

# 2022-2023 ANNUAL REPORT



Information  
Commissioner  
of Canada

Commissaire  
à l'information  
du Canada

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## MESSAGE FROM THE COMMISSIONER

I am pleased to table my report on the activities of the Office of the Information Commissioner for the year 2022–2023. The report that follows outlines the exceptional work carried out by my team despite the monumental challenges we faced, and continue to face.

The results that we have been able to achieve over the past twelve months speak for themselves. In response to a never-ending increase in volume, my office managed to keep pace with the complaints coming in, surpassing last year's record in closing over 8,000 files this year.

That said, in spite of our best efforts, the inventory continues to stand at around 3,500 files, as new files have replaced the older ones we succeeded in concluding. What makes the inventory even more daunting is its composition: many of the remaining files are very complex, requiring the dedicated attention of a small number of seasoned investigators able to tackle the thousands of pages to analyse the many exemptions claimed under dispute.

Simply put, if I am to eliminate this inventory by the end of my mandate, additional temporary funding for my office will be required. This has proven difficult to secure in the past, including this year as my request for additional funding has not been accepted. Moreover, under the current funding model, I am required to submit my requests through a minister whose department I investigate. I strongly believe that a model that gives the Government of the day the power to limit the required funding of Agents of Parliament is contrary to our oversight role. As an Agent of Parliament, I report directly to Parliament, and the manner in which my office is funded should reflect this independence. I will therefore continue to press for an alternative to the funding model currently in place for my office.

Over the course of my time as Commissioner, I have observed the steady decline of the access to information system to the point where it no longer serves its intended purpose. When I appeared before Parliament in May 2022, I laid out, in the starkest of terms, the ongoing deterioration of the system, and was gratified with the Standing Committee on Access to Information, Privacy and Ethics' response. The study on the access to information and privacy systems subsequently launched by this committee



When it came into force nearly 40 years ago, the *Access to Information Act*, which enshrined into Canadian law the concept of the right of access, was recognized as a forward-thinking progressive piece of legislation. Over time, however, successive governments failed to bring in amendments aimed at modernizing the legislation.

It took until 2019 to introduce meaningful reforms to the law. While I recognized this as a step in the right direction at the time, I never viewed it as more than a first phase, and indicated that additional changes to the law would be required. Four years on, it has become obvious that no further changes to the law are being contemplated.

Even more disappointingly, as the government's review of access has wrapped up, money to bolster the system has evaporated and commitments to transparency have vanished from mandate letters, it is clear that improving transparency is not a priority for the government.

gave me further opportunities to provide my perspective on issues plaguing the system throughout the year.

While I continued to call for immediate action, I also expressed my hope that the long-awaited access to information review, including the required review of the Act itself, would go some way to addressing the widespread issues we observed. Despite persistent calls from stakeholders for meaningful change, the Government's review concluded with a report tabled in December, which outlined no firm commitments, and proposed no legislative change.

On the eve of the 40th anniversary of the Act, chronic issues continue to plague the access to information system in Canada, with no solutions in sight. I will therefore continue to press the Government to take action to remedy this lamentable state of affairs and give access to information the attention it so badly needs.

I will also continue to call for a better use of resources for the entire system, including in the area of information management, in order to ensure that the quasi-constitutional right of access is upheld. As I noted last fall in my remarks to the Annual Conference of the Canadian Access and Privacy Association, Canadians are entitled to timely access to information. After all, the person receiving a response to an access to information request is not receiving a service from the government or benefiting from a privilege, they are simply exercising their rights.

A handwritten signature in black ink, appearing to read 'Caroline Maynard'.

**CAROLINE MAYNARD**

Information Commissioner of Canada

# 2022–2023 IN REVIEW

**APR  
2022**

## [The challenge of accessing our collective memory](#)

The Commissioner's special report, [Access at issue: The challenge of accessing our collective memory](#), is tabled in Parliament. The report details the findings from her investigation into systemic issues affecting Library and Archives Canada's handling of access to information requests. The report also draws Parliament's attention to two broader challenges facing Canada's access system: the manner in which consultations on access requests are conducted between institutions as well as the lack of a Government-wide framework for the declassification of records.

**MAY  
2022**

## **The Commissioner addresses the National Claims Research Directors' Annual Meeting**

In a presentation to the National Claims Research Directors (NCRD), the Commissioner provides her views on the state of Canada's access to information regime, the impact of the pandemic and the federal government's access to information review. The NCRD are a national body of specialized technicians who manage over 30 centralized Claims Research Units mandated to research and develop evidence related to the claims, grievances, and disputes between First Nations and the Crown.



## [Speaking to Parliament: A bleak picture of the state of access](#)

In an appearance before the Standing Committee on Access to Information, Privacy and Ethics (ETHI), the Commissioner explains the challenges facing Canada's access to information regime. While she reaffirms her commitment to ensuring the *Access to Information Act* is properly applied, she highlights the record number of complaints received by her office and the growing backlog of complaints that continues to represent a major challenge, in spite of efficiencies adopted. At the conclusion of her appearance, the Committee [adopts a motion to conduct a study into the access to information system](#).

## **A new Code of Values and Ethics**

The OIC releases its updated Code of Values and Ethics, representing the foundation of the Office's organizational culture with respect to the values, ethics and the conduct of all employees. The Code reflects the organizational values as outlined in the [2020–2025 strategic plan](#), as well as the Commissioner's commitments to equity, diversity and inclusion.

**JUNE  
2022**

### **Access to information: A milestone of the digital age**

The Commissioner is a signatory to the statement released by the [13th International Conference of Information Commissioners](#) (ICIC), urging governments to continue to provide access to public information, "through cooperation, collaboration and communication schemes, in which the principles of open government, transparency and accountability will be promoted".

### **Time to provide leadership on access requests and consultations**

In a presentation to the Assistant Deputy Ministers of Access to the Information and Privacy Committee, the Commissioner reminds the audience of their important role in providing leadership in the area of access. She also addresses the issue of consultations, reminding the group that lengthy consultations are one of the causes of delays in the federal access system.

### **Commissioner Maynard Named Interim Privacy Commissioner**

The Information Commissioner is appointed as the interim Privacy Commissioner of Canada. This is the first time that a commissioner is holding both the Access and Privacy Commissioners' mandate at the federal level. She holds the position until the [appointment of the new Privacy Commissioner](#) at the end of June.

**JULY  
2022**

### **Access to information part of public service's struggles**

Various issues challenge Canada's public service as the country begins to emerge from the pandemic. In a [National Post article](#), access to information is cited as an example of a system already broken and getting worse. The article notes that prior to the pandemic, the access system struggled to meet the 30-day deadline to respond to requests, and that a failure to adapt to new work realities imposed the pandemic only worsened the situation. The Commissioner had foreseen this at the beginning of the COVID-19 pandemic, [giving leaders advice on the vital importance of access to information and information management during this challenging period](#).

**AUG  
2022**

### **A first challenge of a Commissioner's order by an institution**

Public Services and Procurement Canada (PSPC) files a notice of application to have the Federal Court review the Information Commissioner's order to release records to a requester on a specified date. The application is discontinued in October as PSPC provides the records to the requester.

**SEPT  
2022**

### **Jurisdictions across Canada share perspectives and best practices**

At the Federal-Provincial-Territorial Annual Meeting of the Information and Privacy Commissioners held in St. John's, Newfoundland and Labrador, commissioners and ombudspersons discuss issues of common interest and shared perspectives on the current state of access to information. At the invitation of Commissioner Maynard, the Chief Information Officer of Canada, Catherine Luelo, and representatives of Immigration, Refugees and Citizenship Canada present new digital tools and innovative practices to bolster the ability to respond to access to information and privacy (ATIP) requests. The Commissioner also moderates a panel of frequent users of the ATIP system, who share their experiences with various jurisdictions.



### **A call to action: Leaders must take an active role in ensuring Canadians' right of access**

The Commissioner provides members of the Public Service Management Advisory Committee (PSMAC) with an update on the state of Canada's access regime. She recognizes the few institutions that are respecting their obligations under the *Access to Information Act*, praising strong leaders who are taking an active role in ensuring Canadians receive responses to their requests within the legislated timelines. She reminds the members of this deputy minister-level committee that it is their responsibility to ensure that public servants understand that access to information is a core part of their job and not a distraction from other responsibilities.

### **Right to Know Week: Leaders must be held accountable for access to information**

In her [annual statement](#) commemorating [Right to Know Week](#), the Commissioner laments a lack of progress toward greater transparency and calls upon leaders to redouble their efforts and ensure that their institutions treat access to information as a collective responsibility.

### **The ATIP community contributes to citizens' confidence in institutions**

In a presentation to the ATIP community marking the International Day for Universal Access to Information, the Commissioner reminds the audience of the essential role they play in helping Canadians understand how their government makes decisions and contributing to citizens' confidence in Canada's institutions. She also announces the 2022 [Information Commissioner's Award](#) recipients, the ATIP teams at Health Canada and the Public Health Agency of Canada, as well as National Defence's ATIP Directorate, which brought positive changes to their respective institutions.

**OCT  
2022**

### The ETHI Committee launches its study into the access to information and privacy systems

Following a motion adopted in May, the ETHI Committee launches its [study into the access to information and privacy systems](#) with the [second appearance of the Commissioner this year](#). During her remarks, the Commissioner refers the committee to her [January 2021 submission](#) to the [Government's review of access](#) and emphasizes that progress in improving the access regime in Canada could start with simply respecting the law, as it currently exists.

### Canada's freedom-of-information system under investigation

Various challenges facing the system are brought to light by many stakeholders prompting *The Globe and Mail* to [launch an investigation](#) into Canada's access to information regime entitled Secret Canada. Calling the system "broken", the Globe reports that delays, costs, the overuse of redactions, a lack of proactive disclosure, as well as political leaders who do not view access as a priority are all factors contributing to the paralysis of the access regime.

### Calling for legislative reforms, more resources and leadership

The Commissioner appears as a guest on Michael Geist's Law Bytes [podcast](#), using the opportunity to continue to push for a change in the way the federal government approaches access to information.

### Digital transformation: Challenges and opportunities for access to information

The Commissioner meets with the Chief Information Officer Council to discuss the use of digital transformation in addressing issues across the access system, as well as information management and technology challenges facing small organizations such as the OIC.

**NOV  
2022**

### The Regulator's Perspective

Along with information and privacy commissioners from across the country, Commissioner Maynard participates in the Regulator's Perspective panel, held during the Canadian Bar Association's Access to Information and Privacy Law online symposium. The panel discusses critical developments and issues in Canadian privacy and access regulation.

### Upholding the right of access to information: The Commissioner's perspective

In a [speech](#) before the Canadian Access and Privacy Association (CAPA) Annual Conference, the Commissioner reflects on the profound impact the global pandemic has had on government institutions and the OIC in the area of the right of access to information. She reminds the audience that Canadians are entitled to timely access to information and should not have to tolerate a situation where institutions do not respect the law of the land.



**DEC  
2022**

### Concerns regarding the Government's report on the review of access to information

In a [statement](#) following the tabling of the report to Parliament on the Government of Canada's [review of the Access to Information Act](#), the Commissioner expresses deep disappointment that the report does not include concrete proposals to address the necessary changes to the Act. She urges the Government to act without further delay to bring about a true reform of the access to information regime.

**JAN  
2023**

### The Commissioner's Hour: A popular gathering at the OIC

The OIC marks the beginning of the new calendar year by holding a Commissioner's Hour. These monthly all-staff meetings keep employees informed of new developments and offer them the opportunity to dialog directly with the Commissioner in a hybrid work environment.

**FEB  
2023**

### The Commissioner meets with the Clerk

The Commissioner meets with Janice Charette, the Clerk of the Privy Council. They discuss the need for strong leadership regarding access to information throughout the public service, including the necessity to minimize consultations between institutions to help reduce delays within the system.

**MAR  
2023**

### [Before the ETHI Committee](#)

The Commissioner once again appears before the ETHI Committee—her second appearance in the context of the ongoing [study into the access to information and privacy systems](#). She conveys her views on the final report of the Government's review of the access regime, the funding and independence of agents of Parliament, and the upcoming 40th anniversary of the *Access to Information Act* in July 2023, an occasion for which there is "little to celebrate."

### Regulators gather in Ottawa for the Privacy and Data Governance Congress

The Commissioner participates in the [Regulators Roundtable](#) during the 2023 Privacy and Data Governance Congress, sharing insights about current and upcoming issues affecting access legislation and practice in Canada.

# A BUSY YEAR FOR INVESTIGATIONS

## A surge in complaints and file closures

The OIC had another record year in 2022–2023, as evidenced by a 7% increase in registered complaints compared to the previous year and a remarkable 19% increase in complaint closures in comparison to 2021–2022, with 8,089 complaints closed.

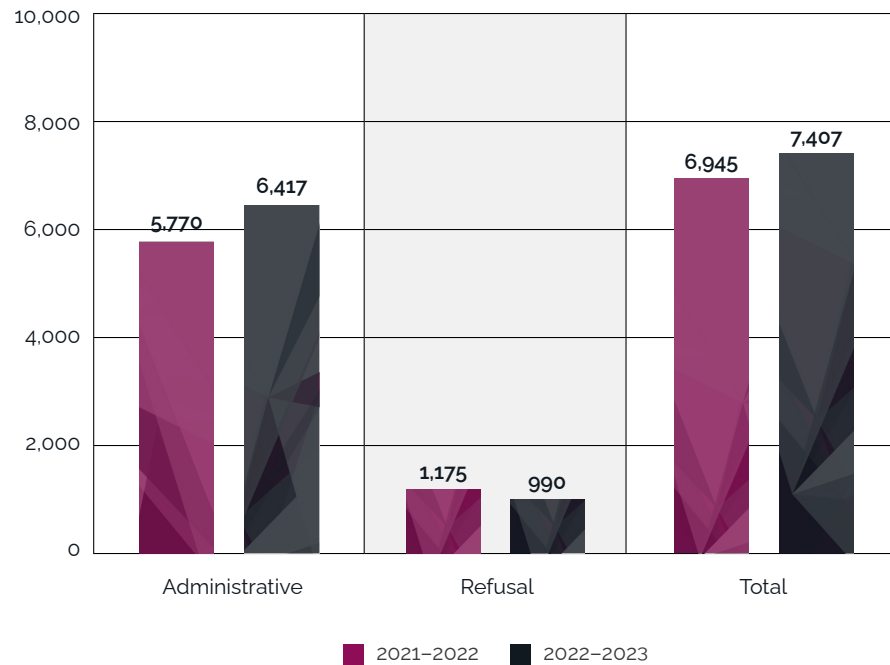
Since the beginning of Commissioner Maynard's mandate on March 1, 2018, the annual number of complaints received by the OIC has grown by 185%, while the number of complaints closed each year has increased by 310%.

The OIC investigates complaints from requesters who believe institutions did not respect their rights under the Act.

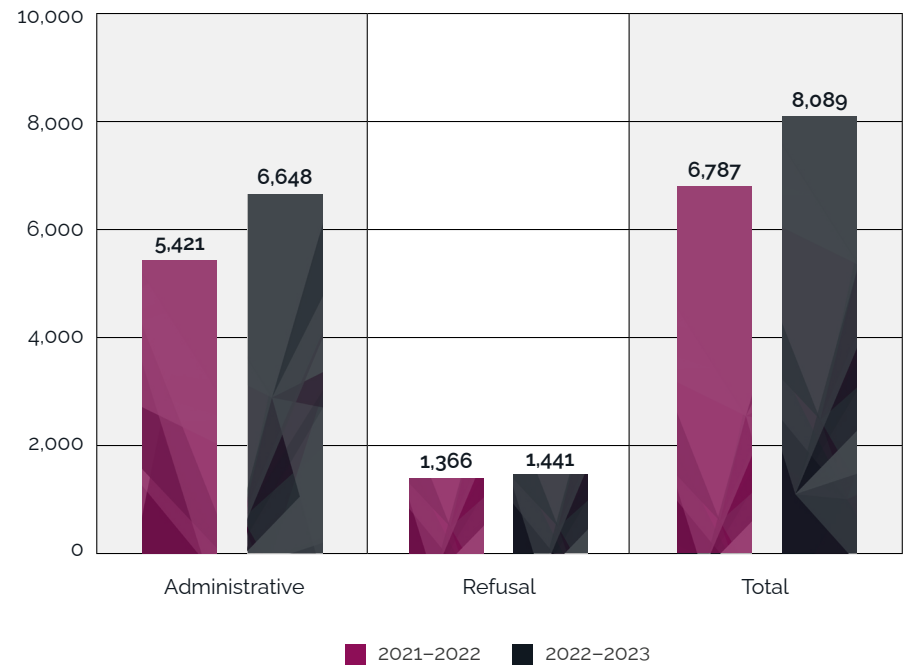
**Administrative complaints** generally relate to institutions extending or delaying timelines for responses to requesters. Complainants have not yet received a response to their request.

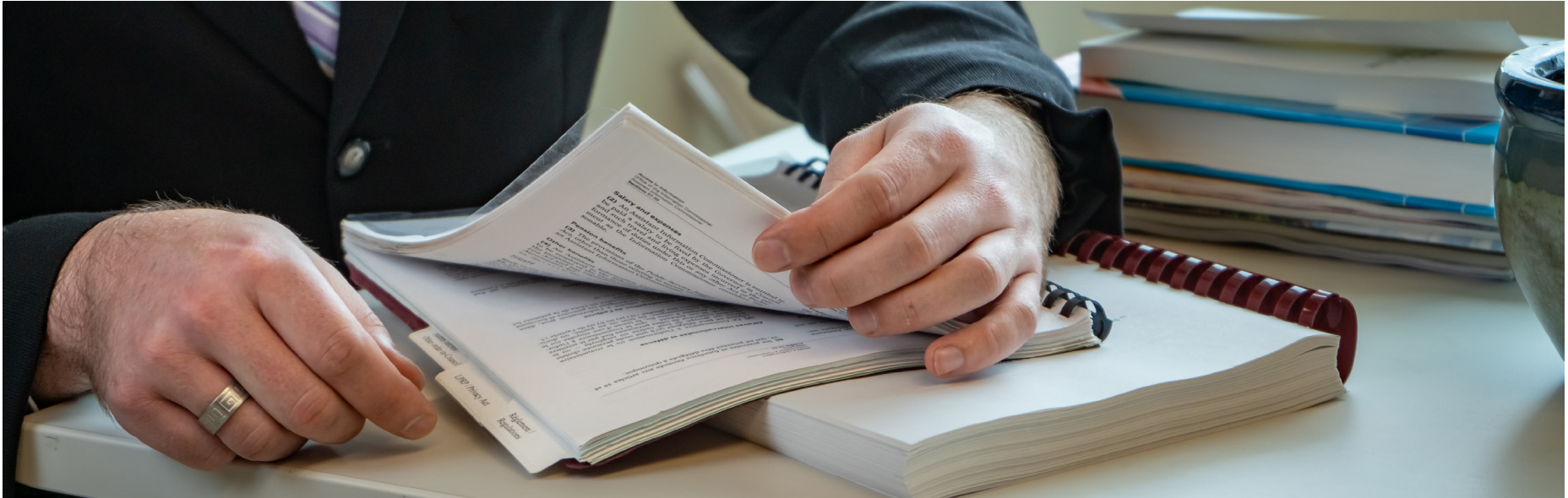
**Refusal complaints** relate to institutions applying exemptions or exclusions under the Act to refuse disclosure of information. Complainants are not satisfied that they received all the information they were entitled to under the Act.

Complaints registered

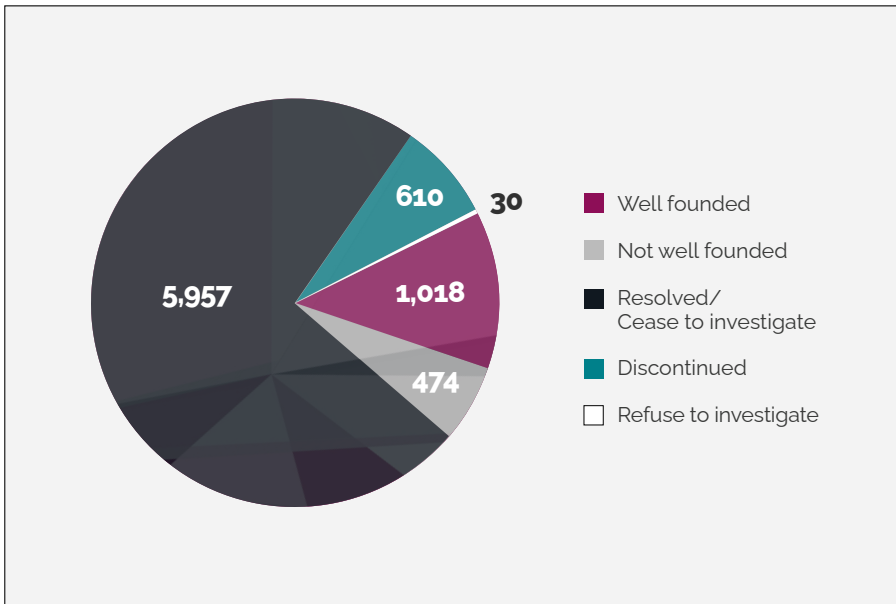


Complaints closed





### Complaint outcomes in 2022–2023



OUTCOMES	2021–2022		2022–2023	
	Count	Percentage	Count	Percentage
Well founded	934	14%	1,018	12%
Not well founded	522	8%	474	6%
Resolved/ Cease to investigate	4,854	71%	5,957	74%
Discontinued	477	7%	610	8%
Refuse to investigate	0	0%	30	0.40%
<b>TOTAL</b>	<b>6,787</b>	<b>100%</b>	<b>8,089</b>	<b>100%</b>

# COMPLAINT ACTIVITY IN 2022–2023

	Active complaints in 2022–2023			Investigations completed in 2022–2023			Outcomes					
	Active complaints as of April 1, 2022	Complaints registered between April 1, 2022 and March 31, 2023	Total	Complaints registered before April 1, 2022	Complaints registered between April 1, 2022 and March 31, 2023	Total	Well founded	Not well founded	Discontinued	Resolved/Cease to investigate	Refuse to investigate	Total
Immigration, Refugees and Citizenship Canada	652	4,685	5,337	590	3,807	4,397	69	78	177	4,060	13	4,397
Canada Border Services Agency	658	613	1,271	487	365	852	41	10	18	783	0	852
Royal Canadian Mounted Police	349	479	828	268	291	559	101	25	32	399	2	559
Canada Revenue Agency	218	199	417	142	81	223	61	26	44	90	2	223
Privy Council Office	237	172	409	112	91	203	62	70	26	44	1	203
National Defence	111	146	257	83	70	153	58	18	22	54	1	153
Library and Archives Canada	266	126	392	123	35	158	102	1	11	44	0	158
Global Affairs Canada	111	84	195	82	22	104	20	11	32	41	0	104
Correctional Service Canada	95	61	156	75	30	105	40	13	4	45	3	105
Health Canada	64	59	123	40	14	54	8	4	14	28	0	54
Employment and Social Development Canada	51	55	106	35	23	58	23	7	9	19	0	58
Transport Canada	104	51	155	59	14	73	30	10	5	28	0	73
Department of Justice Canada	99	49	148	67	14	81	17	26	22	16	0	81
Environment and Climate Change Canada	71	47	118	63	36	99	32	5	19	43	0	99
Innovation, Science and Economic Development Canada	59	38	97	43	13	56	34	2	11	9	0	56
Indigenous Services Canada	44	36	80	26	15	41	16	2	12	10	1	41
Treasury Board of Canada Secretariat	28	36	64	26	15	41	9	14	8	9	1	41
Public Services and Procurement Canada	133	36	169	50	12	62	27	5	6	24	0	62
Public Safety Canada	21	34	55	17	17	34	8	8	4	14	0	34
Canadian Heritage	22	32	54	14	20	34	6	10	8	10	0	34
Department of Finance Canada	55	27	82	49	9	58	17	14	11	16	0	58
Public Health Agency of Canada	33	23	56	28	10	38	10	5	8	15	0	38
Fisheries and Oceans Canada	50	21	71	35	12	47	15	5	12	13	2	47
Canadian Radio-television and Telecommunications Commission	17	21	38	16	15	31	14	0	3	13	1	31
Canadian Security Intelligence Service	54	21	75	38	13	51	6	23	13	9	0	51
Subtotal	3,602	7,152	10,752	2,568	5,044	7,612	826	392	531	5,836	27	7,612
Other Institutions	538	255	794	379	98	477	192	82	79	121	3	477
<b>Total</b>	<b>4,140</b>	<b>7,407</b>	<b>11,546</b>	<b>2,947</b>	<b>5,142</b>	<b>8,089</b>	<b>1,018</b>	<b>474</b>	<b>610</b>	<b>5,957</b>	<b>30</b>	<b>8,089</b>

# A DEEP DIVE INTO THE OIC'S INVENTORY

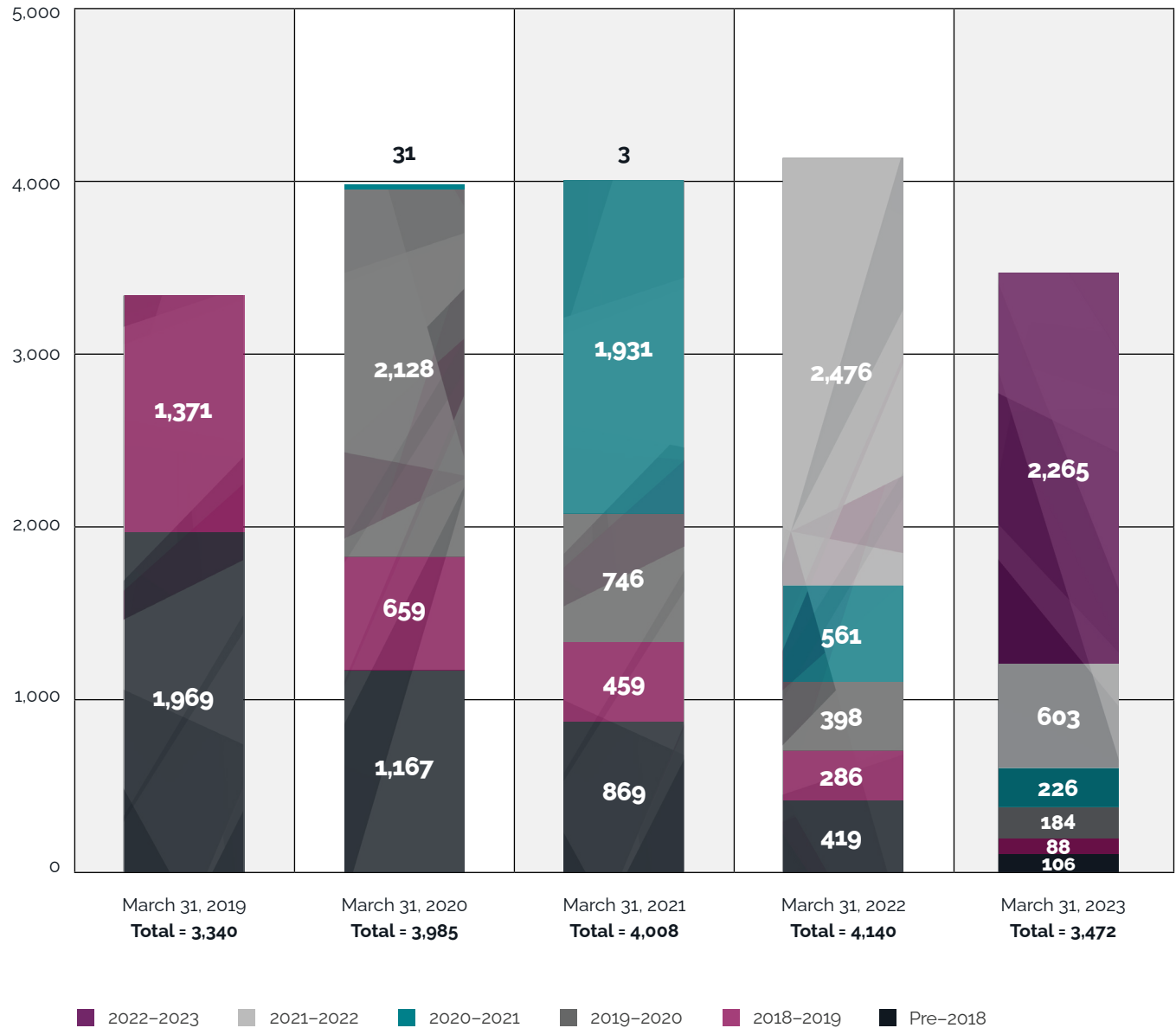
Commissioner Maynard's first priority when she arrived at the OIC was to address the inventory of complaints she inherited, while continuing to investigate new complaints.

As of March 31, 2023, thanks to the efforts of our investigators as well as the tools and processes put in place, the OIC has closed the overwhelming majority of the approximately 3,500 files that existed at the beginning of the Commissioner's mandate. As mentioned in her [speech at the Canadian Access and Privacy Association Annual Conference](#) last November, the Commissioner is committed to do everything she can to get the few remaining complaints that she inherited resolved before the end of her mandate.

As of April 1, 2023, the OIC's inventory was made up of 3,472 complaints.

During fiscal year 2022–2023, despite a record number of new complaints registered, the OIC managed to decrease its inventory by 16%.

**An evolving inventory: From 2019 to 2023**  
Complaints categorized by the fiscal year in which they were registered





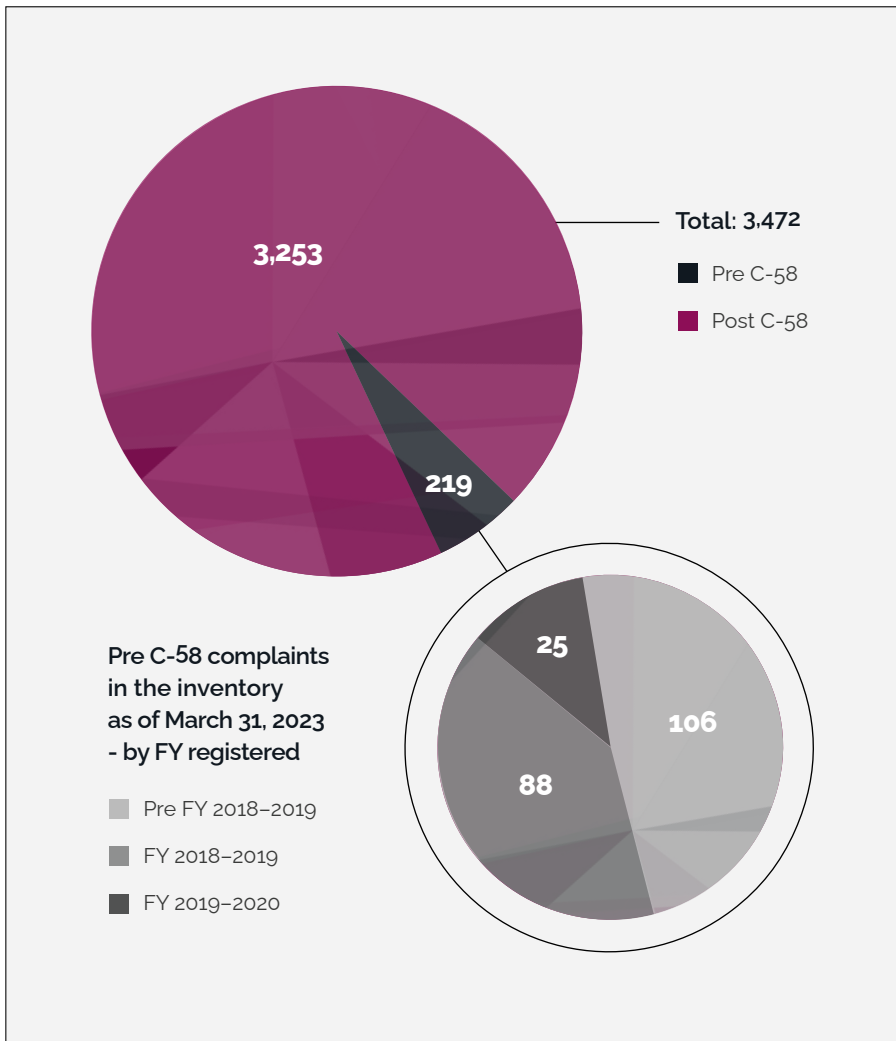
## A complex and varied inventory

The OIC receives complaints for approximately 4% of all access to information requests made. As the volume of requests grows, the volume of complaints grows proportionally. The inventory consists of a wide variety of complaints, from federal employees wishing to access their personal human resource records to complaints about immigration or tax records.

By their nature, many complaints in the inventory pose unique challenges:

- **Some complaint files involve tens of thousands of pages with many exemptions claimed.** The number of records to be reviewed, the number of issues to be investigated, and the completeness and quality of the information provided, are all factors that can affect how long a single investigation will take.
- **Some individuals have filed numerous complaints, often numbering in the dozens or even hundreds.** The Investigations team cannot exclusively prioritize the files of a small number of individuals, as doing so may burden institutions or other complainants when seeking representations. Consequently, the files of high-volume complainants may linger in the inventory for a longer period.
- **Many complaints involve third-party information.** The Act requires that the OIC consult all third parties involved in the complaint. This time-consuming process can present a number of challenges, as shown in a [recent final report regarding an investigation into a complaint against Innovation, Science and Economic Development Canada](#) requiring the consultation of no less than 12 third parties.
- **A number of complaints involve the analysis of highly technical and sensitive information.** The OIC conducts investigations that require careful analysis of information that may have implications for national security and/or the defence of Canada or involve highly technical third-party information. For example, the OIC recently completed an investigation into a [case where records related to the failure of the MCAS system on a Boeing 737 Max aircraft resulting in multiple crashes](#) were withheld by Transport Canada.
- **Only investigators with the necessary security clearance may investigate certain complaints.** The security classification and sensitivity of the records may also mean that only a limited number of investigators have the required security clearance to examine them, further adding to the challenge of investigating such files.

Pre C-58 complaints in the inventory as of March 31, 2023



Through amendments to the *Access to Information Act*, which came into force in June of 2019 (Bill C-58), the Information Commissioner was granted new responsibilities and authorities, including the power to order institutions to release records at the end of an investigation when she finds that a complaint is well founded.

For complaints registered prior to Bill C-58 coming into force, she can only issue recommendations, which unlike orders, are not binding upon the institution.

### How complaints are assigned

The OIC has a limited number of investigators, who can each tackle a limited number of complaints at once. Complaints remain in the inventory until investigators are available to take them on. When all investigators have a full caseload, this results in a delay in assigning complaints.

The OIC takes a balanced approach to assigning complaints in order to make progress against each segment of the inventory. This means that investigators are assigned both new files and older files, based on a variety of factors, including:

- area of expertise;
- level of complexity;
- type of complaint;
- workload constraints;
- input from complainants;
- how time sensitive the requested information is.



## EXAMINING COMPLAINT ACTIVITY IN TOP FIVE INSTITUTIONS

In 2022–2023, Immigration, Refugees and Citizenship Canada (IRCC), Canada Border Services Agency (CBSA), Royal Canadian Mounted Police (RCMP), Canada Revenue Agency (CRA) and the Privy Council Office (PCO) were the five institutions with the highest number of complaints filed with the OIC. It comes as no surprise that these government institutions also receive a large amount of access requests.

Details regarding each of these institutions are presented here, with data regarding access requests **only up to 2021–2022** as statistical reports for 2022–2023 have not yet been published.





## Immigration, Refugees and Citizenship Canada

In 2022–2023, the OIC continued to receive a high number of complaints against IRCC: 4,658 complaints were registered against IRCC, representing an increase of 12% from 2021–2022.

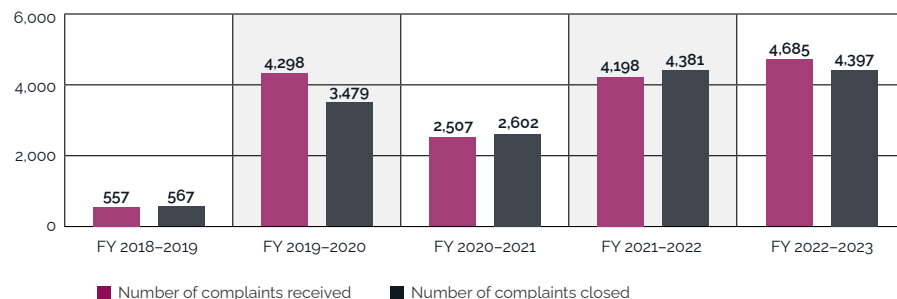
Since at least 2019–2020, IRCC complaints continue to make up more than half of the OIC complaints registered each year. From a high of 70% in 2019–2020, IRCC complaints have consistently made up around 60% of the total complaints registered, the vast majority being delay complaints related to immigration client files.

In May 2021, the Information Commissioner tabled a [special report to Parliament](#) detailing the results of her investigation into systemic issues affecting IRCC's handling of access to information requests. This systemic investigation confirmed that the extraordinarily high number of requests, and correspondingly high numbers of complaints, is the direct result of applicants and/or their representatives being unable to obtain information they are seeking about immigration application files through other means than the access to information system. As the results of this investigation showed, the access system is not the most efficient means of providing potential immigrants with the information they need.

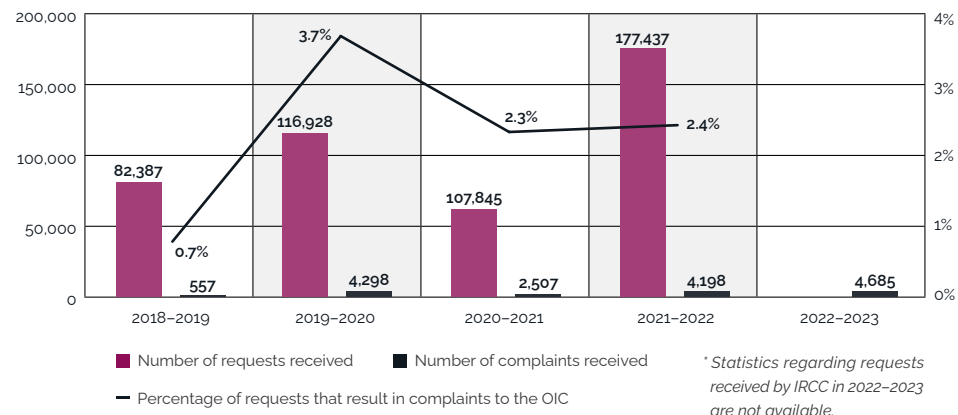
Two years later, despite efforts to innovate undertaken by IRCC's ATIP team, the number of requests and complaints received has not decreased. It appears that several of IRCC's commitments remain "In Progress" and without concrete timelines for completion. IRCC has yet to offer applicants any alternative methods to access the information they are seeking on their immigration files.

The limited number of refusal complaints submitted to the OIC suggests that IRCC is not excessive in its use of exemptions, and the information that requesters need is typically accessible upon request. Rather than continuing to rely on ATI, a solution that is integrated into IRCC's operations is needed to address this issue. Clearly, two years after the systemic investigation against IRCC, much remains to be done.

IRCC complaints - received and closed (over five years)



Requests received by IRCC vs Complaints submitted to the OIC (2018–2022)



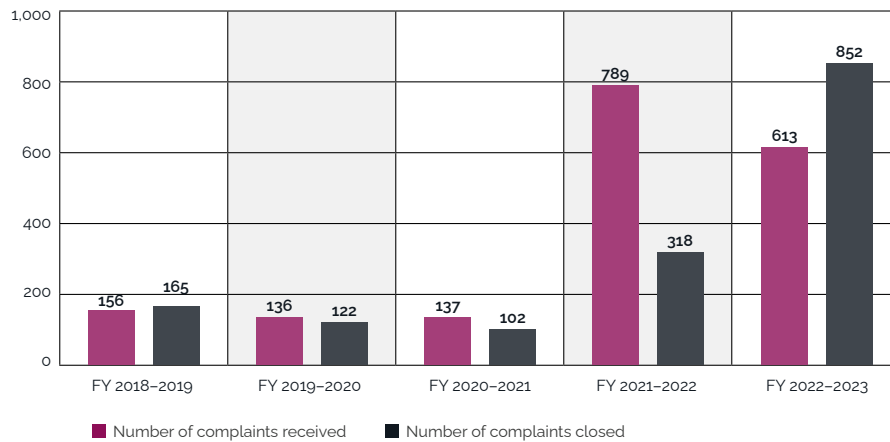
## Canada Border Services Agency

Since April 1, 2021, the OIC has observed a significant increase in administrative complaints made against CBSA, alleging the institution is not responding to access requests within legislated time limits. These requests are mainly for immigration client files. This increase in administrative complaints is having a negative effect on the CBSA's capacity to handle refusal complaints, resulting in a growing backlog.

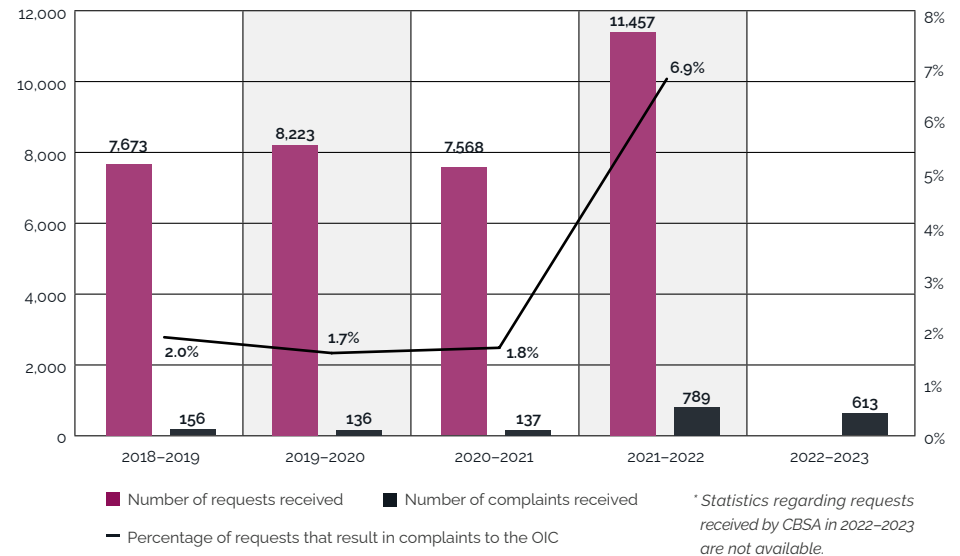
To better understand the root cause of this surge and provide recommendations, in February 2023, the Information Commissioner initiated a systemic investigation into CBSA's processing of requests for immigration application files, covering the period from April 1, 2021, to December 31, 2022. The Commissioner plans to publish the final report on this investigation in 2023–2024.

In 2021–2022, CBSA received 8,136 access and privacy requests for immigration client files, a 65% increase from the previous year.

CBSA complaints - received and closed (over five years)



Requests received by CBSA vs Complaints submitted to the OIC (2018–2022)



## Royal Canadian Mounted Police

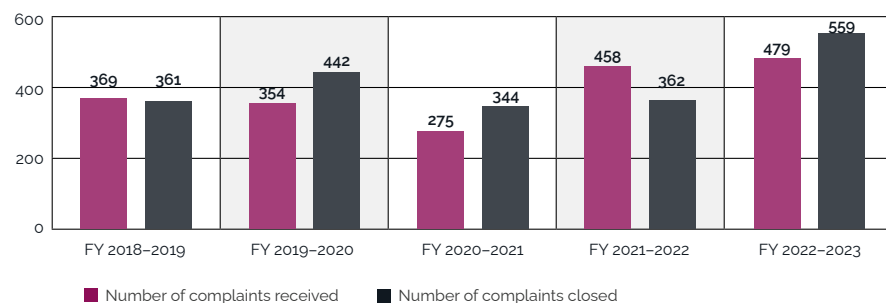
The OIC receives a consistent number of complaints against the RCMP every year, which are typically related to investigative files that involve law enforcement and personal information exemptions.

Significant improvements in resolving RCMP complaints have been made this year, with 54% more complaint files closed in 2022–2023 than in the previous year. This positive development has contributed to reducing the backlog of unresolved complaints against this institution.

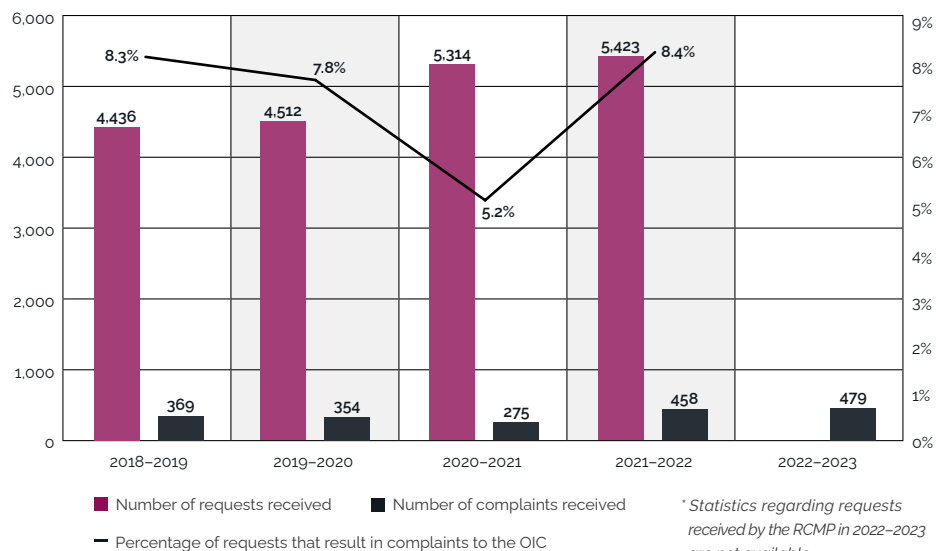
This year, the Commissioner published two final reports concerning the RCMP. The [first report](#) pertained to a complaint that the RCMP had not conducted a reasonable search under the Act while responding to an access request for records associated with the RCMP's "E Norther" file. The Commissioner issued an order in response to this complaint. The [second report](#) investigated a complaint falling under paragraph 30(1)(a) of the Act, which was deemed not well founded. The complaint alleged that the RCMP had not conducted a reasonable search when responding to an access request for the total amount paid annually by the RCMP as a result of sexual harassment/assault between 2009 and 2020.

After the Commissioner conducted a [systemic investigation into the RCMP](#) in 2020, the institution developed a [strategy and action plan](#) to modernize its ATIP program which was to be implemented over a five-year period.

RCMP complaints - received and closed (over five years)



Requests received by the RCMP vs Complaints submitted to the OIC (2018–2022)



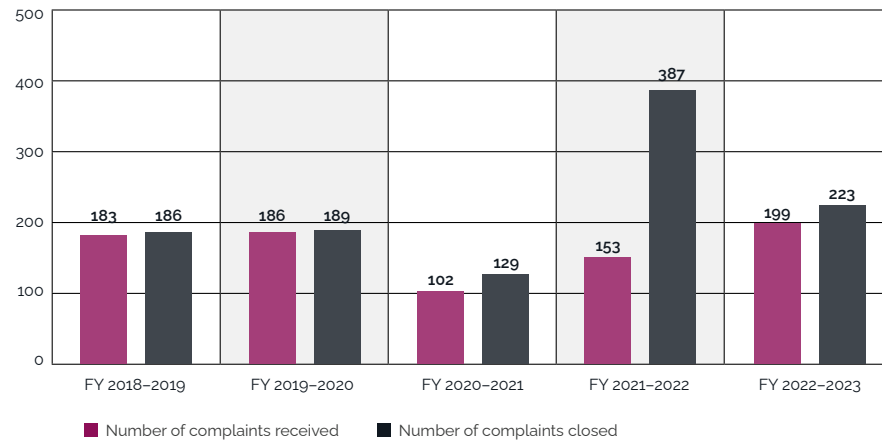
## Canada Revenue Agency

The number of complaints against CRA has remained stable over the years, with most being requests for tax files that are currently under audit. These types of complaints typically involve straightforward applications of exemptions such as section 16(1)(c) (time-limited, further disclosure is available once the audit is completed) or section 24 (mandatory exemption when the information doesn't belong to the taxpayer). There are also a significant number of requests for employee files, as well as information related to particular grievances, and labour relations issues.

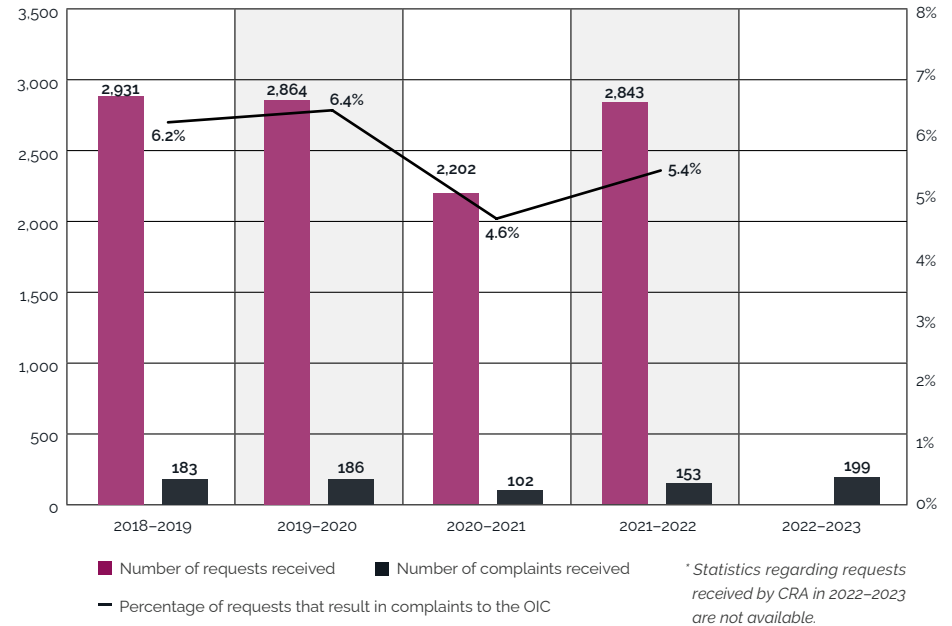
This year, the Commissioner published a [final report](#) related to a complaint against CRA that alleged improper withholding of information in response to an access request for the Canada Emergency Wage Subsidy database of all recipient corporations. The complaint was deemed not well founded.



CRA complaints - received and closed (over five years)



Requests received by CRA vs Complaints submitted to the OIC (2018-2022)



## Privy Council Office

Over the last five years, there has been a marked increase in complaints registered against PCO. Despite significant efforts from PCO's ATIP unit, the number of complaints against PCO in the OIC's inventory continues to increase.

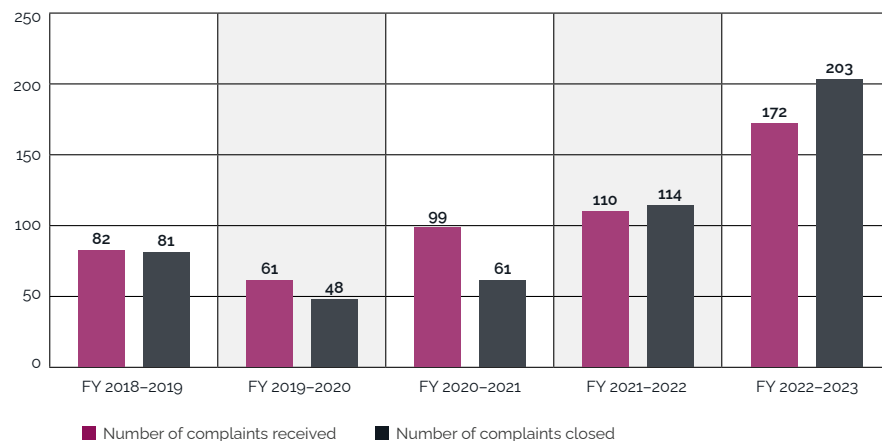
Many of PCO's records require a review for potential Cabinet confidences. In 2022–2023, PCO received a higher number of complaints concerning time extensions taken for these reviews compared to previous years.

One particular challenge for PCO is the volume of historical records that it chose not to transfer to Library and Archives Canada (LAC), and must now process in response to access requests and complaints. The lengthy timelines associated with PCO's processing of historical documents has resulted in these complaints remaining in the OIC's inventory for an extended period. Nearly half of the OIC's oldest remaining files pertain to complaints against PCO.

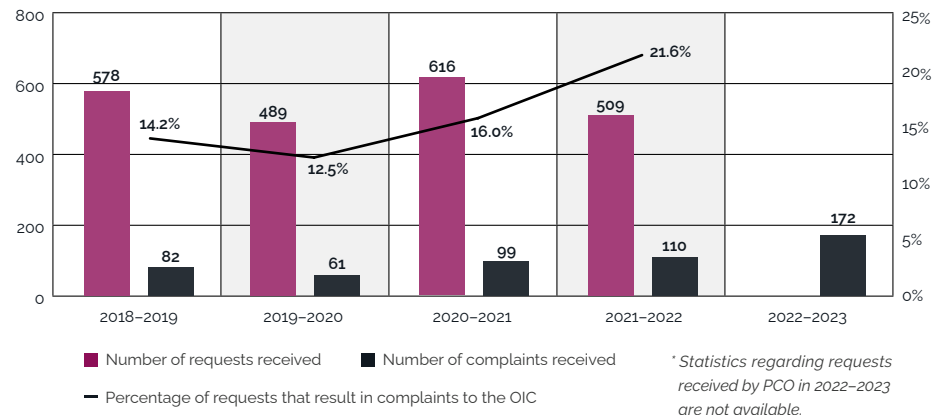
Leadership and a genuine commitment on the part of senior PCO officials is required to address a situation that currently sees complainants kept waiting for a resolution to their complaints for years. Establishing a declassification system is also needed to facilitate the proper management of historical records.



PCO complaints - received and closed (over five years)



Requests received by PCO vs Complaints submitted to the OIC (2018–2022)



## OIC'S INVESTIGATIONS RESULTED IN SIGNIFICANT DISCLOSURE OF HISTORICAL SECURITY DOCUMENTS

Each year, the OIC conducts a significant number of investigations involving historical national security documents. Investigations have revealed that redactions made under [section 15 of the Act](#) are often applied too broadly, as well as based on the document's classification rather than its contents.

Accessing, processing and reviewing documents associated with these types of complaints is frequently more difficult than it should be because in most cases the classification of these documents has not been reviewed or downgraded since their creation. This inevitably slows down the investigative process.

In 2022–2023, the OIC's investigations resulted in significant disclosure in several cases. These include:

1. **Operation Featherbed**, a program conducted by the Security Service of the RCMP, aimed to detect individuals in government positions who disclosed or were likely to disclose classified information to the Soviet Union. The RCMP Security Service files from the 1940s to 1970 contain numerous names of targets of investigation, including senior Canadian officials close to Cabinet members or the Prime Minister.

Concerns about Operation Featherbed were brought before the Royal Commission of Inquiry into Certain Activities of the RCMP (the "McDonald Commission"), and likely played a role in the decision to shut down the Security Service and create the Canadian Security Intelligence Service (CSIS)—a major event in Canadian history.

The OIC conducted extensive research into the public availability of information on Operation Featherbed and its targets, resulting in CSIS making two significant supplementary disclosures of information.

2. LAC used section 15 of the Act to withhold plans, operations, and **Arctic Defense-related information dating back to the 1980s**.

However, the [OIC provided evidence to LAC that both Canada and the United States have previously disclosed a significant amount of similar historical national security information](#). In addition, while LAC reiterated that the redacted information is sensitive to present-day circumstances, it did not indicate how further disclosure of the withheld information would harm national security and/or the defence of Canada.

The Commissioner recommended that the Minister of Canadian Heritage disclose the responsive records in their entirety, and the Minister agreed to implement the Commissioner's recommendation. This is a significant disclosure that impacts several other historical files currently under investigation.

Although significant additional disclosure has been achieved through the OIC's investigations, this process is time-consuming and does not adequately replace a proper declassification system.

The lack of a declassification system in Canada is increasingly affecting the access regime, including the OIC. About 15% of the inventory consists of complaints regarding national security exemptions, which refer to sections 13 and 15 of the Act.

A proper declassification system based on regular reviews and consensus by experts would enable researchers and others to gain access to records that are no longer sensitive to national security, through mechanisms other than the Act. As a result, the number of complaints filed with the OIC regarding these records would decrease.

The Commissioner will continue to advocate for the adoption of a declassification system across the federal government.

## The systemic investigation of Library and Archives Canada leads to concrete improvements that result in greater transparency

Among the thousands of investigations completed this year, the Information Commissioner conducted a systemic investigation into LAC's inability to provide timely access to the information under its control. The investigation, which led to a [special report tabled into Parliament in April 2022](#), found several issues impeding the institution and concluded it was not meeting its obligations under the Act. The Commissioner's findings and recommendations were relayed to the Minister of Canadian Heritage—the minister responsible for LAC.

Over the past few months, the OIC has been receiving feedback from requesters who have noticed that their requests are being processed more quickly and with fewer redactions from LAC. They have pointed out that this change may be attributed to the Commissioner's systemic investigation and the attention she brought to the challenges faced by the institution.

An example of this shift can be seen in the events surrounding the 20th anniversary of the invasion of Iraq in the week of March 19, 2023. Prior to March 2023, records pertaining to Canadian policy regarding Iraq before the invasion were not publicly accessible. However, requesters have reported a notable change occurred when LAC responded to a series of requests with minimal redactions, and swiftly released the records without the need for any complaint to the OIC.

This collection of records, primarily sourced from the Deputy Minister of National Defence's correspondence, offers a compelling insight into various aspects of Canadian defence-focused memoranda, diplomatic negotiations at the United Nations, reports on other countries' war preparations, and the National Threat Assessment sent to provincial governments.

Although this is a step in the right direction, LAC ranks 4th in total pending complaints with the OIC among the top 20 institutions. The majority of the complaints against LAC are administrative delay complaints, and a large number of access requests are carried over from year-to-year. Consultations with other government institutions also contribute in a large part to delays.



Reported key improvements to LAC's access to information and privacy function:

1. Expansion of its management team and recruitment of new staff across the institution to support the response to ATIP requests
2. Creation of a new complaints team, to address the backlog in complaints
3. Establishment of an archival research team responsible for the initial assessment of ATIP requests, to better tailor LAC's approach to consultations

## UPDATE ON ORDER-MAKING AND LITIGATION

Since the coming into force of C-58 in June 2019, the Information Commissioner has the power to make orders. When a complaint falls within the scope of paragraph 30(1)(a), (b), (c), (d), (d.1) or (e) of the *Access to Information Act*, and the Commissioner determines that the complaint is well founded, she may order the institution to take any action she considers appropriate as long as the order relates to a record. Information on all orders is available in the [OIC's decisions database](#). Institutions are legally obliged to abide by an order from the Commissioner unless they apply to the Federal Court for a review of the matter that is the subject of the order.

Two institutions are going to court to challenge the Commissioner's orders.

### Export Development Canada

The complainant alleged that Export Development Canada (EDC) had improperly withheld information under [subsection 18.1\(1\)](#) (confidential financial, commercial, scientific or technical information of EDC) and [subsection 24\(1\)](#) (disclosure restricted by another law) of the *Access to Information Act* in response to an access request for a summary of all financial assistance over \$50,000 provided by EDC to Canadian companies in Honduras, from 2009 to 2019.

The record at issue consisted of a chart setting out the policy types (by acronym), policy numbers, company names and maximum liability amounts per policy, associated with EDC insurance policies of \$50,000 (plus) in Honduras between 2009 and 2019.

The investigation concluded that the complaint was well founded. The Commissioner ordered EDC to disclose the policy types, policy numbers and maximum liability numbers. EDC has challenged the order before the Federal Court. The matter has been heard and a decision will be rendered later this year.

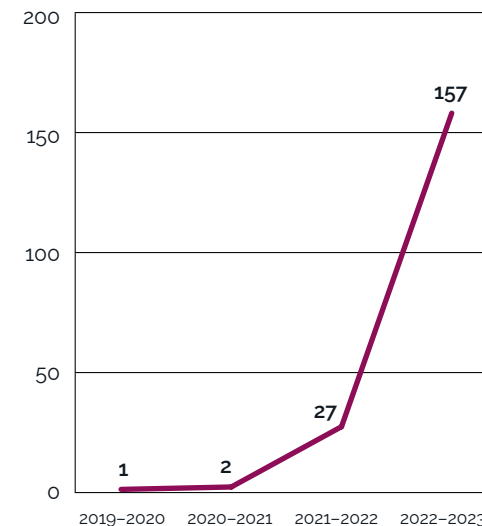
### Public Services and Procurement Canada

The complainant alleged that Public Services and Procurement Canada (PSPC) failed to conduct a reasonable search for records in response to an access request made under the *Access to Information Act* for the Health Protection Building (Tunney's Pasture) Whole Building Designated Substances Report.

Specifically, the request sought a list of contract documents related to the subcontract awarded to DST Consulting Engineers Inc., by Brookfield Global Integrated Solutions on April 7, 2017, related to the drafting of the above-mentioned report as well as copies of the resulting report.

The investigation concluded that the complaint was well founded and found that the documents were under PSPC's control. The Commissioner ordered PSPC to retrieve the records and to respond to the access request by processing the records at issue in accordance with the Act. PSPC is challenging the order before the Federal Court and the matter will be heard later this year or early next year.

Number of orders issued



Under the Act, when the power to issue an order and a recommendation are both available, the Commissioner has the discretion to determine whether she will issue an order or a recommendation.

Since the implementation of the order-making power in June 2019, the Commissioner has consistently issued orders, rather than recommendations, when she had the power to do so. She deems that it is the most efficient way to enforce the Act.





## FAILURE TO COMPLY WITH THE COMMISSIONER'S ORDERS AND TO SEEK REVIEW IN FEDERAL COURT RAISES CONCERNS

While EDC and PSPC followed the process provided in the legislation to challenge an order, some institutions have not complied with the Commissioner's orders and have not sought review of those orders in Federal Court.

Failure to comply with the Information Commissioner's orders and to seek review in Federal Court not only goes against the established framework set forth by the Act, but also raises concerns about institutional adherence to the rule of law and the importance of upholding the right to access information held by public institutions.

### Federal Court reiterates privacy protections

In early 2022, the Information Commissioner appeared before the Federal Court on behalf of the complainants to seek disclosure by Health Canada of the second and third characters of postal codes and names of cities relating to individuals licensed to grow and use medical marijuana as of 2017.

In its decision rendered on January 25, 2023, the Court confirmed that Health Canada was authorized to refuse to disclose the requested information as it met the "serious possibility" test, as set out in the [Gordon](#) case. This test recognizes that information that is not inherently personal, if combined with other available data, may create a serious risk of identifying specific individuals resulting in the disclosure of personal information.

The Court also explained that reasonable severance provided for in section 25 involves both a "semantic" and "cost-benefit analysis". The semantic analysis considers whether the disclosure of additional information would have meaning, while the cost-benefit analysis considers whether the "effort" required to further severing the records is "reasonably proportionate to the quality of access it would provide."

Ultimately, the Court adopted the reasons of the Supreme Court's decisions in [Dagg](#) and [Heinz](#) in concluding that the right of privacy prevails over an individual's access rights when the two conflict with one another.

## ENHANCING INVESTIGATIVE CAPABILITIES BY BEING AN EMPLOYER OF CHOICE

### The OIC focuses on employee retention and strives to be a leader in talent acquisition

With the career lifecycle in mind, the OIC offers structured professional development programs that are designed to enable employees to grow and progress in order to reach higher levels of capability.

As the OIC is continuously striving to strengthen its investigative capabilities to handle complex files and provide timely resolution of complaints, it has implemented various updates and recruitment initiatives to enhance its Development Program for Investigators and attract new talent into the Access to Information profession.

Notably, the 2022–2023 update to the Development Program includes a path to the PM-06 Lead Investigator position, providing investigators with learning, career progression, and recognition for their expertise and experience.

Another important update is the factoring in of work experience gained outside of investigations in hiring and promotions, provided it relates to investigative work and builds relevant skills and competencies. This recognizes the value of diverse experiences and expertise that can be applied to investigative roles, further enhancing the capabilities of investigators.

The OIC has also undertaken external campaigns to recruit new talent, primarily at the PM-03 level. Since 2019, over 40 new investigators have been recruited through these campaigns, and many have progressed at least one level through the Development Program, highlighting the success of these efforts.

Looking forward, the OIC plans to recruit a new cohort of investigators at the PM-03 level in 2023–2024 to backfill vacancies created by normal attrition. These external recruitment campaigns ensure a continuous influx of new talent into the Access to Information profession, enhancing the OIC's investigative capabilities while providing fresh perspectives and ideas.



One of the key aspects of the Development Program for Investigators is the longer-term perspective taken by the organization.

Recognizing that it takes time to bring investigators to the point where they can effectively handle the most challenging complaints, the OIC provides ongoing support and mentoring to investigators, allowing them to tackle increasingly complex files as they gain experience and progress in their development.



### **Team spirit and organizational support are crucial to maintaining efficiency and improving the well-being of employees**

The OIC is committed to accommodation practices that ensure that the individual needs and circumstances of employees do not present barriers to career progression.

In December 2022, the OIC published its first Accessibility Plan, taking into account the needs of OIC employees, complainants and stakeholders, and setting targets to achieve and maintain a culture of diversity and inclusion and prevent the introduction of accessibility barriers. Moreover, the adoption of neutral pronouns in the OIC's investigations reports aligns with inclusivity principles and promotes a diverse and respectful work environment.

As Champion of Equity, Diversity and Inclusion (EDI) at the OIC, the Commissioner hosts a Speaker Series to promote awareness of the important obligation of building a diverse, equitable and inclusive workforce shared by all employees.

In 2022–2023, guest speakers met with OIC employees on nine separate occasions to discuss EDI-related topics, including the power of storytelling and its place in Indigenous culture; the challenges and opportunities in the workplace for disabled people; as well as the changing reality of racialized public servants.

# MOVING THE SYSTEM FORWARD IN COLLABORATION WITH COMPLAINANTS AND INSTITUTIONS

## Frequent users comment on the system

The Commissioner moderated a panel of frequent users of the access system at the annual meeting of federal, provincial and territorial information and privacy commissioners in September 2022. The panellists—two journalists and a historian—between them make hundreds of access requests each year to organizations at all levels of government. They had plenty to say about the state of the access system and about how to improve it.

### Observations

- Delays by some institutions in responding to access requests are extremely long.
- Institutions heavily redact documents due to their broad use of exemptions.
- Canadians are required to request records institutions should be releasing as a matter of course (e.g., reports on matters of public interest, still classified historical documents).
- The access system is an honour system: access officials trust program areas to give them all the records that respond to requests.
- Delays in assigning complaints to investigators and a tolerant attitude toward institutions contravening access legislation undermine federal, provincial and territorial commissioners' effectiveness.
- Waiving user fees has extended the right of access but also encouraged individuals to make multiple open-ended requests involving thousands of pages of records.
- There is a general lack of compliance with information management policies at a time when the number of records, particularly emails, has exploded.
- Governments at all levels have retreated from the idea that decisions and meetings should be documented.
- Published decisions from commissioners can lack detail, and are often too long in coming, making them less valuable reference tools than they could be.

## Suggestions for improvement

- Introduce strict penalties for institutions that contravene access laws.
- Develop and retain seasoned access officials. With their expertise, they can solve many of the problems requesters encounter.
- Add to access legislation a timeline for when commissioners must begin and end their investigations, as well as specific examples of when exemptions apply to limit redactions.
- Implement a declassification framework separate from access legislation to identify historical records and determine what can be released and when.
- Consider reinstating user fees, but with a robust system for requesters to apply to have the fees waived. Alternatively, consider capping or means-testing fees.

Despite panellists singling out some jurisdictions for their prompt responses to requests, and commending the work investigators do on complainants' behalf, the experience of these frequent users reflects all too well the problems endemic to the access system in Canada.

In short, requesters receive heavily redacted documents too late for the information to be useful—when the news story is no longer in the headlines, the research complete or the case already in court.

As more and more Canadians use the access system to seek information about governments and their decisions, the Commissioner and her provincial and territorial counterparts are facing significant challenges. While providing more resources for the access function and commissioners' offices is essential, governments must also take urgent action on matters—such as information management and the declassification of historical records—that are outside the access system but have an enormous impact on it.



## IMPROVING PROCESSES AND COMMUNICATIONS WITH INSTITUTIONS AND COMPLAINANTS

This year, the OIC conducted an [independent evaluation of its investigations program](#) from the perspective of its investigators and institutions subject to the *Access to Information Act*. Overall, participants appear to be satisfied with the program. The evaluator made some recommendations that will serve to strengthen the OIC's investigative function and enable greater efficiencies. A [Management Action Plan](#) is now in place, which aims to improve communications with institutions.

In the coming months, the OIC will seek input from complainants on its investigations program with a view of better understanding their needs and how the OIC can bridge any identified gaps. An independent third party will conduct the process and complainant input will remain confidential. The OIC intends to use the aggregate and anonymized data to further improve its processes.

## Evolving our website: More guidance to complainants and institutions

Since the 2019 amendments to the Act, the Information Commissioner has published final reports detailing the outcomes of her investigations when she deemed them to be of value in providing guidance to institutions and complainants, including any orders or recommendations.

Given that the publication of final reports has a positive effect of the efficient resolution of complaints, the OIC increased the publication of these reports in order to make known its position on key issues.

In February 2023, the Commissioner also undertook to make information on all orders she issues publicly available in the interest of full transparency. As part of ongoing enhancements to the OIC website, the [decisions database](#) was updated to include information on all orders made since the order-making power came into effect. In the coming months, as new orders are issued, periodic updates to the database will continue.

New [guidance material](#) appeared on the website in 2022-2023, providing further resources for both institutions and complainants. Users can now find information on [how the OIC processes and investigates complaints](#), including information on [making representations during investigations](#) as well as on [requirements institutions must meet](#) when they make decisions about access requests.



## ABOUT THE OFFICE OF THE INFORMATION COMMISSIONER

The overall purpose of Canada's *Access to Information Act*, which came into force in 1983, is to protect the public's right to access records under the control of government institutions, while ensuring that the use of exemptions and exclusions is limited and specific. The Act also entrusts the Information Commissioner of Canada with the independent review of any decisions on the disclosure of information. The OIC was established to support the Information Commissioner in her capacity role as an independent agent of Parliament.

The OIC seeks to enforce the Act, using the full range of tools, activities and powers at the Commissioner's disposal. These include negotiating with complainants and institutions, and making recommendations or issuing orders to resolve matters at the conclusion of investigations.

The OIC supports the Commissioner in her advisory role to Parliament and parliamentary committees on all matters pertaining to access to information. It 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 government institutions.

The Information Commissioner is supported by a staff of 128 employees led by three deputy commissioners responsible for investigations and governance, legal services and public affairs, and corporate services, strategic planning and transformation services.

The Information Commissioner carries out confidential investigations about government institutions' handling of access requests, giving both complainants and institutions the opportunity to present their positions.

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\* Thank you to all the OIC employees who were involved in the development of this annual report, which was produced entirely in-house.

# ANNEX



## ANNUAL REPORT OF THE AD HOC INFORMATION COMMISSIONER

According to the *Access to Information Act*, the Office of the Information Commissioner (OIC) is subject to the very legislation it oversees. This means that individuals have the right to request information from the OIC and where they remain dissatisfied with the handling or processing of their requests filed with the OIC and wish to complain.

The review process for this type of complaint has been delegated to the Ad Hoc Information Commissioner. In that role, I have authority to receive complaints and to review the processing of access to information requests submitted to the OIC as well as responses issued by the OIC.

Although I am often asked by requesters to review the outcomes of OIC's complaint investigations involving other public bodies, that is not part of my role. With a view to assisting, however, I do take care in ensuring that those individuals are informed as to why I cannot act and redirect them to the correct process or contacts.

From April 1, 2022 to March 31, 2023, I received 36 files. Below is a breakdown of their outcomes or status:

- **Notification from the OIC:** 1 (time extension)
- **Non-receivable complaints:** 25
- **Complaints investigated:** 7
  - No further investigation necessary: 1
  - Timeliness of OIC response: 1
  - Content of response: 5
- **Complaints under investigation as of March 31, 2023:** 3

In each of the report of findings issued, I provide insights into how the rules governing rights of access to information held in the files of the OIC have been created and how they are applied, in keeping with a view to raising public awareness for this important piece of legislation. I believe these decisions to be helpful as intended and promote a better understanding of access rights generally.

As I continue my work with ongoing investigations, I look forward to being of assistance in the coming year.

Respectfully submitted,


**ANNE E. BERTRAND, K.C.**  
Ad Hoc Information Commissioner






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