Annual Report
Information Commissioner
1989-90

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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."

Subsection 2(1)
Access to Information Act

The Honourable Guy Charbonneau
The Speaker
The Senate
Ottawa, Ontario

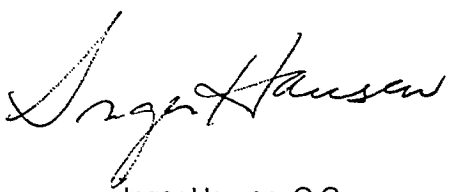
May 1990

Dear Mr. Charbonneau:

I have the honour to submit to Parliament my annual report.

This report covers the period from April 1, 1989, until March 31, 1990.

Yours sincerely,



Inger Hansen, Q.C.

The Honourable John A. Fraser, P.C., Q.C., M.P.
The Speaker
The House of Commons
Ottawa, Ontario

May 1990

Dear Mr. Fraser:

I have the honour to submit to Parliament my annual report.

This report covers the period from April 1, 1989 until March 31, 1990.

Yours sincerely,

Inger Hansen, Q.C.

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THE SEVENTH ANNUAL REPORT - INTRODUCTION

This annual report covers April 1, 1989, to March 31, 1990, and concludes the seven-year term of Canada's first Information Commissioner.

This report recounts not only the activities of our office for 1989-90 but provides a look at what has happened since operations began. It includes a summary statement of our experience with the Act, a synopsis entitled "Seven Years' Experience," a description of some complaint investigations completed during 1989-90 and the usual statistical information in "Complaints". There is a section, "Accessibility," which describes our relations with the public, followed by our report on proceedings in the Federal Court. Finally there is the report prepared by Corporate Management which provides services for both the Privacy Commissioner's office and our own.

References used throughout this report need some identifying explanation. They are: The Standing Committee—this refers to the Standing Committee on Justice and Solicitor General, which was appointed pursuant to Section 75 of the *Access to Information Act; Open and Shut: Enhancing the Right to Know and the Right to Privacy,* is the report of the Standing Committee's review of the *Access to Information Act* and the *Privacy Act; The Steps Ahead* refers to *Access* and *Privacy: The Steps Ahead,* Canada, 1987, which was published by the Department of Justice in response to *Open and Shut.*

SEVEN YEARS OF SEASONING

The Commissioner: What was said

*The **Access to Information Act** provides that any Canadian who has been denied access to a document he has requested under the Act, who has failed to obtain the requested document within the prescribed time or who feels the fees charged are excessive, may lodge a complaint with the Information Commissioner...I believe that this will happen in most cases and that no longer being required to institute an action at law will save Canadians both time and money. It will always be possible to appeal to the Federal Court in those cases where the problem has not been solved.*

Of course the Information Commissioner is an officer reporting directly to Parliament. Being entirely free of the executive, the Commissioner will be at liberty to recommend release of government information, criticize the actions of the executive taken under the Act, table her recommendations in Parliament and take government institutions to court herself to obtain the release of information.

The Honourable Mark R. MacGuigan, Q.C., P.C., M.P.
May 27, 1983
Minister of Justice
Addressing the House of Commons moving
the appointment of the Information Commissioner

After seven years as Information Commissioner, I remain convinced that:

- The political will in support of freedom of information could be stronger.
- The bureaucratic resistance to freedom of information could be weaker.
- The tendency to withhold government information should give way to attitudes favouring its disclosure.
- Coordinators need sufficient resources and greater deputy minister support to fulfill their difficult task and to properly advise their institutions.
- Some institutions lack the resources to comply adequately with the Act; some need to streamline their access requests procedures.
- Delays and reluctance to sever are the biggest obstacles to compliance with the Act.
- Delays and extensions of time for release should not be used to temporarily avoid disclosure.
- To allow institutions to deny access requests on the ground that they are abusive, could lead to abuse of the right to refuse access and could further delay access requests responses.

- The public needs more information about access rights. More resources and adequate funding should be allocated to public information programs to be carried out by the Commissioner and government institutions.

- Our mediation process requires time and patience on the part of those involved; but mediated results may have a greater impact on attitudes than formal findings.

- The recommendations of the Parliamentary Committee have not received the support warranted. There should be further implementation.

Dilemmas, doubts and other difficulties

Difficulty in securing compliance with the Act can be partly attributed to the existence of diverse interests pulling in different directions. For example:

- Cabinet ministers preserve the secrecy of deliberations and of decisions yet to be announced. However, by not disclosing background information the opportunity to demonstrate that compromises are often necessary may be lost.

- A reluctance to disclose records that may create misleading impressions is understandable. However, suitable explanations could enhance the public understanding of Government decisions.

- Some public servants are uneasy because they believe records disclosure may constitute a violation of their oaths of secrecy. Further, they may fear such disclosure could embarrass their minister and they see their first task as protecting the minister. They may also fear premature announcement or discussion of new programs or prejudice to programs. Some may fear disclosure of reports prepared in haste and under stressful conditions, or fear the publication of conclusions, advice or opinions that no longer reflect official views.

- Some ministers and public servants believe that policy advice will be less frank and forthcoming as the result of access to information.

- Users of the Act, such as journalists, academics, special interest groups, and business people who may all require timely disclosure become frustrated and cynical over "censored reports," endless delays and reputed high costs. Historians who before 1982 were often trusted to leaf through unreviewed records have lost such informal means of access. Future historians may lose interesting, subjective information because the inevitable effect of the Act is that many records become "sterile" or "access proof."

- Our office must balance competing rights and interests, respect all the players, treat them with dignity, take their concerns seriously, provide fair procedures and, in the end, reach equitable solutions within the law. It is impossible to make all the players happy all of the time...

Where do we go from here?

A free, mature society should have sufficient trust in its people to say: there is very little information that cannot be shared with the public but if a greater public interest demands that certain information remain secret, reasons and a right of independent review of decisions to withhold will be provided. Canada made such a statement when it enacted the *Access to Information Act* in 1982.

As it stands, the Act creates a right of access to records subject to limited and specific exemptions. It provides a two-stage review process: first to an independent Information Commissioner and second, in respect of refusal of access, to the Federal Court of Canada. The Canadian Act compares favourably with similar laws in other jurisdictions.

There is, as always, room for improvements. However, instead of condemning the Act as they once did, members of the public now seek to learn how to use it effectively and they make complex, less generalized complaints. Besides, public servants are now more interested in increasing their understanding of the Act and many accept it as a social good and a fundamental democratic right.

One improvement which would be a signal to the Canadian public that the Government does take freedom of information seriously would be incorporation into the *Canadian Charter of Rights and Freedoms* of the public's right to know. Sweden has incorporated access to information in its Constitution, the Republic of India is planning to do so, Canada might wish to do the same.

In the foreword to *The Charter of Rights and Freedoms: A Guide for Canadians,* the Right Honourable Brian Mulroney, Prime Minister of Canada, noted in 1987 that the "...Charter does not provide an exhaustive list of all of the rights and freedoms enjoyed by Canadians. Others, such as federal access to information rights, are to be found in statute law." Commenting on the values expressed in the Charter, the Prime Minister said that they have "served over the years as the basis for an open and tolerant society...."

Fundamental human rights now entrenched in the *Canadian Charter of Rights and Freedoms* were originally embodied in a statute, the *Canadian Bill of Rights.* Those rights included the right to freedom of speech and of the press. Freedom of expression, including freedom of the press and other media of communication, is now protected by the Charter with other fundamental rights and freedoms. Is it not reasonable to place the right to know (subject to express and limited exception) in the Charter? Does freedom of information not deserve a place alongside the right to freedom of expression and the right to vote in elections? Is freedom of information not equal in importance to freedom of expression? Is freedom of information not essential to the full enjoyment of our democratic rights?

Such an addition to the Charter would be a major step forward.

SEVEN YEARS' EXPERIENCE

Why an annual report? The short answer is that the *Access to Information Act* requires the Information Commissioner to report to Parliament every year. It is one of the mechanisms by which the office accounts for the discharge of its responsibilities and its expenditure of public funds.

But there are other purposes served by our annual reports. Those who have complained to us, and the public as well, should be able to read about what we have done or tried to do, where we have succeeded and where we have failed, and, very importantly, how we think access to information improvements can be achieved in the future. As I end seven years in office, I want to review the major issues that have arisen — for the most part they are reflected in previous reports — and show how our concerns have been either resolved or remain.

Office's Backlog of Complaints

The first Annual Report covered the period from July 1, 1983, to March 31, 1984. Even in that initial period, problems surfaced that were to continue and, in some cases, intensify over the years. The report spoke of about 50 cases still under investigation, but optimistically I wrote "I intend to have (the backlog) cleared up by the end of 1984." Little did I realize that a steady, sometimes dramatic, increase in complaints would preserve a backlog as the years passed, in spite of our efforts to reduce it.

The 1985-86 Annual Report repeated the material contained in our brief to the Standing Committee about the workload of the office. After providing statistics as to the number of investigators and the dates they had been appointed, the report showed that the caseload of the investigators was extremely high, considering the size of the records that had to be reviewed. Three examples were given, including one in which the files to be reviewed contained 43 volumes, each about four centimetres thick, in each of two institutions. We calculated that a workload of 15 to 20 cases would ensure a two to three month turnaround time. Clearly this could not be delivered when caseloads reached about 40 files, and the investigators spent much time managing, organizing and trying to keep files up-to-date.

Consideration of the various interests of all parties affected and the mechanics of preparing and distributing the required notices to third parties and receiving their representations also created a heavy demand on the office.

Further we found that a heavy caseload prevented investigators from following through with those departments that delayed in responding to our questions. We said this created "an inefficient cycle of non-productive contacts in which investigators and departmental staff explain to each other why nothing has happened."

In the 1985-86 Annual Report we said that it was reasonable for the public to expect an investigation to be completed in two or three months, and acknowledged that we had been able to achieve that in only about half of the cases contained in the report. We doubted that the problem could be solved simply by adding more investigators, support staff, and assistant commissioners, but we said that we were striving to resolve the problems and reduce delays to acceptable levels.

The Standing Committee contrasted the fact that a complaint under the Act must be lodged within a year after receipt of the access request, yet no limit was imposed upon the Commissioner to complete an investigation. As the Standing Committee noted, an applicant could not seek judicial review of a denial of access until the investigation was completed.

The Standing Committee said delays in our office were possibly caused initially by a shortage of personnel, while the failure of various government institutions to grasp the importance of severance was identified as accounting for a "significant volume" of delays. Another major cause of delay was considered to be the notification of third parties and the procedures involved to ensure fairness to them.

The Standing Committee hoped that there would be some reduction in delays as the Act became better understood, and thought that the recommendations it made about notifying third parties should streamline procedures in our office. It mentioned that the Commissioner had given evidence before the Standing Committee that while the average time to complete an investigation was four or five months, she hoped to reduce it to about two or three months. Although aware that imposing a specific time limitation on investigations might result in a less thorough investigation, the Standing Committee recommended that there be a limit of 60 days. If a report of the investigation was not provided within that period the Commissioner would be required to allow direct resort to judicial review. She would do this by a certificate which would simply state the investigation could not be completed within the 60 day period. The applicant could then either go to court or wait for completion of the investigation.

The 1986-87 Annual Report revealed that the backlog of 312 files under investigation would, by itself, take more than a year to complete with the resources available. We, and the complainants, were frustrated by the delays, and we supported the Standing Committee's recommendation about the certificate to be issued after 60 days. However, we were concerned that a complainant who chose to go to Court before the investigation was completed would not be in possession of all the facts relevant to the case.

The problem did not disappear. One person has made more than 2,500 complaints against the Department of National Revenue during the last couple of years and our concerns about delays remain. In the 1988-89 report we said that the time taken to achieve results was a major problem. This reporting year we completed the investigation of 3,011 complaints but have a backlog of 653 files.

Delays in Release of Records by Government Institutions

Almost from the day we began to operate it was evident that the release of information was not speedy enough to meet the needs of journalists. In the 1983-84 Annual Report we recognized that the procedures under the Act did not enable the media to meet its deadlines. However we noted that, in some instances, previous complaints had set precedents for institutions to release information that was withheld before. This, we thought, might result in a more open attitude toward subsequent requests and thus accelerate the procedure.

The cautious optimism of the 1983-84 Annual Report gave way to a realization that delays continued to be the subject of many complaints lodged under the Act. The 1984-85 Annual Report said that some users saw the delays as intentional. We wondered if the remedy for habitual delays by specific departments might lie in application to the Federal Court and "the resulting publicity." Yet, we feared that court action might prove ineffective and suggested an educational program and sufficient staff so that institutions could do the work in a reasonable time.

In early 1986 a special report was made to Parliament dealing with the period April-December, 1985. This report was in anticipation of the comprehensive review of the Act that was to be undertaken by the Standing Committee on Justice and Solicitor General. In that report we said that many delays were unacceptable to complainants and to us. We noted that among the many reasons for the delays were the size of the records to be reviewed, the time taken by departments to react to suggestions from the office and the inability of some departments to handle access requests because of a lack of adequate staff. All of this, we said, was aggravated by a lack of sympathy for the spirit of the Act.

In its report *Open and Shut,* the Standing Committee observed that the problem of inadequate record keeping and inexperienced personnel could no longer justify lengthy delays. The Standing Committee recommended that the Information Commissioner be given the power to waive all access fees if an institution failed to meet the time limits without adequate justification, and that Treasury Board and the Public Service Commission jointly study how compliance with the time limits could be enhanced.

The 1986-87 Annual Report continued to express concerns about delays. We acknowledged that it was difficult for departments to get additional resources to deal with access requests, but noted that delays frequently arose at the senior officials' level. When this happened coordinators said that the records were held up "on someone's desk" and that the coordinators were helpless to speed release.

In late 1986 we began to give priority to complaints of delays, and in 1988 a general complaint about delays was initiated by the Commissioner. The findings of the investigation were set out in detail in the 1988-89 Annual Report. Major causes were identified as:

- lack of sufficient staff in departments,
- the process necessary to get the departmental decision to give or deny access, and
- the need for consultation between government institutions.

Delays to access remains one of the major problems under the Act. Our statistics tell the story.

The number of completed delay and time extension investigations and their percentage of the total complaints are:

1984-85	**1985-86**	**1986-87**
41 27%	62 27%	80 31%
1987-88	**1988-89**	**1989-90**
167 28%	239 38%	2,142 71%

We believe access is useful and meaningful only if provided in a timely fashion. We also consider it improper and unfair for government institutions to delay release of a record simply to avoid disclosure until the last possible moment, in the hope that the information will no longer be noticed or relevant. We are aware of, and consider unfair, the practice of some government institutions of giving priority to access requestors most likely to complain, leaving others to wait even longer. The Act permits extensions for fixed periods of time when "the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution." In addition, extensions may be invoked for fixed periods if consultations are necessary and for indeterminate periods to accommodate third party procedures. No other reasons are valid. The Act provides that access delayed is considered access denied. While we are conscious of resource problems faced by a number of institutions, we cannot dismiss a delay complaint on the grounds of a shortage of government resources.

In the 1984-85 Annual Report we foresaw that we might have to resort to court action to deal with what we considered to be unreasonable delays. When gentle persuasion had little effect we commenced legal action in 1988-89. Counsel were instructed in 13 delay cases, and in all of them the records were released before the matter could be heard by the Court and in some cases the release was almost immediately after the application for review was filed. In other cases, prompt release of the records occurred when officials were subpoenaed to explain the reasons for delays. If used sparingly, compelling public servants to give formal evidence has a dramatic effect and emphasizes those points in the process where improvements ought to be made.

Preparation for court review is costly even when the application is eventually withdrawn. While we have had to continue to make applications for judicial review and to subpoena officials, we are concerned that these formal, costly and time-consuming processes should not become routine.

Three applications, each dealing with similar extensions, are noteworthy. They involved requests for free trade papers. The department invoked 120-day extensions and the Commissioner applied for a review of the length of the extension. However, the department released the records before the application was heard, but not until the extensions had expired. (1987-88 Annual Report, page 95, 1986-87 Annual Report, page 97.)

We are still waiting for the Court to rule whether a department must establish to the Commissioner's satisfaction that there were legitimate reasons for invoking the extensions when the records are released before the hearing of the application.

Third party applications to prevent disclosure of confidential business information present a separate delay problem and are dealt with under the section on third party rights.

Public Education

The first Annual Report voiced a serious concern that the public's understanding of the Act was very limited. This was not, however, the first time I had noted that the Act contained no provision giving the Information Commissioner authority to become involved in public education. During Parliamentary debate over the bill which became the Act, I suggested to the Standing Committee on Justice and Legal Affairs that without an appropriate clause in the Act the necessary education funds could not be made available. At the same time I expressed uncertainty about whether the Information Commissioner was the person to conduct public education, although I was certain that the Commissioner should not be the only person. Later I recognized that third parties might fear that they might not get a fair hearing if the Commissioner was seen to favour access rights beyond the scope of the Act.

The need for public education was described again in the 1984-85 Annual Report and stressed in the 1985-86 Annual Report. It was reiterated in the Special Report for April-December 1985.

The Standing Committee, citing the Special Report, found that Canadians were largely unaware of their rights under the Act, and recommended that the Act mandate that the Information Commissioner, and Treasury Board, foster public understanding of the Act. The Government, in its response to the recommendation of the Standing Committee (contained in the *The Steps Ahead*) undertook to launch a campaign to inform the public, and also to amend the Act to provide "a public education mandate for the Office of the Information Commissioner." There have been no amendments to the Act since the Standing Committee issued its report, but funds have been provided to our office on one occasion to undertake a limited educational program.

Access Coordinators

The 1984-85 Annual Report contained our first reference to access coordinators. It was not to be the last, for their special needs and vital role in coordinating the public delivery of services under the Act proved of major continuing concern. From the outset it was recognized that "If the principles of the *Access to Information Act* are to be accepted and if the users of the Act are to be convinced of the good faith of the Government, it will in large measure be a result of the efforts of the many extremely competent access coordinators." Yet, the 1984-85 period found that already we had some erosion of the authority of the coordinators and a tendency on the part of some of them to become demoralized. We believed that a few had been subject to unjustified criticism, and feared it would appear that standing up for the principles of freedom of information would adversely affect their public service careers.

The Standing Committee said it believed the coordinators must become the primary agents for promoting effective implementation of the Act within each institution. It characterized their current training as apparently deficient, since no regular government-wide training program existed, except for *ad hoc* cooperative efforts of the Administrative Policy Branch of the Treasury Board and the Offices of the Information and Privacy Commissioners. As a result of the Committee's hearings, the Treasury Board in 1986 surveyed the roles and job satisfaction of coordinators. Its report confirmed that coordinators required strong senior management support. The Standing Committee made a number of recommendations. These included that the status and role of the coordinators be explicitly recognized in the Act, that Treasury Board address the problem of ensuring that coordinators, "who should be senior level officials wherever possible," have direct relationships with senior management and that Treasury Board organize standard formal training for coordinators.

We supported the recommendations in the 1986-87 Annual Report and urged that they be given high priority. We discussed the difficulties that coordinators face, pointing out that often they lacked the resources to do their work, and had neither moral nor legal support in their attempts to have departments comply with the Act. We were apprehensive that they would be made scapegoats, thus leaving them torn between what they saw to be their duty and what might be better for their department, their colleagues, and their careers. Also, we thought that departmental legal advisors were tending to advise against release whenever it could not be compelled, contrary to the initial instructions to coordinators that release should take place if the exemption was discretionary and there was no reason for withholding the record.

The Government, in *The Steps Ahead*, agreed that coordinators played a crucial role in the successful implementation of the legislation and undertook to develop a training package for them, enhance their guidance and support, update the requirements and duties of their positions, and emphasize their need for direct access to deputy ministers or other senior officials.

We agreed, but in the 1987-88 Annual Report emphasized that coordinators needed much more. We called for an unequivocal message from the Government that coordinators will not be blamed nor their careers be at risk, when information is released in conformity with the Act and the Government finds the result unpalatable.

The Treasury Board Secretariat published a study on the status and role of coordinators, including a draft description of the role. We applauded this work, and repeated in the 1988-89 Annual Report the most important portion of the role as described in the draft. It stated that the position required thorough knowledge of the legislation, regulations, policy and precedents, and said the coordinator must demonstrate judgment, tact, and good negotiating skills. The position was said to be an independent source of advice to the ministers and deputy ministers.

Satisfactory as we found this to be, we were less pleased by a further paragraph which proposed the coordinator be responsible for "undertaking the primary defence before the Information Commissioner and, when necessary, the Federal Court, of institutional decisions..." We would have much preferred "participated in mediation and negotiation" in lieu of "undertaking the primary defence."

By and large, however, the situation is improving. To quote one of our investigators: "Compared with this time last year, access to information staff have come around. Most of them want to comply but some get blocked from upstairs. Last year they were like management."

As was said earlier, a main reason for delays in some departments was the lack of sufficient staff in coordinators' offices. The 1988-89 Annual Report went into some detail on this aspect, including a reference to the salary levels of some coordinators. During the 1988-89 year there were many changes in coordinators as experienced people moved to better paying positions and lower-ranked positions were either left vacant or filled by inexperienced personnel. However, some departments had added positions to their access staff in recognition of the volume and complexity of the work.

Yet coordinators are frustrated with the difficulties they have in hiring new staff and they speak of a lack of support from their senior management. Our assessment is that there is an additional problem here. Senior public servants who have only occasional contact with access to information issues may not appreciate the principles of rights to access and the strict time limitations under the Act and therefore may not understand the need to deal with issues efficiently and effectively.

There is consensus among our investigators that the Treasury Board courses are helpful, that coordinators have not only gained experience with the Act and their work, but they have also become more understanding of the work that our investigators have to do. Many coordinators are now cooperative, prepared to answer our questions and more willing to assume the burden of establishing the validity of exemptions when they have been claimed. Contrary to common public belief, departments such as Canadian Security Intelligence Service, the Department of National

Defence, the Royal Canadian Mounted Police and the Department of External Affairs are routinely doing well in managing severance and generally preparing themselves for working with our investigators.

Third Party Rights

The 1984-85 Annual Report included observations on the complications caused by the requirement that third parties be informed when released information could affect their interests. A decision by the Government that the records are not releasable, followed by our dismissal of the subsequent complaint under the Act does not present a problem. If, however, the government institution proposes to release the records, or the Information Commissioner intends to recommend release, the third party must be informed and given an opportunity to make representations. In one case, had the Commissioner concluded that the records should be released, some 57,000 persons would have been entitled to notice. But even giving notice to and receiving representations from a dozen third parties or their lawyers add to the time and resources needed to deal with a complaint.

These comments were much expanded and a number of other concerns set out in our main brief to the Standing Committee.

The Act permits government institutions extensions of reply time if it is necessary to engage in third party consultations. The institutions were found to be using this provision to enter into consultations with third parties rather than serving formal notice on them. While in some circumstances this might lead to third party consent to disclosure, it does not give the third party the right to apply to the Federal Court for an order prohibiting disclosure. We recommended that the Government first decide whether it is prohibited by the Act from disclosing a record. If so, consultation may be appropriate to see whether the third party will give its consent. On the other hand, if the Government initially intends to disclose the record, we think that formal notice should be given to the third party.

We recommended broadening the third party notification procedures so that where a third party could be adversely affected by disclosure, although the record was not within the classes specified in the Act, it would be notified and have the opportunity to intervene.

Our recommendation did not, however, extend to investigating on behalf of potential third parties. We had been asked by an individual to investigate what he believed was a request under the Act for personal information about him, and he wanted us to recommend non-disclosure. We took the position that the Commissioner was not authorized to deal with such a complaint. The request, though, illustrated the need for notification to individuals or organizations that might be adversely affected by the intended disclosure of a record.

Further, we would be reluctant to deal with third party complaints since this could lead to complaints from every person who feared disclosure of information by the Government and might place the Commissioner in a situation where both the requestor and a third party could make complaints, one about the refusal, the other about a proposed release.

Our brief also dealt with whether a third party could limit a consent to disclosure by stipulating that disclosure could be made only to a particular requestor. We thought not. And we considered the effect of third party representations made after the expiration of the time limit for getting the representations in to the Government. We believed that they should be considered if the Government had not made its final decision when they were received.

The Standing Committee made four recommendations for amendments to the Act:

- a definition of "trade secrets";
- an extension of the public interest override so that it would apply to all types of third party information set out in the section;
- provision for substitutional service where many third parties were involved or the parties were outside Canada;
- a clarification that third parties had the onus of proof before the Federal Court when challenging release of confidential business information.

In *The Steps Ahead* the Government accepted the last three of these recommendations. So far as a definition of "trade secrets" was concerned, the Government undertook to consider it if a uniform definition was adopted for use in the *Criminal Code* and provincial legislation dealing with protection of trade secrets.

The 1987-88 Annual Report noted that the proposed changes would be beneficial but repeated concerns about the use of the provision for consultation rather than formal third party notice.

The 1988-89 Annual Report returned to the subject of third party rights, particularly as the procedure for dealing with them delayed the release of information. At the time of the report, there had been 133 such applications to the Federal Court since the Act came into effect. In each case the requestor could not be given the records unless the application for review was withdrawn or a judgment ordering release was given.

Applications to the Court are heard at a date fixed by the Court. A date is not likely to be fixed until one of the parties makes application for this to be done. The requestor, unless he or she chooses to become a party to the action, can not hasten the matter, and we did not believe that requestors should have to apply to be a party to the review. Yet some means should be found for expediting hearings, in view of the average time of two years from application to judgement, and an average time of one year to withdraw applications when the third party decides to abandon the case.

We concluded that the head of a government institution was obliged to see that such applications are reviewed by the Court as speedily as practical. The third party is unlikely to apply for a date since delay serves its interests.

However, in these cases the Government has already concluded that there is no exemption in the Act covering the records in question, and so it is under a statutory duty to release them. It is prevented from carrying out that duty by the filing of the application, and remains unable to do so until the application is withdrawn or judgment given.

Our report expressed concern that the Government had not brought these third party cases on for hearing expeditiously, and said that "the failure of the Government to press for timely disposition of the case has meant the loss of a requestor's right." It became apparent this year that counsel for the Government believe that those who requested the records should participate in the third party proceedings. We do not believe that such an obligation exists. It is the Government's duty to defend the Minister's decision to release the records.

We considered whether the Commissioner should seek to intervene in such cases. This, while possible with leave of the Court, would not be practical. There would probably not have been a complaint, since the Government had decided to release the records, and we would have no knowledge of the facts involved. Also, we would be seeking the same result as would the Government, so that our intervention ought to be unnecessary.

Fees

The 1984-85 Annual Report raised for the first time the questions of whether fees were reasonable and what the criteria should be for waiving them. While these questions had yet to be studied in depth at the time of the report, a recommendation had been made to Treasury Board that the fee of 25 cents per page for photocopies might be reduced to 15 cents. In April 1986 the fee was cut to 20 cents per page.

At this stage requestors were beginning to find out how to limit the fees by limiting their requests as to topic, or time, or by being more specific in their requests. Yet we had reports from some persons that they did not use the Act because they thought they would have to pay heavy fees.

This report mentioned the problem that occurs when two or more requestors seek the same record. We noted that there were not, so far as we knew, any instructions from Treasury Board as to charging the first applicant and later collecting a share of the cost from other applicants.

The report also described the frustrating situation for requestors asked to pay fees, or deposits, only to find after records had been searched and reviewed that the entire record was exempt. We thought that in such cases it would be better to waive fees.

In the main brief to the Standing Committee we recommended that the Act be amended so that an applicant would be informed of the estimated fees before his or her request was processed.

Additionally, the brief described a media survey which asked a number of questions about fees. We had decided to do such a survey because more criticism about fees was received from media people than from any other identifiable group. We sent out 200 questionnaires to daily and weekly papers, wire services, press galleries, radio and television stations, and publishers. We received 93 replies. Most respondents thought that generally fees were about right and perhaps a little high, and that the five "free" hours of search and preparation time was acceptable. Forty per cent of the responses suggested that fees should be waived or reduced for journalists, and almost twice as many thought also that they should be waived when they would be an obstacle to disclosure to a particular person.

The Standing Committee recommended rescinding the requirement for an application fee, but coupled this recommendation with one that the Act authorize the Commissioner to make a binding order enabling a government institution to disregard frivolous or vexatious requests, subject to appeal to the Federal Court. It further recommended that:

- five free hours of search and preparation time be continued;
- no fee be charged if a search did not reveal any records;
- copies of released documents be placed in institutional reading rooms, with lists of such records available in the reading rooms and in the institution's annual report;
- The market rate be stipulated for photocopying;
- the Act be amended, or a regulation made, setting a consistent standard for waiver of fees; (Criteria to be considered were specified.)
- the Commissioner be empowered to make binding determinations concerning complaints on fee waivers.

The Government agreed (*The Steps Ahead*) that changes should be made in the fee structure. It would, therefore, set fees for photocopying and other reproduction services on market-rate criteria. It also agreed to establish criteria for the waiver of fees.

The Government recognized that "it should not collect fees from applicants where the cost of collection exceeds the revenues derived." A new policy would be developed based on:

- elimination of the application fee;
- free service for search and preparation time where recovery of a fee would not be economical. Otherwise a fee would be charged;
- no charge for reviewing material for exemptions;
- with these exceptions, fees to be assessed on basis of real costs for processing requests.

These statements about changes to the fee structure were followed by the Government's announced intention to consider amendments to the Act to deal with requests which were trivial or frivolous, or those in which the processing would cause an unreasonable diversion of resources from other operations or "interfere unreasonably with the ability of Ministers to perform their functions."

Read together, the annual reports for 1986-87 and 1987-88 comprise our views on the recommendations by the Standing Committee and the proposals by the Government.

We supported the Committee's recommendation to eliminate the application fee, but took issue with the recommendation to authorize the Commissioner to make a binding order enabling the Government to disregard frivolous and vexatious requests. We pointed out that the authority to make such an order and the order itself were incompatible with the Commissioner's role, and that any finding that a request was frivolous or trivial would damage the office's ability to mediate. In the 1986-87 report we ended our discussion by saying that the Commissioner was convinced there was little or no misuse of the Act.

When the Government's response was considered in the 1987-88 Annual Report, we embarked on a more detailed examination of what was proposed. We pointed out that under the Government's suggested amendment on frivolous, vexatious, or disruptive requests, a requestor could never be certain that the request would be processed, and concluded that the result would be an erosion of the fundamental principles of the Act. We also wondered who was to assess the importance of the information, whether a complaint could be made about such an assessment, the availability of judicial review, and whether there was a role for the Commissioner to authorize the Government to decline to process the request. We noted our uncertainty about the meaning of "disruptive," and "unreasonable" and "trivial."

We had basically agreed with the rest of the recommendations of the Committee but were not in complete accord with the way the Government proposed to proceed. We hoped that the criteria for waiver of fees would include factors in addition to those the Government cited, although agreeing with the Government that it was desirable to consider such matters as benefit to public health, safety or the protection of the environment. But the outlined new policy seemed to us to be a marked departure from current practice. It appeared to envisage access users, so far as possible, bearing the whole costs of processing requests. We assumed that it was intended to abolish five free hours of search and preparation time and that real costs would be

charged except for the simplest requests. We thought this was incompatible with the announced intentions about disregarding access requests considered to be trivial, frivolous, or disruptive. In effect, we said, an institution would appear to be willing to provide a service for a price based on real costs but reserve the right to refuse to provide that service. We added that authority to refuse access on that basis could result in refusal of access solely on the ground of expediency or for arbitrary and discriminatory reasons.

International Affairs and National Defence

In the main brief to the Standing Committee we explained the disagreement between some government institutions and ourselves regarding the interpretation of exemptions that contain an injury test. Without restricting the generality of the provisions constituting the injury test, the exemption includes certain listed classes of information. The prime, but not sole, example of such a provision is section 15, which relates to the protection of the state interest in international affairs, national defence, and national security. We had contended that to constitute a valid exemption the government institution must show that the record fell within one of the listed classes of information

To determine whether our interpretation was correct we made three applications for judicial review. Each such application involved section 15, but the issues varied from case to case dependent, among other factors, on whether we believed the records should be disclosed. (See 1988-89 Annual Report page 81 and 1989-90 Annual Report page 54 and 58.)

Severance

In the main brief to the Standing Committee we dealt with section 25 of the Act, which requires institutions to disclose those parts of requested records that are not exempt by severing the non-exempt parts. We stated that the section was extensively used and recommended severance and disclosure even if departmental officials thought that the material left would be meaningless or useless. We argued that it was for the applicant to determine what was meaningful.

The 1987-88 Annual Report touched on the difficulties being experienced, explaining that public servants, when pressed by investigators to observe the severance principle, tended to ask to be shown how it could be done. As a result, investigators sometimes ended up doing the whole record and then, in effect, reviewing their own suggestions to determine what was exemptible.

The 1988-89 Annual Report expanded on the concern. We pointed out that many records were voluminous and that institutions were loath to spend hours identifying and preparing the non-exemptible parts for release. Investigators continued to be willing to give examples of what was believed to be proper severance, but the Act places the duty on the institution to find the parts of the records that the requestor is entitled to have. Yet institutions often released only the parts that we specified as examples. We therefore had to engage in protracted discussions, causing long delays in the release of additional records.

Our efforts toward maximum severance may seem unreasonable to some institution officials. But we believe that unless we continue to monitor the severance process there may be a tendency to less and less severance and, therefore, a failure to disclose releasable parts of requested records.

The 1988-89 Annual Report was subsequent to a judgment in the Federal Court of Appeal, which possibly removed one misapprehension, holding that even though officials think the whole of a record or set of records should be exempted they are required to review all the records to see if any can be released. (See *Ken Rubin v. President of Canada Mortgage and Housing Corporation* (1988) 1 F.C. 265; see 1988-89 Annual Report page 79.)

In January 1990 the Commissioner recommended that severance of a record be considered even though it contained information subject to solicitor-client privilege. On the advice of the Department of Justice, the Minister declined to do so, saying that severance may result in the loss of privilege for the entire document. The Commissioner has been authorized by the complainant to test the issue in court on his behalf.

Another question still to be answered is the interpretation to be given to the words "and can reasonably be severed." We are awaiting a judgment on a case now before the Federal Court of Appeal.

Recommendations and Consultations

The main brief to the Standing Committee noted that section 21 of the Act permitted withholding advice and recommendations made to or developed by the Government. Further, there was a discretionary right to withhold accounts of meetings of Government employees no matter what the subject matter. We considered the exemption open to abuse because no harms test existed and the Federal Court had held that the exercise of discretion in claiming exemptions was not reviewable. We recommended that a harms test or other limiting provision be inserted in the section, and that factual information in background material should not be subject to exemption under the section.

The Standing Committee said this exemption had the greatest potential for routine misuse. It agreed with the opinion contained in many briefs that the language was far too broad, and recommended that the section contain an injury test, and be clarified to apply only to policy advice and minutes at the policy level of decision-making. The Committee also recommended that the exemption be applicable only to records that came into existence less than 10 years before the request for access, rather than the current 20 year rule.

The 1987-88 Annual Report amplified our views as set out in the brief to the Standing Committee, and noted that the Government had rejected the Committee's recommendations. (*The Steps Ahead* maintained that acceptance of the Committee's recommendations would fundamentally change the confidential relationship between ministers and public servants.) We referred to the debates on the bill that became the Act, in which it was suggested that the public should not be deprived of factual information that was part of the process of giving advice, and said we had seen many examples of the withholding of such information. We continued to press for an amendment to the Act that would include a harms test and limitation of the exemption.

In July 1988, the Federal Court of Appeal delivered a judgment (*Ken Rubin v. President of Canada Mortgage and Housing Corporation* (1988) 1 F.C. 265) which was summarized in the 1988-89 Annual Report. It may be that the effect of that judgment will diminish the occasions upon which the Government will rely on this exemption, since the Court held that in exercising the discretion given by the section the institutional head must have regard to the policy and object of the Act, and that Parliament intended the exemptions to be interpreted strictly.

Personal Information

Our brief to the Standing Committee suggested that Parliament consider what responsibility, if any, should be placed on government departments to seek individuals' consent to disclosure of their personal information. Reference was also made to a judgment in the Federal Court, (*Information Commissioner v. Minister of Employment and Immigration* (1986) 3 F.C. 63) which was summarized in the 1984-85 report. That judgment examined the effect of subsection 19(2) which provides that the minister "may disclose any record requested...that contains personal information" if one of three conditions is met: the consent of the individual is obtained; the information is publicly available; or the disclosure is in accordance with section 8 of the *Privacy Act*. It was held that if the subsection applied the Minister must release the records.

The third of the conditions listed involves our office in a consideration of the *Privacy Act* when a complaint is made to us that a record containing personal information has been withheld improperly. It follows that some amendments to the Privacy Act would be of concern to us, as well as to the Privacy Commissioner.

The Standing Committee expressed "great concern" over an aspect of the legislation that had troubled us, namely the lack of provision for the notification of the individual when it was proposed to release his or her personal information. The Committee stressed the provision in the *Privacy Act* that enabled an institutional head to release such material when the head was of the opinion that "the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure."

The Standing Committee recommended, in addition to a provision for notification to the individual, that the substance of relevant portions of the *Privacy Act* should be incorporated in the *Access to Information Act*, a recommendation we agreed with in our report for 1986-87. We also observed that we had had difficulties with both the definition of "personal information" and the circumstances in which it could be disclosed, and agreed with the Standing Committee's recommendation that statutory amendments should be considered.

The 1987-88 Annual Report dealt further with this exemption. We welcomed the Government's response to the Standing Committee's recommendations that proposed to make the *Privacy Act* a more effective data-protection statute and the announced intention to accept the Standing Committee's recommendations to clarify the definition and use of personal information.

We reiterated our concern about notification to individuals and urged the Government to provide procedures to enable individuals to make representations concerning their records.

Cabinet Confidences

Dealing with the exclusion of Cabinet confidences from the Act, our main brief to the Standing Committee pointed out that the Commissioner had made an arrangement with the Clerk of the Privy Council to obtain certificates from ministers that a record or portion of a record was a confidence of the Queen's Privy Council.

In response to a question before the Standing Committee, I said that I thought the Cabinet confidences question should be considered in the light of both section 21 (the exemption dealing with advice and recommendations developed by or for the Government) and section 69 (which totally excludes such confidences from the operation of the Act).

I added that in our experience Cabinet confidences were not exempted under section 21. Our only authority to investigate complaints about withholding Cabinet confidences would occur when a person alleged that the record was a discussion paper on which a decision had been made public, or a decision had not been made and four years had passed. No such situation developed, although I could have pointed out that we had had complaints that records had been improperly claimed as Cabinet confidences. Ten such complaints were reported in the 1984-85 Annual Report, six of which, based on evidence made available to us, were found to be not supportable. In the other four cases negotiations resulted in full or partial release.

I stated that in other countries having access legislation some protection was given to the decision-making body, and a parliamentary system of government was dependent upon a free exchange of ideas. In addition, I explained that we used section 36 of the *Evidence Act* which allows a body with subpoena power to ask for a certificate from the minister that something constitutes a confidence of the Queen's Privy Council. We had requested such a certificate in 13 cases. In three of the cases more records were released after the minister responsible was asked for the certificate.

It was made clear that my concern was that the withholding of records under the exclusionary section should be minimal. While I had obviously not seen the excluded records, I believed it was possible to withhold records which merely contained the factual backgrounds upon which the Government made decisions. My personal opinion, as asked for by the Chairman, was that a democracy would benefit by having access to that kind of material, and also by being more aware of the many conflicting pieces of advice that a government receives, I thought, that there was "a much greater need for the public to understand (that) any decision at the highest level in government is always a compromise." The Committee devoted much of its report to this exclusion and it recognized that there were important justifications for withholding records.

Further, the Committee said that severing subjective policy advice from factual material in Cabinet memoranda was vital and that factual material should generally be available unless an exemption in the Act was applicable.

In a strongly held view of the Committee, it said that the absolute exclusion of Cabinet confidences from the ambit of the Act could not be justified. It believed that a suitably worded discretionary exemption, not exclusion, would provide protection for Cabinet secrecy. In addition, the Standing Committee believed that confidences more than 15 years old should be beyond the proposed exemption.

The Government rejected the proposals on the basis that the recommendations would impinge on Cabinet confidentiality and undermine the convention of collective ministerial responsibility. Our 1986-87 Annual Report said that we believed Parliament had intended a right of access to such factual background documents. We had found it difficult, however, answering complaints that records once called Cabinet discussion papers had been excluded on the ground that they were really memoranda. Also, the Privy Council Office told us that since the Act was passed no Cabinet discussion papers as described in the Act appeared to have been produced.

The 1987-88 Annual Report noted the rejection of the Standing Committee's recommendations which we had supported. It observed again that the public is unable to obtain factual background documents upon which Cabinet decisions are taken, as we believed was the intent of the legislation.

Attitudes

In every annual report, we have had something to say about attitudes, perceived or desired, and their importance to compliance with the Act. The first Annual Report referred to the public who had called the Act "no good," "a farce," or "the most deceptive piece of legislation ever passed by the federal Government." I did not then, nor do I now, assess the Act in such a fashion. I have, while noting public frustrations at delays and the results of complaints, commented on the attitude of Government and officials. My comments have ranged from stressing the need for understanding of the Act, to emphasizing how reactions of coordinators can be affected, to expressing outright dissatisfaction with Government's inaction, to cautious hope for a new, better atmosphere.

Other portions of the annual reports have indicated what we have thought of the attitude of those with whom we deal. There will be some repetition, but in what here follows we want to stress the importance of attitudes.

As early as the 1984-85 Annual Report I pointed out that full compliance with the principles of the Act would require the dedication of coordinators, the willingness of senior officials and ministers, and a fair amount of understanding and sophistication among the users. I wondered whether coordinators were being extended full support.

When I reported on the 1985-86 year I expanded my concerns. I suggested that Parliament take steps to ensure ministers and public servants develop a more receptive attitude toward the public rights to access. I said that many public servants must experience a 180-degree turn before records would be examined to find ways to release information rather than searching for ways to keep it secret. I asserted that there was 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.

The 1986-87 Annual Report dealt with the tendency of departmental legal advisors to advise against release whenever possible and said that, while this was a normal reaction for lawyers, the advice was contrary to the purpose and spirit of the Act.

The 1987-88 Annual Report detailed my views on a letter from the Clerk of the Privy Council to government departments and on the Government's response to the report of the Standing Committee.

In brief, I made it clear that I did not think consultation, as mandated in the Clerk's letter, was unlawful and that I would intervene only if there was evidence of political interference or if such consultations impeded the proper exercise of access rights. But I made it equally clear that public servants, rightly or wrongly, believed the letter's message was that disclosure under the Act might cause the Government embarrassment, and that such embarrassment should be avoided. I thought it would take a very independent and strong-minded public servant to argue with superiors in favour of release.

After I reviewed the Government's response to the Standing Committee's recommendations, I found little room for optimism. In fact, despite a few laudable proposals, I characterized the Government's response, as "inadequate" and "inappropriate," using the language of the Act.

One important item was the lack of acceptance of the recommendation that each exemption should contain an injury test and be discretionary. I said that implementation of that recommendation would be "a giant step toward more open Government."

The 1988-89 Annual Report is replete with direct or indirect references to attitudes and their importance. In the introduction I spoke of the length of time taken to achieve results, and said that while the Government might embrace freedom of information principles, the embrace remained cool and reluctant. I said that users who find that institutions have not met the prescribed deadlines are left wondering whether problems are operational or attitudinal.

The General Counsel to the Commissioner, in an address reproduced in the report, made the following points:

- some officials emphasize exemptions rather than the right to access;
- to seek to exempt everything that can be exempted may thwart the purpose of the Act;
- to unnecessarily take all the time legally possible to obtain an extension of time is not helpful; and
- that while attitude is not the sole cause of problems under the Act the approach of Government advisors and administrators can have a positive effect.

We also had some positive omens to report. We had conducted an investigation of delays in nine departments. We were happy to report that all those interviewed were helpful and cooperative. They discussed the reasons for delays as they saw them and offered suggestions to solve some, if not all, of the problems. Further, we said that the Government had taken some steps forward in its commitment to enhance the status of coordinators and to create a training program on access and privacy. The provision of more staff to our office was seen as a positive sign of the Government's willingness to assist users of the Act. We finished in a burst of hopeful speculation by asking "Could it be that there has been an order to the helmsman to sharply change course?"

Statutory Prohibitions Against Disclosure

Section 24 of the Act is a mandatory exemption of any information the disclosure of which is restricted by a statute contained in Schedule II to the Act. The Act required that the provisions of Schedule II had to be reviewed and reported on within three years of the Act coming into force. The Standing Committee was charged with conducting this review. Our brief to the Standing Committee detailed our views, concluding that there was no necessity for section 24 and Schedule II. We gave nine reasons for recommending repeal of the section. They included:

- All the restrictions under the Schedule II statutes have corresponding exemptions under other sections of the Act;

- Section 24 is an absolute prohibition, but most of the Schedule II statutes do not absolutely prohibit disclosure;

- The section does not conform with the principle that decisions to withhold should be subject to review independently of the Government;

- Not all the Schedule II statutes specify who makes the decision, and not all set out grounds for the restriction on disclosure or the exceptions to the rule;

- The Commissioner is excluded from any useful role in the mediation of complaints involving a Schedule II statute.

Although we recommended the repeal of Section 24 and the Schedule, we recognized that certain instances existed where mandatory non-disclosure should apply. We suggested that a mandatory exemption could be contained in the Act concerning information under such statutes as the *Income Tax Act,* and the *Statistics Act,* and perhaps a few others.

In its report on section 24 the Standing Committee noted that some of the provisions in Schedule II were expected to no longer merit the protection previously afforded by other Parliaments. The Standing Committee found our brief helpful in having delineated among the Schedule II statutes six categories of discretion, ranging from absolute prohibition to a generally unrestricted discretion to allow disclosure. It concluded that the varying degrees of discretion fitted awkwardly within a mandatory class exception.

The Standing Committee concluded that section 24 violated two of the principles contained in section 2 of the Act as it could not be termed to provide "limited and specific" exemptions, and it did not provide for an independent review.

While the Standing Committee did not determine whether restrictions in the Schedule II statutes were desirable, it concluded that in general it was not necessary to include Schedule II in the Act. It said that in every instance the information safeguarded by one of the statutes would be adequately protected by one or more of the exemptions already in the Act. The Standing Committee recommended that section 24 and Schedule II be replaced by a new mandatory exemption incorporating the interests reflected in the *Income Tax Act,* the *Statistics Act,* and the *Corporations and Labour Unions Returns Act.*

The Standing Committee was concerned about a "slippery slope" effect should Schedule II be retained. It noted briefs from both the public and private sectors seeking various additions to the Schedule and suggested that wholesale additions would defeat the spirit of the legislation.

We agreed with the Standing Committee's recommendation. The Government stated only that it would explore other options to section 24.

Court Review

We seek court review in the name of the Information Commissioner to obtain definitive judicial interpretations of provisions of the Act where mediation has failed.

When we believe a complainant has a good arguable point or that a complaint raises a substantial doubt, we offer to make the court application. This does not necessarily mean that we expect to win. In fact, when we do not, the Court decision helps us to explain why we cannot support a subsequent complaint or why, even if we support it, we cannot justify seeking a court review. The cases primarily involve personal or corporate privacy or procedural and other points of law. A few examples from the last seven years will illustrate:

Minutes of meetings of government institutions

Several complaints required us to determine whether all minutes of meetings of government institutions ought to be withheld under paragraph 21(1)(b), which stipulates that records of the kind described in several paragraphs (here accounts of consultations and deliberations within government institutions) *may* be withheld from disclosure, the section has no injury test.

The question of whether the full text of minutes of meetings of government institutions can be withheld under Section 21 evolved gradually. First, the Atomic Energy Control Board released a substantial portion of requested minutes before the matter came before the court; the National Advisory Committee on Immunization did the same.

It was not until the Chairman of the Canadian Radio-Television and Telecommunications Commission refused access to certain minutes of meetings of the Commission that the issue was heard by the Court. Based on the evidence, the Federal Court declined to review the Chairman's decision.

Later, we received a complaint that Canada Mortgage and Housing Corporation refused to release its minutes. We felt confident that our mandate authorized us to suggest severance and release of some of the records and we so recommended. However, we did not offer to seek court review because of the CRTC decision. The complainant, Ken Rubin, applied on his own and while the Federal Court Trial Division dismissed his application, the Federal Court of Appeal referred the matter back to Canada Mortgage and Housing Corporation for re-examination and possible severance on the grounds that the exemption of the whole of the record without reference to the severability principle violated the purpose of the Act and that each record must be examined for severance. The Court ruled that an institution must exercise its discretion within the proper limits of its power of decision, and *the determination of those limits is a task for the Court.* The case is *Ken Rubin v. Canada Mortgage and Housing Corporation* (1989) 1 F.C. 265.

Personal information

One of the frequently invoked exemptions is section 19 which, generally speaking, prevents the disclosure of protected personal information. The following main issues have been taken before the Federal Court:

Salaries: We sought to find out whether the Government was entitled to withhold information about certain order-in-council appointees who were paid a fixed salary. Salary ranges of officers and employees of government institutions are disclosable, but some of the appointees were heads of government institutions which were not subject to the Act. Realistic salary ranges were created and released before the matter was heard by the court. Similar releases for Governor-in-Council appointments are now the norm, and our office has, in a subsequent complaint, supported the practice of releasing approximations of salary ranges.

Status of applicant: Early on we encountered the question of whether an individual who does not qualify as an applicant under the *Privacy Act* can obtain access to records containing his or her personal information by providing a consent for a third party to obtain it under the *Access to Information Act.* The Court agreed that the individual could and that the Minister had to release the record. A 1989 amendment now provides that anyone present in Canada is qualified to use either Act.

Names of RCMP officers: The RCMP disclosed the result of an internal inquiry into the handling of certain homicide cases. We had recommended release of the record but accepted that personal information that identified individuals was protected. Suitable deletions were agreed upon and release was effected before the Court hearing but after the application to court was made.

Security classification: In this situation a government institution had released individuals' names, but held back the security classifications required for the positions they were occupying under contract. We recommended that they could not be withheld as protected appraisal or personal information. The Court ordered release.

Photographs: We did not consider photographs of some personnel who had been part of a unit within the Department of National Defence to be protected personal information and thus recommended disclosure. The Department did not accept our recommendation yet released the records after evidence was submitted, but before the judge rendered his decision. The application was withdrawn.

Third Party Information

A large number of complaints and court cases relate to confidential business information concerning the private sector.

Meat inspection reports: The public has the right to see meat inspection reports. In a number of cases the Commissioner's recommendation for release had been accepted by the Minister of Agriculture but when actions were brought by some of the third parties to prevent disclosure, the Commissioner applied to take part in the proceedings. Both the Trial and Appeal Divisions of the Federal Court ruled that such reports should be released.

Aggregate tax information: The Department of National Revenue had refused to disclose insurance information compiled in an aggregate form. We had recommended that it be disclosed as it did not identify individual taxpayers and the *Income Tax Act* did not prohibit such disclosure. The records were disclosed before the hearing.

Procedural Points

An order of an Immigration Appeal Board to hold a hearing *in camera* does not preclude the Chairman from considering an access request for release of a transcript of the hearing subject to exemption. The Court held that the *Access to Information Act* takes precedence.

Specific Reasons for Exemptions

In section 15 the introductory portion reads:

> "15(1) The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be 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, including, without restricting the generality of the foregoing, any such information..."

and is followed by nine paragraphs describing various kinds of records or types of information.

The Court held that the government institution is not required to cite a specific paragraph in its notice to an applicant of a refusal to disclose. However, the Court held that the institution must state the major category of each document withheld, *e.g.* whether it relates to national defence, international affairs or subversive activities. Two similar cases are pending where we have recommended release, subject to possible limited exemptions and severance. In these cases it did not appear that all of the subject matter of the records fell within any of the paragraphs of the section. (1989-90 Annual Report page 54.)

Jurisdiction

The Court has accepted our argument that it has jurisdiction to determine issues relating to the process and procedure by which decisions made under the Act are made by government institutions, even when the Commissioner does not dispute the refusal.

Evidence of Witnesses

In a case where the Information Commissioner recommended partial release of a requested record, but is involved as an intervenant at the request of a complainant in whose name the case is brought, the Court has determined that a witness who has filed an affidavit (here on behalf of a government institution) "must answer questions upon which he can be fairly expected to have knowledge which, without being evasive, relate to the principal issue in the proceedings upon which his affidavit touches." (1989-90 Annual Report, page 54.) A similar issue had been brought in another case but, after this decision, the Government agreed to have the questions answered and the application was withdrawn. (1989-90 Annual Report, page 54.)

COMPLAINTS

The Numbers

Since the *Access to Information Act* came into effect July 1, 1983, 5,592 complaints have been received. Table 1 shows the status of complaints while the other tables show their distribution and disposition.

Table 1

STATUS OF COMPLAINTS

April 1, 1989 to March 31, 1990

PENDING FROM PREVIOUS YEAR	**2,607**
OPENED DURING THE YEAR	**1,057**
COMPLETED DURING THE YEAR	**3,011**
PENDING AT YEAR-END	**653**

Terminology

Unlike civil court proceedings, where a plaintiff's case is either allowed or dismissed, or criminal proceedings where an accused is found guilty or not guilty, complaints before the Information Commissioner are dealt with by mediation, a process which leads to a variety of findings, dispositions and results.

The **complaint category** describes the kind of complaint we dealt with. Most complaints concern a government institution's under the Act, but we are also required to investigate complaints about extended time limits to respond, fees assessed, the language of records disclosed, publications required under the Act and other related matters.

Our **finding** is our assessment, on the merits, whether a complaint was justified or not justified. The complaint may be relatively minor — one page exempted out of several hundred — or may be rectified immediately by the institution. In making our finding, however, we ask ourselves whether the complainant was justified in lodging the complaint. It is not for us to decide whether the single withheld page which the complaint was concerned about was really very important.

The **disposition** of a complaint describes the action taken by us. We attempt to mediate disputes between the complainant and the concerned government institution to achieve an acceptable resolution. If these efforts are not successful, the complaint will be reported to the head of the government institution as well-founded and, depending upon the circumstances, specific remedial action may be recommended. If we find a complaint to be not justified, it is dismissed with no further action required by the government institution involved. Occasionally complaints are discontinued or abandoned while our investigation is still in progress. In such instances our finding will depend upon the merits of the case as we were able to assess them up to the time that our investigation was terminated.

The **result** of the complaint is the action taken by the government institution following our investigation. In many instances no action was required because steps had been taken to rectify the matter complained about as soon as we became involved.

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 "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 the head of the government institution. For example, the President of the Canadian International Development Agency is head of that government institution.

Categories

The Information Commissioner is required to receive and investigate complaints about the following:

Refusal to Disclose

Complaints from persons who have been refused access to a portion or the whole of the record requested under the Act. These complaints include matters such as the ground under the Act cited by the government institution to exempt the record from disclosure or to exclude it from the ambit of the Act, inability to find the requested record immediately, or the failure to provide an acceptable reason for non-disclosure.

Delay (Deemed Refusal)

Complaints from persons who allege that they have not been given a response to their access request within the time limits prescribed under the Act. (If a response is late, the institution is deemed to have refused disclosure.)

Time Extension

Complaints from persons who consider extensions of time limits for responses to access requests to be unreasonable.

Fees

Complaints from persons who have been required to pay fees which they consider unreasonable under the Act.

Language

Complaints from persons who have not been given access to a record in the official language requested or have not been given access in that language within a period of time that they consider appropriate.

Publications

Complaints in respect of the Access Register, periodic bulletins or other publications which the Government is required under the Act to make available throughout Canada.

Miscellaneous

Complaints in respect of any other matter relating to requesting or obtaining access to records under the Act.

Findings

Justified

We found merit in the complaint. A legal right had been denied or the spirit of the Act had not been followed.

Not Justified

We were unable to find any denial of legal rights or unfair treatment. In some instances, the complaint was outside the Commissioner's mandate.

Dispositions

Reported as Well-Founded

In cases where we were not able to achieve a satisfactory resolution through mediation, both the finding of the investigation and the recommendation, if any, were reported to the Minister by the Commissioner. In other instances where it was too late for mediation or it was not necessary or possible to take any action, the findings were reported to the access coordinator. In all cases, reports were made to the complainant.

Resolution Mediated

During the course of the investigation the complaint was found to be justifiable in whole or in part and was resolved through mediation. The institution 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 the government institution. It was not necessary to make a report or recommendation to the Minister.

Discontinued

Our investigation was terminated at the request of the complainant or was abandoned by the complainant before its merits could be fully determined. Discontinued cases are dismissed as unjustified unless it was reasonably clear at the time our investigation was terminated that there was some merit to the complaint. A report was made to the government institution and to the complainant, where feasible.

Dismissed

No further action by the government institution was called for because we did not consider the complaint to be justified. No recommendation was made to the complainant and to the government institution about the investigation.

Results

Remedial Action

Remedial action was taken (or proposed) by the government institution and we were satisfied that this action was sufficient to rectify the matter.

Insufficient Action

Although we recommended that the government institution take some remedial action in response to the complaint, the Minister refused to implement our recommendation, or the action taken (or proposed) was inadequate or inappropriate.

TABLE 2
FINDINGS, DISPOSITIONS AND RESULTS OF COMPLAINTS
(By Complaint Category)

April 1, 1989 to March 31, 1990

Finding	Justified					Not Justified			
Disposition	Reported as well founded			Resolution mediated	Discontinued	Dismissed	Discontinued		
Result	Remedial action	Insufficient action	No action required	Remedial action	No action required	No action required	No action required	Total	%
Refusal to disclose	27	12	3	224	7	287	9	569	18.9%
Delay (deemed refusal)	42	0	1564	3	410	54	6	2079	69.0%
Time extension	7	0	18	2	0	35	1	63	2.1%
Fees	0	0	0	12	0	263	5	280	9.3%
Language	0	0	0	0	0	0	0	0	0%
Publication	0	0	0	0	0	0	0	0	0%
Miscellaneous	1	3	1	4	0	11	0	20	.7%
Total	77	1586	15	245	417	650	21	3011	100%
	2.6%	52.7%	.5%	8.1%	13.8%	21.6%	.7%	100%	

No Action Required

In the circumstances it was not necessary or not possible for any remedial action to be taken. In some instances the government institution had resolved the complaint before we became involved, or it was too late to do anything about the complaint.

How Do Our Findings Reflect on the Government Institution?

It is difficult to assess a government institution's performance under the Act simply by looking at the numbers of complaints we consider justified and not justified.

Some justified complaints entail serious breaches of rights under the Act. Others are less serious in nature. Occasionally government access to information officials will say that it seems unfair for us to consider a complaint about one aspect of an access request to be justified when the request in all other respects was handled properly. It may also seem unfair to tag a complaint as justified when the government institution took immediate steps to remedy the complaint and did so to the complainant's satisfaction.

Our statutory mandate under the *Access to Information Act* is to investigate and report on the complaint as it was lodged with us. Our finding is not altered because the matter complained about may seem insignificant or because we considered only one portion of the complaint to be justified. However, wherever possible we try to point out the positive aspects of the manner in which a request was dealt with.

By the same token, we do not make findings in respect of matters not complained about, even though in the course of our investigation we may notice, for example, that an improper time extension has been invoked or statutory time limit has been exceeded.

When looking at the numbers of complaints against a government institution, one must also bear in mind how many access requests they have processed (the Treasury Board maintains this data) and the nature of the organization. Departments such as Revenue Canada deal with confidential taxpayers' information, which they must exempt, and in doing so tend almost to invite complaints.

It is significant to note that in the majority of cases no further action was required by the institution, either because the complaint was not justified or because corrective action had already been taken by the time we became involved.

Table 3
FINDINGS AND RESULTS OF COMPLAINTS
(By Government Institutions)

April 1, 1989 to March 31, 1990

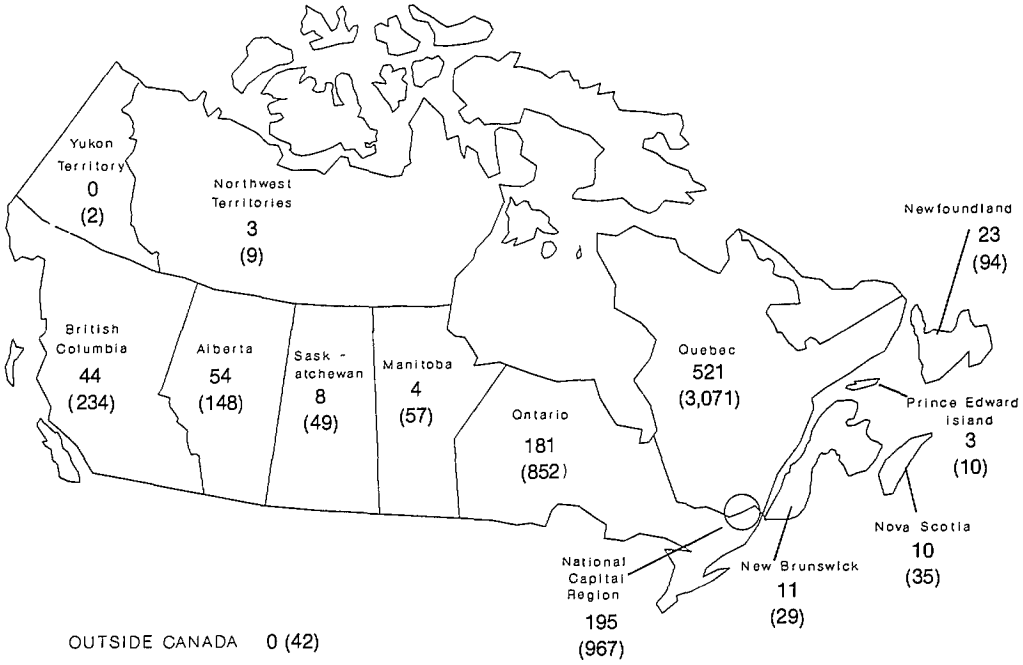
Findings	Justified			Not Justified	
Result	Insuf-ficient Action	Remedial Action	No Action Required	No Action Required	TOTAL
Atlantic Canada Opportunities Agency	—	—	1	1	2
Agriculture	—	6	—	5	11
Bank of Canada	—	—	—	1	1
Canada Deposit Insurance Corporation	—	—	—	1	1
Canada Labour Relations Board	—	1	—	1	2
Canada Mortgage and Housing Corporation	—	2	—	1	3
Canadian Aviation Safety Board	—	1	—	4	5
Canadian Commercial Corporation	—	1	—	1	2
Canadian Film Develop-ment Corporation	—	1	—	—	1
Canadian Human Rights Commission	—	1	—	—	1
Canadian International Development Agency	—	1	—	3	4
Canadian Radio-Television & Telecommunications Commission	—	—	1	1	2
Canadian Security Intelligence Service	4	7	1	7	19
Canadian Security Intelligence Service Office of the Inspector General	—	1	—	2	3
Communications	—	5	1	2	8
Consumer and Corporate Affairs	—	1	—	3	4
Correctional Service Canada	2	45	15	50	112
Employment & Immigration Commission	2	9	3	11	25
Energy, Mines and Resources	—	4	4	1	9
Environment	—	5	4	4	13
External Affairs	1	14	1	16	32
Federal Business Development Bank	—	18	1	2	21
Finance	—	14	7	7	28
Fisheries and Oceans	1	2	—	2	5
Health and Welfare	—	23	14	17	54
Indian Affairs and Northern Development	—	1	4	3	8

Table 3

Findings	Justified			Not Justified	
Result	Insuf-ficient Action	Remedial Action	No Action Required	No Action Required	TOTAL
Investment Canada	—	1	—	—	1
Justice	—	43	1	16	60
Labour	—	1	1	1	3
Law Reform Commission of Canada	—	—	—	1	1
National Capital Commission	2	7	2	3	14
National Defence	—	16	10	23	49
National Parole Board	—	—	—	1	1
National Research Council	—	—	—	1	1
Office of the Supt. of Financial Inst.	—	1	—	2	3
Parks (Environment)	—	1	1	1	3
Privatization & Regulatory Affairs	2	3	—	2	7
Privy Council Office	—	2	2	6	10
Public Archives	—	2	2	5	9
Public Works	—	3	—	6	9
Regional Industrial Expansion	—	2	—	2	4
Revenue Canada — Customs and Excise	—	6	2	1	9
Revenue Canada — Taxation	1	42	1916	392	2351
Royal Canadian Mint	—	2	—	—	2
Royal Canadian Mounted Police	—	3	—	13	16
St. Lawrence Seaway Authority	—	1	—	—	1
Science and Technology	—	—	—	1	1
Secretary of State	—	—	1	7	8
Security Intelligence Review Committee	—	1	—	1	2
Solicitor General	—	—	—	1	1
Statistics Canada	—	1	—	4	5
Supply and Services	—	11	1	14	26
Transport	—	5	6	15	26
Treasury Board (Secretariat)	—	2	1	4	7
Vancouver Port Corporation	—	—	—	1	1
Veterans Affairs	—	1	—	1	2
Western Economic Diversification	—	1	—	—	1
Multiple Departments	—	1	—	—	1
TOTAL	**15**	**322**	**2,003**	**671**	**3,011**

Table 4
GEOGRAPHIC DISTRIBUTION OF COMPLAINTS
(BY LOCATION OF COMPLAINANT)
Cumulative 7-year totals in parentheses

April 1, 1989 to March 31, 1990



CASE SUMMARIES

In previous reports selected cases appearing in "Case Summaries" have included the file number, the institution and other particulars about the complaint as each reported all aspects raised by the complainant relative to a specific request.

Complaints now tend to raise a number of different issues. Some of them are new and difficult, some are routine and some are raised by a number of complainants simultaneously. To accommodate this and make reading easier, we are presenting the case summaries in a much abbreviated form. Thus the main points derived from several completed investigations have been lumped together.

Severance

In a number of instances we pursued the issue of severance. In a significant number of cases we were satisfied that the amount of effort and time it would take to obtain additional information might not be worthwhile. We therefore wrote to complainants along the following lines:

> "It did not appear to us that any meaningful portions of the records could reasonably be disclosed and our investigators so informed you. In order to give you the opportunity to make representations to us about the prospect and value of severability, our investigator randomly selected a sample of documents from the records and the coordinator confined the exemptions to the bare essentials, leaving portions of the records available for disclosure.
>
> "I reviewed the sample and agree that the exemptions are proper and that no more can be disclosed without compromising the interests to be protected under the sections claimed. Our investigator has assured me that the sample is representative of the complete record-holding.
>
> "A copy of the severed sample record was sent to you by the department and after a review you agreed that the information which could be disclosed was of no real significance and was not worth the fee. You told our investigator that you did not wish to have further action taken on this complaint."

In another instance we addressed the issue as follows, dealing with the exemption that protects information that is subject to solicitor-client privilege:

> "The department did not address the severability principle (section 25) but, on viewing the record, I became convinced that if section 25 were applied you would not receive any opinions or other substantive information. Nevertheless, if you wish, we are prepared to try to obtain covering letters and other small portions of the record on the basis you will pay any fees that the department may require. My tentative conclusion is that the records you have asked for are subject to solicitor-client privilege as set out in section 23 of the Act. In view of that conclusion, I have not addressed the applicability of section 14 or subsection 15(1) as these exemptions are redundant."

In one multiple requests instance, the requestor had already made arrangements with the department. We treated that matter this way:

> "We have reviewed the documents that were exempted under section 23 of the Act. The record consisted mainly of an exchange of correspondence between the department and a solicitor. Generally speaking, section 23 was properly applied by the department. There exists one document on which we are not satisfied that it may be entirely withheld under section 23. However, based upon your agreement with the Department, it is our view that severance of the record would not result in the release of information useful to your project."

Multiple Complaints

An individual made 2,679 access complaints against the Department of National Revenue since April 1988.

We investigated 2,184 dealing with delays. As result of many meetings with officials and the complainant, all but three of those were resolved as this reporting year closed.

Eventually, the individual challenged all exemptions claimed in the records released in response to 495 of the requests. The exemptions were claimed under subsection 24(1) (confidentiality provisions under the Income Tax Act) paragraphs 21(1)(a) and/or (b) (advice or accounts or deliberations) and section 23 (solicitor-client privilege). While there was a certain pattern to the type of records requested, each exemption had to be evaluated by itself and the question of severance considered.

We have completed investigations in 186 of the complaints and considered 38 to be justified, 56 were found to be not justified and 92 were not investigated because they were not made within one year from the time of the access request as required by the Act.

The Department was willing to sever and disclose all portions of the records that did not qualify for exemptions and a good working relationship was established.

Eventually, a question of interpretation arose dealing with the applicability of severance to records that contain information subject to solicitor-client privilege. The Information Commissioner concluded that the principle applies but Revenue Canada declined to apply severance based on advice from the Department of Justice. A recommendation was made to the Minister of National Revenue to exercise his discretion in favour of release, subject to exemptions and severance. It was not accepted and the complainant consented to a court review application in the name of the Commissioner.

The Amount of Work Involved

Often we have discussed the amount of work required to investigate an access complaint.

The complaint regarding FLEUR (Federal Law Enforcement Under Review) is an illustration. In December, 1986, a reporter requested the record but was denied access on the ground that it related to the management of personnel and the administration of departments that have not yet been put into operation. (Paragraph 21(1)(d) of the Act.)

Our primary argument in support of the complaint, received in March, 1987, was that the document in question was not exemptible under paragraph 21(1)(d) because it was not a plan but a collection of information, study papers and recommendations upon which a plan could be developed. We recognized that other exemptive sections might be invoked for some portions of the record.

In July, 1988, a recommendation for release, subject to any specific and limited exemptions that might be applicable, was made to the Solicitor General of Canada. In August, the Solicitor General indicated that since we had shown disagreement with the exemption there had been extensive consultations within his department, the RCMP, the Department of Justice and the Privy Council Office. The Minister said that the report was being reviewed and severance would be applied but that other law enforcement agencies which had contributed to the production of the report would need to be consulted. After the Assistant Information Commissioner objected to additional consultations at this stage, he was informed by the Minister that 46 federal law enforcement agencies in 16 departments had to be consulted. The Minister also stated that because the report had not yet gone to Cabinet, it contained material interspersed throughout that might eventually be eligible for exclusion, which necessitated a line by line review. The Minister indicated that the October 28, 1988, deadline, set by the Assistant Commissioner in accordance with the Act, could not be met.

On November 30, 1988, we offered to take the matter before the Federal Court for review on behalf of the complainant.

On December 6, 1988, we agreed not to file for court proceedings providing we received confirmation that release would take place on or before January 13, 1989. We informed the complainant that this exceeded the 45 days allowed for filing an application to court, and explained that we could not guarantee that the court would extend the time, even if based on a promise from the department concerned.

Meanwhile, we learned that in September, 1988, one of the departments had indicated it had no objections to the disclosure of its portion of the record. However, another department objected to release of that part of the FLEUR report that referred to them on the grounds that it constituted advice based on paragraph 21(1)(b). A third department was willing to release the paper on the assumption that the Task Force which prepared the study would agree and the originator of the document would have it declassified.

On October 14, 1988, one of the departments withdrew its objection relative to two pages, but recommended partial exemption of one page of information it considered privileged under Section 23. The first department mentioned again stated no objection, but suggested that since portions of the record was provided by counsel from the Department of Justice to the RCMP, the Solicitor General might consider exempting them with reference to the solicitor-client privilege and the advice and recommendation exemptions. A few days later another department agreed to disclosure of another portion.

On November 4, 1988, one of the separate law enforcement agencies objected strongly to the disclosure of information from their manual which was provided "on a privileged basis, to assist in explaining the internal administration of (the agency)." They requested deletion "even though we cannot refer to an article within the Act that could support a refusal ..."

On October 14, 1988, Privy Council Office had claimed exclusions of certain portions deemed to be Cabinet confidences and on October 25, 1988, a department agreed that the document about which they were consulted was already published and thus releasable. At about the same time, another department conducted a careful review of their documents and agreed to their release.

On December 19, 1988, the RCMP asked the complainant to pay the reproduction costs of the record, (350 pages @ 20 cents), and in compliance with the Act detailed his right to complain about the fees. They also told him that the total cost was $70 taking into consideration the Act's provision that the first five hours of processing is free. We were advised on January 5, 1989, that the fees had been paid.

Shortly after, the records, subject to a number of exemptions, were released and were received by the complainant on January 12, 1989. The record contained 495 pages, of which 102 were totally exempted, while another 60 were partially exempted. (These exemptions were subject of a further complaint investigation.)

A total of 197 hours was spent to complete this investigation, including 36 telephone calls to the department concerned and six departmental meetings. In addition, the investigator held 25 in-house discussions with senior members of the Access staff and made 14 other contacts in person or by phone to other government departments. As a result of the release of the FLEUR report the public was told in a series of newspaper articles that the study said that "enforcement of Canada's federal laws is plagued by duplication of effort, poor management, professional incompetence, destructive rivalry and a lack of over-all government control." The articles summarized the findings in accessible form and reported that the RCMP was being "undermined by other agencies."

Was it worth it? The public can judge but this investigation illustrates the complex and drawn-out nature of the process that leads to access or exemption of government records.

Privacy After Death

We have had complaints from individuals who have used the *Access to Information Act* to do genealogical research. When the search is for the preparation of a family tree, or family history, we have not supported complaints about denial of access to records concerning individuals who have been deceased for less than 20 years. This principle was applied whether the personal information that was exempted concerned a family member or a stranger, such as for example a referee for purposes of a citizenship application.

We acknowledge that subparagraphs 8(2)(j)(i) and (ii) of the *Privacy Act* would permit disclosure

> "to any person or body for research or statistical purposes if the head of the government institution
>
> > "(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and
> >
> > "(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;"

However, the Commissioner finds it difficult to imagine that a search for information for purposes of completing an ordinary family tree would fall within the kind of research contemplated by paragraph 8(2)(j). Equally difficult to envisage is the applicant's ability to provide the undertaking required under that paragraph.

Two Wrongs Don't Make A Right

A business person applied to the Department of Fisheries and Oceans for the Atlantic Fishing Licence Directory in "computer readable format." The directory, a publication distributed by the Department, lists the names and addresses of licensees, their licence codes and their boat specifications and names.

The Department, citing the protection of personal information subsection of the *Access to Information Act*, 19(1), refused, stating that the Department has always been prepared to release the names of licensed fishermen in accordance with paragraph 3(l) of the *Privacy Act* which states that, the non-disclosure rule does not apply to "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 complainant posed the obvious question: If the directory information was "personal", and therefore exempt, how was anyone able to obtain copies of these directories?

The information which the applicant sought, in a different format, had been made public by the Government of Canada for years. However, the Assistant Commissioner was not persuaded by that argument for two reasons. These were explained in a letter to the complainant which follows:

> "Firstly, the Department of Fisheries and Oceans, in conjunction with Supply and Services, may have been in contravention of the *Privacy Act* when they published the information... (after the coming into force of the *Privacy Act*). If this were the case, it would not be proper under the *Access to Information Act* (even though it specifically states that it is not intended to limit in any way access to information that is normally available to the general public) that failure to comply with the *Privacy Act* be perpetuated. Secondly, it is arguable that publication of the names and addresses of the fishermen in the annual directory...(does not violate their rights to privacy) but to make the same information available in a computerized format would be going one step too far."

There is an interesting postscript: In 1984, an audit by the Privacy Commissioner recommended that it was incorrect for the Department of Fisheries and Oceans to publish addresses and in 1986 the Department stopped publishing the directory.

Is Software a Record?

The complainant had asked the Department of National Defence for a CRC UHF/VHF propagation prediction computer program which had been modified under a DND contract. The complainant had been told that it was not available under the Act because the Department did not consider the program as "information." DND was willing to provide the program to a company applying for non-exclusive licence for its use.

The Department of Justice became involved and questioned whether, as required by Section 6, the request provided sufficient detail to permit the record containing the information to be identified with reasonable effort. The legal opinion was that the request did not.

The Minister of National Defence did not accept our recommendation for release stating that the Department considers a computer program a tool to bring about a specific result and not a record. The Minister added that the program is available as stated and that the Act should not apply according to paragraph 68(1)(a). The complainant eventually obtained the program in the manner suggested by the Minister and the ultimate finding by the Assistant Commissioner was that the record was available for purchase by the public within the meaning of section 68 of the Act.

However, there remains the general issue whether government institutions can deny access to computer programs under the Act. The Commissioner has initiated a complaint to deal with that issue.

Third Party Research

An individual had requested records on fuel air explosive research conducted for the Department of National Defence by McGill University. The Department withheld some of the records because they contained confidential business information as defined in paragraphs 20(1)(b), (c) and (d) of the Act. McGill University, when informed by the Department of its rights as third party, responded that it regarded the details as belonging to the researchers and suggested that it was their prerogative to decide on release.

Our investigation did not support the view that the records were exempt and we sent third party notices to the University and the researchers but received no reply. The Department finally accepted our suggestion that the records should be released.

A Delicate Situation

The Canadian Institute for International Peace and Security (CIIPS) was established by Parliament in 1984 to "increase knowledge and understanding of the issues relating to International Peace and Security." However, there are limits on the amount of knowledge the CIIPS is willing to make public. This limit was challenged in August, 1988 when the first access to information complaint was lodged against the CIIPS.

A journalist from Quebec requested "any and all written or sound recorded material that was made or concerns a meeting held on April 28 or 29, 1988 at Montebello, Quebec between members of the Canadian Jewish Community and members of the Canadian Arab Community... This includes names and titles of participants and all documents pertaining to minutes, reports, summaries, agendas, synaps(es) as well as the text of the speech given by the minister for External Affairs, the Right Honourable Joe Clark."

In response the CIIPS said: "The event in question was not a structured, documented meeting in the usual sense. It was instead a private, informal consultation in relaxed surroundings intended to bring members of Canadian society together to discuss issues of common interest among themselves." With this format the CIIPS said there were no verbatim records or minutes of the meeting. A summary was prepared for in-house use but it was withheld under subsection 15(1) of the *Access to Information Act.* The journalist received only nine listings of publicly available documents from Canada, the U.S. and the Middle East. He then complained to the Commissioner.

After the complaint was made and during the investigation, the CIIPS, following consultation with the Department of External Affairs, located more papers, and released some on October 5, 1988. The remainder was released on April 14, 1989. Both sets of disclosures were subject to partial exemptions pursuant to subsection 21(1) of the *Access to Information Act.*

Our investigator examined all of the exemptions made under subsection 19(1). These exemptions were to protect personal information concerning Canadian Jewish and Canadian Arab participants in the Montebello seminar. This exemption was properly applied, but identities of government participants could not be protected (3(j) of the *Privacy Act)* and so were subsequently released to the journalist.

Subsection 15(1): Clarification of the rationale behind this exemption was necessary for one reason. This subsection states: "The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs..." The Department of External Affairs has Canadian responsibility for international affairs so, how could a CIIPS sponsored "event" qualify? Our review of the relevant records indicated that this seminar originated at the suggestion of the Secretary of State and was organized by the CIIPS with the cooperation and assistance of External Affairs. The Commissioner was satisfied that privacy and confidentiality were preconditions to enable attendance and beneficial dialogue between the Canadian Arab and Jewish participants. The controversy generated over this meeting, among various factions within the two communities, was evident in several newspaper articles. These events supported the view that even limited disclosure had already been injurious to the conduct of further meetings.

Since one of the principal purposes of the CIIPS is the promotion and enhancement of International Peace and Security, we believed that the release of the content of the summary report for the seminar could reasonably be expected to be injurious to the conduct of international affairs and no further suggestions for release were made.

Third Party Rights - Private Non-Profit Organization

The fact that a non-profit foundation may have certain advantages over other private sector entities does not diminish its right to protection of confidential commercial information. Allegations that the foundation may have misrepresented the nature of its advantage in the competitive process (whether true or not) is not for the Commissioner to determine and was not relevant to the validity of the exemption.

Confidentiality in the Bidding Process

The names of the five bidders and all information on two of them was provided by Supply and Services Canada when it was asked to identify the companies, details of their bids and the name of the successful bidder on a particular contract.

The complainant argued that he should be entitled at least to all data on the costs involved in the contract that was awarded. He maintained that information in the bids should also be made public because the contract would be financed from public funds. He argued that release of the financial details of the bids could not cause harm to the parties involved because they gave no indication of overall financial situation. He thought that the release of such information would help create healthy competition in the bidding process in future.

The Department obtained further supporting evidence for withholding business information which the Commissioner accepted. The Commissioner found that the release of the financial details could benefit competitors of the bidding firms.

Another Delay

A representative from the World Society for the Protection of Animals requested "copy of all information and exchanges of correspondence relating to the Wildlife Ministers' Conference held on June 25/88, in Winnipeg; and again on September 27 and 28/88 in Saskatoon;... from January 1, 1988 to the present date."

The applicant filed a complaint with our office on February 1, 1989 questioning the withholding of some records "because it was a private meeting." The complainant believed that the Government was seeking to prevent the release of information because it might indicate that the Government had adopted a policy which did not reflect the wishes of the public.

FEDERAL COURT REVIEW

Subsection 2(1) of the Access to Information Act sets out the principle that "decisions on the disclosure of government information should be reviewed independently of government."

Under section 41 of the Access to Information Act an individual who has been refused access to a record may apply for judicial review of the Government's decision after receiving the report of the Information Commissioner's investigation. Under section 42 and with the consent of that person, the Commissioner may file the court application.

From April 1, 1989, to March 31, 1990, 3,011 complaint investigations were completed by the Information Commissioner. During the same period six applications for judicial review were brought by individuals, the Commissioner applied for judicial review of eight Government decisions and 21 applications to block disclosure were made by third parties. The Commissioner was granted leave to intervene in one case under section 44. Five judicial review applications were heard and decided by the Federal Court.

Decisions rendered during the period covered by this report (April 1, 1989, to March 31, 1990), and the details of pending cases that involve the Information Commissioner are at the end of this section.

Table 5
STATUS OF FEDERAL COURT APPLICATIONS UNDER ACCESS TO INFORMATION ACT

April 1, 1989 to March 31, 1990

Status	Judgment Rendered		No Judgment		
Result	Disclosure	No Disclosure	Case Withdraw	Case Pending	Total
Section 42 (Information Commissioner)	0	0	2	6	8
Section 41 (Requestor)	0	0	0	6	6
Section 44 (Third Party)	0	0	2	19	21
Total	**0**	**0**	**4**	**31**	**35**

Table 6
STATUS OF FEDERAL COURT APPLICATIONS UNDER ACCESS TO INFORMATION ACT

July 1, 1983 to March 31, 1990

Status	Judgment Rendered		No Judgment		
Result	Disclosure	No Disclosure	Case Withdraw	Case Pending	Total
Section 42 (Information Commissioner)	5	3	23	12	43
Section 41 (Requestor)	4	6	9	16	35
Section 44 (Third Party)	21	10	64	58	153
Total	**30**	**19**	**96**	**86**	**231**

Although our philosophy is that recourse to the judicial review process should remain the last resort, our office expects to be involved in an increasing number of such section 42 review application cases where:

a) a Commissioner has recommended disclosure and the head of the institution has not acted upon or has declined to act upon the recommendation;

b) there is a matter of statutory interpretation which in the Commissioner's opinion should be adjudicated upon in order to ensure that the principles of the Act are attained; or

c) our assistance is requested in a case and we believe that it would be appropriate to intervene.

Between July 1, 1983, and March 31, 1990, 43 court applications were commenced in the name of the Commissioner. In this same period the Commissioner intervened in one case brought by a complainant and acted as counsel for complainants in two cases.

The records subject to the request totalled 265 pages. Initially, 24 pages were released. As a result of the investigation, almost all of the records were cleared for release with only 29 pages subject to partial or total exemption. After examining the remaining pages, the Commissioner was satisfied that the deleted portions were properly exempted.

By July 13, 1989, it appeared that the complaint had been resolved by the Department (the Environment Minister is responsible for the Canadian Wildlife Service). The Department stated in a letter that additional original records were being sent to the complainant. However, when our investigator telephoned on August 10, 1989, to determine whether the complainant was satisfied with the disclosure she discovered that the records had never been received.

We found that the access officer looking after the request had obtained approval for disclosure from the appropriate official in the Conservation and Protection Branch of the Department. The records with a covering letter were sent to the access coordinator in the Corporate Branch of the Department. The coordinator prepared a covering memo to the Branch Director about the release and the entire package was sent for final approval by either the Director General, Assistant Deputy Minister or the Deputy Minister. In the meantime, the first officer assumed the records had been disclosed to the complainant and so advised our investigator.

When our investigator informed the Department of its inaction, the records were dispatched to the complainant that day.

Persistence Pays Off

In September, 1986, a specific request under the *Access to Information Act* was made for a missing signature page in an inquiry report obtained by a group of air traffic controllers. The page was not numbered and it was not clear where it should fit.

Transport Canada failed to respond to a controller's letter asking where the signature page appeared in the report. He complained to the Information Commissioner and an investigation was initiated.

The investigation revealed that the request for clarification of the location of the signature page had been misplaced. After the Commissioner's office forwarded a copy of the request, the Department advised the controller that the signature page was to be placed at the end of the report.

The Department said it failed to provide the signature page with the report because it had been omitted by the regional office when the report was initially copied. Our investigation established that none of the copies of the report reviewed at head office included a signature page.

We did learn that one of the members of the committee which conducted the inquiry was absent for preparation and submission of the report. Later he was asked to sign a page bearing the signatures of the committee members which he did. When he realized that the signatures signified support of the conclusions and he disagreed with many of its claims, he disassociated himself from the report. This action was unknown, initially, to any of the controllers who had requested and obtained access to the full report.

Copies of correspondence from the dissenting committee member were located as a result of interviews conducted at a regional office of Transport Canada but copies of these were not available at head office. The Commissioner concluded that the documents dealing with the disagreement of one of the committee members were relevant to the request because they affected the perception of the findings. Although the Department was not convinced that these new documents should constitute part of the report, it eventually agreed to release them at the request of the Commissioner.

The possibility that the Department had intentionally misled the controller was considered throughout the investigation but no evidence of such a possibility was uncovered.

Accessibility in Action

A totally-blind student asked the Department of the Secretary of State for "any and all records which relate either directly or indirectly to the establishment, proposed establishment, funding and/or operation in Canada of a broadcast reading service, or other information service, whether or not using radio, television, cable, satellite or any combination thereof, or other common carrier (such as telephone or telegraph). The purpose of such service is to allow blind, visually impaired, and other 'print-handicapped' persons access to such printed materials as magazines, newspapers, and periodicals."

After being informed that "this department does not have any records pertaining to the establishment, funding, or operation of a broadcast reading service for the blind" and receiving a refund of the $5 application fee, the student complained to our office about not receiving any records.

Our investigator established that the Department had correctly told the student that no records regarding a broadcast reading service for the blind were under the control of the Secretary of State. The records were, however, available from and disclosed by the Canadian Radio-Television and Telecommunications Commission (CRTC) and the Department of Communications.

The student made further representations after being notified of our intention to dismiss the complaint against the Secretary of State as not justified, but expressed appreciation for the manner in which we (with the help of the Canadian Human Rights Commission) had corresponded with her: "I was delighted to receive a copy in braille, in addition to the printed copy, so please accept my special thanks in this regard."

In her letter to us, the student also expressed "heartfelt thanks" to the CRTC which had also corresponded in braille.

THIRD PARTY LITIGATION

The Act protects the commercial interests of third parties by providing for judicial review of a government institution's intent to disclose records that may contain confidential commercial information or may harm commercial interests. The Act requires that the third parties concerned be notified before any disclosure is made. Should they oppose such release, but be unable to convince the Government to withhold, they can seek judicial review under section 44 of the Act.

Approximately 66 per cent of all the applications made to the Federal Court under the Access to Information Act have concerned protection to third parties. The actual number of third party applications filed since 1 July 1983, is 153. The Court has heard 31 of these and accepted that the information should be withheld in 10 cases. Another 21 cases have been dismissed, 64 cases have been withdrawn and 58 other third party cases are still pending before the Court.

Litigation has resulted in judicial clarification of the third party protection afforded by section 20. However, these applications also lead to delays and our 1988-89 Annual Report noted:

> "In the 29 cases in which the Court has pronounced judgement, the average time from the launching of the application to the date of the judgement was about two years. In 51 cases, the third party withdrew the application for review before the case was heard. On average, the withdrawal did not take place until more than a year after the application was made."

Those averages have not changed significantly in the past year. While it is important to protect these third party interests, it is equally important that some method be found to reduce the delays.

The Commissioner's Role

The Act does not require third parties to notify the Information Commissioner of an application to be filed under section 44. As a result we monitor all such applications. In the vast majority of the cases we were unaware of the access request because we had not received a complaint.

It is not always necessary for our office to become involved in third party litigation. We believe that we can be most effective if we limit our intervention to cases where:

a) the section 44 application follows the decision of an institution to disclose a record we had recommended be disclosed;

b) we are already investigating a complainant which relates to the same request and we believe we can make a meaningful contribution to the proceedings;

c) there is a matter of statutory interpretation which, in the Commissioner's opinion, should be adjudicated upon in order to ensure that the principles of the Act are attained; or

d) our assistance is requested and because of the experience we have, we believe that it would be appropriate to intervene.

Between July 1, 1983, and March 31, 1990, we have applied for and obtained leave to appear in seven applications under section 44. In six of these cases the Court dismissed the third party's application and the information was disclosed.

The Government's Dual Role

The Act contemplates two distinct types of judicial review. In each situation the Government is the respondent and must defend the decision taken by the institution. But the role it plays in one is diametrically opposed to its role in the other.

In applications under section 41 or 42, the Government must defend an institution's refusal to disclose requested information. In applications by third parties under section 44 the Government is called upon to defend the institution's decision to disclose the requested information.

NEED FOR RULES

Litigation under the *Access to Information Act* has proven to be drawn out, complicated and expensive. Yet, it has provided some substantive and procedural interpretations. For example, there has been clarification of exemptions which deal with personal and commercial information. And, on the procedural side, some of the rules regarding third party procedures have been clarified. Some of the cases now in Court should provide further assistance relating to the rules governing delays and the severance of records.

Section 45 of the Act says that:

> "An application made under section 41, 42 or 44 shall be heard and determined in a summary way in accordance with any special rules in respect of any such applications pursuant to section 46 of the *Federal Court Act.*"

If special rules could be made pursuant to section 46 of the *Federal Court Act* some procedural and practical problems might be alleviated, thus speeding up access cases and reducing costs.

DECISION HIGHLIGHTS

During the year the Federal Court rendered four significant decisions in cases under the *Access to Information Act.*

In the first, *Air Atonabee Ltd. v. The Minister of Transport,* Court No. T-2249-86, Mr. Justice MacKay's decision provides a comprehensive analysis of third party procedures under the Act and establishes three important points. Under section 44 the applicant sought judicial review of the Minister of Transport's decision to disclose certain records relating to its operations. The application, allowed in part, is under appeal.

The three points are: (1) nature of the Court's review, (2) the meaning of confidential, and (3) a new approach to severance.

1) Nature of the Court's review

Mr. Justice MacKay confirmed that in light of the jurisprudence there no longer could be doubt that the Court's function in an application for judicial review is "...to consider the matter *de novo* including, if necessary, a detailed review of the records in issue document by document." This is an important point. Previously, some judges had approached access applications as if they were appeals, either from ministerial decisions or from the recommendations of the Information Commissioner.

2) The meaning of confidential

Paragraph 20(1)(b) protects third parties' business information that is:

> "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 Court held that it is sufficient that the information relate to financial, commercial, scientific or technical matters as those terms are commonly understood, in order to fall within the scope of the exemption. It then identified three requirements for information to be considered confidential:

a) The information must not be available from sources otherwise accessible by the public nor obtainable by observation or independent study by a member of the public acting on his own;

b) The information must originate and be communicated in circumstances giving rise to a reasonable expectation of confidence that it will not be disclosed; and

c) The information, whether required by law or supplied gratuitously, must be communicated in the context of a relationship which is either fiduciary or not contrary to the public interest, in which it will be fostered for public benefit by confidential communication.

In determining whether information had been supplied in confidence to the Government, Mr. Justice MacKay indicated that where there is any doubt about the origin of the information he would resolve the doubt in favour of the third party.

This must be distinguished from the position taken by Associate Chief Justice Jerome in the case of *Maislin Industries v. Minister for Industry, Trade and Commerce et al* (see Federal Court No. T-2560-83, Annual Report 1984-85, page 121).In that case the Court had indicated that public access to Government information ought not to be frustrated by the Court except upon the clearest grounds so that doubt ought to be resolved in favour of disclosure. It was not enough for the third party simply to say that it had always considered the information confidential.

3) A new approach to severance

The approach to severance taken by Mr. Justice MacKay deserves special mention. To accommodate the principle of disclosure and yet protect information which requires special consideration, he held that references to identify particular aircraft should be exempt from disclosure. He required words which would identify a particular aircraft to be deleted and the word "aircraft" to be substituted in order that meaningful information could be disclosed without any resulting harm.

The Information Commissioner was not a party to this case.

Government Must File Relevant Evidence

In the case of *Mary Bland v. The National Capital Commission et al* (Court No. T-2300-86), the extent to which the Government is obligated to file information relevant to the matter under review was considered. In that case, Mr. Justice Martin was called upon to consider whether:

a) A deponent was obliged only to respond to questions which touched on the matters contained in his affidavit; and

b) A deponent was required to inform himself on matters on which he had no immediate knowledge even though they were relevant to the issues raised by the matter under review.

The Court held that affidavits in access proceedings are not similar to those filed in interlocutory proceedings. They are summary proceedings but they are substantive appeals. The Justice ruled that the deponent "...should answer all questions upon which he can be fairly expected to have knowledge which, without being evasive, relate to the principal issue in the proceeding upon which his affidavit touches."

In another access case, *Information Commissioner v. The Minister of National Defence* (Court No. T-746-88, Annual Report 1988-89, page 81), the Information Commissioner brought a similar application for examination to obtain additional evidence. However, before the motion came on for hearing the Government acceded to our request and the application was withdrawn.

Security Classification

In the case of the *Information Commissioner of Canada v. The Secretary of State for External Affairs* (Court File No. T-218-88, Annual Report 1987-88, page 91), Mr. Justice Dubé confirmed that a security classification pertains to a position and not to the individual who applies for, or who eventually fills that position. Thus information is not to be withheld on the ground that it is personal information as defined in section 3 of the *Privacy Act*.

In his decision, he held that even if a security classification was personal information, it would not be protected because of the exception in paragraph 3(k) on the ground that security classification is information that relates to the services performed and not to the individual. He noted the differences between the English and French texts in paragraph 3(k) and concluded that: "It appears clear to me that the object of the two Acts, read together, is that information shall be provided to the public, except personal information relating to individuals. Information relating to the position is not such personal information, whether the individual works directly for the government as an employee under paragraph 3(j) or by way of a contract under paragraph 3(k).

> "It appears clear to me that the object of the two Acts, read together, is that information shall be provided to the public, except personal information relating to individuals. Information relating to the position is not such personal information, whether the individual works directly for the government as an employee under paragraph 3(j) or by way of a contract under paragraph 3(k). There is nothing in the scheme of the Act which would provide more privacy to the individual who is hired by the government through a personnel agency. The French text "qui a conclu un contrat de prestation de services" is, in my view, merely bad translation."

Proof That Requestor Entitled

In the case of *Glaxo Canada Inc. v. The Minister of National Health and Welfare* (Court File No. T-634-89), Mr. Justice Muldoon allowed Glaxo's section 44 application and ordered the Crown not to disclose the information that had been requested because the Crown had not established that the requestor met the requirements of subsection 4(1) of the Act: that he was a Canadian citizen or permanent resident of Canada. Mr. Justice Muldoon said that the burden of proof was on the Crown to establish the requestor's status to use the Act within the meaning of the *Immigration Act.* He held, as well, that the third party had the right to cross-examine the requestor to be satisfied that those conditions were met even though the requestor was not a party to the application. The implications of this decision, which is under appeal, could be far reaching.

CURRENT CASES

The Information Commissioner was involved in these Federal Court cases this year. The cases are in chronological order by date of filing.

Information Commissioner v. The Minister of External Affairs (Federal Court Nos. T-1042-86, T-1090-86, and T-1200-86) Filed May 9, 1986, May 14, 1986, and May 26, 1986, respectively

These cases were included in the Annual Report's 1986-87 (page 97), 1987-88 (page 95) and 1988-89 (page 77). They concern applications for judicial review of delays, alleging an improper extension of the statutory time limits. The records were released before the date of the hearing and the Government moved to dismiss the application. We filed a motion for trial of an issue. Both applications were dismissed and the Court directed that the judicial review contemplated by section 42 should proceed. Additional evidence concerning the delay has now been filed and the case is set for hearing in the Federal Court on April 26, 1990.

Mary Bland v. the National Capital Commission (Federal Court No. T-2300-86) Filed October 21, 1986

This case deals with the refusal of the NCC to disclose information concerning leases which the NCC exempted as personal information under section 19(1) of the Act. For further details see the 1986-87 Annual Report, page 99 and page 54 of this Report. The Privacy Commissioner and the Information Commissioner are both parties.

Affidavit evidence has been prepared and filed and witnesses cross-examined. The case is now ready and has been set down for hearing commencing May 14, 1990.

Information Commissioner v. Solicitor General (Federal Court Trial Division No. T-2783-86) Filed December 23, 1986, (Appeal No. A-679-88)

This case, described in the 1986-87 Annual Report (page 98) the 1987-88 Annual Report (page 95) and the 1988-89 Annual Report (page 78), concerns a report on the food services of a penitentiary. At issue is whether parts of the report related to the position or function of employees of a government institution and were thus not "personal information." This case is pending in the Federal Court of Canada, Appeal Division.

Vienneau v. The Solicitor General of Canada (Federal Court T-842-87, Federal Court Appeal Division A-346-88)

Kealey v. The Solicitor General of Canada (Federal Court T-1106-87, Federal Court Appeal Division A-347-88)

These cases were described in detail in our 1987-88 Annual Report (page 87). Both are pending in the Federal Court of Canada Appeal Division. They concern the question of whether institutions should indicate what sections have been used to exempt specific portions of records that have been withheld.

Bindman v. Immigration Appeal Board (Federal Court No. T-931-87) Filed April 30, 1987

Information Commissioner v. Immigration Appeal Board (Federal Court Nos. T-1051-87, T-1169-87, and T-1355-87) Filed May 21, 1987, June 5, 1987, and June 26, 1987, respectively

These cases, described in the 1987-88 Annual Report (page 88), and the 1988-89 Annual Report (page 76), concern a refusal by the Immigration Appeal Board to release records explaining why a named individual had been granted convention refugee status. The board had made an order under the *Immigration Act* in proceedings conducted *in camera.* The record was sealed.

Following Mr. Justice Pinard's decision that the records were subject to the *Access to Information Act*, the Immigration Appeal Board released a substantial number of the records but refused to disclose the balance on the ground that the records contained personal information which must be exempted under section 19. After protracted discussions, the Board agreed to release additional records and the cases were subsequently withdrawn.

Information Commissioner v. Secretary of State for External Affairs (Federal Court No. T-165-88) Filed February 4, 1988

The issue in this case, described in the 1987-88 Annual Report (page 93), is whether a department may refuse to disclose correspondence between the department and an investigator on the ground that section 35 requires investigations to be conducted in private. The case is adjourned *sine die* pending negotiations with the Department of Justice.

Information Commissioner v. Minister of National Revenue (Federal Court No. T-291-88) Filed February 22, 1988

This case was described in the 1987-88 Annual Report (page 94). Following negotiations subsequent to the filing of an application to review, the Department disclosed the withheld information and the case was withdrawn.

Information Commissioner v. the Minister of National Defence (Federal Court No. T-746-88) Filed April 27, 1988

In this case, described in the 1988-89 Annual Report (page 81), the issue was whether a government institution which invokes section 15 as an exemption is required to inform the requestor of the paragraph in the section on which it relies. The case was heard by Mme Justice Reed on February 19, 1990. In her decision rendered February 22nd, Justice Reed concluded that in the context of section 15, it was not necessary to specify which paragraph was relied on. However, the Court directed that a notice of refusal "...should indicate, with respect to each document to which access is being refused, whether such refusal is based on a determination of one or more of the following: that disclosure would be (1) injurious to the conduct of international affairs; (2) injurious to the defence of Canada or state allied or associated with Canada; (3) injurious to detection, prevention or suppression of subversive or hostile activities."

Information Commissioner v. Minister of External Affairs (Federal Court No. T-895-88) Filed May 17, 1988

This case, described in the 1988-89 Annual Report (page 88) concerns whether the Department's refusal to disclose a record was authorized by 20(1)(b) or (c) of the Act. The record would show the largest single annual quota for the importation of foreign cheese in 1985. Additional affidavit evidence, including transcripts of the cross-examinations of expert witnesses, has been filed. The case was heard on March 21, 1990, by Mr. Justice Denault and his decision was reserved.

ICI Americas Inc. et al v. The Queen et al (Federal Court No. T-1116-88) Filed November 10, 1988

In 1987 the requestor asked the Department of Agriculture for certain records including a study related to neurotoxicity. The requestor complained to the Commissioner because the Department failed to disclose the records requested.

During our investigation, the Department notified the third party that it proposed to disclose the requested report. The third party then filed an application under section 44 to block the proposed disclosure. Our office obtained leave to intervene in the application.

There were two issues placed before the Court. First, does the report contain confidential scientific or technical information within the scope of paragraph 20(1)(b); second, would disclosure of the report be in the public interest as it relates to public health. If such public interest clearly outweighed any financial loss or prejudice to the competitive position of, or interference with, contractual or other negotiations of the third party, the record would be releasable by reason of subsection 20(6) of the Act. The case is pending before the Court.

Information Commissioner v. The Minister of Agriculture (Federal Court No. T-1583-88) Filed August 18, 1988

In this case the Department had withheld inspection reports on certain foreign meat packing firms and the issue was whether subsection 15(1) was a proper basis for exempting these records from disclosure.The case was described in the 1988-89 Annual Report (page 81). The Government released the records before the case could be brought on for hearing and the case was withdrawn.

Information Commissioner v. The Minister of National Revenue (Federal Court No. T-1758-88) Filed September 14, 1988

This case, summarized in the 1988-89 Annual Report (page 84) concerns whether the Department's refusal to release information on Canadian life insurance companies' income tax reassessments is required by section 24 of the Act. The case was set for hearing in the Federal Court on March 7, 1990, but was withdrawn prior to hearing when the Department disclosed the requested information.

Information Commissioner v. The Minister of Agriculture (Federal Court No. T-1885-88) Filed October 4, 1988

This case is described in the 1988-89 Annual Report (page 82) and the issue is whether inspection reports on conditions in certain European meat packing plants may be exempted on the basis of subsection 15(1). The Department has filed affidavit evidence which is being considered. The case is pending.

The Information Commissioner v. The Minister of National Health and Welfare (Federal Court No. T-1987-88) Filed October 20, 1988

This case was described in the 1988-89 Annual Report (page 88) and involves the disclosure of certain records which had been withheld pending the outcome of a related section 44 application to the Federal Court. When the Court concluded that a refusal to disclose the records in question in the other case was unwarranted, the records requested in this case were released and the application was withdrawn.

Information Commissioner v. Minister of National Defence et al. (Federal Court No. T-333-89) Filed February 17, 1989

This case was described in the 1988-89 Annual Report (page 87). At issue is whether the Department contravened section 19 of the Act by refusing to disclose photographs and identities of personnel of one of its units. The case was heard by Mr. Justice McNair on January 31, 1990, but before a decision could be rendered the Department discovered that one of the photographs had been previously published, and agreed to disclose all of the photographs. The Court then ordered the release of both the photographs and the identities of the individuals involved.

Information Commissioner v. The Minister of Finance (Federal Court No. T-1566-89) Filed July 28, 1989

The requestor submitted three access requests for certain records to the Department of Finance, two dated January 27, 1989, and a third dated February 28, 1989. On March 10, 1989, the Government informed the requestor that documents requiring consultation had been identified and that additional time would be required to comply with his first access request. He was further told that most of the relevant documents with which his third access request was concerned had been amalgamated and that additional documents would soon be located.

On April 20, 1989, the requestor complained about the delays. Our investigation showed that the first access request had resulted in consultations with the Privy Council Office and that these consultations had been completed on April 10, 1989. Release was then postponed pending a review in the Department of Finance.

We found that no consultations had taken place concerning the second request but that the delay in processing was because of "operational requirements" of the Department.

Records relevant to the third request had been amalgamated by March 21, 1989, in order to respond to the first request. While no consultations were required, release was delayed pending review by the Department.

By letter of June 9, 1989, we told the Minister the results of the investigation and recommended that the records be released forthwith, subject to any exemptive provisions of the Act. We asked to be given notice no later than June 20 of any action taken or, proposed to be taken to implement the recommendation. In a reply dated July 11, 1989, the Department said it expected to respond to the first and third requests by July 31 but that no estimated completion date could be provided for the second request.

We filed the application for judicial review on July 28, 1989. Three days later, the Minister released the records relevant to each of the three requests with certain parts deleted because of claimed exemptions. The requestor agreed to the withdrawal of the application but complained about the claimed exemptions.This complaint is being investigated.

Information Commissioner v. The Minister of Finance (Federal Court No. T-2103-89) Filed October 13, 1989

By a request dated March 10, 1989, the Department of Finance was asked for records concerning the levels of interest rates, the deficit and the national debt in 1989 and beyond that were in the Government's possession before the November 1988 election. The Department asked for a 90 day extension of time to reply, citing the large number of records involved. This meant that the deadline for reply was extended to July 13, 1989. On July 25, 1989, the requestor complained that he had no further answer to his request. The Department provided our investigator with records showing that on July 5, 1989, records identified as being relevant to the request had been forwarded by officials within the Department to the Access to Information Coordinator, together with suggested exemptions.

On August 17, 1989, we advised the Minister that we considered the delay complaint to be well-founded. We recommended that the records be released forthwith subject to any applicable exemptions, and asked that we be told what action was taken or was proposed to be taken by August 31. By September 20, 1989, we had not received a reply and an Assistant Commissioner telephoned the Minister's office to ask why. He was assured that an additional seven days would enable the Minister to review and release the records.

On October 6, 1989, the records were still not released. We wrote the complainant offering to apply to the Court for a judicial review. The complainant consented and decided that he would himself appear as a party to the application. It was filed on October 13, 1989. On October 19, 1989, the Minister informed the requestor that he was refusing to disclose 530 pages of records that had been "amalgamated", but that other records would be available no later than October 26. The additional records were released on that date and with the consent of all parties the application for review was withdrawn.

Currently we are investigating the requestor's complaint about the exemptions applied to the 530 pages of records.

Information Commissioner v. The Minister of State (Privatization and Regulatory Affairs) (Federal Court No. T-2036-89) Filed October 5, 1989

In January 1987 the requestor asked the Office of Privatization and Regulatory Affairs (OPRA) for records about the possible privatization of Petro-Canada dated or considered subsequent to September 4, 1984. OPRA released certain records and claimed exclusion and exemptions for the rest. The requestor complained to the Information Commissioner in May 1987. We had prolonged discussions with OPRA, and as a result certain additional records were released. While we concluded that some other records were properly excluded or validly exempted, a number of others were, in the Commissioner's opinion, not validly withheld.

OPRA invited each of three third parties to submit representations. All objected to the release of further records by reason of 20(1)(b) and (c) of the Act which refers to the mandatory exemption of confidential business information supplied to the Government by a third party and to information, the disclosure of which could reasonably be expected to result in material financial gain or loss to a third party or prejudice its competitive position.

We did not agree that one of the records had been obtained in confidence from a province or its institution, and did not accept the exemption claimed under 13(1)(c) of the Act. We said that exemptions could be applied to portions of one record but that the whole of the record was not exempt. In others we said some of the information was not confidential since it was publicly known or readily obtainable from corporate annual reports, and that there was no or insufficient showing of the expectation of financial loss or prejudice to competitive position. We also said that one record was unsolicited and so carried with it no obligation of confidentiality.

Still, the Minister refused to release any further information. With the consent of the complainant we applied for judicial review.

Although the issues will vary in detail with each record, the basic issue is whether the record contains confidential business information and, if so, could its disclosure be reasonably expected to result in material financial gain or loss or prejudice to competitive position. The question for one record is whether it was obtained in confidence from a province, and for another whether it was solicited by the Government. The case is pending before the Court.

Information Commissioner v. Minister of Employment and Immigration (Federal Court No. T-2295-89) Filed October 27, 1989

A July 10, 1986, access request asked for all the information in the Department of Employment and Immigration files concerning six persons, who, the requestor stated, entered Canada as immigrants in the post war period and "were in some way associated with alleged war crimes". Similar requests were sent to eight other government institutions. On September 9, 1986, the requestor complained about the delay in responding to the access requests.

In December 1986 the Department disclosed some records, stating that they were all that were accessible at the time, and that a number of the documents on two of the individuals concerned required consultations with other government institutions. The requestor complained to us on December 23, 1986.

Protracted negotiations resulted in the disclosure of additional records on four separate occasions. Records concerning two persons were claimed by the Government in February 1987 to be exempt as personal information. Exemptions were also claimed under subsection 15(1) on the basis that disclosure of the information contained in the records could be reasonably expected to be injurious to the detection, prevention or suppression of subversive or hostile activities.

We recommended to the Minister that the exemption claimed under subsection 15(1) should be withdrawn. The Minister agreed. We found an exemption based on solicitor-client privilege to be established, but for the remainder of the records we recommended release, subject to deletion of material properly exemptable as personal information. The Minister maintained the position that the unreleased records were exempt as containing personal information and that they could not be severed.

After further investigation we concluded that although the records did contain some personal information other portions of them did not. Therefore they ought to be released after the record had been severed. We so informed the requestor on September 12, 1989, and with the requestor's consent we filed for judicial review.

The issue is the extent, if any, to which the records can be severed so that any portions not containing personal information can be released. The case is pending before the Court.

Information Commissioner v. The National Capital Commission et al (Federal Court No. T-2737-89) Filed November 29, 1989

In March 1988 the applicant asked the National Capital Commission for records showing the classification level under the former standard for the Engineering and Scientific Support Group (EG) which expired in December 1987 and the point rating under the new EG classification standard.

Identical requests sent to 15 other government institutions resulted in release of the information requested. However, the National Capital Commission, while supplying a listing of the EG positions and their classification level under the formal classification standard, denied access to rating by factor under the new classification. The NCC relied on paragraph 21(1)(d) of the Act to deny access. This relates to plans concerning the management of personnel that have not yet been put into operation.

In August 1988 the requestor complained to the Information Commissioner about NCC's refusal to provide the point rating. After discussions with the requestor, an Assistant Commissioner informed the National Capital Commission that he considered the claimed exemption to be invalid. The NCC chairman replied that since no EG position had been converted or affected in any way, the exemption claimed was appropriate and valid until the reclassification plan was put into effect at NCC. With the consent of the complainant we applied for judicial review.

The issue here is whether a new standard for classification approved by Treasury Board but not fully implemented, yet exerting influence and having an effect, can be said to be "not yet in operation". The case is pending before the Court.

The Information Commissioner v. The Solicitor General of Canada (Federal Court No. T-2766-89) Filed December 5, 1989

In June 1987 the requestor asked Correctional Service of Canada to provide copies of all complaints, grievances, reports and legal opinions relating to mail and its delivery at Warkworth Institution, and the Visit and Correspondence Department since January 1986. By a second request in July 1987 he sought the same material, this time relating to the Food Service Department. The institution refused to disclose the records on the ground that it was personal information and totally exempt under subsection 19(1) of the Act. In August 1987 the requestor complained to the Information Commissioner.

Investigation showed that the first request had produced preliminary severance of the record and the exemption of such specific identifiers as names and registration numbers. We agreed with these deletions, but could not support a subsequent decision to exempt the complete remainder of the records. As no similar severance was done for the second request, again we believed that the total exemption of the records was invalid.

The investigation also showed that the institution had confined itself to records relating to inmate grievances and complaints resolved within the institution. Grievances originating from sources other than inmates, or any grievance finalized at national or regional levels, had not been considered. We reported the results of our investigation to the Solicitor General, recommending that both access requests be re-examined, that the additional relevant records be assembled, and that the records be disclosed subject to the provisions of the Act. The institution then released some records with certain portions exempted, withholding other records entirely. The requestor complained to us that the exemptions invoked under section 19(1) were not proper.

We again conveyed our view to the Solicitor General that severance of the remaining records had not been properly carried out, referring by way of example to the types of records withheld completely. The Solicitor General replied that no further records would be released. We reported to the complainant and with his consent filed an application for judicial review.

At issue is whether the records withheld, or partially withheld, contain personal information. This will entail consideration of whether the names of employees are personal information, dates can be withheld, complaints and grievances of kitchen workers are personal information, and the exemption applies to inmate complaints and grievances that arise from specific circumstances. The case is pending before the Court.

Information Commissioner v. Minister of Employment and Immigration (Federal Court No. T-2844-89) Filed December 8, 1989

On September 1, 1987, the requestor asked the Department of Employment and Immigration for "country background information used by immigration officers in accordance with the policies established for humanitarian and compassionate review of cases rejected under the Refugee Claims Backlog Regulations". In a reply dated June 30, 1988, the Department provided profiles for certain countries, but only parts of the profiles for 11 others. The Government claimed an exemption under subsection 15(1) for the remainder on the basis that release could reasonably be expected to be injurious to international affairs.

In July 1988 the requestor asked us to review the records to determine whether the portions of the records deleted were exemptable. We were given access to the record of the consultations carried on by the Department with the Refugee Status Advisory Committee and the Department of External Affairs. We also obtained and reviewed two documents that constituted the main sources of information provided to immigration officers.

We concluded that the claimed exemptions were not supportable since, in our opinion, disclosure could not reasonably be expected to be injurious to international affairs. Further, we did not believe that the information was described in, or was akin to, the classes of information specified in the paragraphs following the injury test in the subsection. On August 4, 1989, we informed the Minister of our findings, recommending release of the records and suggesting that the release could be accompanied by explanatory notes so that there would be even less likelihood of danger to international affairs. We asked that the records be released on or before August 28, and that during the intervening period we be notified of any action taken to implement our recommendation.

No response had been received by October 20, 1989.On that date we reported the results of our investigation to the requestor. With her consent we applied to the Federal Court for judicial review of the case.

On November 21, 1989, the Minister, by letter to us, refused to disclose the records, stating that release of the information could reasonably be expected to be injurious to the conduct of international affairs. The Minister further contended that the information in question did not have to fit within any of the enumerated paragraphs of subsection 15(1) in order for the exemption to be valid.

There were two issues in this case. First: would the particular information, if disclosed, meet the harms test provided for by the subsection? Second: must it be of a kind described in, or analogous to, one of the kinds of information described in the paragraphs to that subsection? The Department has agreed to release the disputed records, and the case will be withdrawn.

The Information Commissioner v. The Department of Fisheries and Oceans (Federal Court No. T-674-90) Filed March 14, 1990

In February 1988, the requestor asked the Department of Fisheries and Oceans to provide certain information concerning development of a particular database system. One of the records identified as relevant to that request was a consultant's report which had been prepared for the Department in October, 1987. The institution refused to disclose the report on the ground that it was subject to solicitor/client privilege as described in section 23 of the Act.

During our investigation, we reviewed the report carefully and after interviewing departmental officials and examining the circumstances surrounding the commissioning of the report, we were not satisfied that the dominant purpose for the preparation of the report was litigation involving the Department. No other grounds under the Act were advanced by the Department in support of the exemption of the report.

We reported the results of our investigation to the Minister of Fisheries and Oceans recommending that the report be disclosed. The Minister did not respond to the recommendation but we were advised by officials that there was no proposal to disclose the report. We then reported to the complainant and with his consent filed an application for judicial review.

There are two issues in this case. The first is whether solicitor/client privilege applies only if the dominant purpose for which the report was prepared is litigation involving the Department of Fisheries and Oceans. The second issue is whether the dominant purpose for which the report was prepared is litigation involving the Department. The case is pending before the Court.

ACCESSIBILITY

Knowing how the *Access to Information Act* works and the rights it provides is as important as having the rights in the first place. It is in this spirit that we answer requests for information about the Act and the operations of our office. We distribute publications which promote greater understanding of freedom of information principles and procedures, as do our answers to the many public inquiries we receive on our local and toll-free, long-distance lines, and from those people who visit our office and use our library.

Appearances

As in other years, we accepted as many invitations as possible to address a wide variety of interested groups. This was achieved by having the Information Commissioner, one of the Assistant Commissioners, the Director General of Operations and the General Counsel address a variety of professional, academic and general interest audiences.

The Commissioner, as in past years, conducted regular workshops as part of the career assignment program (CAP) at the Government's Centre for Executive Development in Touraine, Québec, where she also participated in more than a dozen seminars for high-level managers.

Other appearances included the Commissioner's presentation to a group of Southam news editors arranged by the chain's Ottawa member-paper, The Ottawa Citizen; an address to a group of parliamentarians and their aides as part of a seminar organized by the Library of Parliament which included a senior departmental access to information coordinator, and representatives from both the media and the Library of Parliament. Her schedule included appearances in the Ottawa area at the international American Society of Access Professionals (ASAP) Conference and her address to the Canadian Access and Privacy Association (CAPA). Assistant Commissioner Bruce Mann also spoke at these last two functions.

The Commissioner was invited to speak to international professional gatherings in France, Barbados and the United States. Both the Commissioner and General Counsel Paul Tetro attended the International Bar Association Conference in Strasbourg, France. The Commissioner chaired a half-day meeting on the role of the ombudsman, addressing particularly the question of the systemic approach versus the single complaint approach. Mr. Tetro explained the *Access to Information Act* at the section on "Defamation and Media Law." He also visited the Canadian Armed Forces Base at Lahr, West Germany, to explain the Act to personnel there.

In Barbados, the Commissioner participated in a symposium on the role of the Ombudsman. This was convened by the Institute of Social and Economic Research, University of the West Indies. An ASAP conference and the International Computers and Communications (ICC) forum took the Commissioner to Washington, D.C., on two separate occasions.

The Commissioner lectured to students, faculty members, and other interested parties at the universities of New Brunswick, Fredericton, Western Ontario, London, McGill, Montreal, Queen's, Kingston and Carleton in Ottawa.

The Commissioner spoke on three occasions in Toronto, twice at conferences organized by Riley Information Services. In February she spoke on the topic "Why FOI?" and in September, 1989, she gave the opening address to a seminar on third party implications under access to information legislation. Assistant Commissioner Mann addressed the same seminar on the topic "Trade Secrets and Super-Confidentiality." Finally, the Commissioner was the keynote speaker at the University Ombudsmen's National Conference on June 17, 1989, at the University of Toronto.

The three remaining addresses by the Commissioner were made to media members, and federal and provincial colleagues. The Commissioner made presentations to the Edmonton branch of the Centre for Investigative Journalism, the Access to Information and Privacy Directorate of the Department of Veterans' Affairs in Charlottetown, P.E.I., and to fellow ombudsmen at the Canadian Ombudsman Conference in Québec.

Assistant Commissioner Mann attended corporate information seminars promoted by the "Info-Plus" organization in Toronto. He gave two other presentations to a group of public administration students at the University of Western Ontario, London, and to the IPAC group, Institute for Public Administration in Canada in Ottawa.

Director General of Operations, Célyne Riopel, represented the office on four separate occasions. The Director General attended the annual meeting of staff relations officers from across Canada at Grey Rocks, Québec, and spoke at a one-day conference in Ottawa which examined the ramifications of the new Ontario access legislation. Representatives from the private sector attended the conference along with government officials from provincial and municipal levels and a contingent from the U.S.

The Director General also gave two presentations in Toronto, to the Canadian Institute of Surveying and Mapping and to the Ontario College and University Library Association.

The General Counsel conducted a Public Service Commission workshop in Ottawa to deal with disclosure of assessment materials requested by potential public service candidates.

There is now a large number of individuals who are both knowledgeable in the field of access to information and experienced in the exercise of rights under the Act. The questions asked by our audiences bear witness to that.

Inquiries

Our enquiry statistics include letters, telephone calls and personal meetings we have with individuals at our office. This year we received more than 1,100 inquiries, most of which were via the telephone. Approximately 85 per cent were in English; 15 per cent in French.

Distribution of our publications is not included in the above. Publication requests come from individuals, legal agencies, government institutions, libraries, institutions of higher learning, commissioners and ombudsmen both in Canada and other countries. This year we distributed 461 information kits, including brochures, copies of speeches, and our annual reports. All of our publications are available free of charge.

We were able to answer approximately 75 per cent of the inquiries. Some 21 per cent of all inquiries were referred elsewhere to ensure responses from the most qualified sources. The number of referred calls rises enormously when it includes those subject to the preliminary screening by our receptionists. (We share receptionist and toll-free services with the Office of the Privacy Commissioner.) The name "Information" Commissioner attracts many inquiries that have nothing to do with our mandate and the receptionists try to refer them to more appropriate agencies. Most such calls are referred to Reference Canada (6,642 for 1989-90), the federal government's bilingual telephone referral and basic information service, toll-free throughout Canada. For local numbers of Reference Canada offices and affiliated inquiry centres, consult the Government of Canada section of the blue pages in telephone directories. To assist the public, the main numbers follow:

ALBERTA
Reference Canada
1-800-232-9481

Edmonton - 495-4161
(Telecommunications Device for the Deaf)

BRITISH COLUMBIA
Reference Canada
1-800-663-1381

Vancouver - 666-2560
(Telecommunications Device for the Deaf)

MANITOBA
Citizens' Inquiry Service
1-800-282-8060

Winnipeg - 945-4796
(Telecommunications Device for the Deaf)

NEW BRUNSWICK
New Brunswick Inquiries
1-800-442-4400

NEWWFOUNDLAND
Reference Canada - 1-800-563-2432

St. John's - 772-6226
(Telecommunications Device for the Deaf)

NORTHWEST TERRITORIES
495-2021 -
Reference Canada (Alberta)
collect calls accepted from N.W.T. area code 403 only.

1-800-267-0340 -
Reference Canada (Ottawa) serving area code 819.

NOVA SCOTIA
Reference Canada
1-426-8092

Halifax - 426-6696
(Telecommunications Device for the Deaf)

ONTARIO
Reference Canada

Area Code 613 and the Outaouais (Québec): 1-800-267-0340

Ottawa - 952-0845
(Telecommunications Device for the Deaf)

Area codes 807 & 705: 1-800-461-1664

North Bay - 476-7788 (Telecommunications Device for the Deaf)

Area codes 416 & 519: 1-800-387-0700

Toronto - 973-8099 (Telecommunications Device for the Deaf)

PRINCE EDWARD ISLAND
Island Inquiries
1-368-5050

QUÉBEC
Communication-Québec

Consult blue pages under "Communication-Québec"

1-800-361-9596
(Telecommunications Device for the Deaf)

SASKATCHEWAN
Government Inquiry Centre
1-800-667-7160

Regina - 780-7565
(Telecommunications Device for the Deaf)

YUKON
Yukon Inquiry Centre
1-800-661-0408

We do not intend to discourage inquiries regarding the Access to Information Act and would invite people to contact us and ask to speak to an investigator for help.

We can be reached toll-free long-distance telephone service at 1-800-267-0441.

We also accept and dispatch FAX correspondence form (613) 995-1501. Our address for letters is as follows:

Office of the Information
Commissioner of Canada
Suite 300, Place de Ville, Tower "B"
112 Kent Street
Ottawa, Ontario
K1A 1H3

CORPORATE MANAGEMENT

Corporate Management provides both the Information and Privacy Commissioners with financial, personnel, administrative, informatics and library services.

Finance

A new computerized budget control system was introduced to improve the control and reporting of financial commitments and expenditures.

The Offices' total resources for the 1989-90 fiscal year were $5,856,000 and 75 person-years, an increase of $765,000 and six person-years over 1988-89. Personnel costs of $4,481,351 and professional and special services expenditures of $715,783 accounted for more than 90 per cent of expenditures. The remaining $560,135 covered all other expenses.

The following are the Offices' expenditures for the period April 1, 1989 to March 31, 1990*

	Information	Privacy	Corporate Management	Total
Salaries	1,584,774	1,795,493	505,521	3,885,788
Employee Benefit Plan Contributions	243,000	274,000	79,000	596,000
Transportation and Communication	37,415	84,982	130,684	253,081
Information	24,510	36,699	2,424	63,633
Professional and Special Services	571,499	68,916	51,565	691,980
Rentals	—	2,381	9,926	12,307
Purchased Repair and Maintenance	2,178	13,977	4,256	20,411
Utilities, Materials and Supplies	15,970	14,698	38,448	69,116
Acquisition of Machinery and Equipment	31,560	38,931	62,029	132,520
Other Payments	1,412	3,521	2,626	7,559
TOTAL	**$2,512,318**	**2,333,598**	**886,479**	**5,732,395**

*Expenditure figures do not incorporate final year-end adjustments reflected in the Office's 1989-90 Public Accounts.

Personnel

With a net increase of six person-years in 1989-90, the first time appointment of an Assistant Privacy Commissioner and the end of term for an Assistant Information Commissioner, the personnel program was active this year again. Thirty-eight staffing actions, including the appointment of one senior management position, were processed and a review of all Program Management positions was conducted to apply the new classification standards. The offices also underwent a staffing audit by the Public Service Commission.

Administration

Additional office space was obtained to accommodate the growth of the organization as well as anticipated needs.

Informatics

A local area network was implemented in the Privacy Commissioner's office to facilitate expansion of report and text production. Preliminary work has also been undertaken to address major changes to the dated case management system. A requirement study of the Information Commissioner's case management system was undertaken.

The office has also started a new informatics management infrastructure to meet the growing needs of the organization.

Library

The library supports the programs of both the Information and Privacy Commissioners. It is open to the public.

Among the services offered are the provision of interlibrary loans, manual and automated reference and research, and the maintenance of newspaper clipping files. The library acquires and retains national and international material on all aspects of freedom of information, the right to privacy, data protection and the ombudsman function. Comprehensive collections of annual reports on the administration of the Acts, and ombudsman annual reports are also kept.

Automation of library functions is ongoing. Cataloguing of our library collection, enables us to provide efficient, quick production of subject bibliographies, lists of periodicals received, and circulation statistics.

ORGANIZATION CHART