EVERYTHING YOU NEVER WANTED TO KNOW ABOUT ATIP (PART 1)

On 1 April 2014, CSE completed its first year of complete independence for the administration of the *Access to Information Act* and *Privacy Act*. Over the course of the past year, there have been a number of questions about Access to Information and Privacy (ATIP), how ATIP applies at CSE and what it means for every CSE employee. Hopefully the information below will be useful in addressing a number of these questions. I anticipate future posting dealing with more questions.

Q. If I only really remember 6 things about ATIP, what should it be?

A. Okay, here are quick hits of things to always remember about ATIP. Ready? Here we go:

1. It's the law. If CSE does not comply, the Minister and the Chief may be called in front of a Parliamentary Committee. Oh, and you could personally face fines and/or jail.
2. It is an important part of everyone's job.
3. All records, in any form, regardless of classification or originator are subject to ATIP. This includes absolutely everything sent or received by email, instant messages, and BlackBerry PINs, as well as all posts on our intranet, including the material in the forums.
4. Information can only be protected (exempted or excluded) from disclosure based on specific provisions of the Acts. There is no provision for inaccuracy, inappropriateness or stupidity.
5. Timelines are short and legislative, so please action the requests quickly.
6. The ATIP Office is here to help. If you have any questions, comments or concerns, contact them right away at by email at ATIP-Unit@CSE-CST.GC.CA or visit their website at [redacted]

Q. Why do the *Access to Information Act* and *Privacy Act* exist?

A. These Acts provide Canadian citizens, permanent residents or any person (or entity) present in Canada the legal right to obtain information, in any form, that is under the control of a government institution. The general purpose of these Acts is to make government more open and transparent, allowing citizens to more fully participate in the democratic process.

The *Access to Information Act* gives individuals a right to access records under the control of a federal government institution. The main principles of this Act are: government information should be available to the public; exemptions to this right should be limited and specific; and decisions on disclosure of information should be reviewed independently of government.

The *Privacy Act* protects the privacy of individuals with respect to personal information about them held by a government institution and provides individuals with a right to access and request correction to this information.

Q. ATIP only applies to documents like "briefing notes", "decks" (presentations) and "letters", right?

Not quite right. Both Acts provide a right of access to any record, in any form, that is responsive to the request and under the control of the institution. Most often the records will be in a paper or electronic document, but it could also be an audio recording, video recording, or other medium. In fact, even this posting (as well as everything else on our intranet) is subject to the Acts. Similarly, so are all the notes we take at meetings, whether we do it in a notebook, on a scrap of paper, or on a napkin. Likewise, all of our email, faxes, and records in all databases are subject to ATIP requests. Essentially all information, in any form (other than existing only in peoples' heads) is subject to ATIP.

Q. What does "responsive to the request" mean?

A. Any record that could be reasonably concluded as answering or being related to the request would be considered "responsive to the request". If even a portion of a document is responsive to the request (such a paragraph, page, chapter, annex or attachment), then the whole document (and all of its attachments) must be provided to the ATIP Office.

For example, if someone made a request for "All correspondence between the Chief and the Minister", the term "correspondence" should be given its broadest meaning. As such, it should include any records related to communications between the Chief and the Minister, such as letters, memos, briefing notes, emails, faxes, BlackBerry PINs, handwritten notes, voicemail messages, transcripts of conversations, etc.

If you are ever in doubt whether a record is responsive to the request, you can always seek clarification from the ATIP Officer identified in the ATIP request.

Q. So what does "under the control of the institution" mean?

A. In simple terms, any record that is retained on CSE premises, that resides in or on any of our electronic systems, or is held or stored by CSE (or by CSE personnel for CSE purposes) off-site are generally under the control of CSE. There are some limited exceptions to this principle, such as records within the foreign liaison offices (BRLO, SUSLO, AUSLO) which are under the control of those foreign governments or records within DLS, which are under the control of another government institution (i.e., Department of Justice). Similarly, information that CSE personnel can access online, but that is hosted by another agency [redacted] are not generally considered to be under the control of CSE.

Q. Does ATIP apply to records that CSE didn't create, such as those originated by other government departments, Second Party Partners, or the private sector?

A. Sure does, as long as the record is under the CSE's control (see above). This means that if we have an original or copy of a responsive record, regardless of who originated it or where it came from, a copy must be forwarded to the ATIP Office. However, if CSE was not the originator of the record, you should note this to the ATIP Office who will formally consult with the originator (if it does not have sufficient justification to protect the information). Similarly, if a CSE record contains information from another entity, you should note this to the ATIP Office who will formally consult with the originator of that information (if it does not have sufficient justification to protect the information).

Q. Does ATIP apply to "transitory records" or only to "official records"?

A. ATIP applies to every record, regardless of whether you consider it to be a "transitory" or "official" record at the time of the request. Consider an ATIP request as a snapshot of all relevant records under the control of CSE, at the time the request is made. If the record exists, it is subject to the Acts.

It is, therefore, very important to appropriately managing the information you are responsible for, including the timely and appropriate disposition of transitory records and preservation of official records of business value.

Q. I meant to delete the "transitory record" before I received the ATIP request. What do I do?

A. I'm sorry to say that it both too late and too bad. As stated above, the Acts apply. Oh, and I should mention that it is a criminal offence to delete or destroy a record that is subject to an active ATIP request (or to attempt or actually prevent access to a record).

Q. Our Records Disposition Authority states that we are supposed to delete the information. What do I do?

A. As outlined in the response above, you are required by law to retain the information, if it is responsive to an active ATIP request. In this case, the *Access to Information Act* and *Privacy Act* outweigh our other legal requirements related to retention or destruction of records (until the ATIP file is finally closed, at which time the other requirements continue to apply).

Q. Okay, but ATIP requests only apply to final documents, right?

A. Unfortunately that is incorrect. Every version, of every record is subject to the Acts, regardless of whether the record was ever finalized or approved. That being said, most often requesters are only interested in the last version of a document, but ultimately it is the requester's choice. If you aren't sure about a request, you should speak to the specific ATIP Officer identified in the ATIP request, as they can clarify this with the requester.

Q. But the information I have is highly classified. Surely it isn't subject to ATIP, right?

A. Incorrect again. All information, regardless of classification or sensitivity, is subject to ATIP. This doesn't mean that it will ultimately be released to the public though, as both the *Access to Information Act* and *Privacy Act* contain provisions for the severance or removal (in whole or in part) of information that is injurious to disclose (for specific reasons).

Q. Great, so I can remove the really sensitive bits! How do I do that?

A. When you provide the responsive records to ATIP Office, you must provide a clean (preferably electronic) copy of the records and another copy that has any sensitive material highlighted. Along with the highlighting, you have to indicate the reason for severing the material, along with the section of the Act that applies. The exemptions and the exclusion specified in the *Access to Information Act* or *Privacy Act* form the only basis for CSE to refuse access to information. For the severances to be valid, they also must also follow the principle of reasonable severability.

Ultimately, this means that CSE must provide access to all of the information requested, except for the limited information that is either specifically exempted or excluded under a provision of the Acts.

I feel that I should note at this point that there are no grounds under ATIP to protect information simply because it is:

- Factually inaccurate or misleading;
- Embarrassing or politically insensitive;
- A (bad) joke, sarcastic, tongue-in-cheek, or otherwise said in jest;
- Asinine, foolish, heedless, ill-advised, imprudent, poorly stated, rash, reckless, thoughtless, unwise or just plain stupid; or
- Derogatory, inflammatory, or otherwise inappropriate or offensive.

The **only** way to protect yourself (and CSE!) from such records from ever being subject to an ATIP request is to **never** create them in the first place. This isn't to say that you should not create records (quite the opposite, it is important to create official records of our business activities), rather it is to say that you should not create any records that fall into one of the categories identified in the bullets above (because they are not appropriate records of any business value).

Q. Wait a second, what does a "the principle of reasonable severability" mean?

A. "The principle of reasonable severability" means that CSE has to deliberately limit the severances to the information exempted or excluded under the Acts and CSE has to release as much other information as possible. This means that only the sensitive information should be removed from the document, if a valid exemption exists. If the material can be reasonably severed from the rest of the record, the remainder of the document must be disclosed.

Although the original purpose of the document may be lost when the exempt information is removed, an exemption cannot be claimed for the entire record as long as there remains some information that is itself intelligible, comprehensible and relevant to the request.

Q. I think my severances are reasonable and proportionate, so I'm all good, right?

A. Under the Acts, the "head of the institution" (i.e., the Minister of National Defence) or his delegate are the only individual(s) who can make the final determination of what CSE will or will not release to the requester. At CSE, the Minister has provided delegation of authority (in whole or part) to four positions:

- Director General, Policy and Communications;
- Director, Disclosure, Policy and Review;
- Manager, Disclosure Management; and
- Supervisor, ATIP Office.

This means that only the individuals listed above can make the final determination of what will (or will not) be released under ATIP. Note that the Chief is not included in the list above. While he can provide his input to the Minister's delegates to inform their decision (in the same manner as all CSE staff for material under their control), he cannot direct the final decision that is made, as that would be considered to be interference with an ATIP request (which is a criminal offence).

Q. This sounds like a lot of work! Why do I have to bother with this? It's not a part of my job.

A. Actually it is not only a part of your job, it is the law. One of CSE's core values is lawfulness. This applies not only to how we conduct our "mission", but also to how we administer the resources (including information) entrusted to us as public servants. However, if this isn't enough to convince you that you have to do it, then perhaps you should also know that you could be personally fined or sent to jail for willfully withholding or destroying information that is subject to an ATIP request.

Q. Well, I'm really busy, so this will have to wait.

A. Sorry, this can't wait. Under the law, CSE only has 30 days (calendar days, not working days) to provide the responsive records to the requester, unless an extension is taken by the ATIP Office for a valid reason. If you believe an extension will be required (due to the volume or complexity of the search, or the need of the ATIP Office to consult with other entities on the records you will be providing them), please speak with the ATIP Officer identified in the ATIP request.

Q. So what, we were late, what's the worst that can happen?

If CSE consistently exceeds the legislative deadline, the Minister and Chief could be called before Parliamentary committee to explain the cause and what they are doing to address the issue (including holding staff accountable). To be perfectly frank, no Minister or Deputy Minister ever wants to be called before a Parliamentary Committee to discuss problems with ATIP.

Oh, then there is that point again about personal criminal liability if a court determined that you were deliberately (attempting or actually) preventing access to responsive records.

EVERYTHING YOU NEVER WANTED TO KNOW ABOUT ATIP (PART 2)

This post is a follow-up to my initial entry, *Everything You Never Wanted to Know About ATIP (Part 1)*. Today's post focuses on a number of questions that are often asked after someone has been tasked with an ATIP request.

Q1. I know that the ATIP Office receives and tasks out ATIP requests. Why am I getting tasked by someone else in my business line?

A. When the ATIP Office receives a new request, they task the business line that is (or is likely to be) responsible for the records requested by the applicant. Each ExCom member has identified one or more office(s) that act as a liaison with the ATIP Office for the business line. These liaison offices are referred to as an Office of Primary Interest (OPI).

The OPI for your business line is responsible for ensuring that the appropriate subject matter expert(s) (SMEs) within the business line are sub-tasked with retrieving any responsive records, for coordinating severance recommendations, and for seeking appropriate business line approval before submitting the material to the ATIP Office.

Q2. I've heard that applicants get five free hours of "search and retrieval" with their ATIP request. Is this true?

A. It is true that the applicant gets five hours of "search and retrieval" time with their request under the *Access to Information Act*. However, this time is not completely free. It is included in the initial $5 application fee. The time it takes to review records does not count towards the five hour period of search and retrieval applicants are entitled to. The five hour period is for all areas of the organization, not just you, your office or business line.

Q3. What is included in "search and retrieval"?

A. "Search and retrieval" refers to physically locating relevant records and providing them to the ATIP Office. For example, this includes the time required to go through filing cabinets, notebooks, and other hard copy records to locate the relevant records. Similarly, it also accounts for the time required to conduct electronic searches in information repositories, on hard drives, networked drives, the intranet and other electronic media to locate the relevant records.

Additional time needed due to poor file management, photocopying, reviewing records and recommending severances do not qualify as part of the search and retrieval process.

Q4. Wait, you only mentioned the *Access to Information Act* in the response to Question 2. What about "search and retrieval" under the *Privacy Act*?

A. Unlike the *Access to Information Act*, the *Privacy Act* does not require an application fee, nor does it limit search and retrieval time. However, it is important to note that requests submitted under the *Privacy Act* do still have a 30 day legislative timeline to respond to the applicant.

Q5. Why do the two Acts treat application fees and "search and retrieval" differently?

A. This is due to the fundamental differences in the purpose for the right of access under the two Acts.

The *Access to Information Act* is designed to allow Canadians and individuals currently in Canada access to information that the Government creates, holds or for which it is otherwise responsible in order to allow greater participation in the democratic process.

The *Privacy Act*, however, is designed to allow Canadians and individuals currently in Canada to access and correct (as necessary) any information related to themselves that the Government collects, creates, holds or for which it is otherwise responsible. This is principally to ensure that the provision, granting or denial of benefits and services or other administrative decisions taken by the Government is done based on the most up to date and correct information as possible.

Q6. I think that it will take a significant amount of time to do the "search and retrieval". What do I do?

A. Regardless of whether it is an *Access to Information Act* or *Privacy Act* request, if you believe that the "search and retrieval" of records will take more than an hour, stop the search and retrieval process. Immediately provide the OPI within your business line with an estimate of the volume of records that you have to search and approximately how long it will take to retrieve the relevant records. Based on this information, the OPI within your business line may need to engage the ATIP Office. Do not proceed with the search and retrieval process unless the ATIP Office informs the OPI in your business line that you should.

If the "search and retrieval" time is estimated to take more than five hours across all of CSE, the ATIP Office will consult with the requester and *may* apply additional fees (under the *Access to Information Act)* and/or take an extension on the deadline (under either the *Access to Information Act* or *Privacy Act*) if it the search and retrieval would cause undue interference with the operations of CSE.

Note that the application of additional fees or the taking of an extension are discretionary and will be decided by one of the Minister's delegates. Fees paid by requesters for Access to Information requests are based on section 11 of the *Access to Information Act* and prescribed in section 7 of the *Access to*

Information Regulations and are not collected on a cost recovery basis. If applied, neither the additional fees nor the extension can exceed the formulas established by Treasury Board Secretariat.

Q7. Why was the ATIP request worded that way?

A. The simplest (and, perhaps, least useful) answer is that the request text provided to you represents the wording the requester used.

The longer answer is that there can be any number of reasons why the requester phrased a particular request the way they did. For example, the requester may:

- Either be unfamiliar or extremely familiar with the ATIP processes and legislative frameworks;
- Be trying to be as clear and precise as possible, given the (often limited) information they have available to them prior to making the request;
- Be trying to be very inclusive or specific about the nature of information they desire;
- Be using a list of bullets or (sub)clauses to breakdown a complex request;
- Be making the same request of multiple government institutions, regardless of the institutions unique role or mandate;
- Be unsure of how to best describe exactly what they are asking for;
- Either understand or misunderstand what CSE does or does not do;
- Know exactly what they are asking for;
- Be making a broad request for unknown information at the time of the request.

Remember, given the highly classified nature of CSE's activities, most people are not familiar with our specific activities or terminology. As such, a request may use more generic or colloquial terms. Similarly, they may use a specific CSE term in a sense that is different than we often understand or use it. For all of these reasons, the request may appear to be confusing or otherwise unclear to CSE staff.

Q8. Why didn't the ATIP Office clarify the request before tasking me (my office or my business line) with it?

A. ATIP Analysts do seek clarification from the requester before tasking the request if the request is fundamentally unclear, incomplete or unintelligible. However, the ATIP Analysts are not subject matter experts on all aspects of CSE's activities in each business line. Assisting requesters to clarify and/or narrow their request (with the benefit of discussions with OPIs) could, in some cases, reveal sensitive information. Therefore, the ATIP Office will often err on the side of caution and task requests that appear reasonably intelligible.

Q9. I don't understand the request. What do I do?

A. If you ever have a question about an ATIP request, you are encouraged to contact the OPI in your business line or the ATIP Analyst identified on the request tasking. They can work with you to clarify the request. If required, the ATIP Analyst will contact the requester to seek further clarification.

Q10. This request is incredibly specific. Do we have a security issue?

A. Despite the fact that much of what CSE does is highly classified, there are routine and lawful disclosures of information that many experienced ATIP requesters may use to inform their requests. For example:

- Information available on CSE's website, including CSE's Info Source chapter;
- Previous ATIP releases which make reference to other specific records which were not relevant to the original request;
- Documents tabled in Parliament by a Minister, such as the CSE Commissioner's annual public report, the Main and Supplementary Estimates, or responses to an MP's Order Paper Question;
- Responses provided by the Prime Minister, a Minister or a Parliamentary Secretary during Question Period or Parliamentary committee appearances;
- Public appearances and comments made by Government officials (such as the Chief) at Parliamentary committees, at conferences, during media interviews or during other public events;
- Information provided to the media via CSE's media relations team;
- Information released by the courts during or as a result of legal proceedings;
- The requester's personal knowledge or experience with CSE, such as applicants for employment or (current and former) employees, co-op students, contractors, secondees or other personnel;
- Media reporting or other public commentary (regardless of whether or not it is accurate and/or informed);
- Disclosures by foreign or domestic partners or clients.

Despite all of the above sources of information, if you have a concern that a request may relate to a security breach, please speak with the ATIP Analyst identified in the ATIP request. While the ATIP Analyst cannot provide you with the identity of the requester (as it is protected by law), they can bring your concern to the attention of the Minister's senior delegated officials (Director General, Policy and Communications and Director, Disclosure, Policy and Review) for consideration. (Note that the Minister's delegated officials are authorized to know the identity of the requester.) The Minister's senior delegated officials will engage Corporate Security and other stakeholders, if necessary.

Q11. Help! The scope of this request is too broad!

A. Do you want the good news or bad news first?

Okay, here is the bad news. The requester is the only individual who gets to decide the scope of the request by the way they phrase their request. While they may decide to revise their request, CSE cannot make them. If they do not decide to revise it, we must still respond to it as fully as possible, despite the level of effort, time or resources required.

The good news? The ATIP Office is here to help both you and the requester.

Most requesters are actually interested in something specific rather than tens of thousands of records that are useless to them. Similarly, they most often desire the timely release of the particular records they are interested in. They know that the processing of extraneous records will result in a delay in the release of the specifically desired material (as all of the records are normally released at once). As such, it is often in the requesters' interest to make as specific a request (including amendments to the request) as they can.

Fortunately, under section 4 of the *Access to Information Act* and section 6.2 of the Treasury Board *Directive on Privacy Requests and Correction of Personal Information*, CSE has a "duty to assist" the requester in obtaining the information they are seeking. This provides CSE (via the ATIP Office) and the requester the opportunity discuss the request, which may result in the requester amending their request (to be a more specific/narrowly defined or more general/broadly defined). (See the Q&A below for more info on the "duty to assist")

Additionally, remember those five "free" hours for "search and retrieval" mentioned earlier? Well, if the scope of the request is so broad that the time required to search and retrieve the documents would exceed the five hours, the requester *may* have to pay additional fees (only for requests under the *Access to Information Act*, as fees do not apply under the *Privacy Act*).

While the imposition of additional fees may cause some requesters to revise their request to be more focused, this is not always the case. The experience of some other government institutions has shown that some very motivated requesters are willing to pay over a million dollars in additional fees for the records they originally requested.

In the end, while the ATIP Office can work with you to assist the requester in adding more precision to the request, it will ultimately be up to the requester to determine the scope of the request.

Q12. What does the phrase "duty to assist" mean in the ATIP context in general?

A. Simply put, the "duty to assist" is a legal requirement under the *Access to Information Act* that means that CSE must act in good faith and provide all reasonable assistance to applicants in obtaining the information they have requested or are attempting to access, in as timely a manner as possible, without regard to the identity of the requester.

Q13. What does the "duty to assist" mean in practical terms?

A. Treasury Board has issued the *Directive on the Administration of the Access to Information Act,* which provides details regarding the implementation of the "duty to assist". The information below is a summary.

The "duty to assist" requires:

- **Protection of requesters identity**: the ATIP Office must protect the identity of the requester (or any information that could identify the requester), unless the requester consents to the disclosure (or in the case of a *Privacy Act* request, it will be disclosed to those individuals or areas that are believed to hold relevant records so that they may retrieve them).
- **Interpretation and clarification of access request**: CSE must adopt a broad interpretation of the request and seek prompt clarification with the requester (via the ATIP Office) when necessary.
- **Documentation of revised requests:** The ATIP Office must record Date and wording of any revisions to the request.
- **Use of informal processing**: The ATIP Office must determine if it is appropriate to process the request informally and, if so, offering the requester this opportunity.
- **Provision of contextual information**: CSE employees must provide to the ATIP Office (who will provide it to the requester), as appropriate, general information of a contextual nature in response to an access request to help the requester understand the record in cases where the record itself may provide misleading information.
- **Implementation of the principles for assisting applicants:** CSE must implement and communicate the principles for assisting requesters, as listed in the Treasury Board directive.

Q14. What are Treasury Board's principles for assisting requesters?

A. In processing the applicant's request, we will:

1. Process the request without regard to the requester's identity.
2. Offer reasonable assistance throughout the request process.
3. Provide information on the Act, including information on the processing of the request and their right to complain to the Information Commissioner of Canada.

4. Inform the requester, as appropriate and without undue delay, when their request needs to be clarified.
5. Make every reasonable effort to locate and retrieve the requested records.
6. Apply limited and specific exemptions to the requested records.
7. Provide accurate and complete responses.
8. Provide timely access to the requested information.
9. Provide records in the format and official language requested, as appropriate.
10. Provide an appropriate location in the government institution where the requester can examine the requested information.

Q15. I think that another area has records related to this request. What should I do?

A. If you believe that another area in CSE has (or is likely to have) relevant records, you should notify the OPI within your business line as soon as possible. If the office is within your business line, the OPI will sub-task the request to the other office. If it is not within your business line, the OPI will inform the ATIP Office who will task the appropriate additional OPI.

Q16. Some of the relevant records I have were produced by someone other than CSE and/or contain information that belongs or relates to someone other than CSE (e.g., another department, another level of government, a foreign government, a private entity, etc). What do I do with them?

A. All records under CSE's control need to be reviewed and produced to the ATIP Office regardless of who the originator of the record was. However, it is import that you note to the ATIP Office that the records were not created by CSE (or that they relate to another entity) and who they were created by (or which entity they relate to). You will still need to review the records to determine if any exemptions or exclusions should apply. The ATIP Office may formally consult with the originator, who may make request that certain information be withheld from disclosures (as per the exemptions or exclusions contained in the Acts).

Q17. What's the difference between an "exemption" and an "exclusion"?

A. "Exemptions" protect certain information that Parliament believed was important to maintain confidential from public disclosure. The exemption only applies to the sensitive portion of the record and not automatically to the record as a whole.

Broadly speaking, "exclusions" are classes of records to which the right of access under the Acts do not apply (i.e. a requester may not obtain these records, or portions of records containing this information, via the *Access to Information Act* or *Privacy Act*).

Q18. What type of information can be withheld under an "exemption" or "exclusion" and where can I find a list of the exemptions and exclusions?

A. A full list of the type of information can be withheld under sections of the *Access to Information Act* are summarized in the Access to Information exemption and exclusion grid created by the ATIP Office.

Q19. Great, all of my records fall under an exclusion, so I don't need to provide anything to the ATIP Office, right?

A. Incorrect. All relevant records still need to be provided to the ATIP Office, as the Minister's delegates within the ATIP Office within DGPC are the only individuals who can sign-off on the fact that the records consists of (or contain) information under a valid exclusion.

Q20. I'm not sure which exemption or exclusion applies. How do I complete the ATIP request?

A. Rather than expecting SMEs and/or OPIs to cite specific sections of the *Access to Information Act* or *Privacy Act*, the ATIP Office looks to their OPIs and SMEs for severance recommendations based on risk and injury supported by solid rationale. If you would like to suggest which sections of the Act you believe should be applied, you may engage the OPI within your business line and/or the ATIP Office for guidance do so. However, it is more important for the SME and/or OPI to provide a clear rationale for the severance. It is the ATIP Analyst's role to apply sections of the *Act* to exempt or exclude the information, where applicable.

Q21. Can more than one exemption or exclusion apply?

A. Yes, any number of exemptions or exclusions can apply to the same piece of information. It is best to identify all of those that apply.

Q22. So, if I identify a valid exemption, it is mandatory that the ATIP Office applies it to the information?

A. No, not all exemptions are mandatory under the *Access to Information Act* or *Privacy Act*. The ATIP Office looks to their OPIs and SMEs for severance recommendations supported by solid rationales. It is the ATIP Analyst's role to apply sections of the Act to exempt information where applicable.

Please refer to the Access to Information exemption grid for an overview of the mandatory provisions set out in the *Access to Information Act*. The discretionary exemptions are subject to the appropriate exercise of discretion by the Minister's delegate.

Q23. What does appropriate exercise of discretion mean?

A. The discretion given to the Minister's delegates is not unfettered. Discretion must be exercised in accordance with legal principles and with the purpose of the Acts. The Minister's delegates must exercise discretion in good faith, without bias and for purposes rationally connected to the purposes of the legislation.

Before claiming a discretionary exemption, two decisions are necessary: first, does the record come within the description that is contemplated by the statutory exemption invoked in a particular case; and second, if it does, should the record nevertheless be disclosed (i.e. is the disclosure of the record in the public interest). To apply an injury-based exemption, the ATIP Analyst must conduct an injury test to determine if there is a reasonable expectation of probable harm.

Q24. What do I do if I do not have responsive records?

A. If you do not have any responsive records, you still need to inform the OPI in your business line so that the OPI checklist can be completed indicating that there are no responsive records.

Q25. Under what grounds can someone file a complaint with the Information Commissioner?

A. Applicants under the *Access to Information Act* can file complaints with the Information Commissioner based on the following grounds:

- being refused access to a record (or part of a record) that was requested under the Act;
- being charged additional fees that are unreasonable;
- CSE exceeding the statutory deadline for responding to the request;
- CSE not providing the record in the official language requested by the applicant or within a reasonable time (for translation);
- CSE not providing the record in an alternative format requested by the applicant or within a reasonable time (for conversion to alternative format);
- CSE not publishing a complete Info Source chapter; or
- in respect of any other matter relating to requesting or obtaining access to records under the *Access to Information Act*.

Q26. What powers does the Information Commissioner have when investigating a complaint under the *Access to Information Act*?

A. During the course of an investigation into a complaint, the Information Commissioner must conduct the investigation in private and has the powers to:

- summon and force anyone to appear before the Information Commissioner;
- administer oaths;
- compel anyone to give oral or written evidence under oath;
- compel anyone to produce any record or information that the Commissioner deems necessary to conduct a full investigation;
- receive evidence and other information as the Commissioner deems fit, whether or not the evidence or information would be admissible in court;
- enter any CSE premises on satisfying any security requirements necessary;
- converse in private with any person in any CSE premises;
- examine or obtain copies of or extracts from books or other records found in any CSE premises containing any material relevant to the investigation; and
- examine any record to which the *Access to Information Act* applies that is under CSE's control.

Q27. Under what grounds can someone file a complaint with the Privacy Commissioner?

A. Applicants under the *Privacy Act* can file complaints with the Privacy Commissioner based on the following grounds:

- alleging that personal information about themselves held by CSE has been used or disclosure other than in accordance with sections 7 and 8 of the *Privacy Act*;
- being refused access to a record (or part of a record) that contains information about that the applicant and was requested under the Act;
- being denied the opportunity to request corrections to their personal information;
- alleging that corrections of their personal information requested are being refused without justification;
- CSE exceeding the statutory deadline for responding to the request;
- CSE not providing the record in the official language requested by the applicant or within a reasonable time (for translation);
- CSE not providing the record in an alternative format requested by the applicant or within a reasonable time (for conversion to alternative format);
- being required to pay a fee that they consider inappropriate;
- CSE not publishing a complete Info Source chapter, including a list of all relevant Personal Information Banks; or
- in respect of any other matter relating to:
    - the collection, retention or disposal of personal information by CSE;
    - the use or disclosure of personal information under CSE's control; or
    - requesting or obtaining access to their own personal information.

Q28. What powers does the Privacy Commissioner have when investigating a complaint under the *Privacy Act*?

A. During the course of an investigation into a complaint, the Privacy Commissioner must conduct the investigation in private and has the powers to:

- summon and force anyone to appear before the Privacy Commissioner;
- administer oaths;
- compel anyone to give oral or written evidence under oath;
- compel anyone to produce any record or information that the Commissioner deems necessary to conduct a full investigation;
- receive evidence and other information as the Commissioner deems fit, whether or not the evidence or information would be admissible in court;
- enter any CSE premises on satisfying any security requirements necessary;
- converse in private with any person in any CSE premises;
- examine or obtain copies of or extracts from books or other records found in any CSE premises containing any material relevant to the investigation; and
- examine any record to which the *Privacy Act* applies that is under CSE's control.

Q29. I've heard of something called "judicial review". What is this?

A. Following the termination of a complaint to the Information Commissioner (for the *Access to Information Act*) or the Privacy Commissioner (for the *Privacy Act*), the complainant may apply to the Federal Court for judicial review of the decision to refuse access.

Similarly, the Information Commissioner (for the *Access to Information Act*) and the Privacy Commissioner (for the *Privacy Act*) may apply for judicial review of any refusal to disclose records a request requested under the Acts, when the Commissioner has conducted an investigation into the refusal to disclose records.

Under a judicial review, the Court may review all aspects of the case and relevant records to determine if the Acts were appropriately exercised, including the Minister's discretion. In some cases where the Acts were not appropriately exercised (e.g., refusing disclosure on grounds other than those provided for under the Acts), the Court can order the disclosure of the records. In other cases, the Court may order the Minister's delegate to reconsider the matter, but not order the disclosure of the records.