

from: **_Grefe-Registry** <Grefe-Registry@oic-ci.gc.ca>

to:

date: May 20, 2021,
8:34 AM

subject: Compte rendu de
la Commissaire
à l'information /
Office of the
Information
Commissioner's
final report –
3218-01553 - A-
2018-000166

Compte rendu de la Commissaire à l'information / Office of the Information Commissioner's final report – 3218- 01553 - A-2018-000166

Inbox



_Grefe-Registry

8:34 AM (3
hours ago)

to

Compte rendu de la Commissaire à l'information / Information Commissioner's final report

Numéro de dossier du Commissariat : 3218-01553 / **OIC file number**: 3218-01553
Numéro de dossier de l'institution : A-2018-000166 / **Institution file number**: A-2018-
000166

Bonjour,

Vous trouverez ci-joint le compte rendu de
la Commissaire à l'information, pour le
dossier en rubrique.

Ce compte rendu est envoyé au :

Good day,

Please find attached the Information
Commissioner's final report for the above
noted file.

This report is being sent to:

- Plaignant(e)
- Directrice à l'accès à l'information et aux renseignements personnels – SC
- Ministre de la Santé - SC

- Complainant
- Director of Access to Information and Privacy – HC
- Minister of Health - HC

Je vous prie d'agréer, l'expression de mes salutations distinguées,

Yours sincerely,

Luc-Emmanuel Pinard
Adjoint administratif / Administrative Assistant
Commissariat à l'information du Canada /
Office of the Information Commissioner of Canada
Grefe-Registry@ci-oic.gc.ca

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Information Commissioner's final report

Institution: Health Canada

Date: 2021-05-19

OIC file number: 3218-01553

Institution file number: A-2018-000166

Complaint

The complainant alleges that Health Canada did not respond to an access request for information regarding problems with implantable medical devices, within the time limits set out in the *Access to Information Act*.

Investigation

On May 1, 2018, Health Canada received an access request, which was placed on hold for clarification. Accordingly, the statutory due date became June 4, 2018.

On June 4, 2018, Health Canada claimed a 90-day time extension based on [paragraphs 9\(1\)\(a\)](#) and [9\(1\)\(c\)](#), which extended the due date to September 3, 2018.

Health Canada failed to respond by this date.

Under subsection 10(3), when institutions do not respond to an access request within either 30 days or at the end of a period for which they validly extended the time they had to respond, they are deemed to have refused access to the requested records.

Health Canada is deemed to have refused access to the requested information, as per subsection 10(3).

The investigation showed that Health Canada sent notifications pursuant to section 27 to nine third parties. By mid-May 2019, two third parties responded that they had no objections to Health Canada's disclosure of the information for which they had been notified; six third parties opposed the disclosure of some or all information on which they had been notified, and one third party did not respond.

On July 30, 2019, one of the third parties, Abbot Laboratories Ltd. (Abbot), filed a judicial review application pursuant to section 44 (court file T-1232-19). The record at issue in the court proceeding only consisted of a 10-page document out of the 598 pages responsive to the access request.

Health Canada maintained that the 10-page document is similar to other records identified in response to the access request. Health Canada argued that any communication of similar records pursuant to section 28 would likely trigger duplicative litigation by other third parties. Health Canada explained that because of Abbot's judicial review application, none of the 598 pages of responsive records could be disclosed, and no additional decisions could be made or communicated to other third parties pursuant to section 28 of the Act. Health Canada maintained that its processing of the request ought to be suspended until the final outcome of the proceedings in court.

During the investigation, Abbott withdrew its application for judicial review.

On February 9, 2021, the Office to the Information Commissioner (OIC) requested representations from Health Canada under paragraph 35(2)(b) of the Act. Health Canada responded with its representations and also indicated that it had released the ten pages of responsive records related to Abbot. As for the remaining pages, Health Canada explained that:

- information for which some third parties did not oppose disclosure is intertwined with information that other third parties had objected to being disclosed;
- some third parties ought to have been consulted on additional records and, therefore, new third party consultations would need to be commenced pursuant to section 27;
- third parties who had been notified pursuant to section 27 would also need to be re-consulted due to the passage of time and the fact that Health Canada may now be of the view that additional information (to that initially identified when seeking representations) should be disclosed; and
- a consultation with Global Affairs Canada on two (2) pages is to be sent by March 19, 2021, and completed by May 17, 2021.

In order to provide a complete response to the access request, Health Canada indicated to the OIC that, subject to any further applications for judicial review:

- it planned to release, on April 15, 2021, records related to the three third parties who had no objection to the release of the records or failed to respond to Health Canada;

- the additional consultations with third parties as well as with Global Affairs Canada should be complete by mid-May 2021; and
- it committed to providing a final response to the access request by May 26, 2021.

Result

The complaint is well founded.

Recommendation

I recommend that the Minister of Health:

- Provide a final response to the complainant by May 26, 2021.
- Email a copy of the interim and final response letters to the Office of the Information Commissioner's Registrar (Grefe-Registry@oic-ci.gc.ca).

On April 8, 2021, I issued my initial report to the Minister of Health setting out my recommendations.

On May 13, 2021, the Minister gave me notice that she would be implementing my recommendations and that Health Canada would respond to the request by May 26, 2021.

I understand that as a result of some of the third parties' decisions to apply for a review application pursuant to section 44, the planned April 15, 2021, release did not take place.

Section 41 of the Act provides a right to the complainant who receives this report to apply to the Federal Court for a review. The complainant must apply for this review within 35 business days after the date of this report and must serve a copy of the application for review to the relevant parties, as per [section 43](#).


Caroline Maynard
Information Commissioner of Canada

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