

Office of the
Privacy Commissioner
of Canada



Commissariat à la
protection de la vie privée
du Canada

2011-2012 ANNUAL REPORT TO PARLIAMENT

on the *Access to Information Act*



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Introduction

The *Access to Information Act* (ATIA) came into effect on July 1, 1983. It provides Canadian citizens, permanent residents and any person and corporation present in Canada a right of access to information contained in government records, subject to certain specific and limited exceptions.

When the *Federal Accountability Act* received Royal Assent on December 12, 2006, the Office of the Privacy Commissioner (OPC) was added to Schedule I of the ATIA along with other Agents of Parliament. So, while not initially subject to the ATIA, the OPC became so, on April 1, 2007.

Section 72 of the ATIA requires that the head of every federal government institution submit an annual report to Parliament on the administration of the *Act* within their institutions during the fiscal year.

The OPC is pleased to submit its fifth Annual Report which describes how we fulfilled our responsibilities under the ATIA during the fiscal year 2011-2012.

Mandate / Mission of the OPC

The mandate of the OPC is to oversee compliance with both the *Privacy Act* (PA) which covers the personal information-handling practices of federal government departments and agencies, and the *Personal Information Protection and Electronic Documents Act* (PIPEDA), Canada's private sector privacy law.

The OPC's mission is to protect and promote the privacy rights of individuals.

The Commissioner works independently from any other part of the government to investigate privacy complaints from individuals with respect to the federal public sector and certain aspects of the private sector. In public sector matters, individuals may complain to the Commissioner about any matter specified in Section 29 of the PA.

For matters relating to personal information in the private sector, the Commissioner may investigate complaints under Section 11 of PIPEDA except in the provinces that have adopted substantially similar privacy legislation, namely Québec, British Columbia, and Alberta. Ontario and New Brunswick now fall into this category with respect to personal health information held by health information custodians under their health sector privacy laws. However, even in those provinces with substantially similar legislation, and elsewhere in Canada, PIPEDA continues to apply to personal information collected, used or disclosed by all federal works, undertakings and businesses, including personal information about their employees. PIPEDA also applies to all personal data that flows across provincial or national borders, in the course of commercial transactions involving organizations subject to PIPEDA or to substantially similar legislation.

The Commissioner focuses on resolving complaints through negotiation and persuasion, using mediation and conciliation if appropriate. However, if voluntary co-operation is not forthcoming, the Commissioner has the power to summon witnesses, administer oaths and compel the production of evidence. In cases that remain unresolved, particularly under PIPEDA, the Commissioner may take the matter to Federal Court and seek a court order to rectify the situation.

As a public advocate for the privacy rights of Canadians, the Commissioner carries out the following activities:

- Investigating complaints and issuing reports with recommendations to federal government institutions and private sector organizations to remedy situations, as appropriate;

- Pursuing legal action before Federal Courts where appropriate to resolve outstanding matters;
- Assessing compliance with obligations contained in the PA and PIPEDA through the conduct of independent audit and review activities, and publicly reporting on findings;
- Advising on, and reviewing, Privacy Impact Assessments (PIAs) of new and existing government initiatives;
- Providing legal and policy analyses and expertise to help guide Parliament's review of evolving legislation to ensure respect for individuals' right to privacy;
- Responding to inquiries of Parliamentarians, individual Canadians and organizations seeking information and guidance and taking proactive steps to inform them of emerging privacy issues;
- Promoting public awareness and compliance, and fostering understanding of privacy rights and obligations through: proactive engagement with federal government institutions, industry associations, legal community, academia, professional associations, and other stakeholders;
- Preparing and disseminating public education materials, positions on evolving legislation, regulations and policies, guidance documents and research findings for use by the general public, federal government institutions and private sector organizations;
- Conducting research and monitoring trends in technological advances and privacy practices, identify systemic privacy issues that need to be addressed by federal government institutions and private sector organizations and promoting integration of best practices; and
- Working with privacy stakeholders from other jurisdictions in Canada and on the international scene to address global privacy issues that result from ever-increasing trans-border data flows.

Organizational Structure

The Privacy Commissioner is an Officer of Parliament who reports directly to the House of Commons and the Senate. The Commissioner is assisted by an Assistant Commissioner, who has delegated responsibilities under both the PA and PIPEDA.

The OPC is comprised of eight distinct branches:

Privacy Act Investigations Branch

The PA Investigations Branch receives and investigates complaints from individuals who claim a breach of the PA, or complaints that are initiated by the Commissioner. The Branch also receives notifications of breaches from federal government organizations, and receives and reviews public interest disclosures made by them. The Branch is headed by Ms. Sue Lajoie, Director General, PA Investigations.

PIPEDA Investigations Branch

The PIPEDA Investigations Branch is divided between Ottawa and Toronto. In Ottawa, the Branch receives and investigates all complaints of national scope by individuals or initiated by the Commissioner, from anywhere in Canada except from the Greater Toronto Area (GTA). In Toronto, the Branch investigates complaints from the GTA and coordinates public education and stakeholder outreach activities in the GTA. The Branch is headed by Mr. Brent Homan, Director General, PIPEDA Investigations, and the Toronto Office is headed by Mr. Lorne MacDougall, Director.

Audit and Review Branch

The Audit and Review Branch audits organizations to assess their compliance with the requirements set out in the two federal privacy laws. The Branch also analyses and provides recommendations on PIAs submitted to the OPC pursuant to the Treasury Board Secretariat Policy on Privacy Impact Assessments (PIAs). The Branch is headed by Mr. Steven Morgan, Director General.

Communications Branch

The Communications Branch focuses on providing strategic advice and support for communications and public education activities for the OPC. In addition, the Branch plans and implements a variety of public education and communications activities through media monitoring and analysis, public opinion polling, media relations, publications, special events, outreach activities and the OPC web sites. The Branch is also responsible for the OPC's Information Centre, which responds to requests for information from the public and organizations regarding privacy rights and responsibilities. The Branch is headed by Ms. Anne-Marie Hayden, Director General.

Legal Services, Policy and Research Branch

The Legal Services, Policy and Research Branch (LSPR) provides strategic legal and policy advice and conducts research on emerging privacy issues in Canada and internationally. More specifically, the Branch provides strategic legal advice to the Commissioners and various Branch Heads on the interpretation and application of the PA and PIPEDA in investigations and audits, as well as general legal counsel on a broad range of corporate and communication matters. The Branch represents the OPC in litigation matters before the courts and in negotiations with other parties both nationally and internationally. It reviews and analyzes legislative bills, government programs, public and private sector initiatives and provides strategic advice to the Commissioners on appropriate policy positions to protect and advance privacy rights in Canada. The Branch prepares for, represents and supports the office in appearances before Parliament and in its relations with Parliamentarians. The Branch conducts applied research on the privacy implications of emerging societal and technological issues to support and inform the development of OPC policy guidance and best practices for relevant stakeholders. The Branch administers the research contribution program, which was launched in 2004, to advance knowledge and understanding of privacy issues and to promote enhanced protection of personal information. Also housed in the Branch is the OPC Access to Information and Privacy (ATIP) Unit responsible for responding to formal requests for information from the public pursuant to the *Access to Information and Privacy Acts*. The ATIP Unit is also responsible for internal policies relative to these Acts. The Director of the ATIP Unit is also the Chief Privacy Officer for the OPC. The Branch is headed by Ms. Patricia Kosseim, Senior General Counsel and Director General.

Human Resources Management Branch

The Human Resources Management Branch is responsible for the provision of strategic advice, management and delivery of comprehensive human resource management programs in areas such as staffing, classification, staff relations, human resource planning, learning and development, employment equity, official languages and compensation. The Branch is headed by Ms. Maureen Munhall, Director.

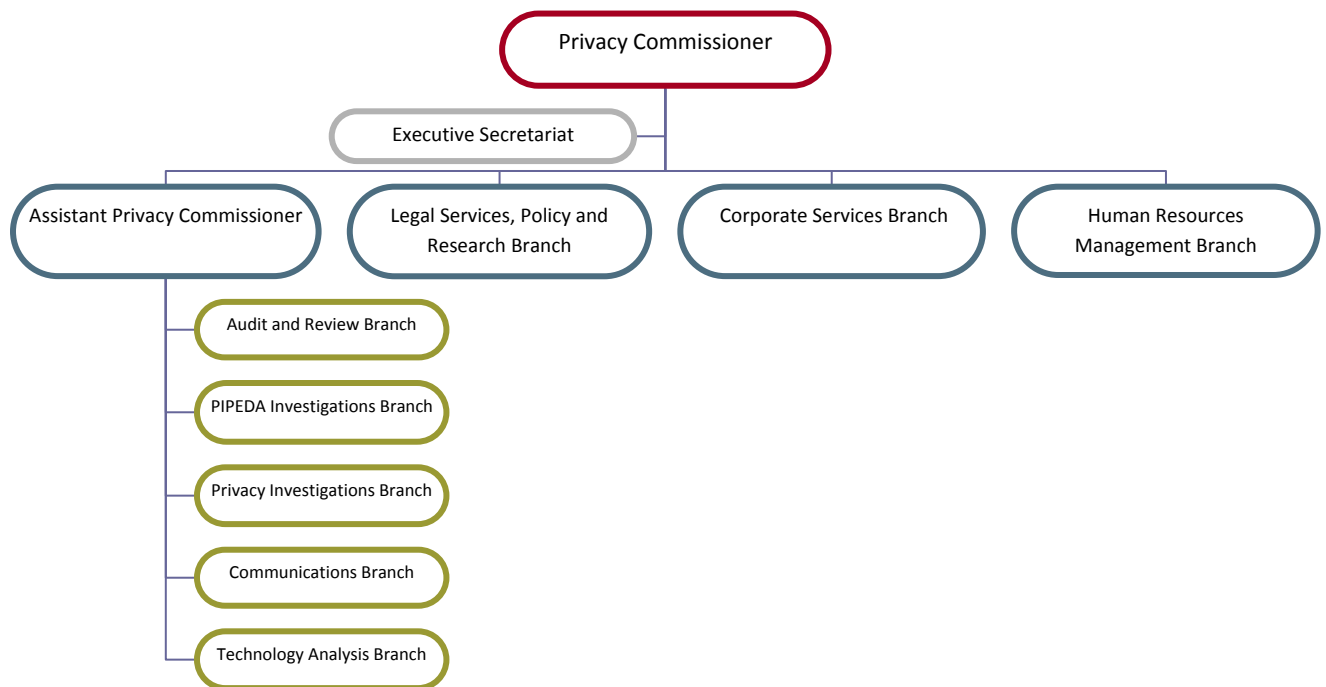
Corporate Services Branch

The Corporate Services Branch provides advice and integrated administrative services such as corporate planning, resource management, financial management, information management/technology and general administration to managers and staff. The Branch is headed by Mr. Daniel Nadeau, Director General and Chief Financial Officer.

Technology Analysis Branch

The Technology Analysis Branch identifies and analyzes technological trends and developments in electronic platforms and digital media. The Branch conducts research to assess the impact of technology on the protection of personal information in the digital world. It also provides strategic analysis and guidance on complex, varied and sensitive technological issues involving breaches in the security of government and commercial systems that store personal information. As a corporate centre of expertise, the Branch analyzes current and emerging issues and trends in national security and public safety. The electronic media and their impact upon the privacy rights of Canadians represent another key area of interest for the Branch. The technological expertise concentrated in the Branch also supports core functions of the OPC, including audits, investigations and PIA reviews. The Branch is headed by Mr. Noël Lachance, Director.

Office of the Privacy Commissioner of Canada



The ATIP Unit is housed within the LSPR Branch. ATIP is headed by a Director who is supported by one Senior Analyst.

Under section 73 of the ATIA the Privacy Commissioner, as the head of the OPC, has delegated her authority to the Senior General Counsel / Director General of the LSPR Branch and to the ATIP Director with respect to the application of the ATIA and its *Regulations*. A copy of that Delegation Order is attached as Appendix A.

The ATIP Director also serves as the OPC's Chief Privacy Officer.

ATIP Unit Activities

In the reporting fiscal year, PA Awareness Sessions were given to new OPC employees, and it is our goal to provide refresher ATIP training to 85% of the existing employees before the end of fiscal year 2012-2013.

As the OPC is a relatively small organization, sessions are also given on an as-needed basis as well.

Throughout the year the ATIP Unit has been active in providing advice to all OPC staff with respect to informal requests for information. ATIP has also continued to support the Information Management function by providing input concerning proper information handling practices.

During the final quarter of the year, the ATIP Unit successfully completed an overall system upgrade with respect to the method of processing files. This was completed through the implementation of an electronic file tracking and redaction system which allows documents to be processed electronically rather than manually.

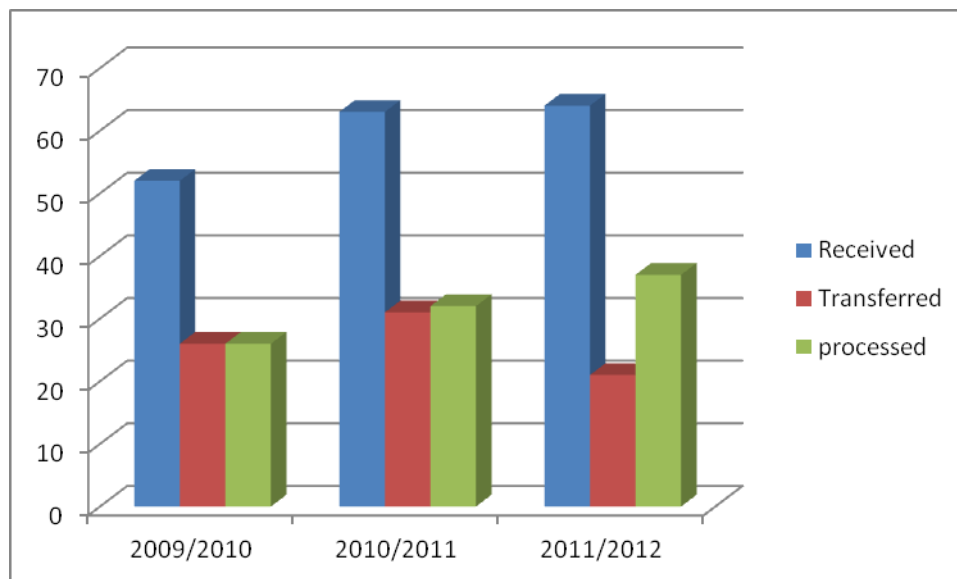
The ATIP Director sits on the OPC's Policy Development Committee and has played a collaborative role in the planning, development and updating of OPC policies, procedures and directives in order to ensure that the *Access to Information Act* is respected.

***Access to Information Act* Statistical Report and Interpretation**

The OPC's statistical Report on the ATIA is attached at Appendix B.

The OPC received 64 formal requests under the ATIA during the fiscal year, which is one more than the previous year. Of those, 21 sought access to records which were not under the control of the OPC and they were therefore transferred to the appropriate federal institutions for processing. The majority of transfers were made to the Canada Border Service Agency, Citizenship and Immigration Canada, Canada Revenue Agency, Correctional Service Canada, Human Resources and Skills Development Canada and the Royal Canadian Mounted Police.

Requests under the ATIA



Of the 43 requests for records under the OPC's control (none had been carried over from the previous reporting period), the ATIP Unit had responded to 37 requests by the end of the fiscal year—six were carried forward to the next fiscal year. The 37 completed requests constituted 3,655 pages of information.

Extensions were claimed with respect to 22 requests, 20 of which were for more than 30 days. In all, the OPC responded to 36 requests within the first 30 days and 22 requests within the extended time period.

Of the 43 requests completed during the fiscal year, approximately ten were for copies of OPC Briefing Notes and related material, six were for the contents of PA or PIPEDA investigation files, one was for legal bills and travel accommodation, one for event planning services, two for information relating to human resources and the remainder were for miscellaneous information.

The OPC released all of the requested documents in seven cases and made partial releases in 25 cases. In regards to the other requests, in no instances was the information all exempted, in no instances was the request abandoned by the applicant and in five cases, no records existed. Four requests were treated informally.

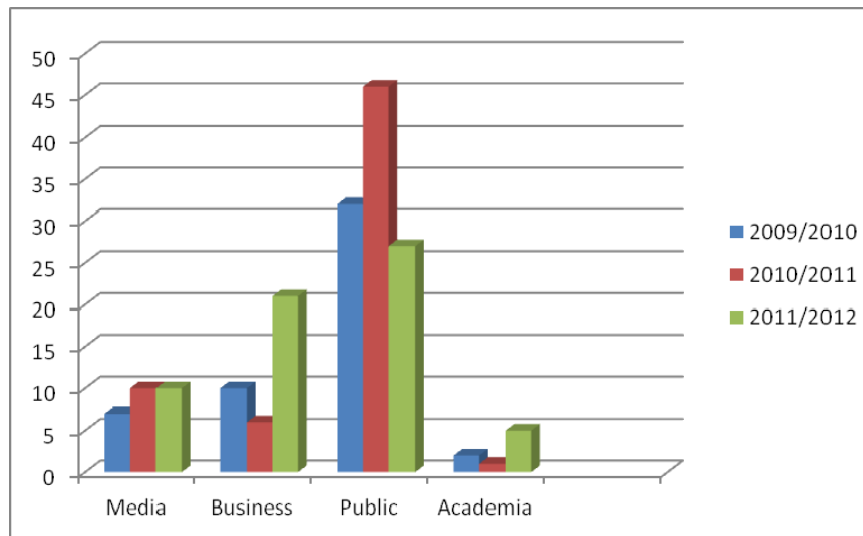
Section 16.1 of the ATIA requires that the OPC protect the information obtained during the course of its investigations or audits even after the matter and all related proceedings have been concluded. So, with respect to requests for access to PA and PIPEDA investigation files, none were released in their entirety—all had some information withheld under section 16.1 and, in some cases, information was withheld under one or more of sections 19(1), 21(1)(a), 21(1)(b) and 23 as well.

As was the case in the last reporting year, the exemption provision invoked most often was section 19(1) concerning the personal information of others, followed closely by section 16.1 with respect to information the OPC received or created during the course of an investigation and section 23 with respect to solicitor-client information. However, in other cases this year the OPC also withheld information under one or more of sections 13(1)(a), 20(1)(b), 20(1)(c) and sections 21(1)(a) and (b) of the ATIA.

Of the 64 requests received this fiscal year, 27 were submitted by the public (42.2 %), ten by the media (15.6 %), 21 by businesses (32.8 %), five by academia (7.8 %) and one by an organization (1.6 %).

The OPC was notified of 14 complaints under the ATIA during the fiscal year compared to one the previous fiscal year. The findings by the Information Commissioner's Office with respect to these complaints have not yet been issued.

Requests under the ATIA by Source



In addition to processing its own ATIA requests, the OPC was consulted on 13 occasions on a total of 655 pages. Treasury Board Secretariat consulted us on two occasions, Veterans Affairs on two occasions and we were consulted once by each of the following institutions: Office of the Information Commissioner, Human Resources and Skills Development Canada, Royal Canadian Mounted Police, Industry Canada, Canada Revenue Agency, International Centre for Human Rights and Democratic Development, Canada Border Services Agency, Financial Transaction and Reports Analysis Centre of Canada, and Canadian Air Transport Security Authority. In seven cases, the ATIP division recommended full disclosure of the requested records.

With respect to application fees, they amount to \$185.00. None of the requests required the assessment of reproduction fees, search fees, preparation fees or computer processing time.

In most cases where records were provided, paper copies were given to the individuals. No one asked to be given access by viewing the records. Fifteen requesters asked to receive records electronically and we provided them by CD.

For additional information on the OPC's activities, please visit www.priv.gc.ca.

Additional copies of this report may be obtained from:

Director, Access to Information and Privacy
Office of the Privacy Commissioner of Canada
112 Kent Street
Ottawa, ON K1A 1H3

Appendix A – Access to Information Act Delegation Order



Access to Information Act Delegation Order

The Privacy Commissioner of Canada, as the head of the government institution, hereby designates pursuant to section 73 of the *Access to Information Act*, the persons holding the positions set out below, or the persons occupying on an acting basis those positions, to exercise the powers, duties or functions of the Privacy Commissioner as specified below and as more fully described in Annex A:

Position	Sections of <i>Access to Information Act</i>
Senior General Counsel/Director General, Legal Services, Policy and Research	<u>Act</u> : 7(a), 8(1), 9, 11(2) to (6), 12(2) and (3), 13 to 24, 25, 26, 27(1) and (4), 28(1), (2) and (4), 29(1), 33, 35(2), 37(1) and (4), 43(1), 44(2), 52(2) and (3), 71(2), 72(1); and <u>Regulations</u> : 6(1) and 8.
Director, ATIP	

In order to ensure independence of decision-making by the Senior General Counsel/Director General, Legal Services, Policy and Research, when exercising the powers under this delegation instrument, legal advice for the institution on specific matters included herein shall be provided by the Director, Legal Services and Senior Counsel.

This delegation of authority supersedes any previous delegation of the powers, duties and functions set out herein.

Dated at the City of Ottawa, this 6th day of April, 2012

Original signed by

Jennifer Stoddart
Privacy Commissioner of Canada

Access to Information Act

- 7(a) Respond to request for access within 30 days; give access or give notice
- 8(1) Transfer of Request to government institution with greater interest
- 9 Extend time limit for responding to request for access
- 11(2), (3), (4), (5), (6) Additional fees
- 12(2)(b) Decide whether to translate requested record
- 12(3) Decide whether to give access in an alternative format
- 13(1) Shall refuse to disclose information obtained in confidence from another government
- 13(2) May disclose any information referred to in 13(1) if the other government consents to the disclosure or makes the information public
- 14 May refuse to disclose information injurious to the conduct of federal-provincial affairs
- 15 May refuse to disclose information injurious to international affairs or defence
- 16 Series of discretionary exemptions related to law enforcement and investigations; security; and policing services for provinces or municipalities.
- 16.1(1) In force April 1, 2007 - Specific to four named Officers of Parliament - Auditor General, Commissioner of Official Languages, Information Commissioner and Privacy Commissioner - shall refuse to disclose information obtained or created by them in the course of an investigation or audit
- 16.1(2) In force April 1, 2007 - Specific to two named Officers of Parliament – Information and Privacy Commissioner - shall not refuse under 16.1(1) to disclose any information created by the Commissioner in the course of an investigation or audit once the investigation or audit and related proceedings are concluded
- 17 May refuse to disclose information which could threaten the safety of individuals

18	May refuse to disclose information related to economic interests of Canada
18.1(1)	May refuse to disclose confidential commercial information of Canada Post Corporation, Export Development Canada, Public Sector Pension Investment Board, or VIA Rail Inc.
18.1(2)	Shall not refuse under 18.1(1) to disclose information relating to general administration of the institution
19	Shall refuse to disclose personal information as defined in section 3 of the <i>Privacy Act</i> , but may disclose if individual consents, if information is publicly available, or disclosure is in accordance with section 8 of <i>Privacy Act</i>
20	Shall refuse to disclose third party information, subject to exceptions
21	May refuse to disclose records containing advice or recommendations
22	May refuse to disclose information relating to testing or auditing procedures
22.1	May refuse to disclose draft report of an internal audit
23	May refuse to disclose information subject to solicitor/client privilege
24	Shall refuse to disclose information where statutory prohibition (Schedule II)
25	Shall disclose any part of record that can reasonably be severed
26	May refuse to disclose where information to be published
27(1),(4)	Third party notification
28(1),(2),(4)	Receive representations of third party
29(1)	Disclosure on recommendation of Information Commissioner
33	Advise Information Commissioner of third party involvement
35(2)	Right to make representations to the Information Commissioner during an investigation
37(1)	Receive Information Commissioner's report of findings of the investigation and give notice of action taken

- 37(4) Give complainant access to information after 37(1)(b) notice
- 43(1) Notice to third party (application to Federal court for review)
- 44(2) Notice to applicant (application to federal Court by third party)
- 52(2)(b) Request that section 52 hearing be held in the National Capital Region
- 52(3) Request and be given right to make representations in section 51 hearings
- 71(2) Exempt information may be severed from manuals
- 72(1) Prepare annual report to Parliament

Access to Information Regulations

- 6(1) Procedures relating to transfer of access request to another government institution under 8(1) of the Act
- 8 Form of Access

Appendix B – Additional Reporting Requirements

Access to Information Act

In addition to the reporting requirements addressed in form TBS/SCT 350-62 "Report on the *Access to Information Act*", institutions are required to report on the following using this form:

Part III – Exemptions invoked

Paragraph 13(1)(e) / not invoked
Subsection 16.1(1)(a) / not invoked
Subsection 16.1(1)(b) / not invoked
Subsection 16.1(1)(c) / not invoked
Subsection 16.1(1)(d) This subsection was invoked in 18 requests
Subsection 16.2(1) / not invoked
Subsection 16.3 / not invoked
Subsection 16.4(1)(a) / not invoked
Subsection 16.4(1)(b) / not invoked
Subsection 16.5 / not invoked
Subsection 18.1(1)(a) / not invoked
Subsection 18.1(1)(b) / not invoked
Subsection 18.1(1)(c) / not invoked
Subsection 18.1(1)(d) / not invoked
Subsection 20(1)(b.1) / not invoked
Subsection 20.1/ not invoked
Subsection 20.2/ not invoked
Subsection 20.4/ not invoked
Subsection 22.1(1) / not invoked

Part IV – Exclusions cited

Subsection 68.1/ not invoked

Subsection 68.2(a) / not invoked

Subsection 68.2(b) / not invoked

Subsection 69.1(1) / not invoked

**REPORT ON THE ACCESS TO INFORMATION ACT
RAPPORT CONCERNANT LA LOI SUR L'ACCÈS À L'INFORMATION**

Institution Office of the Privacy Commissioner of Canada				Reporting period / Période visée par le rapport 04/01/2011 to/à 03/31/2012	
Source	Media / Médias 10	Academia / Secteur universitaire 5	Business / Secteur commercial 21	Organization / Organisme 1	Public 27

**I Requests under the Access to Information Act /
Demandes en vertu de la Loi sur l'accès à l'information**

Received during reporting period / Reçues pendant la période visée par le rapport	64
Outstanding from previous period / En suspens depuis la période antérieure	0
TOTAL	64
Completed during reporting period / Traitées pendant la période visées par le rapport	58
Carried forward / Reportées	6

**II Disposition of requests completed /
Disposition à l'égard des demandes traitées**

1. All disclosed / Communication totale	7	6. Unable to process / Traitement impossible	5
2. Disclosed in part / Communication partielle	25	7. Abandoned by applicant / Abandon de la demande	0
3. Nothing disclosed (excluded) / Aucune communication	0	8. Treated informally / Traitement non officiel	0
4. Nothing disclosed (exempt) / Aucune communication (exemption)	0	TOTAL	58
5. Transferred / Transmission	21		

III Exemptions invoked / Exceptions invoquées

S. Art. 13(1)(a)	1	S. Art. 16(1)(a)	0	S. Art. 18(b)	0	S. Art. 21(1)(a)	18
(b)	0	(b)	0	(c)	0	(b)	5
(c)	0	(c)	0	(d)	0	(c)	0
(d)	0	(d)	0	S. Art. 19(1)	24	(d)	0
S. Art. 14	0	S. Art. 16(2)	0	S. Art. 20(1)(a)	0	S. Art. 22	0
S. 15(1) International rel. / Relations intern.	0	S. Art. 16(3)	0	(b)	13	S. Art. 23	12
Defence / Défense	0	S. Art. 17	0	(c)	2	S. Art. 24	0
Subversive activities / Activités subversives	0	S. Art. 18(a)	0	(d)	0	S. Art. 26	0

IV Exclusions cited / Exclusions citées

S. / Art. 68 (a)	0	S. / Art. 69(1)(c)	0
(b)	0	(d)	0
(c)	0	(e)	0
S. / Art. 69(1)(a)	0	(f)	0
(b)	0	(g)	0

V Completion time / Délai de traitement

30 days or under / 30 jours ou moins	36
31 to 60 days / De 31 à 60 jours	6
61 to 120 days / De 61 à 120 jours	2
121 days or over / 121 jours ou plus	14

VI Extensions / Prorogations des délais

	30 days or under / 30 jours ou moins	31 days or over / 31 jours ou plus
Searching / Recherche	19	
Consultation	2	
Third party / Tiers	1	
TOTAL	22	

VII Translations / Traduction

Translations requested / Traductions demandées		0
Translations prepared / Traductions préparées	English to French / De l'anglais au français	0
	French to English / Du français à l'anglais	0

VIII Method of access / Méthode de consultation

Copies given / Copies de l'original	21
Examination / Examen de l'original	0
Copies and examination / Copies et examen	0

IX Fees / Frais

Net fees collected / Frais net perçus			
Application fees / Frais de la demande	\$185.00	Preparation / Préparation	\$0.00
Reproduction	\$0.00	Computer processing / Traitement informatique	\$0.00
Searching / Recherche	\$0.00	TOTAL	\$185.00
Fees waived / Dispense de frais		No. of times / Nombre de fois	\$
\$25.00 or under / 25 \$ ou moins		1	\$5.00
Over \$25.00 / De plus de 25 \$		0	\$0.00

X Costs / Coûts

Financial (all reasons) / Financiers (raisons)	
Salary / Traitement	\$ 88,907.93
Administration (O and M) / Administration (fonctionnement et maintien)	\$ 72,649.11
TOTAL	\$ 161,557.04
Person year utilization (all reasons) / Années-personnes utilisées (raison)	
Person year (decimal format) / Années-personnes (nombre décimal)	1.05

