OPENNESS AND PRIVACY IN ONTARIO:

An Evaluation of the Implementation of FIPPA

(The Freedom of Information and Protection of Privacy Act, 1987 Chapter 25 and Ontario Regulation 532/87)

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Since the early 1970's, Canadians have expressed many concerns about the growth of government and its impact on their daily lives. The public has requested increased access to government documents and improved protection of the personal information which is held in government files and data banks. At the same time, both academics and practitioners in the field of public administration have become more interested in the values that public servants bring to their decisions and recommendations. Certain administrative values, such as accountability and integrity, have taken on greater relative importance.

The purpose of this thesis is to examine the implementation of Ontario's access and privacy law. It centres on the question of whether or not the Freedom of Information and Protection of Privacy Act, 1987, (FIPPA) has answered the demand for open access to government while at the same time protecting the personal privacy of individual citizens. It also assesses the extent to which this relatively new piece of legislation has made a difference to the people of Ontario.

The thesis presents an overview of the issues of freedom of information and protection of privacy in Ontario. It begins with the evolution of the legislation and a description of the law itself. It focuses on the structures and processes which have been established to meet the procedural and administrative demands of the Act. These structures and processes are evaluated in two ways. First, the thesis evaluates how open the Ontario government has become and, second, it determines how
carefully the privacy rights of individuals are safeguarded. An analytical framework of administrative values is used to evaluate the overall performance of the government in these two areas. The conclusion is drawn that, overall, the Ontario government has effectively implemented the Freedom of Information and Protection of Privacy Act, particularly by providing access to most government-held documents. The protection of individual privacy has proved to be not only more difficult to achieve, but more difficult to evaluate. However, the administrative culture of the Ontario bureaucracy is shown to be committed to ensuring that the access and privacy rights of citizens are respected.
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CHAPTER ONE:
INTRODUCTION

On January 1, 1988, the *Freedom of Information and Protection of Privacy Act* (FIPPA) became law in the province of Ontario. 1. This Act is designed to serve two broad objectives. The first objective is to provide a general right of access to information under the control of a (provincial) governmental institution. This right of access is to be in accordance with the principles that government information should be available to the public, necessary exceptions to the right of access should be limited and specific, and decisions on the disclosure of government information should be reviewed independently of the government. The second objective of the Act is to protect the privacy of individuals with respect to personal information about themselves held by a governmental body and to provide them with a right of access to that information. 2.

The case study, "Cathy's Request," found on the following page, demonstrates the practical implications of freedom of information and privacy legislation. It illustrates the kinds of conflict which many public servants face when dealing with this legislation. Public servants are often caught in a 'tug of war' between openness and secrecy. They are
uncertain as to how to interpret their duty not to divulge confidential information and at the same time adhere to the principle of openness. FIPPA attempts to provide public officials in Ontario with appropriate guidance for resolving this type of dilemma.

This introductory chapter begins with an explanation of the purpose of the thesis and a discussion of why FIPPA is of interest to political scientists, politicians and public servants. The implications of this research and the research methodology are also discussed. An overview of the thesis describes how the subject matter will be developed and tentative hypotheses are presented. The final section of this chapter presents an analytical framework which describes the importance of administrative values as they relate to access and privacy legislation.

Case Study: Part One

"Cathy's Request"

Cathy was receiving a provincial Family Benefits Allowance [formerly known as Mother's Allowance] as a sole support parent. After several confrontations with her caseworker, Wendy, Cathy decided to request, in writing, that she be permitted to have access to her Family Benefits casefile.

Wendy had several concerns about Cathy's request. Not only did the casefile contain the standard personal information about Cathy, including
financial information, employment history and marital background; it also had several contentious documents on file, including confidential complaints from her former employer stating that she knowingly defrauded the government by collecting provincial benefits while being employed full-time. Although the internal investigation had not resulted in charges, Wendy found the content of the documents most unsettling.

Wendy approached her boss, Sam, with both the request and the casefile and exclaimed, "my goodness Sam, what are we going to do? Are we allowed to show her our private file? Who's going to give it to her? And what about the confidential complaints? What about that employer's privacy? How can we possibly give Cathy access to that? This situation is really a problem now, isn't it?"

Sam smiled at Wendy and told her to relax. "Don't worry Wendy, it will all work out fine. There's a piece of legislation to help us with this now, it's called the Freedom of Information and Protection of Privacy Act."

* This an actual case that occurred in 1988.

PURPOSE OF THESIS

Over the past twenty-five years, citizens have become increasingly aware of their rights and of the increasing involvement of government in their daily lives. The public has expressed concern about government accountability and openness. It also believes that citizens have fundamental rights to privacy and that they must be protected from irresponsible government. The adoption of FIPPA has been one attempt by the provincial government to respond to the public's demand for accountable government. The legislation also formally acknowledges the
public's right to have matters of personal privacy safeguarded by government.

When evaluating whether the objectives of FIPPA have been achieved, the following questions will be addressed. Has FIPPA made a difference to the people of Ontario? Has FIPPA required and encouraged the government to be more open and accessible as intended, or has the government become more rigid and closed instead? Are decisions regarding the release of government documents being reviewed by a truly independent body? Does the government of Ontario safeguard the privacy of its citizens?

The answers to these questions are relevant to both academics and practitioners in the field of public administration. Those concerned with the appropriate conduct of public officials should be interested in whether the commitment to open government has been authentic. Some have assumed that FIPPA would inspire an atmosphere of openness. However, the Act provides for eleven legislated exemptions, which limit access to government-held information. Despite the intent of FIPPA in providing open government, if public officials apply these exemptions too broadly, information is likely to become more difficult to acquire.

Politicians, political scientists and the government itself share an
interest in discovering whether the objectives of FIPPA are being fulfilled. Has FIPPA improved the process of parliamentary democracy? Does it allow for more active citizen participation? Has FIPPA caused government to pursue the goals of openness and the protection of privacy for citizens or has FIPPA been a waste of valuable time and resources?

The purpose of this thesis is to assess the extent to which the objectives of FIPPA are being achieved through the Act's implementation. The thesis will identify some weaknesses in the implementation of FIPPA and present some alternatives and possible solutions. The focus will be on public servants, although some mention will be made of politicians, notably ministers. The thesis presents the Ontario experience; however, reference will be made to federal access and privacy laws.

**RESEARCH METHODOLOGY**

The first research task was to collect information on the political climate from which FIPPA emerged. This involved a detailed document search, including an examination of articles in scholarly journals written over the past twenty-five years. The research also included a review of government publications and books written by those with an interest in and understanding of access and privacy issues. Newspaper articles were examined to evaluate how the media have responded to FIPPA.
Much of the data collection involved an examination of the views of those centrally involved with FIPPA. This inquiry included interviews with individuals working as managers in the Office of the Information and Privacy Commissioner/Ontario. These individuals are uniquely qualified to evaluate how well the provincial bureaucracy has implemented FIPPA. The Commissioner's Office has been instrumental in shaping the spirit of access and privacy in Ontario by negotiating with public officials, conducting inquiries and making orders to the government regarding the release of government documents and the adoption of privacy protection practices.

An extensive amount of research involved the evaluation of a cross-section of ministries. The selection of six [of twenty-seven] ministries was intended to provide a manageable, yet empirically sound, sample. The ministries included Health, Community and Social Services, Government Services, Labour, Revenue, and Culture and Communications. The focus on ministries, as opposed to provincial offices, agencies, boards or commissions (i.e., Office for Senior Citizens, Liquor Control Board of Ontario) was based on the rationale that these offices represent a relatively small number of information requests and appeals.

The sample of ministries selected constituted a cross-section of those
where there was a high level of requests and a high percentage of appeals against ministries' decisions to deny access. The sample also included those ministries which had a medium and low percentage of appeals. This allowed a full range of evaluation, including ministries which seem to be responding well to requests for data, and those which appear to be less forthcoming.

After the ministries were selected, information was gathered from each ministry's Access and Privacy Co-ordinator and the Director of Management Board's Freedom of Information and Privacy Branch. Interviews were conducted to determine how different ministries have implemented FIPPA. Some of the issues discussed included the accountability relationships for implementing the Act, the degree of staff awareness of the legislation and the policies that have been altered or adopted in order to ensure greater protection for personal information.

In addition, a 'Coordinator's Survey' was sent out to the FIPPA Unit in each ministry. This survey collected information regarding the size and scope of each Unit, the orientation and training processes in place, and the access and privacy issues in each ministry.

The appeal process was reviewed as it was thought to be a good indicator of how well the legislation has been implemented. Therefore, a
careful examination of appeals, and the outcome of appeals, was conducted for each ministry.

CONTENT OF THESIS

Following this introductory chapter, the second chapter provides an overview of the development of FIPPA. It outlines the factors in the social and political environment which led to the development of access and privacy legislation in Ontario. This chapter also outlines the legislation itself in terms of the access requirements, exemptions to access, and privacy provisions. Ontario's law is unique in combining two important, yet sometimes opposing, objectives into one statute; open access to government documents and the protection of individual privacy.

Chapter Three describes how the provincial bureaucracy has implemented the legislation by establishing access and privacy procedures within their respective organizations. This chapter discusses the role of Management Board's Freedom of Information and Privacy Branch which was established in 1985, two years prior to the passing of FIPPA. It plays a key role in providing direction and support to institutions bound by the legislation. The final component of Chapter Three is a description of the Office of the Information and Privacy Commissioner/Ontario which has the important function of reviewing the activities and decisions of
government institutions.

Chapter Four evaluates the access component of the legislation. The discussion includes a summary of how the legislation has been interpreted to ensure access to public records and it evaluates how well the government has responded to requests for access. The examination of appeals indicates the extent to which the government has been forthcoming in the disclosure of government information.

Chapter Five evaluates the privacy component of FIPPA. It looks at how ministries have interpreted their role to protect the privacy of individuals and it examines the role of the Commissioner's Office in providing direction to institutions regarding important privacy matters. This chapter also examines the legislated sanctions against those who breach access or privacy provisions.

Chapter Six presents the analytical framework of administrative values which is used to analyze the implementation of FIPPA. This framework provides a useful mechanism to determine whether those values which are key in the culture of Canadian bureaucracy have been achieved through the adoption of access and privacy legislation in Ontario.

Chapter Seven, the final chapter, answers the question - has FIPPA made a difference? It analyzes the material presented throughout the
thesis in order to assess the overall impact of Ontario's access and privacy law.

**ANALYtical FRAMEWORK - THE IMPORTANCE OF VALUES**

In order to evaluate the effectiveness of FIPPA, it is useful to reflect on some of the administrative values embedded in access and privacy legislation. Some public administration authors, especially in Canada and the United States, have identified certain dominant values in the evolution of the practice of public administration. It is clear from an assessment of the forces leading to the passing of the Act that several of these values were being pursued. In particular, there seemed to be a demand for the values of accountability, responsiveness, neutrality, efficiency, effectiveness, integrity and fairness. Openness and confidentiality were also being pursued and these concepts are discussed as sub-values of the broader value of integrity.

These values provide a useful framework with which to examine the formulation and implementation of FIPPA. In particular, they provide a basis for assessing whether the objectives of the Act have been achieved. It is important, therefore, to provide a brief definition of these values. Reference to each value can illustrate the pressure for access and privacy legislation and each value can also provide a criterion for evaluating the
success of FIPPA.

*Accountability* is defined as the obligation of public servants to be answerable for fulfilling responsibilities that flow from the authority given to them. Accountability is concerned with the legal and procedural devices by which public servants may be held responsible for their actions. 6. The public, politicians, academics, special interest groups and the media requested that access and privacy legislation be passed in order to increase the accountability of government. It was believed that increased access to government documents would allow governmental activities to be publicly scrutinized, thereby increasing the accountability of public officials to their political masters and to the public.

In assessing whether FIPPA has successfully met its objectives, it is important to determine whether the government has become more accountable. Has the implementation of a system which allows for the disclosure of governmental information required its public officials to be more answerable for their actions?

*Responsiveness* is the inclination and capacity of public servants to respond to the needs and demands of both political institutions and the public. 7. During the citizen participation movement of the late 1960's, individual citizens and citizens' groups expressed their interest in
becoming part of the decision-making processes of government. Access legislation was considered necessary in order to enable the public to participate in a more informed manner in the formulation of public policies. 8. In assessing the objectives of FIPPA, it is important to evaluate whether government has become more responsive because of the Act. Have officials tried to assist citizens to understand the access and privacy law? Have the requests of citizens been fulfilled? Have they received the information that they have requested in a timely fashion?

Neutrality is a value which requires that public servants be impartial in the partisan sense. It also requires that public servants make decisions in a neutral way, regardless of their own personal values. 9. It is recognized that it is unrealistic to expect public servants to be totally value neutral, especially as their discretionary power in policy making and policy execution has increased. However, in the exercise of their advisory and decision-making powers, public servants are expected to be non-partisan and to act within guidelines determined by their political and administrative superiors.

There are several reasons why access legislation was requested. One reason was to allow the public the opportunity to evaluate the neutrality of public decision-making. They expressed their need to know how
discretion was being exercised and whether or not the decision-making processes of government were indeed neutral. When Ian Scott, then Attorney-General, tabled the access and privacy bill in 1987, he demonstrated his commitment to neutrality. He stated that "at some point in the future information may be made public under this new act that could embarrass or harm the political fortunes of the government of the day ... that potential risk, that potential harm, that potential cost, in the interest of freedom, can and must be borne." 10.

It is relevant to the evaluation of FIPPA to determine whether decisions regarding the release of government documents have been made in a non-partisan way. Have public servants followed the neutral framework set out in FIPPA or have they protected information which could potentially cause embarrassment to their political masters?

Efficiency is defined as a measure of performance that may be expressed as a ratio between input and output. 11. Effectiveness is a measure of the extent to which an activity achieves an organization's objectives. 12. Both of these values are important in public organizations and although they are usually complementary, at times they do come into conflict. The pressure for access legislation was inspired by an interest in evaluating both the efficiency and effectiveness of
government. Without access to information, it was felt that the public had limited ability to determine how well the government was performing.

The sharing of government information was thought to be a more efficient way of doing business in the public sector. In the late 1970's, the Commission on Freedom of Information and Individual Privacy (the Williams Commission) declared that it was inefficient for government to make decisions and devote considerable attention to the development of programs only to have them subsequently rejected by an angry public or subjected to the expense and delay of prolonged reconsideration and inquiry. The Commission concluded that the benefits of making more information available considerably outweighed the costs. 13.

It is necessary to consider whether FIPPA has allowed the public to scrutinize government better in terms of governmental efficiency and effectiveness. It is relevant to determine how efficiently FIPPA has been implemented and whether there have been any significant roadblocks to the development of a cost-effective access and privacy regime. Has the legislation been implemented in a way which meets the objectives of the legislators and the general public? Is the public being provided access to government documents? Is individual privacy being safeguarded in Ontario?
Integrity is a primary administrative and ethical value in public organizations. Integrity can be broadly interpreted and can be simply interpreted as honesty. The extent to which this value is demonstrated by public officials can impact on the level of public confidence in government. Some of the pressure for FIPPA came from a call for renewed public confidence in public institutions. In the 1970's, when governments in Canada first began examining such legislation, there was growing public distrust of the integrity of politicians and public servants. There was an unprecedented number of allegations of unethical conduct. In an effort to demonstrate that government was responsible and open to scrutiny, the government yielded to pressures to provide more open access to government documents. In assessing FIPPA, consideration will be given to whether the Act has answered the demand for increased integrity in government. Are governmental decisions being made in an honest way? Has FIPPA inspired the government to be more careful about protecting the information it holds on private citizens?

The concepts of openness and confidentiality run deep within both the spirit and substance of FIPPA. Openness may be defined in several ways; however, in this context, openness means that the public should have real access to government. It was believed that one way to
strengthen the legitimacy of institutions was to implement a law which posits as its first principle the right of everyone to have access to government-held information. 15. In order to evaluate whether real openness has been achieved, it will be necessary to review the extent to which information has been fully disclosed to the public. It is also important to review why certain records have been protected.

The concept which sometimes conflicts with openness is confidentiality. This refers to the right of all citizens to have the personal details of their lives kept secret. In assessing FIPPA, it is necessary to examine how carefully the government safeguards the personal information of individuals. Is personal information collected, used, disclosed and disposed of in an appropriate manner as required by the Act?

*Fairness* is a value which is necessary to resolve the potential conflict between access and privacy. It goes beyond requiring public servants to adhere to legal rules. The pursuit of fairness speaks to the pursuit of decision-making which is equitable. Because of the Canadian Charter of Rights and Freedoms and of judicial decisions made under the Charter, public servants are now required to pay more attention to the value of fairness in government decision-making. It is important to
review whether FIPPA has been implemented in a manner which is equitable to all. Are conflicts between access and privacy resolved in a way which is as fair as possible to all parties involved?

As stated earlier, the 'Values Framework' provides a useful tool in determining whether FIPPA has made a difference to the people of Ontario. In the body of this thesis it will be demonstrated that FIPPA has had a significant impact on the way government operates. Although access to government information is now a legal right, FIPPA goes well beyond merely providing a formal process for requesting public documents. It seeks to inspire a general spirit of accessibility in government. The privacy component of the legislation seeks to make public servants reconsider the control which they hold over the intimate details of the lives of private citizens. The ultimate success of this legislation is left for evaluation in the body of this thesis.

ENDNOTES


2. Ibid., 4.


6. Ibid., 633.


11. Kernaghan and Siegel, 637.

12. Ibid., 636.


The notion that the public has a right to government-held information is a relatively recent concept in Canada. However, freedom of information laws are not entirely new. For example, Sweden adopted freedom of information legislation as early as 1766. However, Canada, like most western democratic governments, waited until the late 1900s to enact access and privacy principles into law. Governments modelled on the British tradition of parliamentary democracy, including Canada, have not viewed these laws as desirable, let alone a priority. The British style of government has embodied the spirit of administrative secrecy. By the late 1960s, it became clear that administrative secrecy was no longer going to be tolerated in Canada.

The first part of this chapter explains the origins of freedom of information and access legislation in Ontario. It will be shown that forces in the social and political environment influenced governments in the United States and in Canada to enact legislation which would deal with the public's concern for responsible government. This chapter
identifies those forces and demonstrates how Canada's federal government and the Ontario government have responded.

The second part of this chapter outlines the legislation itself. To comprehend the spirit of FIPPA, it is necessary to understand the substance of the Act. FIPPA is legislation which marries the principles of access to information and the protection of privacy. This marriage was planned in the careful wording of the Act and is complemented by structures and processes which have been established to meet the Act's procedural requirements.

THE EVOLUTION OF FIPPA

There are those who feel that the roots of freedom of information and privacy legislation are found within the civil rights movement which gained momentum in the 1960's in the United States and Canada. During this period, there was an increasing concern for the individual rights of all members of society. The public was also becoming more and more suspicious of government. Incidents such as the Watergate scandal in the early 1970's contributed to this declining faith in government and to the perception that public institutions were failing to serve the public's needs and desires. The pressure for change came in two forms; first, in the demand for access to government-held information and second, in the
growing concern that the individual privacy of citizens was in jeopardy.

With respect to freedom of information laws, a philosophical debate emerged in Canada. Critics of such legislation argued that in a system of parliamentary democracy, access to information legislation would erode the effectiveness of good government. They believed that it would create a "fishbowl" effect that would adversely affect the deliberative processes of government. Open government was thought to inhibit the frank discussion of policy matters by ministers and public servants. 1.

Proponents of access legislation agreed with Max Weber that "every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge a secret." 2. There was growing support for the position of scholars, like Donald C. Rowat, who believed that "as time advances, the advocates of continued administrative secrecy are finding that their formerly defensible positions are no longer tenable; the denial of full information to the citizenry is clearly preventing the full development of democracy." 3. Rowat believed that the time had come for governments to be more accountable to the electorate and to facilitate more informed participation by the public in the formulation of public policy. 4.

Concern for the privacy of individual citizens grew with the expansion
of the bureaucratic state. Government was seen to be collecting, using and storing large quantities of personal information. There was growing awareness that public servants, as keepers of this information, had access to and control over the intimate details of the private lives of citizens and, as of the early 1970's, no comprehensive regulations existed for the handling of personal information, either provincially or federally. 5. As of 1971, only the provinces of Manitoba, Quebec and British Columbia had formally recognized the right to privacy protection. 6.

The computer revolution raised more concerns regarding the protection of personal data. It was recognized that computers had the capacity to store vast quantities of personal information and to retrieve, process and match information with the touch of a button. The potential for errors in programming, breaches of security and inappropriate dissemination of information were but a few of the problems raised regarding automated personal information held by government. The concern for the sensitive treatment of private information created a very real sense of unease during and following the transition to an information society. 7. The massive amount of personal information in the hands of public servants demanded a system by which they could be held fully accountable to the
public for its use.

Much of the awareness of the need for open government came from the enthusiasm generated in the United States. The principles of access to government information and protection of privacy have been part of intellectual discussion in that country since the 1890's. This is illustrated by the example of two Harvard law school graduates who in the late 1890's argued for the right to be let alone in the face of unnecessary intrusions by government. 8. In 1966, the United States adopted the Freedom of Information Act which formally recognized the public's right to know. Although it was considered to be relatively successful, it was improved by a very effective amendment in 1974. 9.

Canada did not have the same degree of public demand; yet, the concerns being raised by pressure groups and others did not go unnoticed. Questions of administrative secrecy were examined in 1960, when the federal Royal Commission on Security reported that there was controversy over the extent to which government documents and administrative activities should remain confidential. 10.

One of the first important steps towards a freedom of information law in the federal government was taken by Mr. Gerald (Jed) Baldwin, a Conservative Member of Parliament from Peace River. Mr. Baldwin, often
described as the 'father of freedom of information' in Canada, was instrumental in campaigning for an access law in the federal sphere. He introduced a private member's bill in 1974 regarding the right of the public to information concerning government business. Pressure for freedom of information legislation came from Mr. Baldwin and from those he recruited from his Conservative caucus. In addition, interest groups such as the Canadian Bar Association and Access lobbied for the adoption of access laws. Those in the academic community who pressured the federal government to act included Donald C. Rowat, Harold Reylea and Murray Rankin.

Although Mr. Baldwin's bill passed its second reading, a freedom of information law was not realized in the 1970's. In June of 1977, the Liberal government issued a Green Paper on Public Access to Government Documents; however, this paper was criticized by the opposition as being too restrictive. The Conservative government came to power in the spring of 1979 with access legislation claiming priority on their legislative agenda. The Conservatives were defeated shortly after the government's proposed access law passed its second reading.

The new Liberal government introduced and Parliament passed Bill C-43, the Access to Information Act, on July 7, 1982. The Act provided
the public with a general right of access to government-held information within federal institutions. It also provided for an Office of the Information Commissioner that would review decisions when access to information was denied.

The roots of the Privacy Act can be traced to Part IV of the Canadian Human Rights Act, passed on July 14, 1977. This Act placed important responsibilities on federal institutions with respect to the personal information they maintained. It required the government to publish an annual index of federal information banks and, most importantly, it provided for the right of individuals to access their personal information. The Act also established the Office of the Privacy Commissioner to oversee the government's compliance with the legislation. The Privacy Act was passed on July 7, 1982 as a complementary piece of legislation to the Access to Information Act. It replaced the privacy section in the Canadian Human Rights Act.

The Ontario government faced similar pressures for open government. As in the federal sphere, the province followed the tradition of official secrecy; providing access to government documents was largely a discretionary practice. Decisions regarding the release of government documents were left to individual public servants and ministers.
Therefore, politicians and bureaucrats decided whether the public interest warranted the release of specific records. This ad hoc approach led to inconsistent practices regarding the sharing of government documents. 17.

Politics in Ontario seems to have influenced the enthusiasm with which access legislation was embraced. Although Premier William Davis, the leader of the Conservative government, had stated publicly that he would consider access legislation, his government was accused of using stalling tactics to delay it. Key individuals in his Cabinet, including Attorney General Roy McMurtry, had openly opposed the legislation. His concern was that it would undermine important governmental activities, such as law enforcement. 18.

On May 29, 1975, Donald C. MacDonald, NDP member of the legislature, presented a private member's bill on freedom of information to the legislature for first reading. Although all political parties seemed to support freedom of information legislation in principle, no government action followed. Mr. MacDonald introduced several revised versions of his bill, to no avail. 19.

In March of 1977, the minority Conservative government responded to the pressure and established the Williams Commission. This
Commission was charged with the onerous responsibility of studying both the means to improve public information policies and the relevant legislation of the Ontario government. It was to examine:

- the right of access and appeal in relation to the use of government information,
- the categories of information which should be considered as confidential in order to protect the public interest,
- the effectiveness of present procedures for dissemination of government information to the public,
- the protection of individual privacy and the right of recourse in regard to the use of government records,
- and, the public information practices of other jurisdictions in order to consider possible changes which would be compatible to the parliamentary traditions of the government of Ontario. 20.

The Commission was composed of a well-respected research staff which arranged for the preparation of seventeen background papers. It held twenty-six days of public hearings in ten communities across the province and received over one hundred briefs. The final report was submitted to the legislature at a total cost of 1.7 million dollars. 21.

The Commission made two important findings which echoed the concerns being raised by the media, pressure groups, academics and some politicians. It concluded that "people want to see for themselves what governments are up to, and they want to be sure, as well, that the private information governments hold is not only accurate, but properly protected from prying eyes." 22.
Premier Davis assigned responsibility for freedom of information to Mr. Allan Pope, minister without portfolio, who publicly committed himself to drafting legislation as swiftly as possible. However, despite Davis's promise to introduce new legislation upon receiving the Williams Commission report, the delay continued.

Before a new bill was tabled, the Conservative government introduced policy changes which appeared to open the Ontario government to the public. In September of 1980, Premier Davis announced a plan to make 'internal laws,' such as staff manuals, guidelines and policy statements, publicly accessible. 23. A month later, a directive was issued setting out new guidelines for public servants in their dealings with the public. This directive allowed public servants to take a more open stand; however, they were still required to protect cabinet information, details of enforcement proceedings and confidential commercial information. 24.

After the general election in March 1981, which yielded the Conservatives a majority, the stalling tactics continued. Norm Sterling, a new minister without portfolio, was charged with responsibility for freedom of information legislation. In the April Throne Speech, the Conservatives announced that before they introduced draft legislation in the summer, it would be necessary to have yet another public consultation.
A task force was established at a cost of more than one hundred thousand dollars. 25.

Access Ontario, a newly formed citizens coalition, continued to exert strong pressure on the Ontario government in 1982 and 1983. Norm Sterling put forward draft legislation to Cabinet four times in 1983, but it seemed that his colleagues were not interested. A bill was finally introduced by the Conservative government in 1983. At the end of the legislative session in 1984, it died. 26.

When the minority Liberal government came to power in 1985, access and privacy legislation was finally given serious attention. It was the first bill to be introduced by the new government; however, it quickly became embroiled in controversy as the legislature battled over how much openness the law should provide. And yet, the Attorney General of the day, Ian Scott, boasted about the Liberal government’s commitment to the legislation when he stated that “the Liberal government does not now and will never accept the proposition that the business of the public is none of the public’s business.” 27.

In Canada today, there are several access and privacy schemes for government. The Access to Information Act and the Privacy Act are found in the federal sphere. All provinces, except Prince Edward Island and Saskatchewan, have some form of access to information legislation and Saskatchewan has introduced a bill to provide such access. The provinces of Ontario, Quebec and British Columbia have joined the principles of access to information with the protection of individual privacy in a single piece of legislation.

**DESCRIPTION OF FIPPA**

As stated in Chapter One, FIPPA has two fundamental purposes: that Ontario government information should be accessible to the public, and that the privacy of individuals should be protected with respect to personal information held by the government. Perhaps the easiest way to explain the scope and substance of FIPPA is to highlight the key requirements in each part of the Act. FIPPA is divided into five sections: purpose, access, protection of individual privacy, the appeal process and general matters. Part II of the case study Cathy's Request is presented on the following page. It demonstrates some of the procedural requirements of the legislation which will be outlined in the rest of this chapter.
Part Two: Case Study

"The Processing of Cathy's Request"

Wendy had received a freedom of information request from her client Cathy and was unsure of what to do. When Wendy went to her boss Sam, he gave Wendy a quick overview of the requirements of the Freedom of Information and Protection of Privacy Act.

Sam told Wendy that Cathy had actually initiated an official freedom of information request by submitting a request for information in writing and by referring to the Freedom of Information and Protection of Privacy Act. Sam told Wendy that the Ministry had thirty calendar days to respond to the request. During that thirty days, the Ministry would be required to review all the material about Cathy which is held in her casefile.

When reviewing the file, the Ministry carefully evaluates whether any discretionary or mandatory exemptions would apply. In other words, is there anything in the file which the legislation says should be exempt, like the personal information concerning anyone other than Cathy? If the casefile contained any such information, the Ministry would have to determine whether the information should be withheld. Therefore, Wendy would not get to see this information, but would be told why she could not see it.

Sam also discussed whether or not the Ministry would be charging Cathy any fees. Sam explained that, generally speaking, there is no charge when the Ministry releases personal information to an individual.

Wendy was very relieved and stated, "these rules do not seem to be complicated at all. But, what if Cathy is not satisfied with our decision?" Sam responded, "if Cathy is not happy with our decision, she can always appeal within thirty days to the Office of the Information and Privacy Commissioner."

Part I of FIPPA deals with the administration of the Act. It begins
with the purpose of the Act and some of the key definitions used in the legislation. These definitions include the term "head" which refers to the minister in the case of a ministry. 29. A "record" refers to any record of information, however recorded, whether in printed form, on film, by electronic means or otherwise. 30. The Act distinguishes between general records and personal information by clearly identifying the latter. The definition of personal information provides an exhaustive list of items, including any recorded information about an identifiable individual, information relating to an individual’s current or past life history, addresses, telephone numbers, personal opinions or views of an individual (except where they relate to another individual). It also includes correspondence sent to an individual of a private or confidential nature, the views or opinions of another individual about the individual, any identifying number or symbol and the individual’s name where it appears with other personal information relating to the individual where the disclosure of the name would reveal other personal information about the individual. 31. Any information which does not relate to an individual is considered to be a general record.

The term "institution" refers to a ministry of the Government of Ontario, or those agencies, boards, commissions, corporations or other
bodies designated as an institution in the regulations. It also refers to the corporation of every municipality in Ontario and the boards, commissions and the like whose members are appointed by a municipality. 

32. Municipalities were not bound by an access and privacy law until January 1, 1990. The province developed and passed the Municipal Freedom of Information and Protection of Privacy Act, 1989 to make allowances for local practices. 33.

Part I of the the provincial Act describes the designation of a responsible minister. Management Board has been designated as the governmental body responsible for FIPPA. The Act also describes the appointment of an Information and Privacy Commissioner to exercise the powers and perform the duties prescribed by FIPPA. The Commissioner is appointed by the Lieutenant Governor in Council for a term of five years. He or she may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council.

Part II deals with access which is considered to be the responsive side of the legislation. The Act establishes a general right of access to government information in accordance with the principles that information should be available to the public, exemptions from the right of access should be limited, specific, and restricted only to those
exemptions that are necessary, and that decisions regarding access should be reviewed independently of the government.

Any individual may make a request for information held by the government. A request under the Act must be in writing and must provide sufficient detail to enable an experienced employee to locate the record. Management Board has developed a request form to be used by those requesting information under the Act. This form is entitled "Access/Correction Request" (See Appendix One). Although this form is helpful to those individuals requesting information under the Act, it is not necessary that it be used as long as the request for information is in writing and it identifies the information being sought.

The Act did not intend to replace informal methods of access to records which already existed. Provided information can be released under the Act, it may continue to be released informally. The access scheme specifies that the heads of institutions must respond to requests for information within thirty calendar days. This time limit may be extended for a reasonable time period if the request is for a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution. It may also be extended if the consultations necessary to comply with the request cannot reasonably be
completed within the thirty-day time limit.

All institutions must receive any request for information, regardless of where the records are located. Institutions have the obligation to make inquiries to determine whether another institution has custody or control of the record. They must also transfer the request within fifteen days of receiving it.

Management Board must publish Directories of Information on an annual basis. These Directories specify where requests should be made, the name and address of the head of each institution and the address of each institution’s library or reading room. These rooms must be made available for the public to review the institution’s manuals or guidelines.

FIPPA emphasizes that everyone has a right of access to a government record subject to specific and limited exemptions. This limitation is similar to other freedom of information schemes, including the federal Access to Information Act. The exemptions protect the need for confidentiality of certain government records and ensure that the privacy of individual citizens is protected.

Some exemptions are mandatory; these impose a duty on institutions to refuse to disclose a record if it falls within the terms of the exemption. These exemptions include Cabinet records, third-party information and
personal information concerning persons other than the requester. The remaining eight exemptions are discretionary. If a record falls within one of these exemptions, the government may use its discretion to decide whether or not to disclose the record. The following paragraphs will briefly define each of the exemptions.

Cabinet documents (Section 12) are a mandatory exemption because the deliberations of Cabinet in a parliamentary form of government have traditionally been regarded as confidential. Because of the duty of collective responsibility which is placed on Cabinet members, the decision-making processes must remain confidential in order to allow for various options to be discussed. If opposition members were to have access to these confidential discussions, they could exploit the disagreements which often take place during these processes.

Third party information (Section 17) relates to trade secrets or scientific, technical, commercial, financial or labour relations information which is supplied to the government in confidence. This information is exempt from disclosure if releasing the information could legitimately prejudice the interests of a third party.

The personal information of an individual (Section 21) is highly safeguarded in FIPPA. The Act states that the disclosure of personal
information (to anyone other than the person to whom the information relates) would constitute an unwarranted invasion of personal privacy. There are exceptions to this section, including the provision that an individual may consent to the disclosure of his or her own information. There are also compassionate circumstances that may warrant the disclosure of personal information. For example, an individual may be unaware of the death or injury of a family member. An institution may be authorized under FIPPA to disclose personal information in order to pass such information along to an individual.

The remaining exemptions are discretionary; they include information which reveals advice and recommendations to the government (Section 13). This information may be exempt if it includes materials prepared for the purpose of advising the government, unless it is primarily factual information. There are also exemptions concerning law enforcement information (Section 14) where it is necessary to protect the activities of law enforcement agencies.

FIPPA preserves the confidentiality of information that would prejudice Ontario's relationship with other governments (Section 15). This includes information which is received in confidence from other governments and from international bodies. Also potentially exempt is
material relating to matters of defence or the suppression of espionage, sabotage or terrorism (Section 16).

Information that could prejudice the economic, financial, competitive or negotiating interests of the Ontario government (Section 18) may be exempt from disclosure as well as information which relates to solicitor-client privilege (Section 19). Any information that could seriously threaten the safety or health of an individual if it were made public may also be exempt (Section 20). Information may be withheld from disclosure if there are reasonable grounds to believe that it will soon be published by the government (Section 21).

If any document contains information of which portions are covered by a discretionary exemption, these portions can be deleted or severed and the balance of the record disclosed.

Certain exemptions do not apply if there is a compelling public interest in the disclosure that clearly outweights the purpose of the exemption. If the government finds information which reveals a grave environmental, health or safety hazard to the public, the head must disclose the information to the public or to any affected party, whether or not a request for access to the information has been made under the Act.

Part III of FIPPA discusses the protection of individual privacy which
is the active, ongoing part of the legislation sometimes referred to as the "privacy protection code." The government is not authorized to collect personal information unless it is expressly allowed by statute. With few exceptions, personal information must be collected directly from the person to whom it relates. Furthermore, the individual must be given notice of the collection. The notice must identify the legal authority for the collection, the principal purpose for which the information is to be used and the title, business address and business telephone number of a public official who can answer questions about the collection.

When personal information is collected, the government has the obligation to ensure its accuracy. The government can only use information for the purpose for which it was obtained or for a consistent purpose. In addition, the manner in which personal information is disclosed is restricted to certain methods also set out in FIPPA. For example, information may only be released to the person to whom the information relates or to a government employee who needs the record in the performance of his or her duties. Personal information must be disposed of it in accordance with the institution's prescribed regulations.

Individuals are given a right of access to their own personal records, except under limited circumstances. For example, a head of an institution
may refuse to disclose personal records to an individual where the
disclosure would constitute an unjustified invasion of another individual's
privacy or if the disclosure of an individual's medical information could
reasonably be expected to prejudice his or her mental or physical health.

If an individual believes that a personal record contains an error, he or
she may request a correction of the personal information, either by using
the "Access/Correction Request Form" (See Appendix One) or by requesting
a correction in writing. If the institution refuses to make the correction,
the individual may have a "statement of disagreement" attached to the
record.

Section IV deals with the Information and Privacy
Commissioner/Ontario and the right of independent review. If an affected
person, including a third party, disagrees with a decision of an
institution, the Commissioner may be asked to review the decision. The
decisions which may be reviewed include the responses of institutions
concerning access requests, requests to correct personal information and
decisions to provide access to records involving third parties. Generally
speaking, an appeal must be made within thirty days after the notice of
decision is sent.

The Commissioner has the authority to review government decisions by
inspecting records, initiating a mediation process or conducting an inquiry. He or she may make an independent determination regarding the release of records. It should be noted that the decisions of the Commissioner are binding.

The Commissioner must also prepare an annual report to the legislature regarding the disposition of requests. He or she may discuss the general practices of the government with respect to FIPPA and comment on proposed legislation. The Commissioner may also order the government to cease an information collection practice or to destroy personal information which has been collected.

Part V deals with fees and other general matters. It states that the head of an institution may require fees to be levied on requests for general information. The head may waive fees for personal information requests or if the payment of a fee would cause financial hardship for the person requesting the record. This section also speaks to breaches of the Act and states that a person who willfully contravenes FIPPA is guilty of an offence and on conviction is liable to a fine of up to five thousand dollars.

This part of the legislation required the Standing Committee of the Legislative Assembly to undertake a review of the confidentiality
provisions contained in all provincial Acts. The Committee was required to recommend which legislation required revision because of inconsistencies with FIPPA. The Committee was also required to undertake a comprehensive review of FIPPA within three years of the Act's proclamation and to make recommendations regarding necessary amendments. This review has recently been completed.

Earlier in this chapter it was shown that the government of Ontario was slow to address the demands for access and privacy legislation. Although delay was caused by forces in the political environment, those committed to the legislation were persistent, and eventually government responded.

FIPPA is a balanced law which blends the principles of access with the right to individual privacy and it attempts to do this in an equitable way. The majority of the exemptions are discretionary which implies a duty to disclose as much information as possible.

Public officials are also bound by FIPPA to take special care regarding the personal information of all citizens. This duty is implicit in all aspects of information management including collection, storage, disclosure and disposal.
The Act has the potential to inspire both a spirit of openness and the concern for individual rights. It is worded clearly and provides public officials with guidance as to how to resolve conflicts between access and privacy.

However, it is impossible to determine the effects of FIPPA by simply looking at the law itself. In order to determine its effectiveness, it is necessary to review its implementation and to evaluate how public officials have interpreted its various sections. FIPPA creates the boundaries for action and public officials must respond to those guidelines. Their response will lead to the ultimate success or failure of the law.

ENDNOTES


3. Donald C. Rowat, Canada's New Access Laws: Public and Personal Access to Governmental Documents (Ottawa: Department of Political Science - Carleton University, 1983), 120.

4. Ibid., 119.

6. Ibid., 59.


10. Ibid., 125.

11. Ibid., 125.


* Access was a coalition of approximately twenty pressure groups which supported freedom of information laws.

13. Ibid., 10.


19. Ibid., 129.


24. Ibid., 127.


29. Ibid., 6.

30. Ibid., 8.

31. Ibid., 6.

32. Ibid., 6.

CHAPTER THREE:

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT - STRUCTURES AND PROCESSES

The success of a law cannot be measured by simply looking at the legislation itself. The structures and processes which are developed to implement the law are important determinants of its effectiveness. Before providing an evaluation of how well FIPPA has been implemented, it is necessary to understand the structures and processes which have been established to meet the requirements of the Act. There are three major structures. The first is Management Board of Cabinet which has been designated as the body responsible for coordinating and administering FIPPA throughout the government of Ontario. Secondly, Freedom of Information and Privacy Coordinators have been appointed within each Ministry to oversee FIPPA for their particular institutions. And finally, the Office of the Information and Privacy Commissioner/Ontario has been established, as required by the legislation, to review the decisions of those institutions bound by the Act.

These formal structures provide the framework for processing access requests, reviewing decisions regarding requests and ensuring that the
privacy provisions outlined in the legislation are respected. The purpose of this chapter is to explain these structures and their respective roles within Ontario's access and privacy scheme. The chapter will demonstrate that, individually and collectively, Management Board, the FIPPA Coordinators, and the Office of the Information and Privacy Commissioner/Ontario have had significant impact on the implementation of FIPPA.

**MANAGEMENT BOARD OF CABINET**

Management Board of Cabinet is the Committee of Cabinet responsible for coordinating the financial and administrative operations of the provincial government. Under Section 3 of FIPPA, the Lieutenant Governor in Council is directed to appoint a minister of the Crown to be the responsible minister for the purposes of the Act. 1. The chair of Management Board has been appointed the minister responsible for FIPPA.

Within Management Board, a Freedom of Information and Protection of Privacy Branch was created in 1985, three years prior to the enactment of the legislation. This Branch, with Frank White as Director, was originally established to prepare the government for the enactment of FIPPA. Its task was to develop orientation and training programs for government employees and to assist in the development of FIPPA legislation,
regulations and guidelines. During the first few years, Mr. White worked alone towards this goal. Currently, the Branch employs six staff including the Director, a Legal Advisor, two policy advisers and two support staff.

The Branch now supports all institutions covered by both provincial and municipal FIPPA legislation. This involves providing services to both provincial and municipal FIPPA Coordinators. It coordinates and delivers orientation and training to staff and produces a number of publications which assist institutions with their administrative and decision-making processes on access and privacy matters.

The Branch holds quarterly meetings with Coordinators in order to discuss how ministries can put the Act into practice on a day to day basis. During these meetings, Coordinators discuss recent orders of the Information and Privacy Commissioner. The Branch also holds panel discussions which examine how different sections of the Act should be interpreted. Internally, the Branch conducts "portfolio" sessions which are regular meetings held with Management Board policy advisors. These meetings provide an opportunity for advisors to meet and discuss current issues and concerns. These matters are subsequently discussed with FIPPA Coordinators and other interested individuals in order to promote
consistency in the interpretation and implementation of the Act throughout the government.

The Branch provides advice to ministries which are in the process of developing new policies or programs and it evaluates new legislation in order to determine how it reflects the requirements of FIPPA. The Branch also responds to telephone inquiries from Coordinators and from members of the general public.

The Branch has an important educational role in that it provides extensive training and orientation to government institutions. It coordinates basic introductory courses approximately three times a year. These courses are developed for new Coordinators and other individuals with direct FIPPA responsibility. In-depth training is also made available for experienced Coordinators on such issues as how to interpret and apply recent orders from the Information and Privacy Commissioner. Sessions are coordinated for small groups when Coordinators require training on a topic which is particularly relevant or specific to them. In a 1990 survey of Ontario Government institutions, it was found that 94% of the province's ministries have participated in training sessions organized by Management Board. Clearly, the Branch has been a valuable source of educational support to provincial institutions.
As stated earlier, the Branch prepares a number of publications which provide guidance to Coordinators as well as to members of the public. These documents include a Directory of Records, which is a listing of all general and personal records held by provincial institutions, and a Directory of Institutions, which is a listing of all institutions for the purposes of the Act. The Directory of Institutions identifies the individual to whom requests for information should be made.

The Branch produces and updates a FIPPA manual which outlines how institutions should meet the requirements of the Act and related regulations. It publishes "The Annotation," which summarizes all orders from the Information and Privacy Commissioner, and a Branch newsletter called "The Bulletin" which describes current issues in the access and privacy field. 5.

The Standing Committee of the legislature, which was responsible for reviewing the first three years of FIPPA, commended Management Board for its ongoing efforts to increase the level of public awareness of FIPPA and recommended that these efforts continue. 6.

**FIPPA COORDINATORS**

While the FIPPA Branch of Management Board has been an important source of support to the FIPPA Coordinators, its function is essentially
advisory. With the advent of FIPPA, each institution was required to review its own organizational structure and establish internal decision-making processes which would allow it to respond to the Act's procedural requirements.

With respect to these requirements, it is useful to review the recommendations made by the Williams Commission in 1980. The Commission observed that public servants are generally reluctant to disclose information to the public unless they have been authorized to do so by a superior. It also believed that decisions on the disclosure of information were often premised on the public servant's own judgement as to whether the individual requesting the information had a need to know. 7.

In order to deal with these concerns, the Commission recommended that public servants be trained in the operation of access and privacy legislation. Management Board has clearly taken a lead role in developing extensive educational programs for those institutions bound by the Act. The Commission also recommended that government should establish clear decision-making processes. In some ways, the decision-making processes which have been adopted reflect the spirit of the Commission's recommendations. In other ways these processes fall short of the
Commissions’ expectations. For example, the Commission suggested that it was desirable to have access decisions made at a senior level by an individual who was responsible for the access and privacy law. It felt that it would not be prudent to have decisions made by officials involved in the direct delivery of programs. These individuals could appear to be biased in their response to access requests, particularly if their own program area was involved.

The Commission suggested that a senior official in each institution should be responsible for the access and privacy legislation. This would promote consistency in the interpretation of the Act throughout that institution. It recognized, however, that the actual structure of decision-making could vary from one institution to another, depending on the size and complexity of the institution.

The government enacted FIPPA legislation which did not specify in detailed terms the internal decision-making processes for institutions to adopt. The role of the FIPPA Coordinator is not even mentioned in the Act. The Act merely specifies that the "head" of each institution is responsible for ensuring overall compliance with the legislation. It does state that all of the powers and duties of the "head" can be delegated, but the "head" remains accountable for all decisions under the Act.
In all ministries, most of the "head's" duties have been delegated to an Information and Privacy Coordinator. The Coordinator's role can include some or all of the following responsibilities:

- developing and monitoring procedures for the administration of the Act, including statistical reporting and ensuring adherence to legislative requirements
- training and orientation of staff
- consultation with line and senior management and legal advisors on the interpretation and administration of the Act
- making decisions on requests for information
- providing consultation and support for agencies associated with the Ministry
- designing measures to ensure the privacy measures of the Act are honoured.

As the Commission recommended, most Coordinators have been given responsibility for FIPPA only, and many are responsible for making or influencing FIPPA decisions. However, the role of a Coordinator varies greatly depending on the size and scope of the institution.

In a 1992 survey of FIPPA Coordinators, conducted by this writer during the course of the research (Appendix One), the following information was collected. All ministries have appointed an official who is designated as a Coordinator. This individual is usually a full-time staff person; however, a few Coordinators have additional responsibilities. Most Coordinators have at least one staff person to assist them; however,
the amount of support ranges from one half-time support person to eleven full-time persons. The number of support staff depends on the size of the ministry and the volume of access requests. Most of the Coordinators surveyed indicated that their primary responsibilities included processing requests, making recommendations to senior management, providing advice to staff, providing orientation and training programs, reporting statistics and processing appeals. Some Coordinators have developed FIPPA instruction manuals, briefing materials, human resource manuals or other publications, such as newsletters. 10.

The decision-making system which has been established does not reflect the Commission's recommendation that each institution have a single senior official responsible for FIPPA. Although almost all of the Coordinators are responsible for processing access requests, they may or may not have formal decision-making authority. 11. A survey of institutions conducted by the Information and Privacy Commissioner's Office found that final approval in most ministries is generally reserved for the deputy minister, the assistant deputy minister, or some combination of these and other senior officials. 12.

The Standing Committee that reviewed FIPPA found that Coordinators, even those responsible for FIPPA decisions, are not highly
placed in the hierarchy of government and are generally located at the medium to lower end of the management scale. 13. All of the Coordinators who were surveyed in 1992 agreed with recommendations of the Standing Committee’s report that the status and role of Information and Privacy Coordinators should be given explicit recognition in the Act, that Management Board should ensure that Coordinators are senior level officials wherever possible and that Coordinators should have a direct reporting and working relationship with senior management. 14.

The precise role of FIPPA Coordinators varies depending on their particular institution; however, there are certain similarities. Most have heavy workloads, largely as a result of their responsibility to respond to the access side of the legislation. This was especially true when FIPPA was first introduced. They now have more time to examine how the privacy side of the legislation is impacting on their particular organization. 15.

Many Coordinators have set themselves up as advocates within their own ministries. They often lobby on behalf of individuals who request information and on behalf of the legislation itself. Their dedication and commitment to FIPPA is illustrated by one Coordinator’s comments:
We take the approach that we work for the requester, and the Ministry accepts that and that we will be giving them advice. So, if you were a requester and you wanted access, my obligation is to help you get that access. On the other hand, I can't let the Ministry make a fatal mistake such as disclosing personal information, disclosing a Cabinet record or third party information without having done the proper notices. 16.

The Coordinators have an important role in supporting their staff within their own institution and in ensuring that the spirit and substance of the Act are respected. In the event that an institution does not appear to comply with the legislation, an appeal or complaint may result.

THE OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

Appeals are directed to the third of the formal structures involved in the implementation of FIPPA, namely the Office of the Information and Privacy Commissioner/Ontario (IPCO). The Commissioner is appointed by the Lieutenant Governor in Council as an independent review body. The purpose of the Commissioner's Office is to ensure that government institutions, which are bound by FIPPA, adhere to the requirements of the legislation. The Commissioner's role is to review appeals from individuals who have been denied access to information and from individuals who feel that their privacy rights have been violated. The Commissioner's Office serves as a mechanism to oversee provincial and
municipal government institutions so as to make certain that FIPPA is obeyed.

Sara Jones, Manager of Communications with the IPCO, described the Commissioner's Office as "a part of government, small 'g.' We're part of the scheme that the government put into place to create freedom of information, but we're not part of the Ontario public service." 17. This comment reflects the fact that the IPCO is truly independent of partisan government and has an arm's length relationship with provincial and municipal institutions.

The IPCO was established in 1988 with the original Commissioner, Sydney B. Linden, and a small number of staff. Since that time, the IPCO has grown to include over 80 staff and Tom Wright has replaced Mr. Linden as Commissioner. There are now two Assistant Commissioners, one responsible for privacy and the other for access. The Compliance Department is responsible for ensuring that institutions covered by both acts comply with the privacy provisions in the legislation. The Appeals Department is responsible for reviewing decisions when access for information has been denied by an institution. The Executive Director is responsible for day-to-day operational activities, including communications, administration, finance, human resources, legal,
research and policy development. 18.

The Commissioner's Office has three important roles: reviewing decisions of government through the appeals process, reviewing the actions of government with respect to the violation of personal privacy, and educating the public about their rights and responsibilities under FIPPA.

In terms of the appeals process, it is the Commissioner's job to resolve disputes regarding information requests between members of the public and the government. Any government decision regarding an access request may be appealed to the Commissioner within thirty days. The decisions which may be appealed include:

- not receiving a response from the government within 30 days of filing an information request
- being advised that a time extension is necessary
- being denied access to all or some of the information which has been requested
- the fees being charged to process a request
- being denied the opportunity to correct an individual's personal record
- information in which an individual has an interest is being released and the individual disagrees with that decision." 19.

The appeals process is straightforward. Within thirty days of receiving a response from the government regarding an access request, a
letter must be sent to the IPCO identifying the fact that the decision is being appealed. At this point, the Commissioner appoints an Appeals Officer to review the circumstances of the appeal and to ensure that all parties understand the issues. The Appeals Officer then attempts to mediate the situation and bring about an agreement.

If the mediation stage fails, an inquiry stage begins. This process enables both the individual and the government to present their case and to argue what they believe to be the relevant sections of the legislation supporting their positions. The Commissioner will issue a binding order and both parties will receive a copy of the order.

The issues involved in the appeals process are often quite complex and access rights can often conflict with an individual's right of personal privacy. The Commissioner must balance the right of access with the right to privacy and arrive at decisions which are respectful of both sections of the legislation.

The orders of the Commissioner are binding and are not subject to judicial review unless an error in law or jurisdiction has been made. (This is not specifically stated in the Act). This means that the Commissioner may direct any provincial minister to release information, even if the minister wishes to withhold it. This limitation on judicial
review makes the Commissioner very powerful indeed. To date, only about half-a-dozen decisions have been appealed to the Ontario Court of Justice - General Division for judicial review. 20. The power of the Commissioner to issue binding orders has resulted in a body of case-law. This case-law has quickly narrowed the scope of the exemptions and provides guidance to institutions that encounter requests similar to previous ones.

Although government institutions must quickly respond to access requests, the appeals process itself is not governed by strict time deadlines. The speed of the appeals process varies greatly with the nature of the records, the quantity of records and the cooperation between the appellant and the institution.

With respect to the privacy provisions of FIPPA, individuals may complain to the IPCO if they feel that the government has wrongfully collected, used or disclosed their personal information. The complaint process is similar to the appeals process described earlier. Individuals are required to send a letter to the IPCO stating why they feel that their privacy has been invaded. Once the letter is received, the Commissioner will appoint a Compliance Investigator to review the case. The Compliance Investigator will contact both the complainant and the
government to gather related information. If the privacy provisions of the Act have not been followed, the Commissioner's Office will make recommendations to the institution which should prevent the situation from happening again. 21.

The third role of the IPCO is to educate the public about FIPPA. When the IPCO was established in 1988, Commissioner Linden acknowledged his responsibility for public awareness; however, he felt that it was first necessary to establish a process for appeals and compliance investigations. He spent the first year and a half getting these processes established, at which point a Manager of Communications was hired with the responsibility for outreach activities. 22.

Since the time of this appointment, outreach programs have been developed to include training for municipalities, specific public interest groups and the media. Staff from the IPCO make public addresses upon invitation; host FIPPA conferences; and publish several brochures, including Guides to the Commissioner's Office, Guides to the Appeals Process and a quarterly newsletter. An orientation video has also been developed. 23.

The Commissioner, the provincial Coordinators and the FIPPA Branch
of Management Board are important players in Ontario's access and privacy scheme. The individuals who work within these offices are responsible for the application of the legislation throughout the province. They provide orientation and training to public servants and to members of the public and they produce resource materials for those who need to learn about the Act. Most importantly, they are presented with real issues and must apply the law according to what they believe to be the most appropriate and most balanced interpretation.

It is important to recognize that, while each of these structures has a mandate to work independently on specific tasks, they work together to create an access and privacy scheme which is, for the most part, mutually reinforcing. The Coordinators, through their ministries, have an overall responsibility to Management Board. The Board plays a supportive role in the entire government and interacts with the Commissioner's Office. The Commissioner has a watchdog role over the whole of government and also reports to the legislature on an annual basis.

As stated at the beginning of this chapter, these structures play an important role in determining the overall success or failure of the Act. The individuals who work within these structures are equally important. Overall, a comprehensive framework has been developed which includes
well-defined roles, responsibilities and processes. The analysis of the actual effectiveness of this framework is contained in the following chapters.

**ENDNOTES**


8. Ibid., 377.

10. Coordinator's Survey - Conducted by H. Catalfamo (Niagara Falls: Spring 1992). (Also see Appendix One)

11. Ibid.

12. Standing Committee on the Legislative Assembly, 119.

13. Ibid., 119.

14. Ibid., 120.


18. Ibid.


20. Sara Jones, Interview.


22. Sara Jones, Interview.

23. Ibid.
CHAPTER FOUR:
ACCESS TO INFORMATION -
HOW OPEN HAS ONTARIO BECOME?

In 1979, Kernaghan stated that "advocates of public access legislation should realize that considerable progress towards their objectives will have been made if the government fulfills its existing commitments (to enact access laws)." 1. In Canada, the federal government and many provincial governments have made such progress as they have introduced and adopted access and privacy legislation. The case study below, Access to Cathy's File, demonstrates that Ontario now provides individuals, like Cathy, with access to government-held documents.

CASE STUDY: PART THREE

Access to Cathy's File

When Wendy received her first freedom of information request from her client, Cathy, she was very surprised and unsure of what to do. She went to her boss, Sam, and he explained to her the requirements of the new freedom of information legislation. He said that Cathy was entitled to review her file, as long as there was nothing in the file that was protected under the law.

Wendy and Sam notified the local Freedom of Information
Coordinator in their Area Office that they had just received a request. The next day, the Coordinator met with Wendy to review the contents of the file. Wendy was particularly concerned about one section of the file that contained confidential complaints from Cathy's former employer who had sent a letter stating that Cathy had knowingly defrauded the government.

Wendy and the Coordinator read Cathy's entire file which was found to contain only personal information about Cathy. The complaints from her employer were over five years old and the allegations had never been substantiated. The Coordinator explained that although these documents were related to law enforcement activities, which could be exempted under the Act, the investigation had been completed a long time ago. She stated that revealing those records could not realistically be expected to bring harm to either Cathy or to her former employer. She went further to state that in their Ministry, the Area Manager was the delegated decision-maker who would ultimately decide what information would be released. In this case, both Wendy and the Coordinator advised the Area Manager that Cathy should have full access to her Family Benefits file.

Cathy was notified in writing within thirty days that she would have access to her file and that there would be no fee charged for the service. Wendy met with Cathy while she reviewed the file in order for Wendy to answer any of Cathy's questions about the file or to interpret any of the computer calculations. Wendy was surprised and relieved at how uncomplicated the process really was.

It is clear that real commitment to open government goes well beyond simply enacting access legislation. The actual implementation of the legislation is vital to the degree of progress actually achieved. When Ontario introduced FIPPA, Murray Elston, Management Board Chair, stated that "we want to make it (FIPPA) function. We want to make it happen in a way that everyone will be satisfied we're doing a good job." 2. The purpose of this chapter is to review whether Elston's goal has been
achieved. Has FIPPA allowed individuals to access the documents held by the Ontario government?

This chapter is divided into two sections. The first section examines how well the bureaucracy has responded to the Act. The second section examines the role of the Information and Privacy Commissioner/Ontario and discusses the significance of the appeals process. These examinations provide a basis for determining whether FIPPA has made a difference in providing open government to the people of Ontario.

THE BUREAUCRACY AND FIPPA

Prior to 1988, access to government-held documents in Ontario was largely a discretionary practice as the public had no legal right to ask for, let alone receive, access to government documents. In addition, a climate of administrative secrecy was said to have been fostered by both the bureaucracy and politicians. Public servants were compelled by oaths of secrecy, the Official Secrets Act, various statutes and their commitment to their ministers to safeguard information from what was thought to be the "prying eyes of the public."

FIPPA finally gave the public a legal right to request access to
government records and to request information about themselves as well. Since January 1, 1988, the public has demonstrated that they wish to avail themselves of this right. Between 1988 and 1990, a total of 19,362 access to information requests have been filed. 4. (Appendix Two - Table One) This demonstrates that many members of the public have become aware of their rights under this new law.

The majority of those who have requested access to government documents are individual citizens. Between 1988 and 1990, 53.3 percent of all access requests were filed by individuals, 9.9 percent by business, 2.8 by researchers, 2 percent by the media, 2.4 percent by associations, 6.5 percent by others and 22.2 percent by unknown groups or individuals.

5. (Appendix Two - Table Two) This contrasts with the experience of the federal government where the federal act has tended to be used more heavily by researchers, consultants and the media rather than by members of the general public. 6. The fact that, in Ontario, the access component of FIPPA is being used primarily by individuals as opposed to the media or lobby groups, is an indication that FIPPA has been recognized and used by the public as well as by the media and researchers.

It is clear that there has been some interest in accessing government-held information. However, it is more relevant to the
analysis to evaluate how the government has responded to these requests. Inger Hansen, the federal Information Commissioner, has stated that "a good law is not enough. In the end, ... it is a question of political will and by that I mean a will of a bureaucracy. Therefore, there is no doubt in my mind that information is power." 7.

It is useful at this point to examine the commitment which has been devoted to FIPPA both politically and administratively. Commitment in government is often demonstrated by the provision of resources. The government of Ontario has been provided with a central resource Unit for FIPPA, the FIPPA Branch of Management Board. This Branch was discussed in Chapter Three and was found to be an extremely useful resource for all institutions bound by the legislation.

However, Management Board's role is rarely "hands-on" in terms of determining the outcome of access decisions. Therefore, the bulk of this discussion will refer to the role of ministries and their internal FIPPA processes. Much of this information was gathered by this writer in the Coordinator's Survey conducted in 1992 (mentioned in the previous chapter). Twenty-three of twenty-seven ministries responded to the survey.

Most ministries have units within their organizational structure
which are specifically dedicated to freedom of information and privacy protection. In the survey, 79.2 percent of the respondents stated that they had units dedicated to FIPPA. Another 20.8 percent had individuals designated as Coordinators with FIPPA responsibilities; however, they had additional responsibilities unrelated to FIPPA. (Appendix Two - Table Three)

Ministries without FIPPA units generally had a low number of requests and appeals. Natural Resources, Treasury and Economics, Northern Development and Mines and Intergovernmental Affairs ranked 17th, 20th, 26th and 27th in terms of numbers of requests. Energy seems to be the exception, ranking 8th. Two ministries, Culture and Communications and Citizenship, share a FIPPA unit and rank 15th and 22nd in terms of numbers of requests. (Appendix Two - Table Four)

The Coordinator's Survey demonstrated that all but two of the ministries which have established FIPPA units did so in 1988 or earlier. In fact, 67 percent were established in 1986 or 1987, up to two years before they were required to respond to requests for access to information. (Appendix Two - Table Three) This seems to indicate that several ministries, like Management Board, were proactive in preparing for the advent of FIPPA. It also demonstrates the political commitment of their
ministers in allocating resources to establish FIPPA units.

There are different staffing levels throughout the FIPPA units, ranging from one part-time person to twelve full-time and four part-time staff. There seems to be a correlation between the number of requests and the number of staff employed in a FIPPA Unit. The Ministries of Revenue, Correctional Services, Community and Social Services, Health, Attorney General and Labour rank 1 to 6 in terms of numbers of requests. They, in turn, reported staffing levels ranging from three full-time to six full-time employees. Interestingly, the Ministry of the Solicitor General ranked 8th in terms of numbers of access requests, yet appeared to be the most richly staffed with twelve full-time and four part-time staff. (Appendix Two - Table Four)

In the Coordinator's Survey, most ministries (79.2 percent) stated that all staff at one time or another have received a formal orientation to FIPPA. Many of these orientation sessions took place in 1988 when FIPPA was first introduced. These sessions demonstrate that, at least initially, ministries committed themselves to staff awareness and education regarding the new law. Ongoing FIPPA training is provided in many ministries; however, only 55 percent of ministries provide ongoing education to all staff. (Appendix Two - Table Five). Most ministries (80
percent) responded that staff have a good to excellent awareness of the Act and 70 percent responded that staff have a good to excellent understanding. (Appendix Two - Table Six) One Coordinator reported that he believes that "some staff do (have a good understanding of the Act), and some don't. But those people in key positions, where they have to deal with it, I think that that's where it's working rather well." 8.

Ministries generally rely on the FIPPA manuals and updates published by Management Board for guidance in decision making. Yet many ministries, 45 percent, have not developed their own FIPPA manuals and guidelines. (Appendix Two - Table Seven) In a 1990 survey conducted by the Standing Committee on the Legislative Assembly, it was reported that uniform and consistent guidelines/manuals are important tools for ensuring that the Act is implemented effectively. Management Board's procedural manual does not take into account different or unique circumstances which may occur in each institution. Rather it is recommended that individual institutions may need to develop their own procedural guidelines. 9.

It is clear that the political masters of the government, the ministers, have demonstrated some support for FIPPA by providing staffing resources to ministries to enable them to deal with FIPPA. It
seems reasonable that those smaller ministries, which experience fewer 
access requests, have devoted part-time resources to deal with FIPPA.

The effectiveness of the FIPPA units and their activities cannot be 
fully evaluated unless the role of the FIPPA Coordinator is examined in 
detail. A brief overview of this role was provided in Chapter Three; 
however, it is necessary to discuss this role in further detail in order to 
provide a comprehensive examination.

The role of the FIPPA Coordinator is not expressly stated in the Act 
and the Coordinators' responsibilities vary widely among the different 
ministries. Although the Coordinator has an important role in advising 
senior officials regarding the appropriate release of documents, in most 
ministries, final decision-making power lies with the senior officials.

The Standing Committee's 1990 survey stated that the Coordinators 
are "pivotal" in implementing the Act at an institutional level. The 
Committee also stated that the more closely the Coordinator is integrated 
into the principal decision-making functions of the institution, the more 
likely freedom of information and privacy issues will be dealt with by the 
senior staff of the institution. 10.

There is no overall pattern in terms of where the Coordinators are 
placed and there has been no formal direction by the government as to
where they should be placed. This is problematic for some officials. The 1990 survey included a review of Coordinator turnover which reported that the majority of institutions, 62 percent, have had only one Coordinator. However, 31 percent have had two and 7 percent have had between three and five. 11. The Standing Committee concluded that these figures may provide a partial measure of how satisfied the Coordinators are with their role, status and responsibilities. They believed that a relatively high level of turnover indicated that many Coordinators were not satisfied with their role and status. The Standing Committee reported, in their 1992 review of FIPPA, that little had changed since 1990 with respect to the role of the Coordinators. The Committee was concerned that there was a lack of authority and status given to Coordinators within institutions and they feared that this apparent lack of authority may have actually contributed to delays in responding to access requests. 12.

During interviews held with Coordinators and throughout the survey research, it became clear that the Coordinators and their staff are the driving forces behind the effective implementation of the access provisions of the legislation. They have essentially become champions of open government within their own organizations. They have a key role to
play in educating senior level bureaucrats regarding a law which allows the public scrutiny of government decision-making. Their commitment to the principle of open government is not only commendable; it is also essential for the appropriate disposition of access requests.

The 1990 survey reported that there is a relatively high level of administrative efficiency in the processing of access requests. Between 1988 and 1990, most access requests were processed within the time guidelines dictated by the Act. In fact, 78.8 percent were completed in 1 to 30 days, 13.6 percent were completed in 31 to 60 days and 7.6 percent were completed in 61 days or more. (Appendix Two - Table Eight)

The Standing Committee reported in 1992 that, "generally speaking, institutions have attained a fairly high degree of efficiency in the processing of requests, although the latest statistics show a decline in this efficiency." 13. In 1988, 80 percent of requests (excluding correction requests) were completed within 30 days of the request being made. In 1989 the figure was 84 percent. In 1990, the number of requests completed within 30 days fell to 70.5 percent. 14.

The Standing Committee went further to suggest that it is possible that some delays are not always justified and attributed some of this problem, not to the lack of experience on the part of Information and
Privacy Co-ordinators, but to the lack of their authority to deal with requests. The Committee expressed concern that some Coordinators felt over-worked, and that in the current period of fiscal restraint, the resources devoted to FIPPA within institutions might be among the first to be cut back. 15.

The Standing Committee recommended that Management Board review the working conditions of Coordinators and identify sources of delay. If delay was found to originate at the Coordinator level, they suggested providing more training for Coordinators and additional resources which would allow Coordinators to deal more efficiently with access requests. If delay was found to originate at the senior level of management, they recommended reducing the time allowed to respond to a request. 16. Although the Committee's first recommendation seems reasonable, the second does not appear to be either logical or practical. It would, in effect, be punitive towards the Coordinators and contribute to what has already been described as an enormous workload. It seems more appropriate that if Management Board found that processing delays originated with senior level managers, then these managers should be required to participate in comprehensive FIPPA training. This could, in effect, provide them with a greater understanding of the complexities of
the legislation, as well as the procedural requirements (which include response deadlines).

In addressing the question of "just how open has the government become?" it is appropriate to examine how much information is being released to the public. It is important to remember that FIPPA guarantees the right to request access to government information; however, there are a series of exemptions which can be applied to safeguard the personal privacy of individuals and the legitimate interests of relevant parties.

Between 1988 and 1990, only 11.9 percent of all information requests were completely denied, 80.9 percent were either fully disclosed or disclosed in part (60.7 percent were fully disclosed - 20.2 percent were disclosed in part). A total of 6.5 percent of the requests were withdrawn or abandoned and in 0.8 percent of the cases, institutions refused to confirm or deny the existence of the requested records. (Appendix Two - Table Nine) These figures seem to indicate that the government has been fairly open. Many information requests are very complex. If a record were to contain any personal information on any individual, such as a name or a telephone number, the Act states that it must not be disclosed. It is not surprising that the two exemptions most often cited for the denial of information were the protection of personal
privacy and law enforcement activities. 17.

The issue of fees is relevant in evaluating the relative cost-effectiveness of the Act. The Act requires an institution to charge fees for providing access to a record and specific rates are set by regulation. If a fee exceeds $25.00, the requester is provided with an estimate. There are no fees charged for accessing one's own personal information. 18.

Fees are a problematic aspect of access legislation. The actual physical processing of access requests can place a significant demand on public servants in terms of reviewing potentially large volumes of information which may or may not be located in the same place. There are significant time demands involved which may include the cost of taking a program staff person away from other important activities. When the federal government implemented the Access to Information Act some individuals believed that the administration of the Act would not involve significant time or dollar costs. This was based on the assumption that information was easily and readily available. In short, it assumed excellent records systems, comprehensive integration and effective systems management as related to all possible types and sources of information requests. 19.

There are two concerns with the issue of fees. If fees are overly
high, they may discourage the use of the access to information system. If they are too low, unnecessary requests might proliferate and institutions could be prevented from recouping the costs of operating the system. 20. At this point in time, the Standing Committee has stated that the fees collected do not even begin to cover the cost of implementing the Act. 21. If the system is to be responsive to the public, it is important that fees not be charged for access to one's own personal information. This seems to be an equitable policy which reinforces the notion of open government.

By examining the number of appeals, it is possible to assess the relative openness of government. The number of appeals filed in relation to the number of requests suggests that most individuals have been satisfied with the response to their access requests. Between 1988 and 1990, only 7 percent of access to information requests were appealed. (Appendix Two - Table Four) The reasons for the appeals were as follows: access refused in part (26 percent), access refused in whole (29.9 percent), and the explanation that the records requested did not exist was not accepted (11.5 percent). (Appendix Two - Table Ten)

The issue of penalties for non-compliance with the Act has also been raised as a problem. There are no penalties for institutions which refuse to abide by the time deadlines, other than the fact that an appeal
may be filed with the IPCO. The Standing Committee stated that the lack of incentive for an institution to comply within time limits is a serious deficiency in the Act. This lack of incentive has created delays in responding to the Commissioner's Office and has discouraged the use of the Act by potential requesters of information. To deal with this problem, the Committee recommended that the Commissioner be authorized to waive fees when an institution does not meet the required time deadlines. 22. It is unclear as to whether this proposed solution fully addresses the problem; however, it may provide an incentive that institutions who are concerned with collecting fees in order to cover some of the administrative costs of complying with the Act.

THE IPCO AND THE APPEALS PROCESS

The Information and Privacy Commissioner/Ontario has an extremely powerful role which will ultimately determine the long-term impact of FIPPA. In Chapter Three, the Commissioner's Office was shown to have three important roles: educating the public about their rights and responsibilities under FIPPA, reviewing the access decisions of government through the appeals process and reviewing the actions of government with respect to personal privacy. The following analysis will deal with the Commissioner's public awareness role and the appeals
process.

The Standing Committee has stated that a high level of awareness of the public's rights under an information and privacy scheme is a key component in its successful operation. It also stated that measuring public awareness is difficult. 23. As stated in Chapter Three, the efforts towards public awareness have consisted of training for municipalities, specific interest groups and the media as well as the publication of a number of brochures and reports.

The Standing Committee commended the IPCO for their ongoing efforts to increase the level of public awareness. However, there are those who feel that the IPCO has not embraced this role to the extent it could have. One Coordinator stated that "I don't think the IPCO took on that role. I don't feel that they've done all the public awareness they could have. The public may be a little aware, but it is more because of the media reports of situations - like the Evelyn Gigantes situation." 24.

In dealing with appeals, the IPCO has a two stage process. Appeals are initially mediated and if they cannot be settled they are referred for an inquiry. Appeals can be settled at the inquiry stage but if an agreement cannot be reached, the Commissioner issues an order.

The IPCO has stated that its goal is to settle as many appeals as
possible through mediation. However, as more orders are issued, they are bound to cover a wider range of issues. It is possible to use these interpretations of the Act in order to mediate a larger proportion of appeals. 25. Between 1988 and 1990, 67.9 percent of appealed cases were disposed of at the mediation stage and 32.1 percent at the inquiry stage. 26. This demonstrates the extent to which mediation is used to resolve appeals.

In 1989, the IPCO stated that in order for mediation to be effective, institutions must adopt both a flexible attitude toward the mediation process itself and internal procedures which facilitate, rather than delay, the resolution of appeals. It also stated that for the most part, FIPPA Coordinators, Deputy Ministers and other staff have recognized the need for an effective appeals process. The IPCO found that government approached the first year with a spirit of cooperation. 27.

The statistics regarding the disposition of appeals vary greatly from one year to the next and, therefore, no clear pattern has emerged. For example, in 1988 and 1989, 82.9 percent and 84 percent of appeals at the mediation stage were settled by providing requesters with more information or providing them with an explanation of the Act. In 1990, this figure dropped to 47.4 percent. Also, in 1988 and 1989, 9.5 percent
and 13.1 percent of the appeals were withdrawn at the mediation stage. In 1990, this figure increased significantly to 50.5. (Appendix Two - Table Eleven) No explanation is provided for the large variation in these figures.

It is also difficult to evaluate the disposition of appeals at the inquiry stage. In 1988, 67.7 percent of the government’s decisions were upheld at the inquiry stage. This number decreased to 34 percent in 1989 and 22 percent in 1990. In 1988, 5.4 percent of decisions were partly upheld. This number increased to 17 percent in 1989 and 40.2 percent in 1990. (Appendix Two - Table Eleven)

These inconsistencies have made it difficult to evaluate how willingly institutions have disclosed information and any generalizations would be speculative. It would be necessary to review the circumstances and disposition of each appeal. Another difficulty found when examining the appeals statistics was the fact that in 1990, one individual alone filed a total of 240 appeals, or 37 percent of all appeals. 28. This makes it difficult to evaluate conclusively the appeals data in the IPCO’s Annual Reports and the appeals data for those ministries which have been targeted for these appeals.

The combination of the mediation and inquiry stage is thought to be
an effective way to safeguard fairness and equity in the appeals process. The IPCO attempts to mediate a satisfactory settlement. If this is not possible, the inquiry stage re-examines the case and again attempts settlement. If settlement is not possible, the Commissioner issues a binding order. The advantage of this is that it provides a definitive interpretation of the law which creates a form of jurisprudence to guide future decisions. 29.

By comparison, at the federal level in Canada, the Access Commissioner has no power to make a binding order. If a department does not follow the Commissioner's recommendation, the Commissioner can decide whether or not to appeal to the Federal Court. The appellent is not likely to appeal a second time due to the cost involved in pursuing the case through Federal Court. In contrast, the first Ontario Commissioner, Sydney Linden, stated that "under our system, an independent review of government decisions is accessible to all, quickly and at no cost." 30.

Perhaps the most criticized aspect of the appeals process is the fact that although institutions are bound by strict time limits, no time deadlines are imposed on the appeals process. The Canadian Bar Association reported to the Standing Committee that the experience of its members has been that appeals often 'languish' at the mediation stage.
Statistics compiled by the Commissioner's Office show that in 1989 there were 133 cases which took 121 days or more to complete and in 1990, this figure rose to 167. 31. These delays have occurred despite the fact that the IPCO has a staff of approximately eighty individuals. 32.

The Standing Committee reported that the majority of requests under the Act were being dealt with in an efficient manner. 33. However, if 167 of 468 requests completed in 1990 took 121 days or more to complete, this means that more than one third of the cases are not disposed of within a six-month period. 34. This does not seem to constitute a high level of efficiency.

One Coordinator was very critical of the delay at the Commissioner's office, and commented that the IPCO "does not process appeals quickly at all. It often takes two to four weeks to notify a Ministry if there has been an appeal." 35. The Standing Committee felt that delay may result from other factors, including under-staffing in the Commissioner's Office and the fact that institutions may not be fully co-operative during the appeals process. The Committee suggested that Management Board undertake a comprehensive review to determine the cause of delay in the appeals process. 36.

This examination of the appeals process and the role of the IPCO has
demonstrated that the government's record with respect to releasing documentation is relatively good. However, the IPCO could improve its public awareness role in order to educate more people in Ontario about access rights under FIPPA. The appeals process itself seems to work well; however, it does have a problem with delay. This is a problem which needs to be addressed if the system is to be considered totally effective.

In conclusion, it may be useful to examine the words of Sir Humphrey Appleby, of Yes Minister fame. This humorous exchange is an insightful critique of parliamentary democracy.

"Bernard asked us 'What's wrong with Open Government?' I could hardly believe my ears. Arnold pointed out with great clarity that Open Government is a contradiction in terms. You can be open - or you can have government.

Bernard claims that the citizens of a democracy have a right to know. We explained that in fact they have a right to be ignorant. Knowledge only means complicity and guilt. Ignorance has a certain dignity.

Bernard then said 'The Minister wants Open Government.' I remarked that one just does not give people what they want, it it's not good for them. One does not, for example, give whiskey to an alcoholic.

Arnold rightly added that if people do not know what you're doing, they don't know what you're doing wrong."

Sir Humphrey expresses a cynical view of government. In the past,
many critics of government have stated that they believe this view is shared by public servants in Canada who favour secrecy to openness. However, on January 1, 1988, the Ontario government made a philosophical commitment to open government by enacting FIPPA. It is clear that the pledge to enact FIPPA has been realized. Overall, the government has respected the procedural requirements of the law and is complying with the spirit of openness which the Act seeks to inspire. In addition, the Commissioner's Office has demonstrated its commitment to open government by establishing an independent review process whereby the rights and interests of parties are thoroughly considered and impartially adjudicated.

**ENDNOTES**


5. Ibid., 38.


10. Ibid., 3.

11. Ibid., 4.


13. Ibid., 41.


15. Ibid., 41 - 42.

16. Ibid., 42.


18. Standing Committee on the Legislative Assembly, 78.


20. Standing Committee on the Legislative Assembly, 79.
21. Ibid., 79.

(Between 1988 and 1990 the amount of fees collected totalled $122,000.00)

22. Ibid., 83 - 84.

23. Ibid., 5.

24. Confidential Interview with Information and Privacy Coordinator.


26. Ibid., 49.


29. Standing Committee on the Legislative Assembly, 70.


31. Standing Committee on the Legislative Assembly, 71.


35. Confidential Interview with Information and Privacy Coordinator.
36. Standing Committee on the Legislative Assembly, 71 - 72.
CHAPTER FIVE:

PROTECTION OF INDIVIDUAL PRIVACY -

HOW CAREFULLY ARE PRIVACY RIGHTS PROTECTED?

The case study below, Cathy's Notice, illustrates one of the practical implications of Ontario's privacy regulations. However, protection of privacy goes well beyond providing the public with an official's name and business telephone number. Protection of privacy deals with the duty of government to protect citizens from government intrusion into their personal lives. One author has noted that "the ideal of privacy is clearly one of the fundamental values of our culture. In general, Western societies place a high value on the right to privacy." 1.

CASE STUDY: PART FOUR -

Cathy's Notice

Several months after Cathy had met with her Family Benefits caseworker, Wendy, to review her Family Benefits file, Wendy came to visit Cathy in her home to complete an annual update report. This report collected personal information about Cathy's living arrangements, her income and an up-to-date listing of her assets.

When Wendy completed filling out the form, she told Cathy that she had another form which needed to be signed by Cathy and that this form was called a "Notice of Collection of Personal Information." Wendy explained that as a result of the new legislation called the Freedom of
Information and Protection of Privacy Act, her Ministry now had an obligation to give her formal, written notice that her Ministry had collected personal information about her.

She explained that the new form stated that information, such as her income and asset level, was being collected under the authority of the provincial Family Benefits Act and that the information would only be used for the purpose of administering her Family Benefits allowance. Furthermore, the form identified Wendy's name, formal business title, address and a telephone number where she could be reached in order to answer any questions about the information which had just been collected.

Wendy explained that the purpose of this formal notice was to ensure that Cathy knew her privacy rights would be protected by the government. Although the Ministry would continue to collect personal information about her, they were now bound by law to safeguard the collection, use, disclosure and disposal of that information.

By the early 1970's, Canadians had become very aware of the vast amount of personal information which was being collected, used and stored by government. As stated in Chapter Two, there was growing concern about the misuse of this information by public servants. It was feared that the potentially intimate details of individuals' lives could be revealed without their knowledge or consent. The growth of the use of computers also presented additional problems because a great deal of information was now being stored on computer disks and tapes. The first Information and Privacy Commissioner/Ontario, Sidney Linden, quipped that "although 1984 has come and gone, we may well be facing the
prospect of an Orwellian society, but when it comes, don't worry, it will be marked 'user friendly.' 2.

Academics, the media and interest groups have expressed concerns about "big brother," or rather, big government and about what the government does with the information it maintains. The privacy component of FIPPA was developed in order to address these very serious concerns. It seeks to ensure that individuals' privacy rights are safeguarded by public officials. The goal of this chapter is to evaluate whether or not FIPPA has made a difference in protecting the privacy of the people of Ontario.

This chapter is divided into two parts. The first part addresses how the bureaucracy has responded to the privacy provisions of the Act. The second part examines the Commissioner's role in protecting the privacy rights of individuals. This chapter summarizes the overall effect that privacy regulations have had on government and evaluates the overall effectiveness of these changes.

THE BUREAUCRACY AND PRIVACY PROTECTION

Privacy can be defined in different ways. Some feel that privacy is the right to be let alone, or the claim of individuals, groups or institutions
to determine for themselves when, how and to what extent information about them is to be communicated to others. 3. In contemporary Canadian society, privacy has been interpreted more narrowly as "data protection" or the right to have one's own personal information protected and kept from the prying eyes of others. 4.

Many recent polls have indicated that government intrusiveness ranks as a major issue in Canadian society. In a 1988 study, 94 percent of the individuals surveyed stated that the protection of their personal information held by the government was important. Of those surveyed, 73 percent believed that it was very important. Three-quarters responded that protection of individual privacy was more important to them personally than having the right to access government information. 5. In other words, the right to privacy was viewed to be more important than the right to know.

Another poll, conducted in 1987, concluded that 71 percent of Ontario residents were concerned about the confidentiality of personal information collected by the provincial government. The survey went further to demonstrate the public's concern about computers. Of those surveyed, 77 percent believed that 'as long as information is stored on computers, we can never be sure of our guarantee to privacy.' 6.
These concerns were addressed by the adoption of a protection of privacy code in Ontario. However, it is difficult to evaluate to what extent FIPPA has addressed the public's fear about the intrusiveness of government. Besides the Act itself, which provides guidelines for the collection, use, disclosure and destruction of personal information, it is necessary to examine how enthusiastically the bureaucracy has implemented the privacy code.

How much commitment has the government shown towards protecting privacy? Have Coordinators dedicated as much time to privacy as they have to access? These are difficult questions to answer because there are different opinions on just how much attention the privacy code has received.

The first research available to address this question was found in the 1990 Survey of Institutions by the Standing Committee on Parliament. It was found that approximately 85 percent of Coordinators spent at least some time dealing with the privacy component of the Act. In 1989, all of the Coordinators with at least 10,000 employees spent over 10 percent of their time on privacy issues. Institutions within the justice policy field dedicated significant time to privacy and those institutions with the highest number of personal information requests spent more time on
privacy issues than did other institutions. 7.

The same survey concluded that, despite these findings, privacy protection was less likely than access to receive the attention of provincial FIPPA Coordinators. 8. Some of the Coordinators surveyed by this researcher also believed that privacy took a "backseat" to access. One Coordinator stated that "privacy hasn't received as much attention as access, because the access is what the bureaucracy was afraid of and the thing that the media was pushing all the time." The Coordinator went further to state that staff were not as concerned as they should be about the protection of privacy; "they (the staff) still have difficulty. I mean, they think they can pass stuff around in the ministry. They don't really have an understanding that the privacy protection code requires that it only be given out to those who have a right to have it." 9.

Another Coordinator identified staffing as a major concern in meeting the privacy requirements of the Act. He stated that "there just isn't enough staffing and everything is access driven. Privacy is reactive, for example, to complaints that privacy has been breached or to collection or notification practices." 10. The implication in this statement is that if institutions had more staff dealing with FIPPA, there would be more time available to deal with privacy issues and concerns.
The Act initially caused ministries to focus on responding to its access requirements. As time has passed, privacy has emerged to be equally important and is now getting additional attention by the Coordinators. One Coordinator stated that "when the Act was implemented provincially, the focus was on access - getting a process in place to give people access, ensuring the exemptions were applied narrowly, specifically and appropriately ... but what this did was make privacy the sleeping dog of the Act and people forgot it was there. Now privacy is what I get most of my calls on. We do a lot of work trying to keep the profile (of privacy) up to switch it over to at least a balance between access and privacy that wasn't there before." 11.

In the Coordinator's Survey, the following question was asked: In your opinion, have both the access and privacy aspects of the legislation received the same amount of attention? Of 19 responses, 13 responded yes. One Coordinator responded that privacy has received more attention and 5 responded that access has dominated. 12. These findings are contrary to the Survey's report in 1990. However, two years have since passed and the administrative systems required to respond to access requests are, for the most part, firmly established. Coordinators now have the time to dedicate more attention to privacy issues.
Despite the fact that there is no consensus about whether access and privacy have received equal attention, the following observations can be made about most ministries. Most Coordinators agreed that staff have become more aware of the public’s right to privacy. In addition, staff have become aware of their own right to privacy with respect to the information that their employer (the government) holds about them. Consequently, human resource processes have felt the effect of FIPPA; in particular, the privacy aspects of the recruitment and competition processes have been tightened. For example, individuals must now sign release forms before references can be checked. The maintenance of staff records has been streamlined and “supervisory” files are no longer permitted to exist. Some supervisors maintained these informal personnel files without the knowledge or consent of staff.

Many staff have used the Act to gain access to their own personnel files. Therefore, supervisors and managers have become aware that their written comments and observations about staff may become available under the Act. Coordinators have reported that this has improved the objectivity and professionalism of documentation.

The privacy component of the legislation has affected government in other positive ways. There has been greater attention to security
provisions. Some ministries have implemented "clean desk" policies whereby all personal information must be cleared off desks and locked away when individuals leave their work areas for extended periods of time. Concern about computer-security has led ministries to implement mechanisms which better control access to automated equipment. Most ministries have undertaken a "forms review" to ensure that all collections of personal information are permitted under the Act. Many forms have been amended to include formal notice about the legal authority for the collection of personal information.

Most ministries have found that staff are supportive of the privacy provisions in the Act. One Coordinator summarized his ministry's approach. "As the ministry's files contain considerable personal information of individuals, we have always been conscientious about protecting individual privacy. The privacy component of the Act further enhances awareness of privacy issues and has helped us to formalize our procedures." 13.

The Standing Committee Report of 1992 made several observations regarding the collection, use, retention and disclosure of personal information. These recommendations refer to amending the Act in order to enhance the privacy rights of individuals. For example, the Standing
Committee noted that there is nothing in the Act imposing a specific legal duty on institutions to maintain certain security standards even though the Act requires that the heads of institutions are required to ensure that information is accurate and up to date. However, the Standing Committee stated that institutions cannot ensure the accuracy of personal information if their security measures are slack. 14. Therefore, they recommended that a new provision be included in the Act to impose a specific legal duty on institutions to ensure administrative, physical and technical security of personal information held by an institution. 15.

The Standing Committee also observed that some institutions were, in fact, applying certain sections of the Act too narrowly. For example, the Act states that institutions may collect personal information indirectly (from another individual) when indirect collection is authorized under another statute. Despite this authorization, some institutions have taken the approach that even when a statute authorizes indirect collection of personal information, the consent of the individual concerned must first be obtained. The Standing Committee recommended that Management Board ensure that institutions understand the purpose and effect of this section of the Act. 16.

Despite these and other suggestions regarding personal privacy, the
Standing Committee was not very critical of the way government handles personal privacy concerns. While this may be interpreted in a positive light, the record of the government is not entirely spotless. Privacy complaints filed with the Information and Privacy Commissioner reveal those instances when privacy has not been safeguarded.

Unfortunately, the 1988 Annual Report of the Commissioner does not provide any statistical information regarding the specific number of complaints about breaches of personal privacy. However, one incident in 1988 demonstrated a significant breach of the privacy legislation. In February of that year, files containing confidential information relating to child abuse cases (provided to the Ministry of Community and Social Services by the British Columbia government) were found in a public hallway at Queen's Park by a member of the Conservative opposition. The Ministry of Community and Social Services recognized that this incident constituted "a very serious breach of confidentiality." 17.

The Ministry of Community and Social Services, along with the Ministry of Government Services and the Ontario Provincial Police, conducted investigations into the incident. Although no criminal offense was found to have been committed, the investigations revealed that government had inadequate security procedures and insufficient storage
space which led to the improper use of public areas for storage purposes. They also had poor records retention and disposal schedules. The Ministry of Government Services consulted with the Information and Privacy Commissioner on the design and implementation of procedures and security measures required to prevent future problems. The IPCO commended the government on their prompt response to this embarrassing situation. 18.

In 1989, the Information and Privacy Commissioner/Ontario received 38 complaints from the public alleging that someone’s privacy had been invaded. 19. In 1990, this figure rose to 69. 20. These figures refer to all complaints made against all institutions bound by the legislation, including ministries, boards, agencies and commissions. It can be concluded that despite an increase in privacy complaints, the number of complaints seems relatively low given the enormous size of the government. However, privacy breaches must be viewed as extremely serious with potentially devastating consequences. In 1989, an institution transmitted a letter containing highly confidential personal information about an individual with AIDS via a fax machine. The transmission was incorrectly sent to the legal counsel of a private company, instead of the individual’s own solicitor. This situation resulted
in the IPCO developing FAX guidelines to protect personal information from unauthorized disclosure. 21.

Incidents such as these resulted in recommendations by the Commissioner to improve records management systems in all provincial institutions. The IPCO concluded that although these systems had operated reasonably well, some improvements were warranted. 22.

THE IPCO AND PRIVACY PROTECTION

The IPCO plays an important role in providing guidance to institutions regarding privacy practices. However, the IPCO has stated that this role has largely been a reactive one and is limited in its effectiveness because of the wording of FIPPA. The IPCO does not have the power to initiate investigations into the actions or practices of institutions in order to ensure the institution's compliance with the Act. Therefore, it cannot investigate the collection, use, disclosure or retention of personal information except in the context of an ongoing inquiry or complaint.

The Commissioner's Office finds this restriction problematic in that it cannot carry out the duties which are required under the Act without this power. For example, the Act requires that the IPCO provide an annual report to the Speaker of the Legislative Assembly. This includes
a comprehensive review including a review of the extent to which institutions are complying with the Act. 23. The Commissioner has stated that it is difficult to determine whether practices of institutions do in fact comply with the Act, unless he/she is authorized to initiate a review. To date, the Commissioner has been forced to rely on the goodwill of institutions in order to gain compliance. This is said to have affected the manner and timeliness with which the Commissioner's Office has been able to perform its duties. 24. The Standing Committee has recommended that the IPCO be granted the power to investigate an act or practice of an institution in order to assess its compliance with FIPPA. 25.

Similarly, the Commissioner only has the power to order an institution to cease a collection practice and/or to destroy collections of personal information that contravene the Act. In addition to these powers the Standing Committee has recommended that the IPCO be given the additional specific authority which would allow it to order an institution to cease a use, disclosure or retention practice that contravenes the Act. 26.

Despite these legislative limitations, the IPCO has accomplished a great deal with respect to the protection of privacy in only four years. Although they have received a small number of privacy complaints,
officials at the IPCO have not ignored the importance of the privacy code. The IPCO publishes reference material about HIV/AIDS and the Protection of Individual Privacy, the Use of FAX Transmissions and the new Employer Health Number and Privacy Concerns. It also publishes quarterly newsletters which discuss privacy issues in each issue.

The IPCO has also reviewed the issue of computer matching which is the technique of matching information in one database with information in another database. It has prepared a policy paper which addresses the intrusiveness of this practice in terms of its significant privacy implications. 27. It has also reviewed issues about workplace privacy. There is increasing concern that businesses are interested in increasing labour efficiency and productivity at the expense of the privacy of their employees. Such business practices, including DNA testing, drug and alcohol testing, electronic surveillance, genetic screening and psychological testing, are among the different ways that businesses invade the private lives of their employees. 28.

Despite its attention to privacy issues, it appears that the approach of the Commissioner's Office has been somewhat haphazard. It seems that it has been reactive and dealt with the political issues first, such as the AIDS and the FAX issues. However, as stated earlier, it has had limited
power to investigate the practices of government. If legislative changes are adopted, the IPCO could adopt a comprehensive review plan which would methodically map out a study of all collection, use, disclosure and disposal practices.

Overall, it can be concluded that the privacy portion of FIPPA is extremely important. The bureaucracy has attempted to deal with its requirements, given the resources available to it. Initially, the access component of the Act tended to dominate; however, there now seems to be more balance. The IPCO has been limited in its role by the legislation itself.

Both the government and the IPCO recognize the need to be more proactive in the pursuit of improved privacy practices. Legislative changes to increase the power of the Commissioner have been suggested by the Standing Committee in order to enable this to happen. And yet, legislative changes are not enough by themselves. Public servants must be continually reminded of the privacy rights of the public. Once personal information has been inappropriately disclosed, the damage has been done. The IPCO can investigate and make recommendations so that infractions will not happen again; however, that does not change the fact that an
individual's privacy has been invaded.

ENDNOTES


4. Ibid., 6.


6. Ibid., 91.


8. Ibid., 4.

9. Confidential Interview with Information and Privacy Coordinator.

10. Ibid.


12. Coordinator's Survey - Conducted by H. Catalfo (Niagara Falls: Spring 1992). (See also Appendix One).
13. Ibid.


15. Ibid., 51.

16. Ibid., 49.

17. Mary Gooderham, "OPP, 2 ministries investigate why sensitive files left in hall," The Globe and Mail (February 27, 1988).


24. Ibid., 110.

25. Ibid., 111.

26. Ibid., 113.

CHAPTER SIX:
THE VALUES FRAMEWORK -
AN EVALUATION OF FIPPA

'Best Value for Tax Dollars' - Improving Service Quality in the Ontario Government' is a recent report prepared for the Ontario public service. In this report, the public identifies "timeliness, accessibility, reliability, responsiveness and cost as fundamentals of quality service." As the Ontario government shifts towards creating a "service quality" environment, it must respond to the identified needs of the public. Access rights and the protection of individual privacy are now integral components of what the public expects from government. Has FIPPA satisfied the public's demand for open government? Has the government responded to the public's concern regarding the handling of personal and confidential information?

The "values framework," explained in Chapter One, identifies those key values which the public has come to expect from the public service. It is important, therefore, to evaluate the extent to which FIPPA has improved the overall accountability, responsiveness, neutrality,
efficiency, effectiveness, integrity and fairness of government. The purpose of this chapter is to review the "values framework" and to identify whether improved administrative conduct has been achieved with the implementation of FIPPA. Each value will be discussed individually, with reference being made to the evaluation of access and privacy provided in Chapters Four and Five.

ACCOUNTABILITY

Has the government become more accountable to the public because of FIPPA? Accountability speaks to public servants being answerable for their actions, both to the public and to their political masters. As stated in Chapter One, accountability is concerned with the legal and procedural mechanisms by which public servants may be held accountable for their decisions. Has FIPPA ensured that the government shares the information it holds with members of the general public? If so, is it willing to be held accountable for its activities which are now open to public scrutiny? Has FIPPA guaranteed that the government protects the privacy rights of individuals in Ontario? Are public servants answerable for their actions when privacy rights are breached?

In terms of the access component of FIPPA, widespread participation and accountability are both essential features of a healthy
democracy and citizens must have access to information in order to scrutinize the government. 2. Many public servants realize that the adoption of FIPPA has been an important step towards improving the accountability of government. One Coordinator stated that "I'm not in it (FIPPA) for the numbers. The purpose of the Act is to make government more accountable to the public." 3.

It was demonstrated in Chapter Four that most of the information requested under FIPPA is released. The fact that the media, scholars, interest groups and individual citizens are able to review and question government documents means that they can better identify those who are influencing public policy. They can also watch and evaluate how public servants exercise their decision-making power. This tends to enhance the overall accountability of public servants, and, indirectly, of politicians, in that very few decisions are now beyond potential public scrutiny.

With respect to the privacy component of the Act, the value of accountability does not seem to be fully realized for several reasons. As stated in Chapter Five, the Information and Privacy Commissioner/Ontario has limited power to initiate investigations and to make orders requiring institutions to either cease or commence an information practice. This has resulted in a rather reactive approach to privacy issues.
The Act also states that the delegated "head" of each institution must ensure that the privacy provisions of the Act are met. However, there is no formal mechanism in place to ensure that the privacy provisions are regularly reviewed. Institutions are bound by their own interest in and ability to review privacy practices. Therefore, ministries also tend to be reactive when dealing with privacy issues.

Another difficulty with respect to accountability lies within the penalties section of the Act. Those who violate the legislation must do so willfully in order to be considered guilty of an offence. It is difficult to prove that one has willfully contravened the legislation and, to date, no one has ever been formally charged under the Act. Several political figures, including Ministers Evelyn Gigantes and Shelly Martel, have been accused of violating the personal privacy of individual citizens. Despite public and media outrage, no legal penalties resulted from these alleged breaches of confidentiality.

However, it should be recognized that the Commissioner's Office has made several recommendations to ministries which have impacted positively on the protection of privacy in government. It has relied on the goodwill of government and has found that the government is generally willing to cooperate and comply. When found in violation of the privacy
provisions of the Act, most institutions have responded quickly. This is illustrated by the quick response of the Ministries of Government Services and Community and Social Services in initiating an investigation into the storage of child abuse records. (This example was provided in Chapter Five.)

FIPPA has added a formal legal element to the duty to disclose government documents and to protect individual privacy. The Act makes public servants more accountable through a detailed set of directions regarding the handling of information. However, there is significant room for improvement in tightening those accountability mechanisms concerned with privacy protection.

RESPONSIVENESS

The value of responsiveness refers to the capacity and inclination of public servants to respond to the needs of the public. Have officials attempted to assist the public to understand Ontario's access and privacy legislation? Have individuals requesting information received access to the requested documents in a timely fashion? Has access legislation made the government more responsive to the public? Have public servants become more cautious about protecting the personal information they hold on private citizens?
In Chapter Four it was demonstrated that the public service has in fact been responsive to the access requirements of the law. Citizens now receive more information, both formally and informally. Requested information is being released fairly quickly. Requesters of information seem to be relatively satisfied with the responses which they have received. This is demonstrated by the relatively low rate of appeals filed with the Commissioner's Office.

However, it is difficult to evaluate accurately how well the public understands FIPPA or if it is aware of FIPPA at all. Many feel that the public is relatively unaware of their access rights under FIPPA. John Eichmanis, Manager of Strategic Planning and Policy Development in the IPCO, stated in 1990 that more could be done to inform the public of the existence of such legislation. 4.

Responsiveness goes well beyond adhering to the procedural requirements of the Act. It also speaks to whether public servants have changed their philosophy and attitude to reflect the spirit of open government. One critic of the legislation has stated that the Act is riddled with exemptions that allow bureaucrats to withhold almost anything, and that some public servants would grasp at any excuse to block the release of information. 5.
Another critic felt that the provincial government applied the letter of the law, but not the spirit. He noted that the bureaucracy was not accustomed to public scrutiny and that there was resentment on the part of some public servants. 6. The access legislation was further criticized for providing public servants with guidelines for reactive disclosure, yet did little about the proactive obligation on the part of public servants to disclose information to the public. 7.

Despite these criticisms, it has been demonstrated that in a relatively short period of time, the bureaucracy has proven to be responsive in terms of the procedural requirements of FIPPA. In terms of philosophical commitment to FIPPA, many Coordinators have worked hard to educate the staff in their Ministries about the scope, spirit and substance of the legislation. As new individuals are recruited to work for the government, they will be indoctrinated into an environment where access to information is an integral part of the administrative culture.

One Coordinator acknowledged that, initially, there was bound to be a "kneejerk reaction (to FIPPA). People tend to get a little shook up. I would be lying if I didn't tell you that. But what we (the Coordinators) do is, we try to go in and calm them down. We show them we've searched to see if there might be an exemption that applies and we'll explain why each
doesn't fit, although we may want it to fit - it doesn't. (One) of the best lines we have is - there is no exemption for embarrassment." 8. As Coordinators, such as this one, take the time to explain FIPPA and educate public servants about the Act, the climate of openness will be further developed. To date, it seems that the bureaucracy has been relatively responsive to the access demands under FIPPA.

In terms of the privacy aspect of the legislation, it is difficult to assess whether public servants have come to understand fully the concept of privacy protection and whether they have integrated this requirement into the way business is conducted on a day to day basis. However, as stated in Chapters Four and Five, most public servants have received at least some training or initial orientation to FIPPA. Therefore, government has taken the first step in educating staff in order to make them more responsive to the privacy requirements of the Act. Many Coordinators reported that more staff are being trained around specific privacy issues. The interest in FIPPA has shifted away from access issues towards the privacy provisions of the legislation.

It is difficult to assess the level of public awareness of FIPPA or the extent to which public servants explain privacy rights to the public. The low number of privacy complaints may mean that the government has
adequately responded to the privacy requirements of the Act. Or, it may mean that individuals are unaware of their rights. To come to a sound conclusion, it would be necessary to undertake a comprehensive review of all information practices of government, including the collection, use, disclosure and disposal of information. Unfortunately, such a review would be an enormous task and one which even the IPCO does not currently have the power to undertake.

Overall, it can be concluded that the government has been fairly responsive to the access and privacy requirements found within the legislation. Educating public servants about their obligations under a law demonstrates a commitment on the part of government towards effecting a meaningful change towards a more responsive system.

**NEUTRALITY**

As stated in the outline of the 'values framework' provided in Chapter One, the value of *neutrality* connotes both value neutrality and political neutrality. It is unrealistic to expect public servants to be value neutral, especially as their discretionary power in policy-making and policy-execution has increased. The administration of FIPPA is no exception. Public servants have been delegated authority under the Act to make decisions in an objective way. In turn, their ministers are
answerable for these decisions and must deal with the consequences of appeals adjudicated by the Information and Privacy Commissioner. Neutrality also requires public servants to be non-partisan. Have public servants followed the neutral framework set out in FIPPA? Are FIPPA decisions non-political? Have senior level public servants attempted to protect information which could cause embarrassment to their political masters? Have political priorities taken precedence at the expense of personal privacy?

To examine neutrality comprehensively, it would be necessary to have detailed information about all information requests. However, some general observations can be made within the scope of the research completed for this thesis.

Prior to FIPPA, public servants had a duty to protect their minister from public embarrassment. FIPPA has removed the threat of criminal and civil action when requested information is disclosed in good faith. 9. Public servants are now compelled by a new law to provide open access to all documents. Therefore, it is likely that FIPPA causes public servants to be less vulnerable to political pressure. Public decision-making is now open to greater scrutiny by the public, media, interest groups and the like. If a public servant were to conceal inappropriately government documents,
he or she would be subject to severe criticism, particularly by the media and the opposition parties in Parliament. Therefore, it is more prudent for public servants to be open when being publicly scrutinized, instead of involving themselves in clandestine activity which would only cause them, and their political masters, further embarrassment.

Some authors have been highly critical of government in general in terms of its ability to adhere neutrally to the privacy provisions of the Act. One author stated that "public servants do not appear to attach a particularly high level of priority to the protection of individual privacy." He goes further to state that "there are instances of officials becoming willing participants in schemes to identify publicly individuals who provided data anonymously, supplying sensitive government data to commercial users, turning information over to politicians." 10. There is little public evidence of such dealings in Ontario since the implementation of FIPPA. This is not to say that such events have not occurred but rather that the media and the public have not become aware of them.

EFFICIENCY AND EFFECTIVENESS

Efficiency and effectiveness are dealt with together and although it is recognized that these values are different, they are closely related. As stated in the introductory chapter, efficiency is defined as a measure of
performance, expressed as a ratio between input and output. Effectiveness is a measure of the extent to which an activity achieves an organization's objectives. Has FIPPA allowed the public to scrutinize how effectively the government is performing? Has the privacy component of FIPPA enhanced the effectiveness of government? How efficiently has FIPPA been implemented? Is it a cost-effective system?

Chapter Four provided evidence that the access component of FIPPA has been implemented quite effectively. The statistics show that over 18,000 individuals or groups have formally requested permission to review or examine records held by the Ontario government. Prior to FIPPA, it would be impossible to determine how many individuals or groups had requested and received access to government documents. Moreover, these figures do not identify the countless other requests to review records which were not processed through the formal access to information route. Many ministries have adopted a 'business as usual' approach to releasing documents without requiring an individual to file an access request. This occurs when records are straightforward and do not need to be withheld because of an exemption. Of the thousands of requests filed, most information was either fully disclosed or disclosed in part. Therefore, individuals are being permitted to scrutinize government
records.

In terms of efficiency, the bureaucracy has responded to the access requirements of the Act in a highly efficient way. Most documents are revealed to the requester within the thirty day time limit. The appeals process is thought to be somewhat less efficient; however, it must be recognized that many appeals can be extremely complex. At the appeals stage, it is far more important to have a quality decision which is equitable to all parties concerned than a speedy decision which is arrived at in haste.

The costs of a FIPPA system have been shown to be quite high. There are costs associated with administering the legislation, especially in the area of staffing, and costs involved in preparing documents for release. The actual revenues generated through the collection of fees are minimal. However, the cost of such a system is very small in comparison to the government's total budget, or even compared to the amount it spends on its own publicity. 13. Clearly, the value of having open government exceeds the cost of administering such a system. FIPPA has provided information to individual citizens and to groups which allows them to participate in the decision-making processes of government. Overall, this form of participation is likely to reduce the distrust of government and
ultimately increase its efficiency. 14.

There is no available statistical evidence to suggest that the privacy component of FIPPA has caused the government to be more or less efficient and it is difficult to relate the value of effectiveness to the privacy component of the law. However, the following observations may be made with respect to efficiency as it relates to privacy.

There are no limits on the amount of time the IPCO has to investigate and deal with privacy complaints. There are also no limits on the amount of time an institution has to comply with an order of the Commissioner. One Coordinator believed that without time limits investigations have the potential to drag on, which leads to inefficiency or at least the perception of inefficiency. 15.

Complying with the privacy requirements of the Act requires additional resources in order to review existing practices and to ensure that necessary changes do occur. Other than the FIPPA units hired by each ministry, no additional resources were made available with the implementation of FIPPA. This may have led to short-term inefficiencies in government as staff may have been pulled away from other duties, or saddled with the additional responsibilities of FIPPA.

However, the long-term effect has led to increased efficiency in
record-keeping. For example, it was stated that fewer human resource files are being maintained, records retention schedules are being clarified, and record keeping practices are improving.

Overall, it is too early to tell whether the ultimate effect of FIPPA has been improved efficiency and effectiveness in government. It is clear that some processes are becoming streamlined and more care is being demonstrated in terms of the records being collected and disclosed. Therefore, in terms of the values of efficiency and effectiveness, the preliminary indications are positive.

INTEGRITY

Integrity or honesty is a quality which the public seeks in all public servants. It has been argued that integrity is largely a matter of ethics and is "the disposition to do the right thing in all circumstances, and the commitment to act on it." Has FIPPA inspired more integrity in governmental activities? Has it answered the demand for increased honesty in government? In this section, the sub-values of openness and confidentiality will be addressed after a general discussion of the concept of integrity.

Integrity is difficult to evaluate for two reasons. It is an intangible quality which is hard to measure and, at the present time in Ontario, trust
in government seems to be at an all time low. Yet, in terms of integrity, some general observations can be made with respect to the access component of FIPPA. Public servants are now aware that their activities and records are subject to full scrutiny by the public. Coordinators have reported that within government, information practices have changed and sharpened. Records are written in a more precise and objective way. Public servants are conscious of the fact that any document that they create may be requested and released. FIPPA has made it more difficult to conceal inappropriate or embarrassing activities.

In terms of privacy, it is even more difficult to evaluate the honesty of public servants. Privacy issues generally relate to the confidential interests of individual citizens. Therefore unless, as in the AIDS - FAX case presented in Chapter Five, the media become aware of the issue, the specifics of individual cases are kept quite private.

Yet, some observations can be made about how FIPPA has impacted upon the honesty of government. The IPCO was quite critical of the government's loss of requested records. This exposure of this kind of situation does not tend to inspire trust in the integrity of government officials. Generally speaking, government departments find themselves embarrassed and disturbed about such incidents.
FIPPA has provided for some improvements. The quality of documentation has improved because of FIPPA. Public servants are aware that individuals have the right to request their own personal information; therefore, they are likely to be more objective and professional in their note-taking. In addition, the Act requires that Management Board publish Directories of all personal and general information banks. Consequently, public servants are less likely to maintain secret files about which their superiors are unaware.

Openness, or the guarantee of the right to know, is a sub-value which falls within the category of integrity. Open government has become relevant in the Canadian context as it is extremely important to the preservation of public trust and confidence in government. 17. Openness is also cherished for its contribution to effective democratic government. 18. Has FIPPA provided open government for the people of Ontario?

Clearly, not all government documents can be released without restriction. The personal information of individuals must be protected, as should other important records, such as those dealing with law enforcement activities. However, there is a growing body of case law which provides government with a narrow set of exemptions to limit the
release of information. This is requiring the government, by law, to be more open. Former Ontario Minister Bette Stephenson noted the benefits of open government as follows.

There will be benefits as citizens fulfill their responsibility to understand government programs and to speak out knowledgeably. In the short term, they will be able to avail themselves better of government programs and services. In the long term, the criticism, comments and suggestions they make to government will be based on facts and will be better understood by government. In the final analysis, better understanding means better citizenship and better government. 19.

Ontario has become, and is continuing to become, more open. Donald Rowat has stated that Ontario's scheme is no more restrictive than most others. He notes further that we must judge it against the secrecy that existed before and in this light he claims it has been a success. 20.

The sub-value of confidentiality falls within the realm of integrity in government as it speaks to the right of all citizens to have the personal details of their lives kept secret. The former Commissioner, Sidney Linden, state that "our society will ultimately be judged, not on how many megabytes can be stored on a microchip, but on how we treat each other. Privacy is an important human value, it is one that we possess individually and at the same time, share collectively." 21. This statement illustrates the importance of individual privacy as a moral and
an ethical issue and why those dealing with FIPPA must be equally attentive to the privacy component of the legislation. Has FIPPA satisfied the public's right to have their confidentiality safeguarded and is information handled in an appropriate manner as required by the Act?

The Act provides strict rules regarding the manner in which personal information is to be dealt with. Information is to be collected directly from the person to whom the information relates, except under certain legislated circumstances. Individuals are now given written notice of these collections as well as the specific statutory authority for the collection. Information is to be used internally on a 'need to know basis' and information is to be disclosed only to the individual to whom the information relates, unless the consent of the individual is obtained in writing. Disposal of information is to be in accordance with records management destruction practices.

The relatively small number of complaints could be interpreted as evidence that institutions are in compliance with the Act. However, it is possible, indeed probable, that most individuals are not aware when their privacy rights are being violated. For example, it would be a violation of the privacy code for two health services employees to exchange confidential information about a patient for merely conversational
purposes. It is unlikely that FIPPA has caused these informal practices to cease altogether.

Institutions have been criticized for their records management processes and violations of these processes have been highlighted by the media (for example, the child abuse records incident). The Commissioner's Office has also been highly critical of institutions which have lost information which should have been available for review upon request.

However, while poor confidentiality practices may not have disappeared altogether, FIPPA has made a difference and significant improvements are being made. Most individuals who work in government are aware that FIPPA exists. Ministries have been forced to re-examine their collection, use, disclosure and disposal practices which has resulted in new policies and greater protection for individuals. A rule such as a 'clean desk policy' may seem to be common sense; yet it demonstrates heightened awareness of individual privacy.

FAIRNESS

To evaluate the fairness of FIPPA, it must be determined whether the decision-making processes and the decisions themselves are equitable. Is the access process fair to all? Are decisions to release information being made fairly? It is clear that when rights to access
conflict with the protection of privacy, this value becomes extremely relevant. Have conflicts between access and privacy been resolved in a manner which is as fair as possible to all parties involved?

In terms of the process itself, FIPPA is accessible to all individuals. There is no cost involved in filing an access request and all requests for access to personal information are processed free of charge. In terms of process, all individuals are treated equally under the law. Moreover, all requesters are notified of their right to appeal any decision.

Those not satisfied with the outcome of their access requests may file an appeal with the Commissioner's Office. The appeals process is also accessible to all. At the appeals stage, the mediation and inquiry processes attempt to resolve the dispute in a way which satisfies all parties concerned. The appeals process places a great deal of power in the hands of one decision-making body. However, using the courts as an alternative would also place the decision in the hands of a single decision-making body. The Commissioner and his staff of specialists act as a team and normally make collective decisions. 22.

It is important to review how fairly decisions are made when access conflicts with privacy. When these instances arise, institutions attempt to make decisions which represent their own best judgement as to what
constitutes 'fair.' The IPCO serves as a review mechanism to ensure that decisions are made in accordance with the appropriate balance between privacy and access. However, the IPCO is bound to make its decision based upon the legal directions provided in the Act.

The concept of fairness can be extremely subjective in the sense that its interpretation can depend entirely on one's personal perspective. The following case illustrates this point. In a small town, where the town council was actively involved in the town's administration, council passed a resolution requiring welfare administrators to prepare a list of all welfare recipients. The purpose of this list was to enable council to investigate recipients to ensure they qualified for assistance and to allow them to alert welfare recipients to the existence of any jobs that came to their attention. A Legal Clinic requested the IPCO to comment on the validity of this action under the privacy requirements of the Act. The IPCO concluded that these activities did not breach the privacy provisions of the legislation. This opinion was based on the fact that council had enunciated a need for information which was legitimate under the Act as it was necessary and proper in the proper discharge of their supervisory function. 23.

This case illustrates an ethical dilemma faced in the course of
balancing the right of access to information with the duty to protect the privacy of individuals. In the end, the IPCO had little alternative but to examine the Act and make a recommendation based on the actual text of the legislation. However, this resolution may not seem to be entirely 'fair' based upon one's own concept of what might be ethically or morally correct.

It can be concluded that balancing access with privacy is extremely important and can be quite complex. It has been demonstrated that the procedural aspects of the system are accessible to all and from this perspective, it is fair. Seeking a fair resolution of issues is not always an easy task and can often depend on one's subjective interpretation of the problem at hand. However, FIPPA provides guidelines for public servants to resolve these issues. Previously, such decisions would be left to the discretion of an individual decision-maker.

This chapter uses the 'values framework' to identify the key values desired of government and evaluates whether FIPPA has improved the overall quality of government. It is clear that certain values apply more directly to FIPPA and therefore provide a more detailed basis for analysis. However, it is evident that government has begun to pursue a more open
system which also protects the privacy of individuals. It can be concluded that the implementation of FIPPA has enhanced the administrative processes and culture of the Ontario government.

ENDNOTES


5. Information and Privacy Commissioner/Ontario, Key to the 90's, (Toronto: Information and Privacy Commissioner/Ontario, 1988), 54.

6. Ibid., 52.


10. Ibid., 102.


12. Ibid., 633.


15. Confidential Interview with Information and Privacy Coordinator.


17. Kernaghan and Siegel, 284.


21. Key to the 90's, 94.

22. Rowat, 607.

CHAPTER SEVEN -
CONCLUSION

Over the past five years, there have been many significant developments in politics and public administration in Ontario. There has been important new legislation introduced and enacted, including Pay Equity, Employment Equity, French Language Services, and of course the Freedom of Information and Protection of Privacy Act. There has also been a change in government leadership, as the New Democratic Party replaced the Liberals as the political masters of the province. Many of the legislative changes reflect a shifting emphasis towards ensuring that the government protects and safeguards the rights of individuals. The long-term impact of these changes has yet to unfold; however, it is clear that these rights have been acknowledged to be fundamentally important to the future of Ontario's social and political culture.

FIPPA is a piece of legislation which cements two vital aspects of individual rights into the governmental processes of the Ontario government. These include the right of individuals to access government-held information and the duty of public servants to protect the personal information of individual citizens. The purpose of this concluding chapter
is to synthesize the material presented thus far in order to answer the question - has FIPPA made a difference to the citizens of Ontario? It presents conclusions regarding the overall impact of FIPPA as well as some general recommendations which could improve the administration of the Act.

SUMMARY AND GENERAL CONCLUSIONS

In the introductory chapter, an outline of the thesis was presented which included an explanation of the purpose of the thesis, the implications of the research, the research methodology, the subject matter to be developed, and some tentative conclusions. The analysis was to focus on the implementation of the legislation, as opposed to an examination of the legislation itself. Administrative values were presented as a conceptual framework which would be used to explain the development of the access and privacy law and to evaluate its implementation. The thesis has followed the outline presented in Chapter One and has presented an organized and comprehensive evaluation. This section of the concluding chapter summarizes the findings presented in the preceding chapters.

In terms of the development of FIPPA, it was demonstrated that the
Ontario government responded to the pressure for access and privacy legislation which came from demands in the social and political environment of the time. In the early 1970s, the federal and provincial governments in Canada were pressured to become more open and accessible to the public. At the same time, there was growing concern about the growth of the bureaucratic state and the amount of personal information that governments collect on private citizens. The federal government responded slowly to these demands, but finally enacted the Access to Information Act and the Privacy Act in 1982. The Ontario government began contemplating the enactment of such legislation in the mid-1970s. However, they were slow to respond as well. The Conservative government of former Premier William Davis was accused of stalling the enactment of such legislation and of being philosophically opposed to providing open access to government documents. Finally, in 1985, the newly elected Liberal government presented FIPPA as its first bill to be introduced into the legislature. By January 1, 1988, it had been proclaimed as law.

The legislation itself was designed to blend access principles with the right to privacy. The access section of the legislation was shown to be quite specific as it clearly outlines the responsibilities and
requirements of public servants dealing with requests for access to information. Most importantly, it outlines a set of exemptions which restrict the release of a limited number of documents. The intent of the law is clear. Mandatory exemptions are to apply only in a few cases and discretionary exemptions are to be used only if the decision-maker believes it is absolutely necessary to withhold a certain document.

The privacy aspect of the legislation is much less specific; however, it does address a broad range of activities including the collection, use, disclosure and disposal of personal information. FIPPA attempts to inspire a spirit of openness with a balanced concern for privacy rights. It imposes a duty to disclose as much information as possible while at the same time it sets out guidelines which seek to protect the rights of individual citizens.

While the legislation itself is important in terms of its actual effectiveness, the structures and processes which have been adopted are more telling of its overall effectiveness. Management Board was shown to play an important educational and supportive role to provincial institutions bound by the Act. The government was proactive by establishing the FIPPA Branch of Management Board in 1985 and government institutions have clearly benefited from the expertise they
have provided.

Each ministry responded to FIPPA with the appointment of an Information and Privacy Coordinator. Most of these individuals are full-time Coordinators; however, some ministries, which experience a small number of requests, have appointed part-time Coordinators. The Coordinators are not mentioned in the legislation itself and many do not have formal decision-making authority within their ministries. Many find themselves at the middle to lower end of the management scale. These factors seemed to limit their overall effectiveness, although they were found to be enthusiastic advocates of access and privacy within their respective organizations.

The Office of the Information and Privacy Commissioner/Ontario was found to be a truly independent review body with an important watchdog function. The Commissioner's Office is the final appeal body for all government decisions related to access requests and for all complaints related to breaches of personal privacy. This body grew very quickly from a small staff of approximately six, to a staff of over eighty. As the IPCO expanded, the staff established an appeals process which included both mediation and inquiry stages. They also commenced their public education role. It is clear that the appeals process quickly dominated the activities
of the Commissioner’s Office and public outreach was not determined to be a priority.

An important part of the analysis which was presented addressed the question of how well the government has responded to the access provisions of the legislation. Prior to 1988, access to government was a discretionary practice. Today, because of the Act, access is now a formal legal right. Many citizens, almost 20,000 between 1988 and 1990, have exercised their statutory right to request access to government-held documents.

It was demonstrated that the political masters of the day committed themselves to FIPPA by establishing the FIPPA Unit at Management Board long before the official enactment of the legislation. Management Board was found to be an important part of the framework to implement and support the Act. Within ministries, the Coordinators were found to be instrumental in terms of their role to educate employees about the Act and many undertake to provide ongoing training to staff. Many Coordinators felt limited by a lack of resources. Some Coordinators did not have enough time or staff to provide as much training and education as they would have liked or to develop specialized FIPPA manuals related to their particular ministry. It is clear that within each Ministry, the role of
the Coordinator is pivotal to the effective implementation of the legislation. Their commitment to the spirit and substance of the Act is commendable.

Overall, the efficiency of the access process was found to be quite good. Most access requests were responded to within the strict thirty day timeframe. Likewise, most of the information requested was released. The relatively low appeal rate (7 percent) demonstrated that those being denied access to information have been relatively satisfied with the explanation provided for the refusal.

The fees collected for providing access to the general records of government do not even begin to cover the cost involved in administering the Act. However, the cost of administering FIPPA was shown to be relatively small in relation to the overall government budget. Furthermore, it was important to maintain the current practice where individuals are not being charged for access to their personal information. In this respect, it is clearly more important to safeguard the rights guaranteed under the law instead of being overly concerned with administrative costs.

In terms of the appeals process, no clear pattern emerged with respect to the overall success of the mediation and inquiry stages. The
process itself was shown to be accessible to all and the Commissioner's Office seemed committed to the best possible solution to an appeal. And yet, the process itself was found to be plagued by delay, or at least the appearance of delay. The power of the Commissioner to issue a binding order has resulted in a number of precedents which have come to form a body of case-law. These precedents have been useful to government institutions and to the IPCO in guiding the disposition of like cases in a timely fashion. It was found that many feel that the IPCO could have been more active in terms of its public awareness role. However, consideration should be given to the fact that the Commissioner felt it was more important, at the beginning, to establish an effective appeals process. Conducting a full blown public awareness campaign prior to the establishment of a clear appeals process could have led to a flood of information requests and appeals for which neither the ministries nor the Commissioner's Office would have been prepared.

In terms of the privacy provisions of the legislation it was concluded that, at least initially, the government was more concerned with access than with privacy. The privacy side of the legislation was less likely to receive the attention of the Coordinators as it was felt that there was not enough staffing in the ministries to deal effectively with
the wide range of privacy issues presented by the Act. Privacy was thought to be more difficult to address for several reasons, including the fact that the access provisions were clearly outlined in the Act. Privacy, on the other hand, is more difficult to address as it requires public servants to be proactive and to think about individual rights. Ministries were required to implement FIPPA within their current budgets and therefore no additional staffing, beyond the Coordinators and their staff, was provided to ensure that the privacy provisions were followed.

As time has passed, it seems that more interest and attention has been devoted to privacy and that human resources and recording practices have in fact improved. The Information and Privacy Commissioner has published several guidelines regarding specific privacy concerns in order to provide guidance to government institutions. It is unfortunate that the Commissioner's Office is limited in its effectiveness by the fact that the legislation does not permit privacy investigations unless a complaint or an appeal has been filed.

The Commissioner's Office has received a relatively small number of complaints regarding breaches of personal privacy. This seems to reflect well on the privacy practices of government. Yet it may also mean that citizens are unaware when their privacy is being violated. The
difficulty with these issues is that once the violation has been committed, the damage has been done and little can be done to rectify the situation. The offences part of the Act has been shown to be impotent in terms of its preventative or punitive function.

The analysis of the "values framework" provided a useful means to evaluate the overall impact of FIPPA. By looking at those traditional administrative values, it was possible to determine whether or not FIPPA has in fact made a difference.

It was clear that some values were more applicable than others. The government has become more accountable to the public by becoming legally bound to law which provides the right to request access to government documents and the right to have one's privacy protected. The access and privacy provisions of the Act have required public servants, by law, to be more responsive to the public. Although this has begun as a legislated requirement, a shift in philosophy has occurred as FIPPA is becoming an integral part of the way government business is conducted.

In terms of the values of efficiency and effectiveness, the government was found to be relatively efficient in meeting the access provisions of the Act. FIPPA also allows the public to scrutinize government activities, thereby allowing interested parties to evaluate
government effectiveness.

It is impossible to conclude for certain whether FIPPA has improved the disposition of public servants to behave with integrity. It is assumed that most individuals are predisposed to being honest in most circumstances. However, FIPPA does require public servants, by law, to provide access to most government documents and to demonstrate care when dealing with the personal information of citizens. Government has already been shown to be fairly open in terms of the information it provides to individuals and the privacy aspect of the legislation is beginning to receive more attention. As FIPPA blends into the administrative culture of government, public servants will become more disposed to the access and privacy rights of the public.

Neutrality may take on two forms; political neutrality and value neutrality. Although public servants are required to follow the Act, it is difficult to determine whether their philosophical commitment to their political masters has remained more influential. It is also difficult to determine whether their own personal views and beliefs have impacted upon the decisions they have made. The neutral framework provided in the legislation suggests that despite personal or political values, public servants have been required to adhere to the legislated requirements set
It has been shown that FIPPA has improved the information processes of government. Not only has it provided a legal right of access to information and privacy protection, it has led government to re-evaluate its traditional approach to administrative secrecy. The Ontario government is in the process of becoming more consumer-focused and are being required to think from a "rights-oriented" perspective. The following suggestions or recommendations could lead to improvements in the overall administration of FIPPA.

**RECOMMENDATIONS**

It is recognized that many of the following recommendations have financial implications which may not be realistic given the current climate of fiscal restraint in government. Nonetheless, they are still relevant and possible, given the creativity and commitment of many of the individuals presently involved in the administration of the Act.

Coordinators should be explicitly recognized in the Act. Moreover, the importance of their position should be reflected by ensuring they are accorded appropriate status and position within their respective ministries. Coordinators should be given the authority to deal with and decide on the disposition of access requests. It is recognized that this
could be problematic in that Coordinators often do not have the "field" expertise to fully understand the intricacies of all documents. However, Coordinators could work closely with program staff in order to review the requested documents thoroughly. Their recommendations should be respected. Another option would be to ensure that senior management or decision-makers be required to participate in training so that they themselves are familiar with the specific requirements of the legislation.

The Coordinators should be provided with adequate staffing levels in order to address both the access requirements of FIPPA and the privacy issues. Adequately staffed, FIPPA units could undertake a comprehensive review of the privacy requirements of the legislation including collection, use, disclosure and disposal of personal information. They could also expand their educational role to ensure that training packages are developed and provided to new staff and that existing staff are provided with "refresher" courses on the impact of FIPPA on a day to day basis. Within those ministries which collect a great deal of personal information, specific training should focus on what constitutes a breach of personal information. If FIPPA units are adequately staffed, specific resource material could be developed, including specific policy manuals.

It is clear that more attention needs to be paid to the privacy
requirements of the law throughout the bureaucracy. It is unrealistic to expect that the FIPPA Coordinators alone can change the past practices of thousands of employees. Although for decades public servants have taken an oath of confidentiality and secrecy, it is incumbent upon managers throughout the government to ensure that their staff understand what constitutes a breach of privacy. For example, this means that bureaucrats cannot discuss the private lives of citizens, unless the discussion is necessary to carry out the job they are doing. Managers must respect these provisions themselves. They must also be willing to identify these breaches as they occur and to intervene in an appropriate manner. The process of education is an ongoing one, and only in this way will staff be conscious of the potential breaches of personal privacy. In situations where employees deliberately or maliciously breach personal privacy, managers should be willing to sanction these staff.

The Information and Privacy Commissioner/Ontario should extend its public awareness program beyond municipalities and special interest groups. Members of the general public should be informed of their rights to access personal information and to have their privacy protected under FIPPA. It is likely that the average citizen is not aware of the law, beyond what he or she has read about it in the newspaper or have seen on
television. Public awareness could be increased greatly with a brief message or commercial on television. It is recognized that this method of public education would be extremely costly; however, it would certainly heighten awareness about FIPPA in Ontario.

As recommended by the Standing Committee, the IPCO should also review its appeals process and determine the source of delay. If it is found to be a problem with government institutions not providing information to the Commissioner's Office in a timely fashion, time limits should be set and enforced. The Commissioner's Office could also be given the authority to impose a non-compliance fine on the institution. If the problem is found to originate within the administrative processes at the IPCO, consideration should be given to streamlining the mediation and inquiry processes. By making these processes more legalistic and requiring them to meet time deadlines, much of the flexibility of the appeals process could be lost. However, it is important that appeals be dealt with in a timely fashion for the system to be considered legitimate and effective.

The appeals process has received many appeals from a few individual requesters. These kinds of individuals have become known in the field of FIPPA as "nuisance requesters" who file frivolous and
vexatious information requests and appeals. Consideration has been given to implementing legislation which would permit institutions and the IPCO to deal with a nuisance requester in a manner outside of the regular FIPPA process. However, it is difficult to evaluate and determine accurately the motives behind an individual who files an access request. It is also irrelevant in terms of one's procedural rights. Therefore, despite the enormous cost and burden these requests place on institutions, proposals to limit nuisance requesters have not been accepted and implemented. The IPCO has found a solution to the problem by assigning a team of individuals within the Office to deal with these appeals. The Office is committed to processing a set number of these appeals per month. While this approach may somewhat skew the appeal statistics, it seems to be a practical solution.

In terms of the privacy aspect of the legislation, the Commissioner's Office should be given the legal authority to investigate all privacy issues including the collection, use, disclosure and disposal of personal information. They should also be given the power to issue a binding order in any of these matters. They should ensure that a comprehensive review plan of privacy issues is developed in order to address the full range of privacy issues and this review plan should be shared with all institutions
bound by the legislation.

Over the past twenty years, members of the public have demanded a great deal of their government. Those demands have included the right to see what information was being collected by government and the right to have information about their personal lives protected. In the past five years, government has faced many significant challenges, including new legislation, new political leadership and a period of unfortunate economic circumstances. Therefore, despite these numerous changes, the fact that the Freedom of Information and Protection of Privacy Act has been successfully implemented reflects very well on those responsible for administering the legislation.

It has been demonstrated that there are some problems in terms of the administration of the Act. However, the provincial government has done a commendable job in ensuring the access provisions of the legislation are met. Confidentiality has always been a part of the administrative culture in the Ontario government and the privacy concerns of individuals are continuing to receive attention and care.

The values of accountability, responsiveness, neutrality, efficiency, effectiveness, integrity, and fairness are embedded in the administrative
culture of the public service. Members of the public expect public servants to behave according to these values in the performance of their daily activities. The enactment and implementation of FIPPA represents one further step towards creating a bureaucratic culture which reflects a high degree of integrity, where openness and privacy are respected.
APPENDIX ONE:

- Access/Correction Request Form

- Coordinator's Survey (H. Catalfamo)
Access/Correction Request
Freedom of Information and Protection of Privacy

**Request for:**
- [ ] Access to General Records
- [ ] Access to Own Personal Information
- [ ] Correction of Own Personal Information

The request is for access to, or correction of, own personal information records:
- Last name appearing on records: [ ] same as below or □

**Details:**

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<th>First Name</th>
<th>Middle Name</th>
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<table>
<thead>
<tr>
<th>City or Town</th>
<th>Province</th>
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<th>Area Code</th>
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</table>

**Detailed description of requested records, personal information records or personal information to be corrected.** (If you are requesting access to, or correction of, your personal information, please identify the personal information bank or record containing the personal information, if known)

**Note:**
If you are requesting a correction of personal information, please indicate the desired correction and, if appropriate, attach any supporting documentation. You will be notified if the correction is not made and you may require that a statement of disagreement be attached to your personal information.

**Preferred method of access to records**
- [ ] Examine Original
- [ ] Receive Copy

**Signature**

**Date**

**For Institution Use Only**

**Date received**

**Request Number**

**Comments**

---

**Personal information contained on this form is collected pursuant to Freedom of Information and Protection of Privacy legislation and will be used for the purpose of responding to your request. Questions about this collection should be directed to the Freedom of Information and Privacy Coordinator at the institution where the request is made.**
Questionnaire - Information and Privacy Coordinators

Ministry of ______________________

Date: ______________________

1. Does your Ministry have an office or unit specifically dedicated to freedom of information and protection of privacy?
   Yes _____ No _____

2. When was this office/unit formally established? ________________

3. How many staff are employed?
   Total Number of Full-time staff? ____________________
   Breakdown:
   Coordinator
   Program or Policy Advisors
   Support Staff
   Others
   Total Number of Part-time staff? ____________________
   Breakdown:
   Coordinator
   Program or Policy Advisors
   Support Staff
   Others

4. Are requests for access to information channelled through your office for processing?
   Yes _____ No _____
2.

If no, where are access requests processed?

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

5. Does the Coordinator have formal decision making authority? If not, what function does your unit provide in terms of responding to freedom of information access requests?

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

6. Have all staff in your Ministry received a formal orientation to the Freedom of Information and Protection of Privacy Act?

Yes _____  No _____

7. Is ongoing training provided to the following staff:

- all staff ______
- all management staff ______
- some staff ______
- some management staff ______
- only those staff with responsibilities related to freedom of information ______

Comments:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
8. Has your Ministry developed any of the following material in order to educate staff about the access and privacy requirements of the Act?

- manuals [general] ____________________________
- manuals [related to specific programs] ____________________________
- manuals [related to human resources] ____________________________
- videos ____________________________
- pamphlets ____________________________
- other ____________________________

9. Overall, how would you evaluate your staff's awareness of the legislation?

excellent ____________________________
good ____________________________
fair ____________________________
needs improvement ____________________________

10. Overall, how would you evaluate your staff's understanding of the legislation?

excellent ____________________________
good ____________________________
fair ____________________________
needs improvement ____________________________

11. How has the access component of the legislation affected your Ministry?

____________________________________
____________________________________
____________________________________
____________________________________
____________________________________
____________________________________
12. How has the privacy component of the legislation affected your Ministry?


13. In your opinion, have both the access and privacy aspects of the legislation received the same amount of attention?

Yes _____ No _____

If not, please explain which has dominated and why?


14. What barriers have you encountered [if any] in implementing this legislation?
15. How would you evaluate the helpfulness of the Commissioner's office when your Ministry was initially implementing the legislation?

- very helpful
- somewhat helpful
- not very helpful at all
- other

16. How would you describe the Commissioner's office in terms of their relationship with your Ministry?

17. Do you agree with recommendation *73 and *74 of the Standing Committee who was responsible for reviewing the Freedom of Information and Protection of Privacy Act 1987:

"that the status and recognition of Information and Privacy Coordinators be given explicit recognition in the Act;"

yes  no

"that Management Board ensure that Coordinators are senior level officials wherever possible, and that Coordinators have a direct reporting and working relationship with senior management of institutions."

yes  no

** Please note, while the results of these questionnaires will be blended into the thesis, no reference to any specific Ministry will be used.

Thank you for your assistance!
APPENDIX TWO:

0  TABLES
### Table One: Types of Access Requests

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* Taken from - Information and Privacy Commissioner/Ontario -

Annual Report 1990, Toronto: Information and Privacy

### TABLE TWO - TYPES OF REQUESTERS

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<th>TYPES OF REQUESTERS</th>
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<th>PERSONAL INFO</th>
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<td>11128</td>
<td>7346</td>
<td>18474</td>
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</table>


### TABLE THREE: DATE FIPPA UNITS ESTABLISHED

| % OF MINISTRIES WITH FIPPA COORDINATORS AND FIPPA UNITS | 0.792 |
| % OF MINISTRIES WITH COORDINATORS WHO HAVE ADD-ON RESPONSIBILITIES | 0.208 |
| THOSE MINISTRIES WITH FIPPA UNITS - YEAR ESTABLISHED/PERCENTAGE | |
| 1986 | 0.2 |
| 1987 | 0.47 |
| 1988 | 0.2 |
| 1989 | 0.066 |
| 1990 | 0 |
| 1991 | 0.066 |
| 1992 | 0 |

* Taken from - "Coordinator’s Survey" conducted by H. Catalfamo, 1992.
<table>
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<tr>
<th>MINISTRY OF</th>
<th># ROS REC'D</th>
<th># OF APPEALS</th>
<th>% APPLS/ROS</th>
<th># OF STAFF</th>
</tr>
</thead>
<tbody>
<tr>
<td>REVENUE</td>
<td>4865</td>
<td>66</td>
<td>1.4</td>
<td>3 FT-25 PT</td>
</tr>
<tr>
<td>LABOUR</td>
<td>2694</td>
<td>98</td>
<td>3.6</td>
<td>3 FT</td>
</tr>
<tr>
<td>CORRECTIONAL SERVICES</td>
<td>2676</td>
<td>146</td>
<td>5.5</td>
<td>4 FT</td>
</tr>
<tr>
<td>COMMUNITY/SOCIAL SERVICES</td>
<td>1307</td>
<td>97</td>
<td>7.1</td>
<td>3 FT</td>
</tr>
<tr>
<td>HEALTH</td>
<td>1080</td>
<td>152</td>
<td>14.1</td>
<td>6 FT</td>
</tr>
<tr>
<td>CONSUMER/COMMERCIAL RLMS</td>
<td>774</td>
<td>43</td>
<td>5.5</td>
<td>2 FT</td>
</tr>
<tr>
<td>GOVERNMENT SERVICES</td>
<td>682</td>
<td>213</td>
<td>31.2</td>
<td>3 FT</td>
</tr>
<tr>
<td>ENERGY</td>
<td>661</td>
<td>18</td>
<td>2.7</td>
<td>2 PT</td>
</tr>
<tr>
<td>SOLICITOR GENERAL</td>
<td>600</td>
<td>100</td>
<td>16.6</td>
<td>12 FT-4PT</td>
</tr>
<tr>
<td>ATTORNEY GENERAL</td>
<td>535</td>
<td>59</td>
<td>11</td>
<td>5 FT</td>
</tr>
<tr>
<td>ENVIRONMENT</td>
<td>484</td>
<td>39</td>
<td>8.1</td>
<td>2 FT-1 PT</td>
</tr>
<tr>
<td>TRANSPORTATION</td>
<td>430</td>
<td>25</td>
<td>5.8</td>
<td>NO RESPONSE</td>
</tr>
<tr>
<td>COLLEGES &amp; UNIVERSITIES</td>
<td>399</td>
<td>35</td>
<td>8.6</td>
<td>2 FT-1 PT</td>
</tr>
<tr>
<td>HOUSING</td>
<td>391</td>
<td>12</td>
<td>3.1</td>
<td>2 FT-1 PT</td>
</tr>
<tr>
<td>CULTURE &amp; COMMUNICATIONS</td>
<td>389</td>
<td>29</td>
<td>7.5</td>
<td>2 FT-1 PT</td>
</tr>
<tr>
<td>FINANCIAL INSTITUTIONS</td>
<td>273</td>
<td>33</td>
<td>12.1</td>
<td>2 FT</td>
</tr>
<tr>
<td>NATURAL RESOURCES</td>
<td>235</td>
<td>22</td>
<td>9.4</td>
<td>3 PT</td>
</tr>
<tr>
<td>INDUSTRY, TRADE &amp; TECHNOLOG</td>
<td>229</td>
<td>18</td>
<td>7.9</td>
<td>NO RESPONSE</td>
</tr>
<tr>
<td>EDUCATION</td>
<td>225</td>
<td>17</td>
<td>7.5</td>
<td>3 FT</td>
</tr>
<tr>
<td>TREASURY &amp; ECONOMICS</td>
<td>204</td>
<td>67</td>
<td>32.8</td>
<td>7 PT</td>
</tr>
<tr>
<td>AGRICULTURE &amp; FOOD</td>
<td>148</td>
<td>22</td>
<td>14.9</td>
<td>2 FT</td>
</tr>
<tr>
<td>CITIZENSHIP</td>
<td>145</td>
<td>27</td>
<td>18.6</td>
<td>2 FT-1 PT</td>
</tr>
<tr>
<td>TOURISM &amp; RECREATION</td>
<td>119</td>
<td>9</td>
<td>7.6</td>
<td>2 FT</td>
</tr>
<tr>
<td>MUNICIPAL AFFAIRS</td>
<td>84</td>
<td>13</td>
<td>15.5</td>
<td>NO RESPONSE</td>
</tr>
<tr>
<td>SKILLS DEVELOPMENT</td>
<td>51</td>
<td>11</td>
<td>21.5</td>
<td>1 FT-1 PT</td>
</tr>
<tr>
<td>NORTHERN DEVELOPMENT &amp; MINES</td>
<td>35</td>
<td>1</td>
<td>2.9</td>
<td>NO STAFF</td>
</tr>
<tr>
<td>INTERGOVERNMENTAL AFFAIRS</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>1 PT</td>
</tr>
</tbody>
</table>
### Table Five: Staff Orientation/Training

<table>
<thead>
<tr>
<th>Have Staff Received a Formal Orientation?</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>79.2%</td>
</tr>
<tr>
<td>No</td>
<td>20.8%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is Ongoing Training Provided to Staff?</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Staff</td>
<td>55%</td>
</tr>
<tr>
<td>Some Staff</td>
<td>20%</td>
</tr>
<tr>
<td>Only Those with FIPPA Responsibility</td>
<td>10%</td>
</tr>
<tr>
<td>No Response</td>
<td>15%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

* Taken from "Coordinator's Survey" by H. Catalano, 1992.

### Table Six: Staff Awareness/Understanding of FIPPA

<table>
<thead>
<tr>
<th>Staff Awareness of FIPPA</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excellent</td>
<td>35%</td>
</tr>
<tr>
<td>Excellent/Good</td>
<td>5%</td>
</tr>
<tr>
<td>Good</td>
<td>35%</td>
</tr>
<tr>
<td>Good/Fair</td>
<td>5%</td>
</tr>
<tr>
<td>Fair</td>
<td>5%</td>
</tr>
<tr>
<td>Needs Improvement</td>
<td>10%</td>
</tr>
<tr>
<td>No Response</td>
<td>5%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Staff Understanding of FIPPA</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excellent</td>
<td>20%</td>
</tr>
<tr>
<td>Good</td>
<td>50%</td>
</tr>
<tr>
<td>Good/Fair</td>
<td>5%</td>
</tr>
<tr>
<td>Fair</td>
<td>10%</td>
</tr>
<tr>
<td>Needs Improvement</td>
<td>5%</td>
</tr>
<tr>
<td>No Response</td>
<td>10%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

* Taken from "Coordinator's Survey conducted"
TABLE SEVEN: DEVELOPMENT OF FIPPA RESOURCE MATERIAL

<table>
<thead>
<tr>
<th>DEVELOPMENT OF FIPPA RESOURCE MATERIALS</th>
<th>PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>MANUALS (GENERAL)</td>
<td>55</td>
</tr>
<tr>
<td>MANUALS (HUMAN RESOURCE)</td>
<td>25</td>
</tr>
<tr>
<td>MANUALS (PROGRAM RELATED)</td>
<td>10</td>
</tr>
<tr>
<td>VIDEOS</td>
<td>5</td>
</tr>
<tr>
<td>PAMPHLETS</td>
<td>50</td>
</tr>
<tr>
<td>OTHER (NEWSLETTERS/BRIEFING NOTES)</td>
<td>35</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>10</td>
</tr>
<tr>
<td>NO MATERIAL DEVELOPED</td>
<td>15</td>
</tr>
</tbody>
</table>

* Taken from - "Coordinator's Survey" by H. Catalifano, 1992.

TABLE EIGHT: TIME TAKEN TO COMPLETE REQUESTS (1988 - 1990)

<table>
<thead>
<tr>
<th>TIME TAKEN TO COMPLETE RQS (excluding correction reqs)</th>
<th>NO. OF RQS</th>
<th>PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 30 DAYS</td>
<td>14551</td>
<td>78.8</td>
</tr>
<tr>
<td>31 - 60 DAYS</td>
<td>2505</td>
<td>13.6</td>
</tr>
<tr>
<td>61 - 90 DAYS</td>
<td>730</td>
<td>4</td>
</tr>
<tr>
<td>91 - 120 DAYS</td>
<td>375</td>
<td>2</td>
</tr>
<tr>
<td>121 DAYS +</td>
<td>300</td>
<td>1.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>18461</td>
<td>100</td>
</tr>
</tbody>
</table>

### TABLE NINE - DISPOSITION OF REQUESTS (1988 - 1990)

<table>
<thead>
<tr>
<th>DISPOSITION OF REQUESTS</th>
<th>TOTAL NO.</th>
<th>PERCENTAGE %</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALL DISCLOSED</td>
<td>11167</td>
<td>60.7</td>
</tr>
<tr>
<td>DISCLOSED IN PART</td>
<td>3713</td>
<td>20.2</td>
</tr>
<tr>
<td>NOTHING DISCLOSED</td>
<td>2186</td>
<td>11.9</td>
</tr>
<tr>
<td>WITHDRAW/ABANDONED</td>
<td>1193</td>
<td>6.5</td>
</tr>
<tr>
<td>REFUSED CONFIRM/DENY</td>
<td>152</td>
<td>0.8</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>18411</strong></td>
<td><strong>100.1</strong></td>
</tr>
</tbody>
</table>


### TABLE TEN - TYPES OF DECISIONS APPEALED (1988 - 1990)

<table>
<thead>
<tr>
<th>TYPES OF DECISIONS APPEALED</th>
<th>TOTAL</th>
<th>PERCENTAGE %</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCESS REFUSED IN PART</td>
<td>376</td>
<td>26</td>
</tr>
<tr>
<td>ACCESS REFUSED IN WHOLE</td>
<td>435</td>
<td>29.9</td>
</tr>
<tr>
<td>NO RECORDS EXIST</td>
<td>167</td>
<td>11.5</td>
</tr>
<tr>
<td>FEES/FEE ESTIMATE</td>
<td>100</td>
<td>6.9</td>
</tr>
<tr>
<td>THIRD PARTY INFORMATION</td>
<td>69</td>
<td>4.7</td>
</tr>
<tr>
<td>TIME EXTENTION</td>
<td>59</td>
<td>4</td>
</tr>
<tr>
<td>METHOD OF ACCESS</td>
<td>13</td>
<td>0.9</td>
</tr>
<tr>
<td>REFUSED TO CONFIRM OR DENY</td>
<td>20</td>
<td>1.4</td>
</tr>
<tr>
<td>CORRECTION REFUSED</td>
<td>16</td>
<td>1.1</td>
</tr>
<tr>
<td>OTHER</td>
<td>198</td>
<td>13.6</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1456</strong></td>
<td><strong>100</strong></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Mediation Stage</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Settled</td>
<td>82.9</td>
<td>84</td>
<td>47.4</td>
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<tr>
<td>Non-Jurisdiction (IPCO)</td>
<td>6.6</td>
<td>0</td>
<td>0.5</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>9.5</td>
<td>13.1</td>
<td>50.5</td>
</tr>
<tr>
<td>Abandoned</td>
<td>1</td>
<td>2.8</td>
<td>1.6</td>
</tr>
<tr>
<td>Inquiry Stage</td>
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<tr>
<td>Orders</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Heads Decision Upheld</td>
<td>67.7</td>
<td>34</td>
<td>22</td>
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<tr>
<td>Heads Decision Partly Upheld</td>
<td>5.4</td>
<td>17</td>
<td>40.2</td>
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<tr>
<td>Heads Decision Not Upheld</td>
<td>11.8</td>
<td>23.3</td>
<td>19.5</td>
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<tr>
<td>Total * Ordered Cases</td>
<td>84.9</td>
<td>74.3</td>
<td>90.2</td>
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<tr>
<td>Withdrawn</td>
<td>6.5</td>
<td>3.8</td>
<td>2.4</td>
</tr>
<tr>
<td>Settled</td>
<td>8.6</td>
<td>22</td>
<td>7.3</td>
</tr>
</tbody>
</table>

* Taken from -
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