



Information  
Commissioner  
of Canada

Commissaire  
à l'information  
du Canada

OFFICE OF THE INFORMATION COMMISSIONER

# Annual report

2019–20

[oic-ci.gc.ca](https://oic-ci.gc.ca)



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# Message from the Commissioner

## My 2019–20 annual report reviews a momentous year.

Over the 12 months from April 2019 to March 2020, my team was called upon to implement important amendments to the *Access to Information Act* that came into force in June 2019, as well as respond to a very large increase in complaints, while continuing to work to address the inventory of cases.

It was a steep hill to climb, but thanks to the dedication of employees and the renewed sense of purpose that resulted from developing the Office of the Information Commissioner's (OIC) five-year strategic plan, my office stayed on track throughout 2019–20. By March 31, 2020, I saw with satisfaction that the organization was where I had envisioned it would be: dealing transparently with complainants and institutions, collaborating to conclude investigations and resolve complaints, and completing a large number of investigations, with the implementation of the legislative amendments well under way.

In last year's report, I stated that the government needed to step up to ensure it was meeting its obligations under the Act. In the context of the pandemic, this remains the case. As I repeated numerous times in the weeks following the implementation of alternative working arrangements across federal institutions, the

government's response must not suspend the right of access in this critical period, when transparency is more important than ever.

The government's mandatory one-year review of the *Access to Information Act* will take place over the course of 2020–21. It will be an important opportunity to continue to bolster transparency by improving this important legislation, and I look forward to contributing to the process.

However, it is also my sincere hope that this review will not stand in the way of timely action by the government to improve service and reduce delays, and to deal with other problems that persist across the access system, not all of which require legislative change to resolve.

While Budget 2019 had allocated temporary funding for the OIC to continue efforts to reduce the inventory of complaints, I continued to signal throughout 2019–20 that permanent funding was essential to allow me to effectively deliver on my mandate. In August of 2020, I was pleased to learn that the Treasury Board had approved the OIC's submission for a permanent funding to stabilize its operations and ability to deliver on its commitments.

This positive decision from the government will lead to an increase in investigators for my office to help close more files. Further concrete and immediate actions from the government on widespread problems in the access system, constructive results of the legislative review and leadership from institutions to implement best practices and act on the lessons contained in this report will go a long way to improving the health of the system and ensuring that the right of access is upheld for Canadians.



# Year in review

## Implementing amendments to the *Access to the Information Act*

The Office of the Information Commissioner (OIC) spent much of 2019–20 implementing the first significant amendments to the *Access to Information Act* since it came into effect in 1983.

### MAKING ORDERS

Bill C-58 (An Act to amend the *Access to Information Act* and the *Privacy Act* and to make consequential amendments to other Acts) received Royal Assent in June 2019. As a result, the Commissioner may make an order and/or recommendations at the conclusion of investigations into complaints registered on or after June 21, 2019, when she finds the complaints to be well founded.

Two investigations that concluded in the early months of 2020 resulted in intended orders to the Royal Canadian Mounted Police (RCMP) related to significantly delayed responses to access requests. In one instance, the RCMP, who had been in deemed refusal, responded to the access request after learning that the Commissioner intended to issue an order to that effect. In the

other case, the response to the access request went out before the Commissioner's order came into effect.

### PUBLISHING ORDERS AND REPORTS

The amendments also allow the Commissioner to publish final reports.

The OIC developed a new format for these reports, along with a new searchable database of decisions.

Collectively, these reports are becoming a useful reference for complainants and institutions about the Commissioner's positions on the application and interpretation of the Act.

### APPROVING OR DENYING APPLICATIONS FROM INSTITUTIONS TO DECLINE TO ACT ON ACCESS REQUESTS

Institutions have traditionally had to process and respond to all valid access requests they receive for records under their control. However, the 2019 amendments allow institutions to ask the Commissioner for approval to not process valid access requests they view as vexatious, made in bad

## THE OIC RESPONDS TO COVID-19

When the severity of the COVID-19 pandemic became apparent in early March 2020, the OIC immediately implemented a plan to ensure it could seamlessly continue operations.

Due to the extraordinary work of the OIC's information technology team, all employees were, in a matter of days, able to work from home, with access to the OIC network. Corporate functions proceeded as normal for the most part, facilitated by the prompt implementation of electronic delivery of documents and electronic signatures. At the close of the fiscal year, the OIC began planning for selective access to the otherwise closed office for critical services and for new tools to facilitate remote work.

Investigators were able to continue their activities, but were hindered by the shutdown of access operations in many institutions.

On March 20, the OIC issued a brief statement on the impact of the pandemic on its operations. The OIC reminded institutions covered by the *Access to Information Act* to, as they moved to alternative working arrangements, take all reasonable measures to limit the impact on individuals' right of access to information. The OIC also recommended that institutions advise requesters of their reduced capacity to process access requests. The Commissioner issued a longer communication in early April 2020 on these and other access-related concerns that had arisen over the early weeks of the pandemic response.





faith or otherwise an abuse of the right to make access requests.

The OIC set up a process for institutions to apply for this approval, aided by an electronic communications and document-sharing platform to allow the OIC to gather information from the institutions and requesters. This ensures an efficient process which helps the Commissioner issue timely decisions, i.e. within 20 business days to the extent possible.

The Commissioner received six such applications over the course of 2019–20 and [granted one](#). In that instance, the Commissioner found that the access request was vexatious because the requester had made numerous prior requests that either duplicated or were substantially similar to the access request at issue. The Commissioner also found that the access request was an abuse of the right of access, because of the large volume of access requests the requester had previously submitted, as well as the repetitive nature of several of the requests.

In denying the other applications, the Commissioner first considered whether each institution had fulfilled its duty to assist the requester before seeking the Commissioner's approval to not act on the access request. The Commissioner then considered whether the institution had established that the

access request was, in fact, vexatious, made in bad faith or otherwise an abuse of the right to make such requests. The OIC posts summaries of notable decisions related to institutions' applications for approval to decline to act on access requests in its [online decisions database](#)—again, to build a body of reference material to guide institutions and requesters.

### PROACTIVE DISCLOSURE

Along with all other institutions covered by the Act, the OIC began in 2019–20 to proactively disclose more information as a result of the legislative amendments. This information gives Canadians insight into the OIC's operations and preparations for, for example, the Commissioner's appearances before parliamentary committees.

## Addressing the Commissioner's 2019–20 priorities

In addition to implementing the legislative amendments, the OIC focused on three other priorities.

### REDUCING THE NUMBER OF COMPLAINTS IN THE INVENTORY

In 2019–20, the OIC continued to improve how it carries out investigations to increase efficiency and the number of complaints it can close each year. Teams were organized to investigate specific types of complaints and to work with portfolios of institutions. The responsibilities of the Registry, which the Commissioner had set up in the previous year to receive, register and manage complaints, were fine-tuned based on the first year's experience.

The OIC updated a number of tools to assist investigators, which it tested over the year and will roll out in 2020–21.

To augment its investigative capacity and continue inventory reduction efforts, the OIC hired additional term investigators and consultants for the year with temporary funding provided through Budget 2019.

With these extra staff and the various other measures, the OIC was better positioned to respond to a dramatic increase in new complaints and completed a record number of investigations. See "[Investigations](#)" for complete statistical details and highlights of the OIC's investigative work and related legal decisions in 2019–20.

### ENSURING TRANSPARENCY

The OIC unveiled a completely revamped website in 2019–20. This refreshed and modern online presence makes it easy for complainants and institutions to find useful information on the Commissioner's interpretations of the Act (including reports on systemic investigations and [searchable summaries](#) of notable investigations completed over the past decade), guidance on procedures the OIC follows during investigations and other matters related to the Commissioner's oversight role.

The OIC published [new guidance documents](#) in 2019–20 covering e-mail management and applying for the Commissioner's approval to decline to act on access requests.

In the winter of 2020, the OIC consulted institutions on guidance related to investigations affected by a change of circumstance or the passage of time. The OIC published a [new guidance document](#) on this topic in June 2020. The OIC also sought input on the factors the OIC takes into account in investigations related to the control of records—a fundamental concept in the Act, since the right of access does not exist without records being under the control of government institutions. The results of this consultation informed a [new guidance document](#) published in August 2020.

The Commissioner appeared before parliamentary committees three times during 2019–20. In April 2019, she presented her views on a number of proposed amendments to the Act that the Standing Senate Committee on Legal and Constitutional Affairs was considering as part of its clause-by-clause review of Bill C-58. The following month, the Commissioner appeared before the House of Commons Standing Committee on Access to Information, Privacy and Ethics to answer questions about the resources she had available to deliver her mandate. In March 2020, the Commissioner introduced herself and outlined her priorities to the new members of the same committee, which had been reconstituted after the 2019 federal election.

Over the year, the Commissioner and senior officials spoke to groups of access to information specialists across Canada on, among other topics, implementing the 2019 legislative amendments. Meetings with provincial and territorial commissioners, and with the Commissioner's counterparts in the U.K. Information Commissioner's and Scottish Information Commissioner's offices were opportunities for the Commissioner and OIC staff to learn from other jurisdictions and to share and gather best practices. Staff in both offices attributed their

### SYSTEMIC INVESTIGATION COMPLETED INTO THE PROCESSING OF ACCESS REQUESTS AT NATIONAL DEFENCE

In 2019–20, the OIC completed a systemic investigation the Commissioner had initiated in late 2018 into National Defence's overall processing of access requests. This investigation was further to serious allegations made during the pre-trial hearings of Vice-Admiral Mark Norman, together with findings that the Commissioner had made in an earlier investigation involving the Office of the Judge Advocate General, that National Defence had improperly withheld information in response to an access request. The OIC [published](#) the results of the investigation in July 2020.

excellent performance (neither has an inventory of complaints) to being able to publish their decisions and to having implemented digital work environments.

In May 2019, the Commissioner moderated a panel at the Open Government Partnership Global Summit held in the National Capital Region on how removing restrictions on historical government records could improve access to those records, reduce the need to make access requests, and make the processing of historical national security records less complex. This panel led, in February 2020, to the Commissioner's meeting with the National Security Transparency Advisory Group to discuss access to information and national security. In February 2020, the OIC published a [declassification strategy for national security and intelligence records](#) authored by University of Ottawa professor and national security expert Wesley Wark, who had served as rapporteur for the Commissioner's panel. (See also, "[Classified records challenging for institutions and the OIC.](#)")

Finally, the OIC continued to respond to access requests well within legislated deadlines; the average completion time was 21 days in 2019–20. The OIC joined the Government of Canada's [online access to information and privacy request portal](#) in July 2019 and received 42 access requests during the year. Among the 43 completed access requests were those focussed on topics such as investigations, job competitions at the OIC and the Commissioner's new powers. [Appendix A](#) contains the 2019–20 annual report of the Information Commissioner ad hoc. She investigates complaints against the OIC about its handling of access requests.

## FOSTERING COLLABORATION

The Commissioner met with deputy ministers and senior officials at five institutions over the year (Transport Canada, the Department of Justice Canada, National Defence, Library and Archives Canada, and the Privy Council Office). The purpose of these meetings was to gather and share best practices, learn more about the state of access operations in individual institutions, and communicate the Commissioner's concerns about whether and how institutions are fulfilling their obligations under the Act.

Dealings with specific institutions in the course of investigations in 2019–20 highlighted the positive results of fostering collaboration:

- **Canadian Broadcasting Corporation (CBC).** Access officials at the CBC rigorously manage their complaint inventory. For several years, the CBC and the OIC have held bi-weekly meetings to discuss ongoing complaint investigations. These meetings allow for early resolution of complaints and clear lines of communication. In 2019–20, the OIC concluded 31 investigations into complaints against the CBC.
- **Canadian Commercial Corporation.** This institution received 18 requests in 2018–19 and has only been the subject of 14 complaints in its history. The OIC closed four of them in 2019–20, all to do with a multi-million-dollar contract Canada had signed in 2014 to supply Saudi Arabia with light armoured vehicles. Officials at the institution worked with OIC investigators to release information to the complainant that shed light on how the Canadian Commercial Corporation conducts its business and how it arrived at the decision to approve the deal with Saudi Arabia.

- **Copyright Board of Canada.** The Board only received one request in all of 2018–19. In seeking to resolve a 2016 complaint, the institution took the OIC's suggestion to hire a consultant to reprocess requested records that refer to a report by the House of Commons Standing Committee on Canadian Heritage on the Canadian music industry. The Board then conducted consultations on the records with two government institutions and followed their recommendations on what could be disclosed, resulting in more information being released to the complainant.

The Commissioner spoke at the annual meeting of federal access to information and privacy practitioners, held during Right to Know Week in September 2019, and discussed the importance of access to information in a January 2020 presentation to staff at Immigration, Refugees and Citizenship Canada. This institution receives roughly two thirds of all access requests across government each year.



## Supporting investigations through internal services

The OIC's internal services teams supported investigations throughout the year, in particular securing \$1.7 million in permanent annual funding to implement the Commissioner's new powers and responsibilities, and \$3 million in temporary funding for inventory reduction. Toward the end of 2019–20, the OIC began the process to request permanent funding for its ongoing inventory reduction activities. Securing such resources would allow the OIC to augment its investigative capacity on a permanent basis and thus increase efficiency.

The hiring of investigators with the new funding required significant support from the Human Resources team, in terms of staffing actions and other processes, over the course of 2019–20. The team also resolved numerous Phoenix-related pay problems.

As the OIC moved to electronic investigations over the year, the OIC's information management and information technology teams developed policies and procedures, and sourced equipment, for converting paper records to digital ones. To further facilitate electronic investigations, the OIC began to integrate new templates and standard language for investigations reports with the OIC's case management system. New policies to be enacted in 2020–21 will govern the use of electronic signatures for investigations-related and corporate documents.

A related important priority was to develop a multi-year approach to innovation at the OIC. The OIC has set priorities for investments in information management and information technology applications and infrastructure to transform operations in line with government direction and to enhance network and information security. To help ensure the OIC's security measures are robust and aligned with emerging threats, the OIC carried out threat risk and vulnerability assessments in 2019–20 and will act on the findings in 2020–21. The OIC also finalized its new Departmental Security Plan and updated its Business Continuity Plan, two important pillars supporting ongoing work to reduce operational risks.

The OIC's work in the new fiscal year and the subsequent four years will be guided by a [new strategic plan](#), which the OIC developed in 2019–20 with extensive employee input. New governance and committee structures support all aspects of OIC operations, as will a new intranet, which will be launched in 2020–21.

### 2020–21 TO 2024–25 STRATEGIC PLAN

**Vision:** Federal institutions properly apply the *Access to Information Act* and respect Canadians' right of access.

**Mission:** To conduct efficient and fair investigations, be open and transparent when dealing with institutions and complainants, and provide expert advice to Parliament and other stakeholders on access to information.

**Values:** Respect, Collaboration, Transparency, Accountability and Credibility

#### Strategies

- Invest in and support our resources
- Innovate and transform our operations
- Maintain and enhance our reputation



# Investigations

The OIC started 2019–20 with more than 3,300 complaints in its inventory and then registered more than 6,000 new complaints.

## ADMINISTRATIVE COMPLAINTS

Of the new complaints, 76 percent were administrative complaints (largely about delays in responding to access requests and about time extensions).

Most of these (70 percent) were against one institution, Immigration, Refugees and Citizenship Canada (IRCC), ranking it first on the OIC's [list of the top institutions](#) that were subject to complaints in 2019–20.

The volume of IRCC complaints has not always been so large. In the two years prior to 2019–20, the OIC registered only 226 and 558 complaints against this institution, respectively. In July 2019, a small number of individuals began

submitting large groups of complaints (nearly 70 in one week from one person, for example).

The complaints focused almost exclusively on the fact that IRCC had not responded to access requests within the legislated deadlines (either 30 days or an extended period) for the personal information of foreign nationals seeking to enter Canada either temporarily or permanently. Of particular note was that the number of time extension complaints against IRCC increased from just 12 in 2018–19 to 2,529 in 2019–20.

To better understand and address the root cause of these increases, the Commissioner [initiated a systemic investigation against IRCC](#) in March 2020 into the processing of access requests for client immigration files. The investigation will be completed in 2020–21.

The OIC closed 3,479 IRCC complaints in 2019–20, or 63 percent of the total. In many instances, the OIC's initial inquiries determined that IRCC had already responded to the access

requests. Consequently, the OIC was able to quickly resolve 70 percent of the IRCC administrative complaints.

## Complaints closed against IRCC and all other institutions, 2019–20

	Well founded	Not well founded	Resolved	Discontinued	Total
Complaints closed against IRCC in 2019–20	20	32	3,374	53	3,479
Complaints closed against all other institutions in 2019–20	577	312	683	477	2,049
Total	597	344	4,057	530	5,528

## REFUSAL COMPLAINTS

The OIC also receives complaints about institutions' use of exemptions and exclusions to withhold information. These refusal complaints tend to take longer to investigate than administrative complaints. The OIC received 1,039 new refusal complaints (roughly the same amount as in 2018–19) and closed 1,253 in 2019–20, nearly equal to what the OIC achieved the year before.

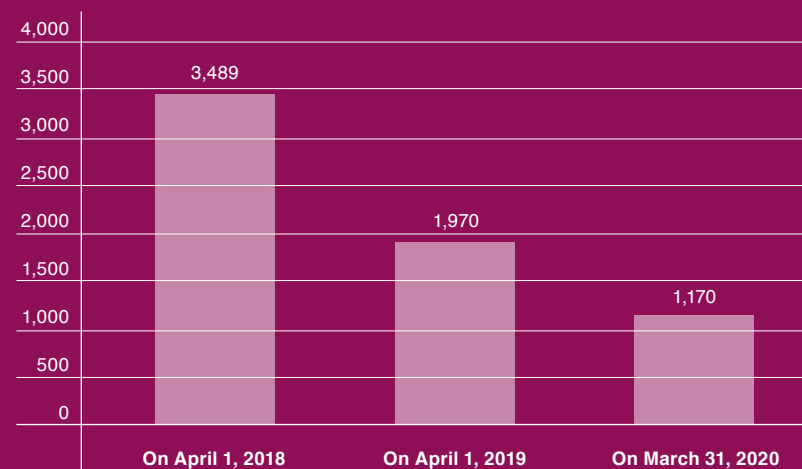
Nearly 800 of the complaints the OIC closed in 2019–20 dated from prior to April 1, 2018. The OIC has reduced the number of older files in the inventory by 66 percent over two years.

Closing older files has been a priority for the Commissioner since her appointment. The Commissioner has sought permanent funding to allow the OIC to augment its investigative capacity so it can respond to complaints more quickly. OIC staff also identified the 50 oldest files in its inventory and began dedicated efforts to close them in 2019–20.

Overall, the OIC closed a total of 5,528 files of all types in 2019–20. This meant that the OIC was able to keep the increase in its inventory of complaints to a minimum.

In March 2020, the OIC began to get a sense of the impact that the COVID-19 pandemic would have on investigations. Institutions began to inform the OIC that, given their limited capacity for remote work, they might not be able to meet dates they had previously committed to for responding to complainants or the OIC.

**Number of pre-April 1, 2018, complaints in the inventory**



## THE BIG PICTURE

**6,173**  
Complaints registered  
(↑150% from 2018–19)

**5,528**  
Complaints closed  
(↑112% from 2018–19)

**3,559**  
Inventory files  
(↑6% from 2018–19)

## ON THE CLOCK

### Administrative complaints

Target to close?  
**90 days**

Within target?  
**3,834 (89.7%)** (2019–20)  
**866 (66.7%)** (2018–19)

Median? \*\*  
**48 days** (2019–20) \*  
**22 days** (2018–19)

### Refusal complaints

Target to close?  
**270 days**

Within target?  
**735 (58.7%)** (2019–20)  
**779 (60.1%)** (2018–19)

Median? \*\*  
**180 days** (2019–20)  
**191 days** (2018–19)

\*Calculated for the 28 percent of administrative complaints not closed by the OIC Registry.

\*\*From date of assignment to an investigator.

## OUTCOMES

Well founded		Not founded		Resolved		Discontinued	
2018–19	2019–20	2018–19	2019–20	2018–19	2019–20	2018–19	2019–20
724 (28%)	597 (11%)	499 (15%)	344 (6%)	983 (38%)	4,057 (73%)	501 (19%)	530 (10%)

For complete complaint activity, 2019–20, [see page 10](#).

## Read more about OIC investigations in 2019–20

- [Investigations involving the Royal Canadian Mounted Police](#)
- [Investigations involving the Canada Border Services Agency](#)
- [Classified records challenging for institutions and the OIC](#)
- [Solicitor-client privilege versus transparency](#)
- [Small groups may lead to the identification of individuals](#)
- [There's more to a reasonable search than meets the eye](#)
- [The format of records can be as important as the content](#)

## Complaint activity, 2019–20

	Inventory			Closed in 2019–20			Outcome				
	Registered before April 1, 2019	Registered April 1, 2019, to March 31, 2020	Total	Registered before April 1, 2019	Registered April 1, 2019, to March 31, 2020	Total	Well founded	Not well founded	Resolved	Discontinued	Total
Immigration, Refugees and Citizenship Canada	119	4,298	4,417	86	3,393	3,479	20	32	3,374	53	3,479
Royal Canadian Mounted Police	412	355	767	276	166	442	150	39	182	71	442
Canada Revenue Agency	481	186	667	130	59	189	53	31	71	34	189
National Defence	155	209	364	67	78	145	30	15	52	48	145
Canada Border Services Agency	133	136	269	73	49	122	36	10	52	24	122
Privy Council Office	189	61	250	41	7	48	26	6	8	8	48
Global Affairs Canada	188	54	242	85	8	93	23	8	18	44	93
Library and Archives Canada	143	89	232	33	8	41	28	3	7	3	41
Department of Justice Canada	112	75	187	48	39	87	14	12	22	39	87
Health Canada	131	52	183	90	9	99	23	6	16	54	99
Parks Canada	134	8	142	27	2	29	15	4	8	2	29
Department of Finance Canada	71	47	118	26	17	43	11	3	22	7	43
Correctional Service Canada	54	60	114	41	20	61	15	9	25	12	61
Canadian Security Intelligence Service	49	59	108	24	18	42	1	25	6	10	42
Public Services and Procurement Canada	61	41	102	38	13	51	18	5	17	11	51
Employment and Social Development Canada	40	57	97	36	20	56	12	15	21	8	56
Canada Post	79	16	95	65	7	72	2	10	33	27	72
Transport Canada	58	34	92	23	13	36	11	3	12	10	36
Canadian Broadcasting Corporation	66	12	78	30	1	31	6	14	5	6	31
Crown–Indigenous Relations and Northern Affairs Canada	60	17	77	18	2	20	6	1	4	9	20
Environment and Climate Change Canada	40	35	75	12	9	21	8	2	9	2	21
Innovation, Science and Economic Development Canada	51	21	72	13	5	18	4	1	7	6	18
Public Safety Canada	43	21	64	20	7	27	4	8	8	7	27
Natural Resources Canada	49	2	51	15	2	17	8	4	3	2	17
<b>Sub-total</b>	<b>2,918</b>	<b>5,945</b>	<b>8,863</b>	<b>1,317</b>	<b>3,952</b>	<b>5,269</b>	<b>524</b>	<b>266</b>	<b>3,982</b>	<b>497</b>	<b>5,269</b>
Other institutions	423	228	651	193	66	259	73	78	75	33	259
<b>Total</b>	<b>3,341</b>	<b>6,173</b>	<b>9,514</b>	<b>1,510</b>	<b>4,018</b>	<b>5,528</b>	<b>597</b>	<b>344</b>	<b>4,057</b>	<b>530</b>	<b>5,528</b>



## Investigations involving the Royal Canadian Mounted Police

The OIC registered 355 complaints against the RCMP in 2019–20, ranking it second on the OIC's list of the [top institutions](#) that were subject to complaints that year. Sixty-three percent of these complaints were about delays, continuing a pattern the OIC has noted for several years. This led the Commissioner to initiate a systemic investigation into the RCMP's processing of access requests. The investigation will be completed in 2020–21.

### LAW ENFORCEMENT EXEMPTION MUST BE LIMITED TO LEGITIMATE INVESTIGATIONS

Complaint investigations involving the RCMP often centre on information touching on very personal situations, including the interactions of members of the public with law enforcement agencies.

For example, the OIC completed an investigation in 2019–20 into the RCMP's response to an access request that it could neither confirm nor deny the existence of records that listed the names and dates of anyone who had accessed the complainant's file in the Canadian Police Information Centre's (CPIC) database. The complainant, who had been criminally accused of assaulting an individual, was of the view that one of that individual's relatives—a police officer (but not with the force that investigated the incident)—had unlawfully accessed his personal information in the CPIC.

The RCMP generally does not release information on ongoing investigations. Indeed, in its response to the access request, the RCMP said that if the requested records did exist, they would be exempted in their entirety because releasing them would have harmed an active investigation.

However, RCMP access officials subsequently acknowledged that the access to the complainant's personal information in the CPIC was not part of a lawful investigation and that, therefore, the exemption did not apply. With the consent of the other police force, the RCMP released the records.

		Access requests*		Complaints	
		2017–18	2018–19 (% change)	2018–19	2019–20 (% change)
Received		5,203	4,436 (–15%)	256	355 (+39%)
Closed		2,967	4,176 (+41%)	165	442 (+168%)
		Access requests closed in 30 days		Outcomes of complaint investigations	
		890	1,101 (+24%)	<ul style="list-style-type: none"> <li>• 72 well founded</li> <li>• 30 not well founded</li> <li>• 189 resolved</li> <li>• 70 discontinued</li> </ul>	<ul style="list-style-type: none"> <li>• 150 well founded</li> <li>• 39 not well founded</li> <li>• 182 resolved</li> <li>• 71 discontinued</li> </ul>

\*Most recent statistics available. Source: Royal Canadian Mounted Police [2018–19 annual report on access to information](#).

## FIREARM SERIAL NUMBERS ARE NOT PERSONAL INFORMATION

In an October 2019 decision, the Federal Court ordered the RCMP to disclose 468 serial numbers of a particular type of firearm. The RCMP alleged that these numbers were personal information, but the Commissioner—and, eventually, the Federal Court—disagreed.

The decision is helpful in that it sets out guidance for determining whether there is a serious possibility that, if released, the information could identify an individual, as the definition of “personal information” requires.

After this decision was released, the RCMP also disclosed firearm serial numbers related to a separate Federal Court case.

See also, “[Small groups may lead to the identification of individuals.](#)”

## LONG-GUN REGISTRY DETAILS SEE THE LIGHT OF DAY

Bill C-71 (An Act to amend certain Acts and Regulations in relation to firearms), which became law in June 2019, restored the right of access to the records in the federal long-gun registry. That right of access was the subject of [a systemic investigation in 2015](#).

A former Information Commissioner had challenged in the Ontario Superior Court the constitutionality of the federal government's elimination of the right of access to these records. With Bill C-71's coming into effect, the current Commissioner was able to discontinue this action, since it had become moot.

The Commissioner's Federal Court application against the RCMP was then able to resume. The RCMP processed most of the fields of information at issue in the litigation under the *Access to Information Act*, as the application sought. Ultimately, the RCMP disclosed most of the information that it processed, with the remaining information withheld under the exemption for personal information. The litigation was, therefore, settled.

## SEEKING TO RELEASE INFORMATION ON COMPASSIONATE GROUNDS EXPOSES SHORTCOMINGS IN THE LAW

The OIC completed a number of investigations resulting from complaints from individuals seeking information about RCMP inquiries into the deaths of family members. The complainants were concerned because the RCMP had withheld information they had asked for so they could get a better understanding of the circumstances surrounding the deaths.

The RCMP had protected the information under parts of section 16 (law enforcement and investigations). The Commissioner determined that the information met the requirements of the exemption and was also satisfied that the RCMP had reasonably exercised its discretion to decide to withhold the information. Among the factors the RCMP considered was that the *Privacy Act* protects the personal information of deceased individuals for 20 years after their death.

These investigations, however, highlight shortcomings in the interplay between the *Privacy Act* and *Access to Information Act* that limit the ability of institutions to release information about a deceased individual to a spouse or other close relative on compassionate grounds, as is possible in several provinces.

In a September 2019 submission to the Department of Justice Canada's review of the *Privacy Act*, the Commissioner recommended that the sections in both that law and the *Access to Information Act* that deal with personal information be amended accordingly.



## Investigations involving the Canada Border Services Agency

The OIC registered 136 complaints about the handling of access requests by the Canada Border Services Agency (CBSA) in 2019–20, ranking it fifth on the OIC’s list of the [top institutions](#) that were subject to complaints that year.

### SEARCHING BACKUP TAPES NOT ALWAYS NECESSARY

A complainant told the OIC that CBSA had not provided all the documents he had asked for because he did not receive any deleted emails, which he had specifically requested. He also wanted information from backup tapes.

During the investigation, the OIC and CBSA discussed both concerns. CBSA officials confirmed that they had searched the relevant folder for deleted emails and had found no responsive records.

With regard to the backup tapes, while the Act requires institutions to make every reasonable effort to assist requesters, searching backup tapes is not required as a matter of course. However, such a search might be warranted when, for example, tapes contain what might be the only copy of records that fall within the scope of an access request—when the records were knowingly or accidentally deleted. Similarly, a search would be necessary in order to comply with a court order or as part of disaster recovery. None of these circumstances applied in this instance. The Commissioner concluded that CBSA had conducted a reasonable search for records in response to the access request.

### AUTOMATICALLY GENERATED NUMBERS ARE NOT “CUSTOMS INFORMATION”

When responding to a request for information related to tariffs on fishing vessels and various vessels for processing or preserving fishery products, CBSA withheld information under subsection 24(1) (disclosure restricted by another law). This provision requires institutions to withhold information when a provision in another piece of legislation—in this case, the *Customs Act*—restricts its disclosure.

In particular, the complainant was concerned that CBSA had refused to release the file numbers associated with entries in its Technical Reference System, in which CBSA records precedent-setting decisions on tariff classification and also tracks cases. The OIC was of the view that these numbers were not actually “customs information” obtained or prepared by CBSA, and therefore their disclosure was not restricted by the relevant provision of the *Customs Act*.

The OIC sought written representations from CBSA on its position, at which point CBSA access officials reviewed the matter and agreed to release the numbers to the complainant.

	Access requests*		Complaints	
	2017–18	2018–19 (% change)	2018–19	2019–20 (% change)
Received	7,466	7,673 (+3%)	298	136 (–54%)
Closed	7,219	8,073 (+12%)	165	122 (–26%)
		Access requests closed in 30 days	Outcomes of complaint investigations	
		4,027	4,732 (+18%)	<ul style="list-style-type: none"> <li>• 54 well founded</li> <li>• 16 not well founded</li> <li>• 65 resolved</li> <li>• 30 discontinued</li> </ul>
				<ul style="list-style-type: none"> <li>• 36 well founded</li> <li>• 10 not well founded</li> <li>• 52 resolved</li> <li>• 24 discontinued</li> </ul>

\*Most recent statistics available. Source: Canada Border Services Agency [2018–19 annual report on access to information](#).

### PREVIOUSLY DISCLOSED INFORMATION WOULD CAUSE GREATER RISK OF HARM TODAY

When responding to a request for seizure statistics, CBSA withheld the locations of the specific ports of entry under paragraph 16(1)(c) (law enforcement). This provision allows institutions to withhold information, the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada—in this case, the *Customs Act*.

The complainant was concerned that CBSA had previously disclosed this same information in a response to a similar access request submitted in 2013. The OIC sought written representations from CBSA to understand why the type of

information that was previously released would now be injurious to the enforcement of the *Customs Act*.

Although CBSA acknowledged in its representations that it had released this information in the past, it was able to show that there was a greater potential for the information to be used to circumvent the *Customs Act* in 2019, particularly for smuggling-related purposes. The Commissioner was satisfied, based on the information received, that the exemption was properly applied and that CBSA had appropriately exercised its discretion to withhold the information.





## Classified records challenging for institutions and the OIC

Processing access requests and investigating complaints involving Secret and Top Secret records—information that, if compromised, could injure the national interest—presents challenges both for institutions and for the OIC. Institutions need adequate digital infrastructure and processes in place. This increases institutions' personnel, information technology and information management security requirements. It also makes it difficult for the institutions processing the requests to seek the advice of other institutions on the application of exemptions and to share working copies of the records with the OIC during complaint investigations. In all cases, institutions and the OIC must tightly safeguard highly classified information.

In early 2020, almost 20 percent of the complaints in the OIC's inventory related to access requests for national security-related information. Of these, investigations into whether institutions conducted reasonable searches for records or into the application of exemptions involved about 45,000 pages of classified information. However, access requests for records associated with delay and time extension complaints could involve additional millions of pages of classified documents. In short, investigating these files is an immense task.

The Commissioner received permission from the President of the Treasury Board to increase the number of investigators with special delegation to examine institutions' application of exemptions to records associated with international affairs, national security and defence. This means the OIC can more promptly begin these complex investigations. Complaints requiring special delegation to investigate accounted for 8 percent of all complaints about the application of exemptions in 2019–20.

In September 2019, the Commissioner met with senior officials from the Privy Council Office, including the Prime Minister's then national security and intelligence advisor, regarding that institution's substantial inventory of national security and intelligence-related complaints involving mainly historic records to develop specific strategies for dealing with them effectively.

However, a more fundamental fix is also called for—establishing a declassification system. The OIC published a [declassification strategy for national security and intelligence records](#) in February 2020 that includes 15 recommendations.

With a proper system of declassification and review of historical national security and intelligence-related records, many of the records associated with access requests and complaints could have been declassified and sent to Library and Archives



Canada (LAC), and could now be more readily accessible to researchers and others who seek access to them. But, in the absence of such a declassification regime, they remain at the original institution, inaccessible except through an access system ill suited to this specific purpose.

Even when records are transferred to LAC, investigating complaints is challenging when the information remains classified. Such was the case with an investigation completed in 2019–20 involving the RCMP Security Service file on René Lévesque, which comprised some 2,750 pages of records, all classified Top Secret. While the OIC was able to secure three supplementary releases of information since LAC originally responded to the request (totalling close to 85 percent of the withheld information), it took nearly 15 years to do so and numerous consultations between LAC and the Canadian Security Intelligence Service (CSIS). Although the latter

was cooperative with both LAC and the OIC, CSIS's involvement and the time and effort required (not least because of the need for personnel with Top Secret security clearance, along with special storage, secure computers and secure transmission of material) would have been reduced if these records, which date back 50 years or more, had been declassified.

#### **“PROTECTED” DESIGNATION FOR SOME INFORMATION DOES NOT PROTECT IT ALL FROM DISCLOSURE**

A related issue arises when institutions decide to broadly rely on the designation of records as “Protected” to withhold information rather than looking at whether the information qualifies for exemption under a specific provision.



For example, Global Affairs Canada withheld requested export permits in their entirety under various parts of subsection 20(1) (confidential third-party information). In justifying the use of paragraph 20(1)(b) (confidential third-party financial, commercial, scientific or technical information), access officials told the OIC that because the system used to store and process applications for export permits was rated for records designated up to Protected B, the records must have been communicated with a reasonable expectation of confidence that they would not be disclosed.

The Commissioner was not persuaded by this argument, noting that a document's security designation does not establish that all the information it contains originated and was communicated with a reasonable expectation that it would not be disclosed. Global Affairs' position was further undermined by the fact that its predecessor, the Department of Foreign Affairs and International Trade, had previously released the types of information at the centre of the complaint. The investigation resulted in additional information being disclosed to the complainant.

### **Solicitor-client privilege versus transparency**

Under section 23, institutions may withhold information protected by solicitor-client privilege. This exemption was cited in nearly 16 percent of the complaints about institutions' refusing access to requested records the OIC received in 2019–20.

#### **RELEASING LEGAL HOURS WORKED IS IN THE PUBLIC INTEREST**

One notable investigation related to the application of section 23 the OIC completed in 2019–20 involved the names of employees and external counsel who had worked on two public inquests into the high-profile 2007 suicide of an individual in custody, along with the hours the employees and external counsel had worked and the cost of their services.

Legal billing is often the subject of investigations. Rates, hours worked and the names of counsel are presumed to be subject to solicitor-client privilege; however, it can be difficult to determine when that presumption can be put aside and the information released.

The Department of Justice Canada had disclosed the total amount of legal fees incurred. In urging the institution to disclose additional information during the investigation, the Commissioner underlined the government's commitment to openness and setting a higher bar for transparency.

At the conclusion of the investigation, the Commissioner was of the view that the Minister of Justice should have considered the public interest more thoroughly when exercising his discretion to decide whether to release the information withheld under section 23, and recommended that he re-exercise his discretion. The Minister did so but ultimately decided to withhold the names and costs associated with the individuals who had been involved in the inquests.

However, the Minister did agree to release the sub-total of hours the various individuals worked, highlighting the importance of institutions' considering all the factors for and against disclosure when making decisions on access.

### **COURT DECISION CLARIFIES ASPECTS OF DISCRETION UNDER SOLICITOR-CLIENT PRIVILEGE EXEMPTION**

In a [decision released in April 2019](#), the Federal Court of Appeal clarified provisions of the *Access to Information Act*.

The access request at the centre of the case was submitted to the Privy Council Office for information relating to four senators. The Court found that most of the requested information was subject to exemptions.

In addition, the Court clarified the extent of the "continuum of communications" protected by solicitor-client privilege and what constitutes a reasonable exercise of discretion. With regard to the latter, the Court noted that institutions must take relevant factors into account but are not required to explain in detail how they weighed every factor against every other.

The Court's ruling also clarified the scope of the exception to the definition of "personal information" for discretionary benefits of a financial nature.



## Small groups may lead to the identification of individuals

Information institutions withhold under section 19 (personal information) must meet the definition of “personal information” in section 3 of the *Privacy Act*. A key aspect of that definition is that the information must be about an “identifiable” individual. By extension, this definition applies to small groups of people, from which an individual might reasonably be identified.

### MEMBERS OF GROUPS OF FIVE OR LESS COULD BE IDENTIFIED IF EQUITY DATA WERE RELEASED

In one instance, the members of the small group were the holders of the position of Canada Research Chair in universities across the country. The complainant had asked the Social Sciences and Humanities Research Council (SSHRC) for statistics on the number of individuals from the four employment equity groups (women, Indigenous peoples, visible minorities and individuals with disabilities) in this role. SSHRC withheld information citing a number of exemptions. Over the course of the investigation, the institution reconsidered its position in some regards, but continued to protect information under subsection 19(1).

The Commissioner agreed with this position when the data involved a group of five people or less, as was the

case for individuals who had self-identified as being Indigenous people or as having a disability. Disclosing the small number of people in these small groups would raise a serious possibility that the individuals could be identified.

The Commissioner was also satisfied that SSHRC had reasonably concluded that the personal information did not warrant being disclosed under subsection 19(2).

### WHAT SIZE OF GROUP MAY RENDER ITS MEMBERS “IDENTIFIABLE”?

In three investigation files, involving sub-areas of various postal codes across Canada, Health Canada refused to disclose the first three characters of postal codes (which are called “forward sortation areas”). Instead, Health Canada only disclosed the first character of each of the postal codes, claiming that the second and third characters constituted personal information that could not reasonably be severed and disclosed.

The postal codes in question were those of 11,842 registered users of medical cannabis, 712 designated or personal producers, and 575 designated or personal producers who were authorized to produce and/or to store large amounts of medical cannabis.

The first two investigations only involved the first three characters of postal codes. The third involved full addresses of designated or personal producers, much of which the Commissioner accepted as constituting personal information (e.g. street names and numbers, and the last three digits of postal codes) because it is about identifiable individuals. However, the third investigation also involved forward sortation areas and city names.

The Commissioner was of the opinion that the populations of most forward sortation areas and cities are too large to be about identifiable individuals, and that Health Canada provided no concrete evidence to the contrary. Accordingly, she found this information not to be personal information and was of the view that Health Canada was required to disclose most forward sortation areas and cities, since they could reasonably be severed from any personal information in the records at issue.

The Commissioner made a recommendation to that end, but Health Canada declined to follow it. The Commissioner recently filed applications in the Federal Court on behalf of the complainants.



## COURT DECISION CLARIFIES RULES FOR TRANSFERRING ACCESS REQUESTS

In an [April 2019 decision](#), the Federal Court of Appeal defined the scope of the provision in the *Access to Information Act* (section 8) that allows one institution to transfer an access request to another institution.

The Court found that section 8 does not require an institution to have control of records responsive to a request in order to be able to transfer the request to a second institution.

The second institution must, however, have a greater interest in a requested record, and must consent to the transfer, in addition to the other requirements for a valid transfer set out in section 8. This section promotes efficiency in the access system, since the requester does not have to make the same request to the second institution.

## There's more to a reasonable search than meets the eye

Among the responsibilities institutions have when responding to access requests is to carry out a reasonable search for records. A number of factors can affect whether an institution's search is reasonable.

### A SECOND SEARCH, SPECIFICALLY DEFINED, LOCATED RESPONSIVE RECORDS

One complaint centred on the fact that Correctional Service Canada (CSC) had been unable to locate any records containing the number of males identifying as transgender housed in women's correctional facilities, and their convictions.

During the investigation, the OIC learned that CSC does track gender considerations and gender fluidity but nothing as specific as males identifying as transgender who are housed in women's correctional facilities. This likely explains why no records were found during the first search. The OIC pressed CSC to conduct a second search. In doing so, CSC found and then released a one-page document that contained the details the complainant sought.

### SOMETIMES SEARCHING FOR RECORDS IN THE POSSESSION OF ANOTHER PARTY IS NECESSARY

A second investigation centred on whether Natural Resources Canada (NRCAN) should have searched for records it did not have possession of but did have control over due to a contractual arrangement with a third party.

During the investigation, the OIC reviewed how NRCAN had processed the access request and examined the records to identify any irregularities in what NRCAN disclosed. In doing so, the OIC came to the view that NRCAN might have had control of a number of additional records that were in the possession of the third party.

Despite disagreeing with the basis for the Commissioner's recommendation to ask the third party for responsive records, NRCAN followed the recommendation. However, in the end NRCAN confirmed that the third party did not have any responsive records.

## The format of records can be as important as the content

Government institutions have an obligation to make every reasonable effort to provide records in response to access requests in the format requested. Individuals can have any number of reasons for asking for records in a particular format—from how they wish to use the information to whether they have Internet access.

In one investigation closed in 2019–20, the complainant had sought records in a particular format in order to shed light on whether a First Nations band council election had been conducted fairly. In particular, the complainant wished to receive colour copies of seven contested ballots so he could see the colour of the marks on them and determine whether those marks had been made fraudulently.

Access officials at Crown–Indigenous Relations and Northern Affairs Canada (CIRNAC) told the OIC that they could not produce the contested ballots in colour because they had to process all records to be released using the institution's redaction software, which converted material to black and white.

The OIC informed CIRNAC that relying on this technicality as a reason for failing to produce the document in the format requested did not fulfill its duty to make every reasonable effort to provide records in the format requested. The OIC suggested other methods to process the document in colour, such as marking colour copies with a stamp to show that they had been disclosed. Ultimately, CIRNAC produced a colour version of the contested ballot that was of greatest importance to the complainant.



# About the Office of the Information Commissioner

The Office of the Information Commissioner (OIC) was established in 1983 under the *Access to Information Act* to support the work of the [Information Commissioner](#).

OIC employees carry out confidential investigations into complaints about federal institutions' handling of access requests, giving both complainants and institutions the opportunity to present their positions on the matters under investigation.

The OIC strives to maximize compliance with the Act. The Commissioner has a wide range of tools, activities and powers at her disposal. These include negotiating with complainants and institutions without the need for formal investigations, and making recommendations and/or issuing an order at the conclusion of investigations when complaints are well founded.

The OIC supports the Information Commissioner in her advisory role to Parliament and parliamentary committees on all matters pertaining to access to information. The OIC also actively makes the case for greater freedom of information in Canada through targeted initiatives such as [Right to Know Week](#) and ongoing dialogue with Canadians, Parliament and federal institutions, and the Commissioner's provincial, territorial and international counterparts.

The Commissioner is supported by a staff of approximately 100 employees led by three deputy commissioners responsible for investigations and governance, legal services and public affairs, and corporate services, strategic planning and transformation services.



# Appendix A

## Annual report of the Information Commissioner ad hoc for 2019–20

The Office of the Information Commissioner (OIC) has been subject to the *Access to Information Act* since 2007 and because it cannot investigate complaints against itself related to its handling of access to information requests, an Information Commissioner Ad Hoc is appointed to conduct such investigations.

Between April 1, 2019 and March 31, 2020, as Information Commissioner Ad Hoc, I received a number of complaints from individuals who sought my assistance because they were disappointed in the result of an OIC investigation of complaints against federal institutions subject to the Act. Those complaints likely stemmed from a misunderstanding regarding my role. As a result, in such cases I carefully review the nature of the concerns and provide written explanations as to why I cannot act. For instance, I explain why I have no authority to review a decision of the OIC at the conclusion of its investigation into a complaint made against an institution subject to the Act resulting from an access to information request. It is evident that the individual requester of the information has remained dissatisfied with the response provided by the public organization as well as with the outcome of the OIC complaint investigation into the nature of that response. Understandably, the OIC does not provide advice on whether an individual should or should not challenge the findings at the conclusion of its investigation into a complaint.

I point out, however, that the OIC does inform those individuals that another process exists as a further recourse should they choose to avail themselves of that option. This is done through the OIC's Report of Findings issued at the conclusion of its investigation; the requester/complainant is informed of his or her rights under section 41 of the Act to apply to the Federal Court for judicial review within 45 days. This recourse is also communicated in the final reports published on the OIC website.

In contrast, I can and do receive complaints in cases where the OIC has itself received an access to information request and the requester is not satisfied with the response provided by the OIC. Those cases are investigated by me and findings are provided to the parties.

For the period ending on March 31, 2020, I received a few cases in which I provided explanations as to why the complaints could not be received in the manner referred to above. Meanwhile, during the latter part of that period, I did receive complaints that were receivable, and those cases are currently under investigation.

Anne E. Bertrand, Q.C.