

## **Privacy Act**

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### Chapter P-21

An Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves

### **Short Title** ➡

*Short title*

1. This Act may be cited as the Privacy Act.

1980-81-82-83, c. 111, Sch. II "1".

### **Purpose of The Act** ➡

#### *Purpose*

2. The purpose of this Act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information.

1980-81-82-83, c. 111, Sch. II "2".

### **Interpretation** ➡

#### *Definitions*

3. In this Act,

*"administrative purpose"* «*fins administratives*»

"administrative purpose", in relation to the use of personal information about an individual, means the use of that information in a decision making process that directly affects that individual;

*"alternative format"* «*support de substitution* »

"alternative format", with respect to personal information, means a format that allows a person with a sensory disability to read or listen to the personal information;

*"Court"* «*Cour*»

"Court" means the Federal Court—Trial Division;

*"designated Minister"* «*ministre désigné*»

"designated Minister", in relation to any provision of this Act, means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of that provision;

*"government institution"* «*institution fédérale*»

"government institution" means any department or ministry of state of the Government of Canada listed in the schedule or any body or office listed in the schedule;

*"head"* «*responsable d'institution fédérale*»

"head", in respect of a government institution, means

(a) in the case of a department or ministry of state, the member of the Queen's Privy Council for Canada presiding over that institution, or

(b) in any other case, the person designated by order in council pursuant to this paragraph and for the purposes of this Act to be the head of that institution;

*"personal information" «renseignements personnels»*

"personal information" means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

(a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,

(b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,

(f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual,

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but, for the purposes of sections 7, 8 and 26 and section 19 of the Access to Information Act, does not include

(j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

(i) the fact that the individual is or was an officer or employee of the government institution,

- (ii) the title, business address and telephone number of the individual,
- (iii) the classification, salary range and responsibilities of the position held by the individual,
- (iv) the name of the individual on a document prepared by the individual in the course of employment, and
- (v) the personal opinions or views of the individual given in the course of employment,
- (k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,
- (l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and
- (m) information about an individual who has been dead for more than twenty years;

*"personal information bank" «fichier de renseignements personnels»*

"personal information bank" means a collection or grouping of personal information described in section 10;

*"Privacy Commissioner" «Commissaire à la protection de la vie privée»*

"Privacy Commissioner" means the Commissioner appointed under section 53;

*"sensory disability" « déficience sensorielle »*

"sensory disability" means a disability that relates to sight or hearing.

R.S., 1985, c. P-21, s. 3; 1992, c. 1, s. 144(F), c. 21, s. 34.

## **Collection, Retention And Disposal of Personal Information ➡**

### *Collection of personal information*

4. No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution.

1980-81-82-83, c. 111, Sch. II "4".

### *Personal information to be collected directly*

5. (1) A government institution shall, wherever possible, collect personal information that is intended to be used for an administrative purpose directly from the individual to whom it relates except where the individual authorizes otherwise or where personal information may be disclosed to the institution under subsection 8(2).

*Individual to be informed of purpose*

(2) A government institution shall inform any individual from whom the institution collects personal information about the individual of the purpose for which the information is being collected.

*Exception*

(3) Subsections (1) and (2) do not apply where compliance therewith might

(a) result in the collection of inaccurate information; or

(b) defeat the purpose or prejudice the use for which information is collected.

1980-81-82-83, c. 111, Sch. II "5".

*Retention of personal information used for an administrative purpose*

6. (1) Personal information that has been used by a government institution for an administrative purpose shall be retained by the institution for such period of time after it is so used as may be prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the information.

*Accuracy of personal information*

(2) A government institution shall take all reasonable steps to ensure that personal information that is used for an administrative purpose by the institution is as accurate, up-to-date and complete as possible.

*Disposal of personal information*

(3) A government institution shall dispose of personal information under the control of the institution in accordance with the regulations and in accordance with any directives or guidelines issued by the designated minister in relation to the disposal of that information.

1980-81-82-83, c. 111, Sch. II "6".

**Protection of Personal Information ➡**

*Use of personal information*

7. Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose; or

(b) for a purpose for which the information may be disclosed to the institution under subsection 8(2).

1980-81-82-83, c. 111, Sch. II "7".

*Disclosure of personal information*

8. (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

*Where personal information may be disclosed*

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;

(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;

(c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;

(d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;

(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;

(f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;

(g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;

(h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;

(i) to the National Archives of Canada for archival purposes;

(j) to any person or body for research or statistical purposes if the head of the government institution

(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and

(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(k) to any association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

(l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

#### *Personal information disclosed by National Archives*

(3) Subject to any other Act of Parliament, personal information under the custody or control of the National Archivist of Canada that has been transferred to the National Archivist by a government institution for archival or historical purposes may be disclosed in accordance with the regulations to any person or body for research or statistical purposes.

#### *Copies of requests under paragraph (2)(e) to be retained*

(4) The head of a government institution shall retain a copy of every request received by the government institution under paragraph (2)(e) for such period of time as may be prescribed by regulation, shall keep a record of any information disclosed pursuant to the request for such period of time as may be prescribed by regulation and shall, on the request of the Privacy Commissioner, make those copies and records available to the Privacy Commissioner.

#### *Notice of disclosure under paragraph (2)(m)*

(5) The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.

#### *Definition of "Indian band"*

(6) In paragraph (2)(k), "Indian band" means

(a) a band, as defined in the Indian Act;

(b) a band, as defined in the Cree-Naskapi (of Quebec) Act, chapter 18 of the Statutes of Canada, 1984;

(c) the Band, as defined in the Sechelt Indian Band Self-Government Act, chapter 27 of the Statutes of Canada, 1986; or

(d) a first nation named in Schedule Ii to the Yukon First Nations Self-Government Act.

R.S., 1985, c. P-21, s. 8; R.S., 1985, c. 20 (2nd Supp.), s. 13, c. 1 (3rd Supp.), s. 12; 1994, c. 35, s. 39.

#### *Record of disclosures to be retained*

9. (1) The head of a government institution shall retain a record of any use by the institution of personal information contained in a personal information bank or any use or purpose for which that information is disclosed by the institution where the use or purpose is not included in the statements of uses and purposes set forth pursuant to subparagraph 11(1)(a)(iv) and subsection 11(2) in the index referred to in section 11, and shall attach the record to the personal information.

#### *Limitation*

(2) Subsection (1) does not apply in respect of information disclosed pursuant to paragraph 8(2)(e).

#### *Record forms part of personal information*

(3) For the purposes of this Act, a record retained under subsection (1) shall be deemed to form part of the personal information to which it is attached.

#### *Consistent uses*

(4) Where personal information in a personal information bank under the control of a government institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not included in the statement of consistent uses set forth pursuant to subparagraph 11(1)(a)(iv) in the index referred to in section 11, the head of the government institution shall

(a) forthwith notify the Privacy Commissioner of the use for which the information was used or disclosed; and

(b) ensure that the use is included in the next statement of consistent uses set forth in the index.

1980-81-82-83, c. 111, Sch. II "9"; 1984, c. 21, s. 89.

### **Personal Information Banks ➡**

#### *Personal information to be included in personal information banks*

10. (1) The head of a government institution shall cause to be included in personal information banks all personal information under the control of the government institution that



(a) has been used, is being used or is available for use for an administrative purpose; or

(b) is organized or intended to be retrieved by the name of an individual or by an identifying number, symbol or other particular assigned to an individual.

#### *Exception for National Archives*

(2) Subsection (1) does not apply in respect of personal information under the custody or control of the National Archivist of Canada that has been transferred to the National Archivist of Canada by a government institution for archival or historical purposes.

R.S., 1985, c. P-21, s. 10; R.S., 1985, c. 1 (3rd Supp.), s. 12.

### **Personal Information Index** ➡

#### *Index of personal information*

11. (1) The designated Minister shall cause to be published on a periodic basis not less frequently than once each year, an index of

(a) all personal information banks setting forth, in respect of each bank,

(i) the identification and a description of the bank, the registration number assigned to it by the designated Minister pursuant to paragraph 71(1)(b) and a description of the class of individuals to whom personal information contained in the bank relates,

(ii) the name of the government institution that has control of the bank,

(iii) the title and address of the appropriate officer to whom requests relating to personal information contained in the bank should be sent,

(iv) a statement of the purposes for which personal information in the bank was obtained or compiled and a statement of the uses consistent with those purposes for which the information is used or disclosed,

(v) a statement of the retention and disposal standards applied to personal information in the bank, and

(vi) an indication, where applicable, that the bank was designated as an exempt bank by an order under section 18 and the provision of section 21 or 22 on the basis of which the order was made; and

(b) all classes of personal information under the control of a government institution that are not contained in personal information banks, setting forth in respect of each class

(i) a description of the class in sufficient detail to facilitate the right of access under this Act, and

(ii) the title and address of the appropriate officer for each government institution to whom requests relating to personal information within the class should be sent.

### *Statement of uses and purposes*

(2) The designated Minister may set forth in the index referred to in subsection (1) a statement of any of the uses and purposes, not included in the statements made pursuant to subparagraph (1)(a)(iv), for which personal information contained in any of the personal information banks referred to in the index is used or disclosed on a regular basis.

### *Index to be made available*

(3) The designated Minister shall cause the index referred to in subsection (1) to be made available throughout Canada in conformity with the principle that every person is entitled to reasonable access to the index.

1980-81-82-83, c. 111, Sch. II "11".

## **Access To Personal Information ➡**

### ***Right of Access ➡***

#### *Right of Access*

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

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

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

#### *Other rights relating to personal information*

(2) Every individual who is given access under paragraph (1)(a) to personal information that has been used, is being used or is available for use for an administrative purpose is entitled to

(a) request correction of the personal information where the individual believes there is an error or omission therein;

(b) require that a notation be attached to the information reflecting any correction requested but not made; and

(c) require that any person or body to whom that information has been disclosed for use for an administrative purpose within two years prior to the time a correction is requested or a notation is required under this subsection in respect of that information

(i) be notified of the correction or notation, and

(ii) where the disclosure is to a government institution, the institution make the correction or notation on any copy of the information under its control.

#### *Extension of right of access by order*

(3) The Governor in Council may, by order, extend the right to be given access to personal information under subsection (1) to include individuals not referred to in that subsection and may set such conditions as the Governor in Council deems appropriate.

1980-81-82-83, c. 111, Sch. II "12".

### **Requests for Access ➡**

#### *Request for access under paragraph*

12(1)(a) 13. (1) A request for access to personal information under paragraph 12(1)(a) shall be made in writing to the government institution that has control of the personal information bank that contains the information and shall identify the bank.

#### *Request for access under 12(1)(b)*

(2) A request for access to personal information under paragraph 12(1)(b) shall be made in writing to the government institution that has control of the information and shall provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

1980-81-82-83, c. 111, Sch. II "13".

#### *Notice where access requested*

14. Where access to personal information is requested under subsection 12(1), the head of the government institution to which the request is made shall, subject to section 15, within thirty days after the request is received,

(a) give written notice to the individual who made the request as to whether or not access to the information or a part thereof will be given; and

(b) if access is to be given, give the individual who made the request access to the information or the part thereof.

1980-81-82-83, c. 111, Sch. II "14".

#### *Extension of time limits*

15. The head of a government institution may extend the time limit set out in section 14 in respect of a request for

(a) a maximum of thirty days if

(i) meeting the original time limit would unreasonably interfere with the operations of the government institution, or

(ii) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or

(b) such period of time as is reasonable, if additional time is necessary for translation purposes or for the purposes of converting the personal information into an alternative format,

by giving notice of the extension and the length of the extension to the individual who made the request within thirty days after the request is received, which notice shall contain a statement that the individual has a right to make a complaint to the Privacy Commissioner about the extension.

R.S., 1985, c. P-21, s. 15; 1992, c. 21, s. 35.

#### *Where access is refused*

16. (1) Where the head of a government institution refuses to give access to any personal information requested under subsection 12(1), the head of the institution shall state in the notice given under paragraph 14(a)

(a) that the personal information does not exist, or

(b) the specific provision of this Act on which the refusal was based or the provision on which a refusal could reasonably be expected to be based if the information existed,

and shall state in the notice that the individual who made the request has a right to make a complaint to the Privacy Commissioner about the refusal.

#### *Existence not required to be disclosed*

(2) The head of a government institution may but is not required to indicate under subsection (1) whether personal information exists.

#### *Deemed refusal to give access*

(3) Where the head of a government institution fails to give access to any personal information requested under subsection 12(1) within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access.

1980-81-82-83, c. 111, Sch. II "16".

## **Access ➡**

### *Form of access*

17. (1) Subject to any regulations made under paragraph 77(1)(o), where an individual is to be given access to personal information requested under subsection 12(1), the government institution shall

(a) permit the individual to examine the information in accordance with the regulations; or

(b) provide the individual with a copy thereof.

#### *Language of access*

(2) Where access to personal information is to be given under this Act and the individual to whom access is to be given requests that access be given in a particular one of the official languages of Canada,

(a) access shall be given in that language, if the personal information already exists under the control of a government institution in that language; and

(b) where the personal information does not exist in that language, the head of the government institution that has control of the personal information shall cause it to be translated or interpreted for the individual if the head of the institution considers a translation or interpretation to be necessary to enable the individual to understand the information.

#### *Access to personal information in alternative format*

(3) Where access to personal information is to be given under this Act and the individual to whom access is to be given has a sensory disability and requests that access be given in an alternative format, access shall be given in an alternative format if

(a) the personal information already exists under the control of a government institution in an alternative format that is acceptable to the individual; or

(b) the head of the government institution that has control of the personal information considers the giving of access in an alternative format to be necessary to enable the individual to exercise the individual's right of access under this Act and considers it reasonable to cause the personal information to be converted.

R.S., 1985, c. P-21, s. 17; 1992, c. 21, s. 36.

### **Exemptions ➡**

#### **Exempt Banks ➡**

##### *Governor in Council may designate exempt banks*

18. (1) The Governor in Council may, by order, designate as exempt banks certain personal information banks that contain files all of which consist predominantly of personal information described in section 21 or 22.

##### *Disclosure may be refused*

(2) The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that is contained in a personal information bank designated as an exempt bank under subsection (1).

##### *Contents of order*

(3) An order made under subsection (1) shall specify

(a) the section on the basis of which the order is made; and

(b) where a personal information bank is designated that contains files that consist predominantly of personal information described in subparagraph 22(1)(a)(ii), the law concerned.

1980-81-82-83, c. 111, Sch. II "18".

## ***Responsibilities of Government ➡***

### *Personal information obtained in confidence*

19. (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any personal information requested under subsection 12(1) that was obtained in confidence from

(a) the government of a foreign state or an institution thereof;

(b) an international organization of states or an institution thereof;

(c) the government of a province or an institution thereof; or

(d) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government.

### *Where disclosure authorized*

(2) The head of a government institution may disclose any personal information requested under subsection 12(1) that was obtained from any government, organization or institution described in subsection (1) if the government, organization or institution from which the information was obtained

(a) consents to the disclosure; or

(b) makes the information public.

1980-81-82-83, c. 111, Sch. II "19".

### *Federal-provincial affairs*

20. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs.

1980-81-82-83, c. 111, Sch. II "20".

### *International affairs and defence*

21. The head of a government institution may refuse to disclose any personal information

requested under subsection 12(1) the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada, as defined in subsection 15(2) of the Access to Information Act, or the efforts of Canada toward detecting, preventing or suppressing subversive or hostile activities, as defined in subsection 15(2) of the Access to Information Act, including, without restricting the generality of the foregoing, any such information listed in paragraphs 15(1)(a) to (i) of the Access to Information Act.

1980-81-82-83, c. 111, Sch. II "21".

#### *Law enforcement and investigation*

22. (1) The head of a government institution may refuse to disclose any personal information requested under subsection 12(1)

(a) that was obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to

(i) the detection, prevention or suppression of crime,

(ii) the enforcement of any law of Canada or a province, or

(iii) activities suspected of constituting threats to the security of Canada within the meaning of the Canadian Security Intelligence Service Act,

if the information came into existence less than twenty years prior to the request;

(b) the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

(i) relating to the existence or nature of a particular investigation,

(ii) that would reveal the identity of a confidential source of information, or

(iii) that was obtained or prepared in the course of an investigation; or

(c) the disclosure of which could reasonably be expected to be injurious to the security of penal institutions.

#### *Policing services for provinces or municipalities*

(2) The head of a government institution shall refuse to disclose any personal information requested under subsection 12(1) that was obtained or prepared by the Royal Canadian Mounted Police while performing policing services for a province or municipality pursuant to an arrangement made under section 20 of the Royal Canadian Mounted Police Act, where the Government of Canada has, on the request of the province or municipality, agreed not to disclose such information.

#### *Definition of "investigation"*

(3) For the purposes of paragraph (1)(b), "investigation" means an investigation that

(a) pertains to the administration or enforcement of an Act of Parliament;

(b) is authorized by or pursuant to an Act of Parliament; or

(c) is within a class of investigations specified in the regulations.

1980-81-82-83, c. 111, Sch. II "22"; 1984, c. 21, s. 90, c. 40, s. 79.

#### *Security clearances*

23. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that was obtained or prepared by an investigative body specified in the regulations for the purpose of determining whether to grant security clearances

(a) required by the Government of Canada or a government institution in respect of individuals employed by or performing services for the Government of Canada or a government institution, individuals employed by or performing services for a person or body performing services for the Government of Canada or a government institution, individuals seeking to be so employed or seeking to perform those services, or

(b) required by the government of a province or a foreign state or an institution thereof,

if disclosure of the information could reasonably be expected to reveal the identity of the individual who furnished the investigative body with the information.

1980-81-82-83, c. 111, Sch. II "23".

#### *Individuals sentenced for an offence*

24. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that was collected or obtained by the Correctional Service of Canada or the National Parole Board while the individual who made the request was under sentence for an offence against any Act of Parliament, if the disclosure could reasonably be expected to

(a) lead to a serious disruption of the individual's institutional, parole or statutory release program; or

(b) reveal information about the individual originally obtained on a promise of confidentiality, express or implied.

R.S., 1985, c. P-21, s. 24; 1994, c. 26, s. 56.

#### *Safety of individuals*

25. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) the disclosure of which could reasonably be expected to threaten the safety of individuals.



1980-81-82-83, c. 111, Sch. II "25".

### ***Personal Information ➡***

Information about another individual 26. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) about an individual other than the individual who made the request, and shall refuse to disclose such information where the disclosure is prohibited under section 8.

1980-81-82-83, c. 111, Sch. II "26".

### ***Solicitor-Client Privilege ➡***

27. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that is subject to solicitor-client privilege.

1980-81-82-83, c. 111, Sch. II "27".

### ***Medical Records ➡***

28. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that relates to the physical or mental health of the individual who requested it where the examination of the information by the individual would be contrary to the best interests of the individual.

1980-81-82-83, c. 111, Sch. II "28".

### ***Complaints ➡***

#### *Receipt and investigation of complaints*

29. (1) Subject to this Act, the Privacy Commissioner shall receive and investigate complaints

(a) from individuals who allege that personal information about themselves held by a government institution has been used or disclosed otherwise than in accordance with section 7 or 8;

(b) from individuals who have been refused access to personal information requested under subsection 12(1);

(c) from individuals who allege that they are not being accorded the rights to which they are entitled under subsection 12(2) or that corrections of personal information requested under paragraph 12(2)(a) are being refused without justification;

(d) from individuals who have requested access to personal information in respect of which a time limit has been extended pursuant to section 15 where they consider the extension unreasonable;

(e) from individuals who have not been given access to personal information in the official

language requested by the individuals under subsection 17(2);

(e.1) from individuals who have not been given access to personal information in an alternative format pursuant to a request made under subsection 17(3);

(f) from individuals who have been required to pay a fee that they consider inappropriate;

(g) in respect of the index referred to in subsection 11(1); or

(h) in respect of any other matter relating to

(i) the collection, retention or disposal of personal information by a government institution,

(ii) the use or disclosure of personal information under the control of a government institution, or

(iii) requesting or obtaining access under subsection 12(1) to personal information.

#### *Complaints submitted on behalf of complainants*

(2) Nothing in this Act precludes the Privacy Commissioner from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorized by the complainant to act on behalf of the complainant, and a reference to a complainant in any other section includes a reference to a person so authorized.

#### *Privacy Commissioner may initiate complaint*

(3) Where the Privacy Commissioner is satisfied that there are reasonable grounds to investigate a matter under this Act, the Commissioner may initiate a complaint in respect thereof.

R.S., 1985, c. P-21, s. 29; 1992, c. 21, s. 37.

#### *Written complaint*

30. A complaint under this Act shall be made to the Privacy Commissioner in writing unless the Commissioner authorizes otherwise.

1980-81-82-83, c. 111, Sch. II "30".

## **Investigations** ➡

#### *Notice of intention to investigate*

31. Before commencing an investigation of a complaint under this Act, the Privacy Commissioner shall notify the head of the government institution concerned of the intention to carry out the investigation and shall inform the head of the institution of the substance of the complaint.

1980-81-82-83, c. 111, Sch. II "31".

### *Regulation of procedure*

32. Subject to this Act, the Privacy Commissioner may determine the procedure to be followed in the performance of any duty or function of the Commissioner under this Act.

1980-81-82-83, c. 111, Sch. II "32".

### *Investigations in private*

33. (1) Every investigation of a complaint under this Act by the Privacy Commissioner shall be conducted in private.

### *Right to make representation*

(2) In the course of an investigation of a complaint under this Act by the Privacy Commissioner, the person who made the complaint and the head of the government institution concerned shall be given an opportunity to make representations to the Commissioner, but no one is entitled as of right to be present during, to have access to or to comment on representations made to the Commissioner by any other person.

1980-81-82-83, c. 111, Sch. II "33".

### *Powers of Privacy Commissioner in carrying out investigations*

34. (1) The Privacy Commissioner has, in relation to the carrying out of the investigation of any complaint under this Act, power

(a) to summon and enforce the appearance of persons before the Privacy Commissioner and compel them to give oral or written evidence on oath and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;

(b) to administer oaths;

(c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Privacy Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;

(d) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;

(e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out therein such inquiries within the authority of the Privacy Commissioner under this Act as the Commissioner sees fit; and

(f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation.

### *Access to information*

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence,

the Privacy Commissioner may, during the investigation of any complaint under this Act, examine any information recorded in any form under the control of a government institution, other than a confidence of the Queen's Privy Council for Canada to which subsection 70(1) applies, and no information that the Commissioner may examine under this subsection may be withheld from the Commissioner on any grounds.

#### *Evidence in other proceedings*

(3) Except in a prosecution of a person for an offence under section 131 of the Criminal Code (perjury) in respect of a statement made under this Act, in a prosecution for an offence under this Act or in a review before the Court under this Act or an appeal therefrom, evidence given by a person in proceedings under this Act and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceedings.

#### *Witness fees*

(4) Any person summoned to appear before the Privacy Commissioner pursuant to this section is entitled in the discretion of the Commissioner to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

#### *Return of documents, etc.*

(5) Any document or thing produced pursuant to this section by any person or government institution shall be returned by the Privacy Commissioner within ten days after a request is made to the Commissioner by that person or government institution, but nothing in this subsection precludes the Commissioner from again requiring its production in accordance with this section.

R.S., 1985, c. P-21, s. 34; R.S., 1985, c. 27 (1st Supp.), s. 187.

#### *Findings and recommendations of Privacy Commissioner*

35. (1) If, on investigating a complaint under this Act in respect of personal information, the Privacy Commissioner finds that the complaint is well-founded, the Commissioner shall provide the head of the government institution that has control of the personal information with a report containing

(a) the findings of the investigation and any recommendations that the Commissioner considers appropriate; and

(b) where appropriate, a request that, within a time specified therein, notice be given to the Commissioner of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken.

#### *Report to complainant*

(2) The Privacy Commissioner shall, after investigating a complaint under this Act, report to the complainant the results of the investigation, but where a notice has been requested under paragraph (1)(b) no report shall be made under this subsection until the expiration of the time within which the notice is to be given to the Commissioner.

#### *Matter to be included in report to complainant*

(3) Where a notice has been requested under paragraph (1)(b) but no such notice is received by the Commissioner within the time specified therefor or the action described in the notice is, in the opinion of the Commissioner, inadequate or inappropriate or will not be taken in a reasonable time, the Commissioner shall so advise the complainant in his report under subsection (2) and may include in the report such comments on the matter as he thinks fit.

#### *Access to be given*

(4) Where, pursuant to a request under paragraph (1)(b), the head of a government institution gives notice to the Privacy Commissioner that access to personal information will be given to a complainant, the head of the institution shall give the complainant access to the information forthwith on giving the notice.

#### *Right of review*

(5) Where, following the investigation of a complaint relating to a refusal to give access to personal information under this Act, access is not given to the complainant, the Privacy Commissioner shall inform the complainant that the complainant has the right to apply to the Court for a review of the matter investigated.

1980-81-82-83, c. 111, Sch. II "35".

### **Review of Exempt Banks** ➡

#### *Investigation of exempt banks*

36. (1) The Privacy Commissioner may, from time to time at the discretion of the Commissioner, carry out investigations of the files contained in personal information banks designated as exempt banks under section 18.

#### *Sections 31 to 34 apply*

(2) Sections 31 to 34 apply, where appropriate and with such modifications as the circumstances require, in respect of investigations carried out under subsection (1).

#### *Report of findings and recommendations*

(3) If, following an investigation under subsection (1), the Privacy Commissioner considers that any file contained in a personal information bank should not be contained therein within the terms of the order designating the bank as an exempt bank, the Commissioner shall provide the head of the government institution that has control of the bank with a report containing

(a) the findings of the Commissioner and any recommendations that the Commissioner considers appropriate; and

(b) where appropriate, a request that, within a time specified therein, notice be given to the Commissioner of any action taken or proposed to be taken to implement the recommendations or reasons why no such action has been or is proposed to be taken.

*Reports to be included in annual or special reports to Parliament*

(4) Any report made by the Privacy Commissioner under subsection (3), together with any notice given to the Commissioner in response thereto, may be included in a report made pursuant to section 38 or 39.

*Review of exempt banks by Court*

(5) Where the Privacy Commissioner requests a notice under paragraph (3)(b) in respect of any file contained in a personal information bank designated under section 18 as an exempt bank and no notice is received within the time specified therefor or the action described in the notice is, in the opinion of the Commissioner, inadequate or inappropriate or will not be taken in a reasonable time, the Privacy Commissioner may make an application to the Court under section 43.

1980-81-82-83, c. 111, Sch. II "36".

**Review of Compliance With Sections 4 To 8 ➡**

*Investigation in respect of sections 4 to 8*

37. (1) The Privacy Commissioner may, from time to time at the discretion of the Commissioner, carry out investigations in respect of personal information under the control of government institutions to ensure compliance with sections 4 to 8.

*Sections 31 to 34 apply*

(2) Sections 31 to 34 apply, where appropriate and with such modifications as the circumstances require, in respect of investigations carried out under subsection (1).

*Report of findings and recommendations*

(3) If, following an investigation under subsection (1), the Privacy Commissioner considers that a government institution has not complied with sections 4 to 8, the Commissioner shall provide the head of the institution with a report containing the findings of the investigation and any recommendations that the Commissioner considers appropriate.

*Reports to be included in annual or special reports*

(4) Any report made by the Privacy Commissioner under subsection (3) may be included in a report made pursuant to section 38 or 39.

1980-81-82-83, c. 111, Sch. II "37".

**Reports To Parliament ➡**

*Annual report*

38. The Privacy Commissioner shall, within three months after the termination of each

financial year, submit an annual report to Parliament on the activities of the office during that financial year.

1980-81-82-83, c. 111, Sch. II "38".

#### *Special reports*

39. (1) The Privacy Commissioner may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of the next annual report of the Commissioner under section 38.

#### *Where investigation made*

(2) Any report made pursuant to subsection (1) that relates to an investigation under this Act shall be made only after the procedures set out in section 35, 36 or 37 have been followed in respect of the investigation.

1980-81-82-83, c. 111, Sch. II "39".

#### *Transmission of reports*

40.(1) Every report to Parliament made by the Privacy Commissioner under section 38 or 39 shall be made by being transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling in those Houses.

#### *Reference to Parliamentary committee*

(2) Every report referred to in subsection (1) shall, after it is transmitted for tabling pursuant to that subsection, be referred to the committee designated or established by Parliament for the purpose of subsection 75(1).

1980-81-82-83, c. 111, Sch. II "40".

### **Review By The Federal Court ➡**

#### *Review by Federal Court where access refused*

41. Any individual who has been refused access to personal information requested under subsection 12(1) may, if a complaint has been made to the Privacy Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Privacy Commissioner are reported to the complainant under subsection 35(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.

1980-81-82-83, c. 111, Sch. II "41".

#### *Privacy Commissioner may apply or appear*

42. The Privacy Commissioner may

(a) apply to the Court, within the time limits prescribed by section 41, for a review of any refusal to disclose personal information requested under subsection 12(1) in respect of which an investigation has been carried out by the Privacy Commissioner, if the Commissioner has the consent of the individual who requested access to the information;

(b) appear before the Court on behalf of any individual who has applied for a review under section 41; or

(c) with leave of the Court, appear as a party to any review applied for under section 41.

1980-81-82-83, c. 111, Sch. II "42".

*Application respecting files in exempt banks*

43. In the circumstances described in subsection 36(5), the Privacy Commissioner may apply to the Court for a review of any file contained in a personal information bank designated as an exempt bank under section 18.

1980-81-82-83, c. 111, Sch. II "43".

*Hearing in summary way*

44. An application made under section 41, 42 or 43 shall be heard and determined in a summary way in accordance with any special rules made in respect of such applications pursuant to section 46 of the Federal Court Act.

1980-81-82-83, c. 111, Sch. II "44".

*Access to information*

45. Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Court may, in the course of any proceedings before the Court arising from an application under section 41, 42 or 43, examine any information recorded in any form under the control of a government institution, other than a confidence of the Queen's Privy Council for Canada to which subsection 70(1) applies, and no information that the Court may examine under this section may be withheld from the Court on any grounds.

1980-81-82-83, c. 111, Sch. II "45".

*Court to take precautions against disclosing*

46. (1) In any proceedings before the Court arising from an application under section 41, 42 or 43, the Court shall take every reasonable precaution, including, when appropriate, receiving representations ex parte and conducting hearings in camera, to avoid the disclosure by the Court or any person of

(a) any information or other material that the head of a government institution would be authorized to refuse to disclose if it were requested under subsection 12(1) or contained in a record requested under the Access to Information Act; or

(b) any information as to whether personal information exists where the head of a government institution, in refusing to disclose the personal information under this Act, does



not indicate whether it exists.

*Disclosure of offence authorized*

(2) The Court may disclose to the appropriate authority information relating to the commission of an offence against any law of Canada or a province on the part of any officer or employee of a government institution, if in the opinion of the Court there is evidence thereof.

1980-81-82-83, c. 111, Sch. II "46".

*Burden of proof*

47. In any proceedings before the Court arising from an application under section 41, 42 or 43, the burden of establishing that the head of a government institution is authorized to refuse to disclose personal information requested under subsection 12(1) or that a file should be included in a personal information bank designated as an exempt bank under section 18 shall be on the government institution concerned.

1980-81-82-83, c. 111, Sch. II "47".

*Order of Court where no authorization to refuse disclosure found*

48. Where the head of a government institution refuses to disclose personal information requested under subsection 12(1) on the basis of a provision of this Act not referred to in section 49, the Court shall, if it determines that the head of the institution is not authorized under this Act to refuse to disclose the personal information, order the head of the institution to disclose the personal information, subject to such conditions as the Court deems appropriate, to the individual who requested access thereto, or shall make such other order as the Court deems appropriate.

1980-81-82-83, c. 111, Sch. II "48".

*Order of Court where reasonable grounds of injury not found*

49. Where the head of a government institution refuses to disclose personal information requested under subsection 12(1) on the basis of section 20 or 21 or paragraph 22(1)(b) or (c) or 24(a), the Court shall, if it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the personal information, order the head of the institution to disclose the personal information, subject to such conditions as the Court deems appropriate, to the individual who requested access thereto, or shall make such other order as the Court deems appropriate.

1980-81-82-83, c. 111, Sch. II "49".

*Order to remove file from exempt bank*

50. Where the Privacy Commissioner makes an application to the Court under section 43 for a review of a file contained in a personal information bank designated as an exempt bank under section 18, the Court shall, if it determines

(a) in the case of a file contained in the bank on the basis of personal information described in paragraph 22(1)(a) or subsection 22(2), that the file should not be included therein, or

(b) in the case of a file contained in the bank on the basis of personal information described in section 21 or paragraph 22(1)(b) or (c), that reasonable grounds do not exist on which to include the file in the bank, order the head of the government institution that has control of the bank to remove the file from the bank or make such other order as the Court deems appropriate.

1980-81-82-83, c. 111, Sch. II "50"; 1984, c. 40, s. 60.

#### *Actions relating to international affairs and defence*

51. (1) Any application under section 41 or 42 relating to personal information that the head of a government institution has refused to disclose by reason of paragraph 19(1)(a) or (b) or section 21, and any application under section 43 in respect of a file contained in a personal information bank designated as an exempt bank under section 18 to contain files all of which consist predominantly of personal information described in section 21, shall be heard and determined by the Associate Chief Justice of the Federal Court or by such other judge of the Court as the Associate Chief Justice may designate to hear the applications.

#### *Special rules for hearings*

(2) An application referred to in subsection (1) or an appeal brought in respect of such application shall

(a) be heard in camera; and

(b) on the request of the head of the government institution concerned, be heard and determined in the National Capital Region described in the schedule to the National Capital Act.

#### *Ex parte representations*

(3) During the hearing of an application referred to in subsection (1) or an appeal brought in respect of such application, the head of the government institution concerned shall, on the request of the head of the institution, be given the opportunity to make representations ex parte.

1980-81-82-83, c. 111, Sch. II "51".

#### *Costs*

52. (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

#### *Idem*

(2) Where the Court is of the opinion that an application for review under section 41 or 42 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.

1980-81-82-83, c. 111, Sch. II "52".

## **Office of The Privacy Commissioner ➡**

### **Privacy Commissioner ➡**

#### *Privacy Commissioner*

53. (1) The Governor in Council shall, by commission under the Great Seal, appoint a Privacy Commissioner after approval of the appointment by resolution of the Senate and House of Commons.

#### *Tenure of office and removal*

(2) Subject to this section, the Privacy Commissioner holds office during good behaviour for a term of seven years, but may be removed by the Governor in Council at any time on address of the Senate and House of Commons.

#### *Further terms*

(3) The Privacy Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.

#### *Absence or incapacity*

(4) In the event of the absence or incapacity of the Privacy Commissioner, or if the office of Privacy Commissioner is vacant, the Governor in Council may appoint another qualified person to hold office instead of the Commissioner for a term not exceeding six months, and that person shall, while holding that office, have all of the powers, duties and functions of the Privacy Commissioner under this Act or any other Act of Parliament and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.

1980-81-82-83, c. 111, Sch. II "53".

#### *Rank, powers and duties generally*

54. (1) The Privacy Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of Privacy Commissioner under this Act or any other Act of Parliament and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

#### *Salary and expenses*

(2) The Privacy Commissioner shall be paid a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice or the Associate Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this Act or any other Act of Parliament.

#### *Pension benefits*

(3) The provisions of the Public Service Superannuation Act, other than those relating to tenure of office, apply to the Privacy Commissioner, except that a person appointed as Privacy Commissioner from outside the Public Service, as defined in the Public Service

Superannuation Act, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the Diplomatic Service (Special) Superannuation Act, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Privacy Commissioner from the date of appointment and the provisions of the Public Service Superannuation Act do not apply.

#### *Other benefits*

(4) The Privacy Commissioner is deemed to be employed in the public service of Canada for the purposes of the Government Employees Compensation Act and any regulations made under section 9 of the Aeronautics Act.

1980-81-82-83, c. 111, Sch. II "54".

#### *Information Commissioner may be appointed as Privacy Commissioner*

55. (1) The Governor in Council may appoint as Privacy Commissioner under section 53 the Information Commissioner appointed under the Access to Information Act.

#### *Salary*

(2) In the event that the Information Commissioner is appointed in accordance with subsection (1) as Privacy Commissioner, the Privacy Commissioner shall, notwithstanding subsection 54(2), be paid the salary of the Information Commissioner but not the salary of the Privacy Commissioner.

1980-81-82-83, c. 111, Sch. II "55".

### ***Assistant Privacy Commissioner ➡***

#### *Appointment of Assistant Privacy Commissioner*

56. (1) The Governor in Council may, on the recommendation of the Privacy Commissioner, appoint one or more Assistant Privacy Commissioners.

#### *Tenure of office and removal of Assistant Privacy Commissioner*

(2) Subject to this section, an Assistant Privacy Commissioner holds office during good behaviour for a term not exceeding five years.

#### *Further terms*

(3) An Assistant Privacy Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding five years.

1980-81-82-83, c. 111, Sch. II "56"; 1984, c. 40, s. 79.

#### *Duties generally*

57. (1) An Assistant Privacy Commissioner shall engage exclusively in such duties or functions of the office of the Privacy Commissioner under this Act or any other Act of

Parliament as are delegated by the Privacy Commissioner to that Assistant Privacy Commissioner and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

#### *Salary and expenses*

(2) An Assistant Privacy Commissioner is entitled to be paid a salary to be fixed by the Governor in Council and such travel and living expenses incurred in the performance of duties under this Act or any other Act of Parliament as the Privacy Commissioner considers reasonable.

#### *Pension benefits*

(3) The provisions of the Public Service Superannuation Act, other than those relating to tenure of office, apply to an Assistant Privacy Commissioner.

#### *Other benefits*

(4) An Assistant Privacy Commissioner is deemed to be employed in the public service of Canada for the purposes of the Government Employees Compensation Act and any regulations made under section 9 of the Aeronautics Act.

1980-81-82-83, c. 111, Sch. II "57".

### **Staff ➡**

#### *Staff of the Privacy Commissioner*

58. (1) Such officers and employees as are necessary to enable the Privacy Commissioner to perform the duties and functions of the Commissioner under this Act or any other Act of Parliament shall be appointed in accordance with the Public Service Employment Act.

#### *Technical assistance*

(2) The Privacy Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties and functions of the Commissioner under this Act or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of such persons.

1980-81-82-83, c. 111, Sch. II "58".

### **Delegation ➡**

#### *Delegation by Privacy Commissioner*

59. (1) Subject to subsection (2), the Privacy Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this Act except

(a) in any case other than a delegation to an Assistant Privacy Commissioner, the power to

delegate under this section; and

(b) in any case, the powers, duties or functions set out in sections 38 and 39.

*Delegations of investigations relating to international affairs and defence*

(2) The Privacy Commissioner may not, nor may an Assistant Privacy Commissioner, delegate

(a) the investigation of any complaint resulting from a refusal by the head of a government institution to disclose personal information by reason of paragraph 19(1)(a) or (b) or section 21, or

(b) the investigation under section 36 of files contained in a personal information bank designated under section 18 as an exempt bank on the basis of personal information described in section 21 except to one of a maximum of four officers or employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting those investigations.

*Delegation by Assistant Privacy Commissioner*

(3) An Assistant Privacy Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Assistant Privacy Commissioner may specify, any of the powers, duties or functions of the Privacy Commissioner under this Act that the Assistant Privacy Commissioner is authorized by the Privacy Commissioner to exercise or perform.

1980-81-82-83, c. 111, Sch. II "59".

## **Special Studies ➡**

### *Special Studies*

60. (1) The Privacy Commissioner shall carry out or cause to be carried out such studies as may be referred to the Commissioner by the Minister of Justice

(a) relating to the privacy of individuals,

(b) concerning the extension of the rights to which individuals are entitled under this Act in respect of personal information about themselves, and

(c) relating to the collection, retention, disposal, use or disclosure of personal information by persons or bodies, other than government institutions, that come within the legislative authority of Parliament, and the Privacy Commissioner shall report thereon to the Minister of Justice from time to time.

### *Reports to be tabled*

(2) The Minister of Justice shall cause each report by the Privacy Commissioner under subsection (1) to be laid before Parliament on any of the first fifteen days after receipt thereof that either House of Parliament is sitting.

1980-81-82-83, c. 111, Sch. II "60".

## **General ➡**

### *Principal office*

61. The principal office of the Privacy Commissioner shall be in the National Capital Region described in the schedule to the National Capital Act.

1980-81-82-83, c. 111, Sch. II "61".

### *Security requirements*

62. The Privacy Commissioner and every person acting on behalf or under the direction of the Commissioner who receives or obtains information relating to any investigation under this Act or any other Act of Parliament shall, with respect to access to and the use of that information, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of that information.

1980-81-82-83, c. 111, Sch. II "62".

### *Confidentiality*

63. Subject to this Act, the Privacy Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act.

1980-81-82-83, c. 111, Sch. II "63".

### *Disclosure authorized*

64. (1) The Privacy Commissioner may disclose or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information

(a) that, in the opinion of the Commissioner, is necessary to

(i) carry out an investigation under this Act, or

(ii) establish the grounds for findings and recommendations contained in any report under this Act; or

(b) in the course of a prosecution for an offence under this Act, a prosecution for an offence under section 131 of the Criminal Code (perjury) in respect of a statement made under this Act, a review before the Court under this Act or an appeal therefrom.

### *Disclosure of offence authorized*

(2) The Privacy Commissioner may disclose to the Attorney General of Canada information relating to the commission of an offence against any law of Canada or a province on the part of any officer or employee of a government institution if in the opinion of the Commissioner there is evidence thereof.

R.S., 1985, c. P-21, s. 64; R.S., 1985, c. 27 (1st Supp.), s. 187.

Information not to be disclosed 65. In carrying out an investigation under this Act, in notifying an individual of a disclosure under subsection 8(5) and in any report made to Parliament under section 38 or 39, the Privacy Commissioner and every person acting on behalf or under the direction of the Privacy Commissioner shall take every reasonable precaution to avoid the disclosure of, and shall not disclose,

(a) any information that the head of a government institution would be authorized to refuse to disclose if it were requested under subsection 12(1) or contained in a record requested under the Access to Information Act; or

(b) any information as to whether personal information exists where the head of a government institution, in refusing to disclose the personal information under this Act, does not indicate whether it exists.

1980-81-82-83, c. 111, Sch. II "65".

#### *No summons*

66. The Privacy Commissioner or any person acting on behalf or under the direction of the Commissioner is not a competent or compellable witness, in respect of any matter coming to the knowledge of the Commissioner or that person as a result of performing any duties or functions under this Act during an investigation, in any proceeding other than a prosecution for an offence under this Act, a prosecution for an offence under section 131 of the Criminal Code (perjury) in respect of a statement made under this Act, a review before the Court under this Act or an appeal therefrom.

R.S., 1985, c. P-21, s. 66; R.S., 1985, c. 27 (1st Supp.), s. 187.

#### *Protection of Privacy Commissioner*

67. (1) No criminal or civil proceedings lie against the Privacy Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.

#### *Libel or slander*

(2) For the purposes of any law relating to libel or slander,

(a) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation carried out by or on behalf of the Privacy Commissioner under this Act is privileged; and

(b) any report made in good faith by the Privacy Commissioner under this Act and any fair and accurate account of the report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged.

1980-81-82-83, c. 111, Sch. II "67".



## **Offences** ➡

### *Obstruction*

68. (1) No person shall obstruct the Privacy Commissioner or any person acting on behalf or under the direction of the Commissioner in the performance of the Commissioner's duties and functions under this Act.

### *Offence and punishment*

(2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

1980-81-82-83, c. 111, Sch. II "68".

## **General** ➡

### *Act does not apply to certain materials*

69. (1) This Act does not apply to

(a) library or museum material preserved solely for public reference or exhibition purposes;  
or

(b) material placed in the National Archives of Canada, the National Library, the National Gallery of Canada, the Canadian Museum of Civilization, the Canadian Museum of Nature or the National Museum of Science and Technology by or on behalf of persons or organizations other than government institutions.

### *Sections 7 and 8 do not apply to certain information*

(2) Sections 7 and 8 do not apply to personal information that is publicly available.

R.S., 1985, c. P-21, s. 69; R.S., 1985, c. 1 (3rd Supp.), s. 12; 1990, c. 3, s. 32; 1992, c. 1, s. 143(E).

### *Confidences of the Queen's Privy Council for Canada*

70. (1) This Act does not apply to confidences of the Queen's Privy Council for Canada, including, without restricting the generality of the foregoing, any information contained in

(a) memoranda the purpose of which is to present proposals or recommendations to Council;

(b) discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;

(c) agenda of Council or records recording deliberations or decisions of Council;

(d) records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

(e) records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d); and

(f) draft legislation.

*Definition of "Council"*

(2) For the purposes of subsection (1), "Council" means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

70(3) Exception (3) Subsection (1) does not apply to

(a) confidences of the Queen's Privy Council for Canada that have been in existence for more than twenty years; or

(b) discussion papers described in paragraph (1)(b)

(i) if the decisions to which the discussion papers relate have been made public, or

(ii) where the decisions have not been made public, if four years have passed since the decisions were made.

R.S., 1985, c. P-21, s. 70; 1992, c. 1, s. 144(F).

*Duties and functions of designated Minister*

71. (1) Subject to subsection (2), the designated Minister shall

(a) cause to be kept under review the manner in which personal information banks are maintained and managed to ensure compliance with the provisions of this Act and the regulations relating to access by individuals to personal information contained therein;

(b) assign or cause to be assigned a registration number to each personal information bank;

(c) prescribe such forms as may be required for the operation of this Act and the regulations;

(d) cause to be prepared and distributed to government institutions directives and guidelines concerning the operation of this Act and the regulations; and

(e) prescribe the form of, and what information is to be included in, reports made to Parliament under section 72.

*Exception for Bank of Canada*

(2) Anything that is required to be done by the designated Minister under paragraph (1)(a) or (d) shall be done in respect of the Bank of Canada by the Governor of the Bank of Canada.

Review of existing and proposed personal information banks (3) Subject to subsection (5), the designated Minister shall cause to be kept under review the utilization of existing personal information banks and proposals for the creation of new banks, and shall make such recommendations as he considers appropriate to the heads of the appropriate government institutions with regard to personal information banks that, in the opinion of the designated Minister, are under-utilized or the existence of which can be terminated.

Establishment and modification of personal information banks (4) Subject to subsection (5), no new personal information bank shall be established and no existing personal information banks shall be substantially modified without approval of the designated Minister or otherwise than in accordance with any term or condition on which such approval is given.

#### *Application of subsections (3) and (4)*

(5) Subsections (3) and (4) apply only in respect of personal information banks under the control of government institutions that are departments as defined in section 2 of the Financial Administration Act.

#### *Delegation to head of government institution*

(6) The designated Minister may authorize the head of a government institution to exercise and perform, in such manner and subject to such terms and conditions as the designated Minister directs, any of the powers, functions and duties of the designated Minister under subsection (3) or (4).

1980-81-82-83, c. 111, Sch. II "71".

#### *Report to Parliament*

72. (1) The head of every government institution shall prepare for submission to Parliament an annual report on the administration of this Act within the institution during each financial year.

#### *Tabling of report*

(2) Every report prepared under subsection (1) shall be laid before each House of Parliament within three months after the financial year in respect of which it is made or, if that House is not then sitting, on any of the first fifteen days next thereafter that it is sitting.

#### *Reference to Parliamentary committee*

(3) Every report prepared under subsection (1) shall, after it is laid before the Senate and the House of Commons, under subsection (2), be referred to the committee designated or established by Parliament for the purpose of subsection 75(1).

1980-81-82-83, c. 111, Sch. II "72".

#### *Delegation by the head of a government institution*

73. The head of a government institution may, by order, designate one or more officers or employees of that institution to exercise or perform any of the powers, duties or functions of the head of the institution under this Act that are specified in the order.

1980-81-82-83, c. 111, Sch. II "73".

*Protection from civil proceeding or from prosecution*

74. Notwithstanding any other Act of Parliament, no civil or criminal proceedings lie against the head of any government institution, or against any person acting on behalf or under the direction of the head of a government institution, and no proceedings lie against the Crown or any government institution, for the disclosure in good faith of any personal information pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act if reasonable care is taken to give the required notice.

1980-81-82-83, c. 111, Sch. II "74".

*Permanent review of this Act by Parliamentary committee*

75. (1) The administration of this Act shall be reviewed on a permanent basis by such committee of the House of Commons, of the Senate or of both Houses of Parliament as may be designated or established by Parliament for that purpose.

*Review and report to Parliament*

(2) The committee designated or established by Parliament for the purpose of subsection (1) shall, not later than July 1, 1986, undertake a comprehensive review of the provisions and operation of this Act, and shall, within a year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including a statement of any changes the committee would recommend.

1980-81-82-83, c. 111, Sch. II "75".

Binding on Crown 76. This Act is binding on Her Majesty in right of Canada.

1980-81-82-83, c. 111, Sch. II "76".

*Regulations*

77. (1) The Governor in Council may make regulations

(a) specifying government institutions or parts of government institutions for the purpose of paragraph (e) of the definition "personal information" in section 3;

(b) prescribing the period of time for which any class of personal information is to be retained under subsection 6(1);

(c) prescribing the circumstances and the manner in which personal information under the control of a government institution is to be disposed of under subsection 6(3);

(d) specifying investigative bodies for the purposes of paragraph 8(2)(e) and sections 22

and 23;

(e) prescribing the circumstances in which and the conditions under which personal information may be disclosed under subsection 8(3);

(f) prescribing the period of time for which copies of requests received under paragraph 8(2)(e) and records of information disclosed pursuant to the requests are to be retained under subsection 8(4);

(g) specifying persons or bodies for the purpose of paragraph 8(2)(h);

(h) prescribing procedures to be followed in making and responding to a request for access to personal information under paragraph 12(1)(a) or (b);

(i) prescribing procedures to be followed by an individual or a government institution where the individual requests under subsection 12(2) a correction of personal information or a notation of a correction requested, including the period of time within which the correction or notation must be made;

(j) prescribing any fees, or the manner of calculating any fees, to be paid for being given access to personal information requested under subsection 12(1) or for the making of copies of such personal information;

(k) prescribing the procedures to be followed by the Privacy Commissioner and any person acting on behalf or under the direction of the Privacy Commissioner in examining or obtaining copies of records relevant to an investigation of a complaint in respect of a refusal to disclose personal information under paragraph 19(1)(a) or (b) or section 21;

(l) specifying classes of investigations for the purpose of paragraph 22(3)(c);

(m) prescribing the class of individuals who may act on behalf of minors, incompetents, deceased persons or any other individuals under this Act and regulating the manner in which any rights or actions of individuals under this Act may be exercised or performed on their behalf;

(n) authorizing the disclosure of information relating to the physical or mental health of individuals to duly qualified medical practitioners or psychologists in order to determine whether disclosure of the information would be contrary to the best interests of the individuals, and prescribing any procedures to be followed or restrictions deemed necessary with regard to the disclosure and examination of the information; and

(o) prescribing special procedures for giving individuals access under subsection 12(1) to personal information relating to their physical or mental health and regulating the way in which that access is given.

#### *Additions to schedule*

(2) The Governor in Council may, by order, amend the schedule by adding thereto any department, ministry of state, body or office of the Government of Canada.

1980-81-82-83, c. 111, Sch. II "77".