

Office of the  
Privacy Commissioner  
of Canada



Commissariat à la  
protection de la vie privée  
du Canada

# 2009-2010 ANNUAL REPORT TO PARLIAMENT on the *Privacy Act*



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## Introduction

The *Privacy Act* came into effect On July 1, 1983. This *Act* imposes obligations on federal government departments and agencies to respect the privacy rights of individuals by limiting the collection, use and disclosure of personal information. The *Act* also gives individuals the right of access to their personal information and the right to request the correction of that information.

When the *Federal Accountability Act* received Royal Assent on December 12, 2006, the Office of the Privacy Commissioner (OPC) was added to the Schedule of the *Privacy Act* along with other Agents of Parliament. So, while not initially subject to the *Act*, the OPC became so on April 1, 2007.

Section 72 of the *Act* requires that the head of every federal government institution submit an annual report to Parliament on the administration of the *Act* within their institutions during the fiscal year.

The OPC is pleased to submit our third Annual Report which describes how we fulfilled our responsibilities under the *Privacy Act* during the fiscal year 2009-2010.

## Mandate / Mission of the OPC

The mandate of the OPC is to oversee compliance with both the *Privacy Act (PA)* which covers the personal information-handling practices of federal government departments and agencies, and the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, Canada's private sector privacy law.

The OPC's mission is to protect and promote the privacy rights of individuals.

The Commissioner works independently from any other part of the government to investigate complaints from individuals with respect to the federal public sector and the private sector. In public sector matters, individuals may complain to the Commissioner about any matter specified in Section 29 of the *PA*.

For matters relating to personal information in the private sector, the Commissioner may investigate complaints under Section 11 of *PIPEDA* except in the provinces that have adopted substantially similar privacy legislation, namely Québec, British Columbia, and Alberta. Ontario now falls into this category with respect to personal health information held by health information custodians under its health sector privacy law. However, even in those provinces with substantially similar legislation, and elsewhere in Canada, *PIPEDA* continues to apply to personal information collected, used or disclosed by all federal works, undertakings and businesses, including personal information about their employees. *PIPEDA* also applies to all personal data that flows across provincial or national borders, in the course of commercial transactions involving organizations subject to *PIPEDA* or to substantially similar legislation.

The Commissioner focuses on resolving complaints through negotiation and persuasion, using mediation and conciliation if appropriate. However, if voluntary co-operation is not forthcoming, the Commissioner has the power to summon witnesses, administer oaths and compel the production of evidence. In cases that remain unresolved, particularly under *PIPEDA*, the Commissioner may take the matter to Federal Court and seek a court order to rectify the situation.

As a public advocate for the privacy rights of Canadians, the Commissioner carries out the following activities:

- Investigating complaints and issuing reports with recommendations to federal government institutions and private sector organizations to remedy situations, as appropriate;
- Pursuing legal action before Federal Courts where matters remain unresolved;
- Assessing compliance with obligations contained in the *PA* and *PIPEDA* through the conduct of independent audit and review activities, and publicly report on findings;
- Advising on, and review, Privacy Impact Assessments (PIAs) of new and existing government initiatives;
- Providing legal and policy analyses and expertise to help guide Parliament's review of evolving legislation to ensure respect for individuals' right to privacy;

- Responding to inquiries of Parliamentarians, individual Canadians and organizations seeking information and guidance and taking proactive steps to inform them of emerging privacy issues;
- Promoting public awareness and compliance, and fostering understanding of privacy rights and obligations through: proactive engagement with federal government institutions, industry associations, legal community, academia, professional associations, and other stakeholders; preparation and dissemination of public education materials, positions on evolving legislation, regulations and policies, guidance documents and research findings for use by the general public, federal government institutions and private sector organizations;
- Providing legal opinions and litigate court cases to advance the interpretation and application of federal privacy laws;
- Monitoring trends in privacy practices, identify systemic privacy issues that need to be addressed by federal government institutions and private sector organizations and promoting integration of best practices; and
- Working with privacy stakeholders from other jurisdictions in Canada and on the international scene to address global privacy issues that result from ever-increasing trans-border data flows.

## **Organizational Structure**

The Privacy Commissioner is an Officer of Parliament who reports directly to the House of Commons and the Senate. The Commissioner is assisted by two Assistant Privacy Commissioners, one responsible for matters related to the *PA* and the other responsible for those related to *PIPEDA*.

The OPC is comprised of seven distinct branches:

### **Investigations and Inquiries Branch**

The Investigations and Inquiries (I&I) Branch investigates complaints received from individuals under Section 29 of the *PA* and Section 11 of *PIPEDA* which may include allegations of the mismanagement of personal information but which are different from incident investigations. The Branch also investigates incidents that are different from individual complaints and not filed under those provisions. These incidents come to the Branch's attention through various sources, including federal government institutions subject to the *PA* and entities subject to *PIPEDA*. The Branch also examines these occurrences in an effort to assist federal government institutions *PA* and organizations *PIPEDA* in ensuring that such incidents do not recur. The Branch is headed by Mr. Art Dunfee, Director General.

### **Audit and Review Branch**

The Audit and Review Branch audits organizations to assess their compliance with the requirements set out in the two federal privacy laws. The Branch also analyses and provides recommendations on PIAs submitted to the OPC pursuant to the Treasury Board Secretariat Policy on PIAs. The Branch is headed by Mr. Steven Morgan, Director General.

### **Research, Education and Outreach Branch**

The Research, Education and Outreach Branch is responsible for researching privacy and technology issues to support policy development, investigation and audit, and the public education program. The Branch administers the research program, which was launched in 2004 to support research into, and the promotion of, the protection of personal information. The Branch supports international outreach activities and stakeholder engagement activities. The Branch is headed by Mr. Colin McKay, Director.

### **Communications Branch**

The Communications Branch focuses on providing strategic advice and support for communications and public education activities for the OPC. In addition, the Branch plans and implements public education and communications activities through media monitoring and analysis, public opinion polling, media relations, publications, special events and the OPC web site. The Branch is headed by Ms. Anne-Marie Hayden, Director.



## Legal Services, Policy and Parliamentary Affairs Branch

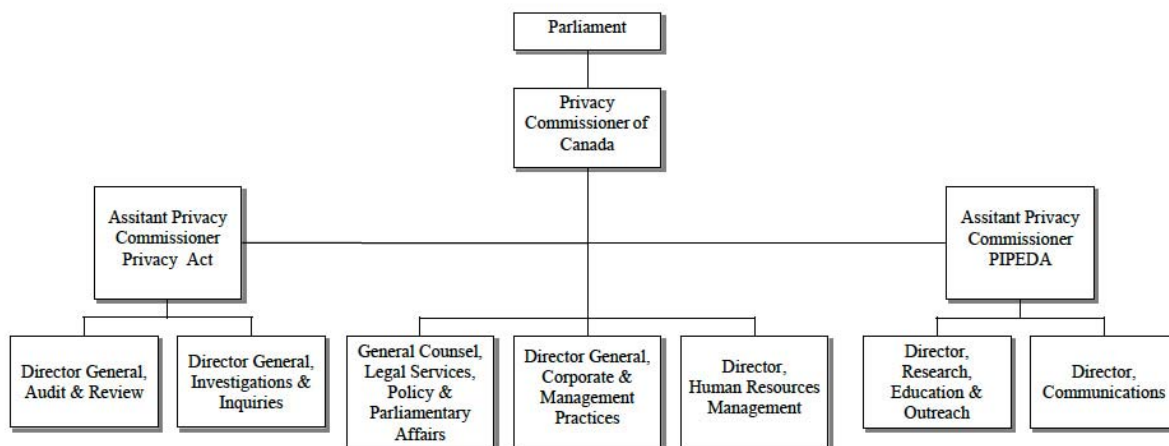
The Legal Services, Policy and Parliamentary Affairs Branch provides strategic legal and policy expertise to the OPC on emerging privacy issues in Canada and internationally. It represents the OPC in litigation before the courts both in Canada and internationally, and provides advice to the Commissioners on the interpretation and application of the *PA* and *PIPEDA*. The Branch provides expert legal support to the operational Branches of OPC, including Inquiries & Investigations and Audit & Review, as well as general legal counsel on a variety of corporate matters. It is responsible for monitoring legislative and government program initiatives, analyzing them and advising the Commissioners on appropriate policy positions to protect and advance privacy rights in Canada. The Branch prepares for and supports the office in appearances before Parliament and in relations with Parliamentarians. In 2009-2010, the Branch was headed by Ms. Lisa Campbell, Acting General Counsel.

## Human Resources

Human Resources is responsible for the provision of strategic advice, management and delivery of comprehensive human resource management programs in areas such as staffing, classification, staff relations, human resource planning, learning and development, employment equity, official languages and compensation. The Branch is headed by Ms. Maureen Munhall, Director.

## Corporate Services

The Corporate Services Branch provides advice and integrated administrative services such as corporate planning, resource management, financial management, information management/technology and general administration to managers and staff. The Branch is headed by Mr. Tom Pulcine, Director General and Chief Financial Officer.



The Access to Information and Privacy (ATIP) Unit falls under the Corporate Services Branch. ATIP is headed by a Director who is supported by one Senior Analyst.

Under section 73 of the *Privacy Act* the Privacy Commissioner, as the head of the OPC, delegated her authority to the Director General of Corporate Services and to the ATIP Director with respect to the application of the *Act* and its *Regulations*. However, due to the seriousness of public interest disclosures under section 8(2)(m) of the *Act*, the Commissioner has retained sole delegation for those decisions. A copy of the Delegation Order is attached as Appendix A.

The ATIP Director also serves as the OPC's Chief Privacy Officer.

## Privacy Commissioner, ad hoc / Complaint Mechanism

In our 2007-2008 Annual Report on the *Privacy Act*, we outlined our views concerning the silence of the *Federal Accountability Act* with respect to an independent mechanism under which *Privacy Act* complaints against the OPC would be investigated.

We still remain of the view that it is inappropriate that the OPC investigate its own actions with respect to its administration of the *Act* but as the situation remains unchanged, we continue to maintain our own mechanism.

The current Privacy Commissioner, ad hoc is Mr. Mario Dion, former Deputy Minister, whom the Privacy Commissioner has delegated the majority of her powers, duties and functions as set out in sections 29 through 35 and section 42 of the *Act* in order that he could investigate *Privacy Act* complaints lodged against the OPC. Mr. Dion's biography may be found at: [http://www.sussexcircle.com/bios/bio\\_dion\\_e.htm](http://www.sussexcircle.com/bios/bio_dion_e.htm).

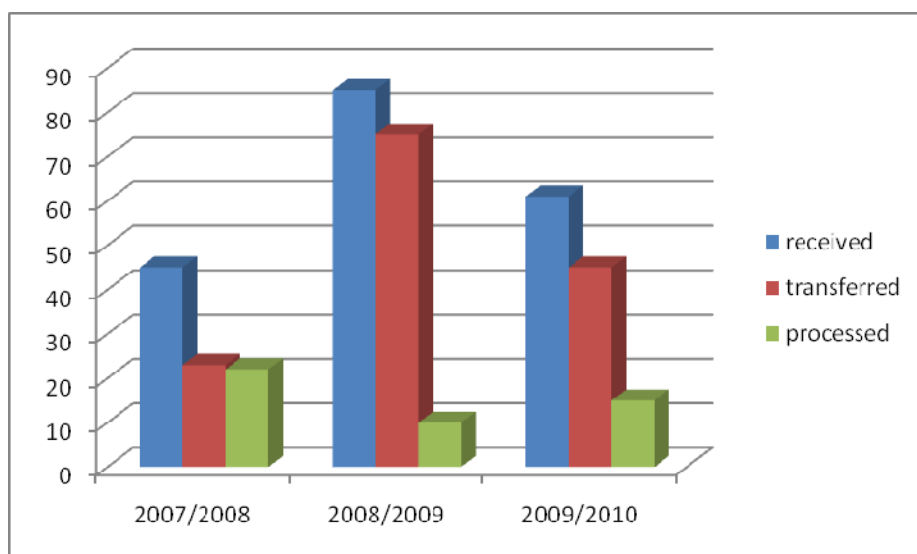
## **ATIP Unit Activities**

While we had hoped to provide *Privacy Act* training to staff this year, the focus was once again on the *Access to Information Act (ATIA)* as we experienced a significant turnover of staff new to the OPC, the majority of who had not had previous training on the *ATIA*. As noted in our previous annual reports, given the nature of the work mandated to us under the *Privacy Act*, OPC staff is already extremely sensitized to privacy issues and to what is required of the OPC with respect to the handling of personal information. Still, we hope to be able to provide specific training on the *Act* in the 2010-2011 fiscal year.

Throughout the year the ATIP Unit has been active in providing advice to all OPC staff with respect to informal requests for access to personal information and concerning the proper handling of the personal information under our control. ATIP has also continued to support the Information Management function by providing input concerning proper information handling practices.

## Privacy Act Statistical Report and Interpretation

The OPC received 61 formal requests under the *Privacy Act* for the fiscal year, down from 85 the previous year. However, the vast majority of those requests—45 of them—sought access to personal information under the control of other government institutions. They were therefore re-directed to those institutions for processing, for example to the Canada Revenue Agency, Correctional Service Canada, Human Resources and Skills Development Canada, the Department of National Defence and the RCMP.



Last reporting year the OPC received 10 *Privacy Act* requests for personal information under our control and we processed some 885 pages of information. This fiscal year was quite different from the previous year in that we received 16 such requests which comprised 9, 884 pages. We do not know the reason for the increase in numbers but perhaps more individuals were aware that the OPC is subject to the *Privacy Act*—we simply do not know. All of the requests were submitted by individuals.

Still, ATIP took no extensions of the statutory time limit in order to process the requests and all were completed within the 30-day legislated timeframe. The longest request to process took 29 days and the shortest time taken was 1 day. One request was carried over to the next fiscal year.

Section 22.1 of the *Privacy Act* was added to the *Act* as a result of the *Federal Accountability Act*. This provision requires that the OPC protect the information that we obtained during the course of our investigations or audits even once the matter and all related proceedings have been concluded.

Of the 15 *Privacy Act* requests completed, 10 were for the contents of *Privacy Act* or *PIPEDA* investigation files. In 1 instance all of the information was withheld under section 22.1 as the investigation had not yet been concluded. In the remaining cases our investigations and all related proceedings were closed; therefore, the information in those files was processed and released to the requesters subject to applicable exemptions.

With regards to other exemptions, section 26 was claimed in 10 cases and section 27 in 6 instances. All information was released in two instances and in two cases the information requested did not exist. Only 1 request was carried forward to the next period.

No requests were received for correction of personal information held within the OPC. The OPC did not receive any complaints against it under the *Privacy Act* in this reporting year.

Finally, unlike last year when the OPC was not consulted by other government institutions, the OPC receive two consultations this fiscal year.

## Report on the Privacy Impact Assessment (PIA) Policy

The *Directive on Privacy Impact Assessment* which came into effect on April 1, 2010, requires that the Treasury Board Secretariat monitor compliance with the *Directive*. Given this responsibility, institutions are asked to include pertinent statistics in their annual reports on the administration of the *Privacy Act*.

In the 2008-2009 Annual Report we reported that the one PIA had been initiated on the OPC's new Case Management System which allows the OPC to both streamline its activities and work in a paperless environment. It has since been completed and has been forwarded to the OPC's Audit and Review Branch for its approval.

## Data Sharing Activities

The OPC has not undertaken any data sharing activities this reporting year.

## Disclosures of Personal Information

The OPC disclosed no personal information under sections 8(2)(e), (f), (g) or (m) of the *Privacy Act* during this fiscal year.

## Privacy-Related Policies

The ATIP Director is a member of the OPC's Policy Development Committee. In that role, policies, directives and guidelines have been and continue to be reviewed to ensure that the *Privacy Act* is respected. In the 2008-2009 Annual Report we reported that the OPC's *Employee Privacy Policy*, the *Corporate Privacy Policy* and the *Privacy Breach Policy* had been approved by the OPC's Senior Management Committee and they are now posted on the OPC's intranet and/or website.

During this reporting year the OPC has not implemented any new privacy related policies, guidelines or procedures.

For additional information on the OPC's activities, please visit [www.privcom.gc.ca](http://www.privcom.gc.ca)

Additional copies of this report may be obtained from:

Director, Access to Information and Privacy  
Office of the Privacy Commissioner of Canada  
112 Kent Street  
Ottawa, ON K1A 1H3

## Appendix A – *Privacy Act* Delegation Order



### *Privacy Act* Delegation Order

The Privacy Commissioner of Canada, as the head of the government institution, hereby designates pursuant to section 73 of the *Privacy Act*, the persons holding the positions set out below, or the persons occupying on an acting basis those positions, to exercise the powers, duties or functions of the Privacy Commissioner as specified below and as more fully described in Annex A:

Position	Sections of <i>Privacy Act</i>
Privacy Commissioner Assistant Commissioner	8(2)(m)
Director General, Corporate Services and Chief Financial Officer  Director, ATIP	<u>Act</u> : 8(2)(j), 8(4) and (5), 9(1) and (4), 10, 14, 15, 17(2)(b) and (3)(b), 18 to 28, 31, 33(2), 35(1) and (4), 36(3), 37(3), 51(2)(b) and (3), 72(1)  <u>Regulations</u> : 9, 11(2) and (4), 13(1), 14

Dated at the City of Ottawa, this 1<sup>st</sup> day of Oct, 2008

*Original signed by*

\_\_\_\_\_  
Jennifer Stoddart  
Privacy Commissioner of Canada



**Privacy Act**

- 8(2)(j) Disclose personal information for research purposes
- 8(2)(m) Disclose personal information in the public interest or in the interest of the individual
- 8(4) Retain copy of 8(2)(e) requests and disclosed records
- 8(5) Notify Privacy Commissioner of 8(2)(m) disclosures
- 9(1) Retain record of use
- 9(4) Notify Privacy Commissioner of consistent use and amend index
- 10 Include personal information in personal information banks
- 14 Respond to request for access within 30 days; give access or give notice
- 15 Extend time limit for responding to request for access
- 17(2)(b) Decide whether to translate requested information
- 17(3)(b) Decide whether to give access in an alternative format
- 18(2) May refuse to disclose information contained in an exempt bank
- 19(1) Shall refuse to disclose information obtained in confidence from another government
- 19(2) May disclose any information referred to in 19(1) if the other government consents to the disclosure or makes the information public
- 20 May refuse to disclose information injurious to the conduct of federal-provincial affairs
- 21 May refuse to disclose information injurious to international affairs or defence
- 22 Series of discretionary exemptions related to law enforcement and investigations; and policing services for provinces or municipalities.
- 22.1(1) In force April 1, 2007 - Privacy Commissioner shall refuse to disclose information obtained or created in the course of an investigation conducted by the Commissioner
- 22.1(2) In force April 1, 2007 - Privacy Commissioner shall not refuse under 22.1(1) to disclose any information created by the Commissioner in the course of an investigation conducted by the Commissioner once the investigation and related proceedings are concluded
- 23 May refuse to disclose information prepared by an investigative body for security clearances

- 24 May refuse to disclose information collected by the Correctional Service of Canada or the National Parole Board while individual was under sentence if conditions in section are met
- 25 May refuse to disclose information which could threaten the safety of individuals
- 26 May refuse to disclose information about another individual, and shall refuse to disclose such information where disclosure is prohibited under section 8
- 27 May refuse to disclose information subject to solicitor-client privilege
- 28 May refuse to disclose information relating to the individual's physical or mental health where disclosure is contrary to best interests of the individual
- 31 Receive notice of investigation by Privacy Commissioner
- 33(2) Right to make representations to the Privacy Commissioner during an investigation
- 35(1) Receive Privacy Commissioner's report of findings of the investigation and give notice of action taken
- 35(4) Give complainant access to information after 35(1)(b) notice
- 36(3) Receive Privacy Commissioner's report of findings of investigation of exempt bank
- 37(3) Receive report of Privacy Commissioner's findings after compliance investigation
- 51(2)(b) Request that section 51 hearing be held in the National Capital Region
- 51(3) Request and be given right to make representations in section 51 hearings
- 72(1) Prepare annual report to Parliament

## **Privacy Regulations**

- 9 Provide reasonable facilities to examine information
- 11(2) and (4) Procedures for correction or notation of information
- 13(1) Disclosure of information relating to physical or mental health to qualified practitioner or psychologist
- 14 Require individual to examine information in presence of qualified practitioner or psychologist

## **Appendix B – Discrepancies**

### **III – Exemptions invoked**

Section 22.1 was invoked on 9 requests.

### **X – Costs**

All operating and maintenance costs are borne by other OPC Branches ie: Human Resources (training), Information Technology (computers, printouts, etc), Corporate Services (supplies, mailing, etc).

### **Other**

The OPC received and responded to 2 consultations from other government institutions.

## **Appendix C – Additional Reporting Requirements**

### ***Privacy Act***

Treasury Board Secretariat is monitoring compliance with the Privacy Impact Assessment (PIA) Policy (which came into effect on May 2, 2002) through a variety of means. Institutions are therefore required to report the following information for this reporting period. Indicate the number of:

Preliminary Privacy Impact Assessments initiated:	1
Preliminary Privacy Impact Assessments completed:	1
Privacy Impact Assessments initiated:	1
Privacy Impact Assessments completed:	1
Privacy Impact Assessments forwarded to the Office of the Privacy Commissioner (OPC):	1

If your institution did not undertake any of the activities noted above during the reporting period, this must be stated explicitly.



**REPORT ON THE PRIVACY ACT  
RAPPORT CONCERNANT LA LOI SUR LA PROTECTION  
DES RENSEIGNEMENTS PERSONNELS**

Institution	Office of the Privacy Commissioner of Canada	Reporting period / Période visée par le rapport	04/01/2009 to 03/31/2010
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<b>I Requests under the Privacy Act / Demandes en vertu de la Loi sur la protection des renseignements personnels</b>	
Received during reporting period / Reçues pendant la période visée par le rapport	61
Outstanding from previous period / En suspens depuis la période antérieure	0
<b>TOTAL</b>	<b>61</b>
Completed during reporting period / Traitées pendant la période visées par le rapport	60
Carried forward / Reportées	1

<b>II Disposition of request completed / Disposition à l'égard des demandes traitées</b>	
1. All disclosed / Communication totale	2
2. Disclosed in part / Communication partielle	10
3. Nothing disclosed (excluded) / Aucune communication (exclusion)	0
4. Nothing disclosed (exempt) / Aucune communication (exemption)	1
5. Unable to process / Traitement impossible	2
6. Abandoned by applicant / Abandon de la demande	0
7. Transferred / Transmission	45
<b>TOTAL</b>	<b>60</b>

<b>III Exemptions invoked / Exceptions invoquées</b>	
S. Art. 18(2)	0
S. Art. 19(1)(a)	0
(b)	0
(c)	0
(d)	0
S. Art. 20	0
S. Art. 21	0
S. / Art. 22(1)(a)	0
(b)	0
(c)	0
S. / Art. 22(2)	0
S. / Art. 23 (a)	0
(b)	0
S. / Art. 24	0
S. / Art. 25	0
S. / Art. 26	10
S. / Art. 27	6
S. / Art. 28	0

<b>IV Exclusions cited / Exclusions citées</b>	
S. Art. 69(1)(a)	0
(b)	0
S. Art. 70(1)(a)	0
(b)	0
(c)	0
(d)	0
(e)	0
(f)	0

<b>V Completion time / Délai de traitement</b>	
30 days or under / 30 jours ou moins	60
31 to 60 days / De 31 à 60 jours	0
61 to 120 days / De 61 à 120 jours	0
121 days or over / 121 jours ou plus	0

<b>VI Extentions / Prorogations des délais</b>		
	30 days or under / 30 jours ou moins	31 days or over / 31 jours ou plus
Interference with operations / Interruption des opérations	0	0
Consultation	0	0
Translation / Traduction	0	0
<b>TOTAL</b>		

<b>VII Translations / Traductions</b>		
Translations requested / Traductions demandées		0
Translations prepared /	English to French / De l'anglais au français	0
	French to English / Du français à l'anglais	0

<b>VIII Method of access / Méthode de consultation</b>	
Copies given / Copies de l'original	12
Examination / Examen de l'original	0
Copies and examination / Copies et examen	0

<b>IX Corrections and notation / Corrections et mention</b>	
Corrections requested / Corrections demandées	0
Corrections made / Corrections effectuées	0
Notation attached / Mention annexée	0

<b>X Costs / Coûts</b>	
Financial (all reasons) / Financiers (raisons)	
Salary / Traitement	\$ 88,280.00
Administration (O and M) / Administration (fonctionnement et maintien)	0
<b>TOTAL</b>	<b>\$ 88,280.00</b>
Person year utilization (all reasons) / Années-personnes utilisées (raisons)	
Person year (decimal format) / Années-personnes (nombre décimal)	1.0256

