

Office of the
Privacy Commissioner
of Canada



Commissariat
à la protection de la vie privée
du Canada

Access to Information and Privacy

Process and Compliance Manual

**Prepared by
The ATIP Unit**

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- ❖ The OPC's ability to comply with the legislated requirements of these *Acts* is largely dependent upon the involvement of each and every employee.
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TO EVERYONE, THANK YOU!

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Introduction

While the *Access to Information Act (ATIA)* and the *Privacy Act (PA)* came into force on July 1, 1983 the OPC became subject to those *Acts* only on April 1, 2007. ATIP has produced this Manual for the OPC:

- in order to explain the basics of the *ATIA* and the *PA*;
- to outline the processes that must be undertaken by the ATIP Unit to respond to requests received under those *Acts*;
- to outline the processes that must be undertaken by OPC branch personnel in fulfilling their responsibilities with respect to responding to requests under the *Acts*, and;
- in order to assist OPC personnel in understanding their responsibilities with respect to the handling of personal information as set out in the *PA*.

Both of the *Acts* serve an essential democratic purpose by making government more open and transparent and by promoting accountability through the participation of individuals in the decisions of government which affect them. There is a compelling public interest in openness in order to ensure that the government is fully accountable for its goals and that its performance can be measured against these goals. This renders the government more accountable to the electorate, facilitates informed public participation in the formulation of public policy, and ensures fairness in government decision-making.

As employees of the OPC, we are the custodians of information that we collect, use, disclose and retain in the course of our duties. We are accountable to the Privacy Commissioner, to the federal government, and to the Canadian public for the manner in which we perform our duties under the various legislations which govern us, including the *ATIA* and the *PA*. We are also individuals with rights under the two *Acts*. This means that we, too, have a right to know how the federal government performs and what personal information it holds about us.

The proper application of the *ATIA* and the *PA* within the OPC is a ***shared responsibility***, one which requires the active participation of every OPC employee. This manual will help you to understand not only how to play your part in the process, but why your complete cooperation is so vitally important.

WELCOME TO THE WORLD OF

ACCESS TO INFORMATION AND PRIVACY...

Frequently Asked Questions

1. Who is the requester and why is he/she asking for these documents?

There is no specific provision in the *Access to Information Act (ATIA)* that prohibits ATIP from divulging the name of a requester. However, the identities of *ATIA* requesters are generally considered personal information.

If an *ATIA* requester is a corporation, the identity of the corporation is not personal information. Whether the identity of the individual who submitted the request on behalf of the corporation should be protected as personal information must be decided on a case-by-case basis. However, it is the practice of ATIP not to disclose either the corporation or the employee's name, as why the requester wants certain documents cannot be taken into consideration during the decision making process under the *ATIA*. Whether the request comes from Joe Public, Joe Reporter or Joe Lawyer is immaterial. Decisions concerning disclosure must be based on the content of the documents and the law alone, not upon who has asked for the information.

Also, the government's Policy on Privacy Protection requires that federal institutions only disclose requester's identities when authorized by the *ATIA* to do so and where there is a "clear need to know in order to perform duties and functions" related to the *ATIA*.

As to the identity of a *Privacy Act (PA)* requester, because the individual is seeking access to their own personal information, ATIP must usually disclose the individual's name to the head of the OPC Branch that has the information being sought. The head will then normally need to disclose the name to someone in the Branch who will be tasked with actually searching for and locating the information. But disclosure of the individual's name beyond that need, is a clear violation of the *PA*.

2. When I gather records for a request, do I have to include my handwritten notes, the e-mails on my computer and any other unofficial records?

If the information those records contain is relevant to the request, yes, they must all be gathered and sent to ATIP for review. Under the *ATIA*, a record is defined as "any documentary material, regardless of medium or form."

3. I sit on an interdepartmental committee which distributed a copy of a confidential private sector paper to all members for their comments. Now I have a request for information on the same subject. Do I have to include the paper among the relevant records?

Yes. If a relevant document exists in the OPC when a request is received, it must be included. A promise to treat information confidentially does not take precedence over the right of access provided by either *Act*. Unless the information qualifies for an exemption or exclusion under the *Acts*, it must be made available to the requester.

4. Sometimes I receive records provided by third parties which have “Copyright” written on them. I am concerned about violating the *Copyright Act* in the event that a record should be considered relevant to an access request. Does the OPC need to obtain the consent of the author in order to release such a record?

No, the OPC does not need to obtain the consent of the author. According to subsections 32.1(1) (a) and (b) of the *Copyright Act*, there is no copyright infringement for any person to disclose, pursuant to either the *ATIA* or the *PA*, a record within the meaning of that *Act*.

5. I have priority projects with tight deadlines and don’t have time to deal with this ATIP request right now. Can it wait until I have some free time?

No. Statutory time limits are set out in the *ATIA* and the *PA* which requires the OPC to respond to requesters within 30 calendar days—this usually amounts to only 20 actual working days within which to retrieve the documents, review them for applicable exemptions, and prepare the release package(s). If you cannot meet the deadline indicated by ATIP, it is imperative that you contact ATIP immediately to discuss the possibility of extending it—but only by perhaps a day or two. If you do not respond by the date indicated, ATIP will contact you and will expect a valid reason for the delay. Delays can and will result in well-founded complaints against the OPC.

6. It’s going to take hours to review the documents, copy them, discuss them with my Director and prepare recommendations. Can we charge for this time?

No. Time spent reviewing information, photocopying documents and developing recommendations are not chargeable under the *ATIA*. Fees can only be charged for the time that is actually spent finding the records and removing sensitive information. Once that has been done, ATIP can charge 20 cents per photocopied page that is being released to the requester. Unlike the *ATIA*, the *PA* does not allow fees for any reason.

7. I have several drafts of a report which are all very similar to the final version. Do I have to send them all to the ATIP Unit to be reviewed?

Yes, all relevant records must be included in the search and review.

8. I have a request for a file of legal opinions, all of which are covered by solicitor-client privilege. Can I just invoke the privilege instead of going through the entire file, document by document?

No. You must review the contents of the file to ensure that all of the records are actually subject to the privilege. Some may have been made public, there may be documents which are not privileged, or there may be a reason to waive the privilege and release the information. Also, only the ATIP Director and the Director General of Corporate Services have the delegated authority from the Commissioner to cite exemptions under the *Acts*.

9. I found a Cabinet document marked “Secret” which has not been seen by the Commissioner yet. Shouldn’t I set it aside since there is no possibility that it will be released?

No. All relevant records, regardless of their security classification or the unlikelihood of their disclosure must be sent to ATIP for review. Markings of “Protected”, “Confidential”, “Secret” etc. may indicate sensitive information but the information must still be reviewed to see if a specific exemption should be claimed.

10. Does the OPC have a policy that advice to the Commissioner will be automatically exempted?

No. Having a blanket policy to exempt “advice” or any other discretionary provision would be contrary to the required exercise of administrative discretion. For discretionary exemptions such as advice, each case must be considered on its own merit and the decision to apply the exemption must be based on a reasonable expectation of foreseeable harm. Also, the exercise of discretion is a matter that can be subject to review by the Federal Court.

11. If we release this information, it will embarrass the Commissioner – shouldn’t we just withhold it?

Embarrassment is not recognized by either *Acts* as a valid reason to withhold information. In the absence of a valid exemption, the information must be disclosed.

12. Several branches collaborated on the drafting of a Briefing Note to the Commissioner on a sensitive subject and several meetings took place in this regard. Can we destroy the draft Briefing Notes if we decide later not to send the final Briefing Note to the Commissioner?

No. Draft Briefing Notes should be kept on departmental files even though they were not sent to the addressee since they were the object of intra-departmental meetings. All documentation relevant to a request that exists at the time of the request must be provided to ATIP for processing.

13. A consultant was hired to produce a report providing key sensitive information to the Commissioner. How can we protect that report from being released should an *Access to Information Act* request be received?

There is no specific provision of the *ATIA* allowing for the protection of reports or other deliverables prepared by consultants. Those documents must be disclosed unless *ATIA* or *PA* exemptions apply.

14. I have a document in which only one paragraph is actually relevant to the request. Can you protect the rest of the information as “not relevant”?

No, not under *ATIA*. Under the *ATIA*, if there is relevant information in a document, then the entire document is relevant to the request as well. While it is possible under the *PA* to process only personal information, you must still provide ATIP with the entire document.

15. The request is for a list of funding provided to certain organizations. As the list does not already exist, are we obligated to create one?

There is no obligation under either *Acts* to create a document solely in order to respond to a request. However, a document can be created if an institution wishes to do so and, in fact, it may be wise to do just that. A case of this nature should be discussed with ATIP so that an informed decision can be made whether to create a document if one does not already exist.

16. If I believe that some information contained in a document is of a sensitive nature or is not relevant, can I blank out that information prior to providing it to the ATIP Unit?

No, you must provide the entire document to ATIP. However, advise ATIP of your concerns so that they will be taken into consideration when the information is being reviewed. ATIP will ultimately determine whether certain provisions of the *Acts* can be applied to protect the information.

A Word About

... Transitory Records

... E-mails

... Drafts

What is a “Record”?

When the term “record” is used, we often think only of those which exist in paper form. However, under the *Access to Information Act (ATIA)*, “record” is defined as **any documentary material, regardless of medium or form**. So, in fact, the term is very broad and covers **any information produced, received or collected within the OPC** including:

- paper and electronic documents
- correspondence, memoranda, reports
- e-mail, information contained in databases, material on web pages
- books, plans, maps, drawings, diagrams, graphic works
- photographs, film, microfilm, sound/audio recordings, videotapes

Under the “Information Management and Technology” portion of the site, there is a link to an “Information Management” section which contains an extremely useful “On-Line Information Management Tutorial”. ATIP highly recommends that all OPC employees avail themselves of this tool along with other information on the Intranet concerning proper records management.

Also, given that all Government of Canada employees are responsible for the effective management of information, it is imperative that OPC employees be aware of the OPC’s Information Management Policy which is found on the OPC Intranet site under “Policies and Guidelines”.

Transitory Records

In order to identify and preserve archival and historical records, the law prohibits the destruction of government records without the consent of the National Archivist. Institutions obtain consent for the disposal of their program records according to plans developed in cooperation with the Archives. An exception is the general authority that the National Archivist has granted for the destruction of records that are transitory in nature. In this authority “transitory records” are defined as:

“... records that are required only for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory records do not include records required by government institutions or Ministers to control, support or document the delivery of programs, to carry out operations, to make decisions or to account for activities of government.”

Thousands of records in paper, electronic and other formats are created and received by OPC employees every day. Many of these are highly valuable to the OPC and need to be protected and preserved, for example those that:

- document the initiation, conduct or completion of a business activity or transaction
- contribute to the evolution of legislation or policy development
- involve financial or legal matters or have policy, program or procedural implications
- document how/why certain decisions and actions were/were not taken
- provide information to Parliament in order to account for OPC activities

However, a great number of records rapidly lose their value from the time they are created or received by the OPC and they therefore no longer need to be retained. Records of no long-term value to the OPC are considered “transitory” and (with one exception, see “Note” later in this section) can be destroyed once they are no longer of use, such as:

- those required for a limited period of time in order to complete a routine action or to prepare another record
- a draft document that is never communicated beyond the author
- a document that contains notes and where the additional information is found in a later version
- a document which is received as a copy, that is maintained for convenience only and which does not direct that the receiver of the copy take any action
- personal working notes—once the necessary information has been incorporated into an official document
- reference material used in a marginal way and which is not required to account for decisions which have/have not been taken

Records of value to the OPC **must not** be destroyed. To identify a transitory record, ask yourself whether the record is used to initiate or to continue an OPC activity, whether it provides comments on an activity underway which requires administrative action, or which requests an opinion or an activity of interest to the OPC. If the answer to any part of the question is ‘yes’, then you are not dealing with a transitory record and it must be retained.

Scenario – You keep a notebook (in paper form or electronic) as an ongoing record and reminder of your daily activities—it contains information about meetings and presentations as well as information on your lunch and dentist appointments. Information in the notebook that contributes to the documentation of a program or activity should be copied to the departmental record. Once that has been done you may dispose of the notebook at your discretion. If the notebook contains information relevant to an ATIP request that was received before the notebook is destroyed, it must be included in the records provided to ATIP for processing.

For questions or clarification with respect to specific records, please consult either the OPC’s Information Manager or the Director of ATIP. OPC employees should also consult the Guideline on Disposing of Records (RDIMS #185634).

Note: it is unlawful to destroy any record once a formal *ATIA* or *PA* request has been received. So, if a transitory record still exists and is relevant to a request received by the OPC, that record cannot be destroyed. It must be provided to ATIP for processing.

Are All Draft Documents Transitory Records?

Draft documents are preliminary versions used to create a final document and may be used to solicit comment and input from others before a document is finalized. Drafts prepared in the process of making a decision or implementing a policy, for example—and copies of such drafts—must be retained and filed where they have been annotated or where information has been added to them.

Some draft documents (including previously “saved” versions of electronic documents) need not be retained where they are working versions which have not been communicated beyond the individual who created them or where they are copies that are used for reference purposes only. These types of drafts may be treated as transitory records and routinely destroyed.

Once a draft has been shared with others in order to obtain input and opinions, those drafts must be retained in order to demonstrate the evolution of the document as it goes through the approval process. So, drafts prepared in the process of making a decision or implementing a policy or other operation must be retained where they have been annotated by others.

Scenario – You have drafted a report from research notes. You make 10 copies of the first draft and circulate them to colleagues for comment. Once you have received their comments you make changes to the report and submit a second draft to your boss. After your boss’ changes are incorporated the report is given to your Branch head as a final document.

Once the report is final, you may destroy your research notes. You may also destroy any of the returned first draft copies if you kept a master version to indicate any significant changes. The same is true of your boss’ comments if they are editorial in nature, however, changes in policy, approach or recommendations should be documented.

What About E-mails?

Electronic mail is a major tool used by federal government employees as a means of formal communication. OPC employees are expected to be able to distinguish between e-mails that are official records of business (and therefore must be saved) and those

that are “transitory” in nature (and which therefore should be destroyed when no longer required).

Some e-mails are the same as simple telephone messages, ie. setting a meeting. Such e-mails are “transitory” and should regularly be deleted.

However, many e-mails have a direct impact on the management of the OPC and the various activities it carries out, ie. e-mails containing direction about the preparation of a major paper, initial thoughts as to how to proceed on an issue, or comments on a draft document. These types of e-mails are not “transitory” and they should be printed and placed on the appropriate file and/or saved in RDIMS. Once printed, filed and/or saved, the electronic form of the record can be deleted.

OPC employees should be aware that government institutions routinely receive specific requests under the *ATIA* and the *PA* for e-mails—the OPC is no exception. Once such a request has been received, any transitory e-mails that are relevant to a request must be retained, provided to ATIP and processed in accordance with the *Acts*.

Scenario A – You receive an e-mail inviting you to a meeting. You may delete the e-mail whenever you wish as this is a transitory record—*unless you are aware that an ATIP request has been received for the e-mail.*

Scenario B – You have received an e-mail message containing significant and substantive information. Once you either print a hard copy of the message and put it on file, or save the e-mail into the relevant electronic file, the original message can be deleted.

For information about the proper management of e-mails, see the Intranet tutorial mentioned earlier. OPC employees should also familiarize themselves with the Guidelines on Managing Electronic Mail found on the Intranet.

Section 67.1 of the *ATIA*

67.1 (1) No person shall, with intent to deny a right of access under this Act,

- (a) destroy, mutilate or alter a record;
- (b) falsify a record or make a false record;
- (c) conceal a record; or
- (d) direct, propose, counsel or cause any person in any manner to do anything mentioned in any of paragraphs (a) to (c).

(2) Every person who contravenes subsection (1) is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding \$10,000, or to both; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding six months or to a fine not exceeding \$5,000, or to both.

While OPC employees must be aware of this provision of the *ATIA*, it should not generate great concern if employees are practicing good information management in accordance with federal government legislation and policies.

In any of the scenarios outlined earlier, destroying records that should have been kept may be in violation of the policy on the Management of Government Information Holdings or the *National Archives Act*, but it will not constitute a violation of 67.1 of the *ATIA* unless:

- 1) records were destroyed in order to ensure that they could not be released under the *ATIA*, or;
- 2) records were destroyed **in full knowledge** that a request for access had already been made under the *ATIA*.

The Treasury Board Secretariat advises government institutions to treat allegations of suspected violations of section 67.1 of the *ATIA* in the same way as any other allegation of criminal activity is treated under the Government Security Policy—once the OPC has been made aware of the allegation, a decision will be made with respect to notifying the appropriate law enforcement agency.

CHAPTER 1

ACCESS TO INFORMATION AND PRIVACY BASICS

1.1 THE LEGISLATION

The purpose of the *Access to Information Act (ATIA – Appendix F)* is:

“...to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.”

The purpose of the *Privacy Act (PA – Appendix G)* is:

“...to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves.”

While the *Acts* contain similarities, they are very different. In the *ATIA*, the federal government recognizes the public’s right of access to information in government records as an essential element of our system of democracy as it promotes transparency and accountability in government institutions. While the *ATIA* provides an enforceable right of access to records under the control of government institutions, it deals primarily (but not exclusively) with non-personal information. The types of records covered by the *ATIA* are usually subject-matter related, ie. bovine growth hormone, air carrier audits, government purchases etc. The *ATIA* prevails over other statutes unless there is a statutory provision to the contrary. Finally, complaints filed under the *ATIA* are investigated by the Office of the Information Commissioner.

On the other hand, the *PA* deals strictly with personal information as that term is defined by section 3 of the *Act*. The *PA* reflects the government’s recognition that individuals value their privacy and the protection of their personal information, and that this protection is an essential element in maintaining public trust in government. The *PA* not only provides individuals with an enforceable right of access to the personal information that governments hold about them, but it deals with all aspects of the handling of their personal information—from its collection to its use, disclosure, retention and destruction. *PA* complaints are investigated by the OPC. The one exception is that *PA* complaints against the OPC are investigated by the ad hoc Privacy Commissioner.

The *Acts* are more fully discussed in Chapters 3 and 4 of this manual. However, an easy rule of thumb is that individuals use the *PA* to obtain access to their own personal information but to access any other kind of information, one must use the *ATIA*.

1.2 DELEGATION OF AUTHORITY AND RESPONSIBILITIES

Both *Acts* are based on the principles of open government, and speak to the ‘head’ of a government institution as responsible for ensuring compliance with the *Acts* within their institutions. Treasury Board policy states that heads of institutions are responsible for the effective, well-coordinated and proactive management of the *ATIA*, the *PA* and their respective *Regulations* within their institutions. In the case of the OPC, the ‘head’ for the purposes of the *Acts* is the Privacy Commissioner.

The Commissioner has delegated the Director General of Corporate Services and the Director of ATIP to exercise the majority of her powers, duties and functions under the *Acts*. While these delegated individuals are accountable for any decisions they make, ultimate responsibility remains with the Commissioner.

All OPC managers and employees are responsible for ensuring that their programs operate within the requirements of the *ATIA* and the *PA* and that assistance is provided to ATIP as required.

1.3 WHAT DOES “UNDER THE CONTROL” MEAN?

A record is “under the control” of an institution when the institution is authorized to grant or deny access to the record, to govern its use and, subject to the approval of the National Archivist, to dispose of it. A record that is physically held by a government institution, whether at its headquarters, regional, satellite or other offices, either within or outside of Canada, is presumed to be under its control unless there is strong evidence to the contrary. A record held elsewhere on behalf of an institution is also under its control (ie. National Archives).

1.4 INFORMAL REQUESTS

The *ATIA* is intended to complement rather than replace existing procedures for obtaining government information—it is not meant to limit the type of information that is normally available to the general public. Treasury Board policy explicitly states that institutions should respond to public enquiries outside of the *ATIA* (informally) whenever possible. Section 68 of the *ATIA* reinforces this statement by excluding published material, material available for purchase and other reference materials from the formal right of access on the expectation that this type of information will be made available by other means.

ATIP will not require that individuals make a formal request under either of the *Acts* if one is not needed. For example, if material was released in a previous *ATIA* request, an individual may wish to receive a copy of the release package in that case. Also, an

employee need not file a formal *PA* request for access to his/her personnel files as arrangements can usually be made to view them through the OPC's Human Resources Branch. Still, should an individual insist upon filing a formal *PA* request, ATIP will process it accordingly. Treasury Board Guidelines clearly state that "no prejudicial actions will be taken against employees who wish to exercise their legal rights."

In an informal request, no fees can be charged, there is no statutory deadline within which ATIP must respond to the request, the individual has no right of complaint, and ATIP can withhold information without explanation.

1.5 ELIGIBILITY TO MAKE FORMAL REQUESTS

Under subsection 4(1) of the *ATIA*, Canadian citizens, permanent residents (within the meaning of the *Immigration Act*), individuals who are present in Canada (but who are not Canadian citizens or permanent residents), and corporations present in Canada have a right of access to records under the control of the OPC. *ATIA* requesters who are not Canadian citizens or permanent residents must be physically in Canada both at the time they make their request for access and at the time access is given.

Under subsection 12(1) of the *PA*, Canadian citizens, permanent residents (within the meaning of the *Immigration Act*), all inmates (within the meaning of Part 1 of the *Corrections and Conditional Release Act*), and individuals present in Canada (who are not Canadian citizens, permanent residents or inmates) have a right of access to their personal information that is under the control of the OPC.

As with the *ATIA*, requesters who are not Canadian citizens or permanent residents must be physically in Canada both at the time the request is made and at the time access to the personal information is given.

1.6 GENERAL GUIDELINES FOR REQUESTING INFORMATION

Requests under the *Acts* must be made in writing to the government institution that has control of the information. While they can be made using the 'Access to Information Request Form' (Appendix A) or the 'Personal Information Request Form' (Appendix B), it is certainly not mandatory. Requests by letter are accepted as long as they specify which *Act* the information is being requested under, and as long as they contain the requisite information. Although there are no fees of any kind for a *PA* request, a \$5.00 application fee must accompany an *ATIA* request. Instructions for completing requests appear on each form. In the case of the OPC, the completed form is to be forwarded to:

Office of the Privacy Commissioner of Canada
Access to Information and Privacy Unit

112 Kent Street
Place de Ville, Tower 'B'
Ottawa ON K1A 1H3.

Info Source is a series of annual Treasury Board Secretariat publications which—among other things (see the Glossary in this manual)—describes the information held by each federal government institution and divides that information into Program and Personal Information Banks (PIBs). Although not necessary, requesters should consult *Info Source* before making a formal request and—in the case of a *PA* request—they should specify the PIB(s) from which they are seeking information. The PIBs can be specified by name, by the bank number found at the bottom of each class description, or both. Instructions for filing requests are located in the first few pages of *Info Source* along with the mailing addresses of all federal government institutions.

When filing an application by letter, it is important that requesters be as specific as possible as to what information or documentation they are seeking. While each *Act* contains different wording, both require that requesters give enough detail in their requests so that documents or information can be located with a reasonable effort. If excessive search time is required to find the information, the *ATIA* allows the department to charge for the search—the *PA* does not.

NOTE: As result of the *Federal Accountability Act (FAA)* federal government institutions now have an enforceable “duty to assist” under the *ATIA* (discussed more fully in Chapter 3 of this manual):

4(2.1) The head of a government institution shall, without regard to the identity of a person making a request for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested.

1.7 IDENTITIES OF REQUESTERS

Identities of ATIA and PA requesters are considered personal information about those individuals and must be treated as such when processing requests.

This matter was discussed earlier in this manual (see Question #1 in the Frequently Asked Questions chapter) but it bears additional mention here.

In circumstances where an *ATIA* requester is a corporation, the identity of the corporation is not personal information. Whether the identity of the individual who submitted the request on behalf of the corporation should be protected as personal information must be decided on a case-by-case basis. However, it is the practice of ATIP not to disclose either the corporation or the employee’s name, as who the

requester is must have no bearing on decisions about whether to disclose information under the *ATIA*.

In the case of a *PA* request, it is usually necessary to provide the name of the individual to the head of the OPC Branch tasked with locating the requested information. OPI personnel are not to disclose the individual's identity further than required in order to find the information that the individual is seeking. Indeed, disclosure of personal information to those with no "need to know" is a contravention of the *PA*.

1.8 INSTITUTIONS WITH GREATER INTEREST

An institution has a "greater interest" if the requested records were originally produced in or for that institution, or if the other institution was the first to receive the record or a copy of it. If the OPC receives an *ATIA* request and determines that another federal institution has a "greater interest" in the information requested, it may transfer the request to the other institution as long as it does so within 15 days of its receipt in the OPC and as long as the other institution agrees to accept the transfer of the request.

These requests must be expedited as *ATIA* time limits start from the date the OPC received the request, not the other institution. So, it is extremely important that OPC branch personnel notify ATIP immediately if it appears that another department or government agency may have a "greater interest" than the OPC.

Under the *PA*, there is no provision that allows for the transfer of a request. However, with the consent of the requester, the OPC will forward it to the appropriate department.

1.9 LEGISLATIVE TIME CONSTRAINTS

The OPC must respond to *ATIA* and *PA* requests within **30 calendar days** from the date of receipt in the OPC. ***If the request is received in another branch of the OPC, the 30 days is calculated from the date of its receipt in that branch, not from the date it was received by ATIP.*** Therefore, it is imperative that requests received in other areas of the OPC be delivered to ATIP immediately.

Within the time limits, the following must be taken into consideration:

- the time required by branch personnel to search, locate and retrieve the information, however and wherever it is stored;
- the time required by branch personnel to photocopy the information, review it, and provide a written rationale about the exemption or exclusion of any of the information (this includes the time required for the information to reach ATIP);
- the time required by ATIP to examine the information for exemption or disclosure, including the time to conduct internal and/or external consultations, and;

- the time required by ATIP to prepare the release package (removing the information being exempted, recopying the documents, preparing release letters etc.).

While both *Acts* allow for an extension of the initial 30-day time limit, an extension can only be claimed in certain circumstances (described fully in Chapter 3 concerning *ATIA* requests, and Chapter 4 concerning *PA* requests). Under the *ATIA*, the OPC can extend for a long period of time but under the *PA*, an extension can only be taken to a maximum of 30 days.

Failure to meet legislative time constraints is called a “deemed refusal” which may result in a well-founded complaint against the OPC, and for which the OPC may be taken to Federal Court. Also, citing an extension without the proper grounds may well result in a ‘well-founded’ complaint against the OPC.

The OPC’s ability to comply with legislated time frames depends a great deal upon the OPC’s records management practices. The less time required to find and retrieve material, the more time is available to examine the information, conduct consultations, and apply exemptions. **So, it is extremely important that OPC employees file their documents properly in RDIMS, in filing cabinets, etc.** Again, ATIP strongly recommends that OPC employees avail themselves of the information available on the OPC Intranet concerning the management of information.

1.10 COMPLAINTS

The *Acts* provide for a two-tiered system of independent review of the OPC’s decisions to refuse to disclose information. When access to information is refused, the *ATIA* provides requesters the right to complain to the Information Commissioner while the *PA* provides the right to complain to the Privacy Commissioner. Once the Commissioners have finished their investigations, they must report the results to their complainants who then have the right to apply to the Federal Court for a review of the matter (explained further in Chapters 3 and 4 of this manual).

When the *Acts* came into force in 1983, neither the OPC nor the Office of the Information Commissioner (OIC) were subject to them. This changed with the passing of the *FAA* in 2006 which made a number of changes to the *ATIA* and to the *PA* and which made the OPC and the OIC subject to the *Acts* on April 1, 2007.

This means that not only does the OIC investigate complaints against government institutions for their handling of requests under the *ATIA*, the OIC’s actions with respect to its application of the *ATIA* within the OIC is subject to investigation as well.

The same applies to the OPC. While the OPC investigates complaints under the *PA* from individuals concerning the government’s handling of their personal information, our

own personal information handling practices are subject to investigation as is our processing of *PA* requests.

The *FAA* provided no independent complaint mechanism under which the OPC could be investigated under the *PA* nor under which the OIC could be investigated under the *ATIA*. As both Commissioners concluded that it is inappropriate for them to investigate themselves, each have delegated their investigative powers to an individual who will act as ad hoc Privacy Commissioner with respect to the *PA* and as ad hoc Information Commissioner with respect to the *ATIA*.

So, *ATIA* complaints against the OPC are investigated by OIC investigators, while *PA* complaints against the OPC are investigated by the ad hoc Privacy Commissioner.

PA complaints filed against the OIC are investigated by OPC investigators. *ATIA* requests against the OIC are investigated by the ad hoc Information Commissioner.

In all other investigative aspects, the authorities of the *Acts* are the same. The ad hoc Information Commissioner/Privacy Commissioner has the authority to enter the OPC in order to conduct investigations for which he has delegated powers, he has the authority to compel the production of documentation relevant to the complaint being investigated, he has the authority to privately interview personnel concerning the complaint etc.

1.11 CRIMINAL OFFENCE UNDER THE *ACCESS TO INFORMATION ACT*

Section 67.1 of the *ATIA* was mentioned earlier in this manual. However, due to the seriousness of the provision, it is reiterated several times in this manual in order to emphasize its seriousness and to ensure that all employees are well aware of it:

67.1 (1) No person shall, with intent to deny a right of access under this Act,

- (a) destroy, mutilate or alter a record;
- (b) falsify a record or make a false record;
- (c) conceal a record; or
- (d) direct, propose, counsel or cause any person in any manner to do anything mentioned in any of paragraphs (a) to (c).

(2) Every person who contravenes subsection (1) is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding \$10,000, or to both; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding six months or to a fine not exceeding \$5,000, or to both.

In the absence of a specific request, records may be destroyed according to normal OPC policy and in accordance with the Retention and Disposal Schedules set out by the National Archives.

However, even in the absence of a specific *ATIA* request, **anything** done to intentionally “deny a right of access” under the *ATIA* can result in criminal prosecution (i.e. a decision-making document is shredded because it may fall under the scope of a future request).

A suspected violation of section 67.1 of the *ATIA* is treated in a similar fashion to a suspected theft, destruction of property or other security breach which may involve criminal activity.

You could go to jail for the destruction, alteration or falsification of any record with the intent to deny a right of access to that record!!!

Ignorance of the law is no excuse!

CHAPTER 2

ROLES AND RESPONSIBILITIES

2.1 DELEGATION OF AUTHORITY AND RESPONSIBILITIES

The **Minister of Justice** monitors the application of the *Access to Information Act (ATIA)* and the *Privacy Act (PA)* to ensure that the intentions of the *Acts* are met. It also provides legal advice to government institutions with respect to the *Acts*.

The **President of the Treasury Board** is the designated minister charged with overseeing the government-wide administration of the *ATIA* and the *PA* through the issuance of policy guidelines and advice. It does so partly through the publication *Info Source*, a series of publications describing all government organizations, their program responsibilities and their record holdings. An index of personal information for each government institution is also published in order to facilitate the public's ability to exercise its rights under the *PA*.

The **Privacy Commissioner**, as head of the Office of the Privacy Commissioner of Canada (OPC), is mandated to conduct investigations under the *PA* and the *Personal Information Protection and Electronic Documents Act (PIPEDA)*. The Commissioner is also responsible for the administration of the *ATIA* and the *PA* within the OPC. The Commissioner has broad investigative powers and can issue summons, compel individuals to give evidence under oath, enter any government premises and examine or take copies of any record it considers pertinent (except Cabinet Confidences).

The **Information Commissioner**, as head of the Office of the Information Commissioner of Canada (OIC), is mandated to conduct investigations under the *ATIA*. The Commissioner is also responsible for the administration of the *ATIA* and the *PA* within the OIC. The Commissioner has broad investigative powers and can issue summons, compel individuals to give evidence under oath, enter any government premises and examine or take copies of any record it considers pertinent (except Cabinet Confidences).

The **Director** of the **OPC's Access to Information and Privacy (ATIP) Unit** has delegated authority from the Privacy Commissioner to exercise, within the OPC, the powers, duties and functions conferred upon the Commissioner under the *ATIA* and the *PA*. The Director administers the ATIP program and ensures compliance with the ATIP legislation within the OPC.

ATIP Analysts process requests under the *ATIA* and the *PA*, provide advice to OPC managers and employees, respond to consultations from federal government institutions, provide advice and assistance to *ATIA* and *PA* requesters, provide records, and explain the OPC's position to OIC investigators and investigators for the ad hoc Privacy Commissioner.

OPC Managers ensure that their programs operate within the requirements of the *ATIA* and the *PA* and that assistance is provided to ATIP as required.

OPC Employees and **Offices of Primary Interest (OPIs)** are accountable for the subject matter of requests under the *ATIA* and the *PA* and are responsible for promptly and efficiently retrieving the information being sought within ATIP deadlines. Due to their familiarity with the history, context and sensitivity of the information at issue, they also advise on issues that could arise from disclosure. Each branch/unit of the OPC is an OPI. An employee could, in certain circumstances, also be an OPI.

The **Federal Court of Canada** examines applications for review from requesters, third parties, the Information Commissioner and the ad hoc Privacy Commissioner (as applicable) concerning the non-disclosure of information.

2.2 OVERALL ATIP RESPONSIBILITIES

ATIP is the focal point for the application and administration of the *ATIA* and the *PA* within the OPC. It is involved in policy matters related to the implementation of the *ATIA* and the *PA* within the OPC, it deals directly with the public in connection with *ATIA* and *PA* requests, and it serves as the center of expertise in enabling the OPC to meet its statutory obligations under the *Acts*.

ATIP Responsibilities to:

- **The public** (media, organizations, businesses, employees, Canadian citizens) ie.
 - provides guidance as to how to request information held by the OPC
 - responds to *ATIA* and *PA* requests
 - provides clarification on the types of records under OPC control;
 - provides explanations concerning *ATIA* and *PA* processes and time frames.
- **Other federal government institutions**
 - provides recommendations concerning the possible disclosure of OPC records which are the subject of requests.
- **Offices of the Information Commissioner** and the **ad hoc Privacy Commissioner**
 - cooperates with the Offices of the Information Commissioner and the ad hoc Privacy Commissioner to resolve complaints made by requesters by explaining/defending the OPC's decisions concerning its requests.

- **Training and information sessions**
 - delivers training sessions intended to familiarize OPC employees with the requirements of the *ATIA* and the *PA*. Information sessions may be held for different sections of the OPC on an as-needed basis.

- **Annual report to Parliament**
 - sections 38 of the *ATIA* and 72 of the *PA* require that the Privacy Commissioner present an annual report to Parliament on the administration of the *ATIA* and *PA* within the OPC. Accordingly, ATIP prepares and submits separate *ATIA* and *PA* reports to the Commissioner for subsequent presentation to Parliament.

- **Statistical information**
 - responsible for the government wide administration of the *Acts*, the President of the Treasury Board reports annually to Parliament on the implementation of the *Acts*. Annual statistics are therefore compiled by ATIP for submission to the Treasury Board Secretariat. The statistical reports are intended to provide up-to-date statistics on the operation of the *Acts* and enable the government to monitor trends and to respond to enquiries from Members of Parliament, the public and the media.

- **Info Source**
 - ATIP must provide the Treasury Board Secretariat with up-to-date information about the OPC's organizational structure and information holdings for publication in *Info Source*. The deadline for submitting changes to *Info Source* is set by the Treasury Board Secretariat each year. When ATIP receives a call letter for information for *Info Source* updates, each OPC branch is asked to review its information holdings and advise whether there have been any changes since the last publication.

The need to update *Info Source* should be kept in mind by OPC managers and employees in the program areas throughout the year. All new or substantially modified collections, programs, surveys, data matches, consistent uses, disclosures, routine uses, classes of individuals and retention and disposal standards must be added each year. *Info Source* can be accessed through the Treasury Board web site at <http://infosource.gc.ca/>.

2.3 RESPONSIBILITIES OF ALL OPC EMPLOYEES

ATIP works closely with OPC employees during the processing of requests. This joint participation involves a number of responsibilities for employees.

Deadlines

- deadlines are a key responsibility for all employees retrieving records in order to respond to ATIP requests.
- due to the deadlines imposed by the *Acts*, the identification and gathering of the records must be done as quickly as possible.
- ATIP will allot five (5) calendar days for an OPI to “search” for, “retrieve”, and submit the records to ATIP.
- the Tasking Memorandum or e-mail that ATIP sends to OPIs will always indicate the date by which the records must reach ATIP.

Retrieval of records

- all relevant records must be provided to ATIP so that they may be reviewed for possible disclosure under the *Acts*.
- the *Acts* require that the OPC process only documents that are under the control of the OPC.
- although OPIs may be aware that other departments or institutions have documents that are relevant to the request, only those documents located in the OPI are to be retrieved.
- for further information, see section 1.3 of Chapter 1 concerning ‘control’.

Successful and timely retrieval involves:

- recognizing the importance of the *Acts* and the statutory obligations they impose on the OPC, especially concerning the public’s general right of access and the time limits to be met;
- carrying out a diligent and conscientious search for all relevant records and forwarding the complete results along with a written rationale for any suggested exemptions or exclusions to ATIP for review.

OPI review and recommendations

Due to their expertise in the information being sought, OPIs must review the records for possible exemptions or exclusions. A written recommendation concerning disclosure must be provided to ATIP along with a rationale as to why information should not be disclosed.

There is no need for OPIs to identify specific provisions of the *Acts* as a basis to withhold certain information as ATIP will do so. However, in order to claim the proper exemption, OPIs must advise ATIP of any adverse implications in the disclosure of the information requested—if, in fact, there is any such concern.

Information Management

To ensure the proper handling of OPC information, employees should seek advice from, consult or advise ATIP regarding:

- the disclosure of information to third parties or other government departments;
- a new collection of information within the OPC, or any activity that may lead to the new collection of personal information;
- responses to informal requests for information;
- any changes or additions to the departmental information holdings for inclusion in *Info Source*.

Records Management Practices

All federal government employees are responsible for managing federal government records according to the Information and Administrative Management Component of the Treasury Board Manual—policies which deal with information management, security, privacy and data protection, communications and access to information.

Records that are misplaced, stored without reference to their content or which are disposed of prematurely, will be difficult if not impossible to include in a response to a request even though they are relevant to that request. As a result, the legal rights of requesters will be compromised and the OPC will have failed to comply with its statutory obligations under the *Acts*.

All OPC employees play an important part in proper records management and should, therefore, avail themselves of the information available to them on the OPC's Intranet.

A comprehensive, accurate and up to date records system is an essential component to the OPC's ability to provide proper, complete and accurate responses to requests for information under the *ATIA* and the *PA*.

CHAPTER 3

PROCESSING FORMAL REQUESTS PURSUANT TO THE *ACCESS TO INFORMATION ACT*

3.1 PURPOSE OF THE ACCESS TO INFORMATION ACT

The purpose of the *Access to Information Act (ATIA)* was discussed in Chapter 1 of this manual. It should be added, however, that the public right of access to information is balanced against the legitimate need to protect sensitive information and to permit the effective functioning of government. Accordingly, the *Act* recognizes the right of government institutions to deny access to information affecting, for example, national security, commercial confidentiality, policy development, solicitor-client privilege and personal information.

3.2 RELATED REGULATIONS, POLICIES AND PROCEDURES

The *ATIA* is supported by a number of regulatory, policy and procedural instruments. The purpose of some of these documents is to reinforce certain provisions of the *Act* itself, while others aim at providing an interpretation of certain sections or seek to provide practical guidance to those who have to implement or comply with the *Act*. These documents include:

- Treasury Board Policy on the *Access to Information Act*: This policy sets out the basic requirements with respect to the implementation of the *Act*.
http://www.tbs-sct.gc.ca/pubs_pol/gospubs/TBM_121/siglist_e.as
- Government Security Policy (Treasury Board): Its purpose is to ensure an adequate protection of the assets and information of the federal government.
http://www.tbs-sct.gc.ca/pubs_pol/gospubs/TBM_12A/gsp-psg_e.asp
- Treasury Board Policy on Management of Government Information Holdings: The policy promotes a better planning of the management of information (personal and non-personal) throughout its entire life cycle.
http://www.tbs-sct.gc.ca/pubs_pol/ciopubs/TB_GIH/siglist_e.asp

3.3 FORMAL REQUESTS FOR ACCESS TO RECORDS

Formal Requests

Formal requests can only be made by those entitled to do so as per section 4 of the *ATIA*. Section 6 requires that requests be made in writing to the institution that has control of the records being sought. Applicants may submit their requests using either the 'Access to Information Request Form' TBC 350-57 (Appendix A) or a letter. Regardless of the method used, section 6 also requires that they provide sufficient

detail to enable an experienced employee of the institution—with a reasonable effort—to identify the record. Finally, each request must be accompanied by a \$5.00 application fee (which ‘buys’ 5 free hours of search and preparation time, and 125 pages of photocopies).

Duty to Assist

As result of the *Federal Accountability Act (FAA)* government institutions have an enforceable “duty to assist” which reinforces the notion that the identity the requester has no bearing on any part of the processing of the request:

4(2.1) The head of a government institution shall, without regard to the identity of a person making a request for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested. (emphasis added)

Accordingly, ATIP is committed to delivering timely and complete responses to each *ATIA* request in the format requested.

3.4 OVERALL GUIDELINES AND TIME ALLOCATED FOR RESPONDING TO AN ACCESS TO INFORMATION ACT REQUEST

The OPC must respond to an *ATIA* request within **30 calendar days** from the date of its receipt—whether received in ATIP or elsewhere in the OPC. Section 9 permits an extension **only** if the request involves a large number of records that would unreasonably interfere with OPC operations, or if outside consultations cannot not be completed in time. As a result, the OPC has approximately **20 working days** within which to process a request.

Note: If an OPC employee receives a formal *ATIA* request, it must be **hand-delivered** in a secure fashion and on an urgent basis to the ATIP Unit.

Receipt of Request

Time allocated	Steps to be Taken	Number of Days Used
1-2 days (ATIP)	Receive the request, enter it in the ATIP tracking system, clarify request, identify its sensitivity, identify appropriate OPI(s), send retrieval notice(s)	2

Upon receipt of a request, ATIP ensures that it complies with legislative and regulatory requirements as outlined in section 3.3 of this chapter. The request is also analyzed to determine the subject of interest and scope. This sometimes requires clarification by the requester and/or OPC personnel who have knowledge of the subject matter. ATIP will also determine whether the request is “routine”, or whether it is sufficiently “sensitive” that Senior Management should be advised. The sensitivity of a request will not delay its processing.

Once the scope and subject of the request is clear, ATIP will forward a Tasking Memorandum (Appendix C) to the appropriate OPI asking for all records on the subject, regardless of their number, content or form (annotated and signed versions, draft documents, post-it notes etc. in hard copy and electronic format, including e-mails, CDs etc.).

Retrieval of Records

Time allocated	Steps to be Taken	Number of Days Used
5 days (OPI)	Search and retrieve all relevant records, prepare estimate (if required) make photocopies, make recommendations and deliver documents to ATIP	7

OPIs must begin their search and compilation of relevant records as soon as they receive the retrieval notice from ATIP. In conducting the search, the request is to be interpreted broadly and in accordance with the evident intent of the requester. If this is not obvious, ATIP should be advised immediately so that clarification can be obtained. Applicants are not required to use departmental terminology or jargon in describing what they want and they are often unable to clearly articulate their wishes. Uncertainties as to what is being sought will be resolved between ATIP and the applicant.

In searching for and retrieving relevant records, OPIs must produce everything that exists at the time of the request and must be aware that:

- **Record** – defined as “any documentary material, regardless of medium or form”.
- Determination of relevance – ***ATIP requires copies of all records containing information relevant to the request and will make the final determination as to their relevance in consultation with the OPI and/or the requester.***
- **Completeness** – the search for records must be extremely thorough as the manner in which the search was conducted is subject to investigation. To ensure completeness searches may be done:
 - by subject (e.g. Winnipeg Conference) ;
 - by object (e.g. the name of a person, the file number);
 - by nature (e.g. contract, audit report, investigation);
 - by the recipient of documents (e.g. all briefing notes to the Privacy Commissioner on a specific subject);
 - by the author of the record (e.g. a Branch, a particular manager/employee);
 - by date or period (e.g. January 2000; 1999 to 2001).
- **Duplicates** – if one copy of a document is ‘clean’ and another copy of the same document contains hand-written notes or other notations, the documents are not exact duplicates and both must be provided to ATIP. Similarly, documents that contain the same information but which are not identical must be provided.
- **Time frame** – ATIP must receive all relevant records within the deadline stipulated on the retrieval notice. Any delay may impact on the OPC’s ability to meet the legislative timeframe.

Employees must also be aware that:

Section 67.1 of the Access to Information Act states:

(1) No person shall, with intent to deny a right of access under this Act,

(a) destroy, mutilate or alter a record;

(b) falsify a record or make a false record;

(c) conceal a record; or

(d) direct, propose, counsel or cause any person in any manner to do anything mentioned in any of paragraphs (a) to (c).

(2) Every person who contravenes subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding \$10,000, or to both; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding six months or to a fine not exceeding \$5,000, or to both. S.C. 1999, c. 16, s. 1.

Special Considerations

Questions or problems may arise when searches are being conducted. ATIP must be informed **immediately** about any complications, including the following:

- the records are not held by the OPI tasked with the search;
- records are missing or cannot be found;
- the number of records is very large or a search is needed through a large number of documents in order to find the relevant ones;
- the search is difficult or impossible to conduct for specific reasons;
- more than 5 hours will be required to locate all the relevant records;
- the request is not clear and further clarification is required;
- there are other OPIs that may have relevant records;
- other departments or agencies may be affected by disclosure;
- there may be a need to coordinate the response centrally.

Court proceedings and their status can also complicate a search. Litigation may have led to disclosure of information or to a publication ban. OPIs should notify ATIP about such situations, and advise as to the current stage in the legal proceedings, since that could change the disclosure status of records at issue.

Section 26 of the *Act* allows the OPC to refuse access to any record which will be published by the OPC or other federal entity within 90 days after the request has been made to the OPC, or for longer if it is necessary to print or translate the material for the purpose of formal printing. OPIs must advise ATIP whether the record should be withheld under this provision and why, or whether it can nevertheless be disclosed.

Finally, although the *Act* excludes Cabinet Confidences of the Queen's Privy Council for Canada, OPIs must provide such documents to ATIP. In order to exclude those documents, ATIP must formally confirm with the Privy Council Office that they are, indeed, Cabinet Confidences. This consultation must be conducted within statutory time limits.

Requests for Investigation or Audit Files

Subsection 16.1(1) of the *ATIA* requires that the OPC refuse access to any record that contains information that the OPC obtained or created during the course of an "investigation, examination or audit". However, once the investigation, examination or audit is concluded along with all related proceedings (appeal mechanisms), subsection 16.1(2) requires that the OPC process any of the information that it "created".

OPIs are required to clearly identify all information that falls within the categories described in 16.1(1), and are further required to advise ATIP as to the status of the investigation or audit and any related proceedings (i.e. whether the investigation/audit has been concluded, whether all appeal mechanisms have been exhausted, the status of any current litigation, grievance etc.).

Subsection 22.1(1) of the *ATIA* says that the OPC "may" refuse to disclose a record that contains a draft report of an internal audit of a government institution or any related audit working paper if the record came into existence less than 15 years before the *ATIA* request was made.

However, subsection 22.1(2) says that the OPC cannot refuse to disclose a draft report of an internal audit of an institution if a final report of the audit has been published, or if a final report is not delivered to the institution within 2 years after the day the audit began. OPIs are required to identify all such drafts to ATIP and must clearly identify the status of the draft report (whether it has been published/sent for publication, what date a final report is expected to be published, whether the institution has received a final copy of the audit etc.).

Transfer of the Request

The subject of "greater interest" was discussed in Chapter 1 of this manual. A transfer of a request to another institution must be done within 15 days of its receipt in the OPC.

The 30-day time limit for the other institution starts from the date that the OPC received the request, not from the date that the other institution received it from us.

So, it is imperative that OPIs notify ATIP **immediately** if another institution has a “greater interest” in the records or the request.

Search Time Estimate

An OPI must do a “search estimate” when more than 5 hours will be needed to locate all of the relevant records. Photocopying, organizing, filing and reviewing records—as well as time spent retrieving records from another location (e.g. Archives)—do not count. ATIP will also require an estimate of the number of pages that are involved so that it can provide a full estimated cost to the applicant as required by the Act. The applicant may decide to pay the estimated fee and continue the request, may decide to abandon the request altogether, or may decide to narrow/change the scope of the request.

Example: 30 files must be searched through in order to pick out the relevant records. Select 4 files of average volume from the 30, and go through them flagging each document that contains information relevant to the request. Note the time taken to do the exercise, and divide the time by 4 to determine the average time per file. Multiply this time by 30 in order to estimate the time required to search through all files (ie. 10 minutes average per file X 30 = 300 minutes = 5 hours).

Then, count the number of pages in the file that you retrieved, divide this by 4 for the average number of pages per file, and multiply this by 30 to estimate the total number of pages (28 pages average per file X 30 = 840 pages).

Complete the “ATIP Request Checklist” that was included with the Tasking Memorandum, and provide the Checklist to ATIP. Do not conduct the full search and retrieve records until advised by ATIP to do so.

If several OPIs are involved in search for records for the same request, ATIP will combine the search estimates and will prepare an estimate for the applicant.

Machine Readable Records

The *ATIA* provides a right of access to existing records only and there is no legal obligation on an institution to create a record just to satisfy a particular request. The one exception concerns machine-readable records which do not exist but which can be produced by an institution using existing informatics resources. These records are considered to be under the institution's control and, on payment of applicable fees, they must be produced and provided to the applicant.

Should OPIs encounter such a situation, they must notify ATIP immediately for further guidance. They must also provide an estimate as to the amount of time required to produce the record(s) so that a proper fee estimate can be prepared for the applicant. The record should not actually be produced until the fee has been paid.

If Records Do Not Exist / Records Exist But Cannot be Found

OPIs may encounter a situation where a record being requested simply does not exist—a situation different from that in which information exists, but only in machine-readable format. If it is clear that a record does not exist, OPIs must advise ATIP in writing as to why, i.e.:

- it was never created in the first place (perhaps all consultations were done verbally or no minutes of a meeting were made)
- the OPC never received/obtained the record
- the record is not one which would have come into the control of the OPC (ie. not in the OPC's mandate, under another government institution's mandate etc.)
- the record did exist at one point in time but it was destroyed in keeping with the destruction period for that type of record
- the record was in the OPC record holdings at one point in time, but they were transferred to the National Archives

There may also be occasions when even though an OPI knows that a requested record exists (or that it should exist), it simply cannot be found. In these cases, OPIs must advise ATIP in writing that the search met with negative results and must detail the efforts that were undertaken to find the record, i.e.:

- what file categories were searched (ie. IIA, RDIMS, CCM etc.)
- what criteria was used to conduct a search in IIA, RDIMS, CCM etc.
- what file cabinets were searched through
- who was the employee who conducted the search (was the employee experienced enough to have known where to look?)

In the event that a complaint is filed about the OPC's response to the request, ATIP must have properly documented details as to the nature and extent of the search conducted, as this will be the focus of the investigation. OPIs should keep in mind that OIC investigators can, and likely will, wish to speak directly with the person(s) who actually conducted the searches for the records.

Recommendations Concerning Disclosure / Non-Disclosure

ATIP personnel are knowledgeable with respect to the application of the *ATIA* but they are not experts with respect to all of the different types of records and information held by the OPC. ATIP must therefore rely upon OPI personnel to give them guidance as to the sensitivity of information being considered for disclosure under the *ATIA*.

It is incumbent upon OPI personnel to review the records they are supplying to ATIP to provide written recommendations concerning the possible release of the information that the records contain. OPIs need not cite specific provisions of the *Act* as ATIP will do so. However, in order to enable ATIP to make appropriate decisions concerning the information, OPI recommendations must contain sufficient background information along with a rationale whether disclosure would have an adverse impact of some sort.

For example, if disclosure of the information would have a negative impact of some sort, the OPI must be able to articulate to ATIP the nature of the impact and why such an impact would occur so that ATIP can cite the appropriate exemptive provision. In the event of a complaint about the exemption, ATIP must be able to explain in detail why the provision was claimed.

NOTE: do not write on the records themselves, but provide recommendations by way of formal memorandum, note, or e-mail. If it is necessary to highlight specific information, do so only using a yellow highlighter as the highlighted portions will not be visible when ATIP photocopies the documents.

Cabinet Confidences

In accordance with section 69, the *ATIA* does not apply to confidences of the Queen's Privy Council of Canada, which include:

- memoranda presenting proposals or recommendations to Council;
- discussion papers presenting background explanations, analyses of problems, or policy options to Council for consideration in making decisions;
- agenda of Council or records indicating deliberations or decisions of Council;
- records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

- records briefing ministers of the Crown in matters before, or proposed to be brought before, Council;
- draft legislation, and;
- records that contain information about the contents of the types of records described above.

NOTE: “Council” means the Queen’s Privy Council of Canada, committees of the Privy Council, Cabinet, and Cabinet committees.

There are instances, however, where even though the documents fall under one of the types described above, they cannot be withheld as Confidences, but must be reviewed for possible release under the ATIA:

- confidences of the Queen’s Privy Council that are more than 20 years old;
- discussion papers if the related decisions have been made public, or;
- where decisions have not been made public, four years have passed since the decisions were made.

If the OPI identifies a document believed to be a Cabinet Confidence, the security classification of the document (along with all duplicate of the documents and all attachments to the document) should be immediately upgraded to “SECRET” and the document must be placed in an appropriate “Secret” folder. All Cabinet Confidences that are relevant to the request—as well as any *suspected* Cabinet Confidences—must be delivered to ATIP by hand in the “Secret” folder.

As required by Treasury Board Guidelines, ATIP must formally consult with the Privy Council Office (PCO). The final decision as to whether all or part of a document qualifies as a Cabinet Confidence rests with the Clerk of the Privy Council as the custodian of all Cabinet Confidences.

PCO requires that ATIP offices consult with them using a ‘schedule’ of a specific format, and further requires that the ‘schedule’ be provided on compact disc. The schedule must list all of the documents (including duplicates and attachments) that are being submitted for PCO review, must describe the documents in detail and must provide evidence to support the exclusion of all or part of the information that the documents contain.

It is therefore extremely important that OPIs provide ATIP with the context of the document—the subject of the document, who prepared it, who it was prepared for, when it was prepared, where did the document go, who has had access to the document both internally and externally etc.

If only a *portion* of a document is thought to be a Confidence, this portion must be clearly identified for ATIP and the same background must be provided—what is the information about, who prepared it, who it was prepared for, when it was prepared, where did the information go, who has had access to the information both internally and externally etc.

For more information on exclusions refer to Chapter 5 of this manual and the Treasury Board web Site:

http://www.tbs-sct.gc.ca/pubs_pol/gospubs/TBM_121/CHAP2_6_e.asp

Principle of Reasonable Severability

Section 25 of the *ATIA* requires that government institutions disclose any part of a record that does not qualify for exemption and if it can reasonably be severed from the record.

This means that a document cannot be entirely withheld if it contains only *some* exemptible information. Institutions must release all portions of the document that do not qualify for specific exemption. The only proviso to this is that the severance must be reasonable. If only a few words are left in the document and convey no meaning or context, then the entire document can be withheld.

Review of Records

Time allocated	Steps to be Taken	Number of Days Used
8 days (ATIP)	Review the records, consult as required, second review as required	15

Once ATIP has received the relevant records from the OPI, it will verify that each aspect of the request has been addressed and will begin a full review of the records. Each record is closely examined along with the background and advice received from the OPI in order to determine whether all or some of the record can be released. ATIP will also consult with other government institutions, individuals, companies or entities as required.

Exemptions and Exclusions

ATIP is required to cite the specific provisions of the *ATIA* upon which it is relying to withhold information. The OPC must be able to defend its decisions to OIC investigators and, possibly, to the Federal Court. This is why detailed recommendations must be received from the OPIs who have expertise in the material. See Chapter 5 for a detailed review of exemptions and exclusions.

Consultation with Other Government Institutions

ATIP must consult with other government institutions if, for example, records that originate or pertain to those institutions form part of the material gathered in response to an OPC ATIP request. ATIP must also conduct consultations if disclosure of the information at issue could cause an injury to the conduct of international affairs, to the conduct of an investigation, to the defence of Canada etc. All consultations must be conducted within the statutory time frames set out in the *ATIA*. It is therefore important that OPIs flag any documents they are providing to ATIP which may fall within this category so that consultations can be done as quickly as possible.

Third Party Consultation

A “third party” is defined in section 3 of the *ATIA* as “any person, group of persons or organization other than the person that made the request or a government institution”.

If ATIP intends to disclose any record that contains—or may contain—information falling within subsection 20(1) of the *ATIA* (i.e. trade secrets, confidential commercial, financial or technical information, information that could result in material financial loss or gain or prejudice the third party’s competitive position), it must formally notify the third party of its intent. The third party is then afforded an opportunity to make representations as to why the information should not be disclosed.

As these consultations must be done within the *ATIA*’s statutory time frames, it is important that OPIs clearly identify any information that belongs to a third party so that consultations can be conducted as quickly as possible.

Fees / Waiver of Fees

The *ATIA* allows institutions to charge certain fees (Appendix D) which will be calculated by ATIP. An applicant can only be charged for search and preparation time (actual time spent searching for documents and only actual time spent cutting and pasting information) and for the number of photocopied pages actually provided. Time spent reviewing documents for exemptions and exclusions is not chargeable to the applicant.

The *ATIA* allows institutions to ‘waive’ or reduce fees payable under *ATIA Regulations*. A decision to do so will be made by ATIP on a case-by-case basis by assessing, for example, the requester’s circumstances or the degree to which a public benefit is obtained through the release of the information. Also, ATIP will consider the waiver of fees associated with preparing records in a format that allows a person with a sensory disability to read or listen to the records.

Approval and Release

Time allocated	Steps to be Taken	Number of Days Used
<p>5 days (ATIP)</p>	<p>Prepare release package, remove exempted information, write letter to requester; review, approval and signature of release package by ATIP Director; notification of release to Senior Management if required; mail-out of release package.</p>	<p>20</p>

Following the review and consultation process (and once applicable fees have been paid), the ATIP Analyst will recommend the exemption/release of information to the ATIP Director. The Director will make the final decision as to which information can be released in response to the request.

Once the final decision has been taken, a copy is then made of the releasable information. A letter is sent to the requester—along with the package of releasable information—which cites the specific sections of the *ATIA* which may have been claimed as a basis under which to withhold information. The individual is also informed of his/her right to file a complaint with the OIC about the processing of the request.

3.5 COMPLAINT PROCESS

A requester may file a complaint with the OIC for any number of reasons ie. delay in responding to the request, fees assessed, exemptions and/or exclusions invoked, incomplete responses, missing information etc. Complaints must be filed with the OIC within **60 days** after the requester has either received ATIP’s final response to the request, or has become aware that grounds for a complaint exist (ie. the institution has not yet responded within the statutory time limit).

Notification by the Office of the Information Commissioner

The OIC must give formal notice to the OPC that a complaint has been filed with the OIC and must provide a summary of the exact nature of the complaint.

Obstructing the Information Commissioner of Canada

During the course of an investigation, investigators from the OIC will often wish to speak directly with various OPC employees who were involved in the search for records or who have particular expertise in the nature of the information they contain. OPC employees should know that:

Section 67.(1) of the Access to Information Act states:

- (1) No person shall obstruct the Information Commissioner or any person acting on behalf or under the direction of the Commissioner in the performance of the Commissioner's duties and functions under this *Act*.
- (2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

Disclosure of Records to Investigators

Under section 36 of the *ATIA* the Information Commissioner has broad powers of access to records, including the power to compel the production of original documents. During an investigation, OPC ATIP will provide the OIC Investigator with a copy of the ATIP file, **except for** any Confidences of the Queen's Privy Council and except for any legal opinions related to the processing of the request which may be on the ATIP file.

Investigation Process

The investigation is carried out with the cooperation of ATIP and the affected OPI. Depending on the nature of the complaint, the OIC Investigator may focus on the completeness of the search, the validity of the exemptions applied, the length of time taken to respond to the request, the need for an extension, the appropriateness of any fees charged to the requester etc.

ATIP represents the OPC in the investigative process by introducing the OIC Investigator to the OPI (if required), outlining the administrative process that was followed, and explaining and defending the application of exemptions. During an investigation, ATIP may decide to release additional information for any number of reasons: information was withheld in error, the OIC Investigator has

convinced ATIP that an exemption did not apply etc. Conversely, ATIP may decide to continue to withhold information despite the objection of the OIC.

In instances where the OIC Investigator and ATIP have reached an impasse about a matter, the OIC Investigator will prepare a report for the Information Commissioner (or his delegate) outlining the results of the investigation and the reasons for the impasse.

The Information Commissioner (or delegate) may then write to the Privacy Commissioner recommending that certain information be released. Recommendations made by the OIC are not legally binding but they carry the authority of the OIC as the Office of Parliament charged with monitoring the proper application of the *ATIA*.

As a result, the Privacy Commissioner will decide to either release some or all of the information in contention, or will confirm ATIP's original decision to deny access to the information.

Regardless as to the scenario, at the end of the investigation the OIC Investigator must prepare a report for the Information Commissioner (or his delegate) who will then provide written finding(s) to both the complainant and to either the OPC's ATIP Director or to the Privacy Commissioner.

Federal Court Review

If an OIC investigation has been conducted and the conclusion was that the OPC's refusal to provide information was valid, the requester nevertheless has the right to apply to the Federal Court for a review of the matter. The application must be filed within 45 days after the OIC has reported the results of the investigation to the requester.

If the OIC has recommended to the OPC that certain information be disclosed but the OPC has refused to do so, the OIC will issue his report of the matter to the complainant and to the OPC. Again, the complainant has the right to apply to the Federal Court but, in a case such as this, the OIC may decide to take the matter to the Court on the individual's behalf. The application must still be filed within 45 days after the results of the investigation have been reported.

In either scenario, the Court will examine the information withheld by the OPC to determine whether all of the exemptive criteria were met with respect to the specific provision of the *ATIA* that was claimed. If the OPC was required to exercise discretion in the application of an exemption, the Court will examine whether it did so and whether it did so properly.

Decisions made by the Federal Court may be appealed to the Federal Court of Appeal and, subsequently, to the Supreme Court of Canada. Decisions made by all levels of Court are binding upon the OPC.

CHAPTER 4

PROCESSING FORMAL REQUESTS PURSUANT TO THE *PRIVACY ACT*

4.1 PURPOSE OF THE *PRIVACY ACT*

The purpose of the *Privacy Act* (PA) was briefly discussed in Chapter 1 of this manual. Not only does the PA provide individuals with a right of access to their personal information, but it also speaks to the collection, retention, accuracy, disposal, use and disclosure of personal information. The PA is based on the principle that every individual should have the right to know:

- what personal information is collected about them by government
- what their personal information is being used for
- under what circumstances their personal information can be disclosed
- when and how their personal information will be disposed
- how to obtain access to and/or correct their personal information

4.2 RELATED REGULATIONS, POLICIES AND PROCEDURES

The PA is supported by a certain number of regulatory, policy and procedural instruments. The purpose of some of these documents is to reinforce certain provisions of the *Act* itself, while others aim at providing an interpretation of certain sections or seek to provide practical guidance to those who have to implement or comply with the *Act*. These documents include:

- Treasury Board Policy on Privacy and Data Protection: This policy sets out the basic requirements with respect to the implementation of the *Privacy Act*.
http://www.tbs-sct.gc.ca/pubs_pol/gospubs/TBM_128/siglist_e.asp
- Government Security Policy (Treasury Board): Its purpose is to ensure an adequate protection of the assets and information of the federal government. It supports the PA in that it requires that personal information be adequately protected from unauthorized access so as to guarantee its confidentiality, integrity and availability.
http://www.tbs-sct.gc.ca/pubs_pol/gospubs/TBM_12A/gsp-psg_e.asp
- Treasury Board Policy on Management of Government Information Holdings: The policy promotes a better planning of the management of information (personal and non-personal) throughout its entire life cycle.
http://www.tbs-sct.gc.ca/pubs_pol/ciopubs/TB_GIH/siglist_e.asp

4.3 FORMAL REQUESTS FOR ACCESS TO PERSONAL INFORMATION

Formal Requests

Formal requests for access to personal information can only be made by those entitled to do so as per subsection 12(1) of the *PA* or section 10 of the *Regulations*. Section 13 requires that requests be made in writing to the institution that has control of the information being sought. Applicants may submit their requests using either the 'Personal Information Request Form' TBC 350-58 (Appendix B) or a letter. Regardless of the method used, section 13 requires that they provide sufficient information on the location of the information as to render it reasonably retrievable. There is no application fee.

4.4 OVERALL GUIDELINES AND TIME ALLOCATED FOR RESPONDING TO A *PRIVACY ACT* REQUEST

The OPC must respond to *PA* requests within **30 calendar days** from the date of its receipt—whether it was received in ATIP or elsewhere in the OPC. Section 15 permits an extension of the time limit **only** where meeting the original time limit would unreasonably interfere with OPC operations, where outside consultations are necessary and cannot be completed in time, to translate the information, or to convert the information to an alternative format. As a result, the OPC has approximately **20 working days** to process a request.

Note: If an OPC employee receives a formal *PA* request, it must be **hand-delivered** in a secure fashion and on an urgent basis to the ATIP Unit.

Receipt of Request

Time allocated	Steps to be Taken	Number of Days Used
1-2 days (ATIP)	Receive the request, enter it in the ATIP tracking system, clarify request, identify appropriate OPI(s), send retrieval notice(s), acknowledge receipt of request to requester.	2

Upon receipt of the request, ATIP ensures that it complies with legislative and regulatory requirements outlined in section 4.3 of this chapter.

The request is also analyzed to determine the subject of interest and scope. This sometimes requires clarification from the requester and/or OPC personnel who have knowledge of the subject matter.

Once the scope and subject of the request is clear, ATIP will forward a Tasking Memorandum to the appropriate OPI asking for all records on the subject, regardless of their number, content or form (annotated and signed versions, draft documents, post-it notes etc. in hard copy and electronic format, including e-mails, CDs etc.).

Retrieval of Records

Time allocated	Steps to be Taken	Number of Days Used
5 days (OPI)	Search and retrieve all relevant records, make photocopies, make recommendations, and deliver documents to ATIP.	7

OPIs must begin their search and compilation of relevant records as soon as they receive the retrieval notice from ATIP. In conducting the search, the request is to be interpreted broadly and in accordance with the evident intent of the requester. If this is not obvious, ATIP should be advised immediately so that clarification can be obtained. Applicants are not required to use OPC terminology or jargon in describing what they want and they are often unable to clearly articulate their wishes. Uncertainties as to what is being sought will be resolved between ATIP and the applicant.

In searching for and retrieving relevant information, OPIs should know:

- **Personal Information** – means information about an identifiable individual that is recorded *in any form* (section 3 of the *PA* at Chapter 6). The *PA* applies to all personal information under the control of the OPC regardless of its physical location, including information which is located outside of the OPC but for which the OPC has retained ownership, (ie. information stored at the Library and Archives Canada Records Centre).
- **Determination of relevance** – ATIP requires copies of all information relevant to the request. ATIP will make the final determination as to its relevance in consultation with the OPI and/or the requester.
- **Duplicates** – if one copy of a document is ‘clean’ and another copy of the same document contains hand-written notes or other notations, the documents are not exact duplicates and both must be provided to ATIP. Similarly, documents that contain the same information but which are not identical must be provided.
- **Completeness** – the search for an individual’s personal information must be thorough, accurate and comprehensive as the manner in which the search was conducted is subject to investigation. The following are examples of ways in which searches may be done to ensure completeness:

- by the individual's name
- by the individual's Personal Record Identifier Number (PRI)
- **Time frame** – ATIP must receive all relevant information from the OPI within the deadline stipulated on the retrieval notice. Any delay may impact on the OPC's ability to meet the legislative timeframe.

Special Considerations

Questions or problems may arise when searches are being conducted. ATIP must be informed **immediately** about any complications, including the following:

- the information is not held with the OPI tasked with the search;
- information is missing or cannot be found;
- the volume of information is very large or a search is needed through a large number of documents in order to find the relevant information;
- the search is difficult or impossible to conduct for specific reasons;
- the request is not clear and further clarification is required;
- there are other OPIs that may have relevant information;
- other departments or agencies may be affected by disclosure;
- there may be a need to coordinate the response centrally.

Court proceedings and their status can complicate a search. Litigation may have led to disclosure of information or to a publication ban. OPIs should notify ATIP about such situations and advise as to the current stage of the legal proceedings, since that could change the disclosure status of the information at issue.

Finally, although the *Act* excludes Cabinet Confidences of the Queen's Privy Council for Canada, OPIs must provide such documents to ATIP. In order to exclude those documents, ATIP must formally confirm with the Privy Council Office that they are, indeed, Cabinet Confidences. This consultation must be conducted within statutory time limits.

Information Contained in Investigation Files

Subsection 22.1(1) of the *PA* requires that the OPC refuse access to any personal information that was obtained or created by the OPC in the course of an investigation. However, once the investigation is concluded along with all related proceedings (appeal mechanisms), subsection 22.1(2) states that the OPC cannot refuse to disclose—by way of subsection 22.1(1)—any of the personal information that it “created”.

OPIs are required to clearly identify all information that falls within the categories described in subsection 22.1(1), and are further required to advise ATIP as to the status of the matter and any related proceedings (i.e. whether the investigation has been concluded, whether all appeal mechanisms have been exhausted, the status of any current litigation, grievance etc.).

Section 22.3 requires that the OPC refuse access to personal information that was created in order to make a disclosure under the *Public Servants Disclosure Protection Act* or in the course of an investigation into a disclosure under that *Act*.

OPIs must clearly identify any information falling within section 22.3 of the PA with respect to the *Public Servants Disclosure Protection Act*.

If Records Do Not Exist / Records Exist But Cannot be Found

OPIs may encounter a situation where the personal information being requested simply does not exist. If this is the case, OPIs must advise ATIP in writing as to why, i.e.:

- the OPC did not require the personal information for any administrative purpose and, therefore, it was never collected
- it was never created in the first place (perhaps there were discussions about the individual but those discussions were never recorded in a memorandum or note to file)
- the personal information did exist at one point in time but it was destroyed in accordance with the destruction period for that type of information
- the information was in the OPC record holdings at one point in time, but was transferred to the National Archives or—in the case of a former employee—the information was transferred to the government institution in which the employee now works.

There may also be occasions when even though an OPI knows that requested personal information exists (or that it should exist), it simply cannot be found. In such instances, OPIs must advise ATIP in writing that the search met with negative results and must detail the efforts undertaken to find the information:

- what file categories were searched (ie. IIA, RDIMS, CCM etc.)
- what criteria was used to conduct the search in IIA, RDIMS, CCM etc. (name, Personal Record Identifier number etc.)
- what file cabinets were searched
- who was the employee who conducted the search (was the employee experienced enough to have know where to look?)

In the event a complaint is filed about the OPC's response to the request, ATIP must have properly documented details as to the nature and extent of the search conducted, as this will be the focus of the investigation. OPIs should keep in mind that ad hoc Privacy Commissioner investigators can, and likely will, wish to speak directly with the person(s) who actually conducted the searches for the information.

Recommendations Concerning Disclosure / Non-Disclosure

ATIP personnel are knowledgeable with respect to the application of the *PA* but they are not experts with respect to all of the different types of records and information held by the OPC. ATIP must therefore rely upon OPI personnel to give them guidance on the sensitivity of information being considered for disclosure under the *PA*.

It is incumbent upon the OPIs personnel to review the information they are supplying to ATIP and to provide written recommendations concerning its possible release. OPIs need not cite specific provisions of the *PA* as ATIP will do so. However, OPI recommendations must contain enough background information to enable ATIP to make appropriate decisions concerning the information.

For example, if disclosure of the information would have a negative impact of some sort, the OPI must be able to articulate to ATIP the nature of the impact and why such an impact would occur so that ATIP can cite the appropriate exemptive provision. In the event of a complaint about the exemption, ATIP must be able to explain in detail why the provision was claimed.

NOTE: do not write on the records themselves, but provide recommendations by way of formal memorandum, note, or e-mail. If it is necessary to highlight specific information, do so only using a yellow highlighter as the highlighted portions will not be visible when ATIP photocopies the documents.

Important: Only personal information that qualifies for a specific *PA* exemption or exclusion can be refused. If a record contains both personal and non-personal information, the entire record must be provided to ATIP so that the non-personal information can be examined to see if any of it can nevertheless be disclosed. ATIP will provide further guidance to OPIs in this regard.

Cabinet Confidences

In accordance with section 70, the *PA* does not apply to Cabinet Confidences of the Queen's Privy Council for Canada, which include:

- memoranda the purpose of which is to present proposals or recommendations to Council;

- discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;
- agenda of Council or records recording deliberations or decisions of Council;
- records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussion, or;
- draft legislation.

NOTE: “Council” means the Queen’s Privy Council of Canada, committees of the Privy Council, Cabinet, and Cabinet committees.

There are instances, however, where even though information falls under one of the types described above, it cannot be withheld as a Confidence, but must be reviewed for possible release under the ATIA:

- confidences of the Queen’s Privy Council for Canada that have been in existence for more than twenty years;
- discussion papers if the decisions to which the discussion papers relate have been made public;
- where the decisions have not been made public, if four years have passed since the decisions were made.

If the OPI identifies information believed to be a Cabinet Confidence, the security classification of the information (along with all duplicates and attachments) should be immediately upgraded to “SECRET” and the document must be placed in an appropriate “Secret” folder. All Cabinet Confidences that are relevant to the request—as well as any suspected Cabinet Confidences—must be delivered to ATIP by hand in the “Secret” folder.

As required by Treasury Board Guidelines, ATIP must formally consult with the Privy Council Office (PCO). The final decision as to whether information qualifies as a Cabinet Confidence rests with the Clerk of the Privy Council as the custodian of all Cabinet Confidences.

PCO requires that ATIP offices consult with them using a ‘schedule’ of a specific format, and further requires that the ‘schedule’ be provided on compact disc. The schedule must list all of the information (including duplicates and attachments) being submitted for PCO review, must describe the information in detail and must provide evidence to support the exclusion of the information.

It is therefore extremely important that OPIs provide ATIP with the context of the information and the documentation in which it is contained—the subject of the document or information, who prepared it, who it was prepared for, when it was prepared, where did the document or information go, who has had access to the document/information both internally and externally etc.

For more information on exclusions refer to Chapter 5 of this manual and the Treasury Board web Site:

http://www.tbs-sct.gc.ca/pubs_pol/gospubs/TBM_121/CHAP2_6_e.asp

Review of the Records

Time allocated	Steps to be Taken	Number of Days Used
8 days (ATIP)	Review the information, consult as required, second review as required.	15

Once ATIP has received the relevant information from the OPIs, it will verify that each aspect of the request has been addressed and will begin a full review of the information—along with the background and advice received from the OPI—in order to determine whether the information can be released. ATIP will also consult with other government institutions or individuals as required.

Exemptions and Exclusions

When responding to applicants, ATIP is required to cite the specific provisions of the *PA* upon which it is relying to withhold information. The OPC must be able to defend its decisions to the ad hoc Privacy Commissioner investigators and, possibly, to the Federal Court. This is why detailed recommendations must be provided by OPIs. See Chapter 5 for detailed information concerning exemptions and exclusions.

Consultation with Other Government Institutions

ATIP must consult other government institutions if, for example, information that originates or pertains to those institutions forms part of the material gathered for an OPC ATIP request. ATIP must also conduct consultations if disclosure of the

information at issue could cause an injury to the conduct of international affairs, to the conduct of an investigation, to the defence of Canada etc. All consultations must be conducted within the statutory time frames set out in the *PA*. It is therefore important that OPIs flag any documents they are providing to ATIP which may fall within this category so that consultations can be done as quickly as possible.

Approval and Release

Time allocated	Steps to be Taken	Number of Days Used
5 days (ATIP)	Prepare release package, remove exempted information, write letter to requester; review, approval and signature of release package by ATIP Director; mail-out of release package.	20

Following the review and consultation process, the ATIP Analyst will recommend the exemption/release of information to the ATIP Director. The Director will make the final decision as to which information can be released in response to the request.

Once the final decision has been taken, a copy is then made of the releasable information. A letter is sent to the requester—along with the package of releasable information—which cites the specific sections of the *PA* used to withhold information. The individual is informed of his/her right to file a complaint with the ad hoc Privacy Commissioner about the processing of the request. Finally, the individual is advised of his/her right to request a correction of information if there is an error or omission.

4.5 COMPLAINT PROCESS

A requester may file a complaint with the ad hoc Privacy Commissioner for any number of reasons ie. delay in responding to the request, exemptions and/or exclusions invoked, incomplete responses, missing information etc. Unlike the *ATIA*, there is no deadline by which a complaint must be filed.

Notification by the Office of the ad hoc Privacy Commissioner

The ad hoc Privacy Commissioner must give formal notice to the OPC that a complaint has been filed and must provide a summary of the exact nature of the complaint.

Obstructing the ad hoc Privacy Commissioner

During the course of an investigation, investigators from the ad hoc Privacy Commissioner's Office will often wish to speak directly with various OPC employees who were involved in the search for records or who have particular expertise in the nature of the information they contain. OPC employees should know that:

Section 68.(1) of the Privacy Act states:

(1) No person shall obstruct the Privacy Commissioner or any person acting on behalf or under the direction of the Commissioner in the performance of the Commissioner's duties and functions under this Act.

(2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

Disclosure of Records to Investigators

Under section 34 of the *PA* the ad hoc Privacy Commissioner has broad powers of access to records, including the power to compel the production of original documents. During an investigation, OPC ATIP will provide the ad hoc Privacy Commissioner's Investigator with a copy of the ATIP file, except for any Confidences of the Queen's Privy Council and except for any legal opinions relating to the processing of the request which may be on the ATIP file.

Investigation Process

The investigation is carried out with the cooperation of ATIP and the affected OPI. Depending on the nature of the complaint, the ad hoc Privacy Commissioner's Investigator may focus on the completeness of the search, the validity of the exemptions applied, the length of time taken to respond to the request, the need for an extension etc.

ATIP represents the OPC in the investigative process by introducing the ad hoc Privacy Commissioner's Investigator to the OPI (if required), outlining the administrative process that was followed, and explaining and defending the application of exemptions.

During an investigation, ATIP may decide to release additional information for any number of reasons: information was withheld in error, the investigator has convinced ATIP that an exemption did not apply etc. Conversely, ATIP may decide to continue to withhold information despite the objection of the investigator.

In instances where the investigator and ATIP have reached an impasse about a matter, the investigator will prepare a report for the ad hoc Privacy Commissioner outlining the results of the investigation and the reasons for the impasse.

The ad hoc Privacy Commissioner may then write to the Privacy Commissioner recommending that certain information be released. Recommendations made by the ad hoc Commissioner are not legally binding but they carry authority as the official delegated to monitoring the proper application of the *PA* within the OPC.

As a result, the Privacy Commissioner will decide to either release some or all of the information in contention, or will confirm ATIP's original decision to deny access to the information.

Regardless as to the scenario, at the end of the investigation the ad hoc Privacy Commissioner's investigator must prepare a report for the ad hoc Commissioner who will then provide written finding(s) to both the complainant and to either the OPC's ATIP Director or to the Privacy Commissioner.

Federal Court Review

If an investigation has been conducted and the conclusion was that the OPC's refusal to provide information was valid, the requester nevertheless has the right to apply to the Federal Court for a review of the matter. The application must be filed within 45 days after the ad hoc Privacy Commissioner has reported the results of the investigation to the requester.

If it was recommended that the OPC disclose certain information but the OPC refused to do so, the ad hoc Privacy Commissioner will issue his report of the matter to the complainant and to the OPC. Again, the complainant has the right to apply to the Federal Court but, in a case such as this, the ad hoc Privacy Commissioner may decide to take the matter to the Court on the individual's behalf. The application must still be filed within 45 days after the results of the investigation have been reported.

In either scenario, the Court will examine the information withheld by the OPC to determine whether all of the exemptive criteria were met with respect to the specific provision of the *PA* that was claimed. If the OPC was required to exercise discretion in the application of an exemption, the Court will examine whether it did so and whether it did so properly.

Decisions made by the Federal Court may be appealed to the Federal Court of Appeal and, subsequently, to the Supreme Court of Canada. Decisions made by all levels of Court are binding upon the OPC

4.6 CORRECTION / NOTATION OF PERSONAL INFORMATION

Paragraph 12(2)(a) of the *PA* provides that every individual given access to personal information that has been used, is being used, or is available for use for an administrative purpose is entitled to request correction of the information where he/she believes there is an error or omission.

The one proviso to this right is that the individual must first have received access to the information by way of a formal *PA* request.

Requests for Correction of Personal Information

Requests for correction can be made by using the 'Correction Request Form' TBC/CTC 350-11 (Appendix E) or by letter. The individual must identify the information of concern and provide any documentary evidence which may be used to establish the validity of the requested correction.

Time Allocated for Responding to a Request for Correction

ATIP must respond to requests for correction within 30 calendar days from the date the request was received in the OPC (whether in ATIP or elsewhere in the OPC). The *PA* does not allow for an extension of the 30-day time limit.

Review of Information

Requests for the correction of personal information will be referred to the appropriate OPI (i.e. Human Resources, I&I Branch) for review and for written recommendation as to whether the request for correction should be accepted and if not, why it should not be accepted. In reviewing the information at issue, OPIs should be aware that:

- Requests for the correction of factual information (i.e. date of birth, eye colour, Social Insurance Number, address etc.) are usually accepted, particularly when the information was originally supplied by the individual or when documentary evidence exists which supports the correction.
- Individuals often request the correction of opinions rather than purely factual information. A request for correction of the applicant's own personal opinion may be accepted if it does not concern any other individual. However, corrections will not normally be made to opinions that others have made about the applicant.

The recommendation provided to ATIP must include a list of all persons, bodies or institutions to which the OPC has disclosed the information that is at issue in the correction request.

Response to Request for Corrections

When a request for correction has been accepted in whole or in part, written notification of the acceptance and correction of information must be provided to:

- the individual (the notice should include a list of the persons, bodies and/or institutions that will be notified of the acceptance of the correction);
- any person or body to whom the information was disclosed in the two years before the correction request was received by the OPC, and;
- any government institution to which the information was disclosed in the two years before the correction request was received by the OPC (the notice must advise the institution of its responsibility to make the correction on every copy of the information under its control).

When a request for correction has been refused in whole or in part:

- a notation must be attached to the information reflecting that a correction was requested but that it was refused in whole or in part;
- the individual must be notified in writing that:
 - the request has been refused in whole or in part and why;
 - a notation concerning the correction request has been attached to the information at issue, and:
 - the individual has the right to make a complaint to the ad hoc Privacy Commissioner.
- any person or body to which the information was disclosed in the two years before the request was received must be notified in writing that a notation has been attached to the information, and;

any government institution to which the information was disclosed in the two years before the request was received must be notified in writing that a notation has been attached to the information and that it must attach a notation to every copy of the information that it has under its control.

CHAPTER 5

EXEMPTIONS AND EXCLUSIONS

5.1 Access to Federal Government Information

The *Access to Information Act (ATIA)* and the *Privacy Act (PA)* provide the public with a right of access to information held by federal government institutions. Those rights of access are subject to very limited and specific exceptions. In other words, unless information can be legitimately withheld under a specific provision of the *Act*, the information must be disclosed.

In determining whether information should be released under either of the *Acts*, departmental officials must balance a number of competing interests. Although the government is accountable to the public for its actions, the need for confidentiality of certain information and activities is recognized by specific exemptions and exclusions found in the *Acts*. Exemptions protect information dealing with, for example, the management of the economy, national security and defence, international affairs and law enforcement. Certain exemptions also protect other interests, such as personal information and sensitive business information. Exclusions protect Cabinet Confidences and state that government need not furnish requesters with published material, material held by the National Archives etc.

Section 25 of the *ATIA* says that government institutions must disclose any part of a record that cannot be withheld under the *Act* if that information can be *reasonably* severed. For example, if much of a particular document is going to be withheld under the *ATIA* but no exemption is applicable to one paragraph, then that paragraph must be severed from the record and it must be provided to the requester. As to 'reasonable', the principle is that whatever information is being released should be intelligible—normally the smallest unit remaining in a severed document should be a sentence.

As section 25 is **mandatory** in nature and reviewable by the Federal Court, it is vital that Offices of Primary Interest (OPIs) examine all parts of the records being provided to ATIP and that they clearly identify what can and cannot be disclosed.

Unlike the *ATIA*, the *PA* does not contain a severability provision. One is not needed in the *PA* because the concept is built into the legislation and is implicit in the wording of the exemptions. Under the *PA* a person can only request access to his/her personal information as that term is defined in the *PA*. So, *PA* exemptions deal only with the exemption of that particular personal information.

Under the *PA*, when a document contains both personal and non personal information about an applicant, the individual is entitled access to his/her information but is not theoretically entitled access to the non-personal information. The personal information can be provided to the individual while the remainder of the information can be withheld via section 12(1) because the person does not have a right of access to it.

Still, as a matter of both practice and policy, when a record contains both personal and non-personal information, an individual should be provided access to any non-personal information in the record if that information cannot be withheld under the *ATIA*.

5.2 Exemptions

Sections 13 through 24 of the *ATIA* and sections 18 through 28 of the *PA* set out a number of exceptions to the right of access under those *Acts*. Sections 68 and 69 of the *ATIA* and sections 69 and 70 of the *PA* describe the types of information to which the *Acts* do not apply. The exemptions and the categories of records excluded from the *Acts* form the **only** basis for refusing access to government information requested under the *Acts*.

Mandatory vs. Discretionary Provisions

Exemptions fall into two distinct categories, mandatory and discretionary.

Mandatory exemptions are introduced with the wording "... the head of a government institution **shall** refuse to disclose ..." which indicates that there is no option but to refuse access to the information. There are some "shall" provisions, however, which contain certain conditions under which the information can be nevertheless be disclosed.

For example, subsection 13(1) of the *ATIA* says that federal government institutions "shall refuse to disclose" any record obtained in confidence from a provincial government. However, subsection 13(2) says that federal government institutions "may disclose" that record if the provincial government either consented to the disclosure or made the information public.

Discretionary exemptions are introduced with the wording "... the head of a government institution **may** refuse to disclose...". In these instances, government institutions have the option to disclose or to protect the information.

Injury and Class Test Provisions

Mandatory and discretionary exemptions fall into two categories, injury test and class test—they can be either mandatory or discretionary in nature.

Injury test provisions contain wording such as “... information the disclosure of which could reasonably be expected to be **injurious** to ...”. In these cases the provision describes the type of injury that would be caused if the information was disclosed (i.e. to the conduct of international affairs, the conduct of a lawful investigation, financial interests of Canada etc.). In order to successfully invoke the provision, it must be shown that the expectation of injury is both reasonable and likely (versus improbable or doubtful).

Class test provisions describe types of information (i.e. information obtained in confidence from other governments, advice or recommendations, trade secrets etc.). If the information being requested falls within the described type, then the exemption can be applied.

Exercise of Discretion

Before refusing access to information under a discretionary provision, government institutions are required to closely examine the information and make an informed, fair, and reasonable decision as to whether it should be disclosed. Institutions cannot simply refuse to release the information without first having properly weighed the ‘pros and cons’ of doing so.

For example, section 21 of the *ATIA* allows government institutions to withhold advice and recommendations, or accounts of consultations or deliberations—but should they?

The provision exists essentially to protect the internal decision making processes of government—but the fact that section 21 is a ‘discretionary’ provision is meant to temper the broad nature of the class test and recognize that the public has a right of access to government records, even if they may technically be withheld.

It is essential to know that an institution’s exercise of discretion is reviewable by the Office of the Information Commissioner and by the Federal Court. So, in choosing to withhold information rather than disclose it, several things must first be taken into account:

- that the general purpose of the *Acts* is to provide access to information;
- that the emphasis of the *ATIA* is to disclose information in support of the notion of government accountability

- the wording of the exemption and the interests which the provision is attempting to protect or balance
- the specific content of the document:
 - the nature of the information or record and why it was created in the first place
 - the sensitivity of the information
 - the context or confidentiality of the information
 - whether the issue is current or dated and the age of the record (the older the record, the older the information, the less likely an adverse consequence to its disclosure)
 - the possibility of a partial disclosure of the record (severance)
- the historical practice of the OPC
- court decisions
- would disclosure show the OPC to be transparent?
- would disclosure assist in explaining a particular decision or action?
- what is the real impact of disclosure?

Access to Information Act and Privacy Act Exemption Grid

*This chart is meant for general reference only. The *Acts* should be consulted for more specific details concerning the exemptions (see Appendices A and B of this manual).

Access Section	Privacy Section	Subject	Nature of Exemption	Comments
n/a	18(2)	exempt bank information	discretionary class test	information contained in a personal information bank designated as an exempt bank
13(1)	19(1)	information obtained in confidence	mandatory class test	obtained in confidence from a foreign, international, provincial, municipal or aboriginal government
14	20	federal-provincial affairs	discretionary injury test	injurious to the conduct of federal-provincial affairs
15(1)	21	international affairs and defence	discretionary injury test	injurious to the conduct of international affairs, defence of Canada
16(1)	22(1)	law enforcement and investigation	discretionary class test/ injury test	information obtained/prepared by a government institution that is an investigative body; information relating to investigative techniques or plans for specific lawful

16(2)	n/a	security	discretionary injury test	investigations; injurious to enforcement of any law of Canada; injurious to the security of penal institutions reasonably expected to facilitate the commission of an offence
16(3)	22(2)	policing services for provinces or municipalities	mandatory class test	information obtained/prepared by the RCMP while performing policing services for a province or municipality
16.1	22.1	relating to investigations, examinations and audits	mandatory class test	information obtained/created by the Auditor General, Commissioner of Official Languages, Information Commissioner or Privacy Commissioner in the course of an investigation, examination or audit
16.2	n/a	investigations	mandatory class test	information obtained/created by the Commissioner of Lobbying in the course of an investigation
16.3	n/a	investigation, examination or review	discretionary class test	information obtained/created by a person who conducts an investigation, examination or review in the performance of their functions under the Canada Elections Act
16.4	22.2	investigation or settlement	mandatory class test	information obtained/created by the Public Sector Integrity Commissioner in the course of an investigation or in an attempt to reach a settlement pursuant to the Public Servants Disclosure Protection Act

16.5	22.3	disclosure pursuant to the <i>Public Servants Disclosure Act</i>	mandatory class test	information created for the purpose of making a disclosure under the <i>Public Servants Disclosure Act</i> or an investigation into a disclosure under that <i>Act</i>
17	25	safety of individuals	discretionary injury test	disclosure could reasonably be expected to threaten the safety of individuals
n/a	23	security clearances	discretionary class test	information obtained/prepared by an investigative body in determining whether to grant security clearances
n/a	24	individuals sentenced for an offence	discretionary class test	information collected/obtained by Correctional Service Canada or the National Parole Board while the individual was under sentence for an offence
18	n/a	economic interests of Canada	discretionary class test/ injury test	trade secrets/financial/commercial/scientific/technical information belonging to the Government of Canada; information that would prejudice the competitive position of a government institution/interfere with contractual or negotiations; scientific or technical information obtained through research by an employee, the disclosure of which could deprive the officer or employee of priority of publication; information the disclosure of which could be materially injurious to the financial interests of a government institution

18.1	n/a	economic interests	discretionary class test	trade secrets, financial, commercial, scientific or technical information that belongs to and is consistently treated as confidential to the Canada Post Corporation; Export Development Canada; the Public Sector Pension Investment Board; or VIA Rail Canada Incorporated
19(1)	26	personal information	mandatory/discretionary class test	personal information about an individual other than the individual who made the request
20(1)	n/a	third party information	Mandatory class test	information belonging to a third party that contains trade secrets, financial, commercial, scientific or technical information; information that could result in material financial loss or gain to, prejudice the competitive position; information that could interfere with contractual negotiations
20.1	n/a	third party investment information	mandatory class test	investment information received in confidence from a third party by the Public Sector Pension Investment Board
20.2	n/a	third party investment information	mandatory class test	investment information received in confidence from a third party by the Canada Pension Plan Investment Board
20.4	n/a	details of a contract or the identity of a donor	mandatory class test	contract details for services of a performing artist/the identity of a donor who made a donation in confidence to the National Arts Centre Corporation
21(1)	n/a	advice etc.	discretionary class test	Advice/recommendations, consultations/deliberations, positions/plans for negotiations, or plans about personnel management that have not yet been put into operation
22	n/a	testing	discretionary	information relating to testing or

		procedures, tests and audits	class test	auditing procedures or techniques or details of specific tests to be given or audits to be conducted
22.1	n/a	internal audits	discretionary class test	draft report of an internal audit of a government institution
23	27	solicitor-client privilege	discretionary class test	information subject to solicitor-client privilege
24	n/a	statutory prohibitions	mandatory class test	information the disclosure of which is restricted by a provision set out in Schedule II
n/a	28	medical records	discretionary class test	Personal information that relates to the physical or mental health of the individual

5.3 Exclusions

“Exclusions” are found in sections 68 and 69 of the *ATIA* and sections 69 and 70 of the *PA*. In accordance with these sections, the *Acts* do not apply to:

- published material or material available for purchase by the public
- library or museum material or material made or acquired and preserved solely for public reference or exhibition purposes
- material placed in the National Archives of Canada, the National Library, the National Gallery of Canada, the Canadian Museum of Civilization, the Canadian Museum of Nature or the National Museum of Science and Technology by or on behalf of persons or organizations other than government institutions
- confidences of the Queen’s Privy Council for Canada, including:
 - memoranda presenting proposals or recommendations to Council
 - policy options to Council for consideration in making decisions
 - agenda of Council; records reflecting communications or discussions between ministers of the Crown
 - briefing material for ministers concerning matters before, or proposed to be brought before Council, and
 - draft legislation.

(Before being able to formally withhold a Cabinet Confidence, ATIP must formally consult with the Privy Council Office to confirm the Confidence).

Access to Information Act and Privacy Act Exclusion Grid

*This chart is meant for general reference only. The *Acts* should be consulted for more specific details concerning the exemptions (see Appendices A and B of this manual).

Access Section	Privacy Section	Subject	Comments
68	69(1)	<i>Act</i> does not apply to certain materials	material published or available for purchase, library or museum material
68.1	69.1	journalistic, creative or programming activities	information under the control of the Canadian Broadcasting Corporation that relates to journalistic, creative or programming activities
68.2	n/a	under the control of Atomic Energy of Canada Limited	any information under the control of Atomic Energy of Canada Limited other than information that relates to general administration and its operation of any nuclear facility
69(1)	70(1)	confidences of the Queen's Privy Council for Canada	memoranda or discussion papers presented to Council, agenda, communications, or briefings of Council and draft legislation

CHAPTER 6

PERSONAL INFORMATION

COLLECTION, RETENTION,

ACCURACY,

USE & DISCLOSURE

6.1 WHAT IS PERSONAL INFORMATION?

The OPC is subject to the *Privacy Act (PA)* and, so, all employees must adhere to the provisions of the *PA* that dictate the type of personal information that the OPC can collect, the circumstances under which the information can be used or disclosed by the OPC, and our retention/destruction of the information.

As the Privacy Commissioner is charged with investigating complaints against federal government institutions about the treatment of personal information under the *PA* and against other entities under the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, it is important that the OPC hold itself to the highest standard possible. It is **crucial** that all employees are aware of their obligations under the *PA* in order to prevent a violation of individual's privacy rights.

The first step is in understanding that "personal information" is information about an identifiable individual which is recorded in any form. Personal information can only be about individuals, not about corporations or associations.

The second is in understanding the definition of "personal information" which is found at section 3 of the *PA* (Appendix G of this manual). The definition is lengthy but it is not exhaustive, as indicated by the introductory phrase, "including, without restricting the generality of the foregoing". Examples of personal information include:

- race, national/ethnic origin, colour, religion, age, marital status
- education, medical, employment or criminal history
- identifying number, symbol or other particular assigned to an individual (i.e. Social Insurance Numbers, bank account numbers etc.)
- address, fingerprints, blood type
- personal opinions or views (unless they are about someone else, are about a proposal for a grant, award or a prize being given/awarded to someone else)
- private or confidential correspondence and replies to that correspondence
- name of an individual when it reveals information about the individual

Information not specifically mentioned in the list is still personal information if it is about an identifiable individual. Examples include:

- information concerning sexual preference
- information concerning political affiliation
- information about an individual's personal likes and dislikes (unless those likes and dislikes are about someone else, then a comment such as "I don't like Sue because she is mean" is personal information about Sue, not of the person who made the remark)

Certain information is specifically excluded from the definition, in other words, there are types of information that are not considered personal information for the purposes of the *PA*:

- work-related information about current and former federal public servants, (i.e. title, business address and telephone number, classification, salary range, responsibilities etc.)
- details of contracts between individuals and the government
- details of discretionary financial benefits provided by the federal government
- information about individuals who have been dead more than 20 years

6.2 COLLECTION OF PERSONAL INFORMATION

Section 4 of the *PA* says that federal government institutions can **only** collect personal information if it relates **directly** to an operating program or activity of the institution. The obvious objective of the provision is to limit the amount of personal information collected by institutions to only that which is absolutely needed. Some examples specific to the OPC would include:

- names and addresses of individuals who wish to obtain certain publications from Communications or other branches and who have supplied their information for that purpose
- names, addresses and/or telephone numbers of individuals who provide that information to Inquiries Unit personnel so that they may obtain information or advice on a given subject
- information which individuals provide in support of their complaints under the *PA* and *PIPEDA* or information which OPC Investigators collect during the course of their investigations (information obtained in these cases is often very extensive and may include medical, criminal, financial information etc.)
- information contained within curriculum vitae sent to the OPC from individuals seeking employment
- financial and other personal information from employees submitting travel claims, damage claims, or other compensation (personal credit card numbers, home addresses etc.)
- health information from employees who have been injured on the job or who require accommodation of some sort

The amount of information collected must be strictly limited to the amount of information needed to carry out the duties associated with the operating program or activity. An excessive collection of personal information is a clear violation of section 4 of the *PA*.

So, if you only need a person's name and address in order to do the task at hand, then that is the only information you can collect.

Section 4 is complemented by subsections 5(1) to (3) of the *PA* which say that:

- wherever possible personal information should be collected directly from the individual about whom the information pertains, unless:
 - the individual authorizes otherwise, or;
 - where personal information may be obtained under one of the provisions outlined in section 8(2) of the *Act*.
- Individuals must be told what their personal information will be used for
- personal information does not have to be collected directly from an individual nor does an individual have to be informed of the collection if:
 - to do so would result in the collection of inaccurate information (a person may lie or provide false information whereas information obtained from another source would be accurate), or;
 - to do so would defeat the purpose for the collection, or would prejudice the use of the information.

6.3 RETENTION OF PERSONAL INFORMATION

NOTE: “administrative purpose” is defined by the *PA* as “the use of that information in a decision making process that directly affects that individual.”

Once personal information has been collected and used for an administrative purpose, section 6(1) of the *PA* and section 4 of the *Privacy Regulations* require that it be retained:

- for at least 2 years after the last time it was used for an administrative purpose unless the individual to whom it relates consents to its earlier destruction, (this ensures that the individual has a reasonable opportunity to obtain access to the information);
- where a request for access to the information has been received, until the individual has had the opportunity to exercise all of his/her *PA* rights.

So, once personal information has been collected by the OPC under section 4 of the *PA*, it must be retained for at least 2 years after the last administrative action with respect to that information. Retention periods for specific types of personal information are fully described in *Info Source*. For more information as to how long specific information must be retained by the OPC, employees should contact Records Management.

6.4 ACCURACY OF PERSONAL INFORMATION

Under section 6(2) of the *PA*, the OPC must “take all reasonable steps to ensure that personal information used by the OPC for an administrative purpose” OPC is “as accurate, up-to-date and complete as possible”. For example, this would include ensuring that employee personnel files are kept up-to-date and that personal information that should be on an employee’s file, *is* on file.

As discussed in Chapter 4, once a person has obtained access to his/her personal information under a formal *PA* request, that individual has the right to ask that errors to the information be corrected by submitting a formal Correction Request to ATIP. The OPC is not required to make a correction to opinion based information because there may be a legitimate difference of opinion about certain events or situations but factual information will usually be corrected (ie. PRI or SIN number, factual financial information, education information etc).

6.5 USE OF PERSONAL INFORMATION

As a general rule, section 7 of the *PA* prohibits the use of personal information that the OPC has collected unless the individual about whom the information pertains consents to its use (‘use’ of personal information means the use of the information within the OPC). There are exceptions to use with consent which are outlined in sections 7 and 8 of the *PA*:

- for a purpose consistent with the reason for which the information was originally collected or created, or;
- for a purpose for which the information has been obtained from another federal institution under subsection 8(2) of the *Act*.

Original Use – is the specific reason for which the personal information was collected or created in the first place.

Example: the OPC collects certain employment history information about employees in order to administer benefit programs and that information can subsequently be used to determine the employee’s eligibility for a certain program.

Consistent Use – is a use of personal information that has a reasonable and direct connection to the specific reason for which it was collected or created in the first place. This means that the original use and the proposed use are so closely related that an individual would expect that the information would also be used for the second purpose (consistent purpose), even if the use is not spelled out.

Example: information in an employee's annual Performance Evaluation Report is originally collected to evaluate performance—it is not collected specifically for later use in staffing actions in which the employee may be involved. Still, the use of the information in a staffing context is wholly compatible with the reason for the original collection of the information. A logical link is made between the two uses, because the information collected in an appraisal reflects the strengths and weaknesses of the employee which may indicate whether that person is good fit for the position to which he/she has applied.

Accounting for Uses / Consistent Uses

All uses and consistent uses of personal information must be submitted to the Treasury Board Secretariat for inclusion in *Info Source*. Should the OPC propose a new use of personal information, **ATIP must be advised as soon as possible** in order to ensure that:

- the new use or consistent use complies with all the applicable legislative, regulatory and policy requirements, and that;
- a description of the new use or consistent use is included in the next edition of *Info Source*.

ATIP must have enough information from the Branch in order to be able to include at least the following information in its submission to the Treasury Board Secretariat for inclusion into *Info Source*:

- the identity of the Branch requesting approval for the new use;
- details about the individual or group of individuals to whom the personal information relates;
- a description of the specific type of personal information at issue, and the title and identification number of the Personal Information Bank to which the information is associated;
- the original purpose for which the information was collected;
- a description of the proposed new use or consistent use of the information;
- whether consent from the individual(s) is required and why/why not (consent is not required for consistent uses and the uses covered by subsection 5(3) of the *PA*);
- the legislative base, if any, of the new use or consistent use;
- an acknowledgement that the new use or consistent use will be added to the appropriate Personal Information Bank in *Info Source* and—until the next edition appears—an undertaking that a record of the new use will be attached to each individual's personal information that was used for the new purpose.

6.6 DISCLOSURE OF PERSONAL INFORMATION

Section 8 of the *PA* prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure ('disclosure' means the disclosure of information outside the OPC). Exceptions to disclosure with consent are outlined in section 8(2) of the *PA*:

- for the purpose for which the information was collected or created by the OPC or for a use consistent with that purpose;
- to comply with an *Act* of Parliament or regulation which authorizes the disclosure;
- to comply with a subpoena, a warrant, a court order or in order to comply with the rules of court;
- to the Attorney General of Canada for use in legal proceedings involving the Crown or the Government of Canada;
- to an investigative body specified in the *Regulations* (ie. the RCMP) upon written request of that body, for law enforcement purposes;
- where there is an agreement or arrangement between the Government of Canada and certain entities for law enforcement purposes (ie. to the CIA, Interpol etc.);
- to a Member of Parliament (federal MPs or Senators only) who is assisting the individual to resolve a problem;
- to OPC employees in order to conduct internal audits or to the office of the Comptroller General for audit purposes;
- to the Library and Archives of Canada for archival purposes;
- to persons or bodies for research purposes if:
 - the OPC is satisfied that the research cannot be done unless the information is provided in a form which would identify the individual(s) about whom the information pertains, and if;
 - the OPC obtains a written undertaking from the person or body that no subsequent disclosure of the personal information will be made so as to identify the individual(s) about whom the information pertains.
- to aboriginal governments, persons etc. to research or validate claims, disputes or grievances of Canadian aboriginal peoples;
- to a federal government institution in order to locate an individual to collect a debt owed to the federal government;
- where the Privacy Commissioner concludes that disclosure is in the public interest:
 - the public interest in disclosure clearly outweighs any invasion of the privacy of the individual, or;
 - disclosure would clearly benefit the individual to whom the information relates.

NOTE: Even though the *PA* allows the OPC to disclose personal information for the above-noted reasons, the OPC is not compelled to do so and can nevertheless refuse access to the information.

6.7 DISPOSITION OF PERSONAL INFORMATION

Section 6(1) of the *PA* stipulates that personal information that has been used for an administrative purpose must be retained long enough after it is used to ensure that the individual about whom it pertains has a reasonable opportunity to obtain access to it. Section 4 of the *Regulations* says that personal information that has been used for an administrative purpose must be retained for at least two years after the last administrative action (unless the person consents to its destruction).

Section 6(3) of the *PA* requires government institutions to dispose of personal information in accordance with the *Regulations* and with any directives or guidelines issued by the Treasury Board. However, personal information may be designated by the National Archivist as having archival or historical value and, if so, that information must be transferred to the control of Library and Archives of Canada. Any information not so designated must be destroyed in accordance with the Government of Canada Security Policy.

Each type of information collected by a government institution must have a retention period attached to it. There are well established retention periods for certain types of personal information that all federal government institutions hold, including the OPC. However, as the OPC is newly subject to the *National Archives Act*, retention periods have not yet been established with respect to all of the different types of personal information held by the OPC. Once those retention periods have been established, ATIP will inform the Treasury Board Secretariat so that the information can be included in the next publication of *Info Source*.

6.8 PRIVACY VIOLATIONS / BREACHES

Any collection, retention, use, disclosure or disposal of personal information that is not authorized by the *PA* is a “privacy breach” and is a violation of the *PA*. The most common privacy breaches happen when personal information is stolen, lost or improperly destroyed. Breaches may be the result of inadvertent errors or malicious actions by employees, third parties or intruders, for example:

- the loss or disappearance of equipment or devices which contain personal information (ie. loss of computers, lap tops etc.);

- intending to work at home after hours, an employee has taken home a laptop computer which contains personal information—the employee failed to remove the laptop from his vehicle which was subsequently stolen during the night;
 - intending to work at home after hours, an employee removed a file from the office that contained personal information, and then inadvertently left his briefcase on the bus.
- the inappropriate use of electronic devices—including telecommunication devices—to transmit personal information;
 - personal information contained in the body of an e-mail message or in an attachment is sent to the wrong e-mail address;
 - personal information is sent by facsimile to the wrong number;
 - using a blackberry, personal information is discussed in e-mails leaving the information vulnerable and allowing it to be accessed by others.
- intrusions that result in unauthorized access to personal information held in building, file storage containers, computer systems, or other equipment or devices;
 - despite having appropriate security systems in place, an office is broken into during the night and thieves have taken several computers, laptops and blackberries, all of which contain personal information;
 - an employee's personnel file has been left open on her supervisor's desk which has allowed someone else to read information from that file.
- low level of privacy awareness among staff, contractors or other third parties who handle personal information;
 - an employee is unaware of the confidentiality provisions of the *PA* and speaks candidly about a particular investigation file with a neighbour;
 - a contractor assisting OPC personnel in various staffing processes discloses details about applicants and their competition scores;
 - documents containing personal information are put in recycle bins rather than being shredded.
- the sale or disposal of equipment or devices without adequate security measures;
 - a hard drive containing personal information is not wiped clean before leaving the OPC for sale;
 - the foil from a facsimile machine is not removed or properly cleaned before leaving the OPC.
- the use of deceptive tactics to trick people into disclosing personal information:
 - on the telephone, an individual pretending to be an employee of the institution asks for personal information about someone on the pretext that it is needed for an administrative purpose involving that person;

Reporting Privacy Violations

Regardless of the reason for the breach, any loss of personal information or loss of control of personal information is a serious matter.

The OPC is in the process of preparing a formal privacy breach policy which, when complete, will be available to all employees on the Intranet. A copy will also be appended to this manual. In the interim, any employee who becomes aware of such a breach must report it immediately to the head of his/her Branch and/or to the Director of ATIP who will provide further guidance.

Employees will be asked to document in detail the circumstances that gave rise to the breach, describe the nature of the information at issue and provide details as to whom the information was disclosed. In order to prevent an exacerbation of the incident, employees are reminded not to discuss the incident with those who have no need to know.

6.9 ACCOUNTING FOR PERSONAL INFORMATION HOLDINGS

Sections 9, 10 and 11 of the *PA* require that all of the OPC's personal information holdings be described in *Info Source* so that individuals know what personal information the OPC holds about them so they can exercise their right of access to it. This also allows the public to know why the OPC collects their personal information and exactly what it does with it.

The OPC accounts for its personal information holdings through Personal Information Banks (PIBs) which are described in *Info Source*. Each PIB is assigned a different identifying number that denotes its classification as a public bank or a federal employee bank.

Procedure for Updating *Info Source*

Throughout the year, OPC employees should keep in mind that *Info Source* must be updated every year. All new or substantially modified collections, surveys, opinion polls, data matches, research and statistical studies, evaluations, uses, consistent uses, disclosures, routine uses, classes of individuals and retention and disposal standards must be provided to the Treasury Board Secretariat for that purpose.

The deadline for submitting changes to *Info Source* is set by the Treasury Board Secretariat when it issues its call letter to all ATIP units. In turn, OPC ATIP will require that each OPC branch review its information holdings and provide updated information to ATIP.

6.10 PRIVACY IMPACT ASSESSMENT (PIA)

A PIA is a process that helps government departments and agencies determine whether new technologies, information systems, initiatives and proposed programs or policies meet basic privacy requirements. It also assists government organizations in anticipating the public's reaction to the privacy implications of a given proposal which could prevent costly program, service, or process redesign.

Government institutions must demonstrate that their collection, use and disclosure of personal information respects the *PA* and privacy principles throughout the initiation, analysis, design, development, implementation and post-implementation phases of their program and service delivery activities. They do so by way of a PIA. Institutions are also responsible to openly communicate why their personal information is being collected and how it will be used and disclosed.

The Treasury Board Secretariat issued a Privacy Impact Assessment Policy in May of 2002 as the institution responsible for providing advice to government institutions with respect to PIAs and for monitoring compliance. It is available at http://publiservice.tbs-sct.gc.ca/pubs_pol/ciopubs/pia-pefr/paip-pefr_e.asp.

A PIA must be conducted for each new program and/or service that raises privacy issues. If a program or service was implemented prior to May 2002, a PIA must be done if that program or service is being substantially re-designed or if the delivery channel will affect the collection, use or disclosure of personal information.

The Privacy Commissioner is responsible for promoting awareness of the requirements of the PIA policy within the OPC, for determining whether OPC initiatives have a potential impact on the privacy of Canadians and therefore warrant a PIA, and for integrating and balancing privacy with other legislative and policy requirements.

OPC Managers are responsible for developing and maintaining PIAs within their area of responsibility. This is a shared management responsibility that requires the cooperation and support of various officials throughout the OPC in order to ensure that privacy implications are identified, assessed, avoided or resolved. Collaboration with communications staff is also required to facilitate the timely dissemination of information to the public.

GLOSSARY

Access Request – is a request for access to a record made under the *ATIA* or for access to personal information made under the *PA*.

Annual Report – is a report submitted by the head of a government institution to Parliament on the administration of the *ATIA* and the *PA* during the financial year.

Administrative Purpose – the use of personal information about an individual “in a decision making process that directly affects that individual” (section 3 of the *PA* – see Appendix G of this manual). This includes all uses of personal information for confirming identity (ie. authentication and verification purposes) and for determining eligibility of individuals for government programs.

Applicant – a person seeking access to records under the *ATIA* or to personal information under the *PA*. Also, a person requesting the correction of his/her personal information under the *PA*.

ATIP Director – the official delegated by the Privacy Commissioner to coordinate all activities relating to the application of the *Acts*, their regulations and their guidelines.

Complainant – an individual who makes a complaint to the Information Commissioner on grounds set out in section 30 of the *ATIA* or to the ad hoc Privacy Commissioner on grounds set out in section 29 of the *PA*.

Confidential Information – whether information is confidential depends upon its content, its purpose and the circumstances under which it is communicated:

- the information is not available from publicly available sources or cannot be obtained by observation or independent study;
- the information originated and is communicated in a reasonable expectation of confidence that it will not be disclosed, and;
- the information is communicated (whether required by law or supplied gratuitously) in a fiduciary relationship between government and the third party supplying it—a relationship that is not contrary to the public interest, and where there is a public benefit to the confidential communication of information.

Confidentiality – the obligation of the custodian of records and/or personal information to protect those records and/or personal information as required by the *ATIA* and the *PA*.

Consistent Use – a use that has a reasonable and direct connection to the original purpose(s) for which the information was obtained or compiled. This means that the original purpose and the proposed purpose are so closely related that the individual

would expect that the information would be used for the consistent purpose, even if the use is not spelled out.

Control – physical possession of information by an institution and its officials, consultant or contractors is a clear indicator that the information is under the institution’s control. A record is under the control of a government institution when that institution is authorized to grant or deny access to it, to govern its use and, subject to the approval of the National Archivist, to dispose of it. Records in the physical possession of an institution, whether at headquarters, regional, satellite or other office, either within or outside Canada, are presumed to be under its control. Records held elsewhere on behalf of an institution are also under its control. (NOTE: The definition of ‘control’ is presently under Court review).

Court – the Federal Court.

Data Matching – an activity involving the comparison of personal information from different sources, including sources within the same government institution, for administrative or non-administrative purposes. The data-matching activity that is established can be systematic or recurring. The data-matching activity can also be conducted on a periodic basis when deemed necessary. Data matching includes the disclosure or sharing of personal information with another organization for data-matching purposes.

Excluded Information – information to which the *ATIA* and the *PA* do not apply, for example:

- published material or material available for purchase by the public;
- library or museum material;
- material placed in the National Archives, National Library or the National Museums of Canada, and;
- Confidences of the Queen’s Privy Council.

Exemption – is a mandatory or discretionary provision under the *ATIA* and the *PA* that authorizes the head of the government institution to refuse to disclose information under the *ATIA* or under the *PA* in response to an access request under those *Acts*.

Financial, commercial, scientific or technical information – information relating to material that is commonly referred to as such, in keeping with the ordinary dictionary definition of those terms. It is sufficient that matters relate or pertain to those matters as those terms are commonly understood.

Government Institution – any federal government department, ministry of state, body or office listed in the schedules to the *Acts*. The term “government institution” does not include Minister’s Offices.

Greater Interest – an institution has greater interest in a record if that record was originally produced in or for the institution, or where the institution was the first to receive the record or a copy of it.

Head – is the Minister in the case of a department or ministry of state. In any other case, it is the person designated by the *Access to Information Act Heads of Government Institutions Designation Order* or the *Privacy Act Heads of Government Institutions Designation Order*.

Information Commissioner / Privacy Commissioner – are Officers of Parliament with the powers of ombudsmen who are appointed by Governor in Council.

Info Source – a series of annual Treasury Board of Canada Secretariat publications in which government institutions are required to describe their organizations, program responsibilities and information holdings, including classes of records. The information is to contain sufficient clarity and detail to assist individuals in exercising their rights under the *Acts*. The publications also provide contact information for government institutions and agencies as well as summaries of court cases and statistics on access requests under the *Acts*.

Manual – set of directives, instructions, guidelines or procedures used by employees in administering or carrying out operational programs or activities.

Need to Know – an information handling principle that limits access to information to only those employees whose duties require access to the information. Employees are not entitled to access information simply because of their status or rank within an organization.

New Consistent Use – a consistent use that was not originally identified in the appropriate Personal Information Bank (PIB) description in the government institution's chapter in *Info Source*.

Non-Administrative Purpose – is the use of personal information for a purpose that is not related to any decision-making process that directly affects the individual. This includes the use of personal information for research, statistical, audit and evaluation purposes.

Office of Primary Interest (OPI) – the branch, program area or individual which holds the records or information that has been requested under the *ATIA* or the *PA*. In the case of the OPC, the OPI is usually a branch.

Personal Information – “information about an identifiable individual that is recorded in any form” (section 3 of the *PA* – see Appendix G of this manual).

Privacy – the fundamental right to control the collection, retention, use and disclosure of our own personal information.

Privacy Protocol – a set of documented procedures to be followed when using personal information for non-administrative purposes including research, statistical, audit and evaluation purposes. These procedures are to ensure that the individual's personal information is handled in a manner that is consistent with the principles of the *PA*.

Program or activity – is, for the purposes of the appropriate collection, use or disclosure of personal information by government institutions, a program or activity authorized or approved by Parliament. Parliamentary authority is usually contained in an Act of Parliament or subsequent Regulations. Parliamentary authority can also be in the form of approval of expenditures proposed in the Estimates and as authorized by an appropriation Act. Also included in this definition are any activities conducted as part of the administration of the program.

Record – “any documentary material regardless of medium or form” (section 3 of the *ATIA* – see Appendix F of this manual).

Representative – a person authorized by an applicant or complainant to act on his or her behalf with respect to requests or complaints under the *Acts*.

Request – a request to obtain records under the *ATIA* or to obtain personal information under the *PA*. Also, a request for the correction of personal information under the *PA*.

Requester – a person seeking access to records under the *ATIA* or to personal information under the *PA*. Also, a person requesting the correction of his/her personal information under the *PA*.

Retention and Disposal Standards – a timetable for the length of time institutional records are maintained within an institution—when they are no longer required to meet operational, legal or other requirements.

Severability – relates to the *ATIA* principle in which the protection of information from disclosure must be limited to the portions of information or material that the head of the government institutions is authorized or obligated to refuse to disclose under the *ATIA*. The principle applies to records that are the subject of an access request under the *ATIA*. (see section 25 of the *ATIA*)

Third Party – any person, group of persons or organization other than the person that made the request or a government institution (see section 3 of the *ATIA* – see Appendix F of this manual).

Appendix A – Access to Information Act Request Form

Instructions

- http://www.tbs-sct.gc.ca/tbsf-fsct/350-57_e.asp

Forms

- [Access to Information Request Form \(TBC/CTC 350-57\) \(RTF\)](#)
- [Access to Information Request Form \(TBC/CTC 350-57\) \(PDF\)](#)

Appendix B – *Privacy Act Request Form*

Instructions

- http://www.tbs-sct.gc.ca/tbsf-fsct/350-58_e.asp

Forms

- [Personal Information Request Form \(TBC/CTC 350-58\) \(RTF\)](#)
- [Personal Information Request Form \(TBC/CTC 350-58\) \(PDF\)](#)

Appendix C – Tasking Memorandum

The ATIP Office has received a request under the **Access to Information Act**.

Le Bureau de l'AIPRP a reçu une demande en vertu de la **Loi sur l'accès à l'information**.

[TEXT]

Our file:
Source :

OPI :

Notre dossier :
Provenance :

BPR :

Note to OPI

Note au bureau de première responsabilité

Please compile the information relevant to the request, review for sensitivity and provide your recommendations concerning exemptions you consider applicable. Should you consider the information sensitive, please ensure Q's and A's are drafted.

Auriez-vous l'obligeance de me faire parvenir tous les documents pertinents à la demande. De plus, il vous incombe d'examiner les documents afin d'identifier les parties sensibles et le cas échéant, de nous fournir une recommandation quant aux exceptions à invoquer. Si vous êtes d'avis que les renseignements visés par la demande revêtent d'une sensibilité, vous êtes priés de fournir une fiche de questions / réponses.

In order to meet the due date, your response is required by close of business [Give 5 DAYS].

Afin que nous puissions répondre dans les délais prévus par la Loi, votre réponse est due au plus tard le [Donnez 5 jours].

If more than five (5) hours of search time is required to compile the records, please provide a time estimate rather than continuing the search.

Si plus de cinq (5) heures sont nécessaires pour effectuer la recherche des documents, je vous saurais gré de cesser la recherche et de me faire parvenir un estimé du temps requis pour identifier tous les documents pertinents.

Should you have any questions or concerns with the above, please contact me immediately.

Si vous avez des questions, communiquer avec moi immédiatement.

Thank you for your co-operation.

Merci de votre collaboration.

Jan Peszat
Director, ATIP
995-3503

Appendix D – Fee and Fee Waiver Policy

The *Access to Information Act (ATIA)* authorizes fees for certain activities related to the processing of formal requests under the *ATIA*. The fee structure is outlined in section 11 of the *ATIA* and section 7 of the *Regulations*. The *ATIA* permits the waiving of fees when the head of the institution decides that it is in the public interest to do so. This policy provides guidance to the OPC in ensuring a consistent approach in charging fees under the *ATIA*.

(NOTE: this *Policy* does not apply to requests made under the *Privacy Act (PA)* as no fees of any kind are chargeable under that *Act*).

Chargeable / Non-Chargeable Fees

The OPC cannot charge fees for:

- reviewing documents to determine whether they are exempt or excluded;
- maintaining statistics or documentation relating to the administration of the *ATIA*;
- filing documents (including filing requests and re-filing records);
- providing facilities for processing requests or for public access to records;
- shipping requested information (including the cost of normal and first class mailing).

The OPC will charge the following fees:

Application: \$5.00 at the time the request is made.

Search: \$2.50 per person per every ¼ hour in excess of 5 hours where an employee(s) must search for the information requested.

Preparation: \$2.50 per person per every ¼ hour in excess of 5 hours for time spent physically marking exemptions/exclusions or using ATIP redaction software to do so. This includes situations where ATIP is applying exemptions and/or exclusions recommended by other institutions.

Reproduction:

- \$0.20 per page of photocopying (not more than 21.5 cm by 35.5 cm);
- \$0.40 per fiche for microfiche duplication, non-silver;
- \$12.00 per 30.5m roll for 16 mm microfilm duplication, non-silver;
- \$14.00 per 30.5m roll for 35 mm microfilm duplication, non-silver;
- \$0.25 per page for microform (microfilm and microfiches) to paper duplication;
- \$25.00 per 731.5 m reel for magnetic tape-to-tape duplication;
- \$0.05 per page of Braille, on paper (not more than 21.5 cm by 35.5 cm);

- \$0.05 per page of large print, on paper (not more than 21.5 cm by 35.5 cm);
- \$2.50 onto (per) audiocassette;
- \$2.00 onto (per) 3" microcomputer diskette;
- \$16.50 per minute for the cost of the central processor and all locally attached devices, and/or;
- \$5.00 per person per every ¼ hour for time spent on programming a computer.

Fees Procedure

The first five hours of search time will always be borne by the OPC. However, search fees will be assessed in all cases where the search is more than 5 hours.

If more than 5 hours is required, the search itself will be halted and the applicant will be given a written estimate of the total amount of time required to locate the requested information and of the fee that must be paid before the search will continue. Dependent upon the amount of the fee assessed, the applicant may be asked to pay a deposit (by certified cheque or money order) which is usually half of the estimated fee. The applicant will be given a date by which the fee or deposit must be paid and he/she will be advised that the request will be considered to have been abandoned if the sum is not paid by that date. The applicant will also be notified of his/her right to file a complaint with the Information Commissioner concerning the fees assessed.

Once the fee estimate letter has been sent, the time limit for the processing of the request will stop-clock and will not re-start until the fee or the deposit is paid. If the required fee is not received by the date indicated in the fee assessment letter, the request will be abandoned.

If the applicant has paid the fee, the search has resumed and the records are ready for release, a final written notice will be sent to the applicant requesting the remainder of the fees. Again, a date will be provided by which the remaining fee must be received and he/she will be advised that the request will be considered to have been abandoned if the final sum is not paid by that date. The time limit for processing the request will stop until the balance is paid.

All fees must be paid by the applicant before access will be given.

If in the end the deposit paid by the applicant exceeds the actual final cost of providing access, ATIP will refund the excess portion that the applicant paid.

Fee Waivers

Subsection 11(6) of the *Act* provides that the head of a government institution may waive, reduce or refund any fees payable under the *Act* and the *Regulations*. The

decision to waive, reduce or refund fees will be made by ATIP on a case-by-case basis by assessing:

- whether the information is normally made available without a charge;
- the degree to which a general public benefit is obtained through the release of the information;
- whether an applicant is requesting access to his/hers own investigation file(s).

It should be noted that the requester's circumstances reasons for seeking access to information may be taken into consideration in a fee waiver decision, even though those same reasons cannot be taken into consideration when deciding whether to grant access to information.

Access Requests

The OPC ATIP Unit's policy is to:

- refund the \$5.00 application fee if the requested information is available in another process which would provide full access ie. during an ongoing harassment investigation, or under compassionate grounds;
- waive search, preparation and reproduction fees where the recoverable amount is less than \$25.00 ie. where the only applicable fee is \$2.00 for a CD-Rom, where the photocopies are less than 125 pages, or where the search and preparation fees are negligible;
- waive the search, preparation and/or reproductions fees if ATIP has not given the requester proper written notice of such fees within 30-calendar days;
- consider waiving all fees associated with preparing the records in a format that allows a person with a sensory disability to read or listen to the records, and;

consider waiving all fees if the OPC is late in responding to the requester and finds itself in a "deemed refusal" situation.

Appendix E – *Privacy Act* Correction Request Form

Instructions

http://www.tbs-sct.gc.ca/tbsf-fsct/350-11_e.asp

Forms

[Record Correction Request Form \(TBC/CTC 350-11\) \(PDF\)](#)

Appendix F – Access to Information Act and Regulations

Act

Access to Information Act (R.S., 1985, c. A-1) from Justice Canada Web site:
<http://laws.justice.gc.ca/en/a-1/8.html>

Regulations

Access to Information Regulations (SOR/83-507) from Justice Canada Web site:
<http://laws.justice.gc.ca/en/A-1/SOR-83-507/45.html>

Appendix G – *Privacy Act and Regulations*

Act

Privacy Act (R.S., 1985, c. P-21) from Justice Canada Web site:
<http://laws.justice.gc.ca/en/showtdm/cs/P-21>

Regulations

Privacy Regulations (SOR/83-508) from Justice Canada Web site:
<http://laws.justice.gc.ca/en/showtdm/cr/SOR-83-508/?showtoc=&instrumentnumber=SOR-83-508>