May 31, 1995

The Honourable Emery Barnes
Speaker
Legislative Assembly of British Columbia
Victoria, British Columbia
V8V 1X4

Dear Honourable Speaker:

Pursuant to Section 51 of the *Freedom of Information and Protection of Privacy Act*, I have the honour to present my second Annual Report to the Legislative Assembly. This report covers the period from April 1, 1994 to March 31, 1995.

Sincerely,

David H. Flaherty
Commissioner

NOTE TO READERS

Certain words used in the text of this Report have a special meaning within the context of the *Freedom of Information and Protection of Privacy Act* (the Act). These words are defined below to assist readers:

Applicant:

An individual who makes a formal request for access to information or a request to correct personal information in a record in the custody or under the control of a public body.

Complaint:

A formal objection made to the Information and Privacy Commissioner with regard to the information and privacy practices of a public body.

Head of a Public Body:

The person responsible for the administration of the Act within a public body.

Information:

Anything contained in a record of a public body.

Intervenor:

A person, group, or organization that has an interest in an issue being decided at an inquiry and is invited by the Information and Privacy Commissioner to present evidence or make a submission at that inquiry.

Inquiry:

A quasi-judicial process in which the Information and Privacy Commissioner decides on the appropriate application of the law on the basis of evidence and arguments from an applicant and representatives of a public body.

Judicial Review:

A form of appeal to the Supreme Court of British Columbia for review of either the findings of fact, or of law, or of both, in an order of the Information and Privacy Commissioner.

Order:

A binding decision of the Information and Privacy Commissioner that resolves issues raised in an inquiry.

Personal Information:

Recorded information about an identifiable individual.

Public Body:

Organizations covered by the Act including provincial ministries, municipal bodies, agencies, school boards, hospital boards, post-secondary institutions, commissions, and Crown corporations.

Record:

Includes books, documents, maps, drawings, photographs, letters, vouchers, papers, and any other thing on which information is recorded or stored by graphic, electronic, mechanical, or other means, but does not include a computer program or any other mechanism that produces records.

Request for Review:

A review involves an investigation by the Office of the Information and Privacy Commissioner of a decision, act or failure to act, of the head of a public body in relation to a formal request for access to information.

TABLE OF CONTENTS

INTRODUCTION

This is the Information and Privacy Commissioner's second Annual Report. It provides a brief background to the Act and explains the mandate of this Office and the role of the Commissioner. The report also contains summaries of selected reviews, orders, and investigations.

The Office of the Information and Privacy Commissioner exists to promote, uphold, and protect the rights created by the *Freedom of Information and Protection of Privacy Act* (the Act). The Act was proclaimed on October 4,

1993. On November 2, 1994, the Act was extended to include public bodies at the local level.

The Commissioner and his staff now comprise an office of 21 employees who handle and manage the day to day operations of a heavy and pressing caseload. The Commissioner and his staff have also undertaken extensive public education and community awareness efforts. In the past year, these efforts have focused primarily on the production and distribution of information materials, and involvement in the community through speaking engagements.

In its second year of existence, the Office has continued to work at the goals set by the Commissioner at the beginning of his term. At the same time, the Office has set new goals which reflect and respond to the practical experience of implementing the Act. For example, since the inclusion of local public bodies under the Act in November 1994, the Commissioner's Office has undertaken to provide support and assistance to many municipalities, schools, school boards, police forces, hospitals, colleges, and universities. During these early stages of tier two implementation, the Commissioner and his staff have tried to develop effective working relationships with all local public bodies and will continue to do so.

This year the Commissioner's Office has also sought to expand its role in the community by extending its public education and public awareness efforts. As part of these efforts, representatives from the Office have addressed a wide variety of groups and organizations on diverse topics relating to information and privacy, the legislation, and the role of the Commissioner. Among the groups that we have addressed are the Supreme Court of British Columbia Judges, the B.C. School Trustees Association, the Canadian Bar Association (B.C. Branch), the B.C. Medical Association, the Professional Secretaries Association, and a variety of student groups all over the province ranging from first year political science students to nursing and law students. Representatives from the Commissioner's Office have also participated in a number of conferences, including the Fifth Annual Alternate Dispute Resolution Conference, the Continuing Legal Education Conference on Media Law, the B.C. Studies Conference, and Information Rights Week.

In the fall of 1994, the Office hosted the First Annual Freedom of Information and Protection of Privacy Conference in Victoria. The Office also hosted the Pan Pacific Privacy Commissioner's Conference February 27-28, 1995. Privacy Commissioners in attendance included Kevin O'Conner from Australia, Bruce Slane from New Zealand, and Bruce Phillips, Canada's federal Privacy Commissioner. Representatives from Ontario and Quebec also attended. Both of these conferences provided further opportunities to build effective working relationships with interest groups, government, members of the public, and the academic community. The cultivation and maintenance of these relationships continues to be an important element of the Office's work in promoting the understanding, interpretation, and acceptance of the Act.

Media and newspaper coverage of our activities has been gratifying, especially in the Lower Mainland. As a result, the Office has been able to increase public awareness of, and sensitivity to, information and privacy issues. It is the Commissioner's hope that increased public awareness will enable British Columbians to become more aware of their information rights and to serve as their own privacy watchdogs.

In the past year, the Commissioner's Office has also worked to ensure that public bodies recognize and fulfill their responsibilities under the Act. The Commissioner encourages public bodies to make information available and accessible when appropriate, and favours a spirit of openness in government. Thus promoting the principles of openness and accountability has figured prominently in the Commissioner's orders this year.

In a time of limited resources, the Commissioner's Office is committed to promoting effective implementation of the Act through the achievement of pragmatic and cost-effective solutions to a variety of problems.

COMMISSIONER'S MESSAGE

It is perhaps obvious that my perspective on the implementation of the Freedom of Information and Protection of Privacy Act is somewhat unique in that while my colleagues and I are not directly responsible for making the Act work, we are charged with overseeing its implementation. Despite this qualification, however, I have no reluctance to say that public bodies have done an excellent job of complying with the legislation to date, despite all of the onerous responsibilities imposed on them. Even if perfection has not yet been achieved, the startup has been much more positive, responsive, and progressive than most of us had dared hope for.

For our part, my colleagues and I continue to approach our statutory tasks under the Act with a particular perspective in mind. We are seeking cost-effective, pragmatic, functional, and effective solutions to the access to information and privacy problems that face both public bodies and ourselves. We are believers in incremental change, although we have certainly been pleased at the rapid responses of certain public bodies to problems that have been identified. I make an effort to repeat our particular approach as frequently as possible because I wish to be reminded when we do not live up to our aspirations.

In addition, we approach public bodies in a cooperative and open manner. Those charged with implementation of the Act at ministries, crown corporations, and tier two public bodies form a community of individuals dedicated to information and privacy rights. Our office shares with the Information and Privacy Branch of the Ministry of Government Services a strong commitment to working together to promote the access and privacy goals of the legislation by giving advice when it is sought and sometimes when it is not.

An example of our sense of intellectual and personal community is the frequent luncheon seminars organized by our office. The speakers are often academic or government figures with considerable achievements to their names in the freedom of information and privacy fields. In addition to the staff of our office, the audience normally includes guests from the community of those working with us on these topics in Victoria. These seminars provide a cooperative and open forum for learning about and discussing current issues in access and privacy.

I am also pleased with the level of public interest in access to information and privacy rights, even though we are a long way from achieving a condition wherein interested members of the general public, especially those living outside the lower mainland and the Capital Regional District, are truly informed of their rights to access records held by a vast array of public bodies, to hold them accountable for their programs and policies, and to have their personal information used in accordance with fair information practices. This is only to suggest that our office alone cannot adequately promote appropriate levels of public information. Participation in newspaper, radio, and television coverage, involvement in public debates, and visits to large and small communities are all parts of the roles of the Commissioner and the Portfolio Officers. But I believe that public bodies, whether government ministries, crown corporations, municipalities, school boards, or hospitals, must do a lot more to promote knowledge of the new legal rights that British Columbians have acquired on the basis of this Act.

With respect to my own work as Commissioner, I believe that the direction of my first forty orders speaks strongly to my commitment to promote a more open and accountable society in this province. Despite my background as a privacy advocate, my sense is that my balancing of competing interests has led quite frequently to decisions that promote access to government information. Of course, my commitment to the privacy interests

of individuals has endured and is also apparent in my first forty orders.

It is ironic, however, that the privacy watchdog side of my work remains most compelling and indeed problematic. We are seeking to promote fair information practices, as set forth in Part 3 of the Act. Although these sometimes appear simple notions to us, we are frequently faced with having to engage in their detailed application to specific schemes that a public body is seeking to promote, often with the expectation that there are no "privacy implications" to the proposal. It is evident that public bodies have been allowed to function for many years without too much of an obligation, at least imposed from within government, to truly consider the implications for personal privacy of what they are proposing. While we have no expectation that an identification of privacy interests is some sort of trump card in the equation of public policy-making, we feel it is essential that this step take place with enough advance notice that deemed solutions can be considered seriously and adopted as necessary.

I would like to remind public bodies, however, that implementation of the Act, from an access to information or privacy perspective, is their responsibility in the first instance. We can give advice, consult, and sometimes make decisions in response to complaints to us. But we also acknowledge that in a democratic society like our own, the final decisions on most such matters will rest in the hands of the legislature. Thus it is simply our wish to ensure that due consideration of privacy interests occurs at all stages of public policy-making in this province.

I think the following pages speak for themselves. It is with a certain sense of pride that I trumpet the success of this office to date in doing what we are supposed to be doing. I am especially proud of the success rate of Portfolio Officers in settling more than ninety percent of the requests for review that come to us. I attribute much of our success to the outstanding performance of the people I work with and to the generally cooperative spirit of the public bodies my office deals with. I am confident that we will continue to grow even more effective in future years.

DIRECTOR'S MESSAGE

Our Office has been given the task of taking a piece of new legislation and breathing life into it, in such a way that we now have an office with professional and administrative staff who handle over 650 cases a year. This is no small accomplishment, for while we are in the process of developing our policies and procedures, the work continues to come in.

As the office has grown over the past year, we have been successful in refining our internal processes so that complaints and requests for review move smoothly and efficiently through the office. Incoming calls are directed to one of two Intake Officers who "walk through" the complaint or request for review with the applicant. Once the Intake Officer has the complaint or request for review ready, it is assigned to a Portfolio Officer. We currently have six Portfolio Officers and expect to increase this number to nine or ten before the next annual report.

Portfolio Officers work together on teams which cover all of the 2,200 public bodies included in the scope of the legislation. Each portfolio officer decides how best to deal with a file and will talk to the applicant and the public body, review the records in dispute, and decide how to attempt to reach a resolution. I act as a coordinator and consultant on all of the files and work with the Portfolio Officers on issues of policy and procedure. I review all files before they go to the Portfolio Officers and, in this way, track similar issues or systemic problems. Details of cases in progress are not shared with the Commissioner, since he may have to decide the matter in an oral or written inquiry.

We have worked to create a set of procedures for our cases and hearings that are fair to all involved. We strive to give ten working days notice of a hearing and to allow all parties the opportunity to respond to any submissions made to the Commissioner.

We have continued to operate our office and perform our duties under the Act in a way that stresses cooperation and team work. The professional staff meet regularly to discuss issues as they arise and to consider solutions. We strive to take this same spirit of cooperation with us when we work together with applicants and heads of public bodies to resolve issues in dispute.

In addition to working on individual cases, we also play an active role in reviewing draft legislation and policy initiatives for privacy concerns. There is an inclination to use available technologies to create larger and more interconnected data bases. Our Office believes that these data bases pose a threat to personal privacy because they are far more easily accessible than the individual data bases held by different public bodies. Thus part of our role has been to advocate on the part of British Columbians for the protection of their personal privacy in the creation and modification of data bases.

I am pleased with our successes so far and am looking forward to the growth that I am sure the next year will bring to our office.

LEGISLATIVE BACKGROUND

Bill 50, British Columbia's *Freedom of Information and Protection of Privacy Act* (the Act), unanimously passed third reading on June 23, 1992 and was proclaimed October 4, 1993. Key commentators have described Bill 50 as the best legislation of its kind in Canada. They praise the balance it achieves between the right of access to government-held information and the government's need for confidentiality in limited circumstances. They also applaud the strong rights to privacy protection that the Act provides for British Columbians.

When Bill 50 was introduced, the government announced its intention to extend freedom of information and protection of privacy rights to public bodies at the local level. A report summarizing the outcome of various consultations was presented to the Attorney General on February 1, 1993 and its recommendations were incorporated into Bill 62, which was passed in July 1993. The Bill extends coverage to municipalities, school boards, hospital boards, police boards, universities, colleges, and self-governing professions. The amendments came into force on November 2, 1994 for all local public bodies, excluding self-governing professions. Amendments covering self-governing professions are anticipated for the fall of 1995.

THE COMMISSIONER'S MANDATE

The Information and Privacy Commissioner has been appointed to promote and protect the information and privacy rights of British Columbians as guaranteed in the *Freedom of Information and Protection of Privacy Act*.

The Commissioner has a six-year, non-renewable term. He is an Officer of the Legislature and, like the Ombudsman and the Auditor General, is independent of government. This independence is essential to the Commissioner's ability to provide an impartial review of government's compliance with the Act.

The Commissioner also has the power to issue binding orders. Public bodies covered under the Act must comply with these orders within thirty days.

The Act provides for public access to records held by public bodies and defines limited exceptions to the right of access. It also establishes strict standards about how public bodies collect, use, and disclose personal information. It guarantees an individual's right to see his or her information and to correct it.

The Act guarantees both the right of access to information and the right of protection of personal privacy. While these two rights may seem contradictory, they are, in fact, quite compatible. The right of access applies mainly to general information about the activities of government organizations that are reflected in administrative, operational, and policy-related records. Access to these records makes government more open and accountable to the people of British Columbia.

Privacy, on the other hand, concerns information about specific individuals. The Act ensures that individuals are able to see personal information about themselves that is held by public bodies and have more say in how that information is used and by whom. It establishes a series of "fair information practices."

The Act specifies limited circumstances where a public body may or must withhold general information. These exceptions to the public's right of access include information gathered during a law enforcement proceeding and information that, if released, would harm the business interests or personal privacy of a third party.

The public bodies that are covered by the province's freedom of information and protection of privacy legislation often have to achieve a balance between the public's right of access and an individual's right to privacy. The Office of the Information and Privacy Commissioner seeks to ensure that these rights are interpreted consistently among public bodies and to provide recourse to those individuals who are not satisfied with a public body's decision either to deny access to information or to release it.

Information that may be withheld from the public includes policy and legal advice, recommendations to government, information which could reasonably be expected to harm a law enforcement matter or intergovernmental relations or negotiations, or the financial or economic interests of a public body. The heads of public bodies exercise discretion in deciding whether to release information that falls under one or more of these exceptions.

If only part of a record contains information that may be withheld, it should be severed and the remaining portions released. The Commissioner seeks to ensure that exceptions are interpreted narrowly and in the spirit of openness.

The Information and Privacy Commissioner has a broad mandate to protect the rights guaranteed under the Act. As part of this mandate, the Commissioner engages in the promotion of the principles of the Act through public education, research, and active involvement in the information and privacy community.

VII. REVIEWS AND COMPLAINTS

The Process: Reviews

The right to an impartial review of the decisions or actions of public bodies is fundamental to guaranteeing freedom of information and protection of privacy rights. The review mechanism exists to ensure that these information and privacy rights are interpreted consistently among public bodies and that the purposes of the Act are achieved.

Once an applicant has approached a public body to ask for information and has been informed either that none of the information requested will be released or that only part of it will be released, the applicant has the option to **request a review** of the decision by the Information and Privacy Commissioner. Also, third parties who have been notified of a decision by a public body to give access to information that might harm the third party's personal privacy or business interests have a right to ask the Commissioner to review the decision.

As outlined in the Act, the request for review of a decision made by a public body must be delivered in writing to the Commissioner's Office within thirty days of the applicant receiving the public body's decision. The request for review should include a copy of the applicant's original written request for information to the public body and the public body's written response explaining its decision to refuse release of all or part of the records.

Initially, requests for review are examined by one of the Office's Intake Officers. The Intake Officer will review the request and may contact the applicant for clarification of the circumstances of the case. Sometimes, the request cannot proceed because more information is needed or other steps must be taken first. If the request for review can proceed, the Intake Officer assigns the request to the appropriate Portfolio Officer in the Office. After the case has been assigned to a Portfolio Officer, the ninety day review period begins, as required by the Act, and the head of the public body receives a copy of the request for review.

The Portfolio Officer must investigate and try to resolve the matter within ninety days. The Portfolio Officer has substantial powers (delegated by the Commissioner) to require that records be produced, to examine information, and to ask questions, despite any other enactment or privilege. He or she will contact the information and privacy section of the appropriate public body to obtain copies of the requested records, including severed sections if parts were withheld, and any correspondence related to the request. Special precautions are taken when transporting and storing records relating to a review since some of the information may be very sensitive.

After reviewing the requested records and analyzing the decision of the public body for consistency with the Act, the Portfolio Officer often initiates further meetings with the Director or Manager of Information and Privacy for the public body involved to clarify the basis for its decision to refuse or limit access to the requested records.

Once the Portfolio Officer has gathered all the necessary facts about the public body's decision, he or she will attempt to resolve the dispute between the parties by negotiation and/or mediation. Portfolio Officers either will attempt to assist parties in reaching an agreement by talking or meeting with each party separately and proposing a resolution, or by meeting with the parties jointly and assisting them to negotiate their own agreement or resolution.

Of the requests for review that come to the Information and Privacy Commissioner's Office, 93 percent are settled through the mediation process. The remaining 7 percent go before the Commissioner as either oral or written inquiries. An important aspect of the request for review process is that the Commissioner does not become involved in, nor hear details of, any request for review until the case comes before him in an oral or written inquiry. The Commissioner is a quasi-judicial figure who hears cases in much the same way as a judge hears cases in court. His function is to act as an impartial officer in enforcing the principles and practices of the

Freedom of Information and Protection of Privacy Act.

The Process: Complaints

The Commissioner's Office also investigates **complaints** about a variety of matters involving the information and privacy practices of public bodies covered under the Act. Like requests for review, complaints are referred to an Intake Officer for initial review and then assigned to a Portfolio Officer. If the complaint affects a number of public bodies, it may be assigned to a team of Portfolio Officers to coordinate further action.

Unlike the process for a request for review, there are no statutory time limits for processing complaints.

In conducting an investigation, a Portfolio Officer normally will contact the complainant for clarification of the facts and will meet with the Director or Manager of Information and Privacy of the public body involved in the case to discuss the matter. As in a request for review, a Portfolio Officer has substantial powers to look at records and ask questions and will take all necessary precautions to transport and store these records safely.

Some complaints are directed at a specific public body, but the subsequent investigation may reveal broader issues of concern to the Commissioner's Office. For example, an individual may be concerned about unauthorized disclosure of personal information from a government data bank. An investigation of this matter may reveal that the data bank has inadequate security provisions. This discovery may initiate a cross-government audit of the security procedures for certain personal information systems. Portfolio Officers are alert to identifying inappropriate information and privacy practices.

When investigating complaints that involve systemic problems, it may be difficult for a Portfolio Officer to resolve the problem definitively. Where possible, however, a Portfolio Officer will attempt to resolve a complaint through conciliation or mediation. It is the goal of the Office to resolve as many complaints as possible at this stage. If a resolution is not possible, the matter is referred to the Commissioner who may pursue the matter as a formal investigation or refer the matter to an outside mediator, if the parties agree, or conduct an official inquiry and ultimately issue an order.

STATISTICAL OVERVIEW

Between April 1, 1994 and March 31, 1995, the Office of the Information and Privacy Commissioner received:

· 544 requests for review;

· 79 complaints; and

· 65 requests for time extensions from public bodies.

Requests for extensions occur when a public body cannot locate and process the requested records within the thirty-day time limit set by the Act.

Between April 1, 1994 and March 31, 1995, the Office also received 54 requests for reviews and 19 complaints that were not within its jurisdictions.

The breakdown by public body for the basic types of cases is as follows:

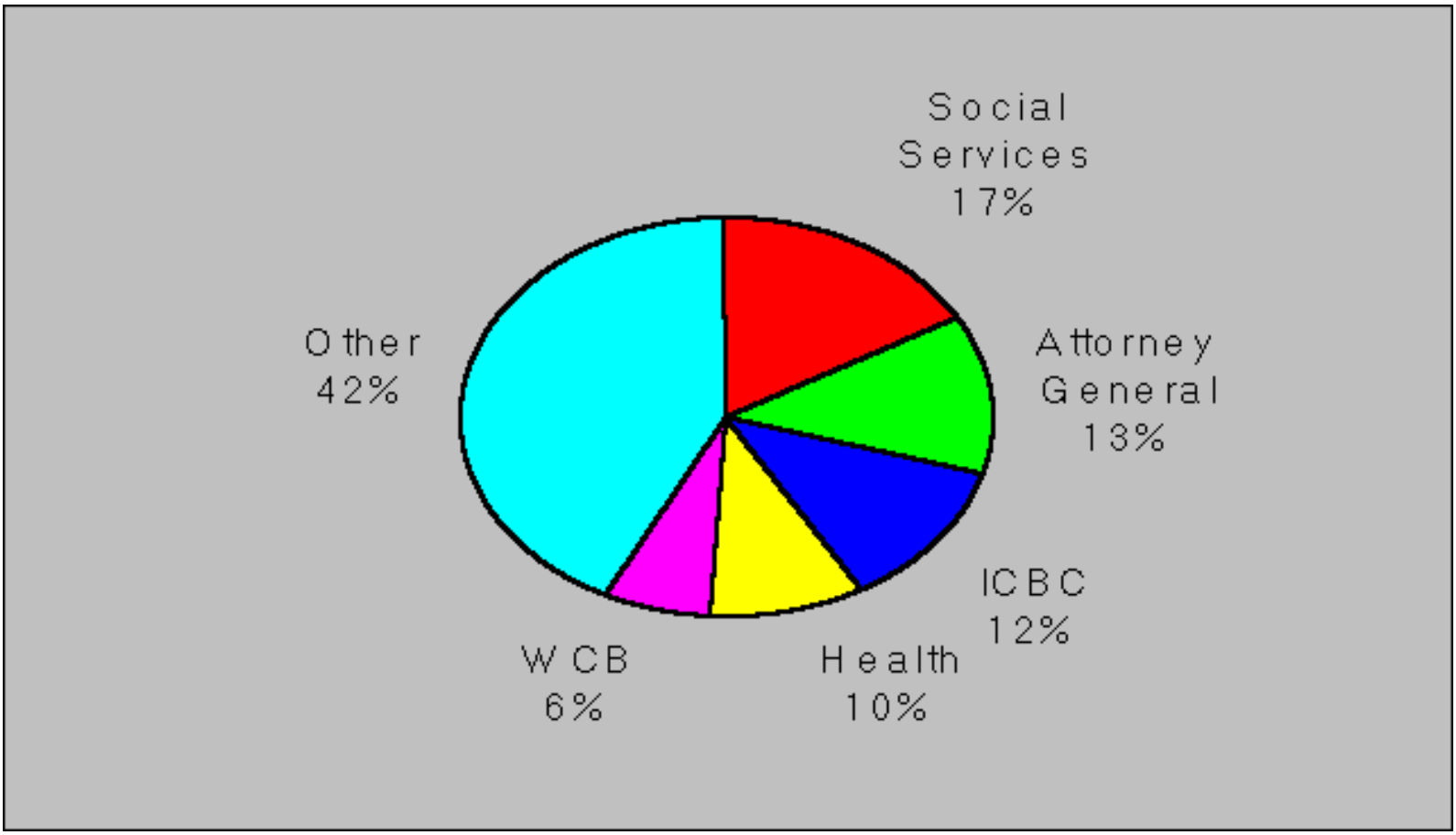
Public Body	Requests for Review	Percentage
Social Services	91	17%
Attorney General	70	13%
ICBC	64	12%
Health	52	10%
WCB	35	6%
Other *	232	43%
Total	544	100%

* No other public body listed in this category produced more

than 35 requests for reviews.

Requests for Review received

between April 1, 1994 and March 31, 1995



Complaints received between

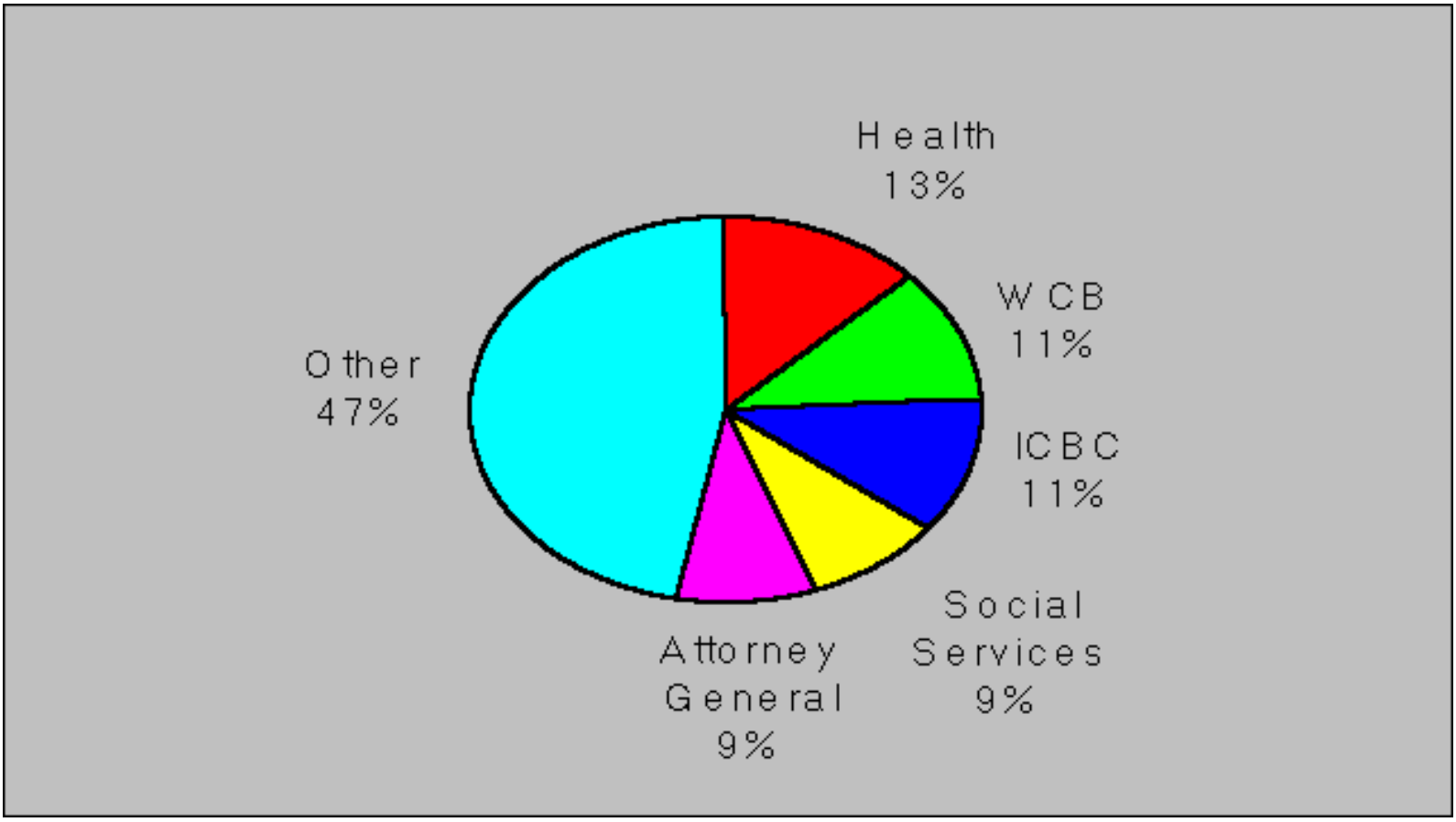
April 1, 1994 and March 31, 1995

Public Body	Complaints	Percentage
Health	10	13%
WCB	9	11%
ICBC	9	11%
Social Services	7	9%
Attorney General	7	9%
Other *	37	47%
Total	79	100%

* No other public body listed in this category produced more

than 7 complaints. **Complaints received between**

April 1, 1994 and March 31, 1995



On November 2, 1994, the Act was extended to cover "tier two" which includes local public bodies, municipal police departments, hospitals, school districts, and post- secondary institutions. Between November 2, 1994 and March 31, 1995, 22 percent of the requests for review and 47 percent of the complaints opened related to tier two public bodies.

Requests for Review and Complaints

received between November 2, 1994 and March 31, 1995.

Public Body Type	Requests for Reviews	Complaints
Local Government Body	29	3
School Boards/Districts	14	3
Police Departments	9	3
Hospitals	6	3
Post Secondary Educational Institutions	3	2
Total "Tier Two" Public Bodies	61	14
Other Public Bodies	218	16
Totals	279	30

Three hundred and seventy-three requests for review and 56 complaints were filed by individuals. Thirty-two requests for review and four complaints were filed by the media, while Members of the Legislative Assembly filed twelve requests for review and 42 complaints. The remaining requests for review and complaints were filed by business organizations, unions, and special interest groups.

Four hundred and forty-five requests for review and 67 complaints were closed between April 1, 1994 and March 31, 1995. Twenty-nine of the requests for review resulted in inquiries before the Commissioner. There were no inquiries resulting from complaints.

Closing Method for Requests for Review

received between April 1, 1994 and March 31, 1995

Method of Closure	Number	Percentage
Settlement	416	93%
Inquiry Held	29	7%
Total	445	100%

HIGHLIGHTS OF SELECTED REVIEWS AND COMPLAINTS

Ministry of Attorney General - "*Bail Supervisor Visits*"

The mother of a young man who was kicked to death outside a bar requested information about the individual who was out on bail pending a trial for the death. The applicant wanted information concerning the dates that the accused was reporting to his bail supervisor.

The Ministry of Attorney General initially denied the request under section 22 of the Act. Following mediation, however, the Ministry agreed to supply the applicant with a breakdown of the number of times per month that the accused had reported to his bail supervisor.

Ministry of Attorney General - "*Non-profit Agency Report*"

An applicant requested a report from the Ministry of Attorney General concerning a government-funded non-profit agency. The agency objected to the release of the report because they felt that it was flawed. The agency was concerned that release of the report would damage the reputation of the people who worked there.

The Ministry of Attorney General could not withhold the report under section 22 because organizations do not have "privacy rights" as defined in that section. The situation was resolved by severing the names of employees and allowing the agency to attach an annotation to the report which outlined their concerns with the methodology and the substance of the report.

The report and the annotation were subsequently released to the applicant.

British Columbia Systems Corporation - "*Investigation Report*"

An employee of a Crown corporation launched a harassment complaint against a number of fellow employees. The incident was investigated by both the Union and the Employer, and witnesses were assured that their statements would remain anonymous.

Upon completion of the investigation, the union and the employer agreed that there was not enough evidence to support the complaint. The employee requested access to the complete investigation file, including the witnesses' statements. The witnesses, however, did not want the information released.

After mediation with the Commissioner's staff, a final settlement was reached based on section 22(5) of the Act, which requires that an applicant be provided with a summary of information provided in confidence by a third party, so long as the summary can be prepared without disclosing the identity of the informant. The witnesses approved the summary that the employee received.

Ministry of Finance and Corporate Relations - "*Contracts"*

An applicant made a request to the Ministry of Finance and Corporate Relations for copies of contracts for training services provided by a consultant. The Ministry sent third party notice to the consultant to obtain consent for release.

The consultant objected to the disclosure of certain information contained in the contract. The Ministry, however, decided to disclose the information. The consultant then requested that this Office review the Ministry's decision.

Mediation led to an agreement between the consultant and the Ministry as to the information that would be released. This arrangement satisfied the applicant.

Ministry of Government Services - "*Waiver of Fees"*

A community newspaper requested a review of a fee estimate by the Ministry of Government Services for information about the Commonwealth Games. The original fee estimate of $2,500 for searching and copying was based on 7,600 pages of information and the Ministry's view that the newspaper was a commercial applicant.

The newspaper argued that it was not a commercial applicant because it was serving the public interest and that search fees should not apply.

With the help of mediation, the newspaper and the Ministry quickly negotiated an agreement which provided the newspaper with access to the documents in severed form and charged it only for the copies that the newspaper chose to make. In addition, the two parties agreed on a prorated search fee based on the original number of pages and the original fee estimate. The final bill for the entire request was $161.

Ministry of Government Services - "*Polling Results"*

A caucus researcher for a political party applied for polling information about gaming. At the time, the polling information was part of a broader gaming review that had not yet gone to Cabinet.

The Ministry of Government Services argued that the polling results were protected under section 12 of the Act. The applicant, however, argued that section 13 specifically provides for the release of opinion polls.

Through mediation, the applicant agreed to wait for the poll until the Cabinet made its decision on gaming policy. If this decision was not made within a specific time frame, the Ministry and the Commissioner's Office agreed to process any new application quickly in order to resolve the issue.

The Cabinet decision was made within the allotted time for the original request for review, and the poll was released to the applicant.

Ministry of Health - "*Policy Advice and Recommendations"*

An applicant requested access to the results of qualitative opinion polls of significant stakeholders in the Pharmanet debate. The Ministry of Health provided some information but withheld a report prepared by an outside consultant. The report described the results of interviews with sixteen stakeholders. The consultant had titled the summary of the discussions as "Recommendations."

The Ministry originally considered that the consultant's report could be withheld under section 13 of the Act, which protects policy advice and recommendations. After review, however, it became clear that the information in question was actually a detailed summary of the interviews with the sixteen stakeholders.

The Ministry decided that section 13 did not, in fact, apply and subsequently released the consultant's report to the applicant.

Ministry of Health - "*Health Care Facility Funding Application"*

An applicant requested copies of records related to her applications to the Ministry of Health to fund her health care facility. The Ministry released over 1,200 pages of records but withheld certain portions of the records under sections 13, 14, 21, and 22.

The applicant requested a review of the application of section 13 and also questioned the adequacy of the Ministry's search for relevant records. Mediation by the Commissioner's staff resulted in the complete release of the records originally withheld under section 13.

Further searches of the Ministry's records resulted in the subsequent disclosure of another smaller number of records and a finding by the Commissioner's Office that the search had been adequate.

Ministry of Health/Office of the Premier - "*Cabinet Confidences"*

The applicant requested information for a client about the process that Cabinet had followed in its decision on the Pharmacare program. The Ministry of Health and the Office of the Premier had released some information to the applicant, but had withheld certain documents.

In mediation it became clear that the material could not be released under section 12 of the Act. The Ministry and the Premier's Office, however, agreed to prepare an index of documents that would help the applicant understand the process by which Cabinet had made its decision on Pharmacare. The index outlined when different committees had considered particular records as the proposals worked their way to the final Cabinet meeting.

The applicant was satisfied with this information.

Insurance Corporation of British Columbia (ICBC)- "*Personal Information"*

A woman complained about the disclosure of her personal medical information by a lawyer acting on behalf of ICBC during a civil litigation action in the Supreme Court of British Columbia. The personal information included medical reports regarding her injuries, her disease history, and the impact of her illness on her sexual activity.

The complainant's lawyer requested an apology from the lawyer acting on behalf of ICBC in court. The judge dismissed this request, noting that when the complainant put her medical issues into litigation, she lost her privacy, "so far as it is relevant to the issues in the case." An investigation by the Commissioner's staff concluded that ICBC's defense lawyer was justified in disclosing the personal medical information according to the rules of court. However, it also concluded that ICBC is subject to a higher standard for the protection of personal information under the *Freedom of Information and Protection of Privacy Act* for its activities conducted *outside* the civil litigation process.

As a result of this complaint, ICBC agreed to take steps to minimize the invasion of privacy during civil litigation. In particular, ICBC has recommended that defense lawyers prepare separate court documents for medical and employment records so that employers do not receive employee medical information where it is not relevant.

City of New Westminster - "*Legal Opinion"*

An applicant requested a copy of a legal opinion which had been commissioned in an open meeting of a city council. The opinion concerned whether the applicant's remarks to the council in previous meetings constituted defamation. The city initially refused access to the opinion under section 14 of the Act.

Mediation by the Commissioner's staff led the city council to agree to release the opinion to the applicant. As a result, the applicant learned that the city's solicitor had not considered the applicant's remarks defamatory.

Ministry of Social Services - *"Guaranteed Available Income for Need* (*GAIN) File"*

An applicant applied to the Ministry of Social Services for access to her Guaranteed Available Income for Need (GAIN) file. The Ministry carried out an extensive search but was unable to locate the file.

The applicant complained to the Commissioner's Office concerning the adequacy of the search. At our request, the Ministry's records officials carried out the search again using slightly different and more detailed criteria. The Ministry was successful in locating the file and then released it to the applicant in severed form.

University of British Columbia - "*Custody and Control of Financial Statements*"

An applicant requested the financial statements of a non-profit development company from the University of British Columbia. He claimed that the development company was a subsidiary of a real estate company that was a subsidiary of a trust fund that was managed and controlled by the University. The University, however, refused to disclose the records, claiming that it had no control over them.

After considering the custody and control issues involved in the case, the Commissioner's staff came to the conclusion that the public body was correct in its refusal to release the financial statements, since it was evident that it had no control over them.

The applicant ultimately was able to obtain the financial statements from the director of the development company under the *Financial Reporting Act*, which governs the reporting obligations of a non-profit organization.

Vancouver Police Department - "*Investigation Report"*

The applicant, a police officer, requested access to internal files compiled by the police department as a result of allegations of improprieties against the applicant. In processing the request, the police department consulted with a series of third parties.

One woman complained to the Commissioner's office objecting to the proposed release of information that she had provided in the course of the investigation into the allegations. Mediation with the Commissioner's staff resulted in an agreement between the third party and the police as to what information would be withheld and what would be released. The applicant was satisfied with the response from the police.

Victoria City Police Department - "*Accident Report"*

A lawyer representing the parents of a woman killed in a car accident requested access to the police incident

reports of the accident. The police released most of the records, including the names of witnesses, but withheld some of the information under section 22 of the Act. The parents were not satisfied and requested a review by the Information and Privacy Commissioner's Office.

As a result of mediation with the Commissioner's staff, some further information was released with the consent of the witnesses. Other information which was already available to the applicant from other sources was also released by the police. Another record, which had not been considered part of the incident report, was also made available to the applicant at her request.

Worker's Compensation Board - "*Waiver of Fees"*

An applicant requested a variety of records from the Workers' Compensation Board relating to an industrial plant. The Board agreed to release the records, but estimated that the fee for the provision of the documents would be $4,800. Since the applicant could not afford to pay the fee, he complained to the Commissioner's Office.

Through mediation with the Commissioner's staff, the applicant was able to narrow his request to include only the inspection reports, air quality testing results, and field notes from 1971 to 1991 (with the exception of 1980 records that had not yet been processed), and the Board agreed to waive the fee of $4,800 for the narrowed request.

THE COMMISSIONER'S ORDERS

When a review of a public body's decision cannot be resolved to the satisfaction of all parties through mediation, the issue is referred to the Commissioner for an inquiry. Between April 1, 1994 and March 31, 1995, the Information and Privacy Commissioner issued 29 orders. This number represents only seven percent of all the cases that were brought to the Office during this fiscal year.

An inquiry may be conducted in person or by written correspondence from the parties. The Commissioner receives submissions from the applicant and representatives of the public body. Any person or organization that was given a copy of the request for a review is notified of the inquiry and also given an opportunity to make representations to the Commissioner. The Commissioner reviews records that have been withheld from disclosure.

When an oral inquiry is required, or requested, it is conducted in public, unless there are compelling reasons to treat some matters in private. If sensitive material has to be reviewed or discussed in detail, all or part of the proceedings may be *in camera* (in private). The Commissioner has broad discretion to determine how an inquiry will be conducted. Every effort is made to ensure that the process is appropriate and fair for the circumstances of each case.

Generally, the Commissioner seeks to function in a totally open manner in the conduct of oral inquiries. The applicant and the head of the public body are expected to be present. If the head of the public body delegates this function, the delegate must have full power to act at the hearing as the circumstances require. Each has the option to be represented by counsel or an agent. The media and the public are welcome to attend, within the limits of the seating capacity of the Office's boardroom.

While the style of a hearing is not as formal as a court, witnesses are sworn or affirmed to the truth of their testimony. The applicant and representatives of the public body make representations to the Commissioner and each have access to, and an opportunity to comment on, representations made by other parties. The intention is to allow the several parties to be fully heard.

An official taped record of the hearing is made. Copies of tapes are made available to the parties upon request, at minimal cost. Any party may, at their own expense, have a transcript prepared.

The Commissioner issues a written order as soon as possible after an inquiry is concluded.

Orders are numbered sequentially by year. Copies are sent first to the applicant and the head of the public body. After it has been verified that these copies have been received, the order is made available to the public.

The Commissioner's orders are available through Crown Publications, through Quick Law, and on the Internet via the World Wide Web at http://www.cafe.net/gvc/foi.

TABLE OF ORDERS 1 THROUGH 40

Order Inquiry Regarding

1-94 Ministry of Finance and Corporate Relations / Public Service Employees Relations Commission

2-94 A Request for Access to Ministry of Social Services Records

3-94 A Request for Review by Mr. Gordon D. Frampton for Access to Survey Records held by the Ministry of Agriculture, Fisheries and Food

4-94 A Request for Access to Psychological Records held by the B.C. Board of Parole, Ministry of the The Attorney-General

5-94 A Request for a Report from the Insurance Corporation of British Columbia

6-94 A Request for a Report from the Insurance Corporation of British Columbia

7-94 A Request for Access to Records Relating to the Performance of Abortion Services for the Ministry of Health

8-94 A Request for Access to Records of the Ministry of Employment and Investment and the Office of the Premier

9-94 A Request for Access to Records of the Ministry of Finance and Corporate Relations

10-94 A Request for Access to Records of the Ministry of Social Services

11-94 A Request for Access to Records of the Ministry of Health and Dogwood Lodge

12-94 A Request for Access to Records of the Insurance Corporation of British Columbia

13-94 A Request for Access to Records of the B.C. Police Commission

14-94 A Request to Review a Decision of the Ministry of Aboriginal Affairs

15-94 A Request by the Wellington Insurance Company for Access to Records of the Insurance Corporation of British Columbia

16-94 A Request for Access to Records of the Insurance Corporation of British Columbia

17-94 A Decision to Release Records of the Ministry of Education

18-94 A Request for Access to records of the Ministry of Health and Ministry Responsible for Seniors

19-94 A Request for Access to Records of BC Transit

20-94 A request for Access to Records of The Ministry of The Attorney-General

21-94 A Decision to Withhold Records of the Ministry of Health and the Ministry Responsible for Seniors

22-94 A Request for Access to Records of the Workers' Compensation Board of British Columbia. A Request to Review a Decision by the Workers' Compensation Board of British Columbia to Disclose a Record

23-94 A Request for Access to Records of the Criminal Justice Branch of the Ministry of The Attorney-General

24-94 A Request for Access to Records of the Ministry of Health and the Ministry Responsible for Seniors

25-94 A Request for Access to Records of the Insurance Corporation of British Columbia

26-94 A Request for Access to a Record of the British Columbia Hydro and Power Authority

27-94 A Request by The Province for Access to Suicide Records held by the Ministry of Health and the Ministry Responsible for Seniors

28-94 A Request for Access to the Identity of the Author of a Letter to the Motor Vehicle Branch of the Ministry of Transportation and Highways

29-94 A Request for Access to Records about Cypress Bowl Recreation Ltd., held by the Ministry of Environment, Lands and Parks and the Ministry Responsible for Human Rights and Multiculturalism

30-95 A complaint from the Radio and Television News Directors Association of Canada concerning the handling of a request by the Ministry of Attorney-General and the search fees that the Ministry proposed to charge

31-95 A request for access to records of the Office of the Public Trustee of British Columbia

32-95 A request for access to complaint records of the Employment Standards Branch of the Ministry of Skills, Training and Labour

33-95 A request for access to the records concerning the Premier's Council on Native Affairs

34-95 A request for access to a record held by the Ministry of Highways and Transportation, being a letter of complaint concerning the applicant, written by the Applicant's neighbour

35-95 A request for records concerning an adult adoptee held by the Ministry of Social Services

36-95 * A Request for access to the name of a complainant in a record held by the Ministry of Environment, Land and Parks concerning the Saturna Island landfill

37-95 * A request for access to records held by the Labour relations Board (The reports of an Industrial Relations Officer concerning an application for certification of a union)

38-95 * A request for access to records pertaining to Flora Island held by the Ministry of the Attorney-General

39-95 * A Request for Access to Complaint Records held by the City of Langley

40-95 * A request for access to a behavioural investigator's report to the Office of the Chief Coroner on the death of Patient X at the Maples Adolescent Treatment Centre

* These orders were issued after March 31, 1995.

TABLE OF CONCORDANCE FOR ORDERS 1 THROUGH 40

Section Order

2

2(1) 5

2(2) 7, 11

3

3(1) 2, 12

3(1)(g) 20

4

4(1) 1, 2, 7, 31

4(2) 3, 29

5

5(1) 11

6

6(1) 30

12

12(1) 8, 9, 33

12(2) 8, 9, 33

13

13(1) 12

14 5, 6, 12, 16, 23, 29, 38

15

15(1)

15(1)(a) 12, 16, 32, 36, 39

15(1)(c) 39

15(1)(d) 12, 28, 36, 39

15(1)(f) 20, 23

15(1)(g) 20

15(2)(b) 36, 39

15(4) 20, 23

16

16(1)(a) 3, 4

16(1)(c) 14

17

17(1) 1, 14, 15, 26

19

19(1) 7, 18, 28, 40

19(1)(a) 39

19(1)(b) 39

21

21(1) 19, 21, 22, 26, 32

21(2) 22

22 35

22(1) 3, 12, 17, 22, 36, 40

22(2) 24, 40

22(2)(a) 13, 24, 27, 40

22(2)(b) 40

22(2)(d) 3

22(2)(e) 3, 32, 36, 39

22(2)(f) 24, 32, 36, 39, 40

22(2)(h) 36

22(3)

22(3)(a) 4, 27, 40

22(3)(b) 13, 36, 39

22(3)(d) 3, 13, 32

22(3)(f) 3, 24, 32

22(3)(g.1) 17, 32

22(4) 24, 34

22(4)(b) 4

22(4)(c) 23

22(4)(f) 4

22(4)(g) 23

23

23(1.1) 3

23(1.2) 21

25 4, 13, 22, 27, 32

27

27(1) 20

28 3

29

29(1) 20

29(2) 20

32

32(a) 4

33

33(b) 10

35 3

42 37

47

47(3) 12

56

56(2) 12

56(4) 12

57

57(1) 22

57(2) 3, 4, 24, 27

57(3) 11

75

75(5) 30

75(5)(b) 13

78

78(1) 35, 37

78(3) 37

Regulation

3

3(a) 2, 10

3(c) 27, 31

7 30

Summaries of Selected Orders

It is difficult to say that one order is more significant than another, especially when one considers that every order is significant for the applicant. For this reason, we have chosen instead to focus here on some of the sections of the Act that the Commissioner's orders have been most often considered. Summaries of selected orders that address these sections are reprinted below.

Section 12: Cabinet Confidences

Section 12 of the *Freedom of Information and Protection of Privacy Act* concerns Cabinet confidences. While the Commissioner has issued only three orders relating to this section, the importance of the orders cannot be underestimated. The Commissioner has held that section 12, which is a mandatory exception, must be interpreted narrowly. This means that all the information that government has traditionally included under the blanket of "Cabinet confidences" cannot be so labeled under the *Freedom of Information and Protection of Privacy Act*.

The Commissioner has also maintained that even if the material appears to fall under the mandatory exception, the public body must still do a line-by-line review to see if any material can be severed. Although the British parliamentary tradition is one of utmost secrecy about Cabinet documents, the Commissioner's orders regarding section 12 have moved British Columbia well along the road towards the goal of greater government accountability.

Order No. 8-1994

May 26, 1994

INQUIRY RE:

A request for access to records of the Ministry of Employment and Investment and the Office of the Premier.

The President of Aquasource Ltd., requested from the Ministry of Employment and Investment and the Office of the Premier copies of all background information presented to Cabinet or any Cabinet committees which related to the decision to execute Order-in-Council 331, which established a "moratorium" on water exports from streams in British Columbia until a specific date. The Ministry refused disclosure of part of a record to the applicant. The record at issue was a Cabinet submission relating to water issues. Although portions of the record were disclosed to the applicant, parts were severed and withheld under section 12 of the Act which covers Cabinet confidences.

The applicant requested a review of the Ministry's decision. At issue at the inquiry was the interpretation of section 12 and the information that could properly be withheld under this section. Under section 57(1) of the Act, the burden of proof was on the Ministry to show that the applicant had no right of access.

At the inquiry, the Ministry argued that the release of any more of the Cabinet Submission at issue would reveal the "substance of deliberations." The Commissioner, however, stated that the "substance of deliberations" should be narrowly interpreted, in accordance with a plain language approach to the Act.

In his ruling, the Commissioner noted that public bodies cannot automatically presume that sub-section 12(1) prohibits the disclosure of all information described as "advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees." Public bodies must review each of these records on their own merits to determine if disclosure, or partial disclosure, would reveal the substance of deliberations.

The Commissioner ordered the Ministry of Employment and Investment to reconsider its decision not to release portions of the Cabinet submission to the applicant.

Section 14: Legal Advice

Section 14 is a discretionary exemption that deals with solicitor-client privilege. Order 29 is probably the key order in this area. In that order, the Commissioner maintained that the presence of a lawyer at a meeting was not enough to establish its entire minutes as being subject to solicitor-client privilege. In his ruling, the Commissioner expressed the view that the Legislature did not intend to weaken its goal of greater openness and accountability by means of an expansive interpretation of solicitor-client privilege. Thus, the Commissioner again expressed his intention to interpret this section narrowly in accordance with the basic intent of the legislation.

Order 29 narrowed the scope of what has traditionally, or at common law, been held to be solicitor-client privilege. The government has applied for judicial review of this order.

Order No. 29-1994

November 30, 1994

INQUIRY RE:

A request for access to records about Cypress Bowl Recreation Ltd., held by the Ministry of Environment, Lands and Parks and the Ministry Responsible for Human Rights and Multiculturalism

Bobby Swain, Planning and Program Manager of Cypress Bowl Recreation Ltd. (Cypress Bowl), made a request to the Ministry of Environment, Lands and Parks for records pertaining to Park Use Permit number 1506. The Ministry provided the applicant with a fee estimate and extended the response time by thirty days. The Ministry subsequently provided some of the documents to the applicant, but withheld others on the grounds that they were subject to solicitor-client privilege. The applicant requested that the Office of the Information and Privacy Commissioner review the Ministry's decision.

The issue under review was the extent to which the Ministry could use section 14 of the Act (solicitor-client privilege) to refuse to disclose information from the records in dispute. Under section 57(1), the burden of proof in this inquiry was on the head of the public body to prove that the applicant had no right of access to all or part of the records.

Counsel for the applicant argued that although written solicitor-client communications are privileged in their entirety at common law, "[u]nder the Act, only those portions of the written communication that contain requests for or the obtaining of legal advice are privileged." Counsel maintained that statements of fact by either the client or the solicitor at a meeting are not privileged, and should be disclosed after severing.

The Ministry, however, argued that for solicitor-client privilege to apply, there must be: 1) a lawyer-client relationship; 2) consultation of a lawyer in the capacity of legal adviser; and 3) a confidential communication for the purpose of obtaining legal advice." According to the Ministry, all three of these conditions were met in this case.

In his order, the Commissioner stated that "public bodies should apply a line-by-line analysis to records to which solicitor-client privilege may apply." The Commissioner maintained "the presence of a lawyer at a meeting is not enough to establish its entire minutes as being subject to solicitor-client privilege."

The Commissioner confirmed the Ministry's decision to withhold one document, and ordered disclosure of two others after severing. In his ruling, the Commissioner expressed the view that "the Legislature did not intent to weaken this clear purpose of greater openness and accountability by means of an expansive interpretation of solicitor-client privilege."

Section 22: Disclosure harmful to personal privacy

Section 22, disclosure harmful to personal privacy, has been considered in eleven of the Commissioner's orders. This section requires a careful balancing of the right of access with the right of privacy. The orders reprinted below offer examples of how the Commissioner has sought to achieve this balance.

Order No. 13-1994

June 22, 1994

INQUIRY RE:

A request for access to records of the B.C. Police Commission

Kim Pemberton, a staff reporter for the Vancouver Sun, made a request for access to complaint files involving municipal police officers from the Office of the Complaint Commissioner, which is a component of the B.C. Police Commission. The applicant wanted any information held by the Ministry of Attorney General regarding the termination of employment of a West Vancouver police officer in 1993. She also asked for any information filed with the Ministry on disciplinary action taken under the *Police Act* for any officer serving on a British Columbia municipal police force from January 1992 to the present date. She wanted to know the officer involved, the police force involved, the circumstances surrounding the charge, and how it was dealt with by law enforcement officials.

The Police Commission responded to the applicant's request by offering to provide a computer printout with limited summary information on it. The applicant rejected this and asked that the Office of the Information and Privacy Commissioner review the Police Commission's decision. When the Police Commission sought to charge her a fee of $241.80 to process this limited information, she also requested a review of the fee. The parties agreed to combine the two requests for review.

Upon reviewing the written submissions of both parties, the Commissioner decided that an oral hearing was necessary in order to further review the issue within the context of the current complaints process. At the oral inquiry, the Commissioner requested that the parties address a number of issues. First, he wanted to know whether there was explicit or implied confidentiality granted to the complainant in the process. Second, the Commissioner wanted detailed information about the actual records kept by the Police Commission, and a sample of these records. Third, the Commissioner wanted further clarification as to what the applicant wished to receive from the Police Commission.

Under section 57(1) of the Act, the initial burden of proof was on the Ministry to show that the applicant had no right of access to the records of part thereof. Under section 57(2), however, the applicant carried the burden of proof for the release of records containing personal information about third parties.

The applicant argued that the public had an interest in disclosure of the records. In response to the Police Commission's claim that disclosure would be harmful to law enforcement, the applicant stated that the statutory exemption is restricted to information that may be harmful to a specific law enforcement matter, rather than generally harmful. The applicant also stated that the disclosure of the records in question would not be an unreasonable invasion of the privacy of third parties.

The Police Commission maintained that the disclosure of complaint files was not in the public interest, and that disclosure would be harmful to law enforcement. Furthermore, the Police Commission noted that the information provided by complainants is compiled as part of an investigation into a possible violation of law, and disclosure would be an unreasonable invasion of privacy.

The B.C. Federation of Police Officers supported the case made by the Police Commission, as did the B.C. Association of Chiefs of Police. The Chiefs of Police noted that the responsibility for ensuring that the police discipline process works effectively rests without the chief constable of the municipality. They also noted that confidentiality is necessary to maintaining the effectiveness of the complaints process.

The B.C. Civil Liberties Association also made a submission as an intervenor in this case. Its basic position was that the information should be released "for the purpose of holding the police accountable to the public, consistent

with the protection of the privacy of the persons concerned."

In his ruling, the Commissioner stated that "the public has a right, under the *Freedom of Information and Protection of Privacy Act*, to know more and in greater detail about the functioning of the current system of making complaints against the police." Nevertheless, the Commissioner was concerned that the personal information of constables and complainants should not be made available. Thus he ordered the B.C. Police Commission to release police complaint records to the Vancouver Sun after severing them to protect the personal information of constables and complainants. The Commissioner deferred his decision on the question of fees to allow the Police Commission time to engage in the appropriate severing of the complaint records.

Order No. 24-1994

September 27, 1994

INQUIRY RE:

A request for access to records of the Ministry of Health and the Ministry Responsible for Seniors.

In February of 1993, it was announced that the University Hospital, Shaughnessy Site in Vancouver (Shaughnessy Hospital) would be closed. Alison Appelbe, a reporter for the Vancouver Courier, made a request to the Ministry of Health for a list of the severance packages awarded to non-union employees, including the names of the employees, the dates of the agreements, and the amounts of the packages.

After a thirty-day extension due to the difficulty of locating files in transition, the Ministry determined that the records in question were under the control of Shaughnessy hospital and transferred the request there. The hospital provided the applicant with a document entitled "Displacement of University Hospital Non-Union Staff." It consisted of a covering letter that provided the total amount of severance money paid to all former non-union employees of Shaughnessy Hospital and a three-page document entitled "Arrangements for Non-Contract Staff," which included the methods of calculating the severance packages.

The applicant wrote to the Ministry once again requesting the detailed information she had originally requested. The Ministry ultimately refused access to the entire record in question, stating that disclosure would result in an unreasonable invasion of the privacy of the former employees. The applicant requested that the Office of the Information and Privacy Commissioner review the case, and an oral inquiry was held on September 15, 1994.

The issue under review was whether the disclosure of the record, in whole or in part, would constitute an unreasonable invasion of privacy under the Act. Under section 57(2), the burden of proof was on the applicant to show that the disclosure of the personal information of the third parties would not be an unreasonable invasion of their privacy.

The applicant argued that the severance grid should be subject to public scrutiny because of the concern that some administrative staff had taken severance packages and shortly afterwards joined other hospitals. The applicant also argued that the disclosure of a single, recent payment from public funds would not disclose an individual's overall finances or income, and so would not constitute an unreasonable invasion of privacy. The Freedom of Information and Privacy Association, which made a written submission in this case as an intervenor, supported

the applicant's case.

The Ministry, however, maintained that certain individuals would be identifiable on the basis of the severance grid, and that consequently the release of the record could potentially be an unreasonable invasion of privacy. Furthermore, the Ministry was concerned that the appearance of the record in the newspaper would "unfairly convey the impression that some of the individuals involved were not entitled to a severance package as they subsequently found other employment." A number of health care associations acted as intervenors in this case and supported the Ministry's position.

In his order, the Commissioner was moved by the need for the public, through the media, to learn more about how public funds are spent on such matters as severance payments, since there appears to be considerable public suspicion and political concern about them. He concluded that the release of the severance payment information would not constitute an unreasonable invasion of privacy, and that severance payments are not equivalent to "finances" or "income." As a result, the Commissioner ordered the Ministry to disclose the record in dispute.

Order No. 27-1994

October 24, 1994

INQUIRY RE:

A request by The Province for access to suicide records held by the Ministry of Health and the Ministry Responsible for Seniors.

Ann Rees, a reporter for The Province, submitted a request for a copy of an internal report on the death of a named resident (Patient X) at the Maples Adolescent Treatment Centre (the Maples) from the Ministry of Health. The Ministry responded by releasing portions of an investigation report on Patient X's suicide and attachments to that report. The Ministry severed or withheld the majority of the report and its attachments under section 22 of the Act, which protects the privacy of third party personal information. The applicant requested that the Office of the Information and Privacy Commissioner review the Ministry's decision.

In two subsequent requests, the applicant asked for copies of Patient X's entire diary and other records relating to the suicide. The Ministry refused access to the diary because the Ministry no longer had control of it. It also refused access to other records because the Coroner was investigating the suicide.

The applicant then withdrew her initial request for review by the Information and Privacy Commissioner and submitted a new consolidated request for records from the Ministry. The Ministry again refused access to the majority of the records being requested. The applicant submitted a new request for review. The Ministry later located a copy of the diary, and refused access on the basis of section 22 of the Act.

The issue under review was whether the release of the records, in whole or in part, would constitute an unreasonable invasion of Patient X's privacy. Under section 57(2) of the Act, the burden of proof at the inquiry was on the applicant to demonstrate that disclosure of the personal information of the third party would not be an unreasonable invasion of her privacy.

The applicant argued that the public interest in knowing what went wrong in the care and treatment of Patient X at the Maples, and in what measures were being taken to correct problems, was paramount. The applicant was of the opinion that the Ministry was refusing to release any documents that would show it in a bad light. Furthermore, the applicant argued that privacy concerns were reduced or eliminated because Patient X was deceased.

The Ministry argued that the information requested consisted largely of Patient X's medical information, her personal views and opinions, and other people's opinions about Patient X. As such, the information was protected under section 22(3)(a). The Ministry further maintained that all information relating to the action of staff at the treatment centre had already been released.

The Ombudsman acted as an intervenor in this case because of the general issues concerning the privacy rights of children and deceased persons that arose. The Ombudsman noted that a child is entitled to privacy like any other person, and that "the Act preserves respect for the dead just as it does for the living." The Office of the Public Trustee also made a submission expressing its concern that Patient X's privacy rights should be protected.

In his order, the Commissioner stated that Patient X's privacy rights survive her death. The Commissioner also recognized the privacy rights of Patient X's family, relatives, and other caregivers. Consequently the Commissioner confirmed the Ministry's decision not to disclose Patient X's diary.

Nevertheless, the Commissioner agreed that there was a need for public scrutiny of the incident and so ordered the Ministry of Health to release the remaining records in severed form.

Order No. 35-1995

March 27, 1995

INQUIRY RE:

A request for access to records about an adult adoptee held by the Ministry of Social Services.

An adult adoptee requested a copy of everything in his adoption file, in non-identifying form, from the Ministry of Social Services. Among the records that were being requested were correspondence between his birth mother and the Adoption Reunion Registry regarding the adoptee's interest in a reunion. The Ministry refused to grant access to the records on the basis of the confidentiality restrictions in the *Adoption Act*. The applicant requested that the Office of the Information and Privacy Commissioner review the Ministry's decision.

The issue under review was the applicability of section 78(1) of the Act to the records in dispute. Section 78(1) outlines that the head of a public body must refuse to disclose information to an applicant if the disclosure is prohibited or restricted by or under another Act. Under section 57(1) of the Act, the burden of proof was on the Ministry to demonstrate that the applicant had no right of access to all or part of the documents.

The applicant argued that disclosure of his adoption records should be permitted because he was requesting information in non-identifiable form. According to the applicant, the disclosure of non-identifiable information is not prohibited by the *Adoption Act*, and does not constitute an unreasonable invasion of any third party's privacy

under the *Freedom of Information and Protection of Privacy Act*.

The Ministry argued that the confidentiality provisions of the *Adoption Act* override the right of access in the *Freedom of Information and Protection of Privacy Act*. The Ministry also took the position that the Commissioner's inquiry was restricted to a determination of what information and documents could be released under the *Adoption Act*, which distinguishes between the release of *documents* and the release of *information*.

Parent Finders and the Adoption Council of Canada were intervenors in this case. Parent Finders supported the view that the *Adoption Act* does not contain any confidentiality clause specifically barring disclosure of non-identifying information. The Adoption Council of Canada agreed.

The Commissioner found that the *Adoption Act* does not restrict or prohibit the release of non-identifying personal information. Consequently, the Commissioner ordered the Ministry of Social Services to release the records in dispute in severed form. In his ruling, the Commissioner stated that he has considerable sympathy with arguments that adoptees want and need access to their adoption records. "It is hard to think about the `best interests of the child'... and not be inclined to disclose more information to adoptees about themselves than has previously been done."

INVESTIGATIONS

The Information and Privacy Commissioner is empowered to conduct investigations with respect to a variety of matters affecting access to information and the protection of privacy. These investigations are often a result of a complaint, but may also be undertaken in cases where there is a perceived concern on the part of the Commissioner, the public, or a public body about a particular problem.

Unlike reviews, investigations tend to examine *systemic* rather than *specific* information or privacy issues. Investigations provide a chance for the Commissioner to examine how the Act is being implemented and to offer guidance to public bodies about difficult information and privacy issues.

Copies of the investigations undertaken by the Office of the Information and Privacy Commissioner are available through Crown Publications. They are also available through the Internet via the World Wide Web at http://www.cafe.net/gvc/foi.

Summaries of Investigations

Investigation P94-001 - *Public Service Employee Relations Commission* (4 pages)

Released: April 27, 1994

On April 12, 1994, Jack Weisgerber, Member of the Legislative Assembly for Peace River South, received a package of information from the Public Service Employee Relations Commission (PSERC), Ministry of Finance and Corporate Relations. Mr. Weisgerber received the information in response to his request for materials relating to Revenue Canada's warning to the province concerning the practice of hiring independent contractors as government employees. The information included the names, addresses, and salaries of 22 former employees and contractors of the provincial government.

Mr. Weisgerber contacted the Commissioner's Office, alleging that the Ministry of Finance and Corporate Relations had improperly disclosed personal information in responding to his request. The Commissioner reviewed the materials and determined that thirteen of the 22 disclosures were not unreasonable invasions of privacy, but that nine were unreasonable.

As a result of his investigation, the Commissioner made a number of recommendations, including that all outgoing correspondence and records containing personal information should be reviewed by a staff person within PSERC. The Commissioner also recommended that PSERC should undertake an in-depth education and training program for all Ministry staff with the assistance of the Manager, Information and Records Service, and the Information and Privacy Branch of the Ministry of Government Services.

Investigation P94-002 - *Insurance Corporation of British Columbia* (15 pages)

Released: April 29, 1994

In April 1994, the Insurance Corporation of British Columbia (ICBC) learned that a television network in British Columbia had obtained two of its files. These files contained personal and medical information about persons who had filed insurance compensation claims with ICBC. It immediately investigated and learned that some of its old insurance claims files that had been transferred in 1993 to a paper recycling company had been found on the site of a local movie and television production company. Some of the files were being used as movie and television props.

As a result of government-wide, ICBC, and public concern over this unauthorized disclosure of personal information in the files, the Commissioner's Office investigated the incident. The investigation concluded that ICBC and the paper recycling company had taken all reasonable measures to safeguard the confidentiality of personal information in files and documents during the recycling and destruction processes, but that ICBC should no longer use the regular recycling process for its confidential materials.

The Commissioner recommended that ICBC no longer use the regular paper recycling process for its confidential files and papers, including those that contain personal information about insurance claimants or ICBC employees. Furthermore, ICBC should establish a shredding system that reduces confidential waste paper and files to an unreadable form before placing them in the regular paper recycling process.

The Commissioner stated that government ministries, Crown corporations, boards, and agencies must take all reasonable precautions to safeguard the confidentiality of personal information in files and documents.

Investigation P94-003 - *Release of Personal Information by the Forensic Psychiatric Services Commission of the Ministry of Health and the Ministry Responsible for Seniors* (7 pages)

Released: May 5, 1994

In March 1994, a man contacted the Commissioner's Office to complain that he had received information about his victim when he received his patient files for the Adult Forensic Psychiatric Out-Patient Services (the clinic) of the Forensic Psychiatric Services Commission of the Ministry of Health. His file contained information regarding the name, address, and phone number of the victim of his sexual assault.

During his investigation, the Commissioner learned that the complainant's patient file had been reviewed by two health care professionals prior to being released. As well, the location information the complainant received about his victim was several years old, and the name of his victim was already known to him.

As a result of the incident, the Minister of Health announced that the Ministry would be tightening the procedures for disclosure of patient files in the future. The Minister said that all requests for medical records by patients would be handled differently and approved by the Deputy Minister of Health before release. The Commissioner, however, was concerned that a more formal process would not be practical for routine disclosures.

As a result of this investigation, the Commissioner made six recommendations, including in-depth training for the staff of the clinic on reviewing patient files before disclosing third party information. The Commissioner also commented that the complainant had violated his victim's privacy by bringing the issue before the media and publicly discussing information that was already known to him for the most part.

Investigation P95-004 - *A complaint by KF Media Inc. against the Vancouver Police Department concerning the television series "To Serve and Protect"* (11 pages)

Released: March 22, 1995

The producers of a popular police "reality television" series complained to the Information and Privacy Commissioner that the Vancouver Police Department's new policy requiring ride-along media to obscure the identities of persons shown interacting with police on the program was contrary to the public's right to know. "Ride-alongs" permit television camera crews to accompany police officers during their patrols and videotape the officers' encounters with members of the public for broadcast later on television.

The Commissioner found that the Vancouver Police Department properly applied the protection of privacy principles in the *Freedom of Information and Protection of Privacy Act*. He found that people interacting with police are "disadvantaged," regardless of their background or social status, simply because of the stigma of being involved with the police, especially on camera. The Commissioner found further that obscuring identities does not unreasonably reduce the capacity of police reality-based television programs to observe police activity and ensure police accountability for their actions. The Commissioner concluded that the complaint by KF Media, Inc. was unsubstantiated.

Investigation P95-005 - *Cars, People, and Privacy: Access to Personal Information Through the Motor Vehicle Data Base"* (21 pages)

Released: March 31, 1995

As a result of the controversy surrounding a Delta police officer's alleged access to the Motor Vehicle Database at the Insurance Corporation of British Columbia (ICBC) through the Canadian Police Information Centre (CPIC) for the purposes of tracing the license plates of certain vehicles parked at Everywoman's Health Centre, the Information and Privacy Commissioner conducted an investigation into access to the database. The Commissioner's investigation focused on the general issues surrounding the protection of personal privacy in a complex, multi-user database such as the Motor Vehicle Database.

The Commissioner's investigation resulted in six recommendations calling for the implementation of audit trails, internal privacy codes, and public education. The Commissioner also called for written agreements to control relations between user groups and ICBC. In doing so, the Commissioner urged the recognition and implementation of "fair information practices" for the Motor Vehicle Database. Fair information practices provide that access to information should be on a `need to know' basis only, that there must be a chain of accountability for those obtaining access, and that there must be audit trails to monitor who is obtaining access.

A primary goal of this investigation was to heighten public awareness about the existence and use of the Motor Vehicle Database.

MONITORING COMPLIANCE

Commenting on Legislative Schemes and Proposals: A Pharmanet Update

The involvement of the Commissioner's Office with the Pharmanet prescription profile network in this province is illustrative of the Commissioner's role as a privacy watchdog. The Commissioner's Office has worked closely with the College of Pharmacists and the Ministry of Health on this matter since October 1993, when we first asked for a briefing on the scheme. We have achieved a privacy code for pharmacists that will have the force of law and be the first of its kind in North America; we have achieved strong security measures to guard against unauthorized disclosure of sensitive or stigmatizing personal information, such as whether one is taking prozac, antabuse, or contraceptive pills; and our Office will have the authority to audit compliance with the detailed rules that have been worked out for data protection.

But at the end of the day, the Commissioner remains opposed to Pharmanet's prescription profile system in its present form, since it will be mandatory for anyone in the province seeking a prescription, and there are no provisions that forbid an employer or other third party from requiring people to produce a printout from the system for review. The 1994 Equifax national privacy poll shows that approximately 25 percent of British Columbians regard such a prescription drug profile as an unacceptable invasion of personal privacy. These privacy fundamentalists are older and wealthier (but not better educated) than those not, or less, concerned.

The Commissioner agrees with the B.C. Civil Liberties Association and the B.C. Freedom of Information and Privacy Association that the compulsory nature of Pharmanet remains its fundamental weakness. A Decima public opinion poll for the Ministry of Health in mid-summer 1994 found the public about evenly divided on this issue, even after hearing brief arguments for and against. Residents of Victoria and the southern interior were the most likely to say the system should be mandatory, whereas residents of the northern interior and the north coast were equally committed to the system being voluntary.

The Commissioner accepts the decision of the Minister of Health, however, who wrote to him that the Cabinet had considered the mandatory character of the program and decided to proceed with it. The Office looks forward to the public response now that Pharmanet has become operational.

Site Visits

Under section 42 of the *Freedom of Information and Protection of Privacy Act*, the Commissioner has the power to conduct audits of the record-keeping and record management procedures of public bodies under his

jurisdiction. Over the past year, the Commissioner has emphasized this audit aspect of his role as Information and Privacy Commissioner by making "site visits" to a number of ministries and local public bodies.

The purpose of site visits is threefold:

- to meet personally the head of the public body and the information management personnel;
- to view how records management personnel collect, use, store, disseminate, and dispose of the personal information under their custody and control; and
- to address any immediate concerns regarding the privacy, security, and accessibility of records.

Site visits, for the most part, are conducted informally. The Commissioner's primary goal is to raise consciousness about, and sensitivity to, the information and privacy principles set out in the Act, and to encourage the active application of these principles by all public bodies. In some cases, when the Commissioner and his staff have discovered some specific concerns about a public body's records management process, the Commissioner's Office has conducted a follow-up visit and/or drafted a letter or report setting out the problems that need immediate attention. The Office is pleased to report, however, that no government agency visited so far has been in serious breach of proper records management principles as required under the Act.

Some of the public bodies visited this past year include Elections BC; BC Stats; Victoria Police Department; Corrections Branch--Ministry of Attorney General; Vancouver Island Regional Corrections Centre ("Wilkinson Road Men's Prison"); Prince George Youth Containment Centre; Burnaby Correctional Centre for Women; Greater Victoria Mental Health Society; Burnaby Hospital; Prince George Regional Hospital; Riverview Hospital; Royal Columbian Hospital -- New Westminster; Forensic Psychiatric Institute; Vancouver Mental Health; Adoption Centre--Ministry of Social Services; University of British Columbia (Registrar's Office, Awards and Financial Aid, Student Health); and the Motor Vehicle Database at ICBC.

The Commissioner plans to continue expanding his site visit activity. Site visits have proven to be one of the most effective and immediate ways to raise awareness about a public body's legislated obligation to handle records in accordance with fair information practices. This is especially important with records containing highly-sensitive and potentially stigmatizing personal information.

Providing Advice: Privacy and Social Insurance Numbers (SIN)

The Information and Privacy Commissioner's Office undertook a study of the use of Social Insurance Numbers by public bodies in British Columbia. The study was very successful, not only in identifying public bodies in the province that collect and use the SIN, but also in enabling our Office to work with those public bodies to develop alternative means of identification, when this appeared to be desirable.

The number of ways the SIN is used today worries many British Columbians. There are a few federal laws which require you to provide your SIN for specific purposes, and yet British Columbians are constantly being asked for their SINs by a variety of organizations that use them in a variety of ways. Some of these uses are authorized by legislation, but others are not. So, for example, universities are not authorized to use the SIN as a student identification number and public bodies should not be asking for the SIN as a matter of course unless the collection of the SIN is specifically authorized by legislation. You are always entitled to ask why the SIN is being collected and how it will be used.

Many private companies also collect the SIN for various purposes. Video stores often collect the SIN for identification purposes. Other companies, such as BC Tel and BC Hydro, collect the SIN as part of their client profile information. BC Hydro, in consultation with our Office, has been phasing out this practice.

Part of the problem is that anyone may ask you for your SIN, and few people know that they don't have to provide that information. You are only legally required to provide your SIN for a few purposes, including Old Age Security, Unemployment Insurance, and Canada Pension Plan contributions or claims; income tax purposes; various benefit programs, registries, and tax applications, and for the purchase of financial products or services.

Although goods and services providers in the private sector may ask for your SIN, they are not legally entitled to it, and you may choose whether or not you want to provide it. Unfortunately, there is presently no legal protection for individuals who are denied access to goods or services as a result of their refusal to provide a SIN.

While the Office of the Information and Privacy Commissioner continues to monitor the use of the SIN, it is up to individual British Columbians to protect their own privacy rights by being alert to misuses of their SINs. Citizens have a right to inquire as to why their SIN is being collected and under what authority, whether it will be kept confidential, and whether they can provide an alternative form of identification. And unless the SIN is being collected to comply with a legal statute or regulation, British Columbians also have the right to choose whether they will disclose it.

TOWARD THE FUTURE

Submissions on the Information Highway

From time to time, the Office of the Information and Privacy Commissioner makes submissions to federal or provincial government agencies or committees on matters of public interest which affect the information and privacy rights of the residents of British Columbia. One matter of particular concern over the past year has been, and continues to be, the development and implementation of the information highway in British Columbia.

A cross-Canada poll on the information highway, conducted in 1994 by Gallup Canada for Andersen Consulting, revealed that although 67.7 percent of Canadians rated the information highway as a good idea, 83.7 percent of Canadians were very concerned about how their individual privacy rights would be affected by the exchange of personal information on the information highway. 1 A follow-up poll in March 1995 revealed that a further 59.7 percent of Canadians reported "not knowing who is responsible for building the information highway, ... who will `protect' the user, and if the users' best interests are being addressed by service providers."

In short, although there is consensus by those aware of the information highway that it is a useful and effective means of information exchange, Canadians are confused and concerned about how personal information will be exchanged on the information highway and what controls will exist to promote access and protect privacy.

The Office of the Information and Privacy Commissioner believes that the access and privacy implications of the information highway are a pressing issue and should be addressed by the federal and provincial governments while the technology is still relatively new and governments are in a position to set wide-ranging policy and practice guidelines.

To this end, the Commissioner's Office has made submissions to two federal government agencies charged with evaluating the technological and sociological impact of the information highway on Canadian society. In December 1994, the Commissioner made a submission to the Information Highway Advisory Council of Industry Canada entitled, *Submission to Industry Canada Re: The Information Highway*. In January 1995, the Commissioner made a further submission on the information highway to Canadian Radio-Television Telecommunications Commission (CRTC) entitled, *Submission to the Canadian Radio-television and Telecommunications Commission (CRTC) Re: The Information Highway*.

In both of these submissions, the Commissioner emphasized the need for nation-wide guidelines on the information highway, at both the technological and policy levels, that will ensure greater public access to government information and enhanced protection of privacy of personal information. Most specifically, in his submission to the CRTC, the Commissioner noted that "an Information Highway that involves 2,200 public bodies in British Columbia [which] are subject to the *Freedom of Information and Protection of Privacy Act* ... will have to operate with full accountability and sensibility to its privacy and access principles." In short, the Commissioner reminded both provincial and federal governments that "the Information Highway cannot flow through British Columbia without compliance with the Act."

In late February 1995, the Commissioner's Office made further public comment on the access and privacy issues surrounding the information highway at a two-day Pan Pacific Privacy Commissioners Conference in Victoria, British Columbia hosted by the Commissioner's Office. As part of the conference, the visiting privacy commissioners and their spokespersons from Australia, British Columbia, Canada, Ontario, Quebec, and New Zealand participated in a news conference which focused exclusively on the access and privacy issues arising from the implementation and development of the information highway in their respective countries. Participants Kevin O'Connor (Australia), David Flaherty (British Columbia), Bruce Phillips (Canada), Anne Cavoukian (Ontario), Jean Foisey (Québec), and Bruce Slane (New Zealand) all commented on the pressing need for national guidelines addressing access and privacy concerns on the information highway. Participants noted also that the international exchange of information is seriously affected when data protection laws exist in some countries and not in others. Although not all participants agreed that national legislation was the solution, there was consensus that the information highway is one of the most pressing access and privacy issues of the day.

The Commissioner's Office agrees with this consensus and is committed to ongoing efforts to ensure that the principles of safeguarding personal information and enhancing access to public information on the information highway are at the top of the federal and provincial governments' agendas.

A comprehensive excerpt from the Commissioner's submission to the CRTC discussing some of these matters is set out below.

SUBMISSION TO THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC) RE: THE INFORMATION HIGHWAY [an excerpt]

In response to the call for submissions by the Canadian Radio-television and Telecommunications Commission (CRTC) to its Report under section 14 of the *Telecommunications Act* and section 15 of the *Broadcasting Act* to the Governor General in Council, the Information and Privacy Commissioner for British Columbia submitted the following comments on the development and implementation of the Information Highway in Canada and British Columbia.

I. The Information Highway and the Privacy Issue

A. The Problem

The massive capacity for profiling individuals through the linkage of transactional information about them is the critical privacy issue in the evolving debate over the Information Highway. Since the promotion of the Information Highway is largely commercially-driven, the significant value attached to personal data by commercial interests is a serious challenge to the privacy interests of individuals. The unwanted result is that a set of records intended for a particular purpose is used for novel and unintended purposes without individual consent.

The public must be made aware of the impact of current and prospective data collection and use practices on the privacy rights and interests of individuals. Lack of governmental and corporate sensitivity to the preservation of the right to privacy will lead to significant risk of hostile consumer response to real and perceived privacy problems associated with technological innovations.

Despite the positive efforts by some companies in Canada to develop self-regulatory privacy codes, none of them have the force of law and, according to our interpretation of recent Canadian privacy surveys, none are perceived as being fully responsive to the privacy concerns of individuals. (I recommend to your attention the findings of the current research for the Canadian Standards Association by Professor Colin Bennett of the University of Victoria on the implementation of voluntary privacy codes in advanced industrial societies.)

Therefore, it is essential that government agencies or private sector concerns prepare privacy-impact statements as a prerequisite to the promotion and application of new information technology, new products, and new services on the Information Highway. Such privacy-impact statements should identify competing interests to the fullest extent possible and suggest how a balance may be achieved.

B. Proposed Solutions

1. The issue of who has jurisdiction over the Information Highway is not seriously problematic. In short, **it is unnecessary to implement a uniform federal statutory response** to all of the privacy problems posed by the Information Highway.

A typical Canadian solution would involve **both federal and provincial regulatory initiatives** to respond to the social aspects of the Information Highway. The existence of the regulatory structure of the Canadian Radio-television and Telecommunications Commission is a positive aspect of the existing regulatory scene, since the agency has taken some positive initiatives on telecommunications privacy in particular.

2. All efforts at regulation must be prefaced by **ongoing empirical efforts to understand proposed uses of technology** and how various parts of the current and proposed technologies of the Information Highway actually operate.

Unless one understands the flow of personal information in a particular system, one cannot meaningfully prescribe fair information practices for it. Thus **the practice of technology assessment** is an essential and ongoing prerequisite to fashioning intelligent regulations to protect the privacy interests of all Canadians.

3. The application of **fair information practices** can take care of most of the privacy problems posed by the Information Highway.

The formulation and implementation of fair information practices in national and provincial data protection laws has a thirty-year history in advanced industrial societies. Fair information practices are at the heart of national and provincial data protection legislation.

A table of **twelve primary data protection principles and practices** for the treatment of personal information is included in Appendix A, below.

4. **Informed consent** is the most specific concern in the application of fair information practices. In every instance, opportunities for informed consent should be maximized.

The perception that "consent cures all," however, requires careful qualification. Too often an individual is given no real choice but to "consent" in order to obtain a benefit or a service. Further, the transfer of one's personal data to third parties should occur only on the basis of an individual's choice to "opt-in" to a proposed new and unrelated data use and not follow the "opt-out" model favoured in particular by the private sector. Thus, for example, a direct marketer should obtain individual consent for re-contact with a customer or for the sale of a customer's name to a third party.

5. Every agency and organization holding personal data in the private sector in North America should engage in as much **voluntary self-regulation** as possible. Fair information practices should be the basis of such voluntary privacy codes. Following Quebec's 1993 legislated model and the European Union's draft Directive on Data Protection, such private sector codes should ultimately have the **force of law** with an outside body responsible for monitoring compliance.

C. Our Submission to Industry Canada on the Information Highway

In our submission to Industry Canada on the Information Highway, we stated that we are supportive of the following proposed solutions Industry Canada presented:

- the extension of the federal *Privacy Act* to all sectors of the marketplace within federal jurisdiction;
- the avoidance of `data havens' and interprovincial trade barriers caused by differing privacy protection requirements and practices among provinces and territories;
- the enactment of progressive legislation and regulations to protect the enormous information holdings of all levels of government, including medical, welfare, tax, immigration, and police records;
- the creation of voluntary codes and standards to apply to private sector business and industry associations;
- the use of technological solutions to safeguard personal data, such as reliance on encryption and smart cards; and
- the need for consumer education to raise their awareness of how to protect themselves from invasion of privacy.

D. The European Model

The European Union's draft Directive on Data Protection has specific applicability to the Canadian situation. The

Directive provides for **the protection of personal privacy as a basic human right**. It also seeks to establish general principles of fair information practices and some precise rules that can be incorporated and implemented in national and provincial data protection legislation for both the public and private sectors.

The most important thing about the draft Directive, from a North American perspective, is that it exists and is moving forward with all deliberate speed. This Directive will potentially have a negative impact on the EU's trading partners that do not have reciprocal protections in place.

Although British Columbia, Alberta, Ontario, and Quebec are now governed by freedom of information and protection of privacy legislation, and other provinces recognize in less comprehensive legislation the pressing need for the protection of privacy of their citizens, most parts of the private sector, except in Quebec, are not formally regulated and do not have voluntary codes of fair information practices in place.

The European Union Directive seeks to set both high standards for data protection and equivalent data protection rules for the handling of personal information. This will **establish a set of minimum standards that can be translated into legislation and strengthened at will by national or provincial regimes**. The draft Directive covers manual and automated records in both public and private records systems.

Privacy advocates emphasize the **necessity of an independent administrative authority for the promotion of fair information practices**. Such an authority can also be expected to investigate and process complaints from individuals. The absence of an independent administrative authority is a reason why contractual arrangements cannot fully handle the implementation of data protection, since auditing of compliance, or the enforcement of rights of individuals to access their own data, cannot otherwise be done.

Informational self-determination for the individual, ensuring the **transparency of personal data use**, and ensuring the existence of **enforceable legal rights to fair information practices** are the fundamental principles which underlie the Directive. These principles need to be reflected in Canadian law and practice.

II. The Information Highway and the Access to Information Issue

A. The Problem

As set out in the discussion paper produced by the Coalition for Public Information ("Future-Knowledge--A Public Policy Framework for the Information Highway"); an appendix to this document ("Access and Privacy Principles") produced by the Information and Privacy Commissioner for Ontario; and the CRTC's own comments on the economic and cultural benefits of the Information Highway, the Information and Privacy Commissioner for British Columbia concurs that **the Information Highway should be recognized as an opportunity to enhance access to information of interest to the public**.

Yet, advances in new technology, new products, and new services often create barriers for those with special needs, such as persons living in remote regions of Canada, persons on low income, and those with literacy, disability, or language skills problems.

B. Proposed Solutions

1. **The development, management, and application of all new Information Highway technology in Canada should be informed by and correlate with basic access to information standards**. These standards should derive from three primary access to information principles:

- universality
- affordability
- government responsibility for public education and training

2. **The minimum standard of access to information should include universal and affordable access to government services and information**. The precedent for a standard of universal access to important issues of Canadian culture and government is located in the historical role and function of the Canadian Broadcasting Corporation (CBC Radio and CBC Television).

3. **The government should ensure that the necessary funding and other resources for public education and training are available to individuals and groups who wish to access government services and information**.

For those persons or groups wanting access to non-governmental services and information, subsidy arrangements for cost-sharing between government and the private sector to educate, train or serve the public could be implemented. Practically, this would express itself in the location of government-funded Internet access through such public venues as public libraries, colleges, universities, and community centres or organizations. This would provide educational programs and essential information that are simple, affordable, and accessible by all members of Canadian society.

III. Conclusion

The thrust of our submission to the Canadian Radio-television and Telecommunications Commission Review is concern about the pressing need for active, effective, and visible privacy and access to information standards in the development, management, and application of the Information Highway in Canada.

We note with regret that although the issue of privacy is set out in the CRTC's Review and call for submissions as one of the four primary operating principles, that it is not addressed, not even in a perfunctory way, in the body of the review. Important access to information issues are similarly disregarded, except in the context of Canadian economic or cultural identity concerns. Access should reflect more than facilities connectivity and interoperability or cultural content; it must address systemic participation and inclusion issues which affect all Canadians, especially those with primary disadvantages.

In our view, privacy and access to information issues are paramount to the organization and implementation of the Information Highway in Canada. Individuals must be protected from potential abuse of their personal information in the vast exchange of data that will take place on the Information Highway, and they must also be guaranteed universal, affordable, and functional access to the great wealth of public information that will be available on such a network.

Further, an Information Highway that involves 2,200 public bodies in British Columbia who are subject to the *Freedom of Information and Protection of Privacy Act* (1992), will have to operate with full accountability and sensibility to its privacy and access principles. In short, the Information Highway cannot flow through British

Columbia without compliance with the Act.

In conclusion, it is our view that the final Report by the CRTC to the Governor in Council should reflect throughout its analysis important privacy and access to information concerns as they affect each technological issue of the Information Highway. Further, recommendations for overarching policy statements about privacy and access to information standards should form an essential part of the ethical guidelines prefacing the Report. These are necessary first steps to making the Information Highway a welcome and useful innovation to all members of Canadian society.

Submission to the Canadian Standards Association

In December 1994 the Canadian Standards Association (CSA) released a draft Model Code for the Protection of Personal Information as a first step to introducing a national voluntary privacy code for the private sector. Quebec is currently the only province in Canada that has data protection legislation governing the activities of the private sector. In British Columbia and the rest of Canada, private sector groups and entities are individually self-regulating. In some instances, and with some private sector bodies, self-regulation to protect the privacy interests of their customers has been effective, but on the whole, private sector bodies are free to conduct themselves as they choose and do not suffer formal sanctions for neglecting to consider basic privacy standards.

The CSA's draft Model Code purports to regulate the private sector on a voluntary but comprehensive and consistent basis across Canada. It would provide a set of minimum privacy standards by which all participating private sector bodies must abide. Although implementation and registration options for the CSA Model Code are still in the process of development at the time of this printing, it is our understanding that there is a consensus among members that compliance with the code is necessary in order for the code to be truly meaningful. In other words, to be part of this self-regulating privacy code would give a private sector group or industry a CSA "seal of approval" that all consumers would recognize. To not be part of this code or to breach it would isolate the private sector body from the community of private sector groups who support, enforce, and benefit from the code.

The Information and Privacy Commissioner's Office has reviewed the draft Model Code and supports the initiative of the private sector to voluntarily regulate itself in a comprehensive and consistent manner by instituting a set of privacy standards, based on ten privacy principles, that will protect and enhance the privacy interests of its customers. The Office has responded to the CSA's invitation to comment on the draft Code by submitting a list of comments and criticisms addressing each of the ten principles.

In summary, the theme of the Commissioner's submission is to ensure that fair information practices are adequately represented, circumscribed, and enforced in the Model Code. It is the Commissioner's view that fair information practices are the cornerstone of all successful privacy legislation in Canada and that, similarly, they should be the centrepiece of any new voluntary effort to regulate the collection, use, exchange, storage, and disposal of personal information across Canada. The CSA has already incorporated basic fair information practices into its draft Code, but the thrust of the Commissioner's submission is that the Code should describe and enforce fair information practices more firmly. In short, it is the Commissioner's view that the Model Code should be an explicit, forceful, and committed statement of fairness, self-regulation, and compliance.

In particular, the Commissioner highlighted the need for some formal requirement of compliance and for repercussions for non-compliance, stating that although his Office supports the CSA initiative, it is his considered view that the CSA's Model Code will be more effective if given the force of law in the fullness of time.

APPENDIX A

BUDGET ALLOCATION FOR THE 1994/95 FISCAL YEAR

Total Salaries and Benefits:	1,305,436
Total Operating Costs:	809,064
Total Asset Acquisitions:	66,500
Total Voted Expenditure*:	2,181,000

The 1994/95 total voted expenditure reflects the first full year of operation. It provided for a staff of 20.

THE PRIMARY OBJECTIVES FOR FISCAL 1993/94:

1. to build an integrated, competent office that is responsive to clients needs;
2. to monitor, encourage, and enforce compliance with the purposes of the legislation;
3. to promote a wider understanding of the Freedom of Information and Protection of Privacy Act and the role of the Commissioner; and
4. to develop a productive working relationship with public employees in government organizations.

APPENDIX B

A major achievement of our Office to date has been the settlement of most cases before they had to be brought to an inquiry. This reflects, in my view, the quality of the professional and administrative staff working in this Office.

The following are the names of staff members for the 1994/95 fiscal year:

Darleen Blacker Human Resources Technician

Linda Calver Finance and Administration Manager

Mary Carlson Portfolio Officer

Lorrainne Dixon Director

Betty Down Intake Officer

Helga Driedger Administration Assistant

Judy Durrance Senior Executive Secretary

Barbara L. Fisher Chief Counsel (contractor)

David H. Flaherty Commissioner

Celia Francis Portfolio Officer

Kyle Friesen Portfolio Officer

Marcus Hadley Law Co-op Student (January 3 to April 29, 1995)

Sandra Kahale Researcher, Special Projects (May 30 to October 24, 1994)

Tom Kaweski Researcher, Special Projects (May 30 to August 26, 1994)

Charmaine Lowe Intake Officer

Peter Luttmer Portfolio Officer

Bridget Minishka Law Co-op Student (May 2 to August 31, 1994)

David Mitchell Law Co-op Student (September 6 to December 30, 1994)

Susan E. Ross Counsel (contractor)

Pamela E. Smith Research and Communications Officer

Michael Skinner Portfolio Officer

Ingrid Thorleifson Administrative Assistant

Bill Trott Portfolio Officer

Stacie Young Receptionist