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for
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OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
British Columbia

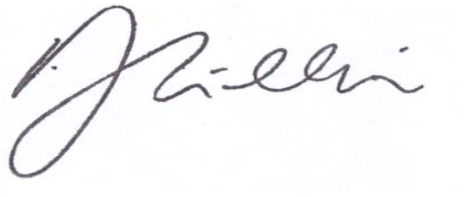
July 28, 2004

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

Dear Honourable Speaker Richmond:

Pursuant to section 51 of the *Freedom of Information and Protection of Privacy Act* and section 44 of the *Personal Information Protection* Act, I have the honour to present the Office's tenth Annual Report to the Legislative Assembly. This report covers the period from April 1, 2003 to March 31, 2004.

Yours sincerely,



David Loukidelis
Information and Privacy Commissioner
for British Columbia

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1.0 Commissioner's Message

This has been a notable year on a number of fronts. Significant new responsibilities came our way at a time when our activities under the *Freedom of Information and Protection of Privacy Act* ("Act")—which turned ten on October 4, 2003—were as extensive as ever. I will focus here on only a few of the more notable developments this past year.

Private sector privacy comes to British Columbia

The *Personal Information Protection Act ("*PIPA*")*, which came into force on January 1, is a major development. PIPA extends internationally-recognized privacy protections to British Columbians in their dealings with the broad private sector. PIPA strikes the right balance between the privacy rights of individuals and the need of organizations to collect, use and disclose personal information for their activities. PIPA is similar to private sector privacy laws found in Alberta, Quebec and federally, but its balanced and practical approach puts British Columbia in the front ranks in this area, while bringing us into line with the situation in Europe and elsewhere.

We began gearing up last year for PIPA's arrival—its coverage of over 350,000 for-profit and not-for-profit organizations across the province clearly required us to support organizations as they prepared for the new law. In addition to meeting with affected groups, and speaking at conferences and workshops, our office has published several PIPA tools for organizations and individuals. These range from a comprehensive, practical guide to the legislation, to principles for developing privacy policies, to guidance on how to investigate and resolve privacy complaints. Some of these tools were based extensively on work done by our colleagues in the Office of the Information and Privacy Commissioner for Alberta and by Alberta's Ministry of Government Services, which they very generously shared with us. Another notable initiative was our work with the BC Medical Association and the College of Physicians and Surgeons on a set of compliance tools for British Columbia's doctors and their offices. The forward-looking initiative both the BCMA and the College displayed in creating these resources and rolling them out across the province is greatly appreciated.

As indicated above, British Columbia is not the only Canadian jurisdiction to have a private sector privacy law—similar laws exist federally, in Quebec and in Alberta. Starting late last year, I discussed with my Alberta and federal colleagues the need for our offices to, as far as possible, create similar support tools for organizations and to co-operate in information sharing and co-ordination of complaints-handling. In January, we worked out an interim arrangement for the handling of Alberta and British Columbia complaints to the Office of the Privacy Commissioner of Canada. This step was, we believed, necessary pending the federal government's still-awaited declaration that our law and Alberta's are substantially similar to the federal *Personal Information Protection and Electronic Documents Act*.

Since then, our three offices have worked very hard on a number of fronts to co-ordinate our efforts to explain to individuals and organizations how Canada's private sector privacy laws work. We have also continued to work on ways to co-ordinate enforcement activities in order to avoid the inefficiencies that can flow from multiple complaint investigation processes for the same complaint. We intend to continue this work and to see if it can be expanded to reduce compliance costs and enhance compliance. I am grateful to our federal and Alberta colleagues for their ongoing commitment to this process.

It became clear to me last year that our looming PIPA responsibilities would require both added resources and changes in my office's structure. Beginning late last year, we embarked on a re-organization that has enhanced management of our intake function, created an adjudicator's position and enhanced our remaining administrative support functions. We were able to undertake these changes, which are designed to make our PIPA activities as efficient and responsive as possible, thanks to added PIPA funding recommended by the Select Standing Committee on Finance and Government Services. This funding has also enabled us to hire two new Portfolio Officers to investigate and mediate PIPA complaints.

Our public sector access and privacy work still challenges us

October 4, 2003 was the 10th anniversary of the coming into force of our Act, which remains a landmark law in this country. To celebrate the Act's 10th anniversary, we held a two-day conference in September, 'The State of Accountable Government in A Surveillance Society'. This conference, attended by several hundred people, brought together access and privacy experts from around the world to discuss the tough issues. Our goal was to examine the state of affairs in British Columbia and elsewhere, including because of the then pending legislative review our Act. I certainly benefited enormously from the event and those who attended have consistently told us the same thing. It took a lot of work for my colleagues to put this event together and I thank them, as well as our many speakers and panelists, for their efforts.

Any decade-old law is likely to need some fine-tuning in light of hard-learned lessons and changing conditions. In February, I submitted 47 recommendations for legislative improvements to the all-party Special Committee to Review the *Freedom of Information and Protection of Privacy Act*. A number of our recommendations were aimed at improving our ability to function efficiently in overseeing compliance with the legislation, but many were intended to enhance openness, accountability and privacy protection. The Special Committee's report was published after the end of the year, but I will repeat here my strong support for its recommendations and my thanks to the Special Committee's Chair and members for their hard work. Those recommendations must all be implemented if our legislation is to remain an effective force for public body accountability and privacy protection for British Columbians.

As the numbers found later in this report demonstrate, our work under the Act continued to be pressing and substantial. Our ability to meet the demands facing us continued to be impaired due to budget cuts. In 2003-2004, we faced a second 10% budget cut and had to reduce staff as a result. The recommendation last December by the Finance & Government Services Committee that our budget not be cut further in the three fiscal years following 2004-2005—our public sector budget for 2004-2005 has been cut a further 15%, for a total reduction of 35%—offers certainty at least.

Despite these serious constraints, we managed this year to keep our heads above water in handling privacy complaints and mediating access to information appeals. I say this bearing in mind that our clients have told us we are often not responding in as timely a way as we used to. Nor did we find enough time on the side to do as much of the pro-active policy and education work that is indispensable to good public policy and public body compliance with the law. We only managed as well as we did thanks to the dedication of my colleagues in the office. As always, this year they rolled up their sleeves and dug in—uncomplaining to a fault, they displayed their customary creativity and energy in serving the public and public bodies with skill and in good faith.

Privacy remains vulnerable on many fronts

The government's stated intention to hire a private sector company to administer the province's public health insurance plan, the Medical Services Plan, generated controversy toward the end of the year because of concerns about the United States anti-terrorist legislation known as the *USA Patriot Act*. Concerns were expressed that this law would allow American law enforcement agencies to gain access to the personal information of British Columbians here in British Columbia. Some weeks ago, I announced my intention to consider—through a public process in which I am seeking input from my colleagues, other privacy experts, stakeholders and the public—whether the *USA Patriot Act* does reach across the border and directly impinge on the privacy of British Columbia residents right here in British Columbia. I take this issue very, very seriously and will work hard to publish an advisory report this summer offering practical, effective recommendations on how to deal with any privacy risks.

Law enforcement efforts to combat cyber-crime also featured in our work last year. Like many other governments around the world, the federal government last year proposed—in the name of fighting cyber-crime—to lower the bar for obtaining warrants to monitor our Internet use and e-mail communications. In a submission to the federal government, I resisted this proposal on the basis, among other things, that no evidence had been presented that the existing legal standards for obtaining warrants were harming law enforcement efforts in light of new technologies or criminal methods. Many, many others said similar things. Those opposed included many of Canada's other privacy commissioners and Internet service providers—in the latter case, fearing the high costs associated with the proposal to require ISPs to retain data for significant periods of time.

The status of this proposal is not clear, though I expect it will be revived in the next year. I will continue to monitor this issue closely and speak out in support of the privacy rights of British Columbians.

Again on the national scene, the national ID card proposal floated by Denis Coderre, at the time Minister of Citizenship and Immigration, continued to engage our attention last year. In my testimony before the Parliamentary Standing Committee on Citizenship and Immigration, I opposed the creation of a national ID card for a number of reasons. My main concern was, and still is, that a national ID card which uses a unique individual identifier would—even if it is not designed at the outset to do so—inevitably facilitate data-linkage and data-mining in ways that would negatively affect our privacy and other rights. I remain convinced that, if there is truly a pressing and substantial problem with the security of existing identity documents such as birth certificates, driver's licences or passports, our taxpayer dollars would be much better invested in addressing improvements in those documents. If the national ID card proposal rears its head again, I will be vigorous and dogged in my efforts to ensure that the privacy of British Columbians is protected.

I have already acknowledged the heavy debt I owe to my colleagues in the office. But it bears repeating that, truly, they have my gratitude, respect and admiration for all the excellent work they do, day in and day out. They are a wonderful group and I look forward to this coming year of collegiality, hard work and plain fun.

2.0 Role and Mandate

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

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

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

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

To accomplish these important objectives, the Act:

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

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

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

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

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

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

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

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

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

The OIPC's 2003-2004 financial statements have been prepared in the same format as the 2001-2002 format, which was reviewed by staff of the Auditor General.

The *Personal Information Protection Act* makes the Information and Privacy Commissioner responsible for overseeing compliance with PIPA and imposes a number of obligations on him and the OIPC.

PIPA requires all private sector organizations to comply with rules respecting:

- What personal information can be collected from individuals (including customers, clients and employees)
- When consent is required to collect personal information and how consent is obtained
- What notice must be provided before personal information is collected
- How personal information may be used or disclosed
- How organizations must respond to requests from individuals seeking access to their own personal information
- How personal information is to be kept secure
- How organizations must make their personal information practices transparent.

PIPA provides that an individual who believes an organization has inappropriately collected, used or disclosed his or her personal information, or has incorrectly refused to give access to that information, can complain to the Information and Privacy Commissioner. He can investigate complaints within his jurisdiction and, where they are not settled by mediation, may hold formal hearings and dispose of complaints by binding order. PIPA also gives the Information and Privacy Commissioner other powers and duties in overseeing compliance.

PART 1 – *Freedom of Information and Protection of Privacy Act*

3.0 Reviews and Inquiries

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

3.1 Mediation and Case Disposition

Section 55 of the Act allows the Commissioner to authorize mediation for any matter under review by the Office. The OIPC has a long and remarkable history of successfully mediating access appeals. Last year, the Office resolved fully 92% of its requests for review by mediation. Mediation typically involves an OIPC Portfolio Officer or Review Officer reviewing the decision in dispute, discussing the issues with all parties involved and attempting to facilitate a full or partial settlement through discussion of the established principles and practices of the Act and by generating mutually-acceptable options for resolution. The officer is not an advocate for either the applicant or the public body, but rather ensures that the applicant has received all the information to which he or she is legally entitled, taking into account the circumstances of the case, the applicable sections of the Act and previous decisions relevant to the issues.

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

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

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

Figure 1 sets out the specific type and disposition of the requests for review that came before the OIPC from April 1, 2003 to March 31, 2004.

Figure 1:
Disposition of Requests for Review
April 1, 2003 to March 31, 2004

	DISPOSITION			
GROUNDS	**Mediated**	**Order[1]**	**Discontinued[2]**	**Total**
Access:				
Denied Access	88	9	1	**98**
Partial Access	300	20	5	**325**
Correction	5	2	0	**7**
Deemed Refusal	106	1	3	**110**
Duty to Assist	24	0	0	**24**
Fees	53	2	0	**55**
Scope of Act	8	1	1	**10**
Third Party	13	4	0	**17**
Time Extensions[3]	2	0	0	**2**
Other	5	0	0	**5**
Total	**604**	**39**	**10**	**653[3]**

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

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

3 In 2002-2003, the OIPC began treating certain matters as complaints, not requests for review, which makes the total here lower than it would have been under the old system.

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

Figure 2, below, sets out requests for review by applicant type from April 1, 2003 to March 31, 2004.

Figure 2:
Requests for Review by Applicant Type
April 1, 2003 to March 31, 2004

Type of Applicant	Requests for Review	Percentage
Individuals	517	79.2%
Organization	24	3.7%
Commercial	35	5.4%
Media	46	7.0%
Lawyer	15	2.3%
Special Interest Group[1]	9	1.4%
Public Body	4	0.6%
First Nations	3	0.5%
Total	**653**	**100%**

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

Consistent with previous years, decisions by ICBC, the Ministry of Attorney General and Ministry of Public Safety & Solicitor General were the subject of the most appeals. These public bodies receive higher numbers of requests for information than other public bodies and collect, use and disclose more personal information than other public bodies. The number of appeals and complaints therefore does not point to difficulties in their compliance.

Figure 3, below, sets out the disposition of requests for review by public body from April 1, 2003 to March 31, 2004. Figure 4 sets out the grounds for requests for review.

Figure 3:
Disposition of Requests for Review by Public Body
April 1, 2003 to March 31, 2004

Public Body	Mediated	Discontinued	No Reviewable Issue (NRI)[1]	Order	Requests for Review
Insurance Corporation of BC	122	4	3	2	131
Attorney General/PS&SG	39	1	3	10	53
Finance/Mgmt Services/OOP	23	0	1	2	26
Vancouver Police Department	25	0	0	0	25
Provincial Health Services Authority	17	0	2	1	20
Workers' Compensation Board	18	0	0	0	18
Forests	14	0	0	2	16
Vancouver Coastal Health Authority	15	0	0	0	15
Vancouver Island Health Authority	13	0	1	1	15
Health Services	11	0	1	2	14
Children and Family Development	12	1	0	0	13
Advanced Ed/Education/SDL	11	0	0	0	11
Water, Land and Air Protection	11	0	0	0	11
City of Surrey	9	0	0	1	10
BC Hydro	6	1	1	1	9
City of Vancouver	6	0	0	3	9
Human Resources	8	0	0	1	9
All Other Public Bodies	214	4	17	13	248
Total	**574**	**11**	**29**	**39**	**653**

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

Figure 4:
Grounds of Requests for Review by Public Body
April 1, 2003 to March 31, 2004

	CORRECTION REQUEST	DEEMED REFUSAL	DENIED ACCESS	DUTY TO ASSIST	FEES	PARTIAL ACCESS	SCOPE OF THE ACT	THIRD PARTY	TIME EXTENSION[1]	OTHER	TOTAL
Insurance Corporation of BC	0	14	5	1	7	103	0	0	1	0	**131**
Attorney General & Public Safety and Solicitor General	2	6	12	3	4	24	1	0	0	1	**53**
Finance/Mgmt Services/OOP	0	7	1	0	5	13	0	0	0	0	**26**
Vancouver Police Department	1	2	8	0	2	10	2	0	0	0	**25**
Provincial Health Services Authority[1]	0	13	2	2	0	2	1	0	0	0	**20**
Workers' Compensation Board	0	7	2	1	2	5	0	1	0	0	**18**
Forests	0	3	1	0	5	6	1	0	0	0	**16**
Vancouver Coastal Health Authority	0	4	1	0	0	10	0	0	0	0	**15**
Vancouver Island Health Authority	0	2	0	3	0	9	0	0	0	1	**15**
Health Services/Planning	0	2	3	1	1	6	0	1	0	0	**14**
Children and Family Development	0	0	3	1	1	8	0	0	0	0	**13**
Advanced Ed/Education/SDL	0	0	0	0	3	7	0	1	0	0	**11**
Water, Land and Air Protection	0	1	2	0	2	6	0	0	0	0	**11**
City of Surrey	0	1	3	0	0	5	0	1	0	0	**10**
BC Hydro	0	1	0	1	0	6	0	1	0	0	**9**
City of Vancouver	0	1	2	0	2	3	0	0	1	0	**9**
Human Resources	1	2	1	0	0	1	0	2	2	0	**9**

3.2 Summaries of Mediated Requests for Review

The following examples of successfully-mediated requests for review illustrate the range of access to information issues in 2003-04 and the role of mediation in resolving disputes informally, and handled more quickly and cheaply than through more formal legal processes.

[1] The PHSA includes the BC Cancer Agency, BC Centre of Disease Control, the Forensic Psychiatric Institute and Children's & Women's Hospital.

School District – student's letter

A father with joint custody of his son made a request to the school district for records relating to a safety issue involving his son. The only responsive record was a letter written by the student and the student's mother that included some personal information of the applicant. The school district withheld the letter under the exceptions related to physical or mental harm and personal privacy. The applicant asked the OIPC to review the decision of the school district.

Mediation revealed that it was not reasonable to sever the letter as it was not possible to disclose the applicant's personal information to him without disclosing personal information of third parties. However, the school district prepared a summary of the applicant's personal information in the letter and obtained the consent of the third parties to release their personal information in the summary. The applicant received the summary and accepted that further information could not be disclosed.

Municipal police department – investigation records

An individual made a request to a police department for records related to an investigation involving him that had concluded without charges being laid. The police disclosed records but withheld information concerning the identities of witnesses under the personal privacy exception, as disclosure would reveal personal information that was compiled and was identifiable as part of an investigation into a possible violation of law. The applicant asked the OIPC to review the decision to withhold the identities of the witnesses. As a result of mediation, the applicant accepted that the police had properly withheld the information but asked what the possible violation of law was that he was accused of. The police disclosed the nature of the offence that had been investigated, which was apparent from the records originally disclosed.

Municipality – Labour Relations records

An applicant requested a review of a municipality's decision to withhold the identities of third parties involved in a labour relations investigation. The investigation concerned an allegation of bias made by an employee against a manager in the context of a hiring competition. The applicant was the successful candidate in the competition. The investigation determined that the allegation was unfounded and the employee received a letter of reprimand for making the allegation without reasonable evidence.

The municipality agreed to release additional documents containing the names of the municipality's human resources representative and the union representative that dealt with the matter. The applicant agreed that the municipality had properly withheld the name of the third party who made the complaint that resulted in the investigation by the municipality.

Ministry of Children and Family Development – record did not exist

A former youth worker requested a copy of an order made by the Superintendent of Family and Child Services to a school district to stop abusive conduct towards a child. The applicant had made the allegations of abuse years earlier and had been told by the child's parents that the Superintendent had issued the order. The ministry refused to confirm or deny the existence of any order on the basis that this was the personal information of the child.

The ministry agreed to resolve the matter by confirming to the applicant in writing that the ministry had no record of any order or any other document or correspondence from the ministry to the school district regarding the incident referred to in the applicant's request for information. The applicant confirmed that he considered this to be an acceptable resolution to his request for review.

Ministry of Children and Family Development – birth mother's personal information

An adult, who had been born in another province but adopted in British Columbia, wanted to locate his birth mother. He asked the OIPC to review the Ministry's decision to disclose his birth and adoption records but withhold personal information of the birth mother and her family to protect her privacy. The Ministry required evidence that the applicant knew the identity of the birth mother before it would release her personal information to him, but the applicant could provide only the birth mother's last name.

The OIPC reviewed the original records and confirmed that the ministry was required under the Act to withhold the information in question. The OIPC also confirmed with the relevant authorities in the other province that the applicant could not obtain his birth registration from that province without having complete information about the identity of his birth parents.

After discussions with the OIPC, the applicant's adoptive mother recalled that she had records from the time of the adoption that established the identity of the birth mother. The OIPC sent copies of those records to the Ministry, which found them sufficient to establish that the applicant knew the identity of his birth mother and that it would therefore not be an unreasonable invasion of her privacy for the Ministry to release her personal information to him.

Soon after, the applicant was able to contact his birth mother's relatives in the other province and his birth mother, who had moved. The birth mother was relieved to be located, since she had intended that her son be able to contact her when he was older and had been unsuccessful in her attempts to locate him.

Ministry of Children and Family Development – father's adoption records

A man requested information regarding his birth father, who had been adopted as a child many years earlier, including the father's child welfare files, the circumstances of his birth and adoption, his early medical history and his placement with orphanages and foster families. The ministry located and released to the applicant many pages of records from its files but withheld a substantial amount of personal information about the father, saying disclosure of the information would be an unreasonable invasion of the father's personal privacy. The applicant asked the OIPC to review the Ministry's decision and also questioned whether the Ministry had overlooked certain records that he thought should be in their files.

At the OIPC's request, the Ministry conducted an additional search to confirm that it had no additional records relating to the applicant's original request for records or his letter to the OIPC. The Ministry also reviewed the records again, taking into consideration the age of the records and the fact that the applicant's father was deceased. The result was the release of considerably more information and the applicant was satisfied.

Municipal police department – recruitment and reserve files

An applicant requested information from a municipal police department regarding his recruitment and reserve files. The police department released part of the records, but withheld others on the grounds that the information was gathered in confidence in the course of conducting reference checks and background interviews to determine suitability as a candidate for recruitment. As a result of mediation, the police department agreed to summarize the content of the withheld information, which provided the information that the applicant was seeking, thereby resolving the matter.

Municipal Police Department – police report

The applicant requested information pertaining to a police report for an upcoming court case. The police department granted access to the report but withheld third-party personal information and witness statements that were compiled and identifiable as part of an investigation into a possible violation of law. After reviewing the records, the OIPC found that the information was withheld appropriately. However, it recommended that the police department consult the third parties involved to seek approval for the release of the withheld information.

The police department contacted the third parties involved, who agreed to the release of their statements. The police department then released the statements to the applicant, as well as other information from the police report which was similar to that released in the witness statements. The police department continued to withhold minor third-party personal information but the applicant was satisfied with the release of the majority of the requested information and the matter was settled.

Municipality – records on property damage

The applicant requested information pertaining to riverbank erosion resulting from water discharge by the municipality. The municipality released two adjusters' reports that were responsive to the applicant's request. However, it severed much of the information as it pertained to recommendations by the adjusters, as well as to claim reserves and negotiations.

During mediation, the OIPC reviewed the information and recommended that the majority of the information be released. The municipality accepted the recommendation and disclosed the information to the applicant, only withholding minor information related to the reserves. The applicant was satisfied with the release of information.

Municipality – subcontracts for the construction of a new arena

An applicant requested a list of all subcontracts awarded for the construction of a new arena, including the subcontractors' names, type of work and value of the contracts. The municipality responded that it did not have custody or control of the requested information. The applicant requested a review of the municipality's response on the grounds that the municipality had control of the records, as it was funding the project.

After several discussions with the OIPC, the municipality came to the conclusion that all this information should be made publicly available. It agreed to place the information on its website in the future.

Municipality – complaint about lack of building permit

An applicant made a request to a municipality for the name of an individual who had complained about a shed that the applicant was building without a permit. The municipality released a copy of the complaint but severed the name of the complainant, as it believed the name was protected as a confidential source of law enforcement information. The applicant requested a review because he suspected that the complaint had come from one of the two companies with which he had business dealings and he did not want to continue to give them work if they had filed the complaint against him.

During mediation, the applicant explained that he did not want the name, only to know if either company had complained. The municipality agreed to inform applicant that neither business had been involved in the complaint and the applicant was satisfied with this outcome.

Self-governing professional body – complaint records

An applicant made a request to a self-governing professional body for records related to a complaint file. The public body reviewed the records, which contained third-party personal information, and determined that they could all be released. It notified the third party of the decision and told him that he could ask for a review by the OIPC.

The third party requested a review of the public body's decision on release of the records that he had created. During mediation, the OIPC discussed the records with the third party, explaining that the applicant already knew all of the information. The third party agreed to the release of the records.

Municipality – mayor's e-mails

An applicant requested copies of e-mails from the mayor of a municipality during a specific time period. Initially the municipality assessed a significant fee for the production of the e-mails. The applicant then requested a fee waiver in the public interest which the municipality denied. The municipality also decided that approximately half of the e-mails were outside the scope of the Act, as they were records of an elected official of a local public body. The applicant requested a review of those decisions.

As a result of mediation, the municipality agreed to grant the fee waiver. The applicant asked the OIPC to review the responsive records and, upon further discussion with the municipality, it disclosed half of the e-mails. However, the remainder of the e-mails were personal or related to a recent election campaign. The applicant asked if the municipality would tell her how many of the outstanding e-mails were election-oriented and how many were personal. The municipality agreed to her request and this satisfied the applicant.

School district – personnel records

An applicant requested access to all records concerning him or the performance of his duties held by his employer, the school district. The employer provided most of the records, but withheld four under the personal privacy exception, since a third party had authored them. The applicant requested a review of this decision.

During mediation, the third party strongly opposed release of the information. It also became apparent that the applicant's primary aim was to have the four records removed from his files. In these particular circumstances, the employer and the third party agreed with this solution. The records were destroyed and the applicant was satisfied.

Ministry of Water, Land and Air Protection – forest appeal records

The applicant, a forest company, requested records from the Ministry about an appeal to the Forest Appeals Commission ("FAC"), which also involved the Forest Practices Board ("FPB"). The records in dispute were a series of severed e-mail exchanges between legal counsel for the FPB and employees of the Ministry, which the Ministry had severed under s. 14 (solicitor client privilege).

The OIPC concluded that the FAC process is "litigation" and that the dominant purpose for the creation of the records in dispute was for this type of litigation. The OIPC also concluded that the FPB had not waived privilege simply because the records were in the Ministry's custody. The applicant was satisfied with the OIPC's explanation of the application of s. 14.

Financial Institutions Commission – application for mortgage broker's licence

The applicant requested all personal information that the public body held on him regarding his application for a mortgage broker's licence. The public body withheld all information requested on the grounds that the applicant was under investigation. The applicant requested a review of the public body's decision to withhold the information.

The public body agreed during mediation to disclose more information and records, withholding only small amounts of information protected by solicitor client privilege and the personal privacy exception. The OIPC gave the applicant the opinion that he had now received all of the information he was entitled to under Act and recommended he accept the revised severing. The applicant told the OIPC that he was satisfied with this revised severing and said he would take things from there.

Health authority – request for proposal

The applicant, an unsuccessful bidder in a request for proposal ("RFP") process, requested information from the health authority regarding an RFP for external audit services, including the names of the firms that submitted a proposal, the amount bid by each firm (including the fee and out-of-pocket costs for each of the five years covered by the RFP) and a copy of the evaluation of the proposals. The health authority responded by granting access to the names of the firms that had submitted the bids, but denying access to the remaining information under the exception for third-party business information (s. 21).

During mediation, the applicant narrowed the request to the summary scoring sheet from the evaluation of the bids and the evaluation of the financial terms of the bids of the top three firms. The health authority and the OIPC then consulted with the third parties. The OIPC explained to the third parties that the public body had created the information in the scoring sheet. As the third parties had not supplied the information, it would not, in the

OIPC's view, meet the second part of the s. 21 criteria. In addition, the financial information in question related to the total fees and expenses for each of the five years and as such was also unlikely to meet the s. 21 test. As a result of these discussions, the health authority agreed to release the information related to the top three firms. The applicant was satisfied with the disclosure.

Insurance Corporation of British Columbia – telephone logs

The applicant requested copies of telephone log records and other records for files related to his claim. ICBC provided a number of records but withheld others under the exceptions that protect solicitor client privilege, financial interests and personal privacy. The applicant requested a review of this decision.

During mediation, it became clear that the applicant was mainly interested in knowing whether ICBC's dial-a-claim logs had a record of him reporting his accident. He claimed that he had reported the accident a few days earlier than indicated in ICBC's records. ICBC acknowledged that it has dial-a-claim log but confirmed that there was no record of the applicant calling on the earlier date. The OIPC corresponded and spoke with the applicant on this issue who then decided not to pursue the matter further.

Health authority – mental health records

The applicant requested her mental health records from her local health unit for 2001 and 2002. The health authority responded by releasing some information and withholding some records as personal information of others. The applicant requested a review of the decision to withhold information.

Mediation revealed that the health authority had disclosed its own records about the applicant, but had withheld records about the applicant that it had received from other public bodies. It said it had done so without consulting with those other public bodies. The OIPC recommended that the health authority consult with the other public bodies on their records and then make a decision on whether it could release them. The health authority did this and concluded it could disclose all previously withheld records without any severing.

The applicant then said that there was no record of a meeting which she knew had occurred on a particular date. The health authority searched again and found a record related to that meeting which it disclosed. The applicant was satisfied with these steps.

Municipality – legal advice on conflict of interest

The applicant requested records related to a request for advice by the municipality's legal counsel on a potential conflict of interest matter regarding the municipality's administrator. The request included the advice supplied and the amount that the law firm

had billed. The municipality denied access to the records on the grounds that they were protected by solicitor client privilege. The applicant requested a review of the decision as she felt that, as a taxpayer, she was entitled to the information about a possible conflict of interest of a staff member of the municipality.

The OIPC wrote to the applicant with the opinion that solicitor client privilege applied to the responsive records (the lawyer's notes of a conversation with the municipality's mayor and the legal bill). The applicant then decided not to pursue the review.

Office of the Premier – fee waiver

The applicant requested records about the recruitment, training and appointment of members of the Employment and Assistance Appeal Tribunal. The Office of the Premier issued a fee estimate of $950. The applicant requested a fee waiver on public interest grounds and because he could not afford the fee. The Office of the Premier denied the fee waiver request, but amended the fee estimate to $560. The applicant requested that the OIPC review the decision to deny the fee waiver.

During mediation, the applicant clarified that he wished to have copies of the résumés that members of the Tribunal had supplied to the Office of the Premier. The agency responsible for the recruitment of the members agreed to post the résumés on its website which satisfied the applicant.

Self-governing professional body – response to complaint

The applicant requested copies of all correspondence to date between the self-governing body and the professional about whom the applicant had complained. The public body responded that it was unable to provide access to the requested records, as it had not yet adjudicated the complaint and the applicant's concerns were still under investigation. The public body said disclosure of the records at that point in the process would harm its investigation, which it termed a law enforcement matter. The applicant requested a review of the decision to withhold the requested records as she did not understand how harm to law enforcement played a role in the matter.

The OIPC recommended disclosure of the requested correspondence, pointing out that the applicant already appeared to know much of the information. The OIPC therefore questioned how, in this particular case, its disclosure could reasonably be expected to harm the investigation process. The public body accepted the recommendation, after consultation with the professional, and disclosed the requested records in full.

Municipal police department – investigation records

The applicant requested records pertaining to police charges against him for incidents which had allegedly occurred at his place of business. The police provided only a copy

of its media release on the matter. It stated that the rest of the records related to a prosecution that was still before the courts and that the records were therefore excluded from the scope of the Act. The applicant requested a review of the response, stating he believed charges were no longer outstanding, as Crown counsel had declined to approve charges recommended by the police.

Mediation confirmed that the Crown had decided not to approve charges. The police department therefore revised its decision that the Act did not apply. It processed the records under Act and disclosed most of them. The applicant was satisfied with this result.

Health authority – fee waiver

The applicant requested copies of any and all documents pertaining to her day care business from the community care facilities and licensing branch of a health authority. The health authority sent her a fee estimate of $289. The applicant requested a review of the fee estimate, as she did not believe she should be charged a fee at all.

During mediation, the health authority then issued a revised estimate of $197.25, having discovered that it had processed many of the responsive records in a previous access request, thus lowering the time for preparation of those records. Mediation also revealed that the health authority had calculated the time of two licencing officers to review the records, as the matter was likely to end in litigation. The OIPC pointed out that the fee regulation does not contemplate charging for two staff to carry out a single task. Further mediation led to clarification of the fee calculation and a further decrease in the fee, to $122.25, which the applicant agreed to pay.

Ministry of Human Resources – exit survey responses

The applicant, a media outlet, requested a copy of all comments collected in a series of exit surveys the Ministry had conducted with former income assistance recipients. The Ministry denied access to the records on the grounds that they would reveal third-party personal information. The applicant asked the Ministry to reconsider its decision. It refused to do so and the applicant then asked for a review of the refusal by the OIPC.

Although the applicant expressed a preference for the survey comments themselves, he said he would accept a summary if necessary. The Ministry disclosed a summary which the applicant said would not be helpful in his work. The OIPC then recommended full disclosure of the survey responses, with potentially identifying information withheld. The Ministry accepted this recommendation and disclosed the 46-page record and the applicant was satisfied.

4.0 Complaints and Investigations

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

If it appears that the complainant has not attempted to resolve the complaint with the public body, the OIPC generally refers complainants to public bodies first, so that they can attempt to resolve the complaint between them. If the complainant has done this and is dissatisfied with the public body's response, the complainant may contact the OIPC again. The OIPC then decides whether or not to investigate further.

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

If the matter under investigation is of a systemic nature or one that affects a significant number of people, the findings of the investigation may be issued publicly in the form of an investigation report. No investigation reports have been issued this year.

4.1 Disposition of Privacy and Access Complaints/Investigations

Figure 5 sets out the disposition by percentage of access and privacy complaints closed from April 1, 2003 to March 31, 2004. Figure 6 sets out their disposition by grounds.

Figure 5:

Disposition of Access and Privacy Complaints/Investigations by Percentage

April 1, 2003 to March 31, 2004

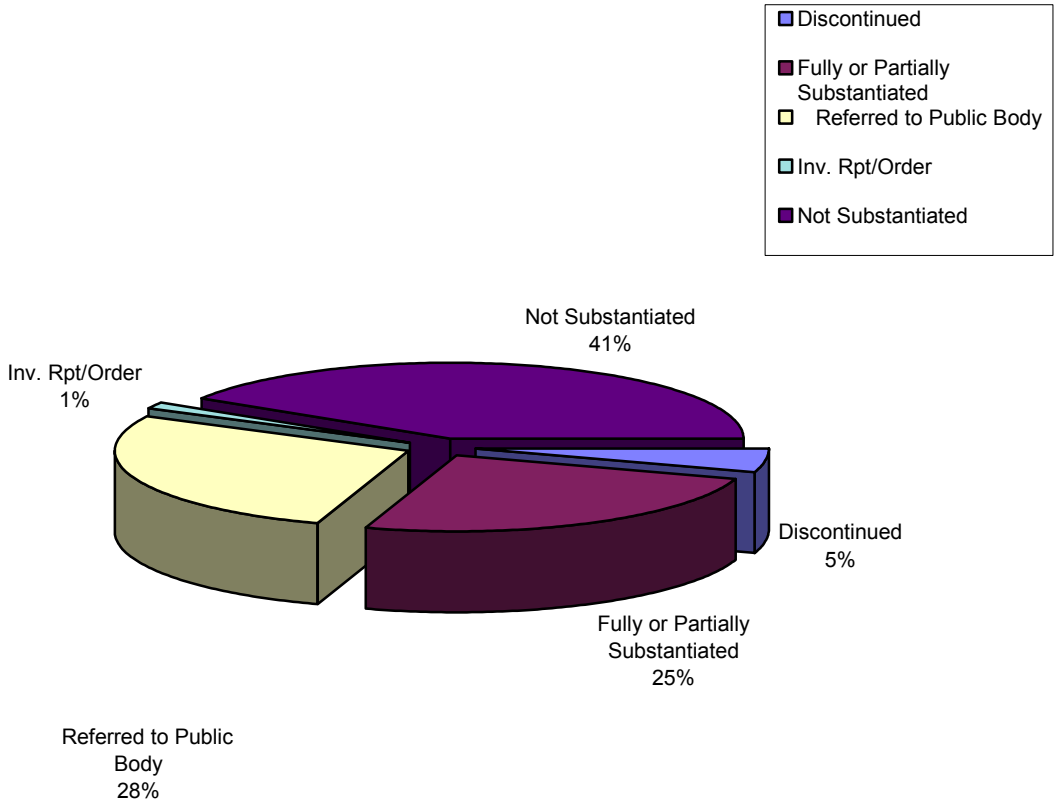


Figure 6:
Disposition of Privacy and Access Complaints/Investigations by Grounds
April 1, 2003 to March 31, 2004

Grounds	Fully or Partially Substantiated	Unsubstantiated	Referred to Public Body	Discontinued	Order/ Invest. rpt	Total
Adequate	16	35	32	5	2	90
Collection	5	13	12	2	0	32
Disclosure	20	19	11	0	0	50
Duty	23	40	19	5	2	89
Extend	1	4	0	2	0	7
s. 79	0	1	0	0	0	1
Retention	2	0	0	0	0	2
Use	3	3	3	0	0	9
Total	**70**	**115**	**77**	**14**	**4**	**280**

NOTES:

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

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

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

Some public bodies are the subject of more privacy complaints than others. This often happens because they possess or handle more personal information than other public bodies. Figure 7, sets out access and privacy complaints by public body, and by type of complaint, from April 1, 2003 to March 31, 2004. Figure 8 sets out the disposition of access and privacy complaints by public body.

Figure 7:
Access and Privacy Complaints by Public Body
April 1, 2003 to March 31, 2004

Public Body	Total Complaint & Investigation	Adequate	Collection	Disclosure	Duty	Extend	Use	Other
Attorney General/ PS&SG	24	5	2	3	13	1	0	0
Insurance Corporation of BC	18	7	2	3	5	0	1	0
Vancouver Police Department	10	5	0	1	4	0	0	0
Workers' Compensation Board	15	1	4	2	4	2	2	0
Children & Family Development	11	4	0	2	4	0	0	1
Human Resources	15	5	2	3	4	0	0	1
Health/Services/ Planning	27	6	11	4	4	2	0	0
Advanced Ed./ Education/ Skills, Dev. & Labour	14	10	0	0	3	1	0	0
Vancouver Coastal Health Auth.	12	4	0	2	6	0	0	0
Fin/Mgmt Services/OOP/PSA	9	5	0	0	4	0	0	0
All Other Public Bodies*	125	37	12	30	38	1	6	1
TOTAL	**280**	**89**	**33**	**50**	**89**	**7**	**9**	**3**

Figure 8
Disposition of Access and Privacy Complaints/Investigations by Public Body:
April 1, 2003 to March 31, 2004

Public Body	Complaints/ Investigations	Referred to Public Body	Fully or Partially Substantiated	Not Substantiated	Discontinued	Order
Attorney General/Public Safety and Solicitor General	24	3	9	9	1	2
Health Services and Planning	27	6	8	13	0	0
Insurance Corporation of BC	18	8	3	6	1	0
Human Resources	15	8	1	6		0
Workers' Compensation Board	15	7	2	3	3	0
Advanced Ed/Education/ Skills, Dev. and Labour	13	4	1	8	1	0
Vancouver Coastal Health Authority	12	2	4	5	1	0
Children and Family Development	11	4	4	3	0	0
Vancouver Police Department	9	1	0	6	2	0
Finance/Mgmt Services/OOP/PSA	9	5	2	2	0	0
All Other Public Bodies[1]	126	29	36	54	5	2
Total	**280**	**77**	**70**	**115**	**14**	**4**

4.2 Summaries of Privacy Complaint Investigations

The following summaries are examples of some of the privacy complaints the OIPC investigated and resolved in fiscal year 2003-04.

Ministry of Health Services – Fair PharmaCare

The OIPC received complaints about the Fair PharmaCare Program registration form. Complainants believed that the consent form was too broadly-worded and permitted collection of personal information beyond what was necessary for registration.

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

The Ministry of Health Planning (now part of the Ministry of Health Services) had announced the new Fair PharmaCare program and sent out a package to each household containing a consent form. The form asked each person for permission for what was then the Canada Customs and Revenue Agency (CCRA) to release income information to the Ministry for the purpose of determining eligibility for financial assistance under the Fair PharmaCare program. This process was consistent with the method developed and implemented in the past by the Ministry and CCRA to determine eligibility for home and community care and medical services plan (MSP) premium assistance.

The OIPC learned that the exchange of information is governed by a "Memorandum of Understanding with Respect to Income Verification" (MOU) between CCRA and the Ministry. The MOU provided for CCRA to disclose to the Ministry information from nine specified fields from an individual's previous year's income tax return. The MOU expressly limited the Ministry to using the information only "to determine the eligibility for or the amount of benefits" for PharmaCare.

The Ministry informed the OIPC that the nine tax lines in the MOU were negotiated prior to the finalization of Fair PharmaCare's definition of income. The Ministry assured the OIPC that it only required information from three fields related to net income. The OIPC agreed that the Ministry's collection of the three fields of income tax information was required to verify an individual's registration for a certain benefit level. The OIPC therefore concluded that collection of this information was not a contravention of the Act. As a result of the OIPC's involvement, the Ministry formally requested that CCRA remove the six income fields that were no longer required.

As for the consent, the OIPC considered it was too broadly-worded, as it suggested the Ministry would be requesting more income information than was needed for Fair PharmaCare. The OIPC said that the consent should expressly refer to the fields or data elements needed for the program and asked the Ministry to amend the consent form accordingly.

After discussion with CCRA, the Ministry revised its consent form. The new form describes only the three data elements required for this program, and describes why the Ministry needs the information and how it will be used. In addition, the OIPC reviewed a proposed form for both MSP premium assistance and Fair Pharmacare that incorporates this approach.

Municipality – disclosure of employment information

A man complained that a municipality had inaccurately and inappropriately disclosed personal information relating to the termination of his service as a member of the police department. The municipality resolved the complaint by issuing a media release

clarifying the information contained in the document package it had earlier released to the news media and expressing regret for releasing certain information. The complainant was satisfied with this resolution.

Improvement district – personal information practices

A board member of the district complained about the handling of personal information by the district. She complained that her personal information, as well as that of others, was inappropriately collected, the district failed to protect personal information, information that should have been retained was inappropriately destroyed and information that the applicant requested was destroyed in an inappropriate manner.

The OIPC found, after a lengthy investigation, that the district had inappropriately collected personal information. The OIPC also found that the district did not retain personal information as set out in the legislation, that information in the custody or control of the district was inappropriately destroyed; that the destruction of the records voided the applicant's rights to access her personal information and that the district had not met its obligation to protect personal information from unauthorized access, collection, use, disclosure or disposal. The OIPC also concluded that the district, despite having received countless hours of advice on how to comply with its legal obligations under the Act, was still disregarding its obligations and duties as set out in the Act.

The OIPC made several recommendations, including that: the district develop proper procedures and processes to ensure that board members and employees are aware of their duties and obligations under the Act; individuals' access and privacy rights be respected; the district establish written policies and procedures to ensure compliance when collecting, using, disclosing and protecting personal information; the district revisit and ensure it follows the policies and procedures that it already has in place; and the district consider a sworn oath for employees and board members upon assuming office.

The district now appears to be taking positive steps to ensure that it complies with the Act and the OIPC's recommendations by developing written policies and procedures.

School district – disclosure to union

During the processing of an awareness request for records by an employee of the school district, the school district provided a copy of the request to the employee's union. The employee complained that this disclosure of her personal information violated her privacy. The employer argued that the collective agreement required it to send information about its employees to the union.

As a result of its investigation, the OIPC recommended that the practice of automatically sending all freedom of information requests to the union be discontinued and that the school district send only those requests required for the union to fulfill its functions. The employer agreed to change its practice.

Commission – disclosure of complaint information

During a land use application process by the complainant's neighbour, the neighbour quoted comments that the complainant had made in a record that became part of the public record. The complainant believed that the quotes were inaccurate and asked the commission involved to remove the comments. The public body told him the records constituted part of their permanent records and could not be altered or destroyed.

After an investigation, the OIPC found that the neighbour had no objection to the alteration and, since the comments were not relevant to the application, the public body agreed to sever them from the record.

4.3 Summaries of Access Complaints

Ministry of Health Services and a health authority – SARS notification

A journalist complained about the failure of a health authority and the Ministry of Health Planning (now part of the Ministry of Health Services) to provide, in the public interest, the names and photographs of individuals infected with severe acute respiratory syndrome (SARS) who might have exposed members of the public to a risk of infection. The complainant believed that it was the duty of these public bodies, particularly a named hospital within the heath authority, to provide the members of the public with this information so that they could determine whether they had had contact with the infected individuals and should quarantine themselves to prevent further spread of the virus. The complainant asked that the OIPC immediately direct the public bodies to disclose the information in order to minimize the risk of spreading SARS through the community.

The OIPC found that the public bodies had acted appropriately in not disclosing the requested information as, given the method of transmission of SARS as it is understood, there was no urgent or compelling need for them to do so in the circumstances.

Ministry of Children and Family Development – request for client's informed consent

A lawyer complained that the Ministry had refused to respond to his request, on behalf of his client, for the entire contents of the Ministry's files relating to his client. Since much of the information was personal and sensitive, the Ministry wanted the client to clarify her request for information and to confirm that she consented to the lawyer making the

request on her behalf and to receiving her personal information. However, the client wanted no contact with the public body.

At the OIPC's suggestion, the Ministry acknowledged, in writing, that the client's consent was adequately confirmed through her instructions to her lawyer that she did not want direct contact with the Ministry. The Ministry also wrote to the lawyer to request information from the client that would assist the Ministry to conduct a thorough search for her information and to explain how this information would assist its search.

Health authority – unclear response

The complainant said she had requested her medical records from a doctor at a hospital within the health authority who, she said, was an employee of the hospital and who had apparently refused to grant her access to her file. The OIPC's inquiries with the health authority clarified that some doctors operate privately within the hospital and also work for the hospital. The health authority said that it was necessary to determine the status of such records each time it got a request and agreed to look into status of the doctor's records in this case.

The health authority then investigated and confirmed that the doctor's records were covered by the Act. It went on to say that its hospital health records department had in fact sent the complainant all of her medical records. Its cover letter was, however, somewhat unclear, in that it suggested that the doctor's hospital office might have other records, when it did not. The applicant accepted the health authority's assurances that it had provided her with all of her medical records.

Ministry of Forests – records did not exist

The applicant requested a list of all the timber marks that went through a named saw mill for a specified 16-month period. The Ministry responded that it was unable to provide access to the records as they did not exist. The applicant complained about this response, as he believed that records did exist. He provided a copy of a record which, in his view, indicated the existence of other records.

The Ministry then explained that it has no method of linking timber marks with saw mills and thus has no records of which logs go to which mills. The complainant accepted this explanation.

5.0 Commissioner's and Delegates' Orders

In 2003-2004, the OIPC mediated a settlement in 92% (604 cases) of all requests for review. Only 2% (10 cases) of reviews were discontinued or abandoned, while the remaining 6% (39 cases) were resolved by order after a formal inquiry under Part 5 of the Act.

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

An inquiry may be conducted in person (oral inquiry) or through written submissions (written inquiry). Almost all inquiries are written.

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

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

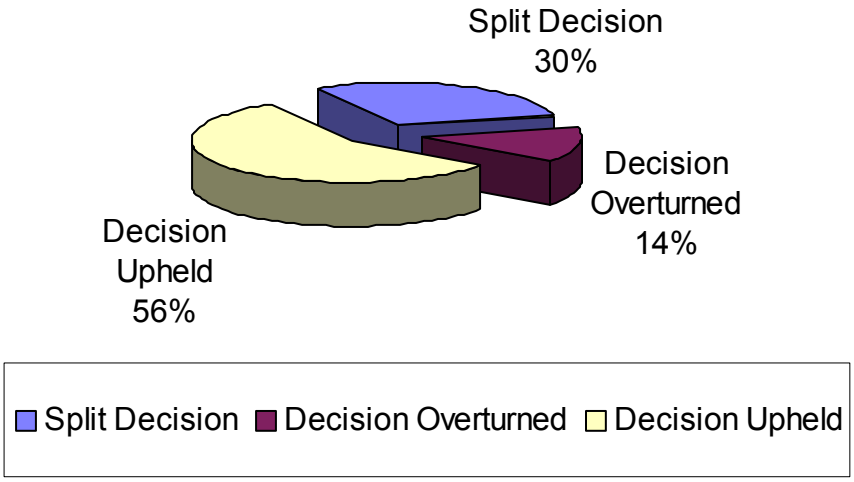
- Require the public body to give the applicant access to all or part of the record
- Confirm the decision of the public body or require the public body to reconsider it
- Require the public body to refuse access to all or part of the records
- Require that a duty imposed by the Act be performed
- Confirm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

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

Figure 9 sets out the disposition of orders issued between April 1, 2003 to March 31,

2004. Of the 39 orders issued, 56% (21) upheld the decision of the public body, 30% (11) partially upheld the decision of the public body and 14% (5) overturned the public body's decision.

Figure 9
Disposition of Commissioner's and Delegates' Orders
April 1, 2003 and March 31, 2004



5.1 Summaries of Orders

The following is a small sampling of some of the more significant orders issued in 2003-2004.

Duty to create records in electronic format (Order 03-16)

The applicant asked the Ministry of Forests for a copy of its Enforcement Action, Administrative Review and Appeal Tracking (ERA) database in electronic format. The Ministry initially proposed giving the applicant a paper copy of the information, but assessed a fee estimate of $10,507.00 for this record. The applicant then requested a snapshot, at a given date, of the ERA database, with certain data entities and attributes deleted from the record. The Ministry refused to provide an electronic copy of this record.

The Ministry claimed that in order to provide an electronic copy of the record, it would also have to provide computer software elements that were excluded from the Act's definition of "record". The Commissioner found that it was technologically possible to create an electronic record, or "ERA snapshot", that did not contain software

elements. It was also found that s. 6(2) required the Ministry to create a record.

Ultimately, however, the Ministry was not ordered to produce the record in electronic format, as information could not reasonably be severed from it. The Commissioner expressed concern that development of electronic information systems such as the ERA should not raise a barrier to the public's right of access under the Act.

Fee Waiver for PharmaNet records (Order 03-19)

The applicant requested access from the Ministry of Health Services to records from the PharmaNet electronic information system that related to prescription patterns for various drugs. She had made similar requests before and had written a number of newspaper articles about the prescription of drugs for children and youth. The Ministry first charged a fee and later argued that s. 6(2) excused it from creating the records.

The Commissioner found that the Ministry had a duty to create the records. The Commissioner then found the applicant's request related to a matter of public interest and he ordered that the fee be waived.

Applicant entitled to access her own personal information (Order 03-24)

The applicant complained to the College of Psychologists about the conduct of a College member and later requested access to the College's complaint records. The College disclosed 140 records from its complaint file, but refused to disclose, in their entirety, 19 records. The Commissioner found that the College failed to show that some information should be excluded under s. 3(1)(b) (draft decision of a person acting in a quasi-judicial capacity) because the College could not establish that its members were acting in such a capacity. Further, the College could not show that some records should be excepted under s. 12(3)(b) (substance of deliberations), as the College failed to demonstrate that it had the legislated authority to hold these particular meetings in confidence. Finally, although the College could show that some of the records were related to law enforcement matters, it could not establish that there was a reasonable expectation of exposure to civil liability under s. 15(2)(b).

However, the Commissioner found that the College was authorized to refuse disclosure of some information under s. 13(1) (advice or recommendations) and s. 14 (solicitor client privilege). He also found that the College was required to refuse disclosure of some information under s. 22 (unreasonable invasion of a third party's personal privacy). Specifically, the College must withhold records that related to a third party's personal evaluations or employment history. Finally, the Commissioner found that disclosure to the applicant of her own personal information (including her allegations against the third party) would not unreasonably invade the personal privacy of a third party and ordered this information disclosed.

Billing records of Air India trial lawyers (Order 03-28)

The applicant journalist requested access from the Ministry of Attorney General to records related to the billing accounts of the lawyers who, at public expense, defended an individual in criminal proceedings related to the bombing of Air India Flight 182. The Commissioner found that, in light of clear case law, s. 14 (solicitor client privilege) authorized the Ministry to refuse to disclose the records in their entirety. He also found that the public interest in disclosure of the requested information was not sufficient to trigger the application of s. 25(1) (public interest disclosure). Therefore, s. 25 could not be used to override s. 14 of the Act and the Commissioner confirmed the Ministry's decision to withhold the requested information.

6.0 Other Decisions

In addition to orders, the Commissioner issued decisions under other sections of the Act in the past fiscal year. Summaries of some of them follow.

6.1 Section 43

Section 43 allows the head of a public body to ask the Commissioner to authorize the public body to disregard certain requests. The public body must show that responding to such requests would unreasonably interfere with its operations because of the repetitious or systemic nature of the requests, or that the requests are frivolous or vexatious. The Commissioner issued one such decision in the past fiscal year, a summary of which follows.

Ministry of Management Services Authorization (s. 43) (03-01)

The respondent, a researcher, had made several access requests to the Ministry prior to its s. 43 application. The Ministry asked for authorization to disregard the respondent's current request on the basis that it covered approximately 9,700 pages of records and the Ministry sought authorization to limit the respondent's future requests to a certain number of pages each month.

The Commissioner found that the respondent's requests were not systematic, but even if they were systematic or repetitious, responding to them would not unreasonably interfere with the Ministry's operations. The Commissioner also found that the respondent's requests were not frivolous or vexatious. He did not authorize the Ministry to disregard the respondent's current request or enable the Ministry to curtail the respondent's future access rights.

6.2 Section 53

Section 53 instructs applicants on how to ask the OIPC for a review of a decision made by a public body. Section 53(2) specifies that an applicant must deliver a written request for a review within 30 business days after the applicant is notified of the decision of the public body, or within a longer period if allowed by the Commissioner. The Commissioner this year considered one extension granted by his staff and a summary of this case follows.

Working Opportunity Fund & Ministry of Attorney General

The applicant, Working Opportunity Fund (WOF), made access requests to the Ministry of Attorney General, the Ministry of Competition, Science and Enterprise (CSE), and the Ministry of Finance (Finance) on February 12, 2002. The Ministry responded on

August 19, 2002, and informed the WOF that it had 30 working days in which to request a review by the OIPC. However, the WOF did not submit a request for a review to the OIPC until June 20, 2003, at which time an Intake Officer decided to grant the WOF an extension.

Upon complaint by the Ministry, the Commissioner decided to reconsider the decision to grant an extension. The WOF argued that it had treated all three requests as a single request based on the fact that the requests were very similar and that the Ministries involved had consulted each other on the processing of the release. The WOF waited until it had received the final package of information from the Ministry of Finance on June 10, 2003, before it could reasonably decide if a review was warranted. The Commissioner found that the WOF's position on this matter was reasonable and that the Ministry failed to show that the delay would cause undue prejudice in the case. The Commissioner allowed the WOF to request a review.

6.3 Section 56

Under s. 56 of the Act, the Commissioner may decline to conduct an inquiry to resolve a complaint or request for review. The Commissioner issued one such decision in the past year, a summary of which follows.

Simon Fraser University – names of plagiarists

An applicant requested the names of university students who had been found guilty of plagiarism. The applicant believed that the stature of her university degree had been diminished by these events. The university responded to the applicant by applying the personal privacy exception (s. 22) to the information and explained in detail how this exception applied. The applicant requested a review, as she felt that the names were being withheld unfairly and inappropriately. Mediation did not resolve the matter and an inquiry was set.

The university asked Commissioner to exercise his discretion not to hold an inquiry as it believed the application of s. 22 to the individual names was appropriate and there were substantial precedents to establish this. On the basis of this request, the Commissioner asked the applicant to provide arguments as to why an inquiry should be held. Both parties submitted arguments and the Commissioner declined to hold an inquiry as allowed under s. 56(1), as there was no arguable issue.

7.0 Judicial Reviews and Adjudications

7.1 Judicial Reviews

A party may apply to the Supreme Court of British Columbia for judicial review of Commissioner's and delegates' orders. Only two judicial review decisions were handed down this year.

Order 02-56 - Architectural Institute of British Columbia (2004 BCSC 217)

The British Columbia Supreme Court upheld Adjudicator Francis's decision on February 18, 2004 and the AIBC abandoned its appeal to the British Columbia Court of Appeal in May. The Supreme Court held that the Adjudicator had correctly interpreted and applied s. 22 in finding that the AIBC had to disclose certain details of an employment contract.

Order No. 322-1999 - Legal Services Society (2004 BCCA 278)

The Court of Appeal dismissed our appeal from a decision of the British Columbia Supreme Court that quashed the last decision by the previous Commissioner. The Court of Appeal held that disclosure of the names of the top five legal aid lawyers, in terms of billings to the Legal Services Society, could disclose privileged information.

7.2 Adjudications

Section 62 grants an applicant the right to ask for a review of the decisions or actions of the Commissioner with respect to requests or complaints regarding records in the custody and control of the OIPC in its capacity as a public body. This section provides that an independent adjudicator (a judge of the Supreme Court of British Columbia) may review the decisions or actions of the Commissioner and issue a binding decision. A summary of the single adjudication decision issued in the past year follows.

Mr. & Mrs. Y (Adjudication Order No. 17)

The applicants requested copies of two OIPC complaint files in which they were the complainants and one review file in which they were the applicants. The Commissioner denied the request on the basis of s. 3(1)(c) (Act does not apply to a record created by or for an officer of the Legislature if it relates to the exercise of that officer's functions under an Act).

Justice D. Smith agreed with a number of earlier similar adjudications by finding that, while the OIPC is a public body under the Act, s. 3(1)(c) excludes certain records from the Act. Records that do not relate to the Commissioner's functions under the Act are classified as "administrative" records and are subject to the Act. Records that relate to the exercise of the Commissioner's functions under the Act are "operational" records and

are not subject to the Act. Justice Smith found that the requested case files were "operational" records and therefore were not subject to release under the Act.

8.0 Providing Advice

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

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

In the normal course of business, public bodies approach the OIPC for advice on a variety of issues. Requests for advice may be simple, requiring only a telephone call, or complex, necessitating a series of consultations with one or more officers or other public bodies.

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

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

- Self-governing bodies' complaint processes and privacy policies
- A discussion paper by a municipal police department on the privacy rights of victims who are minors
- A health authority's proposed fee guidelines for records subject to the Act
- General advice to another officer of the Legislature on the process for responding to requests for information regarding administrative records
- Issues involving municipal police departments and victim services
- Advice on a ministry's decision that certain records fell outside the scope of the Act under s. 3 of the Act was reviewable by the OIPC and that the ministry should inform the applicant of his right to request a review of that decision
- A policy on best practices in applying the Act, developed jointly by municipal police services in the province

- Advice to a ministry regarding the privacy and consent implications of videotaping, a conference that it was organizing for use in future training workshops
- The Motor Carrier Commission's proposal to place digital videocameras in taxi cabs in the Lower Mainland (the Information and Privacy Commissioner stated that he did not support the proposal for privacy reasons)
- A health authority's request for advice on how to respond to a media request for information about the operations of a community care facility without improperly disclosing third-party personal information
- Transparency and accountability policies for the 2010 Olympic bid with the Commissioner being called for measures to ensure accountability and transparency
- Electronic access to court records and the protection of personal privacy, in the form of comments on a discussion paper of the Canadian Judicial Council
- Privacy issues surrounding the research activities of the BC Cardiac Registries
- Alternatives to the use of video surveillance cameras in the classroom
- Review of proposed municipal by-law that would require pawnbrokers to routinely submit information to the police
- Field visit to the Victoria Police Department to assess the collection of information by the Drug Surveillance Squad
- Data protection principles for secure disposal companies
- Field visit to the Vancouver Police Department to assess the disclosure of data from the PRIME database
- Privacy and consent issues surrounding the creation of a tumour tissue repository and a bio-informatics database by the BC Cancer Agency
- Participation in creation of best practice privacy guidelines for health research in Canada
- Information sharing between ICBC and the Ministry of Provincial Revenue for income tax collection purposes
- Advice to public bodies concerning the theft of sensitive information stored in automobiles.

8.1 Training and Development

To ensure the purposes of the Act are achieved, the OIPC provides access and privacy training to public bodies. Training seminars range from basic orientation workshops for new access and privacy staff to professional development workshops to specialized sector-specific sessions varying in scope and complexity. Whenever possible, OIPC staff collaborate with public bodies to co-deliver workshops and ensure that training and reference materials are relevant to the audience.

Some of this year's OIPC training events included:

- City of Victoria managers
- Saanich Police Department officers and FOI staff
- Province-wide police conference involving municipal police FOI contacts on police issues and best practices policy
- FOI/litigation training session for district and regional staff about the OIPC's role, mediation and inquiries (Ministry of Forests)
- Upper-year political science students (University of Victoria)
- 10th Anniversary Conference – "The State of Accountable Government in a Surveillance Society".

9.0 Informing the Public

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

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

- Access & Privacy Conference (University of Alberta), "Impact of Terrorism on Access & Privacy Since 9/11"
- Health Privacy Conference (Toronto – Insight), "Personal Health Information & Health Research – "What Price Consent? What Price Value?"
- Canadian Information Processing Society
- Managing Privacy & Security of Health Information (Canadian Institute), "How BC Law Affects health Information Collection, Sharing & Use"
- Labour & Employment Client Conference
- The New Wave of Privacy Protection in Canada (Freedom of Information and Privacy Association Conference), "Making Privacy Law Work in the Real World – Sensible Enforcement in BC"
- Elections BC, "Tracking Voters While Respecting Their Privacy"
- Security and Privacy – Friends, Foes or Partners (Ministry of Management Services Conference), "Identity, Privacy & Security – Can Technology Really Reconcile Them?".

Public outreach services provided by OIPC staff this year included:

- Federation of Child and Family Services, Burnaby
- BC Industrial Relations Association, Vancouver
- School District 44 principals and administrators, North Vancouver.

PART 2 - *Personal Information Protection Act*

10.0 Background

The *Personal Information Protection Act* ("PIPA"), which protects personal information in the hands of private sector organizations, came into force on January 1, 2004. It covers over 350,000 businesses, non-profit groups, religious organizations and other private sector organizations in British Columbia.

The government introduced PIPA in the context of, and partly in response to, federal private sector legislation, the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), which came into effect on January 1, 2001 for federally-regulated businesses such as banks, insurance companies, telecommunications companies and airlines.

As of January 1, 2004, PIPEDA applies to the collection, use or disclosure of personal information, in the course of a commercial activity, in any province or territory that had not enacted legislation the federal Cabinet has declared to be substantially similar to PIPEDA. In April 2004, the federal Cabinet announced a proposal to declare British Columbia's and Alberta's private sector privacy legislation substantially similar to PIPEDA. At the time of this report, this process was not finalized.

New Rules for the Private Sector

The *Personal Information Protection Act* creates a set of rules organizations must follow in collecting, handling and managing personal information.

Organizations must obtain consent for collecting, using and disclosing an individual's (other than an employee of the organization) personal information except where PIPA permits otherwise. Unless PIPA allows otherwise, organizations are required to collect personal information directly from the individual concerned and are required to tell the individual how they intend to use and disclose this information at or before the time of collection.

Any personal information an organization collects must be for reasonable purposes, and an organization must collect only as much as is minimally needed to fulfill these purposes.

Once an organization has identified the purposes for which it is collecting personal information, any information collected must be used and disclosed only for those purposes unless the individual consents or unless PIPA permits otherwise.

Upon request and subject only to limited exceptions, an organization must provide an individual with copies of any personal information the organization has collected pertaining to that individual. Upon a request from an individual, an organization must

explain the ways in which the individual's personal information has been and is being used and/or the names of anyone to whom that personal information has been disclosed.

The law requires that organizations ensure that any personal information they have collected is accurate and complete for the purpose for which it was collected, and must respond to an individual who has requested correction of his/her personal information, either by correcting that information or by annotating the information with the correction that was requested but not made.

An organization has an obligation in law to ensure that any personal information it has collected is safeguarded from unauthorized use, collection, access, disclosure, copying or disposal or other similar risks.

Organizations are expected to designate one or more individuals to be responsible for the organization's compliance with PIPA. And, in order to meet its obligations under the Act, organizations are legally required to develop, follow and make available to the public policies and practice concerning its information management practices and processes for resolving privacy complaints.

The requirement to obtain consent for the collection, use and disclosure of personal information does not apply to employee personal information, provided the collection is reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual. All of the other rules apply.

11.0 Implementation Activities

In October 2003, the OIPC appeared before the Select Standing Committee on Finance and Government Services to request additional funding to assist the OIPC in implementing PIPA. The committee accepted the OIPC's budget proposal and recommended that the OIPC receive $295,000 in additional funding to cover recruitment, software development and other start-up costs.

To inform members of the public of their rights under PIPA, the OIPC developed guidelines on how to make requests, file complaints and requests for review and how to resolve disputes directly with organizations.

We engage in ongoing consultations with organizations and, to assist them in meeting their responsibilities and obligations under PIPA, the OIPC has also developed guidelines, information sheets and other implementation tools, in co-operation with Alberta's OIPC and the Corporate Privacy and Information Access Branch, Ministry of Management Services. These include tips to organizations on how to handle complaints and investigations and a guide to developing a privacy policy.

The OIPC has also developed an information package for medical practitioners in co-operation with the British Columbia Medical Association and the College of Physicians and Surgeons of British Columbia.

The OIPC also developed protocols for handling complaints and reviews with the Alberta OIPC and the federal Privacy Commissioner's office.

To meet our new responsibilities, we have hired three new staff members and created the position of adjudicator, whose primary responsibility is to assist the Commissioner in the conduct of formal hearings. The OIPC has re-vamped its website and developed a new tracking system to assist in tracking issues, reviews and complaints under both PIPA and the *Freedom of Information and Protection of Privacy Act*.

A large part of our implementation activities included numerous speaking engagements, public education sessions and media awareness activities. Selected speaking engagements and training sessions included:

- Ministry information and privacy analysts
- Board of directors of a Victoria community theatre
- BC American Marketing Association, Vancouver
- BC Association of Magazine Publishers, Vancouver
- Canada – BC Business Services Centre, Vancouver
- Camosun College Continuing Education Program, Victoria
- Construction Association of Victoria,

- Association of Fundraising Professionals, Vancouver Island Chapter, Saanich
- Capital City Executive Association.

The OIPC received hundreds of telephone calls and written inquiries from the public and organizations on PIPA questions and issues. The most common sectors from which we receive questions and consultations are employers and unions; insurance companies and credit unions; landlord and tenant, health care professions; and lawyers. The most common issues include fees for requesting access to personal information; when it is appropriate to share personal information; the collection of the Social Insurance Number; surveillance; when PIPA will be declared substantially similar to PIPEDA; and cross-jurisdictional questions.

12.0 Providing Assistance to the Public and Organizations

The OIPC has also developed office policies and procedures specific to PIPA. Where we receive actual complaints or requests for review from a member of the public, our process generally begins with a referral of the issue to organizations. If the complainant is not satisfied with the organization's response, he or she may come back to the OIPC and we may decide to open a file on the matter.

The OIPC is looking at developing sector-specific guidelines and has begun consultation on its draft guide to employers on employment privacy issues.

13.0 Case Statistics

During the first three months of this year, the OIPC logged in 131 cases pertaining to the *Personal Information Protection Act*. Those are as follows:

Intake Summary by File Type
Received between
01-Jan-2004 and 31-Mar-2004,
(PIPA only)

Complaint	22
Copy (FYI only)	5
Investigation	1
Meetings	1
Non-Jurisdictional Issue	5
Policy or Issue Consultation	8
Projects (Reviews, etc.)	2
Request for Information	73
Request for Review	9
Speaking engagements	5
TOTAL	**131**

PART 3 - Financial Reporting

Operations

	2004		2003
	Budget	*Actual*	*Actual*
Total Salaries and Benefits	$1,597,000	$1,405,720	$1,439,754
Total Operating Costs	$ 664,000	$ 621,746	$ 589,385
Total Recoveries	– $ 15,000	–	–
Total Voted Appropriation	$2,246,000	$2,027,466	$2,029,139
Unused Appropriation		$ 218,534	$ 100,861

Capital Assets

	2004		2003
	Budget	*Actual*	*Actual*
Net Assets - beginning of year		$31,452	$26,689
Appropriations for purchase of capital assets	$33,000	$30,817	$13,308
Capital asset amortization		– $23,830	– $ 8,545
Net Assets		$38,439	$31,452