

# Health Canada

## Annual Report on the *Access to Information Act* and the *Privacy Act*

2020-2021



Health  
Canada

Santé  
Canada

Canada 

**Health Canada is the federal department responsible for helping the people of Canada maintain and improve their health.** Health Canada is committed to improving the lives of all of Canada's people and to making this country's population among the healthiest in the world as measured by longevity, lifestyle and effective use of the public health care system.

- Health Canada's mission statement

Également disponible en français sur le site Web de Santé Canada sous le titre :  
Rapport annuel 2020-2021 sur la *Loi sur l'accès à l'information* et la *Loi sur la protection des renseignements personnels*

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# Introduction

Health Canada is pleased to present to Parliament its consolidated annual report on the administration of Access to Information and Privacy (ATIP) services, in accordance with section 94 of the *Access to Information Act* (ATIA), section 72 of the *Privacy Act* and section 20 of the *Service Fees Act*. The report describes activities that support compliance with these laws for the fiscal year beginning April 1, 2020 and ending March 31, 2021.

## About Health Canada

Health Canada is the federal department responsible for helping Canadians maintain and improve their health, while respecting individual choices and circumstances. Health Canada has regional offices in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and the Atlantic and Northern Regions.

For more information about Health Canada, please [visit our website](#).

## Purpose of the Acts

The ATIA gives Canadian citizens and permanent residents of Canada the right to access information contained in federal government records, subject to certain specific and limited exceptions. The ATIA complements, but does not replace, other means of obtaining government information.

The *Privacy Act* protects an individual's privacy by setting out provisions related to the collection, retention, accuracy, disposal, use and disclosure of personal information. It also gives Canadian citizens and permanent residents of Canada the right of access to information about themselves held by the federal government, with certain specific and limited exceptions.

# Organizational Structure

## Shared Services Partnership Agreement

ATIP Operations Division and the Privacy Management Division provide services to both the Public Health Agency of Canada and Health Canada, and do so as part of the Shared Services Partnership Agreement. These divisions are housed under the Planning, Integration and Management Services Directorate (PIMSD) of Health Canada's Corporate Services Branch (CSB). ATIP Operations Division manages the processing of requests under both the ATIA and the *Privacy Act*, while the Privacy Management Division is responsible for privacy policy and providing guidance to programs. Although ATIP services are provided to both institutions, the statistics and financial data provided in this report are only for Health Canada.

## Access to Information and Privacy Operations Division

The primary function of the ATIP Operations Division is to ensure compliance of Health Canada's program delivery with the provisions of the ATIA and the *Privacy Act* along with the policies and directives of the Treasury Board of Canada Secretariat (TBS).

The ATIP Operations Division is responsible for responding to Access to Information and Privacy requests. It reviews information to support various disclosures including the appropriate sharing of investigation reports, proactive publication under Part 2 of the ATIA, as well as supporting Parliamentary Affairs in responding to Parliamentary Motions to Produce Papers. In addition, ATIP

Operations Division provides training and awareness programs to staff.

In 2020–2021, there were 75.76 full-time equivalents (FTEs) within ATIP Operations Division supporting Health Canada's administration of both the ATIA and the *Privacy Act*. The breakdown of the different types of FTEs is as follows:

- 63.95 full-time employees;
- 10.26 consultants and agency personnel;
- 0.99 part-time and casual employees; and
- 0.56 students.

## Privacy Management Division

The primary functions of the Privacy Management Division (PMD) include ensuring compliance of Health Canada's program delivery with the provisions of the *Privacy Act* and the policies and directives of the Treasury Board of Canada Secretariat (TBS). Responsibilities include:

- The development of privacy policies, procedures and practices;
- The delivery of privacy training and awareness programs to staff;
- Assessing and reporting on privacy breaches;
- Coordinating the department's input of InfoSource; and
- Providing privacy analysis and advice using a number of tools including Privacy Impact Assessments (PIA) and Privacy Protocols.

In 2020–2021, PMD comprised 10.00 full-time equivalents (FTEs). The breakdown of the different types of FTEs is as follows:

- 7.10 full-time employees;
- 1.85 part-time and casual employees;
- 0.77 consultants and agency personnel; and
- 0.28 students.

These figures include administrative support, management, reporting, monitoring, advisory services and policy resources, which contribute to the overall support of operations and the application of the *Privacy Act*.

## Total FTEs supporting the ATIA and the *Privacy Act*

In 2020–2021, there were a total of 85.76 full-time equivalents (FTEs) supporting the administration of the ATIA and the *Privacy Act*. This comprised 68.49 FTEs supporting the ATIA and 17.27 FTEs supporting the *Privacy Act*.

For clarity and greater accountability, the following table illustrates the total resources from the ATIP Operations Division and the Privacy Management Division supporting the administration of the ATIA and the *Privacy Act*.

### Total FTEs supporting the ATIA and the *Privacy Act*

Type of FTE	ATIA ATIP Operations	Privacy Act ATIP Operations	Privacy Act PMD	Total
Full-time employees	57.82	6.13	7.10	<b>71.05</b>
Part-time and casual employees	0.89	0.10	1.85	<b>2.83</b>
Regional staff	0.00	0.00	0.00	<b>0.00</b>
Consultants and agency personnel	9.27	0.99	0.77	<b>11.02</b>
Students	0.51	0.05	0.28	<b>0.84</b>
<b>Total FTEs supporting <i>Privacy Act</i></b>	<b>68.49</b>	<b>7.27</b>	<b>10.00</b>	<b>85.76</b>

## Governance

Initiatives related to access to information and privacy are governed through the ATIP EX Leaders Committee. This committee is made up of executive-level representatives from across the department who provide leadership and strategic direction on key topics and communicate them within their respective branches. The Committee is chaired by the Director General, PIMSD, CSB, who is responsible for the ATIP Operations Division and the Privacy Management Division.

ATI and privacy matters requiring a higher level of oversight are also brought forward to Health Canada's Executive Committee for strategic direction.

## Delegation of Authority

In keeping with Treasury Board of Canada Secretariat (TBS) recommendations on best practices, the Delegation Order extends authorities to multiple positions including the Deputy Minister, the Corporate Services Branch's Assistant Deputy Minister, the Director General of Planning Integration and Management Services Directorate, and the ATIP Coordinator. As appropriate, certain administrative authorities are delegated to various senior levels within the ATIP Operations Division and PMD to support the effective and efficient administration of the ATIA and the *Privacy Act*. The most recent delegation order, signed by the Minister of Health, is included in this report ([Appendix A](#)).

## Openness and Transparency

Health Canada is committed to being open and transparent and continues to make more information available to Canadians. The department continues to publish information in accordance with Part 2 of the ATIA including briefing note titles, travel and hospitality expenses, reclassification of positions, and contracts over \$10,000. The department is also committed to creating documents following accessibility guidelines and this document follows those guidelines.

# COVID-19

Fiscal year 2020-2021 was a challenging year across Health Canada as the response to the pandemic brought about a large number of changes; including: how we work, where we work, and the rapid shift in priorities for what we worked on.

Health Canada has played a key role in contributing to the pandemic response. For example, in 2020-2021 Health Canada:

- worked with its partners to anticipate and meet Canadian's health product needs;
- approved five vaccines, which were then rolled out across the country;
- reviewed and approved numerous supplies of personal protective equipment (PPE); and
- ensured the regulatory compliance of products and manufacturers such as hand sanitizer, masks and ventilators.

On March 13, 2020, Health Canada initiated their business continuity plan (BCP) in response to the evolving COVID-19 pandemic; this continued into the 2020-2021 fiscal year reporting period. The health and well-being of Health Canada employees remains a Departmental priority and the adoption of alternate work arrangements, including working from home, were introduced early in the pandemic to help fulfil this obligation.

As the majority of the Department shifted towards working from home<sup>1</sup> and in the interest of ensuring that critical services were delivered, guidance was provided by the Chief Information Officer (CIO) as to which services would be permitted to use the network during core business hours. Over the course of the first few months of 2020-2021, network capacity increased and restrictions were eased and staff were able to work more efficiently and during core hours.

## Access to Information and Privacy Operations Division

The ATIP Operations Division was also impacted significantly due to a number of COVID-19 related restrictions, including network restrictions and the partial closure of government offices. The ATIP Operations Division worked to address and overcome barriers related to the pandemic as quickly as possible, including obtaining authorization for some ATIP analysts to return to the office and establish capacity to manage physical mail and paper records.

Public health measures and operational requirements directly impacted the timeliness of responding to information requests, particularly in the first few months of the pandemic. The lack of, or limited, physical presence in the office affected the Department's ability to manage and process paper records while heavy workloads and tight deadlines resulting from the Department's COVID-19 response limited the ability to quickly retrieve records. Following the guidance and best practices from TBS, the ATIP Operations Division contacted requesters directly to notify of potential delays in processing requests as a result of the pandemic.

Although there were a number of barriers associated to the closure of the physical office, these challenges also led to the implementation of several digital tools and electronic solutions. For example, branches quickly shifted to providing all records in electronic format (where applicable) and many requesters and third parties enrolled with the epost™ service to securely send and receive

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<sup>1</sup> Some key services continued to access the workplace during the pandemic (e.g. laboratories, inspections)



electronic documents.

Due to the pandemic and aforementioned issues, Health Canada did not close as many requests as the previous year. However, steady progress was made and barriers were addressed while taking into account the protocols put in place in response to the pandemic. In the final months of the year, Health Canada closed almost as many requests as received.

## **Privacy Management Division**

The Privacy Management Division remained fully operational, without interruption, with a focus on providing advisory services for many initiatives aimed at responding to the COVID-19 pandemic. This included privacy advice on matters such as contracts, digital solutions, the collection, use and disclosure of personal information, as well as research projects involving human subjects.

In order to meet the tight timelines and high demands, the Privacy Management Division developed privacy assessments tools and guidance documents specifically tailored to the COVID-19 response. The Privacy Management Division was consulted on a number of important issues, including the development of digital solutions to prevent the spread of COVID-19 (e.g. COVID Alert, Canada COVID-19 App), and data sharing in various public health contexts (e.g. new public health response initiatives, COVID-19 related research).

## **Capacity to Receive and Process Records in 2020-2021**

Health Canada receives requests by mail, email and online through the Government of Canada's ATIP Online Request System.

Due to the closure and restrictions of government offices for health and safety reasons, there was a period of two weeks during 2020-2021 where the ATIP Operations Division was unable to access physical mail. With regard to capacity to process paper records, the Division had no capacity to process paper records for eight weeks and partial capacity for 44 weeks. With regard to capacity to process electronic records, the Division had partial capacity for six weeks and full capacity for 46 weeks. The Division had no capacity to process secret records for eight weeks and partial capacity for 44 weeks.

Detailed information about Health Canada's capacity to receive and process records can be found in the Supplemental Statistical Report on the Access to Information Act and Privacy Act ([Appendix D](#)).

## **Performance for 2020-2021**

In previous years, leading up to COVID-19, Health Canada was keeping up with the annual volume of requests and significantly reducing the large historic backlog of unprocessed requests. The COVID-19 pandemic had an immediate and significant impact on productivity. In 2020-2021, Health Canada received 2,409 requests (ATI, Access Informal and Privacy) and closed 1,813, resulting in 24.7% fewer requests being closed than received. Overall, there were 21.5% fewer requests received and 45.6% fewer requests closed than the previous fiscal year, however new requests under the Access to Information Act only decreased by 7%, with the most significant decrease being in the number of requests for informal disclosure of previously released information, which dropped by 56%.

The impacts of the pandemic were most significant early on as Health Canada adapted to the new environment and implemented measures to restore operations across the Department. The ATIP Operations Division adjusted to the changing environment and protocols, implementing solutions to respond to emerging issues. Through these efforts, productivity continued to improve over the course of the year.

#### **Performance for 2020-2021**

Type of Request	Received	Closed
Access to Information	1,938	1,358
Access Informal	332	311
Privacy	139	144
<b>Total</b>	<b>2,409</b>	<b>1,813</b>

The following section of the report includes an interpretation and explanation of the data contained in Health Canada's Statistical Report, which summarizes Access to Information (ATI) and Privacy-related activity for the period between April 1, 2020 and March 31, 2021 ([Appendix B – ATI](#) and [Appendix C – Privacy](#)).

### ***Access to Information Act***

#### **Access Informal Requests**

Requests can be made for records previously released under the ATIA, which are referred to as 'Access Informal Requests'. Summaries of previously released ATI requests are posted monthly on the [Open Government](#) website where the public can make the request for the previously released records. This forms part of the Government of Canada's commitment to openness and transparency. Health Canada faced a lower volume of incoming requests of only 332, and processed 311 'Access Informal requests' in 2020-2021.

#### **Caseload and Carry Forward**

In 2020-2021, Health Canada had a total of 3,159 active ATI requests. Of this total, 1,938 were new ATI requests received in 2020-2021 while 1,221 were outstanding requests from the previous reporting period. Health Canada closed 1,358 ATI requests and carried forward 1,801 to the 2021-2022 fiscal year.

In 2018, the ATIP Operations Division implemented a 'backlog reduction initiative' with a target to significantly reduce the accumulated inventory of ATIP requests. The Division's experience with dealing with a large inventory of accumulated requests, while handling ongoing day-to-day operational demands will ensure that the Division is in a good position to address the increased inventory of requests that resulted from the pandemic.

Over the previous three fiscal years, the ATIP Operations Division made tremendous progress towards improving productivity and closed more requests than received for the period overall; however, as a result of the pandemic, productivity was reduced and fewer requests were closed than received. Health Canada is committed to continuing to increase performance and resume its backlog reduction strategy for all files accumulated prior to and during the pandemic.

## Data Quality

Please note that small data variances may exist from year to year, including in the previously reported number of outstanding requests carried forward into the current fiscal year. Several reasons contribute to inevitable shifts in data. While rigorous processes are in place to support data accuracy, the timing of the pandemic and stay at home measures, coupled with unexpected absences resulted in delays in the closure of a small number of files which ought to have been reflected in the 2019-2020 fiscal year. Other reasons to explain data shifts include requests by the Office of the Information Commissioner to re-open requests in the context of complaint resolution, and requesters seeking to divide one incoming request into several files while retaining the initial date received.

## Access to Information Requests Received & Completed

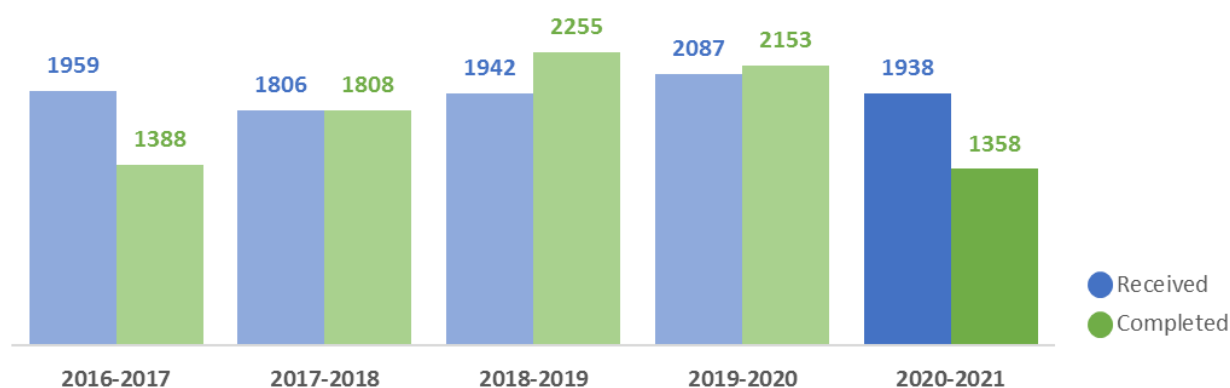


Figure 1 ATI Requests Received and Completed each fiscal year from 2016-2017 to 2020-2021

## Key Statistics by Fiscal Year

Fiscal Year	Number of Requests Received	Number of Requests Carried Over	Total Caseload	Number of Requests Closed	# of Pages Reviewed for Closed Files
2016–2017	1,959	1,047	3,006	1,388	1,891,795*
2017–2018	1,806	1,612	3,418	1,808	374,021
2018–2019	1,942	1,610	3,552	2,255	955,667**
2019–2020	2,087	1,289	3,376	2,153	320,066
2020-2021	1,938	1,221	3,159	1,358	225,307

\*Note that this number includes 1.4 million pages on one subject matter that was later abandoned.

\*\*A high number of pages were reviewed for eight of the requests closed in 2018-2019. These eight closed requests represent 735,402 of the 955,667 pages reviewed.

## Source of Requests under the Access to Information Act

The majority of Health Canada's ATI requests come from private businesses, mostly in the health sector (pharmaceutical, medical devices, natural health products, etc.), requesting records related to their competitors and their own products. Sixty percent of requests received this year were from private businesses, an increase of 10% from last year. Due to the nature of the records that these corporations request, Health Canada conducts a large number of third party consultations, as many records involve confidential business information, sometimes of multiple parties. In addition, records often contain highly technical and scientific information, which can be complex to review.

12% of Health Canada's ATIP requests come from the general public, 11% from the media, 8% of requests came from organizations, and 1% from academia, while 8% declined to identify which category they associate with.

### Proportion of Requests among Sources

Source	Number of Requests	Proportion of Requests	Change from 2019-2020
Business (Private Sector)	1,170	60%	+10%
Public	233	12%	-1%
Media	201	11%	-3%
Organizations (e.g. political party, association, union)	161	8%	-6%
Decline to Identify	154	8%	+2%
Academia	19	1%	-2%
<b>Total</b>	<b>1,938</b>	<b>100%</b>	

### Processing Time for Requests

A total of 522 requests (38.4%) were processed within the legislated timeline while 836 requests (61.6%) were closed past the legislated timelines. Requests closed past the legislated timelines were for a number of reasons:

- 372 were closed past the legislated timelines due to 'interference with operations/ workload';
- 419 were closed past the legislated timelines for 'other' reasons;
- 36 requests were closed past the legislated timelines due to external consultation; and
- 9 were closed past the legislated timelines due to internal consultation.

### Extensions

The vast majority of extensions (72%) invoked under the ATIA were to conduct consultations with third parties, while 17% were due to voluminous records.

Completing third party consultations is a necessary step in the process, enabling Health Canada to release as much information as possible. Over the last several years, at the departmental level, Health Canada has made accessible increasingly more information, continuously reassessing the balance between its commitment to openness and transparency, with the need to safeguard confidential business information. Health Canada's commitment to transparency can be at odds with the views of third parties, who can challenge Health Canada's proposed release of information, by seeking judicial review of Health Canada's intended disclosure.

## Consultations Completed From Other Institutions

In addition to processing its own requests, Health Canada also completes consultations received from other institutions and organizations to provide input relating to the disclosure of the Department's information. In 2020-2021, Health Canada received 162 consultations from other Government of Canada institutions and 18 from other organizations, closing 165 and reviewing 8,806 pages of records. In the majority of cases, Health Canada consented to full disclosure of the records.

## Disposition of Completed Requests

Of the ATI requests completed in 2020-2021, 73% were either disclosed in part (55% of requests) or all disclosed (18% of requests). 16% of ATI requests were abandoned, while no records existed for 10% of requests. The breakdown of the remaining 1% (numbers may not add to 1% due to rounding) of 'other' completed files is as follows:

- 0.2% all exempted
- 0.1% all excluded
- 0.4% request transferred
- 0% neither confirmed nor denied
- 0% decline to act with the approval of the Information Commissioner

## Disposition of Completed ATI Requests

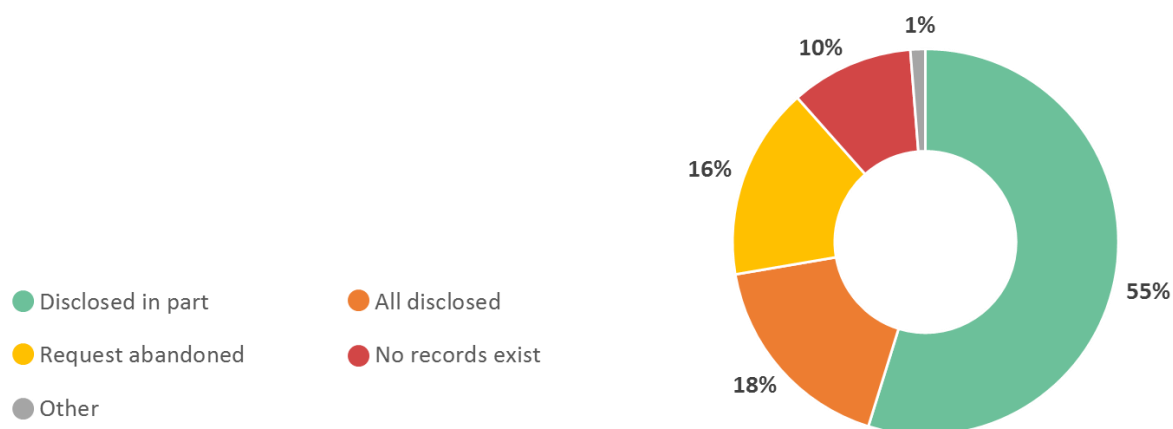


Figure 2 Disposition of Completed ATI Requests

## Exemptions Invoked

Sections 13 to 24 of the ATIA provides specific legislated exemptions intended to protect information from disclosure, while section 26 provides a temporary exemption relating to information that will soon be published. In some instances, records may have multiple exemptions applied to them to appropriately safeguard information.

The majority (762) of exemptions applied were for section 19(1); this is a mandatory exemption that safeguards personal information. The application of section 20 (to protect third party information) in

181 requests required consultations to ensure that only proprietary and commercially sensitive information is protected. Section 21 (the protection of information related to government operations) was applied to 93 requests.

### Exclusions Cited

The *Access to Information Act* does not apply to published material, material available to the public for purchase, or for public reference (section 68), nor does it apply to confidences of the Queen's Privy Council (section 69). Requests containing proposed exclusions under section 69 require consultation with the Department of Justice and, in some cases, the Privy Council Office.

In 2020-2021, eight requests contained exclusions for publicly available material and 32 requests had records pursuant to confidences of the Queen's Privy Council.

### Translations

No translations were required to respond to requests in 2020-2021.

### Format of Information Released

Of the requests that were fully or partially disclosed, 23 were released in paper format, 957 were released as electronic copies and two were released as other. Electronic copies are available through CD or epost™, or by e-mail where the attached records are small enough to support this form of distribution.

## Privacy Act

### Caseload and Carry forward

In 2020-2021, Health Canada had a total of 193 active privacy requests. Of this total, 139 were new privacy requests received in 2020-2021 while 54 were outstanding requests from the previous reporting period. A total of 144 privacy requests were closed and 49 privacy requests were carried forward to the 2021-2022 fiscal year.

Many of the requests received are for access to public servants' medical records, as the Public Service Occupational Health Program is operated by Health Canada. In addition, requests are received from current and former Health Canada employees who want to obtain their personal information, and from people who have applied for employment at Health Canada or the Public Health Agency of Canada, seeking the details of their applications.

### Privacy Requests Received and Completed

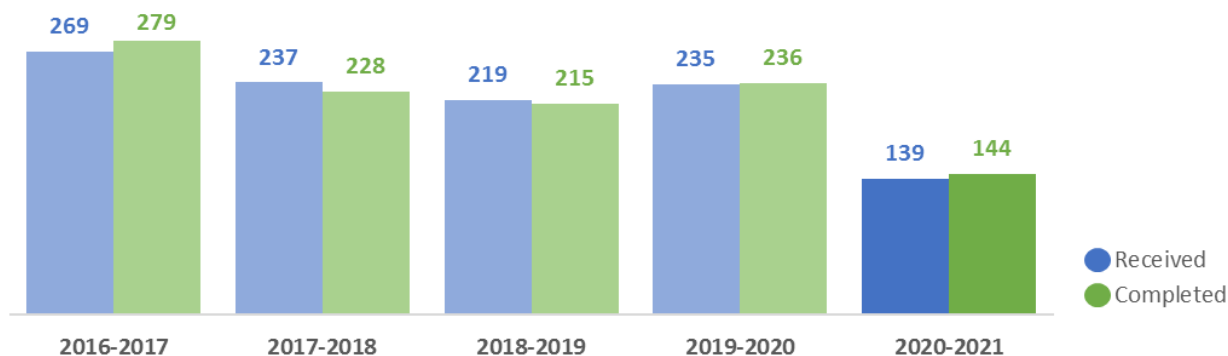


Figure 3 Privacy Requests Received and Completed each fiscal year from 2016-2017 to 2020-2021

## Key Statistics by Fiscal Year

Fiscal Year	Number of Requests Received	Number of Requests Carried Over	Total Caseload	Number of Requests Closed	# of Pages Reviewed for Closed Files
2016–2017	269	50	319	279	13,305
2017–2018	237	40	277	228	8,608
2018–2019	219	49	268	215	21,612
2019–2020	235	54	289	236	19,008
2020–2021	139	54	193	144	9,630

## Processing Time for Requests

Health Canada responded to 59.7% of privacy requests within legislated timelines (30 days plus applicable extension). The majority of those requests closed past the legislated timeline were due to interference with government operations (i.e. workload and voluminous records). In accordance with the TBS Directive on Personal Information Requests and Correction of Personal Information, Health Canada continues to notify requesters in writing of anticipated delays.

## Extensions

For the five requests where extensions were taken, the majority (4) were to allow for review of a large volume of records, and one required consultation. Under the *Privacy Act*, 30 days is the longest extension that can be taken.

## Consultations Completed From Other Institutions

Health Canada also received three consultations from other Government of Canada institutions, totaling 97 pages. One consultation was carried forward from the previous fiscal year and all four were completed in 2020-2021.

## Disposition of Completed Requests

Approximately 43% of the privacy requests completed in 2020-2021 were either disclosed in part (38%

of requests) or all disclosed (5% of requests). The breakdown of the remaining files is as follows:

- 29% request abandoned
- 28% no records exist
- 0% all exempted
- 0% all excluded
- 0% neither confirmed nor denied

### Disposition of Completed Privacy Requests

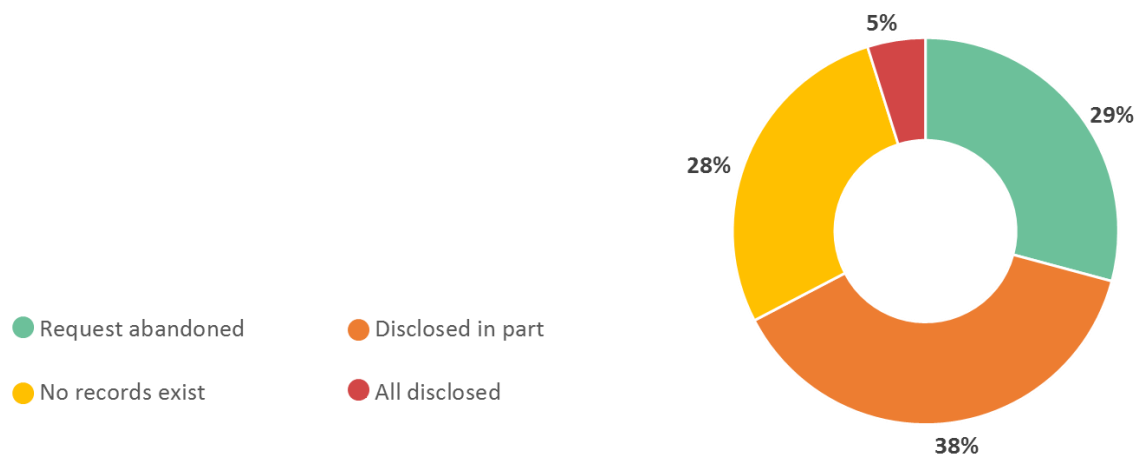


Figure 4 Disposition of Completed Privacy Requests

### Exemptions Invoked

Of the 62 exemptions applied to privacy releases in 2020-2021, 53 (85.5%) were to protect the personal information of individuals other than the requester included in the records. The nine remaining exemptions were related to solicitor-client privilege (14.5%).

### Exclusions Cited

No exclusions were applied to privacy request releases made in 2020-2021.

### Translations

No translations were required to respond to requests in 2020-2021.

### Format of Information Released

Of the requests that were fully or partially disclosed, four were released in paper format, while the remaining 58 were released as electronic copies. Electronic copies are available through CD or epost™. epost™ is a service offered by Canada Post that provides an accessible platform to share information.



## Privacy Management Division Advisory Services

During 2020-2021, PMD received 604 enquiries from Health Canada program clients. Year after year, the complexity of files continues to increase. This was particularly evident in the 141 (23%) enquiries that were in support of COVID-19 initiatives. Privacy advisory services for COVID-19 related files has continued well into fiscal year 2021-2022 and is anticipated to be reported in next year's Annual Report.

Health Canada is committed to appropriately handling the personal information in its custody and ensured thorough consideration was given to privacy requirements, especially given the speed with which COVID-19 initiatives were being developed.

## Reporting on Fees for the *Service Fees Act*

The *Service Fees Act* requires a responsible authority to report annually to Parliament on the fees collected by the institution.

With respect to fees collected under the *Access to Information Act*, the information below is reported in accordance with the requirements of section 20 of the *Service Fees Act*.

**Enabling authority:** *Access to Information Act*

**Fee amount:** The only fee charged is \$5 to submit a request under the *Access to Information Act*.

**Total Revenue:** The total fee revenue for 2020-2021 was \$8,100.

**Fees waived:** In accordance with the Interim Directive on the Administration of the *Access to Information Act*, issued on May 5, 2016, and the changes to the *Access to Information Act* that came into force on June 21, 2019, Health Canada waives all fees prescribed by the ATIA and associated Regulations, other than the \$5 application fee set out in paragraph 7(1)(a) of the Regulations.

A total of \$1,590 was waived or refunded by Health Canada in 2020-2021.

## Costs for Administering the *Access to Information Act*

Health Canada spent a total of \$6,807,970 on ATI functions in 2020-2021. Of this total, salaries and overtime costs represent \$4,674,425 and administration costs were \$2,133,545. Most of the administration costs (\$2,020,392) were used to retain temporary resources to address the volume and complexity of requests.

## Costs for Administering the *Privacy Act*

Health Canada spent a total of \$1,817,560 on privacy functions in 2020-2021. Of this total, salaries and overtime costs were \$1,419,049. Temporary resources to support the processing of privacy requests accounted for \$380,595 and administration costs were \$17,917.

# Training and Awareness

## Formal Training

### Access to Information Training

An online 'Introduction to ATIP' course is available to all staff via the Canada School of Public Service and is recommended as a foundation for all departmental employees. In addition, in 2020-2021 Health Canada conducted virtual Access to Information and Privacy Request training for 829 employees. Training is available to groups by request and is tailored for each session to include examples that are relevant to the participants' day-to-day work. Four types of training are available:

- ATI 101 – fundamental principles of the ATIA and *Privacy Act*, Health Canada-specific processes, an overview of key exemptions, and a case study/exercises
- Abridged ATI 101 – a refresher course focused on Health Canada-specific processes and policies, and updates on recent changes in the legislation
- ATI 102: How to Read a Request Text and Search for Relevant Records – Health Canada-specific procedures with a focus on practical advice for assessing and understanding requests, estimating volume and retrieving and assessing records
- ATI 104: Update on Bill C-58 – a review of Canada's commitment to openness and transparency, the recent changes to legislation through Bill C-58, including proactive publication requirements, and a review of the fundamentals of the ATIA and *Privacy Act*

### Privacy Training

During 2020-2021, PMD delivered a number of virtual privacy training sessions to support the Department's response to COVID-19. This included presentations to the Health Canada and Public Health Agency of Canada Research Ethics Board (HC-PHAC REB), the COVID Alert Advisory Council and other working groups.

PMD also delivered a number of targeted privacy training sessions to specific groups within the Department. This included privacy training to Health Products Compliance and Enforcement employees of the Health Products and Food Branch, and the employees of the Pest Management Regulatory Agency.

In addition, PMD hosted virtual sessions about privacy, data ethics and artificial intelligence.

In total, approximately 364 Health Canada employees attended PMD's virtual training sessions.

Health Canada continues to offer privacy awareness training via its online learning tool, Privacy Basics and Privacy Impact Assessments. Approximately, 401 Health Canada employees completed the online training in 2020-2021. Throughout the year, regular communications were sent to all employees on privacy-related matters with the aim of supporting a culture of strong privacy awareness within the Department.

## Right to Know Week

In 2020, Canada celebrated Right to Know Week from September 28<sup>th</sup> to October 4<sup>th</sup>. Health Canada marked this event by hosting a meeting with ATIP Operations Division employees to discuss the principles that support the *Access to Information Act* and how these principles affect the work that we do. There was a special presentation by the Office of the Information Commissioner with remarks from the Information Commissioner of Canada. The importance of the right to access and of properly documenting and storing government records was highlighted.

## Policies, Guidelines, Procedures and Initiatives

### Treasury Board of Canada Secretariat: Access to Information Review

In June 2019, the Government of Canada passed Bill C-58, which brought forward significant amendments to the ATIA. Bill C-58 also required a full review of the ATIA within one year of the bill coming into force. In June 2020, the Treasury Board of Canada Secretariat (TBS) notified Health Canada that it is conducting a review of Canada's access to information process. In January 2021, Health Canada consulted with all branch contacts, identified a number of issues and provided detailed feedback. TBS is expected to finalize the review in 2022.

### Privacy Act Modernization

Health Canada has been engaged in *Privacy Act* Modernization efforts, led by the Department of Justice, helping ensure that an eventual revised, modern *Privacy Act* addresses the realities of the Department. In particular, Health Canada was consulted as part of the Department of Justice's targeted stakeholder engagement that commenced in summer 2019, and provided feedback on five discussion papers that focused on technical and legal considerations for modernizing the *Privacy Act*.

In addition, Health Canada provided a detailed response to the consultation paper circulated by the Department of Justice in June 2020. Health Canada's response highlighted the nature of the Department's work, and provided recommendations for a modernized law that would best protect important privacy interests while still facilitating Health Canada's health work.

### Privacy Impact Assessments and COVID-19

During 2020-2021, PMD proactively sought policy changes from TBS to address challenges with completing PIAs for new COVID-19 related programs or activities. As a result, TBS issued interim privacy policies to enable a more nimble approach to assessing privacy risks for time-sensitive COVID initiatives. In accordance with the interim policies, PMD developed a privacy checklist specifically for COVID-19 initiatives, which incorporated the privacy principles included within the Office of the Privacy Commissioner of Canada's April 2020 Framework for Privacy-Impactful Initiatives in Response to COVID-19. This checklist was an important tool to support HC's ability to effectively assess the privacy risks of time-sensitive initiatives and programs that were deployed in response to the pandemic.

## The COVID Alert Exposure Notification App

In July 2020, Health Canada, in collaboration with the Canadian Digital Service, launched COVID Alert, a national COVID-19 exposure notification app, as a tool to help reduce the spread of COVID-19. Using an exposure notification framework developed by Google and Apple, COVID Alert was designed to minimize risks to privacy and limit the collection of personally identifiable information. PMD supported the Department's assessment of the app according to the privacy principles for contact tracing and similar apps outlined in the joint statement by Federal, Provincial and Territorial Privacy Commissioners.

Health Canada meaningfully and transparently engaged the Office of the Privacy Commissioner of Canada (OPC) on the development of the app. The OPC supported its use and reassured Canadians of its significant privacy protections. The [COVID Alert: COVID-19 Exposure Notification Application Privacy Assessment](#) is published online and has been updated throughout 2020-2021 as the app evolved and new features were introduced. Any further updates or changes to the app will continue to be assessed and incorporated into the publicly available privacy assessment, for the entire lifespan of the app.

## Risk-Based Approach to Privacy Breaches

During 2020-2021, PMD completed its pilot project to implement a risk-based approach to managing privacy breaches. The pilot project was a success and this approach will be implemented Department-wide during fiscal year 2021-2022. This new approach will allow the Department to manage privacy breaches in a more streamlined manner where the level of effort is proportional and commensurate to the level of risk.

## Enhanced ATIP Processes

Due to the pandemic, a number of processes were reviewed to identify opportunities for improvement. One such process change involved the collection and review of specific briefing notes requested by number. The ATIP Operations Division now retrieves these briefing notes directly, from the correspondence system, reviews and validates information to support various disclosures, provides recommendations and consults with branch contacts and subject matter experts, before finalising the release package.

Retrieving these briefing notes and providing the recommendations to the relevant branch was very helpful during COVID-19 as it reduced the burden on branch contacts while further developing expertise within the ATIP Operations Division and supporting a more timely processing of the information.

The ATIP Operations Division also played an important role in supporting Parliamentary Affairs in the collection and review of records for Parliamentary Motions to Produce Papers. The division assisted by:

- Sharing best practices for managing the collection of large volumes of information and facilitating redaction;
- facilitating inter-department consultations; and
- supporting regular meetings and providing advice on an 'ATIP lens'.

## **Official Language Learning**

Throughout 2020-2021, ATIP Operations Division and the Privacy Management Division continued to offer part-time language training to staff in order to support bilingual delivery of services. This learning model, which began in 2018, allowed staff to work in small groups with a certified language teacher. Due to COVID-19, classes continued, shifting to online rather than in-person.

ATIP is a field with a shortage of qualified resources across the Government of Canada, and benefits significantly with the availability of bilingual employees. Health Canada is committed to providing bilingual services to the public and continues to increase bilingual capacity.

## **ATIP Coordinators' Working Group**

This year Health Canada's ATIP Coordinator continued to chair the ATIP Coordinator's Working Group, which meets monthly to discuss common and emerging issues and share best practices, strategies and tools.

Launched in October 2018, the working group is comprised of ATIP Coordinators representing 30 institutions. Notable discussions in 2020-2021 included the ATI Review that is being conducted by the Treasury Board Secretariat, discussions about restoring ATIP functions as quickly as possible, evolving operational challenges such as the unexpected suspension of court timelines impacting the ability to complete disclosure of requests involving third party consultations and notification, and ways to address the accumulated inventory of requests resulting from the pandemic.

## **ATIP Analyst Monthly Meetings**

Based on positive feedback from ATIP Analysts, the ATIP Operations Division re-launched monthly ATIP Analyst meetings in September 2020. These meetings were well attended and a number of topics were addressed such as effective file management strategies and procedures, the complaint process and principles of the ATIA.

## **Access to Information and Privacy Operations Division's Professional Development Program**

In 2020, the Access to Information and Privacy Operations Division's Professional Development Program (ATIP PDP) was reviewed to confirm that it was achieving its objectives.

ATIP PDP was launched in January 2017. It allows employees to progress based on performance, without the need of a competitive hiring process. The main objectives of the PDP are to:

- attract, develop and retain the talent necessary for Health Canada/Public Health Agency of Canada to meet its legal obligations in managing the ATIP program and services;
- provide participants the opportunity to broaden their knowledge of the ATIP legislation and other core competencies that are needed now and in the future to meet both statutory and institutional needs;
- allow participants to excel in their performance, advance and pursue fulfilling careers within the Department and/or ATIP environment in the federal Public Service, and
- support capacity building of specialized resources in the most efficient and effective way possible.

The review found that the ATIP PDP is functioning well and fulfilling its objectives. The report indicated that ATIP PDP:

- has a high participation rate;
- attracts junior analysts; and
- plays an important role in employee development and retention.

The report made a few process related recommendations that the ATIP Operations Division is working on implementing in order to further improve the program. The Division is committed to improving the ATIP PDP and to contributing to the ATIP community by hiring and training ATIP Analysts, thus developing future leaders for the ATIP community.

## **Post-Secondary Recruitment Campaign**

Health Canada led again this year an interdepartmental ATIP-specific post-secondary recruitment campaign as an intake mechanism for junior ATIP analyst positions (PM-01). Running a large-scale recruitment campaign involved a significant investment of resources within Health Canada, an effort which was supported by several other government institutions.

A total of 1,724 post-secondary students applied to the recruitment campaign and 260 met all requirements and invited to write a written exam. A qualified pool of candidates is expected to be established by the summer of 2021, which will be made available to all federal government institutions.

# **Summary of Key Issues and Actions Taken on Complaints and Audits**

## **Privacy Management Audit**

An internal privacy audit was concluded during fiscal year 2019-2020 on the management of privacy practices at the Public Health Agency of Canada and Health Canada. Noting that privacy is a shared responsibility between the Privacy Management Division and all branches, the audit found that key controls were generally in place and functioned as intended to effectively protect personal information. The audit made four recommendations to further strengthen the management of privacy practices.

The recommendation to incorporate Sex and Gender-Based Analysis + (SGBA+) considerations into its processes is complete. Work to complete the other three recommendations is underway and will continue in 2021-2022, namely:

- a) to enhance organizational information regarding privacy risk levels to improve risk management practices;
- b) to implement a process to follow up on recommendations made in privacy impact assessments and privacy protocols; and
- c) to fully implement a training and awareness strategy

A copy of the full audit report can be found at <https://www.canada.ca/en/public-health/corporate/transparency/corporate-management-reporting/internal-audits/reports/management-privacy-practices-2019.html>

## Complaints Management

### Complaints to the Information Commissioner

In 2020–2021, 32 complaints under the ATIA were filed with the Office of the Information Commissioner (OIC) for Health Canada's requests, representing a decrease of 41% from the 54 filed in 2019-2020. No orders were issued to Health Canada by the OIC in 2020-2021.

Areas of complaint include deemed refusal (late), time extensions taken, and exemptions applied, in particular related to personal information and third party information. The Department reviews the outcomes of all OIC investigations, and where appropriate, incorporates lessons learned into business processes.

### Complaints to the Privacy Commissioner

Health Canada received four complaints from the OPC related to the Department's management of personal information. One of these complaints was resolved by the OPC using the early resolution process. Three Letters of Findings on complaints related to the Department's management of personal information were received from the OPC.

## Federal Court Cases

### Applications & Appeals Submitted to the Federal Court

#### *Access to Information Act*

When Health Canada decides to disclose information related to third parties under the *Access to Information Act*, the third party is officially informed and has the opportunity to challenge the disclosure through judicial review. This can happen before the initial publication of the documents (notice under section 28) or following a formal complaint by the OIC and a subsequent recommendation or order to reconsider the publication (notice under section 29).

In 2020–2021, Health Canada was served with two notices of application for judicial review. Both are currently ongoing as of March 2021. In total, nine court cases were active at the end of the year while three were discontinued throughout the year. These cases are summarized in [Appendix E](#).

#### *Privacy Act*

No applications or appeals were made to the Federal Court or the Federal Court of Appeal during the 2020–2021 fiscal year.

## Monitoring Compliance

ATIP Operations Division produces weekly, monthly and quarterly reports to senior management in order to monitor performance within Health Canada. This includes incoming volume of requests, number of closed requests, and timeliness of retrieval of records.

In 2020-2021, ATIP Operations Division added a temporary performance indicator to its reports called 'pending record retrieval'. Many branch contacts were directly involved in supporting Health Canada's COVID-19 response and heavy workloads and tight deadlines limited their ability to quickly retrieve records. The 'pending record retrieval' indicator identifies and tracks tasks that have not yet been assigned and allows the branches and Division to track these tasks. This indicator allowed ATIP

Operations Division to quickly identify and support branches that needed assistance retrieving records.

The Privacy Management Division produces quarterly reports on privacy breaches and privacy impact assessments. PMD supports compliance by periodically reviewing its privacy policies, procedures and practices.

## Other Reporting Requirements Specific to the *Privacy Act*

### Material Privacy Breaches

During 2020-2021, Health Canada reported one material privacy breach to the Office of the Privacy Commissioner and the Treasury Board Secretariat. The breach involved an email containing personal information about numerous individuals that was sent using the Cc field instead of the Bcc field. Measures were taken to secure the breached information and to prevent the risk of recurrence, including reminders on appropriate procedures to ensure the protection of personal information.

### Privacy Impact Assessments

Two PIAs were completed during the 2020-2021 fiscal year. Below are brief descriptions of the PIAs.

#### Peer Support Program PIA

The Peer Support Program (PSP) is a pilot project for all Health Canada employees, as a separate but complementary option to the Departmental Employee Assistance Program (EAP). The objective of the PSP is to help mitigate an individual's mental health issue/illness, by leveraging a trusting relationship between someone who has been living with a mental health problem, directly or indirectly, with a co-worker who has had a similar experience. A PIA was completed on the program to ensure compliance with the *Privacy Act* and Treasury Board policies and to recommend mitigation actions to address any risks to privacy. For more information, please refer to the [PSP PIA summary website](#).

#### Asynchronous Video Interviews for Staffing (VidCruiter) PIA

Health Canada's Human Resources Services Division (HRSD) provides staffing services for the Department and the Public Health Agency of Canada. HRSD has contracted VidCruiter, a Canadian company, to conduct pre-recorded video interviews. HRSD's use of VidCruiter is a substantial modification to an existing program activity, where personal information is used for an administrative purpose (e.g., interview, candidate rating); therefore, initiating the requirement to conduct a PIA. The PIA examined the privacy-related risks of the VidCruiter video interview and proposed methods to lower these risks. For more information, please refer to the [Asynchronous video interviews for staffing \(VidCruiter\) PIA summary website](#).

### Public Interest Disclosures

During 2020-2021, there were no disclosures made under section 8(2)(m) of the *Privacy Act* and, therefore, no section 8(5) written notifications made to the Office of the Privacy Commissioner.



# Appendix A: *Access to Information Act* and *Privacy Act* – Delegation Order

Delegation Order

*Access to Information Act and Privacy Act*

I, the Minister of Health, pursuant to section 95 of the *Access to Information Act* and section 73 of the *Privacy Act*, hereby delegate the persons holding the positions set out in the Delegation of Authority Schedule attached hereto, or the persons occupying on an acting basis those positions, to exercise the powers, duties and functions of the Minister as head of Health Canada, under the provisions of the Act and related regulations set out in the schedule opposite each position. This delegation supersedes all previous delegation orders.

L'ordonnance de délégation de pouvoirs

*Loi sur l'accès à l'information et Loi sur la protection des renseignements personnels*

En ma qualité de ministre de la Santé et en vertu de l'article 95 de la *Loi sur l'accès à l'information* et de l'article 73 de la *Loi sur la protection des renseignements personnels*, je délègue par la présente aux titulaires des postes énoncés à l'annexe de délégation de pouvoirs ci-après, ou aux personnes occupant les dits postes à titre intérimaire, les attributions dont je suis investie, à titre de ministre de Santé Canada, aux termes des dispositions des lois et des règlements connexes mentionnés en regard de chaque poste. Le présent document remplace toute ordonnance de délégation de pouvoirs antérieure.

Hajdu,  
Patty

Digitally signed by Hajdu, Patty  
DN: C=CA, O=GC, OU=HC-SC,  
CN="Hajdu, Patty"  
Reason: I am the author of this  
document  
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Minister of Health  
Ministre de la Santé

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Date

Delegation of Authority Schedule

Access to Information Act

Part 1 and 3

Provision	Description	DM	Assoc. DM	ADM CSB	DG PIMSD	Dir ATIP Ops	Deputy Dir, ATIP Ops
	All powers, duties and functions under the <i>Access to Information Act</i> , R.S.C. 1985, c. A-1 (prior to and following June 21, 2019) and related regulations (prior to and following June 21, 2019)	Full authority					

Provision	Description	Dir, PMD	Manager	Team Leader/ Senior Advisor	Senior Analyst	Analyst
4(2.1)	Responsibility of government institutions	No	Yes	Yes	Yes	Yes
6.1(1)	Reasons for declining to act on request	No	Yes	No	No	No
6.1(1.3), (1.4), (2)	Notice – suspension, end of suspension	No	Yes	Yes	Yes	No
7	Notice when access requested	No	Yes	Yes	Yes	Yes
8(1)	Transfer of request	No	Yes	Yes	No	No
9 (1)	Extension of time limits	No	Yes	Yes	No	No
9(2)	Notice of extension to Information Commissioner	No	Yes	Yes	Yes	Yes
10	Where access is refused	No	Yes	Yes	No	No
11(2)	Application Fee Waiver	No	Yes	Yes	No	No
12(2)(b)	Language of access	No	Yes	Yes	No	No
12(3)(b)	Access to record in alternative format	No	Yes	Yes	No	No
Exemption Provisions of the <i>Access to Information Act</i>						
13	Information obtained in confidence	No	Yes	No	No	No
14	Federal-provincial affairs	No	Yes	No	No	No
15	International affairs and defence	No	Yes	No	No	No
16	Law enforcement and investigations	No	Yes	Yes	No	No
16.5	<i>Public Servants Disclosure Protection Act</i>	No	Yes	No	No	No
17	Safety of individuals	No	Yes	No	No	No
18	Economic interests of Canada	No	Yes	No	No	No
18.1	Economic interest of certain government institutions	No	Yes	No	No	No
19	Personal information	No	Yes	Yes	No	No
20	Third party information	No	Yes	Yes	No	No
21	Advice, etc.	No	Yes	No	No	No
22	Testing procedures, tests and audits	No	Yes	No	No	No
22.1	Internal Audits	No	Yes	No	No	No
23	Protected information – solicitors, advocates and notaries	No	Yes	Yes	No	No
23.1	Protected information – patents and trade-marks	No	Yes	Yes	No	No
24	Statutory prohibitions against disclosure	No	Yes	Yes	No	No
Other Provisions of the <i>Access to Information Act</i>						
25	Severability	No	Yes	Yes	No	No
26	Refusal of access if information to be published	No	Yes	No	No	No
27(1), (4)	Notice to third parties	No	Yes	Yes	Yes	No
28(1)(b),	Representations of third party and decision	No	Yes	No	No	No
33	Notice to Information Commissioner of notices to third parties	No	Yes	Yes	Yes	No
35(2)(b)	Right to make representations	No	No	No	No	No
37(1)(c)	Notice of actions to implement recommendations of Commissioner	No	No	No	No	No
37(4)	Access to be given to complainant	No	Yes	No	No	No
41(2)	Review by Federal Court – government institution	No	No	No	No	No
43(2)	Service or notice of application to Federal Court for review	No	Yes	Yes	No	No
44(2)	Notice to person who requested record	No	Yes	Yes	No	No
52(2)(b), 52(3)	Special rules for hearings	No	No	No	No	No
94	Annual report – government institutions	No	No	No	No	No
96(3)	Notice of Provision of services related to access to information	No	No	No	No	No
96(5)	Spending authority	No	No	No	No	No
Access to Information Regulations						
6(1)	Transfer of request	No	Yes	No	No	No
8	Method of access	No	Yes	No	No	No
8.1	Limitations in respect of format	No	Yes	No	No	No

Privacy Act

Description	DM	Assoc. DM	ADM CSB	DG PIMSD
All powers, duties and functions under the Act and Regulations	Full authority			

Description	Dir ATIP Ops	Deputy Dir, ATIP Ops	Dir, PMD
All powers, duties and functions under the Act and Regulations, with noted exceptions	Full authority except Sections 8(2)(j), 8(2)(m), 8(5), 9(1), 9(4), 10	Full authority except Sections 8(2)(j), 8(2)(m), 8(5), 9(1), 9(4), 10	Full authority except Sections 14-28 inclusively

Provision	Description	Manager	Team Leader/ Senior Advisor	Senior Analyst	Analyst
8(2)(j)	Disclosure for research or statistical purposes	No	No	No	No
8(2)(m)	Disclosure in the public interest or in the interest of the individual	No	No	No	No
8(4)	Copies of requests under paragraph 8(2)(e)	No	No	No	No
8(5)	Notice of disclosure under paragraph 8(2)(m)	No	No	No	No
9(1)	Record of disclosures to be retained	No	No	No	No
9(4)	Consistent uses	No	No	No	No
10	Personal information to be included in personal information banks	No	No	No	No
14(a)	Notice where access requested	Yes	Yes	Yes	No
14(b)	Giving access to the record	Yes	Yes	No	No
15	Extension of time limits	Yes	Yes	Yes	No
16	Where access is refused	Yes	Yes	No	No
17(2)(b)	Language of access	Yes	Yes	No	No
17(3)(b)	Access in an alternative format	Yes	Yes	No	No
18(2)	Exempt banks	Yes	No	No	No
19	Information obtained in confidence	Yes	No	No	No
20	Federal-provincial affairs	Yes	No	No	No
21	International affairs and defence	Yes	No	No	No
22	Law enforcement and investigations	Yes	No	No	No
22.3	Public Servants Disclosure Protection Act	Yes	No	No	No
23	Security clearances	Yes	No	No	No
24	Individuals sentenced for an offence	Yes	No	No	No
25	Safety of individuals	Yes	No	No	No
26	Information about another individual	Yes	Yes	No	No
27	Protected information – solicitors, advocates and notaries	Yes	Yes	No	No
27.1	Protected information – patents and trade-marks	Yes	Yes	No	No
28	Medical records	Yes	No	No	No
33(2)	Right to make representations	No	No	No	No
35(1)(b)	Notice of actions to implement recommendations of Commissioner	Yes	No	No	No
35(4)	Access to be given to complainant	Yes	No	No	No
36(3)(b)	Notice of actions to implement recommendations of Commissioner	Yes	No	No	No
51(2)(b),(3)	Special rules for hearings	No	No	No	No
72	Annual report to Parliament	No	No	No	No
73.1(3)	Notice of Provision of services related to privacy	No	No	No	No
73.1(5)	Spending authority	No	No	No	No
Privacy Regulations					
7	Retention of personal information requested under paragraph	No	No	No	No
9	Examination of information	Yes	Yes	Yes	Yes
11(2), 11(4)	Notification concerning corrections	Yes	Yes	Yes	Yes
13(1)	Disclosure of personal information relating to physical or mental	Yes	Yes	No	No
14	Examination in presence of medical practitioner or psychologist	Yes	Yes	No	No

Legend

Yes	Delegated
No	No Delegation

# Appendix B: Statistical Report on the *Access to Information Act*

Reporting period: 2020-04-01 to 2021-03-31. Data extracted on June 7, 2021.

## Section 1: Requests under the *Access to Information Act*

### 1.1 Number of Requests

Category	Number of requests
Received during reporting period	1,938
Outstanding from previous reporting period	1,221
<b>Total</b>	3,159
Closed during reporting period	1,358
Carried over to next reporting period	1,801

### 1.2 Sources of Requests

Source	Number of requests
Media	201
Academia	19
Business (private sector)	1,170
Organization	161
Public	233
Decline to Identify	154
<b>Total</b>	1,938

### 1.3 Informal Requests

Completion Time	Number of Requests
1 to 15 days	143
16 to 30 days	64
31 to 60 days	50
61 to 120 days	46
121 to 180 days	5
181 to 365 days	0
More than 365 days	3
<b>Total</b>	311

**Note:** All requests previously recorded as “treated informally” will now be accounted for in this section only.

## Section 2: Decline to act on vexatious, made in bad faith or abuse of right requests

Category	Number of Requests
Outstanding from previous reporting period	0
Sent during reporting period	0
<b>Total</b>	0
Approved by the Information Commissioner during reporting period	0
Declined by the Information Commissioner during reporting period	0
Carried over to next reporting period	0

Section 3: Requests Closed During the Reporting Period

3.1 Disposition and completion time

Disposition of requests	1 to 15 days	16 to 30 days	31 to 60 days	61 to 120 days	121 to 180 days	181 to 365 days	More than 365 days	Total
All disclosed	3	35	35	79	34	37	15	238
Disclosed in part	7	95	71	170	113	171	117	744
All exempted	0	0	1	0	1	0	1	3
All excluded	0	0	1	0	0	0	1	2
No records exist	46	55	23	11	2	2	1	140
Request transferred	6	0	0	0	0	0	0	6
Request abandoned	78	21	5	8	6	5	96	219
Neither confirmed nor denied	4	1	1	0	0	0	0	6
Decline to act with the approval of the Information Commissioner	0	0	0	0	0	0	0	0
Total	144	207	137	268	156	215	231	1,358

3.2 Exemptions

Section	Number of requests
13(1)(a)	10
13(1)(b)	4
13(1)(c)	8
13(1)(d)	1
13(1)(e)	2
14	3
14(a)	4
14(b)	10
15(1)	15
15(1) - International Affairs	1
15(1) - Defence of Canada	0
15(1) - Subversive Activities	0
16(1)(a)(i)	0
16(1)(a)(ii)	0
16(1)(a)(iii)	0
16(1)(b)	2
16(1)(c)	4
16(1)(d)	0
16(2)	3
16(2)(a)	0
16(2)(b)	0
16(2)(c)	35
16(3)	0
16.1(1)(a)	0
16.1(1)(b)	0
16.1(1)(c)	0
16.1(1)(d)	0

Section	Number of requests
16.2(1)	0
16.3	0
16.31	0
16.4(1)(a)	0
16.4(1)(b)	0
16.5	0
15.6	0
17	5
18(a)	1
18(b)	1
18(c)	0
18(d)	0
18.1(1)(a)	0
18.1(1)(b)	0
18.1(1)(c)	0
18.1(1)(d)	0
19(1)	762
20(1)(a)	3
20(1)(b)	108
20(1)(b.1)	0
20(1)(c)	59
20(1)(d)	11
20.1	0
20.2	0
20.4	0
21(1)(a)	45
21(1)(b)	37
21(1)(c)	11
21(1)(d)	0
22	3
22.1(1)	0
23	43
23.1	0
24(1)	0
26	0

3.3 Exclusions

Section	Number of requests
68(a)	8
68(b)	0
68(c)	0
68.1	0
68.2(a)	0
68.2(b)	0
69(1)	1
69(1)(a)	2
69(1)(b)	0
69(1)(c)	1
69(1)(d)	1
69(1)(e)	4
69(1)(f)	1
69(1)(g) re (a)	9
69(1)(g) re (b)	0
69(1)(g) re (c)	3
69(1)(g) re (d)	3
69(1)(g) re (e)	2
69(1)(g) re (f)	4
69.1(1)	1

3.4 Format of Information Released

Paper	Electronic	Other
23	957	2

3.5 Complexity

3.5.1 Relevant Pages Processed and Disclosed

Number of Pages Processed	Number of Pages Disclosed	Number of Requests
225,307	160,567	1,212

3.5.2 Relevant Pages Processed and Disclosed by Size of Requests

Disposition	Less than 100 pages processed		101 to 500 pages processed		501 to 1,000 pages processed		1,001 to 5,000 pages processed		More than 5,000 pages processed	
	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed
All disclosed	209	4768	24	4317	1	622	4	9027	0	0
Disclosed in part	446	11,661	235	53,471	33	18,811	27	44,013	3	13,877
All exempted	2	0	0	0	0	0	0	0	1	0
All excluded	2	0	0	0	0	0	0	0	0	0
Request abandoned	197	0	8	0	7	0	6	0	1	0
Neither confirmed nor denied	6	0	0	0	0	0	0	0	0	0
Total	862	16,429	267	57,788	41	19,433	37	53,040	5	13,877

3.5.3 Other Complexities

Disposition	Consultation Required	Assessment of fees	Legal Advice Sought	Other	Total
All disclosed	96	0	1	38	135
Disclosed in part	405	0	9	92	506
All exempted	0	0	1	1	2
All excluded	1	0	0	0	1
Request abandoned	0	0	0	1	1
Neither confirmed nor denied	0	0	0	0	0
Declined to act with the approval of the Information Commissioner	0	0	0	0	0
Total	502	0	11	132	645

3.6 Closed Requests

3.6.1 Number of Requests Closed Within Legislated Timelines

Category	Requests Closed Within Legislated Timelines
Number of requests closed within legislated timelines	522
Percentage of requests closed within legislated timelines (%)	38.4

3.7 Deemed Refusals

3.7.1 Reasons for Not Meeting Legislated Timelines

Total Number of requests closed past the statutory deadline	Interference with Operations/ Workload	External Consultation	Internal Consultation	Other
836	372	36	9	419

3.7.2 Requests Closed Beyond Legislated Timelines (including any extension taken)

Number of days past legislated timelines	Number of requests past legislated timeline where no extension was taken	Number of requests past legislated timeline where an extension was taken	Total
1 to 15 days	66	37	103
16 to 30 days	35	40	75
31 to 60 days	57	63	120
61 to 120 days	44	76	120
121 to 180 days	45	48	93
181 to 365 days	60	74	134
More than 365 days	68	123	191
Total	375	461	836

3.8 Requests for Translation

Translation Requests	Accepted	Refused	Total
English to French	0	0	0
French to English	0	0	0
Total	0	0	0



Section 4: Extension

4.1 Reasons for Extensions and Disposition of Requests

Disposition of Requests Where an Extension was Taken	9(1)(a) Interference with Operations	9(1)(b) Consultation: Section 69	9(1)(b) Consultation: Other	9(1)(c) Third Party Notice
All disclosed	2	1	6	115
Disclosed in part	91	5	40	411
All exempted	1	0	0	1
All excluded	0	0	0	1
No records exist	0	0	0	0
Request abandoned	42	10	20	33
Decline to act with the approval of the Information Commissioner	0	0	0	0
Total	136	16	66	561

4.2 Length of Extensions

Length of Extensions	9(1)(a) Interference with Operations	9(1)(b) Consultation: Section 69	9(1)(b) Consultation: Other	9(1)(c) Third Party Notice
30 days or less	55	0	11	0
31 to 60 days	24	3	18	544
61 to 120 days	36	13	32	16
121 to 180 days	11	0	0	1
181 to 365 days	10	0	5	0
365 days or more	0	0	0	0
Total	136	16	66	561

Section 5: Fees

Fee type	Fee collected		Fee waived or refunded	
	Number of requests	Amount	Number of requests	Amount
Application	1,620	\$8,100	318	\$1,590
Other fees	0	\$0	0	\$0
Total	1,620	\$8,100	318	\$1,590

Section 6: Consultations Received From Other Institutions and Organizations

6.1 Consultations Received from Other Government of Canada Institutions and Organizations

Consultations	Other Government of Canada Institutions	Number of Pages to Review	Other Organizations	Number of Pages to Review
Received during reporting period	162	7835	18	707
Outstanding from the previous reporting period	23	2679	1	11
Total	267	11,761	27	718
Closed during the reporting period	149	8345	16	461
Carried over to next reporting period	36	2,169	3	257

6.2 Recommendations and Completion Time for Consultations Received from Other Government of Canada Institutions

Recommendation	1 to 15 days	16 to 30 days	31 to 60 days	61 to 120 days	121 to 180 days	181 to 365 days	More than 365 days	Total
Disclose entirely	28	36	26	15	6	4	2	117
Disclose in part	0	0	4	3	2	1	1	11
Exempt entirely	0	0	0	0	0	0	0	0
Exclude entirely	0	0	0	0	0	0	0	0
Consult other institution	5	2	3	3	1	0	0	14
Other	3	2	1	1	0	0	0	7
Total	36	40	34	22	9	5	3	149

6.3 Recommendations and Completion Time for Consultations Received from Other Organizations

Recommendation	1 to 15 days	16 to 30 days	31 to 60 days	61 to 120 days	121 to 180 days	181 to 365 days	More than 365 days	Total
Disclose entirely	4	3	6	2	0	0	0	15
Disclose in part	0	0	0	0	0	0	0	0
Exempt entirely	0	0	0	0	0	0	0	0
Exclude entirely	0	0	0	0	0	0	0	0
Consult other institution	1	0	0	0	0	0	0	1
Other	0	0	0	0	0	0	0	0
Total	5	3	6	2	0	0	0	16

Section 7: Completion Time of Consultations on Cabinet Confidences

7.1 Requests with Legal Services

Number of days	Fewer than 100 pages processed		101 to 500 pages processed		501 to 1,000 pages processed		1,001 to 5,000 pages processed		More than 5,000 pages processed	
	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed
1 to 15	2	8	0	0	0	0	0	0	0	0
16 to 30	3	0	0	0	0	0	0	0	0	0
31 to 60	3	37	0	0	0	0	0	0	0	0
61 to 120	1	0	0	0	0	0	0	0	0	0
121 to 180	0	0	0	0	0	0	0	0	0	0
181 to 365	1	0	0	0	0	0	0	0	0	0
More than 365	0	0	0	0	0	0	0	0	0	0
Total	10	45	0	0	0	0	0	0	0	0

7.2 Requests with Privy Council Office

Number of days	Fewer than 100 pages processed		101 to 500 pages processed		501 to 1,000 pages processed		1,001 to 5,000 pages processed		More than 5,000 pages processed	
	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed
1 to 15	0	0	0	0	0	0	0	0	0	0
16 to 30	0	0	0	0	0	0	0	0	0	0
31 to 60	0	0	0	0	0	0	0	0	0	0
61 to 120	0	0	0	0	0	0	0	0	0	0
121 to 180	0	0	0	0	0	0	0	0	0	0
181 to 365	0	0	0	0	0	0	0	0	0	0
More than 365	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0	0

Section 8: Complaints and Investigations

Section 32 Notice of intention to investigate	Subsection 30(5) Ceased to investigate	Section 35 Formal representations	Section 37 Reports of finding received	Section 37 Reports of finding containing recommendations issued by the Information Commissioner	Section 37 Reports of finding containing orders issued by the Information Commissioner
32	25	11	20	13	0

Section 9: Court Action

9.1 Court Actions on Complaints Received Before June 21, 2019 and On-going

Section 41 (before June 21, 2019)	Section 42	Section 44
1	0	0

9.2 Court Actions on Complaints Received After June 21, 2019 (Section 41)

Complainant (1)	Institution (2)	Third Party (3)	Privacy Commissioner (4)	Total
0	0	1	0	1

Section 10: Resources Related to the *Access to Information Act*

10.1 Costs

Expenditures	Amount
Salaries	\$4,600,993
Overtime	\$73,432
Goods and Services	\$2,133,545
Professional services contracts	\$2,020,392
Other	\$113,152
Total	\$6,807,970

10.2 Human resources

Resources	Person Years Dedicated to Access to Information Activities
Full-time employees	57.824
Part-time and casual employees	0.892
Regional staff	0.000
Consultants and agency personnel	9.267
Students	0.514
Total	68.497

# Appendix C: Statistical Report on the *Privacy Act*

Reporting period: 2020-04-01 to 2021-03-31. Data extracted on June 7, 2021.

## Section 1: Requests under the *Privacy Act*

### 1.1 Number of Requests

Category	Number of requests
Received during reporting period	139
Outstanding from previous reporting period	54
<b>Total</b>	193
Closed during reporting period	144
Carried over to next reporting period	49

## Section 2: Requests Closed During the Reporting Period

### 2.1 Disposition and completion time

Disposition of requests	1 to 15 days	16 to 30 days	31 to 60 days	61 to 120 days	121 to 180 days	181 to 365 days	More than 365 days	Total
All disclosed	0	2	0	2	0	3	0	7
Disclosed in part	3	8	13	8	9	11	3	55
All exempted	0	0	0	0	0	0	0	0
All excluded	0	0	0	0	0	0	0	0
No records exist	35	2	1	1	1	0	0	40
Request abandoned	32	3	5	0	0	0	2	42
Neither confirmed nor denied	0	0	0	0	0	0	0	0
<b>Total</b>	70	15	19	11	10	14	5	144

### 2.2 Exemptions

Section	Number of requests
18(2)	0
19(1)(a)	0
19(1)(b)	0
19(1)(c)	0
19(1)(d)	0
19(1)(e)	0
19(1)(f)	0
20	0
21	0
22(1)(a)(i)	0
22(1)(a)(ii)	0
22(1)(a)(iii)	0
22(1)(b)	0
22(1)(c)	0
22(2)	0
22.1	0
22.2	0
22.3	0

Section	Number of requests
22.4	0
23(a)	0
23(b)	0
24(a)	0
24(b)	0
25	0
26	53
27	9
27.1	0
28	0

### 2.3 Exclusions

Section	Number of requests
69(1)(a)	0
69(1)(b)	0
69.1	0
70(1)	0
70(1)(a)	0
70(1)(b)	0
70(1)(c)	0
70(1)(d)	0
70(1)(e)	0
70(1)(f)	0
70.1	0

### 2.4 Format of Information Released

Paper	Electronic	Other
4	58	0

### 2.5 Complexity

#### 2.5.1 Relevant Pages Processed and Disclosed

Number of Pages Processed	Number of Pages Disclosed	Number of Requests
9,630	7,063	104

2.5.2 Relevant Pages Processed and Disclosed by Size of Requests

Disposition	Less than 100 pages processed		101 to 500 pages processed		501 to 1,000 pages processed		1,001 to 5,000 pages processed		More than 5,000 pages processed	
	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed
All disclosed	7	67	0	0	0	0	0	0	0	0
Disclosed in part	35	1,234	15	3,244	4	2,433	1	85	0	0
All exempted	0	0	0	0	0	0	0	0	0	0
All excluded	0	0	0	0	0	0	0	0	0	0
Request abandoned	42	0	0	0	0	0	0	0	0	0
Neither confirmed nor denied	0	0	0	0	0	0	0	0	0	0
Total	84	1,301	15	3,244	4	2,433	1	85	0	0

2.5.3 Other Complexities

Disposition	Consultation Required	Legal Advice Sought	Interwoven Information	Other	Total
All disclosed	0	0	0	0	0
Disclosed in part	2	1	2	10	15
All exempted	0	0	0	0	0
All excluded	0	0	0	0	0
Request abandoned	0	0	0	0	0
Neither confirmed nor denied	0	0	0	0	0
Total	2	1	2	10	15

2.6 Closed Requests

2.6.1 Number of Requests Closed Within Legislated Timelines

Category	Requests Closed Within Legislated Timelines
Number of requests closed within legislated timelines	86
Percentage of requests closed within legislated timelines (%)	59.7

2.7 Deemed Refusals

2.7.1 Reasons for Not Meeting Legislated Timelines

Total Number of requests closed past the statutory deadline	Interference with Operations/ Workload	External Consultation	Internal Consultation	Other
58	33	1	0	24

2.7.2 Requests Closed Beyond Legislated Timelines (including any extension taken)

Number of days past deadline	Number of Requests Past Legislated Timeline Where No Extension was Taken	Number of Requests Past Legislated Timeline Where an Extension was Taken	Total
1 to 15 days	8	0	8
16 to 30 days	10	0	10
31 to 60 days	8	0	8
61 to 120 days	7	1	8
121 to 180 days	6	0	6
181 to 365 days	13	2	15
More than 365 days	2	1	3
Total	54	4	58

2.8 Requests for Translation

Translation Requests	Accepted	Refused	Total
English to French	0	0	0
French to English	0	0	0
Total	0	0	0

Section 3: Disclosures under Subsections 8(2) and 8(5)

Paragraph 8(2)(e)	Paragraph 8(2)(m)	Subsection 8(5)	Total
8	0	0	8

Section 4: Requests for Correction of Personal Information and Notations

Disposition for Correction Requests Received	Number
Notations attached	0
Requests for correction accepted	0
Total	0

Section 5: Extensions

5.1 Reasons for Extensions and Disposition of Requests

Reason for Extension	Number of Requests Where an Extension was Taken
15(a)(i) Interference with Operations: Further Review Required to Determine Exemptions	0
15(a)(i) Interference with Operations: Large Volume of Pages	4
15(a)(i) Interference with Operations: Large Volume of Requests	0
15(a)(i) Interference with Operations: Documents are Difficult to Obtain	0
15(a)(iii) Consultation: Cabinet Confidence (Section 70)	0
15(a)(iii) Consultation: External	0
15(a)(iii) Consultation: Internal	1
15(b) Translation Purposes or Conversion	0
Total	5



5.2 Length of Extensions

Reason for Extension	1 to 15 days	16 to 30 days	31 days or greater	Total
15(a)(i) Interference with Operations: Further Review Required to Determine Exemptions	0	0	N/A	0
15(a)(i) Interference with Operations: Large Volume of Pages	0	4	N/A	4
15(a)(i) Interference with Operations: Large Volume of Requests	0	0	N/A	0
15(a)(i) Interference with Operations: Documents are Difficult to Obtain	0	0	N/A	0
15(a)(iii) Consultation: Cabinet Confidence (Section 70)	0	0	N/A	0
15(a)(iii) Consultation: External	0	0	N/A	0
15(a)(iii) Consultation: Internal	0	1	N/A	1
15(b) Translation Purposes or Conversion	0	0	0	0
Total	0	5	0	5

Section 6: Consultations Received From Other Institutions and Organizations

6.1 Consultations Received from Other Government of Canada Institutions and Other Organizations

Consultations	Other Government of Canada Institutions	Number of Pages to Review	Other Organizations	Number of Pages to Review
Received during reporting period	3	97	0	0
Outstanding from the previous reporting period	1	22	0	0
Total	4	119	0	0
Closed during the reporting period	4	119	0	0
Carried over to next reporting period	0	0	0	0

6.2 Recommendations and Completion Time for Consultations Received from Other Government of Canada Institutions

Recommendation	1 to 15 days	16 to 30 days	31 to 60 days	61 to 120 days	121 to 180 days	181 to 365 days	More than 365 days	Total
All disclosed	2	1	0	0	0	0	0	3
Disclosed in part	0	0	0	0	0	0	0	0
All exempted	0	0	0	0	0	0	0	0
All excluded	0	0	0	0	0	0	0	0
Consult other institution	0	0	0	0	0	0	0	0
Other	0	0	0	1	0	0	0	1
Total	2	1	0	0	0	0	0	4

6.3 Recommendations and Completion Time for Consultations Received from Other Organizations

Recommendation	1 to 15 days	16 to 30 days	31 to 60 days	61 to 120 days	121 to 180 days	181 to 365 days	More than 365 days	Total
All disclosed	0	0	0	0	0	0	0	0
Disclosed in part	0	0	0	0	0	0	0	0
All exempted	0	0	0	0	0	0	0	0
All excluded	0	0	0	0	0	0	0	0
Consult other institution	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0

Section 7: Completion Time of Consultations on Cabinet Confidences

7.1 Requests with Legal Services

Number of days	Fewer than 100 pages processed		101 to 500 pages processed		501 to 1,000 pages processed		1,001 to 5,000 pages processed		More than 5,000 pages processed	
	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed
1 to 15	0	0	0	0	0	0	0	0	0	0
16 to 30	0	0	0	0	0	0	0	0	0	0
31 to 60	0	0	0	0	0	0	0	0	0	0
61 to 120	0	0	0	0	0	0	0	0	0	0
121 to 180	0	0	0	0	0	0	0	0	0	0
181 to 365	0	0	0	0	0	0	0	0	0	0
More than 365	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0	0

7.2 Requests with Privy Council Office

Number of days	Fewer than 100 pages processed		101 to 500 pages processed		501 to 1,000 pages processed		1,001 to 5,000 pages processed		More than 5,000 pages processed	
	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed	Number of requests	Pages disclosed
1 to 15	0	0	0	0	0	0	0	0	0	0
16 to 30	0	0	0	0	0	0	0	0	0	0
31 to 60	0	0	0	0	0	0	0	0	0	0
61 to 120	0	0	0	0	0	0	0	0	0	0
121 to 180	0	0	0	0	0	0	0	0	0	0
181 to 365	0	0	0	0	0	0	0	0	0	0
More than 365	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0	0

Section 8: Complaints and Investigation Notices Received

Section 31	Section 33	Section 35	Court Action	Total
4	2	4	0	10

Section 9: Privacy Impact Assessments (PIA) and Personal Information Banks (PIB)

9.1 Privacy Impact Assessments

Number of PIA(s) Completed
2

9.2 Personal Information Banks

Active	Created	Terminated	Modified
46	0	2	1

Section 10: Material Privacy Breaches

Number of material privacy breaches reported to:	Number
TBS	1
OPC	1

Section 11: Resources Related to the Privacy Act

11.1 Costs

Expenditures	Amount
Salaries	\$1,373,516
Overtime	\$45,533
Goods and Services	\$398,511
Professional services contracts	\$380,595
Other	\$17,917
Total	\$1,817,560

11.2 Human Resources

Resources	Person Years Dedicated to Privacy Activities
Full-time employees	13.236
Part-time and casual employees	1.950
Regional staff	0.000
Consultants and agency personnel	1.755
Students	0.338
Total	17.279

# Appendix D: Supplemental Statistical Report on the *Access to Information Act* and *Privacy Act*

In addition to completing the forms for the Statistical Reports on the ATIA and *Privacy Act* for 2020-2021, institutions were asked to complete this Supplemental Report to help identify the institutional capacity during COVID-19. The data requirements are set out in the tables below.

## Capacity to Receive Requests

Table 1 reports the number of weeks Health Canada was able to receive ATIP requests through different channels.

Table 1

Time period	Number of Weeks
Able to receive requests by mail	50
Able to receive requests by email	52
Able to receive requests through the digital request service	52

## Capacity to Process Records

Table 2.1 reports the number of weeks Health Canada was able to process paper records in different classification levels.

Table 2.1

Type of Paper Record	No Capacity	Partial Capacity	Full Capacity	Total
Unclassified Paper Records	8	44	0	52
Protected B Paper Records	8	44	0	52
Secret and Top Secret Paper Records	8	44	0	52

Table 2.2 reports the total number weeks Health Canada was able to process electronic records in different classification levels.

Table 2.2

Type of Electronic Record	No Capacity	Partial Capacity	Full Capacity	Total
Unclassified Electronic Record	0	6	46	52
Protected B Electronic Record	0	6	46	52
Secret and Top Secret Electronic Record	8	44	0	52

# Appendix E: Federal Court Review

## **Information Commissioner of Canada (Molly Haynes and Patrick Cain) v. Minister of Health**

Three complainants filed individual applications for judicial review on June 15, 2020, which the Federal Court consolidated. In all three requests, Health Canada refused to disclose the first three characters of postal codes of producers and users of medical cannabis on the grounds that these three characters constitute personal information.

The Information Commissioner, representing the complainants, concluded that the FSAs should have been disclosed where individuals could not be identified. An independent expert was retained by Health Canada to opine on the risk of re-identification. The expert's report was served on March 24, 2021 and are awaiting next steps.

## **Novo Nordisk Canada Inc. v. Minister of Health and Attorney General of Canada**

Filed on June 9, 2020, this application for judicial review relates to the release of records pertaining to the removal of a Canadian patent from the Patent Register. Novo Nordisk is challenging the disclosure on records stating they contain personal information or that they fall outside the scope of the request. Affidavits have been filed, and the matter is ongoing at this time.

## **Apotex Inc. v. Minister of Health et al**

In August 2019, Apotex filed for judicial review of the decision to release records related to a drug product that had been withdrawn from assessment. The fact that it was withdrawn impacts the records that may already publicly exist.

The motion was scheduled to be heard on December 18, 2020, however the Court adjourned the motion and ordered this matter to be held in temporary abeyance pending a decision being rendered in another litigation matter concerning a similar request. A case management conference shall be convened to discuss next steps.

## **Elanco Canada Limited v. Canada (Minister of Health) (Under Appeal)**

In January 2020, the Federal Court decided in favour of Elanco and overruled Health Canada's decision to partially release third party records related to Elanco's submissions for the veterinary medicine Fortekor Flavour Tabs. Health Canada argued that some of the information is available in the public domain already or could be verified through independent observation of the product, and that confidentiality agreements held by the company do not supersede the right to access under the ATIA.

The judge declared Health Canada's decision to release was invalid, awarded costs to Elanco, and allowed exemption of the entirety of the disputed records. Health Canada is appealing this decision. Both parties appeal factums have been served and filed as of the fall of 2020 and are now awaiting scheduling.

## **Provital Health v. Canada (Minister of Health), Preventous Collaborative Health v. Canada (Minister of Health), Copeman Healthcare v. Canada (Minister of Health)**

In January 2019, three private health care clinics each filed judicial review applications in relation to one ATI request. The applications for judicial review concern the partial release of audit reports in relation to the three clinics.

The Applicants brought forward a motion for an order to compel the production of documents (Rule 317) requested during the cross-examinations of the Health Canada affiants and refused by Canada.

That motion was dismissed by the Federal Court on March 25, 2020. The Applicants filed additional motions and appeals for the production under Rule 317 and on March 25, 2021, the court granted the motion.

Pursuant to special COVID-related practice directives, the appeal has been “deselected” by the Federal Court of Appeal (FCA) meaning that the regular time periods are suspended and will begin to run once the FCA removes the case from this list.

#### **Samsung Electronics Canada Inc. v. Minister of Health (Under Appeal)**

In September 2018, an application was filed for a judicial review of Health Canada's intention to partially release records related to potential safety issues concerning certain top load, high efficiency washing machines.

The review was heard on September 10, 2020. The Confidential Judgement and Reasons were rendered on November 30, 2020, resulting in the application being dismissed.

The Applicant is appealing the decision on the grounds that the application judge erred in his interpretation and application of s. 20(1) of the ATIA and commercial information under s. 20(1)(b) of the ATIA.

#### **Actial Farmaceutical S.R.L. v. Minister of Health**

In January 2020, Actial Farmaceutical filed for judicial review of a Health Canada decision issued to Ferring Inc. to partially release records related to two natural health products. Canada notified the Applicant on February 20, 2020 of its intention to file a motion to strike unless the Applicant filed specific proof that Actial has the legal right to view all of Ferring's information.

As evidence of prior disclosure by Ferring, the Applicant provided an affidavit attesting that the Applicant was in possession of the proof however, it included no attachments showing the correspondence between the parties.

On January 25, 2021, the Crown wrote to the Federal Court requesting a case management conference in order for the Court to opine on the sufficiency of the Applicant's evidence. The Court directed the Applicant to provide the Respondent, by no later than April, with an affidavit/declaration from Ferring affirming Ferring's consent to disclosure of the information to Actial.

#### **Organigram Holdings Inc. v. Minister of Health (Discontinuance)**

Organigram filed for judicial review in July 2019, to overturn a Health Canada decision to release records following an Office of the Information Commissioner complaint that was determined to be well founded. The records contain pesticide reports related to a cannabis recall. Health Canada filed an affidavit in October 2019.

On June 12, 2020, the Federal Court ordered that the matter continue as a specially managed proceeding and that the applicant serve and file a requisition for hearing by July 2, 2020. By October 2020, the Applicant proposed to discontinue without costs. The Crown has agreed not to seek costs so the Applicant will move forward with the discontinuance.

#### **Abbott Laboratories Limited v. Minister of Health and AGC Abbott#1 (T-1487-18) and Abbott#2 (T-1232-19) (Discontinuance)**

In August 2018, Abbott Laboratories Limited filed a judicial review application to contest the decision to partially release records the company considers confidential. The Applicant cross-examined Health Canada affiants in March 2019.

In July 2019, Abbott Laboratories Limited filed a secondary judicial review of a Health Canada decision to release assessments of implantable medical devices from a number of third parties. Cross-examinations were held in December 2019.

Hearings for Abbott#1 (T-1487-18) and Abbott#2 (T-1232-19) were scheduled to be heard on October 5 and 6, 2020, respectively, by videoconference. However, on September 18, 2020, Abbott unilaterally discontinued both applications. The Crown will be preparing the costs.