OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
*for*
*British Columbia*

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INFORMATION & PRIVACY
COMMISSIONER
*for*
*British Columbia*

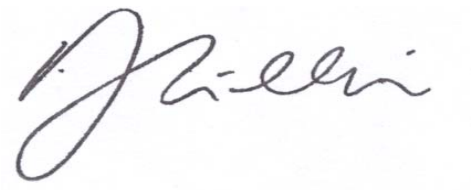
May 29, 2003

The Honourable Claude Richmond
Speaker
Legislative Assembly of British Columbia
Victoria, BC V8V 1X4

Dear Honourable Speaker Richmond:

Pursuant to section 51 of the *Freedom of Information and Protection of Privacy Act*, I have the honour to present the Office's tenth Annual Report to the Legislative Assembly. This report covers the period from April 1, 2002 to March 31, 2003.

Yours sincerely,



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# TABLE OF CONTENTS

# TABLE OF FIGURES

# 1.0 Commissioner's Message

The *Freedom of Information and Protection of Privacy Act* ("Act") came into force ten years ago on October 4, 1993. Its express purposes are to make public bodies more accountable to the public they serve and to protect the privacy of the personal information of citizens. The time is right to begin asking whether British Columbia's access and privacy legislation has delivered on these promises. For example, has freedom of information made the activities and decisions of government more transparent and is government more accountable to the public? Are public agencies appropriately restrained in the collection, use and disclosure of citizens' personal information?

Transparency in government requires many things. It requires a vigilant populace, a civil service that honours the intent and spirit of access legislation and meaningful oversight of government compliance. These are also necessary elements in any effective privacy protection scheme.

**A Vigilant Populace**

Because of the Act, British Columbians actively exercise their statutory right to request records and to challenge the government if they believe their privacy has been compromised. The number of requests for review and complaints filed with the Office of the Information and Privacy Commissioner (OIPC) has risen from less than 300 in 1993 to almost 1,100 in 2003. Some 80% of these appeals come from individual citizens. This is in sharp contrast to Ontario, where individual appeals account for only 37% of the total.

**A Civil Service Committed to Open Government and Protection of Privacy**

The success of access and privacy legislation depends very heavily on whether the public service is committed to open government and privacy protection. The professionalism and dedication to the principles of transparent and privacy-sensitive government demonstrated by access and privacy staff in public bodies around the province are commendable.

I am concerned, however, that cuts to provincial government staff are beginning to take their toll on the capacity of access and privacy staff to respond to requests for information in a timely and complete fashion. Access and privacy units have experienced substantial budget cuts, have been merged with other units or have lost key records-management personnel.

The provincial government is pursuing alternative means of delivering services to the public, often by transferring functions to private sector service-providers. Alasdair Roberts – Canada's leading academic in access to information matters – has described this as the growth of 'shadow government', where organizations that do not regard themselves as public or governmental perform what are traditionally public sector functions. As the provincial government moves forward with these changes, it must take positive steps to ensure that appropriate and effective transparency and accountability measures are built into these new forms of governance. Failure to do so will destroy taxpayers' ability to scrutinize how the services they pay for are delivered.

For example, in the past year, the operations of the BC Ferry Corporation have been put outside the reach of the Act's access to information provisions. As I made clear to the government before introduction of the *Coastal Ferry Act*, it is necessary to ensure that information respecting the safety of ferry operations produced in the ordinary course continue to be made available to the public in a proactive manner. The two recent engine fires on BC Ferries' *Queen of Surrey* illustrate the importance of ensuring that the public continue to have access to safety-related information. At the time of writing, I continue to pursue this issue.

Also in the past year, BC Hydro – a public body under the Act – has outsourced an array of functions and services involving personal information of BC Hydro customers and employees to Accenture, a private business. Such arrangements must ensure that the public's right of access to information concerning decisions around service levels, standards and performance continues under the Act.

Similarly, the *Transmission Corporation Act* will off-load the operation, control and maintenance of BC Hydro's transmission system. Yet this new legislation is silent on whether or not these functions will continue to be covered by the *Freedom of Information and Protection of Privacy Act*.

The government has also announced its plans to privatize the management of the Coquihalla Highway. It is important that highway maintenance and safety records, among others, continue to be available to the public. I intend to pursue this issue.

With respect to privacy practices, if services involving the collection and use of personal information are outsourced – as is the case with Fair PharmaCare – citizens' personal privacy must be protected by the new entities. The provincial government has, I am happy to say, created standard privacy-protection clauses for contracts with service providers. However, particular circumstances may require more extensive privacy clauses than those routinely included on such contracts.

Perhaps more important, though, is the risk that, as ministries' resources and expertise diminish, their ability to monitor and enforce contract performance is thrown into question. The outsourcing of services may, until the *Personal Information Protection Act*

is enacted and comes into force call into question the OIPC's ability to investigate any concerns that a contractor is mishandling personal information. Cuts to the OIPC's budget certainly diminish my Office's ability to oversee the handling of personal information by private service-providers.

**Effective Oversight of the Law**

Effective, independent oversight of compliance with the Act is critical to its proper functioning. The Act creates a statutory right for individuals to appeal any public body's access to information decision to the OIPC. It also creates a right to complain to the OIPC about a public body's privacy compliance. How well is this oversight mechanism working?

The OIPC's mandate is broad. The Act covers more than 2,000 public bodies, including ministries, crown corporations, local governments, schools, hospitals, universities, police forces and self-governing professions. Our mandate includes mediating appeals, investigating and resolving privacy complaints, educating the public about access and privacy rights, commenting on the access and privacy implications of proposed legislation, policies or programs and engaging in research into anything that affects the achievement of the purposes of the Act. In short, we are responsible for the overall monitoring of how the Act is administered.

Our budget is extremely low compared to other information and privacy commissioners across Canada, whose functions are similar. Both the Alberta and Ontario commissioner's offices have similar legislation to enforce and have undergone budget restraint too. Neither of them can be described as lavishly funded, but BC's OIPC had 580% of the caseload of Alberta's OIPC in fiscal year 2000-2001, yet only 83% of Alberta's budget. Comparison to the Ontario OIPC further demonstrates, in stark terms, the impact of the cuts to our budget. The BC OIPC's workload in 2000 was 105% of Ontario's, but we had only 32% of Ontario's budget.

A further way of measuring these changes to our resources is to comment on the average number of access appeals and privacy complaints handled by each of the OIPC's professional staff members. The average appeal and complaint caseload per professional staff member in the office has almost doubled in the last five fiscal years.

As our resources shrink and case loads increase, I am concerned that we may not be able to maintain our nation-leading mediation rate, as professional staff will not able to devote as much time to mediating settlements as before. This is highly regrettable, since mediation resolves matters more effectively than formal appeal hearings can. It also avoids the cost, primarily to public bodies, of retaining lawyers, gathering evidence for affidavits and so on.

My office has tried to find ways to manage its workload in light of the significant cuts to our budget. We have, for example, implemented a policy of declining to investigate privacy complaints unless the complainant has first tried to resolve the matter directly with the public body. We are doing the same thing with complaints that the public body did not conduct an adequate search for records.

The harsh reality is, however, that the OIPC's ability to perform its role in independently overseeing British Columbia's access and privacy legislation has been compromised. As I told the Standing Committee on Finance & Government Services when I presented the OIPC's 2003-2006 budget proposal on October 30, 2002, I will be calling on the Committee later this year to rescind its recommendation on the further 15% cut that it has so far recommended on top of the 20% cut to which we have been subjected, and complied with, to date.

## 2.0 Role and Mandate

British Columbia's *Freedom of Information and Protection of Privacy Act* ("Act") helps citizens hold government bodies accountable by giving the public a right of access to records and limiting the circumstances in which requests for records may be refused. The Act also protects the privacy of citizens by preventing the unauthorized collection, use or disclosure of personal information by public bodies.

Some suggest that the goals of the Act – freedom of information and protection of privacy – conflict. In fact, the two goals are compatible. The right of access to information gives the public the ability to request records relating to the decisions, operations, administration and performance of government. The underlying premise is that citizens are best equipped to hold government accountable, and better able to participate in the democratic process, when they have timely access to relevant information. This is reflected in the Act's purposes, set out in s. 2(1). That section affirms that one of the Act's main objectives is to make public bodies more accountable to the public. This is why the right of access to information is, as s. 2(1) confirms, given "to the public", not individual applicants. This goal of access to information laws was affirmed by the Supreme Court of Canada's decision in *Dagg* v. *Canada (Minister of Revenue)* (1997):

> As earlier set out, s. 2(1) of the *Access to Information Act* describes its purpose, *inter alia*, as providing "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". The idea that members of the public should have an enforceable right to gain access to government-held information, however, is relatively novel. The practice of government secrecy has deep historical roots in the British parliamentary tradition; see Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (1988), at pp. 61-84.
>
> As society has become more complex, governments have developed increasingly elaborate bureaucratic structures to deal with social problems. The more governmental power becomes diffused through administrative agencies, however, the less traditional forms of political accountability, such as elections and the principle of ministerial responsibility, are able to ensure that citizens retain effective control over those that govern them; see David J. Mullan, "Access to Information and Rule-Making", in John D. McCamus, ed., *Freedom of Information: Canadian Perspectives* (1981), at p. 54.
>
> The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.

The Act's privacy provisions implement internationally-recognized limits on government's ability to collect, use and disclose individuals' personal information in the delivery of public services. The Act's rules on how public bodies can collect, use and disclose personal information, and how citizens can get access to their own personal information, hold public bodies accountable for their actions as they affect our personal privacy.

To accomplish these important objectives, the Act:

- Establishes a set of rules specifying limited exceptions to the rights of access
- Requires public bodies to make every reasonable effort to assist applicants and to respond to access requests openly, accurately and without delay
- Requires public bodies to respond to access requests within legislated timeframes
- Requires a public body to account for information it withholds in response to a request for records
- Establishes strict standards around when and how public bodies may collect, use and disclose personal information
- Provides for independent review and oversight of decisions and practices of public bodies concerning privacy and access rights

Public bodies covered by the Act include ministries, Crown corporations, government agencies, boards and commissions, school districts, colleges, universities, self-governing professions, municipalities, municipal police forces, health authorities, hospitals, regional districts and library boards.

Part 4 of the Act establishes the Office of the Information and Privacy Commissioner ("OIPC"). The Information and Privacy Commissioner, David Loukidelis, is an independent officer of the Legislature. The Commissioner is appointed for a six-year, non-renewable term, and reports to the Legislative Assembly of British Columbia. The mandate of the OIPC is to provide an independent review of government decisions that involve access and privacy rights.

The Commissioner is generally responsible for monitoring how the Act is administered to ensure that its purposes are achieved. Under s. 42 of the Act, the Commissioner has the power to:

- Investigate, mediate and resolve appeals concerning access to information disputes
- Investigate and resolve privacy complaints
- Conduct research into anything affecting access and privacy rights
- Comment on the access and privacy implications of proposed legislation, programs or policies

- Comment on the privacy implications of new technologies and/or data matching schemes
- Educate the public about their access and privacy rights

The Commissioner has delegated some of these powers to his staff, who conduct investigations, mediate disputes, engage in public education activities and work with public bodies to ensure access and privacy rights are factored into the decision-making process.

The Commissioner is committed to ensuring that he and his office are accountable to the public. The Commissioner is accountable to the public in a number of ways:

- The Commissioner's decisions in access to information appeals and privacy complaints can be judicially reviewed by the Supreme Court of British Columbia
- The Commissioner's administrative, but not operational, records are subject to the right of access under the Act and the Commissioner's decision on an access request for such records can be appealed to a judge of the Supreme Court of British Columbia
- A complaint can be made to the Speaker of the Legislative Assembly of British Columbia about the Commissioner or his office
- The Commissioner must comply with the *Public Service Act* in appointing and terminating staff
- Although the *Budget Transparency and Accountability Act* does not apply to the Commissioner, he has committed to applying the service planning and budgeting standards under that Act as far as they can apply
- The OIPC's annual budget and annual report are subject to review by, and the recommendations of, a Select Standing Committee of the Legislative Assembly of British Columbia
- At the Commissioner's request, the Auditor General of British Columbia reviewed and audited the financial statements and activities of the Commissioner's office for fiscal 2001-2002 and reported the results, which the Commissioner delivered to the Legislative Assembly
- The OIPC's 2003-2003 financial statements have been prepared in the same format as the 2001-2002 format, which was reviewed by staff of the Auditor General.

## 3.0 Reviews and Inquiries

One of the cornerstones of the *Freedom of Information and Protection of Privacy Act* ("Act") is the right of citizens to appeal to an independent oversight body all public body responses to access requests. This is the role of the OIPC. Applicants can file a request for review with the OIPC regarding the refusal or failure of a public body to disclose information, to respond to access requests, to correct personal information, to perform an adequate search for records, to establish appropriate fees for records or any other action or decision taken by a public body in responding to an access request.

## 3.1 Mediation and Case Disposition

Section 55 of the Act allows the Commissioner to authorize mediation for any matter under review by the Office. The OIPC has a long and remarkable history of successfully mediating access appeals. Last year, the Office resolved fully 91% of its requests for review by mediation. Mediation typically involves an OIPC Officer reviewing the decision in dispute, discussing the issues with all parties involved and attempting to facilitate a full or partial settlement through discussion of the established principles and practices of the Act and by generating mutually-acceptable options for resolution. The Officer is not an advocate for either the applicant or the public body, but rather ensures that the applicant has received all the information to which he or she is legally entitled, taking into account the circumstances of the case, the applicable sections of the Act and previous decisions relevant to the issues.

The Act gives the OIPC 90 business days from the day the case is opened to resolve the matter. The first 60 to 70 days is the mediation phase. After that time, if a settlement cannot be achieved, the matter is normally set to proceed to a formal inquiry before the Commissioner or his delegate.

Mediation may result in any or all of the following outcomes:

- Further information is released to the applicant;
- A reduction in the number of records in dispute;
- Confirmation or reduction of a fee;
- Additional records responsive to the request are located;
- Clarification of outstanding issues that cannot be settled by mediation;
- Referral to another agency for resolution of the issue (*e.g.*, the Ombudsman).

Figure 1 sets out the specific type and disposition of the requests for review that came before the OIPC from April 1, 2002 to March 31, 2003.

**Figure 1:**
**Disposition of Requests for Review**
**April 1, 2002 to March 31, 2003**

| | DISPOSITION | | | |
|---|---|---|---|---|
| **GROUNDS** | **Mediated** | **Order[1]** | **Discontinued[2]** | **Total** |
| Access: | | | | |
| Denied Access | 82 | 16 | 0 | **98** |
| Partial Access | 387 | 28 | 3 | **418** |
| Adequate Search[3] | 17 | 4 | 0 | **21** |
| Correction | 16 | 2 | 0 | **18** |
| Deemed Refusal | 126 | 1 | 1 | **128** |
| Duty to Assist | 33 | 1 | 0 | **34** |
| Fees | 43 | 4 | 1 | **48** |
| Scope of Act | 7 | 4 | 1 | **12** |
| Third Party | 16 | 4 | 0 | **20** |
| Time Extensions[3] | 3 | 0 | 0 | **3** |
| Other | 6 | 0 | 0 | **6** |
| **Total** | **736** | **64** | **6** | **806** |

1 The total requests for review settled by Order differs from the total number of Orders actually issued in this past fiscal year. This is due to the fact that some orders deal with more than one request for review, because the requests were either made by the same applicant or involved similar records and issues. For further details on Orders by the Commissioner, please see the section on Commissioner's Orders.

2 "Discontinued" indicates those requests for review that were abandoned or withdrawn by the applicant.

3 Cases involving "Adequate Searches" and "Extensions", originally considered requests for review, are now handled as complaints under s. 42

Many different individuals or organizations rely on the Act to obtain information. Typical users include individuals, the media, political parties, individual businesses, business groups, unions and labour organizations, ratepayer groups, public interest groups, the legal profession, elected officials, First Nations, environmental groups and community organizations. However, fully 80% of all requests for review are made by individuals seeking access to information affecting their own interests.

Figure 2, below, sets out requests for review by applicant type from April 1, 2002 to March 31, 2003.

**Figure 2:**
**Requests for Review by Applicant Type**
**April 1, 2002 to March 31, 2003**

| Type of Applicant | Requests for Review | Percentage |
|---|---|---|
| Individuals | 648 | 80.4% |
| Organization | 40 | 5.0% |
| Commercial | 28 | 3.5% |
| Media | 47 | 5.8% |
| Lawyer | 21 | 2.6% |
| Special Interest Group[1] | 15 | 1.9% |
| Public Body | 6 | 0.7% |
| First Nations | 1 | 0.1% |
| **Total** | **806** | **100.0%** |

[1] "Special Interest Group" includes unions, associations, societies, non-commercial organizations, environmental, wildlife and human rights groups.

Consistent with previous years, decisions by ICBC, the Ministry of Attorney General, Ministry of Public Safety & Solicitor General and the Ministry of Children and Family Development were the subject of the most appeals. This is not surprising, as these public bodies also receive high numbers of requests for information and collect, use and disclose more personal information than many other public bodies.

Figure 3, below, sets out the disposition of requests for review by public body from April 1, 2002 to March 31, 2003. Figure 4 sets out the grounds for requests for review by the top ten public bodies.

## Figure 3:
## Disposition of Requests for Review by Public Body
## April 1, 2002 to March 31, 2003

| Public Body | Mediated | Discontinued | No Reviewable Issue (NRI)[1] | Order | Requests for Review |
|---|---|---|---|---|---|
| Insurance Corporation of BC | 182 | 0 | 1 | 1 | 184 |
| Attorney General/PS&SG | 61 | 1 | 6 | 11 | 79 |
| Children & Family Development | 32 | 0 | 4 | 3 | 39 |
| Vancouver Police Department | 32 | 0 | 2 | 1 | 35 |
| Vancouver Coastal Health Auth. | 25 | 0 | 2 | 2 | 29 |
| Health Services/Planning | 25 | 0 | 1 | 1 | 27 |
| Workers' Compensation Board | 17 | 0 | 4 | 5 | 26 |
| Human Resources | 14 | 0 | 8 | 0 | 22 |
| Forests | 13 | 1 | 1 | 0 | 15 |
| Water, Land and Air Protection | 10 | 0 | 2 | 2 | 14 |
| Fraser Health Authority | 20 | 0 | 1 | 1 | 22 |
| Finance | 13 | 0 | 0 | 0 | 13 |
| City of Vancouver | 9 | 0 | 0 | 4 | 13 |
| BC Hydro | 8 | 0 | 0 | 1 | 9 |
| College of Physicians & Surgeons | 7 | 1 | 0 | 1 | 9 |
| University of British Columbia | 4 | 0 | 1 | 4 | 9 |
| Simon Fraser University | 6 | 0 | 0 | 3 | 9 |
| All Other Public Bodies | 206 | 4 | 18 | 24 | 252 |
| **Total** | **684** | **7** | **51** | **64** | **806** |

[1] NRI includes requests for review closed as non-reviewable issues and those referred back to public bodies.

## Figure 4:
## Grounds of Requests for Review by Public Body
## April 1, 2002 to March 31, 2003

| | ADEQUATE SEARCH[1] | CORRECTION REQUEST | DEEMED REFUSAL | DENIED ACCESS | DUTY TO ASSIST | FEES | PARTIAL ACCESS | SCOPE OF THE ACT | THIRD PARTY | TIME EXTENSION[1] | OTHER | TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Insurance Corporation of BC | 2 | 1 | 15 | 3 | 2 | 0 | 160 | 0 | 0 | 1 | 0 | **184** |
| Attorney General & Public Safety and Solicitor General | 1 | 1 | 11 | 14 | 5 | 1 | 33 | 0 | 8 | 1 | 4 | **79** |
| Children and Family Development | 5 | 3 | 1 | 3 | 2 | 2 | 22 | 0 | 0 | 0 | 0 | **38** |
| Vancouver Police Department | 0 | 1 | 0 | 12 | 1 | 1 | 17 | 3 | 0 | 0 | 0 | **35** |
| Vancouver Coastal Health Auth. | 0 | 2 | 7 | 3 | 1 | 4 | 11 | 1 | 0 | 0 | 0 | **29** |
| Health Services/Planning | 0 | 0 | 14 | 5 | 3 | 0 | 5 | 0 | 0 | 0 | 0 | **27** |
| Workers' Compensation Board | 5 | 5 | 2 | 1 | 1 | 3 | 7 | 1 | 1 | 0 | 0 | **26** |
| Human Resources | 1 | 4 | 4 | 2 | 1 | 0 | 10 | 0 | 0 | 0 | 0 | **22** |
| Forests | 0 | 0 | 2 | 4 | 0 | 3 | 6 | 0 | 0 | 0 | 0 | **15** |
| Water, Land and Air Protection | 0 | 0 | 5 | 1 | 1 | 3 | 4 | 0 | 0 | 0 | 0 | **14** |

## 3.2 Summaries of Mediated Requests for Review

The following examples of successfully-mediated requests for review illustrate the range of access to information issues brought before the OIPC in 2002-03 and the role of mediation in resolving disputes informally and more quickly and cheaply than through more formal legal processes.

**Health Authority – Access to Investigation Records**

An applicant made a request to a health authority for records relating to an investigation into a complaint against the manager of a group home. The health authority denied access to the records on the grounds that they were subject to s. 15 of the Act, which prohibits the release of records where disclosure could be harmful to a law enforcement matter. The records consisted of tapes of interviews conducted as part of the investigation.

[1] Cases involving "Adequate Searches" and "Extensions", originally considered requests for review, are now handled as complaints under s. 42

As a result of mediation, the applicant agreed to accept a transcript of the tapes rather than an actual copy. The public body agreed to release the tapes by transcription, but was concerned about the length of time that it would take to transcribe them due to a lack of sufficient resources. The applicant agreed to pay a private firm to do the transcription.

**Ministry of Attorney General – Access to Family Maintenance Enforcement Program Records**

An applicant requested records regarding any notices that had been filed under the Family Maintenance Enforcement Program ("FMEP") that could have affected the applicant. The Ministry denied access on the grounds that records created under the FMEP are not covered by the Act, which the applicant did not accept.

During mediation, the OIPC confirmed that s. 43 of the *Family Maintenance Enforcement Act* provides that records created under the FMEP are exempt from coverage under the Act, which the applicant eventually accepted.

**Ministry of Health Services – Access to Air Ambulance Records**

An applicant requested a copy of air ambulance flight log entries submitted by the Ministry to the RCMP on specific days at specific times. The Ministry denied supplying this information to the RCMP. The applicant requested a review, saying he had observed the air ambulance fly over his home on the days and at the times he had specified.

As a result of mediation, the OIPC learned that the Ministry did have a copy of flight logs for the days in question, but that these logs had not been supplied to the RCMP, leading the Ministry to conclude that the logs requested were not responsive to the applicant's request. The Ministry was concerned that by simply supplying the records to the applicant as requested, it would appear that the Ministry had disclosed the records to the RCMP. The OIPC was able to convince the Ministry to release the records to the applicant with the explicit understanding that the records had not been supplied to the RCMP.

**Municipality – Access to Contract Records**

An applicant requested a copy of the airport fuel contract between a municipality and an oil company. The municipality responded by providing a heavily-severed version of the contract. The municipality did not identify which sections of the Act it was applying to withhold the severed information.

During mediation, the municipality clarified that it was withholding the information on the ground that disclosure would harm the business interests of the oil company. The OIPC's review of the contract indicated, however, that, with the exception of one paragraph, the contract should be released in its entirety under the Act. The OIPC

concluded that disclosure would not reasonably harm the business interests of the oil company and that organizations doing business with a public body must accept that their business relations are subject to a greater degree of scrutiny than purely private arrangements. The rest of the contract was released.

**Ministry of Attorney General – Access to List of Lawyers Hired**

The applicant, a writer for the *Lawyers Weekly* magazine, requested a list of all lawyers hired by the Ministry in a certain fiscal period. The Ministry refused to supply the list, stating that the information was subject to solicitor-client privilege.

As a result of mediation, however, the Ministry agreed to release a short list of names, which showed the top five firms that billed the Ministry for the period requested, but which did not reveal the specific amounts that were actually billed. The applicant was satisfied.

**BC Buildings Corporation – Access to a List of Rental Revenue Property**

A reporter made an access request to the BC Buildings Corporation ("BCBC") for a list of all monthly and yearly rents for the spaces owned and leased by the corporation. BCBC withheld the actual rent amounts paid to it by tenants on the grounds that disclosure of this information would harm the economic interests of the corporation.

BCBC argued that, since the corporation leases large amounts of space throughout the province, disclosing this information would impair its ability to secure the best deals possible in the market. BCBC also argued that release of individual lease details would compromise its ability to negotiate future lease terms with landlords and would expose the confidential financial status of existing landlords to their competitors in the marketplace.

As a result of mediation, BCBC re-examined the request and determined that it would release a simple list of monthly rents paid to BCBC. It compiled a spreadsheet of all monthly rents it received, released it to the applicant and the matter was settled.

**Insurance Corporation of BC ("ICBC") – Access to Adjusters Policy Documents**

A lawyer practicing personal injury law requested a copy of ICBC's policy disclosing criteria ICBC's claims adjusters apply to claims to decide whether an injured person should be required to undergo an independent medical examination ("IME"). The lawyer wanted to understand why ICBC required an IME in some cases and not others.

ICBC released a severed copy of its policy entitled "Independent Medical Examinations Guide for Adjusters", stating that it was withholding some portions on grounds that they were a matter of solicitor-client privilege and policy advice which were protected from disclosure under the Act.

As a result of mediation, ICBC reconsidered its position and released the rest of the policy except for two short paragraphs, which set out specific advice and counsel to adjusters on the type of situations in which they should require an IME. The OIPC explained to the applicant that the severed information did represent advice to ICBC and, based on the exceptions to disclosure under the Act, the applicant agreed not to proceed to inquiry.

**Insurance Corporation of BC – Access to Personnel Files**

ICBC had received an anonymous tip that one of its employees had a criminal conviction, which the employee had not previously disclosed to ICBC. The employee was subsequently disciplined by ICBC for this omission. The employee's lawyer then requested the employee's personnel file from ICBC, including information about the tip. ICBC released some portions of the file but severed up to several hundreds of pages of information on grounds that the policy advice, solicitor-client privilege, economic interests and personal privacy exceptions of the Act authorized or required it to withhold the information.

During mediation, the OIPC determined that the lawyer was primarily interested in confirming the identity of the person providing the tip. The OIPC confirmed for the lawyer that the severed records did not appear to provide any clue about the informant's identity. Since the records released to the applicant included a copy of the informant's letter but did not include a copy of the informant's envelope, the lawyer wanted to see the original letter and envelope to verify whether they revealed the identity of the informant.

ICBC was persuaded to conduct a second search and located the informant's original letter and envelope. ICBC agreed to allow the lawyer to visit its offices to view the two original documents and the matter was settled.

**Office of the Chief Coroner – Access to an Investigation Report**

The applicant, a mother, requested a copy of a "Behavioural Investigation Report" regarding her deceased son. The Coroner's Office refused to release the report, stating that these reports are written solely for the Coroner to assist in the writing of the Judgement of Inquiry, which is the official public document reporting on the facts of death. The Coroner's Office also argued that the information was personal information, which is exempted from disclosure under the Act and was obtained in confidence.

During mediation, the OIPC recommended that the Coroner's Office release the majority of the Behavioural Investigation Report to the applicant, since it was composed mostly of factual information that was contained in the Judgement of Inquiry. The Coroner's Office reviewed the document a second time and agreed to release the majority of the report to the applicant, only withholding portions containing third-party personal information.

**Municipal Police Department – Access to Witness Information**

An applicant requested information from a municipal police department regarding an incident at a racecourse that involved the applicant. The police department released part of the records, but withheld others on the ground that they were witness statements containing the personal information of witnesses to the incident.

As a result of mediation, the police department agreed to summarize the content of the witnesses' statements for the applicant, which provided the information the applicant was seeking without revealing the identities of the witnesses.

**Municipality – Fee Assessment**

An applicant requested copies of records from a municipality, which pertained to the drinking water supply for the municipality. The municipality informed the applicant that most of the information requested was available for free on the municipality's website and assessed a fee for access to the remainder of the requested records.

The applicant asked the municipality to waive the fee under the Act on the grounds that the applicant could not afford to pay the fee and that the records related to a matter of public interest. The municipality refused to waive the fee, stating that comprehensive information about the municipality's drinking water was already available for free on the municipality's website.

As a result of mediation, the municipality agreed to allow the applicant to view the requested records in person and to charge only for copies of any of the records subsequently requested. In addition, the municipality allowed two representatives of the applicant to view the records in this manner and the applicant was given copies of the specific records he was seeking.

**Municipal Police Department – Access to Murder Investigation Records**

An applicant requested records from a police department concerning the unsolved murder investigation of her brother. The police department refused access to the records, stating that disclosure of the information could be harmful to their investigation.

During mediation, however, it became clear that police had been unable to make substantial progress in solving the case and that the investigation had actually been inactive for many years. The department subsequently conducted a final review of the file and declared it closed. It then decided to release the requested records to the applicant, since no active law enforcement investigation was underway or could be harmed by disclosure of the records and the matter was settled.

**Regional District – Access to Winning Bid Information**

The applicant, an unsuccessful proponent in an engineering contract competition tendered by a regional district, requested a copy of the winning proposal from the district. In particular, the applicant sought third-party financial information set out in the winning proposal. The district released a copy of the financial information, which it had severed to exclude specific financial information in key spots.

As a result of mediation, the OIPC determined that the severed information related to a relevant portion of the overall cost of the contract and that disclosure of this information could not reasonably be expected to significantly harm the competitive position, or otherwise harm the business interests, of the winning proponent. The regional district agreed and the records were disclosed to the applicant.

**Municipality – Access to Animal Control Complaint Letter**

The applicant asked the municipality for a copy of the letter it had sent to her neighbour concerning the applicant's complaint to the municipality that the neighbour's cats were littering the applicant's property. The municipality refused to release the letter to the applicant on the grounds that disclosure would be harmful to individual or public safety.

During mediation, the OIPC reviewed the letter and recommended its disclosure to the applicant, since it was simply a brief and straightforward reminder to the neighbour about the municipality's animal control bylaws. The municipality accepted the recommendation and disclosed the record to the applicant and the case was settled.

**Self-Governing Professional Body – Access to an Expert Opinion**

The applicant requested all records relating to complaints received by the self-governing professional body that its members were engaging in certain questionable practices. Specifically, the applicant asked for all meeting minutes, notes, memos and other records related to considerations of these practices by a particular committee of the public body.

The self-governing body released a few hundred pages of records to the applicant, stating that the balance was being withheld under the Act under the exceptions for local public body confidences, solicitor-client privilege, business interests of a third party and personal privacy. The self-governing body did, however, summarize the substance of the withheld documents for the applicant.

During mediation, the OIPC reviewed the withheld records and recommended disclosure of some of them, which the self-governing body accepted. The applicant was pleased with the additional disclosures and requested one further record detailing an expert opinion, with the author's name severed. The self-governing body released the record in this way and the matter was settled.

**Ministry of Forests – Access to Violation Ticket Records**

A lawyer asked the Ministry of Forests for records relating to a violation ticket the Ministry had issued to his client for allowing her bull to escape onto Crown land. The Ministry had confiscated the bull and issued a ticket to the lawyer's client. The lawyer said Crown counsel had later stayed the charges resulting from the ticket and the lawyer wanted records showing why this had happened. The lawyer also said his client had never got her bull back and wanted to know whether it had been destroyed, sold or disposed of in some other way.

The Ministry refused access to any of the records, stating that, despite the stay, the records related to a prosecution where proceedings were not yet concluded and that such records are outside the scope of the Act.

During mediation, the OIPC recommended that the Ministry disclose a number of the withheld records, since some of them were within the scope of the Act, including those records indicating what had happened to the bull. The Ministry agreed to disclose the records and also obtained the Ministry of Attorney General's agreement to disclose other records that also fell within the scope of the Act. In addition, the Ministry explained to the lawyer why the charges against his client had been stayed and the lawyer and his client were satisfied that the Ministry had responded adequately to their request for records.

## 4.0 Complaints and Investigations

Sections 42(2) and 52 of the *Freedom of Information and Protection of Privacy Act* ("Act") authorize the Commissioner to receive and investigate complaints about a public body's compliance with the Act. Individuals who think that their personal information has been inappropriately collected, used or disclosed by a public body and who think that the public body has subsequently failed to investigate these allegations can ask the Commissioner to investigate. Individuals can also complain about a public body's alleged failure to properly secure personal information against unauthorized use, disclosure or destruction, or about the public body's refusal to correct personal information. Individuals may also complain about a public body's failure to investigate an access complaint, such as its failure to conduct an adequate search for records or fulfill its duty to assist an applicant. The Commissioner has the authority to investigate such matters even if no complaint is received.

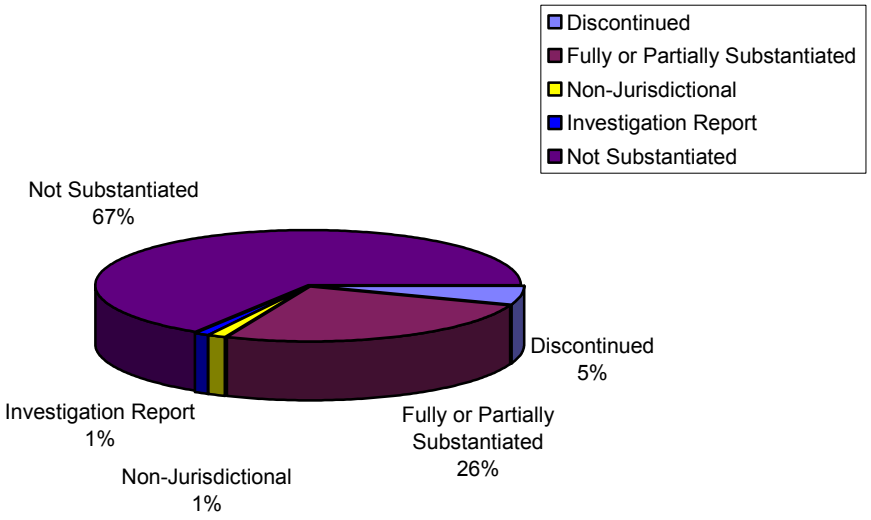
Most complaints are received in writing. They are assigned to an officer for investigation, who examines the circumstances surrounding the complaint and determines if the complaint has merit. If the complaint is substantiated, the officer will work with the public body to ensure remedial steps are taken to correct the problem and reduce the risk of recurrence. The OIPC may require the public body to change the way it uses, discloses, collects or stores personal information, implement training programs or change its policies and procedures.

If the matter under investigation is of a systemic nature or one that affects a significant number of people, the findings of the investigation may be issued publicly in the form of an investigation report. In rare cases, the complaint may be referred to the Commissioner, who may conduct an inquiry.

## 4.1 Disposition of Privacy and Access Complaints

Figure 5 (next page) sets out the disposition by percentage of access and privacy complaints closed from April 1, 2002 to March 31, 2003. Figure 6 (also next page) sets out their disposition by grounds.

## Figure 5:
## Disposition of Access and Privacy Complaints by Percentage
## April 1, 2002 to March 31, 2003




## Figure 6:
## Disposition of Privacy and Access Complaints by Grounds
## April 1, 2002 to March 31, 2003

| Grounds[1] | Fully or Partially Substantiated | Not Substantiated | Non-Jurisdictional | Discontinued[2] | Order | Total |
|---|---|---|---|---|---|---|
| Adequate Search[3] | 25 | 79 | 0 | 3 | 1 | **108** |
| Collection | 3 | 28 | 2 | 1 | 0 | **34** |
| Disclosure | 24 | 32 | 2 | 6 | 0 | **64** |
| Duty | 20 | 32 | 0 | 5 | 1 | **58** |
| Extension[3] | 2 | 11 | 0 | 1 | 0 | **14** |
| Fees | 0 | 1 | 0 | 0 | 0 | **1** |
| Use | 2 | 11 | 0 | 0 | 1 | **14** |
| **Total** | **76** | **194** | **4** | **16** | **3** | **293** |

1 Since many complaints and investigations involve more than one issue, they have been categorized by their predominant grounds only.

2 "Discontinued" indicates those complaints that were abandoned or withdrawn.

3. Cases involving "Adequate Searches" or "Extensions", originally considered requests for review, are now handled as complaints under s. 42

Some public bodies are the subject of more privacy complaints than others. This often happens because they possess or handle more personal information than other public bodies. Figure 7, below, sets out access and privacy complaints by public body and by type of complaint from April 1, 2002 to March 31, 2003. Figure 8 sets out the disposition of access and privacy complaints by public body.

## Figure 7:
## Access and Privacy Complaints by Public Body
## April 1, 2002 to March 31, 2003

| Public Body | Adequate Search[2] | Collection | Disclosure | Duty | Extend[2] | Fees | Use | Total Complaints |
|---|---|---|---|---|---|---|---|---|
| Attorney General/PS&SG | 15 | 9 | 12 | 6 | 0 | 0 | 1 | **43** |
| Insurance Corporation of BC | 6 | 3 | 8 | 3 | 2 | 1 | 3 | **26** |
| Vancouver Police Department | 8 | 1 | 2 | 7 | 0 | 0 | 0 | **18** |
| Workers' Compensation Board | 11 | 3 | 1 | 1 | 0 | 0 | 1 | **17** |
| Children & Family Dev. | 10 | 0 | 3 | 1 | 0 | 0 | 1 | **15** |
| Human Resources | 3 | 2 | 6 | 2 | 0 | 0 | 0 | **13** |
| Health Services/Planning | 5 | 0 | 2 | 4 | 0 | 0 | 0 | **11** |
| BC Hydro | 5 | 0 | 1 | 0 | 2 | 0 | 1 | **9** |
| Vancouver Coastal Health Auth. | 4 | 0 | 2 | 0 | 1 | 0 | 1 | **8** |
| University of BC | 3 | 0 | 0 | 1 | 2 | 0 | 0 | **6** |
| All Other Public Bodies[1] | 38 | 16 | 27 | 33 | 7 | 0 | 6 | **127** |
| **Total** | **108** | **34** | **64** | **58** | **14** | **1** | **14** | **293** |

1 "All Other Public Bodies includes all other provincial, municipal and self-governing professional bodies

2. Cases involving "Adequate Searches" or "Extensions", originally considered requests for review, are now handled as complaints under s. 42

## Figure 8
## Disposition of Access and Privacy Complaints by Public Body: April 1, 2002 to March 31, 2003

| Public Body | Fully or Partially Substantiated | Not Substantiated | Discontinued | Order | Total Complaints |
|---|---|---|---|---|---|
| Attorney General/PS&SG | 8 | 32 | 3 | 0 | **43** |
| Insurance Corporation of BC | 6 | 19 | 1 | 0 | **26** |
| Vancouver Police Department | 6 | 11 | 1 | 0 | **18** |
| Workers' Compensation Board | 1 | 16 | 0 | 0 | **17** |
| Children & Family Development | 7 | 6 | 1 | 1 | **15** |
| Human Resources | 5 | 6 | 2 | 0 | **13** |
| Health Services/Planning | 4 | 7 | 0 | 0 | **11** |
| BC Hydro | 0 | 9 | 0 | 0 | **9** |
| Vancouver Coastal Health Auth. | 3 | 5 | 0 | 0 | **8** |
| University of British Columbia | 1 | 5 | 0 | 0 | **6** |
| All Other Public Bodies[1] | 35 | 78 | 12 | 2 | **127** |
| **Total** | **76** | **194** | **20** | **3** | **293** |

## 4.2 Summaries of Privacy Complaint Investigations

The following summaries are examples of some of the privacy complaints the OIPC investigated and resolved in fiscal year 2002-03.

**Health Authority – Disclosure of Patient Information**

An individual complained that an emergency room nurse had verbally disclosed the complainant's personal information to another individual who had visited a hospital looking for the complainant. The hospital was located in a small community. The complainant alleged that the nurse told the visitor that the complainant was no longer in the hospital, but had been in the emergency room earlier with a breathing problem.

The OIPC's investigation determined that a positive confirmation could not be made by either the hospital or the OIPC that a specific employee had, indeed, made an inappropriate disclosure, but concluded that it would be nonetheless prudent and appropriate for the hospital to remind staff of their privacy responsibilities under the Act. The Health Authority took the additional step of circulating its draft privacy policy to hospital staff, which resolved the matter for the complainant.

[1] "All Other Public Bodies" includes all other provincial, municipal and self-governing professional bodies.

**Ministry – Disclosure of Payroll Information**

An employee complained that a human resources manager within the Ministry had disclosed the complainant's personal pay and timesheet information to numerous other individuals. The manager had allegedly done this by copying his response to the complainant's email, which contained the information, to numerous other people.

Upon investigation by the OIPC, the Ministry acknowledged that the disclosure was inappropriate. It sent a formal apology to the employee and engaged the manager in a review of the Ministry's privacy requirements. The Ministry also asked its FOI staff to attend a managers' meeting to review the Act with several managers as a group.

**Mental Health Centre – Disclosure of Personal Photographs**

A man complained that a local mental health drop-in centre that he attended placed two pictures of him in its newsletter without his consent. The OIPC's review of the complaint determined that the organization operating the drop-in centre was not associated with a public body covered by the Act and thus was outside the OIPC's and the Act's jurisdiction.

When approached by the OIPC, however, the organization voluntarily agreed to revise its publication policy so that it would no longer include personal photographs in its newsletters without the written consent of the individual.

**Hospital / Municipality – Disclosure of Personnel Information**

A former employee of a hospital complained to the OIPC that the hospital had inappropriately collected personal information from the personnel records she had with the local municipality and a private company. The complainant was involved in a union dispute with the hospital over her alleged misuse of employer sick leave benefits.

During its investigation of the sick leave benefit issue, the hospital had advised the complainant that it might be a serious offence to be working for other employers while obtaining sick leave benefits from the hospital. Upon the hospital's request, the municipality and the private company provided the hospital with the personnel information.

As a result of its investigation, the OIPC found that the hospital had collected the complainant's personnel information from the municipality and the private company as part of an investigation into a law enforcement matter, which is permissible under the Act. The municipality had the authority to disclose the information for the same purpose under the Act. The Act did not govern the disclosure by the private company.

The OIPC recommended that, while there is no requirement for public bodies to notify employees about disclosure of their personnel information for this purpose, employers should provide generic notice to employees that employers can collect personal information on employees indirectly in certain circumstances. This type of notice can be accomplished through employer policies or rules or through an express term in the employment contract.

In addition, the OIPC recommended that, in future, the hospital notify any organization from which it is requesting personal information of its authority under the Act to collect the information indirectly. In the case of public bodies, the hospital should inform the public body of its authority under the Act to disclose the information.

**Ministry of Transportation and Highways, Motor Vehicle Branch – Disclosure of Personal Address Information**

A man complained that a woman who should not have been able to find his home address had contacted him. The complainant suspected that an employee of the Motor Vehicle Branch (MVB) had searched the MVB database and disclosed his home address to the woman.

At the request of the OIPC, the MVB conducted its own internal investigation of the matter. The MVB's investigation confirmed that the employee had, in fact, inappropriately accessed the complainant's personal information and given it to a third party, who then provided it the woman.

The Ministry agreed that a serious breach of privacy had occurred and dealt directly with the employee on the matter. The Ministry also wrote a letter of apology to the complainant and advised all its employees in writing that they were accountable for their actions when accessing confidential information.

**Municipality – Disclosure of Pay Information**

An employee of a municipality complained that the City was inappropriately disclosing his personal information by putting all pay slips in an open pile on the supervisor's desk. The pay slips were not in envelopes and employees were allowed to rummage through the pile until they located their own pay slip.

The OIPC discussed the matter with the municipality and advised it that this practice fell short of the municipality's obligation under the Act to protect personal information from unauthorized disclosure. The municipality agreed to implement a system whereby all pay slips would be delivered in sealed envelopes.

**Public Guardian and Trustee – Disclosure of a Minor's Financial Information**

A man complained that staff at the Public Guardian and Trustee ("PGT") had disclosed details of his personal trust account to his mother without his consent. The complainant had just come of age and said that he had learned that, at her request, PGT staff had informed his mother of the amount of money in his trust fund. The complainant alleged that he had been subjected to excessive verbal abuse from his mother as a result of this disclosure. He stated that he had not lived with his mother for years and had given the PGT instructions not to provide his mother with any information about his trust fund.

During the OIPC's investigation, the PGT acknowledged that it had provided the complainant's mother with some information on the trust fund balance without the complainant's consent after he had come of age. It pointed out, however, that its records indicated that the mother had had some involvement with the PGT's administration of her son's trust fund. It said that parents usually have some involvement in and knowledge of their children's trust funds and that it is normally appropriate for PGT staff to provide parents with information about their children's affairs. The PGT also said that it had no documentation of the complainant's wishes that his mother not be given information about his trust fund.

The OIPC recommended that the PGT train its staff on how to deal with requests for minors' personal information as they come of age, noting in particular that the FOIPP Regulations indicate that parents or guardians may act on behalf of minors only where minors are not capable of acting for themselves. The OIPC also recommended that PGT staff discuss with minors the release of their personal information to their parents or guardians as the minors reach their late teens. The OIPC also recommended that staff document in PGT files the wishes of minors regarding the disclosure of their personal financial information.

**Public Service Employee Relations Commission ("PSERC") – Inclusion of Irrelevant Medical Information in Appeal Decision**

A woman complained that a decision by the medical panel of PSERC's Claims Review Committee ("CRC") regarding her appeal of a decision on her application for Long Term Disability benefits had contained irrelevant medical information. The complainant said she understood that certain medical information had to be included in the decision, but that some of the information included was not related to the medical condition for which she had sought benefits.

The complainant also said that she had expressly requested that panel members not reveal her marital status unnecessarily, but that this information was nevertheless contained in the written decision. She was further concerned that PSERC had released the entire report to certain staff members in her workplace who should not have received it, particularly her personnel office.

Upon investigation of the matter, the OIPC learned from PSERC that CRC panel members are independent medical experts and must include in their decisions reasons for their findings for or against appeals. PSERC acknowledged, however, that the decision in the complainant's case contained medical and other information about the complainant that was not relevant to the panel's decision on her appeal. PSERC subsequently met with panel members to emphasize that only relevant medical information should be included in written decisions.

With respect to the distribution of the panel's decision to staff members in the complainant's workplace, PSERC clarified that it had not sent a copy of the decision to the personnel office, since that office did not need a copy of the decision for its work. PSERC clarified that the covering letter of the decision had erroneously indicated that the personnel office had received a copy and that PSERC had revised its procedures to ensure that covering letters accurately reflect the distribution of decisions.

**A Public Housing Authority / Municipal Police Department – Disclosure of Personal Information**

The holder of a federal exemption permit for the consumption of marijuana for medical purposes complained about the exchange of his personal information between a Public Housing Authority and a municipal police department. The complainant argued that the exchange of information took place without his consent and that it facilitated a campaign of harassment against him by local police. He also complained that police disclosed his exemption permit information and medical status to other tenants in the building where he resided.

The OIPC's investigation found that the disclosure of information had occurred from municipal police officers to the tenants and manager of the building when the officers attended the building in response to complaints by angry tenants about the infiltration of marijuana smoke into their apartments. The police had investigated the source of the smoke, questioned the complainant and learned from him about his permit. They disclosed this information to the tenants and building manager in an effort to quell the heated dispute and to explain why they would not in future attend the building to address the complaint. They suggested tenants take the issue up with the Public Housing Authority as a matter of civil, not criminal, complaint.

The OIPC concluded that since the limited disclosure of personal information to the building manager and tenants did not include the complainant's name, the release of information about the complainant's permit was appropriate under the Act. The OIPC determined that disclosure of the permit information by police to the both the tenants and the building manager, an employee of the public housing authority, was necessary for the performance of the officers' statutory duties as law enforcement officials.

**BC Assessment Authority ("BCCA") – Disclosure of Property Information**

A married woman purchased a property some distance away from her matrimonial home to use as a refuge in the event that she and her children needed to escape her husband, who had threatened them. When she completed the conveyance, she indicated that her address for contact regarding that property, its property assessments, tax notices, utilities bills and so on was that of the refuge residence, not her matrimonial home. She did not want her husband to learn of the refuge residence or her actions.

One day, however, the assessment notice for her refuge residence was delivered to her matrimonial home, but fortunately was not seen by her husband. Upset, she called the BCCA for an explanation and, ultimately, complained to the OIPC about what she considered to be an unauthorized disclosure of personal information.

The OIPC's investigation determined that the records kept by BCAA were accurate and contained the complainant's preferred address for communication. BCAA could provide no records that explained how the assessment notice came to be sent to the complainant's matrimonial home instead of the designated refuge residence.

BCAA staff did, however, construct a plausible theory for how the notice may have come to be redirected to the complainant's matrimonial home. In order to avoid situations where taxpayers may be prejudiced or lose the right to appeal because they failed to respond to an assessment notice, the BCAA has a courtesy policy of redirecting returned mail. BCAA theorized that its staff had searched its database for an alternate address for mail delivery for the complainant when her assessment notice was returned. In short, the BCAA's genuine effort to assist could have ended up inadvertently causing harm. The OIPC learned however, that the chance of such an error happening again was remote since BCCA's returned-mail forwarding service was slated for termination as a budgetary cost-cutting measure.

**Ministry of Attorney General – Disclosure of Criminal Conviction Information**

The complainant, an employee of a provincial agency, was convicted of trespass and was sentenced to a period of probation. The probation officer, an employee of the Ministry, conducted a search of the Ministry's database of convictions, discovering that the complainant had been convicted of two criminal offences approximately 20 years earlier. The probation officer, concerned that the complainant's current job involved working with vulnerable individuals, informed the provincial agency of the complainant's criminal history. The complainant's employment was terminated as a result. The complainant alleged that the probation officer had made an unauthorized disclosure of his personal information under the Act.

The OIPC's investigation determined that the complainant's personal information was disclosed by one public body, the Ministry, to another public body, the provincial agency, for reasons directly related to the performance of each public body's statutory duties. The OIPC further determined that the probation officer had acted in good faith according to what he believed to be his duty and that the receiving agency had a legitimate need to know, all of which complied with the requirements of the Act.

**School District – Disclosure of Personal Address**

A father complained to a school district that a teacher had used his family's home address for the purposes of a teacher mail-out regarding the teachers' union and contract negotiations. Although teachers normally receive students' home mailing addresses from the school for the administrative or educational purposes of contacting students enrolled in their classes, the complainant felt that the letter the teacher sent to parents explaining why he was withdrawing as chairman of the school's scholarship committee was for political purposes.

The school's principal told the complainant that the teacher had been advised that it would not be appropriate for him to distribute or mail his letter through the school. The teacher complied with this direction, instead mailing the letter to parents with the support of the local teachers' association. The complainant was not satisfied with the school's explanation and asked the OIPC to investigate.

The OIPC determined that the complainant had a valid complaint about the teacher's inappropriate use of student demographic information and made some specific recommendations to the school district to prevent its recurrence. The OIPC recommended that the school district establish written policies and procedures instructing teachers on the appropriate use of students' personal information for school-related purposes only. The OIPC also recommended that the school district send a notice to schools reminding them of their privacy obligations under the Act. In addition, the OIPC suggested to the school district that it send a letter to schools asking them to inform their staff of the specific privacy policies and procedures established by the school and providing them with opportunities for training on relevant access and privacy issues.

## 4.3 Summaries of Access Complaints

**Ministry of Health Services – Adequate Search for Transfer of Services Records**

The applicant requested that the Ministry of Health Services provide him with copies of information in any form that had been communicated between the Ministry and the Emergency Health Services Commission, the BC Ambulance Service, any MLA, the BC Professional Firefighters Association and the Fire Chiefs' Association of BC regarding the transfer of ambulance and first responder services to firefighters.

The Ministry provided the applicant with all the records it deemed responsive to the request, but the applicant complained to the OIPC, alleging that some relevant records were missing and that the Ministry had not completed an adequate search for records. He listed the details of the additional records he believed he should have received, including, for example, incoming correspondence, since he had only received outgoing correspondence.

As a result of the OIPC's investigation, Ministry staff conducted a second search and found the missing records. The Ministry disclosed them in full and the matter was closed.

**Municipal Police Department – Adequate Search for Gun Records**

The applicant had requested copies of reports pertaining to a rifle he submitted to a police department for destruction in the 1990s. Police responded to his request by releasing a printout, which was the only information the department said it was able to locate relating to the applicant's request. The applicant complained to the OIPC that he believed more information existed in the department's files, based on his previous correspondence on the matter with the department, and that staff had not conducted an adequate search for records.

As a result of the OIPC's investigation, the department conducted a second search and found some items that the applicant had mentioned in his complaint letter, which the department subsequently released to the applicant. In response to an additional letter from the complainant, the department also conducted further searches for records, but did not find any of the ones the applicant listed. The department concluded that the records had probably been destroyed. The OIPC determined that the department had now completed an adequate search for records under the Act and the matter was closed.

**Ministry of Public Safety and Solicitor General – Adequate Search for Invoice Records**

The applicant requested copies of any record, contract or letter of expectation between a branch of the Ministry, a Ministry service centre and a private company pertaining to an invoice the applicant received as a result of another access request. The branch responded that no records existed that were responsive to the applicant's request. The applicant complained to the OIPC that he found it difficult to believe that the branch would not, at the least, have signed a formal contract with the private company, which would be a record relevant or responsive to the applicant's request.

As a result of the OIPC's investigation, the branch conducted a further search for records and found some telephone notes of instructions to the private company, which were released to the complainant. The OIPC was satisfied that the branch had now completed an adequate search for records responsive to the original request and advised the complainant of its finding.

## 5.0 Commissioner's Orders

In 2002-2003, the OIPC mediated a settlement in 91% (736 cases) of all requests for review. Less than 1% (6 cases) of reviews were discontinued or abandoned, while the remaining 8% (64 cases) were resolved by order after a formal inquiry under Part 5 of the Act.

The Commissioner has the power to decide all questions of fact and law that arise during an inquiry and to dispose of the matter by issuing an order under s. 58 of the Act. Neither the Commissioner nor any delegate handling an inquiry is involved in a request for review in any way during the mediation process. This is to ensure that, if the matter proceeds to an inquiry, the Commissioner or delegate is not biased by any previous involvement in the matter.

An inquiry may be conducted in person (oral inquiry) or through written submissions (written inquiry). The Commissioner determines whether or not an inquiry will proceed on an oral or written basis. Almost all inquiries are done in writing.

In a written inquiry, the parties provide submissions. The submissions are exchanged and the parties are permitted a response. If sensitive material is under review or must be discussed in detail, all or part of that portion of the submission may be submitted *in camera*, which means, in effect, "for the eyes of the decision-maker only."

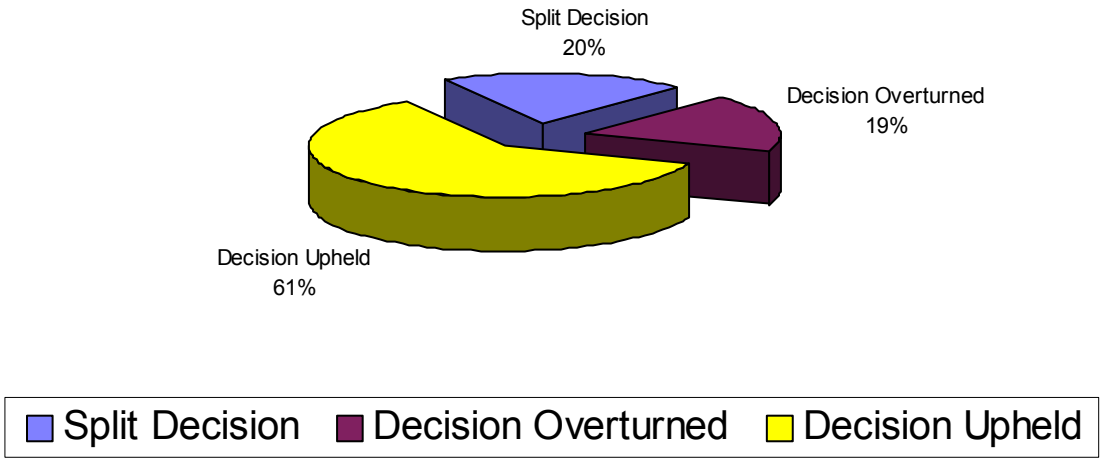
At the conclusion of an inquiry, an order is issued. It becomes a public document and is posted on the OIPC's website. An order may do one or a combination of the following:

- Require the public body to give the applicant access to all or part of the record
- Confirm the decision of the public body or require the public body to reconsider it
- Require the public body to refuse access to all or part of the records
- Require that a duty imposed by the Act be performed
- Confirm or reduce the extension of a time limit for responding to a request
- Confirm, excuse or reduce a fee
- Confirm a decision not to correct personal information or specify how it is to be corrected
- Require a public body to stop collecting, using or disclosing personal information in contravention of the Act
- Require the head of a public body to destroy personal information collected in contravention of the Act

Commissioner's and delegates' Orders are final and binding, although a party can apply to the Supreme Court of British Columbia for judicial review of an Order. Failing this, a public body must comply with an Order within 30 business days after it is issued.

Figure 9, below, sets out the disposition of Orders issued between April 1, 2002 to March 31, 2003. Of the 59 Orders issued, 61% (36) upheld the decision of the public body, 20% (12) partially upheld the decision of the public body and 19% (11) overturned the public body's decision.

**Figure 9**
**Disposition of Commissioner's and Delegates' Orders**
**April 1, 2002 and March 31, 2003**




## 5.1 Summaries of Commissioner's Orders

The following is a small sampling of the more substantive orders the Commissioner and Adjudicators dealt with in 2002-03.

**WCB's proposed regulation on smoking in the workplace**
**(Order 02-38)**

The applicant requested records from the Premier's Office and the Ministry of Skills Development and Labour relating to the government's decision to delay implementation of the WCB's proposed regulation on smoking in the workplace. In particular, the applicant cited s. 25(1) – disclosure in the public interest – as an imperative for the release of this information.

The government severed and withheld some information from the applicant under ss. 12, 13 and 14 of the Act. It dismissed the applicant's request for disclosure under s. 25. The applicant requested a review of the government's decision, as well as its duty to assist an applicant and the authorization required for time extensions under ss. 6 and 10 of the Act, since the government had not responded to the applicant within the legislated timelines.

With respect to ss. 6 and 10, the Commissioner found that, although the government had shown good faith in processing the applicant's request, its inability to respond on time, as required by law, due to excess demand on its resources did not excuse it from its legal duty. He disagreed with the applicant, however, that the information severed by the government met the "clear gravity and present significance to the public interest" test that s. 25 required. Further, the Commissioner found that the government had appropriately withheld records under ss. 12 and 14 of the Act, which except from disclosure Cabinet confidences and information protected by solicitor-client privilege.

With respect to s. 13, however, the Commissioner concluded that some information withheld by the government did not, in fact, constitute policy advice or recommendations and therefore should be released to the applicant. The Commissioner also found that some information withheld under s. 12 should be disclosed.

**Appraisal reports and supporting documentation for parcels of land involved in a treaty negotiation**
**(Order 02-50)**

The applicant, Lheidli T'enneh First Nation, requested access to appraisal reports and supporting documentation for parcels of land included in an offer made to it by the Government of British Columbia and the Government of Canada during treaty negotiations. The then Ministry of Aboriginal Affairs disclosed some records, but severed and withheld other information under ss. 16 and 17 of the Act on grounds that disclosure would reveal information used by the Province in negotiating treaties with the First Nation and would compromise the negotiations in advance of finalizing a treaty.

The Ministry also withheld information under s. 12, the exception for Cabinet confidences. When the matter came before the Commissioner for review, the Commissioner himself raised the issue of the applicability of s. 25, the duty to disclose information that is in the public interest, since the records pertained to treaty negotiations. Both parties subsequently made submissions on this issue.

With respect to s. 25, the Commissioner ruled that it did not ultimately apply to the records. He concluded that although there is undoubtedly a public interest in the fair and constructive process of treaty negotiations with First Nations, it was anything but clear that disclosure of the disputed information to the Lheidli T'enneh was necessary to bring about or contribute to a treaty.

With respect to ss. 12 and 17, the Commissioner found that records in dispute were properly withheld under the Act, since disclosure would reveal the substance of Treasury Board deliberations, which have been held in past Orders to form part of Cabinet confidences, and could reasonably be expected to harm the financial or economic interests of British Columbia. He concluded, however, that s. 16 did not apply to the records.

In addition, the Commissioner commented on the discretionary aspects of ss. 16 and 17 and whether such discretion under the Act should favour disclosure in the case of treaty negotiations where a fiduciary obligation exists on behalf of government. He concluded that, although British Columbia may have a fiduciary obligation to Lheidli T'enneh to disclose some or all of the withheld information, the access process under the Act is a separate scheme of access to information that does not infringe upon the government's fiduciary obligation.

**Proposals or specific designation concerning a wildlife management area (Order 02-51)**

The applicant, a representative of the East Kootenay Chamber of Mines (EKCM), requested records from the then Ministry of Environment, Lands and Parks pertaining to proposals or a specific designation concerning a wildlife management area in the East Kootenays. The Ministry acknowledged that the records related to a matter of public interest but denied the applicant's request for a fee waiver under s. 75 of the Act, saying that the EKCM represented private, not public, interests. The applicant requested a review by the OIPC.

The Adjudicator agreed with the Ministry that the records related to the environment and therefore to a matter of public interest but found further that the applicant's proposed use of the records would yield a public benefit. On that ground, the Adjudicator ruled that that the Ministry should grant the applicant a full fee waiver.

**Duty to respond to the applicant without delay, openly, accurately and completely (Order 02-54)**

The Hospital Employees' Union (HEU) applied to the Ministry of Health Services for access to records concerning Bill 29 of the previous legislative session entitled the *Health and Social Services Delivery Improvement Act*. The request set out 21 different subject areas and specified six different categories of records covered.

The Ministry responded to the HEU that, due to the large volume of records requested, it could not respond within the legislated 30 days and was therefore granting itself an extension under s. 10 of the Act. The Ministry did not, however, respond further until approximately four months later, when it released just some of the documents, stating that it was still processing the other documents which it would forward to the applicant as

soon as it was able. Dissatisfied, the HEU requested a review of the Ministry's delay by the OIPC.

Section 6 of the Act requires a public body to respond to an applicant without delay and openly, accurately and completely. The Ministry acknowledged during the inquiry that, with hindsight, it should have sought permission from the OIPC for further time extensions as required by the Act, but continued to argue that, given the large volume of records requested, it did not consider it wise even now to "rush" its response.

The Commissioner found that the Ministry had breached its s. 6 obligations under the Act and ruled that it could not continue to dictate its own pace of compliance with the Act. He noted that the Ministry failed to provide evidence that the request was particularly complex and, further, that the Ministry gave no persuasive reason why it could not have released records as it processed them.

**Supply of on-campus goods and services to University of British Columbia (UBC) by third-party business**
**(Orders 03-02, 03-03, 03-04)**

The applicant, a journalist, requested records from UBC pertaining to the supply of its on-campus good and services by the Royal Bank of Canada, the HSBC Bank of Canada (HSBC), Telus Corporation and Spectrum Marketing Corporation. Specifically, the journalist wanted copies of UBC's exclusive agreements with Telus and Spectrum and a draft exclusive agreement with the Royal Bank and HSBC.

UBC decided to release the agreements it had with Telus and Spectrum, but both companies objected based on s. 21 of the Act, which prevents disclosure of information that could be harmful to the business interest of a third party. Telus and Spectrum both argued that the information in their exclusive agreements with UBC had been supplied in confidence and that disclosure could harm their competitive positions and interfere with current or future negotiations.

With respect to the draft exclusive agreement between UBC, the Royal Bank and HSBC, UBC refused to release it, stating that it was protected under s. 14 of the Act, the exception for solicitor-client privilege, and that disclosure would harm both UBC's and the banks interests as protected by ss. 17 and 21 of the Act.

In his inquiries, the Commissioner noted that, for information to be protected under s. 21, legal precedence required that a third party must prove that the information had been "supplied in confidence." He concluded that neither Telus, Spectrum nor the banks had "supplied" the information in the agreements, but rather that the agreements contained information "negotiated" between the parties. He also found that there was no reasonable expectation that disclosure of the agreements would harm the competitive or negotiating position of the third parties.

In Orders 03-02 and 03-03*, the Commissioner ordered UBC to release the Telus and Spectrum agreements to the applicant in their entirety. In Order 02-04, the Commissioner ordered UBC to withhold under s. 14 only the privileged handwritten notes made by UBC's lawyer in the draft agreement with the banks.

**Deceased spouse's pension payout option**
**(Order 03-07)**

The applicant sought records from BC Hydro and Power Authority relating to her deceased husband's election of a particular pension payout option. As the primary beneficiary of his estate, the applicant wanted records concerning her husband's medical condition and extent of disability at all times relevant to his pension election.

BC Hydro contended that the applicant was acting on her own behalf and therefore did not qualify for the status conferred by s. 3(c) of the FOI Regulation, which permits a person who is the nearest relative or personal representative of a deceased or incapacitated person to stand in their shoes with respect to accessing that person's personal information under the Act. BC Hydro instead treated the applicant as an arm's-length third party, refusing to disclose records to her on the basis that disclosure would unreasonably invade her husband's personal privacy under s. 22 of the Act. The applicant disagreed and appealed to the OIPC.

The Adjudicator found that, although the applicant had an economic interest in the husband's estate, it did not negate the fact that she, as the executor and principal beneficiary, had a duty to enquire about his pension election on behalf of all beneficiaries and was "standing in the deceased's shoes" as executor of his estate. The Adjudicator concluded that this standing met the conditions required of s. 3(c) of the FOI Regulation originally rejected by BC Hydro. On the basis of s. 3(c) alone, the Adjudicator ruled that the applicant was entitled to the deceased's records withheld by BC Hydro.

The Adjudicator added that, even if s. 3(c) of the Regulation did not apply, BC Hydro could not legitimately withhold the records under s. 22, since the husband's personal information in the records was not particularly sensitive and was already known by his wife.

* ***Note***: Telus has applied for judicial review of Order 03-03.

## 6.0 Providing Advice

Section 42 of the *Freedom of Information and Protection of Privacy Act* ("Act") gives the Commissioner the responsibility of commenting on the privacy and access implications of: proposed legislative schemes or programs; automating systems for the collection, management or transfer of personal information; record linkages; or any other matter that impacts on access or privacy rights.

Proposals involving the collection, use and disclosure of personal information, changes to procedures to access information, proposals to link or create databases for surveillance purposes, the installation of surveillance cameras, outsourcing of the management of personal information, legislative changes limiting access or increasing surveillance powers, identity card and biometric proposals, mandatory reporting of health information and data sharing technologies are some examples of issues potentially impacting on the access and privacy rights of citizens.

In the normal course of business, public bodies approach the OIPC for advice on a variety of issues. Requests for advice may be simple, requiring only a telephone call to an officer, or complex, necessitating a series of consultations with one or more officers or other public bodies. In the absence of a proactive request for advice from a public body, the Commissioner has the power to comment on any matter that comes to his attention, if the matter affects access and privacy rights.

The Act was amended on April 11, 2002 to require ministries to complete a privacy impact assessment to determine if a new enactment, system, project or program complies with the privacy responsibilities set out in Part 3 of the Act. The OIPC continues to encourage all public bodies to conduct a privacy impact assessment before any program is implemented in order to fully assess and mitigate any negative effects the program may have on the privacy rights of citizens. It is normal practice for the OIPC to receive and comment on privacy impact assessments.

The following examples demonstrate the range and depth of issues the OIPC has provided advice or comments on over the past year:

- The federal government's Canada Customs and Revenue Agency ("CCRA") Air Travellers Surveillance Database
- Privacy issues connected to electronic health records
- Organ Donor Transplant Regulations and the anonymity of donors
- Informed consent in studies involving drug testing
- Data matching between Vital Statistics and the federal Passport Office

- Lawful Access proposals and the impact on personal privacy
- Data sharing amongst criminal justice agencies
- Personal information in the Unclaimed Property Registry
- Privacy issues surrounding the new Online Corporate Registry
- Privacy issues surrounding the posting of municipal council minutes online
- Voluntary student surveys
- Data linkages between the Ministry of Education and University of British Columbia
- Fees for individual background checks
- BC Ferries video surveillance guidelines
- Mandatory HIV reporting
- The acceptability of verbal consent versus written consent
- Law enforcement data sharing Memoranda of Understanding
- Principles for secondary use of personal information in health research
- Dealing with access requests for wiretap records
- Health Authority Internet Usage Policy
- Private sector privacy legislation and private investigators
- Access to hospital files of incapable minors
- Electronic voter registers
- Disclosing homeowner names in bulk to realtors
- Access issues related to the new Community Charter
- Proposal for a National Identity Card
- Personal information encoded on student bus passes
- Research agreements between Vital Statistics and BC Hydro
- Archiving of records of defunct public bodies
- Crime Victim Assistance Act consent forms
- The appropriateness of using certain government databases for jury selection
- WCB public inspection reports and the disclosure of personal information
- Disclosure of the names of workers with Thallium cancer to the BC Cancer Agency

- Standard contract language to protect personal information
- Police access to patient information through nurses in hospitals
- School video surveillance policies
- The use of drug sniffing dogs in lower mainland schools
- Privacy and portable closed circuit television cameras
- Privacy, access and outsourcing

## 6.1 Training and Development

To ensure the purposes of the Act are achieved, the OIPC provides access and privacy training to public bodies. Training seminars range from basic orientation workshops for new access and privacy staff to professional development workshops to specialized sector-specific sessions varying in scope and complexity.

This year, the OIPC fanned out across the province to deliver a series of one-day orientation seminars covering the basics of access and privacy, including response times, contents of response, duty to assist, exceptions to disclosure, collection, use and disclosure of personal information, data security and retention.

Whenever possible, OIPC staff collaborate with public bodies to co-deliver workshops and ensure that training and reference materials are relevant to the audience.

Some of this year's OIPC training events included:

- Access and privacy workshop, Terrace
- Access and privacy workshop, Nanaimo
- Access and privacy workshop, Fort St. John
- Access and privacy workshop, Burnaby
- Access and privacy workshop, Smithers
- Access and privacy workshop, Cranbrook
- General access and privacy training for law enforcement agents, Victoria
- Specialized police access and privacy workshop, Saanich
- Local government training workshop, Victoria
- Three separate access and privacy training sessions targeted to Chief Licensing Officers, Lower Mainland

- Environmental Health Officers access and privacy training seminar, Lower Mainland
- Specialized access and privacy workshop – self-governing professions, Victoria
- Specialized access and privacy workshop – health sector, Vancouver

## 7.0 Informing the Public

The OIPC has the additional mandate to inform the public about the Act. Toward that end, every year the OIPC engages in a number of activities designed to educate citizens about their access and privacy rights. Those activities range from keeping the OIPC website current and accessible to the public; participating in conferences and other public forums; teaching classes at university and colleges; distributing informational materials, such as brochures and FAQs; and through interviews with the media.

The Commissioner participated as a keynote speaker and primary participant at a number of access and privacy conferences this year, including:

- Employment Law Conference, Vancouver
- Privacy in Health Research Conference, Ottawa
- British Columbia Council of Administrative Tribunals Annual Conference, Vancouver
- Privacy and Security Conference, Victoria
- BC Crime Prevention Association Conference, Vancouver

Public outreach services provided by OIPC staff this year included:

- Speech to the Victoria Library Association for Information Rights Week, Victoria
- Public forum on access and privacy for Information Rights Week, Vancouver
- "Privacy And Labour Arbitration" Presentation, Continuing Legal Education Conference, Vancouver
- Presentation to first year political science students at Simon Fraser University, Burnaby
- Speech to first year law students, University of British Columbia, Vancouver
- Speech to the Health Information Association, Edmonton, Alberta
- Speech to the Canadian Franchisee Association, Vancouver

# 8.0 Financial Statement

## Operations

| | 2003 | | 2002 |
|---|---|---|---|
| | ***Budget*** | ***Actual*** | ***Actual*** |
| Total Salaries and Benefits | $1,634,000 | $1,439,754 | $1,641,139 |
| Total Operating Costs | $ 511,000 | $ 589,385 | $ 587,152 |
| Total Recoveries | $ -15,000 | | |
| Total Voted Appropriation | $2,145,000 | $2,029,139 | $2,228,291 |
| Unused Appropriation | | $ 100,861 | $ 115,709 |

## Capital Assets

| | 2003 | | 2002 |
|---|---|---|---|
| | ***Budget*** | ***Actual*** | ***Actual*** |
| Opening Cost of Tangible Capital Assets | | $26,673 | $ 221,141 |
| Appropriations for purchase of capital assets | $15,000 | $13,308 | $ 14,870 |
| Capital asset amortization | $15,000 | $-8,545 | $ -14,791 |
| Accumulated Amortization | | | $-194,547 |
| Closing Cost of Tangible Capital Assets | | $31,436 | $ 26,673 |