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**IMPACT OF THE ONTARIO FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY ACT, 1987 UPON
AFFECTED ORGANIZATIONS**

by

Margaret Ann Wilkinson

School of Library and Information Science

**Submitted in partial fulfilment
of the requirements for the degree of
Doctor of Philosophy**

**Faculty of Graduate Studies
The University of Western Ontario
London, Ontario
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ABSTRACT

This exploratory research was designed to study the effect of an attempt to control the flow of information through the imposition of a statute, the Ontario Freedom of Information and Protection of Privacy Act, 1987 (which came into effect in January of 1988). The hypotheses tested dealt with the effect of the statute in terms of (1) its implementation by the management of organizations on which it is imposed (including its effect on organization structure); (2) its adoption by the employees of those organizations; and (3) the impact on information flow within the organizations (both direction of flow and the impact on formal and informal channels of communication). Comprehensive case studies of eight organizations subject to the Ontario Freedom of Information and Protection of Privacy Act, 1987 were completed. The independent variables operationalized in the research design were the type of organization (whether ministry or crown corporation), size (whether large or small) and public profile (whether much in the news, or little in the public eye). Interviews and questionnaires were used in each organization to gather information from (1) the "heads" of the organizations, (2) the information and privacy Coordinators (whose positions have been created as a reflection of the implementation efforts of the government) and (3) a sampling of employees throughout six of the eight organizations. The study found that the pattern of the measures of adoption in the

organizations closely reflected the pattern of level of implementation effort in the eight cases. The type of organization was the most reliable indicator of differences in the levels of adoption in the organizations, with the ministries consistently surpassing the crown corporations. The statute had not had anything more than a very minor impact on organization structure. Nor did it appear that the directions of information flow had been dramatically affected in the organizations. In some, indeed, there had been no change. In others, the evidence tended to suggest that the changes appeared to be as much in the channels of communication being used as in direction. All the organizations studied seemed to be concentrating on reactive measures in their handling of this new legislative requirement. In only one organization, the small, low profile ministry, did there appear to be any real indication of proactive implementation. Employees at this organization also surpassed their colleagues in the other organizations in terms of adoption indicators. The study is important because it demonstrates a new perspective on information policy research, within an information process model capable of providing the framework for empirical measurement of the complex and largely mysterious phenomenon of information.

DEDICATION

This work is dedicated to

Richard Warren Crouch,

... without whom none of this would be possible...

nor would it be interesting or worth doing.

?

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I would like to acknowledge my indebtedness to a great number of people who have helped me in so many ways to complete this work. Unfortunately I cannot name the seven Coordinators who helped me so much. Each of them gave a great deal of time and energy to this project. All encouraged a spirit of enquiry and had the self-confidence to allow me into their work. Their efforts are each to be applauded and appreciated. In a similar fashion, I must acknowledge and thank those individuals who assisted me by being the guinea pigs in my pretesting (and I must thank my classmate, Lisa Baron, for helping me find pretesters and for assisting me in one of my interviews).

On the other hand, I can publicly name and thank all my academic colleagues for their encouragement. First, I must thank my two co-chairs, Mark Kinnucan, of the School of Library and Information Science, and David Flaherty, of the Department of History and Faculty of Law. Each contributed enthusiasm and expertise to my enterprise. I would also like to thank Jim Rush, of the School of Business Administration, for taking on an "out of faculty" student and giving practical assistance at a number of tough points. I would also like to thank Janet Fyfe, of the School of Library and Information Science, for adding me to her demanding work load. I would also like to acknowledge by indebtedness to Alexis Jamieson, who shepherded me through the critical period at the beginning of my doctoral studies, and Stan Beacock, who gave me an early opportunity to try my research wings. Betty McCamus also reviewed my proposal and made several key comments. I would also like to thank Dean Peter Mercer of the Faculty of Law who has provided encouragement and support in the latter stages of this production.

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CHAPTER 1: OVERVIEW

We are said to be living in an information society or entering into the information age. Many scholars and policy-makers are concerned about formulating government's response to the changing directions of Canadian society and global economic conditions. There are calls for a national information policy. However, the way to achieve an effective policy to help Canadians cope with the transition to the information age is by no means clear.

A large part of the problem stems from our lack of precise knowledge about the changes in society being discussed. These difficulties are compounded because we are not clear about the central phenomenon of the change: information.

This study has its root in the conviction that we cannot move forward to articulate and implement an effective national information policy until we understand the parameters within which such a policy is intended to be effective. We cannot propose new directions until we understand what exists now in the arenas which we wish to affect in our new policy. We cannot judge the effectiveness of our attempts at policy implementation unless we know where to look to measure the impact of our initiatives. This requires that we have a framework for analysis of the phenomenon of information

and an understanding of the phenomenon of information that will permit effective empirical analysis.

This study begins, in Chapter 2, then, by proposing a definition of information which is not inconsistent with most of the definitions currently articulated in the literature, but which will support an empirical investigation into the phenomenon of information in our society and provide the basis for evaluating the impact of policy attempts in this area. The strength of the definition proposed is that it can be used in research without requiring a complete grasp of all aspects of the phenomenon of information. Thus it is a definition with which it is possible to begin to learn.

This definition is then built into a model of the information process in our society. Investigation of various aspects of the model will gradually increase our knowledge of the information society. The model permits us to relate the various pieces of information generated through research to each other and to our attempts at policy formation. Again, the strength of the model is that it can be used to guide our investigations of policy attempts in the information arena without requiring investigation of all aspects of the model at any one time. Knowledge to facilitate a complete understanding of the impact of, and factors which affect, information flow in the model can be acquired incrementally.

In Chapter 3, the definition of information proposed and the information

process model suggested are used to structure the investigation of a particular area of information policy: the approach taken by the Ontario provincial government in its recent regulation of information held by public sector organizations (a previously unregulated area). Specifically, the effect of the Freedom of Information and Protection of Privacy Act, 1987 was tested with respect to several aspects of the information process model. More generally, the research was designed to study the effect on individuals in certain organizations, and hence on organization structure and the organizations themselves, of an attempt to control the information process through law.

The probable effectiveness of extending this legislative initiative into private sector organizations is forecast by comparing the implementation and adoption of this legislation in organizations within the government itself (ministries) and in those which, while owned and operated primarily through the government, are operating in ways closely allied with private sector organizations (crown corporations). The research looked at the effect of the legislation, not in terms of the sanctions imposed or from the perspective of the oversight agency established to administer the Act, but from the perspective of the organizations on whom it was imposed. Therefore, the study examined the variables of size and public profile (how much the organization is in the public eye) to see whether these affected the organization's response to the

government's policy initiative in this area. The research looked at the impact of the legislation on the overall functioning of the organizations -- in terms of organizational structure and patterns of information flow.

Chapter 4 explores the areas of prior research which are related to this study. This review confirms that, although there are prior studies in the areas of information as an element of organization research, research on information flow, and social science research about information law issues, the research being undertaken in this study is exploratory work utilizing a new approach.

The research design used is fully explained in Chapter 5 and the methodology is described in Chapter 6. Multiple case studies were used within a design framework which permitted hypotheses to be tested between groupings of organizations.

The results, which are fully described in the seventh, eighth and ninth chapters, indicate that the evidence gathered using this research design (developed out of the definition of information advanced and the information process model proposed) permitted me to make concrete findings about this particular information policy initiative of the Ontario provincial government. These findings offer a new perspective on the effect of this enactment. It is hoped that the conclusions of this study (presented in final chapter) may inform further discussion of our legal policy response to the

challenges of the information society and will also demonstrate the validity of the approach to information policy research developed through this definition of information and model of the information process.

CHAPTER 2: THE MODEL

Far better an approximate answer to the right question, which is often vague,
than an exact answer to the wrong questions, which can always be made precise.

Professor John W. Tukey¹

2.1 Developing information policy

Two central concerns of a government's information policy are: (1) the protection of information held by government about private individuals; and (2) the access to information held by government which will be given to those outside government. The Ontario government has passed two laws and created a single administrative framework to control and govern Ontario in these two areas. The first statute passed in this area, the Freedom of Information and Protection of Privacy Act, 1987,² established the administrative framework within which both statutes are enforced. It also regulates the conduct of the provincial government and its agencies. The second Ontario statute is the Municipal Freedom of Information and Protection of Privacy Act, 1989, which regulates the conduct of municipal bodies.³

¹Quoted by Richard Rose in "Disciplined Research and Undisciplined Problems" in *Using Social Science Research in Public Policy-making*, ed. C.H. Wiess (Toronto: Lexington Books, 1977), 23-35 at 23.

²R.S.O. 1990, c.F.31. Hereinafter referred to as "the Act". It came into effect January 1, 1988 (see s.72). It was originally supposed to come into force with respect to municipal institutions three years later (see s.2(3) in the original enactment) but, instead, the municipal lobby persuaded government that its own unique enactment was necessary.

The intent of the Ontario legislature in creating the statute being studied is given expression in the first section:⁴

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

This purpose is articulated in terms of "information". Thus the statute is a manifestation of the Ontario government's policy with respect to information, at least in some respects.

The statute has no predecessor in the Ontario legislative experience, and, indeed, legislation in these areas is a relatively recent phenomenon world-wide. One must presume that there have been societal changes (in Canada, in Ontario, and in the rest of the world) which have called forth a new legislative response. In discussing this era of change, Lynton K. Caldwell says, "Knowledge is derived from information, and consequently the marshalling, collating, organizing, analyzing, focussing and testing of information becomes, more than ever before, an essential element of public policy and administration."⁵

³R.S.O. 1990, c.M-56. This statute has applied to municipal institutions since January 1, 1991, see s.52(1).

⁴See s.1 of the Act.

⁵Lynton K. Caldwell, "Managing the Transition to Post-modern Society," *Public Administration*

The emphasis placed on knowledge reflects new realities: first, our society is becoming service-based, rather than product-based;⁶ and secondly, the abilities of a given society to cope in the changing global environment depend upon the abilities of its individual members to cope.⁷ The provision of services and the ability to cope with our complex society depend upon an efficient and effective information environment. The four essentials of progress in the information environment have been identified as: (1) basic research support, (2) incentives for investors, entrepreneurs, and innovators, (3) strong education capabilities, and (4) expanding market opportunities.⁸ Education in Canada has always been a public (government) responsibility. It has also been traditional in Canada to look to government for significant support in the other three areas as well.⁹

The information environment has been dramatically changed by technological innovation. It has become evident, as communications technology advances, that each nation's information situation has an impact upon and is affected by the conduct of every

Review 35 (1975): 567-592 at 570.

⁶See for example, Peter F. Drucker, "The Coming of the New Organization," *Harvard Business Review* 66 (1988): 45-54; or *A National Information Policy for Australia: Discussion Paper* (Australia, Department of Science: 1985).

⁷Toni Carlo Bearman, "National Information Policy: An Insider's View," *Library Trends* 35 (summer 1986): 105-107; see also Anne W. Branscomb, "Law and Culture in the Information Society," *Information Society* 4 (1986): 279-311.

⁸M.E.L. Jacob and D.L. Rings, "National and International Information Policies," *Library Trends* 35 (1986): 119-69 at 141.

⁹The current recession may be giving a very clear indication that the Canadian private sector, acting alone, cannot accomplish the accommodation to the new society.

other nation in the world.¹⁰ Historically, governments have made a number of attempts to try to control change in society through controlling information. Censorship has a long history in the western world. Indeed, attempts to control the changes wrought by technological innovation during the industrial revolution created the whole area of intellectual property law. Much of this area of the law is based in statutes which were developed as a response to the balance required in society between the need to reward individuals and enterprises for creativity and innovation and the need to ensure the spread of ideas to fuel continued industrial development. Statutory responses which dramatically reshaped the information environment after the invention of the printing press included the "Statute of Anne" and subsequent copyright enactments.¹¹ This statutory response obviously addressed a real concern in societies because the approach has been adopted by ever increasing numbers of nations and has been implemented internationally by a Convention which nations are continuing to join.¹²

¹⁰See Brian Woodrow, "Telecommunications and Information Networks: Growing International Tensions and Their Underlying Causes," *The Information Society* 6 (1989): 117-25.

¹¹Hence the concern of the Organization for Economic Co-operation and Development (see *Guidelines on the Protection of Privacy and Transborder Data Flows of Personal Data* (Paris, 1981)) and of the Council of Europe (see Knut S. Selmer, "Data Protection Policy," in *From Data Protection to Knowledge Machines: The Study of Law and Information*, ed. P. Seipel (Deventer: Kluwer Law and Taxation Publishers, 1990), pp. 11-28. The "Statute of Anne" is in quotation marks because, of course, there were many other statutes passed during Anne's reign, but in the copyright context, this is the name given to An Act for the Encouragement of Learning by Vesting the Copies of Printed Books in the Authors or Purchasers of Such Copies, 8 Anne c.21 (1709).

¹²The United States only became signatory to Berne in 1989. China is apparently about to sign "to comply with world standards" ("China says it is set to join copyright conventions," *Globe and Mail*, Thursday, June 25, 1992, B4).

The current recognition of a new need to regulate in the area of information has led a number of countries to enact legislation. Indeed, there has been collective action by nations in the area of information policy in the form of Guidelines on the Protection of Privacy and Transborder Flows of Personal Data promulgated by the Organization for Economic and Co-operation and Development, to which Canada has announced adherence.¹³

No country has yet announced, however, a comprehensive "national information strategy". There have been studies.¹⁴ There have been policy papers.¹⁵ There have been government initiatives directed to certain aspects of information policy.¹⁶

¹³*Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*. The goals of the Guidelines are (1) to protect personal information and (2) to ensure free flow of data between countries. The Guidelines were developed between 1978 and 1980 and adopted by the Council of the OECD September 23, 1980. Canada announced adherence June 25, 1984.

¹⁴For example: *A National Information Policy for Australia: Discussion Paper*, (in fact, the contents of the paper are really a background discussion rather than the proposal which the title might suggest); United States Congress, Office of Technology Assessment, Washington, D.C., *Informing the Nation: Federal Information Dissemination in an Electronic Age* (U.S. Government Printing Office, October 1988).

¹⁵Canada, Department of Consumer and Corporate Affairs, *From Gutenberg to Teledon: A White Paper on Copyright: Proposals for Revision of the Copyright Act* (1984); Canada: Department of Communications, *Communications for the Twenty-First Century: Media and Messages in the Information Age* (1987); Peter J. Judge, *National Information Policy* (Canberra: Department of the Parliamentary Library, 1985); Adele Carpinter, *Managing Data, Knowledge and Know-How: Information Policy Issues for the 1990's* (Wellington: National Library of New Zealand and the Institute of Policy Studies, 1991).

¹⁶ See David Vaver, "Copyright Phase 2: The New Horizon," *Intellectual Property Journal* 6 (1990): 37-66, for a discussion of both projected phases of revision to the Copyright Act and the implementation to date. See David M. Rogers, Q.C., "Canadian Patent Law with Emphasis on the

Whether nations have articulated a national information strategy or not, each government has an information policy, even if it is inaction or refusal to deal with the issues.¹⁷ Historically in Canada coordinated approaches to progress have been necessary to overcome the inherent problems posed by our geography. Mark Hepworth has suggested that the same problems of distance and resultant expense will plague our progress in the information society unless Canada works on a nationwide basis to achieve consistent policy across the nation:

[s]ince all of Canada's provinces are developing as information economies, it follows that an important consideration of Canadian regional policy should be whether these network innovations are equally accessible throughout the country....

Southern Ontario's comparative advantage in computer networking (specifically, data transmission) is essentially a historical legacy, being another outcome of cumulative patterns of Canadian economic development.... Canada's "regional problem" can be traced back to colonial patterns of economic

New Patent Act", a paper presented to the Philadelphia Patent Law Association on November 16, 1989 and revised and updated March 1991, on recent revisions to the Patent Act. See Ontario Ministry of Culture and Communications, *One Place to Look: Ontario Public Library Strategic Plan* (Toronto: Canadian Library Association, 1990). See also the policy initiatives in various jurisdictions listed in Maureen Cubberley and Stan Skrzyszewski, "Empowering the Individual in the Information Age," *Policy Options* (1992): 9-15 at 10. Outside the Canadian context, see, for example, New South Wales, The Privacy Committee, *Privacy and Data Protection in New South Wales: a Proposal for Legislation* (1991).

¹⁷Such commentators as Blaise Cronin, "Transatlantic Perspectives on Information Policy: The Search for Regulatory Realism," *Journal of Information Science* 13 (1987): 129-138, and Michael John Haddock, "A Comparative Analysis of National Information Policy in Six Industrialized Nations," in *Translating an International Education to a National Environment*, ed. Julie I. Tallman and Joseph B. Ojiambo (Metuchen, N.J.: Scarecrow Press, 1990): 45-56, are comparing and contrasting the approaches to information policy being taken by various nations. Eileen Trauth, in particular, articulates the position that the national information policy of a country is to be discovered in its actions and attitudes, not necessarily in its articulated policy statements. See Trauth, "An Integrative Approach to Information Policy Research", *Telecommunications Policy* 10 (1986): 41-50.

development...and is clearly reflected in the geographical bias of inter-provincial telecommunications costs.¹⁸

National policy, however, because of our federated constitutional structure, cannot be achieved through the efforts of our federal government alone. The individual initiatives of our provincial governments form a necessary part of a comprehensive "national policy" for Canada. The division of powers between the federal and provincial levels of government means that neither can go it alone in creating a complete societal shift from industrial to information-based society.¹⁹

Specifically, neither the British North America Act of 1867 [now the Constitution Act, 1867] nor subsequent constitutional amendments (which together contain the terms under which the provinces are federated into Canada) deals specifically with "information". The federal government is responsible for certain areas of national

¹⁸These problems are more fully described in Mark E. Hepworth, "The Geography of Economic Opportunity in the Information Society," *The Information Society* 4 (1986): 205-220 at 213.

¹⁹Although Cubberley and Skrzyszewski state that information "policy must not be technology driven" (p. 14), their interesting discussion focuses largely around technological systems (albeit emphasizing the human interface side). Thus, their expression of the role of governments is expressed in terms of networks:

The information system created by this policy must be decentralized. It cannot be one big network. It must consist of a series of networks, with different systems of controls all linking into a non-evaluative backbone system. In Canada, this means that there must be provincially-based systems that include a multiplicity of local networks, contributing to a federal infrastructure.

A complete division of powers is not practical. A federal information policy must be supported by complementary provincial policies. Decentralization of the system will allow for the development of discrete services which can be accessed independently and, if necessary, marketed independently. This will prevent the development of an information monopoly and will allow the operation of a system open to both private and public sector participants. (P. 12.)

life,²⁰ while the provinces have exclusive jurisdiction over others.²¹ There are very few shared areas of responsibility.²² Thus the character of the country's information policy is determined only partly through the federal government's activities -- much is determined at the provincial level. Consistency in information policy across the land, as in other policy areas, is often achieved because the competent jurisdictions pass legislation which is essentially similar to that passed in other jurisdictions. One such area of information policy, achieved nationally through the jurisdictionally independent actions of the provinces, is the delivery of free library services to the public. Public libraries are familiar, municipally-based organizations which have a long and venerable history as information providing institutions in Canada from pre-Confederation times to the present.²³ As local, municipally-based institutions, they fall under the exclusive jurisdiction of the provinces.²⁴ Every province now has a statute which essentially

²⁰In s. 91 of the Constitution Act, 1867, among other powers, regulation of trade and commerce and copyright were given exclusively to the federal government.

²¹Under ss. 92 and 93, among other heads of power, education, municipal institutions in the province, property and civil rights, and anything of a purely local or private nature is left to the provinces exclusively.

²²For a further discussion of the constitutional context of Canadian law, see Peter W. Hogg, *Constitutional Law of Canada*, 2nd ed. (Toronto: Carswells, 1985).

²³With respect to the history of Ontario public libraries, in particular, see Eric Bow, "The Public Library Movement in Nineteenth Century Ontario," *Ontario Library Review* 66 (1982): 1-16, and Margaret Beckman, Stephen Langmead, and John Black, *The Best Gift: A Record of the Carnegie Libraries in Ontario* (Toronto: Dundurn Press, 1984).

²⁴With respect to the history of the provinces' exercise of this jurisdiction, see Lois Bewley, *Public Library Legislation in Canada: A Review and an Evaluation* (Halifax: Dalhousie University School of Library Service (Occasional Paper 26), 1981). Specifically with respect to the experience of the public library service component of the Ontario government administration, see Margaret Ann Wilkinson,

empowers and governs the conduct of public libraries throughout the province (see Appendix 1). Although differences exist between the provincial enactments, the institutions created are generally consistent with each other. Taken together, they represent Canada's public library policy. The federal government can have no direct role to play in its formation.

On the other hand, there are areas in which the federal government is the only jurisdiction which can act to implement information policy. The Official Secrets Act, Copyright Act, Income Tax Act and Broadcasting Act are examples of statutes passed by the federal government in areas of its exclusive jurisdiction containing provisions which form part of our national information policy (see Appendix 1).

Finally, there are areas where the national information policy can only be determined by examining the contributions of the federal and provincial governments because of the constitutional sharing of jurisdiction. Such an area is our national position on the question of public access to government information. In this area, the federal government has chosen to legislate, as have many of the provinces. However in several provinces, the policy has been to leave the question to the common law (refer to Appendix 1). And even where governments have chosen to legislate policy, it can be seen that the legislation has not taken a consistent form.

"Not Unloved or Unwanted", *Canadian Library Journal* 40 (1983): 365-370.

The question, of course, is how to take effective action toward an articulated national information strategy. In Canada, policy-makers must be aware of their own constitutional situation and that of other Canadian lawmakers. Beyond that, however, policy-makers must have regard, not only to their own domestic national situation, but also to the links between their domestic situation and foreign situations.²⁵ Policy-makers are also uncomfortably aware that traditional approaches to problem solving do not seem to be effective in the information economy.²⁶ For example, economists, who traditionally work with assumptions of static information states, are finding increasingly that models based upon such assumptions do not reflect reality in society.²⁷ Attempts are being made to adjust economic models to allow for the effects of information flow in the economy (for example, the "adjustment" theory²⁸), but these are just developing at

²⁵Canada's Privacy Commissioner has recently voiced concerns that "[w]ithout comparable data protection laws in Canada's private sector, European countries may no longer allow companies to transfer their citizens' information to Canada.' (*Annual Report 1991*, p. 15.) Apparently, Fiat France recently blocked a transfer of data to Fiat Italy because adequate data protection was not in place in Italy. (Ingeborg Slade, quoting a conversation between herself and a source in the Canadian Department of Justice, fall 1991.)

²⁶Aata J. Repo surveys the problems of definition and analysis involved in information in "Economics of Information," *ARIST* 22 (1987): 3-35.

²⁷Peter Monk, *Technological Change in the Information Economy* (London: Pinter Publishers, 1989). See especially Chapter 3 "Information Economics and the Information Economy", pp. 39-63.

²⁸See Gordon L. Clark, Meric S. Gertler, and John E.M. Whiteman, *Regional Dynamics: Studies in Adjustment Theory* (Boston: Allen and Unwin, 1986). See also C. Jonscher, "Information Resources and Economic Productivity," *Information Economics and Policy* 1 (1) (1983): 13-35, where Jonscher divides society into production and information handling tasks and models the information-productivity relationship. See also the analysis by Jacob and Rings, "National and International Information Policies," p. 139. Finally, see Sherman Robinson, "Analyzing the Information Economy: Tools and Techniques," *Information Processing and Management* 22 (1986): 183-202, which describes and

the forefront of the field of economics.²⁹

Analyst work in the area of information policy is sparse, and very recent,³⁰ for at least three reasons: (1) the importance of the area has only recently been recognized;³¹ (2) as discussed above, the phenomenon of information is generally not

contrasts the approaches of Marc Porat and Fritz Machlup to the problem.

²⁹A very recent attempt at economic modelling is presented in Abbe Mowshowitz' three part article: "On the Market Value of Information Commodities," *Journal of the American Society for Information Science* 43 (3) (April 1992). In part I, "The Nature of Information and Information Commodities" (pp. 225-232), he creates a definition of an "information commodity" whose "market value derives from [its] capacity to furnish information" (p.232). These definitions will be discussed further later in this dissertation. In part II, "Supply Price" (pp. 233-241), he develops his argument for the supply price of information commodities; and in part III, "Demand Price" (pp. 242-248), for the demand price. Despite the very different nomenclature and style of modelling used by Mowshowitz, when compared with the model presented here, in the end result, it would appear that he is also discussing the direction of information flow (see, for example, FIG.1 of the third article: "the production digraph for research report") and must conclude "[f]urther research is needed to classify information commodities according to the types of changes they induce in production digraphs." (p.248)

³⁰Such works include: David Flaherty, *Protecting Privacy in Surveillance Societies: The Federal Republic of Germany, Sweden, France, Canada, and the United States* (Chapel Hill: The University of North Carolina Press, 1989). (483pp.); and Kenneth C. Laudon, *Dossier Society: Value Choices in the Design of National Information Systems* (New York: Columbia University Press, 1986). See also Colin Bennett's very recent *Regulating Privacy: Data Protection and Public Policy in Europe and the United States* (Ithica, N.Y.: Cornell University Press, 1992).

³¹Various institutional responses to the recognition of the importance of this area include: *A National Information Policy for Australia: A Discussion Paper*, Judge, *National Information Policy*, United States, Domestic Council on the Right to Privacy, *National Information Policy: Report to the President* (National Commission on Libraries and Information Science, 1976); and Adele Carpinter, *Managing Data, Knowledge and Know-how: Information Policy Issues for the 1990's*. Recognition of the key function of information policy by scholars and other authors is evident in such contributions as: Inge Berg Hansen, "What is required to design a national information policy? Can media policy and information policy be separated?," in *Information Technology and Information Use: Towards a Unified View of Information and Information Technology*, ed. Peter Ingwersen, Leif Kajberg, and Annelise Mark Pejtersen (London: Taylor Graham, 1986): 55-63; Michael R. Rubin, *Information Economics and Policy in the United States* (Littleton, Co.: Libraries Unlimited, 1983); Burt Nanus,

very well understood; and (3) the area crosses established borders, both with respect to academic specialty and, as mentioned above, with respect to political jurisdictions.

Government action in an area can occur in any one or more of three ways: (1) through legislative action, (2) through executive or administrative action, or (3) by judicial action. Since the mid-nineteenth century, in Canada, the legislature (or commons) has been paramount over the executive branch of government in the sense that "it is the provincial legislature and electorate which decide who shall form the effective executive government of the province."³² Indeed, as Peter Hogg points out, "[t]he effect of responsible government is to transfer effective political power to elected officials."³³ The Supreme Court of Canada has stated, in Reference Re Amendment of the Constitution of Canada (Nos. 1, 2, and 3), as follows: "ministers are appointed by the Crown on the advice of the Prime Minister or Premier when he forms or reshuffles his cabinet. Ministers must continuously have the confidence of the elected branch of the Legislature, individually and collectively. Should they lose it, they must either resign or ask the Crown for a dissolution of the Legislature and the holding of a general election.

Most of the powers of the Crown under the prerogative are exercised only upon the

"Developing Strategies for the Information Society," *The Information Society*, 1 (1982): 339-356; and John Ng'ang'a Gathegi, "The State and Society: Intervention in the Creation of Scientific Information in Developing Countries," 43 (4) *Journal of the American Society for Information Science* (1992): 323-333 (focussing particularly on the example of Kenya).

³²Kenneth C. Wheare, *Federal Government*, 4th ed. (1963), pp.17-20, quoted by Neil Finkelstein in *Laskin's Canadian Constitutional Law*, 5th ed. (Toronto: Carswell, 1986), vol.1, at.17.

³³Peter W. Hogg, *Constitutional Law of Canada*, 2nd ed., at 194.

advice of the Prime Minister or the Cabinet which means they are effectively exercised by the latter, together with innumerable statutory powers delegated to the Crown in council."³⁴ Hence the Governor General and provincial Lieutenant Governors, in representing the Queen in Canadian jurisdictions, are exercising a largely ceremonial role. The Cabinet is chosen from the elected legislatures.³⁵ The legislative power exercised by the executive branch is delegated to the Lieutenant Governor in Council pursuant to legislation enacted by the legislatures.³⁶ The real choice, then, in a given policy area is whether the legislature (federal or provincial as determined under the constitution) will act (or will empower the executive to act) or whether the area will be left to develop through the common law (that is, the judiciary).³⁷

Of course, if a statute is enacted, it must not be forgotten that the courts

³⁴Reference Re Amendment of the Constitution of Canada (Nos. 1, 2, and 3) [1981] 1 *Supreme Court Reports* 753, per Martland, Ritchie, Dickson, Beetz, Chouinard and Lamer JJ, majority on the question of constitutional convention, as quoted by Finkelstein in *Laskins' Canadian Constitutional Law*, 5th ed., vol. 1, at 8.

³⁵With the exception of the federal Cabinet, which from time to time has included members selected from the appointed upper chamber, the Senate. The provinces have no upper chamber.

³⁶See, for example, s. 60 of the Act and Regulations 15/89 and 516/90 promulgated pursuant to that enabling section. This constitutional discussion of the power of the branches of government in the Canadian context of responsible government is not concerned with the question of the role of the Cabinet (chosen from the governing party of the day) in setting the legislative agenda of the elected legislatures.

³⁷For a history of the separation of the judicial branch of government from the executive in Ontario see Margaret A. Banks, "The Evolution of the Ontario Courts 1788-1981," in *Essays in the History of Canadian Law, Vol. II*, ed. David Flaherty (Toronto: The Osgoode Society, 1983), pp. 492-572, at 507 ff. Banks also discusses the origins of Canadian "responsible government, in which the executive sits in the legislature and is responsible to it, and the American congressional system, where there is a greater separation of powers between legislature, executive, and judiciary." (p.507)

continue to play a role in interpreting that enactment (leaving aside their right to declare such an enactment invalid on constitutional grounds). Indeed, the courts in both the United States and Canada have been active in the information policy area, particularly in their function as interpreters of legislation.³⁸ It has been argued philosophically that it is very difficult for the courts to take a pro-active policy role in today's society.³⁹ On the other hand, 1982 witnessed a profound change in the structure of the Canadian constitution when the Canadian Charter of Rights and Freedoms⁴⁰ was enshrined in our law. The rights guaranteed under that Charter cannot be abrogated in any way by any legislative or executive body.⁴¹ The courts are the final arbiters of disputes over the Charter. Because of this, the judiciary are necessarily playing an active role in shaping Canadian society during this period of change.⁴² It has been argued, however, that the

³⁸See, for example, R.v. Stewart (1988) 41 *Canadian Criminal Cases* (3d) 481 (Supreme Court of Canada) which dealt with whether confidential information was not property in the context of theft under the Criminal Code of Canada; or Feist Publications v. Rural Telephone Service 111 *Supreme Court* 1282, 1991 *U.S. Lexis* 1856 (United States Supreme Court) where it was found, on the grounds of non-originality, that the plaintiff had no copyright in its telephone directory.

³⁹See Daniel A. Farber and Phillip P. Frickey, "In the Shadow of the Legislature: the Common Law in the Age of the New Public Law," *Michigan Law Review* 89 (1991): 875-906. See also Beverly McLaughlin, "The Role of the Court in the Post-Charter Era: Policy-maker or Adjudicator" (Text of the Viscount Bennett Memorial Lecture Canada) *University of New Brunswick Law Journal* 39 (1990): 43-64.

⁴⁰Constitution Act, 1982, Part I.

⁴¹Except as provided for in the Charter itself. See ss. 1 and s. 33 (discussed further below).

⁴²"Top Court Becomes Supreme Player," *Globe and Mail*, Monday, April 6, 1992, A1, continued as "Court's Decisions can Affect the Lives of Millions," A4. This article bears out the predictions made by James G. Snell and Frederick Vaughan in the closing chapters of their *The Supreme Court of Canada: History of the Institution* (Toronto: The Osgoode Society, 1985); see p.251 ff. The role of the Supreme Court of Canada in the constitutional process is also clearly analyzed in David Milne's

non-elected judiciary should not be driving fundamental change in our democracies.⁴³

The Canadian judiciary have an undeniable role in Canadian information policy development, however, because a number of the rights and freedoms guaranteed in the Charter may be involved in information policy questions. In particular, section 2(b) guarantees the right to "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."

Comprehensive strategy is probably best delivered through legislative or executive action (within the limitations established by the legislature as discussed). Indeed, some commentators have argued that only legislative action can address the needs of the information society.⁴⁴ Perhaps legislation can provide a timely, broad response to perceived problems; but, if it intervenes in an ill-conceived manner, it may not be useful in achieving long-term progress.

No matter which level or arm of government is implementing information policy or formulating strategy, it is surely a serious problem if, as Phillip Cooper writes, "... those who work with information and those who must reach legal conclusions about it

The Canadian Constitution: The Players and the Issues in the Process that has led from Patriation to Meech Lake to an Uncertain Future (Toronto: James Lorimer, 1991); see especially pp. 300-11.

⁴³ Farber and Frickey, "In the Shadow of the Legislature."

⁴⁴ Kirby quotes with approval the then French Minister of Industry, suggesting the need for "legal infrastructure to sustain the transition to the information economy" in M.D. Kirby, "Information Technology in Context," in *An Exploration of the Legal Issues in Information and Communications Technologies*, (ICCP Report No.8, 1986) p. 11. Kirby also maintains in his "Kirby's Ten Commandments," *The Privacy Bulletin* 2(2) (1986) p. 1, in his second commandment, that only legislation can respond to the needs of society as the common law is too inflexible.

frequently think of the subject matter in entirely different ways."⁴⁵ As Cooper points out, analysts and policy-makers have traditionally focussed on paired contrasts when confronting information problems: freedom of information versus the right to privacy, individual rights versus government prerogatives. This narrow focus obscures, distorts or ignores much of the complexity inherent in this field.⁴⁶ Government is becoming active in areas of information strategy through legislation such as the statute with which this research is concerned. The tendency toward bipartite analysis might lead analysts and critics to concentrate on the effect of this type of government activity on "the public", generally meaning private individuals. However, government information strategy also concerns the third partner in our industrial society, the organization. An organization is created when a number of persons or groups wherein individuals have certain specific responsibilities unite for some purpose or work.⁴⁷

Donald Lamberton concluded that the "literature of economics has shown a sharpening focus on the role of the organization."⁴⁸ Indeed, Florence Heffron writes

⁴⁵Phillip J. Cooper, "Acquisition, Use and Dissemination of Information: A Consideration and a Critique of the Public Law Perspective," *Administrative Law Review* 33 (1981):81-107 at 101.

⁴⁶In his important and interesting paper, "Acquisition, Use and Dissemination of Information," published in 1981, Cooper discusses the problems of the legal response to the increasing importance of information. I hereby acknowledge my indebtedness to Cooper for his suggestion that all law dealing with information be viewed under the general pattern analysis of acquisition, use, and dissemination. As I will urge later, however, I do not regard the area of use as a proper area for legal oversight.

⁴⁷Definition taken from the *American Heritage Dictionary of the English Language*, s.v. "organization."

⁴⁸Donald M. Lamberton, "The Economics of Information and Organization," *Annual Review of Information Science and Technology* 19 (1984): 3-30 at 22.

that "[o]rganizations are the primary means by which public policy is implemented."⁴⁹ These organizations themselves, however, are undergoing profound change to respond to the new economy. The period of the typical large, hierarchical, pyramid business firm is apparently passing, to be replaced by a flat, dispersed organization with autonomous specialists linked directly to a small management core.⁵⁰ Organizations must place an increased value upon communication with the public through the organization's "front line". In the current, typical structure, these people are almost invariably in the lower ranks of the company and therefore, to begin to effect change toward the organization structure Drucker predicts for the future, organizations must place an increasing importance on channels of communication in the organization in order to move information from the top down to empower those in the "front line." As Peter Drucker envisages the corporate future, firms will be turned upside down: "[i]n the information based organization, the knowledge will be primarily at the bottom, in the minds of specialists who do different work and direct themselves."⁵¹

Therefore, the effect of government activity or inactivity in assisting corporations to make the transition to the information-based economy will be crucial to our national future and to the futures of individuals and governments in our society. The

⁴⁹Florence Heffron, *Organization Theory and Public Organizations: The Political Connection* (Englewood Cliffs, N.J.: Prentice Hall, 1989), p. ix.

⁵⁰Drucker, "The Coming of the New Organization."

⁵¹*Ibid.*, p.47.

Act studied in this research affects this transition. Although the purpose of the statute speaks from the perspective of individuals external to the institutions (see s.1, quoted at the beginning of this chapter),⁵² in order to achieve the stated objects of the legislation, the statute actually regulates, not those external individuals, but individuals within the institutions (organizations) which are subject to the Act. To achieve the object of protecting the privacy of information about identifiable individuals, the statute actually regulates, within the organizations which are covered by them, the acquisition of certain information by the organizations and the dissemination of certain information from the organizations. In order to achieve the object of access to general information held by the organizations (that is, acquisition of information from the organizations by those external to it), the statutes regulate aspects of the dissemination of general information from the organizations. One approach to assessing the effectiveness of these legislative initiatives, therefore, is to examine the effect of this legislation *within* the organizations which are subject to it. This study took that approach.

2.2 Understanding information

2.2.1 The problem

Two scholars have written that information "is the structure which directs social energy to enable society to adapt to a changing environment".⁵³ Another has written

⁵²See above, p.7.

Information is Power. This is a maxim worn shiny by frequent use. But power over what? Let us expand the maxim to understand it to the full. Information is power over decisions, power over capital, power over individuals, power over organizations, power over adversaries, power over the past, the present and the future. And information power lends itself to any use and abuse. Automation in its turn changes the modes of usage, the control over usage, the costs of usage, and the opportunities of usage. The occurrence of such changes is mostly taken for granted but it has often been stated that the consequences of the automation of information processing, not the least the social consequences, are both complex and unknown.⁵⁴

It is increasingly recognized, therefore, that profound change is taking place in our society and that change is related to information.⁵⁵ Indeed, it is the importance of information in society and the questions of control over information which prompted this research, and, of course, the concept of information is central to this study. However, as discussed below, there is no consensus on the exact meaning of the term "information".⁵⁶ It is becoming imperative that a practical approach to information be

⁵³D.H. Fiedler and H. Burkert, "A Structured Approach to the Teaching of Information Policy and Information Law," in *Proceedings of the Conference of Institutions Responsible for Teaching the Subject 'Computers and Law', Rome, 9-11 October 1985: Reports Presented at the Conference* (Strasbourg: Council of Europe, 1987), p. 5.

⁵⁴Peter Seipel, *Computing Law: Perspectives on a New Legal Discipline* (Stockholm: LiberFörlag, 1971), pp. 241-242.

⁵⁵See James R. Beniger, *The Control Revolution: Technological and Economic Origins of the Information Society* (Cambridge, Mass.: Harvard University Press, 1986), for a very thought-provoking analysis of the origins and defining characteristics of the "information society".

⁵⁶It is interesting that no definition of information appears to exist in Canadian law. Although there are a number of statutes, both federally and provincially, which would seem to be primarily concerned with information, none of these contains a definition of information. Relevant federal legislation would include Official Secrets Act (R.S.C. 1985, c.O-5), and Privacy Act (R.S.C. 1985, c.P-21, as amended) and Access to Information Act (R.S.C. 1985, c.A-1, as amended). At the provincial level, there are the two Ontario enactments on privacy and access already discussed and Quebec's older Act Respecting Access to Documents held by Public Bodies and the Protection of Personal Information

developed despite our incomplete knowledge of the phenomenon.⁵⁷

This poses more than a semantic difficulty for the researcher. It is impossible to describe completely, to count, or to measure that which cannot be accurately defined.

This impossibility poses enormous difficulties for the conduct of empirical research in an ill-defined area, as indeed it does for government policy-making in the same amorphous area.⁵⁸

Sandra Braman has also recognized the difficulty of definition in information

(R.S.Q.1990, c.A-2.1). Where information is involved in a definition, it is defined in terms of itself. Judges have avoided breaking new ground in terms of definition, partly through the deliberate artifice of bringing "information" problems within the already well established concepts of "property".

Legal thought is, in essence, the process of categorization. The lawyer is taught to place phenomena into categories such as fact or law, substance or process, public or private, contract or tort, and foreseeable or unforeseeable, to name but a few. Categorizing phenomena determines how they will be treated by the legal system.

(from Kenneth J. Vandervelde, "The New Property of the 19th Century: the Development of the Modern Concept of Property," *Buffalo Law Review* 29 (1980): 325-367 at 327).

⁵⁷Richard Saul Wurman's *Information Anxiety* (New York: Doubleday, 1989) underscores the dangers of not coming to grips with the change. The Canadian government is not unaware of the need for a coping strategy: see Arthur J. Cordell, *The Uneasy Eighties: The Transition to an Information Society* (Ottawa: Science Council of Canada, 1985) and *Planning Now for an Information Society: Tomorrow is Too Late* (Canada: Science Council, 1982).

⁵⁸Roger McCain ("Information as Property and as a Public Good: Perspectives from the Economic Theory of Property Rights," *Library Quarterly* 58 (1988): 265-282), points out that the peculiarities of information make it very difficult to analyze as an economic "good". He maintains that information forces the analyst to confront the limits of modern economic knowledge. Calvin Kent ("The Privatization of Government Information: Economic Considerations," *Government Publications Review* 16 (1989): 113-162) considers information to be a "merit good" -- a good or service which the private sector would provide, but in insufficient quantities to meet the demands of society. He admits that there are problems in valuing information and concluded that government and politics must therefore replace the market in regulating information activities in society. He is, however, forced to conclude that economic analysis cannot resolve the challenges of information issues.

policy-making. In laying the theoretical foundations for her doctoral research, she spent considerable effort trying to deal with the plurality of definitions of information in the literature. Her approach to coping with this diversity was to create four categories of definition: information as a resource, information as a commodity, information as a perception of pattern, and information as a constitutive force in society. Braman's categories deliberately represent different approaches to information which are not mutually exclusive since she argues "that multiple definitions apply concurrently"⁵⁹ because "society is intricate, multilevel and global in nature."⁶⁰ Indeed, Braman takes the position that

what would seem the most logical, and in many respects the easiest, way out of this definitional dilemma - to choose one operational definition of information for use in all situations - is unfortunately to take a political stance that will at best polarize the policy discussion and at worst exclude certain discussants from participation.⁶¹

Braman's approach was to group multiple definitions into a limited number of categories. This study takes a different approach to the problem of definition.

Celebrating diversity of definition, as Braman does, may be a practical approach to cooperation,⁶² but it leaves the researcher (and the policy maker) with very real

⁵⁹Sandra Braman, "Defining Information: An Approach for Policy Makers," *Telecommunications Policy* 13 (1989): 233-242 at 234-235. This article draws on material first presented in her dissertation, "Information Policy and the United States Supreme Court" (Ph.D. dissertation, University of Minnesota, 1988).

⁶⁰*Ibid.*, 242.

⁶¹*Ibid.*, 234.

difficulties for developing a common framework for understanding the implications of proposed policies in all areas of possible ramification. Therefore, instead of trying to find an organizing principle by creating a hierarchy of definition, I have instead looked within the definitions proffered in the literature for a single common element which I have then used to structure my approach. As a result, this study advances a model for the study of information which does not rely on a full grasp of the concept of information. The model permitted isolation of an important aspect or characteristic of information: flow. Flow has two aspects: direction and volume. The difficulties of measurement already discussed prevent accurate analysis, as yet, of volume of flow. As is further discussed below, the one common element of definitions of information (other than those which try to define information by analogy to something else) is the element of direction. One important aspect of the design of this research was to provide an analysis of an aspect of the directions of information flow in organizations.

2.2.2 The definition of information

The ALA Glossary of Library and Information Science (rev. ed.) defines information as

all the ideas, facts and imaginative works of the mind which have been communicated, recorded, published and/or distributed formally or informally in any format.⁶³

⁶²Ibid., 242.

To be information, "ideas, facts, and imaginative works" cannot simply exist, they have to have been "communicated, recorded, published and/or distributed". This communication, recording, publication and distribution can collectively be described as dissemination. Thus facts may exist, but, prior to dissemination, are not information. The decision to disseminate ideas and facts is necessarily a human decision (at some level). This definition is at odds with other definitions which would not always require human agency in the production of information. Acceptance of this definition of information is the justification in the research design for the concentration on individuals within the organizations. This definition is further developed and expressed in a simpler form at the end of this section, but this formulation forms the basis for that development.

Other definitions may be compared with this ALA formulation to see what elements of commonality and difference exist. One definition which seems to include information creation at the instigation of a machine is that adopted by the Economic Council of Canada in 1972:

everything that can be transmitted as some sort of message between man and man, man and machine, and machine and man.⁶⁴

This definition, emphasizing the "message", adopts an approach which may be thought of as "the communications model definition". The communications model is often

⁶³*ALA Glossary of Library and Information Science*, rev. ed., (Chicago: American Library Association, 1983). There was no definition of "information" in the original 1943 edition.

⁶⁴Canada, Economic Council of Canada, *Report on Intellectual and Industrial Property* (1971), p. 16.

thought to derive from the pioneering work of Shannon and Weaver in 1949.⁶⁵

However, in point of fact, their work in "information theory" was concerned only with the *carriers* of information, not with the information itself. Subsequent enthusiasts have obscured this subtlety in their work.⁶⁶

Karl Deutsch, writing in the sixties about government structure, exemplifies this same type of approach to information as exemplified in the Economic Council's definition. He defines information as "a patterned distribution or a *patterned relationship between events*" [his emphasis].⁶⁷ These definitions include the concept of direction, although the emphasis is on two-way communication flow. Deutsch then speaks of the processes which together form

a *channel of communication* and information is that aspect of the state description of each stage of the channel that has remained invariate from one stage to another. That part of the state description of the first stage of the channel that reappears invariant at the last stage is then the information that has been transmitted through the channel as a whole.⁶⁸

The research design developed in this study made no attempt to comprehensively examine both end points of an information exchange, which would be

⁶⁵Claude Shannon and Warren Weaver, *The Mathematical Theory of Communication* (Champaign-Urbana: The University of Illinois Press, 1949).

⁶⁶See the discussion in Walter Buckley, "Signals, Meanings, and Control on Social Systems", in *The Study of Information: Interdisciplinary Messages*, ed. Fritz Machlup and Una Mansfield (New York: John Wiley and Sons, 1983) p. 601, and also Fritz Machlup, "Semantic Quirks in Studies of Information" in the same volume, pp. 641-71, at 659-60. Shannon and Weaver's work on "information" has led to a whole discipline of study called "information theory" which Machlup says is incorrectly titled and a misuse of the term "information".

⁶⁷Karl W. Deutsch, *The Nerves of Government: Models of Political Communication and Control* (New York: The Free Press, 1966), p. 146.

⁶⁸*Ibid.*, p. 147, citing D.O. Hobb, *The Organization of Behaviour* (New York: Wiley, 1949), pp. 109-134.

necessary if this approach to the definition of information had been adopted. It is argued that a comprehensive and useful picture of information flow in a sector can be obtained by examining the direction of information flow to and from a given set of individuals.

According to the ALA Glossary definition adopted for this study, once disseminated, information is available. It exists as information, whether or not anyone seeks it. This contrasts with the concept of information put forward by Stan Metcalfe, that information is

the flow of knowledge between different individuals, that is as the transmission of a state of knowing.⁶⁹

Implicit in Metcalfe's definition is the notion that information only exists as it is found to answer an information need.⁷⁰ It is suggested that what the existence of an information need establishes is, not the existence of the information itself, but the *VALUE* of the information. Indeed, information only has value as it satisfies an information need.⁷¹

This definition, then, includes the common element of direction. Indeed, it explicitly

⁶⁹Stan Metcalfe, "Information and Some Economics of the Information Revolution," in *New Communications Technologies and the Public Interest: Comparative Perspectives on Policy and Research*, ed. Marjorie Ferguson (London: Sage Publications, 1986), pp.37-51 at 39.

⁷⁰I would raise this same objection to the definition of information recently put forward by Abbe Mowshowitz: "Information is the ability of a goal-seeking system to decide or control." See "On the Market Value of Information Commodities. 1. The Nature of Information and Information Commodities," at 226.

⁷¹Indeed, Peter Seipel has opined that "for a discussion of the notion of information law, criteria of existence are of less concern than criteria of value," in "Information Law Revisited," *Journal of Media Law and Practice* 7 (1987): 51-55 at 56.

refers to "flow". However, the question of value has been irretrievably mixed with the question of meaning and this confounds the definition and renders it unhelpful as a discrete definition of the concept.

This confusion of value with meaning is one reason why the "property" approach to information developed. It is precisely because the characteristics which define information and those which define property are not parallel that the analogy between information and property is not proving useful. One "property-type" definition says that information is "a non-tangible good which arises in vast quantity from the total activity of a society, cultural and moral as well as commercial and industrial."⁷² There are at least three characteristics of information that distinguish it from traditional concepts of property: it is shareable, it is diffusive, and it is expandable.⁷³ As Gary Byrd points out, there is a complete lack of correlation between the volume of information available and its value.⁷⁴ Information is also a commodity which does not depreciate⁷⁵ -- it is

⁷²Anthony Smith, "Telecommunications and the Fading of the Industrial Age," *The Political Quarterly* 54 (1983): 127-136 at 127.

⁷³Harlan Cleveland, "Information as a Resource," *The Futurist* 16 (1982): 34-39 at 37. In this article, Cleveland identifies three other characteristics of information. The other three are that information is compressible, substitutable, and transportable. Since all three can equally characterize various objects, I do not find these latter three characteristics of information useful in defining the unique character of information. Indeed, Cleveland himself omits these latter three in a short article titled "King Canute and the Information Resource," *Technology Review* 87 (1984): 12-14.

⁷⁴Gary D. Byrd, "The Economic Value of Information," *Law Library Journal* 81 (1989): 191-201 at 200.

⁷⁵*Ibid.*, p. 195.

either accurate or inaccurate, and while time may affect accuracy, it does not necessarily do so. In the case of the two week old newspaper, for example, the information it contains remains an accurate reflection of the events of the day preceding its publication and is one of the best sources available for that information. On the other hand, its content will not be the most accurate reflection of the world situation for either the week before or the week after its publication. The source's value depends upon the need which the information-seeker looks to satisfy, not upon the age of the source. The scarcity of information on a particular issue does not necessarily increase the value of the information: if a particular completed dissertation addresses an area germane to this study, for example, but is not widely available, reference can be made to it by this researcher although the information in the study was not available to this researcher and this research can move forward without it. It may be the case that this research uncovers the same information which would have been provided in the other study through other sources. That would be inefficient perhaps, but the value of that inefficiency is in terms of the researcher's time, not any intrinsic value of the information contained in the earlier study.

The real problem with information viewed as property is that our concepts of property are bound up in concepts of value. The value of property fluctuates according to the demand or market for it. However, that market analysis is dependent upon notions of

scarcity or finite availability. These notions cannot be applied to information analysis with consistent success. In coming to grips with information, R.J. Roberts emphasizes the aspect of universal possession and argues that information's only value lies in secrecy.⁷⁶ However, it has been pointed out that while secrecy may affect the *cost* of information, it does not influence its *value*.⁷⁷ The value of particular information is defined by the individual who recognizes a particular information need. Under the Act which is the subject of this research, a government organization can charge fees for answering a particular request for general information held by that agency. Thus a requester can pay several hundred dollars to get information from the agency, and then determine that, perhaps because of the portions of the material which are withheld by the organization exercising its proper authority under the statute, the information which was released is valueless to the recipient (despite the cost).

An information need is personal to the human individual who has it. These needs can be institutionalized and computers can be programmed to reflect recognized needs, but essentially, an information need is subjective and personal. Moreover, the concept of property is not concerned with flow as a necessary characteristic. The analogy cannot be usefully made, then, between property and information.

⁷⁶R. J. Roberts, "Is Information Property?" *Intellectual Property Law Journal* 3 (1987): 209-215.

⁷⁷I wish to acknowledge that this idea was brought to my attention by Robert Barr in a personal communication, October 22, 1991. The *American Heritage Dictionary of the English Language, s.v.* "cost" and "value", defines "cost" as "an amount paid or required in payment for a purchase" while "value" is defined to be "1. an amount considered to be a suitable equivalent for something else... 3. worth in usefulness or importance to the possessor: utility or merit".

Once an information need is recognized, an individual will seek the information necessary to satisfy it. Many sources may be available to satisfy a particular information need. An individual will search his or her available environment for information and will take information from wherever it can be found. Indeed, an individual will not necessarily persevere to obtain the "best" information (that is, information that is the most timely or most authoritative) in a given situation, if the need is satisfied with something less.⁷⁸ Indeed, accessibility often outweighs other considerations as the factor in choosing an information source.⁷⁹ Factors which influence the choice of information accepted to satisfy a need include not only those which revolve around the available information, its nature and quality, but also characteristics particular to the searcher, such as frustration and tolerance levels.⁸⁰

Once the information is acquired, the individual will use it to satisfy the need which led to its acquisition. The process of use may or may not result in further

⁷⁸ See Ching-Cheh Chen and Peter Hernon, *Information-Seeking: Assessing and Anticipating User Needs* (New York: Neal-Schuman, 1982); and also Brenda Dervin et al., *The Development of Strategies for Dealing with Information Needs of Urban Residents* (Bethesda, Md.: ERIC Document Reproduction Service, ED 125-640 (Phase 1), ED 136-791 (Phase 2), and ED 148-389 (Phase 3)).

⁷⁹Byrd, "The Economic Value of Information," p. 199.

⁸⁰D.C. Blair, "Searching Biases in Large Interactive Document Retrieval Systems," *Journal of the American Society of Information Science* 31 (1980): 271-7. Blair advances the interesting concept of the "futility point" beyond which a user will not browse a retrieved set in an online retrieval context. He also discusses the idea of "anchoring" -- the tendency not to deviate from the path of search originally embarked upon, no matter what the results. Indeed, individuals will often be satisfied with erroneous information: see John Forester, "Planning in the Face of Power," *Journal of the American Planning Association* 48 (1982): 67-80. The author discusses the concept of "misinformation". The negative impact of wrong or misleading information is certainly one aspect of the information problem which deserves further study.

dissemination of information at that time, but will affect all further disseminations of information emanating from that individual, at least insofar as that individual's knowledge base has been altered⁸¹.

This cycle is often discussed in the literature as a hierarchy:⁸²

data
information
knowledge
wisdom

Data have an objective existence independent of any human agency. Information, on the other hand, has an objective existence, but must be *available to someone*, to distinguish it from data. The requirement that data must be disseminated to become information renders inadequate the definition of information given by Michael Tushman and David Nadler: "data which are relevant, accurate, timely and concise"⁸³. Such data remains

⁸¹These ideas are further explored in the work of N. J. Belkin. See for example, "Information Concepts for Information Science," *Journal of Documentation* 34 (1978): 55-85, and "Anomalous States of Knowledge as a Basis for Information Retrieval," *Canadian Journal of Information Science* 5 (1980): 133-43.

⁸²Some authors do not extend the hierarchy as far as wisdom (see Robert P. McGowan, "Organizational Decision-Making and Information Systems: A Case Analysis of State Agencies," Chapter 10 in *Decision Making in the Public Sector*, ed. Lloyd G. Nigro (New York: Marcel Dekker, 1984), pp. 262-3 for a cogent discussion of the first three levels), and indeed, as indicated below, this research need not concern itself with fourth level since the distinctions surrounding the second, information, are all that concern this research. Phillip J. Cooper also discusses this hierarchical definition: "a 'datum' is a unit of fact or opinion; 'information' is a coherent set of data and 'knowledge' is evaluated information." ("Acquisition, Use and Dissemination of Information," p. 99.) Note that my own definitions of the elements of the hierarchy are different.

⁸³Michael L. Tushman and David A. Nadler, "Information Processing as an Integrating Concept in Organizations Design," *Academy of Management Review* 3 (1978): 613-24 at 614. This concept of

merely static, not flowing, not information.

Knowledge, the next level in the hierarchy, enters the realm of the subjective and is personal to the individual. Knowledge is concerned with a state of knowing, not with flow. Drucker phrases the situation as follows:

[i]nformation is data endowed with relevance and purpose. Converting data into information thus requires knowledge. And knowledge by definition is specialized.⁸⁴

It can therefore be argued that the definition of information put forward by the Office of Management and Budget in the United States in its Circular A-130 is philosophically flawed. It states:

the term "information" means any communication or reception of knowledge such as facts, data or opinions, including numerical, graphic, or narrative forms, whether oral or maintained in any medium, including computerized data bases, paper, microform, or magnetic tape.⁸⁵

This definition is useful, in its emphasis on flow, as imparted in the phrase "communication or reception of knowledge". However, the definition requires information first to be knowledge, rather than the other way around. It would therefore permit the interpretation that machines impart knowledge. Knowledge however is generally agreed to be a subjective, human attribute.

information would lead researchers to concentrate unduly on considerations of physical forms of recording information, artifacts of "data", and cause them to overlook the human aspects of the problems facing corporations.

⁸⁴Peter F. Drucker, "The Coming of the New Organization," p. 46.

⁸⁵United States, Office of Management and Budget, "Management of Federal Information Resources," *OMB Circular No. A-130, Federal Register* 50, no. 247, (Tuesday December 24, 1985): 52730 at 52735.

This brings the discussion back to the ALA definition of information with which this section opened, and which forms the basis of the approach used throughout this study:

all the ideas, facts and imaginative works of the mind which have been communicated, recorded, published and/or distributed formally or informally in any format.

One may usefully paraphrase this definition, using the terms of the hierarchy outlined above, thus

Information is all data which have been made to flow.

This final formulation forms the basis for this empirical research study.⁸⁶

2.2.3 The concept of privacy in the information context

The statute with which this research is concerned has two thrusts. One is providing access to information held by government institutions. The other is "to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information".⁸⁷ This

⁸⁶In this paraphrasing, "works of the mind" has been taken to "work" in the sense of "the output of an artist or artisan ..." (see definition 5a., *American Heritage Dictionary of the English Language*, s.v. "work"). One's ideas, facts and works of the mind indeed spring from one's knowledge, but when expressed, they are simply one's output and will not necessarily be absorbed into the knowledge of anyone else. In themselves, once output, they are simply data. The concept of "flow" is further explained in Figure 6, "The approach to information taken by this study," and in the text below in section 2.3.

research treats the statute as a whole and does not isolate either the "access" or the "privacy" aspects of the Act. This is because I see the two as philosophically and practically inextricably linked in this legislation. However, "privacy" in this respect has often been treated as a separate research area.⁸⁸ Therefore, it is important to discuss why this has not been done in this research.

One classic statement of privacy is "the right to be left alone."⁸⁹ This concept goes beyond questions of information flow and includes issues such as abortion. Narrower issues of privacy which involve only information rights (as distinct from other human rights) have come to be labelled personal data protection issues. Alan Westin's definition of personal data protection is "the claim of individuals, groups or institutions to determine when, how and to what extent information about them is communicated to others."⁹⁰ Personal data protection legislation which reflected the orientation of the classical "right to be left alone" privacy definition would tend to be centred upon the individual: to regulate how, when, and to what extent individuals are compelled to disseminate information about themselves to other individuals or organizations. That, as

⁸⁷Quoting again from s.1 of the Act.

⁸⁸See works such Flaherty's, *Protecting Privacy in Surveillance Societies*, and Bennett's *Regulating Privacy*.

⁸⁹Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4 (1893): 193-220. David F. Linowes and Colin Bennett, in "Privacy: Its Role in Federal Government Information Policy," *Library Trends* 35 (Summer 1986): 19-42, make the point (p. 22) that the definition was first presented by Judge Cooley and was elaborated upon in the Warren and Brandeis article.

⁹⁰Alan F. Westin, *Privacy and Freedom* (New York: Atheneum, 1967), p. 7.

discussed above, it is not how the 1987 Ontario Act is framed. It regulates the actors in government, not the individuals outside government.

In this Act, the government's right to determine what is properly to be collected from individuals is explicitly preserved:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.⁹¹

The Act therefore says nothing about the relationships between private individuals and these organizations. This legislation does not prohibit the government from properly collecting personal information from individuals (thus not requiring government to leave individuals alone in this respect). The legislation is not directed to protecting individuals from dissemination of their personal data to government. Therefore, it may be argued that it does not address privacy issues at all. Philosophically, legislation which was intended to reflect the "right to be left alone" privacy approach would also have to be concerned with some questions beyond personal data protection issues. It should concern questions about general information acquisition by individuals: is the privacy of an individual being violated through enforced acquisition of information or through attempts to coerce or involve the individual in acquisition of information? Again, the 1987 Ontario statute has no bearing upon this kind of broader information privacy question.

⁹¹S.38(2) of the Act.

Under this legislation, moreover, personal data is protected even *after* communication by the individuals concerned. That is, the use, dissemination, and disposal of personally identifiable information, once collected, is strictly controlled by the legislation whether or not the subject individual is aware of the government's activities. The data collected also has to be accorded the protection of the statute by the institution even if the individual subject makes it publicly available through other channels.⁹² The personal information purpose of the statute ("to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information") is, therefore, both narrower than the ambit of "right to be left alone" privacy legislation should be, since it says nothing about acquisition of general information by individuals, and yet broader in scope than personal data protection which emphasizes only dissemination of personal data by those who are the subjects of the information.

Under this Ontario legislation, data about identifiable individuals are protected because it is information related to a certain class of subject and is acquired or held by a certain class of organization. Other data are regulated under this legislation because they are held by a certain type of organization, regardless of subject matter. In either case, the

⁹²It may be that the institution could make such data available to a requester under s.21(1)(f) of the Act "if the disclosure does not constitute an unjustified invasion of personal privacy" but this result could only occur once the institution had satisfied itself that it had considered the test imposed by the statute. Therefore, such data can still be said to be subject to the Act.

controls created by the legislation are dependent upon characteristics of the information itself (its subject and location). The controls upon information created by this legislation do enter into the realm of personal data protection issues but go beyond Westin's concentration upon the active rights of the subject individuals by building controls over the class of information based upon its subject (identifiable individuals) even when no longer held by those identifiable individuals. By concentrating upon characteristics of the data, rather than focussing upon active rights of individuals, the statute is not framed in privacy terms. It does certainly have the effect of enhancing personal privacy protection, but only in certain limited instances: where personally identifiable information is held or requested by government.

The structure of this legislation, on the other hand, makes it much more appropriate to orient research in terms of the whole statute, rather than isolating either the "privacy" aspect or the "general information" aspect. The statute is framed in terms of access to "records". Records may contain both personally identifiable information and other information. In responding to dissemination requests, the records are to be analyzed to identify which portions are to be treated under the part of the statute dealing with personally identifiable data⁹³ and the which remain to be treated under the general access provisions of the Act.⁹⁴ It is the characteristics of the data elements in the record

⁹³Sec ss.21 and 42 of the Act.

⁹⁴See s.10 of the Act. Note that s.10(2) specifically endorses the concept of the severability of records.

which determine how each is to be treated under the Act. Knowledge of both aspects of the legislation would be required to make the judgements required under either. Both aspects of the statute reflect a general approach to information policy, framed in terms of characteristics of the information itself, which can be analyzed fruitfully within the broader framework of information concerns.⁹⁵

2.3 The information process model

The crucial questions now before the policy-makers in our society involve considerations about the complex problems in dealing with information which have been discussed in previous sections: the difficulty in valuing it, particularly given its shareable characteristic; the difficulty in attempting to control it within political jurisdictions given its diffusive nature; the difficulty in keeping people informed given the difficulty of accurately gauging people's needs (their own perceptions may be obscured by the expandability of information - they may not realize that they do not know something since

⁹⁵In taking this approach, I differ from David Flaherty who sees personal data protection as a sub-field of privacy (see his "The Emergence of Surveillance Societies in the Western World: Toward the Year 2000," *Government Information Quarterly* 5 (1988): 377-87, particularly p. 386). On the other hand, he argues (in "Data Protection and National Information Policy," in *From Data Protection to Knowledge Machines*, pp. 29-47 at 41) that "[m]ore efforts may also be necessary to distinguish data protection as a human rights activity from data protection as a component of information policy." I would argue that this Act presents an example of personal data protection created purely in the context of information policy, without a human rights aspect.

they are satisfied with some other information). To undertake comprehensive empirical research to answer all the questions involved in understanding our "national information policy" would be a mammoth undertaking. However, it is possible to model the system within which that policy functions. Leaving aside for the moment the question of consensus on definition, it is important to gain an understanding of how information flows in an organization and in a country,⁹⁶ and what steps are effective in influencing the transfer of information between individuals in organizations and in the country. The following model has been developed to clarify the process.

Information must be acquired by an individual in order to be used. The individual may then decide to create further information through dissemination.

Therefore, the key elements of the *information process* are:

ACQUISITION-USE-DISSEMINATION.

These processes are all human processes. Technology is only a tool which can aid in these processes, at the direction of humans. Theoretically, accurate examination of each individual's acquisition, use and dissemination of information, both as an individual and as a component of an organization, would give one a total picture of the information

⁹⁶ Eileen Trauth, after discussing the inadequacies of technology-centred approaches to information policy, suggested a systems approach to national information policy analysis, stressing the input-process-output framework. See "An Integrative Approach to information Policy Research." While I adopt her theoretical approach, I disagree with her application of her theory, particularly as illustrated in her Figure 2, (p. 49) which fatally oversimplifies the information functions/information issues interaction.

process in society. The pattern of information processing in our societies is like the biological processes in nature (see Figure 1A).⁹⁷ Just as everything in nature depends

⁹⁷Most interesting questions for further research arise as to how the biological cycles and the information cycles interact with each other and are affecting each other today. In today's ardent conservation efforts, is information changing the way we interact with nature?

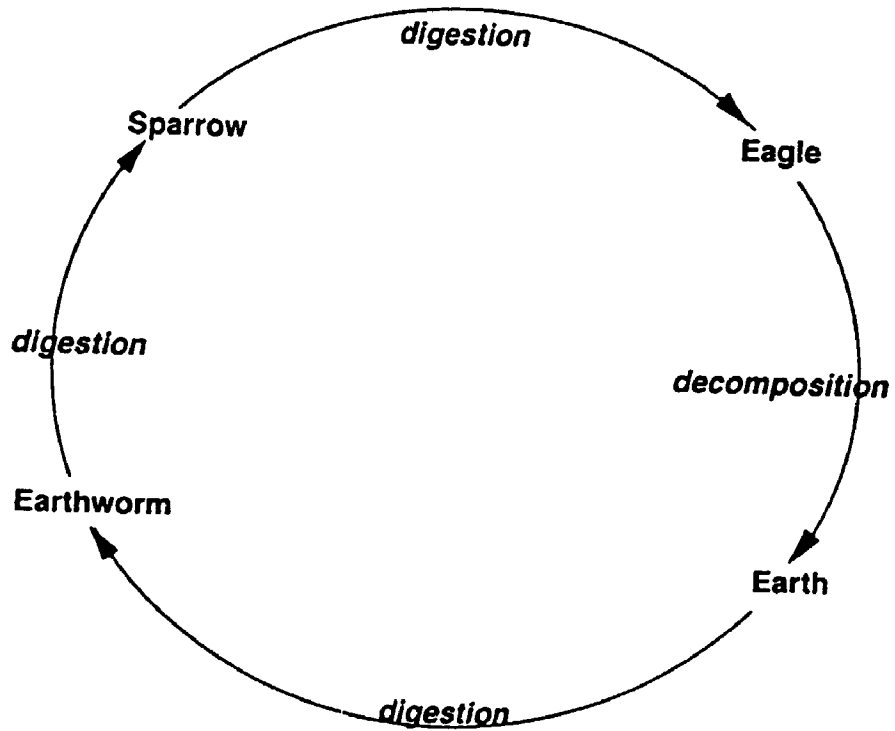


Figure 1A:
A Biological Process

on some other stage in the biological cycle and is in turn depended upon, so too in the "information cycle", every source of information has in turn required that information be gathered from elsewhere (see Figure 1B). Information is not some vast natural resource which flows continuously from some one source. As Fritz Machlup described it: "[t]here is no growing BODY of information, for what is not integrated in knowledge is thrown out or forgotten. There is, of course, a growing FLOW of information...."⁹⁸ The nodes in the information cycle are all human (the professor/author, the student). The channels may or may not be artifacts or mechanical devices (contrast books and computers with the spoken word).

While the full model of the information process includes acquisition, use and dissemination, the aspects of the information process which, it is argued, should be involved in policy decision-making are only two:

ACQUISITION-DISSEMINATION.

It is argued, philosophically and politically, that *USE* should be left aside in policy-making because only acquisition and dissemination should be regulated in a free

⁹⁸Machlup, "Semantic Quirks," at 643. Richard N Langlois also criticizes the "oil flow" analogy in "System Theory, Knowledge and the Social Sciences", in *The Study of Information, Interdisciplinary Measures*, pp. 581-600 at 586.

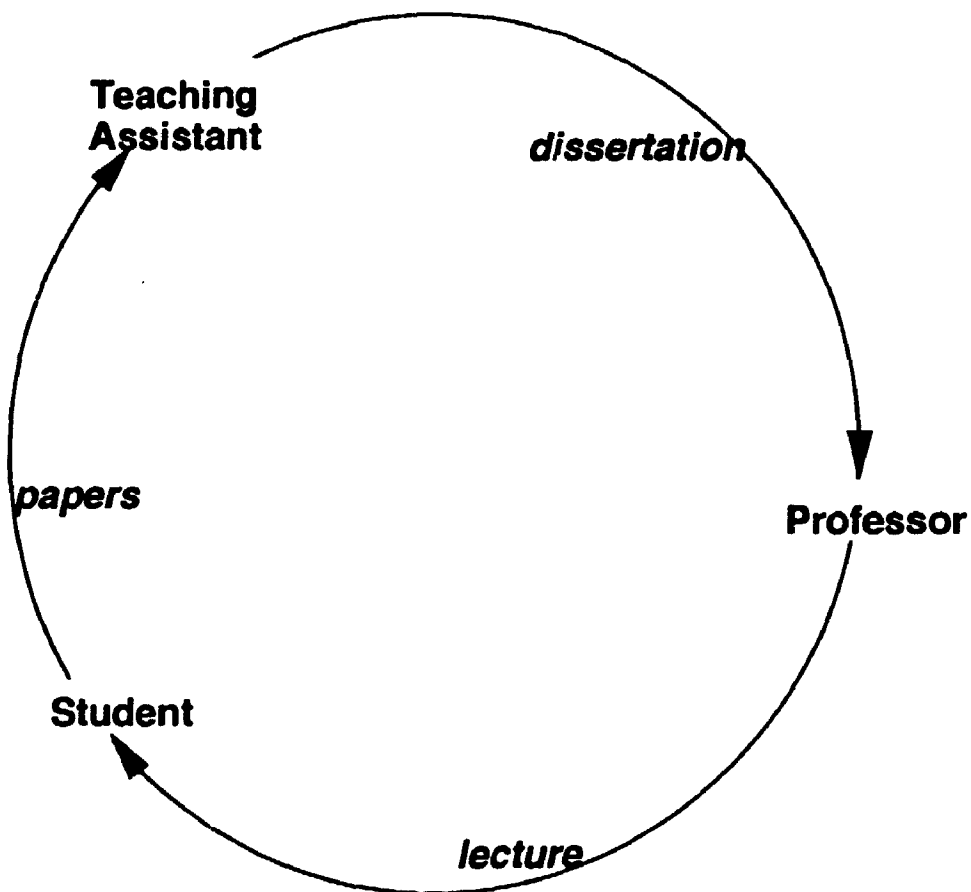


Figure 1B:
An Information Process

and democratic society.⁹⁹ As well, for the purposes of this study, acquisition and dissemination are the processes which are within the realm of social science research. Use must be investigated through the methodologies of other disciplines such as cognitive psychology.¹⁰⁰ Finally, as a matter of definition, *USE* is not involved in analysis of *information flow*, although it is a part of the information process. This research is concerned with information flow.

Individuals are involved in information flow in two ways: either individuals deal with information as an individual private act or they are acting on behalf of an organization of which they are a part. In dealing with information on behalf of organizations, individuals can be involved in either the government sector or the corporate sector.¹⁰¹ Therefore there are three possibilities: (1) individuals dealing with

⁹⁹The Canadian Charter of Rights and Freedoms enshrines the following fundamental principles which are relevant to this discussion:

s. 2 Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion....

These rights relate, in my view, to the use of information, rather than its flow (referring back to my earlier discussion of the hierarchy of information -- these rights operate at the level of knowledge). Section 2(b) also provides a guarantee related to dissemination: freedom of "expression, including freedom of the press and other media of communication". It is true, of course, that these individual rights can be limited because they are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."(s. 1) Moreover, under s. 33 of the Charter, a province can "opt out" of these guarantees with respect to a particular enactment for three year period.

¹⁰⁰See such papers as Nicholas J. Belkin, "Anomalous States of Knowledge as a Basis for Information Retrieval," and Sara Fine, "Research and the Psychology of Information Use," *Library Trends* 32 (Spring 1984): 441-60.

¹⁰¹The corporate sector can be further divided between private corporations and crown (or statutory)

information for themselves, that is: private individuals; (2) individuals dealing with information as part of corporations;¹⁰² and (3) individuals dealing with information as part of government (see Figure 2).

In conceptualizing this model, although individuals, corporations and governments are shown as discrete elements for analysis, it must be remembered that what must be studied is *individuals* acting in any of the three contexts. This concept is reinforced through Figures 3A and 3B.

Figure 4 illustrates the model of information flow which is being proposed. Again, one must bear in mind that the behaviour being analyzed under the rubrics of "government" and "corporation" is the collective behaviour of the individuals who make up those organizations, as shown in Figure 3A, discussed above. The cells of the matrix permit examination of all of the flows of information between individuals pictured in Figure 2, discussed above. The structure of the cells creates a way of analyzing and describing the information flows involved in various information processes (see Figure 1B, discussed above). All information flow patterns in a society can be described in terms of the matrix. The analysis represented operates at the sectoral level, however. Flows of information can be distinguished between sectors and within sectors: from

corporations. At this point in the analysis, this distinction is not necessary. The discussion will return to this point later. Private corporations themselves can be further subdivided into non-profit and charitable organizations as opposed to for-profit organizations. This distinction, however, is not an issue in this research and will not be further explored.

¹⁰²"Corporation" is used in this study to refer to any business organization. It is not intended to be restricted to its technical legal meaning.

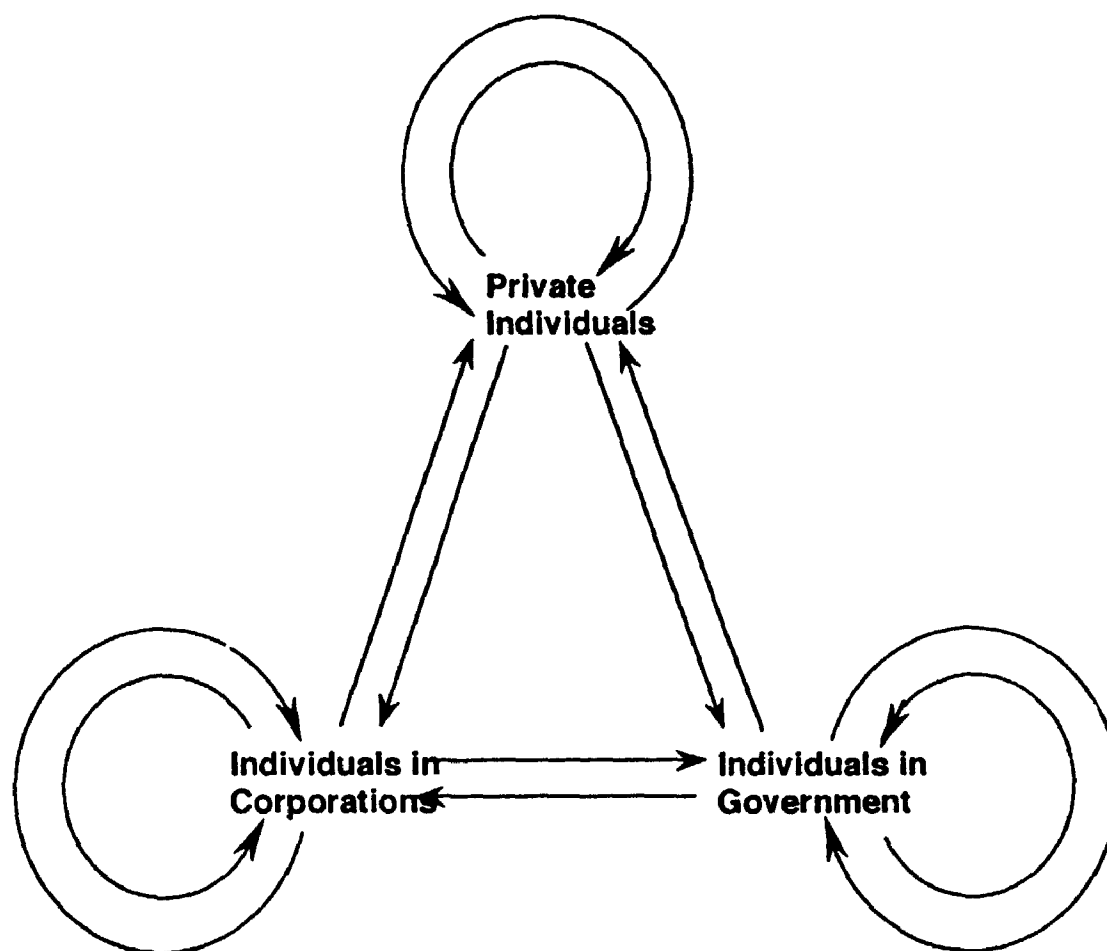


Figure 2:
The Paths Of Information Flow

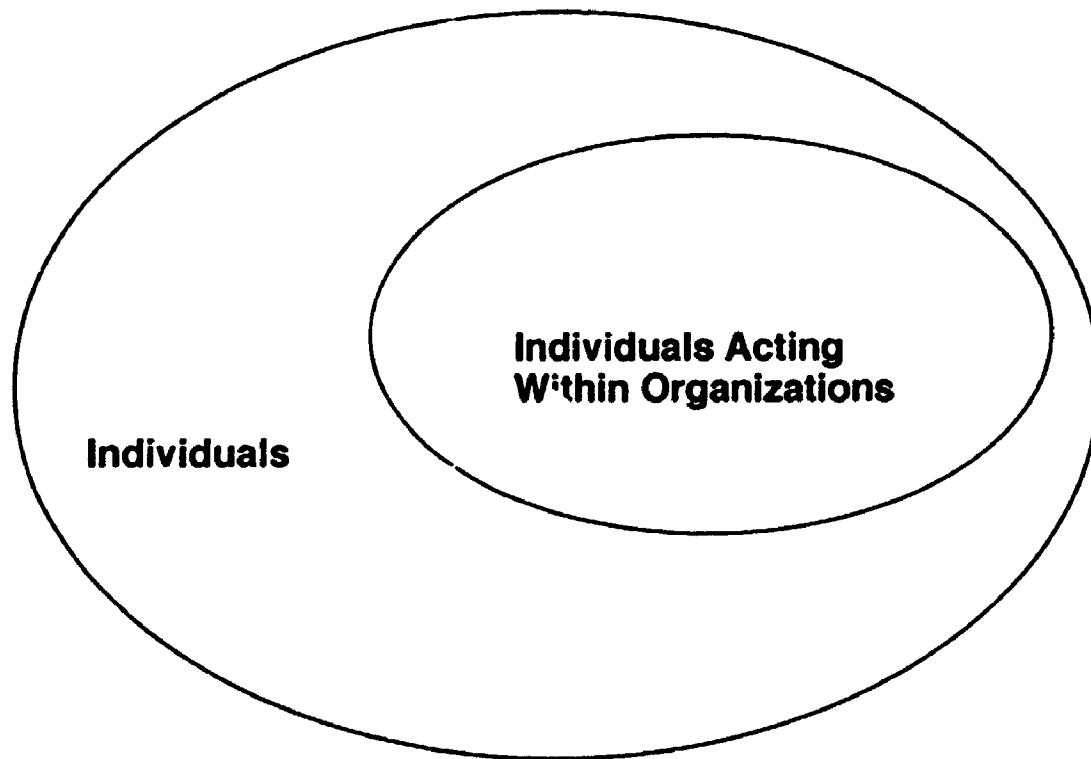


Figure 3A:
Organizations As A Subset Of
The Universe Of Individuals

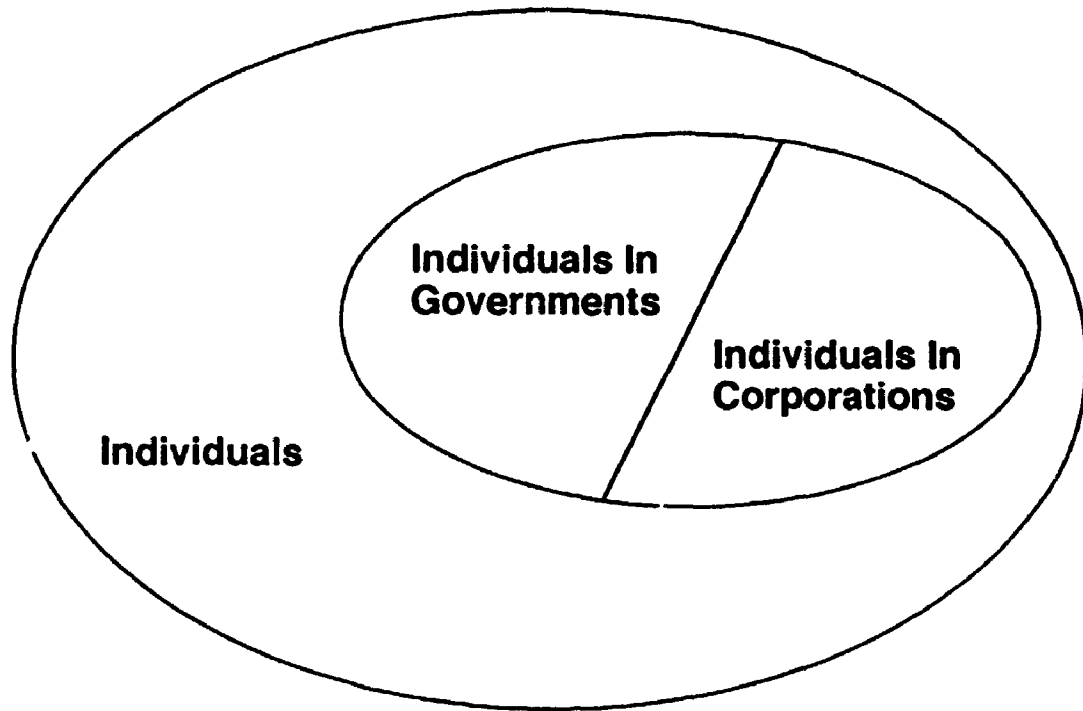


Figure 3B:
Corporations And Governments
Comprise The Organizations Subset

		DISSEMINATION TO:		
		GOV'T	CORP'N	INDIV.
ACQUISITION FROM:	GOV'T	1	2	3
	CORP'N	4	5	6
	INDIV.	7	8	9

Figure 4:
Matrix Of Information Flows

private individuals to individuals in corporations, or from individuals in corporations to other individuals in corporations, for example. The diagrams do not distinguish, however, within the sectors. Hence, for example, the diagrams do not discriminate between analysis of individuals in one corporation disseminating information to individuals within that same corporation and disseminating to individuals in another corporation. Analysis of both kinds of interaction would be necessary to complete the description of information flow *within* each of the three sectors shown.

Of course, as implied in an earlier discussion, there is another dichotomy involved in a policy-making consideration of information flow: DOMESTIC-FOREIGN.¹⁰³ Therefore, the full model of information flow for policy-making is depicted in Figure 5, which is simply the information flow matrix shown in Figure 4 presented as a flow chart in order to allow for the insertion of the new dimension of foreign-domestic.

It can be seen that those concerned with national information policy and those concerned with restructuring and adapting society's organizations to meet the new challenges are, in fact, addressing aspects of the same information flow model, the former concentrating on the entire model in all its aspects, the latter being more concerned

¹⁰³In this context, the distinction between domestic and foreign means "within the jurisdiction" and "beyond the jurisdiction". Thus, in the context of the Canadian federation, "foreign" could mean in a particular circumstance either "another province", or "another nation", or "another level of government", depending upon the constitutional context of the policy being considered.

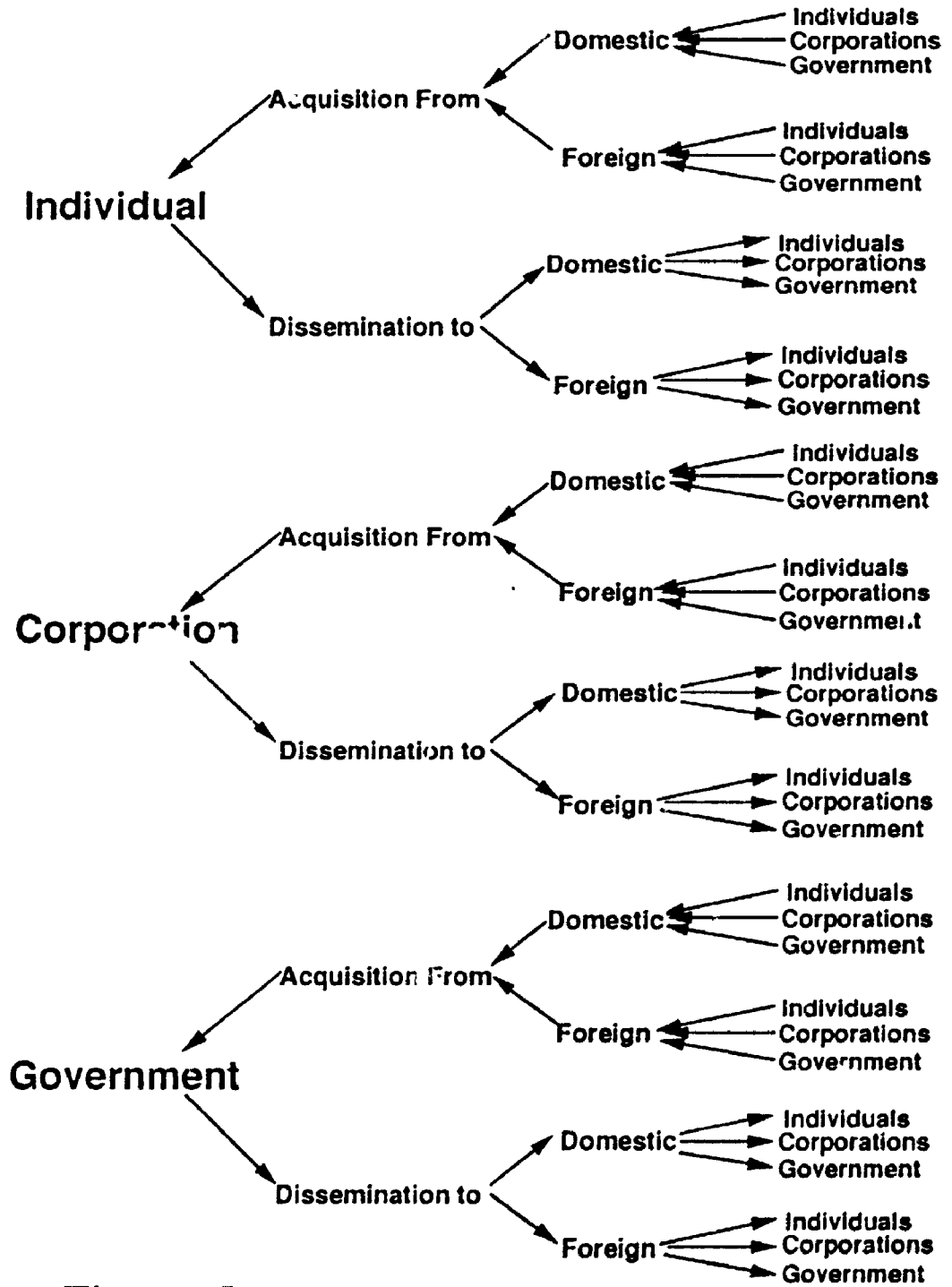


Figure 5:
The Policy-maker's Paradigm

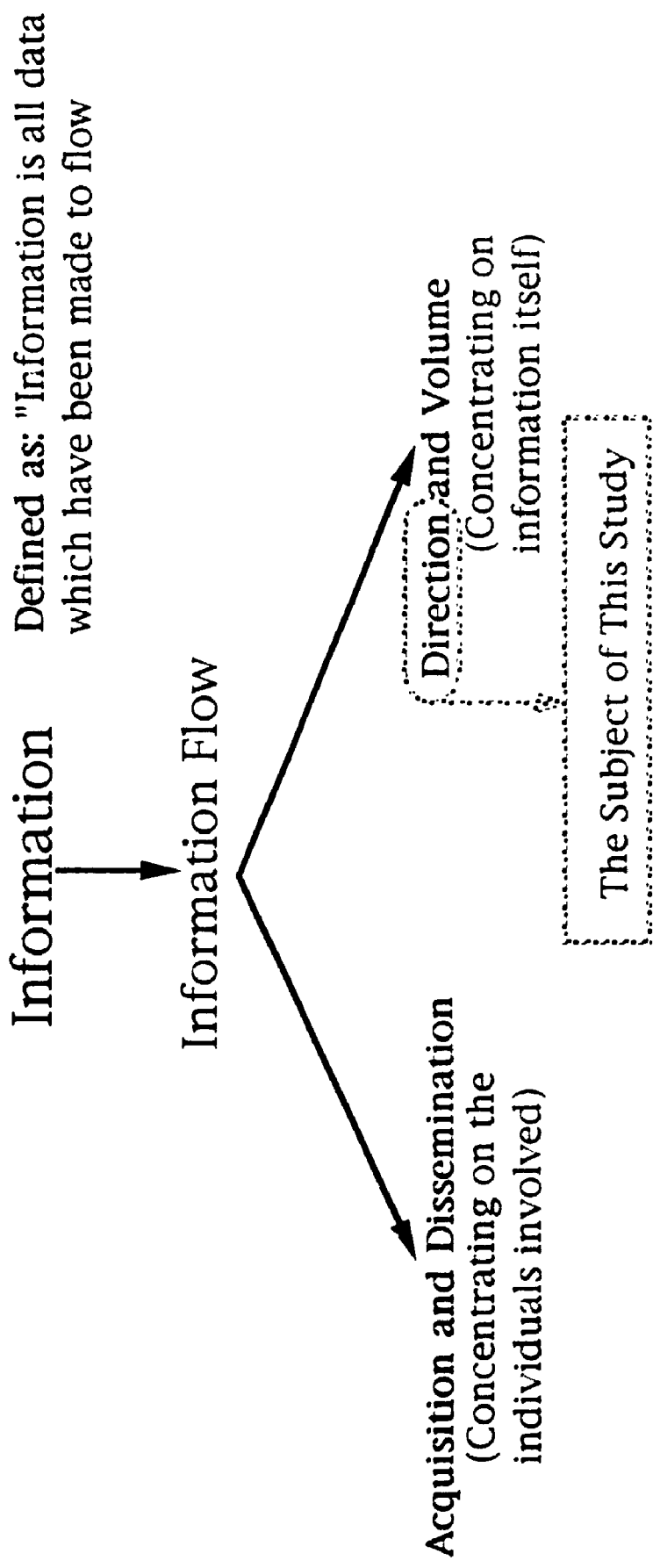
with particular cells of the matrix. It is suggested that both aspects of information policy, the national and the organizational, should be studied in the context of this framework. Before changes are implemented or proposed in the context of any one sector, analysis should be done to determine the effect of such changes in that sector, but also in all the other sectors of the model. The whole nation would profit if information policy could be implemented such that each aspect of society (that is, each sector of the matrix) is advantaged.

It is argued that the model used for this research is very useful in the emerging conditions of the information-based economy because it can at least be used to identify with some certainty directions of information flow in given circumstances, whether such directions be discrete vectors from source to user or fans of vectors (all possible sources to one user or all possible users to one source). Identification of these types of patterns is a fruitful starting place for policy-making. Once the element of direction has been established with some certainty in particular situations, it is possible to predict with precision who will be affected by information policy implementation of a certain kind. Rough estimates of the effect of particular policy initiatives on the volume of flow in the directions established may be sufficient to assess the policy implications of proposed changes (that is, simply understanding exactly whose information access will be

restricted and whose increased may be sufficient to warrant moving ahead with certain legislation, without necessarily needing precise measurement of the difference at this stage). Attempts at measurement of volume may then be possible in particular contexts once a better understanding of direction of flow has been established.

In other areas of research, measurement of volume may provide some direct evidence for valuation. However, as discussed elsewhere, it appears that information value cannot be determined in the same way that other elements of economic structure have traditionally been valued. Indeed, it is probably because the question of direction of flow is so complicated in the area of information that valuation is so complicated. Therefore, measurement of both the direction of the flow of information in a given context and the measurement of the volume of that flow are involved in establishing information value. In the absence of precision in the definition of information, it appears impossible to measure the volume of information flow accurately. However, information flow direction can be established accurately. As indicated in Figure 6, that is the area of this study.

The policy-maker's need to cope with uncertainty in decision-making is inherent in that role. Sufficient empirical evidence of the direction of information flow would provide enhanced certainty in practical policy-making independent of questions of value. Moreover, accuracy when dealing with the question of the value of information in



N.B. "information value" requires that the concepts of 'acquisition and dissemination' and 'direction and volume' be combined with the cognitive concept of the 'information need'.

Figure 6: The Approach to Information Taken By This Study

particular contexts, which almost certainly involves issues of measurement of volume, will be better assured once research has established firmly the element of direction of flow. Developing an understanding amongst leaders in all sectors of the approach to information policy decisions described here may assist decision-makers in analysing the effects of attempts to influence the information cycle. It is to be hoped then that an improved understanding of information flow can contribute both to increased effectiveness for organizations and to an ability to cope with the changing nature of Canadian society in general.

Within the context of this research study in particular, it must be noted that the Ontario statute examined in this study speaks in terms of "person", indicating that anyone, from any jurisdiction, may use this Act. The Act applies, however, only to domestic Ontario organizations. Since this research was an empirical study of the effect of this legislation on the organizations which are subject to it, the design of the study, focussing on internal changes to the organizations wrought by the legislation, precludes analysis of the foreign-domestic dimension of the policy-makers information flow model. Therefore, the model presented in Figure 4, "The matrix of information flows," is the model which was used for this research, without the complications introduced in the "Policy-maker's paradigm" (Figure 5). The matrix model will be expanded in the next chapter, and the research design will be discussed in terms of this expanded model (in Chapter 5).

CHAPTER 3: THE RESEARCH PROBLEM

3.1 Introduction

Ontario was not the first jurisdiction in Canada to regulate in the area of access to government information and the protection of privacy (see again Table 1). The federal government was the first in Canada to enact this type of personal data protection legislation, in Part IV of the Human Rights Act in 1977. Meanwhile, the Maritime provinces were pioneering access legislation. Quebec initiated the first omnibus administrative scheme in 1982, while the federal government created a pair of complementary statutes and two separate Commissioners in 1983.¹

Initially, the federal statutes, upon which much of the Ontario legislation was modelled, did not cover most federal crown corporations. This policy decision followed a study surrounding the issues of extension of the legislation beyond government departments.² The statutes mandated a Parliamentary review of the legislation at the

¹The most recent federal budget contained a proposal that the two Commissioners' positions be combined, but this has not yet been translated into practice.

²See Robert T. Franson, *Access to Information: Independent Administrative Agencies* (Law Reform Commission of Canada, 1976). After passage of the federal statutes, Andrew Hubbertz examined the issues in "Freedom of Information and Canadian Crown Corporations," *Government Information Quarterly* 3 (1986): 63-71. In the abstract, given at the beginning of his paper, Hubbertz most succinctly identifies his theses in the paper as follows: "[t]he total exemption of Crown corporations from the Act is found to contradict the traditional notion of ministerial responsibility. It also subordinates public access to information regarding such issues as public safety and environmental impact to the economic interests of the corporation."

end of its first 3 years. The resulting report, Open and Shut: Enhancing the Right to Know and the Right to Privacy,³ in Recommendations 2.6-2.8, recommended extension of the legislation to the crowns. In the government's reply paper, Access and Privacy: The Steps Ahead, the federal government accepted the recommendation with respect to the privacy legislation⁴ but reserved judgement with respect to access rights.⁵ In the result, most federal crown corporations have been added to the Schedules, including them under both regimes, one by one. However, at the time this study was commenced, the federal crown corporations did not have experience with this type of legislation.

Meanwhile, the Ontario government has passed two laws and created a single administrative framework to control and govern the province in both these two central areas of a government's information policy: (1) the protection of information held by government about private individuals; and (2) the access to information held by government which will be given to those outside government. Each statute governed certain institutions with respect to both the areas. The distinction between the two statutes is in the level of government institutions governed. The first statute passed in

³Canada: House of Commons, Report of the Standing Committee on Justice and the Solicitor General on the Review of the Access to Information Act and the Privacy Act, *Open and Shut: Enhancing the Right to Know and the Right to Privacy* (1987).

⁴Canada: Department of Justice, *Access and Privacy: The Steps Ahead* (1987), p.13.

⁵ *Ibid.*, p. 37.

this area, the Freedom of Information and Protection of Privacy Act, 1987,⁶ regulates the conduct of the provincial government and its agencies. It also established the administrative framework within which both statutes are enforced. The second Ontario statute is the Municipal Freedom of Information and Protection of Privacy Act, 1989, which regulates the conduct of municipal bodies.⁷ Since January 1, 1988, when the first of these two statutes came into force,⁸ Ontario has regulated the conduct of individuals not only in government ministries, but also in crown corporations. This study looks only at the effect of the earlier statute which had been in effect over two years prior to the data gathering phases of this study, affecting both ministries and crown corporations. How have organizations coped with this Ontario legislation governing access to corporate records and protection of an individual's personal information?

The implementation of the Act by organizations in Ontario furnished a unique opportunity to contribute to our understanding in three areas. First: by studying the changes in organization structure and in information climate caused by a new environmental factor (this legislation), it was possible to examine the impact of specific constraints on each organization's ability to control information flow both within and

⁶The 1987 statute was originally supposed to come into force with respect to municipal institutions three years later (see s.2(3) in the original enactment) but, instead, the municipal lobby persuaded government that its own unique enactment was necessary.

⁷R.S.O. 1990, ch. M-56. This enactment does not govern crown corporations since crown corporations cannot be municipally created. It does cover such local special purpose bodies as public library boards.

⁸The later municipal statute came into force January 1, 1991. (see s. 52 of the statute).

across the boundaries of that organization. The information environment within which an organization operates is an important element in the analysis of the behaviour of the organization. Government initiatives which affect an organization's abilities to acquire and disseminate information are part of the organization's environment and have direct effects on its information climate and organization structure. This study examines changes in organizations' information climates and structures which are the result of a particular statutory change. Second: by examining the actual implementation of a legislative initiative in the information area by the organizations which are subject to it, the effectiveness of this legislative measure in meeting the objectives of the legislative policy-makers who imposed it could be assessed. Third, study of the patterns of information transfer among individuals has formed an important area of information science research. This research extends work done on the patterns of information transfer among individuals operating in the context of organizations by looking at how patterns are affected by a certain stimulus, a new piece of legislation. This research, then, has implications in the area of implementation and effectiveness of legislation, in the area of organization behaviour, and in information science.

Because the Act governs both crown corporations and ministries, and because a number of Ontario's crown corporations are intended to operate like private sector businesses, it also provides an opportunity to make observations about the probable

effects of extending this type of legislation into the private sector. Other countries already have legislation in the privacy arena which governs the conduct of private sector organizations.⁹ Canada and the United States have preferred to encourage the private sector to adopt voluntary codes of conduct in this area, rather than to legislate. However, as the federal Privacy Commissioner commented forcefully this year in his Annual Report, Canada may be forced into legislative activity because of pressure from our European trading partners, since it would appear that there has been insufficient adoption of comprehensive voluntary codes in the private sector.¹⁰

3.2 The legislative framework

The Act provides all persons with a legal right of access to any information contained in the records of government institutions (subject to certain exceptions), and sets out the standards for protection of personally identifiable data that must be met by all of these institutions. The Act applies to all the records held by an institution at the time of coming under the Act, as well as to all records afterwards acquired or created by the institution.¹¹

⁹See David Flaherty, "The Emergence of Surveillance Societies," p. 385.

¹⁰Canada, Privacy Commissioner, *Annual Report 1990-1991*, p. 15.

¹¹With respect to the difficulty of defining a record beyond the paper context - in the computer context - see Peter Seipel, "Paper Laws in Transition," in *From Data Protection to Knowledge Machines*, pp 99-134, especially at 109-10. (Although Seipel makes many interesting points in this article, I disagree with his diagrammatic representations.)

The Act does not give a definition of "information". Instead, the objects of the Act, set out in section 1 of the Act ¹² which speak in terms of "information", are operationalized by requiring organizations subject to the Act to govern themselves in their dealings with "records". The definition of "record" in the Act is very broad:

- s.2(1) "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,
- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
 - (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;...

Two things should be noted about this definition: first, this definition means that the Act does not attempt to control information transmitted orally; and second, part (b) of the definition section has indeed been modified, as permitted in the subsection, in the first regulation promulgated under the Act. Regulation 532/87 s.10 states:

A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.. ¹³

The Act states that it was not intended to restrict the flow of general

¹²As quoted in Chapter 1 "Overview", above.

¹³ As to the applicability of the Act to computer software, see the discussion of a recent opinion rendered through the federal Information Commissioner's office in Louis Milrad and Margaret Ann Wilkinson, "Municipal Freedom of Information and Protection of Privacy Act: More than A Records Management Issue - Part One," *Municipal World* 102 (January 1992): 10-13 at 13.

information from government which existed prior to enactment of the Act:

s.63(2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by custom or practice immediately before this Act comes into force.

Nor was the Act meant to formalize all contacts with the institution:

s.63(1) Where a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

As discussed earlier, protection of privacy in this statute is framed in terms of "personal information." Among the many responsibilities given the head under this legislation is the following:

s.44 A head shall cause to be included in a personal information bank all personal information under the control of the institution that is organized or intended to be retrieved by the individual's name or by an identifying number, symbol or other particular assigned to the individual.

Such a section places a positive duty on management to manage information in certain, particular ways. One might expect that adherence to such a requirement would cause changes in information handling throughout the organization. Therefore, one area which is explored in this research is whether individuals within the organizations were aware of, or had participated in, changes as a result of the legislation.

The differences shown between Figure 7A and Figure 7B represent changes in information channels which the research data could reflect. Individuals x, y, and z may exist in the organization's environment either as individuals, or as members of other organizations. The channels to those individuals are part of the relationship between the

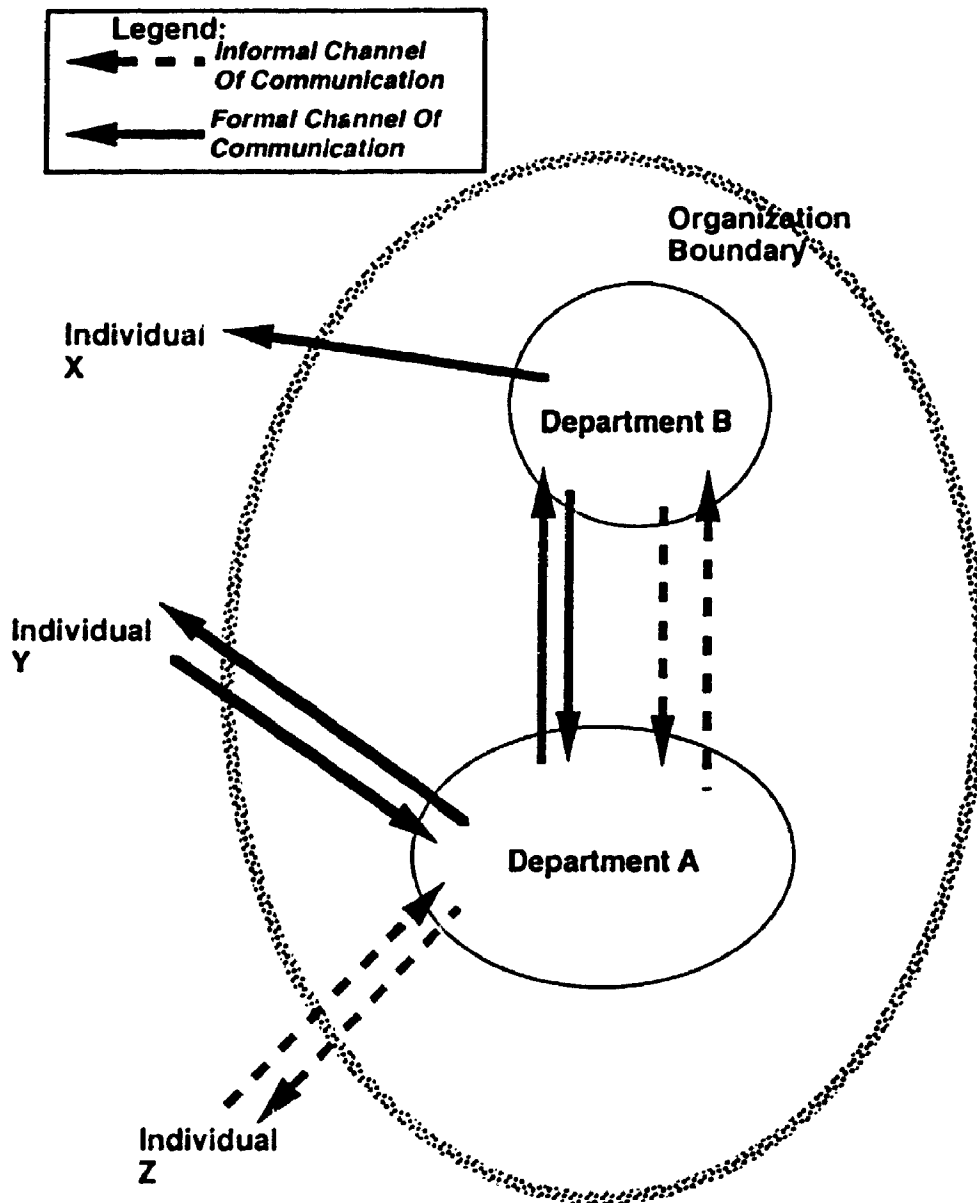


Figure 7A:
Hypothesized Channels of Communication
Prior to the Act

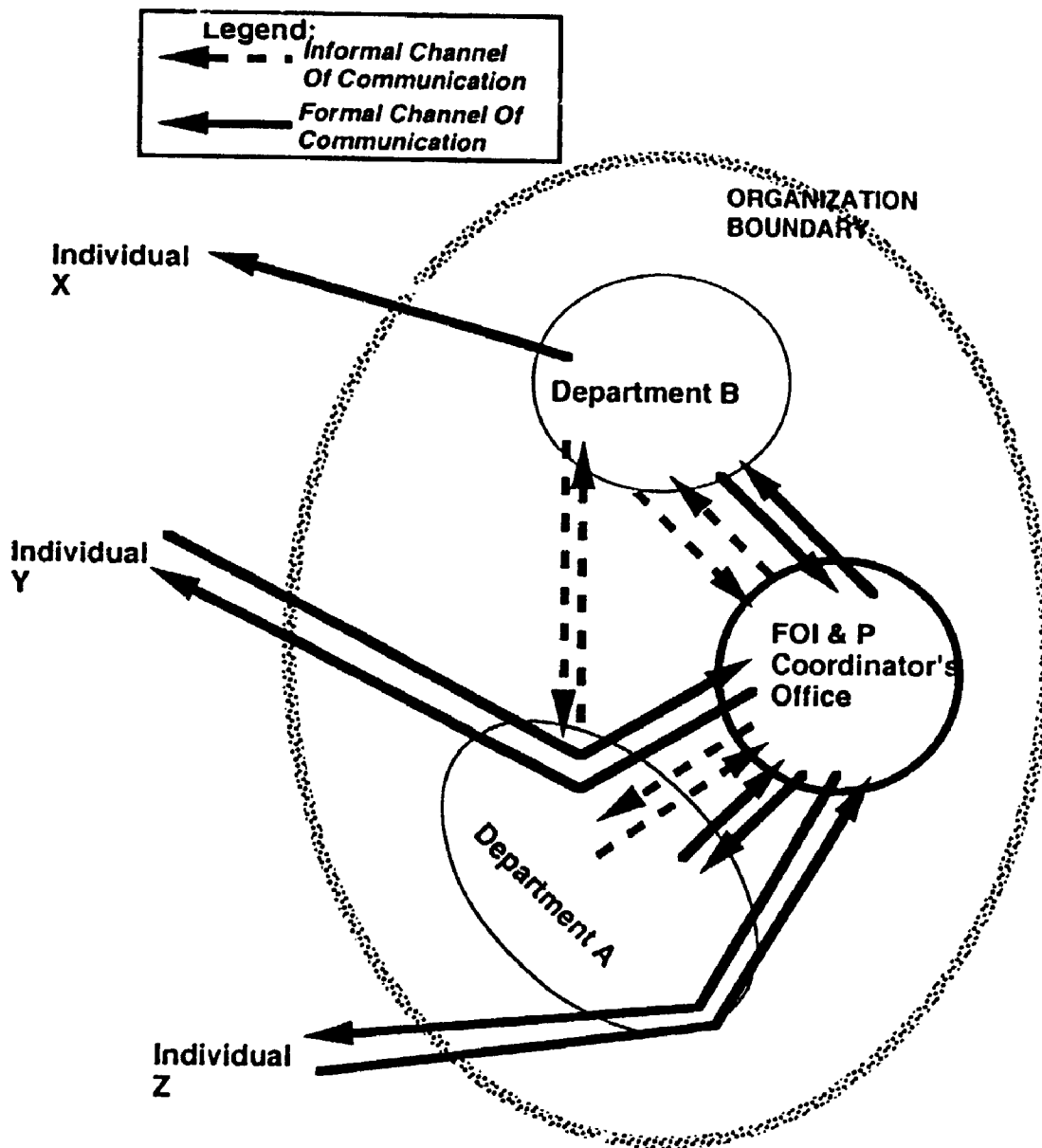


Figure 7B: Hypothesized Channels of Communication AFTER the Act

organization and its environment. The "environment" within which the organization hypothesized in Diagram 7A is operating is an unregulated one (with respect to information flow) whereas Diagram 7B represents the same organization hypothesized in a subsequent regulated environment. The hypothesized changes include changes in the directions of flow of information and changes in the types of channels of flow of information. (The hypotheses presented below did not predict any particular pattern of change, but merely predicted that there would be change.) These changes, if indeed they have occurred as hypothesized, combine to create a changed information "climate" within the organization

The Act designates a responsible minister (s.3). This position has been given to the Chairman of the Management Board of Cabinet. A staff was established to oversee implementation of the Act: the Freedom of Information and Privacy Branch of the Management Board Secretariat. This office continues to provide ongoing training and resources for government and the institutions which fall under the Act. This office has also prepared position papers for Cabinet on possible amendments to the Act, where they are seen to be necessary.¹⁴

The Act also created the office of Information and Privacy Commissioner

¹⁴See, for example, *Municipal Freedom of Information and Protection of Individual Privacy: Handbook for Municipalities and Local Boards* (1990). This office also issues an ongoing publication entitled *the Information and Privacy Bulletin*. It also issues an *Annual Report*.

(s.4), as an independent office of the Legislature. The first Commissioner, Sydney Linden, created an office and hired staff in order to carry out his duties under the Act.¹⁵ The Commissioner is responsible for Appeals from the decisions of the heads of institutions under Part IV of the Act, and has additional duties and powers under s. 59 of the Act:

The Commissioner may,

- (a) offer comment on the privacy protection implications of proposed legislative schemes or government programs;
- (b) after hearing the head, order an institution to
 - (i) cease a collection practice, and
 - (ii) destroy collections of personal information, that contravene this Act,
- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- (d) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (e) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities; and
- (f) receive representations from the public concerning the operation of this Act

The Act places the full responsibility for complying with the Act, however, on the "head" of each institution.¹⁶ There is, however, provision under the Act for the head to delegate:

- s.62(1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

¹⁵Linden left to become Chief Justice of the newly reorganized Provincial Court (Criminal Division) of Ontario (see Information and Privacy Commissioner, *Newsletter* 3 (3) (Summer 1990): 1). After a considerable vacancy, Linden was replaced from within by Tom Wright, formerly one of the two Assistant Commissioners, on April 25, 1991 (see *Newsletter* 4 (3) (Summer 1991): 1)

¹⁶The concept of the "head" is further discussed below.

Thus, the Act gives the heads of the institutions the power to delegate their responsibilities under the Act. The extent to which they have done so, and the level of the corporate hierarchy which their delegates occupy, is one indication of the extent to which the behaviour of the corporation can be expected to be affected by this legislative initiative. It was conjectured that if the responsibilities for the Act had in fact been delegated to a low level of the corporate hierarchy, the impact on the overall information practices of the corporation would be minimal.

Although such a position is not mandated under the Act, the Freedom of Information and Privacy Secretariat of the Management Board of Cabinet seems to have assumed that each institution subject to the Act would establish an administrative position called Freedom of Information and Privacy Coordinator, and indeed this seems to have occurred in every organization.¹⁷ Because the Act was recent, it was anticipated that in many cases the first incumbents of the new position would still be in office at the time of this research.¹⁸ By capturing the experiences of these first incumbents and/or those

¹⁷This is completely consistent with the approach which had been adopted in the federal civil service. See Bruce Mann, "The Federal Information Coordinator as Meat in the Sandwich," *Canadian Public Administration* 29 (1986) 579-82, for a discussion of this role. Although the federal Access and Privacy Acts are separate, it would appear that the roles of the Coordinators were combined into one in each institution from the beginning (see *Access to Information and Privacy Coordinators: Their Status and Role* (Canada: Treasury Board, 1988).

¹⁸This surmise was confirmed by findings of an Ontario government survey, discussed further below, which found that 62% of institutions had had only one Coordinator by the spring of 1990 and another 31% had only had two. See *Freedom of Information and Privacy Survey of Ontario Government Institutions* (Fall 1990), p. 4 of the "Interpretive Summary" section.

who developed these positions, the research was intended to reflect the experiences of corporate change due to the legislation. Reconstructing the corporate memory in this respect was achieved through the research interviews (supplemented by relevant documentation). In addition to his or her other responsibilities, under s. 34 (1), the head of each institution has a responsibility to report annually to the Commissioner as follows:

s.34(2) A report made under subsection (1) shall specify,

- (a) the number of requests under this Act for access to records made to the institution;
- (b) the number of refusals by the head to disclose a record, the provisions of this Act under which disclosure was refused and the number of occasions on which each provision was invoked;
- (c) for each provision of this Act in respect of which an appeal of a decision of a head has been commenced, the number of appeals commenced;
- (d) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth [in the annual Index of Personal Information Banks],
- (e) the amount of fees collected by the institution. ; and
- (f) any other information indicating an effort by the institution to put into practice the purposes of this Act.

These reporting requirements mean that in each of the organizations examined there exists a certain basic level of record-keeping in place about the information patterns in that organization. With respect to the present research, it was expected that this data would be discussed and augmented during the interviews with the information and privacy Coordinators in each organization.

The purpose of the statute speaks from the perspective of the individual external to the organization. However, in order to achieve the stated objects of the

legislation, the statute actually regulates, not that external individual, but individuals subject to the Act. To achieve the object of protecting personally identifiable information about individuals, the statute actually regulates, within the organization: the acquisition of certain information by the organization and the dissemination of certain information from the organization. In order to achieve the object of access to general information held by the corporation, the statute regulates aspects of the dissemination of general information from the organization. In order to assess the effectiveness of this legislative initiative to implement information policy, therefore, it was necessary to examine the effect of this legislation within the organizations which are subject to it.

The Act places certain responsibilities for information management on the institutions it covers, and creates certain mechanisms intended to ensure compliance. The extent to which the responsibilities are recognized and the extent to which preparations are made to ensure complete and timely compliance throughout the corporation are two measures of the extent to which the objects of the Act have been adopted by the organization.

Prior to the Act coming into force on January 1 of 1988 (at which time the crown corporations listed in the Schedule under the Act became subject to the Act), there was no similar environmental factor affecting the operations of these corporations. In

attempting to measure change, there is always the problem of causality. There is the possibility that the changes in these organizations observed in the present research are independent of the passage of this legislation. It is not, of course, possible to turn back the clock and observe conditions before the passage of the Act. Indeed, one would not have known then what evidence to collect. It is equally impossible to find organizations in the private sector (which are not governed by the legislation) with which to compare organizations in the public sector (which are subject to the Act). There are not parallel organizations in both sectors. For example, although Ontario Hydro (public sector) and Consumers Gas (private sector) are both involved in the energy market, the product being marketed by the two organizations is so significantly different in such areas as characteristics, distribution patterns and availability that one could not be certain that observed differences were not a result of those fundamental differences rather than the presence or absence of certain statutory information requirements.¹⁹ In the case of the organizations to be studied in the present research, however, it was established without

¹⁹Whereas Ontario Hydro has a statutory monopoly over the supply of electricity throughout the province of Ontario, there are three private companies who supply gas to customers in Ontario. In general, they operate in distinct areas of the province, although there is some direct competition at the edges of each territory. Generally speaking, Consumers Gas covers the Niagara Peninsula and Toronto regions (with the exception of the Hamilton area) and Ottawa; Union Gas supplies south west Ontario to the Bruce Peninsula (and the Hamilton region); Inter City Gas serves the north of Ontario and the Cornwall region. All three report to the Ontario Energy Board, as does Ontario Hydro. Only Ontario Hydro, however, is regulated by the federal Atomic Energy Control Board. On the other hand, the gas companies do in some circumstances have occasion to be before the National Energy Board where gas transportation agreements are concerned. The point of this brief discussion is that the gas companies are smaller than Ontario Hydro, serve different (more local) publics, and service different geographic territories with different mixes of customers.

question that a new office, that of the Freedom of Information and Privacy Coordinator, had been established in each organization as a direct result of the implementation of this legislation. Those changes within the organization which could be traced to initiatives from the new office were unquestionably brought about because of the legislation. Therefore, the thrust of the historical aspect of this research was to discover what changes had been made as a result of the Act.

Passage of legislation in the fields of access to government information and protection of personal data is a recent phenomenon in Canada (see again Table 1B).²⁰ Ontario was the first province to create this complete and complex administrative framework to govern both areas. Some of the other provinces and the Yukon have created declaratory laws in the area of access and left enforcement to existing bodies, either the Ombudspersons²¹ or the courts.²² Future researchers might wish to do inter-jurisdictional work to shed some light on the issues raised by Daniel Farber and Phillip Frickey about the role of the courts in an era of change in the law.²³ The area of

²⁰As, indeed, in the rest of the world. Flaherty indicates that virtually all initiatives are post-1970 ("The Emergence of Surveillance Societies," p. 382.)

²¹Manitoba, Newfoundland, and New Brunswick (which provides an alternative recourse to a judge). Colin H. H. McNair and Christopher D. Woodbury, practitioners with the law firm of Fraser and Beatty, have produced a very useful looseleaf publication in this area of Canadian law, *Government Information: Access and Privacy* (Don Mills: Richard De Boo, 1989). Periodically updated, it includes all jurisdictions with the exception of the territories.

²²Nova Scotia and New Brunswick (in some circumstances).

²³Farber and Frickey, "In the Shadow of the Legislature: the Common Law in the Age of the New Public Law".

information law in Canada affords examples of rights and enforcement delivered under an administrative scheme such as Ontario's and also examples of rights created under a declaratory statute with enforcement available through the regular court process. Indeed, the findings of this Ontario based study might provide empirical evidence about the Ontario system which will support future comparative work after replication in another jurisdiction.

3.3 The corporate context

It was intended that the approach adopted in this research would provide a framework for empirical analysis and a meaningful description of the information climate within which organizations operate. It would appear that an accurate understanding of the relationships in this area is quickly becoming vital to organizations. It is hoped that this research involving certain kinds of organizations, using the Freedom of Information and Privacy legislation as a vehicle, will begin to provide "an approximate answer to the right question".

Corporations can be owned in two different ways: either privately or by government.²⁴ The characteristics of private corporations have been studied extensively

²⁴There is a definition of "crown corporation" advanced in *Open and Shut*, p. 10: "corporations in which the government has a *de facto* controlling interest and which provide goods or services to the public on a commercial or quasi-commercial basis." The report refers the reader in this connection to: President of the Treasury Board, *Annual Report to Parliament on Crown Corporations and Other Corporate Interests of Canada*, III, p.13.

in the organization behaviour literature. On the other hand, although Government-owned (that is, crown) corporations are very active in the Canadian economy,²⁵ they have not been so extensively studied.²⁶

Crown corporations differ among themselves in the degree to which they may be said to be carrying on business independent of government. Some crown corporations are not at much distance from their related ministries of the government. They operate with limited budget independence and are not expected to make independent business decisions. Other crown corporations are very much expected to operate at arm's length from government and, rather than being funded from government, are expected to generate profits for government.

An extensive study of Ontario crown corporations was made in 1972.²⁷ The corporations were categorized into Schedule I, Schedule II, or Schedule III according to their degrees of independence from government. Those corporations placed in Schedule

²⁵Their history and role in Canadian life is discussed in Andrew Hubbertz, "Freedom of Information and Canadian Crown Corporations," *Government Information Quarterly* 3 (1986): 63-71.

²⁶Here I am echoing a conclusion about government organizations generally reached by Sharon L. Caudle and Kathryn E. Newcomer in "Command and Control: Public Program Oversight in the Information Age," *Information Management Review* 3 (1987): 37-50. They in turn are citing B. Bozeman and S. Bretschneider, "Public Management Information Systems, Theory and Prescription," *Public Administration Review* 46 (November 1986): 475-87.

²⁷The Committee on Government Productivity, 1972. Discussed in George G. Bell and Andrew D. Pascoe, *The Ontario Government: Structure and Functions* (Toronto: Wall and Thompson, 1988), p. 42. There are 20 self-supporting, fully operational crown corporations in Schedule II. Examples are Ontario Hydro, the Ontario Liquor Control Board, and the Ontario Lottery Corporation.

II were said to most resemble private, for-profit corporations.²⁸ The crown corporations studied, therefore, were selected from those crown corporations listed in Schedule II. It was expected that such crown corporations would provide the greatest contrast to the purely bureaucratic ministries. Moreover, the results of studying this type of crown corporation may have a predictive utility because the findings made with respect to these organizations should provide evidence which would most closely approximate the probable effect of extending this type of legislation to private sector corporations.

Figure 8 shows the design matrix which will form the basis for this study.

This matrix expands the basic matrix used earlier (see Figure 4) by distinguishing between private and crown corporations: the "corporation" row and column have been divided into a row and column for "Crown Corporations", which are subject to this Ontario legislation, and a separate row and column for "Private Corporations", which are not.

The study did not attempt to draw a complete picture of information flow across the boundaries surrounding the organizations studied. Nor was a complete description of the information climate within the organization possible. The study concentrated upon the perceptions of individuals within the organization. They were asked about changes in their information habits. Their responses about changes in information acquisition and dissemination were expected to include information about the

²⁸The distinctions between Schedules I, II, and III are discussed elsewhere herein.

		DISSEMINATION TO:			
		GOV'T.	CROWN CORP.	PRIVATE CORP.	INDIV.
ACQUISITION FROM:	GOV'T				
	CROWN CORP.				
	PRIVATE CORP.				
	INDIV.				

Figure 8:
The Expanded Information
Flow Matrix

flow of information across organization boundaries. Information flow within the organization is similarly described in terms of the data gathered from individuals about changes in the patterns of their information acquisition and dissemination within their own organization. On the other hand, every attempt was made to capture in the data, and thus provide through this study, a full and complete description of all the changes in organization structure which have occurred as a result of this legislation.

Surya B. Yadav has proposed the overview of relationships among various factors in an organization which has been reproduced here as Appendix 2.²⁹ In terms of his typology, the passage of this legislation would, I think, be termed a contingency factor which has implications, in terms of his model, for organization structure, organizational systems and managerial functions.³⁰

As indicated earlier (in section 2.2.3), this statute, as a whole, has implications for information flow throughout the organizations which it affects. The distinctions in the statute between the treatment to be accorded personally identifiable data (the "privacy" provisions of the statute) and that to be accorded other data *depend upon the subject matter of the data elements involved* in communication and stored in

²⁹Figure 4.1, "A broad overview of relationships among various factors and managerial functions," in Surya B. Yadav, "Determining an Organization's Information Requirements. A State of the Art Survey," *Data Base* 14 (1983): 3-20 at 19.

³⁰Yadav is particularly concerned with separating the issue of determining the information requirements of an organization (of which, in my view, compliance with legislation is one) from the issue of determining the design requirements of an information system.

"records", rather than upon a characterization of particular channels of communication or particular records or particular functions of the employees of the organizations affected by the legislation. These distinctions, therefore, call for an informed judgement about the subject matter of each data element with which she or he comes into contact on the part of each individual handling information within the organization. This research, therefore, is not concerned with the distinctions in treatment which the legislation requires that the employee accord each type of data element, but rather with the questions prerequisite to the exercise of that judgement by employees in the organization-- are employees even aware of the need to exercise this discrimination in their handling of information? if they are, how is their awareness translated into their work practices? -- do the employees of different organizations differ in their awareness and response to the legislation? does this awareness and responsiveness in each organization mirror the implementation effort which the management of that organization has put into this legislative initiative? Observations are made in this study which reflect the two thrusts of this legislation (protection of personally identifiable data and access to all other government-held information) but the primary thrust of this enquiry was to ask questions about the effect of the legislation as a single legislative initiative.

As a pilot investigation into the Ontario experience of the effect of an attempt to control information flow by mandating certain activities by government organizations,

this research was designed to ask *whether* in fact systemic differences have occurred in the responses of the organizations affected by the legislation. Once having established whether or not certain distinctions in effect have occurred, subsequent research can be designed to try to investigate *why* the differences observed in this research exist.

CHAPTER 4: PRIOR RESEARCH

4.1 Introduction

The subject of this research is truly interdisciplinary: academic disciplines such as law, political science, business administration, history, library science, information science and communications have all produced scholars whose work has contributed to the development of this research design.¹ This research itself, however, is pioneering and does not follow exactly in the footsteps of any previous work. While on the one hand, at a macro level, many individuals and groups from a variety of disciplines are writing about information policy (particularly at the national and international levels), on the other hand, at the micro level, research looking at information patterns and controls within organizations is being advocated. However, in the policy context, empirical research directly relevant to these issues is still relatively rare and, beyond studies of information technology, relatively little has been published on organizations either. There is, however, a growing corpus of studies which examine law empirically in its social context. This research, involving a particular legislative initiative, falls within this fairly small body of work.

¹This chapter describes prior research which is relevant to this study. It is not intended as a complete literature review of all work done which touches upon the subject of this research. Therefore, works which are purely explanatory or opinion pieces are not cited in this chapter (although citations to such works occur elsewhere herein). The research presented in this chapter is discussed in terms of the contributions others' findings have made to the development of the research questions in this study or in terms of the research methodologies which others have used and which have influenced the development of the methodology used here.

Since this research is exploratory in nature, it is perhaps not surprising that the research cited as background to this study does not form one closely connected body of literature on the questions of information examined by this research. Each academic discipline seems to be producing its own independent literature. Very few of the works examined cited any of the literature from the other fields.² Thus this chapter represents an attempt to bring together research in divergent academic traditions and unite that empirical work around the themes involved in the present research.

4.2 Information as an element of organization research

4.2.1 Organization environment research

Control over information -- its patterns of flow and its content -- is increasingly being seen as important to the corporate world. Indeed, it has been said

[t]oday there is a growing realization that managing information and information technology is far more important than has been perceived in the past. It is so important that information and information systems are considered by many to be major business assets, perhaps even the most important asset. Yet, because they are invisible --unlike traditional business assets such as equipment and buildings-- organizations have been slow to realize their importance.³

²This phenomenon, experienced anecdotally by the researcher, is supported more rigorously by the findings of Christine L. Borgman and Ronald E. Rice as reported in their recent article "The Convergence of Information Science and Communication: A Bibliometric Analysis," *Journal of the American Society for Information Science* 43 (6): 397-411 (1992).

³Carol Cashmore, with Richard Lyall, *Business Information: Systems and Strategies* (New York: Prentice Hall, 1991) at xiii.

This slow recognition perhaps explains why, although there has been some theorizing in organization behaviour literature and elsewhere about the role of information in organizations,⁴ research support for the theories is very limited.

One explanation for this scarcity may rest in the history of organization behaviour research. Most theories in this area seem to have been derived from the study of particular firms. These firms were often elected as representative of certain industries. P.R. Lawrence and J.W. Lorsch, for example, studied certain firms in the plastics, food and container industries,⁵ and Raymond Miles and Charles Snow (and their colleagues) studied firms in the textbooks, electronics, food processing and health care industries.⁶ As a result of this approach, there has been a tendency to describe the environment beyond the firms from the perspective of the firms, rather than to theorize about the environment and then to examine firms with respect to particular aspects of their environment. Indeed, so strong has the organization-centred approach to analysis been that Mary Crossan is able to state that "the concept of the environment [surrounding an organization] is inextricably linked to the concept of strategy [within that organization]."⁷

⁴As, for example, Yadav's work mentioned just at the end of the previous chapter, "Determining an Organization's Information Requirements: A State of the Art Survey."

⁵P. R. Lawrence and J. W. Lorsch, *Organization and Environment: Managing Differentiation and Integration* (Richard. D. Irwin, 1969, c. 1967).

⁶Raymond E. Miles, Charles C. Snow, Alan E. Meyer, and Henry J. Coleman, Jr., "Organizational Strategy, Structure and Process," *Academy of Management Review* (July 1978): 546-62.

⁷Mary M. Crossan, "A Concept of the Environment," (Unpublished paper written for Professor R.

Selecting a sample of organizations in order to find characteristics which can be used to distinguish between them has led to an approach which identifies unique characteristics of the organization (or industry) in question. The environment surrounding those organizations can then be described only in terms of the characteristics which have been found to distinguish *between* the organizations (and industries) in the particular study. This does not lead to a full description of the environment in which the organizations operate. There do not seem to have been studies done which proceeded from notions about the external environment and sought to describe the organizations which exist within that environment.⁸ Thus the environment external to organizations has never been comprehensively studied to see which environmental elements have pivotal impact upon the organizations within. Perhaps as a result of this individual, organization-centred approach, none of the research on organization behaviour seems to discuss government regulation of industry or lack thereof as an important variable in the environment of organizations.⁹

White, January 1988) at 1.

⁸There is an interesting small study reported in the library and information science literature, rather than the business administration literature, where information variables were studied within three organizations and the researcher then related them to an "ideal" model centred on information. See Edwin E. Olson, "Organizational factors affecting information flow in industry," *Aslib Proceedings* 29 (1977): 2-11.

⁹A couple of recent studies which do, in fact, examine the impact of information legislation on organizations are discussed below in the fourth section of this chapter. They are studies based on broad industry-wide surveys, not detailed studies of the behaviour of particular organizations.

This area of research may be expected to attract researchers more in the future. Paul Lawrence and Davis Dyer, in a recent synthesizing paper, produced no fewer than 13 figures of a matrix¹⁰ on which the vertical axis is labelled both "information domain" and "strategic uncertainty".¹¹ While this paper does specifically recognize the place of information in the corporate environment, it is also strictly theoretical. The framework of the matrix is introduced only briefly¹² and the relationship of the term "information domain" to the specific constructs listed under it ("number of competitive variations, customer preferences and variations, knowledge generators (university, government, and industry research & development) and knowledge disseminators (schools, government, trade associations, etc.)") is not fully explored or explained in the paper.¹³ The paper presents a thought-provoking hypothesis about the ways in which government can influence corporations (at pp. 52 and 53 and Figure 19, "Impact Tendencies of Selected Federal Agencies" and accompanying text; see Appendix 3, attached); but no empirical research is cited in support of these ideas. It is expected that the research model proposed in the present study will provide some data germane to the types of hypothesized relationships shown in Figure 19 of that paper.

¹⁰Paul Lawrence and Davis Dyer, "Toward a Theory of Organizational and Industrial Adaptation", (paper no. HBS80-57, revised 1981, produced by the Harvard Business School, 69pp. and 21 figures).

¹¹Which reinforces Crossan's comment, noted above, about the conceptual twinning of the two in the literature!

¹²Lawrence and Dyer, p. 2.

¹³The paper also contains a fascinating figure (no. 20) entitled "Schematic of the information/resource transformation process within an organization" which is also not fully described or explained, although a paragraph in the text introduces it (p. 55).

4.2.2 Research into information as a factor within the organization

There is growing recognition of the importance of information as a factor in organization research. For example, Michael Tushman and David Nadler indicate the central hypothesis of their model of corporate behaviour -- that "[e]ffectiveness is a function of matching information processing capacities with information processing requirements."¹⁴ However, the hypothesis has been left for later testing. Similarly, William Egelhoff's general hypothesis that "[t]here is a good fit between structure and strategy when the information-processing requirements of a firm's strategy are satisfied by the information-processing capacities of its structure"¹⁵ goes as yet untested.

Occasionally, researchers have gathered data about information patterns in their research, particularly such quantitative data as the numbers of memoranda sent, the persons to whom they were sent, and the number of telephone calls received. Such data were gathered in the Aston studies¹⁶ and in the studies of the Organization Assessment school.¹⁷ However, the data were not used to elucidate hypotheses about information

¹⁴Tushman and Nadler, p. 622.

¹⁵William G. Egelhoff, "Strategy and Structure in Multinational Corporations: An Information-Processing Approach," *Administrative Science Quarterly* 27 (1982): 435-58 at 436.

¹⁶Derek S. Pugh, "The Aston Program of Research: Retrospect and Prospect," (pp. 135-166) and "Rejoinder to Starbuck," (pp. 199-203), in Chapter 4, "The Aston Program Perspective," in *Perspectives on Organization Design and Behaviour*, ed. Andrew H. Van de Ven and William F. Joyce (New York: John Wiley and Sons, 1981).

¹⁷(see Andrew H. Van de Ven, "The Organization Assessment Research Program," (pp. 311-37) in Chapter 6, "The Organization Assessment Perspective," in Van de Ven and Joyce, *Perspectives on*

per se but rather were used to elucidate other constructs about organization structure.

This may have been because the units of analysis were either entire corporate entities or sub-units of the entities. Analysis of individual behaviour was not done (although in the Aston school there was originally the intention to do analysis at the level of the individual).¹⁸

There is an area of literature which is involved in discussions of "Management Information Systems" and "Information Resources Management". However, the work done in this area is almost exclusively technology centred. The orientation apparent in this literature¹⁹ stresses computer systems and record keeping while virtually ignoring the human.²⁰ There is another area of literature which examines the information

Organization Design and Behaviour, and Cortlandt Cammann, "Comments on the Organization Assessment Research Program," (pp. 299-310) in Chapter 6 of the same volume.

¹⁸There is one doctoral dissertation about the information needs of employees in organizations but it did not attempt to analyze information flow. See N. G. Barnett, "Assessing information needs in complex organizations," (Ph.D. dissertation, University of California at Davis, 1981).

¹⁹See as examples: Clyde W. Holsapple and Andrew B. Whinston, "Knowledge-Based Organizations," *The Information Society* 5 (1987): 77-90; and Donald A. Marchand, "Information Management: Strategies and Tools in Transition," *Information Management Review* 1, no.1 (summer 1985): 27-34.

²⁰For an example of an attitude which ignores the human element necessary to this research, Daft and Lengel ask the question "Why do organizations process information?" and then hypothesize that "organizational design can provide information of suitable richness to reduce equivocality as well as provide sufficient data to reduce uncertainty." in Richard L. Daft and Robert H. Lengel, "Organizational Information Requirements, Media Richness and Structural Design," *Management Science* 32 (May, 1986, 554-71 at 559. It must be pointed out that organizations do NOT process information: only the individuals within organizations and outside them can have information needs. Organizational design can only ensure that data is available, not information. Organizational design cannot cause the individuals within or beyond the corporate structure to decide when or how they have received sufficient data to reduce uncertainty. That is an individual cognitive process.

processes in an organization in terms of "task enhancement" for individuals within the organization.²¹ This type of study is really concerned with the *use* to which information is put by an individual decision-maker and the factors which affect an individual's information need, whereas the emphasis in this present research is on the individual's role in the information flow in an organization.

One recent study takes these kinds of themes and unites them in an interesting study which winds up raising the sort of questions which this present research is designed to investigate. Robert McGowan looked at the effectiveness of the information systems available in 19 New York state agencies to support decision-making.²² His methodology apparently bore a considerable similarity to that employed in this research: he began with informally conducted interviews with 50 "administrators" (across all 19 agencies) conducted around 5 key questions. In the next phase of the research, questionnaires were sent to over a thousand program delivery "managers" (apparently, subordinate in status to the "administrators") in the organizations, of whom 64% responded. McGowan himself comments that the theoretical model that he used as the basis for his research "lends itself to speculation about external versus internal

²¹One example would be Richard L. Daft and Norman B. Macintosh, "A Tentative Exploration into the Amount and Equivocality of Information Processing in Organizational Work Units," *Administrative Science Quarterly* 26 (1981): 207-24.

²²Robert P. McGowan, "Organizational Decision Making and Information Systems: A Case Analysis of State Agencies," Chapter 10 in *Decision Making in the Public Sector*, ed. Lloyd G. Nigro (New York: Marcel Dekker, 1984), pp. 261-288.

organizational conditions...."²³

Another recent Canadian study took the introduction of technology into government as its point of departure and asked questions about the resulting change in the organizations studied. Cynthia Alexander's doctoral dissertation in political science²⁴ examined the impact of the introduction of electronic data processing and information technology in the social service systems of Manitoba, Saskatchewan and Alberta. Her methodology differed from that to be used here in that her interviews were conducted in an open-ended manner with an expanded network of available officials²⁵ in each government, without particularly emphasizing consistency in target subjects or in the content of the interviews. She found, on the evidence of her study, a number of factors which contributed to unsatisfactory implementation of electronic data processing:

1. the needs of users, including senior management, field workers, and central office staff, have been ignored or been poorly defined;
2. necessary policy changes to program area, including clarification of vague policies and concepts have not been undertaken;
3. executive rotation brings in actors whose different priorities result in a lack of financial or management commitment to the EDP project;
4. an organization ignores or neglects to consider the pace at which change may ensue as a result of EDP; and,
5. little or no attention is paid to the office or client environment in which the system is to operate.²⁶

²³Ibid. p. 282.

²⁴Cynthia Jacqueline Alexander, "The Administrative Politics of EDP [electronic data processing] in the Three Prairie Governments," (Ph.D. dissertation, Queen's University, 1987). Also reported in Cynthia Alexander and Edwin R. Black, "Computerizing Social Services: Putting the Byte on Three Governments," (presented to the June 1988 Annual Meeting of the Canadian Political Science Association at the University of Windsor, Ontario).

²⁵Beginning with appointments with contacts in each organization, she used referrals from those individuals to establish contacts and interviews with others in each organization. She followed the leads established by her early subjects to identify subsequent subjects.

Another study relevant to this research speaks to questions of organization structure in the context of information professionals.²⁷ Eugenia Brumm developed a definition of a Chief Information Officer [CIO]:

1. Oversees all or most of the information technology in an organization,
2. Is a senior executive level position, reporting to a high ranking executive,
3. Leaves the day-to-day operations to subordinates,
4. Is concerned primarily with strategic issues, by being responsible for corporate policy and strategy regarding use of information resources.

From secondary sources, Brumm identified CIOs in the top 100 ("Fortune 500") service and the top 100 ("Fortune 500") industrial organizations and sent 81 questionnaires to service CIOs and 85 to industrial CIOs. Data from the questionnaires led her to conclusions about the level of the CIO in an organization and the position's span of control; the CIO's involvement in corporate strategy formulation; and the education, employment background and demographics of CIOs. These findings led Brumm to the definition of CIO quoted above. The findings of the present study regarding the impact of the new position of Freedom of Information and Privacy Coordinator on organization structure will be compared with the results of Brumm's study.

²⁶Alexander and Black, p. 11.

²⁷ Eugenia K. Brumm, "Chief Information Officers in Service Organizations: A Survey," *Information Management Review* 3 (1988): 17-33, and Brumm, "Chief Information Officers in Service and Industrial Organizations," *Information Management Review* 5 (1990): 31-45. The first of these two articles describes the pretest for the larger study which is reported in the second article. The second article is apparently drawn from her doctoral dissertation entitled "Exploratory Study of Chief Information Officers in Fortune Service and Industrial Organizations," (Ph.D. dissertation, University of Illinois). (I was not able to see this thesis, however, because the author has denied permission for circulation and also denied my specific personal request.)

4.3 Research on information flow

4.3.1 In general

As early as the late sixties, Victor Rosenberg found that both industrial and government personnel go to the easiest and most convenient sources for information rather than to the source having the most information.²⁸ In the same vein, Mary Culnan has shown more recently that people choose between library systems, an online information system, and interpersonal sources for information based on perceived ease of use (which comprises both accessibility and familiarity).²⁹ These studies are part of an area of research focussed on the information acquisition patterns of individuals in various segments of society (as for example, the large studies in which Brenda Dervin has been involved).³⁰ Studies such as these focus on the individual, and do not attempt to reach conclusions about the organizations in which these individuals find themselves. There is, however, one major study concerning information acquisition, use, and dissemination patterns in an organization. The INISS study, done in the late seventies by T. D. Wilson and others, was a field study of social workers in one particular government department

²⁸Victor Rosenberg, "Factors Affecting the Preferences of Industrial Personnel for Information Gathering Methods," *Information Storage and Retrieval* 3 (1967): 119-27.

²⁹Mary J. Culnan, "The Dimensions of Perceived Accessibility to Information: Implications for the Delivery of Information Systems and Services," *Journal of the American Society for Information Science* 36 (1985): 302-308.

³⁰ See Brenda Dervin, et al., *The Development of Strategies for Dealing with Information Needs of Urban Residents* (Bethesda, Md.: ERIC Document Reproduction Service ED 125-640 (Phase 1), ED 136-791 (Phase 2), and ED 148-389 (Phase 3)).

in England³¹ Figure 9 indicates the areas of the information flow model with which Dervin and Wilson and their colleagues dealt (though neither exhaustively nor explicitly).

Finally, there is another, recently published, piece of research which looked at actual adoption and implementation questions throughout the organizations studied. Rohit Deshpande and Ajay K. Kohli report on a telephone survey of 250 middle-level managers in large American industrial goods manufacturers.³² The study explored the reasons for knowledge disavowal in these organizations -- that is, the avoidance of available information in order to protect the status quo. Their research was similar to this research in that it did not look at just the top corporate management level. Eighty per cent of the 250 middle managers approached as key informants about a major product launch decision in their company participated in this telephone survey. Neither the researchers' first hypothesis, "the more formalized the organizational structure, the greater the knowledge disavowal," nor their fifth, "the more centralized the organizational structure, the greater the group disagreement," were supported in their data. However, they did find that

knowledge disavowal is greater in more centralized organizations, when managers make decisions about older products, and where lack of consensus characterizes the decision making. Further group disagreement among managers is exacerbated by rigid rules and procedures for going about tasks -- that is, by formalized structures.³³

³¹ See, among other reports of the study, T. D. Wilson, "The Cognitive Approach to Information-Seeking Behaviour and Information Use," *Social Science Information Studies* 4 (1984): 197-204; and T. D. Wilson and D.R. Streatfield, "Information Needs in Local Authority Social Services Departments: an Interim Report on Project INISS," *Journal of Documentation* 33 (1977): 277-93.

³² Rohit Deshpande and Ajay K. Kohli, "Knowledge Disavowal: Structural Determinants of Information-Processing Breakdown in Organizations," *Knowledge: Creation, Diffusion, Utilization* 11 (1989): 155-69.

³³ *Ibid.*, p. 164.

		DISSEMINATION TO:		
		GOV'T	CORP'N	INDIV.
ACQUISITION FROM:	GOV'T	1 WILSON	2	3
	CORP'N	4 STIEG	5	6 DERVIN
	INDIV.	7	8	9 PATTERSON

Figure 9:
Matrix Showing Area Of Some
Previous Studies.

4.3.2 Distinguishing formal and informal channels

There is another area of literature concerned with distinguishing between formal and informal channels of communication in information flow. Formal channels are those which are externally validated by being made public or official in some way. An instance of the use of a formal channel is publication of press releases by an employee as part of his or her duties. Another type of formal communication is written official correspondence. All written communications are not formal, although written communication tends to demonstrate the existence of a formal channel more often than does oral. On the other hand, formal channels do include mandated oral communications.³⁴

Informal communications are all forms of communication which are not formal. Telephone conversations with a co-worker who provides information as a

³⁴ "Formal channels' carry information which is public and remains in 'permanent' storage; 'informal channels' carry information to restricted audiences and its storage is relatively temporary." W. D. Garvey and B. C. Griffith, "Informal channels of communication in the behavioural sciences: their relevance in the structuring of formal or bibliographic communication," in *The Foundations of Access to Knowledge*, ed. E. B. Montgomery (Syracuse University, 1968): 129-46 at 131. It would appear from this definition, for example, that personal letters which are saved are still examples of informal channels of information as long as they are not made public, particularly since their information value was probably upon receipt and the accident of being saved may depend more upon sentimental than informative value. Once published (or used as evidence in a public forum such as a legal proceeding) it would appear that the character of the letter would become changed and it would become a formal channel for information. Judith Weedman simply distinguishes public (formal) from private (informal), without any references to permanence. See "Informal and Formal Channels in Boundary-Spanning Communication," *Journal of the American Association for Information Science* 43 (3) (April 1992): 257-67 at 257.

colleague and friend rather than because officially required to do so are an example of informal communication. A memorandum sent by a colleague in another organization as a personal initiative is another example.

Research has been done in the area of "invisible colleges" of experts in the scientific community, which are generally created through informal channels.³⁵ There are also studies distinguishing between these two types of channels in the context of an organization. One such study indicates that the actual operation of an organization may rely on informal communications channels to a large extent, rather than on formal ones.³⁶ Finally, Judith Weedman has recently published a study of the information channels used by three groups of professionals or semi-professionals in the book industry: editors, reviewers and scholars (critics) of children's literature.³⁷ The study had about 180 respondents, of whom well over half were the critics, and only 13 were reviewers. The study set out to discover whether both formal and informal channels of communication were important in spanning the boundaries between the three groups. It was found that the social circle surrounding each group crossed the professional boundaries (an informal channel). It was found that the journal literature read by each group also crossed boundaries (a formal channel). Finally, it was also found that attendance at conferences and book fairs also crossed boundaries. However, in the

³⁵See, for example, Diana Crane, *Invisible Colleges: Diffusion of Knowledge in Scientific Communities* (Chicago, Ill.: University of Chicago Press, 1972).

³⁶William Paisley, "Information and Work," *Progress in Communication Sciences* 2 (1980): 113-65.

³⁷Weedman, "Informal and Formal Channels."

study, this attendance was considered evidence of formal communication channels "since the basic nature of a conference is that it is formally convened and the content is planned."³⁸ I would argue that this logic is weak. It is the aspect of the conference centred upon delivery of formal papers and proceedings which might be characterized as formal (public and permanent). But I would suggest that it is not clear that the formal part of a conference is the only, or even the major, source of information for conference attendees. Usually, the main purpose in attending such an event is precisely to be in touch with the invisible college and tap informal channels. In any event, the identified informal source of information, the social circle, already overwhelmed the formal channels in importance. One other interesting finding of the study was that "[i]ndividuals central to the informal structure were also more likely to use the formal channels."³⁹ Weedman speculates that "[i]t is likely that their central positions permit them to wick information from the formal channels into the system."⁴⁰

The legislation with which the present research is concerned does not specifically confine itself to either formal or informal communication. In this regard, it may be noted that "personal information", which is germane to the privacy aspects of the Act, is required to be "recorded" information. This does not necessarily mean that such information must flow in formal channels to be affected by the Act. Similarly, the

³⁸Ibid., p.259.

³⁹Ibid., p.267.

⁴⁰Ibid., loc.cit.

definition of "record" in the Act, quoted above,⁴¹ means that verbal communications seem to be beyond the scope of the freedom of information aspects of the Act. Yet this Act may still affect informal channels of communication. The present research will examine the effect of the Act on both types of information channels.

4.4 Social science research about information law issues.

Information law has come to include a number of different areas, of which control over government information (access to government information and protection of personally identifiable information in the hands of government) comprises only one facet. There are important studies in the other areas of information law. These studies are important to this research because they illustrate approaches to information issues in the legal context.

One aspect of information law involves intellectual property law issues, particularly with respect to copyright. Copyright law is purely a creature of statute. It is designed to ensure the spread of facts and ideas while still protecting the rights of the creator of a work. The Act involved in this research is similarly creating rights under a statute which had no prior existence in law. This Act is also trying to create balances between different interests in information. There is an interesting piece of historical research, by Lyman Ray Patterson, which analyzes the historical impact of the original

⁴¹See section 3.2, above..

eighteenth-century English copyright legislation and its successors in England and the United States.⁴² Figure 9, referred to earlier, indicates which cells of the information process model developed for the present research I believe can be said to be involved when Patterson's work on copyright is analyzed in this way.

Another valuable historical study about the effect of information law traces the role of the census and factory legislation in early nineteenth-century England in giving government the right to collect certain kinds of information.⁴³ In terms of the information process model for analysis being used in this study, Margaret Stieg's research looks at seminal legislation enhancing government's acquisition capability from individuals (again, see Figure 9). This legislation was directly affecting the privacy rights of individuals by mandating the dissemination of certain personally identifiable information to government. It contrasts with the legislation involved in the current study which, as already pointed out, does not directly legislate in the area of acquisition by government from individuals (*what* can be collected) except to place some controls on *how* the acquisition will occur.

Another important historical study, concentrating specifically on the Canadian context, has been written by Marc Raboy describing the entire history of Canadian

⁴²Lyman Ray Patterson, *Copyright in Historical Perspective* (Nashville: Vanderbilt University Press, 1968).

⁴³Margaret F. Stieg, "The Nineteenth Century Information Revolution," *Journal of Library History* 15 (1980): 22-52.

broadcast policy. Throughout, he distinguishes the "national" interest from the "public" interest and shows how confusion between the two concepts has often led to the use of broadcasting as an instrument of state policy.⁴⁴

Another ambitious research effort, concerned with American information law, is Sandra Braman's doctoral work, discussed earlier in connection with the discussion of the definition of information.⁴⁵ After establishing her typology of information definitions, Braman used case headnotes⁴⁶ to select 114 decisions released by the Supreme Court of the United States between 1980 and 1986 which involved the court in decisions involving information activity at any stage in the "information production chain".⁴⁷ This represented about 10% of the cases heard during this time period. Other than cases which involved questions of evidence, which she excluded as beyond her technical competence to interpret, and constitutional cases involving the separation of

⁴⁴ See *Missed Opportunities: The Story of Canada's Broadcasting Policy* (Montreal: McGill-Queen's University Press, 1990), p. xii. The work is unique and without parallel in other jurisdictions.

⁴⁵ "Information policy and the United States Supreme Court" (Ph.D. Dissertation, University of Minnesota, 1988), 489 pp. Some of the information resulting from the dissertation has appeared in Sandra Braman, "Information and Socioeconomic Class in U.S. Constitutional Law," *Journal of Communication* 39 (3): 163-79. As discussed earlier, the definition portion of the dissertation also spawned an article "Defining Information: an Approach for Policy Makers."

⁴⁶ Headnotes are basically abstracts and index terms for the cases. They are added by the editors of the reporting series during the editorial process before the text of the decision is published in the series.

⁴⁷ A concept drawn from the work of Fritz Machlup and K. Boulding which she is applying. See "Information and Socioeconomic Class in U.S. Constitutional Law," where she cites K. Boulding, "The Economics of Knowledge and the Knowledge of Economics," *American Economic Review* 56 (2) (1966): 1-13 and F. Machlup, *Knowledge and Knowledge Production* (Princeton: Princeton University Press, 1980).

church and state, Braman believes that the 114 represent all the decisions which involved the court in making either "manifest" or "latent" information policy during this period. While applauding her approach, Bruce Kennedy is of the opinion that Braman missed one very important "information" case in her selection.⁴⁸ She analyzes the decisions first according to an "information production chain" model and second by individual justice. The first analysis is broken into the following categories: creation-creation, creation-generation, creation-collection, processing-cognitive, processing algorithms, storage, transportation, distribution, destruction, and seeking. The hypotheses which she sought to test were:

- (1) the Supreme Court as information policy-maker will exhibit in the particular many of the same problems facing the United States information policy as a whole;
- (2) Supreme Court thinking will reflect an awareness of discrete stages of an information production chain and of interactions.⁴⁹

Braman concluded that these Supreme Court decisions did provide a "validity check for the concept of the information production chain."⁵⁰

Although it does not deal directly with a legislated situation in the United States, another American study will be discussed which bears directly upon the personal data protection aspect of the current research. Henry Jefferson Smith, Jr., in a recent

⁴⁸See Bruce M. Kennedy, "Dissertation Review of Braman, Sandra, 'Information policy and the United States Supreme Court'," *Library and Information Science Research* 13 (1991):72-75.

⁴⁹Braman dissertation, p. 13.

⁵⁰Braman dissertation, p. 399.

doctoral thesis, examined personal data protection practices in six large American private sector organizations.⁵¹ His research included interviews in all six organizations and an attitude survey questionnaire administered to employees in three of the six. It is mentioned in this canvass of research on information law because, as mentioned earlier, there are indications that data protection laws may be extended into the private sector on this continent, as they have already been in some European countries. Smith described the current state of data protection in these six organizations, unregulated in this respect at present, and thus provides evidence of the state of voluntary compliance with data protection principles in the United States, which, like Canada, does not yet regulate these industries in this respect. As such, the study addresses another aspect of the same policy question which this present research is designed to address for Canada. Smith's major findings may be summarized as follows: (1) many industries are concerned about the privacy issue but the type of information the company handles affects the company's approach (there are differences between industries); (2) the strongest concerns are related to sharing information between organizations (and particularly concerns about deliberate errors in data); (3) decision making was at the middle-management level in each organization until some external "perturbation" caused a corporate-wide management response (industry-wide responses occurred only in the face of an external challenge such

⁵¹Henry Jefferson Smith, Jr., "Managing Information: A Study of Personal Information Privacy," (Doctor of Business Administration, Harvard University, 1990).

as AIDS presented to the insurance industry); (4) information systems executives were subservient, though observant, in privacy discussions; (5) consumers were uninformed about policies and procedures but often vocal in calls for reform when informed.⁵²

Still concentrating in the area of privacy or data protection, but turning to research about the effect of legislation in this area, Colin Bennett's recent work discusses data protection in Sweden, the United States, West Germany and the United Kingdom from the perspective of a political scientist.⁵³ He discusses the convergence and divergence apparent in the approaches which each jurisdiction has taken to this area of legislation by examining the historical record of how each enactment was created and what the links were between the several countries involved. He also looks at the influence of the Organization for Economic Co-operation and Development on the developments in each jurisdiction. Unfortunately, from the point of view of this study, Bennett did not include any Canadian jurisdictions in his analysis.

Fortunately, there is already a considerable body of data about the Canadian federal and Ontario provincial access and privacy legislation. There is some early anecdotal and opinion evidence available about the effect of the federal access and privacy

⁵²These points are culled from the points made by Smith at pp. 330-1. The evidence which supported Smith's last point must be taken to be indirect because his study was internal to the organizations: "a combination of interview, focus group, observation, and archival techniques -- the attitudes of employees at four of the six sites were examined through a questionnaire," (quoted from the abstract). He also points out an area of concern for his subjects (which he had not anticipated in his initial design) was access to information within the organization. See p. 331.

⁵³Bennett, *Regulating Privacy: Data Protection and Public Policy in Europe and the United States*.

legislation in government.⁵⁴ There is continuing coverage of the effect of the statutes in the press.⁵⁵

At a more systematic level, there has been considerable work done by commissions and committees which has analyzed, in a descriptive way, the operations of particular pieces of legislation. Such an analysis of the effect of the federal Access to Information Act and Privacy Act has recently resulted in the report Open and Shut.⁵⁶ This report of the Standing Committee on Justice and the Solicitor General resulted from a review of the federal statutes which was undertaken three years after their passage, as required in the legislation.⁵⁷ The report analyzed the implementation of the federal Canadian Acts through the evidence obtained during the committee hearings: written submissions and viva voce representations from within government (such as those by John Grace, the then Privacy Commissioner, and the Honourable John Crosbie, then Minister of Justice), from academics (including the Canadian Historical Association and Department of Epidemiology of the University of Ottawa), interest groups (the

⁵⁴See, for example, such pieces as Frank Cassidy, "Closed or Open Government: The Public Servant and the Public," *Canadian Public Administration* 29 (1986): 583-4; Mitchell Sharp, "Freedom of Information: Have We Gone Too Far?" *Canadian Public Administration* 29 (1986): 571-8.

⁵⁵ See, for a recent example, "Ottawa Finding New Ways to Shut Down Information Flow," *Globe and Mail* (Monday, March 9, 1992): A6, about the effect of the federal statutes.

⁵⁶*Open and Shut*.

⁵⁷See s. 75(2) of the Privacy Act and s. 75(2) of the Access to Information Act. One of the background studies done for this Committee was a study by the Treasury Board of Canada entitled *Access to Information and Privacy Coordinators: Their Status and Role*. The major conclusions of the federal study are the basis for the recommendations of *Open and Shut* quoted below. See "Conclusions" at pp. 7-8 of the study.

Consumers Association of Canada and Canadian Rights and Liberties Federation among them), and members of the public.⁵⁸ The Committee made 108 recommendations for legislative reform and administrative implementation of the federal statutes. Four of the recommendations dealt particularly with issues involved in this study:

2.14 The Committee recommends that the status and role of Access and Privacy Coordinators be given explicit recognition in section 73 of the Access to Information Act and section 72 of the Privacy Act, since they are the prime movers for implementation of the legislation within government institutions.

2.15 The Committee recommends, in light of the Treasury Board's 1986 consultation with Access and Privacy Coordinators, that the Treasury Board directly address the problem of ensuring that Coordinators, who should be senior level officials wherever possible, have direct reporting relationships with senior management and senior program officials of government institutions in order to ensure necessary support for, and understanding of, their complicated, demanding and expanding tasks in information management. The Treasury Board should also update its requirement statement concerning the role of Coordinators, especially in such areas as information collecting policy, information inventories, privacy protection, and security issues.

2.16 The Committee recommends that the Treasury Board organize standard, formal training for Access and Privacy Coordinators, perhaps using automated training modules, audiovisuals, and films.

2.17 The Committee further recommends that the Treasury Board and the department of Justice become more active in central coordination and policy leadership on issues with government-wide implications for Access and Privacy legislation.⁵⁹

Not long after the Standing Committee report appeared, a very large and comprehensive comparative account of the operation of privacy legislation in five nations, including Canada, was published.⁶⁰ This major study by David Flaherty consists of

⁵⁸See Appendix C, "Witnesses," and Appendix D, "Written Submissions Received," pp. 121-7.

⁵⁹*Open and Shut*, pp. 13-14, 100-101. Recommendation 2.14 has not been implemented in the legislation.

⁶⁰Flaherty, *Protecting Privacy in Surveillance Societies: The Federal Republic of Germany, Sweden, France, Canada, and the United States*. Indeed, David Flaherty, the author of the international study,

five case studies of the bureaucracies created under the federal privacy legislation in each jurisdiction studied. The data was gathered through documentary evidence, site visits, and interviews with the administrators holding positions created under the legislation. The focus of the study is the effectiveness of the government institutions created by the statutes (in the case of Canada, on the Office of the federal Privacy Commissioner). Flaherty makes a number findings about personal data protection in the conclusion to his study. From the evidence presented in his study, he argues that "[i]n order to be effective watchdogs over public administrators, data protectors have to adopt a functional, expansive, and empirical, rather than a formal and legalistic, approach to their statutory tasks."⁶¹

A review process after three years was also mandated under the Ontario legislation.⁶² In preparation for this review, like its federal counterpart, the Ontario government did an empirical study of the role of the Coordinators appointed in the organizations governed by the Act.⁶³ The data for the study was gathered through a 9 page, self-administered survey distributed to "all designated FOIP coordinators as well as to any institution which completed more than five requests during the 1989 calendar

was also one of the two expert consultants to the Standing Committee which presented the earlier report (see "Minutes of Proceedings," pp. 129-130 of the report.

⁶¹Ibid., p. 385.

⁶²See s. 68 of the Act.

⁶³*Freedom of Information and Privacy Survey of Ontario Government Institutions* (Ontario, Freedom of Information and Privacy Commissioner, Fall 1990).

year.⁶⁴ A 100 per cent response rate was achieved from the 129 instruments sent out.⁶⁵ Several major findings of the survey were: (1) there was no overall pattern to the position of the Coordinator in the organization structure; (2) there was no overall pattern of reporting structure from the Coordinators to other management; (3) in ministries, final approval for access decisions was largely reserved for management senior to the Coordinators, such as the Deputy Minister or Assistant Deputy Minister;⁶⁶ (4) the majority of institutions had part-time Coordinators; and (5) Coordinators spent 5% or less of their time on FOIP activities (although the majority of full-time Coordinators spent over 50% of their time on FOIP issues).⁶⁷

Another systematically gathered source of evidence about the workings of the federal and Ontario legislation from the perspectives of the special purpose administrative bodies created under the legislation can be found in the annual reports of the federal and

⁶⁴Ibid., p. 3 of the "Survey Report" section.

⁶⁵Ibid.

⁶⁶The survey analysis did not create a category for Schedule II crown corporations alone. It was found that more agencies (which category would include the crowns which are the subject of this research) allow Coordinators final approval (20%) than ministries (3% for general access, 6% for personal data access requests). The questionnaire provided choices for final approval from Minister, Deputy Minister, Assistant Deputy Minister, Executive Director, Director, Manager, Legal Counsel, FOIP Coordinator, and Other (See Questions 5a and 5b). Apparently approval lies under "other" for many agencies (see p. 7 of the "Survey Report" section).

⁶⁷This conclusion is drawn from information supplied in response to an open question, which asked "What is the estimated percentage of time you spent in 1983 on the following activities?: - Non-FOIP activities? Supervision of FOIP office staff? Processing all types of FOIP request? FOIP training of institution staff? Protection of personal privacy issues? FOIP appeals? Other FOIP activities?..." (Question 11.)

provincial Commissioners.⁶⁸ The federal Commissioners have an investigative function and have prepared detailed internal analyses of the organizations they have examined.⁶⁹

In this respect, the federal Commissioners, and only to a slightly lesser extent, the Ontario Commissioner, have functioned like the "oversight agencies" analyzed by Sharon L. Caudle and Kathryn E. Newcomer.⁷⁰ With respect to the American oversight

⁶⁸The evidence of these reports was used only very, very sparingly in preparing this study. The reports are public documents. It was very tempting to include analyses of the number of requests an organization had received over the years, or the number of appeals the Commissioner had handled involving a particular organization in the study. However, such information could lead to identification of the participating organizations and therefore the temptation to make these sorts of comparisons with the data generated in this study itself had to be resisted.

⁶⁹This researcher has had the opportunity to review the reports of two "Privacy Compliance Audits" of federal departments: that of Environment Canada, dated March 9, 1988, and of Transport Canada, also completed in March of 1988. The report which Transport Canada received was generally positive - "the personal information is generally well protected within Transport Canada and employees are vigilant in preventing its unauthorized disclosure." On the other hand, Environment Canada received a more negative judgement - "[a]lthough there is a general awareness among staff of the need for the protection and security of personal information, the audit disclosed that there is a general lack of awareness among departmental employees of the Privacy Act, its application and implications. The Ontario Information and Privacy Commissioner lacks the specific investigative power under which his counterparts at the federal level conduct these audits (Access to Information Act, s. 30(3), and Privacy Act, ss. 36 and 37). Therefore, the Ontario investigations occur in one of three contexts: (1) out of an appeal; (2) from a specific public complaint to the Commissioner; or (3) in connection with investigation of a particular by the Commissioner (see p. 11 of the *1989 Annual Report*). In Policy Change XV of his *Suggested Changes to the Freedom of Information and Protection of Privacy Act, 1987, as amended*, (pp. 138-43) the Information and Privacy Commissioner put forth the case for a broader explicit power. Recommendation 69 of the Standing Committee on the Legislative Assembly adopts this position (pp. 109-11 of the *Review of the Freedom of Information and Protection of Privacy Act, 1987*).

⁷⁰See Caudle and Newcomer. They do not offer a precise definition of an "oversight agency". The American agencies which they examined were the Office of Management and Budget and the General Accounting Office. They define "Oversight information systems" as:

information systems that provide information to oversight agency managers to enable them to monitor the operations of agencies for which they have oversight responsibilities, to compare performance data against set performance criteria established by the oversight agency or by external political authorities, and to identify exceptions outside of tolerance parameters... [These] systems rely on data input by actors within the oversight reporting system, and data collection is primarily the responsibility of personnel in the agencies being overseen. (pp.39-39.)

agencies which they studied, Caudle and Newcomer found

The information is used to serve the public, visible side of the central oversight agency and the less visible strategic planning for internal and external negotiations to meet the agency's mission. The information systems in most cases are very self-serving. They help the agency demonstrate that it is doing what it would like to accomplish, justify current or increased resources, and ... develop data supportive of new policy initiatives. The oversight information systems interestingly enhance internal accountability within agencies, not within the overseen agencies. In the arena of political oversight, political accountability or the oversight agencies to external audiences is of the highest priority to oversight agency managers. They strive to protect their agencies' vulnerability to critics using the information resources they gather in a defensive rather than offensive manner.⁷¹

The particular findings which supported these conclusions were presented in a figure in the article reporting this research. That figure is reproduced herein as Appendix 4.

This present research, done independent of the relevant oversight agency, addresses questions apart from the oversight functions and is not susceptible to the biases reported in the American study (whether or not such biases in the oversight information systems would be found if that research were replicated in the Canadian context).

The final piece of research which bears upon this study is a very recent, very interesting empirical study, commissioned by the Canadian federal Department of Justice, which has provided some data on transborder data flows of personal information *from* Canada.⁷² A six-page, closed question instrument was sent to a national population of

⁷¹Ibid., pp. 49-50. The "overseen" agencies are the executive agencies of the United States government. It should be noted that the research was done strictly within the oversight agencies, so conclusions about the overseen agencies must be considered as reflecting only the perspective of the sources of data Caudle and Newcomer were using.

over 5,000 large organizations in the public and private sectors.⁷³ There was a response rate of 36% overall. The report provides interesting exploratory data on the quantity and characteristics of personal data which leave Canada. Section 10 of the instrument asked about "protections and guarantees" given by the organizations when they transfer data. Analysis of the results of these questions⁷⁴ led to the conclusion that "in a majority of cases the data disclosed are well protected and the people affected by disclosures are rarely kept in the dark about their occurrence."⁷⁵ Surprisingly, this was true in both public and private spheres. The instrument did not ask about the respondent's knowledge of relevant legislation.⁷⁶

⁷²Department of Justice, Computer Science and Law Research Group, *Crossing the Borders of Privacy: Transborder Data Flows of Personal Data from Canada* (Université de Québec à Montréal, 1991).

⁷³As indicated in the "letter of introduction" included as Appendix 2 to the study, the survey was sent to the head of each organization with the request that it be forwarded "to the person or those persons in your firm who [sic] you feel are best informed with regard to those questions concerning communication of personal data."

⁷⁴*Ibid.*, pp. 188-95, including Table 8-1 and 8-2.

⁷⁵*Ibid.*, p. 194.

⁷⁶This exploratory study attempted to establish measures for both the direction and the volume of actual information flow out of Canada with respect to personal data. In this way it can be seen to be directly relevant to the research model developed here. The approach taken can be distinguished from that used by Rakesh B. Samharya and Arvind Phatak in their study of transborder data flow restrictions ("The Effect of Transborder Data Flow Restrictions on American Multinational Corporations," *Management International Review* 30 (1990): 267-89), because Samharya and Phatak are looking at the role played by executives' perceptions of trans-border data flow restrictions on the decision-making processes of those executives. (They found that executives perceived economic factors to be more important in restricting transborder data flow than privacy laws.) While such a study is important in understanding organizational behaviour, it does not directly address the question of actual information flow in organizations or actual (rather than perceived) effects of information legislation.

These, then, are the studies which provided the background for this research. There are several very interesting historical analyses about related information law issues which helped to establish, for this researcher, the kinds of questions which can be asked about the effects of law on society and its agencies. There is a very interesting study about the role of the judiciary in information policy (Braman) which looks carefully at questions of definition, as does this research design. There is work done in the area of data protection legislation which describes and discusses the operation of these statutes from the perspective of the policy-makers themselves (Bennett) and the key administrative players (Flaherty). The work done by Caudle and Newcomer suggests however, that research into the effectiveness of these enactments from a different point of view (such as this study takes) will increase our understanding of their actual effect. There have been a few studies about information-related phenomena in organizations but much of the interesting theoretical work in the literature remains to be tested empirically. (Brumm's study, which discusses the role of a particular information professional in organization structure, is not itself directed toward questions about the information process itself.). There have been a few studies about information flow and the channels of information flow but none has been directed to the impact of a particular factor influencing the patterns of flow (the role of the Act in the present research). On the other

hand, looking at organizations on the macro level, Crossing the Borders of Privacy has contributed new information about the actual flows of personally-identified information *out of Canada*.⁷⁷

⁷⁷ From a policy-making point of view, in order to assess the urgency of the need to meet the European standards of privacy protection on data for Canada, it would be really useful to have similar studies establish similar measures of the rate of flow of personal information *into* Canada (to know what we would lose by not bringing our protection up to European standards).

CHAPTER 5: THE RESEARCH DESIGN

5.1 The research questions

Referring back to the expanded information flow matrix discussed in Chapter 2, one can examine this legislation for its impact in terms of the matrix. It has the potential to affect three quarters of the cells of the matrix. It establishes controls on the following types of information channels:

1. GOVERNMENT ACQUISITION FROM and DISSEMINATION TO OTHER GOVERNMENT BODIES [cell 1] - with respect to personal data
2. GOVERNMENT DISSEMINATION TO CROWN CORPORATIONS [cell 2] -with respect to personal data
3. GOVERNMENT DISSEMINATION TO PRIVATE CORPORATIONS [cell 3] - with respect to all information, both personal and non-personal - *indirectly*
4. GOVERNMENT DISSEMINATION TO INDIVIDUALS [cell 4] - with respect to all information, both personal and non-personal.
5. GOVERNMENT ACQUISITION FROM INDIVIDUALS [cell 13] - with respect to personal data
6. GOVERNMENT ACQUISITION FROM PRIVATE CORPORATIONS [cell 9] - with respect to personal information, because the government can't collect it from this source (only from the subject individual) and non-personal (because the government can no longer guarantee confidentiality).

This is set out in Figure 10A. These areas of the matrix were affected by the original

		DISSEMINATION TO:			
		GOV'T.	CROWN CORP.	PRIVATE CORP.	INDIV.
ACQUISITION FROM:	GOV'T	1 Personal	2 Personal	3 Personal and ** General	4 Personal and General
	CROWN CORP.	5	6	7	8
	PRIVATE CORP.	9 Personal and General *	10	11	12
	INDIV.	13 Personal	14	15	16

* Because no guarantee of confidentiality

** Corporations must apply indirectly through individuals -they are not "persons".

Figure 10A:

Areas of the information flow matrix affected by this legislation as it pertains to government

federal legislation, which did not include crown corporations in its coverage.

Because this Ontario legislation also governs the conduct of crown corporations, it also involves the following additional information channels:

1. ACQUISITION FROM CROWN CORPORATIONS and DISSEMINATION TO GOVERNMENT [cell 5] - with respect to personal data
2. ACQUISITION FROM and DISSEMINATION TO CROWN CORPORATIONS [cell 6] - with respect to personal data
3. ACQUISITION FROM CROWN CORPORATIONS and DISSEMINATION TO PRIVATE CORPORATIONS [cell 7] - both personal and non-personal data - *indirectly*
4. ACQUISITION FROM and DISSEMINATION TO INDIVIDUALS [cell 8] - both personal and non-personal data
5. ACQUISITION FROM INDIVIDUALS and DISSEMINATION TO CROWN CORPORATIONS [cell 14] - personal data
6. ACQUISITION FROM PRIVATE CORPORATIONS and DISSEMINATION TO CROWN CORPORATIONS [cell 10] with respect to personal information, because crown corporations can't collect it from this source (only from the subject individual) and non-personal (because crown corporations can no longer guarantee confidentiality).

The effect of the coverage of crown corporations, by themselves, in such legislation is shown in Figure 10B. The total coverage of the Ontario legislation is shown in Figure 10C.

		DISSEMINATION TO:			
		GOV'T.	CROWN CORP.	PRIVATE CORP.	INDIV.
ACQUISITION FROM:	GOV'T	1	2	3	4
	CROWN CORP.	5 Personal	6 Personal	7 Personal and General **	8 Personal and General
	PRIVATE CORP.	9	10 Personal and General *	11	12
	INDIV.	13	14 Personal	15	16

* Because no guarantee of confidentiality

* Corporations must apply indirectly through

* individuals -they are not "persons".

Figure 10B:

Areas of the information flow matrix affected by this legislation as it pertains to crown corporations

		DISSEMINATION TO:			
		GOV'T.	CROWN CORP.	PRIVATE CORP.	INDIV.
ACQUISITION FROM:	GOV'T.	1 Personal	2 Personal	3 Personal and General**	4 Personal
	CROWN CORP.	5 Personal	6 Personal	7 Personal and General**	8 Personal and General
	PRIVATE CORP.	9 Personal and General*	10 Personal and General*	11	12
	INDIV.	13 Personal	14 Personal	15	16

* Because no guarantee of confidentiality

** Corporations must apply indirectly through individuals -they are not "persons".

Figure 10C:

Areas of the information flow matrix affected by the total coverage of this legislation (10A & 10B)

If the personal data protection aspects of this legislation were to be extended into the private sector, then the cells shown in Figure 10D would be affected and the following three channels would be controlled with respect to the flow of personal data:

1. ACQUISITION FROM and DISSEMINATION TO PRIVATE CORPORATIONS [cell 11]
2. ACQUISITION FROM INDIVIDUALS and DISSEMINATION TO PRIVATE CORPORATIONS [cell 15]
3. ACQUISITION FROM PRIVATE CORPORATIONS and DISSEMINATION TO INDIVIDUALS [cell 12].

This would mean that, with respect to personal data, every type of channel in the information flow matrix would be covered by legislation, with the exception of the cell which describes ACQUISITION FROM and DISSEMINATION TO INDIVIDUALS [cell 16]. It is suggested that legislation which attempted to control information channels in this cell would probably run afoul of the constitutional guarantee of freedom of expression in the Canadian Charter of Rights and Freedoms.

One of the research questions which this research was designed to provide data about is whether or not the cells involved because of the coverage of crown corporations by the legislation are being affected to the same degree as those involved because of the coverage of government institutions. Theoretically, both types of institutions are covered in the same way. However, in actual implementation, would

		DISSEMINATION TO:			
		GOV'T.	CROWN CORP.	PRIVATE CORP.	INDIV.
ACQUISITION FROM:	GOV'T	1	2	3	4
	CROWN CORP.	5	6	7	8
	PRIVATE CORP.	9	10	11 Privacy Provisions	12 Privacy Provisions
	INDIV.	13	14	15 Privacy Provisions	16

Figure 10D:

Areas of the information flow matrix which would be affected if private sector organizations were covered by this legislation

there be the same effect in Figure 10B cells as in Figure 10A cells? Thus while not able to measure exact impact of the legislation, the research was designed to give some information about relative impacts.

The problem with the measures of impact provided by examining the record of appeals and complaints to the Commissioner's office is that by and large these figures only give information about the impact of the legislation in cells 4 and 8, GOVERNMENT and CROWN CORPORATION DISSEMINATION TO INDIVIDUALS, since the vast majority of complaints arise out of situations involving requests for dissemination of personal or non-personal information from government institutions and crown corporations by individuals. But this leaves most of the cells affected by the legislation not analyzed. By going into crown corporations and ministries, this research was able to ask questions which bore upon every cell the legislation currently affects. Indeed, the only cells that employees of the government and crown corporations could not speak about (as employees and not as private citizens) were the four cells not controlled by the legislation (cells 11, 12, 15 and 16). Therefore another research question which this study probed was the extent to which the crown corporations and ministries are involved in actually controlling all the types of channels of information flow connected with their organizations which the legislation purports to affect.

5.2 Constructs and variables

5.2.1 The five dependent variable constructs

To *implement* is to carry into effect.¹ The responsibility for carrying this statute into effect within the institution is given by the statute to the head of the institution and her or his delegates -- that is, management. Therefore, one measure of the effect of this legislation is the extent to which management have taken steps to implement its requirements. Issues explored in this area of the study focused on the position and efforts of the Freedom of Information and Privacy Coordinator in the organization, revealed through interviews with these Coordinators and their management. *Implementation* is the first of five dependent variable constructs with which the study is concerned.

To *adopt*, on the other hand, is

1. to take and follow by choice or assent;
2. to take up and use as one's own.²

The activities of acquiring and disseminating information take place throughout a corporation. The organization's activities in this respect are only the sum of the activities of each of its individual employees because information activities are individual personal activities (as discussed earlier) which, in the case of the organization, are conducted within the scope of the individual's employment with the organization. Therefore, although the statute makes the head or head's delegate responsible for compliance with the Act, the head can only be successful in ensuring compliance throughout the

¹American Heritage Dictionary of the English Language, s.v. "implement".

²American Heritage Dictionary of the English Language, s.v. "adopt".

organization in one of two ways. The first would be to control all instances of acquisition by or dissemination from any employee of the organization and checking, or having a specifically empowered delegate check, for compliance with this statute. Given the centrality of communication to the conduct of business in today's society, an attempt to use this approach to ensure adherence to the statute would probably bring the organization to a standstill. If this method is being attempted, or a variation of it is being attempted, evidence of the attempt will be available in the measures of implementation constructed in this research. The second way of ensuring compliance is to persuade employees to follow the statute themselves, to take the responsibility for compliance upon themselves, to adopt the statute as their own standard for dealing with information acquisition and dissemination on the job. This is probably the more effective way of ensuring compliance with this statute without unnecessarily interfering with the conduct of the day to day business of the organization. It is, however, perhaps the more difficult management challenge.

It is not easy to persuade employees to adopt management's burdens as their own. Some evidence about the strategies employed to make this attempt, if any, will be available in the evidence gathered on management's implementation of the statute. However, the real test of the success of any such strategies, and the real evidence of the impact of the statute on the day to day life of the organization, will be the evidence of adoption which is gathered from the employees themselves. Therefore, adoption of the

legislation was explored by examining what changes had taken place in the handling of information in the corporation by all levels of the employees of the organization.

Despite the best efforts of management, and elaborate manuals produced by the Coordinators, if the rank and file of the organization remain indifferent to, or ignorant of, the requirements of the Act, then it cannot be said that the organization has adopted the changes required under the Act. *Adoption* was measured through questions in an instrument distributed to the employees. It is the second dependent variable construct examined in the study.

As previously discussed, legislation dealing with access to government information and the protection of individual privacy in personal information held by government is recent in most jurisdictions, certainly in the form it has taken in Ontario. During the period of the study, the concept was new to the administration of government and the crown corporations. One of the elements which this research explored was the type and extent of change which the legislation had caused within the subject organizations.³ Change was analyzed in two areas: in organization structure and in information flow.

The first aspect of change explored was change in *organization structure*.

³In this respect, the study is adopting the first of the three methods of examining the legal impact of legislation discussed by Richard Lempert, "comparing the same jurisdiction before and after the passage of the law in question and noting any behavioural changes which seem to have followed as a result of the passage of the law." See Richard Lempert, "Strategies of Research Design in the Legal Impact Study: The Control of Plausible Rival Hypotheses," *Law and Society Review* 1 (1966): 111-32, at 112. This is also neither a longitudinal nor a truly historical study. The element of change has been measured in this study from a retrospective point of view, that is, by using the current corporate memory of the individuals and records which reflect upon the past.

What role does the new office of the Coordinator of Freedom of Information and Privacy play in the corporation? Why was a new office created? At what level of the management hierarchy has the position of the Coordinator been created? What is the extent of the authority of the incumbent? What other areas of the organization have been affected by the creation of this new office? One purpose of these questions is to distinguish mere changes in staffing from actual changes in corporate structure. Have actual changes in corporate structure occurred as a result of this legislation? The interviews with the Coordinators and the heads furnished most of the evidence gathered on these points.

As discussed earlier, problems of definition persist in the area of information study and, where problems of definition are so fundamental, it is not surprising that the problem of measurement remains. One element of definition has been discussed in Chapter 2, above, which is common to the better definitions of information which have been advanced. This is the aspect of the flow of information. This study uses that commonality and addresses the problem of accurately describing change in the information climate within organizations in terms of flow.

Therefore, one focus of the discussion of change in the organization is on analysis of change in *directions of flow of information*. Evidence was collected from all individuals contacted in the course of the study, as well as from the policy materials were provided.

The other focus of the examination of change in the flow of information in the organizations was on change occurring in the *type of channels of information flow*, whether formal or informal. This was explored through evidence gathered primarily from both the interviews with the Coordinators and the employee questionnaire.

5.2.2 The three independent variables

As previously discussed, access and privacy legislation always governs the conduct of government institutions. However, it has not always been extended to crown corporations. There is consideration being given to extending at least the personal data protection aspects of this type of legislation into the private sector, where organizations are more like crown corporations than they are like government ministries. Therefore, the first independent variable operationalized for the research was *type of organization: ministry versus crown corporation*.

The second independent variable operationalized for the study was *organization size*. Graham White has recently pointed out that the variable of size is a very important, often overlooked, aspect for the study of Canadian government institutions.⁴ At the conclusion of his article, White writes:

Although this paper has demonstrated that size can have important implications for how the structures of Canadian government work, it has only scratched the surface; much in the paper is speculative rather than empirical analysis. The

⁴Graham White, "Big is Different from Little: On Taking Size Seriously in the Analysis of Canadian Government Institutions," *Canadian Public Administration* 33 (1990): 526-50.

analysis presented above suggests good reason for focusing attention more directly on provincial institutions, since they may not necessarily function as does Ottawa. If we are to understand many of the policies of greatest import to Canadians, we must come to grips with the context of provincial policy-making. And size is one of the most important contextual variables.⁵

By including size as one of the variables involved in this study, the study can contribute to the understanding which White indicates needs to be developed, particularly with respect to our provinces.

Size is also explored in this study because it may provide an explanation for differences which are observed between organizations with respect to the dependent constructs being examined. That is to say, there may be more observable differences between large and small organizations (either crown corporations or ministries), than between types of organization, crown corporations and ministries, with respect to the dependent constructs of adoption, implementation, organization structure, directions of information flow and type of channels of information flow. Inclusion of this variable in the study design allowed the research the possibility of capturing that explanation (size) for observed differences between the organizations studied.

Since the present study involved interpersonal communication, and looked closely at information habits of individuals as they function within the corporate context, it was most useful to operationalize size in terms of number of employees. Organizations were dichotomized by size: big versus small.

⁵Ibid., p. 550.

The final independent variable operationalized for this research was *public profile*, also dichotomized: high versus low. This variable was operationalized by comparing the number of references to a given organization which had appeared in the Globe and Mail (all sections except careers) over a 16 month period. Organizations were classified into the two classes (high versus low) according to their rank score of mentions. Varying the organizations by public profile was done because one of the aims of the legislation is to open government and its operations to the public. The freedom of information aspects of the legislation are intended to affect dissemination of information when requests are initiated by members of the public. It was felt that organizations under greater public scrutiny would probably have received more requests under the Act and would be under the greatest pressure from interest groups to respond effectively and efficiently.⁶ Therefore public profile was included in the study because, as in the case of the variable size, it might add greater explanatory value for observed differences in the values of the variables operationalizing the dependent constructs in the study than differences in type of organization, which is the primary dependent variable arising directly out of the research questions.

⁶Mentions in a major Canadian news database provided an ordinal measure of the strength of each organization's continuing contact with the public.

5.3 Sources of evidence

5.3.1 The design of the study

The study is, at least in part, a *field study*.⁷ The data gathered on managements' efforts concerning, and impressions of, the statute were gathered by going out and talking to management, in the subjects' places of business. Although this contact was guided to some extent by the researcher, the process was also directed by the subject participants' responses and initiatives. On the other hand, the study has a *survey* component.⁸ Data were gathered from employees in both government ministries and crown corporations by means of a mailed questionnaire administered to a sample of the population.

This study describes the conduct of individuals operating within the context of organizations.⁹ However, the unit of analysis in operationalizing the constructs is

⁷See the discussion of field research in Earl Babbie, *The Practice of Social Research*, 5th ed. (Belmont, Calif.: Wadsworth Publishing, 1989), Chapter 10, "Field Research": 260-89.

⁸Survey methodology is discussed in all the research methods texts consulted: see, for example, Bruce A. Chadwick, Howard M. Bahr and Stan L. Albrecht, *Social Science Research Methods* (Englewood Cliffs, N.J.: Prentice-Hall, 1984), Chapter 6, "Survey Research Questionnaire Studies": 134-62; and Royce Singleton, Jr., Bruce C. Straits, Margaret M. Straits, and Ronald J. McAllister, *Approaches to Social Research* (New York: Oxford University Press, 1988), Chapter 10, "Survey Instrumentation": 264-95.

⁹The research is therefore *ex post facto*, rather than experimental, in nature because I did not have direct control over the independent variables, to use the distinction expressed by Fred N. Kerlinger in *Foundations of Behavioural Research*, 2nd ed. (New York: Holt, Rinehart and Winston, 1973), p. 379. In developing the research design, Jeffrey Katzer, Kenneth Cook and Wayne W. Crouch, *Evaluating Information: A Guide for Users of Social Science Research*, 2nd ed. (Reading, Mass.:

the organization. The research design which has allowed the researcher to gather data from individuals in organizations in order to examine possible differences in the independent variable constructs is the *multiple case studies* approach. The study consists of a number of individual case studies, each case carefully selected to represent different combinations of the independent variables .

The main reason for choosing the multiple case studies approach was that this research is exploratory in nature. The information characteristics of organizations is not an area of investigation which has been thoroughly developed in the past, nor has empirical research into the effectiveness of this type of legislation been done. Therefore, it was necessary to begin with a broad descriptive approach to the subject in order to determine aspects of the organizations which the legislation has affected. The multiple case study approach, involving a variety of methodologies, avoided the pitfalls of other methodologies where the wrong questions might have been asked and relevant data therefore not collected. As Yin expresses this point: "the case study allows an investigation to retain the holistic and meaningful characteristics of real-life events".¹⁰ The other justification for a case study approach is that the major question of this study is a "how" question: how has a legislative attempt to control information affected organizations?¹¹

Addison-Wesley Publishing, 1982), was a useful cautionary aid. The work is now in its 3rd edition (published in New York, by Random House, 1991).

¹⁰Robert K. Yin, *Case Study Research: Design and Methods* (Beverly Hills: Sage Publications, 1984), p. 14.

Comparing and contrasting different organizations, rather than limiting the study to one or two, has allowed more independent variables (and hence possible rival explanations) to be explored. There has been no attempt here to sample in selecting the cases but rather to replicate the case study in a number of different organizations.¹²

Where the results are constant across all organizations, or within an identifiable subset, this constancy provides some evidence of a general pattern. On the other hand, where the results differ between organizations, further research may be necessary. Most importantly, the study has been structured so that the results can be compared to theoretical propositions, which renders the results analytically, if not statistically, generalizable.¹³

5.3.2 Operationalizing the three independent variables

The independent variables in the study were: (1) the type of organization, (2) the size of the organization, and (3) the public profile of the organization. Each of these

¹¹The other methods which Yin categorizes as useful in investigating a "how" question are experiment and history (ibid., p. 18). An experiment is not appropriate or possible in this environment and the legislation is too recent to permit a true historical approach. In any event, Yin later points out that the case study methodology generally allows one to use all the evidence which would be available in historical research, and as well have the benefit of direct observation and systematic interviewing (ibid., p. 19).

¹²The strength of this type of replication is discussed by Earl Babbie, *The Practice of Social Research*, 5th ed. (Belmont, Calif.: Wadsworth Publishing, 1989), p. 9: The study was designed for theoretical replication, that is, to provide an individual case in each cell of the design matrix described below (which was created to test certain theories), rather than literal replication, which would have required that each organization be another example from within the same cell of the design matrix.

¹³Yin, p. 21.

variables was created as a binary: (1) ministry or crown corporation, (2) small or large organization, and (3) low or high profile organization. This created the eight celled design shown in Figure 11.¹⁴ Using the multiple case studies approach to implement the design meant that an organization was selected to be the subject of a case study for each of the eight cells in the design. Thus the design was intended to be as follows:¹⁵

CASE 1 : a small, low profile ministry

CASE 2 : a small, high profile ministry

CASE 3 : a large, low profile ministry

CASE 4 : a large, high profile ministry

CASE 5 : a small, low profile crown corporation

CASE 6 : a small, high profile crown corporation

CASE 7 : a large, low profile crown corporation

CASE 8 : a large, high profile crown corporation

5.3.3 The sources of data for operationalizing the five dependent constructs

As discussed above, the dependent constructs involved in the study were adoption, implementation, organizational structure, directions of information flow, and channels of information flow. Evidence to explore them was gathered from four different sources within each organization. This triangulation has meant that several sources of evidence have been brought to bear on each hypothesis.¹⁶

¹⁴The figure shows the design in two dimensions, as two four-celled matrices.

¹⁵In fact, for reasons discussed in the following chapter, not every cell in the design matrix was able to be filled. Only seven case studies were finally conducted, although information from the organization in the eighth cell was obtained and will be discussed.

¹⁶See Babbie, p. 99, on the value of triangulation.

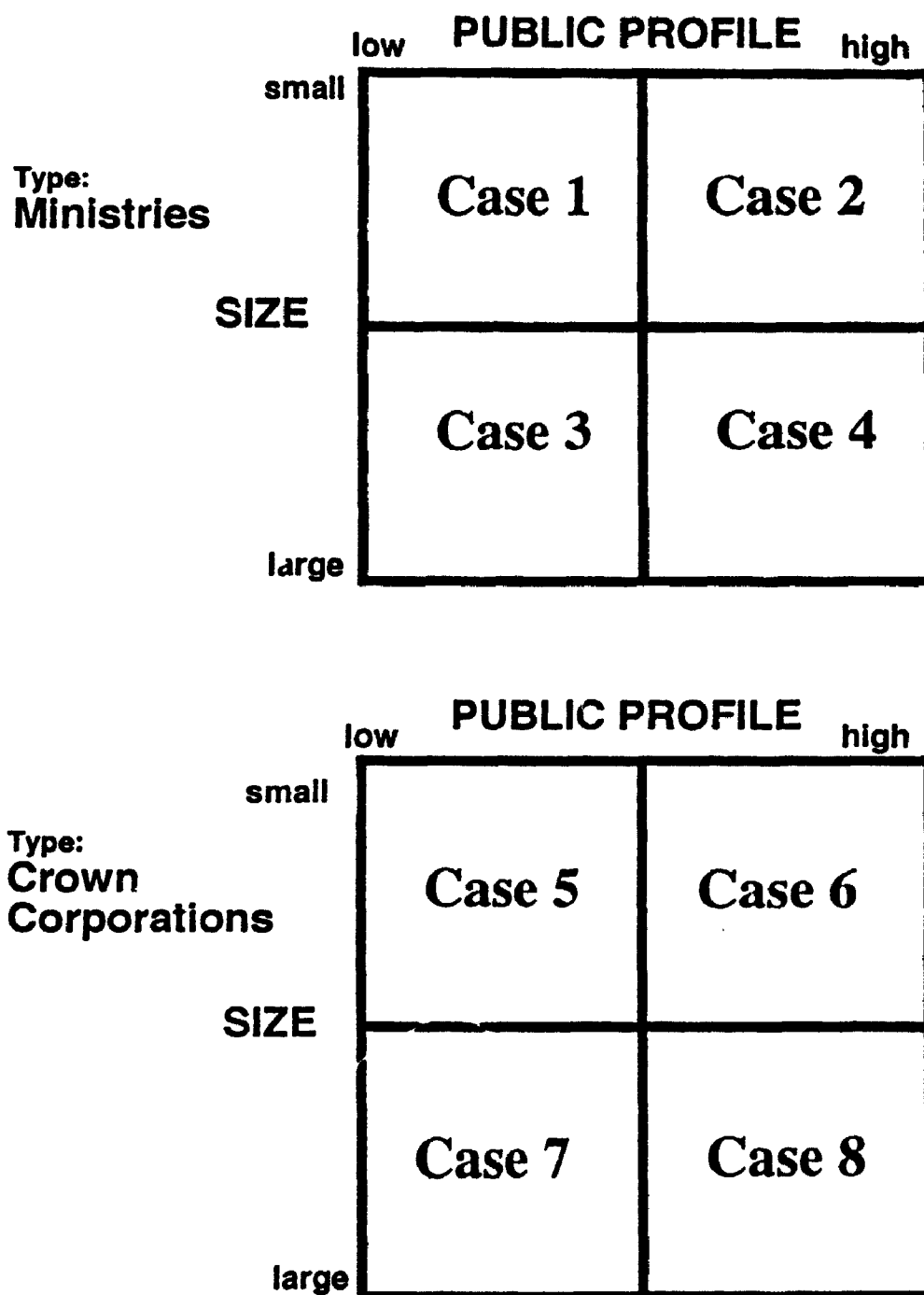


Figure 11:
The Eight-Celled Design

The first source of data was an interview conducted with the Freedom of Information and Privacy Coordinator in each organization. These individuals appear to meet Karl Deutsch's criteria for the strategic middle level of an organization:

(1) Without them, taken all together, little can be done, and particularly, little can be changed. (2) Each of them must count with the group of his peers, with whose support he can win easily but against whom he is nearly powerless.¹⁷

Deutsch indicated that these individuals were promising subjects for research. This interview was conducted over several hours using the protocol advocated by Yin,¹⁸ where a predetermined structure kept the interviewer on track, but allowed the interviewer to follow initiatives in the conversation suggested by the responses given.

These interviews were the researcher's second contacts with the Coordinators in most cases, since an initial interview with the Coordinators was arranged prior to the study in order for the researcher to present the research and discuss the organization's possible involvement in the project. This second, formal, data-gathering interview included discussion of the Coordinator's perceptions about the penetration of the legislation into the working lives of the employees, the steps taken by the Coordinator's office to implement the legislation, and about the background and experience of the Coordinator. The data gathered during this interview tended to be qualitative, rather than quantitative.

¹⁷Karl W. Deutsch, *The Nerves of Government: Models of Political Communication and Control* (New York: The Free Press, 1966), p. 156.

¹⁸Yin, p.70 ff.

During the course of this interview, another source of evidence, written documentation bearing upon the issues, was requested. This evidence included such material as, policy manuals, training materials, organization charts (both before and after the implementation of the Act), and job descriptions.

Next, a short questionnaire survey was distributed to employees.¹⁹ This questionnaire asked questions about the employee's level in the corporate hierarchy, about the level of awareness of the Act for each employee and about that employee's information patterns at work. Each survey was conducted within the confines of one organization and furnished quantitative, sampled data for that single case study which has then been compared with the other case studies.²⁰

The final aspect of data gathering was a forty-five minute interview with the head of each organization or his or her delegate. This interview also used the protocol

¹⁹The design of the questionnaire benefitted from my previous reading of such works as T.D. Wilson, "Questionnaire Design in the Context of Information Research," *The Research Interview* (1985): 65-77; James S. Kidston, "The Validity of Questionnaire Responses," *Library Quarterly* 55 (1985): 133-50; Harpur W. Boyd, Ralph Westfall, and Stanley F. Stasch, *Marketing Research: Text and Cases*, 5th ed. (Homewood, Ill.: Richard D. Irwin, 1981), particularly pp. 99-125 and 219-297; Ronald R. Powell, *Basic Research Methods for Librarians* (Norwood, N.J.: Ablex Publishing, 1985), pp. 89-112 (now available in a 2nd edition, 1991). I have also benefitted from analyzing and discussing the instrument developed by my colleague, Mutawakilu Tihamiyu, for his doctoral research. See Mutawakilu Adisa Tihamiyu, "Factors underlying the use of information sources in government institutions in Nigeria" (Ph.D. dissertation, University of Western Ontario, 1990).

²⁰See Yin, p.53. One of the seven organizations which had agreed to participate in the case studies ultimately denied the researcher permission to conduct the employee survey. Therefore, there is information from this source for only six of the organizations. This will be discussed further below.

approach discussed above. Certain questions were directed toward learning about how and where within the organization the decisions which have implemented the Act occurred. Another area of questioning concerned the level of responsibility and accountability of the Freedom of Information and Privacy Coordinator in that organization. This interview also tended to produce qualitative, rather than quantitative information.

This empirical study therefore fulfilled each of the three requirements which Yin has delineated for a case study:

- [It]-investigates a contemporary phenomenon within its real-life context;
 - when
 - the boundaries between phenomenon and context are not clearly evident;
 - and in which
 - multiple sources of evidence are used.²¹

5.4 The Hypotheses

It was expected that ministries had gone further in implementation of the legislation than crown corporations. This expectation derives from the fact that the ministries are directly part of the government which had initiated these changes. The crown corporations are further removed from the government. Also, crown corporations operate in the arena of business enterprises and so it was expected that an initiative which does not directly contribute to the "bottom line" would be resisted or ignored more than it would be in government, which has not traditionally had so direct a concern with costs.

²¹Yin, p. 23.

It was further expected that there might be more concern in the crown corporations with protecting business advantage by trying to restrict access to information which the individuals in the organization might consider to be commercially advantageous to outsiders.

Hypothesis 1: That ministries had gone further in implementation of the legislation than crown corporations.

It was expected that adoption would have proceeded further in the ministries than in the crown corporations. Again this expectation existed simply because more time and effort was expected to have been put into training in the ministries. Since the direct business effect of this legislation is not obvious, it was expected that organizations in the private sector, with a traditional concern for the "bottom line", would not have been as pro-active about this legislation as the public sector corporations. It was expected that employees of the crown corporations would believe that the legislation is a nuisance interfering with the carrying on of business.

Hypothesis 2: That ministries had gone further in adoption of the legislation than crown corporations.

It was thought that the mechanisms for coping with the demands of the Act would probably have been easier to implement in the less complicated structure of a smaller organization. This is consistent with White's view that

[s]ize has its most pronounced impact in the bureaucratic realm. A wide range of size-related factors, such as directness of communications between politicians and senior officials, the tendency for senior bureaucrats to concentrate on process and administration rather than on policy, and the likelihood that policy analysts in central agencies and elsewhere have had personal experience delivering policy or

maintain close contact with those who do, all contribute to making smaller bureaucracies more manageable, better able to respond quickly to change, and generally more effective.²²

Hypothesis 3: That small organizations had implemented the legislation more effectively and quickly than large ones.

On the other hand, White's enthusiasm for the small organization is not without caveat. He goes on to comment:

Conversely, however, smaller scale in bureaucracy may mean more personal fiefdoms: more idiosyncratic, unpredictable behaviour, which in turn may reduce morale and effectiveness; and less scope for change because of rigidity at the top reflecting the influence of a small, closed elite. Taken in concert with the narrower range of expertise and resources available in smaller bureaucracies, such size-related factors make for less effective, less manageable bureaucracies. The argument of this paper is not that small is beautiful, or even better, but simply that small is different.²³

These views might lead one to suspect that adoption of management initiatives by the rest of the organization would be slower in small organizations. However, it was the researcher's view that the limitations described here by White would be less influential in slowing the pace of adoption than would the sheer difficulties of communication, education and awareness imposed by the size of large organizations. Therefore, it was hypothesized that a large organization would be more bound by inertia in meeting new challenges than a small one and that therefore size would affect the speed and efficiency of the adoption of new corporate initiatives, such as this new legislative requirement.

Hypothesis 4: That smaller organizations had adopted the legislation more quickly and effectively than large ones.

²²White, p. 549.

²³Ibid., p. 549.

As discussed earlier, organizations under greater public scrutiny are probably under the greatest pressure from interest groups to respond effectively and efficiently to access and privacy legislation. It was therefore suspected that the management of these higher profile organizations would have tried to get the mechanisms for the Act into place quickly.

Hypothesis 5: That organizations with higher public profiles had implemented the legislation more quickly and effectively than those with lower public profiles.

It was also expected that organizations which are more in the public eye would be more concerned about maintaining politically correct public relations. Therefore, it was expected that the employees of such an organization would be more likely to be aware of the legislation and to have implemented it in their daily working lives.

Hypothesis 6: That organizations with higher public profiles had adopted the legislation more effectively and quickly than those with low public profiles.

Preliminary investigations by the researcher indicated that the role of information and privacy Coordinator had been created at a relatively low level of the management hierarchy in organizations and that the incumbents saw their role as largely reactive. Because such positions did not appear to have much breadth of control in the

organizations, nor the ear of senior management in other line departments, it was suspected that fundamental changes in the organizations' approaches to information pointing toward the central role of information as a factor in these organizations were not going to be led out of the offices implementing this legislation in the organizations.

Hypothesis 7: That the study would reveal only minor changes in the organization structure of these organizations as a result of the legislation.

The early preparation, prior to the beginning of the study itself, had also indicated that a Freedom of Information and Protection of Privacy Coordinator had been named in every organization in the study. Presumably that person would be involved in some way with the flow of information in the organization, at least seeing all requests for information pursuant to the Act. Therefore, the existence of the new office was expected to have had an impact on the directions of flow of information in the organization. Other changes in flow might also be expected to result from changes in procedure as a result of the Act.

Hypothesis 8: That changes had occurred in directions of the flow of information in the subject organizations as a result of this legislation.

As discussed above, the legislation does not explicitly deal with oral transactions, either formal or informal. It prescribes written forms for questions and contemplates a "formal" process. It was expected that this legislation would be

interpreted as being directed toward formal channels of communication and, therefore, the greatest change was expected in this area.

Hypothesis 9: That the legislation had affected formal information channels in the organizations to greater degree than informal channels.

The complete list of hypotheses developed and tested in this study is attached as Appendix 5.²⁴

²⁴It may be noted, further to the discussion in section 3.3 above, that none of these hypotheses requires a distinction between the "privacy" and access provisions of the statute. As discussed earlier, these hypotheses are developed to provide answers to threshold questions which do not require distinctions based upon the subject matter of the data being handled. Nor are these hypotheses designed to provide answers to questions asking "why". Rather they are designed to elicit answers to descriptive questions about the actual effects of the legislation.

CHAPTER 6: METHODOLOGY

6.1 The Selection of the Cases

An agency of the Government of Ontario, according to the Manual of Administration, is

- an organizational unit with ongoing responsibilities, which is formally established by , or pursuant to, a specific Ontario statute, regulation or order-in-council; and to which the majority of members is appointed or elected by, or subject to the approval of, the Lieutenant-Governor or a minister; or
- a corporation in which the government, whether directly or indirectly, holds more than 50 percent of the issued and outstanding shares with voting rights and/or appoints a majority of the members of the managing board; or
- an organization (other than a ministry) designated or constituted as an agent of Her Majesty the Queen in Right of Ontario.¹

"Operational agencies" have as their prime function "the direct provision of goods and services in order to implement approved government policy and programs".² Schedule II agencies, which (as discussed earlier) had been selected as those most closely resembling private sector businesses, are defined in the Ontario Manual of Administration as operational agencies of a commercial nature that:

- are or are intended to be completely funded out of the revenue generated by their programs. These agencies may receive loans or subsidies from the Consolidated Revenue Fund
 1. in the start-up and initial phases of their operations; and/or
 2. when they are directed by the responsible minister for reasons of government policy to carry out programs or activities that will incur deficits;
- adhere to the general management principles of the government but can demonstrate reasons whereby full compliance with the administrative policies and procedures established by the Management Board is not appropriate;
- manage their own administrative support;
- appoint staff under the authority of their own act and not under the *Public Service Act*.³

¹Ontario, Management Board of Cabinet, *Manual of Administration* (1989), p. 6-2-1.

²Ibid.

There were 18 such agencies or crown corporations listed at the time this study began. Of the 18, only those corporations listed in the Schedule to the Freedom of Information and Protection of Privacy Act, 1987 as having been governed by the Act since 1988,⁴ were to be considered for the purposes of this study. This eliminated two agencies: the Urban Transportation Development Corporation (UTDC) and the North Pickering Development Corporation. This study was only concerned with Schedule II corporations which were actively in business during the period of the study. This further requirement eliminated the Ontario Energy Corporation, the Ontario Centres for Technology, the Algonquin Forestry Authority (which is almost totally seasonal in its operation) and the Ontario Property Assessment Corporation. The final population of crown corporations therefore became those shown in Table 1.

The list of the components of the Ontario government is given in Table 2.⁵ The definition of "institution" in s.2 of the Act means "(a) a ministry of the Government of Ontario, ... and (c) any agency, board, commission, corporation or other body designated as an institution in the regulations". The Ontario Place Corporation and

³Ibid., p. 6-2-2. The list of 18 Schedule II agencies given here is derived from the Appendix found at pp. 6-2-5 to 6-2-10 (Nov. 89).

⁴There were agencies listed for whom the statute did not come into effect until January 1989.

⁵Taken from the Management Board of Cabinet, Civil Service Commission, *Annual Report 1988-1989*, p.36-37.

Table 1: Schedule II Agencies:

No. of Hits	Agencies
0	1. Ontario Food Terminal Board-(Agriculture and Food)
1	2. Ontario Stock Yards Board- (Agriculture and Food)
100	3. Liquor Control Board of Ontario- (Consumer and Commercial Relations)
	4. Ontario Energy Corporation- (Energy) subsidiaries: Ontario Energy Resources Ltd. Ontario Energy Venture Limited Onexco Oil and Gas Ltd.
336	5. Ontario Hydro- (Energy)
1	6. Ontario Waste Management Corporaouon- (Environment)
0	7. North Pickering Development Corporation- (Housing)
0	8. Ontario Centres for Technology- (Industry, Trade and Technology) Advanced Manufacturing CAD/CAM Robotics Resource Machinery
0	9. Algonquin Forestry Authority- (Natural Resources)
20	10. Ontario Northland Transportation Commission- (Northern Development and Mines) subsidiaries: The Nipissing Central Railway Company Owen Sound Transportation Company Limited 75887 Ontario Limited Star Transfer Limited
0	11. Ontario Training Corporation- (Skills Development)
0	12. Metropolitan Toronto Convention Centre Corporation- (Tourism and Recreation)
8	13. Niagara Parks Commission- (Tourism and Recreation)
5	14. Ontario Lottery Corporation- (Tourism and Recreation)
4	15. Ottawa Congress Centre- (Tourism and Recreation)
0	16. Urban Transportation Development Corporation- (Transportation) Subsidiaries: Metro Canada Ltd. UTDC Research & Development Ltd. UTDC Services Inc. UTDC (USA) Inc. Partially owned subsidiaries: Metro Canada International Ltd. RailTrans Industries of Canada Limited Subsidiaries: Can Car Rail Inc. Venture Trans Manufacturing Inc.
18	17. Stadium Corporation of Ontario Limited- (Treasury and Economics)

Table 2: The Ontario Government in 1988-89.*

<u>No. of Hits</u>	<u>MINISTRIES</u>
22	Ministry of Agriculture and Food
83	Ministry of the Attorney General (Cabinet Office)
	Ministry of Citizenship and Culture**
11	Ministry of Colleges and Universities
74	Ministry of Community and Social Services
60	Ministry of Consumer and Commercial Relations
31	Ministry of Correctional Services (Disabled Persons Office)
45	Ministry of Education
28	Ministry of Energy
266	Ministry of the Environment
26	Ministry of Financial Institutions
20	Ministry of Government Services
224	Ministry of Health
66	Ministry of Housing
19	Ministry of Industry, Trade and Technology
1	Ministry of Intergovernmental Affairs
6	Ministry of Labour (Lieutenant Governor's Office) (Management Board of Cabinet)
43	Ministry of Municipal Affairs (including the Niagara Escarpment Commission) (Native Affairs Office)
133	Ministry of Natural Resources
11	Ministry of Northern Development and Mines (Ontario Development Corporation) (Ontario Place Corporation)
24	Ministry of Revenue (Senior Citizens Affairs Office)
13	Ministry of Skills Development
34	Ministry of the Solicitor General (including the Ontario Provincial Police)
27	Ministry of Tourism and Recreation
44	Ministry of Transportation
9	Ministry of Treasury and Economics (Women's Issues)

* The Provincial Auditor, Ombudsman, Legislative Assembly and Office of the Premier do not employ Civil Servants.

** The Ministry of Citizenship and Culture was formed from the previous Ministry of Culture and Recreation and the Ministry of Citizenship.

Ontario Development Corporation (which are listed in Table 2) are listed in the Schedule to the Act, but are not similar in nature to the other organizations on the list because they are Schedule I crown corporations and therefore had to be excluded from consideration in choosing cases in government to contrast with the crown corporations. The other offices (Cabinet Office, Disabled Persons Office, Lieutenant Governor's Office, Native Affairs Office and Senior Citizens Affairs Office) are probably not ministries within clause (a) of the definition quoted above. Nor are they included in the Schedule. Therefore, they are not suitable organizations to be considered as cases for this study. Management Board of Cabinet was excluded from consideration because it has been given responsibility for implementation of the Act under s.3 of the Act. Therefore, for the purposes of the study, only Ministries were considered (as shown in Table 2).⁶

The number of employees in each Ministry was taken from published sources.⁷

However, no reliable information was available about the number of employees in the crown corporations being studied. Eventually, inquiries about the number in their employ were made to each corporation. The number of employees was established as the number of full-time equivalents in each organization.

⁶Ministries which had recently reorganized, such as Culture and Communications, were avoided (this pertained to the three involved in that particular rearrangement, for example)..

⁷Ontario, Management Board of Cabinet, *Annual Report 1988-89* (March 31, 1989), "Classified Service by Ministry" at 36-37.

The public profile of the organizations was established by doing a search for mention of each Ministry and crown corporation by name in the online database Infoglobe for the period January 1, 1989 to April 27, 1991 (16 months). The number of references found to each ministry being considered is indicated in Table 2, above. Table 1, above, includes the number of references found to each crown corporation.⁸

The public profile of the crown corporations was plotted against their sizes. This plot contained two outliers of very large, high profile organizations. To make differences between the other crown corporations more visible, Figure 12 shows the

⁸The search strategy was as follows:

1. from a menu, the option "all articles about a company or organization" was chosen;
2. from a menu, the option "any reference except stocks, dividends, sports, Osgoode Hall, social news" was chosen;
3. the search strategy "ministry w/1 [name of ministry] not appointment in class" was entered for ministries and the strategy "[proper name of crown] not appointment in class" was entered.

This strategy created a set of all "hits" in the database on the search strategy [total hits]. (The limitation "not appointment in class" removed all the appointment notices which organizations place in the *Globe and Mail* from consideration. Other possible limiters - to geographic location, to organization name, to personal name, or to subject - were not invoked. The whole text of the paper was searched, but added entries for subject were not searched.) In order to narrow the "hit" score to Ontario, the searches were repeated with the added parameter "not Ontario". This set contained the "hits" in the database which did not include reference to Ontario in them [non-Ontario hits]. In most cases, this set was null. In part, this validated the strategy, since it worked for organizations which are probably unique to Ontario. Where the "non-Ontario hits" sets were not null, the number of "hits" in those sets was subtracted from the number of hits shown for the corresponding "total hits" set, and the resulting score was used in this research. The headlines to the articles which made up the sets were reviewed in a number of cases and no error in the search strategy logic was found. Similarly, in a few cases, the full text of the corresponding articles was pulled, and again no error in the search strategy was found. Expense prohibited a full verification by analyzing every article in each set.

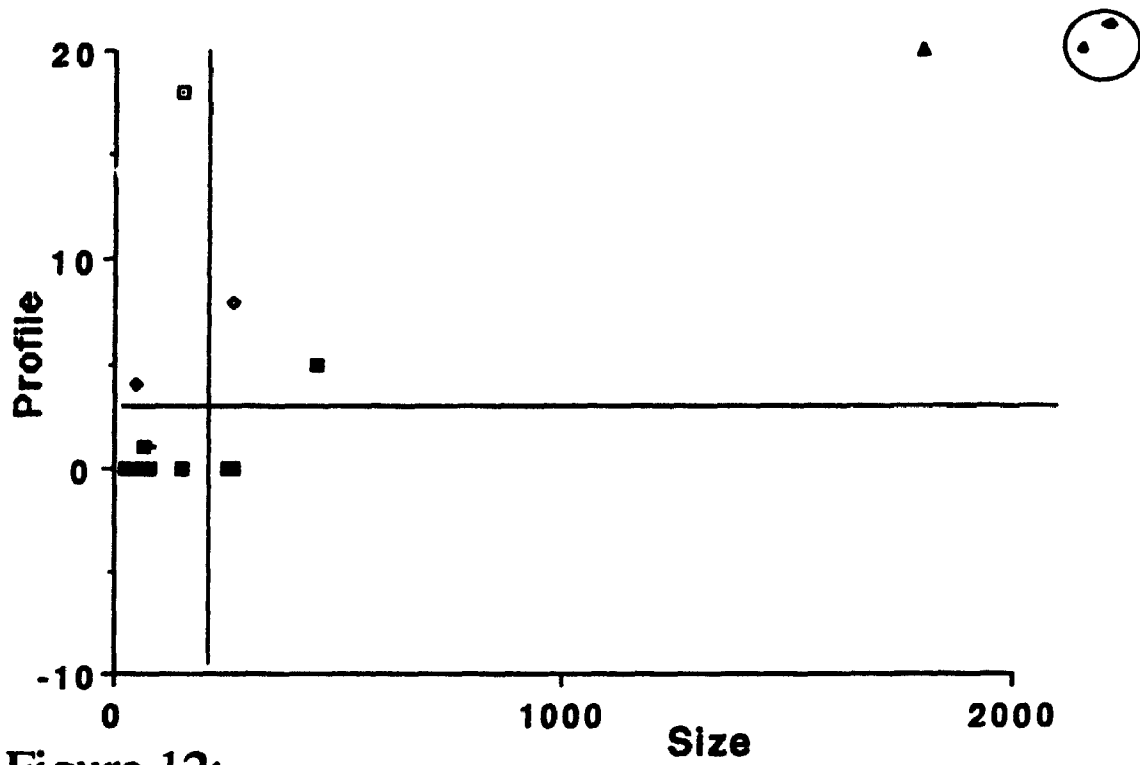


Figure 12:
Crown Corporations partitioned by size and profile

crown corporations plotted with these two outliers added in circles in the upper right hand quadrant for reference but not to scale. The object of establishing this graph was to enable the researcher to approach case organizations which provided contrasts along each of the variable continuums. Therefore, the actual scores on public profile and the exact sizes of the organizations were not so important as establishing categories of high profile / low profile and large / small respectively. Therefore, having placed the crown corporations on the graph, the researcher grouped the crown corporations into four quadrants using partitioning lines (as is shown in Figure 12).

The same exercise was followed with respect to ministries. See Figure 13 showing the ministries grouped into quadrants.

As discussed earlier, White argues that size is an important variable in public sector research. In discussing size, he offers the following definition of a large organization: "it is one in which the highest ranking officials know fewer than half the other members of the organization."⁹ He further comments that it

would not be at all unreasonable to expect a long-serving deputy minister or assistant deputy minister to know personally half or more of the staff in a department of, say, two to three hundred, particularly if a high proportion of them are professionals rather than clerical workers.¹⁰

It must be noted that, by this criteria, all four of the organizations finally selected in the

⁹White, "Big is Different from Little: on Taking Size Seriously in the Analysis of Canadian Governmental Institutions," at 542, apparently quoting Anthony Downs, *Inside Bureaucracy* (Boston: Little, Brown, 1966) at 18 and 27.

¹⁰*Ibid.*

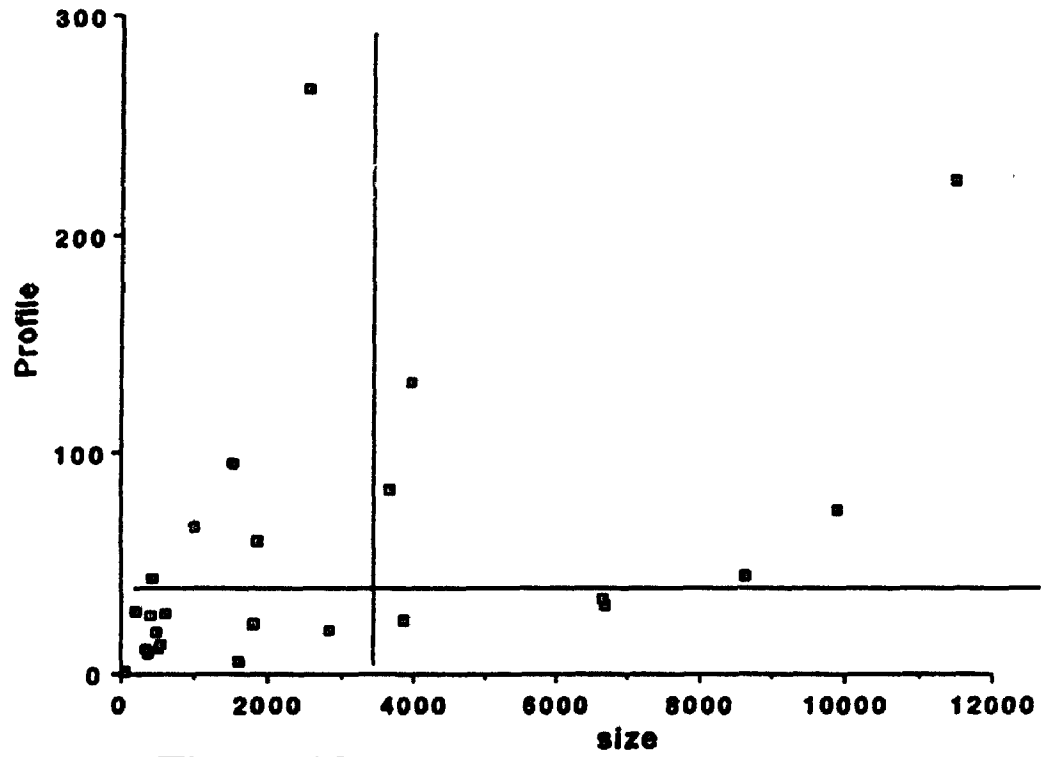


Figure 13:
Ministries partitioned by Size and Profile

"large" cells are large. Both the two small crown corporations are definitely small within this definition. One of the two "small" ministries falls clearly within White's definition (the "small/low profile" ministry). The other, while larger than White's numeric parameter, appears from the interviews conducted there to fall within his familiarity definition-- the organization appears to view itself as small and the core of the staff may indeed be known to the deputy ministers and assistant deputy ministers to a greater than 50% level.¹¹

Just as the approach to the selected organizations was about to begin, there was a change of government in the province. The New Democratic Party replaced the Liberals. The first Cabinet was named in the first week of October, 1990.¹² This meant that the entire population of organizations in the study was subject to the change created by a new government and new ministers. There was at least some measure of increased stability in the organizations once the new ministers were named. After a few weeks had passed, the researcher began to approach organizations to make the initial enquiries.¹³

¹¹In the interview conducted with the Executive Director, this individual mentioned many other employees, management team members, and Deputy Ministers (both past and present) by name in a way that indicated great personal familiarity with these individuals and with their roles and histories with the organization. Both the Coordinator and this Executive Director refer to themselves as working in a small (overworked) organization.

¹²See "NDP Team in Place", *The Toronto Star*, Wednesday, October 3, 1990, p.A13; "Rae's Cabinet", *The Toronto Sun*, Tuesday, October 2, 1990 p.5.; for subsequent changes in the government during the period of the study, see (for example) "Rae Appoints New Deputy Ministers", *Globe and Mail*, Friday, January 25, 1991, p.A5.

¹³There was a short period of further instability in January of 1991 when the Premier made significant

Initially, interviews were arranged with the Freedom of Information and Privacy Coordinators in eight organizations, one from each cell of the research design. The researcher spent one or two hours with each Coordinator discussing the nature of the study, answering questions, and discussing the nature of the approvals which would be necessary within each organization in order to get permission for that organization to participate in the study. A brief synopsis of the study and biography of the researcher were presented to each Coordinator during this interview (see Appendix 6). The Coordinators were also provided with a draft of the questionnaire which was to be distributed to employees and a sample of a model covering letter. This material was designed to assist the Coordinator in presenting the study to others in the organization, if necessary, to secure the requisite approvals.

The first small, low-profile Ministry approached declined to participate in the study. An approach was immediately made to another Ministry within that cell. The second Ministry approached agreed to participate.

In the case of a large, low-profile crown corporation, the Coordinator, an officer of the corporation, declined to allow the organization to participate in the study at

changes to the senior civil service in the province (see "Rae appoints new deputy ministers", *Globe and Mail*, Friday, January 21, 1991, A5). This shake-up of the senior administration in the province occurred after the initial approaches to the organizations had been completed but may have had a significant impact in certain organizations on the continued enthusiasm for the study. However, despite occasional delays, no organization failed to complete its participation and assistance commitment to the researcher.

any level. However, he or she did permit my interview with him or her to be used in the study. This interview contained much material relevant to the purpose of the study and explained the refusal to participate in terms which are very germane to the issues in this study. For this reason, and also because there was no other crown corporation in that cell of the matrix, that organization was not replaced in the study. Therefore, observations from that initial interview will be reported in this study as appropriate. Figure 14 shows the extent of the data gathered in each case. The large, low-profile crown corporation cell is shown shaded with diagonal hatching because there is some evidence about the organization in that cell (C4) which was used in the study, but the organization did not participate fully in any aspect of the study and therefore "a case study" of that organization cannot be said to have been done.

The administration of questionnaires to a stratified random sample of employees occurred in six of the organizations initially approached. In the case of the large, high-profile crown corporation (C3), the Coordinator was enthusiastic about the organization's participation in the study. However, an internal policy was later discovered which prohibited the organization from permitting a written survey to be administered on behalf of an external party to the organization's employees. The organization was pleased to participate in all other facets of the study. Therefore, in Figure 14, the large, high-profile crown corporation cell is shown with grey shading because, although complete data are available from the interviews with the Coordinator

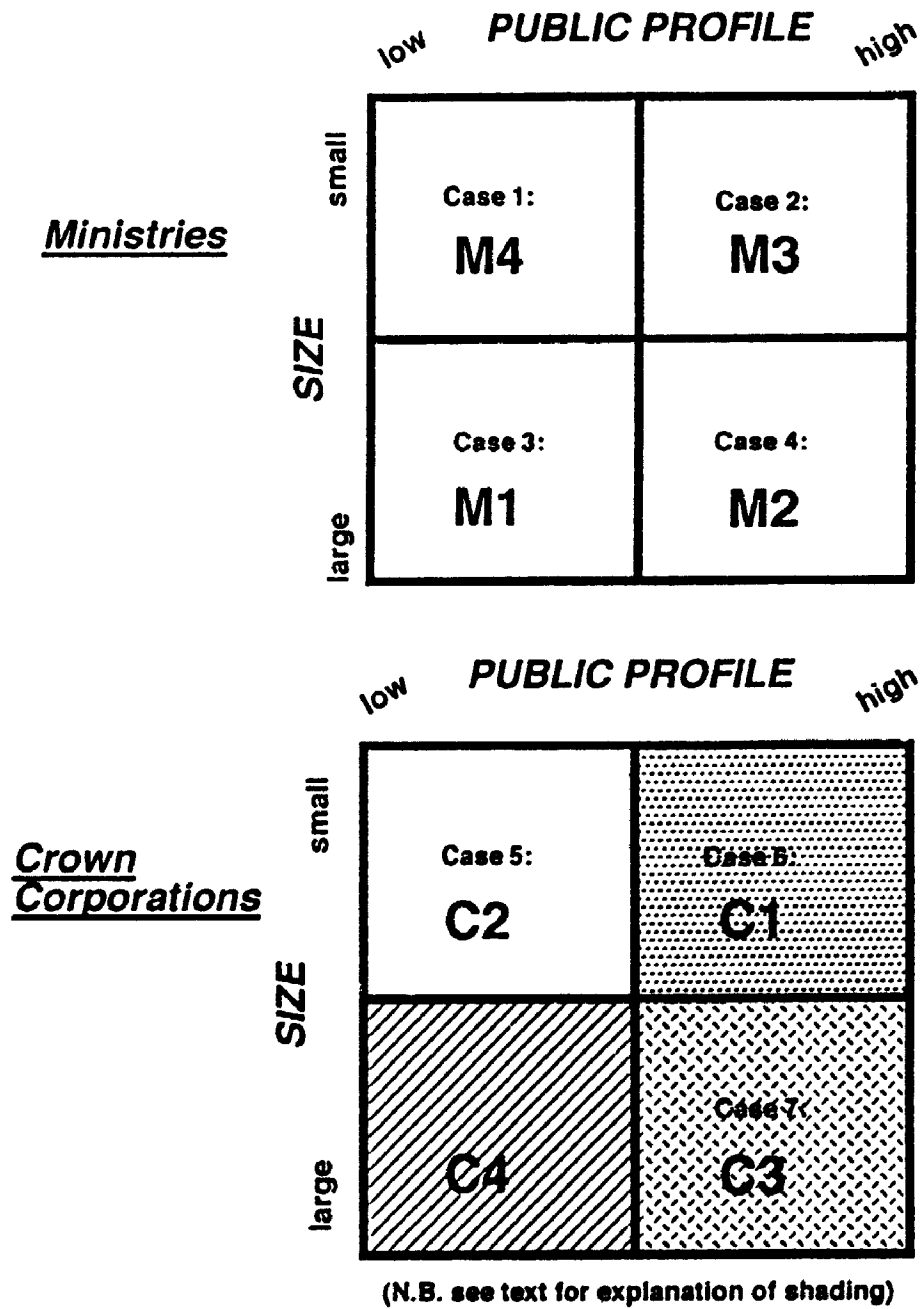


Figure 14:
The Selected Organizations

and corporation secretary, and other documentary evidence was made available through those interviews, there is no data from employees. Full participation in the study was obtained from the remaining six organizations.

In the case of the small, high-profile crown corporation (C1), the head of the organization had not delegated the authority given by the statute. In that case, the Coordinator and the head were the same individual. Therefore, there were not two separate interviews conducted in that organization. Rather, the protocols were adjusted to avoid duplication and the remaining issues in both protocols were canvassed during the interview. In this case, of course, there were only three sources of evidence brought to bear upon the research questions: the evidence of the head (Coordinator), the documentary evidence supplied through that interview, and the employee questionnaires. This situation, however, reflected the actual implementation of the Act in that organization rather than any procedural difficulty in conducting the research. The cell in which this organization is located is shaded with polka dots in Figure 14.

Confirming letters were sent to each organization when permission was received to involve that organization in the study. These letters explicitly stated the arrangements which had been agreed between the researcher and the Ministry with respect to the confidentiality of the identity of the participating organization. See Appendix 7, as an example of the type of letter sent.

In one case, it was necessary to formalize the question of confidentiality by means of a formal contract signed after the initial part of the study, the in-depth interview of the Coordinator, had been completed but before the questionnaires to employees were distributed (see Appendix 8 where a copy of the agreement is included, with the identity of the Ministry removed).

The initial phase of the study, the in-depth interviews with the Freedom of Information and Privacy Coordinators, was completed in all seven organizations by the end of January 1991. The distribution of questionnaires to employees of the six participating organizations began at the beginning of March 1991. Because of reliance upon the extensive cooperation of the organizations themselves, and in particular the Coordinators, and due in no small part to the external exigencies of responding to the changing government, the progress of the research in each of the seven organizations was according a different timetable. The final interview with the last "head" was only completed (after a number of re-schedulings) in February of 1992. Table 3 indicates the timetable for each case study.

Activity	Organizations									
	M1	M2	M3	M4	C1	C2	C3	C4		
Initial Contact	11-Oct-90	16-Oct-90	31-Oct-90	31-Oct-90	6-Nov-90	10-Oct-90	10-Oct-90	9-Oct-90		
Coordinator Interview	17-Dec-90	15-Jan-91	21-Jan-91	30-Nov-90	5-Dec-90	23-Nov-90	7-Dec-90	---		
Head Interview	29-Nov-91	10-Jan-92	17-Jul-91	1-Nov-91	5-Dec-90	25-Oct-91	21-Aug-91	---		
Survey Distributed	Jul-91	13-Mar-91	13-Mar-91	6-Mar-91	21-Mar-91	Aug-91	---	---		
First Follow-up	Oct-91	8-Apr-91	3-Apr-91	X	5-Apr-91	2-Jul-91	---	---		
Second Follow-up	---	8-May-91	29-May-91	X	(verbal)	9-Aug-91	---	---		

X Missing Data
 --- No Action Taken

Table 3: Contact And Activity Timetable For Each Organization

6.2 The Gathering of the Evidence

6.2.1 Design and administration of the instruments

In addition to serving the research needs of the study, the instruments used in the study were designed to meet two other criteria: (1) they were intended to gather information which would potentially be useful to the participating organizations, since the incentive to participate in the study (in addition to the altruistic motive of furthering academic research) was to receive feedback specifically about themselves through an independent research study which the organization would not otherwise have available; and, (2) they had to be designed to minimize the disruption to the organization caused by the study.

As previously outlined, the study is based upon four sources of evidence. The first was the long structured interview with the Information and Privacy Coordinators. The second was the written documentation which was supplied by the Coordinators during or as a result of the interviews -- see Table 4. The third was the mailed questionnaire administered to the stratified random sample of employees in each organization. The fourth was the shorter structured interview with the "head" of the organization or a delegate of that head. All four sources of information were tapped through the use of three instruments: (1) the protocol of questions for the Coordinators;

Documents	M1	M2	M3	M4	C1	C2	C3	C4
Organization Charts	X		X	X	X	X	X	
FOI Liaison Lists	X	X	X				X	
Ministry Delegation Of Authority	X			X				
Resume	X	X	X	X		X	X	
Help For Requesters & 3rd Parties	X			X				
Control Sheets For Requests	X	X		X			X	
Management Board Info.	X			Y				
Budgetary Information	X							
Position Descriptions		X	X			X	X	
Internal Booklets on FOI & P of P			X	X				
Admin. Policies and Manuals (FOI)			X				X	
Work Plans			X					
Submission to 3 yr. Review				X				
H.R. Secretariat Guidelines				X				
Paycheque Enclosure Brochure				X				
Corporate Plan					X		X	
Board Minutes (before and after)					X			
Model Contracts						X		

Table 4: Documentary Evidence Received From Each Organization

(2) the protocol of questions for the "heads"; and (3) the questionnaire for the employees.

In January of 1989 an in-depth 4 hour interview was done with the then Acting Coordinator in a crown corporation.¹⁴ This pilot interview was conducted without a prepared instrument to guide it. It was exploratory and detailed notes were taken by the researcher of the answers given during the interview, and also, of the way in which information was elicited during the interview. That interview formed the basis for the structured interview protocol designed for the Coordinators.

The protocol was not formally pretested, although it was reviewed by several individuals experienced in research and one experienced in the setting of a crown corporation. Evidence that it was satisfactory to the purpose is that it was able to be used without modification through all seven interviews to gather information which was consistent in all seven organizations, although of course the content differed with the individual situations of each Coordinator.

As mentioned earlier, the Coordinators were first interviewed in connection with enlisting the organization's participation in the study. Once participation had been confirmed, the researcher returned to conduct the protocol interview with each

¹⁴This crown corporation later participated in the study. However, the individual with whom this preliminary interview was conducted was in no way connected with the office or functions of the Freedom of Information and Privacy Coordinator's office by the time the study itself was conducted.

Coordinator. This session lasted about half a day. This session was conducted with each of the seven participating organizations. The protocol used during the interviews with the seven Coordinators (including the head at the small, high profile crown corporation, who had not delegated that function) is included as Appendix 9. The replies to this instrument are incorporated in the discussion below. No transcription has been provided because the interviews were very lengthy, the interviews focussed upon different aspects at different points in each session (although the interviewer ultimately covered all the points in each session), and the replies were often very organization specific (and a verbatim transcription would be too revealing of details which could lead to identification of the organization). The Coordinators had varying levels of experience as Coordinator:

M1 - just over 1 year
 M2 - 1 2/3 years
 M3 - 1 1/4 years
 M4 - 3 years
 C3 - 8 months
 C2 - just over 1 year¹⁵

In the six cases where the head had delegated functions to a separate Coordinator, two interviews were conducted in the organization, the first with the

¹⁵Four of the six agencies had had two coordinators since the imposition of the legislation (two had only had the one). According to the provincial study of coordinators, this places the four amongst 31% of organizations and the other two among 62% (see Table 29, p.12 of that report, the *Freedom of Information and Privacy Survey of Ontario Government Institutions*).

proportion of the sample to be obtained from each list was manually calculated and then names were selected from each list in a pattern calculated to produce the desired number of sample members (for example, the seventh name on each page in one case where the number of pages coincidentally equalled the number of employees needed to produce the sample). The researcher, however, never at any time actually saw any of the personnel information used in drawing the sample. A mailing list was prepared by each Coordinator (which the researcher never saw).³⁵

6.2.3 The survey response rate

The employee questionnaires were administered through the internal mail systems of each of the participating organizations. A package was sent to each employee (or each employee selected in the sample where sampling was done). The package included a covering letter, the questionnaire³⁶ and a return business supply envelope addressed to the researcher. A draft covering letter (Appendix 12) was supplied by the researcher to each organization and each Coordinator prepared the final covering letter as

³⁵The proportional sample was drawn to ensure representation from all three levels of employee in the organizations. The researcher was satisfied that the proportionality of the sample was accurate in each organization. No hypothesis in the study rested upon comparisons between the groups. Responses were received from all three groups in each organization, as discussed later, thus ensuring the representativeness of the sampling technique.

³⁶In one organization, distribution was either in French or in English, according to employees' preferences already known to the administration. In all other cases, the French version was made available upon request, as indicated in the covering letter.

Organizations

Organizational Position	M1	M2	M3	M4	C1	C2	C3	C4
Size Profile	Large Low	Large High	Small High	Small Low	Small High	Small Low	Large High	Large Low
CEO or Minister	Head	Head	Head	Head	All Roles	Head	Head	Head
CEO-1 or Dep. Min.	Effective Head	Effective Head	Effective Head	Effective Head		Effective Head	Effective Head	Effective Head
CEO-2 or DM-1	Coordinator	Coordinator		Coordinator			Coordinator	
CEO-3 or DM-2								
CEO-4 or DM-3								
CEO-5 or DM-4								
CEO-6 or DM-5								

Figure 15: Hierarchy Surrounding The "Effective Head"

of the Act and the four newer Coordinators were able to be judicious in their comments because they were bringing a fresh perspective to their offices.

The protocol for the interview with the "heads"¹⁷ was also developed from the experience of the "pilot" interview with the Acting Coordinator in the crown corporation in 1989, as well as from other instruments found in the literature. It was not pre-tested since it was simply not politically feasible to get an interview with a senior civil servant which was not part of the organization's commitment to the study itself. These interviews, which were conducted at the end of the data gathering phase in each organization, had to be limited to exactly 45 minutes because of the pressures of time on the respondents. The protocol used in the "head" interviews is attached as Appendix 10 (the appendix also includes transcriptions of the replies received). The content of the interviews with the heads in each organization differed according to the context of the organization. As Yin points out "the questions are posed to the *investigator*, not to a respondent. The questions, in essence, are reminders to the investigator regarding the information that needs to be collected, and why."¹⁸

When the first of the in-depth interviews with the Coordinators was conducted, another doctoral student, unconnected with this research, accompanied the

¹⁷Unless otherwise specified, "heads" will be used to refer to the "effective heads" interviewed for this research in the remainder of this report.

¹⁸Yin, *Case Study Research: Design and Methods*, p.70.

researcher and also made a full notation of the answers given to the questions asked. The record made by the independent observer was subsequently compared with the record of that interview prepared by the interviewing researcher. There were no great differences in the answers recorded.¹⁹ All subsequent interviewing was conducted by the researcher alone. Resources did not permit having an independent observer attend every interview and tape recording was not adopted because the researcher felt it to be too invasive.

As advocated by Wilson, the questionnaire instrument was designed during the progress of the first phase of the research, the interviews with the Coordinators. Thus the interviews were able to shape the questionnaire.²⁰ It was designed to be short and easy to answer: four pages presented as one legal-size folio.²¹ The final version of

¹⁹Question 27 asked "Are there other committees which you would like to participate in?" The independent observer noted "temp. committees - do functions, then disbanded. aversion to too many meetings." Interviewing researcher noted "only recently able to persuade Management Board of need for a committee." The recorded responses to this question are the farthest apart the two records get, and question 27 seems an isolated incident. It may be noted that neither version records an answer directly on point -- perhaps each recorder selected a different aspect of an answer which was given which did not directly address the question asked. A typical example is the responses to Question 11 "How big a budget are you responsible for? Independent observer notes: "\$xx,xxx -no part of budget allocated to FPA -seen entirely as administrative- could get funds from budget if consultant was needed. If training needed on FPA, would be able to get \$ for that as well from budget \$ y million - operating budget \$z for ...". Interviewing researcher wrote: "no portion allocated specifically for this function - cd. get consultants or training - \$xx,xxx - proportion of total: \$y mil. from [Ministry] inclu. ... fund \$z mil." [x,y,z used here to preserve anonymity]

²⁰See T.D. Wilson, "Questionnaire Design in the Context of Information Research," in *The Research Interview: Uses and Approaches*, ed. Michael Brenner, Jennifer Brown, David Cantor (London, Academic Press, 1985): 57-77.

²¹In one case, Ministry 2, the Coordinator's office very generously offered to print the questionnaires on

the questionnaire is appended as Appendices 11A (English) and 11B (French). The instrument was designed not only to answer the research questions for the dissertation but also to furnish information that would be useful for the organization participating in the study.²²

The researcher shied away from extensive use of ordinal measure questions (questions 8b and 9 are the only examples of this Likert scale approach to questioning in the instrument) because of the kinds of problems in interpretation highlighted in James Kidston's article.²³ Instead, the approach advocated by Royce Singleton, Jr., and his co-authors was used, which gives categories of response which have an unambiguous meaning for both respondent and researcher.²⁴

The order of the questions was carefully considered in order to involve the

the researcher's behalf. Only upon receipt of completed responses in the mail did the researcher realize that the folio concept had been lost and the instrument had appeared on four separate one-sided sheets. It is interesting to note that that Ministry had the lowest response rate of the ministries (see Table 6, discussed below).

²²The researcher benefitted from reviewing the instrument used by her colleague Mutawakilu Tiamiyu in his doctoral research, "Factors Underlying the Use of Information Sources in Government Institutions in Nigeria." The researcher also benefitted from the prior experience of the short survey gleaned through the survey of public library patrons' attitudes to seniors (see Margaret Ann Wilkinson and Bryce Allen, *Report on Public Library Service to Seniors in Southwestern Ontario* (London: School of Library and Information Science, University of Western Ontario, 1988), p.26 and Appendix C, pp.92-93b.). It would appear that the design of the survey has avoided most of the pitfalls described by Julia Bailey, "Problems of Data Collection and Analysis," *Law Teacher* 24(Winter 1990): 77-81, although the participating organizations have been promised a report of the findings (see her 10th point at p.81).

²³James S. Kidston, "The Validity of Questionnaire Responses," *Library Quarterly* 55 (1985): 133-150

²⁴See Royce Singleton, Jr., et al, *Approaches to Social Research*(New York: Oxford University Press, 1988), p.279.

respondents in answering questions 1 to 4 (on information in the general work environment) before asking specifically about this legislation (question 5).²⁵ By providing further questions whether the respondent was or was not aware of the statute (if yes, continue; if no, turn to the back page), the researcher hoped to avoid the appearance of placing any value judgement on the response to question 5. Similarly, the two paths given respondents after indicating whether the statute affected their work or not (question 7) was intended to mute any appearance of judgement on that answer (if no, skip to question 10; if yes, continue). Placing the "if yes" option first in question 5 and second in question 7 was a deliberate attempt to overcome any effect of order in these questions. The questions asking for information about the employee's positions were placed last on the questionnaire in order to provide a sense of closure for respondents (who would be confident in their knowledge of this information, whatever their level of familiarity with the legislation) and to leave the only questions which might concern respondents in terms of confidentiality until the end when they would have been committed to completing the instrument.

Standard demographic questions such as age, sex, and marital status were not asked because those factors are not relevant to any hypothesis involved in the study. In

²⁵The use of "buffer" questions is discussed in Harpur Boyd et al. *Marketing Research: Text and Cases, 5th ed.* (Homewood, Ill.: Irwin, 1981), p.241. A discussion on the order of questions follows at 242-243. This text was very useful in actually creating the questionnaire instrument.

this, the researcher is guided by Ronald Powell's admonishment to the researcher to "ask him or herself if a specific question is actually necessary or will be useful. ... [o]ne should never ask any more questions than are absolutely necessary."²⁶ Moreover, such questions might have led respondents to question the anonymity guaranteed.

To further encourage the respondents' sense of security that the information given was not being directly transmitted back in an identifiable form to the Coordinator's office in her or his organization, the questionnaire did not identify the employee's organization, nor did it ask the employee to make that identification. The obvious problem for the researcher was solved by colour coding the questionnaires: that is, all the questionnaires distributed to employees of Ministry 3 were one particular colour, while those distributed to Crown Corporation 1 were another colour.

A draft of the questionnaire was included with the initial package presented to potential organizations during the initial interviews with the Coordinators when seeking the organizations' participation. Each organization was asked to review the questionnaire and make any suggestions they felt necessary or helpful for the purposes of their case

²⁶Ronald Powell, *Basic Research Methods for Librarians* (Norwood, N.J.: Ablex, 1985), p.99. It may be noted that the Ontario government's survey instrument contains no questions asking for this type of demographic information from the respondents either (see *Freedom of Information and Privacy Survey of Ontario Government Institutions*); nor, apparently, did the federal study (see *Access to Information and Privacy Coordinators: Their Status and Role*). The decision to omit a gender identification question, in particular, was taken after careful consideration of the issues raised by Margrit Eichler and Jeanne Lapointe in *On the Treatment of the Sexes in Research* (Social Sciences and Humanities Research Council of Canada, 1985). Indeed, all of the instruments used in this study were designed bearing in mind the issues raised therein.

study. No organization made specific requests for changes in content,²⁷ although discussions with the Coordinators about the needs and uses they had for such a study did lead the researcher to make certain modifications to the draft. In the case of one organization, a specific request was made that the instrument be distributed in both English and French. Accordingly, a French translation of the final survey instrument was prepared and was made available in all the organizations.²⁸

While the process of initial consultations with potential organizations was

²⁷One error in the content of the questionnaire was subsequently discovered during data analysis. The last question in the questionnaire asked:

22. Is your position classified as ...
- (a) a union position?
 - (b) a line management/professional position?
 - (c) a senior management position?
 - (d) an executive position?
 - (e) other. Please specify _____

This question was particularly brought to the attention of the coordinators because the researcher expected that the classifications made here might not be appropriate in every organization. No organization suggested any change. However, it became apparent in the responses that one of the organizations was not unionized. This did not present an insuperable difficulty in analysis because the researcher was able to interpret the answers in question 22 with those in question 21:

"If a friend who is unconnected with your organization asked you about your work, how would you describe what you do in your job in a couple of sentences (without revealing your exact title or position)?"

This allowed the researcher to make an accurate classification for question 22 since the issue which question 22 was designed to address is the issue of rank in the organization, not the employee's contract status vis-a-vis the employer.

²⁸This translation was done for the researcher by Marie Louise Menc, for many years a French teacher in Toronto, now retired, who also qualified as a lawyer and was called to the Bar in Belgium. Analysis of the responses to the French questionnaires, as in the case of the responses to the English questionnaires, was done by the researcher.

occurring, the draft instrument was pre-tested on the following volunteers: an individual employed in a ministry which was not one of those targeted for the study; an individual who works in the crown corporation in the study which did not permit the employee questionnaire to be distributed; an individual in a second ministry not targeted in the study; 4 individuals working in a crown agency subject to the Act, but found in a Schedule other than Schedule II, and hence not a potential subject organization for this research; and, finally, to an individual in a third ministry of the Ontario government not targeted for this study. These eight "pretesters" included one person whose job was at that moment being reclassified from line management to executive in rank, three respondents in line management/professional positions, two respondents in union positions, and two respondents who did not identify the classification of her or his position. Five of these individuals reported response times of between 8 and 18 minutes. The comments made by the pretesters, in writing in four cases, and in follow-up interviews in the other four cases, were incorporated into three succeeding drafts of the instrument before the penultimate draft of the instrument was finalized. That penultimate draft was reviewed by one of the individuals earlier pretested and was also pretested on two further individuals, one with an extensive background in research and the other a lawyer familiar with government structure. No further suggestions for change were made.

The questionnaire and two interview protocols were reviewed by the Ethics

Committee of the School of Library and Information Science and one of its members also made substantive inquiries which were considered and satisfied in the final drafting of these documents.

As noted above, Appendix 11A is the final form of the questionnaire in English, after review by (1) the ten individuals in positions analogous to the positions of the eventual subjects; (2) the ethics committee; and (3) the Coordinators. (Appendix 11B, as noted, is a copy of the questionnaire as translated into French.)

6.2.2 The survey sampling

The two crown corporations participating in the employee questionnaire portion of the research were small enough that the entire population was surveyed.²⁹

The ministries involved in the study were larger, and sampling was necessary. The threshold questions which had to be decided was the appropriate size of sample for each ministry. Unfortunately, in an exploratory study of this nature, it was not possible to estimate either the appropriate confidence interval or the degree of precision sought.³⁰ As recommended in this type of situation, "when all one knows of the strata is their sizes", ³¹ the samples were selected proportionally to reflect the sizes

²⁹Their exact size will not be indicated as it would reveal the identities of the organizations.

³⁰Therefore, it was not possible to use the formulaic approach explained in Boyd et al, *Marketing Research: Text and Cases*, 318-322 (on random sampling) and 330-340 (on stratified random sampling).

of each stratum of the population in each organization. As to the overall size of the samples, it was necessary to adopt the "rule of thumb" approach. The authorities seem to agree that fewer than 30 cases is minimally adequate for statistical analysis.³²

Anticipating a return rate of at least 40% made the sample for Ministry 4 adequate at 75.

The more breakdowns into which the data are to be grouped, the larger the sample needs to be.³³ In the case of Ministry 1, the Ministry for its own purposes wanted an extra level of categorization imposed upon certain analyses strictly for its own internal use.³⁴

For that reason, the largest sample was drawn from that Ministry. The other two sample sizes fall between (see Table 5).

Each ministry was able to generate 3 lists of employees: (1) executives, (2) management professionals, and (3) union and management excluded employees. In several organizations, another branch produced a random proportional sample for the Coordinator of the size requested using the three lists. In the other ministries, the Coordinator produced the sample from the lists obtained from other departments. The

³¹Ibid, at 338.

³²Bruce Chadwick et al, *Social Science Research Methods* (Englewood Cliffs, N.J.: Prentice-Hall, 1984), p.68 (citing Bailey, 1982), and Singleton et al, *Approaches to Social Science Research*, p.160. There appears to be some confusion over whether the minimum 30 is the sample size (Chadwick) or the number of responses from the sample which would be required to provide adequate analysis (Singleton). The smallest sample in this research meets the more rigorous test, as discussed.

³³See Singleton, p 161-162.

³⁴That analysis is not reported in this study as it was done strictly at the request of the participating ministry, and the ministry requested confidentiality. The analysis did not bear on any of the hypotheses being tested in this study.

ORGANIZATION	QUADRANT	SAMPLE SIZE	RESPONSE RATE
M1	<i>low large</i>	175	60%
M2	<i>high large</i>	150	47%
M3	<i>high small</i>	100	65%
M4	<i>low small</i>	75	60%
C1	<i>high small</i>	100%	42%
C2	<i>low small</i>	100%	44%
Overall		N/A	55%

Table 5:
Employee Questionnaire Responses

proportion of the sample to be obtained from each list was manually calculated and then names were selected from each list in a pattern calculated to produce the desired number of sample members (for example, the seventh name on each page in one case where the number of pages coincidentally equalled the number of employees needed to produce the sample). The researcher, however, never at any time actually saw any of the personnel information used in drawing the sample. A mailing list was prepared by each Coordinator (which the researcher never saw).³⁵

6.2.3 The survey response rate

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³⁶In one organization, distribution was either in French or in English, according to employees' preferences already known to the administration. In all other cases, the French version was made available upon request, as indicated in the covering letter.

he or she felt would be most effective in that organization. Each covering letter was signed by the Coordinator of the organization,³⁷ not the researcher, because it was hoped that this official sponsorship from within the organization would help boost response rates.³⁸ On the other hand, the replies were addressed to the researcher outside the organization to ensure the confidentiality of the replies and emphasize the independent position of the researcher. It was hoped that this too would boost the return rates. Two follow-up letters (again drafted by the researcher but tailored by each Coordinator) were sent in each organization to encourage responses.³⁹

The response rates achieved are reported in Table 5, above. The overall response rate obtained for the survey was 55%.⁴⁰ The individual organizations had response rates ranging from 47% to 65% in the ministries, to 42% and 44% for the crown corporations. For the four small organizations, the range is from 42% to 65%.

³⁷Except in one case where organization policy dictated that the covering letter be signed by a line superior, rather than the coordinator.

³⁸From a practical point of view, it must be remembered that the out of pocket expenses for this research were financed solely by the researcher. It was a tremendous advantage to be able to use the internal mailing systems of each of the organizations for the initial distribution of the questionnaires, and then for the subsequent follow-up letters. The trade-offs for the researcher, in the loss of control over the mechanics of distribution and follow-up, were more than offset by the generous cooperation of the organizations involved. The cost of return mail for the responses was born by the researcher.

³⁹There was an exception in the case of one organization where, with respect to part of the sample, the original covering letters had been individually signed by the recipient's superior. This resource intensive approach could not be used for follow-up. With respect to those subjects, only one follow-up letter was sent (under a common signature).

⁴⁰The total number of questionnaires administered cannot be revealed since it could lead to recognition of the crown corporations participating.

The two crown corporations are in fact smaller than the small ministries and the lower response rates in the small crown corporations may reflect a greater concern over confidentiality in so small a group.

The views about response rates in the literature vary. Singleton et al mention that 60% is the acceptable return rate for mailed surveys.⁴¹ Only three of these organizations meets that test. However, Boyd et al comment that "[t]here is evidence that the results from a mail survey with a 40 per cent return are, in most cases, the same as the results after 60 or 80 per cent return."⁴² All of the organizations meet that standard. Earl Babbie, on the other hand, gives as his rules of thumb 50% as adequate, 60% as good and 70% as very good.⁴³ Probably at least four of the organizations could be said to meet his test of adequacy. On the other hand, the Computer Science and Law Research Group of the Université de Québec à Montréal, which conducted the transborder data flow survey on behalf of the Department of Justice, was very satisfied with a response rate of about 35%, showing that it exceeded response rates in all but one of the five comparable studies for which response rates were available.⁴⁴ By that yardstick, this survey has an excellent response rate across all organizations. Given that this study asked for purely voluntary participation (unlike the probable perception of the

⁴¹Singleton, at 259.

⁴²Boyd, at 121.

⁴³Babbie, at 2-42.

⁴⁴*Crossing the Borders of Privacy: Transborder Flows of Personal Data from Canada*, p.39.

Commissioner's study⁴⁵) and does not involve an area in which the respondents are necessarily going to display a high level of interest, the response rates are very respectable. Julia Bailey felt that a 56% response rate was "in practice a very good return if the target field is of reasonable numbers".⁴⁶

⁴⁵The Ontario Information and Privacy Commissioner's Office enjoyed a 100% response rate on its survey.

⁴⁶Julia Bailey, "Problems of data collection and analysis", p.80.

CHAPTER 7: RESULTS WITH RESPECT TO IMPLEMENTATION AND ORGANIZATION STRUCTURE

7.1 Implementation

The dependent variable "implementation" was involved in three of the hypotheses of the study:

Hypothesis 1: That ministries had gone further in implementation of the legislation than crown corporations.

Hypothesis 3: That small organizations had implemented the legislation more effectively and quickly than large ones.

Hypothesis 5: That organizations with higher public profiles had implemented the legislation more quickly and effectively than those with low public profiles.

There was evidence relevant to implementation available in the study for all eight cells of the design matrix. Therefore, all three hypotheses were fully tested and the first hypothesis was supported, while hypotheses three and five were not.

The data with respect to implementation were gathered during the interviews and through examination of the documentation provided by the interview subjects. This qualitative data, summarized in the following vignettes, was used by the researcher to assign a ranking to the implementation efforts of each of the eight organizations studied, see Figure 16.

The organization which received the highest ranking was M4, the small, low profile ministry. In this organization, the "head" interview was conducted with the Deputy Minister, the most senior civil servant. The Deputy had become aware of the Act

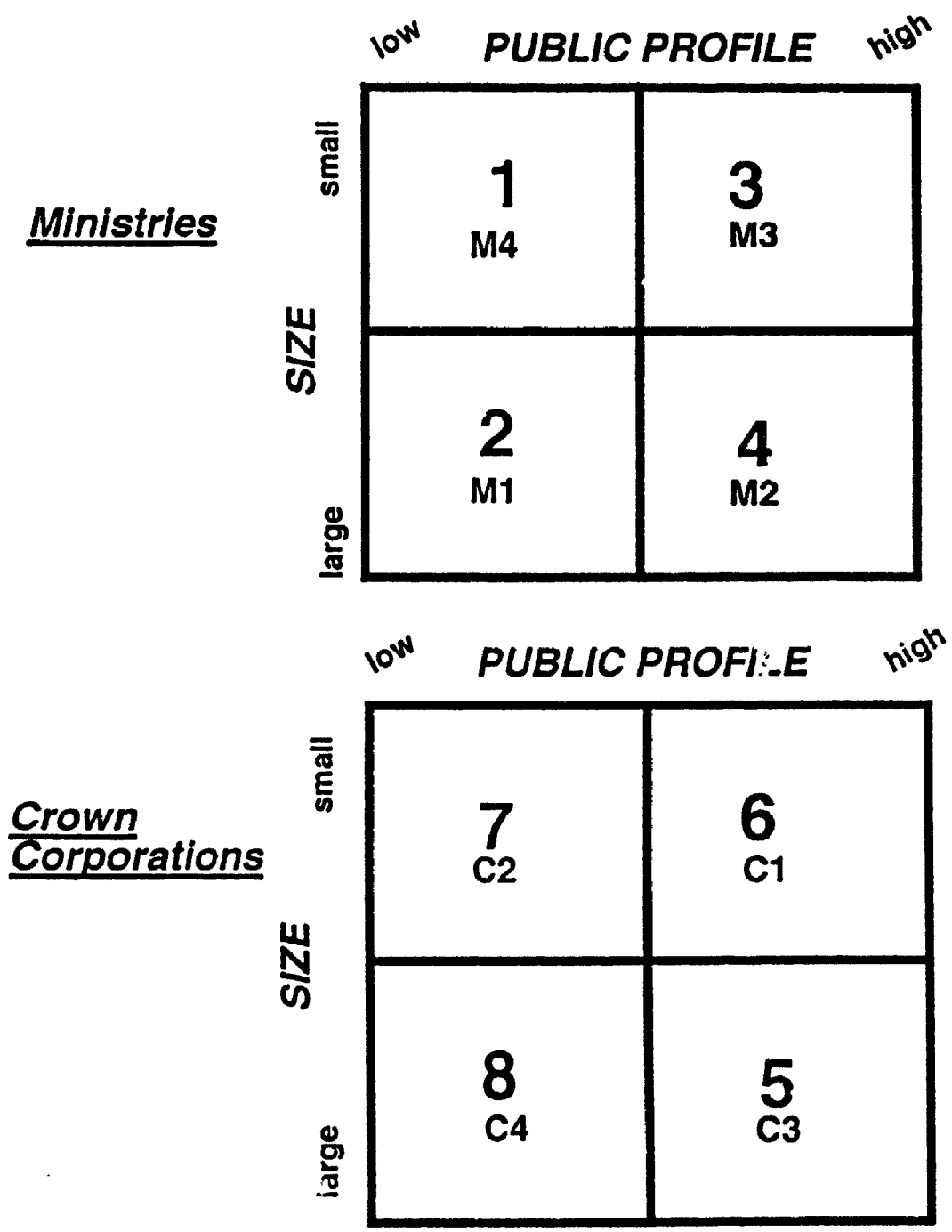


Figure 16:
Implementation Ranking

first through the media and then through the Deputy Ministers' Council when a number of representatives from Management Board had appeared speaking about the impending legislation. The Deputy had also met with Commissioner Linden.

The Minister of that portfolio had been directly involved in the initial set-up of the organization's approach to the legislation and remained informed because part of the regular reporting function in FOI matters included copies to the Minister's office. Initially, the Deputy had involved the Assistant Deputies, and indeed, FOI matters have come up in a number of the weekly management group meetings. The Deputy Minister had directly recruited the incumbent (original) Coordinator from another organization where that individual had had previous involvement in these issues.

The Deputy Minister had looked, not only for previous involvement in the legislation, but also for someone whose ability to work with those outside the Ministry was evidenced through volunteer community activities. This strategy was rewarded when the Coordinator was able to negotiate settlements favourable to requesters, despite internal skepticism of the Act, early on. Although the Coordinator's position reports administratively to an individual between the Deputy Minister and the Coordinator, the Coordinator has direct access to the Deputy Minister and the Deputy Minister signs off ALL requests at a regularly scheduled briefing session with the Coordinator. The discussions at the briefing session, however, are actually limited to the more awkward

requests (flagged by the Coordinator). Really difficult requests are referred to the Ministry's Policy Committee by the Deputy Minister. The Deputy therefore sees the Coordinator as the quarterback of the operation - dealing in the first instance with both the requester and the internal information providers, seeking accommodation. There is no system of "FOI specialists" in place in the organization. The information provider involved in the request deals directly with the Coordinator, and if the file is troublesome, attends the briefing session with the Deputy Minister. Continuing the sports metaphor, the Deputy saw her or his position as that of General Manager, where the major restructuring of the system would occur, if necessary, and otherwise routinely keeping an eye on things. There have been some systemic responses implemented, in consultation with the Coordinator, such as forms redesigned both to preserve privacy and to facilitate easy release of material which is permitted to be disseminated in response to requests.

This Coordinator sees the role as having two functions: first, to provide access to information and protection for information as appropriate while acting as an advocate for the requester to the ministry and as advocate for the ministry to the client; and second, to organize with an emphasis on mediation, gaining the trust of the Ministry employees, senior management, and the client requesters.

The position is a combined one: while about two-thirds FOI, one-third of the Coordinator's time is devoted to another, conceptually related, function.

Administratively this works well as both functions are subject to stringent time limitations and demands are similar in nature. In one case, an issue was raised through both channels. Since the respondent Coordinated both responses, he or she was able to ensure that the Minister was not "blindsided" through an FOI release. The incumbent Coordinator recognized that there was a future potential for ethical conflict in the two roles since the responsibilities of the related position could be better discharged, in certain circumstances, by disclosing the fact of contentious FOI requests.

The Coordinator's relationship with the Commissioner's office is wary. The Coordinator feels that the Office focuses on large organizations only and does not recognize organizations which are handling the legislation smoothly. Although the relationship with the people at Management Board of Cabinet may be smoother, the Coordinator condemns perceived inadequacy of the preparation which was given by that office for organizations which came under the legislation at dates after its initial enactment. This criticism was levied by this Coordinator because she or he has often been contacted by these other agencies and new Coordinators because of her or his experience and willingness to assist. The Coordinator is disappointed that the Act is not used more and that there has been so little public education about it.

The evidence of implementation taken from the "head" interview, the Coordinator interview, and the documentation all supported the conclusion that this

organization, the small, low profile ministry, had made the greatest efforts at implementing this legislation, both in coordinating efforts to respond to requests under the Act and also in general adherence to the spirit of the Act, particularly in the area of the data protection aspects of the legislation.

The second most highly ranked organization was also a ministry, the large, low profile ministry. This ministry, M1, anticipated that the early impact of the legislation would be felt in one particular section (where early requests were anticipated). Accordingly, the original Coordinator was drawn from that section. The activities of the personnel in the section had brought them into contact with similar legislation in other jurisdictions. The original staff were viewed as credible throughout the organization. After the initial start-up period, however, it was seen to be necessary to have the office viewed as organization-wide, and not just relevant to the original section. Therefore, the position of Coordinator was moved to a portfolio which operates organization-wide, reporting directly to the respondent effective head, who was, in turn, responsible to the Deputy. Much of the original staff of the Coordinator's office moved too, thus maintaining the credibility born of perceived expertise while adding new credibility now derived from position authority as well. This strategy of beginning in one section and then moving to a position more involved in the broader organization was developed by the respondent effective head and the Deputy Minister and recognized the fact that no

funds were allocated by government for the implementation of this legislation and took initial advantage of existing resources. The Deputy delegated all organizational responsibility to the respondent effective head while retaining "sign off" personally in certain areas, for example Cabinet confidences. The organization has many geographically disparate service points and therefore a consistent approach was important, while preserving field autonomy.

Third ranked, again a ministry, was the small, high profile ministry, M3. The Coordinator at M3 has a number of future plans for implementation, including involving him or herself with management seminars produced by other segments of the ministry, giving one day open orientation sessions, meeting quarterly with the liaison employees and establishing a quarterly newsletter for senior management and the liaison people. However, at the time of this research, these were all future plans. The office was operating reactively, with the Coordinator involved extensively with a completely disparate role. His or her predecessor had distributed a pamphlet to employees with their pay cheques and run the original "dog and pony show"¹ through the ministry. The ministry's planning for the role seemed very *ad hoc*. The head recalled that the first incumbent had been appointed before the exact parameters of the role were worked out. Moreover, the head being interviewed had not been involved in the selection of the

¹To quote the current coordinator's turn of phrase, apparently meaning introductory seminars and presentations to field personnel.

incumbent Coordinator at all, but had delegated that responsibility to a subordinate. Moreover, the head had no comment about how the legislation had been implemented in the ministry, other than to refer the researcher back to the Coordinator, because "not involved, not my job". The head perceived the Coordinator to have a tough job negotiating with the Ministry experts holding the information who feel the pressure of "real issues". The lack of involvement by the effective head in this organization contributed to the lower ranking given the implementation efforts of this ministry. It may be doubtful whether the Coordinator's plans for future implementation will bear fruit in this situation.

M2, the large, high profile ministry, although fourth in the overall ranking, was the lowest ranked ministry. The implementation efforts in M2 were fraught with problems. Although the implementation had received sponsorship from the highest level of the ministry's civil service, it was thought to have blighted the career of the first incumbent of the Coordinator's post because of the perceived disruption to the prevailing corporate culture caused by the notion of release of information. Although the head saw negotiating skills as important for the Coordinator, the language used in describing the Coordinator's activities was more authoritarian: that the role had at first been "educative" and had now become "adjudicative". The importance of FOI in policy areas was originally underestimated, whereas the anticipated requests for personal information never materialized. The Coordinator has developed a program for the continuing

education of the liaison employees. As was the case at M3, the Coordinator at M2 has extensive plans for implementation in the future, involving FOI in the ministry's audit program, producing a privacy pamphlet for general employee distribution, and further becoming involved in an anticipatory advisory function with line programs. The FOI function has recently been given a new corporate "home" in another department and it remains to be seen whether this relocation will enable the Coordinator to re-order priorities to implement these future plans.

It was this ranking of the ministries in all of the four top spots which made it clear that the first hypothesis that ministries had gone further in implementation was supported. Among the ministries, size was not a predictor of implementation effort, with small ministries holding both first and third place. However, the low public profile ministries held the first two rankings.

For the crown corporations, size was also not useful in predicting implementation effort (small crowns held sixth and seventh place, while large crowns held fifth and eighth). However, for crowns, while public profile did seem to be related to implementation effort, the tendency was in the opposite direction to that observed in the ministries. Among the crowns, the high profile organizations had gone further in their implementation efforts than had the low profile (holding fifth and sixth place).

The most highly ranked crown corporation was C3, the large, high profile

organization. The approach taken by this organization contrasts completely with the centralized, high level implementation undertaken by the most highly ranked ministry, the small, low profile M4 (described above). At C3, the organization Secretary being interviewed had assumed unilateral decision-making authority over all aspects of the implementation of the statute, leaving the actual head with no involvement at all. A centralized function had been rejected in favour of a decentralized approach involving a large network of "FOI specialists" throughout the organization (there were 67 in 1988). These specialists were the contacts for the Coordinator. The Coordinator function had begun as a fairly junior position, but with an autonomous office. The office had then been combined, for practical reasons of administration with other functions and a new, more senior position created. The new incumbent was selected because of qualifications related to the other functions. The new Coordinator did in fact have previous FOI experience, but this was viewed as a happy coincidence and not as material to the post.

The 1990-1994 business plan for the FOI function in C3 noted that

it is the responsibility of each branch to ensure that its policies, procedures and practices conform to the requirements of the legislation. A number of branches have established programs to ensure compliance with the Act; however, implementation at the branch level is often inadequate or inconsistent. Furthermore, some areas of the organization are clearly resistant to the privacy provisions of the Act as they apply to the management of employee information...

Thereupon followed suggestions for a comprehensive communications program, inter-

unit task forces and a program designed to monitor and measure implementation of the privacy provisions of the Act. During our interview, the Coordinator did not mention any steps being taken in these directions and in the 1991-1999 business plan, the action planned on privacy had become purely reactive:

The focus in 1991 will be on compliance with the privacy provisions of the Act. In the event of an audit by the Information and Privacy Commissioner into personal information collection practices and procedures, a significant commitment of time and resources will be required for the unit.

A manual has been prepared, and voluntary full-day workshops are available, as well as a periodic newsletter. However, all three are for the benefit of the liaison persons and not the wider employee population. Despite these limitations, however, which placed C3's efforts behind any of the ministries, this organization had made more efforts than any other crown.

The implementation efforts in the two small crown corporations, high profile C1 and low profile C2, had been very limited. The small, high profile crown (C1) was ranked just ahead of the small, low profile crown (C2) because management at C1 had been a tiny bit more active in this area than at C2, in that the principles of the statute were formally endorsed and accepted in two sentences in the organization's corporate plan. Other than that, there appeared to have been no attempt at implementation in this organization. The head would have welcomed some innovative "advertising" posters to raise employee awareness, but did not know of any available either through Management

Board or through the Commissioner's office. It was felt that such a display would capture employees' interest without unduly interfering with the business day.

The head at C2, the small, low profile crown, which ranked seventh, just behind C1, indicated that a balance needed to be struck between the right to know and the need to carry on business. There had been briefings for senior management and the Coordinator was expected to flag issues in management meetings (amongst other areas of expertise), although senior management were expected to bear responsibility for compliance, rather than the Coordinator. The head was aware of the legislation largely because of a previous background but saw no problem in meeting the legitimate business needs of the organization within the framework of the third party exemption provisions of the Act, speaking of the balance between the public right to know and the protection of personal and proprietary information. The Coordinator, on the other hand, was not involved in any organizations which involved FOI, nor had the office accomplished anything that she or he could point to with respect to the statute, such as training manuals, materials or goals and objectives planning with respect to FOI. While there was no hostility toward the Act, action toward implementation had suffered from an attitude which could perhaps be characterized as one of benign neglect.

Establishing the ranking for implementation for the final organization, C4, the large, low profile crown corporation, was the easiest task. This was the organization which did not actually participate in the study. However, the officer of the corporation

initially approached about the study permitted that interview to be used and the data from that interview permitted a ranking for implementation effort to be assigned to the organization: eighth, or last. During the interview, the executive indicated that requests and approaches from the Commissioner's office had been handled with a minimum of involvement by the organization: "only 4 or 5 employees have ever heard of the Act". Any further exposure of employees to the Act would ruin good employee relations by "creating false expectations". The employees already signed a permission form for the checking of their references. The employee handbook notified the employees that their files were confidential and open to no one except themselves. That, implied the executive, amounted to full implementation of the privacy provisions of the statute. As for the general access provisions of the statute, the organization would continue to "carry on business - other information would remain confidential, period - referrals, recommendations of contacts were a matter of course".² The head had been to a

²This comment implies that information received from other businesses would be treated by the organization as strictly confidential and not released to any requester, whether or not the third party information so requested met the stringent three part test which such information must meet in order for this crown corporation to legitimately refuse to release it upon request. See s. 17 of the Act, and the following Orders of the Information and Privacy Commissioner: Order No.3, dated June 21, 1988 (in Appeal No. 880031 re: Ministry of Education), Order No.36, dated December 28, 1988 (in Appeal No.880030 re: Ministry of Industry, Trade and Technology), Order No.65, dated June 27, 1989 (in Appeal No.880151 re: Ministry of the Environment), Order No.76, dated July 17, 1989 (in Appeal No.880105 re: Ministry of Agriculture and Food), and Order No.87, dated August 24, 1989 (in Appeal No. 880082 re: Ministry of Industry, Trade and Technology). The respondent was also indicating in these remarks, taken in the context of this discussion, that the requirements of Part III of the Act, governing collection, use, disclosure and retention of personal information, would be disregarded in the context of "referrals and recommendations of contacts" since indirect collection and passing along to other business contacts of personal information was part of the standard practice of business.

cocktail party with Sidney Linden (the then Commissioner) and one training seminar and had had no further contact with respect to training or other information regarding the Act. The executive considered her or his job to be to "stick to the knitting" which was as a profit-making organization and not as a bureaucracy, and implied that this meant no further involvement with the implementation of this legislation.

Thus, in terms of implementation, this legislation has had the most impact upon ministries. Indeed, with the exception of C3, the large, high profile crown (which, although ranked behind all of the ministries, has made a determined effort), the efforts of the crowns have been slight. The ministry which has made the greatest efforts toward implementation is the small, low profile. The size of the organizations, whether ministry or crown, has not determined their implementation efforts. The public profile of the organizations appears to have had an opposite effect for ministries, where low profile organizations have made greater efforts, than for crown corporations, where the higher profile organizations have made more effort.

7.2 Organization Structure

Hypothesis 7 addressed organization structure: "that the study would reveal only minor changes in the organization structure of these organizations..." The concept of organization structure, which involves the issues of responsibility and accountability

for performing the collective functions of the organization, was operationalized in a number of different ways through the interviews and documentary evidence gathered in this study. One variable was the delegation of the head's function in each organization. Another was the staffing commitment made to the implementation of this legislation. The third measure was the budget commitment to this function made in each organization. The evidence for all eight of the organizations, on each of these parameters, was that the changes made pursuant to this legislation were either non-existent or relatively minor, thus supporting the hypothesis in all cases.

In the crown corporations, with the exception of the large, high profile C3, this legislation has had a negligible effect on the structure of the organizations. No new positions have been created, no budget resources allocated, and the decision-making function with respect to this legislation rests with the same executives who exercise decision-making power with respect to other issues in the organization. In the small, high profile crown (C1), the head estimated that 1/2 of 1% of his or her time was spent on the freedom of information and privacy function. At C1, no authority had been delegated from the head (although the head's executive assistant is involved in the day to day administration of this function as in every other aspect of the operation of the organization). Although in the small, low profile crown (C2) the head had nominally delegated the functions of Coordinator to a subordinate, the subordinate's main function

was as a line manager. The Coordinator respondent estimated an expenditure of 5% of her or his time on the FOI function. Where necessary, the "Coordinator" could call upon a subordinate for help - but the roles and responsibilities were essentially defined by other aspects of the line function, not FOI.³ The actual amount of the delegation from the head to the Coordinator at C2 was unclear. The Manager felt that if the matter touched upon his or her line function, his or her authority was final as within the proper scope of authority for the Manager of this line function. The head seemed less certain that he or she was not in all cases the final arbiter. However, for these purposes, that clarification is not necessary. What is important is that neither thought the Coordinator exercised final authority *qua* Coordinator but rather, if the Coordinator exercised final authority in certain cases, it was as falling within the proper scope of authority for such a line Manager. The executive at C4, the large, low profile crown corporation which refused to participate in the study, was also the Coordinator for the organization. The organization had had requests (and also an audit from the Commissioner's office). These had been handled expeditiously by this executive, acting alone. Indeed, this executive, one level from the actual head designated under the legislation, appeared to have been delegated

³In the Manager's own curriculum vitae, there is no mention of the FOI function in the "Accomplishments" with respect to her or his current position. While FOI is mentioned from time to time as an area of involvement in the "position description questionnaire" for the position, the lack of impact of this portion of the portfolio is indicated when, under external contacts, only board members, consultants and potential job applicants are mentioned -- no mention of requesters. The incumbent was also the French language services coordinator.

total responsibility and authority for the organization's response to the Act. The Coordinator's role did not appear in a job title in any of these three crown corporations. None of these three crowns had made any allocation at all in their budgets for the freedom of information and privacy area.

More changes had been made pursuant to the legislation at the large, high profile crown corporation than in the other three crown corporations. However, these changes did not amount to more than minor structural change. The responsibility for the day to day conduct of the freedom of information and privacy function had been given to an individual with a combined responsibility.⁴ Although the Coordinator respondent's time allocation may have indicated more emphasis on the FOI function (65% of his or her time), the order of the job title and the qualifications which the "head" indicated had been sought for this position indicated much more emphasis on the other aspect of the combined position. The actual FOI staff turned out to consist of one assistant and one clerical, although the total staff complement in the unit was 20. In addition to dedicated staff, at C3, as at half of the organizations studied, a system had been set up to create "liaison" people in line positions in different areas of the organization. A similar system was in place for both large ministries (M1 and M2) and the small, high profile ministry (M3). There was no similar structure at the three other crown corporations already

⁴According to the job description for this position, the Freedom of Information and Privacy Coordinator's position actually reported to this one. However, according to the organization chart for the same period (and the references during the interviews), the position reporting to this one was Assistant Coordinator and the Coordinator role itself was subsumed into this combined position.

discussed, nor at the small, low profile ministry (M4). These individuals would provide contacts for the Coordinator's office in various units of the organization. At C3, there were 59 contacts (although there were vacancies -- 3 in one section). The contact persons appeared, on average, to be either middle or lower level individuals in their sections. No decision-making power had been delegated to these individuals (*qua* that role).⁵ The Coordinator in this large, high profile crown was unable to allocate accurately a particular portion of the combined budget for the combined unit to just the FOI and privacy function. However, using the combined figure provided, the organization's commitment is less than .034% of its operating budget. Perhaps a more valuable figure for comparative purposes is the commitment made expressed in dollar terms per employee in the organization: \$76.

The interviews and the organization's "Freedom of Information Access Procedures and Guidelines" indicated that all the head's responsibility had been delegated completely to the officer of the corporation interviewed, the Secretary, and no further. The Coordinator has no actual signing authority, although the officer's involvement is often a "rubber stamp" of the Coordinator's actions. This type and level of change in

⁵Evidence from the questionnaire administered to the employees in six of the eight organizations, unfortunately not within the large, high profile crown (C3), indicated that these individuals were not seen as nearly as important sources of information about the legislation by the employees as the coordinators, and, indeed, employees had in fact received more information from both the coordinator and their line supervisors or superiors than from these liaison persons (see further discussion of the questionnaire results below).

staffing in the large, high profile crown corporation, without real change in organization structure, is consistent with the pattern which was discovered in the ministries.

The large, low profile ministry (M1) has created a full-time Coordinator's role. This was the only organization in the study which had an individual devoted exclusively to this role. M1 also had the largest staff complement, seven. M1 also had the largest network of "liaison" contacts in place, sixty-two. The contacts appeared to be highly placed directors and managers. M1 had made a budget commitment per employee approximately equivalent to that made at C3: \$83.

At the small, low profile ministry (M4), the Coordinator had a title which implied a full time position, but in fact 1/3 of the incumbent's time was spent on a completely different function, although arguably conceptually allied.⁶ The Coordinator had only one staff, an Administrative Assistant who spent 2/3 time on FOI. This ministry was the only ministry which did not use the system of "liaison" contacts. All contacts between the line personnel and the Coordinator were direct except requests for responses to requests, which actually were sent under signature of the Deputy Minister (inviting the responding line individual to attend the briefing session with the Deputy set up by the Coordinator to discuss the Ministry's response to this request). M4's budget commitment to FOI was only 20% of M1's in dollar terms. However, in terms of

⁶The specifics of the unrelated functions in each of these cases has been omitted, since to describe the combined responsibilities exactly could lead to identification of the participating organizations.

commitment per employee, M4 far outdistanced any other organization at \$327 per employee.

At M2, the large, low profile ministry, the Coordinator had a combined title and estimated that she or he spent 35% of her or his time on the other, unrelated function, again conceptually linked to the type of functions performed as FOI Coordinator. Here, although the Coordinator had responsibility for a staff complement of 21, only 4 of these were involved in the FOI function full-time.⁷ There were 45 "liaison" contacts in place in this Ministry.⁸ These contacts were all directors, administrators or managers. At this large, high profile ministry the budget committed to the FOI function was about \$76 per employee, again consistent with C3, M1 and (as will be seen next) M3.

At the small, high profile ministry (M3), the Coordinator appeared to be in an unusual position. There was a position description for a full-time Freedom of Information Coordinator. The Coordinator provided the researcher with a copy of a job advertisement for an assistant which indicated that the selected candidate would be reporting to the Manager of Freedom of Information and Privacy. However, the incumbent Coordinator was actually only 50% involved with FOI, spending the rest of his or her work time in another separate managerial function which seemed totally

⁷This figure (4) is taken from the interview with the coordinator. The job description says there are 6 supporting staff for FOI.

⁸This figure is taken from the mailing list provided. During the interview, the coordinator pinpointed the number at 31.

incongruous with the FOI portfolio.⁹ Although the Coordinator was seeking approval to advertise for the assistant position, the support for the FOI function had never previously exceeded one secretary. There were 37 "liaison" contacts. The Coordinator identified them all as either technical (professional) or administrative positions, with exception of one clerk. The dollar commitment to the FOI function by this small, high profile ministry was 40% of the commitment made by M1, the large, low profile ministry. In terms of dollars per employee, it was considerably less than M4, at \$83 per employee (consistent with the other ministries and the large, high profile crown).

Thus it can be seen that no ministry had made a very significant commitment of resources, either human or financial, to the FOI function, although M4 had made the most serious commitment per employee. The remaining structural question was whether there had been a new locus of decision-making authority and responsibility created pursuant to this legislation or whether the channels of responsibility and accountability remained the same in the ministries, as they had in the crown corporations. Only in one case, the small, high profile ministry (M3), did the Coordinator seem to exercise any binding authority in substantive FOI and privacy matters. In all other cases, final authority lay with line management or with the organization's executive (which would not be inconsistent with the normal exercise of executive power). In this aspect of structure,

⁹50% was an average figure. The incumbent said the demands of both jobs meant that day to day involvement with FOI fluctuated wildly from 10 to 90%.

as in the others examined, the ministries did not differ from the crowns.¹⁰

At M3 (the small, high profile ministry), which, as mentioned, differed in this respect from the other organizations studied, the Administrative Policy Manual had the following provisions:

AUTHORITY TO GRANT OR DENY ACCESS UNDER THE EXEMPTION SECTIONS OF THE ACT

Under the exemption sections of the Act, only the Minister, the Deputy Minister and the Ministry Freedom of Information Co-ordinator have the authority to grant or deny access to Ministry information.

BRANCH/REGIONAL RESPONSIBILITY

The response from Branch/Regional management is only a recommendation ...

SIGN-OFF LEVELS

All recommendations will normally be signed by the appropriate Director. No further sign-off is required if the recommendation is for release because no exemptions apply or the denial is mandatory.

When some discretion is allowed in the application of an exemption, these may, at the discretion of the Division Head, require sign-off at division head level and may be referred to the Deputy Minister or Minister if the issue is extremely sensitive.

NOTE:

Refusals based on exemptions for personal information can be responded to directly by the [unit]. They do not need to go to the FOI Office.

There may at one time have been a delegation document which formed the basis for the Manual entries, and perhaps clarified the delegation as between the Deputy Minister, the Executive Director, and the Branch Director, down to the level of the Coordinator, but no

¹⁰There was one difference between the two small crowns and every other organization in the study. At the two small crowns, the designated head under the statute had remained actively involved with FOI and privacy. In the large crowns and in all the ministries, the designated heads had delegated virtually all involvement down at least one level. In the large crowns, other corporate officers had final authority. In the ministries, the deputy ministers were the ultimate authorities (even at M3, the small, high profile ministry, while the minister appeared as involved in the Administrative Policy Manual provisions quoted in the text here, neither of the interview subjects from this ministry could remember actual ministerial involvement).

such document could be located. In fact, the Coordinator had never spoken of FOI matters with the Deputy in over a year in office, although he or she continues to state that the sensitive matters would be referred to the Deputy. The Coordinator decided whose sign-off was required, in practice (line managers or line directors). Other matters the Coordinator decided and signed on his or her own, with a copy sent to the the Executive Director for information only.

At M4, the small, low profile organization, on the other hand, a written delegation document evidenced that the Coordinator had been delegated only the following housekeeping powers: "transfer of a request", "documents available", "annual report", "manuals etc. to be available in reading room", "information available to responsible minister", "record retention", and "notice of application for appeal".¹¹ All substantive power remained in the hands of the Deputy. Similarly, at M2 (the large, high profile ministry), the Coordinator seemed to see the role of Coordinator as entirely advisory, with line management taking final responsibility for release and the Coordinator's superior taking full responsibility for refusals (often, but apparently not necessarily, seeking and accepting the Coordinator's advice). The Executive Director who was interviewed as head indicated that she or he retained all the large or contentious files her or himself, discussed all requests, and dealt with all refusals. Occasionally, the

¹¹These powers are those given the head in ss.25, 33, 34, 35(2), 36, 46, and 50(3) of the Act, respectively.

Deputy Minister was involved. At M1 (the large, low profile ministry), a written document delegated from the Minister to the Deputy Minister, an "Executive Officer", a "Director",¹² or the Coordinator, or various two and three-way combinations of the four. Apparently, if delegation is to more than one person, any of the persons named can act alone. For example, "third party information..." (s.17) has been delegated to both Deputy Minister and Executive Officer, but in practice the Deputy Minister is rarely involved in matters involving the application of this section.¹³ Acting alone, the Coordinator has responsibility for housekeeping matters,¹⁴ including matters concerning personal information matters which had been reserved to the Deputy Minister at M4.¹⁵ Thus, as in the case of the crown corporations, there is no evidence of a real shift of responsibility for this legislation into new channels different from the traditional structure of the organization.

Therefore, looking at three indicators of structural change (allocation of human resources, commitment of budget resources, and the locus of the decision-

¹²"Executive Officer" is defined in the document by reference to various senior executives. A "Director" includes a Director and an Assistant Director (of a line department in the organization).

¹³The Deputy Minister does reserve exclusive jurisdiction in the areas of defence, cabinet records, and disclosure in the public interest because of grave environmental, health or safety hazards. Ss. 16, 12 and 11 of the Act, respectively.

¹⁴As in the footnote above describing the coordinator's responsibilities at M4, but without sole power over the transfer of requests to another institution (s.25) or notices of application for appeal (s.50(3)), which are unassigned in the document governing M1).

¹⁵These are "retention and disposal of personal information" (s.40), "compilation of personal information bank" (s.44) and "indexes re nature and purposes of personal information banks" (s.45).

making function mandated by the legislation), it can be seen that the responses of the eight organizations in terms of structural change range from non-existent (certainly at all the crown corporations except the large, high profile crown) to very minor: the largest allocation of budget in absolute terms, at M1 (the large, low profile ministry), of 1.1% -- however, the largest commitment in per employee terms at M4 (\$327, almost 4 times the next largest commitments); the largest staff commitment, also at M1, of 7; the only full-time Coordinator also at M1; most organizations keeping delegation of authority to existing channels except for housekeeping matters (the exception apparently being M3, the small, high profile ministry). Thus the evidence overwhelmingly supports the hypothesis of merely minor changes in structure.

One possible reason for this lack of impact may be the backgrounds from which the Coordinators have come. Not one of those interviewed is an information professional.¹⁶ They are all experienced career civil servants. Only the Coordinator at M4, the small, low profile ministry, has any experience beyond the public sector and that experience is some time ago. Only the Coordinator at M4 has extensive community involvement beyond work and only that same Coordinator has any legal training at all.¹⁷ The incumbents therefore see their role as one of efficiently managing an administrative portfolio rather than as a proactive position from which to advance their organization's information handling processes.

¹⁶I am using the term "information professional" in its broadest sense to mean dedicated education directed to information issues at the university or college level.

¹⁷One year of law school.

CHAPTER 8: RESULTS WITH RESPECT TO ADOPTION

8.1 How adoption was operationalized

Three of the hypotheses with which the study is concerned were about adoption of the legislation by the organizations:

Hypothesis 2: That ministries had gone further in adoption of the legislation than crown corporations.

Hypothesis 4: Smaller organizations had adopted the legislation more quickly and effectively than large ones.

Hypothesis 6: Organizations with higher public profiles had adopted the legislation more effectively and quickly than those with low public profiles.

The evidence for the construct of adoption of the legislation was obtained from the employee survey portion of the research. As previously discussed, this portion of the research was conducted in only six of the eight organizations in the research design and, therefore, there was no evidence from employees available at either of the large crown corporations, C3 or C4. Because there was no data for the cells of the eight celled design occupied by the two large crown corporations, the design used to analyze the data about adoption consisted of two four-celled matrixes: all the small organizations in one matrix (see Figure 17A) and all the ministries in another (see Figure 17B). This variation in the research design meant that hypotheses 2, 4, and 6 could not be tested as presented. Rather, the following hypotheses were tested (underlining indicates the differences

		Small Organizations	
		Ministry	Crown
Profile	Low	M4*	C2
	High	M3*	C1

* Appears in Ministry Analytic Matrix as well.

Figure 17A:
Analytic Matrix For Small Organizations

		Ministries	
		Small	Large
Profile	Low	M4*	M1
	High	M3*	M2

* Appears in Small Organization Analytic Matrix as well.

Figure 17B:
Analytic Matrix For Ministries

between these hypotheses and the general hypotheses posed at the outset):

Hypothesis 2.1: Small ministries had gone further in adoption of the legislation than small crown corporations.

Hypothesis 4.1: Smaller ministries had adopted the legislation more quickly and effectively than larger ministries.

Hypothesis 6.1: Ministries with higher public profiles had adopted the legislation more effectively and quickly than ministries with lower public profiles.

Hypothesis 6.2: Small organizations with higher public profiles had adopted the legislation more effectively and quickly than small organizations with lower public profiles.

A number of multivariate statistical techniques were used to analyze whether the respondents' answers with respect to variables involved in the construct of adoption were significantly related to the independent variables of type of organization, size or public profile of the organization in which they were situated. Most of the analysis involved comparisons of categorical variables, for which chi-square and log linear analyses were used.¹ The statistical package SPSS was used in this analysis.²

Tables 6 and 7 summarize the tests performed and the significant relationships found in the multivariate analysis for small organizations and ministries respectively. As this

¹A regression analysis was run asking whether interest or disinterest in learning more about the legislation (question 18) was affected by the type, size or profile of the organization. The results of this test, however, were insignificant.

²The researcher would like to acknowledge the assistance of John Croke in the data entry. The following sources were used to guide this stage: Andrews, Frank M., et al. *A Guide for Selecting Statistical Techniques for Analyzing Social Science Data*, 2nd ed. (Survey Research Center, Institute for Social Research, University of Michigan, 1981), Cooper, R.A., and Weekes, A.J., *Data, Models and Statistical Analysis* (Totowa, N.J.: Barnes & Noble Books, 1983), Marija J. Norusis, *SPSS-X Advanced Statistics Guide* (New York: McGraw Hill, 1985), Marija J. Norusis, *SPSS-X Introductory Statistics Guide* (New York: McGraw Hill, 1983), and *SPSS-X User's Guide* (3rd ed.) (Chicago: SPSS Inc., 1988).

	Type	Profile	Change	Position
Awareness	Sig. 3 Way .05 Level	Sig. 3 Way .05 Level		Not Significant
Changes Made	Significant .01 Level	Significant .001 Level		
Work Affect Possible	Not Significant	Significant .01 Level		
Interested in Learning More	Not Significant	Not Significant		
Information Sources	Significant .001 Level	Not Significant		
Work Involved A Request			Significant .01 Level	
Next Year			Significant .05 Level	

N.B. ≡ Shows Three Way Link

Table 6:
Analyses Performed for Small Organizations
 N.B. The direction and nature of the relationships
 shown are fully explored in the text.

	Size	Profile	Change	Position
Awareness	Sig. 3 Way .01 Level ≡	Sig. 3 Way .01 Level		Not Significant
Changes Made	Sig. 3 Way .05 Level ≡	Sig. 3 Way .05 Level		
Work Affect Possible	Not Significant	Significant .001 Level		
Interested in Learning More	Not Significant	Not Significant		
Information Sources	Not Significant	Not Significant		
Work Involved A Request			Significant .001 Level	
Next Year			Significant .001 Level	

N.B. ≡ Shows Three Way Link

Table 7:
Analyses Performed For Ministries

N.B. The direction and nature of the relationships shown are fully explored in the text.

section will indicate, the modified hypothesis 2.1 was the only one of this group of hypotheses about adoption of the legislation that was supported.

In addition to information gathered relating to the specific hypotheses concerned with adoption, the questionnaire instrument was designed in part to provide descriptive information about the responding employees which would help to establish a context for the Coordinators who will be continuing to create new strategies for implementation of the legislation and in part to provide empirical evidence about the environment in which the legislation is operating. The next subsection of this section of the chapter presents some of these general findings about the characteristics of the respondents. The section will then turn back to a discussion of the specific measures of adoption developed and tested in this research.

The six measures of adoption developed in the questionnaire are logically linked together (see Figure 18). The first, threshold measure was the question "Are you aware of the Freedom of Information and Protection of Privacy Act?"(question 5). Awareness is a condition precedent to adoption, since the employees have to know something about the legislation to take and follow or use it. Those who responded affirmatively were filtered to the second measure, which was the question "Can the Freedom of Information and Protection of Privacy Act affect *your* work?" (question 7). Again, in order to specifically take up and use or follow the legislation as their own,

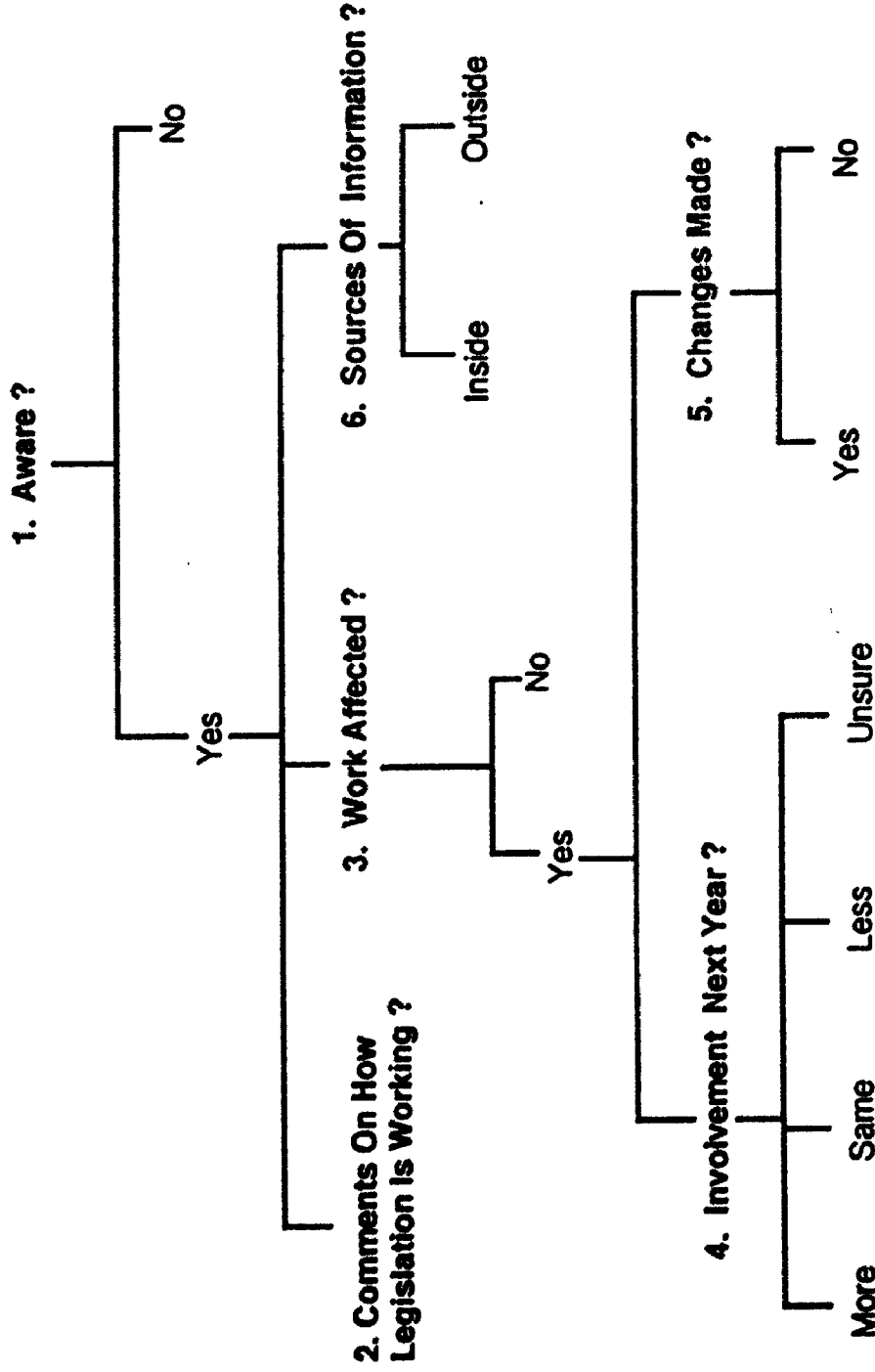


Figure 18:
Flow of Principle Measures Of Adoption In The Questionnaire

employees would need to see it as applicable to their situations. However, those who were aware of the legislation but had not adopted it in their own work situations because they felt it to be inapplicable might certainly have opinions about the effect of the statute on their overall organization. Therefore, an open question solicited the views of all respondents who had indicated awareness of the statute about "how this legislation is 'working' in your organization or could be made to work better". Only those who had indicated both that they were aware of the Act and that they felt that their work could be affected by the Act were filtered to the last two indicators of adoption, which were, indeed, the most direct evidence of adoption. These were the responses to the question "Have you made any changes in the way you do your job since you have heard about the Freedom of Information and Protection of Privacy Act?" (question 8(c)) and the responses to the question which asked whether the respondents expected to be involved with the Act more, about the same, or less (or were unsure) next year (question 9).

The sixth source of evidence about the adoption of the legislation in the organization asked about the origin of the employees' awareness of the legislation. Although awareness of the legislation is a logical precursor to adoption throughout the organization, it is not, by itself, sufficient to establish adoption. One reason for this is that individuals within organizations also function in a private capacity. Not everything they know can be imputed to their organization since individuals may have acquired

information in their private capacities which they are not using in their organizational context. Nor do they necessarily use that which they acquire from within the organization to further the organization's objectives. If the awareness employees indicated was gained from sources inside the organization, then it would be further evidence of adoption throughout the organization. If, however, the employees' awareness had come through outside information, this would weaken the case for adoption throughout the organization. Each of these six areas of evidence is discussed in the subsection following the discussion of the characteristics of the respondents.

The final subsection of this section of the chapter makes overall findings about adoption in the six organizations which formed this part of the study and then discusses the adoption findings in the light of the implementation findings discussed in the first section of this chapter.

8.2 Characteristics of the Respondents

The information on the characteristics of the respondents is derived from the answers to questions to which all respondents were invited to respond. Even those who indicated that they had no awareness of the statute with which the study is concerned answered a core set of common questions located on the front and back pages of the questionnaire.³

The final question on the instrument (22) asked the respondents to indicate their position classifications. Figure 19A indicates the breakdown of their replies into the classifications given in the question. Figure 19B shows the respondents reclassified into three groups, using the answers provided in question 22 and the information provided in the previous open question asking the respondents to describe their jobs.

The mean number of years that the respondents had held their present positions, as indicated in the responses to question 4, was 6.61 (although the range was from 0 to 31 years). The majority (54%) had been in the job longer than 3 years.⁴ This indicates that most of the respondents were able to tell about their experiences with the Act (or the lack thereof) from the perspective of working in the same position both before and after the imposition of the legislation.

The first question the employee respondents answered dealt with how they spent their workday. Table 8 gives the summary statistics connected with the data. Employees believed that about a third of their workday was spent at the workstation in work which did not involve the computer. They believed that nearly another third was spent at the computer.

The means shown in Table 8 total just over to just over 117% when

³"N" values of over 300 on both the first page questions and the last page questions indicate that most of those who indicated that they were unaware of the legislation (55) in the filter question 5 did successfully skip to question 20 and complete the questionnaire (251 said they were aware and were funnelled through the questions on the middle two pages).

⁴One organization was omitted from this calculation because it is younger than 3 years old.

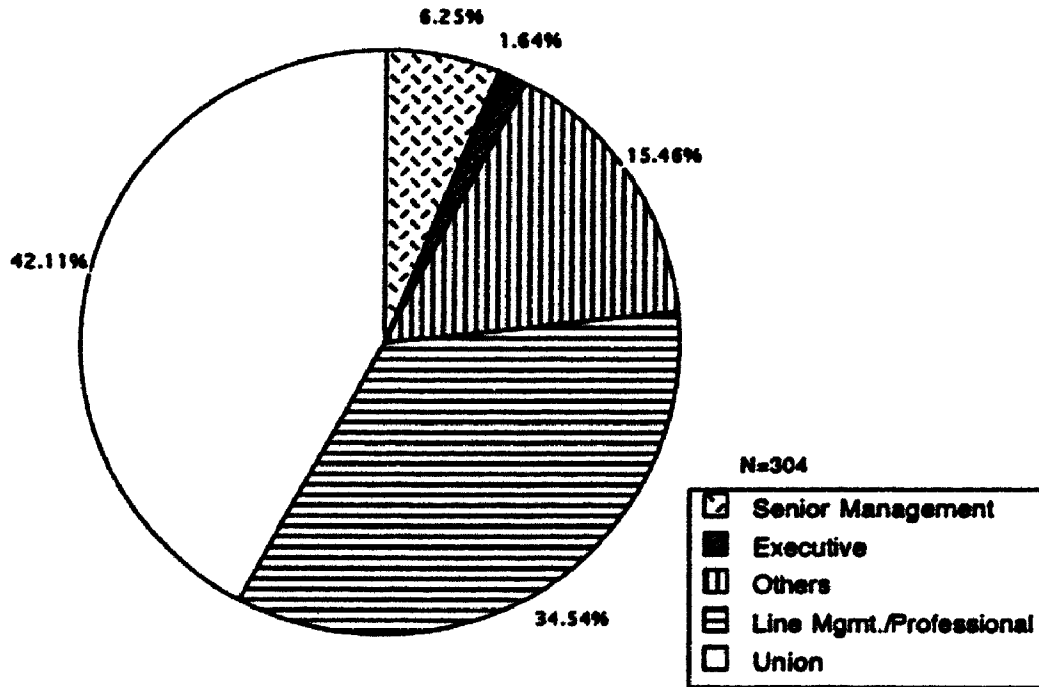


Figure 19A: Respondents' Positions

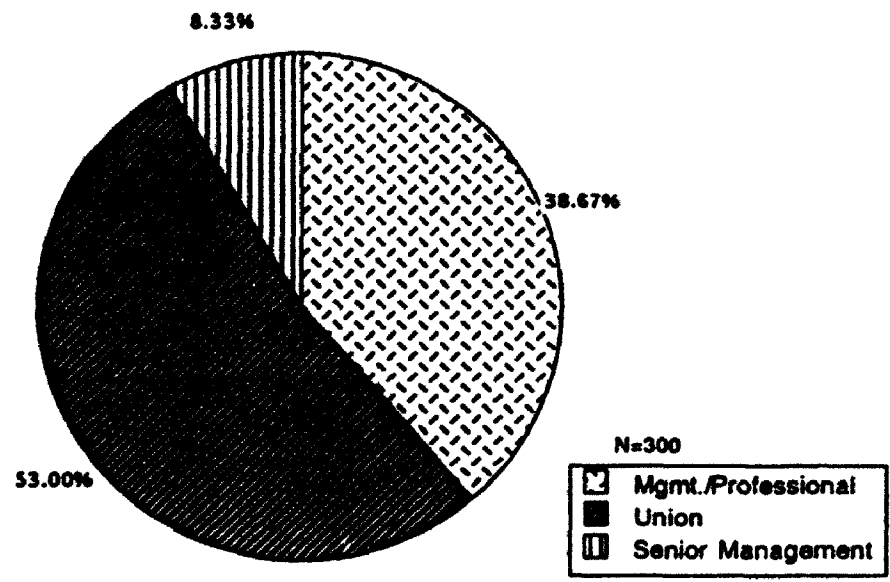


Figure 19B:
Respondents' Positions Reclassified

Responses	Mean	Std. Dev.	Range	N
at my workstation on the telephone	15.5	15	0-95	271
at my workstation using my computer	27.9	24.6	0-95	232
at my workstation reading or working	32.1	23.3	0-96	266
in my organization but away from my workstation	23.2	22.9	0-90	153
outside my organization	18.7	24.6	0-99	214

Table 8: Where working day is spent

cumulated, which is possible because the respondents were not all accurate in ensuring that their allocations of percentages to the various parts of the question actually totalled to 100% overall. However, to achieve a sense of proportion in the responses, Figure 20 shows the mean values in question 1 as a pie chart.

Speaking on the telephone definitely involves the employee in communication, while working at the workstation with the computer is almost certainly a solitary activity. The other three activities in question 1 may have elements of both communication and solitary activity but it is more likely that being in the organization but away from the workstation and being outside the organization are activities involving communication and being at the workstation reading or working without the computer is solitary. Using those assumptions, employees have indicated in question 1 that 49% of their workday involves communication and 51% involves solitary activity.

Assuming that these assumptions have some validity, then the results in question 1 provide support for the accuracy of the employees' estimate in question 2b that their jobs involve working with people 52.5% of the day (S.D. 28, Range 0-98).

Question 2a gave employees a chance to indicate how the half of each day they spend in communication with other people is broken down. Table 9 provides a summary of the responses to this question. Again, the sum of the means is greater than 100% (in this case about 114%). Figure 21 graphically depicts the means given in Table 9.

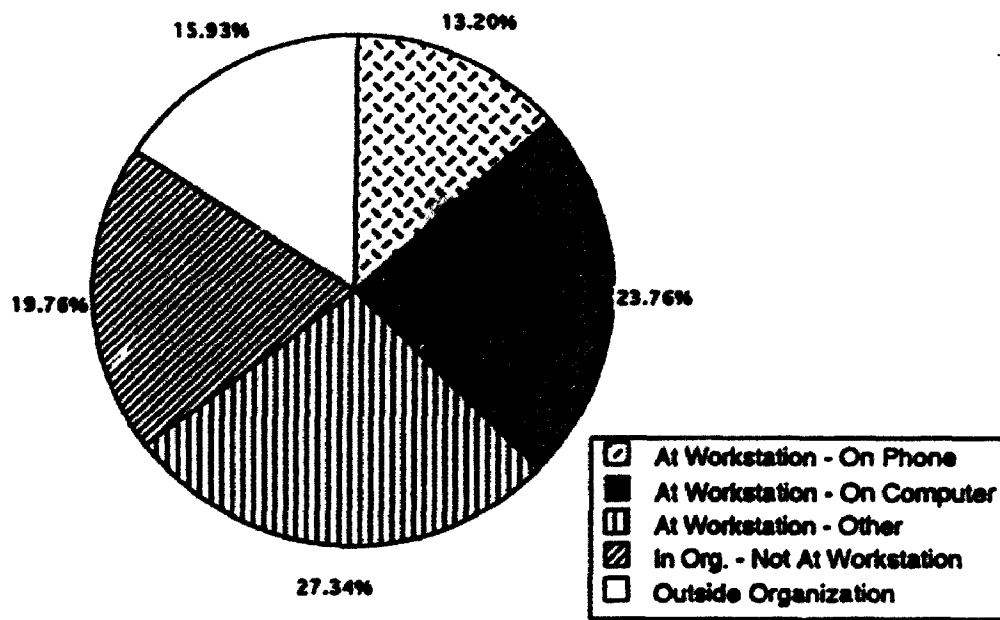


Figure 20: Where Workday Spent

Responses	Mean	Std. Dev.	Range	N
others in my organization	54.7	29.3	0-99	276
people in other government organizations - FED	5	12	0-98	185
people in other government organizations - PROV.	10.2	12.9	0-90	229
people in other government organizations - MUN.	5.9	11.01	0-99	191
people in private sector corporations - in Ontario	12	16.97	0-85	219
people in private sector corporations - elsewhere	2.5	8.1	0-65	154
people in charitable agencies	4.3	10.3	0-73	175
individual members of the public	16.1	22.7	0-95	231
the media	3.6	11.21	0-80	176

Table 9: Work Contacts

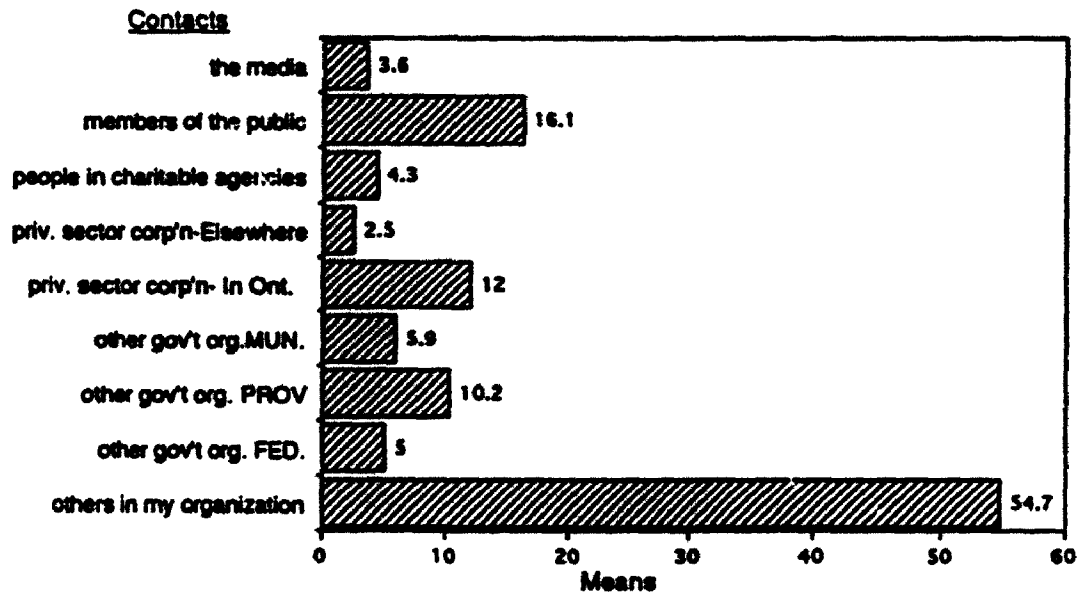


Figure 21: Work Contacts

The responses given in this question can be grouped by sector. Contacts with (a) others in your organization, (b) people in federal government organizations, (c) people in provincial government organizations, or (d) people in municipal government organizations, are all contacts in cells 1,2,5, and 6 of the expanded information flow matrix (whether the respondents are in a crown corporation or a ministry), and, as indicated earlier, in Figure 10C, bring the respondents within the ambit of the privacy provisions of the statute.⁵ These public sector contacts represents 66% of the employees' contacts, using the results in question 2a. Contacts with (e) people in private sector corporations in Ontario, (f) people in private sector corporations elsewhere, (g) people in service and/or charitable agencies, or (i) the media, represent information flows in cells 3,7,9, and 10 of the expanded information flow matrix. As shown in Figure 10C, above, that brings both the privacy and the other general access provisions of the legislation into play with respect to these contacts. However, the information gathered in question 2a shows that these contacts represent only 20% of the employees' work communication pattern. Question 2a shows, finally, that the smallest percentage of the employees' contacts are with private individuals: 14%. These contacts represent activity in cells 4, 8, 13 and 14 of the expanded information flow matrix in Figure 10C, and as such, involve the employee in the privacy aspects of the legislation with respect to

⁵At least, certainly when taken in conjunction with the operation of the Municipal Freedom of Information and Protection of Privacy Act, 1989.

contacts which involve acquisition or dissemination of personally identifiable information and in the general access provisions of the statute where the contacts represent dissemination to private individuals. It is interesting to note that the transactions with these contact individuals which involve only acquisition by these employees of non-personally identifiable information are not affected by this legislation at all (cells 13 and 14 of the matrix). It would appear then, that since cells 1,2,5,6,4,13 and 14 are involved in only the control of the personal information aspects of the legislation and cells 3,7, 8, 9, and 10 also involve the personal information aspects, the privacy implications of the legislation should play a far greater role in the lives of these employees than the other provisions of the statute. Figure 22 indicates the level of involvement which the respondents reported in each of three different groups of cells. Notice that the question did not discriminate between contacts involving acquisition and those involving dissemination and so the percentage of contacts figures are indicated only in the key to the shading of the Figure, since it is impossible on this data to accurately allocate portions of the total figures for cells of the same shade between the acquisition and dissemination cells of the matrix.

The mean results of question 3, "How do you communicate with people?" are shown in Table 10. It may be noted that the overwhelming method of communication within the organization is face to face (56.8%) with the memo and electronic mail trailing

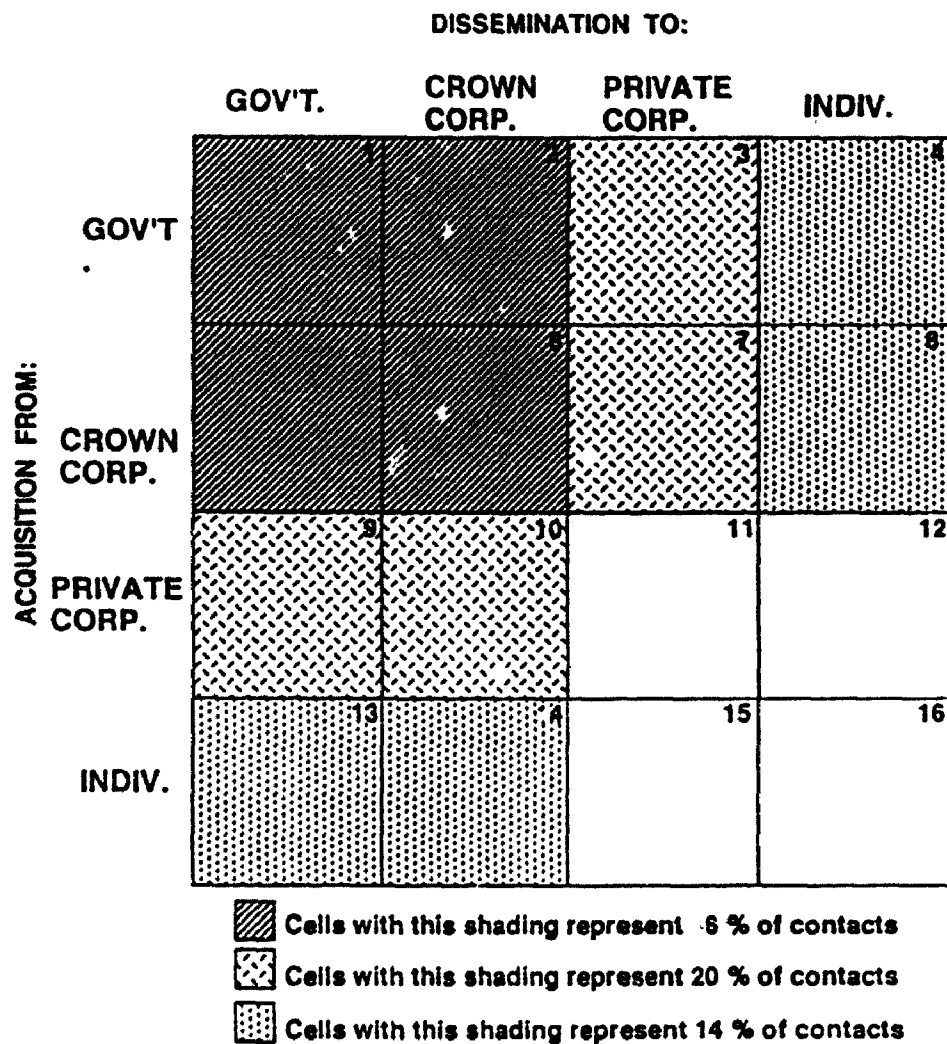


Figure 22:
 Work Contacts Shown In
 Information Flow Matrix

	Face to Face	Telephone	Letter	Memo	E-Mail	Other
Others in your organization	57	23	5	7	6	3
People in other government organizations						
federal	9	31	15	3	2	1
provincial	20	45	13	6	3	2
municipal	17	26	12	2	4	2
People in private sector corporations						
in Ontario	17	36	13	2	1	2
elsewhere	6	23	12	1	1	1
People in service and/or charitable agencies	13	27	9	1	0	2
Individual members of the public	27	32	10	0	0	1
The Media	12	27	2	0	0	0

Table 10: Types Of Work Contact

far behind at 7 and 6% respectively. Individual members of the public are dealt with approximately equally in terms of face to face communication (26.8%) and telephone (31.6%).

One of the hypotheses deals changes in the flow of information in formal and informal channels in the organization. Questions 2 and 3 provide some insight into the use of formal and informal channels by employees. The overwhelming characteristic of a formal channel is its public nature. Therefore, employees' contacts with the media can be considered formal channels of dissemination of information from the organizations studied. This formal channel represents only 3.6% of employee contact. On the other hand, communications within the organization are not public in nature and may therefore be considered informal. These constitute almost 55% of employee contact. Beyond these categories, communications with outside individuals and groups are perhaps best distinguished according to the degree to which the communication may be regarded as official (formal) or unofficial (informal). Outside communications by letter are official. Communications by memo are probably less so, but are still permanent evidence of the organization's communication, available both for the addressed recipient but also to anyone else the recipient cares to show. The least official communications are probably telephone calls and face to face contacts, which are essentially private (meaning personal, one to one) in nature.

Electronic mail is an example of a written informal channel, since the communications are private and are often considered to lack permanence. It is also an example of an informal channel which appears to come within the ambit of the Act being studied, since electronic mail can be printed out and it can hardly be argued that the process of printing out one's "e-mail" would unreasonably interfere with the operations of an institution.⁶ This would mean that e-mail messages are "records" within the meaning of the Act and are available for dissemination under the general provisions of the Act and subject to all the requirements with respect to collection (acquisition), storage and retrieval, use, dissemination and disposal of personal information in the Act. While electronic mail plays only a minute role in external communications, its role within the organization is about the same as the role played by letters and memos.⁷

Both the respondents who had indicated that they were aware of the legislation and those who had indicated that they were not were asked a general question

⁶See the definition of "record" part (b) in s.2 of the Act, together with Regulation 517/90, s.1.

⁷It may be noted that in the responses to the question asking about changes the employees have made since the Act was introduced, there were many comments about changes in letters and files (memos) etc. There was not one mention of the e-mail system. This tends to support the proposition that employees do not view e-mail as subject to the Act. Nor does it tend to be regarded as part of the formal communications network. (See the discussion of change below). One respondent wrote in a comment beside the choice "bulletin board notice" in question 20(b) that she or he considered that option to include e-mail. While this may be an appropriate analogy within the corporate culture, the controlled access by the e-mail receiver may alter the public nature of the communication, even though the sender can make broad "mailings". The public character of the bulletin board may be lost when translated to the electronic environment.

about how they would prefer to be informed about legislation that affected the way they communicate with others in their job and how they handle information about people in their work (question 20). The first part of the question asked the respondents to rank various sources of information according to which they believe gives the best information. The scores for the first three choices are shown in Table 11. The overwhelming first source is the organization's designated person or office (the Freedom of Information and Protection of Privacy Coordinator). As a first source, this surpassed the individual freedom of information contact in the respondent's own area and the line supervisor. The individual contact within the department was considered by most to be the second best source. The line supervisor was, for most, the third best source, although, as third best source, the union or professional association was choice of the second largest group of respondents. External sources, such as the media and external groups, were an insignificant source for almost all respondents. The "other sources" which the respondents mentioned included the Act itself (3 mentions), their peers, the ministry's legal counsel and an office administrator.

The second part of this question asked respondents about the forum in which they would like to receive this type of information. Table 12 indicates the first 3 choices respondents made from this list. Workshops within their own organization appealed to most people as their first choice. People's preferences for second and third choice of forum appear evenly spread. However, totaling the votes for first, second and third

Who are your preferred sources ?	First Choice	Second Choice	Third Choice
(a) Your line supervisor?	47	39	86
(b) The FOI Coordinator?	186	55	18
(c) The FOI Liaison Person?	52	119	25
(d) Your union or professional association?	12	15	30
(e) External groups to which you belong?	1	1	2
(f) The press or media?	4	1	8
(g) Other sources? Please specify	6	11	7

Table 11:
Top 3 Choices For Sources Of Information

What is preferred form ?	First Choice	Second Choice	Third Choice
(a) Meetings.	45	37	37
(b) Workshops within your organization.	120	33	29
(c) Workshops given outside your org.	23	30	14
(d) Other sessions . Please specify	1	4	1
(e) Memos.	22	29	37
(f) Newsletters.	29	35	20
(g) Bulletin board notices.	1	9	16
(h) Procedure manuals.	34	32	20
(i) Orientation materials.	10	26	20
(j) Videos.	?	28	19
(k) Other materials.	3	1	1

Table 12:
Top 3 Choices For Forms Of Information

choice in each case (see column 4), meetings received the second highest number of choices overall, with memos, newsletters and procedure manuals finishing roughly equally in third place. It is interesting that for their first two choices, respondents are choosing forums which offer opportunities for predominantly informal information channelling, in complicated patterns of direction (at least one-to-many, almost certainly many-to-one as well, and depending upon the conduct of the meeting or workshop, many-to-many). The formal, one-to-many, one-way channel forms -- the memo, newsletter, and procedure manual -- are third choices.

These characteristics of the respondents indicate that the data collected from the measures of adoption discussed below probably accurately reflect a wide cross-section of organization employees. The respondents represent a good cross-section of the levels of employees. The average respondent had been in the job long enough to have experienced his or her organization's efforts at implementing the statute since the average length of employment was six years and the legislation was only about three years old at the time the instrument was distributed.

The general characteristics revealed about the respondents also highlighted how important adoption of the legislation is in public sector organizations. Respondents indicated that they spent about half of each day in communication with people and yet only 14% of that communication is with individual members of the public. The data

protection aspects of the legislation are designed to protect personally identifiable information held by organizations in all contexts. However, it is difficult to monitor whether the limitations and controls on collection, use and dissemination of personally identifiable information are being observed when only 14% of the contacts from within the organization are with individual members of the public.

The contacts in other sectors presumably have less interest in monitoring individual data protection practices in these public sector organizations than have either the individuals who are the subjects of the data or other individuals who are concerned in principle. Moreover, the enforcement mechanisms in the Act are oriented toward individual requests. An individual who is the subject of personally identifiable information in records held by the institution has the ability to inspect that information and to compel the institution to make corrections or append statements of disagreement to the records.⁸ However, those rights are given only to the individuals concerned. Under normal circumstances, others cannot exercise those rights on behalf of the individual subject.⁹ Also, whereas there is a prohibition on the release of personally identifiable information to other than the subject in response to a general request made by another person,¹⁰ there does not seem to be any incentive in the statute or mechanism

⁸See s.47 of the Act.

⁹See s.66 of the Act where certain exceptional situations are dealt with explicitly.

¹⁰See s.21 of the Act.

for the recipient to complain that personally identifiable information about another was received with the general response.¹¹ Even if the Commissioner had an explicit audit power in the statute,¹² the lack of a “whistle-blowing” incentive means that it is probable that many breaches of the statute never come to the attention of the head of the institution, the Commissioner, or the aggrieved individual.

The information about communication patterns gathered from the respondents further emphasizes the importance of adoption of this legislation by the employees of the organizations affected because it highlights the difficulties inherent in attempts to enforce the statute upon employees. About half the employees' communications with each other are face to face, and over half the employees' communications with the public are either face to face or over the telephone. These channels are ephemeral. Evidence about whether employees have or have not complied with the mandates of the legislation during these contacts will be indirect at best, since no records of the actual transactions are normally created, and at worst, will be unobtainable.

¹¹The right of appeal to the Commissioner, given in s.50 of the Act, is limited to “a person who has made a request” or “a person who is given notice of a request [as a person who is the subject of personally identifiable information in a record involved in another's request or a third party whose information is contained in a record which is involved in another's request]”. The Commissioner may, under s.59(f) “receive representations from the public concerning the operation of the Act”, but this does not empower the Commissioner to take specific action on a complaint.

¹²See the Ontario Commissioner's efforts to gain an explicit power, mentioned above, in the Policy Recommendation XV, discussed at pages 138-143 of *Suggested Changes to the Freedom of Information and Protection of Privacy Act, 1987, as amended.*

8.3 Measures of Adoption

The first indicator of adoption was the level of awareness of the statute which existed in the organizations participating in this portion of the research. Responses to question 5 indicated that 82% of respondents were aware of this Act.

A loglinear analysis of the responses to this question by type of organization by profile of organization was run for the small organizations. This analysis showed a significant 3-way interaction ($\chi^2 = 5.66, d.f. = 1,^{13} p = .017$). See Table 13. More people are aware in small ministries than in small crown corporations, and the difference is more pronounced in the high profile small organizations. A similar analysis of awareness by organization size by public profile done for the ministries also showed a significant 3-way interaction ($\chi^2 = 6.75, p = .009$). In this case, review of Table 14 shows that for high profile ministries, a higher percentage of people are aware in the smaller ministry than in the larger ministry, but for low profile ministries, the percentages of people aware are about the same

The chi square comparisons done for the ministries and the small organizations to see whether the positions held by the respondents were related to the respondents' awareness of the statute showed no significant relationship.¹⁴

¹³Because the analyses involved in this study dealt almost exclusively with variables which were, or had been reduced to, binaries, the degrees of freedom involved in the analyses were 1, hereafter, only degrees of freedom other than one will be noted.

¹⁴To make the comparison, the responses about employment classification (question 22) reclassified into (a) a union position, (b) a line management/professional position, (c) a senior management position, or (d) an executive position. The replies indicated as "(d) other" were reclassified into one of the other four using the information provided by the respondents in the open question 21, which asked them to describe what they did.

		Low Profile		High Profile	
		Ministries	Crowns	Ministries	Crowns
Aware		51	13	59	11
		81%	72%	94%	52%
Unaware		12	5	4	10
		19%	28%	6%	48%
		63	18	63	21
		78%	22%	75%	25%
			N= 81		N= 84
			100%		100%

Table 13: Awareness Of The Legislation By Type and Profile For Small Organizations

		Low Profile		High Profile	
		Small	Large	Small	Large
Aware		51	86	59	31
		81%	86%	94%	76%
Unaware		12	14	4	10
		19%	14%	6%	24%
		63	100	63	41
		39%	61%	61%	39%
			N= 163		N= 104
			100%		100%

Table 14: Awareness Of The Legislation By Size And Profile For Ministries

A subsequent question tested what the respondents' meant when they responded that they were aware of the statute. Although aware of *an* Act, the responses to question 6 indicated that the awareness was not necessarily of this specific Ontario legislation, the Freedom of Information and Protection of Privacy Act, 1987. The largest group (70% of those aware of the Act) knew there was legislation at both the federal and provincial levels, although they were about evenly split over whether this particular statute, the Freedom of Information and Protection of Privacy Act was an Ontario (as, of course, it is) or a federal enactment (52% to 48% respectively). Nearly a quarter of those who had said that they were aware of the Act (24%) either thought there was only federal legislation in this area or were unsure about whether there was Ontario legislation. Figure 23 shows the breakdown of responses. It illustrates the division between those who thought the legislation which was the subject of the question was federal, and those who thought it was provincial. As further discussed below, however, this division would appear to be the result of a confusion about how legislation is created, rather than a confusion about whether this law actually applied to their particular situation.

Question 19 explored further the issue of the application of the law by asking all the respondents who had indicated an awareness of the Act which employees in which organizations they thought were affected by the need to comply with this legislation. The spread of answers here was very revealing.¹⁵ Fourteen per cent of people aware of the statute thought *some* employees of their organization were

¹⁵Several of the possible responses were paired and mutually exclusive, as may be seen in the following discussion, but others were not and multiple responses were common.

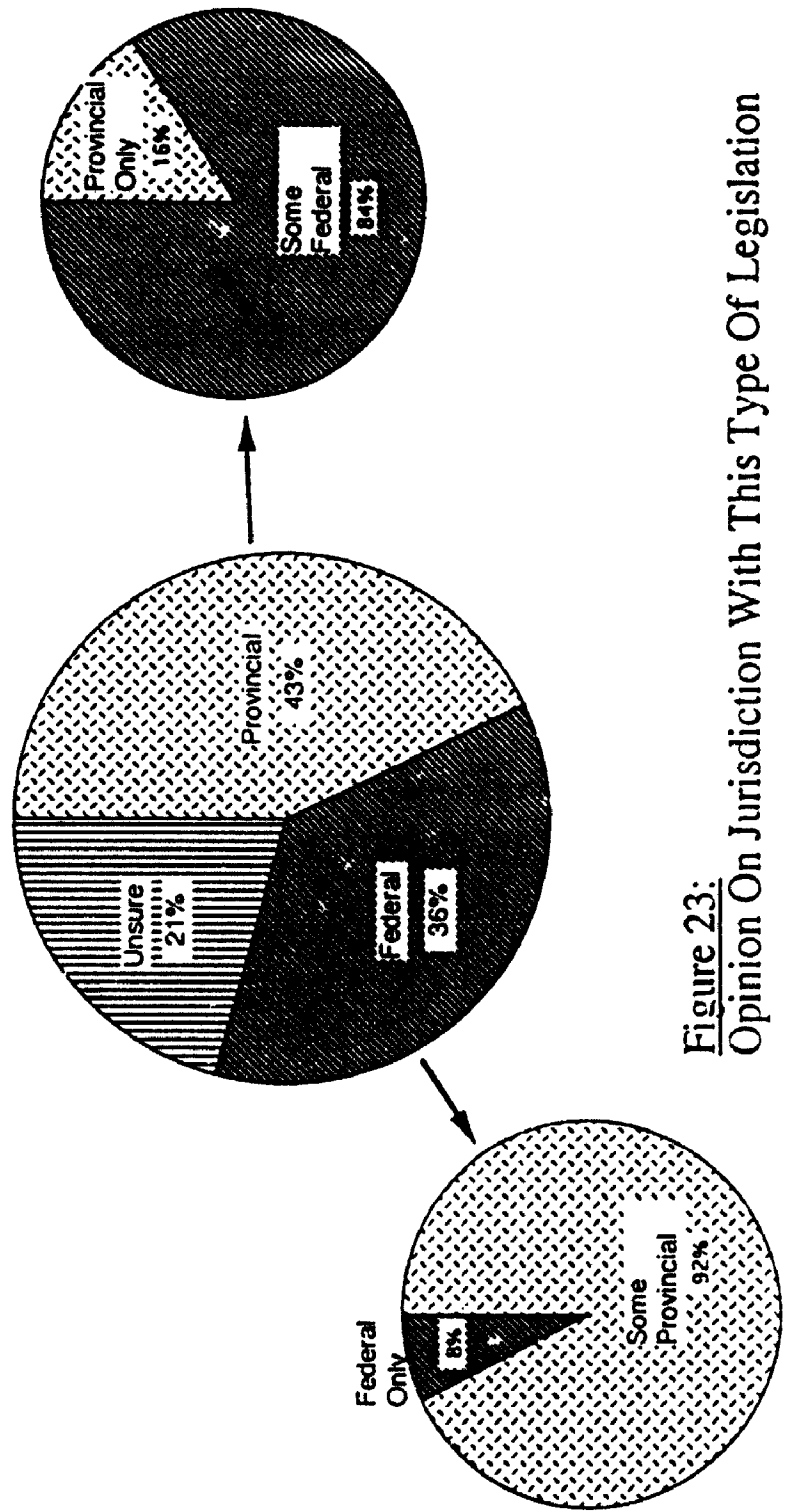


Figure 23:
Opinion On Jurisdiction With This Type Of Legislation

affected while 76% thought *all* employees of their organizations were affected.¹⁶

Reasons given for why respondents thought some employees of their organization were unaffected included: "they do not collect or hold data"; "not [in a public service position]"; "does not apply to job"; and, "not in a position to supply information."¹⁷

Although 76% recognized that all employees of *their* organization were affected by the legislation, only 42% of those aware of the statute recognized that *all* of their contacts in provincial government would be affected. Reasons given for thinking some other provincial contacts would not be affected were: "they do not collect or hold data" and an incorrect identification of a certain type of private sector organization as part of the provincial administration and citing it (accurately, but for another reason) as not covered.

¹⁶This means, presumably, some of those who said they were affected (in question 7, discussed above) saw this as a particular characteristic of their job and not as a universal characteristic of being employed by their organization (since only 25 had said they were unaffected).

¹⁷S.38 of the Act includes personal information which is not recorded when discussing the institution's power to collect personal information. The use and disclosure of personal information collected either orally or in writing is controlled under sections 41 and 42. These controls over personal information do not apply only in situations where formal records are being created or stored. Nor do they apply only to employees working in positions which interact directly with the public. They apply in all areas of the organization. It is particularly in areas where there is no direct contact with the public that abuses can occur undetected, as discussed immediately above. It is difficult to conceive of positions where the incumbents never deal or have the potential to deal with personal information either orally or in writing. Which employee does not at one time or another handle information about his or her fellow employees, products or services supplied by third parties to the organization, or other individuals with whom his or her work takes him or her into daily contact? Even if, or particularly if, situations are infrequent which could involve the employee with the Act, all employees should know of the Act's parameters if compliance is to be achieved. Therefore, these comments indicated a misapprehension of the scope of the Act in the organization's day to day activities.

Seventeen per cent of the respondents aware of the Act thought at least some of their contacts in the federal government were covered¹⁸ and just over a quarter of those aware of the statute (26%) thought at least some of their contacts in the municipalities were covered.¹⁹ Although this legislation does not govern private sector institutions, 10% of respondents aware of the Act thought *some* of their contacts in the private sector were covered and 16% people thought *all* of the private sector was covered.²⁰ These results are graphically represented in Figure 24, which shows the breakdown of choices made by sector: how many people felt each sector was affected (whether for all employees of the sector, or by some).

The next measure of adoption was the respondents' own opinions about the legislation's effectiveness in their organizations. All the respondents who were aware of

¹⁸Thus giving further credence to the argument that the responses discussed above to the question about whether this legislation was provincial or federal are really a reflection of the respondents' confusion about law-making in Canada, rather than a misapprehension about the identity of the statute being asked about. In that question, 38% indicated that this was federal legislation, and yet in this question only 17% think their federal government colleagues are covered by this legislation.

¹⁹The survey was distributed in the six organizations between March and August of 1991, within a few months after the later Municipal Freedom of Information and Protection of Privacy Act, 1989 had come into force (January 1, 1991). The publicity surrounding the introduction of the similar, but separate, statute may have caused this confusion in some of the respondents' minds. See footnote below.

²⁰This misapprehension could lead employees to a false sense of complacency in their own activities. If they think, incorrectly, that their private sector contacts are subject to the same requirements that they are, they could erroneously feel that their own conduct is meeting the requirements of the legislation if they do the same as their private sector counterparts whereas the statute requires a higher standard of conduct of public sector employees in this regard.

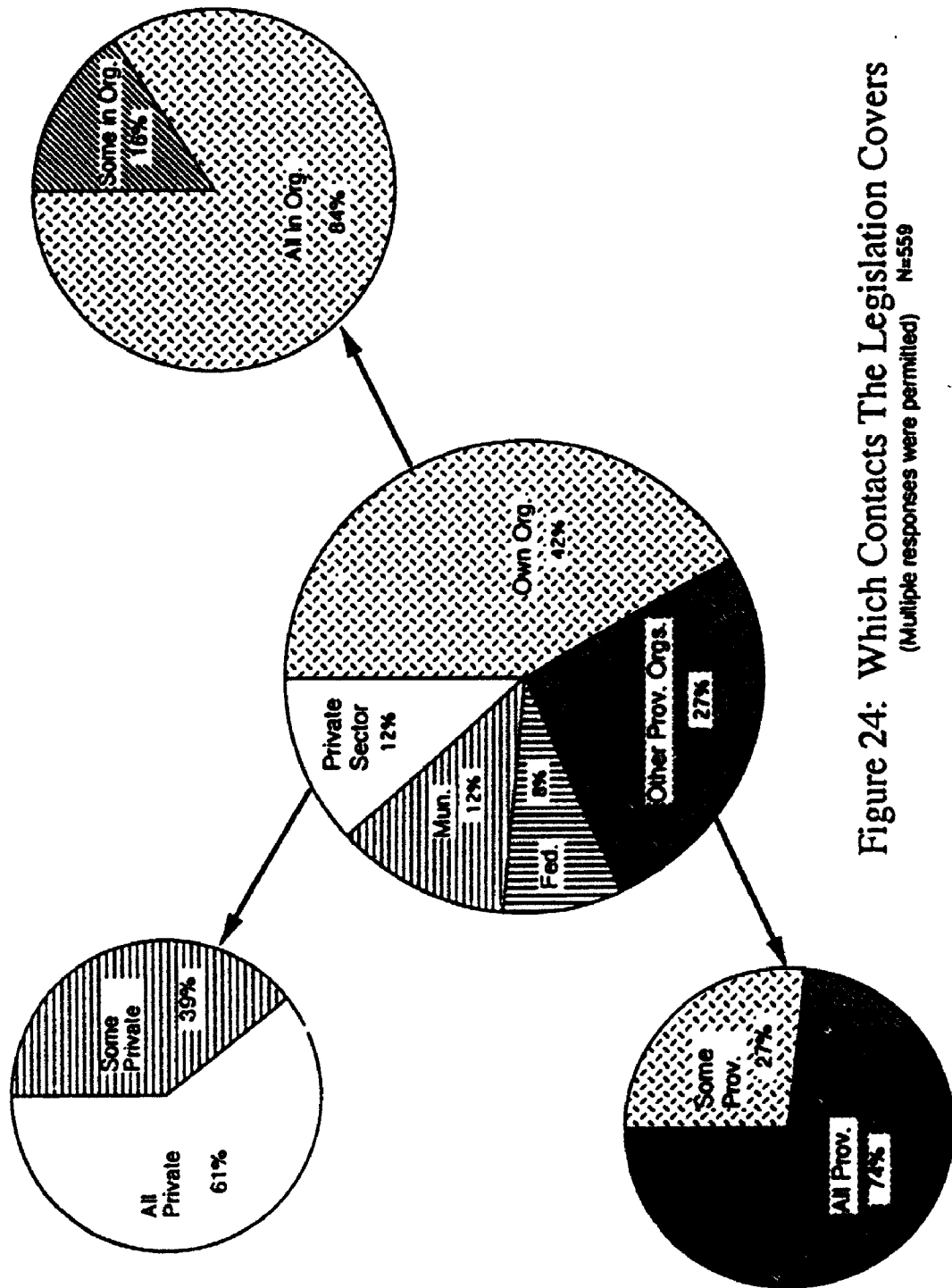


Figure 24: Which Contacts The Legislation Covers
(Multiple responses were permitted) N=559

the Act were asked, in an open question (17), whether they had any comments about how the legislation is "working" in their organization or could be made to work better. Over a quarter of those aware of the statute (28%) wrote substantive comments in response. Each respondent answered in her or his own words, from a unique perspective. Appendix 13 is a transcription of these remarks divided into categories imposed afterwards by the researcher²¹ including (a) substantive comments (both (i) practically-oriented and (ii) philosophically-oriented), and (b) training.²² The unequivocally positive substantive comments about the practical workings of the legislation were brief and undetailed generalizations: "appears to be working as intended", for example. On the other hand, the less positive comments were pointed and detailed -- clearly the product of personal experience: "there should be more 3rd party protection - the FOI office itself should be more accountable for what it does, when errors are made by staff", for example. Although there were positive comments among the less practical, more philosophical reflections on the Act, these tended to be negative,

²¹As in all the transcriptions in the Appendices, it was occasionally necessary to alter or omit some specific references or vocabulary in the responses in order to preserve the anonymity of the organizations participating. Where this has been done, the researcher's substitute word or expression has been enclosed in square brackets. There were also 9 cases where the respondent simply replied that he or she hadn't enough experience to make a meaningful comment. These 9 are shown in the Appendix, but are not included in the 28% figure in the text and are not discussed in the text.

²²There are also comments about the respondent's lack of experience with the statute, included in the appendix at (1) (c).

whether succinct comments such as "pain in the neck" or more lengthy and descriptive such as:

- I was involved in division-level coordination of responding to FOI request - there is a lot of time spent "responding" to request that is really counter-productive. Yes, it is working, but at what cost? Are there more efficient ways of handling FOI?

Eleven per cent of those aware of the statute made comments which dealt with training. Thirty-seven per cent of these have been grouped together in Appendix 13 as comments on how the act is working since they were substantive overall comments which basically agreed that more training is necessary. The other 63% of comments about training were comments making specific suggestions for further training. In particular there were several calls for workshops and several calls for education which was specifically targeted to relate the Act to job functions.

The final area of comment was suggestions for improvements in the Act itself. These ranged from the suggestion to "scrap it..." to a suggestion about the qualifications for FOI specialists to various suggestions for exemptions from release.

Analyzing these comments and simply categorizing each as either positive about the Act or negative about the Act (omitting the comments about lack of experience, (1)(c), and the ones suggesting training improvements, (2)(a)), there were far more negative statements, almost three quarters (74%), than positive. These negative comments, expressed by 14% of the employees who were aware of the Act, create the

impression that employees do not view the legislation as having been adopted by their institutions-- that they do not view their fellow employees as having taken it up and turned it into a normal functioning aspect of their institution. This measure, however, provided only indirect evidence of adoption, in the form of the employees' assessments, and only just under a third of the employees who were aware of the statute wrote in comments (31%). Other measures, including more direct measures, of adoption were available from the series of questions asked of those who were aware of the Act.

Whatever their opinions on the jurisdiction responsible for the legislation or whether or not others were covered, most respondents believed, according to their responses to question 7, that the legislation had the ability to affect *their* work in provincial organizations (90% of those who were aware of the legislation thought the legislation could affect their work). This suggests that the varied answers to the question about the jurisdiction in which the legislation was passed were a reflection of people's ignorance in matters of civics, rather than a misapprehension about whether the Act being discussed had the potential of affecting their organization. Indeed, when asked why they thought that the Act did not affect *their* work, the 10% who thought themselves unaffected each indicated that this was because "although it has become law and does affect my organization, I do not work in a position which is affected by this law" (rather than thinking that it had not yet become law or that they worked in an organization unaffected by the law).²³

A loglinear analysis comparing those who felt themselves to be affected with those who did not by type of organization and public profile for the small organizations showed that the interaction of public profile with these results was significant ($\chi^2=8.39$, $p<.01$). As shown in Table 15, more people felt themselves to be affected in the low profile small organizations than in the high. The loglinear analysis of the number of people who felt themselves to be affected or not affected by the legislation for the ministries showed a significant interaction of public profile with these results was also significant ($\chi^2=17.63$, $p<.001$). As in the small organizations, more people saw themselves as being affected in the low profile ministries than in the high profile ministries (see Table 16). This repeated relationship for the small organizations and for the ministries suggests that this particular relationship, that the lower the public profile of the organization, the more the employees see themselves as affected by this legislation, may indeed hold true for all eight cells of the original design matrix.

Linking the respondents who felt that their work was not affected with their descriptions of their positions given in response to question 21, it was found that the positions which the respondents felt were not affected included managers, technical support personnel and maintenance workers. One might suppose that these people do not have direct public contact and probably don't handle personal data (although one might

²³See the second part of question 7 to which respondents who answered no (that they were not affected by the legislation) were directed.

	Low Profile	High Profile	
Affected	59 95%	55 80%	114 87%
Unaffected	3 5%	14 20%	17 13%
	62 47%	69 53%	131 100%

Table 15: Whether Affected By Profile For Small Organizations

	Low Profile	High Profile	
Affected	131 98%	73 81%	204 91%
Unaffected	3 2%	17 19%	20 9%
	134 60%	90 40%	224 100%
			N=

Table 16: Whether Affected By Profile For Ministries

wonder about managers). However, the positions listed also included a number of database and computer systems people, programme development officials, an individual in public relations and another in sales. These individuals are clearly involved in areas touching upon information provision in the organization and yet they see themselves as unaffected by this statute (although admittedly their numbers were few in the study).

The vast majority of those who thought that the legislation could affect their work thought (accurately at the time) that it was about 3 years old -- see Figure 25.²⁴ Since at this time the federal legislation was about nine years old,²⁵ it would appear that most of the respondents had the Ontario 1987 legislation in mind, whatever their ideas of its legislative origin (74% of the aware people thought it was 3 or 5 years old). It is possible that the 10% who thought the statute was new had become aware of the legislation because of the publicity surrounding the new Municipal Freedom of Information and Protection of Privacy Act, 1989, which, at the time of the questionnaire, was receiving a fair amount of press because it was just coming into force.²⁶

Of those who thought that this legislation could affect their work, 28% indicated that they felt that they were speaking from experience -- that work they had

²⁴See the second part of question 7 to which respondents who answered "yes" (they were affected by the legislation) were directed.

²⁵See Privacy Act, s.10; proclaimed in force: SI/82-232, SI/83-21 and SI/83-134. See also the Access to Information Act.

²⁶Municipal Freedom of Information and Protection of Privacy Act, 1989, s. 52(1). See, for example, "Local police to release names of victims", *Hamilton Spectator*, Thursday, January 3, 1991, p.B1.

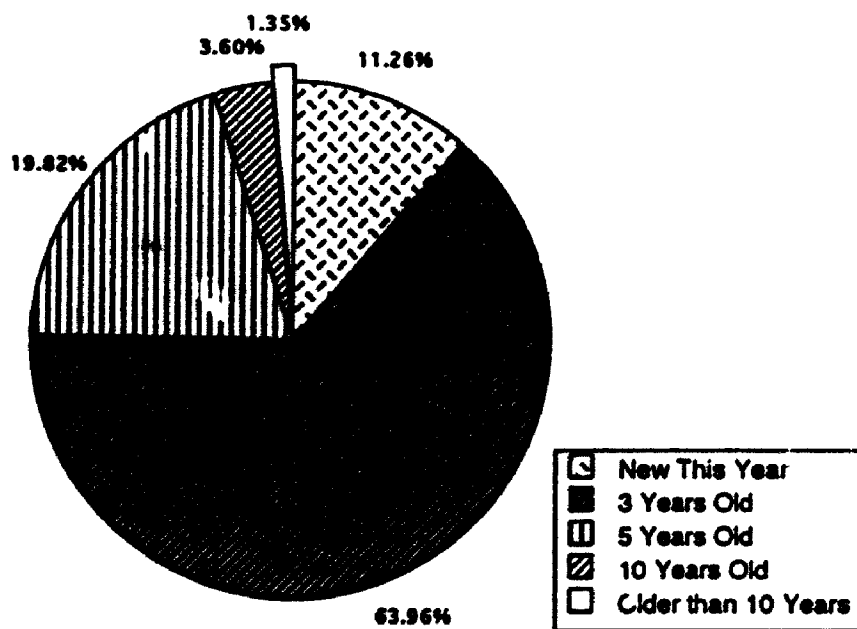


Figure 25: How Old Is This Legislation ?

done in the past year had been the subject of an access or privacy request or a request for correction (62% indicated that such a request had not been made, to their knowledge).²⁷ The number of requests received ranged from 1 to 10, with the average number of requests received being 3 each. Although only just under a third thought that requests about their work had actually been received, 82% of those aware of the Act felt that they had done work which *could* have been the subject of a request at least once. Nearly a third (29%) thought that occasionally the work they did could be the subject of a request (see Figure 26). Almost as many (26%) thought their daily work could potentially involve them in requests.²⁸

Thus most of the respondents who were aware of the Act also indicated that they believed that their work could be affected by the Act. This sense of being affected by the Act varied significantly between low profile organizations, where the sense of being potentially affected was greater, and high profile organizations.

The fourth indicator of adoption was the attitude which respondents took toward future involvement. When asked whether they expected that their job would involve them further with the Act next year (question 9), although 14% of those who

²⁷See question 8a. In some cases, there were more respondents indicating an involvement in requests that the total number of requests reported by that institution to the Commissioner's office. However, this is very possible since more than one individual's work may be involved in providing the records related to a single request.

²⁸Using responses to question 8b. Fifteen per cent thought that they had never done work which could be the subject of a request.

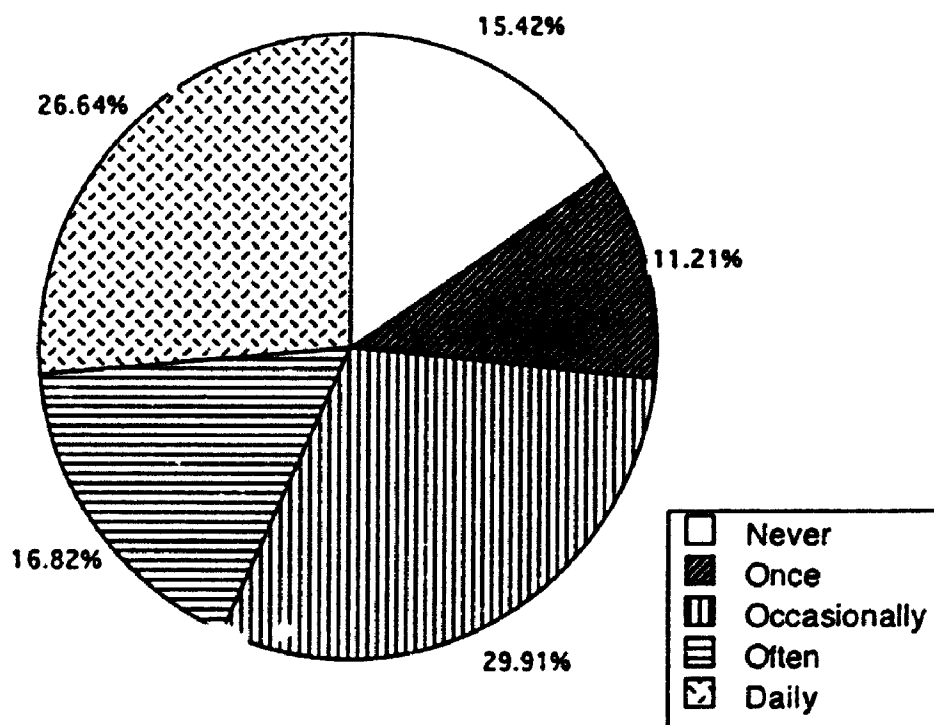


Figure 26: Doing Work Affected By The Act ?

thought their work could be affected by the Act were unsure about next year, not one person thought that they would have less involvement. While 50% of those aware of the Act expected about the same level of involvement next year, 18% of respondents who were aware of the Act expected more involvement next year (see Figure 27).²⁹

Another question, discussed further below, asked the respondents whether they had made any changes since hearing about the Act. Chi square analyses were done for both the ministries and the small organizations to see whether people's predictions of further involvement in the statute next year was related to whether they had made changes in their work since hearing about the Act.³⁰ In each case, there was a significant interaction between these two variables. As indicated in Table 17, for the small organizations, if people anticipated more involvement next year, they were much more likely to have made changes than not to have ($\chi^2 = 6.18, p = .013$). Exactly the same relationship was apparent for the ministries, as shown in Table 18 ($\chi^2 = 15.4, p < .001$). Here again, the evidence in both the four celled designs tested in this study demonstrated the same relationship. Therefore, this tends to provide evidence that the relationship would probably hold true for all eight cells of the full model. This fourth measure of adoption, anticipated involvement next year, was therefore highly correlated with the fifth

²⁹Note that the percentages shown in the figure are the percentages of respondents to this question, while the percentages discussed in the text are the percentages of those aware of the Act.

³⁰As previously mentioned, no one thought that she or he would be less involved next year. The people who were unsure about their involvement next year were excluded from this analysis

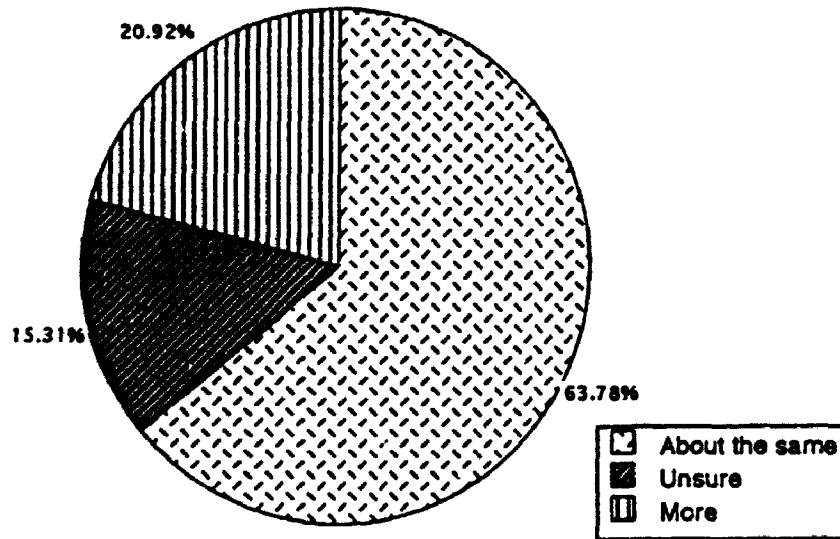


Figure 27: Anticipated future involvement

	More Involvement Next Year	Same Involvement Next Year	
Changes Made	25 68%	35 31%	60 40%
No Changes Made	12 32%	78 69%	90 60%
	37 25%	113 75%	150 100%
			N=

Table 17:
Changes By Anticipated Future Involvement For Small Organizations

	More Involvement Next Year	Same Involvement Next Year	
Changes Made	25 68%	35 31%	60 40%
No Changes Made	12 32%	78 69%	90 60%
	37 25%	113 75%	N= 150 100%

Table 18: Changes By Anticipated Future Involvement For Ministries

measure of adoption, changes made, which will be discussed further below.

Given that every respondent anticipated possible future involvement (since those who were unsure of their expectations may be taken at least to have decided they did not expect less involvement), it is interesting to consider how many were interested in further learning about the Act. The responses to question 18 can be divided into those who made choices involving more learning and those who wanted no further learning involvement, see Figure 28. This figure also shows when employees would be willing to pursue this learning. The number of people willing to pursue this area outside of work hours may indicate a level of personal commitment to the ideals of the legislation. Whether the interest in the legislation is strictly job related or whether there is a personal commitment beyond the job requirements is also illustrated in the figure. Almost a third of respondents are personally interested even though their jobs do not demand it. Finally, the reasons chosen for not pursuing further learning about the statute are also included in the figure. The largest category here is the group who indicated that they already knew enough about this Act. Time constraints were the least common reasons for not pursuing the matter.

The most direct measure of adoption was the the number of employees seeing themselves as potentially affected by the Act who had made changes in the way they did their jobs since hearing about the Act. Thirty-seven per cent of respondents to

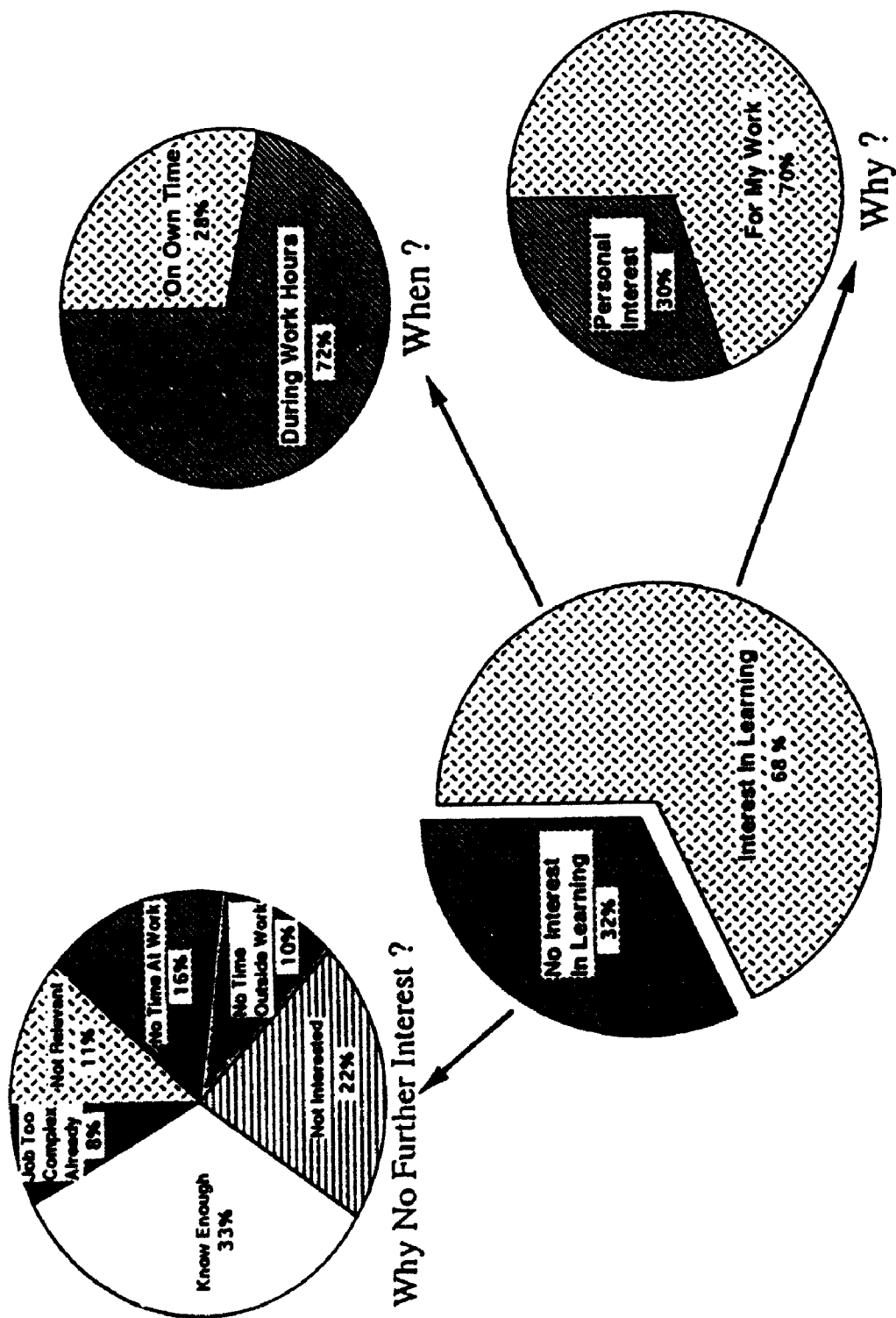


Figure 28: Interest In Further Learning About The Act

N=276

question 8C indicated that they had made changes. This means that just under one in four of all the respondents to the study had made changes in their work habits as a result of this Act. More will be said about the exact nature of the changes reported in the section below on information flow. It is sufficient for discussion of adoption in this section to limit the discussion now to the number of respondents reporting change.

A loglinear analysis of this variable, changes made, by the type of organization by public profile was run for the small organizations. Two significant 2-way interactions were discovered. The interaction between the organization's public profile and the responses to this question about making change is significant ($\chi^2=12.9$, $p<.001$). As Table 19 indicates, more people in the small low profile organizations had made change than in the small high profile organizations. The interaction between the type of organization and the number of respondents reporting changes is also significant ($\chi^2=7.2$, $p<.01$). As apparent in Table 20, the small ministries had a higher proportion of people making change than the small crowns.

A similar loglinear analysis of the variable of changes made was run for ministries, by size by public profile. This analysis, on the other hand, showed a significant 3-way interaction ($\chi^2= 4.55$, $p=.03$). Table 21 shows that more people in the small low profile ministry had made changes than in the other three ministries, but in those other three, the percentages of people making changes was about the same.

	Low Profile	High Profile	
Changes Made	27	12	39
	54%	22%	38%
No Changes Made	23	42	65
	46%	78%	63%
	50	54	N= 104
	48%	52%	100%

Table 19: Changes By Profile For Small Organizations

	Ministry	Crown	
Changes Made	11	1	12
	24%	13%	22%
No Changes Made	35	7	42
	76%	88%	78%
	46	8	54
	85%	15%	100%
			N=

Table 20: Changes By Type For Small Organizations

Controlling For Profile

Low Profile

	Small	Large	
Aware	26 63%	29 38%	55 47%
Unaware	15 37%	48 62%	63 53%
	41 35%	77 65%	N= 118 100%

High Profile

	Small	Large	
Aware	11 27%	7 33%	18 27%
Unaware	35 76%	14 67%	49 73%
	46 69%	21 31%	N= 67 100%

Table 21: Changes By Size By Profile For Ministries, Controlling For Profile

Forty-three per cent of this group of respondents who indicated that they had made changes since hearing about the legislation were among the 61 respondents discussed above who thought that their work had been the subject of a request. A chi square analysis was performed to test whether there was any significant relationship between the two responses. A significant relationship was indeed discovered ($\chi^2=20.38$, $p<.001$). As Table 22 indicates, slightly more people who thought their work had involved requests had made changes, and, indeed, people were slightly more likely to have made changes if they thought that their work had involved requests than if they did not think it had. However, the majority of respondents did not think that the work they had done had been the subject of a request and also had not made any changes to their work since hearing about the Act.

The sixth and final measure of adoption was developed from the questions which asked the respondents who had indicated awareness of the statute from whom they had received their information (question 10). These sources were grouped, for this analysis, into internal sources (“(a) your line supervisor”, “(b) the Freedom of Information and Protection of Privacy Coordinator in your organization (or his or her office)”, and “(c) an individual in your area of the organization responsible for coordinating with the office of the Freedom of Information and Protection of Privacy Coordinator”) and external sources (“(d) your union or professional association”,

	Involved	Not Involved	
Changes Made	43 52%	41 24%	84 33%
No Changes Made	40 48%	133 76%	173 67%
	83 32%	174 68%	257 100%
			N=

Table 22: Changes By Perceived Involvement In Requests

“(e) external groups to which you belong”, and “(f) the press or media”).³¹ A loglinear analysis asking whether receiving information about the statute from inside or outside sources was affected by size or profile (or both) for the small organizations. The interaction between the type of organization and the sources of information about the statute was significant ($\chi^2=11.16, p<.001$). As Table 23 illustrates, significantly more people had received information about this statute from sources within their organization in small ministries, whereas more people had received information about this statute from outside sources in the small crown corporations. A similar analysis performed on the responses to this question for ministries, by size and profile. However, no significant effects were found.

8.4 Overall findings about adoption and comparison with the implementation findings

Therefore, the evidence established that the first threshold requirement for adoption of the legislation had been met to some degree in the organizations studied. Most of the respondents expressed an awareness of the Act. However, there were significant differences between the organizations in meeting this first stage of adoption. The crown corporations ranked behind the ministries in awareness, and this difference is more pronounced in the high profile small organizations than in the low profile small

³¹The choice “(g) from other sources” was omitted from this analysis, but will be further discussed below.

	Ministry	Crown	
Sources Within Organization	79	6	85
	80%	38%	74%
Outside Sources	20	10	30
	20%	63%	26%
	99	16	N= 115
	86%	14%	100%

Table 23: Sources Of Information By Type For Small Organizations

organizations. Profile also figured in the differences between the ministries since the low profile ministries had about the same levels of awareness, while the small high profile ministry ranked higher than the large high profile ministry on this measure.

The level of awareness indicated in each organization did not necessarily translate into adoption of the legislation by the employees however. The employees' own assessments of the effect of the legislation on their organizations were largely negative. Although most of those respondents who aware of the Act thought that their work could be affected by it, the analysis of those who felt that their positions meant that the Act had no potential effect included a number of positions which lead the researcher to question the employees' conclusions. Therefore, at least some employees seemed to misapprehend the effect of the Act despite becoming aware of it. Interestingly, significantly more people in the low profile organizations saw themselves as potentially affected by the statute than in the high profile.

The most concrete measure of adoption was the evidence of changes made by employees who considered that they would be affected. Only one quarter of all the respondents to the survey indicated that they had made any changes. This adoption measure was significantly related to another adoption measure, which was the employees attitude toward their further involvement in the Act next year. If employees thought they would be more involved next year, they were more likely to have made changes.

However, employees who had made changes and employees who anticipated more involvement next year were both in the distinct minority. Moreover, employees in the two small crown corporations involved in the study had made significantly fewer changes than the employees in the small ministries, and indeed, Appendix 14 indicates that the only particulars given of these changes were two very general remarks, one for each organization. As well, a significant difference was found between the sources of information for the small ministries, which were more often inside the organization, and those for the small crown corporations, which were more often external. Moreover, profile played a significant role in the small organizations, where the two low profile organizations reported more changes than their high profile counterparts. Indeed, amongst the ministries, the small low profile ministry employees had made significantly more changes than the employees in the other three ministries had (who each reported about the same number of changes).

Therefore, returning to the hypotheses about adoption postulated earlier, Hypothesis 2.1, that small ministries would have gone further in adoption of this legislation than small crown corporations, was supported initially by the evidence that the levels of awareness were higher in small ministries than in small crowns, and that threshold evidence was borne out by the evidence of changes made by the employees, which were significantly more frequent in the small ministries than the small crowns, and

by the evidence of the sources of information about the statute, which were significantly more often internal in the small ministries and more often external in the small crowns. Therefore, this hypothesis about adoption was the only strongly supported one of the four modified hypotheses (which were related to adoption).

The evidence relating to Hypothesis 4.1, that smaller ministries will have adopted the legislation more quickly and effectively than larger ministries, did not support the straightforward hypothesized relationship. The evidence suggested a more complex interaction. Although the small, high profile ministry exhibited more awareness amongst its employees and its employees had also made more changes, this trend did not extend to the small high profile ministry and therefore the hypothesis cannot be supported.

Both hypotheses about public profile were unsupported by the evidence, and indeed, the evidence suggested that the relationships between high and low profile organizations are the reverse of those tested. Fewer people saw themselves as affected by the statute in the high profile ministries, and, confirming this trend, fewer people in the high profile ministries had made changes (this three way relationship had indicated that the level of change was higher in the small, low profile ministry and about the same in the other three ministries). For the small organizations, the high profile small ministry and small crown had a lower level of awareness than their low profile counterparts, fewer of those aware saw themselves as affected by the statute and fewer had made changes.

This section will conclude with some observations about the relationship between the patterns found between organizations with respect to adoption and the ranking of the organizations by implementation previously discussed. The previous section of this chapter made findings about implementation in each of the eight organizations in the research design. The eight organizations are each distinguished by type of organization, size and public profile from each of the others. The measures of adoption just discussed were used to create a ranking on adoption for each of the seven organizations for which evidence of adoption was available, see Figure 29. The rankings in Figure 29 were created largely from the analysis of the variable about changes made,³² but are consistent with the general conclusions about the hypotheses concerning adoption just discussed above. The rankings so created, with the crowns at the bottom, are supported by the findings concerning the sources of information about the Act, since the crown corporation employees were receiving their information from outside the organization more often than ministry employees (which tends to indicated less adoption within the crowns). The interaction between the variable of involvement next year and changes made also supports the measure of changes made as a reliable indication of adoption. The conclusion which ranks adoption last in the large, low profile

³²The values used in creating the rankings were taken from the percentages of changes made in the analyses of respondents who had indicated that they were aware of the Act. However, further checking confirmed that the rankings are not altered when the percentages of changes made are of all respondents to the questionnaire. Therefore, the rankings are an accurate reflection of overall adoption levels in the organizations.

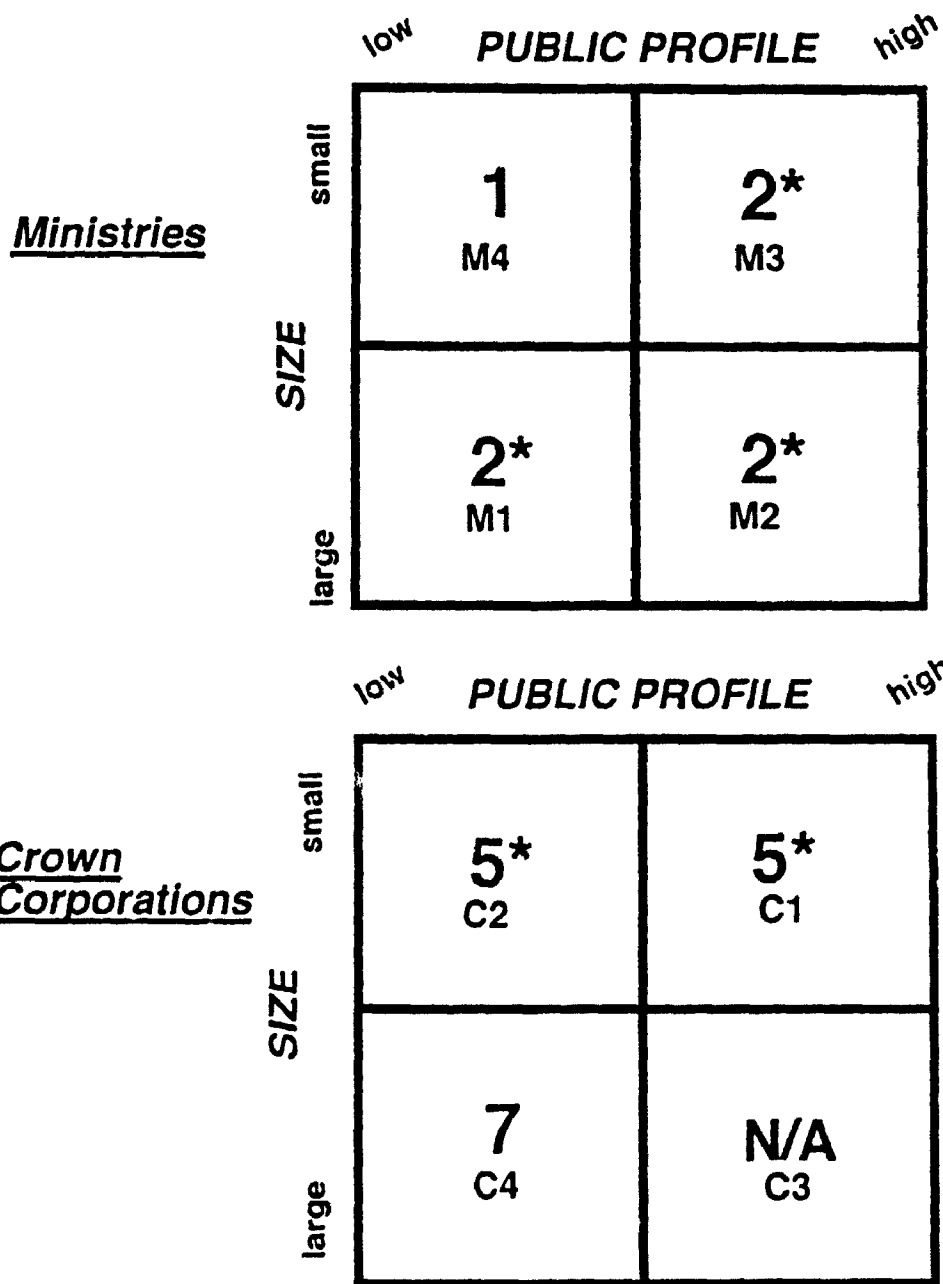


Figure 29:
Adoption Ranking
* indicates a tied ranking

crowns, C4, is based on the evidence of the interview with the executive of that organization. If none of the employees know about the legislation and management wishes that state of affairs to continue, it is impossible for the organization's employees to adopt the Act. Therefore, the only cell in the research design where the level of adoption remains a mystery is the large, high profile crown, C3, which refused to participate in the employee questionnaire portion of the research. It may be noted in the figure that there are a number of organizations tied with others in the adoption ranking. Thus, while the small, low profile ministry clearly ranks ahead of the other organizations in adoption level, the other three ministries are virtually indistinguishable and are therefore all given the ranking of second place. Similarly, while the large, low profile crown can clearly be ranked last, in seventh place, the two small crowns are closely tied and therefore are both ranked fifth. When the pattern of level of adoption in the seven organizations where this ranking was possible is compared with pattern of implementation ranking presented earlier, in Figure 16, it can be seen that there is a correspondence between the organization's rank on employee adoption and its rank for implementation. In both rankings, the small, low profile ministry (M4) stands as number one, and in both cases, the small crowns lag behind the ministries. In both cases, the large, low profile crown stands last.

CHAPTER 9: RESULTS WITH RESPECT TO INFORMATION FLOW

9.1 The evidence gathered

The final section of the chapter will address the evidence which was obtained from the study with respect to the final two hypothesis:

Hypothesis 8: That changes had occurred in directions of flow of information in the subject organizations as a result of this legislation.

Hypothesis 9: That the legislation had affected formal information channels in the organizations to a greater degree than informal channels.

The data with respect to changes in the channels and direction of information flow in the organizations was obtained largely from the employee survey, supplemented by information obtained during the interviews.

A major source of data concerning changes in the flow of general personal and non-personal information, as distinct from information specifically about this enactment, in six of the eight organizations was the detailed replies given by respondents to the question on the questionnaire which asked them to describe the changes which they had made in their jobs since hearing about the Act. Another pair of questions in the instrument asked whether the respondents had themselves used the Act. To the extent that they reported that they had, this would furnish evidence of the use of a new information channel in their own organization or in others.

The "heads" of the organizations were also given several prompts which would have tended to provide them with the opportunity to speak about changes in information flow in their organizations: "-has the Act had the impact that you expected on your organization? what kind of impact did you expect? what kind has happened?"; "what are the strengths of your organization's response to this legislation?", "how would you rate the impact of this legislation on your organization?". The Coordinators were given opportunities in which this area could have been addressed through such prompts as: "what has your office accomplished since it was established?", "are there areas of your organization where you are having difficulty fulfilling your mandate?" This evidence was available for all eight organizations (since the initial interview with the executive in the large, low profile crown which did not participate provides evidence on these points).

The other evidence about information flow which was collected through the questionnaire is all couched in terms of information concerning the Act itself. However, although the data from these questions are addressed to directions of flow about one particular subject, they do furnish information about the channels the respondents use and the extent to which they have included, in their information-seeking behaviour and advice to others, the dedicated channels established when the organizations implemented this particular legislation. This evidence limited specifically to the subject of the Act itself was

treated as contributing to the analysis, but not determinative, because it is not as strong as the evidence about the patterns of information flow for which the subject spectrum was not so limited.

As will be further described in the following sections, the evidence indicated that neither Hypothesis 8, that changes have occurred in the directions of flow of information in the organizations as a result of the legislation, nor the final hypothesis, that formal information channels in the organizations are affected to a greater degree than informal, could be supported on the evidence of this study. Although hypothesis eight could not be supported as presented, because there had not been demonstrated changes in the directions of information flow in each of the eight organizations, the evidence did tend support the argument that changes in the direction of information flow are directly related to the implementation and adoption pattern already found in the study. The evidence also tended to suggest that, rather than formal channels being affected more than informal, both types of channels were being equally affected as emphasis in the organization shifted in response to the dictates of the legislation.

9.2 General information flow

It will be recalled that about a quarter of the respondents in the six organizations participating in the employee questionnaire portion of the research had indicated that they had made changes to their jobs since hearing about the Act. Most wrote in the changes they had made. As indicated earlier, Appendix 14 is a transcript of

their responses, organized into four categories: (1) general remarks, (2) acquisition changes, (3) changes in record content and storage, and (4) dissemination changes. Only 12% of all respondents to the questionnaire made comments which indicated that they had made changes in acquisition or dissemination of information; in other words, in the flow of information in their organization. Within each category, the respondent's organization is also identified. Changes reported by those who had experienced at least one request are starred. It must be emphasized that only one general remark was made by a single individual in each of the two small crown corporations. These two general remarks are the only changes noted by anyone in the crown corporations.

Only a very few comments could be classified as affecting acquisition changes (five in all), and these are from only two of the six organizations (M1 and M2).

In all four ministries, respondents described changes made since the Act to their information dissemination activities. One or two indicated a broadening of certain access: "[subjects] are informed to their right to have copies of data in their [file]" (M2); "try to ensure that information requested is provided"(M3); "offer more information without a formal request"(M3).

Most respondents who had made changes in their dissemination practices indicated a tightening up on release of information. Comments ranged from "more cautious in giving information to other agencies" (M1) and "being more careful about what is said on phones to public"(M4) to "no information to be given out - to anyone"

(M2). A number indicated an increased procedural formality in releasing information: "more control or screening of the person requesting the information"(M1); "with regards to handing out paychecks, it is now given in a sealed envelope"(M3); "all envelopes must be stamped confidential [from personnel]"(M3); "all requests for data are first screened by me before passing them on to subordinates" (M4); and "have to prepare FOI report when sensitive information is released"(M4). Two people indicated that they will now respond only to written requests (thus creating a new formal channel of communication, replacing previous channels): "for any requests for [information specific to this organization], I ask them to send written requests" (M3) and "will not provide requested documentation unless a request in writing under FOI has been made"(M4). Respondents from M4 seem particularly to be aware of the requirements of the act respecting consent: "information not given as freely unless consent is given"; "not discussed any info to persons other than [subject]. Requested authorization from individuals to discuss case particulars with another party"; "made sure authorization for release of info obtained from 3rd parties"; "ensure that I only give out info relative to a file to the actual individual, i.e. not his/her [relatives], etc."; "I advise [interested parties, not the subject] that I can only give them general info"; and "do not give personal info over the phone". No other organization seems to have created this specific a level of awareness. By the same token, at M4 only one respondent replied by indicating routine involvement of an FOI specialists

in dissemination: "check with FOI officer before releasing information to public".

However, in the other ministries, there are more references to a new channel of information being used for dissemination to the public since the Act: "refer questions about release of information to others rather than release information independently"(M1); provision of information to people requesting under this Act must be referred to FOI officer unless specific instructions/policy cover the situation" (M1); "before giving out information clarifying with the freedom of information and protection of privacy act officer"(M2); "FOI Coordinator must approve 'outside' request, (even other ministry)"(M2); "consult FOI person to clear any requests"(M3); and "defer all enquiries to the branch FOI officer"(M3).

These comments respecting changes in patterns of acquisition and dissemination are the direct evidence obtained from this source about information flow. However, the comments made in response to this question which describe changes in record content may also signal changes in the channels of communication being used internally by these employees. Their comments about content changes do not necessarily mean that information is not flowing,¹ they may instead be interpreted as signalling a change in channels from formal to informal channels:

"not put some information in reports"(M1),

¹ A number of comments indicate, on the other hand, that the volume of data being stored has been reduced: "less information being retained" (M1), "eliminated extraneous material from working files" (M3), "shredding documents" (M3), "in the type of info placed in files" (M4).

- "confidential info written elsewhere"(M1),
- "during interviews when documenting answers"(M1),
- "more careful what's put down on paper"(M1),
- "minutes of meetings... less detail"(M1),
- "more cautious regarding information retained on file"(M2),
- "changes in documentation of some information"(M2),
- "more cautious about what I commit to writing and how I write about those issues"(M4)

M1 and M4 exhibit the greatest measure of change in record content and storage, although all four ministries indicate change here. Most of these comments can be summarized by the statement that respondents are now more careful of the information they record, particularly avoiding personal comment and unsubstantiated statements and being careful about personal privacy.²

As discussed earlier, there is a significant relationship between the perception that work done has been involved in a request and changes being made in the respondent's work. It appears from analyzing the comments made that the changes which are request driven are occurring slightly more in the context of the content of records than in acquisition or dissemination of information. This trend is particularly apparent in the case of M1.

As a second indicator of changes in information flow pursuant to the Act,

²Only one person addressed the question of data security: "separate documents which require privacy protection (i.e. personal/confidential information) and keep them secure, locked"(M4). One other person addressed the problem of confidentiality noting that the organization is subject to the Act: "if I have guaranteed confidentiality to any person I have to be careful how I record gained information"(M1) and another person indicated (perhaps with respect to the same issue) that they "have added a clause to all forms"(M4)

the respondents who were aware of the Act were asked whether they themselves had ever used the Act, either to gain access to information about themselves (question 15) or to find out something other than information about themselves (question 16). The overwhelming majority of respondents had never used the Act (96% had never used it for general purposes and 93% had never used it for a personal inquiry). A slightly larger proportion of the small group who *had* used the statute (or its provincial or federal counterparts) had used it to get information about themselves (61%) rather than information about other subjects (39%). Over half the use of the legislation to get personal information was to get information from the employee's own organization (58%). (Such users, however, represent only 3% of the total respondents to the questionnaire). Most of these were single uses, although two people indicated more than one request. Rather surprisingly, over half the use of the statute to get other information was also from the employee's own organization (64%). (It must be remembered, again, that the employees making this use of the legislation represent only 2% of the total respondents to the questionnaire.) In this case, four of the requesters were multiple requesters (several from only one of the organizations). This evidence indicates that the Act is not being used by large numbers of provincial employees in preference to other avenues for obtaining information. However, somewhat surprisingly, those employees who are using it are using it more often to get information from their own organizations.

The final area of source of evidence about changes in the flow of information about subjects other than the Act itself was the evidence provided by the interviews subjects. Most of the Coordinators and the heads interviewed demonstrated throughout the interviews a mind set about the statute which almost exclusively request driven. Their views on their organizations' abilities to cope are measured in terms of response times to requests and volume of requests. The head in the large, high profile ministry was typical in making the observation that the impact of the legislation on the ministry had been different from that anticipated in that the volume of personal data requests anticipated had not materialized but the use of the request mechanism for general information about policy initiatives in the Ministry had been far greater than expected. Only one ministry head (the small, low profile ministry, M4) seemed to gauge the success of the implementation efforts in terms other than ones related directly to the processing of requests, speaking of the potential for involvement of the requirements of the Act in all public contacts and creating systemic responses to policy areas which could create conflicts with the thrusts of this legislation. This head's response when asked to comment upon the strengths of the organization's response to the legislation was that the legislation is understood and not responded to defensively. The other three heads (of the large, low profile ministry (M1), the large, high profile ministry (M2) and the large, high profile crown (C3)) who made explicit responses to this prompt spoke in terms of

requests and not being criticized by the Commissioner. These seemed to be very reactive measures which did not address overall changes in information flows in the organizations. The head at the small, low profile crown, C2, on the other hand, also mentioned his or her expectation that the Coordinator there was expected to flag policy conflicts, and, as in the case of the small, low profile ministry head (M4) was speaking beyond the context of request responses. Probably not coincidentally, the Coordinator who spoke the most vehemently about moving away from the request driven ministerial response to the Act and toward identification of problem areas of information handling throughout the ministry was the Coordinator at M4, the small, low profile ministry. While the other ministerial Coordinators were certainly aware, and made reference to, the importance of the privacy provisions of the Act in particular, their overall approach to implementation and discussion of the effectiveness of their roles and the roles of the other players in the area (such as the Management Board of Cabinet Freedom of Information and Privacy Secretariat and the Commissioner's Office) was framed in terms of responding to requests. This emphasis on requests may be entirely appropriate in terms of the provisions of the Act relating to information other than personally identifiable information, which deal with dissemination issues only and are themselves request driven.³ The emphasis on requests in the context of personally identifiable information

³See Part II of the Act. No other aspect of the information cycle with respect to information other than personally identifiable is dealt with in the statute. Acquisition, use, storage and retrieval, and

tends to obscure the other requirements of the Act. Requests for personal information deal directly with issues of dissemination, as do requests for other information under the Act. However, requests for corrections or the appending of statements of disagreement are issues of information acquisition by the organization. The statute had provision affecting every stage of the information cycle with respect to information which is personally identifiable: acquisition, use, storage and retrieval, dissemination, and disposal.⁴ Since records can contain a blend of both personally-identifiable and non-personally identifiable information,⁵ all information operations in the organizations should be subjected to scrutiny as every stage in the cycle to ensure that the requirements of the Act with respect to personally identifiable information are being met in every case. This broader thrust was missing from the discussions with most of those interviewed.

9.3 Information about the Act.

As previous discussed in the section of this chapter on adoption, both those respondents who did think that their work could be affected by the Act and those who were aware of the Act but did not think it could affect their work were asked about their

disposal are left entirely to the discretion of the institution (as before the statute was passed). It may be prudent in the organization to make particular arrangements for storage and retrieval in order that the time limits imposed by the statute can be met, but this is entirely a matter for the organization, not a necessary mandate of the legislation.

⁴See Part III of the Act.

⁵See s.10(2) of the Act, which establishes the severability of records.

sources of information about the Act. In question 10, respondents were asked to indicate all the sources from which they had received information, and, as previously discussed there was a significant difference in the small organizations between the ministries where internal sources tended to predominate and the crown corporations where external sources predominated (see again Table 23). Figure 30 is a bar chart showing the responses to question 10 juxtaposed with the answers which all respondents gave as their first choice sources of information in response to question 20a (refer to Table 11, discussed earlier in the section on the characteristics of the respondents, for the source of this data).⁶ It can be seen that there is a considerable discrepancy between the employees' perceptions of the most reliable sources of information about this kind of legislation and the actual sources of their information. Specifically, too many are being informed by the press or media and other sources for their own comfort level. Although information is reaching employees from their line supervisors, the employees may not be as comfortable with that source (which was, in fact, their majority third choice in question 20a) as with information from the organization's Coordinator.

Question 11 asked what meetings and workshops the respondents had

⁶One of the choices given to the respondents in question 10 was "(g) from other sources...". As indicated in Figure 30, 37 people selected this option. Their replies could be grouped as follows: 4 people cited government sources beyond their organization; 7 cited other sources which were apparently within their organizations, 4 cited their peers or word of mouth, 13 used the opportunity to indicate particular types of information (such as seminars or training sessions), 5 cited personal reading or the library, and the remaining 2 indicated that they couldn't remember an exact source, in one case, and general knowledge, in the other.

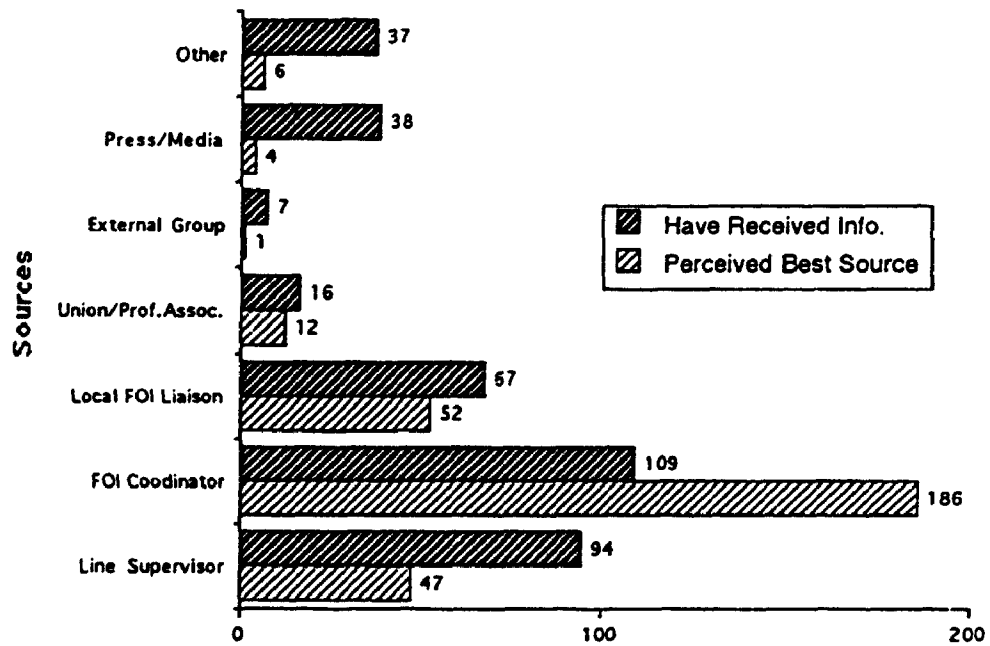


Figure 30:
Where Information Received Juxtaposed With Preferred Sources
 (more than 1 choice permitted)

attended. Figure 31A shows their responses. This may be contrasted with the proportions in Figure 31B, which shows the respondents' actual preferences for forums.⁷ This comparison indicates an over emphasis on meetings as the forum for communication of the legislation, whereas employees would prefer the workshop format.

Question 13 explored the respondents' exposure to written artifacts about the legislation more indicative of formal communication channels. Figure 32 indicates the number of these methods of communication the respondents had seen juxtaposed against the total first, second and third choices of preference the respondents had given these same forms in Question 20b (discussed above) It would appear that the use of the newsletter may not be as prevalent as the respondents would prefer.

Taking questions 11 and 13 together, one finds that the forums for communication about this Act which the respondents have been most exposed to are memos, meetings, internal workshops and newsletters (see Figure 33A). Procedure manuals have been included in this figure because they are tied for third place with memos and newsletters in the respondent's preferences (question 20b). In actual practice they are tied with bulletin board notice, orientation materials, and videos (question 13). Figure 33B shows the relative popularity of the five methods according to the employees' preferences from question 20b discussed above. The contrast between the two figures

⁷It was created from the totals of the first, second and third choice columns presented earlier in Table 12.

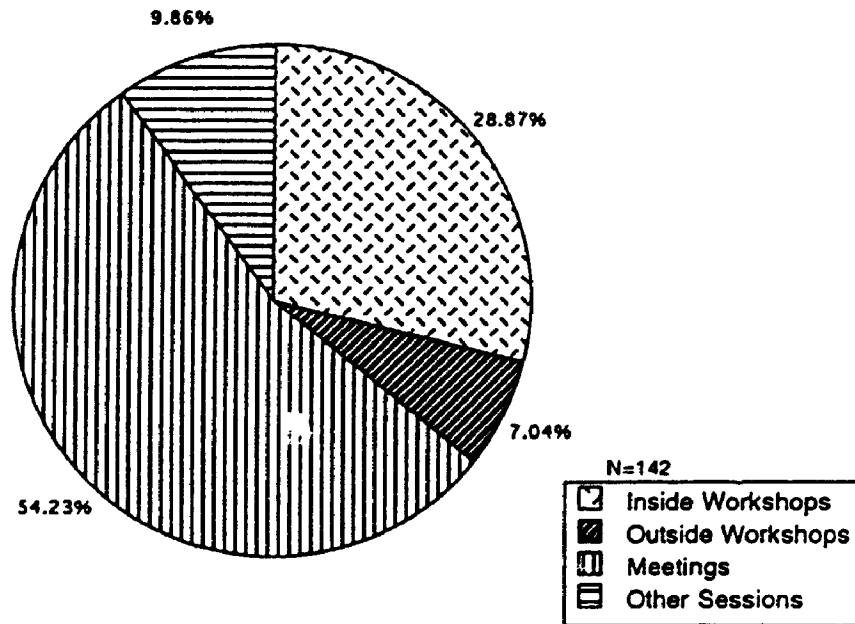


Figure 31A: Meetings and Workshops Attended
(Multiple responses were permitted)

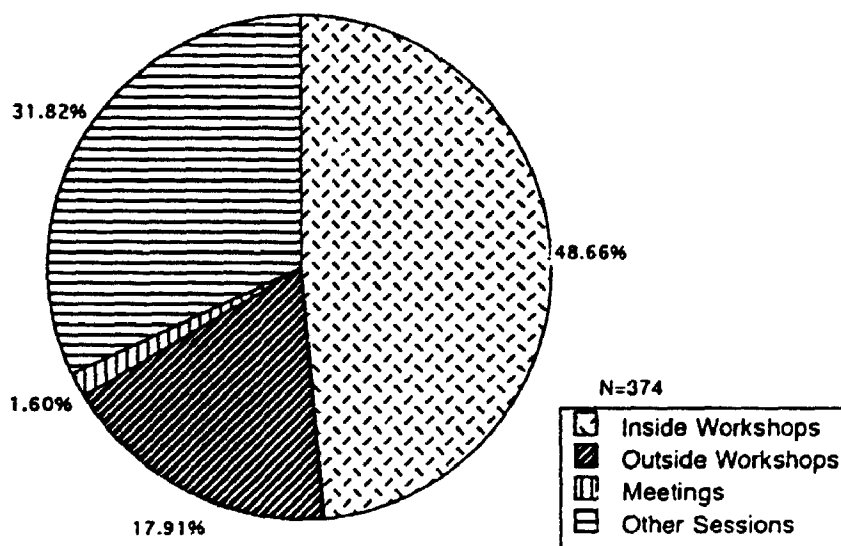


Figure 31B: Preferences For Meetings and Workshops
(Multiple responses were permitted)

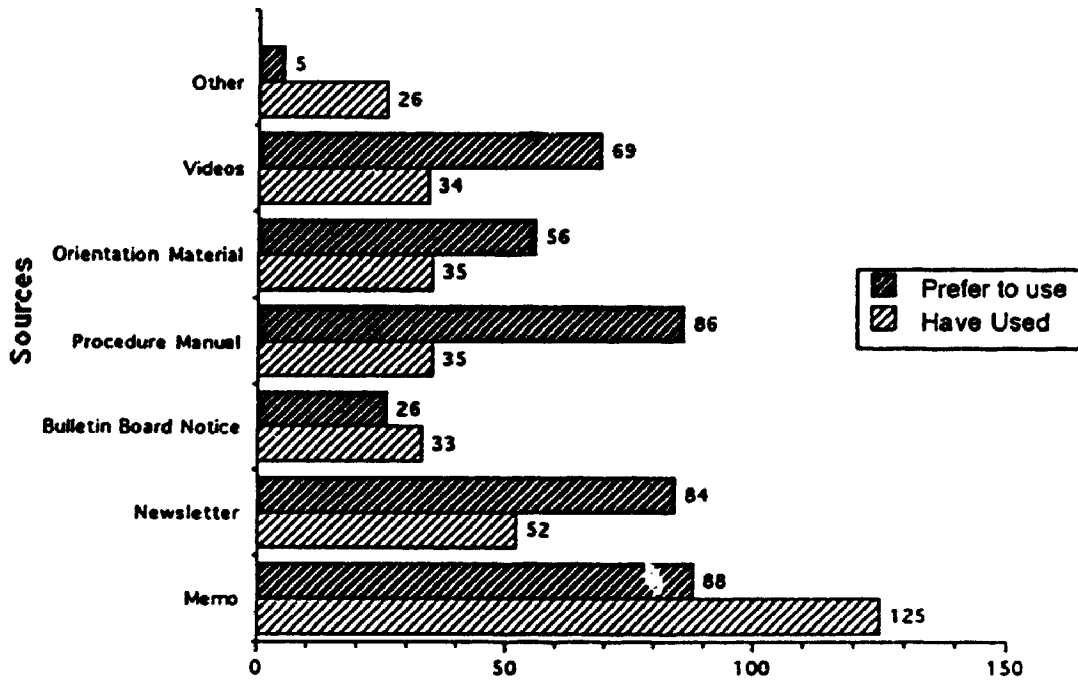


Figure 32: Exposure To Artifacts About The Act Juxtaposed With Preferences For Artifacts
 (more than one choice permitted)

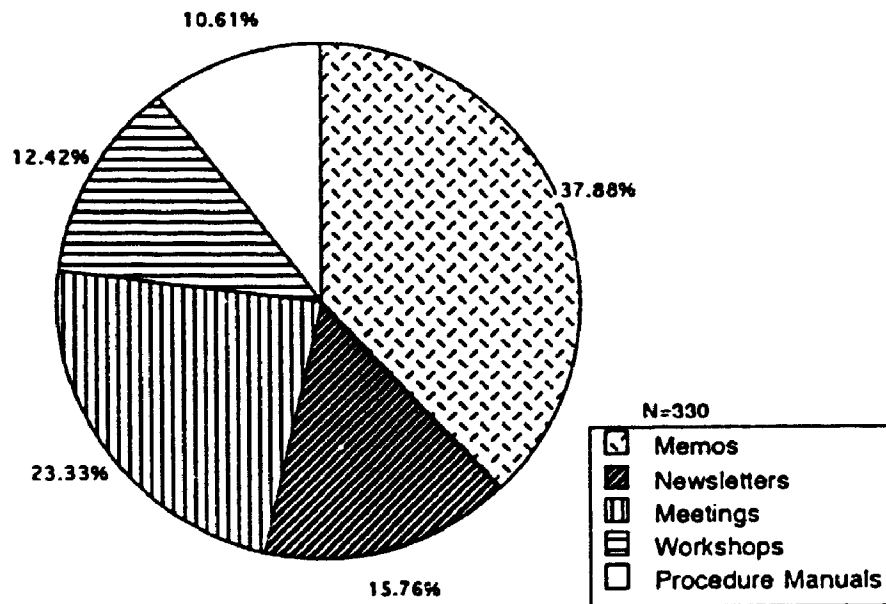


Figure 33A:
Actual Exposure To Sources Of Information
(Multiple responses were permitted)

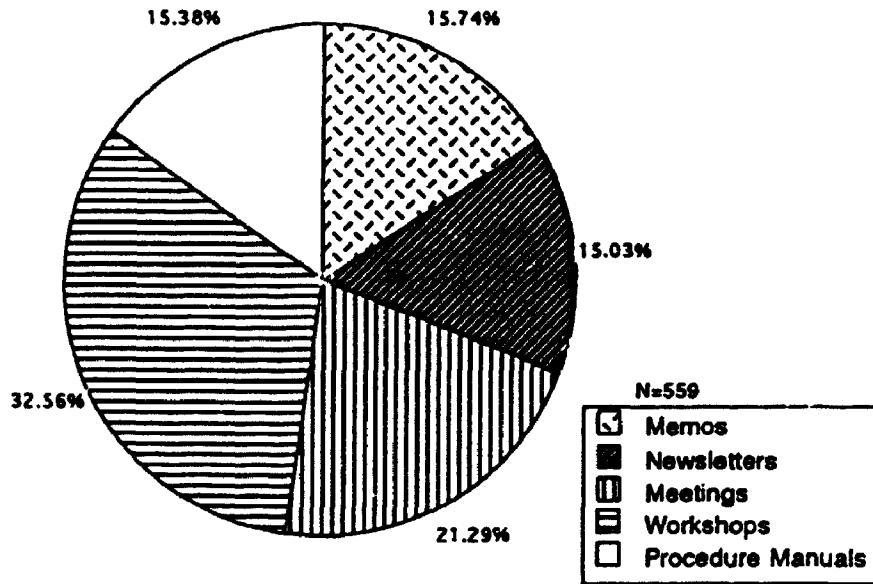


Figure 33B: Preferred Sources Of Information
(Multiple responses were permitted)

indicates that while employees are actually receiving 65% of their information about the Act through the more formal channels of the memo, newsletter and manual, they would actually prefer that this combination account for only 45% of this information about the Act and that the more informal channel environments of the meeting and workshop account for the majority of their information about the Act (55%).

The respondents were asked where they could locate a copy of the statute in question 12. Figure 34 depicts their replies. Half either had their own copy of the legislation or knew of a copy near their workstation. Sources outside the organization mentioned by respondents included: government offices, secretary of state, government library, government bookstore, the library (4 mentions) and information in the government services directory.⁸

Another question asked where the respondents would go if they needed information about this Act. This was an open question. Appendix 15, first column, lists the responses given in frequency order. The two main sources are the organization's Coordinator (32% of the employees aware of the Act) and the respondent's supervisor or superior (20% of those aware of the Act). Somewhat surprisingly, the local freedom of information and privacy liaison person (or "FOI specialist" or "FOI officer") was not selected very often as a source of information (only by 7% of the respondents aware of

⁸The specifications provided in part (e) allowed the researcher to reclassify 11 of these responses into (d) for sources within the organization.

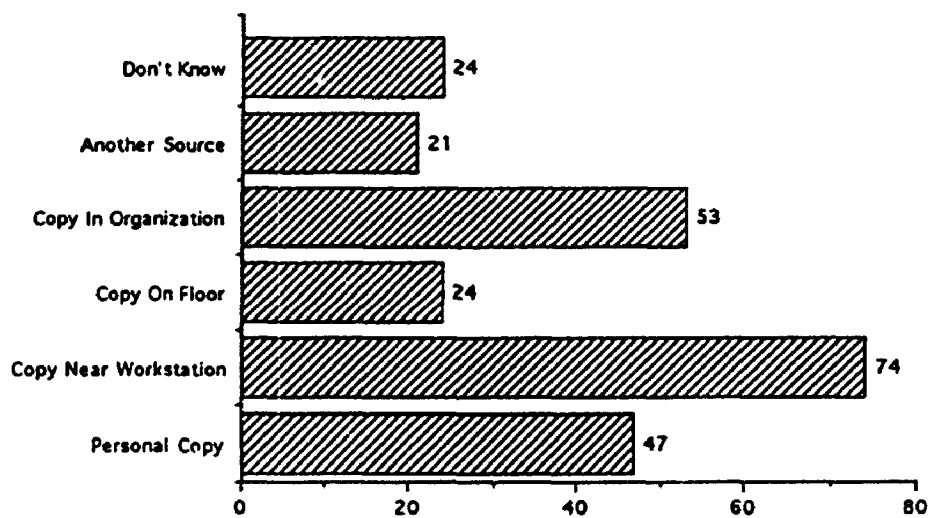


Figure 34: Locating A Copy Of The Statute
(N=243)

the Act).⁹ Also unexpected was the ranking given the Commissioner as a source, seventh, only mentioned by only 3% of those aware of the Act.¹⁰

Appendix 15, in the second column, lists the places to which the respondents indicated they would refer a question about this Act which they could not answer, again in order of frequency. The organization's Coordinator would have the largest number of referrals (referred to by 35% of those aware of the Act), with the employee's supervisor or superior second (20%). These percentages almost exactly reflect the places to which the employees themselves look, as just discussed. Again, just as in indicating their own sources (discussed above), these two were followed in a distant third place by the local FOI specialist (chosen for referral by 7% of those aware of the Act). The Commissioner's office was again only mentioned by 3% of those aware of the Act. The Freedom of Information and Protection of Privacy Secretariat of the

⁹Of course here it must be remembered that not all the respondents were in an organization which had implemented this type of arrangement. Specifically, such an arrangement did not exist in the small crown corporations or in the small, low profile ministry. Even so, the low number of employees citing this source, as compared to the line supervisor or Coordinator, was not anticipated.

¹⁰What is interesting is the number and variety of other sources cited. A number would, in fact, be useless as sources: the federal government's information service, their M.P., the Ministry of Justice, and another, unrelated statute that was mentioned are the most glaring examples. Many are clearly prepared to do their own research: 1 in the public library, 4% of those aware in the "library" (whether public or office is unclear), 4% also in the office library, 1 in a university library, 2 through the Ontario Government Bookstore, 4% again in written sources at the office and 6% through the Act. A number of individuals are looking outside their organization: to the Ontario Legislative Assembly, a lawyer, the Ontario Ministry of Government Services, the coordinator of another organization, their union office, the press or media.

Management Board of Cabinet received one mention. A number of the referrals proposed would be less than helpful to the hapless recipient: the Ontario Human Rights Commission, the federal government's information line, or another unrelated statute. Some would certainly lead the referred individual on a long route to the information: outside public interest groups, the press or media, the government information line, the Coordinator in another organization, Queen's Park or the Ontario Legislative Assembly, the blue pages, legal aid, or the union steward. Again, as in the case of the respondent's own information search strategies, the number and variety of sources is striking.¹¹

9.4 Findings about information flow

Thus the evidence indicates that the eighth hypothesis, that changes in directions of information flow have occurred in the eight organizations as a result of this legislation, cannot be supported. In the large, low profile crown, C4, the evidence of the interview with the executive who refused to permit the organization's participation indicates that there have been no changes in information flow. In the two small crown corporations, the evidence of change presented in the only two general comments made is too slight to provide any support for the hypothesis.

¹¹Various sources within the organizations were mentioned: the head of the organization, the administration department, the public relations department, other departments connected with the subject matter of the request, "head office", the human resources department and the legal services branch. Five people indicated that they would do the research on behalf of the questioner and respond. Others would direct the questioners to do their own research: in the Act, at the public library (in one case), at the "library"(unspecified) in 3 cases, the Ontario government bookstore (in 2 cases), the departmental library (in 2 cases) and through the Act itself (in 1 case)

At the large, high profile crown corporation, C3, the only evidence available is from the interviews since the employees were not permitted an opportunity to participate in the study. That available evidence tends to suggest that the impact of the legislation on the directions of information flow are not very different from the experience of the small, high profile ministry (M3) and the large ministries (M1 and M2) because all four appear to emphasize a request response orientation and a reactive philosophy of satisfying the Commissioner. All four also use the decentralized theory of the "liaison" contacts throughout the organization.

In the ministries, 14% of the respondents reported making changes in their work which could be categorized as changes affecting either acquisition or dissemination of information; that is, information flow. Most of these changes were reported in dissemination activities. This is completely consistent with the emphasis on the request-driven, or dissemination, aspects of the statute encountered in the interviews with the Coordinators and effective heads in three of the ministries (and might be expected, as discussed, in the large, high profile crown). The unusual awareness of the consent provisions of the Act and the higher level of self-sufficiency exhibited in the small, low profile ministry was consistent both with the more rounded approach to the statute exhibited by the Coordinator and effective head in this ministry during the interviews and with the high implementation and adoption levels achieved by this organization, which have been discussed earlier. The evidence would suggest that the pattern of change in information flow in the eight organizations probably mirrors the ranking given seven of

the organizations on adoption (see Figure 29, above), with the previously unranked large, high profile crown having the same level of change and the level 2 ministries.

The evidence of the questions on the survey instrument concerning information about the Act itself is interesting with respect to changes in direction of information flow. Although in some organizations, particularly the small crowns, there is a great reliance on outside sources of information about the Act, the Commissioner, whose mandate includes public education,¹² is seldom cited. Moreover, although the organization Coordinators clearly represent a new channel of information in the organization, albeit a dedicated channel, the system of "liaison" contacts carefully established in four of the six organizations studied, are (on the evidence gathered from three of the four) not viewed by employees as a reliable or preferred channel ranking ahead of either the new central authority of the Coordinator or the old familiar channel of the line superior. The request mechanism itself does not seem to be having much of an impact on the normal directions of flow of information to employees in the organization: only 3% of respondents had made personal information requests of their own organizations and even fewer, 2%, had made such non-personal requests.

The evidence with respect to the type of channels actually being affected by the legislation did not support the hypothesis that formal channels would be more affected, although the tenor of the conversations with the heads and Coordinators would have suggested an almost exclusive emphasis on formal channels. The evidence about

¹²Sec s.59(e) of the Act.

changes in actual formal and informal channel use in the general information context in the organizations was derived largely from the indirect evidence of the changes in content reported by employee respondents to the survey. Although there was evidence that the content of written formal artifacts had been altered since the Act (generally by deleting personal opinions), that evidence did not support the hypothesis that these channels had been affected to a greater degree than the informal, and, indeed, there is some evidence in the comments to suggest that information is being switched from formal to informal channels in reaction to the perceived vulnerability of formal channels to access requests (information gathered orally not being transcribed or an informal written source of information being used to record information previously placed in formal sources). This tentative proposition is further supported by the observation that request driven changes are being made to a great extent in the area of record content and storage rather than in the directions of information flow.

The evidence of the channels used in information flow about the Act itself would suggest that there seems to be more emphasis on formal channels, but that the employees would themselves prefer to de-emphasize the formal and increase the opportunities for informal channels to be used.

CHAPTER 10: CONCLUSIONS

The key indicator of effective implementation, as demonstrated in this study, was the type of organization. Ministries had uniformly implemented the legislation more efficiently and effectively than had crown corporations. There was also firm evidence that the small ministries had achieved greater adoption in their employees than had small crown corporations. Indeed, the pattern of adoption in the organizations mirrored in a general way the pattern which was discovered in implementation effort. Neither size nor public profile was found to be as reliable in predicting implementation or adoption as the variable of type. The study found that there had been only minor changes in the organization structures of the eight organizations, and these minor changes were limited largely to very small new staff allocations and had only occurred in some of the organizations studied. There had been changes in the directions of flow of information in at least six of the organizations, but these changes appear neither very extensive nor uniform across all six. There was one organization where no changes in information flows had occurred at all. Moreover, there is no support for the hypothesis that formal channels of information flow have been affected more than informal channels. In fact, the evidence suggests that both types of channel were being affected: that employees are increasingly using informal channels. Formal channels were still continuing to be utilized

by employees but the content of the artifacts used in them was being altered and reduced.

The study also found that the implementation efforts made by the organizations were, almost without exception (the exception was M4, the small, low profile ministry), totally request driven. On the other hand, with respect to adoption by employees in *small* organizations, the study found that the perception that one's work had involved a request did not make one any more or less likely to have made changes as a result of awareness of the Act. Similarly, in *ministries*, only just over half of those who perceived that their work had been involved in a request had made changes. Moreover, more of those employees (in both the small organizations and the ministries) who predicted only the same involvement in the Act next year had made changes in their work than had those who predicted increased involvement. This may suggest that the corporate culture over the employees is causing them to react to the legislation in a more proactive way than their management which is charged with implementing the legislation but which is acting primarily reactively in its efforts. Certainly, there is a high level of interest amongst employees in learning more about the statute and in receiving training relevant to the implications of the Act on their job functions.

These conclusions are not dissimilar in nature to the kinds of conclusions reached by Alexander in her study of the impact of the introduction of electronic data processing and data technology into governments in western Canada.¹ The findings of

¹ Alexander, "The Administrative Politics of EDP in the Three Prairie Governments."

this study certainly echo her findings of dissatisfaction. Here, employees are looking for information from the Coordinators about this legislation, in particular forms, and are receiving it instead in other forms, and/or from other less desirable sources (many of them external to the organization). Alexander (with her co-author Edwin Black) states that "necessary policy changes to program areas, including the clarification of vague policies and concepts have not been undertaken."² In this study, the response of management has been request driven, and employees are asking for specific education, in workshops, about how the legislation actually could impact their specific job functions. Moreover, the lack of reference to changes in information acquisition in the organizations tends to strongly suggest that the provisions regarding the acquisition of personally identifiable information, in particular, are not being implemented in the organizations covered by the Act.

The Coordinators in this study do not share many of the characteristics of Brumm's Chief Information Officers,³ although they are involved in the day to day administration of a statute which should influence the handling of information throughout the organization. They do not oversee much or any of the information technology in the organization, although the Coordinator at C3, the large, high profile crown corporation,

²Alexander and Black, "Computerizing Social Services: Putting the Byte on Three Governments", p.11.

³Brumm, "Chief Information Officers in Service and Industrial Organizations."

being also in charge of a related function, comes closest to this aspect of Brumm's model. This level of control in the organization is not an unreasonable expectation given that the Act has application to every corporate record the organization owns or controls and the judgement which is required of a Coordinator who has been delegated full decision-making powers involves assessments of a very sophisticated nature. However, not one of the Coordinators has any formal educational background in information policy or information technology and, without that background, it would seem unlikely that they would ever to achieve the level of influence of Brumm's Chief Information Officers. The Coordinator at the large, high profile crown also seems to come closest to Brumm's second requirement, that the individual be a senior executive level position, reporting to a high ranking executive. However, the Coordinator at the small, low profile Ministry (M4), had the ear and cooperation of the Deputy Minister, and in this respect was perhaps more influential than any of the others. The Coordinator at M3, the small, high profile ministry, falls farthest short of this requirement. However, in all cases but that of M1's Coordinator (the large, low profile ministry), the Coordinator's hierarchical position appears to be the result of a combined post, and the marriage of the FOI function with another does not seem to leave much room for a proactive, executive approach to the FOI function. Leaving the day to day operations to subordinates does not seem to be an option when the staffing levels in this function are so low. Even the Coordinators with other responsibilities reported major time commitments for FOI. Brumm's final defining

point was that the CIO be concerned primarily with strategic issues, by being responsible for corporate policy and strategy regarding use of information resources. The Coordinator who came closest to meeting this aspect of the definition was the Coordinator at M4 (the small, high profile ministry), with the Coordinators at M2 and M1 (the two large ministries) also showing aspects of this kind of involvement.

While exploratory in nature, this study has contributed useful findings in the area of research on information flows (such as the pattern of employee communication shown in Figure 19). It also contributes to the growing research which explores the relationship between formal and informal channels of communication, although, since this work was exploratory, it was not possible to test very precise hypotheses in this area of the study. The study does indicate that the empirical methodology used would, if replicated with other subjects, provide a growing body of information about the effect of this statute on the use of these kinds of channels. Here, only about a quarter of the respondents had made changes in the way they did their jobs since hearing about the Act, and the changes reported were not extensive, which meant that there was not as much data available through which to explore the kinds of changes made as might be available to subsequent researchers when the process of change under this legislation is more advanced in organizations.

The study developed here has demonstrated the validity of the approach to

information definition which was developed in the opening sections of this report. Even without an exact knowledge of all the parameters of the phenomenon, it has been possible to study the effect of a policy initiative in the information arena and develop concrete comparative measures. Braman would argue that there are many definitions of information for many purposes.⁴ I would argue, based on this research experience, that there is only one definition of information. The lack of clarity comes from our inability to focus on the elements of the definition with which we can work to gather evidence to inform our understanding of this difficult phenomenon. In this sense, this research contributes to the dialectic about definition and its utility which Braman articulates in her doctoral research.⁵

The model developed here did assist in developing the evaluative framework for the analysis of the effectiveness of the legislation. Studying those actually affected by the legislation, rather than exploring the administration or the the policy history of the legislation has allowed me to ask different questions than those asked by Flaherty⁶ or Bennett.⁷ This study provides evidence that the implementation of this statute in the organizations which are subject to it may not be inculcating the kind of corporate adoption which is necessary for the Act to be truly effective. This kind of research approaches the

⁴Braman, "Defining Information: An Approach for Policy Makers."

⁵Braman, "Information Policy and the United States Supreme Court."

⁶Flaherty, *Protecting Privacy in Surveillance Societies*.

⁷Bennett, *Regulating Privacy*.

problem from an entirely different direction than the measures the "oversight" agency involved (to use Caudle and Newcomer's term),⁸ the Freedom of Information and Privacy Commissioner, has traditionally used to evaluate the performance of the organizations subject to the Act. The measures of compliance traditionally used by that agency are: appeals, decisions on appeals, investigations arising from appeals, and investigations arising from complaints.⁹ It is suggested that these measures may provide the sort of self-serving information system described by Caudle and Newcomer. From that perspective, the measures adopted in this research have been demonstrated in this study to provide measurable evidence in the area of "compliance" which is independent of the functions of the oversight agency, the Commissioner's office. This approach may therefore prove useful to other investigators in the future.

This approach to empirical research provides demonstrable evidence of the effect of a legislative attempt to come to grips with information policy issues. There is evidence in the experience of the crown corporations in this study to suggest that, however desirable extension of data protection legislation into the private sector might be, such an extension to govern private businesses may be ineffectual.¹⁰ In making this

⁸Caudle and Newcomer, "Command and Control: Public Program Oversight in the Information Age."

⁹See Ontario Information and Privacy Commissioner, *Annual Report 1989*, pp.45-48, for example.

¹⁰Braman's study of the American Supreme Court decisions, on the other hand, looks at information law-making through the evidence of the law itself. This means that her analysis must be content with description and categorization, rather than testing effectiveness, because she had no evidence connecting the law with real world experience.

findings of difference between the types of organizations, the study tends to contradict the finding in the very recent Canadian Crossing the Borders of Privacy study that in both the public and private sectors "in a majority of cases the data disclosed are well protected and the people affected by disclosure are rarely kept in the dark about their occurrence."¹¹ This finding of commonality in both the public and private sectors is different from the experience in the ministries and crown corporations of Ontario which this research captured. In this research, the efforts at implementation in the crown corporations, those organizations covered by this legislation which are most analogous to the private sector, were uniformly behind the efforts made in the public sector ministries. And within the limitations of the evidence of adoption which was available to me, the proposition that adoption had gone further in small ministries than in small crown corporations was supported.

This research echoed one of the findings in Smith's dissertation on privacy practices in the private sector in that the implementation efforts discovered in this research also tended to be reactive. As Smith expressed it "decision-making was at the middle-management level in each organization until some external "perturbation" caused a corporate-wide management response..."¹² Here, although final authority usually rested at the higher levels, the Coordinators managed a day to day response to requests,

¹¹*Crossing the Borders of Privacy: Transborder Flows of Personal Data from Canada*, p. 194.

¹²Smith, Henry, "Managing Information: A Study of Personal Privacy," pp. 330-331 ..

and change was instigated usually in response to requests (or to the Commissioner's audits), both external initiatives.

The study found nothing to contradict the findings implicit in the federal Open and Shut Report,¹³ except to report that the Coordinators seem to be largely reactive and are not effective "prime movers" for the implementation of the legislation. They are not educated in information areas. Not one of the Coordinators interviewed had any recent private sector experience (where the requests are generated). None had developed measurable objectives directly solely at the implementation of the personal data protection aspects of the legislation. Nor, in most cases, does the function constitute their sole responsibility and consequently it competes for their attention and resources. While the federal report called for more active involvement of the Treasury Board and the Department of Justice, many of the Coordinators involved on a day to day basis with the Commissioner's office were looking for a better rapport and understanding of their issues. Generally there was appreciation amongst the Coordinators for the contribution made by the Freedom of Information and Privacy Secretariat of the Management Board of Cabinet, although there were some calls for leadership on such issues as the problem repeat requester.

As mentioned in earlier sections, the findings of this study were completely consistent with the findings of the Ontario Commissioner's study done the year before

¹³*Open and Shut: Enhancing the Right to Know and the Right to Privacy.*

this study in terms of the experience of the Coordinators, their positions, their tenure and roles.¹⁴ This may suggest that the findings of this study, which go beyond the areas covered in that study, may also hold for the larger population of organizations, beyond the eight selected organizations.

A possible question for research in the future to explore would be to seek to compare the implementation, adoption and changes wrought by this legislation against the implementation, adoption and changes wrought by other legislation (such as, for example, the Pay Equity Act, 1987,¹⁵ which was imposed on these same organizations at the same time as this legislation). I suspect that more of the organizations' resources have been devoted to implementation of other, better understood, more apparently concrete, statutes than to this information policy.

Another area of possible future interest to researchers would be comparisons of the Ontario experience with the experiences of organizations under the jurisdiction of Quebec or the federal government, which have had regimes similar to Ontario's (in governing both access and data protection issues) for some time.

¹⁴*Freedom of Information and Privacy Survey of Ontario Government Institutions.*

¹⁵S.O.1987,ch.34, as amended by 1989, Ch.72, s.48.

APPENDIX 1: Information Legislation

	Local public libraries	Access to Government Information	Other
Fed.	No Jurisdiction	<i>Access to Information Act/Privacy Act (cited elsewhere)</i>	<i>Official Secrets Act R.S.C. 1985, c. O-5</i> <i>Broadcasting Act S.C. 1991, c. 11</i> <i>Copyright Act R.S.C. 1985, c. C-42, as amended</i>
Nfld.	<i>Public Libraries Act R.S.N. 1990, c. P-40.</i>	<i>Freedom of Information Act R.S.N. 1990, c. P-22</i>	No Jurisdiction
P.E.I.	<i>Public Libraries Act S.P.E.I. 1992, c. 56</i>		No Jurisdiction
N.S.	<i>Libraries Act R.S.N.S. 1989, c. 254, as amended</i>	<i>Freedom of Information Act, S.N.S. 1990, c. 11</i>	No Jurisdiction
N.B.	<i>Libraries Act R.S.N.B. 1975, c. L-5 , as amended</i>	<i>Right to Information Act S.N.B. 1978, c. R-10.3, as amended</i>	No Jurisdiction
Que.	<i>Public Libraries Act R.S.Q., B-3</i>	<i>Access to Documents Held by Public Bodies and the Protection of Personal Information *</i>	No Jurisdiction
Ont.	<i>Public Libraries Act, R.S.O. 1990, c. P-44.</i>	<i>Freedom of Information and Protection of Privacy Act (and Municipal one)</i>	No Jurisdiction
Man.	<i>Public Libraries Act, R.S.M. 1987, c. P220, as amended</i>	<i>Freedom of Information Act, S.M. 1985-86, c.-F175, as amended</i>	No Jurisdiction
Sask	<i>Public Libraries Act, S.S. 1983-84, c. P-3 9.1, as amended</i>		No Jurisdiction
Alta.	<i>Libraries Act, S.A. 1983, c. L-12.1, as amended</i>		No Jurisdiction
B.C.	<i>Library Act, R.S.B.C. 1985, c. N-12, as amended</i>	<i>Freedom of Information and Protection of Privacy Act (Bill 50, 1992, passed)</i>	No Jurisdiction

"A Broad Overview Relationships among Various Actors and Managerial Functions"

-taken from an article by Yadav

(see text for full citation)

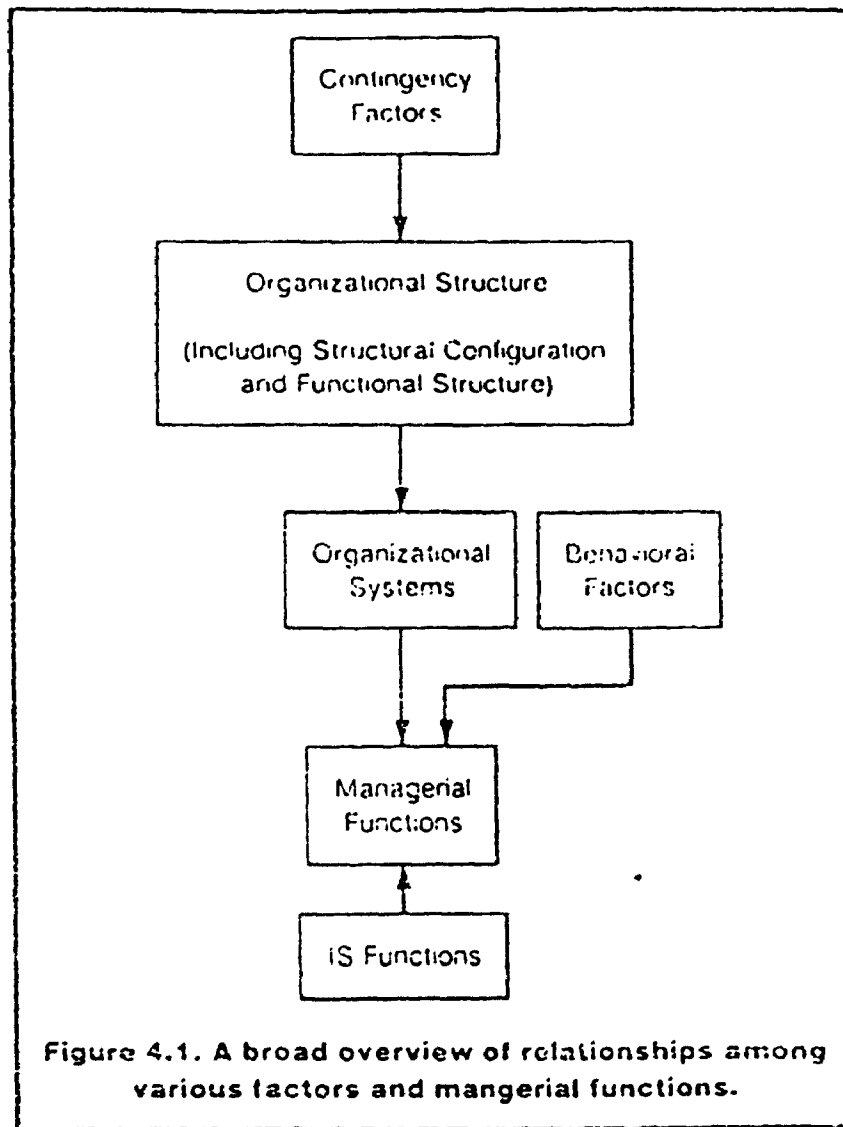


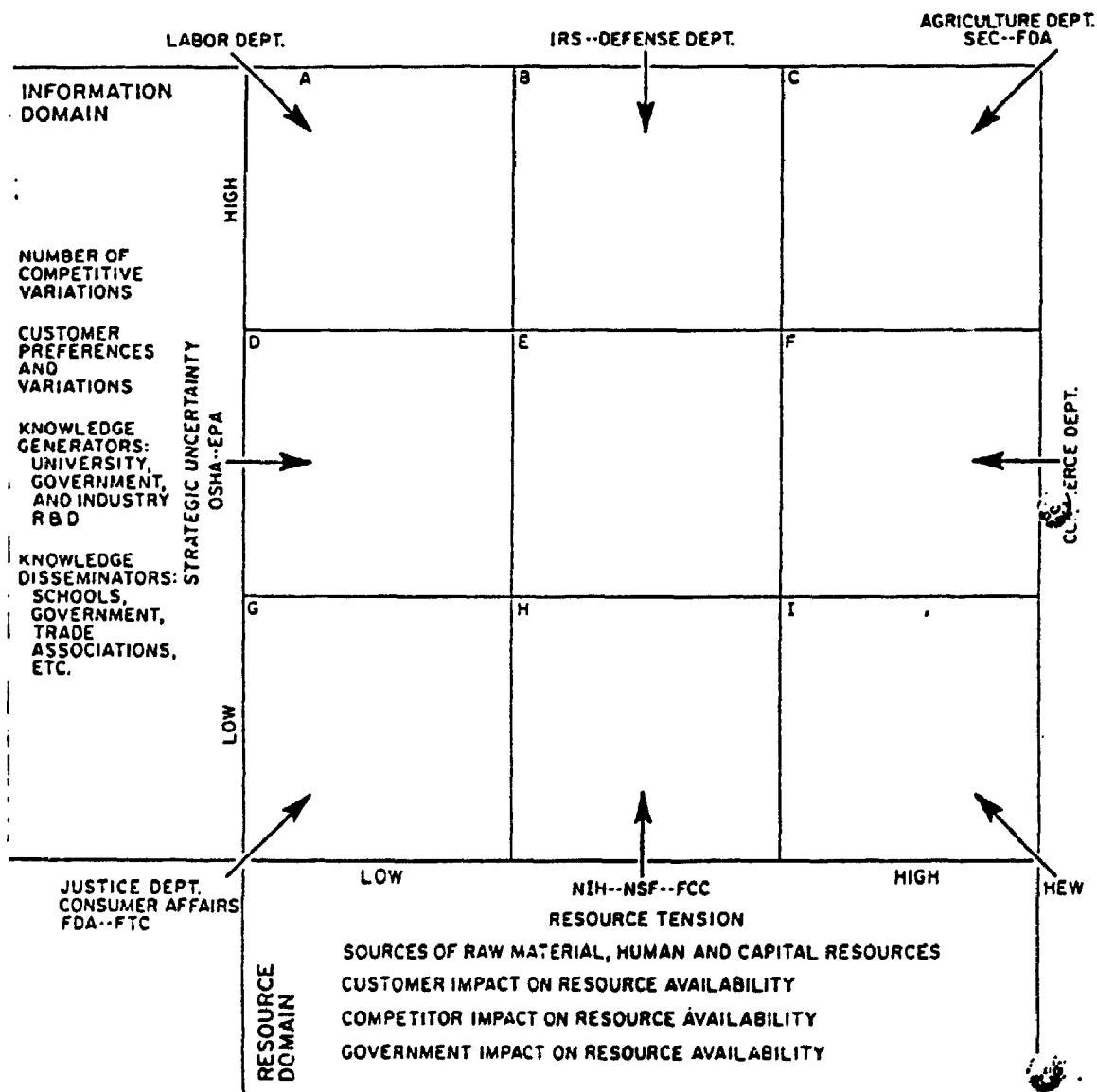
Figure 4.1. A broad overview of relationships among various factors and managerial functions.

APPENDIX 3

"Figure 19 Impact tendencies of selected federal agencies"
 -taken from an article by Lawrence and Dyer (see text for full citation)

FIGURE 19

IMPACT TENDENCIES OF SELECTED FEDERAL AGENCIES

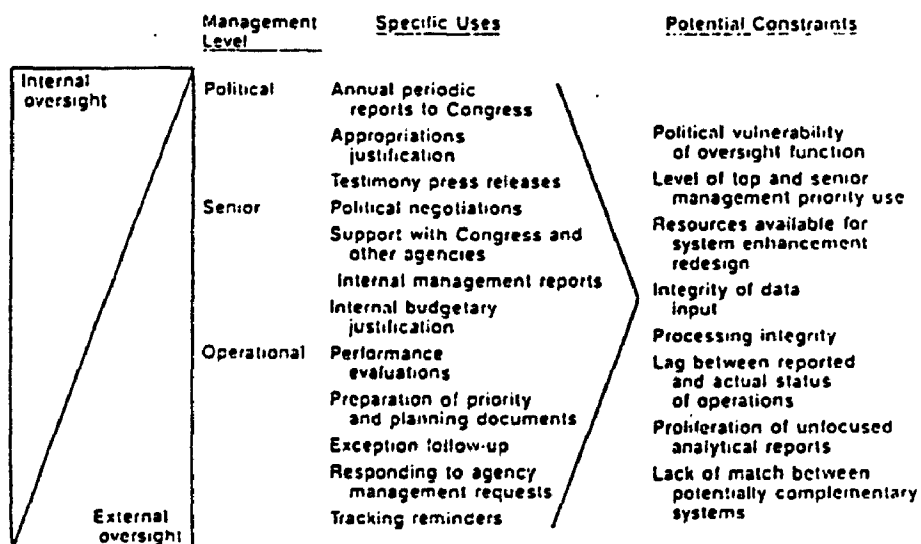


APPENDIX 4:

"Oversight systems and constraints"
 -taken from an article by Caudle and Newcomer
 (see text for full citation)

Figure 3

OVERSIGHT SYSTEMS AND CONSTRAINTS



Appendix 5: The Hypotheses.

- Hypothesis 1:** That ministries had gone further in implementation of the legislation than crown corporations.
- Hypothesis 2:** That ministries had gone further in adoption of the legislation than crown corporations.
- Hypothesis 2.1:** Small ministries had gone further in adoption of the legislation than small crown corporations.
- Hypothesis 3:** That small organizations had implemented the legislation more effectively and quickly than large ones.
- Hypothesis 4:** That smaller organizations had adopted the legislation more quickly and effectively than large ones.
- Hypothesis 4.1:** Smaller ministries had adopted the legislation more quickly and effectively than larger ministries.
- Hypothesis 5:** That organizations with higher public profiles had implemented the legislation more quickly and effectively than those with lower public profiles.
- Hypothesis 6:** That organizations with higher public profiles had adopted the legislation more effectively and quickly than those with low public profiles.
- Hypothesis 6.1:** Ministries with higher public profiles had adopted the legislation more effectively and quickly than ministries with low public profiles.
- Hypothesis 6.2:** Small organizations with higher public profiles had adopted the legislation more effectively and quickly than small organizations with low public profiles.
- Hypothesis 7:** That the study would reveal only minor changes in the organization structure of these organizations as a result of the legislation.
- Hypothesis 8:** That changes had occurred in directions of the flow of information in the subject organizations as a result of this legislation.
- Hypothesis 9:** That the legislation had affected formal information channels in the organizations to greater degree than informal channels.

Appendix 6: Synopsis of study and biography of researcher

Margaret Ann Wilkinson, 61 Herbert Ave., Toronto, M4L 3P8

Phone: (416) 694-6296

Research proposal: assessing the impact of the Ontario Freedom of Information and Protection of Privacy Act, 1987, upon selected Ministries and Crown Corporations

ABOUT THE RESEARCH PROJECT

- the research is being done in fulfillment of the requirements for a Ph.D. at the University of Western Ontario by Margaret Ann Wilkinson
- the Committee supporting Margaret Ann Wilkinson in this dissertation research is interdisciplinary:
 - Professor David Flaherty, Faculty of Law and Department of History, co-chair
 - Professor Mark Kinnucan, School of Library and Information Science, co-chair
 - Professor Jim Rush, School of Business Administration
 - Professor Janet Fyfe, School of Library and Information Science
- this is the first attempt to do empirical research into the effects of freedom of information and privacy legislation in the organizations on which such legislation is imposed.
- although public sector corporations and ministries are heavily regulated by government (as compared to the private sector) comparatively little research has been done about how they operate and what effect this regulation has on their day-to-day functioning
- the flow of information is becoming increasingly important in government and business and yet studies about how information flows in organizations are rare
- the results of this study will provide your organization with
 - feedback on the extent to which employees throughout the organization are aware of the legislation, the role of the coordinator, and the effectiveness of the attempts being made to implement the legislation.
 - data about information patterns among employees in your organization
 - comparative data about the other organizations in the study (unidentified)
 - the opportunity to present opinions about, and experiences with, this legislation in a study done completely independent of government

- the study has two main components:
 - (1) two interviews: an hour and a half interview with the Information and Privacy Coordinator, followed by a half hour interview with the "head" of the organization (as designated under the Act)
 - (2) a 12 minute, 4 page questionnaire distributed to a random stratified sample of employees in the organization and returned anonymously to the researcher and, if possible, a short conversation(s) with an individual(s) involved in public relations for the organization

ABOUT THE RESEARCHER, Margaret Ann Wilkinson

- Bachelor of Arts (History, Trinity College, University of Toronto)
- Bachelor of Laws (University of Toronto)
- Master of Library Science (University of Toronto)
- now in the final stages of her Ph.D. at the University of Western Ontario, working on data collection for her thesis
- doctoral studies supported by the Social Science and Humanities Research Council of Canada and Ontario Graduate Scholarship program

- called to the Ontario Bar in 1980 and is a member of the Law Society of Upper Canada
- practiced law (with an emphasis on administrative and appellate litigation) for 3 years
- 16 cases in which she was involved were reported in the law reports

- has completed two earlier research projects funded by the Ministry of Citizenship and Culture (as it then was): "Financial Restraint in Two Ontario Public Libraries" (with Laurent G. Denis and Ethel Auster, 1984) and "Report on Public Library Services to Seniors in Southwestern Ontario" (with Bryce Allen, 1988).

- was a seminar leader in the Administrative law portion of the Bar Admission course
- has taught several master's level courses at the University of Western Ontario
- has published 6 articles in professional journals
- has given many presentations and workshops, including a number on the area of Freedom of Information and Protection of Privacy, to various professional and local government groups

APPENDIX 7:

Example of confirming letter sent to organization

M.
Co-ordinator, Freedom of Information and Privacy Office,
Ministry of
Ontario,

November 27, 1990.

Dear M

Re: Research on Freedom of Information and Privacy

Thank you very much for giving me the opportunity to present my proposal for research to you on October 31. I am very pleased to receive your message on November 19 that the Ministry has agreed to participate in the study.

As we discussed in October, all information which I gather from the Ministry and its employees will remain completely confidential throughout the study. I will prepare my case study about your organization for my doctoral work and submit it to you for review. If upon review, you find that you do not have any difficulty in having the Ministry of identified with my work in subsequent academic papers which I may seek to have published, then I would request your permission at that time. If, on the other hand, after examining the case, you would prefer that the Ministry's participation not be specifically identified with my work, the only people who would know of your organization's participation would be the four members of my advisory committee (set out in the summary which I provided to you) and the members of my examining committee for my doctoral defense. This approach is common in the work done in the private sector by students from the School of Business Administration at the University of Western Ontario.

As I mentioned, the study will consist of case studies of a number of different organizations, both ministries and crown

corporations. At the conclusion of the study, I will be pleased to provide you with information about the other organizations involved in my study according to the level of identification which each of them decides upon once the cases are complete.

Although various people connected with the Office of the Freedom of Information and Privacy Commissioner and the Freedom of Information and Privacy Secretariat of the Management Board of Cabinet are aware that I am doing doctoral research in this area under Professor David Flaherty, I am approaching your organization independent of these offices and my results will not be made available to them unless it is the express wish of your Ministry after you have reviewed my report to you.

I am pleased to confirm our meeting for Friday, November 30 at 1:30 p.m. As I indicated in my 2 page research summary, I expect that the interview portion of our appointment will take about an hour and a half. I would suggest that we might finalize the form of the questionnaire for employees after the end of my interview with you. I will not be gathering any "personal information" from employees of the Ministry.

During the interview with you it would be useful if you might make available to me documentation relating to the origins of the position of Freedom of Information and Privacy Coordinator, and the position and role of Coordinator in the structure of the Ministry. The types of materials I have in mind are such things as:

- organizational charts of the organization,
- memorandums relating to the function of Coordinator,
- job descriptions,
- any annual or other planning documents for or involving your office,
- any manuals or pamphlets or other materials prepared through your office.

I am looking forward to our meeting.

Yours truly,

Margaret Ann Wilkinson,
Doctoral Candidate,
University of Western Ontario.
Phone: (416) 694-6296 (Toronto).
Address: 61 Herbert Ave., Toronto, M4L 3P8

APPENDIX 8:

Confidentiality Contract

THIS AGREEMENT made as of the day
of May, 1991.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF ONTARIO as represented
by
(hereinafter referred to as the "Ministry")

AND

Margaret Ann Wilkinson
(hereinafter referred to as the "Researcher")

WHEREAS the Researcher has requested that the Ministry participate in a case study entitled "Assessing the impact of the Ontario Freedom of Information and Protection of Privacy Act, 1987".

AND WHEREAS the Ministry recognizes the merit of the proposed case study and wishes to assist the Researcher in such study.

AND WHEREAS the Ministry does not wish to be identified in the case study but recognizes that since this case study will form part of the Researcher's doctoral dissertation, it will be necessary to identify the Ministry to the advisory and examining committees.

NOW THEREFORE the Ministry and the Researcher agree to the following terms and conditions:

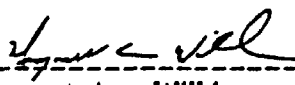
- 1.0 The Ministry will participate in the Researcher's doctoral dissertation case study further to her proposal entitled "Assessing the impact of the Ontario Freedom of Information and Protection of Privacy Act, 1987 upon selected Ministries and Crown Corporations".
- 2.1 The Researcher may identify the Ministry only to her advisory committee and the examining committee for her doctoral defense.
- 2.2 The Researcher shall request of each committee member that the identity of the Ministry be kept confidential.
- 2.3 The Researcher shall request of the Faculty of Graduate Studies of the University of Western Ontario that the defense of her doctoral dissertation be held in private session.

- 3.1 The Researcher shall not identify the Ministry as one of the subject organizations of this study either in her doctoral dissertation or in any subsequent publications, presentations and references to the case study.
- 3.2 The Researcher shall not knowingly provide any details which would lead to the identification of the case study with the Ministry in her dissertation or any subsequent publications, presentations and references.
- 3.3 The Researcher may discuss the results of her case study (in her dissertation, in any subsequent publications, presentations and references or otherwise) in terms in which she does not knowingly identify the Ministry.
- 4.1 The Ministry may, at its option, purchase a copy of the Researcher's doctoral dissertation upon its completion.
- 4.2 The Researcher shall provide the Ministry with a case study report of the dissertation research as it relates to the Ministry.

DATED AT TORONTO this day of May, 1991.

For the Ministry

DATED AT TORONTO this 1st day of May 1991.



Margaret Ann Wilkinson.

Appendix 9- The Coordinator Protocol

-give short outline of the nature of the project:

- 1.- how long have you been Coordinator?
- 2.- how would you describe your position as coordinator?
- 3.-do you hold another position?

if so, what is it?

what percentage of your time is devoted to the coordinator's role?

how was the decision made to combine these positions?

how well do you believe the combination works?

- 4.- a bit of background:
 - educational background

- length of service with the organization?

in government?

- previous position

after this, talking only about your role as coordinator

- 5.- what qualities and qualifications which you possessed do you think helped you to get this post?

ask for job advertisement copy
ask for curriculum vitae

- 6.- what staff do you have to assist you in this job function?

- 7.- history of the staffing of your office

ask for local organization charts

- 8.- where do you fit in the organization?
ask for broad organization charts

how many levels between you and the CEO?

to whom do you report?

9. who is the "head" of your institution under the Act?

what is your relationship with this person?

what power under the Act do they exercise?

is the rest delegated to you or is there delegation to others? who?

- 10.- who are the key people with whom you interact?
-officially
-unofficially
11. - how big a budget are you responsible for?
12. - how many hours do you actually work a week?
- 13.- when you have a problem in your office, how do you handle it?
officially, unofficially
to whom do you turn?
why?
what resources are available to you in terms of books and manuals (sources other than people)
does your approach vary depending on the kind of problem? how?
- 14.- can you describe your line superior? the kind of superior he is?
how would you describe your relationship with your line superior?
how do you suppose your superior would describe you?
- 15.- what is your relationship with the organization's legal counsel?
- 16.- what is your relationship with the Office of the Information and Privacy Commissioner?
-are you on a first name basis with the Commissioner or any of the staff?
who?
- how often are you in touch with their office, other than in connection with a specific appeal?
about what sort of matters?
who initiates the contact?
- 17.- what is your relationship with the Freedom of Information and Privacy Secretariat of the Management Board of Cabinet?
-are you on a first name basis with any of that staff?
who?
- how often are you in touch with their office?
about what sort of matters?
who initiates the contact?
- 18.- what has your contact been with other Information and Privacy Coordinators?
officially? unofficially?
-how often

-how useful

- 19.-what training have you received since you began this position?
 -from the Information and Privacy Commissioner's Office?
 -from the Information and Privacy Secretariat of the Management Board of Cabinet?
 -from other sources?
- 20.- what training would you consider most useful in your present position?
- 21.-what associations or groups do you belong to?
 what events do you attend ? how often?
- 22.-do you subscribe to or use particular publications regularly?
 what are they?
- 23.-what types of records are kept in your office?
ask for examples of their records
- 24.-what records beyond those of your own office do you use?
 how often? officially or unofficially?
- 25.- what meetings do you regularly attend in your organization?
 how often?
 with whom?
 why are you included?
 what is your role at the meetings?
- 26.- what committees are you a member of?
- 27.-are there other committees which you would like to participate in?
- 28.-who makes the decision about what meetings and committees you participate in?
- 29.- who have you gotten to know the best SINCE beginning this position?
- 30.- what has your office accomplished since it was established?
 - *ask for training manuals*
 - *opinions*
 - *training seminar materials*
 - *annual plans, goals and objectives for all years*
- 31.- do you have assistance in carrying out your task other than within your own office?
 ("information specialists" in each arm of the organization)
 -how was this network established?
 -do you choose these individuals? participate in their selection?
 -what contact do you have with them?

- what are their attitudes toward this facet of their work?
 - how do they balance the demands you create with those created by their other duties?
 - what support do you get from their line superiors?
 - what contact have you had with their line superiors?
ask for organization charts and lists
- 32.- how involved are you in your job?
- 33.- how hard would you say that you work compared to others in your organization?
- 34.-do you control your approach to your job?
- 35.-do you control the way your office functions?
- 36.-do you have sufficient professional support?
what would you consider adequate?
- 37.-do you have sufficient clerical support?
what would you consider adequate?
- 38.-what resources of the organization beyond your own office do you use?
how often?
are there other resources to which you wish you had access?
- 39.-how would you describe your status in the organization?
- 40.-how would you describe your workload?
- 41- how are requests handled in your organization?
-what happens to letters (as opposed to form requests)?
-what happens to oral requests?
ask for records of oral vs. letter vs. form requests?
- how do you ensure that all requests that could fall within this Act are being handled under it by all members of your organization?
- what level of decision-making regarding requests lies with you?
can you or have you delegated any decision-making?
- to whom do you refer decisions and how often?
-what kinds of questions
- 42.-what are the strengths of the Information and Privacy Secretariat of the Management Board of Cabinet?
- areas where it could improve its service to your office?
- 43.-what are the strengths of the Office of the Information and Privacy Commissioner?
- areas where it could improve its service to your office?
- 44- what do you believe is the future for your office here?

45- are you receiving enough support from senior management?
 -in what areas would you like to see more support?

-where are the problems?

46- where do you see yourself moving in the future?
 within this organization?
 elsewhere?

47- what qualifications do you think should be sought in your replacement?

48-what advice would you give to a successor?

49- do you see this job as stressful?

50- do you see this job as interesting?

51

-can you describe a typical day for you?

-ask for portions of diary or appointments book

**52-53-54. PRESENT THE CHOICES LISTED IN BRACKETS ON SEPARATE SHEETS SO
 THE SUBJECTS CAN REVIEW THE OPTIONS PRESENTED CAREFULLY**

55- how do you think the organization views your office?

56-are there areas of your organization where you are having difficulty fulfilling your
 mandate?

what are the reasons for these difficulties?

can you suggest possible solutions?

who has the power to implement these solutions?

how likely is it that your solutions will be implemented? when?

57-what do you think are the strengths and weaknesses of this piece of legislation?

-why

58-what do you think is its significance or importance?

59-how is your performance in this position judged?

60-does this reflect the way you think you should be judged?

-what changes would you make?

Thank you.

Appendix 10: The "head" protocol with transcription

Responses to "head" interview¹: transcribed and, where necessary, paraphrased

-this legislation was imposed on your organization in January of 1988.- were you with the organization then? in this same capacity?

M1 - YES

M2 - YES

M3 - YES

M4 - YES

C2 - Organization younger than the legislation. Therefore, incumbent from the beginning.

C3 - YES

-as your know, the schedule to the Act designates you as the "head" of your organization responsible for the Act - to what extent are you involved in the day to day operations of the Act?

M1 - the response began in one section of the Ministry, where it was anticipated that there would be a high level of activity; this section had the ability to devote initial resources to the problem when the rest of the Ministry was less able to respond with allocation of resources; the activities of this section of the Ministry had brought its members into contact with the counterpart federal legislation and American legislation and so there was an initial level of interest among members; the Ministry expected, based on the experience of other jurisdictions, that an investment of substantial resources would ultimately be necessary; they awaited events.

M2 - 2 or 3 times a week; further delegation - retained all large or contentious files, all discussed - dealt with all refusals

C2 - the Act was reviewed during the discussion of set-up needs; also involved in resolution of first (and

¹One planned area of question was not pursued in most situations, or brushed aside in those few where it was raised: "If I phoned in requesting information from your organization, how would that request be handled? has this approach changed since 1988? would the handling of my request be different if I wrote you a letter? is there any change since 1988? what would be the reaction if I used one of the forms available at public libraries under this legislation? do you distinguish between inquiries made from the general public and those made by your stakeholders? in what way? are they handled differently?" The area seemed out of context with the policy level of the rest of the interview and the researcher was unable to interest the first several respondents in this level of conversation, so the area was omitted in later interviews. Time was also a factor in all of these interviews. The guaranteed maximum was 45 minutes and the interviewer generally adhered exactly. In no case did the entire interview, including introductory conversation, exceed an hour in length.

only request), partly because request in respondent's area of line management and also addressed to respondent

C3 - earlier really tricky; phone calls sometimes to the line person - to smooth the way (usually where a release was contentious for the line people) - only 1 meeting in the last couple of years with a line person, because of a tricky request; now passive - legal problems now to staff lawyer, whereas early on respondent personally involved, now "routine" without him, only "not quite routine" brought to respondent every week or week and a half

***[When do you involve your Minister in matters involving this Act?]²**

M2 - Never the Minister, sometimes the Deputy Minister

M4 - in initial stages of set-up yes, no complaint from Minister ever about their handling, regular reporting function, copies to the Minister's office

C3 - if something really sensitive, he would notify Board (although within the power of respondent's office to act alone)

-the Act of course gave you power to delegate your duties and responsibilities under the Act - to what extent have you done so?

M1- the Deputy Minister has delegated all his organizational responsibility in this area to the Executive Director who was responding to the interview- the Deputy Minister reserves his sign off personally in certain areas: e.g. Cabinet confidences

C2 - function delegated to Personnel Manager - although personnel files already open - manager's role to alert respondent and indicate intention

-the Act does not specify how the delegation will be accomplished or organized. I understand that you have appointed a coordinator for Freedom of

²The order and presentation of the questions was varied in two of the six "heads" interviews (Ministry 1 and Crown 2 are the same and slightly different from the other four). This was partly an attempt to confound the influence of order of questions and partly arose from the fact that access to senior officials was different in each organization and the instruments were subtly altered where different levels of senior persons were being interviewed. All six interviews covered the same ground except that this question does not seem to have been included explicitly in interview instrument used for M1 and C2.

Information and Privacy, a new position in your organization - can you tell me how the decision to delegate and to establish this new position came about? - who was involved in this decision? -when was the decision made? -how was it made?

M1 - the Ministry has many service locations in the province (hundreds) and therefore was determined that decentralization would be essential but foresaw problems in that the training necessary to ensure a consistent approach across the Ministry would be too expensive; in establishing the Coordinator's office, the experience of the section of the Ministry most familiar with this type of legislation was sought- the ultimate decision was that of the Senior Management Committee of the Ministry (which included the respondent and the Deputy Minister)

M2 - the Deputy Minister made it a corporate issue and has been its patron; no obvious happy home - trouble with guidance - has moved several times; respondent little touched by the creation but on the committees which approved the establishment; the coordinator's position blighted the career of the first incumbent - seen as shocking that the Minister's "house book" or labour matters can be released; no one wanted to be responsible for implementation - heavy duty concern to "do it right" - cultural disruption

M3 - Deputy Minister; the structure was put in place first and the incumbent, and then the exact parameters of the role were worked out

M4 - the central agencies [Management Board] were in touch re: the impact of the new legislation; the matter routinely came to the respondent's attention; incumbent recruited incumbent coordinator and that coordinator, working with the appropriate Assistant Deputy Minister, started the process; the process was formalized through policy committee briefings; implementation not entirely smooth - first effort said to be too directive by Assistant Deputies, needed information sessions and softening of plans to empower Assistant Deputies a bit

C2 - not alot of people to delegate to!; felt requests might be personnel, therefore logical; incumbent a permanent person on board early

C3 - unilateral decisions on implementation lay with the respondent; wanted a simplified system, without a big bureaucracy - a central function not efficient enough for a crown (although perhaps suitable for ministries which are themselves centralized); this crown's business not centralized and yet there would be too much diversification if the implementation followed the organization's functional lines; the position has changed over the years: there was first an automous office, then the position was combined with another related function - the link was practical not theoretical - the lone office was not large enough on its own for efficiency (the background sought in the new "head" was in the other function, the fact that the incumbent had FOI knowledge was seen as purely fortuitous

-once you had decided to create this position, how did you decide upon the selection of the incumbent? were you involved personally? what particular

strengths do you feel the incumbent brings to the position? are there any weaknesses?

M1 - the office was first located in the section of the Ministry with the experience of similar legislation and the office continues to be staffed by people from this section who have experience and skills which make them credible with their peers throughout the Ministry and thus make them effective in securing compliance with the legislation. However, after several years, the decision was made to take the office itself out of that section of the Ministry and to make the Coordinator an individual with broader Ministry experience so that the office was seen to be relevant Ministry-wide

M2 - strong negotiating skills (3-way negotiation: supplier of information; Commissioner's office; and requestor; accommodations possible (clear difficulties); personal skills

M3 - selection done by senior manager (respondent's subordinate)

M4 - experience in same start up role in another Ministry; considerable insight into process and why it was important and could be there; ability to work with those outside the Ministry evident through volunteer community activities; public and respondent well-served - coordinator began by negotiating settlements favourable to the requestors (a difficult accomplishment in the early days of the Act)

C2 - role in this position not really in consciousness; trained after delegation made; no thought to improvement - aware of right to know and need to carry on business

C3 - first incumbent part of the change - probably the job would have been easier if the position had been at the higher level now accorded the incumbent of the new combined position- rank is very important in this organization

-do you interact directly with the coordinator? in what way? how often? what is the reporting structure?

M1 - there is regular, frequent interaction, though not through regularly scheduled meetings; there are regular written status reports (and indeed, the frequency of reports have been increased); interactions are of two types: (1) operations, which are not large or time-consuming; (2) issues - pre-screening of sensitive issues.

M3 - 1988-89 weekly/monthly reports - after that just the unusual (routine); now every 6 months or so (go through Assistant Deputy Minister only if there is a problem (- ADM sees the Commissioner's

report)

M4 - respondent signs off on all requests at a regular briefing session; discussion limited to the more awkward; really difficult referred to Policy Committee

C2 - involvement in this study; briefings for senior management (not a profile item)

C3 - weekly or bi-weekly, more often if no trust in the incumbent - if incumbent proves competent, then more scope given

-have you reserved decision-making for yourself in this area? in what respects? from whom do you take advice in making these decisions? -to whom have you delegated your responsibilities under the Act?

M1 - a few things such as Notices of Appeal go to the respondent

-how would you describe the role of coordinator?

M1 - a critical though not senior management position - its importance lies in its issues, not in its size. The incumbent should be fairly independent; should view the position as performing a service to protect the Ministry and the public; should see themselves as a source of advice and counsel, knowledge, and training "the expert on FOI in the Ministry"

M2 - at first more educative, now less so; now far more adjudicative with respect to executing requests; more likely to be consulted for pre-emptive decisions now (before release of publicity; how to compose files - sections for possible release severable from sections intended to be exempt from release); advisory function more in demand

M3 - the expert in process and administration; to identify problems; the consultant for staff; to interface with the corporate FOI staff; be alert for policy and political implications and precedent potential; knowledge of the legislation, skill in negotiation, facilitating, mediating and credibility with both Management Board and the Commissioner

M4 - central quarterback of the operation - deals with requester and deals with providers and seeks accomodation (this key player)

C2 - monitor focal point - information - watchdog; not sole responsibility for compliance - compliance a line management job; to be more knowledgeable

C3 - coordinator of the program, senior enough to talk to senior people in the organization and to understand the significance of the program; articulate, communicator who can sell the program to the

busy line people (the program needs selling, since it is seen as a "pain" by some); intelligent, with a good understanding of the corporation and its priorities; individual who will recognize the sensitivity of requests.

-how would you describe your own role in this legislation?

M2 - head; signing authority delegated from Minister; role potentially awkward since had line responsibility for files containing information [as well as FOI supervisory role] - possible conflict - aware of similar conflicts arising in American context - here no actual conflict developed, nor has any conflict developed for Legal Branch

M3 - semi-responsible, particularly early on, in difficult or precedent setting requests

M4 - General Manager's office - major restructuring, if required, would be his - routine, except where difficult

C2 - ultimate responsibility for keeping up to date and in compliance

-what has been your background with this legislation? when did you first hear about it? through whom? have you had preparation or information about it? in that form? from whom?

M1 - from proposals in 1986 (when then in another capacity); seminars, videos, Manual in respondent's office, Management Board or own people; through the Coordinator day to day in the files.

M2 - 1976 corporate policy - involvement with Deputy Minister directly - passive involvement, not a dominating issue, because of the scope of incumbent's other roles

M3 - just at start up

M4 - only through media before; then in Deputy Ministers' Council (several reps from Management Board of Cabinet); also in meeting with Linden

C2 - previous management experience outside the organization had created awareness of the legislation

C3 - involved in the hearings leading up to the Act - no internal training

-has the Act had the impact that you expected on your organization? what kind of impact did you expect? what kind has happened?

M1 - Not really - the public was not knowledgeable, at least at the start, so the anticipated demand did not materialize, at least until this year (2 more staff added); awareness now and volume up - the tight time limits are known throughout the organization - central review now less impact

M2 - amount and areas of requests anticipated in the early days less troublesome than expected; expected personal information requests which did not materialize; did not expect the growth in general requests which has resulted from the development of careers in accessing information under the legislation and the interest groups; the system adjusts - reports are now written anticipating release to the media (tighter, less fulsome writing); the office of the coordinator was originally physically located near many of the Ministry's line records, then moved as it became apparent the requests were at the [head office] corporate policy level; FOI has come to be regarded as 100 times more important in some [policy] areas than was anticipated

M3 - no radical change; dispersed staff in Ministry - putting together a file is time-consuming

M4 - surprise - one area of request expected and another the overwhelming target and yet not expected (information gleaned used in certain types of completely unrelated disputes as ammunition between the parties); no expectation of the "professional FOI requestor"

C2 - Yes, they had had no expectation of any kind of major impact; the organization deals with a lot of proprietary information and couldn't be in business if they violated the privacy of business plans - but no problem; information provision is part of the mandate of the organization - hesitate on release only if potential business aspect

C3 - anticipated an impact on the way they did business, had read about the situation in the United States and had therefore expected action on the commercial side - also experienced impact on the policy side (public interest groups taking advantage) - instead - not as much overall impact as expected - public interest groups not sophisticated in its use (no requests in advance) - the majority have been personal information requests (often prompted by labour relations - therefore not that much impact (no information sense at respondent's level) - rare requests from competitors) perhaps structure of business different in Ontario from U.S.) - not extensive knowledge of the Act in the legal community

-if a problem came up regarding this legislation, to whom in your organization

would you turn?

M1 - would look to Coordinator to bring forward options; people inside and outside the organization look to the Coordinator; there is always also 1 lawyer from Legal Services involved with the legislation whom the Coordinator would contact before bringing the options to the respondent

M2 - permanent or semi-permanent legal counsel or the Commissioner's office [the then deputies] - the approaches first made through the coordinator, not the respondent

M4 - coordinator and legal counsel

C2 - initially to the coordinator and then to their legal counsel, in the first instance an outside private law firm

C3 - labour lawyer on staff with expertise in FOI from previous FOI requests in the organization

-to whom outside your organization?

-do you know anyone at the Information and Privacy Secretariat of the Management Board of Cabinet? who? officially or unofficially? have you dealt directly with that office with respect to this legislation? under what circumstances?

M1 - Frank White

M3 - Frank White (did briefing of senior people); Lora Metrick

M4 - only through presentation at Deputy Minister's council

C2 - Not officially, but informally

C3 - Frank White - interview with respect to 3 year review

-do you know anyone at the Office of the Information and Privacy Commissioner? who? officially or unofficially? have you dealt directly with that office with respect to this legislation? under what circumstances?

M1 - Sydney Linden through other avenues; now little contact - work within the system

M2 - Respondent went personally to discuss legislative policy with Commissioner's staff (with coordinator)

M4 - Syd Linden, on other issues

C3 - initial meetings with the Commissioner - Tom Wright when he was chief counsel at first case and initial impacts

-how has this legislation been implemented in your organization?

M3 - not involved, not my job, see coordinator

M4 - office most directly concerned with issue on hand would come to briefing; direct access to Coordinator - no system of "specialists" in each unit (Ministry too small) ; some systemic responses - forms redesigned in consultation with coordinator to preserve privacy and facilitate easy release of material
OK to go

C2 - "we" read the legislation and guidelines and had one session for senior management; may have had a session for all staff (unsure)

-what has been your contact with others in your organization regarding this legislation, other than the coordinator?

M1 - not a lot - some talk at Senior Management Committee, etc.

M2 - as coordinators office has matured, decreasing frequency - often does "litmus tests", especially with regard to "negative cases" - better for respondent since coordinator wants to preserve sympathetic bond with line personnel

M4 - Assistant Deputy Ministers initially; whole management group each week - FOI problems would come up in a number

C2- only with the V.P. involved in the one request

-what training do you consider the most useful for your organization with

respect to this legislation? have they had it? what barriers are there to training?

M1 - general knowledge - maybe they have that; publicity on the municipal bill increased interest; still a need for training (not enough time in the coordinator's office with the tight timing of requests and appeals - people were added for training and were instead absorbed in just meeting 30 day deadlines (still deadlines often missed))

M2 - sensitive cases produce a flurry; instinct now - most couldn't pass a test but are sensitive to the issue - there are pockets of sophistication - few places are unaware; couldn't say more wouldn't be better ever but steps are constantly being taken (memos designed with automatic warnings)

M3 - 1988-89 training, don't know if repeat - no grumbling, orientation includes it - 100% coverage - expect 1 or 2 experts in each department

M4 - executive of ministry - through briefing own people; also coordinator's workshops in branches

C2 - briefing session; coordinator could benefit from a training course by the Commissioner's office in more detail

-what percentage of your time is spent on the requirements imposed on your organization by this particular piece of legislation?

M1 - 5%

M4 - initially 5% in first few months; routine item now 1/2 to 1 hour every two weeks now ave.

C3 - 2% maybe

-what are the strengths of your organization's response to this legislation?

M1 - kept out of trouble; met requirements basically [see time limit problem above]; not criticized by Commissioner; success on appeals

M2 - no basis for comparison; on 1st principles - no news is good news; not having a lot of trouble with the Commissioner; not so much groaning in the operational areas now; more anticipatory (sometimes don't keep the information the way it is asked for) ; part of the plumbing - not intrusive;

Ministry as a culture more ready to see information distinctions (respect for privacy etc.) - pervading culture enough to respect implementation

M4 - the legislation is understood and not responded to defensively - requestors are contacted; good system designed

C3 - there are checks and balances in the system to recognize the sensitivity of requests: (1) there is a sign off by the top line authority and then there is (2) a sign off by the respondent; the respondent also receives a monthly computer print-out of all requests and their status; very lean, efficient, as non-bureaucratic as you can get (size of office small given the size of the organization; first coordinator on the leading edge in province during the setting up; computerization of the office achieved under new combined incumbent - this organization's idea to centralize [the function in the role of a coordinator])

-how would you rate the impact of this legislation on your organization?

M1 - Not major; like other things needs awareness and response; operational managers probably aware - comes up often in their areas; another administrative process

M4 - one positive, a quirky practice had developed in one adjudicative function which involved splitting applicants into convenient pools alphabetically for administration (but resulting in splitting them into pools for entitlement as well); the unintended result was picked up when responding to an FOI request and corrected; within one year, no one casual about requests from public - people understand the FOI potential in public requests; if there is doubt at the policy level, the matter is referred to the Coordinator for input

C2 - very low, no reason for increase in level of activity

-how would you rate the effectiveness of your coordinator's efforts? what barriers and problems does he or she face? are they soluable?

M3 - no insoluable problems - keep on top of new issues, represents the knowledge of the Ministry - negotiate with Ministry experts holding the information who feel the pressures of "real issues", sometimes hard to get cooperation.

M4 - effective; people stretched - some requests seem frivolous - the fishers, selling to the media - a media class told to send in requests (costs incredible, renegotiated with instructor when discovered)

C2 - adequate - no experience (not a priority); no changes contemplated unless indication of need

-how would you describe the status of your coordinator in your organization?

M1 - from the perspective of a field person, another administrative office, "head office"

M2 - "cross to bear"; any post with statutory authority is more immune to where it sits in the organization (e.g. auditor); coming to a better organizational fit with most recent portfolio move

M3 - [only in terms of line position] -reports to Director

M4 - "nice guy" to "pain" - respect because leading responsibility for implementing legislation governing their ministry - priority access to people

C2 - good credibility, trust because of primary role (good match for role as coordinator)

C3 - current combined incumbent has a lower profile than predecessor; predecessor got to know the top executives during the initial set-up phase

What do you see as the future for the organization in terms of this Act?

M3 - continued pressure to provide information - more through own releases than FOI - therefore, through FOI, no change, no new demand, information through other channels from the Ministry planned

M4 - steady state, systemic improvements may decrease requests in some areas; role of coordinator as watchdog must continue but coordinator's role may become more clerical and therefore a professional may not be needed eventually (on job training may be sufficient) but there is a requirement for some status to ensure priority and timeliness in line compliance; there is also an important role in helping subordinate agencies involved with this or similar legislation

C3 - no change

-what do you think this legislation was trying to do?

M3 - growing sense in the public of wanting to know, to be involved, to be treated like adults - to debate the government and community groups' perceptions of public interest

C2 - create balance between rights of people to know in public domain and balance of protection of personal and proprietary information

C3 - at the inception of the Act made representations that Crowns should not be included - that Crowns should be aligned with the business community and that much of their information would be commercially sensitive; that this particular crown was involved extensively with federal and other provincial information and should be exempt; that there was no sound basis for the inclusion of crowns in the legislation since they were not then secretive (not like government ministries at that time) since

nothing was held back from the public except broad commercial material and Board matters. - obviously unsuccessful

-is it succeeding?

M3 - yes; a legitimate way to discipline the system - justify your actions - be aware of release in decision-making

C2- no data to the contrary but no data in support - no real sense one way or the other

-what changes would you like to see in the legislation?

M1 - time frames unrealistic; too much power in the office of the Commissioner; more emphasis on the privacy aspect - lean heavily on release, perhaps at the expense of privacy

M2 - notion of whether intended for business purpose - trade association, doctoral student, business client - harnesses consultants in government at below market rates! - on the other hand, personal requests have no economic value to the requestor and should therefore be completely free; cost problem - in theory, not required to construct file for release purposes, but in practice alot of work and disruption required to reconstruct files (and the request is "run by the requestor" in terms of time); the time limits take no account of the corporate year - no leniency for year end, or Christmas;

M4 - eliminate abuses, but problem defining abusers - resources finite, therefore rights and freedoms can't be absolute and without limit; if the information requested is then sold, then the public is subsidizing a business; fishing expeditions a problem - no one should look at the legislation as a way of saving legwork (the cultural change inside needs to happen outside); no way of knowing about extension of the Act to other related agencies (see no difficulty in dealing with subordinate agencies both within and beyond the legislation)

C2 - none

C3 - an exception for frivolous requests; an exception for all labour relations records

-have you taken any steps toward those changes?

M4 - submission based on experiences made to Management Board as part of 3 year review process

what do you think are its strengths and weaknesses? -why

-what do you think is its significance or importance?

-how well do you think your organization has responded to it? Where are there problem areas? Can solutions be found?

M3 - acceptable job by measure of complaints and problems

-do you think there is a general awareness in your organization of the requirements of this legislation?

M3 - Yes, at least at executive, managerial level, how far down respondent not sure; work on awareness of privacy of one individual in files of other individuals, sense that good awareness of third party rights (sensitivity in line activities to rights of competitors)

M4 - yes, by a year or so

APPENDIX 11A: The Employee Questionnaire - English
Information and Communication Survey

1. Where do you spend your workday?

- (a)-at my workstation on the telephone %
 - (b)-at my workstation using my computer..... %
 - (c)-at my workstation reading or working without my computer..... %
 - (d)-in my organization but away from my own workstation %
 - (e)-outside my organization (for example: visiting business contacts, colleagues, on external training).
 Please specify type(s) of outside activities: %
-
- TOTAL: 100% of your workday**

2. (a) What percentage of your work contacts are with:

- others in your organization?..... %
 - people in other government organizations?
 - federal %
 - provincial %
 - municipal %
 - people in private sector corporations?
 - in Ontario %
 - elsewhere %
 - people in service and/or charitable agencies? %
 - individual members of the public? %
 - the media? %
-
- TOTAL: 100% of your contacts with other people**

(b) Your job involves dealing directly with people _____ % of your work day.

3. How do you communicate with people? (Please try to estimate percentages as demonstrated in the first example.)

	FACE TO FACE	TELEPHONE	LETTER	MEMO	ELECTRONIC MAIL	OTHER	TOTAL
<i>Example: Your extended family.....</i>	45%	45%	5%	5%	0%	0%	100%
Others in your organization	---	---	---	---	---	---	100%
People in other government organizations							
federal	---	---	---	---	---	---	100%
provincial	---	---	---	---	---	---	100%
municipal	---	---	---	---	---	---	100%
People in private sector corporations							
in Ontario	---	---	---	---	---	---	100%
elsewhere	---	---	---	---	---	---	100%
People in service and/or charitable agencies	---	---	---	---	---	---	100%
Individual members of the public	---	---	---	---	---	---	100%
The media	---	---	---	---	---	---	100%

4. How long have you been in your present position ? _____ years.

5. Are you aware of the Freedom of Information and Protection of Privacy Act? (Please put an "X" beside Yes or No)
 ___ Yes ___ No

If No, please skip to question 20 on the back page of this questionnaire.

If Yes, please continue to the next question, question 6.

6. Which of the following statements do you believe is correct? (Only choose one, mark your answer with an "X")

- ___ (a) The Freedom of Information and Protection of Privacy Act was created by the federal government. There is no Ontario legislation governing access to information and privacy.
- ___ (b) The Freedom of Information and Protection of Privacy Act was created by the Ontario government. There is no federal legislation governing access to information and protection of privacy.
- ___ (c) The Freedom of Information and Protection of Privacy Act was created by the federal government. There is also Ontario legislation governing access to information and privacy.
- ___ (d) The Freedom of Information and Protection of Privacy Act was created by the Ontario government. There is also federal legislation governing access to information and privacy.
- ___ (e) I am not sure which statement is correct.

7. Can the Freedom of Information and Protection of Privacy Act affect your work? (Put an "X" beside Yes or No)
 Yes No

If No, is this because ... (please choose one):

- (a) it has not yet become law.
 (b) although it has become law, I do not work in an organization which is affected by this law.
 (c) although it has become law and does affect my organization, I do not work in a position which is affected by this law.
 (d) other: Please specify _____

Please skip to Question 10 on this page

If Yes, do you think that it ... (please choose one)

- (a) is new this year?
 (b) is about 3 years old?
 (c) is about 5 years old?
 (d) is about 10 years old?
 (e) was passed more than 10 years ago?

Please continue to the next question, Question 8

8. The position you hold could involve you with the Freedom of Information and Protection of Privacy Act (If not, you should move to question 10).

(a) To your knowledge, has work you have done in the past year been the subject of an access or privacy request or request for correction under the Freedom of Information and Protection of Privacy Act?

Yes No

If Yes, how many? _____

(b) Have you actually done work which could be the subject of a request under this Act in the past year?

never once occasionally often daily

(c) Have you made any changes in the way you do your job since you have heard about the Freedom of Information and Protection of Privacy Act?

Yes No

If yes, what changes have you made? _____

9. Next year, would you expect that your job will involve you with this Act: (please select one)

more about the same less unsure

10. Have you received information about this statute from ... (please choose as many as apply)

- (a) your line supervisor?
 (b) the Freedom of Information and Protection of Privacy Coordinator in your organization (or his or her office)?
 (c) an individual in your area of the organization responsible for coordinating with the office of the Freedom of Information and Privacy Coordinator?
 (d) your union or professional association?
 (e) external groups to which you belong? (please specify _____)
 (f) the press or media?
 (which newspapers/magazines/ shows or other sources? _____)
 (g) from other sources? (please specify _____)

11. Have you attended ... (please choose as many as apply)

- (a) meetings devoted to discussion of this legislation? If so, how many? _____
 (b) workshops about this legislation within your organization? If so, how many days? _____
 (c) workshops about this legislation given outside your organization? If so, how many days? _____
 (d) other sessions about this legislation? Please specify _____

12. Please choose one of the following statements and place an "X" beside it:

- (a) I have my own copy of the Freedom of Information and Protection of Privacy Act.
- (b) I do not have my own copy of the Act but there is a copy near my workstation.
- (c) There is no copy of the Act in my office, but I know where there is one on my floor.
- (d) There is no copy of the Act on my floor but I know that I could get a copy within my organization.
- (e) Although I don't know where to find a copy in my organization, I could get a copy from (please specify).....
- (f) I do not know where I could get a copy of this Act.

13. Have you ... (please choose as many as apply):

- read memos about this legislation?
How many? _____ Average length _____ pages.
Prepared by _____
Easily understandable? Yes _____ No _____
- read newsletters discussing this legislation?
How many? _____ Average length _____ pages.
Prepared by _____
Easily understandable? Yes _____ No _____
- read bulletin board notices about this legislation?
How many? _____ Average length _____ pages.
Prepared by _____
Easily understandable? Yes _____ No _____
- read procedure manuals about this legislation?
How many? _____ Average length _____ pages.
Prepared by _____
Easily understandable? Yes _____ No _____
- read orientation materials about this legislation?
How many? _____ Average length _____ pages.
Prepared by _____
Easily understandable? Yes _____ No _____
- seen videos about this legislation?
How many? _____ Average length _____ minutes.
Prepared by _____
Easily understandable? Yes _____ No _____
- read or seen other materials about this legislation?
How many? _____ Average length _____ pages.
Prepared by _____
Easily understandable? Yes _____ No _____

14. (a) If you were asked a question about the Freedom of Information and Protection of Privacy Act which you could not answer, where would you refer the person asking? _____

(b) If you yourself needed to know about this Act, where would you go for information? _____

15. Have you used the Freedom of Information and Protection of Privacy Act to gain access to information about yourself? (Please choose as many as apply)

- (a) Never.
- (b) From your organization. How many times? _____
- (c) From another provincial government body. How many times? _____
- (d) From a municipal body. How many times? _____
- (e) From a federal body. How many times? _____

16. Have you used this legislation to find out something other than information about yourself? (Please choose as many as apply)

- (a) Never.
- (b) From my organization. How many times? _____
- (c) From another provincial government body. How many times? _____
- (d) From a municipal body. How many times? _____
- (e) From a federal body. How many times? _____

17. Do you have any comments about how this legislation is "working" in your organization or could be made to work better?

18. Would you like to learn more about this legislation? (Please choose as many as apply)

- (a) Yes, on my own time.
 (b) Yes, during work hours.
 (c) Yes, because my job demands it.
 (d) Yes, because although my job does not demand it, I am personally very interested.
 (e) No, because my job is already very complex.
 (f) No, because the Act is not relevant to my job.
 (g) No, because I have no time during work hours.
 (h) No, because I have no time outside work.
 (i) No, because the legislation does not interest me.
 (j) No, because I know enough about this legislation.

19. The Freedom of Information and Protection of Privacy Act can be used by anyone to gain access to information held by certain organizations. It protects everyone's privacy in the information held by these organizations. Which employees in which organizations are affected by the need to comply with this legislation?

(Please choose as many as apply)

- (a) Some employees of your organization. Others are not because _____
 (b) All employees of your organization.
 (c) Some of your contacts in provincial government. Others are not because _____
 (d) All of your contacts in provincial government.
 (e) At least some of your contacts in federal government. Others are not because _____
 (f) At least some of your contacts in municipal government.
 (g) Some of your contacts in private sector organizations. Others are not because _____
 (h) All of your contacts in private sector organizations.

20. Assume you need to know more about legislation affecting how you communicate with others in your job and how you handle information about people in your work.

(a) Which of the following would you expect to give you the best information? (Please, number your choices in order, giving the number 1 to the Best source, 2 to the second best, etc.)

- (a) Your line supervisor?
 (b) The person in your organization designated to look after such legislation (the Freedom of Information and Privacy Coordinator) or that office in your organization?
 (c) An individual in your area of the organization responsible for coordinating with the office of the Freedom of Information and Privacy Coordinator in your organization (the Specialist or Contact)?
 (d) Your union or professional association?
 (e) External groups to which you belong? (please specify _____)
 (f) The press or media? (which newspapers/magazines/ shows or other sources? _____)
 (g) Other sources? Please specify _____

(b) In what form would you prefer to receive the information? (Please, number your choices in order, giving the number 1 to the best source, 2 to the second best, etc.)

- (a) Meetings.
 (b) Workshops within your organization.
 (c) Workshops given outside your organization.
 (d) Other sessions. Please specify _____
 (e) Memos.
 (f) Newsletters.
 (g) Bulletin board notices.
 (h) Procedure manuals.
 (i) Orientation materials.
 (j) Videos.
 (k) Other materials. Please specify _____

21. If a friend who is unconnected with your organization asked you about your work, how would you describe what you do in your job in a couple of sentences (without revealing your exact title or position)? _____

22. Is your position classified as ...

- (a) a union position?
 (b) a line management/professional position?
 (c) a senior management position?
 (d) an executive position?
 (e) other. Please specify _____

Thank you very much for taking the time to complete this questionnaire. Please slip it into the enclosed stamped, self-addressed envelope and drop it in the mail.

APPENDIX 11B: The Employee Questionnaire - French
Etude sur l'information et sur la communication

1. Où passez-vous votre journée de travail?

- à mon poste de travail au téléphone..... %
- à mon poste de travail utilisant mon ordinateur..... %
- à mon poste de travail à lire ou à travailler sans mon ordinateur..... %
- dans mon organisme mais pas à mon poste de travail..... %
- en dehors de mon organisme (par exemple: à visiter des contacts d'affaires, des collègues, ou en entraînement à l'extérieur)..... %

Veuillez expliquer vos activités à l'extérieur:

TOTAL -----
 100% de la journée de travail

2.(a) Quel pourcentage de vos contacts de travail sont avec:

- d'autres personnes dans votre organisme?..... %
- des personnes d'autres organismes gouvernementaux?
 - fédéraux..... %
 - provinciaux..... %
 - municipaux..... %
- des personnes appartenant à des sociétés privées?
 - en Ontario..... %
 - autre part..... %
- des personnes travaillant dans des services médicaux, sociaux, etc. ou des organismes charitables?... %
- des individus du public?..... %
- les médias?..... %

TOTALE -----
 100% de vos contacts avec d'autres personnes

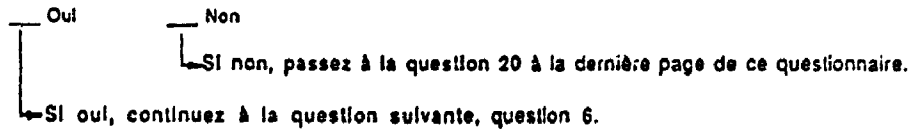
(b) Dans votre travail, vous avez affaire à communiquer avec des individus pendant _____% de votre journée de travail.

3. Comment communiquez-vous avec les gens (essayez d'estimer des pourcentages tel qu'indiqué dans la première question.)

	<u>Face à face</u>	<u>Téléphone</u>	<u>Lettre</u>	<u>Mémo</u>	<u>Courrier électronique</u>	<u>Autre</u>	<u>Total</u>
Par exemple: votre famille.....	40%	40%	5%	5%	0%	0%	100%
D'autres personnes dans votre organisme....	_____	_____	_____	_____	_____	_____	100%
Des personnes d'autres organismes gouvernementaux:							
-fédéraux.....	_____	_____	_____	_____	_____	_____	100%
-provinciaux.....	_____	_____	_____	_____	_____	_____	100%
-municipaux.....	_____	_____	_____	_____	_____	_____	100%
Des personnes appartenant à des sociétés privées:							
-en Ontario.....	_____	_____	_____	_____	_____	_____	100%
-autre part.....	_____	_____	_____	_____	_____	_____	100%

4. Depuis combien de temps occupez-vous votre position actuelle? _____ années.

5. Avez-vous entendu parler de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée? (Choisissez Oui ou Non en marquant la lettre "X".)



6. Laquelle des déclarations suivantes vous paraît la plus exacte? Choisissez une des possibilités en marquant la lettre "X".

- ___ (a) La Loi de 1987 sur l'accès à l'information et la protection de la vie privée a été créée par le gouvernement fédéral. Il n'y a pas de législation en Ontario couvrant cette matière.
- ___ (b) La Loi de 1987 sur l'accès à l'information et la protection de la vie privée a été créée par le gouvernement de l'Ontario. Il n'y a pas de législation fédérale couvrant cette matière.
- ___ (c) La Loi de 1987 sur l'accès à l'information et la protection de la vie privée a été créée par le gouvernement fédéral. Il y a aussi de la législation en Ontario couvrant cette matière.
- ___ (d) La Loi de 1987 sur l'accès à l'information et la protection de la vie privée a été créée par le gouvernement d'Ontario. Il y a aussi de la législation fédérale couvrant cette matière.
- ___ (e) Je ne sais pas quelle déclaration est correcte.

7. La Loi de 1987 sur l'accès à l'information et la protection de la vie privée, peut-elle affecter votre travail? (Veuillez enmarquant Oui ou Non.)

Oui Non

↓

Si Non, c'est par ce que... (choisissez une réponse)

___ (a) elle n'a pas encore force de loi

___ (b) bien qu'elle ait form de loi, je ne travaille pas dans un organisme affecté par cette loi

___ (c) bien qu'elle ait force de loi et affecte mon organisme, je ne travaille pas dans une position qui est affectée par cette loi.

___ (d) autre. Veuillez préciser _____

Passez à la question 10.

Si Oui, pensez-vous qu'elle... (choisissez une réponse)

___ (a) est entrée en vigueur cette année

___ (b) est entrée en vigueur il y a environ 3 ans

___ (c) est entrée en vigueur il y a environ 5 ans

___ (d) est entrée en vigueur il y a environ 10 ans

___ (e) est entrée en vigueur il y a plus de 10 ans

Passez à la question suivante, question 8.

8. Dans la position que vous occupez, vous pourriez avoir à faire avec la Loi de 1987 sur l'accès à l'information et la protection de la vie privée (sinon, passez à la question 10).
- (a) A votre connaissance, le travail que vous avez fait l'année dernière a-t-il été le sujet d'une demande d'accès, une demande d'accès à des renseignements personnels ou une demande de rectification des renseignements personnels tel que prévu par la Loi de 1987 sur l'accès à l'information et la protection de la vie privée?
- ___ Oui ___ Non
- Si oui, combien? _____
- (b) Avez-vous fait du travail qui pourrait être le sujet d'une demande aux termes de cette loi l'année dernière? (Encerclez une réponse.)
- jamais une fois de temps à autre souvent quotidiennement
- (c) Avez-vous apporté des changements à la façon dont vous exécutez votre travail depuis que vous avez appris l'existence de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée?
- ___ Oui ___ Non
- Si oui, quels changements avez-vous effectués? _____
- _____
- _____
9. L'année prochaine, vous attendez-vous à ce que votre travail soit affecté par cette Loi? (Choisissez une réponse.)
- ___ davantage ___ à peu près comme avant ___ moins ___ pas sûr
10. Avez-vous reçu des renseignements à propos de cette législation...(choisissez toutes les réponses applicables)
- ___ (a) de votre surveillant immédiat?
- ___ (b) du Coordinateur de la Loi dans votre organisme (ou de son bureau)?
- ___ (c) d'une personne de votre secteur de l'organisme qui est responsable pour la liaison avec le Coordinateur de la Loi?
- ___ (d) de votre syndicat ou association professionnelle?
- ___ (e) de groupes à l'extérieur de votre travail dont vous êtes membres? (Décrivez-les _____)
- ___ (f) de la presse ou des médias? (quels journaux, revues, spectacles ou autres sources? _____)
- ___ (g) d'autres sources (décrivez-les _____)
11. Avez-vous assisté... (choisissez toutes les réponses applicables)
- ___ (a) à les réunions consacrées à la discussion de cette Loi? Si oui, à combien? _____
- ___ (b) à des ateliers concernant cette Loi des votre organisme? Si oui, pendant combien de jours au total? _____
- ___ (c) à des ateliers concernant cette Loi en dehors de votre organisme? Si oui, pendant combien de jours au total? _____
- ___ (d) à d'autres sessions relatives à cette Loi? Veuillez les décrire _____

12. Veuillez choisir une des déclarations suivantes:

- (a) J'ai ma copie personnelle de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée.
 (b) Je n'ai pas de copie personnelle de la Loi, mais il y en a une près de mon poste de travail.
 (c) Il n'y a pas de copie de la Loi dans mon bureau, mais je sais où se trouve une copie de la Loi au même étage.
 (d) Il n'y a pas de copie de la Loi à mon étage mais je sais que je pourrais en obtenir une dans mon organisme.
 (e) Bien que je ne sache pas où trouver une copie dans mon organisme, je pourrais en obtenir une de _____ (spécifiez)
 (f) Je ne sais pas où je pourrais obtenir une copie de cette Loi.

13. Avez-vous... (choisissez autant de réponses qu'applicables)

- lu des mémoranda au sujet de cette Loi?
 Combien? _____ Longueur moyenne _____ pages.
 Préparés par _____
 Faciles à comprendre? Oui Non
- lu des bulletins qui discutent de cette législation?
 Combien? _____ Longueur moyenne _____ pages.
 Préparés par _____
 Faciles à comprendre? Oui Non
- lu des avis au tableau d'affichage au sujet de cette législation?
 Combien? _____ Longueur moyenne _____ pages.
 Préparés par _____
 Faciles à comprendre? Oui Non
- lu des manuels de procédures au sujet de cette législation?
 Combien? _____ Longueur moyenne _____ pages.
 Préparés par _____
 Faciles à comprendre? Oui Non
- lu de la documentation d'orientation au sujet de cette législation.
 Combien? _____ Longueur moyenne _____ pages.
 Préparés par _____
 Faciles à comprendre? Oui Non
- vu des vidéos au sujet de cette législation?
 Combien? _____ Longueur moyenne _____ minutes.
 Préparés par _____
 Faciles à comprendre? Oui Non
- lu ou vu d'autres matériaux au sujet de cette législation?
 Combien? _____ Longueur moyenne _____ pages.
 Préparés par _____
 Faciles à comprendre? Oui Non

14. (a) Si quelqu'un vous posait une question concernant la Loi, à laquelle vous n'étiez pas capable de répondre, avec qui est-ce que vous mettriez cette personne en contact? _____

(b) Si vous-même, vous aviez besoin de renseignements concernant cette loi, à qui est-ce que vous vous adresseriez pour obtenir tels renseignements? _____

15. Vous êtes-vous servi de Loi de 1987 sur l'accès à l'information et la protection de la vie privée pour obtenir l'accès à des renseignements sur vous-même? (choisissez autant de réponses qu'applicables)

- (a) Jamais.
 (b) Au près de votre organisme. Combien de fois? _____
 (c) Au près d'un autre organisme du gouvernement provincial. Combien de fois? _____
 (d) D'un organisme municipal. Combien de fois? _____
 (e) D'un organisme fédéral. Combien de fois? _____

16. Vous êtes-vous servi de cette législation pour obtenir d'autres renseignements? (Choisissez autant de réponses qu'applicables.)

- (a) Jamais.
 (b) Au près de votre organisme. Combien de fois? _____
 (c) Au près d'un autre organisme du gouvernement provincial. Combien de fois? _____
 (d) D'un organisme municipal. Combien de fois? _____
 (e) D'un organisme fédéral. Combien de fois? _____

17. Avez-vous des remarques sur la façon dont cette législation "fonctionne" dans votre organisme ou sur comment elle pourrait mieux fonctionner?

18. Souhaiteriez-vous apprendre davantage au sujet de cette législation? (Choisissez toutes les réponses applicables.)
- (a) Oui, par moi-même pendant mon temps libre.
 - (b) Oui, pendant les heures de travail.
 - (c) Oui, parce que cela m'est nécessaire dans mon travail.
 - (d) Oui, parce que cela m'intéresse personnellement, quoi que cela ne me soit pas nécessaire dans mon travail.
 - (e) Non, parce que mon travail est déjà très complexe.
 - (f) Non, parce que la Loi n'a pas d'application dans mon travail.
 - (g) Non, parce que je n'ai pas le temps pendant les heures de travail.
 - (h) Non, parce que je n'ai pas le temps après le travail.
 - (i) Non, parce que la législation ne m'intéresse pas.
 - (j) Non, parce que je suis suffisamment au courant de cette législation.
19. Tout individu peut se prévaloir de la Loi pour obtenir l'accès à des renseignements détenus par certaines organismes et cette loi protège le droit de chacun à la vie privée quant à ces renseignements. Quels employés et quels organismes sont obligés de se conformer à cette législation. Choisissez toutes les réponses applicables:
- (a) Certaines employés de votre organisme.
 - (b) Tous les employés de votre organisme.
 - (c) Certains de vos contacts dans le gouvernement provincial.
 - (d) Tous vos contacts dans le gouvernement provincial.
 - (e) Au moins certains de vos contacts dans le gouvernement fédéral.
 - (f) Au moins certains de vos contacts dans un gouvernement municipal.
 - (g) Certains de vos contacts dans des organismes du secteur privé.
 - (h) Tous vos contacts dans des organismes du secteur privé.
20. Mettons que vous avez besoin de savoir davantage au sujet de toute législation concernant la façon dont vous communiquez avec d'autres personnes dans votre travail et dont vous traitez de l'information que vous avez à votre disposition concernant les personnes avec qui vous êtes en contact dans votre travail.
- (a) A votre avis, lesquelles des sources suivantes vous fourniraient la meilleure information? (Veuillez choisir toutes les réponses applicables, en les numérotant par ordre d'importance.)
- (a) votre surveillant immédiat?
 - (b) la personne désignée la Coordinatrice/le Coordinateur de l'accès à l'information et du droit à la vie privée ou le bureau désigné dans votre organisme pour s'occuper de cette législation?
 - (c) d'une personne dans votre secteur de l'organisme qui a la responsabilité de coordonner avec le bureau du Coordinateur... de votre organisme (le spécialiste ou le Contact)?
 - (d) de votre syndicat ou association professionnelle?
 - (e) d'autres groupes à l'extérieur dont vous êtes membre (veuillez préciser _____)
 - (f) de la presse ou des médias? (Quels journaux, revues, spectacles ou autres sources _____)
 - (g) d'autres sources? (Décrivez-les _____)
- (b) Par quels moyens préféreriez-vous recevoir ces renseignements (veuillez choisir toutes les réponses applicables, en les numérotant par ordre d'importance).
- (a) En réunion.
 - (b) Ateliers organisés à l'intérieur de votre organisme.
 - (c) Ateliers organisés à l'extérieur de votre organisme.
 - (d) Autres sessions. Veuillez préciser _____
 - (e) Mémoires.
 - (f) Bulletins.
 - (g) Avis aux panneaux d'affichage.
 - (h) Manuels de procédures.
 - (i) Documentation d'orientation.
 - (j) Vidéos.
 - (k) Autre documentation. Veuillez préciser _____
21. Comment est-ce que vous décririez ce que vous faites dans votre travail (dans quelques phrases et sans donner votre titre) à un ami (une amie) de l'extérieur de votre organisme? _____
-
22. Votre position comment est-elle classifiée?
- (a) position à l'intérieur d'un syndicat?
 - (b) position de surveillant ou position professionnelle?
 - (c) cadre?
 - (d) cadre supérieur?
 - (e) autre? Veuillez spécifier _____

Nous vous remercions infiniment d'avoir bien voulu remplir ce questionnaire. Veuillez la mettre dans l'enveloppe timbrée et adressée ci-jointe, et mettre celle-ci à la poste. Merci.

APPENDIX 12

The Draft Covering Letter

March 6, 1991.

Dear Madam or Sir:

I am writing to ask for your assistance in a study of information and communication patterns in The study is part of a larger study involving a number of other Ministries and crown corporations. The study is being done by Margaret Ann Wilkinson, a doctoral student at the University of Western Ontario. has agreed to cooperate with Ms. Wilkinson but the study is her own project, designed to fulfill the requirements for her Ph.D. degree. The enclosed questionnaire has been carefully designed and has been approved by the Ethics Review Committee of the School of Library and Information Science at the University of Western Ontario.

Every effort has been made to completely safeguard your anonymity when you participate in this study. Ms. Wilkinson is interested only in your responses, not your identity, and so we ask that you not put your name on the questionnaire. Ms. Wilkinson will not be informed of the identities of the employees in On the other hand, as you will notice, the questionnaire is to be returned directly through external mail to Ms. Wilkinson and will not be given access to the completed questionnaires.

In addition to contributing to original research about the Ontario government, it is my hope that the results from will provide us with data to support some practical initiatives within our own organization. Your response is important and I would encourage you to take 15 minutes to complete the questionnaire. If you have any questions or concerns about the study, please contact my office.

Le questionnaire est aussi disponible en français. Veuillez m'appeler à mon bureau.

At the conclusion of her research, Ms. Wilkinson will be providing me with aggregated results for and also comparative results from the other organizations. If you are interested in receiving a summary of the study results, please feel free to contact my office.

In order to provide timely results, Ms. Wilkinson would appreciate it if you would complete the questionnaire and return it to her in the envelope provided, by **Wednesday, March 20**.

On behalf of Ms. Wilkinson and, I would like to thank you for your cooperation in this most interesting study.

APPENDIX 13: The respondents' comments on the effect of the Act and suggestions for improvement

(1) How it is working:

(a) substantive comments

(i) *practically oriented*

- appears to be working smoothly
- appears to be working as intended
- no problems
- OK at this time
- changes not as pervasive as originally expected
- there is always room for improvement
- most often it is the "privacy" aspect which I would be involved with, regarding references
- in my organization no because we tend to be aware of legal procedures. However I found that when we need info from another provincial government department there was a great deal of confusion as to who was authorized to approve the request. There was a great deal of hesitation because no one wanted to or felt obligated to provide data of a general, not financial nature. This data request was limited to addresses.
- time frame for responding to FOI requests is short
- design of information systems do not currently adequately consider freedom of information [from a computer system analyst and designer]
- try to avoid using it formally
- minimal effect on my organization [from a manager of public relations]
- some excitement generated whenever a request is submitted
- since it has been in place, employees are much more aware of any information released to the public...- the public does not appear to understand the "restrictions" placed on our agency as a result of this legislation as is pertains to individual [client] files
- more often than not, [relatives are involved in the process] It can be difficult to explaining that only the [client] can have [the file] explained
- seems to be going well. Our [particular department section] does excellent sessions on keeping staff informed. I don't pay attention myself as I don't work in direct [public contact] areas any more.
- the legislation appears OK but the administration is a nightmare

(substantive comments on how it is working, continued)

- some requests are a considerable nuisance to fill. Information has been given inappropriately [e.g. ...]
- I think it creates alot of problems at [one location of the organization]
- I believe it has affected building security and has made it easier for individuals to gain access to our work area. This I do not see as a positive step.
- it's a pain as the coordinator is ignorant re: the privacy side & dictatorial to boot, so not likely to get much cooperation. For libraries it's just extra work and a hassle.
- I see no problem. Lots of information was previously kept that was unnecessary, irrelevant and unfair to an incumbent or to a person. Unless info is directly relevant to a situation, it should not be kept.

(ii) philosophically oriented

- too restrictive now - makes for a more secretive society - disagree totally with the Act - there are things one does which as far as I'm concerned is nobody's business
- to me this legislation can endanger someone [privacy] if I make a mistake in recording or in information ...
- not worth a damn
- seems to me to be a positive, valuable public service - democratic vehicle - study its functioning and look for problems to resolve
- it provides a clear and easy means for consultants to obtain info from government. Requests are extremely time consuming and labour intensive.
- pain in the neck
- legislation is strangely designed to make information more difficult to receive rather than easier i.e. the implications of the Act have to be considered in what used to be fairly routine dealings with the public
- I was involved in division-level coordination of responding to FOI request - there is a lot of time spent "responding" to request that is really counter-productive. Yes, it is working, but at what cost? Are there more efficient ways of handling FOI?
- procedure to get access to information is daunting
- too many people requesting confidential information under the Act which in fact breaches another person's privacy and right to confidential information that should remain so. I don't believe your statement in question 19 ["It protects everyone's privacy in the information held by these organizations"] is true.
- misused by the individuals of organizations requesting such access for leverage.
- believe it will be detrimental to developing cases for court [to enforce our legislation].

(b) training

- there is little or no information available
- needs some explanation
- not much information on the Act
- many people are not aware of this legislation, could be made to work better if people are given more knowledge about this Act
- more training is needed - more training follow-ups
- more training required for staff
- make employees more aware of it
- more information required
- a better understanding of the legislation speaking as an employee and as an individual living in Ontario
- more dissemination of information needed

(c) lack of experience

- haven't had to deal with it yet
- I have had no dealings with the actual processing of the application, so I am uncertain as to the effectiveness of the process
- As it is fairly new in operation I haven't heard much feedback on its effect yet
- never heard of it being used
- I have no knowledge of how or if it works in practice, as opposed to theory
- I have no idea how it is "working"
- our work will only now within the next year become more involved with it I presume?
- I have no idea how it's working except we have a standard confidentiality letter for clients if they choose to (ask to) use it
- we don't deal with sensitive information in my division and I don't seek it out

(2) Suggested Improvements:**(a) *In training:***

- it would be better to attend a seminar/meeting on this subject
- simple communication other than receipt of reams of paper would be a start
- a better, more formal understanding/ by a brief brochure to educate the ignorant
- la loi n'est pas bien expliquée, manque de renseignements clairs
- further training for awareness and proper application of knowledge gained
- clarification with individual work locations as to impact on employee's job requirements

(suggested improvements in training, continued)

- more info is needed to be sent to employees
- I think it needs further exposure - for instance by a WORKSHOP
- newsletters
- people should have "a quick index" to easily search and know about this legislation. What it applies to, who etc.. And procedures on how to handle a request.
- seminars should be given regularly and open to all to attend
- information session ASAP
- should inform all employees of the ramifications of the Act - protect confidential information
- I think employees should receive a clearer explanation as to the rights of this Act- whether it affects their jobs or not
would like to know how it could impact my organization and my job
it would be helpful to learn more about this legislation concerning its rationale and applications
- workshops; management should be informed of the effects of this legislation, not just the fact that it is legislation

(b) in principle

- scrap it. a special to people in jails and institutions
- better safeguards for [third parties supplying information] - innocent persons need not to worry, only [those in the wrong] abuse systems
- the person elected to be in charge of FOI requests should be one who is available most of the time & one who is familiar with administrative procedures
- people should use it more often
- there should be more 3rd party protection - the FOI office itself should be more accountable for what it does, when errors are made by the staff
- some of the information should not be accessible i.e. results of tests given during competition for promotion
- should not allow access [to enforcement information or mechanisms]

Appendix 14: Answers to question 8(c)(ii) "If yes, what changes have you made?"

Changes made:¹

(1) general remarks:

C1 -in the manner of recruiting personnel

C2 -more conscious of requirements under the Act

M1 -be more prudent and selective

-must be factual and available to prove

M2-keep Act at hand for reference

-established internal [method?] to monitor reviews and respond to requests

-procedures

M4-protection of privacy measures

-FOI has always been part of the job [1^{1/2} years]

(2) acquisition changes:

M1-if I have guaranteed confidentiality to any person I have to be careful how I record gained information¹

-quality of information I have access to has been greatly reduced - made conscious effort not to trust lawyers

-yes, more protection for person gathering the information requested⁶

-consult Freedom of Information liaison first in other department government information

M2-internal clients pass on to us what is suitable under the Act (i.e.privacy) so we don't have to make decisions on it or inquiries into it. However, we always keep our eyes open in case it slips by the clients or is questionable

¹Superscript numbers indicate that the same individual made two remarks, which have been entered appropriately under different headings, but are linked by the same superscript number.

(3) changes in record content and storage:

M1-ensure that personal opinions do not form part of any report unless absolutely necessary

- if I have guaranteed confidentiality to any person I have to be careful how I record gained information¹
- more accurate with information put in reports - not put some information in reports
- being more careful about correct and accurate documentation
- avoidance of opinionated statements
- any notes taken can be substantiated entirely by other material
- I am more aware of the potential access, therefore I am cautious to content of report and memo i.e. be able to support opinion with fact
- do not include names of peoples as much as before - confidential info written elsewhere
- no speculations or thoughts to be written, only facts
- during interviews when documenting answers
- reporting of investigations
- personal comments in my notes
- more careful what's put down on paper
- less information being retained⁵
- minutes of meetings, correspondence to protect privacy of individuals, less detail
- keep only that which is required by law and shows that I acted or made decision in a clear logic and defensible basis
- increased sensitivity of what documents contain in that they are subject to FOI requests
- keep better personal records

M2-careful documentation

- always [record] with the thought that a nasty lawyer and hostile jury are breathing down your neck
- [record] more carefully. Answers to pt. is very carefully thought of before stated
- ensuring better record keeping - knowledge of Act's requirements
- more cautious regarding information retained on file
- changes in documentation of some information

M3-eliminated personal comments in internal memos

- eliminated extraneous material from working files
- I ensure that I do not write anything that is personal or unprofessional while at work
- shredding documents²

M4-in the type of info placed in [] files³

- wording of letters; the processing of certain information
- reasons for decisions taken with respect to a particular issue are more clearly detailed
- have added a clause to all forms
- more cautious about what I commit to writing and how I write about issues
- greater attention to content of material to be placed on file
- greater care over nature of entries in files⁴
- more conscious of the information that is put into applicant's file i.e. written decisions, record of oral communication, delete any references to other files
- separate documents which require privacy protection (i.e. personal/confidential information) and keep them secure, locked

(4) dissemination changes:

M1-release of information

- more control or screening of the person requesting the information⁶
- more cautious in giving information to other agencies
- refer questions about release of information to others rather than release information independently
- provision of information to people requesting under this Act must be referred to FOI officer unless specific instructions/policy cover the situation
- more careful attention paid to release of info.⁵
- be more aware of stupid requests that can now be made

M2-[subjects] are informed to their right to have copies of data in their [files]

- before giving out information clarifying with the freedom of information and protection of privacy act officer
- in regards to giving out information over the telephone
- informed supervision - no info to be given out - to anyone
- FOI coordinator must approve "outside" request, (even other ministry)

M3-for any requests for [information specific to this organization], I ask them to send written request

- try to ensure that information requested is provided
- consult "FOI" person to clear any requests
- offer more information without a formal request
- with regards to handing out paychecks, it is now given in a sealed envelope
- defer all enquiries to the branch FOI officer
- all outgoing envelopes must be stamped confidential [from personnel]²

M4-in the type of information provided by phone³

- information not given as freely unless consent is given
- all requests for data are first screened by me before passing them on to subordinates
- check with the FOI officer before releasing information to public. Also have to prepare FOI report when sensitive information is released
- being more careful about what is said on phones to public
- not discussed any info. to persons other than [subject]. Requested authorization from individuals to discuss case particulars with another party
- made sure authorization for release of info obtained from 3rd parties⁴
- will not provide requested documentation unless a request in writing under FOI has been made
- ensure that I only give out info relative to a file to the actual individual, i.e. not his/her [relatives], etc.
- being more aware of what I say to callers
- I advise [interested parties, not the subject] that I can only give them general info
- do not give personal info over the phone

APPENDIX 15: Sources for information about the Act

Sources for own information need: (from question 41(b))	Places to send another for info (from question 14(a))
<i>Rank*</i>	<i>Rank*</i>
1 80 coordinator's office.....	1 89
2 50 supervisor or superior.....	2 50
3 17 office FOI specialist.....	3 18
4 16 the Act.....	11 1
5 11 a written source in the office	
6 10 library.....	9 3
10 office library.....	10 2
7 7 Commissioner's office.....	5 7
7 human resources department.....	5 7
8 6 "head office".....	9 3
6 legal branch.....	8 4
9 5 administration section.....	6 6
10 4 department concerned.....	4 11
11 3 government information line.....	10 2
12 2 Management Board of Cabinet.....	11 1
2 federal government information line.....	10 2
2 coordinator of another provincial organization	10 2
2 Ontario Government Bookstore.....	10 2
12 2 unknown.....	7 5
13 1 union office.....	11 1
1 another [unrelated] statute.....	11 1
1 M.P.	
1 Ministry of Justice.....	11 1
1 Ministry of Government Services	
1 university library	
1 public relations department.....	11 1
1 Ontario Legislative Assembly.....	10 2
1 press, media.....	11 1
1 organization head.....	10 2
1 blue pages.....	10 2
1 records manager	
1 lawyer	
1 public library.....	11 1
	7 5 research and respond
	10 2 public interest groups
	10 2 Queens Park
	11 1 government office
	11 1 "get book or phone govt."
	11 1 legal aid

* highlighted rank means interesting differences between the ranks in the two columns.

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