

## Canada

# Testing Access to Information Systems during the COVID-19 Pandemic

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## Introduction<sup>1</sup>

The COVID-19 pandemic has rocked government operations around the world and Canadian public authorities have not been immune to its challenges. The health restrictions that have been put in place because of the pandemic have transformed the operations of government, with many staff members being required to work from home leading, among other things, to limited access to physical records.

At the same time, the exigencies of the pandemic have led to governments making enormously important decisions which have had a profound impact on Canadians' health, rights and well-being in general, not to mention the Canadian economy. The need for accountability is thus high and yet many accountability systems, including parliament and oversight bodies, have been hobbled or at least hindered by the very same pandemic restrictions. As a result, robust public access to information held by government is more important than ever to ensuring Canadians can hold their government to account for the actions it has and is taking during this time of crisis. For this reason, it is crucially important that procedures for making requests for information under the Access to Information Act<sup>2</sup> (Act) are maintained and that workarounds are found for any barriers as soon as is reasonably possible, including adapting access systems to remote working arrangements.<sup>3</sup>

At the federal level in Canada, no legal changes were made which would permit public authorities to deviate from their obligations under the Act during this period. Reflecting this, in March 2020, the Canadian Information Commissioner issued a notice reminding authorities of the following:

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<sup>1</sup> This Report was prepared by Caitlin Shropp and Parker Byrne, Pro-Bono Students from Schulich School of Law, with support from Laura Notess, Legal Officer at CLD, and Toby Mendel, Executive Director at CLD. This work is licensed under the Creative Commons Attribution-Non Commercial-ShareAlike 3.0 Unported Licence. You are free to copy, distribute and display this work and to make derivative works, provided you give credit to Centre for Law and Democracy, do not use this work for commercial purposes and distribute any works derived from this publication under a licence identical to this one. To view a copy of this licence, visit: <http://creativecommons.org/licenses/by-nc-sa/3.0/>.

<sup>2</sup> R.S.C., 1985, c. A-1, <https://laws-lois.justice.gc.ca/eng/acts/a-1/>.

<sup>3</sup> For an in-depth discussion of government responsibilities regarding access to information during times of crisis, along with recommendations, see CLD, *Maintaining Human Rights during Health Emergencies: Brief on Standards Regarding the Right to Information*, May 2020, [https://www.law-democracy.org/live/wp-content/uploads/2020/05/RTI-and-COVID-19-Briefing.20-05-27.Final\\_.pdf](https://www.law-democracy.org/live/wp-content/uploads/2020/05/RTI-and-COVID-19-Briefing.20-05-27.Final_.pdf).

The OIC is asking institutions to take all reasonable measures to limit the impact on individuals' right of access to information, and to advise access requesters of their reduced capacity to process access requests.<sup>4</sup>

Legally, public authorities are obliged to respond to requests for information within 30 days.<sup>5</sup> Extensions are allowed rather flexibly “for a reasonable period of time”, but these must be justified on the basis of one of the three following grounds: 1) the request is for a large number of records or requires a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the authority; 2) consultations are needed to complete the request which cannot reasonably be completed within the original time limit; or 3) notice has been given to third parties whose rights may be impacted by the request.<sup>6</sup> These rules continue to apply during the pandemic and they do not appear to allow for much accommodation to take into account inconveniences due to pandemic restrictions, although arguably the interpretation of what would unreasonably interfere with operations would be affected.

The evidence seems to suggest that some public authorities have failed to respect their legal obligations under the Act during the pandemic. For example, in December 2020, the Information Commissioner reported on an investigation which found that Canadian Heritage had improperly ceased processing access to information requests during the first months of the COVID-19 pandemic.<sup>7</sup>

To assess how far this had gone and what ways it might have manifested itself, in November 2020 the Centre for Law and Democracy (CLD) undertook an empirical evaluation of responses to requests for information, based on lodging a series of test requests with different Canadian public authorities. CLD has previously tested the quality of implementation of Canada's access to information law using a methodology developed by the civil society network FOIANet.<sup>8</sup> The current assessment did not use the full FOIANet methodology, which

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<sup>4</sup> Office of the Information Commissioner, Statement on the Impact of the COVID-19 Pandemic, 20 March 2020, <https://www.oic-ci.gc.ca/en/resources/news-releases/statement-office-information-commissioner-impact-covid-19-pandemic>.

<sup>5</sup> See section 7 of the Act.

<sup>6</sup> Act, section 9(1).

<sup>7</sup> Office of the Information Commissioner, Canadian Heritage (re), 2020 OIC 10, OIC file number: 5820-00645, 16 December 2020, <https://www.oic-ci.gc.ca/en/canadian-heritage-re-2020-oic-10>.

<sup>8</sup> FOIANet is the leading global civil society network focusing on access to information issue. The methodology in question is available at [https://foiadvocates.net/?page\\_id=11036](https://foiadvocates.net/?page_id=11036). See, for example, Parallel Report on Canada's Compliance with SDG 16.10.2, 28 September 2017, <https://www.law-democracy.org/live/parallel-report-on-canadas-compliance-with-sdg-16-10-2/>.

looks at issues beyond responding to requests, such as proactive disclosure of information, and just applied a request testing approach, also part of the FOIANet methodology, to provide a snapshot of how well Canadian public authorities were doing in terms of processing requests during the pandemic. At the same time, we used the test requests to gather substantive information about requests received by different authorities during the pandemic.

## 1. Methodology

This assessment relied on two requests for information being submitted to 18 different federal public authorities. The authorities were selected to ensure diversity in terms of size, function (the nature of their work) and type of public authorities. An effort was also made to select authorities which received different numbers of requests. The 18 public authorities were:

1. Canada Border Services Agency (CBSA)
2. Canada Post
3. Canada Revenue Agency
4. Canadian Centre for Occupational Health and Safety (CCOHS)
5. Canadian Food Inspection Agency (CFIA)
6. Canadian Heritage
7. Canadian Human Rights Commission (CHRC)
8. Department of Finance
9. Department of Indigenous Services
10. Department of Justice
11. Employment and Social Development Canada
12. Global Affairs Canada (GAC)
13. Health Canada
14. Immigration and Refugee Board of Canada
15. Innovation, Science and Economic Development Canada (Department of Industry) (ISED)
16. Royal Canadian Mounted Police (RCMP)
17. Statistics Canada
18. Transport Canada

The two separate requests for information were submitted to each authority by different individuals. A complete list of the questions sent to each authority is provided in Appendix 1. All requests were submitted online using the [Government of Canada ATIP Request Portal](#)

and all instructions received were followed carefully. The requests were all submitted on 10 November 2020.

One request asked for the exact same information from each of the 18 authorities. The purpose was to gather what could be termed self-reporting information from the authorities themselves about their compliance with the access to information (ATI) rules during the COVID-19 pandemic. This request comprises four sub-questions, as follows:

*The ATIP Online Request Tool has posted a general notice of delay for institutions responding to requests to information. From among all of the access to information requests that [name of the institution] has received since 1 April 2020, how many (total number and percentage of all requests) were responded to beyond the initial 30-day time limit? From among these, for how many was the delay related to the COVID-19 pandemic? Again, from among these, in how many cases was notice of an extension provided to the applicant within the initial 30-day time limit? We are only interested in aggregated information and not in any details related to individual requests.*

Two other requests were submitted to ten of the 18 authorities, as follows:

- Five authorities were asked to disclose any work-from-home policies they had put in place due to the COVID-19 pandemic.
- Five authorities were asked about contracts which were signed or renewed during the early months of the COVID-19 pandemic.

The second request put to the eight other authorities did not have a direct relationship to the COVID-19 pandemic.

The purpose behind this mix of requests was to test the ability of authorities to respond to a range of questions, including those directly related to the pandemic and those with no direct relationship to the pandemic.

## 2. Results

### 2.1. Overall Compliance

In total, 61% of the requests were responded to within 30 days, while 64% were responded to within legislated timelines (i.e. beyond 30 days but within timely extensions). Most of the remaining requests were responded to, albeit late, although, concerningly, no response at all had been received June 2021 for four requests.

Table 1 provides a summary of the overall compliance of public authorities with legal time limits. Table 2 provides a more granular breakdown of the timeliness of each authority's responses, including when a final response (if any) was ultimately received, whether it came within the initial 30-day timeline, whether an extension was requested, and whether the authority was compliant with legal timelines (including any proper extensions).

**Table 1: Summary of Overall Compliance**

	Number	Percentage of total requests
Total requests submitted	36	100%
Requests responded to within 30 days*	22	61%
Requests responded to within legislated timelines (including timely extensions)	23	64%
Requests for which final responses were received	32	89%

\*Including suspensions of the 30-day time limit while clarifications were pending

**Table 2: Authority Specific Summary of Response Rate and Timeliness of Response**

		Submitted (2020)	Final response	Within 30 days*	Extension claimed	Compliant with legal timelines
CBSA	Q1	10 Nov	25 Nov	Yes	No	Yes
	Q2	10 Nov	1 Dec	Yes	No	Yes
Canada Post	Q1	10 Nov	10 Dec	Yes	No	Yes
	Q2	10 Nov	10 Dec	Yes	No	Yes
Canada Revenue Agency	Q1	10 Nov	10 Dec	Yes	No	Yes
	Q2	10 Nov	17 Dec	No	30 Nov, for 30 more days	Yes
CCOHS	Q1	10 Nov	17 Nov	Yes	No	Yes
	Q2	10 Nov	10 Dec	Yes	No	Yes
CFIA	Q1	10 Nov	10 Dec	Yes	No	Yes
	Q2	10 Nov	17 Nov	Yes	No	Yes
Canadian Heritage	Q1	10 Nov	18 Jan	No	No	No (late)
	Q2	10 Nov	18 Feb	No	No	No (late)
CHRC	Q1	10 Nov	8 Dec	Yes	No	Yes
	Q2	10 Nov	27 Nov	Yes	No	Yes

<b>Dept. of Finance</b>	Q1	10 Nov	None	No	No	No response
	Q2	10 Nov	4 May 2021	No	8 Dec, for 30 more days	No (late)
<b>Dept. of Indigenous Services</b>	Q1	10 Nov	6 Jan	No	No	No (late)
	Q2	10 Nov	12 Feb	No	22 Dec, for 30 more days	No (late)
<b>DOJ</b>	Q1	10 Nov	11 Dec	Yes*	No	Yes
	Q2	10 Nov	2 Dec	Yes	No	Yes
<b>Employment and Social Dev. Canada</b>	Q1	10 Nov	10 Dec	Yes	No	Yes
	Q2	10 Nov	10 Dec	Yes	No	Yes
<b>GAC</b>	Q1	10 Nov	3 Feb	No	8 Dec., for 30 more days	No (late)
	Q2	10 Nov	None	No	No	No response
<b>Health Canada</b>	Q1	10 Nov	17 Dec	No	No	No (late)
	Q2	10 Nov	19 Nov	Yes	No	Yes
<b>Immigration and Refugee Board</b>	Q1	10 Nov	31 Dec	Yes*	No	Yes
	Q2	10 Nov	11 Dec	Yes*	No	Yes
<b>ISED</b>	Q1	10 Nov	9 March 2021	No	No	No (late)
	Q2	10 Nov	None	No	No	No response
<b>RCMP</b>	Q1	10 Nov	22 Jan 2021	No	No	No (late)
	Q2	10 Nov	None	No	No	No response
<b>Statistics Canada</b>	Q1	10 Nov	17 Nov	Yes	No	Yes
	Q2	10 Nov	27 Nov	Yes	No	Yes
<b>Transport Canada</b>	Q1	10 Nov	2 Dec	Yes	No	Yes
	Q2	10 Nov	24 Nov	Yes	No	Yes

\*Takes into account suspensions of the time limit while clarifications were pending

Beyond timeliness, as captured in the two tables above, authorities have other obligations, such as either to disclose all of the information requested or (legitimately) claim an exception. As noted above, Question 1 involved four discrete sub-questions and authorities did not respond consistently to all four parts. Table 3 summarises the information provided by authorities in response to three parts of Question 1, namely the number and percent of requests closed beyond 30 days, and the number of times extensions were claimed. The last part of the question, namely whether delays were due to COVID-19, is discussed below.



As Table 3 shows, the information was provided in an inconsistent manner. This was partly due to varying interpretations of Question 1, but also partly due to authorities failing to answer all parts of the question or failing to explain clearly how they calculated the derived numbers they disclosed to us. Some authorities, rather than providing the requested information, provided spreadsheets of all requests from the relevant time period. While this meant more detailed information was provided, the spreadsheets themselves did not always provide the information necessary to answer the specific parts of Question 1.

Table 3 shows the number of requests authorities reported they had received between 1 April 2020 and, typically, 10 November 2020, although some authorities used a slightly different end date, such as a later day in November.

**Table 3: Disclosed Data: ATI Requests Since 1 April 2020**

	<b>Total number of requests</b>	<b># responded to beyond 30 days</b>	<b>% responded to beyond 30 days</b>	<b>% responded to beyond 30 days out of total closed</b>	<b>Extensions claimed and notice provided within the initial 30 days</b>
<b>CBSA</b>	3949 (3201 closed)	419	10.6%	13.9%	1375
<b>Canada Post</b>	46	18	39.1%	--	3
<b>Canada Revenue Agency</b>	1261	212	16.8%	--	24
<b>CCOHS</b>	Not provided	0	0%	0%	0
<b>CFIA *</b>	133 (95 closed)	30	22.6%	31.6%	48 of the 133 marked as extended, but no indication if timely notice was given
<b>Canadian Heritage</b>	295	186	63%	--	1
<b>CHRC</b>	24 (17 closed)	9	37.5%	52.9%	9 extensions of those closed; 13 of those received
<b>Dept. of Finance</b>	No response	No response	No response	--	No response

<b>Dept. of Indigenous Services*</b>	227 (39 closed)	27	11.9%	69%	112 of the 227 marked as extended, but no indication if timely notice given
<b>DOJ</b>	Not provided	63	Not provided	--	40, but no indication if timely notice was given
<b>Employment and Social Dev. Canada</b>	514	216	--	58%	110, notices were given, but not clear if they were all timely
<b>GAC</b>	Not provided	41	N/A	--	1, but not clear if timely notice was given
<b>Health Canada</b>	1197	211	18%	--	132
<b>Immigration and Refugee Board</b>	66	34	52%	--	3
<b>ISED*</b>	1031 (370 closed)	185**	17.9%	50.0%	166
<b>RCMP</b>	3164	2506	79.2%	--	4
<b>Statistics Canada</b>	49 (34 closed)	Not disclosed	N/A		11 extensions taken in first 30 days
<b>Transport Canada</b>	402 (205 closed)	26	--	12.6%	No records

\*Numbers based on our own calculations from provided spreadsheets

\*\*Calculated based on the difference between the receipt dates and the closing dates on the spreadsheet disclosed by ISED.

## 2.2. COVID-19-Specific Impacts on Responses

This section of the report looks at two different types of COVID-19-specific responses. The first comprises references to COVID-19 in communications relating to requests other than the actual responses to the requests. The second relates to the substantive information provided by public authorities in response to the Question 1 query about whether delays in responding to requests were due to the pandemic.

We received a range of communications about our requests from different public authorities, as well as the automated system for making requests. The online ATI portal used to submit requests hosted a general notice, at the time the requests were made, alerting requesters to possible delays in request processing as a result of reduced operational capacity during the

COVID-19 pandemic. In addition, upon submitting a request, the receipt which is generated automatically by the online system contained the following notice:

Our ability to respond to requests within the timelines mandated by the Access to Information Act and the Privacy Act may be affected by the exceptional measures put in place to curb the spread of the novel coronavirus (COVID-19) and protect the health and safety of Canadians. Access to information and personal information requests received from the public continue to be important to us. We will continue to make best efforts to respond to requests, in accordance with operational realities and the necessity to comply with direction concerning measures to mitigate the spread of COVID19 and to protect the health and well-being of federal employees and the public.

Thank you in advance for your patience and understanding as we all navigate these unprecedented challenges.

A number of individual public authorities also included information about the impact of COVID-19 on their processing of requests in their communications with us, for example in follow-up emails. Table 4 summarises the nature of these messages, while a table containing the direct quotes of the relevant communications is found in Appendix 4. These communications fell into three main categories: notice of possible delays or an inability to meet the legislated timelines; a request to limit the scope of the search to an electronic records search; and a request to provide responsive information electronically or in an electronic format such as via the government’s E-post Connect system.

**Table 4: References to COVID-19 Pandemic Impacts in Communications from Authorities**

	Y/N	Type
<b>CBSA</b>	Yes	<ul style="list-style-type: none"> <li>• Possible delays/inability to meet legislated timelines (Question 2)</li> <li>• Consent for only electronic records search (Question 2)</li> <li>• Reference to delivering requests electronically (Question 1)</li> </ul>
<b>Canada Post</b>	Yes	<ul style="list-style-type: none"> <li>• Possible delays/inability to meet legislated timelines (both questions)</li> </ul>
<b>Canada Revenue Agency</b>	Yes	<ul style="list-style-type: none"> <li>• Possible delays/inability to meet legislated timelines (Question 2)</li> <li>• Request to use E-post Connect (both questions)</li> </ul>
<b>CCOHS</b>	No	
<b>CFIA</b>	No	
<b>Canadian Heritage</b>	No	
<b>CHRC</b>		<ul style="list-style-type: none"> <li>• Possible delays/inability to meet legislated timelines (both questions)</li> <li>• Possible limitation to electronic records with physical records when staff return to the office (both questions)</li> </ul>
<b>Dept. of Finance</b>	No	

Dept. of Indigenous Services	Yes	<ul style="list-style-type: none"> <li>Will not be able to respond within legislated timelines (both questions)</li> </ul>
DOJ	No	
Employment and Social Dev. Canada	No	
GAC	No	
Health Canada	No	
Immigration and Refugee Board	No	
ISED	Yes	<ul style="list-style-type: none"> <li>Possible inability to comply with legal requirements (Question 2)</li> </ul>
RCMP	Yes	<ul style="list-style-type: none"> <li>General statement about limited capacity and impact on operations (both questions)</li> </ul>
Statistics Canada	No	
Transport Canada	Yes	<ul style="list-style-type: none"> <li>Possible delays/ inability to meet legislated timelines (Question 1)</li> </ul>

The last sub-question in Question 1 asked directly about how many requests had been delayed due to the COVID-19 pandemic. Public authorities varied in their interpretation of this question in two main respects. First, they variously reported the number of COVID-19 delayed requests as a proportion of the total number of requests or of the number responded to beyond 30 days, or failed to indicate how they arrived at the number provided. Second, they varied in their understanding of what constituted a request which had been delayed due to COVID-19. Table 5 summarises the information provided.

**Table 5: Disclosures under Question 1: Requests Delayed Due to COVID-19**

	Reply	# of COVID-19 delayed requests	Total requests received and closed past 30 days: <i>“Compare” means the authority did not indicate what pool the COVID-19 delayed requests were out of; “out of” means the number was drawn from the indicated class</i>	Comments on how the authority determined what counts as delays due to COVID-19
CBSA	Yes	22	Compare: 3949 received; 419 beyond 30 days	Unclear how calculated
Canada Post	Yes	3	Out of 46 received and 18 beyond 30 days	Unclear how calculated but noted 2 delayed because of external consultations that could not be completed in time due to COVID-19
Canada Revenue Agency	Unable	Said they could not respond because they could not isolate COVID-19 from other factors contributing to delays		
CCOHS	Yes	0	Out of 0 requests beyond 30 days	No delayed requests for any reason

CFIA	Yes	59	Compare: 133 received; 30 beyond 30 days	Identified with a COVID impacted key word search in their database
Canadian Heritage	Yes	186	Out of 295 received (63%); compare: 186 beyond 30 days	Appears they counted all delays as due to COVID-19
CHRC	Unable	Said unable to report on extensions taken due to COVID-19 since there was no section in the Act regarding COVID		
Dept. of Finance	No	<i>No response to the entire request</i>		
Dept. of Indigenous Services	No	<i>No information provided</i>		
DOJ	Yes	13	Compare: 63 beyond 30 days	Unclear how calculated. Sent a spreadsheet with a "COVID 19" column; possibly a database tag.
Employment and Social Dev. Canada	Yes	56	Out of 216 beyond 30 days; compare 514 received and closed	Unclear how calculated
GAC	Yes	38	Out of 41 beyond 30 days	Indicated that they do not specifically track requests impacted by COVID, but they estimate this number based simply on the date of requests responded to late.
Health Canada	Unable	Said they do not track delays related to COVID-19		
Immigration and Refugee Board	Yes	62	Out of 66 ; compare 34 beyond 30 days	Unclear how calculated
ISED	No	<i>No information provided</i>		
RCMP	Yes	352	Compare: 3164 received and 2506 beyond 30 days	Appears this number was calculated based on "COVID-19" tag in the system.
Statistics Canada	Yes	None	Compare: 49 received; 11 extensions claimed	Noted they could not claim extensions due to COVID-19 as directed by TBS/Information Commissioner
Transport Canada	No	<i>No information provided</i>		

As shown in Table 5, some authorities interpreted the question more narrowly to refer to formal extensions due to the COVID-19 pandemic while others took a much broader approach, apparently classifying all requests or all within a certain date range as impacted by the pandemic. Interestingly, yet others appeared to have an internal classification system

or tag in their electronic database for requests which they deemed to have been impacted by COVID-19. Overall, however, authorities provided little information on how they interpreted the question or how they identified requests as having been delayed by the pandemic.

A few authorities provided additional information or explanatory comments about how they handled requests during the pandemic:

- CHRC noted that they were only providing electronic records during the COVID period and that requesters were notified that paper records would only be provided once staff physically returned to the office.
- The Immigration and Refugee Board noted that they only claimed formal extensions for a small number of requests, “principally because these requests were submitted after our office was re-opened. On other requests, no extension was taken but applicants were informed about the current delay by both the TBS Website (when application was submitted) as well as by our institution in an acknowledgement email.”

### 3. Analysis

#### 3.1. Overall Compliance

Overall, the responses to our request testing exercise show that a majority of public authorities are capable of responding to at least simple requests which were submitted electronically in a timely manner despite COVID-19 constraints and have appropriately adapted their processes for this purpose. However, it is also of concern that such a significant minority of requests were closed late or, in four instances, not closed at all, showing that some public authorities are not reliably meeting their legal obligations under the Act.

We also have concerns about the relatively low quality of responses to Question 1, which had multiple parts. Question 1 was about ATI requests, something each public authority should be tracking properly and have clear records on. However, public authorities did not consistently answer all parts of Question 1 or did not provide adequate explanations or contextualisation for their answers. For example, our question asked for the total number and percent of requests which were closed late. Not all authorities provided an explanation of how the numbers and percentages the provided were calculated (such as out of what pool of total requests the number was drawn from), although others did. While a minimalist view of this request could deem this information not to be included in the request, the fact that a

number of authorities provided it, along with the common sense understanding that these numbers do not make sense without contextualisation, clearly suggests that a good reply should have explained how numbers were arrived at.

The fact that some public authorities simply ignored parts of this question was also very problematical. At a very minimum, if an authority deemed this to be a bundling of questions, it should have informed us about that and asked us to separate out the questions, which did not happen. Otherwise, failing to provide responses to all parts of the question was a direct failure to respect the Act.

Inconsistency in the responses here and the relatively lower quality of some responses suggests that public authorities in Canada, beyond the context of the pandemic, may need better guidance on how to collect and report on their own processing of ATI requests. Furthermore, a more standardised system for collecting and reporting on this data would be helpful, likely both for public authorities and for the public. In addition, there is a need for a more serious and compliant approach in responding to requests, which includes providing all of the information being sought by a requester and not merely just parts of it or perhaps those parts which are easiest to convey.

Substantively, the responses to Question 1 suggest that, across the board, public authorities are not responding to requests within 30 days and hence not meeting their legal obligations in regards to timeliness. It is not entirely clear to what extent these delays were due to the COVID-19 pandemic as opposed to just a continuation of pre-existing problems in this area, which have been well documented.<sup>9</sup> Several authorities appear to be severely backlogged, including some which receive large numbers of requests and should therefore have effective systems in place to process that volume. For example, the Department of Indigenous Services received 227 requests, of which it only 39 had been closed, of which a large majority (27) were still closed beyond 30 days. Similarly, of the 514 requests closed by Employment and Social Development Canada, 216 (58%) were closed past 30 days. Canadian Heritage closed 63% of the 295 requests it received past 30 days.

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<sup>9</sup> For example, the Information Commissioner has referred to a “culture of delay”. In 2018-2019, only 73% of requests were processed within time limits (including time extensions) and only 54% processed within 30 days. Both these percentages had already been trending downwards for several years prior to the onset of the pandemic. Information Commissioner, Observations and Recommendations from the Information Commissioner on the Government of Canada’s Review of the Access to Information Regime, January 2021, p. 10, <https://bit.ly/2Ymz0Tm> (summarising statistics from the Treasury Board of Canada).



We did not probe into the reasons for this and it is certainly possible that some delays were justifiable, although it seems hard to believe that such large percentages of requests could fall into the justified grounds for extensions. Furthermore, while some public authorities did claim extensions on some requests, overall the number of requests answered beyond 30 days for which this was not the case significantly outnumbered those for which proper extensions were taken.<sup>10</sup>

Many public authorities indicated the number of requests responded to late and the total number of requests received, but did not clearly identify how many requests were still ongoing. This may have been a weakness in our formulation of the question, which did not specifically ask for this information, although we would argue that an ongoing request which was already late should have been counted among the late requests. Regardless, this meant that we only had data on the percentage of requests closed past 30 days out of the total closed requests for seven authorities. Overall, data reported by authorities is likely to have undercounted the extent of request backlog, since in most cases it reported only those requests closed late (rather than those closed late and those still pending which were already beyond the 30 days). As such, our data on this point likely undercounts the extent of delayed responses and non-compliance with legislated timelines by several of the authorities.

One conclusion from this data is that many authorities appear to be poor performers during COVID-19, it should be highlighted that many authorities were already regularly failing to meet the time limits under the Act even prior to the pandemic. For example, a 2019 report found that the RCMP was responding to 92% of its requests past the legislated deadlines.<sup>11</sup> If the data reported to us was correct and was calculated in a comparable manner, the 79% figure it reported of requests responded to past 30 days between April and November 2020 actually suggests an improvement on pre-pandemic performance, although the RCMP is still one of the worst performers among the authorities included in our sample.

In summary, most authorities are managing to respond at least to simple requests submitted online during the pandemic. However, some authorities are not even meeting this basic requirement reliably. In addition, there are chronic issues across multiple authorities in terms

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<sup>10</sup> Compare, for example, 110 extensions claimed by Employment and Social Development Canada out of 216 requests responded to late (and it was not clear whether notices for these extensions were timely), 1 extension out of 41 responded to beyond 30 days for Global Affairs Canada, and 24 extensions by Canada Revenue Agency out of 212 requests responded to beyond 30 days.

<sup>11</sup> Office of the Information Commissioner, *Access at Issue: The Need for Leadership, Systemic Investigation of the RCMP, Special Report to Parliament*, 17 November 2020, <https://www.oic-ci.gc.ca/en/en/resources/reports-publications/access-issue-need-leadership>.



of the thoroughness with which requests are answered, the regularity with which requests are responded to past 30 days and compliance with legal requirements in the Act regarding timeliness.

### 3.2. Ease of Requesting Experience

The process of submitting test requests helps illustrate how easy it is to navigate the ATI system, including during a pandemic. Access to information processes should be accessible to ordinary Canadians, whether or not they have specialised knowledge or expertise on this issue. This section summarises our requesters' subjective experiences with the requesting process and offers some comments on where and how the requesting experience could be improved.

#### 3.2.1. Positives

All of our requests could be submitted online, an important accessibility feature that was doubly crucial during the pandemic, although that was in part due to the way we selected public authorities. Canada has a central online portal for submitting requests and, although not all authorities accepted requests through this platform during our test, the goal is for all authorities to transition to using the portal by the end of 2021. At the time of our exercise, some public authorities, including some larger bodies such as the Canadian Broadcasting Corporation, were still requiring ATI requests to be submitted by mail.

Another positive feature of the requesting experience was that many public authorities engaged worked with our requesters to clarify requests to ensure that the requester received the desired information. This frequently included an email from the information officer with a suggested restatement or change in the scope of the request, either to clarify or to align it with the records they kept. Although in some cases these interactions were not always as helpful as they could have been or focused on technicalities rather than substance, these engagements were generally positive and, overall, should enable better communications with requesters over the nature of the information sought. Our requesters were relatively restrained in engaging so as to avoid skewing the results, but when an authority took an active role in reshaping the request, this led to mutually beneficial outcomes.

One authority (the Immigration and Refugee Board of Canada) even followed up after not hearing back on a request for clarification. This was very positive; the authority could simply have allowed the request to lapse but, instead, it prompted the requester thereby ensuring that a mistake, such as forgetting to respond to an email, did not completely derail the whole

requesting process. In doing this, the authority sent a message to the public that it cares about addressing ATI requests efficiently and in a user-friendly manner.

### 3.2.2. Areas for Improvement

Several authorities informed our requesters that they do not answer questions but only provide access to records that they hold. This was unnecessarily pedantic since the reformulations involved in these cases were typically minor language edits to remove the question phraseology rather than substantive changes. These responses appear to be based on the fact that public authorities are not obliged to create new records in order to respond to questions. The ATI Manual for public authorities offers model language for asking requesters to clarify a request where the request asks questions which would require the creation of new records instead of merely providing access to existing records.<sup>12</sup> In our experience, however, this approach was used more as a bureaucratic barrier to respond to requests which were for existing records, albeit formally posed as questions, rather than a real statement of the non-obligation to generate new records.

For most people, the intuitive approach to filing an ATI request is to phrase the request as a question about the information sought. There is no reason why such requests should not be responded to directly, where they do not require the creation of new records. The fact that many public authorities were accommodating of this approach shows clearly that this is not an issue for them. When the requirement to phrase requests formally as statements asking for existing documents is used as a barrier to otherwise perfectly legitimate request, this is inefficient and unnecessary. It is likely to put off requesters, may result in confusion for some and otherwise just wastes time and effort (for both requesters and officials). As such, it is clearly not a better practice for engaging with requesters.

There were a few where public authorities were inconsistent in their correspondence. For instance, the authority would ask for consent to correspond using a certain form of communication, such as the personal email address of the requester, and then not use this form of communication once consent was received. This is both illogical and inconsistent.

A service called epost Connect was used to deliver many of the records. There were a host of problems with epost Connect. First, there was an inconsistent approach to consent to use this service among public authorities. Some sought permission from the requester to use epost

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<sup>12</sup> Treasury Board Secretariat, *Access to Information Manual*, Model Letter 3, <https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/access-information/access-information-manual.html>.

Connect while others did not and just sent the material through that service, regardless of what the requester might want. Additionally, some of the messages sent through epost Connect would disappear after an assigned expiry date. This meant that if the correspondence was not downloaded fairly quickly, there was a risk of losing access to it. This could include access to the information requested.

Overall, using epost Connect was not a user-friendly experience. Given that the information could simply have been emailed or delivered using other electronic means, this seemed like an unnecessary complication. While epost Connect may provide added security appropriate for materials containing personal information requested under the Privacy Act, this security was not needed for access to information requests submitted for this report. Indeed, the fact that many authorities replied to requests through email clearly demonstrates that the use of epost Connect was unnecessary. At the same time, it is clearly preferable to the previous practice of sending information by CD-Rom, which was in place for many years despite the fact that these have not been able to be read by many computers for years.

With regard to the case management data, specifically, the format of the disclosed records suggested that a similar software was being used across authorities to track their processing of requests. Despite this, the consistency of both the content and format of responses varied widely across authorities. Additionally, the data was sometimes released in a format that limited further processing. For example, in one case the spreadsheet was saved as a non-searchable (picture) PDF rather than in a machine readable format such as excel. In another case, a spreadsheet was printed and mailed physically. A third spreadsheet was delivered in excel, but without clear headings or other explanations of what contents were contained in each data column.

Overall, responses to Question 1 were not made available in a manner which facilitated an understanding of the data by the requester or which would have allowed the data to be incorporated easily into research. This seriously undermines the ability of requesters to use information obtained via ATI requests effectively for research or comparative purposes, for example.

### 3.3. Adapting to COVID-19

#### 3.3.1. Tracking of COVID-19 Impacts by Public Authorities

One part of Question 1 asked authorities to identify the number of requests delayed due to the COVID-19 pandemic. This question was intentionally phrased broadly because we did

not have a clear understanding whether and, if so, to what extent authorities might be tracking the impact of COVID-19 on their processing of requests.

Three public authorities indicated that they were unable to answer this question but eleven others provided some sort of response to this question, indicating some level of internal tracking of COVID-19 impacts, although few details were provided (the remaining four failed to answer the question). Some public authorities appeared to count all requests within a certain time period as having been impacted by COVID. Interestingly, however, other authorities seemed to rely on some sort of tagging system within their database to identify COVID-19 impacted requests. This suggests that some more formal tracking of COVID-19 impacts may be possible. If so, this should be encouraged as it would be an important source of data for future research.

The most interesting information in response to this request came from the Canadian Food Inspection Agency, which disclosed a more detailed record than any other public authority of COVID-impacted requests from its database. This indicated the various ways in which COVID-19 had impacted its operations in relation to specific requests. Examples included reduced staffing resulting in a backlog in mailing out responses and importing records, restricted access to the office, connectivity issues due to work-from-home causing record access challenges, and certain other unspecified COVID-19 restrictions. All authorities should keep such detailed notes on COVID-19's impacts on individual requests as such records would represent a useful source for future research on how access to information systems should adapt to crises.

On the other hand, the fact that many authorities did not reply to this query, or stated that they were unable to report on COVID-19 impacts, indicates that public authorities are not monitoring closely the impact of COVID-19 on ATI requests. Clear guidance to public authorities on how to monitor COVID-19's impacts, and adapt accordingly, could help individual authorities adopt consistent record-keeping and response practices during COVID-19 and possible future pandemics or other crises.

### 3.3.2. Communications to Requesters Regarding COVID-19

Transparency with requesters about COVID-19 impacts is a better practice. Particularly in the early days of the pandemic, clear messaging about the operational capacity limitations of public authorities when responding to requests was important. For this reason, general notices on the ATI portal, for example, were appropriate.

However, over time, these general notices should be revisited. In particular, there is concern that such notices may be used as an excuse or reason for non-compliance with legal requirements even as public authorities return to full functionality in other areas of work. Greater attention should be paid to how messaging around COVID-19 should evolve over time, particularly as public authorities adapt, which is also important in terms of public relations.

Further concerns arise in the practices of individual public authorities in notifying requesters about COVID-19 impacts. Many authorities, even in late 2020 (when most communications with our requesters occurred), included automatic notices of COVID-19 delays in all communications. By that point, authorities should have begun to develop more tailored communications. For example, they should have provided more specific information on the extent to which their operations continued to be impacted by COVID-19, instead of continuing to issue a generic disclaimer. Even better, they could have switched to a system which notified requesters on a case-by-case basis if their request would be impacted by COVID-19.

Positively, several authorities were careful to stress that they could not claim extensions based simply on COVID-19 and that legal timelines remained in place. However, in a few cases, communications with our requesters implied that authorities were relying on COVID-19 as a catch-all excuse for delays in replying to requests. For example, the Department of Indigenous Services sent a reply to both questions indicating that their ability to meet the legislated timelines “will” be impacted by COVID-19 (as opposed to “may”, as other authorities stipulated). Similarly, some responses to Question 1, such as one from Canadian Heritage which appeared to count all delayed requests as having resulting from COVID-19, suggest that some authorities were taking a blanket approach to assuming that all requests would be impacted by COVID-19.

While COVID-19 has caused some very real complications for public authorities, it is troubling that some authorities continue to cite COVID-19 immediately as a potential basis for delay in responding to ATI requests, without properly tying this to a valid basis for extension under the Act, whether that is caused by COVID-19 or something else. The reality is that in many cases the operational challenges resulting from measures put in place to curb COVID-19 alone will not sustain a valid extension. Section 9(1)(a) of the Act permits an extension when the request is for a large number of records or requires a search through a large number of records, *and* meeting the original time limit would amount to an unreasonable interference with the operations of the authority. COVID-19 may be a factor in

interpreting what constitutes an unreasonable interference, but is not, of itself, a legal reason for claim an extension.

It is not clear if the government has developed clear guidance on extensions during COVID-19. Out of our test requests, only four public authorities notified us of an extension. One of these improperly used “and/or” when referring to the large number of records and unreasonable interference requirements, whereas only “and” is appropriate. None provided specific reasons for the extension, such as an explanation of why responding to the request in a timely manner would unreasonably interfere with their work. It seems that some authorities view COVID-19, on its own, as justifying extensions or even as justifying delayed responses without an extension. Much greater transparency, not to mention strict fidelity to the legal requirements of the Act, is needed from public authorities on the reasons for delays in responding to requests during the pandemic, the practical reasons for those delays and any legal grounds relied upon to justify extensions.

Understandably, the COVID-19 pandemic and the various measures put in place to keep people safe have made it more difficult to respond to ATI requests in a timely manner. However, this does not excuse using the pandemic as a “catch-all” excuse for ATI delays. Public authorities should still make their best effort to respond in a timely manner and, when an extension is required, cite the appropriate provisions of the Act to ensure that the extension is valid.

Finally, some responses to our requests suggest that access to information has not been appropriately prioritised by public authorities during the pandemic. Even in late 2020, authorities indicated to us that they would be unable to search non-electronic records until staff returned to the office, for example. While work-from-home arrangements may have been deemed a public health necessity for most staff, it is not clear why one or two designated employees could not occasionally return to the office to complete searches of paper records or otherwise handle access to information issues that cannot be resolved remotely. We are aware that public authorities put in place such arrangements to handle other business that needed to be conducted in person. Simple procedures can be designed to maintain ATI responsiveness which take account of public health concerns. The fact that such procedures appear to be absent suggests that public authorities are not appropriately prioritising access to information during the pandemic.



## Recommendations

- General recommendations:
  - Public authorities should continue to provide assistance and direction to requesters with a view to reframing requests but should also avoid being overly formalistic when doing so.
  - Greater consistency should be encouraged among public authorities regarding how to handle correspondence with requesters, particularly electronic correspondence. While requesters should always have the option of non-electronic communication or receipt of requests, simple electronic forms of communication should be prioritised. Complex systems like epost Connect should not be used unless the requester consents to this and, generally, they provide clear advantages. Otherwise, over the medium-term, epost Connect should be reformed to make it more user friendly.
  - Public authorities should always respond to requests thoroughly and precisely, including with explanatory information where that is necessary to interpret data extracted from more extensive records.
  - Data should be shared in a manner which is amenable to machine processing and use by researchers.
  - The government as a whole, as well as individual public authorities, should devote significant attention to addressing the persistent failure of public authorities to comply with legal obligations in the Act regarding timeliness of responses.
- Recommendations for adapting to the COVID-19 and potentially other pandemics:
  - Authorities should provide requesters with more precise, accurate and current information about how COVID-19 is impacting their operations at this stage of the pandemic and they should regularly review and update this information.
  - Default language regarding COVID-19 impacts on requests, which were developed earlier on, should be rewritten and periodically revised to ensure it evolves as public authorities adapt to pandemic realities.
  - Access to information staff should be provided with clearer legal guidance on the inappropriateness of relying on COVID-19, *per se*, as justification for delayed responses and when COVID-19 may properly be incorporated into legal grounds under the Act for extensions. Similarly, clearer guidance should be given as to how to communicate with requesters about the impact of COVID-19 on access to information, particularly in relation to delays.
  - The government should prioritise access to information during the pandemic and ensure that sufficient resources are made available to public authorities to ensure that access to information procedures adapt to remote work arrangements and other COVID-19 impacts. In this regard, a temporary increase in resources may be necessary to handle outstanding backlogs and other challenges.

## Appendix 1: Authorities Selected and Questions Submitted

### Question 1: COVID-Era Data on Requests (all 18 authorities)

*Question:* The ATIP Online Request Tool has posted a general notice of delay for authorities responding to requests to information. From among all of the access to information requests that [name of the institution] has received since 1 April 2020, how many (total number and percentage of all requests) were responded to beyond the initial 30-day time limit? From among these, for how many was the delay related to the COVID-19 pandemic? Again, from among these, in how many cases was notice of an extension provided to the applicant within the initial 30-day time limit? We are only interested in aggregated information and not in any details related to individual requests.

*Submitted to:*

1. Canada Post
2. Department of Justice
3. Employment and Social Development Canada
4. Department of Finance
5. Health Canada
6. Department of Indigenous Services
7. Global Affairs Canada
8. Transport Canada
9. Canadian Heritage
10. Innovation, Science and Economic Development Canada (Department of Industry)
11. Canada Revenue Agency
12. Royal Canadian Mounted Police
13. Statistics Canada
14. Canadian Human Rights Commission
15. Canadian Centre for Occupational Health and Safety
16. Immigration and Refugee Board of Canada
17. Canadian Food Inspection Agency
18. Canada Border Services Agency

### Question 2:

*Question:* COVID-19 Work from Home Policy (5 Authorities). Please provide any work from home policies for employees of [name of institution] that were put in place due to the COVID-19 pandemic.



*Submitted to:*

1. Department of Justice
2. Department of Indigenous Services
3. Canadian Heritage
4. Innovation, Science and Economic Development Canada (Department of Industry)
5. Canadian Human Rights Commission

*Question: COVID-19 Contracts (5 Authorities):* Please provide a list of the vendor, contract value, and product name for all new or renewed contracts for the use of software for the benefit of [name of institution] that were concluded between 1 April 2020 and 30 June 2020.

*Submitted to:*

1. Department of Finance
2. Global Affairs Canada
3. Canada Revenue Agency
4. Statistics Canada
5. Immigration and Refugee Board of Canada

*Institution Specific questions:*

- Canada Post: Are there currently any maps or other documents indicating the locations where post can be dropped off to be delivered, not including manned outlets offering postal services, in the city of Halifax? If so, please provide.
- Employment and Social Development Canada: Of the total number of incidents of Employment Insurance overpayment due to fraud that occurred in 2019, how many instances were characterised as “major”?
- Health Canada: Of all consumer product recalls issued in 2019, how many (total number and percentage) were issued as a result of possible or confirmed microbial contamination?
- Transport Canada: How many drone incident report forms were filed in 2019?
- Royal Canadian Mounted Police: In 2019, what was the most frequent reason given for denying a firearm licence application for individuals over the age of 18?
- Canadian Centre for Occupational Health and Safety: Please provide the number of individuals who participated in online courses offered by CCOHS in both September 2019 and September 2020?
- Canadian Food Inspection Agency: Of all meat product recalls issued in 2019, how many (total number and percentage) were issued as a result of possible or confirmed E. coli contamination?

- Canada Border Services Agency: In 2019, how many incidents occurred where animals were refused entry, detained or confiscated by Canada Border Services Agency officers because of being transported in a non-humane way and not being kept safe from harm and injury?

## Appendix 2: Responses from Each Public Authority

Canada Border Services Agency	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	Yes (rescope of question) – 12 November 2020
Clarification provided?	N/A	Yes, 12 November 2020
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes, 25 November 2020	Yes, 1 December 2020
Comments and Critiques		

Canada Post	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	Yes – 11 November 2020
Clarification provided?	N/A	Yes – 11 November 2020
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A

Final response received?	Yes – 10 December 2020	Yes – 10 December 2020
Comments and Critiques		The final response severed portions of the disclosed records pursuant to section 25 of the Access to Information Act. The severed portions were said to qualify under s.16(2)(c) and s.18.1(1)(a) of the Act.

<b>Canada Revenue Agency</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	Yes – confirm interpretation of request – 25 November 2020
Clarification provided?	N/A	Yes – 25 November 2020
Extension request made?	No	Yes
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	Yes – cites paragraph 9(1)(a) of the Access to Information Act since meeting the original time limit would unreasonably interfere with the CRA’s operations.
Final response received?	Yes - 10 December 2020	Yes – 17 December 2020
Comments and Critiques	Acknowledgement was sent by mail, but the remaining information was sent by epost Connect.	CRA required authorisation for unencrypted email contact with the ATI requester.  CRA also required the ATI requester to consent to their use of epost Connect to deliver the response package.

<b>Canadian Centre for Occupational Health and Safety</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	No
Clarification provided?	N/A	N/A
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes - 17 November 2020	Yes – 10 December 2020
Comments and Critiques	No data was disclosed, only a statement of complete compliance was made.	

<b>Canadian Food Inspection Agency</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	Yes – cannot answer questions (need a clear request for documents presently held).	Yes – cannot answer questions (need a clear request for documents presently held) – 13 November 2020.
Clarification provided?	Yes	Yes – 13 November 2020
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes - 10 December 2020	Yes – 17 November 2020

Comments and Critiques		Final response was a link to a website that was responsive to the question. The institution was then informed, on this basis, that the request could be abandoned. Accordingly, the request was closed.
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<b>Canadian Heritage</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	No
Clarification provided?	N/A	N/A
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes – 18 January 2021	Yes – 18 February 2021
Comments and Critiques		The final response was a document called “Telework: A Decision-Making Guide.” It was provided both in English and in French.

<b>Canadian Human Rights Commission</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	No
Clarification provided?	N/A	N/A
Extension request made?	No	No

Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes – 8 December 2020	Yes – 27 November 2020
Comments and Critiques		The acknowledgment letter said the only records that could be released would only be those in electronic format until workers were back in the office.

<b>Department of Finance</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	Yes – 19 November 2020
Clarification provided?	N/A	Yes – 19 November 2020
Extension request made?	No	Yes – 8 December 2020
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	Yes – cites paragraph 9(1)(a) of the Access to Information Act – “the extension is required due to the large volume of records involved and/or interference to government operations.”
Final response received?	No	Yes – 4 May 2021
Comments and Critiques	This is the only institution for which no communication was received at all for this question.	

<b>Department of Indigenous Services</b>	<u>Question 1</u>	<u>Question 2</u>

Clarification requested by institution?	No	Yes – 13 November 2020
Clarification provided?	N/A	Yes – 13 November 2020
Extension request made?	No	Yes – 22 December 2020
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	No – not within 30 days of original request, though it does cite paragraph 9(1)(a) of the Access to Information Act.
Final response received?	Yes – 6 January, 2021	Yes – 12 February 2021  The same response package was received from a different individual on 10 March 2021.
Comments and Critiques		The response package contained many policies relating to work from home, including a policy “Guidance on Remote Work Expenses,” “Procedure for the Provision of Office Chairs and Desks to Support Remote Work,” “Remote Work Form,” and “Guide on Remote Work: Q&As.” Some of the policies are provided in both French and English.

<b>Department of Justice</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	Yes – 16 November 2020	No
Clarification provided?	Yes – 16 November 2020	N/A
Extension request made?	No	No

Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes - 11 December 2020	Yes – 2 December 2020
Comments and Critiques		

<b>Employment and Social Development Canada</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	No
Clarification provided?	N/A	N/A
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes – 10 December 2020	Yes – 10 December 2020
Comments and Critiques		

<b>Global Affairs Canada</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	No
Clarification provided?	N/A	N/A
Extension request made?	Yes	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	No - states that meeting original timeline would unreasonably interfere with the operations of the	N/A



within 30 days of original request]	department, but makes no mention of a large number of records.	
Final response received?	Yes - received 3 February 2021	No
Comments and Critiques	The response indicated that “GAC did not explicitly keep track of COVID's impact on requests. The numbers above capture only requests for which the data entry date positively indicates a COVID impact. Other requests may have been impacted.”	No contact at all from this institution.

<b>Health Canada</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	No
Clarification provided?	N/A	N/A
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes – 17 December 2020	Yes – 19 November 2020
Comments and Critiques		The acknowledgement email included a poster and a “pitch” to use epost Connect. It sounded like an option rather than a necessity.

<b>Immigration and Refugee Board of Canada</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	Yes – 1 December 2020	Yes – 17 November 2020
Clarification provided?	Yes – 23 December 2020	Yes – 17 November 2020
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes – 31 December 2020	Yes – 11 December 2020.
Comments and Critiques	When they did not hear a response to their clarification, they made an effort to follow up. And despite this lapsed time, after they received the response and the timeline began running once more, they responded within legislated timelines.	11 December 2020 is beyond the 30-day time limit. However, the day of the clarification request was counted as a “hold day,” even though the response was sent on the same day, and so this is a compliant request.

<b>Innovation, Science, and Economic Development Canada</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	Yes – 16 November 2020	No
Clarification provided?	Yes	No
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is	N/A	N/A

within 30 days of original request]		
Final response received?	Yes – 9 March 2021	No
Comments and Critiques		The acknowledgement letter said that responses with more than 20 pages are provided on DVD-R, though an epost Connect account could be made to use as an alternative, and to inform the office if this was done. The requester ended up making an epost Connect account for other requests, but did not inform this institution. Regardless, no DVD-R was received.

Royal Canadian Mounted Police	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	<p>Yes – 27 November 2020. Response said “Too vague/ATIP does not answer questions it retrieves records” and asked for information about the type of records requested, specific locations to conduct the search, and a time frame to search if the RCMP file number is unknown .</p> <p>- Additional request for clarification received 24 February 2021 along with a proposed restatement.</p>



Clarification provided?	N/A	Yes – 27 November 2020 and again on 24 February 2021 agreeing to the proposed restatement.
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes – 22 January 2021	No
Comments and Critiques		

<b>Statistics Canada</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	Yes – 10 November 2020	No
Clarification provided?	Yes – 10 November 2020	No
Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes – 17 November 2020	Yes – 27 November 2020
Comments and Critiques		

<b>Transport Canada</b>	<u>Question 1</u>	<u>Question 2</u>
Clarification requested by institution?	No	No
Clarification provided?	N/A	N/A

Extension request made?	No	No
Extension justified under s.9(1)? [cites proper reason under 9(1)(a)-(b) and is within 30 days of original request]	N/A	N/A
Final response received?	Yes – 2 December 2020	Yes – 24 November 2020
Comments and Critiques		

## Appendix 3: Relevant Sections of the Access to Information Act

### Notice where access requested

Section 7: Where access to a record is requested under this Part, the head of the government institution to which the request is made shall, subject to sections 8 and 9, within 30 days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part thereof.

### Extension of time limits

Section 9 (1) The head of a government institution may extend the time limit set out in section 7 or subsection 8(1) in respect of a request under this Part for a reasonable period of time, having regard to the circumstances, if

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution,
- (b) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or
- (c) notice of the request is given pursuant to subsection 27(1)

by giving notice of the extension and, in the circumstances set out in paragraph (a) or (b), the length of the extension, to the person who made the request within thirty days

after the request is received, which notice shall contain a statement that the person has a right to make a complaint to the Information Commissioner about the extension.

## Appendix 4: Communications Referencing the Pandemic

	Y/N	Comments
<b>CBSA</b>	Yes	<p>For Question 1, an email mentioned “Due to the current situation with COVID-19, the Canada Border Agency (CBSA) is attempting to maintain a high standard of service delivery as stipulated in the Access to Information Act and Privacy Act. As you have selected to receive an electronic copy of the responsive records, please find attached the Canada Border Services Agency’s response to your request.”</p> <p>For Question 2, CBSA mentioned that a reduced on-site workforce had constrained their ability to process requests and meet the legislated timelines. The also asked to limit the search to electronic records in order for them to be retrieved remotely: “In order to process your request at this time, we are proposing that you limit your request to electronic records, thereby making them retrievable remotely. If you agree, our office will task out for responsive records. To be clear, we will not ask employees to go onsite to do this or to obtain secret records from any secure networks not accessible through remote access. If you do not agree to limit your request to electronic records, we will proceed with your request once we are back to normal operations.”</p>
<b>Canada Post</b>	Yes	<p>In initial communications, for both questions: “Like other workplaces across Canada, the Government of Canada has implemented exceptional workplace measures to curb the spread of novel Coronavirus (COVID-19) and protect federal employees and the public. Institutions are operating with significantly reduced on-site workforces, with most employees asked to work from home. As a result, our ability to meet the legislated timelines under the Access to Information Act is presently significantly constrained, and we may be delayed in responding to your request.</p> <p>Your request is important to us. We will continue to make best efforts to respond to your request, in accordance with our reduced operational capacity caused by the exceptional measures to mitigate the spread of COVID-19.”</p>

<b>Canada Revenue Agency</b>	Yes	<p>In initial communications for Question 2: “Like other workplaces across Canada, the Government of Canada has implemented exceptional workplace measures to curb the spread of novel Coronavirus (COVID-19) and protect federal employees and the public. Institutions are operating with significantly reduced on-site workforces, with most employees asked to work from home. As a result, our ability to meet the legislated timelines under the Access to Information Act is presently significantly constrained, and we may be delayed in responding to your request. Your request is important to us. We will continue to make best efforts to respond to your request, in accordance with our reduced operational capacity caused by the exceptional measures to mitigate the spread of COVID-19.”</p> <p>For both questions, in email communications prior to the delivery of the information, the CRA asked to use e-post: “While the Canada Revenue Agency (CRA) is committed to openness, transparency and accountability, at this time, due to measures taken surrounding the COVID-19 virus, we are experiencing delays in sending responses to access to information and privacy requests. In an effort to increase our capacity, we are now able to send documents electronically via epost Connect™. ... If you do not consent to receive your response via epost Connect™, it will be mailed to you. Please note that the physical mailing of responses is delayed due to reduced operational capacity caused by the exceptional measures in place to mitigate the spread of COVID-19.”</p>
<b>CCOHS</b>	No	No references
<b>CFIA</b>	No	No references
<b>Canadian Heritage</b>	No	No references
<b>CHRC</b>	Yes	<p>In initial communications, for both questions: “In addition, the COVID-19 pandemic is creating challenges for individuals and organisations. The Canadian Human Rights Commission (CHRC) is following the recommendation of public health officials to physically distance in order to keep its staff and the public safe. As such, we are currently operating under alternative work arrangements until further notice.</p> <p>The CHRC ATIP Unit continues to be committed with the processing of your request; however, given the unprecedented</p>

		<p>current situation; there may be further unavoidable delays with the processing of your request. This could potentially result in our inability to meet the legislated timelines to respond to your privacy request. Nevertheless, we will be sure to keep you apprised along the way.</p> <p>We would also like to take this opportunity to inform you that given the current unprecedented situation, any responsive records that may potentially be released to you would be only those that are currently available in our system in electronic format. Nevertheless, the rest of any responsive records, should they exist in paper format, would be provided to you once our staff members are physically back in the office.”</p>
<b>Dept. of Finance</b>	No	No references
<b>Dept. of Indigenous Services</b>	Yes	<p>An email was sent for both questions stating: “We wish to inform you that our ability to respond to requests within the timelines mandated by the Access to Information Act and the Privacy Act will be affected by the exceptional measures put in place to curb the spread of the novel coronavirus (COVID-19). Access to information and personal information requests received from the public continue to be important to us. However, despite all our efforts, we will not be able to respond to your ATIP request within the legislated timelines.</p> <p>We will continue to make reasonable efforts to respond to requests, in accordance with operational realities and our limited capacities.</p> <p>Thank you in advance for your patience and understanding during this period as we all navigate these unprecedented challenges.”</p> <p>It is not clear whether this email was automatically sent to all requesters or if it was sent on a case-by-case basis. Subsequent formal extension letters were sent at a later date which did not reference the pandemic.</p>
<b>DOJ</b>	No	No references
<b>Employment and Social Dev. Canada</b>	No	No references



<b>GAC</b>	No	No references
<b>Health Canada</b>	No	No references
<b>Immigration and Refugee Board</b>	No	No references
<b>ISED</b>	Yes	An email response to Question 2 stated: "As you may be aware, our department is currently operating with significantly reduced on-site workforces, with most employees asked to work remotely as an exceptional measure to curb the spread of the novel coronavirus (COVID-19). This unusual situation may constrain our ability to meet the requirements under the Act and may be causing challenges that are outside of our control. Please note that we will continue to make reasonable efforts to meet deadlines, in accordance with operational realities. In the meantime, we will also do our best to keep you informed should any obstacles affect the processing of your request. We thank you in advance for your patience and understanding throughout this crisis as we all navigate these unprecedented challenges."
<b>RCMP</b>	Yes	Initial email communications for both questions stated: "***Please note that in light of the current events related to COVID-19, our capacity to process requests is limited, as well, the capacity of personnel involved in the retrieval of records and/or provision of representations is similarly affected. This has an impact on our ATIP operations. Our apologies for the delay in completing your request. We thank you in advance for your considerations and understanding."
<b>Statistics Canada</b>	No	No references
<b>Transport Canada</b>	Yes	Emailed response for Question 1 stated: "Possible delays in treating your request  Openness, transparency and accountability are guiding principles of the Government of Canada. However, our ability to respond to requests within the timelines mandated by the Access to Information Act and the Privacy Act may be affected by the exceptional measures put in place to curb the spread of the novel coronavirus (COVID-19) and protect the health and safety of Canadians. Access to information and personal information requests received from the public continue to be important to us. We will continue to make reasonable efforts to respond to requests, in accordance with operational realities. Thank you in

		advance for your patience and understanding during this period as we all navigate these unprecedented challenges.”
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