

# Informal Record Access Issues at CIRNAC

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On behalf of CRU representatives

National Claims Research Workshop

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## The History – 1990's to 2017

- Researchers struggled with Access to Information (ATI) requests at the department
- Growing frustrations lead to the creation of an ATI Working Group made up up of ATIP staff and CRU technical representatives in 1999

## The History – 1990's to 2017

- During 1999 meetings of the working group, several reoccurring issues were raised:
  - Researchers could not access history cards to decide for themselves which files were relevant to their inquiries - dependent on INAC staff who did not know issues
  - Differences between different regions
  - Department staff lacked awareness of claims policies, agency histories, and research process
  - Department's view that access to files was discretionary, that FN's had no right of access

Outcome: an internal Memorandum of Understanding (MOU) was drafted, creating the "informal" process for designated researchers

- Intention: speed up record access for First Nations authorized Researchers.



Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

Assistant Deputy Minister / Sous-ministre adjoint

Ottawa, Canada  
K1A 0H4

A3740-23

JUN 17 1999

Assistant Deputy Ministers  
Directors General, HQ  
Regional Directors General  
Regional Directors of  
Corporate Services

Sous-ministres adjoints  
Directeurs généraux, AC  
Directeurs généraux régionaux  
Directeurs régionaux des  
Services ministériels

#### REQUESTS FOR RECORDS AND FILE REVIEW

#### DEMANDES DE DOCUMENTS ET EXAMEN DE DOSSIERS

As you know, the department is committed to assisting First Nations with their claims research. First Nations have a right to information held by the department to validate their claims, disputes or grievances. First Nations researchers request numerous DIAND records on an ongoing basis and these requests ought to be processed informally. Only in exceptional circumstances would First Nations researchers resort to the formal ATIP process to access records. ATIP was meant to complement and not replace existing procedures for access to government information. This of course applies not only to First Nations but to anyone requesting information from DIAND.

Comme vous le savez, le Ministère s'est engagé à aider les Premières Nations dans leurs recherches relatives aux revendications. Les Premières Nations ont droit aux informations détenues par le Ministère pour appuyer leurs réclamations, leurs litiges et leurs griefs. Les agents de recherche des Premières Nations demandent régulièrement de nombreux documents au MAINC; ces demandes doivent être traitées de façon informelle. Les Premières Nations utilisent exceptionnellement le processus officiel de l'AIPRP pour accéder aux documents. L'AIPRP vise à compléter et non à remplacer les procédures actuelles d'accès aux informations gouvernementales. Cela s'applique non seulement aux Premières Nations mais aussi à toute personne demandant de l'information au MAINC.

To facilitate this informal access to DIAND records, there are a number of new departmental initiatives underway:

Pour faciliter l'accès informel aux documents du MAINC, de nouvelles initiatives ministérielles sont en cours :

- new procedures for Records and Program staff at headquarters and the regions have recently been implemented;

- de nouvelles procédures pour le personnel de la Gestion des documents et des programmes à l'Administration centrale et dans les régions ont récemment été mises en place;

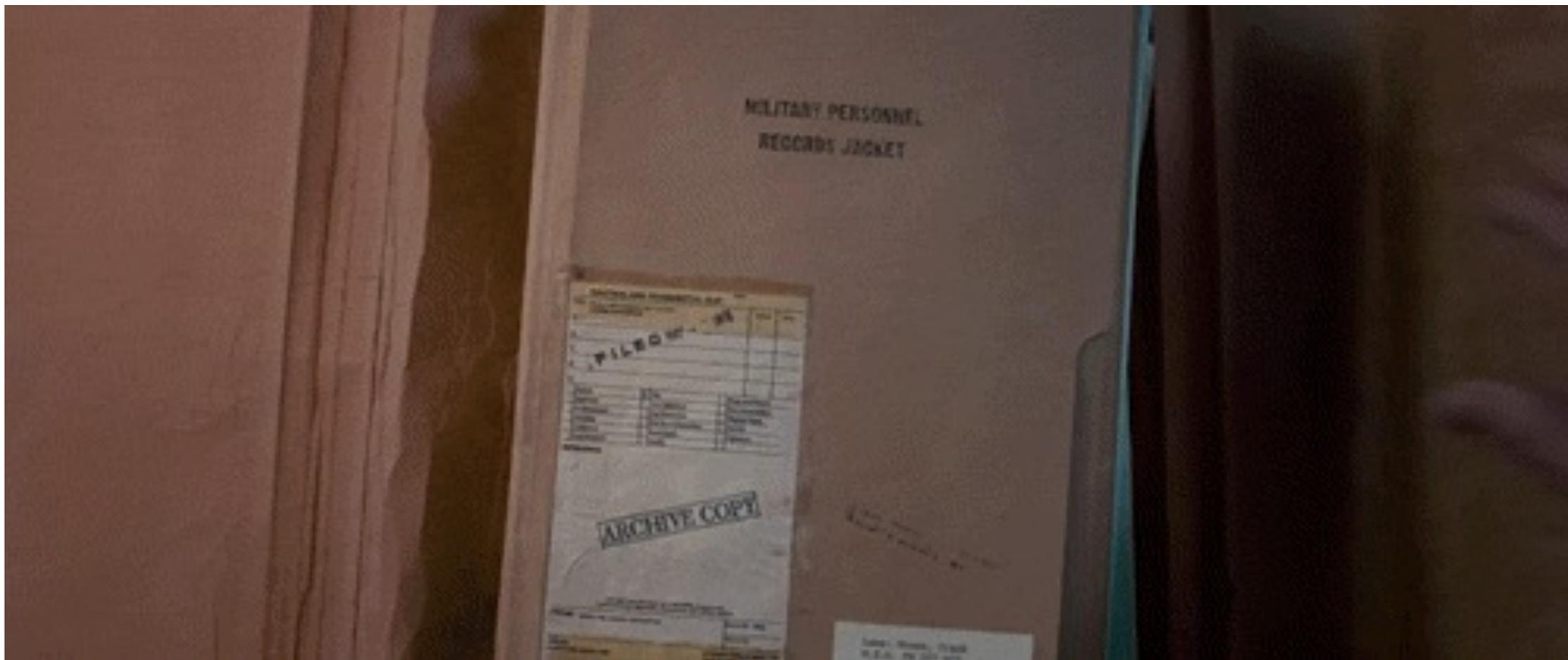
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Canada

## The History – 1990's to 2017

- After the MOU, the informal process worked better – it appeared that researchers were given speedier access to records, and confidentiality needs under the *Privacy Act* and *Access to Information Act* were respected
- Around 2015, it became obvious that the informal process was deteriorating, and no longer worked as intended

# The rise of the “Orangie”...



## 2017-2020

- Spring 2017: Pete DiGangi presents on the rise of “orangies” reappearing in restricted files
- Tammy Martin indicates she was unaware of an informal process, and her ATIP staff *were not* involved in document review and release through this process
- The CRU members of the working group brought back the ATI working group with members of CIRNAC/ISC to attempt to resolve these issues once more
- Between 2017-2020, experienced varied widely with some researchers experience trending in a positive direction, with quick record access and complete file lists being shared, and others had to find work-arounds at a regional level that impeded record access
  - Researchers highlight that the informal process is a discretionary trust-based process with no resolution mechanisms

- COVID-19 brings “temporary” office closures to respond to the growing pandemic
- As the pandemic continued, researchers are advised that “...access to information requests are not a priority for staffing in office...”
  - Staff CANNOT work on ATIP requests remotely, thus stalling out request processing for several months
- By September 2020, processing of requests slowly restarts, with staff getting into the office approximately once a week
- Once ATIP staff started work again, researchers began to notice significant issues...

## 2020 – COVID Response

# Case Study 1 – Conflicting protocols for Informal Process

- Pre-2018 researchers were able to contact their regional office to facilitate informal ATIP requests
- Researchers would submit their Band Council Resolution (BCR) and then receive a list of files to review and make requests from
- Upon ATIP review, records would be available for in-person viewing, or digitized and sent to the researcher
- Timeline: 1-2 weeks for file lists, 2-3 months for records (on average)

# Case Study 1 – Conflicting protocols for Informal Process

- Researchers recently submitted a request to their regional office for informal processing
  - Initial email communication was opaque, researcher left without information for several months
- After escalation within the CRU, CIRNAC responded, indicating informal process utilized was incorrect, and researcher needed to go to HQ for 8(2)k approvals before the request could move forward
  - This lead to CIRNAC only corresponding with Senior researcher, not the original requestor
  - CRU is experiencing extreme delays in getting questions answered, request processed, and access to information

**STATUS: REQUEST OUTSTANDING**

## Case Study 2 – Failure to sign 8(2)k Paperwork

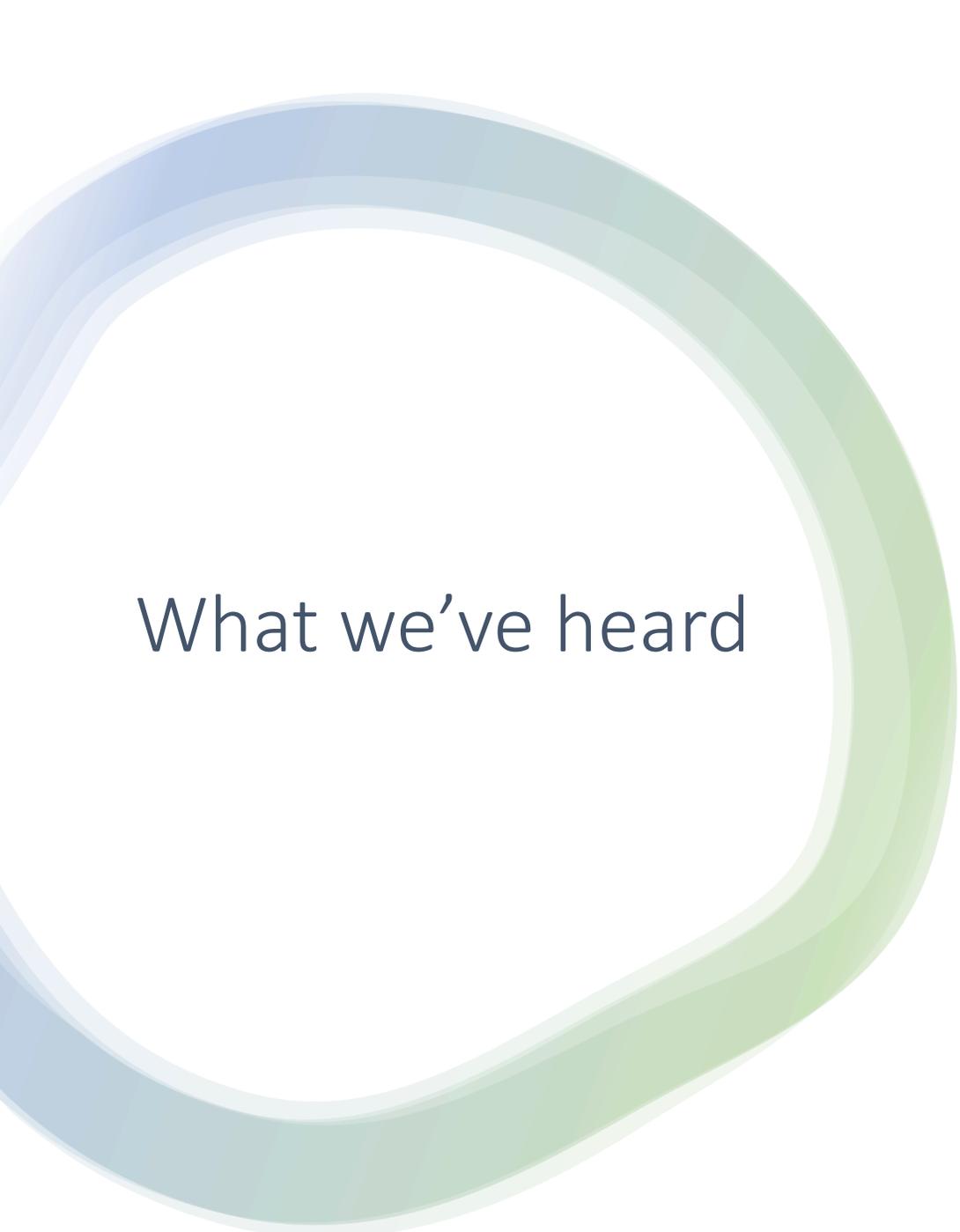
- Researchers submitted 8(2)k paperwork to ATIP department as per post-2018 protocol in June 2022
- Researcher followed up in August, ATIP indicated the 8(2)k paperwork is awaiting signature of Deputy Director
- Researchers cannot access file lists and move research forward until the 8(2)k paperwork

STATUS: REQUEST OUTSTANDING

# Case Study 3 – Rejection of BCRs

- In 2016, research request was rejected due to age of BCR (CR was over 2 years old)
  - BCR did not indicate an expiry
- In 2017 UBCIC sent open letter to Minister Bennett along with legal review of the issue of BCR validity
- Through consultation and after review of UBCIC's legal analysis of the matter, BCR validity issue was (seemingly) resolved.
  
- In 2021, this same issue arose once again, forcing CRUs to remind the department of their own policies and procedures.

STATUS: RESOLVED (for now...)



## What we've heard

- *Informal arrangement works fine while the respective heads of departments stay friendly or stay in those positions. But if new staff come in who don't agree/have a different agenda, then agreement can fall apart.*
- *We always try to get the documents informally and only make a formal request if the files are unnecessarily screened.*

**In short: a system designed to improve access is in fact doing the opposite.**

And we're not alone...

*“respecting the law as it currently exists would represent an important first step.”*

*- Information Commissioner Carolyn Maynard as quoted in the Globe and Mail.*

Hockey Canada loses Tim Hortons, <sup>303</sup>Scotiabank as sponsors - A10

# THE GLOBE AND MAIL

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SECRET CANADA

## ACCESS DELAYED, ACCESS DENIED: FREEDOM OF INFORMATION IS ANYTHING BUT IN CANADA

TIME ESTIMATED BY LIBRARY AND ARCHIVES CANADA TO PRODUCE  
HISTORICAL RCMP FILES ON A DECADE-LONG CORRUPTION  
INVESTIGATION

**80 YEARS**

CANADA'S PLACE IN THE GLOBAL RIGHT TO INFORMATION RANKINGS,  
COMPILED BY THE CENTRE FOR LAW AND DEMOCRACY

**51st**

PERCENTAGE INCREASE IN COMPLAINTS FILED TO OFFICE OF  
THE INFORMATION COMMISSIONER IN THE PAST FIVE YEARS

**234 PER CENT**

Public information is routinely treated as state secrets at Canadians' expense. Requests can take years to process and are sometimes ignored outright. Over the coming months, The Globe and Mail will dig into problems at the federal, provincial, territorial and municipal levels and explore solutions to the country's culture of secrecy.

## 'Nobody's doing great': Ottawa spent \$90-million in 2021 on broken system

House of Commons committee told departments have inadequate resources to deal with demand

TOM CARDOSO  
ROBYN DOOLITTLE

Federal Information Commissioner Caroline Maynard warned a House of Commons committee that her office was on track for a record 10,000 complaints this year, as Canada's freedom-of-information systems have buckled under a surge of access requests and inadequate resources.

Every government department is struggling to keep up with its legally required access-to-information duties. Ms. Maynard told the House of Commons standing committee

on access to information, privacy and ethics on Wednesday.

"Nobody's doing great," Ms. Maynard said. Last year, 30 per cent of requests were completed after their legislated deadlines, according to data from the Treasury Board of Canada Secretariat.

"Respecting the law as it currently exists would represent an important first step to improving the state of access to information," she said during her opening remarks.

Access-to-information laws exist at all levels of government in Canada, and allow people to formally request the disclosure of otherwise-secret government records. Access re-

quests are routinely used by businesses, researchers, journalists, lawyers and other individuals to learn more about government decision-making.

Ms. Maynard's office is responsible for mediating access disputes at the federal level. For 90 minutes in front of the House committee, she discussed the litany of issues that have plagued Canada's system: long delays, excessive redactions and outdated legislation. "We need more resources, we need more innovation, and we definitely need more leaders that believe in access," she said.

■ FOI, A9