

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 *Privacy Act*



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Cat. No. IP51-4/2-2012E-PDF

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## Introduction

The *Privacy Act* came into effect On July 1, 1983. This *Act* imposes obligations on federal government departments and agencies to respect the privacy rights of individuals by limiting the collection, use and disclosure of personal information. The *Act* also gives individuals the right of access to their personal information and the right to request the correction of that information.

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

Section 72 of the *Act* 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 *Privacy Act* 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.

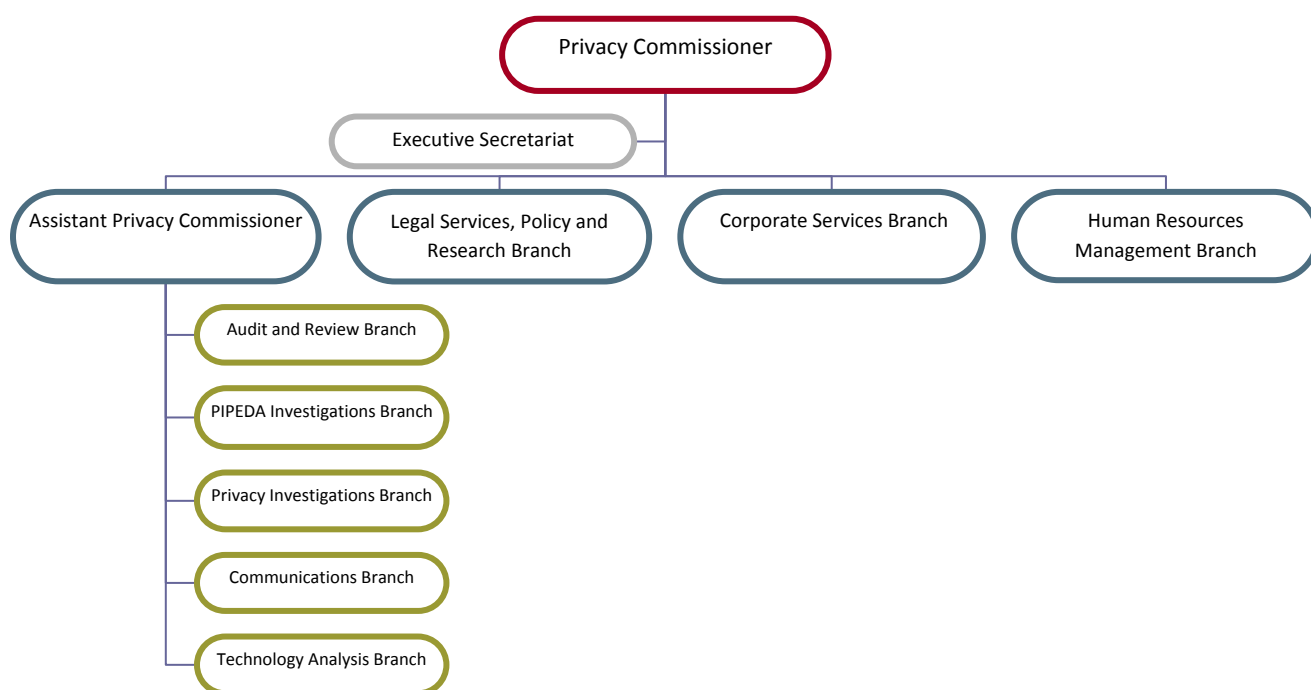
## **Corporate Services Branch**

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 PA the Privacy Commissioner, as the head of the OPC, has delegated her authority to the Senior General Counsel and Director General of the LSPR Branch and to the ATIP Director with respect to the application of the *Act* and its *Regulations*. With respect to public interest disclosures under section 8(2)(m) of the *Act*, the Commissioner has delegated her authority to the Assistant Commissioner for those decisions. A copy of the Delegation Order is attached as Appendix A.

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

## Privacy Commissioner, Ad Hoc / Complaint Mechanism

Given the silence of the *Federal Accountability Act* with respect to an independent mechanism under which PA complaints against the OPC would be investigated, we have developed an alternative mechanism to investigate OPC actions with respect to its administration of the *Act*.

For this purpose, the Commissioner has delegated her powers, duties and functions as set out in sections 29 through 35 and section 42 of the *Act* to a Privacy Commissioner Ad Hoc in order that he could investigate PA complaints lodged against the OPC.

The current Privacy Commissioner, Ad Hoc is Mr. John H. Sims. Mr. Sims is a member of the Ontario Bar, and retired from the Public Service of Canada on April 2, 2010 after 32 years, five as Deputy Minister of Justice and Deputy Attorney General of Canada. Throughout his career, Mr. Sims has been recognized for outstanding achievements, high standards of ethical and professional conduct, excellence in leadership and preeminent public service. In 2010, the Prime Minister presented Mr. Sims with the prestigious Outstanding Achievement Award of the Public Service of Canada.

## **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.

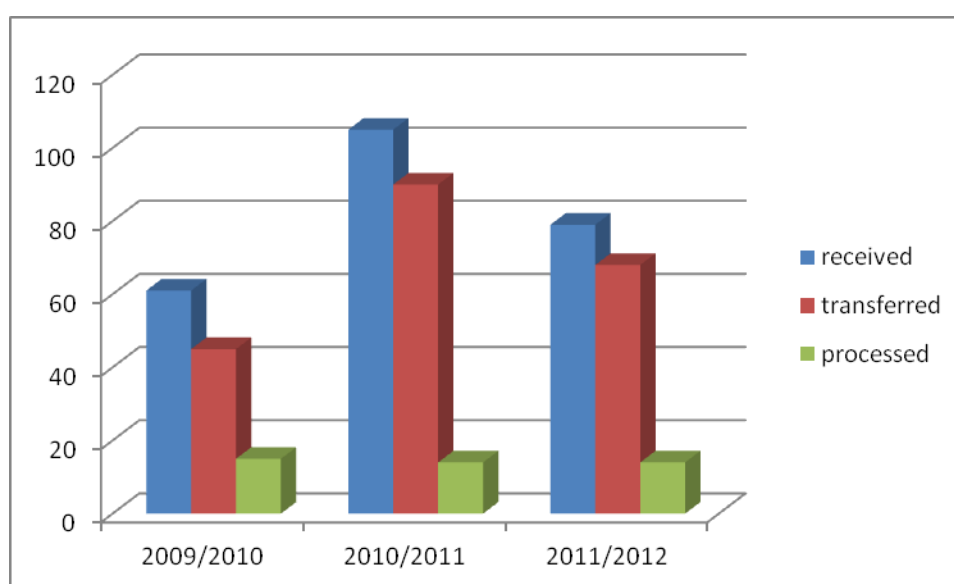
During the final quarter of the year, the ATIP Unit successfully completed an overall system upgrade with respect to the method of processing files. This was completed through the implementation of an electronic file tracking and redaction system which allows documents to be processed electronically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

## ***Privacy Act* Statistical Report and Interpretation**

The OPC received 79 formal requests under the PA for the fiscal year. However, the vast majority of those requests—68 of them—sought access to personal information under the control of other government institutions. They were therefore re-directed for processing to those institutions, including to the Canada Revenue Agency, Correctional Service Canada, Human Resources and Skills Development Canada, National Defense, Canada Border Services Agency and the RCMP.

### **Requests under the *Privacy Act***



During the last reporting year, the OPC received 14 PA requests for personal information under our control and we processed some 6,257 pages of information. This fiscal year was quite different from the previous year in that we received 11 such requests which comprised 14,375 pages. All requests were submitted by the individual themselves.

An extension was claimed with respect to one request and it was completed within the extended timeframe.

One request was carried over to the next fiscal year.

Of the ten PA requests completed, three were for the contents of PA or PIPEDA investigation files. In two instances, our investigations and all related proceedings were closed; therefore, the information in those files was processed and released to the requesters subject to applicable exemptions. In the two cases some information was withheld under section 22.1(1).

Section 22.1 of the PA requires that the OPC protect the information that we obtained during the course of our investigations or audits, even after the matter and all related proceedings have been concluded. This exemption was applied in three cases during the reporting period.

With regards to other exemptions, section 26 was claimed in three cases and section 27 in two instances.

All information was released in two instances and partially in three cases. In two cases the information requested did not exist and in two other cases, the request was abandoned. In one case, all information was exempted entirely.

No requests were received for correction of personal information held within the OPC.

The OPC received three complaints against it under the PA in this reporting year. The investigations by the Privacy Commissioner Ad Hoc were completed. Two complaints were not well founded, and one was resolved.

Finally, the OPC received four consultations from other federal institutions this fiscal year.

## Report on the Privacy Impact Assessment (PIA) Policy

The *Directive on Privacy Impact Assessment* which came into effect on April 1, 2010, requires that the Treasury Board Secretariat monitor compliance with the *Directive*. Given this responsibility, institutions are asked to include pertinent statistics in their annual reports on the administration of the PA.

In 2011-2012 the OPC did not initiate any PIAs.

## Data Sharing Activities

The OPC did not undertake any personal data sharing activities this reporting year.

## Disclosures of Personal Information

The OPC disclosed no personal information under sections 8(2)(e), (f), (g) or (m) of the PA during this fiscal year.

## Privacy-Related Policies

The ATIP Director is a member of the OPC's Policy Development Committee. In that role, policies, directives and guidelines have been and continue to be reviewed to ensure that the PA is respected.

During this reporting year the OPC did not create any new policy or directive with regards to the protection of personal information.

For additional information on the OPC's activities, please visit [www.priv.gc.ca](http://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 – *Privacy Act* Delegation Order



### *Privacy Act* Delegation Order

The Privacy Commissioner of Canada, as the head of the government institution, hereby designates pursuant to section 73 of the *Privacy 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>Privacy Act</i>
Privacy Commissioner Assistant Privacy Commissioner	8(2)(m)
Senior General Counsel/Director General, Legal Services, Policy and Research  Director, ATIP	<u>Act</u> : 8(2)(j), 8(4) and (5), 9(1) and (4), 10, 14, 15, 17(2)(b) and (3)(b), 18 to 28, 31, 33(2), 35(1) and (4), 36(3), 37(3), 51(2)(b) and (3), 72(1)  <u>Regulations</u> : 9, 11(2) and (4), 13(1), 14

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 24 day of April, 2012

Original signed by  
\_\_\_\_\_  
Jennifer Stoddart  
Privacy Commissioner of Canada

## ***Privacy Act***

8(2)(j)	Disclose personal information for research purposes
8(2)(m)	Disclose personal information in the public interest or in the interest of the individual
8(4)	Retain copy of 8(2)(e) requests and disclosed records
8(5)	Notify Privacy Commissioner of 8(2)(m) disclosures
9(1)	Retain record of use
9(4)	Notify Privacy Commissioner of consistent use and amend index
10	Include personal information in personal information banks
14	Respond to request for access within 30 days; give access or give notice
15	Extend time limit for responding to request for access
17(2)(b)	Decide whether to translate requested information
17(3)(b)	Decide whether to give access in an alternative format
18(2)	May refuse to disclose information contained in an exempt bank
19(1)	Shall refuse to disclose information obtained in confidence from another government
19(2)	May disclose any information referred to in 19(1) if the other government consents to the disclosure or makes the information public
20	May refuse to disclose information injurious to the conduct of federal-provincial affairs
21	May refuse to disclose information injurious to international affairs or defence

- 22 Series of discretionary exemptions related to law enforcement and investigations; and policing services for provinces or municipalities.
- 22.1(1) In force April 1, 2007 - Privacy Commissioner shall refuse to disclose information obtained or created in the course of an investigation conducted by the Commissioner
- 22.1(2) In force April 1, 2007 - Privacy Commissioner shall not refuse under 22.1(1) to disclose any information created by the Commissioner in the course of an investigation conducted by the Commissioner once the investigation and related proceedings are concluded
- 23 May refuse to disclose information prepared by an investigative body for security clearances
- 24 May refuse to disclose information collected by the Correctional Service of Canada or the National Parole Board while individual was under sentence if conditions in section are met
- 25 May refuse to disclose information which could threaten the safety of individuals
- 26 May refuse to disclose information about another individual, and shall refuse to disclose such information where disclosure is prohibited under section 8
- 27 May refuse to disclose information subject to solicitor-client privilege
- 28 May refuse to disclose information relating to the individual's physical or mental health where disclosure is contrary to best interests of the individual
- 31 Receive notice of investigation by Privacy Commissioner
- 33(2) Right to make representations to the Privacy Commissioner during an investigation
- 35(1) Receive Privacy Commissioner's report of findings of the investigation and give notice of action taken
- 35(4) Give complainant access to information after 35(1)(b) notice

- 36(3) Receive Privacy Commissioner's report of findings of investigation of exempt bank
- 37(3) Receive report of Privacy Commissioner's findings after compliance investigation
- 51(2)(b) Request that section 51 hearing be held in the National Capital Region
- 51(3) Request and be given right to make representations in section 51 hearings
- 72(1) Prepare annual report to Parliament

## **Privacy Regulations**

- 9 Provide reasonable facilities to examine information
- 11(2) and (4) Procedures for correction or notation of information
- 13(1) Disclosure of information relating to physical or mental health to qualified practitioner or psychologist
- 14 Require individual to examine information in presence of qualified practitioner or psychologist

## Appendix B – Additional Reporting Requirements

### ***Privacy Act***

Treasury Board Secretariat is monitoring compliance with the Privacy Impact Assessment (PIA) Policy (which came into effect on May 2, 2002) and the Directive on Privacy Impact Assessment (which takes effect April 1, 2010) through a variety of means. Institutions are therefore required to report the following information for this reporting period. Note that because some institutions are using the Core PIA as outlined in the Directive in advance of the implementation deadline, they will not have Preliminary PIAs to report.

Indicate the number of:

- Preliminary PIAs initiated: 0
- Preliminary PIAs completed: 0
- PIAs initiated: 0
- PIAs completed: 0
- PIAs forwarded to the OPC: 0

\*\*No PIAs were completed during the reporting period

### **Part III – Exemptions invoked**

Paragraph 19(1)(e) / not invoked Paragraph 19(1)(f) / not invoked Subsection 22.1 This exemption was invoked in 3 files Subsection 22.2 / not invoked Subsection 22.3/ not invoked
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### **Part IV – Exclusions cited**

Subsection 69.1 / not invoked Subsection 70.1/ not invoked
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*Note:* If your institution did not invoke any exemptions or cite any exclusion noted above during the reporting period, this must be stated explicitly.


**REPORT ON THE PRIVACY ACT**  
**RAPPORT CONCERNANT LA LOI SUR LA PROTECTION**  
**DES RENSEIGNEMENTS PERSONNELS**

Institution	Office of the Privacy Commissioner of Canada	Reporting period / Période visée par le rapport 04/01/2011 to 03/31/2012
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<b>I Requests under the Privacy Act / Demandes en vertu de la Loi sur la protection des renseignements personnels</b>	
Received during reporting period / Reçues pendant la période visée par le rapport	11
Outstanding from previous period / En suspens depuis la période antérieure	0
<b>TOTAL</b>	<b>11</b>
Completed during reporting period / Traitées pendant la période visées par le rapport	10
Carried forward / Reportées	1

<b>II Disposition of request completed / Disposition à l'égard des demandes traitées</b>	
1. All disclosed / Communication totale	2
2. Disclosed in part / Communication partielle	3
3. Nothing disclosed (excluded) / Aucune communication (exclusion)	0
4. Nothing disclosed (exempt) / Aucune communication (exemption)	1
5. Unable to process / Traitement impossible	2
6. Abandoned by applicant / Abandon de la demande	2
<b>TOTAL</b>	<b>10</b>

<b>III Exemptions invoked / Exceptions invoquées</b>	
S. Art. 18(2)	0
S. Art. 19(1)(a)	0
(b)	0
(c)	0
(d)	0
S. Art. 20	0
S. Art. 21	0
S. / Art. 22(1)(a)	0
(b)	0
(c)	0
S. / Art. 22(2)	0
S. / Art. 23 (a)	0
(b)	0
S. / Art. 24	0
S. / Art. 25	0
S. / Art. 26	3
S. / Art. 27	2
S. / Art. 28	0

<b>IV Exclusions cited / Exclusions citées</b>	
S. Art. 69(1)(a)	0
(b)	0
S. Art. 70(1)(a)	0
(b)	0
(c)	0
(d)	0
(e)	0
(f)	0

<b>V Completion time / Délai de traitement</b>	
30 days or under / 30 jours ou moins	9
31 to 60 days / De 31 à 60 jours	1
61 to 120 days / De 61 à 120 jours	0
121 days or over / 121 jours ou plus	0

<b>VI Extentions / Prorogations des délais</b>		
	30 days or under / 30 jours ou moins	31 days or over / 31 jours ou plus
Interference with operations / Interruption des opérations	1	0
Consultation	0	0
Translation / Traduction	0	0
<b>TOTAL</b>	<b>1</b>	

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

<b>VIII Method of access / Méthode de consultation</b>	
Copies given / Copies de l'original	10
Examination / Examen de l'original	0
Copies and examination / Copies et examen	0

<b>IX Corrections and notation / Corrections et mention</b>	
Corrections requested / Corrections demandées	0
Corrections made / Corrections effectuées	0
Notation attached / Mention annexée	0

<b>X Costs / Coûts</b>	
Financial (all reasons) / Financiers (raisons)	
Salary / Traitement	\$ 127,940.69
Administration (O and M) / Administration (fonctionnement et maintien)	\$6531.89
<b>TOTAL</b>	<b>\$ 134,472.58</b>
Person year utilization (all reasons) / Années-personnes utilisées (raisons)	
Person year (decimal format) / Années-personnes (nombre décimal)	1.51

