

[English]

Basically we need to obtain additional funding in order for my office to establish realistic resource levels and service standards based on the size and complexity of my program. We need these resources so we can put a greater focus on accountability, effective governance and oversight, and improve service delivery. Otherwise, my ability to deliver on my legislative mandate as well as the integrity of my office's program could be put in jeopardy.

In closing, Mr. Chairman, a stronger regime requires more than modernizing the legislative framework and administrative processes. It requires the leadership necessary to effect the cultural change required to lift the fog over access to information and create a real climate of openness. Your leadership is also required, to see that legislative reform becomes a reality.

It was Alvin Toffler who wrote *Future Shock* in 1970. You may remember he coined the phrase "information overload", and he wrote the following: "Knowledge is the most democratic source of power." You have a unique opportunity to bring about measures to modernize the access to information regime and bring it into the 21st century.

As I said earlier, I think this is going to be an interesting year for access to information. As you can see, there's lots of work to be done. With the appropriate resources and leadership, I'm confident we can meet these challenges.

[Translation]

Thank you for your attention and I look forward to your questions.

[English]

The Chair: Thank you kindly, Commissioner.

I'm going to move right into the questions.

Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Thank you.

Thank you, Commissioner, for appearing before us.

I was quite disturbed when towards the end you said there is a serious problem and, in your wording, “cultural change” is necessary. Does this mean that within our access to information system, the ATIP department, instead of a culture of openness and helpfulness when it comes to accessibility to public documents, you have the opposite? You have a situation where—

The Chair: Order, please.

Pardon me. I believe we might have a problem with the translation.

Are we okay now?

Please proceed.

Mr. Borys Wrzesnewskyj: Instead of a culture of openness, we in fact are seeing the opposite.

Mr. Robert Marleau: Mr. Chairman, the report cards we tabled last week show that there is a greater use of extensions—that is, we are using more and more time in order to service the requesters.

There are probably many causes of that, but one is what I would call a culture that is disclosure-adverse. The first reflex in the system is to find reasons not to disclose or exemptions to apply. It should be the reverse. That certainly was the intent of the statute when it was first adopted in 1983.

It's not new. It's not recent. My predecessor called it a “culture of secrecy”. I don't like that term, because it implies a complicity and an organized effort to keep everything secret, and I don't think that's the case. But the reflex is not to transparency. It's to non-disclosure.

• (1550)

Mr. Borys Wrzesnewskyj: I've also noted that you've written that there's been an 81% increase in the number of complaints over the last year. Are there any correlations that have caused this sort of rapid increase in the number of complaints?

Mr. Robert Marleau: Part of the increase in the number of complaints is due to the introduction of the Federal Accountability Act, which broadened the scope of the act. It introduced some 70 or more institutions under the purview of the statute. That's part of it, but not all of it.

There's definitely a net increase in disclosing less information. There's a net increase in applying more exemptions, as well as a trend, I think. If we take a six-year cycle, the number of requests is up approximately 35%, but the number of complaints is up over 140%. So when you want to pinpoint a cultural issue, I think those figures demonstrate that.

Mr. Borys Wrzesnewskyj: You've provided a table that shows us the number of complaints and you've also provided a report card of ten different government departments. I notice that scraping the bottom of the barrel, I guess, we have the Royal Canadian Mounted Police with a below-average rating.

Do you have the categories or the types of complaints? Which of these departments generate the highest number of complaints, and of what type are they?

Mr. Robert Marleau: Those categories have just been published by the Treasury Board Secretariat in Info Source. The categories of complaints are not in there; there are figures that point to the volume

of requests to the various departments. In terms of our categories of complaints that we've received in 2007-08, I'll turn to my assistant commissioner to break them down for you.

Mr. Borys Wrzesnewskyj: Prior to doing that, could we get a breakdown of the number of complaints by department in order to know which departments in particular are generating the largest number of complaints?

Mrs. Andrea Neill (Assistant Commissioner, Complaints Resolution and Compliance, Office of the Information Commissioner of Canada): Yes, we can certainly do that. It's from last year's annual report, because we have a full year of data for that. It shows the top ten departments.

Mr. Borys Wrzesnewskyj: Who's the worst?

Mrs. Andrea Neill: As far as received last year, we had—

Mr. Borys Wrzesnewskyj: Or who are the three worst?

Mrs. Andrea Neill: The top three are CBC—

Mr. Borys Wrzesnewskyj: The CBC?

Mrs. Andrea Neill: The CBC became subject to the act on September 1, 2007, under the Federal Accountability Act. And they received hundreds of requests. We received hundreds of complaints.

The other two are the Department of National Defence, at about half that amount, 256, and the Privy Council Office at 239.

Mr. Borys Wrzesnewskyj: The Privy Council Office.

Mrs. Andrea Neill: Yes.

Mr. Borys Wrzesnewskyj: At a time of tremendous concentration of power and people's worries about the concentration of power within the PMO and the PCO, they're also generating the largest volumes of complaints. What types of complaints were those? Were they delays? Or were they a combination of delays and material coming back?

I made an ATIP request, actually, and I was stunned, because of 49 pages, 47 came back blank. Is that the type of complaint we're getting in regard to the PCO?

Mrs. Andrea Neill: Yes. It crosses the gamut, whether it's delays or refusals—and certainly the cabinet confidence complaints.

• (1555)

Mr. Borys Wrzesnewskyj: Have you had any complaints from employees within ATIP sections coming and complaining, whistleblowing one might say, about practices within the departments? And, specifically, have you heard any within the RCMP ATIP section?

Mr. Robert Marleau: Mr. Chairman, no, we had no whistleblowing types of approaches, nor any specific complaint about interference in their work.

We can tell you that, anecdotally, we get a lot of complaints about lack of resources and lack of training, and, to some degree, lack of giving priority to their work.

Mr. Borys Wrzesnewskyj: Thank you.

The Chair: Okay. We'll move on now to Madame Thi Lac.

[Translation]

Mrs. Ève-Mary Thāi Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good afternoon and welcome, Commissioner.

I am going to start by asking you some questions about a motion my colleague Ms. Freeman, the member for Châteauguay—Saint-Constant, presented at the committee on February 11.

I will read it to you:

That the Committee recommend that the Government introduce in the House, by March 31, 2009, a new, stronger and more modern Access to Information Act, drawing on the work of the Information Commissioner John Reid, and that, pursuant to Standing Order 108(2), the Committee Chair promptly report the adoption of this motion to the House.

I would like you to comment on this motion and tell me whether you think it will make it possible to get an updated Access to Information Act.

Mr. Robert Marleau: I don't know what you are expecting exactly in the way of comments on this motion, because it has already been passed by the committee. I can tell you at the outset that I support the draft bill put forward by my predecessor for this committee and subsequently tabled. In the last Parliament, it was adopted by the committee and the House actually adopted the committee's report.

That said, I did take the time over the past year to consult access to information users and others who work in the field. I asked them what the priorities should be for legislative reform or modernization. You will find that information in the document I tabled with the committee today. It sets out 12 recommendations. That is not everything I would like to see, but I think these things could be done quickly, and they would be the absolute minimum. I am quite convinced that only the government can undertake an in-depth reform of the act. Based on my past experience, I think a royal recommendation would have to be attached to this bill, and that only a minister could present such a bill.

The 12 recommendations I am making to the committee are an absolute minimum. Those are the most urgent issues. You will see that my paper is based on provincial and international precedents, on demands made by the committee that preceded this one, namely the Justice Committee, or on other studies, such as the Delagrave report.

We have not invented anything new. We have simply put together the most urgent demands.

Mrs. Ève-Mary Thāi Thi Lac: In your opening comments you said that there had been an 80% increase in complaints and that there was still a backlog. What percentage of your work does the backlog account for at the moment?

Mr. Robert Marleau: I do not know whether I can give you a percentage, but as of April 1, 2008, there were some 1,600 cases in the backlog. I believe there were 1,560 cases before the new fiscal year. We are now referring to these cases as the inventory, and they have been referred to a special team that is dealing with the oldest cases. We are making tremendous progress. By the end of the fiscal year, I expect we will have reduced this part of the backlog by more than one-third, by perhaps 500 or 600 cases. That will put us on the right track—as I promised last year in my appearance before the committee—in order to process these cases in the backlog before the end of the next fiscal year.

• (1600)

Mrs. Ève-Mary Thāi Thi Lac: When people make an access to information request, they have to send in a payment with the request.

Often, when they receive the documents, some of the information, and not just the names, have been blacked out, and so sometimes they have to submit a second request on the same subject.

The fact that the information may be incomplete might be a factor in increasing the number of access to information requests, might it not?

Mr. Robert Marleau: When people request information in which passages have been blacked out and think this has been overdone, they may complain to our office. Most of the time, more information is released following our investigation. Complaints of this type account for close to 50% of our workload, and the rest are administrative complaints.

With respect to complaints about redacted passages, or exemptions or exclusions, we manage to settle almost half of them. I am rounding out my figures here. We manage to settle 50% of them. We also find that almost half of these complaints are unfounded, that is that the passages have been redacted in accordance with the standards set out in the act.

Mrs. Ève-Mary Thāi Thi Lac: Could the workload not be reduced and the number of request reduced as well by reviewing the data that can be sent out at the outset? That would greatly reduce the number of times people have to request information more than once. This would reduce the number of requests the system must process.

Mr. Robert Marleau: The better the coordinators are trained, and the more access they have to adequate resources in order to do their work properly, the fewer complaints I will receive. I agree with you on that.

[English]

The Chair: Thank you.

Mr. Siksay, please.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Mr. Chair.

Thank you for being here today with your colleagues, Mr. Marleau.

I suspect that you and other information commissioners around the world were excited by President Obama's first act of setting a very clear presumption of openness for his government. The very first thing he did was make a statement and executive order around access to information. In fact he said in that executive order that "The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails." He went on to say: "All agencies should adopt a presumption in favour of disclosure in order to renew their commitment to the principles embodied in the FOIA."

Is that the kind of thing you mean when you talk about a culture of openness or a cultural shift that's necessary for the Freedom of Information Act, or the Access to Information Act in Canada, to be administered appropriately?

Mr. Robert Marleau: In 1983, when the statute was adopted, that was the presumption—that the statute would be a last resource, that informal access to information would be easy and continue the way it was before the act was adopted.

Unfortunately, I think over time the default position was to file an access request. There's no question that a certain lack of leadership over the years has contributed to that culture of non-disclosure or default position of non-disclosure.

So when the leader of an administration makes such a strong statement, it becomes a strong signal to those who work in his administration to serve the public according to the terms of the statute, and it has considerable impact.

I believe that Canadian public servants do want to do the best they can in serving the Canadian public. But they do need direction from the top. I said last week in a press conference that a similar statement by our own political leaders, the Prime Minister, or a minister within his own department, would go a long way to start changing that culture.

• (1605)

Mr. Bill Siksay: Have you ever seen that kind of statement from an official high up in the Canadian government in the time that you've been Information Commissioner?

Mr. Robert Marleau: Yes, I have. It was from an official high up in the Canadian government, not from a minister directly. Although I know from conversations with a minister that he'd made a personal commitment to turn his department around, and he did. But without the ministerial support and the executive leadership of the deputy minister, it would not have happened.

My concern is whether, when those individuals rotate to other positions, that department will perform quite as well.

Mr. Bill Siksay: In your statement at the press conference last Thursday, you identified a number of gaps, and you said that these gaps are clearly indicative of a lack of leadership at the highest levels of government. Can you tell us exactly what levels you meant when you talked about highest levels of government?

Mr. Robert Marleau: Well, obviously, the highest levels of government are the cabinet itself and the deputy ministers who directly support their ministries. A signal from those levels becomes marching orders on the ground floor. I think if a similar statement were made in Canada, it would have a tremendous impact.

Mr. Bill Siksay: Mr. Marleau, I have a list of issues here, and I'd like to ask you if, in the time you've been Information Commissioner, you've seen any movement on any of them by the government.

Have you seen any move by the government to actually implement former commissioner Reid's recommendations, the draft bill that he put forward?

Mr. Robert Marleau: In fairness, the Federal Accountability Act did contain a series of initiatives that were supported by Commissioner Reid and my office. The scope of the statute was broadened, notwithstanding that certain other exemptions were added to it, which he felt, and I feel, were not necessary. They were already covered by the statute. The carve-outs given to some of the new institutions I don't feel were absolutely necessary.

So in that sense, the scope was broadened to crown corporations and my office, parliamentary officers, and foundations. So, yes, I have to say that was a positive step forward.

Mr. Bill Siksay: But it wasn't the full recommendation of Mr. Reid?

Mr. Robert Marleau: Mr. Reid filed a special report for Parliament, complaining that it fell far short.

Mr. Bill Siksay: As Information Commissioner, have you been given the power to order the release of information?

Mr. Robert Marleau: No, sir. We have an ombudsman model at the federal level. I have the power only to recommend.

I have extraordinary powers of investigation. I can see just about everything, excluding cabinet confidences. I can send for papers, and I can enter into premises. We don't use those powers because we usually get nothing but cooperation in terms of access.

At the end of the day, I can only file a letter under section 37 to a minister, recommending that this be done. If the ministry does not follow my recommendation, with the approval of the requester, I can go to the Federal Court, and the Federal Court can ultimately order that disclosure.

As commissioner, I'm first an ombudsman. I'm not a neutral ombudsman; I am biased towards disclosure. But I am trying to mediate and resolve.

Mr. Bill Siksay: Has the coverage of the act been extended to all crown corporations, officers of Parliament, foundations, and organizations that spend taxpayers' money or perform public functions?

Mr. Robert Marleau: No, I think there are still.... If I use the Auditor General's term "follow the dollar", there are still probably other institutions out there that could fall under the purview of the statute. In the recommendations I tabled today, I recommend that Parliament, the Library of Parliament, the Senate, and the House of Commons should also be covered by the statute.

Mr. Bill Siksay: Are you able to review the exclusion of cabinet confidences?

Mr. Robert Marleau: No, I am not. That's called an exclusion under our statute. I have to say I'm highly uncomfortable with that. I think virtually all my colleagues in the provinces have access to cabinet confidences. In New Zealand, as you'll see—that's a recommendation I make—they proactively post a whole bunch of cabinet decisions and the commissioner has full right of regard.

That's not so much ordering cabinet confidences to be disclosed, but I have to accept the government's word. I get a certificate from the clerk that says this is cabinet confidence and I can't see it. So there's no third-party review.

• (1610)

The Chair: Thank you.

I'll have to move on now to Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Thank you very much.

Commissioner, I am looking at table 2, complaints closed in 2007-08. It says at the bottom in a note that there was an increase of 1,070 new complaints. Then I look over here at table 1, which lists by institution the number of complaints, and I see here that the Canadian Broadcasting Corporation was responsible for 536 of those complaints.

The reason I point this out is that it would appear that half the new complaints can be attributed to one new institution that was just recently added. Now, I don't say that to blame CBC or any other institution. I think it's reasonable to expect that any institution that is newly added to the act is going to face an inordinate number of complaints in the first years of implementation. As such, I wonder if you can comment on whether or not the unprecedented addition of 69 new institutions under coverage by the Access to Information Act might be responsible for the increase we see.

Mr. Robert Marleau: The short answer is yes. A large part of the increase in 2007-08 is due to the larger number of institutions that came under purview of the act. However, that's not the only cause. In the case of CBC, they were subjected in their first month under the statute to a large volume of requests by one requester who subsequently filed a large number of complaints related thereto.

That, if you like, kind of skews the statistics a little bit. However, the trend this year for 2007-09 is roughly the same. Despite this one sort of large number, there is still a curve going up that's going to take us in well over 2,000 complaints this year.

Mr. Pierre Poilievre: Sure. Fair enough. I recognize there are many complaints that are not going to be legitimate, so I'm not suggesting that all 500 complaints attributed to the CBC are necessarily founded complaints. However, I'm just pointing to the fact that there are 69 new institutions added. I think what I extract from your answer is that you agree this was at least a large and significant contributing factor to the increase in overall complaints.

Secondly, I look at the number of requests processed. Here I note, looking at... Do you have the same table, sir, on page 2? Actually, sorry, I don't think we have the same page references. I'm looking at the table of the number of requests processed. It shows the progression from 2002 through to 2008. Am I correct in pointing out there has been an increase of 38% in the number of complaints processed in that five-year span?

Mr. Robert Marleau: Number of complaints or requests?

Mr. Pierre Poilievre: I meant to say requests processed. These are access to information requests that were processed.

Mr. Robert Marleau: Yes. Those are the Info Source statistics that show a roughly 36% increase in the volume of requests over six years, which is an average of 6% per year. That seems to be roughly the same figure for 2007-08 and it looks like it's going to be the same figure for 2008-09. So there isn't the same kind of curve, if you like, on the number of requests processed or number of requests filed as there is with complaints, which are up 142%.

If I may, I should add to your previous question, which relates to why there are so many more complaints. The Federal Accountability Act changed the complaint period in the statute, narrowing it to 60 days from one year. So part of this increase is also due to requesters filing complaints much earlier, in anticipation that they would miss

their window. But we've not yet been able to say it's X or Y. It's a mix of things.

● (1615)

Mr. Pierre Poilievre: In a sense, a complainant might file a complaint before a complaint might be necessary in order to avoid missing the deadline.

Mr. Robert Marleau: That's it.

Mr. Pierre Poilievre: So I think that we need to put these numbers into perspective. One, there are 69 new institutions added for which complaints could be made—CBC being an example, taking up half of the new complaints by itself, and it's only one of 69. Two, we've had a 38% increase in the number of requests that are processed in the last five to six years. So when we're dealing with larger volumes, that explains the change in numbers in part.

I would also like to look at the response times. A lot of noise has been made by critics about the increase of about half a percentage point in the number of requests that are not completed within 30 days. Originally, in 2006-07, it was 57.2% that were not completed in 30 days, and a year later it was 57.8%, so an increase of 0.6%.

I would note conversely, however, that the number that did get treated within 60 days increased by 2.1%. So while there was a very marginal reduction in the number that occurred within the 30 days, there was actually an improvement if you extend to a 60-day window. Is that not correct?

Mr. Robert Marleau: Well, it's difficult to... I'm not sure we're on the same page of statistics, but I make it almost a 20% increase in the proportion that was completed between 31 and 60 days, and a slight decrease beyond. Our report cards confirm, at least for those ten institutions—and it's hard to extrapolate it to the entire government, but for those ten institutions—that extensions are up about 30%, 35%.

So the total statistics that are published in Info Source—I'm not saying they're wrong, but because they take the whole system in. If you look at CIC, Citizenship and Immigration Canada, they represent a full third of all of the requests filed under access to information. So you almost have to extrapolate them right out of the equation in order to get a fairer evaluation of those performances.

The Chair: Thank you.

Before I move on to Madame Simson, Commissioner, with regard to the ten departments that were included in the report card, the Department of Justice had the highest rating, in fact the highest possible rating. Are there any elements or characteristics of the manner in which they approach access to information, or other factors that we may not be aware of, that would indicate to you, relative to the other nine, why their performance is so good?

Mr. Robert Marleau: In the case of the Department of Justice, I would say it's two issues. They invested in resources and training, and they have established memorandums of understanding with some 18 institutions on consultations because they're one of the departments that get consulted a lot. But the biggest component in my evaluation is effective leadership. I know from talking to the minister, having had ratings of F for three years in a row, they decided that, as the Department of Justice, they should be at the top of the list.

The Chair: Madam Simson.

Mrs. Michelle Simson (Scarborough Southwest, Lib.): Thank you.

Welcome, Mr. Marleau. I really appreciate the opportunity to ask a few questions. I think mine are along the lines of the compliance issue.

I did read your report, and I had a specific concern with respect to the fact that, as you say, your role is one to process but there is nothing that.... Essentially, you can be turned down for the information yourself. So really, your department doesn't have a lot of teeth; it's an ombudsman-type organization. Correct?

• (1620)

Mr. Robert Marleau: Yes, it is. But just to be clear, I can't be turned down to have access to information myself.

Mrs. Michelle Simson: No, I understand.

Mr. Robert Marleau: I have full access. I can't order its disclosure. The Federal Court can, if I take the case to the court. But, yes, I'm an ombudsman.

You raised the issue of having no teeth. The statute has no teeth.

Mrs. Michelle Simson: Yes, that's exactly where I was going.

Mr. Robert Marleau: The compliance model is weak.

Mrs. Michelle Simson: Yes. And an area of concern for me is the compliance issue.

You have access to the information, but if one of the institutions refuses to provide the information to the requester, with their permission you make the application to Federal Court.

Now, is there any cost to the requester for that service and that support?

Mr. Robert Marleau: No, and that is one of the strong aspects of this statute, that those costs are borne by my office and at no cost to the requester.

If you look at the U.S. model, for instance, there is no ombudsman. There is an appeal process within a department. But if you go to the court in the U.S., you have to fund your own way. And some of the large media outlets are finding it very expensive to pursue the government on access on freedom of information in the U.S.

It's one of the big advantages, and it's one that I think we should keep.

Mrs. Michelle Simson: Now, in terms of the cases that go unresolved, how many cases would require your intervention or application to Federal Court to try to get the information for the requester, on average?

Mr. Robert Marleau: Very few—less than 1% over time. We resolve about 98% of the cases, or the complaints get discontinued, and about 1% of the cases have gone to Federal Court over, say, the last 25 years. And we've won most of those.

Mrs. Michelle Simson: I just didn't have a sense of how many would go that far.

Mr. Robert Marleau: It's not speedy. It's not timely, but....

Mrs. Michelle Simson: I'm sure it would take a long time. The requester would have to have a lot of perseverance or want to see the documents pretty badly.

You said that this wasn't a recent phenomenon. As you said, you didn't want it to sound like it was suddenly becoming secretive, but the statistics seem to be spiking, and for various reasons. As Mr. Poilievre pointed out, CBC accounted for 536 complaints, and 383 were delayed complaints.

I noted from your report, for instance, there was an inordinate number that were fee complaints, the fees charged. Now, is that for the initial request? It specifically mentioned \$5 in your report. Is that something that is supposed to be universal to all the institutions under this umbrella?

Mr. Robert Marleau: Under the statute, the government can set by regulation the fee structure for responding to requests: 20¢ a page for photocopying, search fees, preparation fees, for large volume. So the fee issue, which has just come up in the media recently about a couple of departments, is something that can be used by certain departments to discourage applications. I've got investigations under way—I can't confirm or comment on those—but that's the concern about the use of fees.

We call those administrative complaints, and I'm making recommendations in my legislative proposals to deal with those.

The Chair: Thank you.

We'll go to Mr. Hiebert, please.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you, Mr. Chair.

I couldn't help but note, Mr. Marleau, in your previous answers, that you talked about one requester making a large number of complaints and a large number of requests. How many requests and complaints did this one individual make?

Mr. Robert Marleau: Do mean in the case of CBC, or generally?

Mr. Russ Hiebert: I mean generally.

Mr. Robert Marleau: I'm not really at liberty to share publicly the number of complaints any one individual makes.

Mr. Russ Hiebert: Why is that?

• (1625)

Mr. Robert Marleau: The complaints are private under the statute. The investigation is private under the statute.

Mr. Russ Hiebert: I'm not asking for names. I want to understand the statistics behind the average person and how many complaints he or she makes. Maybe there are a few users who exercise excessive use. You might be familiar with the 80-20 rule.

Mr. Robert Marleau: Sure, I'm familiar with the 80-20 rule. In this case, it's almost a 50-50 rule.

Andrea will pull the scale out for me, but two users represent about 45% of my workload.

Mr. Russ Hiebert: Did you say two users?

Mr. Robert Marleau: I'm sorry. Ten users represent about 45% of my workload. Two users represent about 35% of my workload.

Mr. Russ Hiebert: So the two are included in the ten.

Mr. Robert Marleau: Yes.

Mr. Russ Hiebert: Two users comprise how much? Did you say 35%?

Mrs. Andrea Neill: For some reason, my page is missing. Of our top ten users, number one accounts for 17%. The second user is 12%. Others go down from there, for a total of 47% for the top ten.

Mr. Russ Hiebert: So you're saying that ten people constitute 47% of the requests to your department.

Mrs. Andrea Neill: Yes. They are from business and the media.

Mr. Russ Hiebert: That's unbelievable.

Mr. Robert Marleau: They are from business, media, and the public, yes.

Mr. Russ Hiebert: So this really isn't the access-to-information department. This is the access-for-ten-people department, to some degree. I am being facetious, of course, but I find that astonishing.

We've heard from the Privacy Commissioner that roughly 20%, I think—maybe the chair can correct me—of the Privacy Commissioner's requests and complaints come from people involved in correctional institutions. I was going to ask if there's a similar correlation with a certain group of people. This is far more dramatic than I ever imagined.

Let me ask the question. Does Correctional Service Canada have members of its institutions who seek access to information?

Mr. Robert Marleau: Yes, they do, but we don't have the same kind of volume in access as they have in privacy from Correctional Service Canada or from incarcerated individuals.

I do have the chart, Mr. Chair, if you want me to table it. It shows the distribution of percentage use, by user category, without divulging the names of the complainants. It is graphic in the sense that there are two recommendations I'm making for modernization that are related to this. The first is that for large requests made by the same user to the same institution, there should be a specific extension provision available to the department, on the approval of the commissioner.

The other is about choice. The act says that I shall investigate. I'm recommending that the committee consider, as was included in the open government act, that the commissioner be given discretion on initiating investigations to allow more flexibility in managing resources and in dealing with what might be perceived by some as vexatious or frivolous or abusive. I'm happy to table this document, if you wish.

Mr. Russ Hiebert: I would love to see that document, Mr. Marleau.

I'm just noting for the committee members here that when we look at these numbers, when we look at the number of complaints, when we look at the increase from 22,000 requests in 2002 to 30,000 requests in 2008, we're not talking about the public as a whole. We're talking about fewer than a dozen people—I wouldn't say that they are manipulating the system—certainly taking full advantage. Would that not be a fair description?

Mr. Robert Marleau: I can't impute motive, but using it to its full advantage is probably a good description.

Mr. Russ Hiebert: Thank you very much.

Mr. Chair, do I have more time?

The Chair: Carry on.

Mr. Russ Hiebert: Thank you.

I would love to continue along those lines. I was going to ask you why government institutions would be legitimately allowed to curtail the information that's available.

Could you explain to members why government can at times curtail access to certain types of information to reflect the balance between access by the public and the legitimate business of the government?

Mr. Robert Marleau: The statute provides for a series of exemptions and exclusions, things like national security, international affairs, commercial third-party relationships, and cabinet confidences. A carve-out was included for the major crown corporations like Canada Post and AECL. CBC has a journalistic carve-out. Those are the kinds of issues that.... The access provides for legitimate state secrets.

The application, the actual exercise of that discretion where it isn't mandatory, is where my investigations come into play as to whether the discretion was properly exercised.

• (1630)

Mr. Russ Hiebert: That would be my last question. The opposition parties have at times impugned that ministers or political staff members have been the ones to handle these requests. Can you not confirm that it's in fact not ministers or political staff but members of the public service who are always responsible for reviewing these kinds of requests?

Mr. Robert Marleau: All I can say is that in the two years I've been there and reading through many of the annual reports of my predecessors, we have not found through our investigations direct political interference in the processing of access requests. However, as I said earlier, the talk at the top has considerable influence on the ground floor service delivery.

We do have a famous case before the courts called a controlled case when, in the Ministry of National Defence, meetings were held with the minister, the deputy minister, and the Chief of the Defence Staff and people tried to access those documents. So far, we have not been able to resolve that. It's at the Federal Court of Appeal right now.

The Chair: Thank you.

Monsieur Asselin.

[*Translation*]

Mr. Gérard Asselin (Manicouagan, BQ): Thank you, Mr. Chairman.

Good afternoon, Mr. Marleau, Ms. Neil, and Ms. Legault.

We had an opportunity to get to know each other during your past life, Mr. Marleau. You did an excellent job, and people are still referring to your texts.

Mr. Marleau, when opposition members ask questions in the House of Commons about access to information of the Treasury Board President, he says that things could not be better. This afternoon, the picture does not look as clear and unblemished as the minister suggests. You have produced an excellent report, in which you make a number of recommendations. This all speaks to the high quality of your work. But this can all be done—and I am sure you know this as well—only if there is a political will to amend the act, to implement your recommendations and to earmark the human resources required to remove the dust from this old legislation. But we seem to be getting bogged down.

You and I both know that we have to use access to information regularly when we do not get information from the department. Access to information is our last resort. That leads us to ask certain questions. Does the government have the political will to change things? Have you cried for help? Have you told the minister that you were getting bogged down, that you did not have the human resources or the budget you need? I would also like to know whether there have been any increases since 2006. I'm sure there has been an increase in the number of requests.

I will have another question later on.

Mr. Robert Marleau: Thank you, Mr. Chairman.

I would like to thank you for your generous comments regarding my performance in another life. I have good memories of those days.

You ask whether the political will exists. I think I more or less answered this question in my report on the report cards. I said that this culture of non-disclosure could only be changed if there were an energetic will and leadership. I cannot state this differently—there is something missing here and it is serious. Has there been a decline? The statistics published last week by Treasury Board show that there has been a decline of about 20% in the number of cases in which all the information was revealed. There has also been an increase in the use of exemptions—in other words there have been more redactions in the last two years than in the past.

To be fair, some of this is attributable to the mission in Afghanistan, if we think of the Department of National Defence and the Department of Foreign Affairs and International Trade, for example. However, the mission in Afghanistan alone cannot account for this 20% decline.

•(1635)

Mr. Gérard Asselin: Is it reasonable that democratically-elected members of Parliament have to get involved in order to get a minimum amount of information from a department as a result of a request from a constituent? It seems like the directives are top-down, and that people are being muzzled when it comes to providing information. And when we proceed through an access to information request, the documents are provided very slowly. There are often documents missing. We are referred to certain pages, and these pages are missing. There are also documents that have been censored. In fact, I would say that over 50% of the documents are censored. That bogs the system down. People are dissatisfied and wonder whether, when they turn to access to information, the documents they need in order to do their work are being checked. People are entitled to get their evaluation reports.

There's a fisher in my riding who was evaluated by an official and who did not get his quota. A report was written on this. The report was prepared incorrectly, was censored, and was missing certain pages. And if we have to get involved, once again, we have to turn to an ATI request.

[English]

The Chair: Merci.

Mr. Commissioner, perhaps you have a comment you would like to make to the comment.

[Translation]

Mr. Robert Marleau: I often hear about the type of frustration you are expressing. There are many such anecdotes. I can only intervene when I get a complaint on a specific issue. All issues are complex in their own way. It is difficult to make generic comments and to say that all the cases are the same. However, if you complain to the Office of the Commissioner, there is a good chance you will get more information.

Mr. Gérard Asselin: I will keep the information on how to contact your office.

[English]

The Chair: Mr. Dechert, please.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Mr. Marleau, in answer to some questions from my colleague Mr. Hiebert you mentioned that approximately ten users generate I think it was 47% of all the requests and complaints, which is really quite remarkable. Would it be fair to say that these requests and complaints consume approximately 47% of your budget, or a similar percentage of your budget? And if so, how much is that?

Mr. Robert Marleau: Our budget is a little over \$8 million. No, I can't say that it would be totally attributable to half the budget, but in a large part.

Mr. Bob Dechert: So we could say more than \$3 million, maybe up to as much as \$4 million of your budget is....

Mr. Robert Marleau: Almost a half is in compliance and resolution under Ms. Neill, but there are corollary activities in there that are not specific certainly to these ten users.

Mr. Bob Dechert: As a rough estimate, I think it's something that the public should probably know.

You may know that prior to being elected to Parliament last fall I was a lawyer in private practice for over twenty years, and I actually studied law with a fellow by the name of Professor Alasdair Roberts, who you're probably aware of and who is a recognized expert in the field of access to information. He's made a number of comments in the press. He's been quoted in a number of journals, both in *The Toronto Star* and in *Lawyers Weekly*, which is a journal that I read quite frequently as a lawyer. There are a number of interesting comments.

I'm referring to a *Toronto Star* article dated November 1, 2003, which quotes Professor Roberts, who was a professor at Queen's University, and he's now at Syracuse University in Syracuse, New York. It says:

Canada's leading expert on access to information issues, Alasdair Roberts, says the system results in unequal treatment for suspect requesters. Media queries are sidelined while others move through unimpeded. Roberts' studies show journalists' requests take longer on average than other types of requests. "Everyone is entitled to equal protection and treatment under the law", he says. "There is no provision in the law that says journalists and politicians get second class treatment."

He then went on to refer to the CAIRS system that previously existed:

CAIRS is a product of a political system in which centralized control is an obsession. The system, which has been around in a less sophisticated form for a decade, was upgraded by the Liberal government in 2001 to allow officials across government to review the inflow of requests to all major federal departments, says Roberts, who now teaches at Syracuse University....

Do you remember seeing that article, by any chance? I wonder if you could comment on what was going on in the system for access to information then and what the situation is today.

• (1640)

Mr. Robert Marleau: I can't remember for sure that I read the same article. I've read Professor Roberts' book and many of his commentaries about access to information. Since that article was published, my office did a systemic investigation—it ran from 2003 to 2005—on what became known as “amber lighting” media requests.

The Canadian Newspaper Association filed a complaint. My predecessor started a systemic complaint on it. We found there was amber lighting. We found that indeed the media was part of that amber lighting, but they weren't the worst. Parliamentarians and lawyers were slowed down even worse than the media was in the amber lighting, and we found it did slow the requests in some circumstances.

I came out not against profiling requests within a department, but certainly against it violating the timeliness of the act, and made three recommendations to Treasury Board, which we're about to follow up on.

So that's the amber lighting and how the media might be profiled. I have no problems with that, because if a department wants to get ready for its communications on a story that's going to break, so long as they do it within the 30 days by the statute or the 60-day extension, that's their decision from a management point of view. We can argue what the spin is—that's another story—but if the requester gets his information in a timely fashion, that's what is paramount to me.

As for the second component, since then as well, we haven't really found a major issue. I'm sorry, I'm using up your time, but there was a two-part question.

Mr. Bob Dechert: That's okay.

Mr. Robert Marleau: Mr. Chairman, I'm in your hands.

The Chair: Please complete.

Mr. Robert Marleau: One of my concerns was that when I looked at some of these issues from a complaints perspective, because that's what we receive, I felt that certain users—and you've had a certain reaction to that sheet I gave you about the volume users—were clogging the system outside and inside my shop. So we've introduced an early resolution unit that does some triage. I didn't want, for instance, the 500 CBC complaints blocking the whole

investigative process in my shop. So we've done some triage, and that seems to be working well. I didn't want the little old lady from Moose Jaw who is using the act for the first time to be told, “You're number 2,185; we'll see you in two years”.

Mr. Bob Dechert: Would you know if the ten users you're referring to are ten users who have been making requests for more than five years, say, or are they recent users?

Mr. Robert Marleau: They're experienced users.

The Chair: Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair.

Mr. Marleau, I want to go back to that list of issues I was raising earlier just to ask if, in your time as commissioner, you've seen the government take any action on any of these issues. Has there been any effort to oblige public officials to create the records necessary to document their actions and decisions?

Mr. Robert Marleau: Other than the standing policy directives from Treasury Board, nothing statutory.

Mr. Bill Siksay: Has a general public interest override for all exemptions been provided so that the public interest is put before the secrecy of the government?

Mr. Robert Marleau: No, and I think that's a recommendation in the open government statute proposal.

Mr. Bill Siksay: Have all exemptions from the disclosure of government information been justified only on the basis of the harm or injury that would result from disclosure, not from blanket exemption rules?

Mr. Robert Marleau: I think I'd say, subject to being corrected by my assistant commissioner, that the body of our investigation would show there is abuse of exemptions.

• (1645)

Mr. Bill Siksay: Have the disclosure requirements of the Access to Information Act... Has there been any move to prevent their circumvention by secrecy provisions and other federal acts, while respecting the confidentiality of national security and the privacy of personal information?

Mr. Robert Marleau: There is a body of statutes out there that exempt various institution programs from access to information. It's a creeping phenomenon.

Mr. Bill Siksay: Chair, I just want to say that the issues I've been reading might be familiar to my colleagues across the table. They're the commitments the Conservative Party made in its platform in 2006 on strengthening access to information legislation. So it seems there is still quite a way to go in terms of meeting those commitments.

Mr. Marleau, on this question of number of users, number of complaints, and number of requests they're filing, is it possible that the kind of specialized experience that's necessary to have a successful ATI request filed and followed through on has necessitated the development of experienced users who provide that service to other people who are trying to access information from the federal government? Does that explain some of the concentration of those requests?

Mr. Robert Marleau: The general answer to that would be yes. I think there is a legitimate role for what I would call “data brokers”, who know the system and can serve a client fairly quickly by using the statute more effectively. There are also people outside the country, who don't have the right to make an access to information request and need a data broker.

That's a recommendation I'm making, which should be dealt with. Anyone should be able to have access without using a broker if they so choose. There are also people who want anonymity, for whatever reason, and they use the services of these experienced individuals.

So it's provided for in the statute.

Mr. Bill Siksay: That might offer an explanation as to why there are some folks who seem to be making requests so often.

Mr. Robert Marleau: It's difficult for me; I'm not allowed to impute motive. When I get a frequent user who is asking for a body of information and has a complaint, that's a complaint.

Mr. Bill Siksay: But there might be other explanations, other than what seems to be immediately apparent to some folks around the table.

You mentioned that funding is a serious issue. I heard you say your budget was \$8 million a year and that you're going to the body that looks at the budget requests of parliamentary officers. Can you give us any scoop on what you need to do your job appropriately? It's very clear from your language in the report that you don't have that ability now. It sounds like the whole operation is in jeopardy, partially because of funding issues.

Mr. Robert Marleau: I made that case last year that we needed to look at it but I didn't want to just throw money at it.

Parliament graciously provided money for us to do a fundamental study. We got \$100,000 in the estimates last year to do what's called an A-base review. We've done that. We've negotiated with Treasury Board. I believe at this hour we have agreement on a proposal to the parliamentary panel, which will review it next week. If we get the amount of money we're requesting, we'll be making up the lost ground of the 1990s and early 2000s in trying to meet the service standards Canadians should expect from my office.

The Chair: Thank you.

Just to clarify, the advisory panel does not approve your request. I'm on the advisory panel. I don't want to be the reason you're not doing your job. In fact it's collaboration with Treasury Board, and the panel will look forward to seeing you next week when you come.

Mr. McTeague, please.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Mr. Chair.

If you don't mind, I'll split my time with Ms. Martha Hall Findlay. I only have one question.

Monsieur Marleau, Madame Legault, it's good to see both of you here. Thank you for being here.

Monsieur Marleau, I'd like to recognize that you have lost a good friend in Monsieur Gilbert Parent, who you worked with in the past.

Condolences to you as well. We commend you for being such a good worker with him over the years, for all of us.

Monsieur Marleau, I want to go very quickly to Mr. Reid's reports and recommendations, some of which have been crystallized into a private member's bill.

On the ten recommendations you put forward, are they the same as, different from...? Do they in fact provide you with the litmus test you need to provide greater teeth? I'm referring, for instance, to recommendation nine, where you actually talk about removing “for the purposes of access within 60 days for extension”. You're suggesting forfeiture of the fees charged. That doesn't sound like something that would give a whole lot of bite to what you're trying to accomplish.

I also recognize the “access to the court”. In your view, would that not provide a greater stampede to the courts, given the preponderance of cases?

• (1650)

Mr. Robert Marleau: The answer to the first part of your question is that some of these are in the Reid open government proposal and some are not. We approached it from a perspective of trying to reinforce the compliance model and dealing with some of the issues of effectiveness of the commissioner.

To your question about recommendation nine, if a government department has to come to me for approval of a further extension, that creates a discipline in the system. While it might not be as sharp as a shark's tooth, they have to come to the commissioner to explain why they need more than 60 days. In Alberta, that's what's happening, and it works. They don't want to explain; they want to get it done. And that's the idea.

In terms of the direct access to the courts, I explained earlier that many requesters asked for this in the consultations we did, but there are costs. If I go to the Federal Court with a requester, there are no costs. So I wouldn't see a stampede through the courts. But those who choose to do so would have that freedom. I've been told by some requesters to get out of the way: your investigations are in the way; we just want to get to the court with this.

Hon. Dan McTeague: Yes.

Could you just comment on how your recommendations here differ from those of John Reid, the previous commissioner?

Mr. Robert Marleau: Well, one of them is the hybrid order-making power. That would be a significant one.

Many of the provinces—B.C., Alberta, Quebec, and Ontario—have full order-making powers. I'm recommending that Parliament, through statute, give order-making powers to the commissioner on administrative complaints—the fees, preparation and search, all of those costs. While it may not seem like much, if the commissioner gets a complaint on, say, fees, and goes in and says “Sorry, that's an abuse, and you forfeit your fees”, that will create a discipline in the system.

The Chair: Ms. Hall Findlay, please.

[Translation]

Ms. Martha Hall Findlay (Willowdale, Lib.): Thank you, Mr. Chairman.

I would like to thank the witnesses for sharing their time with us this afternoon.

[English]

Our colleague Mr. Hiebert seemed surprised at the list of the top ten users and suggested that somehow this did not reflect access for the public. I would like the record to show my comment that individual Canadians rely on the media for their information, and I assume that media outlets are among the top users.

I recognize that the Information Commissioner cannot disclose individual identities, but can you at least confirm for us that media outlets are in fact significant users of this service, and therefore there is an ability of the public to gain access to this information?

Mr. Robert Marleau: Well, obviously in our democratic system the media play an extremely important role. In terms of using access to information, they're not the top user. They represent about 10% to 15%, depending on the year, in the user category for all of the system.

In the complaints I receive, which is a much narrower field—say 2,100 per year—they're not the top user. One complainant, who I'd say is a specialist, is among the top users. So while I have a media user who is a high complainer, you can't translate that into the system, because the system shows roughly 10% to 12%—I think that's the figure—of users from the media. That's usually a surprise to people. People think the media are the top users. They're not; it's business.

Ms. Martha Hall Findlay: Thank you.

The Chair: We're at four minutes and 53 seconds, excellent for the two visitors. Welcome.

Madam Block.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much.

Thank you, Mr. Marleau and your associates, for being here today.

I'm really interested in the report card process and I have some questions after reading your report. Your report cards issued grades to several departments, and you earned media exposure for those grades last week. I would like for us to take a look at them a little more closely.

You gave the RCMP an F this year, and if you look back, they received an F in the 2005 report under a Liberal government as well. Did you not give them an F as well in 2005, as in this year?

•(1655)

Mr. Robert Marleau: We went to a star system this year, because we've added context to the report cards rather than just a headline evaluation of A to F, and we gave them two stars.

Mrs. Kelly Block: Thank you.

I do have another question regarding the report card process. In your report, under "commitments", you state that the Office of the Information Commissioner also commits to better inform federal

institutions about the report card process and its requirements ahead of time. Can you explain what you mean by that, and what currently is happening with departments in terms of understanding the process?

Mr. Robert Marleau: Can I ask Ms. Legault to answer that question?

Ms. Suzanne Legault (Assistant Commissioner, Policy, Communications and Operations, Office of the Information Commissioner of Canada): Mr. Chairman, basically what we did this year was institute a new process for report cards that was more comprehensive, so there was very little notice to departments in order for them to understand what we were going to be seeking in terms of information. We do report that in the special report.

One of the particular areas where we wanted to have specific information was on the specific extensions and also on the length of time for consultations. This is information that's not collected in a very disaggregated data by the various departments because, as it stands now, it's not a requirement for their reporting to Treasury Board Secretariat. Because of that, it did require a bit of work from the departments in answering our questions. We were particularly looking at extensions in consultations timelines because we feel it's becoming a real concern.

We've decided that what we're going to do with the report cards going forward is actually a three-year plan so that departments and institutions that will be the subject of report cards will get advance notice that we will basically be looking into more details in some of those practices.

Mrs. Kelly Block: I have a follow-up question.

I'm just wondering, then, if they had very little notice in terms of what you might be evaluating for this year, could that account for some of the lower grading that organizations or departments received, that is, if they didn't have a good understanding of what you might be evaluating them on in this process?

Ms. Suzanne Legault: They had a good understanding of what information we were looking for. There was only one institution that could not answer some of our questions in detail. That was the RCMP in terms of some of the delays beyond 30 days. They didn't have that information collected or they didn't provide it to us in the time that we allowed.

But we had several interactions with all of the departments. In terms of explaining very well our requirements, there was a lot of back and forth with all of the departments that were subject to the report cards.

Mrs. Kelly Block: Where are you looking for improvements, then? I guess it's in communicating the report card process and the requirements ahead of time. You state that you need to do that. Do you feel that was done well enough or is there always room for improvement?

Ms. Suzanne Legault: Pardon me?

Mrs. Kelly Block: It was suggested in the report that there was a need to improve communication about the report card process and its requirements ahead of time. You've described what sounds to me like good communication and a good understanding. What, then, are you referring to in terms of improving the process and the requirements ahead of time?

Ms. Suzanne Legault: We can always improve our processes, that's for sure, and we're always striving to do that.

One of the measures we want to improve is actually part of the recommendations we made to the Treasury Board Secretariat in terms of some of the statistics that need to be collected in order for Parliament, other institutions, and our office to better understand what is going on in the system.

• (1700)

The Chair: Thank you.

Mr. Marleau, we're going to get into this a little more with your recommendations, etc., but in your annual report, you reported that 85% of the files were backlogged. In the report card, if you look at that as being reflective across government, two-thirds of the departments of government are not complying with the law. That's failure.

Mr. Robert Marleau: That's what I called it.

The Chair: Yes.

If you get the resources, and I'm sure that you will, how many years is it going to take before the system is normalized and meeting the general standards of the Access to Information Act?

Mr. Robert Marleau: Mr. Chairman, if I get the resources that I'm submitting to Parliament for review, I'll be able to do my job. But my job is not to run the access to information regime. That belongs to the Government of Canada under the stewardship of the Treasury Board Secretariat.

I think the traditional posture has been that the head of the institution is responsible for the administration of the act, and that's true: that's the way it's written. But the designated minister, who's the minister of Treasury Board, has responsibilities under the statute for across-the-board performance. That's where I think the leadership has been lacking. It's not last year and it's not the year before; it's been lacking for a considerable amount of time.

The Chair: Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: Mr. Marleau, you stated you had not come across any direct interference in ATIP requests in the last two years.

If you were to become aware of direct interference, and not just in general, as in terms of setting the tone, but of direct interference on a particular ATIP request, what would the sanctions be—not that you could apply them, but what would they be?

Mr. Robert Marleau: Short of the shame and blame and public reporting and tabling in Parliament of such an event, that's about the only sanction. Then it's up to Parliament to decide where it takes it. We've only had one case since I've been there that had a *souçon* of political interference, a case this committee looked at very closely in terms of the Afghanistan human rights report within the Ministry of Foreign Affairs, where two requests alleged political interference.

In our investigation we were not be able to establish that, not even close. We did file our report with the committee as well on that one, and the committee did make some very good and substantive recommendations to government on that, but I gather from the committee report that it was not able to establish whether or not it did occur.

Mr. Borys Wrzesnewskyj: I'd like to come back to the RCMP, who I referenced earlier. They received a below average grade, I guess that's a failing grade, the worst grade on your report card and this culture of non-disclosure you referenced.

Just under two years ago, in the public accounts committee, under questioning, a former ATIP officer stated he was called into the commissioner's boardroom by Deputy Commissioner Gauvin, who is one level down from the commissioner. There was a request to switch the documents that had been prepared to be sent out with documents prepared by the deputy commissioner. How do you treat a case of this sort?

Mr. Robert Marleau: First, I need a complaint to cause an investigation. There are now provisions in the statute, particularly the destruction of documents, to pursue that under criminal law, section 67.1.

I would turn that over to the Attorney General as quickly as possible, if I found it.

Mr. Borys Wrzesnewskyj: That's quite helpful. I believe it was an Officer Estabrooks who also testified, who used to work in that department. They talked about constructive dismissals and punitive transfers.

I believe that particular officer also said files would go missing or they would be incorrectly stamped as being top secret to make sure that access would not be provided. Are you aware of any of these sorts of practices within the RCMP ATIP section?

• (1705)

Mr. Robert Marleau: No, not directly through our investigations. Is there zeal in stamping something top secret when it's not? It happens. We find it. We argue it, and usually it gets released, because we can see what is top secret. This doesn't prevent us from seeing the file, so we will see it.

In fairness, the RCMP also has had a very large increase in the number of requests this particular review period. They have invested more resources. We expect from their action plan that has been published in our report that they'll do a little bit better next year.

Mr. Borys Wrzesnewskyj: How often do files go missing?

Mr. Robert Marleau: I have no idea, sir.

Mr. Borys Wrzesnewskyj: That seems to have been an issue raised—

Mr. Robert Marleau: Through our investigations, it's quite rare that we would conclude that a file has gone missing.

Files get lost, records don't get found, poor search practices are in place, and there's mismanagement of records. Alvin Toffler, whom I referred to earlier, coined the phrase "information overload". Right now across government there is an information management crisis, so files going missing is probably not an uncommon thing. Whether they go missing deliberately is another issue.

The Chair: Mr. Dreeshen, please.

Mr. Earl Dreeshen (Red Deer, CPC): Thank you very much for coming here today, Mr. Marleau.

I'm a former schoolteacher. I just did some calculations, and I think I've done around 20,000 report cards in my life as a high school teacher. We didn't give stars.

I would like to talk to you about one of the things I have here in *The Toronto Sun*. It talked about the worst performers and some of the better performers. We've just put the stars there, but it would seem as if the media is looking more at the letter grade you have. It seems to me as though the Fs they see are the things that are being reported.

I want to talk a little bit about that. You've talked about the CBC and so on. Of the top ten users we've spoken about before, you said there's a legitimate role for data brokers. How many of the top ten would you consider to be data brokers?

Mr. Robert Marleau: We've identified them in our list, sir, as "media" or "business". Data brokers are in the business category. And we stick to those because they're the same ones used by the Treasury Board, so as not to divulge any identity.

Mr. Earl Dreeshen: What departments are usually targeted by these top ten users?

Mr. Robert Marleau: It cuts across the board. There would be one user who specializes in a department—we have those—they just know and they're on the trail of something, or they want to keep a flow of information on a particular policy or issue. There are specialists and there are universalists.

Mr. Earl Dreeshen: This probably wouldn't be fair, but if you were to take out the top ten users I wonder how those report card marks would change.

Mr. Robert Marleau: It's difficult to say, because when you talk about the top ten users and the top ten complainers, there's a gap. And since I only see the complaints, it's hard for me to actually overlay that. I was formerly a high school teacher as well, and when you're doing this kind of grading you want to be as fair as you can be. We work from complaints for the calculation of the percentage of the use of our resources, and the report cards were on performance of the institutions in a timeliness context.

Mr. Earl Dreeshen: I have just a couple more points, if I could.

On page 43 of the report, you gave the Department of Justice an A this year. Of course in the three years prior to that it was all Fs, and you mentioned this earlier. And you indicated that it had a lot to do with a change in direction. What was the major problem in the three years before?

Mr. Robert Marleau: If you go to page 42, the second bar from the bottom notes "senior management leadership"; I think that's what made the whole difference.

Mr. Earl Dreeshen: That would be the same situation you had with respect to Library and Archives Canada as well?

• (1710)

Mr. Robert Marleau: Library and Archives Canada are a little different. They really take their duty-to-assist mission seriously and work very closely with the requesters to understand their requests and therefore better satisfy them. So in that sense it's slightly different. But of course duty to assist flows from the top. A duty-to-assist statement in a statute says "the head of the institution shall".

Mr. Earl Dreeshen: Going back to this media report, if you look at these ten institutions, basically there were only two that received poorer grades than back in 2005 under the Liberal government. Is that how you see it?

Mr. Robert Marleau: There are only two that received....

Mr. Earl Dreeshen: Poorer grades this year than last year.

Mr. Robert Marleau: Yes. There's an improvement in PCO, for instance. There's an improvement in Public Works. So there is improvement.

The other thing we did in this report, which maybe the media is not picking up, but we wanted this committee to have, was the context in the action plan. What I was trying to do in a way was create a public contract between the institution and Parliament by saying here's how we're going to turn this ship around, a little bit like how a teacher makes a contract with his students.

Mr. Earl Dreeshen: I have just a couple of quick—

The Chair: A quick one.

Mr. Earl Dreeshen: It's hard for me to get my head around this, but would your staff have the same commitment for those frequent users as they would for that lady from Moose Jaw?

Mr. Robert Marleau: I have to say, yes, that the complexity of their complaints sometimes is more challenging than the one from the little lady from Moose Jaw. But what we've done is put in a triage system. If their complaint fits our triage, it rises to the top like the others. So there is no discrimination in our approach. But the latest snow removal contract at the headquarters of CBC might fall a little further down the line.

Mr. Earl Dreeshen: Do you think the department feels the same way?

The Chair: Thank you.

Mr. Earl Dreeshen: I'm sorry.

The Chair: Thank you.

Madame Thi Lac, please.

[Translation]

Mrs. Ève-Mary Thaï Thi Lac: Thanks once again, Mr. Marleau.

You have stated several times that the Access to Information Act must be modernized. We know that 139 recommendations were made in 2002, but that no action was taken on this report. Members of Parliament have tabled requests for changes to the act on a number of occasions. Some changes have been made, but nothing in-depth has been done.

I am pleased that my colleague, Ms. Freeman, the Bloc Québécois critic on privacy and ethics, will be tabling a bill to modernize the act during this 40th Parliament. Mr. Asselin asked a question a little earlier about political will. I hope my colleague's bill will be supported by colleagues here, particularly those on the government side, who would simply like to do more than the Liberals did in the past. I would be very pleased if my colleagues opposite were to support Ms. Freeman's bill.

Earlier you said that 10 individuals submit many of the requests. I want to be sure that you are not talking about 10 individuals, but rather 10 associations or categories of people.

Mr. Robert Marleau: I was not talking about people requesting information. The list I provided was of people who filed complaints with the Office of the Commissioner. They are in fact 10 individuals.

Mrs. Ève-Mary Thāi Thi Lac: So there really are 10 individuals?

Mr. Robert Marleau: In the case of a complaint on a business matter, the complainant could be a small law firm, for example. This is a list of 10 users who complain to our office.

Mrs. Ève-Mary Thāi Thi Lac: So it is 10 associations.

Mr. Robert Marleau: Most of them are individuals.

Mrs. Ève-Mary Thāi Thi Lac: I see.

Your first table states at the top that 14 complaints come from parliamentarians, while the second table makes no reference to parliamentarians. Is that because parliamentarians stopped complaining or because their complaints received priority?

Mr. Robert Marleau: This is what makes statistics so wonderful. The first table refers to a complainant in the parliamentary category. This is not necessarily a parliamentarian; it could be a staff member of a member of Parliament or a senator. This category accounted for 1% of the complaints. The second table shows the entire inventory, and this category accounts for less than 1% and therefore disappeared.

• (1715)

Mrs. Ève-Mary Thāi Thi Lac: I see.

I would like to ask you one last question. What are the major differences between your recommendations and the draft bill put forward by Mr. Reid?

Mr. Robert Marleau: Several recommendations have points in common. The ones proposed by Mr. Reid and those that are included in your colleague's bill, that mirrors Mr. Martin's bill, which is currently on the Order Paper of the House of Commons, go much further with certain issues. This is the case, for instance, a review of exemptions and exclusions in an attempt to make them all discretionary. I did not go that far, because I did not want to raise a debate that would lead to broader discussion. I wanted to present to the committee 12 recommendations which, in my opinion, were supported by all the users of the system. Moreover, they would help to improve the discipline and the performance of the departments that are subject to the Access to Information Act. That was my objective.

I am not rejecting any of the things that I did not include in my recommendations, but I also recognize the fact that if we insist on

discussing the commissioner's power to issue absolute orders, the debate will be a very lengthy one.

Mrs. Ève-Mary Thāi Thi Lac: Although my colleague's bill goes further than your recommendations do, it would be very good if it were adopted.

Mr. Robert Marleau: As I said in my opening statements, I fully support the bill that was tabled by my predecessor. As a former clerk of the House of Commons, I know that this will require a ministerial initiative and a royal recommendation. I also know that the standing orders allow the government to make this a government bill.

Mrs. Ève-Mary Thāi Thi Lac: Thank you.

[English]

The Chair: I'll go to Mr. Hiebert, please.

Mr. Russ Hiebert: Thank you, Mr. Chair.

As reflected in this table you provided to us, I note that not only do the top ten users generate 50% of your work, but more specifically, three individuals generate one-third of your work. Does that not strike you as, at the very least, interesting?

Mr. Robert Marleau: To be fair, though, they are complainants, not users. There's a little difference. But does it strike me as peculiar? It struck me as peculiar the first time I saw those statistics.

Mr. Russ Hiebert: You have an \$8-million budget, and a third of your work—a third of your work—comes from three Canadians.

Mr. Robert Marleau: Which is why, if you look at the business model that we've put in place and that we're going forward to try to finance, you'll see that we introduced an early resolution evaluation unit, intake unit, and we've set some triage criteria to make sure these users do not completely dominate the process of complaints.

Mr. Russ Hiebert: As they are.

What percentage would you consider frivolous and vexatious? You used those words earlier.

Mr. Robert Marleau: In the access community, whether it's frivolous and vexatious depends on which side of the fence you're on. I've had discussions with my colleagues in the provinces. My predecessors have never identified a single frivolous or vexatious request, and so far neither have I. One of my colleagues, in Alberta, where the law does provide for dealing with frivolous and vexatious requests, has had only one case in his history.

Mr. Russ Hiebert: I have many questions, so I'm going to have to cut it short there.

Is there a fee associated with making a request?

Mr. Robert Marleau: There's a five-dollar fee for making a request. There's no fee for filing a complaint.

Mr. Russ Hiebert: All right. What's the average cost per request, to your department?

Mr. Robert Marleau: The average cost per request in the system is published by Treasury Board Secretariat, and for this year the average cost per request completed is listed as \$1,425.

Mr. Russ Hiebert: Fourteen hundred dollars per request. Would it not make sense, in light of the fact that three people generate a third of your work, that you would have, at some point, at some threshold, a cost-recovery escalating fee, so you could recover some of these expenses that are being generated by these three individuals?

• (1720)

Mr. Robert Marleau: On the complaints side, we're dealing with rights of individuals, and they may be acting on behalf of someone else.

Mr. Russ Hiebert: I'm talking about the request side.

Mr. Robert Marleau: On the request side, there are fees already provided for by regulation, and that's why the average cost is \$1,425 but the average fee collected is \$13.34.

Mr. Russ Hiebert: There's a bit of a skew there.

Mr. Robert Marleau: But that's a government policy issue. It's for Parliament to look at these regulations as to whether they are relevant. In many cases, I advocate no fees.

Mr. Russ Hiebert: I think that's the way to go with the individual who has fewer than 50 requests, but when you have three people generating 800 requests, a third of your work, it seems a little bit excessive.

In terms of privacy, do you disclose the name of the requester to the department where information is being sought?

Mr. Robert Marleau: No. All requests and all complaints are processed regardless of the identity of the individual, and that's provided for in the act.

Mr. Russ Hiebert: So the department receiving the request does not know who is asking for the information?

Mr. Robert Marleau: Yes. The department coordinator would know who the requester is, but in the search for the documents, unless it's absolutely pertinent to get the source documents, the identity is not revealed, and it should not be revealed.

Mr. Russ Hiebert: So obviously people, not just in your office but in different departments, know who these individuals are. What's the basis for preserving the privacy of the requester? I can understand the privacy associated with the complainant. That makes perfect sense to me. But what's the public interest in preserving the privacy of the requester? I'm specifically wondering why the public would not want to know who these three individual users are.

Mr. Robert Marleau: There's the privacy of the requester and the privacy of the complainant.

Mr. Russ Hiebert: I'm talking about the requester.

Mr. Robert Marleau: Well, the statute specifically says "regardless of identity".

Mr. Russ Hiebert: I understand that's what the statute says. I'm wondering what your impression is as to why it says that.

Mr. Robert Marleau: I think human nature would make it such, over time, that identification of individuals would colour the quality of service in return to that individual. Furthermore—

Mr. Russ Hiebert: But you just.... The department still knows who's asking for the information.

Mr. Robert Marleau: The coordinator knows, because the request is filed, there's a cheque, there's a signature. But then they're

supposed to process that request without regard to the identity and keep it private. If you're asking for personal information, obviously that's going to have to be shared down the line, but they're supposed to get the same result.

Mr. Russ Hiebert: I perfectly understand that. I'm not at all suggesting that there should be a connection between the nature of the request and the requester. I'm just saying that the sheer information associated with how many requests a person makes—not the type of request, just the number—would be very interesting for the public to know.

Mr. Robert Marleau: In one case it might be very voluminous, if you think of Maher Arar, and in another case it might be a question of wrongful dismissal and nobody else wants to know that. There are all kinds of issues that come into play.

Mr. Russ Hiebert: Again, I'm not advocating exposing the knowledge of the type of the request, but simply who. I'm trying to understand why that privacy is important, but I have completed my question.

Thank you.

Mr. Robert Marleau: On that point, sir, if I may just add to it, nothing prevents the Government of Canada and the Treasury Board Secretariat from publishing their own list like this without divulging identity if they want to tag a particular user category with the number of requests.

The Chair: Just for clarification on the cost per request, is the number you gave net of recovery?

Mr. Robert Marleau: The cost per request completed is listed at \$1,425.04. The total cost of operations for 2007-08 is \$43.9 million, minus \$404,000 in fees recovered. Divide that by the 31,000 requests and you come up to your \$1,400 per request.

The Chair: Thank you. So it's not net.

Mr. Siksay.

Mr. Bill Siksay: Thank you, Chair.

Just so I'm clear, Mr. Marleau, you said that you hadn't seen a frivolous or vexatious request and that only one of your colleagues across the country could identify one. Was it requests or complaints that you were talking about?

Mr. Robert Marleau: The complaint is about it being vexatious or frivolous. I know of only one case in Alberta where the commissioner found it so. It's difficult. Beauty's in the eye of the beholder. It depends on what side of the fence you're on. But also, there's the concept of abuse.

• (1725)

Mr. Bill Siksay: I want to go back to your statement from Thursday where you were talking about the systemic issues. We've talked about a number of them this afternoon. You talked about the major information management crisis, in that there was "no universal and horizontal approach to managing or accessing information within government". Could you just say a little bit more about what you mean by that or what the change there might look like?

Mr. Robert Marleau: I think the government has to invest horizontally in information management. There's no one common platform. We got rid of the good old secretary who used to do the filing and now nobody's doing any filing. It just gets electronically stored somewhere. People are not trained appropriately in information management. Some institutions are just trying to delegate it to whoever is available to do it.

I think there has to be a real leadership approach from the centre, with investment in infrastructure and in technology, to bring it up to date. We're all crumbling under the weight of e-mail and we're not managing it properly.

I'll just give you a brief example. In one department, if you ask about a particular contract activity, they have to send out 1,200 e-mails in order to get the responding documents. The next time they ask the same question about a similar document, the first 1,200 e-mails pop up and have to be looked at. It's just growing exponentially and government is crumbling under the weight of this crisis.

Mr. Bill Siksay: You also say that some institutions don't even know exactly what information they're holding. Is that the same issue of there not being responsible folks, who know what's there, doing that work any more?

Mr. Robert Marleau: Yes. In large part it's a resource issue, both technological and human. It often gets done as an afterthought whenever we get around to it.

One of the witnesses, since you asked me that question, who you might want to have a discussion with about this is Ian Wilson, the head of Library and Archives Canada, whose mandate is ultimately to archive and preserve. He is of the view, also, that the duty to create a record should be under his statute. It shouldn't be under mine. I'm an oversight ombudsman, but ultimately he ends up with the mess and he has to file it.

Mr. Bill Siksay: You also mentioned there was an increasing number of consultations between institutions that was a cause of delays. Could you say a bit more about that?

Mr. Robert Marleau: The legislation does require consultation with third parties. Also, there are policy guidelines from Treasury Board mandating all institutions to consult with the Department of Foreign Affairs and International Trade on issues of foreign affairs and security, with Department of Justice on solicitor-client privilege issues, and with the Privy Council Office on cabinet confidences, but there is no incentive in the legislation to do this in a timely fashion.

So what we find is government serving government, and consultation spin. Consequently, if I'm in the Canada Border Services Agency and I have to consult PCO, my reflex is to take a 120-day extension, because I know it's not going to come out of PCO within that time and I'm going to be accused of not meeting my timeline. So these consultations have a pervasive impact.

What I said is that the Ministry of Foreign Affairs, for instance, should be given dedicated resources to deal with consultations, and then deal with its own ATIP request independently. One gets hostage to the other, in many institutions.

Mr. Bill Siksay: You also mentioned there aren't enough qualified personnel to handle access to information operations, and there is no

plan for increasing that capacity. Could you maybe say a bit more about that too?

Mr. Robert Marleau: I can't say there's no plan for increasing that capacity. There is the Treasury Board Secretariat's response to that recommendation. I find it somewhat tepid, to be honest.

This is a fundamental issue. After the sponsorship issue arose in the Government of Canada, they promulgated an internal audit policy, with external members serving on the audit. They certified auditors and did a recruitment campaign. They built competencies around that, as an accountability and governance regime.

The same thing has to apply, in my view, to ATIP coordinators. A deputy minister should get a recommendation on disclosure with the same confidence that he or she gets from an internal audit. Right now, in some institutions, the quality and the competency are not there.

● (1730)

The Chair: Thank you, Mr. Siksay.

Colleagues, the bells are going to ring momentarily for a vote, and I know people are going to scurry away.

On page 5 of the document that was circulated by the commissioner, you will find the 12 recommendations that we're going to consider on Monday. I've also asked the clerk to circulate to all honourable members all of former commissioner Reid's recommendations, so you will have them readily available and have an appreciation of the context in which these are being made.

Now, because we are so close to the end, members who have to leave for whatever reason, please feel free to do so. But I understand from Madam Simson and Mr. Hiebert that they still have a couple more questions. I think we're going to proceed as quickly as we can.

Mrs. Michelle Simson: Actually, I'll narrow these down to one quick question.

Mr. Marleau, you were saying with respect to the users and requesters that the media outlets, despite what we might think, weren't the highest users, but represented the highest number of complainants. Is that correct?

Mr. Robert Marleau: No, that's incorrect.

I would say they're about 10% or 12% of the user community at large, and in this list I provided you, one of them is in the top ten users. He or she—I'm not sure which gender they are—ranks number eight.

And among the overall complainants—

Mrs. Michelle Simson: Yes.

Mr. Robert Marleau: —they rank eight, nine, and ten, at less than 2%, and 1% of my volume.

My conclusion is that the media complainer is not an issue for me. In terms of managing the total volume, with the proper triage in place, I can provide better service to any category, and better service to the media user and complainer.

Mrs. Michelle Simson: Thank you.

The Chair: Mr. Hiebert.

Mr. Russ Hiebert: I'm just doing some quick calculations. The top three users pay roughly between \$4,000 and \$10,000 for their requests and generate over \$1.2 million in fees to the government for access to the information they're asking for. It would seem to me that there's certainly a basis for looking at an escalating fee.

But my question actually relates to a number that you threw out there. I didn't fully understand it. You said something with respect to \$43 million. What was that number? What does it relate to?

Mr. Robert Marleau: The total cost of operations for the access to information and privacy program for 2008 reported by the Treasury Board Secretariat is \$43.9 million.

Mr. Russ Hiebert: That was the cost to administer the act.

Mr. Robert Marleau: Every department must file a report with Parliament giving statistics on use and an estimate of their resource investment at the centre. This is the roll-up of those costs.

Mr. Russ Hiebert: When we talked earlier about your budget being \$8 million or \$9 million and the top ten users generating 50% of the work, roughly taking \$3 million to \$4 million of your budget, that did not include all the other departments. If we included all the other departments, their roughly 50% of requests would be more in the order of \$20 million.

Mr. Robert Marleau: I cannot conclude that my top ten complainers are the top ten users, and I think it would be statistically unwise to do so. You must keep a distinction between the weight I carry and the weight the entire system carries.

Mr. Russ Hiebert: I'm really not that focused on complainants; I'm more focused on the requests. So going back to the requests, 47% of the requests are from ten people, and a third are from three people. You're telling me it costs \$43 million to administer the act?

Mr. Robert Marleau: The top ten complainants I've listed are those who filed complaints with my office. There's a distinction between the top ten users and whatever profile of users is out there. There's no direct correlation between complaints. A lot of people don't complain. I see 6% of cases—

Mr. Russ Hiebert: I'm not talking about complaints. Let's just focus on requests. The chart you have here says the top ten requesters generate 47% of the requests.

Mr. Robert Marleau: No, I say complainants.

Mr. Russ Hiebert: The entire inventory on January 31 was—

• (1735)

Mr. Robert Marleau: I take the entire inventory of my complaints, and they're the frequent users in the context of my complaints. Those are the ones I see.

Mr. Russ Hiebert: Okay, gotcha.

Mr. Robert Marleau: I think it's risky to extrapolate these figures and apply them to the system.

Mr. Russ Hiebert: Fair enough.

Thank you, Mr. Chair.

The Chair: Some interesting points have come up about whether there is a fix for extraordinary users, whether they be complainants or requesters. That may be something we can explore at our next meeting.

I have one question for you, Commissioner, before you go. Does the Government of Canada have to amend or somehow otherwise change the Access to Information Act for us to successfully discharge the responsibilities under the act?

Mr. Robert Marleau: Yes.

The Chair: Thank you.

The meeting is adjourned.

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