

**CANADIAN
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DES JOURNAUX**

2006

National Freedom of Information Audit

Executive Summary

Canadians continue to face barriers to access to basic information that should be available to the public, the Canadian Newspaper Association has found. The association's second freedom of information audit, conducted in the spring of 2006, found that of the requests made to federal, provincial and municipal agencies across Canada, basic information was denied or provided only in part in a substantial number of cases (approximately one-third). The results of the CNA audit were released as part of the first annual celebration in Canada of "Right to Know Week."

More than three dozen newspapers participated in the study, which tested access in every province and at the federal level. Reporters acting as ordinary citizens, but without concealing their identities as journalists, often faced days or weeks of delays in obtaining facts about a basket of sample issues selected on the basis that they should be of general interest to ordinary citizens, and that such information should be readily available. Three questions were posed on crimes in local communities, bonuses paid to local hospital executives, and pesticide use by municipalities.

Simultaneous attempts to obtain information on pandemic planning from the Public Health Agency of Canada were completely frustrated by demands for long time extensions greatly in excess of the statutory 30-day period for response. Only one of six requests received a response by July 4th. As of August 21, 2006, five of six requests were outstanding more than 120 days after April 4, when they were received at Health Canada.

The results show wildly different access in different provinces and municipalities, and frequent demands by public servants to know why information was being requested before it would be released.

Commentary: Problem Areas

There are four areas that give particular cause for concern:

- 1) Ignorance or lack of a cooperative approach to requests for information among some police forces, typically in smaller communities;
- 2) Continuing problems in New Brunswick stemming from weaknesses in the province's freedom of information laws, which do not cover municipal government, local police or hospital administration;
- 3) The fact that hospital administrations are not covered under freedom of information in Ontario and some other provinces deprives the health care system of transparency at a time when health care delivery is under increasing pressure to demonstrate accountability and efficiency;
- 4) The federal government routinely frustrates FOI requests from journalists by making indiscriminate, excessive demands for extensions to the statutory 30-day period for responses.

Police in some smaller communities, particularly in Eastern Canada and in Quebec, had difficulty responding to reporters' requests for crime statistics. This information is not normally considered sensitive and is freely available from the Centre for Justice Statistics in Ottawa, a division of StatsCan which collects data from police forces across the country. In addition, many cities (Toronto, Hamilton, Ottawa) pro-actively post local crime statistics online. However, police in one Ontario town (Pembroke) requested a \$1,200 fee to produce local crime statistics, while in New Brunswick, police and the province denied possession of this information. In Quebec, police in one Greater Montreal community (Longueuil) obligingly pointed a reporter to the statistics that had been posted online and sent an email containing information that was missing, while in another community just north of Montreal (Laval) police flatly denied the existence of such "compiled" data and invoked the province's freedom of information law, which they said exempts them from any requirement to compile data. In this case, the process of requesting information became needlessly complicated, to the extent that Laval police actually called in their lawyer to deal with the reporter in question.

While the city of Fredericton, alone out of the New Brunswick municipalities tested, appears to be making good use of a new media relations policy, the province once again had the poorest performance in Canada. Requests for basic information that is available in most other provinces were either denied or poorly responded to. For example, New Brunswick police could have pointed reporters to the StatsCanada website where the information can be obtained. To deny access to such information simply because the province's laws do not compel authorities to release it begs the question of why the province's laws are not being modified to bring them up to the standards that prevail in other parts of the country.

In Ontario, the Freedom of Information and Privacy Act does not cover hospitals, an omission that the province's Information and Privacy Commissioner has repeatedly called on the government to correct (the Act was recently expanded by the Liberal government to include universities). The previous Conservative government had earlier introduced the Salary Disclosure Act, which obliges government departments and all institutions funded by Ontario taxpayers to publish salaries of employees earning in excess of \$100,000. The CNA audit sought further detail on the composition of these salaries in the case of hospital executives: the proportion attributable to bonuses, and the criteria for awarding such bonuses. These requests were universally denied, although several hospital authorities also denied paying any bonuses. However in one instance where health authorities denied a bonus system existed, a reporter noticed that disclosed salaries for that hospital showed large variations from year to year, calling into question the accuracy of the response received.

In Saskatchewan, bonus information was disclosed without problem. In Quebec, a reporter complained that the information provided was only partial, and incomplete. In Alberta, while the bonus payments were disclosed, the identities of the recipients were withheld citing privacy concerns. Such concerns were not an issue in Saskatchewan, for example, or in Ontario where total salaries paid to individuals are disclosed. The Calgary Herald has filed a complaint with the province's Information and Privacy Commission.

The federal government's Public Health Agency immediately demanded 60-day extensions to all six requests for information submitted by Canadian Press as part of the audit exercise. As noted earlier, five of six requests were outstanding more than 120 days after they were received. The federal government was one of the worst performers in the 2005 audit and its response in 2006 is par for the course. In a response to a formal complaint from CNA on behalf of Canada's newspapers, the federal Office of the Information Commissioner is currently undertaking an exhaustive review of the performance of federal departments in responding to requests for information under the Access to Information Act.

Finally, it must be noted that in Alberta, the CNA is growing increasingly alarmed over the state of freedom of information at provincial level, even though in this and in our previous test the province's municipal and regional authorities and police typically score quite well. None of the CNA's questions in the 2006 audit would end up being specifically directed to provincial government sources in Alberta, and this is a critical weakness in the design of the audit project, according to Edmonton Journal Editor-in-Chief Allan Mayer (The Journal declined to participate in the 2006 exercise). The Journal is currently embroiled in a dispute with the province over attempts to obstruct the release of information concerning the government's flight logs, and Alberta Justice is now considering whether criminal charges are warranted in the case. The status of FOI in Alberta warrants separate study, and the CNA hopes to contribute to a better appreciation of specific FOI issues in Alberta in future through a separate research initiative details of which will be announced in due course.

Similarly, British Columbia has scored well in this easy test using easy questions. More sensitive questions from journalists and other interested members of the public may not fare as well. To study the specific problems in British Columbia, the CNA has co-sponsored a study conducted for the Freedom of Information and Privacy Association of British Columbia (FIPA). Results from this in-depth study, focused solely on FOI in B.C., will also be released as part of "Right to Know Week."

Detailed Report on Results

Reporters from thirty-nine newspapers, from all 10 provinces, and from The Canadian Press news service participated in the audit.

As in 2005, each request began with an in-person visit to a public office. If all of the requested information was released within five days, the agency was deemed to have complied with the request. If only some of the information was released, access was denied, or there was no answer given, the reporter filed a formal freedom of information request under the applicable local legislation. CP filed requests to the Public Health Agency of Canada using the federal Access to Information Act.

The information sought was:

- The amount spent annually in the last three years for which data is available on herbicides and pesticides by municipalities, and on which herbicides and pesticides and in what quantity. Requested of municipalities.
- The total number of crimes reported and the total number of cases resolved in each community over the last five years for which data is available, including break and enter, assault, sexual assault, crimes involving a firearm, homicide or manslaughter, theft over \$5k, and theft under \$5k. Resolved could mean “charges laid.” Requested of police departments.
- All reports about hospital officials or staff who received merit pay or bonuses in the last three years on record, including who received the payments, how much each person received, and the criteria used to determine such payments. Requested of hospitals or health districts.
- Information from the Public Health Agency of Canada on drug stockpiles to fight pandemics (six separate requests, each for different information).

The in-person stage

One hundred and twelve initial in-person visits were made to municipal, provincial and federal government offices as well as to hospitals, health districts and police stations.

Of those, 46 resulted in records being released in full, a whisker more than four in ten. In 24 cases, part of the request was denied. The remainder were either denied access altogether, or there was no response, which was treated as a denial. Here is the detailed breakdown of results on visits.

Results	Count	Percent
Records released in full	46	41.1%
Fee requested	2	1.8%
No response	16	14.3%
Records denied in part	24	21.4%
Request denied altogether	24	21.4%
Total denied*	64	57.1%
Total	112	100.0%

*Includes denied in full, denied in part and no response.

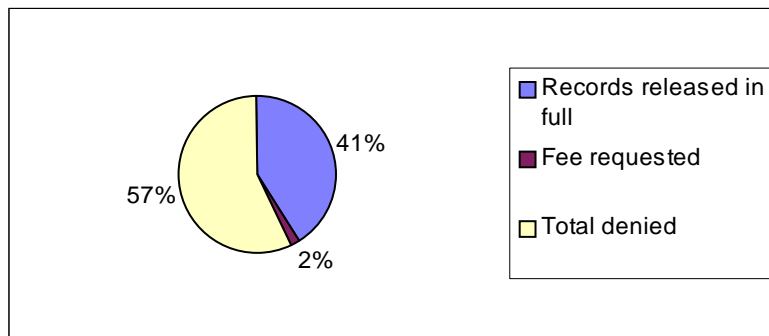


Chart shows the results on initial visits in 2006 audit.

By question, 50 per cent of the in-person requests for information on pesticide use resulted in the release of the requested information within the period given for a response. None of the visits to the Public Health Agency of Canada resulted in the release of information.

This was the detailed breakdown by question for initial visits:

Results	Federal	Health	Pesticides	Police
Records released in full	0	15	18	13
Fee requested	0	0	0	2
No response	0	3	8	5
Records denied in part	0	6	6	12
Request denied altogether	6	11	4	3
Total denied*	6	20	18	20
Totals	6	35	36	35
Percentages				
Records released in full	0.0%	42.9%	50.0%	37.1%
Fee requested	0.0%	0.0%	0.0%	5.7%
No response	0.0%	8.6%	22.2%	14.3%
Records denied in part	0.0%	17.1%	16.7%	34.3%
Request denied altogether	100.0%	31.4%	11.1%	8.6%
Total denied*	100.0%	57.1%	50.0%	57.1%

*Total of denied in part, denied altogether and no response.

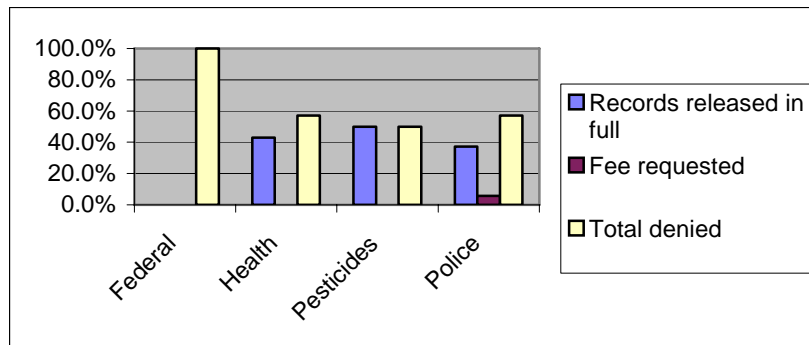


Chart shows results of visits, by question.

The written stage

In all cases where records were denied in whole or in part, a fee was requested, or there was no response, the requesters proceeded to the second stage in which they filed a formal request under the prevailing freedom of information legislation. In some cases, the legislation did not cover the particular institution, but requests were filed in any case on the basis that the information should be public. An example of this was hospitals in Ontario.

Sixty-six written requests were filed. In 30 cases, 45.5 per cent of the requests filed, the information requested was disclosed. In the remaining cases, the information was either partially or completely denied, or there was no response within the legislated time limit. Here is the detailed breakdown.

Results	Count	Percent
Records released in full	30	45.5%
Fee requested	1	1.5%
No response	7	10.6%
No follow up entry*	10	15.2%
Records denied in part	8	12.1%
Request denied	10	15.2%
Total denied**	35	53.0%
Totals	66	100.0%

*Reporter did not enter a result; presumed to be denied.
 **Total of no response, no follow up, partial or complete denial.

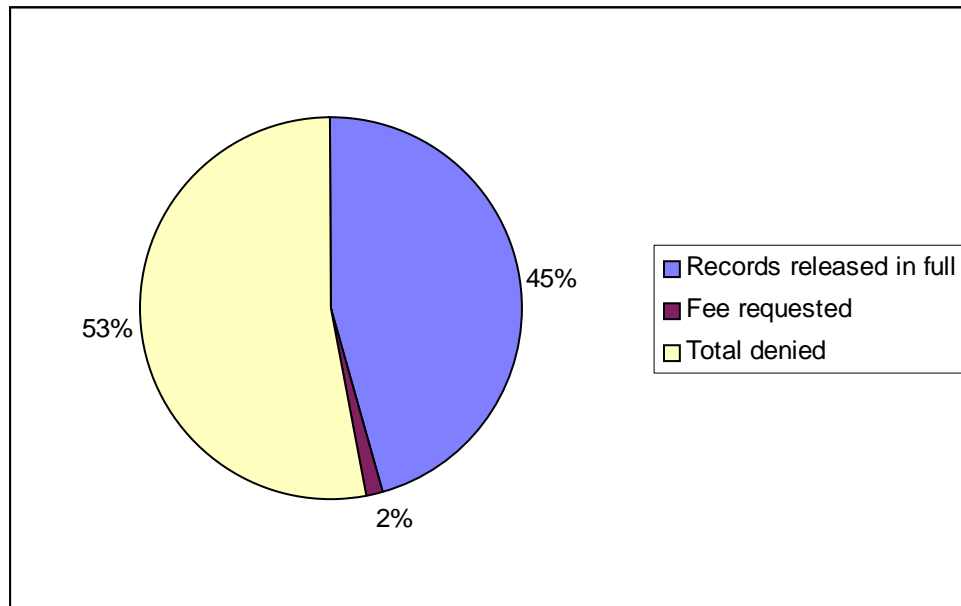


Chart shows the results of written requests in 2006 audit.

The following table shows the breakdown by question for written requests:

Results	Federal	Health	Pesticides	Police
Records released in full	0	6	12	12
Fee requested	0	0	0	1
No response	1	2	2	2
No follow up entered	5	2	1	2
Records denied in part	0	3	3	2
Request denied altogether	0	7	0	3
Total denied*	6	14	6	9
Totals	6	20	18	22
Percentages				
Records released in full	0.0%	30.0%	66.7%	54.5%
Fee requested	0.0%	0.0%	0.0%	4.5%
No response	16.7%	10.0%	11.1%	9.1%
NULL	83.3%	10.0%	5.6%	9.1%
Records denied in part	0.0%	15.0%	16.7%	9.1%
Request denied altogether	0.0%	35.0%	0.0%	13.6%
Total denied*	100.0%	70.0%	33.3%	40.9%

*Total of denied in part, denied altogether, no response and no follow-up entry.

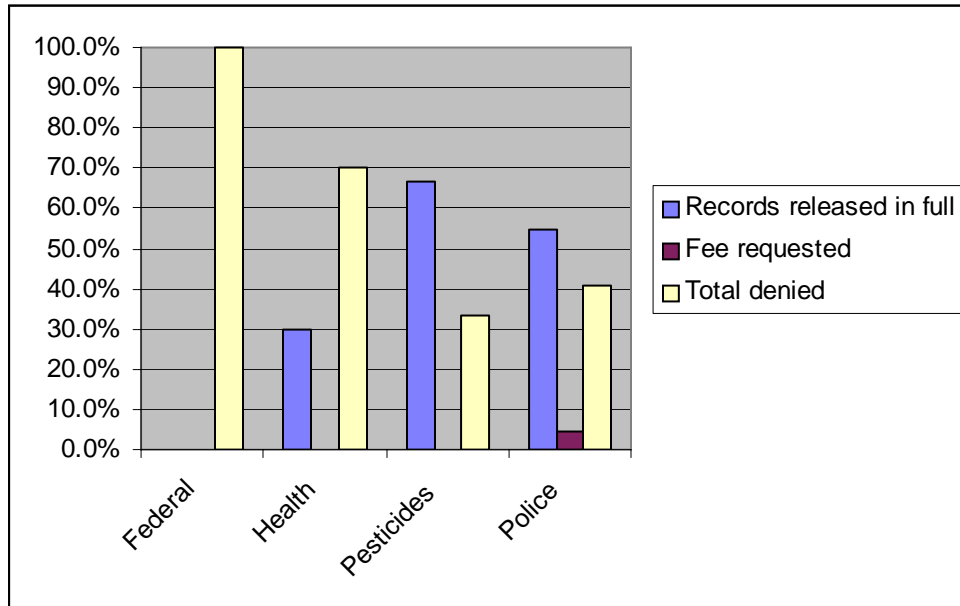


Chart shows results of written requests, by question

Results by province

As with the first audit, openness varied between different jurisdictions. Here are the results by province, sorted from best to worst performance:

Province	Visits				Writing			Overall summary				
	Total requests	Records released in full visit	Fee requested visit	Total denied on a visit*	Records released in full writing	Fee writing	Total denied in writing**	Total released in full, visits or writing	Records denied in whole or in part, both stages	Percent released in full	Percent denied in whole or in part	Percent fee stage 2
BC	6	3	0	3	3	0	0	6	0	100%	0%	0%
NL	6	3	0	3	3	0	0	6	0	100%	0%	0%
PE	4	2	0	2	2	0	0	4	0	100%	0%	0%
NS	9	8	0	1	0	0	1	8	1	89%	11%	0%
SK	6	1	0	5	4	0	1	5	1	83%	17%	0%
ON	54	24	1	29	13	1	16	37	16	69%	30%	2%
AB	3	1	0	2	1	0	1	2	1	67%	33%	0%
MB	3	1	0	2	1	0	1	2	1	67%	33%	0%
QC	6	2	1	3	1	0	3	3	3	50%	50%	0%
NB	9	1	0	8	2	0	6	3	6	33%	67%	0%
Federal	6	0	0	6	0	0	6	0	6	0%	100%	0%
Total	112	46	2	64	30	1	35	76	35	68%	31%	1%

**Includes records denied in full or in part, no response and no follow up by reporter.

Overall outcome

Through both stages, all of the information requested was released in 68 per cent of the cases. Release was denied in full or in part in 31 per cent of the cases. In one per cent of the cases, a fee was requested at the written stage.

In about a third of the 112 requests started, agencies released denied some or all of the information requested. This is even though the information sought is not particularly controversial in nature and should be readily available.

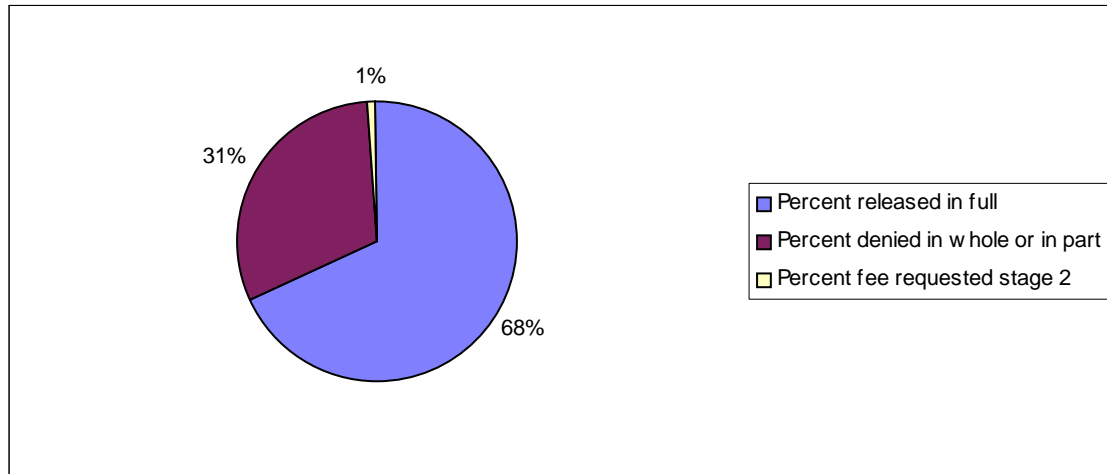


Chart shows overall results of the audit.

The most readily-released information was on pesticide use, in which 83 per cent of the requests resulted in the release of all of the requested information. Police and health authorities were less likely to release all of the requested information, with health agencies doing worst at 60 per cent. The Public Health Agency of Canada did not release any of the information requested at either stage of the audit, within the statutory 30-day time period. As noted earlier, one request received a response after 90 days, and five requests were outstanding more than 120 days after the requests were made.

Results	Federal	Health	Pesticides	Police	Total
Total released in full	0	21	30	25	76
Total denied	6	14	6	9	35
Fee requested	0	0	0	1	1
Totals	6	35	36	35	112
Percentages					
Total released in full	0%	60%	83%	71%	68%
Total denied	100%	40%	17%	26%	31%
Fee requested	0%	0%	0%	3%	1%

Appendix 1, Raw results

The following table shows the raw results in stages 1 and 2, by paired types of responses:

In person stage	Written stage	Count
Records released in full	No further step required	46
Records denied in part	Records released in full	14
No response	Records released in full	8
Request denied	Records released in full	7
Request denied	No follow up entered	7
Request denied	Request denied	5
Request denied	No response	3
Records denied in part	Request denied	3
Records denied in part	Records denied in part	3
No response	Records denied in part	3
No response	No response	2
Records denied in part	No follow up entered	2
Request denied	Records denied in part	2
Records denied in part	No response	2
No response	Request denied	1
Fee requested	Records released in full	1
No response	No follow up entered	1
No response	Fee requested	1
Fee requested	Request denied	1