



**Annual Report
Information Commissioner
1985-86**

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Information Commissioner
1985-86**



The Information Commissioner of Canada
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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)

Access to Information Act

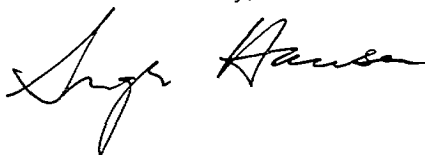
The Honourable Guy Charbonneau
The Speaker
The Senate
Ottawa

June 30, 1986

Dear Mr. Charbonneau:

I have the honour to submit to Parliament my annual report. This report covers the period from April 1, 1985, until March 31, 1986.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Inger Hansen".

Inger Hansen, Q.C.

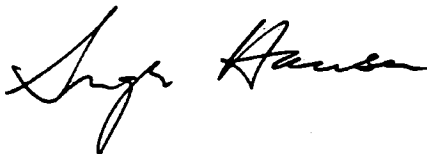
The Honourable J. Bosley
The Speaker
The House of Commons
Ottawa

June 30, 1986

Dear Mr. Bosley:

I have the honour to submit to Parliament my annual report. This report covers the period from April 1, 1985, until March 31, 1986.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Inger Hansen'.

Inger Hansen, Q.C.

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The Third Annual Report

This third annual report of the Information Commissioner under the *Access to Information Act* covers April 1, 1985, to March 31, 1986.

Subsection 75(2) of the *Access to Information Act* provides that a Parliamentary Committee review the provisions and the operation of the Act within three years after its coming into force.

On February 28, 1986, a special report was submitted to ensure that the Parliamentary Committee would have up-to-date, detailed information on the operation and activities of the Office of the Information Commissioner. The Special Report covering the period from April 1, 1985, to December 31, 1985, was produced in a limited number. This report contains all the material from the Special Report.

THE GENERAL SCHEME

The Mandate

The primary objective of the Office of the Information Commissioner is to seek compliance by the federal institutions subject to the *Access to Information Act*. The Act ensures that the office achieves this goal by receiving, investigating and reporting on complaints. As part of the process, the Commissioner is expected to attempt to resolve valid complaints and if such a resolution is not possible to report to ministers or other heads of government institutions subject to the Act.

Finally, the Commissioner participates in litigation on issues before the Federal Court relative to complaints under the Act.

The Commissioner and two Assistant Commissioners base their findings on complaint investigations and representations from affected parties. The investigations are conducted by persons employed by the Office of the Commissioner. The investigatory powers of the Commissioner are delegated to the investigators, as permitted under the Act.

Complaints are receivable under such categories as: refusal of access, fees, delays, official language, the register, the bulletins or other matters relating to access. The Commissioner has authority to initiate complaints.

The Appointments

The Information Commissioner is appointed by the Governor in Council, after approval by a vote of both the Senate and the House of Commons, for a seven-year term. The Assistant Commissioners are appointed by Cabinet for up to five years.

The Commissioners all hold office "during good behaviour", but the Information Commissioner may be removed only by the Governor in Council on address of the Senate and House of Commons.

Authority

The Commissioner has the same power to obtain evidence as does a Superior Court of Justice. This enables the Commissioner and, by delegation, the Assistant Commissioners and the investigators to review and obtain copies of all relevant records except records excluded as confidences of the Queen's Privy Council. When there is doubt that withheld records constitute such confidences under the *Evidence Act*, a certificate is obtained from the Minister or the Clerk of the Privy Council.

The Commissioners may summon witnesses and conduct investigations on government premises. However, they may not disclose exempted information or confirm the existence of a record where the head of an institution has not done so unless such action is necessary to conduct the investigation and report as required under the Act.

The Information Commissioner cannot order the government to change its mind about an access request. Modeled on a Parliamentary ombudsman, the Commissioner neither orders action nor metes out punishment. The office benefits from the absence of "judicial distance" and its procedures are seldom adversarial.

— First Report — Starting Up

Although the number of complaints received during the first nine months was small, many were complex and therefore difficult to complete in a timely fashion. Staffing problems were more serious than anticipated. Few people, including those who had to work with it, understood the Act.

Much time was spent explaining the Act and our procedures and persuading departments to work informally with us and to provide the access rights under the Act.

— Second Report

The second Annual Report focused on the apparent lack of understanding of the Act, the problem of delays, difficulties with third party procedures, lack of support for access to information coordinators and problems with fees.

Attitudes

Subject to qualifications stated below, my views remain unchanged and, indeed, I would suggest that Parliament take steps to ensure that ministers and public servants develop a more receptive attitude toward the public rights to access as set out in the Act. Many public servants must experience a 180-degree turn before requested records will be examined with a view to finding ways to release information rather than searching for ways to keep it secret.

Clearly, there is far too little support for freedom of information and far too much belief that something traditionally kept from the public should be kept from the public forever.

There are legitimate reasons why some records cannot be released and the *Access to Information Act* takes that into account. However, there is no reason why it should often take months, or possibly years, to satisfy legitimate requests for government records.

Public Awareness

I have advocated and strongly urge Parliament to recognize the need for public education on access to information and to provide the resources to carry it out.

Most people remain unaware of the Act. Many users, as well as those providing services under the Act, do not understand the purpose of the legislation, the need for access rights to be balanced with respect for privacy, and the needs of third parties and governments.

Release of a controversial record may cause someone to feel embarrassed, betrayed or insecure. Conversely, when someone is denied access to a particular record, there is frequently suspicion of sinister motives on the part of the government.

Such examples make it vital that Parliament provide resources necessary to explain the realities and dispel the fears by fostering a greater understanding of the delicate balance of competing interests that make freedom of information work.

As I have mentioned before, the Canadian *Access to Information Act* compares favourably with acts of other countries both in terms of its provisions and its procedures. But without public education, it may be the end of this century before the *Access to Information Act* is understood and freedom of information is a reality in Canada.

Public education is vital. However, I believe it does not now fall within the role of the Information Commissioner. A number of users of the *Access to Information Act* have criticized the failure of the Commissioner to actively promote public use of the Act and I would like to explain my view of the Commissioner's role.

First, our office responds to many enquiries about the Act, giving us an opportunity to explain access rights and procedures. The Information Service has prepared a widely-distributed pamphlet on the functions of our office and we routinely accept invitations to speak and to be interviewed publicly. Nevertheless, whether this office should properly take a more aggressive approach to public education remains in doubt.

During the Parliamentary debate over the *Access to Information Act*, I suggested to the Standing Committee on Justice and Legal Affairs the extent of the Information Commissioner's involvement in public education ought to be clarified in the Act. I told the Committee, *inter alia*, that:

"... if the Commissioner, or Commissioners, is required to educate the public, if more than just responding is required, in order to have the necessary funds a special clause would be necessary. For reference, I can point to the *Parole Act*; for the Board, it has such a clause. For the Human Rights Commission, Parts II and III of the Act have such a provision. There is no provision in this Act."

While I am more convinced than ever that public awareness of the *Access to Information Act* is crucial to its usefulness, I am not sure that the Information Commissioner, as an independent, neutral reviewer, is the appropriate person to conduct public education. Certainly the Commissioner should not be the only person. In my opinion, the Commissioner's public education endeavours carry with them the inherent risk of an allegation of bias.

If this office were to take a leading role in an aggressive public education campaign without a specific statutory mandate, users of the Act, third parties and even government institutions might suggest that a Commissioner should withdraw from hearing representations on a given complaint investigation, or they might seek a court injunction, on the ground that the Commissioner's unsolicited views in the matter are already public.

I raised the issue, but Parliament did not include a public education mandate in the Act. I have concluded that it was deliberately withheld. Hence, I have no right to infer such a mandate.

Some Good News

My optimism referred to earlier results from indications that those most interested in the Act, such as journalists, academics, and researchers, have not given up using the Act and our office. Statistics based on the names of complainants under the Act from July 1, 1983, to March 31, 1986, indicate that

- 240 one time complainants account for 240 files opened,
- 77 more frequent complainants (2-5 times) account for 194 files, and
- 11 very frequent complainants (more than 5 times) account for 211 files.

The repeat complainants are becoming very good at exercising their rights under the Act. Their assistance and representations to us have produced recommendations for release which, despite competent investigations, might otherwise not have been possible. Some of the repeat users are also becoming more understanding of our investigations and the reasons why some take so long. While we appreciate this new patience, it will not be used to accommodate back-sliding.

There has also been an increase in the number of complaints. The number of files opened in this reporting year represented a 63 per cent increase over the previous 12 months. A greater number of these cases involves consideration of privacy rights or the legitimate interests of hundreds of third parties, causing additional demands on our resources.

Delays

There are valid reasons why the investigations take considerable time but many delays are unacceptable to the complainants and this office.

Among the many explanations for the delays are the voluminous records that must be reviewed page by page, the time it takes before departments react to our suggestions, the inability of some departments to handle access requests, and a lack of staff to do the work. All of this is aggravated when sympathy for the spirit of the Act is missing.

WORKLOAD

Number of Investigators

During the 12 months covered by this report, there were 10 investigators employed in the office. Four of the investigators were employed for all of 1985 but one of them has been on language training since July 1. Another investigator commenced work on May 1, two on August 1, two on October 15, one on February 10, 1986, and the last one on February 24. Together this provided a total of 86 person-months or 7.1 person-years. All of the investigators are experienced and only a minimum of training was required.

Volume of Work

The caseload carried by the investigators is extremely high considering the thousands of pages of records that were reviewed and analysed. For example, minutes of the CRTC meetings were contained in 40 cardboard boxes of 38 cm x 30 cm x 17 cm; the minutes of the AECEB consisted of 19 binders each approximately 5 cm thick. At the moment we are investigating a complaint concerning both Treasury Board and the Public Service Commission. The files for this conflict of interest issue contain 43 volumes, each about 4 cm thick, in each institution.

Special Delegation

Subsection 59(2) of the Act stipulates that:

"The Information Commissioner may not nor may an Assistant Information Commissioner delegate the investigation of any complaint resulting from a refusal by the head of a government institution to disclose a record or a part of a record by reason of paragraph 13(1)(a) or (b) or section 15 except to one of a maximum of four officers or employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting such investigations."

This limitation has caused the two most experienced investigators to carry loads of approximately 40 cases each. Inevitably this too leads to delays.

A Reasonable Caseload

Experience in our office has suggested that when an investigator's caseload reaches about 40 files, that person spends too much time managing, organizing and generally trying to keep files up-to-date, at the expense of getting on with the job of investigating and reporting. We believe that a workload of 15 to 20 cases would ensure that two to three month turnaround time normally could be attained. This suggested caseload is lower than those carried by investigators in other ombudsman's offices, but work under the *Access to Information Act* is different. Other investigators normally deal with one individual and his or her relationship with one government institution. The issues are rarely debated in public. Access complaints, on the other hand, involve the complainant, those who prepared the record, governments, organizations and corporations in the private sector and privacy rights of individuals.

All parties affected by the outcome of our investigations must be given an opportunity to make representations. Consideration of the various interests is time-consuming and the mechanics of preparing and distributing notices to third parties and receiving their representations creates a heavy demand on the office. Finally, public debate of a complaint can delay or hinder our attempts to resolve it.

The heavy caseload prevents the investigators from following through with those departments which delay responses to our questions and demands. This situation creates an inefficient cycle of non-productive contacts in which investigators and departmental staff explain to each other why nothing has happened.

Even though there has been an increase in the number and complexity of complaints, it is reasonable for the public to expect that an investigation normally will be completed in two or three months. We have been able to achieve this in only about half the cases described in this report. Efforts to expedite and give priority to delay complaints have only had limited success and our experience has shown that we cannot solve the problem by simply adding more trained investigators, support staff and assistant commissioners. As well, efficiency does not necessarily increase proportionately with the number of people assigned to a task.

We are, however, striving to solve the problems and reduce the delays to an acceptable level.

Inquiries

The Commissioner's Office answers or deals with a number of public inquiries primarily concerning the procedures and problems under the Act. Some inquiries concern subjects related to the Act, but others deal with issues that fall within the mandate of human rights commissioners, provincial ombudsmen or other complaint-handling agencies. Such inquiries are referred to the appropriate agencies.

We also received a number of telephone calls from individuals seeking general information. For example, one caller wanted to know whether provincial government offices were open on November 11. Another caller asked for the hours that the National Library was open. In such cases, every attempt is made to point the caller in the right direction.

Between April 1, 1985, and March 31, 1986, the Office handled 680 access inquiries for a total of 450 hours. The combined Offices of the Information and Privacy Commissioners handled 152 inquiries that concerned both the Information and Privacy Acts. Most inquiries are directed to an experienced investigator so that the caller is not put in the position of having to repeat the facts.

Records are kept of the nature of the inquiries and the responses.

Complaints by Number

The total number of files opened since the *Access to Information Act* came into effect on July 1, 1983, is 645, including 321 between April 1, 1985, and March 31, 1986. Table 1 shows the number of files dealt with since the Act came into force, as well as the number of pending files on both March 31, 1985, and March 31, 1986.

In contrast, the other tables refer to the number of complaints as opposed to files. There are more completed complaints than closed files because a file, opened on receipt of a complaint letter, may eventually produce more than one complaint. The 235 files dealt with during this reporting period gave rise to 290 separately described complaints.

A two-stage system traces the progress of handling complaints. The first stage records incoming complaints and the second records and reports results and other pertinent particulars such as category of complaint, department involved and geographical origin of complaint.

TABLE 1
STATUS OF INVESTIGATION FILES

<u>April 1, 1984 to March 31, 1985</u>	
Files pending from previous year	94
Files opened	188
Total	282
Files closed (deducted)	167
Files pending at March 31, 1985	115
<u>April 1, 1985 to March 31, 1986</u>	
Files pending from previous year	115
Files opened	321
Total	436
Files closed (deducted)	235
Files pending at March 31, 1986	201

UNDERSTANDING THE TERMS

Unlike civil court proceedings, where a plaintiff's case is either allowed or dismissed, complaints before the Information Commissioner are dealt with by mediation and lead to a variety of findings and dispositions. The terms "*Well-founded*" and "*Supportable*" are used to describe cases where the complaint was justified under the Act, with the term supportable used to indicate those that were resolved informally. Complaints found to be "*Not Supportable*", in the

Information Commissioner's opinion, had no merit or were outside the mandate of the Commissioner under the Act. The disposition of the case indicates how the investigation was concluded by the Information Commissioner.

A "*Government Institution*" is a department or agency listed in Schedule I of the *Access to Information Act* and is therefore subject to the Act. A reference

to "*The Minister*" usually means the member of Cabinet responsible to Parliament for the particular government institution but in some cases means the person designated by Regulation under the Act as responsible for compliance with the *Access to Information Act* by the government institution. The President of the Atomic Energy Control Board is an example. The following are specific meanings ascribed for the terms used in the statistical tables.

Well-founded — Report to Minister

This means that the Information Commissioner concluded that the complaint was justified but it was not possible to achieve a satisfactory resolution through mediation. A report of the findings of the investigation was made to the Minister, along with any recommendations for remedial action which the Commissioner considered appropriate. The government either disputed the finding or took some action to resolve the complaint fully or in part. The Information Commissioner also reported the results of the investigation to the complainant.

Supportable — Resolution Negotiated

During the course of the investigation the complaint was found to be justifiable in whole or in part and was resolved through mediation. The government was persuaded to take some remedial action which the Information Commissioner considered to be an acceptable solution to the complaint. A report was made to the complainant and to the government institution. It was not necessary to make a report or recommendation to the Minister.

Supportable — Discontinued by Complainant

Although the Information Commissioner found merit in the complaint, the investigation was discontinued before a resolution could be negotiated or a report made to the Minister. The investigation was terminated at the express request of the complainant or was abandoned by the complainant. A report was made to the government institution and to the complainant, where feasible.

Not Supportable — Dismissed

This term means that the Information Commissioner was unable to find any denial of the complainant's rights under the *Access to Information Act* by the government institution. In some instances, the complaint was outside the Commissioner's mandate. No action was taken by the government institution. A report was made to the complainant and to the government institution.

Not Supportable — Discontinued by Complainant

In this situation the complainant abandoned the complaint or asked that the investigation be terminated before the merits of the complaint could be fully determined. The Information Commissioner had found no basis to support the complaint. No action was taken by the government institution.

Stage One — Tracking Investigations

The Office of the Information Commissioner maintains a computerized data base for retrieval of records by name of complainant, date of complaint, department cited, investigator assigned to the file, and so forth.

Investigations are conducted in the order in which they are received but are not always completed in that order. The time required depends on the volume of records involved, how many third parties have to be consulted or given notice of the Commissioner's intention to recommend release of information, how many of those make representations and, generally speaking, the complexity of the issue.

To ensure that complaints are investigated without undue delay, the director of investigations reviews a list of outstanding files each month and each investigator receives his or her list of outstanding files. The list helps the investigator make certain that a complainant is kept informed of progress on a regular basis.

Stage Two — The Product

The Annual Report of the Information Commissioner contains case summaries that were generated after the Commissioner's findings were communicated. The information at the top of the various case summaries are the data that are compiled in the tables which follow.

Close to 32 per cent of the complaints fell into the well-founded and supportable categories but in only 19 per cent of the total complaints was it necessary to proceed formally with a report to the Minister. A total of 14 per cent were resolved during the course of the investigation and 66 per cent were dismissed.

Table 2 shows the findings and dispositions of the complaints.

An analysis of Table 2 into categories of complaints is found in Tables 3A and 3B. This shows that the largest number of complaints concerned exemptions and delays.

Table 4 identifies which departments and agencies were named in complaints, including numbers and resolutions. Information about the number of access requests which did not produce complaints can be found in the special annual reports individual departments and agencies are required to submit to Parliament under the *Access to Information Act*.

Table 5 covers the geographic origin of completed complaints.

TABLE 2
FINDINGS AND DISPOSITIONS OF COMPLAINTS
APRIL 1, 1985 - MARCH 31, 1986

Finding	Well-Founded	Supportable		Not Supportable		Total
Disposition	Report to Minister	Resolution Negotiated	Discontinued by Complainant	Dismissed	Discontinued by Complainant	
Total	55	36	5	181	13	290
Percentage	18.97%	14.13%		66.90%		100%

TABLE 3A
RESULT OF ACCESS AND DELAY COMPLAINTS
APRIL 1, 1985 - MARCH 31, 1986

Finding	Well-Founded		Supportable		Not Supportable		Total	
Disposition	Report to Minister		Resolution Negotiated	Discontinued by Complainant	Dismissed	Discontinued by Complainant		
Category	Government Action Taken						121 12 40	
	Resolved in full	in part	Disputed	Resolved in full	in part	No Action		
Refusal								
- Exemption	2	9	3	3	26	2	72	4
- Exclusion	—	—	—	—	—	—	12	—
- General	4	4	1	2	1	1	25	1
Delay	Not Disputed	Disputed	Late Disclosure	No Action	No Action			
	26	4	—	1	28	3		
							62	235

TABLE 3B
RESULT OF FEES, LANGUAGE, REGISTER AND OTHER COMPLAINTS
APRIL 1, 1985 — MARCH 31, 1986

Finding	Well-Founded		Supportable		Not Supportable		Total	
Disposition	Report to Minister		Resolution Negotiated	Discontinued by Complainant	Dismissed	Discontinued by Complainant		
	Government Action Taken							
	Waived or Reduced in full	in part No Action	Waived or Reduced in full	in part No Action	No Action			
<u>Category</u>							37	
Fees	1	—	—	1	1	31		2
	Corrective Action	No Action	Corrective Action	No Action	No Action			
Language	—	—	—	—	—	—		
Register	—	—	—	—	—	—	—	
Miscellaneous	1	—	2	—	14	1	18	
							55	

TABLE 4
DISTRIBUTION BY FINDING OF COMPLAINTS AMONG
GOVERNMENT INSTITUTIONS
APRIL 1, 1985 — MARCH 31, 1986

Government Institution	Total	Well-Founded	Supportable	Not Supportable
Agriculture Canada	18	2	5	11
Atomic Energy Control Board	5	1	—	4
Bank of Canada	2	—	—	2
Canada Council	1	—	—	1
Canada Mortgage and Housing	2	—	—	2
Cdn. Commercial Corporation	2	—	1	1
Can. Deposit Insurance Corporation	2	2	—	—
Cdn. International Dev. Agency	2	2	—	—
Cdn. Radio-tel. & Tel. Comm.	2	—	—	2
Cdn. Security Intelligence Service	5	1	—	4
Consumer and Corporate Affairs	3	1	—	2
Correctional Service Canada	3	3	—	—
Department of Communications	3	1	1	1
Department of Finance	9	2	—	7
Department of Justice	9	1	1	7
Employment and Immigration Canada	19	4	3	12
Energy, Mines and Resources	9	—	2	7
Environment Canada	5	2	—	3
External Affairs Canada	41	3	4	34
Farm Credit Corporation	1	—	1	—
Fisheries and Oceans	1	1	—	—
Foreign Investment Review Agency	1	—	1	—
Great Lakes Pilotage Authority	1	—	—	1
Health and Welfare Canada	23	13	2	8
Indian Affairs and Northern Dev.	3	1	1	1
Investment Canada	2	—	—	2
Labour Canada	1	—	—	1
National Defence	21	3	4	14
National Film Board	1	1	—	—
National Parole Board	1	—	—	1
Privy Council Office	10	3	3	4
Public Archives Canada	5	—	1	4
Public Service Commission	2	—	—	2
Public Works Canada	4	—	1	3
Regional Industrial Expansion	4	—	—	4
Revenue Canada, Customs & Excise	8	—	2	6
Revenue Canada, Taxation	8	1	—	7
Royal Canadian Mint	1	—	—	1
Royal Canadian Mounted Police	8	1	1	6
Secretary of State	3	—	—	3
Social Sciences & Humanities Res.				
Council of Canada	1	—	1	—
Solicitor General Canada	4	2	2	—
Statistics Canada	1	—	—	1
Supply and Services Canada	17	—	1	16
Transport Canada	12	3	3	6
Treasury Board of Canada	4	1	—	3
Total	290	55	41	194

TABLE 5
GEOGRAPHIC DISTRIBUTION OF THE ORIGIN OF COMPLAINTS
APRIL 1, 1985 — MARCH 31, 1986

ORIGIN	Total
Yukon Territory	2
Northwest Territories	—
British Columbia	15
Alberta	15
Saskatchewan	5
Manitoba	10
Ontario (excluding National Capital Region)	66
Quebec (excluding National Capital Region)	81
National Capital Region	92
New Brunswick	—
Nova Scotia	2
Prince Edward Island	—
Newfoundland	2
Outside Canada	—
Total	290

Case Summaries

This report summarizes each case dealt with by the Information Commissioner between April 1, 1985, and March 31, 1986. Each case has a heading to help readers identify particular interests. Also shown at the beginning of each case are such particulars as the department involved, the nature of the complaint and the outcome. These items form the basis for the annual statistical tables produced in the Complaints by Number section.

The cases have been grouped by categories. The numbers in square brackets refer to sections of the Act.

Reference which would indicate the gender of the complainant has randomly been altered.

EXEMPTIONS

Tobacco Additives

Files: 006, 241

Institution: *Health and Welfare
Canada*

Complaint: *Refusal - exemption
[20(1)(b)]*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Resolved in part*

Two virtually identical complaints were made relating to Health and Welfare Canada's refusal to disclose records of lists of tobacco additives held by the department's Health Protection Branch. Access was denied under paragraph 20(1)(b) of the Act which requires the government to withhold from disclosure, *inter alia*, confidential, commercial or technical information supplied to the government by a third party and which has consistently been treated in a confidential manner by the third party.

The investigation established that information concerning additives and provided to the Health Protection Branch by the manufacturers of Canadian tobacco products was regarded by manufacturers as confidential, constituting trade secrets the release of which could compromise their competitive positions in the marketplace. Departmental officials confirmed that the lists of additives had not been released outside the department although the Health Protection Branch responded to enquiries from the public by providing a list of additives published for distribution in the United Kingdom.

The records about additives provided to the department by the manufacturers vary in form but contain names or identifiers of all additives declared to have been used in the production of fine-cut tobacco products.

The trade secrets' issue was not examined initially because the department had not claimed exemptions on the ground that the information constituted trade secrets of third parties. The Information Commissioner found that the information constituted business information of a commercial, scientific or technical nature and as such might be protected from disclosure based on paragraph 20(1)(b). However, it appeared that because the information concerned additives widely used by the consuming public, disclosure might be in the public interest as it relates to public health or protection of the environment. Subsection 20(6) of the Act provides that such information may be disclosed where disclosure "clearly outweighs in importance any financial loss or gain to, prejudice to the competitive position of or interference with contractual or other negotiations of a third party". In this case the Information Commissioner concluded tentatively that it did.

As required under paragraph 35(2)(c) of the Act, notices were sent to the tobacco manufacturers in Canada as third parties who might be affected by a recommendation for disclosure. A copy of the form of the notice was provided to the Minister of National Health and Welfare April 26, 1984.

Separate meetings were held by the Commissioner with representatives of four of the manufacturers and a number of joint meetings were held with their lawyers and the President of the Canadian Tobacco Manufacturers Council. The third parties appointed a solicitor to represent their common interests. He joined the meetings as did the Information Commissioner's legal counsel. The two lawyers were made privy to confidential business information which the third parties were not prepared to disclose to each other.

The tobacco manufacturers urged the Commissioner to accept the argument that the information about additives constituted trade secrets and therefore was not subject to disclosure.

Based on the representations of the manufacturers and the Commissioner's investigation, the Information Commissioner decided that the lists of additives in the form maintained by the Department of National Health and Welfare constituted records which *prima facie* should be exempted from disclosure by paragraph 20(1)(b). However, because the information concerned ingredients present in tobacco products, the Information Commissioner concluded that regardless of whether the ingredients are considered harmful or otherwise, the public interest in relation to health and the protection of the environment warranted disclosure.

The Information Commissioner also accepted the submission of the third parties that disclosure of additives in a manner which identified the particular brand or brands of tobacco products in which they are used would prejudice the competitive position of tobacco manufacturers.

Based on the Commissioner's commitment to that view, the four tobacco manufacturers agreed not to engage in litigation to ascertain whether the lists constitute trade secrets under paragraph 20(1)(a) of the Act. The Information Commissioner therefore expressed no opinion on whether the lists might be classified as trade secrets. Litigation over paragraph 20(1)(a) (trade secrets) would have been time-consuming and costly and, at best, simply have delayed the consideration given to the exemption based on paragraph 20(1)(b). At worst (from the complainants' standpoint) litigation would have upheld the claim for exemption of trade secrets and no records or information at all would become available because protection from disclosure of trade secrets is mandatory.

The compromise solution, in the opinion of the Information Commissioner, protected the right of the third parties not to have confidential commercial information disclosed without compromising unreasonably the public interest in disclosure under the Act.

The manufacturers agreed to compile and deliver to the minister of National Health and Welfare, within two months, a list for public disclosure which would include all additives available for use in cigarette and fine-cut tobacco products manufactured in Canada. All additives previously reported to the department prior to the time of the first access request were to be on the list; all additives presently in use in Canada were to be on the list; and any new additives used by the manufacturers which were not already on the list would be added on an annual basis.

The manufacturers also ensured that the additives had been approved for use in the United Kingdom in conformity with guidelines prepared by the Hunter Committee (an independent scientific committee on smoking and health) or that they appeared on the so-called West German list prepared under the authority of the Nutrition and Consumer Goods Law of the Federal Republic of Germany. The Canadian manufacturers also had to ensure that any additions to the list would have met the United Kingdom and West German standards.

The manufacturers also agreed to provide the Minister with a proposal for release of the list to the public.

A recommendation incorporating this solution was provided to the Minister and a list more extensive than expected was released. This list included every additive in the Hunter Committee list and hundreds of additives on the West German list. As a result the disclosure did not give a reasonable idea of what additives might be found in Canadian cigarettes. The manufacturers pointed out that 95 per cent of their cigarette products contain few additives, but the list is lengthy because of the great diversity of additives available for use.

The four manufacturers also agreed to cooperate with individual Canadian physicians whose patients suffer from allergies which may be caused by smoking Canadian tobacco products containing one or more of the listed additives. They did not undertake to disclose proprietary information regarded as trade secrets and said that in most cases their assistance would produce a recommendation that the patient simply stop smoking.

Third Party Protected

File: 051

Institution: *Public Works Canada*
Complaint: *Refusal - exemption [18(b)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual applied to the Department of Public Works for disclosure of a lease between the Department of Public Works and a third party for an Ottawa building occupied by the federal government.

The records were exempted under paragraph 18(b) on the grounds that disclosure could reasonably be expected to prejudice the competitive position of a government institution.

The individual complained, stating that he was requesting "no more than a copy of a document in the public domain". The investigation found that the lease was not a document in the public domain, nor had the department registered a notice of the lease in the Ottawa Land Registry Office. (Registration of a lease is not required under Ontario law, but can be used to give notice to anyone who may be interested that a property is under a lease.)

Departmental officials were asked to make representations at a meeting with the Information Commissioner and the investigator. The officials submitted that disclosure part way through the term of the lease would be prejudicial to the government's competitive position in the real estate rental market.

The investigation included a review of the Government Contracts Regulations, Government Land Acquisition Regulations, Government Land Option Regulations, and the Treasury Board Administrative Policy Manual concerning lease contracts, which indicated that it is normal government policy to maintain confidentiality in such contractual matters. United States case law was also consulted to determine how similar situations had been handled under the United States *Freedom of Information Act*.

The case in the United States is *Federal Open Market Committee vs. Merrill* 443 U.S. 340, 61 L.Ed 2d 587, 99 S.Ct. 2800 (1979). In a dispute over the disclosure of information concerning government contracts, the U.S. Supreme Court considered the 5th exemption under the *Freedom of Information Act*, 5 U.S.C. 552(b), which permits withholding of

- (5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

Mr. Justice Blackmun at 443 U.S. 359 ruled that

"The theory behind a privilege for confidential commercial information generated in the process of awarding a contract...is...that the Government will be placed at a

competitive disadvantage or that the consummation of the contract may be endangered. Consequently, the rationale for protecting such information expires as soon as the contract is awarded or the offer withdrawn."

The Court observed, at 443 U.S. 363, that the sensitivity of the commercial secrets involved and the harm that would be inflicted upon the government by premature disclosure should serve as criteria in determining whether the exemption 5 privilege is applicable.

The United States case deals with an exemption under U.S. law which is vastly different from paragraph 18(b) of the Canadian *Access to Information Act*. However, the Commissioner thought it reasonable, in a matter under section 18 of the Canadian *Access to Information Act*, to apply the same practical logic followed by the U.S. Court. That is, with the passage of time, the case for secrecy weakens.

In this complaint it was not necessary to consider whether the lease should have become disclosable immediately upon its execution, which preceded the request by several years. The Commissioner acknowledged that disclosure of the terms of a lease immediately after it has been signed could prejudice the competitive position of the government in negotiating other leases. At some point, however, the information becomes stale and its disclosure is innocuous to the government. Without determining the competitive state of affairs when the lease was executed, or in September, 1983, when the access request was made, the Commissioner

was satisfied that in September, 1985, disclosure of the lease information was unlikely to have any substantial prejudicial effect on the competitive position of the government.

If exemption under paragraph 18(b) were the only issue, the Commissioner would have recommended that the Department disclose the terms of the lease to the applicant. However, by virtue of paragraph 35(2)(c) of the Act, any third parties that might be materially affected by disclosure were entitled to an opportunity to make representations to the Commissioner.

The third party named in the lease stated that because there were a number of years left to run on the lease, its disclosure would have an adverse effect on the party's competitive position and contractual and other negotiations. [To fully explain this position would disclose details of the lease itself and undermine the protection which the Act affords third parties.] The Commissioner, because of the details of the lease and the somewhat unusual circumstances of the case, was satisfied that disclosure was not warranted because of paragraphs 20(1)(c) and (d) of the Act. Those provisions which had not previously been raised as grounds for exemption, read as follows:

20.(1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains...

(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

While the Commissioner found that the complaint about exemption of the lease document from access on the grounds of section 18 of the Act was not justified, the government's decision not to release the record was supported on the basis of the argument raised by the third party. The complaint of refusal to disclose was not supportable and was dismissed.

FPAG Meeting Documents

File: 052

Institution: *External Affairs*

Complaint: *Refusal - exemption [15(1), 21(1)(a) and (b)]*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in part*

On August 8, 1983, the applicant requested information from External Affairs concerning meetings of the Foreign Policy Advisors Group (FPAG). He specified the following:

- (i) time, place and full list of participants;
- (ii) all records that would enable him to know the agendas, the contents of any discussion papers presented and any action arising from these papers;
- (iii) all records that would indicate the success of these meetings and all records dealing with the termination or suspension of such meetings;

-
- (iv) all records that concerned travel expenses paid participants by External Affairs and all records dealing with any other costs associated with the meetings.

On September 9, 1983, the department acknowledged the request and advised the applicant of a 30-day extension because of the volume of material involved. On October 7, 1983, some information was made available but other records, or portions of records, were exempted under subsection 15(1) and paragraphs 21(1)(a) and 21(1)(b) of the Act.

A complaint was made November 8, 1983.

The investigator met with External Affairs on November 10, 1983, and November 14, 1983, and learned that some of the discussion papers for two-day Foreign Policy Advisors Group meetings in 1981, 1982 and 1983 had been totally exempted.

The records released detailed the purpose of the FPAG, its membership, the month of the first meeting, membership for 1982 and 1983, and time and place of meetings. Thus portion (i) of the access request was satisfied. Also released were files containing general information, including the agendas for the three meetings, satisfying one-third of the request under (ii).

The balance of the (ii) request was for discussion papers presented at the meetings and any action arising from these papers. The investigator learned that such papers were circulated in advance of the second and third meetings

and those prepared in advance of the 1982 FPAG meeting were all exempted under subsection 15(1) and paragraph 21(1)(a) of the Act. Those completed for the third meeting were exempted under section 15 and paragraphs 21(1)(a) and 21(1)(b) of the Act.

Under part (iii) of the request, the applicant asked for information about the success of these meetings and all records dealing with termination or suspension of such meetings. The department had advised him that no such records existed as there was never any consideration given to suspending or terminating FPAG meetings. The only document they had that could be considered an evaluation of a meeting was a telex dated February 11, 1983, which went out after the third FPAG meeting. Two sentences of this telex were exempted under section 15 of the Act and the balance was released.

Portion (iv) of the request, which dealt with expenses and costs borne by the department for these meetings, was satisfied by release of appropriate files.

At numerous meetings with officials of the department it was suggested that the severance principle be applied so that the applicant could receive portions of the withheld information. In May, 1984, the department appeared prepared to release some portions of the documents, in compliance with the severance principle. However, weeks later, the Commissioner's office learned that the two persons assigned to conduct the review were on duty in Europe. On June 18, 1984, the Information Commissioner advised the Under-Secretary of State that it had been 10 months since the applicant made his request and it had

been almost three months since departmental officials had agreed to consider the severance principle and that the Commissioner recommended that a decision be reached on or before July 9, 1984.

The investigator had pointed out that a document "Canada-U.S. Relations: Options for the Future" had been published and because of this, the *Access to Information Act* did not apply. Notwithstanding this External Affairs provided same to the complainant free of charge on July 6, 1984.

On the same date, the Secretary of State released seven severed documents and one document in full. It had been exempted under paragraph 21(1)(a), but the author did not appear to have been a public servant at the time of its writing and the Commissioner suggested that the paragraph only applied to documents prepared by public servants.

The Commissioner was satisfied that the remainder of the exemptions were correct in law and in fact. The complainant requested that the Commissioner consider whether he was entitled to an index of the records that were relevant to his request but no such index exists. The Commissioner was satisfied that the complainant had received everything to which he was entitled.

Injury to Canada's Economic Interests

File: 085

Institution: *Public Works Canada*
Complaint: *Refusal - exemption [18(b) and (d)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

Access was sought to records dealing with all correspondence, agreements, contracts, tenders and lease arrangements relating to the acquisition of property, the supply of services and the construction of a building to be leased from private interests.

The department claimed exemptions in the economic interests of Canada [18(b) and (d)], and a complaint was launched.

An investigation and representations by the department satisfied the Commissioner that at the time of the complainant's request, the withheld information, if disclosed, could reasonably have been expected to be materially injurious to the financial interests of the Government of Canada or could reasonably have been expected to result in an undue benefit to some person.

Names of Radio Frequency Users

File: 089

Institution: *Communications*
Complaint: *Refusal - exemption*
[15(1)(i)(ii), 15(1)(c),
16(1)(d), 16(2), 17 and 19(1)]
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Resolved in part*

This complaint involved a request for access to "the list of all authorized radio frequencies and authorized users of such frequencies in the Metropolitan Toronto area..."

The names of all radio licensees were withheld from the complainant on the ground that they were personal information exempted under section 19. The Commissioner recommended release on the basis that the names of licensees are not protected from disclosure under the definition of "personal information" in section 3 of the *Privacy Act*. While the Minister did not agree with the Commissioner's finding, he agreed to disclose all information exempted under section 19.

The Minister's rationale for disclosure was that release of the radio licensees' names, call signs, frequencies and other technical information is in the public interest and thus clearly outweighs any invasion of privacy. Accordingly, he authorized the release under subparagraph 8(2)(m)(i) of the *Privacy Act*.

The investigation confirmed as appropriate the exemptions claimed by the department under international affairs [15(1)(i)(ii)], defence [15(1)(c)], law enforcement [16(1)(d)], security [16(2)] and the safety of individuals [17].

Meat Inspection Reports

File: 095

Institution: *Agriculture Canada*
Complaint: *Refusal - exemption [20(1)(c) and (d)]*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Resolved in part*

The applicant requested access to 1982 and 1983 Canadian meat inspection reports on U.S. meat packing plants and Kitchener area Canadian meat inspection audit team reports to June 20, 1983.

The department provided copies of both types of reports, exempting portions as confidential business information [20(1)(b), (c) and (d)].

In a letter received on January 11, 1984, the applicant objected to the exemptions under 20(1)(c) and (d). Subsequently the department withdrew the exemption made under 20(1)(d).

The complainant had obtained the same, or similar, meat inspection reports under the U.S. *Freedom of Information Act* and contended that it made no sense that Canadians should be denied information from the Government of Canada that could be obtained from Washington.

During the investigation, an opportunity was provided for the department and the 37 meat-packing firms to show the Information Commissioner what defined injury might arise from the release of the exempted information. None of the representations provided persuasive examples of injury.

Further, while reports prepared by Canadian and U.S. meat inspectors and filed in Washington have been released by the U.S. Department of Agriculture under the *Freedom of Information Act* since 1972, the United State Department of Agriculture was not aware of North American meat industry firms suffering business losses as a result of disclosures.

The Commissioner recommended release and advised the Minister that the head of a government institution may disclose any record containing confidential business information "if such disclosure would be in the interest of public health [20(6)] and if the public interest in disclosure clearly outweighs in importance any financial loss or gain to, or prejudice to the competitive position of a third party." She also referred to the department's meat inspection mandate which, in part, is "to provide consumers with sound, safe, wholesome, correctly labelled meat products....". Therefore, a concern for public health appears to be the purpose of such inspections. She pointed out that exempted comments relate to non-compliance with sanitary or processing standards and disclosure would keep the public properly informed whether packing plants adhered to the appropriate standards. Furthermore, she stated, officials may make explanatory remarks when releasing records, should they think it necessary.

The Minister agreed to implement the Commissioner's recommendation, subject to notification to third parties of their right to a judicial review of his decision. Disclosure was made to the complainant of all previously exempted portions of the reports under 20(1)(c), with the exception of the reports of third parties who had opted for judicial review.

Duty on Crystal

File: 106

Institution: *Revenue Canada (Customs and Excise)*

Complaint: *Refusal - exemption [13(1)(a), 16(1)(c)(i), (ii), (iii) and 21(1)(a)]*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in part*

The complainant sought access to all Revenue Canada (Customs and Excise) records "pertaining to a review of the value for duty of cut crystal tumblers and stemware containing a minimum of 24 per cent lead originating from Czechoslovakia, Hungary and the German Democratic Republic and all records pertaining to a valuation ruling dated August 24, 1983, concerning the same items".

As a result of our investigation, the department released a number of the previously-exempted records. The remaining exempted records were found to be supportable because they were received in confidence from the government of a foreign state, [13(1)(a)], contained information about an investigation that would reveal the identity of a confidential source of information or information obtained during an investigation, the disclosure of which could be injurious to law enforcement [16(1)(c)(i), (ii), (iii)]; or contained advice or recommendations developed by or for a government institution or a minister [21(1)(a)].

Security Policies

File: 109

Institution: *Public Archives Canada*
Complaint: *Refusal - exemption [13(1)(a) and (b), 15(1)(d)(ii) and 16(1)(c)(ii)]*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in part*

The complaint involved a request for access under the *Access to Information Act* for a number of files and specific documents originating with several departments but held by Public Archives Canada. The applicant requested information from the RCMP, Privy Council Office and External Affairs records concerning "Security Policy 1939-1957".

The request was made on October 12, 1983, and some of the information was refused by Public Archives in three separate letters under paragraphs 13(1)(a) and (b), subparagraph 15(1)(d)(ii), subparagraph 16(1)(c)(ii), section 17 and subsection 19(1). The complainant challenged the exemptions under sections 13, 15 and 16 of the Act.

As a result of the investigation, Public Archives disclosed a number of records originally exempted under sections 13, 15 and 16 of the Act. The Commissioner concluded that the remaining exemptions under paragraphs 13(1)(a) and (b), subparagraphs 15(1)(d)(ii) and 16(1)(c)(ii) had been correctly applied. Information may be exempted under paragraphs 13(1)(a) and (b) if it is obtained in confidence from the government of a foreign state or an institution

thereof or from an international organization of states or an institution thereof; under subparagraph 15(1)(d)(ii) if it is obtained or prepared for the purpose of intelligence relating to the detection, prevention or suppression of subversive or hostile activities; and subparagraph 16(1)(c)(ii) if it reveals the identity of a confidential source of information.

In his letter of complaint, the complainant expressed the concern that the spirit of the *Access to Information Act* did not allow for a more restrictive interpretation than previously established rules for disclosure of information. Those previous guidelines, as well as the Prime Minister's statement in the House of Commons on May 1, 1969, setting out the basis for the "thirty-year rule", were examined. The Commissioner found that the exemptions applied by Public Archives in this instance were no more restrictive than they would have been prior to the Act coming into force.

Leaded Gasoline

File: 123(1/2)

Institution: *Energy, Mines and Resources*
Complaint: *Refusal - exemption [13(1)(c), 14, 20(1)(a), (b) and (c) and 21(1)(a) and (b)]*

Finding : *Supportable*

Disposition : *Resolution negotiated*

Result : *Resolved in part*

The requestor sought access to "all records that will enable me to know of the department's 1982 and 1983 reports concerning the federal government proposals to reduce the level of lead in Canadian gasoline". A similar request was sent to Environment Canada. On December 9, 1983, Energy, Mines and Resources (EMR) informed the requestor that 76 pages were available for review at their offices. They also noted that some records or portions thereof were exempted as protected third party information [20(1)(b) and (c)] and as accounts of advice and deliberations [21(1)(a) and (b)]. In addition, third parties were being contacted by EMR and additional disclosures were possible after January 6, 1984. The requestor viewed the 76 pages at the department on January 17, 1984.

On February 1, 1984, an additional 147 pages were made available for review. Some records continued to be exempted following representations by third parties [20(1)(a), (b) and (c)] as a result of the department's decision to exempt information from another government [13(1)(c) and 14], or due to advice or consultations [21(1)(a) and (b)].

On February 29, 1984, the individual registered a five-part complaint concerning:

(a) The deletions made by EMR to the document *Lead Phase-Down: EMR Concerns* and the exemptions cited . . . The 20(1)(c) and 21(1)(a) exemptions were made to material already in the public domain . . .

(b) The document, "Implications of Reduced Lead-in-Gasoline Limits for the Canadian Lead-Industry" was withheld by EMR but produced by Environment Canada.

(c) Five letters sent in 1983 from EMR officials to officials of Environment Canada which were released by Environment Canada but not by EMR . . .

(d) The discrepancy in the amount of time taken by the departments in responding to the request.

(e) All other inconsistencies in the actual records released in the field where there is overlapping, including the three letters between the two departments in 1982 that were released by EMR but not by Environment Canada.

The individual also made a broader complaint of a "fortress mentality" in the department.

The Commissioner reported the results of the investigation:

(a) Following consultations with EMR pages 2, 4, 6, and 8 of the document *Lead Phase-Down: EMR Concerns* containing portions previously exempted under paragraphs 20(1)(c) and 21(1)(a) were released in full on May 15, 1985.

(b) As a result of the investigation, EMR said that the exempted paper "Implications of Reduced lead-in-gasoline limits for Canadian lead industry" had been made public as an appendix to an Environment Canada report. This paper was released on May 15, 1985.

(c) The five letters were not disclosed by EMR because, in their judgement, the contents did not fall within the bounds of the request. With the wording of the request in mind, the investigator agreed that four did not come within the bounds of the request. The fifth letter, dated July 15, 1983, was released to the complainant on February 6, 1986.

(d) The investigation showed that the departments took different periods of time because Environment Canada records were centralized, as is decision-making on access. Only two third parties required contact by telephone. In EMR, each sector of the department controls its files and a review committee consisting of a representative from each sector, a legal adviser and departmental access staff must convene to review all records when responding to the request. Coupled with the need to correspond with 13 third parties and await replies, this situation accounted for the time taken by EMR.

(e) Environment Canada confirmed that the three 1982 letters between departments, released by EMR but not by Environment Canada, were accessible to the complainant when Environment Canada records were being reviewed.

The investigation did not disclose any irregularities in the handling of the request by either department. Differences in organization, record keeping, and decision making resulted in the

time difference in processing the requests. A slight difference in wording between the requests explained why some records were being supplied by one department and not the other. A further complication was the lack of communication about the requests between the departments. In addition, officials handling the request were inexperienced. The Act had been in force for only three months, and variations in the implementation and interpretation of the Act were inevitable at the early stage.

All the exempted records or parts thereof were examined and EMR has since made additional disclosures to the complainant. The Commissioner was satisfied that the remaining exemptions under section 14, subsection 19(1) and paragraphs 13(1)(c), 20(1)(b), (c) and (d) and 21(1)(a) were correctly applied by the department.

Information Received in Confidence

File: 167(1/2)

Institution: *Health and Welfare Canada*
Complaint: *Refusal - exemption [13(1)(c) and 20(1)(a) and (b)]*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result : *Resolved in full*

A complaint against Health and Welfare Canada dealt with a refusal to disclose a portion of records under its control and alleged that the department "encouraged secrecy" and that there were "general problems" in response to access requests.

On January 30, 1984, the complainant requested records relating to a list of requests from other parties that their records be treated as confidential and thus not releasable [13(1)(c), 20(1)(a) and (b)].

The department had indicated that it had difficulty interpreting the request and on February 14, 1984, the complainant had advised them in writing that he was referring to lists of "in confidence" submission claims (either specific or general) received from government or other agencies with reference to section 13 of the *Access to Information Act* or section 19 of the *Privacy Act*, as well as from third parties with reference to section 20 of the *Access to Information Act*. He asked that the lists be to the end of January, 1984, or later, that they name the actual agency and indicate whether the request received was a general claim of "in confidence" treatment or merely for specific classes of information. He sought access to actual correspondence between the department and the other party and also to "in confidence" claims submitted to Health and Welfare Canada before any actual access requests had been filed that might involve applying such exemptions.

On April 13, 1984, Health and Welfare Canada informed the complainant that "lists" of government institutions and corporations, as requested, do not exist. The department acknowledged having received correspondence from provinces and corporations and indicated it was awaiting their consent to release.

On May 30, 1984, the department said that it had received the requested type of correspondence from six provinces, three of which had agreed to release. Correspondence from the remaining three provinces was exempted under paragraph 13(1)(c) of the *Access to Information Act*. Health and Welfare Canada also stated it would release all 10 corporate letters received requesting confidentiality, except for specific trade secrets which were exempted under paragraph 20(1)(a) of the *Access to Information Act*.

The information withheld from the complainant pursuant to paragraph 20(1)(a) of the *Access to Information Act* concerning "in confidence" claims from corporations dealt specifically with trade secrets. The Information Commissioner was satisfied that, if these records were released, they could injure the competitive position of the third party.

The part of the complaint described as a "general problem" concerned interaction between the complainant and two staff members of the Health and Welfare Canada Access to Information Office. This specific problem was discussed during a meeting with the deputy minister, National Health and Welfare, and restated in a letter. As a result, the Information Commissioner was confident that similar problems would not recur.

The complaints of refusal to disclose the records and of encouraging secrecy were considered to be one and the same. The Information Commissioner concluded that the total exemption of the records from three provinces under paragraph 13(1)(c) of the *Access to Information Act* was not justified. This material was supplied to Health and Welfare Canada after the *Access to Information Act* was promulgated and was not at that time labelled confidential and did not fall within the categories of information the provincial ministries consider as given in confidence. The Information Commissioner doubted that such a record, not previously designated as classified, and written after July 1, 1983, could retroactively be declared to have been provided in confidence.

Representations from Health and Welfare Canada did not persuade the Information Commissioner that the department's reason for refusing access to the records requested was supportable under the Act.

On February 15, 1985, a report was provided to the minister of National Health and Welfare recommending release on or before March 8, 1985, of the provincial ministry records exempted under paragraph 13(1)(c). In accordance with subsection 37(1), the Commissioner asked that notice be given of any action taken, or proposed to be taken to implement the recommendation or alternatively that reasons be given why no such action had been or was proposed to be taken.

On February 28, 1985, an interim response from the Deputy Minister indicated that before he could respond to the recommendation, he had to seek the views of the deputy minister of Justice, the secretary of the Treasury Board and the secretary to Cabinet for Federal-Provincial Relations.

On receipt of the reply the complainant was advised by the Commissioner's office, as required under the Act, that his complaint was considered well-founded.

On March 19, 1985, the Minister wrote to the Commissioner as follows:

"On February 26, 1985, [the Deputy Minister] asked you on my behalf to extend your deadline to March 31, 1985, in order to consult with other government officials. Such consultations have now taken place, and I have instructed my Department to take the following action. The provincial institutions concerned will be contacted again to see if they are prepared to consider your position on the issue and to consent to the disclosure of their letters pursuant to paragraph 13(2) of the *Access to Information Act*.

"If they accept, I would expect the department to be able to release the letters to [the complainant] on the same date."

On March 22, 1985, after this office had written to the Minister, the complainant wrote directly to the Minister setting another deadline for the release of the requested information. The Information Commissioner wrote to the complainant on March 28, 1985, expressing concern for this action which could cause confusion in the minds of the Minister and his officials.

On April 3, 1985, the Minister wrote to the complainant with a copy to the Information Commissioner as follows:
"...Earlier today... I received a letter from the Deputy Attorney General of Ontario, conveying authorization on behalf of all Ontario departments concerned for the release to you of the letters in question... A similar authorization from New Brunswick was received yesterday. Accordingly, I am able to attach copies of all the provincial letters you have requested".

Information Given in Confidence

File: 168(1/2)

Institution: *Royal Canadian Mounted Police*

Complaint: *Refusal - exemption [13(1)(b) and (c) and 16(1)(b) and (c)]*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Resolved in part*

The RCMP refused access to submissions from other governments or corporations on the basis that the records should be considered "in confidence" and therefore protected from disclosure. The RCMP also refused access to "personal data sharing" agreements made under paragraph 8(2)(f) of the *Privacy Act*.

On April 27, 1984, the RCMP informed the complainant that the only "personal data sharing" agreements they had relative to paragraph 8(2)(f) of the *Privacy Act* were those between the Department of Justice and the Provincial Attorneys-General. The RCMP "understood that" the complainant had received copies of these "personal data sharing" agreements from the Department of Justice but informed him that he could receive copies or review them.

As to the submissions from other governments, the RCMP informed the complainant that documents relating to eight "in confidence" claims had been located. Three were from corporations, four from provincial government institutions and one from an international organization.

Three of the provincial government institutions' "in confidence" claims were exempted under paragraph 13(1)(c) and related RCMP correspondence was exempted under paragraph 16(1)(c). The Information Commissioner concluded that the total exemption of these documents was not justified. Material from one provincial ministry had been supplied to the RCMP after the *Access to Information Act* came into force and was not at that time labelled as confidential. It did not fall within the categories of information the provincial ministries themselves consider as given in confidence and the Commissioner doubted whether a record, not previously designated as classified, and written after July 1, 1983, could retroactively be declared to be provided in confidence.

The "in confidence" claim of the international organization was exempted under paragraph 13(1)(b) and related RCMP correspondence was exempted under paragraph 16(1)(c). The Information Commissioner considered these exemptions and a partial exemption under paragraph 16(1)(b) in respect of a fourth provincial government institution's "in confidence" claim, to be correct in fact and in law.

The documents requested relating to corporations were released without exemption.

On February 5, 1985, a report to the Solicitor General of Canada recommended release on or before March 8, 1985, of the provincial ministry records exempted under paragraph 13(1)(c). In accordance with subsection 37(1) of the *Access to Information Act*, the Minister was asked to provide a notice of any action taken, or proposed to be taken, to implement the recommendation or be provided with reasons why no such action has been or is proposed to be taken.

On March 8, 1985, the Solicitor General replied that he would seek legal advice and consult with the departments concerned and advise of his proposed course of action "on or before April 1, 1985".

In accordance with subsection 37(3), the Information Commissioner reported the finding and the Minister's response to the complainant.

While awaiting the Minister's action, the complainant wrote directly to the Minister setting another deadline.

On April 2, 1985, the Minister replied to the Commissioner that "...as a result of the further consultation referred to in my letter of March 8, the three relevant institutions... have now given their consent to the disclosure of the records requested by [the complainant]."

Cellular Mobile Radio

File: 178

Institution: *Communications*

Complaint: *Refusal - exemption [14, 15(1)(g), (h) and (i), 19(1), 20(1)(a) and (b), 21(1)(a) and (b) and 23]*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in part*

In his access request, the applicant sought certain records dealing with cellular mobile radio policy and licences. The department released some of the records but exempted others. The complainant objected to the exemptions, claiming that facts in the public portion of the cellular applications were not exemptable in letters or other correspondence within the department.

As a result of the investigation, a number of additional records relating to the request were made available to the complainant.

The Commissioner informed the complainant that she was satisfied that the remaining records refused under section 14, paragraphs 15(1)(g), (h) and (i), subsection 19(1) and paragraphs 20(1)(a) and (b), paragraphs 21(1)(a) and (b) and section 23 were examined and that the exemptions had been correctly applied.

Licencees' Privacy Rights

File: 198

Institution: *Fisheries and Oceans*

Complaint: *Refusal - exemption [19(1)]*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Disputed*

The complaint arose from the Department of Fisheries and Oceans' refusal to disclose copies of all applications requesting permission to visit the seal hunts in 1975-1983 under the Seal Protection Regulations.

The department refused to disclose the requested records on the grounds that they constituted personal information.

The Commissioner accepted the department's view that, generally speaking, the records would constitute "personal information" as defined in section 3 of the *Privacy Act* since they included the name and address of the applicant, indicated his or her occupation and specified the organization the individual represented. The applicant is also required to state the reasons why a permit is requested and this information is arguably the personal opinion or view of the individual.

However, the definition of "personal information" contains an exception which provides that

...for the purposes of...section 19 of the *Access to Information Act*, [personal information] does not include...

(1) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit...

The Commissioner believed that records concerning individuals who received permits were releasable under this exception. The departmental officials disagreed and the Commissioner subsequently made a recommendation to the Minister.

The recommendation was not accepted and the Minister advised the Commissioner:

We are of the view, the addition [in the exception quoted above] of the 'granting of a licence or permit' after 'any discretionary benefit of a financial nature' does not enlarge the latter expression, but rather serves as an example of what may constitute a discretionary benefit of a financial nature. The granting of a licence or permit would then be excluded from the definition of 'personal information', and therefore be subject to disclosure, only where such granting constitutes a discretionary benefit of a financial nature. If Parliament had wanted 'the granting of a licence or permit' to stand on its own, i.e. without reference to the preceding words, it would have been easy to say it in more unambiguous terms or even in a separate paragraph of the definition 'personal information'...

"We are further of the view that a permit to visit and observe the seal hunt is not a discretionary benefit of a financial nature. The relationship between such a permit and the generation of income appears to be very thin, to say the least. It is felt that, for a licence or permit to be a benefit of a financial nature, the licence or permit must authorize the carrying out of a lucrative activity, which is hardly the case for a visitor's permit. Observation of the seal hunt, which is what is authorized by the permit, does not itself generate any income."

Publicly Available

File: 200

Institution: *National Defence*
Complaint: *Refusal - exemption*
[16(1)(c)]
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Resolved in full*

The complainant had been denied access to "transcripts of evidence taken before and decision of the Canadian Forces Board of Inquiry in 1984 into allegations that five Department of National Defence Inspectors allegedly wrongfully accepted favours in return for approving shipments of military equipment to the United States".

Access was denied on the basis that the information, if released, could reasonably be expected to be injurious to law enforcement [16(1)(c)].

The investigation disclosed that consultations had been necessary with the RCMP, which was carrying on an investigation. After a number of meetings with officials, the department agreed to apply severance to the record. The Commissioner concluded in a tentative finding provided to the complainant, that the application of the exemptions was correct. She also believed that the releasable portion of the record might be of no value to the requestor. The complainant was invited to make representations.

The complainant provided the Commissioner with a number of search warrants which concerned the same subject as the record. Based on *Attorney-General of Nova Scotia et al. v. MacIntyre* (1982) 132 D.L.R. 385; 65 C.C.C. (2d) 129, the complainant argued that if the information withheld under the *Access to Information Act* needed protection, the same argument could have been made against release of the search warrants.

The Commissioner accepted these representations and recommended to the Minister that a portion of the information be released because it had already been made public elsewhere. Thus releasing it could not be injurious to law enforcement. The recommendation was accepted and the information released. However, the Deputy Minister of Defence stipulated that "our releasing the names in this case is being done without prejudice to the position we have consistently taken in withholding the names and identifying features of witnesses appearing before Boards of Inquiry to protect the department's investigative processes as provided for under paragraph 16(1)(c). Consequently, this particular case should not be construed as a precedent in other cases."

(It should be noted that subsequent amendment to the Criminal Code prevents the media from reporting information from search warrants unless consent is obtained from the individual concerned.)

Confidential Business Information

File: 202

Institution: *Regional Industrial Expansion*
Complaint: *Refusal - exemption*
 [20(1)(b), (c) and (d)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An applicant asked for all records from 1976 held by the Department of Regional Industrial Expansion (DRIE) which "show the assistance given to [a third party] under the Enterprise Development Program". Records were released subject to exemptions under the provisions of third party information [20(1)(b), (c) and (d)].

The investigation confirmed that the exemptions invoked by DRIE were justified under the protection afforded to third parties in section 20.

The complainant's counsel requested additional searches to ascertain whether the requested information had been made public elsewhere. No evidence of such disclosure was found.

Complaint Withdrawn

File: 217

Institution: *Transport Canada*
Complaint: *Refusal - exemption*
 [20(1)(a), (b), (c) and (d)].

Finding: *Supportable*

Disposition: *Discontinued*

Result: *No action*

Transport Canada refused to disclose the records of an audit performed after an airplane crash to protect third party information [20(1)(a), (b) (c) and (d)]. The department later conceded that paragraph (a) was not applicable.

The Commissioner believed that the information could not be exempted under subsection 20(1), and approached the third party for representations concerning the release of specific information.

However, before this procedure was completed, the complainant withdrew his complaint.

Business Information

File: 218(2/3)

Institution: *Agriculture Canada*
Complaint: *Refusal - exemption*
 [20(1)(a), (b) and (c)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

This complaint occurred when records on the safety of a pesticide were withheld as confidential business information [20]. Enquiries found that the exempted records contained confidential financial, commercial, scientific or technical information supplied to the department by a third party that had consistently treated it as confidential.

In addition, disclosure of information could cause material financial loss or gain or could prejudice the competitive position of a third party.

The complainant was informed that subsection 20(2) of the *Access to Information Act* was not invoked because no product testing was carried out by or on behalf of a government institution. Subsection 20(6) of the Act was not invoked because there were no indications that the disclosure of the exempted information would be in the public interest as it relates to public health, public safety or protection of the environment. Therefore, the Commissioner could not support the complaint.

Pesticides

File: 218(3/3)

Institution: *Health and Welfare Canada*
Complaint: *Refusal - exemption [19(1), 20(1)(b) and (c) and 21(1)(a)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant sought access to records held by Health and Welfare Canada on the safety of a pesticide. (An identical request was sent to Agriculture Canada. See exemption 218 (2/3)).

The department provided the applicant with some records but exempted other records as personal information, third party information and advice or recommendations developed by or for a government institution or a Minister of the Crown. The applicant challenged the exemptions. Following an investigation, the Commissioner was satisfied that the exemptions had been properly applied by the department.

World Fair Information

File: 220

Institution: *Privy Council Office*
Complaint: *Refusal - exemption [13(1)(a) and 19(1)]*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

In this case access was sought to records the Privy Council Office held on the Montreal World Fair.

When the complainant received the requested records, portions had been exempted as confidences of another government [13(1)(a)] and personal information [19(1)].

As a result of the investigation, the complainant was granted access to some information which had previously been exempted. The remaining exemptions covered personal information on specific individuals entitled to protection under the *Privacy Act*, and a report on confidential negotiations with other countries, subject to mandatory exemption under 13(1)(a).

The Commissioner's Office informed the complainant that, subject to any representations he wished to make, the remaining exemptions by the department were found to be properly claimed.

Security Measures

File: 221

Institution: *National Defence*
Complaint: *Refusal - exemption*
 [13, 15, 16(2) and 19(1)]
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

The complainant challenged exemptions claimed by National Defence. The complainant objected when some records he requested from National Defence were exempted under the confidences of another government [13], international affairs and defence [15], law enforcement and investigations [16(2)] and personal information [19] provisions of the Act. As a result of the investigation, and representations to the department, additional records were released.

The complainant had asked the department to limit its review to five hours, and the Commissioner reviewed all the documents identified in that time by the department. Aside from the additional records released, she was satisfied that the records withheld were properly exempted under the Act.

Cuban Missile Crisis

File: 227

Institution: *National Defence*
Complaint: *Refusal - exemption*
 [13(1)(a)]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant sought access to "all records related to the Cuban missile crisis that are under the control of National Defence". He added: "I am also requesting any correspondence or record of communication between National Defence and External Affairs on this subject".

The department invited the complainant to view the records in Ottawa with the exception of two records withheld because they were received in confidence from another government [13(1)(a)]. The complainant objected to the department's refusal to disclose the two records.

A review of the records established that the exempted documents were provided in confidence by a foreign government and that the claim of confidence had been checked with that government following the complainant's request. In those circumstances, the exemption is mandatory under the Act.

The investigation also confirmed that no other correspondence or record of communication requested by the complainant existed at the Department of National Defence.

Injury To International Affairs

File: 231

Institution: *Privy Council Office*
Complaint: *Refusal - exemption [15(1)]*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

The complainant requested access to Canadian immigration policy records respecting immigrants from Israel. The department provided the complainant with copies of accessible records but exempted portions under the provisions for international affairs and defence [15(1)].

The department released additional information as a result of the investigation. The Commissioner was satisfied that the remaining exemptions were properly claimed as release could cause injury to the conduct of international affairs.

Existence of Record Neither Confirmed Nor Denied

File: 235

Institution: *Health and Welfare Canada*
Complaint: *Refusal - exemption [19(1) and 20(1)(b) and (c)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

A lawyer, acting on behalf of a client, complained to the Information Commissioner because Health and Welfare Canada informed the client that it could not comply with a request for a "Notice

of Compliance" issued to a named manufacturer for capsules or tablets pursuant to Section c.08.004 of the Food and Drug Regulations. The department had stated that, if the information requested did exist, it would be exempted as personal information and confidential business information [19(1), 20(1)(b) and (c)].

The Commissioner informed the complainant that under section 10 of the *Access to Information Act*, a government institution is permitted to indicate the specific provision of the Act on which a refusal is, or could reasonably be expected to be based, without indicating whether the record exists, and that she was satisfied the department's refusal to provide access without confirming or denying the existence of the record was appropriate in this case.

The Commissioner also informed the complainant that:

"... I am of the view that disclosure of the existence or non-existence of the type of record requested would cause the injury contemplated in paragraphs 20(1)(b) and (c). Confirmation that a prescription drug has or has not reached the notice of compliance stage, before approval is made public, could seriously prejudice the competitive position of a pharmaceutical manufacturer in the process of seeking approval for the use of a new product. As well, information provided by pharmaceutical manufacturers for the purpose of obtaining approval constitutes confidential technical information supplied to the government. It is apparent that such information is consistently treated

in a confidential manner. As a result, I am satisfied that, regardless whether the record requested actually exists, the exemptive provisions were ones on which a refusal could reasonably be expected to be based. Similarly, if a record of the type requested contained personal information as defined in the *Privacy Act*, exemption of the record could reasonably be based on section 19 of the *Access to Information Act*".

Terrorism

File: 237

Institution: *Privy Council Office*
Complaint: *Refusal - exemption [13(1)(c)]*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

The Privy Council Office had exempted all of a record relating to terrorism in Quebec on the basis that it consisted of confidences of another government [13(1)(c)].

As a result of the investigation, the Privy Council Office released all of the record requested, except one sentence.

The Commissioner was satisfied that this sentence contained information received from another government which objected to its release.

Basis for Exemptions not Accepted

File: 244

Institution: *Employment and Immigration Canada*
Complaint: *Refusal - exemption [15(1) and 16(2)(a)]*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Disputed*

An individual made an access request to Employment and Immigration Canada (EIC) for portions of the Immigration Manual IC (Immigration Classified). The department sent portions of the records to the applicant, but exempted the portions under subsection 15(1) and paragraph 16(2)(a) of the Act.

The applicant complained to this Office in a letter received on November 23, 1984. On November 27, 1984, the investigator met with EIC officials to review the exempted portions of the records. On December 6, 1984, the investigator and EIC officials carried out a chapter-by-chapter review of the exempted records. A number of specific exemptions were questioned.

EIC informed this Office that consultations within the department and with other government institutions would be required before these questions could be answered. Because the investigator's approach had not yielded answers to our questions about the type of information exempted under subsection 15(1) or the injury foreseen by release, these concerns were expressed in a letter to an EIC official. When EIC did not respond for 13 weeks, the Information Commissioner

reported to the Minister, explaining the difficulties encountered in completing the investigation and recommending that the exempted portions of the records be released. In accordance with the Act, the Minister was asked to give notice on or before August 30, 1985, of any action taken or proposed to implement the recommendation or provide reasons why no such action would be taken.

Although the Minister's office acknowledged receipt of the report on August 14, 1985, the Minister did not respond by August 30, 1985. In her letter of September 9, 1985, the Minister stated that she had received additional documentation to support the exemptions. She wrote: "I trust the review of the additional documentation by your office will result in your support by your exemptions invoked by the Canada Employment and Immigration Commission".

This additional documentation consisted of recommendations by two other government institutions that specified portions of the Immigration Manual (Immigration Classified) should be withheld. The Commissioner was satisfied that this additional documentation provided no significant support for the exemptions invoked by EIC. As a result, she found no reason to alter the recommendation to the Minister that the exempted portions of the records be disclosed. In some cases, the information appeared not to qualify for exemption or was already available to a certain public. In other cases, the Commissioner did not understand the basis for the exemption

invoked by EIC and no explanations were offered. The Information Commissioner concluded that EIC had failed to state the specific basis for the refusal, bearing in mind that, under the Act, necessary exemptions to the right of access should be limited and specific.

The Commissioner informed the complainant that the Minister's response was inadequate because it did not explain the refusal satisfactorily and she also informed him of his right to a judicial review.

One Valid Ground for Exemption Suffices

File: 246

Institution: *Revenue Canada (Taxation)*
Complaint: *Refusal - exemption [13(1)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant objected when the record he requested from Revenue Canada (Taxation) was exempted under the confidences of another government provision [13(1)] and law enforcement and investigation provisions [16(1)(c)] of the Act. The investigation disclosed that the exemption under 13(1) resulted from a specific request for confidentiality by the government or institution in question and, in these circumstances, the exemption is mandatory.

Aircraft Accidents/Incidents

File: 248

Institution: *Transport Canada*

Complaint: *Refusal - exemption*
[16(1)(c), 16(3), 19(1) and
21(1)(a) and (b)]

Finding: *Supportable*

Disposition: *Discontinued*

Result: *No action*

The complainant had sent two requests to Transport Canada for access to records on four specific aircraft accident investigations, three specific aircraft incident investigations and any records about difficulties involving the pitch of skis on two specific aircraft models.

The department disclosed all the relevant records under its control about the skis and most of the records of the aircraft accident and aircraft incident investigations. However, some of the records were exempted under the Act on the grounds that disclosure could be injurious to the conduct of lawful investigations [16(1)(c)], that they contain information obtained under RCMP provincial policing agreements [16(3)], that they contain personal information [19(1)] and that they contain advice or recommendations developed by or for a government institution or accounts of consultations or deliberations involving government officials or employees [21(1)(a) and (b)].

As a result of the Commissioner's preliminary investigation, the department provided the complainant with a revised list of exemptions which identified more clearly the material being exempted and the provisions of the Act under which each exemption was made. The department withdrew the exemption under paragraph 21(1)(b).

The complainant indicated that although the department's letter made things clearer, he felt that the exemptions remained unjustifiable.

After the investigator had logged more than 130 hours in a complex investigation and advised the department that he would recommend that the Commissioner find the complaint justifiable and that the exemptions under paragraphs 16(1)(c) and 21(1)(a) should be withdrawn, the complainant advised us that he no longer needed the information.

The Commissioner found that there appeared to be substantial merit to the complaint and it was considered to be supportable, although discontinued.

Cruise Missile

File: 263

Institution: *National Defence*

Complaint: *Refusal - exemption*
[13(1)(a), 15(1), 19(1) and
21(1)(b)]

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in part*

The complainant requested "all records related to cruise missile testing in Canada including analysis and policy records, between March 27, 1984, and November 20, 1984", "any correspondence or record of communication between National Defence and External Affairs on this subject for the same period" and "records related to the communication plan for testing". The Department of National Defence released the records, but claimed exemptions and the complainant objected.

The exemptions were on the grounds of confidence of another government [13(1)(a)], records that might affect international affairs [15(1)] or disclose account of deliberations involving a high level meeting [21(1)(b)]. Some personal information was also withheld [19(1)].

The Information Commissioner found that the exemptions, with one exception, were supportable and correct in law. The questionable exception was the deletion of the author's name in a letter from a municipal institution. The department agreed to release this document in its entirety.

During our review of the released portion of the record, it was noted that two documents referred to an enclosure identified as "Memo to MND". The enclosure did not appear in the record. The department advised that the memorandum in question was not signed until November 30, 1984, and was therefore not part of the requested record. The complainant was told that this particular document was not missing and had been accounted for.

Nuclear Reactor Market

File: 264(1/3)

Institution: *External Affairs*
Complaint: *Refusal - exemption*
[13(1)(a), 15(1) and
20(1)(b), (c) and (d)]

Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant sought access to "records related to the present and future market for nuclear reactors in Canada and the rest of the world."

After a considerable delay, which is the subject of another complaint, External Affairs informed the applicant that all accessible records were available for his examination subject to exemptions claimed in respect of confidences of another government [13(1)(a)], international affairs - defence [15(1)] and third party [20(1)(b), (c) and (d)] provisions of the Act. Some records were also excluded because they were confidences of the Queen's Privy Council (see exclusion 264(2/3)).

Following an investigation, the Commissioner was satisfied that the exemptions were justified based on the provisions of the Act. The Commissioner added that in almost every document more than one ground for exemptions was claimed and the more readily sustainable exemption was considered in such cases.

Nuclear Reactor Markets

File: 267(1/3)

Institution: *Energy, Mines and Resources*
Complaint: *Refusal - exemption*
[13(1)(a), 15(1), 20(1)(b), (c)
and (d) and 21(1)(a), (b)
and (c)]

Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant was denied access to portions of records relating to the present and future market for nuclear reactors in Canada and the rest of the world. The denial was made under confidences of another government

[13(1)(a)], information which could result in injury to international affairs and defence [15(1)] or to third parties [20(1)(b), (c) and (d)], and as accounts of consultations or deliberations involving government operations [21(1)(a), (b) and (c)].

The Commissioner accepted the exemptions and informed the complainant that the exemptions had been properly applied.

Narcotics Prosecutions

File: 269(2/2)

Institution: *Justice*
Complaint: *Refusal - exemption*
[16(1)(c)]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual complained that the Department of Justice withheld information concerning the laying of charges under the *Narcotics Control Act*. The exemptions were claimed on the ground that the information, if disclosed, might reasonably be expected to be injurious to the enforcement of any law in Canada [16(1)(c)].

The information withheld would have indicated exact benchmarks used to determine the charges that might be used. At the conclusion of the investigation the complainant was advised of the preliminary results and invited to make representations. After considering those representations, the Commissioner was satisfied that the release of the information could reasonably be

expected to be injurious to the enforcement of the *Narcotics Control Act* because disclosure of the benchmark amounts might assist those involved in the illegal importation or sale of narcotics.

Ministerial Discretion

File: 273

Institution: *Health and Welfare Canada*
Complaint: *Refusal - exemption*
[20(1)(b), (c) and (d) and
21(1)(a)]
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Resolved in part*

Health and Welfare Canada refused to disclose portions of a report entitled "Possible Adverse Reaction to [a named drug]" as confidential third party information [20(1)(b), (c) and (d)] and advice and recommendations to a government institution [21(1)(a)]. The applicant objected.

In the early stage of the investigation the department agreed to cancel parts of the exemption claimed under 20(1)(b) but maintained the exemptions under 20(1)(c) and (d).

The Commissioner provided a report to the Minister recommending that the portion of the record exempted under 21(1)(a) be disclosed. The Minister accepted the report, stating "that the indiscriminate application of paragraph 21(1)(a) to any report prepared by a government employee would not serve the intent of this Act." The Minister also added that this "is a discretionary exemption and its application to all types of advice and recommendations tendered within my department is carefully weighed at all levels of the review process."

In the information disclosed by the Minister, the author of the report stated that he did not have sufficient information to pass an opinion as to a health hazard of the drug.

The Commissioner informed the complainant that she was satisfied that the remaining exemptions contained confidential, financial, commercial, scientific or technical information provided by a third party which had been treated consistently in a confidential manner and that disclosure of that information could reasonably be expected to prejudice the competitive position of a third party or to interfere with contractual or other negotiations.

Relevance of Record

File: 276

Institution: *Solicitor General*
Complaint: *Refusal - exemption*
[13(1)(a), 16(1)(c)(iii), 19(1),
21(1)(a) and (b)][10(2)]

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Disputed*

The applicant had requested reports, records or documents concerning "the use of Canada as a haven for alleged war criminals in exchange for information or assistance provided by them to Canada and/or Canada and its allies". The department claimed total exemption under 13(1)(a), 19(1), 16(1)(c)(iii) and 21(1)(a) and (b).

The Commissioner informed the complainant that, with one exception, she was satisfied that all portions of the records were properly exempted under at least one of the provisions. In many instances more than one provision applied.

The exception was a document the investigator located which he considered relevant to the request. It was not part of the documentation mentioned in the department's response to the complaint. Departmental officials had reviewed this additional record but had not considered it relevant to the request.

Under section 64 of the *Access to Information Act*, the Commissioner's Office is required to take every reasonable precaution to avoid disclosure of whether a record exists where the head of a government institution, in refusing to give access, does not indicate whether it exists. For this reason, the investigator was unable to give the complainant a report on the records which the department had considered, since to do so and then continue the investigation would imply the existence of another record.

Negotiations continued with the department, but its officials refused to acknowledge that the document was relevant to the access request. They added that, even if it were relevant, it would be exempted under subsection 19(1) and paragraph 21(1)(b) of the Act.

On October 21, 1985, the Commissioner wrote to the Deputy Solicitor General with the following findings concerning the additional record:

"1. The subject document deals generally with the subject matter of the access request and any doubt as to its relevance ought to be resolved in favour of disclosure, subject to any legitimate exemptions under the Act.

"2. The department ought to seek the consent of at least one individual to the disclosure of certain personal information in the document, as there is a very high likelihood that the individual(s) will consent to disclosure.

"3. Personal information relating to at least one other individual referred to in the document cannot be exempted under subsection 19(1) of the Act since the information is personal opinions or views of the individual(s) purportedly given in the course of employment as an officer or employee of a government institution and the information relates to the position or functions of the individual(s).

"4. No reasonable explanation was offered (or apparent to us) for the discretionary exemption under paragraph 21(1)(b). The department simply indicated that the record was one which could be subject to the exemption and pointed out that to exempt the entire document would be consistent with the treatment of other documents which were subject to the access request.

"5. The department ought to apply the principle of severability so that even if there is information in the document which warrants exemption under paragraph 21(1)(b) or subsection 19(1), the remaining portions of the document which can reasonably be severed from them should be disclosed."

The Commissioner recommended to the Deputy Solicitor General that the complainant be told that an additional record relevant to his request had been found; that the consent of at least one named individual be sought

to disclose personal information; and that the document, except for personal information where consent to disclose was denied, be released to the complainant.

The department's response to these recommendations was:

"1. There is no obligation to advise the complainant of a document which, in the department's opinion, is not relevant to his request;

"2. The department will not seek consent for disclosure of personal information because the document is not relevant to the access request, and even if it were, it would qualify for exemption in its entirety pursuant to paragraph 21(1)(b); and

"3. There are no legal arguments raised by the Information Commissioner opposing the application of paragraph 21(1)(b)."

At that stage, the Commissioner was ready to report the results of the investigation to the complainant, but was still faced with the prohibition against disclosing the existence of the additional record.

Her staff met with departmental officials on February 25, 1986, and they remained adamant that, because they did not consider the record relevant to the access request, they were not prepared to disclose its existence. However, they had no objection to the Commissioner's disclosing the existence of the record to the complainant, so long as the record was not described.

The department was informed that the Commissioner was prepared to take this case before the Federal Court. Her staff asked if the department would raise the issue of relevance at that stage, even though the existence of the document would no longer be a secret from the complainant. They agreed that if the complainant were to file another access request asking for this "additional document" they would not invoke paragraph 10(1)(b) of the Act and refuse to disclose its existence, but they would refuse to disclose its contents under subsection 19(1) and paragraph 21(1)(b).

While the Commissioner did not support the complaint about the exemption of records identified by the department, in respect of the additional record, the Commissioner considered the complaint to be well-founded and reported it as such to the Deputy Solicitor General.

RCMP Union Activities

File: 277

Institution: *Royal Canadian Mounted Police*

Complaint: *Refusal - exemption [16(1)(c) and 21(1)(a) and (d)]*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in part*

The complainant submitted two access requests to the RCMP for a policy paper prepared for the Commissioner by a staff sergeant between 1979 and 1981 on the formation of a union in the RCMP,

and all documentation on the association of 17 divisions, including members' names and union activities.

The RCMP exempted all of the documents under the law enforcement and investigations provisions [16(1)(c)], advice or recommendations developed by or for a government institution [21(1)(a)] and plans relating to the administration of a government institution that have not yet been put into operation [21(1)(d)]. The complainant challenged these exemptions.

As a result of the investigation, the RCMP reviewed the records and agreed to release 867 of the 1064 pages previously exempted upon receipt of a \$216.75 charge for photocopies of the released documents. The complainant was also given the choice of reviewing the documents at either the head office in Ottawa or at a detachment in Montreal, where he would be charged only for copies of the pages requested.

Security

File: 278(2/3)

Institution: *External Affairs*

Complaint: *Refusal - exemption [13(1)(a), 15(1), 16(1)(b) and (c), 16(2)(c) and 21(1)(a), (b) and (d)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant objected to exemptions claimed by External Affairs regarding his request for access to "all records related to security vulnerability of documents, communications, buildings and personnel both at posts abroad and in Ottawa between January 1, 1983, and present".

The department claimed exemptions based on confidences of another government [13(1)(a)], international affairs - defence provisions [15(1)], law enforcement and investigation provisions [16(1)(b) and (c)], security provisions [16(2)(c)], and government operations [21(1)(a), (b) and (d)].

The investigation disclosed that, of the 1400 pages of documents, 49 pages had been exempted. The Commissioner was satisfied that those 49 pages had been legitimately withheld.

Confidential Business Information

File: 286(2/2)

Institution: *External Affairs*

Complaint: *Refusal - exemption [20(1)(b), (c) and (d)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant objected when he was denied access to third party information [20(1)(b), (c) and (d)] in response to his request for "records pertaining to export permits of [a third party] in connection with the company's sales of products or services to [a foreign country]".

The investigation confirmed that the document contained confidential financial, commercial, scientific or technical information provided by a third party and that it had been treated consistently by the third party as confidential.

The Commissioner informed the complainant that the exemption had been properly applied under paragraph 20(1)(b). Hence it was not necessary to consider the other paragraphs claimed.

However, as a result of the investigation, the department agreed to inform the complainant that there was no reference within the document to the third party having received an export permit for the sale of products or services to the foreign country and our investigation confirmed that no such permits were issued.

Confidential Business Information

File: 290

Institution: *Supply and Services Canada*

Complaint: *Refusal - exemption [20(1)(c)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant sought access to a copy of a Supply and Services Canada contract awarded to a third party. He complained when the department exempted some records as third party information [20(1)(c)], and stated that "It is our belief the long standing practice of DSS to provide unit price information on awarded contracts should continue".

The investigation established that release of the exempted portions could reasonably be expected to result in financial loss or gain to the third party, or to prejudice its competitive position [20(1)(c)].

In addition, while the department had on occasion released unit price information, it was not a long-standing and consistent policy, and, under the circumstances, the department's refusal to release was based on the criteria for protecting third party information set out in the Act.

Use of Canadian Uranium

File: 291(1/2)

Institution: *External Affairs*

Complaint: *Refusal - exemption*

[13(1)(a), 15(1) and 21(1)(b)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant challenged the exemptions claimed under 13(1)(a), 15(1) and 21(1)(b) of the Act by the Department of External Affairs in responding to his request for information regarding the use of Canadian supplied uranium or technology by Pakistan for non-peaceful purposes.

The records were all examined during the course of the investigation and qualified for exemptions under the relevant sections.

The investigation showed that the department of External Affairs had retrieved all relevant documents for the periods specified and released those accessible. The department also advised that there were fewer documents produced in the recent period specified, as the subject was more prevalent in 1982-83.

Uranium Exports

File: 293

Institution: *Energy, Mines and Resources*

Complaint: *Refusal - exemption* [20(1)(c) and (d)]

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in full*

An individual complained because he had been refused access to information on uranium exported from Canada. The department exempted the requested information as third party information under paragraphs 20(1)(c) and (d).

During the course of the investigation, this Office carried out extensive negotiations with the department. As a result, the department disclosed the requested information to the complainant who informed us that he was satisfied with the information he received.

Reaction of Foreign Governments

File: 294(1/3)

Institution: *External Affairs*

Complaint: *Refusal - exemption*

[13(1)(a), 15(1), 21(1)(a) and 24(1)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An individual asked External Affairs for "all records related to the reaction of foreign governments to Canadian initiatives in the area of Canadianization of

Canada's industries, FIRA and the National Energy Program. Also any records related to evaluating the international impact of FIRA. Records are requested between January 1, 1982, and August, 1984."

The department notified the applicant that, subject to the five-hour time limit he stipulated, the accessible records were available for examination, subject to exemptions under 13(1)(a), 15(1), 21(1)(a) and 24(1). Some information had also been excluded by virtue of subsection 69(1) of the Act (see exclusion 294(2/3)). The applicant objected.

Based on the investigation, the Commissioner was satisfied that the information withheld under subsection 24(1) was subject to the confidentiality provisions of the *Foreign Investment Review Act* and that the other exempted portions contained information received in confidence from a foreign government [13(1)(a)] or would, if released, cause injury to foreign relations [15(1)]. The information withheld under 21(1)(a) was an account of deliberation of a kind that may be legitimately withheld.

Defence Research Board

File: 295

Institution: *Public Archives Canada*

Complaint: *Refusal - exemption*
[13(1)(a)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant requested access to "defence research board records related to U.S. Government Research at [a named University]... between 1954 and 1964".

Public Archives advised the complainant that the records were available to him for examination, with the exception of a letter from the Chairman, Defence Research Board, exempted because it contained information provided by a foreign government in confidence [13(1)(a)]. The complainant challenged that exemption.

The investigation confirmed that the record in question contained information that was provided in confidence and that the foreign state still objected to disclosure. In those circumstances, the exemption is mandatory under the Act.

Two Departments Involved

File: 298

Institution: *National Defence*

Complaint: *Refusal - exemption*
[13(1)(a) and 15(1)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant sought access to "all records related to the shooting down of a Korean civilian jet by the Soviet Union in August, 1983. This request includes analysis and policy records to the present related to this incident."

National Defence identified 371 records of which 323 were totally exempted pursuant to paragraph 13(1)(a) and subsection 15(1), 30 were partially exempted under paragraph 13(1)(a) and subsection 15(1), and 18 were released to the complainant in their entirety. As a result of the exemptions, a complaint was filed.

The Commissioner had some doubts about the partial exemptions claimed in 30 records.

However, the investigation found that all of these records were the subject of a similar access request by the applicant to the Department of External Affairs. The exemptions invoked by External Affairs were identical. The released portions of these documents made it clear that they originated from the Department of External Affairs. Consequently, the Commissioner proposed to deal with those exemptions only in the context of the complaint against the Department of External Affairs, subject to any objection by the complainant. (See exemption 299(1/2)).

The Commissioner supported the other exemptions on the grounds claimed.

Sensitivity Not Decreased

File: 299(1/2)

Institution: *External Affairs*

Complaint: *Refusal - exemption*
[13(1)(a) and (b), 15(1), 19(1)
and 21(1)(a), (b) and (c)]

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Resolved in part*

An applicant requested from the Department of External Affairs "all records related to the shooting down of a Korean civilian jet by the Soviet Union in August, 1983". The department responded that some records had been exempted in whole or in part under subsections 15(1) and 19(1) and paragraphs 13(1)(a) and (b) and 21(1)(a), (b) and (c) and that a portion of the record was excluded from the Act by virtue of paragraph 69(1)(e). (See exclusion 299(2/2)).

The complainant objected to the exemptions and further suggested that the sensitivity of the records requested had decreased with time. The Commissioner did not agree in the specific instance.

After investigating the complaint about refusals, the Commissioner found that the exemptions made by the Department of External Affairs were justified except in respect to 36 of the severed documents. These comprised 10 memoranda addressed to "file" and 26 telex messages, all dealing with press releases. The alphabetic indicators for the addressor, addressee and distribution list on each had been exempted under subsection 15(1) of the Act.

On June 12, 1985, the Commissioner recommended, under subsection 37(1), to the Secretary of State for External Affairs that the exempted portions of the records in question be disclosed on or before July 2, 1985. Because this letter did not arrive at the Office of the Secretary of State for External Affairs until June 25, 1985, the response date was extended to July 16, 1985.

The Department of External Affairs then advised that the Secretary of State for External Affairs was travelling in Asia and Europe and would not return to Ottawa until August 2, 1985. The Information Commissioner accordingly directed a letter to the Under Secretary of State for External Affairs on July 18, 1985, indicating that the action taken by the Department of External Affairs appeared inadequate and inappropriate. In accordance with subsection 37(2) of the *Access to Information Act*, the department was informed that the complainant would receive a formal report of the investigation if a reply to the recommendation was not received by July 26, 1985.

On July 25, 1985, the Secretary of State for External Affairs did authorize disclosure of the rest of the 36 documents.

No Explanation Possible

File: 305

Institution: *National Defence*

Complaint: *Refusal - exemption [15(1), 16(2), 19(1) and 21(1)(a) and (b)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant was denied access to certain documents pertaining to security vulnerability based on international affairs and defence [15(1)], security [16(2)], personal information [19(1)], and advice or recommendations and accounts of consultations or deliberations - government operations [21(1)(a) and (b)] provisions of the Act.

As a result of the investigation, the Commissioner was satisfied that the exemptions were properly claimed.

In this situation, the Commissioner was unable to give any particular information to the complainant to explain why the complaint was not supported. The Commissioner explained:

"We appreciate the difficulty which you have when you are asked to comment upon the propriety of exemptions being claimed for records which you have not seen. Nevertheless, we trust that you will understand that the obligations which are

imposed upon us by the *Access to Information Act* necessitate that we not compromise the confidentiality of information to which we become privy solely as a result of the process created under the Act.

"We have re-examined the exemptions applied to the documents in question in the light of the spirit of the *Access to Information Act* which, as you know, is reflected in its purpose provision.

"We can only assure you that we have reviewed the documentation in the light of your representations and we are satisfied that we have addressed your concerns."

Performance Audit Not Necessarily Personal

File: 309

Institution: *Canadian International Development Agency*

Complaint: *Refusal - exemption [19(1)]*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Resolved in full*

An individual sought access to "the report of an audit, carried out by the Department of Supply and Services, of the operations of the Procurement Division of CIDA in 1984".

CIDA exempted the entire report as personal information [19].

An examination of the record in question showed that it contained little personal information and that the audit was conducted as an objective appraisal and not a subjective appraisal of the performance of an employee as claimed by CIDA. Accordingly, section 19 could not be claimed in light of the exception of protection of personal information about a government employee in paragraph 3(j) of the *Privacy Act*.

CIDA released the complete report following the investigation and recommendation for disclosure from the Information Commissioner to the Secretary of State for External Affairs.

Solicitor-Client Privilege

File: 315

Institution: *Justice*
Complaint: *Refusal - exemption*
 [21(1)(a) and 23]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant sent an access request to the Department of Justice seeking records concerning possible Charter of Rights changes which might affect prison inmates. The department provided some of the requested records and exempted the rest on the grounds that they constituted advice or recommendations developed by or for a government institution [21(1)(a)] or information subject to solicitor-client privilege [23].

The Commissioner informed the complainant that the exempted portions were subject to solicitor-client privilege and were therefore properly exempted. The complainant was invited to make representations but he stated that he accepted the conclusion.

Phasing In

File: 317

Institution: *Indian Affairs and Northern Development*
Complaint: *Refusal - exemption* [17, 19(1) and 27(1)(b)]
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

An individual made a request to the Department of Indian Affairs and Northern Development for access to the following records of a particular Indian band:

- a 1972 investigation report;
- a 1982 investigation report;
- voter's lists for elections;
- financial statement for the years ending March 31, 1968, to March 31, 1984.

The department responded that it was not aware of the 1972 investigation report. It disclosed the 1982 investigation report, exempting some portions under section 17 and/or subsection 19(1) of the Act. It disclosed the voters' lists. The 1968-77 financial statements were withheld under paragraph 27(1)(b) of the Act; however, the 1978-84 financial statements were disclosed.

The complaint concerned the refusals. As a result of the investigation, the department disclosed additional portions of the 1982 investigation report to the complainant. The Commissioner was satisfied that the remaining exemptions contained information, "the disclosure of which could reasonably be expected to threaten the safety of individuals" [17], and personal information as defined in section 3 of the *Privacy Act* [19(1)].

The Commissioner informed the complainant that the records withheld under paragraph 27(1)(b) were requested during the second year after the coming into force of the *Access to Information Act*, and were in existence more than five years before the coming into force of the Act. Therefore, these records need not be disclosed under the phasing-in provisions of paragraph 27(1)(b).

Purchase of CF-18

Files: 322(1/2), 338(1/2)

Institution: *National Defence*

Complaint: *Refusal - exemption*
[13, 15, 20(1)(b), (c) and
(d) and 21]

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in part*

Two complainants had requested but been denied information on the Department of National Defence's purchase of CF-18 aircraft. Additional information was released as a result of the complaint investigation. However, the Commissioner supported the balance of the exemptions. As a result, both complainants made additional representations.

One commented that "... of course, ... I have no way of knowing the nature of the material being withheld. However it does still strike me that exceptionally liberal use is being made of section 21 (advice) in relation to a Cabinet discussion paper."

The other stated that "The Cabinet discussion paper referred to is now several years old and concerns a decision that was taken at that time. Surely, the information contained in this paper cannot be considered so sensitive that it cannot be seen by the public at this time." He urged the office to take a fresh look at exactly what was being withheld and on what grounds.

The Commissioner's response was :

"I have reviewed our file. While this review has not caused me to reach a different conclusion, I will attempt to outline our procedures in the hope that you will accept that our investigations are thorough.

"During the course of an investigation we proceed on the basis that to comply with the spirit of the *Access to Information Act* (subsection 2) and the severance principle (section 25), the record requested must be reviewed page by page and each document must be annotated to indicate which exemptions have been applied. This is so whether the exemption is of a passage or of the whole document. We also ensure that departments employ the severance principle so that only exemptable passages are withheld. As a matter of practice, and provided a complainant is prepared to pay any fees involved, we

request that complainants be given titles or headings of exempted paragraphs or pages, unless, of course, those headings are legitimately exempted. This procedure is time consuming and is one of the reasons why our investigations take so long.

"In the case of the record requested by you, the information which was withheld was examined with reference to the particular wording of each of the applicable sections of the Act but where the department had used more than one section, we did not necessarily inquire into the propriety of using all as long as there was clear justification for the use of one.

"This means that in respect of section 13 (appended) the government would have to establish that the exempted material contains information that was received from (e.g.) a foreign government and that the foreign government would not consent to release or had not made it public.

"In respect of section 15 (appended) we would have to be satisfied that release could reasonably be expected to injure either defence or international affairs and that the record contained information of the kind enumerated in one of the paragraphs (a) to (i).

"With reference to section 20 the information would have to be of the kind described and furthermore that there was no public interest in its disclosure based on subsections (2) or (6).

"Finally, as you are also aware, I have serious concerns about the application of section 21. I have taken the position that section 21 cannot be employed by government departments as a means to withhold all advice developed for the use of any public servant. Such an interpretation, I have argued, offends the general purpose of the Act and renders other precise exemptions unnecessary.

"That question is now before the Federal Court". (See 1984-85 annual report - exemptions I.84-193).

"With reference to your complaint, it is unfortunate that in this particular case, I can only reassure you that we have examined the record on the above basis. In Canada, the Office of the Information Commissioner performs a mediator's role and is entrusted with the information that the government refuses, based on law, to disclose. It is for that reason that the Information Commissioner has been given the same investigatory authority as a Superior Court, has been appointed by Parliament rather than the government of the day and has security of office to the extent that dismissal can only be on an address to the Senate and the House of Commons. While I may find it uncomfortable, I am occasionally placed in the position of having to say to a complainant, you have to trust me, but I cannot tell you why. This is because I might disclose what has been withheld and the Act prohibits me from doing that."

Personal Opinion

File: 334

Institution: *Employment and Immigration Canada*

Complaint: *Refusal - exemption [19(1)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant sought access to a "letter submitted by the Union... required with the application prepared by [a third party] dated November 5, 1984". Employment and Immigration Canada released the requested letter, subject to exemptions claimed under personal information [19(1)].

The letter, written on behalf of the union, was in relation to an application for an Employment and Immigration Canada job creation grant. The portions withheld expressed personal opinions of the author as distinct from those of the union.

As a result of the investigation and a review of the exempted information, the Commissioner was satisfied that the personal opinions of the author of the letter qualified as personal information as defined in section 3 of the *Privacy Act* and consequently the department was required to exempt that information under 19(1) of the *Access to Information Act*.

Not Personal Information

File: 342

Institution: *Transport Canada*

Complaint: *Refusal - exemption [19(1)]*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in full*

The complainant sought access to a report on the quality of air traffic services at the Quebec City airport.

The department provided the requested records, exempting certain portions as personal information [19(1)].

As a result of the investigation, the department released most of the originally-withheld portions. These portions related to the positions or functions of certain employees, employees' performance on the job, and personal opinions or views of some employees. The complainant was satisfied with the additional information.

39 Years of Records

File: 346

Institution: *Canadian Commercial Corporation*

Complaint: *Refusal - exemption [13, 15(1), 20(1), 21(1), 23 and 27]*

Finding: *Not supportable*

Disposition: *Discontinued*

Result: *No action*

The applicant requested all minutes of the Canadian Commercial Corporation Board of Directors' meetings from its inception until March, 1985, including all appendices and background

material. When the Corporation exempted all the requested records under six different sections of the Act, the applicant complained.

The Corporation's response to the request was general and did not explain the magnitude of the records, nor the cost nor time required to search and prepare them. The response only suggested which exemptions might apply.

The investigation disclosed that the records covered the period from 1946 until 1985. When the Corporation came into being, it was part of Supply and Services Canada. It was later attached to Industry, Trade and Commerce and now reports to Parliament through the Secretary of State for External Affairs and the Minister of State for International Trade. The investigation showed that none of the departments had identified the records or contacted the complainant. It was apparent that the Corporation had little experience with the Act.

At the investigator's suggestion, the Corporation asked the complainant to narrow his access request.

The complainant agreed to submit a revised access request and dropped his complaint.

Confidentiality Provisions in Another Statute

File: 347

Institution: *Foreign Investment Review Agency*

Complaint: *Refusal - exemption*
[20(1)(b) and 24(1)]

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in part*

An applicant who requested records held by FIRA complained when the records were exempted from disclosure as confidential because they comprised confidential information [20(1)(b)] and because the confidentiality provision of the *Foreign Investment Review Act* applies as a result of section 24 of the *Access to Information Act*. The complainant understood that "much of the Agency information is confidential" but could not believe that "...100 per cent of it is confidential".

As a result of the investigation, the Agency changed its position and agreed to provide the requested records cancelling the claim under subsection 24(1) but exempting certain portions of the record under paragraph 20(1)(b). The complainant decided not to challenge the exemptions.

Intelligence Activities

File: 352

Institution: *External Affairs*

Complaint: *Refusal - exemption*
[13(1)(a), 15(1), 16(1)(b) and (c), 19(1) and 21(1)(a) and (b)]

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in part*

An individual complained that External Affairs had withheld records relating to his access request for "all records related to intelligence activity in Canada directed by the Soviet Union, between January 1, 1963, and April 1, 1965".

As a result of a number of meetings held with officials of the department, two documents and the attachments to two other documents were released.

The department claimed exemption of the remaining records under international affairs [15(1)], law enforcement and investigations [16(1)(b) and (c)], personal information [19(1)] and advice or recommendations and/or accounts of consultations or deliberations - government operations [21(1)(a) and (b)] provisions of the Act. The Commissioner found the exemptions were justified and, where more than one ground for exemption was claimed, she was satisfied with the propriety of the more readily sustainable exemption.

Security of Documents and Buildings

File: 355(1/2)

Institution: *External Affairs*

Complaint: *Refusal - exemption [13(1)(a), 15(1), 16(1) and (2), 17 and 19(1)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant objected to the exemptions claimed by External Affairs in a request for access to "all records held in Ottawa related to the general situation concerning security vulnerability of documents, communications, buildings and personnel both at posts abroad and in Ottawa, between July 17, 1984, and December 17, 1984".

The investigation revealed 77 records relevant to the request. Twenty-nine were released in total and, upon review, one was found to be irrelevant. The remaining 47 were exempted in whole or in part, most under 15(1)(h). In all cases the records were diplomatic exchanges

and the subject matter was of a nature which could reasonably be expected to be injurious to foreign relations if released. The remaining records were exempted under 13(1)(a), 16(2)(c) and 17. In all cases where 13(1)(a) was invoked, the record contained information of a confidential nature received by Canadian officials from representatives of foreign governments. Where 16(2)(c) was invoked, the information concerned the physical security of employees and buildings at posts abroad and where section 17 was invoked, the information related to specific steps taken and planned for the safety of employees at posts abroad.

The records released subject to severance contained information exempted as confidences of another government [13(1)(a)], security information [16(2)(c)], or records that if released could threaten the safety of individuals [17], or personal information [19(1)].

Although the department agreed to release additional information to the complainant as a result of the Commissioner's investigation, the Commissioner was satisfied that all the remaining exemptions claimed by the department had been correctly applied.

Meaning of Third Party

File: 357

Institution: *Canadian Radio-television and Telecommunications Commission*

Complaint: *Refusal - exemption [20(1)(b)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant sought access to a copy of "Book 4 of the Canadian Broadcasting Corporation (CBC) television network renewal application". He complained because the Canadian Radio-Television and Telecommunications Commission denied him access under paragraph 20(1)(b).

Based on the investigation, the Commissioner found correct the denial of access based on paragraph 20(1)(b) of the *Access to Information Act*. The complainant assumed that the document contained economic and financial information and analysis. The examination ascertained that the exempted information had not been disclosed elsewhere and the Commissioner was satisfied that it was provided in confidence in the first place. Under those circumstances, exemption from disclosure is mandatory under the *Access to Information Act*.

In representations, the complainant did not agree that paragraph 20(1)(b) would apply to the material he requested from the CRTC because it was provided to the CRTC "by the CBC, which is a government institution, and not a third party".

The Commissioner informed him that, while the CBC is a federal Crown corporation, section 3 of the *Access to Information Act* defines "government institution" as "any department or ministry of state of the Government of Canada, or any body or office listed in Schedule I". The CBC is not included in Schedule I. Section 3 of the Act also defines "third party" as "any person, group of persons or organization other than the person that made the request or a government institution". Because the CBC is not listed in Schedule I, it would qualify as a "third party".

The Commissioner's initial decision was therefore unchanged.

Personal Information

File: 359(2/3), (3/3)

Institution: *Public Service Commission and Revenue Canada (Taxation)*

Complaint: *Refusal - exemption [19(1)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An individual complained that both the Public Service Commission and Revenue Canada (Taxation) had exempted some of the information he requested concerning competitions for employment at Revenue Canada (Taxation) as personal information under subsection 19(1).

The Commissioner was satisfied that the exempted records contained personal information as defined in section 3 of the *Privacy Act* and, consequently, were properly exempted under the *Access to Information Act*.

The Commissioner informed the complainant that none of the exempted records could reasonably be severed, nor could any of the partially exempted records be released.

International Relations

File: 360(2/2)

Institution: *Transport Canada*
Complaint: *Refusal - exemption*
 [15(1)(g)]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant objected when the records he requested from Transport Canada were exempted under the international affairs provision [15(1)(g)].

The Commissioner reviewed the records in question and informed the complainant that they appeared to be correctly exempted under paragraph 15(1)(g).

Following this tentative conclusion, this Office received representations from the complainant and a copy of an undated letter from Transport Canada to the complainant exempting the requested records under subsection 13(1) and paragraphs 20(1)(c) and (d) of the Act as well.

The Commissioner reported to the complainant that since the requested records had been correctly exempted under paragraph 15(1)(g), it was not necessary to determine the correctness of the additional exemptions. The Commissioner also informed the complainant that his representations had been carefully considered but had not been persuasive.

Confidential Business Information

File: 364

Institution: *Agriculture Canada*
Complaint: *Refusal - exemption*
 [20(1)(b)]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant requested from Agriculture Canada "a list of the businesses that have exported British Columbia tree fruit since September 1, 1984, and the volume of tree fruit exported by each of those businesses."

The information was withheld on the grounds that it was confidential business information [20(1)(b)] and the department contacted the third parties involved and all companies except one objected to disclosing the information. The department provided the information for that one company but exempted information relating to the other companies. The investigation found that the information provided by the third parties was confidential business information and had been treated consistently in a confidential manner by them.

The Commissioner agreed that the information was exemptable under 20(1)(b) and could only be disclosed with the consent of the third parties.

Extent of Search

File: 365

Institution: *External Affairs*

Complaint: *Refusal - exemption*
[20(1)(b) and (c)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant challenged third party information exemptions [20(1)(b) and (c)] claimed by External Affairs in respect to her request for access to "all records related to the sale of weapons, armaments, military technology and defence materials manufactured and/or developed in Canada for the period January 1, 1982, to the present". The request form also specified that: "This request includes all policy and analysis documents in this area, as well as all correspondence between government departments."

At a meeting of officials of the department and the investigator, it was established that a five-hour free search identified only two documents as coming within the bounds of the request. It was later determined that one of the documents was not applicable.

The investigator expressed concern that only one document had been identified and a lengthy discussion followed about the sensitivity of the records held by the department in relation to weapons and armaments and the financial, commercial, scientific and technical information received in confidence. Because of another complaint in which the Information Commissioner agreed that the records requested in that case were not releasable, the person who searched the records in this case deliberately by-passed the first filing cabinet of records.

He explained that, because of the Information Commissioner's determination in another case, he knew the records in that cabinet were exemptable and decided to by-pass them to examine records that had not previously been examined under the Act. He said he could have easily examined the documents from the first cabinet for five hours knowing full well, in advance, that they would be exempt.

The Commissioner was satisfied that the department had conducted a thorough search of a large volume of records and identified all documents within the request during the five-hour time limit set by the complainant.

The Commissioner found that exemptions claimed by the department were justified under the provisions of paragraphs 20(1)(b) and (c) which state that the head of a government institution shall refuse to disclose a record that contains financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party and information the disclosure of which could result in material financial loss or gain or prejudice the competitive position of a third party. These exemptions are mandatory under the Act.

Confidential Business Information

File: 366

Institution: *Indian Affairs and Northern Development*

Complaint: *Refusal - exemption*
[20(1)(b)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An individual applied to the Department of Indian Affairs and Northern Development for the financial statements of five companies.

The department located financial statements of two of the companies but refused disclosure to protect third party information [20(1)(b)]. The applicant objected to the exemption.

The investigation revealed that the financial statements contained "financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party". The Commissioner concluded that the department's decision not to disclose the records was in accordance with section 20 of the Act.

Father Can't See Son's Passport Application

File: 367

Institution: *External Affairs*

Complaint: *Refusal - exemption* [19(1)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An individual complained when External Affairs denied him access to information regarding the acquisition of his son's passport.

The Commissioner was satisfied that the passport application information was personal and therefore protected by both the *Privacy Act* and the *Access to Information Act*. Once a department establishes that requested information is personal, except in certain specific instances, it can only disclose such information to the subject of the information or to others with the subject's consent. In the case of a minor, the consent must be given by his legal guardian. As the complainant's former wife was the son's guardian, the Commissioner found that the exemption claimed by External Affairs was correct.

The complainant has sought a court review of the denial.

Security Service Operational Manual

File: 368

Institution: *Canadian Security Intelligence Service*

Complaint: *Refusal - exemption* [15(1)(c) and (f) and 16(1)(c)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant requested access to sections of the Security Service Operational Manual relating to countersubversive and counterespionage investigations. The department provided the applicant with copies of some of the records but withheld the balance in whole or in part, invoking paragraphs 15(1)(c), 15(1)(f) and 16(1)(c) of the Act.

Discussions were held with the Canadian Security Intelligence Service regarding the sensitivity of its operational manuals. Based on the investigation, the Commissioner was satisfied that the exemptions claimed by CSIS were justified, because release could seriously jeopardize ongoing and future operations.

Counterintelligence

File: 369

Institution: *Canadian Security Intelligence Service*

Complaint: *Refusal - exemption [13, 15(1)(c), (d)(ii), (f) and (i)(iii), 16(1)(c), 17 and 19]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant requested access to records on counterintelligence investigations concerning intelligence activity by the Soviet Union in Canada between January 1, 1963, and October 1, 1964.

The Canadian Security Intelligence Service informed the applicant that the Service could not comply with the request as all of the records sought, if they existed, could reasonably be expected to be exempted in whole or in part by virtue of the sections listed above. As a result, he complained about the exemptions, adding that after 20 years some material should be accessible to the public despite its sensitivity.

An investigation was carried out and the Commissioner informed the complainant that the records he sought, if they existed, would have been obtained or prepared for the purpose of intelligence relating to the detection, prevention or suppression of subversive or hostile activities. The passage of time does not necessarily decrease the sensitivity of such records, if they exist, because the methods used for collecting, assessing or handling the information may not have changed nor the sensitivity diminished. As well, if the records existed, their disclosure could reasonably be expected to threaten the safety of individuals and reveal the identity of confidential sources.

Based on the investigation, the Commissioner was satisfied that, if a record did exist, it would be properly exempted under the provisions of the Act.

Personal Information

File: 375

Institution: *Communications*

Complaint: *Refusal - exemption [19(1)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An applicant who requested the job description and point rating for the position of ADM PMG in the Department of Communications complained when part of the records were exempted under the personal information provisions[19(1)] of the Act.

Following investigation, the Commissioner informed the complainant that the exempted records contained personal information and the exemption was mandatory under the Act.

Minutes Released

File: 376

Institution: *Agriculture Canada*
Complaint: *Refusal - exemption*
[21(1)(b)]
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

The complainant requested copies of the minutes of the Canadian Grain Commission and the Advisory Committee to the Canadian Grain Commission of March and November, 1984.

When the Commission denied access because the records constituted accounts of consultations or deliberations of public servants [21(1)(b)], the complainant objected.

As a result of representations made to the Commission, the minutes were released, subject to some exemptions.

Privacy Protected

File: 379

Institution: *Atomic Energy Control Board*
Complaint: *Refusal - exemption [19(1)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual's access request to the Atomic Energy Control Board (AECB) asked for Reference 16 from the "Report on the Future of Phase I Leach Tails". This concerned the record of radiation received by workers while removing the leach residue from a building to an open pool.

The Board released the records requested exempting the names of the workers under the personal information provisions [19(1)] of the Act. The complainant objected to the exemptions, contending the names of the workers could be released under section 8 of the *Privacy Act*. The complainant claimed it was not possible to calculate the total radioactive exposure of each worker without the names and indicated the understanding that the workers' radiation readings were publicly posted at the work site.

As a result of the investigation, the AECB sent the complainant another copy of Reference 16, including letters from the alphabet as identifiers (not persons' initials), in place of the exempted names, to assist in computing the radiation dosages received by the individual workers. Furthermore, according to AECB, only work site area readings were posted publicly, not workers' radiation doses.

The Commissioner informed the complainant that, based on the investigation, the names of the workers qualified for exemption under subsection 19(1) of the *Access to Information Act*.

The Board also considered the request under paragraphs 8(2)(j) and (m) of the *Privacy Act*. The head of a federal government institution can grant or refuse access to personal information for research or statistical purposes under paragraph 8(2)(j) of the *Privacy Act* and has the right to determine whether disclosure in the public interest is appropriate under paragraph 8(2)(m). In this case, the Commissioner supported the federal institution decision that exceptions under paragraphs 8(2)(j) and (m) of the *Privacy Act* were not warranted.

Search for Next-of-Kin

File: 380

Institution: *Employment and Immigration Canada*
Complaint: *Refusal - exemption [19(1)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An applicant requested any information from Employment and Immigration Canada files concerning the next-of-kin of a named deceased person.

The department did not confirm or deny the existence of any information and stated that, if such records existed, they would be exempt from disclosure because they would be personal information under subsection 19(1) of the *Access to Information Act*.

The applicant objected, arguing that disclosure was in the public interest by virtue of paragraph 8(2)(m) of the *Privacy Act* because he was trying to locate the heirs of the deceased and thus facilitate the distribution of the estate.

The investigator reported that the office of the provincial Public Trustee had the matter well in hand. Consequently there was no public interest outweighing the invasion of privacy that could result from making disclosure to the complainant.

Minutes of Meetings

File: 381

Institution: *Agriculture Canada*
Complaint: *Refusal - exemption [21(1)(b)]*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

The complainant requested access to minutes of executive meetings of the Agricultural Products Board, the Agricultural Stabilization Board and its advisory committee.

The department refused access, claiming exemption under the provisions of the Act dealing with accounts of consultations or deliberations in government operations [21(1)(b)].

The investigation disclosed that the claimed exemptions did not cover all of the information found within the records requested. As a result, the department forwarded the requested records to the complainant, exempting third party information under paragraph 20(1)(c) and certain other portions under paragraph 21(1)(b).

Confidential Business Information

File: 384

Institution: *Health and Welfare Canada*
Complaint: *Refusal - exemption [20(1)(b) and (c)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant sought access to documents dealing with advertising and promotion of beverage alcohol. He objected to certain exemptions claimed for third party information [20(1)(b) and (c)].

As a result of the investigation, the Commissioner was satisfied that the requested records contained "financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party" and that if disclosed, the information "could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party".

Confidence of Another Government

File: 385

Institution: *Labour Canada*
Complaint: *Refusal - exemption [13(1)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

This complaint occurred when the Department of Labour denied access under 13(1) - confidences of another government - to a request for information supplied to the department by the British Columbia government.

The investigation established that the information requested was submitted in confidence. The department had asked the British Columbia official who had supplied the information to consent to release. This request was refused.

Since the exemption under subsection 13(1) is mandatory the complainant was informed that, subject to representations, his complaint could not be supported. No representations were received.

Kingsmere Renovations

File: 387

Institution: *Public Works Canada*
Complaint: *Refusal - exemption [21(1)(d)]*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in full*

An individual sought access to a copy of the Department of Public Works renovation proposal for Kingsmere, the official residence of the Speaker of the House of Commons, and was refused access by the department under 21(1)(d) - plans for operation of a government institution.

As a result of our investigation, the department released the entire document to the complainant.

Third Party Injury Probable

File: 389(2/2)

Institution: *National Defence*
Complaint: *Refusal - exemption*
 [20(1)(c) and (d)]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual made two requests for access to records on the Canadian Patrol Frigate Program.

The Department of National Defence sent the requested records to the complainant, claiming exemptions under third party provisions [20(1)(c) and (d)] of the Act. The applicant challenged the exemptions.

The investigation revealed that the documents or portions of documents withheld under 20(1)(c) and (d) contained information that could reasonably be expected to prejudice the competitive position of a third party or to interfere with contractual or other negotiations of that party.

Applicant's Representations Useful

File: 391

Institution: *Employment and Immigration Canada*
Complaint: *Refusal - exemption* [19(1)]
 [10(2)]
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

The complainant sent three access requests to Employment and Immigration Canada seeking immigration documents and records relating to three French citizens admitted to Canada in 1948.

The department informed the applicant that, if such records did exist, they would qualify for exemption under subsection 19(1) of the Act, and therefore they were unable to comply with his request. In accordance with subsection 10(2), a department has the prerogative to neither confirm nor deny the existence of a record when refusing access.

The applicant complained that the information should be released on the ground that section 19 provided for disclosure of personal information if the subject was deceased for more than 20 years, or if the consent to disclose was obtained from the individual. These issues were addressed but neither the department nor the Commissioner had any way of knowing, or learning, the whereabouts of the three persons. Thus it was impossible to determine if they were still alive, and if so, to request consent.

The investigation focussed on the point of whether, if the record(s) existed, the information would be "personal" and exemptable under section 19. The Commissioner was satisfied that this was the case. Subject to representations by the complainant, the Commissioner tentatively concluded that the complaint was not supportable.

Representations received from the complainant stated that:

- he believed documents existed because there were deportation orders relating to the three named individuals and a subsequent Cabinet decision waiving the earlier deportation orders;

-
- the information contained in the documents could be severed and released to him;
 - the names of the three individuals were in the public domain.

The matter of deportation orders had been researched during the initial investigation. It was found that the three persons were not within the class of immigrants permitted to land in Canada in 1947. However, on September 16, 1948, the Immigration Regulations were amended by Order-In-Council permitting French citizens to land in Canada. This appeared to have the effect of waiving the deportation orders against the three persons referred to by the complainant.

Following receipt of the complainant's representations it appeared that a specific Order-In-Council waiving the deportation orders might have been made, and a search at Public Archives disclosed an Order-in-Council dated September 22, 1948, containing specific personal information on the three French immigrants. After the Commissioner had recommended disclosure to the department, it was learned that it had obtained a copy of the Order-in-Council and was in the process of disclosing the requested records to the complainant.

Canadian Police Information Centre System

File: 401

Institution: *Royal Canadian Mounted Police*

Complaint: *Refusal - exemption [16(2)(c)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An applicant requested "information relating to data maintained by the Canadian Police Information Centre System (including CPIC computer) on persons in Canada including all internal and policy documents and manuals describing the system; what types of information are on the system; who has access to the system; how information is entered on the system; agreements with other police agencies; how information is removed from the system; rules and procedures for transferring information to foreign governments including any agreement; what civilian control and review is exercised over the system particularly by the Department of the Solicitor General; whether there has been any review of the system or policies relating thereto as a result of a letter dated March 8, 1984, from [the applicant] to the Solicitor General for Canada, attached, including any correspondence relating thereto."

The RCMP responded by providing the accessible portions of the record and exempting 512 pages on the basis that disclosure could be expected to facilitate the commission of an offence,

[16(2)(c)]. The complainant objected to the denial of access. The RCMP reviewed the record again and released 67 more pages to the complainant. As to the remainder, the Commissioner was satisfied that release would cause injury to security.

Management of the Economy

File: 406

Institution: *Finance*
Complaint: *Refusal - exemption [14(b), 18(d)(iii), 21(1)(a)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complaint involved a request for "impact studies of the budget on unemployment and economic growth across Canada as a whole and in specific regions and sectors of the economy". The Department of Finance informed the applicant that the records were exempted under paragraph 14(b), subparagraph 18(d)(iii) and paragraph 21(1)(a) of the Act.

Following the investigation, the Commissioner was satisfied that the department had conducted a thorough record search and identified all pertinent documents. The Commissioner believed that release of the documents would seriously injure the ability of the government to manage the economy and supported the exemption under 18(d)(iii). She also informed the complainant that where more than one section of the Act is invoked to exempt documents, it is not necessary to inquire into all possible exemptions as long as there is clear justification for one.

Meaning of "In Confidence"

File: 411

Institution: *Employment and Immigration Canada*
Complaint: *Refusal - exemption [13(1)(c)]*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Resolved in full*

The applicant sought access to communications exchanged between Employment and Immigration Canada (EIC) and York University concerning a "Memorandum of Understanding" released to him. The department released two pieces of correspondence from EIC but exempted two pieces of correspondence written by York University on the basis that they were confidences of another government [13(1)(c)].

In his complaint about the exemptions, the complainant asked for "the criteria by which York University is considered an institution of the Ontario government" and asked "what is the criteria for creating the differentiation between 'obtained in confidence' and not obtained in confidence?".

As a result of the investigator's representations to the department, the two previously withheld letters were released.

The Commissioner recorded the complaint as well-founded and reported to the Minister.

The following is the Commissioner's reply to the complainant's questions:

"In your complaint letter you raised two points that, unfortunately, I am not able to answer definitely. In relation to whether York University is an institution of the government of Ontario, I can state that the provincial Ministry of Education considers it is and so advised the Federal government after the *Access to Information Act* and *Privacy Act* came into being. It has not arisen as an issue with our office and the Department of Justice advised that they have not had occasion to examine this question and to my knowledge it has not come before the Federal Court.

"In response to your second point, information to have been 'obtained in confidence' should be so designated. It was on the basis of the paragraph 13(1)(c) *Access to Information Act* exemption that Employment and Immigration's denial of release was challenged in this case. The departmental correspondence to York University did not request information 'in confidence', the York University replies were not labelled 'confidential' and the content certainly did not signify information that was either confidential or obtained in confidence."

Solicitor-Client Privilege

File: 415

Institution: *Revenue Canada (Customs & Excise)*

Complaint: *Refusal - exemption [23]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant was refused access to a legal opinion concerning classification of a book "The Hoax of the Twentieth Century" as hate propaganda, on the basis that it contained information subject to solicitor-client privilege [23].

The investigation disclosed that the author of the opinion was a solicitor employed by the Department of Justice as one of their legal advisors to Revenue Canada (Customs and Excise), and that the document was prepared in response to requests for legal advice from employees of the department. The record had not been seen by anyone not directly concerned with its content. The Commissioner informed the complainant that the record qualified as a communication between solicitor and client and was properly exempted.

Refusal to Disclose Whether Record Exists

File: 416

Institution: *Health and Welfare Canada*
Complaint: *Refusal - exemption 19(1), 20(1)(a), (b) and (c)[10]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

Five requests were sent to the Health Protection Branch for "any record of a Pre-Clinical Submission (IND) filed by [named pharmaceutical manufacturer(s)] with said Branch requesting a Notice of Compliance for the sale and marketing of diltiazem which Notice of Compliance has not yet been issued".

The department replied that it could not comply with these requests explaining that, if such information did exist, it would qualify for exemption under personal information [19(1)] and third party information [20(1)(a), (b), and (c)] provisions of the Act. A complaint was filed.

The investigation revealed that confirmation that a prescription drug has reached the pre-clinical submission stage could seriously prejudice the competitive position of a pharmaceutical manufacturer seeking approval for a new product. As well, information provided by pharmaceutical manufacturers to obtain approval constitutes confidential technical information supplied to the government.

This type of information is consistently treated in a confidential manner by the department.

The Commissioner concluded that the department's refusal to give access without confirming or denying the existence of the record was appropriate in these circumstances because disclosure of the record's existence would cause the injury contemplated in paragraphs 20(1)(a), (b) and (c).

The Commissioner also concluded that if a record of the type requested contained personal information as defined in the *Privacy Act*, the record could reasonably be exempted under section 19 of the *Access to Information Act*.

Afghanistan Invasion

File: 421(1/2)

Institution: *External Affairs*

Complaint: *Refusal - exemption [13(1)(a) and (b), 15(1)(e), (g) and (h), 21(1)(a) and (c)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The request was for all records relating to the invasion by the Soviet Union of Afghanistan in December 1979 and subsequent diplomatic activity and policy development in that area, between February 16, 1980, and August 16, 1980.

External Affairs provided the accessible portions of the records and exempted the remaining records under paragraphs 13(1)(a) and (b), 15(1)(e), (g) and (h) and 21(1)(a) and (c).

An investigation was carried out and the Commissioner was satisfied that the department had conducted a thorough records' search and identified all requested records within the time period specified by the complainant. The vast majority of exemptions claimed were under the provisions of paragraphs 13(1)(a) and (b) of the Act, which are mandatory exemptions. The Commissioner told the complainant that more than one ground for exemption was claimed in respect of almost every document and the Commissioner considered the more readily sustainable exemption in each case.

Third Party Protection

File: 423

Institution: *Health and Welfare Canada*
Complaint: *Refusal - exemption [19(1), 20(1)(c)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

On April 18, 1985, an applicant requested records of his work from Health and Welfare Canada. Specifically, he requested:

1. The pages of Book 16 from January, 1982, to August, 1983.
2. The "Summary of Performance" pages at the end of Book 1.
3. The "Summary of Performance" pages at the end of Book 2.
4. The name of a person to whom the method of filth separation in pasta was demonstrated on February 8, 1984, from 1 p.m. to 3 p.m.

The department received the request on April 24, 1985, but it was not accompanied by the application fee. The department then requested the fee on May 9, 1985. Having received the fee, the department processed the request and on June 17, 1985, the complainant received the releasable portion of the record. Portions of the record were exempted under subsection 19(1) and paragraph 20(1)(c) of the *Access to Information Act*. The applicant challenged these exemptions.

Following an investigation, the Commissioner was satisfied that the exemption under subsection 19(1) was proper as release would have revealed the identity of an individual who was not a government employee. Names of government employees in the documents were not exempted.

Similarly the Commissioner was satisfied that release of the third party information withheld under paragraph 20(1)(c) could prejudice the third party involved.

Advice and Accounts of Consultations

File: 429

Institution: *Canada Council*
Complaint: *Refusal - exemption [21(1)(a) and (b)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant made three requests to the Canada Council for minutes of its meetings of November 27, 1984, January 21-23, 1985, and March 18-20, 1985. The Council provided the complainant with some records, claiming exemptions of others as advice or recommendations [21(1)(a)] or accounts of consultations or deliberations involving officials or employees of a government institution, a Cabinet minister or his staff [21(1)(b)].

Upon investigation, the Commissioner concluded that the exempted portions were records of the kind described in the two above-mentioned paragraphs.

Statutory Restriction

Files: 438, 446

Institution: *Investment Canada*
Complaint: *Refusal - exemption [24(1)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual requested access to Investment Canada (formerly the Foreign Investment Review Agency) records concerning the proposed takeover of two Canadian companies by two American companies.

Investment Canada refused to disclose the requested records under subsection 24(1) of the *Access to Information Act* which prohibits disclosure where it is restricted by one of the statutory provisions in Schedule II of the Act. Investment Canada officials pointed out that subsection 36(1) of the *Investment Canada Act* makes information concerning takeover proposals privileged. Under another provision, similar information collected by the Foreign Investment Review Agency remains privileged under the *Investment Canada Act*.

The applicant complained to the Information Commissioner:

"I understand that much of the agency information is confidential, and not accessible under the *Access to Information Act*. However, I cannot believe that 100 per cent of it is confidential. Specifically, I would like to have copies of undertakings made . . . to the government of Canada, which resulted in approval of the proposed investment."

Under paragraph 36(4)(h) of the *Investment Canada Act*, Investment Canada may disclose information pertaining to a foreign investment proposal that has been approved. In these cases, however, no proposal had been submitted. Consequently, paragraph 36(4)(h) was not applicable. Investment Canada was not required to disclose other information furnished to it which was already available to the public. (The *Access to Information Act*, according to section 68, does not give a right to access to published material or material available for purchase by the public.) The rest of the requested information was properly classified as privileged information under the *Investment Canada Act* and consequently Investment Canada had no choice but to refuse disclosure under the *Access to Information Act*. As a result, the Commissioner could not support the complaint.

Unit Price in Bids

File: 442

Institution: *Supply and Services Canada*
Complaint: *Refusal - exemption [20(1)(c)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

This complaint involved a request for access to a list of all prices tendered in connection with a specified contract.

The department provided the complainant with the names of the successful bidders and the total amounts of their bids. However, the release of individual unit prices tendered was exempted under paragraph 20(1)(c) on the ground that disclosure "could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party".

The investigation indicated that the tender was in the form of a "request for proposal". Details of the bids, including the unit pricing of the successful bidder, were not available to the public, nor is it the department's practice to release such details.

The Commissioner dismissed the complaint, informing the complainant that the exempted information fell under paragraph 20(1)(c) of the Act and that the release of unit pricing information would provide information in sufficient detail to competitors that it could reasonably be expected to result in material financial loss or gain to a third party or could reasonably be expected to prejudice its competitive position.

Investigator's Report Released

File: 447

Institution: *Revenue Canada (Customs and Excise)*

Complaint: *Refusal - exemption*
[16(1)(c)]

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Resolved in part*

The complainant sought access to a custom investigator's final report relating to a specified seizure. The department denied access based on paragraph 16(1)(c) of the Act.

As a result of the investigation, the department released the report, exempting two segments on pages 1 and 10 under subparagraph 16(1)(c)(ii). This became the subject of another complaint. (See exemption 563).

Reluctant Complainant

File: 448

Institution: *Revenue Canada (Taxation)*

Complaint: *Refusal - exemption*
[16(1)(a)]

Finding: *Not supportable*

Disposition: *Discontinued*

Result: *No action*

An individual acting on behalf of a client sought access to "the T2 corporate tax returns, working papers, notices of assessment and reassessment and all other information relating to . . . (two different clients)". The department exempted the records about one client under paragraph 16(1)(a) and stated that it had no record about the other. The applicant complained saying that the department had exempted records about his second client that he maintained existed in the department.

The complaint letter, received on August 19, 1985, did not specify the government institution which had denied the records nor the type of records involved in the original access request. An investigator attempted unsuccessfully to contact the complainant to obtain details necessary to investigate the complaint.

On August 22, 1985, this Office received another letter from the complainant stating that he was no longer acting for the client and providing the name of another person to contact for information regarding the complaint.

On August 26, 1985, and September 16, 1985, the investigator telephoned the new person acting on behalf of the client who, on both occasions, promised to provide the investigator with all pertinent details. When this Office had not heard from the person by October 17, 1985, the investigator reminded him in writing that basic information was needed before an investigation.

On November 8, 1985, the investigator spoke on the telephone with a third person now acting on behalf of the client, who gave assurances that the information requested would be provided as soon as possible. He also mentioned that the federal institution involved was "probably" Revenue Canada (Taxation).

Although the investigator had not heard from the third person, he contacted Revenue Canada (Taxation) on December 20, 1985. Officials confirmed that they had received several access requests on behalf of the client during 1985. However, the imprecise nature of the complaint meant that officials were unable to connect it with any request in particular. The investigator explained the situation to the third person acting on behalf of the client, asking that details be provided before January 31, 1986. As no information was received, the complaint was recorded as discontinued by the complainant.

Solicitor-Client Privilege

File: 452

Institution: *National Defence*
Complaint: *Refusal - exemption [23]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

A newspaper reporter complained when the Department of National Defence refused to disclose portions of records dealing with departmental policy and practice for the selection of the peace-keeping contingent members in the Middle East. The refusal was on the ground that the exempted portions were subject to solicitor-client privilege.

The investigation revealed that nine of 282 pages of documents relevant to the request had been exempted. The Information Commissioner found that the exemption was justifiable.

When offered the opportunity to make representations in the matter, the complainant referred to a recent Federal Court of Canada case in which, he submitted, the Court held that solicitor-client privilege applied only to communication between lawyer and client, prepared with a definite prospect of litigation. He asked that the Information Commissioner clarify whether those conditions had been met.

The Commissioner replied that the decision cited, *Houle v. The Queen*, (Federal Court of Canada, File No. T-2382-84, June 4, 1984) did not alter Canadian jurisprudence so as to require that correspondence between a lawyer and the client has been made in contemplation of litigation in order to enjoy the benefit of solicitor-client privilege. The Commissioner stated:

"The decision in *Houle* in my opinion conforms with the established Canadian jurisprudence on solicitor-client privilege and adds nothing to it. . . . In the *Susan Hosliery* case cited in *Houle*, Jackett P. describes the two categories of information subject to solicitor-client privilege:

"1. All communications, verbal or written of a confidential character, between a client and a legal advisor directly related to the seeking, formulating or giving of legal advice or legal assistance (including the legal advisor's working papers directly related thereto); and

"2. All papers and materials created or obtained especially for the lawyer's brief for litigation, whether existing or contemplated.

"The privilege is not a matter of black-letter law but is founded on the public interest that individuals should be able to consult their lawyers and have them prepare cases for litigation without fear that someone can compel the lawyer to disclose information imparted to him by the client, or material that has been prepared in contemplation of litigation.

"Although the privilege was originally tied to the litigious process, the Court of Chancery in the case of *Greenough v. Gaskell* [1833] 39 E.R. 618 recognized that the scope of the privilege had by that time been expanded to include any communications made to seek legal advice, regardless whether litigation was pending or even contemplated.

"In the *Susan Hosliery* case, Jackett P. affirmed that this 'modern' rule applied in Canada. While the rule in Canada has been narrowed somewhat since that time, I am not aware of any suggestion that the 'contemplation of litigation' condition has been restored in respect of solicitor-client communication. In the case of *Solosky v. The Queen* [1980] 1 S.C.R. 861 the Supreme Court of Canada dealt with the privilege that applied to penitentiary inmates' mail. Mr. Justice Dixon reviewed recent cases and noted that litigation is not essential to support the privilege; it is created at the time the confidential communication is made and can protect the communication from disclosure even outside the normal evidentiary setting. (In *Solosky*, however, the inmate's right to invoke the privilege was balanced against the security needs of the penitentiary, and a limited interception of the inmate's mail was authorized.)

"This principle was repeated by the Court in the case of *Descoteaux et al v. Mierzwinsky* [1982] 1 S.C.R. 860 in which Lamer J. quoted Mr. Justice Dixon's statement in the *Solosky* case: "... the right to communicate in confidence with one's legal advisor is a fundamental civil and legal right, founded upon the unique relationship of solicitor and client". He did not speak of any requirement that that communication be made with litigation in mind in order to be privileged.

"The other major category of information protected by solicitor-client privilege is documents and reports prepared or obtained with litigation in mind, although it is not essential that litigation actually has been commenced in order for the privilege to obtain. This branch of solicitor-client privilege clearly has been narrowed in scope over the years since *Greenough*. In the case of *Waugh v. British Railways Board* [1979] 3 W.L.R.150 the House of Lords tightened up the law of privilege and held that even though one of the material purposes for the preparation of a report might be to submit it to legal advisors in order to obtain legal advice in reasonable anticipation of litigation, the privilege could not be claimed unless that was the dominant purpose for which the report was prepared.

"In a recent Canadian case, *CNR v. Milne* [1980] 2 F.C. 285 Mr. Justice Addy reviewed the *Waugh* decision and stated, at page 288:

" 'In my view, the Canadian Courts will most likely be adopting a similar rule in the future having regard to the tendency of our Courts in recent years to enlarge the areas where disclosure can be ordered.'

"The 'dominant purpose' principle in *Waugh* was cited with approval by the Nova Scotia Court of Appeal in *Economical Mutual Insurance Company v. Italian Village et al* [1981] 121 D.L.R. (3d) 195 and by the British Columbia Supreme Court in *Steeves et al v. Rapanos* [1982] 140 D.L.R. (3d) 121.

"Unfortunately in *Houle* the distinction between these categories of documents subject to solicitor-client privilege was not carefully delineated, but I do not think that by failing to do so Madame Justice Reed intended to alter the common law to make the contemplation of litigation condition applicable to both categories of records. . . . It is possible that the memorandum in *Houle* is subject to privilege because it falls within both categories in the *Susan Hosiery* case. No one has said that the categories are mutually exclusive. My point is simply that even in this instance Madame Justice Reed did not consider the prospect of litigation to be the *sine qua non* of the privilege."

The complainant declined to make further representations. The complaint was dismissed.

Prevention of Hostile Acts

File: 453

Institution: *Privy Council Office*

Complaint: *Refusal - exemption*

*[15(1)(d)(ii), 16(1)(c) and
19(1)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complaint involved a request for access to "all records concerning counter-intelligence investigations concerning intelligence activity directed by the Soviet Union in Canada between January 1, 1963 and April 1, 1965".

Privy Council Office claimed exemptions under international affairs and defence [15(1)(d)(ii)], law enforcement and investigations [16(1)(c)] and personal information [19(1)] provisions of the Act.

The investigation confirmed that the Privy Council Office identified all records subject to the request. Each document was closely examined and, with one exception, exemptions made by the government institutions were justified based on the provisions of subparagraph 15(1)(d)(ii), paragraph 16(1)(c) and subsection 19(1) of the Act. The information withheld dealt with the prevention or suppression of subversive or hostile activities and its disclosure could reasonably be expected to injure ongoing lawful investigations. The Commissioner was satisfied that the Privy Council Office used as narrow an interpretation as possible and released the maximum information. The exception was a single page which was forwarded to the complainant.

Although the investigation did result in one additional severed page being released, this was a duplication of information supplied previously and the complaint was therefore classified as not supportable.

Tenders

File: 454

Institution: *Supply and Services Canada*

Complaint: *Refusal - exemption*

[20(1)(c)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An applicant requested a breakdown of individual prices submitted by three firms in a successful bid on a contract with Supply and Services Canada.

The department provided the applicant with copies of the records but deleted the unit prices under paragraph 20(1)(c) on the ground that disclosure "could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party".

As a result of the investigation and representations made by the department, the Commissioner was satisfied that the exempted information fell under paragraph 20(1)(c) of the Act and that the release of unit prices would have provided detailed information to competitors that could reasonably be expected to result in material loss to the third parties or prejudice their competitive position. In such circumstances, exemption is mandatory, and the department had acted in accordance with the Act.

Protection of Privacy

File: 457

Institution: *Justice*
Complaint: *Refusal - exemption [19(1)]*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

In providing the applicant with a requested 1981 Cabinet Discussion paper on alleged war criminals in Canada, the Department of Justice exempted the last page as personal information [19(1)]. The applicant objected to the exemption, suggesting that public interest in this matter should override the protection of personal information under the *Privacy Act*.

During the investigation, this office suggested that additional information could be severed and released without revealing individual identities. The department disagreed at first, stating that such extensive severance would render the document unintelligible. However the department subsequently severed and released additional information to the complainant.

The Commissioner was satisfied that the exempted material remaining was personal information and fell within the protection of section 19. The Commissioner also informed the complainant that the public interest in this subject was not great enough to outweigh the invasion of privacy.

Personal Information

File: 461

Institution: *Privy Council Office*
Complaint: *Refusal - exemption [19(1)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

This complaint involved an access request for "... minutes of the federal Cabinet meeting of December 21, 1955, dealing with immigration - case of conductor of Calgary Symphony".

The applicant was provided with part of the records requested, the remaining records being exempted as personal information [19(1)]. The applicant objected to the exemption.

During the investigation the exempted material was reviewed and application of paragraphs 3(m) and 8(2)(m) of the *Privacy Act* and subsection 19(2) of the *Access to Information Act* was considered.

The complainant made these representations:

"I did not ask for a review with respect to sections 3(m) and 8(m) of the *Privacy Act*, since I have no information that they would apply. My complaint was limited to section 19(2)(b) of the *Access Act* which provides that personal information may be released if the information is publicly available.

"I provided you with photocopies of newspaper articles which are available in any public library across Canada and which are indexed in the Canadian News Index."

Subsection 19(2) makes release possible where the individual to whom the information relates consents to disclosure; the information is publicly available; or the disclosure is in accordance with section 8 of the *Privacy Act*.

In this case, the Commissioner was satisfied that none of these situations applied and that the exemptions had been correctly applied by the Privy Council.

Cost of Printing Money

File: 463

Institution: *Bank of Canada*
Complaint: *Refusal - exemption [18(d), 20(1)(b), (c) and (d)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

This complaint involved exemptions applied by the Bank of Canada to records of changes in the printing processes of the Bank of Canada \$1 and \$2 bills in 1984. In particular, the requestor asked for records compiled since January 1, 1982, outlining reasons for the change, together with records itemizing the differences in printing costs between the old and new methods.

The investigation disclosed that the Bank provided the complainant with severed copies of the relevant records. In severing the documents, the Bank exempted portions under paragraphs 18(d) and 20(1)(b), (c) and (d) of the Act.

The Commissioner was satisfied that the information withheld "could reasonably be expected to be materially injurious to the financial interests of the Government of Canada" [18(d)] and was supplied to a government institution by a third party [20(1)(b), (c) and (d)].

Publication Information

File: 464

Institution: *External Affairs*
Complaint: *Refusal - exemption [20(1)(b) and (c)]*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

The applicant sought access to the following information about CanadExport:

1. Detailed operation budget and expenses to produce, print and distribute the publication for the year 1984 and the first complete start-up year.
2. Current number of Canadian subscribers.
3. Copy of most recent readership survey if any.

The applicant was dissatisfied because he had received only a small fraction of the financial information requested and was refused access to the CanadExport readership survey under third party provisions [20(1)(b) and (c)] of the Act.

The investigation disclosed that, because the production unit of CanadExport was part of a much larger admin-

istrative group, the financial record requested by the complainant did not exist. Nevertheless, the department did prepare some financial data concerning this publication which was forwarded to the complainant. Additional financial records were not readily available because the production group was not a financially-isolated unit and the department was not required under the Act to create a record.

The number of subscribers was not exempted and, after negotiations, the department agreed to release the most recent readership survey.

Contract Particulars

File: 467

Institution: *Supply and Services Canada*
Complaint: *Refusal - exemption [20(1)(c)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complaint involved a request for copies of three engineering contracts. Supply and Services Canada (SSC) provided the complainant with all of the records, including regular and overtime hourly rates, for one contract but claimed exemptions based on third party information [20(1)(c)] for the other two contracts.

The investigation revealed that the department provided records on the one contract because the third party had approved the release. The other third parties involved objected to the release of the hourly rates.

The Commissioner informed the complainant that the exemptions were properly applied and correct in law.

The complainant mentioned in his submission that, at a briefing session with Supply and Services Canada, he was advised that full disclosure of the results of previous proposals of this kind were readily available. The Commissioner's Office learned that the person in SSC who conducted the briefing session was unaware of departmental policy that restricts disclosure to only the name of the successful bidder and the total amount of the bid and then only after the contract is let. This employee has since acquainted himself with Supply and Services Canada policy and no longer advises that full disclosure is available.

Unclaimed Bonds

File: 484

Institution: *Bank of Canada*
Complaint: *Refusal - exemption [19(1)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An applicant requested a list of the "names and other particulars, including amounts, sales agents, city, etc." of owners of Canada Savings Bonds which have not been cashed and have been put into the Federal Treasury.

The Bank of Canada denied access to the list under subsection 19(1) - personal information. The applicant challenged the exemption.

The investigation established that the records constituted personal information such as the names, addresses, and other details of the bond owners. Under the circumstances, the Bank of Canada was prohibited from releasing this personal information.

The Bank of Canada also advised that it takes steps to remind bond owners that their bonds are about to mature and that interest is not paid on unredeemed bonds after maturity. Notices are sent with the final interest cheques at maturity and a second notice is sent six months later. The Bank informs interested persons of the maturity of specific series of bonds and puts notices in major Canadian newspapers. As of August 31, 1985, only a small fraction of the bonds which matured earlier than 1984 were unredeemed.

The Commissioner informed the complainant that the prohibition against disclosure of personal information did not apply to individuals who have been dead for more than 20 years. Strictly speaking, the complainant would have a right of access to information in these cases.

However, the estimated number of deceased bond owners is extremely small. The Commissioner was satisfied that it would be unreasonable to require Bank of Canada officials to examine every one of its records to determine whether the bond owner has been deceased for 20 years. The complaint was therefore dismissed.

No Choice But To Exempt

File: 487

Institution: *Supply and Services Canada*
Complaint: *Refusal - exemption [20(1)(b) and (c)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant sought information concerning a contract between a group of Indian Bands and the Department of Indian Affairs and Northern Development.

The Department of Supply and Services exempted the records as third party information [20(1)(b) and (c)].

Based on the investigation, the Commissioner was satisfied that the exemptions had been properly claimed.

After receiving representations from the complainant, the Commissioner informed him as follows:

"I also wish to assure you that this Office thoroughly investigated your complaint, as we do with all complaints we receive, to determine whether additional information ought to be released to you. However, section 20 of the *Access to Information Act* is a mandatory section that states the head of a government institution shall refuse to disclose . . . except under certain circumstances as described in succeeding subsections. We examined each of the subsections and concluded that none of them could be applied to thwart the mandatory exemptions required by subsection (1). The question under the Act is simply, 'Is the record of the kind that must be withheld' and I can assure you that it is.

"We were not satisfied with the department's claim that consent to release had been sought from the third party. We contacted the third party ourselves and we were informed that under no circumstances would they consent to the release of appendix "B" to the contract.

"I can appreciate your concern in this matter. However, I have to inform you that my tentative conclusion in this case must be my final conclusion."

Prejudice To A Third Party

File: 488(2/2)

Institution: *Supply and Services Canada*
Complaint: *Refusal - exemption [20(1)(c)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

After having been informed that the department had exempted some records concerning an access request on a specified contract, as third party information [20(1)(c)], an individual indicated in a telephone conversation with an investigator from this Office that he was not satisfied with the material received and wanted to complain about the exemptions. The complainant agreed to send a written confirmation but it was never received. The investigator attempted unsuccessfully to contact the complainant.

Nevertheless, the investigation continued and the Commissioner was satisfied that the exemption was justifiable since disclosure of this information could prejudice the competitive position of the third party involved.

Economic Forecasts

File: 491

Institution: *Finance*
Complaint: *Refusal - exemption [18(d)(iii), 21(1)(a)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant objected to the Department of Finance's refusal to release all studies carried out by the Fiscal Policy and Economic Analysis Branch concerning the impact of the Western Accord. The department claimed exemptions under the financial interests of Canada [18(d)(iii)] and advice or recommendations - government operations [21(1)(a)] provisions of the Act.

As a result of the investigation, the Commissioner informed the complainant that the exemptions had been properly applied as release of the information could reasonably be expected to be materially injurious to the financial interests of the Government of Canada or its ability relating to contemplated changes in tariff rates, taxes, duties or any other revenue source. Further, the information contained advice or recommendations developed by or for a government institution or a Minister of the Crown.

The complainant made representations as follows:

"I will concede that within that wide group of information there might in fact be some information that could be materially injurious to the financial interests of the Government of Canada.

"My main interest here is to obtain whatever forecasts the department has prepared for job creation under the Western Accord. I find it difficult to understand how the numbers forecasting job creation could be injurious.

"Is it not possible to pull those numbers out of all that other so-called injurious material? Why are we talking about all or nothing when the Commissioner, herself, has made it clear that she supports severability?

"I would also like to point out that in her Annual Report 1984-85 the Commissioner describes a case where the request was for Economic forecasts (p. 39). Although the complaint was never followed through, the Commissioner states that she would have supported the complaint basing her decision on the advice of an outside expert that forecasts constitute facts rather than advice and should therefore be released."

The Commissioner replied that the records had been re-examined to determine whether portions could be severed and released to him. It was found that the job creation information sought by the complainant was inextricably linked with other fiscal data in the economic forecasts prepared for the Minister and disclosure would be materially injurious to Canada's financial interests.

The Commissioner pointed out that the information requested was substantially different from the complainant's comparison of his complaint with one that appeared in the Commissioner's Annual Report of 1984-85 and that the conclusion in this case could not be compared to the conclusion arrived at in the other.

RCMP Information - Exempted Under Two Laws

File: 492

Institution: *Royal Canadian Mounted Police*

Complaint: *Refusal - exemption [16(1)(c), 16(3), 17, 19(1) and 23]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An applicant requested access to two reports by named RCMP officers in connection with an assault on a named person.

The request had originally been considered under the *Privacy Act* and the record requested had been provided to the applicant, with exemptions applied. An investigation of the exemptions was carried out under the *Privacy Act*. At the applicant's request, the case was subsequently referred to the Information Commissioner for investigation under the *Access to Information Act*.

The request was then considered by the RCMP under the *Access to Information Act*. The complainant was advised that the information he sought was exempted under paragraph 16(1)(c), subsections 16(3) and 19(1) and sections 17 and 23.

An investigator examined the documents to determine whether the exemptions were correct and the Commissioner was satisfied that they had been properly claimed by the RCMP.

Not Publicly Available

File: 498

Institution: *Revenue Canada (Customs and Excise)*
Complaint: *Refusal - exemption [19(1)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant sought access to all information, files and records concerning a specified customs seizure. Revenue Canada (Customs and Excise) exempted the records as personal information [19(1)]. The applicant complained, stating that the exemption did not apply "because, like judicial records, the information requested was publicly available".

An investigator attended at the appropriate Court Registry to search relevant records. He learned, and subsequently confirmed, that the Search Warrant and supporting documents were not available there. The Commissioner concluded that the information requested in this case was not publicly available.

A review of the department's records revealed that all of the information was of the kind protected from disclosure under section 19. Severance was considered; however all the information concerned one seizure and the investigation into that seizure. This information was attributable only to the persons involved. Consequently any information disclosed would reveal personal information.

The Commissioner informed the complainant that the department had correctly applied the exemption under 19(1) of the Act.

Publication Intended

File: 501

Institution: *Finance*
Complaint: *Refusal - exemption [26]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

On June 27, 1985, an individual requested access to the actuarial report on the pension plan of MPs referred to in the House of Commons debates on June 3, 1985. On July 15, 1985, the Minister of Finance refused disclosure pursuant to section 26 of the Act since it was intended to table the information in Parliament shortly after September 9, 1985 [section 26 allows refusal if the head of a government institution believes, on reasonable grounds, that the material will be published within 90 days of the request being made].

On October 24, 1985, the complainant, acting on behalf of the individual who originally submitted the request, re-submitted the request. On the same date, the complainant asked this Office to determine if there was any documentary evidence that the department intended to publish at the time of the original request and if the section 26 exemption was being abused.

The investigation failed to reveal any documentation, prior to the access request being made, supporting the intention to publish, other than the June 3, 1985, statement in the House of Commons by the Minister of Finance.

In regard to abuse of section 26, the Minister of Finance indicated that it was intended to table the information in Parliament shortly after September 9, 1985, (74 days after the request). However, the report was not tabled until October 31, 1985, (126 days after the request). A departmental official explained that a number of factors contributed to the delay, including discussions with Treasury Board officials and notice to all interested parties to ensure an appropriate tabling of the report.

The Commissioner was satisfied that the tabling delay was not foreseen and that the department had fully expected that the report would be tabled within 90 days of the access request being submitted.

Law Enforcement in a Province

File: 502

Institution: *Royal Canadian Mounted Police*

Complaint: *Refusal - exemption [16(3)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

A complaint was received from an individual acting on another's behalf to the effect that the RCMP had denied him access to "RCMP File 83-2667 ... Powell River, B.C." under subsection 16(3) of the Act.

As a result of the investigation, the Commissioner was satisfied that each document on the file contained information obtained or prepared by the RCMP while performing policing services for British Columbia, pursuant to an arrangement made under section 20 of the *RCMP Act*. Consequently, denial of access was mandatory under subsection 16(3).

Possible Underbidding

File: 504

Institution: *Supply and Services Canada*
Complaint: *Refusal - exemption [20(1)(c) and (d)]*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant objected when the detailed pricing information he requested from a successful tender for optical products was exempted as third party information under paragraphs 20(1)(c) and (d).

The Commissioner found that the records sought contained information of the type referred to in both paragraphs 20(1)(c) and (d), and that the provisions were mandatory in this case because none of the exceptions applied. The Commissioner was satisfied that release of the exempted information could result in financial loss or gain, prejudice a competitive position or interfere with negotiations of a third party.

The complainant had asked if non-disclosure would be justified specifically on the basis that a competitor's knowledge of the price may result in future loss. The Commissioner explained that each case is dealt with on its own merits but that, in this case, it would be possible to envisage such a scenario.

The complainant suggested that a successful manufacturer would not be involved with a third party or third party "contracts" - in effect, sub-contracts. The Commissioner explained that "third party" was used as defined in section 3 of the Act and did not refer to sub-contractors.

The complaint exemplified how third party disclosure could result in lost contracts in the future. The complainant as first party, requested information from the government as second party, about the named manufacturer, as third party. If the government had provided the applicant with detailed pricing information, the applicant would have a better idea of what criteria would be used in the manufacturer's bidding formula on subsequent contracts, including hourly wages, processing estimates and cost of commodities provided. The applicant could then structure a bid accordingly, possibly underbidding and thereby depriving the manufacturer of a contract.

Proper Exemption

File: 505

Institution: *External Affairs*
Complaint: *Refusal - exemption*
[16(2)(c)]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant objected when External Affairs exempted requested records on the grounds that they contained "information that could reasonably be expected to facilitate the commission of an offence..."

An investigation showed that the records were properly exempted.

Information About a Public Servant

File: 514

Institution: *Social Sciences and Humanities Research Council of Canada*
Complaint: *Refusal - exemption [19(1)]*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in full*

An applicant sought access to a memo on staffing procedures dated February 10, 1983, held by the Council. The Council denied access on the grounds that it was personal information [19]. As a result, a complaint was made to the Commissioner.

After the Commissioner's representations, the Council released the document to the complainant.

In addition to discussing personnel policies, the document provided the name of a public servant and described the person's functions and abilities as a public servant. The Commissioner found that the document was disclosable based on paragraph 3(j) of the *Privacy Act* which provides:

"Personal Information" means information about an identifiable individual that is recorded in any form...but, for the purposes of... section 19 of the *Access to Information Act*, does not include information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual...".

Personal Information

File: 515(2/2)

Institution: *Health and Welfare Canada*
Complaint: *Refusal - exemption [19(1)]*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

The complainant sought access to records concerning several drugs. The department provided him with some records but exempted others as personal information [19(1)].

As a result of the investigation, some of the previously exempted records were released. The Commissioner was satisfied that the remaining exemptions under subsection 19(1) of the Act were properly applied by the department.

Complaint Withdrawn

Filed: 516(2/2)

Institution: *Revenue Canada (Customs and Excise)*
Complaint: *Refusal - exemption [20(1)(b) and (c)]*
Finding: *Not supportable*
Disposition: *Discontinued*
Result: *No action*

The complainant was denied access to portions of records concerning dandruff treatment shampoos under third party provisions [20(1)(b) and (c)] of the Act.

Before the complaint could be fully investigated, the complainant asked that the complaint be discontinued, making it unnecessary for the Commissioner to determine the propriety of the exemption.

Unit Prices Withheld

File: 520

Institution: *Supply and Services Canada*
Complaint: *Refusal - exemption [20(1)(b)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The request was for access to the prices or discounts of successful suppliers in connection with tenders on a Department of Supply and Services contract and stated that: "It has always been our past understanding that tender calls are, or have always been, open to those who tender the calls".

The department provided the complainant with all accessible records pertaining to the bids of the three successful companies, with the unit prices exempted as third party information [20(1)(b)].

The investigation established that the exempted portions contained "financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party".

While the department had, from time to time, released unit price information on tenders, it was not a long-standing policy. The department's refusal in this case was based on the need to protect third party information.

Detailed Prices

File: 522

Institution: *Supply and Services Canada*
Complaint: *Refusal - exemption [20(1)(c)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An applicant sought access to detailed pricing information from a successful tender for optical products. The department exempted the records as third party information [20(1)(c)]. The applicant objected to the exemption.

The investigation revealed that the department had requested the third party's consent to release the records. However, consent was refused.

The Commissioner informed the complainant that, in the circumstances, the exception was mandatory and that the information, if disclosed, "could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party".

Pesticides

File: 537

Institution: *Agriculture Canada*
Complaint: *Refusal - exemption [19(1), 21(1)(a) and 23]*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

The applicant requested access to all records on "whether the federal government is considering abolishing or modifying product specific registration (PSR) of pesticides". The department provided a portion of the requested records and informed the complainant that an internal document and certain portions of other documents were exempted as personal information [19(1)], advice or recommendations developed by or for a government institution or a Minister of the Crown [21(1)(a)], and solicitor-client privilege [23]. The complainant believed that the number of records exempted was excessive.

The investigation disclosed that the personal information exempted under subsection 19(1) consisted of a single name in a letter. The three paragraphs

exempted under section 23 were clearly subject to solicitor-client privilege. The investigator challenged a four-page document exempted in its entirety under paragraph 21(1)(a), taking the view that the last two pages contained only factual statements and not advice. After some discussion, departmental officials agreed to sever the document and forwarded the factual portion of the record to the complainant.

Unsubstantiated Information

File: 538

Institution: *Health and Welfare Canada*
Complaint: *Refusal - exemption*
[20(1)(c)]

Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant complained that Health and Welfare Canada had exempted certain portions of records dealing with a named drug under paragraph 20(1)(c).

The Commissioner was satisfied that, if disclosed, the exempted information could be expected to materially affect or prejudice the competitive position of a third party, as described in paragraph 20(1)(c).

In reaching that conclusion, the Commissioner considered whether disclosure was in the public interest as it relates to public health, public safety or protection of the environment and whether that public interest would clearly outweigh any prejudice to the third party. She concluded that public interest in the disclosure of this information was minimal.

Cheese Import Permits

File: 541(2/2)

Institution: *External Affairs*
Complaint: *Refusal - exemption* [20(1)(b) and (c)]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant sought to access to "Names of individuals and companies, and their addresses, who were given permits to import into Canada foreign cheese in excess of 25,000 kilograms, from January 1985 to date". The department exempted the records as third party information [20(1)(b) and (c)].

As a result of the investigation, the Commissioner was satisfied that the records contained "financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party" and the information, if released, "could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party". In such circumstances, the exemption is mandatory.

Total Bid vs Unit Prices

File: 542

Institution: *Supply and Services Canada*
Complaint: *Refusal - exemption*
[20(1)(c)]
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

The applicant objected when the detailed pricing information he requested from a successful tender was exempted as third party information.

During the investigation, the Commissioner found that the records were information from a third party of the type referred to in paragraph 20(1)(c). The department contacted the third party involved, which refused to consent to release of the requested information. In such circumstances, exemption is mandatory under the Act.

In representations submitted to this Office, the complainant stated he was interested not in the unit prices of the contract but in the total of eight unit prices. He also asked the Commissioner to confirm whether his tender bid submitted to the department was higher than the bid of the successful company.

In response to these representations, the Commissioner informed the complainant that the total of the eight unit prices was available under the Act. The department agreed to provide him with this total. With respect to divulging whether the complainant's bid was higher than the successful bid, the Commissioner refused. She pointed out that, pursuant to section 62 of the Act, "the Information Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act".

Ranking of Employees

File: 543

Institution: *Agriculture Canada*
Complaint: *Refusal - exemption [19(1)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An applicant complained when a merit list prepared for anticipated status showing employees by rank, group and level was exempted as personal information [19(1)]. He contended that this information did not meet the criteria of section 3 of the *Privacy Act* and that, if it did, the department would not have previously released an unranked list.

The investigation revealed there is a difference between an unranked list and a merit list. An unranked list is simply a list of names. A merit list takes into consideration seniority, annual evaluations, qualifications and so forth. Each one of these factors is given a numerical value and the total of these values establishes an individual's standing on the merit list. Release of the merit list would disclose personal information protected from disclosure by subsection 19(1) and defined in section 3 of the *Privacy Act*.

As a result of the investigation, the Commissioner was satisfied that the exemption under 19(1) was correctly applied by the department.

Information Provided by Another Party

File: 556

Institution: *Supply and Services Canada*
Complaint: *Refusal - exemption [20(1)(b) and (c)]*

Finding: *Not supportable*
Disposition: *Discontinued*
Result: *No action*

The applicant complained when Supply and Services Canada refused access to a list of equipment to supply a telephone system for Revenue Canada (Taxation) at Calgary and Edmonton.

This Office received the complaint on January 6, 1986, and met with the staff of the departmental Access to Information Coordinator's office on January 8. Subsequently, the investigator was informed that the departmental coordinator had contacted the complainant by telephone and had succeeded in having his request answered through consultation with another party involved in the contract. The coordinator advised this office that the complainant did not wish to pursue his complaint, and this was confirmed with the complainant.

Confidential Source

File: 563

Institution: *Revenue Canada (Customs and Excise)*
Complaint: *Refusal - exemption [16(1)(c)(ii)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complaint involved a request for access to an investigative report relating to a customs seizure. The department exempted portions of the record under subparagraph 16(1)(c)(ii) of the Act.

After having reviewed the exemptions, the Commissioner was satisfied that release of the exempted portions of the record would identify a confidential source of information. The exemptions were therefore correct.

Personal Information - Open Competition

File: 564

Institution: *Canada Mortgage and Housing Corporation*
Complaint: *Refusal - exemption [19(1)]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

Based on the personal information [19(1)] provisions of the Act, the applicant was denied access to certain documents pertaining to an open competition for manager, real estate, CHMC Edmonton office.

The investigation revealed that the exempted portions of the records correctly fell within the protection of subsection 19(1) of the Act as they pertained to personal information of candidates considered for the position. The Commissioner informed the complainant that CMHC correctly refused to disclose the exempted portions of the records.

Third Party Protection

File: 579

Institution: *Supply and Services Canada*
Complaint: *Refusal - exemption*
[20(1)(b) and (c)]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complaint involved information withheld by Supply and Services Canada in relation to an access request for details of a specified contract.

The investigation revealed that the department provided the complainant with some records but exempted portions as third party information. A review of the records established that they contained third party information which, if disclosed, might lead to the injury as described in paragraphs 20(1)(b) and (c).

Where government determines that injury could reasonably be expected to occur, the exemption of the relevant information is mandatory under the Act unless the third party affected consents to disclosure, or disclosure would be in the public interest as it relates to public health, safety or protection of the environment. In this case, the third party objected to disclosure of a portion of the requested information and none of the statutory exceptions allowing for release were present.

EXCLUSIONS

Policy-Related Operational Plans

File: 211(1/4)

Institution: *Treasury Board*

Complaint: *Refusal - exclusion* [69]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant requested the operational plans for the Policy Development and Revision Division and for the Information Policy Section for 1984-85, as well as the 1983 electronic data processing plans for Transport Canada, Supply and Services Canada, Public Works Canada and Agriculture Canada.

The department excluded the records pursuant to paragraph 69(1)(a), as confidences of the Queen's Privy Council. This exclusion was confirmed by the President of the Treasury Board.

The Commissioner informed the complainant that she had no legal authority to review the excluded documents.

Operational Plans for Computer Systems

File: 211(2/4)

Institution: *Health and Welfare Canada*

Complaint: *Refusal - exclusion* [69]

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant sought access to the Information Systems Directorate operational plan for 1984-85, which was pro-

vided by Health and Welfare. The complainant also requested the budget allocation for the purchase of computer equipment and software for 1984-85, which the department excluded as a confidence of the Queen's Privy Council.

The Commissioner informed the complainant that she had no legal authority to review the excluded documents.

Electronic Data Processing Budget Allocation and Operational Plans

File: 211(4/4)

Institution: *Transport Canada*
Complaint: *Refusal - exclusion* [69]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant challenged a Cabinet confidence exclusion claimed by Transport Canada in response to requests for the 1984-85 budget allocation for the purchase of a computer equipment and software and the 1984-85 operational plan for the Information Systems Directorate.

The Commissioner informed the complainant that she had no authority to review the excluded documents; however, based on the investigation, the exclusions appeared to be proper.

Confidences of the Privy Council

File: 264(2/3)

Institution: *External Affairs*
Complaint: *Refusal - exclusion* [69]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant challenged the exclusion of some documents by External Affairs in response to a request for "records related to the present and future market for nuclear reactors in Canada and the rest of the world".

Following a request by the Information Commissioner to the Minister of External Affairs for a certificate that the information constituted a confidence of the Queen's Privy Council, a certificate to this effect was signed by the Clerk of the Privy Council, putting the issue outside of the Commissioner's mandate.

Nuclear Reactor Markets

File: 267(2/3)

Institution: *Energy, Mines and Resources*
Complaint: *Refusal - exclusion* [69]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant challenged the Cabinet confidences exclusion claimed by the Department of Energy, Mines and Resources in responding to a request for records relating to the present and future market for nuclear reactors in Canada and the rest of the world.

The Commissioner was satisfied that the exclusion under section 69 was substantiated and, therefore, no certificate was required.

Security

File: 278(3/3)

Institution: *External Affairs*
Complaint: *Refusal - exclusion [69]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

External Affairs excluded from review some records containing confidences of the Queen's Privy Council in complying with a request for access to "all records related to security vulnerability of documents, communications, buildings and personnel both at posts abroad and in Ottawa, between January 1, 1983, and present".

The investigation satisfied the Information Commissioner that the exclusion was proper.

Privy Council Confidence

File: 294(2/3)

Institution: *External Affairs*
Complaint: *Refusal - exclusion [69]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An applicant objected when External Affairs excluded records under 69(1), confidences of the Queen's Privy Council, following a request for records relating to foreign governments' reactions to Canadianization programs.

As a result of the investigation, the Commissioner was satisfied that subsection 69(1) was correctly applied.

Exclusion Supported

File: 299(2/2)

Institution: *External Affairs*
Complaint: *Refusal - exclusion [69]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

External Affairs excluded records by virtue of paragraph 69(1)(e) in reply to a request for "all records related to the shooting down of a Korean civilian jet by the Soviet Union in August, 1983".

The applicant objected to the exclusion.

The Commissioner had sufficient information to support the exclusion of documents as confidences of the Queen's Privy Council and so informed the complainant.

Internal Contracting Study

File: 303

Institution: *Treasury Board*
Complaint: *Refusal - exclusion [69]*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

Treasury Board refused to release a record entitled "A Study of Contracting Out in the Federal Government", on the grounds that it was excluded under section 69 of the Act.

The investigation revealed that the record forms part of an overall study of contracting in the federal government, and is being prepared at the request of Treasury Board for its own use.

The record was properly excluded under section 69 and the complainant was dismissed.

Privy Council Confidences

Files: 332(2/2), 338(2/2)

Institution: *National Defence*
Complaint: *Refusal - exclusion* [69]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

Two complainants challenged a National Defence Cabinet confidences exclusion to a request regarding the purchase of CF-18 aircraft.

The Commissioner had sufficient information to support the exclusion of records on the grounds that they indeed constituted confidences of the Queen's Privy Council.

Afghanistan Invasion

File: 421(2/2)

Institution: *External Affairs*
Complaint: *Refusal - exclusion* [69]
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

External Affairs excluded some records containing confidences of the Queen's Privy Council in complying with a request for access to all records compiled between February 16, 1980, and August 16, 1980, concerning the Soviet Union invasion of Afghanistan in December 1979.

The Commissioner had sufficient information to determine that the exclusion was proper.

GENERAL

Inconsistencies Between Departments

File: 123(2/2)

Institution: *Environment Canada*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual criticized Environment Canada for not releasing letters similar to two that had been released by Energy, Mines and Resources in response to access requests.

The investigation revealed that the letters were in Environmental Protection Service files; however, the complainant was given copies of only the most relevant material, and also was invited to examine the files and discuss the subject with specialists in the area. The two letters were in the files and would have been released had the complainant specifically requested them.

The Commissioner informed the complainant that Environment Canada was prepared to provide copies of the letters if requested.

Phasing In

File: 247(1/2)

Institution: *Atomic Energy Control Board*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual whose complaint against AECB was reported in the 1984-85 Annual Report (I.83-37), complained that the Board, by invoking section 27 [phasing in], denied him access to minutes prepared before July 1, 1980. The Commissioner found that the Board was legally entitled to invoke the "phasing in" section which reads:

27.(1) The head of a government institution may refuse to disclose any record requested under this Act

(a) during the first year after the coming into force of this Act, in the case of a record that was in existence more than three years before the coming into force of this Act;

(b) during the second year after the coming into force of this Act, in the case of a record that was in existence more than five years before the coming into force of this Act; and

(c) during the third year after the coming into force of this Act, in the case of a record that was in existence more than five years before the coming into force of this Act where, in the opinion of the head of the institution, to comply with a request for the record would unreasonably interfere with the operations of the government institution.

However, in March 1985, the Board announced a policy of placing all the minutes of its deliberations in its public documents room. This policy was fully implemented by June 30, 1985.

Search Time Limited

File: 264(3/3)

Institution: *External Affairs*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No Action*

Because the releasable records in an access request on nuclear reactors comprised less than 100 pages, External Affairs photocopied and sent them, without cost, to the applicant. This prompted a letter from the complainant stating that he did not think an adequate search had been conducted, especially in the area of analysis records.

The Commissioner informed the complainant that an investigation had been carried out and she was satisfied that the department conducted a thorough records search and identified all documents pertaining to the complainant's request, within the five-hour time period specified by him.

Severance Principle

File: 265

Institution: *Canadian International Development Agency*

Complaint: *Refusal - general*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Resolved in part*

The applicant requested records from the Canadian International Development Agency (CIDA) concerning a reforestation project in the People's Republic of China. He complained about exemptions and suggested that the search for records was incomplete.

The complainant had requested any records concerning changes of contractors for CIDA projects after the election of the Conservative government in Canada. A change of contractors was identified in only one project. The records located were two telexes and three memoranda.

The two telexes were released as the information was publicly known and the memos were totally exempted as advice, consultations or plans [21(1)(a), (b) and (c)].

The complaint was received on January 8, 1985. In a meeting on January 28, CIDA officials were asked to review the records with a view to applying severance. On February 4, the Agency advised by telephone that it had reviewed the documents and would not sever and release any material. After legal counsel reviewed the material, the possibility of severance was raised again with CIDA. On April 12, 1985, CIDA replied to the effect that it continued to insist on full exemption of the record.

The Commissioner was of the view that some portions of the records were purely factual, some were publicly available elsewhere, some simply provided information on the selection of a candidate, and some described the activities of an evaluation team. The Commissioner consequently recommended that the records be reviewed in accordance with the severance principle in section 25 of the Act and that identified portions not exemptable under the Act be released. On June 25, 1985, the Senior Vice-President of CIDA responded that all three memoranda would be released in accordance with the severance principle.

The complainant was informed that the balance of the records exempted under paragraphs 21(1)(a), (b), and (c) and section 23 had been examined, and that the Commissioner had concluded that these exemptions were correctly applied and that all records dealing with the access request had been properly identified.

All Records Retrieved

File: 267(3/3)

Institution: *Energy, Mines and Resources*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant was dissatisfied with "what appears to be an incomplete retrieval of records" concerning his request for records relating to the market for nuclear reactors.

The investigation established that all records within the scope of the request had been retrieved and reviewed by the department.

Contact With the Media

File: 283

Institution: *External Affairs*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant sought access to External Affairs' records of the department's decision to limit or restrict contact with news media by External Affairs employees. The complainant also sought all records that resulted in the decision, including all records of a telex sent to diplomatic personnel instructing them to use their own discretion in contacts with news media and records that resulted in this telex and other instructions. Because the complainant did not receive background material relating to the instructions, he complained to our office.

The investigation verified that the department's search and retrieval was thorough and that all records identified were supplied to the complainant, without exception.

Document Found

File: 286(1/2)

Institution: *External Affairs*
Complaint: *Refusal - general*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in full*

The complainant objected when External Affairs indicated that it had no records relevant to his request for records pertaining to export permits of a third party in connection with the company's sales of products or services to a foreign country.

During the investigation, one document was identified that related to the request. The document was exempted as confidential business information [20(1)(b), (c) and (d)] and this gave rise to another complaint.

Inmate Entitled to Manual

File: 288

Institution: *Correctional Service Canada*
Complaint: *Refusal - general*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Resolved in full*

An inmate of a penitentiary complained that Correctional Service Canada refused him access to the departmental Case Management Manual.

CSC informed the inmate that the manual was accessible at the penitentiary library and if he wished, he could obtain a copy from the Offender Programs Branch. The complainant on two occasions requested a copy of the manual but the Offender Programs Branch informed him that it was unable to provide a copy, reiterating that the manual was available through the penitentiary library.

The Information Commissioner found that the refusal to comply resulted from a misunderstanding on the part of administrators. The manual would be sent to the complainant upon payment of the set fee.

As the complaint was well-founded, the Commissioner reported the result of the investigation to the Minister.

Few Records

File: 294(3/3)

Institution: *External Affairs*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

After a complainant had received records relating to the reaction of foreign governments to Canadian initiatives on Canadianization of Canada's industries, FIRA and National Energy Program, he complained about

"the lack of documents for the period starting in 1983. The latest document appears to be from late 1982. I would argue if the question of free search time expiring comes up, that the search so far has apparently not focussed on the most recent records covered by my request. These are the records that interest me the most."

The investigation showed that the department of External Affairs had retrieved all relevant documents for the periods specified and released those accessible. The department also advised that there were fewer documents produced in the recent period specified, as the subject was more prevalent in 1982-83.

Assistance from Complainant

File: 301

Institution: *Canadian Commercial Corporation*
Complaint: *Refusal - general*
Finding: *Supportable*
Disposition: *Discontinued*
Result: *No action*

The complainant sent an access request to the Canadian Commercial Corporation for contracts awarded to post secondary education institutions from 1978 to 1985. The Corporation replied that no such contracts had ever been awarded. The complainant said he knew that at least one contract had been awarded to a university.

After another request for access by the complainant, the Corporation released four records including the one identified by the complainant.

On receipt of the requested records, the complainant asked that his complaint be discontinued.

Missing Name of Flight Passenger

File: 313

Institution: *National Defence*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

A journalist sought from National Defence the passenger manifests for a certain flight to Europe and was provided with all the information held by the department. He complained when the name of a passenger, who to his knowledge had been on the flight from London to Ottawa, did not appear on the released list. He wanted to be certain no other names had been missed.

The investigation revealed that the Department of National Defence does not have original flight manifests for each leg of the flight. Prior to January 15, 1985, these manifests were routinely destroyed after the information was filed in the department's "Astra" computer program. Since January 15, 1985, all manifests are preserved and are available for inspection by the public at National Defence Headquarters.

The investigation also revealed that one name had been inadvertently omitted from the list of passengers for the leg of the flight from London to Ottawa and that when the department became aware of the oversight, it released that name. No evidence was found to suggest that any other passenger was carried on any leg of the flight.

Completeness of Minutes

File: 314

Institution: *Atomic Energy Control Board*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complaint involved a request for the minutes of all meetings of the Atomic Energy Control Board (AECB), including all attachments from 1978 to the date of the request. The complainant asked whether the minutes from November 19, 1984, onward were in fact the only Board records relevant to the request. In addition, the complainant asked why Board Member Documents (BMD) were not identified as attachments to the minutes and were not supplied to him in response to his request.

The investigation disclosed that the form of the AECB minutes was changed beginning with the record of the November 19, 1984, meeting as a result of a proposal to the Board members in a memorandum dated November 1, 1984. The memorandum (BMD 84/155) is referred to in the November 19, 1984, Board minutes and sets out the reasons for the change in the minutes' content. The memorandum is available to the public in the AECB reading room.

The procedures for recording the minutes remained unchanged during the tenure of both the recording and Board secretaries from June 1, 1983, to the date of the investigation. No other records of the Board proceedings were taken or prepared.

Regarding the complaint that attachments to the Board minutes were not provided, the investigation disclosed that the usual attachments were the schedules listing BMDs, and the occasional report or letter discussed in the minutes. These attachments were provided in response to the original request. The BMDs listed in the schedules were never attachments to the meeting minutes, but were filed separately. Many of the BMDs are now available in the public reading room. Those not found there may be requested from the Board.

The Commissioner informed the complainant that only one set of AECB meeting minutes were recorded and prepared during the period specified and that all attachments to the minutes requested by the complainant were appended in the response to him by the AECB.

Minutes of Meetings

File: 329

Institution: *Canada Deposit Insurance Corporation*

Complaint: *Refusal - general*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Resolved in full*

This complaint involved a request for access to the Canada Deposit Insurance Corporation for "the Corporation's executive/management board or equivalent meeting minutes and their appendices...". The Corporation refused to disclose the requested records under paragraphs 21(1)(b), 13(1)(c), 18(a) and (d), subsections 19(1) and 20(1), and section 23.

CDIC had not examined the records systematically, nor marked the exempted portions with the provision of the Act being invoked. As well CDIC had not undertaken to sever portions of the records wherever possible, as required by section 25 of the Act.

Section 10 of the Act requires a government institution to state the specific provision of the Act when claiming an exemption from disclosure. While there may have been information in the CDIC records that qualified for exemption, it was not possible to form an opinion as to whether the exemptions were correct without the portion being identified and the exempting provision identified.

The Commissioner's report to the Chairman stated that she could not support exemption of minutes of all the CDIC meetings of the Board of Directors. To do so would contradict the intent of the Act stated in section 2, namely "that necessary exceptions to the right of access should be limited and specific...", and the requirement in section 25 to disclose as much of a record as is reasonably possible.

The Chairman agreed to follow the recommendation to employ the severance principle.

Extended Time Limit Not Quite Met

File: 331(2/2)

Institution: *National Defence*

Complaint: *Refusal - general*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Resolved in part*

This complaint concerned a 60-day extension of time claimed by the department for consultation with other government departments and the United States government to respond to a request for access to 25 agreements and treaties between the two countries.

The complaint was not supportable. However, after expiry of the 60-day extension beyond the 30-day statutory time limit, six requested records had not been released pending consultation with the US government.

As a result, the Commissioner found that, in accordance with subsection 10(3) of the Act, the department was deemed to have refused access.

Five Hours Search

File: 355(2/2)

Institution: *External Affairs*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant asked for records concerning the security vulnerability of documents, communications, buildings and personnel at posts abroad and in Ottawa and had stated that the request should be considered "fully processed after five hours search time". In his complaint letter, he stated:

"The retrieval did not come up with many documents of an analysis nature.... Perhaps a quick retrieval verification could determine whether this type of record exists..."

The investigation established that the department identified 76 records relevant to the request and had spent more than the five hours' search time specified by the complainant to process his request. The Commissioner was satisfied that the department complied with the request considering the time limits set by the complainant.

Existence of Record

File: 356(1/3)

Institution: *Agriculture Canada*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The Department of Agriculture had received two access requests dated January 22, 1985, for "records of denials of access to Canadian meat inspection reports". The first request was for the period 1972 to 1978 and the second for the period 1979 to 1983.

The applicant objected to a refusal on the basis that documents did not exist, stating that the department, in correspondence, had estimated the search and preparation costs of the records at \$100, clearly implying that such records existed. The investigation confirmed that the complainant was told in correspondence that most requests for information about meat inspection reports were made by telephone and therefore no documentation was on file. The department indicated that it was prepared to carry its search to records in the Public Archives. The fee was estimated on the basis of such a proposed search.

The Commissioner did not agree with the complainant that by estimating search and preparation costs, the department implied that records existed. The search was to ascertain whether the records existed.

Control of Record

File: 363

Institution: *Canada Radio-television and
and Telecommunications
Commission*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant had been denied access to the "broadest content for Quebec City radio station CHRC between 8:15 and 8:30 a.m. of April 19, 1985, in either transcript or tape form" on the basis that the record did not exist.

The investigation confirmed that the CRTC never had the requested record in its possession. The complainant suggested that the CRTC has control over these records because the Broadcasting Regulations require a radio station to provide tapes to the CRTC upon request. In fact, the CRTC must ask radio stations to provide such records to them, and, for any one of a number of reasons, the radio station might refuse. The Commissioner was satisfied that a radio station could not be forced to turn over such records. In the event of a refusal, the CRTC may take steps to discipline the station for breach of the regulations, but such action would not guarantee that the records would be turned over to the CRTC. Until a government institution has acquired some form of physical control over a record, there is no basis for finding that a record is in its control under the *Access to Information Act*.

Further, the CRTC may only exercise its rights under the Broadcasting Regulations for certain purposes. The CRTC would not be legally entitled to demand a copy of a tape or transcript without a given reason. Radio stations are required to comply with the Regulations only when a request arises out of matters under the applicable legislation. The Commissioner found that a request under the *Access to Information Act* does not entitle the CRTC to make a request under the Broadcasting Regulations. Therefore the complaint was dismissed.

Official Residences Report

File: 373(1/2)(2/2)

Institution: *Privy Council Office, Public
Works Canada*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

A person requested the "Report of the Official Residences Council on Stornoway" and complained when both the Privy Council Office and Public Works said that no record of that description was under their control.

Enquiries conducted at Public Works and the Privy Council Office indicated that administrators of both had not seen nor possessed any report submitted by the Official Residences Council.

The Commissioner dismissed the complaint, subject to any representations the complainant wished to make. None were received.

In addition, the Commissioner provided the complainant with a copy of an Order in Council setting up the Official Residences Council indicating it was set up "to advise the Prime Minister". The Commissioner suggested that any reports on official residences might be in the Office of the Prime Minister, the records of which are not subject to the *Access to Information Act*.

Records Searched Within Time Frame

File: 389(1/2)

Institution: *National Defence*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

As a result of records received from National Defence regarding two requests for access to records relating to a specific aspect of the Canadian Patrol Frigate Program, a complainant wrote to our office:

"I wish to complain about the retrieval of records which does not appear to have been complete, even considering the five-hour time limit. Analysis records should have been among the records found, for example."

The investigation established that all records of the Canadian Patrol Frigate Program relating to the requests were searched by the department within the time limit specified by the complainant.

Record Does Not Exist

File: 393

Institution: *Public Service Commission*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant objected when the Public Service Commission (PSC) stated the record he sought did not exist. He had requested the rationale for the PSC or Revenue Canada (Taxation) increasing the passing mark on intelligence test 320 from 80 to 90 as well as for the PSC Personnel Psychology Centre adopting the same increased mark to determine employees' learning capabilities.

The investigation uncovered that no documents under PSC control relating to an increase in the minimum points required on intelligence test 320. However, documents existed relating to establishing the points for such a test and, after discussions with the Public Service Commission, they provided the complainant with these documents.

All Available Records Released

File: 397

Institution: *Public Archives Canada*
Complaint: *Refusal-general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant sought access to records held by Public Archives relating to three projects concerning mental health grants. More than 900 pages of

material were accessible in relation to two projects but only five dealing with the third project. He complained because he did not believe that the research project produced only five pages of information in some ten years.

The investigation confirmed that the complainant had received all the records on file in relation to the third project.

The records originally came from the Department of Health and Welfare, and the investigator contacted that department to see if any pertinent records remained. The department contacted those who had been involved with the project and searched its own records as well. No additional material was located.

One Dollar Coin

File: 399

Institution: *Royal Canadian Mint*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Discontinued*
Result: *No action*

An applicant requested "any and all records, including reports, studies, correspondence, and memorandums concerning the potential production, by the Royal Canadian Mint, of a \$1 coin to replace the \$1 Bank of Canada bill now in circulation."

The Mint informed the applicant that "by and large, the documentation that the Royal Canadian Mint has is in the form of third party correspondence which we are not at liberty to release." However, they did provide some material. As the applicant wanted additional material and records, he complained to the Information Commissioner.

However, the preliminary investigation revealed that the Mint made its records available for the complainant's perusal, and, as a result, the complaint was discontinued.

The investigator's report gives a detailed picture of the work done by an investigator in what is essentially a simple complaint. The following excerpts illustrate:

"In view of the apparent unfamiliarity with the *Access to Information Act* and the Mint's responsibilities I went over some of the procedures with (the access coordinator). During this discussion I pointed out that the Mint had not identified the specific section under which it was exempting material not did it advise the applicant that he has the right to complain to the Information Commissioner. (The coordinator) acknowledged these oversights and advised that he would have to take some time to become more familiar with the Act.

"On (date), I called (the complainant) who advised me that the Mint had offered to make its records available for his perusal. He hopes to do this during the week of (date) and in the meantime requests that we withhold any further investigation. On (date), I met with the acting access to information coordinator and the departmental counsel and corporate secretary. At this meeting (the acting access coordinator) admitted that they were not as cognizant of the provisions of the Act as they should be; however, they had two more files for (the complainant) to view. As they were still having problems with the

scope of (the complainant's) request, I suggested that they contact (the complainant) and ask him to amend his request to something manageable. They could then review the records and give him an estimate of costs or the opportunity to review the files.

"On (date), I contacted (the acting access coordinator) who advised me that he was in touch with (the complainant) approximately one week ago at which time he informed him that they wished to co-operate but asked if he could focus on one particular area. He also advised him that there would be some inherent costs. (The complainant) was to call back (the acting access coordinator) that same day. However, no response has been received to date. (The acting access coordinator) states that he is not going to chase (the complainant). On (date), I contacted (the complainant) who advises that he has spoken with (the acting access coordinator) and he has agreed to narrow his request. He advises that so far he has been too busy to address the question but proposes to do so this week. He claims that he is content with the action to date and he will contact me when he has defined his requirements.

"Having heard nothing from (the complainant) by (date), I attempted to contact him at (his office). I learned that the complainant was a summer student and had returned to university. After several attempts and several different phone numbers, I finally contacted (the complainant) on (date), at which time he advised me that he had not had time to re-define his request and in fact was content with the records received from the Mint for the time being and that he

wished to withdraw his complaint. I asked him to send us a letter to that effect. On (date), we received a letter from (the complainant) who advises that he officially wishes to withdraw his complaint against the Royal Canadian Mint. In this letter he states that the Mint granted him sufficient access to the records he sought and that, should he require any more records, he will formally submit another request to the Mint."

Instructions to Immigration Officers

File: 407

Institution: *Employment and Immigration Canada*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An individual sought access from Employment and Immigration Canada (EIC) to copies of "instructions to immigration officers regarding identification of homosexuals contained in either or both of the Immigration Manual and the Administrative Manual used by such officers from the mid-1950s until 1970".

EIC informed the applicant that the files containing the requested information had been transferred to the Public Archives and that his request was being transferred to Public Archives for processing. However, Public Archives informed the applicant that the requested records were not located in Public Archives, prompting the complaint.

Employment and Immigration Canada conducted another review of its files but did not locate any procedural instructions referring specifically to the identification of homosexuals attempting to enter Canada. (Amendments to the *Immigration Act* in 1976 repealed a provision which prohibited homosexuals from entering Canada).

Our investigation revealed the existence of an old Immigration Manual relevant to the request. However, the instructions did not have any reference to the identification of homosexuals. Immigration officials also informed the Commissioner that identification of homosexuals was based solely on the judgement and recommendations of the RCMP and Health and Welfare Officers dealing with persons seeking entry to Canada.

The Commissioner informed the complainant that, while there appeared to be confusion between EIC and Public Archives in responding to his request, the records sought do not exist.

Record Did Not Exist

File: 417

Institution: *Treasury Board*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant requested projected salaries and person-years for exempt and departmental staff for ministers and ministers of state for fiscal year 1985-86 and the actual figures for 1984-85. The applicant also requested the projected budget and person-years for the average office of a minister in 1985-86. Treasury Board informed the complainant that no such survey has been undertaken since the document prepared in September 1984 and therefore the information requested was not available.

The investigation was carried out and the Commissioner was satisfied that, at the time of the access request, Treasury Board did not possess the requested information.

Complaint Withdrawn

File: 459

Institution: *Energy, Mines and Resources*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Discontinued*
Result: *No action*

The complainant requested "...copies of all correspondence or memoranda originating in or sent to the Office of the Minister or Deputy Minister relating to a corporation..." The Department of Energy, Mines and Resources responded that it held no such records about the named corporation. The complainant contacted the Information Commissioner because he believed letters pertaining to the Corporation had been sent to the Minister.

No departmental records on the subject in question were found during the investigation. However, before the Commissioner had reported on the investigation, the complainant discontinued his action.

Addresses of Form Letters

File: 465

Institution: *Solicitor General*
Complaint: *Refusal - general*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in part*

An applicant informed us that he had received what he believed was a form letter from the Solicitor General dealing with the Canadian Security Intelligence Service. When he asked for access to the list of addressees who had received identical letters, he was told that the department found no such list during a search of its records.

As a result of our investigation, the department located a list and released to complainant the list of organizations that were sent the letter, exempting the names of individuals under the personal information provisions [19(1)] of the Act.

Aboriginal Claim

File: 466

Institution: *Farm Credit Corporation*
Complaint: *Refusal - general*
Finding: *Supportable*
Disposition: *Resolution negotiated*
Result: *Resolved in full*

The solicitor acting on behalf of an Indian band requested copies of all appraisals of land in a named area developed by, or for, the Farm Credit Corporation prior to August 1, 1965. The Corporation advised the applicant that it could not comply with his request because information contained in the appraisal reports was subject to provisions of the *Privacy Act* and could not be released without consent of the parties concerned.

In his letter to the Commissioner's Office, the complainant stated:

"Pursuant to S. 8(2)(k) of the *Privacy Act*, the requested appraisal reports (if personal information) may be released to me as I am acting on behalf of [named Indian band], aboriginal people for the purpose of researching and validating the claims, disputes and grievances of the Band. I submit that section 8(2)(k) was enacted for precisely this type of situation, to expedite fair settlements of long-standing grievances in order that outstanding claims be extinguished and the Band members have a deservedly better future."

Section 8(2)(k) of the *Privacy Act* reads:

"(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed . . .

(k) to any association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes of grievances of any of the aboriginal peoples of Canada."

The Corporation released the requested document as a result of the Commissioner's representations that the access request was for validating an aboriginal band claim.

Wording of Request

File: 468

Institution: *Justice*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant submitted an access request to the Department of Justice for records "... prepared jointly by the Department of the Solicitor General with other ministries such as Justice, Immigration and External Affairs that have dealt with how the government might deal with alleged war criminals living in Canada".

Officials of the department could not identify the documents requested from the original access request and asked the complainant for additional details. In a further letter to the department the complainant stated: "To make your search for the information I am seeking a little easier I will try to pinpoint the exact report that I would like to obtain. It was a report commissioned by the former Solicitor General Robert Kaplan in conjunction with a number of other departments, including Justice ...".

On May 15, 1985, the complainant submitted another access request to obtain a copy of "... a Cabinet discussion paper called Alleged War Criminals in Canada". A copy of this paper was released to the complainant. The complainant then asked for an investigation of the department's original denial as it appeared Justice possessed the requested record when it was denied.

The investigation determined that the department had considered the subject Cabinet discussion paper but concluded that it was not what the complainant wanted because:

- a) the discussion paper was not prepared jointly with other departments;
- b) the discussion paper was not commissioned by the Solicitor General of the day, Robert Kaplan;
- c) the Department of Justice was aware that the Solicitor General's department was working on one of the complainant's access requests which apparently dealt with the subject discussion paper and consequently did not think he was asking them for the same record.

Consequently, the Commissioner concluded that the complainant's original description of the record in his original request was not sufficiently detailed to enable the department to identify it with a reasonable effort as required by section 6 of the Act. In particular, the Commissioner was satisfied that departmental officials were acting in good faith and were not unduly technical about the wording of the request.

Request Delayed in Mail

File: 471(1/4)

Institution: *Employment and Immigration Canada*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

On July 21, 1985, the applicant mailed a request to Employment and Immigration Canada (EIC). When no reply was received by September 5, 1985, he complained to the Commissioner.

The investigation revealed that EIC had received the access request on August 5, 1985, 15 days after it was mailed.

On August 29, 1985, EIC provided the complainant with some of the documents and on September 4, 1985, the rest of the documents were dispatched.

The Commissioner found that there was no delay because the documents were provided before September 5, 1985, within the 30-day statutory time limit.

Organization of Records

File: 482

Institution: *Canadian Security Intelligence Service*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant submitted an access request to the Canadian Security Intelligence Service (CSIS) for "General Organizational Outline of Archival Material. Basic information on records held and mode of organization. Document equivalent to list of Public Archives Record Groups and Manuscript Groups with indication of extent in linear meters of material held. Can be limited to materials pre-dating end of World War II."

CSIS advised the applicant that it did not have a document which described its older records nor the number of linear meters of the requested material. The applicant was also informed that CSIS does not classify any files as archival material, therefore to establish whether an investigation was complete could not be determined until the file was actually reviewed. CSIS requested that the applicant provide as much detail as possible on a particular topic. The applicant then complained to this Office.

An investigation confirmed that CSIS does not organize its records in the manner described in the access request and, consequently, could not provide the complainant with the organizational outline or listing he described.

Although it would undoubtedly be useful to the complainant if CSIS compiled outlines of its material and how it is organized, the Commissioner informed him that CSIS is not obliged under the Act to create such records.

In representations to this Office, the complainant pointed out that the Access to Information and Privacy Bulletin entry contained no reference to historical material held by CSIS. The Commissioner agreed with the complainant, but further explained:

"A quick perusal of the Access Register indicates that as a rule departments do not list historical material as such. I think the reason for this is that it is largely a subjective determination whether material is historical in nature. Most departments transfer records which clearly have no current administrative value . . . to the National Archives for retention or disposal.

"As for the records presently retained by CSIS, we have been informed that there is no historical or archival component to these records as you have suggested. CSIS maintains ongoing files on organizations, specific incidents, and individuals. Information is continually added to files, even to those which have been dormant for a considerable period of time. In some instances, information added to a file today may deal with activities which took place years ago. Thus it does not really assist the enquiry in this case to call records historical or for you to specify that your request is for the organization of records predating the end of World War II."

The complainant asked the Commissioner to broaden the investigation to include the organization of CSIS's historical material. The Commissioner informed the complainant that broadening his request would be tantamount to a new request to deal with CSIS's current record management system, rather than the original request for the "general organizational outline of archival material". He was therefore advised that it was not within the mandate of this Office to investigate a complaint concerning subject matter which was never requested.

Deemed Refusal

File: 503

Institution: *Privy Council Office*
Complaint: *Refusal - general*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Resolved in part*

An individual complained when the Privy Council Office (PCO) had failed to provide requested documents by the expiration of the extensions claimed in respect to nine access requests.

In each request, the extension set out by the PCO expired without any records having been released. The Commissioner reported the delays to the Minister, and, in accordance with subsection 37(1), recommended that the information requested be made available to the complainant by a specified date. However, the records were not disclosed by that date which under subsection 10(3) of the Act, was deemed refusal to give access.

The Commissioner then reported to the complainant that his complaint was well-founded and informed him of his right to request a judicial review of the refusal by the Federal Court. He agreed to have the Commissioner make the application on his behalf. Before an application was filed with the Court, PCO released the records, with exemptions, to the complainant.

Serial Requests

Filed: 506

Institution: *Solicitor General*
Complaint: *Refusal - general*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Disputed*

In the spring 1985, the applicant submitted five access requests to the Department of the Solicitor General for records relating to alleged war criminals in Canada. Each access request bore a notation to the effect that the request was to be considered fully processed after five hours' search time.

The department completed five hours' search on each request. The department then informed the applicant that the cost to prepare the documents for disclosure was estimated at \$150 and requested a \$75 deposit.

The applicant did not forward the deposit; instead he submitted five new requests for the same records. The department concluded that the requests received were not new but a repetition of the previous requests already processed. The department returned the \$25 application fee remitted with the new requests and advised the complainant that it would proceed with his original requests upon receipt of the \$75 deposit.

The applicant contended he was within the law in submitting new requests for more work to be done on material retrieved as a result of the first set of requests. He complained to the Commissioner.

The Commissioner reported to the Deputy Solicitor General as follows:

"When the Act and Regulations were promulgated, it was obvious that because the first five hours of search and preparation time are not billable under the Act, the most cost-effective way to obtain records would be to confine the scope of an access request as closely as possible to, without going over, five hours search and preparation. By such a strategy one can, ideally, effectively reduce the cost of search and preparation of records to \$1 per hour. [The complainant] evidently was trying to perfect this technique by filing an access request with the rider that the department consider it fully processed when five hours of searching had been completed. The department did not object to this in the first instance and went ahead and searched records for five hours. By following this up with a further request to take up where the previous one left off, [the complainant] expected a further five hours (maximum) to be done for his new \$5 application fee.

"Departmental officials may not like [the complainant's] strategy, and may even feel that it is unfair. Perhaps it is, but since his complaint alleges denial of his rights under the *Access to Information Act*, I am inclined to construe his rights in the manner most favorable to him within the legislation.

"[The complainant's] second series of access requests (the ones dated July 4, 1985, which are the subject of his complaint) appear to meet all the requirements of an application set out in section 6 of the Act and section 4 of the Regulations.

"For the moment, let me stick with the example. In identifying the records he wished to obtain, [the complainant] wrote 'further work in preparing records retrieved through [his previous request]'. This certainly left no ambiguity about the records he wanted, but it may be because of this description that departmental officials considered the new request simply to be an extension of the earlier one. [The complainant], however, made it clear that it was not. In his earlier request he stated that it was to be considered *fully processed* after five hours work, and the department undertook to commence processing of that request without any objection to the automatic cut-off point. He used a fresh application form and submitted the appropriate application fee with his new application.

"If a stranger were to come along and request precisely the same records that the department had already searched for and retrieved in response to [the complainant's] original request, the department would have no grounds for charging the \$10 per hour rate for the first five hours of preparation of those records for disclosure to the stranger. I can see no legal justification in treating [the complainant] less favourably than the stranger, merely because he is the person who, in an earlier request, caused the department to search for and retrieve the records in question.

"In the particular circumstances of the five access requests dated July 4, 1985, my finding is that the department has improperly refused to disclose to [the complainant] the records identified in those requests. It was a relevant consideration in my finding that the department has taken no objection to (and has appeared to acquiesce in) the rider attached to the access requests—that they be considered fully processed after five hours search and preparation time. I should add, however, that since the issue was not raised I have taken no position on the propriety of that rider.

"My recommendation is that the records be disclosed, subject to any appropriate exemptions. In accordance with paragraph 37(1)(b) of the Act I would request that no later than March 19, 1986, you give me notice of any action which you have taken or propose to take in response to this recommendation or reasons why no such action has been or will be taken."

On March 21, 1986, the Deputy Solicitor General responding to the Commissioner's recommendations, stated that the department maintained its position that the five requests dated July 4, 1985, were not new requests and that the complainant was required to pay for preparation time before any further work would be carried out.

The Commissioner reported to the complainant that:

"I considered your complaint to be well-founded, but only on the most technical reading of both the Act and your requests

"The most critical feature of my finding is that I have construed your rights under the Act in the manner most favorable to you within the wording of the legislation, with any doubt resolved in your favour.

"In his response, the Deputy Solicitor General has taken a broader view and decided that this approach, if taken to the extreme, would permit individuals to continually restrict their requests to five hours and thereby avoid ever paying the full fees contemplated by the Act. I agree that it is unlikely Parliament intended to permit this to happen, but do not take this to mean that I agree with the Deputy that a scheme such as you have contrived is necessarily bound to be successful. Specifically, I do not think that the department was bound to deal with your "stop after five hours" request in the first place—but since those chose to accept and process your initial access requests on that basis, it certainly was not within the mandate of our Office to interfere with their decision, and so we did not."

Because the department refused to disclose information pursuant to the second set of access requests filed by the complainant, the Commissioner informed the complainant of his right to seek a judicial review by the Federal Court. The Commissioner added that it was not appropriate to expend additional resources of her Office on the matter.

Records Management

File: 513

Institution: *Canadian Security Intelligence Service*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant requested access to "all records of RCMP Security Service related to terrorism in Quebec (and the separatist movement) between July 1, 1964, and June 1, 1965". The Canadian Security Intelligence Service (CSIS) informed the applicant that "as there was considerable difficulty in locating records pertaining to your specific request, we have now utilized five hours of search time" as specified by the complainant and CSIS considered the access request fully processed.

The applicant objected maintaining that difficulties in locating records should not be his problem. He also claimed that the files in question should be easily accessible through the record index.

The investigation showed that a full response to the complainant's request would require searching a large volume of records, and that CSIS had in fact spent more than five hours processing the request. In addition, the complainant's statement that CSIS records are maintained in a disorderly manner was not borne out by an examination of the CSIS records office and system.

CSIS files are continuous, meaning that if new information relates to an old dormant file, the file is reactivated. Therefore, all records within the purview of the access request would have been examined together in long-term files to determine if records were kept during the time period specified.

After completing five hours' search time, an institution normally prepares a cost estimate for complete processing. The applicant then uses this estimate to decide whether to pursue the request. In this case, CSIS had not provided the complainant with a cost estimate but, at the Commissioner's request, agreed to reopen the file and provide an estimate if the complainant wished.

Wording of Request

File: 516(1/2)

Institution: *Revenue Canada (Customs and Excise)*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Discontinued*

Result: *No action*

The applicant was denied access or supplied only with partial records in response to four access requests for information concerning dandruff treatment shampoos.

During the investigation, the department indicated that the requests were too general, making it difficult for the department to determine which records the complainant sought. With the complainant's permission, this Office provided the department with a copy of the letter of complaint which contained more precise information than the access requests.

After clarifying the requests with the department, the complainant informed the Commissioner's Office that unless further difficulties were reported, our office need not take further action. We did not hear from the complainant again.

Incomplete Response

File: 521

Institution: *Transport Canada*

Complaint: *Refusal - general*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Resolved in part*

Transport Canada received a request for access on September 19, 1985, and had until October 21, 1985, to supply the records. The department failed to meet the 30-day deadline as records were sent to the complainant October 24, 1985. The Commissioner reported the delay to the Minister even though the complainant did not object to the delay.

The applicant did however complain that the department had not provided him with complete records. The investigation revealed that, after having received some documents on October 24, 1985, the complainant wrote to the department pointing out the absence of some specific documents he expected to receive. The departmental access to information coordinator relayed this information to the Toronto Regional Office which contacted the complainant to clarify the exact nature of the records being sought.

When the complainant had received nothing by January 24, 1986, the Commissioner wrote the Minister, giving the department until February 14, 1986, to provide a full response. The records which constituted a complete response, subject to exemptions, were sent to the complainant on February 10, 1986.

Survey Methods Not Available

File: 525

Institution: *Canada Mortgage and Housing Corporation*
Complaint: *Refusal - general*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant objected when telephone numbers of respondents used in obtaining information for a Canada Mortgage and Housing Corporation (CMHC) survey were not included in the records provided to him by CMHC.

The investigation revealed that CMHC used the services of about 27 part-time free-lance enumerators to conduct the survey in question. These enumerators were hired specifically for this purpose and they used their own method in conducting the survey. The enumerators did not provide CMHC with details of their method nor were they legally required to do so. Hence, the telephone numbers in question were not contained in CMHC records.

Sought Surveys

Files: 532, 535

Institution: *Finance*
Complaint: *Refusal - general*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Resolved in full*

The Department of Finance had refused two journalists' requests for copies of polls and surveys commissioned by the department. The similar requests asked for "any public opinion surveys commissioned wholly or in part by the federal Finance Department. The surveys would cover the period from September 17, 1984, to the present. They would cover any topic and would be conducted either by federal government personnel or by private firms hired by the federal government."

The department supplied a list showing three such polls or surveys and explained that the results of these polls did not exist in departmental files. While there was advice on how information about two of these surveys could be obtained, there was no mention of the third: Consultation/Design of Multi-Option Research Program, by Decima Research. It was this survey which brought forth the complaint.

The Commissioner recommended, and the department agreed, that the results of the Decima Research Study be placed in the records of the Department of Finance and released subject to the provisions of the *Access to Information Act*.

Total Exemption Not Refusal

File: 577

Institution: *Regional Industrial
Expansion*

Complaint: *Refusal - general*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

On January 23, 1986, an individual complained that he had not received access to a request and had been told by the access coordinator of the Department of Regional Industrial Expansion (DRIE) that the department was "unable to respond either in part or in whole" to his December 19 and December 23, 1985, requests for information. The latter request was an extension of the first, enlarging the scope of material requested.

The investigation revealed that the two requests for access were originally sent to the department's Regional Office in Montreal and only received at Ottawa headquarters December 24, 1985, and January 9, 1986, respectively.

On January 22, 1986, one day before the end of the 30-day limit of the first request and the same day the complainant lodged his complaint, the department responded to both requests. There appeared to be a misunderstanding as to the department's statement. While the department responded within the statutory time limit, exempting the entire record, the response did not reach the applicant until after he made his complaint.

DELAYS

36,000 Page Manual

File: 154(2/2)

Institution: *Revenue Canada (Taxation)*

Complaint: *Delay*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

This complainant asked Revenue Canada (Taxation) on March 29, 1984, to inspect Taxation Operations Manual. The department responded April 27, 1984, that the manual had not been prepared for public viewing. The department described the work necessary to produce the manual in both a public and departmental version, with the latter containing exempted material. This involved editing, severing and production of more than 1,000 chapters in bilingual format, consisting of approximately 18,000 double-sided pages. A pilot project showed that the entire undertaking would take approximately 16 months. Therefore, while the work was under way at the time of the request, an extension of 16 months was required before access could be given to the manual.

The complainant felt that this extension was not "reasonable" as required under section 9 of the Act. He also questioned a 16-month delay when assembling of manual for public view was "fully under way" and that 16 months exceeded the time permitted by section 71 for the department to set up facilities for the public inspection of manuals. Further, he wondered why he could not inspect portions of the manual as they were edited.

The investigation disclosed that the various branches and directorates of the department were editing the manual when the request was received. The impact of 13,000 pages per year of on-going revisions due to changes in legislation, procedures and organization slowed the editing process. A further impediment to production was the overload on the department's printing facilities.

The department informed the complainant that he could inspect the revised pages of the manual in Ottawa as they became available. The department was in contact with the complainant to update him on the efforts to produce portions of the manual for his perusal. The Commissioner's office was also in close touch with departmental officials, and aware of the difficulties being encountered in the production of the manual. The first completed portions of the manual were shipped to field offices on June 18, 1985, and the department notified the complainant that they would be available for viewing in his home city on or after July 1, 1985 (a few days more than 14 months after notifying the complainant of the 16-month extension).

The Commissioner found that, because of the volume of the manual, the necessity to produce an updated internal version, and then review, sever and publish a "public" edition while inserting on-going revisions, the extension was not unreasonable.

Unauthorized Delay

File: 167(2/2)

Institution: *Health and Welfare Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

The complainant requested access to claims from third parties (other governments and corporations) that they had provided information "in confidence".

The request for access was made February 7, 1984, and on February 14, 1984, the complainant submitted clarifications in writing. On March 8, 1984, notice was given of an extension of up to 30 days to carry out consultations.

The complaint of delay was found to be supportable in that Health and Welfare Canada took 110 days to fulfill the request in part. Health and Welfare Canada had requested an extension of 30 days beyond the 30-day statutory limit. Thus there was an additional 50-day delay not authorized by the statute.

Extension Reasonable

File: 168(2/2)

Institution: *Royal Canadian Mounted Police*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An access request received by the RCMP on March 2, 1984, was acknowledged by letter April 2, 1984, but the RCMP gave notice that it required an additional 90 days to carry out necessary consultations. The applicant complained about the lengthy extension.

The RCMP used 59 of the 90 days requested. The investigation established that attention to the request had been continual during the period and the Commissioner concluded that the time taken to process this request was within reason.

Extension in Time

File: 211(3/4)

Institution: *Transport Canada*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant questioned the period of time taken by Transport Canada to respond to his requests for the 1984-85 budget allocation for the purchase of computer equipment and software and the 1984-85 operational plan for the Information Systems Directorate.

The investigation established that Transport Canada received the requests on May 15, 1984, and acknowledged them on May 16, 1984. On June 13, 1984, within the original 30-day statutory time limit, the department informed the complainant that a 30-day extension was required. By letter dated July 5, 1984, within the 30-day extension, the department informed the complainant that the requested records were excluded from access. (This resulted in a second complaint against Transport Canada.)

The Commissioner informed the complainant that the department was not in contravention of sections 7 and 9 of the Act.

Late Extension

File: 240

Institution: *Health and Welfare Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

The complainant requested access to records on a brand of toothpaste manufactured by a third party.

The request for access was received by Health and Welfare Canada on July 26, 1984, and no acknowledgement of receipt was provided within the 30-day period required under the Act. The department notified the complainant of a 30-day extension two days after the 30-day period. However, the department failed to provide the records within the extended time period.

On November 6, 1984, some of the requested records were released (subject to some exemptions) but others were withheld by the department pending notification of a third party under section 28 of the Act. Finally, on January 14, 1985, the record concerning the third party was released, subject to some exemptions.

The Commissioner reported to the Minister that the complaint about delay was considered to be well-founded because the department failed to reply to the complainant within the initial 30-day period following receipt of the request, failed to provide access within the extended period of time and failed to notify the complainant of the third party notice within the 30 days following receipt of the request.

Request Must Go to Ottawa

File: 258(1/2)

Institution: *Health and Welfare Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

This complaint concerned a request for the "Professional Activity Study Individual Case Listing" for the Inuvik Zone, sent to the Health and Welfare Canada office in Whitehorse. When the applicant had not received a reply by December 24, 1984, he complained.

The investigation confirmed that the department office in Whitehorse did not forward the request to the department coordinator in Ottawa until January 3, 1985. The *Access to Information Act* and Regulations specify that the 30-day statutory limit runs from the date on which the request is received by the designated official. The department therefore had until February 2, 1985, to respond to the request or to seek an extension.

On February 4, 1985, the department informed the complainant that he could expect an answer shortly, but did not give him the required notice of an extension.

Although the department claimed that the requested records could have been exempted because they contained personal information, it worked out a compromise, providing the complainant with useful information but at the same time protecting the privacy of individuals listed in the document. The information was released on April 19, 1985.

The Commissioner informed the complainant that his complaint of delay was well-founded since Health and Welfare Canada did not adhere to the limits of the Act. A report to that effect was made to the Minister. The Commissioner noted that, because the request was sent to the regional office, the first delay could not be dealt with under the Act since the statutory time limit did not commence until the request was received by the coordinator in Ottawa.

Two Months

File: 258(2/2)

Institution: *Health and Welfare Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

The applicant's request for four consultants' reports was received by Health and Welfare Canada on November 20, 1984. On December 17, 1984, the department requested a 30-day extension beyond the statutory 30-day limit to allow consultation with him to identify the exact titles of the reports requested. The complainant clarified his request in a letter to the department on December 24, 1984, and he complained to our office.

The records were not released until March 25, 1985, and the Commissioner reported the delay to the Minister.

Improper Extension

File: 262

Institution: *External Affairs*

Complaint: *Delay*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Not disputed*

The complainant sought access to records of foreign governments' reaction to Canadianization of Canada's industries, to FIRA and the National Energy Program. He also requested records evaluating the international impact of FIRA.

On October 26, 1984, the department asked for an extension of 60 days beyond the 30-day statutory limit. Then, on December 21, 1984, the department notified the complainant of an extension of an additional 30 days for consultation. It was because of this 30-day delay that the complainant contacted the Information Commissioner.

A report to the Minister stated that the additional extension was not permitted under the act and, therefore, the complaint was well-founded.

Late Release of Part of Record

File: 268

Institution: *Indian Affairs and Northern Development*

Complaint: *Delay*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Not disputed*

The complainant considered it unreasonable that the department could not provide the requested records to him within 30 days after the request was received.

The appropriate officer of the department received the request on December 12, 1984. On December 19, 1984, the department requested a 29-day extension. Some of the requested records were released (subject to some exemptions) on January 23, 1985. The rest of the requested records (also subject to some exemptions) were released only on February 26, 1985.

The Commissioner considered the complaint about delay to be well-founded and reported to the Minister that, although the department replied to the complainant within 30 days following receipt of the request, it failed to provide complete access within the extended time period.

Informal Application

File: 269(1/2)

Institution: *Justice*

Complaint: *Delay*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant objected to a delay on the part of the Department of Justice in responding to his request for guidelines concerning charges under the *Narcotic Control Act*.

The investigation showed that the request was not accompanied by the \$5 fee prescribed by the regulations. The department received the complainant's cheque for \$5 on December 5, 1984, and the requested information was released (subject to exemptions) to the complainant on January 2, 1985, within the 30 days specified by the Act.

One Week Late

File: 275

Institution: *Health and Welfare Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

On December 12, 1984, an individual requested access to records relating to a specific drug.

The complainant wrote to the Information Commissioner January 18, 1985, because the requested records had not been received.

The department informed the complainant on January 10, 1985, that her request was under consideration, and "regretted" the delay. It did not release the requested records until January 18, 1985, and a report was made to the Minister.

Additional Extension

File: 278(1/3)

Institution: *External Affairs*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

A request for access to "all records related to security vulnerability of documents, communications, buildings and personnel both at posts abroad and in Ottawa, between January 1, 1983, and present" led the department to advise the complainant on August 17, 1984, of a 90-day extension.

On November 16, 1984, the department notified the complainant of an additional 30-day extension. The complainant contacted our office and, after the investigation, the Commissioner reported to the Minister that:

"...In my view a government institution is required to estimate the length of time it will take to respond to an access request within the first 30 days and it cannot issue a valid notice of extension after the first 30 days have expired.

"The second notice of extension was issued well after the initial 30 days had expired and I am of the opinion there is no basis in law for such an extension."

Consultations

File: 279

Institution: *External Affairs*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant suggested that External Affairs was unjustified in seeking an extension of 60 days for consultations relative to his request for records on Soviet intelligence activity between January 1, 1963, and April 1, 1965.

The department gave notice of the extension within 30 days of receipt of the request and sent a final reply to the complainant within the 60-day extension.

The extension of time was for the purpose of consulting with another government institution and was reasonable under the circumstances. No contravention of the Act was found.

Consultations Necessary

File: 280

Institution: *External Affairs*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant objected when External Affairs requested a 60-day extension beyond the 30-day statutory limit because of the need for consultation to process his request.

The investigation revealed that External Affairs sought the extension within 30 days of receiving the access request and replied in full within the 60-day extension period. There was a need to consult with another federal institution and that consultation took place quickly. As a result, the Commissioner found no evidence of undue delay.

No Second Extension

File: 281

Institution: *National Defence*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

The complainant objected to the extension of the time limit invoked by National Defence in response to his request for access to records relating to the shooting down of a Korean civilian jet by the Soviet Union in August, 1983.

The request was received by the department on November 16, 1984, and on December 7, 1984, the department informed the complainant that an extension of 30 days was necessary for consultation prior to release. This extension was properly invoked under subsection 9(1) of the Act.

On January 15, 1985, the department again informed the complainant that it was extending the time required to respond to his request by another 30 days.

The Commissioner reported to the Minister that there was no basis in law for such an extension and recorded the complaint as well-founded.

Extension Reasonable

File: 296(1/2)

Institution: *Revenue Canada (Taxation)*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

Revenue Canada, Taxation, told the complainant that there would be an extension of 30 days beyond the required 30 days to process his access request.

The investigation revealed that the department received the request November 20, 1984, and acknowledged receipt December 17, 1984, notifying the complainant of a 30-day extension. On January 18, 1985, before the time extension expired, the department indicated that the records were available for his review pending payment of requested fees.

The extension was required because the requested records had to be retrieved from a district office as well as from departmental headquarters. The Commissioner found that the extension was reasonable.

Lengthy Delay

File: 300

Institution: *Canadian Security Intelligence Service*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

This complaint concerned two requests to the Canadian Security Intelligence Service. The original requests required clarification and the two clarified requests were received on August 28, 1984.

On September 24, 1984, the department notified the complainant of the need for a 30-day extension. When the complainant had received no response by February 20, 1985, he complained to the Information Commissioner.

The investigation confirmed that the records requested had not been released within the extended time set by the Service due to internal delays.

In a report to the Solicitor General, the Commissioner recommended immediate release. The complainant was informed on April 24, 1985, that all records concerning the first request were exempted. For the second request, the accessible portion of the record was released on April 30, 1985.

One Year

File: 318

Institution: *Privy Council Office*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

This access request was received by the PCO on March 29, 1984. The department informed the complainant on April 27, 1984, that an extension of up to 90 days beyond the 30-day limit would be required to carry out consultations with other departments. On May 12, 1985, the complainant wrote the Commissioner's office that he had not received the requested records.

As a result of investigation, PCO released the records to the complainant on May 16, 1985. Nevertheless, the Commissioner invited PCO to show why a finding of unreasonable delay should not be made. PCO replied that:

"Throughout the processing of this particular request the applicant was kept fully informed of the external consultations which contributed to the long delay and our inability to meet the 90-day extension deadline. He was aware that the delay was not intentional.

"Nevertheless, we recognize that we were unable to meet our estimate of extended time and the complaint of undue time to process the request is well-founded. We have taken corrective action to avoid any similar situation in the future.

"The applicant has expressed his satisfaction that the request is now completed. We have thanked him for his understanding and forbearance in the circumstances and we now consider this matter closed."

Complicated Search

File: 321(1/2)

Institution: *Employment and Immigration Canada*

Complaint: *Delay*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant sought access to:

"Computer print-out records...detailing long distance telephone activity for all telephone numbers identified on the attached listing...Such records would cover the period January 1, 1984 to December 31, 1984 inclusive. All telephone numbers identified are used by the Canada Employment and Immigration Commission, Manitoba Region."

The request was made on February 1, 1985, and the department notified the applicant on March 6, 1985, of the need for an extension of up to 30 days beyond the 30-day statutory time limit. On March 13, 1985, the applicant wrote the Commissioner, claiming the delay was simply "a stall" by the department because:

"The records I asked to receive copies of are very clearly identified in my original request. In addition, I am aware that such records are kept in the Regional Office of CEIC in Manitoba."

The investigation established from Employment and Immigration Canada, through its Manitoba region, that the handling, storage and retention of telephone records is not as uncomplicated as the complainant indicated. While the complainant clearly identified the records required, not all long-distance telephone calls are given in the Station Message Detail Recording print-out he supplied. Also, not all of this class of financial records are kept in the department's regional office in Winnipeg. The Regional Services Administration reported that records are kept in two locations within the regional office; others at

the Metro Administration Office and still others at six rural locations in Manitoba. Some of the records are in filing cabinets and others are stored in archive boxes. Quick and ready access is not possible.

Not all the records requested were on Government Telecommunications Agency print-outs. The six rural offices are serviced by the Manitoba Telephone System and all its long-distance records are held at the rural offices. Some of the long-distance calls made from telephones on the Government Telecommunications Agency System could have been "dropped" to the Manitoba Telephone System if government lines were busy and this would result in a billing from the Manitoba Telephone System. Such records were also considered part of the request.

Employment and Immigration Canada replied to the complainant on April 4, 1985, exactly 60 days after receiving the request. The Commissioner found that there was no undue processing delay.

Conflicting Dates

File: 326

Institution: *Employment and Immigration Canada*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Discontinued*
Result: *No action*

The complainant sent an access request to Employment and Immigration Canada January 23, 1985. When he had not received a reply as of March 19, 1985, he complained.

The investigation showed that the department mailed the requested records to the complainant February 19, 1985, within the 30-day time limit. The investigator tried to contact the complainant by telephone but on June 21 he received a call from a person acting on the complainant's behalf who said that the complainant had received the requested records and wanted to discontinue the action.

Extension Reasonable

File: 327

Institution: *Employment and Immigration Canada*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual made three access requests to Employment and Immigration Canada for immigration documents and records relating to three other individuals who had been ordered deported in 1947 but were subsequently allowed to stay in Canada.

A complaint was lodged when the department informed the complainant that a 60-day extension beyond the 30-day statutory limit was required to process his request.

The investigation disclosed that the requests were processed beginning February 20, 1985, the date the requests were received. Notices of the 60-day extensions were sent to the complainant on March 21, 1985, informing him that consultations were required with others.

The original notice was within the 30-day limit and the department responded to the requests on May 10, 1985, 50 days after the 60-day extension notice was issued.

The Commissioner informed the complainant that the department had acted properly under subsection 9(1) of the Act and that the time taken to respond to his requests was reasonable in the circumstances.

Almost Five Months

File: 328(1/2)

Institution: *Employment and Immigration Canada*

Complaint: *Delay*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Not disputed*

The complaint involved a request for access to "all records . . . about the Skills Growth involving all grants made to Manitoba during 1982, 1983, 1984, and to date". The applicant subsequently modified her request after visiting the department's Winnipeg office to examine records of two Skills Growth Fund projects. Her complaint concerned the lengthy delay before she was allowed access to the records.

The investigation revealed that the access request dated January 29, 1985, was received by the department on February 5, 1985, and its receipt was acknowledged the next day by telephone and by letter. On March 7, 1985, a departmental official tried to telephone the complainant to arrange for her to view the available records at the department's Winnipeg office.

Simultaneously, an official of the department's Ottawa office notified the complainant of the need for a 60-day extension beyond the 30-day statutory time limit to carry out consultations with the Manitoba Department of Education.

During a two-month period thereafter the applicant was in contact with the department to establish which Skills Growth records she wished to obtain. An agreement was reached approximately May 1, 1985. However, the records were not made available for examination until September 27, 1985.

The Commissioner reported the delay to the Minister and invited the Minister to make representations as to why the complaint should not be considered well-founded. No such representations were received.

Consultations Necessary

File: 331(1/2)

Institution: *National Defence*

Complaint: *Delay*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant requested access to records relating to several Canada-US arrangements on defence, defence production and defence sharing. The request was received by the department February 21, 1985, and on March 18, 1985, it notified the complainant of a 60-day extension beyond the 30-day statutory time limit for consultation. His letter of complaint, received April 3, 1985, stated that the extension claimed was unreasonable because the request was specific, giving full titles and dates of the requested documents.

The investigation revealed that National Defence claimed the 60-day extension to allow the department to consult with other government departments and with various branches of the United States government.

The Commissioner reviewed the reasons for the extension and the action taken by the department during the 60 days and was satisfied that the extension was necessary and that there was no undue delay.

No Acknowledgement

File: 336

Institution: *Correctional Service Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

A complaint was lodged about Correctional Service Canada's delay in responding to the access request received on February 19, 1985.

The investigation confirmed that the department had failed to acknowledge the request within the 30-day time limit provided under the Act because of an internal problem.

On April 25, 1985, the Information Commissioner recommended to the Minister that the record requested be disclosed to the complainant and that the Commissioner's office be notified of any action taken or proposed to be taken or be provided with reasons why no action was taken or proposed.

The report to the Minister was not disputed and the requested record was sent to the complainant on May 3, 1985.

Just Under the Wire

File: 340(2/2)

Institution: *Finance*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

This complaint concerned a request received by the department on February 19, 1985, to which it responded on March 21, 1985. The complainant claimed that the department had not responded within the 30-day time limit because the letter was not given to a courier for delivery until March 22, 1985.

The Commissioner informed the complainant that by responding on March 21, the department was within the deadline. The fact that the letter was not physically in the courier's hands until March 22 did not alter her view that the department had complied with the Act.

Departmental Error

File: 348

Institution: *Environment Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

This complaint concerned a January 23, 1985, request by Mr. X. (his legal name) who sought from Environment Canada "copies of records relating to a registry and alert network of unusual and anomalous phenomena which the Ministry of Environment suggested it would help set up in the Response Report: 1982 Public Consultation Program".

The department responded in an undated letter (believed to be signed March 14, 1985) and a further letter dated March 25, 1985.

Department staff advised the Commissioner that the applicant had not provided the \$5 application fee with his access request. They had therefore treated his request as an informal enquiry not subject to the time constraints of the *Access to Information Act*. The complainant subsequently provided the serial number of his postal money order and, upon request of the Commissioner to check financial records, the department discovered that it had received the application fee with the original access request. The department was found to be at fault and the Commissioner reported the lengthy delay to the Minister.

The Minister's response explanation pointed out that the applicant's name had created a problem. This is not the first time the name of this user of the Act has confused departments.

The following is an excerpt from the Minister's letter:

"Mr. X is correct in stating that Environment Canada's response to his request dated January 23 was mailed to him after the March 11 deadline. The delay is due mostly to the fact that the precise nature of Mr. X's request was not clearly understood, which meant that several departmental people had to be contacted before a response could be prepared.

"The question as to whether information of the nature requested could be released to an unidentified person also explains part of the delay. We learned only afterwards that the name Mr. X is the legally registered name of this Canadian citizen.

"When it became evident to officials in the department that the response to Mr. X would be delayed, a personal telephone call was placed to him on March 8, at which time he was verbally informed of a probable five-day delay in his response. While I agree with you that Mr. X's complaint is basically founded, I believe that the nature and circumstances of the request as well as the action taken on March 8 should be considered valid mitigating factors."

(Mr. X consented to the use of his name in this report.)

Consultations Necessary

File: 353

Institution: *Justice*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

On March 14, 1985, the Department of Justice received four access requests, all of which dealt with alleged war criminals.

On April 10, 1985, the department informed the applicant that an extension of up to 120 days beyond the 30-day statutory time limit was required to process the requests. The complainant objected to the length of the extension.

Initial investigation indicated that the extension of 120 days was excessive, particularly in light of the limitation of five hours of search time on each of the complainant's access requests. The Commissioner so advised the Minister of Justice. As a result of representations made by the department, it became apparent that the records in question had already been assembled for another purpose and therefore the actual search time was not a factor. However, each of the requests required extensive consultations both within and outside the department before officials could properly respond to the requests. In those circumstances the extension was deemed reasonable.

One Day Late

File: 359(1/3)

Institution: *Revenue Canada (Taxation)*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

An individual sought access to records concerning competitions for employment at Revenue Canada (Taxation) in Edmonton, Alberta. The department received the request on January 8, 1985. It had until February 7, 1985, to give the applicant written notice of whether access to the records would be granted. The written notice was dated February 7, 1985, but mailed on February 8, 1985. The individual complained about the delay.

The Commissioner reported to the Minister that, while the delay was very short, it still technically constituted a contravention of section 7 of the Act, under which a government institution is required to give written notice within 30 days after the request is received.

Extension in Time

File: 360(1/2)

Institution: *Transport Canada*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant initially made an informal request to Transport Canada for a copy of a letter to the government of Trinidad and Tobago concerning contract costs to renovate the airport in Trinidad. This request was followed with a written request under the *Access to Information Act* on March 18, 1985.

On March 27, 1985, the applicant complained that Transport Canada had delayed in responding to his request.

During the investigation, several meetings were held with officials of Transport Canada. They confirmed that they had consulted with both the Trinidadian government and the Department of External Affairs and on April 17, 1985, notified the complainant of the need for a 30-day extension to the 30-day statutory limit for this purpose. Since the access request was received by Transport Canada on March 19, 1985, the notification of the 30-day extension was within the statutory time limit.

Double Extension

File: 370

Institution: *Health and Welfare Canada*
Complaint: *Delay*
Finding: *Supportable*
Disposition: *Discontinued*
Result: *No action*

In response to a request for access, the complainant received two consecutive notices from the Department of National Health and Welfare, each extending the time limit by 30 days. The complainant objected to the second extension and to the fact that the department did not give notice of the extensions of delay.

The Commissioner found the complaint to be justified as the Act does not permit a second extension once the initial one has elapsed. He noted also that the department failed to notify the Office of the Information Commissioner of an extension of time beyond 30 days, as required under the Act.

The complaint was withdrawn when the record was released 90 days after the request had been made.

A Large Number of Documents

File: 372

Institution: *Royal Canadian Mounted Police*

Complaint: *Delay*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant was dissatisfied with the 30-day extension of time beyond the initial 30-day statutory limit claimed by the RCMP, concerning his request for access to records contained in Chapter 217 of the RCMP administrative procedures manual for the period between 1974 and 1985. The RCMP required the time extension because meeting the original time limit would unreasonably interfere with the operations of the RCMP as set out in subsection 9(1) of the Act.

The investigation revealed that the RCMP received the access request on March 29, 1985.

The department replied on April 26, 1985, notifying the complainant of a 30-day extension. Records had to be searched in a large number of administrative files within the records management division in Ottawa. The search identified 797 pages which were reviewed for release to the complainant. No exemptions were claimed.

On May 1, 1985, three days after the expiry of the 30-day statutory time limit, the RCMP notified the complainant that the records were available for review.

In view of the large number of records and the reasons provided by the RCMP as to why the processing of the request within the statutory 30-day time limit would have unreasonably interfered with the operations of the RCMP, the Commissioner found that an extension of 30 days beyond the 30-day statutory time limit was not unreasonable in the circumstances.

Third Party Consultations

File: 382

Institution: *Agriculture Canada*

Complaint: *Delay*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant was dissatisfied with the time extension Agriculture Canada claimed for consultation with third parties concerning his request for access to documents from the investigation of an outbreak of salmonella poisoning during the 1984 Papal visit.

The Commissioner informed the complainant that, under the Act, the department had no choice but to consult the third parties involved and his complaint of delay was therefore not supportable.

One Month Late

File: 383

Institution: *Health and Welfare Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

The complainant challenged the delay by Health and Welfare in responding to his request for access to "reports, tests and other papers resulting from the investigation conducted...as a result of an outbreak of salmonella poisoning on or about September 22, 1984, at or near Midland, Ontario, and involving roast beef supplied by [third party]".

The request for access was received by the department on April 2, 1985, and acknowledged on May 3, 1985, (one day late). No notice extending the period of time had been issued to the complainant nor had any records been released.

On May 30, 1985, the Commissioner reported to the Minister that, under subsection 10(3) of the Act, such a delay is deemed a refusal to grant access, and recommended that the records requested be disclosed to the complainant on or before June 10, 1985, or that the Commissioner's office be notified of any action taken or proposed to be taken to implement this recommendation or provide reasons why no such action has been taken or proposed.

The department mailed the requested records to the complainant on June 5, 1985. Nonetheless, the complaint was recorded as well-founded.

Deemed Refusal

File: 394

Institution: *Canada Deposit Insurance Corporation*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

In a request dated February 19, 1985, a solicitor acting on behalf of a client asked for certain information concerning a trust company and a land corporation. The request was received by the Canada Deposit Insurance Corporation on February 28, 1985. On March 28, 1985, the Corporation wrote to the client's solicitor advising that an extension of 30 days beyond the statutory 30-day limit was required to respond. As well, the Corporation informed him of the anticipated cost. By letter of April 1, 1985, the necessary funds were forwarded to the Corporation. Having heard nothing further from the Corporation despite having written a reminder letter on May 2, 1985, the solicitor complained officially on June 7, 1985.

During the investigation, the Corporation stated that, due to other work, it could not meet the deadline. The investigator pointed out that under subsection 10(3) of the Act he had no choice but to report that the Corporation was in contravention of the Act. The corporation access to information coordinator also indicated that he would have to examine the material very carefully and probably sever some portions before releasing it. The coordinator stated that he would send material to the complainant by June 25, 1985.

When no records had been released by July 3, 1985, the Commissioner wrote to the Chairman of the Canada Deposit Insurance Corporation, recommending that the records be disclosed to the complainant on or before July 31, 1985. On July 26, 1985, the Chairman acknowledged receipt of the letter stating:

"I have been informed by management that they are in the process of reviewing the records that have not been gathered. After examining their recommendations, I shall be in a position to respond to your request prior to July 31, 1985."

On August 7, 1985, the coordinator of the Corporation indicated that:

"Further to previous correspondence... we wish to inform you that the Corporation will now be providing information to [the client's solicitor]. You can expect to receive copies of the relevant correspondence."

On August 14, 1985, the Commissioner's office sent a letter to the coordinator advising that, unless the Corporation had

complied with a commitment to release the material by August 16, 1985, the Commissioner would seek the complainant's consent to commence appropriate proceedings in the Federal Court of Canada.

On August 16, 1985, the Corporation forwarded the requested records to the complainant who subsequently informed us that the documents had been received.

Extension Not Warranted

File: 396

Institution: *Employment and Immigration Canada*

Complaint: *Delay*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Not disputed*

On May 7, 1985, a lawyer requested access to the immigration records of a client. On June 7, 1985, the department advised that an extension of up to 60 days would be required beyond the 30-day statutory limit to permit consultations. The complainant objected to the extension as his client had been deported to the U.S.A. and was in a temporary accommodation pending determination of his status.

The investigation disclosed that only one consultation took place within Employment and Immigration Canada and the Commissioner therefore concluded that the extension of 60 days was unreasonable. A report to that effect was made to the Minister.

Access was subsequently denied on the basis that the client was not a Canadian citizen or a permanent resident and therefore was not entitled to access under the *Privacy Act*.

Reasonable Consultation

File: 398

Institution: *Justice*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

A journalist complained when the Department of Justice told him that an extension of 30 days beyond the initial 30-day period would be required to answer his request for access to a 1981 Cabinet discussion paper entitled "Alleged War Criminals in Canada". The department held that consultations were necessary to comply with the request and that this could not reasonably be completed within the original time limit.

An investigation confirmed that consultations, both within and outside of the department of Justice, had taken place. The Commissioner informed the complainant that given the controversial nature of the documents in question, the consultations were necessary and the 30-day extension of time was not unreasonable.

Too Late

File: 404

Institution: *Atomic Energy Control Board*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

Five access requests from the same individual were received by the Atomic Energy Control Board on April 26, 1985. On May 24, 1985, the Board provided some of the information requested and informed the applicant that an extension of 30 days beyond the original 30-day time limit would be necessary to complete the release. When the applicant had not received the remaining documents by the expiry date of the extension, his agent complained.

The investigation showed that the records were finally provided to the applicant between July 3 and July 19, 1985. The Commissioner pointed out to the President of the Atomic Energy Control Board that although his officials eventually provided the requested information, they failed to meet the time limit. The Board was deemed to have refused to give access under subsection 10(3) of the Act.

Misdirected Request

File: 405

Institution: *Supply and Services Canada*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

This complaint occurred when Supply and Services Canada invoked a 60-day extension beyond the 30-day limit to consult with third parties concerning the access request.

The investigation disclosed that the request was originally received by Treasury Board and referred to Supply and Services as this department had "a greater interest" in the record requested. Supply and Services Canada contracts for other federal departments and had to contact the client department. It is also mandatory to contact a third party when a record might contain exemptable third party information and this was necessary in this case.

As a result, the Commissioner informed the complainant that because the request was misdirected and a third party had to be contacted the time extension was not unreasonable.

Consultations Necessary

File: 410

Institution: *Supply and Services Canada*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant objected when the department requested a 40-day extension of time beyond the 30-day statutory limit for consultations before responding to his request.

The investigation revealed that Supply and Services Canada sought the extension within 30 days of receipt of the access request and provided the complainant with the requested records two days before the expiry of the 70-day limit.

A review of the requested records established that they contained third party information which, if disclosed, might have led to the injury described in subsection 20(1) of the Act. Given the nature of the information requested, it was reasonable for the department to conduct consultations.

Additional Extensions

File: 413

Institution: *Health and Welfare Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

This access request was received by Health and Welfare Canada May 7, 1985. On May 30, 1985, the department informed the applicant that it needed an extension of 30 days beyond the statutory 30-day limit to process his request and do the necessary consultation.

On July 23, 1985, the department released some of the records and advised the complainant that the remaining records required third party notification imposing a further 30-day extension.

On August 30, 1985, the department informed the complainant that an objection to disclose had been received from a third party and an extra 20 days were necessary to permit the third party to consider recourse in the Federal Court. Disclosure of the remaining accessible records was made to the complainant on September 18, 1985.

The Commissioner provided the minister of Health and Welfare Canada with the results of the investigation, inviting representations as to why the complaint should not be considered as well-founded. The Minister did not disagree.

Response in Time

File: 414

Institution: *Employment and Immigration Canada*

Complaint: *Delay*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant sent a request to Employment and Immigration Canada on January 7, 1985, seeking access to records which would endorse the negative comments shown on a performance review. The department received the request on January 11, 1985, and, on February 6, 1985, requested a 30-day extension beyond the statutory 30-day time limit.

A complaint was received on July 23, 1985, with regard to the non-compliance with the 30-day extension.

The investigation showed that the department, having requested the 30-day extension within the prescribed period of time, had until March 12, 1985, to give the requestor written notice as to whether access would be granted. It did so on February 25, 1985, and thus contravened neither section 7 nor section 9 of the Act.

Question of Copyright

File: 422

Institution: *External Affairs*

Complaint: *Delay*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complaint was launched when External Affairs required an extension of up to 30 days beyond the 30-day statutory time limit for consultation regarding an access request for information about *CanadExport*.

The investigation revealed that consultations were taking place to resolve certain difficulties concerning copyright ownership and releasability of a survey requested by the complainant.

As a result, the Commissioner informed the complainant that the 30-day extension claimed by External Affairs was justifiable.

Deadline Not Met

File: 440

Institution: *Health and Welfare Canada*

Complaint: *Delay*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Not disputed*

An applicant's request to Health and Welfare Canada was received on June 4, 1985. On June 28, 1985, the department informed the complainant that an extension of up to 30 days beyond the 30-day statutory limit was required to process his request. The department failed to meet the extended deadline.

As a result, the complaint was considered well-founded and a letter to this effect was sent to the minister of National Health and Welfare.

Third Party Consultation

File: 443

Institution: *National Defence*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual found excessive a 60-day extension beyond the 30-day statutory limit claimed by National Defence to consult with a third party. He thought that a 30-day extension would have been a more reasonable period to comply with his request.

The investigation showed that the department received the complainant's access request on July 3, 1985, and, on August 6, 1985, it acknowledged receipt and informed him that a 60-day extension would be needed to consult with a third party. The department advised him to expect an answer on or before October 1, 1985.

Under paragraph 28(3)(c), when a department consults with a third party relative to its intention to disclose any record under this Act, the third party may, within 20 days after the notice is given, make representations to the head of the government institution in control of the record to show why that record or part thereof should not be disclosed. Similarly, under subsection

44(1), when a department gives notice to a third party that it intends to disclose any record requested under this Act, the third party may, within 20 days after the notice is given, apply to the Court for a review of the matter.

The Commissioner concluded that, because of the time frames permitted under the Act, the 60-day extension would seem more reasonable than the 30-day extension suggested.

Extension Beyond Time Limit

File: 445

Institution: *Consumer and Corporate Affairs*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Discontinued*
Result: *No action*

An individual complained about Consumer and Corporate Affairs extending up to 30 days the 30-day statutory time limit to respond to his request.

Preliminary enquiries revealed that the complainant's access request was received by the department on July 12, 1985, and a notice of extension of time was sent to him on August 8, 1985. The records requested were made available to him on August 23, 1985. As a result, the complaint was withdrawn. The department said that meeting the original time limit would unreasonably interfere with the operations of the department. It was not known whether the complaint was supportable as it was withdrawn before the investigation was completed.

Consultations

File: 462

Institution: *Privy Council Office*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

Privy Council Office received a request on May 16, 1985, for access to specific paragraphs of federal Cabinet minutes between March 8, 1955, and July 7, 1959, on the AVRO Arrow Defence Estimates. On June 14, 1985, the department informed the applicant that it required an extension of 60 days beyond the 30-day statutory time limit to process his request. The complaint letter of August 29, 1985, received August 30, 1985, indicated that the 60-day extension was up and he still had not received the requested records.

In a letter dated September 6, 1985, PCO forwarded to the complainant copies of the requested records, subject to exemptions.

Because PCO did not meet the deadline, the Commissioner wrote to the Prime Minister:

"The investigation established that it was necessary to circulate the requested documents through three other departments... to identify possible exemptions and I am satisfied that this would justify the extension. However, after giving notice of the 60-day extension, the Privy Council Office did not meet that deadline, and 84 days elapsed from the date of the request to the release of documents. The Privy Council Office was therefore in contravention of the *Access to Information Act*."

The reply from the Prime Minister's Office states:

"...As my officers explained to your investigators, the subject matter of the records under the control of the Privy Council Office often falls within the special areas of interest of other government institutions. Before records can be disclosed to an applicant, there is a requirement, mandatory in many situations, to conduct consultations with these institutions.

"Extension time limits are determined on the basis of an evaluation of the complexity of a request and the amount of consultation which is deemed necessary. Unfortunately, from time to time, unforeseen delays do occur for a variety of reasons during the consultation process. This was the case in this particular request and therefore the complaint you received from the applicant is valid. You can be assured that we will continue to make every effort to avoid similar situations in the future.

"For your information, during a nine-day period in May, 1985, the applicant submitted 44 access requests to this institution and all but one of these, the subject of this complaint, were processed within 30 days or within the time limits of extensions."

Third Party Consultations

File: 471(4/4)

Institution: *Secretary of State*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The Secretary of State had informed the applicant that it was unable to respond to his access request within the 30-day statutory limit because an extension was required for mandatory consultations with third parties. It is not necessary to determine the length of extensions falling under that paragraph of the Act.

Following an investigation, this office informed the complainant that these consultations with third parties were required to determine what documents would be available for release and which would be exempt under the Act. Hence, the department could not provide the complainant with a specific time extension.

Consultations Necessary

File: 488(1/2)

Institution: *Supply and Services Canada*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Discontinued*
Result: *No action*

An individual complained about the extension of the time limit Supply and Services Canada claimed in order to respond to his access request concerning a specified contract.

The investigation revealed that the department received the complainant's access request August 22, 1985. On September 17, 1985, the department informed the complainant that, because of the need to consult the third party involved, the statutory time limit of 30 days would be extended by 50 days.

The complainant was provided with the requested information on October 18, 1985, and discontinued the complaint.

Seven Days Late

File: 489(1/2)

Institution: *Transport Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

An individual sought access to records on the "Rail Passenger Action Force". Transport Canada received the request on August 28, 1985, and replied on October 4, 1985, seven days late, claiming an extension of 30 days beyond the 30-day statutory time limit to process his request.

The Commissioner reported to the Minister that the department had contravened section 7 of the Act, which states that the head of a government institution shall, within 30 days after a request is received, "give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given".

Deadline For Release Result In Exemptions

File: 489(2/2)

Institution: *Transport Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

After having claimed on October 4, 1985, a 30-day extension of time beyond the 30-day statutory limit, the department failed to provide access to the requested records within the extended time limit.

The investigation revealed that almost three months had elapsed since the department had received the complainant's access request and the department had not yet notified the complainant in writing as to whether access to the requested records would be given.

On November 26, 1985, the Commissioner recommended to the Minister that the department release the requested records on or before December 10, 1985, provide the Commissioner with notice of any action taken or proposed to implement this recommendation, or provide reasons why no such action has been taken or proposed.

On December 9, 1985, the Minister responded that a few records would be disclosed to the complainant on December 10, 1985. He admitted that the delay was caused by human error, explaining that the request was complex and the desired records contained sensitive information affecting third parties. As a result of the Commissioner's intervention, the department stated, on December 23, 1985, that it would give the complainant definite written notice as to whether access would be granted to the requested records. On December 24, 1985, the department wrote to the complainant that:

"... because of the stringent time limit given to us by the Information Commissioner's Office, we have no other alternative than to exempt the records we have reason to believe may affect third parties and to exclude records we have reason to believe contain confidences of the Queen's Privy Council."

The exemptions resulted in a further complaint, still under investigation.

Nine Months After Request

File: 515(1/2)

Institution: *Health and Welfare Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

The applicant's two access requests were received on May 22 and May 28, 1985. On June 18, 1985, the department notified him of an extension of up to 30 days beyond the 30-day statutory time limit to process the requests because of the number and complexity of the records to be searched. Again, on July 28, 1985, the information access coordinator advised the complainant that his requests could not be answered within the extended time-frame but would be answered as soon as possible.

On August 6, 1985, the department forwarded some of the requested documents to the complainant. In spite of the applicant's constant contact with the department, the remainder of the documents had not been released on November 20, 1985.

Following the investigation of a delay complaint, the Commissioner sent a report to the Minister stating that the delay was deemed a refusal to give access. The Minister was asked to provide a full response to the access request by December 6, 1985, or give notice of any action taken or proposed to implement this recommendation. Some records were provided on November 29 and on December 13 but the complainant was also informed that several records required a third party notification under subsection 28(1) and that he would be informed of these results.

On January 23, 1986, the Commissioner offered to seek a review of the deemed refusal in the Federal Court. However, on January 29, the department informed the complainant that it had sent the third party a second notice of the department's intention to disclose the record unless the third party applied for a court review within 20 days. On February 19, 1986, the complainant informed the Commissioner that he had received the record.

Incorrect Grounds Claimed

File: 523

Institution: *Agriculture Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Disputed*

The applicant objected when Agriculture Canada requested a 30-day extension beyond the 30-day statutory limit to process his request.

Agriculture Canada received the access request on October 4, 1985, and stated in its November 12 letter invoking the extension that it was required because "the information you are seeking access to involves a large volume of records". An extension for this reason is provided for in paragraph 9(1)(a) of the Act, if meeting the time limit would unreasonably interfere with the operation of the government institution.

The investigation disclosed that the actual reasons for an extension were the number of access requests being handled by a limited staff, the need to review the material for exemptions and the need to consult with other government institutions regarding some exemptions. While paragraph 9(1)(b) provides for an extension when consultations are needed, this reason was not cited in Agriculture Canada's letter to the complainant.

The Commissioner did not consider this request, for 284 pages, to be sufficiently large to warrant an extension beyond the 30 days provided in section 7 of the Act. Further, the extension was invoked by Agriculture Canada on November 12, 1985, later than the time limit for informing an applicant.

The investigation also revealed that the records were assembled in Ottawa by October 22, 1985, and the department estimated it would only require 15 hours of search and preparation. Some of the documents were released to the complainant on December 12, 1985, and the remaining documents were ready for release on December 31, 1985.

The Commissioner reported to the Minister that the complaint was well-founded because the department was late in extending the time limit and the extension could not be justified on the grounds claimed. The Minister responded that he felt the "extension was both reasonable and necessary". The Minister added that the:

"... request involves records which contain information on a complicated and sensitive issue. The records originated from Agriculture Canada, the Canadian Grain Commission and Employment and Immigration Canada. Full consultation was necessary with the responsible operations managers of each of these institutions prior to disclosure. The exemption review process and preparation of documents for release are time consuming activities and do not commence until the requestor has provided the required deposit based upon the estimated fees chargeable. My officials have assured me that the processing of the 284 pages of requested documents could not have been accomplished within the original 30 days without unreasonably interfering with the operations of the department.

"In conclusion, I wish to assure you that the department makes every reasonable effort to comply with the requirements of the Act. There are times when circumstances arise such that the department cannot meet established time limits. This, however, should not be interpreted to mean that the department is attempting to deny rights of access to a requestor. The requested records were released in good faith as soon as operational requirements allowed."

Consultations Necessary

File: 536(1/2)

Institution: *Public Archives Canada*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant was dissatisfied with the 30-day extension claimed by Public Archives Canada to process her request.

The investigation showed that Public Archives had received the access request on October 8, 1985. Because the complainant had already perused them after an informal request, officials were able to send the records to the Privy Council Office and the Department of Finance the next day for consultation. Despite the fact that the applicant had already seen the records, the consultations were necessary and the Commissioner found the 30-day extension reasonable.

Reasonable Extension

File: 536(2/2)

Institution: *Finance*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant objected to an extension in replying to her access request claimed by the Department of Finance.

The department received the access request on October 8, 1985, and on October 24, 1985, notified the applicant of the estimated cost of providing the records requested and asked her whether the department should proceed. Twelve days later, the applicant replied that the department should proceed with its search.

It became clear to the department that the Department of External Affairs would have to be consulted concerning several hundred pages of records. Consequently, the Department of Finance considered a 90-day extension beyond the 30-day statutory time limit to be necessary and so notified the complainant.

Taking into consideration the volume of records, and the need for consultation, the Commissioner found that the department was justified in claiming a 90-day extension.

Non-Compliance with Notice of Extension

File: 539

Institution: *Justice*

Complaint: *Delay*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Not disputed*

An individual complained that the Department of Justice violated the time limits permitted under the *Access to Information Act*.

The investigation showed that the complainant's access request of February 12, 1985, was received by the department on February 21, 1985. On March 20, 1985, the department gave notice of a 120-day extension beyond the 30-day statutory time limit for search and consultations. This notice extended the time limit to July 21, 1985.

Although a portion of the records was sent to the complainant on October 31, 1985, he had not received anything further when he complained on December 9, 1985.

The Commissioner recommended to the Minister that the department make a full response to the complainant's access request by February 14, 1986.

On February 14, 1986, the department complied with this recommendation by forwarding the remaining records to the complainant.

Extension Reasonable

File: 541(1/2)

Institution: *External Affairs*

Complaint: *Delay*

Finding: *Not supportable*

Disposition: *Discontinued*

Result: *No action*

In a November 28, 1985, letter to the Commissioner, an individual complained because External Affairs requested a 60-day extension beyond the 30-day statutory time limit for purposes of consultation.

On December 20, 1985, the complainant informed this Office that he was withdrawing his complaint of delay because he had received a response from the department advising that consultations had been completed and that the information he requested was exempt under paragraphs 20(1)(b) and (c). The exemption became the subject of another complaint.

No Second Extension

File: 557(1/2)

Institution: *Consumer and Corporate Affairs*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Disputed*

On October 31, 1985, Consumer and Corporate Affairs received a request for access to records on potential free trade between Canada and the United States. On November 21, 1985, the department invoked an extension of up to 30 days to consult and search through a large number of records.

On December 20, 1985, the department orally informed the complainant of a further extension. The complainant objected.

The Commissioner reported to the Minister that the Act does not provide for a second extension to be invoked after an extension has been claimed within the 30-day statutory time limit.

Departmental Delays

File: 558

Institution: *Environment Canada*
Complaint: *Delay*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Not disputed*

A research consultant had filed an access request with Environment Canada for a computer printout of specified call-ups against standing offers issued by the Department of Supply and Services for electronic data processing services. The access request was misplaced by the department for a month, after which the complainant telephoned the department to ask why he had not received a reply. Officials located the request and promised a reply within two weeks.

Almost three months had elapsed when the complainant was finally given the requested records.

He filed a complaint with the Information Commissioner in which he asked why a letter from the department dated December 6, 1985, was not sent to him until December 23.

During the investigation, the departmental officials immediately admitted that there was no excuse for the initial delay; the access request had simply been misplaced. Retrieving the requested records was time-consuming because they were not computerized and had to be searched manually. Finally, the department's response to the access request was delayed before mailing because the Assistant Deputy Minister, who reviews correspondence of this nature, was away from the office for several days.

The Information Commissioner considered the complaint to be well-founded and sent a report to the Minister. In her report to the complainant, the Commissioner said that she considered the department's reasons for the delay unacceptable.

Failure to Meet Extended Deadline

File: 559

Institution: *Correctional Service
Canada*

Complaint: *Delay*

Finding: *Well-founded*

Disposition: *Report to Minister*

Result: *Not disputed*

The Commissioner received a complaint dated January 6, 1986, from an individual that Correctional Service Canada had failed to respond to a request made in September 1985.

The investigation showed that the access request was received by the department October 3, 1985, and that on October 16, 1985, an extension of 30 days beyond the 30-day statutory time limit was requested by the department for consultations. Under the extension the department was required to make a full response to the complainant by December 3, 1985. However, a final reply was not forwarded until January 10, 1986.

As a result, the Commissioner advised the Solicitor General of Canada that the complaint would be registered as well-founded unless the department wished to challenge the decision. No representations were received from the department.

Extra Time Needed for Consultation

File: 566

Institution: *Agriculture Canada*

Complaint: *Delay*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant claimed that a time extension imposed by Agriculture Canada was a "stalling tactic" and consultation with another government department was unnecessary.

The request, covering reports, proposals, recommendations, studies and other correspondence concerning the Crop Disaster Assistance Programme, was received by the department December 5, 1985. On January 3, 1986, Agriculture Canada requested a 30-day extension beyond the 30-day statutory time limit to consult with the Department of Justice.

The investigation showed that the request covered a wide range of material held by Agriculture Canada and involving a number of government departments with which consultation was necessary. This included the Department of Justice.

The Commissioner informed the complainant that Agriculture Canada appeared to be processing his request as expeditiously as possible.

Need for Consultation

File: 573

Institution: *Supply and Services Canada*
Complaint: *Delay*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual complained on January 20, 1986, that the department's claim of a 30-day extension beyond the 30-day statutory time limit for third party consultations was too long and prejudiced his company's ability to bid on contracts.

The investigation revealed that the department received the request for access on January 6, 1986, and, the next day, advised the complainant that a 30-day extension was required for third party consultations in accordance with section 28 of the Act.

The Commissioner was satisfied that the department was correct in law in consulting with the third party prior to disclosing the requested information.

FEES

Refund of Fees

File: 082

Institution: *Justice*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The Department of Justice had been asked for all records, including any reports from other governments and Interpol, on the Church of Scientology, its founder and the "E-meter" used by the Church in pastoral counselling. The applicant also asked for a fee waiver.

The department estimated costs at \$3,000 and declined to waive fees. The applicant suggested that the fees should be waived because the estimated time to search files was excessive. The complaint was that high fees effectively prevented disclosure of records which would benefit the public by correcting false information.

Following the complaint, the Department of Justice and the complainant attempted to narrow the scope of the request, but without success. The department explained during the investigation that references to the Church of Scientology files were not cross-indexed and consequently the search required a scan of all records generally indexed under churches, religion and cults, a total of more than 74 feet of records. Although the original estimate was substantial, the Commissioner concluded that it was not excessive.

The complainant also alleged that the time taken to investigate his complaint (almost six months) was excessive but the Commissioner disagreed, pointing out that the investigation had been suspended for three months during which the complainant and the department tried to negotiate a re-definition of the request.

However, when the department released all the requested records, it also refunded almost half of the \$3,000.

Fee Waivers

File: 103

Institution: *Agriculture Canada*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant's formal access request to Agriculture Canada was received August 10, 1983. The three subjects of the request were:

- "(1) All Agriculture Canada's correspondence concerning Canadian testing of the 43 chemicals tested by Industrial Biotest Laboratories.
- "(2) All meat inspection reports done by Agriculture Canada in the 1980-83 period together with other specified documents.
- "(3) All data Agriculture Canada prepared to counter Pat Mooney's 'Seeds of the Earth'."

There followed a five-month exchange of correspondence between the applicant and Agriculture Canada consisting of five letters from the applicant and replies on four occasions. The magnitude of two of the three access requests changed. The records concerning Mooney's "Seeds of the Earth" were supplied by Agriculture Canada with their letters of September 12 and November 17, 1983. The complainant indicated in a letter to the department on November 29, 1983, he was satisfied

with the documents received in relation to that request. Following that lengthy exchange, the applicant complained that Agriculture Canada had a policy of never granting public interest fee waivers.

The investigator examined the fees assessed for search and preparation work on the documents requested in (2) and (3). These fees appeared to be within reason. The original request for meat inspection records from 1980 to 1983 meant checking approximately 40,000 reports. The complainant gradually reduced his request to meat inspection audit reports for the years 1982 and 1983, comprising about 1,000 reports annually. In these reports, inspections of 535 establishments are listed by establishment number with all inspection reports filed daily by that number. Release of these reports entailed searches, contact with third parties, and photocopying to sever non-exemptable portions. No charges would be made for the photocopying or the time spent on exemptions but the department conservatively estimated that it would take 10 minutes to prepare each report, and arrived at an estimate of \$1,660. This did not include costs of photocopying documents, should the complainant require them.

For the first request, the department estimated there were 20 volumes containing 4,000 pages concerning the Industrial Biotest Laboratories testing. The documents contained trade secrets and scientific and technical information exempt from access under paragraphs 20(1)(a) and 20(1)(b). The department estimated 300 hours to search and prepare those records at an estimated cost of \$3,000. This was based on a conservative estimate of five minutes per report.

The complainant expressed concern about the high costs and time taken by the department. However, from June 30, 1983, until the complaint on January 25, 1984, Agriculture Canada was in constant contact with the complainant by letter or in person, to better identify the required records and thus reduce the cost. The Commissioner agreed that the quoted access fees were high but justifiable considering the large volume of records.

Allowing a public interest fee waiver is the decision of the head of a government institution. The complainant's request for fee waiver was considered, and on appeal, reconsidered. It appeared that his and other requests received individual consideration.

The complaint that Agriculture Canada did not consider fee waivers appeared unsupportable. However, the Commissioner initiated a general investigation into the question of fee waivers with the department. When invited to make representations the complainant stated:

"I believe your findings on Agriculture Canada's public interest fee waiver miss the point. The policy is never to grant public interest fee waivers and not to consider such requests or appeals on a case by case basis. This is in violation of the Access Act. By never granting fee waivers over \$25, Agriculture Canada has placed a large barrier to public use of the legislation.

"My complaint against Agriculture Canada's general fee waiver policy is supportable as they do not by their across-the-board policy consider fee waivers over \$25, no matter how many times I or anyone else ask or appeal to them to reconsider this general policy."

The Commissioner agrees that a general policy of not considering waivers in specified cases is not supportable but found that she could not support this particular complaint.

Inspection of Manual

File: 154(1/2)

Institution: *Revenue Canada (Taxation)*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An applicant had asked for access to Revenue Canada's Taxation Operations Manual and questioned the right of the department to charge a \$5 application fee.

The *Access to Information Act* provides that such manuals were to be made available before July 1, 1985, for inspection by the public [71]. The request was made prior to that date and therefore the department was entitled to charge the \$5. Had the request been made after July 1, 1985, the department could not have justified the charge.

As a result of the investigation the department agreed to release completed portions of the manual as they became available and, as a goodwill gesture, to refund the \$5 fee.

Fees Not Waived

File: 218(1/3)

Institution: *Agriculture Canada*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

A complainant objected when denied refund of the \$5 application fee and waiver of other fees.

The investigation indicated that the department had considered the application on its merits and decided not to refund the \$5 application fee. Other fees were estimated at less than \$25 and therefore no other fees were charged. The department acted in accordance with both subsection 11(6) of the *Access to Information Act* and section 7 of the *Access to Information Regulations*. No basis for intervening was found.

Search and Preparation

File: 247(2/2)

Institution: *Atomic Energy Control Board*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant objected to paying \$150 for the minutes of meetings of the Board and requested a fee waiver. He considered the fee unreasonable because of a delay in release of the record and the Board's failure to explain why 20 hours were needed to prepare 19 sets of minutes. He had been given no indication of the "severity of exemptions" and he might already, as a taxpayer, have paid for some of the information if they were in Board news releases.

While the Board refunded the deposit of \$50 and waived the search and preparation fees, the Commissioner found that the original fees had been reasonable.

Incorrect Fees

File: 249

Institution: *National Film Board*
Complaint: *Fees*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Reduced in full*

On June 11, 1984, Revenue Canada, Taxation, received a request for a video cassette of the film "Excuse Me, But There's a Computer Asking for You". On July 3, 1984, the department agreed to provide the applicant with a letter authorizing the National Film Board to release a copy of the film to him. On August 22, 1984, the National Film Board asked the applicant for payment of \$115.64. The applicant requested a fee waiver and, when he had received no response, complained on November 27, 1984.

The Commissioner originally supported the National Film Board's assessed charge for the film and invited the complainant to make any further representations. The complainant did so on May 28. Because the film had been removed from circulation and was not publicly available from the National Film Board, the Commissioner concluded that, since Revenue Canada, Taxation, had authorized the National Film Board to release the film under the *Access to Information Act*, the fee schedule in Regulation 7(1)(b)(vi) of the Act should apply. After this conclusion was reported to the National Film Board on July 22, 1985, the Board advised that it wished to consult with legal counsel at the Department of Communications, the Department of Justice and the Treasury Board.

Despite almost constant contact with the coordinator at the National Film Board, this Office was unable to obtain a reaction to the proposal. During four months, 16 telephone calls went unanswered and on two occasions appointments were not kept. Through discussions with the Board's lawyers, the Commissioner learned that legal counsel from the Department of Communications, the Department of Justice and the Treasury Board had recommended release of the film for either the prescribed fee of \$25 or at no cost, but the National Film Board had failed to act.

Therefore, on December 12, 1985, the Commissioner recommended, under subsection 37(1) of the Act, to the Minister of Communications that he reach a decision on or before January 6, 1986, or give notice of any action taken or proposed. This recommendation resulted in the National Film Board supplying the film to Revenue Canada, Taxation, on December 17, 1985, and the latter supplying it to the complainant on December 23, 1985, at no cost.

Photocopy Fees

File: 261(1/2)(2/2)

Institution: *External Affairs, National Defence*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complaints referred to the photocopying fee structure of two departments and expressed concern with "photocopying fees being charged for journalists accredited with the news media".

The investigation revealed that both National Defence and External Affairs have written policies on photocopying fees and fee waivers that are consistent with the *Access to Information Act* and Regulations. Both departments have considered Treasury Board Guidelines that departments consider waiving amounts under \$25. The Treasury Board suggestion is not binding in law and it refers to fees generally, other than the application fee. Not all government institutions have accepted the guidelines on this point but the Departments of External Affairs and National Defence follow them. They also consider fee waiver requests on a case-by-case basis.

The Commissioner dismissed the complaint because she was satisfied that the actions of National Defence and External Affairs are consistent with their departmental policy and the Act.

The Commissioner added:

"... we have received a number of adverse comments about the high cost of photocopying. Informal enquiries confirmed that lower fees for photocopying are available elsewhere. Because of this, I propose to have a formal investigation conducted, the results of which will be made known to you in due course. During this study, I intend to examine the question of whether the media should receive special consideration in terms of fees, but so far I have received conflicting messages from members of the media as to whether fees should be waived or reduced. Some sectors are of the view that fee waivers may impinge on the independence of the media".

Public Interest

File: 284

Institution: *External Affairs*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant had asked External Affairs to waive photocopying fees on the ground that news media are of 'a general public benefit' and should be exempted from the payment of fees. He objected when the department refused the waiver.

External Affairs policy regarding fees states:

"Pending the development of guidelines as to what constitutes 'a general public benefit', the fee will not be waived on this account".

The investigation revealed that the application had been considered on its merits in spite of the policy.

Time to Consider Request for Waiver

File: 285(1/4)

Institution: *External Affairs*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An individual requested from External Affairs copies of records showing the disposition of completed access and privacy requests for 1983-84.

The objection occurred when External Affairs failed to answer promptly and directly to the request for a waiver of fees on the grounds of public interest.

The investigation confirmed that the request for a fee waiver was received by External Affairs September 14, 1984. The department replied October 23, 1984, denying a waiver of fees. The Information Commissioner found that there was no undue delay in responding to the request.

No Duty to Give Estimate

File: 285(2/4)

Institution: *External Affairs*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

External Affairs charged the complainant \$244.75 in response to his request for copies of records showing the disposition of access and privacy requests for 1983-84.

The complaint cited External Affairs' failure to give the complainant an estimate of fees prior to processing his request. The complainant alleged that "this unreasonable administrative practice violates any access rights under subsection 7(a) and subsections 11(2), (4) and (5) and Regulation 5".

The Commissioner informed the complainant that subsection 11(4) of the Act provides that the head of an institution "may" require a deposit prior to undertaking the search and production of a record but that the Act did not require prior notification of fees. While this practice might be desirable, failure to do so did not violate any provisions of the Act.

Search and Preparation

File: 285(3/4)

Institution: *External Affairs*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

A request for copies of records showing the disposition of requests to External Affairs under the *Access to Information Act* and *Privacy Act* produced charges of \$244.75 including \$200 for search and preparation time and \$44.75 for photocopies.

The complainant submitted that the search and preparation fees were unreasonable and that the compilation of the records should not have taken 25 hours.

The investigation demonstrated that the department had devoted 38 1/2 hours to processing the request, which was reduced by 13 1/2 hours as some work was duplicated. The complainant was not charged for the first five hours, leaving a balance of 20 hours at \$10 per hour.

The Commissioner advised the complainant that considering the number of records reviewed and prepared for release, the number of hours spent to complete the processing was not unreasonable.

Photocopies

File: 285(4/4)

Institution: *External Affairs*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant objected when External Affairs charged him 25 cents per page for photocopies concerning his request for copies of records showing the disposition of requests under the *Access to Information Act* and the *Privacy Act* for 1983-84.

The Commissioner replied that:

"While the appropriateness of the 25 cents per page fee is under review by this office generally, External Affairs has charged an amount specifically mandated by Regulation 7(1)(b)(i). I cannot support an allegation that External Affairs is in violation of the Act or Regulations when the fee charged for photocopies is exactly in line with the applicable regulation."

Public Interest

File: 287(1/3)

Institution: *External Affairs*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

A journalist had requested that External Affairs grant a fee waiver "... on the grounds that widespread publication of the information requested would be in the general public interest and of general benefit to the public".

However, External Affairs had considered the request for waiver of fees on its merits and did not accept that a "public benefit" would flow from waiving the fees in this case.

The Commissioner informed the complainant that the Act and Regulations make no mention of waiving fees for the "public benefit" and that she was satisfied that there was no contravention of the Act. The complainant was informed that this office was conducting a general study on fees and would address the fee waiver issue.

Retrieval Methods

File: 287(2/3)

Institution: *External Affairs*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

A second complaint was received from a journalist who complained that External Affairs did not provide him with sufficient detail on how the fees were incurred to justify the high costs. He also suggested records retrieval procedures in the department led to higher costs.

The Commissioner informed the complainant that the Act and Regulations stipulate a charge of \$2.50 per quarter-hour for search and preparation time in excess of five hours.

Further, the investigation produced no evidence to support the allegation that External Affairs' inefficient record-keeping led to higher costs. The records requested were in missions abroad but were not part of the general financial records. They were kept under the control of the ambassadors or high commissioners and therefore took longer to prepare and forward to Ottawa than would be the case for ordinary records.

Based on the results of the investigation, the Commissioner was satisfied that the fees for processing the request were correctly calculated and reasonable, and that the time taken to prepare the records for release was reasonable.

Fees Required in Advance

File: 287(3/3)

Institution: *External Affairs*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

A third complaint was made by a journalist as a result of his request for access to records held by External Affairs. The complaint stated that there was no justification in the Act and Regulations for External Affairs to demand payment of the fee within 30 days.

The investigation revealed that a great deal of work remained to be done before the records could be released to the complainant.

There is nothing which specifically authorizes a demand for payment of fees within 30 days. However, the Act contains no prohibition against such a demand. The question is therefore whether the demand was unreasonable in the circumstances.

The Information Commissioner did not find it unreasonable for External Affairs to require the fee to be paid before the department prepared the records for release.

Reasonable Fees

File: 296(2/2)

Institution: *Revenue Canada (Taxation)*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

When the department asked for a \$324.25 fee to cover an access request, the complainant contacted the Commissioner's office.

The investigation confirmed that the department considered but refused the complainant's request for a fee waiver. Furthermore, 33 hours were required to search and prepare the requested records, and with five free hours deducted, the resulting cost of 28 hours was \$280. Photocopying charges amounted to \$44.95, for a total of \$324.25.

The Commissioner told the complainant that the costs set out by the department were in line with subsections 11(1) and (2) of the *Access to Information Act* and section 7 of the Regulations. The complainant was invited to make representations but did not do so.

Reasonableness

File: 321(2/2)

Institution: *Employment and Immigration Canada*

Complaint: *Fees*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Reduced in part*

The Commissioner received a complaint dealing with an estimate of fees the complainant considered excessive in relation to his request for information on Employment and Immigration Canada long-distance telephone calls in the Manitoba region. (See delay 321(1/2)).

The department estimated fees for search and preparation at \$665 and the cost to cover Government Telecommunications Agency charges (programming and computer-run time) at \$1,200.

As a result of meetings with officials of Employment and Immigration Canada, the Commissioner challenged the search and preparation fees. This resulted in a reduction of \$425. An accounting was also requested for the Government Telecommunications Agency services fees. The reduction of \$889.46 was found to be reasonable.

Fee Waiver Policy

File: 325

Institution: *Agriculture Canada*

Complaint: *Fees*

Finding: *Supportable*

Disposition: *Discontinued by complainant*

Result: *No action*

The Information Commissioner initiated this complaint when she discovered that the department had a fee waiver policy that "when fees payable exceed \$25 (in addition to the application fee) then all fees will be collected". The Commissioner felt that this policy eliminated any exercise of discretion in granting fee waivers in individual instances and thus contravened the Act. However, during the course of the investigation, it became apparent that a more global examination of the issue was needed and this complaint was discontinued. A new investigation into the fee waiver policies of a number of departments was begun.

Waiver When Released Delayed

File: 328(2/2)

Institution: *Employment and Immigration Canada*

Complaint: *Fees*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Waived in full*

An applicant complained that, during her first visit to the Manitoba Region Office of Employment and Immigration Canada to examine documents requested, she was informed that fees

for search, preparation and photocopying would not be waived. She also reported that, during discussions with an official of the Manitoba office, she received incorrect information as to how costs were assessed and payments made.

As a result of the investigation, Employment and Immigration Canada informed this office that it was prepared to waive all search and preparation fees because of inordinate delays in allowing access to the records (see delay 328(1/2)). Officials also decided to waive photocopying fees as well if the complainant were interested in obtaining copies of only a 100 to 150 page segment of the records. The department attempted to contact the complainant to inform her of the waiver but were unable to reach her.

Fee Waiver Considered by Minister

File: 340(1/2)

Institution: *Finance*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant objected when the Department of Finance did not grant him a fee waiver requested on the basis that his research and subsequent publication would be for public benefit.

The investigation revealed that the Minister had personally considered the complainant's request but had not granted the waiver.

The Commissioner informed the complainant that the Act leaves fee waivers to the discretion of the Minister. The Minister had considered the request, and the Commissioner was satisfied that there was no evidence that the Minister had exercised his discretion unfairly.

Estimate

File: 349

Institution: *Supply and Services Canada*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: No action

An individual sent four requests to Supply and Services Canada seeking access to records concerning various aspects of the "Canadian Patrol Frigate Program". He asked that each request be considered fully processed after five hours' search time.

The department informed the complainant that after five hours' search time for each request, a total of 5815 pages had been identified and the department estimated a cost of \$2,425 for processing. Supply and Services asked for a deposit of \$1,212.50.

The applicant complained about the fee estimate.

The investigation established that a separate free five-hour search had been completed for each of the four requests and that the estimated fees were only for the time to prepare the records and did not include time to review the records for exemptions or exclusions.

The Commissioner found the assessment for each request to be reasonable and in accordance with both section 11 of the Act and section 7 of the Regulations.

Reasonable Fee Estimate

File: 350

Institution: *National Defence*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant made five access requests to the Department of National Defence for records relating to various aspects of the Canadian Patrol Frigate Program. The requestor asked that each request be limited to five hours' search time.

The department asked for deposits of \$425, \$85 and \$625, being half of the estimated fees for the preparation of the records in relation to three of the requests. This caused the complaint.

The investigation revealed that the department had identified 1,300 pages, 423 pages and 5,500 pages in relation to three requests. Exemptions would be claimed to the records and preparation time would be necessary in applying the severance principle. The assessments were based on the best possible estimates and did not include time for reviewing documents to determine whether they were exempt or excluded, nor the cost of any photocopies.

The Commissioner was satisfied that the department's estimate of costs to prepare the records was within reason and correct in law.

Fee For Preparation

File: 351

Institution: *Regional Industrial Expansion*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Discontinued*

Result: *No action*

The complainant objected to the fees assessed by Regional Industrial Expansion for "preparation" required to respond to his access request.

During the free five-hour search requested by the complainant, the department estimated the fees for preparation of the records at \$50 and reproduction fees at \$25. The complainant paid a \$37.50 deposit as requested.

After the work was done, the department established that the actual fees for preparation were \$10 and the fees for photocopies were \$11.50.

After the complainant reviewed the records, the department waived the \$21.50 fee and, as the complainant did not want additional copies, the department refunded the \$37.50 deposit. The complainant discontinued his complaint.

Refund of Application Fees

File: 356(2/3)

Institution: *Agriculture Canada*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant sought a refund of his application fee for two separate requests because no information was produced. He said he applied for the information in question because of "an early assertion by Agriculture Canada that such information did exist".

The Commissioner was satisfied that the department did not deliberately mislead the complainant about the existence of information. Further, the Commissioner held that the application fee is intended to defray the costs of processing a request and is appropriate even when no records are found.

High Fee Estimate

File: 362

Institution: *National Defence*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An access request to the Department of National Defence sought "all records related to the sale of weapons, armaments and defence materials manufactured in Canada for the period January 1, 1982, to the present. This request includes all policy and analysis records in this area, as well as all correspondence between government departments". The request also stipulated it was "to be considered fully processed after five hours of search time".

After changing the starting date from January 1, 1982, to January 1, 1983, at the request of the complainant, the department notified the complainant that the five hours of search time provided free under the Act had been expended.

The department estimated the cost to prepare the requested records at \$4,200. The complainant was asked for a deposit of \$2,100 before the department would proceed with preparation of the records. This resulted in the complaint.

The investigation revealed that, in the five hours' search time provided free, the department had identified 144 files containing records relating to the request. The application of severance would be necessary and there were many exemptions. The cost of \$4,200 was the best possible estimate of the time the department needed to prepare the records for disclosure and did not include time for reviewing documents to determine whether they were exempt or excluded, nor the cost of photocopies.

A review of the formula used to arrive at the estimated cost, together with a review of the records identified, resulted in the Commissioner advising the complainant that the cost estimate was reasonable.

Reasonableness

File: 395

Institution: *Public Archives Canada*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complaint involved a fee of \$41 assessed by Public Archives Canada for copying records. The complainant paid a \$25 deposit under protest, to continue the processing of his request. His letter complaining of the fees was received on June 13, 1985. This office's

acknowledgment dated June 14, 1985, asked if he had requested a fee waiver from Public Archives Canada, and on July 9, 1985, a letter was received from the complainant stating he had not, as Public Archives Canada had advised him to complain to this office.

The investigation disclosed that the Public Archives Canada charge for photocopying 65 pages at 10 cents per copy is 15 cents per copy less than required under the Regulations to the *Access to Information Act*. The Regulations allow fees for copying the 138 microform images requested at 25 cents per image. The complainant's request required a 15-hour search for the records. Although the first five hours are not chargeable under the regulations, every hour beyond five can be charged at \$10 per hour. Public Archives Canada waived the fees for the additional 10 hours.

The Commissioner found that the fees assessed by Public Archives Canada were within the bounds of the *Access to Information Act* and Regulations, and were reasonable, particularly bearing in mind that some of the other fees had been waived.

Fee Calculation

File: 418

Institution: *National Parole Board*

Complaint: *Fees*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

After an exchange of correspondence in which an applicant was asked to narrow the scope of his access request, the National Parole Board quoted a price of \$500 for copies of records about habitual offenders, dangerous offenders and persons detained in custody under Lieutenant-Governor's warrants. The complainant thought that the cost might be an overcalculation and in any event was unfair.

The investigation established that the records requested amounted to some 2000 pages which, at 25 cents per page, would cost \$500.

The Commissioner informed the complainant that the fee quoted by the Board conformed to the Access to Information Regulations, subparagraph 7(1)(b)(i) which permits the government to charge a fee of 25 cents per page for photocopying. The complainant did not challenge the calculations further but asked for a reduction in fees, which became the subject of another complaint.

Fees Refunded

File: 419

Institution: *Agriculture Canada*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Discontinued*
Result: *No action*

When the Department of Agriculture requested a fee of \$72 for search, preparation and photocopying charges in response to an access request, the complainant contacted the Information Commissioner to ask for help in having the \$72 fee reimbursed.

Preliminary enquiries established that the complainant had not asked the department for a fee waiver but that the department had considered a fee waiver because, with his cheque for the \$72, the complainant had included a copy of his letter of complaint to the Information Commissioner. The department decided to waive the fee and the complainant's cheque was returned to him. The complainant discontinued his action.

Reasonableness of Deposit

File: 455

Institution: *Regional Industrial Expansion*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant complained when the Department of Regional Industrial Expansion (DRIE) asked for a deposit of \$30 toward the costs of searching Cabinet discussion papers to respond to his request.

The investigation indicated that the \$30 covered the time already spent in excess of the five free hours to search for the requested documents. The \$30 also formed part of the total estimated searching fees that might be charged by DRIE. These fees, which were not expected to exceed \$4,792.50, were calculated on the basis that an average of 35 minutes would have to be spent to locate each of the remaining documents that formed the access request.

The Commissioner concluded that the \$30 deposit asked for by DRIE was not unreasonable and was in accordance with subsection 11(4) of the Act.

Cost Estimate Reasonable

File: 458

Institution: *Transport Canada*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant objected when the department advised him that searching his access request for Cabinet discussion papers would cost \$950 for which they asked a deposit of \$475. He believed that search fees did not apply to this type of application.

The investigation revealed that the department did not stop the search process at the end of the five free hours. Instead, it completed the search so that it could identify the documents involved and make an accurate estimate of the required preparation time.

The Commissioner informed the complainant that, given the number and size of the documents involved, the estimate of 100 hours of search time was reasonable and that, considering the hourly rate as set out in subsection 7(2) of the Regulations, the estimated cost of \$950 was appropriate.

Fees Calculated Correctly

File: 471(3/4)

Institution: *Secretary of State*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant objected to charges of \$2,250 calculated by the Secretary of State for the records requested.

The investigation established that the department had quoted charges solely for photocopying and not for search and preparation. The Commissioner found no evidence of deliberately inflated costs. She also noted that the department had provided the complainant with the opportunity to examine the records in person or to narrow the request to reduce the cost. The department also offered to make the records available in the complainant's home province.

The complainant also objected when the department requested payment of a deposit before a given date. The Commissioner informed the complainant that he had only to ask for an extension and it would be granted. An itemized billing would be prepared as well if required.

The Commissioner could find no fault with the department's actions.

Fees Not Unreasonable

File: 518

Institution: *Environment Canada*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

An individual complained about the fee of \$130 levied by Environment Canada for reproduction of documents dealing with a Minister's expense accounts.

The complainant stated that the fee was excessive because the Minister had indicated in the House of Commons that the documents would be made public. Also, he suggested that fees should be waived because release of the record was in the public interest.

The investigation revealed that by letter of November 4, 1985, Environment Canada offered to let the complainant review the documents requested prior to deciding whether to pay the \$130 photocopying fees. The complainant chose not to do so.

The investigation also revealed that no charge was levied for time devoted to search and preparation of the documents.

The Commissioner informed the complainant that the amount charged to obtain the documents in question was not unreasonable.

Estimate Reasonable

File: 527

Institution: *Revenue Canada (Customs and Excise)*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant objected to fees of \$300 for search and preparation and \$437.50 for photocopying as charged by the department to respond to his access request for information on the Church of Scientology. He held that the fees were discriminatory and also that release of the information was in the public interest.

The investigation revealed that Revenue Canada (Customs and Excise) spent 8.5 hours identifying files believed to contain records within the scope of the request. Based on this initial search, the department estimated that an additional 25-30 hours would be required to complete the search and that 1,500 to 2,000 pages would have to be photocopied. The estimated costs were made up of 30 hours at \$10 per hour (which included preparation as well as search) and 1,750 pages at 25 cents per page for photocopying.

Based on the results of the investigation, the Commissioner was satisfied that the estimated charges were in accordance with the Act. The investigator suggested that the complainant ask the department to waive the fees and include any argument supporting his contention that the estimated fees were discriminatory and that release of the information would be in the public interest.

Reasonableness of Fees

File: 528

Institution: *Finance*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The department estimated fees of \$470 for search and preparation in connection with an access request for Cabinet discussion papers. The applicant had requested a fee waiver at the time of his application and the department indicated it would only consider a fee waiver once the relevant material had been thoroughly reviewed.

The investigation disclosed that the department had already spent a total of 47 hours to search for and retrieve approximately 700 pages. After deducting the first five free hours, a balance of 42 hours at \$10 per hour, or \$420 could be charged in accordance with section 11 of the Act. The department also estimated that a further five hours would be required at \$10 per hour to prepare the material for release.

The Commissioner informed the complainant that the \$235 deposit requested by the department was reasonable and that the estimate of \$470 in fees for search and retrieval (\$420) and preparation (\$50) was in accordance with the Act.

Reasonableness

File: 552

Institution: *Energy, Mines and Resources*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant objected to the fees Energy, Mines and Resources estimated in regard to his access request concerning ministerial travel, and to the denial of his request for a fee waiver. He had requested the waiver on the basis that the information should be public and freely available.

The investigation revealed that the department estimated that it would take one employee 37.5 hours to search files and prepare a summary of the requested travel expenses. Based on this the department advised the complainant of the estimated fees of 32.5 hours at \$10 per hour and asked for a deposit of half the amount. The department did not propose to charge photocopying costs.

The investigation further revealed that Energy, Mines and Resources has not developed a policy on fee waivers but follows the provisions of the *Access to Information Act* and the Treasury Board Guidelines. The latter state that the decision to waive fees should be made on a case-by-case basis, considering whether the information is normally made available without charge, the degree to which the general public benefits through the release of the information, the circumstances of the application, and the applicant's reasons for seeking the information.

The Commissioner informed the complainant that he had not presented a convincing argument that the fees, representing only a portion of the actual costs, should be paid from public funds. The Commissioner was satisfied that the estimated fee was in accordance with subsection 11(2) of the Act and subsection 7(2) of the Regulations.

Based upon a suggestion from the Office of the Information Commissioner, the complainant clarified his request. The department discovered that records already existed within the Minister's office to satisfy the request. These records were released without charge.

Public Interest

File: 576

Institution: *Environment Canada*
Complaint: *Fees*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The applicant, a journalist, appealed Environment Canada's denial of a fee waiver. The complainant stated that the waiver was denied because the newspaper received monetary benefit from the material obtained.

The investigation showed that Environment Canada's policy is to decide such requests on a case-by-case basis and to consider whether the information is normally made available without charge, general public benefit obtained through release of the information, whether the amount is less than \$25, and any other mitigating circumstances.

Although the department considered the monetary benefit to the newspaper, there was nothing to suggest that this was a major consideration in their decision to deny the waiver.

Following a review of the department's procedures, the Commissioner was satisfied that the complainant's request was handled in a fair and proper manner under the Act.

REGISTER

No complaints were investigated relative to the Register during the reporting period.

MISCELLANEOUS

Threefold Complaint

File: 151

Institution: *Health and Welfare Canada*
Complaint: *Miscellaneous*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Corrective action*

A request to Health and Welfare Canada sought access to "the list, as of January 30, 1984, of personal data sharing agreements signed or contemplated under paragraph 8(2)(f) of the *Privacy Act*".

Health and Welfare Canada informed the applicant on February 13, 1984, that the department had difficulty interpreting the request and he supplied written clarification on February 14, 1984. On March 8, 1984, it requested a 30-day extension beyond the 30-day statutory

limit. On April 13, 1984, three days following expiry of the extension, Health and Welfare Canada advised that it did not have any such agreements at that time nor were any contemplated.

The applicant again contacted the department and indicated that he encountered "attitude problems" with two of the Access to Information Unit staff members. He submitted a follow-up access request on May 18, 1984, for the same record, but clarified the request further by adding "...whether pursuant to section 8(2)(f) of the *Privacy Act* or not...". At the insistence of the department he paid a second application fee and then on June 1, 1984, complained to this office. The complaint was threefold: "a lack of information when records exist", "a time problem" and "a flexibility problem in the case of my [the complainant] having to apply twice to Health and Welfare".

Following the investigation, the Commissioner found that each aspect of the complaint was supportable. Many meetings were held with Health and Welfare Canada and correspondence was exchanged. During a meeting with the Deputy Minister, the interpretation of the access request dealing with personal data-sharing agreements was discussed at length. The department contended that data-sharing agreements under paragraph (8)(2)(f) of the *Privacy Act* could only refer to those reached after July 1, 1983, which was why the department required a second access request to establish what the complainant wanted. The Commissioner suggested to the Deputy Minister that there was no difference between the two access requests and suggested that Health and Welfare Canada might consider refunding the second application fee of \$5.

The complainant had informed Health and Welfare Canada that he was aware that personal data-sharing agreements existed and had been entered into during the past 30 years. It was not until after the second request that action was taken to search and retrieve these documents. An extension of 30 days beyond the 30-day statutory limit was requested on June 25, 1984, after the second access request was received by the department on May 30, 1984. The complainant was notified that the releasable documents were ready for examination on August 8, 1984, nine days following the expiry of the extension. It was drawn to the Deputy Minister's attention that, despite the contact between the Health and Welfare Canada Access to Information Office and the complainant, the access request was not correctly interpreted until May 30, 1984, 110 days after the initial request was received.

There was no question that records existed and that release was delayed. The complainant had been required to apply twice for the record. Health and Welfare Canada had not considered refunding the second application fee to the complainant and on February 1, 1985, a letter was directed to the Minister, in accordance with subsection 37(1) of the *Access to Information Act*, recommending that a refund be made.

The minister of National Health and Welfare, on February 28, 1985, advised that to avoid prolonging the affair, he had instructed that the \$5 application be refunded. In doing so the Minister wished the record to note,

"...the Department does not agree with your opinion that the second request made by [the complainant] in May, 1984, for a copy of all personal data sharing agreements signed or contemplated prior to the *Privacy Act* coming into force on July 1, 1983, was implicitly part of his February, 1984, request for a list of personal data sharing agreements signed or contemplated by National Health and Welfare under section 8(2)(f) of the *Privacy Act*."

On June 21, 1984, the complainant had added an additional complaint concerning the department's "poor attitude". This referred directly to interaction with staff members of the department and was raised during a meeting with the Deputy Minister of National Health and Welfare. The Commissioner believes that the complainant will not encounter the same difficulties with the department in the future.

No Application Fee

File: 289

Institution: *Great Lakes Pilotage Authority Ltd.*

Complaint: *Miscellaneous*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

A preliminary investigation of this complaint against Great Lakes Pilotage Authority disclosed that the complainant had not paid the initial application fee, as required under the Act.

Thus there was no authority under the Act to investigate the complaint.

Exemption of Headings

File: 291(2/2)

Institution: *External Affairs*

Complaint: *Miscellaneous*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

In addition to complaining about totally or partially exempted records, this complainant asked the Commissioner to consider "whether the department has a duty, on grounds of fairness and natural justice, to supply me [the complainant] with some sort of index to the material for which exemption is claimed. In the alternative to consider whether the Information Commissioner has a duty to see that such an index is supplied to a complainant after the Commissioner has made her findings on a complaint of this nature".

The Commissioner reported to the complainant that, in her view, the right to access under the *Access to Information Act*, is to "information in records". A "record" is a term defined in the Act and the reference is to existing records, unless a record can be produced from existing computer programs.

While government departments interested in adhering to the principle of open government should, within reason, assist the requestor in finding information, there appears to be no statutory obligation to create an index where one does not already exist.

The complainant referred to the U.S. case, *Vaughn v. Rosen* (484 F.2d 820 (1973)) and suggested that Canada should follow the directives issued by the United States court, that is, to require the government to produce an index to the records in dispute before the court.

The Commissioner suggested that the Canadian Act requires that each document should bear an indication of which exemption has been applied, whether a passage or the whole document has been exempted. She also reported that as a matter of practice the Information Commissioner insists that complainants be given titles or headings of exempted pages or passages unless those headings are exemptable *per se*, provided the applicant accept the possibility of additional fees for little substantial information. While this has caused at least one commentator to ridicule receiving blank pages with titles only, the Commissioner found that by providing these pages an access requestor could determine what had been withheld. This process of identification and specific justification for each exemption slows down investigations. She explained that the office must ensure that the record is annotated so that the requestor may identify the exempted passages and the reason for the exemption to be satisfied that releasable portions are not withheld. Accordingly she concluded that in complaints where her office is involved, it is already doing what the court in *Vaughn v. Rosen* expected the "special master" to do. In this instance, however, the Commissioner found that the exemptions were properly claimed for the headings as well as for the text and thus the complaint could not be supported.

Mandate

File: 304

Institution: *Energy, Mines and Resources*
Complaint: *Miscellaneous*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complaint concerning the handling of a request for records on "the Clan Lake incident of June 22, 1960", was over a telephone call to the complainant in which the caller was alleged to have criticized the applicant for expecting so much effort for a five dollar fee. The request had been received by Energy, Mines and Resources and transferred to the National Research Council. The investigation ascertained that the telephone caller was not a member of NRC staff and EMR acknowledged that one of its officers had contacted the complainant and the exchange had become "more and more heated".

The Commissioner informed the complainant that EMR and the employee responsible had been told of the complaint. The Commissioner was satisfied that preventive action had been taken but expressed doubt as to her authority to entertain the complaint.

No Mandate

File: 310

Institution: *Transport Canada*
Complaint: *Miscellaneous*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

The complainant sought access through the Department of Transport's Vancouver office to records about aircraft registered in the name of a consulting firm. He complained that he had been refused access to most of the requested records.

A preliminary investigation revealed that the complainant had asked the department to consider his letter as a request for information pursuant to the *Access to Information Act* "should it be necessary". The Vancouver branch of the Department of Transport dealt with the request informally, as the complainant had not paid the \$5 fee.

The Commissioner informed the complainant that she had no authority to investigate his complaint until an official request for access had been made.

No Authority to Complain

File: 311

Institution: *Secretary of State*
Complaint: *Miscellaneous*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

A person requested access to records about the Translation Bureau as held by Secretary of State. Another person alleged that some of the records requested had been refused and that the estimated photocopying fees were unreasonable.

While a preliminary investigation was carried out, the complainant had not obtained authorization from the original requestor to act on his behalf and did not make a formal request. Thus, the Commissioner had no authority to investigate the complaint.

Informal Request

File: 332

Institution: *Employment and Immigration Canada*
Complaint: *Miscellaneous*
Finding: *Not supportable*
Disposition: *Dismissed*
Result: *No action*

On February 20, 1985, an individual reported that she had not received a reply from Employment and Immigration Canada to her request for access.

An investigation disclosed that the request for access of October, 1984, had been informal and that a formal request, made in January, 1985, was being processed. In these circumstances, the complaint could not be supported.

Agent

File: 344

Institution: *Privy Council Office*
Complaint: *Miscellaneous*
Finding: *Not supportable*
Disposition: *Discontinued*
Result: *No action*

An individual requested access to the weekly list of Cabinet Ministers' travel and engagements and was refused access by the Privy Council Office.

A person other than the one who had made the request complained about the exemption. The Information Commissioner attempted to obtain confirmation by telephone or letter that the second person had authority to act [30(2)]. No authority was received and the complaint was abandoned.

Complaint Too Late

File: 345

Institution: *Energy, Mines and Resources*

Complaint: *Miscellaneous*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The complainant objected to an exemption claimed by Energy, Mines and Resources. His letter dated April 18, 1985, was actually received by our office on April 16, 1985. A preliminary investigation revealed that the request for access of March 1, 1984, was received by the department on March 2, 1984.

Section 31 of the *Access to Information Act* reads:

"A complaint under this Act shall be made to the Information Commissioner... within one year from the time when the request for the record in respect of which the complaint is made was received."

The Commissioner had no alternative but to dismiss the complaint because it was filed too late.

Limited Search Time

File: 354

Institution: *Solicitor General*

Complaint: *Miscellaneous*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Corrective action*

A complainant filed five separate access requests for records concerning alleged war criminals in Canada. Each request related to records compiled during specified time periods from 1975 to 1985. Each request asked the department to terminate its search after five hours. (Under the Act, the first five hours of search time are at no cost to the applicant.)

When the department informed the complainant that it would take up to six months to deal with his requests, he complained that this extension of time was unreasonable.

When the Commissioner questioned whether the department had taken into account the limitation on the search time, it informed the complainant that his access requests would be handled within 30 days and provided him with an estimate of the costs involved.

Although the six-month extension originally assessed appeared to have been due to an oversight, the requirements of the Act are nevertheless strict and the complaint was supportable.

Allegation of Bias

File: 356(3/3)

Institution: *Agriculture Canada*

Complaint: *Miscellaneous*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Corrective action*

The complainant had requested access to "records of denials of access to Canadian meat inspection reports", but was refused these records by the department. In addition to complaints about the exemptive grounds under the Act, he made allegations about "bias and attitude towards information release", stating:

"Agriculture assets that even if [such] information did exist, that such information's release is 'misinformation' and clearly sides with the meat packing industry's view of such information release".

The relevant file records indicated that, in a letter to the complainant dated April 16, 1985, the head of the Access to Information and Privacy Unit had stated:

"Through conversations with officers of the Meat Hygiene Division, it is my understanding that the purpose of the reports is to point out deficiencies and therefore does not give a fair assessment of a plant's overall operations. As such there has always been concern that the media would misinterpret reports and the public would be misinformed. Such misinformation would not serve the public and would probably be very damaging to individual plants and to the industry as a whole."

The Commissioner pointed out that the unit head had not characterized the requested information as "misinformation". The unit head was concerned that its interpretation and reporting by the media would be "misinformation" to the public, and was trying to be helpful in offering this explanation. The Commissioner did not agree that, just because the department had refused to disclose the requested record, this was evidence that it sided with the meat-packing industry in any improper manner.

Receipt of Access Request

File: 409

Institution: *Treasury Board*
Complaint: *Miscellaneous*
Finding: *Well-founded*
Disposition: *Report to Minister*
Result: *Corrective action*

This complainant had personally delivered his access request to the access coordinator at Treasury Board June 28, 1985, and received a written acknowledgement which stated the request was received July 2, 1985. He complained to our office because Treasury Board modified the receipt date of his request.

An investigation confirmed that the request was received by the department June 28, 1985, and Treasury Board advised the complainant that the date of receipt was restored to that date.

The Commissioner informed the President of the Treasury Board that the Act imposed time limits on government institutions which make it essential that precise dates be used to record receipt of access requests.

Informal Request

File: 420

Institution: *Employment and Immigration Canada*

Complaint: *Miscellaneous*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

A complainant acting on behalf of a person who has requested records from the Department of Employment and Immigration wrote to this office when the request access to the records was denied.

A preliminary inquiry established that the request had not been made formally, nor was the \$5 fee submitted.

As a result, there was no authority to investigate the complaint. However, the Information Commissioner furnished the complainant with access to information request forms and the name and address of the access to information coordinator at the Department of Employment and Immigration.

Cross-Matching

File: 471(2/4)

Institution: *Employment and Immigration Canada*

Complaint: *Miscellaneous*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

The applicant objected when Employment and Immigration Canada contacted another department for approval before acting on an access request. The complainant called this tactic cross-matching and suggested that it was contrary to the Act.

The Commissioner informed the complainant that there is no prohibition against such consultation under the *Access to Information Act*. Under the Treasury Board Access to Information Act Guidelines, departments are required to consult other departments in some instances.

Estimate Informal

File: 479

Institution: *Statistics Canada*

Complaint: *Miscellaneous*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

This complaint involved a fee estimate of over \$1,000 by Statistics Canada to provide the complainant with information requested.

Preliminary enquiries revealed that the complainant's request was made informally rather than under the Act. Hence, this office did not have a mandate to investigate the complaint.

No Formal Request

File: 480

Institution: *Royal Canadian Mounted Police*

Complaint: *Miscellaneous*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

An individual complained when the RCMP refused access to a copy of Treasury Board minutes pertaining to the 1974 RCMP overtime package, on the basis that the minutes constituted confidences of the Queen's Privy Council.

An investigator's inquiries revealed that the request had not been made under the *Access to Information Act*.

As a result, the Commissioner informed the individual that she had no authority to investigate the complaint.

Transfer of Request

File: 531

Institution: *Agriculture Canada*

Complaint: *Miscellaneous*

Finding: *Supportable*

Disposition: *Resolution negotiated*

Result: *Corrective action*

An applicant requested from Agriculture Canada all records since January 1, 1979, concerning the monitoring or review by the National Farm Products Marketing Council (NFPMC) on the activities of the national marketing agencies established under the *Farm Products Marketing Agencies Act*. The request included correspondence concerning Council supervision between

the department and either the NFPMC or the national marketing agencies. As well, the applicant requested records concerning the breadth of the NFPMC's powers of review and its effect on the agencies' quota, levy or pricing decisions.

Agriculture Canada transferred the access request to the NFPMC on the basis that NFPMC had control of the records in question. The applicant complained about this transfer, as he had already filed a similar request with the NFPMC. His request to Agriculture Canada was for documents not covered in the request to the Council. He asked that Agriculture Canada answer the request.

As a result of the investigation, Agriculture Canada agreed to process the request.

Consultations Legitimate

File: 557(2/2)

Institution: *Consumer and Corporate Affairs*

Complaint: *Miscellaneous*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

A letter to the Commissioner stated:

"It does not appear justified for one government department to dictate to another whether or not documents should be disclosed. Once the department subject to the request has reached its conclusions on disclosure, that should end the matter . . .".

The investigation revealed that on October 31, 1985, the applicant asked Consumer and Corporate Affairs for records on potential free trade between Canada and the United States. On November 21, 1985, the department invoked an extension of up to 30 days for consultations and review of the large number of records. On December 20, 1985, the department telephoned the complainant regarding a further extension. On January 6, 1986, the Department of Consumer and Corporate Affairs advised the complainant that the documents were available but, at the request of the Department of External Affairs, the records would not be released prior to consultation.

The Commissioner informed the complainant that the Act provides for an extension of time for consultation between departments so that there is some consistency in the release of federal government records. While a complaint about a second extension of time was well-founded (See delay 557(1/2), this complaint was dismissed.

No Mandate to Investigate

File: 600

Institution: *Employment and Immigration Canada*

Complaint: *Miscellaneous*

Finding: *Not supportable*

Disposition: *Dismissed*

Result: *No action*

A lawyer informed the Information Commissioner that he believed someone had applied for immigration records of a client under the *Access to Information Act* and pointed out that disclosure was prohibited under the Act pursuant to section 19 (personal information) and section 17 (threat to the safety of an individual). He asked that we consider the matter as a complaint.

The Commissioner advised the complainant that the matter appeared to be one in the jurisdiction of the Privacy Commissioner. The complainant and the Information Commissioner contacted officials in the Privacy Commissioner's Office to verify that they had received the letter also and were prepared to respond.

The Commissioner told the complainant that her Office was not permitted to declare whether an access request had been made to his client's immigration file. However, even if an access request was made, the Commissioner did not think that section 30 of the Act gave her authority to receive and investigate a complaint to prevent disclosure of a requested record.

Third Party Procedures

Section 28 of the *Access to Information Act* provides that when the government intends to disclose a record in response to an access request but has reason to believe that the record might contain trade secrets of a third party, confidential business information or information the disclosure of which could have an adverse material effect on a third party, it must notify that third party in order to receive its representations about disclosure.

A third party may be any person, group of persons or organization that is not itself a federal government institution under the Act.

The third party notice procedures are relatively formal and the timeframes are tight. A third party notice must be given within 30 days after the access request is received, or within an extended time period if one has been set. The third party has 20 days after the notice is given to make representations to the government, and the government must make its decision about disclosure within 30 days after the notice has been given.

If the government decides to disclose the record in question it must immediately notify the third party of that decision and the third party then has 20 days to file an application with the Federal Court for review of the matter. The requested record will otherwise be disclosed.

Informal Consultations

Under section 9 of the Act the government may extend by a specified period the time limit to respond to an access request if consultations are necessary to comply with the request.

This provision is not limited to consultations within the government.

In some cases, the government has used this provision to consult with a potential third party intervenant, rather than send out formal third party notices under section 28. This practice is desirable in one respect: it can be used as a quick means of determining if there are grounds for refusing disclosure under section 20 of the Act and in some instances the third party may even give its consent to disclosure.

However, the practice does not give the third party its formal right to make representations and to apply to the Federal Court for an order prohibiting disclosure. Such informal consultations may also leave the government department open to the criticism that by setting its own time limit to complete the consultation process it creates a dilemma in cases where the third party issue is not resolved: whether to disclose the record anyway (and meet the time limit) or continue the consultative process and run afoul of the time limits.

By following from the outset the third party notice procedure under section 28, the government is forced to make a decision quickly, but at least the third party has the right to bring the case before the Federal Court.

Silence is Not Necessarily Consent

The Information Commissioner was inclined to recommend disclosure in a complaint concerning the government's refusal to disclose the lease expiry dates of privately-owned properties occupied by the federal government. However, as required under the Act, she first contacted the property owners who might be affected by such disclosure to seek their representations.

All of the property owners objected to disclosure but with varying degrees of intensity. For example, one owner simply said "We do not give our permission to disclose", while another's representatives appeared before the Commissioner and presented detailed arguments against disclosure.

Ultimately, the Commissioner supported the government's decision not to disclose details of any of the leases on the ground that the competitive position of each of the third parties would be prejudiced.

Although some of the third parties were less vocal than others and their representations against disclosure, if taken alone, might not have been convincing, the Information Commissioner found that the arguments raised by one were relevant to all.

Contact Only If Commercial Injury Likely

In a case reported in the 1984-85 Annual Report (Exemption — 1.84-98) the Department of Veterans Affairs refused to disclose personal information about an individual who had been exposed to atomic radiation. However, since the individual had earlier both sought and

received considerable public attention concerning his pension application, the Commissioner thought he may consent to disclosure under the *Access to Information Act*. There is no procedure under the Act requiring either the government or the Information Commissioner to contact a third party about disclosure except as set out in section 20, which deals with possible commercial-type injury from disclosure. As a result of the investigator's intervention the department consulted with the individual and received his consent to release the requested record, satisfying the complainant. Had this not occurred, it is doubtful whether the Commissioner, given the requirements that investigations be conducted in private, could legitimately contact the third party where the effects of disclosure were non-commercial in nature.

Ironically, while third party procedures under the Act can be instituted only in the specific commercial circumstances described, nothing in the Act restricts the third party, once contacted, from raising any legitimate objection to disclosure. For example, a third party contacted about the intended disclosure of possible trade secrets could successfully argue that the records are not trade secrets but should be withheld from access because their disclosure could compromise the defence of Canada or an allied state.

Multiple Third Parties

In a case reported in the 1984-85 Annual Report (Exemption - 1.84-139), the possibility existed that almost 57,000 persons would have to be contacted to

determine whether they had any objection to the disclosure of information related to urea formaldehyde foam insulation in their homes. (Ultimately the complaint was disposed of without having to contact all of these third parties.) Under section 28 of the Act, the government is required to give notices in writing to every third party and to receive representations in writing or orally.

Under section 35, the Information Commissioner is simply required to give "a reasonable opportunity to make representations" to third parties. It is not clear whether notices through mass media — for example notices in major newspapers across Canada — would constitute third party notices within the meaning of the Act. Similarly it is not clear whether representations could be heard through a procedure in the nature of a class action.

In another case currently under investigation (but not involving section 28 third party notices) details were requested on several hundred properties. The Information Commissioner randomly selected a small number of these properties for detailed scrutiny to determine, on a preliminary statistical basis, whether there appeared to be merit in carrying the complaint further. A similar random-sampling approach might be considered for representations from third parties.

Can a Third Party Complain to the Information Commissioner?

The Information Commissioner has been informed of an application by a third party who asked the Federal Court to prohibit a government department

from disclosing a record requested under the Act until the third party could file a complaint with the Information Commissioner and have her deal with it.

Subsection 30(1) of the Act lists matters on which the Commissioner can receive and investigate complaints (refusal of access, unreasonable fees, time delays, and so on.) The provision allows complaints "in respect of any other matter relating to requesting or obtaining access to records under this Act." It can be argued that the Commissioner has jurisdiction (and may be required) to deal with a complaint from a third party concerning an access request that has been made for information where disclosure may affect that third party in some way.

It is difficult to oppose such a concept in principle since the Information Commissioner may, when handling a complaint from a requestor, contact a third party and mediate the dispute. Why should this not also work the other way around? Yet the general requirement that investigations be conducted in private appears to prohibit the Commissioner from contacting the requestor where a complaint has been filed by the third party. The concept is not addressed in the legislation.

Furthermore, the Commissioner is of the view that a conflict of interest may arise if a complaint from a third party is accepted as it would then become impossible to accept a complaint from the requestor who may have asked for the records in the first place.

Federal Court Review

Court Cases Commenced by the Information Commissioner

Since the inception of the *Access to Information Act*, the Commissioner has taken only a few cases before the Federal Court and has not intervened in cases commenced by other parties. Critics have suggested that the Information Commissioner should take a more active role.

The Act requires that in every case where the government has refused to disclose a requested record, or part of a record, the Information Commissioner must inform the complainant of his or her right to judicial review by the Federal Court. This information is provided whether or not the Commissioner considers the complaint to be justifiable.

Each time the Commissioner has recommended that the government disclose a record, or part of a record, and the matter has not been resolved, the Information Commissioner has told the complainant that with his or her consent, she would be prepared to file an application for a judicial review by the Federal Court. The Commissioner is also prepared to intervene in any case where our office's specialized knowledge of the Act or our ability to review the disputed records would be of assistance to the Court. This offer includes cases where a complaint has been dismissed by the Commissioner but an important point of law has been raised. The Commissioner considers it within her mandate to bring before the Federal Court a case where an issue of statutory interpretation of the Act is involved.

Three cases were initiated by the Information Commissioner during this reporting period.

Information Commissioner v. Chairman of the Canada Radio-Television and Telecommunications Commission (Federal Court No. T-707-85, Filed April 10, 1985) Application dismissed February 28, 1986

This was an application under paragraph 42(1)(a) of the Act. The dispute in this case was over the use of paragraph 21(1)(b) to exempt minutes of any meetings of the Executive Committee of the CRTC which led to the published final decision CRTC 84-214. Despite a recommendation for disclosure, subject to any other appropriate exemptions under the Act, the CRTC would not disclose any portion of the requested record. With the consent of the complainant on April 10, 1985, the Commissioner filed an application for judicial review by the Federal Court.

The case was heard on September 12, 1985. Judgement was pronounced on February 28th and the application by the Information Commissioner was dismissed with costs. No appeal was taken from this order.

Mr. Justice Jerome held that the minutes of the executive committee meetings fell within the exemption set out in paragraph 21(1)(b) and that there was no ambiguity in its language.

As well, he found that the exception in paragraph 21(2)(a) requiring disclosure of records containing an account of, or statement or reasons for, a decision made in the exercise of a discretionary power did not apply to preparatory notes or communications, but only to final Reasons for

Decision by the CRTC. He also held that there was no difference between the French and English versions of Section 49.

The Court then held that once it determined a record to fall within the class of records referred to in subsection 21(1) the applicant's right to disclosure becomes subject to the head of the government institution's discretion to disclose it. Furthermore, Mr. Justice Jerome held, the Federal Court, in such circumstances, will not review the exercise of discretion by the head of a government institution once it is determined that the record or file falls within the class of records exempted from disclosure.

**Information Commissioner v.
Minister of Employment and Immigration (Federal Court No. T-2606-85, Filed December 2, 1985)**

An individual had requested a copy of portions of the Canada Employment and Immigration Commission's "Immigration Manual IC (Immigration Classified)". After three months he was informed by CEIC that certain words, phrases and in some instances paragraphs would not be disclosed by virtue of subsection 15(1) [disclosure injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada, or the detection, prevention or suppression of subversive or hostile activities . . .] and paragraph 16(2)(a) [information that could facilitate the commission of an offence, including information on criminal methods or techniques]. A complaint was filed with our office but the investigator, despite repeated attempts, was unable

to obtain answers to questions about the class of information exempted or the injury foreseen by release. As a consequence, a formal recommendation for disclosure of the exempted portions of requested records was made to the Minister.

The Minister's response shed no light on the exemptions but made it clear that disclosure would not be made. As a result, the Information Commissioner, with the consent of the complainant, applied for judicial review of the matter by the Federal Court.

As of March 31, 1986, pending completion of direct discussions between the complainant and the department, the case had not been set down for hearing.

**Information Commissioner v.
Minister of Fisheries and Oceans (Federal Court No. T-2687-85, Filed December 11, 1985)**

The complainant had originally asked for copies of all applications requesting permission under the Seal Protection Regulations to gain access to the seal hunts from 1975 to 1983. The Department of Fisheries and Oceans refused to disclose any of the requested records, citing subsection 19(1) of the Act which prohibits the disclosure of personal information.

A complaint was filed with our office and we agreed that the department was required to refuse disclosure of applications where permits were not granted. However, in those cases where permits were ultimately granted we believed that the applications were not protected from disclosure, since the definition of "personal information" for the purposes of subsection 19(1) of the Act does not include . . .

"information relating to any discretionary benefit of a financial nature including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit."

The department's position was that seal hunt visitor's permits are not discretionary benefits of a financial nature and therefore remain protected from disclosure under the Act.

Our office felt that the addition of the words "including the granting of a licence or permit" was intended to bring information regarding licences or permits within the rule and require disclosure of them regardless whether the licence or permit is itself considered a discretionary benefit of a financial nature. In fact, if the provision were intended to apply only to licences or permits which constitute discretionary benefits of a financial nature, there would be no need to mention licences or permits at all.

The Commissioner's Office also felt it arguable that the visitor's permits are benefits of a financial nature since they would be worth money to, or could assist in the generation of income by, those receiving them.

The department objected to both arguments, and reiterated its refusal to disclose.

With the consent of the complainant, an application was made to the Federal Court for judicial review. As of March 31, 1986, no hearing date had been set.

Third Party Actions to Block Disclosure

Under the *Access to Information Act* the Information Commissioner is given special status as a potential intervenant in any court application commenced by a person who has been refused access to a record or by a third party seeking to prevent disclosure of a record. Under paragraph 42(1)(c) the Information Commissioner may, with leave of the Court, appear as a party.

However, no request has yet been made by a litigant for the Information Commissioner to become a party to court proceedings. The reasons are probably twofold. First, there is no provision in the Act which requires anyone to advise the Commissioner of Court proceedings and this may cause non-government parties to conclude that the Information Commissioner's involvement is inappropriate or not normal. Second, non-government parties initiating Federal Court proceedings in almost all instances have a lawyer representing them or are themselves knowledgeable about the Act and may feel that they have no need to involve the Information Commissioner.

The Information Commissioner's Office has been reluctant to intervene where legal counsel has been retained by both sides to a dispute. Yet developments in the *Piller Sausages* and related cases have caused us to wonder whether we ought to take a more active interventionist role, particularly where third parties are seeking to enjoin the government from disclosure of records and the government institution is in the position of defending a decision to disclose records where the propriety of disclosure initially was in doubt.

**Piller Sausages and Delicatessens Inc. v. The Minister of Agriculture and Information Commissioner
(Federal Court No. T-1024-85, Filed May 10, 1985)**

This case is one of 13 applications filed with the Federal Court pursuant to section 44 of the *Access to Information Act* for an order prohibiting the disclosure of meat-packing inspection reports.

The dispute arose when a journalist complained that the Department of Agriculture refused to disclose copies of meat-packing inspection reports on the grounds of paragraph 20(1)(c) of the Act because disclosure could result in material financial loss or gain or prejudice the competitive position of a third party of the Act.

The Information Commissioner's investigation tentatively concluded that the public health interest in disclosure clearly outweighed in importance any injury which might result to the third party companies involved. She contacted these third parties as required under the Act to give notice of her intended recommendations and invited them to make representations about disclosure.

A number of companies responded but failed to persuade the Information Commissioner that the inspection reports should be withheld. A recommendation in favour of disclosure was accepted by the Minister of Agriculture. Subsequently the third parties were advised of the government's intention to disclose and informed of their rights to apply to the

Court for an order prohibiting disclosure. The *Piller* case is the first of 13 related cases which were filed with the Federal Court between May 10 and July 30, 1985. The Information Commissioner is now considering whether to apply to intervene in any of these cases.

Relationship to the Privacy Act

Since both the *Access to Information Act* and the *Privacy Act* create parallel rights of access to government records, subject to generally parallel exemptive provisions, problems and interpretations of one Act may have implications for the other. For example, precisely the same under each Act are the ability of provincial governments to bar disclosure of records provided to the federal government, the treatment of records classified as Cabinet confidences, and the jurisdiction of the Federal Court to review decisions to exempt records from disclosure.

In addition to these shared features, there is a complex inter-relationship between the two statutes concerning personal information, which is defined in the *Privacy Act* and, for the purposes of the *Access to Information Act*, is generally exempt from disclosure.

The *Privacy Act* is more than a code for access to and use of personal information. The *Privacy Act* restricts the use of personal information within the federal government and prohibits its disclosure except under prescribed circumstances. As a consequence, every time a complaint is filed with the Information Commissioner about the non-disclosure of a record, or a portion of a record, on the ground that it contains personal information, there is tension between the right of the requestor under the *Access to Information Act* and the right of the individual under the *Privacy Act* to have his or her privacy protected.

Subsection 19(1) of the *Access to Information Act*, which prohibits the disclosure of personal information, is one of the most frequently invoked exemptive grounds and also one of the most frequent subjects of complaints to our office.

There are, of course, cases where it is the personal information which the applicant wishes to obtain but which the department, under the *Privacy Act* (and section 19 of the *Access to Information Act*) is required to protect from disclosure. Almost all of the disputes about the disclosure of personal information have arisen from the definition of that term in section 3 of the *Privacy Act*.

"Personal information" means information about an identifiable individual that is recorded in any form..."

This open-ended definition sets out nine items of information which are included within its meaning. It also sets out eight categories of information which, for the purposes of the *Access to Information Act*, are not included within the meaning. Determining what is personal information is relatively easy compared to the task of determining what, specifically, is not subject to protection from disclosure.

In several cases requestors under the Act have asked the Bank of Canada for details of unredeemed Canada Savings Bonds or unclaimed bank accounts. Information about an individual who has been dead for more than 20 years is not protected from disclosure as personal information but the Information Commissioner found that it would be unreasonable to expect the government to

look into every account to determine whether the subject individual has been dead for more than 20 years. On the other hand, in another case dealing with records involving individuals who would have been in their 30's about 65 years ago, the Information Commissioner rejected the suggestion that the records could be withheld as personal information unless the government could show that the individuals were alive 20 years ago.

Under the *Access to Information Act*, records are not subject to the personal information exemption when they relate to a discretionary benefit of a financial nature conferred on an individual. In some cases, our office has had to examine the granting procedure in detail to determine whether it is discretionary or an entitlement under a statute. In other cases it has been necessary to determine whether there really was a benefit conferred — that is, something which the recipient did not pay for or which was received at substantially less than its fair market value as a result of the exercise of some discretion.

To complicate matters, the *Access to Information Act* permits the disclosure of personal information where, in the opinion of the head of the government institution, the public interest in disclosure clearly outweighs any invasion of privacy that could result from disclosure. While the Information Commissioner may, by way of a recommendation, convince the government institution that disclosure of certain personal information is warranted, the head of the institution is required to notify the Privacy Commissioner about the disclosure (in advance, if practicable) and the Privacy Commissioner may, if he deems it appropriate, notify the individual who is the subject of the record.

Reading Rooms and Manuals

Section 71 of the *Access to Information Act* states that by July 1, 1985, each government institution must provide a reading room at its headquarters (and at its regional offices where practicable) where the public may inspect manuals used to carry out those programs or activities which affect the public.

Making manuals available is intended to open up the institution's internal operations and the mechanics of its decision-making to public scrutiny.

These manuals, along with an Access Register describing all manuals used by employees of each government institution [5(1)(c) of the Act], should enable a citizen to clearly identify the records he wishes to request under the *Access to Information Act*.

This office has conducted a study of whether 51 of the 136 departments and agencies subject to the Act have met this requirement.

The study found that all but one government agency (the Canadian Security Intelligence Service) reported having proper facilities, namely, a reading room, library, meeting room or board rooms. One agency reported using its Chairman's office. The Security Service reported using the reading room of its Ministry.

The vast majority of those government institutions also have manuals used in carrying out programs or activities affecting the public.

Important exceptions are the National Museums of Canada, the Canadian Security Intelligence Service, the Canada Labour Relations Board and the Canada Council.

The Department of Science and Technology and the Canadian Radio-television and Telecommunications Commission state that they have no manuals as defined by section 71 of the Act.

The Privy Council Office reading room is reportedly used on a regular basis, but the reading rooms of other government institutions in this study are used rarely, if ever.

Consultation or requests for manuals were scarce, which may mean that the Canadian public is unaware of this provision of the Act. This office has received only one complaint dealing with manuals and facilities where the public may inspect them.

Public Appearances

The Information Commissioner accepts invitations to speak whenever possible and welcomes the opportunity to address students, professionals, journalists and public officials at home and abroad to explain her unique mandate.

Between April 1, 1985, and March 31, 1986, the Information Commissioner addressed audiences in Canada, New Zealand, and Washington, San Francisco and Virginia in the U.S.A.

During her talks, the Commissioner explains the history of the legislation and how it works. Whenever feasible, she invites the audience to participate in role-playing.

One of the international events the Commissioner addressed during 1985 was a Communications Symposium in San Francisco, California, called WORLD-COM '85. She spoke to government and business leaders from 24 countries who had met to discuss new market needs and policies in the computer field in Europe and North America.

She also joined a panel on international perspectives on Freedom of Information for the American Society of Access Professionals in Washington, D.C.

As a member of the International Ombudsman Consultative Committee, the Commissioner attended a meeting held by the Australian Ombudsman to plan the 1988 international meeting of ombudsmen.

At the same time, she accepted an invitation to speak to audiences during a week's stay in Wellington, New Zealand, as a guest of the Deputy Prime Minister, Geoffrey Palmer.

She addressed the Wellington District Law Society, the New Zealand Commerce Commission, the Victoria University Law Faculty and the New Zealand Law Society. She also spoke with the Secretary of Justice, S.J. Callahan, and his officials, the Deputy Prime Minister and the chairman and commissioners of the State Services Commission, as well as addressing the New Zealand Information Authority and the New Zealand Ombudsmen. The Commissioner ended her visit by speaking in French to students in two classes of an all girls' school.

The Transnational Data Report invited Ms. Hansen to speak to representatives of more than 30 countries on the subject of legal and social issues in data access, at a conference held in Williamsburg, Virginia.

In Canada, she addressed the Manitoba Legal Aid Society and the Special Libraries Association, in Winnipeg and in Montreal. She spoke to a chapter of Investigative Journalists in Calgary and at their national meeting in Vancouver.

In January 1986, she gave five lectures during a three-day visit to Victoria University.

In Ottawa, the Commissioner spoke to the Association of Professional Social Workers, the Community Information Centre and employees of Systemhouse, a software company. She also addressed several groups of legislative and research assistants to Members of Parliament who wished to better understand the Act. She spoke as well to the Canadian Association for Information Science, the Forum for Young Canadians and at a seminar for Career Advancement for Women in the Public Service.

The Commissioner has been a regular lecturer for the Career Assignment Program (CAP) and for the Centre for Executive Development senior managers' course in Touraine, Quebec. She has also been a guest lecturer at Carleton University in Ottawa.

She has spoken to the Access Coordinators' Association and at the Justice Conference on Access and Privacy.

One of the Assistant Commissioners, Bruce Mann, has also given speeches on the Act. He addressed the Association of Research Libraries at its annual meeting in Washington. As well, he spoke at the Insight Educational Services Conference on Access to Information in Toronto.

Assistant Commissioner George Hamelin spoke on access to information at the Senior Managers' course at the Centre for Executive Development in Touraine, Québec.

Office Operations

The Offices of the Information and Privacy Commissioners together constitute a department for the purposes of the *Financial Administration Act*, and each Commissioner has the status of a deputy head under the *Public Service Employment Act*. Having to meet the obligations and responsibilities of a full department places a considerable burden on the office and its limited resources.

The Information Commissioner's Office comprises the Commissioner, two Assistant Commissioners, legal counsel, the director of Complaint Investigations, eight investigators (two of whom joined the staff on October 15, 1985) and an administrative assistant to the Commissioner. There are five support staff.

Corporate Management, including financial, personnel and communications officers, is shared with the Office of the Privacy Commissioner.

To better serve all regions of Canada, the telephone switchboard is open and at least one investigator is available from 7:30 a.m. to 6:00 p.m. (Ottawa time). The toll-free number is 1-800-267-0441.

Technology

Our office is equipped with personal computers used at all levels of the organization for managing complaints and compiling and reporting statistics. In the near future we foresee providing the public with computer disks containing summaries of completed complaint investigations.

Publications

During this fiscal year, the Annual Report and a brochure on the Information Commissioner were distributed from the Office of the Information Commissioner to a variety of points across Canada.

The 1984-85 Annual Report was distributed in July to 1,586 offices on a mailing list which includes Parliamentarians, deputy ministers, heads of institutions, access to information coordinators, ombudsmen, academics, public interest groups, civil liberties groups, business associations, and interested individuals.

Of the 7,000 printed copies of the Annual Report, 6,600 were distributed by the end of the fiscal year. The six-page bilingual brochure describes the *Access to Information Act*, gives some tips on how to use it, when and how individuals may complain, the powers of the Information Commissioner, how investigations are conducted and their possible results.

Called "The Information Commissioner", the brochure had an initial printing of 25,000, with another printing of 80,000 in September. Of the total, 83,000 were distributed by March 31, 1986.

On May 31, 10 copies of the brochure were mailed to each of the 98 departmental access coordinators, followed by 10 to each of the Members of Parliament. Copies were also sent to the provincial and federal Human Rights Commissions, as well as to the nine provincial ombudsmen. Sixteen Members of Parliament requested a further 10 to 1,000 copies of the brochure.

A mailing in November, including 10 copies of the brochure and one of the annual report in each package, went to 2,000 offices on a Treasury Board mailing list that includes public, university and college libraries, isolated nursing stations, native band council offices and all penitentiaries. Ten copies of the brochure were also sent to other organizations on the Treasury Board mailing list.

Information Services handled 550 requests for publications between April 1, 1985, and March 31, 1986. Following the November mailing, the office received 63 requests, of which 75 per cent were from Canada Employment Centres across Canada requesting from 25 to 1,000 brochures.

Corporate Management Branch

Corporate Management provides both the Information and Privacy Commissioners with financial, personnel, administrative and public affairs services.

Personnel

There were 51 person years used against the 57 allocated in the 1985-86 main estimates. Two senior employees retired under the Early Retirement Incentive Program and 11 staffing activities were conducted in 1985-86.

Finance

The 1985/86 budget for the entire organization was \$3,363,000, which was reduced by \$25,200 as a result of government restraint programs. Included in the budget was \$1,128,845 for Corporate Management \$1,320,335 for the Privacy Commissioner and \$913,820 for the Information Commissioner. However, an additional \$104,106 was spent by the Information Commissioner to cover salaries of the Assistant Information Commissioners and their support staff and the preparation of the Special Annual Report.

Expenditures

The following are the Offices' expenditures for the period April 1, 1985, to March 31, 1986.

	Information	Privacy	Administration	Total
Salaries	\$ 715,153	\$ 844,136	\$ 650,087	\$2,209,376
Employee benefit plan contributions	95,845	133,323	95,843	324,988
Transportation and communications	26,557	40,253	79,942	146,752
Information	75,179	36,439	8,646	120,264
Professional and special services	104,951	32,964	127,696	265,611
Rentals	—	—	11,567	11,567
Purchased repair and maintenance	—	—	4,633	4,633
Utilities, material and supplies	—	—	33,586	33,586
Construction and equipment acquisition	—	—	65,001	65,001
All other	266	695	185	1,146
Total	\$1,017,926	\$1,087,810	\$1,077,188	\$3,182,924

Public Affairs

The unit provided writing/editing, media, publication production and distribution services for the two Commissioners. During the year the unit assisted in the production of and distributed two annual reports, a special report, and material for the Commissioners' submissions to the Legal and Justice Affairs Committee which will be reviewing the administration of the *Privacy Act* and the *Access to Information Act*. Public Affairs also distributed copies of information material to approximately 7,000 locations where individuals can consult the index and register and pick up forms to apply under both Acts.

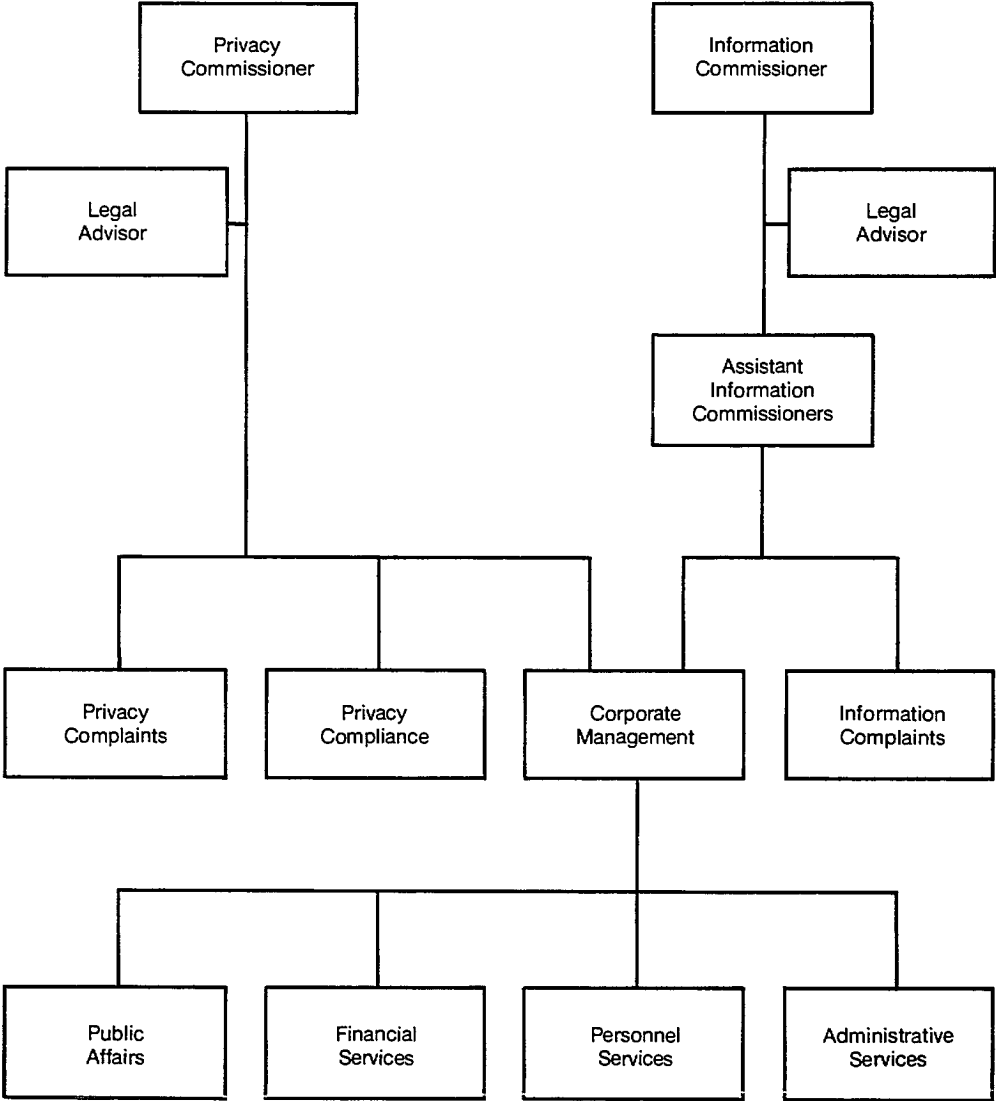
Office Automation

The office now has 19 personal computers providing statistics, record keeping, data manipulation, word processing and access to outside legal and research data banks. Special networking features have been built in to allow managers access to facilitate complaint investigations.

Appendix I - Organization Chart



Offices of the
Information and Privacy
Commissioners of Canada



Appendix II - Index

BY CATEGORY OF COMPLAINT

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		364	57
		376	61
		381	62
		537	86
		543	88
	BANK OF CANADA	463	77
		484	78
	CANADA COUNCIL	429	69
	CANADIAN COMMERCIAL CORPORATION	346	53
	CANADA MORTGAGE AND HOUSING CORPORATION (CMHC)	564	89
	CANADIAN INTERNATIONAL DEVELOPMENT AGENCY (CIDA)	309	49
	CANADIAN RADIO- TELEVISION AND TELE- COMMUNICATIONS COMMISSION (CRTC)	357	55
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		178	30
		375	60
	CANADIAN SECURITY INTELLIGENCE SERVICE	368	59
		369	60
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INVESTMENT CANADA	347 438 446	54 70 70
JUSTICE	269(2/2) 315 457	41 50 76

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NATIONAL DEFENCE	200	32
	221	35
	227	35
	263	39
	298	47
	305	49
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	401	65
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Customs and Excise	415	67
Customs and Excise	447	71
Taxation	448	71
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Customs and Excise	563	89

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		467	78
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		522	86
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		556	89
		579	90
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		294(2/3)	92
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	NATIONAL DEFENCE	332(1/2)	93
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	TRANSPORT CANADA	211(4/4)	91
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		303	92
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		314	98

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CANADIAN COMMERCIAL CORPORATION	301	97
CIDA	265	95
CMHC	525	114
CRTC	363	101
CSIS	482 513	108 110
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	ENVIRONMENT CANADA	518 576	359 161
	EXTERNAL AFFAIRS	261(1/2)	148
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		285(1/4)	149
		285(2/4)	149
		285(3/4)	150
		285(4/4)	150
		287(1/3)	150
		287(2/3)	151
		287(3/3)	151
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		566	143
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	CANADA DEPOSIT INSURANCE CORPORATION	394	130
	CONSUMER AND CORPORATE AFFAIRS	445	135
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	CORRECTIONAL SERVICES	336	126
		559	143
	CSIS	300	122
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		326	124
		327	124
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		279	121
		280	121
		422	134
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	370	120
	383	130
	413	133
	440	134
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	398	132
	539	141
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	462	136
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Taxation	296(1/2)	122
Taxation	359(1/3)	128
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SUPPLY AND SERVICES	405	132
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BY DEPARTMENT

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	376	Refusal	61
	381	Refusal	62
	382	Delay	129
	419	Fees	157
	523	Delay	139
	531	Miscellaneous	169
	537	Refusal	86
	543	Refusal	88
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	379	Refusal	61
	404	Delay	132
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	484	Refusal	78
CANADA COUNCIL	429	Refusal	69
CANADIAN COMMERCIAL CORPORATION	301	Refusal	97
	346	Refusal	53
CANADA DEPOSIT INSURANCE CORPORATION	329	Refusal	99
	394	Delay	130
CMHC	525	Refusal	114
	564	Refusal	89
CIDA	265	Refusal	95
	309	Refusal	49
CRTC	357	Refusal	55
	363	Refusal	101

COMMUNICATIONS	089	Refusal	21
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	375	Refusal	60
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	557(2/2)	Miscellaneous	169
CORRECTIONAL SERVICE CANADA	288	Refusal	96
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	559	Delay	143
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	368	Refusal	59
	369	Refusal	60
	482	Refusal	108
	513	Refusal	110
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	321(2/2)	Fees	152
	326	Delay	124
	327	Delay	124
	328(1/2)	Delay	125
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	391	Refusal	64
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	278(2/3)	Refusal	44
	278(3/3)	Refusal	92
	279	Delay	121
	280	Delay	121
	283	Refusal	96
	284	Fees	149
	285(1/4)	Fees	149
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	285(3/4)	Fees	150
	285(4/4)	Fees	150
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	340(2/2)	Delay	126
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	491	Refusal	80
	501	Refusal	82
	528	Fees	160
	532	Refusal	114
	535	Refusal	114
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	235	Refusal	36
	240	Delay	117
	258(1/2)	Delay	118
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	273	Refusal	41
	275	Delay	120
	370	Delay	128
	383	Delay	130
	384	Refusal	63
	413	Delay	133
	416	Refusal	67
	423	Refusal	69
	440	Delay	134
	515(1/2)	Delay	138
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	353	Delay	127
	398	Delay	132
	457	Refusal	76
	468	Refusal	107
	539	Delay	141
LABOUR CANADA	385	Refusal	63
NATIONAL DEFENCE	200	Refusal	32
	221	Refusal	35
	227	Refusal	35
	261(2/2)	Fees	148
	263	Refusal	39
	281	Delay	121
	298	Refusal	47
	305	Refusal	49
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