

ACCESSING PERSONAL INFORMATION UNDER THE  
*FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*  
OF BRITISH COLUMBIA

by

Carol Elliott

B.S.W., University of Victoria, 1987

B.A., University of Victoria, 1988

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of the Requirements for the Degree of

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## **Supervisory Committee**

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**Supervisor**

Dr. Reg Whitaker (Department of Political Science, Faculty of Social Sciences)  
**Outside Member**

## Abstract

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Rapid advances in information technology have led to a considerable body of scholarly research focused on the evolution of the “surveillance society.” This term is used by the author to refer to governments’ increasing ability to monitor and control the actions of citizens as well as their own operations. An associated area that is rarely examined in scholarly research is the process by which citizens access their own personal information from public bodies and the barriers that they encounter when attempting to do so. It is this area which will be the focus of this thesis.

The thesis is based upon a descriptive study that involved a systematic investigation of how the political and governmental context influences the process of accessing personal information under the *Freedom of Information and Protection of Privacy Act* of British Columbia. The goal of the research is to examine factors that encourage and limit individual citizens’ ability to access their own personal information. The thesis explores issues and circumstances that lead applicants to appeal decisions, factors that facilitate and impede access, and the impacts of the request process on applicants. Recommendations for changes that may improve access as well as enhance government transparency and accountability are proposed. I approach the research from the perspective that open and accountable government is necessary in democratic society, and that, through increased public awareness and avenues for input, changes can be made which improve access to personal information and government accountability.

The research involved a content analysis of fifty-three orders by the Information and Privacy Commissioner of British Columbia and his staff. The content analysis of these documents is supplemented by statistical analysis and personal reflection. The thesis relies on concepts and theory proposed by Max Weber and Anthony Giddens to provide a viable framework for understanding both the structure and culture of government, particularly how the access to information process reflects the control and flow of information within the bureaucracy.

The research confirms that barriers to access do exist and they are not in the places that one

might expect to find them. Recommendations concerning amendments to the legislation and improvements to the processing of requests and the appeal process are suggested. However, the most crucial change necessary is for the Office of the Information and Privacy Commissioner, despite fiscal restraints, to engage in greater transparency concerning its own activities and for the role of the Commissioner to focus more on public education and advocacy, such as support for community programs that would offer free legal assistance and information concerning the public's rights under the Act, including guidance concerning how to make a request and pursue a complaint or appeal.

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Without the purveyors of truth mentioned above our world would suffer from a greater accountability deficit than it does already. Their words of wisdom concerning the research provided me with much inspiration and increased my resolve to be "part of the solution."

Where the Mind is Without Fear

Where the mind is without fear and the head is held high  
 Where knowledge is free  
 Where the world has not been broken up into fragments  
 By narrow domestic walls  
 Where words come out from the depth of truth  
 Where tireless striving stretches its arms towards perfection  
 Where the clear stream of reason has not lost its way  
 Into the dreary desert sand of dead habit  
 Where the mind is led forward by thee  
 Into ever-widening thought and action  
 Into that heaven of freedom, my Father, let my country awake.

Rabindranath Tagore, Indian poet, philosopher and Nobel laureate

## CHAPTER I: INTRODUCTION

### Introduction

Traditionally, the main roles of government are as the maker of laws and the provider of service delivery (Kernaghan & Siegel, 1995). Government is also the chief repository of information. However, the role and function of government is drastically changing as we enter the twenty-first century. Amidst a global neo-liberal economic climate, more and more countries are embracing democratic principles while at the same adopting private sector practices. As a result, governments are becoming the brokers rather than providers of information and services through such practices as downsizing, devolution and contracting out of service delivery (Kernaghan & Siegel, 1995).

Due to advances in information technology governments are able to collect, store and disseminate information more quickly and widely than ever before. Ironically, through the adoption of information management systems and highly controlled corporate communications (Roberts, 1999b; Roberts, 2004c), governments are increasing their capacity to monitor and restrict the amount of information available to the public concerning their decision making as well as reducing the number of people to which they provide services. The effect is to drastically limit the ability of citizens to scrutinize government actions and participate in government decision making and policy making.

A key premise of this study is that open and accountable government is necessary in democratic society, and that, through increased public awareness and avenues for input, changes can be made which improve access to personal information and government accountability. Access to information is considered a cornerstone of democratic government (Lor & van As, 2002; Vaughn, 2000) and is enshrined in the United Nations' *Universal Declaration of Human Rights* (1948):

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

## Purpose of Study

The objective of the research is to examine the process of accessing personal information under the *Freedom of Information and Protection of Privacy Act* of British Columbia as detailed in cases appealed to the Office of the Information and Privacy Commissioner (OIPC). The research examines issues and circumstances that lead applicants to appeal decisions, factors which facilitate and impede access, impacts (intended and unintended) of the request process on applicants, and recommend changes that may improve access as well as enhance government transparency and accountability. By the latter terms, I mean openness to public scrutiny and public evaluation of its performance of its legislated responsibilities, respectively.

The research question has been developed from my own experiences as an information and privacy analyst with the Provincial government from 1996 to 2002. I am concerned that the voices and experiences of applicants have in the past, currently and will in the future be excluded from the development of policy and procedures concerning the processing of requests. From the information gathered, I hope to develop recommendations which can be used to improve the access process, as well as foster greater government accountability and transparency of practices.

## Research Question

Specifically, the research question is: what encourages and what limits individual citizens' ability to access their own personal information?

Four sub-questions will guide my research:

1. What capacities and actions (and lack thereof) of applicants facilitate and encourage, as well as limit and hinder, their ability to access their personal information, and why and how does this occur?;
2. What capacities and actions of (and lack thereof) of government facilitate and encourage, as well as limit and hinder, individuals' access to their personal information, and why and how does this occur?;
3. What are some of the impacts (intended and unintended) on applicants? and
4. What are some ways to increase individuals' ability to access their personal information and "build in" additional supports?

## Background of Study

### Lessons Learned in Government<sup>1</sup>

As a former information and privacy analyst, I have first-hand knowledge and experience of how the provincial government fulfills its responsibilities for requests made under *FOIPPA*. By my calculations, I have processed over four hundred requests, the vast majority for personal information.

In my experience, individuals who seek their personal information under the legislation (and sometimes those individuals who seek information about others) often do not know what information the government holds about them, where it is held, and to whom to make the request. Applicants are often in crisis or stressful situations, as for example, in child custody disputes, in compensation claims for abuse as a child, in appeals of welfare benefits, and on probation or incarcerated. Applicants experience great frustration with the process, particularly when the response is delayed (as it frequently is) over the thirty working days legislated time limit, and when the government denies access to or partially withholds the requested information. Rarely do applicants complain to the Information and Privacy Commissioner, who has responsibility for the implementation and oversight of the legislation.

As part of their job duties, information and privacy analysts are legally required to contact the applicant under few sets of circumstances, as for example, if the wording of the request is unclear, or if additional information must be sought in order to process the request. They are also encouraged to close files as quickly as possible. While analysts are required to take steps to increase the chance of applicants obtaining the information requested, there is no legal obligation for an analyst to work *with* the applicant to produce a response to his/her request that involves the disclosure of information.

### The Applicants' Voices are Unheard

Applicants and public bodies alike have expressed concern regarding the request process (OIPC, 2002; OIPC, 2003; Special Committee to Review the *Freedom of Information and Protection of Privacy Act*, 1999; Special Committee to Review the *Freedom of Information and*

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<sup>1</sup>I have also learned lessons "in the field." While I was employed as a transition house support worker (from 1991 to 1996), I became aware of information and privacy issues, particularly how individuals who attempt to access their information often encounter difficulties, such as government workers not returning their phone calls and records released to them which had information blanked out. Although unaware of it at the time, I was developing an understanding of the social organization of knowledge.

*Protection of Privacy Act*, 2004). Through hundreds of conversations with applicants, other information and privacy analysts, program managers, and portfolio officers of the OIPC, I have come to believe that many more applicants than those who make complaints and appeals are dissatisfied with the way their requests are processed. For applicants, the key issues are the time delays in receiving requests, and the perception that government has inappropriately withheld some or all of the requested information (OIPC, 2002; OIPC, 2003; Special Committee to Review *FOIPPA*, 1999). For the provincial government, key practice issues are budget cutbacks and dwindling resources to respond to requests, and resulting backlogs of requests (OIPC, 2002; OIPC, 2003; Special Committee to Review *FOIPPA*, 1999; Special Committee to Review *FOIPPA*, 2004).

How information and privacy programs are managed alongside government attitudes toward information and privacy perpetuate the above-noted concerns. Administrators at the program and senior management level are mainly interested in gathering information which will help them meet their legal and fiduciary responsibilities. Annual program reviews are focused primarily on the effectiveness and efficiency of the request process and other program objectives. Information and privacy analysts and legal analysts regularly critically scrutinize orders by the Information and Privacy Commissioner for their legal significance and impact on government operations, but do not as a matter of course examine the experience of and impact on applicants.

I suggest that many requests for personal information are related to applicants' dissatisfaction with the services they receive from public bodies or not being able to participate fully in life-altering decisions concerning themselves. This frustration is compounded by the lack of responsiveness of the access process by public officials.

#### Relevance of Study

Trends and challenges facing public sector service delivery has become a main topic of research by political scientists (Doern, 1994; Johnson, 2002; Mintzberg, 1996; Wake Carroll & Siegel, 1999). Recent studies by the federal government have focused on client focused service delivery (Bent, Kernaghan & Marson, 1999; Blythe & Marson, 1999); performance improvement (Schmidt & Marson, 2006); innovation (Privy Council Office, 1997); ethics (Canadian Centre for Management Development, 2000); and accountability (Auditor General of Canada and Treasury Board Secretariat, 1998). This research will attend to broader scale political and economic factors, such as the trend toward neo-liberalism and public demands for accountability, as well as micro-sociological aspects of decision making, particularly the use of discretion by those

involved in the processing of requests for personal information. The discretion allowed and the choices made by officials at several levels are examined. An attempt will be made to examine the reasons for such decisions, although they can only be speculated upon, with reference to the larger organizational culture and structure along with societal influences.

The proposed research has both short- and long-term benefits. By examining applicants' experiences of the process and attempting to give them voice, I will attempt to challenge the "hierarchy of credibility" (Becker, 1967, p. 207) that exists within bureaucracies and between bureaucracies and the public. "Hierarchy of credibility" refers to the idea that knowledge and opinions expressed by the upper echelons of society (in this instance, government officials) are considered more valid than other viewpoints and used to exert control over subordinate groups. Becker observes, "In any system of ranked groups, participants take it as given that members of the highest group have the right to define the way things really are" (p. 207).

Inclusion of applicants' experiences in the development of policy and procedures concerning the processing of requests is especially important given the current neo-liberal political climate and attempts by Premier Campbell to further limit openness of government and reduce public scrutiny. For example, in 2002 the Provincial government implemented amendments to *FOIPPA* that extend the legislated response time to thirty working days instead of thirty calendar days and, under Section 5 (how to make a request), add a requirement that the applicant "provide sufficient detail to enable an experienced employee of the public body, with a reasonable effort, to identify the records sought." An examination of applicants' experiences will assist with providing support for public accountability: "government will act most appropriately if it knows that it will be scrutinized" (Milsum, 1993, unpagged). In the long-term, the study is intended to heighten public awareness of the process of accessing personal information and to foster more examination of government operations, which will hopefully lead to greater accountability and transparency of practices.

My personal background as a white, middle-class female who has been both "insider" (within government) and "outsider" (as a citizen) to the process studied will strongly influence how I conduct the research, including what I choose to examine, how I examine the information I gather, and the evidence that I choose to offer as support for my arguments. To bridge both worlds, I will need to remember my different roles and locations, consider administrative as well as research ethics, and be reflexive (Giddens, 1984). Government policy analysts typically use positivist research approaches, such as statistical methods and "objective" analyses of factual data. They would not usually examine the effectiveness of operations through seeking to understand applicants' experiences from their frame of reference and engaging in reflexivity. This

is another reason why the research may have value for stakeholders both internal and external to government.

### Summary of the Relevance of the Study

Accessing one's own personal information is meant to be an empowering experience, and an important method to hold decision makers accountable. Unfortunately, the access process is fraught with barriers and challenges that limit access and, ultimately, prevent citizen participation in governance and attainment of their democratic rights. Governments' interpretations of its legal responsibilities under *FOIPPA* and its unwillingness to assist applicants ultimately reflect negative and undemocratic attitudes toward openness, accountability, fairness and democracy.

Decisions concerning service delivery and the access process itself cannot be scrutinized if those who receive the services are fewer and fewer in number and their voices are remain unheard and are actively silenced through the control orientation of government. Only minute segments of the population have the necessary awareness of their access rights and sufficient resources in terms of time and money to endure months of waiting and truly exercise their legal right of access to information.

### Assumptions of the Research

I have made many assumptions regarding knowledge, access to information, bureaucracy and change. The following assumptions will guide the research, upon which I will elaborate further in the thesis:

#### Regarding knowledge and information

- Knowledge is a form of power.
- Each person is an expert concerning his/her own life.
- Systemic hierarchies of oppression (race, class, gender) influence what knowledge and information is valued; who creates and has access to the most important forms of knowledge; and how knowledge is used and managed to perpetuate oppression.

#### Regarding the research topic

- All people should be able to participate fully and effectively in decisions made concerning them.

- Freedom of association and, by inference, freedom of information are fundamental rights, as guaranteed under the Canadian Charter of Rights and Freedoms, and necessary for a democratic society.
- All people should be able to obtain their personal information from government and know what information government possesses about them.
- Each person should be able to access information that enables him/her to make fully informed choices concerning his/her life and participate in public decision-making.
- Access to information is a crucial way for the populace to become empowered and hold government accountable.
- Every person should be able to obtain his/her personal information without making an access request under *FOIPPA* unless the requested information contains the personal information of third parties or one of the other exceptions to disclosure under *FOIPPA* applies.
- Each person should be assisted by public officials (including information and privacy analysts, teachers, social workers, medical professionals), as and when necessary, to obtain access to their personal information and other information necessary to a full determination of their access rights.
- The Fair Information Practices (OECD, 1980) on which *FOIPPA* is based are indeed fair.

#### Regarding government and information

- The traditional purpose of government is to make and enforce rules that are fair and to act in the public good: “The public sector is about democracy and the public good, the collective interest and the peaceful enjoyment of life. (. . .) An effective government maintains a singular focus on the welfare of citizens (. . .)” (Cochrane, 2004, unpagged).
- Government is acting less and less in the public good and as a service provider and more as a broker of services.
- Government is the main repository of information in society.
- Traditionally, government has considered all information in its possession – including citizens’ personal information – as its own. The information is not to be disclosed unless it is proven that no harm will come from its disclosure.
- By controlling the flow of information (for example, by top-down, one-way communication; levels of access within and external to government), government maintains control over its operations and the populace.

#### Regarding change and governance

- Governments are protective of the “status quo” and generally resistant to change.
- Governments are focused on effective, cost-efficient service delivery, and more amenable to change to these ends.
- Current structures and cultures will need to be changed to encourage access to personal information and to reduce barriers to access.
- Change toward access to information and supportive government processes, policy, and cultures and structures can be created through collaborative work with those affected (stakeholders). Measures to increase citizen involvement, community capacity and quality of life can be built in to administrative policies and procedures.

#### Regarding change

- Change is normal – “the only thing constant is change.”
- Change can offer opportunities, rather than be something to always avoid and resist.
- Change is political – someone gains from the way things are, someone does not. Those who control the decision-making process may not want to give up their power.
- Power dynamics highly influence who creates change, what is done and how it is done.
- Change is necessary – often what is defined as a “personal problem” is really a “public issue.” Sharing power with those affected by decisions is necessary to develop effective solutions to social and individual problems, and participatory decision-making.
- Planned change is participatory, collaborative, democratic and iterative.

## CHAPTER II: THE ACCESS PROCESS AND THE ORGANIZATIONAL CONTEXT

I will briefly recount the history and purpose of the *Freedom of Information and Protection of Privacy Act (FOIPPA)* of British Columbia. I will then describe the process by which one accesses one's own personal information. This will be followed by a description of the organizational context and current trends in government. Global, national and provincial political and economic factors that also influence the topic under discussion will be discussed in remaining chapters.

### A Short History of the Access to Information Process in British Columbia

The New Democratic Party (NDP) in the province of British Columbia was elected in 1992 on a platform that it would introduce legislation similar to that already in place in other Canadian provinces to protect personal privacy and provide access to government information (Levine, 1993). The provincial NDP has ideological roots close to those of its federal counterpart, including commitment to “the application of democratic socialist principles to government and the administration of public affairs” and “the belief that the dignity, freedom and equality of the individual is a basic right that must be maintained and extended” (NDP, 2001).

The initial drafting of the new information and privacy law, known as Bill 50, involved consultation with many stakeholders, including the Freedom of Information and Privacy Association of BC, which represents many public interest groups; the British Columbia Civil Liberties Association; business, media, labour and concerned citizens (Ministry of Attorney General, 1992, p. 2). Heralded as “the best legislation of its kind in Canada” (Ministry of Attorney General, 1992, p. 2), the legislation balanced the right of access with the protection of personal privacy. The explicit purposes of the legislation “are to make public bodies more accountable to the public and to protect personal privacy” (section 2[1]). The legislation was modeled on similar legislation previously enacted by the Province of Ontario in 1990 (Levine, 1993).

At the time it was drafted the legislation pertained to “all government Ministries and over 200 Provincial government corporations, boards, commissions and agencies” (Ministry of Attorney General, 1992, p. 2). The coverage of the legislation was soon extended to “municipalities and other local government agencies; local boards such as police, school and hospital boards; colleges and universities; and self-governing professional bodies” (Ministry of Attorney General, 1992, p. 2). The *Freedom of Information and Protection of Privacy Act* of British Columbia (*FOIPPA*)

was proclaimed in October, 1993.

The Provincial government highlighted many virtues in a report on the legislation soon after the Bill 50 passed third reading on June 23, 1992:

Special features that have received favourable comment include

- the strong statement of information rights and the duty of government to assist applicants requesting records;
- the powers given to British Columbia's Information and Privacy Commissioner to ensure that government meets its responsibilities under the legislation, particularly the Commissioner's power to order cessation of inappropriate personal information practices;
- the publication of a public records index which will list those government records which are available without a request for access under the Act;
- the conversion of class tested exceptions found in other information and privacy legislation into harm tested exceptions (e.g., harm must be demonstrated before information can be withheld);
- the assignment of time limits on exceptions;
- a strong and usable public interest override which applies to all exceptions and can be used even without a request;
- protection against the use of personal information for mailing lists or solicitations by telephone and other means;
- a 30 day time limit on extensions for responding to requests unless a longer period is approved by the Commissioner;
- a 90 day time limit on the length of time the Commissioner may take to review a decision by the head of a public body; and
- the Act's plain language. (Ministry of Attorney General, 1992, p. 2)

The specific features of the legislation are important to consider when examining existing barriers and strengths of the access process. Chapter III (Legislation) will offer a comparative analysis of Provincial legislation as well as a review of legislation of selected countries across the world.

Prior to the implementation of the *FOIPPA*, the Provincial Office of the Ombudsman issued a public report that examined "the underlying principles governing such access to information as well as the necessary exceptions" (Ombudsman of British Columbia, 1991, p. 1). The principles

were “based on administrative fairness and not political philosophy” (p. 15). Denial of access to personal information was believed to be justified in certain cases, such as access to medical records, which may involve issues of “consent and competence” (p. 15); “personal information contained in police or other investigative files” (p. 15); and “personal information regarding correctional and security matters” (p. 15).

The Ombudsman made many recommendations that became part of the provisions of *FOIPPA*, including the three situations involving exceptions to disclosure described above. Two recommendations that were not included in the legislation are progressive even by today’s standards. The Ombudsman suggests that fees should not apply if records are not located. Under *FOIPPA* applicants seeking general information are required to pay a fee if the cost, which applies to search and retrieval of the record, photocopying and mailing, is above fifty dollars. In practical terms, this means that a search of several hours that produces only one responsive record may still result in a charge for the applicant, sometimes over a hundred dollars. The Ombudsman also recommends that the principle of access should be instituted at a fundamental stage in information management: the design of forms. He remarks that, “Government forms should be designed with severability in mind. For example, where portions of a record are exempt from disclosure, there should be provision from the provider of the information to attach that material as appendices” (p. 15). This principle is one that I heard discussed only a handful of times in my former workplaces. The design of forms and databases to store personal information and the development of security measures to control threats to data security and personal privacy have become much more important issues in public and private sector agencies since the terrorist attacks of September 11, 2001 in the United States and the recent implementation of Federal and Provincial private sector privacy legislation.

Similar to legislation of other provinces, *FOIPPA* is divided into several parts. Part 1 (Introductory provisions) covers definitions of terms used in the legislation and the purpose and scope of the act. Part 2 (Freedom of Information) refers to access rights, exceptions to disclosure, third party notification and disclosure in the public interest. Part 3 (Protection of Privacy) covers collection, protection and retention of personal information, and the use and disclosure of personal information. Part 4 (Office and Powers of Information and Privacy Commissioner) concerns the hiring, role and duties of the Information and Privacy Commissioner and his staff, as well as protection from libel or slander. Part 5 (Reviews and Complaints) covers reviews by the Commissioner and investigations and reviews by an Adjudicator appointed by the Commissioner. Part 6 (General Provisions) focuses on a plethora of concerns not mentioned in prior sections, including delegation by the head of a public body; the requirement of an annual report by the

minister responsible for the act; offences and penalties; privacy protection offences; additional powers of the information and privacy commissioner; and the relationship of the act to other acts.

The research will examine mainly the provisions of Part 2 but will also refer to Parts 4, 5 and 6 with regard to offering recommendations for improvements. Further mention of the provisions of the legislation will be made in Chapter III.

### Requests and Appeals

In the initial years of the legislation the number of personal and general requests for records under *FOIPPA* steadily increased. The categories of applicants included individual citizens, the media, political parties, public interest groups and researchers. Individuals by far remain the most frequent requestor of information under the Act. Many statistics and other observations regarding the access process will be provided later in this chapter and throughout the thesis.

According to the Office of the Information and Privacy Commissioner's *2002-2003 annual report*, "The number of requests for review and complaints filed with the Office of the Information and Privacy Commissioner has risen from less than 300 in 1993 to almost 1,100 in 2003" (p. 1). In the fiscal years 2001-2002 and 2002-2003, the OIPC mediated approximately ninety percent of requests for review (OIPC, 2002; OIPC, 2003). Requests for review can be made for several reasons, including on the grounds of partial access (53 %), deemed refusal (17 %), denied access (11 %) and duty to assist (4 %) (OIPC, 2003). In 2002-2003, eighty percent of the requests for review were from individuals seeking access to personal information (OIPC, 2003).

As will be detailed in the analysis of the research data, most access requests made to the Provincial government are for personal information. In actuality only a small percentage of applicants seek a review of the government's decision concerning access. The government's statistics also do not identify the percentages of requests for personal information that result in a review versus the percentage of requests for non-personal information. As previously mentioned, the statistics may mask the public's actual satisfaction level with the request process, and that many people still are unaware that they may use the legislation to obtain their personal information and that they can appeal if they are not satisfied with the response that they receive.

### Current Challenges

The process of creating an infrastructure to support key information and privacy activities, such as policy development, request processing and compliance, continues to be done within a global economic recession and governmental environment of fiscal conservatism. In 1997 the

budget for the information and privacy function (policy and programs) was twenty-one million dollars (Tromp, 2000). In 1997-1998 fiscal cutbacks to information and privacy programs across government in response to the then provincial budget deficit and attacks by the media and B. C. political (Liberal and Reform) parties left many programs with approximately half their former operating budget (Tromp, 2000). In 1998 the Campaign for Open Government, spearheaded by the Freedom of Information and Privacy Association of British Columbia, took out newspaper advertisements and lobbied support for open government (Tromp, 2000).

Following criticisms by the public concerning backlogs of requests and wait times exceeding the legislated time frames (Special Committee to Review the Act, 1999; OIPC, 1999), at the request of the Information and Privacy Commissioner the two ministries that received the most requests, in terms of the number of requests for personal information and the largest number of requests overall, engaged in concerted efforts toward the hiring of extra staff and reduction of the backlogs (OIPC, 2000). David Loukidelis, then and currently the Information and Privacy Commissioner, specifically noted the guidance of a “change champion,” Sharon Manson Singer, who served separate terms as Deputy Minister of both ministries:

Two ministries that have struggled the longest with chronic backlogs have recently, at my urging, managed to re-allocate resources to address the problem. The former Deputy Minister of the Ministry of Social Development and Economic Security, Sharon Manson-Singer, laudably committed added resources to deal with the problems. The present Deputy Minister, Mike Corbeil, has continued those welcome steps to address the backlog. There is now only a two month backlog for requests for personal information and I will continue to monitor the progress in eliminating the backlog altogether. Backlog delays also plague the Ministry for Children and Families, which has for many years struggled with the Act’s timelines. The current Deputy Minister, Sharon Manson-Singer, is again to be applauded for her recent direction that resources are to be re-allocated to deal with the backlog. It remains to be seen how quickly these Ministries will be able to comply with the Act, but I am encouraged by the commitment of resources and will watch the situation closely. (OIPC, 2000, p. 8)

After the election of the current Liberal government in 2001, government-wide restructuring resulted in further downsizing of information and privacy programs and the OIPC. The OIPC, not surprisingly given the benefits to the government of less oversight, was dealt a thirty-five percent budget cut between March, 2002 and March, 2005 (OIPC, 2004).

The Canadian Centre for Policy Alternatives (2006) observes that the Province of British Columbia “ranks fifth of eight provinces in funding per \$1000 of Provincial revenue” (p. 1) for the Office of the Information and Privacy Commissioner and sixth with regard to per capita funding. British Columbia has “almost six times the caseload of Alberta, which has similar legislation, but only 83 per cent of Alberta’s budget” (Lavoie, 2003, p. A4). As well, British Columbia has “a five per cent greater workload than Ontario, but only 32 percent of Ontario’s budget” (Lavoie, 2003, p. A4).

The annual reports produced by the OIPC and comments by the Commissioner to the media highlight his concerns regarding a shrinking budget and the potential for loss of accountability. In his 2003-2004 annual report, the Commissioner noted public concerns about delays (“our clients have told us we are often not responding in as timely a way as we used to”) (p. 8), and his concern that important functions were not being done by his staff (“Nor did we find enough time on the side to do as much of the pro-active policy and education work that is indispensable to good public policy and public body compliance with the law”) (p. 8). Echoing sentiments expressed by Murray Rankin, a founder of the legislation and lawyer, and Darrell Evans, Executive Director of the Freedom of Information and Privacy Association of British Columbia (Kines, 2005), Loukidelis stressed the need for his office to retain its ability to fulfill its mandate:

There is a very important public interest involved here around accountability and transparency. When we see all this talk about the democratic deficit, and ensuring greater transparency and accountability, I think that all levels of government have to continually ensure that these legal obligations are respected.” (Cribb, Vallance-Jones & Fowlie, 2005, P. C1)

### Accessing Personal Information

A diagram of the request process is noted in Figure 1, Appendix A (“Process Map for Formal Requests for Records to the Provincial Government of British Columbia”). To make a request for one’s own personal information,<sup>2</sup> one must submit a request in writing or a completed “Access to Records” form to the public body that one believes holds the requested records.<sup>3</sup> Applicants must provide details of the records, including subject or type of record, such as an adoption file,

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<sup>2</sup> Requests for non-personal information are known as “general requests.” A typical example is a request made by the media for expense accounts of high ranking public officials.

<sup>3</sup> The legislation pertains to requests for records rather than for information.

probation records or counsellor's notes, and a date range. Applicants must also provide contact information (name, mailing address, telephone number). From the receipt of the request, public bodies have thirty working days to respond. The intake officer or information and privacy analyst assigned to the file must make several important decisions, including whether the request is understandable and whether clarification is necessary, whether the records can be provided through routine channels, and whether the applicant is entitled to have access to the records requested. After forwarding an acknowledgment letter to the applicant, along with a request for clarification if necessary, the analyst then determines which offices might have the records in question and asks them to forward relevant records. If records responsive to the request do not exist, the records have not been located, or the records have been destroyed, the analyst then notifies the applicant of the disposition of the records. If records responsive to the request are located, the analyst reviews the records for exceptions to disclosure under *FOIPPA*. Of the eleven exceptions to disclosure, Section 22 (disclosure harmful to personal privacy) is most frequently applied. The analyst then prepares the records for photocopying, has the records copied (which may be done either by the analyst or by administrative support staff), and forwards a release package with a response letter and the records to the applicant. The applicant may be granted full or partial access, or denied access to the records in their entirety.

The onus is on the public body to assist as the applicant will not necessarily know what records to request and what information the government possesses. Under section 6(1) (duty to assist) of *FOIPPA*, the public body "must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely." For some exceptions to disclosure, decisions concerning access are made after an assessment of whether harm could result from the disclosure of the information contained in the records, as for example, the disclosure might violate the personal privacy of third parties or jeopardize personal or public safety. If not satisfied with the response received, the applicant can then submit a request for review to the Office of the Information and Privacy Commissioner (OIPC).

These steps in the access process are detailed in Provincial government's policy and procedures manual concerning the Act. Individual information and privacy programs have also developed their own internal procedures to respond to requests. Changes in the access process do result from time to time in response to directives issued by the Information Management/Information Technology Privacy and Legislation Branch and the Office of the Information and Privacy Commissioner.

## Summary

Information and privacy analysts possess much discretion with regard to how they process requests. However, limited resources, staff shortages and administrative priorities to quickly close files and prevent complaints and requests for review to the Office of the Information and Privacy Commissioner undermine the ability of analysts to be flexible and generous with how requests are answered. Citizens' rights to access their personal information are thus abrogated.

Many other factors hinder the public's ability to access personal information. These include the fact that applicants are often unaware of what information they are entitled to ask for, what information is held by the government and how to go about making a request; there are few required communications between analysts and applicants; and that the government is not legally required to work with applicants to produce a request that can be answered with records. Additionally, the government does not actively encourage the public's right to access their own personal information or publicize the process of accessing personal information.

## Organizational Context

In this section I will position the information and privacy function within the bureaucracy, including documenting important lines of authority and flow of communication. I will then examine the role and responsibilities of information and privacy programs, followed by a brief description of external stakeholders and their influence over the access process.

### Information and Privacy in the Bureaucracy

The organizational structure of the Provincial government of British Columbia includes nineteen ministries, six central agencies and eleven Crown corporations. At the top of the hierarchy are the Office of the Premier, Cabinet, the Public Affairs Bureau, the Treasury Board (now part of the Ministry of Finance) and several other central agencies. The Premier and Cabinet are elected to office, while the Executive Committee for each ministry or public body (Deputy Minister and Assistant Deputy Ministers, or equivalent) is appointed.

Along with human resources, financial services, information systems, policy and planning and others, information and privacy is a central function to government. The main offices that are responsible for information and privacy are the Office of the Information and Privacy Commissioner; the Information Management/Information Technology Privacy and Legislation Branch of the Office of the Chief Information Officer, Ministry of Labour and Citizens' Services;

and information and privacy programs throughout government. I will briefly examine the responsibilities of each office in turn.

#### Office of the Information and Privacy Commissioner

Although its budget and mandate are approved by the Premier, the Office of the Information and Privacy Commissioner is considered an independent provincial government body, as are the Ombudsman and the Auditor General. The Information and Privacy Commissioner has the powers equal to a judge and is responsible for oversight of the act. He and his staff investigate complaints and requests for review and make binding decisions. He also acts in an advisory capacity, gives public education and conducts program audits and makes recommendations.

#### Information Management/Information Technology Privacy and Legislation Branch

All information and privacy policy, standards and directives pertaining to *FOIPPA* are developed by staff of the Information Management/Information Technology Privacy and Legislation Branch (IMITPLB) of the Office of the Chief Information Officer. IMITPLB has similar responsibilities for the *Electronic Transactions Act* and the *Personal Information Protection Act*.

#### Corporate Information Management Branch

The Corporate Information Management Branch of the Office of the Chief Information Officer is responsible for the management of all recorded information. Among its several functions, the branch directs all records management activities and creates records management policy and procedures, including the Administrative Records Classification System (ARCS) and Operational Records Classification Systems (ORCS), which are specific to each public body. The branch is responsible for the administration of the *Document Disposal Act*.

#### Information and Privacy Programs

The manager and staff of the information and privacy programs ensure that each public body covered by *FOIPPA* meets its responsibilities under the legislation. A program may serve one or more ministries and its associated public bodies. For example, the Ministry of Children and Family Development's program is responsible for the records of the ministry and of Office of the Representative for Children and Youth. Some non-ministry offices, such as the British Columbia Human Rights Tribunal and the British Columbia Public Service Agency, have their own information and privacy programs.

The head of each program, either a Manager or Director depending on the size of the staff contingent, reports to the head of the branch within which the program is located. Typically, the Manager/Director reports to the Assistant Deputy Minister for the branch, who in turn reports to the Deputy Minister.

#### Role and Responsibilities of Information and Privacy Programs

For the sake of expediency, in my thesis research I focused on the work done by one information and privacy program, the Privacy, Information and Records Section (PIRS). PIRS provides services to the Ministry of Attorney General and the Ministry of Solicitor General.

#### Goals and objectives

PIRS is responsible under *FOIPPA* for "the overall management and coordination of the (ministries') activities" and "ensuring consistency in the application of the *Freedom of Information and Protection of Privacy Act*" (Ministry of Attorney General, 1999, p. 4). The three principal operational objectives are policy development, compliance monitoring and presentation of corporate position; processing requests; and advice, training and coordination (Ministry of Attorney General, 1999).

#### Activities

To fulfill its responsibilities, PIRS is involved in several activities, including "reviewing Ministry legislation, policies and procedures for compliance with the Act; processing centralized branch, cross-ministry and cross-government requests, and other requests as needed for other branches and agencies; and representing the Ministry with respect to these requests in responding to reviews and inquiries conducted by the Office of the Information and Privacy Commissioner" (Ministry of Attorney General, 1999; p. 4). Integral to the success of the program is efficient and effective project management.

Processing formal requests made under the *FOIPPA* is the main program activity. The program processes requests for information from various applicants (including the media, political parties and business) in accordance with *FOIPPA*. Each information and privacy analyst is responsible for managing a case load of requests. PIRS receives funding from the provincial Treasury Board for analyst positions on the basis of approximately one hundred requests assigned to each analyst per year.

The Ministry of Attorney General (MAG) and the Ministry of Public Safety and Solicitor General (MPSSG) are expected to be standard setters among provincial public bodies with regard

to implementing policies and procedures concerning information and privacy. MAG and MPSSG are the authorities for determining whether to apply sections 14 (solicitor client privilege) and 15 (disclosure harmful to law enforcement) of *FOIPPA*. Likewise, all public bodies must consult with the Office of the Premier when considering whether to except information from disclosure under section 13 (cabinet confidences), and with the Ministry for Children and Family Development for section 22 (disclosure harmful to personal privacy).

#### Reporting requirements

PIRS has implemented various reporting procedures and performance measures to ensure that the program manager and internal<sup>4</sup> stakeholders possess information required to support decision-making and accountability. The many requirements are detailed in Figure 2, Appendix B (Information Requirements Related to the Operation of Information and Privacy Programs).

Data concerning the performance of PIRS is collected by the program; the Information Management/Information Technology Privacy and Legislation Branch (IMITPLB); and the Office of the Information and Privacy Commissioner (OIPC). The most detailed reports are forwarded each week to senior executive for briefing. Internal and external stakeholders use information from PIRS' annual report and the OIPC's annual report to compare the performance of PIRS with that of other public bodies.

Despite the time and resources devoted to documenting and reporting program activities, much corporate knowledge remains unrecorded. A main example is that, due to the high turnover of staff within most of the information and privacy programs, "best practices" are not shared and lower level staff not given adequate training. Additionally, the reporting system provides an opportunity for feedback from and accountability to internal stakeholders, however, not enough attention has been paid to performance as related to the satisfaction levels of the public, particularly applicants. As external clients' views on the program are not known, it is difficult to identify what changes, if any, should be made to improve the reporting system and the program's services.

#### The influence of the bureaucratic hierarchy

As part of a traditional bureaucratic structure, program operations are characterized by decision-making centralized with senior executive of the ministries, a "top-down" flow of communication, and formal lines of power and authority. All decisions regarding the

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<sup>4</sup> For the purpose of this research, "internal" will refer to aspects of the ministries served by PIRS and the larger government context; "external" will refer stakeholders outside of the provincial government.

development and delivery of programs and services, including determining project and budget priorities for the fiscal year, are made by the Manager, and approved by two higher levels of authority, the Executive Director of the Finance and Administration Division, and the Assistant Deputy Minister, Management Services. The Deputy Solicitor General and Deputy Attorney General review and sign-off on "sensitive"<sup>5</sup> requests. Senior executive must be informed of any information which, if released, could be embarrassing to the Ministries or jeopardize relationships with non-governmental organizations and other public bodies, such as the Legal Services Society and municipal police forces.

PIRS operations are strongly influenced by the needs of senior executive and heads of important and influential programs within the ministries, such as Legal Services, Criminal Justice, Corrections Branches, Corporate Issues<sup>6</sup> and other public bodies (for example, the OIPC and the IMITPLB). PIRS has direct authority over ministry policy development and responding to requests, while each branch has authority over the information provided and the offering of recommendations on disclosure.

## External Stakeholders

### Political parties and politicians

The Premier and Cabinet ministers have the final responsibility for policy decisions and are accountable to the legislature (Langford & Prince, 1998). Control can be exerted by several mechanisms, including "the capacity to reward loyalty" (p. 25) and "control over the legislature's time table and agenda" (p. 25).

Opposition parties are key requesters of information. While in opposition the Liberal party in British Columbia was a frequent requester of documents pertaining to high profile issues. However, at the time of the Liberal government's election in 2001, the NDP party won only two of the seventy-nine available seats in the legislature. As the Liberal government did not grant it opposition status, the NDP party lost important funds for research and policy development, part

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<sup>5</sup> "Sensitive" requests can be deemed as such for several reasons: the nature of the material requested; the type of requester; and/or the content of the material to be released. In the author's experience, senior executive exercise much discretionary power regarding signing-off on sensitive requests. The sign-off process may involve consultations with several stake-holders, and may entail much examination and revision of the recommended response before it is approved for release to the applicant.

<sup>6</sup> During the time period of the research, government communications branches such as Corporate Issues vetted access requests and other information that were going to be released to the media and used for other public purposes. The communications branches are now part of the Public Affairs Bureau, a central agency, which reports to the Office of the Premier.

of which are used toward submitting and appealing requests under FOIPPA.

This state of events also highlights the fact that, once in power, governments do not support the access process. The continued use of requests under *FOIPPA* by political parties to discredit the government in power creates a lack of trust within government of the request process. For example, managers are often reluctant to release certain "hot issue" files and may take much time reviewing the documents, effectively stalling the process. Delays can be used to avoid, prevent or reduce media attention on an issue and thus hinder public scrutiny, informed public dialogue and citizen participation in decision making.

The public's ability to access and be aware of personal information held by government entities has not been a matter of political interest. There are a few notable exceptions, including the opening of previously sealed adoption records in the mid-1990s in British Columbia; the public outcry over Human Resources and Development Canada's building of a master database of personal information on Canadian citizens, which led to its dismantlement; and, currently, the development of the electronic health record and its ramifications for advancements in health care and medical research as well as issues relating to security of patient information.

#### Media

The media plays an increasingly powerful role by providing information to the public and acting as self-appointed "watchdogs of the public interest" (for example, by setting the public agenda and stimulating reform in government) (Kernaghan & Siegel, 1995). The media's main role is to report factual information regarding the political and governmental environment as well as provide critical analyses of emerging trends and issues (Langford & Prince, 1998). Media strategies are increasingly employed by pressure groups, politicians and government officials as well as by the private sector to manipulate public opinion.

The media also has a strong influence on the measures taken by governments to monitor and control its internal operations and the external flow of information. Files which contain issues which may be eventually picked up by the media are routed through the Corporate Issues Branch for a "heads up" and issues management.

#### Concerned citizens' groups

The influence of political parties is declining while the ability of concerned citizens' groups to influence public policy increases (Kernaghan & Siegel, 1995). Concerned citizens' groups have become powerful communication links between citizens and public officials, as well as perform other important functions (including legitimation, administration, and regulation) (Kernaghan &

Siegel, 1995). They most often target cabinet ministers, bureaucrats, and legislators (Langford & Prince, 1998).

By obtaining access to the policy making process and recognition from public officials, concerned citizens' groups can effect major changes in policy, as for example protect the rights of the public to access government records. Groups such as the British Columbia Civil Liberties Association, the Freedom of Information and Protection of Privacy Association of British Columbia and the Canadian Taxpayers Federation have played a key role in placing access to information and privacy issues in the media spotlight, particularly with respect to the cumbersomeness of the process.

### Citizens

The extent to which citizens are able to participate in decisions affecting them is strongly affected by the structure (for example, "top-down" communication flow, hierarchical authority) and processes (for example, leadership style, policy implementation mechanisms) of government. As government has become more complex, citizens feel less personal control over decisions made affecting their welfare and ultimately distrust government's ability to act in their best interest (Kernaghan & Siegel, 1995). Conversely, increased citizen awareness of the workings of the political and governmental environment has led to calls for greater accountability of public servants. Information and privacy analysts acknowledge that requests are being more complex as citizens become familiar with the workings of government.

### Summary

Information and privacy is a central government function. While information and privacy programs possess legal authority and a powerful position in the bureaucratic hierarchy, their funding and daily activities are heavily influenced by many powerful internal and external stakeholders, such as Treasury Board, Cabinet, the Office of the Information and Privacy Commissioner, the Information Management/Information Technology Policy and Legislation Branch, media, concerned citizens' groups and political parties. The traditional structure and culture, including "top-down" communications and hierarchical authority, is self-maintaining: obedience and loyalty are expected and rewarded.

The use of issues management and communications strategies by the Provincial government to manage the flow of information and media coverage has become as important as policy and planning. However, given increasing public pressure for accountability, the Provincial government must identify and collaborate successfully with key stakeholders such as concerned

citizens' groups and members of the public whose support is vital to the creation and implementation of effective public policy.

### Current Trends in Government

In this section I will define the terms “accountability” and “discretion” as they are used in this study and examine two trends pertaining to the current government context: the “new public management”; and service delivery innovation. I will also briefly touch on academic thought concerning what are considered ethical practices in government. These practices and principles will be related to aspects of the access to information process and barriers to and supports for structural and cultural change.

#### Accountability

Kernaghan and Siegel (1995) define administrative accountability as “concern for the legal, institutional, and procedural means by which bureaucrats can be obliged to answer for their actions” (p. 314). Public sector employees are directly accountable to their employers and the legal system and indirectly to other interests, such the general public and the media (Kernaghan & Siegel, 1991). The right of the public to access information concerning government activities and to take government to court is fundamental mechanisms to ensure such accountability.

The tradition of ministerial accountability in Canada allows for political neutrality, the traditional exchange between politicians and bureaucrats whereby politicians receive credit for policy-making while granting public servants anonymity from public scrutiny (Kernaghan & Siegel, 1991). Political neutrality is currently a contentious issue as the public sector undergoes increasing scrutiny from the public, the media, and the legal system to justify its actions (or lack thereof). Perceived conflicts of interest, abuses of discretionary powers, and other poor judgment have created a dearth of public trust in government, as well as intensified the need for public servants to be seen as objective and non-biased.

Organizational changes have also created the need for managers to address the issue of accountability in greater depth. The policies and practices of the public sector are strongly influenced by pressures from the external environment, such as market changes, social trends and “customer/client” preferences. Over the past fifteen years the public service has become more interested in accountability for results rather than the process (Kernaghan & Siegel, 1995).

This research examines the issue of government accountability from two perspectives. The study addresses the access to information process' ability to hold the Provincial government to

account, and the appropriateness and accountability of the process itself in terms of being responsive to applicants' needs.

### Discretion

Wake Carroll and Siegel (1999) examined the daily work of Federal field level bureaucrats. They identified two types of discretion: policy discretion and administrative discretion. Policy discretion is the "ability to adjust the program or process to meet the needs of the client" (p. 74). Administrative discretion can be further divided into two different categories: "the degree to which administrators can alter the structure of their day - the order of their work" (p. 74), and "the extent to which administrators can define the job itself" (p. 74). Examining the nature and extent of discretion held by information and privacy analysts under this definition would be time-consuming but well-worth the effort. Considering their relatively low standing in the administrative hierarchy (above clerical and office administrative support but below mid- and senior-level managers) and the standardized process they must perform, it appears that analysts have little policy or administrative discretion.

Lipsky (1980), on the other hand, suggests that front line workers possess a great deal of discretion and they can use this power to make positive impacts when working with clients. Lipsky examines the phenomenon of "people processing," a concept first put forth by Jeffrey Prottas (1979). Front line workers are unaware that they possess a great deal of discretion, and that, as the bureaucracy defines the problems and the solutions, this discretion is being used to respond to bureaucratic problems instead of helping clients. For example, a reduced budget would mean that workers would be told that they have fewer resources to help clients and would need to offer less to them. It could also mean fewer workers and less service provision hours. The other way to view this is to keep service levels up to previous levels and develop more creative and resourceful as well as less expensive solutions to clients' problems.

Lipsky believes that front line workers adopt practices to cope with the challenges they face responding to clients' concerns and bureaucratic structures. Policy is then not driven from the top but from the bottom.

Information and privacy analysts are a form of front line worker with respect to offering information to the public. Analysts possess much discretion with respect to processing requests under *FOIPPA*: it is through exercising their discretion that administrative unfairness can occur.

Referring to the practice of social work, Evans and Harris (2004) suggest that the question of whether professional discretion has been curtailed is more complex than recent literature on the topic has suggested. Whereas Lipsky views professional discretion as a positive attribute, Evans

and Harris view discretion as having neutral value, however, they propose that administrators may hide behind their discretion. They also believe that the existence of a plethora of rules in an organization does not necessarily reflect a high level of control by managers and workers' lack of discretionary power.

This research examines Lipsky's premise that front line workers such as information and privacy analysts do possess considerable discretion with regard to determining policies and procedures by which requests for personal information are processed. The research also considers Evans' and Harris' premise that, even though there are a great number of rules concerning the processing of requests, the rules provide analysts much leeway in determining how to respond.

### New Public Management

An examination of current trends in government is important to the context of the research. Governments have traditionally acted as the provider of goods and services (Kernaghan & Siegel, 1995). However, experts (Kernaghan & Langford, 1991; Kernaghan & Siegel, 1995; McGill, Slocum, Jr., & Lei, 1992; Wright, 1992) agree that the organizational structure and culture of public sector organizations has experienced rapid transformation in the last three decades. Public sector managers have adapted policy and procedures to incorporate new information technology and respond at an increasing rate to public concerns. The drive to do "more with less" and "less with less" has sparked the public sector's growing interest and adoption of values and principles which have traditionally influenced private sector managers, including cost-effectiveness and a client-centered approach (Snow, Miles, & Coleman, Jr., 1992).

Studies by senior public servants (Hubbard, 1999; Schmidt & Marson, 2006) suggest that performance management is central to the Federal and Provincial governments' organizational culture and structure. Strong performance levels will need to be achieved amidst a changing public sector environment that has "high levels of client expectations for services, evolving service delivery models that require new skill sets and higher levels of knowledge for frontline workers and financial constraints" (Schmidt & Marson, 2006, p. 1). After citing several studies of "best practices" in public sector and private sector workplaces, Marson (1999) concludes that, "High performance, whether it is in Japan, whether in private sector companies in the United States, or whether it is in government departments and agencies, can be created through a participative management environment, through clearly articulated goals, through performance feedback, and through recognition for a job well done" (p. 9). Schmidt and Marson (2006) identify employee satisfaction and employee commitment as the factors that contribute to employee

engagement and underlie organizational performance.

Scholars (Savoie, 1995a; 1995b; Tamas, 1995) suggest, however, that public administrators are having difficulty adapting to what is known as "the new public management." For example, administrators seem to be sending their employees mixed messages by offering support to them through employee development programs and promoting from within but, at the same time, promoting an "entrepreneurial spirit" which encourages employees to put their own needs ahead of the organization and be self-directed (Tamas, 1995).

Savoie (1995a, 1995b), a critic of the new public management movement, argues that administrators must first examine the strong influence of politicians and political institutions on their work before adopting private sector values and management practices. Mintzberg (1996) states that performance measures advocated by the private sector are useful in managing some tasks (such as routine clerical functions), but that public sector administrators would do well to consider not only aspects of the performance-control model but also of the normative model of government, which is widely used by management systems in Asian countries.

### Innovation

Academic and government literature offer similar and divergent views regarding whether existing policies and practices contribute to innovation. The need to provide quality service and create innovations that meet clients' expectations are recognized by both sources (Mintzberg, 1996; Privy Council Office, 1997; Schmidt & Marson, 2006), as are the need for change champions (Mintzberg, 1996; Privy Council Office, 1997) and client feedback (Privy Council Office, 1997; Wake Carroll & Siegel, 1999). Government publications stress the reforms that have been undertaken to modernize service delivery, including "modernizing work methods, service provisions, and the development of partnerships" (Privy Council Office, 1997, p. 11). Innovations undertaken by the Federal government to improve service delivery to clients and reduce costs include "single-window services," "horizontal integration" and "vertical integration." Two other innovations are the use of technology to "reach out and better inform Canadians about government services" (Privacy Council Office, 1997, p. 14) and "opportunities for citizens to have a greater say in the delivery of programs" (p. 14).

While the specified innovations may help clients, and public sector values explicitly relate to the adopting of these practices include client service and accountability, in practice the most important values are cost-effectiveness and efficiency. In British Columbia, public service recognition awards are primarily given for innovations that save the government time and money, such as improvements to technology that decrease the time spent on processing application forms

and identify and eliminate redundant office practices (Ministry of Labour and Citizens' Services, 2007; Office of the Premier, 2007). Ironically, offices that have been recognized for cost-cutting measures can be eliminated and staff members reassigned to other offices. Resulting cost savings are not passed along to citizens but redirected to other government priorities.

The descriptions of the innovations noted above also indicate that the goals concerning information service delivery and the identification of clients' needs are prescribed predominantly by the bureaucracy. There are many other questions that could be asked of the public, such as the extent to which citizens are aware of various policies, programs and services; how often they have used a particular service or program and their satisfaction level; what information would they like to see made available for free or at a low cost; and how would they like to receive it (for example, by internet, mail, email, brochures available in the community).

#### Ethical Practices in Government

Kernaghan and Langford (1991) note that current ethical dilemmas in the public service are related to changes in its "size and role" (p. 11) over the past thirty years and the neo-liberal political climate of the last decade. They suggest that several factors, including the adoption of "managerial thinking" from the private sector, increased discretionary power of line level staff, and closer scrutiny of financial management, have eroded the traditional culture and values of the public service, with the consequence that staff must directly confront "hard choices between values such as privacy and efficiency, effectiveness and fairness, and openness and confidentiality" (Kernaghan & Langford, 1991, p. 12).

Kernaghan and Langford (1991) examine "seven commandments" or ethical practices that employees of the federal, provincial and local governments must follow (for example, "act in the public interest" [p. 2], "protect the privacy of citizens and employees" [p. 2], "provide efficient, effective and fair service to the public" [p. 2], and "be accountable" [p. 2].) There is confusion at several junctures, as for example between personal values and organizational values, and at the policy and practice interface. They propose that determining what is considered ethical behaviour by public servants involves questioning whether public servants are "independent moral actors" (p. 12), "ethical relativism" (there is not a "right" or "more ethical" way) (p. 15), and whether "public morality is different than private morality" (p. 18).

Gummer (1996) suggests that management decision making is highly dependent on organizational structure. He offers, "In any problem in administrative ethics, reasonable persons may agree on what competing claims may legitimately be at issue but disagree on the weight each should be given. (. . .) Hierarchical organizations require the disciplined obedience of members

who must in turn subordinate their personal goals to organizational goals” (p. 101). Formalized systems of rules and procedures of bureaucracies contain sanctions for wrongdoing. Whistle-blowers are viewed as either “dissidents or reformers” ( p. 95).

Organizations that take the latter view may be more likely to engage in positive organizational practices. Recognizing the value of whistle-blowing toward the avoidance of wrongdoing, Canadian Federal and provincial legislation, including *FOIPPA*, have been developed and amended to include provisions concerning public interest disclosure (whistle-blower protection).

Along this same line of thought, scholars (Kernaghan & Langford, 1991; Kernaghan & Siegel, 1995) believe that the integrity of government officials is essential to instilling public confidence in government. *FOIPPA* presumes that government officials will “act in good faith” when responding to inquiries for information, be committed to maintaining the integrity of government, and held accountable for their actions.

#### Barriers to Innovation and Structural and Cultural Change

Barriers have been noted by many experts (Doern, 1994; Hasenfeld, 1983; Johnson, 2002; Kernaghan & Langford, 1991; Kernaghan & Siegel, 1995; Mintzberg, 1996; Tamas, 1995; Wake Carroll & Siegel, 1999; Wright, 1992). I will first describe barriers identified by Wright (1992), and then describe additional barriers associated with organizational structure and culture.

Wright (1992) notes five key barriers to structural change in the public sector: limited vision; policy co-ordination; perceived risk; existing infrastructure; and accountability.

- Limited vision

The traditional "machine" view of government held by senior managers may blind them to other perspectives regarding the process of management, such as the "barn raising" concept proposed by Benest (1996) and the normative model suggested by Mintzberg (1996). Benest (1996) believes that governments work best if they act in a coordinating role and adopt a collaborative problem-solving approach with citizens, other government bodies, and the private and non-profit sector. The metaphor of a "barn raising" suggests that people can and should take an active rather than a passive role in meeting their needs for services, as well as provide services to others. The strategies involved in barn raising (for example, visioning, empowering neighbourhoods) are viable processes that promote public trust and confidence in government. Mintzberg suggests that the analytical, “calculating” style of management employed in public sector organizations prevents organizational change and growth and must be replaced by a more functionally integrated, “committing” style of management that encourages the development of

new strategies and innovation through strategic thinking.

- Policy co-ordination

Organizations often seek policy coordination by administering programs and services under hierarchical control (Wright, 1992). The use of uniform bureaucratic structures discourages efforts to become more innovative and implement change. The top-down form of decision-making is supported by managers because it paradoxically allows them to assume less responsibility for the overall planning process.

- Perceived risk

Public servants are hesitant to take risks when implementing policy and procedures, a characteristic which Wright (1992) attributes to concern that public service values, such as fairness and consistency, will be jeopardized or that ministerial responsibility will be eroded. An often repeated motto at my Provincial government workplace was "to err on the side of caution if you must err at all."

- Existing infrastructure

Existing bureaucratic infrastructures are self-maintaining (Wright, 1992). Structural characteristics such as a top-down flow of communication and the development of policies along functional lines "reinforces centralization and inhibits cross-functional integration" (p. 29.).

- Accountability

Current decision-making authority and control in government organizations is centrally driven (Wright, 1992). Managers are protected from taking administrative responsibility by not being subjected to mechanisms of control and accountability to the same extent as lower-level employees.

#### Additional Barriers Pertaining to Organizational Structure and Culture

The term "organizational structure" refers to an organization's framework (Robbins & Stuart-Kotze, 1994). Robbins and Stuart-Kotze consider organizational structure as having three components: "complexity, formalization, and centralization" (p. 289). Public sector organizations are developing into "flattened hierarchies," as well as becoming less formalized and decentralized.

“Organizational culture” refers to the organization's personality and involves a “shared set of values and assumptions” (Levin & Sanger, 1994, p. 172). Organizational culture can be analyzed by assessing the degree to which an organization possesses such characteristics as “group emphasis,” “risk-tolerance,” “conflict tolerance,” “open-systems focus,” and “means-ends orientation” (Robbins & Stuart-Kotze, 1994). Public sector organizations traditionally have a strong culture which emphasizes control, low risk-tolerance and conflict tolerance, and respond slowly to changes to the external environment.

According to Kernaghan and Siegel (1995), often traditional organizational structures and cultures obstruct the development and implementation of new practices, and remain in place even after new innovations have been implemented. Lack of leadership from management, as well as a lack of a political support, will hinder the introduction of change measures.

At the provincial level, the policy process has remained mainly controlled by the political executive, senior bureaucrats and legislators (Kernaghan & Siegel, 1995). The extent to which citizens are able to participate in decisions affecting them is strongly affected by the structure (for example, “top-down” communication flow, hierarchical authority) and culture (for example, ethics and norms, leadership style) of government.

Hasenfeld (1983) states that, to be effective, change efforts must consider the history and ideologies of the organization, and “the relative power and influence of the various participants” (p. 238). Generally speaking, corporate cultures are known for their aversion to risk taking and maintenance of the “status quo.” Wake Carroll and Siegel (1999) found that public servants tend to make decisions that support the organizational mandate, rather than the client’s needs, despite often having the discretion to do so. Bureaucracies, with specified goals, and regimented tasks and procedures, are ideally suited to radical rather than incremental changes (Hasenfeld, 1983).

#### Supports for Structural and Cultural Change

Experts who have identified the barriers noted above and additional researchers (Charih & Paquin, 1993; Wharf & McKenzie, 1998; Whetten & Cameron, 1995) offer suggestions for structural and cultural change. The recommendations include more support for managers (Tamas, 1995); changes in incentives, values and relationships (Charih & Paquin, 1993; Wright, 1992); innovations that empower public servants (Wright, 1992); collaborative leadership (Kernaghan & Siegel, 1995); principles and instruments for inclusiveness (Shookner, 2003; Smith, 2003; Wharf & MacKenzie, 1998); generative learning organizations (McGill, Slocum, Jr., & Lei, 1992); and efforts to create a more ethical and accountable public service (Kernaghan & Langford, 1991; Whetten & Cameron, 1995).

### Support for managers

Tamas (1995) believes that organizations need to support their managers as well as their employees, and offers several suggestions regarding how to help managers (for example, managers should receive training in human relations, team building, and be helped to implement "no-hassle" administrative systems.) As well, managers should be able to model new attitudes and skills to employees, such as a tolerance for ambiguity and strong feelings of uncertainty.

### Changes in incentives, values and relationships

Changes in incentives, values and fundamental relationships (both internal and external) which exist in public sector organizations will affect planning roles and functions (Charih & Paquin, 1993). One benefit of these refinements is the lessening of the functional separation between policy-formulating "visionaries" (senior-level managers) and the "hands-on" implementers of the plans (lower-level administrators). As well, other changes, such as how managerial roles are defined and how information is collected and handled (as described by Wright, 1992), tend to generate more equitable responsibility for strategic and operational planning by lower-and senior-level management.

### Innovations that empower public servants

Wright (1992) discusses two categories of innovations to support objectives for structural innovation in the federal public service "those that empower public servants" (p. 29) (for example, decentralized decision-making and "reporting relationships that are informal and based in trust" [p. 29]), and "those that promote teamwork and better service to the public" (p. 29) (for example, multi-disciplinary teams which provide "one-stop shopping" to clients). As well, Wright (1992) suggests that barriers to structural innovation will be removed by such developments as "changes in the role and organization of central agencies" (p. 29), "a willingness to accept a certain degree of risk" (p. 29) and "appropriate modifications to classification and personnel systems" (p. 29).

### Collaborative leadership

Collaborative leadership at all levels of government is necessary for fostering linkages and minimizing "turf battles." Overinvolvement by managers in the direction of the organization will create distrust by employees (Kernaghan & Siegel, 1995).

#### Attention to principles and practices of inclusion

Proposing a policy making process that is more considerate of the needs of practitioners and clients, Wharf and McKenzie (1998) suggest that “attention to the principle of inclusiveness is the single most important reform needed in the human services” (p. 127). Federal and Provincial governments have indicated a growing recognition of the importance of public sector administrators developing culturally-sensitive management attitudes and practices. For example, the Population and Public Health Branch, Health Canada, has developed an inclusion lens so that policies and procedures are inclusive and do not inadvertently discriminate against individuals or categories of people (Shookner, 2002), as well as a framework for public participation in policy making (Smith, 2003). These suggestions can be implemented in government with information and privacy programs.

#### Generative learning organizations

The values and practices of generative learning organizations can be slowly but surely adapted through incremental change by public sector organizations. Particularly, the value placed on relationships with the public and face-to-face meetings with stakeholders to share visions will help offset the distancing effect created by information technology: "Reframing an organization's approach to its environment must be supported by an internal re-framing of processes and managerial practices that put these ideas into action" (McGill, Slocum, Jr., & Lei, 1992, p. 12). McGill et al. (1992) identify several managerial practices that promote openness to change, including: "implementing commitment to cultural-functional division in selection, development and promotion (of new technologies, products, and services); use of multi-functional and cross-functional work groups; an absence of jargon, turf, and 'expert' domains; and the ready availability of all information to all members" (p. 12).

#### More ethical and accountable public service

Kernaghan and Langford (1991) suggest that efforts to create a more ethical and accountable public service must attend to both the staff and organizational levels if they are to be successful. They offer three suggestions for improvement: institute a “code of conduct” (p. 186); “create a hospitable institutional environment” (p. 186); and adopt “appropriate regimes of enforcement and sanctions” (p. 186).

Whetten and Cameron (1995) state that most people do not refer consciously to a set of principles when they make decisions, possibly because they do not know how to construct such a framework. They offer standards that can be used to develop a “personal set of universal,

comprehensive, and consistent principles that can guide decision making” (p. 70), including the following:

- Golden rule test: Would I be willing to be treated in the same manner?
- Dignity and liberty test: Are the humanity and liberty of others preserved by this decision? Are their opportunities expanded or curtailed?
- Equal treatment test: Are the rights, welfare and betterment of minorities and lower status people given full consideration? Does this decision benefit those with privilege but without merit?
- Congruence test: Is this decision or action consistent with my espoused personal principles? Does it violate the spirit of any organizational policies or laws?
- Procedural justice test: Can the procedures used to make this decision stand up to scrutiny by those affected?
- Cost-benefit test: Does a benefit for some cause unacceptable harm to others? How critical is the benefit? Can the harmful effects be mitigated? (pp. 70-71)

#### Summary

The public service has a strong, traditional culture and structure. Embracing neo-liberal principles and practices, governments are adopting business practices and striving to meet performance targets. However, at the same time, the organizational culture and structure must adapt to the changing needs of staff, clients and the public. The trend toward the brokerage rather than provision of services, the focus on performance and cost-efficiency, and the pervasive “culture of secrecy” has created a public impression that the government is neither client oriented nor open and democratic.

Schmidt and Marson (2006) identified “employee engagement” (employee satisfaction and commitment) as central to performance management. While recognizing and rewarding performance is important, the hierarchical structure may encourage achievement of performance targets and organizational goals at the expense of meeting clients’ needs.

Innovative change and effective decision-making result from the implementation of organizational structures and cultures that are client centered and encourage employees to question policy and procedures. Cooperation and communication between employees cannot necessarily be enforced through codes of conduct, but are developed through mutual expression of trust and respect.

I propose that government’s role as a knowledge and service broker should involve less

secrecy and more sharing of information as well as respect for citizens' needs and opinions. Fundamental rather than incremental change to service delivery will only come about through citizens being given opportunities to state what they need along with "when, where and how." By being open, transparent and inclusive -- and honest -- the government will need to do less to maintain a positive public image.

### CHAPTER III: LEGISLATION

An examination of academic studies of access processes in other countries as well as the terms of relevant legislation can provide important details concerning barriers to and supports for citizens' ability to access their own personal information. I will begin this chapter by first briefly detailing eight principles that underlie the *Freedom of Information and Protection of Privacy Act (FOIPPA)*. This will be followed by a short history of access to information legislation across the globe. I will then examine barriers and strengths of access systems of selected countries. Last, I will compare features of Canadian Federal and Provincial legislation.

#### OECD Guidelines

Much of the legislation that will be discussed in this research follows principles known as fair information practices. The principles, developed by the United States Department of Health, Education and Welfare in 1973 (Canadian Nurses Association, 2003), are the basis of the Organisation for Economic Cooperation and Development's (1980) "Guidelines on the Protection of Privacy and Transborder Flows of Personal Data." The principles, considered a minimum standard of protection, are intended to ensure that the methods by which public bodies and other organizations collect, use, store and dispose of information will protect privacy and security of personal data related to transborder flow.

The eight principles are as follows:

1. Collection Limitation Principle: There should be limits to the collection of personal data and any such data should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the data subject.
2. Data Quality Principle: Personal data should be relevant to the purposes for which they are to be used, and, to the extent necessary for those purposes, such data should be accurate, complete and kept up-to-date.
3. Purpose Specification Principle: The purposes for which personal data are collected should be specified not later than at the time of data collection and the subsequent use limited to the fulfillment of those purposes or such others as are not incompatible with

those purposes and as are specified on each occasion of change of purpose.

4. Use Limitation Principle: Personal data should not be disclosed, made available or otherwise used for purposes other than those specified in accordance with [the Purpose Specification Principle] except:

- a) with the consent of the data subject; or
- b) by the authority of the law.

5. Security Safeguards Principle: Personal data should be protected by reasonable security safeguards against such risks as loss or unauthorized access, destruction, use, modification or disclosure of data.

6. Openness Principle: There should be a general policy of openness about developments, practices and policies with respect to personal data. Means should be readily available of establishing the existence and nature of personal data, and the main purposes of their use, as well as the identity and usual residence of the data controller.

7. Individual Participation Principle: An individual should have the right:

a) to obtain from a data controller, or otherwise, confirmation of whether or not the data controller has data relating to him;

b) to have communicated to him, data relating to him

- i) within a reasonable time;
- ii) at a charge, if any, that is not excessive;
- iii) in a reasonable manner; and
- iv) in a form that is readily intelligible to him;

c) to be given reasons if a request made under subparagraphs (a) and (b) is denied, and to be able to challenge such denial; and

d) to challenge data relating to him and, if the challenge is successful, to have the data erased, rectified, completed or amended.

8. Accountability Principle: A data controller should be accountable for complying with measures which give effect to the principles stated above. (Organisation for Economic Cooperation and Development, 1980)

As the research focus is primarily on access to personal information, Principles 6 (Openness), 7 (Individual Participation) and 8 (Accountability) are the most relevant for the purposes of this research and will be referred to throughout the thesis. Of particular interest is how various countries and Canadian provinces and territories have incorporated the principles into access legislation and the resulting impacts of practices and policies established to facilitate access. A thorough understanding of barriers to access must also consider the context in which data is collected and used by the public body thus Principles 1 (Collection Limitation), 2 (Data Quality) and 3 (Purpose Specification) will also be examined.

A major premise of this research is that barriers associated with a lack of openness and accountability reflect traditional attitudes and practices concerning data collection and use. If this is so, reducing barriers and increasing support for openness and accountability may require a multi-targeted strategy that aims toward ensuring that public bodies consider the negative ramifications of the ways in which information and communications are monitored and controlled.

### History of Access Laws

Laws concerning access to information have been in existence since the eighteenth century (Banisar, 2002; Mendel, 2003). The earliest law, entitled the *Freedom of the Press Act*, was enacted in Sweden in 1766. Despite its name, the legislation, which is part of the Swedish Constitution, guarantees the right of access to all citizens. Sweden was also among the first countries in the world to introduce legislation (*Data Act*, 1973) concerning the processing of personal data (Banisar, 2002; Mendel, 2003).

In Western Europe revolutions in England and France in the seventeenth and eighteenth centuries, respectively, loosened the monarchies' control over the state and introduced democratic rights of free speech and public scrutiny of the legislative process (Fowlie, 2005b). Government bureaucracies evolved and bureaucrats were given the authority to develop and implement policy. Article 14 of France's *Declaration of the Rights of Man* (1789) states that, "All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put."

In 1888 Columbia implemented the Code of Political and Municipal Organization, which allowed access to documents in the possession of government offices and archives (Mendel, 2003). The adoption of laws and practices was slow, however, as the constitutions of most countries did include freedom of information as a right (Banisar, 2002; Mendel, 2003). Two important points to emphasize are that the earliest laws did not allow citizens access to their own personal information and that modern laws distinguish between the right of access to personal information and the right of access to non-personal information.

The inclusion of freedom of expression (and information) and association in the United Nations Declaration of Human Rights of 1948 was the first recognition of these rights by an international governing body (Mendel, 2003). Under Article 12, "No one shall be subjected to arbitrary interference with his privacy, family and home or correspondence, or to attacks upon his honor and reputation." Article 19 provides that, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 20 provides that, "(1) Everyone has the right to freedom of peaceful assembly and association; (2) No one may be compelled to belong to an association." The intricate connection between democracy, access to information and freedom of association underlies this research and will be expounded upon further in this and the remaining chapters.

The Declaration of Human Rights also includes principles concerning fair treatment under the law (Article 10); protection against interference (concerning privacy, family, home and correspondence) and attacks on personal reputation (Article 12); and participation in governance and equal access to public service (Article 21). The member countries of the United Nations are to abide by the principles set out in the Charter of the United Nations and the Declaration or risk being expelled by the General Assembly. International human rights observers (Human Rights Watch, 2006; Amnesty International, 2008) and the United Nations itself (United Nations News Centre, 2008) question the effectiveness of the process given continuing abuses of human rights both by industrialized and developing nations with enforcement and support of members in decline.

In March of 1999, fifty years after the Declaration of Human Rights, the United Nations issued a document reaffirming the right of individuals to seek information concerning their human rights. Article 6 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms provide, in part, that, "Everyone has the right, individually and in association with others: (a) To know, seek, obtain, receive and hold information about all human

rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.”

The passage of the *Freedom of Information* law by the United States in 1967 marked a change in modern democracies toward openness (Banisar, 2002; Mendel, 2003). This law allowed for public access to government documents and an external appeal process, to the Federal court system. The establishment by the OECD of its privacy guidelines marked the subsequent development by many pieces of access and privacy legislation by its member countries. Subsequent access legislation was passed in 1982 in Canada, 1988 in Australia, and 1993 in New Zealand (Mendel, 2003). These are laws which pertain to access to non-personal information, and as such, have been models for legislation around the world. Banisar (2002) comments on the development of existing legislation:

Overall, most FOI laws around the world are broadly similar. In part, this is because only a few countries' laws have been used as models. The US FOIA [Freedom of Information Act] has probably been the most influential law. Canada's and Australia's laws have been prominent with countries based on the common law tradition. (p. 4)

The inclusion of provisions for access to personal information in access legislation or in stand alone legislation is a relatively new occurrence. In Canada and the United States access to personal information falls under Federal privacy legislation. Provincial legislation, instituted across Canada by all provinces in the 1990s, includes provisions for access to personal and non-personal information. More will be said about Canadian Federal and Provincial legislation later in this chapter.

The past twenty years has been a time of massive global change in governance and technology. Global trade and economic development have led to public concerns regarding breaches of privacy and data security involving the cross border flow of personal data. In response, countries have taken various steps to ensure that such fears are allayed. In 1995 the European Economic Union (EU) issued a comprehensive privacy directive to its member states, “On the Protection of Individuals With Regard to the Processing of Personal Data and on the Free Movement of Such Data.” The EU directive, which required member nations to implement legislation that would protect personal information, spawned subsequent legislation in the United Kingdom, Western Europe and Australia, as well as a voluntary “Safe Harbour” code of conduct in the United States. The directive contained detailed provisions concerning how personal data is to be processed, rights of access by the data subject, confidentiality and security, and measures

when transferring personal data outside the country. Latin American countries, including Colombia, Peru, Argentina, Brazil and Ecuador, have adopted the principle *habeas data* (“you should have the data”), which refers to the Constitutional right of citizens to access, correct and destroy any of their own personal information held by government. South Africa’s *Promotion of Access to Information Act (PAIA)*, which allows the public access to personal and non-personal information from both public and private sector organizations, is considered one of the most advanced pieces of legislation today (Banisar, 2002; Mendel, 2003). *PAIA* has requirements for access and accountability that many pieces of legislation lack. The legislation and practices of individual countries will be further detailed in the next section.

### Overview of Provisions of Legislation Across the Globe

There is not much variation between modern legislation because these laws have been based on that of a few countries (Banisar, 2002). Legislation with provisions for access to personal information typically include sections that specify the purpose and scope of the act; the offices covered (Parliament and Courts are typically not included); the right of individuals to make a request; details of the request (such as how the request should be made; to whom the request should be made); measures that the organization must take to respond; exceptions to disclosure; and appeal processes.

Definitions of who is entitled to make a request (“citizen” or “permanent resident” of a country) and the materials requested (“information” or “records”) vary somewhat as do the organizations to which the request are made (public sector organizations, businesses, international bodies). Problems with access may arise because legislation may not be updated to include requests and records in electronic form (Banisar, 2002).

A key principle of access is that all information requested by the applicant is to be released unless the legislation or other government legislation prevents its disclosure. Applicants who request their own personal information will normally receive all of the information unless the release of the information may harm the privacy of third parties. Other reasons that some or all of the information may be withheld are that its release could be harmful to personal or public safety, harmful to law enforcement or be considered a matter of solicitor client privilege. “Harms tests” are normally employed for the determination of harm to personal privacy, public safety and law enforcement. Some exceptions to disclosure, such as Section 22 (Disclosure harmful to personal privacy) of the *Freedom of Information and Protection of Privacy Act of British Columbia*, include a consideration of rights of the applicant as well as a harms test. Legislation typically

specifies that applicants have the right to know upon what grounds information is withheld and that they have a right to request a review.

Most legislation includes mechanisms of appeal (Banisar, 2002; Mendel, 2003). Internal appeals are often the first line of approach, followed by an appeal to an external body. External offices of oversight are thought to increase the openness of the process while internal reviews often maintain the status quo (uphold the denial of access and delay release) (Banisar, 2002). Ombudsmen or Information Commissioners, which may be completely independent or part of Parliament or government, normally make non-binding decisions, however, because the position has powers similar to a judge their decisions are usually followed. In Ireland and the United Kingdom, the Information Commissioner can make binding decisions, which are subject to overrides and limited appeals (Banisar, 2002). An office of oversight may also have other duties, such as audits of public bodies, training of staff, public awareness of the legislation and proposing changes to legislation.

The court system is the final level of appeal in most legislation (Banisar, 2002). If the courts are the only point of review, as in the United States, applicants face barriers to appeal in the form of costs and delays in the legal process. This type of appeal system also prohibits and limits participation and increases the disparity between those able and unable to access information.

An important facet of mainly the newer laws is the requirement for governments to compile a list of publicly available documents and to make this information available electronically, on a website or in paper form (Banisar, 2002; Mendel, 2003). Legislation may also specify categories of information that are routinely releasable. In British Columbia as part of cross government procedures rather than legislated policy the Provincial government is required to specify the location of personal information banks (which records contain them) and make this information available to the public.

### Legislation of Selected Countries

In the following section I will offer a brief description of barriers to and supports for access to personal information contained in existing legislation of seven selected countries. In order of discussion, the countries are Australia; United Kingdom (England, Wales and Scotland); South Africa; United States; and Canada. All are members of the United Nations and all have ratified the International Covenant on Civil and Political Rights. With the exception of South Africa, all are members of the Organisation for Economic Cooperation and Development (OECD).

The noted strengths and criticisms are only those that I was able to identify; there may be

many others. Unless otherwise stated, applicants have the option of several levels of appeal (internal review, review by Ombudsman or Commissioner, judicial review), which is considered a strength of access legislation. Two common barriers to access are the required payment of fees (Australia, United Kingdom, South Africa, and United States) and the lack of an independent Ombudsman or Privacy Commissioner (Australia, South Africa, and United States). In South Africa organizations may impose fees for providing records only if the search is successful (Banisar, 2006).

### Australia

Australia's Constitution does not refer to a right to information. The country passed its *Freedom of Information Act (FOI Act)* in 1982 and its *Privacy Act* in 1988 to comply with the OECD's guidelines and to fulfill its obligations under Article 17 of the International Covenant on Civil and Political Rights (Office of the Privacy Commissioner of Australia, 2008).

The *Privacy Act* provides individuals with the right to access records about themselves that are held by the government of Australia. Privacy legislation has also been passed by most states and territories.

Over 90% of the 39,265 requests made from July 2004 to June 2005 were for personal information (Office of the Privacy Commissioner of Australia, 2005). 339 of the 508 requests for internal review (67%) were related to decisions concerning personal information. While the agency's decision was upheld 56% of the time, for the other 44%, additional materials were released.

### Strengths

Along with provision for several levels of appeal, a main strength of the legislation is that it allows for the use of an intermediary. If the applicant is not granted access the public body must consider using an intermediary to allow some form of access to the information. Whether an intermediary is chosen depends on several factors, including "the nature of the exception under which an organisation may deny access"; "whether the intermediary would meet the needs of both the organisation and the individual requesting access"; and "whether giving access through an intermediary would lessen a threat to life or health that the organisation believes will arise if direct access is given to the individual."

Public organizations, however, only have to consider the use of a mutually agreed on intermediary. In submissions to the ALRC in 2007, the Ombudsman and other stakeholders such as Legal Aid Queensland suggest that individuals such as those with "diminished decision-

making capacity” (ALRC, 2007, p. 759) should be able to use an intermediary to access information that they would otherwise be denied (ALRC, 2007). The ALRC suggested that the proposed “Access and Correction” principle include wording that refers to the mandatory instead of discretionary use of an intermediary in certain situations when requested information is excepted from disclosure (ALRC, 2007).

#### Criticisms

In September 2007, the Australia Law Reform Commission (ALRC) released a report (*Review of Australian Privacy Law*, discussion paper 72) that contained 301 proposals for improvement to the Act. The ALRC recommended that “at or around the time of collection of personal information, agencies and organizations be required to notify individuals that they are able to gain access to the information collected” (ALRC, 2007, p. 771) and “that agencies and organisations should be required to list in their Privacy Policies the steps individuals may take to gain access to personal information about them that is held by an agency or organisation” (ALRC, 2007, p. 771). I have been unable to determine other barriers to access for the *Privacy Act*.

#### United Kingdom

Mendel (2003) notes the contradictions evident in the United Kingdom’s historical promotion of freedom of expression and suppression of information:

The United Kingdom presents an interesting conundrum on freedom of information, contrasting a vibrant media operating in an atmosphere of relatively high respect for freedom of expression with a government which has, at least until recently, been obsessed by secrecy. This explains the odd situation whereby a freedom of information law was not passed in the United Kingdom until November 2000, long after most established democracies had adopted such a law. (p. 91)

The *Data Protection Act* (1998) was enacted in March 2000 in response to Directive 95/46/EC of the European Parliament. The purpose of the legislation is to protect the right to privacy of individuals and ensure that data about them is processed only with their knowledge and consent. Under Section 1(1) of the Act, processing refers to anything that can be done with data. As with previous legislation examined, eight “data protection principles” form the basis for the legislation and the data controllers must comply with these principles.

14,616 requests for information were made in 2005, with 18,400 requests made in 2003

(Banisar, 2006). Seventy-six percent of all requests were from individuals asking for their personal information. Forty-three percent of all requests were granted in full, while twenty-six percent were granted in part and fifteen percent were denied in full. Four percent were subject to an internal review (Banisar, 2006).

### Strengths

The *Data Protection Act* allows applicants several levels of appeal. For example, if applicants do not receive a satisfactory response concerning their social service records they may contact the Director of Social Services or the Chief Executive of the Council (local authority) (Office of the Information Commissioner, 2008). If still dissatisfied, the applicant may either apply to a court for release of the data or contact the Information Commissioner. Applicants are advised by the Information Commissioner to consult a solicitor, Citizens Advice (a national charity that offers free legal and financial advice and other services) or their local law centre if they are considering legal proceedings (OIPC, 2008).

The legislation contains deterrents to the unauthorized collection, use, disclosure and destruction of data. The following actions are treated as criminal offences: “if a data controller having received a subject access request destroys the data rather than discloses it”; “a data controller discloses personal data without the authority to do so”; “a data subject does not comply with an enforcement notice”; or “a data subject knowingly or recklessly obtains, discloses or procures the disclosure of personal information without the consent of the data controller.” The Information Commissioner monitors and maintains compliance through enforcement notices and practice recommendations (OIPC, 2008).

### Criticisms

Instead of the usual thirty days, usually one’s request must be responded to within forty days. The organization may charge a fee for providing the information, up to a maximum of ten pounds for typical requests and fifty pounds for non-electronic medical records (Banisar, 2002).

I was unable to determine whether comments concerning access and appeals under the *Data Protection Act* pertain to requests for personal information. Banisar (2006) notes that there have been “delays on responses and decisions both by the authorities and the Information Commission” (p. 156) and “problems with the excessive use of exemptions by public bodies” (p. 156). The Commissioner has been criticized for not addressing substantive issues and for his judgments in several cases.

Notes from a recent Information Tribunal User Group meeting (Information Tribunal of

United Kingdom, September 18, 2007) shed some light on current legal barriers faced by applicants. Three main recommendations are “to explore more avenues of legal support for litigants in person, updating the website with the information, and alerting litigants in person to such early in the proceedings” (unpaged); “to explore the possibility of funding a specialist information rights post at a designated Law Centre” (unpaged); and “to provide more guidance to litigants on the actual hearing and what to expect” (unpaged).

### South Africa

South Africa, formerly a colony of Britain and under authoritarian rule until 1994, is now a democracy. The Bill of Rights in the Constitution of South Africa includes a right of access to information held by the state as well as to information held by private agencies.

In accordance with the Constitution, the *Promotion of Access to Information Act (PAIA)* was implemented in 2001. Public interest groups were highly involved in the drafting of the legislation (Dimba, 2002). The purpose of the Act is to “foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information” and “actively promote a society in which the people of South Africa have effective access to information to enable them to fully exercise and protect all of their rights.”

### Strengths

Of the legislation reviewed, *PAIA* offers applicants the most assistance and respect. The Act requires information officers to provide “such reasonable assistance, free of charge, as is necessary to enable” requesters to make requests. A request may not be rejected without first offering the requester this assistance.

Applicants may choose to receive the requested information in one of the eleven official languages, including English, Afrikaans and nine indigenous (Bantu) languages). Applicants who cannot submit written requests are allowed to make an oral request, which the information officer must put in writing and provide to the applicant.

Public bodies must submit annual reports containing details of requests received and internal appeals to the South African Human Rights Commission (SAHRC), which is responsible for oversight of the legislation (SAHRC, 2005). As well, public and private organizations covered by the Act must publish directories that describe their structure and functions and contain descriptions of record holdings (Banisar, 2006). Such agencies must also identify records that are publicly available without a request.

Ironically and perhaps mostly due to the oppression citizens experienced under apartheid, the legislation is considered one of the most progressive such laws in the world. In Chapter IX (Summary and Conclusion) I will elaborate further on provisions of *PAIA* that foster access and that could be adopted by Western legislation such as *FOIPPA*.

### Criticisms

Despite the hopes of its creators, there have been many significant problems with the implementation of the Act. Non-compliance by public bodies appears to be extensive (Open Democracy Advice Centre, 2007, SAHRC, 2008). Four years after the Act's implementation few public bodies were submitting annual reports to the SAHRC.

The SAHRC's website offers a summary of reasons for problems with non-compliance:

- Lack of awareness by public bodies about their duties in terms of the Act;
- Public bodies not taking their obligations in terms of PAIA seriously;
- Poor information management systems (no records management policies and file plans) in public bodies;
- Failure to delegate information officers' powers within the public bodies; and
- Inability to identify the Unit or Division to be responsible for administering PAIA.

(SAHRC, 2008, unpagged).

A major problem has been that the legislation does not allow for an independent review of requests for information (Banisar, 2006; SAHRC, 2005). The *SAHRC annual report 2004/05* included a recommendation for the establishment of an Office of the Information Commissioner as a "cheaper and simpler enforcement mechanism to handle complaints pertaining to the right of access to information" (SAHRC, 2005, p. 88).

Lor and van As (2002) examined the development of policies for access to information in South Africa since the implementation of *PAIA* in 2001. The political and governmental climate of South Africa is distinguished by rapid advancements in information technology, particularly with regard to information systems used to organize government information and provide public access. Even though a broad, general policy has been developed that places a priority on access to information, and various initiatives have been developed by various levels of government, the South African government has not developed a clear policy framework that would oversee the coordination of the initiatives. Consequently, many initiatives that focus on greater transparency of government practices and public participation have not been put into practice.

An important initiative with far-reaching effects is the development of multipurpose community centres (MPCCs). MPCCs were to be centre points for the delivery of government of government services, such as welfare, health and education, and offer “access to government information and other information, access to telecommunications and access to electronic libraries, community media and business opportunities” (Lor and van As, 2002, p. 107). Adult basic education and training agencies, “cyber-shebeens” (indigenous cyber-cafes), libraries, post offices, churches, schools and government agencies are just some of the community organizations that could be utilized as part of the proposed information network.

#### United States

Despite the right of information not being part of its Constitution, the United States is noted as having a lengthy history of access to information, with some states providing access to records for over one hundred years (Banisar, 2002). However, although approximately half of the fifty states have legislation concerning government records, “fewer than one dozen provide individuals with the right to see and correct their files” (Media Awareness Network, 2008, unpagued).

The *Privacy Act* of 1974 works in conjunction with the *Freedom of Information Act (FOIA)* (1967) to allow individuals to access their personal records held by federal agencies. The law allows any person or organization, regardless of citizenship or country of origin, to ask for records held by federal government agencies. Some agencies, such as executive and military departments, are excluded from coverage (Banisar, 2002).

A survey by the General Accounting Office (GAO) found that electronic records were part of seventy percent of the agencies’ 2,400 record systems (GAO, 2003). The internet had become an important method of accessing personal information: “agencies allowed individuals to access their personal information electronically via the Internet in about 1 of every 10 systems of records” (p. 3). As the use of manual records systems declines, the ability of citizens to access their own personal information will depend on their ability to access the internet.

In 2003 there were 3.2 million requests made to Federal agencies under the *FOIA* and *Privacy Acts*; in 2004, there were over four million requests (Banisar, 2006). A significant number of requests were made to the Department of Veterans Affairs and the Social Security Administration by individuals seeking to obtain their own records. Often these requests were treated as being made under the *FOIA* rather than the *Privacy Act* (Banisar, 2006).

### Strengths

The legislation contains important provisions that streamline and hasten the processing of requests. Requests to which exceptions do not apply shall be answered “promptly”, which is within twenty working days. If the response time is to be extended, the public body must notify the applicant and offer the applicant the choice of “either limiting the scope of the request or arranging an alternative time frame” (Mendel, 2003, p. 103). Requests may be expedited if the requestor expresses “a compelling need” (Mendel, 2003, p. 104). One example of a compelling need is “where a failure to obtain the record could reasonably be expected to pose an imminent threat to life or safety” (p. 104).

Government bodies must prepare public directories of records that contain descriptions of information management systems and instructions on how to obtain different categories of information (Banisar, 2006). The public agencies must also forward annual reports to the Attorney General concerning their fulfillment of their responsibilities under the Act (Banisar, 2006). The information contained in the reports is to be made available to the public.

### Criticisms

Along with fees (which may be applied by some agencies) and the lack of an independent oversight agency, another barrier is that responses to requests made under the *FOIA* are subject to long delays, sometimes “years or decades” (Banisar, 2006, p. 159). I have been unable to find comparable data concerning the *Privacy Act*. I would venture a guess, however, that applicants seeking social security records and other records concerning personal benefits would experience a delay in response because of the large volume of requests.

A reason for the delays may be the lack of compliance resulting from the lack of guidance by the Office of Management and Budget (OMB), which has responsibility for policy development concerning both pieces of legislation (Banisar, 2002). A 2003 survey by the GAO found uneven compliance by twenty-five Federal agencies with the *Privacy Act*: “Specifically, these officials identified barriers to improved compliance that include a need for more OMB leadership and guidance on the act, low agency priority given to implementing the act, and insufficient training on the act” (p. 14).

### Canada

On par with other nations, the federal *Access to Information Act* and the *Privacy Act* were both implemented in 1983, following the proclamation of the *Charter of Rights and Freedoms* in 1982. The *Canadian Charter of Rights and Freedoms* does not mention the right to access information.

However, it does include statements which outline that citizens have “a) freedom of conscience and religion; b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; c) freedom of peaceful assembly; and d) freedom of association.”

The Information Commissioner (1994) explains Canada’s reluctance to implement information and privacy legislation as attributable to its “political heritage, the parliamentary system with its dedication to ministerial responsibility and a public service that inherited the British penchant for secrecy” (p. 2). The Commissioner offers further thoughts on the first ten years under the legislation:

The entrenchment of fundamental rights and liberties in the *Charter of Rights and Freedoms* in 1982 has had a widely acknowledged impact on government and the courts. To a lesser extent, the information and privacy laws have been recognized as mechanisms in defense of individual rights. In 1986, the Justice and Solicitor General parliamentary committee reviewed these laws and produced a report entitled, *Open and Shut: Enhancing the Right to Know and the Right to Privacy*. The all-party committee described the *Access to Information Act* and the *Privacy Act* as ‘potential instruments with which to strengthen Canadian democracy’ finding that the Charter and the two Acts ‘represent significant limits on bureaucracy and have provided a firm anchor to individual rights’”. (p. 3)

The explicitly stated purpose (Section 2) of the *Privacy Act* “is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information.” The *Privacy Act* pertains to requests for personal information contained in government records while the *Access to Information Act* covers requests for other official records.

Individuals are to be given access to their own personal information as per section 12 (Right of access), which provides as follows:

(1) Subject to this Act, every individual who is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* has a right to and shall, on request, be given access to

(a) any personal information about the individual contained in a personal information bank; and

(b) any other personal information about the individual under the control of a government institution with respect to which the individual is able to provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

Applicants need to submit a written request using a completed “Personal Information Request form” to the government institution believed to hold the information and “provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the institution.” *Info Source*, the public directory of Federal government records, identifies records held by each public body covered by the *Privacy Act* and the *Access to Information Act*.

The government is required to either allow the applicant to receive a copy of or examine the requested information. The head of a public institution can permit records to be made available in the language requested by the applicant as long as it is either official language. Applicants with sensory disabilities can ask that information be provided in an alternative format.

The Federal government is to respond to the request within thirty days after the request is received. An extension of thirty days can be taken for consultations or if processing the request would unreasonably interfere with the operations of the government. Additional time may also be taken to translate the personal information or to convert the information into an alternative format. Fees do not apply to requests for personal information under the Act.

Exemptions to disclosure include personal information pertaining to a third party, information that may threaten the safety of individuals, and solicitor-client privilege. Under section 28 (medical records), the head of an institution may refuse to disclose personal information “that relates to the physical or mental health of the individual who requested it where the examination of the information by the individual would be contrary to the best interests of the individual.”

Applicants may submit complaints concerning their privacy requests or if a government institution has violated their privacy rights to the Office of the Privacy Commissioner. Complaints related to requests may be made on several bases, including exceptions applied and delay in providing a response.

A complaint must be made within sixty days from the date the response was received by the applicant. There is no cost for investigation of a complaint. If applicants are unsatisfied with the response by the Commissioner they may apply for a judicial review by the Supreme Court of

Canada.

In 2001-2002, 36,000 requests were made for personal information under the *Privacy Act* (Banisar, 2002). During the same time period, 1,213 complaints were made to the Privacy Commissioner: forty-five percent were on the grounds of denial of access to the requested information, and thirty-five percent pertained to failure to respond within the legislated time frame (Office of the Privacy Commissioner, 2002).

In 2003-2004, the Privacy Commissioner received 4,206 new complaints (OPC, 2004). Of these complaints, 950 were against the Correctional Service of Canada (CSC) from thirty-eight offenders in British Columbia for delays receiving personal information held in twenty-five standard personal information banks. 1100 more complaints concerning the CSC were from 608 correctional officers for refusing to provide them with copies of their employee personnel files.

### Strengths

The *Privacy Act* is considered one of the best such pieces of legislation in the world. The Act allows for several levels of appeal and an independent office of oversight. Applicants are not charged application, processing or mailing fees.

Tom McMahon, legal counsel for the Information Law and Privacy Section, Department of Justice, believes that the trend toward more open government requires citizen activism and will continue with the development of the information highway and the fact that every jurisdiction in Canada now has access laws: “it is likely that over time (access laws) will come to be seen as essential to democracy as the rule of law, an independent judiciary, and fair elections” (McMahon, 1996, p. 11). McMahon foresees that, rather than “hiding behind the discretion that access laws provide them” (p. 11), government will be more apt to provide information routinely.

Proactive disclosure is another touted method of supporting access to information. In recent years the Federal government has adopted several policies that require the disclosure of information, such as information concerning the reclassification of occupied positions in the public service, travel and hospital expenses of public officials, and the awarding of contracts of over ten thousand dollars. The Privacy Commissioner’s website has links to these policies and information that has already been disclosed ([http://www.privcom.gc.ca/pd-dp/c-c/index\\_e.asp](http://www.privcom.gc.ca/pd-dp/c-c/index_e.asp)). While these policies do not refer to access to personal information, the disclosures serve to make government more transparent and accountable. The policy on the reclassification of occupied positions will render the employee positions in the hierarchy more visible and provide the public with increased awareness of how government is staffed and organized.

### Criticisms

Not unexpectedly, the annual reports of the Privacy Commissioner mainly address issues related to the protection of privacy, such as “ensuring that the Federal government is collecting as little personal information as possible” (Office of the Privacy Commissioner, 2007, unpagged). The Privacy Commissioner notes the increased potential for improper decision-making resulting from unprecedented levels of collection of personal information: “As law enforcement and national security agencies collect more information, from more sources, about more individuals, the probability increases that authorities will make decisions based on information of questionable accuracy or take information out of context” (OPC, 2005, p. 12). He suggests that reforms to the Act address the following issues: “the need for a broader range of fair information practices; greater openness and transparency; an expanded right of access to personal information; limits and conditions for transborder data flows; and greater recourse to the Federal Court” (OPC, 2007, unpagged). With respect to access to personal information, the Privacy Commissioner believes that the *Privacy Act* needs to be updated to grant rights of access on par with that of citizens in the European Union and other countries. Specifically, the Act should be amended so that all Canadians have the right to access personal data held by the Canadian government “regardless of their citizenship or place of residence.” The Privacy Commissioner also recommends that, similar to the *Access to Information Act*, sanctions should be included in the *Privacy Act* “for destroying, altering, falsifying or concealing a person’s record.”

Practically speaking, there is not much information available on the Privacy Commissioner’s website concerning the access and appeal processes. For example, grounds for complaints are listed in broad categories: access; accountability; accuracy; challenging compliance; collection; consent; correction; fee; openness; retention and disposal; safeguards; time limit; and use and disclosure. Of these thirteen grounds, six (access, accountability, accuracy, openness, retention and disposal, and time limit) appear to refer to requests for personal information.

Examining precedent concerning appeals of responses by public institutions is also difficult. The topics that one can search under relate to neither the institution nor the type of record. Instead, those who want to appeal a request or examine the Commissioner’s findings must try various search words at random, or conduct a search under such private-sector oriented topics as “accommodations,” “financial institutions,” “health,” “marketing,” “professionals,” “sales,” “services,” “telecommunications,” and “transportation.”

Another problem is that, unlike the Office of the Information and Privacy Commissioner of British Columbia’s website, the Federal Privacy Commissioner’s website does not list details of investigations but instead provides only a few summaries of a few findings made per year. Only

three summaries pertained to requests for personal information; of these, just two referred to a specific request.

The challenges noted above are only symptoms of underlying attitudes toward access to information, which the Information Commissioner deftly describes:

The background for this reform exercise is the reality that no government – not in Canada, not elsewhere in the world – lives comfortably with a legal right of access to government-held records. In opposition, politicians tend to be ardent champions of access laws and information commissioners. The law gives them enforceable rights, after all.

Once in government, however, the law imposes obligations on them to conduct thorough searches, minimize secrecy and produce records in a short period of time. The obligation limits in a dramatic way the options available to governments for ‘managing the message’. Consequently, the temptation is great for any sitting government to address its own agenda for relief from what it sees as ‘onerous’ obligations and to do so in the guise of reform. (Office of the Information Commissioner, 2002, p. 1)

#### Access in British Columbia

Barriers to access to personal information in British Columbia is the subject of this study. The access and appeal processes related to the *Freedom of Information and Protection of Privacy Act* have already been discussed in detail in Chapter II (The Access Process and the Organizational Context).

#### Access in Other Provinces

Several provinces enacted legislation concerning both access and privacy before the Federal legislation was implemented. Nova Scotia passed its legislation in 1977, the first jurisdiction in the Commonwealth to do so (Information Commissioner of Canada, 1994). New Brunswick’s legislation was implemented in 1978, followed by Newfoundland in 1981 and Quebec in 1982. Among the last governments to implement legislation, the Yukon and the Northwest Territories implemented their similarly named and provisioned *Access to Information and Privacy Acts* in 1996. The Northwest Territories’ legislation became part of the law of Nunavut on division day (April 1, 1999). Legislation in Newfoundland and Labrador was not implemented until 2002.

Provisions concerning access to personal information contained in Canada’s Federal and provincial legislation are quite similar. The remainder of this section will compare and contrast

relevant aspects of provincial and territorial legislation.

The explicitly stated purpose of most provinces' legislation is "to make public bodies more accountable to the public and to protect personal privacy." New Brunswick's *Right to Information Act* has only sixteen provisions and does not specify a purpose. The legislation entitles citizens to "request and receive information relating to the public business of the Province" and "to request and receive information about him or herself."

The legislation of all of the provinces concerns the right to records, rather than information, in the custody or under the control of a public body. Requests are to be made to the head of the public body believed to hold the material. The onus is not on the applicant to select the correct public body, however, and public bodies are required to transfer requests to others that do hold the records.

Regarding how requests are to be made, all provinces require written requests. In Saskatchewan applicants are technically required to submit an access form, however, the government normally will respond to other forms of written requests. Manitoba's legislation allows applicants to make oral requests if they have "limited ability to read or write English or French; or have a disability or condition that impairs [their] ability to make a written request." The Yukon's legislation is even more flexible, recognizing that some people may be illiterate: "a request for access to a record may be made orally or in writing verified by the signature or mark of the applicant."

All provinces require that the applicant provide enough detail for the public body to identify the record. While most provinces' legislation requires that records that the public can access be listed in public directories, only a few provinces have published such directories. The Alberta government's directory of records is available at public libraries, however, the latest edition is dated 1995. The Government of Ontario's directory of records is available online. In all provinces applicants may ask to view or receive a copy of the information.

In most provinces public bodies are not required to provide records in languages and formats other than the one in which they exist, for example alternative formats for the hearing or seeing impaired. In most instances, however, public bodies will try to accommodate such requests. In Ontario, applicants can ask for information in a reasonably practical format as long as they are willing to pay the fee. In Manitoba, if a record exists but is not in the form requested by the applicant, the head of the public body may create a record in the form requested if it would be simpler or less costly for the public body to do so. Under Prince Edward Island's legislation, public bodies that are subject to *the French Language Services Act* will respond in either English or French. In Manitoba, records are generally provided in the language in which they were

created, however, applicants may request an explanation of the record in English or French. In the Northwest Territories, requested records are to be provided in an Official Language of the Territories where the record already exists in that language or the public body considers it to be in the public interest to have a translation of the record prepared in that language. In Quebec, applicants may ask that documents be translated into English or French, but the public body is not required to fulfill the request; applicants are not required to pay for translation. In Ontario applicants cannot ask for records in languages other than English.

The time limit for responding is normally thirty days. Public bodies in the Northwest Territories and Nunavut are to respond within twenty or thirty days depending on the request. In Quebec, public bodies respond within twenty days: extensions of time can only be taken for ten (instead of the usual thirty) days, and made only once. All provinces specify similar reasons that extensions of time may be taken to respond to requests: the applicant has not provided enough detail to identify the requested records; a large volume of records must be searched and meeting the time limit would interfere of the operations of the public body; the public body needs more time to consult with a third party; or a third party has asked for a review.

All provinces except Saskatchewan and New Brunswick require that the public body “respond to each applicant openly, accurately and completely.” Exceptions to disclosure are fairly standard for all provinces: cabinet confidences; policy advice; legal advice; disclosure harmful to law enforcement; disclosure harmful to the financial or economic interests of the government or third parties; disclosure harmful to heritage sites; disclosure harmful to individual or public safety; disclosure harmful to personal privacy; and disclosure harmful to business interests of a third party. There are also exceptions to disclosure for information due to be released to the public within the next sixty or ninety days, as well as a public interest override.

Some provinces’ legislation includes unique exceptions to disclosure. The Yukon’s legislation includes an exception concerning workplace harassment, whereby a public body may refuse to disclose a record related to an incident of workplace harassment and any information in it or about it. In Ontario, applicants do not have a right of access to “information collected, prepared, maintained or used by an institution in connection with labour relations or employment matters.” In Quebec, public bodies may refuse to disclose to an applicant “personal information that is evaluative or opinion material compiled for determining the applicant’s suitability, eligibility or qualifications for employment or for the awarding of government contracts or other benefits when the information has been provided to the public body, explicitly or implicitly, in confidence.” In Nova Scotia, applicants may be denied access to academic references and some hospital records.

Some provinces charge fees for accessing personal information. In Ontario, New Brunswick

and Newfoundland/Labrador one must pay a five dollar application fee. In Saskatchewan, there is a twenty dollar fee for requesting information from local authorities. In Manitoba, Nova Scotia and the Yukon applicants are charged fees for search time. In Saskatchewan and Manitoba the first two hours for a search and preparation of the records are free but after that there is a fifteen dollar fee per each half hour. In Nova Scotia finding and retrieving the record is at a cost to the applicant of fifteen dollars per hour.

Most governments charge fees for copying the records. In Alberta and Manitoba there is a charge for copying the records if the fee is more than ten dollars. In Alberta, applicants pay for the cost of copying the records if the fees are estimated to exceed ten dollars. In New Brunswick a fee of ten cents per page may be charged for photocopying the records; in Saskatchewan and Prince Edward Island the cost is twenty five cents per page. The Northwest Territories and Nunavut charge for copying if the cost exceeds twenty-five dollars. Ontario charges twenty cents per page. Similar to Alberta, Saskatchewan and Manitoba, Ontario has a list of additional costs associated with copying other items such as microfilm and computer disks. Nova Scotia, Quebec and the Yukon also charge for copying but I was unable to obtain exact figures.

Nova Scotia, Quebec and the Yukon charge for postage and faxing. Manitoba charges for courier delivery of the records.

In Alberta, Saskatchewan, Manitoba, Ontario, Prince Edward Island, Yukon, Northwest Territories and Nunavut one can request a fee waiver from the Office of the Information and Privacy Commissioner.

#### Avenue of appeal

Applicants are encouraged to first try to resolve any problems with the public body. If this is not successful, applicants can appeal to either an Ombudsman or Information and Privacy Commissioner charged with oversight of the legislation. Most of the provinces, including Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia, the Yukon and the Northwest Territories, have independent Commissioners.

In Manitoba, applicants first appeal to an Ombudsman. Regardless of whether the decision is in the applicant's favour, if the applicant has received the Ombudsman's report and the public body refuses to grant access, the applicant can appeal the public body's decision to the Manitoba Court of Queen's Bench.

In New Brunswick applicants can request a review of the public body's decision by the Office of the Ombudsman. As well, applicants can also for a judicial review concerning a decision to refuse access to information. Whereas the Ombudsman's decision is not binding on a government

department, a judge's decision is binding. The cost of going to court may be prohibitive. As well, one cannot request both reviews simultaneously, or that the Ombudsman conduct a review after a judge has rendered a decision.

In Nova Scotia, applicants can request a review by the Nova Scotia Freedom of Information and Protection of Privacy review officer. They may also appeal to the Supreme Court of Nova Scotia, but only if there is no third party involved or if all third parties consent to the appeal to the Supreme Court.

## CHAPTER IV: SYSTEMATIC REVIEW

Most academic literature has noted the importance of freedom of information legislation to democracy (Lor & van As, 2002; Mendel, 2003; Milsum, 2002; Roberts, 1999a; Roberts, 1999b; Roberts, 2002a; Roberts, 2002b; Roberts, 2004b). I will begin this chapter by briefly reflecting on the meaning and necessity of access to information as a fundamental human need. I will then examine academic studies that focus on access to information policies and practices pertaining to access to personal information in Canada. Next, I will examine barriers to and supports for access to information contained in articles and other materials from various other sources: government officials responsible for oversight of access and privacy legislation; the media; legal advocates; concerned citizens' groups; and policy analysts. Last, I will describe barriers to and supports for structural and cultural change as presented in academic literature, and then offer a summary of the literature reviewed.

### The Meaning of Access to Information

In this research I am primarily investigating barriers encountered by applicants who attempt to access their own personal information from the Provincial government. However, a brief consideration of the broader issue of what access to information is and means will help illuminate the importance of governments valuing this right and making this right able to be acted upon by the populace.

As with access to food, water and shelter, the ability of citizens to access information is a fundamental human right and one without which we will perish. For example, we must eat food in order to survive. However, if we do not know what constitutes appropriate food, where to find it and how to prepare it properly we risk illness, injury or losing our lives.

Johnson and Johnson (1987) stress that the sharing of information is a main way that people build bonds of trust and respect. If one shares information with another person for the purpose of assisting them, they are demonstrating consideration for that person. In turn, the receiver, by respecting the sender and the information offered, is acting in a trustworthy manner.

The sharing of knowledge is thus a process on which solid relationships are built. Trust and respect can be established by other behaviours as well as the sharing of information (Johnson & Johnson, 1987). These include being honest with someone, sharing time and resources, and speaking in a considerate manner to them.

To summarize, sharing information is necessary for human survival. What information is shared with us, how and by who matters a great deal, as it is from these interactions that we build relationships and community. It would stand to reason that those who have the skills, knowledge and resources to access information about matters that affect their daily lives, such as educational and employment opportunities; child care; housing; eligibility for income assistance, disability and other benefits; investment and mortgage rates; as well as nutrition and health care, would have a higher quality of living. How governments interpret their role to provide access to information concerning service delivery and decision making processes makes a crucial difference to our individual and collective ability to fully participate in society and make informed decisions.

#### Academic Research Concerning Federal and Provincial Access to Information Policies and Practices in Canada

As previously stated, access to information is a relatively new field of inquiry. The federal *Access to Information Act* and the *Privacy Act* were implemented in 1982 and 1984, respectively, while *FOIPPA* was implemented in 1993. It is thus not surprising that much of the available academic research on accessing personal information pertains to requesting information from the federal government.

Alasdair Roberts is a leading expert on information and privacy issues in North America. He has conducted a vast amount of research concerning federal access legislation. Roberts notes that studies by the Office of the Information Commissioner (OIC) indicate that many requesters have valid grounds to complain about delay but “choose not to, perhaps because they know there is no effective remedy” (Roberts, 2002b, p. 55). He suggests that the *Access to Information Act* lacks an adequate enforcement mechanism for requests for review concerning delay. He posits that “the best approach would be to give the OIC explicit authority to require that non-compliant departments publish plans for improving performance” (Roberts, 2002b, p. 55). Roberts (2003) argues that the *Access to Information Act* has done the opposite of its stated purpose and reduced accountability of federal institutions.

In his study, “Retrenchment and Freedom of Information: Recent experience under Federal, Ontario and British Columbia law” (1999b), Roberts obtained statistical reports of requests made under access to information legislation to examine whether trends toward non-compliance were exacerbated during periods of public sector restructuring. Ontario’s and the Federal government’s legislation require departments and agencies to produce annual statistical reports concerning the

processing of access requests. Roberts analyzed this data as well as data obtained from an information management system used to track requests by the Provincial Government of British Columbia, which does not mandate Provincial institutions to publish such reports. He was unable to examine comparative statistics of other provinces because of a similar lack of legislated reporting.

Roberts (1999b) found that the rate of non-compliance of Federal government offices has increased, and cited the reason as “resource cutbacks and a weakening of enforcement mechanisms” (p. 2). In Ontario the number of requests has drastically declined due to the implementation of a new and more stringent fee structure (p. 2). The small amount of data that Roberts analyzed for British Columbia indicated that the 1998 changes “may have caused a significant reduction in the number of FOI requests received by provincial ministries” (p. 3).

Roberts (1999b) recommends three reforms that governments can adopt to increase compliance among government departments:

First, provinces could amend their FOI laws to include a reporting requirement for departments and agencies, so that the effect of policy changes can be more easily monitored. Federal and provincial information commissioners could also reconsider the strategy traditionally used to promote compliance by institutions with FOI requirements. (Legislation typically allows for offices of oversight to conduct formal investigations, however, institutions may prefer to cooperate informally to develop and implement compliance plans.) A new approach to enforcement, which uses statistical measures to identify patterns of non-compliance by public institutions and targets enforcement actions on institutions with the worst compliance records, may be more effective. Finally, jurisdictions could reconsider fee requirements that have an inequitable impact on individual non-commercial requesters. (p. 3)

Roberts’ (1999a) examination of the data for Ontario resulted in a separate report on the impact of reforms of the Harris Government in Ontario. Analyzing the results of statistical reports made to twenty-four institutions “that received a large number of requests” (p. 2) from 1994 to 1998, he found that changes to fee schedules concerning FOI requests under the *Savings and Restructuring Act* caused a dramatic decline in the number of requests. The largest reduction of requests was for personal information, for which applicants had not been required to pay fees. Under the Act, implemented in January 1996, all applicants were required to pay a five dollar

application fee and a ten dollar appeal fee (Roberts, 1999a). The government's stated reason for introducing user fees was to recover administrative costs. Roberts found that, between 1994 and 1998, the total revenue generated from the implementation of the fees rose from \$151,514 to \$304,605. This represented an increase of over one hundred percent. Roberts states that this amount may be "misleadingly high" because the Ministry of Environment began treating more requests as formal requests and accounts for most of the growth in revenue.

Roberts concludes that the government should either revert to the former fee schedule or, at least, eliminate the new application and appeal fees. Roberts notes that, "FOIPPA is the only FOI law in Canada that requires institutions to make annual reports to the Commissioner (p. 15). Considering the intention of the drafters of the law, he recommends that Office of the Information and Privacy Commissioner should use the data contained in the reports "to prepare an annual review of the law and track compliance by each institution" (Roberts, 1999a, p. 15).

Roberts' (2002a) examination of "sensitive" requests, including those by journalists and political parties, made under the Federal *Access to Information Act*, were subject to differential treatment. His analysis of 2,120 requests made to Human Resources Development Canada between 1999 and 2001 found that, on average, requests by media and political parties took a greater number of days to process than other requests: "in 2000 and 2001 almost a complete month longer" (Roberts, 2002a, p. 184). These requests were also more likely to be responded to beyond the thirty-day (or extended) legislated time limit (known as a "deemed refusal"). If no records were found relating to the request this decreased the probability of a "deemed refusal."

Roberts suggests that "internal norms and routines – what Mashaw calls an '*internal*' law of administration" (Roberts, 2002a, p. 189) are violating two fundamental principles of the Act: equal treatment; and "timely access." Roberts attributes slow processing times to the Act's weak enforcement mechanisms. The Office of the Information Commissioner (OIC) took, on average, five months to respond to complaints regarding delay in 2002 (Roberts, 2002a). He believes that publicity will encourage accountability: the OIC should require federal offices "to produce more detailed and informative statistical reports on the processing of ATIA requests" (p. 190), and that the OIC should "audit institutions to ensure that data-collection and reporting procedures are adequate and accurate" (p. 190). To address the serious issue of "persistent non-compliance," Roberts believes that the OIC should be given "the explicit authority to require that non-compliant departments public plans for improving overall performance" (Roberts, 2002a, p. 191).

Roberts (2004c) also examined the handling of "sensitive requests" under *FOIPPA*. He examines how information technologies have been used by the Provincial Government of British Columbia to monitor and control the flow and release of information considered to be high-

profile. Most ministries in Provincial and Federal governments have stand-alone databases to collect and track information concerning requests for information. The Provincial government's corporate request tracking system (CRTS), however, is a cross-government system that collects a broader range of information and is regularly updated.

Roberts obtained information from the database that suggested that sensitive requests were monitored more closely than other requests and assigned "sensitivity ratings." Requests with a "high" sensitivity rating were more likely to be responded to beyond legislated time frames, sometimes several months later. They were also less likely to result in a full disclosure and more likely to result in a response that records do not exist and to withdrawn by applicants.

A point Roberts did not note but is of tremendous consequence is that the CRTS was developed by EDS Advanced Solutions, a multi-national company which now collects and manages Medical Services Plan, Pharmacare and other revenue for the Province under a multi-year, multi-million dollar contract. This foreign-based company is part of the "shadow government" that enforces government policy and represents the "contracting out" of service delivery, and of privacy (Whitaker, 1999).

For all three of the above-mentioned studies, Roberts concluded that governments' adoption of information management systems has potential for increasing public scrutiny of government actions and increased accountability and transparency. Roberts' ability to demonstrate how laws are implemented and resulting impacts benefited greatly from his ability to request and receive such data, and he suggests that researchers and other non-government actors can undertake more thorough research of "the complexities of daily practice and show how statutory ambitions are amended -- or subverted -- by the internal laws on access to information" (Roberts, 2002a, p. 19).

John Reid, former Information Commissioner of Canada (2004), laments the deeply entrenched attitudes toward secrecy in the Federal public service. He details two decades of struggle by the Office of the Information Commissioner to create open government, including "fighting in the courts to keep exceptions to the right of access as narrow and specific as possible" (p. 82) and "judicial and administrative battles to get government to obey the response deadlines in the Act" (p. 82).

Reid (2004) believes, however, that the largest threat to open government is the lack of information management. He notes that "officials are told to avoid creating records" (p. 83) and that "it is rare in government for committees to keep agendas, minutes or records of decisions" (p. 83). The public's right of access to information cannot be attained if government officials do not attend to information management. As well, without a "paper trail," the Auditor General cannot

be confident of the results of annual audits (Reid, 2004).

Reid (2004) stresses that information management is essential for accountable government . He argues that information management reform should be the Federal government's "most important infrastructure project" (p. 86). He also advocates the development of an information management framework and the implementation of an "Information Management Act" that would designate offices responsible for "monitoring and enforcing the law" (p. 85) and "regulate the entire life-cycle of government-held information" (p. 85).

Mitchinson and Ratner (2004) discuss the issues of government transparency and citizen engagement with respect to the use of information communication technologies (ICTs). They believe that, for citizens to fully participate in public debate, they must be informed about government operations. To this end, more active and greater dissemination of government information through the main tools of the "knowledge economy" (which include the internet, databases and cellular telephones) is necessary.

Noting changes in government toward downsizing of staff and the shift to electronic records, Mitchinson, former Assistant Information and Privacy Commissioner of Ontario, and Ratner (2004) recommend that governments implement electronic records and document management systems and adopt seven Access Design Principles (ADPs) to guide the development of all new technologies. The ADPs include "provisions for accountability" (p. 101) (which refers to the establishment of lines of authority and responsibility, performance standards and accountability mechanisms); "categorization of information" (p. 101) (which involves identifying data that is open for public perusal, data that must be reviewed before being disclosed, and data that should remain undisclosed or confidential); "protection of personal information" (p. 102); "records management"; "communications plan"; "reporting mechanisms"; and "provide for integration with central government web-portal" (p. 102).

Mitchinson and Ratner (2004) strongly support principles of routine disclosure and active dissemination of information. They reiterate findings of the Access to Information Review Task Force that the Federal government could improve access to information by "considering all the ways that information can be provided to the public during the design and implementation stage of any new project" (p. 94) and "systematically identify information that is of interest to the public, and engage in the regular publication of this information either through the internet, or by other means" (p. 94).

Colin Bennett, a researcher who has conducted many studies of privacy and surveillance, examined the role of the Privacy Commissioner of Canada (2003). The Privacy Commissioner and his provincial counterparts are required to perform many duties that involve the resolution of

value dilemmas and that will ultimately influence how concerns for personal privacy are balanced with other concerns, such as efficiency or security (p. 230). Bennett identifies seven interrelated roles that officials responsible for privacy oversight are required to perform: ombudsman; auditor; consultant; educator; policy advisor; negotiator; and enforcer (p. 237). Bennett believes that successful oversight involves a proactive rather than reactive stance, with privacy protection “built in” to policy and seen as a process rather than an outcome. While the legislation emphasizes the Privacy Commissioner’s role as an adjudicator, Bennett emphasizes that the position is “as much an educational effort as a regulatory one” (p. 239) requiring an awareness of many policy tools besides the law and attention to organizational change and the involvement of a large implementation network.

Roberts (2003) also comments on the lack of an effective lobby for open government. He states, “Without an effective lobby, the (federal *Access to Information*) law will continue to die - either from repeated statutory amputations or the internal rot of ministerial control” (p. A13). In my opinion, this statement also pertains to the administration of *FOIPPA*.

#### Barriers to and Strengths of the Access Process Identified by Sources Other than Peer-Reviewed Literature

Academic studies offer important insights concerning the barriers experienced by applicants and ways to improve the access and appeal processes. A review of the academic literature, while providing some clarity, is not meant as an exhaustive account of the phenomena studied. An examination of observations of other stakeholders with intimate knowledge of access legislation and the access and appeal processes will extend greater depth and breadth to the barriers and strengths previously identified.

In the following section, I will offer observations of government officials responsible for oversight, media, advocates and concerned citizens’ groups regarding barriers to and supports for access to information. Despite their different roles and motivations, there is much consensus between the different perspectives that many barriers exist, as well as their origins and impacts. As concerns regarding cross government budget cutbacks and the reduction of credibility and transparency has already been discussed, I will concentrate on additional barriers to access.

#### Barriers Identified by the Media

For the past several years the Canadian Newspaper Association (CNA) has conducted annual audits of governments’ commitment to openness. During the audits reporters try to access

documents from several levels of government (local, provincial, federal) across Canada, including school boards, police, health boards, and local, provincial and federal government offices. As requests for personal and general information are processed in the same manner, the media face barriers that are quite similar to those experienced by people who seek their own personal information from government.

A major finding of the CNA's annual audits is that public bodies at both the Federal and Provincial level use a litany of strategies and tactics to limit and prevent access to information. Governments are not respecting the principle that the information held by the government belongs to the public and that citizens are entitled to receive answers to questions concerning government activities (MacLeod, 2005).

#### Principle of non-disclosure

Cribb and Fowle (2005) note that methods of evasiveness extend to what officials say and do not say when first contacted about their responsibilities to provide information. They recount the experience of a reporter who approached a health unit in Ontario for water quality tests for the region. The government official said that she was not familiar with the records and told the reporter that he could not file an information request because it was not the health unit's responsibility to release the information. When asked why not, the official responded just that the reporter could not file a request. The reporter later learned that the records were held by another public body. The official should have at least acknowledged that she *was* familiar with the type of records that the reporter requested and that the information was not held by the public body. If the official was aware of the name of the public body that did hold them, she could have directed the reporter to the other public body.

Former Federal Information Commissioner John Reid, commenting on the CNA's annual audit, stresses the embedded nature of traditional government culture and its impacts on access to information: "There's still a very strong culture of secrecy in these organizations. They all run on the basis of loyalty and that means not rocking the boat" (Cribb & Vallance-Jones, 2005, p. A4).

MacLeod (2005) posits that bureaucrats are hesitant to release information because of the uncertainty and risk concerning its disclosure. This risk is not to the government but to their own credibility and competence:

Government secrecy is driven by two key groups. Bureaucrats, traditionally sheltered from public probing, often worry that releasing information will complicate their lives. It invites scrutiny of their competence. And it could

compel them to defend publicly why they have or have not done something.  
 (. . .) Likewise, government politicians often want to hide all but the most-filtered and managed information. (MacLeod, 2005, p. C4)

David Loukidelis, Information and Privacy Commissioner, states that individual need for control is behind such decision making: “There is an understandable psychological reaction that if I control the information it’s all safe and that I don’t have to worry about the risk that it’ll be misused or inappropriately disclosed” (Fowlie, 2005e, p. C2).

#### Reduction in note taking

The “culture of secrecy” pertains to government officials’ attitudes and actions taken to prevent the disclosure of information regarding governments’ activities. Along with a tendency toward non-disclosure of written information in its possession, the term also refers to the propensity of government employees to refrain from documenting important facts, rationale, opinions and decisions in favour of verbal messages. This trend results in the development of an “oral culture.” Governments are growing wise to the fact that much of the information that they collect and create is not subject to the provisions of *FOIPPA*. For example, Ken Dobell, at the time a Deputy Minister to former Provincial Premier Gordon Campbell, stated that he does not leave a paper trail and “rarely writes working notes of meetings and rapidly deletes most of his emails” (Lavoie, 2003, p. B1). Dobell explained that he is not deliberately hiding information from the media and public but trying to “avoid having internal e-mails caught up in media fishing expeditions.” Dobell accords a personal level of privacy to corporate operations: “It’s like having a family argument at home and deciding to take it and invite the biggest neighbourhood gossip in” (p. B1).

In making such statements Dobell is denying that citizens have a legal right to access information and that governments are to be transparent and accountable. While the government may be afraid of negative publicity, *FOIPPA* does not exempt from disclosure information or wording that may be a source of embarrassment to the government. The government’s best protection is far from hiding or deleting emails, or not making any notes at all: it is telling the truth (Paterson, 2003), or, as John Reid states, “The way you make (the system) more efficient is by answering people’s questions” (Cribb, Vallance-Jones & Fowlie, 2005, p. C2).

Murray Rankin, a creator of the legislation and legal advocate, succinctly sums up the situation by saying that more people need to use the Act to hold the government accountable, and that there must be more funding, resources and efforts to keep the legislation strong (Fowlie,

2005b). Paterson (2003) states that we did not vote in an autocracy so Dobell cannot complain about access requests: “the solution is to be so open and accountable that there’s no need for them” (p. A3).

#### Strengths of the Legislation as Found by the Canadian Newspaper Association Audits

The audits produced by the Canadian Newspaper Association drew much attention to concerns regarding access to information across Canada. While barriers to access are prevalent, the audits also refer to relative strengths of *FOIPPA*. Compared with other Provincial legislation, *FOIPPA* applies to the largest and broadest number of public bodies, including governing bodies of professions and occupations (Cribb, Vallance-Jones & Fowlie, 2005). Government bodies in Western provinces tended to show the widest degree of openness. John Reid comments: “The western provinces have this concept of populism and whatnot, and that pays off in terms of making things available” (Cribb, Vallance-Jones & Fowlie, 2005, p. C2) .

Reid also suggests greater openness is related to the following factors:

The greater openness in western Canada is partly a function of newer laws and greater support among top officials and politicians. The results also show that provinces that fared poorly in the audit – such as P.E.I., Nova Scotia and New Brunswick – are choosing the most expensive way of handling public disclosure of records. It is far cheaper to release records routinely than to process formal requests under the information laws. (Cribb, Vallance-Jones & Fowlie, 2005, p. C2)

Given previous comments from Alasdair Roberts and David Loukidelis concerning the current state of access to information in British Columbia, as well as Reid himself regarding government cutbacks, the Provincial government may indeed be more open than other governments, particularly those back East. That said, however, the Provincial government’s view of the access process and its drastic reduction of financial support to information and privacy programs and to the Office of the Information and Privacy Commissioner is nothing to aspire to.

#### Advocates

Information and privacy advocates have produced some important findings concerning barriers to access as well. Mitchell and Rankin (1984) and Rubin (1984a) developed separate

taxonomies of barriers to access from examining requests for general information made to the federal government. The barriers identified refer to attempts by officials to obstruct, obfuscate and subvert the access process.

Legal advocates Mitchell and Rankin (1984) note several avoidance practices used by the federal government soon after the *Access to Information Act* was implemented. The tactics include “delay; mislabelling the record, misreading the act; severing; partial access; stonewalling, comingling; and releasing the positive, suppressing the negative” (p. vii).

Ken Rubin (1984a), a formidable Canadian access to information advocate since the implementation of the federal legislation, has by his own calculation made over one thousand requests for information from the federal government. He identifies additional barriers, such as “access procedures made behind closed doors” (p. 4), “vague exemption and exclusion rules” (p. 10), and “insufficient record reference aids” (p. 27). While Mitchell and Rankin’s (1984) and Rubin’s (1984a) findings may be dated, their observations are highly applicable to accessing information under the *Privacy Act* (Bennett, 2003) and *FOIPPA* (Lavoie, 2003a; Lavoie, 2003b; Paterson, 2003).

Twenty years after his initial comments, Rubin believes that we are at a point where the whole system needs to be overhauled: “Governments are so adept at undermining access laws that only drastic action can narrow the gap between what citizens are entitled to and what governments disclose. To yank this whole system, you have to start anew or have a great crisis” (MacLeod, 2005, p. C4).

This research has considered preceding taxonomies in assessing the barriers to accessing personal information in British Columbia under *FOIPPA*. The methodology of this study will be examined in Chapter VI.

### Concerned citizens’ groups

The Freedom of Information and Privacy Association (FIPA), a non-profit association that lobbies for improved access and privacy laws across Canada, produces annual reports concerning the public’s ability to access information from the Provincial government. In FIPA’s 2005 report, “Open Government: B.C. Liberals promise Much, Deliver Little,” Darrell Evans, the Executive Director, states that the Liberals carried on from the NDP with “undermining the act and re-asserting strict government control over access to information” (unpaged). In the organization’s 2006 report, “Access Denied,” of nearly 12,000 requests between 2000 and 2005, 46.8% were not filled within the mandatory thirty days. The report concluded that fewer requests are being made and the percentage of those abandoned is more than fifteen percent (FIPA, 2006). Reports by

FIPA (Tromp, 2000; FIPA, 2005; FIPA, 2006) over the past ten years cite numerous pieces of evidence that, since 1998, both the New Democratic Party and Liberal governments have made several attempts to make the process as difficult as possible for requesters. These include amendments to *FOIPPA*, severe budget and staff cuts to the OIPC, statements made by public officials and statistics concerning requests and appeals.

The Campaign for Open Government is a coalition of forty-four advocacy bodies (including the British Columbia Civil Liberties Association, FIPA, Action Committee of People with Disabilities, and the Canadian Taxpayers Association); professional associations (British Columbia Library Association, British Columbia Teachers' Federation, British Columbia Trial Lawyers Association, Canadian Association of Journalists); unions (British Columbia Nurses Union, Canadian Union of Public Employees); and other provincial and nationally-based committees, coalitions and organizations. The Campaign is pressuring the Provincial government to make urgently needed reforms. The campaign members have identified a set of demands: they want government to increase funding so that requests are handled within the legislated time frame; implement the recommendations from the Special Committee's Review of FOIPPA in 2004; and address the "culture of denial." The culture of denial is typified by constant attempts by government officials to delay, deter, limit and deny access.

### Summary

Responses by the government to requests for information highlight the differences between how the government views its responsibilities to provide information to the public and the rights of the public and their expectations of the process. The myriad of methods used to prevent disclosure of information, from refusing to disclose information that should be routinely available without a formal request, to delays in responding, are indicative of governments' traditional view of information in its possession as its own and its tendency toward secrecy. The problems experienced by applicants are reflective of governments' tendency to use their resources for their own benefit and to prevent public scrutiny. The media, concerned citizens' groups and opposition parties are not seen to have the government's interests at heart: the best strategy as far as the standing government is concerned is to monitor and put constraints on what is disclosed.

Despite the Provincial government's actions, as well as inaction, access to information is a human, legal and civil right. Amendments to *FOIPPA* and cutbacks to information and privacy programs and the Office of the Information and Privacy Commissioner are made in the name of espoused goals of "cost efficiency and effectiveness." However, in actuality the Provincial government is using these strategies to actively oppose citizens' ability to attain their rights of

citizenship. It is shocking that a democratically elected government is indifferent to the needs of individual citizens, and that citizens are increasingly unable to hold government accountable due to the government's undermining of the office of oversight and the legislation itself. The electorate is being told in no uncertain terms that the standing government has a mandate to do what it wants rather than a mandate to serve the interests of the people who voted it into power.

## CHAPTER V: THEORETICAL FRAMEWORK

The request and appeal processes are appropriate sites to explore the link between individuals and institutions. Accordingly, I will examine theoretical and ideological positions concerning the role and function of government in society from the viewpoint of several theorists.

Two literatures in particular have assisted in framing my approach to understanding the issues identified previously: organization of government; and neo-liberalism. In this chapter, I will first briefly review Anthony Giddens' (1984) theory of structuration. I will then examine the development of society and organization of bureaucracy, taking into account theories of Max Weber, followed by an overview of neo-liberalism and its relationship to the research question: what encourages and what limits individual citizens' ability to access their own personal information under *FOIPPA*.

### Giddens' (1984) Theory of Structuration

Anthony Giddens is a pre-eminent British social theorist whose work draws from and expands from the oeuvres of modern and classical theorists, including Karl Marx and Max Weber. His "third way" perspective, whereby the welfare state should be retained but individuals take some responsibility for their survival, has influenced the policies of the New Labour Party and Prime Minister Tony Blair in England. While Giddens' contributions to sociological theory are significant, this research will utilize his theory of structuration. This theory offers a theoretical analysis of the relationship between self and society and allows the reader to understand the theory which supports the main arguments in this thesis.

In reaction to what he viewed as serious flaws with traditional social theory (functionalism and structuralism), Giddens (1984) developed his theory of structuration, which focuses on the recursive and ordered nature of social activities. He posits that actions reproduce structures and structures reproduce actions. The main tenet is that "human social activities (. . .) are not brought into being by social actors but continually recreated by them via the very means whereby they express themselves as actors" (Giddens, 1984, p.2).

The production and reproduction of social systems results from the exertion of power, characterized by a "duality of structure" (Giddens, 1984, p. 16), which is both the ability of the individual to influence his/her environment and the "structural properties" ("rules and resources") (p. 17)) of social systems. One's social agency depends on one's ability to engage in reflexivity and access appropriate resources.

Reflexivity is a form of "knowledgeability" of human beings, and is defined as "the monitored character of the ongoing flow of social life" (p. 3). Each person's experience of a particular situation is unique and depends on the person's understanding of the environment and how it influences one's daily activities. Most actions cannot be articulated, as they are products of the unconscious or preconscious.

#### Application

Giddens' theory of structuration offers important perspectives on bureaucracy and the role and power of the public servant. For example, a large proportion of the daily work of an information and privacy analyst involves interpreting policies and procedures concerning requests for information. What decisions are made and how they are made, along with the amount of discretion used, depends on the analyst's perception of the problem and his/her ability to influence the process. As well, it involves access to power and resources: those with the most power and resources are able to exercise the most agency. By "agency" I mean the ability of individuals to act independently and exercise free will. Analysts are able to reflect on how their actions create and recreate structures, and then take action to change social rules and forms.

A key question that this research addresses is how bureaucratic practices, structures and cultures are reproduced through the actions of public servants during the request and appeal processes. Other important questions involve examining how government staff interpret their roles, how this interpretation may affect the decisions they make, and contributes to their use of discretion when assisting applicants, and how applicants' abilities to enact their agency are affected and effected by the actions of public servants and the influence of the bureaucracy. The goal of the research is to examine factors that encourage and limit individual citizens' ability to access their own personal information.

### Role and Organization of Government

#### Social and Political Theories

An understanding of hierarchies of oppression can be obtained by examining "the nature of power and the different rhetorical and political perspectives on power, including pluralist, elitist, structural and post-structural accounts" (Ife, 2001, p. 151). The next section will thus offer a brief description of theories proposed by Max Weber that address the development of society and the role and function of government. The final consideration will be an overview of neo-liberal ideology, knowledge of which is essential to understanding the evolution of Western

democratic nations.

### Max Weber's Theory of Bureaucracy

Max Weber is the pre-eminent theorist with respect to the structure of bureaucracy (Johnson, 2002; Kernaghan & Siegel, 1995). Although the size and scope of government has increased since his observations, scholars (Hasenfeld, 1984; Johnson, 2002) believe that modern bureaucracies exhibit the features and principles that Weber elucidated, including their principal purpose: "the creation of a system through which the organization could achieve its goals in the most economical, efficient, and effective manner conceivable" (Johnson, 2002, p. 241).

In his theory known as dialectical materialism, Karl Marx linked the development of society with economic development (Palmer & Colton, 1971). Weber agreed with Marx that society developed through a combination of material forces and social classes. However, Weber believed that organizational and institutional structure were the main factors (Bottomore & Outhwaite, 1982). In his attempts to link aspects of culture with socioeconomic development, Weber claimed that Western (European) society developed administrative structures with constitutions and written rules.

In his work, *The Protestant ethic and the spirit of capitalism*, Weber relates the Protestant ethic, whereby work is engaged in as a form of devotion, to "the ability and disposition of men to adopt certain types of practical rational conduct" (Weber, 1904, in Andrews, 1983, p. xxxix). Weber posits that capitalism is a rational system that is efficient, standardized, predictive and predictable.

In his theory of authority Weber identifies three sources of authority: traditional authority; charismatic authority; and legal-rational authority. Traditional authority refers to a right to rule that is generational, such as divine right and heredity. Traditional authority is present in feudal and some modern societies. Charismatic authority pertains to a leader who is inspirational and a visionary, such as John F. Kennedy. Legal-rational authority refers to administration that relies on the content of the law. The bureaucracy, represented by the operations of modern governments and corporations, is associated with legal-rational authority. Charismatic authority and legal-rational authority are associated with the operation of modern governments.

Governments and traditional medium- and large-sized corporations are marked by a rigid hierarchical structure, formal chain of command, and clearly defined roles and tasks. Features of the "ideal-type" bureaucracy included a hierarchical structure; specialization of labour; consistency of personnel practices including hiring and promotion; decisions based on impersonal rules; and formal and informal flows of communication, with importance placed on written

rules. To Weber bureaucracies were operated in a rational manner with machine-like efficiency: "Precision, speed, unambiguity, knowledge of files, continuity, unit, strict subordination, reduction of friction and of material and personal costs - these are raised to the optimum point in the strictly bureaucratic administered organisation" (Weber, 1904, in Andrews, 1983, p. xxxix).

Weber also presented a model of hierarchical responsibility that supposed that those in the highest positions in the bureaucracy also have the highest level of accountability. Subordinates, as long as they carry out their assigned responsibilities, are not morally responsible for any repercussions from their work. One criticism of this way of thinking is that lower level employees do possess discretion in conducting their activities, sometimes to a great extent (Schafer, 1999).

Weber understood society as being composed of not just external manifestations of human nature but as well the internal thoughts and motivations of the people that created them (Hagedorn, 1980). Instead of a general law of human behaviour he developed the concept of "verstehen," which refers to "the interpretative understanding of human behaviour" (Hagedorn, 1980, p. 16). Weber believed that the best way to understand another person's experience is to be empathetic and put one's self in the other person's place. This can be done by observation and/or contemplation of the person's actions or having a discussion with the other person (Hagedorn, 1980).

### Application

The impersonal quality of the Weberian model of bureaucracy and its adherence to rules and procedures is quite evident in the twenty-first century in all three sectors (non-profit, private and public). Much of civil servants' duties in the bureaucracy pertain to interpreting legislation and performing highly structured tasks. Practices are standardized through the use of written directives and other measures, particularly policy and procedures manuals and employee training. Loyalty, obedience and conformity are rewarded and perpetuated through the training analysts and other staff receives. Officials' focus on maintaining the bureaucracy's structure (rules and norms) perpetuates the status quo.

There are obvious weaknesses to this "machine-like" form of bureaucracy. The lack of flexibility in the bureaucratic structure may render its processes obsolete and not keeping with societal trends. Aging information systems may mean that some offices may lag behind others with efficiency. Rewarding conformity and discouraging risk taking does not necessarily result in the most effective decision making, which may require innovative and progressive thinking. As a result, the employees may become alienated and unmotivated. Importantly, the public may become frustrated with what it sees as inefficiency and non-responsiveness to individual needs.

The thesis research and analysis should thus investigate how barriers concerning access to information relate to the organization and function of the bureaucracy as noted in the rational model, particularly with respect to Weber's explanation of how labour and tasks are highly structured and managed and the importance of rules and written records to this end. Hierarchical responsibility should be considered in relation to the discretion of staff involved in the processing of requests for information as well as the accountability of the access process. Information and privacy analysts face many decision points while responding to a request under *FOIPPA*. Additionally, the research should examine the influence of employee training, standards of conduct, office protocol, and the role and function of information and privacy analysts.

Weber's interpretative approach to understanding human behaviour underpins phenomenological inquiry, which is an important part of this study's methodology. Accordingly, I will offer my observations of the access process and barriers and issues that affect information and privacy analysts as they attempt to fulfill their responsibilities.

#### Neo-liberalism<sup>7</sup>

Neo-liberalism is a political movement that espouses economic liberalism as a means of promoting economic development and securing political liberty (Rice & Prince, 2000). The liberal theory of economics, developed in the eighteenth century by Adam Smith, stresses minimal interference by government in the economy (Graham, Swift & Delaney, 2003). Citizens are able to achieve economic prosperity on their own using their innate talents; the result is that society will be more equitable. The development of the capitalist economic system precipitated the demise of the mercantilist system (Palmer & Colton, 1971).

Over the past thirty years the rise of neo-liberalism in the West is directly related to the election of Margaret Thatcher in England and Ronald Reagan in the United States. "Thatcherism" and "Reaganomics" stressed competition (the allocation of resources through market forces) and monetarism (control of the money supply to reduce inflation) (Rice & Prince, 2000). Under this climate of fiscal restraint, wealth was redistributed to the large corporations and highest wage earners, and even the traditional "deserving poor," such as seniors, low income families and people with disabilities, were left to fend for themselves. Proponents do not acknowledge the many benefits that accrue to the capitalists and the profound impacts of inequality and inequity born by citizens.

The free market has expanded to reach countries all over the world. The domestic and

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<sup>7</sup> The term "neo-conservative" is also used by some scholars (Kernaghan & Langford, 1991; Kernaghan & Siegel, 1995; Rice & Prince, 2000; Wharf & McKenzie, 1998) to describe this ideology.

international policies of the Labour Party's Tony Blair in England and George Bush in the United States have continued trends started under their predecessors. Current Canadian Federal and Provincial government social policy reflects prevailing neo-liberal political ideology (Barry, 2002; Rice & Prince, 2000).

The reality of neo-liberalism is that decreased job security, "de-skilling" of jobs, lower wages and poorer working conditions become common place as employers focus on economic gain (Graham, Swift & Delaney, 2003; Rice & Prince, 2000). With governments reducing their commitment to social programs and adopting greater restrictions concerning eligibility for employment insurance and welfare benefits, there are an increasing number of "working poor" and people unable to access any form of government assistance, and few ways for them to hold employers and governments accountable.

International aid organizations also are now "part of the problem." The International Monetary Fund and the World Bank, initially established to provide temporary reconstruction and development assistance after the war, are now able to force countries to participate in structural adjustment programs that result in long-term debt when the changes prove unsustainable.

#### Application

The goals and objectives adopted by the Provincial government of British Columbia focus on improving performance and revenue generation. Emphasis is placed on developing policies and processes that are effective, cost-efficient and measurable, and a flow of information that is accurate, complete, and timely. These priorities reflect traditional bureaucratic structure as well as neo-liberal ideology. Administrative imperatives, such as budget and staffing priorities, operational requirements, and legal and fiduciary responsibilities reflect competing values and often conflict with supporting individual and collective human rights.

Governments implement information and privacy legislation to protect the right to personal privacy and to promote accountability. However, the two major impacts of neo-liberalism in British Columbia -- through drastically reducing funding to service delivery and social programs (including information and privacy programs) and offices of oversight -- are limits to government accountability and public scrutiny of its activities, and an increase in the gap between the rich and the poor.

To summarize, neo-liberalism creates structures and processes that ultimately subvert democracy and accountability. Citizens have difficulty accessing information concerning how public funds are being used and cannot participate in decision-making and policy making that directly concerns them. A truly democratic society is one in which the public is able to exercise

their legal and civil rights of citizenship, rights which include a right to access information, freedom of expression and freedom of association.

### Summary

The aim of this research is to offer a realistic analysis of the process by which citizens access their own personal information under the *Freedom of Information and Protection of Privacy Act* of British Columbia. Concepts and theory proposed by Max Weber and Anthony Giddens provide a viable framework for understanding the structure and culture of government, particularly how the access to information process reflects the control and flow of information within the bureaucracy.

The theory of Max Weber is essential to understanding the interplay between governance and class. Confirming Weber's observations of the "machine-like," self-perpetuating bureaucracy, to this day much of civil servants' duties pertain to interpreting legislation and performing highly structured tasks. Information and privacy analysts' role and duties are performed according to prescribed standards and directives issued by mid- and senior level staff, often without question and without conscious knowledge of the strict controls placed on loyalty, obedience and conformity. Neo-liberalism explains our current need to "fend for ourselves" in the capitalist system, in which we are all increasingly alienated from each other, with higher personal and financial costs attached both to our choices and our obligations.

The tendency of government civil servants to be oblivious to the fact that they are perpetuating systemic oppression and their inability to effect beneficial change in their work is readily explained by Anthony Giddens' concept of structuration. Information and privacy analysts are responsible for interpreting and implementing policy and procedures, however, the actual authority for such decision-making often resides with senior government officials. The result is that analysts' influence over their daily activities and their attempts to assist applicants to the best of their ability and to applicants' satisfaction, within or outside legislated duties, are curtailed.

## CHAPTER VI: METHODOLOGY

### Methodological Considerations

The research methodology refers to how the research should be conducted (Rubin & Babbie, 1993). The choice of research methodology affects the way one engages in all phases of the research process, as for example, choice of question and design, how the data is collected and analyzed, and conclusions drawn. Neuman (1997) and Wetherell, Taylor and Yates (2001) maintain that there must be congruency between the research question and the methodologies and methods used.

As descriptive research, this study will examine a particular problem and provide information for decision-making. A conceptual framework will be developed and implemented using the data collected. Although the lived experiences from the point of view of the population in question is important to understanding the phenomena studied and should be a focus of future research, I am particularly interested in the actions of and communications between the provincial government and applicants in relation to examining a specific process (accessing personal information). I am also interested in determining the prevalence of existing problems and opportunities for change that would benefit applicants. Certain aspects of this process (such as the percentage of requests for personal information which are appealed, and which result in a Commissioner's order) are more appropriately examined through quantitative research, while others (such as examining barriers as perceived by applicants and arguments by applicants in support of information being released) require the use of qualitative methodologies (Wetherell, Taylor & Yates, 2001).

The study will blend elements of the three research approaches identified by Neuman (1997): positivism, interpretative social science, and critical social science. The positivist research approach is more disposed to the use of quantitative methodologies, as for example, statistical analysis and surveys, while the interpretative social science and critical science approaches readily lend themselves to qualitative methodologies, such as phenomenology and action research (Neuman, 1997). The interpretive social science and critical social science approaches use phenomenology (a qualitative research methodology) for different purposes and outcomes (Neuman, 1997). Interpretative social science is interested in the subjective meanings that individuals attach to experiences of life, while the critical social science approach uses individuals' perceptions to "explode myths" and promote social change (Neuman, 1997).

Congruent with a critical social science approach, the research aims to examine social interactions from a "macro-level historical context" (Neuman, 1997, p. 75), empower citizens by

“demystifying” the access to information process, and “critique and transform social relations” (Neuman, 1997, p. 74). This study will focus on the examination of documentary evidence, and thus it is important to have a sample of cases that is representative of the type of concerns expressed, the interactions between the applicants and public bodies, and the outcomes produced.

While different in their theoretical underpinnings, features of positivism and phenomenology can be combined to produce a study which maximizes their strengths and minimizes their weaknesses. I have developed a comparative table (Table 1) to highlight features of positivism and phenomenology that are relevant to this study. Together these features describe my approach – bearing in mind that I have a critical stance toward each. Some of these elements will be discussed in the remainder of this research.

### Ethical Considerations Regarding Interviewing

As previously mentioned, an important aspect is that individuals who request their personal information are typically vulnerable adults (former and current social and health service users), many of whom have had negative experiences with government. As such, it is important to use methodologies and methods that minimize the possibility of revictimization and trauma to participants. One appropriate approach is to conduct personal interviews and surveys which incorporate feminist principles (Kirby & McKenna, 1989; London Family Court Clinic, undated). However, issues of privacy, confidentiality and anonymity would be difficult to address if this method was used. As an example, individuals who have received social services may want to participate in the study, but fear that that by doing so their names and personal information will be disclosed and their identities revealed to individuals and organizations that are in positions of power over their lives, such as social workers with the Ministry of Children and Family Development and employment and assistance workers with the Ministry of Human Resources. They may think that by participating they could jeopardize their receipt of government services and, if they have made an appeal, possibly harm their cases with the OIPC. Other reasons why I could not justify conducting personal interviews are that the information sought can be obtained less intrusively through the use of documentary evidence, and the process may benefit the researcher more than interviewees (for example, the research may raise more questions for applicants than it answers, and not provide immediate, tangible solutions to their problems, thus heightening their already high levels of anxiety and frustration with “the system.”)

All of the orders of the Information and Privacy Commissioner are written without the applicants’ personal identifiers. A rich source of data, they include detailed accounts of the

Table 1  
Features of Positivism and Phenomenology that are Relevant to this Study

	Positivism	Phenomenology
Purpose	Causal explanations of events	Underlying meanings of lived experiences from the point of view of those involved.
Ontological Assumptions	Human beings understand and are affected by social phenomena in similar ways	Reality is socially constructed.
Epistemological Assumptions	The researcher is independent of what is being researched and his/her role is to observe and measure change in social structures.	The researcher's role is to understand individuals' interpretations of events rather than the events themselves; one starts with as few assumptions as possible.
Practical implications for research	This research will examine factual information (for example, academic journal articles, Commissioner's orders) in an attempt to assess the frequency of certain barriers to accessing information, and estimate the percentage of the population who experience these barriers.	This study's aim is to understand how applicants navigate the access process, how their actions relate to the barriers they encounter, and provide recommendations for change.
Method	Survey; content analysis; statistical analysis	Participant-observation
Sample	Cross-section of population: large sample size	In-depth study; small sample size
Assessment	High on reliability and internal validity; low on external validity	Low on reliability and internal validity; high on external validity

Source: Creswell, J. (1998). Five qualitative traditions of inquiry. In J. Creswell, *Qualitative inquiry and research design* (pp. 47-72). Thousand Oaks, CA: Sage Publications.  
 Neuman, L. (1997). The meanings of methodology. In L. Neuman, *Social research methods: qualitative and quantitative approaches* (chapter four). Boston: Allyn & Bacon.  
 Rubin, A. & Babbie, E. (1993). *Research methods for social work* (2<sup>nd</sup> ed.). Pacific Grove, CA: Brooks/Cole.

government's and applicants' actions, such as affidavits of both parties, and of the deliberations and recommendations of the Commissioner. From comments made in the orders by the Commissioner and others, one is able to identify normative debates concerning access to information, as well as attitudes and values expressed by various government officials (information and privacy analysts, portfolio officers of the OIPC, and the Commissioner himself). Other points in its favour are that the data is readily available (publicly available on the OIPC's website) and relatively inexpensive to obtain.

Because the research is concerned with changing the power relations between applicants and the government (towards transparency and accountability), the research methodologies and methods chosen must be able to identify injustices and pursue the goal of "critiquing and transforming social relations" (Neuman, 1997, p. 74). The orders have also been chosen because they set precedent for government information and privacy programs' handling of requests for personal information and their analysis will identify ways to achieve fair and equitable access as well as transparent and accountable government practices.

Poland (1990) has noted that a main reason that research studies fail is because of their lack of applicability to real life situations. For example, administrative and operations policy and procedures manuals dictate how "business is done" in government. Research of government practices must take into account the presence of such rules and structures, and the possible effects on those who participate in the research. As this research is intended to produce viable recommendations for change, the influence and requirements of the larger bureaucratic context will be considered although will not circumscribe their development.

### Specifics of Data Collection and Analytical Methods

Studies which produce the most reliable and valid results use several types of data including personal observations, oral reports, written reports and statistical reports (Rubin & Babbie, 1993). Accordingly, this study will include an examination of the Commissioner's orders, which are the prime documentary source of information for reviews of public bodies' decisions concerning requests. In order to facilitate comprehension of the trends observed, I will also provide an analysis of requests received across government during the years studied.

The research is designed to proceed in three phases: review of literature; data collection; and synthesizing, analyzing and reporting data. Chapters III (Legislation) and IV (Systematic Review) addressed the literature review; the remaining section of this chapter and future chapters will

focus on the last two phases.

### Data Collection

In this section I will describe content analysis and detail why it was chosen as the research method. I will also outline the sampling procedures to be employed.

### Content Analysis

Content analysis has been defined in various ways. Classic content analysis involves the transference of symbolic, qualitative data (including words, phrases and images) into quantitative data (Monette, Sullivan & DeJong, 1994; Rubin & Babbie, 1993). Post-modernists Denzin and Lincoln (1994) describe content analysis as a systematic method of analysis which can be used to “describe and interpret the characteristics of a recorded or visual message” (p. 225).

While content analysis can be used with most formats of recorded information (Rubin & Babbie, 1993), it is particularly suited for examining multiple meanings and patterns contained in text and images. Rubin and Babbie (1993) state that content analysis can be deftly applied to communications research, especially with regard to examining the question, “Who says what, to whom, why, how and with what effect?” (p. 407). They also note that content analysis is useful for identifying the prevalence of a phenomenon based on statistical data.

### Advantages and disadvantages of content analysis

There are several advantages of using content analysis with the information contained in the Commissioner’s orders. The data to be collected and analyzed is publicly available and readily lends itself to this method of analysis. The concreteness of the features to be examined increases the reliability of the findings (Rubin & Babbie, 1993).

Another key feature is that content analysis is inexpensive and does not require large investments of time and labour (Rubin & Babbie, 1993). The method is unobtrusive and the data is not affected by reactivity (which occurs between subjects and the researcher during personal interviews) (Monette et al, 1994). Lastly, content analysis is an excellent method to use when examining the prevalence of existing problems, which will be a focus of this study (Denzin & Lincoln, 1994; Rubin & Babbie, 1993).

Content analysis offers important contributions to existing theory. The method can identify particular features of the access process and workings of the bureaucracy as noted by Weber and Giddens. From a Marxist perspective, content analysis can identify meaning related to larger structures of power and ruling relationships

Content analysis does have some short-comings which may affect the reliability and internal and external validity of the research. A major concern is that the content of the documents will exhibit variable quality, incompleteness and bias (Monette et al, 1994). As well, Denzin and Lincoln (1994) note that studies that involve counting words or themes in a text may be dismissed by some as lacking rigor and producing unremarkable findings. With regard to the purpose of this study, although identifying barriers faced by applicants may be a relatively easy task, examining the context of the situation (including the circumstances under which requests are made and the impacts on applicants) may be more difficult to accomplish through the use of content analysis.

Content analysis is thus an appropriate method to examine the actions of (including communications between) the provincial government and applicants in relation to individuals accessing their own personal information under *FOIPPA*. This method will be used to examine the content of the Commissioner's orders as well as provide an empirical foundation for understanding problems related to how relevant policies and procedures are implemented.

#### Steps in conducting content analysis

There are two major methodological problems to overcome with regard to sampling when using content analysis. The first problem is that it is difficult to select relevant material due to the abundance of documents to choose from (Monette et al, 1994). The second problem, related to the first, concerns the generalizability of the findings (Monette et al, 1994; Rubin & Babbie, 1993). Content analysis has traditionally been considered a quantitative method. A representative sample must be obtained in order for the findings to be generalized. Monette et al (1994) point out that obtaining a representative sample "is often difficult to achieve with documents" (p. 224).

Weber's (1985) stages of content analysis, which are used in this study, are as follows:

#### *Identify a population of documents or other textual sources for study*

The Commissioner's orders are chosen because they contain rich description concerning the access process. The orders follow a prescribed pattern and include detailed analyses of the chronological series of steps taken by the public body to respond to a request.

#### *Determine the units of analysis*

The unit of analysis can range from a word or phrase, to much larger pieces of text (sentences, paragraphs, themes) including the text in its entirety (interview, article, book) (Denzin & Lincoln, 1994; Monette et al, 1994; Rubin & Babbie, 1993). The units of analysis in this study are barriers to and supports for access to information.

*Select a sample of units from the population*

Each year several hundred requests for review are made to the Office of the Information and Privacy Commissioner (OIPC), however, only a fraction of these pertain to requests by individuals seeking access to their own personal information. Additionally, the majority of appeals to the OIPC concern a handful of public bodies (OIPC, 2003).

Given these circumstances, a stratified, random sample of thirty orders was to be<sup>8</sup> drawn from the public bodies that have the highest number of requests for personal information and the most requests appealed annually to the OIPC (Insurance Corporation of British Columbia; Ministry of Attorney General/Ministry of Public Safety and Solicitor General; Ministry of Children and Family Development; Ministry of Health Services/Ministry of Health Planning; Ministry of Human Resources) (OIPC, 2003).

The aim of sample selection in a qualitative study is to shed light on the phenomenon under investigation. I will seek credibility by noting patterns concerning the data and examining the influence of my location on the findings. For the barriers identified through statistical data, I am also interested in producing results that can be generalized to other samples and the population from which the data was drawn (Commissioner's orders).

*Design coding procedures for the variables to be measured*

The coding process involves the classification of data according to the conceptual framework chosen (Rubin & Babbie, 1993). The researcher may choose to focus on the manifest (surface) content or the latent content (underlying meaning). Choosing to analyze the surface content has the advantages of reliability of findings and precision in terms of coding (Rubin & Babbie, 1993). Examples pertinent to this research are counting the number of times requests for personal information are made to particular public bodies; the time delay for certain types of requests; and the relative frequency of various grounds for review. Examining the latent content has the advantages of depth and validity of findings (Rubin & Babbie, 1993). An example of the coding of latent content is assigning a numeric value to a description of a problem or an issue; in this research, an example is assigning different values to different barriers to access. A weakness of latent content coding is that different coders may assign different values to the same data and that the research audience may be confused about the definitions used (Rubin & Babbie, 1993). Rubin & Babbie (1993) suggest that researchers should code both manifest and latent content to ensure that the coding is "reasonably valid and reliable" (p. 410).

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<sup>8</sup> The sample selection process did not proceed smoothly: initial assumptions produced an inappropriate sample, and selection terms had to be refined. This will be detailed in the next section.

As many relevant factors concerning the barriers are quantifiable, much numerical data will be collected in this research. Manifest content will be examined through quantitative analysis. The study will seek to examine underlying meanings through the use of both quantitative and qualitative data, particularly responses by public bodies that attempt to explain delays and withholding of information.

*Test and refine the coding procedures*

Ideally, two coders should compare their codes for the same variables to get a measure of inter-rater reliability (Rubin & Babbie, 1993). A second coder, though recommended, is considered unnecessary for this research because the data that will be coded is easily quantifiable, is about discrete elements and concepts, and is readily compared and contrasted to other similar data.

*Base statistical analyses on counting occurrences of particular words, themes or phrases and test relations between different variables*

Researchers can employ quantitative measures such as frequency, measures of central tendency and correlation. This research will primarily rely on frequency, as for example the frequency of requests for review as related to type of public body, and proportion, such as the proportion of orders related to various grounds for review and the number of decisions that are upheld and overturned by the Commissioner.

In summary, through conducting a content analysis, barriers to access will be identified and emerging patterns will be recorded. The data will be compared for consistency; for example, differences noted in the data contained in the orders, and possible influences of sample characteristics.

## Outline and Rationale for the Selection of the Orders

### An Initial Attempt at Data Selection

From a review of the index of the Commissioner's orders, the number of orders produced per year by the Commissioner varies, as does the annual number of requests for personal information and the annual number of orders per public body. I determined that there were two hundred forty-five orders for the years 1999 to 2003, of which between approximately fifty to one hundred

orders would pertain to the public bodies in question.<sup>9</sup> Of these orders, some would not pertain to requests by individuals for their personal information but rather requests for the personal information of third parties (children, birth parents, etc.) for non-personal information (such as contracts and policy information) and requests for correction. I had planned to have a quota of six orders for each of the five categories of public bodies that I had identified.

During the data collection, I realized that the orders concerning health services were not listed under the Ministry of Health but under the names of the health authorities (formerly regions), hospitals and other service providers. I thus created a new category, “Health Service Providers,” to replace the original category.

In total, thirty-two orders concerned requests by individuals for their personal information. There were not enough orders for some of the categories and more than enough for others.

The sample confirmed that few applicants who sought their own personal information sought requests for review that resulted in orders. While this may mean that applicants were generally satisfied with the process, making a request for information is an important method to hold public bodies accountable for service delivery, and it appears that it is not being used to its fullest extent by applicants.

#### Some False Assumptions

The problem obtaining a sample using the strategy that I had selected underscored my faulty understanding of what data is available to examine. I had made three key assumptions that proved false. I also failed to recognize that many orders pertain to public bodies that are not specifically mentioned in the Commissioner’s annual reports.

#### *Most of the records would be client files*

I had reasoned that because the Ministry of Children and Families (MCF) processes the most requests for personal information, many of which are client files, and receives a high number of requests for review, that the number of orders for the ministry that concern personal information would be higher than other ministries. My experiences at the Ministry of Attorney General (MAG) and Ministry of Public Safety and Solicitor General, which together receive the third largest amount of requests for personal information, led me also to believe that a disproportionate

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<sup>9</sup> The Commissioner’s annual reports list orders by grounds for review but also state that these are less than the total number of orders because more than one grounds for review can be dealt with in one order. As well, an order can deal with more than one request by the same applicant.

number of requests for review and orders would pertain to these ministries. Additionally, I thought that many orders would pertain to each of the other three public bodies that I had selected (Ministry of Human Resources [MHR], Health Services, and Insurance Corporation of British Columbia [ICBC]), given that they are also among the public bodies that receive the highest number of personal requests and their large number of client files. Table 2 highlights the proportion of requests received in 2000 by MAG, MCF and MHR (then known as the Ministry of Social Development and Economic Security).

However, only four of the MCF orders pertained to client records, as did only one MAG and three MHR orders. Six of the MAG orders, two of the MCF orders, and one MHR order pertained to personnel files.

*A large proportion of requests for review and orders pertain to only a few public bodies*

The Commissioner's annual reports only list the public bodies with the most requests for review, in order of total requests. The public bodies with the highest level of requests for review consistently include ICBC, MAG, MCF and the Vancouver Police Department. However, the number of requests for review for the remainder of the public bodies varies from year to year, as does the number of public bodies mentioned (between 10 in 2001 and 21 in 1999) and the minimum cut-off level (between 4 requests for review in 2002 and 20 in 2001).

This closer inspection confirmed that a large percentage of requests for review and orders pertain to public bodies that are not specifically mentioned in the reports. Four of the annual reports have a category entitled "All Other Public Bodies" that includes any public bodies not mentioned in the reports. This category includes over one thousand other public entities, including municipal governments, school districts, colleges and universities, and health authorities. It also includes public bodies listed under Schedule 2 (Agencies, Boards and Commissions) and 3 (Governing Bodies of Professions or Occupations) of *FOIPPA*. Statistics concerning the number of orders and requests for review are difficult to compare because of the inclusion of different public bodies, numbers of public bodies and differing minimum cut-off levels .

Table 2  
 Requests for General and Personal Information for Three Selected Ministries  
 for the Year 2000

	General	Personal	Total
Attorney General	433 (17.%)	238 (8.7%)	671
Children and Families	72 (3.0%)	1333 (49.2%)	1405
Social Development and Economic Security	66 (2.7%)	834 (30.7%)	900
Total	571 (23.4%)	2405 (88.7%)	2976
Total of All Requests	2433	2710	5143

Source: Adapted from table entitled, "Request Type by Ministry," Corporate Privacy and Information Access Branch, Information, Science and Technology Agency (2001).  
 Victoria, BC: Author.

Figure 4, Appendix D, and Figure 5, Appendix E, depict proportions of requests for review and orders, respectively, for various public bodies. The data refers to the twelve public bodies to which, on average, the most annual requests for review and orders pertain. Additionally, I have included the category “All Other Public Bodies,” that, as previously stated, is not consistent from year to year. With the exception of 2001, which covers the calendar rather than the fiscal year, one can compare the percentages of requests for review and orders per category of public body and annual totals.

The category “All Other Public Bodies” made up between thirty (2002) and forty-five percent (2000) of requests for review, and thirty-three (2003) and fifty-five percent (2000) of orders. However, from comments contained in the Commissioner’s reports, one is lead to believe that the public bodies that are not mentioned do not receive many requests for review, individually or collectively:

Note that there have been no requests for review made against the majority of public bodies under the Act. The total of 359 reviews for “All Other Public Bodies” represents, for the most part, the one or two requests for review that have been filed against 165 public bodies other than the ones specifically listed. None of these 165 public bodies received more than nine requests for review in total.

(OIPC, 2000, p. 19)

*The number of requests received by a public body for personal information directly corresponds to a higher number of requests for review*

Over the period from 1999 to 2003, although MCF and MHR received the highest number of total requests<sup>10</sup> as well as the highest number of requests for personal information, ICBC and MAG received the most requests for review. ICBC received between 68 (1999) and 184 (2002) requests for review, while MAG received between 49 (1999) and 88 (2001). In reality, MCF’s and MHR’s proportion of requests for review and orders compared to the number of requests for personal information they receive is substantially lower than other public bodies.

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<sup>10</sup> As ICBC uses different categories for processing requests (“general” and “personnel”), I have not been able to determine the annual percentage of requests and personal requests received by ICBC. It could be that it receives the most amount of requests overall, as well as the most personal requests and requests for review. I have also not been able to ascertain the annual number of requests received by the Vancouver Police Department. The VPD expected approximately 300 formal requests in 1995 (retrieved May 9, 2008 from Vancouver Police Department website: <http://vancouver.ca/ctyclerk/cclerk/950725/p2i.htm>).

The OIPC's annual reports do not contain statistics for requests and the contents do not attempt to relate statistics concerning requests to statistics for reviews and orders. Comments made in the annual reports thus do not recognize the patterns and trends for individual public bodies. The requests for review pertaining to personal information are divided up between several public bodies.

The following comment is not true for MCF and MHR, which are the main recipients of requests for personal information as well as overall total requests:

Some public bodies are the subjects of requests for review to the Commissioner's Office more often than others. Normally, it is because they possess or handle more personal information than other public bodies. It also may reflect ongoing disputes about certain types of records, issues, or policies of a particular public body. (OIPC, 2000, p. 19)

*The majority of the orders pertain to requests for personal information*

The Commissioner's annual reports suggest that the three public bodies that received the most orders were MAG, UBC, and ICBC. Given its greater proportion of requests for review, it is not surprising that the Ministry of Attorney General is consistently among the top five public bodies each year to which the most orders pertain. MAG received the highest number of orders in 2002 and 2003 (11 and 10, respectively). In two other years, more orders pertained to ICBC than other public bodies (7 in 2000 and 14 in 2001). The MAG has the highest number of orders (38), followed by UBC (26), ICBC (23), Workers' Compensation Board (10), Ministry of Environment, Lands and Parks (8), City of Vancouver (7), MCF (6) and MHR (2).

For its great number of requests for review, ICBC received relatively few orders. VPD was consistently between the third and fifth ranked public body in terms of requests for review, yet received three or less orders per year. MCF ranked between third and fourth from 1999 to 2002 (eleventh in 2003) but received only two or three orders in those years. Conversely, UBC ranked between eighth and tenth from 1999 to 2002 but the highest proportion resulted in orders, between one-quarter (2000) to almost one-half (2001).

While all six of MCF's orders and MHR's four pertained to personal information, only eight orders of MAG and UBC (instead of 38 and 26 orders, respectively) pertained to personal information. I also found that two of the seven orders for the City of Vancouver pertained to personal information, one of which is included in the sample for this study.

The Commissioner's annual reports between the years of 1999 to 2004 do not shed much light on barriers to accessing one's own personal information. Nineteen of the approximately sixty summaries of mediations of reviews and four of the twenty-two summaries of the orders pertained to requests by individuals for their own personal information. The summaries do not go into detail about barriers faced by applicants other than ones pertaining to the application of the Act. Three of the summaries of orders concerned post-secondary institutions (University of British Columbia, Simon Fraser University, Malaspina University-College).

The summaries reported mostly concerned requests by high profile applicants (business, political parties, and media). A quick glance of the summary of complaints also showed the same trend. What issues are reported and why is an issue to be further discussed later in the thesis.

### Revised Sampling Procedures

I reviewed again the purpose of the study and the sampling procedures. The purpose of the sampling was to obtain representations of barriers that are experienced by applicants, factors that facilitate access, and changes to policies and practices that could be built into the processing system and the structure and culture of government. As a primarily qualitative study, the purpose of the research is to identify patterns and to produce results that are valid for the sample studied. Unlike a quantitative or experimental study, it is impossible to control for the influences of factors that might have affected orders not included in the sample. However, as I examine commonalities as well as differences in barriers and supports across government through some use of quantitative methods, I am concerned about the reliability and internal and external validity of the results

I examined the possibility of selecting orders based on various factors, such as type of record (client, student, and personnel); exception applied; grounds for appeal; type of barrier experienced; and whether the Commissioner had upheld the decision. I also considered sampling again by public body but using a different sample of public bodies than the ones that I had chosen.

Additional reading of the Commissioner's annual reports and reflecting on my experiences helped me redefine the sample and sampling procedures to be used. In my experience, it was necessary to consider the processing of requests by the Ministry for Children and Families because many of the requests are by individuals seeking access to their own personal information, particularly concerning the services they have received from the ministry. The ministry provides many supportive services to families, including services for mentally and physically challenged children and adults, child and youth mental health, youth probation, and foster home and respite

care. The ministry is also charged with conducting child abuse investigations and ensuring child safety. As the ministry becomes involved in providing services when a complaint is made, often applicants are seeking information about complaints made by other people about themselves, and complaints that applicants have made about other people, for example reports of child abuse. Typically, they are seeking the identity of the reporter, details of the complaint, statements of witnesses, and actions of the ministry in response to the complaint.

Purposive sampling, whereby one hand picks a sample to represent certain features under study, seemed a strong possibility because it would help me identify and focus on the most challenging as well as moderate barriers that are faced by applicants, and procedures conducive to access. I was concerned, however, that if I chose the orders to represent certain barriers and related issues that the sample would primarily be made up of extreme cases rather than common barriers faced by applicants. Focusing on “worst practices” would be a valuable exercise but it would not necessarily be realistic of the experience of the majority of applicants. I did not want to create a false impression of the effectiveness and responsiveness of the system.

In the end I decided that I wanted to find a balance, similar to the espoused purpose of *FOIPPA*: “to make public bodies more accountable to the public and to protect personal privacy” (section 2). This meant highlighting policies and practices that severely restricted or delayed access and impinged on applicants’ rights of access under the Act.

## Summary

It is evident from the statistics contained in the Commissioner’s annual reports that the majority of people who request their own personal information, as well as those who request general information, do not request a review from the OIPC. While many of the requests for review concern public bodies that receive the most requests for personal information (MCF, MHR, MAG), almost an equal number of requests for review and orders that concern personal information are spread among many other public bodies, including ICBC, VPD and UBC, and those not specifically mentioned in the reports. Without conducting a visual search of the listings of the orders on the OIPC’s website, it is impossible to determine how many requests for review and orders concern personal information and how many concern general information because this data is not included in the Commissioner’s annual reports.

The reporting practices of the OIPC highly influence what is known about the access and appeal processes. The information contained in the Commissioner’s reports pertains to requests for review and orders. The number of requests received annually by each public body and the number of personal and general requests is not included. The composition of the reports for each

year vary, particularly with respect to the number of public bodies listed and the minimum cut-off levels for the number of requests for review, making it difficult to draw comparisons between the years. As well, only a few of the requests for review and orders that involve personal information are summarized in the reports.

The effect of this selective reporting is to mask trends and factors influencing the requests for personal information. The applicants and the challenges and barriers they face are thus invisible as well. Another important point is the large number of requests that are not appealed and the discrepancy between the issues examined and those that are not brought forth, and how the Commissioner's decisions inadvertently (and perhaps purposively) ignore and exacerbate the barriers that applicants experience.

#### A Second Attempt at Sample Selection

As a result of the information gleaned from problems with the initial sample selection, I refined my conception of the problem and of the data that existed. I then revised the sample criteria for the study. The years of the study remained the same. However, I refined the criteria for the applicants and the public bodies from which the records were sought.

Applicants should be seeking records concerning themselves as a client, student or employee; a complaint they have made concerning service delivery or the conduct of a public official; or a complaint by one or more third parties concerning their conduct as a service recipient, caregiver, student or employee.

The second category can include complaints about a teacher's or a police officer's conduct, or a complaint that requires investigation under the *Child, Family and Community Services Act* or the *Adult Guardianship Act*. Requests by individuals for personal information of third parties in addition to requests for one's own personal information are acceptable, but requests in which individuals are solely seeking information of third parties are excluded.

Requests by individuals for information concerning their businesses, such as contracts awarded and zoning of property, are considered requests for general rather than personal information. General requests are not included in the study.

The public body should be one that provides social or health services to clients, or acts as a review body concerning complaints about social service delivery or client and human welfare.

I thought about including requests for records of governing bodies (Dental Surgeons, Physicians and Surgeons, Psychologists) because they provide accountability for the conduct of many professionals. However, eventually I decided to not include them in the sample because I could not determine whether some of the professionals were self-employed or employed by

public bodies, which is the focus of the study. For similar reasons, I excluded requests for claims files and records concerning matters dealt with by the Insurance Corporation of British Columbia (which had been included in the initial sample), the Workers' Compensation Board and the Labour Relations Board. Other examples of requests not included in the sample are an order in which applicants want any correspondence by an individual about whom they have made a noise complaint (01-48); orders concerning an applicant's complaints against lawyers involved in rezoning of his property in Surrey (02-01 and 03-26); and an order in which the applicant says that he was treated poorly by officials of a certain public body and the volunteer association (01-15). (The public body was not one that delivered health or social services.)

I included orders that pertained to public bodies that handle appeals related to social service provision (BC Human Rights Commission, Vancouver Police Board, Office of the Police Complaint Commissioner, Public Guardian and Trustee). I also included the BC Housing Management Commission because it provides social housing to tenants who are vulnerable individuals.

#### Description of the Sample

Fifty-three orders were selected from the two-hundred forty-five available orders for the years between 1999 and 2003. The orders that I selected followed the criteria mentioned above and reflected my refinement of both the conception of the problem and of the existing data. The orders were organized according to applicant and record type: client (13); student (12); personnel (17); and complaint (11). There were thirteen client orders; twelve student orders; seventeen personnel orders; and eleven complaint orders.

The complaint category differs from the other categories in that the applicant is not a client, student or employee of a public body but rather a member of the public who has either made or been the subject of a complaint. The complaints concern a human rights issue (BC Human Rights Commission order #03-18); possible abuse by a caregiver (Public Guardian and Trustee #03-12; Vancouver Island Health Authority #03-43; Public Guardian and Trustee #03-44); and the conduct of a police officer (Vancouver Police Department #00-35, #01-34; Vancouver Police Board #331-1999, #00-46; Office of the Police Complaint Commissioner #00-05; City of Vancouver #01-05; Ministry of Attorney General #01-08).

People who have made complaints and those who have complaints made against them are applicants in all four categories. The complaints pertain to unprofessional conduct of government and public sector employees (teachers, college administrators, teachers); workplace complaints against co-workers and bosses, such as harassment and misuse of managerial authority; and issues

that are dealt with through a grievance process. |

The orders and the type of records requested are summarized in Figure 6, Appendix F. In most instances applicants requested records concerning only themselves. Some applicants explicitly requested the personal information of a third party while in other requests this was implied. In a few orders the applicant did not make an argument either way or appeared to change his mind. In the summary I have added comments that expound on the applicants' position regarding wanting additional information.

### Coding Procedures

I determined that the best way to obtain data concerning barriers to and supports for access was to gather information concerning the exceptions to disclosure initially and subsequently applied by the public body, and sections reviewed and applied by the Commissioner during the inquiry. The data gathered includes the type of record requested, arguments made by the public body and by the applicant, and how the Commissioner arrived at his decision. Coding sheets are included in Appendix G.

Coding sheets are developed for each section and subsection of the Act that is examined in the orders by the Commissioner. These are section 3(1), 6(1), 6(2), 13(1), 14, 15(1), 15(2), 19(1)(a), 19(1)(b), 19(2), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(g), 22(2)(h), 22(3)(a), 22(3)(b), 22(3)(c), 22(3)(d), 22(3)(f), 22(3)(g), 22(3)(h), 22(4)(e) and 22(5). Each order may refer to more than one exception. A coding sheet was completed each time one of the sections and subsections was referred to in the orders.

The results of the coding were tabulated and entered on an excel spreadsheet. Patterns and trends were immediately evident concerning grounds for review and the decision of the Commissioner. The arguments made by the applicant and the public body are both quantitatively and qualitatively summarized. Appendix H summarizes relevant data for each order (arranged in the four categories of client, student personnel and complaint): grounds for review; exceptions examined and applied; and the date of the public body's receipt and response to requests.

## CHAPTER VII: DATA ANALYSIS

This study was designed to examine barriers to and supports for accessing one's own personal information under the *Freedom of Information and Protection of Privacy Act (FOIPPA)* of British Columbia. To provide context concerning the processing of requests, I will first examine statistical information related to requests for review and orders issued by the Office of the Information and Privacy Commissioner between 1999 and 2003. Particular reference will be made to the five public bodies that receive the largest number of requests for personal information. Last, I will analyze quantitative and qualitative data gleaned from the Commissioner's orders and identify barriers to and supports for access.

### Requests for Review and Orders

#### Grounds for Review

Annually, the Office of the Information and Privacy Commissioner receives approximately 600 to 950 requests for review (OIPC, 1999-2000; OIPC, 2001; OIPC, 2002; OIPC, 2003; OIPC, 2004). One can make a request for review on several grounds.

The "Request for Review/Complaint Form" (OIPC, 2005) asks an applicant to select one or more of the following grounds for review:

- Third party requesting review prior to disclosure;
- Denial of existence of records;
- Record not under control or in custody;
- How access is to be given;
- Withholding records;
- Severing information from records;
- Deemed refusal (no response within 30 days of your access request) if no extension;
- Correction of personal information request;
- Records outside the scope of the Act; and
- Other.

Complaints may be made on several bases as follows:

- Adequacy of search for records (as of 2002, considered a complaint rather than a grounds for review) (OIPC, 2003);
- Collection, use or disclosure of your personal information;

- Fee assessment;
- Fee waiver refused;
- Extension of time/transfer (as of 2002, considered a complaint rather than a grounds for review) (OIPC, 2003);
- Security;
- Retention; and
- Other.

Examining the annual numbers of requests for review and orders for the years under study highlights the very small proportion of concerns that are represented in the orders and, consequently, the types of problems dealt with by the Commissioner and his staff and the decisions rendered. It is important to consider that ninety percent of the requests for review are mediated by the OIPC, resulting in between 39 (2003) and 81 (2001) orders per year (OIPC, 1999; 2000; 2001; 2002; 2003a; 2004a).

Table 3 depicts the top five grounds for review examined by the OIPC and the number of reviews that are mediated and result in order. The number of requests for review concerning partial access, the grounds most frequently used, have varied from a low of 260 in 1999 to 387 in 2002. The next highest annual totals are deemed refusal and denied access, which range from 106 to 170 and from 82 to 130, respectively. Two other categories, adequacy of search and duty to assist, which became a category in 2000, are only a fraction of the numbers for partial access and denied access. Adequacy of search has fluctuated, from 51 in 1999 to 124 in 2001 and down to seventeen in 2002 before it began to be handled as a complaint.

The total number of grounds for review declined between 1999 and 2003. The reduction in the numbers of appeals based on deemed refusal and denied access in particular may be due to efforts to reduce backlogs and refine the process. On the other hand, the OIPC and the public bodies may want to appear to have curtailed problems and want to avoid reporting problems in these areas.

As an example, the figures for deemed refusal do not reflect the high number of late responses that are received by applicants. As shown by the statistics for requests, a large percentage of requests (approximately 44% percent of general and 43% of personal requests in 2003) are received by applicants past the thirty-day legislated time period for responding. In my experience, from speaking with applicants and processing requests, the amount of complaints and requests for review that could be made is probably at least equal to the number actually made.

Table 3: Dispositions for Requests for Review Closed by the Office of the Information and Privacy Commissioner for April 1, 1999 to March 31, 2004 as per Selected Grounds for Review

Grounds for Review	Time frame: Apr 1, 1999 to Mar 31, 2000		Jan 1, 2000 to Dec 31, 2000*		Apr 1, 2001 to Mar 31, 2002		Apr 1, 2002 to Mar 31, 2003		Apr 1, 2003 to Mar 31, 2004	
	Med.**	O	Med.	O	Med.	O	Med.	O	Med.	O
Denied Access	101	11	114	14	130	17	82	16	88	9
Partial Access	260	26	275	34	334	29	387	28	300	20
Adequacy of Search***	51	2	55	12	124	10	17	4	-	-
Deemed Refusal	113	0	170	2	162	4	126	1	106	1
Duty to Assist****	-	-	20	3	16	6	33	1	24	0
Other	34	3	5	0	1	0	6	0	5	0

Source: Table developed from data contained in annual reports of the Office of the Information and Privacy Commissioner (1999-2000; 2000; 2001-2002; 2002-2003; 2003-2004). Victoria, BC: Author.

\* The reports for 1999-2000, 2001-2002, 2002-2003 and 2003-2004 cover the time frame April 1 to March 31. The report for 2000 covers the time frame January 1, 2000 to December 31, 2000. The data do not include requests for review that have been abandoned or withdrawn, or that are non-reviewable.

\*\* Mediated: Med.; Order: O.

\*\*\* The annual report for 2002-2003 advises that, "Cases involving 'Adequate Searches' and 'Extensions', originally considered requests for review, are now handled as complaints under s. 42." The report does not state if the number of requests for review that were mediated (17) and resulted in an order (4) in 2002-2003 cover part or all of the time frame in question.

\*\*\*\* Duty to assist was not a category of grounds for review until 2000-2001. It is now no longer a category under which applicants can request a review or make a complaint.

One could also question the timing of the shift of the category adequacy of search from a “grounds for review” to a “grounds for complaint” since grounds for adequacy of search declined to low levels before they were considered complaints. The OIPC cannot investigate complaints as thoroughly as requests for review: requests for review involve formal mediation and inquiry stages. The effect is that there may be serious systemic problems with public bodies’ search efforts but there is now less public scrutiny of relevant policies and procedures.

Applicants’ concerns about delay and completeness of response are handled now in two ways, complaint and request for review. A concern about a delay falls under both a complaint based on “extension of time” and a request for review under “deemed refusal.” A concern about completeness of response can be dealt with both through adequacy of search, which is now a complaint, and a request for review based on “withholding records” or “denial of existence of records,” which both relate to the public body’s legislated “duty to assist” (failure to respond “openly, accurately and completely”).

With regard to orders, between one-third to one-half of the orders are related to partial access. Although deemed refusal is the second highest grounds for review, only a handful (between none and four) of orders was produced each year.

#### Decisions Upheld, Overturned and Split

As per Figure 9, Appendix I, the Commissioner’s decision most often upholds the decision of the public body. The only exception to this was in 2000 when the number of upheld decisions (24) was almost equivalent to the number of split decisions (23). It is important to note, however, that each year approximately ten percent of the decisions are overturned. The reasons that the decisions are overturned will be examined later in the thesis. Few applicants would be aware of these figures and that the barriers they face include an understanding of well-tested precedent. As well, the Commissioner’s upholding of a decision does not mean that the request is without processing errors.

#### Data Concerning Five Public Bodies Under Study

An examination of the data for five public bodies that receive the most requests for personal information offers an indication of the trends that could be expected to result from this research. The five public bodies are the Ministry of Attorney General/Ministry of Public Safety and Solicitor General (MAG/MPSSG); Vancouver Police Department (VPD); Ministry for Children and Families (MCF); Ministry of Social Development and Economic Security (formerly known as the Ministry of Human Resources) (MSDES/MHR), and the University of British Columbia

(UBC).

Appeals to the OIPC concerning both personal and general requests made to the MAG/MPSSG consistently have the greatest number of grounds for review. As noted in Figure 10, Appendix J, in 2000 the number of grounds for review concerning MAG/MPSSG was 51. The VPD also had 51 grounds for review, while MCF had 35. MSDES/MHR averaged around 20 grounds per year, with 30 in 2000, while UBC had 12 grounds for review that year.

Recalling the statistics from Table 2 for the personal requests, MAG/MPSSG processed almost twice as many requests for general information (433) as personal information (238), and only a fraction of the personal requests that MCF (1333) and MSDES/MHR (834) did in 2000. The data thus confirm that only a small percentage of requests are appealed, and that few of the requests for personal information are appealed. Future chapters will examine why this is so and what it means with respect to barriers to accessing personal information.

Referring back to Figure 4, Appendix D and Figure 5, Appendix E, for all public bodies a very small proportion of requests for review result in orders. The proportion of requests for review that result in orders for the five public bodies support this finding. One noticeable difference is that for the three years that there is corresponding data (1999-2000, 2000, 2000-01), a greater proportion of requests for review to UBC tend to result in orders (OIPC, 1999-2000; OIPC, 2000; OIPC, 2001). This figure is approximately thirty to fifty two percent. Another finding that is probably an anomaly is that in 2002-03, for the MAG/MPSSG the proportion of orders is also higher (eleven percent) (OIPC, 2003).

#### Examination of the Five Main Grounds for Review

The research data pertains to a sample of personal requests and covers a small fraction of grounds for review for the years 1999 to 2003. An examination of statistics concerning the five main grounds for review for the five public bodies studied concerning the population of orders and requests received between 1999 and 2003 can be compared and contrasted to the research data to discern trends and patterns.

#### Partial access

Referring to Appendix K, partial access is the most frequently used grounds for review, with an average of fifteen to twenty each year for three public bodies (MAG/MPSSG, VPD, and MSDES/MHR), supporting the trend for all requests over those years and the analysis previously offered by CPIAB (2001). To reiterate, one would expect to see partial access used as a grounds for review most often with the public bodies that receive the most requests for personal

information. As MCF and MSDES/MHR receive much larger percentages of requests for personal information, they should have much larger percentages of requests for review based on partial access. Given that the overwhelming majority of requests to MAG/MPSSG are for general information, it is somewhat surprising that the most requests for review based on partial access tend to be made to the MAG/MPSSG. However, in my experience as an analyst with MAG requests for personal information from the public body include probation and corrections files, as well as personnel files. These records often include exceptions to disclosure such as s. 14 (client solicitor privilege) and 15 (disclosure harmful to law enforcement) as well as s. 22 (disclosure harmful to personal privacy).

#### Deemed refusal

Referring to Appendix L, similar to the overall trend, deemed refusal is the second most frequent category of grounds for review. However, as data is missing for the years 2001 to 2003, comparison between the public bodies is difficult. The VPD and UBC had a consistently low number of grounds concerning deemed refusal; MAG, MCF and MSDES appeared to peak in 2000 and 2001 and then reduce their numbers. A possible reason for this finding is that processing requests within the thirty-day legislated time limit became more of a priority for the Provincial public bodies. In his annual report (OIPC, 2000), the Commissioner stressed his efforts to enforce compliance with MCF and MSDES. However, as previously mentioned, in 2004 61% of MCFD's requests were processed over sixty days. One would thus expect that MCFD would have a larger proportion of grounds for review based on deemed refusal.

The acknowledgement letter to applicants is supposed to note that if applicants do not receive a reply within thirty days that they can appeal to the OIPC. Applicants who are familiar with government legislated response times for other processes will most likely be aware of their right to appeal on the basis of deemed refusal, or at least be reminded of it by the letter. However, mitigating factors are that applicants seeking their personal information from MCF and MSDES/MHR are often past or current clients who do not have the energy, time and resources, including level of education and literacy, to make an appeal, and that they often have other more pressing, immediate concerns in their lives such as participating in court proceedings related to difficulties receiving social and financial services, work and family issues.

#### Denied access

As per Appendix M, the numbers of appeals based on denied access vary per public body. On average, the VPD receives ten requests for review a year based on denied access, with larger

numbers reported by MAG/MPSSG in 2001-02, 2002-03 and 2003-04. A possible reason is that these two public bodies deal with law enforcement. The decision to grant full or partial access to a record depends on several factors, including the creator of the document, the contents of the record, and the procedures to be followed in applying the exceptions. In my experience, sections 15(1)(a) (disclosure could be reasonably be expected to harm a law enforcement matter), 15(1)(d) (reveal the identity of a confidential source of law enforcement information), and 22(3)(b) (the personal information was compiled and is identifiable as part of an investigation into a possible violation of law) are used frequently to deny access to a record in records held by the MAG/MPSSG and police departments. Section 14 (legal advice) is applied to information that is subject to solicitor client privilege and can be applied to withhold information in a whole record rather than just a line or a paragraph (for example, a letter to a third party from ministry counsel).

Further light will be shed on these findings through an examination of the fifty-three selected orders. For example, the study will determine whether certain types of exceptions are applied too broadly, to withhold particular records or parts of records, by particular public bodies.

#### Adequacy of search

As previously stated, data for the grounds of adequacy of search are not complete for 2002-2003 and absent for 2003-2004 because adequacy of search is now handled as a complaint rather than a request for review (OIPC, 2003). Due to this situation, only tentative conclusions can be drawn.

One would expect that MCF and MSDES/MHR would each have a higher percentage of grounds for review concerning adequacy of search. However, as noted in Appendix N, adequacy of search tended to be cited only a few instances a year for each of the public bodies. In 2000 and 2001-2002 the VPD had twelve and thirteen grounds for review, respectively, based on adequacy of search, while in 2001-2002 MAG/MPSSG had fourteen grounds for review. Again, the findings for VPD and MAG/MPSSG could relate to the legal importance of the records and for MAG/MPSSG, and most likely VPD, that it processes a large number of non-personal or general requests.

In my experience adequacy of search is an issue often cited when the applicant did not receive records that the applicant expected to receive, or was told by the public body that no records responsive to the request exist. The quantity and quality of information that applicants expect to receive is often much different than what they actually receive. However, applicants seeking records from MCF and MSDES/MHR and other public bodies would not be aware of their rights to request a review (currently, to make a complaint) on the grounds of adequacy of search unless

they sought further information from the OIPC. The response letter to applicants must cite any grounds used by the public body to except information from disclosure (which includes sections of *FOIPPA* and other legislation) but the letter does not specify appealing specifically on the grounds of adequacy of search or issues related to duty to assist.

#### Duty to assist

Duty to assist was not considered grounds for review in 1999-2000. As shown in Appendix O, from 2000 to 2003, for all five public bodies few appeals concerned duty to assist. Only MCF received one or more appeals each year on this basis. In 2002-2003 MAG/MPSSG had five grounds for review concerning duty to assist, which is the highest number of such grounds in the sample. One would expect MAG to have a higher number of grounds concerning duty to assist given its higher share of the total grounds per year. Again, MCF also does not receive the (higher) proportion that one would expect.

As for the other grounds for review, applicants are probably not exercising their rights because of their lack of awareness of section 6 (duty to assist) of *FOIPPA* and that the right to appeal for these reasons is not mentioned in correspondence to the applicant. The “Request for Review/Complaint form” currently does not state “duty to assist” as a grounds for requesting a review. I am assuming that “denial of existence of records” and “withholding records” are included in this category. In my experience and as will be examined further in this study, the statistics do not adequately reflect the number of applicants who probably would have grounds for review based on duty to assist and complaints (formerly reviews) based on adequacy of search.

#### Summary

The data for the personal requests, requests for review and orders offer much useful information concerning trends that could be expected to occur for this research. Statistics concerning the three public bodies that receive the most requests for personal information -- the Ministry of Children and Families, the Ministry of Social Development and Economic Security and the Ministry of Attorney General -- shed some light on the existing state of the request process, barriers to and supports for access, including possible changes to policies and procedures and the larger organizational context.

Requests for personal information form the majority of requests made each year to government, with this percentage steadily increasing, and yet only outnumber (by far) general

requests in two ministries (MCF and MSDES) (CPIAB, 2001, unpagged). The fact that most personal requests are handled by these two ministries strongly indicates that their processing practices and their culture and structure must be thoroughly examined to develop viable suggestions for organizational change and future research.

From a positivist viewpoint, one will be unable to obtain a clear picture of the barriers concerning the request process if the issues discussed in the orders do not adequately reflect the circumstances under which the majority of the requests for personal information are made. From an interpretive social science viewpoint, the goal is to examine the orders for trends and patterns, which will be valid for this sample if not for the bulk of the orders concerning personal information.

Central to the consideration of the effectiveness of the process and barriers to access experienced by applicants is an examination of how the act is applied and problems with the processing of requests. Partial access was the most often cited grounds for review, followed by concerns regarding the withholding of records temporarily (deemed refusal) or permanently (denied access). It is evident that many applicants are not exercising their rights to appeal, and that they particularly lack awareness of section 6 (duty to assist) of *FOIPPA*. In my experience, the statistics do not adequately reflect the number of applicants who would have grounds for review in all five areas examined.

It is important to examine whether documents produced by the public bodies while responding to requests and information that is publicly available such as the Commissioner's annual reports and the request for review/complaint forms themselves lend themselves to erroneous conclusions. A great many public bodies are not mentioned in the annual reports even though they account for a large proportion of the requests for review and orders. The annual reports focus on high profile applicants and issues; very little attention is paid to problems concerning requests by individuals for their own personal information. The way that the statistics are reported by the OIPC -- including no attempt to link the number of requests received by government with the number of requests for review, the number of grounds for review and orders ; the lack of specific data for personal and general requests; the lack of detail concerning how dispositions are assigned; and lumping important information into a mutable category called "all other public bodies" -- underestimates the number and type of problems experienced by applicants.

The findings support the notion that it is extremely important to make visible the experiences of individuals who request their own personal information since they represent the single largest segment of applicants. The problems applicants encounter when making requests and successfully appealing public bodies' responses to their requests would be exacerbated by a lack of public

information about the process and the government's (including the OIPC) resistance to transparency and accountability.

### Analysis of the Sample of Orders

I will begin this section by examining the grounds for review and the decision of the Commissioner. This will be followed by an identification of barriers relating to the processing of requests. To shed further light on the barriers identified, I will then examine features of requests with the most problems (concerning severing and providing assistance) and the least problems (number of exceptions applied).

#### Grounds for Review

As per Figure 16, Appendix P, partial access and duty to assist are the grounds for review most often used by applicants. Partial access was cited twenty-nine times and duty to assist twenty-five times. The "duty to assist" category includes figures for both duty to assist and adequacy of search because the two categories underwent modification by the OIPC during the five years of the study.

Surprisingly, only seven of the orders involved the grounds of denied access. The scope of the act was referred to six times by applicants in the student, personnel and complaint orders, while custody and control of the records was referred to twice by applicants in the client orders. Applicants who sought their personnel and client files were more apt appeal on the basis of partial disclosure.

Section 89(1) of the *Child, Family and Community Service Act (CFCSA)* was cited as grounds for review in three of orders concerning clients, all held by the Ministry for Children and Family Development. Section 89(1) is similar to section 6(1) (duty to assist) of *FOIPPA*. Older files created before the *CFCSA* was implemented (January 29, 1996) are subject to *FOIPPA*.

Referring back to the annual statistics for all the orders from 1999 to 2003, one would expect that roughly half of the orders would relate to the issue of partial access. This appears to be confirmed for this sample. As noted by CPIAB (2000), requests for personal information to MCF and MHR are often partially released because third party information is contained in the desired files.

The number of orders that concern denied access, however, is less than one quarter of that for partial access. Based on the analysis of the grounds for review from 1999 to 2003, one would expect denied access to be approximately half the amount of partial access. Denied access occurs

most frequently with personnel orders (four of the seven times denied access is noted), twice with student orders, only once with client orders, and not at all with complaint orders.

Relating the data to type of public body may assist with understanding the trends noted. In Figure 17, Appendix Q, of the ten requests for appeal concerning MCF, three concerned partial access, five duty to assist/adequacy of search (including concerns about section 89[1]), one custody and control and one other issue. The four requests for review pertaining to MHR were on the grounds of partial access. The highest number (seven) of requests appealed on the basis of partial access were to MAG, which also had three appeals concerning duty to assist and no grounds for review concerning denied access. The most appeals (six) based on duty to assist was UBC. As previously noted, although UBC annually has a small number of appeals a larger proportion of them result in orders.

As per prior analysis (Appendix M), denied access is frequently cited by applicants as grounds for review to police bodies and MAG. An important finding is that denied access is not present for either category of public body. Denied access does appear twice for colleges and universities other than UBC, and for school districts, and once each for UBC and health bodies.

One major problem affecting analysis of this data is that I was unable to establish how many requests were appealed on the grounds of deemed refusal. While the orders often mentioned the grounds for review, none of them specified deemed refusal as grounds for review. The orders often stated the date that the public body received the request and the date of the reply: many of the responses were over the thirty-day legislated time limit for responding.

From the data contained in the Commissioner's annual reports for the years 1999-2003, there should have been eight orders concerning deemed refusal among the sample of fifty-three orders. There is a slight possibility that all eight orders are included in the ninety-two orders not chosen.

#### Decision of Commissioner

The Commissioner upheld the decision of the public body thirty-seven (seventy percent) of forty-nine times. As per Figure 18, Appendix R, approximately half of the client, student and personnel orders were upheld, while nine of the eleven complaint orders were upheld. Only two decisions were overturned, concerning one client and one personnel order.

The percentage of upheld orders is above the proportion of orders (a low of forty-six percent in 2000 to a high of sixty-one percent in 2002-03) upheld by the Commissioner during 1999 to 2003 (OIPC, 1999-00; 2000; 2001-02; 2002-03; 2003-04). The proportion of split decisions (fourteen, or twenty-seven percent) and overturned decisions (three percent) is lower than the Commissioner's proportion over the period in question (between twenty percent in 2002-03 and

forty-three percent in 2000 for split decisions; between eleven percent in 2000 and twenty percent in 1999-00 for overturned decisions).

Referring to Figure 19, Appendix S, the Commissioner tended to uphold the decision of police services, MCF and the health bodies. Each of these categories had only one split decision, with the health bodies also having an overturned decision. UBC had an equal number of its decisions upheld and split. The post-secondary institutions other than UBC also did not fair well, with three decisions upheld, two split and one overturned.

Three public bodies - Public Guardian and Trustee, British Columbia Human Rights Commission and British Columbia Housing Corporation – were unable to be classified, together or with other categories. As noted in Appendix H, the four decisions that concern them were upheld by the Commissioner.

### Barriers Related to Interpretation and Application of *FOIPPA*

As apparent from the grounds for review cited and comments made in their submissions during the inquiry process, applicants often appeal to the Commissioner's office on the belief that there is a problem with the response that they received. In this section I will examine how public bodies interpret their responsibilities under the Act and the Commissioner's findings regarding the same.

#### Barrier #1: Faulty Interpretation of Duty to Assist Applicants

Section 6(1) (duty to assist) specifies the efforts that public bodies must expend to respond to applicants' requests: "The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely."

As per Figure 20, Appendix T<sup>13</sup>, in nineteen of the twenty-five situations examined by the Commissioner the public body upheld its duty to assist. (I have included four orders in which the public body did not meet its initial responsibilities in the "no" column.) This means that, in approximately one-quarter of the orders, the public body did not at least initially meet its responsibilities.

An important point to note is that an applicant's request for review can cite grounds of partial disclosure, under "severing information from records." However, applicants cannot appeal on the basis of duty to assist. The closest categories are "denial of existence of records" and

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<sup>13</sup> Figure 20 also depicts statistics for public bodies' application of Section 3(1) (Scope of the act). Section 3(1) was applied appropriately five of the seven times that it was examined.

“withholding records.” Complaints can be made on the grounds of “adequacy of search for records” and “retention.” Complaints do not result in orders and tend to be settled quickly. The ramifications of this situation will be discussed in more depth later in this section and in Chapter IX (Summary and Conclusion).

Figure 21, Appendix U, depicts the relationship between order type and how successful public bodies were with meeting their duties under section 6(1). The proportion of times that the public body successfully met its duties was the highest for complaint records (seven successes and one non-success). For client and personnel orders the number of times that the public body met its responsibilities was equal to the number of times that it did not.

As previously mentioned, applicants in many of the orders are mentioned as either having made a complaint about the behaviour of public officials or as being the subject of a complaint, such as concerns about professional conduct, workplace harassment, and allegations of abuse of a child or older adult. Section 6(1) was examined in only two of the fifteen orders in which applicants are the subject of complaints but in nine of the eighteen orders in which applicants have made complaints. This trend may represent complainants’ interest in accountability and their need to determine what actions the public body has taken concerning their complaint and/or their request for records; sometimes the orders do contain wording to this effect. In my experience, many requests and appeals to the OIPC are directly related to complaints regarding service delivery and the decisions of public officials.

#### Barrier #2: Improper Application of Exceptions to Disclosure

A frequently cited (Mitchell & Rankin, 1984; Rubin, 1984a) barrier faced by applicants is the public body inappropriately applying exceptions to disclosure. As will be examined later in this chapter, public bodies liberally employ strategies and tactics to resolve problems in mediation and avoid going to inquiry. By examining the Commissioner’s comments, one can obtain an idea of the frequency of this transgression.

Before I discuss Barrier #2, I should mention that there are several limitations to the way that I have chosen to collect and analyze the data related to the application of exceptions to disclosure. Some records that were part of the original request may not be at issue in the inquiry, some applications of exceptions may not be challenged, and the public body may have dropped its reliance on some exceptions used to withhold information. The data that I examine thus concern the sections of the Act that the Commissioner reviews but not the ones that he does not, which are important to examine in their own right.

Another issue is the way in which the Commissioner determines if exceptions have been

correctly applied. The process of reviewing some exceptions, in particular sections 14, 19 and 22, takes priority over other exceptions. This means that if these exceptions are found to apply to material to which other exceptions apply, the Commissioner does not have to review the other exceptions. For example, if section 19(1)(a) is found to apply, the Commissioner does not have to review the same information to see if section 22 applies. If Section 14 applies to information withheld under section 15, the Commissioner does not have to review for section 15.

The Commissioner will sometimes review the public body's application of section 22(1), (2) and (3) by examining subsections not initially applied by the public body but which are particularly relevant. Many times public bodies simply apply section 22(1) and do not explicitly state other subsections that would help clarify why the information is being withheld. The Commissioner may find that section 22 does apply but not for the reasons that the public body argues in the inquiry.

The figures thus do not adequately reflect the improper applications of exceptions to disclosure and probably under-represent the extent of the problem. I will expound more on the ramifications of these issues in later parts of this thesis.

#### Discretionary exceptions to disclosure

Seven discretionary and three mandatory exceptions to disclosure are noted in Part II (Division 2 - Exceptions) of *FOIPPA*. Discretionary exceptions are exemptions that the public body may *choose* to apply if certain tests of evidence are met. Discretionary exceptions include sections 13 (policy advice, recommendations or draft legislation), 14 (legal advice), 15 (disclosure harmful to law enforcement), 16 (disclosure harmful to intergovernmental relations or negotiations), 17 (disclosure harmful to the financial or economic interest of a public body), 18 (disclosure harmful to the conservation of heritage sites) and 19 (disclosure harmful to individual or public safety).

As previously mentioned, records containing one's own personal information can also contain the personal information of third parties, which is excepted from disclosure under the mandatory exception section 22 (disclosure harmful to personal privacy). Depending on the issues involved, requested records may also contain information concerning law enforcement and legal matters, to which sections 13, 14 and 15 may be applied. As well, one would expect sections 19(1) and (2) would be used as they pertain to matters concerning personal safety. In my experience, section 19(2), which allows for a public body to withhold the applicant's personal information "if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health," is not used very often: withholding an applicant's own personal information from the applicant is contrary to the purpose of the Act. Sections 16, 17 and

18, due to their subject matter, would not be expected to apply to requests for personal information. More than one exception can be applied to particular information contained in a record.

As per Figure 22, Appendix V, section 19(1)(a) was applied properly five out of the eight times. Sections 13, 14 and 15 were applied correctly as often as they were not. Section 19(2) and 17 were incorrectly the few times they were applied (twice and once, respectively). Section 16 was applied properly its one time, while section 18 was not used at all.

The discretionary exceptions were applied in total thirty times, fifteen incorrectly. Discretionary exceptions were applied correctly most often to orders concerning student records (seven of the eight times). Section 19(1)(a) was the only section applied at least once to each order type. The two times section 19(2) was applied wrongly was to client orders. I have not included a graph of the application of the discretionary exceptions to disclosure per order type because of the difficulty of displaying frequencies predominantly of one and two.

#### Mandatory exceptions to disclosure

Mandatory exceptions are sections 12 (cabinet and local public body confidences), 21 (disclosure harmful to business interests of a third party) and 22 (disclosure harmful to personal privacy). Section 22 is the primary exception to disclosure applied to personal information. Sections 12 and 21 were each applied in one instance but not examined by the Commissioner in the orders reviewed.

Section 22(1) provides that, “The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.” Section 22(2) lists eight relevant circumstances, such as whether “the personal information has been supplied in confidence” ([2][f]) and whether it is “likely to be inaccurate or unreliable” ([2][g]), that must be considered when determining if the disclosure will be harmful to a third party’s personal privacy. Section 22(3) lists ten examples of situations in which information, if disclosed, would be expected to harm third party personal privacy. These include information concerning a third party’s “medical, psychiatric or psychological history” ([3][a]), “eligibility for income assistance or social service benefits” ([3][c]) and “employment, occupational or educational history” ([3][d]). Section 22(4) lists circumstances in which the disclosure of personal information is not an invasion of third party personal privacy.

There are two other important exceptions under which one’s own personal information can be withheld; one is section 19(2), as previously mentioned. The other is section 22(5), which states, “On refusing, under this section, to disclose personal information supplied in confidence about an

applicant, the head of the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the information.”

To facilitate comprehension, I have created two graphs depicting the application of the subsections of section 22. I will first discuss the application of section 22(1), 22(3) and 22(5) (Figure 23, Appendix W), followed by an examination of sections 22(2) and (4) (Figure 24, Appendix X). Subsections 22(2)(b) and (d), and (3)(e), (i) and (j) were not considered by the Commissioner or adjudicator in any of the orders.

*Sections 22(1), 22(3) and 22(5)*

Section 22(1) was found to correctly apply in five of the six orders in which it was examined. Section 22(1) is often cited by public bodies in their response letters although subsections (2) and (3) must be considered when applying subsection (1). As subsections (2) and (3) refer to many diverse situations and considerations, this practice makes it difficult for the applicant to determine on what grounds personal information was withheld and to argue successfully during mediation and inquiry, especially if records were withheld in their entirety. The public body not providing details in the response letter regarding why the section was applied is a key barrier to access.

Referring to subsection (3), (3)(d) (personal information relating to employment or educational history) is applied most frequently and most well (applied correctly twelve out of the fourteen times). Subsection (3)(a) (personal information relating to medical or psychological history) was applied correctly four times while (3)(g) (personal recommendations or evaluations about the third party) was applied as many times incorrectly. The remaining subsections -- (3)(b), (c), (f) and (h) -- were only applied one or two times, with as many correct applications as incorrect ones.

Section 22(5) was found to apply in half (six) of twelve situations examined. Section 22(5) is addressed after a determination is made regarding whether the personal information of the applicant has been supplied in confidence (22[2][f]), and whether it can be released to the applicant without disclosing the identity of the third party who provided the information. Only in two cases did the public body provide the applicant with a summary of personal information. In one order (MAG 01-08) the public body provided a summary but did not apply section 22(2)(f) because the individual did not want the information of the third party. In another (SD 01-54), a summary of the complaints about the applicant was provided to the applicant in lieu of disclosing the actual letters of complaint and their authors. The summary was provided many years before *FOIPPA* was proclaimed, which meant that the public body was actively acting openly.

*Sections 22(2) and 22(4)*

Section 22(2)(f) (“personal information has been supplied in confidence”) was applied most often and most well (twenty times appropriately). In no instances, of the sixteen times examined, is the personal information requested found to be “relevant to a fair determination of the applicant’s rights” ([2][c]), “inaccurate or unreliable” ([2][g]) (twice examined) or “unfairly damage the reputation of any person referred to in the record requested by the applicant” ([2][h]) (three times examined). Subsection (2)(a) (“the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny”) is applied correctly once and incorrectly twice. Subsection (2)(e) (“the third party will be exposed unfairly to financial or other harm”) is applied correctly eight out of the fourteen times applied. Section 22(4)(e) (“the information is about the third party’s position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister’s staff”), was found to be correctly applied the one time it was applied.

*Comparison of section 22 for public bodies*

Comparing the findings for public bodies is difficult because the numbers of orders are not equal for each category. One would expect personnel records to have section 22 applied more often due to the larger proportion of orders concerning personnel records.

In this section I will not address subsections that were applied less than four times. I have not included a graph of this data because of many frequencies of one and two.

Section 22 was applied more times to personnel orders, and more times incorrectly, than all of the other orders. Of the six times that section 22(1) was applied, of the five right applications three were to personnel orders. Section 22(1) was correctly applied to one complaint order and wrongly to one personnel order.

Of the relevant circumstances, for section (2)(f), of the nineteen appropriate applications, nine were to personnel orders, four were to student orders and three each were to client and complaint orders. For section (2)(c), which did not apply to any of the orders, nine of the sixteen applications were to personnel orders, three each were to client and student orders and one was to complaint orders. Section (2)(e) was applied correctly for three client orders, one student order and two personnel orders, but incorrectly to one client and one student order and four personnel orders.

Of the twelve times that section (3)(d) was applied appropriately, five were to personnel orders, three were to student orders and three were to client orders. The two incorrect applications

were to personnel orders. (3)(g) was applied once appropriately to client and student orders and once inappropriately to a student order and twice inappropriately to personnel orders. (3)(b) was applied appropriately to three client orders and once inappropriately to a personnel order.

### Barrier #3: Late Response Time

For the sake of drawing comparisons I have used thirty days as the response time and considered anything beyond this as overdue. I have also not considered extensions, as many public bodies did not take extensions. The results indicate that, regardless of whether the public body took an extension, its response was often late.

Again, to facilitate comparison, I have averaged the response times for orders which refer to two or more requests. As well, for some requests more than one response was provided by the public body. For these requests I have calculated the promptness of the response on the basis of the date of the first response. The effect will be to under- rather than over-estimate the lateness of the complete response.

I have used the term “request” instead of “order” in this section because requests are responded to by the public body.

#### *Number of late requests per order type*

As per Figure 25, Appendix Y, many of the requests that had response dates noted in the orders were responded to over thirty days. Twelve of the seventeen personnel orders and eight of the thirteen client orders were responded to over thirty days. Additionally, approximately half of the student and complaint orders were dealt with over thirty days.

#### *Response time per category of public body*

Four orders concerning three of the public bodies are not included in the data because the public bodies did not fit the categories mentioned. These are British Columbia Housing Management, the British Columbia Human Rights Commission and the Public Guardian and Trustee.

Referring to Figure 26, Appendix Z, none of the requests handled by MCF, MHR and the school districts were responded to within thirty days. All five of MCF’s requests and three of the four requests to MHR were processed after 151 days. Of the school districts’ requests, one response was between thirty-one and sixty days, one between sixty-one and ninety days, and one between 121 and 180 days.

UBC responded to its requests the fastest: three were processed within thirty days, three

between thirty-one and sixty days and two between ninety-one and 120 days. VPB/VPD, UBC and universities and colleges other than UBC all had three or more requests processed within thirty days. MAG responded to one request within thirty days, two within thirty-one and sixty days and three between sixty-one and ninety days. One request was processed over 181 days by MAG. The response time for the health bodies was spread out over several categories, with two of the six requests processed within thirty days and the remaining four processed over thirty days.

In only twelve orders (fourteen if two of the four other orders are considered) were requests responded to within thirty days. It would be interesting to compare the response times for requests that were not appealed to the OIPC with those that were appealed. It seems that those who receive a request late are more apt to seek a review.

*Late requests and duty to assist for categories of public bodies*

Referring to Figure 27, Appendix AA, with the exception of MHR/MSDES and police bodies, the number and proportion of late responses by the public bodies appears to correlate with the number and proportion of times that section 6(1) was examined by the Commissioner. MCF has the largest proportion of requests for which problems with the application of section 6(1) were found. As previously noted, all five of MCF's responses were late: section 6(1) was examined for four of the requests and for three there was a problem with the application of section 6(1).

Surprisingly, Section 6(1) was not examined for any of the MHR/MSDES files although all of the requests were received late by applicants. Another interesting point to note is that UBC and the police bodies, which responded within the thirty day time limit approximately half of the time, were the focus of the highest number of examinations of duty to assist but among the public bodies with the lowest number of times the section was inappropriately applied.

For three categories of public bodies, section 6(1) was examined more times than the number of late responses. These three categories include UBC, which processed its requests more quickly than the other public bodies (three of eight requests responded to within thirty days), and the police bodies and universities and colleges other than UBC, which processed three of six and three of four requests, respectively, within thirty days.

Barrier #4: Lack of Information Available to the Public Concerning the Access and Appeal Processes

Barrier #5: Selective Use and Misrepresentation of Facts Concerning the Access and Appeal Processes

The findings of this research confirm that applicants requesting their own personal information face particularly difficult challenges during both the request and appeal processes. Decisions of public bodies are often upheld despite discretionary and mandatory sections initially applied wrongly and the initial failure of the public body to meet its duty to assist. Another startling finding is that while the bulk of requests by individuals for their personal information are made to three public bodies, which from my experience are for client files, only a handful of orders pertain to individuals seeking client records. The nine applicants who had sought records from the two public bodies that receive the most requests for personal information (MCF and MSDES/MHR) waited at least four months to receive a reply, yet the Commissioner did not review the issue of lateness in any of the MHR orders.

Three barriers to access were identified: the faulty interpretation of section 6(1) by the public body; the improper application of discretionary and mandatory exceptions to disclosure; and late response times, some of which are months over the thirty-day legislated time limit. Intrinsically linked with these barriers are previously identified fourth and fifth obstacles: the lack of information available to applicants and the public concerning the request and appeal processes; and the selective use and misrepresentation of facts concerning these processes contained in the information that is available, particularly the difficulties that individuals seeking access to their own personal information face.

The details of the orders confirm that the Commissioner's annual reports under-report the number of grounds for review examined and extol the high percentage of requests for review that are mediated rather than result in an order. The large numbers of requests and appeals made by individuals seeking their own information are not visible in annual statistics produced by the OIPC.

While not identified in the OIPC annual reports as frequently used grounds for review because of the way dispositions are logged, in twenty-four of the orders duty to assist (which includes the grounds of adequacy of search from 1999 to 2002) is cited as a grounds for review. The "completeness of the response" as well as the thoroughness of the search may be examined by the Commissioner. In over half of the orders, responses were received late by applicants but for unknown reasons they did not request a review, as they could, based on deemed refusal; they

could also launch a complaint based on delay.

The similarity between statistics for late requests and orders reviewed by the Commissioner for section 6(1) raises several concerns. If a request is late applicants may be more inclined to seek a review based on issues related to the public body's response, such as the denial of the existence of records, or the adequacy of search because they believe that there are more serious problems related to the public body's lateness. As well, applicants might select the grounds that they believe is most necessary to obtaining the records they seek. If so, they are correct because one-quarter of the time, the public body is not found to uphold its duty to assist. The public body must then take steps to show that it has responded "openly, accurately and completely."

The misapplication of discretionary exceptions fifty percent of the time (fifteen of thirty applications) requires further analysis. Sections 13, 14, 15, 17 and 19(2) were applied inappropriately. The following section will examine orders that displayed the most problems with severing and providing assistance.

#### Requests with the Most Problems Concerning Severing and Assistance

Reviewing the barriers and trends shown in the fifty-three orders provided an overview of the problems experienced by applicants. Each of the barriers identified has profound ramifications for applicants and the information released.

To understand further the challenges faced by applicants and areas where improvements should be made, in the following section I will identify and examine orders in which actions of the public are especially problematic concerning the application of *FOIPPA*.

The orders that are the "most problematic" are ones in which the public body was found by the Commissioner to not have applied the Act correctly and not initially met its duty to assist. These orders typically examine several issues, including section 3(1) and 6(1), and refer to requests to which the greatest numbers of exceptions to disclosure are applied. The sub-sample includes all of the orders in which the public body's decision is overturned and split, as well as nine orders in which the public body's decision is upheld. This sub-sample does not include all the orders where there are problems, such as delay and misapplication of sections of the Act. Many of the orders do refer to such problems, but the problems are relatively straightforward to examine and the Commissioner's decision more easily arrived at.

As will be discussed, all of the problems with applying the act noted by the Commissioner relate to just over half (twenty-seven) of the fifty-three orders. The orders, arranged by record type, and pertinent details (grounds for review, Commissioner's decision, response time) are

noted in Figure 28, Appendix BB.

#### Order Type and Category of Public Body

As noted in Figure 28, Appendix BB, problems were encountered in six of the thirteen client orders (two MCF, one MSDES and three health bodies); five of the twelve student orders (four UBC and one school district); eleven of the seventeen personnel orders (four MAG/MPSSG, one MCF, one MSDES, two school district and three other universities and colleges); and three of the eleven complaint orders (two VPB/OPCC and one MAG).

For three categories (client, student and personnel), in all but one order the request(s) was received late by the applicant. In two of the three complaint orders the response was not late. One complaint order and one personnel order did not provide details of response dates.

This study only examines three requests concerning MHR/MSDES (client: 02-10; 00-44; personnel: 01-07). MSDES 00-44 and 01-07 are included in the problem requests. Further examination of MHR requests, requests for review and orders is recommended because these two requests had many problems with the application of section 19(1)(a) and 22.

#### Grounds for Review

As with the sample of fifty-three orders, several of the sub-sample of orders pertains to more than one grounds for review. Grounds for review that are explicitly cited in each order are the ones that I identify and examine. The categories of grounds for review are similar to the grounds for review included in the Commissioner's annual reports.

A key finding, from Figure 29, Appendix CC, is that partial access is cited over half of the time by applicants, or seventeen of the thirty-two appeals made. The proportion is similar to that of the grounds for review of the sample of fifty-three orders and the population of orders from which it was drawn. All four requests in which applicants are denied access are included in this sub-sample.

Another important observation is that duty to assist, which was cited by applicants almost as frequently as partial access in the study sample, comprises only eight grounds for appeal in the orders with the most problematic interpretation of the legislation. I have included an order that refers to an applicant's concerns about records being omitted, which would fall under section 89(1) of CFCSA, in the category duty to assist.

As previously noted, orders can address more than one section of the Act at a time, as well as more than one request. However, it seems as though in the orders where partial severing is at issue that duty to assist may be removed from discussion. The issue could be resolved by the

public body or the applicant may not push for it to be examined.

Referring to Figure 30, Appendix DD, partial access was a grounds for review for all of the categories of public bodies. Problems related to severing thus appear not to be situated with one or two public bodies but to be spread out. Given that appeals based on partial access were concentrated with MAG, MCF and MHR/MSDES, this finding might be of concern because it could indicate systemic problems with severing, such as applying the act too broadly to exempt information from disclosure. It could also indicate that certain types of information contained in records of all public bodies are regularly being improperly withheld under the Act.

Denied access, on the other hand, is only a problem for three categories of public bodies: health bodies; other universities and colleges besides UBC; and school districts. Duty to assist is a problem for MAG/MPSSG; MCF; health bodies; UBC; and school districts. The faulty interpretation of the scope of the act solely pertains to requests concerning the VPB/VPD and UBC.

#### Commissioner's Decision

As per Figure 31, Appendix EE, the Commissioner upheld the public body's decision only six of the seventeen times that partial access was cited as a grounds for review. The other eleven times the decision was split. For duty to assist and scope of the request, only half (four and two, respectively) of the decisions were upheld and the others split. Two of the decisions concerning denied access were split and two were overturned. In total, twenty of the thirty-one decisions of the public bodies were either split or overturned. More light may be shed on these findings when I compare the orders with the most problems with the orders that have the least problems.

Referring to Figure 32, Appendix FF, in five of the eight categories of public bodies the Commissioner reaches either a split decision or upholds the decision of the public body in equal proportions. The two overturned decisions relate to one health body and to a post-secondary institution. The split decisions are across the board, but four pertain to UBC and three to MAG. UBC only has four decisions in this subsample; all four are split.

#### Exceptions Applied

Problems with public bodies' application of exceptions to disclosure with orders in the subsample are the same as those for the sample of orders. It would take too much time to review all of the sections applied by the public bodies and those examined by the Commissioner. Instead, I will just focus on the application of a few of the exceptions.

The discretionary sections 13 (policy advice) and 14 (solicitor client privilege) were applied

incorrectly three out of five and four out of eight times, respectively. It would appear that the public bodies overly rely on sections 13 to withhold policy information and 14 to withhold legal information. Policy advice can be applied to many areas such as labour relations issues, personnel issues and program development and recommendations. A line by line review of the text must be done for section 13; the exception cannot be used to blanket withhold information.

As information concerning the existence of a legal document or advice should not be confirmed, section 14 is often applied to whole rather than part of documents. For section 14, three criteria must be met: the information must be supplied in confidence; the information must be legal advice; and the person supplying the information must be acting in a legal capacity. Government staff who are trained as lawyers but who are in advisory capacities other than that of a lawyer (such as managers, policy and legislation analysts and planners) cannot use solicitor client privilege on their communications.

Public bodies often employ “harm” arguments to withhold personal information. Examples include 22(2)(e) (a relevant circumstance -- “the release of the personal information will cause financial or other harm”) and 19(1)(a) (“the disclosure will cause harm to other individuals’ personal health or safety”). The public bodies also often cite information as being provided in confidence (22([2][f]) and personnel recommendations being provided in confidence (22[3][g]) and [h]) when these sections do not apply.

In the sample of orders, section 19(1)(a) was applied correctly in three out of nine applications, while section 19(2) was not applied all right either time it was used. Although public bodies seemed to understand the meaning of “provided in confidence” (22 [2][f]), and applied it right seven of ten times, section 22(2)(e) was applied right only seven out of fourteen times, while (3)(f) in only one of two. While section (3)(g) was applied right four out of five, 22(3)(h) was applied correctly only two of four times.

Applicants often would cite section 22(2)(c) (fair determination of applicant’s rights), but it did not apply in eight of the ten times that it was examined. A sad reality is that by the time the response is offered the reason the request was made often no longer exists. As an example, for one order, the Commissioner reasoned that the information was not needed for a current labour relations matter, but the matter was current at the time the applicant made the request. If the public body had not taken half a year to answer, then the records would have been considered important to the applicant’s legal rights. The applicant should not have to suffer twice because the public body is late responding.

### Response Times

Referring to response times per record type, depicted in Figure 33, Appendix GG, the problem requests are spread out among different time periods. The two complaint orders with problems were handled within thirty days. The four student orders were processed within four months, but only one within thirty days. The nine personnel orders and the six client orders were spread across the time zones, with each having a request in the less than thirty day category as well as six and four requests, respectively, above 121 days.

Looking at response times per category of public body in Figure 34, Appendix HH, five orders (each for a different category) pertain to requests that were responded to within thirty days. Response times were spread across the time frames. The response times are included even though the frequencies for the orders are zero, one or two because the result is easy to understand visually.

### Orders with the Least Problems

The orders with the least problems (by “least problems” I also mean fewest barriers to access) were selected based on two criteria: that only one or two sections of the act were examined, including sections 3(1), 4(1) and 6(1); and that only one or two exceptions were found to apply. As depicted in Figure 35, Appendix II, seventeen orders are included in this sub-sample. (Nine orders are in the medium range.)

### Order Type

Four of the least problem orders are client orders; seven are student orders; four are personnel orders; and two are complaint orders. The client orders appear to be split among the three levels of difficulty. Over half of the twelve student orders are included in this sub-sample, while only two of the complaint orders and four of the personnel orders are included.

### Category of Public Body

Five of the orders pertain to UBC; three to MCF; three to VPD; two refer to a university (SFU); one to MAG; and one to a health body. The only category not represented is MHR/MSDES. All three of the VPD orders (as opposed to VPB), five of the eight UBC student orders (three of which concern one student), as well as an Ombudsman order connected with orders concerning UBC, are part of this section.

### Grounds for Review and Exceptions to Disclosure

Section 6(1) was examined in eleven of the seventeen orders, including two of the orders for the VPD, and four of the five orders for UBC (and the related Ombudsman order). The Commissioner found that the section was not applied properly in three of the orders, however, in two orders (both MCF) the public body's decisions were upheld; in another, the decision was split. The extreme lateness of the public body was not at issue for both of the upheld decisions.

Section 3(1) (scope of act) was the grounds for review and focus of examination for three of the orders, two of which concern requests by students (Ombudsman 01-42; UBC 01-43). Section 3(1) along with section 4(1) (information rights) were examined in a client order (VCH 02-49). In all three cases the decision was upheld. VCH 02-49 and UBC 01-43 were both responded to late (121 and 38 days, respectively), however, section 6(1) was not addressed by the Commissioner.

Partial access was the grounds for review for only two of the requests: VPD 03-06, in which section 22(1) was examined; and SFU 00-06, in which section 14 was examined. These decisions were both upheld. However, the responses were late, VPD by five months and SFU by eight months.

### Response Times

As these are the requests with the least problems, one would expect to find fairly quick response times. However, nine of the seventeen requests were late. (Details of the date of the response were not provided for two orders, MAG 01-49 and VPD 01-34). Applicants did not appeal on the basis of deemed refusal for any of the requests.

Referring to Figure 36, Appendix JJ, there is a distinct divide in response time between the requests that were responded to within thirty or sixty days and the ones responded to on or after 121 days. This is primarily related to category of public body and record type. Five of the seven orders pertaining to requests processed within 60 days relate to UBC. Three of the four orders with requests responded to on or over 181 days pertain to MCF (MCF00-43:183 days; MCF03-01:205 days; MCF02-52:300 days). The VPD is the only public body to have requests in both the earliest (less than or equal to thirty days) and latest (on or over 181 days) response periods.

Regarding order type, referring to Figure 37, Appendix KK, four student requests (UBC 00-04; UBC 00-51; Om 01-42; and SFU 01-16) were processed within thirty days. Three others (UBC 01-43; UBC 01-44; UBC 01-45) were processed within sixty days. Four of these six files (Om 01-42; UBC 01-43; UBC 01-44; and UBC 01-45) all relate to the same student and were released concurrently by the Commissioner. Three of the four client orders (MCF 00-43; MCF

03-01; and VCH 02-49) and three of the four personnel orders (MCF 02-52; VPD 03-06; SFU 00-06) were processed over 121 days.

#### Duty to Assist

The common thread for the orders with the least problems and exceptions applied is the examination of section 6(1). Eleven of the seventeen orders examined this single issue. Lateness could have been appealed many times in the sample, particularly with regard to five orders (MCF 00-43; MCF 03-01; UBC 01-44; UBC 01-45; MCF 02-52) in which adequacy of search was examined, as well as four others (VCH 02-49; UBC 01-43; VPD 03-06; SFU 00-06).

#### Summary

More than half of the problematic orders cite partial access as a grounds for review. It appears that, if applicants cite partial access as a grounds for review, there is a strong chance that one or more additional barriers to access will exist: the public body will have responded to the request late; applied discretionary and/or mandatory exceptions to disclosure incorrectly (those at issue and others); and/or not met initially its duty to assist the applicant.

The Commissioner tends to rule in the public body's favour concerning section 6(1) (duty to assist). However, there are times for both the "one issue," least problematic requests and the ones in which several issues are examined when the public body initially does not fulfill its duty to assist but the Commissioner still upholds the public body's decision. Section 6(1) is used by the Commissioner to examine a number of issues along with adequacy of search, such as instances in which the public body has failed to respond to the applicant's request; the public body's response was inaccurate or inappropriate; or the public body misinterpreted the request. In some cases the wording of the public body's response triggers applicants to believe that the public body has not conducted a proper search when in actuality the response letter was vague or poorly worded. Other times the public body informs the applicant that, despite a thorough search, records were not located but then the public body is found by the Commissioner not to have conducted an adequate search.

Two issues that should be further explored are whether the status of the applicant, for example student or personnel, influences the applicant's participation in the request and appeal processes, and whether applicants who make requests for particular types of records or to particular public bodies consistently face certain types of barriers. It appears that education and income, as well as material resources, may strongly influence who makes a request for review and how successful

the outcome of an order may be. For example, although UBC and other universities and colleges responded the quickest to requests for personal information, students and personnel at these institutions were more apt to request a review, both when a request is late and with regard to adequacy of search and other issues related to 6(1). Although UBC tended to fulfill its duty to assist applicants, the Commissioner did repeatedly find inappropriate application of section 6(1) by other universities and colleges, school districts and MCF. While the Commissioner tended to side with the public body's decision for orders pertaining to UBC, for other universities and colleges and MAG the Commissioner's decision was just as likely to be split. Consequently, the issues that are examined by the Commissioner are not necessarily reflective of the experiences of the majority of applicants and do not address important issues concerning fairness and equity.

## CHAPTER VIII: CONCEPTUAL FRAMEWORK

### Conceptual Framework

The theoretical and conceptual frameworks provide explanations for the phenomena studied. The conceptual framework is a method by which to organize empirical data examined during the research that concerns barriers to the access process. The conceptual framework was developed from empirical academic research (Bennett, 2003; Roberts, 1999; Roberts, 2002a; Roberts, 2002b; Roberts, 2004c) as well as the research data. As previously noted, the review of the OIPC's annual reports indicated that the way that I had originally viewed the problem to be examined and the data available, and consequently the sampling strategy, needed revision. Studies by Roberts and Bennett and typologies suggested by advocates Mitchell and Rankin (1984) and Rubin (1984a) enabled me to identify barriers related to the access process. The review of literature concerning access processes in other countries confirmed similar as well as unique barriers to access, and assisted me with identifying developing suggestions for improvements to the legislation, access and appeal processes, and the culture and structure of government.

The theoretical framework is a higher level of conceptual organization. The theories of Max Weber and Anthony Giddens explain the development and perpetuation of the state, government and broader socioeconomic and political influences and trends.

The systematic review of the literature examined academic, peer-reviewed research as well as other sources of information, such as academic and non-academic texts; various government publications (particularly those of the OIPC and offices of oversight); newspaper articles, editorials and press releases; and internet webpages. A review of information concerning the access process provincially, nationally and globally and the workings of government helped me view and develop the research process and its findings in a more integrated, evolving way.

As the conceptual framework was partly inductive (arising from the data), the framework was both a guide and a constant test of my conceptualization of barriers to access and strategies for improvement. Barriers that had been identified in prior research tended to concern information being withheld. For reasons that have been and will be explained, I examined additional areas, such as government communications, clients' expectations, and features of the access and appeal processes, and the circumstances of requests that result in an order.

### Typologies of Mitchell and Rankin (1984) and Rubin (1984a)

The barriers faced by individuals and groups who request access to information in Canada has been studied by only a few scholars and advocates (Mitchell and Rankin, 1984; Roberts, 1999a; Roberts, 1999b; Roberts, 2004c; Rubin, 1984a). Mitchell and Rankin (1984) and Rubin (1984a) have developed typologies of problems encountered by applicants. While these typologies pertain to requests for general (non-personal) information, they are applicable to requests by individuals for their own personal information.

#### Mitchell and Rankin's (1984) tactics of "creative avoidance"

Mitchell and Rankin (1984) list ten tactics of "creative avoidance" commonly used by public bodies: delay; mislabelling the record, misreading the act; severing; partial access; stonewalling; comingling; discretionary access: releasing the positive, suppressing the negative; quantity access; fees; and creative tactics. I will describe each of the tactics.

The most commonly used method to block access is "delay," which refers to the public body stalling the release of the requested information. Some examples of stalling measures Mitchell and Rankin identify are the public body not responding within legislated time frames, requesting extensions due to files being lost or misfiled, providing illegible photocopies, and refusing to grant copying privileges.

"Mislabelling the record, misreading the act" refers to circumstances in which the public body wrongly categorizes information in order to prevent its release. A popular tactic is mislabelling innocuous information and categories of records as "personal" or "confidential."

"Severing" refers to the public body inappropriately applying exceptions to disclosure to fully withhold information from applicants. "Partial access" is very similar, but refers to the public body applying the act so that some rather than all of the information is withheld.

"Stonewalling" is when the public body does not acknowledge the existence of the records. Public bodies are responsible for responding to requests as worded, however, often applicants cannot identify precisely the records that they are seeking. As well, applicants may not know what records they are entitled to request, and/or what records are kept by the public body. The result is that applicants are unable to determine what grounds for review are appropriate: were the records lost, or not ever created; or were they inappropriately withheld? This situation may compromise the successful argument of the appeal by the applicant.

"Comingling" refers to situations in which records that would normally be releasable are considered part of a record, or collection of records, that are excluded or excepted from

disclosure. A prime example is information that becomes part of a cabinet document that also exists in records created by officials in lower levels of the bureaucracy.

“Discretionary access: releasing the positive, suppressing the negative,” as it suggests, refers to the tendency of the public body to disclose information that portrays the government favourably while at the same time following the motto, “when in doubt, take it out.” The act does not except from disclosure statements that may harm the government’s reputation or suggest that the government has acted impartially. Information and privacy programs provide senior officials with a “heads up” when information will be released that will portray the government or its staff in a less-than-flattering light.

“Quantity access” refers to the public body providing applicants with an abundance of records that they must then spend hours sifting through to find the requested information. “Fees” refers to the public body imposing various charges for providing the records. Mitchell and Rankin suggest that public bodies should try to work with applicants to narrow requests rather than deter access by issuing large fee estimates.

“Creative tactics” are other strategies used to prevent disclosure, such as “wordy exemptions” that allow government to withhold information that is “preliminary” or “investigatory.” Additional examples are the flagging and monitoring of “sensitive requests” and profiling of particular types of applicants, including reporters and concerned citizens’ groups.

#### Rubin’s (1984a) tactics

Rubin (1984a) identifies five tactics used by public bodies to restrict or prevent access to information. These include vaguely worded exceptions; exception(s) applied too broadly; delay responding; applicant is not aware of what details to provide; and applicant is denied access. These tactics are self-explanatory. However, two of the tactics are broken down further. “Delay responding” includes situations when the government seeks additional information or clarification of a request, requests an extension, or does not request an extension although it is over the time limit for responding. Rubin suggests that one can be denied access for six reasons: the records responding to the request as worded do not exist; available records are not within the scope of the request; the records cannot be located; the records were never created; the public body is not required to create a record; and producing the record would interfere with program operations.

#### Strengths and Limitations of Barriers Identified

Some of the barriers noted by Mitchell and Rankin and Rubin, such as delay, severing, partial access and denied access, are simple actions to identify and analyze. Others, such as comingling,

creative tactics, “releasing the positive, suppressing the negative,” vaguely worded exceptions and “applicant is not aware of what details to provide” appear to be more complex and difficult to identify.

Mitchell and Rankin’s categories do not appear to be mutually exclusive. As an example, delay is both a category of its own as well as a form of stonewalling. Delay in any analysis can also be a form of denied access: a delay of over thirty days is considered by the Office of the Information and Privacy Commissioner as a “deemed refusal.” As several categories suggest, public bodies are skilled at preventing disclosure through mislabelling documents and “creative” categorization of records.

Rubin distinguishes between barriers related to exceptions to disclosure (vaguely worded exceptions and exceptions too broadly applied), as do Mitchell and Rankin. The latter’s categories of “mislabelling the record, misreading the act,” severing, partial access, comingling, and creative tactics all refer to how exceptions are applied.

Rubin’s category of denied access includes six reasons, but there are also a few others, such as the incorrect application of exceptions to disclosure; the request being reworded and/or the scope narrowed in consultation with the analyst only to be denied access to existing records; requested records being destroyed; and the analyst not interpreting the wording of the request correctly. The category of delay is included in both typologies. Rubin identifies three reasons for delay, however, there are many other possibilities, such as the request being transferred and/or responded to outside of the legislated time frames; “staged releases” of information, where applicants receive a reply to part of their request or access to particular records over a period of time, which often spans several months; the analyst not interpreting the wording of the request correctly; and the volume of records that the applicant has to review. There are also many situations that create delay that applicants will experience but not be able to identify as affecting their particular request, such as program areas not forwarding, or being reluctant to forward, requested records; program areas not wanting to agree to disclose the records; holidays and sickness on the part of the analyst and other staff; and lack of staff and resources.

Overall, Mitchell and Rankin and Rubin provide excellent descriptions and classifications of barriers experienced by applicants. A wide range of tactics are used by public bodies not only to delay and deny access but also to prevent applicants from knowing what information has been withheld and the reasons why. Their findings echo barriers noted by information and privacy advocates, researchers, independent bodies of oversight, and governments themselves world-wide.

The typologies provide impetus and room for refinement of existing categories through further

identification and exploration of barriers and their sources, such as aspects of the legislation, the political and government environment, processing procedures and appeal procedures and experiences and expectations of applicants. As this research has found, there are hidden barriers concerning the quality and quantity of knowledge communicated about the access process and during the access process to applicants and the public. These barriers serve to limit applicants' understanding of their rights under the legislation and of the request and appeal processes, which negatively impact their use of the appeal process and their ability to make a successful appeal.

This research attempts to explore and expand on the researchers' findings, and to provide a more systematic analysis. Statistics concerning requests are linked with information noted in the Commissioner's reports and with details of the orders themselves. Some barriers, however, may not be able to be indentified. The findings of this research suggest that many requests are responded to improperly by public bodies, whether the problem lies with the response letter itself or the actions of the public body with regard to processing the request, and that many more applicants could complain and make requests for review and complaints but for whatever reason do not. Further examination of the nature of requests for personal information and patterns apparent in their processing will yield important results and create further awareness of barriers to and strengths of the process as well as ideas for improvements.

### Barriers

I had initially hoped to expand and refine the categories of barriers identified by Mitchell and Rankin and Rubin. However, categorizing the barriers was difficult for the reasons previously described. After much reflection, the barriers appear to form two interrelated categories: features and implementation of the access and appeal processes; and applicants' understanding and expectations of the processes. The orders did not provide evidence of the legislation itself as a barrier, however, from the legislation previously reviewed there are obviously some changes needed.

In this section I will identify additional barriers related to the access and appeal processes, specifically issues examined by the Commissioner that form grounds for review and complaints made to the OIPC. I will also identify barriers related to the appeal process that have been developed from a perusal of the orders.

### More Barriers Related to the Access and Appeal Processes

As previously stated, applicants seeking access to their own personal information can request a review on the basis of eight reasons: denial of existence of records; record not under control or in custody; how access is to be given; withholding records; severing information from records; deemed refusal (no response within thirty days of one's access request) if no extension; correction of personal information request; and records outside the scope of the Act. There is also a category entitled "other" that applicants may select if the appeal is for other reasons (OIPC, 2005).

"Adequacy of search for records" was considered a grounds for request for review until 2002 and is now a grounds for complaint (OIPC, 2003). Requests for personal information are not normally appealed on an additional grounds offered by the OIPC: "third party requesting review prior to disclosure denial of existence of records."

From perusal of the orders, the Commissioner sometimes examines issues that are deemed complaints in the inquiry process. These issues appear to have been raised at the same time as the request for review concerning a request. A study of barriers concerning issues examined by the Commissioner would thus not be complete without considering matters related to complaints. The grounds for complaints are: adequacy of search for records; collection, use or disclosure of one's personal information; fee assessment; fee waiver refused; extension of time/transfer; security; retention; and "other." Not all of the categories of complaints can be appealed by applicants who have requested access to their own personal information. Thus, the categories of complaints that are selected and reviewed in the orders are "adequacy of search for records," "extension of time/transfer," and "retention."

Relating Mitchell and Rankin's and Rubin's categories to the grounds for review, denial of existence of records is similar to Mitchell and Rankin's category of stonewalling and Rubin's category of denied access (the records were never created). Withholding records is comparable to two other aspects of Rubin's category of denied access (records responding to the request as worded do not exist, available records are not within the scope of the request). Severing information from records corresponds to Mitchell and Rankin's categories of severing and partial access, and Rubin's exceptions applied too broadly. Deemed refusal is akin to Mitchell and Rankin's category of delay and Rubin's delay responding. Records outside of the scope of the Act (section 3) is not a category in either typology, however, public bodies inappropriately exclude information from disclosure under this provision. Applying section 3 too expansively is thus similar to Rubin's category of exceptions applied too broadly. Section 3 describes records that are not covered by the act, including court documents and records of a person acting in a judicial or

quasi judicial capacity. Applicants may be able to obtain these records through other processes, as for example records available for a fee through the Ministry of Attorney General's Court Services Branch and the British Columbia Archives.

Regarding grounds for complaints, adequacy of search relates to Rubin's category of denied access (the records can not be located). As we have seen, denied access is an important one to examine. Extension of time/transfer is included in Mitchell and Rankin's category of delay and Rubin's barrier of delay responding. Retention relates to Rubin's category of denied access (records cannot be located).

I have selected some examples of orders that best illustrate the types of issues that form the grounds for review. The grounds for review that were most often identifiable in the records were withholding records and severing information from the records. I was unable to identify any orders that addressed the issue of denial of existence of records and how access is to be given.

Adequacy of search for records was the grounds for complaint most frequently found. In fact, I could not find examples from the other two other relevant categories (extension of time/transfer and retention).

Thus, in the next section I will offer examples of barriers related to the access process that specifically pertain to five grounds for review (custody or control of record; withholding records; severing information from records; deemed refusal; and records outside scope of Act) and one grounds for complaint (adequacy of search). As Mitchell and Rankin and Rubin do not detail barriers with respect to the appeal process I have developed my own categories of barriers. Details of specific orders (with at least one order per grounds for review) will be summarized to illustrate barriers related to the access process, while a more general referral to relevant orders will be made concerning barriers related to the appeal process.

## I. Access Process

### *1. Grounds for review: Record not in custody or under control of ministry*

#### Order 00-35 (Vancouver Police Department)

Details: The applicant requested a an unsevered copy of record entitled, "Notice of Results of Investigation," that he attached to his letter. Some of the text had been blanked out. Annotations on the record said that it had been sent to the deputy chief constable, now the chief constable, of the VPD. The VPD responded that the record "does not belong" to the VPD." The applicant requested a review, after which the VPD conducted another search. The VPD said that it made

“every reasonable effort to locate the record requested by the applicant.” The VPD asked members of the Internal Investigation Section and the Vancouver Police Board if they knew the origin of the records; they did not. The applicant then asked if the information and privacy staff had asked the chief constable and other organizations the applicant named. The VPD conducted a further search. Staff of the chief constable’s office did not recognize the record and did not know where it would be located.

The Commissioner requested clarification from the VPD whether the staff in the chief constable’s office had conducted a search for any records. The VPD said that it did not know if anyone in the chief constable’s office had conducted a search, but that the information and privacy analyst had shown the chief constable the record and he did not recognize it. The VPD also said that it cannot identify which agency created the record, but also says that it is another agency.

The Commissioner ruled that VPD complied with its duty under section 6(1) of the Act. However, the Commissioner also remarked:

I note in passing that it would have been helpful if the VPD had simply expressly told the applicant in its response letter that it could not find the record, rather than saying the record did not “belong to” to the VPD and it could not therefore comply with his request. This imprecision in its response led directly to my request for clarification. If the VPD’s response had been clearer, the subsequent review and inquiry processes themselves might not have been necessary.

## *2. Grounds for review: Withholding records*

Order 00-43 (inquiry regarding *Child, Family and Community Service Act* records)

Details: Applicants sought access to the “complete contents of the Ministry’s file pertaining to their child, including ‘copies notes on file. . . pencil notations, telephone messages, correspondence and any and all statements from any parties involved’”. The Ministry responded seven months later, withholding some of the information under sections 75 and 77(1) and (2) of the *Child, Family and Community Service Act* (CF&CS Act). The applicants sought a review based on their belief that the Ministry was withholding file notes of social workers with whom they had been involved. This was despite the fact that the Ministry released twenty-six pages of handwritten notes of the two social workers and one page of a student who worked on the case.

The Ministry cited precedent that placed the onus on the applicants to “provide a reasonable

basis for concluding that such records exist.” However, the Commissioner refuted their interpretation, stating the order meant “in the rare cases where the applicant is in the best position to provide this information.” The Ministry’s affidavits, including two sworn by information and privacy analysts, described its search efforts and established that it had made a reasonable effort to locate and retrieve the records. The Ministry also submitted affidavits of two social workers. The Commissioner concluded, “Given the Ministry’s evidence of the type and range of its search efforts, I find that the Director exercised such diligence that it is not reasonable to believe that records were omitted from the response.”

#### Order 00-47 (Malaspina University-College)

Details: The applicant sought two records written about him by college staff, a College employee’s minutes of a meeting attended by the applicant and College representatives, and other records about the applicant allegedly held by the College’s president. The College initially replied that it was not required to respond to the applicant’s request. Three months later the College responded with a letter from its legal counsel that the information was excepted from disclosure under section 14 (solicitor-client privilege).

The main issue was whether a contractual release and waiver signed by the applicant before he made the request precluded the applicant from seeking records and the College from having to respond to his request. The College argued that, “where public policy requires that persons not be able to contract-out of a statute, this is expressly provided for in the legislation.” In the absence of such provisions in the Act, the College believed that the applicant’s rights to information have been extinguished. However, after citing precedent from British Columbia, Canada and the United States, the Commissioner ruled, in words of McIntyre J Ontario Human Rights Commission et al. v. Borough of Etobicoke, that, “the Act was enacted by the Legislature for the benefit of the community at large and of its individual members – including the applicant – and clearly falls within that category of enactment that may not be waived or varied by contract (p. 13).”

#### Order 02-59 (Ministry of Children and Family Development)

Details: The applicant sought records concerning the apprehension and continuing custody of her child, and other records about the applicant and her child. The Ministry replied that the records had already been disclosed to the applicant’s legal counsel and would not be making further disclosures of the same records. (The Ministry also excepted some additional information under sections of the CF&CS Act, however, that will not be described here.)

The Commissioner agreed with the public body that the issue is whether the failure to make an additional disclosure of the file, this time directly to the applicant, constitutes an omission under the CF&CS Act. The Ministry produced an affidavit from its legal counsel that stated that records were disclosed to the applicant's legal counsel, however, the affidavits did not provide details of the previous disclosures. The Ministry's counsel had also previously sent the applicant's legal counsel nine volumes of "severed" records from the applicant's family service file. The ministry's legal counsel advised the applicant's legal counsel that further disclosures of the file were covered by the CF&CS Act. The Ministry said that the applicant did receive copies from her legal counsel because she submitted documents bearing identification numbers inscribed by the public body as part of the disclosure package for her legal counsel. However, the Commissioner stated that the public body has not established that the records disclosed to counsel are the same as the records sought by the applicant. The Commissioner ruled that the public body was to provide the applicant with a complete copy of the requested records, subject to solicitor-client privilege and other exceptions under CF&CF Act.

### *3. Grounds for review: Severing information from records*

#### Order 02-32 (Fraser Health Authority)

Details: The applicant requested her file from a mental health centre. The Fraser Health Authority (FHA) withheld the applicant's personal information under section 19 on the basis that it could cause her harm. The Commissioner notes that before the applicant submitted her request, the Ministry of Children and Family Development applied in Provincial court for a disclosure of the same records. The records were ordered disclosed to the Ministry; the Ministry was not to disclose the records to the applicant. Another judge later ordered the Ministry to disclose those parts of the records to the applicant that the Director intended to rely on at a child custody hearing involving the applicant. It is not clear to the Commissioner if the court order covered all of the records that were in dispute.

The FHA believed that the applicant wanted the records for the purposes of litigation. The FHA cited a previous order by the OIPC that states that anyone contemplating litigation has other means of obtaining records. As well, the applicant will be given parts of the records pertaining to the child custody hearing so she does not require them through the access request. The Commissioner ruled that the availability of other means of access to the same records is not relevant in this case.

The Commissioner found that the main issue was the application of section 19(2) to the

records. To withhold an applicant's own personal information, the public body must prove that the disclosure of the information could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health. The FHA submitted an in camera affidavit of a psychiatric medical professional that stated that "the applicant's access request is not being made on a competent and reasoned need to use the material for the betterment of her medical and psychiatric condition." The medical professional stated that if the applicant is given access to her own personal information she could "decompensate" and become "certifiable" under the *Mental Health Act*.

The Commissioner decided that the public body's argument addresses possible harm to the applicant's mental health but not "immediate and grave harm." FHA did not indicate specific information that would lead to the reasonable expectation of harm under section 19(2). The Commissioner concluded that section 19(2) does not apply to the records but that the records appear to contain third party personal information, which the FHA had not considered. The FHA was to review the records to determine whether section 22 applies and to disclose any portion of the records that it is not required to withhold under section 22.

#### *4. Grounds for review: Deemed refusal*

Order: BCIT 00-31 (British Columbia Institute of Technology)

Details: The applicant, a former BCIT employee, requested all of her personal information from the institution. BCIT did not respond to her request. Nine months later the applicant submitted a request for review to the OIPC, citing BCIT's failure to respond to her request. BCIT responded apparently due to intervention from the OIPC seven months later that it was withholding the one document it had under sections 13, 15, 17 and 22. The applicant then submitted another request for review on the basis that BCIT did not produce all of her files.

BCIT did not respond when told the dates to file initial and reply submissions. The Commissioner had to conduct the Inquiry based on the portfolio officer's fact report and the applicant's submission and the Commissioner's review of the one record in dispute.

The Commissioner concluded that BCIT did not respond completely and accurately to the applicant. The response letter does not address all of the items that she noted. The letter also does not provide reasons for BCIT's refusal, which is a breach of section 8(1)(c)(i), and contact information for an officer or employee who can address questions concerning the refusal, which is a breach of section 8(1)(c)(ii). The Commissioner found another lapse of responsibility by the public body: he determined that the institution did not respond when required:

It is abundantly clear that BCIT simply did not live up to the clear requirements of s. 7, much less its s. 6(1) duty to respond ‘without delay.’ It has both failed to fulfill its s. 6(1) obligation to respond without delay and breached its s. 7 obligation to respond within 30 days ( . . . )

The Commissioner ordered BCIT to, within thirty days of the order, undertake a search for records responsive to the applicant’s request and to reply to her request, complying with section 8(1). The Commissioner also ordered that BCIT deliver to him a copy of the response and an affidavit that describes the institution’s search efforts and the results. As BCIT did not submit evidence to substantiate the application of sections 13, 15 and 17, the Commissioner ruled that BCIT had not discharged its burden of proof concerning these exceptions. BCIT was to provide the applicant with information it had wanted to withhold under sections 13, 15 and 17. However, BCIT must refuse to provide the applicant access to third party personal information contained in the one record that the Commissioner reviewed.

*5. Grounds for review: Records outside the scope of the Act*

Order 01-42 (Ombudsman of British Columbia)

Details: The applicant requested the names and positions of the officials at the Ombudsman’s offices in Victoria and Vancouver who participated in discussions of his situation and any information that they have concerning the applicant. The applicant had made a complaint about the University of British Columbia which the Ombudsman found to be unsubstantiated.

The Ombudsman’s office identified one officer responsible for the applicant’s file and confirmed that the Ombudsman himself was responsible for the conduct of the office’s business and was aware of the letter sent to the applicant that determined that the complaint against UBC was unsubstantiated. The applicant was informed that information concerning the investigation of his complaint, including the names of those involved in discussions, was excepted from disclosure under section 3(1)(c) of the Act. The Ombudsman refused to disclose information concerning his complaint, including an Ombudsman’s complaint file, FOI request files and any legal file related to his complaint or FOI request. Legal advice pertaining to the FOI request file was withheld as per section 14, as was correspondence of which the Ombudsman believed the applicant already had copies.

The applicant’s initial submission alleged unfairness, bias and unethical conduct towards him

on the part of the Ombudsman's office. In his reply submission, the applicant asked that the Commissioner require the Ombudsman to confirm that he did not conduct an "independent investigation" of the applicant's complaint against UBC. The Ombudsman's reply submission stated that the applicant's allegations were "spurious and vexatious." The Commissioner ruled that he had no authority to decide whether the Ombudsman failed to conduct an independent investigation. He also ruled that he had no authority to decide whether section 3(1)(c) has been used by UBC to hide alleged institutional bias against, and "persistent inappropriate treatment" of, the citizens that a public body is supposed to serve.

The Commissioner determined that the information gathered by the Ombudsman's office concerning its investigation of the complaint against UBC was considered the records of an officer of the Legislature and thus is not included under the scope of the Act. He also determined that the names of Ombudsman's staff who worked on the applicant's complaint involve a request for information and not for records.

#### Order 01-43 (University of British Columbia)

Details: The applicant requested records related to his complaint against the university. He sought all records in a file kept by a specific UBC professor between December 1999 and March 2000. He also requested evaluations, statements and opinions about his academic work or situation by three individuals and between these individuals and the Ombudsman's office.

UBC responded that the records of the UBC professor were made after he retired from the university and thus are not in the custody and control of the university. UBC replied to both requests that records concerning the Ombudsman's investigation are excluded from the Act under section 3(1). The applicant did receive twenty-six records as part of the response to the second request.

Both UBC and the applicant made submissions concerning whether the records for the first request were in custody or control of UBC, however, the Commissioner did not address the issue because it was not set out in the Notice of Inquiry. The Commissioner stated that he would most likely find that the records would be excluded from the Act if the issue was before him. The Commissioner found that UBC withheld all the information appropriately under section 3(1)(c).

*6. Grounds for complaint: Adequacy of search for records*

Order: 02-52 (Ministry of Children and Family Development)

Details: The applicant requested copies of all of his personal information from his employer. He had launched many grievances against his employer over the years. One of the facility's directors told the applicant that he had been maintaining his own files on the applicant. After originally being told by the director that he could review the files, he was then told that he would have to make an access to information request.

The applicant identified several regional program and facility offices as sources of records. He also requested the senior corrections officers' "pink book." The Ministry sought clarification of the "pink book." Six months later, the ministry provided a response which did not include the "pink book," as it had not been located. The applicant was also told that records concerning an ongoing grievance would be available through the arbitration process or, when the matter was concluded, through the "information and privacy process." The Ministry sent another release of records to the applicant four months later, saying that it had located additional records. These records included closed grievance files.

After this release, the Ministry then located "four other grievance files and one file filled with miscellaneous documents." The applicant then requested a review of the Ministry's response to his request on the grounds that the facility held additional records containing his personal information that had not been disclosed to him. Among the outstanding records were the "ghost file" held by the facility's directors, grievance records, and the "pink book."

The OIPC issued the Notice of Inquiry and the portfolio officer's fact report to the applicant and the Ministry. The Ministry had several concerns regarding the fact report, including that it "referred to the Ministry withholding information from the applicant in a way that commingled the adequacy of search issue with substantive access issues." The Ministry requested that the fact report be amended to include only the search issue. The Executive Director of the OIPC then agreed to amend the fact report despite the applicant's objection.

The Adjudicator, however, did not view the amending of the fact report as being an attempt on the Ministry's part to avoid scrutiny. The Adjudicator made several important comments throughout the eighteen page order that do show some concern regarding the Ministry's handling of the request. For example, the Adjudicator commented:

With respect to meeting notes, the Ministry states that any notes relating to the applicant have been located. ( . . . ) One of the directors stated that he had notes relating to an

investigation that post-dated the applicant's request but otherwise everyone confirmed that all responsive records had been located and retrieved. In specifying that the meeting notes had been "located and retrieved," I assume that the Ministry is making the point that this does not necessarily mean that the notes were released to the applicant. As the Ministry did inform the applicant that records relating to unsolved grievances was being withheld, it is possible that notes taken at meetings relating to the applicant's grievances fall into this category. However, as the Ministry's decision to withhold information is not before me, I can make no finding on this. (p. 6)

The Adjudicator commented "that part of the applicant's confusion may result from how the Ministry chose to respond to the applicant's request." The Ministry told the applicant that the records concerning ongoing grievances were "not ordered." It was not clear whether the Ministry had withheld the records or whether it did not even retrieve the files. The Adjudicator noted that if the Ministry had reviewed the records it should have provided a reason for withholding the information. The Act does not include an exception to disclosure for records concerning ongoing grievances. The Adjudicator found that, although the Ministry did not initially comply with its section 6(1) duty to respond to the applicant openly, accurately and completely, it eventually discharged its responsibilities.

In my opinion, the several releases of records and the vague responses that the Ministry gave the applicant indicated a failure to respond completely as well as the withholding of records. From the responses that the applicant received, he would not know exactly what records had been withheld and the importance of having the issues of complete response and withholding records as part of the inquiry.

Order: 02-25 (Ministry of Children and Family Development)

Details: The applicant requested records relating to herself, her employment and her case under the Short Term Illness and Injury Program for employees. Five months later the Ministry responded by providing approximately two hundred pages of records, with some pages severed or withheld under sections 13 and 22 of the Act. The applicant submitted a request for review based on the decision to withhold information and also said that she believed that there were more records.

The applicant cited several examples of records that she believes exist but the Ministry did not provide to her, including a "ghost file" that she believes another employee kept on her, notes of a meeting between her husband and another Ministry employee, and records relating to exchanges

between Ministry staff and others. The applicant pointed to the Ministry's release of more records as indicative of inadequate initial search efforts and of withholding records improperly.

The Ministry listed the areas that it searched and argued that there was no reason to believe that records existed in other areas. Two Ministry employees submitted affidavits concerning the search. As a result of reviewing the records again, the Ministry disclosed records that it previously withheld; the Ministry also found records after reviewing an original file. The Ministry does not consider that its initial search was inadequate. The Commissioner found that "the Ministry's searches for records were reasonable and would conform to the efforts that a fair and rational person would expect."

The Commissioner did not rule on whether the Ministry met its duty to respond accurately and completely because it was not before him. The reason that this issue not before him is quite possibly related to the lack of awareness on the part of the applicant. The Commissioner raises some doubt as to whether the Ministry would have met its initial responsibilities, stating, "the Ministry has now apparently accounted for all the records that it found."

## II. Appeal Process

The appeal process is a site of extensive structural barriers to access. The following discussion briefly examines some of the hindrances to access faced by applicants. As the barrier of misinterpretation and misapplication of discretionary sections of the Act has already been noted, this section will refrain from further analysis. Examples of such orders are CCHSS 02-60; SFU 00-06; VPD 331-1999; and MAG 01-08.

### Applicant is not able to or does not appeal on right grounds

In one order (UVic 01-10) the applicant does not make an appeal on the grounds that are the right ones but instead uses section 25 (public interest). The applicant also appeals the second request when he should have appealed the first request. In another order previously mentioned (MCF 02-52) the applicant could have requested a review based on withholding records but was forced to limit his concerns to adequacy of search by the public body and the OIPC.

In another order (OPCC 00-08), the public body should have informed the applicant that it had no responsive records. The public body said that section 3(1)(c) applied to both records, however, the public body's submissions says it has no records relating to employees. The applicant could have requested a review on the basis of section 6(1) but the applicant would not be aware of this given the public body's response. The applicant should not be penalized twice for the problem

with the public body's response.

#### Additional searches before and during mediation

Public bodies attempt to conduct an adequate search and fulfill their duty to assist with every request. Information and privacy analysts understand, however, that if a request for review or complaint is made they may be asked by the OIPC to undertake further searches for records. Conducting a proper initial search prevents embarrassment to the public body and spares everyone time if the applicant seeks redress from the OIPC.

Many of the public bodies noted in the orders (including VPD 00-35; UBC 03-37; PGT 03-44) conducted additional searches either before the request for review was made or during mediation.

#### Additional releases of information before and during mediation

In mediation, public bodies are asked to review the records provided to the applicant and consider the applicant's request again. As a result of consultation with the portfolio officer and reviewing the records initially found and results of additional searches, the public body may decide to release additional records. Additional releases of information were provided to applicants in many instances, both before and during mediation (SD 01-53; MCF 02-52). As a result of the inquiry, for several orders the Commissioner overturned the public body's decision, or part of it, and additional records were ordered released (MAG 00-07; MCF 02-25; MPSG 02-21; MPSSG 03-13; OSHR/PRH 01-29).

The public body is not required to direct the applicant to the public body that may hold the records

According to policy 1 concerning section 11 (Transferring a request) contained in the *Freedom of information and protection of privacy policy and procedures manual*, "Public bodies shall make every reasonable effort, as quickly as possible, to assist applicants in locating the records that satisfy their information needs, wherever they are held. This duty to assist includes locating the public body best able to handle the request." In one order (City of Vancouver 01-05) the applicant was certain that a lawyer was employed by the City and therefore records in a file held by the lawyer were subject to the Act. The Commissioner ruled otherwise. The City could have told the applicant to check with the Vancouver Police Department, the Vancouver Police Board and the Office of the Police Complaints Commissioner.

## Procedural issues

### *Adjournments*

In most cases, applicants and public bodies followed the time frames for steps of mediation and inquiry set out by the OIPC. In some cases, however, the public body or applicant did not follow the time frames. For example, in one order (MPSSG 03-27) several adjournments spread the length of the inquiry over a year.

### *Conflict of interest*

In three orders (UBC 327-1999; SFU 00-06; UVic 01-10), applicants were concerned about a possible conflict of interest. In one order (UVic 01-10) the university's legal counsel advised on the application of section 14 and had previously refused to disclose records to the applicant concerning a case of harassment.

### *Application of Section 43 (power to authorize a public body to disregard requests)*

A concern identified by the Privacy Commissioner of New Zealand was the public body's aversion to assisting applicants in situations involving litigation, labour relations and other contentious matters. In one order (VPB 331-1999) the public body was awaiting the result of a judicial review concerning another access to information request by the applicant that would have determined whether section 43 could be applied to that and future requests. The public body was hoping that it would be able to ignore requests from the applicant and that the Commissioner would likewise disregard the request for review. The Commissioner decided not to wait for the results of the judicial review.

### *How information can be submitted*

For several orders (MCF 03-01; UBC 00-51; UBC 03-08; PGT 03-44), the public body preferred and was granted permission to make in camera affidavits. While this practice protects information of third parties and can be used by the applicant as well, applicants were sometimes not happy with the process.

### *What is included in the submissions*

In several orders applicants appeared confused or frustrated with the process. In one order (MPSSG 03-27) the applicant withdrew his submission when he could not do it all in camera. In

another order (PGT 03-44) the applicant's submissions are focused on events that precipitated the request. In a third order (VIHA 03-43) both the applicant and the public body object to the other's submissions.

*The contents and use of fact reports*

As previously noted, in one order (MCF 02-52) the public body subverted the inquiry process by asking for the portfolio officer's fact report to be amended so that it would not include issues that the public body might have not have addressed properly or not have fully addressed. In another order (VCHS 02-60) the Commissioner allowed the public body to use the fact report as part of its submission but this allowed the public body to meet its burden of proof.

*What issues can be raised during inquiry*

The OIPC and the Commissioner determine the issues that are raised during inquiry. In several instances applicants raised issues that could not be addressed by the Commissioner because they were either not included in the public body's fact report or in the Notice of Inquiry. In one order (MCF 02-52), despite the applicant's objections, the question of whether the Ministry had inappropriately withheld records was not included in the fact report, just adequacy of search. In another order (MPSSG 03-27) section 6(1) was not mentioned in the fact report so it was not dealt with in the inquiry. In another order (VPB 331-1999), section 16 was not mentioned in the Notice of Inquiry, but the applicant then raised it in the initial submission. The Commissioner chose to review the application of section 16. In another order (03-13) the Commissioner chose to examine sections 4(2), 5 and 9(2) rather than 6(1).

*The narrowing of issues for examination during the inquiry by the public body*

During the period of mediation the public body is to take steps to resolve the issues identified by the applicant. One request may have several issues, such as the inability of the public body to locate records for one part of the request; the application of exceptions to disclosure to other records; and the designation of some records as not falling under the scope of the Act. To prevent the request from going to inquiry, the public body can take several initiatives, such as reconsider its application of exceptions to disclosure and/or conduct an additional search.

If the issues are not all resolved in mediation, one or more of them is the focus of an inquiry. In several orders (including UVic 01-10) several sections were initially applied but only a few of them were at issue in the inquiry.

The Commissioner's role in the mediation and inquiry processes is not "applicant friendly"

In rendering his decisions the Commissioner is supposed to be fair and impartial. The portfolio officers are charged with the task of assisting the public body and the applicant to come to some type of resolution. The public body, however, also relies on advice from program areas and legal counsel. The role of the Commissioner is not to address this power imbalance, however, it does affect the course of mediation and inquiry. Numerous orders suggest that the Commissioner does not take into account the applicant's ability to understand and participate in the process.

In one order (MPSSG 03-40) the Commissioner stated that the applicant's knowledge was a relevant factor, but the applicant was not asked to supply knowledge or evidence. In another order (MCF 02-52) the Commissioner commented that the applicant did not supply him with copies of records that were apparently given to the Ministry. (This raises the question: why, if the records were so important, did not the Commissioner request them from the Ministry?) In another order (03-34) the Commissioner did not ask to see information that the public body did not provide to the applicant. Normally the Commissioner is to review all the records that have been reviewed for disclosure, including ones withheld.

Applicant is supposed to know what issues should be pursued to inquiry

Applicants must determine whether any or all of the issues they are concerned about should be pursued to inquiry. The problem with this is that their lack of knowledge of the Act and of precedent precludes them from making informed choices. As well, although the portfolio officer may help them come to some resolution of outstanding issues with the public body, applicants may also choose to not pursue issues that may be ultimately resolved in their favour and provide additional access to records they requested. For example, in one order (MPSSG 03-27) the applicant received two typed interviews provided in mediation. These interviews are severed under sections 15, 19 and 22 but the applicant does not argue the application of these exceptions.

The public body and/or the portfolio officer could have done more to help the applicant and prevent unnecessary inquiries

As indicated by the number of requests that are resolved in mediation by the OIPC, many times applicants' misunderstandings of the public body's response and what records are available are cleared up through discussion with the public body during mediation. In my experience, analysts are repeatedly told to take steps to resolve any problems concerning the request so that the applicant does not appeal to the OIPC.

Occasionally in the orders, and many times in my experience, there are instances where public bodies and/or the portfolio officer involved could have done more to help the applicant understand what records are available and why the public body has responded as it has to the request. Applicants often remain concerned about responses from the public body that in effect deny access and responsibility for access, such as those that state that the requested records are not in the custody or control of the public body; records responding to the request have not been located; or records responding the request are out of scope of the Act.

In one order (VPD 01-34) the applicant made two requests for all personal information concerning himself that were on file in successive time periods. He made a request for review concerning the second request on the basis that he was not provided with all of the information, however, his initial submission stated that he thought “there should be NO records concerning myself with the VPD” in accordance with the terms of a federal pardon. During mediation, when the public body became aware that the grounds for review were not the main issue, it would have been more prudent of the public body to have confirmed what records still remained on file and why (due to the VPD’s record retention standards and the federal pardon) in response to the applicant’s requests.

In another order (VPD 00-35), the public body’s vague response to the applicant that a particular record “does not belong” to the VPD rather than simply stating that it could not find the record, and the applicant’s frustration with the VPD’s seemingly less than thorough search efforts, most likely led to the inquiry. In a third order (City of Vancouver 01-05) the applicant firmly believed that the City had not responded properly to his request and that the public body had custody or control of the records. The main unanswered question is why the public body and/or the portfolio officer did not more clearly explain the provenance of the records and refer the applicant to the public bodies that would probably have the records rather hold an unnecessary inquiry on the irrelevant matter of the public body’s duty to assist. In another situation (BCHM #02-39), an applicant thought a rent subsidy was unjustified, but the Commissioner could only address the adequacy of search for records.

Applicant is supposed to know how to argue for disclosure

In many cases the Commissioner’s comments suppose a level of awareness of the process that the applicant does not have or cannot have. Applicants often are not told the subsection applied to withhold information. They do not have a lawyer representing them; they do not know the standard of evidence for each subsection and have not read the orders. Applicants do not bear the

burden of proof unless they are also requesting the personal information of third parties. However, they ultimately need to know how to argue their case for disclosure.

In two orders (Okanagan Similkameen Health Region and Penticton Regional Hospital 01-29 and MPG 02-21), the applicant did not know what information was withheld and so cannot make a successful argument. In one order (UVic 01-10) the applicant clearly was confused about how to argue for disclosure, suggesting that, with respect to the disclosure of his own personal information, section 25 (public interest) applied on the basis of the public body's lack of fiscal responsibility, respect for public process, respect for human rights and standard of teaching at UVic. In another order (UBC 01-44) the applicant thought that UBC wilfully misinterpreted his current request (and his other requests described in previous orders), and argued that sections 28 and 42 apply to issues in academia, however, the Commissioner stated that they do not.

In some orders the applicant does not make a submission. For example, in one order (OSHR/PRH 01-29) the applicant made no submission about the one issue examined: whether or not the public body has care or custody of the records.

#### Exceptions to disclosure initially applied and then taken off

This research has already examined public bodies' misapplication of discretionary and mandatory sections of the Act. An examination of the arguments made by public bodies and applicants would shed more light on barriers related to application of the Act, however, to do so would be an immense undertaking.

Instead, I will focus on the phenomenon of public bodies in mediation withdrawing sections that were initially used to withhold all or some of the records. In the orders perused, in one order (MPSSG 03-13) section 19 was initially applied and then removed during mediation. In another order (CCHSS 02-60) sections 19 and 22 were initially used by the public body to withhold information. In the inquiry, however, the public body did not make representations concerning the application of section 19 so only its application of section 22 was considered.

#### Submission of circumstantial evidence by the public body

Public bodies on several occasions submitted circumstantial evidence (OSHR/PRH 01-29; FHA 02-32) to try to apply section 19 (disclosure harmful to individual or public safety) in order to prevent a person from receiving his/her own information. In one order (OSHR/PRH 01-29), the applicant's psychiatrist believed the request is not made by the client for "the betterment of her medical and psychiatric condition," which is not a legitimate grounds for withholding the information.

### The use of contradictory strategies to withhold information

A public body may claim, as it did in MPSSG 02-21, that comments about an applicant cannot be released because they are intertwined with a third party's personal information when legally it is required under section 22(5) to provide a summary of the information. In another order (MPSSG 03-13), the Commissioner noted that the public body "cannot have it both ways" when the Ministry declined to disclose to an applicant an audiotape which it claimed, on the one hand, was "inaudible" and yet also excepted it from disclosure under section 22(2)(e) ("the third party would be exposed unfairly to financial or other harm").

### Application of other Acts

Applicants who were allowed access under *FOIPPA* to particular records sometimes were not allowed access under other legislation, such as the *Police Act*, *Adult Guardians Act* and *Human Rights Act*. In two orders (PGT 03-12; PBT 03-44) the AGA does not override the Act but the public body must protect confidentiality. In another (BCHRC 03-18), section 40 of the HRA says that *FOIPPA* cannot be applied until the complaint is referred to a tribunal, dismissed or is settled/withdrawn.

### Using the Act as a collateral review

As previously stated, I believe that many requests are made by applicants as a result of their dissatisfaction with services they have received from public bodies and a lack of communication concerning such matters. Individuals often start by seeking specific information rather than records concerning public bodies' decisions, however, their inquiries end up as formal requests under the act. Collateral reviews bog down the access and appeal systems and create delays for applicants with legitimate access issues. The OIPC's time and resources should not be wasted on inquiries related to issues not under its purview.

The barrier identified here is the need for communication about service delivery and decision making to be as transparent and inclusive as possible, from the client's initial contact with the public body onward. As part of their response to access requests, information and privacy analysts can direct applicants back to program areas for written and verbal replies to questions concerning decisions made on their behalf, and for information contained in the records.

Several orders referred to applicants using the access process as a way to receive redress for another issue. In one order (BCHRC 03-18) parents claimed that the Human Rights Commission (HRC) had not done a thorough review of their claim that their son was being discriminated

against on the grounds of mental or physical safety. They sought records pertaining to the formulating of the HRC's decision. The Commissioner said that they in effect were seeking a collateral review. In another order (OPCC 00-05) the applicant wanted the commission of an offense to be examined by the Attorney General. Again, the Commissioner could not address this issue through his role. In third order (UVic 01-10) the university's legal counsel suggested that the applicant was unsatisfied with the outcome of a harassment case and was using the process to receive a collateral review. A fourth order (UBC 00-04) concerns a student who was not accepted into law school and who then sought records relating to an incident where he caused a disruption at UBC. The response from UBC was that there were no records relating to the investigation because UBC did not investigate. The Commissioner ruled that he cannot address issues that UBC failed to investigate.

### Summary

The current study was designed to understand barriers to accessing one's own personal information. Echoing prior research (Mitchell & Rankin, 1984; Rubin, 1984a), the main strategies and tactics the public bodies used to withhold information were withholding records (or denied access); severing (or partial access); deemed refusal (or delay); records not within the scope of the Act; and an inadequate search.

Most of the orders concerned situations in which the public body did not provide all or some of the requested information. The wording of the public body's response letter was also cause for concern in several orders. Applicants based their grounds for review on the response letter, which could be vague and misleading to the point that the real reason that the records were withheld was not dealt with in the inquiry, or the applicant could not make a successful argument for their disclosure.

On a larger scale, the barriers pertained to how information and privacy analysts employ their broad powers of discretion; the understanding and expectations of applicants concerning the access process and the information that they would receive; and the control of the access and appeal processes by the Office of the Information and Privacy Commissioner (OIPC). The lack of open and transparent communication by the OIPC and public bodies is related to all three barriers.

### Discretion of information and privacy analysts

The decisions of the information and privacy analysts and other officials involved in the processing of requests reflects codified values of the bureaucracy. Each order details the public body's actions with regard to processing one or more access requests. More importantly, the orders indicate if the public body's decision indeed reflects a balance of attention on protecting personal privacy and access to information, and the extent of consideration of openness and transparency.

The contents of the orders suggest that information and privacy analysts possess much discretion with regard to processing requests and that their latitude of discretion is most evident in differences by which requests are processed. The lengths to which some public bodies go to conduct adequate searches and formulate proper and unique wording of response letters are two examples. Notably, communication with applicants can greatly improve applicants' satisfaction levels. Problems with communication are quite prevalent as indicated from the number of needless requests for review and inquiries in which information was withheld that should not have been.

The research confirms that analysts' decisions did not always follow the terms of the Act and standard policy and procedures. It is difficult to determine the extent to which information and privacy analysts' difficulties with fulfilling their duties under the Act reflects broader organizational values or aspects of the particular information and privacy program. Analysts may honestly assume that they have responded to requests in an appropriate manner.

As decision making discretion is delegated by the public to government officials, the public has a right to complain if decisions made on its behalf are not fair and just. This research is an attempt to show the access and appeal processes as they really are and help the public see through actions taken by key decision makers to avoid appearing as having made mistakes and, in some cases, being open and accountable.

### Understanding and expectations of applicants

The orders indicate that for the most part applicants are naïve to the workings of the access and appeal processes. Applicants may be aware of records that have been created that concern them, however, they also need to be aware that the public body will only provide what it thinks applicants are entitled to receive based on its interpretation of the access request and its own criteria for determining what it is allowed to offer. Applicants are normally not aware of the proper grounds for review and the impact of choosing one grounds over another. They are also not aware of the amount of resistance that they are going to face during the inquiry process, and

the latitude of discretion that the public body has concerning what issues are examined during inquiry and the remedial measures that it may take to address any outstanding issues, with the Commissioner's approval.

The access and appeal processes are a difficult journey to navigate, with little or no satisfaction for even those who eventually are provided with the information that they requested. For some applicants, the outcome will be that they realize that they misunderstood their rights under the Act or the public body's response. Other applicants will be vindicated by finally receiving information but they may have to endure the public body not wanting to admit that it withheld information inappropriately. Many applicants will spend months, sometimes years, proceeding through the stages and waiting for the inquiry and the Commissioner's decision.

The preceding discussion illustrates the lack of responsiveness of the access and appeal processes to the needs and abilities of applicants. Public bodies and the Commissioner cannot expect applicants to know what records exist, how to locate them and what they are entitled to receive. They can also not expect that applicants will exercise their rights to appeal the responses they receive and participate fully in an appeal if they are unsure of grounds for appeal, how to make submissions and how to successfully argue their positions.

Public bodies first try to resolve any problems concerning requests in mediation. Many requests that go to inquiry could have been averted if the public body had communicated better with the applicant regarding why the requested records were not provided. Analysts should address concerns regarding applicants' expectations of the process at the beginning rather than if and when the applicant makes a request for review. Applicants' requests indicate their knowledge of the records available and the information that they think they are entitled to receive. Contacting applicants would resolve many problems and make reasons for the withholding of information more understandable. As well, more attentive communication at the beginning of the request process with applicants would result in less waste of time and financial resources over the long term and better public relations for the information and privacy programs and the government.

The link between service provision and the making of requests for personal information has not been examined in the academic literature. In my opinion, openness begins with how services are provided to the public. The failure of a public body to be open about the decisions they have made, such as dealing with employee grievances, not permitting clients to access certain social and educational programs, and not addressing complaints concerning human rights and abuse issues, is not something that the Commissioner can make amends for. Applicants who seek redress through making an access request and appealing the public body's response should be told by analysts that the access process cannot provide answers and remedies to issues related to

program service delivery, and be directed back to officials they dealt with in the program area for a response. I am not suggesting that information and privacy programs refuse requests; I am suggesting that applicants be told upfront what the access process can and cannot do and let the applicant decide whether to continue with making the request.

#### Control of the access and appeal processes by the OIPC

Analysts have a large amount of discretion over responding to requests, however, the OIPC dictates how the appeal process proceeds from start to finish. The result is that applicants have no influence over the course of events and the appeal process is not responsive to their needs.

A prime illustration of the power and authority held by the OIPC is that the Commissioner can uphold the public body's decision even when there are problems with the public body's response, such as an inadequate initial search, improper application of exceptions to disclosure, and vague or misleading wording of the response letter. Many times in the orders applicants were correct in assuming that the public body had abrogated its responsibilities. For applicants to steadfastly believe in their views and to continue to the inquiry stage takes much time and courage.

Another serious issue of fairness and accountability is that during an inquiry public bodies may be allowed to take additional measures to fulfill its duties, such as conduct additional searches and offer additional releases of information. These steps draw notice to the fact that the public body did not originally properly process the request. The message sent by the Commissioner in allowing extra efforts by the public body is that if the applicant appeals, the public body is given another chance during the inquiry stage to make amends. Upholding the public body's decision in such circumstances makes a mockery of the appeal process and may possibly encourage public bodies to obstruct, obfuscate and subvert the access process. The Commissioner's role is to make government accountable and to deliver fair and equitable decisions, not to be complicit in attempts by offices to avoid public scrutiny and prevent the populace from attaining their access rights.

#### Relevance of the Research to Understanding Factors and Strategies that Lead to More Information Being Disclosed to the Applicant

From an examination of the orders I had hoped to determine both barriers and strengths of the access process. I found many barriers and noted that identifying the strengths of the process was much more difficult.

The sample of orders represents only a small segment of requests made for personal

information. The orders are also ones in which applicants were not satisfied with the response they received and involve problems and issues concerning how requests were processed. The sample would therefore neither be expected to refer to requests that were processed well by the public body, nor to contain an abundance of positive comments concerning strengths of the access and appeal processes.

The content of the orders detail various problems encountered by applicants and how the Commissioner arrived at his decision regarding whether the public body has upheld its duties under the Act. The Commissioner refers to conduct found to be acceptable as well as inappropriate. The Commissioner does not specifically refer to “best practices” or to situations in which access was promoted by the public body.

The results of this research indicate that in many instances the Commissioner supported the actions and decisions of the public body. However, the fact that the public body’s conduct was found acceptable and to the “rule of the law” is not necessarily indicative that the request was processed appropriately. Although I could find instances where the public body facilitated access, such as processing thousands of pages for an applicant’s request and going to great lengths to conduct and describe searches for records, these actions in and of themselves do not reflect strengths of and supports for the access process. The examination of strengths and supports ultimately raised more questions than it answered, such as why applicants must complete and submit a formal request for their own personal information, particularly when the information requested does not contain the personal information of third parties or other material to which exceptions apply; whether several searches and/or releases to respond to the request, before or after mediation, actually constitute a “thorough search”; and whether public bodies that have a relatively large number of appeals have more problems with processing requests, or if applicants have a higher level of awareness of their rights under the legislation.

Barriers to access have been defined and identified in this research related to applicants’ dissatisfaction with the request processes as expressed by their appeals to the OIPC. It would be difficult if not impossible to identify strengths of the process as well without obtaining measures of applicants’ opinions. A positive outcome for applicants would be most likely to receive all of the records that they requested as well as answers to their questions.

The findings of this study also indicate that public bodies differ with regard to the proportion of appeals they receive and the barriers faced by applicants. Thus, to examine supports for access a closer examination than what could be attempted by this research should be made of policies and procedures pertaining to the access processes of various public bodies, particularly those that receive the most requests for personal information. I could not find any instances where access

was actively promoted by the public body.

Given this situation, the strengths of the access and appeal processes can only be inferred from examining the Commissioner's comments regarding conduct found to be acceptable. In this research I have reviewed the extent to which public bodies apply the act appropriately and meet their duty to assist; how thoroughly searches are conducted; and whether requests are replied to within the legislated time frame.

I was able to find examples of steps that applicants can take that may increase the probability of their requests being responded to with records, and information concerning the process that applicants should be aware of before they submit requests and make appeals. I also found examples of improvements that could be made to the access process.

In the next chapter I will conclude the thesis by offering suggestions for applicants and prospective applicants that may improve their experience of the access process and lead to successful outcomes. I will also provide some ideas for improvements to the access and appeal processes, as well as to the legislation and to the culture and structure of government.

#### Statement of Limitations of the Data

A descriptive rather than an explanatory study, the intent of this research is to provide an thorough and systematic analysis of aspects of the process by which applicants access their own personal information. Descriptive research can provide much factual data, however, it cannot fully explain the reasons for the phenomena observed.

Another limitation of the study is the low external validity of the research design. The small sample size, although adequate for a descriptive study, and the unique characteristics of the sample preclude the findings from being generalized to other similar research. While many strong trends and patterns were noted, other sampling methods could be used to obtain larger and more representative samples.

## CHAPTER IX: SUMMARY AND CONCLUSION

The research has examined barriers that applicants face when seeking their own personal information from the Provincial government. The following summary, conclusion and recommendations for this descriptive study have been developed from my analysis of a relatively small but detail-rich data set.

The study found that the Provincial government has developed many strategies and techniques to suppress the flow of communication and information to the public and internally. The many barriers identified reflect the immense capacity of and focus by the bureaucracy toward internal monitoring and control, and reveal the enormous power and influence wielded by government officials during the administration of the access process and the resulting impacts on applicants.

Theories and concepts of Max Weber provide further meaning to the phenomena examined. In this section I will relate the findings of the study to ideas proposed by Weber. I will also briefly examine the purposes of such barriers, which can also be called “defence mechanisms.” I will then examine normative debates concerning the access process that underlie the barriers. Last, I will provide recommendations for further study.

### Weber’s Theory of “Government as Machine”

Weber posited that the government functions as a machine, impenetrable, all knowing and pervasive. The parts of the machine -- the creation and implementation of rules and laws, a hierarchical structure, standards of conduct, reliance on systems of written information, and rewards for loyalty and obedience -- serve to perpetuate its culture and structure. These attributes also help the government maintain control over its operations and keep any threats to the status quo in check. As a result the public has limited understanding of the workings of government as well as limited input and ability to influence decision and policy making.

The findings suggest the existence of an institution based total “command and control” through restrictions on access to information within the bureaucracy, however, there are also indications that government officials function less like automatons than human beings whose decisions reflect attitudes and constraints of the working environment and the latitude of discretion they are given under the Act. Information and privacy staff, program area staff, portfolio officers and others involved in responding to requests must make a litany of decisions. They are required to take reasonable steps and precautions to protect the assets (human and material) and the reputation of the government, as well as public privacy and other rights extended under the Act.

While for the most part officials followed government-wide and Ministerial policy and procedures, their decisions show some variation from established legal precedent and actions not always in accordance with standard written guidelines.

The overall conclusion is that, while the bulk of policy and decision authority resides with government executive, Cabinet and powerful entities such as the Premier's Office and the Ministry of Attorney General's Legal Services Branch, the decisions of mid- and lower-level bureaucrats strongly influence the process and outcome of requests for personal information. Identifiable actions and inactions of officials contributed to barriers faced by applicants, such as problems with search and retrieval of records, the response by the public body (delay and completeness), and the application of the Act.

### Defence Mechanisms

In sum, the barriers identified in this study are strategies and tactics actively engaged in by government officials. The primary functions of these mechanisms are the suppression of data and subversion of the access to information process. These functions are useful to the organization because they maintain a positive impression ("impression management") and public trust; minimize and prevent embarrassment of public officials; control the flow of information within and external to the organization; and protect against outside awareness of internal operations and threats to operational stability.

This research has shown that the access and appeal processes are unnecessarily arduous and lengthy. The information and privacy analyst and staff concerned with the process determine how the request is interpreted, how search efforts are conducted, and whether requested information is released. The public body also determines what information about all of the foregoing issues is shared with the applicant. If the applicant is not satisfied with the public body's response to the request, the applicant must attempt to justify the concerns raised with relatively little understanding of the request and appeal processes and the applicant's rights under the Act.

The explicit purpose of the *Freedom of Information and Protection of Privacy Act* is to "make public bodies more accountable to the public and protect personal privacy" (section 2). To this end, the Provincial government is required under section 6 of the legislation to assist applicants and respond in a prescribed manner ("without delay [. . .] openly, accurately and completely"). To fulfill its fiduciary responsibilities, the government should offer more support for applicants to pursue their access rights and provide more transparency and accountability regarding the request and appeal processes. Applicants' rights to access their own personal information should not be

subjugated or sacrificed because of administrative and operational priorities that reflect a “culture of secrecy” and resulting cutbacks to staff and resources of information and privacy programs and the office of oversight (OIPC).

### Normative Debates

The contradictions and tensions inherent in the access to information process are reflected in normative debates concerning section 6(1) (duty to assist) of the *Freedom of Information and Protection of Privacy Act (FOIPPA)* of British Columbia. The expression of four main values (respect, truth, integrity and equality) in Section 6(1) of *FOIPPA* will be contrasted and compared with similar values reflected in Section 19(1) and (2) (Duty to assist requesters) of the newly implemented and progressive *Promotion of Access to Information Act (PAIA)* of South Africa.

#### Respect

Respect is defined variously as "an act of giving particular attention," "the quality or state of being esteemed," and "to consider worthy of high regard" (Webster's New Collegiate Dictionary, 1973).

Section 6(1) of *FOIPPA* explicitly demonstrates respect for applicants' rights to information (for example, states when -- "without delay"-- and how --"openly, accurately and completely"-- the public body is to respond to a request.) Section 6(1) details in general terms the efforts those public bodies must take to respond to requests, including those for which access is denied. In contrast, Section 19(1) of *PAIA* provides that "[...] the information officer must render such *reasonable assistance* [italics added], free of charge, as is necessary to enable that requester to comply with Section 18(1) [Form of requests]." Section 19(2) sets out four specific conditions that must be met before a request can be refused for not complying with section 18(1). Section 19 of *PAIA* thus appears to provide a greater degree of assurance that the request is not denied inappropriately.

The stated purpose of both *FOIPPA* and *PAIA* (Section 2.1 and 9, respectively) is to promote government accountability. Democratic governments are expected to be accountable to the electorate if they are to remain in power. In practice, senior government official strongly influence whether information is withheld or delayed from release. The control of corporate knowledge and decision-making often takes precedence over the public's right to know what information is held by government.

The issues discussed suggest that a key normative debate is the duty of government to provide access to information to the public versus the choice of government to provide access.

## Truth and Integrity

### Truth

Truth is defined as "fidelity, constancy," "fact," and "actuality" (Webster's New Collegiate Dictionary, 1973). This section will examine another normative debate: the extent to which the legislation promotes secrecy of government information and practices, as opposed to access to information and openness of government.

Experts (Vaughn, 2000; Kernaghan & Siegel, 1995) posit that government has a vested interest in protecting and controlling the dissemination of knowledge in order to maintain its power over the populace. Facts and information can be strategically managed by government communications and issues management experts to create a positive public image. Vaughn (2000), cites research by Alan Westin, author of *Privacy and Freedom*:

Authoritarian governments are identified by ready government access to information about the activities of citizens and by extensive limitations on the ability of citizens to obtain information about the government. In contrast, democratic governments are marked by significant restrictions on the ability of government to acquire information about its citizens and by ready access by citizens to information about the activities of government.

While access to information legislation may seem to promote accountability, it may also act as a convenient cover to hide behind. For example, Alasdair Roberts believes that public bodies are using *FOIPPA* to stall the dissemination of records that, prior to the implementation of the legislation, were released routinely (Special Committee to Review the *Freedom of Information and Protection of Privacy Act*, 1999).

The rigid, rule-bound bureaucratic environment itself may render futile applicants' attempts to access their own personal information. Excessive, complex and time-consuming administrative and operational procedures associated with the processing of requests can hinder or prevent both government decision making and public scrutiny.

### Integrity

A value similar to but distinct from truth is integrity. Integrity is defined as "honesty," "incorruptibility," and "the quality or state of being complete or undivided" (Webster's New Collegiate Dictionary, 1973). According to Kernaghan and Siegel (1995), the integrity of government officials is essential to instilling public confidence in government.

*FOIPPA* and *PAIA* presuppose that government officials will "act in good faith" when responding to inquiries for information. Section 6(1) of *FOIPPA* explicitly mentions integrity: "[...] to respond without delay to each applicant openly, accurately and *completely* [emphasis added]." The Information and Privacy Commissioner of British Columbia has issued several orders (for example, Order 01-41; Order 00-15; Order 30-1995) which address what constitutes reasonable search efforts to respond "openly, accurately and completely." Although, as previously mentioned, Section 19(2) of *PAIA* sets out the conditions under which a request can be refused, the legislation does not specify the effort that the government must expend to reply to those requests that it deems deserving of a response. As a result, the Government of South Africa's commitment to openness is susceptible to question and concern.

### Equality

Equality refers to "the quality or state of being equal" (Webster's New Collegiate Dictionary, 1973). The term "equal" is defined as "like in quality, nature or status" and "regarding or affecting all objects in the same way (Webster's New Collegiate Dictionary, 1973)." Access to information legislation typically includes specific wording that entitles every citizen to make a request for information. Sections 18 and 19(1) and (2) of *PAIA* are intended to address inequalities --such as geographical, technological and language barriers --which may hinder a significant proportion of South Africa's population from making a request for information.

Access to information legislation is essential for citizens to effect political change: "Without information about government decisions and the implications of these decisions, the impetus for [exercising one's right to freedom of] association is also abridged" (Vaughn, 2000). In Canada (and in South Africa), in an era of economic globalization and social pluralization (Rice & Prince, 2001), special interest groups (such as First Nations and indigenous peoples, environmentalists, and gays, lesbians, bisexuals, and transgendered people) are increasingly seek recognition of their individual and collective legal rights. Some interest groups are able to develop strong and influential rapport with policy makers and legislators.

Lobbying efforts and government patronage often influence what is and is not released, as well as to whom. A third normative debate, therefore, involves equality of access to information as

opposed to privileged access by individuals and groups deemed most worthy.

### Summary

Rather than exist in conflict with each other, the four values – respect, truth, integrity and equality -- are interdependent. Together, they underlie the "spirit of the Act" (to balance regard for the right to personal privacy with the public right of access to information) and are intrinsic to the creation and maintenance of civil society (Rice & Prince, 2001). The values also serve as important factors by which to measure the appropriateness of the government's responses to applicants' requests. The Commissioner often refers to such values in his orders, each of which examine in great detail the public body's handling of a request.

Underlying the values presented are assumptions that government officials are committed to maintaining the integrity of government, are truthful, conduct their work in "the spirit of the Act," and can be made accountable for their actions. Another key assumption is that the rights of the public (individuals and collective interests) are held in high esteem, or at least are as highly regarded as the protection of government corporate knowledge and control.

### Conclusion

Amidst a neo-liberal political climate, governments are adopting principles and practices from the private sector such as user fees and an "information broker" rather than "service provider" role. Information and privacy programs and other services such as health, education, income assistance and family and child support have been forced to operate on restricted budgets because they do not generate revenue. The process of providing information to the public is nevertheless seen as a business function rather than a right enshrined in several levels of legislation.

As well, the government is the main repository of information in society. The monitoring and control over internal and external flows of information and communication are central to its control over the populace. While increasing levels of public funds are being allocated toward the development and implementation of intricate corporate communications and information management systems, tighter reins are being placed on offices that provide information to the public such as the Provincial government's Public Information Bureau and information and privacy programs.

The impact of these changes is profound. Just as the worker is alienated from the product of his work, citizens are alienated from information about themselves through the capitalist system. We are not aware of what records the government keeps on us, much less how and where they are

kept. We are also not aware of how decisions are made and who is involved in making the decisions. Our democratic rights are not safeguarded: the information, and through it our rights to freedom of association and our very existence, becomes a commodity to be bought and sold. As Alasdair Roberts (1999a) observes

Two arguments are usually used to justify freedom of information laws. The first is that a right of access to personal information allows individual citizens to protect themselves against arbitrary action by public institutions. The second is that access to information about policy or management questions allows citizens and non-governmental organizations to participate actively in the governance of their communities. (p. 14)

The barriers inherent to the access to information process reflect the best and the worst aspects of the “age of information.” The spread of capitalism coincided with the development of information technology capable of transmitting mass quantities of data across the world in the “blink of an eye.” Citizens are able to obtain an assortment of goods and services literally at the push of a button. However, while much more information is able to be generated and transmitted, certain segments of the population - predominantly the elite members of society (government, large corporations, lawyers) - are able to benefit the most. With their higher levels of education and income, along with corresponding greater access to information and advanced technology, the elite are able to organize and unify. People who cannot afford the requisite technology (access to the internet, an email account, a fax machine, a newspaper) or have a low level of literacy will not be able to access the best employment, education, housing, health treatment and a host of other services and amenities. This growing divide over access to information has been termed “information poverty.”

All governments have the power to use the information that they collect in the public’s best interest. Whether or not they choose to do this defines them as authoritarian. Most governments are somewhere in between. The implementation of access legislation does not guarantee that people can obtain information and their legal rights if infrastructure such as records management systems and mechanisms of enforcement, such as adequate staffing of offices of oversight and requirements for public reporting, are not supported. Openness and accountability cannot exist when an arsenal of defence mechanisms ensures that access rights are controlled and often abrogated.

Each of the barriers identified in this research are part of knowledge, information management and appeal systems common to modern governance. Government controls not only what is known

but how it is known. To quote the Greek pre-Socratic sophist, Gorgias, governments' responses are routinely (stress on this word):

Nothing exists; even if something exists, nothing can be known about it; and even if something could be known about it, knowledge about it cannot be communicated to others.  
(quoted in Sextus Empiricus, 1949/2000)

In such a solipsist climate, not only is access to information regularly denied, confirmation of one's reality is denied. Systems intended to provide justice are not, or do not appear, just. Decisions are, or appear to be, arbitrary because of inadequate "checks and balances," or made with vested interests favouring the elite. The public interest is not protected. Democracy, human rights and legal rights are threatened because the evidence cannot be located and confirmed.

#### Suggestions for Further Research

The results of this study have confirmed and expanded upon the findings of academic researchers, advocates and the media. However, prior research and this research have only scratched the surface concerning barriers to accessing personal information. Those who are most aware of the strengths and weaknesses of the access and appeal processes and who might have ideas for improvements -- clients of the government and public servants involved with the administration of the legislation -- are those least able or willing to participate in such a discussion.

Further studies of the access process, the information and privacy function, and other aspects of the operations of the Provincial Government of British Columbia may yield additional important observations. Longitudinal and comparative studies of how personal information is accessed through other Provincial legislation as well as those of the Federal and governments globally would also offer valuable findings, such as examine and explain the higher rate (forty-three percent) of full disclosure in the United Kingdom. Such investigations would benefit from the use of other interpretive methods, such as conducting interviews with clients and program staff to examine their experiences and perceptions. For example, obtaining comments from applicants concerning their level of satisfaction with the access and appeal processes would add depth and context to the observations made in this study. The interrelationship between applicants' satisfaction with the delivery of public services and their requests for access to information is another possible avenue of investigation. The strengths of the access process were

not fully examined, nor were the circumstances and impacts of delays and non-disclosure of desperately needed information.

The experiences and opinions of those who work in the field (information and privacy analysts, records analysts, managers of information and privacy and portfolio officers) would add some more context and confirmation, or refutation, of this study's findings. An examination of the role of information and privacy training and processes whereby employees are hired, promoted and trained would shed additional light on the reciprocal relationship of action and structure. It is apparent from this research that, through the use of carefully constructed communications and correspondence, the government deftly manages and controls the daily activities of information and privacy staff, overall program operations, and interactions with applicants who have made requests under *FOIPPA*.

Studies of the use of advocates and intermediaries for individuals with barriers to participation in the access process would be of great practical benefit to the public and to the larger pursuit of democracy and justice for all. As well, further research could investigate the development and implementation of community programs that would offer information concerning the Act and free legal assistance.

This research did not explore the influence of gender or culture on the access process. It would be interesting to examine the experiences of particular applicant groups, such as women, immigrants, people with less than a grade ten level of education, people with disabilities, older people and rural residents. The organizational culture and structure of government also deserves more attention: perhaps a study could determine whether the barriers noted are, as speculated, not unique to the request and appeal processes but indicative of service delivery and appeal processes in government in general.

### Recommendations for Improvements to the Legislation

*FOIPPA* provides a general right of access to all forms of recorded information. However, the most obvious need is for information about the Act and the records covered by it to be made more widely available. In 2002 the Provincial government repealed Section 72 (public record index), under which an index of records was to be made available to the public in libraries and through public bodies. Reinstating this section of the Act and attention by the Provincial government to the creation of brochures, paper and electronic directories, and informative (possibly interactive) websites would increase public awareness and the use of the access process.

Under *FOIPPA*, at the time personal information is collected public sector organizations are

required to state that the information is being collected according to the provisions of the Act; the purpose for the collection; and contact information for officials who can answer questions about the use and disclosure of the information. A recommendation suggested by the Australian Law Reform Commission (ALRC) that would improve access to personal information under *FOIPPA* is for government offices' privacy policies to state that applicants may access their personal information and the steps that they may take to do so.

The legislation could also benefit from provisions that offer progressive reform with regard to routine release and proactive disclosure. Such principles could state that the Provincial government is to provide personal information routinely and proactively in support of accountability and access to information, with accompanying wording on specified actions such as "information that has previously been released that is the subject of frequent requests must be made available with any information excepted from disclosure removed." Sections 2 (Purpose of the Act) and 71 (Records available without request) indirectly state that personal information is subject to more constraints on release than non-personal information. Section 2(2) states, "This Act does not replace other procedures for access to information or limit in any way access to information that is not personal information and is available to the public." Section 71 (3) states, "Subsection (1) does not limit the discretion of the government of British Columbia or a public body to release records that do not contain personal information." The protection of personal privacy does not need to extend to protecting personal information from the very people the information is about.

Another improvement to *FOIPPA* would be the inclusion of a principle that encourages public bodies to provide applicants, including those who need assistance comprehending the requested information, with access to information that they otherwise would not be able to receive through an intermediary. I suggest that the wording of the provision be similar to that suggested by the ALRC: "the organization must take reasonable steps to reach an appropriate compromise, involving the use of a mutually agreed intermediary, which would allow for sufficient access to meet the needs of both parties."

Several other amendments could be made that would improve client satisfaction. A major improvement would be to amend section 6 (duty to assist) of the *FOIPPA* to include provisions similar to those of the *Promotion of Access to Information Act* of South Africa so that the Provincial government is required to take prescribed steps to work with the applicant to produce a response to his/her request that involves the disclosure of information. Applicants' rights under *FOIPPA*, and reasons for making requests, would be more likely satisfied if the legislation included three provisions similar to that of the *Privacy Act* of the United States. Requests to

which exceptions do not apply should be answered “promptly” (within twenty working days). Requests that demonstrate “compelling need” should be expedited. If the time frame for responding is to be extended, the public body must notify the applicant and offer the applicant the choice of either limiting the scope of the request or arranging an alternative time frame. Last, to increase transparency and accountability, I suggest that the legislation include a requirement that public bodies make annual reports to the Office of the Information and Privacy Commissioner similar to that done by public bodies in Alberta and that these reports are made public.

I have not suggested additional sanctions for breaches of access legislation or unprofessional behaviour. *FOIPPA* already provides that officials who make false statements or obstruct the Commissioner, or other official, or fail to comply with an order may be fined up to \$5000. I believe that including additional supports for access in the legislation is preferable to sanctions and that their presence may eliminate the need for more severe penalties.

#### Recommendations for Improvements to the Access and Appeal Processes

Information and privacy programs are both a major conduit of information to senior executive and the “gatekeeper” of information flow external to government. Within their own organizations, however, their main task -- monitoring the public body’s compliance with *FOIPPA* -- results in the function being perceived by program areas as a threat and a nuisance to their operations. Another significant problem is that little data exists regarding the effectiveness and efficiency of request processing procedures, with applicants' voices unheard. Questions to be addressed by internal government studies that would improve the visibility and effectiveness of information and privacy programs within the bureaucracy include how to improve the image of the function so that such programs are recognized more for their legal authority than for promoting a process to be feared and resisted; improve rapport and increase support from senior executive, program areas and other internal and external stakeholders; provide opportunities for collaborations across public bodies; and improve service delivery.

The research has identified many weaknesses of the access and appeal processes, including the wide-spread issues of public bodies’ late response to requests; misapplication of the Act; inadequate initial searches; and response letters that include vague and misleading wording and that do not specify subsections relied on to except information from disclosure, which ultimately serve to confuse the applicant. My main recommendation is for the Office of the Information and Privacy Commissioner (OIPC) and staff involved in the processing of requests, including managers of information and privacy programs, information and privacy analysts and program

area staff throughout government, to be more forthcoming with information about the access process. The internal flow of communication concerning the access process should encourage feedback from program area staff and reduce fear and other negative perceptions surrounding the function of information and privacy programs. The emphasis should be on the positive purposes of the access process and the multitude of benefits to applicants of providing them with their own personal information, such as their birth history and their cultural heritage, and motivations of and efforts made on their behalf by government staff. Assisting applicants to understand and use the process to their benefit ultimately reduces time spent dealing with appeals and miscommunication. The challenge to this will be that an appropriate service orientation must be modeled by managers and senior executives. For there to be more openness there must be a shift in attitude at the higher levels of the bureaucracy.

Even if the traditional structure and culture does not change, there are many daily opportunities for government employees to display attitudes and behaviours that reflect openness. Keeping the OIPC and the information and privacy programs fully staffed and resourced will be proof of the government's commitment to accountability and transparency. Another major improvement is for all offices to post more information about the Act and records available with and without a request on government websites, and for such information to be made widely available in electronic documents as well as brochures placed in libraries and other community facilities for those without internet access.

*FOIPPA* requires that analysts notify applicants through written correspondence at certain steps in the access process. Along with written notification, applicants should be contacted over the telephone as a matter of policy in certain circumstances. I am thinking mainly of instances where the analyst knows that a response within thirty days is impossible; the request is vague and the analyst must make a decision whether to send a letter of clarification; and instances where requested records are unable to be located. Applicants should receive a telephone call when it appears that they do not know what to ask for, or are unintentionally limiting themselves to a small portion of the existing information. They should also be contacted if they are requesting their own personal information and the analyst will have to exclude much information from disclosure, such as when the applicant's own information cannot be severed from the personal information of third parties. As shown by the research, many orders pertain to applicants who remain positive at the stage of appeal that information has been withheld from them improperly, either because it was not able to be located or because it has been inappropriately excepted under one or more sections of the Act. Regardless of whether the applicant is right (which they often are) or wrong, public bodies should be more willing to work with the applicant to produce a

satisfactory response to the applicant's request.

Although each request is to be considered on its own merits by the public body, there is still a need for public bodies to treat applicants' requests with more respect, on a "case-by-case" basis rather than part of a production line, and with more consideration of the impact on the applicants. Obtaining feedback from applicants and the public concerning the access and appeal processes is essential to the development of a viable plan for improvement.

Another issue that should be addressed is that the current records management system used by the Provincial government is aimed toward classifying and managing the flow of existing information. More thought should be paid to what information is collected and gathered by each program, and the forms that are used to collect the information. Forms can be created so that information that is protected under the Act is documented in some areas while information that could be given back to the applicant is collected in other places. To this end, the Provincial government should consider adopting access design principles such as those suggested by Michinson and Ratner (2004) to guide the development of all new technologies, and emphasize routine release and the active dissemination of information. Clients should routinely receive copies of records that are made with their input, such as care plans and counselling and health records.

Last, the role of the Information and Privacy Commissioner, which has tended to focus on conflict resolution and adjudication, should be more proactive and focus on public education and advocacy. Beginning with its own practices, the OIPC should be more open with regard to the information contained in its annual reports. In particular, the reports should contain statistics concerning requests for information, with separate tallies for personal and general requests, as well more information concerning appeals. They should also include more summaries of requests for review and complaints pertaining to requests for personal information. The annual reports could be modeled on those of the Information and Privacy Commissioner of Alberta and public bodies in Alberta, which contain statistics of requests and appeals based on frequency of type of request (personal/general), requestor, response times and public body to which requests are made.

#### Recommendations for Improvements to the Culture and Structure of Government

The findings suggest that efforts toward beneficial change must target attitudes and aspects of the larger organizational structure and culture as well as the access process and related policies and procedures. Access to personal information can be improved by attention to the factors that create problems, such as broad discretion and narrowly-defined responsibilities of information

and privacy analysts, and systemic orientation toward interpreting policies which focus on administrative and operational goals rather than meet applicants' needs. Information and privacy analysts, program managers and those involved in policy and planning for information and privacy throughout the bureaucracy should create a "culture of access," including simplifying access procedures and increasing requirements to contact applicants regarding their requests. In particular, government accountability and transparency would be improved by providing incentives toward becoming more client focused, reviewing and improving standards concerning processing requests, including improving communications with applicants before and during mediation. This could also include conducting "access impact assessments," which would be modeled on privacy impact assessments but focus instead on the impacts to citizens of not providing access to personal information.

Access to information is a right and a need which must be championed through inclusionary policies and practices by government and civil society. We must become aware of the problem before we can become part of the solution. There are many opportunities for government efforts to develop citizen awareness and community capacity concerning public participation in governance and access to information. The public's awareness and use of the Act would be considerably improved by the funding and creation of community programs that provide legal and other forms of advocacy. The OIPC could act as the impetus and change leader and become involved in multilateral, proactive consultations and projects with private and public sector organizations to this end.

#### Vision for the Access to Information Process

Citizen participation in government has been replaced by decisions delegated to elected representatives and public administrators (Ombudsman of British Columbia, 1991, p. 1). Access to information provides citizens with a method of participating in decisions affecting themselves and holding decision makers accountable. For fairness to be achieved, however, individuals must be able to access information and decision makers must aware of the impact of their decisions on those on whose behalf the decisions are made (Ombudsman of BC, 1991).

Developing public awareness of the legislation and of the access and appeal processes, as well as creating and strengthening a network of community allies, are the proposed foci of a multi-stakeholder effort to build community capacity. An overall vision for the access to information process that especially considers access to personal information is as follows:

### 1. Client-centred

- each applicant is valued and individual differences are valued
- requests are responded to appropriately
- individual awareness of request and appeal processes are increased
- individual capacity to make requests and to participate in appeal processes are increased
- public participation in planning and review processes is increased
- all British Columbians are aware of the government's website and how to access publicly available information

### 2. Comprehensive

- the planning and delivery of services related to access to personal information consider factors such as individual characteristics (income, education, native language, literacy, access to the internet, location of residence) and characteristics of the access process itself and of the government and political environment (such as the hierarchical structure, top- down one-way communication, norms and standards of behaviour, "levels of access," "turf wars" between programs)
- the access to information system provides a high level of access to personal information as well as public information about access to personal information (paper and web directories of records, brochures, information about appeal process)
- the methods of providing access to personal information stress routine and proactive release methods, including attention to forms creation, and information collection and disclosure; directories of records are publicly available; public bodies are required to make regular reports to the OIPC, also publicly available
- the Provincial government develops and implements policies and practices such as a culture of openness, client centred service, and records creation and management that foster access to information

### 3. Responsive

- everyone who makes a request receives a prompt response
- every type of request receives a prompt response
- every public body responds in a timely, open, accurate and complete fashion
- access is offered in ways that respect community/individual needs and experiences

### 4. Accessible

- everyone is able to access their own personal information under FOIPPA, using the resources that they have available (internet, regular mail, fax)
- the public can identify where to make a request and have access to their personal information
- the public can write a request that will produce records or a response that is satisfactory to them

- information and privacy analysts and other government officials involved in responding to requests keep communications open so that applicants are aware of how requests are progressing and where to appeal
- everyone receives equity of access, regardless of income, education, native language, literacy, access to the internet, location of residence
- policies, practices and programs that support democracy are implemented province-wide

#### 5. Collaborative

- information and privacy analysts and other government officials involved work together to help applicants understand the request and appeal systems and successfully access their own personal information
- the OIPC, the IM/ITPPB, information and privacy programs and other offices that are central to the provision of access to personal information to the public maintain and improve their working relationships
- the OIPC, the IM/ITPPB, information and privacy programs and other offices that are central to the provision of access to personal information to the public collaborate to promote awareness of the access process and its importance to democracy within the bureaucracy
- information and privacy analysts and other government officials (OIPC portfolio officers, records officers, program managers, social workers, probation officers, health providers, human resources managers, etc.) create respectful, supportive structures and cultures that enhance innovation and collaborative decision-making
- a coalition of those interested in improving the access and appeal systems and creating more equitable access to personal information (advocates, lawyers, non-profit interest groups, businesses, individuals) identify ways to work together and meet common and individual concerns and needs

#### 6. Accountable

- information and privacy analysts, managers of information and privacy and policy bodies (OIPC, IM/ITPPB) are accountable through lines of authority and specific responsibility
- government officials involved with the access process have access to current, complete, accurate information that will assist them with forming sound decisions
- the access and appeal processes are subject to ongoing evaluation that considers the public's needs as well as government standards of efficiency and effectiveness
- government officials involved with the access process develop initiatives, particularly training and public education, that facilitate access to personal information and improve service delivery

## 7. Sustainable

- the OIPC, other government officials, and advocates (FIPA, BC Civil Liberties Association) increase public awareness of the access and appeal process, and ensure that the processes are affordable and acceptable to the public as well meet government standards of efficiency
- best practices are adopted and promoted province-wide
- information and privacy analysts and records analysts are provided with opportunities for ongoing training and education in service delivery and collaboration

### Suggestions for Applicants that may Improve Their Experience of the Access Process and Lead to More Successful Outcomes

#### Preparation for Making a Request

The applicant should develop a list of all of the details concerning the records, not information, that the applicant is seeking. The applicant should have an idea of the date range of the records, the offices that might hold the records, and the names of the people with whom the applicant has spoken or who are involved with the matter in some way. These would include social workers, program managers, administrators and others who have responsibilities connected with the issues to which the records pertain. Applicants should be aware that several offices (local and regional offices, administrative offices) may hold records, particularly if the applicant is requesting personnel files or client files.

Obtaining copies of records is made easier if the applicant has either seen all or some of the documents in question. If the applicant has complete copies of the records or “severed” copies, they can be provided to the government office or OIPC if necessary. (Most applicants will not have complete copies of records because they would not be making a request if they did, however, some do have documents that are similar to the ones they are requesting, such as older versions or drafts.) Applicants may have records in their possession that refer or lead to sources of more relevant documents. One can make a request for personal information and then submit additional requests for documents referred to in the records obtained.

In the orders some applicants were able to provide sources for documents from previous documents they had received, or government officials that they had talked to, and were able to describe records that should be on file. Some applicants were also able describe policies and procedures relating to the creation of the records and state why they should be available.

The applicant should first attempt to obtain the records directly from the government office in question in a “routine release,” particularly if the documents will probably not contain the

personal information of third parties or other information excepted from disclosure under the Act. Medical records, notes of counselling sessions and other matters that strictly pertain to information that the applicant has provided, including comments that the applicant has made about other people, would normally be provided back to the applicant.

If the individual is aware that information in the records will probably be excepted from disclosure, or at least need to be reviewed before it is disclosed, the applicant should consider requesting a copy of the document just with the applicant's own personal information left in. If the applicant is considering going to court, the applicant's lawyer can obtain the records as part of the discovery process. The applicant can also subpoena this information; as well, a judge can order it produced in court.

#### Any Delay or Withholding of Records Constitutes a Breach of Rights Under the Act

The cases examined indicate that in many instances the public body's initial search is not in fact thorough and that additional searches and releases, and corresponding delays, are in fact *de rigour*. Applicants who encounter problems with delay, information being withheld due to severing or other reasons (such as records not being located, or a failure to respond completely), and with the wording of the public body's response letter should consider appealing to the Commissioner on the basis of deemed refusal and/or withholding records. The category of "adequacy of search" is now a grounds for complaint instead of review, but as shown in the orders the Commissioner will examine adequacy of search and other issues related to the public body's duty to assist, such as responding "completely and accurately." It is especially important to examine the wording of response letters and to determine that they meet requirements under sections 6 (duty to assist), 7 (time frame for responding) and 8 (contents of response).

As approximately half of applicants who request their personal information under the Act are granted only partial access, there is a strong chance that applicants seeking their personal information will not receive all of the information that they requested. Applicants should become familiar with their rights under the Act before they make a request, including the mandatory and discretionary exceptions to disclosure, which may or may not be applied correctly by the public body. Applicants who have their own personal information withheld for any reason, including section 19(2) and 22(5), should consider seeking a review from the OIPC.

#### Burden of Proof

The onus is on the government to show why information should be withheld for all exceptions other than section 22. In an inquiry the Commissioner's examination of the application of each

exception thus does not focus on the applicant's argument. It is therefore not necessary for applicants to have a total grounding in precedent related to their appeal of the public body's response. Applicants should, however, have an awareness of the importance of the grounds for review and complaints, keeping in mind that records that have been withheld may have been done so for more than one reason, which might not be evident at first.

### Active Participation

Applicants should participate as actively in the access and appeal processes as they can. They should be aware of time frames for mediation and inquiry; they should also be aware of guidelines for making submissions. Applicants should examine and approve the wording of two key documents in the process, both of which are issued and approved by the OIPC: the Notice of Inquiry; and the portfolio officer's fact report. Even with an awareness of one's rights under the Act, the access process, and the records available (routinely and with a formal request), some tactics used to prevent disclosure of information are difficult to identify and address, such as response letters which mention section 22(1) without other subsections or vague references to records that have not been provided.

Applicants should familiarize themselves with information concerning submitting requests as well as requests for review and complaints that is available on the Commissioner's website ([www.oipc.org](http://www.oipc.org)). There is information concerning the steps of the inquiry process and an archive of requests for review and complaints to peruse. Of particular relevance and use is a document that describes the public body's responsibilities to conduct an adequate search, "Guidelines for Adequate Search Investigations" ([http://www.oipc.org/advice/Guidelines\\_for\\_Adequate\\_Search\\_Investigations.pdf](http://www.oipc.org/advice/Guidelines_for_Adequate_Search_Investigations.pdf)) (OIPC, 2003). If possible, applicants should seek assistance from community advocacy offices or free legal assistance.

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- Province of Alberta. *Freedom of Information and Protection of Privacy Act*.
- Province of British Columbia. *Document Disposal Act* [RSBC 1996], Chapter 99.
- Province of British Columbia. *Electronic Transactions Act* [SBC 2001], Chapter 10.
- Province of British Columbia. *Freedom of Information and Protection of Privacy Act* [RSBC 1996], Chapter 165.
- Province of Manitoba. *Freedom of Information and Protection of Privacy Act*. C.C.S.M. c.F175
- Province of New Brunswick. *Right to Information Act 1978*. Chapter R-10.3
- Province of Newfoundland and Labrador. *Access to Information and Privacy Act* SNL2002 Chapter A-1.1
- Province of Nova Scotia. *Freedom of Information and Protection of Privacy Act*. Chapter 5 of the Acts of 1993
- Province of Ontario. *Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, Ch. F.31.
- Province of Quebec. *An Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information*. R.S.Q., chapter A-2.1
- Province of Prince Edward Island. *Freedom of Information and Protection of Privacy Act* Chapter F-15.01
- Province of Saskatchewan. *Freedom of Information and Protection of Privacy Act*. Chapter F-22.01
- United Kingdom (1990). *Access to Health Records Act*
- United Kingdom (1998). *Data Protection Act*
- United Nations (1948). *Universal Declaration of Human Rights*
- United Nations (1966). *International Covenant on Civil and Political Rights*
- United Nations (1999). *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*
- Orders of the Information and Privacy Commissioner of British Columbia  
Retrieved May 10, 2008 from website: <http://www.oipcbc.org>

#### I. Client orders

Ministry of Attorney General  
00-02

## Ministry for Children and Families

00-03

00-43

02-59

03-01

## Ministry of Human Resources

02-10

## Ministry of Social Development and Economic Security

00-44

## Health Services

00-28 Vancouver Community Mental Health Services

01-29 Okanagan Similkameen Health Region and Penticton Regional Hospital

02-32 Fraser Health Authority

02-49 Vancouver Coastal Health Authority

02-60 Cariboo Community Health Services Society

## BC Housing Management

02-39

## II. Student orders

## University of British Columbia

327-1999 (same applicant as 01-43, 01-44 and 01-45, and Office of the Ombudsman 01-42)

01-43

01-44

01-45

00-04

00-51

01-30

03-37

## Office of the Ombudsman

01-42 (refers to UBC 327-1999, 01-43, 01-44 and 01-45)

## Simon Fraser University

01-16 (01-16 and 02-57 are for the same records)

02-57

## University of Victoria

03-08

## School District #39 (Vancouver)

03-34

### III. Personnel orders

Ministry of Attorney General

00-07

01-49

Ministry of Public Safety and Solicitor General

02-21

03-13

03-27

03-40

Ministry for Children and Families

02-25

02-52

Ministry of Social Development and Economic Security

01-07

Vancouver Police Department

03-06

School District #20 (Kootenay-Columbia)

302-1999

School District #84 (Vancouver Island West)

01-53

School District #44 (North Vancouver)

01-54

03-29

University of Victoria

01-10

Simon Fraser University

00-06

Malaspina University-College

00-47

British Columbia Institute of Technology

00-31

### IV. Requests and complaints by the public (not clients, students, employees of public bodies)

#### a) Human rights

BC Human Rights Commission

03-18

#### b) Adult Guardianship Act

Public Guardian and Trustee

03-12

03-44

Vancouver Island Health Authority

03-43

c) Police services

Vancouver Police Department

00-35

01-34

Vancouver Police Board

331-1999

00-46

Office of the Police Complaint Commissioner

00-05

City of Vancouver

01-05

Ministry of Attorney General

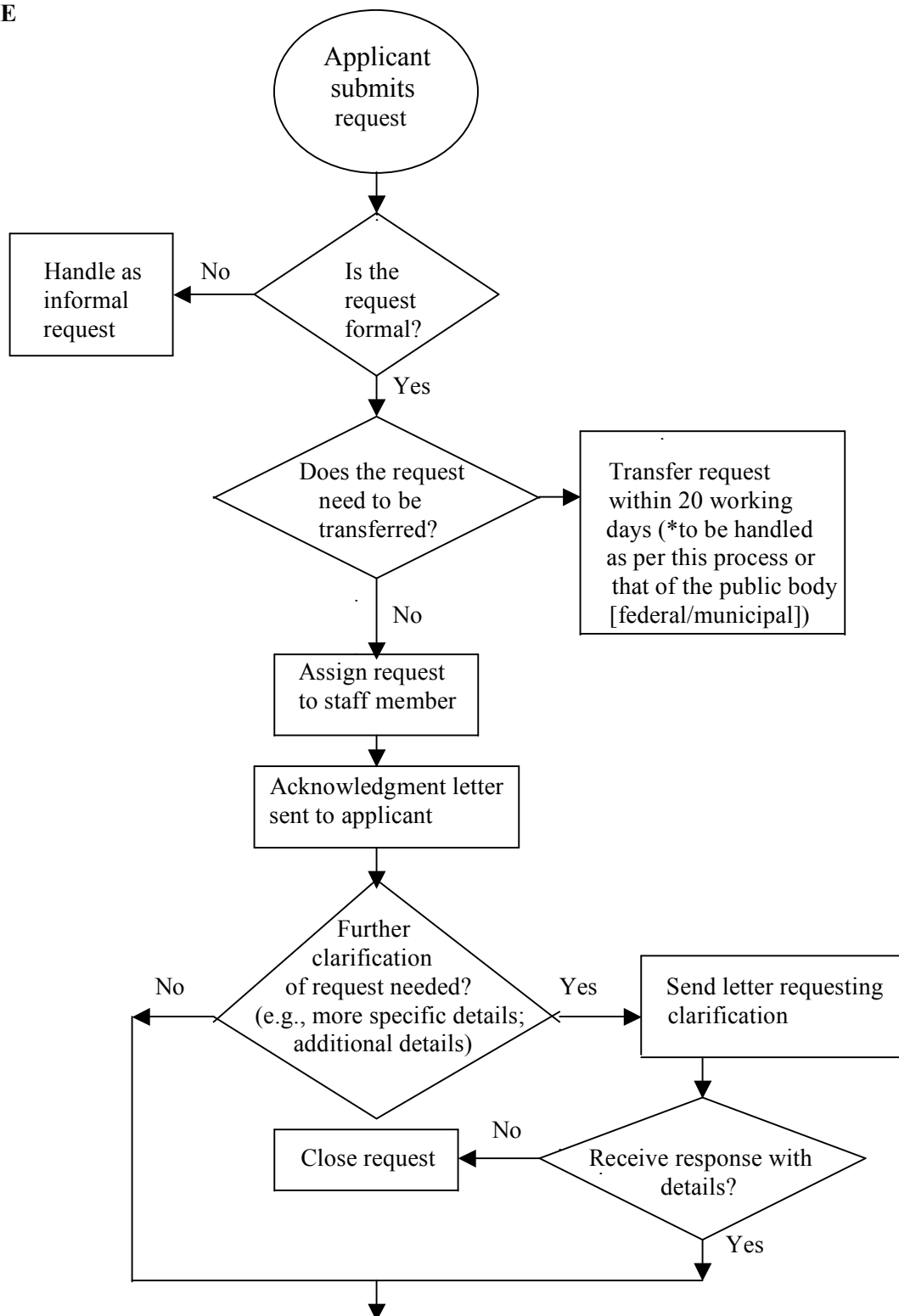
01-08

Appendix A  
The Access Process

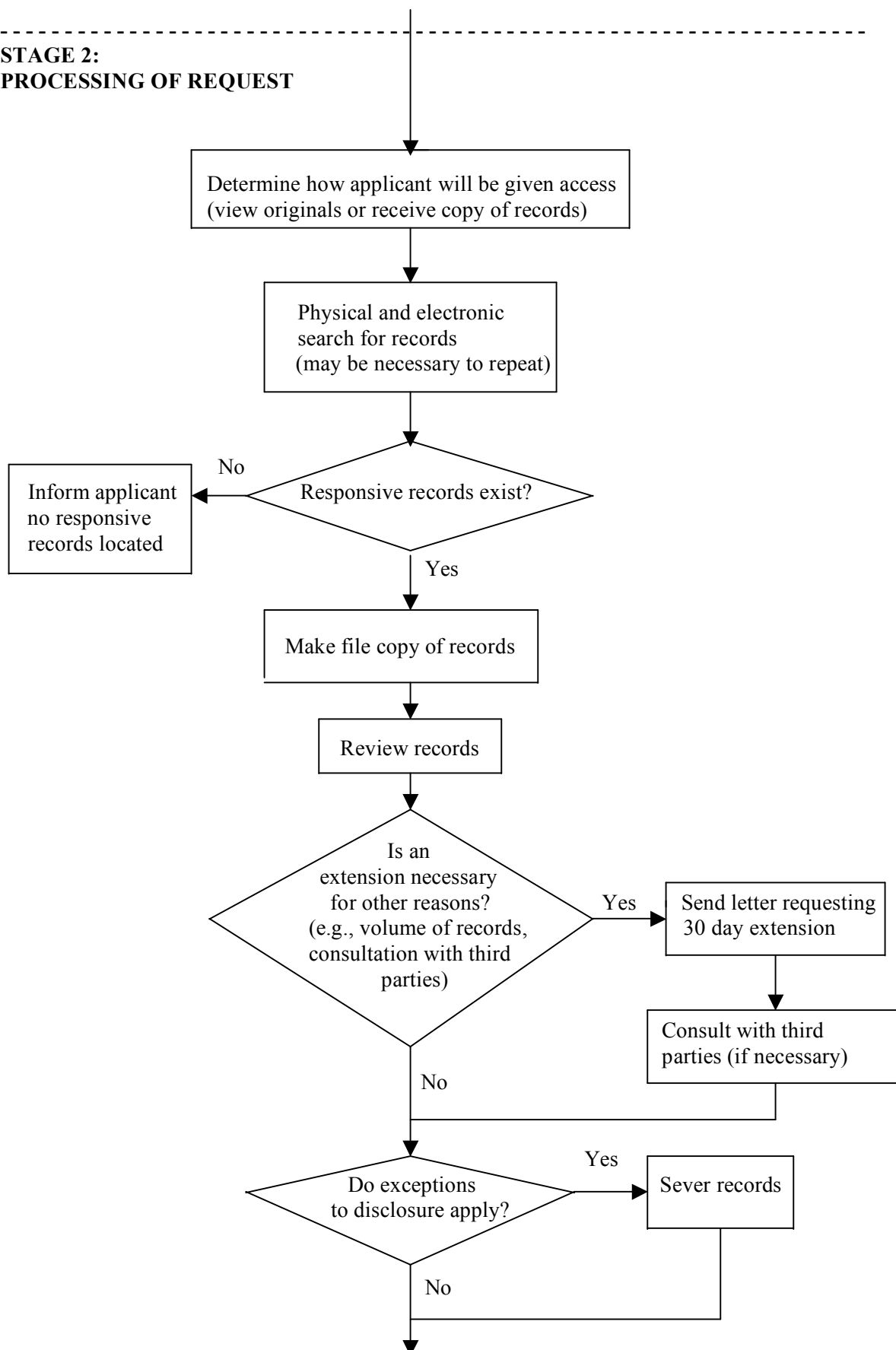
Figure 1

Process Map for Formal Requests for Records  
to the Provincial Government of British Columbia

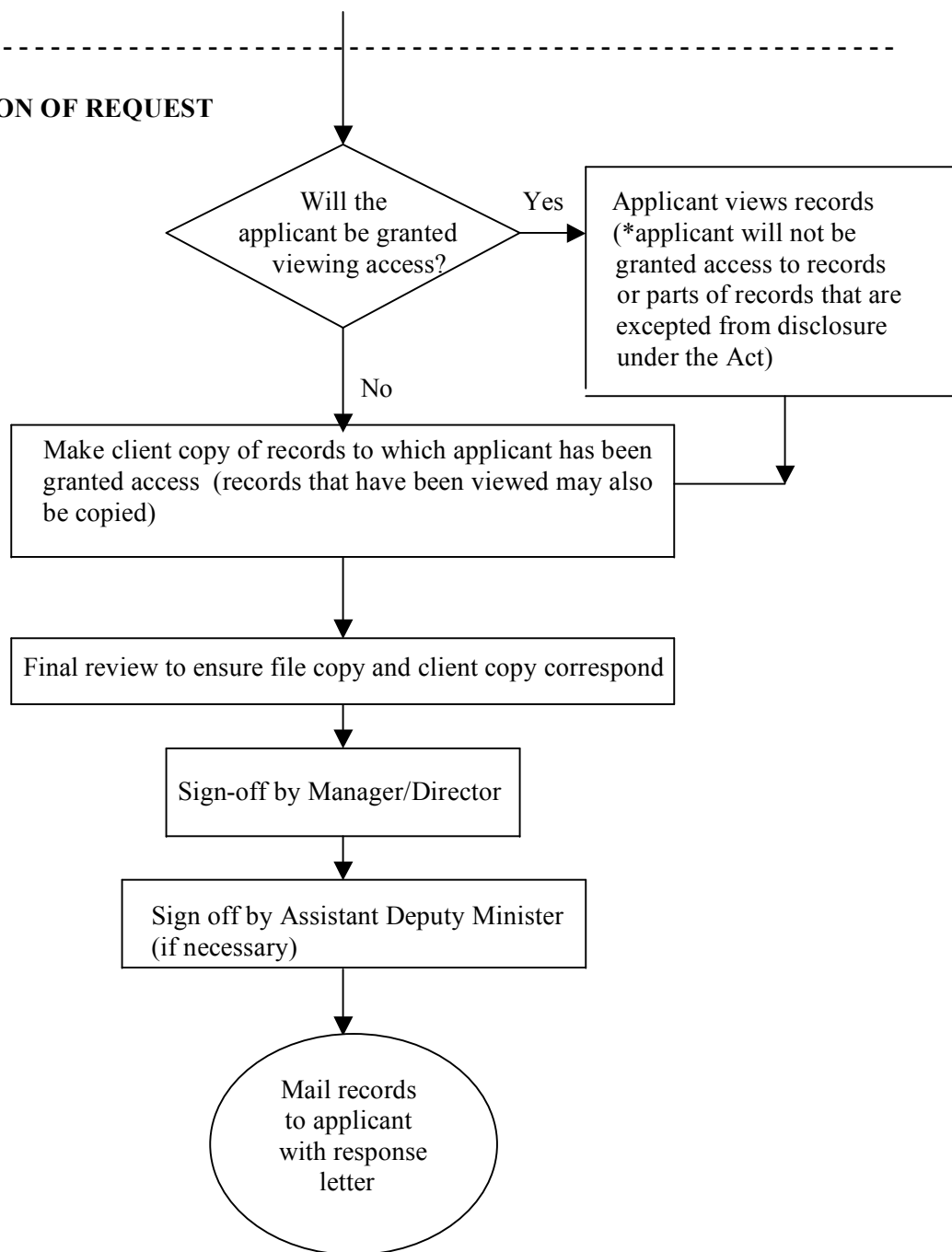
STAGE 1:  
INTAKE



-----  
**STAGE 2:  
PROCESSING OF REQUEST**



-----  
**STAGE 3:  
COMPLETION OF REQUEST**



Appendix B  
Figure 2

Information Requirements of Information and Privacy Programs  
Related to the Phases of the Management Control Process

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<b>Phase</b>	<b>Information</b>
Strategic planning	Mission, goals, objectives of the organization; development of organisational structure (linear responsibility chart); job descriptions and roles of staff; strategic plan; business plan; activities/tasks for each program; performance measures; benchmarks; reward structure; establishment of formal reporting procedures (e.g., regular meeting schedules, between senior management and Directors, senior management and Board members, program employees and their respective supervisors/ Director; opportunities for feedback and communication between clients who use services and the program staff
Budget preparation	for the organization, a master budget and set of financial statements; for each program, monthly statements of expenditures and revenues, and cash flow analysis
Operations and measurement	records of actual levels of outputs and inputs: status reports; formal monitoring, including program reports (financial and performance information); program review meetings; informal monitoring, including general conversations between staff members, ongoing interactions with stakeholders, and "management by walking around."
Reporting and evaluation	comparisons of actual levels of outputs; "open door policy" to let lower- and middle-level staff discuss difficult problems with the supervisor/Director; regular meetings between stakeholders to exchange ideas and provide updates, and for the Director and senior management to state what the "view from the top" is; operations analysis (internal audit); evaluation

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Appendix C  
Features of the Legislation

Features of the Freedom of Information and Protection of Privacy Act of  
British Columbia that are Relevant to the Processing of Personal Information

Feature of Legislation Purpose	<p>British Columbia Freedom of Information and Protection of Privacy Act 2 (1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by</p> <p>(a) giving the public a right of access to records, (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves, (c) specifying limited exceptions to the rights of access, (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and (e) providing for an independent review of decisions made under this Act.</p>
Application Type of material requested	<p>Government bodies (Schedules 1, 2 and 3) Personal information; “General” (non-personal) information (policy, Cabinet documents, contracts, reports, etc.)</p>
How to make a request	<p>5 (1) To obtain access to a record, the applicant must make a written request that</p> <p>(a) provides sufficient detail to enable an experienced employee of the public body, with a reasonable effort, to identify the records sought, (b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, and (c) is submitted to the public body that the applicant believes has custody or control of the record. (2) The applicant may ask for a copy of the record or ask to examine the record.</p>
Duty to assist applicants	<p>6 (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.</p> <p>(2) Moreover, the head of a public body must create a record for an applicant if</p> <p>(a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and (b) creating the record would not unreasonably interfere with the operations of the public body.</p>

Time limit for responding	<p>7 (1) Subject to this section and sections 23 and 24 (1), the head of a public body must respond not later than 30 days after receiving a request described in section 5 (1).</p> <p>(2) The head of the public body is not required to comply with subsection (1) if</p> <p>(a) the time limit is extended under section 10, or</p> <p>(b) the request has been transferred under section 11 to another public body.</p> <p>[...]</p> <p>(6) If a third party asks under section 52 (2) that the commissioner review a decision of the head of a public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the written request for review is delivered to the commissioner to the end of the day the commissioner makes a decision with respect to the review requested.</p> <p>(7) If a person asks under section 62 (2) for a review of a decision of the commissioner as head of a public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the request for review is delivered to the minister responsible for this Act to the end of the day the adjudicator makes a decision with respect to the review requested.</p>
Contents of response	<p>8 (1) In a response under section 7, the head of the public body must tell the applicant</p> <p>(a) whether or not the applicant is entitled to access to the record or to part of the record,</p> <p>(b) if the applicant is entitled to access, where, when and how access will be given, and</p> <p>(c) if access to the record or to part of the record is refused,</p> <p>(i) the reasons for the refusal and the provision of this Act on which the refusal is based,</p> <p>(ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and</p> <p>(iii) that the applicant may ask for a review under section 53 or 63.</p> <p>(2) Despite subsection (1) (c) (i), the head of a public body may refuse in a response to confirm or deny the existence of</p> <p>(a) a record containing information described in section 15 (information harmful to law enforcement), or</p> <p>(b) a record containing personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of that party's personal privacy.</p>
How access will be given	<p>9 (1) If an applicant is told under section 8 (1) that access will be given, the head of the public body concerned must comply with subsection (2) or (3) of this section.</p>

(2) If the applicant has asked for a copy under section 5 (2) and the record can reasonably be reproduced,

- (a) a copy of the record or part of the record must be provided with the response, or
- (b) the applicant must be given reasons for the delay in providing the record.

(3) If the applicant has asked to examine the record under section 5 (2) or if the record cannot reasonably be reproduced, the applicant must

- (a) be permitted to examine the record or part of the record, or
- (b) be given access in accordance with the regulations.

Extending the time  
limit for responding

10 (1) The head of a public body may extend the time for responding to a request for up to 30 days if one or more of the following apply:

- (1)(a) the applicant does not give enough detail to enable the public body to identify a requested record;
- (b) a large number of records are requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body;
- (c) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to a requested record.

(2) In addition to the authority under subsection (1), with the permission of the commissioner, the head of a public body may extend the time for responding to a request as follows:

- (a) if one or more of the circumstances described in subsection (1) (a) to (c) apply, for a period of longer than the 30 days permitted under that subsection;
- (b) if the commissioner otherwise considers that it is fair and reasonable to do so, as the commissioner considers appropriate.

(3) If the time for responding to a request is extended under this section, the head of the public body must tell the applicant

- (a) the reason for the extension,
- (b) when a response can be expected, and
- (c) in the case of an extension under subsection (1), that the applicant may complain about the extension under section 42 (2) (b) or 60 (1) (a).

Transferring a  
request

11 (1) Within 20 days after a request for access to a record is received by a public body, the head of the public body may transfer the request and, if necessary, the record to another public body if

- (a) the record was produced by or for the other public body,
- (b) the other public body was the first to obtain the record, or
- (c) the record is in the custody or under the control of the other public body.

(2) If a request is transferred under subsection (1),

- (a) the head of the public body who transferred the request must notify the

applicant of the transfer, and  
 (b) the head of the public body to which the request is transferred must respond to the applicant in accordance with section 8 not later than 30 days after the request is received by that public body unless this time limit is extended under section 10.

Legal advice

14 The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

Disclosure harmful to law enforcement

15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (a) harm a law enforcement matter,
- (b) prejudice the defence of Canada or of any foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism,
- (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
- (d) reveal the identity of a confidential source of law enforcement information,
- (e) reveal criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organized criminal activities or of serious and repetitive criminal activities,
- (f) endanger the life or physical safety of a law enforcement officer or any other person,
- (g) reveal any information relating to or used in the exercise of prosecutorial discretion,
- (h) deprive a person of the right to a fair trial or impartial adjudication,
- (i) reveal a record that has been confiscated from a person by a peace officer in accordance with an enactment,
- (j) facilitate the escape from custody of a person who is under lawful detention,
- (k) facilitate the commission of an offence under an enactment of British Columbia or Canada, or
- (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

(2) The head of a public body may refuse to disclose information to an applicant if the information

- (a) is in a law enforcement record and the disclosure would be an offence under an Act of Parliament,
- (b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record, or
- (c) is about the history, supervision or release of a person who is in custody or under supervision and the disclosure could reasonably be expected to harm the proper custody or supervision of that person.

(3) The head of a public body must not refuse to disclose under this section

- (a) a report prepared in the course of routine inspections by an agency that

is authorized to enforce compliance with an Act,  
 (b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program unless disclosure of the report could reasonably be expected to interfere with or harm any of the matters referred to in subsection (1) or (2), or  
 (c) statistical information on decisions under the Crown Counsel Act to approve or not to approve prosecutions.  
 (4) The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute  
 (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or  
 (b) to any other member of the public, if the fact of the investigation was made public.

Disclosure harmful to individual or public safety

19 (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health, or  
 (b) interfere with public safety.

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health.

Disclosure harmful to personal privacy

22 (1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

(b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,

(c) the personal information is relevant to a fair determination of the applicant's rights,

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable, and

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

(b) the personal information was compiled and is identifiable as part of an

investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,

(d) the personal information relates to employment, occupational or educational history,

(e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax,

(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

(g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,

(h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation,

(i) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations, or

(j) the personal information consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure,

(b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party,

(c) an enactment of British Columbia or Canada authorizes the disclosure,

(d) the disclosure is for a research or statistical purpose and is in accordance with section 35,

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,

(f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,

(g) public access to the information is provided under the Financial Information Act,

(h) the information is about expenses incurred by the third party while travelling at the expense of a public body,

(i) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit, or

(j) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, not including personal information that is supplied in support of the application for the benefit or is referred to in subsection (3) (c).

(5) On refusing, under this section, to disclose personal information

supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

(6) The head of the public body may allow the third party to prepare the summary of personal information under subsection (5).

Notifying the third party

23 (1) If the head of a public body intends to give access to a record that the head has reason to believe contains information that might be excepted from disclosure under section 21 or 22, the head must give the third party a written notice under subsection (3).

(2) If the head of a public body does not intend to give access to a record that contains information excepted from disclosure under section 21 or 22, the head may give the third party a written notice under subsection (3).

(3) The notice must

(a) state that a request has been made by an applicant for access to a record containing information the disclosure of which may affect the interests or invade the personal privacy of the third party,

(b) describe the contents of the record, and

(c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or may make written representations to the public body explaining why the information should not be disclosed.

(4) When notice is given under subsection (1), the head of the public body must also give the applicant a notice stating that

(a) the record requested by the applicant contains information the disclosure of which may affect the interests or invade the personal privacy of a third party,

(b) the third party is being given an opportunity to make representations concerning disclosure, and

(c) a decision will be made within 30 days about whether or not to give the applicant access to the record.

Time limit and notice of decision

24 (1) Within 30 days after notice is given under section 23 (1) or (2), the head of the public body must decide whether or not to give access to the record or to part of the record, but no decision may be made before the earlier of

(a) 21 days after the day notice is given, or

(b) the day a response is received from the third party.

(2) On reaching a decision under subsection (1), the head of the public body must give written notice of the decision to

(a) the applicant, and

(b) the third party.

(3) If the head of the public body decides to give access to the record or to part of the record, the notice must state that the applicant will be given access unless the third party asks for a review under section 53 or 63 within 20 days after the day notice is given under subsection (2).

Annual report of commissioner	<p>51 (1) The commissioner must report annually to the Speaker of the Legislative Assembly on</p> <ul style="list-style-type: none"> <li>(a) the work of the commissioner's office, and</li> <li>(b) any complaints or reviews resulting from a decision, act or failure to act of the commissioner as head of a public body.</li> </ul> <p>(2) The Speaker must lay each annual report before the Legislative Assembly as soon as possible.</p>
Right to ask for a review	<p>52 (1) A person who makes a request to the head of a public body, other than the commissioner or the registrar under the Lobbyists Registration Act, for access to a record or for correction of personal information may ask the commissioner to review any decision, act or failure to act of the head that relates to that request, including any matter that could be the subject of a complaint under section 42 (2).</p> <p>(2) A third party notified under section 24 of a decision to give access may ask the commissioner to review any decision made about the request by the head of a public body, other than the commissioner or the registrar under the Lobbyists Registration Act.</p>
How to ask for a review	<p>53 (1) To ask for a review under this Division, a written request must be delivered to the commissioner.</p> <p>(2) A request for a review of a decision of the head of a public body must be delivered within</p> <ul style="list-style-type: none"> <li>(a) 30 days after the person asking for the review is notified of the decision, or</li> <li>(b) a longer period allowed by the commissioner.</li> </ul> <p>(3) The failure of the head of a public body to respond in time to a request for access to a record is to be treated as a decision to refuse access to the record, but the time limit in subsection (2) (a) for delivering a request for review does not apply.</p>
Mediation may be authorized	<p>55 The commissioner may authorize a mediator to investigate and to try to settle a matter under review.</p>
Inquiry by commissioner	<p>56 (1) If the matter is not referred to a mediator or is not settled under section 55, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.</p> <p>(2) An inquiry under subsection (1) may be conducted in private.</p> <p>(3) The person who asked for the review, the head of the public body concerned and any person given a copy of the request for a review must be given an opportunity to make representations to the commissioner during the inquiry.</p> <p>(4) The commissioner may decide</p> <ul style="list-style-type: none"> <li>(a) whether representations are to be made orally or in writing, and</li> <li>(b) whether a person is entitled to be present during or to have access to or</li> </ul>

to comment on representations made to the commissioner by another person.

(5) The person who asked for the review, the head of the public body concerned and any person given a copy of the request for a review may be represented at the inquiry by counsel or an agent.

(6) An inquiry into a matter under review must be completed within 90 days after receiving the request for the review.

#### Burden of proof

57 (1) At an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part.

(2) However, if the record or part that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

(3) At an inquiry into a decision to give an applicant access to all or part of a record containing information that relates to a third party,

(a) in the case of personal information, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy, and

(b) in any other case, it is up to the third party to prove that the applicant has no right of access to the record or part.

#### Commissioner's orders

58 (1) On completing an inquiry under section 56, the commissioner must dispose of the issues by making an order under this section.

(2) If the inquiry is into a decision of the head of a public body to give or to refuse to give access to all or part of a record, the commissioner must, by order, do one of the following:

(a) require the head to give the applicant access to all or part of the record, if the commissioner determines that the head is not authorized or required to refuse access;

(b) either confirm the decision of the head or require the head to reconsider it, if the commissioner determines that the head is authorized to refuse access;

(c) require the head to refuse access to all or part of the record, if the commissioner determines that the head is required to refuse access.

(3) If the inquiry is into any other matter, the commissioner may, by order, do one or more of the following:

(a) confirm that a duty imposed by this Act or the regulations has been performed or require that a duty imposed under this Act be performed;

(b) confirm or reduce the extension of a time limit under section 10 (1);

(c) confirm, excuse or reduce a fee, or order a refund, in the appropriate circumstances, including if a time limit is not met;

(d) confirm a decision not to correct personal information or specify how personal information is to be corrected;

(e) require a public body or service provider to stop collecting, using or disclosing personal information in contravention of this Act, or confirm a decision of a public body or service provider to collect, use or disclose

personal information;

(f) require the head of a public body to destroy personal information collected in contravention of this Act.

(4) The commissioner may specify any terms or conditions in an order made under this section.

(5) The commissioner must give a copy of an order made under this section to all of the following:

(a) the person who asked for the review;

(b) the head of the public body concerned;

(b.1) any service provider to whom the order is directed;

(c) any person given notice under section 54;

(d) the minister responsible for this Act.

Duty to comply with orders

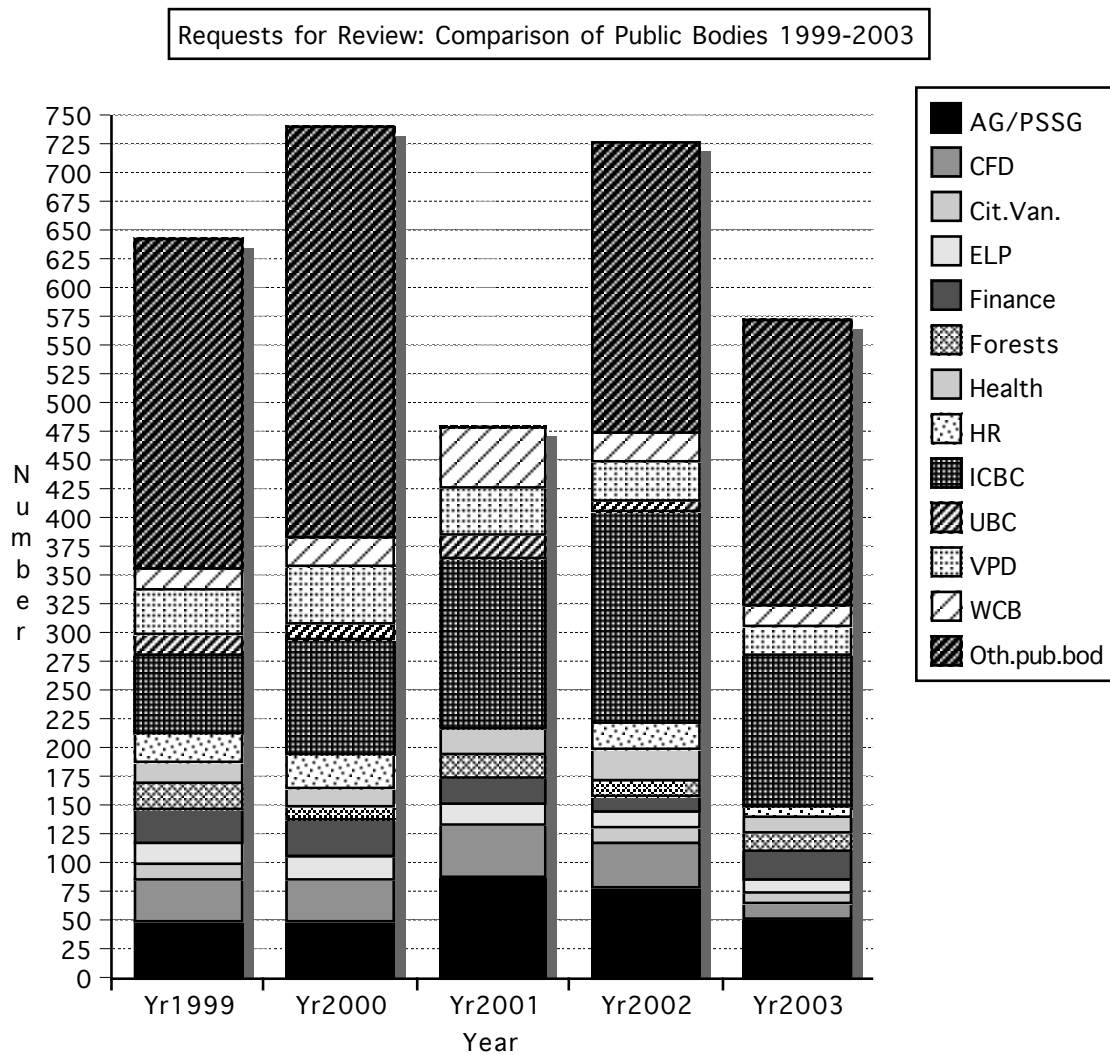
59 (1) Not later than 30 days after being given a copy of an order of the commissioner, the head of the public body concerned or the service provider to whom the order is directed, as applicable, must comply with the order unless an application for judicial review of the order is brought before that period ends.

(2) If an application for judicial review is brought before the end of the period referred to in subsection (1), the order of the commissioner is stayed from the date the application is brought until a court orders otherwise.

Appendix D

Figure 4

Comparison of Requests for Review  
For Selected Public Bodies 1999-2003

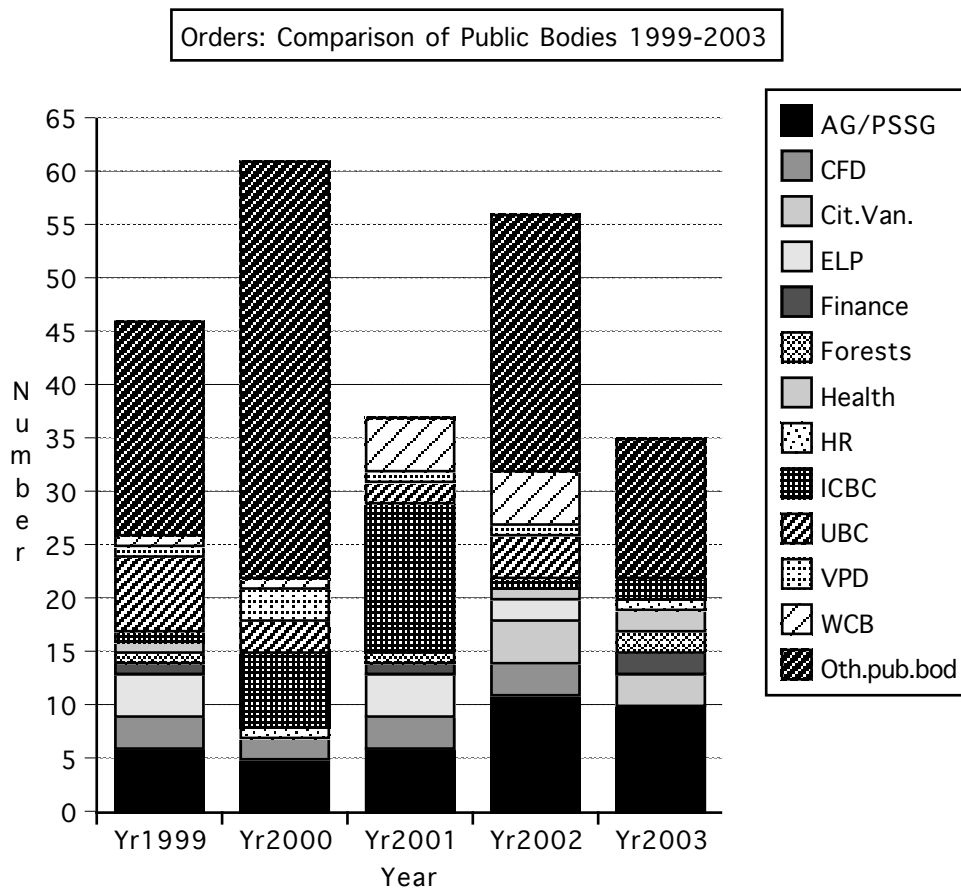


Source: Office of the Information and Privacy Commissioner. *Annual reports 1998-1999, 1999-2000, 2000, 2001-2002, 2002-2003, 2003-2004.*

Appendix E

Figure 5

Comparison of Orders for  
Selected Public Bodies 1999-2003



Source: Office of the Information and Privacy Commissioner. *Annual reports 1998-1999, 1999-2000, 2000, 2001-2002, 2002-2003, 2003-2004.*

Appendix F  
Figure 6  
Summary of Information Applicant has Requested

Public Body	Type of Record	Applicant's Own Personal Information	Applicant's Own Personal Information and that of a Third Party (as deemed by Legislation)
Ministry of Attorney General 00-02	Probation Police records Forensic report Interviews with victim and her family members	Yes	Yes
Ministry for Children and Families 00-03	Older family service and child in care file (FOIPA); newer family service file (FOIPA and CFCSA)	Yes	Yes
Ministry for Children and Families 00-43	"Complete contents" of Ministry's file on applicants' child; however, inquiry focused on search for records	Yes	No?
Ministry of Children and Family Development 02-59	All records concerning herself and her child (including child apprehension and continuing custody records)	Yes	Yes
Ministry of Children and Family Development 03-01	All records pertaining to applicants, sons and daughter, particularly those records pertaining to daughter's care in by contractors	Yes	Yes
Ministry of Human Resources 02-10	All ministry records relating to applicant from February 1993	Yes	Not sure (wants all but not show evidence why should)
Ministry of Social Development and Economic Security 00-44	All information/records concerning applicant, including those related to a complaint by the applicant about an employee	Yes	Yes
00-28 Vancouver Community Mental Health Services	Health record (1996 to 2000)	Yes	Yes (name[s] of caller)
01-29 Okanagan Similkameen Health Region and Penticton Regional Hospital	Written and computer files about applicant	Yes	No (information in file initially withheld under s. 22 is

applicant's own)

02-32 Fraser Health Authority	Applicant's file with mental health center	Yes	No (applicant does not say)
02-49 Vancouver Coastal Health Authority	Applicant's medical records from examination at UBC Hospital	Yes	No
02-60 Cariboo Community Health Services Society	Records pertaining to a complaint made by the applicant concerning mental health services she received; applicant's clinical file; inquiry focuses on a consultant's report concerning a complaint the applicant made	Yes	No (applicant does not say)
02-39 BC Housing Management	Records concerning applicant's subsidized rent	Yes	No
II. Student Records:			
327-1999 University of British Columbia*	Records concerning the applicant's time as a graduate student at UBC (1993-1998)	Yes	No (applicant does not say whether wants names of third parties, including those who provided evaluations concerning himself)
01-42 Ombudsman of BC*	Information that informed decisions regarding the applicant's complaint	Yes	No (applicant does not say)
01-43 University of British Columbia*	All records contained in a file kept by a named professor, and communications between named parties	Yes	No (applicant does not say)
01-44 University of British Columbia*	Correspondence related to the applicant's academic appeal)	Yes	No (applicant does not say)
01-45 University of British Columbia*	Correspondence including records previously released with #327-1999	Yes	No (applicant does not say)
00-04 University of British Columbia	Records relating to applicant's complaint against staff	Yes	Yes (witness statements)
00-51 University of British Columbia	All records pertaining to applicant (admission, registration, evaluation, administration)	Yes	No

\*Appears to be same student.

01-30 University of British Columbia	Letter to university concerning applicant's alleged threats against an instructor	Yes	Yes
03-37 University of British Columbia	Records concerning applicant's academic appeal	Yes	No
01-16 Simon Fraser University of Victoria	Personal information held by SFU	Yes	No
03-08	Records concerning attendance and conduct at UBC	Yes	No (applicant does not say)
School District #39 (Vancouver) 03-34	Records concerning applicant and her daughter written to or by school or school district staff	Yes	Yes
III. Personnel Records:			
Ministry of Attorney General 00-07	Legal advice, emails, memoranda, file notes	Yes	Not explicitly stated. Much of the information is the applicant's own personal information and was supplied in confidence.
Ministry of Attorney General 01-49	Records related to an alleged investigation concerning the applicant during the time of a job competition	Yes	No
Ministry of Public Safety and Solicitor General 02-21**	Records concerning a complaint of abuse of managerial authority made by applicant against his supervisor, including correspondence, evidence, tapes, transcripts and notes of interviews	Yes	Yes
Ministry of Public Safety and Solicitor General 03-13**	Records related to an investigation of applicant's workplace conduct.	Yes	No (initially yes)
Ministry of Public Safety and Solicitor General 03-27	Records pertaining to himself during his employment with the ministry	Yes	No (applicant does not say)
Ministry of Public Safety And Solicitor General 03-40	Records related to workplace allegations, complaints and other issues	Yes	Yes (applicant is aware of the names individuals involved)

\*\*same applicant for orders 02-21 and 03-13.

Ministry of Children and Family Development 02-25	Correspondence about the applicant, her employment and her case under the Short Term Illness and Injury Program.	Yes	No (applicant does not say)
Ministry of Children and Family Development 02-52	All information concerning applicant held by a youth correctional facility (applicant a former employee)	Yes	No (applicant wants names of employees but does say if wants names of others)
Ministry of Social Development and Economic Security 01-07	Investigation reports and witness statements related to a complaint by the applicant that a manager had abused her managerial authority	Yes	Yes (implied that applicant wants third party personal information)
Vancouver Police Department 03-06	Records concerning an internal investigation regarding the applicant	Yes	No (initially yes)
School District #84 (Vancouver Island West) 01-53	Ten page investigation report; four appendices	Yes	Yes
School District #44 (North Vancouver) 01-54	Correspondence from individuals who expressed concerns about the applicant	Yes	Yes
School District #44 (North Vancouver) 03-29	Letters written to the school about the applicant	Yes	Yes
UVic 01-10	All records containing the applicant's personal information	Yes	No (applicant does not say)
SFU 00-06	Records relating to a harassment investigation involving the applicant	Yes	Yes? (no details)
00-47 Malaspina University-College	Two letters written about applicant, meeting minutes, president's file on applicant	Yes	No (applicant states in his submissions that he does not want access to third party personal information)
British Columbia Institute of Technology 00-31	All records concerning the applicant kept by several named offices and any other managers	Yes	No (asked for files containing her own personal information)
IV. Complaints by the public (other than clients, students, employees of public bodies)			
BC Human Rights Commission 03-08	All records provided by a school district during a human rights investigation	Yes	No (no details but assume that the information

			requested pertains to statements by third parties who have provided information to the school district)
Public Guardian and Trustee 03-12	Any information concerning the applicant, including allegations concerning the applicant's handling of her mother's financial affairs	Yes	No (no details but the applicant states she "fully understands the PGT's position regarding the confidentiality of their sources")
Public Guardian and Trustee 03-44	All information concerning the applicant and her mother, including a file pertaining to a complaint	Yes	Yes
Vancouver Island Health Authority 03-43	Records pertaining to a complaint made by a third party (appears to be about applicant)	Yes	Yes (inferred that she wishes the name of the complainant)
Vancouver Police Department 00-35	One record: unsevered copy of "Notice of Results of Investigation"	Yes/No****	Yes/No
Vancouver Police Department 01-34	All records concerning the applicant	Yes	No
Vancouver Police Board 331-1999****	Records concerning the applicant's complaints against police officers	Yes	Yes (inferred)
Vancouver Police Board 00-46****	Records concerning the applicant's complaints against police officers	Yes	not sure
Office of the Police Complaint Commissioner 00-05****	Records concerning the applicant's complaints against police officers	Yes	not sure
City of Vancouver 01-05	Records relating to the applicant's complaint against a police officer	Yes	not sure
Ministry of Attorney General 01-08	Correspondence concerning letters written by the applicant to a newspaper, including a complaint letter and records received or created afterward	Yes	No (Did not want personal information of third parties.)

\*\*\*From the description provided in the order, the record appears to have been created as a result of a complaint made by the applicant against a member of the police.

\*\*\*\*From the wording of the requests and the comments contained in the orders, the applicant for each of these three requests appears to be the same person.

Appendix G  
Coding Sheets

Coding Sheet: Exception Applied

1.0 Section: 3(1) (scope of the act)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

2.1 \_\_\_ Personal health records

2.2 \_\_\_ Personal mental health records

2.3 \_\_\_ Personnel/labour relations records

2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)

2.5 \_\_\_ Social service file (financial benefits)

2.6 \_\_\_ Social service file (probation, corrections)

2.7 \_\_\_ Student records

2.8 \_\_\_ Records of an office that investigates complaints

2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 3(1) to

3.1 \_\_\_ Records that are not under the scope of the Act

3.2 \_\_\_ Records that are under the scope of the Act

4.0 Timing of the public body's application of s. 3(1)

4.1 \_\_\_ s. 3(1) initially applied by the public body

4.2 \_\_\_ s. 3(1) applied during inquiry

4.3 \_\_\_ s. 3(1) removed during inquiry

5.0 Scope of the inquiry

5.1 \_\_\_ s. 3(1) is dealt with in the inquiry

5.2 \_\_\_ s. 3(1) is not dealt with in the inquiry

6.0 Outcome

6.1 \_\_\_ s. 3(1) is determined to apply

6.2 \_\_\_ s. 3(1) is determined not to apply

6.3 \_\_\_ s. 3(1) is not dealt with in the inquiry

6.4 \_\_\_ s. 3(1) is not dealt with in the inquiry but the Commissioner says that it would not have applied

6.5 \_\_\_ s. 3(1) is not dealt with in the inquiry but the Commissioner says that it would have applied

7.0 Application of other sections to some or part of the information withheld under s. 3(1)

7.1 \_\_\_ s. [fill in] is applied instead

7.2 \_\_\_ s. [fill in] is applied in addition to s. 3(1)

7.3 \_\_\_ No other sections are applied

8.0 Argument the government uses to apply s. 3(1)

8.1 \_\_\_ (a) The record is in a court file, a record of a judge or justice of the peace, a judicial

administration record or a record relating to support services provided to a judge

8.2 \_\_\_ (b) The record is a personal note, communication or draft decision of a person who is acting in a judicial or quasi judicial capacity

8.3 \_\_\_ (c) The record is created by or for, or is in the custody or control of, an officer of the Legislature and relates to the exercise of that officer's functions under an Act

8.4 \_\_\_ (h) The record relates to a prosecution in which all the proceedings have not been completed

8.5 \_\_\_ Other reason \_\_\_\_\_

9.0 Evidence the government uses to support its claims for this section

9.1 \_\_\_ Affidavit and submissions by information and privacy program staff

9.2 \_\_\_ Affidavit and submissions of other government staff

9.3 \_\_\_ No evidence

10.0 How the applicant refutes the application of s. 3(1)

10.1 \_\_\_ The applicant is entitled to the records

10.2 \_\_\_ The information does not pertain to any of the categories of information noted under s. 3(1)

10.3 \_\_\_ Other reason \_\_\_\_\_

10.4 \_\_\_ The applicant does not offer an argument

10.5 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument

11.0 How the Commissioner makes his decision

11.1 \_\_\_ Relies on precedent

11.2 \_\_\_ Creates precedent

11.3 \_\_\_ Considers affidavits of government staff

11.4 \_\_\_ Considers affidavits of the applicant

11.5 \_\_\_ Other reason \_\_\_\_\_

1.0 Section: 6(1) (duty to assist applicants; respond without delay to each applicant openly, accurately and completely)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

2.1 \_\_\_ Personal health records

2.2 \_\_\_ Personal mental health records

2.3 \_\_\_ Personnel/labour relations records

2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)

2.5 \_\_\_ Social service file (financial benefits)

2.6 \_\_\_ Social service file (probation, corrections)

2.7 \_\_\_ Student records

2.8 \_\_\_ Records of an office that investigates complaints

2.9 \_\_\_ Other \_\_\_\_\_

3.0 Scope of the inquiry

3.1 \_\_\_ s. 6(1) is dealt with in the inquiry

3.2 \_\_\_ s. 6(1) is not dealt with in the inquiry

## 4.0 Outcome

- 4.1 \_\_\_ The public body fulfilled its duty under s. 6(1)
- 4.2 \_\_\_ The public body did not fulfill its duty under s. 6(1)
- 4.3 \_\_\_ s. 6(1) is not dealt with in the inquiry
- 4.4 \_\_\_ s. 6(1) is not dealt with in the inquiry but the Commissioner says that the public body would have met its duties
- 4.5 \_\_\_ s. 6(1) is not dealt with in the inquiry but the Commissioner says that the public body would not have met its duties

## 5.0 Why the applicant appealed to the Commissioner using s. 6(1)

- 5.1 \_\_\_ The public body did not respond within the legislated time frame
- 5.2 \_\_\_ The public body did not respond openly
- 5.3 \_\_\_ The public body did not respond accurately
- 5.4 \_\_\_ The public body did not respond completely (other records exist)
- 5.5 \_\_\_ The public body did not conduct an adequate search
- 5.6 \_\_\_ Other \_\_\_\_\_
- 5.7 \_\_\_ Unknown

## 6.0 Argument the applicant uses to support his/her claim

- 6.1 \_\_\_ The public body did not undertake an adequate search.
- 6.2 \_\_\_ The public body did not respond within the legislated time frame.
- 6.3 \_\_\_ The public body did not notify the applicant that it took an extension.
- 6.4 \_\_\_ The public body's response letter was unsatisfactory.
  - 6.4.1 \_\_\_ The response letter did not fully address how and/or whether it was granting access to each of the items that the applicant requested.
  - 6.4.2 \_\_\_ The response letter appeared to contain errors or omissions.
  - 6.4.3 \_\_\_ The response letter appeared to be untruthful.
    - 6.4.3.1 \_\_\_ The response letter said that no records responsive to the request were located.
    - 6.4.3.2 \_\_\_ The response letter said that the requested records could not be located.
- 6.5 \_\_\_ The records provided to the applicant were unsatisfactory.
  - 6.5.1 \_\_\_ The applicant did not receive one or more records that s/he thought should be provided.
  - 6.5.2 \_\_\_ The records provided were not the ones that were requested.
  - 6.5.3 \_\_\_ No records were provided.
- 6.6 \_\_\_ Subsequent letters advising of whether the public body would grant access to additional records were unsatisfactory.
- 6.7 \_\_\_ Subsequent releases of records were unsatisfactory.
- 6.8 \_\_\_ Other \_\_\_\_\_
- 6.9 \_\_\_ The applicant does not offer an argument
- 6.10 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument.

## 7.0 How the government defends its actions concerning s. 6(1)

- 7.1 \_\_\_ The public body responded as quickly as it could given organizational changes, such as fiscal cutbacks to staff and resources, the workload of analysts, holidays, etc.
- 7.2 \_\_\_ The public body advised the applicant in writing of its backlog of requests.
- 7.3 \_\_\_ The public body states that its response letter it advises the applicant what information it is granting access to and any exceptions to disclosure applied
- 7.4 \_\_\_ The public body states that it conducted a thorough search of all offices
  - 7.4.1 \_\_\_ The public body conducted more than one search
  - 7.4.2 \_\_\_ The public body documented its search efforts, including who undertook the search,

what offices were contacted, what records (paper, electronic, email) were searched, the time spent on search and retrieval.

7.5 \_\_\_ After being contacted during mediation and/or the inquiry, the public body made additional efforts.

7.5.1 \_\_\_ The public body conducts further searches.

7.5.2 \_\_\_ The public body offers documentation of its search efforts to the Commissioner.

7.5.3 \_\_\_ The public body offers additional information to the applicant concerning its search efforts

7.5.4 \_\_\_ The public body offers additional information to the applicant regarding what information was withheld and what exceptions it used to withhold the information.

7.5.5 \_\_\_ The public body provides additional records to the applicant.

7.6 \_\_\_ The public body does not defend its lack of response during the legislated time frame.

7.7 \_\_\_ The public body does not defend its response letters and their contents.

7.8 \_\_\_ The public body does not defend its search efforts.

8.0 Evidence the government uses to support its claims

8.1 \_\_\_ Affidavit and submissions by information and privacy program staff

8.2 \_\_\_ Affidavit and submissions of other government staff

8.3 \_\_\_ No evidence

9.0 How the Commissioner makes his decision

9.1 \_\_\_ Relies on precedent

9.2 \_\_\_ Creates precedent

9.3 \_\_\_ Considers affidavits of government staff

9.4 \_\_\_ Considers affidavits of the applicant

9.5 \_\_\_ Other reason \_\_\_\_\_

Coding Sheet: Exception Applied

1.0 Section: 6(2) (duty to assist; the head of a public body must create a record for an applicant)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

2.1 \_\_\_ Personal health records

2.2 \_\_\_ Personal mental health records

2.3 \_\_\_ Personnel/labour relations records

2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)

2.5 \_\_\_ Social service file (financial benefits)

2.6 \_\_\_ Social service file (probation, corrections)

2.7 \_\_\_ Student records

2.8 \_\_\_ Records of an office that investigates complaints

2.9 \_\_\_ Other \_\_\_\_\_

3.0 Scope of the inquiry

3.1 \_\_\_ s. 6(2) is dealt with in the inquiry

3.2 \_\_\_ s. 6(2) is not dealt with in the inquiry

4.0 Outcome

- 4.1  The public body fulfilled its duty under s. 6(1)  
 4.2  The public body did not fulfill its duty under s. 6(1)  
 4.3  s. 6(2) is not dealt with in the inquiry
- 5.0 Why the applicant appealed to the Commissioner using s. 6(2)  
 5.1  The public body did not create a record.  
 5.2  Other \_\_\_\_\_
- 6.0 Argument the applicant uses to support his/her claim  
 6.1  The government did not create a record as required under s. 6(2).  
 6.2  The government has the ability to create a record but did not.  
 6.3  Creating a record would not unreasonably interfere with the operations of the public body.  
 6.4  Other \_\_\_\_\_  
 6.5  The applicant does not offer an argument.
- 7.0 How the government defends its actions concerning s. 6(2)  
 7.1  The public body is not required to create a record.  
 7.2  Producing the record would interfere with program operations.  
 7.3  Other \_\_\_\_\_
- 8.0 Evidence the government uses to support its claims  
 8.1  Affidavit and submissions by information and privacy program staff  
 8.2  Affidavit and submissions of other government staff  
 8.3  No evidence
- 9.0 How the Commissioner makes his decision  
 9.1  Relies on precedent  
 9.2  Creates precedent  
 9.3  Considers affidavits of government staff  
 9.4  Considers affidavits of the applicant  
 9.5  Other reason \_\_\_\_\_

#### Coding Sheet: Exception Applied

- 1.0 Section: 13(1) (policy advice, recommendations or draft regulations)  
 1.1  Discretionary section 1.2  Mandatory section
- 2.0 Records requested:  
 2.1  Personal health records  
 2.2  Personal mental health records  
 2.3  Personnel/labour relations records  
 2.4  Social service file (foster home, adoption, child-in-care, child abuse investigation)  
 2.5  Social service file (financial benefits)  
 2.6  Social service file (probation, corrections)  
 2.7  Student records  
 2.8  Records of an office that investigates complaints  
 2.9  Other \_\_\_\_\_

## 3.0 Public body applied s. 13(1) to

- 3.1  Protect policy advice received from internal or external advisors from disclosure.
- 3.2  Protect recommendations received from internal or external advisors from disclosure
- 3.3  Protect draft regulations from disclosure
- 3.3  Protect the policy and planning process and operations of the government
- 3.4  Other \_\_\_\_\_

## 4.0 Timing of the public body's application of s. 13(1)

- 4.1  s. 13(1) initially applied by the public body
- 4.2  s. 13(1) applied during inquiry
- 4.3  s. 13(1) removed during inquiry

## 5.0 Scope of the inquiry

- 5.1  s. 13(1) is dealt with in the inquiry
- 5.2  s. 13(1) is not dealt with in the inquiry

## 6.0 Outcome

- 6.1  s. 13(1) is determined to apply
- 6.2  s. 13(1) is determined not to apply
- 6.3  s. 13(1) is not dealt with in the inquiry
- 6.4  s. 13(1) is not dealt with but the Commissioner says that it would not have applied.
- 6.5  s. 13(1) is not dealt with but the Commissioner says that it would have applied.

## 7.0 Application of other sections to some or part of the information withheld under s. 13(1)

- 7.1  s. [fill in] is applied instead
- 7.2  s. [fill in] is applied in addition to s. 13(1)
- 7.3  No other sections are applied

## 8.0 Argument the government uses to apply s. 13(1)

- 8.1  The release of the information will create unfairness in how the policies are applied.
- 8.2  The release of the information will disrupt the policy and decision making process.
- 8.3  The release of the information will harm government operations.
- 8.4  Other reason \_\_\_\_\_

## 9.0 Evidence the government uses to support its claims

- 9.1  Affidavit and submissions by information and privacy program staff
- 9.2  Affidavit and submissions of other government staff
- 9.3  No evidence

## 10.0 How the applicant refutes the application of s. 13(1)

- 10.1  The information is not policy advice, recommendations or draft regulations
- 10.2  The information is not able to be excepted from disclosure as per section 13(2)
- 10.3  The information has been in existence for ten or more years
- 10.4  Other reason
- 10.5  The applicant does not offer an argument
- 10.6  The applicant is not aware of what is being withheld and why and so cannot make a valid argument

## 11.0 How the Commissioner makes his decision

- 11.1  Relies on precedent
- 11.2  Creates precedent

- 11.3 \_\_\_ Considers affidavits of government staff  
 11.4 \_\_\_ Considers affidavits of the applicant  
 11.5 \_\_\_ Other reason \_\_\_\_\_
- 

Coding Sheet: Exception Applied

1.0 Section: 14 (legal advice)

- 1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

- 2.1 \_\_\_ Personal health records  
 2.2 \_\_\_ Personal mental health records  
 2.3 \_\_\_ Personnel/labour relations records  
 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)  
 2.5 \_\_\_ Social service file (financial benefits)  
 2.6 \_\_\_ Social service file (probation, corrections)  
 2.7 \_\_\_ Student records  
 2.8 \_\_\_ Records of an office that investigates complaints  
 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 14 to

- 3.1 \_\_\_ Protect solicitor-client privilege  
 3.2 \_\_\_ Protect the operations of the government  
 3.3 \_\_\_ Other \_\_\_\_\_

4.0 Timing of the public body's application of s. 14

- 4.1 \_\_\_ s. 14 initially applied by the public body  
 4.2 \_\_\_ s. 14 applied during inquiry  
 4.3 \_\_\_ s. 14 removed during inquiry

5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 14 is dealt with in the inquiry  
 5.2 \_\_\_ s. 14 is not dealt with in the inquiry

6.0 Outcome

- 6.1 \_\_\_ s. 14 is determined to apply  
 6.2 \_\_\_ s. 14 is determined not to apply  
 6.3 \_\_\_ s. 14 is not dealt with in the inquiry  
 6.4 \_\_\_ s. 14 is not dealt with but the Commissioner says that it would not have applied.  
 6.5 \_\_\_ s. 14 is not dealt with but the Commissioner says that it would have applied.

7.0 Application of other sections to some or part of the information withheld under s. 14

- 7.1 \_\_\_ s. [fill in] is applied instead  
 7.2 \_\_\_ s. [fill in] is applied in addition to s. 14  
 7.3 \_\_\_ No other sections are applied

8.0 Argument the government uses to apply s. 14

- 8.1 \_\_\_ The information is communications between a solicitor and client (government)  
 8.2 \_\_\_ The information offered is advice.

8.3  The information has been offered in confidence.

8.4  Other reason \_\_\_\_\_

9.0 Evidence the government uses to support its claims

9.1  Affidavit and submissions by information and privacy program staff

9.2  Affidavit and submissions of other government staff

9.3  No evidence

10.0 How the applicant refutes the application of s. 14

10.1  The information is not the communications between a solicitor and client (government)

10.2  The information is not advice

10.3  The information has not been offered in confidence

10.4  Other reason

10.5  The applicant does not offer an argument

10.6  The applicant is not aware of what is being withheld and why and so cannot make a valid argument

11.0 How the Commissioner makes his decision

11.1  Relies on precedent

11.2  Creates precedent

11.3  Considers affidavits of government staff

11.4  Considers affidavits of the applicant

11.5  Other reason \_\_\_\_\_

#### Coding Sheet: Exception Applied

1.0 Section: 15(1) (disclosure harmful to law enforcement)

1.1  Discretionary section 1.2  Mandatory section

2.0 Records requested:

2.1  Personal health records

2.2  Personal mental health records

2.3  Personnel/labour relations records

2.4  Social service file (foster home, adoption, child-in-care, child abuse investigation)

2.5  Social service file (financial benefits)

2.6  Social service file (probation, corrections)

2.7  Student records

2.8  Records of an office that investigates complaints

2.9  Other \_\_\_\_\_

3.0 Public body applied s. 15(1) to

3.1  Protect law enforcement

3.2  Protect the identity of a confidential source of law enforcement information

3.3  Other

4.0 Timing of the public body's application of s. 15(1)

4.1  s. 15(1) initially applied by the public body

4.2  s. 15(1) applied during inquiry

4.3  s. 15(1) removed during inquiry

## 5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 15(1) is dealt with in the inquiry  
 5.2 \_\_\_ s. 15(1) is not dealt with in the inquiry

## 6.0 Outcome

- 6.1 \_\_\_ s. 15(1) is determined to apply  
 6.2 \_\_\_ s. 15(1) is determined not to apply  
 6.3 \_\_\_ s. 15(1) is not dealt with in the inquiry  
 6.4 \_\_\_ s. 15(1) is not dealt with but the Commissioner says that it would not have applied.  
 6.5 \_\_\_ s. 15(1) is not dealt with but the Commissioner says that it would have applied.

## 7.0 Application of other sections to some or part of the information withheld under s. 15(1)

- 7.1 \_\_\_ s. [fill in] is applied instead  
 7.2 \_\_\_ s. [fill in] is applied in addition to s. 15(1)  
 7.3 \_\_\_ No other sections are applied

## 8.0 Argument the government uses to apply s. 15(1)

- 8.1 \_\_\_ The release of the information will harm a law enforcement matter  
 8.2 \_\_\_ The release of the information will reveal the identity of a confidential source of law enforcement information.  
 8.3 \_\_\_ Other reason \_\_\_\_\_

## 9.0 Evidence the government uses to support its claims

- 9.1 \_\_\_ Affidavit and submissions by information and privacy program staff  
 9.2 \_\_\_ Affidavit and submissions of other government staff  
 9.3 \_\_\_ No evidence

## 10.0 How the applicant refutes the application of s. 15(1)

- 10.1 \_\_\_ The information, if released, will not harm a law enforcement matter.  
 10.2 \_\_\_ The information, if released, will not identify a confidential source of law enforcement information.  
 10.3 \_\_\_ The facts of the investigation have been made public.  
 10.4 \_\_\_ Other reason \_\_\_\_\_  
 10.5 \_\_\_ The applicant does not offer an argument  
 10.6 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument

## 11.0 How the Commissioner makes his decision

- 11.1 \_\_\_ Relies on precedent  
 11.2 \_\_\_ Creates precedent  
 11.3 \_\_\_ Considers affidavits of government staff  
 11.4 \_\_\_ Considers affidavits of the applicant  
 11.5 \_\_\_ Other reason \_\_\_\_\_

## Coding Sheet: Exception Applied

- 1.0 Section: 15(2) (disclosure harmful to law enforcement)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

- 2.1 \_\_\_ Personal health records
- 2.2 \_\_\_ Personal mental health records
- 2.3 \_\_\_ Personnel/labour relations records
- 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)
- 2.5 \_\_\_ Social service file (financial benefits)
- 2.6 \_\_\_ Social service file (probation, corrections)
- 2.7 \_\_\_ Student records
- 2.8 \_\_\_ Records of an office that investigates complaints
- 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 15(1) to

- 3.1 \_\_\_ Protect law enforcement
- 3.2 \_\_\_ Protect the identity of a confidential source of law enforcement information
- 3.3 \_\_\_ Other \_\_\_\_\_

4.0 Timing of the public body's application of s. 15(1)

- 4.1 \_\_\_ s. 15(1) initially applied by the public body
- 4.2 \_\_\_ s. 15(1) applied during inquiry
- 4.3 \_\_\_ s. 15(1) removed during inquiry

5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 15(1) is dealt with in the inquiry
- 5.2 \_\_\_ s. 15(1) is not dealt with in the inquiry

6.0 Outcome

- 6.1 \_\_\_ s. 15(1) is determined to apply
- 6.2 \_\_\_ s. 15(1) is determined not to apply
- 6.3 \_\_\_ s. 15(1) is not dealt with in the inquiry
- 6.4 \_\_\_ s. 15(1) is not dealt with but the Commissioner says that it would not have applied.
- 6.5 \_\_\_ s. 15(1) is not dealt with but the Commissioner says that it would have applied.

7.0 Application of other sections to some or part of the information withheld under s. 15(1)

- 7.1 \_\_\_ s. [fill in] is applied instead
- 7.2 \_\_\_ s. [fill in] is applied in addition to s. 15(1)
- 7.3 \_\_\_ No other sections are applied

8.0 Argument the government uses to apply s. 15(1)

- 8.1 \_\_\_ The release of the information will harm a law enforcement matter
- 8.2 \_\_\_ The release of the information will reveal the identity of a confidential source of law enforcement information.
- 8.3 \_\_\_ Other reason \_\_\_\_\_

9.0 Evidence the government uses to support its claims

- 9.1 \_\_\_ Affidavit and submissions by information and privacy program staff
- 9.2 \_\_\_ Affidavit and submissions of other government staff
- 9.3 \_\_\_ No evidence

10.0 How the applicant refutes the application of s. 15(1)

- 10.1 \_\_\_ The information, if released, will not harm a law enforcement matter.
- 10.2 \_\_\_ The information, if released, will not identify a confidential source of law enforcement information.
- 10.3 \_\_\_ The facts of the investigation have been made public.
- 10.4 \_\_\_ Other reason
- 10.5 \_\_\_ The applicant does not offer an argument
- 10.6 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument
- 11.0 How the Commissioner makes his decision
- 11.1 \_\_\_ Relies on precedent
- 11.2 \_\_\_ Creates precedent
- 11.3 \_\_\_ Considers affidavits of government staff
- 11.4 \_\_\_ Considers affidavits of the applicant
- 11.5 \_\_\_ Other reason \_\_\_\_\_
- 

#### Coding Sheet: Exception Applied

1.0 Section: 19(1)(a) (disclosure harmful to individual or public safety; disclosure could be expected to threaten anyone else's safety or mental or physical health)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

- 2.1 \_\_\_ Personal health records
- 2.2 \_\_\_ Personal mental health records
- 2.3 \_\_\_ Personnel/labour relations records
- 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)
- 2.5 \_\_\_ Social service file (financial benefits)
- 2.6 \_\_\_ Social service file (probation, corrections)
- 2.7 \_\_\_ Student records
- 2.8 \_\_\_ Records of an office that investigates complaints
- 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 19(1)(a) to

- 3.1 \_\_\_ Protect a third party
- 3.2 \_\_\_ Protect third party (government staff)
- 3.3 \_\_\_ Protect applicant

4.0 S. 19(1)(a) is applied to records with information that

- 4.1 \_\_\_ identifies a source of confidential information concerning the applicant
- 4.2 \_\_\_ identifies someone who has made a recent complaint about the applicant
- 4.2 \_\_\_ identifies someone who made a complaint in the past (over two years ago) about the applicant
- 4.3 \_\_\_ identifies a government employee
- 4.4 \_\_\_ includes derogatory comments about the applicant that may distress the applicant if released to him/her

5.0 Timing of the public body's application of s. 19(1)(a)

- 5.1 \_\_\_ s. 19(1)(a) initially applied by the public body

5.2 \_\_\_ s. 19(1)(a) applied during inquiry

5.3 \_\_\_ s. 19(1)(a) removed during inquiry

#### 6.0 Scope of the inquiry

6.1 \_\_\_ s. 19(1)(a) is dealt with in the inquiry

6.2 \_\_\_ s. 19(1)(a) is not dealt with in the inquiry

#### 7.0 Outcome

7.1 \_\_\_ s. 19(1)(a) is determined to apply

7.2 \_\_\_ s. 19(1)(a) is determined not to apply

7.3 \_\_\_ s. 19(1)(a) is not dealt with in the inquiry

7.4 \_\_\_ s. 19(1)(a) is not dealt with but the Commissioner says that it would not have applied.

7.5 \_\_\_ s. 19(1)(a) is not dealt with but the Commissioner says that it would have applied.

#### 8.0 Application of other sections to some or part of the information withheld under s. 19(1)(a)

8.1 \_\_\_ s. 19(1)(b) is applied instead

8.2 \_\_\_ s. 19(1)(b) is applied in addition to s. 19(1)(a)

8.3 \_\_\_ s. 19(2) is applied instead

8.4 \_\_\_ s. 19(2) is applied in addition to s. 19(1)(a)

8.5 \_\_\_ s. 22 determined to apply

8.6 \_\_\_ No other sections are applied

#### 9.0 Argument the government uses to apply s. 19(1)(a)

9.1 \_\_\_ The applicant is a danger to others' safety

9.2 \_\_\_ The applicant is a danger to others' mental or physical health

9.3 \_\_\_ Other reason \_\_\_\_\_

#### 10.0 Evidence the government uses to support its claims

10.1 \_\_\_ Affidavit of medical doctor

10.2 \_\_\_ Affidavit of other health professional

10.3 \_\_\_ Affidavit of non-health professional

10.4 \_\_\_ Affidavit and submissions by information and privacy program staff

10.5 \_\_\_ Affidavit and submissions of other government staff

10.6 \_\_\_ No evidence

#### 11.0 Comments made about the applicant by the government to support its claim

11.1.1 \_\_\_ The applicant is currently threatening, intimidating or acting in a hostile manner toward one or more third parties (non-government staff) involved in the matters documented

11.1.2 \_\_\_ The applicant has threatened, intimidated or acted in a hostile manner to the third party(ies) in 11.1.1 in the past

11.2.1 \_\_\_ The applicant is currently threatening, intimidating or acting in a hostile manner toward one or more government staff members

11.2.2 \_\_\_ The applicant has threatened, intimidated or acted in a hostile manner toward the individual(s) noted in 11.2.1 in the past

11.3.1 \_\_\_ The applicant can reasonably be expected to act in a threatening, intimidating or hostile manner to one or more third parties (non-government staff)

11.3.2 \_\_\_ The applicant can reasonably be expected to act in a threatening, intimidating or hostile manner to one or more government staff members

11.3.3 \_\_\_ Other reason \_\_\_\_\_

#### 12.0 How the applicant refutes the application of s. 19(1)(a)

- 12.1 \_\_\_ It is the applicant's personal information and s/he is entitled to it  
 12.1.1 \_\_\_ States reasons why    12.1.2 \_\_\_ Does not state reasons why  
 12.2 \_\_\_ The applicant does not have the illness that s/he is claimed to have  
 12.2.1 \_\_\_ States reasons why    12.2.2 \_\_\_ Does not state reasons why  
 12.3 \_\_\_ The applicant is not a threat to others (not including government staff)  
 12.3.1 \_\_\_ States reasons why    12.3.2 \_\_\_ Does not state reasons why  
 12.4 \_\_\_ The applicant is not a threat to government staff  
 12.4.1 \_\_\_ States reasons why    12.4.2 \_\_\_ Does not state reasons why  
 12.5. The reasons why the applicant is not a threat to others  
 12.5.1 \_\_\_ The applicant has never threatened, intimidated or been hostile to the third party(ies) (non-government staff) in question  
 12.5.2 \_\_\_ The applicant has not recently threatened, intimidated or been hostile to the third party(ies) (non-government staff) in question  
 12.5.3 \_\_\_ The applicant has never threatened, intimidated or been hostile to government staff members  
 12.5.4 \_\_\_ The applicant has not recently threatened, intimidated or been hostile to government staff members  
 12.5.5 \_\_\_ The applicant does not offer an argument  
 12.5.6 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument
- 13.0 How the Commissioner makes his decision  
 13.1 \_\_\_ Relies on precedent  
 13.2 \_\_\_ Creates precedent  
 13.3 \_\_\_ Considers affidavits of government staff  
 13.4 \_\_\_ Considers affidavits of the applicant  
 13.5 \_\_\_ Other reason \_\_\_\_\_

#### Coding Sheet: Exception Applied

1.0 Section: 19(1)(b) (disclosure harmful to individual or public safety; disclosure could be expected to interfere with public safety)

1.1 \_\_\_ Discretionary section    1.2 \_\_\_ Mandatory section

2.0 Records requested:

- 2.1 \_\_\_ Personal health records  
 2.2 \_\_\_ Personal mental health records  
 2.3 \_\_\_ Personnel/labour relations records  
 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)  
 2.5 \_\_\_ Social service file (financial benefits)  
 2.6 \_\_\_ Social service file (probation, corrections)  
 2.7 \_\_\_ Student records  
 2.8 \_\_\_ Records of an office that investigates complaints  
 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 19(1)(b) to

- 3.1 \_\_\_ Protect the operations of a public service  
 3.2 \_\_\_ Protect the identities of those who work in public safety

4.0 S. 19(1)(b) is applied to records that

- 4.1 \_\_\_ Identify individuals who are responsible for public safety
- 4.2 \_\_\_ Contain information concerning the operations of a public service
- 4.3 \_\_\_ Other

5.0 Timing of the public body's application of s. 19(1)(b)

- 5.1 \_\_\_ s. 19(1)(b) initially applied by the public body
- 5.2 \_\_\_ s. 19(1)(b) applied during inquiry
- 5.3 \_\_\_ s. 19(1)(b) removed during inquiry

6.0 Scope of the inquiry

- 6.1 \_\_\_ s. 19(1)(b) is dealt with in the inquiry
- 6.2 \_\_\_ s. 19(1)(b) is not dealt with in the inquiry

7.0 Outcome

- 7.1 \_\_\_ s. 19(1)(b) is determined to apply
- 7.2 \_\_\_ s. 19(1)(b) is determined not to apply
- 7.3 \_\_\_ s. 19(1)(b) is not dealt with in the inquiry
- 7.4 \_\_\_ s. 19(1)(b) is not dealt with but the Commissioner says that it would not have applied.
- 7.5 \_\_\_ s. 19(1)(b) is not dealt with but the Commissioner says that it would have applied.

8.0 Application of other sections to some or part of the information withheld under s. 19(1)(b)

- 8.1 \_\_\_ s. 19(1)(a) is applied instead
- 8.2 \_\_\_ s. 19(1)(a) is applied in addition to s. 19(1)(b)
- 8.3 \_\_\_ s. 19(2) is applied instead
- 8.4 \_\_\_ s. 19(2) is applied in addition to s. 19(1)(b)
- 8.5 \_\_\_ s. 22 determined to apply
- 8.6 \_\_\_ No other sections are applied

9.0 Argument the government uses to apply s. 19(1)(b)

- 9.1 \_\_\_ The information will be used by the applicant to interfere with public safety
- 9.2 \_\_\_ The information will be used by the applicant to interfere with government operations
- 9.3 \_\_\_ Other reason \_\_\_\_\_

10.0 Evidence the government uses to support its claims

- 10.1 \_\_\_ Affidavit of medical doctor
- 10.2 \_\_\_ Affidavit of other health professional
- 10.3 \_\_\_ Affidavit of non-health professional
- 10.4 \_\_\_ Affidavit and submissions by information and privacy program staff
- 10.5 \_\_\_ Affidavit and submissions of other government staff
- 10.6 \_\_\_ No evidence

11.0 Comments made about the applicant by the government to support its claim

- 11.1.1 \_\_\_ The applicant is currently threatening, intimidating or acting in a hostile manner toward one or more third parties (non-government staff) involved in the matters documented
- 11.1.2 \_\_\_ The applicant has threatened, intimidated or acted in a hostile manner to the third party(ies) in 11.1.1 in the past
- 11.2.1 \_\_\_ The applicant is currently threatening, intimidating or acting in a hostile manner toward one or more government staff members
- 11.2.2 \_\_\_ The applicant has threatened, intimidated or acted in a hostile manner toward the individual(s) noted in 11.2.1 in the past

11.3.1 \_\_\_ The applicant can reasonably be expected to act in a threatening, intimidating or hostile manner to one or more third parties (non-government staff)

11.3.2 \_\_\_ The applicant can reasonably be expected to act in a threatening, intimidating or hostile manner to one or more government staff members

11.3.3 \_\_\_ Other reason \_\_\_\_\_

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12.0 How the applicant refutes the application of s. 19(1)(b)

12.1 \_\_\_ It is the applicant's personal information and s/he is entitled to it

12.1.1 \_\_\_ States reasons why      12.1.2 \_\_\_ Does not state reasons why

12.2 \_\_\_ The applicant does not have the illness that s/he is claimed to have

12.2.1 \_\_\_ States reasons why      12.2.2 \_\_\_ Does not state reasons why

12.3 \_\_\_ The applicant is not a threat to others (not including government staff)

12.3.1 \_\_\_ States reasons why      12.3.2 \_\_\_ Does not state reasons why

12.4 \_\_\_ The applicant is not a threat to government staff

12.4.1 \_\_\_ States reasons why      12.4.2 \_\_\_ Does not state reasons why

12.5. The reasons why the applicant is not a threat to others

12.5.1 \_\_\_ The applicant has never threatened, intimidated or been hostile to the third party(ies) (non-government staff) in question

12.5.2 \_\_\_ The applicant has not recently threatened, intimidated or been hostile to the third party(ies) (non-government staff) in question

12.5.3 \_\_\_ The applicant has never threatened, intimidated or been hostile to government staff members

12.5.4 \_\_\_ The applicant has not recently threatened, intimidated or been hostile to government staff members

12.5.5 \_\_\_ The applicant does not offer an argument

12.5.6 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument

13.0 How the Commissioner makes his decision

13.1 \_\_\_ Relies on precedent

13.2 \_\_\_ Creates precedent

13.3 \_\_\_ Considers affidavits of government staff

13.4 \_\_\_ Considers affidavits of the applicant

13.5 \_\_\_ Other reason \_\_\_\_\_

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#### Coding Sheet: Exception Applied

1.0 Section: 19(2) (disclosure harmful to individual or public safety; disclosure could be expected to result in immediate and grave harm to the applicant's safety or mental or physical health)

1.1 \_\_\_ Discretionary section    1.2 \_\_\_ Mandatory section

2.0 Records requested:

2.1 \_\_\_ Personal health records

2.2 \_\_\_ Personal mental health records

2.3 \_\_\_ Personnel/labour relations records

2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)

2.5 \_\_\_ Social service file (financial benefits)

- 2.6 \_\_\_ Social service file (probation, corrections)
- 2.7 \_\_\_ Student records
- 2.8 \_\_\_ Records of an office that investigates complaints
- 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 19(2) to

- 3.1 \_\_\_ Protect the applicant's safety or mental or physical health
- 3.2 \_\_\_ Other reason

4.0 S. 19(2) is applied to records that

- 4.1 \_\_\_ identifies a source of confidential information concerning the applicant
- 4.2 \_\_\_ identifies someone who has made a recent complaint about the applicant
- 4.2 \_\_\_ identifies someone who made a complaint in the past (over two years ago) about the applicant
- 4.3 \_\_\_ identifies a government employee
- 4.4 \_\_\_ includes derogatory comments about the applicant that may distress the applicant if released to him/her

5.0 Timing of the public body's application of s. 19(2)

- 5.1 \_\_\_ s. 19(2) initially applied by the public body
- 5.2 \_\_\_ s. 19(2) applied during inquiry
- 5.3 \_\_\_ s. 19(2) removed during inquiry

6.0 Scope of the inquiry

- 6.1 \_\_\_ s. 19(2) is dealt with in the inquiry
- 6.2 \_\_\_ s. 19(2) is not dealt with in the inquiry

7.0 Outcome

- 7.1 \_\_\_ s.19(2) is determined to apply
- 7.2 \_\_\_ s. 19(2) is determined not to apply
- 7.3 \_\_\_ s. 19(2) is not dealt with in the inquiry
- 7.4 \_\_\_ s. 19(2) is not dealt with but the Commissioner says that it would not have applied.
- 7.5 \_\_\_ s. 19(2) is not dealt with but the Commissioner says that it would have applied.

8.0 Application of other sections to some or part of the information withheld under s. 19(2)

- 8.1 \_\_\_ s. 19(1)(a) is applied instead
- 8.2 \_\_\_ s. 19(1)(a) is applied in addition to s. 19(2)
- 8.3 \_\_\_ s. 19(1)(b) is applied instead
- 8.4 \_\_\_ s. 19(1)(b) is applied in addition to s. 19(2)
- 8.5 \_\_\_ s. 22 determined to apply
- 8.6 \_\_\_ No other sections are applied

9.0 Argument the government uses to apply s. 19(2)

- 9.1 \_\_\_ The applicant is a danger to his/her own safety
- 9.2 \_\_\_ The applicant is a danger to his/her mental or physical health
- 9.3 \_\_\_ Other reason \_\_\_\_\_

10.0 Evidence the government uses to support its claims

- 10.1 \_\_\_ Affidavit of medical doctor
- 10.2 \_\_\_ Affidavit of other health professional
- 10.3 \_\_\_ Affidavit of non-health professional

10.4 \_\_\_ Affidavit and submissions by information and privacy program staff

10.5 \_\_\_ Affidavit and submissions of other government staff

10.6 \_\_\_ No evidence

11.0 Comments made about the applicant by the government to support its claim

11.1 \_\_\_ The applicant is currently suicidal or unstable mentally or emotionally

11.2 \_\_\_ The applicant has been suicidal or unstable mentally or emotionally in the past

11.3 \_\_\_ The applicant can reasonably be expected to become suicidal or unstable mentally or emotionally if the information about the applicant is allowed to be released

11.4 \_\_\_ Other reason \_\_\_\_\_

12.0 How the applicant refutes the application of s. 19(2)

12.1 \_\_\_ It is the applicant's personal information and s/he is entitled to it

12.1.1 \_\_\_ States reasons why      12.1.2 \_\_\_ Does not state reasons why

12.2 \_\_\_ The applicant does not have the illness that s/he is claimed to have

12.2.1 \_\_\_ States reasons why      12.2.2 \_\_\_ Does not state reasons why

12.3 \_\_\_ The applicant is not a threat to him/herself

12.3.1 \_\_\_ States reasons why      12.3.2 \_\_\_ Does not state reasons why

12.4. The reasons why the applicant is not a threat to him/herself

12.4.1 \_\_\_ The applicant has never been suicidal or emotionally or mentally unstable

12.4.2 \_\_\_ The applicant has not recently been suicidal or emotionally or mentally unstable

12.4.3 \_\_\_ The information in the records would not cause the applicant to become suicidal or emotionally or mentally unstable

12.4.4 \_\_\_ The applicant does not offer an argument

12.4.5 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument

13.0 How the Commissioner makes his decision

13.1 \_\_\_ Relies on precedent

13.2 \_\_\_ Creates precedent

13.3 \_\_\_ Considers affidavits of government staff

13.4 \_\_\_ Considers affidavits of the applicant

13.5 \_\_\_ Other reason \_\_\_\_\_

#### Coding Sheet: Exception Applied

1.0 Section: 22(2)(a) (disclosure harmful to personal privacy; the disclosure is desirable for subjecting the activities of the government to public scrutiny)

1.1 \_\_\_ Discretionary section    1.2 \_\_\_ Mandatory section

2.0 Records requested:

2.1 \_\_\_ Personal health records

2.2 \_\_\_ Personal mental health records

2.3 \_\_\_ Personnel/labour relations records

2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)

2.5 \_\_\_ Social service file (financial benefits)

2.6 \_\_\_ Social service file (probation, corrections)

2.7 \_\_\_ Student records

2.8 \_\_\_ Records of an office that investigates complaints

2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(2)(a) to

3.1.1 \_\_\_ the personal information of the applicant

3.1.2 \_\_\_ the personal information of a third party

3.1.3 \_\_\_ both 3.1.1 and 3.1.2

3.1.4 \_\_\_ other

3.2.1 \_\_\_ comments made by a third party (excluding government staff) that are not about the applicant

3.2.2 \_\_\_ comments made by a government staff member that are not about the applicant

3.2.3 \_\_\_ other

4.0 Timing of the public body's application of s. 22(2)(a)

4.1 \_\_\_ s. 22(2)(a) initially applied by the public body

4.2 \_\_\_ s. 22(2)(a) applied during inquiry

4.3 \_\_\_ s. 22(2)(a) removed during inquiry

5.0 Scope of the inquiry

5.1 \_\_\_ s. 22(2)(a) is dealt with in the inquiry

5.2 \_\_\_ s. 22(2)(a) is not dealt with in the inquiry

6.0 Outcome

6.1 \_\_\_ s.22(2)(a) is determined to apply

6.2 \_\_\_ s. 22(2)(a) is determined not to apply

6.3 \_\_\_ s. 22(2)(a) is not dealt with in the inquiry

7.0 Application of other sections to some or part of the information withheld under s. 22(2)(a)

7.1 \_\_\_ s. 22[fill in] is applied instead

7.2 \_\_\_ s. 22[fill in] is applied in addition to s. 22(2)(a)

7.3 \_\_\_ other section(s) applied

7.4 \_\_\_ no other section applied

8.0 Argument the government uses to not apply s. 22(2)(a)

8.1 \_\_\_ The information pertains to the applicant and, if released, would not promote public scrutiny

8.2 \_\_\_ The applicant has not provided any evidence that suggests that the information would promote public scrutiny

8.3 \_\_\_ Other reason

9.0 Evidence the government uses to support its claims

9.1 \_\_\_ Affidavit and submissions by information and privacy program staff

9.2 \_\_\_ Affidavit and submissions of other government staff

9.3 \_\_\_ No evidence

10.0 How the applicant refutes the government's lack of application of s. 22(2)(a)

10.1 \_\_\_ The information if released would promote scrutiny of the government's activities

10.2 \_\_\_ It is important that the public body be accountable for its actions

10.3 \_\_\_ The government has made an error in judgment and the applicant thinks that it is important for this information to be released

10.4 \_\_\_ The applicant does not offer an argument

10.5 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument

11.0 How the Commissioner makes his decision

11.1 \_\_\_ Relies on precedent

11.2 \_\_\_ Creates precedent

11.3 \_\_\_ Considers affidavits of government staff

11.4 \_\_\_ Considers affidavits of the applicant

11.5 \_\_\_ Other reason \_\_\_\_\_

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#### Coding Sheet: Exception Applied

1.0 Section: 22(2)(c) (disclosure harmful to personal privacy; the personal information is relevant to a fair determination of the applicant's rights)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

2.1 \_\_\_ Personal health records

2.2 \_\_\_ Personal mental health records

2.3 \_\_\_ Personnel/labour relations records

2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)

2.5 \_\_\_ Social service file (financial benefits)

2.6 \_\_\_ Social service file (probation, corrections)

2.7 \_\_\_ Student records

2.8 \_\_\_ Records of an office that investigates complaints

2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(2)(c) to

3.1.1 \_\_\_ the personal information of the applicant

3.1.2 \_\_\_ the personal information of a third party

3.1.3 \_\_\_ both 3.1.1 and 3.1.2

3.1.4 \_\_\_ other

3.2.1 \_\_\_ comments made by a third party (excluding government staff) that are not about the applicant

3.2.2 \_\_\_ comments made by a government staff member that are not about the applicant

3.2.3 \_\_\_ other

4.0 Timing of the public body's application of s. 22(2)(c)

4.1 \_\_\_ s. 22(2)(c) initially applied by the public body

4.2 \_\_\_ s. 22(2)(c) applied during inquiry

4.3 \_\_\_ s. 22(2)(c) removed during inquiry

5.0 Scope of the inquiry

5.1 \_\_\_ s. 22(2)(c) is dealt with in the inquiry

5.2 \_\_\_ s. 22(2)(c) is not dealt with in the inquiry

6.0 Outcome

6.1 \_\_\_ s.22(2)(c) is determined to apply

6.2 \_\_\_ s. 22(2)(c) is determined not to apply

6.3 \_\_\_ s. 22(2)(c) is not dealt with in the inquiry

7.0 Application of other sections to some or part of the information withheld under s. 22(2)(c)

7.1 \_\_\_ s. 22[fill in] is applied instead

7.2 \_\_\_ s. 22[fill in] is applied in addition to s. 22(2)(c)

7.3 \_\_\_ other section(s) applied

7.4 \_\_\_ no other section applied

8.0 Argument the government uses to not apply s. 22(2)(c)

8.1 \_\_\_ The information is not relevant to a fair determination of the applicant's rights

8.2 \_\_\_ The applicant has not provided any evidence that suggests that the information is important to a fair determination of the applicant's rights

8.4 \_\_\_ The applicant is not involved in litigation, arbitration or some other process that requires the information

8.5 \_\_\_ Other \_\_\_\_\_

9.0 Evidence the government uses to support its claims

9.1 \_\_\_ Affidavit and submissions by information and privacy program staff

9.2 \_\_\_ Affidavit and submissions of other government staff

9.3 \_\_\_ No evidence

10.0 How the applicant refutes the application of s. 22(2)(c)

10.1 \_\_\_ The information is the applicant's personal information and s/he is entitled to it

10.1.1 \_\_\_ States reasons why      10.1.2 \_\_\_ Does not state reasons why

10.2 \_\_\_ The information is pertinent to matters the applicant is dealing with

10.2.1 \_\_\_ States reasons why      10.2.2 \_\_\_ Does not state reasons why

10.3. \_\_\_ The applicant does not offer an argument

10.4 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument

11.0 How the Commissioner makes his decision

11.1 \_\_\_ Relies on precedent

11.2 \_\_\_ Creates precedent

11.3 \_\_\_ Considers affidavits of government staff

11.4 \_\_\_ Considers affidavits of the applicant

11.5 \_\_\_ Other reason \_\_\_\_\_

Coding Sheet: Exception Applied

1.0 Section: 22(2)(e) (disclosure harmful to personal privacy; the third party will be exposed unfairly to financial or other harm)

1.1 \_\_\_ Discretionary section    1.2 \_\_\_ Mandatory section

2.0 Records requested:

2.1 \_\_\_ Personal health records

2.2 \_\_\_ Personal mental health records

2.3 \_\_\_ Personnel/labour relations records

2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)

- 2.5 \_\_\_ Social service file (financial benefits)
- 2.6 \_\_\_ Social service file (probation, corrections)
- 2.7 \_\_\_ Student records
- 2.8 \_\_\_ Records of an office that investigates complaints
- 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(2)(e) to

- 3.1.1 \_\_\_ the personal information of the applicant
- 3.1.2 \_\_\_ the personal information of a third party
- 3.1.3 \_\_\_ both 3.1.1 and 3.1.2
- 3.1.4 \_\_\_ other
- 3.2.1 \_\_\_ comments made by a third party (excluding government staff) that are not about the applicant
- 3.2.2 \_\_\_ comments made by a government staff member that are not about the applicant
- 3.2.3 \_\_\_ other

4.0 Timing of the public body's application of s. 22(2)(e)

- 4.1 \_\_\_ s. 22(2)(e) initially applied by the public body
- 4.2 \_\_\_ s. 22(2)(e) applied during inquiry
- 4.3 \_\_\_ s. 22(2)(e) removed during inquiry

5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 22(2)(e) is dealt with in the inquiry
- 5.2 \_\_\_ s. 22(2)(e) is not dealt with in the inquiry

6.0 Outcome

- 6.1 \_\_\_ s.22(2)(e) is determined to apply
- 6.2 \_\_\_ s. 22(2)(e) is determined not to apply
- 6.3 \_\_\_ s. 22(2)(e) is not dealt with in the inquiry

7.0 Application of other sections to some or part of the information withheld under s. 22(2)(e)

- 7.1 \_\_\_ s. 22[fill in] is applied instead
- 7.2 \_\_\_ s. 22[fill in] is applied in addition to s. 22(2)(e)
- 7.3 \_\_\_ other section(s) applied
- 7.4 \_\_\_ no other section applied

8.0 Argument the government uses to apply s. 22(2)(e)

- 8.1 \_\_\_ The information, if released, will expose a third party to financial or other harm
- 8.2 \_\_\_ The applicant has not provided any evidence that suggests s/he intends not to cause any harm with the information
- 8.3 \_\_\_ Other \_\_\_\_\_

9.0 Evidence the government uses to support its claims

- 9.1 \_\_\_ Affidavit and submissions by information and privacy program staff
- 9.2 \_\_\_ Affidavit and submissions of other government staff
- 9.3 \_\_\_ No evidence

10.0 How the applicant refutes the application of s. 22(2)(e)

- 10.1 \_\_\_ The information, if released, will not expose a third party to financial or other harm
  - 10.1.1 \_\_\_ States reasons why
  - 10.1.2 \_\_\_ Does not state reasons why
- 10.2 \_\_\_ The applicant has no intention of using the information to cause harm to a third party

- 10.2.1 \_\_\_ States reasons why    10.2.2 \_\_\_ Does not state reasons why  
 10.3. \_\_\_ The applicant does not offer an argument  
 10.4 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument.

11.0 How the Commissioner makes his decision

- 11.1 \_\_\_ Relies on precedent  
 11.2 \_\_\_ Creates precedent  
 11.3 \_\_\_ Considers affidavits of government staff  
 11.4 \_\_\_ Considers affidavits of the applicant  
 11.5 \_\_\_ Other reason \_\_\_\_\_

Coding Sheet: Exception Applied

1.0 Section: 22(2)(f) (disclosure harmful to personal privacy; the personal information has been supplied in confidence)

1.1 \_\_\_ Discretionary section    1.2 \_\_\_ Mandatory section

2.0 Records requested:

- 2.1 \_\_\_ Personal health records  
 2.2 \_\_\_ Personal mental health records  
 2.3 \_\_\_ Personnel/labour relations records  
 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)  
 2.5 \_\_\_ Social service file (financial benefits)  
 2.6 \_\_\_ Social service file (probation, corrections)  
 2.7 \_\_\_ Student records  
 2.8 \_\_\_ Records of an office that investigates complaints  
 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(2)(f) to

- 3.1.1 \_\_\_ the personal information of the applicant  
 3.1.2 \_\_\_ the personal information of a third party  
 3.1.3 \_\_\_ both 3.1.1 and 3.1.2  
 3.1.4 \_\_\_ other  
 3.2.1 \_\_\_ comments made by a third party (excluding government staff) that are not about the applicant  
 3.2.2 \_\_\_ comments made by a government staff member that are not about the applicant  
 3.2.3 \_\_\_ other \_\_\_\_\_

4.0 Timing of the public body's application of s. 22(2)(f)

- 4.1 \_\_\_ s. 22(2)(f) initially applied by the public body  
 4.2 \_\_\_ s. 22(2)(f) applied during inquiry  
 4.3 \_\_\_ s. 22(2)(f) removed during inquiry

5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 22(2)(f) is dealt with in the inquiry  
 5.2 \_\_\_ s. 22(2)(f) is not dealt with in the inquiry

## 6.0 Outcome

- 6.1  s.22(2)(f) is determined to apply  
 6.2  s. 22(2)(f) is determined not to apply  
 6.3  s. 22(2)(f) is not dealt with in the inquiry

## 7.0 Application of other sections to some or part of the information withheld under s. 22(2)(f)

- 7.1  s. 22[fill in] is applied instead  
 7.2  s. 22[fill in] is applied in addition to s. 22(2)(f)  
 7.3  other section(s) applied  
 7.4  no other section applied

## 8.0 Argument the government uses to apply s. 22(2)(f)

- 8.1  The information has been supplied in confidence  
 8.2  The person supplying the information was advised by the public body that the information would be held in confidence  
 8.3  Other \_\_\_\_\_

## 9.0 Evidence the government uses to support its claims

- 9.1  Affidavit and submissions by information and privacy program staff  
 9.2  Affidavit and submissions of other government staff  
 9.3  No evidence

## 10.0 How the applicant refutes the application of s. 22(2)(f)

- 10.1  The applicant is entitled to know the name of a person who has made a complaint about him/her  
 10.2  The applicant is entitled to know the details of a complaint concerning him/her  
 10.3  The information was not supplied in confidence by the third party  
 10.3.1  The third party was not advised by the public body that the information would be held in confidence  
 10.3.2  The applicant has been told the names of the individuals involved in providing the information submitted in confidence  
 10.3.2.1  By the public body 10.3.2.2  By the third party 10.3.2.3.  By another person  
 10.3.3  The applicant has been verbally provided with the information in question  
 10.3.3.1  By the public body 10.3.3.2  By the third party 10.3.3.3.  By another person  
 10.3.4  The applicant has been provided with documents that relate the information in question  
 10.3.4.1  By the public body 10.3.4.2  By the third party 10.3.4.3.  By another person  
 10.3.5  The applicant has seen the information contained in the records in question  
 10.3.5.1  By the public body 10.3.5.2  By the third party 10.3.5.3.  By another person  
 10.3.6  Other reasons \_\_\_\_\_  
 10.4  Does not state reasons why  
 10.5  The applicant does not offer an argument  
 10.6  The applicant is not aware of what is being withheld and why and so cannot make a valid argument

## 11.0 How the Commissioner makes his decision

- 11.1  Relies on precedent

- 11.2 \_\_\_ Creates precedent
  - 11.3 \_\_\_ Considers affidavits of government staff
  - 11.4 \_\_\_ Considers affidavits of the applicant
  - 11.5 \_\_\_ Other reason
- 

#### Coding Sheet: Exception Applied

1.0 Section: 22(2)(g) (disclosure harmful to personal privacy; the personal information is likely to be inaccurate or unreliable)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

- 2.1 \_\_\_ Personal health records
- 2.2 \_\_\_ Personal mental health records
- 2.3 \_\_\_ Personnel/labour relations records
- 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)
- 2.5 \_\_\_ Social service file (financial benefits)
- 2.6 \_\_\_ Social service file (probation, corrections)
- 2.7 \_\_\_ Student records
- 2.8 \_\_\_ Records of an office that investigates complaints
- 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(2)(g) to

- 3.1.1 \_\_\_ the personal information of the applicant
- 3.1.2 \_\_\_ the personal information of a third party
- 3.1.3 \_\_\_ both 3.1.1 and 3.1.2
- 3.1.4 \_\_\_ other
- 3.2.1 \_\_\_ comments made by a third party (excluding government staff) that are not about the applicant
- 3.2.2 \_\_\_ comments made by a government staff member that are not about the applicant
- 3.2.3 \_\_\_ other

4.0 Timing of the public body's application of s. 22(2)(g)

- 4.1 \_\_\_ s. 22(2)(g) initially applied by the public body
- 4.2 \_\_\_ s. 22(2)(g) applied during inquiry
- 4.3 \_\_\_ s. 22(2)(g) removed during inquiry

5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 22(2)(g) is dealt with in the inquiry
- 5.2 \_\_\_ s. 22(2)(g) is not dealt with in the inquiry

6.0 Outcome

- 6.1 \_\_\_ s.22(2)(g) is determined to apply
- 6.2 \_\_\_ s. 22(2)(g) is determined not to apply
- 6.3 \_\_\_ s. 22(2)(g) is not dealt with in the inquiry

7.0 Application of other sections to some or part of the information withheld under s. 22(2)(g)

- 7.1 \_\_\_ s. 22[fill in] is applied instead  
 7.2 \_\_\_ s. 22[fill in] is applied in addition to s. 22(2)(g)  
 7.3 \_\_\_ other section(s) applied  
 7.4 \_\_\_ no other section applied
- 8.0 Argument the government uses to apply s. 22(2)(g)  
 8.1 \_\_\_ The information pertains to the applicant but is likely to inaccurate or unreliable  
 8.2 \_\_\_ The information pertains to a third party but is likely to inaccurate or unreliable  
 8.3 \_\_\_ Other
- 9.0 Evidence the government uses to support its claims  
 9.1 \_\_\_ Affidavit and submissions by information and privacy program staff  
 9.2 \_\_\_ Affidavit and submissions of other government staff  
 9.3 \_\_\_ No evidence
- 10.0 How the applicant refutes the application of s. 22(2)(g)  
 10.1 \_\_\_ The information is the applicant's personal information and s/he is entitled to it  
 10.1.1 \_\_\_ States reasons why    10.1.2 \_\_\_ Does not state reasons why  
 10.2 \_\_\_ The information is pertinent to the request  
 10.2.1 \_\_\_ States reasons why    10.2.2 \_\_\_ Does not state reasons why  
 10.3. \_\_\_ The applicant does not offer an argument  
 10.4 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument
- 11.0 How the Commissioner makes his decision  
 11.1 \_\_\_ Relies on precedent  
 11.2 \_\_\_ Creates precedent  
 11.3 \_\_\_ Considers affidavits of government staff  
 11.4 \_\_\_ Considers affidavits of the applicant  
 11.5 \_\_\_ Other reason \_\_\_\_\_

#### Coding Sheet: Exception Applied

- 1.0 Section: 22(2)(h) (disclosure harmful to personal privacy; the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant)
- 1.1 \_\_\_ Discretionary section    1.2 \_\_\_ Mandatory section
- 2.0 Records requested:  
 2.1 \_\_\_ Personal health records  
 2.2 \_\_\_ Personal mental health records  
 2.3 \_\_\_ Personnel/labour relations records  
 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)  
 2.5 \_\_\_ Social service file (financial benefits)  
 2.6 \_\_\_ Social service file (probation, corrections)  
 2.7 \_\_\_ Student records  
 2.8 \_\_\_ Records of an office that investigates complaints  
 2.9 \_\_\_ Other \_\_\_\_\_
- 3.0 Public body applied s. 22(2)(h) to

- 3.1.1 \_\_\_ the personal information of the applicant
- 3.1.2 \_\_\_ the personal information of a third party
- 3.1.3 \_\_\_ both 3.1.1 and 3.1.2
- 3.1.4 \_\_\_ other
- 3.2.1 \_\_\_ comments made by a third party (excluding government staff) that are not about the applicant
- 3.2.2 \_\_\_ comments made by a government staff member that are not about the applicant
- 3.2.3 \_\_\_ other
  
- 4.0 Timing of the public body's application of s. 22(2)(h)
  - 4.1 \_\_\_ s. 22(2)(h) initially applied by the public body
  - 4.2 \_\_\_ s. 22(2)(h) applied during inquiry
  - 4.3 \_\_\_ s. 22(2)(h) removed during inquiry
  
- 5.0 Scope of the inquiry
  - 5.1 \_\_\_ s. 22(2)(h) is dealt with in the inquiry
  - 5.2 \_\_\_ s. 22(2)(h) is not dealt with in the inquiry
  
- 6.0 Outcome
  - 6.1 \_\_\_ s.22(2)(h) is determined to apply
  - 6.2 \_\_\_ s. 22(2)(h) is determined not to apply
  - 6.3 \_\_\_ s. 22(2)(h) is not dealt with in the inquiry
  
- 7.0 Application of other sections to some or part of the information withheld under s. 22(2)(h)
  - 7.1 \_\_\_ s. 22[fill in] is applied instead
  - 7.2 \_\_\_ s. 22[fill in] is applied in addition to s. 22(2)(h)
  - 7.3 \_\_\_ other section(s) applied
  - 7.4 \_\_\_ no other section applied
  
- 8.0 Argument the government uses to apply s. 22(2)(h)
  - 8.1 \_\_\_ The disclosure may damage the reputation of one or more third parties noted in the records
    - 8.1.1 \_\_\_ The information includes past actions by the third party that reflect negatively on that person
    - 8.1.2 \_\_\_ The information contains comments made about the third party that are derogatory
  - 8.2 \_\_\_ Other \_\_\_\_\_
  
- 9.0 Evidence the government uses to support its claims
  - 9.1 \_\_\_ Affidavit and submissions by information and privacy program staff
  - 9.2 \_\_\_ Affidavit and submissions of other government staff
  - 9.3 \_\_\_ No evidence
  
- 10.0 How the applicant refutes the application of s. 22(2)(h)
  - 10.1 \_\_\_ The applicant information is the applicant's personal information and s/he is entitled to it
    - 10.1.1 \_\_\_ States reasons why
    - 10.1.2 \_\_\_ Does not state reasons why
  - 10.2 \_\_\_ The information is pertinent to the request
    - 10.2.1 \_\_\_ States reasons why
    - 10.2.2 \_\_\_ Does not state reasons why
  - 10.3. \_\_\_ The applicant does not offer an argument
  - 10.4 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument

- 11.0 How the Commissioner makes his decision
- 11.1 \_\_\_ Relies on precedent
- 11.2 \_\_\_ Creates precedent
- 11.3 \_\_\_ Considers affidavits of government staff
- 11.4 \_\_\_ Considers affidavits of the applicant
- 11.5 \_\_\_ Other reason \_\_\_\_\_
- 

#### Coding Sheet: Exception Applied

1.0 Section: 22(3)(a) (disclosure harmful to personal privacy; the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

- 2.1 \_\_\_ Personal health records
- 2.2 \_\_\_ Personal mental health records
- 2.3 \_\_\_ Personnel/labour relations records
- 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)
- 2.5 \_\_\_ Social service file (financial benefits)
- 2.6 \_\_\_ Social service file (probation, corrections)
- 2.7 \_\_\_ Student records
- 2.8 \_\_\_ Records of an office that investigates complaints
- 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(3)(a) to

- 3.1.1 \_\_\_ the personal information of the applicant
- 3.1.2 \_\_\_ the personal information of a third party
- 3.1.3 \_\_\_ both 3.1.1 and 3.1.2
- 3.2.1 \_\_\_ comments made by a third party (excluding government staff) that are not about the applicant
- 3.2.2 \_\_\_ comments made by a government staff member that are not about the applicant
- 3.2.3 \_\_\_ other

4.0 Timing of the public body's application of s. 22(3)(a)

- 4.1 \_\_\_ s. 22(3)(a) initially applied by the public body
- 4.2 \_\_\_ s. 22(3)(a) applied during inquiry
- 4.3 \_\_\_ s. 22(3)(a) removed during inquiry

5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 22(3)(a) is dealt with in the inquiry
- 5.2 \_\_\_ s. 22(3)(a) is not dealt with in the inquiry

6.0 Outcome

- 6.1 \_\_\_ s.22(3)(a) is determined to apply
- 6.2 \_\_\_ s. 22(3)(a) is determined not to apply
- 6.3 \_\_\_ s. 22(3)(a) is not dealt with in the inquiry

7.0 Application of other sections to some or part of the information withheld under s. 22(3)(a)

7.1  s. 22[fill in] is applied instead

7.2  s. 22[fill in] is applied in addition to s. 22(3)(a)

7.3  other section(s) applied

7.4  no other section applied

8.0 Argument the government uses to apply s. 22(3)(a)

8.1  The personal information relates to a medical history, diagnosis, condition, treatment or evaluation of a third party

8.2  The personal information relates to a psychiatric or psychological history, diagnosis, condition, treatment or evaluation of a third party

8.3  Other \_\_\_\_\_

9.0 Evidence the government uses to support its claims

9.1  Affidavit of medical doctor

9.2  Affidavit of other health professional

9.3  Affidavit of non-health professional

9.4  Affidavit and submissions by information and privacy program staff

9.5  Affidavit and submissions of other government staff

9.6  No evidence

10.0 How the applicant refutes the application of s. 22(3)(a)

10.1  The personal information is not that of a third party

10.1.1  States reasons why      10.1.2  Does not state reasons why

10.2  The third party is biologically related to the applicant and the applicant is entitled to know his/her genetic history and pre-disposition to illness

10.3  Other reason

10.4  The applicant does not offer an argument

10.5  The applicant is not aware of what is being withheld and why and so cannot make a valid argument

11.0 How the Commissioner makes his decision

11.1  Relies on precedent

11.2  Creates precedent

11.3  Considers affidavits of government staff

11.4  Considers affidavits of the applicant

11.5  Other reason \_\_\_\_\_

#### Coding Sheet: Exception Applied

1.0 Section: 22(3)(b) (disclosure harmful to personal privacy; the personal information was compiled and is identifiable as part of an investigation into a possible violation of law)

1.1  Discretionary section    1.2  Mandatory section

2.0 Records requested:

2.1  Personal health records

2.2  Personal mental health records

2.3  Personnel/labour relations records

- 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)
- 2.5 \_\_\_ Social service file (financial benefits)
- 2.6 \_\_\_ Social service file (probation, corrections)
- 2.7 \_\_\_ Student records
- 2.8 \_\_\_ Records of an office that investigates complaints
- 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(3)(b) to

- 3.1.1 \_\_\_ the personal information of the applicant
- 3.1.2 \_\_\_ the personal information of a third party
- 3.1.3 \_\_\_ both 3.1.1 and 3.1.2
- 3.1.4 \_\_\_ other
- 3.2.1 \_\_\_ comments made by a third party (excluding government staff) that are not about the applicant
- 3.2.2 \_\_\_ comments made by a government staff member that are not about the applicant
- 3.2.3 \_\_\_ other

4.0 Timing of the public body's application of s. 22(3)(b)

- 4.1 \_\_\_ s. 22(3)(b) initially applied by the public body
- 4.2 \_\_\_ s. 22(3)(b) applied during inquiry
- 4.3 \_\_\_ s. 22(3)(b) removed during inquiry

5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 22(3)(b) is dealt with in the inquiry
- 5.2 \_\_\_ s. 22(3)(b) is not dealt with in the inquiry

6.0 Outcome

- 6.1 \_\_\_ s.22(3)(b) is determined to apply
- 6.2 \_\_\_ s. 22(3)(b) is determined not to apply
- 6.3 \_\_\_ s. 22(3)(b) is not dealt with in the inquiry

7.0 Application of other sections to some or part of the information withheld under s. 22(3)(b)

- 7.1 \_\_\_ s. 22[fill in] is applied instead
- 7.2 \_\_\_ s. 22[fill in] is applied in addition to s. 22(3)(b)
- 7.3 \_\_\_ other section(s) applied
- 7.4 \_\_\_ no other section applied

8.0 Argument the government uses to apply s. 22(3)(b)

- 8.1 \_\_\_ The personal information would reveal the identity and/or comments of a person who supplied information that is part of an investigation concerning the applicant
- 8.2 \_\_\_ The personal information would reveal the identity and/or comments of a person who supplied information that is part of an investigation concerning another person
- 8.3 \_\_\_ The personal information pertains to a third party who is the subject of an investigation
- 8.4 \_\_\_ Other \_\_\_\_\_

9.0 Evidence the government uses to support its claims

- 9.1 \_\_\_ Affidavit and submissions by information and privacy program staff
- 9.2 \_\_\_ Affidavit and submissions of other government staff
- 9.3 \_\_\_ No evidence

10.0 How the applicant refutes the application of s. 22(3)(b)

- 10.1 \_\_\_ The applicant is entitled to know the identity of a complainant
- 10.2 \_\_\_ The applicant is entitled to know the details of a complaint against him/her
- 10.3 \_\_\_ The personal information is not that of a third party
- 10.4 \_\_\_ Other reason
- 10.5 \_\_\_ The applicant does not offer an argument
- 10.6 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument
  
- 11.0 How the Commissioner makes his decision
  - 11.1 \_\_\_ Relies on precedent
  - 11.2 \_\_\_ Creates precedent
  - 11.3 \_\_\_ Considers affidavits of government staff
  - 11.4 \_\_\_ Considers affidavits of the applicant
  - 11.5 \_\_\_ Other reason \_\_\_\_\_

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#### Coding Sheet: Exception Applied

1.0 Section: 22(3)(c) (disclosure harmful to personal privacy; the personal information relates to eligibility for income assistance or social service benefits)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

- 2.1 \_\_\_ Personal health records
- 2.2 \_\_\_ Personal mental health records
- 2.3 \_\_\_ Personnel/labour relations records
- 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)
- 2.5 \_\_\_ Social service file (financial benefits)
- 2.6 \_\_\_ Social service file (probation, corrections)
- 2.7 \_\_\_ Student records
- 2.8 \_\_\_ Records of an office that investigates complaints
- 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(3)(c) to

- 3.1.1 \_\_\_ the personal information of the applicant
- 3.1.2 \_\_\_ the personal information of a third party
- 3.1.3 \_\_\_ both 3.1.1 and 3.1.2
- 3.1.4 \_\_\_ other

4.0 Timing of the public body's application of s. 22(3)(c)

- 4.1 \_\_\_ s. 22(3)(c) initially applied by the public body
- 4.2 \_\_\_ s. 22(3)(c) applied during inquiry
- 4.3 \_\_\_ s. 22(3)(c) removed during inquiry

5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 22(3)(c) is dealt with in the inquiry
- 5.2 \_\_\_ s. 22(3)(c) is not dealt with in the inquiry

6.0 Outcome

- 6.1  s.22(3)(c) is determined to apply  
 6.2  s. 22(3)(c) is determined not to apply  
 6.3  s. 22(3)(c) is not dealt with in the inquiry
- 7.0 Application of other sections to some or part of the information withheld under s. 22(3)(c)  
 7.1  s. 22[fill in] is applied instead  
 7.2  s. 22[fill in] is applied in addition to s. 22(3)(c)  
 7.3  other section(s) applied  
 7.4  no other section applied
- 8.0 Argument the government uses to apply s. 22(3)(c)  
 8.1  The personal information pertains to a third party's eligibility for income assistance benefits  
 8.2  The personal information pertains to a third party's eligibility for social service benefits  
 8.3  Other reason \_\_\_\_\_
- 9.0 Evidence the government uses to support its claims  
 9.1  Affidavit and submissions by information and privacy program staff  
 9.2  Affidavit and submissions of other government staff  
 9.3  No evidence
- 10.0 How the applicant refutes the application of s. 22(3)(c)  
 10.1  The personal information does not pertain to a third party's eligibility for income assistance benefits  
 10.2.  The personal information does not pertain to a third party's eligibility for social service benefits  
 10.3  The applicant is entitled to know this information of the third party  
 10.4  Other reason  
 10.5  The applicant does not offer an argument  
 10.6  The applicant is not aware of what is being withheld and why and so cannot make a valid argument
- 11.0 How the Commissioner makes his decision  
 11.1  Relies on precedent  
 11.2  Creates precedent  
 11.3  Considers affidavits of government staff  
 11.4  Considers affidavits of the applicant  
 11.5  Other reason \_\_\_\_\_

#### Coding Sheet: Exception Applied

1.0 Section: 22(3)(d) (disclosure harmful to personal privacy; the personal information relates to employment, occupational or educational history)

1.1  Discretionary section 1.2  Mandatory section

2.0 Records requested:

2.1  Personal health records

2.2  Personal mental health records

- 2.3  Personnel/labour relations records
- 2.4  Social service file (foster home, adoption, child-in-care, child abuse investigation)
- 2.5  Social service file (financial benefits)
- 2.6  Social service file (probation, corrections)
- 2.7  Student records
- 2.8  Records of an office that investigates complaints
- 2.9  Other \_\_\_\_\_
- 3.0 Public body applied s. 22(3)(d) to
- 3.1.1  the personal information of the applicant
- 3.1.2  the personal information of a third party
- 3.1.3  both 3.1.1 and 3.1.2
- 3.1.4  other
- 4.0 Timing of the public body's application of s. 22(3)(d)
- 4.1  s. 22(3)(d) initially applied by the public body
- 4.2  s. 22(3)(d) applied during inquiry
- 4.3  s. 22(3)(d) removed during inquiry
- 5.0 Scope of the inquiry
- 5.1  s. 22(3)(d) is dealt with in the inquiry
- 5.2  s. 22(3)(d) is not dealt with in the inquiry
- 6.0 Outcome
- 6.1  s.22(3)(d) is determined to apply
- 6.2  s. 22(3)(d) is determined not to apply
- 6.3  s. 22(3)(d) is not dealt with in the inquiry
- 7.0 Application of other sections to some or part of the information withheld under s. 22(3)(d)
- 7.1  s. 22[fill in] is applied instead
- 7.2  s. 22[fill in] is applied in addition to s. 22(3)(d)
- 7.3  other section(s) applied
- 7.4  no other section applied
- 8.0 Argument the government uses to apply s. 22(3)(d)
- 8.1  The personal information pertains to a third party's employment or occupational history
- 8.2  The personal information pertains to a third party's educational history
- 8.3  Other reason \_\_\_\_\_
- 9.0 Evidence the government uses to support its claims
- 9.1  Affidavit and submissions by information and privacy program staff
- 9.2  Affidavit and submissions of other government staff
- 9.3  No evidence
- 10.0 How the applicant refutes the application of s. 22(3)(d)
- 10.1  The personal information does not pertain to a third party's employment or occupational history
- 10.2  The personal information does not pertain to a third party's educational history
- 10.3  The applicant is entitled to know this information of the third party
- 10.4  Other reason
- 10.5  The applicant does not offer an argument

10.6 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument

11.0 How the Commissioner makes his decision

11.1 \_\_\_ Relies on precedent

11.2 \_\_\_ Creates precedent

11.3 \_\_\_ Considers affidavits of government staff

11.4 \_\_\_ Considers affidavits of the applicant

11.5 \_\_\_ Other reason \_\_\_\_\_

#### Coding Sheet: Exception Applied

1.0 Section: 22(3)(f) (disclosure harmful to personal privacy; the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

2.1 \_\_\_ Personal health records

2.2 \_\_\_ Personal mental health records

2.3 \_\_\_ Personnel/labour relations records

2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)

2.5 \_\_\_ Social service file (financial benefits)

2.6 \_\_\_ Social service file (probation, corrections)

2.7 \_\_\_ Student records

2.8 \_\_\_ Records of an office that investigates complaints

2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(3)(f) to

3.1.1 \_\_\_ the personal information of the applicant

3.1.2 \_\_\_ the personal information of a third party

3.1.3 \_\_\_ both 3.1.1 and 3.1.2

3.1.4 \_\_\_ other

4.0 Timing of the public body's application of s. 22(3)(f)

4.1 \_\_\_ s. 22(3)(f) initially applied by the public body

4.2 \_\_\_ s. 22(3)(f) applied during inquiry

4.3 \_\_\_ s. 22(3)(f) removed during inquiry

5.0 Scope of the inquiry

5.1 \_\_\_ s. 22(3)(f) is dealt with in the inquiry

5.2 \_\_\_ s. 22(3)(f) is not dealt with in the inquiry

6.0 Outcome

6.1 \_\_\_ s. 22(3)(f) is determined to apply

6.2 \_\_\_ s. 22(3)(f) is determined not to apply

6.3 \_\_\_ s. 22(3)(f) is not dealt with in the inquiry

7.0 Application of other sections to some or part of the information withheld under s. 22(3)(f)

7.1  s. 22[fill in] is applied instead

7.2  s. 22[fill in] is applied in addition to s. 22(3)(f)

7.3  other section(s) applied

7.4  no other section applied

8.0 Argument the government uses to apply s. 22(3)(f)

8.1  The personal information pertains to a third party's finances, income, or financial history or activities

8.2  Other reason \_\_\_\_\_

9.0 Evidence the government uses to support its claims

9.1  Affidavit and submissions by information and privacy program staff

9.2  Affidavit and submissions of other government staff

9.3  No evidence

10.0 How the applicant refutes the application of s. 22(3)(f)

10.1  The personal information does not pertain to a third party's finances, income, or financial history or activities

10.2  The applicant is entitled to know this information of the third party

10.3  Other reason

10.4  The applicant does not offer an argument

10.5  The applicant is not aware of what is being withheld and why and so cannot make a valid argument

11.0 How the Commissioner makes his decision

11.1  Relies on precedent

11.2  Creates precedent

11.3  Considers affidavits of government staff

11.4  Considers affidavits of the applicant

11.5  Other reason \_\_\_\_\_

#### Coding Sheet: Exception Applied

1.0 Section: 22(3)(g) (disclosure harmful to personal privacy; the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party)

1.1  Discretionary section 1.2  Mandatory section

2.0 Records requested:

2.1  Personal health records

2.2  Personal mental health records

2.3  Personnel/labour relations records

2.4  Social service file (foster home, adoption, child-in-care, child abuse investigation)

2.5  Social service file (financial benefits)

2.6  Social service file (probation, corrections)

2.7  Student records

2.8  Records of an office that investigates complaints

2.9  Other \_\_\_\_\_

## 3.0 Public body applied s. 22(3)(g) to

- 3.1.1 \_\_\_ the personal information of the applicant
- 3.1.2 \_\_\_ the personal information of a third party
- 3.1.3 \_\_\_ both 3.1.1 and 3.1.2
- 3.1.4 \_\_\_ other

## 4.0 Timing of the public body's application of s. 22(3)(g)

- 4.1 \_\_\_ s. 22(3)(g) initially applied by the public body
- 4.2 \_\_\_ s. 22(3)(g) applied during inquiry
- 4.3 \_\_\_ s. 22(3)(g) removed during inquiry

## 5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 22(3)(g) is dealt with in the inquiry
- 5.2 \_\_\_ s. 22(3)(g) is not dealt with in the inquiry

## 6.0 Outcome

- 6.1 \_\_\_ s. 22(3)(g) is determined to apply
- 6.2 \_\_\_ s. 22(3)(g) is determined not to apply
- 6.3 \_\_\_ s. 22(3)(g) is not dealt with in the inquiry

## 7.0 Application of other sections to some or part of the information withheld under s. 22(3)(g)

- 7.1 \_\_\_ s. 22[fill in] is applied instead
- 7.2 \_\_\_ s. 22[fill in] is applied in addition to s. 22(3)(g)
- 7.3 \_\_\_ other section(s) applied
- 7.4 \_\_\_ no other section applied

## 8.0 Argument the government uses to apply s. 22(3)(g)

- 8.1 \_\_\_ The personal information consists of personal recommendations or evaluations about the third party
- 8.2 \_\_\_ The personal information consists of personnel evaluations about the third party
- 8.3 \_\_\_ Other reason \_\_\_\_\_

## 9.0 Evidence the government uses to support its claims

- 9.1 \_\_\_ Affidavit and submissions by information and privacy program staff
- 9.2 \_\_\_ Affidavit and submissions of other government staff
- 9.3 \_\_\_ No evidence

## 10.0 How the applicant refutes the application of s. 22(3)(g)

- 10.1 \_\_\_ The personal information does not pertain to personal recommendations or evaluations about a third party
- 10.2 \_\_\_ The personal information does not pertain to personnel evaluations about a third party
- 10.3 \_\_\_ The applicant is entitled to know this information of the third party
- 10.4 \_\_\_ Other reason
- 10.5 \_\_\_ The applicant does not offer an argument
- 10.6 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument

## 11.0 How the Commissioner makes his decision

- 11.1 \_\_\_ Relies on precedent
- 11.2 \_\_\_ Creates precedent

- 11.3  Considers affidavits of government staff  
 11.4  Considers affidavits of the applicant  
 11.5  Other reason \_\_\_\_\_
- 

#### Coding Sheet: Exception Applied

1.0 Section: 22(3)(h) (disclosure harmful to personal privacy; the disclosure could reasonable be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation)

1.1  Discretionary section 1.2  Mandatory section

2.0 Records requested:

- 2.1  Personal health records  
 2.2  Personal mental health records  
 2.3  Personnel/labour relations records  
 2.4  Social service file (foster home, adoption, child-in-care, child abuse investigation)  
 2.5  Social service file (financial benefits)  
 2.6  Social service file (probation, corrections)  
 2.7  Student records  
 2.8  Records of an office that investigates complaints  
 2.9  Other \_\_\_\_\_

3.0 Public body applied s. 22(3)(h) to

- 3.1.1  the personal information of the applicant  
 3.1.2  the personal information of a third party  
 3.1.3  both 3.1.1 and 3.1.2  
 3.1.4  other

4.0 Timing of the public body's application of s. 22(3)(h)

- 4.1  s. 22(3)(h) initially applied by the public body  
 4.2  s. 22(3)(h) applied during inquiry  
 4.3  s. 22(3)(h) removed during inquiry

5.0 Scope of the inquiry

- 5.1  s. 22(3)(h) is dealt with in the inquiry  
 5.2  s. 22(3)(h) is not dealt with in the inquiry

6.0 Outcome

- 6.1  s. 22(3)(h) is determined to apply  
 6.2  s. 22(3)(h) is determined not to apply  
 6.3  s. 22(3)(h) is not dealt with in the inquiry

7.0 Application of other sections to some or part of the information withheld under s. 22(3)(h)

- 7.1  s. 22[fill in] is applied instead  
 7.2  s. 22[fill in] is applied in addition to s. 22(3)(h)  
 7.3  other section(s) applied  
 7.4  no other section applied

- 8.0 Argument the government uses to apply s. 22(3)(h)
- 8.1 \_\_\_ The third party supplied, in confidence, a personal recommendation or evaluation, or character reference, about the applicant
- 8.2 \_\_\_ The third party supplied, in confidence, a personal recommendation or evaluation, or character reference, about a person other than the applicant
- 8.3 \_\_\_ The third party supplied, in confidence, a personnel evaluation about the applicant
- 8.4 \_\_\_ The third party supplied, in confidence, a personnel evaluation about a person other than the applicant
- 8.5 \_\_\_ Other reason \_\_\_\_\_
- 9.0 Evidence the government uses to support its claims
- 9.1 \_\_\_ Affidavit and submissions by information and privacy program staff
- 9.2 \_\_\_ Affidavit and submissions of other government staff
- 9.3 \_\_\_ No evidence
- 10.0 How the applicant refutes the application of s. 22(3)(h)
- 10.1 \_\_\_ The applicant is entitled to know the identity of a person who has supplied a personal recommendation or evaluation, or character reference, about him/herself
- 10.2 \_\_\_ The applicant is entitled to know the identity of a person who has supplied a personal recommendation or evaluation, or character reference, about a third party
- 10.3 \_\_\_ The applicant is entitled to know the identity of a person who has supplied a personnel evaluation about him/herself
- 10.4 \_\_\_ The applicant is entitled to know the identity of a person who has supplied a personnel evaluation about a third party
- 10.5 \_\_\_ The information was not supplied in confidence by the third party
- 10.6 \_\_\_ The information supplied by the third party is not a personal recommendation or evaluation, or character reference, about the applicant
- 10.7 \_\_\_ The information supplied by the third party is not a personal recommendation or evaluation, or character reference, about a third party
- 10.8 \_\_\_ The information supplied by the third party is not a personnel reference about the applicant
- 10.9 \_\_\_ The information supplied by the third party is not a personnel reference about a third party
- 10.10 \_\_\_ Other reason
- 10.11 \_\_\_ The applicant does not offer an argument
- 10.12 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument
- 11.0 How the Commissioner makes his decision
- 11.1 \_\_\_ Relies on precedent
- 11.2 \_\_\_ Creates precedent
- 11.3 \_\_\_ Considers affidavits of government staff
- 11.4 \_\_\_ Considers affidavits of the applicant
- 11.5 \_\_\_ Other reason \_\_\_\_\_

#### Coding Sheet: Exception Applied

1.0 Section: 22(4)(e) (disclosure harmful to personal privacy; the disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, functions or remuneration as an officer, employee or member

of a public body or as a member of a minister's staff)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

- 2.1 \_\_\_ Personal health records
- 2.2 \_\_\_ Personal mental health records
- 2.3 \_\_\_ Personnel/labour relations records
- 2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)
- 2.5 \_\_\_ Social service file (financial benefits)
- 2.6 \_\_\_ Social service file (probation, corrections)
- 2.7 \_\_\_ Student records
- 2.8 \_\_\_ Records of an office that investigates complaints
- 2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(4)(e) to

- 3.1 \_\_\_ the personal information of a third party
- 3.2 \_\_\_ other

4.0 Timing of the public body's application of s. 22(4)(e)

- 4.1 \_\_\_ s. 22(4)(e) initially applied by the public body
- 4.2 \_\_\_ s. 22(4)(e) applied during inquiry
- 4.3 \_\_\_ s. 22(4)(e) removed during inquiry

5.0 Scope of the inquiry

- 5.1 \_\_\_ s. 22(4)(e) is dealt with in the inquiry
- 5.2 \_\_\_ s. 22(4)(e) is not dealt with in the inquiry

6.0 Outcome

- 6.1 \_\_\_ s. 22(4)(e) is determined to apply
- 6.2 \_\_\_ s. 22(4)(e) is determined not to apply
- 6.3 \_\_\_ s. 22(4)(e) is not dealt with in the inquiry

7.0 Application of other sections to some or part of the information withheld under s. 22(4)(e)

- 7.1 \_\_\_ s. 22[fill in] is applied instead
- 7.2 \_\_\_ s. 22[fill in] is applied in addition to s. 22(4)(e)
- 7.3 \_\_\_ other section(s) applied
- 7.4 \_\_\_ no other section applied

8.0 Argument the government uses to not apply s. 22(4)(e)

- 8.1 \_\_\_ The personal information does not pertain to the third party's position, functions or remuneration as an officer, employee or member of a public body
- 8.2 \_\_\_ Other reason

9.0 Evidence the government uses to support its claims

- 9.1 \_\_\_ Affidavit and submissions by information and privacy program staff
- 9.2 \_\_\_ Affidavit and submissions of other government staff
- 9.3 \_\_\_ No evidence

10.0 How the applicant refutes the application of s. 22(4)(e)

- 10.1 \_\_\_ The personal information pertains to the third party's position, functions or

remuneration as an officer, employee or member of a public body

10.2 \_\_\_ The applicant is entitled to know this information of the third party

10.3 \_\_\_ Other reason

10.4 \_\_\_ The applicant does not offer an argument

10.5 \_\_\_ The applicant is not aware of what is being withheld and why and so cannot make a valid argument

11.0 How the Commissioner makes his decision

11.1 \_\_\_ Relies on precedent

11.2 \_\_\_ Creates precedent

11.3 \_\_\_ Considers affidavits of government staff

11.4 \_\_\_ Considers affidavits of the applicant

11.5 \_\_\_ Other reason \_\_\_\_\_

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#### Coding Sheet: Exception Applied

1.0 Section: 22(5) (disclosure harmful to personal privacy; on refusing to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identify of a third party who supplied the personal information)

1.1 \_\_\_ Discretionary section 1.2 \_\_\_ Mandatory section

2.0 Records requested:

2.1 \_\_\_ Personal health records

2.2 \_\_\_ Personal mental health records

2.3 \_\_\_ Personnel/labour relations records

2.4 \_\_\_ Social service file (foster home, adoption, child-in-care, child abuse investigation)

2.5 \_\_\_ Social service file (financial benefits)

2.6 \_\_\_ Social service file (probation, corrections)

2.7 \_\_\_ Student records

2.8 \_\_\_ Records of an office that investigates complaints

2.9 \_\_\_ Other \_\_\_\_\_

3.0 Public body applied s. 22(5) to

3.1.1 \_\_\_ the personal information of the applicant

3.1.2 \_\_\_ the personal information of a third party

3.1.3 \_\_\_ both 3.1.1 and 3.1.2

3.1.4 \_\_\_ other

4.0 Timing of the public body's application of s. 22(5)

4.1 \_\_\_ s. 22(5) initially applied by the public body

4.2 \_\_\_ s. 22(5) applied during inquiry

4.3 \_\_\_ s. 22(5) removed during inquiry

5.0 Scope of the inquiry

5.1 \_\_\_ s. 22(5) is dealt with in the inquiry

5.2 \_\_\_ s. 22(5) is not dealt with in the inquiry

## 6.0 Outcome

- 6.1  s. 22(5) is determined to apply
- 6.2  s. 22(5) is determined not to apply
- 6.3  s. 22(5) is not dealt with in the inquiry

## 7.0 Application of other sections to some or part of the information withheld under s. 22(5)

- 7.1  s. 22[fill in] is applied instead
- 7.2  s. 22[fill in] is applied in addition to s. 22(5)
- 7.3  other section(s) applied
- 7.4  no other section applied

## 8.0 Argument the government uses to not apply s. 22(5)

- 8.1  The personal information about the applicant was not supplied in confidence
- 8.2  The summary cannot be prepared without disclosing the identify of a third party who supplied the personal information)
- 8.3  The personal information of the third party is intertwined with the personal information of the applicant
- 8.4  Other reason

## 9.0 Evidence the government uses to support its claims

- 9.1  Affidavit and submissions by information and privacy program staff
- 9.2  Affidavit and submissions of other government staff
- 9.3  No evidence

## 10.0 How the applicant refutes the application of s. 22(5)

- 10.1  The summary can be prepared without disclosing the identify of a third party who supplied the personal information
- 10.2  The personal information of the third party is not intertwined with the personal information of the applicant
- 10.3  The applicant is entitled to his/her personal information
- 10.4  Other reason
- 10.5  The applicant does not offer an argument
- 10.6  The applicant is not aware of what is being withheld and why and so cannot make a valid argument

## 11.0 How the Commissioner makes his decision

- 11.1  Relies on precedent
  - 11.2  Creates precedent
  - 11.3  Considers affidavits of government staff
  - 11.4  Considers affidavits of the applicant
  - 11.5  Other reason \_\_\_\_\_
-

## Appendix H

## Grounds for Review, Exceptions Examined and Applied, and Date of Public Body's Receipt of and Response to Requests for Selected Orders from 1999-2003

Record Type	Grounds for Review	Exceptions Examined	Exceptions Applied by the Commissioner	Commissioner Decision	Date of Receipt and Response
1. Client Records					
Ministry of Attorney General: 00-02	Partial access	15(1)(g), 16(1)(a)(ii), 16(1)(b),  16(2)(a), 19(1)(a), 22(1), 22(5); 15, 19(1)(a), 22(a), (c), (e), (f), (3)(b)	15(1)(g), 19(1)(a), 22(2)(a), (c), (e), (f) and 3(b)	Upheld	Rec: Mar3/99 Resp: Apr9/99 Late response Days to respond: 37
Ministry for Children and Families: 00-03	Partial access; Custody or control of record	s. 22 and s. 4, s. 77 of the <i>Child, Family and Community Service Act</i> ; 22(c), (e), (3)(a), (b)	22(2)(c), (e), (3)(a), (b)	Upheld	Date received and date of response not noted in order
Ministry for Children and Families: 00-43	Whether the Commissioner has jurisdiction over issue related to search: records omitted from the response	s. 6(1); s. 89(1) of <i>CFCSA</i>	s. 6(1) does not apply; s. 89(1) duties met	Upheld	Rec: Jan7/99 Resp: Jul6/99 Late response Days to respond: 183
Ministry for Children and Families: 02-59	Partial access; failure to make an additional disclosure of records	s. 75(a), 76(2)(a), 77(1)(a) and (b), (2)(a) and (c) and 89(1) of <i>CFCSA</i> ; s. 22(2)(2)(e), (f), (3)(b)	MCF must provide the applicant with a copy of the records, subject to severing as per <i>CFCSA</i> ; S. 77(1)(a) and (b),	Split Decision: Confirm ministry's decision to sever personal information; however, orders the ministry to	Rec: Jul/01 Resp: Dec13/01 Late response Days to respond: 165

			(2)(a) and (c) of CFCSA; s. 22(2)(e), (f), (3)(b)	disclose a copy of the requested records, subject to appropriate severing	
Ministry for Children and Families: 03-01	Records omitted from the response	s. 89(1); 22(3)(c), (d)	Reasonable effort made concerning s. 89(1); 22(3)(c), (d)	Upheld	Rec: Jul 10/01 Resp: Jan31/02 Late response Days to respond: 205
Ministry of Human Resources: 02-10	Partial access	s. 19(1)(a), 22(1)	s. 19(1)(a), 22(1)	Upheld	Rec: Sep1/00 Resp: Feb13/01 Late response Days to respond: 165
Ministry of Social Development and Economic Security: 00-44	Partial access	s. 19(1)(a), 22(2) (c), (e), (f), (g) (h), 3(d), (g)	22(2)(c), (f), (3)(d)	Split Decision: some information withheld under s. 22 must be disclosed	Rec: Oct31/99 Resp: Mar2/00 Late response Days to respond: 123
Vancouver Community Mental Health Services: 00-28	Partial access	s. 19(1)(a)	19(1)(a)	Upheld	Rec: Jan17/00 Resp: Jan28/00 Days to respond: 11
Okanagan Similkameen Health Region and Penticton Regional Hospital: 01-29	Partial access (both requests); duty to assist (adequacy of search) (PRH)	OSHR: s. 19(1)(a) and (2), 22(1); PRH: 19(1)(a); 19(2); 6(1)	OSHR and PRH: 19(1)(a); PRH must undertake a search to comply with 6(1), and respond to applicant in	Split Decision 19(2) does not apply; some information withheld by both OSHR and PRH under s. 19(1)(a) but	Rec: May23/00 Resp: Jun7 and 20/00 Days to respond: 15

			accordance with 8(1)	some ordered disclosed; PRH must conduct a search	
Fraser Health Authority: 02-32	Denied access	s. 19(2); 3 and 4	s. 19(2) does not apply; the public body must review the records for s. 22 and disclose the information that can be released to the applicant	Overtured	Rec: Aug/01 Resp: Oct18/01 Late response Days to respond: 78
Vancouver Coastal Health Authority: 02-49	Custody or control of records	s. 3 and 4	Records are not in the custody or control of the public body	Upheld	Rec: Oct22/01 Resp: Feb20/02 Late response Days to respond: 121
Cariboo Community Health Services Society: 02-60	Partial access; duty to assist (adequacy of search)	s. 6(1), 19(1)(a), 22(2)(a), (e), (3)(c), (d), (g)	s. 22(2)(e), (3)(c), (d), (g); Duty to assist met	Upheld	Rec: Dec15/00 Resp: Jun/01 Late response Days to respond: 168
BC Housing Management: 02-39	Duty to assist (adequacy of search)	s. 6(1)	Duty to assist met	Upheld	Rec: Dec5/01 Resp: Jan2/02 Days to respond: 28
II. Student Records					
University of British Columbia: 327-1999*  *Same applicant as	Partial access; duty to assist (adequacy of search and respond without delay)	s. 6(1), 13, 14, 22(3)(c), (d), (f), (g)	Duty to assist met; s. 13, 14, 22(3) (c), (d), (f), (g), 22(5)	Split Decision One word severed under s. 13 and information on two other pages severed	Six requests between Feb3/98 and Aug12/98 Several responses from Mar to

01-42 Ombudsman of BC; 01-43 UBC; 01-44 UBC; 01-45 UBC)				under this section must be disclosed, and a summary must be prepared under s. 22(5)	Aug/98 Possible late response to Feb 3/98 request Days to respond: 26 to 56 days for Mar/98 response
Ombudsman of BC 01-42*	Scope of act; Denied access	s. 3(1)	s. 3(1)	Upheld	Rec: Mar1/01 Resp: Mar 14/01 Days to respond: 13 days
University of British Columbia: 01- 43*	Scope of act; Denied access	s. 3(1)	s. 3(1)	Upheld	Rec: Feb 26/01 Resp: Apr 5/01 Late respond Days to respond: 38
University of British Columbia: 01- 44*	Duty to assist (adequacy of search)	s. 6(1)	s. 6(1) duties met	Upheld (x2)	Two requests: Rec: May 15 Resp: Jun 20/00 Late response Days to respond: 36 Rec: Nov 2/00 Resp: Dec 1/00 Days to respond: 29
University of British Columbia: 01- 45*	Duty to assist (adequacy of search for five requests)	s. 6(1)	s. 6(1) duties met	Upheld (x 5)	Five requests rec Feb 3/01, Feb 9/01, Feb 26/01; Feb 26/01,

					<p>and May 8/01</p> <p>Resp: Mar 22/01 (to Feb 3 and Feb 9) Late response to both requests Days to respond: 47</p> <p>Resp: Apr 6/01 (to Feb 26 and Feb 26) Late response Days to respond: 39 to both requests</p> <p>Resp: Jun 4/01 (to May 8) Days to respond: 27</p>
University of British Columbia: 00-04	Duty to assist (records not responsive to request)	s. 6(1)	s. 6(1) duties met	Upheld	<p>Rec: Jun 29/99</p> <p>Resp: Jul 9/99</p> <p>Days to respond: 10</p>
University of British Columbia: 00-51	Duty to assist (adequacy of search)	s. 6(1)	UBC fulfilled its duty to assist but must search for one record	Split Decision UBC required to conduct another search and to annotate the applicant's personal information	<p>Rec: Aug 5/99</p> <p>Resp: Aug 30/99</p> <p>Days to respond: 25</p>
University of British Columbia: 01-30	Partial access	s. 19(1) and 22(1)	19(1)(a), 22(2)(f), (3)(d); (3)(g) not apply	Split Decision UBC must give the applicant access to	<p>Rec: Nov 8/99</p> <p>Resp: Feb 21/00</p> <p>Late</p>

				information withheld under s. 19 and her own personal information that it withheld, but third party personal information was correctly withheld under s. 22	response Days to respond: 105
University of British Columbia: 03-37	Partial access; scope of the act; duty to assist (adequacy of search, combining of requests, interpretation of request); scope of act	s. 3, 6, 13, 14, 22	s. 14, 22(2)(c), (f), (3)(a), (d), (h); (3) (f) not s. 6(1) duties not initially met	Split Decision Some information withheld under s. 13 and 22 must be disclosed; s. 3 and 14 applied correctly.	Rec: Nov 23/01 Two Resp: Jan 23/02 and Apr 12/02 Late response Days to respond: 61 days (Jan 23/02 response)  Two requests rec: Jul 1 and 2/02 Resp: Oct 29/02 Late response Days to respond: 120 to Jul 1/02 request
Simon Fraser University: 01-16	Refused to process request: request for same records as applicant's previous request, which was settled in mediation	Issue of whether the Commissioner can order a public body to not process an access request in certain circumstances.	SFU does not have to process second request.	Upheld	Rec: Mar 3/00 Resp: Mar 31/00 Days to respond: 28

University of Victoria: 03-08	Partial access; duty to assist (adequacy of search)	s. 6, 13, 14, 15, 19, 22	13, 14, 19(1)(a), 22(c), (e), (f); s. 6(1) duties met	Upheld	No dates given
School District #39 (Vancouver): 03-34	Partial access	s. 21 and 22	22(2)(c), (f), (3)(d), 22(5); 22(2)(e) not apply	Upheld School District applied s. 22 correctly but must prepare a summary under s. 22(5)	Rec: May /02 Resp: June/02 and another response between June and Sep /02 Late response Days to respond: 31 to 60 for June/02 reply
III. Personnel Records					
Ministry of Attorney General: 00-07	Partial access	s. 13, 14, 15, 22	s. 14, 22(2)(c), (e), (f)	Split Decision Commissioner confirmed the ministry's application of s. 14 and 22 but the ministry was not authorized to withhold information under s. 17  -workplace harassment	Two requests rec: Oct 26/98 and Dec 11/98 Resp: Jan 8/99  Late response to second request Days to respond: 74 days for Oct 26/98 request; 28 to Dec 11/98 request
Ministry of Attorney General: 01-49	Duty to assist (adequacy of search)	s. 6(1)	s. 6(1) duties met	Upheld  -job competition Issue was	Date received and date of response not noted in

				adequacy of search (6(1)). Commissioner found that the ministry conducted a proper search. Commissioner noted that the applicant seemed concerned about adequacy of search for the previous request, but again public body's response adequate.	order Applicant raises issue of failure to meet 30-day legislated timeline for this and two other requests
Ministry of Public Safety and Solicitor General: 02-21***same ap.	Partial access	s. 13, 15, 17, 22; consider 22(2)(c), (e), (f), (g), (3)(d), (5)	22(2)(c), (f), 22(3)(d), 22(5)	Upheld Ministry must prepare a summary under s. 22(5) *Applicant is the same for 02-21 and 03-13; has made a complaint about abuse of managerial authority	Two requests received sometime in 1999 and responded to in July 1999 Days to respond: between 1 and 211 days
Ministry of Public Safety and Solicitor General: 03-13*** same ap.	Partial access; right of access (s. 4) and record can reasonably be reproduced (s. 9)	s. 4, 9, 22	s. 22(2)(c) and (f); (2)(e) not apply; (3)(d), 4(2); 9(2)	Split Decision Ministry required to withhold information under s. 22 but did not meet its duties under 4(2) to sever copies of the interview tapes, and	Rec: Sep /01 Resp: Dec/01 and Jan/02 Late response Days to respond: 91 to 121 for Dec/01 reply

				9(2), to provide the applicant with copies of interview tapes; ordered to provide all eight tapes, severed consistent with transcripts *applicant from 02-21 is wanting own records	
Ministry of Public Safety and Solicitor General: 03-27	Partial access; duty to assist (adequacy of search)	s. 6(1), 13, 15, 17, 19, 22	s. 13, 22(2)(c), (f), (3)(d); s. 6(1) duties not met initially	Upheld -s. 6 duty eventually met, and s. 13(1) and 22 applied properly information -15, 19 and 22 applied to two taped interviews it found during mediation but applicant did not request a review of this decision -adequacy of search addressed but not applicant's complaint about the delay in the ministry's response (note in his request for review and initial submission but not listed in the Notice	Rec: May/01 Resp: Jan/02 Late response Days to respond: between 215 and 274

				of Inquiry or in the Portfolio Officer's Fact Report) -ministry did not perform adequate search at first but then made additional efforts so fulfilled its section 6(1) duty to assist	
Ministry of Public Safety and Solicitor General: 03-40	Partial access; duty to assist (adequacy of search)	s. 6(1), 22	22(2)(e), (f), (3)(d); s. 6(1) duties met	Upheld	Two requests Rec: May 12/00 Resp: Jun 16/00 and Aug 24/00 Late response Days to respond: 35 for Jun16/00 reply  Req: May 24/02 (narrowed request) Resp: Jan 29/03 (narrowed request) Late response Days to respond: 250
Ministry for Children and Families: 02-25	Partial access; duty to assist (adequacy of search, restore deleted	s. 6(1), 13(1) and 22	s. 6(1) duties met, 22(3)(d)	Upheld	Req: Jan 15/01 Resp: Jun/01 Late

	emails)				response Days to respond: 167
Ministry for Children and Families: 02- 52	Duty to assist (adequacy of search and completeness of response)	s. 6(1) and 22 (not at issue)	s. 6(1) – duty to assist met, although initially failed with respect to one set of records	Upheld s. 6(1) – duty to assist met (although Commissioner chastises ministry for several things and ministry deliberately asks for fact report to not address withholding of records, which makes the outcome in the ministry’s favour as this was an issue) s. 22 applied to some records but not at issue here, for whatever reason	Rec: Jul 31/00 by Ministry of Attorney General  Transferred to MCF Aug 3/00  Letter of clarification : Sep 27/00  Resp: May 30/01 and Sep 14/01  Late response Days to respond: 300
Ministry of Social Development and Economic Security: 01- 07	Partial access	s. 22 (could be s. 6)	s. 22(2)(c), (f), (3)(d); not 22(2)(e) and (h), (3)(g) and (h)	Upheld	Rec: Aug28/98 Resp: May 18/99 Late response Days to respond: 263
Vancouver Police Department: 03-06	Partial access; whether s. 66.1 of the <i>Police Act</i> applies to the records and <i>FOIPPA</i> does not apply	s. 66.1 of the <i>Police Act</i> , s. 22	s. 66.1 applies to records “arising out of or otherwise related to a conduct complaint”; s. 22(1) applies to	Upheld Information to which the <i>Police Act</i> does not apply is excepted from disclosure under s. 22	Rec: Jan 15/01 Resp: June 20/01 Late response Days to respond: 156

			some of the information in the pre-complaint records	Workplace harassment	
School District #84 (Vancouver Island West): 01-53	Denied access	s. 14, 22	22(2)(c) and (f), (3)(d) (4)(e), (5)	Split Decision s. 14 does not apply at all and s. 22 applies to only some of the information; a summary must be prepared under s. 22(5)	No dates provided
School District #44 (North Vancouver): 01-54	Denied access	s. 22(1); s 19 could also have worked, says C.	22(2)(c) and (f)	Upheld	Rec: Aug /00 Resp: Nov/00 Late response Days to respond: 62
School District #44 (North Vancouver): 03-29	Partial access; duty to assist (s. 6), time limit for responding (s. 7); not extending the time limit (s. 10)	s. 6(1), s. 7, 10, 22	22(2)(c) and (f); duties under s. 7 and 10 not met; s. 6(1) not initially met	Upheld	Rec: Jul 25/01 Resp: Dec 3/01 4 mos late (although "considerable communication between the applicant and public body") Late response Days to respond: 131
University of Victoria: 01-10	Partial access; scope of the act; duty to assist (adequacy of search,	s. 3(1), 6(1), 13, 14, 22, and 25	s. 22(1); s. 6(1) duties	Upheld	Rec: Nov 1/99 Four disclosures of records: Nov 30/99;

	records destroyed and one record missing, conflict of interest)				Dec 22/99; Jan 6/00; and Jan 26/00 Days to respond: 29 days for Nov 30/99 reply
Simon Fraser University: 00-06	Partial access	s. 14, 22	s. 14 and 22	Split Decision S. 22 was found to be properly applied but s. 14 only applies to some of the records that were withheld	Rec: May25/98 request narrowed over several months and series of disclosures, starting Jan 28 /99 Late response Days to respond: 248
Malaspina University-College: 00-47	Denied access; issue of whether, by signing a contract, one's rights under FOIPPA can be waived	s. 14 (applied to all of the records)	s. 14 and 22(1)	Split Decision Some information withheld under s. 14 must be disclosed; s. 22 applies to third party information	Rec: Nov16/99 Resp: Nov26/99 and Feb16/00 Days to respond: 10
British Columbia Institute of Technology 00-31	Denied access; information rights (s. 4); duty to assist (s. 6); time limit for responding (s. 7); contents of response (s. 8), extending the time limit for responding (s.	s. 4(2), 6(1), 7, 8, 13, 15, 17, 22	s. 4(2), 6(1), 7, 8, 10 duties not met; s. 22(1)	Overtaken BCIT must make additional searches and is not authorized to withhold information under s. 13, 15 and 17	Req: Oct 8/98  Applicant requested a review Jul 16/99  Resp: Feb 10/00 Late response Days to respond:

	10)				490
IV. Requests and Complaints by the Public					
BC Human Rights Commission: 03-18	Duty to assist (adequacy of search); whether the Commissioner has jurisdiction to proceed with the inquiry	s. 6(1)	s. 6(1) duties met; applicant's rights under <i>FOIPPA</i> are temporarily suspended until a complaint has been referred to a tribunal, dismissed, resolved, or withdrawn	Upheld	Rec: Feb 5/01 Resp: June 15/01  Late response Days to respond: 130
Public Guardian and Trustee: 03-12	Partial access	s. 22(2)(f)	22(2)(f), (3)(a), (5)	Upheld Ministry ordered to prepare a summary as per s. 22(5)	Rec: Jan 15/02 Resp: Feb 15/02 Late response Days to respond: 31
Public Guardian and Trustee: 03-44	Partial access, duty to assist (adequacy of search); scope of the act	s. 3(1), 6(1), 22; s. 46(2) and 62(4) of the <i>Adult Guardianship Act</i>	s. 3(1), 22(2)(f), s. 6(1) duties met	Upheld	Rec: Aug 28/02 Resp: Nov 1/02 Late response Days to respond: 65
Vancouver Island Health Authority: 03-43	Partial access; duty to assist (adequacy of search)	s. 6(1), 22; s. 46(2) of the <i>AGA</i>	22(2)(a) and (f); s. 6(1) duties met	Upheld	Two requests Rec: Aug28/02 Resp: Nov4/02 Late response Days to respond: 68  Rec: Nov

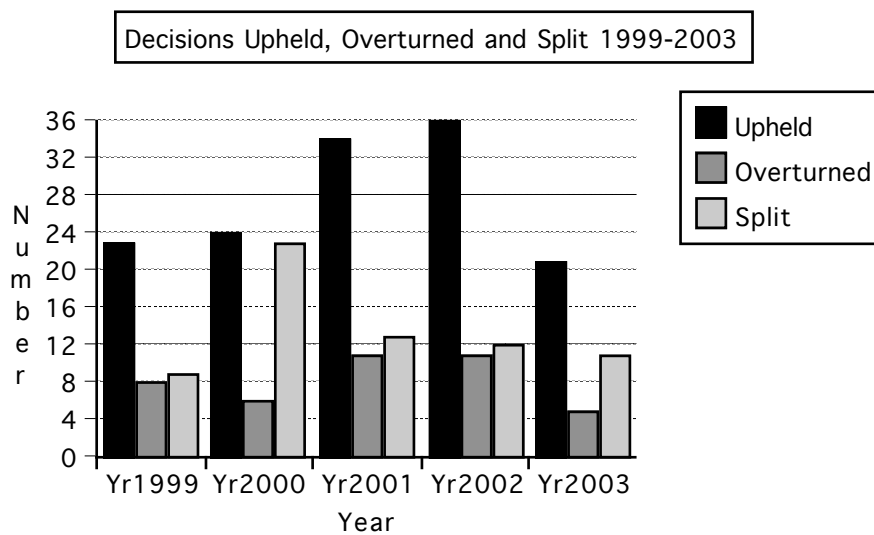
					6/02 Resp: Dec 5 and 23/02 Days to respond: 29 for Dec 5/02 reply
Vancouver Police Department: 00-35	Duty to assist (adequacy of search)	s. 6(1)	s. 6(1) duties met	Upheld	Rec: Jan 12/00 Resp: Jan 13/00 Days to respond: 1
Vancouver Police Department: 01-34	Duty to assist (disclosure of records)-could be retention	s. 6(1)	s. 6(1) duties met	Upheld	Rec: July/00 Resp: no details
Vancouver Police Board: 331-1999	Partial access; scope of act	s. 3, 12, 14, 15, 16, 22	s. 14	Split Decision s. 3, 12, 15, 16 and 22 do not apply at all s. 14 only applies to some of the records; public body must conduct another search	Rec: Oct 22/98 Resp: Nov 17/98 Days to respond: 26
Vancouver Police Board: 00-46	Duty to assist (adequacy of search)	s. 6(1)	s. 6(1) duties met	Upheld	Rec: Feb 15/00 Resp: Apr 17/00 Late response Days to respond: 62
Office of the Police Complaint Commissioner: 00-05	Denied access	s. 3(1)	OPCC should have replied that it had no responsive records under its custody or control.	Upheld	Two requests: Jul 17 and Sep 3/99 Two responses: no dates given
City of Vancouver: 01-05	Duty to assist (adequacy of search)	s. 6(1)	s. 6(1) duties met	Upheld	Rec: Apr 6/00 Resp: Apr 17/00

					Days to respond: 11
Ministry of Attorney General: 01-08	Partial access	s. 15(2)(b), 19(1)(a) and 22(1)	s. 19(1)(a) and 22(1)	Split Decision Information withheld under s. 15(2)(b) and 19(1)(a) ordered disclosed, as well as some information withheld under 22(1)	Rec: Nov 22/99 Resp: Dec 16/99 Days to respond: 24

## Appendix I

Figure 9

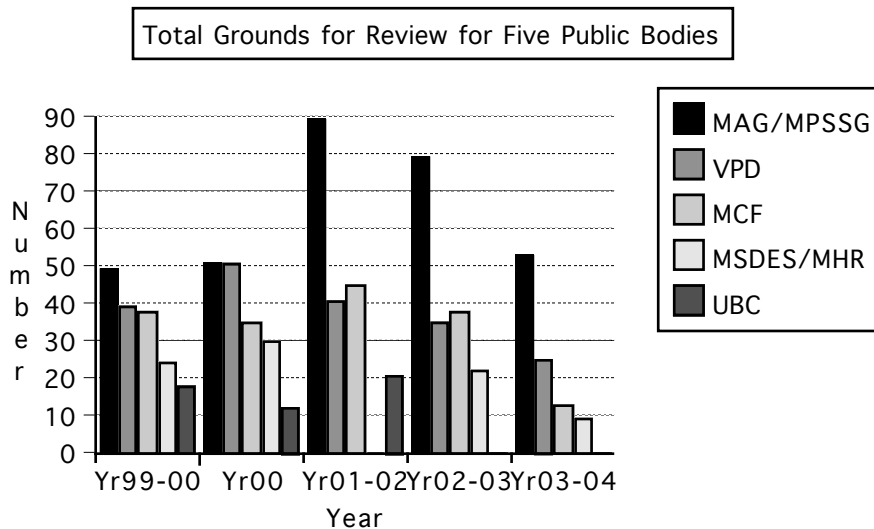
## Decisions Upheld, Overturned and Split 1999-2003



Source: Annual reports of the Office of the Information and Privacy Commissioner (1998-1999; 1999-2000; 2000; 2001-2002; 2002-2003; 2003-2004).

Appendix J  
Figure 10

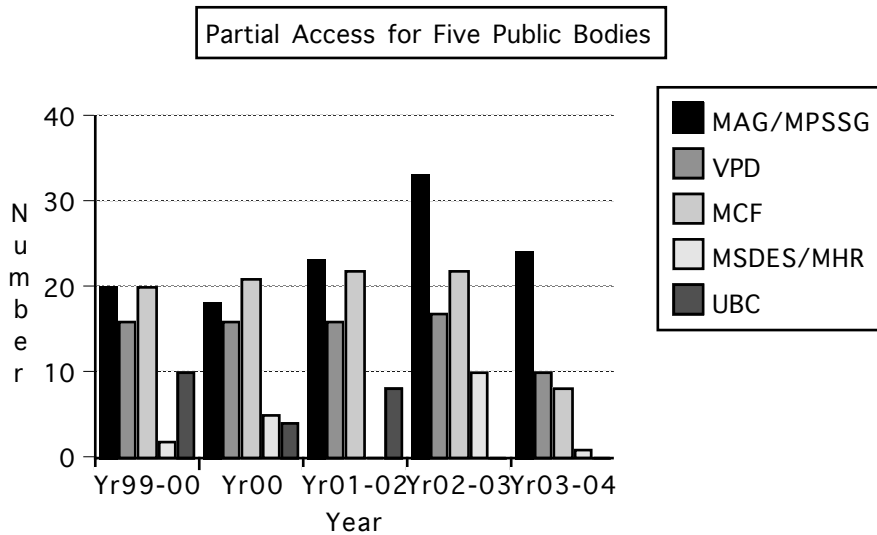
Total Grounds for Review for Five Public Bodies 1999-2003



Source: Annual reports of the Office of the Information and Privacy Commissioner (1998-1999; 1999-2000; 2000; 2001-2002; 2002-2003; 2003-2004)

Appendix K

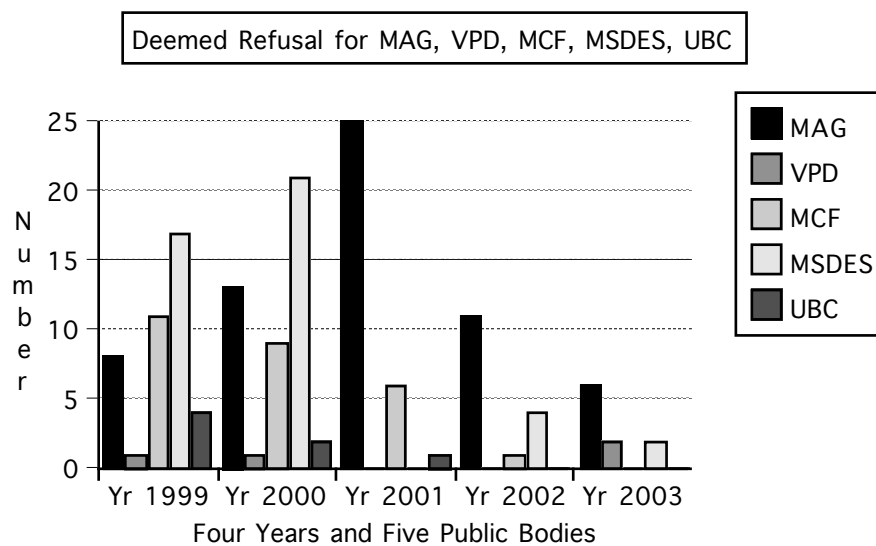
Partial Access for Five Public Bodies 1999-2003



Source: Annual reports of the Office of the Information and Privacy Commissioner (1998-1999; 1999-2000; 2000; 2001-2002; 2002-2003; 2003-2004)

## Appendix L

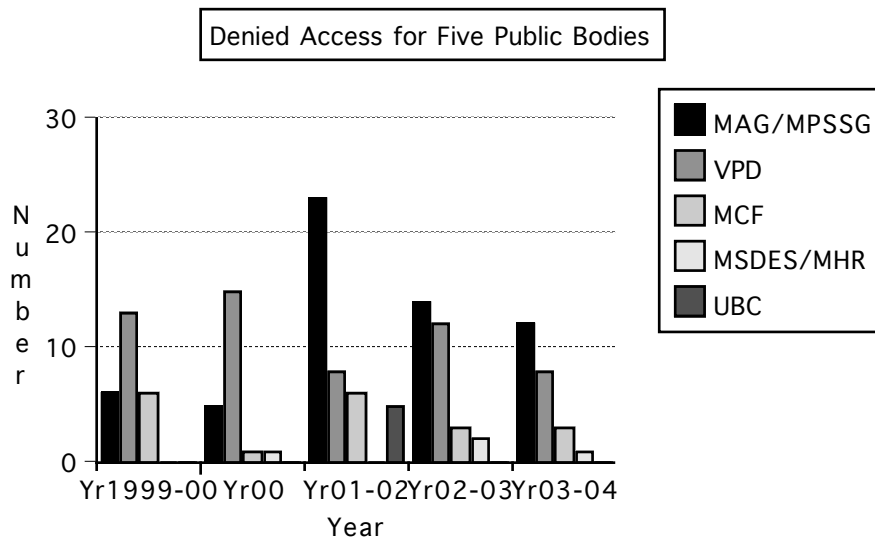
## Deemed Refusal for Five Public Bodies 1999-2003



Source: Annual reports of the Office of the Information and Privacy Commissioner (1998-1999; 1999-2000; 2000; 2001-2002; 2002-2003; 2003-2004)

Appendix M

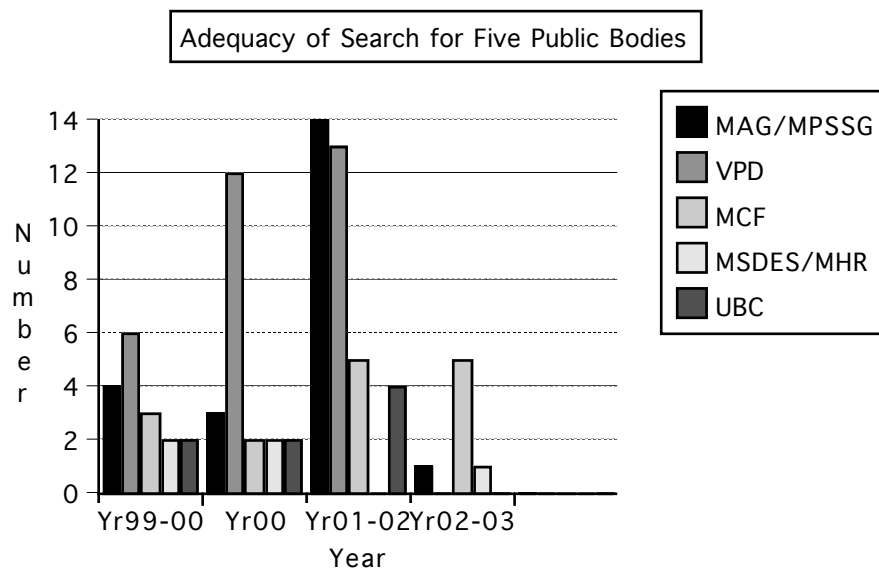
Denied Access for Five Public Bodies 1999-2003



Source: Annual reports of the Office of the Information and Privacy Commissioner (1998-1999; 1999-2000; 2000; 2001-2002; 2002-2003; 2003-2004)

## Appendix N

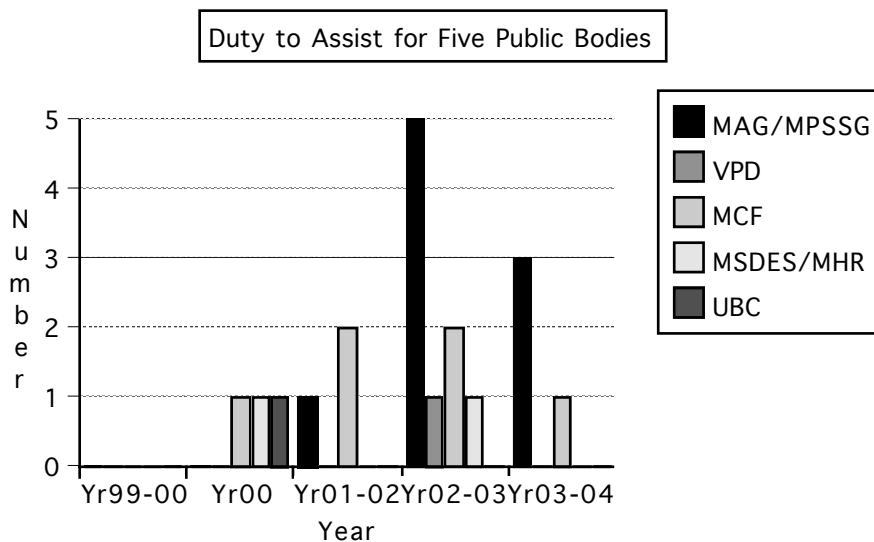
## Adequacy of Search for Five Public Bodies 1999-2003



Source: Annual reports of the Office of the Information and Privacy Commissioner (1998-1999; 1999-2000; 2000; 2001-2002; 2002-2003; 2003-2004)

Appendix O

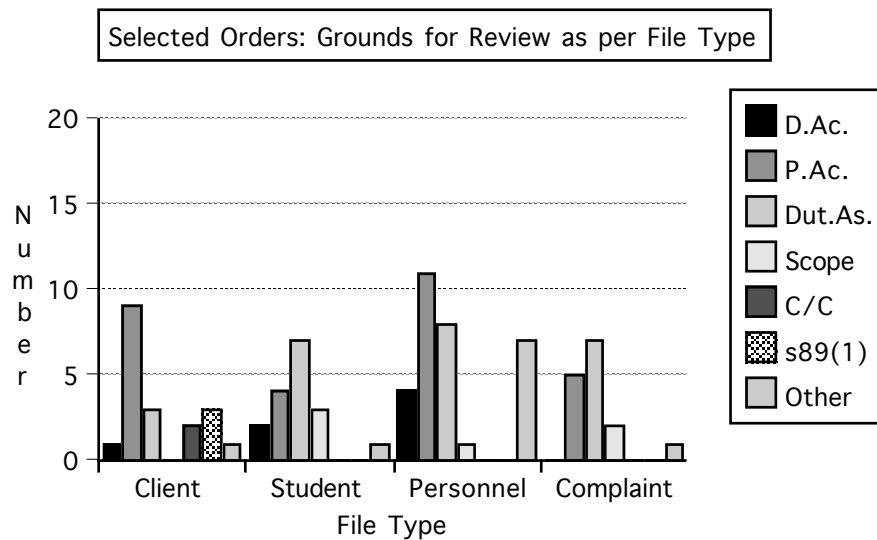
Duty to Assist for Five Public Bodies 1999-2003



Source: Annual reports of the Office of the Information and Privacy Commissioner (1998-1999; 1999-2000; 2000; 2001-2002; 2002-2003; 2003-2004)

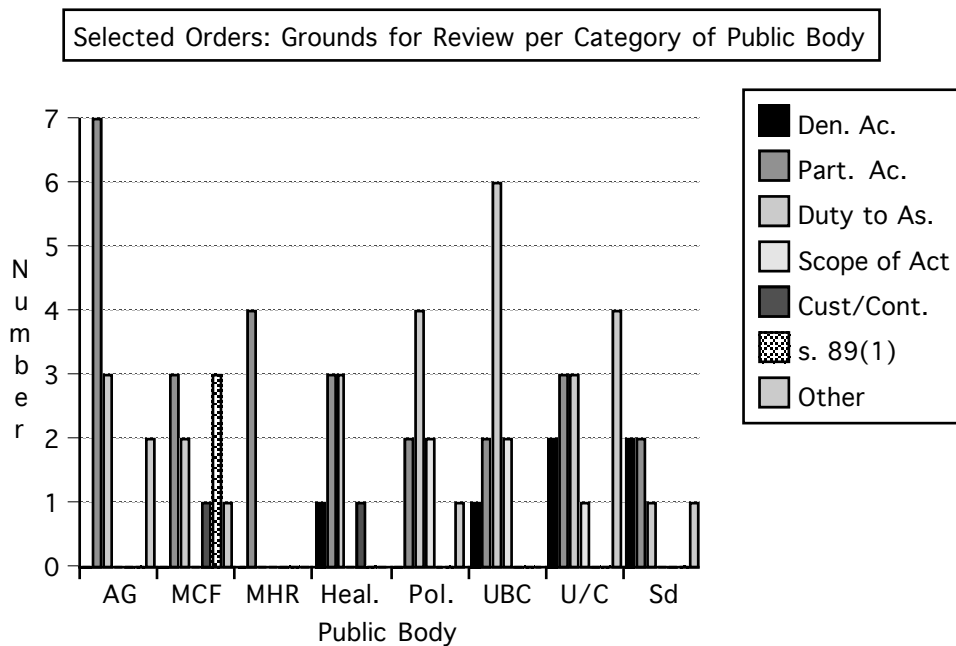
Appendix P

Figure 16  
 Grounds for Review as per Order Type



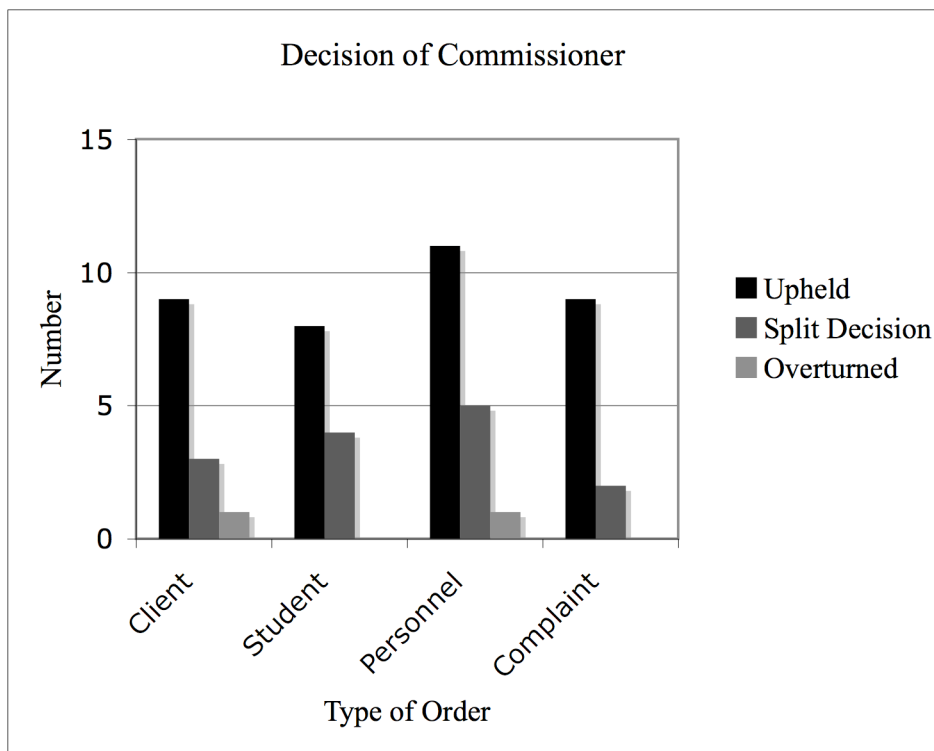
Appendix Q

Figure 17  
 Grounds for Review per Category of Public Body



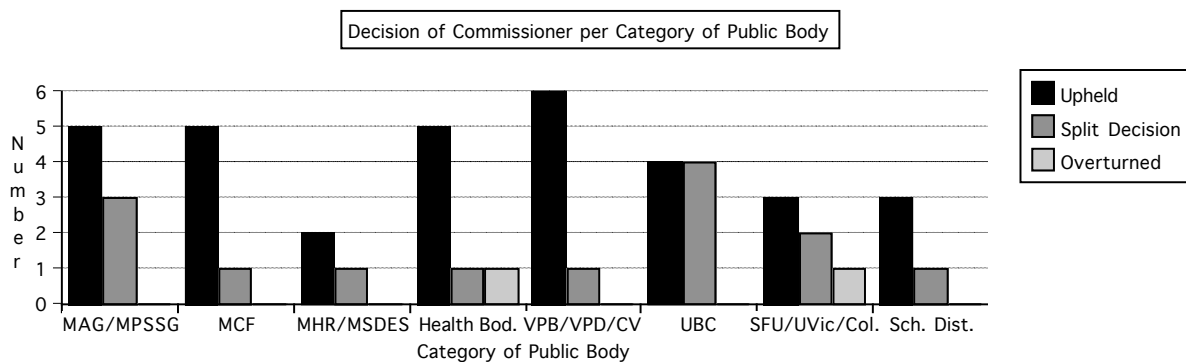
Appendix R  
Figure 18

Decision of Commissioner per Order Type



Appendix S  
Figure 19

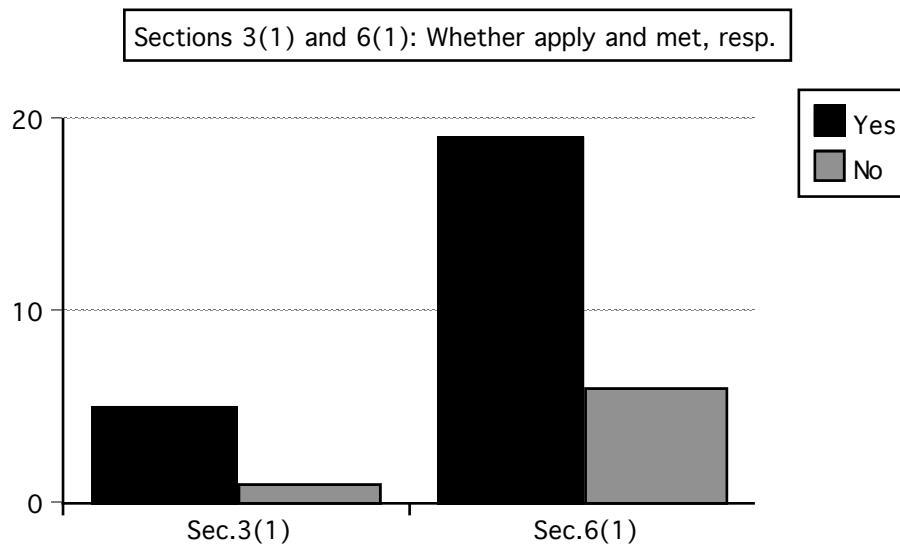
Decision of Commissioner per Category of Public Body



Appendix T

Figure 20

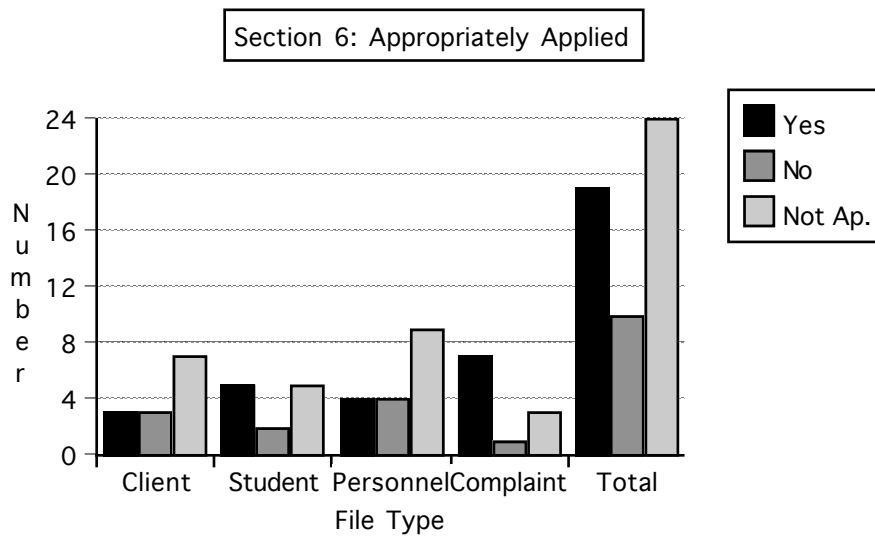
Sections 3(1) and 6(1):  
Whether the public body met its responsibilities



Appendix U

Figure 21

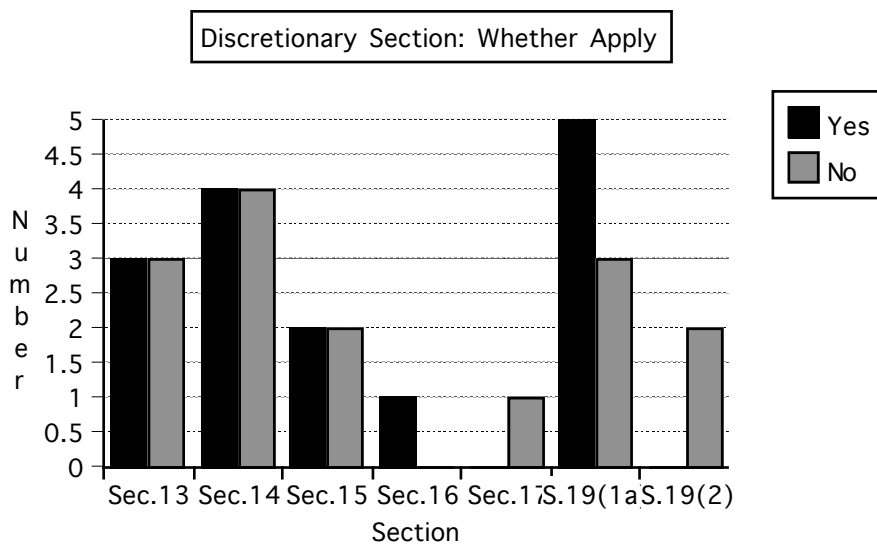
Section 6: Appropriately Applied



Appendix V

Figure 22

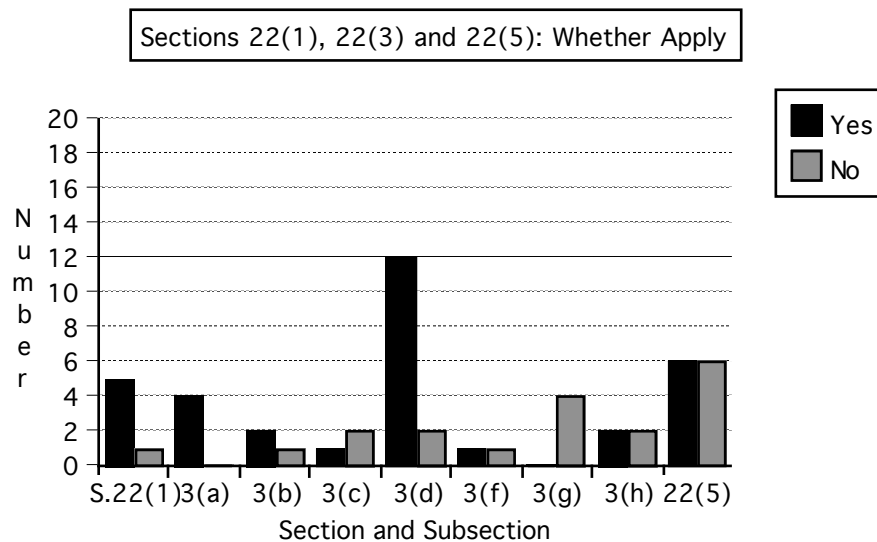
Discretionary Sections



Appendix W

Figure 23

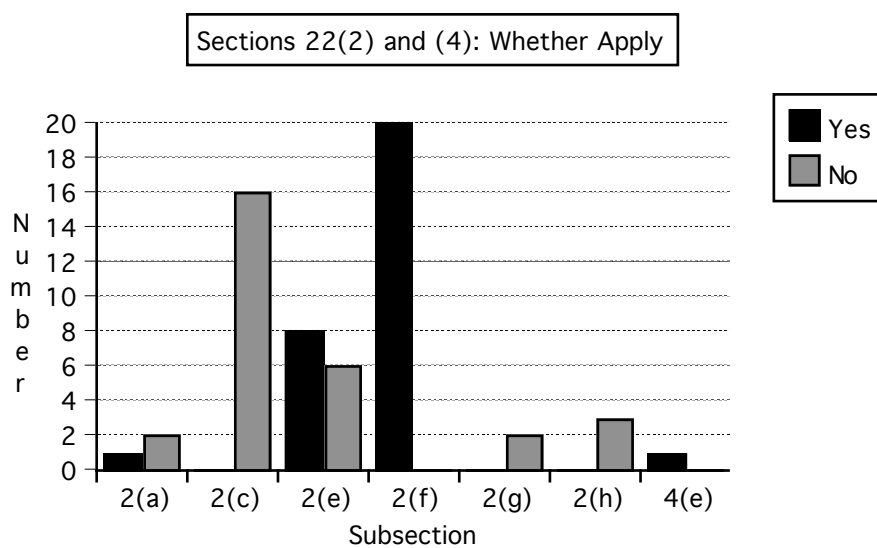
Mandatory Exceptions: 22(1), 22(3), and 22(5)



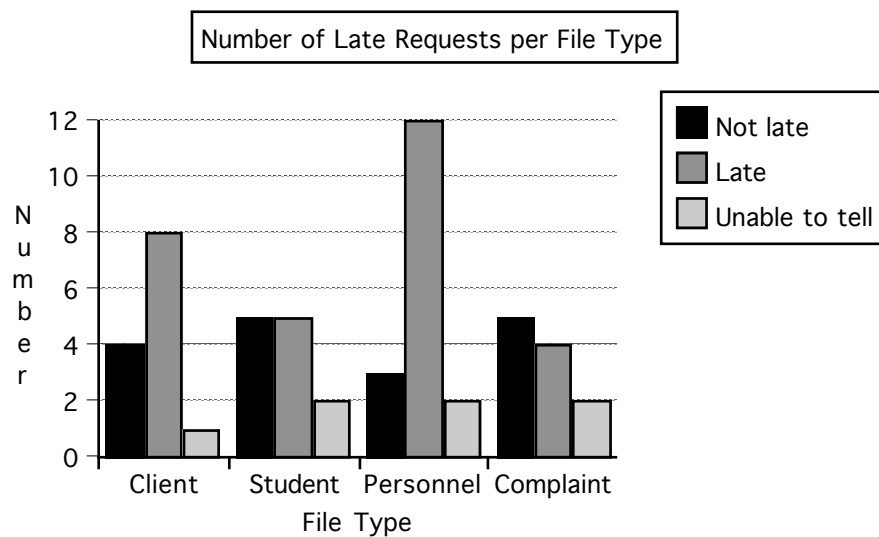
## Appendix X

Figure 24

Mandatory Exceptions: 22(2) and 22(4)



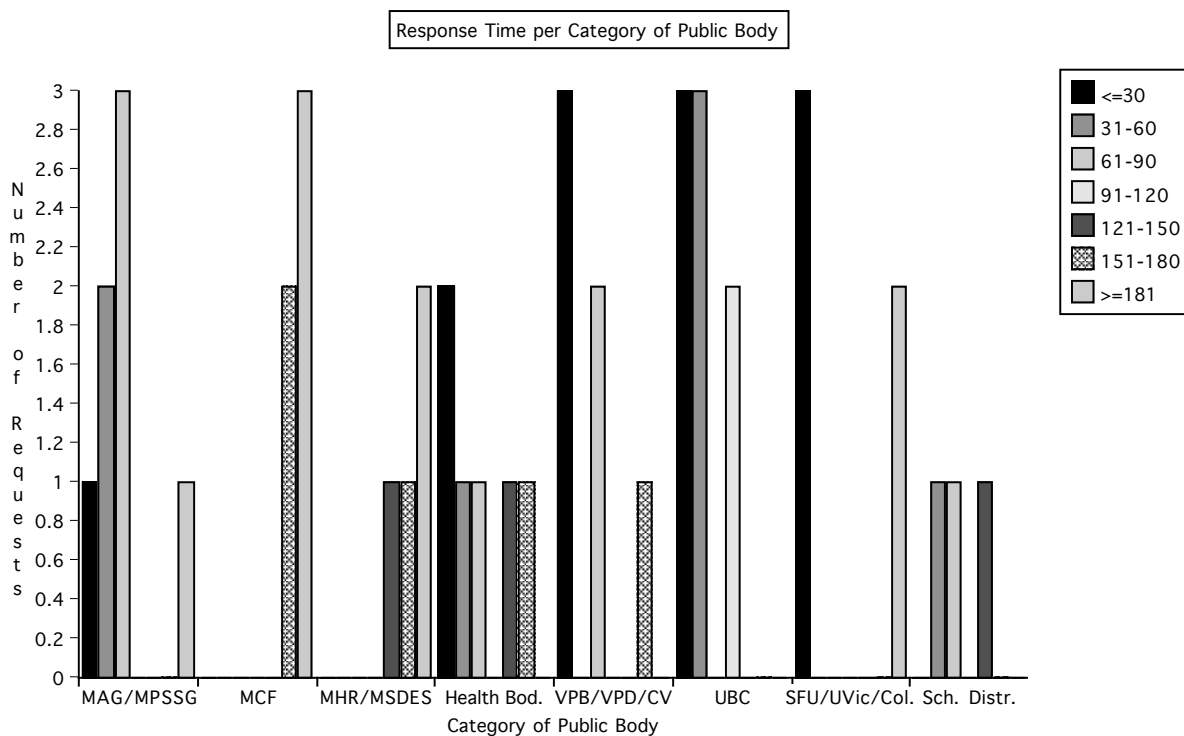
## Appendix Y

Figure 25  
Late Requests per Order Type

Appendix Z

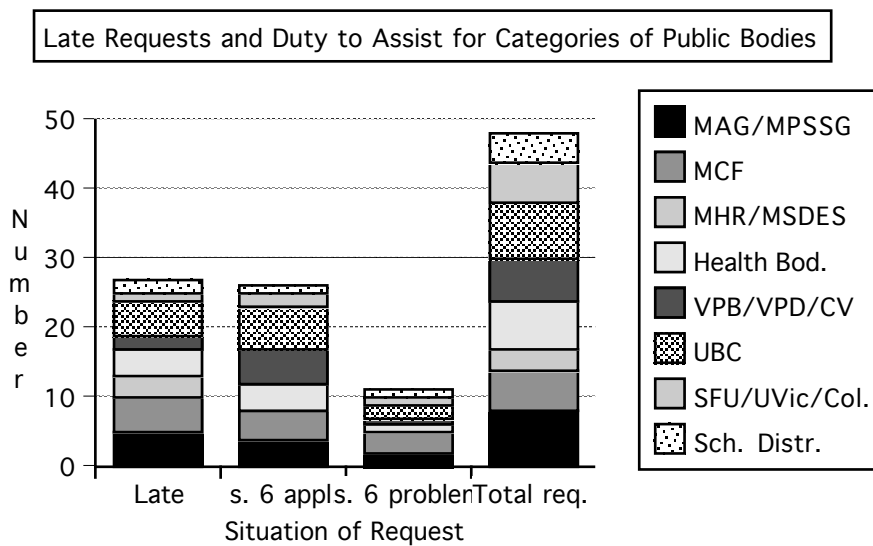
Figure 26

Response Time per Public Body



Appendix AA

Figure 27  
Late Requests and Duty to Assist per Category of Public Body



## Appendix BB

Figure 28  
Requests with the Most Problems with Severing

Record Type	Grounds for Review	Decision	Response Time
I. Client Records:			
Ministry for Children and Families: 02-59	Partial access; failure to make an additional disclosure of records	Split Decision: MCF must provide the applicant with a copy of the records, subject to severing as per CFCSA; S. 77(1)(a) and (b), (2)(a) and (c) of CFCSA; s. 22(2)(e), (f), (3)(b)	165 days to respond Late
Ministry for Children and Families: 03-01	Records omitted from the response	Upheld: Reasonable effort made concerning s. 89(1); 22(3)(c), (d)	205 days to respond Late
Ministry of Social Development and Economic Security: 00-44	Partial access	Split Decision: Ministry originally applied s. 19(1)(a), 22(2) (c), (e), (f), (g) (h), 3(d), (g); Commissioner decided that 22(2)(c), (f), (3)(d) applied	123 days to respond Late
Okanagan Similkameen Health Region and Penticton Regional Hospital: 01-29	Partial access (both requests); duty to assist (adequacy of search) (PRH)	Split Decision: Sections originally applied by OSHR: s. 19(1)(a) and (2), 22(1); PRH: 19(1)(a); 19(2)  OSHR and PRH: 19(1)(a); PRH must undertake a search to comply with 6(1), and respond to applicant in accordance with	15 days to respond

		8(1)	
Fraser Health Authority: 02-32	Denied access	Overturned; s. 19(2); 3 and 4  s. 19(2) does not apply; the public body must review the records for s. 22 and disclose the information that can be released to the applicant	78 days to respond Late
Cariboo Community Health Services Society: 02-60	Partial access; duty to assist (adequacy of search)	Upheld; Commissioner examined 19(1)(a), 22(2)(a), (e), (3)(c), (d), (g). CCHSS met its duty to assist, but 19(1)(a) did not need to be applied. S. 22(2)(e), (3)(c), (d), (g) were appropriately applied.	168 days to respond Late
II. Student Records:			
University of British Columbia: 327-1999	Partial access; duty to assist (adequacy of search and respond without delay)	Split Decision: Duty to assist met; s. 13, 14, 22(3) (c), (d), (f), (g), 22(5) One word severed under s. 13 and information on two other pages severed under this section must be disclosed, and a summary must be prepared under s. 22(5)	41 days (average) to respond Late
University of British Columbia: 00-51	Duty to assist (adequacy of search)	Split Decision: UBC must search for one record	25 days to respond
University of British Columbia: 01-30	Partial access	Split Decision: 19(1)(a), 22(2)(f), (3)(d); (3)(g) not apply is the only problem	105 days to respond Late
University of British Columbia: 03-37	Partial access; scope of the act;	Split Decision: s. 14, 22(2)(c), (f), (3)(a),	91 (average) days to respond

	duty to assist (adequacy of search, combining of requests, interpretation of request); scope of act	(d), (h); (3) (f) not s. 6(1) duties not initially met	Late
School District #39 (Vancouver): 03-34	Partial access	Upheld: 22(2)(c), (f), (3)(d), 22(5); 22(2)(e) not apply	31 days to respond Late
III. Personnel Records:			
Ministry of Attorney General: 00-07	Partial access	Split Decision Commissioner confirmed the ministry's application of s. 14 and 22 but the ministry was not authorized to withhold information under s. 17	56 days (average) to respond Late
Ministry of Public Safety and Solicitor General: 02-21***same ap.	Partial access	Upheld: s. 13, 15, 17, 22; consider 22(2)(c), (e), (f), (g), (3)(d), (5)  s. 13, 15, 17 and 22(2)(e) and (2)(g) do not apply	106 days to respond Late
Ministry of Public Safety and Solicitor General: 03-13*** same ap.	Partial access; right of access (s. 4) and record can reasonably be reproduced (s. 9)	Split Decision: s. 22(2)(c) and (f); (3)(d) apply; (2)(e) not apply applicant from 02-21 is wanting own records; Ministry did not meet its duties under 4(2) to sever copies of the interview tapes, and 9(2), to provide the applicant with copies of interview tapes; ordered to provide all eight tapes, severed	106 (average) days to respond Late

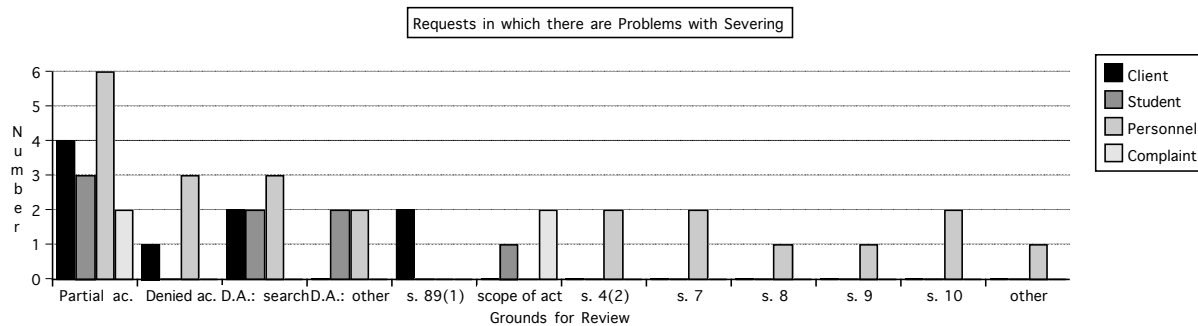
		consistent with transcripts	
Ministry of Public Safety and Solicitor General: 03-27	Partial access; duty to assist (adequacy of search)	Upheld: Commissioner looked at s. 6(1), 13, 15, 17, 19, 22 -15, 19 and 22 applied to two taped interviews it found during mediation but applicant did not request a review of this decision Sections that were found to apply: s. 13, 22(2)(c), (f), (3)(d); s. 6(1) duties not met initially	245 (average) days to respond Late  -adequacy of search addressed but not applicant's complaint about the delay in the ministry's response (note in his request for review and initial submission but not listed in the Notice of Inquiry or in the Portfolio Officer's Fact Report) -ministry did not perform adequate search at first but then made additional efforts so fulfilled its section 6(1) duty to assist
Ministry for Children and Families: 02-52	Duty to assist (adequacy of search and completeness of response)	Upheld: s. 6(1) – duty to assist met	300 days to respond Late s. 6(1) – duty to assist met (although Commissioner chastises ministry for several things and ministry deliberately asks for fact report to not address withholding of records, which makes the outcome in the ministry's favour as this was an issue) s. 22 applied to some records but not at issue here, for whatever reason
Ministry of Social	Partial access	Upheld:	263 days to respond

Development and Economic Security: 01-07		Commissioner considered s. 22 but could have been s. 6; 22(2)(c), (f), (3)(d); not 22(2)(e) and (h), (3)(g) and (h)	Late
School District #84 (Vancouver Island West): 01-53	Denied access	Split Decision: s. 14, 22(2)(e) and (h), (3) (d) or (f) and (g) do not apply; 22(2)(c) and (f), (3)(d), (4)(e), (5)	No dates provided
School District #44 (North Vancouver): 03-29	Partial access; duty to assist (s. 6), time limit for responding (s. 7); not extending the time limit (s. 10)	Upheld: s. 22(2)(a) not apply; (2) (c) and (f); duties under s. 7 and 10 not met s. 6 not initially met	131 days to respond Late
Simon Fraser University: 00-06	Partial access	Split Decision: s. 14 and 22, but there is a problem with 14	248 days to respond Late
Malaspina University-College: 00-47	Denied access; issue of whether, by signing a contract, one's rights under <i>FOIPPA</i> can be waived	Split Decision: s. 22(1) applies to some of the personal information, but s. 14 does not apply to the records	10 days to respond
British Columbia Institute of Technology 00-31	Denied access; information rights (s. 4); duty to assist (s. 6); time limit for responding (s. 7); contents of response (s. 8), extending the time limit for responding (s. 10)	Overtured: s. 4(2), 6(1), 7, 8, 10 duties not met; s. 22(1) applies s. 13, 15 and 17 do not apply as public body did not make representations	490 days to respond Late
IV. Complaint Records:			
Vancouver Police Board: 331-1999	Partial access; scope of act	Split Decision: s. 3, 12, 15, 16, 22(3)(b) do not apply; s. 14 applies to some of the information.	26 days to respond
Office of the Police Complaint Commissioner:	Scope of act	Upheld: S. 3(1) does not apply; OPCC should have replied	No dates given

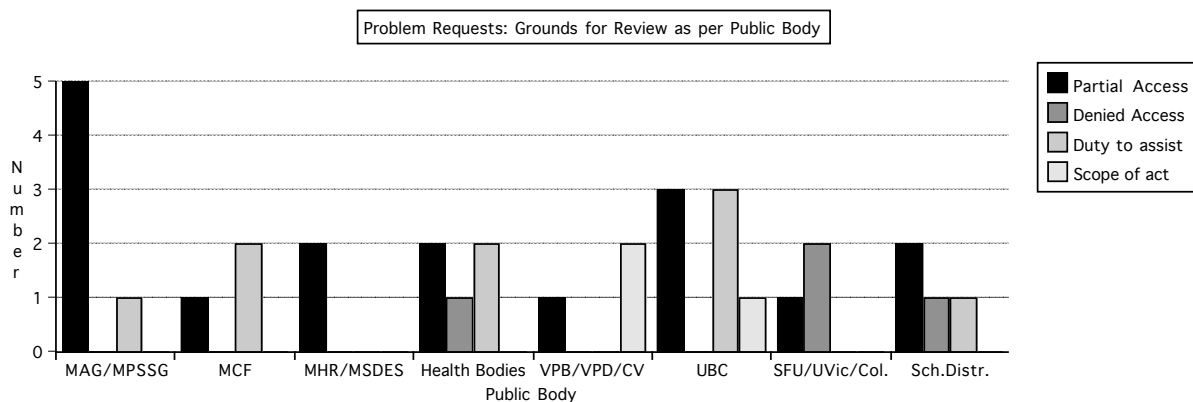
00-05		that it had no responsive records under its custody or control.	
Ministry of Attorney General: 01-08	Partial access	Split Decision: s. 19(1)(a) and 22(1), but not to all for 22	24 days to respond

Appendix CC

Figure 29  
 Problem Requests: Grounds for Review per Order Type

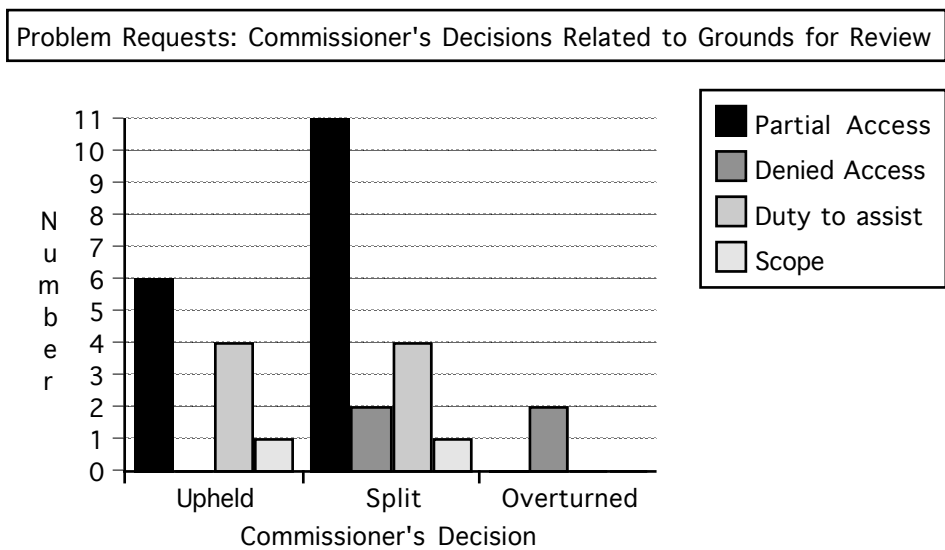


Appendix DD  
 Figure 30  
 Problem Requests: Grounds for Review per Public Body



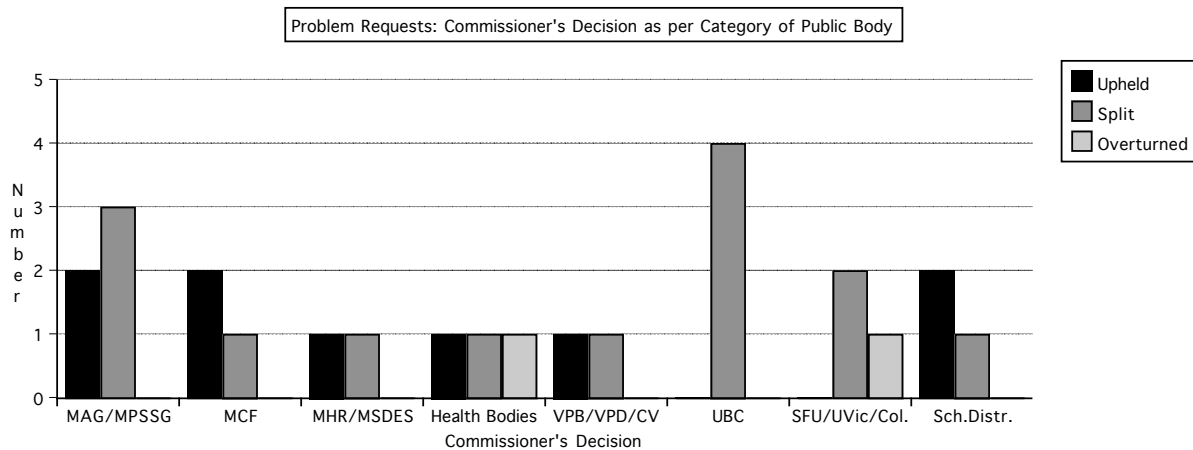
## Appendix EE

Figure 31  
Problem Requests: Commissioner's Decisions Related to Grounds for Review



Appendix FF

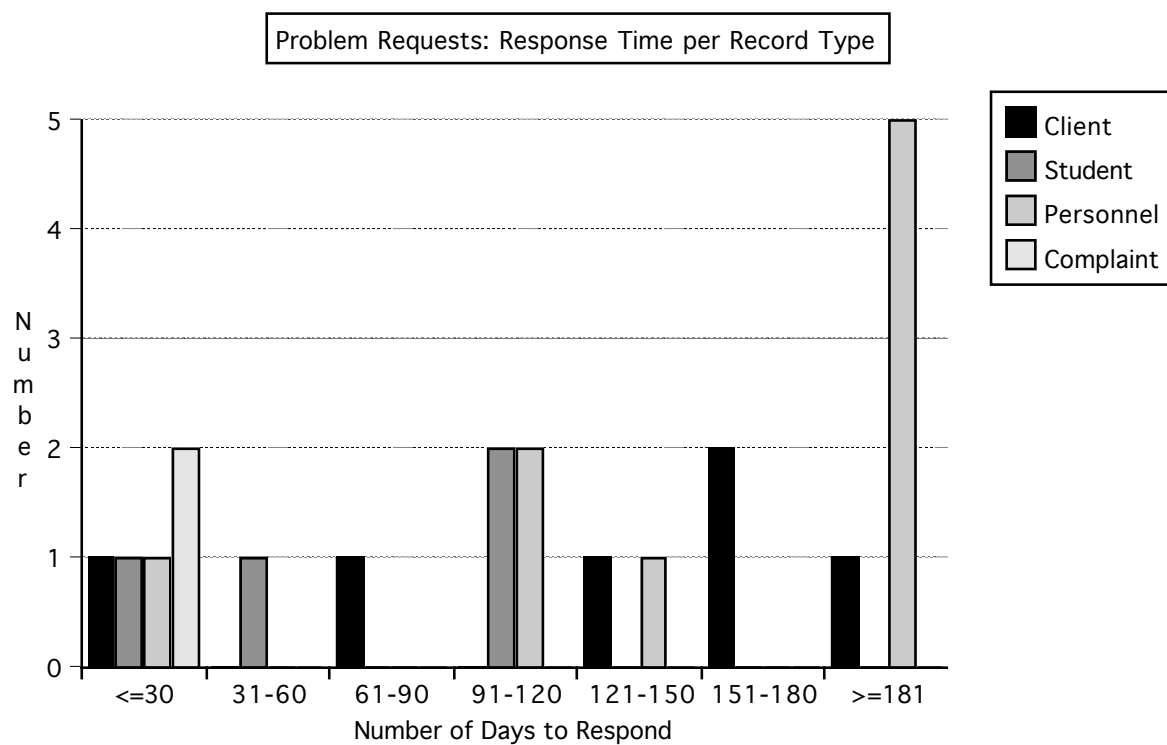
Figure 32  
 Problem Requests: Commissioner's Decision as per Category of Public Body



## Appendix GG

Figure 33

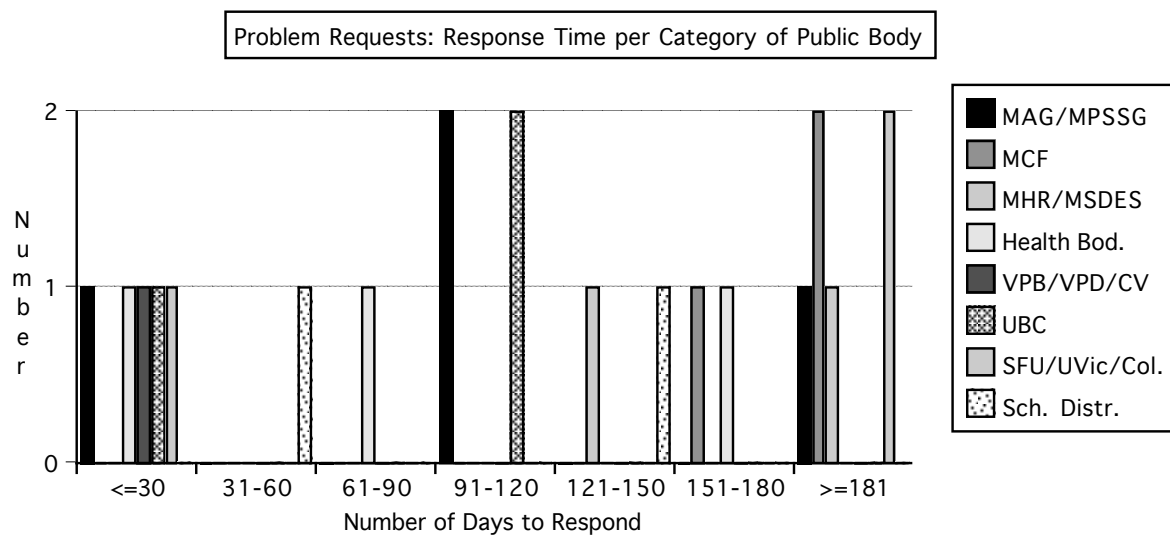
Problem Requests: Response Time per Order Type



Appendix HH

Figure 34

Problem Requests: Response Time per Category of Public Body



## Appendix II

Figure 35

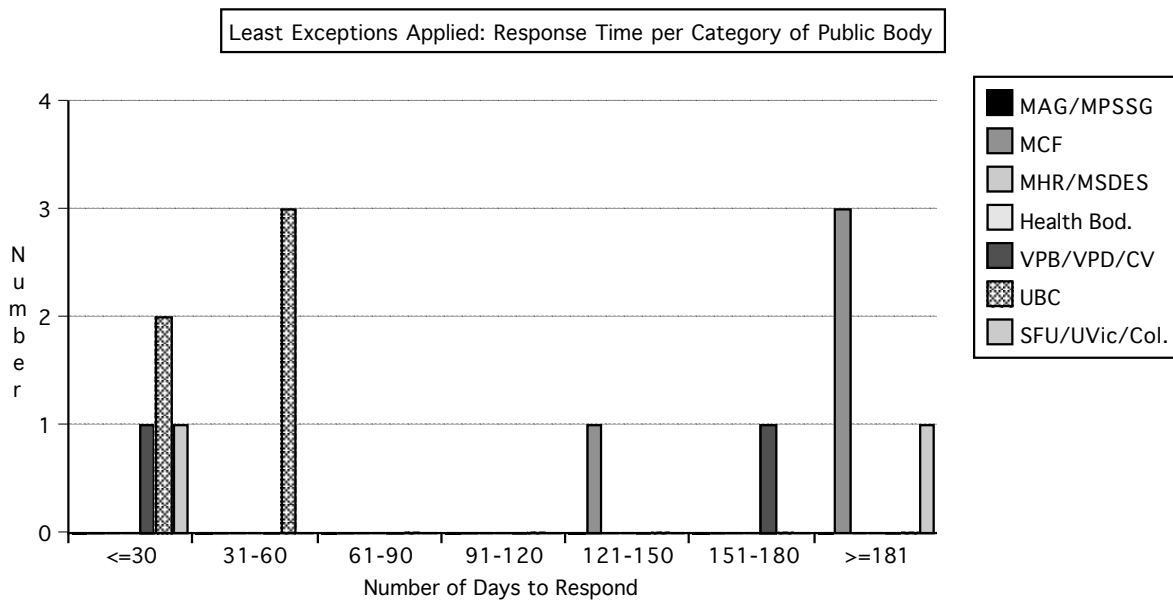
## Orders with the Least Number of Sections Applied

MCF00-43	6(1); upheld	Client	183 days to respond Late
MCF03-01	6(1) not applied properly; upheld	Client	205 days Late
VCH02-49	3 and 4; upheld	Client	121 days to respond Late
BCHM02-39	6(1); upheld	Client	28 days to respond
Om01-42	3(1); upheld	Student	13 days to respond
UBC01-43	3(1); upheld	Student	38 days to respond Late
UBC01-44	6(1); upheld	Student	33 days (average) to respond Late
UBC01-45	6(1); upheld	Student	38 days (average) to respond Late
UBC00-04	6(1); upheld	Student	10 days to respond
UBC00-51	6(1) problem; split	Student	25 days to respond
SFU01-16	Problem with second release; upheld	Student	28 days to respond
MAG01-49	6(1); upheld	Personnel	No details
MCF02-52	6(1); prob; upheld	Personnel	300 days to respond Late
VPD03-06	22(1); upheld	Personnel	156 days to respond Late
SFU00-06	14; split	Personel	248 days to respond Late
VPD00-35	6(1); upheld	Complaint	1 day to respond
VPD01-34	6(1); upheld	Complaint	No details

Appendix JJ

Figure 36

Least Exceptions Applied: Response Time per Category of Public Body



Appendix KK  
Figure 37

Least Exceptions Applied: Response Time per Order Type

