

Annual Report,  
Privacy Commissioner,  
1983-84



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Privacy Commissioner,  
1983-84**



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The Privacy Commissioner of Canada  
112 Kent Street, 14th Floor  
Ottawa, Ontario  
K1A 1H3

(613) 995-2410 — Collect calls are accepted and the switchboard is open from 7:30 a.m.  
to 6:00 p.m., Ottawa time.

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“... the privacy of individuals and their right of access to records containing personal information concerning them for any purpose including the purpose of ensuring accuracy and completeness should be protected to the greatest extent consistent with the public interest.”

Section 2(b),  
Canadian Human  
Rights Act  
(repealed July 1, 1983)

“The purpose of this act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to such information.”

Section 2,  
*Privacy Act*,  
effective July 1, 1983

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The Honourable M. Riel  
The Speaker  
The Senate  
Ottawa

June 29, 1984

Dear Mr. Riel:

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

Yours sincerely,



John W. Grace  
Privacy Commissioner

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

June 29, 1984

Dear Mr. Francis:

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

Yours sincerely,

A handwritten signature in black ink that reads "John W. Grace". The signature is written in a cursive style with a large, looping initial "J".

John W. Grace  
Privacy Commissioner

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# Mandate

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The *Privacy Act* is the law which gives individuals access to their personal information held by the federal government. The Act took effect on July 1, 1983, and is an expansion of the privacy protection formerly contained in Part IV of the Canadian Human Rights Act. The new Act protects individuals' privacy by limiting those who may see the information and gives individuals some control over the government's collection and use of the information.

The Act also sets out the principles of fair information practices. These principles require government institutions to collect only as much information as they need to operate their programs; whenever possible to collect the information directly from the individual concerned, and to tell the individual how it will be used.

Canadian citizens and permanent residents may now ask to see all information about them, not just that which has been gathered for an "administrative purpose". Having requested the information, individuals may now complain to the Privacy Commissioner if:

- they are denied some or all of the information;
- they are denied the right to correct some of the information on the file — or to annotate it;
- the department takes longer than the initial 30 or maximum 60 days to provide the information;
- the Index's description of the contents of information banks is deficient in some way;
- the department's listing in the Index does not describe all the uses it makes of personal information;
- an institution is collecting, keeping or disposing of personal information in a way which contravenes the *Privacy Act*.

The Act provides for a Privacy Commissioner who investigates complaints from individuals who believe that they have been denied their privacy rights. The Commissioner's investigators may examine all files (including those in closed banks) except confidences of the Queen's Privy Council to ensure that government institutions are complying with the Act.

A list of the approximately 2,200 federal personal information banks is contained in the Personal Information Index, copies of which are kept in public libraries, Canada Service Bureaus in large cities, and post offices. The Index describes what each department does, what type of information it collects, and who individuals should contact if they wish to see their files. Application forms are kept alongside copies of the Index. There is no charge to see personal files.



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# A Need for Access

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*Who steals my purse steals trash. . .  
But he that filches from me my good  
name robs me of that which not  
enriches him, and makes me poor  
indeed.*

*Shakespeare, Othello,  
Act III, Scene iii*

The first report to Parliament of a new Privacy Commissioner under a new *Privacy Act* demands more than a survey of the new legislation, a statistical accounting of the number of complaints received and a description of statutory obligations discharged.

Of course, such information is essential: Parliament should know how Canadians are using the *Privacy Act* and how the office of the Privacy Commissioner responds to the cases received.

Indeed, statistics are not abstractions. They represent individuals and their concerns; that is the important thing about these figures.

The fact that more complaints (198) were received by the Privacy Commissioner in the first nine months of the Act than in a full year under the previous privacy legislation is evidence more of the growing sensitivity to privacy rights than proof that the office has been busy.

Any annual report always has the figures and the charts; specific cases and particular comments. After longer experience a general statement may be attempted on the privacy state of the nation. For this first report the principal larger obligation is to make a profession of privacy faith and to provide an initial statement of how the Privacy Commissioner sees his role.

## **The Commissioner as ombudsman**

In providing for a Privacy Commissioner, the architects of the Canadian legislation made a compromise. They had before them the American precedent of a privacy act with no overseeing commissioner, and the European model of privacy (or data) commissioners with the authority to supervise the collection and uses of personal information by both the public and private sectors.

The compromise was to put a Commissioner in place, not to grant licences or to make binding decisions, but, among other things, in the hope of preventing excessive (and expensive) recourse to the courts in search of privacy justice. In this function the Commissioner becomes a specialized ombudsman for privacy, the single voice in the federal government with a mandate to speak on behalf of privacy rights.

The first responsibility of the Privacy Commissioner is to see that the *Privacy Act* is properly applied; above all that individuals receive the full rights to which they are entitled. The Commissioner will investigate on behalf of complainants, taking up their cases and making representations on their behalf.

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The Commissioner and his office will assist individuals in their use of the *Privacy Act*. Technically deficient applications or complaints made under the wrong section of the legislation should not be allowed to diminish a person's rights. In the same way, of course, privacy rights are not enlarged because of misapplication of the Act by the information-holders. Privacy issues are too important to be decided by technicalities. If he were to stand by and allow that, the Privacy Commissioner would be abdicating his responsibility.

Privacy rights are not absolute. The *Privacy Act* recognizes competing claims, a fact which defines and constrains the Commissioner's role as ombudsman acting on behalf of individuals. He must be servant of his Act.

### **The primacy of privacy**

Within the confines of the *Privacy Act* the Privacy Commissioner will be on the side of protecting personal information and helping a person's access to his own. He is not called "Privacy" Commissioner to be a non-combattant in the endless war between the individual's claim to privacy and the state's need to regulate. Both are legitimate claims. But the balance should be struck and priorities established by legislators and not by the Privacy Commissioner.

Privacy gives way to competing social values, for example, to the claims of national security and justice, when the legitimacy of such claims has been established. But the contest is often even and the choice difficult.

The Privacy Commissioner will assert the privacy claim, and only this claim. That does not mean the Commissioner is unmindful of or insensitive to other values and interests. But they will be for others to assert. If the Privacy Commissioner does not speak up for privacy, who does? In the long term, the effectiveness of the office of the Privacy Commissioner may depend as much upon a consistent, careful enunciation of privacy values as on how it discharges its narrower juridical function.

What kind of Privacy Commissioner would remain silent in the face of the threat to a citizen's privacy rights posed by the technique of linking computer files? The surreptitious matching of personal information collected for different purposes and contained on different computers could be as destructive of privacy as wiretapping telephone conversations. No evidence of improper computer-matching by federal authorities has come to the attention of the Privacy Commissioner and the *Privacy Act* is silent on computer-matching as such.

But the Act does make the Privacy Commissioner responsible for ensuring compliance with the principles set forth in the legislation. One of the principles is that such information should be used only for the purpose for which it was collected. The Privacy Commissioner does not need to wait for a complaint before launching an investigation or sounding a privacy warning. Indeed, he should not and he will not.

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## **When computers are linked**

The pressure is mounting to make computer-matching a standard investigatory technique. It is inevitable that governments will want to put the full potential of the computer to use not only in the name of efficiency but for apprehending, for example, tax evaders or welfare cheats. No one will quarrel with that objective. Computer-matching to detect what is called economic crime is in fact now being carried out routinely in many foreign jurisdictions.

The privacy concern must address the adequacy of safeguards to prevent violations of personal privacy. That computer-matching is carried on in the name of efficiency, good government and law enforcement makes it potentially a more, not less, dangerous instrument in the state's hands.

In Canada unauthorized wiretapping of electronic communications is prohibited by a part of the Criminal Code dealing with invasion of privacy. Any application by police for authorized wiretapping must be signed either by a judge, a provincial attorney general or the Solicitor General of Canada. Supporting reasons must be given for each wiretap and Parliament is provided with an annual accounting of the number of authorizations granted.

Critics continue to argue that the control is too loose and wiretapping authorizations are granted too easily. Yet covert computer linkage with unauthorized data matching is a form of search and seizure about which privacy advocates should be sounding alarms to both the government and the public. Such intrusions upon personal records should be subject to procedural safeguards at least as rigorous in their own way as those covering wiretapping to detect criminal activity or the search and seizure of property.

If there are no such safeguards, there is the danger that these computers will, of course, function mindlessly and without discrimination, as mere machines must do. We will have created "The Technological Society" which Jacques Ellul warned about, the society in which "to be sure of apprehending the criminal, it is necessary that everyone be supervised."

The *Privacy Act* is a testimony that Parliament does not want Canadians to be supervised by computers, specifically by government computers, and does not want government trafficking in personal information.

## **A question of dignity**

Societies which treat privacy with contempt and use personal information as a cheap commodity will sooner or later hold the same attitudes towards their citizens. Privacy, therefore, is not simply a precious and often irreplaceable human resource; respect for privacy is the acknowledgment of respect for human dignity and of the individuality of man.

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The source for a concern with privacy is an innate respect for personhood. Privacy is the ultimate minority protection. That is why the claim of privacy is so much more than a cry to be left alone or a fashionable obsession.

In 1984 it has become trite to say that personal privacy is threatened as never before in human history. Yet the very triteness is a reason for optimism, though not over-confidence. The confluence of new technologies with ever-insistent claims of the state to know, to be efficient, or both, has changed the quantitative and qualitative nature of the problem. That must be said and recognized. However, a growing sensitization towards both the threat to and the values of privacy has occurred at the same time.

It is important that balances be kept. A free press, by its very nature, violates personal privacy; yet no one deserves to be taken seriously who suggests that the right to free speech should be subjugated totally to the priority of personal privacy. The claims for privacy are valid and abiding enough not to require over-statement.

The *Privacy Act* does not make extravagant claims. The fact that they are modest should make them more realizable. The first months of the Act's operation should be reassuring to Parliament. Important privacy principles have been put in place and they are working. The way to start protecting privacy is to recognize that it could easily become an endangered species.

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## After July 1, 1983, The New Act

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*"It seems odd that the application of a technique designed to liberate men from the machine should end in subjecting them the more harshly to it."*

Jacques Ellul  
The Technological Society

The role of the Privacy Commissioner has been set forth carefully in the *Privacy Act* and been given shape and substance by Inger Hansen, in her pioneering work under Part IV of the Canadian Human Rights Act which contained Canada's privacy legislation from 1978 to 1983.

The traditions and standards which she established have been of inestimable value in providing wise precedents. The ombudsman's role has been widely recognized and respected for its rigid independence. The model has been provided and the example followed.

But this is the first annual report made to Parliament by the Privacy Commissioner. (The reports required by Section 60 of the Canadian Human Rights Act were to the Minister of Justice.) The privilege of a direct report and the fact that, on July 1, 1983, privacy was given its own act, no longer being an appendage to other legislation, signifies the new status Parliament conferred upon the value of personal privacy.

Of course, Parliament went beyond making a formal change which could be criticized, rightly, as mere cosmetics. The Act, in its own words, extends "the present laws of Canada that protect the privacy of individuals with respect to personal information about them held by government institutions and that provide individuals with the right of access to such information."

The extensions are significant. The Act expands the rights of individuals to gain access to personal information. Previously, there was a right to see only personal information used for specific administrative purposes. Now there is no such limiting test. Moreover, Canadians now have the right of access not only to their personal information contained in the published register of information banks — newly printed and expanded — but also to any other "reasonably retrievable" personal information about themselves held in any form in government sources.

The Act covers more federal institutions than did its predecessor, though creatures of the Crown, such as the CBC, CNR and Air Canada, which compete in the market place, remain outside its provisions.

Under Part IV of the Canadian Human Rights Act, Parliament had instructed that responses to requests for personal information be made within a reasonable time. The *Privacy Act* now sets a 30-day response period which, for good reason and upon notice, may be extended to 60 days. If the response to a request is not forthcoming within the time limits set out in the Act, the lateness in providing information is, by operation of law, deemed to be a refusal of access.

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Another significant difference between the old and new privacy regimes: for the first time an individual who has been refused access to personal information can, after an investigation by the Privacy Commissioner, ask the Federal Court to review the department's refusal.

Since the Privacy Commissioner, as before, can only recommend, the fact that the courts can now enforce a privacy ruling gives new substance to the *Privacy Act*.

The Privacy Commissioner may appear in court on behalf of anyone who has applied for federal court review, paying costs if he deems it appropriate.

#### **The Commissioner as auditor**

For the first time, the Privacy Commissioner has been given a mandate to go beyond an essentially passive role of responding to complaints. Not only may the Privacy Commissioner initiate his own complaint, he now has the authority to investigate the record-keeping of federal departments.

This type of investigation, or auditing function, determines whether personal information is collected, held by, and disposed of by federal government institutions in accordance with the terms of the *Privacy Act*. This broadened mandate will challenge the ingenuity and the resources of the Privacy Commissioner's office.

The priorities imposed by the need to establish the office of the Privacy Commissioner and to keep up with the volume of individuals' complaints have inevitably delayed the start of the more discretionary process of conducting general investigations of records systems.

The challenge is to carry out effective auditing of diverse, complex and large systems without creating yet another formidable parallel bureaucracy. A methodology is required (and is being developed) to provide an assurance of credible audit results.

Highly specialized competence will be demanded of the compliance investigators. The sensitivity of the position, the newness of this function and the lack of available experienced practitioners made it impractical, if not impossible, to employ persons under contract to conduct the first audits. In addition to special skills, the Privacy Commissioner's investigators are required under the *Privacy Act* to have the same level of security clearance as the government staff who handle the records being accessed. As a result, no investigative audits have been made, nor will be made, until qualified permanent staff is in place.

The Privacy Commissioner places great store in the potential efficacy of his auditing role. The possibility that his office will examine personal information files on a systematic basis should spur the achievement across government of a professional standard of record-keeping in conformity with the principles of the *Privacy Act*.

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## Opening for business

Unlike with the auditing function, the Privacy Commissioner was able to receive and investigate complaints from the first day the *Privacy Act* became effective because experienced complaint investigators were available who had worked under Part IV of the Canadian Human Rights Act. They have provided a continuity and instant high level of competence without which the first period of the new office would have been immeasurably more difficult.

The Privacy Commissioner was also fortunate in being able to attract, on contractual basis, the services of other trained and experienced complaint investigators with the required security clearances. They also have brought dedication and competence to their work.

The nucleus of a support staff was put in place by the Treasury Board task force which did the initial planning for the Privacy Commissioner's office. This group was as essential as the first investigators in making effective operations possible from the very beginning. It was important for the credibility of a new act that no significant backlog of cases be created; there was none.

But the delay in filling the positions of permanent investigators has been a concern. This staffing has been slowed from the start by an abundance of candidates: some 650 having applied for the initial 13 positions on the Information and Privacy Commissioners' staffs.

This competition, open only to federal public servants, including the RCMP and the armed forces, is being conducted by the Public Service Commission. The assistance of the Commission has been estimable. But the complexity of the staffing procedures, however necessary that may be, has caused long and frustrating delays.

The end of the staffing process is not yet in sight. The inability to put in place key front-line personnel, upon whom the enterprise so heavily depends, is the chief disappointment of the first months of this office's operation.

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# The Privacy Professionals:

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*There is nothing more difficult to take in hand, more perilous to conduct or more uncertain in its success than to take the lead in the introduction of a new order of things.*

Nicolo Machiavelli,  
The Prince

The *Privacy Act* has imposed new demands and responsibilities upon federal government departments whose managers might have resented yet another regulator poking into their business. In fact, they have showed no signs of any such attitude. The Privacy Commissioner has received an unfailingly high level of co-operation and support.

One way to judge the commitment of senior public service managers to the Act and its principles is by the attention they give to the position of privacy co-ordinator. It is not enough that privacy co-ordinators be familiar with the *Privacy Act* and be ready to respond to queries and requests. Co-ordinators should become the privacy consciences of their departments, raising their colleagues' consciousness of privacy access and protection principles. To do this, co-ordinators should be in the mainstream of their organizations. The position of privacy co-ordinator should be coveted as highly desirable for career progress, demanding as it does sensitivity and advocacy skills as well as a department-wide knowledge of operating programs and activities.

Privacy co-ordinators should be encouraged to become privacy professionals, sharing their skills and insights with colleagues both inside and outside the public service.

## Spreading the privacy gospel

The privacy community is small and highly-specialized. The office of the Privacy Commissioner has continued to expand lines of communication with that community, with academics, ombudsmen, members of Parliament, civil libertarians and business groups. As new technologies introduce their challenges and complexities, it is important for the Privacy Commissioner's office to keep close to those at the growing edge of privacy concerns. Such knowledge will be particularly useful in preparation for the parliamentary three-year review of the *Privacy Act*.

When the Act came into force last year the legislation received a burst of initial publicity. The arrival of the Orwellian year of 1984 resulted in more attention to the Act and the reasons why it exists. No public relations campaign could have generated more attention to Canada's privacy law, and all with no cost.

George Orwell or not, the overwhelming majority of Canadians have little or no knowledge of their rights under the *Privacy Act*. The perception that privacy is under assault and that government (and non-government) is intruding upon personal privacy is much more widespread than knowledge of the protection against such occurrences.



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Yet the number of applications made under the *Privacy Act* was about right for the start-up period. A much larger volume of requests might have overburdened the system, causing inordinate delays which would have led to initial disillusionment and cynicism. As it is, two departments faced large numbers of requests which exceeded their ability to handle them without delays.

No mandate exists and no resources are provided for spreading the gospel of privacy. The Commissioner has accepted many invitations to speak and he visited five provinces in nine months. Next year he hopes to visit them all, as well as the Yukon and Northwest Territories. However, the speeches, the newspaper interviews and the appearances on television and radio programs will only marginally increase awareness of the *Privacy Act* and how it may be used.

Parliament may wish to consider whether the Privacy Commissioner should have a specific mandate, similar to that given the Commissioner of Official Languages, to explain the *Privacy Act* and to inform Canadians of their privacy rights.

#### **When access is denied**

The *Privacy Act* attempts to strike an appropriate balance between the individual's right to know and the state's right to withhold information in the national interest, for the legitimate demands of, for example, national security or criminal investigations. Thus, 19 (of some 2,200) personal information banks are closed; individuals may not have access to their files, if any, in these closed or "exempt" banks.

Though there may sometimes be argument over the justification for designating a specific bank as non-accessible, the principle of some closed information systems is generally accepted. What causes some frustration and cynicism about the efficacy of the *Privacy Act* are two consequences of having closed personal information banks.

The first consequence is the fact that the existence, or otherwise, of a complainant's file in a closed bank will neither be confirmed nor denied. Once the principle and need of exempt banks have been established, the logic of neither confirmation nor denial may be irrefutable. The knowledge of the existence or non-existence of a particular file could be vital information to a terrorist, a criminal or a spy. But logic sometimes does not soothe applicants who feel cheated by the *Privacy Act*.

The other consequence of closed banks causes more frustration. The Privacy Commissioner can make sure that the personal information in these banks is relevant to a department's or agency's mandate. That is an important and useful role. But no assurance can be given to individuals that information about them, which may be contained in a closed bank, is accurate and not maliciously or mistakenly compiled. The general right of correction cannot apply to information in the most sensitive of personal information files. The Privacy Commissioner is not able to confirm the truth or falsity of the contents of files, closed or open, nor should he be.

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The result is a loss of credibility for the Act on the part of some complainants. Skepticism about the judgment and activities of security and law enforcement agencies may be healthy, even inevitable, in any society. Certainly it is part of the temper of the times. Whatever the reason, the skepticism has reduced some persons' acceptance of the *Privacy Act* as a useful instrument to protect the individual against harmful consequences of unknown or erroneous personal information in government hands.

Such an unfavourable perception of the Act is unfortunate and unfair. But it should be noted, even if no solution is possible.

#### **A matter of credibility**

A more widespread and more legitimate source of dissatisfaction with the functioning of the *Privacy Act* results from the insistence by some provinces on confidential treatment of all personal information obtained by federal government institutions from their governments.

Section 19(1) of the *Privacy Act* states: "19. (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any personal information requested under subsection 12(1) that was obtained in confidence from

- (a) the government of a foreign state or an institution thereof;
- (b) an international organization of states or an institution thereof;
- (c) the government of a province or an institution thereof; or
- (d) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government."

Ontario and Alberta have made particularly broad claims for confidentiality under this section. A federal government institution has no discretionary power in responding to such blanket claims. As a result, the *Privacy Act* now sometimes prevents an individual's access to personal information available as a matter of right under Part IV of the Canadian Human Rights Act.

The situation is particularly untenable in provinces where the Royal Canadian Mounted Police function as the provincial police. The result may be that a person in Alberta, for example, is prohibited from receiving information on something as innocuous as his record of parking offences.

The exchange of some confidential information between the provinces and the federal government is necessary in a federal system. But a blanket agreement covering all information received from a province is a promiscuous use of confidentiality.

While such an exemption would be correct in law, it is profoundly destructive of the credibility of the *Privacy Act*. However unfair it is to belittle the whole legislation because of a particular violation of the spirit of the Act, that will be the inevitable result if confidentiality claims are not made much more selectively.

The matter should not wait to be addressed until the parliamentary review. The Minister of Justice should draw the problem to the attention of his provincial colleagues, requesting their co-operation in protecting the integrity of the federal legislation. Without that co-operation we face the paradox of an expanded *Privacy Act* reducing individuals' rights.

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# Complaints

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*Somebody's watching me and I can't get no privacy.*

Rockwell, *Somebody's Watching Me*  
pub: Jobete Music Company Inc.  
© Motown Record Corporation

By March 31, 1984, nine months after the new *Privacy Act* took effect, 198 individuals had complained to the Privacy Commissioner that government institutions were not complying with the law.

Approximately 57 per cent or 113 of the 198 files were investigated and completed by the end of the reporting period. Since complaints are filed by the individual's name each file may contain more than one complaint; thus the 113 files represent 141 completed investigations.

More than half of all complaints completed during the nine-month period concerned delays as responses to requests took more than the initial 30 or maximum 60 days specified in the Act.

The remaining 45 per cent of complaints alleged that the information had been misused; that they had been denied some, or all, of the information, or denied the right to correct or annotate the information.

None of the completed investigations concerned irregularities in the government's collection, retention or disposal of information nor the accuracy or completeness of the listing of banks in the Privacy Index.

The following case summaries illustrate the type of complaints the Privacy Commissioner's office dealt with during the first nine months of

the new *Privacy Act*. Names have been omitted because the Act assures anyone filing a complaint that his or her identity will not be revealed and that the investigation will be conducted in private.

In all cases, the Privacy Commissioner advises the complainants of their right to have the matter reviewed by the Federal Court.

For a statistical breakdown of the complaints and investigation results see page 14. Statistics on the number of personal information requests received by each government institution

## ORIGIN OF COMPLETED COMPLAINTS BY PROVINCE AND TERRITORY

Newfoundland	1
Prince Edward Island	
Nova Scotia	2
New Brunswick	4
Quebec	56
National Capital Region	3
Ontario	44
Manitoba	6
Saskatchewan	3
Alberta	12
British Columbia	10
Northwest Territories	
Yukon	
Outside Canada	
<b>Total</b>	<b>141</b>

will appear in its special annual report to Parliament on the administration of the *Privacy and Access to Information Acts*.

### Correction or Annotation

This category includes complaints that individuals have been unable to correct what they believe are errors in

government files or to add an explanatory note to the information.

### Language skill rating challenged

A man complained to the Privacy Commissioner that the Public Service Commission (PSC) would not correct records of his classroom performance during French language training. In

### DISTRIBUTION OF COMPLETED COMPLAINTS BY GOVERNMENT INSTITUTION AND RESULT

Department, Ministry or Institution	Justified	Dismissed	Total
Consumer and Corporate Affairs		1	1
Employment and Immigration		4	4
Environment Canada		1	1
National Defence	4	5	9
Health and Welfare Canada		1	1
National Revenue, Taxation		3	3
Solicitor General		1	1
Transport Canada		1	1
Veterans Affairs	2	2	4
Canada Employment and Immigration Commission	2	4	6
Canada Post		1	1
Correctional Service of Canada	45	18	63
National Parole Board	13	7	20
Public Archives		2	2
Royal Canadian Mounted Police	3	16	19
Statistics Canada		4	4
Privy Council Office		1	1
<b>Total</b>	<b>69</b>	<b>72</b>	<b>141</b>

January, 1983, the teacher assessed his classroom work as below average in all four areas under review; reading, writing, listening and speaking. The complainant maintained that in an objective test he took in February of that year he had scored average or above in all but the speaking component. He asked the PSC to change the record of the teacher's subjective assessment to reflect the higher objective test results.

During investigation the PSC established that the record was only an assessment of classroom performance, that his test results were all on his record, and that the tests were taken in the summer of 1983, after he finished the course, not in February.

The Privacy Commissioner dismissed the complaint, agreeing that the information being challenged was a subjective assessment performed by a trained

#### GROUNDS OF COMPLAINTS AND INVESTIGATION RESULTS

Grounds	Justified	Dismissed	Total
<b>Privacy Act</b>			
Misuse		5	5
Access	4	41	45
Correction	1	3	4
Time extension			
Index			
Collection/retention/ disposal			
Delay	58	12	70
<b>Total</b>	<b>63</b>	<b>61</b>	<b>124</b>
<b>Part IV, Canadian Human Rights Act,</b>			
Access	2	6	8
Delay	4	4	8
Correction		1	1
<b>Total</b>	<b>6</b>	<b>11</b>	<b>17</b>
1. Cases still under investigation when the Privacy Act was passed. These were transferred to the new Privacy Commissioner.			
<b>Results: All cases</b>	<b>69</b>	<b>72</b>	<b>141</b>

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instructor based on classroom work and, whether or not the complainant agreed, he could not change history. The PSC agreed to place the man's observations on its paper file.

## **Delays**

Complaints of delays occur when someone alleges that a government institution has not provided the information within 30 days of receiving the request nor given notification that it will need a 30-day extension to find the material.

Delays are the number one cause of complaints to the Privacy Commissioner. This problem of delays was particularly evident with Correctional Service Canada, which received 1,495 requests between July 1, 1983, and March 31, 1984, and the National Parole Board, 141 — primarily from inmates wanting to look at their files. By comparison, the Department of National Defence received 3,732 requests but a far greater proportion of the Correctional Service files contain material that is withheld when the file is released.

In fact, each file requested at Correctional Service must be carefully screened to ensure that release does not injure a third party or the inmate. The volume of requests and the screening process caused a backlog of 450 files at one point and some inmates waited up to six months for their files. While this backlog has been cleared, the Act clearly states that any delay of more than 60 days is "deemed refusal" and the Privacy Commissioner found justified 58 of the 83 complaints against the two institutions. Two examples follow:

## **At Correctional Service**

An inmate asked to see his records in two Correctional Service information banks, the Inmate Documents and Record Information System and the Offender Administration Records. Correctional Service received the request October 3, 1983, and acknowledged it November 2, notifying the inmate that there would be a 30-day extension of the normal 30-day response period because of the number of requests. The inmate received his files December 22, 1983.

The Privacy Commissioner notified the inmate that he considered the complaint justified but resolved since the documents had been released.

## **At the Parole Board**

Another inmate applied July 20, 1983, to see his parole case file. The National Parole Board acknowledged his request August 26 but advised him that there would be a delay while they consulted with other institutions. On September 20, the inmate complained of delay to the Privacy Commissioner.

The investigator found that the Parole Board was in the midst of training staff to handle the request paperwork. The investigator stayed in touch with the board's co-ordinator as the file was examined and on December 9, almost five months after the request was made, the inmate received the file. Again, the Commissioner found the complaint justified.

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## Access

This covers examples of those complaints lodged by individuals who believe that they were denied some, or all, of the personal information requested from the government institution.

### Missing documents

A public servant complained that several documents were missing from his personnel information files kept by his employer, the Canada Employment and Immigration Commission (CEIC). The employee had received his file but found missing three items he thought should be there; a personal document, a confidential letter to him from a doctor and a discipline report.

The Privacy Commissioner's investigator found that CEIC had removed the personal document from the file in 1979 following a Treasury Board directive that departments should remove any irrelevant material from personal files. CEIC did not have a copy of the doctor's letter which had been sent to the employee and marked "Personal and Confidential". The Commission agreed to put the letter on file if the employee would provide a copy. The discipline report had been removed from the file because the employee's collective agreement required that it be destroyed two years after the disciplinary action was taken.

The Privacy Commissioner concluded that none of the documents should have been on file and dismissed the case.

## All documents received

A Statistics Canada employee asked for and received 342 pages of material from three personal files. He wrote to the Privacy Commissioner seeking assurance that he had been given all his documents.

The investigator examined the information in the Public Archives and confirmed that the complainant had received all the material, and that there had been no violation of the *Privacy Act*.

### Exempt banks

The RCMP turned down a man's application to see whether there was any information about him in the force's Security Service Records and Criminal Operational Intelligence Records. Both information banks are exempt under the *Privacy Act* and the RCMP would neither confirm nor deny the existence of any record on its files. The mere existence of such a file would alert an individual to an investigation. When the RCMP advised the applicant of his right of appeal he complained to the Privacy Commissioner.

An investigator examined the information banks and determined that they contained nothing that should have been kept in a non-exempt bank and that the RCMP had not denied him any rights under the *Privacy Act*.

### Wrong bank cited

A person who lost a part-time job because of "breached security" complained to the Privacy Commissioner that the RCMP had denied him access

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to his security clearance file which showed what the breach was. The applicant had used an outdated Index, citing an information bank that was and is closed.

During investigation the RCMP agreed to review the man's file in the Security Clearance and Member Personnel Records and provide him with any information it could legally release.

### **Misuse**

This category involves complaints alleging that the government has, without consent, used or disclosed personal information for a purpose unrelated to the original use.

#### **Too much information**

A woman complained to the Privacy Commissioner that a medical form that her employer asked her to complete in order to get disability parking was far too detailed and an invasion of her privacy. The complainant's parking application included a doctor's certification that she was unable to use public transportation. Her employer, the Canada Employment and Immigration Commission (CEIC), asked her to complete Health and Welfare Canada's General Physical Examination Report, which requires such details as family health problems, the applicant's mental health, alcohol intake and chronic skin conditions.

The woman reluctantly completed the form but worried that the information would be available to individuals who could use it for other purposes.

The Privacy Commissioner's investigator met with Treasury Board which agreed to ask Health and Welfare to revise its form and to ensure that CEIC observes the policy requiring this type of information to be seen only by those who have an administrative need.

The Privacy Commissioner found the complaint justified.

### **Names and addresses given**

An armed forces officer, disturbed that National Defence (DND) had apparently provided a jeweller with names, addresses, ranks and social insurance numbers of officers who had been promoted from the ranks, contacted his MP who referred the matter to the Privacy Commissioner under Part IV of the Canadian Human Rights Act. The Commissioner could not deal with the complaint and advised holding it until the new *Privacy Act* was passed.

By the time the new Act was passed, National Defence had received similar complaints and had conducted an official investigation which confirmed that there had been an unauthorized release of personal information. It acted to prevent a recurrence. DND notified the other officers of its findings but were unaware of the complainant's concern since he had not approached DND directly. The Privacy Commissioner subsequently dismissed the complaint because DND had rectified the problem before the complaint was lodged.



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## The informal approach

There are occasions when violations of the *Privacy Act* are resolved without an individual's complaint. For example, a union official contacted the Privacy Commissioner's office January 26, 1984, because the Department of Supply and Services had printed garnishment information on the face of an employee's paycheque. The employee, faced with serious financial difficulties, had received his cheque stamped "non-negotiable" across the face. The replacement cheque bore the words "In lieu of cheque #x, garnisheed".

The union representative maintained that the employee had difficulties enough without having the added embarrassment of everyone, including his bank, aware of his problems.

The Privacy Commissioner's office advised the department that the action appeared to contravene the *Privacy Act*. The department's own inquiry found that the action was an isolated incident but, to prevent its recurrence, had issued a directive February 7 requiring all pay staff to ensure that "no information pertaining to the garnishment be contained on the face of the cheque".

The whole matter was resolved within two weeks.

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# Notifying the Commissioner

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The *Privacy Act* defines two situations which require the various government institutions to notify the Privacy Commissioner of actions they plan or have taken.

## In the public interest

One such section requires government institutions to advise the Privacy Commissioner before, or immediately after, releasing personal information when the department finds the privacy question clearly outweighed by the "public interest" aspects or if release of the information benefits the individual.

In these cases the decision to release is made by the department head but the Commissioner can either notify the individual, or initiate his own complaint if he is not satisfied that the information should be released.

Government departments have reported a number of instances where release was deemed to be in the public interest or the individual's personal benefit clearly outweighed any invasion of privacy. These included:

- Department of Indian Affairs and Northern Development's release of a list of native people on local reserves to the sheriff to prepare a juror's list. In this instance, the Commissioner, notified prior to release, suggested that the list be screened to ensure that no unnecessary personal information was included;

- confirmation to a U.S. district attorney that an individual, charged with social insurance fraud, was receiving Canadian unemployment benefits. In this case, no notification was provided to the individual;
- release of information to lawyers and trust companies to allow them to trace beneficiaries of estates. In these cases the Privacy Commissioner suggested that, whenever possible, the institution contact the person directly to obtain consent.

## Consistent use notifications

The *Privacy Act* permits government institutions to use personal information for a use "consistent with" the purpose for which it was originally gathered. However, here again the Act requires the department to notify the Privacy Commissioner of any such use it intends to make of the information that is not listed in the Personal Information Index. Further the department must ensure that the use will be described in the next edition of the Index.

Individuals may complain to the Privacy Commissioner if they find that their personal information is being used for a purpose not listed in the Index.

The Privacy Commissioner received one "consistent use" notification in the first nine months of operation — a figure so low that it left the Commissioner more than a little surprised.

# Corporate Management

- Spring, 1980 — Treasury Board establishes Task Force on implementation of the Access to Information and Privacy Acts.
- July 7, 1982 — Privacy and Access to Information Acts receive Royal Assent.
- June 2, 1983 — John Grace is appointed Privacy Commissioner and Inger Hansen, Information Commissioner, both for seven years.
- July 1, 1983 — Acts take effect and offices open.

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

The organization has 59 positions. Twenty-nine staff years were allocated for the nine-month start up period from July 1, 1983 to March 31, 1984. By that date the organization had 32 full-time employees on strength, including seven in the office of the Privacy Commissioner, and 17 in the common service branch. Several investigators were retained on contract while the Public Service Commission screened 644 applicants for the 13 permanent positions.

Supplementary estimates in 1983-84 provided the organization with a total budget of \$2,024,000, including \$655,000 for the Privacy Commissioner, and \$915,000 for common services. The organization's actual expenditures for the nine-month period were \$1,369,429 reflecting a lapse of \$654,571 largely attributable to staffing delays.

## Expenditures

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

	Information	Privacy	Corporate Management	Total
Salaries	\$219,080	\$213,174	\$402,486	\$ 834,740
Transportation and communication	9,134	21,523	47,565	78,222
Printing	783	1,032	11,279	13,094
*Professional and special services	57,689	119,195	58,069	234,953
Rentals	—	—	16,880	16,880
Utilities, supplies	—	—	47,851	47,851
Construction and equipment acquisition	—	—	139,590	139,590
All other	271	137	3,691	4,099
<b>Total</b>	<b>\$286,957</b>	<b>\$355,061</b>	<b>\$727,411</b>	<b>\$1,369,429</b>

\*Includes salaries of 6 contract investigators retained for the start-up period.

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# The Privacy Act and You

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## **What personal information does the government have about me?**

Without knowing your personal circumstances there is no way of telling exactly how much information the federal government has about you. There is, however, no single file in Ottawa containing everything about you; there are a number of files and that number depends on what contacts you have had with the government. For example, have you ever worked for a federal department or agency; do you receive Canada Pension benefits; or family allowance?

Some information on most Canadian residents will turn up as a result of at least one of the following:

- Income tax files
- UIC contributions
- CPP deductions or benefits
- Family allowance benefits
- Student loan applications
- Social Insurance Number applications
- Passport applications
- Old age security benefits
- Customs declarations

Perhaps your name appears in the files of those who have applied for a home insulation grant or who have auditioned at the National Arts Centre.

If you have ever worked for the federal government, your department and the Public Service Commission may still have your personnel file, a record of any job competitions you entered, your annual performance appraisal, any applications for parking spaces and information about your pay and benefits. The Personal Information Index will indicate how long these files are kept.

## **Where do I find the list of personal information banks?**

The Personal Information Index contains a complete list of the banks of personal information held by each federal government institution. Copies of the Index are available at public libraries, Canada Service Bureaus and post offices, along with the forms needed to apply for access.

The Index explains what each institution does, how and to whom to apply for access and lists the files each government institution keeps. One section lists files concerning the general public; another, federal employees. If you believe there is information about you but cannot find an appropriate bank listed in the Index, the Act still ensures you access if you can give the department sufficient specific information on its location for it to be found by staff.

## **How do I see my personal information?**

Read through the Index to determine which banks could contain information about you. Then complete a Personal Information Request Form (see Appendix II) for *each* bank you wish to examine and send it to the coordinator listed under each institution. There is no charge. The department must respond within 30 days of receiving your request but may ask for a 30-day extension if the search is time-consuming or complicated.

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**Are there any banks I can't see?**

Yes, 19 out of the approximately 2,200 banks are closed. All are listed in the Index with descriptions of their contents. They are:

CANADA POST: — Postal Related Crimes/Offences Records (CP-P20)

CORRECTIONAL SERVICE: — Preventive Security Records (CSC-P50)  
— Institutional Security Threats Records (CSC-P70)  
— Security Inquiries Records (CSC-P90)

EMPLOYMENT & IMMIGRATION: — Enforcement Information Index System (EIC-P440)  
— Immigration Security and Intelligence Data Bank (EIC-P430)

NATIONAL DEFENCE: — Military Police Investigation, Case Files (ND-P-P440)

REVENUE CANADA: — Customs Intelligence Records (RC-CE-P40)  
— Tax Evasion Cases (RC-T-P160)  
— Tax Avoidance Cases (RC-T-P170)

**PRIVY COUNCIL**

OFFICE: — Security and Intelligence Information Files (PCO-P10)

RCMP: — Criminal Operational Intelligence Records (RCMP-P120)  
— Security Service Records (RCMP-P130)  
— Protection of Personnel & Government Property (RCMP-P140)

**SOLICITOR GENERAL:**

— Security Policy and Operational Records (SGC-P60)  
— Commissions of Inquiry (SGC-P120)  
— Police and Law Enforcement Records Relating to the Security and Safety of Persons and Property in Canada (SGC-P70)  
— Protection of Privacy (wiretapping as defined in s.178.1 to 178.23 inclusive of the Criminal Code) (SGC-P80)  
— RCMP Operational Records (SGC-P110)

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### Does this mean I may see everything else?

No, not quite. Some material in other banks may be excluded because the personal information:

- was received in confidence from a municipal, provincial or national government;
- could injure Canada's defence or conduct of its affairs;
- was collected by an investigative body during the investigation of a crime;
- could threaten an individual's safety;
- is the subject of a solicitor-client privilege;
- relates to an individual's mental or physical health if the knowledge *could be contrary to his/her best interest* (the information may be released to the person's doctor);
- concerns security clearances (although this exemption is not mandatory);
- is a confidence of the Queen's Privy Council;
- was obtained by Correctional Service Canada or the National Parole Board while the person making the request was under sentence for an offence against any act of Parliament, if the disclosure "could reasonably be expected to"
  - lead to a serious disruption of the person's institutional, parole or mandatory supervision program, or
  - reveal information about the person obtained originally on a *promise of confidentiality*, either express or implied.

### Can the government disclose my personal information to someone else?

The Act generally requires a government institution to obtain your permission before it releases personal information. However, there are several circumstances when your consent is not required. Personal information may be released:

- to comply with another act of Parliament;
- to comply with a warrant or *subpoena*;
- for the Attorney General of Canada to use in a legal proceeding;
- for the use of an investigative body (such as the RCMP or Military Police) when enforcing a law;
- to another government in order to administer or enforce a law when there is an arrangement between the two governments;
- to a member of Parliament who is trying to help you (with your consent);
- to carry out an official audit;
- to the Public Archives for storage;
- for statistical or research purposes providing that the researcher agrees in writing not to disclose the information;
- to help native people prepare claims;
- to collect a debt to the Crown or to pay an individual a debt owed by the Crown;
- to further the public interest;
- or to benefit you. (In these last two cases the institution must notify the Privacy Commissioner who may in turn notify you.)

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### **Which government departments are covered by the Privacy Act?**

Most of the federal departments, agencies and commissions are covered by the Act but not those Crown corporations which compete with the private sector as do CBC, Air Canada and CN.

A complete list of the institutions covered is in Appendix III.

### **What can I do if I think the information is incorrect?**

Write to the privacy co-ordinator at the institution holding the information, explaining the error and setting out the corrections you would like made. Generally there is little difficulty correcting factual errors. If you are refused, you have the right to attach a notation to the information showing the correction you wanted made.

If you are denied these rights you may complain to the Privacy Commissioner.

### **What should I do if I have been refused access?**

If it is not clear to you why the institution has refused your request, the first step is to ask the appropriate privacy co-ordinator to explain the problem to you. Many departments and agencies will accept collect calls. Perhaps there has been a misunderstanding.

If, after talking to the co-ordinator, you still think you have been wrongly denied the information, call or write to the Privacy Commissioner's office.

The Privacy Commissioner of  
Canada  
112 Kent Street, 14th Floor  
Ottawa, Ontario  
K1A 1H3

(613) 995-2410 — Collect calls are accepted and the switchboard is open from 7:30 a.m. to 6:00 p.m., Ottawa time.

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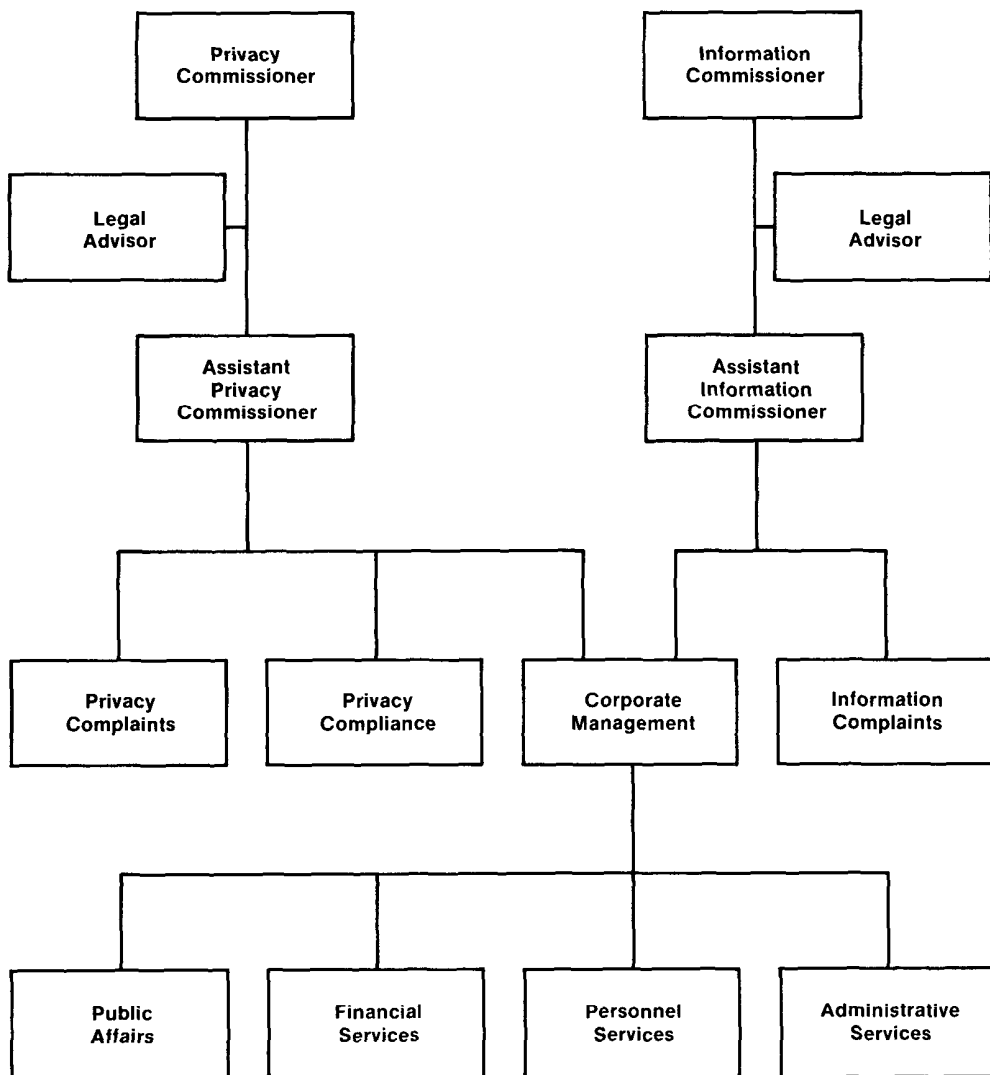
# Appendix I

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Offices of the  
Information and Privacy  
Commissioners of Canada

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





# Appendix II



Government of Canada / Gouvernement du Canada

Privacy Act

## Personal Information Request Form

For official use only
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Individuals are required to use this form to request access to personal information about themselves under the Privacy Act.

**STEP 1:** *Decide whether or not you wish to submit a request under the Privacy Act.* You may decide to request the information informally, without using the procedures required by the Act, through the local office of the appropriate government institution or through the Privacy Co-ordinator listed in the Index of Personal Information. Copies of the Index are available in public libraries, post offices in rural areas and government information offices.

**STEP 2:** *Consult the Index of Personal Information.* If you have decided to exercise your rights of access under the Privacy Act, review the descriptions of personal information for institutions which are most likely to have the information you are seeking. If you cannot identify the institution, you may seek the advice of the Privacy Commissioner at the address shown in the Index. Decide on the personal information bank or class of personal information likely to contain the information.

**STEP 3:** *Complete this personal information request form.* Indicate the personal information bank or class of personal information to which you are

requesting access, and include any additional information indicated in the bank description to locate the information you are seeking, or to verify your own identity. Indicate whether you wish to receive copies of the information, examine the original in a government office, or if you are requesting other arrangements for access. There is no application fee for making a request under the Privacy Act.

**STEP 4:** *Send the request to the person identified in the Index as the appropriate officer responsible for the particular personal information bank or class.*

**STEP 5:** *Review the information you received in response to your request.* Decide if you wish to make further requests under the Privacy Act. You may wish to exercise your rights to request corrections or to require that notations be attached to the information when corrections are not made. You may also decide to complain to the Privacy Commissioner when you believe that you have been denied any of your rights under the Act.

Federal Government Institution

Registration Number and Personal Information Bank or Class of Personal Information

I wish to examine the information  As it is  All in English  All in French

Provide other details specified in the Index to aid in locating particular information or to verify identity of applicant. (Present or former members of the Canadian Armed Forces requesting military records must provide additional information as specified in the D.N.D. section of the Index.)

Method of access preferred

Receive copies of the original  Examine original in government office  Other method (please specify)

Identification of applicant

Name (or previous name) Social Insurance No. (or other identifying no. if applicable)

Street address, apartment

City or town

Province, territory, or other

Postal Code

Telephone number(s)

If this request follows a previous enquiry, quote reference number ►

I have a right to access to personal information about myself under the Privacy Act by virtue of my status as a Canadian citizen, a permanent resident within the meaning of the Immigration Act, 1976, or by Order of the Governor in Council pursuant to subsection 12(3) of the Privacy Act.

Signature

Date

Canada

Français au verso

TBC 350-58 (83/2)

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## Appendix III

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### Government Institutions Covered by the Act

#### *Departments and Ministries of State*

Department of Agriculture  
Department of Communications  
Department of Consumer and Corporate  
Affairs  
Ministry of State for Economic  
Development  
Department of Employment and  
Immigration  
Department of Energy, Mines and  
Resources  
Department of the Environment  
Department of External Affairs  
Department of Finance  
Department of Fisheries and Oceans  
Department of Indian Affairs and  
Northern Development  
\*Department of Industry, Trade and  
Commerce  
Department of Insurance  
Department of Justice  
Department of Labour  
Department of National Defence  
(including the Canadian Forces)  
Department of National Health and  
Welfare  
Department of National Revenue  
Department of Public Works  
\*Department of Regional Economic  
Expansion  
Ministry of State for Science and  
Technology

Department of the Secretary of State  
Ministry of State for Social  
Development

Department of the Solicitor General  
Department of Supply and Services  
Department of Transport  
Department of Veterans Affairs

#### *Other Government Institutions*

Advisory Council on the Status of  
Women  
Agricultural Products Board  
Agricultural Stabilization Board  
Anti-Dumping Tribunal  
Atlantic Development Council  
Atlantic Pilotage Authority  
Atomic Energy Control Board  
Bank of Canada  
Bilingual Districts Advisory Board  
Board of Trustees of the Queen  
Elizabeth II Canadian Fund to  
Aid in Research on the Diseases  
of Children  
Bureau of Pension Advocates  
Canada Council  
Canada Deposit Insurance Corporation  
Canada Employment and Immigration  
Commission  
Canada Labour Relations Board  
Canada Mortgage and Housing  
Corporation  
Canada Post Corporation  
Canadian Aviation Safety Board

\*now the Department of Industrial and Regional Expansion

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Canadian Centre for Occupational Health and Safety  
Canadian Commercial Corporation  
Canadian Cultural Property Export Review Board  
Canadian Dairy Commission  
Canadian Film Development Corporation  
Canadian Government Specifications Board  
Canadian Grain Commission  
Canadian Human Rights Commission  
Canadian International Development Agency  
Canadian Livestock Feed Board  
Canadian Patents and Development Limited  
Canadian Penitentiary Service  
Canadian Pension Commission  
Canadian Radio-television and Telecommunications Commission  
Canadian Saltfish Corporation  
Canadian Transport Commission  
Canadian Unity Information Office  
The Canadian Wheat Board  
Crown Assets Disposal Corporation  
Defence Construction (1951) Limited  
The Director of Soldier Settlement  
The Director, The Veterans' Land Act  
Economic Council of Canada  
Energy Supplies Allocation Board  
Export Development Corporation  
Farm Credit Corporation  
Federal Business Development Bank

Federal Mortgage Exchange Corporation  
Federal-Provincial Relations Office  
Fisheries Prices Support Board  
The Fisheries Research Board of Canada  
Foreign Investment Review Agency  
Freshwater Fish Marketing Corporation  
Great Lakes Pilotage Authority, Ltd.  
Historic Sites and Monuments Board of Canada  
Immigration Appeal Board  
International Development Research Centre  
Laurentian Pilotage Authority  
Law Reform Commission of Canada  
Medical Research Council  
Merchant Seamen Compensation Board  
Metric Commission  
National Arts Centre Corporation  
The National Battlefields Commission  
National Capital Commission  
National Design Council  
National Energy Board  
National Farm Products Marketing Council  
National Film Board  
National Harbours Board  
National Library  
National Museums of Canada  
National Parole Board  
National Parole Service  
National Research Council of Canada

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Natural Sciences and Engineering  
Research Council  
Northern Canada Power Commission  
Northern Pipeline Agency  
Northwest Territories Water Board  
*Office of the Auditor General*  
Office of the Chief Electoral Officer  
Office of the Commissioner of Official  
Languages  
Office of the Comptroller General  
*Office of the Co-ordinator, Status of  
Women*  
Office of the Correctional Investigator  
Office of the Custodian of Enemy  
Property  
Pacific Pilotage Authority  
Pension Appeals Board  
Pension Review Board  
Petroleum Compensation Board  
Petroleum Monitoring Agency  
*Prairie Farm Assistance Administration*  
*Prairie Farm Rehabilitation  
Administration*  
Privy Council Office  
Public Archives  
Public Service Commission  
Public Service Staff Relations Board  
Public Works Land Company Limited  
*Regional Development Incentives Board*  
Restrictive Trade Practices Commission  
Royal Canadian Mint  
*Royal Canadian Mounted Police*  
The St. Lawrence Seaway Authority

*Science Council of Canada*  
Social Sciences and Humanities Research  
Council  
Standards Council of Canada  
Statistics Canada  
*Statute Revision Commission*  
Tariff Board  
Tax Review Board  
Textile and Clothing Board  
Treasury Board Secretariat  
Uranium Canada, Limited  
War Veterans Allowance Board  
Yukon Territory Water Board