



Offices of the Information and Privacy Commissioners

Performance Report

For the period ending
March 31, 2001

Canada

Improved Reporting to Parliament Pilot Document

Each year, the government prepares Estimates in support of its request to Parliament for authority to spend public monies. This request is formalized through the tabling of appropriation bills in Parliament.

The Estimates of the Government of Canada are structured in several parts. Beginning with an overview of total government spending in Part I, the documents become increasingly more specific. Part II outlines spending according to departments, agencies and programs and contains the proposed wording of the conditions governing spending which Parliament will be asked to approve.

The *Report on Plans and Priorities* provides additional detail on each department and its programs primarily in terms of more strategically oriented planning and results information with a focus on outcomes.

The *Departmental Performance Report* provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the spring *Report on Plans and Priorities*.

The Estimates, along with the Minister of Finance's Budget, reflect the government's annual budget planning and resource allocation priorities. In combination with the subsequent reporting of financial results in the Public Accounts and of accomplishments achieved in Departmental Performance Reports, this material helps Parliament hold the government to account for the allocation and management of funds.+

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Foreword

In the spring of 2000 the President of the Treasury Board tabled in Parliament the document “Results for Canadians: A Management Framework for the Government of Canada”. This document sets a clear agenda for improving and modernising management practices in federal departments and agencies.

Four key management commitments form the basis for this vision of how the Government will deliver their services and benefits to Canadians in the new millennium. In this vision, departments and agencies recognise that they exist to serve Canadians and that a “citizen focus” shapes all activities, programs and services. This vision commits the government of Canada to manage its business by the highest public service values. Responsible spending means spending wisely on the things that matter to Canadians. And finally, this vision sets a clear focus on results – the impact and effects of programs.

Departmental performance reports play a key role in the cycle of planning, monitoring, evaluating, and reporting of results through ministers to Parliament and citizens. Earlier this year, departments and agencies were encouraged to prepare their reports following certain principles. Based on these principles, an effective report provides a coherent and balanced picture of performance that is brief and to the point. It focuses on results – benefits to Canadians – not on activities. It sets the department’s performance in context and associates performance with earlier commitments, explaining any changes. Supporting the need for responsible spending, it clearly links resources to results. Finally the report is credible because it substantiates the performance information with appropriate methodologies and relevant data.

In performance reports, departments strive to respond to the ongoing and evolving information needs of parliamentarians and Canadians. The input of parliamentarians and other readers can do much to improve these reports over time. The reader is encouraged to assess the performance of the organization according to the principles outlined above, and provide comments to the department or agency that will help it in the next cycle of planning and reporting.

This report is accessible electronically from the Treasury Board of Canada Secretariat Internet site:

<http://www.tbs-sct.gc.ca/rma/dpr/dpre.asp>

Comments or questions can be directed to this Internet site or to:

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**OFFICES OF THE INFORMATION AND
PRIVACY COMMISSIONERS OF CANADA**

PERFORMANCE REPORT

for the Period Ending March 31, 2001

Approved: _____
The Honourable A. Anne McLellan, PC, MP
Minister of Justice and
Attorney General of Canada

Date: _____

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OFFICE OF THE INFORMATION COMMISSIONER OF CANADA
PERFORMANCE REPORT

I am pleased to submit my Performance Report for the fiscal period April 1, 2000 to March 31, 2001.

Approved: _____
The Honourable John M. Reid
Information Commissioner of Canada

Date: _____

Section I

Information Commissioner's Message

Access laws give individuals the legal right to request records held by government institutions. They are remarkable achievements. They are almost as rare as Bengal tigers in that there are less than 20 countries in the world – although the list is now slowly growing – that have subjected their governments and bureaucracies to such transparency. Access laws are becoming an essential cornerstone to a vibrant and healthy democracy. The benefits of such laws are tangible and profound; they transform the way in which public business is done. There is greater care, frugality, integrity and honesty in government because of access laws. As well, access laws support a professional, ethical and non-partisan public service.



Hon. John M. Reid, P.C.
*Information
Commissioner of Canada*

During the year covered by this Performance Report, the Minister of Justice announced that there would be a major review of the *Access to Information Act*. Minister McLellan stated that she and the President of the Treasury Board, had begun the process of determining how the review would take place. I commended the Minister for pressing forward with this initiative and pledged to cooperate in any way possible.

To assist in that review, I made a comprehensive set of recommendations for modernizing the *Access to Information Act* and the regime for information management in government. These suggestions are contained in my 2000-2001 Annual Report which was tabled in both Houses of Parliament in June of 2001.

Who We Are and What We Do

If one only reads the newspapers and listens to the Ottawa rumour-mill, it might seem that all the Office of the Information Commissioner does is issue subpoenas, grill mandarins under oath, fight court cases and make enemies. As the following overview of the process will bear out, this could hardly be farther from the truth.

The Information Commissioner is an ombudsman appointed by Parliament to investigate complaints that the government has denied rights to under *the Access to Information Act*. As an ombudsman, the Commissioner may not order a complaint resolved in a particular way. He must rely on persuasion, negotiation, mediation and, sometimes, arm-twisting to solve disputes. It is extremely rare for him to issue a subpoena and no one receives a subpoena unless he or she refuses a polite invitation to cooperate voluntarily. It is even more rare for the Commissioner to ask for a Federal Court review of a government institution's refusal to disclose documents. He only goes to court if he believes an individual has been improperly denied access and a negotiated solution has proven impossible.

To underline how rare this is, note that in fiscal year 1999-2000, 99.9% of complaints to us were resolved without the Commissioner initiating a Federal Court review. Only three reviews were begun. Again, in fiscal 2000-2001, 99.9% of complaints were resolved without going to court. In that year, the one on which this Performance Report is based, only two reviews were brought to court. These figures paint a picture of a process that is a highly successful dispute resolution process in the best tradition of a classical ombudsman.

Here is how the Commissioner handles complaints:

When a complaint is received, it is assigned to an investigator. It is the investigator's task to try to resolve the complaint and, if that is not possible, to bring the matter to senior management so that further efforts can be made to that end.

In the course of an investigation, the investigator first familiarizes him or herself with the complaint and, by contacting the complainant, learns any background to the complaint. Next, the investigator contacts the department involved, obtains copies of the records in question, if it is an exemption complaint, and assesses the adequacy of the search. In other cases, the investigator discusses the fees, extension of time or other issues involved in the complaint.

If it is an exemption complaint, the investigator must read all of the records, consider the exemptions claimed in those records, obtain explanations from the official who invoked the exemptions, hear the complainant's views, review the statutory provisions involved and formulate some preliminary thoughts on the validity of the exemptions claimed.

It is at this point, where the fact-gathering process is mostly completed, regardless of whether it is an exemption, fee estimate, no records or time extension complaint, that the investigator begins the discussion/persuasion phase of the process. During this process, departmental officials may be asked to reconsider and remedy any perceived defect. The investigator acts as an advocate for the Act, not for the complainant. As noted earlier, we were successful 99.9% of the time in securing a resolution that we considered to be in accordance with the Act.

While investigators are the heart and soul of the complaint investigation process, they are not alone, but are backed up by a small support network of managers (3) and lawyers (3) which exist to guide, advise, supervise and, ultimately, consider the results of their investigations and their recommendations for resolution or further action. Even though the vast majority of complaints are resolved without the intervention of management, the more difficult cases will require not only consultation with management, but the active participation of those officers. If an impasse is reached with the department and the complainant; if the investigator is prepared to recommend release of records and the department is insistent on refusing to do so, a several-step process comes into play.

Often the Director General, Investigations and Reviews will meet with more senior departmental officials to see if a fresh approach can be found. Many files are resolved at that level. If his intervention does not bear fruit, the Deputy Commissioner will become involved at the most senior levels of a department. It is his job to make a final effort at informal resolution and, if that proves impossible, to finalize the necessary evidentiary record for the Commissioner's consideration and, if necessary, consideration by the Court.

This process will include offering the head of the institution against which the complaint is made, an opportunity to make written or oral representations. Of course, representations have been sought at every step in the investigative process, but this is the final, formal opportunity for the Office to bring our preliminary views to the attention of the head of the institution and to give the head the final opportunity to address our concerns.

The Commissioner keeps a distance from the fact gathering process of investigations in order to ensure that he comes to the deliberation phase with an open mind. During the deliberation phase, it falls to him to review all the evidence and representations, fairly and with an open mind. If he considers the complaint to be well-founded, it is his role to recommend remedial action and to communicate his findings and recommendations to the complainant and the head of the institution. He also informs the complainant that, if access to the requested records has not or will not be given, she or he has the right to apply to the Federal Court for a review of the institution's decision to refuse access.

It should be noted here, that the Commissioner has no power to go to the Federal Court on his own. It is only the person who has been refused access who can ask for a review, or, if that person so chooses, he or she may give the Commissioner consent to apply for a review on their behalf. The Commissioner's policy is to offer to go to court in every case where the head of an institution has refused to follow a recommendation that records be disclosed.

Performance Information¹

As mentioned in the Commissioner's message, the benefits of the *Access to Information Act* are tangible and profound; these laws transform the way in which public business is done. The long-term and enduring benefit to Canadians, derived from the mere existence of this program, is that citizens have a more informed understanding of governmental issues and actions. As well, governance is more transparent, accountable, and ethical.

The Year in Review

In the reporting year, 1,688 complaints were made to the Commissioner against government institutions (see Table 1). Table 2 indicates that 1,337 investigations were completed, 43.1 percent of all completed complaints being of delay (see Table 2). Last year, by comparison, 49 percent of complaints concerned delay. While slightly improved, the system-wide, chronic problem remains of non-compliance with the Act's response deadlines. As a result, it remains the office's first priority.

In addition to the complaints received in 2000-01, our office responded to 2,419 enquiries.

Resolutions of complaints were achieved in the vast majority of cases (99.9 percent of cases, to be precise). In two cases it proved impossible to find a resolution. As mentioned in the Commissioner's message, these have been brought before the Federal Court for review.

Complaint Statistics

As seen from Table 3, the overall turnaround time for complaint investigations increased to 5.40 months from the previous year's 4.34 months. This turnaround time is getting worse. It is hoped Treasury Board will provide the resources needed to clear the backlog and prevent its return. Otherwise, Canadians could be deprived of an effective and timely avenue of redress for abuses of access rights.

The Commissioner's office works closely with institutions that have had complaints filed against them to determine whether the complaints signal any systemic problems. With the exception of Citizenship and Immigration Canada, which doubled the number of complaints investigated last year, only National Defence repeats on the "Top 5 list", and with a much lower number of complaints against it. The fact that Health Canada, Indian and Northern Affairs and Canada Customs and Revenue Agency do not appear on this year's "Top 5 list" is the result of dedicated hard work by officials in those institutions. They deserve and get, this Commissioner's kudos for addressing long-standing problems of delay in constructive ways.

¹ For financial performance information, please refer to Section IV, page 22, of this document .

Table 1: STATUS OF COMPLAINTS

	2000-2001	2000-2001
Pending from previous year	742	571
Opened during the year	1359	1688
Completed during the year	1530	1337
Pending at year-end	571	922

Table 2: COMPLAINT FINDINGS*April 1, 2000 to March 31, 2001*

FINDINGS						
Category	Resolved	Not Resolved	Not Substantiated	Discontinued	TOTAL	%
Refusal to disclose	263	2	187	82	534	39.5
Delay (deemed refusal)	493	-	50	32	575	43.1
Time extension	83	-	66	2	151	11.3
Fees	28	-	20	6	54	4.0
Language	-	-	-	-	-	-
Publications	-	-	-	-	-	-
Miscellaneous	13	-	6	4	23	1.7
TOTAL	880	2	329	126	1337	100%
100%	65.8	0.1	24.6	9.4		

Table 3: TURNAROUND TIME (MONTHS)

Category	1998-1999		1999-2000		2000-2001	
	Months	Cases	Months	Cases	Months	Cases
Refusal to disclose	5.86	526	5.99	537	7.83	534
Delay (deemed refusal)	2.50	669	3.44	749	3.33	575
Time extension	2.80	71	2.33	134	4.18	151
Fees	5.69	45	5.41	55	7.02	54
Language	-	-	-	-	-	-
Publications	-	-	-	-	-	-
Miscellaneous	4.54	40	4.34	55	4.61	23
Overall	3.99	1351	4.34	1530	5.40	1337

Case Management Initiatives

Refined the OIC's Rigorous Selection Process: not everyone has what it takes to be a good investigator, no matter how well they may know the *Access to Information Act*. One needs to be able to think logically and critically; to be able to gather facts and to evaluate them; to be able to ask questions and follow-up questions; to be able to listen and, as importantly, to understand; to be able to learn from experience; to be able to respect the opinions and points-of-view of others; to be able to put facts into a context and to draw conclusions from those facts; and, finally, to be able to support those conclusions with evidence.

The investigation and resolution process also demands that an investigator be able to communicate clearly, accurately and concisely with the complainant, with departmental officials and with other Information Commission staff. Most importantly, an investigator must have the ability to remain neutral between the complainant and the government, not being biased for or against either party, not having any stake in the outcome of the investigation other than that the law be followed.

It is, of course, not easy to find someone with all of the requisite skills. Most of our investigators, when hired, have an excellent knowledge of the Act. Many have worked in government departments as ATIP officers or coordinators. Some have legal skills.

Developed Comprehensive Training Program: despite their individual backgrounds, each new investigator undergoes an extensive and rigorous training program as their first task with the Office.

This training program begins with a personalized, section-by-section, review of the Act and Regulations designed and presented by a senior lawyer with extensive experience in the field both in a department and with the Office. This training incorporates not just the legislation and the decisions of the Federal Court of Canada, as well as other courts, but previous investigations of the Office, the Treasury Board Manual on the Act and current case files.

During this initial training, the investigator begins working on a reduced number of less complex files, usually delay complaints. New investigators are mentored in these files by senior counsel and investigators to ensure that their training is implemented in their work. Eventually, the new investigator will be assigned a full caseload of up to fifty files.

Experienced investigators also take part in ongoing training, mentoring and file reviews. For example, the Office has hired outside experts to give extensive training to all investigators in negotiating and mediation skills as well as skills in dealing with "difficult people and situations". Emphasis is placed on remaining neutral.

Added Specialized Continuing Education Seminars: in addition to the mandatory training programs mentioned above, specialized continuing education seminars are held on a regular basis on specific sections of the Act which have proven to be difficult to interpret, such as the exemption in section 23 for solicitor-client privilege, the section 21 exemption regarding advice, recommendations and accounts of consultations and deliberations and the provisions in section 16 regarding investigations. Moreover, specialized training sessions are frequently held on non-statutory issues such as questioning skills, obtaining representations, investigation techniques as well as file management and preparation of investigation report skills. As well, monthly investigators' meetings are held to discuss emerging issues, problem files and new court decisions.

In November 2000, a highly successful three-day course entitled, "Introduction to Principled Negotiation" was given to investigators at Meech Lake. The course covered such topics as "Characteristics of Conflict", "Negotiating Skills", and so on.

Updated our Administrative Procedures Manual: investigators are one of the prime resources of this organization. We cannot measure the performance of an investigator in strict dollars and cents terms, as the efforts of the investigators have a major impact on the totality of our organizational accomplishments. In order to meet the goals of the organization, we must achieve excellence through people. One of the ways of doing this is by managing key processes of our work. The processes found in this manual are critical for such success and have a major impact on our ability to meet the needs of our clients. It is important to focus on the key processes and to simplify and prioritize them as they relate to the mandate of the organization.

An enormous revamping of this manual took place in the performance year for the purpose of improving and/or streamlining investigation processing times, reducing waste and increasing effectiveness by "doing it right the first time".

Updated Code of Conduct: in order to successfully fulfil our mandate, we must have the respect, confidence and cooperation of everyone with whom we deal including complainants, departmental officials, access coordinators and officers and with our colleagues in the OIC. We will only gain that respect, confidence and cooperation if we are, like Caesar's wife, above reproach. Not only must we avoid any conduct that is improper under this or other governmental Codes of Conduct to which we may be subject, we must also avoid the appearance of impropriety and avoid any conduct that might undermine the OIC's credibility. To this end, in 2000-01, an extensive updating of our Code of Conduct Manual was undertaken and completed.

OFFICE OF THE PRIVACY COMMISSIONER OF CANADA
PERFORMANCE REPORT

I am pleased to submit my Performance Report for the fiscal period April 1, 2000 to March 31, 2001.

Approved: _____
George Radwanski
Privacy Commissioner of Canada

Date: _____

Section II

Privacy Commissioner's Message



George Radwanski

All of us care about privacy because we recognize that it's a critical element of a free society. In the words of Justice Laforest of the Supreme Court of Canada, privacy is "at the heart of liberty in a modern state."

Both the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* recognize privacy as a fundamental right. That's because without it there can be no real freedom. In fact, it can be argued that privacy is the right from which all others flow—freedom of speech, freedom of conscience, freedom of association, freedom of choice, and so on.

That, of course, is why lack of real privacy is a distinguishing characteristic of so many totalitarian societies, and why privacy is not only an individual right — it's also a shared value, a social, public good.

This is a particularly important point for a publicly funded privacy protection authority like my office. We are often accused of putting the privacy of the individual before the greater good or the interests of society. That means I spend a lot of time explaining that the interests of society *include* the privacy of individuals. When privacy is lost, the individual feels it of course, but society is the real loser.

Naturally, I acknowledge that privacy is not an absolute right. Sometimes some privacy does have to be sacrificed in order to advance other social objectives. But I believe that when someone proposes a limitation on privacy as a trade-off for some other objective, we must pose hard, insistent questions: Is there really a need that clearly outweighs the loss of privacy? Will sacrificing privacy really achieve the objective? Is there a less privacy-invasive way to achieve the same thing?

I define privacy as *the right to control access to one's person and to information about oneself*. This informational definition of privacy seems to me to capture the most persistent and pressing privacy problem we're faced with today: The collection and compiling of information about us without our knowledge or consent.

It's that problem that leads me to believe that *privacy will be the defining issue of this decade*. That's because we are at a crossroads. Privacy is no longer protected by default. When information about us was in paper records, scattered over a lot of locations, compiling a detailed dossier on any individual was a daunting task. But the move to electronic record-keeping has changed all that, eating away at the barriers of time, distance, and cost that once guarded our privacy.

New surveillance technologies—cookies and web bugs, video cameras, e-mail monitoring, smart cards, biometric identifiers, location-tracking, drug-testing—assail us wherever we turn. Strangers sitting at computer keyboards need little more than seconds to compile dossiers on us, detailing our every action, purchase, statement, even human contact.

With the default protection vanishing, it's up to us. The choices we make in confronting this threat to privacy will determine what kind of world we leave for our children and grandchildren.

In Canada, one of the choices we've made as a society is to enact privacy legislation. In 1983, Parliament passed the *Privacy Act*, which gives Canadians rights of control over and access to their personal information held by government institutions. In 2000, Parliament extended similar protections to the private sector with the *Personal Information Protection and Electronic Documents Act*. That Act came into effect on January 1st of this year.

My mandate flows from these statutes. As the Privacy Commissioner of Canada, I'm an Officer of Parliament, appointed for a seven-year term to be the independent guardian and champion of the privacy rights of Canadians. I don't work for, or report to, the government. I work for and report directly to the people of Canada, through Parliament.

As a defender for the privacy rights of Canadians, I have the power to investigate complaints and conduct audits under two federal Acts, to publish information about the personal information-handling practices in both the public and private sectors, and to take matters to the Federal Court of Canada. The new Act also carries with it the important responsibilities for public education to raise awareness and understanding of privacy issues by the Canadian public and to conduct research.

It is, therefore, my pleasure, to present this Office's 2000-01 Performance Report to Parliamentarians and to all Canadians.

Who We Are and What We Do

The Privacy Commissioner of Canada, George Radwanski, is an Officer of Parliament who reports directly to the House of Commons and the Senate.

The Commissioner is an advocate for the privacy rights of Canadians with the power to:

- investigate complaints and conduct audits under two federal laws;
- publish information about personal information-handling practices in the public and private sector;
- take matters to the Federal Court of Canada;
- conduct research into privacy issues; and
- promote awareness and understanding of privacy issues by the Canadian public.

The Commissioner works independently from any other part of the government to investigate complaints from individuals with respect to the federal public sector and the private sector.

Canadians may complain to the Commissioner about any matter specified in Section 29 of the *Privacy Act*. This Act applies to personal information held by the Government of Canada.

For matters relating to personal information in the private sector, the Commissioner may investigate complaints under Section 11 of the *Personal Information Protection and Electronic Documents Act*. This Act now applies to federally regulated businesses across Canada and all businesses in the three territories.

As an ombudsman, the Commissioner prefers to resolve complaints through negotiation and persuasion, using mediation and conciliation if appropriate. The Commissioner has the power to summon witnesses, administer oaths and compel the production of evidence if voluntary co-operation is not forthcoming.

Investigations and Inquiries Branch

The Investigations and Inquiries Branch is responsible for investigating, on behalf of the Commissioner, complaints received from individuals under Section 29 of the *Privacy Act* and Section 11 of the *Personal Information Protection and Electronic Documents Act*. Essentially, the Office's investigations serve to establish whether individuals have had their privacy rights violated and/or whether they have been accorded their right of access to their personal information.

Where privacy rights have been violated, the investigation process seeks to provide redress for individuals and to keep violations from recurring. Through the Privacy Commissioner, the Branch has the authority to administer oaths, receive evidence and enter premises where appropriate. The Commissioner can also examine or obtain copies of records found in any premises.

To date, all complaints brought before the Commissioner have been resolved without having to use these formal investigative powers, because voluntary cooperation with investigations has been forthcoming.

The Investigations and Inquiries Branch responds to thousands of inquiries annually from the general public who contact the Office for advice and assistance on a wide range of privacy-related matters.

Privacy Practices and Reviews Branch

Like the Investigation and Inquiries Branch, the Privacy Practices and Reviews Branch assesses how well organizations are complying with the requirements set out in two federal Acts.

Following accepted standard audit objectives and criteria, the Branch conducts compliance reviews under Section 37 of the *Privacy Act* and audits under Section 18 of the *Personal Information Protection and Electronic Documents Act*.

The *Privacy Act* permits the Commissioner to randomly initiate a compliance review of federal institutions. The *Personal Information Protection and Electronic Documents Act* allows the Commissioner to audit the compliance of private organizations if the Commissioner has "reasonable grounds to believe" that the organizations are contravening a provision of the Act.

Through the Privacy Commissioner, the Branch has the authority to administer oaths, receive evidence and, at any reasonable time, enter premises where appropriate. It also provides assistance to public and private sector organizations regarding fair information handling practices with respect to any initiative with privacy implications.

Communications and Strategic Analysis Branch

The Communications and Strategic Analysis Branch has been newly created to carry out the public education and research mandate of the Office, strengthened under the *Personal Information Protection and Electronic Documents Act*.

The Strategic Analysis Division of this Branch serves as the centre of expertise on emerging privacy issues in Canada and abroad. It is responsible for researching trends, providing analysis on key issues, and developing policies and positions that advance the protection of the privacy rights of Canadians.

Legal Services

Legal Services, headed by the General Counsel, provides specialized legal and strategic advice and litigation support to the Privacy Commissioner with respect to the *Privacy Act* and the *Personal Information Protection and Electronic Documents Act*.

Performance Information

Investigations and Inquiries Branch

Privacy Act

The Commissioner's findings and recommendations, made to heads of government institutions and CEO's of private sector organizations, serve to ensure that the rights of individuals are respected and to encourage the advancement of fair information practices by public and private sector organizations. Under the *Privacy Act*, staff completed 1542 complaint investigations, of which 553 were well-founded, 421 were not well-founded, 82 were well-founded/resolved, 44 were resolved, and 321 were settled during the course of investigation. The remaining 121 were discontinued for various reasons.

The number of incoming *Privacy Act* complaints increased in 2000-01 to 1713 cases. This represents an increase of 10% over the previous year, which is a return to the trend observed since the Office was established. In 1999-2000, the Office experienced an unusual drop of nearly 50% in received complaints. This now appears to have been an anomaly as a result of the heavy intake of complaints about government matching of returning travellers' customs declarations with employment insurance claims. Despite the increased number of incoming complaints this past year, the Branch succeeded in significantly reducing the backlog of cases so that only a handful of complaints older than a year remain open.

Certain investigations completed during the year have had a significant impact on the protection of privacy of all Canadians. An example of this is the opening by Canada Customs officials of mail coming into Canada. The practice of opening private mail seriously erodes the fundamental privacy rights of Canadians. The *Customs Act* prohibits the opening of mail weighing less than 30 grams without either a search warrant or the addressee's consent. The same prohibition does not apply to mail weighing more than 30 grams, whether it is a package or personal correspondence. Inspectors may open these any time they believe they contain contraband or false documents. Any mail considered suspicious from an immigration standpoint is turned over to immigration officials for examination and further action. While the opening of mail over 30 grams by Customs is lawful, the Commissioner's concern was that the distinction between under 30 grams and over 30 grams is an artificial and inappropriate way of distinguishing between correspondence and parcels. He was particularly concerned that sending a letter by any form of "priority post" requires placing it in a large and comparatively heavy outer envelope that by itself can often put the item in the "over 30 grams" category. The Commissioner expressed his concerns to the Ministers responsible for both Customs and Immigration. Customs Minister Cauchon agreed with the Commissioner and as a result, the Agency is reviewing and updating its administrative practices and guidelines to reflect the use of larger envelopes such as express packs and bubble packs in the international

For financial information, please refer to Section IV, page 22, of this document.

mail stream. Specifically, the Agency will ensure that the weight of such external packaging is to be excluded for the purpose of arriving at the 30-gram limit. This should go a long way toward addressing the privacy concerns by much more closely approaching the legislatively intended distinction between letter mail and parcels.

Figure 1: Complaints Completed – Turnaround Time (months)

Complaint Category	1996-97 Actual	1997-98 Actual	1998-99 Actual	1999-00 Actual	2000-01 Actual
Access	12.8	9.6	8.4	8.2	7.0
Privacy	16.4	15.4	14.7	9.2	9.0
Time Limit	3.9	3.3	4.1	2.6	2.0
Overall	9.7	8.6	6.8	6.1	6.0

The average overall turnaround time for *Privacy Act* complaint investigations during the reporting year was six months – two months for time limit complaints, seven months for denial of access complaints, and nine months for privacy complaints.

Personal Information Protection and Electronic Documents Act

This new piece of legislation came into effect on January 1, 2001. As a result, the performance accomplishments are limited. During April to December 2000, the Investigations and Inquiries Branch focussed on recruiting and hiring new staff to assist the Office in carrying out its new responsibilities of investigating complaints in the private sector. Both new employees and existing staff received training on the new legislation. The Branch was re-organized and procedures were developed to deal with the anticipated increased caseload.

Twenty-four complaints were received in the first three months of 2001, related to denial of access and improper collection and disclosure of personal information, held by a cross-section of industrial sectors including banking, health, transportation, broadcasting and telecommunications. Meetings were held with senior officials of some of the respondent organizations to familiarize them with the Office and the investigation process.

It is anticipated that complaints filed under the *PIPED Act* will affect, sometimes quite significantly, how private sector organizations handle the personal information of Canadians. One of the first complaints received provides a good example of the type of intervention this Office will undertake as a result of this important new piece of legislation. As we increasingly rely on the internet and the telephone to pay our bills, transfer money, and monitor our account transactions, it is important that financial institutions maintain the highest levels of security regarding our personal information. In the complaint, the issue was that a third party could easily obtain access to the complainant's personal information through an automated telephone inquiry service. A third party caller would thus be able to determine a person's account balance and the history of payments, advances and debits. The Commissioner determined that the complaint was well founded. The organization responded immediately by disabling telephone access to that customer's personal information, and following discussions with

this Office is revising its policies and procedures to ensure a higher level of security for all its customers. It is likely that other financial institutions will follow suit.

Privacy Practices and Reviews (PP&R) Branch

In October 2000, as a result of the need to review compliance of federal institutions subject to the *Privacy Act*, and in response to the challenges resulting from the Privacy Commissioner's expanded mandate under the new *Personal Information and Protection and Electronic Documents (PIPED) Act*, the Commissioner created a Privacy Practices and Reviews (PP&R) Branch. This newly formed branch holds responsibility for compliance issues related to the principles of fair information practices as outlined in sections 4 through 8 of the *Privacy Act*, as well as the Model Code for the Protection of Personal Information which is found in Schedule I of the *PIPED Act*.

The primary function of PP&R is to perform compliance reviews of federal institutions and, where applicable, to audit private sector organizations within Canada. Since its inception, PP&R has initiated two formal compliance reviews involving government institutions. However, the results of the reviews will only be available next fiscal year.

In addition to these functions, the branch works with federal organizations providing them with advice on compliance issues and the privacy implications of new and existing programs and practices. In keeping with this commitment, PP&R has been involved in numerous consultative efforts with government departments, including Human Resources and Development Canada (HRDC), Statistics Canada and Justice Canada to name a few. These consultations often involve reviewing new proposals for information management such as data-matching initiatives, the creation of databases and information-sharing arrangements with other organizations. It is important to note that PP&R's role in such issues is one of advisor. The branch does not in any way provide formal approval for such initiatives that might compromise the Commissioner's impartiality during subsequent investigations or reviews.

Following the dismantling of the Longitudinal Labour Force File in May 2000, HRDC implemented a strict review process for all future research projects requiring the connection of separate databanks by any of its offices in headquarters and the regions. This process included consultation with the OPC on all such projects. PP&R's involvement in the HRDC review process resulted in several recommendations that ensured an increased integration of the principles of fair information practices in research projects involving the linkage of databanks containing personal information.

The PP&R branch was also involved in consultations that took place with Statistics Canada regarding the 2001 Census. As a result of privacy concerns identified by the PP&R branch, Statistics Canada initiated a number of changes to its census collection process. For example, procedures are now in place for respondents to follow in order to avoid providing information returns to census representatives they know personally as neighbours or colleagues; a sensitivity training module has been added for all census representatives to make them more aware of individuals' privacy concerns; the edit and

follow-up procedures have been modified to minimize the burden placed on respondents and thus reduce the number of contacts with households; the census questionnaires and guide have been simplified so respondents better understand the questions and why they are asked.

Over the past year PP&R Branch also reviewed the Canadian Firearms Program's compliance with privacy principles. During the course of this review, it was noted that the application for possession and acquisition of licences required applicants to list two types of identification. The application form, which is issued by Justice Canada, provided the Social Insurance Number (SIN) as an example of acceptable ID. However, the Firearms Program is not listed as an authorized user of the SIN in the Treasury Board 1989 Policy on Data Matching and Control of the SIN, nor is the use of the SIN authorized under the *Firearms Act* or its *Regulations*. PP&R's involvement served to highlight this concern, which resulted in the forms being redesigned and the reference to the SIN being removed.

It is important to note that a significant part of PP&R's compliance work is not simply to encourage maximum compliance with the letter of the law. The branch actively stresses the importance of complying with the spirit of the legislation and to this end has done significant work in emphasizing the importance of such privacy principles as "informed consent". For example, over the past year, Review Officers from PP & R have worked closely with Statistics Canada to ensure that adequate information is provided to respondents prior to soliciting an individual's participation in a number of population surveys such as the Family Expenditure and the Canadian Community Health surveys. This ensures that individuals are provided with all relevant information to make an informed decision prior to providing their personal information for survey purposes. The approach emphasizes that a significant aspect of privacy is the right to *control access to one's person and to information about oneself*.

Over the course of this year PP&R has sought to address the challenges associated with establishing a new branch both in terms of defining its role within the organization and acquiring the necessary resources. Having dealt with these challenges, it is anticipated that PP&R's review and audit function will become more prominent in years to come. Nevertheless, the branch will continue its advisory and consultative approach to encourage compliance with the principles of fair information practices both within federal organizations and the private sector.

SECTION III - CORPORATE SERVICES

The Privacy and Information Commissioners share corporate services while operating independently under their separate statutory authorities. These shared services – finance, human resources, information technology and general administration – are centralized in the Corporate Management Branch to avoid duplication of effort and to save money for both government and the programs.

The Branch is a frugal operation with a staff of 19 and a budget representing 13% of total program expenditures.

During the performance year, Financial Services successfully implemented the Government's Financial Information Strategy and made great strides in implementing a records management system (RDIMS).

SECTION IV - FINANCIAL PERFORMANCE

Financial Performance Overview

As evidenced in the Program narratives of this document, OIPC managers continually pursue innovative approaches to delivering their programs without sacrificing the level of quality service to the public.

As you will notice in the following three financial tables, the Offices' combined budgets for the 2000-01 year was \$13.7 M. Actual expenditures for 2000-01 were \$13.4 M.

Table 1: Voted Appropriations

Financial Requirements by Authority (\$ millions)				
Vote		2000-01		
		Planned Spending	Total Authorities	Actual Spending
Offices of the Information and Privacy Commissioners of Canada				
40	Program Expenditures	7.3	12.4	12.1
(S)	Contributions to Employee Benefit Plans	1.2	1.3	1.3
Total Agency		8.5	13.7	13.4

Note: Total Authorities are: Main Estimates (\$7.3 M), Supplementary Estimates (Bill C-6 \$4.4 M and 99-00 Operating Budget Carry Forward \$0.3 M), Treasury Board Vote 5 Items (\$0.2 M), Treasury Board Vote 15 Items (\$0.2 M) and Contributions to Employee Benefit Plans (\$1.3 M).

Table 2: Comparison of Total Planned Spending to Actual Spending

Planned Versus Actual Spending by Business Line (millions of dollars)							
Business Lines	FTE's	Operating	Capital	Grants and Contributions	Total Gross Expenditures	Less: Respendable Revenues	Total Net Expenditures
Access to Government Information							
Planned Spending	45	3.6	-	-	3.6	-	3.6
Total Authorities	<i>45</i>	<i>3.9</i>	-	-	<i>3.9</i>	-	<i>3.9</i>
Actual	37	4.1	-	-	4.1	-	4.1
Protection of Personal Information							
Planned Spending	45	3.7	-	-	3.7	-	3.7
Total Authorities	<i>76</i>	<i>8.0</i>	-	-	<i>8.0</i>	-	<i>8.0</i>
Actual	56	7.4	-	-	7.4	-	7.4
Corporate Services							
Planned Spending	15	1.2	-	-	1.2	-	1.2
Total Authorities	<i>22</i>	<i>1.8</i>	-	-	<i>1.8</i>	-	<i>1.8</i>
Actual	19	1.9	-	-	1.9	-	1.9
Totals	105	8.5	-	-	8.5	-	8.5
Total Authorities	<i>143</i>	<i>13.7</i>	-	-	<i>13.7</i>	-	<i>13.7</i>
Actual	112	13.4	-	-	13.4	-	13.4
Other Revenues and Expenditures							
Non-Respendable Revenues							-
Total Authorities							-
Actual							-
Costs of services provided by other departments							1.0
Total Authorities							<i>0.6</i>
Actual							0.6
Net Cost of the Program							9.5
Total Authorities							<i>14.3</i>
Actual							14.0

Note: Numbers in italics denote Total Authorities for 2000-01. Total Authorities are: Main Estimates (\$7.3 M), Supplementary Estimates (Bill C-6 \$4.4 M and 99-00 Operating Budget Carry Forward \$0.3 M), Treasury Board Vote 5 Items (\$0.2 M), Treasury Board Vote 15 Items (\$0.2 M) and Contributions to Employee Benefit Plans (\$1.3 M).

Bolded numbers denote actual expenditures in 2000-01.

Table 3: Historical Comparison of Total Planned Spending to Actual Spending

Planned Versus Actual Spending by Business Line (\$ millions)					
Business Lines	Actual 1998-99	Actual 1999-00	2000-01		
			Planned Spending	Total Authorities	Actual
Access to Government Information	3.0	3.8	3.6	3.9	4.1
Protection of Personal Information	3.6	4.7	3.7	8.0	7.4
Corporate Services	1.5	1.4	1.2	1.8	1.9
Total	8.1	9.9	8.5	13.7	13.4

Note: Total Authorities are: Main Estimates (\$7.3 M), Supplementary Estimates (Bill C-6 \$4.4 M and 99-00 Operating Budget Carry Forward \$0.3 M), Treasury Board Vote 5 Items (\$0.2 M), Treasury Board Vote 15 Items (\$0.2 M) and Contributions to Employee Benefit Plans (\$1.3 M).

SECTION V - SUPPLEMENTARY INFORMATION

1. Legislation Administered by the Information and Privacy Commissioners

The Information Commissioner has an oversight responsibility to Parliament for the:

<i>Access to Information Act</i>	R.S.C., 1985, ch. A-1, amended 1997, c. 23, s. 21
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The Privacy Commissioner has an oversight responsibility to Parliament for the:

<i>Privacy Act</i>	R.S.C., 1985, ch. P21, amended 1997, c. 20, s. 55
<i>Personal Information Protection And Electronic Documents Act</i>	2000, c.5

2. Statutory Annual Reports and Other Publications

The Commissioners' annual reports and position papers on access to information and privacy issues are available on the Commissioners' internet web sites.

- **Information Commissioner's 2000-01 Annual Report.** Ottawa: Minister of Public Works and Government Services Canada, 2001. Available from the Office of the Information Commissioner of Canada, Ottawa, Canada K1A 1H3; (613) 995-2410.
- **Privacy Commissioner's 2000-01 Annual Report.** Ottawa: Minister of Public Works and Government Services Canada, 2000. Available on audio cassette, computer diskette and hardcopy from the Office of the Privacy Commissioner of Canada, Ottawa, Canada K1A 1H3; (613) 995-8210 and on the Office's Internet home page.
- **Performance Report to Parliament, for the period ending March 31, 2000.** Ottawa: Minister of Public Works and Government Services Canada, 2000. Available through local booksellers or by mail from Public Works and Government Services - Publishing, Ottawa, Canada K1A 0S9.
- **2001-02 Estimates: A Report on Plans and Priorities.** Ottawa: Minister of Public Works and Government Services Canada, 2001. Available through local booksellers or by mail from Public Works and Government Services - Publishing, Ottawa, Canada K1A 0S9.

■ Office of the Information Commissioner of Canada Internet home page:
<http://infoweb.magi.com/~accessca/>

■ Office of the Privacy Commissioner of Canada Internet home page:
<http://www.privcom.gc.ca/>

3. Contact for Further Information

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