

1996 Annual Report

[\(News release\)](#)

Table of Contents

- ▶ **The Role and Mandate of the IPC**
- ▶ **Information Requests Profiled Across Government**
- ▶ **Resolving Appeals**
- ▶ **Safeguarding Personal Information**
- ▶ **Judicial Reviews**
- ▶ **Exploring Access and Privacy Issues**
- ▶ **Raising Public Awareness of Access and Privacy**
- ▶ **Financial Statement**
- ▶ **Appendix One**

THE PURPOSES OF THE ACTS

The purposes of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* are:

a) To provide a right of access to information under the control of government organizations

in accordance with the following principles:

- information should be available to the public;
- exemptions to the right of access should be limited and specific; and
- decisions on the disclosure of government information may be reviewed by the Information and Privacy Commissioner.

b) To protect personal information held by government organizations and to provide individuals with a right of access to their own personal information.

Upon request, this publication will be made available on audio tape to accommodate individuals with special needs.

Ce rapport annuel est également disponible en français.

LETTER OF TRANSMITTAL



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

Speaker of the Legislative Assembly

I have the honour to present my annual report to the Legislative Assembly. This report covers the period from January 1, 1996 to December 31, 1996.

Yours sincerely,

Tom Wright
Commissioner



80 Bloor Street West.
Suite 1700.
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-325-3333
1-800-387-0073
Fax/Télé: 416-325-8195
TTY: 416-325-7539
<http://www.ipc.on.ca>

Commissioner's Message

As this is my closing annual report as Ontario's Information and Privacy Commissioner, I would like to use this message to reflect on the achievements of the past six years and the challenges that lie ahead. When I look back over my term, what strikes me most is the profound change in public awareness that has occurred on both the access and privacy fronts.

The volume of requests for government information -- perhaps the most tangible measure of attitudes toward access -- has

grown to more than 20,000 per year. But, more importantly, government organizations are beginning to release information automatically on request, or proactively without waiting to be asked -- a trend that undoubtedly mirrors their reading of public expectations.

In fact, the whole concept of routine disclosure and active dissemination is in my view the most exciting new direction to emerge in the access to government information field over the past decade. I am proud of the leadership my office has provided in promoting this innovative new approach.

In most cases, it is more efficient to freely release information to the public than to search for records in response to ad hoc requests. Routine disclosure and active dissemination streamline customer service, cut red tape and lower costs. They are in tune with the times. Furthermore, as fiscal pressures mount and competition for scarce government funds intensifies, these innovative practices may well prove crucial to the long-term viability of the access system.

Let us keep in mind the true purpose of freedom of information legislation. It is not to generate requests or appeals, but to change the culture of government organizations -- to replace the tendency toward secrecy with a spirit of openness. Such a cultural shift will, I believe, strengthen confidence in government as an institution. In these cynical times, the free flow of information will help the public see what those of us inside government see every day -- a picture of dedicated public servants grappling with complex issues and endeavouring to serve the public interest.

On the privacy side, opinion polls have consistently registered growing public misgivings about the use of digitized information. I am pleased that my office has been able to meet an unfulfilled need for research and analysis of privacy issues and how to deal with them. We have produced nearly two dozen reports on various dimensions of privacy -- ranging from an in-depth look at privacy in the workplace, to privacy guidelines for voice mail and E-mail systems, to consumer tips for taking control of one's own privacy.

One of our most important projects was a joint report with the Netherlands data protection agency which marked what I believe is a breakthrough in the way we think about privacy and technology. This study examined leading technologies that allow anonymous but authenticated transactions -- such as blind digital signatures and digital pseudonyms and the use of trusted third parties. Our analysis concluded that these privacy-enhancing technologies work -- and if widely deployed, could make the information age also a golden age of privacy. In short, privacy and technology can be allies rather than enemies.

The participation of my office in these public policy debates has been enhanced by our success in getting our core businesses in order. Since 1992, we have cut the time it takes to process an access appeal by half, and the time to investigate a privacy complaint by two thirds. These advances in customer service have allowed us to direct the necessary energy and resources to all aspects of our mandate.

Let me turn to some of the challenges that remain on the access and privacy agenda.

I believe Canada will ultimately have to address public concerns about privacy by establishing a federal-provincial data protection system covering the entire private sector -- and meshing with international standards. It is encouraging that the federal government has recently endorsed the concept of a national legislative framework for the protection of personal information in the private sector.

Along the same lines, Ontario is making considerable progress in a critical sector, with the drafting of comprehensive legislation on the privacy of health information -- a measure my office has long advocated. I believe the commitment of the Minister of Health to proceed with this legislation represents an historic milestone in the protection of privacy in this province.

While I have stressed that privacy and technology can work together, there will be cases where trade-offs are unavoidable. In this sort of social decision-making, the scales can be tilted against privacy by what I call the "panacea syndrome."

It is all too easy to become mesmerized by technology. For example, I believe those who think that video cameras will eliminate crime or that biometric identification will root out all welfare fraud are going to be disappointed. We must resist the

temptation to resort to technological solutions when human answers elude us. And we must take care not to part easily with our privacy as the price to be paid for some technological cure-all.

The siren song of technology must also be heard with caution on the access side. When I became Commissioner in 1991, I had never heard of the Internet. Now my office has its own web site -- as do many other government bodies.

While I regard the proliferation of web sites as a positive development, the transition to a fully wired society is just beginning. A StatsCan survey released in October 1996, for instance, showed that only 7.4 per cent of Canadian households are on the Internet. For governments to prematurely dispense with paper-based communications would be to invite a new social division, between information haves and have-nots.

A longer-run threat to access lies in the very nature of computer technology. Not only are electronic storage media more fragile than paper, the hardware and software used to process information are constantly being superseded by new products. It would be the supreme irony if the information age turned out to be one of the most poorly documented periods in human history, simply because we could not preserve the tools needed to retrieve the records of our own times.

Another challenge my successors will face is found in the trend toward alternate delivery of public services. When regulatory functions performed by government are devolved to the private sector, the existing information and privacy legislation no longer applies.

In my opinion, Ontario's access and privacy system generally deserves solid marks for efficiency and effectiveness. Based on my six years experience, I believe there are four keys to this success.

The first is workable access and privacy legislation. While my office has proposed a number of amendments to strengthen and update the *Acts*, Ontario's basic legislative framework is sound and indeed has provided a model for other provinces.

A second key to success is the network of freedom of information and privacy co-ordinators, whom I consider to be the unsung heroes of the system. They labour tirelessly in the trenches every day and are gradually positioning themselves in the organizational structure to bring about cultural change.

The third ingredient is a central resource within the provincial government to provide advice and guidance and foster a consistent approach to access and privacy issues. As an independent body, my office cannot play this supportive role -- but Management Board Secretariat can and does.

The final key to success is the existence of a strong independent oversight function which is supported by talented and dedicated staff. I'm convinced the availability of an avenue of consumer redress provides a powerful incentive for organizations to comply with access and privacy rules. Even as access and privacy become ingrained as routine operating procedures across government, the need for an external review function will remain. The role of the Commission will come to resemble an accident insurance policy -- something you hope you never need, but something you want to be in place just in case you do.

These four components, while necessary, are not in themselves, sufficient. Ultimately, it is people who make the difference - - people who work in municipal and provincial organizations and understand that government is the custodian -- not the owner -- of the information it holds.

At its root, I believe the strength of the access and privacy system is grounded in attitude -- an attitude which flows naturally from an appreciation of the nature of the relationship between government and the public. Governments exist at the pleasure of the governed -- and freedom of information and protection of privacy are essential parts of that relationship.

I would like to conclude on a personal note. It's been an honour and a privilege to serve the Legislature and all Ontarians. It's been an experience like no other I've had and one that I've described on many occasions as the "best job in government today."

I've been extremely fortunate throughout my term to work with people at the Commission who believe in the importance of our work and the values of access and privacy. Without their efforts and support, the numerous accomplishments of the past six years would not have occurred. I feel that together we have contributed in some small way to the enhancement of quality of life in Ontario.

Tom Wright

Information and Privacy Commissioner



THE ROLE AND MANDATE OF THE IPC

The Information and Privacy Commissioner (IPC) plays a crucial role under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* (the *Acts*). Together, these two *Acts* establish a system for guaranteeing public access to government information, with limited exemptions, and for protecting personal information held by government organizations at both the provincial and municipal levels.

The provincial *Act* applies to all provincial ministries and most provincial agencies, boards and commissions, as well as to colleges of applied arts and technology and district health councils. The municipal *Act* covers local government organizations, such as municipalities; police, library, health and school boards; and public utilities and transit commissions.

Freedom of information refers to public access to general records about what government does, ranging from administration and operations to legislation and policy. The underlying objective is open government, to hold elected and appointed officials accountable to the people they serve.

Privacy protection, on the other hand, refers to the safeguarding of personal information - that is, data about individuals held by government organizations. The *Acts* establish rules about how government organizations may collect and use personal data. In addition, individuals have a right to see their own personal information and are entitled to correct it if necessary.

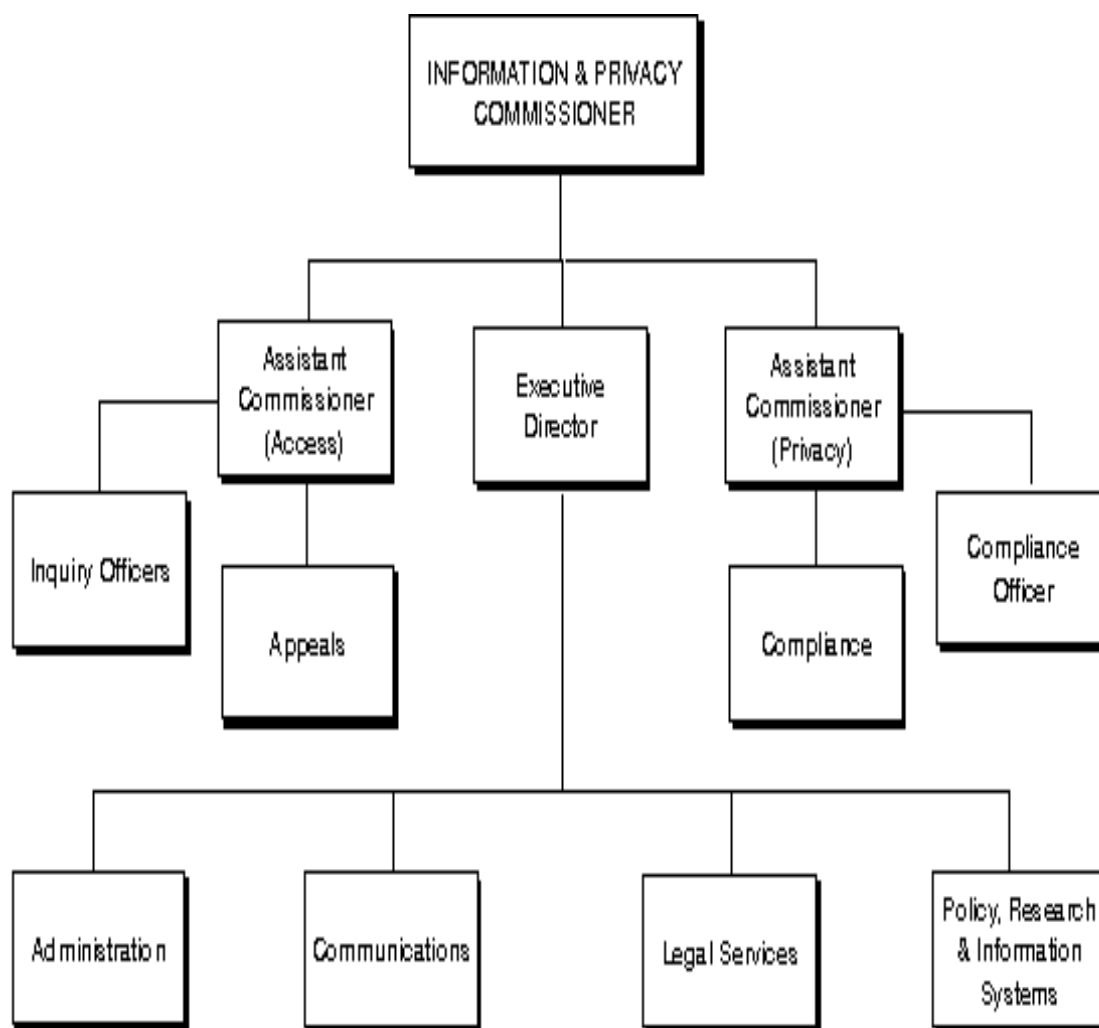
The Information and Privacy Commissioner is appointed by and reports to the Legislative Assembly of Ontario. The Commissioner is therefore independent of the government of the day to ensure impartiality. The *Acts* establish an independent agency - the Office of the Information and Privacy Commissioner or the IPC.

The mandate of the IPC is to provide an independent review of government decisions and practices concerning access and privacy. To safeguard the rights established under the *Acts*, the IPC plays five roles:

- resolving appeals when government organizations refuse to grant access to information;
- investigating privacy complaints about government-held information;
- ensuring government organizations comply with the *Acts*;
- conducting research on access and privacy issues and providing advice on proposed government legislation and programs; and
- educating the public about Ontario's access and privacy laws.

In accordance with the legislation, the Commissioner has delegated some of his decision-making powers to his staff. The

Assistant Commissioner (Access) and six Inquiry Officers have the authority to issue orders resolving appeals. The Assistant Commissioner (Privacy) investigates privacy complaints, reviews government practices, approves applications for indirect collection of personal information and comments on any computer matches proposed by the provincial government.



Information Requests Profiled Across Government

Government organizations, both provincial and municipal, file a yearly report with the IPC on their activities under the *Acts*. These reports include data on the requests received for general records, personal information and correction of information, as well as on the organizations' responses to these requests. By compiling these reports, the IPC gains a useful picture of compliance with the *Acts*.

Provincial government organizations received a total of 9,260 requests for information in 1996, down somewhat from the previous year's total of 11,645. Municipal government organizations received a total of 11,528 requests, also down from the record high 14,671 requests received in 1995.

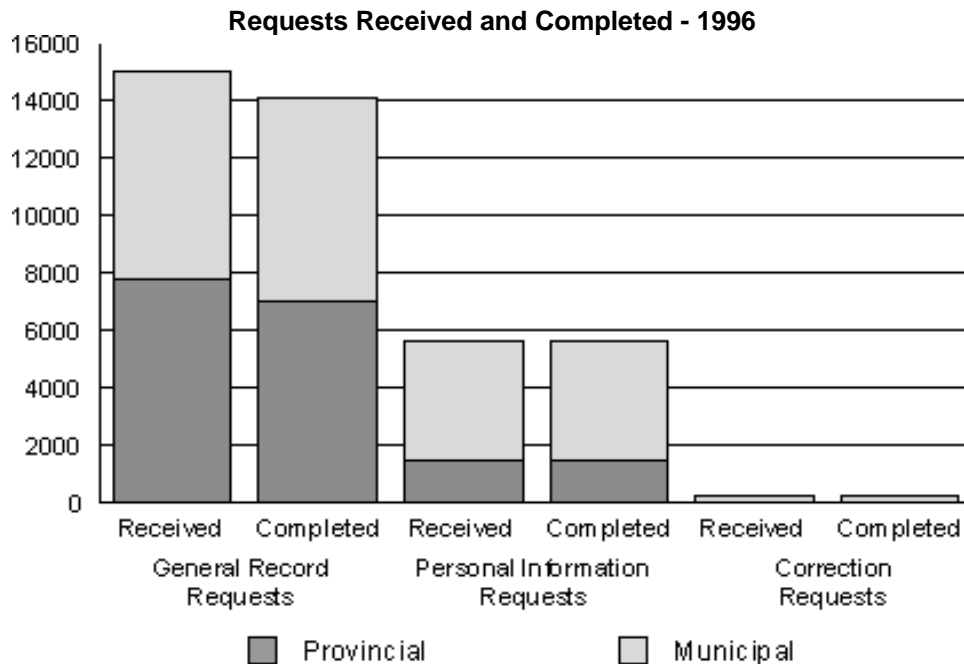
Requests for access to general records outnumbered requests for access to personal information by slightly more than two to one. The proportions differed for provincial and municipal organizations with general records requests outnumbering personal information requests almost five to one for provincial organizations and about 1.4 to one for municipal

organizations.

Once again, the majority of requests received by both the provincial and municipal organizations were completed by year end. Less than ten per cent of requests were carried over to 1997.

The Ministry of Environment and Energy reported the highest number of requests received under the provincial *Act*, followed by the Ministry of Finance, the Ministry of the Solicitor General and Correctional Services and the Ministry of Labour. Together these four Ministries accounted for 65 per cent of all provincial requests.

Under the municipal *Act*, police services boards received 56 per cent of total requests. Municipal corporations (including municipal governments) were next with 31 per cent, followed by public utilities with six per cent and school boards with three per cent.



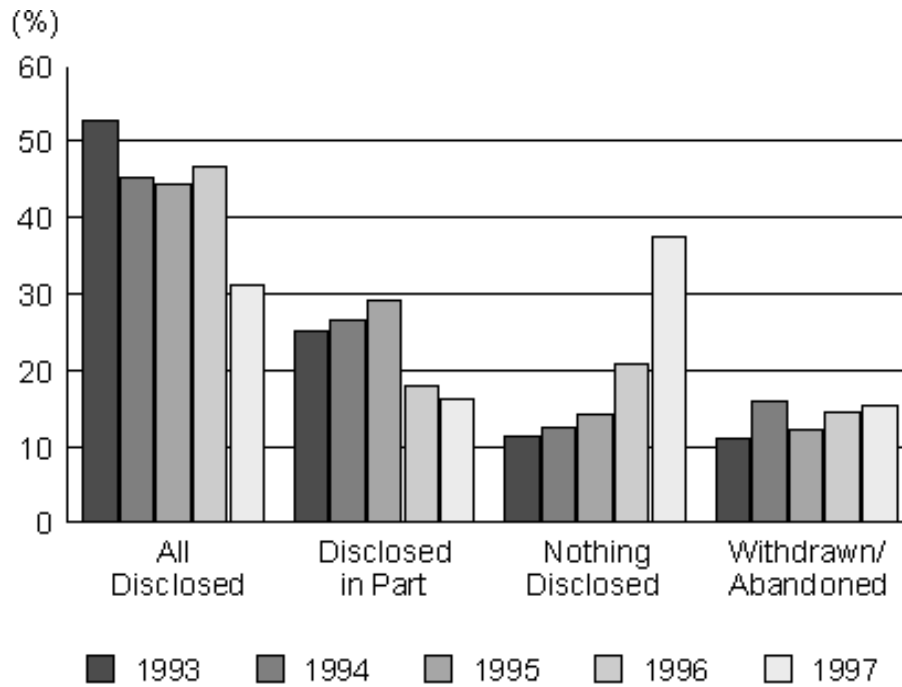
Thirty-nine per cent of provincial requests were answered within 30 days in 1996. Sixty-three per cent of provincial requests were completed within 60 days, while only twelve per cent took more than 120 days.

Municipal government organizations again responded to the vast majority of requests - 90 per cent - within 30 days in 1996. This was the sixth consecutive year at virtually the same high level. Ninety-seven per cent of municipal requests in 1996 were answered within 60 days, with less than two per cent taking more than 120 days to complete.

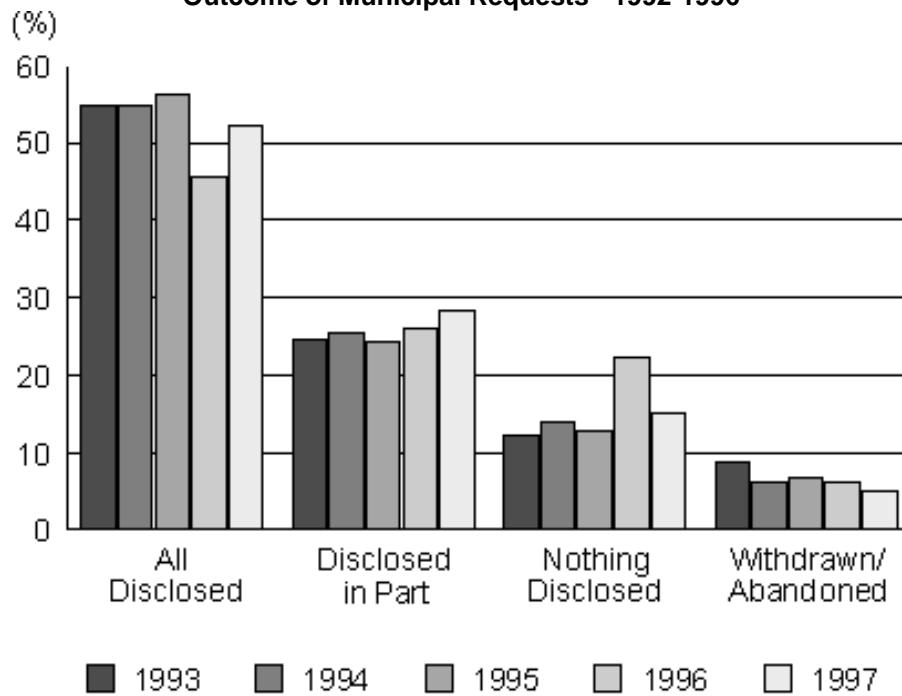
As to outcomes, 40 per cent of provincial requests completed in 1996 led to the release of all information sought. For municipal requests, 46 per cent of requests led to full disclosure. In only one in four cases was no information released.

Under the exemption provisions of the *Acts*, government organizations can, and in some cases must, refuse to disclose requested information. In past years, both provincial and municipal organizations cited personal privacy and personal information exemptions most frequently. In 1996 this pattern changed slightly. For provincial organizations personal privacy and personal information exemptions were cited most frequently but for municipal organizations, law enforcement was cited most frequently for personal information requests and personal privacy was cited most frequently for general records requests.

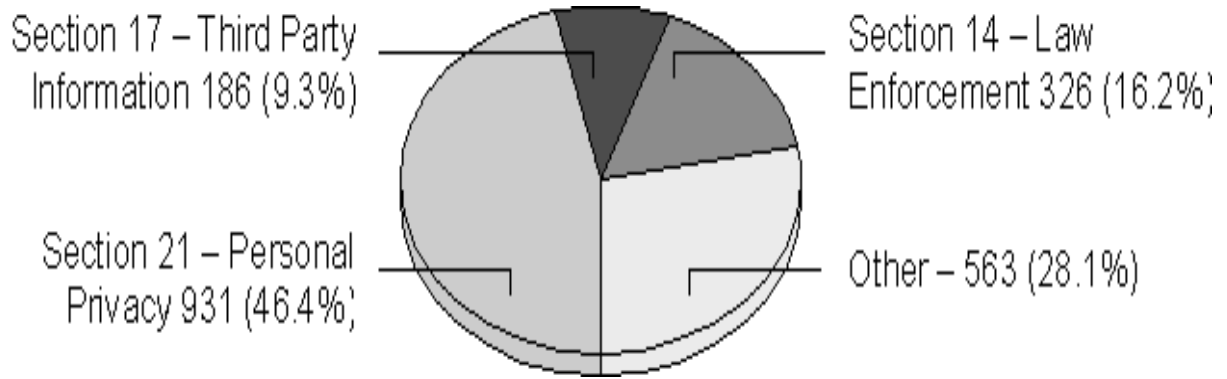
Outcome of Provincial Requests - 1992-1996



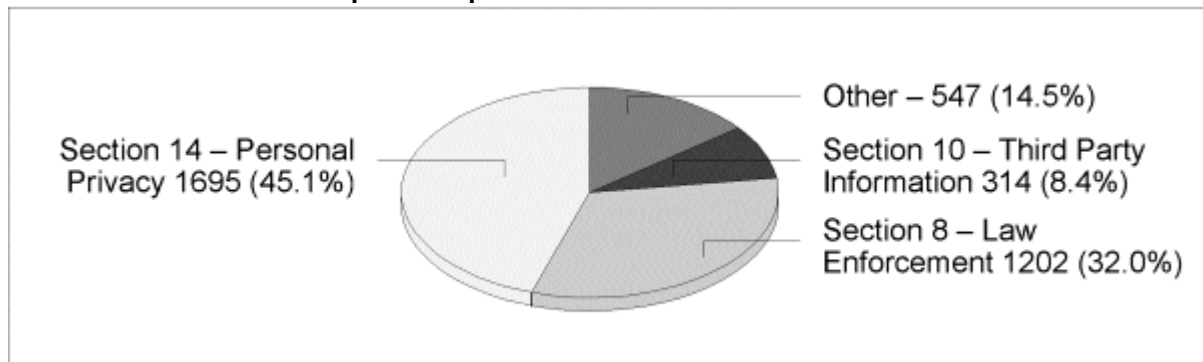
Outcome of Municipal Requests - 1992-1996



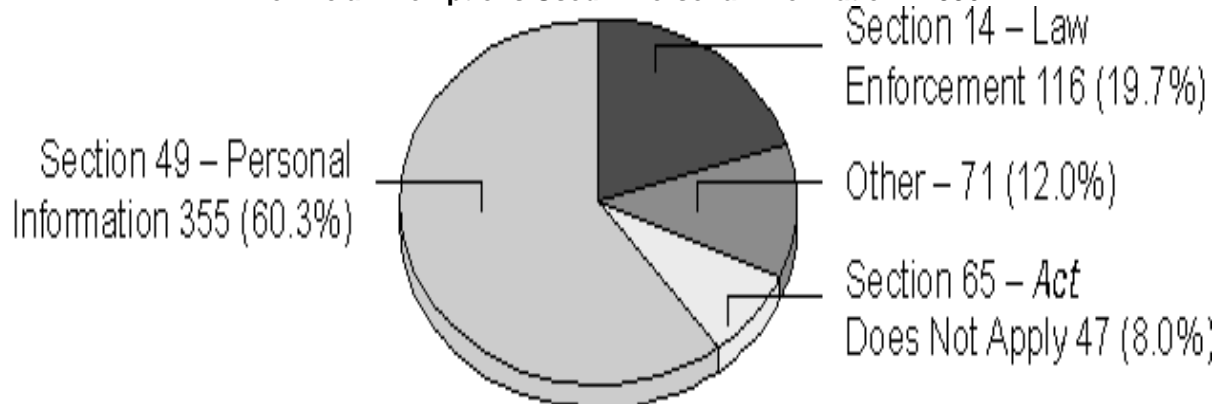
Provincial Exemptions Used -- General Records - 1996



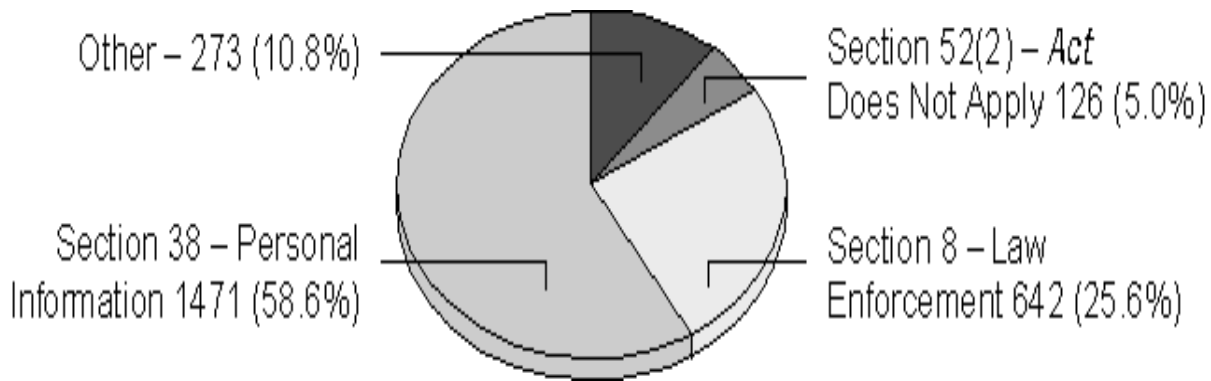
Municipal Exemptions Used -- General Records - 1996



Provincial Exemptions Used -- Personal Information - 1996



Municipal Exemptions Used -- Personal Information - 1996



Under the legislation, individuals have the right to request correction of their personal information held by government. This year provincial organizations received six correction requests and refused only one of them. Municipal organizations received 329 correction requests and refused only eight of them. When correction is refused, the requester may attach a statement of disagreement to the record, outlining why the information is felt to be incorrect. This year no provincial and only five municipal statements of disagreement were filed.

In addition to the newly introduced application fees, the legislation permits government organizations to charge fees for providing access to information under certain conditions. A fee estimate must be provided before filling the request where the expected charge is over \$25. Organizations have discretion to waive payment where it seems fair and equitable to do so after weighing several specific factors. This year, for the first time, people can be required to pay fees to access to their own personal information.

As in previous years, provincial organizations most often cited reproduction of material as the reason for collecting fees in 1996. For personal information requests, reproduction costs were reported in 99 per cent of cases where fees were collected. For general records requests, reproduction costs were mentioned in 38 per cent of cases where fees were collected, followed by search time costs in 28 per cent and other (invoice costs) in 25 per cent. Municipal organizations also cited reproduction costs in 99 per cent of personal information cases where fees were collected. They cited reproduction costs in 38 per cent of general records cases, search time in 32 per cent and preparation in 18 per cent.

	Provincial		Municipal	
Collected in Full	91.8%	3146	60.3%	1404
Waived in Part	0.8%	26	2.3%	54
Waived in Full	7.4%	255	37.4%	923
Total Application Fees Collected (dollars)		\$34,952.00		\$35,113.00
Total Additional Fees Collected (dollars)		\$141,360.89		\$65,766.27
Total Fees Waived (dollars)		\$2,196.33		\$3,740.70

IPC Appeals

Application Fees Collected – 1997

General Records	\$9,182
Personal Information	\$2,580

RESOLVING APPEALS

If individuals who request information are not satisfied with the government organization's response to that request, they can appeal to the IPC. This is a key feature of Ontario's access and privacy system under the *Acts*. Appeals can be filed concerning a refusal to provide access to general records or personal information, a refusal to correct personal information, the imposition of fees, or other aspects of the handling of a request.

When an appeal is filed, the IPC makes an attempt to settle the case through mediation by working with the parties to find common ground. Mediation is successful in the majority of appeals. If the issues are not settled within a reasonable amount of time, the IPC may conduct an inquiry and issue a binding order to resolve the case.

The Year in Appeals

RECENT AMENDMENTS TO THE ACTS

Two recent Acts of the Legislature have had an impact on the operation of the appeals process. In November 1995, the *Labour Relations and Employment Statute Law Amendment Act, 1995* (known as Bill 7) removed certain types of records relating to labour relations or the employment of individuals from the scope of the *Acts*. In January 1996, the *Savings and Restructuring Act, 1996* (known as Bill 26) further amended the *Acts*. The most significant of these new legislative provisions related to the imposition of fees for appeals; the authority of the IPC to complete an appeal without conducting an inquiry; the ability of the IPC to dismiss an appeal if an appellant does not present a reasonable basis for concluding that a record exists; and the ability for a government organization to refuse access to a general record or personal information on the basis that the request was frivolous or vexatious.

The IPC has developed new approaches to operationalize these changes in the appeals process.

CONTINUED PRODUCTIVITY

The efficient processing of appeals remains a top priority at the IPC. In 1996, the IPC continued a longstanding trend of processing appeals more quickly with 93 per cent of appeals closed within five months of receiving them, up from 88 per cent in 1995. The average time to close an appeal was maintained at 3.3 months - the same as in 1995 and down from 3.6 months the previous year.

Experience has shown that mediated settlements require fewer resources and generally produce more satisfactory results for both appellants and organizations. This year, the IPC organized an advanced mediation training session for appeals

staff. This training has provided staff with new tools to successfully mediate files.

Appeals: Statistical Trends

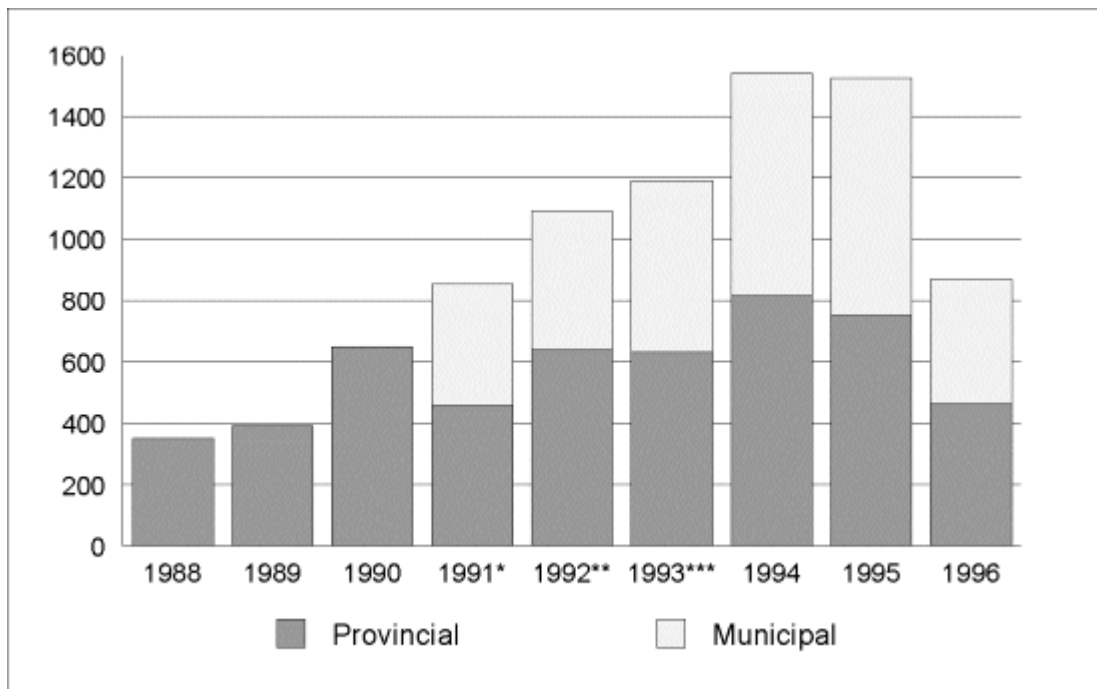
In all, 869 appeals⁽¹⁾ were made to the IPC in 1996 - down 43 per cent from the previous year. In the spring of 1996, Ontario experienced a public sector strike that delayed the normal processing of requests for information and the subsequent receipt of appeals-related documents by the IPC. Also, two pieces of legislation came into effect, Bill 7, removing the records related to labour relations and an individual's employment from the scope of the *Acts*, and Bill 26, introducing additional fees for the filing and processing of requests and appeals.

More than half of the appeals were filed under the provincial *Act*. In previous years, with the exception of 1995, the number of provincial appeals exceeded the number of municipal appeals.

Seventy-nine per cent of provincial appeals in 1996 involved ministries. Provincial appeals decreased 38 per cent from the previous year. Municipal appeals also decreased by 48 per cent from 1995. The largest proportion of municipal appeals filed - 48 per cent - concerned municipal corporations, followed by police services boards and boards of education. These patterns were similar to those observed in prior years.

Approximately one-third of all appeals involved a request for general records, while about 15 per cent concerned a request for personal information. About 42 per cent involved a request for both general records and personal information.

Appeals Received -- 1988-1996



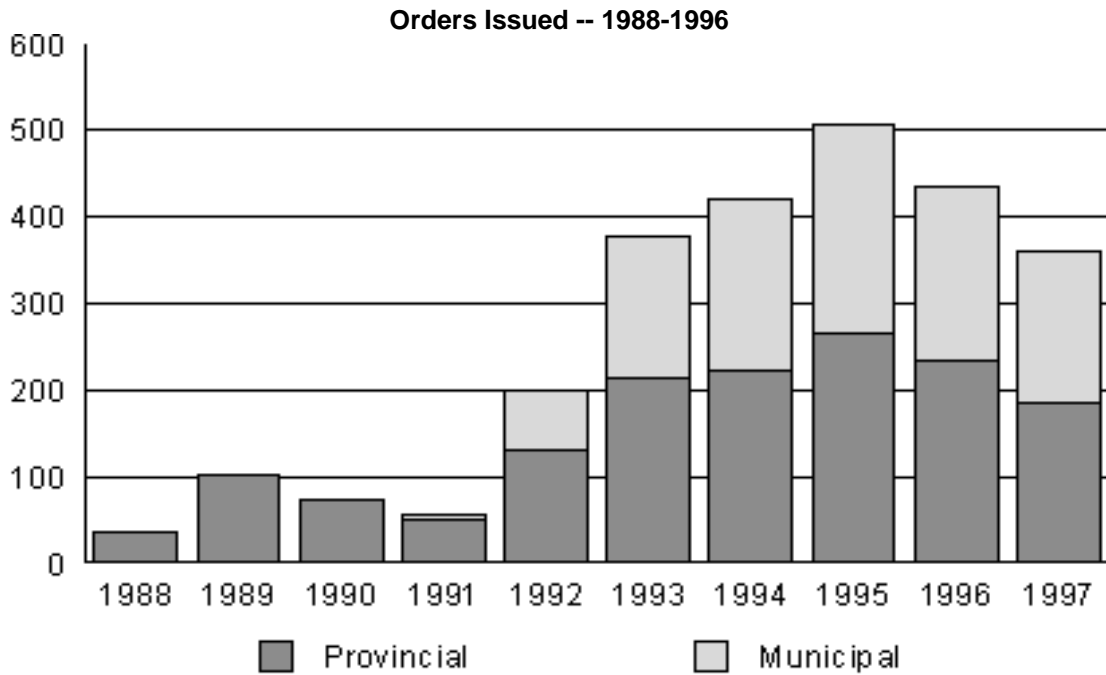
* an additional 741 inactive appeals were received during 1991

** an additional 129 inactive appeals were received during 1992

*** an additional 28 inactive appeals were received during 1993

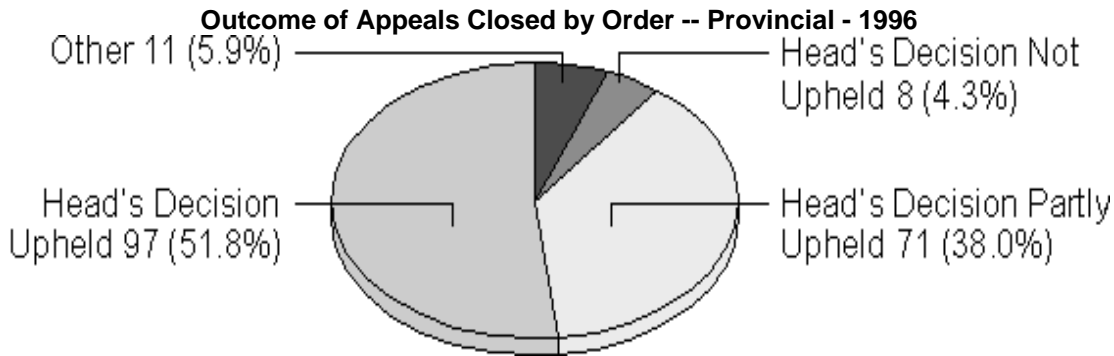
The IPC closed a total of 1078 appeals during 1996 - a decrease of 32 per cent from 1995. As was in the case in previous years, slightly more than half, or 563, appeals resolved this year concerned provincial government organizations. Forty-eight per cent or 515 appeals closed this year involved municipal institutions. Municipal appeals closed were down 34 per cent, while provincial appeals closed were down 31 per cent over 1995 levels.

Of the cases closed this year, the IPC resolved 42 per cent by issuing an order, with 43 per cent of provincial and 40 per cent of municipal appeals. In 1996, the IPC issued a total of 435 orders - a 14 per cent decrease from the previous year. (The number of orders is less than the number of appeals closed by order, since an order may deal with more than one appeal.) Fifty-three per cent of the 1996 orders concerned provincial government organizations.

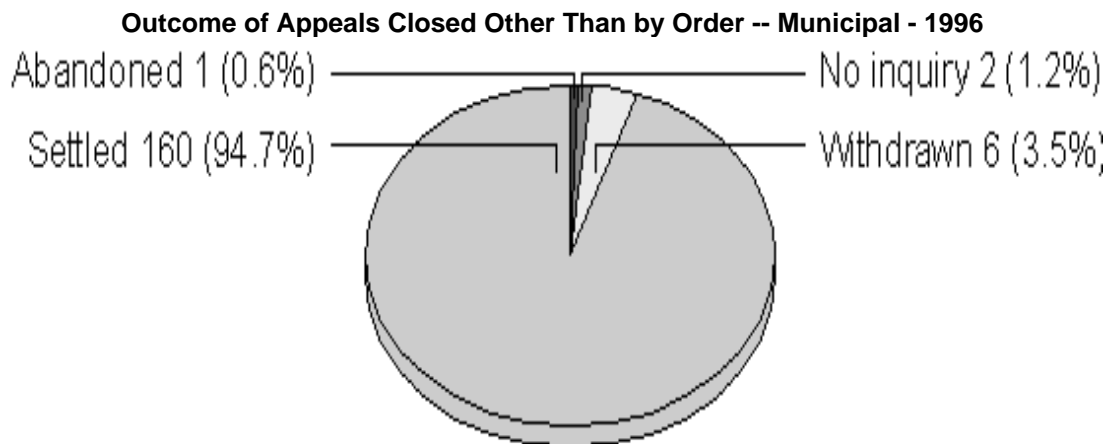
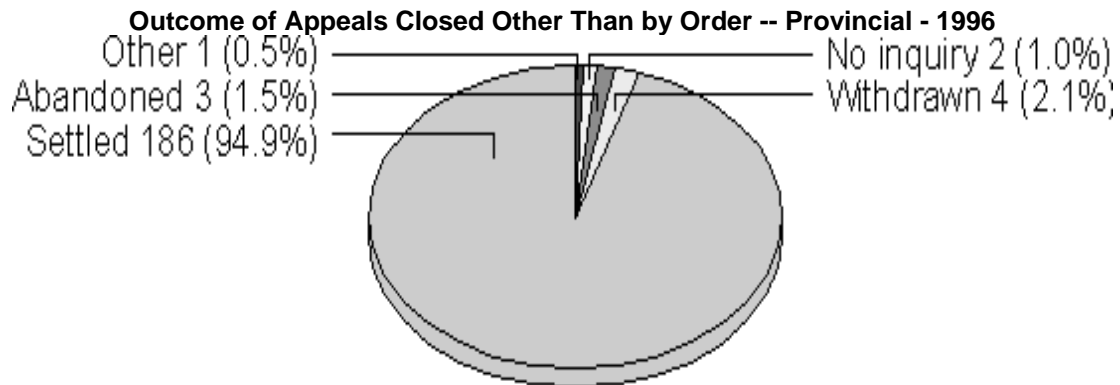
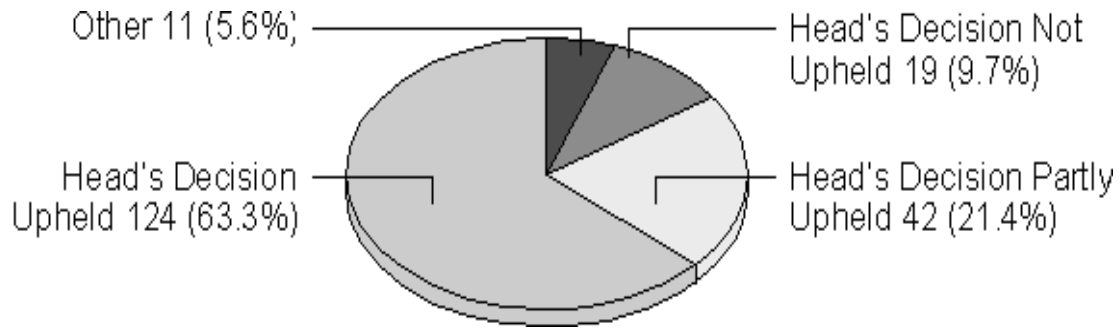


In the appeals resolved by order, the decision of the head of the government organization involved was upheld in 49 per cent of orders - up slightly from 1995 when 47 per cent of orders fully upheld the decision of the head.

Where appeals were closed by means other than an order, the most frequent outcome was settlement by mediation. As was the case in previous years, a mediated settlement occurred in a majority of all appeals resolved by any means this year. Approximately three per cent of appeals were withdrawn by appellants and another two per cent were abandoned. An additional two per cent of appeals were dismissed without an inquiry.



Outcome of Appeals Closed by Order -- Municipal - 1996



Highlights of Orders

In 1996, the orders issued by the IPC dealt with a range of significant issues. A few key orders are summarized below.

PUBLIC INTEREST IN DISCLOSURE OF RECORDS

Ontario Hydro received a request for access to a copy of the most recent peer evaluation reports conducted for the five nuclear plants that it operates. The reports are used by Ontario Hydro to supplement periodic Atomic Energy Control Board reviews that address regulatory compliance. Hydro denied access to the reports claiming their release would prejudice its economic interests or competitive position under section 18(1)(c) of the provincial *Act*. In appealing Hydro's decision, the appellant claimed that there existed a compelling public interest in the disclosure of the records.

The IPC found that the exemption applied because Hydro had demonstrated a reasonable expectation of prejudice to its economic interests or competitive position should the reports be disclosed. This finding was based on Hydro's arguments

that, among other things, it is under considerable pressure to reduce the cost of producing power and to open itself to competition in power generation.

The IPC then considered whether there was a compelling public interest in the disclosure of the records under section 23 of the *Act*, which clearly outweighed the purpose of the section 18(1)(c) exemption. Consistent with the approach taken in previous orders, the IPC found that there was a compelling public interest in the release of records that contain information about nuclear safety. The next consideration was whether this interest clearly outweighed the purpose of the section 18(1)(c) exemption.

The IPC found that the section 18(1)(c) exemption recognizes that organizations sometimes have economic interests and compete for business with other public or private sector entities. However, when the IPC balanced the monetary-based purposes of this exemption against the broad public interest in nuclear safety and public accountability for the operation of nuclear facilities, it was found that the compelling public interest clearly outweighed the purpose of the exemption. As a result, it was ordered that the peer evaluation reports be disclosed. (Order P-1190)

PUBLIC ACCESS TO ELECTRONIC RECORDS

A requester asked the Ministry of Finance for electronic copies of the 1995 property assessment rolls for the region of Ottawa-Carleton. The Ministry denied access to this request under section 22(a) of the provincial *Act* on the basis that this information had been published or was currently available to the public.

The Ministry further advised the requester that the assessment roll for an individual municipality in the Ottawa-Carleton region could be viewed at no cost at the office of the clerk of the municipality. The Ministry indicated that the requester could purchase a copy of each roll directly from a municipality or from the Ministry's Assessment Program on computer tape at an estimated cost of \$1,700. The requester appealed the Ministry's decision to charge \$1,700 for the computer tape and its reliance on the section 22(a) exemption to deny access.

The IPC found that the responsive record was the compilation of assessment roll information from all municipalities in the region of Ottawa-Carleton. Therefore, referring the requester to the individual municipalities did not satisfy the request as no one municipality had the compilation. Accordingly, the Ministry failed to establish that the requested record or the information contained in the record was published or available to the public through this source.

The IPC concluded that the computer tape responded to the request and went on to consider whether the tape was either published or available to members of the public generally, through a regularized system of access for the purposes of section 22.

The IPC found that the section 22(a) exemption applied and that, consequently, the fee structure of the *Act* (including the fee waiver provisions) did not apply to this information. The result was that to obtain a copy of the tape, the requester would have to purchase the tape from the Ministry for the price established. (Order P-1316)

FRIVOLOUS OR VEXATIOUS REQUESTS

The Town of Midland received a request for access to the names of all members of its town Council, their secretaries, all administrative staff, as well as the names of all employees who were related to past or present Council members. The town refused to process the request because, in its view, it was frivolous and vexatious for the purposes of section 4(1)(b) of the municipal *Act*.

The town informed the IPC that the requester had followed a pattern of submitting many requests, some of which resulted in appeals to the IPC. The requester argued that there was nothing wrong with testing or examining the boundaries of the *Act* or in "having fun" filing requests.

The IPC noted that the majority of the requests involved extremely detailed subjects or identified a large number of individuals or locations that the requester believed should be examined to locate responsive records. In addition, the

requests were often interrelated. The IPC also noted that since 1991, the requester had filed a total of 1131 appeals, involving both the town and other organizations.

Based on these considerations, the IPC upheld the town's argument that the requester's past and present requests, when considered together, formed part of a pattern of conduct that amounted to an abuse of the right of access. The IPC also found that the request was made in bad faith and for a purpose other than to obtain access. The result was that the present request was determined frivolous and/or vexatious and that the town was not required to process it. (Order M-850)

DATABASES MAINTAINED BY THE PROVINCIAL GOVERNMENT

The Ministry of Consumer and Commercial Relations received a request for access to certain electronic records, including the ONBIS database that contains information on registered businesses in Ontario.

The Ministry denied access to the database on the grounds that it contained publicly available information under section 22 of the provincial *Act* and that the contents constituted valuable government information for the purposes of section 18(1)(a) of the *Act*. In addition, the Ministry argued that the disclosure of the information could reasonably be expected to adversely affect its economic interests.

In an interim order, the IPC determined that the ONBIS database was not publicly available simply because the requester could do a record-by-record search of individual businesses that had been registered. Such searches would be limited to specific pieces of information as opposed to a collection of relational data elements. In addition, the IPC found that the software programs that were part of the database had never been publicly available.

The IPC also concluded that while the database as a whole, the database management system and the design, search and query software all constituted technical information for the purposes of section 18(1)(a), the data elements provided by business registrants to the Ministry did not. Nor did they qualify as commercial information.

The IPC found that the Ministry had no right of ownership in these data elements because they were purely factual in nature and, based on the case law, not entitled to copyright protection. It was concluded, however, that the arrangement of the data within the database and the database itself did belong to the Government of Ontario. Similarly, the software programs which perform the sorting, searching and retrieval functions constituted the Ministry's original selection and arrangement of the data within the database. The Ministry had, thus, established copyright protection for these parts of the ONBIS database.

The Ministry also established that it had a demonstrated intention to market the information through licence agreements with various search companies for a fee and, therefore, that the ONBIS database had potential monetary value.

For these reasons, the IPC found that the database, the database management system and the accompanying software qualified for the exemption under section 18(1)(a). The underlying data elements did not. (P-1281)

Mediation Success Stories

A majority of all appeals are resolved through mediation. Here are a few examples of successful mediation efforts in 1996.

CREATIVE WAYS TO PROVIDE EMPLOYMENT- RELATED INFORMATION TO INDIVIDUALS

The appellant asked a regional police force for copies of all records that described the process by which sergeants could be promoted to the rank of staff sergeant. The appellant was an unsuccessful candidate for such a promotion. The police denied access to the responsive records under section 52(3) of the municipal *Act* on the basis that they contained employment- related information and were not subject to the *Act*.

An appeal was filed and during the mediation stage, the police agreed to provide the appellant with informal access to a

number of records. The police directed the appellant to contact their Human Resources Bureau for more information. The appellant was satisfied with the degree of disclosure and agreed to close his appeal.

SETTLEMENT SATISFIES UNDERLYING CONCERNS OF APPELLANT

The requester operated a home day care facility and asked the Ministry for a copy of a report regarding a complaint that she had left the children in her care unattended. She was granted partial access to the report. She filed an appeal.

The appellant was very concerned that this report was untrue and would constitute a mark on her professional reputation. At the suggestion of the Appeals Officer this file was resolved when the Ministry agreed to include in its complaint file, a letter of disagreement from the appellant, along with letters from several parents attesting to her excellent reputation as a caregiver.

ACCESS PROVIDED ON COMPASSIONATE GROUNDS

The record in this appeal was a suicide note written by the requester's son in a foreign language. The son had sent this note to his sister and to a close friend. The father had asked the police to provide the original note so that he would be able to add it to a shrine dedicated to his son's memory.

As the note was not addressed to the father, the police originally refused to disclose the note, claiming that its release would constitute an unjustified invasion of the son's privacy.

During the course of the ensuing appeal, it was learned that the sister and the friend had already provided the father with a copy of the note. At the request of the Appeals Officer, the father obtained consents from the sister and the friend. The police then agreed to release the original note to them, who, in turn, would provide it to the father.

1. The statistics cited in this Annual Report refer to active appeals only, unless otherwise indicated. In 1991, the IPC established a policy of limiting the number of appeals, from any one source, worked on at one time. This policy was necessary to deal with the bulk use of the appeal process. Active appeals are those that were actively worked on by the IPC during one year. All other appeals are classified as inactive.

SAFEGUARDING PERSONAL INFORMATION

The *Acts* establish rules for the collection, retention, use, disclosure, security and disposal of personal information held by government organizations. People who believe that an organization has failed to comply with one of the *Acts*, and that their privacy has been compromised as a result may complain to the Information and Privacy Commissioner. The IPC investigates the complaint, attempts to mediate a solution and, depending on the findings of the investigation, may make formal recommendations to the organization to amend its practices.

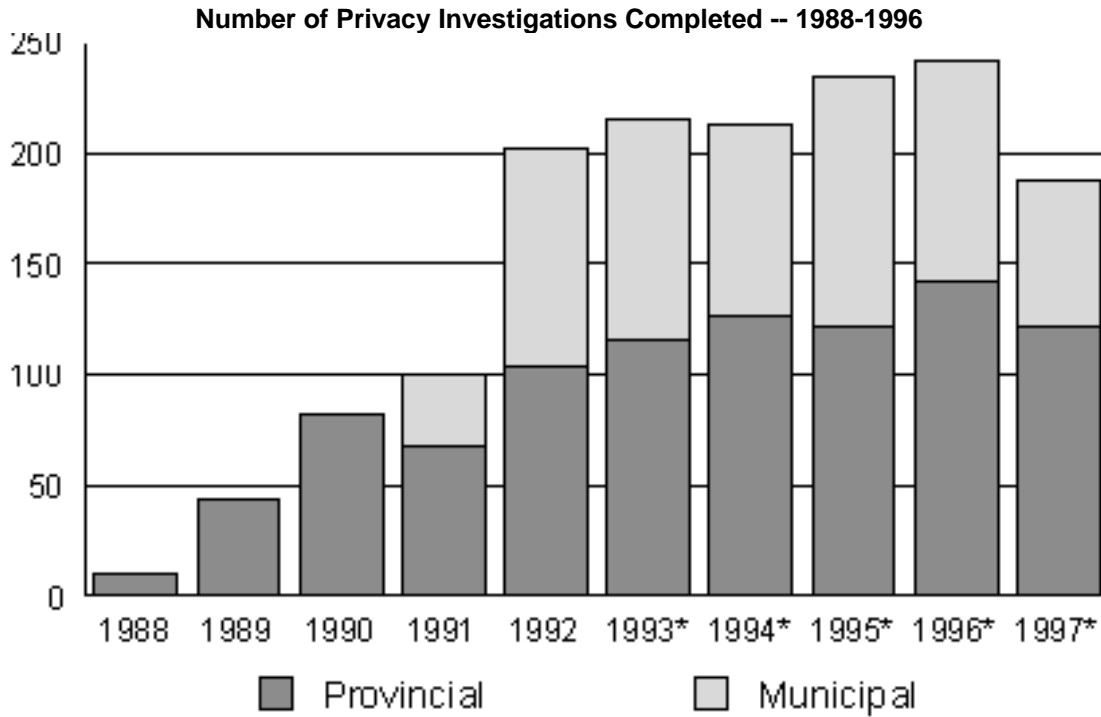
A few IPC investigations are prompted by appeals, meaning that the IPC may decide to study an organization's procedures if a problem comes to light during an appeal proceeding.

The IPC also ensures adherence to the legislation by selecting certain government organizations to evaluate their procedures by conducting compliance reviews, which examine each organization's information management practices. In addition, the IPC comments on the privacy aspects of computer matching proposals by government organizations.

Complaints Handled Efficiently

The IPC completed 241 investigations in 1996, up from 234 the previous year. Of the 241 investigations, only 17.7 per cent of the organizations were in breach of the *Acts*. This is a decrease from 1995, where 21.4 per cent were found to be in breach of the legislation. In 1996, the IPC issued 18 formal investigation reports. These cases resulted in 15 formal

recommendations to government organizations.



* includes 9 investigations in 1993, 11 in 1994, 11 in 1995, and 19 in 1996 that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation.

Summary of Privacy Investigations – 1997

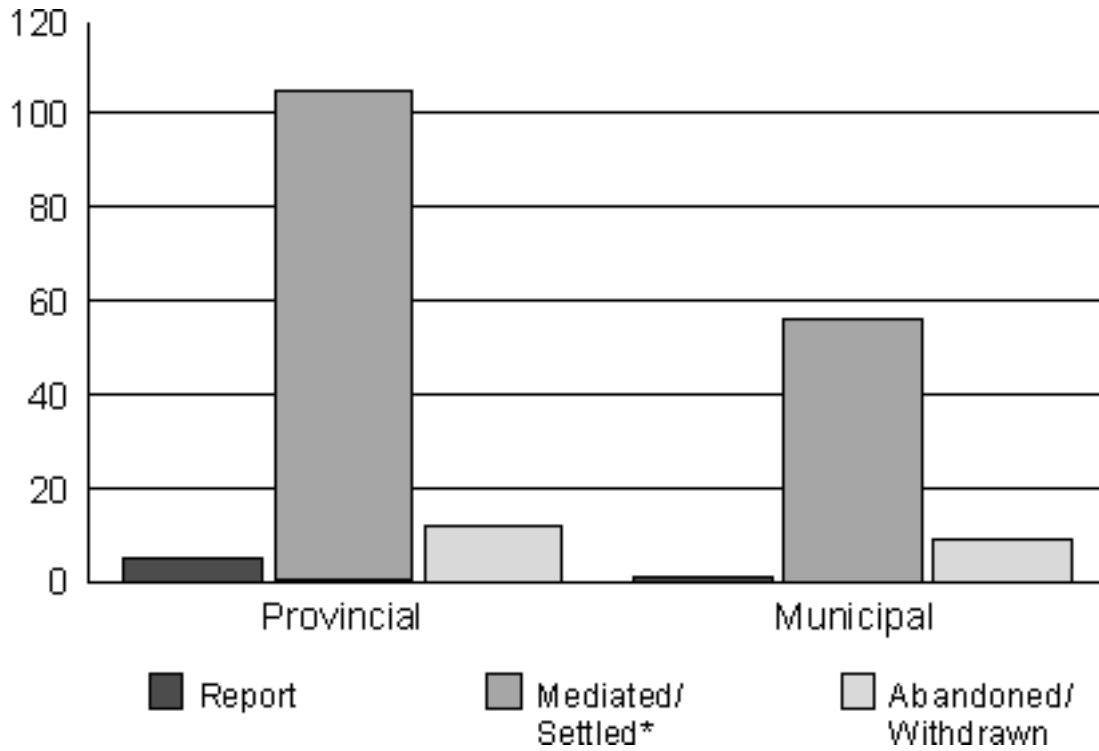
	1996 Privacy Complaints		1996 Total	1997 Privacy Complaints		1997 Total
Carried Forward	27	22	49	26	10	36
Initiated	141*	87	228	104*	66	170
Completed	142*	99	241	122*	66	188
In Process	26	10	36	8	10	18

Municipal numbers appear in bold

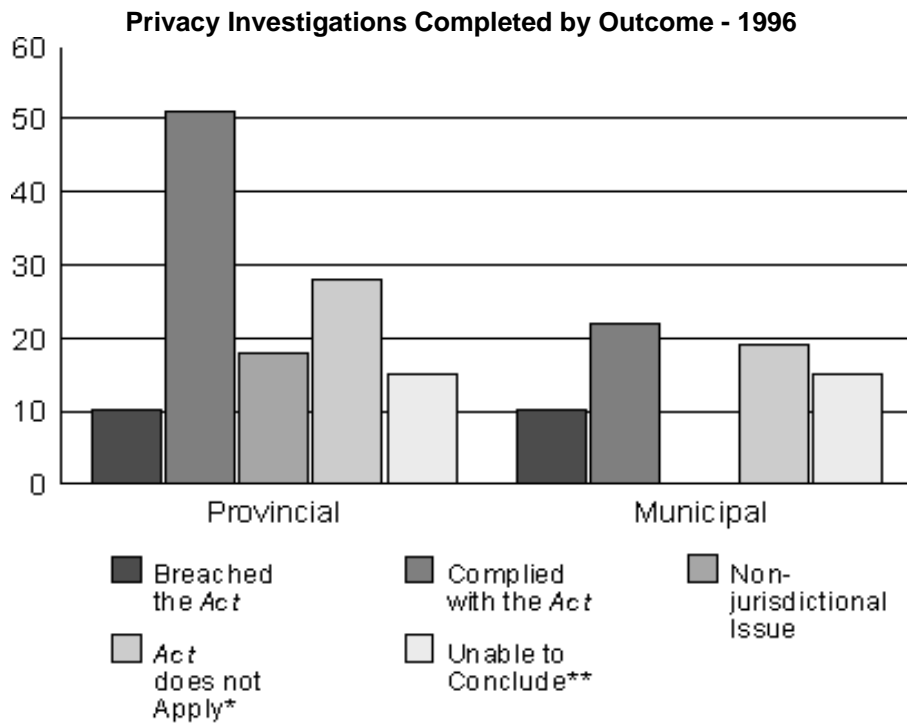
* includes 19 investigations in 1996 and 18 in 1997 that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation

More than 80 per cent of the complaints resolved in 1996 were settled through mediation. In over 80 per cent of these mediated cases it was found that government organizations were in compliance with the Acts. In mediated cases where there was found to be a breach of one of the Acts, the IPC made more than 30 suggestions on the practices or procedures of the organization. In all of these cases, the organization either agreed with the suggestion or had already taken action.

Privacy Investigations Completed by Type of Resolution - 1996



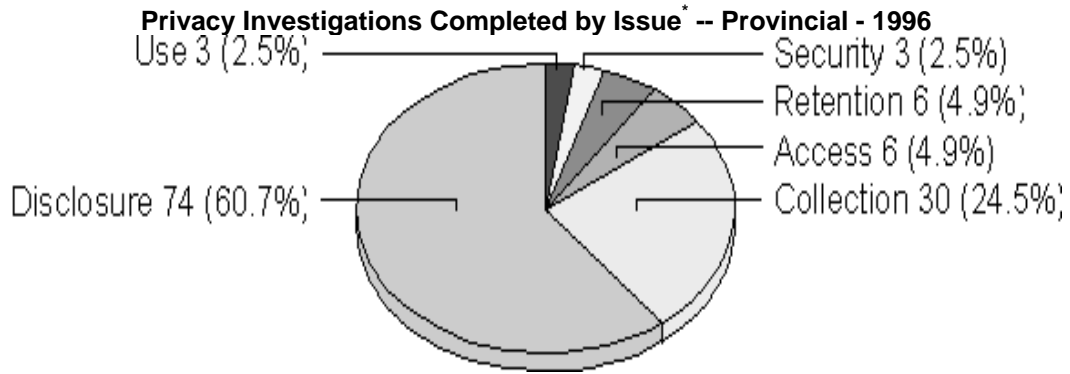
* includes 19 investigations that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation



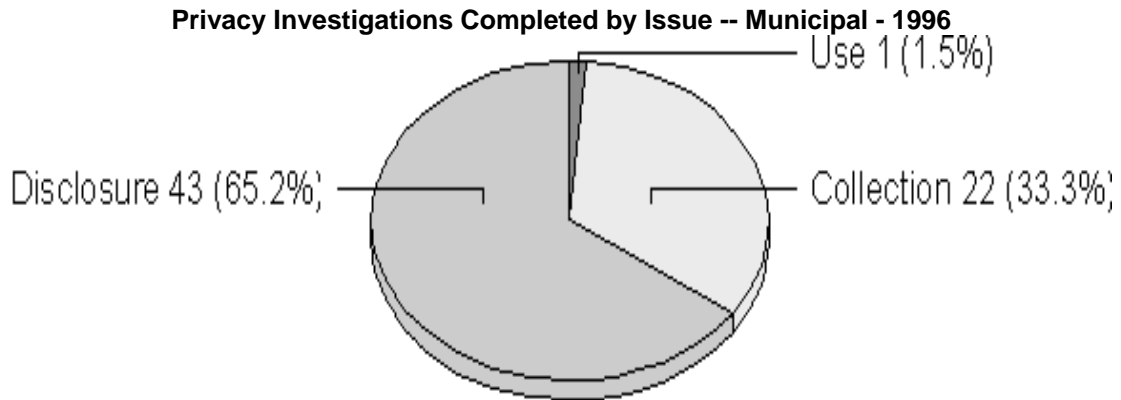
* primarily includes investigations that were found to contain issues that related to Bill 7, thus the Acts no longer applied

** includes 26 investigations where the complainant abandoned or withdrew their complaint during the course of the investigation

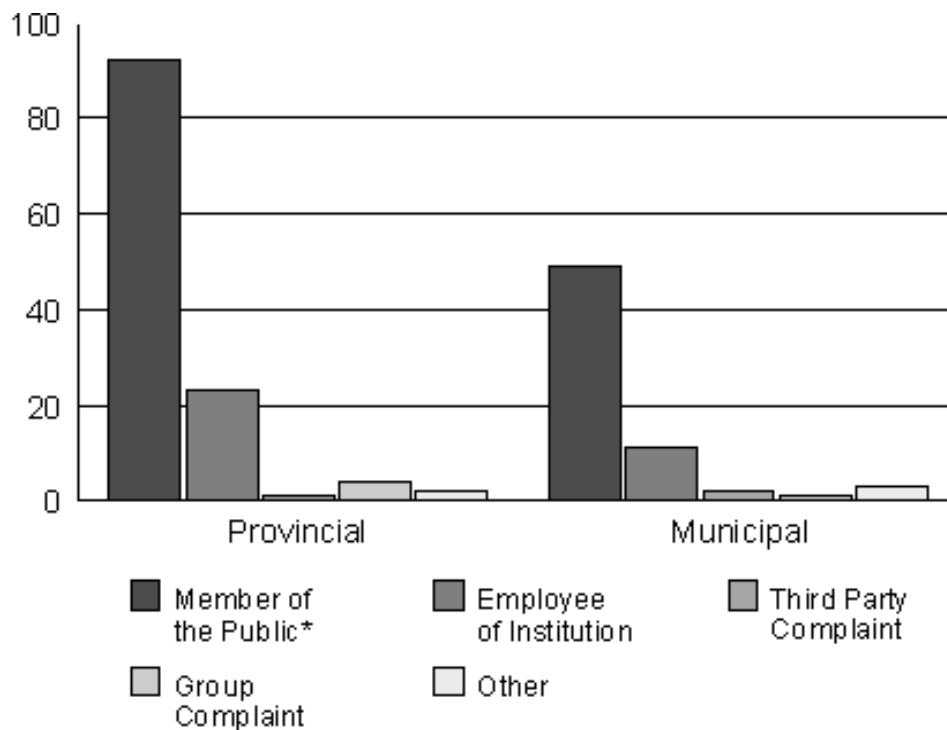
Sixty-three per cent of the privacy complaints received in 1996 concerned the disclosure of personal information. The next most frequent issue was collection of personal information, which accounted for 27 per cent of complaints. The principal user of the complaints system is the general public. Members of the public filed 169 complaints this year, which represents 70 per cent of all complaints filed in 1996.



* includes 19 investigations that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation



Types of Complainants Involved in Privacy Investigations - 1996



* includes 17 investigations that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation

** includes two investigations that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation

ORAL COMPLAINTS

In addition to dealing with written complaints, the IPC responds to privacy concerns or complaints lodged over the telephone. In 1996, the Compliance department resolved 307 oral complaints and responded to an additional 130 complaints about access and privacy matters.

Highlights of IPC Investigations

Here are brief summaries of some of the noteworthy investigations by the IPC in 1996.

SURVEY COLLECTED PERSONAL INFORMATION

A parent complained that a Board of Education improperly collected personal information about students and parents in a survey conducted by the Board. The Board had been considering introducing "year-round" education in one or two of its elementary schools and sent out a questionnaire to parents of children attending potential pilot schools.

The questionnaire asked the parents to provide their names and telephone numbers, the ages and grade levels of their children, and their opinions and/or concerns about year-round education. It also asked if parents wanted additional information about year-round education and if they were interested in working on a committee or participating in follow-up discussions regarding the proposed program.

The Board stated that its survey had been conducted to determine parents' interest in the program and to determine how many schools would be interested in setting up this program.

The Board submitted that the collection of the personal information in the survey was both expressly authorized by statute

and necessary to the proper administration of a lawfully authorized activity, in compliance with section 28(2) of the municipal *Act*.

In support of its position, the Board referred to specific sections of the *Education Act* including Regulation 304 under the *Education Act*. The IPC determined the legislation that was cited by the Board did not specifically require the collection of the personal information in question and therefore, the collection was not expressly authorized by statute.

The Board, also stating the collection was necessary to the proper administration of a lawfully authorized activity, claimed that when making a decision of this kind, it needed to get a response rate as close to 100 per cent as possible. Therefore, the parents' names and telephone numbers had been required so that the Board could follow up on any outstanding responses. In addition, it claimed that the names were necessary to identify parents who were interested in working with a committee and/or participating in follow-up discussions.

It was the IPC's view that, under the *Education Act*, the Board could decide on year-round education with the approval of the Minister and that conducting a survey to determine parental opinion prior to implementing a program was a lawfully authorized activity. It was noted, however, that the names and the telephone numbers of parents had not been required nor used in the analysis. The IPC felt that the Board could have determined parental interest and opinion without collecting names and telephone numbers and those interested in participating further could have been advised to contact a specific individual.

Therefore, in the IPC's view, it could not be said that the Board's collection of personal information was necessary to the proper administration of a lawfully authorized activity in compliance with section 29(2) of the *Act*.

A recommendation was made to the Board that for further surveys, they take steps to ensure that the collection of information was in compliance with the *Act*. (Investigation I96-057M)

PERSONAL INFORMATION USED

An individual complained that a Board of Education had permitted her personal information and that of other night school registrants to be improperly used by a Board employee to further his own private business interests.

The IPC contacted the Board. As a result of the contact, the Board issued a memorandum to all staff indicating that such a use of personal information was not in compliance with the municipal *Act*. Staff were reminded that permission should be obtained from the individual concerned before his or her personal information is disseminated outside of appropriate school or Board use.

MEDIATION WITH A MUNICIPALITY

A complainant stated that the parents of disabled children enrolled in a program offered by the municipality were required to complete a form which asked for personal information about the child and his or her parents. However, the form did not contain a notice for the collection of personal information as required by the municipal *Act*. When the IPC contacted the municipality, the municipality advised that it would take immediate steps to ensure that all forms used to administer the program would comply with the notice provisions of the municipal *Act*. The municipality shortly afterwards provided the IPC with copies of the revised forms. The municipality also agreed to undertake a complete review of all the forms it used to collect personal information.

Following Up on Recommendations

An investigation report often contains recommendations to the government organization involved in a complaint, for achieving compliance with the *Act*. Each year, the IPC follows up to ensure that these recommendations have been carried out. In 1996, the IPC followed up on 44 recommendations and is pleased to report that *all* had been implemented to its satisfaction.

Personal Information Collected Indirectly

Under the legislation, the Commissioner has the power to authorize the indirect collection of personal information, that is, collection of information other than directly from the individual to whom it relates. In 1996, the IPC processed one request from a police force to assist in creating a wandering patient registry. The IPC approved this request.

Computer Matching Assessments and IPC Comments

Computer matching refers to a computerized comparison of two or more databases of personal information originally collected for different purposes. The computer match creates or merges files on identifiable individuals to reveal matters of interest. Computer matching by government organizations is intended to improve the efficiency of programs and services. This objective, however, must be weighed against the dangers to privacy.

In 1996, the IPC commented on two computer matching assessments between the Ministry of Community and Social Services and five other provinces. The purpose of these computer matching activities is to identify social assistance recipients who are receiving social assistance benefits in more than one provincial jurisdiction at the same time and to take appropriate action in cases where such a match is found.

The IPC found that the activities complied with the privacy provisions of the provincial *Act* during all phases of the matching activity. Further, the IPC noted that in all cases, the Ministry had drafted a formal data sharing agreement with each of the other provinces to supplement the computer matching and had incorporated the privacy provisions of the *Act* into these agreements.

Government Actions Under Scrutiny

To ensure compliance with the *Acts*, the IPC conducts reviews of government activity and offers comment on the privacy implications of government actions.

ORDER SPARKS REVIEW

In Order M-510, the Compliance department was asked by the Appeals department to conduct an independent review into circumstances regarding the collection, use and disclosure of personal information stored in the Canadian Police Information Centre (CPIC) system by the Sault Ste. Marie Police Services Board (the board). An employee of the police services board, who was an affected party in an appeal with the IPC, used personal information obtained from CPIC to assist in preparing a response to the appeal with the IPC.

While the IPC concluded that in this particular case, the *Act* had not been breached by the practices of the board, the IPC also felt that more could be done to address the privacy of individuals whose personal information is contained on the CPIC system. Consequently, the IPC contacted the Ministry of the Solicitor General and Correctional Services.

A recommendation was made to the Ministry that, through its outreach program, it should remind all police services in Ontario that personal information stored and retrieved through the CPIC system is supplied in confidence by the originating agency for the purpose of law enforcement. This information should only be used for activities authorized by a police services board. In addition, police services boards in Ontario should be asked to review their policies to ensure that their local directives reflect the requirements of the CPIC Reference Manual.

USE OF VIDEO SURVEILLANCE EQUIPMENT

During 1996, the IPC undertook reviews of seven government organizations using video surveillance cameras. These reviews entailed site visits and/or reviewing policies and procedures.

The stated purpose for the uses of this equipment was for the protection and security of staff, the public and government assets. Generally, the IPC found that video equipment had been installed in key public access areas such as main entrances, public hallways, parking garages and at certain secondary points of entry. The review findings varied from lack of public notice to inadequate policies to ensure that personal information was used, disclosed and disposed of in accordance with the *Acts*. Appropriate recommendations were made to each government organization to ensure compliance with the *Acts*.

DOCUMENTS FOUND IN TRASH

The IPC reviewed the circumstances surrounding the insecure disposal of personal information by two ministries. In one case, staff at a provincial court building had disposed of outdated material, including information about a young offender, by placing the records in two clear plastic bags and putting them in a dumpster. In the second case, also involving information about a young offender, staff at a welfare office cleaned out a storage room and discarded the records. As a result of these incidents, the ministries involved have taken adequate precautions to prevent future occurrences and have advised the IPC that they would contact the individuals involved. The IPC determined that these were isolated incidents.

JUDICIAL REVIEWS

Orders issued by the Information and Privacy Commissioner may be reviewed by the courts on jurisdictional grounds, as is the case with the decisions of other administrative tribunals.

During 1996, 10 new applications for judicial review were filed in relation to the Commissioner's orders, and 16 were resolved. Of the 16, nine were withdrawn, four were dismissed and three were allowed. The IPC responded to three applications for leave to appeal decisions of the Divisional Court, two of which were dismissed⁽²⁾ and the remaining one was granted by the Court of Appeal⁽³⁾. In a fourth case, the Court of Appeal granted the IPC leave to appeal a decision of the Divisional Court⁽⁴⁾.

Outstanding Judicial Reviews – 1996	
Launched by	
Requesters	1
Affected parties	4
Institutions	10
Total	15

Also, during 1996, two of the Commissioner's compliance investigations were the subject of applications for judicial review, both involving municipal organizations. In each case, the organization claimed that the Commissioner did not have the jurisdiction to conduct the compliance investigation in question. One of these applications was abandoned and the other remains before the courts.

LOCATION-SPECIFIC REQUEST UPHELD

In one case decided this year, a school board received a request from a former employee for any records containing the requester's personal information located at a law firm. The board refused to process the request on several grounds, including that the municipal *Act* does not give a person the right to learn the location of records containing his or her personal information.

The IPC ordered the board to respond to the location-specific request and to therefore identify to the requester any responsive records (Order M-500). The board then applied for judicial review, seeking to quash the IPC's order.

The Divisional Court dismissed the board's application, holding that because the *Act* explicitly contemplates, in section 37(1), a location-specific request for personal information, the nature and contents of any response to such a request is a matter within the jurisdiction of the IPC. The Court also rejected the board's argument that responding to the request would reveal information subject to solicitor-client privilege⁽⁵⁾.

JUDGE'S APPOINTMENT RECORDS SUBJECT TO THE ACT

In another case this year, a request was made to the Judicial Appointments Advisory Committee for information about the appointment of an individual to the position of judge.

The Ministry of the Attorney General responded to the request, stating that the committee was separate from, and independent of, the Ministry and, therefore, the committee's records were not subject to the provincial *Act*.

The IPC found that the committee was a part of the Ministry and that the records in question were under the control of the Ministry. On this basis, the IPC ordered the Ministry to obtain copies of the records from the committee and to provide the requester with a new decision regarding access. (Order P-704)

On judicial review, the Divisional Court held that the committee members acquired the records in their capacity as advisors to the Attorney General in carrying out their statutory duty under section 42(1) of the *Courts of Justice Act*. The Court further found that since the records were under the control of agents of the Attorney General, the records were, by law, under the control of the Ministry. Accordingly, the Court dismissed the Ministry's application⁽⁶⁾.

The Ministry and the affected party have been granted leave to appeal this judgement to the Ontario Court of Appeal.

REFUSE TO CONFIRM OR DENY PROCESS UPHELD

In yet another case this year, a union sought access to records relating to a particular employee of Ontario Hydro. Hydro located records responsive to the request, but refused to confirm or deny the existence of the records based on section 21(5) of the *Act*.

In February 1994, the IPC sent Hydro a confirmation of appeal indicating that, in accordance with IPC policy, Hydro had 35 days from the date of the confirmation to raise additional discretionary exemptions. In representations in July 1994, Hydro advised that if the IPC did not uphold its section 21(5) claim, Hydro reserved the right to rely on additional exemptions.

Despite Hydro's claim, the IPC proceeded to determine all of the issues in the appeal. The IPC found that disclosure of most of the records would not constitute an unjustified invasion of privacy and, therefore, concluded that Hydro could not rely on section 21(5) to refuse to confirm or deny the existence of records. The IPC ordered Hydro to disclose the records to the union with appropriate severances (Order P-808). Hydro applied for judicial review, claiming that this decision constituted a denial of natural justice and that the IPC's interpretation of section 21(5) was in error.

The Divisional Court dismissed Hydro's application, finding that the IPC's process was fair. The Court further held that the IPC's interpretation of section 21(5) was not unreasonable⁽⁷⁾.

Hydro was refused leave to appeal this judgement to the Ontario Court of Appeal.

- 2.
3. Order P-704
4. Order P-804
5. *Toronto (City) Board of Education v. Burk*, [1996] O.J. No. 742, 90 O.A.C. 315 (Div. Ct.)
6. *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, [1996] O.J. No. 996, 90 O.A.C. 181 (Div. Ct.), leave to appeal granted [1996] O.J. Nos. 2478, 2479 (C.A.)
7. *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 1669 (Div. Ct.), leave to appeal refused [1996] O.J. No. 3114 (C.A.)

RAISING PUBLIC AWARENESS OF ACCESS AND PRIVACY

The IPC maintains an active and ongoing public education program to increase public awareness of access and privacy issues, to promote understanding of privacy rights under the *Acts*, and to inform both consumers and government organizations of the IPC's procedures.

Support for Government Co-ordinators

In co-operation with Management Board Secretariat, the IPC assists Freedom of Information and Privacy Co-ordinators in the municipal and provincial government organizations by participating in training sessions around the province. The co-ordinators play an integral role in the day-to-day operation of the access and privacy system. In 1996, the IPC took part in 11 sessions and participated in the annual fall access and privacy workshop, providing keynote speakers and workshop facilitators.

Educating the Public

In 1996, the IPC's outreach efforts included a heavy schedule of speaking engagements and extensive media relations work, in addition to a continued commitment to educating the public about privacy and access issues.

Through the IPC Speakers' Bureau, 38 speeches were delivered by the Commissioner, Assistant Commissioners and staff, including Humber College in Toronto, sessions with the London Free Press, the Canadian Institute of Law and Medicine, the Canadian Cancer Society, Bell Canada, the Conference Board of Canada, and the American Judges' Association.

The IPC also released two papers related to access and privacy issues in April 1996 - the first promoting *Enhancing Access to Information: RD/AD Success Stories* (with Management Board Secretariat); the second promoting *Guidelines on Facsimile Transmission Security*.

During 1996, the IPC continued to create and distribute publications to government organizations. Three new issues of *IPC Perspectives*, the newsletter that flags emerging issues in access and privacy, were distributed. The three information brochures continue to be popular and the IPC provided more than 17,300 information pieces in response to requests from

the public and government organizations. In addition, the IPC responded to more than 2,400 telephone calls from the public requesting information on access and privacy issues.

The IPC On-line at <http://www.ipc.on.ca>

At the end of 1995, the IPC launched its own Web site on the Internet as a research and information tool on virtually everything we do. The site is updated regularly and includes:

- all orders, investigation reports and policy papers. All documents are available in HTML format;
- a section on frequently asked questions on access and privacy, text of the various *IPC Practices*, and the text of the most current *IPC Perspectives*;
- the text of both *Acts*, as well as a plain language summary;
- links to other sites dealing with access and privacy;
- indices that group orders and investigation reports by subject and section number of the *Acts*.

FINANCIAL STATEMENT

	1997-98 Estimates \$	1996-97 Actual \$
Salaries and wages	4,732,100	4,732,685
Employee benefits	923,800	745,210
Transportation and communication	141,400	65,183
Services	668,800	590,693
Supplies and equipment	106,800	183,100
Total Expenditures	6,572,900	6,316,871

The figures for the period ending March 31, 1998, are estimates. For a copy of the Provincial Auditor's report, please contact the IPC Communications Department at 416-326-3333 or 1-800-387-0073; TTY (Teletypewriter) 416-325-7539.

APPENDIX ONE

As required by the *Public Sector Salary Disclosure Act, 1996* the following chart shows which IPC employees received more than \$100,000 in salary and benefits during 1996.

Name	Position	Salary Paid	Taxable Benefits
Anderson, Ken	Director of Legal Services	\$111,075.48	\$343.14
Cavoukian, Ann	Interim Commissioner	\$117,453.42	\$329.29
Challis, William	Legal Counsel	\$104,360.88	\$298.56
Hubert, Judy	Executive Director	\$120,947.06	\$317.69
Mitchinson, Tom	Assistant Commissioner	\$120,285.67	\$344.10