



# Offices of the Information and Privacy Commissioners

## Performance Report

For the period ending  
March 31, 2002

Canada

## The Estimates Documents

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. Departments and agencies are 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 outcomes - benefits to Canadians and Canadian society - and describes the contribution the organisation has made toward those outcomes. It sets the department’s performance in context and discusses risks and challenges faced by the organisation in delivering its commitments. The report also associates performance with earlier commitments as well as achievements realised in partnership with other governmental and non-governmental organisations. Supporting the need for responsible spending, it 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 and agencies 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 organisation 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.

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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:

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**OFFICE OF THE INFORMATION COMMISSIONER OF CANADA**

**PERFORMANCE REPORT**  
**for the Period Ending March 31, 2002**

Approved: \_\_\_\_\_  
The Honourable Martin Cauchon, 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, 2001 to March 31, 2002.

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

Date: \_\_\_\_\_

## Section I - Information Commissioner's Message

There is now widespread recognition among academics, members of Parliament, the judiciary, the media and the public, that the *Access to Information Act* is one of the cornerstones of our democratic process and one of the best tools available to ensure an open and transparent government.

In the conduct of its affairs, the Government of Canada and its agencies and institutions create, collect, maintain, use and disseminate information in a vast variety of media and forms. This information supports and documents all decision-making, business activities and legal processes, and the measurement of their outcomes and effects. It is the authoritative evidence of activities, decisions and commitments, and of government's interactions with the public and other bodies.

Happily, the importance of good information management is finally becoming more widely recognized in public-sector organizations, as in private-sector firms. Senior managers are realizing that greater attention to the management and use of information will enable them to plan and deliver their programmes and services more effectively. A more immediate stimulus in the Government of Canada, however, is the growing awareness that the success of Government On-Line depends on good information management and a much stronger information and data infrastructure. Electronic service delivery will be a wasted effort if the information offered is unavailable, incomplete, out-of-date, unreliable or inconsequential.

Stimulus has also been provided in reports of this and previous Information Commissioners and through comments from such respected officials as the National Archivist, the Auditor General and the Chief Information Officer of Canada. As well, a number of public controversies, such as that surrounding the HRDC Transitional Jobs Fund, have demonstrated the political, legal and other costs of poor recordkeeping practices.

The Prime Minister and the leadership of the public service need to lead by example in this area. The enormity of the task, as well as my dedication to it, cannot be overstated. Neither can the enormity of the threat to the health of our democracy be underestimated should we fail to take it on.

I believe that the federal government bears a fiduciary duty – to carefully create, preserve and protect its records – to the ultimate owners of the records, the citizens of Canada.

It is my pleasure, to present to you, Parliamentarians and citizens of Canada, this Office's Performance Report for the Period Ended March 31, 2002.



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

## Section II – Context

### *Current Environment*

During this reporting year, the going got tough, tougher than ever, for the public's "right to know". Quietly, firmly, the government shut the door on 19 years of public access to the records showing how ministers and ministerial staffers spend public money.

Even more troubling, the government took advantage of the tragic events of September 11, 2001, to give itself the power to (1) remove whole classes of records from the coverage of the *Access to Information Act* and (2) "discontinue" any investigation which the Information Commissioner was conducting which touched upon information relating to national defence, security or international relations. The phrase "took advantage of" is used deliberately, because the derogation from the right of access contained in Bill C-36 was not needed to assist in the so-called war on terrorism.

The right of access continues to be eroded through the creation of new institutions, to carry out public functions, which are not made subject to the *Access to Information Act*. For example, this year's Bill C-27 created the Waste Management Organization to manage nuclear fuel wastes. The bill does not add this organization to the schedule of institutions covered by the *Access to Information Act*. The government offered no reason for denying Canadians a right of access to records held by this new institution.

Access to information requesters are, with increasing frequency, being confronted with a new way to deny their access requests. Some departments have begun invoking extensions of several years beyond the 30-day response deadline. These departments then assert the legal position that, no matter how unreasonable the extension period, there is no constructive refusal, which can be reviewed by the Commissioner or the Federal Court.

Meanwhile, behind closed doors, the government's Task Force of bureaucrats toiled away at formulating recommendations for changes to the *Access to Information Act*. In June 2002, the Report of the Task Force became public. The Information Commissioner will inform Parliament and the public of his response to the Task Force Report, in a special report to Parliament to be tabled in the Fall of 2002.

There is positive news, too, to report. More requests than ever before were received by government, yet a lower percentage of them became complaints to the Information Commissioner's office. Again this year, it was possible to resolve the vast majority without recourse, by the Commissioner, to the Federal Court. All of this speaks of an improved professionalism in the administration of the Act by government departments and greater trust and respect among requesters, government institutions and this Office.



Continuing on the positive side, last year, 43.1 percent of complaints received by the OIC concerned problems of delays or unreasonable extensions of time. In this reporting year, the percentage dropped to 28.8 percent. Aiding this improvement was an increased allocation of resources to the access to information units in departments which had been, for years, sorely under-resourced and overworked. Although the resource gap is still a real problem, important steps have been taken by the government to put the resources in place to enable the rights contained in the access law to be delivered to Canadians. Some additional resources were also given to the Information Commissioner; however, a gap remains between the workload of complaints and the available resources to handle it.

Finally, as mentioned in the Information Commissioner's message, efforts are being made on several fronts to address the sorry state of information management in the government of Canada. As the reporting year drew to a close, Treasury Board ministers were preparing to consider adopting a revised, strengthened policy governing the management of government information.

## ***Raison d'être***

### ***Access to Government Information***

The Information Commissioner is an ombudsman appointed by Parliament to investigate complaints that the government has denied rights under the *Access to Information Act*--Canada's freedom of information legislation.

The Act came into force in 1983 and gave Canadians the broad legal right to information recorded in any form and controlled by most federal government institutions.

The Act provides government institutions with 30 days to respond to access requests. Extended time may be claimed if there are many records to examine, other government agencies to be consulted, or third parties to be notified. The requester must be notified of these extensions within the initial time frame.

Access rights are not absolute. They are subject to specific and limited exemptions, balancing freedom of information against individual privacy, commercial confidentiality, national security and the frank communications needed for effective policy-making. These exemptions permit government agencies to withhold material, often prompting disputes between applicants and departments.

Dissatisfied applicants may turn to the Information Commissioner who investigates applicants' complaints that:

- they have been denied requested information;
- they have been asked to pay too much for copied information;
- the department's extension of more than 30 days to provide information is unreasonable;

- the material was not in the official language of choice or the time for translation was unreasonable;
- they have a problem with the Info Source guide or periodic bulletins which are issued to help the public use the Act; or,
- they have run into any other problem using the Act.

The Commissioner has strong investigative powers. These are real incentives to government institutions to adhere to the Act and respect applicants' rights.

Since he is an ombudsman, the Commissioner may not order a complaint resolved in a particular way. Thus he relies on persuasion to solve disputes, asking for a Federal Court review only if he believes an individual has been improperly denied access and a negotiated solution has proved impossible.

To underline how rare this is, since 1999, 99.9% of complaints were resolved without the Commissioner initiating a Federal Court review. Of the 1,049 reviews, which were opened in 2001-2002, the fiscal year on which this Performance Report is based, only two reviews were brought to court. These figures continue to paint a picture of a process that is a highly successful dispute resolution process in the best tradition of a classical ombudsman.

Complaints received by the Commissioner are handled as follows:

1. When a complaint is received, it is assigned to an investigator, who will try to resolve the complaint. The investigator first familiarizes him or herself with the complaint and contacts the complainant to obtain relevant background. Next, the investigator contacts the Government department involved to obtain copies of the records in question if exemption from providing the requested information is being claimed, or, to assess the adequacy of the search where information cannot be found.
2. If an exemption from the Act is claimed, the investigator:
  - reads all of the records;
  - considers the exemption claimed;
  - obtains explanations from the official(s) who invoked the exemption;
  - hears the complainant's views;
  - reviews the statutory provisions involved; and,
  - assesses the validity of the exemption claimed.
3. After the fact-gathering process is completed, irrespective of the type of complaint, the investigator acting as an advocate for the Act will, if he believes that the complaint is justified, ask departmental officials to reconsider their position. As noted earlier, a resolution that is considered to be in accordance with the Act is achieved 99.9% of the time without further action.
4. When an investigator is prepared to recommend release of records and the department does not agree, the Director General, Investigations and Reviews, may meet with

senior departmental officials to seek a satisfactory resolution. If this approach is not successful, the Deputy Information Commissioner may become involved to make a final effort at informal resolution. If that proves impossible, the necessary evidentiary record for the Commissioner's consideration and, if necessary, consideration by the Court, is prepared.

5. Prior to court proceedings, the head of the institution against which the complaint is made, is provided with an opportunity to make written or oral representations. 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 is not involved with the fact-gathering process of investigations thus ensuring that he comes to the deliberation phase with an open mind. During the deliberation phase, he reviews the evidence and representations, and if he considers the complaint to be well founded, recommends remedial action. His findings and recommendations are communicated 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, the complainant has the right to apply to the Federal Court for a review of the institution's decision to refuse access.

The Commissioner does not have the authority under the Act to go to the Federal Court on his own. The complainant can either ask for a review, or, if that person so chooses, can give the Commissioner consent to apply for a review on his or her 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.

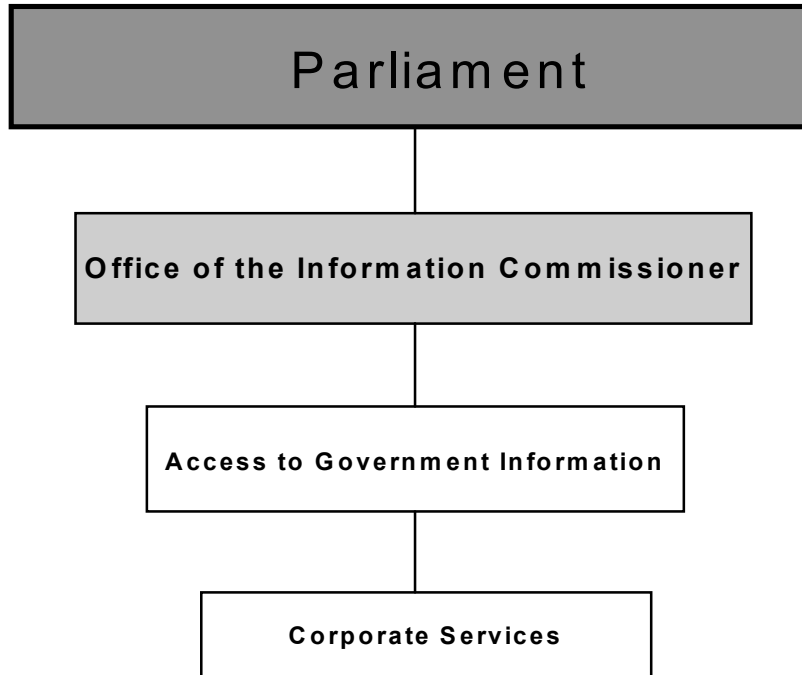
### ***Corporate Services***

From 1983-1984 to 2000-2001, the Offices of the Information and Privacy Commissioners of Canada operated under a one-vote structure. Commencing with the 2001-2002 fiscal year, each office operated independently of the other under their own respective vote structure but shared corporate services, based on a service usage basis. These shared services – finance, human resources, information technology, and general administration – have always been centralized in the Corporate Management Branch to avoid duplication of effort and to save money.

However, in this reporting year, the Privacy Commissioner of Canada informed the Information Commissioner that he did not intend to continue with the “shared corporate services” model. Rather, the Privacy Commissioner prefers to have corporate services provided to him by staff who work exclusively for his office.

This departure from the traditional organizational design will increase the resource expenditures, which are not justified for such a small department. Unnecessary expenditures of public funds are especially regrettable at the hands of Officers of Parliament.

**Figure 1: Accountability for Business Line Results and Resources Allocated**



## Section III - Performance Information by Strategic Outcome

### *Access to Government Information*

(millions of dollars)	2001-2002
<b>Planned Spending</b>	<b>\$3.7</b>
<i>Total Authorities</i>	<i>\$4.6</i>
Actuals	\$4.3
For an explanation of the variance between planned spending and total authorities, please refer to Section IV.	

### *Strategic Outcome 1 – Public Officials’ improved awareness of their access obligations*

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. Much of the evidence to support the benefits of the Act is anecdotal and hinges upon the satisfactory results obtained by complainants of substantiated complaints. As well, a reduction in the overall number of complaints could result from better education and understanding of the Act, although this indicator is open to interpretation.

When the Information Commissioner began his seven-year term of office, his first priority was to solve the chronic, worsening problem of delay in answering access requests. He promised members of Parliament (during their pre-appointment review of his suitability) that he would take on the delay problem with vigour. He also promised to inform Parliament, by means of report cards, about the performance of departments. These report cards would identify specific causes of delay, those with failing grades, make constructive suggestions for improvement and track remedial action in subsequent years.

The commissioner delivered on this promise. Since 1998, 26 report cards have been completed and tabled in Parliament.

As well, the commissioner promised to take a harder line in investigations of individual complaints of delay. Prior to 1998, complaint investigations involved negotiating a reasonable, revised response deadline (a departmental commitment). If the revised deadline was not met, further negotiations were undertaken for a second revised date. Only if that second date was also missed, would the aid of the Federal Court be sought to force an answer. Inevitably, however, the answers were given before the court process began.

In 1998, this commissioner adopted the one-chance-to-correct approach to delays. Under this approach, failure by a department to honour the revised response date negotiated with the commissioner, or failure to give a commitment to a fixed response date, would trigger

a "deemed-refusal" investigation. The Federal Court of Appeal describes such an investigation as follows:

"...as soon as the institution failed to comply with the time limit, the commissioner could have initiated his investigation as if there had been a time refusal. He does have powers to investigate including, at the beginning of an investigation, the power to compel the institution to explain the reasons for its refusal."

- Information Commissioner of Canada v. Minister of National Defence  
(1999) F.C.J. No. 522 (F.C.A.), para. 21

In other words, departments were given one fair opportunity to answer a delayed response by a reasonable, but fixed, date. Failure to take advantage of that opportunity would require senior officials of the department to justify, in formal proceedings, the legal basis for what the law deems to be a refusal to grant access.

After this less tolerant approach was adopted, two instances arose (both in 1999) where deputy ministers were required to appear and give evidence under oath concerning delayed responses. On both occasions, the access requests at issue were answered by the date of the appearances. No deputy ministers have been asked, since, to give evidence in a case of delay. Since those two instances, departments routinely give and respect revised response date commitments.

All major departments have had infusions of new resources to meet workload demands, and the report card results were instrumental in convincing ministers to seek, and Treasury Board to grant, the much needed infusion of resources.

### ***Strategic Outcome 2 – Canadians’ improved awareness of their access rights***

*“It is a question of power and we all know that those who have information are those who wield real power. But in a democracy such as ours, power and information must be widely shared...[Government] information belongs to the people of Canada, unless there is a very specific and fundamental reason for keeping it secret.”*

- The Right Honourable Joe Clark

*“...a democracy cannot function unless the people are permitted to know what their government is up to.”*

- Henry Steele Commager

Of the world’s 187 independent countries, only 30 give citizens the legal right to government information. Canada is one of the nations that has taken the step to open the filing cabinets and databases of its bureaucracy.

Just over a decade ago, Canada joined the ranks of this small, enlightened group of Western countries. The *Access to Information Act* and its companion legislation, the

*Privacy Act* came into force on Canada Day, 1983. With this move, Parliament granted Canadians and landed immigrants the right to view their personal government-held records, and the legal right to all other government-held information, subject to specific and limited exemptions.

Since that time, the OIC has undertaken a variety of activities to raise public awareness and understanding of access to information issues, to inform Canadians of their legislated rights.

The activities, undertaken in the reporting year, included:

- Assuming speaking engagements to raise awareness of issues;
- Issuing press releases;
- Participating on a number of boards;
- Contributing articles and other information to several publications;
- Providing support to conferences, public meetings and other special events;
- Maintaining and updating a web site; and
- Maintaining a public reading room.

### ***Strategic Outcome 3 – Improved service standards***

Practicing what one preaches is essential for any regulatory or oversight body. Canadians are not much impressed if their complaints against government are not dealt with in a timely manner. On this point, the commissioner has not had much success. Since the beginning of his term in 1998, the average time it takes to complete an investigation has risen from 3.9 months to 7.8 months in this reporting year. Equally troubling, the backlog of cases which remained incomplete at year's end has grown from 742 in 1998 to 922 last year. In this year, a backlog of 729 cases exists.

Every conceivable productivity improvement has been introduced: conversion of management, policy, public affairs positions to investigator positions; introduction of a rigorous time-management system for investigations; improved training and work tools for investigators and greater reliance on computerized approaches to case management, precedents and report preparation. Independent consultants and officials of Treasury Board Secretariat have reviewed the office's utilization of its resources.

There is an agreement on this point: 25 investigators cannot handle expeditiously some 1,200 to 1,500 complaints per annum of increasing complexity, against in excess of 150 government institutions with offices spread across Canada and throughout the world.

The resource problem does not only manifest itself in the inadequate numbers of investigators. It also limits the ability of the commissioner's office to play a constructive role in the system through research, education, public information and provision of advice to government and Parliament on legislative proposals.

Canadians have every right to expect timely investigations just as they have a right to expect timely answers to their access requests. This commissioner takes no pride in his record in this regard. But this commissioner is entirely dependent for resources upon the government which he is charged with investigating. In the end, through the purse strings, the government controls the effectiveness of the Office of the Information Commissioner. This is the point where the theory of the commissioner's independence runs afoul of the reality of his dependence upon the government of the day.

**Figure 2: Status of Complaints**

	<b>1999-2000</b>	<b>2000-2001</b>	<b>2001-2002</b>
Pending from previous year	742	571	912
Opened during the year	1359	1678	1049
Completed during the year	1530	1337	1232
Pending at year-end	571	912	729

**Figure 3: Complaint Findings April 1, 2001 to March 31, 2002**

<b>FINDINGS</b>						
<b>Category</b>	<b>Resolved</b>	<b>Not Resolved</b>	<b>Not Substantiated</b>	<b>Discontinued</b>	<b>TOTAL</b>	<b>%</b>
Refusal to disclose	277	2	312	99	690	56.0
Delay (deemed refusal)	299	-	31	18	348	28.2
Time extension	47	-	14	15	76	6.2
Fees	23	-	28	17	68	5.5
Language	-	-	1	-	1	0.1
Publications	-	-	-	-	-	-
Miscellaneous	25	-	15	9	49	4.0
<b>TOTAL</b>	<b>671</b>	<b>2</b>	<b>401</b>	<b>158</b>	<b>1232</b>	<b>100%</b>
<b>100%</b>	<b>54.5</b>	<b>0.1</b>	<b>32.6</b>	<b>12.8</b>	<b>100</b>	

Figure 3: Complaint Findings April 1, 2001 to March 31, 2002, indicates that 1,232 investigations were completed, 28.2 percent of all completed complaints being of delay. Last year, by comparison, 43.1 percent of complaints concerned delay. This significant drop (in absolute terms from 575 to 348 complaints) suggests an improving performance by government in meeting response deadlines. Whilst improving, the system-wide, problem of non-compliance with the Act's response deadlines remains a priority.

In addition to the complaints received in 2001-02, the office responded to 3,396 inquiries, an increase of 977 (40.3%) inquiries from the previous fiscal year.

As in previous years, the vast majority of cases (99.9 percent of cases, to be precise) were resolved. Two cases remain unresolved and are currently before the Federal Court for review.



**Figure 4: Turnaround Time by Category for 1999-2000 to 2001-2002 inclusive**

Category	1999-2000		2000-2001		2001-2002	
	Months	Cases	Months	Cases	Months	Cases
Refusal to disclose	5.99	537	7.83	534	9.76	690
Delay (deemed refusal)	3.44	749	3.33	575	4.99	348
Time extension	2.33	134	4.18	151	5.59	76
Fees	5.41	55	7.02	54	5.84	68
Language	-	-	-	-	2.33	1
Publications	-	-	-	-	-	-
Miscellaneous	4.34	55	4.61	23	7.82	49
<b>Overall</b>	<b>4.34</b>	<b>1351</b>	<b>5.40</b>	<b>1337</b>	<b>7.85</b>	<b>1232</b>

Figure 4: Turnaround Time by Category for 1999-2000 to 2001-2002 inclusive, shows the turnaround time in months for the different categories of complaints for the three years to 2001-2002 inclusive.

Complaint investigations increased by 2.35 months (from 5.40 months to 7.85 months) from 2000-2001 to 2001-2002. This is consistent with the increased turnaround time of 1.05 months (from 4.34 to 5.4 months) experienced between 1999-2000 and 2000-2001. Thus, despite the decreased backlog (from 912 to 729 as shown in Figure 1), turnaround time has increased. This is partially due to the 31% increase in the number of “refusal to disclose” complaints, which typically require more investigation time and a longer lead-time to resolve.

Therefore, despite the recent infusion of additional resources there is still a need for additional resources to reduce the backlog and to decrease turnaround times.

### ***Corporate Services***

(millions of dollars)	2001-2002
<b>Planned Spending</b>	<b>\$0.6</b>
<i>Total Authorities</i>	<i>\$0.6</i>
Actuals	\$0.6

Commencing with the 2001-02 fiscal year, each office operated independently of the other under their own respective vote structure but shared corporate services, based on a service usage basis. These shared services – finance, human resources, information technology, and general administration – were centralized in the Corporate Management Branch to avoid duplication of effort and to save money.

As previously mentioned on page 8, the Privacy Commissioner of Canada informed the Information Commissioner that he did not intend to continue with the “shared corporate services” model.

## **Section IV - Financial Performance**

### ***Financial performance overview***

As indicated in the performance information narrative of this document, managers continually pursue innovative approaches to delivering their programs without sacrificing the level of quality service to the public.

In the 2001-2002 *Report on Plans and Priorities* (RPP) of the Office of the Information Commissioner of Canada (OIC), planned spending was indicated as \$4.3 million. Through *Supplementary Estimates* and Treasury Board Vote 5, the OIC received an additional amount of \$0.9 million, including contributions to employee benefit plans, for total authorities amounting to \$5.2 million.

Actual spending for the 2001-2002 fiscal year amounted to \$4.9 million: \$0.3 million less than Total Authorities.

### ***Financial summary tables***

The financial tables in this section contain summaries of financial information such as that in Table 1, which comprises three different headings. For greater clarity, the definitions of the three headings are given below:

- *Planned Spending* – the planned spending at the beginning of the fiscal year as set out in the *2001-2002 Estimates – Report on Plans and Priorities*;
- *Total Authorities* – the level of spending authorized by Parliament, including the *Supplementary Estimates*, to take into account the development of priorities, increased costs and unanticipated events;
- *Actual Spending* – the amounts actually spent in the 2001-2002 fiscal year indicated in the *Public Accounts*.

**Table 1: Voted Appropriations**

The following table indicates the level of spending authorized by Parliament, including the *Supplementary Estimates* and other authorities.

The differences between planned spending and total authorities can be explained mainly by the additional appropriations received in the fiscal year (see note below).

<b>Financial Requirements by Authority (millions of dollars)</b>				
<b>Vote</b>		<b>2001-02</b>		
		<b>Planned Spending</b>	<b>Total Authorities</b>	<b>Actual Spending</b>
	<b>Offices of the Information Commissioner of Canada</b>			
40	Program Expenditures	3.7	4.6	<b>4.3</b>
(S)	Contributions to Employee Benefit Plans	.6	.6	<b>.6</b>
	<b>Total Vote</b>	<b>4.3</b>	<b>5.2</b>	<b>4.9</b>

**Note:** Total Authorities are: Main Estimates - \$3.7 M; Supplementary Estimates B - \$0.6 M; Treasury Board Vote 5 - \$0.3 M; and Contributions to Employee Benefit Plans - \$0.6 M.

**Table 2: Comparison of Total Planned Spending to Actual Spending**

The following table indicates, in detail, the allocation of total planned spending, the authorities (in italics) and actual spending (in boldface) for 2001-2002, by business line and the nature of the spending.

The differences between planned spending and total authorities by business line can be explained mainly by the additional appropriations received in the fiscal year (see note below).

<b>Planned Versus Actual Spending by Business Line (millions of dollars)</b>							
<b>Business Lines</b>	<b>FTE's</b>	<b>Operating</b>	<b>Capital</b>	<b>Grants and Contributions</b>	<b>Total Gross Expenditures</b>	<b>Less: Respendable Revenues</b>	<b>Total Net Expenditures</b>
<b>Access to Government Information</b>							
Planned Spending	45	3.7	-	-	3.7	-	3.7
Total Authorities	<i>45</i>	<i>4.6</i>	-	-	<i>4.6</i>	-	<i>4.6</i>
Actual	<b>41</b>	<b>4.3</b>	-	-	<b>4.3</b>	-	<b>4.3</b>
<b>Corporate Services</b>							
Planned Spending	7	.6	-	-	.6	-	.6
Total Authorities	<i>7</i>	<i>.6</i>	-	-	<i>.6</i>	-	<i>.6</i>
Actual	<b>7</b>	<b>.6</b>	-	-	<b>.6</b>	-	<b>.6</b>
<b>Total</b>	<b>52</b>	<b>4.3</b>	-	-	<b>4.3</b>	-	<b>4.3</b>
Total Authorities	<i>52</i>	<i>5.2</i>	-	-	<i>5.2</i>	-	<i>5.2</i>
Actual	<b>48</b>	<b>4.9</b>	-	-	<b>4.9</b>	-	<b>4.9</b>
<b>Other Revenues and Expenditures</b>							
<b>Non-Respendable Revenues</b>							
Total Authorities							-
Actual							-
<b>Costs of services provided by other departments</b>							
Total Authorities							.6
Actual							<b>.6</b>
<b>Net Cost of the Program</b>							
Total Authorities							4.9
Actual							<b>5.5</b>

**Note:** Total Authorities are: Main Estimates - \$3.7 M; Supplementary Estimates B - \$0.6 M; Treasury Board Vote 5 - \$0.3 M; and Contributions to Employee Benefit Plans - \$0.6 M.

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

The table below gives an historical overview of spending by business line. It also includes a comparison between total planned spending for 2001-2002 and actual spending in the *Public Accounts*.

The differences between planned spending and total authorities by business line can be explained mainly by the additional appropriations received in the fiscal year (see note below).

<b>Planned Versus Actual Spending by Business Line (millions of dollars)</b>					
<b>Business Lines</b>	<b>Actual 1999-00</b>	<b>Actual 2000-01</b>	<b>2001-02</b>		
			<b>Planned Spending</b>	<b>Total Authorities</b>	<b>Actual</b>
Access to Government	3.8	4.1	3.7	4.6	<b>4.3</b>
Information Corporate			.6	.6	<b>.6</b>
<b>Total</b>	3.8	4.1	4.3	5.2	<b>4.9</b>

**Note:** Total Authorities are: Main Estimates - \$3.7 M; Supplementary Estimates B - \$0.6 M; Treasury Board Vote 5 - \$0.3 M; and Contributions to Employee Benefit Plans - \$0.6 M.

## Section V - Supplementary Information

### 1. Legislation Administered by the Information Commissioner

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

*Access to Information Act*

R.S.C., 1985, ch. A-1, amended 1997, c. 23, s. 21

### 2. Statutory Annual Reports and Other Publications

The Commissioner's annual report and position paper on access to information are available on the Commissioner's Internet web site.

- **Information Commissioner's 2001-2002 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.
- **Performance Report to Parliament, for the period ending March 31, 2001.** 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.
- **2002-03 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://www.infocom.gc.ca>

### 3. Contact for Further Information

Dan Dupuis  
Director General, Investigations and Reviews  
Office of the Information Commissioner of Canada  
112 Kent Street, 22<sup>nd</sup> Floor  
Ottawa, ON K1A 1H3

Telephone: (613)995-1783  
Facsimile: (613)947-7294

**OFFICE OF THE PRIVACY COMMISSIONER OF CANADA**

**PERFORMANCE REPORT**  
**for the Period Ending March 31, 2002**

Approved: \_\_\_\_\_  
The Honourable Martin Cauchon, PC, MP  
Minister of Justice and  
Attorney General of Canada

Date: \_\_\_\_\_

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**OFFICE OF THE PRIVACY COMMISSIONER OF CANADA**  
**PERFORMANCE REPORT**

I am pleased to submit my Performance Report for the fiscal period April 1, 2001 to March 31, 2002.

Approved: \_\_\_\_\_  
George Radwanski  
Privacy Commissioner of Canada

Date: \_\_\_\_\_

## Section I - The Privacy Commissioner's Message



I can think of no activity more deserving of support from public resources than the protection of privacy. Privacy is a fundamental human right, recognized as such by the United Nations in the *Universal Declaration of Human Rights*. It is often considered to be the right from which all others flow. Freedom of thought, freedom of association, of conscience, and of speech, to name just a few, are all grounded in our right to privacy.

To protect privacy in Canada is to protect the values of a free society.

Privacy in the public sector is protected by the *Privacy Act*. This statute ensures that government institutions collect, use, and disclose personal information only for purposes directly related to their operating programs or activities. It gives individuals a right of access to information about them held by government institutions. It also gives individuals, through my Office, a means of seeking redress to ensure that government institutions comply with the *Act*.

The *Personal Information Protection and Electronic Documents Act*, which was passed by Parliament in 2000, has significantly advanced privacy rights in Canada, extending to the private sector the protections of privacy that have existed in the public sector since 1983. The *PIPED Act*, as it is known, strikes a balance between individual privacy rights and the needs of organizations to collect, use, and disclose personal information. My Office and I ensure that the law is respected, and that redress is available if an individual's rights are violated.

The *PIPED Act* came into force on January 1, 2001 and is coming into effect in stages. In the first stage it applied to all personal information, other than personal health information, collected, used, or disclosed in the course of commercial activities and employment by federal works, undertakings, and businesses. It also applied to personal information held by provincially regulated organizations and sold, leased, or bartered across provincial or national boundaries. In addition, it applied to the entire commercial sector in the Yukon, Northwest Territories and Nunavut, since all local businesses in the territories are considered to be federal works, undertakings, and businesses, and therefore under the jurisdiction of the federal Parliament.

The second stage - the stage we are in now - began on January 1, 2002, when the exemption for personal health information ended. The *Act* now applies to *all* personal information collected, used, or disclosed by the organizations covered in the first stage.

The third stage of the *Act* will begin on January 1, 2004. The *Act* will extend to all commercial activities in Canada, including those in the provincially-regulated private sector, with one significant exception. If a province has enacted legislation that is substantially similar to the *PIPED Act*, the Governor in Council can exempt some or all

commercial organizations or activities in the province from the application of the *Act*. The federal law will continue to apply to federal works, undertakings, and businesses, and to personal information collected, used, or disclosed across provincial or national boundaries.

The result will be that privacy protection in Canada will be seamless, with privacy rights protected under either the *PIPED Act* or substantially similar provincial legislation.

An important aspect of my mandate is to educate individuals and organizations about issues surrounding personal privacy. My Office and I have been engaged in a variety of activities to inform Canadians of their legislated privacy protections, to remind organizations of their legislated responsibilities, and to raise public awareness and understanding of issues that could potentially threaten privacy.

We have produced two important guides, one to help citizens understand their rights under the new law and another to help businesses learn how to comply. Both continue to be in high demand. We have also produced fact sheets on a variety of topics, and have posted them to our Web site.

We post all of my findings under the *PIPED Act* on our Web site, anonymizing them to protect the identities of the parties involved. These case summaries help individuals and organizations develop an understanding of the application of the new *Act*.

Media relations activities, advertising campaigns and speaking engagements continue to be very effective tools in helping to raise awareness of the *PIPED Act* among a variety of audiences. Over the past year, I have delivered numerous speeches to a variety of audiences in Canada and abroad; senior staff of this Office have also delivered numerous speeches. I have also given more than 270 media interviews and my Office receives an average of 100 inquiries from reporters each month. As well, we received an average of 16,000 visits to our Web site each month during the 2001-2002 fiscal year.

While it is always a challenge to measure effectiveness, I feel confident that these initiatives have significantly raised public awareness of the importance of privacy and the need to be diligent in protecting the privacy rights of Canadians.

## Section II - Context

### Current Environment

The right to privacy has never been more in the news and in our minds, and in many ways it has never been more threatened. We are facing increased pressure for greater security against crime and terrorism, largely in reaction to the attacks of September 11<sup>th</sup>. Bill C-55, the *Public Safety Act*, is an example of the kind of challenges we face in a radically transformed security environment since the September 11<sup>th</sup> attacks.

While much of Bill C-55 strikes a reasonable balance between security and privacy rights, I am concerned about several provisions that expand the powers of the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS) unnecessarily by giving them unrestricted access to the personal information of all travellers on flights within Canada and on international flights. It allows the RCMP to obtain and scan passenger lists in search of anyone subject to an outstanding warrant for any offence punishable by imprisonment of five years or more.

Another threat to the fundamental right of privacy is the video surveillance of public streets and public places by law enforcement agencies. With the RCMP setting the tone in Kelowna, we have seen video surveillance systems installed or contemplated in cities across the country - in Vancouver, Saskatoon, Regina, Hamilton, Toronto, London, and Halifax.

The Office of the Privacy Commissioner will not stand in the way of the genuine security of Canadians. But neither will it step aside and see privacy rights sacrificed unnecessarily or for expedience.

On a positive note, with regard to its provision of services to Canadians, I am pleased to note that the Government of Canada has recognized that respect for citizens' privacy is critical to the success of all its programs and services. New and existing programs and services with potential privacy risks will now undergo a Privacy Impact Assessment (PIA)—in effect, a feasibility study from a privacy perspective. Canada is the first country in the world to make PIAs mandatory for all federal departments and agencies. My Office has worked closely with Treasury Board Secretariat (TBS) to develop a PIA policy and will review all PIAs, and offer comments to departments and agencies at an early stage.

In summary, this is a challenging time for privacy and consequently there is a need for the Privacy Commissioner and his Office to remain extremely vigilant to ensure that this fundamental right is not nibbled away, for expedience, and by parts.

## **Raison d'être**

The Privacy Commissioner of Canada, George Radwanski, is an Officer of Parliament who reports directly to the Senate and House of Commons. 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 sectors;
- take matters to Court;
- conduct research into privacy issues; and
- promote awareness and understanding of privacy issues by the Canadian public.

The Commissioner works independently from the government to investigate complaints from individuals and conduct compliance audits 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.

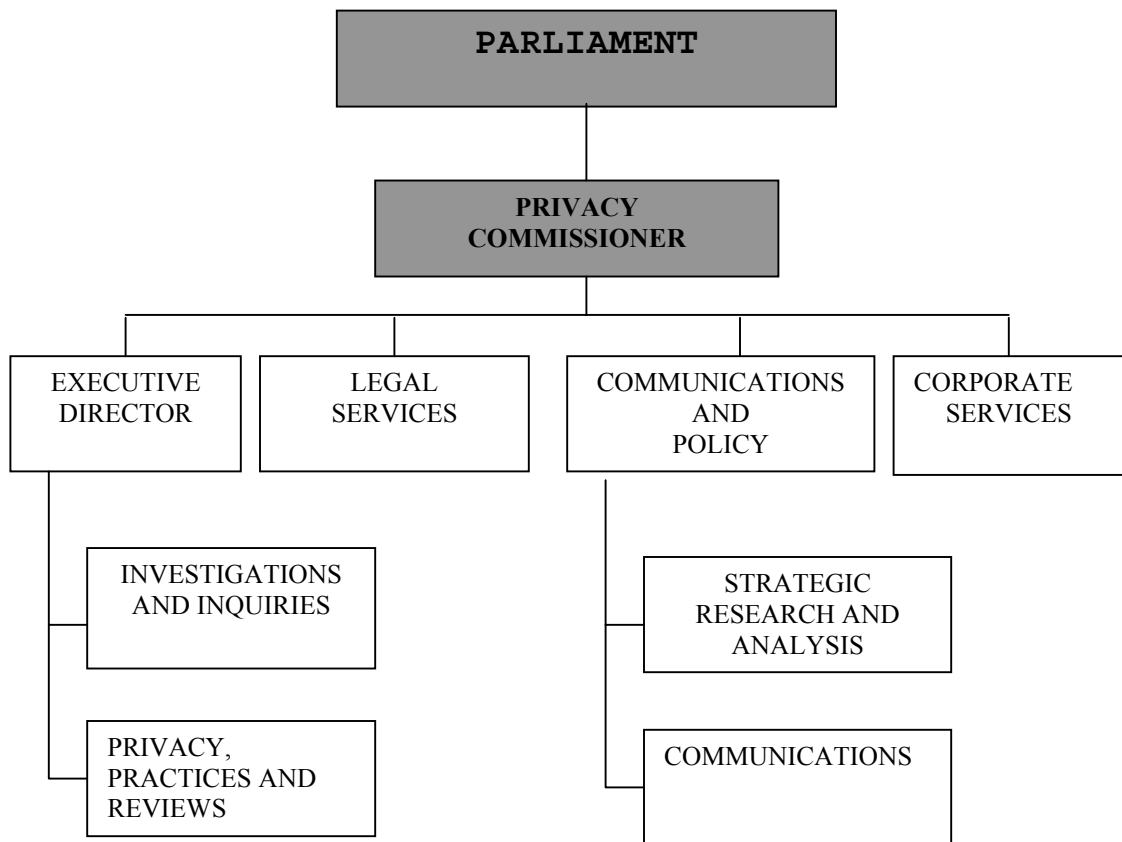
For matters relating to personal information in the private sector, the Commissioner may investigate complaints under Section 11 of the *PIPED Act*. This *Act* now applies to federally regulated businesses across Canada and to all businesses in the three territories. It also applies to personal information that is sold or bartered across provincial and national boundaries for consideration.

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

## Organization

The Office of the Privacy Commissioner (OPC) is divided into branches, as shown in *Figure 1: Organization of the Office of the Privacy Commissioner*.

**Figure 1: Organization of the Office of the Privacy Commissioner**



### 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 *PIPED Act*. Essentially, the OPC's investigations serve to establish whether individuals have had their privacy rights violated and/or have been accorded their right of access to their personal information.

Where privacy rights have been violated, the investigative process seeks to provide redress for individuals and keep violations from recurring. Through the Privacy

Commissioner, the Branch has the authority to administer oaths, receive evidence and enter the premises of federal government institutions where appropriate. The Commissioner can also examine or obtain copies of records found in federal government institutions.

The Branch also responds to inquiries from the general public, who contact the Commissioner for advice and assistance on a wide range of privacy-related matters.

### **Privacy Practices and Reviews Branch**

The Privacy Practices and Reviews Branch assesses how well organizations are complying with the requirements set out in the two federal *Acts*.

The Branch conducts compliance reviews under Section 37 of the *Privacy Act* and audits under Section 18 of the *PIPED Act*. As well, the Branch is responsible for reviewing Privacy Impact Assessments (PIAs). PIAs are conducted by federal government departments on all government projects or initiatives that involve the collection, use and disclosure of personal information, to determine the impacts of a proposal on an individual's privacy and ways to mitigate or avoid any adverse effects.

The *Privacy Act* permits the Commissioner to randomly initiate a compliance review of federal institutions. Paragraph 18 (1) of the *PIPED 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 on fair information-handling practices with respect to any initiative with privacy implications.

### **Communications and Policy Branch**

A key aspect of the Commissioner's mandate is that of educating individuals and organizations about privacy issues thus increasing their awareness and understanding. To focus on this important responsibility, the Communications and Policy Branch was established in September 2000 to raise awareness of privacy issues, to inform Canadian citizens and businesses of the new private sector legislation, and to expand the Office's research capability.

The Strategic Research and Analysis Division of the Branch is a centre of expertise on emerging privacy issues in Canada and abroad, responsible for researching trends, providing analysis on key issues, and helping to develop policies and initiatives 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 *PIPED Act*.

## **Corporate Services**

In 2001-2002 the Offices of the Information and Privacy Commissioners shared corporate services while operating independently under their separate statutory authorities. These shared services – finance, human resources, information technology, and general administration - were centralized in the Corporate Management Branch.

The budget of the Office of the Privacy Commissioner, which was increased from \$4.3 to \$11.1 million to manage the implementation of the *PIPED Act* and the corresponding increased mandate under that *Act*, supported:

- an increase in the number of inquiries and complaints;
- an increase in the number of investigators, auditors and Privacy Impact Assessment officers to handle issues under both federal privacy laws;
- an extension of the hours of operation to cover all time zones in Canada from 9.00 a.m. to 5.00 p.m. daily;
- an adjusted management framework to incorporate both investigative and audit functions for both federal privacy laws; and
- an increase in public education and communications activities to raise awareness of the privacy issues.

Effective 2002-2003, Corporate Services for the Office of Privacy Commissioner will operate separately from those of the Information Commissioner to meet the increased workload and demands of the Privacy Commissioner's Office.



## Section III - Performance Information by Strategic Outcome

### 3.1 STRATEGIC OUTCOME 1 – Encouraging compliance with fair information practices by both public and private sector organizations through complaint investigations.

Through the efforts of its Investigations and Inquiries Branch, the OPC seeks to promote the implementation of fair information practices by both public and private sector organizations in Canada in accordance with federal privacy laws.

*The Privacy Act*, which took effect on July 1, 1983, imposes obligations on federal government departments and agencies to respect the privacy rights of Canadians by placing limits on the collection, use, and disclosure of personal information. It gives Canadians the right to obtain access to, and correct personal information about them, held by these federal government organizations.

*The Personal Information Protection and Electronic Documents (PIPED) Act*, which took effect on January 1, 2001, sets out the conditions under which organizations may collect, use or disclose personal information and gives individuals rights of access to, and, correction of, personal information held about them by an organization. As well, it defines the process for lodging a formal complaint and the legal remedies available to individuals who believe that their privacy rights have been violated.

The *Act* applies to personal information, including personal health information, collected, used or disclosed in the course of commercial activities, or about their employees, by federal works, undertakings, and businesses. (This includes banks, the broadcasting industry, inter-provincial transportation companies, and telephone companies.) It also applies to disclosures of personal information traded across provincial and national borders for consideration, and to the entire commercial sector in the Northwest Territories, Yukon and Nunavut.

#### Complaints Received 2001-2002

On April 1, 2001 the Office had 1044 complaints pending from the previous fiscal year. During 2001-2002, 1351 new complaints were received and 1755 complaints were resolved, leaving 640 complaints outstanding as at March 31, 2002. *Figure 2: Complaints Received, Resolved and Outstanding as at March 31, 2002* shows the distribution of complaints by complaint category. In *Figure 2*, complaints that relate to denial of access to personal information are categorized as “access” complaints, complaints that relate to issues of collection, or retention and disposal, or use and disclosure, are categorized as “privacy” complaints, and complaints for which a response had not been received within the time frames specified by the *Acts* are categorized as “time limit” complaints.

**Figure 2: Complaints Received, Resolved and Outstanding as at March 31, 2002**

Complaint Category	Outstanding as at April 1, 2001	Received FY 2001-2002	Completed FY 2001-2002	Outstanding as at March 31, 2002
Access	488	576	721	343
Privacy	362	346	463	245
Time Limit	194	429	571	52
Overall	1044	1351	1755	640

### Turnaround Time for complaints

The average overall turnaround time for *Privacy Act* and *PIPED Act* complaint investigations (Figure 3) during the reporting year was 5.8 months - 2.4 months for complaints about government institutions' lack of timeliness in responding to requests to obtain access to personal information within the legislated timeframes, 6.7 months for denial of access to personal information complaints and 8.7 months for complaints related to the collection, use, disclosure, retention, and disposal of personal information. The average overall turnaround time for complaints has continued to improve each year since 1996-1997.

**Figure 3: Complaint Investigations Completed – Turnaround Time (months)**

Complaint Category	1996-97 Actual	1997-98 Actual	1998-99 Actual	1999-00 Actual	2000-01 Actual	2001-02 Actual*
Access	12.8	9.6	8.4	8.2	7.0	6.7
Privacy	16.4	15.4	14.7	9.2	9.0	8.7
Time Limit	3.9	3.3	4.1	2.6	2.0	2.4
Overall	9.7	8.6	6.8	6.1	6.0	5.8

\* Includes both *Privacy Act* and *PIPED Act* complaints

### Inquiries Received 2001-2002

Staff dealt with a total of 27,538 inquiries during 2001-2002.

Many of the inquiries under the *Privacy Act* related to questions of interpretation and how to exercise one's rights under the *Act*. Other inquiries included concerns about issues such as the new firearms legislation, the census, law enforcement and criminal records, and video surveillance. The OPC also received more than 3,200 applications for access to personal information that had to be re-directed to other federal or provincial government departments or agencies for response.

Inquiries under the *PIPED Act* ranged from requests for information; to use of, or requests for, Social Insurance Numbers; to interpretations of the *Act* for a cross-section of industrial sectors including banking, health, transportation, broadcasting and telecommunications.

### **Example of investigation completed under the *Privacy Act* in 2001-2002**

Certain investigations completed during the year have had a significant impact on the privacy protection of all Canadians.

#### *Canada Post changes stance on using negative consent to sell addresses to mass mailers*

A complaint was received that Canada Post was improperly disclosing personal information that it collected through its National Change of Address service. Canada Post was automatically updating lists of commercial and government mass-mailing lists with the new address, unless the subscriber contacted the corporation in writing and specifically requested that their new address not be disclosed.

Canada Post offers this service, for a fee, to individuals who wish to have their mail forwarded to their new address automatically. Subscribers were asked to sign an acknowledgement that included an agreement to release their new address to mailers, provided the mailers requested it and had the old address. Subscribers not consenting to the release of their new address to mass mailers had to write to Canada Post and specifically request that their new address not be disclosed. This type of “negative option” does not meet the criteria of “informed consent” under Section 5(2) of the *Privacy Act*.

Informed consent in this case would mean that a reasonable person would conclude, when reading the Change of Address Notification (COAN) form, that they were giving consent for the disclosure of their new address to mass mailing organizations. It is doubtful that a reasonable person would conclude that they were giving consent based upon the current wording in the form. Therefore, Canada Post was asked to replace the word “acknowledgement” with “authorization” and to include an “opt-in” box on the front page of the form. Canada Post has redesigned the COAN form to include two check-off boxes on its front, which will allow Canadians who pay Canada Post to re-direct their mail to indicate clearly whether or not they consent to also having their addresses provided to any business mailers.

This example reinforces the fact that under the *Privacy Act* a government institution does not have a person’s consent to release personal information if it has not informed that person of the reason for the use of the information.

### **Example of investigation completed under the *PIPED Act* in 2001-2002**

Complaints filed under the *PIPED Act* are affecting, sometimes quite significantly, how private sector organizations handle personal information.

#### *Collection of personal information by chartered banks*

Some of the practices used by several large banks have been examined, such as the refusal by banks to provide customers with their credit scores and the requirement that anyone applying to open a savings account agree to a credit check as a condition to opening the account.

In the first situation an individual complained that a bank had refused him access to his personal information, specifically his credit score. The credit score in question was the bank's internal credit score. It had been generated not by a credit reporting agency's standardized credit scoring model, but rather by a customized model unique to the bank and incorporating its strategic business priorities. Principle 4.9 of Schedule 1 of the *PIPED Act* states that, upon request, an individual must be informed of the existence, use, and disclosure of his or her personal information and must be given access to that information. Section 9(3)(b) of the *Act* is an exemption provision, which stipulates that an organization is not required to give access to personal information if doing so would reveal confidential commercial information.

The Commissioner was satisfied that the bank's internal credit scoring model was confidential commercial information. Moreover, on the cumulative basis of the submissions from this and an earlier case, he was persuaded in general that customized credit scoring models internal to financial institutions should in future be deemed confidential commercial information for purposes of the *Act*.

Given his responsibility to achieve a balance between the privacy rights of individuals and the legitimate informational interests of organizations, he considered it only fair in the circumstances to accept the proposition that the release of internal credit scores *would* reveal the credit scoring model on which they were based.

The Commissioner found that, in citing the section 9(3)(b) exception for confidential commercial information, to refuse the complainant access to his credit score, the bank had been acting in accordance with the *Act*.

In the second situation, it was found that the complaint was well-founded. It was recommended that the bank develop a procedure whereby individuals, unwilling to consent to a credit check but willing to forgo all forms of credit, could open an account by consenting to whatever alternative conditions the bank might impose to ensure no credit is advanced. As a result, the bank is reviewing its procedures.

### **3.2 STRATEGIC OUTCOME 2 – Safeguarding the right to Privacy of Canadians through audits and reviews.**

To safeguard Canadians' right to privacy, the OPC has been conducting compliance reviews under section 37 of the *Privacy Act* since 1984. As well, the OPC conducts audits of personal information-management practices, provides advice to federal government organizations on privacy implications of programs and advises government institutions on Privacy Impact Assessments.

The OPC performs compliance reviews of federal institutions and, where applicable, audits private sector organizations within Canada. It is responsible for compliance reviews of the principles of fair information practices, which are outlined in sections 4 through 8 of the *Privacy Act*, and for the Model Code for the Protection of Personal Information, which is contained in Schedule I of the *PIPED Act*.

As an ombudsman, a non-confrontational approach to privacy audits is desirable. An audit, ideally, provides a co-operative and constructive approach to dealing with issues before they become complaints. As well, it adds value to organizations that want to improve their personal information-handling practices. Although the Commissioner has the same powers with respect to audits that are available for privacy investigations, i.e. to summon witnesses, administer oaths, and compel organizations to produce evidence, these powers would only be used as a last resort.

In the past year, the OPC completed reviews of the personal information-handling practices under section 37 of the *Privacy Act* at the Canadian Nuclear Safety Commission (CNSC) and the Immigration and Refugee Board (IRB).

The objectives of the reviews were to:

- learn where, and how, the CNSC and the IRB handle personal information;
- determine the degree to which their personal information management policies and practices are in compliance with sections 4 to 8 of the *Privacy Act* in terms of the principles of fair information practices; and
- offer observations and recommendations, where necessary.

Reports have been issued to both organizations and we are awaiting their responses to the findings and recommendations.

#### *Canadian Firearms Program's compliance with privacy principles*

As noted in last year's performance report, the OPC has reviewed the Canadian Firearms Program's compliance with privacy principles. The *Firearms Act* requires the collection of a large amount of highly sensitive personal information. The OPC continues to receive complaints from some of the 2.3 million firearm owners in Canada and from some Members of Parliament.

In August 2001, a report entitled *Review of the Personal Information Handling Practices of the Canadian Firearms Program* was issued to the Department of Justice and made public on the OPC Web site. The report contained a review of the program's compliance with sections 4 to 8 of the *Privacy Act* and provided an assessment of the pertinence of the questions about personal history used on the Firearms Licence Application. The report also contained some 34 detailed recommendations for corrective measures aimed at reducing the intrusiveness of the program.

To date, no response to the findings and recommendations has been received from Justice Canada.

However, the Royal Canadian Mounted Police (RCMP) have agreed to implement some of the recommendations. For example, firearm officers across Canada no longer have full query access privileges to the RCMP's Police Information Retrieval System (PIRS). As well, all recommendations with respect to limiting the use of PIRS have been implemented and revisions to the Memorandum of Understanding regarding informatics and security areas related to the Firearms program will be completed in the near future. These important steps will tighten access controls to sensitive personal information used in the program.

The Commissioner will continue to encourage the department to take the necessary measures to bring the program into full compliance with the *Privacy Act*.

#### *Audits of personal information management practices*

The *PIPED Act* provides the authority to carry out audits of personal information management practices in the private sector if there are "reasonable grounds to believe" that a private sector organization is contravening a provision of the *Act*. The OPC is responsible for conducting such compliance reviews and audits specified under section 18 of the *PIPED Act*.

During 2001-2002, no private sector audits were undertaken because no matter had been brought to the attention of the Commissioner that would constitute reasonable grounds for an audit.

#### *Advice to federal government organizations on privacy implications of programs*

The OPC also provides federal government organizations with advice on compliance issues, and the privacy implications of new and existing programs and practices. In this regard, the OPC has provided such advice to a broad range of government departments.

In the 2000-2001 performance report, it was described how, under mounting public pressure, Human Resources Development Canada (HRDC) made the decision to dismantle the Longitudinal Labour Force File, and to implement a review process and a governance protocol for all policy analysis, research, and evaluation activities involving the connection of separate databanks. This review process involved consultation with the

OPC to examine such projects.

Since then, comments have been provided on an additional 17 HRDC submissions, including the Review of the Action Centre for Employment, the Non-Experimental Evaluation of Investigation and Control, and the Testing of Probabilistic Record Linkage projects. These reviews of HRDC's research projects provide a critical check to protect personal privacy.

The OPC has developed a customized assessment tool to facilitate timely reviews of the HRDC submissions. The tool ensures that the reviews are thorough and that the principles of fair information practices as specified in the *Privacy Act* are respected.

#### *Privacy Impact Assessment support and advice*

In April 2002, Treasury Board launched the Government of Canada's new Privacy Impact Assessment (PIA) policy, which took effect on May 2, 2002. New and existing programs and services with potential privacy risks will undergo a PIA - in effect, a feasibility study from a privacy perspective. Canada is the first country in the world to make PIAs mandatory for all federal departments and agencies.

Under the new PIA Policy, federal government departments and agencies must conduct PIAs on all government projects or initiatives that involve the collection, use and disclosure of personal information. They will also have to inform the Office of the Privacy Commissioner of all PIAs being conducted, and to send completed PIAs to his Office for review and comment.

In addition to working in consultation with Treasury Board of Canada Secretariat on the policy, the OPC has developed a process whereby it will review all PIAs, and offer comments to departments and agencies at an early stage.

Given the numerous Government On-Line projects currently underway, a large number of PIAs are expected in the upcoming fiscal year.

The OPC also provides assistance to private sector organizations on the privacy implications of their initiatives and has been involved in consultations with organizations such as the Canadian Marketing Association, the Insurance Brokers Association of Canada, the Canadian Medical Association, the Canadian Dental Association, Air Canada and the Union of Ontario Indians on various privacy issues related to their operations.

In sum, in 2001-2002 the OPC has fulfilled its mission to perform compliance reviews and audits, and, by so doing, has assisted organizations in applying both the *Privacy Act* and *PIPED Act* for the benefit of Canadians.

### **3.3 STRATEGIC OUTCOME 3 – Increasing public awareness and understanding of privacy issues**

The OPC has undertaken a variety of activities to raise public awareness and understanding of privacy issues, to inform Canadians of their legislated privacy protections and to remind private sector organizations of their responsibilities, and citizens of their rights, under the new legislation.

These activities include speaking engagements, in Canada and around the world, to raise awareness of privacy issues among diverse audiences and settings, such as professional and industry associations, non-profit and advocacy groups and universities. Over the past year, the Commissioner has delivered numerous speeches to a variety of audiences in Canada and abroad and senior staff have also delivered numerous speeches. Topics have included workplace privacy, genetic privacy, the application of the *PIPED Act*, the Government On-Line initiative and the need to balance privacy rights with security objectives following the terrorist attacks in the United States. As well, in several speeches, the Commissioner has expressed grave concerns about video surveillance by public authorities in public places.

Recognizing the influence of the media in setting the public agenda, the OPC has also undertaken a number of media relations initiatives. In addition to granting more than 270 interviews on current privacy topics to reporters, an average of 100 calls are received each month from journalists seeking information on privacy issues.

As well, to further raise awareness of privacy issues the OPC has:

- issued more than 23 news releases;
- participated on a number of editorial board meetings;
- contributed articles and other information to several publications; and
- provided media relations support to conferences, public meetings and other special events.

A Citizens' Guide, which provides Canadians with information about their rights under the *PIPED Act* and a Business Guide, which informs organizations of their responsibilities under the *Act*, were produced in 2001-2002. Close to 22,000 printed copies of these guides have been distributed since their publication. They are also accessible on the OPC Web site.

The Web site is a readily available source for privacy information and is continually updated with news releases, speeches, fact sheets, selected reports and case summaries. The increasing number of visits, which now average more than 16,000 per month, evidences the popularity of the site. Upgrades and improvements to the structure and content of the site are ongoing.



Advertising has been another important tool to raise public awareness and understanding of privacy rights under the new law. A campaign in 2001 involved placing advertisements in daily and community newspapers. Another campaign in 2002 involved airing advertisements on the top English and French radio stations in every market across the country. These advertisements emphasized Canadians' rights under the new law and the OPC's role in helping to protect these rights. Both advertising campaigns reached millions of Canadians and resulted in a near doubling of the number of inquiries to the OPC.

The need to raise public awareness of privacy rights, obligations, and issues is a critical success factor. These initiatives, along with a significant increase in media coverage of privacy issues, suggest a heightened level of public awareness over the past year.

## **Section IV – Financial Performance**

### **Financial Performance Overview**

As indicated in the performance information narrative of this document, managers continually pursue innovative approaches to delivering their programs without sacrificing the level of quality service to the public.

In the 2001-2002 *Report on Plans and Priorities* (RPP) of the Office of the Privacy Commissioner of Canada (OPC), planned spending was indicated as \$11 million. Through *Supplementary Estimates* and Treasury Board Vote 5, the OPC received an additional amount of \$0.7 million, including contributions to employee benefit plans, for total authorities amounting to \$11.7 million.

Actual spending for the 2001-2002 fiscal year amounted to \$11.4 million.

### ***Financial Summary Tables***

The financial tables in this section contain summaries of financial information such as that in Table 1, which comprises three different headings. For greater clarity, the definitions of the three headings are given below:

- *Planned Spending* – the planned spending at the beginning of the fiscal year as set out in the *2001-2002 Estimates – Report on Plans and Priorities*;
- *Total Authorities* – the level of spending authorized by Parliament, including the *Supplementary Estimates*, to take into account the development of priorities, increased costs and unanticipated events; and
- *Actual Spending* – the amounts actually spent in the 2001-2002 fiscal year as indicated in the *Public Accounts*.

**Table 1: Voted Appropriations**

The following table indicates the level of spending authorized by Parliament, including the *Supplementary Estimates* and other authorities.

The differences between planned spending and total authorities can be explained mainly by the additional appropriations received in the fiscal year (see note below).

<b>Financial Requirements by Authority (\$ millions)</b>				
<b>Vote</b>		<b>2001-02</b>		
		<b>Planned Spending</b>	<b>Total Authorities</b>	<b>Actual Spending</b>
	<b>Office of the Privacy Commissioner of Canada</b>			
45	Program Expenditures	9.7	10.4	<b>10.1</b>
(S)	Contributions to Employee benefit Plans	1.3	1.3	<b>1.3</b>
	<b>Total Agency</b>	<b>11.0</b>	<b>11.7</b>	<b>11.4</b>

**Note:** Total Authorities are: Main Estimates - \$9.7 M; Supplementary Estimates B - \$0.4 M; TB Vote 15 - \$0.3 M and Contributions to Employee Benefit Plans - \$1.3 M.

**Table 2: Comparison of Total Planned Spending to Actual Spending**

The following table indicates, in detail, the allocation of total planned spending, the authorities (in italics) and actual spending (in boldface) for 2001-2002, by business line and the nature of the spending. The differences between planned spending and total authorities by business line can be explained mainly by the additional appropriations received in the fiscal year (see note below.)

Planned Versus Actual Spending by Business Line (millions of dollars)							
Business Lines	FTE's	Operati	Capital	Grants and Contributions	Total Gross Expenditures	Less: Respendable Revenues	Total Net Expenditures
<b>Protection of Personal Information</b>							
<b>Federal Public Sector</b>							
Planned							
Spending	45	3.8	-	-	3.8	-	3.8
Total							
Authorities	<i>45</i>	<i>4.5</i>	-	-	<i>4.5</i>	-	<i>4.5</i>
<b>Actual</b>	<b>38</b>	<b>8.8</b>	-	-	<b>8.8</b>	-	<b>8.8</b>
<b>Private Sector</b>							
Planned							
Spending	48	5.9	-	-	5.9	-	5.9
Total							
Authorities	<i>48</i>	<i>5.9</i>	-	-	<i>5.9</i>	-	<i>5.9</i>
<b>Actual</b>	<b>39</b>	<b>.6</b>	-	-	<b>.6</b>	-	<b>.6</b>
<b>Corporate Services</b>							
Planned							
Spending	15	1.3	-	-	1.3	-	1.3
Total							
Authorities	<i>15</i>	<i>1.3</i>	-	-	<i>1.3</i>	-	<i>1.3</i>
<b>Actual</b>	<b>14</b>	<b>2.0</b>	-	-	<b>2.0</b>	-	<b>2.0</b>
<b>Totals</b>	<b>108</b>	<b>11.0</b>	-	-	<b>11.0</b>	-	<b>11.0</b>
Total	<i>108</i>	<i>11.7</i>	-	-	<i>11.7</i>	-	<i>11.7</i>
Authorities							
<b>Actual</b>	<b>91</b>	<b>11.4</b>	-	-	<b>11.4</b>	-	<b>11.4</b>
<b>Other Revenues and Expenditures</b>							
<b>Non-Respendable Revenues</b>							
Total Authorities							-
<b>Actual</b>							-
<b>Costs of services provided by other departments</b>							
Total Authorities							1.3
<b>Actual</b>							<b>1.3</b>
<b>Net Cost of the Program</b>							
Total Authorities							12.3
<b>Actual</b>							<b>13.0</b>
							<b>12.7</b>

**Note:** Total Authorities are: Main Estimates - \$9.7 M; Supplementary Estimates B - \$0.4 M; TB Vote 15 - \$0.3 M and Contributions to Employee Benefit Plans - \$1.3 M.

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

The table below gives an historical overview of spending by business line. It also includes a comparison between total planned spending for 2001-2002 and actual spending in the *Public Accounts*.

<b>Planned Versus Actual Spending by Business Line (\$ millions)</b>					
<b>Business Lines</b>	<b>Actual 1999-00</b>	<b>Actual 2000-01</b>	<b>2001-02</b>		
			<b>Planned Spending</b>	<b>Total Authorities</b>	<b>Actual</b>
Protection of Personal Information					
- Federal Public Sector	4.7	7.4	3.8	4.5	<b>8.8</b>
- Private Sector			5.9	5.9	<b>.6</b>
Corporate Services	1.4	1.9	1.3	1.3	<b>2.0</b>
<b>Total</b>	<b>6.1</b>	<b>9.3</b>	<b>11.0</b>	<b>11.7</b>	<b>11.4</b>

**Note:** Total Authorities are: Main Estimates - \$9.7 M; Supplementary Estimates B - \$0.4 M; TB Vote 15 - \$0.3 M and Contributions to Employee Benefit Plans - \$1.3 M.

## Section V – Supplementary Information

### 1. Legislation Administered by the Privacy Commissioner

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 Commissioner's annual reports on privacy issues are available on the Commissioner's Web site.

- **Privacy Commissioner's 2001-02 Annual Report.** Ottawa: Minister of Public Works and Government Services Canada, 2001. Available on 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 Web site.
- **Performance Report to Parliament, for the period ending March 31, 2001.** 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.
- **2002-03 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 Privacy Commissioner of Canada Web site: [www.privcom.gc.ca](http://www.privcom.gc.ca)

### 3. Contact for Further Information

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