



Information and Privacy Commissioner/Ontario
Annual Report
1997

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;
 - 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.



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Ce rapport annuel est également disponible en français.



The Honourable Chris Stockwell
Speaker of the Legislative Assembly

I have the honour to present the 1997 annual report of the Information and Privacy Commissioner to the Legislative Assembly. This report covers the period from January 1, 1997 to December 31, 1997.

Sincerely yours,



Ann Cavoukian, Ph.D.
Commissioner



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Commissioner's Message

1997 produced a number of milestones, including legislation that a biometric (a physiological characteristic such as a fingerprint) intended to identify social assistance applicants must be *encrypted* — a first, worldwide. The input from this office into that legislation is among the highlights of the work of the Information and Privacy Commissioner/Ontario (IPC) cited in this 1997 annual report, which also reviews the first 10 years of the *Freedom of Information and Protection of Privacy Act*, and looks at some of the major access and privacy issues of 1997.

Improving Our Service

As part of our continuing efforts to provide an even more responsive and efficient service, we recently made several sweeping changes to the structure of our organization. We combined the appeals and compliance departments to form one cohesive tribunal. I am very proud of the services we have been able to provide over the years, but now I'm excited about the potential of the new Tribunal Services structure.

For the general public, the new process is designed to be a more understandable and "user-friendly" system. The changes are part of an ongoing process, with all segments of the new system being monitored to assess increased effectiveness.

The basic framework for the new integrated tribunal consists of three stages: (1) a dedicated intake system that receives all cases and has a certain degree of decision-making authority, (2) an expanded mediation process that endeavours to settle the great majority of cases referred to it, and (3) an adjudication process that issues orders on cases that reach that final stage. The dedicated intake function uses "screening" and "streaming" processes. The screening process quickly determines if the matter raised is something that can be appealed under the *Acts*. Under the streaming process, appeals that

move beyond the initial stage (the vast majority) will be streamed directly into mediation, or, to a lesser degree, to the adjudication process.

While our emphasis continues to remain with mediation, there are some cases where it is clear from the very start that mediation will not succeed in resolving the issues. Accordingly, these cases will be moved directly into adjudication, thereby speeding up the entire process. But the majority of cases will be directed into the mediation stream. Roughly half of all the appeals resolved in 1997, and more than 85% of the privacy complaints closed, were resolved through mediation. We hope to see these figures increase even further in 1998.

The IPC will continue to pursue four general objectives in all of its activities: ensuring fairness to all parties; reducing timelines; keeping systems as uncomplicated as possible, and minimizing the effort involved for both members of the public and government bodies.

Building in Privacy Safeguards

It was a very significant year on the legislative front: the *Social Assistance Reform Act (Bill 142)* demonstrated how technological advances can be used to protect privacy, while the introduction of a draft bill by the Ministry of Health will lead to greater protection of personal health information throughout the province.

Once the Ontario Government decided that some form of biometric identification was necessary in order to combat "double-dipping" (the impersonation of different identities to fraudulently obtain multiple benefits), the IPC was asked for its assistance to ensure that the privacy of social assistance applicants would not be compromised. We worked closely with the Ministry of Community and Social Services in building a broad set of protections into *Bill 142*. This set the stage for legislation that is unprecedented with respect to the scope of privacy

protection relating to the administrative use of a biometric — creating a standard higher than found in other jurisdictions.

Identifiable biometrics such as full-image fingerprints, represent a powerful, unique identifier that can be used to locate and track individuals. The central retention of such fingerprints and multiple access by different arms of government evokes images of “Big Brother” surveillance. However, an “encrypted” or coded biometric — with a series of stringent safeguards — is as different from an identifiable biometric as a locked door is from a wide open one.

An identifiable biometric can be used as a unique identifier to link disparate pieces of personal information about an individual, creating the potential for the creation of a detailed personal profile. But the *Social Assistance Reform Act* does not permit the use of identifiable biometrics — it requires that the biometric be encrypted, which, coupled with extensive legislative and procedural controls, enhances privacy. For example, an encrypted biometric finger scan can be used for the purpose of preventing double-dipping, but cannot be used to function as a unique identifier, capable of facilitating linkages to other biometric information or other databases containing personal information. Extensive legislative safeguards restricting access to and use of the encrypted biometric are not only required but have been built into the statute, making this *Act* truly unique in the level of protections required.

Turning to other legislation, we welcome the overall thrust of the draft health information protection legislation released for consultation in late 1997. Having called for such legislation for 10 years now, we hope to see a revised version move forward quickly, and have made a submission to the Ministry of Health on how the draft bill could be enhanced.

Public Awareness

We released more than a dozen papers and *Practices* in 1997, while continuing to use our Outreach program, extensive media interviews,

and our Web site (www.ipc.on.ca) to heighten awareness of privacy and access issues. Our paper entitled, *Identity Theft: Who's Using Your Name?*, released in June of 1997, attracted considerable attention. It looked at the factors contributing to the growth of identity theft, where an imposter assumes your identity by acquiring key pieces of information about you, thereby enabling him or her to pretend to be you. The paper also included a number of practical tips to assist the public in protecting their personal information and avoiding becoming an easy target.

Among the other papers we released was one that provided crucial information to government offices at a time when government functions are increasingly being transferred to the private sector. To help preserve access and privacy rights, the IPC developed a template for contracts that are drawn up when a government institution transfers some of its functions to a non-government entity. This report, called *A Model Access and Privacy Agreement*, is designed to assist government institutions contemplating alternative service delivery options. The template in the report can be adapted to form part of the overall contract or agreement between a government institution and a private sector company.

Access Requests & Appeals

Combined provincial and municipal statistics show that in 1997, 42.9% of access requests led to the release of all the information sought, while another 22.9% led to partial disclosure. A total of 20,578 access requests were made in 1997. The IPC received 711 appeals in 1997.

Access and Privacy Issues

The IPC has been working with the Ministry of Transportation and the Ontario Transportation Capital Corporation (OTCC), the Crown agency created to develop Highway 407, to ensure

that the users of this electronic toll highway (the first in Canada) would be given the opportunity to make a choice as to the manner in which they travelled this highway — anonymously or in an identifiable manner. I am delighted that the OTCC has introduced a completely anonymous account option for Highway 407 travellers — another first!

Among the key privacy issues I raised in presentations in 1997 was how technology could be used as an enabling tool, to *enhance* privacy, not detract from it. In particular, *encryption* (remember that word) has become key to protecting privacy online. The importance of encryption will escalate dramatically as the use of the Internet (Net) grows tenfold, and the demand for privacy multiplies in turn.

We have also been working with provincial and municipal information and privacy co-ordinators as well as Management Board Secretariat to identify ways in which the Net could be used to enhance access to information. Electronic access to government records may be the way of the future. We're keeping close track of this.

In Praise of Commitment and Dedication

A diverse group of people who genuinely care about access and privacy issues have made major contributions to this field. I would like to thank my predecessor, Tom Wright, for his many contributions over the years. Thank you Tom! I would also like to personally thank a number of other important people for their commitment, dedication, customer service and for continuing to uphold the public's rights of access to government information and protection of personal information. My thanks to each and every talented member of the IPC team, the access and privacy section at Management Board Secretariat, and the information and privacy co-ordinators in all government organizations. It is only through your hard work and ongoing efforts that these rights will continue to be advanced.

Ann Cavoukian, Ph.D.

Information and Privacy Commissioner

FIPPA at 10

Looking Back: Reflections on the First 10 Years

The 10th anniversary of the implementation of the *Freedom of Information and Protection of Privacy Act* in Ontario provides an appropriate occasion for reflection on the impact that the *Act* has had over these years. Since the legislation (which came into effect on January 1, 1988) encompasses two important values, that of access to government information and the protection of personal information, any assessment must recognize this duality. (The *Municipal Freedom of Information and Protection of Privacy Act* came into effect January 1, 1991.)

Overall, the access side of the legislation has resulted in the opening of more government filing cabinets to public scrutiny. The three main objectives of freedom of information legislation are to create openness in government, strengthen government accountability, and provide an opportunity for public participation. Progress has been made towards all three objectives. It is generally recognized that the public's legal right to government information is now an embedded feature of modern democracies.

As we increasingly move from paper to electronic forms of communication, more opportunities are being seized to permit simultaneous access to government information by many, rather than one individual at a time.

On the privacy side, the *Act's* incorporation of fair information practices, which are universally recognized as the standard to be met for the protection of personal information, was farsighted. There are now very few jurisdictions in Canada or in other advanced countries that do not subscribe to these practices in some form.

Over the last 10 years, the issue of privacy has become more relevant to the public, with the spread of information technologies that not only provide potentially greater access to government information, but can also be privacy intrusive. Governments have responded to these public concerns in different

ways — in Ontario, with proposals to introduce legislation that would protect health care information, and federally, protecting personal information that is collected by the private sector.

The First 10 Years 1988–1997

Totals	Provincial	Total*
Requests Filed	89,465	157,150
Appeals Completed	5,459	9,066
Orders Issued	1,592	2,652
Investigations Completed	936	1,530

* Total includes municipal statistics

The Office of the Information and Privacy Commissioner/Ontario (IPC) has also changed and evolved in response to the changing environment. Starting with the premise that organizations must continuously improve to meet customer needs, the IPC has reviewed its own operating procedures so that it can more effectively fulfill its various mandates.

Effectiveness of the legislation is to a considerable extent dependent on public awareness. The IPC has actively pursued a broad outreach program that encompasses speaking engagements, media interviews, university lectures, workshops, and publication of brochures and papers relating to the *Act*. To further its outreach mandate, the IPC has created its own Web site, where access is provided to its orders, policy papers and other outreach material.

Another function of the IPC is to provide advice to government, which the IPC has done on a range of proposed legislation and programs. The IPC routinely monitors proposed legislation and provides comments to lawmakers on issues that may impact on the operation of the *Act*. Advice is often sought by government policy makers on issues relating to the *Act*, particularly with respect to programs that have a privacy component.

Over the years, the IPC has sought to keep the public aware of privacy and access issues while keeping pace with changing legislative and government priorities.

Role and Mandate

Ontario's *Freedom of Information and Protection of Privacy Act*, which came into effect on January 1, 1988, established an independent oversight agency — the Office of the Information and Privacy Commissioner (IPC). The Information and Privacy Commissioner is appointed by and reports to the Legislative Assembly of Ontario. Therefore, the Commissioner is independent of the government of the day in order to ensure impartiality.

The *Municipal Freedom of Information and Protection of Privacy Act*, which came into effect January 1, 1991, broadened the number of public institutions covered by Ontario's access and privacy legislation.

The IPC plays a crucial role under the two *Acts*. Together, the *Acts* establish a system for public access to government information, with limited exemptions, and for protecting personal information held by government organizations at the provincial or municipal level.

The provincial *Act* applies to all provincial ministries and most provincial agencies, boards and commissions; 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; 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 and holding elected and appointed officials accountable to the people they serve.

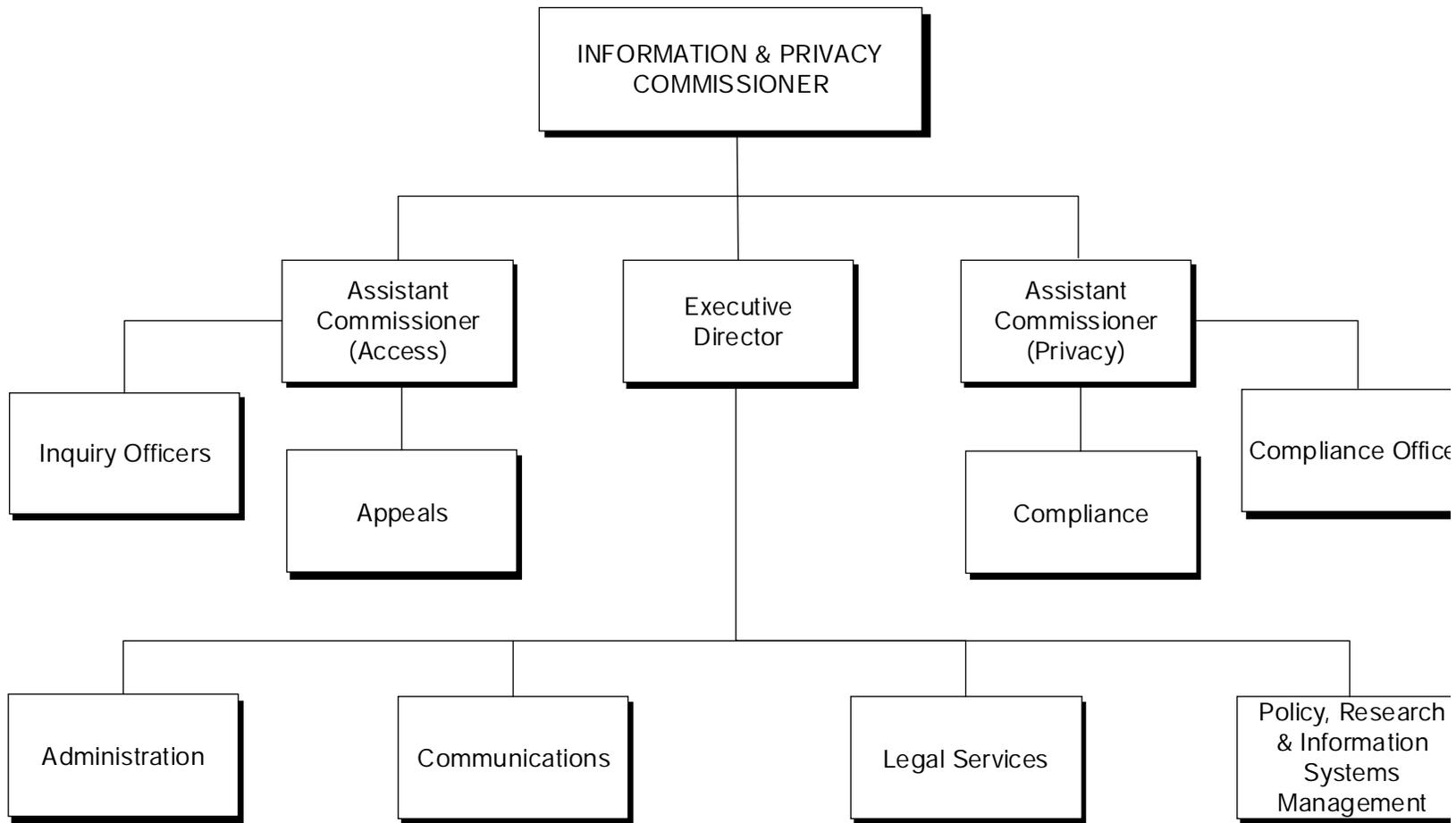
Privacy protection, on the other hand, refers to the safeguarding of personal information — that is,

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 have it corrected if necessary.

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 has five key roles:

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

In accordance with the legislation, the Commissioner delegated some of the decision-making powers to staff. The Assistant Commissioner (Access) and six Inquiry Officers were given the authority to issue orders resolving appeals. The Assistant Commissioner (Privacy) investigated privacy complaints, reviewed government practices, approved applications for indirect collection of personal information and commented on inter-ministry computer matches proposed by the provincial government.



Requests Made

Provincial and municipal government organizations file a yearly report to 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 the response by these organizations to the requests. By compiling these reports, the IPC gains a useful picture of compliance with the *Acts*.

In 1997, provincial government organizations received a total of 9,283 requests for information, 23 more than the previous year's 9,260. Municipal government organizations received a total of 11,295 requests, down marginally from the 11,528 requests received in 1996.

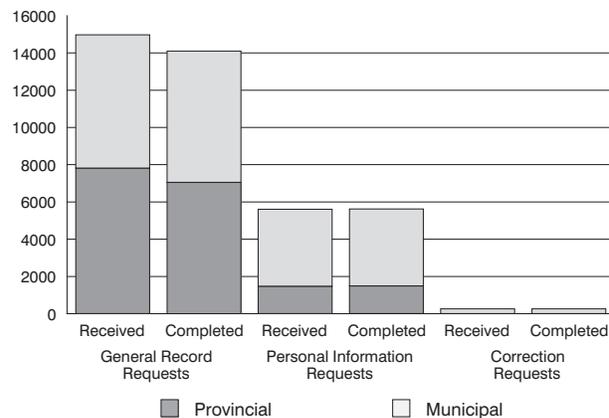
Requests for access to general records outnumbered requests for access to personal information by almost three to one. The proportions differed for provincial and municipal organizations, with general records requests outnumbering personal information requests by slightly more than five to one for provincial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

Once again, the majority of requests received by both the provincial and municipal organizations were completed by year-end. Only slightly more than 5% of requests were carried over to 1998.

The Ministry of Environment and Energy again reported the highest number of requests received under the provincial *Act*, followed by the Ministry of the Solicitor General and Correctional Services, the Ministry of Labour and the Ministry of Health. Together, these four Ministries accounted for 75% of all provincial requests.

Under the municipal *Act*, police services boards received 49% of total requests. Municipal corporations (including municipal governments) were next with 34%, followed by public utilities with 7.5% and school boards with 6%.

Requests Received and Completed – 1997



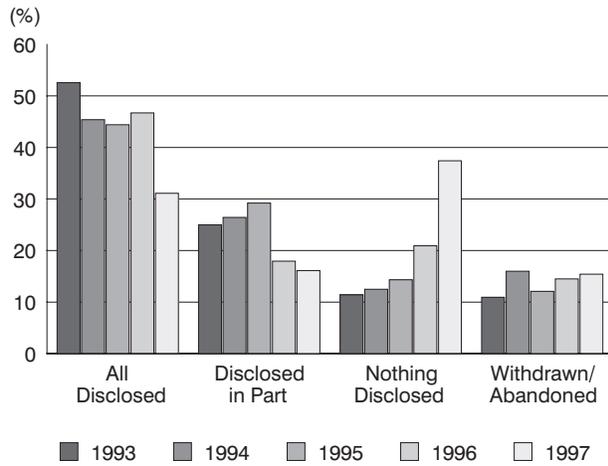
In all, 47% of provincial requests were answered within 30 days in 1997. Overall, 80% of provincial requests were completed within 60 days, while only 5.5% took more than 120 days.

Municipal government organizations responded to 87% of requests within 30 days in 1997. This was the seventh consecutive year at virtually the same high level. Overall, 96% of municipal requests in 1997 were answered within 60 days, with less than 1% taking more than 120 days to complete.

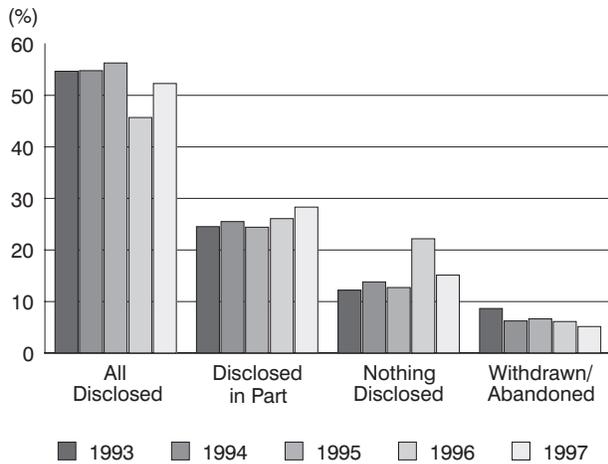
As to outcomes, 31% of provincial requests completed in 1997 led to the release of all information sought. For municipal requests, 52% of requests led to full disclosure. Looking at all requests, in only one in four cases was no information released.

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 1997, this pattern did not change.

Outcome of Provincial Requests – 1993-1997

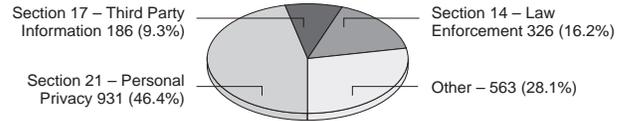


Outcome of Municipal Requests – 1993-1997



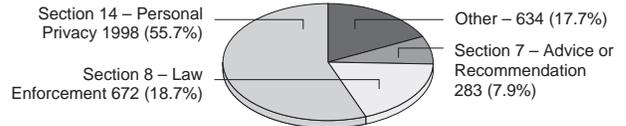
Provincial Exemptions Used

General Records – 1997



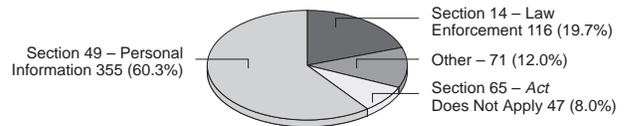
Municipal Exemptions Used

General Records – 1997



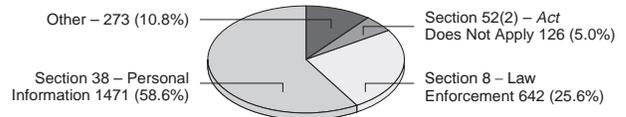
Provincial Exemptions Used

Personal Information – 1997



Municipal Exemptions Used

Personal Information – 1997



Under the legislation, individuals have the right to request correction of their personal information held by government. In 1997, provincial organizations received six requests for corrections and refused two. Municipal organizations received 254 correction requests and refused six. When a correction is refused, the requester may attach a statement of disagreement to the record, outlining why the information is believed to be incorrect. This year, two provincial and five municipal statements of disagreement were filed.

In addition to application fees, the legislation permits government organizations to charge additional fees for providing access to information

under certain conditions. Where the expected charge is over \$25, a fee estimate must be provided before filling the request. Organizations have discretion to waive payment where it seems fair and equitable to do so after weighing several specific factors.

Provincial institutions reported collecting \$43,605 in application fees while municipal institutions reported receiving \$44,781.

Provincial organizations most often cited search time as the reason for collecting fees. Search time costs were mentioned in 51% of cases where fees were collected, followed by reproduction costs in 28% and shipping costs in 9%. Municipal organizations cited reproduction costs in 45% of cases, search time in 27% and preparation in 21%.

Cases in Which Fees were Estimated – 1997				
	Provincial		Municipal	
Collected in Full	92.3%	3,639	58.6%	1,877
Waived in Part	0.9%	37	1.9%	61
Waived in Full	6.8%	267	39.5%	1,263
Total Application Fees Collected		\$43,605.00		\$44,781.00
Total Additional Fees Collected		\$86,319.00		\$78,276.00
Total Fees Waived		\$11,158.00		\$7,407.00

IPC Appeals Application Fees Collected – 1997	
General Records	\$9,182
Personal Information	\$2,580

Resolving Appeals

The right of appeal is a key feature of Ontario's access and privacy system. If individuals make a request under the *Acts* for information from government organizations and are not satisfied with the response they are given, they can appeal the decision to the IPC. Appeals can be filed concerning a refusal to provide access to general records or personal information, a refusal to correct personal information, the charging of fees, or other procedural aspects relating to a request.

When an appeal is filed, the IPC attempts to settle the appeal through mediation. However, if the issues in an appeal are not settled within a reasonable period of time, the IPC may conduct an inquiry and issue a binding order to resolve the appeal.

Looking Ahead

One of our most exciting and challenging projects was initiated in the latter part of the year. The IPC undertook a comprehensive review of our two tribunal program areas: access to information appeals, and privacy complaint investigations — the first in 10 years. Our goal was to retain the parts of these processes that were working well, while looking for creative ways of improving others. We were committed to fully utilizing the process tools provided in the *Acts*, as well as the suggestions for changes to the broader agency sector emerging from the government's Agency Reform Commission.

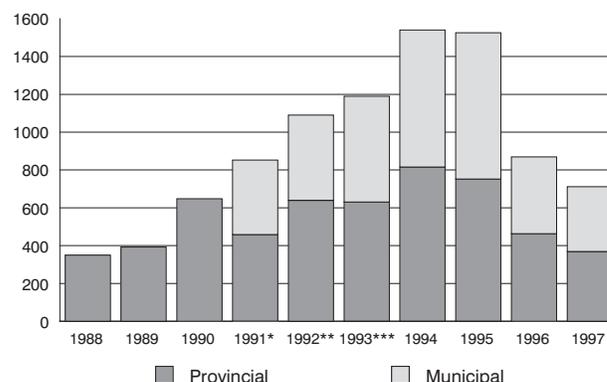
The review included the development of corporate values that will guide our actions, services, decisions and work relationships. As well, a number of broad goals were identified, together with a set of specific objectives to help us achieve them. The overall emphasis was on ensuring that our tribunal services establish the proper balance between quality, timeliness, fairness, flexibility and client responsiveness. As a result of our review, one integrated Tribunal Services Department has now been formed, amalgamating the former appeals and compliance departments.

Our work during 1998 will focus on implementing a comprehensive program of process changes that are necessary to meet our goals and objectives.

Statistical Trends

In all, 711 appeals were made to the IPC in 1997 — down 18% from the previous year. More than half of the appeals were lodged under the provincial *Act*. In all but one previous year — 1995 — the number of provincial appeals exceeded the number of municipal appeals.

Appeals Received – 1988-1997



* 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

Provincial appeals were down 21% from 1996. 80% of provincial appeals involved ministries rather than agencies, a proportion that is similar to that of previous years.

Municipal appeals were down 16% in 1997. The largest segment — 47% — concerned municipal corporations, followed by police services boards and boards of education. This breakdown is similar to that of previous years.

About one-third of all appeals involved a request for general records, while about 24% concerned a request for personal information. About 35% involved a request for both general records and personal information. As was the case in previous

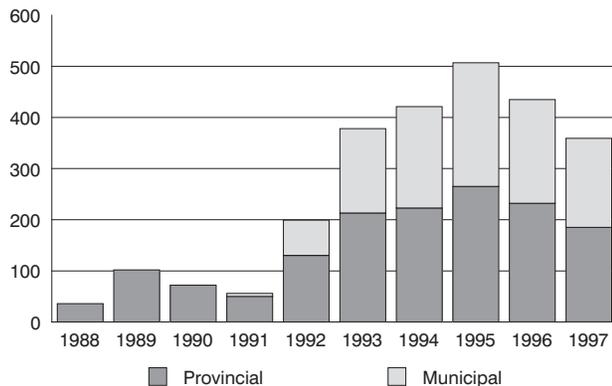
years, there were few appeals in other categories such as fee estimates and objections by third parties to the disclosure of information.

The IPC closed a total of 748 appeals during 1997 — a decrease of 31% in comparison to 1996. As was the case in previous years, slightly more than half (383) of the appeals resolved in 1997 concerned provincial government organizations. 49% (365) of the appeals closed concerned municipal institutions. Municipal appeals closed were down 29%, while provincial appeals closed were down 32% over 1996 levels.

Of the cases closed in 1997, the IPC resolved 51% by issuing an order. Although the number of appeals closed by order was down 15%, the relative proportion of appeals closed by order was up 9% from 1996. 49% of provincial and 54% of municipal appeals were closed by order this year.

During 1997, the IPC issued a total of 359 orders — a 17% 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.) 52% of the 1997 orders concerned provincial government organizations.

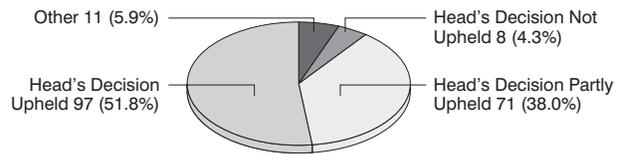
Orders Issued – 1988-1997



In appeals resolved by order, the decision of the head of the government organization involved was more likely to be fully upheld than partly upheld or not upheld. The decision of the head was fully upheld in about 58% of orders, up from 1996 when 49% of orders fully upheld the decision of the head.

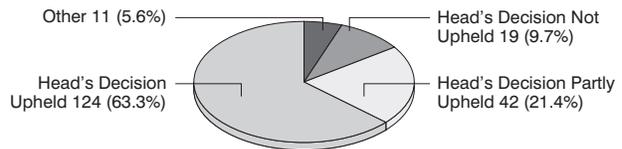
Outcome of Appeals Closed by Order

Provincial – 1997



Outcome of Appeals Closed by Order

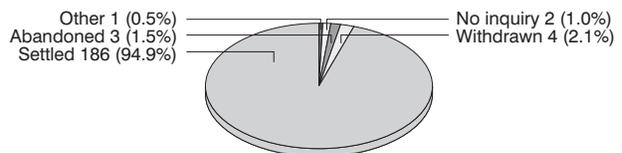
Municipal – 1997



A mediated settlement occurred in 46% of all appeals resolved by any means this year, down 7% from the previous year. Of the appeals closed by means other than order, 95% were settled, 3% were withdrawn and 1% abandoned. An additional 1% of appeals were dismissed without an inquiry.

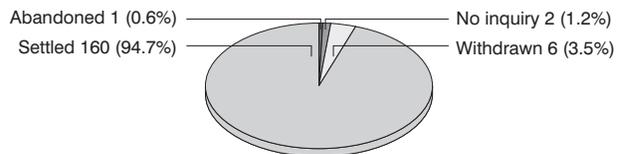
Outcome of Appeals Closed Other Than by Order

Provincial – 1997



Outcome of Appeals Closed Other Than by Order

Municipal – 1997



Reconsiderations

While the decisions made by the IPC after an inquiry are final, under certain limited circumstances the IPC may reconsider a decision. Although decisions were reconsidered in the past, in 1997, for the first time, the IPC began to track and report statistics in relation to reconsiderations. During 1997, the IPC received 34 requests to reconsider decisions. Thirty reconsideration requests were dealt with during the year. Of these 30 requests, 18 were declined on the basis that insufficient grounds for the reconsideration had been raised, 3 were declined after receiving representations from interested parties, and nine were allowed. Eight of the nine reconsiderations that were allowed resulted in a change to the original decision.

Highlights of Orders

The orders issued by the IPC in 1997 dealt with a range of significant issues. These included:

Potential Threat Considered

The Ministry of Health received a request for access to Ontario abortion statistics for 1994. The Ministry granted access to all responsive records but denied access to a two-page document listing hospitals and clinics providing abortion services and the number of abortions they performed in 1994. The Ministry cited section 14(1)(e) of the provincial Act (the disclosure could “reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.”)

The Ministry submitted that if the record was disclosed, it would be in the public domain and thus available to all individuals and groups supporting the pro-life movement, including those who might utilize acts of vandalism and property damage to promote their cause. The Ministry did not dispute that all of the clinics and some of the hospitals listed in the record were known to provide abortion services but argued that the disclosure of the number

of abortions performed at these facilities could escalate the harassment and violence directed against them.

The Ministry pointed to specific actions that had occurred over the past several years involving staff at these facilities and submitted that the more information made available, the more likely specific individuals or facilities would be targeted.

The appellant submitted that abortion clinics advertised their services in telephone directories and it was commonly and publicly known which hospitals perform abortion services. The appellant submitted that the mere knowledge of the number of procedures performed did not increase any “risk” that may already have existed. Furthermore, that up to the time of her request, her organization had routinely received comparable information from the Ministry.

The IPC found that the exemption applied. The Ministry had provided sufficient evidence to establish that the disclosure of the record could reasonably be expected to endanger the life or physical safety of individuals associated with the abortion facilities. The information in the records would be potentially available to individuals and groups involved in the pro-life movement who might elect to use acts of harassment and violence. Although acknowledging that similar information had been previously disclosed, the IPC accepted the Ministry’s position that the more abortion-related information made available, such as the numbers associated with each facility, the more likely that specific individuals would be targeted. (Order P-1499)

Limits Placed on Exclusionary Provision

The Corporation of the Town of Oakville received a request for access to two reports. It released one but denied access to a report of an operational review of the Town’s Public Works — prepared by consultants retained by the Town — claiming that it fell within section 52(3)3 of the municipal Act and therefore was outside the scope of the legislation. The Town also claimed that even if section 52(3)3 did not apply, a number of exemptions did.

Section 52(3) places various categories of records concerning labour relations and employment-related matters outside the IPC's jurisdiction. For the report to fall within the scope of 52(3)3, the Town had to establish that it (1) had been collected, prepared, maintained or used by the Town or on its behalf; and (2) this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and (3) these meetings, consultations, discussions or communications were about labour relations or employment-related matters in which the Town has an interest.

The Town submitted that the report had been prepared on its behalf, by consultants retained to conduct an operational review and to provide advice about its Public Works Department in the areas of strategic operational planning, structure and staffing levels of the operational units and the efficiency and effectiveness of the operation. The Town also stated that the consultants' report had been prepared to assist the council in its discussions about the Public Works Department. The Town submitted that the report focused on the staffing levels and staff functions and, therefore, was directly related to labour relations and employment-related matters in which the Town has an interest.

The IPC found that the report had been prepared on behalf of the Town by the consultants and that its preparation and use had been directly connected to council meetings, discussions or communications and therefore was "in relation to" them. The IPC concluded, however, that while the report included suggestions for the elimination of certain positions and the creation of others, it was primarily an organizational review of the department, containing summaries of management and employee concerns and department goals.

The IPC found that the report was therefore more appropriately characterized as relating to the "efficiency and effectiveness of the operation" than to labour-relations or employment-related matters. Thus, the third requirement had not been met and section 52(3)3 of the *Act* did not apply.

The IPC proceeded to determine if any of the Town's claimed exemptions applied. They did not, and the Town was ordered to release the record. (Order M-941)

Public Access to Electronic Records

Management Board Secretariat (MBS) received a request for the Revised Statutes of Ontario (RSO's), and the Revised Regulations of Ontario (RRO's), or any portions thereof, that were available in electronic format. The appellant also requested the most up-to-date consolidations where statutes had been consolidated with amendments made subsequent to the 1990 RSO's and RRO's.

MBS denied access based on section 22(a), "the record or the information contained in the record has been published or is currently available to the public." In its submissions, MBS stated that on the date of the request, the Statutes of Ontario in diskette form consolidated to 1994 had been published and available to the public through Publications Ontario and that as of September 1995, the Statutes of Ontario in CD-ROM format were also available to the public through this source. With respect to the regulations, some regulations relating to four statutes existed in electronic format at the time of the request and were also available.

However, after the Ministry submitted its representations, the consolidated versions of both the statutes and regulations were made available on CD-ROM. The statutes were current to December 31, 1995, and the regulations were current to at least September 30, 1994. MBS also advised that both the statutes and the regulations were also available on the Net.

The IPC was of the view that in order to give effect to the purposes of the *Act*, it is essential that all relevant facts and developments that arise *prior to the date of an order* be considered. Taking into account the more recent developments, the IPC was satisfied that the RSO's and the RRO's were available through a regularized system of access in both print and electronic format through Publications Ontario. If the appellant were to purchase the CD-ROM, he would obtain access to the information he sought, and in addition, access was also available at no direct cost via the Net. Therefore, the IPC found that section 22(a) applied.

In a postscript to this Order, the IPC took note of the rapid transition of government information

from paper to an electronic format and offered some principles to consider in the development of an information policy framework, including the encouragement of the widest possible dissemination of government information by making it available either free of charge or at marginal cost. (Order P-1387)

Compelling Public Interest

On the evening of September 4, 1995, a group of aboriginal protesters began to occupy Ipperwash Provincial Park, claiming that the Park lands contained an aboriginal burial site. Two nights later, a shooting incident occurred, involving some of the occupiers and the Ontario Provincial Police. One person died and two others were injured.

The occupation of the Park resulted in meetings of the Emergency Planning for Aboriginal Issues Interministerial Committee (the Committee). The appellant, a member of a news organization, made a request to the Ontario Native Affairs Secretariat (ONAS) for the minutes of the Committee's meeting at Ipperwash Provincial Park on September 5.

ONAS denied access to the record based on a number of exemptions under the provincial *Act*, including advice or recommendations, section 13(1), and solicitor-client privilege, section 19. Section 19 consists of two branches that provide a head with the discretion to refuse to disclose a record that is subject to the common law solicitor-client privilege (branch 1) and a record that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (branch 2).

The IPC found that the record reflected oral communications between the individuals in attendance at the September meeting and that the communications reflected were of a confidential nature. It was the IPC's view, however, that not all communications during the meeting were between a client and a legal advisor. Further, although one of the purposes of the meeting was to obtain legal advice, there was a broader purpose involving: information sharing, general discussion of actions that might be taken to resolve the issues presented by the Park's

occupation, formulation of recommendations, etc. Therefore, the IPC found that branch 1 of the section 19 exemption applied to only some of the information in the record. (The IPC also found that branch 2 did not apply.)

The IPC found that section 13(1) of the *Act* (the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution...) applied to certain portions of the record. However, section 23 provides for a "public interest" override of an exemption in section 13 "where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption."

The appellant provided a sample of the news coverage on the long-standing controversy concerning the Native land claim to and occupation of the Park. He submitted that it was imperative that the public know both the information that was in the hands of the institution prior to the Ontario Provincial Police actions and the credibility of public statements made on behalf of the government concerning its role in and knowledge of those subsequent actions.

ONAS submitted that even if it were found that there was a compelling public interest in knowing the events that resulted in the death of the individual during the occupation, any allegations of wrongdoings of government officials in relation to the occupation would be addressed in the upcoming criminal trials and civil suit lodged by the family of the deceased. ONAS argued that these were the appropriate forums for such issues. ONAS further submitted that government employees need to be able to provide advice and recommendations freely.

The IPC considered the circumstances of the appeal: the death of a person at the hands of police in a land-claims dispute; extensive discussions in the Legislature concerning the government's role; and the comprehensive reporting of events in the media. The IPC found that a compelling public interest in disclosure did exist. In balancing the compelling public interest and the purpose of the exemption in section 13(1), the IPC found that the public interest clearly outweighed the purpose of the exemption. (Order P-1363; see also Order P-1409)

Successful Mediation Stories

Detailed Index a Key in Complex Case

The appellant requested a number of records related to a fire in the City of Hamilton. The City disclosed several records but denied disclosure to approximately 40 others, claiming that their disclosure would either constitute an unjustified invasion of personal privacy or be subject to solicitor-client privilege.

The City prepared an excellent index of the records, which allowed the Appeals Officer, the City, and the appellant to discuss the validity of the exemptions claimed. As a result of mediation, there were only nine records at issue when the Notice of Inquiry was issued. Subsequent to the Notice of Inquiry, the City further agreed to release additional records for which it had claimed the solicitor-client privilege exemption and the appellant agreed not to contest the City's decision not to disclose certain information in the records on the basis that it would constitute an unjustified invasion of personal privacy. On this basis, the appeal was settled without the necessity of an order being issued.

Suggestion Led to Resolution

A corporate appellant submitted a request to the Ministry of Consumer and Commercial Relations for information about underground storage tanks in Ontario. The Ministry denied access under section 22(a) (information published or available outside the *Act*) and stated that the information was available on a record-by-record basis.

The appellant advised the Appeals Officer that the information had been previously provided to it on a regular basis. At the Appeals Officer's suggestion — to try to obtain details as to what had previously been released — the appellant located some dated correspondence between the Ministry and another corporate requester that had subse-

quently become part of the appellant's company. The Appeals Officer forwarded copies of this correspondence to the Ministry, which helped it to determine precisely what information had been disclosed to the previous corporate requester on a regular basis.

Once this was clarified, the Ministry agreed to provide the same information to the appellant and to work directly with the appellant to come to an agreement on format, fees and other details.

Detailed Letter Helps Settlement

The Ministry of Health received a request for any and all records pertaining to the requester and held at any office under the Ministry's authority, which might be located in any file and/or database under the Ministry's control. The Ministry asked the requester to clarify his request and to provide details of the types of records he wished the Ministry to search for. The requester appealed this.

During mediation, the Ministry agreed to provide the appellant with its most recent organizational chart outlining all of its program areas and with the Ministry's section of the Provincial Directory of Records, listing its program areas and their respective personal and general information databanks.

After reviewing the information provided, the appellant agreed to narrow the scope of his request to several program areas and Ministry databanks, as well as specific time frames. In turn, the Ministry conducted all the relevant searches and later issued its decision granting access to all responsive records, with minor severances.

The decision specifically outlined the results of the searches and detailed information to help the appellant interpret the responsive records. In addition, the Ministry explained that the severed information was deemed to be not responsive to the appellant's request, and that even if it had been found to be responsive, it would have qualified for exemption under the *Act*. The appellant was satisfied with the new decision.

Fee Options Led to Settlement

The Ministry of Community and Social Services received a request for certain records relating to a named daycare operation. The Ministry issued a fee estimate in the amount of approximately \$450 and requested a deposit of 50% prior to processing the request. In its decision, the Ministry also indicated that some exemptions under the provincial *Act* might apply to the requested records.

During mediation, the appellant agreed to provide the Ministry with additional information about the records she was seeking. She also requested that the Ministry waive the fees associated with her request.

The Ministry noted that instead of narrowing the scope of her original request, the appellant had expanded it. The Ministry issued its revised fee estimate, denying the appellant's request for a fee waiver. The revised fee estimate, however, provided the appellant with two options: 1) the Ministry would search for all records as outlined in the appellant's revised request, which amounted to a fee estimate of almost \$600, or 2) the Ministry would search only for those documents which the appellant would not have previously received through other means and the reduced fee would be approximately \$45. The appellant agreed to narrow the scope of her request as proposed by the Ministry and paid the lower fee.

Co-operation Key to Settlement

The Ministry of Community and Social Services received a multi-part request from a newspaper reporter for information relating to the Ontario Works program. The Ministry granted partial access to records it identified as responsive, claiming a number of exemptions under the provincial *Act*, including 13(1) (advice or recommendations of a public servant) and 17(1) (third party information) to deny access to the remainder.

The appellant believed that additional records existed that responded to the request; that the Ministry had not fully responded to all parts of the request; and that a public interest existed in the disclosure of the information at issue.

During mediation, the issues of whether all parts of the request had been responded to and whether more records existed were resolved. The appellant further narrowed the scope of the records at issue. The Ministry, with the affected parties' consent, withdrew the section 17(1) exemption and disclosed the relevant severance to the appellant.

Although it was agreed that the section 13(1) exemption had been properly applied to the remaining information, the Ministry was encouraged by the Appeals Officer to exercise its discretion and consider disclosure, which it did.

Letter Led to Agreement

The Ministry of Health received a request for both the final and draft audit reports respecting a named ambulance service. The Ministry granted access to the final audit report but denied access to the draft audit report pursuant to section 13(1) (advice or recommendations of a public servant) under the provincial *Act*.

The Appeals Officer pointed out that the parts of the draft audit report that contained advice or recommendations had already been disclosed in the final audit report. She also pointed out that, except for the wording of one sentence, two handwritten notations, and the deletion of two words, the changes made to the final report were factual in nature.

The Appeals Officer asked the Ministry to reconsider its decision to deny access to the record. The Ministry did so and granted access to the entire draft audit report, despite the potentially valid exemption claim.

Safeguarding 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 a provincial or municipal government 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.

The IPC may also decide to study an organization's procedures if a problem comes to light during an appeal proceeding on an access to information request. The IPC also helps ensure adherence to the legislation by conducting compliance reviews of selected organizations' information management practices. In addition, the IPC comments on the privacy aspects of computer matching proposals by government organizations.

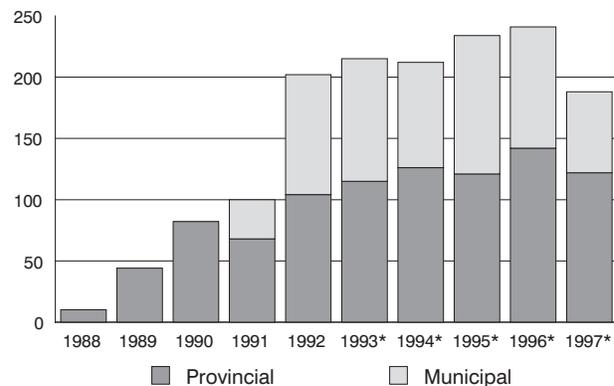
Probing Complaints

When looking into complaints, the IPC continues to emphasize mediation. More than 85% of the complaints resolved in 1997 were settled informally through mediation. The IPC

completed 188 investigations in 1997 and issued six formal investigation reports. Those reports resulted in 11 formal recommendations to government organizations. In addition, the IPC followed up on recommendations that had been made in previous years and found that all had been implemented to our satisfaction.

Of the 188 complaints, only 10.7% involved a breach of the *Acts*. Of the 241 complaints for which investigations were completed in 1996, 17.7% were found to involve a breach of the *Acts*.

Number of Privacy Investigations Completed 1988-1997



* includes 9 investigations in 1993, 11 in 1994, 11 in 1995, 19 in 1996 and 18 in 1997 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

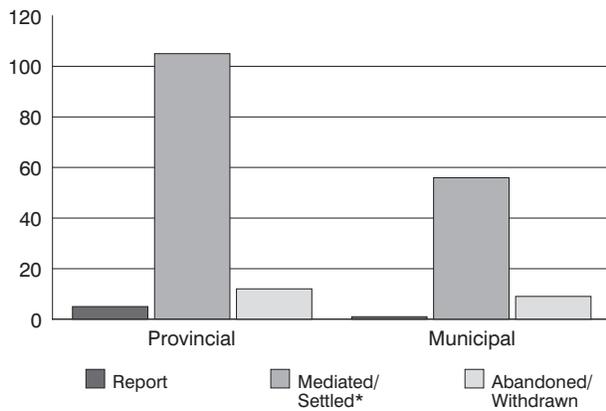
Municipal numbers appear in **bold**

* 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

Overall, nearly 63% of the privacy complaints completed in 1997 concerned the disclosure of personal information, while 27.7% related to the collection of personal information.

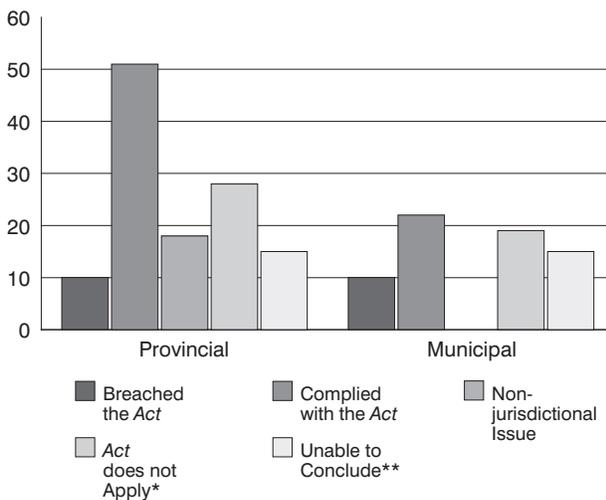
Again, the general public was the principle user of the complaints system. Of the 188 cases completed in 1997, three-quarters were complaints that had been filed by the general public. Just over 18% were filed by employees of institutions.

Privacy Investigations Completed by Type of Resolution — 1997



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

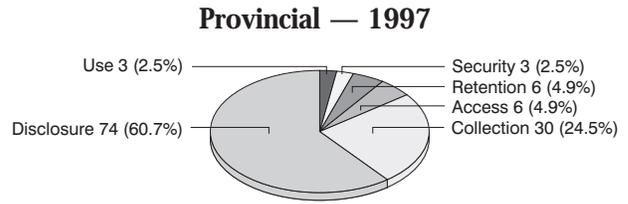
Privacy Investigations Completed by Outcome — 1997



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

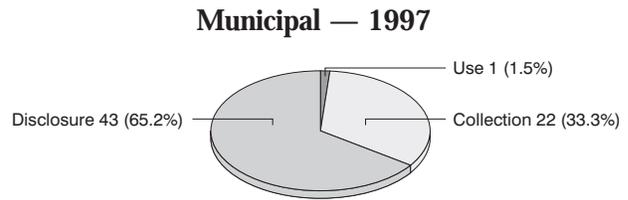
** includes eight investigations where the complainant abandoned or withdrew his or her complaint during the course of the investigation

Privacy Investigations Completed by Issue*

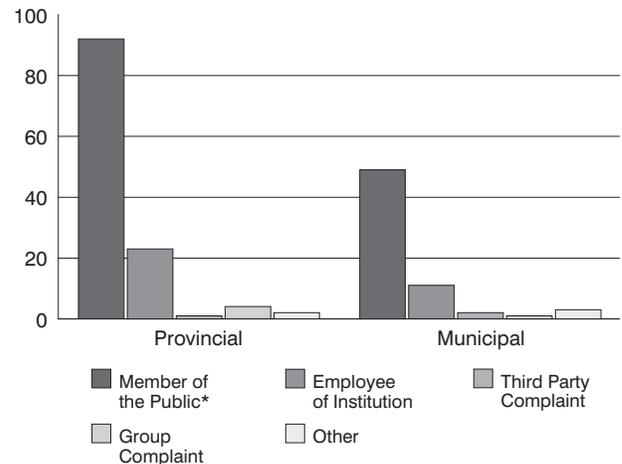


* includes 18 investigations that were discovered to involve non-jurisdictional organizations or issues during the course of the investigation

Privacy Investigations Completed by Issue



Types of Complainants Involved in Privacy Investigations — 1997



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

Oral Complaints Also Accepted

As well as investigating written requests, the IPC — in order to make itself as accessible as possible — also responds to privacy concerns or complaints communicated by telephone. In 1997, 512 oral complaints were received, an increase of 75 from 1996.

Highlights of Investigations

School Records Left In Dumpster

The IPC was advised that a number of confidential school records had blown out of a dumpster located beside an elementary school. When IPC staff met with school board officials, they were told that the school records, which were intended to be shredded, had been placed in the dumpster by error.

The IPC learned that the vice-principal, who was leaving the school, had gone into the school during the summer months to clean out her files. She had filled two boxes with old school records that required shredding. When she returned to the school on the day of the incident, she could not find one of these boxes. She thought she had noted on the missing box that its contents were to be shredded, but was not certain.

The IPC was also told that no shredding was done at the school. Instead, confidential records were placed in sealed boxes or envelopes and marked “to be shredded.” They are then transported to the board offices, where they await shredding by the shredding truck. However, there was no delivery service to the board’s offices during the summer months.

The board acknowledged that the documents in question — which the IPC determined contained personal student information — should have been shredded, and that they had been placed in the dumpster in error. Accordingly, the Board’s disclosure of the student information was not in compliance with section 32 of the *Act*.

The IPC recommended that written guidelines be developed to govern the secure destruction of personal information and that staff be made aware of security measures relating to the disposal of personal information. The board was also asked to consider either purchasing shredders for its schools or obtaining “confidential security containers” for documents intended for shredding. We also recommended that a log be maintained of all records disposed of, containing the date and manner of destruction. The board implemented all of the IPC recommendations.

Disclosures to Private Collection Agencies

In 1996, the provincial government decided that private collection agencies would take over much of the task of collecting debts owed to the government. Management Board Secretariat (MBS), in its role as the central government agency responsible for debt collection, made contractual agreements with four private-sector collection agencies.

An individual complained about the disclosure of her personal information to a private-sector collection agency. In her particular case, the funds owed by her to the Ministry of Community and Social Services (the Ministry) was the result of an overpayment of benefits.

MBS said that the disclosure of personal information was in compliance with section 42(c) of the *Act*, which states that “an institution shall not disclose personal information in its custody or under its control except for the purpose for which it was obtained or compiled or for a consistent purpose.” MBS stated that it had obtained the personal information in question from its client ministries and agencies in order to collect the debt and was disclosing the personal information to collection agencies for the same purpose.

It was the IPC’s view that the relevant purpose under section 42(c) was the purpose for which the personal information had been obtained or compiled by the Ministry. The IPC concluded that the personal information in question had been obtained or compiled by the Ministry for the purpose of administering social assistance benefits under the *General Welfare Assistance Act* and the *Family Benefits Act*. Collecting a debt in relation to an overpayment of social assistance benefits would be considered a part of the overall purpose of administering social assistance benefits. Therefore, MBS disclosed the personal information for the same purpose for which the information was obtained or compiled, in compliance with section 42(c) of the *Act*.

Ministry of Health

In a published newspaper article, a journalist reported that a special assistant to the then-Minister of Health had told her that a certain doctor, “was Ontario’s No. 1 biller, charging more to OHIP than any other doctor in the province.”

The IPC was asked by Cabinet Office to investigate the incident as well as review the practices of the Health Insurance Division with respect to its disclosure of such information.

The investigation was unable to determine conclusively exactly what the special assistant had said to the reporter. However, it was determined that he had either said that the named doctor was “the” top biller, or “one of the” top billers to OHIP. The IPC concluded that either version constituted a disclosure of the named doctor’s personal information. The investigation also concluded that the special assistant’s disclosure to the reporter was not in compliance with the *Act*.

The review resulted in a number of recommendations to the Ministry on its practices and procedures relating to OHIP information.

Reviewing Government Actions

Computer Matching Assessments

In 1997, the IPC commented on one computer matching assessment between the Ministry of Community and Social Services and the Ministry of the Solicitor General and Correctional Services. The purpose of this computer match was to identify welfare recipients who were or were about to be incarcerated, and to adjust their social services benefits accordingly. The IPC found that this activity complied with the privacy provisions of the *Act*.

Review of Security, Records Management

In November 1996, two MPPs entered the Ministry of the Attorney General’s Family Support Plan (FSP) office. As the result of the ease with which the MPPs were able to gain access to the newly consolidated office, the Ministry of the Attorney General asked the IPC to conduct an independent review of the physical security and records management practices at the facility.

The IPC concluded that although the Ministry was well aware of the sensitive nature of the personal information contained in the FSP files, this had not been conveyed well enough to those involved in setting up the consolidated office.

Five recommendations were made to the FSP addressing its contract agreement, security, staff awareness, and policies and procedures. Shortly after these recommendations were made, all five were implemented.

Assisting Organizations

The IPC reviewed the Web sites of four government organizations and recommended changes at two of these sites. The recommendations were quickly implemented. IPC staff also visited six government organizations to review their information practices and procedures. As well, a sample of the Personal Information Banks (PIB) listings from the Provincial Directory of Records published by Management Board of Cabinet was reviewed and compared against the practices actually in place at the government organizations. All these initiatives were undertaken to assist government organizations in complying with the *Acts*.

Use of Video Equipment for Security

Government organizations continue to turn to video surveillance cameras to monitor people's activities in an effort to enhance security and deter crime. During 1997, the IPC consulted with seven government organizations on their use of video surveillance cameras. These projects entailed reviewing relevant policies and procedures to ensure that the collection, use, disclosure and disposal of this personal information complied with the *Acts*. Appropriate recommendations were made to the government organizations involved.

Ensuring Privacy on Highway 407

The IPC has been working with the Ministry of Transportation and the Ontario Transportation Capital Corporation (OTCC) — the Crown agency created to assist in the development of Highway 407 — to ensure that the users of this electronic toll highway will be afforded the opportunity to travel the highway anonymously. The OTCC has introduced an anonymous transponder account option for Highway 407 users. The IPC and OTCC will be publishing a report on this significant achievement.

Judicial Reviews

During 1997, 10 new applications for judicial review were filed in relation to the Commissioner's orders, and seven cases were resolved. Of the seven, four were withdrawn, one was dismissed and two were allowed. The IPC responded to two applications for leave to appeal decisions of the Divisional Court, one of which was dismissed¹ and one of which was granted² by the Court of Appeal. Seventeen applications remained before the courts at year end.

Outstanding Judicial Reviews – 1997

Launched by

Requesters 5

Affected parties 4

Institutions 8

Total 17

Also, a judicial review of one of the Commissioner's compliance investigations, commenced by a municipal institution, remained before the courts at the end of 1997.

Disclosure to the Law Society Constitutes Waiver of Solicitor-Client Privilege

One of the cases decided in 1997 involved a lawyer who had been charged with fraud, tried and acquitted. Shortly after the acquittal, the prosecuting Crown Attorney sent documents relating to the prosecution to the Law Society of Upper Canada. The Law Society had initiated but did not pursue disciplinary proceedings against the lawyer. Subsequently, the lawyer commenced a civil action for malicious prosecution against, among others, the Royal Canadian Mounted Police.

Approximately 10 years after the acquittal, the lawyer asked the Law Society to provide him with copies of the records contained in his disciplinary file. The Law Society disclosed the records with the exception of documents received from the Ministry, because it did not have the Ministry's consent.

The lawyer then made a request to the Ministry under the provincial *Act* for access to the records given to the Law Society. The Ministry denied access on the basis that they were subject to solicitor-client privilege, and thus the exemption at section 19 of the *Act* applied. The lawyer appealed this decision to the IPC.

The IPC found that by disclosing the documents to the Law Society, the Ministry had waived privilege. Since the exemption did not apply, the IPC ordered the Ministry to disclose the records to the lawyer. The Ministry applied for judicial review.

The Ministry argued in Divisional Court that the Crown Prosecutor had a duty to disclose the records to the Law Society under the Rules of Professional Conduct, and thus the Commissioner erred in finding that privilege had been waived. In addition, the Ministry relied on section 42(g) of the provincial *Act*, which permits an institution to disclose personal information to a law enforcement agency. The Ministry argued that because the disclosure to the Law Society was made under this provision, waiver did not apply.

The court found that the Crown Prosecutor had no obligation to report to the Law Society anything that would entail a breach of solicitor-client privilege, and that by disclosing privileged records to the Law Society, the Ministry voluntarily waived privilege. The court also found that section 42(g) of the provincial *Act* did not require the disclosure of privileged information or protect the disclosure of such information from waiver of privilege. Accordingly, the court dismissed the Ministry's application.³

¹ Order P-1190

² Order P-912

³ *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.)

Court of Appeal Reverses Decision on Judge's Appointment Records

As reported in 1996's annual report, the Divisional Court upheld a decision of the IPC which found that a judge's appointment records were subject to the provincial *Act* (Order P-704). The Divisional Court agreed with the IPC that the Ministry of the Attorney General had control over the records and must retrieve them from the Judicial Appointments Advisory Committee in order to make a decision on a requester's right of access. The Ministry and an affected party were both granted leave to appeal this decision to the Ontario Court of Appeal.

The Divisional Court's judgment was reversed in 1997. The Court of Appeal agreed with the court below that the IPC must be "correct" when ruling on the question of whether particular records are subject to the *Act*. However, the higher court did *not* agree that the IPC was correct in this particular case.

It was not enough, the court said, that Committee members may have been agents of the Ministry or that the Committee's records related to the work of the Ministry. Individual Committee members were neither employees nor officers of the Ministry, and the Committee itself was set up to provide independent recommendations on the appointment of judges at arm's length from the Ministry. Since the Ministry had no contractual or statutory authority over what records the Committee created, or over their possession and disposal, it could not be said to have any property right in them either.

According to the court, in the absence of such control, the Commissioner had no authority to order the Ministry to retrieve the appointment records or to make a decision on access under the *Act*.⁴

Another Ruling on "Control" Over Records Questioned in the Courts

In another case in 1997, three requesters sought access to a freelance court reporter's "back-up" audio tapes of their hearings before the Ontario Criminal Code Review Board (OCCRB). The OCCRB, which is the body responsible for reviewing dispositions of persons detained under the *Criminal Code* as not fit to stand trial or not criminally responsible due to mental disorder, refused access on the grounds that the tapes were not in its custody or under its control within the meaning of section 10(1) of the provincial *Act*. The IPC ruled that the *Act* required the OCCRB to obtain copies of the tapes and make a decision on access (Order P-912). The OCCRB then sought judicial review of this order.

The Divisional Court held that the meaning of "control" should be resolved on the basis of the statutory framework, rather than the private contractual relations between the OCCRB and the court reporter. The OCCRB was required by the *Criminal Code* to keep a record of its proceedings and the audio tapes facilitated this obligation. The absence of specific contractual terms setting out who had control over the tapes did not assist the OCCRB because, as the Divisional Court said, it is not entitled to "contract out" of its statutory obligations. The court also rejected the court reporter's argument that the *Act* did not apply to records originating in a public proceeding.

In dismissing the judicial review, the court noted that court reporters are still entitled to charge for the preparation of a transcript of proceedings when one is required, and that the application of the *Act* to the records of other boards or tribunals will depend on the governing legislation in each case.⁵

The court reporter has been granted leave to appeal this judgment to the Ontario Court of Appeal.

⁴ *Walmsley v. Ontario (Attorney General)* (1997), 34 O.R. (3d) 611, 101 O.A.C. 140, [1997] O.J. No. 2485 (C.A.), reversing (1996), 90 O.A.C. 181, [1996] O.J. No. 996 (Div. Ct.)

⁵ *Ontario (Criminal Code Review Board) v. Ontario (Information and Privacy Commissioner)* (March 7, 1997), Toronto Doc. 283/95 (Ont. Div. Ct.), leave to appeal granted [1997] O.J. No. 4899 (C.A.)

Access & Privacy Issues

Information technologies continue to present both challenges and opportunities for access to information and privacy matters. It is therefore not surprising that in 1997, many of the IPC's policy initiatives dealt with some dimension of digital information.

IPC Policy Initiatives

Electronic Records and Managing Information

Increasingly, new information technologies are altering the way we work, live and play. For access to information and privacy, the shift from paper-based record keeping to electronic formats has meant that information is now routinely created, stored and retrieved electronically. But despite the format that a record may take, the *Acts* still apply to the information held by government institutions — this makes the sound management of recorded electronic information central to the administration of the *Acts*.

For this reason, in 1997, the IPC focussed two papers on the management of electronic information. In *Electronic Records: Maximizing Best Practices*, 18 practices for government institutions were provided.

One commonly used electronic record is electronic mail or e-mail. Sometimes overlooked as a record source, e-mail systems that are used to create, send and receive documents from computer to computer are subject to the same legal obligations, policies, rules, directives and legislation as are paper documents. Suggestions on how government institutions might best deal with e-mail system documents are discussed in the *IPC Appeals Practice #13 — Q's and A's for Managing Electronic Mail Systems*.

Geographic Information Systems (GIS)

One type of electronic information management system that has developed rapidly and extensively is Geographic Information Systems (GIS) technology. This computer system is designed to store, retrieve, and analyse geographic information such as images from aerial photographs. In Ontario, many provincial and municipal institutions are using GIS.

In the report *Geographic Information Systems*, the IPC examined how GIS is used and provided a range of example applications within and outside of government. This report probes a variety of access and privacy issues and then offers government institutions numerous supplementary access and privacy principles to consider when using or assessing GIS from the perspective of the *Acts*. In tandem with the report, two *Practices*, *GIS and Privacy*, and *GIS and Access* were also released.

Identity Theft — A Growing Societal Problem

Today's "identity thieves" are sophisticated and devious. They may lurk around bank machines to capture your PIN number or redirect your mail to their P.O. box number hoping to get credit card or bank account information. Some are "dumpster divers" who scavenge through garbage bins in search of any personal identification information that can abet their efforts to assume another person's identity. A stolen identity can cause a ruined reputation and lost credit-worthiness that may take years to correct.

The factors contributing to the crime of identity theft, as well as some of the practical ways to prevent it or deal with it once it has happened, are discussed in *Identity Theft: Who's Using Your Name?* The report suggests that organizations have an equal, if

not larger role to play than consumers when it comes to preventing identity theft — ensuring adequate protection of customer privacy can be carried out through properly designed information management systems, and proper disposal of personal data.

A Model Agreement

Today, more and more government functions are being transferred over to the private sector. To help ensure that access and privacy provisions are preserved, the IPC has developed a template for contracts that are drawn up when a government institution transfers some of its functions to a non-government entity.

The report, *A Model Access and Privacy Agreement*, has been designed to assist government institutions that are contemplating an alternative service delivery option. The template in this report can be adapted to form part of the overall contract or agreement between the government institution and contracting entity.

Advanced Cards and Privacy

The use of smart, optical and capacitive cards is now on the increase in Canada. Wallet-sized, advanced cards can store and transport vast amounts of information.

The IPC and the Advanced Card Technology Association of Canada collaborated to produce a report, *Smart, Optical and Other Advanced Cards: How to do a Privacy Assessment*. Overall, this report provides developers and marketers of advanced card technologies with the background information and tools necessary to successfully deliver, in a practical way, the principles of privacy protection. The report also provides two checklists to guide organizations through a step-by-step process for including privacy in advanced card technology applications.

Rates for Unlisted Telephone Numbers

As part of its mandate, the IPC comments on the privacy implications of emerging or existing information practices. In keeping with this mandate, the IPC provided a submission to the CRTC in October on the rates charged for unlisted number service and other privacy issues related to the publishing of telephone subscriber listings.

The IPC expressed the view that privacy should not be a commodity that is available only to those who can afford it, since current rates charged for non-published number service may be beyond the financial reach of some subscribers. The IPC urged the CRTC to require telephone companies to offer unlisted number service at no cost to telephone subscribers or, at a minimum, to offer the service at a reduced rate that more closely reflects the actual cost of providing this service.

Privacy and Positive Identification

In Toronto, a plan to tackle “double-dipping” fraud for recipients of General Welfare Assistance received approval from (the then) Metro Council in June. The plan prescribes that, after a pilot phase, social assistance recipients will be finger scanned in order to assure eligibility for benefits. Over many months of discussions with the Metro Corporate Access and Privacy Office on the specifics of the Client Identification and Benefits System, the IPC advanced the view that within a very narrow context, the use of a biometric identifier — along with encryption technology — may be used when certain procedural and technical safeguards are in place.

The IPC worked with the Ministry of Community and Social Services in building extensive privacy safeguards into *The Social Assistance Reform Act, Bill 142* — the legislation that enables the collection of the biometric information. The Ministry accepted amendments suggested by the IPC that provided for the encryption of the biometric infor-

mation in a system that does not permit reconstruction of the biometric, requires the secure maintenance of the information with restricted access, and places restrictions on its disclosure except pursuant to a court order or search warrant. These legislative provisions, coupled with procedural safeguards, provide the most extensive privacy protection in North America for biometric information held by a government organization.

On the Legislative Front

Landmark Legislation for Health Information

The draft *Personal Health Information Protection Act, 1997*, was released in November by the Ministry of Health for public consultation. The draft *Act* would establish consistent and comprehensive rules and other safeguards governing the collection, use and sharing of personal health information.

The IPC provided initial comments and, at the end of 1997, produced a formal submission to the Ministry.

Providing Input on Privacy and Access

The IPC reviews each Ontario bill for privacy and access implications. Among the other draft legisla-

tion that the IPC helped contribute to or provided comment on were the following bills: Bill 102 (*Community Safety Act, 1997*); Bill 103 (*City of Toronto Act, 1997*); Bill 104 (*Fewer School Boards Act, 1997*); Bill 107 (*Water & Sewage Improvement Act, 1997*); Bill 109 (*Local Control of Libraries Act, 1997*); Bill 139 (*Fish and Wildlife Conservation Act, 1997*); Bill 142 (*Social Assistance Reform Act, 1997*); Bill 160 (*Education Quality Improvement Act, 1997*) and Bill 164 (*Tax Credits to Create Jobs Act, 1997*).

Globally Speaking

As an invited expert on the Harmonization Working Group of the World Wide Web Consortium, the IPC participated in the development of the Platform for Privacy Preferences Project (P3P). The aim of the P3P is to address the twin goals of meeting the data privacy expectations of consumers on the Web while assuring that the medium remains viable for electronic commerce.

Elsewhere on the global scene, the International Organization for Standardization (ISO) is looking at the desirability/practicality of developing international standards relevant to the protection of privacy. An Ad Hoc Advisory Group (AHAG) was created by the ISO's Technical Management Board to conduct the actual work. The IPC has been part of a group of interested Canadian organizations that has helped the Canadian members of the AHAG bring forward Canada's views on the issue.

Public Awareness

The IPC maintains an active and ongoing public education program to fulfill its legislative mandate 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.

Helping to Educate the Public

In 1997, the IPC's outreach efforts included an extensive schedule of speaking engagements, the release of policy papers and a wide range of media interviews.

Through the IPC's Speakers' Bureau, 33 speeches were delivered by the Commissioner, Assistant Commissioners and staff. These presentations included addresses at Queen's University, York University and the University of Toronto, as well as presentations to Canada's Coalition for Public Information, the Parliamentary Committee on Human Rights, the Canadian Institute, the Canadian Payments Association, the United States Department of the Interior, the Association for Canadian Informatics in Government and Stentor.

Among the papers released by the IPC in 1997 on access and privacy issues were: *Electronic Records: Maximizing Best Practices*; *Geographic Information Systems*; *You and Your Personal Information at the Ministry of Transportation*; *Identity Theft: Who's Using Your Name?*; *Moving Information: Privacy and Security Guidelines*; *A Model Access and Privacy Agreement*; *Recent Developments in Freedom of Information and Privacy Protection Legislation - A Coast to Coast Survey*; and *Smart, Optical and Other Advanced Cards: How to do a Privacy Assessment*.

During 1997, the IPC continued to create and distribute publications to government organizations, including two new issues of *IPC Perspectives*, the newsletter that addresses issues in access and privacy.

As well, the IPC distributed more than 8,100 information documents in response to requests

from the public and government organizations. In addition, the IPC responded to 3,300 telephone calls from the public and roughly 100 calls from the media requesting information on access and privacy issues.

The IPC Online

<http://www.ipc.on.ca>

In 1997, the IPC continued to add pertinent information to its Web site, which serves as a research and information tool. The site is updated regularly and includes:

- information about the IPC's role, frequently asked questions about access and privacy, and the two most recent annual reports;
- the text of both Acts, as well as plain language summaries;
- all orders, investigation reports and judicial reviews, with subject and section number indices;
- all IPC policy papers, *IPC Practices*, and the most current *IPC Perspectives*;
- links to other sites dealing with access and privacy information.

Contributing to Training

In co-operation with Management Board Secretariat, the IPC assists Freedom of Information and Privacy co-ordinators in 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 1997, the IPC took part in 10 training sessions for co-ordinators and participated in the annual fall access and privacy workshop, providing keynote speakers and workshop facilitators.

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

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 1997.

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