Information Commissioner of Canada

Commissaire à l'information du Canada

A NEW DIRECTION

07-08
ANNUAL REPORT

This report is dedicated with thanks to Sharon Nadeau, recently retired Acting Director General of Investigations and Reviews, who had been with the Office of the Information Commissioner since it was established. In addition to being a committed and well-respected colleague, Sharon was the driving force behind the Office's annual report for many years.

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A NEW DIRECTION

May 2008

The Honourable Noël A. Kinsella
Speaker of the Senate
Ottawa ON K1A 0A4

Dear Mr. Kinsella,

I have the honour to submit to Parliament, pursuant to section 38 of the *Access to Information Act*, the annual report of the Information Commissioner, covering the period from April 1, 2007, to March 31, 2008.

Yours sincerely,

Robert Marleau

May 2008

The Honourable Peter Milliken, MP
Speaker of the House of Commons
Ottawa ON K1A 0A6

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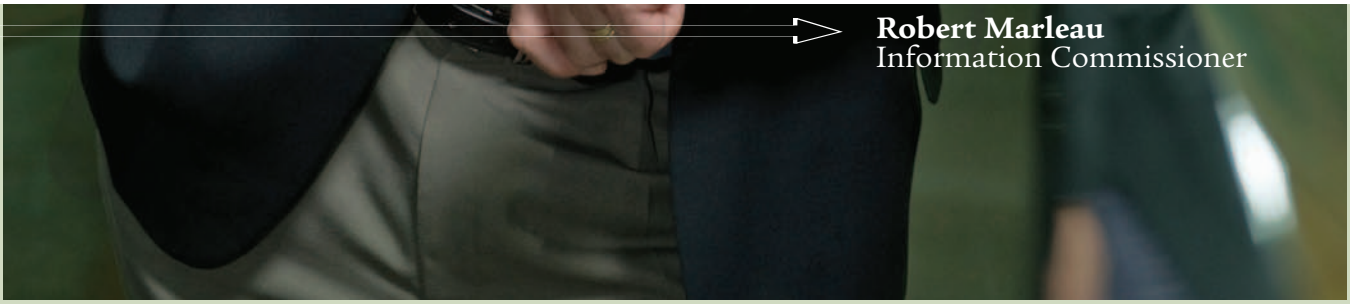
Yours sincerely,

Robert Marleau

Message from the Commissioner



Robert Marleau
Information Commissioner

A NEW DIRECTION

As the 25th anniversary of the *Access to Information Act* approaches, there is unprecedented discussion in the media, in the corridors of Parliament and the public service, and even around Canadians' kitchen tables, about freedom of information.

As Information Commissioner, this delights me. It is imperative that all Canadians recognize the importance of debating the subject and keeping it in the public eye. Freedom of information is a hallmark of the democracy we all cherish. In my first year as Information Commissioner, I have taken every available opportunity to emphasize this point.

Fostering a culture of openness in government requires an approach that embraces an ombudsman's full range of influence to effect positive change and enhance transparency in government. I take my role as an ombudsman seriously and see it as the true fulfillment of the position of Information Commissioner. In particular, I wish to be a strong advocate for the duty of all federal institutions to help in any way they can the individuals and organizations who request information from them to get that information.

During the first year of my term, I began to move the Office of the Information Commissioner in a new direction, one that takes a new approach to our work and involves strong policy development, active communications and top-notch client service.

The challenges we faced that warranted this new direction were significant. The Office of the Information Commissioner required profound institutional changes to address inherent weaknesses that were significantly limiting our ability to do our job and to respond to new responsibilities stemming from the *Federal Accountability Act*. The activities described in this annual report show how I have turned my ideas into action in my first year in office.

I began to move the Office of the Information Commissioner in a new direction, one that takes a new approach to our work and involves strong policy development, active communications and top-notch client service.

My three distinguished predecessors—Inger Hansen, John Grace and the Honourable John Reid—oversaw the *Access to Information Act* with vision, care and professionalism. Now it is time, in this 25th anniversary year, to assess the soundness of the law. Given that some of the problems these commissioners faced are still with us, it is important to take stock of how the legislation has evolved over the years and to look to the future and a strengthened access to information system in Canada.

I commend this annual report to anyone who wishes to know what I have done so far as Canada's fourth Information Commissioner to meet my most important goal of ensuring that the access to information system is functioning in the best interests of Canadians. This report lays the foundation for what I expect to achieve as my term unfolds.

My first year was one of considerable progress in building our capacity to serve. I know that as we continue to develop the Office's core functions, I will be able to count on the support of my dedicated and hard-working staff.

About the Office

Who we are

The Information Commissioner is an officer of Parliament and ombudsman, appointed by Parliament under the *Access of Information Act*, Canada's freedom of information legislation. The Commissioner reviews the complaints of individuals and organizations who believe that federal institutions have not respected their rights under the Act. The Commissioner also advocates for access to information in Canada and for transparent and open government.

Canada's fourth and current Information Commissioner, Robert Marleau, began his term on February 1, 2007. Before taking up the position, Mr. Marleau served Parliament for 31 years, 13 of them as Clerk of the House of Commons. He was interim Privacy Commissioner in 2003.

Mr. Marleau is supported in his work by the Office of the Information Commissioner, an independent public body set up in 1983 under the *Access to Information Act* to respond to complaints from the public about access to government information. The Office has four branches:

- The Complaints Resolution and Compliance Branch carries out investigations and dispute resolution efforts to resolve complaints.
- The Policy, Communications and Operations Branch monitors federal institutions' performance under the Act, provides strategic policy direction for the Office, leads the Office's external relations with the public, the government and Parliament, and provides strategic and corporate leadership in the areas of financial management, internal audit and information management.
- The Legal Services Branch represents the Commissioner in court cases and provides legal advice on investigations, and legislative and administrative matters.
- The Human Resources Branch oversees all aspects of human resources management and provides advice to managers and employees on human resources issues.

What we do

We **investigate** complaints about federal institutions' handling of access requests.
We thoroughly and fairly investigate complaints against federal institutions and use mediation and persuasion to resolve them. We bring cases to the Federal Court of Canada when they involve important principles of law or legal interpretation.

We **promote** Canadians' right to access government information and **advocate** for greater freedom of information and open government.
We encourage federal institutions to disclose information as a matter of course and to respect Canadians' rights to request and receive information, in the name of transparency and accountability.

We actively make the case for greater freedom of information in Canada, through targeted initiatives, such as Right to Know Week, and ongoing dialogue with Canadians, Parliament and federal institutions.

About Complaints

Under the *Access to Information Act*, anyone who makes a request for information to a federal institution and is dissatisfied with the response has the right to complain to us.

One common reason for complaints is the time it takes an institution to respond to a request. Federal institutions have 30 days to do so but they may extend that time for a number of reasons—for example, when they have to search a large number of records, consult other federal institutions or notify third parties—and they must notify requesters of these extensions within the initial 30 days. Requesters may file complaints about this notice, about the length of extensions or because they feel, generally, that the process is taking too long.

Complaints also focus on the information that institutions choose to release or not to release. Institutions may apply specific and limited exemptions, after careful consideration of the balance between the right to information and the need to protect interests such as individual privacy, commercial confidentiality and national security, and to safeguard the frank communications that effective policy-making requires. There are also certain types of information, such as Cabinet confidences, that are excluded under the Act and that, consequently, institutions may not release. These exemptions and exclusions allow institutions to withhold material, which often prompts complaints.

Other types of complaints involve the following:

- requesters being asked to pay fees for requested information beyond the $5 application fee;
- requesters not receiving the records in their official language of choice or the translation taking an unreasonably long time;
- requesters having a problem with the *InfoSource* guide or the periodic bulletins that the Treasury Board Secretariat issues to help the public use the Act; and
- requesters running into other problems related to requesting or obtaining access to records.

The Act requires that we investigate all the complaints we receive and that those investigations be thorough, unbiased and conducted in private. Although there is no deadline in the law for when we must complete our investigations, we strive to carry them out as quickly as possible. We usually complete investigations of administrative complaints within six months to a year. Investigations that centre on complaints that information that has been withheld tend to be more complex or involve large volume of records and, consequently, take longer.

The Commissioner has strong investigative powers, which provide a real incentive for institutions to comply with the Act and respect requesters' rights. However, the Commissioner may not order a complaint to be resolved in a particular way, relying instead on persuasion to settle disputes, and asking for a review by the Federal Court of Canada when an institution has not followed a recommendation on disclosure of information and with the consent of the complainant.

Chapter 3 includes more information about the types of complaints we receive and the categories of findings that result from our investigations.

Contents

Introduction:
A new direction

This annual report records the happenings of a very full year for the Office of the Information Commissioner.

Our activities stemmed from a real desire to ensure that Canada's access to information system is functioning as effectively as possible and to instill a culture of openness and transparency in government, to the benefit of Canadians, parliamentarians and federal institutions.

The coming into force of the *Federal Accountability Act* added a layer of complexity. Under this new law, about 70 additional institutions became subject to the *Access to Information Act*. One of these institutions was the Office of the Information Commissioner. Becoming subject to the Act has had a number of implications for us, not the least of which is that we have had to set up an access to information office, just like most other federal organizations have had for years. This is new territory for us, but it has brought with it great awareness of the challenges federal institutions face in meeting their access to information obligations. This will serve us well in the future.

It became clear early on that we were going to have to move in a new direction and significantly improve the way we do business.

This first full year under the helm of the new Commissioner saw us take stock of the state of freedom of information in Canada. We assessed how best the Office could get the word out about the importance of freedom of information and do its legislatively mandated work of investigating complaints about how federal institutions handle access to information requests.

It became clear early on that we were going to have to move in a new direction and significantly improve the way we do business. In particular, we determined that we were going to have to make changes to how the Office is structured, the funding we receive, the processes we follow, the technology we use and the complement of employees across the organization (both in number and function) to ensure we can meet our standards of service to Canadians.

On top of this were the challenges presented by advances in technology, including the increased amount of data and records available, the growing use and storage of electronic data, and the challenges associated with processing access requests and complaints involving electronic data.

Clearly, these challenges required a new approach. This annual report sets out details of our work to respond to them and move in our new direction.

Chapter 1 describes many of the initiatives we have taken during the year in detail.

Chapter 2 looks at the work we did to comply with the *Access to Information Act*. In particular, our new responsibilities meant finding an independent ad hoc commissioner to investigate complaints against us, since that is a role the Office may not, and very definitely should not, play itself. **Appendix 1** contains the report of the ad hoc Information Commissioner, the Honourable Peter de C. Cory, a retired Supreme Court of Canada justice, who comments on his first year in office.

This year saw us close 1,381 investigations of complaints into how various federal institutions handled access to information requests. **Chapter 3** sets out the key facts and figures of our caseload for the year.

Chapter 4 contains informative case studies of some of those investigations. The case studies provide valuable insight into the work of the Office and our approach to resolving complaints as well as lessons learned for all parties to a complaint.

Chapter 5 reviews key court cases involving access to information issues in 2007–2008.

Chapter 6 highlights legislative activity in 2007–2008 that affects what we do.

Chapter 7 introduces some of the work that is ahead for the Office in the next year, including thoroughly reviewing our operations and funding, and celebrating the 25th anniversary of the *Access to Information Act* and Canada's annual Right to Know Week.

Three appendices complete the report, the first being the annual report of the ad hoc Information Commissioner, as noted above. **Appendix 2** provides details on ongoing legal cases, while **Appendix 3** sets out amendments and proposed amendments to the Act and other laws.

1

The year gone by

The year gone by

The presence of the new Information Commissioner and a renewed commitment to the role and functions of the Office brought about significant activity in 2007–2008 to take the Office in a new direction.

A year ago, it would not have been an understatement to say that the state of affairs at the Office was such that our ability to deliver services to parliamentarians, federal institutions and Canadians was severely compromised. A number of factors accounted for this, including burdensome investigative processes, insufficient staff, outdated technology, and limited communications, policy development, and administrative support.

The impact of the *Federal Accountability Act* and the resulting amendments to the *Access to Information Act* and the *Privacy Act* has also been substantial and required supplementary funding.

During 2007–2008, about 70 institutions, including Crown corporations, such as the CBC and Canada Post, and their wholly owned subsidiaries, and various foundations and agencies, such as the Canadian Wheat Board, became subject to the Act. This represents a 37 percent increase in the number of institutions covered by the Act, and brings the total to more than 250.

Among that group of institutions was the Office of the Information Commissioner. Our new status required us to set up an effective access to information and privacy process (see Chapter 2). As part of this process, we appointed an ad hoc Information Commissioner to respond to access to information complaints about us (see Appendix 1 for the Commissioner's annual report).

Another major implication of the increase in institutions subject to the Act is that we are now managing a larger volume of complaints. In fact, the number of complaints increased in 2007–2008 by more than 80 percent from last year (see Chapter 3 for facts and figures on our caseload this year). We also provide assistance to the new institutions as they gain experience in administering the Act and the complaint process.

To begin to address the serious challenges we faced, we obtained additional funds to allow us to meet the requirements of the *Federal Accountability Act*, as well as to establish and maintain an internal audit function, as required by Treasury Board. The latter includes developing a risk-based internal audit plan and setting up an independent audit committee comprising members from outside the Office and the public service.

We also received funding to carry out a thorough review of our operations and budget (called an A-base review). For more information, see Chapter 7.

Beyond this, we put considerable effort into building organizational capacity and developing our core functions. Here are some examples of work in this regard in 2007–2008:

- Staffing: we hired new people to help with our investigations.
- Communications: we adopted a proactive approach to communicating more clearly, openly and effectively with all our stakeholders and took the initial steps towards setting up a dedicated communications unit.


Andrea Neill
Assistant Commissioner

- Information management and technology: we began to modernize our systems to provide all employees with more effective tools to do their work.
- Policy development: we began to strengthen our internal policy and research capabilities to provide advice from our unique perspective to Parliament and federal institutions.

Backlog strategy

1. Restructure the Complaints Resolution and Compliance Branch to reduce bottlenecks in the management review and approval of cases.
2. Staff vacant and new positions.
3. Delegate some approvals of cases to the director and chief levels.

During 2007–2008, about 70 institutions became subject to the Act. This represents a 37 percent increase in the number of institutions covered by the Act, and brings the total to more than 250.

Streamlining our complaints-handling process

In the last few years, we have reported a continuing and persistent backlog of cases. The situation did not improve in 2007–2008, despite our considerable efforts to reduce the caseload. At year-end, almost 85 percent of our cases were in backlog, according to our service standards.

Nonetheless, the Commissioner has made a clear public commitment to eliminate the historical backlog by the end of the 2009–2010, and much of the work we did this year puts us in good stead to meet that goal. In particular, we identified 11 actions we will take to ensure that we resolve complaints more efficiently and at the earliest opportunity, and make decisions faster and fairly (see box).

4. Place priority on the oldest files.
5. Supplement investigators' work with assistance of temporary workers to accelerate the completion of investigations of older files.
6. Monitor the progress of cases more closely internally and in federal institutions.
7. Review our complaints-handling process.
8. Assess the benefits of a dedicated intake and early resolution function.
9. Review our internal service standards.
10. Conduct best practices sessions internally and with the access to information community.
11. Develop tools and information (e.g., forms, checklists and practice notes) to help complainants, federal institutions and others.

We gathered ideas for strengthening and streamlining our complaints-handling process from our staff, from provincial counterparts that have solved similar problems and from a consulting firm with expertise in performance management and program evaluation. (The firm's report is available on our website: http://www.infocom.gc.ca/publications/2008/pdf/final_report_Jan_29_08-e.pdf).

We also plan to meet with representatives from several federal institutions that have recently become subject to the *Access to Information Act* to discuss their experience and get their feedback on our approach to resolving complaints. We will also produce tools and information that will help complainants and institutions navigate the complaints process.

Our new approach to report cards is more balanced than the previous process and will help us produce a more complete picture of the performance of the selected institutions.

Here are some of the key recommendations:

- establish a dedicated intake and early resolution unit that prioritizes complaints according to a set of clear criteria;
- abandon our existing service standards as ineffective and develop internal performance targets for communicating expected timelines to complainants, based on the nature and complexity of the complaint;
- redefine the complaints in the backlog as those that have been assessed by the intake and early resolution unit as valid but have not yet been assigned to an investigator; and
- implement a portfolio approach to investigations to allow investigators to develop expertise with certain institutions.

Renewing the report cards process

Each year, federal institutions eagerly await the Office of the Information Commissioner's annual report cards, which detail how well they met their obligations under the *Access to Information Act*.

Requesters and institutions alike turn to the report cards to get a broad perspective on their overall performance administering the Act, in contrast to the specific results of individual investigations.

Former Commissioner, the Honourable John Reid, introduced the report cards a decade ago. Their advent brought about a significant drop in the number of access to information complaints against institutions. However, in recent years, the number of some types of complaints is on the rise again. This made us realize that we need to enhance the

report cards to better help institutions comply with the Act. To that end, we reviewed the whole report card process and concluded that, while report cards are still a priority for us and an important part of our work, we needed to make significant improvements to the way we prepare them, what they measure and how we communicate the results to institutions, Parliament and the public.

In particular, we found that the current process focuses mainly on delays and consequently does not uncover nor allow us to communicate information that accurately reflect institutions' ongoing efforts, or lack thereof, to improve compliance. The process also does not shed any light on the reasons why selected institutions are performing the way they are.

We wish to link the report card process to the government's performance management framework, which is based on the fiscal year of April 1 to March 31. As a result, our report cards will be more effective in holding heads of institutions accountable for their organizations' access to information performance and coincide with the performance review cycle common to government and Parliament.

Our new approach to report cards is more balanced than the previous process and will help us produce a more complete picture of the performance of the selected institutions. We will evaluate institutions within a framework designed to put more information in context, which will help reveal institutions' strengths and weaknesses, and the progress they have made in complying with the Act.

We have built in time for collaboration with institutions as we do the assessment and we will also allow each institution to comment on a preliminary version of our report. At the same time as we issue the report cards, we will publish action plans and responses from the institutions, to provide details beyond a simple rating of access to information request delays, including contextual information that will help institutions understand the underlying reasons for their performance results, good or bad.

Our intention with this new process is to address issues that permeate the whole access to information system and to contribute to improvement by making recommendations and best practices readily available for all institutions to implement.

Here are five key aspects of the report card process we will implement in 2008–2009:

- Review period: We will base our assessment on the fiscal year, linked to the government's planning cycle.
- Selection of institutions: We will select institutions to report on according to criteria such as results from the previous year (for this transition year only), trends uncovered by the complaints we receive, and other issues of interest to us. We will also choose at least one institution with a good track record to allow us to identify best practices.
- The assessment: During this transition year, we will continue to measure performance against deemed refusals. However, we will also go beyond that to look at delays resulting from systemic factors such as the rising number of consultations with other institutions and additional layers of approvals and their impact on delays.

- Reporting: Rather than reporting results in our annual report, which we usually publish in June, we will table a special report in the fall. This report will contain analysis and recommendations. The report's release will also coincide with the annual tabling of departmental performance reports, which will give Parliament a better perspective on institutions' performance under the *Access to Information Act*.

- Process: We will gather information from the selected institutions and, during the summer, will provide them with a preliminary analysis for discussion, clarification and revision, as required. At the end of October, the Commissioner will table the final report to Parliament, and we will post it on our website.

We will be reporting on the following federal institutions in 2008–2009:

- Canada Border Services Agency;
- Department of Foreign Affairs and International Trade;
- Department of Justice Canada;
- Department of National Defence;
- Health Canada;
- Library and Archives Canada;
- Natural Resources Canada;
- Privy Council Office;
- Public Works and Government Services Canada; and
- Royal Canadian Mounted Police.

Building relationships with partners and Parliament

On a number of occasions during his first year in office, the Information Commissioner has publicly stated his commitment to fostering good relations with all the players in the access to information system—from requesters, to complainants, to institutions, to Parliament. This bridge building will contribute to better stewardship of the system and promote openness in government.

"... the Information Commissioner has publicly stated his commitment to fostering good relations with all the players in the access to information system—from requesters, to complainants, to institutions, to Parliament."

During 2007–2008, we took part in many policy projects with other officers of Parliament, provincial and territorial regulators, and federal institutions. For example, with the Treasury Board Secretariat we have been actively involved in the renewal of access to information policies.

With the Treasury Board Secretariat and the Officers of Parliament Working Group, we reviewed ways for officers of Parliament to apply Treasury Board policies while preserving their independence.

We are partnering with Library and Archives Canada on a pilot project to develop documentation standards for small organizations, such as the Office,

which will help us and other small institutions that have recently become subject to the *Access to Information Act* to develop information management policies.

We are also working with the Canadian School of Public Service and the Office of the Privacy Commissioner to develop a curriculum to train public servants in the areas of access to information and privacy.

We continue to support the University of Alberta's Information Access and Protection of Privacy Certificate Program as a member of the program's Advisory Committee and by enrolling staff in the program.

As part of Right to Know Week in the fall of 2007, we held a one-day seminar on various aspects of citizens' right to know, featuring presentations by experts in the field and from the Office on the fundamentals of access to information in Canada and how it can be improved. The Commissioner gave the keynote speech on his approach to fostering openness in government. The two assistant commissioners participated in similar events held by some of our provincial counterparts.

During 2007–2008, we began work with the Department of Justice and the Treasury Board Secretariat on legislative and administrative initiatives related to access to information. As part of the work on the legislative reform, we prepared a reference document that lists the proposals contained in the draft bill, the Open Government Act, a proposed revision to the *Access to Information Act*, with their sources. A copy of the document is available on our website (www.infocom.gc.ca/publications/pdf_en/OGA_notes.pdf).

As an officer of Parliament, the Commissioner enjoys a special rapport with Parliament. Parliamentarians rely on the Commissioner for objective advice about the access to information implications of legislation, jurisprudence, regulations and policies. The Commissioner is devoted to helping Parliament play its vital role of holding federal institutions and officials accountable for the proper administration of the Act. In order to better achieve this goal, we have created a unit to respond to parliamentarians' enquiries and to keep legislators and decision makers informed about developments in the world of access to information. For example, the Commissioner and other officials participated in a Library of Parliament seminar series, making a presentation in February 2008 on the rights, objectives and challenges associated with access to information.

In addition, the Commissioner, accompanied by representatives from the Office, appeared a number of times before parliamentary committees in 2007–2008:

- Mr. Marleau's first appearance as Information Commissioner before the Standing Committee on Access to Information, Privacy and Ethics took place in April 2007 to discuss the Office's spending estimates for the year.
- He appeared again before the Committee in May 2007 to discuss the Department of Foreign Affairs and International Trade report *Afghanistan 2006: Good Governance, Democratic Development and Human Rights* (see Chapter 4).
- Another appearance before the Committee took place in November 2007 to discuss future business.
- Finally, the Commissioner appeared before the Advisory Committee on the Funding and Oversight of Officers of Parliament in December 2007 to seek funding related to the coming into force of the *Federal Accountability Act* and the requirement for us to set up an internal audit function.

2

Welcoming access to information

Welcoming access to information

As reported in last year's annual report and in Chapter 1, the Office of the Information Commissioner became subject to the *Access to Information Act* and the *Privacy Act* on April 1, 2007. As such, we joined the many other federal institutions that are veterans of receiving and responding to access to information and privacy requests.

both Acts. This involves responding to requests under both laws, as well as to requests from other institutions considering releasing information generated by the Office (called consultations). The secretariat is also notified of any access to information complaints against the Office that are referred to the ad hoc Information Commissioner for investigation (see below).

"...we fully expect that the public and others will be particularly interested in how well we manage and disclose information."

While we welcome this development, so we can do even more to ensure open government and access to government information, we know that our efforts in this area will be subject to considerable scrutiny, given who we are. As the body appointed by Parliament to investigate complaints against federal institutions, we fully expect that the public and others will be particularly interested in how well we manage and disclose information.

This added responsibility will be a learning experience but there is no doubt we are aiming to meet a high standard of compliance. This chapter briefly describes the various activities we undertook in 2007–2008 to fulfill our new obligations. We expect to do much more on this front in 2008–2009.

Secretariat

We set up a secretariat—essentially an access to information and privacy office—in the Office's Information Management Division to administer

In 2007–2008, we received 93 access requests and 3 privacy requests. We participated in 21 consultations and were notified of 10 complaints. See box for details of the seven complaints that were completed during the year. The remaining three are still under investigation.

The secretariat is doing some foundational work to ensure that everyone in the Office is able to comply with the law. For example, the secretariat is producing a policy and procedures manual to help manage and administer access requests. The secretariat also gave awareness training to employees on their legal responsibilities under both Acts and the policy requirements that stem from those responsibilities.

As part of the welcome movement toward voluntary disclosure of government information, the secretariat is making information more readily available to the public. Of particular note are the "Grids," which comprise the investigators' working manual. These

Suzanne Legault
Assistant Commissioner

are now available on our website (www.infocom.gc.ca/grids/default-e.asp). These documents provide important insight into the work of the Office and how we investigate complaints. The secretariat has plans to share further information with the public on our website and to enhance the site's features.

Ad hoc Information Commissioner

Although we are aiming to achieve a flawless record in responding to access to information requests, access requesters still have the right to voice their concerns and to make complaints.

The amendments to the *Access to Information Act* stemming from the *Federal Accountability Act* that made the Office subject to the Act did not set out how access to information complaints against us are to be handled. To ensure the integrity of the complaints process and that adequate safeguards are in place to prevent the conflict of interest that would arise if we had to investigate ourselves, the Commissioner appointed an ad hoc Information Commissioner to handle these investigations.

The Honourable Peter de C. Cory graciously agreed to take up this new office, establishing guiding principles for it and how it would operate. He receives and independently investigates complaints against us and has the same functions and powers as the Commissioner to conduct investigations and make recommendations. Appendix 1 contains the ad hoc Information Commissioner's first annual report.

Results of complaints to the ad hoc Information Commissioner in 2007–2008

Type of complaint	Number of complaints	Results
Refusal (failure to release all records requested)	1	Resolved
Refusal (failure to release all records requested)	2	Not substantiated
Administrative (extension of 90 days for consultation unreasonable)	2	Not substantiated
Administrative (fees charged)	2	Cancelled

Information technology

The Office secured funding that we will use in 2008–2009 to buy software to support the processing of access and privacy requests. The software will also help us comply with the reporting requirements set out in Treasury Board's policies on access to information and privacy protection, as well as produce the annual reports on the administration of the Acts that we will present to Parliament each year.

Biography

The Honourable Peter de C. Cory, a former justice of the Supreme Court of Canada, is a distinguished jurist of international repute. In addition, he has held various positions as commissioner, such as Commissioner to study the qualifications, salary and pensions of Military Judges, and Commissioner to investigate the reasons for the wrongful conviction of Thomas Sophonow for murder and to fix the compensation payable to him arising from his wrongful conviction and imprisonment. In June 2004, Mr. Cory was appointed Chancellor of York University.

3

Facts and figures

Facts and figures

The charts and figures in this chapter set out the Office's complaints caseload for 2007–2008 from three perspectives: the complaints we received, the work we did to process them and the outcomes of our investigations.

Receiving complaints

The complaints we receive in any given year tend to fall into a handful of broad categories. Our caseload in 2007–2008 was no exception to this; we had three main types of complaints: administrative complaints, refusal complaints and complaints related to exclusions for Cabinet confidences, as follows:

Administrative complaints

- Extensions: The institution extended the time it required to process the request.
- Delays: The institution failed to provide access to the information within the time limits set out in the Act.
- Fees: The fee the institution proposed to charge was unreasonable.
- Miscellaneous complaints, including the following:
  - Access to records: The institution did not give the requester an opportunity to examine the information.
  - Official language of choice: The institution did not provide the information in the requester's official language of choice.
  - Alternative format: The institution did not provide the information in an alternative format that a person with a sensory disability could use.
  - Other matters: This includes complaints about any other matter relating to requesting or obtaining access to records under the Act.

Refusal complaints

- Exemptions: The institution withheld the records under a specific provision of the Act, for reasons such as that the information was obtained in confidence from foreign governments, the information was related to the safety of individuals or the records contain personal information.
- Incomplete response: The institution did not provide all the information it was allowed to release that matched the request.
- No records: The institution found no documents that matched the request.
- Published information: The information had already been published.

Cabinet confidences exclusion complaints

- Access to records refused: The documents contained Cabinet confidences and were, as a result, not released.

Figure 1 sets out the complaints we received in 2007–2008 according to these three categories. Administrative complaints comprised 58 percent of all the complaints we received, compared to 54 percent last year. They included time-related complaints associated with delays (29 percent) and extensions (21 percent). Figure 2 sets out the complaints received by month.

Figure 1.
Types of complaints received, 2007–2008

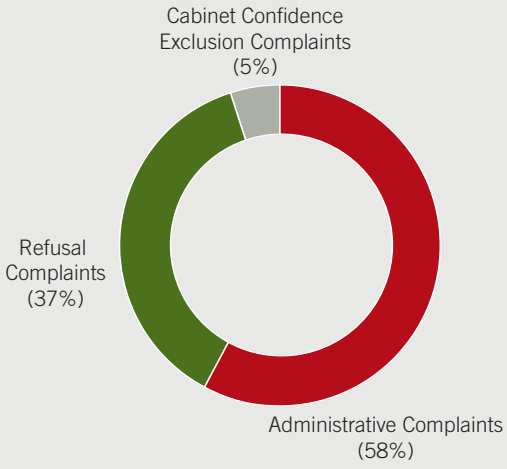


Figure 2.
Number of complaints received each month

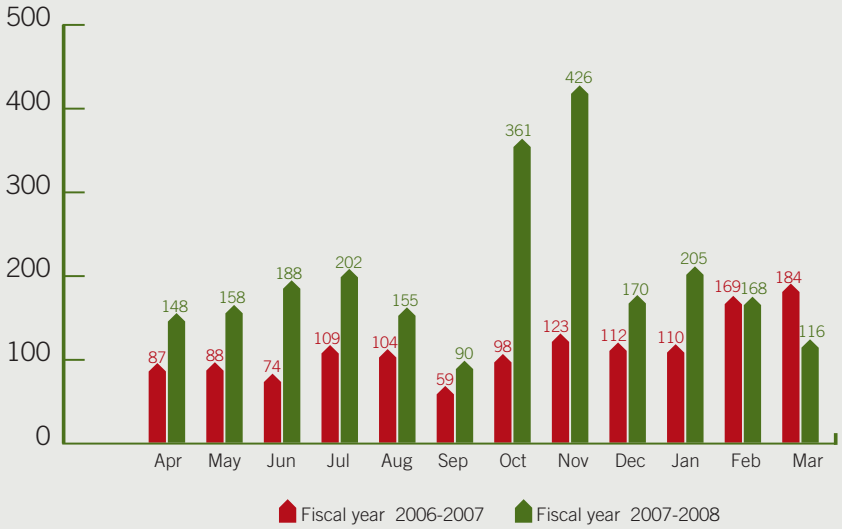


Table 1 looks at the complaints we received according to the institution involved.

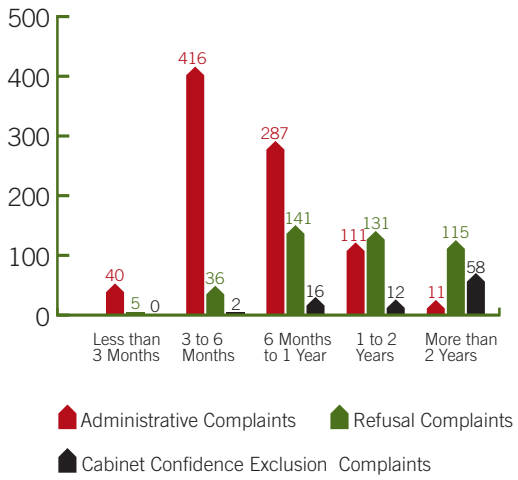
Table 1.
Complaints received in 2007–2008, by institution

Institution	Number of complaints
Canadian Broadcasting Corporation	536
Department of National Defence	256
Privy Council Office	239
Royal Canadian Mounted Police	134
Canada Revenue Agency	123
Department of Foreign Affairs and International Trade	102
Canada Border Services Agency	71
Public Safety Canada	63
Citizenship and Immigration Canada	60
Correctional Service of Canada	56
Health Canada	56
Public Works and Government Services Canada	53
Department of Justice	50
Department of Finance	47
Transport Canada	41
Others (66 institutions)	500
Total	**2,387**

Processing complaints

We usually complete investigations of administrative complaints in six months to one year, but many investigations of refusal and Cabinet confidence exclusion complaints take more than a year to investigate. Much of this delay is the result of the large backlog, which keeps complaints on hold for a significant period. Figure 3 shows the turnaround times for closing the 1,381 investigations we completed this year. The average for the year was eight months.

Figure 3.
Turnaround times to close investigations, 2007–2008



Completing our investigations

When an investigation is complete, it is assigned as being resolved, not substantiated or not resolved:

- resolved: when a complaint has merit and the institution has resolved it to the Commissioner's satisfaction;
- not substantiated: when a complaint could not be substantiated; the institution acted correctly; and
- not resolved: when a complaint has merit but the institution did not accept the Commissioner's recommendations. To resolve the complaint, the Commissioner or the requester may consider taking court action.

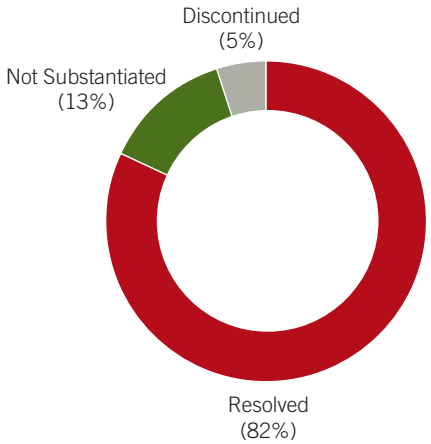
Complaints may be cancelled because complainants withdrew or abandoned them *before* investigations began. Examples of cancelled complaints are those that we received that should have gone to the Office of the Privacy Commissioner or complaints made beyond the time allowed.

Complaints may be discontinued because complainants withdraw them or abandon them *after* investigations began. Examples of abandoned complaints are those that are resolved without our intervention.

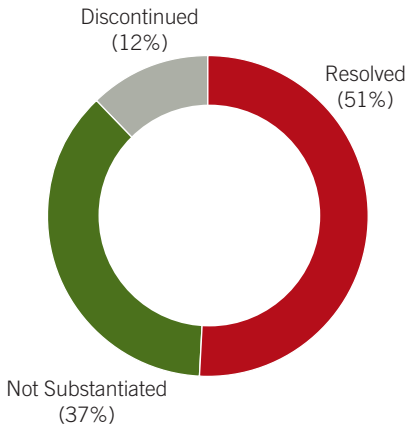
Figure 4 breaks down the findings for this year's completed investigations by type of complaint. We found both refusal complaints and Cabinet confidence exclusion complaints to be not substantiated considerably more often than we did administrative complaints. We were able to satisfactorily resolve all the complaints.

Figure 4.
Outcome by type of complaint, 2007–2008

Outcome of Administrative Complaints
(865 Complaints)



Outcome of Refusal Complaints
(428 Complaints)



Outcome of Cabinet Confidence Exclusion Complaints (88 Complaints)

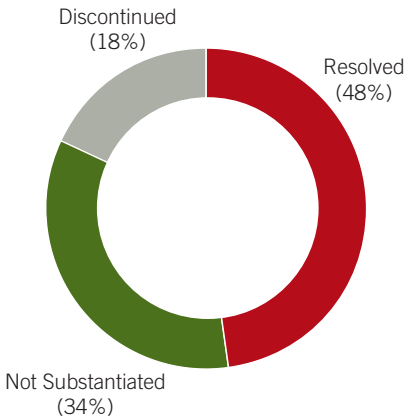


Table 2 gives the overall number of complaints we closed in 2007–2008 by institution, and the number we found to be substantiated and that we then resolved satisfactorily. We closed the remainder because we found them to be not substantiated or we cancelled or discontinued them.

Table 2.
Complaints closed in 2007–2008, by institution

Institution	Number of complaints	
	Overall	With merit
Canadian Broadcasting Corporation	385	355
Department of National Defence	112	67
Privy Council Office	80	42
Library and Archives Canada	66	50
Royal Canadian Mounted Police	66	39
Department of Foreign Affairs and International Trade	61	39
Fisheries and Oceans Canada	52	33
Canada Revenue Agency	50	25
Public Works and Government Services Canada	49	27
Health Canada	43	38
Canada Border Services Agency	43	28
Correctional Service of Canada	37	17
Citizenship and Immigration Canada	36	17
Public Safety Canada	32	25
Transport Canada	32	24
Others (48 institutions)	237	149
Total	**1,381**	**975**

Table 3 summarizes the caseload for the whole year and compares it to that of 2006–2007. We received 2,387 new complaints in 2007–2008, which is an increase of 1,070 new complaints (81 percent) from last year. We closed the investigations into 1,381 complaints; however, because of the increase in new complaints, 2,318 were pending at year-end.

Table 3 also includes figures for investigations into systemic issues. The Commissioner may launch his own investigations to address what appear to be widespread problems. These may be chronically late responses, improper management of extensions, large backlogs of unanswered requests and administrative practices that may result in requesters receiving slower or less forthcoming responses to access requests than they might otherwise. Individual requesters may also ask us to undertake a systemic investigation about the same matter taking place in several federal institutions.

In 2007–2008, the Commissioner started to address systemic issues, such as delays, through a more balanced and comprehensive report card process (see Chapter 1).

Table 3.
Summary of caseload, 2007–2008

	April 1, 2006, to March 31, 2007*	April 1, 2007, to March 31, 2008
Complaints received		
Complaints carried over from the previous year	1,453	1,420
New complaints received during the year	1,317	2,387
Complaints cancelled during the year	82	108
Complaints closed during the year	1,268	1,381
Complaints pending at year-end	1,420	2,318
Commissioner-initiated systemic investigations		
Complaints carried over from the previous year	423	237
New complaints initiated during the year	393	0
Complaints closed during the year	579	237
Complaints pending at year-end	237	0
Report Cards initiated during the year	17	10

* figures adjusted at year end

4

Notable investigations

Notable investigations

Each year, a number of our investigations stand out from the others for one reason or another. Often it is their complexity or the light they shed on the access to information system that makes them noteworthy.

This year, three of the investigations we summarize below highlight the importance of the duty of institutions to help requesters in any way they can with their access requests. This duty to assist, as it's known, has always been an implied duty of institutions; now it is entrenched in the *Access to Information Act* itself, as a result of amendments that were introduced in the *Federal Accountability Act*.

We also look at a case involving the newest in communications technology, the BlackBerry, and one of the newest institutions to become subject to the Act, the Canadian Broadcasting Corporation.

Going the distance

This case highlights the commitment of one institution to finding an innovative way to resolve a complaint and the Office's role in making this happen. This was particularly noteworthy because the institution faced the competing interests of disclosing information under the Access to Information Act *and protecting personal information under the* Privacy Act.

Background

The requester asked Health Canada for an electronic copy of the entire database of the Canadian Hospitals Injury Reporting and Prevention Program (CHIRPP). CHIRPP is a surveillance system that collects detailed health information on the circumstances of injuries treated at the emergency departments of 10 paediatric and four general hospitals across Canada.

The program was launched at Health Canada in 1990 and now resides within the Public Health Agency of Canada. Officials there analyze the injury records and share the analysis with a wide range of stakeholders for policy and program development and evaluation, and for public health research.

At the time of the request, the database comprised approximately 1.5 million individual records, each having 82 data fields.

Even though Health Canada extended the deadline for disclosing the information, it was unable to meet it. While officials were actively working on the request, including having several discussions with the requester to explore options to provide access that would not compromise patient privacy, the requester complained to us about the continuing delays.

Resolving the complaint

Health Canada's challenge was to find a way to assess an enormous number of records without having to look at each one and to release as much information as possible while ensuring that none of it would identify individual patients.

With the assistance of an expert in statistical disclosure control methodology, officials developed computer programs that would protect person-identifiable information by making it anonymous, suppressing it or rolling up multiple pieces of information into one. Among this information were the injured person's medical record number, date of birth, sex, postal code and an abbreviation of his or her name.

could be released while still protecting patient privacy. They also explained to the requester that it was more manageable for them to manipulate and produce one calendar year's worth of data at a time, rather than preparing the entire release at once, because of the extensive computer programming involved. Over the course of the subsequent year, Health Canada released several years' worth of data.

This year, three of the investigations we summarize below highlight the importance of the duty of institutions to help requesters in any way they can with their access requests.

Health Canada officials eventually disclosed a sample of the records for one calendar year and asked the requester for his comments before preparing data for the other years. The officials expected to be able release one year at a time, with each year's release taking approximately six weeks to produce.

The requester was not satisfied with the sample, stating that too much information had been withheld or collapsed. He also questioned Health Canada's proposal to release one year's worth of data at a time.

At this point, we had several discussions with Health Canada about how to meet the requester's requirements. Officials examined the information again and modified the computer programs in order to maximize the amount of information that

Our role in this case was one of mediator. We brokered a workable solution that addressed and accommodated the respective needs and interests of both the requester and Health Canada. We also monitored the progress Health Canada was making on the request to ensure it was being advanced in as timely a way as possible under challenging circumstances.

Lessons learned

This request took a long time to process because of a number of challenges Health Canada faced such as the size, amount and sensitivity of the information in the database, and the complexity of preparing the information for release in a way that would respond to the request but not compromise patient privacy.

This case serves as an excellent example of a federal institution providing every assistance to a requester before there was any legal requirement to do so. This is a hallmark of the duty to assist that is now entrenched in the *Access to Information Act*. Health Canada expended considerable time, effort and financial resources to find a solution that would respect the requester's right of access under the Act while meeting its own obligations under the *Privacy Act*. And, while the requester accepted the solution with reservations, he was satisfied that there had been genuine co-operation from all involved, and an attempt to balance competing privacy and access interests in a creative way.

You take it … No, you take it!

This case highlights how important it is that institutions clearly understand their obligations under the Access to Information Act *and that they do everything they can to help individuals with their access requests*.

Background

An individual made four access requests to Industry Canada for information about financial contributions made to named individuals through Aboriginal Business Canada. At the time of the requests, this program was being transferred from Industry Canada to Indian and Northern Affairs Canada (INAC). A memorandum of understanding outlining the details of the transfer specifically stated that Industry Canada was to redirect access requests to INAC until the program files were transferred to INAC after which point INAC would handle all requests.

While the transfer was ongoing, Industry Canada attempted to redirect the four requests to INAC, since it could no longer legally process them. INAC refused to accept the requests, saying that it did not as yet have control of the program records. Industry Canada officials explained this to the requester and suggested that he submit his requests directly to INAC. The requester did so and then complained to us.

Resolving the complaint

We were not instrumental in resolving the complaint; nevertheless we found that both institutions failed the requester, leaving him caught in the middle and fending for himself, because officials could not agree on their respective obligations. Although INAC did process the requester's second set of requests, and did disclose the records he was looking for, both institutions did him a disservice by not resolving their differences when he first made his requests. This left the requester with no choice but to start over.

Lessons learned

The duty to assist that is now such an important part of the *Access to Information Act* requires institutions to make every reasonable effort, particularly in unusual situations, such as when a program gets transferred from one institution to another, to help requesters gain access to the information they seek.

Balancing the risks and benefits

How does a government institution balance the public's right to information with the need to protect safety and security in a time of war? Investigations of complaints related to Canada's military mission in Afghanistan shed light on this important question and the need of institutions to communicate clearly with requesters.

Background

We received more than 100 complaints in 2007–2008 from the media, members of Parliament, academics and the public related to access requests for information about various aspects of the Afghanistan mission, such as operations, related events and activities, treatment of detainees, and policies.

A few of these requests garnered considerable media and public attention and complaints to our office. In April 2007, for example, the print media reported allegations of concealment, heavy censuring and political interference at the Department of Foreign Affairs and International Trade (DFAIT). This was because DFAIT had not revealed certain information about human rights abuses of Afghan detainees in response to access requests for an internal report, *Afghanistan 2006, Good Governance, Democratic Development and Human Rights*.

We also investigated complaints against the Department of National Defence that it had refused to disclose information about Afghan detainees, including lists, photographs, and medical conditions and other personal information.

Resolving the complaint

The allegations against DFAIT piqued the interest of the House of Commons Standing Committee on Access to Information, Privacy and Ethics, which decided to study the governance report to determine whether DFAIT had violated the *Access to Information Act* in any way. The Information Commissioner appeared before the Committee on May 31, 2007, but could say very little about our investigations since we must carry them out in private.

In the end, we reported to the complainants and informed the Committee that we found no evidence that government officials had concealed the existence of the report or other related documents, nor any evidence of political interference to suppress the information. However, we did find administrative delays in the processing of the requests and confusion about the existence of the report. DFAIT could have avoided this confusion, and the public brouhaha that ensued, if it had communicated more effectively with the requesters at the time their requests were processed.

DFAIT eventually disclosed much more information in the governance report to the requesters as a result of our intervention, although not all of it. We supported DFAIT's position to continue to withhold some details, mainly to avoid harming international relations.

During the course of the investigations into the complaints against the Department of National Defence, that department agreed to release as much information as possible while continuing to protect personal information. We supported its position to continue to withhold other information that would put the defence of Canada or Canada's allies at risk if disclosed.

Lessons learned

The matter of the DFAIT report carries an important lesson for all institutions on the importance of communicating with, and serving requesters, particularly in the context of the duty to assist that is now entrenched in the *Access to Information Act*. In fact, the report of the House of Commons Standing Committee on Access to Information, Privacy and Ethics, issued in early April 2008, recommended that the government develop guidelines on how to implement the duty to assist (http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=13184&SourceId=233921&SwitchLanguage=1).

The attention around the Department of National Defence case brought to light a special group known as the Tiger Team that the Department had put in place to vet all access requests relating to the Afghanistan mission. Concerns were raised that this additional layer of review was causing delays in responding in a timely fashion to requesters, that the team was in fact deciding whether to release or withhold information rather than the access to information and privacy coordinator doing so, and that no information about the mission was being disclosed.

We do not know yet whether the Tiger Team is contributing to delays. However, we will have an opportunity to explore this during our report card process in 2008–2009. Meanwhile, requesters who are not satisfied with any institution's response to their access requests always have recourse to our office, and we will investigate their complaints objectively and thoroughly.

It is perhaps useful to remember that decision makers will naturally hesitate to release information that they believe could harm international relations, national defence or individual safety. However, it should also be remembered that federal institutions may only exempt information that would otherwise be releasable if they can show that it would cause harm if it were released. Another argument in favour of releasing information is that citizens will be better informed, which might lead to greater public understanding of initiatives such as the Afghanistan mission.

To delete or not to delete...

Are government institutions implementing policies on how employees are to maintain and manage information as they use new wireless communication technology?

Background

A requester asked for all the PIN-to-PIN BlackBerry messages of the Clerk of the Privy Council and the Deputy Minister of Human Resources and Social Development Canada between March 1 and August 31, 2005. PIN-to-PIN messages allow one BlackBerry user to communicate with another using a personal identification number (PIN) and without the communication being recorded elsewhere.

After the Privy Council Office and Human Resources and Social Development Canada told the requester that no relevant documents existed, he complained to our office that the institutions had failed to keep government records. He was

particularly concerned because he had made the requests just three weeks after the time period in question, which might indicate that the institutions lacked a proper record-keeping policy on BlackBerry messages.

Resolving the complaint

In the course of our investigation, we learned that the Privy Council Office and Human Resources and Social Development Canada had, in fact, drafted such policies. The policies identify PIN-to-PIN messages as records that either are transitory and, therefore, may be destroyed or that are of enduring value and must be retained in an institutional email account. The policies also state that any messages that exist on a BlackBerry at the time an access to information or privacy request is received are considered official records that must not be deleted and must be processed in response to the request.

We found no evidence that, in not retaining the BlackBerry messages of these two officials, these two institutions had failed to comply with their respective record-keeping policies. Once the messages were cleared from the devices, they were no longer retrievable on the devices. By the time the access requests were received, there were no such messages for the relevant period. These facts led us to conclude that the complaints could not be substantiated.

Lessons learned

This case shows how important it is for institutions to keep on top of the proliferation of communications technology and to ensure that employees understand that communications with devices such as BlackBerrys produce records, just like documents, e-mails and voice mails, and that employees have a responsibility to manage them properly.

The Secretary of the Treasury Board reminded federal institutions in November 2005 of some of the principles of good information management, security and access to information and privacy responsibilities when employees use BlackBerrys. However, there is no uniform federal policy on PIN-to PIN communication and institutions have been advised to each craft their own policy.

Through our investigation, it became apparent to us that the goals of consistency and simplicity favour a single government policy. While we can assess these policies in the course of investigating a complaint, the Office also has a broader role to play in encouraging federal institutions to implement and enforce effective policies for the proper management of their information holdings, in collaboration with the Treasury Board Secretariat and Library and Archives Canada.

Tuning into a new frequency

An institution that recently became subject to the Act was immediately inundated with access requests and could not handle the volume. The Office worked alongside the institution in taking a flexible approach to resolving the complaints and a realistic timeline for doing so.

Background

The Canadian Broadcasting Corporation (CBC) is one of several federal institutions that became subject to the *Access to Information Act* on September 1, 2007. Within three months, the CBC had received hundreds of access requests and found it impossible to meet the 30-day response deadline under the Act.

In a December 28, 2007, news release, the CBC announced that it was "beefing up its Access to Information Office to respond to a greater-than-anticipated volume of requests" and address the delays. It promised to put in place processes and resources to respond to the flow of requests as quickly as possible, including getting expert advice on how best to reorganize its resources, and actively filling additional positions to help it administer the backlog and get on a better footing in the subsequent months

While the CBC was wading through the large volume of requests, our office was flooded with complaints—536 of them in six months, mostly from one source. Although some of the complaints concerned time extensions, fees, missing records and the use of exemptions or exclusions, the majority of them were about delays.

Resolving the complaint

We concluded that the bulk of the complainant's 383 delay complaints were valid, and the CBC resolved them to our satisfaction. A small number were either discontinued or found to be not substantiated.

CBC officials co-operated with us fully as we worked with them to establish target dates to respond to the requests. We worked with the complainant to prioritize some of them and reported weekly on the CBC's progress. By March 31, 2008, the CBC had responded to approximately 120 of the requests the complainant had brought to our attention. The CBC and our office agreed on a one-year target date to respond to all of the remaining ones. We reported to the complainant that we were satisfied that the CBC made a reasonable commitment and that the complainant would receive a response as each request was processed. We also informed the complainant that we would monitor the CBC's progress, and confirmed the complainant's right to complain to our office about any of the responses.

Lessons learned

These complaints gave us an opportunity to take a different and more flexible approach to resolving delay complaints than we have in the past. We considered the CBC's circumstances: it had just become subject to the Act when it was inundated with hundreds of requests over a very short time period, and it did not have adequate resources to process them in a timely way. By negotiating a target date to respond to all the requests, the CBC could focus on the task of completing them, and we could close the complaint files but still monitor the CBC's progress to ensure that the complainant continues to receive responses.

5

Court cases

Court cases

A fundamental principle of the *Access to Information Act* is that decisions on disclosure of government information should be reviewed independently of government. Review by our office and the Federal Court of Canada are the two stages of independent review the law provides.

When the Information Commissioner concludes that a complaint against a federal institution is substantiated and makes a formal recommendation that the institution does not follow, the Commissioner's policy is to bring the matter before the Federal Court and seek to obtain an order to compel the institution to disclose the records in question.

Summaries of several key court cases that were decided in 2007–2008 are outlined below. For complete details, go to our website. Appendix 2 lists cases that were ongoing as of March 31, 2008.

Census records for Aboriginal land claim research

Canada (Minister of Industry) v. Canada (Information Commissioner) 2007 FCA 212 (A-107-06), June 1, 2007 (Chief Justice Richard and Justices Décary and Evans)

Summary

Algonquin bands requested census records to help document their land claims. The Minister of Industry, through his delegate, the Chief Statistician, refused to disclose the records. The Federal Court ordered disclosure for the specific and limited purpose for which the records were requested. The Minister of Industry appealed that decision.

Background

The access to information request was made to Statistics Canada by a tribal council representing three Algonquin bands, as part of their research to document their land claim, for which the Crown required proof of continuity of the bands' membership and of their use and occupation of the lands.

The request was refused and the refusal was investigated by the Commissioner, who recommended that records be disclosed under section 17(2)(d) of the *Statistics Act*, by virtue of section 8(2)(k) of the *Privacy Act*.

The Federal Court ordered the disclosure of the records with an undertaking that the requester keep confidential the personal information of non-Aboriginal persons.

The Federal Court of Appeal judgment confirmed the Federal Court order.

Issues

The issue in this case was whether the laws at play permitted disclosure of personal information.

Reasons

Majority opinion

First, it was held that, because the *Access to Information Act* referred to section 17 of the Statistics Act in its entirety, the Chief Statistician was required to determine whether disclosure could take place under that provision.

Section 17(2) of the *Statistics Act* provides a list of exceptions to a general prohibition against disclosure of information, including an authorization to disclose information "available to the public under any statutory or other law."

In this case, the provision brought into play was section 8(2)(k) of the *Privacy Act*, which, subject to any other Act of Parliament, permits disclosure of personal information to any Aboriginal government or association of Aboriginal people for the purpose of researching or validating the claims, disputes or grievances of any of the Aboriginal peoples of Canada.

The phrase *available to the public* in section 17(2)(d) of the *Statistics Act* was to be interpreted to mean a segment of the population, such as Aboriginal groups, as opposed to the entire population. Neither provision required that the information be "already" in the public domain.

Therefore, the requirements of section 8(2)(k) of the *Privacy Act* had been met. Once the conditions necessary for the release of personal information had been fulfilled, the head of the institution had an obligation to disclose the census records. Further, the Federal Court order established parameters so that it would not allow census records to be examined for any purpose or by anybody.

Dissenting opinion

It was held that section 24 of the *Access to Information Act* prohibits disclosure of records governed by the statutory provisions listed in Schedule II. This meant that individuals seeking disclosure of census information could only do so outside the Act, by requesting that the Chief Statistician proceed in accordance with subsection 17(2) of the *Statistics Act*.

However, even if the request was through the "wrong door," the judge explained that it would be unfair and would waste time and resources to allow the appeal on those grounds. He opted instead to determine whether the refusal was authorized under section 17 of the *Statistics Act*.

He determined that information was available to the public "when anyone may readily access or obtain it by virtue of being a member of the Canadian population." In order to access information under section 8(2)(k) of the *Privacy Act*, a person must establish a connection with particular groups within the Canadian population: being a member of the community at large is not enough.

Future action

The decision was not appealed to the Supreme Court of Canada. The Federal Court order stands and the recommendation of the Information Commissioner was upheld. Statistics Canada is now under judicial compulsion, subject to contempt of Court proceedings, to disclose the requested information. The Office is keeping a watching brief. Without our involvement, these bands would not have had access to information to document their claim.

Confidentiality orders on counsel are justified

Canada (Attorney General) v. Canada (Information Commissioner) 2007 FC 1024 (T-531-06), October 5, 2007 (Justice de Montigny)

Summary

The Attorney General challenged the Information Commissioner's authority, when carrying out an investigation under the *Access to Information Act*, to order confidentiality orders against government witnesses compelled to give evidence and the Department of Justice (DOJ) counsel who accompanied the individual witnesses while they gave their evidence *in private*.

Background

While investigating a complaint under the Act, certain government officials were compelled to give evidence *in private* and under oath before the Deputy Information Commissioner. These officials were accompanied by counsel from DOJ, who were permitted to attend to represent each of the witnesses as individuals.

The evidence was to be given *in private*. However, because a number of witnesses were being called, the Deputy Commissioner determined, on behalf of the Commissioner, that it was necessary to issue confidentiality orders to prevent each witness from disclosing his or her evidence to others (including other witnesses) until such time as all witnesses had given their evidence. Meanwhile, because each witness was represented by counsel from DOJ, and these counsel represented other witnesses as well as the witnesses' employer (i.e., the Crown), the Deputy Commissioner also ordered counsel not to disclose a witness's evidence to anyone else unless specifically instructed to do so by the witness.

After all witnesses had given their evidence, the Deputy Commissioner withdrew the confidentiality orders imposed on the individual witnesses but refused to lift the confidentiality orders issued to the witnesses' counsel. The Deputy Commissioner's rationale was that, because DOJ lawyers have a dual mandate (i.e., acting as a legal representative for each of the individual witnesses, while at the same time representing the witnesses' employer), the orders were necessary to ensure that it remained up to the individual witnesses whether the evidence they gave *in private* would be shared with their employer.

The Attorney General brought the Information Commissioner to the Federal Court, arguing that he had acted beyond his jurisdiction when issuing the confidentiality orders to the individual witnesses and their counsel.

Issues

The issue at the centre of this case was whether the Information Commissioner had the authority under the *Access to Information Act* to impose confidentiality orders on both witnesses giving evidence in relation to an investigation by the Commissioner and the witnesses' legal counsel.

Reasons

Because the confidentiality orders imposed on witnesses were lifted after all witnesses had finished giving their evidence, the Court refused to consider whether by issuing these orders the Deputy Commissioner had exceeded his authority under the Act. The matter was not considered because there was no longer any live issue for debate.

Instead, the Court focused on whether the Deputy Commissioner had exceeded his authority when issuing orders to the counsel. More specifically, the Court considered whether orders imposed on counsel improperly interfere with the solicitor-client relationship between DOJ counsel and their multiple clients and/or whether the orders amount to an unjustifiable infringement of the freedom of expression guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*. The Court noted that it was "revealing and even disturbing" that none of the individual witnesses had joined the Attorney General in its challenge of the Commissioner's authority to issue the confidentiality orders to the witnesses' counsel.

The Court noted that the orders are consistent with the Act's objectives, which include the principle that the Commissioner's investigations be conducted independently of the government. The Court held that although the orders interfere with the solicitor-client relationship they do so no more than is necessary, since employees testifying before the Commissioner must have the last word as to who will have access to what they said. Further, the Court held that while the orders do infringe on DOJ counsel's freedom of expression, in context that infringement is justified.

Thus, the confidentiality orders imposed on counsel do not improperly interfere with solicitor-client privilege and do not unreasonably breach DOJ lawyers' Charter rights.

Future action

The Attorney General has appealed the Federal Court's decision.

Patient souls rewarded with release of the Analysis section of a Memorandum to Cabinet

Canada (Minister of Environment) v. Canada (Information Commissioner) 2007 FCA 404 (A-502-06), December 14, 2007 (Chief Justice Richard and Justices Nadon and Pelletier)

Summary

In a second round of court battles, the Information Commissioner argued in favour of disclosing the remaining portions of the Analysis section of a Memorandum to Cabinet related to a law that had been tabled in 1995. The Federal Court had ordered the disclosure of parts of the record that the Minister had sought to exempt but upheld some of the Minister's claimed exemptions. Agreeing with the Information Commissioner's position, the Federal Court of Appeal ordered the disclosure of the remaining portions of the record.

Background

When Ethyl Canada Inc. originally requested Cabinet discussion papers on the *Manganese-based Fuel Additives Act* in 1997, it was told by the Minister of Environment that these records were Cabinet confidences excluded from the *Access to Information Act*. The Information Commissioner investigated and took the position that the Analysis section of the Memorandum to Cabinet was a discussion paper and, as such, was not excluded from the Act and should be disclosed. The Minister disagreed.

Litigation ensued. The Courts agreed with the Information Commissioner's position that the document was a discussion paper to which the Act applied, regardless of its title, but decided that the Minister should be given the opportunity to review the document to verify whether any of the Act's exemptions applied.

The Minister did apply exemptions to certain portions of the record. The bulk of the record was released to the requester but the Information Commissioner, for the most part, did not accept that the exemptions invoked by the Minister applied.

A second round of court battles took place. The legal question was the applicability of the section 21 exemptions, which permit federal institutions to refuse to disclose certain information about the operations of government, including advice or recommendations developed by or for a federal institution or minister.

The Federal Court ordered disclosure of further portions of the record, but upheld the exemptions claimed by the Minister for other parts of the record. Both the Minister and the Information Commissioner were dissatisfied with this outcome. On appeal, three judges heard the case and all agreed that all of the Analysis section of the Memorandum to Cabinet should be released to the requester.

Issues

The Minister argued that the Federal Court had misapplied certain components of the section 21 exemptions and that the Minister's decision to apply those exemptions should be restored. The Information Commissioner agreed with the Federal Court's order to disclose the portions of the record it did but argued that the whole record should be disclosed because the Minister did not retain any power under section 21 to properly refuse to disclose the Cabinet discussion paper.

Reasons

Two of the three appeal judges decided to exercise their discretion under the Act to order disclosure of the whole record, rather than return it to the Minister to make a further decision on disclosure in accordance with the Court's reasons. These judges were "convinced that the integrity of the Government's decision-making process would not be compromised by the release of these sentences and words."

The third appeal judge agreed with the others that the entire record should be disclosed to the requester, but for different reasons. This judge agreed with the Information Commissioner's submissions on the fundamental incompatibility of the section 21 exemptions with Cabinet discussion papers, including the Analysis section of the Memorandum to Cabinet at issue. He saw the section 69 exclusion and the section 21 exemptions as being two mutually exclusive grounds. In this case, the Minister chose to rely on the exclusion set out in section 69 of the Act. The Minister could not, as a backup position, claim the benefit of the exemption for operations of government.

As stated by the Chief Justice, "Perhaps Homer had in mind this prolonged proceeding for the disclosure of information dating back over 12 years when he penned this famous line in *The Iliad*, 'The fates have given mankind a patient soul.'"

Future action

The decision was not appealed to the Supreme Court of Canada.

Government contractors may not raise the personal information exemption

SNC Lavalin Inc. v. Canada (Minister for International Cooperation) 2007 FCA 397 (A-309-03), December 12, 2007 (Justices Desjardins, Sharlow and Trudel)

Summary

SNC Lavalin (SNC) appealed a decision by the Federal Court that upheld the Canadian International Development Agency's (CIDA) decision to disclose portions of records requested under the *Access to Information Act*.

Background

CIDA decided to disclose portions of records that had been requested under the Act relating to an audit of a project involving SNC and CIDA. SNC challenged CIDA's decision to release portions of the requested records, on the grounds that the information consisted of "personal information" and/or "confidential third party information" relating to SNC, and therefore could not be disclosed. The Federal Court dismissed SNC's challenge on the grounds that, first, as a corporate third party, SNC was not entitled to argue that the information contained "personal information," but rather, could only resist disclosure if the information was "confidential third party information" relating to SNC, and that, second, SNC had failed to make its case that the information was "confidential third party information" in this instance.

SNC appealed the Federal Court's decision. The Information Commissioner intervened in the proceedings before the Federal Court of Appeal.

Issues

Should portions of the record not be disclosed on the grounds that they are "personal information"? Should portions of the record not be disclosed on the grounds that they are "confidential third party information"?

Reasons

The Federal Court of Appeal determined that although, as a result of the Supreme Court of Canada's decision in *H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General)*, [2006] 1 S.C.R. 441, corporate "third parties" are entitled to challenge institutions' decision to disclose requested records on the grounds that they contain "personal information," SNC had failed, in this instance, to establish that the information could be withheld on this basis. Specifically, the Court concluded that the information at issue was "about an individual who is or was performing services under contract for a government institution that relates to the services performed" so that it fit within an exception to the definition of *personal information*. Consequently, the information could not be withheld under section 19(1) of the Act.

The Federal Court of Appeal agreed with the Federal Court that SNC had failed to establish that the information at issue was confidential "third party information" exempted under either section 20(1)(b) or (c) of the Act. As a result, the Federal Court of Appeal upheld the Federal Court's judgment and CIDA's decision to disclose the requested records stands.

Future action

The decision was not appealed to the Supreme Court of Canada.

Severance requirement for records containing legal advice

Blank v. Canada (Minister of Justice) 2007 FCA 87 (A-563-05), March 1, 2007 (Justices Létourneau, Evans and Pelletier)

The decision was applied in two subsequent appeals involving the same parties and similar issues *(Blank v. Canada (Minister of Justice)*, A-292-06, 2007 FCA 147, April 12, 2007, and *Blank v. Canada (Minister of Environment)*, A-515-06, 2007 FCA 289, September 17, 2007).

Summary

This was an appeal by the Minister of Justice of a Federal Court decision ordering disclosure of portions of records that were protected by legal advice privilege. Mr. Blank, the requester, asked the Court of Appeal to order further disclosure of the records.

Background

This was one of many cases brought by Mr. Blank in his ongoing efforts to obtain all records relating to the Crown's unsuccessful criminal prosecution of him and his company for pollution and reporting offences. Many of the access requests, including the one at play in this appeal, were made to advance a lawsuit Mr. Blank has brought against the Crown regarding its attempts to prosecute him.

In this appeal, three relevant documents remained in dispute. The Federal Court of Appeal decided that the Federal Court had been wrong to order the disclosure of certain portions of the documents. However, it ordered that two documents be disclosed to Mr. Blank because the privilege attached to them had been waived.

Issues

Section 25 of the *Access to Information Act* requires disclosure of portions of records to which no exemptions apply. The Federal Court of Appeal was asked to determine whether the Federal Court had properly applied that requirement to certain records to which the legal advice exemption applied.

Reasons

The Court of Appeal's general determination was that "[s]ection 25 of the Act does not require the severance from a record of material which forms part of a privileged solicitor-client communication." The proper test for applying the severance requirement to a record containing legal advice was therefore to ask "whether the information is part of the privileged communication. If it is, then section 25 does not require that it be severed from the balance of the privileged communication."

Applying this principle to the records at issue, the Court of Appeal found that the Federal Court had misapplied the severance requirement and that it had ordered too much disclosure of information from solicitor-client privileged records.

However, Mr. Blank was able to demonstrate that two documents for which the exemption was claimed had previously been shown to him. The Court of Appeal stated that the privilege for those documents had therefore been waived and ordered their disclosure.

Future action

The decision was not appealed to the Supreme Court of Canada.

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Changes to the Access to Information Act

Changes to the Access to Information Act

The Federal Accountability Act

The *Federal Accountability Act* introduced substantive changes to the *Access to Information Act*, many of which came into force in 2007–2008. One important amendment modified the definition of *government institution*. As a result, about 70 institutions are now covered by the Act, including officers of Parliament and Crown corporations and their wholly owned subsidiaries. Specific exemptions and exclusions were also added for the institutions that became subject to the Act.

Another important amendment introduced as part of the *Federal Accountability Act*, and which came into force on September 1, 2007, adds a duty to assist requesters to the obligations of federal institutions under the law. This duty has several aspects:

- to make all reasonable efforts to assist a requester with an access request;
- to respond to the request accurately and completely;
- to provide timely access to the record in the format requested; and
- to do all of this regardless of the identity of the requester.

Duty to assist requires federal institutions to meet high standards in their dealings with requesters. With regard to access to information and the role of the Information Commissioner and our office, the duty to assist means two things:

- It implies a commitment to a culture of service and underscores the importance of access to information as a service.
- It changes duty to assist from a moral obligation to a statutory one—in fact, a statutory principle under which to interpret the Act.

The Commissioner and the Office have already taken this new approach to heart. Most of the cases this annual report presents reflect the importance of improving communications and service to requesters. The Commissioner has been very active in meeting heads of institutions to promote the duty to assist. We prepared a comparative study that looks at whether various provinces and territories and other countries have a duty to assist principle in their legislation and, if so, how they implement it. The study will be available on our website.

Lastly, section 8.1 of the Access to Information Regulations was added as a result of the new statutory duty to assist. This section allows an institution to decline to release a record in a requested format when it does not already exist in that format and lists factors institutions must take into account before converting records into the format requested, should they choose to do so.

Other changes

Other statutes brought about changes to the *Access to Information Act*. One noteworthy change was made to the definition of aboriginal government in section 13 to include the Tsawwassen Government (*First Nations Jurisdiction over Education in British Columbia Act*, S.C. 2006, c. 10).

Further, a new exemption was included in section 20 for information supplied in confidence by a third party for the preparation, maintenance, testing or implementation of emergency management plans that concern the vulnerability of infrastructure (*Emergency Management Act*, S.C. 2007, c. 15).

Appendix 3 contains a list of other changes made to the Schedules and Designation Order of the *Access to Information Act* this year.

Proposed changes to the Act

The Commissioner monitors Parliament's activities and advises the government and Parliament on proposals for reform of the *Access to Information Act* and on the implications of draft legislation on the right of access to information.

During 2007–2008, Parliament had two sessions. The first ended by prorogation on September 14, 2007; the second started on October 16, 2007. There were a number of Bills in existence at the time of prorogation, including Private Members' Bills, that proposed amendments to the *Access to Information Act*, but they all died on the Order Paper. Some Bills were reintroduced during the Second Session. For a list of Bills, see Appendix 3.

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Looking ahead

Looking ahead

We will be taking on a number of initiatives in 2008–2009, as well as an extensive program of work to continue the fundamental improvements the Office made in 2007–2008 and ensure we are always serving Canadians to the best of our ability.

Intake and early resolution unit

At the beginning of 2008–2009, our new intake and early resolution unit will begin work on a pilot basis. During the year, we will assess the success of this approach, examine lessons learned and adjust as necessary before rolling out the unit permanently.

We will put our service standards aside until such time as we can assess what impact the new unit has had on the timeliness of responses and our overall performance and productivity.

New approach to closing files

As a result of our successful work in responding to several hundred complaints launched in a very short time against the Canadian Broadcasting Corporation (see Chapter 4), we will no longer keep investigations open until such time as institutions provide final responses to requesters. When a reasonable target date can be established in a particular set of circumstances, we will consider the complaint resolved, monitor its progress and follow up where necessary. Should the institution not meet its target date, we may initiate our own complaint or the requester may do so on the basis that he or she has become aware of new grounds on which to complain.

Important cases

Canadian Newspaper Association

At year-end, we were in the final stages of completing our investigation into a complaint filed by the Canadian Newspaper Association against all federal institutions asking us to investigate the existence of special rules for processing access to information requests from the media. We will issue our findings in early 2008–2009, which we will also include in our special report to Parliament in October 2008.

Criminal Lawyers' Association

In 2008–2009, we will be watching with interest, and will consider seeking leave to intervene in a case before the Supreme Court of Canada involving the constitutionality of a section of Ontario's freedom of information legislation (*Ministry of Public Safety and Security et al. v. Criminal Lawyers' Association*, S-32172).

In a criminal trial for a 1983 murder, an Ontario court stayed the proceedings against two accused on Charter grounds, finding that the rights of the accused had been violated as a result of "abusive conduct by state officials" involving deliberate non-recording of evidence and non-disclosure of information. Following this decision, the Ontario Provincial Police (OPP) was asked to investigate the conduct of the police force involved and the prosecution. It reported that there was no evidence of attempts to obstruct justice but it did not release its report.

The Criminal Lawyers' Association submitted a request under Ontario's freedom of information legislation to the Ministry of Public Safety and Security seeking records concerning the OPP review.

Suzanne Legault, Assistant Commissioner, Robert Marleau, Information Commissioner and Andrea Neill, Assistant Commissioner

The Ministry refused to disclose documents, including the police report, on the basis of three exemptions under the Act.

The issue in the case is whether the public interest override (section 23), which applies only to some exemptions, complies with the guarantee of freedom of expression in the *Canadian Charter of Rights and Freedoms*.

Two judges of the Ontario Court of Appeal found that "s. 23 of the Act infringes s. 2(b) of the Charter by failing to extend the public interest override to the law enforcement and solicitor-client privilege exemptions ... and that this infringement cannot be justified under s. 1 of the Charter." A third judge dissented, finding no Charter violation. The Ministry was granted leave to appeal the decision to the Supreme Court of Canada.

25th anniversary of the *Access to Information Act*

The *Access to Information Act* and its companion legislation, the *Privacy Act*, came into force on Canada Day 1983. Both these laws have made important contributions to the advancement of freedom and democracy in Canada.

With the law on access, Parliament granted Canadians greater rights of access to records controlled by federal institutions and, by the same token, a way to hold decision makers accountable for their policies, decisions and actions with regard to government information.

After 25 years, the *Access to Information Act* continues to be sound in terms of its concept, structure and balance, but there is work that needs to be done to modernize it from legislative and administrative perspectives. The Commissioner stands ready to help Parliament and the government modernize the access to information system.

Throughout 2008–2009, there will be a number of activities to highlight the importance of both laws and the work of access to information and privacy specialists across government. We will be seeking the views of stakeholders and the general public on modernizing the access to information system. As a first step, we will hold a roundtable in June 2008 with stakeholders on administrative and legislative reform. We will also invite the general public to comment on a number of discussion papers.

Right to Know Week

Around the world, September 28 marks International Right to Know Day, dedicated to the promotion of freedom of information. The goal is to raise citizens' awareness of their right of access to government information. This year, Right to Know Week is from September 29 to October 3, 2008.

In Canada, Right to Know Week is celebrated to promote the right to information as a fundamental human right and to campaign for citizen participation in open, democratic government. This national event offers an opportunity for anyone interested in promoting freedom of information as a fundamental right to engage in an informed dialogue with Canadians of all ages.

Reviewing funding and operations

Recent changes brought about by the *Federal Accountability Act*, as well as our growing backlog of complaints, have led us to focus on how we serve our clients, including our investigations and administrative support. In 2008–2009, we will be doing a thorough review of our funding, operations, staffing levels and, in particular, our information technology systems (called an A-base review) to determine whether they might adversely affect our ability to fulfill our legislative mandate, which might put the integrity of our program at risk. This review will also help in identifying where we can optimize the use of our resources and improve the efficiency of our operations.

APPENDIX

1. Report of the ad hoc Information Commissioner
2. Ongoing court cases
3. Amendments and proposed amendments to the Access to Information Act

Appendix 1.
Report of the ad hoc Information Commissioner

The Access to Information Commissioner, through good work and integrity, has earned the respect and confidence of Canadians. The Ad Hoc Commissioner must maintain that high standard. On June 7, 2007 I was appointed Ad Hoc Information Commissioner. In that role, I was to receive and deal with complaints by members of the public against the Information Commissioner for refusal to disclose records from that office. My appointment expired on March 31, 2008, however, I agreed to stay on after the end of my term and until a new Ad Hoc Commissioner was ready to take over.

It is of the fundamental importance that the Ad Hoc Commissioner be completely independent of the Commissioner of Access to Information and his office. It may seem of little concern and, indeed, petty but the Ad Hoc Commissioner's independence must always be maintained. He or she will require a separate office, mailing address, telephone number and secretarial assistance. The Ad Hoc Commissioner must select and engage an investigating officer that will report only to him. The investigation officer or officers must be assured that they have the authority to gain access to documents as do the investigators employed by the Commissioner. It was necessary at the outset of my term to engage an investigating officer. She has worked conscientiously and well in her endeavours.

During the course of my term seven complaints were carefully investigated by the investigating officer and her report and conclusions submitted to me and duly considered. It is sufficient to note that all information which was not subject to statutory exemption was made available to the complainant.

In my view, it is necessary to maintain the office of the Ad Hoc Commissioner. This is necessary in order to ensure that someone independent of the Commissioner has considered the complaints made against the Commissioner were properly considered and appropriately dealt with. This position is a new one. At present, one investigating officer appears to be capable of reviewing all the complaints. If the number of complaints increase it will be necessary to consider engaging another investigating officer.

The Honourable Peter Cory

Appendix 2.
Ongoing court cases

Case	Next step	Issue
Control of records in a minister's office *Information Commissioner v. ND (Pugliese)*, T-210-05	Hearing in May 2008	Interpretation of "under the control of a government institution" and interplay between the concepts of minister (as head of a federal institution) and department (federal institution)
Control of records in the Prime Minister's Office *Information Commissioner v. Prime Minister (Throness)*, T-1209-05	Hearing in May 2008	Interpretation of "under the control of a government institution" and interplay between the concepts of minister (as head of a federal institution) and department (federal institution) Exemptions: sections 19 and 21
Control of records in a minister's office *Information Commissioner v. Transport Canada (Murray)*, T-1211-05	Hearing in May 2008	Interpretation of "under the control of a government institution" and interplay between the concepts of minister (as head of a federal institution) and department (federal institution) Exemptions: sections 17, 19 and 69
Prime Minister's agendas under the control of the RCMP *Information Commissioner v. RCMP (McGregor)*, T-1210-05	Hearing in May 2008	Exemptions: sections 17, 19 and 69
Information Commissioner's powers to issue confidentiality orders during investigations *Attorney General of Canada v. Information Commissioner of Canada*, A-492-07, A-568-07	Date of hearing to be set	Appeal of Attorney General of the decision in *Attorney General of Canada v. Information Commissioner of Canada*, 2007 FC 1024 Cross-appeal of the Office of the Information Commissioner on admissibility of portion of evidence For more information, see Chapter 5.
Privacy Commissioner's investigative powers under private sector legislation *Privacy Commissioner of Canada v. Blood Tribe (Office of the Information Commissioner is an intervenor)*, SCC 31755	Judgment reserved at the February 21, 2008, hearing	Under the *Personal Information Protection and Electronic Documents Act* the powers of the Commissioner to examine and assess documents asserted to be protected under the solicitor-client privilege during investigations

Case	Next step	Issue
Complainant seeking remedies against the Commissioner *Harvey Ernest Adams v. Attorney General of Canada*, T-1621-07	Motion pending before the Court	Challenge to the Commissioner's investigation Challenge of the decision of the head of the federal institution
Complainant seeking remedies against the Commissioner *Clint A. Kimery v. Minister of National Revenue*, T-2070-07, T-2207-07	Applications were quashed (by orders on January 28, 2008, and February 29, 2008)	Challenge to the findings of the Commissioner's investigations and of the Commissioner's conduct of the investigation Challenge of the decisions of the head of the federal institution
Complainant seeking remedies against the Commissioner *Clint A. Kimery v. Minister of National Revenue*, T-238-08	Kimery must file his evidence	Challenge to the findings of the Commissioner's investigations and of the Commissioner's conduct of the investigation
Complainant seeking remedies against the Commissioner *Clint A. Kimery v. Information Commissioner of Canada*, T-104-08, T-417-08	Kimery must file his evidence	Challenge to the findings of the Commissioner's investigations and of the Commissioner's conduct of the investigation
The Information Commissioner improperly named as a respondent *Pinaymootang First Nation v. Canada (Minister of Health) and the Information Commissioner of Canada*, T-25-08	Commissioner to file motion to be removed as respondent	Challenge of the decision of the head of the federal institution

Appendix 3.
Amendments and proposed amendments to the Access to Information Act

Changes to the Schedules and Designation Order in 2007–2008

Statute or Order in Council	Bill	Citation	Came into force	Change
An Act to implement certain provisions of the budget tabled in Parliament on May 2, 2006	C-13	S.C. 2006, c. 4	November 10, 2006	Adds an institution to Schedule I
Public Servants Disclosure Protection Act	C-11	S.C. 2005, c. 46	April 15, 2007	Creates new exemptions in sections 16.4 and 16.5 Adds institutions to Schedule I
Act to amend the Canada Pension Plan Act and the Old Age Security Act	C-36	S.C. 2007, c. 11	May 3, 2007	Schedule II: changes section 104.01 of the *Canada Pension Plan Act* and section 33.01 of the *Old Age Security Act*
An Act to amend the Canada Transportation Act and the Railway Safety Act	C-11	S.C. 2007, c. 19	June 22, 2007	Schedule II: changes section 51 of the *Canada Transportation Act* and section 29 of the *Competition Act*
An Act to amend certain Acts in relation to DNA identification	C-18	S.C. 2007, c. 22	June 22, 2007	Schedule II: changes section 6 of the *DNA Identification Act*
An Act to amend the Excise Tax Act, the Excise Act 2001 and others	C-40	S.C. 2007, c. 18	June 22, 2007 (section 134 is deemed to have come into force on June 22, 2003)	Schedule II: changes section 295 of the *Excise Tax Act* Adds a reference to section 211 of the *Excise Act, 2001*
Order 2007-1148			September 27, 2007	Adds an institution to Schedule I
Order 2007-1450			September 27, 2007	Adds an institution to the Designation Order
P.C. 2007-1685 and P.C. 2007-1686			November 2, 2007	Schedule II: proclaims the *Motor Vehicle Fuel Consumption Standards Act* in force

Statute or Order in Council	Bill	Citation	Came into force	Change
An Act to amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to another Act	C-25	S.C. 2006, c. 12	*Some provisions* December 14, 2007 Others: February 10, 2007	Schedule II: changes section 55 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and section 241 of the *Income Tax Act*
An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2007 and to implement certain provisions of the economic statement tabled in Parliament on October 30, 2007	C-28	S.C. 2007, c. 35	December 14, 2007	Schedule II: changes section 241 of the *Income Tax Act* and section 101 of the *Canada Petroleum Resources Act*

Proposed changes to the Act

Substantive changes

- **Bill C-7, *An Act to amend the Aeronautics Act***

  Second Session; was referred to as Bill C-6 in the First Session

  Last step: Third Reading Debates, November 2, 2007

  More provisions have been added to Schedule II, adding grounds for exemptions. The proposed sections provide that, in certain circumstances, information regarding the safety and security of aeronautical activities and information collected by flight data recorders would be confidential and would not be disclosed, except in some circumstances. Further, the Bill provides that specific confidentiality provisions would apply to investigations carried out by the Airworthiness Investigative Authority.

- **Bill C-426, *An Act to amend the Canada Evidence Act (protection of journalistic sources and search warrants)***

  First and Second Session

  Last step: Committee meeting, March 6, 2008

  The Bill would enact a statutory protection to ensure the confidentiality of journalistic sources. The disclosure of information to journalists would therefore be privileged unless very specific conditions were met. This could have serious implications for the manner in which some information under the control of federal institutions may be transmitted to the public and the integrity of the decision-making process on disclosure of information under the *Access to Information Act*.

- **Bill S-216,** ***An Act to amend the Access to Information Act and the Canadian Wheat Board Act***

  Second Session; was referred to as Bill S-224 in the First Session

  Last step: Second Reading Debates, March 13, 2008

  This Bill intends to amend Schedule I by removing the Canadian Wheat Board from the coverage of the Act.

- **Bill S-223,** ***An Act to amend the Access to Information Act***

  First Session

  Last step: Second Reading Debates, May 15, 2007

  The Bill provides for changes to the exemption in section 16.1 (exemption for agents of Parliament). It proposes to add the Auditor General and the Commissioner of Official Languages to the list of agents of Parliament whose records may, in some instances, be disclosed after completion of an investigation. The Bill also provides for a public interest override, which means that in every instance, except for information that relates to national security, the head of a federal institution would be required to disclose information if it is in the public interest to do so.

- **Bill C-470,** ***An Act to amend the Access to Information Act (response time)***

  Second session

  Last step: First Reading, October 30, 2007

  The Bill provides for a report to be given to the requester and the Office of the Information Commissioner explaining the delay and the projected completion date when a request is still outstanding 100 days after it was received. With this notice, the requester could decide to engage in the complaint procedure earlier or could decide to wait, depending on the explanation and the projected completion date. It would allow the Office to monitor the frequency with which federal institutions are late in responding to access requests.