



Annual Report, Information Commissioner, 1983-84

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"The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government."

Section 2(1)
The Access to Information Act

The Honourable M. Riel The Speaker The Senate Ottawa

June 29, 1984

Dear Mr. Riel:

I have the honour to submit to Parliament my first annual report. This report covers the period from July 1, 1983, until March 31, 1984.

Yours sincerely,

Inger Hansen, Q.C.

The Honourable L. Francis The Speaker The House of Commons Ottawa

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The First Report

The first report of the Information Commissioner, under the new Access to Information Act, covers from July 1, 1983, to March 31, 1984.

While our history is short, we have had our share of public attention. In fact, there are those who have suggested that the Access to Information Act is "no good", "a big disappointment", a "secrecy act", a "farce", or "the most deceptive piece of legislation ever passed by the federal government." As Commissioner, I am not prepared to make any such judgements at this stage.

There have, of course, been start-up problems. Dr. John Grace, the new Privacy Commissioner, and I were appointed June 2, 1983. We share offices and agreed to open our doors for business on July 1, 1983. The fact that privacy issues had previously been dealt with under Part IV of the Canadian Human Rights Act and that the public had waited a long time for freedom of information convinced us not to ask for long lead-time to get organized.

When we were appointed our offices had already been rented and some administrative staff engaged. But there were many problems to be solved, including action to fill staff vacancies. As with any new organization, there were unforseen difficulties too. For example, our so-called federal identity was lacking. Two independent commissioners sharing offices and administration required a common name.

Our federal identity was designated "Offices of the Information Commissioner and Privacy Commissioner" (OIPC). Consequently, telephone directories and the building where our offices are located at 112 Kent Street, Ottawa, listed us under "O". It took a lot of persuasion and pressure to get separate listings placed everywhere to indicate our functions and separate identities. Now the key words: information and privacy, appear in directories and elsewhere under "I" and "P" so that the public can find us.

This first report contains a summary of the rights and procedures under the Act, and discusses the investigations completed by the end of the reporting period.

In fact, 46 cases were completed -- primarily representing straightforward ones that included cases that obviously could not be supported, some about delays and those with only two competing interests; that of the applicant and that of the government. About one third of those were resolved in favour of the applicant. Only one of the completed cases involved a complex issue of law: The question of whether the Information Commissioner had the right to disclose exempted information to a lawyer acting for an applicant.

At the end of the reporting period 50 more cases had been completed by our investigators and were awaiting my decision.

Some information complaints raised issues complex both in law and fact and investigations that involved review of metres and metres of documentation. Few of these were completed by March 31, 1984. As a result, approximately 50 more cases – often the more complex ones, or the ones where several parties are entitled to make representations – were still under investigation.

This backlog is, of course, a concern and I intend to have it cleared up by the end of 1984.

Another matter of concern is the frustrations experienced by journalists who find that the Access to Information Act does not work to their short lead-time requirements.

Often these professionals require information within hours but the procedures of the Access to Information Act cannot react to those deadlines. In the long run, however, this may improve as we have seen occasions where as a result of a previous complaint, there is now a precedent for government institutions to release a type of information it once withheld. Such decisions may generate a more open attitude toward subsequent requests and thus accelerate the access procedure.

Other individuals too are often discouraged by the complex and drawnout processes necessary under the Act. It is true, in fact, that it takes a lot of patience to be a complainant.

One of the most serious problems, however, concerns the public's understanding of the Act.

A press conference was held when the Act came into effect but no other announcements or explanations have been disseminated to the public by the government.

When I appeared before the Parliamentary Committee to discuss the proposed new Privacy and Access to Information Acts, I suggested that if the Commissioner, or Commissioners, were required to create public awareness of the legislation, it would require a clause in the Act.

No such clause was incorporated; thus there is no mandate to actively engage in public education and no funds will be allocated for such activities.

I am concerned that in three years when Parliament reviews the Act, we will not possess the experience necessary to make relevant and appropriate amendments. I intend, therefore, to continue to encourage individuals to use the Act and to raise complaints not only to have specific government decisions reviewed but to discover what improvements should be made to the Act

Obviously, if the Information Commissioner works in obscurity, the public will not improve its awareness of the Act or its intent. As a consequence, I accept invitations to explain the Act to as many groups as I can. It may be argued that the controversial nature of the Act and the competing interests it serves will continue to focus public attention on freedom of information and the provisions of the Act. That may not be enough. Either the government or the Commissioner should actively inform the public of the meaning of the Act, the rights it grants to individuals and the importance of those rights in a modern democratic society.

Explaining legislation can be very dull so when I speak to students on the Access to Information Act I often ask them whether they favour unlimited access to government records. Not surprisingly the majority usually favours such access. I then introduce my uncopyrighted party game: "Airplane".

The game's scenario is simple: an airplane skidded off the runway; the passengers were unhurt save for one who died, apparently from a heart attack. For some unknown reason the passengers were left incommunicado at the airport under police protection.

Students are assigned to play the following roles: an arms dealer who holds a new patent on a weapon sought by many governments: a diplomat known to be engaged in high level peace negotiations; an aging actress and her lover, a well-known sex symbol; an RCMP officer who is escorting a prisoner-informer being taken to protective custody in another penitentiary: a student who was supposed to be at class: a Minister of Transport: a Secretary of State for External Affairs: a Solicitor General: a commissioner of the RCMP: the Privacy Commissioner: the Information Commissioner and a representative for the estate of the dead person. Finally, someone plays. the journalist who is assigned to the story and must obtain the passenger list under the Access to Information Act

The acting abilities of the students may vary but it is amazing how quickly they become protective of the specific interests of their characters.

It soon becomes clear that freedom of information invariably involves disclosure of information, collected by someone else, affecting yet another person's interests.

I then relate the interests they wish to protect to various exemptions under the Act and discuss whether the exemptions can be justified.

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The Information Commissioner's mandate is modelled on that of an ombudsman. My mandate is fixed by law; I deal with complaints in accordance with the Access to Information Act. I have the same powers as a judge to compel the production of evidence. The difference between my office and that of a general ombudsman is that, generally speaking, I deal with legal rights, not administrative issues, and the mandate is limited to one subject.

My primary duty is to cause a fair investigation into all complaints; to interpret the Act in favour of release and to argue for a narrow interpretation of any clause that seeks to prevent disclosure.

We use whatever talents we have to make the fact-finding process complete and objective. When evidence warrants it, the investigators and I press with forceful suggestions to insure that no record is held back when it should be released.

My motto is "don't push, persist" because I believe we would lose credibility and effectiveness if I were to jump to the conclusion that information has been improperly withheld. My personal views as to what should and what should not be disclosed cannot influence my judgment on the facts and the law.

I am, of course, concerned about the complexity of the Act and the delays experienced by the persons who use the complaint procedure. While there are reasons for the delays, I hope to show that I will not hesitate to make strong recommendations for release of information once they can be based on a thorough examination of the facts and an accurate interpretation of the provisions of the Access to Information Act.

I hope during the first three years of the Access to Information Act that this office will be able to help change attitudes wherever necessary, so that the spirit and the substance of the Act will live. I have told my critics that this can only be achieved by an unswerving insistence on full compliance with the law and a devotion to accuracy and fairness by the investigators and the Commissioner. I am confident that the conversion to openness can, in a vast majority of cases, take place without resort to confrontation and grandstanding.

Shop Hause

Access to Information - A Summary

The Access to Information Act gives every Canadian citizen and landed immigrant the right to see the records under the control of federal government institutions, unless that right has specifically been taken away by law.

The Act applies to most government departments, boards and commissions but not to Crown corporations that are in competition with the private sector. The Act also excludes from its application such records as Cabinet documents, published material and material already available in libraries and museums.

When a government institution refuses to grant access to a record, or part of a record, because the information is exempted it must cite the statutory ground in the Act on which the exemption is based or would be based if the record existed. (A government institution is not required to confirm whether a particular record actually exists because disclosure of its existence may be the very thing that needs to be withheld.)

A government institution is, however, under a statutory obligation to sever exempted portions of records and to provide the rest.

The government institution must provide applicants with material in the official language of their choice if the record is available in that language. When it is not available in the language requested, the head of the institution can direct that it is in the public interest to have a translation prepared within a reasonable period of time.

The government publishes an Access to Information Register of the records under the control of each institution. The register is updated both annually and through periodic bulletins. It describes each organization's functions, programs, and classes of records, its access procedures and the address of the access coordinator.

An individual sets the access wheels in motion by submitting a written application to a particular government institution and paying the \$5 application fee.

Other fees may be charged, such as \$2.50 for every quarter hour in excess of five hours taken to search for and prepare the record for disclosure or examination and .25 per page for copies of the record provided. There are various fees for microfiche copies and computer processing of records stored in machine readable form. No fees are charged for time spent to consider exemptions from access. Fees may be waived.

The institution has 30 days to respond to the access request. This period may be extended if the request is for a large number of records and responding in time would interfere with the institution's operations; if necessary consultations cannot be completed within the period or if notice is required to a third party whose interests are protected under the Act. When the time is extended the institution must give the individual notice of the delay, within the first 30 day period.

An individual who has been denied access to information can complain to the Information Commissioner. Complaints may also be made about delays, fees, extensions of time to provide access, language of the record provided, or any other matter relating to requesting or obtaining access under the Act. An unreasonable delay may be deemed a refusal to grant access. The Information Commissioner receives and investigates all complaints made under the Act, but complaints related to a request for access to a record must be made within one vear of the access request.

The investigation must be conducted in private and the Information Commissioner must provide all parties a reasonable opportunity to make representations.

The Information Commissioner can compel evidence in the same manner as does a superior court of record in that witnesses can be summoned and compelled to give oral or written evidence on oath and to produce requisite documents. If the Information Commissioner finds that the complaint is well-founded, the head of the government institution that has control of the requested record is given a report containing the findings and any appropriate recommendations.

The Information Commissioner may specify the amount of time that an institution has to reply to the report and to inform her of any action taken or proposed or the reasons why no action has been or will be taken.

The Information Commissioner reports the result to the complainant and, where the head of the institution has not taken any action or indicated that any action will be taken, advises the complainant of the right to apply to the Federal Court for review. The Commissioner may make the application for the complainant, if he or she consents.

The Information Commissioner reports annually to Parliament and may make special reports on urgent and important matters.

Third party intervention

Where a government institution intends to release a record that contains information which may affect a third party, the head of the institution must advise the third party and give it 20 days to make representations why the record should not be disclosed. If the institution still plans to disclose the record, it must advise the third party and give it a further 20 days to file an application with the Federal Court to seek to prevent the disclosure.

A third party has no right to complain to the Information Commissioner about release of a record. However, if the government institution accepts the third party's representations and decides against release, the applicant for the record may complain to the Commissioner.

Federal Court review

Under the Access to Information Act the Federal Court may only review the refusal to disclose a requested record. The Act gives the Court no explicit review powers over other matters about which individuals may complain to the Information Commissioner. This includes such matters as fees, unreasonable extensions of time to give access and the language of the records. But failure to give access within the required time may be deemed a refusal

The Court can order or forbid the release of a record or make such other orders as it considers appropriate. The Court may award costs to an unsuccessful applicant if the case involves important new principles.

When access is refused

An individual who has been refused access to a record must lodge a complaint with the Information Commissioner and receive a report before asking for a review by the Federal Court If the Commissioner finds that the complaint is well-founded and the institution still refuses to disclose the record, the individual has 45 days to ask the Federal Court for judicial review of the government's decision. The Court may hear an application filed after the 45 days have expired but it is not obliged to do so. Application for a judicial review can be made even when the Information Commissioner does not recommend release of the record as it is the decision of the institution, and not that of the Information Commissioner, which is subject to Court review.

The Information Commissioner may, with the consent of the complainant, apply for a judicial review of any government decision to refuse to disclose the record requested. The Information Commissioner may also appear before the Court on behalf of a complainant who has applied for a review. In any other case the Information Commissioner may, with permission of the Court, appear as a party to the review. Where the Information Commissioner has applied for a judicial review, the complainant may still appear on his or her own behalf.

Once a judicial review has begun, the head of the institution which refused access to the record must immediately give written notice of the Court proceedings to any third party that it had already notified, or would have notified, if it had originally intended to disclose the record requested. The third party has the right to appear as a party to the judicial review.

Court procedures

Although the Federal Court can make special rules to deal with applications for review made under the Access to Information Act, it had not done so by March 31, 1984.

The Court has the right to examine any record to which the Act applies but it is obliged to take every reasonable precaution to prevent disclosure of the record (or even of its existence where the government institution has not indicated whether such record exists). The Court may hear representations made by the parties privately (ex parte) or with the public excluded (in camera).

Should a Court application involve a record which the government institution has refused to disclose on grounds that it relates to international affairs or national defence, the Associate Chief Justice, or his delegate, must hear the application in camera and, if the head of the institution so requests, at a hearing in the National Capital Region. The government institution must be given the opportunity to make representations privately.

In judicial review the Act places the onus on the government institution to establish its authority to refuse disclosure of a particular record or part of a record.

During the period under review by this report there were no applications made for judicial reviews of decisions to refuse disclosure. Two applications were filed by third parties for review of the government's proposal to release certain information.

Processing Complaints

This part of the report discusses the complaint investigation process and how it dealt with the issues that came before the office of the Information Commissioner in the first nine months of the new Act

The terminology used in the complaint handling and reporting process is explained under Terminology of Tables (pages 12 and 13) and is helpful both in reading the text and the tables.

Complaints by Number

During the period covered by this report 150 complainants contacted the Office of the Information Commissioner. This report covers the outcomes of 46 completed investigations. The balance of the complaints were still under investigation at the end of the reporting period.

In some instances one individual raised a number of complaints which were investigated and dealt with separately. In other cases a complainant has disagreed with several exemptions applied to different documents in the same record. Such complaints are registered as a single issue.

The Office treated complaints as distinct when they dealt with completely different subject matters or raised issues of denial of rights under the Act that were fundamentally different. Separate reports are also made when two distinct findings are made as a result of one investigation. Complaints made by different individuals and complaints made against different institutions were counted separately even though they may have dealt with the same subject matter or raised the same general issues of denial of rights.

During the reporting period there were only two instances which led to multiple investigations: one letter of complaint generated four separate complaints and another brought out two separate complaints.

This report may not be typical of future reports from the Information Commissioner. The complaints which were cleared in the Office's first nine months (and which are the only ones covered by this report) can, for the most part, be divided into two groups: the simple issues, which reflect little more than the difficulties experienced by government institutions in becoming familiar with the Act and setting new procedures in motion; and the others, which presented fundamental problems of interpretation and principle. Future reports will contain more of the latter.

In the first nine months of operation no formal recommendations have been made by the Information Commissioner as the more complex cases were still under investigation at the end of the reporting period.

In many instances items reported as "inquiries", described elsewhere in this report, took the form of complaints. Often these inquiries concerned the lack of information about rights under the Act. If they were satisfied by an "on the spot" explanation and did not require any follow-up activity they were not classified as complaints.

Handling a complaint

Most complaints arrive by mail at the Office of the Information Commissioner

Under the Act, the Information Commissioner may exercise or delegate to investigators very broad powers of investigation, including the power to summon witnesses and enter government premises.

Each complainant is assigned an experienced investigator who follows up the complaint until it is informally resolved or made the subject of a formal finding by the Information Commissioner. Usually the investigator telephones or meets with the complainant to ascertain the precise nature of the complaint and gather additional facts. Next, the investigator contacts the information coordinator and other officials of the relevant government institution to discuss the problem.

Complaints frequently arise from misunderstandings or lack of information and the investigator is often able to solve these problems. He then reports to the Commissioner and the officials involved and the Commissioner writes a closing letter to the complainant.

If the matter is not resolved at the administrative level, the investigator will gather whatever information is considered necessary and prepare a report for the Information Commissioner, with suggestions for action.

While the Information Commissioner is required to give the complainant, the head of the government institution, and any third parties who may be affected by the disclosure of information a reasonable opportunity to make representations, no one is entitled as of right to a hearing or to have access to the representations made by any other person.

Should the complaint not be resolved in the course of the investigation, or informally by the Information Commissioner after the investigation is completed, the Commissioner provides a report of the results of the investigation to the complainant and the government institution.

When the Information Commissioner considers the complaint well-founded she advises the complainant and the head of the government institution of the finding and appropriate recommendations. The Act permits the Information Commissioner to give prior notice of the finding and recommendations to the head of the institution and to require a response within a given period of time.

The Information Commissioner informs a complainant of the results of the investigation by letter. If the complaint is not supported, the complainant is offered an opportunity to make additional representations or if the complainant prefers, to have a formal finding for use before the Federal Court. When the head of the institution rejects the Commissioner's recommendation for release the Commissioner may offer to conduct the case before the Federal Court if the complainant wishes. The Commissioner may be a party to proceedings before the Federal Court even where the Commissioner does not fully support the complainant's position.

Terminology of Tables

Table 1 (Category of Complaint)

Exemption — The complainant disagreed with the decision of the government institution to exempt from disclosure all or part of the record requested.

Exclusion — The complainant disagreed with the determination by the government institution that the Act excludes from its scope all or part of the record requested.

Severability — Where a record was exempted from disclosure, the complainant suggested that too much had been withheld or that portions of an exempted record could have been severed from it and released.

General — The complainant alleged that a record requested was withheld without any reason or that the request for access had not been dealt with appropriately by the government institution.

Fees — The complainant considered the fee required to be paid for a record to be unreasonable.

Access Given Late — The complainant alleged that access to a record requested was given after the time limit prescribed by the Act or set by the government institution.

Unreasonable Extension of Time — The complainant considered the time set by the government institution to give access to a record to be unreasonable.

Language — The complainant alleged that access to a record or part thereof was not given in the official language specified when the request was made or that the delay in giving access in the preferred language was unreasonable.

Register — The complainant was dissatisfied with the publications or bulletins which the government is required to publish describing its organizations, functions, programs, classes of records, administrative manuals and addresses of its Access to Information Coordinators.

Miscellaneous — This includes complaints not categorized above, for example, lack of cooperation, cumbersome procedures and unclear explanations.

NOTE: Under Section 71(c) of the Act, each government institution has until July 1, 1985, to provide facilities at its headquarters and such other offices as is reasonable where the public may inspect manuals used by the government institutions to administer or carry out their programs and activities. Therefore, at July 1, 1985, the Information Commissioner will deal with complaints about such facilities.

Well-Founded — Following investigation, the Information Commissioner found that the complainant had been denied a right under the Act.

Not Supportable — Following investigation, the Information Commissioner found that the complainant had been accorded every right to which he or she was entitled under the Act or that the complaint was outside the mandate of the Commissioner.

No Finding — The Information Commissioner did not make a finding because the complaint was resolved or disposed of during the course of the investigation.

Table 2 (Disposition of Complaints)

Recommendation — The complaint was well-founded and the Information Commissioner recommended to the institution that specific remedial action be taken.

Dismissed — The complaint was not supportable.

Completed During Investigation — The complaint was settled or otherwise resolved during the investigation.

Abandoned — The complainant asked that the investigation be discontinued or the complainant could not be located.

Unable to Assist — The Information Commissioner was unable to assist because: the complaint was outside the Commissioner's jurisdiction; the complainant declined to take steps necessary to complete the investigation; the complainant did not respond to suggestions or queries from the Office of the Information Commissioner; the complainant was unable or unwilling to accept suggestions or advice; there was nothing to be gained by continuing the investigation.

The basis of complaints

More than half of the 46 investigations completed during the reporting period were based on a refusal to disclose all, or some, of the record requested.

Almost a third of the complainants alleged delays and the remainder objected to fees or miscellaneous matters. No complaints dealt with the language of documents or the Access Register.

Tables 1, 2 and 3 all show complaints by category.

Table 1, which features the Information Commissioner's findings by category of complaint, indicates that more than twice as many cases were not supportable as were well-founded. This may give the impression that most complaints were not legitimate. However, Table 2, which shows the disposition of cases, puts a different complexion on the issue because 16 of the

TABLE 1
FINDINGS BY CATEGORY OF COMPLAINT

Category	Well-founded	Not Supportable	No Finding	Total	
Refusal: -Exemption	-	7	5	12	
-Exclusion	-	4	1	5	
-Severability	-	-	1	1 1	
-General	-	1	7	8	
Fees	-	-	5	5	
Delay: -Access given late	6	1	2	9	
-Unreasonable extension	-	1	4	5	
Language	-	-	-	<u>.</u>	
Register	-	-	-	-	
Miscellaneous	-	1	-	1	
Total	6	15	25	46	

^{*}The Tables cover the 46 investigations that were completed during the year. The balance of the total number lodged were still under investigation at the end of the reporting period.

25 cases that produced no finding were completed during investigation. Generally, this meant that during the investigation some action was taken which satisfied the complainant. Furthermore, 15 of the "no finding" cases were abandoned.

Table 3 shows the action taken by the government institution for each category of complaint. In every case where a complaint of refusal was resolved in the course of investigation, the complainant received some or all of the information initially withheld.

Although six complaints were well-founded they did not require recommendations by the Information Commissioner because all six related to a delay in getting access to information and the records were disclosed during the investigation. In one case the complaint was withdrawn because the lateness made useless the information requested.

At the close of the period covered by this report, cases which might warrant formal recommendations were still under investigation or mediation with the relevant government institutions.

TABLE 2

DISPOSITION BY CATEGORY OF COMPLAINT

Category	Recommen- dation	Dismissed	Com- pleted During Investi- gation	Aban- doned	Unable to Assist	Total
Refusal: -Exemption	-	7	5	-	-	12
-Exclusion	-	4	1	-	-	5
-Severability	-	-	1	-	-	1
-General	-	1	1	2	4	8
Fees	-	-	-	3	2	5
Delay: -Access given late	-	1	5	1	2	9
-Unreasonable extension	-	1	3	-	1	5
Language	-	-	-	-	-	-
Register	_	-	-	-	-	-
Miscellaneous	-	1	-	-	-	1
Total	-	15	16	6	9	46

TABLE 3

ACTION TAKEN BY GOVERNMENT INSTITUTIONS

Category of Complaint	Where Recommendation Made By Commissioner		Where Completed During Investigation		Where Dismissed, Abandoned or Unable to Assist					
	Government action taken									
Refusal:		cord losed Part	No Disclosure	Record Disclosed All Part		Disclosed		Disclosed		No Disclosure
-Exemption	-	-	-	3	2	7				
-Exclusion	-	-	-	1	-	4				
-Severability	_	-	-	-	1	-				
-General	-	-	-	-	1	7				
	Reduced Waived or Refunded		No Action	Reduced Waived or Refunded		No Action				
Fees	-		-			5				
Delay:	Accepted by government		No Action	Accepted by government		No Action				
-Access given late -Unreasonable extension	_		-	5 3		4 2				
	Corrective Action		No Action	Corrective Action		No Action				
Language		-	•	-		-				
	Corrective Action		No Action	Corrective Action		No Action				
Register		-	-	-		-				
		Corrective No Action Action		Corrective Action		No Action				
Miscellaneous		-	•	-		1				

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DISTRIBUTION OF COMPLAINTS AMONG GOVERNMENT INSTITUTIONS

Departments and Ministries of State	Total
Agriculture	1
Energy, Mines and Resources	1
Environment	2
External Affairs	3
Fisheries and Oceans	1
Industry, Trade and Commerce	2
Justice	1
Labour	1
National Defence	2
National Health and Welfare	1
National Revenue	4
Public Works	1
Regional Economic Expansion	1
Secretary of State	5
Transport	2
Agencies	
Atomic Energy Control Board	1
Bank of Canada	1
Canada Deposit Insurance Corporation	1
Canada Employment and Immigration Commission	3
Canadian International Development Agency	1
Canadian Transport Commission	1
Correctional Service of Canada	1
Federal Business Development Bank	1
Privy Council Office	1
Public Archives	1
Royal Canadian Mounted Police	6
Total	46

Distribution of complaints

Table 4 shows the distribution of complaints closed during the reporting period by the government institutions which were challenged. These figures are for information purposes and are not a measure of compliance with the Access to Information Act by the government institutions. Several factors must be borne in mind when reviewing Table 4.

- the figures represent only the 46 complaint investigations which were completed during the reporting period. There were 104 complaints under active investigation on March 31, 1984.
- about a third of the complaints were well-founded or led to corrective action on the part of the government institution. The rest were dismissed, abandoned or disposed of with no action having been recommended by the Information Commissioner or taken by the government institution.
- some government institutions receive greater numbers of requests for access to records than do others.

- some government institutions, by the nature of their programs, deal with information which is less likely to be disclosed and hence, more likely to lead to complaints.

Future annual reports may provide a more meaningful breakdown of complaints. For the present, only a qualitative assessment of the responses of government institutions can be made. The case descriptions in this report are intended to serve that purpose.

About the complaints

Table 5, the geographic origin of complaints, shows that more complaints originated in Ontario than in all the other provinces combined.

No conclusions need be drawn from this as complaints from Ottawa may well occur because complainants find it convenient to have representatives or agents in Ottawa make access requests for them.

Complainants were not asked their reasons for seeking access to government records and their locations and unsolicited explanations did not provide a reliable profile of who is interested in the Act

The records do enable the Office to determine the sex of the complainant (since only individuals and not corporations have rights of access under the Act) as well as the language of their choice. However, this does not lead to an accurate profile because the complaint, as noted earlier, may be lodged on behalf of another person.

TABLE 5

GEOGRAPHIC DISTRIBUTION OF THE ORIGIN OF COMPLAINTS

Origin	Total
Yukon Territory	
Northwest Territories	
British Columbia	2
Alberta	3
Saskatchewan	3
Manitoba	5
Ontario	28
Quebec	5
New Brunswick	
Nova Scotia	
Prince Edward Island	
Newfoundland	
Outside Canada	
Total	46

Summaries of Cases

The following case descriptions are listed by category of complaint. In each case the description names the government institution, provides the results and a brief narrative of the facts. Statutory references are to provisions in the Access to Information Act. Several similar instances have been grouped together.

In keeping with instructions in the Act, no information that would disclose an exempted record is given and the descriptions do not include details which might identify the complainant or other persons connected with the case. References which would indicate the gender of the complainant have randomly been altered.

The order of presentation is: Access (exemptions - by section number), Access - Severability, Access - General, Fees, Delay and Miscellaneous.

Refusal of Access

Exemptions

Institution: Secretary of

State

Complaint: Access refused - exemption

(section 14)

Finding: Not supportable Disposition: Dismissed

The complainant objected to a disclosure exemption made on the ground that the document requested contained information on federal-provincial deliberations and strategy adopted, or to be adopted, by the federal government. The Information Commissioner found that the documents indeed dealt with extremely sensitive federal-provincial negotiations and that the refusal was justified.

* * *

Institution: Secretary of

State

Complaint: Access refused - exemption

(section 14)

Finding: None

Disposition: Completed during investigation

In this case several documents were exempted from access on the basis that their release would injure federal-provincial affairs. The investigator suggested that the department consult the community group which authored one of the documents (a letter) about its release. The community group consented and the document was released to the applicant.

* * *

Institution: Department of National Defence

Complaint: Access refused - exemption

(subsection 15(1))

Finding: Not supportable Disposition: Dismissed

The complainant asked to see records regarding the number of unauthorized overflights of Canadian territory by aircraft of the Soviet Union.

The request was refused because disclosure would involve military defence intelligence and could damage international affairs, the defence of Canada or an allied state and the detection, prevention or suppression of subversive or hostile activities.

The complainant argued that disclosure of the number, location, dates and aircraft types involved in overflights would have no injurious effects. Since the onus is on the government to justify an exemption. National Defence provided enough information for the Information Commissioner to form the tentative opinion that disclosure could cause one or more of the anticipated injuries. The complainant could not be told the basis for the Information Commissioner's tentative decision because the Commissioner is prohibited from disclosing information provided for investigations. The complainant did not act upon an invitation to make further representations in favour of release and the complaint was subsequently dismissed.

* * *

Institution: Royal Canadian Mounted Police

Complaint: Access refused - exemption

(subsection 16(3))

Finding: None

Disposition: Completed during investigation

The complainant believed that he was denied an insurance claim because information about a loss of property was provided by the Royal Canadian Mounted Police (RCMP) to a claims investigator of a provincial government insurance office. His application for access to the report was refused by the RCMP on the ground that the record contained "information that was obtained or prepared by the Royal Canadian Mounted Police while performing policing activities for a province or a municipality pursuant to an agreement made under section 20 of

the Royal Canadian Mounted Police Act." This exemption is mandatory where the federal government has accepted the request of the province and agreed not to disclose such information. This situation applied in this

During the investigation by the Office of the Information Commissioner, the provincial authorities made the report available to the complainant.

Institution: Bank of Canada

Complaint: Access refused - exemption (subsection 19(1))

Finding: Not supportable Disposition: Dismissed

The Bank of Canada refused to fulfill a request for the names and addresses of holders of matured but unredeemed Canada Savings Bonds. The denial was issued on the ground that the Act prohibited release of this personal information. The complainant suggested that most of the bond holders were never advised that their bonds had expired (and were no longer earning interest) and that the bank was taking advantage of these people.

The bank admitted to the Information Commissioner's investigator that some people may be unaware of their matured bonds. However, the bank notifies all holders of mature bonds when sending out the final interest cheque and again six months after maturity. The bank also uses advertising for its new bond series to advise the public that a specific bond series has reached maturity.

Although the system cannot guarantee that every holder of a matured bond will be notified, the campaign annually brings in a flood of redemptions and it is quite effective as evidenced by the fact that the number of unredeemed bonds represented only .31 per cent of the total bonds outstanding as of July 31, 1983.

The investigator asked the bank whether information about persons dead for more than 20 years could be released because such information does not apply under the Act. The bank said that it had no practical way of determining which bond holders, if any, died more than 20 years ago and that a manual search of early noncomputurized records of each outstanding bond holder would unduly interfere with the bank's operations.

The bank offered to do a name search in any case where the complainant could show authority from an individual or his estate to get information. Similarly, the Information Commissioner suggested that if the complainant could produce evidence that an individual had been dead for more than 20 years the information would no longer be protected from disclosure.

* * *

Institution: Public Archives

Complaint: Access refused - exemption

(subsection 19(1))

Finding: Not supportable Disposition: Dismissed

A request for access to records of a naval board of inquiry held in Halifax in 1945 was first rejected but Archives later agreed to release descriptive data while obliterating names and other personal identifiers.

The complainant subsequently told the Information Commissioner that he did not believe that the information withheld was only a small part of the entire package requested. The Information Commissioner inspected the whole record and confirmed that only the names and serial numbers of navy personnel had been withheld. The complaint was accordingly dismissed.

* * *

Institution: Canadian International Development Agency

Complaint: Access refused - exemption

(subsection 19(1))

Finding: Not supportable Disposition: Dismissed

Disclosure was refused to a complainant who had sought access to the personal records CIDA held on another individual. The complainant believed that there was administrative documentation leading to an alleged reevaluation of a position and that this should not qualify as a personal information exemption. The Information Commissioner's investigator found no such records and the Commissioner so informed the complainant. The complaint was dismissed.

Institution: Canada Employment and Immigration

Complaint: Access refused - exemption (subsection 19(1))

Finding: Not supportable Disposition: Dismissed

Portions of an internal audit on administration of CEIC were exempted from access. In the course of an investigation the CEIC withdrew part of its exemption but continued to withhold the name of one individual because its release would identify and reveal personal information about other individuals. The Information Commissioner agreed with the CEIC and dismissed the complaint.

* * *

Institution: Fisheries and Oceans

Complaint: Access refused - exemption

(paragraph 20(1)(b))

Finding: None

Disposition: Completed during investigation

The complainant wanted a copy of the 1983 preliminary report on a sealing gun. Access was refused because the report contained confidential technical information supplied by a third party. The investigator showed the department that the report dealt with product testing carried out by, or on behalf of, the government. Subsection 20(2) of the Act specifies that the government cannot as a rule refuse disclosure of confidential technical information on product testing. The department released the report,

exempting a few portions which, if released, could threaten the safety of individuals. (This exemption is authorized under section 17 of the Act.) The complainant was satisfied with the result

* * *

Institution: Federal Business
Development Bank
Complaint: Access refused - exemption

(paragraph 20(1)(b))

Finding: None

Disposition: Completed during investigation

This case occurred through a request to see a "group life insurance contract between the Federal Business Development Bank and Canada Life." The request was turned down because the contract was said to be confidential commercial information supplied to a government institution by a third party. The investigation disclosed that the complainant was, or had been, insured under the policy. After representations made by the investigator, the complainant was given a copy of the policy with only others' personal information exempted.

Institution: Canada Deposit Insurance

Corporation

Complaint: Access refused - exemption

(paragraph 20(1)(c))

Finding: Not supportable Disposition: Dismissed

In this case, one line had been deleted from a record which the complainant had obtained. The exempted portion of the record was the name of a party which had received a loan from the CDIC. The reason given for the exemption was that disclosure of the information could cause material financial loss or gain to, or prejudice the competitive position of, a third party.

The complainant argued that shareholders and depositors were entitled to know the financial risks of dealing with the particular party and that it was improper for the federal government to protect incompetent management by keeping confidential the name of a party who had received financial assistance.

The Information Commissioner concluded that release of the name might lead to material financial loss to third parties. The government institution was obliged under the Act to withhold the information and the complainant's "public interest" argument was not a relevant factor under paragraph 20(1) (c). The exemption was justified in the circumstances and the complaint was dismissed.

Institution: Department of the Environment

Complaint: Access refused - exemption

(section 26)

Finding: None

Disposition: Completed during investigation

Environment Canada refused a request for a report on the "socio-economic impact analysis of leaded gasoline" because it was planning to publish the report within 90 days. Before the 90 days had expired another individual complained about not receiving the report. During the investigation of the second complaint, the department decided to release the report to both parties.

Exclusions

Institution: Department of

Agriculture

Complaint: Access refused - exclusion

(paragraph 69(1)(b))

Finding: None

Disposition: Completed during investigation

The complainant was denied access to a report described as concerning the beef cattle industry. The Department of Agriculture said that the report was not subject to the Access to Information Act because it was a discussion paper presenting background explanations and analyses of problems or policy options for a Cabinet decision.

During investigation by the Office of the Information Commissioner, the department released the report and no further action was necessary.

Institution: Secretary of

Complaint: Access refused - exclusion

(section 69)
Finding: Not supportable
Disposition: Dismissed

The complainant objected when the institution said that the records requested contained confidences of the Queen's Privy Council and were excluded from the right of access under the Act. The Information Commissioner asked the applicant to help provide evidence that the particular records requested might not be properly categorized as Cabinet confidences so that a basis for an investigation could be established. No reply was received from the complainant and the Information Commissioner dismissed the complaint.

* * *

Institution: Department of Industry, Trade and Commerce Complaint: Access refused - exclusion

(section 69)
Finding: Not supportable
Disposition: Dismissed

The complainant sought copies of the Cabinet discussion papers and background material relating to a recent Cabinet decision. His request was framed in language almost identical to that of section 69, which provides that the Access to Information Act does not apply to such records. Understandably, the request was turned down by the department and the Information Commissioner could not support the complaint. The complainant informed the Commissioner that a new access

request would be filed avoiding any specific request for Cabinet

* * *

Institution: Department of lustice

Complaint: Access refused - exclusion (paragraph 69(1)(a) and (b))

Finding: Not supportable Disposition: Dismissed

Application was made for access to a study concerning possible forms of redress for actions taken against Canadians of Japanese origin during World War II. The request was rejected on the ground that the report was part of a background paper for a Cabinet decision and therefore not covered by the Act. A complaint was filed with the Information

Generally, the provisions in the Act excluding Cabinet documents place such reports beyond investigation by the Information Commissioner, An investigator from the Commissioner's office confirmed that the Privy Council Office had directed the Department of Justice to conduct a study and prepare a report as described by the complainant. The Information Commissioner found that the report was indeed excluded from access. However, it was suggested that the complainant consider the "sunset" provisions in subsection 69(3) which might make the discussion papers available at a later date. (Individuals may ask to see these documents once the decisions to which they relate have been made public or, where the decisions have not been made public, four years after the decisions were made.)

Institution: Department of National

Revenue (Taxation)

Complaint: Access refused - exclusion

(paragraph 69(1)(c) and (g))

Finding: Not supportable Disposition: Dismissed

In response to a request for certain records dealing with income tax, the applicant was refused access to one document and part of another. The investigation provided sufficient evidence to establish that the exempted records did contain confidences of the Queen's Privy Council. The Information Commissioner's office explained to the complainant that the Information Commissioner is also excluded from examination of these records.

Severability

Institution: Department of National

Revenue (Customs and Excise)
Complaint: Access refused – severa-

bility (section 25)

Finding: None

Disposition: Completed during investigation

The case resulted from a request for access to a "report or memorandum or recommendations regarding the tariff classification of modems, datasets, datacouplers and multiplexers" held by Revenue Canada, Customs and Excise Branch. When the request was denied, by virtue of section 21 dealing with internal government documents, a complaint was filed with the Information Commissioner.

The investigator suggested to the department that it consider releasing the report subject to the exemption of portions that clearly contained restricted material. The department held that this approach would make the released portion meaningless. The Information Commissioner convinced the department to release the severed portions anyway.

* * *

General

Institution: Department of Public Works, Atomic Energy Control Board, Privy Council Office, Department of External Affairs

Complaint: Access refused - general

Finding: None

Disposition: Unable to assist

Four separate complaints occurred from requests made for access to records before the Access to Information Act came into force. The Information Commissioner had no authority to investigate since requests had not been made under the Act, and so advised the complainants.

Institution: Department of National Health and Welfare Complaint: Access refused - general

Finding: None

Disposition: Completed during investigation

This was one of the first complaints resolved by the Office of the Information Commissioner. It concerned an individual who had experienced difficulties in obtaining records from Health and Welfare Canada. The information investigator found that the complainant had not made a formal access request under the Act. The investigator discussed the subject with the department's Access to Information Coordinator and the complainant received certain records and was satisfied

* * *

Institution: Department of National Revenue (Customs and Excise) Complaint: Access refused – general

Finding: None

Disposition: Abandoned

The complainant contacted the office of the Information Commissioner about difficulties obtaining requested records. The request for assistance was withdrawn when the records were released.

* * *

Institution: Correctional Service Canada

Complaint: Access refused - general

Finding: None

Disposition: Abandoned

This case concerned access to certain negotiations between the CSC and a third party. The investigation found that no formal access request had been made under the Act. The Information Commissioner's office suggested that such a request be made but the complainant did not again contact the office.

* * *

Institution: Canada Employment and Immigration Commission

Complaint: Access refused - general

Finding: Not supportable Disposition: Dismissed

This applicant claimed he was refused access to information but investigation disclosed that no formal request had been made. The Information Commissioner's office explained the procedures to the complainant and suggested that a formal application be presented to CEIC.

Fees

Institution: Department of Regional Economic Expansion

Complaint: Fees Finding: None

Disposition: Unable to assist

An individual who requested access to records without submitting the \$5 application fee complained that the department would not process his application. The Information Commissioner explained that the application fee had to be paid before the request could be processed and action taken on a refusal complaint.

* * *

Institution: Department of External Affairs

Complaint: Fees Finding: None

Disposition: Abandoned

This complaint was filed after the Department of External Affairs estimated that information requested on financial support from outside Canada for the Communist Party of Canada or other pro-communist organizations in Canada since 1970 would cost about \$2,000. The department asked for a \$1,000 deposit before proceeding and a complaint was lodged about the amount of the fees.

The investigator learned that a six-hour sample search, done by the department at no cost to the applicant, indicated that a complete search of all the relevant records would take more than 200 hours. The Information Commissioner was satisfied that, although high, the fee quoted was reasonable in the circumstances. However, the Information Commissioner was concerned that an applicant might pay a substantial fee only to find that the records in question would be exempted under the Act. She suggested that the information might be more easily and cheaply retrieved by the RCMP. The applicant subsequently withdrew the complaint against External Affairs and no further contact occurred.

Institution: Royal Canadian Mounted Police

Complaint: Fees Finding: None

Disposition: Abandoned

Two complainants asked for an investigation into access to records fees charged by the RCMP. In each case, the Information Commissioner suggested that the RCMP be asked to waive the fees first. Neither complainant followed up the matter.

Institution: Department of Industry, Trade and Commerce

Complaint: Fees Finding: None

Disposition: Completed during investigation

In this case, the Information Commissioner also asked the complainant (a publisher) to provide the department's response to his request for a fee waiver so that the Commissioner would have authority to act.

This occurred after the publisher objected to preparation and photocopying charges because the publisher intended to make the information available to the general public.

The Information Commissioner told the applicant that the office would conduct a separate study into the issue of whether a general fee waiver for the media was in the public interest.

* * *

Delays

Institution: Department of the Environment, Canada Employment and Immigration Commission, Department of Transport, Secretary of State

Complaint: Delay - access given late

Finding: Well-founded

Disposition: Completed during

investigation

In three cases government institutions failed to give access to records within an extended time limit. In a fourth case, a department did not advise the applicant that more than 30 days would be required to produce access.

The delays were found to have been caused by the newness of the Access to Information Act. The Information Commissioner advised the heads of each institution that the complaints of delay were well-founded. In each instance, the information requested was eventually provided.

* * *

Institution: Royal Canadian Mounted Police

Complaint: Delay - access given late

Finding: Well-founded
Disposition: Unable to assist

This complaint followed an August 23, 1983, request to the RCMP for access to certain information. By September 23, 1983, no information had been provided nor had any notice been furnished, as required under the Act, as to when it would be forthcoming. On September 26, 1983, the complainant discussed the application with RCMP officials by telephone but withdrew the request because the records could not be furnished in time for a hearing the next day. The \$5 application fee was returned.

The RCMP accepted the Information Commissioner's finding that the complaint was well-founded. No corrective action could be usefully recommended.

Institution: Department of
National Defence
Complaint: Delay - access given late

Finding: Not supportable
Disposition: Dismissed

An access request dated July 22, 1983, was not received by the department until August 19, 1983, at which time the applicant was advised that the records would be provided no later than September 19, 1983. The information was ultimately provided on September 14, 1983.

However, on August 29, 1983, the applicant complained to the Information Commissioner that there had been no information or acknowledgement of the request within the required 30 days. The complaint was dismissed because the Information Commissioner considered reasonable the length of time which the department took once it had received the request.

* * *

Institution: Department of External Affairs

Complaint: Delay - access given late

Finding: None

Disposition: Abandoned

In this case the request for access was dated October 12, 1983, but the department did not receive it until November 9, 1983. The record was sent December 2, 1983, but in the interval the complainant had contacted the Information Commissioner because no response was received from the department.

The complainant was invited to make representations as to why the complaint of delay should be considered justified but did not respond.

* * *

Institution: Royal Canadian
Mounted Police

Complaint: Delay - access given late

Finding: None

Disposition: Completed during investigation

On December 2, 1983, a complaint was filed concerning a delay in receiving a response from the RCMP to an October 18, 1983, request for access to records. The investigator found no trace of the request having been received by the RCMP, nor any evidence that the complainant's \$5 application fee cheque had been cashed. The complainant agreed to submit another request.

Institution: Department of Transport

Complaint: Delay - access given late

Finding: Well-founded

Disposition: Completed during investigation

The complainant in this case contacted the Information Commissioner for assistance on November 25, 1983, because access had not been provided for a request which the department had received on September 29, 1983. The request was acknowledged in writing October 17, 1983, but despite the complainant's telephone conversations with the department, the records were not provided, nor had the department advised of an extension of the time required to give access.

After meeting with the investigator, the department released three reports and related correspondence on January 10, 1984. The Deputy Minister of Transport advised the Information Commissioner that the newness of the Act had led to administrative difficulties unlikely to recur.

* * *

Institution: Department of Labour,
Canadian Transport
Commission, Royal Canadian
Mounted Police

Complaint: Delay - unreasonable extension of time

Finding: None

Disposition: Completed during investigation

In two of these cases an extension of time of not more than 30 days was required and the institution advised the applicant in each case. However, in a third case, the RCMP had accepted a request for access before the Act came into force and did not tell the applicant until two months after his request was received that another month would be required to translate and assess documents dealing with "German and Nazi organizations in Canada just before and during World War II." The Information Commissioner, who received the complaint only because the RCMP had treated the request as if it were made under the Act, made no finding about the delay.

In all three cases the Information Commissioner was satisfied that the extension of time required was reasonable. The complainants accepted the explanations.

* * *

Institution: Secretary of State

Complaint: Delay - unreasonable extension of time Finding: Not supportable

Finding: Not supportable Disposition: Dismissed

This request for access was received on October 17, 1983, and acknowledged by the department the next day. On November 8, 1983, the department advised the complainant that it would need a 30-day extension to consult with a third party in another city to review certain relevant material. The basis for the time extension was reasonable and the department had complied with the Act, so the Information Commissioner dismissed the complaint.

* * *

Institution: Department of Energy, Mines and Resources Complaint: Delay - unreasonable

extension of time Finding: None

Disposition: Unable to assist

In this case the department needed an additional 60 days to consult with a third party overseas before a decision could be made to release the requested record. The applicant complained that this was too long.

The investigation established that the department had followed the law by advising the complainant of the extension within 30 days of having received the request. The department was obliged to notify any third party which might be adversely affected by the release of the document and the time required to contact the third party was reasonable in the circumstances.

The complainant was invited to make representations but chose not to do so.

* * *

Miscellaneous

Institution: Department of National Revenue (Customs and Excise) Complaint: Miscellaneous (Procedural)

Finding: Not supportable Disposition: Dismissed

A lawyer representing a complainant suggested that the Information Commissioner should disclose documents or portions of documents exempted by the government institution to counsel acting on behalf of a complainant.

The lawyer submitted that the general prohibition against disclosure in section 64 is subject to the Information Commissioner's authority under section 63 of the Act to disclose information as necessary, to establish the grounds for findings and recommendations. He also referred to the Information Commissioner's general authority to establish procedures and argued that the obligation placed on the Information Commissioner under subsection 35(2) of the Act to give the complainant a "reasonable opportunity to make representations" is not met if counsel for the complainant is prevented from examining the exempted record.

The lawyer also argued that the requirement that investigations of complaints be conducted in private can be met by an undertaking of confidentiality given by a complainant's legal counsel. In support, he described the seriousness and the consequences which may flow from a breach of a lawyer's undertaking. He suggested that because all lawyers in Canada are officers of the Federal Court, that Court could punish a lawyer for a breach of an undertaking given to the Information Commissioner.

The argument was supported with reference to the decision in Vaughn v. Rosen, 44F. 2d 820 (1973), a decision of the United States Court of Appeals and to procedures followed by the Chief Justice of the Federal Court of Canada in the unreported case of Maurice Goguen et al v. Frederick Gibson.

The Information Commissioner agreed that section 63 of the Act permits disclosure of information where, in her opinion, it is necessary to do so to further an investigation or to establish the grounds for the findings and recommendations. The question is whether the right of a complainant to a reasonable opportunity to make representations, coupled with the Commissioner's authority to disclose information, gives a right to counsel to gain access to documents which the federal government institution has refused to disclose. Based on the purpose and general framework of the Act the Information Commissioner was of the opinion that no such right exists.

The Information Commissioner provided counsel with the following opinion:

"The security and confidentiality provisions in section 61 and 62 of the Act contain a general prohibition against the disclosure of information to anyone by me or members of my staff. These are buttressed by more specifically directed provisions, such as section 64 of the Act which requires that I take every reasonable precaution to avoid disclosing even information which would indicate the basis on which the head of a government institution would be authorized to withhold information under the Act or whether a record exists at all.

"Under subsection 59(2) of the Act, I am required to confine the investigation of complaints concerning specified matters of international affairs and defence to one of a maximum of four officers or employees specially designated by me. Even other officers or employees in my office may not have access to the records in question. Given the foregoing I think that it would be completely inconsistent with the specific intent of Parliament for me, in the present case, to authorize disclosure of the documents in question to counsel for a complainant on the footing that it is necessary to do this in order to give the complainant a reasonable opportunity to make representations.

"Furthermore, I do not think that the obligation to conduct investigations in private, under section 35 of the Act. could always be met adequately by receiving undertakings from legal counsel acting on behalf of a complainant. I do not have the authority to enforce such an undertaking, whether it be given by a solicitor or anyone else, nor could I be assured that the 12 law societies across Canada would do so uniformly, if at all. I doubt very much that the Federal Court of Canada has the authority to punish a breach of such an undertaking or that I have authority to request that it consider a reference from me to deal with such a breach. Without specific authority to make such a reference, I see no procedure for bringing such contempt before the Court.

"Finally, as a matter of principle, I do not think that it is fair for me to accord special treatment in cases where complainants are represented by legal counsel. One of the features of an ombudsman's office is that it is accessible without the necessity of having a lawyer. I would be afraid that giving special treatment to lawyers would undermine the credibility of my office and render ineffective those features and advantages which it offers the public.

"In the case of Goguen et al v. Gibson mentioned earlier, it appears that certain information was disclosed to counsel in a case although it was considered top secret and objection to its disclosures most likely would have been taken if access to those same documents had been sought under the Access to Information Act. This was a procedure which was optionally followed under the direction of the Chief Justice of the Federal Court. I do not think that this case should have even persuasive value in the present circumstances because I am operating under different statutory restraints than was the Chief Justice. As well, the Federal Court is in a position to enforce a promise of confidentiality which might be given by counsel or a party to the action.

"The case of Vaughn v. Rosen which was raised, in my view, supports the argument against disclosure of exempted material to legal counsel in proceedings before me. In that case Wilkey J. recognized the difficulty of a system where one of the parties is unable to advance his case fully because he does not have the information necessary to rebut the claims made by the government. At page 826, the Court recognizes two major drawbacks to the system of resolving disputes under the Freedom of Information Act.

'First, there are no inherent incentives that would affirmatively spur government agencies to disclose information . . . Secondly, . . . there is an innate impetus that encourages agencies automatically to claim the broadest possible grounds for exemption for the greatest amount of information . . .

there is a possibility that an agency could simply point to selected, clearly exempt portions, ignore disclosable sections and persuade the Court that the entire mass is exempt ... 'It is vital that some process be formulated that will (1) assure that a party's right to information is not submerged beneath governmental obfuscation and mischaracterization, and (2) permit the Court system effectively and efficiently to evaluate the factual nature of disputed information.'

"By way of solution, Wilkey J. suggests that the complainant might be given a relatively detailed analysis without excessive reference to the actual language of the document in dispute, for argument before the Trial Court. He also suggests that the Trial Court designate a special master to examine documents and evaluate the government's claims for exemptions.

"I think that the Canadian legislators have, by the appointment of an independent Commissioner such as myself. attempted to overcome the very problems described in the Vaughn v. Rosen case which arise because the party seeking disclosure cannot know the precise contents of the document sought. I would suggest that my powers to report my findings and recommendations to the heads of government institutions, to appear as a party to an action in the Federal Court, and ultimately to make reports directly to Parliament is an incentive to spur government institutions to disclose information in accordance with the Access to Information Act not found in the United States system. The wide-ranging powers of investigation given to me go beyond those which normally apply to a master."

Inquiries

Besides complaints, the Office of Information Commissioner fields a second category of public contact - inquiries.

Inquiries cover those contacts for information or assistance which do not amount to a complaint about having been denied a right under the Access to Information Act.

Between July 1, 1983, and March 31, 1984, the Office handled 500 such inquiries, of these 313 dealt with access to information and 187 concerned both access and privacy of personal information.

The inquiries cover such matters as requests for copies of the Access to Information Act, the names of departmental information coordinators, whether a department is covered by the Act and who is entitled to access. The office also received inquiries on matters completely outside the mandate of the Information Commissioner. For example, one inquirer wanted the telephone number of a commissionaire at a particular building; someone else asked for a map and a list of interesting places to visit in Canada; another wanted the telephone number of Lottario. In such cases, every attempt is made to steer the caller in the right direction.

A total of 182 hours were spent on inquiries for an average of 25 minutes each. Most inquiries are directed to an experienced information investigator so that the caller is not put in the position of having to repeat his facts.

Records are kept of the nature of the inquiries and the responses, but no analysis has been done to-date. Although many of the inquiries come in by telephone, there was confusion in the early phases of operation as the office was not listed in the city directory and only under "O" for offices in the government phone book. Both the city and government operators had difficulty locating the correct numbers and often directed callers to the wrong department. The office is now correctly listed under "I" for Information Commissioner. However, callers frequently assume this office has taken over the functions of the now disbanded Information Canada.

The switchboard of the Information Commissioner's office is open from 7:30 a.m. to 6:00 p.m. from Monday to Friday, and a member of the professional staff is on duty during this time to receive questions.

Explaining the Act

To government

As a result of written requests the Information Commissioner met deputy ministers and senior officials of 67 of 133 government institutions contacted. The meetings were requested to:

- 1 introduce the new Information Commissioner;
- 2 answer any questions that the institutions had concerning the Access to Information Act, and;
- 3 explain the approach the office intended to take in handling complaints.

Virtually all of the 67 departments that met the Commissioner agreed to an informal approach for handling complaints. The balance did not reply to the Commissioner's letter or simply opted to decide how to deal with complaints as the situations occurred.

The formal approach follows to the letter the procedures described in the Act. Notices of an investigation, findings and recommendations are executed by the Information Commissioner and sent directly to the Minister or similar head of the institution.

An informal approach involves investigators meeting departmental access coordinators and other officials without serving notices. This process stresses mediation and explanation. In most cases when the issue is resolved during investigation without a finding, the investigation results are reported to the complainant and the department without a formal report to the head of the institution

The informal approach usually produces speedier solutions and, in the Commissioner's opinion, will lead to earlier and fuller compliance with the Act.

To the public

The Access to Information Act does not specifically give the Information Commissioner a mandate to carry out a program of public education about the rights of individuals under the Act. However, invitations are accepted to speak about the work done in the office

During the first nine months of operation, the Information Commissioner addressed 27 audiences across Canada and abroad. The Commissioner also responded to numerous media requests for interviews and background information.

While inquiries and public speaking engagements have produced some limited publicity for the Act, the public appears unaware of the meaning of the Act and the role of the Information Commissioner to mediate complaints and take proceedings to the Federal Court. Indeed, many who have tried to use the Act soon gave up because they found procedures too complicated or too slow.

The Act requires government institutions to advise persons who are denied information that they have a right to complain to the Information Commissioner. In fact, government institutions rarely give applicants additional details about their rights.

Corporate Management

Key Steps to Establishment of the Offices of the Information Commissioner and Privacy Commissioner

Spring, 1980 — Treasury Board establishes Task Force on Access to Information and Privacy

July 7, 1982 — Access to Information and Privacy Acts receive Royal Assent

June 2, 1983 — Inger Hansen is appointed Information Commissioner and John Grace, Privacy Commissioner, both for seven years

July 1, 1983 - Acts take effect

The Offices of the Information and Privacy Commissioners are separate legal entities and operate independently. However, in the interests of economy and efficiency, the two Commissioners share administrative support services. (See Appendix I for the organization chart).

The organization has 59 authorized positions. Twenty-nine staff years were allocated for the nine-month start up period from July 1, 1983, to March 31, 1984. By that date the full corporate organization had 32 full-time persons on strength, including eight in the Office of the Information Commissioner and 17 in the common service branch.

Several investigators were retained on contract while the Public Service Commission screened 644 applicants for the 13 permanent positions.

Supplementary estimates in 1983-84 provided the organization with a total budget of \$2,024,000, including \$454,000 for the Information Commissioner and \$915,000 for common services. Actual expenditures for the ninemonth period were \$1,369,429, reflecting a lapse of \$654,571 that is largely attributable to staffing delays.

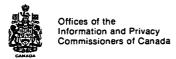
Expenditures

The following are the Offices' expenditures for the period from July 1, 1983 to March 31, 1984.

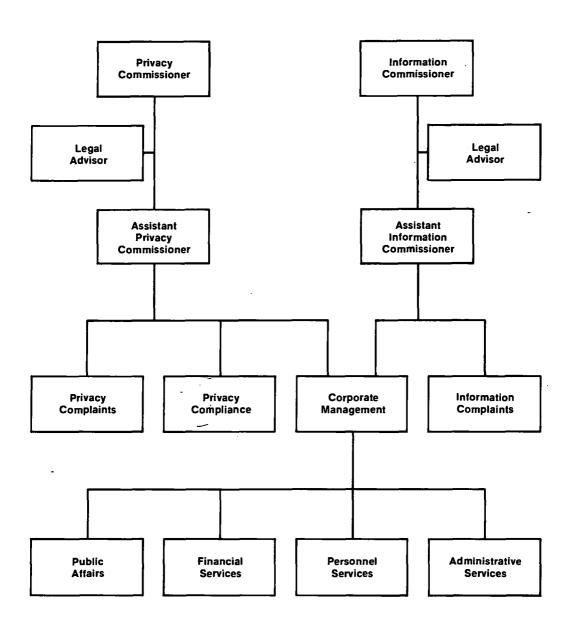
	Information	Privacy	Corporate Management	Total
Salaries	\$219,080	\$213,174	\$402,486	\$ 834,740
Transportation and communication	9,134	21,523	47,565	78,222
Printing	783	1,032	11,279	13,094
*Professional and special services	57,689	119,195	58,06 9	234,953
Rentals	_	_	16,880	16,880
Utilities, supplies	_	_	47,851	47,851
Construction and equipment acquisition	_	_	139,590	139,590
All other	271	137	3,691	4,099
Total	\$286,957	\$355,061	\$727,411	\$1,369,429

^{*}Includes salaries of 6 contract investigators retained for the start-up period.

Appendix I



Bureaux des Commissaires à l'information et à la protection de la vie privée du Canada



Appendix II

On Being a Complainant

These tips may be useful for future complainants.

- 1 Don't ask for all the records on a subject unless you really want all of them. Narrow the nature of the request for faster results and lower costs. You can go back for more and will know more about how the records are organized.
- 2 Consult the Access Register and if necessary the coordinator to make sure the government institution you are writing to has the information you want. This avoids a referral of your request to another source.
- 3 While your reasons for seeking access to a record are irrelevant to your right to disclosure, they may help the public servants process your request. If they know what kind of information you are looking for and what you hope to do with the information they may find it faster. The government institution may also be able to suggest other relevant material.
- 4 If possible, ask if you can visit the government institution to see the requested documents. Then you can select only those pages that you want - it is quicker and cheaper.
- 5 Put your telephone number with your request for information so that the institution can call if they need to clarify what you want.

- 6 Pay your \$5 application fee up front. If you want to argue about the propriety of the application fee do it afterwards and ask for a refund. The government institution is under no obligation to respond to your access request if you have not paid the application fee and we have no authority to deal with a complaint about an informal request.
- 7 Before you make an access request, telephone the government institution and ask if the information you want is available without using the Act. Section 2 of the Act says: "This Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public."
- 8 If it is unlikely that research information will be disclosed because it involves personal information about others, ask the government institution if you can see the documents on your personal understanding, in accordance with the Privacy Act, that you will not make subsequent disclosure of the information in a manner that could identify any individual to whom it relates. Note that the government must be satisfied that the research cannot be accomplished without disclosure of personal information.

- 9 If you think that the fees are too high then ask the government for an explanation and give the reasons why you think that they are too high. Normally the Information Commissioner will not deal with a complaint about fees unless the complainant has first asked the government to reduce or waive them.
- 10 If a fee estimate seems high, ask what proportion of it involves searching and processing. Other government institutions may have the same information already processed. Ask what other government institutions might maintain the same records.
- 11 Ask if the government institution will refund part of the search and preparation fees paid if someone else subsequently seeks access to the same record.
- 12 Keep in touch with the government institution. If you have not received information 30 days after filing your request, contact them.