



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

BUDGET PROPOSAL

Fiscal Years 2008-2009
through 2010-2011

Presented to the
Select Standing Committee on Finance and Government Services
Legislative Assembly of British Columbia

November 26, 2007

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INTRODUCTION

This budget proposal by the Office of the Information and Privacy Commissioner (“OIPC”) to the Select Standing Committee on Finance and Government Services (Committee) is for the fiscal years 2008-2009 through 2010-2011.

The OIPC’s current budget has to be viewed in light of the broad scope of the OIPC’s statutory duties under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), the *Personal Information Protection Act* (“PIPA”) and the *Lobbyists Registration Act* (“LRA”). This significant broadening of responsibility, and the ongoing increases in workload, continue to challenge our ability to provide effective, efficient and responsive service to British Columbians and public bodies.

Against this backdrop, this submission requests funding to meet increased costs beyond the OIPC’s control, as follows:

- Of the requested increase, 23% (\$150,000) is for special one-time funding to design and build a new online lobbyists registration system. Accordingly, in fiscal 2009-2010 and beyond, the OIPC’s funding would decrease by \$150,000.
- Of the requested increase, fully 28% (\$182,000) is the direct result of salary increases, and associated benefits costs, that are beyond the OIPC control. The increases stem from the across-the-board provincial public sector salary increase awarded last year and the statutorily-driven increase in my salary and associated benefits costs.
- A further 13% (\$86,000) of the requested funding increase is for estimated increases in the operating costs and taxes charged on our space. These are beyond the OIPC’s control.
- Of the requested increase, 13% (\$85,000) stems from increases in the charge made by the Office of the Ombudsman for the corporate, human resource and other administrative services it provides to the OIPC. The annual charge is calculated on a per capita basis and the increase this year reflects the current OIPC staffing count.

This submission also requests funding to make permanent the two temporary Portfolio Officer positions that the Committee approved last year, to add one position for our Intake function to meet increased demand and one support staff position for the entire OIPC, particularly for our lobbyists registration and adjudication functions.

In fiscal year 2006-2007, the OIPC opened 1,946 new files, excluding the 2,882 general requests for information or assistance received that year. This was an 11% increase from the previous year. These figures include work on access to information appeals and complaints, privacy complaints, investigations, requests for time extensions from public bodies and from the public, policy and legislation consultations, stakeholder communications, public education and speaking activities, creation of support tools,

media work and more. The figures illustrate the broad scope of our work. They measure the extent of our work more meaningfully than would a narrow focus on only the number of formal appeals and complaints.

We reported a backlog of cases in fiscal 2004-2005 and this happened again in 2005-2006 and the last fiscal year. Although additional auxiliary staff and process changes allowed us to reduce our backlog¹ by 24% this year, to 152 cases, the fact remains that we are for the third year running in backlog. This means we are not meeting statutory timelines and are not serving the public, public bodies or organizations in as timely a fashion as we should be.

As is discussed further below, OIPC and Ministry of Attorney General staff have worked together during the current fiscal year on a project for improvements to the online lobbyists registration system, which is hosted and maintained by the Ministry. This proposal seeks one-time funding of \$150,000 for the estimated cost of building a new online system that better serves the public and lobbyists. The Ministry did not seek that one-time funding in its budget request for fiscal 2008-2009, although we had understood this would be the case. Because the lobbyists registration system badly needs fixing, I am seeking that one-time funding here. I also urge the Committee to ensure that this one-off request for the joint renewal project does not affect its assessment of the funding otherwise sought in this budget proposal. Funding for the lobbyists registration system renewal project should not, in other words, come from the funds that are otherwise needed for the OIPC's operations in serving the public.

In its December 2006 report, the Committee said that it was "sympathetic" to our request for additional staff resources, "especially since the OIPC qualifies as a 'lean organization'" compared to other similar offices. We are lean by any measure, as is appropriate. That said, we need to be in a position to provide high-quality, timely services in ensuring that the law is respected and properly implemented. To do so, the funding proposed below adds modestly to our front-line, service-delivery personnel and adds one clerical support position. We will still be lean, but we need these permanent resources to do our work. I respectfully ask the Committee to support our work by approving this request in full.

November 26, 2007

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

¹ Calculated by the number of requests for review that remain open after the 90-day statutory deadline and complaint files open past 120 days.

A. OVERVIEW OF THE LAST YEAR

This section discusses significant aspects of the OIPC's operations in its three business areas. (The Appendix to this document offers an overview of these for those who are interested.)

Freedom of Information and Protection of Privacy Act

Statistics from fiscal year 2006-2007

From April 1, 2006 to March 31, 2007, the OIPC opened 1,717 files under FIPPA. (excluding requests for information) This number includes 909 FIPPA appeals and complaints. During the same period, in addition to our work responding to appeals, complaints and inquiries, OIPC staff activities included the following:

- Published investigation reports dealing with major privacy breaches;
- Processed 244 requests for time extensions (this is further addressed below);
- Completed 84 policy consultations;
- Reviewed 55 draft and tabled Bills for access and privacy implications;
- Delivered 41 speeches, workshops and training seminars;
- Reviewed and commented on 9 privacy impact assessments.

In addition, the OIPC developed a risk assessment tool for public bodies and private sector organizations to determine when and how to notify individuals of privacy breaches. The OIPC is also developing a tool to help public bodies and private sector organizations create and implement privacy breach prevention and response programs.

Last year, the OIPC asked the Committee to approve funding for two Portfolio Officers to help with the backlog of cases, which stood at 189. Since then, we have implemented a number of procedural efficiencies to deal with the backlog and growing number of case files:

- An early intervention process for quick resolution of simple requests for review and complaints. Under this process, files that have been opened by our Intake team are channelled to a designated early intervention Portfolio Officer, who identifies issues capable of quick resolution and takes the necessary steps, including mediation where necessary, to bring the file to a rapid conclusion. More complex files are then assigned to another Portfolio Officer for further investigation and mediation.
- An expedited deemed refusal process for complaints about public bodies' failure to respond in time to access to information requests. Complaints that public bodies have exceeded the 30-day timeline prescribed by section 7 of FIPPA, where the permission of our office for a time extension has not been sought and obtained under section 10, no longer take their place in the mediation queue but instead are routed immediately to a designated Portfolio Officer, who contacts the public body, determines the reason for the delay and arrives at a fixed date for response by the

public body to the access request. We then issue to all parties a consent order specifying the agreed-upon date. This consent order has the same force as an order issued by the Commissioner. If the date is missed, the matter may proceed to an expedited inquiry.

- Fast-tracking of procedural objections at inquiry. Objections by parties on matters such as whether material is properly submitted by a public body *in camera* (in secret) or the relevance of a party's submission are now dealt with at the time they occur instead of during the hearing, thus ensuring that procedural issues are dealt with right away and do not cause delay down the road.
- Restructuring of management responsibilities. To improve quality control and increase the effectiveness of our oversight responsibilities, we appointed from within our existing staff numbers two Managers of Investigation and Mediation, with separate lead responsibilities for each statute. Their primary role is to support the work of Portfolio Officers and Intake Officers, provide expert guidance on complex investigations and engage in policy consultations on current issues.
- Appointment of a full-time permanent Adjudicator and one half-time adjudicator on a temporary basis, with the latter position running out at the end of this fiscal year. The creation of this position, complementing the roles of the Senior Adjudicator, the half-time Adjudicator and the Commissioner in writing orders, was intended to enable us to reduce our backlog of inquiry decisions. (This struggle continues and, as discussed below, this year's proposal includes an amount to fund the new part-time Adjudicator position next year as well.)
- Appointment of two additional Portfolio Officers using temporary funding recommended last year by the Committee.

Workload statistics since April 1, 2007 and workload projections

Our statistics reveal that between April 1, 2007 and October 31, 2007, the OIPC opened a total of 1,457 files, as compared to 1,303 during the same period last year. It is safe to project from this that our caseload by the end of this fiscal year will be 2,497 (including requests for information) and 2,119 (excluding requests for information.)

With respect to access to information appeals (known as requests for review) and complaints, from April 1, 2007 to October 31, 2007, the OIPC received 532 cases, yielding a projected caseload by the end of this fiscal year of 912.

The most significant, and troubling, statistic is the number of time extension requests received since April 1, 2007—255 as compared to 135 for the same period last year, or almost double. The OIPC projects 385 requests for time extensions by the end of this fiscal year, an increase of 37% over last year and an increase of 63% from fiscal year 2004-2005.

The Intake team at the OIPC strives to meet a performance standard of opening and assigning files within two weeks of receipt. This involves reviewing the file to ensure receipt of all necessary documentation, determining jurisdiction, clarifying issues with the parties, sending out formal notices and referring complainants to other agencies or processes to deal with issues outside our mandate. Due to the huge increase in requests for time extensions, the average processing time to open and assign a file is now five weeks and over this summer was as high as seven weeks. This necessitated a “blitz” by the entire investigative team, who put aside their own work for two days to pitch in and help with the Intake backlog. Our associated and ongoing difficulties in opening and assigning files to Portfolio Officers in a timely fashion further erodes our ability to investigate complaints and appeals in a timely fashion.

Our average file-closing times are improving and the size of our case backlog is down over the last fiscal year. The reduction in case backlog is attributable to the temporary addition of two Portfolio Officers, approved by the Committee last year. This temporary increase in staffing has also had a positive effect on the average time to close files. In the last six months, our average closing times improved to 15.1 weeks for complaint files (down from a high last year of 23.3 weeks) and 12.3 weeks for requests for review (down from a high last year of 15 weeks).

However, we still have a backlog of 152 files, which shows that we are unable to consistently meet the statutory timelines for resolving requests for review in 90 business days and to investigate complaints within 120 business days. The OIPC continues, as it did last year, to face significant challenges to its ability to meet its legislated duties. Accordingly, as discussed below, the Committee is asked to make the two temporary Portfolio Officer positions permanent.

Another area of concern is the timeliness with which the OIPC's Adjudicators are able to write and issue decisions under FIPPA and PIPA. As of late October 2007, there were some 70 appeal decisions pending and the average time between the holding of an appeal hearing and issuance of a decision is several months and can be more. The OIPC added one new full-time Adjudicator last summer and added one part-time, temporary Adjudicator at that time. The latter position expires at the end of this fiscal year. In order to help tackle the backlog of decisions and get average times down, the OIPC is seeking funding to permit a one-year appointment of a half-time Adjudicator to help with decisions.

Personal Information Protection Act

From April 1, 2007 to October 31, 2007, the OIPC opened a total of 347 PIPA files as compared to 354 during the same period last year. As such, our yearly caseload is projected to be 594 (including requests for information) or 289 (excluding requests for information), a figure that includes access appeals, complaints, investigations and policy or issue consultations. Of this total, the number of PIPA appeal and complaint files opened is 90 (yearly fiscal projection: 154), compared to 97 last year. Our workload under PIPA, therefore, has stayed stable. Whether it will do so in future is of course not known, but it may be that publicity in the coming months around the statutory review of

PIPA by an all-party special committee of the Legislative Assembly will increase the number of complaints we receive in the coming months.

The following list illustrates some of the PIPA-related work the OIPC has completed since the start of this fiscal year in addition to our routine work responding to appeals, complaints and inquiries:

- Issued guidance for retailers about privacy and identification practices, along with the Alberta OIPC, the Office of the Privacy Commissioner of Canada and the Retail Council of Canada;
- Drafted a second phase of FAQs about collection, use and disclosure of personal information during the hiring process and conducted an extensive consultation process with businesses and labour groups;
- Organized and co-hosted with the Alberta OIPC, in Vancouver, the second annual PIPA conference for businesses and non-profit organizations, attended by some 300 individuals;
- Continued to participate, as the sole Canadian privacy commissioner's office invited to do so, in the Good Human Resources and Security Practices Project of the International Association for Human Resources Information Management, Privacy and Security Special Interest Group;
- Embarked on a collaborative project with strata property associations to create a suite of privacy tools for condominium councils.

Lobbyists Registration Act

In addition to other responsibilities, the Commissioner is also the Registrar of Lobbyists under the LRA. The LRA requires registration as a lobbyist of anyone who communicates with a public officer in an attempt to influence the development of a legislative proposal, the introduction of a Bill, the awarding of a contract, the amendment of a government policy or program or the arranging of a meeting with a public office holder.

As of October 31, 2007, there were a total of 312 active lobbyists registered. There are three types of lobbyists—consultant lobbyists who are paid on contract to lobby on behalf of clients, in-house lobbyists employed by businesses that carry on activities for commercial gain and senior officers of not-for-profit organizations who either lobby directly or employ staff who spend significant amounts of their time on lobbying. There were 91 consultant lobbyists, 140 senior officers and 81 in-house lobbyists registered. Information in the lobbyists registry is made available to the public through a website maintained by the Ministry of Attorney General. The OIPC has worked with the Ministry to improve the online registration system and to improve the design of the public reports available on the website.

As is discussed below in some detail, during the current fiscal year, the OIPC's Executive Director and its Registrar of Inquiries participated in extensive discussions

and other work associated with the project to renew the lobbyists registration system itself. This entailed dedication of a considerable amount of their time.

Further, during this fiscal year, the OIPC completed an extensive and time-consuming review of the registration-related actions of several individuals. This involved considerable time and effort on the part of the Commissioner in particular, as well as expenditure of funds on legal counsel.

B. KEY FEATURES OF FUNDING PROPOSAL

In recent years, the OIPC has been operating under significant resource constraints. The following discussion outlines key features of the funding proposals for 2008-2009 and the two succeeding fiscal years.

It should be noted here that each year's proposed budget is based on the assumption that the present arrangement for shared office space and services with the Office of the Ombudsman, the Office of the Police Complaint Commissioner and the Office of the Merit Commissioner continues, as is at present expected, throughout the period covered by this document. Similarly, each year's budget reflects ongoing provision to the OIPC by the Office of the Ombudsman of payroll, financial and information technology systems support through our shared services agreement.

Further, the proposal for next year forecasts that, unless there is an unanticipated increase in the need for legal services—for example, due to increases in the numbers of judicial review proceedings commenced against the OIPC—no additional funds will be required for legal services.

1. Fiscal 2007-2008

The Committee's December 2006 report set the OIPC's operating budget for the current fiscal year \$2,952,000 and its capital budget at \$60,000. At this time, the OIPC anticipates being able to once again meet its budget target for the current fiscal year.

2. Fiscal 2008-2009

The OIPC's budget request for 2008-2009 is now \$3,603,000 for operating expenses and \$60,000 for capital expenses. The requested increase is to accommodate increased demand for the OIPC's services and to properly discharge our other statutory responsibilities. This request is based on making permanent the two Portfolio Officer positions approved by the Committee last year on a temporary basis. It would also give the OIPC a single secretarial support for its entire professional staff, one part-time Adjudicator and one new Intake position, again to meet increased workloads.

To enable the OIPC to properly and efficiently discharge its statutory duties and functions under both FIPPA and PIPA, we are seeking funding to make permanent the two full-time Portfolio Officer positions that the Committee approved on a temporary basis last year. In addition to the reasons given above for this request, it should be noted that the learning curve for a Portfolio Officer is at least six months. The new

auxiliary Portfolio Officers are now fully trained and, as a result, our processing times are beginning to improve.

We not only need these people at the front-line to deal with appeals and complaints coming in the door under FIPPA and PIPA, we need them in order to properly fulfill our other responsibilities. These duties include providing expert input for proposed legislation, policies and programs. An example of this last aspect of our work is the e-health initiative of the Ministry of Health, which will in the coming year require OIPC staff to engage heavily in analysis of and comment on the privacy implications of the proposed system. There is no doubt that, should the OIPC lose the two auxiliary Portfolio Officer positions, our case backlog will grow again and our processing times will erode, to the detriment of the citizens who seek our assistance. We will also be much less able to provide expert input on proposed legislation, policies and programs.

We also need one added Intake position to deal with the large increase in workloads, notably the projected 37% increase in public bodies' requests for extension of time to respond to access to information requests. All time extension requests are decided by our Intake staff. The number of time extension requests is projected to rise from 242 last fiscal year to 385 this fiscal year, an increase of 37%, and from 78 in fiscal year 2004-2005, an increase of 63% since then. Each one of those requests takes, on average, two hours to process and decide. As noted earlier, this and other factors are causing intake backlogs.

The OIPC investigative and adjudicative teams operate without the benefit of administrative support staff. We have one receptionist who answers the telephone (providing a great deal of information to callers in the process) and receives incoming mail and courier packages. But the only other support is the Commissioner's assistant. Our Portfolio Officers, Intake Officers and Registrar of Inquiries do their own correspondence, faxing and other secretarial tasks. This results in inefficient use of professional staff time, who spend many hours a week performing administrative tasks, a situation that must be remedied by the addition of a single administrative support function. This added staff position is also needed because our Registrar of Inquiries—who organizes and runs all appeal hearing processes and also spends a material amount of time on lobbyists registration system tasks—cannot keep up with the demands on her time and needs assistance.

One-time special funding request for lobbyists registration system

Considerable discussion is necessary regarding the portion of the budget request related to the OIPC's lobbyists registration function.

Last year's budget proposal to the Committee sought \$100,000 in operating funds and \$25,000 in one-time capital funds to enable the OIPC to assume responsibility for the computer system, including management, maintenance and enhancements. This amount was based on the OIPC's best estimate of costs at the time, after consultations with Ministry of Attorney General officials, to ensure the online system works properly. After the OIPC submitted its budget proposal, the Committee made inquiries of the Ministry about the cost estimate and, as a result, the Committee

recommended less funding than the OIPC sought at the time. The Ministry appears to have given the Committee information different from that agreed upon between the OIPC and the Ministry as a basis for the OIPC's funding request to the Committee. The Commissioner wrote to the Committee's then Chair recording this fact.

This budget proposal now seeks *one-time* funding of \$150,000 during fiscal year 2008-2009 for the lobbyists registration system design and development work described below. OIPC and Ministry officials have worked together during the current fiscal year on the system project. The OIPC had understood that the one-time funding now sought in this proposal would be included by the Ministry in its budget request for fiscal 2008-2009. This has not turned out to be the case. Because the Commissioner believes the lobbyists registration system must be fixed, a view shared by Ministry staff, the OIPC is now seeking the funding rather than the Ministry. The expenditure of that money and management of the lobbyists registration system re-build will be the responsibility of the provincial government, but the OIPC is seeking the \$150,000 estimated cost.

It is of critical importance that the Committee be made aware of the background to this request. In communications last week with the Deputy Attorney General and other senior provincial government officials, on November 23, 2007, the Commissioner in writing confirmed the provincial government's agreement that the \$150,000 estimate is realistic and the provincial government's agreement that, if the project's actual costs exceed that estimate, the overrun will not be borne by the OIPC and will be the direct and first-instance responsibility of the provincial government. The Commissioner also confirmed that OIPC has not budgeted other funds for the project and beyond the \$150,000 the OIPC will not bear any costs of the project.

This request to the Committee should not be permitted to jeopardize or limit the funding levels otherwise sought by the OIPC in this budget proposal. Put another way, the funding for the lobbyists registration system project should not come from the funds that the Committee might otherwise recommend for the OIPC's other services to the public. The system re-build is, nonetheless, an urgent priority.

The lobbyists registration system was intended to be a simple web-based self-registration system. When it was built five years ago, the Ministry tendered the design and construction of the system. The bids ranged between a high of \$329,246 and a low of \$29,900. The average of the bids was \$155,000. The Ministry chose the \$29,900 bid.

From the outset, the system has been criticized by lobbyists, the public and the media as being difficult to use, which is why funds were sought last year to improve the system and why funding is sought here. The concerns include these:

- The system is not easy to use for those wishing to register, causing lobbyists extra time and effort and leading to calls to the OIPC for support in navigating and completing the registration process;

- The system still does not offer an online payment option, which was part of the original system requirements;
- The system does not have adequate reporting capabilities; and
- The system has its own unique authentication process requiring the Registrar to issue and track userIDs and passwords manually.

With the funding that the Committee recommended last year, the OIPC and the Ministry embarked on a joint review of the system with a view to identifying options to eliminate or mitigate the problems inherent in the current system and thus provide proper functionality and reporting capabilities. The review was undertaken by a consultant.

During Phase 1 of the project, the consultant identified five options for the system:

- Option 1: Keep the current system and use a regular maintenance and release schedule to upgrade it. This option may actually be the most costly in the long run because of delayed realization of any benefits and because of splitting the design, build and testing work over many releases, resulting in more effort for the same incremental upgrade to the system.
- Option 2: Rework the existing system. This option will require a considerable amount of work because of the need to redesign and rebuild the data model, rebuilding significant parts of the system and a full data conversion. Costs are estimated to be at least as great as custom-building a replacement system.
- Option 3: Custom building a new system has the advantage of designing it from the ground up to avoid mistakes made in the first generation system. The completed registry would meet all of the business requirements and have the desired look and feel. Data conversion will be required.
- Option 4: Of other systems reviewed, the Nova Scotia system appears to best meet the requirements for a British Columbia registry. It is not clear, at this point, whether Nova Scotia would licence use of its software or at what cost. The system would in any case required modifications to meet British Columbia requirements, especially for standard web-page look and feel. System testing involving a full fit gap analysis would be required to determine the amount of work required to fit the Nova Scotia solution to British Columbia circumstances and requirements. If the database were to need modification, the work would be much more significant.
- Option 5: No off-the-shelf software solutions were found that provide the required functionalities.

The consultant has recommended Option 3 because it provides the cleanest solution, with predictability. A key issue with the existing system is that the data model does not properly reflect the way lobbyists must register their activities under the legislation.

For example, the data field for describing issues about which a lobbyist is lobbying is designed in a way that prevents consultant lobbyists from registering more than one issue per undertaking.

Phase 2 of the project, now under way, involves development of a set of detailed business requirements, including developing a detailed design specification for the system and designing and developing a new logical and physical data model for the system. Phase 2 is nearing completion, with the timeline at present being as follows:

- December 14, 2007—business requirements document to be completed by the consultant and submitted to Ministry IT staff to review and approve;
- January 15, 2008—review and approval by Ministry IT staff;
- February 15, 2008—final design provided to OIPC;
- February 20, 2008—request for proposals (“RFP”) issued;
- March 31, 2008—completion of RFP process and identification of contractor for design and development.

Phase 3 of the project will be the design and development phase, which will include:

- Redesign of the user interfaces to create an easy-to-use system, allowing users to navigate, register and update information, search and query the database, and generate reports without the need to call the OIPC for support;
- Incorporating use of BCeID for authentication of lobbyists and security of the system;
- Incorporating the use of the online payment capability of the Ministry of Finance for the collection of required registration fees;
- Rebuilding of the lobbyists registration system based on provincial government standards;
- Data conversion from the old system to the new;
- Full testing of all aspects of the system to prove that it performs to specification and meets business requirements; and
- Putting the new system into production and testing it.

After the new system is operational, the Ministry will continue to host and maintain the system.

The consultant’s cost estimate is \$150,000 for the design and building of the new system to completion and operation. Of course, once a contract is awarded, it will have to be managed closely by the provincial government to ensure the delivered system will provide the required solutions and to manage costs and timelines. The OIPC has not

budgeted any funds beyond the \$150,000 sought here for the project, which can only proceed if the Committee recommends that funding. If the awarded contract, or any cost overruns, in the end exceed that amount, the funds will have to be found in other budgets, not the OIPC's budget. The provincial government has been informed of this position on the OIPC's part.

3. Fiscal 2009-2010 and Fiscal 2010-2011

It has been the Committee's practice to recommend the same budget for the second and third years in the three-year budget planning cycle, the intent being to review and revise the budgets for those years as required, based on data closer to the time of each review. The following resource summary reflects this practice noting that it does not include in either of these years the one-time \$150,000 lobbyists registration system funding sought for next year only.

Resource Summary for the Office of the Information & Privacy Commissioner

Core Businesses	2007/08 Budget	2008/09 Estimates	2009/10 Plan	2010/11 Plan
Operating Expenses (\$000)				
Public Sector Information & Privacy	2,119	2,468	2,468	2,468
Lobbyists Registration	145	150	150	150
Private Sector Privacy	688	835	835	835
Rebuild of Lobbyists Registration System		150	0	0
TOTAL	2,952	3,603	3,453	3,453
Full-time Equivalentents (FTEs)				
Public Sector Information & Privacy	15.5	17.5	17.5	17.5
Lobbyists Registration	1.5	1.5	1.5	1.5
Private Sector Privacy	5	5	5	5
TOTAL	22	24	24	24
Capital Expenditures (Consolidated Revenue Fund) (\$000)				
	60	60	45	45

The following table provides a detailed budget analysis by STOB (Standard Object of Budgeting):

STOB	DESCRIPTION	2007/08 Estimates	2008/09 Estimates	Change	2009/10 Plan	2010/11 Plan
50	SALARIES	\$ 1,595,000	\$ 1,932,000	\$337,000	\$ 1,932,000	\$ 1,932,000
51	SUPPLEMENTARY SALARY	\$ 5,000	\$ 5,000	\$ -	\$ 5,000	\$ 5,000
52	EMPLOYEE BENEFITS	\$ 456,000	\$ 476,000	\$ 20,000	\$ 476,000	\$ 476,000
54	OFFICER OF LEG.SALARY	\$ 228,000	\$ 247,000	\$ 19,000	\$ 247,000	\$ 247,000
57	TRAVEL	\$ 45,000	\$ 45,000	\$ -	\$ 45,000	\$ 45,000
59	CENTRAL MGM'T SUP SERVICES	\$ 35,000	\$ 270,000	\$235,000	\$ 270,000	\$ 270,000
60	CONTRACT SERVICES	\$ 240,000	\$ 450,000	\$210,000	\$ 300,000	\$ 300,000
63	DATA & WORD PROCESSING	\$ 25,000	\$ 25,000	\$ -	\$ 25,000	\$ 25,000
65	OFFICE EXPENSES	\$ 100,000	\$ 80,000	\$ (20,000)	\$ 80,000	\$ 80,000
67	PUBLIC INFORMATION	\$ 10,000	\$ 10,000	\$ -	\$ 10,000	\$ 10,000
68	STATUTORY REPORTS	\$ 10,000	\$ 10,000	\$ -	\$ 10,000	\$ 10,000
69	UTILITIES, MATERIALS, SUPPLIES	\$ 13,000	\$ 13,000	\$ -	\$ 13,000	\$ 13,000
70	OPERATING EQPT & VEHICLES			\$ -		
73	AMORTIZATION EXPENSE	\$ 45,000	\$ 45,000	\$ -	\$ 45,000	\$ 45,000
75	BUILDING OCCUPANCY	\$ 150,000	\$ -	\$ (150,000)	\$ -	\$ -
88	RECOVERIES	\$ (3,000)	\$ (3,000)	\$ -	\$ (3,000)	\$ (3,000)
89	RECOVERIES	\$ (1,000)	\$ (1,000)	\$ -	\$ (1,000)	\$ (1,000)
90	RECOVERIES	\$ (1,000)	\$ (1,000)	\$ -	\$ (1,000)	\$ (1,000)
TOTAL		\$2,952,000.00	\$ 3,603,000	\$651,000	\$ 3,453,000	\$ 3,453,000
	CAPITAL BUDGET					
Capital	Information systems, furniture & equipment	\$60,000	\$ 60,000	\$ 30,000	\$ 45,000	\$ 45,000

Key Features and Service Consequences

- Of the increased funding sought for next year, 54% is due to cost increases and other factors beyond the OIPC's control.
- A further 23% (\$150,000) is for special *one-time* funding to design and build a new online lobbyists registration system. Accordingly, in fiscal 2009-2010 and beyond, the OIPC's funding would decrease by \$150,000, to \$3,453,000 from \$3,603,000.

- Of the requested increase, fully 28% (\$182,000) is the direct result of salary increases, and associated benefits costs, that are beyond the OIPC's control. The increases stem from the across-the-board provincial public sector salary increase awarded last year and the statutorily-driven increase in the Commissioner's salary and associated benefits costs.
- A further 13% (\$86,000) of the requested funding increase is for estimated increases in the operating costs and taxes charged on our space. These are beyond the OIPC's control.
- Of the requested increase, 13% (\$85,000) stems from increases in the charge made by the Office of the Ombudsman for the corporate, human resource and other administrative services it provides to the OIPC under our shared services agreement. The annual charge is calculated on a per capita basis and the increase reflects the current OIPC staffing count.
- Funding at the requested level will allow the Office of the Information and Privacy Commissioner to modestly increase its current staffing level to meet demands for services.
- The funding being sought will result in the OIPC making permanent the two Portfolio Officer positions for which the Committee recommended temporary funding last year. This will enable the OIPC on an ongoing basis to handle its considerable, and increasing, workload under PIPA and FIPPA. The OIPC has significantly fewer Portfolio Officer positions than desirable, given our case numbers in comparison to other similar offices, including those with smaller workloads. OIPC staff are also constantly pressed to respond properly, off the sides of our desks, to the numerous requests we receive for advice, consultation and comment on proposed legislation, policies, programs and specific issues. These services improve administration of FIPPA and PIPA, and enhance access and privacy, through cost-effective advice. We also need to have these two positions continue so we can offer more, and better, pro-active advice and guidance to both the public and private sectors—activities which again improve administration of FIPPA and PIPA, and enhance access and privacy, in cost-effective ways.
- The funding request includes an amount to enable the OIPC to hire one new Intake Officer, with managerial responsibilities to assist with increased workloads and to manage the Intake function.
- The request includes an amount to staff a single administrative support position for the entire OIPC. At present, the OIPC has a receptionist whose duties include providing information to callers and assisting with some Intake questions. The Commissioner also has an assistant. The rest of the OIPC has no secretarial or administrative support. This is particularly critical for the Registrar of Inquiries, who is responsible for running the OIPC's formal appeal processes under FIPPA and PIPA. The Registrar also does the lion's share of work involved in registering lobbyists and administering the lobbyists registration system. Further, Portfolio

Officers, Intake Officers and other staff spend a lot of time typing, printing and faxing their own communications, filing materials in files and otherwise doing tasks that materially reduce the time they have to work on the substance of cases assigned to them.

- The proposal includes funds to retain one part-time Adjudicator to hear appeals under FIPPA and PIPA and write decisions. Other similar offices have multiple Adjudicators and, while the OIPC's complement of Adjudicators has increased slightly in recent years, we are not issuing orders and decisions in as timely a fashion as necessary. This situation must be corrected and the modest further funding necessary to hire one part-time Adjudicator for one year is critical if we are to improve service to the public in this area.
- The current funding for the LRA responsibilities covers the direct staffing costs, rent and overhead, and administrative costs.

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APPENDIX

DESCRIPTION OF THE OIPC's WORK

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

The public policy goals at FIPPA's core are to make public bodies more accountable to the public they serve and to protect personal privacy. Section 2(1) of the Act explicitly states that one of the purposes of FIPPA is to "make public bodies more accountable to the public...by giving the public a right of access to records". The central importance of freedom of information for good government has been confirmed on many occasions, as the following passage from the Supreme Court of Canada decision in *Dagg*² illustrates:

As society has become more complex, governments have developed increasingly elaborate bureaucratic structures to deal with social problems. The more governmental power becomes diffused through administrative agencies, however, the less traditional forms of political accountability, such as elections and the principle of ministerial responsibility, are able to ensure that citizens retain effective control over those that govern them....

The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry...

In a classic article, Professor Donald Rowat explains:

Parliament and the public cannot hope to call the Government to account without an adequate knowledge of what is going on; nor can they hope to participate in the decision-making process and contribute their talents to the formation of policy and legislation if that process is hidden from view....

Here in British Columbia, a 1991 law reform report by the BC Freedom of Information and Privacy Association put it this way:

Information about how government decisions have been made, and why, must also be available on the ground of political accountability. Government and the information held by it are paid for by taxpayers. Many government agencies, and most individuals and interest groups, welcome a degree of public participation in decision-making. But meaningful and efficient participation depends also on access to relevant information held by government in its broad sense....

Access to information will gradually enhance the credibility of government with the public. It will justify public trust and the perception of government integrity and

² *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403, at paras. 60 and 61 (internal citations omitted).

accountability. The public will perceive government decision-makers as administering in a fair and open manner.

Protection of privacy is of fundamental importance to individual development and the health of our society. Simon Davies, an internationally known privacy expert, has written:³

People who have no rights of privacy are vulnerable to limitless intrusions by governments, corporations, or anyone else who chooses to interfere in your personal affairs. Imagine a world where government had an unfettered right to demand information from you, or to remove money from your bank account, or even to enter your house. The tragic history of many of the world's countries shows us that a nation denied the right of privacy is invariably denied all other freedoms and rights.

In order to receive public goods and services, citizens must provide a certain amount of personal information to the government. The scope and sensitivity of the personal information that must be produced in exchange for the service varies, depending on the service. For example, an individual will be required to disclose information about her or his health and family when seeking health care; educational and income information when seeking a university education; family status and income information when seeking financial assistance with medication; eyesight, height and weight information when applying for a driver's license.

FIPPA deals with the privacy of such information—what the Supreme Court of Canada has called “informational privacy”:⁴

...[T]here is privacy in relation to information. This too is based on the notion of the dignity and integrity of the individual. As the [Federal Task Force] put it: “[The] notion of [informational] privacy derives from the assumption that all information about a person is in a fundamental way his own, for him to communicate or retain for himself as he sees fit.” In modern society, especially, retention of information about oneself is extremely important. We may, for one reason or another, wish or be compelled to reveal such information, but situations abound where the reasonable expectations of the individual that the information shall remain confidential to the persons to whom, and restricted to the purposes for which it is divulged, must be protected. Governments at all levels have in recent years recognized this and have devised rules and regulations to restrict the uses of information collected by them to those for which it was obtained; see, for example, the [federal] *Privacy Act*.

Using internationally recognized rules—called “fair information practices”—FIPPA governs the collection, use and disclosure of personal information by public bodies. Collectively, FIPPA's rules reinforce the basic premise that public bodies must be appropriately restrained, transparent and vigilant in their collection, use, disclosure and management of personal information.

³ Davies, Simon, *Big Brother: Britain's Web of Surveillance & the New Technological Order* (London: Pan 1996)

⁴ *R. v. Dyment*, [1988] 2 S.C.R. 417, at pp. 429-430

Under FIPPA, the OIPC is the appeals and investigative agency that enforces compliance with the law's requirements. The OIPC, which is fully independent of executive government, is responsible for investigating and resolving complaints that any of more than 2,000 public bodies—including ministries, Crown corporations, universities and colleges, local governments, school boards and self-governing professions—has refused to give an applicant access to information or has inappropriately collected, used or disclosed someone's personal information.

Someone dissatisfied with a public body's decision in response to an access to information request can appeal the decision to the OIPC. The case is referred to a Portfolio Officer, who will investigate and attempt to mediate the dispute. The OIPC emphasizes mediation because it is cost-effective and, the OIPC firmly believes, yields effective outcomes. Last year, the OIPC succeeded in resolving 75% of all access to information disputes by mediation.

If a dispute cannot be resolved by mediation, it will proceed to a formal hearing, known as an inquiry. The parties are allowed to present evidence and legal argument, almost always in writing and not in a live hearing, on the issues in dispute. After consideration of the issues, the Commissioner or an Adjudicator issues a written decision, known as an order. The order is binding on the parties and must be complied with. A party has the right to seek judicial review of an order in the British Columbia Supreme Court. Generally, some 50 written orders are issued each year. Relatively few of them are the subject of judicial review proceedings in the courts.

The OIPC is also responsible for commenting on the access and privacy implications of proposed legislation or programs, new technologies or data linkages, educating the public about access and privacy rights and engaging in research into anything affecting access and privacy rights. The OIPC is regularly consulted by ministries and other public bodies, as it has been since the early 1990s, about legislative initiatives and program proposals that involve access to information or privacy rights. Public bodies recognize the value that the OIPC adds to public policy through its independent, arm's-length expertise in access to information and privacy issues. The OIPC has become known around the world for its expertise and contributions in these areas.

A properly functioning access and privacy system is indispensable to good government. The policy and program support that we provide to ministries, Crown corporations, health authorities and local public bodies assists them in pro-actively and cost-effectively meeting their statutory obligations and adopting best practices. The services we provide under FIPPA are also crucial to ensuring that public bodies operate in a transparent and accountable fashion and that public bodies respect the privacy of the citizens they serve.

The value of the OIPC's services to the health of our democratic system of government and protection of individual rights cannot readily be measured. There is no doubt, however, that our mandate and functions are vital to restraining and illuminating the activities of government and to empowering citizens, both of which are fundamental to a healthy and well-functioning modern democracy.

2. Mandate under the *Personal Information Protection Act*

PIPA came into force on January 1, 2004. It governs the collection, use and disclosure of personal information by the provincially-regulated for-profit and not-for-profit private sector in British Columbia. At least 380,000 organizations in British Columbia are covered by PIPA, including all businesses, trade unions, societies, co-operatives, independent schools, charitable organizations and religious organizations. Similar legislation exists federally, in Alberta and in Quebec. Private sector privacy legislation also exists at the federal and state levels in the United States, in the European Union and in many Asian countries (such as Japan, Korea and Hong Kong). The Organization for Economic Co-operation and Development and the Asia Pacific Economic Cooperation organization have adopted privacy frameworks that promote similar legislation among their members.

The OIPC is responsible for overseeing compliance with PIPA. As with FIPPA, PIPA gives us the authority to investigate and mediate complaints, hold formal hearings and, if necessary, dispose of complaints by a binding order.

Our PIPA activities have been even more extensive than these numbers indicate. For example, the OIPC has published a number of guidelines to pro-actively educate organizations and consumers about PIPA and assist with compliance. Our website has been revamped and through it we offer resources to organizations and citizens.

As with our other public education efforts, the Commissioner and other OIPC staff speak frequently at conferences and to groups about PIPA.

3. Mandate under the *Lobbyists Registration Act*

As mentioned earlier, in addition to other responsibilities, the Commissioner is also the Registrar of Lobbyists under the LRA. The purpose of that law is to require registration as a lobbyist of anyone who communicates with a public officer in an attempt to influence the development of a legislative proposal, the introduction of a Bill, the awarding of a contract, the amendment of a government policy or program or the arranging of a meeting with a public office holder. This information is made available to the public through a website.