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Executive Summary

On December 5, 1996, Brett James, communications special assistant to Jim Wilson, Minister of Health, telephoned Jane Coutts, reporter for *The Globe and Mail*, to discuss a news conference scheduled for that morning by the Specialist Coalition of Ontario. At the time, physicians in the province were in negotiations with the Ministry on a number of financial issues. The Specialist Coalition is an organization representing specialist physicians; the Vice-Chair of the Coalition is Dr. William Hughes.

After leaving a message for Coutts to return his call, James watched the news conference attended by both Hughes and Coutts. Coutts later returned James' call, leaving a message for him. Around noon on December 5, James telephoned and spoke with Coutts. During the course of their conversation about the news conference and the questions Coutts had asked Hughes, James allegedly told Coutts that Hughes was the "No. 1 biller" to the Ontario Health Insurance Plan (OHIP).

On December 6, 1996, Coutts telephoned James and informed him that she intended to write about his comments of the previous day concerning Hughes. Later that day, James resigned from his position in the Minister's Office.

In *The Globe and Mail* on December 7, 1996, Coutts wrote that James had told her that Hughes, a Peterborough cardiologist, "was Ontario's 'No. 1' biller, charging more to OHIP than any other doctor in the province."

On December 9, 1996, "in light of concerns that a former member of his [the Minister's] staff may have had access to confidential physician billing information", the Information and Privacy Commissioner/Ontario (IPC) was asked by Cabinet Office to investigate, "this particular incident as well as the practices of the Health Insurance Division with respect to its disclosure of such information."

This report outlines the IPC's investigation of the privacy incident that took place on

December 5, 1996. A review of the general information practices of the Ministry's Health Insurance Division with respect to physicians' billing information is being completed separately. In light of the conclusions reached in the investigation, that review has no relevance to the incident investigated in this report.

The investigation was unable to determine conclusively whether, during the course of their conversation on December 5, James said to Coutts that Hughes was "the" top biller, or "one of the" top billers to OHIP.

The IPC's investigation did conclude that for purposes of the [Freedom of Information and Protection of Privacy Act](#) (the *Act*) either version of James' possible comments to Coutts constituted a disclosure of Hughes' personal information. The disclosure was of information related to Hughes' OHIP billings, which constitute "financial transactions in which the individual has been involved" and meet the requirements of paragraph (b) of the definition of "personal information" in [section 2\(1\)](#) of the *Act*.

No document was found to exist ranking identifiable physicians by their OHIP billing amounts. Nor was there any document which identified the top-billing physician in the province. In addition, none of the 18 persons interviewed during the investigation had any knowledge of the identity of the top-billing physician in the province.

The investigation concluded that James' disclosure of Hughes' personal information was not in compliance with the *Act*. The investigation concluded that Wilson had no prior knowledge or awareness of the information disclosed by James and that James made the disclosure on his own initiative.

A summary of the report's specific conclusions follows:

- James disclosed to Coutts either that Hughes was "the" top biller or "one of the" top billers to OHIP.
 - The information in question was "personal information" as defined in [section 2\(1\)](#) of the *Act*.
 - The disclosure of Hughes' personal information was not in compliance with [section 42](#) of the *Act*.
 - No document ranking identifiable physicians by their OHIP billing amounts was found to exist in the Ministry.
 - James did not have access to identifiable physician billing information.
 - James disclosed Hughes' personal information on his own initiative without the knowledge of, or at the request of, Wilson, other Minister's Office or Ministry staff.
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Introduction

The Privacy Incident

In an article which appeared in *The Globe and Mail* on Saturday, December 7, 1996, reporter Jane Coutts wrote that Brett James, communications special assistant to Jim Wilson, the Minister of Health, had told her that a Peterborough cardiologist, Dr. William Hughes, "was Ontario's 'No. 1' biller, charging more to OHIP than any other doctor in the province." (See [Appendix A](#))

At the time of *The Globe and Mail* article, physicians in the province were in the midst of negotiations with the Ministry of Health over a number of issues. Hughes was the Vice-Chair of the Specialist Coalition of Ontario, an organization representing physicians practising in a speciality area of medicine.

On Thursday, December 5, 1996, James had spoken to Coutts by telephone following a news conference that had been held by the Specialist Coalition and led by Hughes. During the course of this conversation, the disclosure of information allegedly occurred.



The Request to Investigate

On Friday, December 6, 1996, Coutts informed James by telephone of her intention to write about his comments regarding Hughes' billings. Later that day, James resigned from his position in the Minister's Office.¹

On Monday, December 9, 1996, "in light of concerns that a former member of his [the Minister's] staff may have had access to confidential physician billing information", I was asked by Cabinet Office to investigate "this particular incident as well as the practices of the Health Insurance Division with respect to its disclosure of such information." (See [Appendix B](#))

On that same day in the Legislature, Wilson announced that he was stepping aside as Minister of Health, pending the outcome of the investigation by the Information and Privacy Commissioner (IPC).



The Type of Information at Issue

The nature of the information alleged to have been disclosed by James involved physician billing information, not patient health information. The two types of information are quite distinct from each other. It should be noted that at no time during the course of this investigation was any patient health information accessed or reviewed.



Background

The Specialist Retention Initiative Program

The Ministry of Health (the Ministry) administers a program called the *Specialist Retention Initiative* (SRI) which is designed to encourage specialists to maintain services in areas of marked undersupply, and to discourage specialists providing rare sub-specialty services from leaving the province as a result of the government's threshold on OHIP billings. Specialists admitted to the SRI program are exempt from the set threshold or "cap" on their billings. For the fiscal year 1995-1996, the provincial threshold was \$404,000, and Hughes was one of the specialists admitted to the SRI program for that period.

All applicants to the SRI program must complete an application form and questionnaire, which contains a consent stating: "I further understand that by signing this agreement to participate in the SRI, my name will be included in the Ministry's list of specialists admitted to the SRI and that this list may be made available to the public." Specialists already admitted to the program prior to April 1, 1996 completed an Extension of Enrollment form which included the identical consent. (See [Appendix C](#)) In addition, upon being accepted into the program, specialists are required to sign an agreement containing the following provision: "The name of each specialist participating in the SRI shall be included in the Ministry's list of SRI specialists, and such list shall be made available to the public by the Ministry." (See [Appendix D](#)) For the period 1995-96, both the extension of enrollment and the agreement forms were signed by Hughes.



The Freedom of Information Request

In April 1996, the Ministry received a freedom of information request from a *Toronto Star* reporter for "the names and earnings of all doctors in Ontario exempt from the Ontario Health Insurance Plan \$400,000 cap." A list in alphabetical order, consisting of the names of specialists exempted under the SRI program and the dollar amounts of their approximate billings,² from April 1995 to March 1996, was generated. Hughes was one of 88 specialists whose names appeared on this list. A second list produced in the same format contained the names of 12 physicians exempted under the Underserved Area Program (UAP). The UAP extends to both general practitioners and specialists practising in northern Ontario. Doctors admitted to this program are also exempt from the set threshold. Hughes' name did not appear on the second list.

We were advised that the lists containing the billing amounts were created specifically in response to this freedom of information request. Prior to their release, however, the dollar amounts of physicians' billings were deleted and only the names of physicians were disclosed. This first list, containing only the names of the SRI specialists, will be referred to throughout this report as "the SRI List."³

The disclosure of specialists' names exempted from the threshold of \$404,000 was made pursuant to the consents they had signed upon being accepted to the SRI program.

On a daily basis, it is the practice of the Ministry's Freedom of Information and Protection of Privacy (FIPP) Office to send an e-mail to staff located in four areas of the Ministry (Minister's Office, Deputy Minister's Office, Communications and Information Branch, and Legal Services Branch), advising of requests made under the [Freedom of Information and Protection of Privacy Act](#) (the *Act*). The standard e-mail consists of a status report on freedom of information requests, including a brief description of what was requested, the category of requester (i.e., Individual, MPP, Media, or Business), and what information has been released. In his capacity as the Minister's special assistant - communications, James was one of 12 people whose names appeared on the distribution list to receive this e-mail. Wilson's name was not on the distribution list.

On July 19, 1996 the SRI List was released. On that same date, in addition to the standard daily FIPP e-mail, (see [Appendix E](#)) individuals on the Ministry e-mail distribution list were specifically advised of its release through an e-mail from the FIPP Office. James later saw a copy of the SRI List released pursuant to this freedom of information request (see [Issue C \(ii\)](#)).



Scope of the Investigation

This report outlines the IPC's investigation of the privacy incident that allegedly took place on December 5, 1996. A review of the general information practices of the Health Insurance Division of the Ministry with respect to physicians' billing information is being completed separately. In light of the conclusions reached in the investigation, that review has no relevance to the incident investigated in this report.

The investigation included a series of 18 interviews (see [Appendix H](#) for a complete list of those interviewed), as well as a review of all relevant documentation relating to the privacy incident. Nineteen individuals were contacted for interviews, and all but one agreed to be interviewed. Coutts, through the lawyer for *The Globe and Mail*, declined our request to be interviewed.

I am pleased to report we received the complete co-operation of all those interviewed. The interviewees also fully and expeditiously complied with our requests to provide materials relevant to our investigation. This greatly assisted us in completing a thorough and extensive investigation in a timely fashion using only existing resources.



Site Inspection

a) Minister's Office

An on-site inspection of Wilson's and James' offices was conducted on Thursday, December 12, 1996 by myself and my Assistant Commissioner (Privacy). The Assistant

Commissioner and I also met with the Deputy Minister of Health (the Deputy Minister) and the Director of Legal Services (the Director of Legal).

At that time, we inspected the entrance to James' office as well as the papers which had been removed from the office. The door to James' office was sealed with two-inch wide adhesive tape. The papers in James' office (those not in his filing cabinet or bookshelf), had been packed by Wilson's Executive Assistant (the Executive Assistant) on Sunday, December 8, 1996. The papers filled seven boxes which were sealed and moved into Wilson's office on Monday, December 9. That afternoon, the offices of Wilson and James were locked and entry denied to all but the Deputy Minister and the Director of Legal. The Director of Legal was the only person in possession of the keys to these two offices.

On Friday, December 13, 1996, a Compliance Investigator from the IPC attended Wilson's office in order to review the correspondence files that had been awaiting his review and signature. These files had been locked in Wilson's office since his resignation on December 9, 1996.

The Compliance Investigator, along with the Executive Assistant, reviewed the correspondence in detail to determine whether it contained information relevant to this investigation. No information relating to this investigation was found. After the inspection, the correspondence files were permitted to be removed from Wilson's office.

On Thursday, January 9, 1997, the Compliance Investigator attended Wilson's office a second time in the presence of James, his lawyer, and the Ministry's lawyer, to review the material that had been removed from James' office and packed into seven boxes. At this time, James' office was also unsealed, and any additional material found was reviewed. James' e-mail and voice mail were also examined. No information was found relating to identifiable or individual physicians' billing amounts.

We obtained and reviewed a copy of the "Entry Control Register" for Saturday, December 7 and Sunday, December 8, 1996, which is the sign-in list of any weekend visitors to the Macdonald Block (the building where Wilson's office is located). We verified that neither James' nor Wilson's name appeared on the log.

In our view, Wilson's and James' offices and the records stored therein were secured from the afternoon of Monday, December 9, 1996 until Thursday, January 9, 1997, when the Compliance Investigator completed her review of the records. We have no reason to believe that any materials relevant to this investigation had been removed, tampered with or destroyed. All Ministry interviewees were asked whether they had altered or destroyed any records relevant to this investigation. All answered "No" in response to this question.



b) Electronic Mail System

Also on December 12, 1996, we asked the Ministry to disengage the existing "auto-delete" function from James' e-mail, which it agreed to do. Absent this request, the normal practice

of automatically deleting e-mails, according to a set schedule, would have taken effect.

We reviewed an index of James' e-mails from the backup tapes maintained by the Ministry for two time periods: from November 25 to December 6, 1996 (the two weeks prior to James' resignation), and July 22 to August 2, 1996 (two weeks after the release of the records in response to the freedom of information request). No information was found relating to identifiable or individual physicians' billing amounts.



Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the *Act*? If yes,
- (B) Was the disclosure of the personal information in compliance with section 42 of the *Act*?
- (C) Were there any additional circumstances related to the disclosure?
- (D) Role of the Minister's Office in the events of December 5 - 6, 1996



Results of the Investigation

Issue A: Was the information in question "personal information" as defined in section 2(1) of the *Act*?

James advised that he was the only person responsible for communications in the Minister's Office, dealing with, on average, 20 to 30 media calls a day. Wilson and the Executive Assistant both verified that responding to media calls was among James' duties and responsibilities. Both Wilson and the Executive Assistant confirmed that they would not normally be informed of any discussions James intended to have with members of the media.

James was in contact with Coutts virtually on a daily basis, and informed us that he had tried to call her at *The Globe and Mail* on the morning of Thursday, December 5, 1996. He told us the purpose of the call was to find out if she knew if Dr. David Mendelsohn, Chair of the Specialist Coalition, was going to be present at a news conference scheduled by the Coalition for that morning. He did not speak to her but left a message for her to call. James said that he watched the news conference on closed circuit television and saw Coutts there. Coutts called James back after the news conference and left a message for him. James returned her call "around noon" and spoke with Coutts at that time.

James told us that he and Coutts were discussing the news conference and her questions to Hughes when he (James) said: "You know Jane, if you wanted to have fun some time, you

should ask Bill Hughes how much he bills in a year." James said that Coutts then asked: "Why, is he the top biller?" James said he then replied: "I don't know, but he's up there." According to James, Coutts then said: "I wouldn't be able to verify that." James said he agreed that she wouldn't be able to verify it (Hughes being the top biller), unless Hughes did it for her.

James told us that he did not, in fact, know if Hughes was the top biller. He also said he did not discuss his conversation with Coutts with anyone else that day (December 5, 1996).

On Friday, December 6, 1996, James said that Coutts called him around noon. According to James, Coutts said: "You know Brett, what you said yesterday, I feel obligated to write about it." James recalled replying: "What do you mean? What are you talking about?" to which she replied: "You know, the fact that a member of the Minister's staff wanted to tell me that Dr. Hughes was the province's top biller."

James informed us that he was "shocked" at hearing this and that his first response had been: "No, I never said he was the top biller, those were your words." James recalled Coutts then saying: "No, what I [Coutts] said was, 'Why, is he a high biller?' and you replied: 'He's number one'." James said he was at "a loss for words."

When interviewed, Hughes advised that Coutts had called his office on Friday, December 6, and had left a message for him to call her back, which he did at approximately 1:15 p.m. that day. Hughes stated that Coutts told him she had spoken to James, when she returned a call that had been made to her before the news conference. Coutts told Hughes that when she spoke with James, he had said to her: "You know, it's too bad we didn't speak earlier you should have asked Dr. Hughes about his billings." Coutts then told Hughes that she had said: "Why, is he a big biller?" to which she said James had replied: "Number one."

In a subsequent telephone conversation later that day, Coutts asked Hughes if he was in fact the number one biller, to which he replied he had no idea.

As noted earlier, we contacted Coutts for an interview regarding this matter, but through the lawyer for *The Globe and Mail*, she declined our request. Coutts, did, however, confirm through the lawyer that "she stood by her story," including confirmation of the quote attributed to James regarding Hughes being the "No. 1' biller."

James indicated that after his conversation with Coutts on December 6, 1996, he discussed the incident with the Executive Assistant and the Deputy Minister. On that day, Wilson was in his constituency, and was not present at the Ministry.

On separate occasions, we interviewed the Deputy Minister and the Executive Assistant, who both verified that they had met with James on December 6, 1996, to discuss his conversation with Coutts.

The Deputy Minister said that the Executive Assistant and James had told her that a reporter had called James to say that a story might appear the next day about comments he

had made about Hughes. James then explained that he had spoken to Coutts of *The Globe and Mail* and that she intended to write a story about him saying to her that Hughes was the top biller to OHIP. The Deputy Minister said she asked James if that was in fact what he had said. She said he told her that he was pretty sure he had said that Hughes was "one of the" top billers, but he couldn't remember for sure.

The Executive Assistant recalled James saying that he had had a conversation with Coutts, but James couldn't remember his exact words. The Executive Assistant said James believed he had said that Hughes was "one of the" top billers, but Coutts believed he had said Hughes was "the" top biller.

James also spoke to the former Minister's special assistant - policy that day. When interviewed, the special assistant said that James had told him he couldn't remember what he had said, but it was either that Hughes was "one of the" highest billers or "the" highest biller.

The Director of Legal also spoke with James on December 6. He told us that James had told him: "I don't recall honestly what I said to her [Coutts]. I don't think I used the words 'the top biller'." Further, the Director of Legal stated that James said he didn't think he had used the words "top biller" because he did not know who the top biller was.

[Section 2\(1\)](#) of the *Act* defines "personal information" as recorded information about an identifiable individual, including,

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

Based on the information available to me, I am unable to determine conclusively what James said to Coutts. However, whether James said that Hughes was "the" top biller or "one of the" top billers to OHIP it would, in either case, be information related to Hughes' OHIP billing records. In my view, OHIP billings constitute "financial transactions in which the individual has been involved." Consequently, either piece of information would meet the requirements of paragraph (b) of the definition of "personal information" in the *Act*.

Conclusions:

- James disclosed to Coutts either that Hughes was "the" top biller or "one of the" top billers to OHIP.
 - The information in question was "personal information" as defined in [section 2\(1\)](#) of the *Act*.
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Issue B: Was the disclosure of the personal information in compliance with section 42 of the Act?

Under the *Act*, an institution shall not disclose personal information in its custody or under its control except in the circumstances set out in [sections 42 \(a\) to \(n\)](#). (The complete text of this section may be found in [Appendix F](#).)

[Section 42\(b\)](#) of the *Act* allows for the disclosure of personal information, "where the person to whom the information relates has **identified that information in particular** and consented to its disclosure."(emphasis added)

As indicated on page four of this report, Hughes had signed the SRI agreement, thereby consenting to the inclusion of his name on an SRI List to be made publicly available by the Ministry. In response to a freedom of information request, such a list, minus the dollar amounts of specialists' billings, was released to *The Toronto Star*, pursuant to [section 21\(1\)\(a\)](#) of the *Act*.

It is my view, however, that Hughes' consent to the release of his name on the SRI List did not extend to the information disclosed by James to Coutts, namely, that Hughes was either "the" top biller or "one of the" top billers. It cannot be said in either case that Hughes had "identified" the personal information "in particular and consented to its disclosure." Therefore, [section 42\(b\)](#) of the *Act* does not apply.

I have carefully reviewed the remaining provisions of [section 42](#) of the *Act* and have found that none apply in the circumstances of this case.

Conclusion:

- The disclosure of Hughes' personal information was not in compliance with [section 42](#) of the *Act*.



Issue C: Were there any additional circumstances related to the disclosure?

i) Was information available in the Ministry on the "top billers" to OHIP?

We interviewed all relevant Ministry staff to determine whether any Ministry record(s) existed which ranked identifiable physicians in Ontario according to their billing amounts. No one was aware of, or had ever seen, a list that ranked identifiable physicians by the amounts they had billed. The Assistant Deputy Minister, Health Insurance and Related Programs/General Manager of OHIP (the ADM/General Manager of OHIP) advised us that no such document existed. Both she and the Director of Provider Services (responsible for physicians' billings) said that a document of this nature was not produced because there was no management need for it. The Director of Provider Services, who had been in her position for six years, added that she had never been asked to produce such a document. In addition, when asked who the "top biller" to OHIP was, all Ministry staff who were

interviewed said unequivocally that they did not know.

During their interviews the Deputy Minister, the ADM/General Manager of OHIP and the Director of Provider Services each offered a view as to the possible speciality area of the top billing physician. No one thought the top biller would be practising in cardiology.

As part of our investigation, the Manager and an Officer from the Compliance Department of my office attended at the Health Insurance Division (HID) offices in Kingston, Ontario. During their 12 day on-site inspection, they interviewed numerous HID staff, reviewed relevant computer programs used to access physicians' billing information, and examined numerous computer files and reports associated with this information.

They did not find any documents which ranked identifiable physicians by their billing amounts. This type of information was not available via any existing computer program, nor found to be maintained on the mainframe computer, or on staff personal computers. Staff who were interviewed confirmed that no such information was available -- a special computer program would have to be written to generate such information.

Based on the interviews conducted and the information obtained through our own on-site inspection, it is my view that no document exists or is routinely produced that ranks identifiable physicians by their respective billing amounts. Nor was there any document in existence that identified the top billing physician in the province.



ii) How did James obtain the information he disclosed?

We interviewed James on two separate occasions.

As noted earlier, James was on the distribution list of staff who received a daily e-mail about freedom of information requests. James and others on this list were also sent a specific e-mail on July 19, 1996 regarding the release to *The Toronto Star* of the list of physicians' names whose billings were permitted to exceed the threshold of \$404,000. When we examined the action log for the e-mails received by James, we noted that neither of these two e-mails had been read: both the daily e-mail regarding freedom of information requests and the specific e-mail pertaining to *The Toronto Star* request were identified by the system as "unread."

However, when the Executive Assistant was questioned on this issue, she recalled that upon receiving the daily e-mail ([Appendix E](#)) about the release of the SRI List, she had asked for a copy from the FIPP Office. She said the reason for requesting a copy was that she thought it might be relevant to the Ministry's review of thresholds for doctors' billings. She stated it was possible she would have shared her copy with James since "it was topical" and related to the Ministry's review of threshold levels.

Information obtained from the FIPP Office supported the Executive Assistant's recollection. We were told that on July 19, 1996, the Program Adviser in the FIPP Office

had prepared the decision letter accompanying the disclosure of the lists without the dollar amounts of the physicians' approximate billings -- that portion of the record was exempted from disclosure pursuant to [sections 21\(2\)\(f\)](#) and [21\(3\)\(f\)](#) of the *Act*. The Program Adviser had then sent the specific e-mail advising of the release of this information. The Program Adviser confirmed that on July 22, 1996, he was asked by the Executive Assistant to provide her with a copy of the record disclosed to *The Toronto Star*.

FIPP Office documents confirmed that the only other person at the Ministry to request a copy of the SRI List from the FIPP Office, prior to the December 5, 1996 incident, was a Communications Officer in the Communications and Information Branch of the Ministry. This person advised that he had requested a copy of the SRI List because it had been released to the media. As a Communications Officer, he was required to be aware of information provided to the media.

While a copy of the SRI List was not in our hands at the time of our first interview with James, he recalled that Hughes' name had appeared "somewhere around the middle of the list." In fact, Hughes' name appears 37th on a list of 88 names. In his second interview, when shown a copy of the SRI List obtained by the Executive Assistant, James indicated that it looked like the copy he had seen -- it was in the same format.

James could not identify an exact date when he had seen the SRI List but stated that, logically, he would have seen the document around the time of its release. James stated that his comments quoted in the December 7, 1996 *Globe and Mail* article, that he had seen "a piece of paper" months ago "for entirely different reasons," had been a reference to the SRI List released pursuant to *The Toronto Star* freedom of information request. James could not recall with certainty whether he had received his own copy of the SRI List, or had seen someone else's copy.

Based on the interviews conducted and in the absence of the existence of any document ranking identifiable physicians by their billing amounts or identifying the top billing physician, in my view, it is reasonable to conclude that James did not have access to identifiable physician billing information and that he saw the Executive Assistant's copy of the SRI List.

Further, I am satisfied that if James in fact said to Coutts that Hughes was the "top biller" to OHIP, he had no factual basis for doing so. I am also satisfied that by seeing the SRI List James knew that Hughes was one of 88 specialists in Ontario who were not subject to the set threshold on billings.

Conclusions:

- No document ranking identifiable physicians by their OHIP billing amounts was found to exist in the Ministry.
 - James did not have access to identifiable physician billing information.
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Issue D: Role of the Minister's Office in the events of December 5 - 6, 1996

We interviewed Wilson on two separate occasions.

Wilson advised us that he had been in his constituency on December 6, 1996. Wilson also advised us that he did not know about, nor did he see, the news conference on Thursday, December 5. He also said he did not know that the news conference was the reason for James' call to Coutts. Wilson said he had no discussions with James about the Specialist Coalition news conference, nor had he asked James to call Coutts. On this same point we specifically asked James if Wilson had asked him to call Coutts. James answered "No" and said that he had called Coutts on his own initiative.

The Executive Assistant indicated that Wilson would not have had an opportunity to see the news conference, since he was in meetings all Thursday morning. She also stated that Wilson would not have had a chance to speak to James because of his (Wilson's) schedule.

Wilson told us that his only involvement with the freedom of information process in the Ministry was if a request was related to his personal expenses or staff expenses. The Deputy Minister confirmed that this was the case. When shown the SRI List that had been disclosed pursuant to *The Toronto Star* request, Wilson advised he had never seen it. He said he did not know about the freedom of information request, or the response to it. The Executive Assistant confirmed that she had never given Wilson a copy of the SRI List, nor had he asked her for one.

The FIPP Office confirmed that Wilson had not been sent a copy of the record responsive to the freedom of information request. James advised that he did not recall any discussions with Wilson about the SRI List. The Communications Officer, the only other person who had requested a copy of the SRI List from the FIPP Office, said he had not shown his copy to anyone. He also confirmed that he had not spoken to Wilson about the SRI List.

Wilson advised us that at approximately 3 p.m. on December 6, his Executive Assistant had called to inform him of the telephone conversation between James and Coutts. Wilson stated that he had discussed the possibility of James' dismissal with her at that time.

James told us that some time after 4 p.m. on December 6, 1996, the Executive Assistant asked for his resignation. James wrote out his letter of resignation at 4:30 p.m. The Executive Assistant informed us that she told her staff that James had resigned as he had made inappropriate comments to the media. She said she also stressed to staff the importance of maintaining confidentiality at all times with respect to personal information to which they had access.⁴

Wilson advised us that he had telephoned Hughes late in the day on December 6, 1996, to inform him that James was no longer employed in his Office. Wilson also expressed his regret and told Hughes he was sorry for any embarrassment the incident might have caused him.

Based on the interviews conducted and the information available to me, I have no reason to believe that Wilson, other Minister's Office or Ministry staff requested James to disclose Hughes' personal information.

Conclusion:

- James disclosed Hughes' personal information on his own initiative without the knowledge of, or at the request of, Wilson, other Minister's Office or Ministry staff.



Other Matters

Access to Physician Billing Information by the Minister's Office

We confirmed with a number of interviewees that the Minister and his staff did not require information regarding the amount that an individual physician had billed OHIP, that is, they didn't need to know that a particular physician had billed a particular amount. The interviewees from the Minister's Office confirmed this point and said they only needed aggregate or total data concerning physicians' billings by the various areas of speciality (not individual billing amounts) to assist, for example, in determining the level of physicians' billing thresholds. The Minister's staff who were interviewed also indicated that they had made no requests for any identifiable billing information concerning individual doctors; nor had they requested specific billing information relating to Hughes. Everyone interviewed stated that Wilson had never asked them to obtain any information relating to individual physicians' billings.

Wilson said that he did not have any knowledge of identifiable physician billing information. Specifically, he said: "I have never seen a piece of paper with a doctor's name and individual billing." When asked whether he had ever requested any identifiable billing information about individual doctors in the province, he replied: "No." Wilson was asked if he had ever requested that James, or anyone else at the Ministry, obtain information about Hughes, to which he replied: "No." When asked if he had ever asked the ADM/General Manager of OHIP, or anyone else at the Ministry, for detailed billing information about individual doctors in this province, he again replied: "No."

We were also advised by the Deputy Minister and the ADM/General Manager of OHIP that in order for another division within the Ministry to access information from the HID, they first had to obtain the permission of the Deputy Minister or ADM/General Manager of OHIP. The only exception was if a division had been granted a "standing authorization" to access such information, based on a demonstrated business need; only four such authorizations have ever been issued. We were told that no authorization of this nature (to access physician billing information) existed for the Minister's Office; a number of interviewees confirmed this point.

We were advised by the Deputy Minister and ADM/General Manager of OHIP that if the Minister's Office needed any OHIP-related information for the purpose of preparing House

notes or answering questions from MPPs, it would be requested through the ADM/General Manager of OHIP, with a copy of the request to the Deputy Minister's Office. The Minister's staff confirmed that this was the practice they followed. The staff of the Ministry's HID (located in Kingston) indicated that no one in the Minister's Office had online access to any health insurance information. This was confirmed by the staff of the Minister's Office and others interviewed.

As noted earlier, a review of the general information practices of the Ministry's HID, with respect to physicians' billing information, is being completed separately.



Summary of Conclusions

- James disclosed to Coutts either that Hughes was "the" top biller or "one of the" top billers to OHIP.
- The information in question was "personal information" as defined in [section 2\(1\)](#) of the *Act*.
- The disclosure of Hughes' personal information was not in compliance with [section 42](#) of the *Act*.
- No document ranking identifiable physicians by their OHIP billing amounts was found to exist in the Ministry.
- James did not have access to identifiable physician billing information.
- James disclosed Hughes' personal information on his own initiative without the knowledge of, or at the request of, Wilson, other Minister's Office or Ministry staff.



Recommendations

I recommend that the Ministry take additional steps to ensure that all staff exercise proper discretion and care with respect to the disclosure of personal information, in compliance with [section 42](#) of the *Act*. Among other things, the Ministry should conduct periodic refresher courses to heighten awareness of privacy-related issues, or periodically issue reminder memoranda concerning the appropriate use and disclosure of sensitive personal information. My office would be pleased to assist in developing such a program.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with this recommendation.



Postscript

From time to time I take the opportunity to comment more generally on the right of

privacy. The following comments are of that nature. They are not directed to the Ministry of Health or, for that matter, any other specific government organization. In fact, during the course of interviews with Ministry staff, I was impressed by the high level of awareness and concern for the protection of personal information which exists in the Ministry.

In my view, the circumstances from which this report arose reflect the ultimate fragility of the protection of personal information held by government organizations. They also point to a basic truth about privacy -- privacy once lost cannot be regained. Once personal information is "out the door" there is simply no way of eliminating knowledge of it.

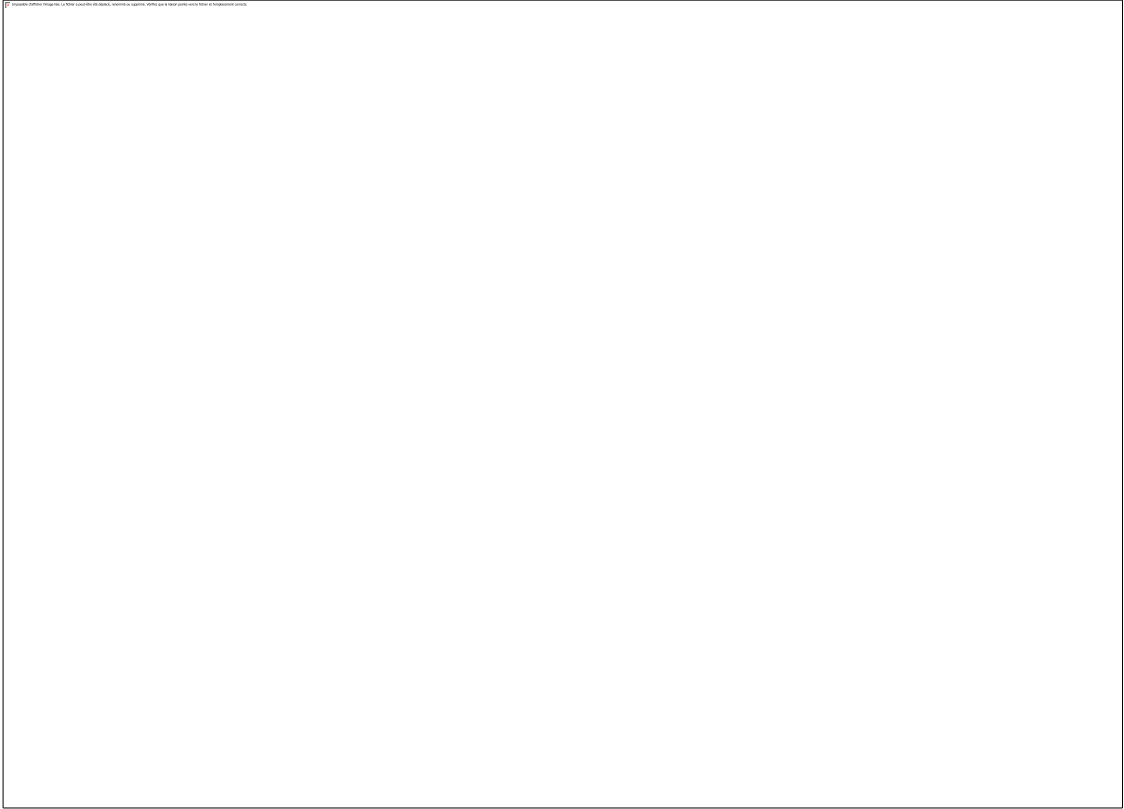
I believe it is essential for government organizations to be guided by the premise that they are only the stewards of the personal information entrusted to them. The information belongs to the person to whom it relates. Understandably, governments require personal information in order to perform the various services they provide. However, the fact that the personal information has been provided to them does not mystically transform the information into the "government's" information. Indeed, this is the essence of the privacy rules contained in Ontario's two freedom of information and protection of privacy acts.

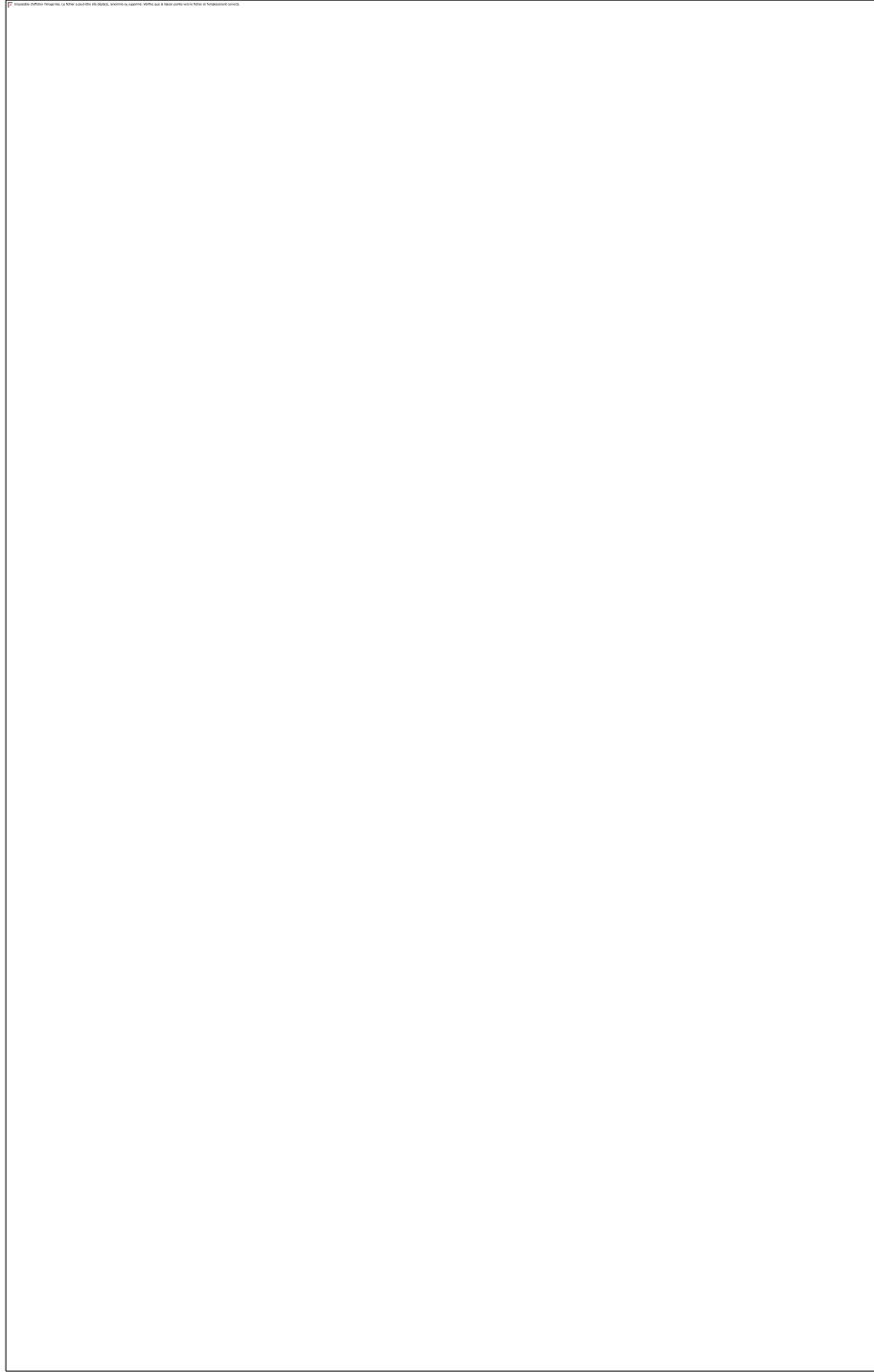
In my opinion, privacy laws are only part of the answer to privacy protection. As with any law, they cannot provide an absolute guarantee. What is essential is that governments understand and respect the immense level of trust citizens place in government when they relinquish any detail of their personal information. They are disclosing details about their relationships, their finances and their health, after which point they have no control over what happens to the information. This lack of control is even more pronounced in an era of digitized information.

At its root, I feel the best privacy protection is grounded in attitude -- an attitude which should flow naturally from an appreciation of the nature of the relationship between government and members of the public. Governments exist at the pleasure of the governed -- and privacy protection is an essential part of the relationship.

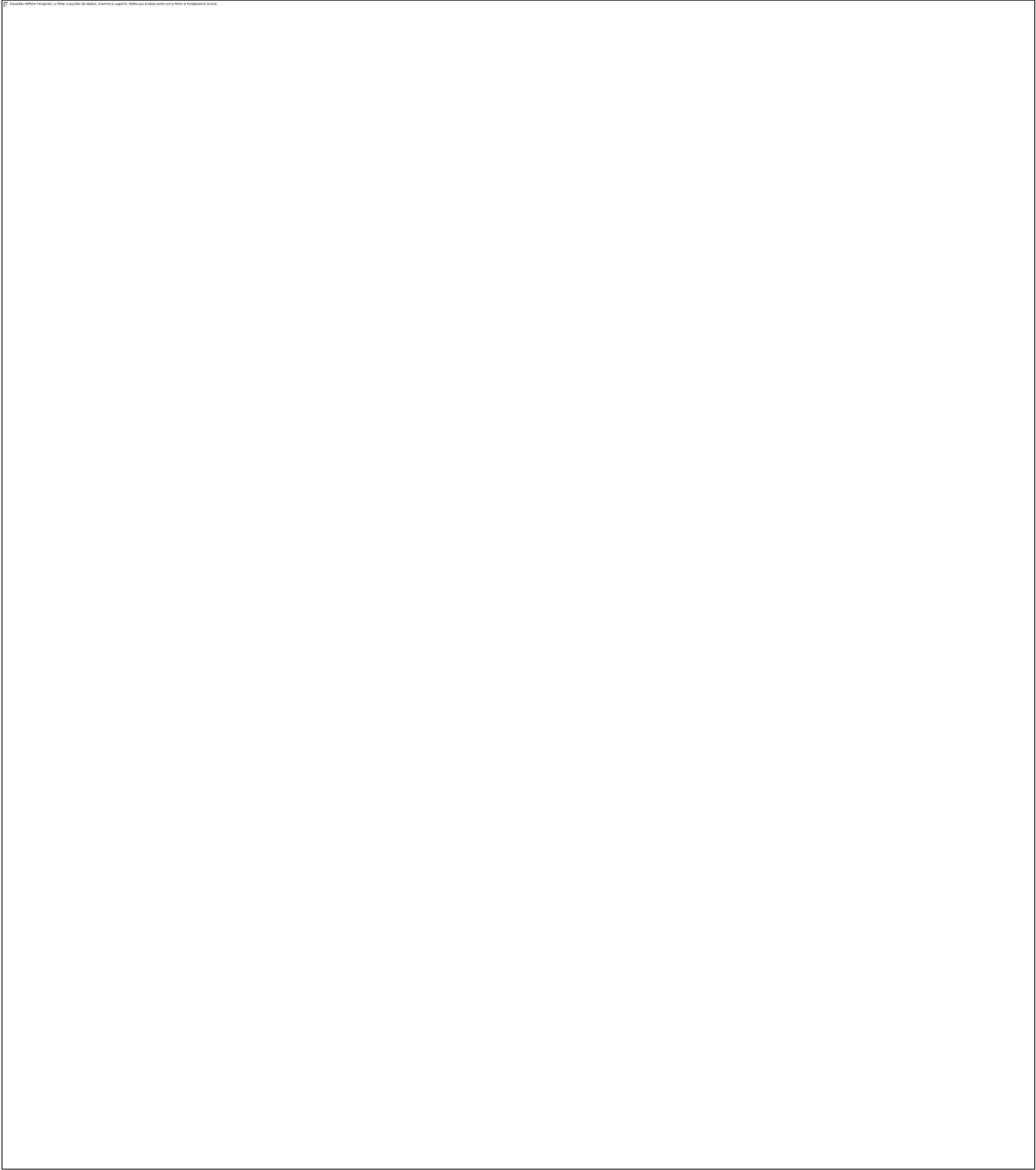


Appendix A - *The Globe and Mail* article, December 7, 1996

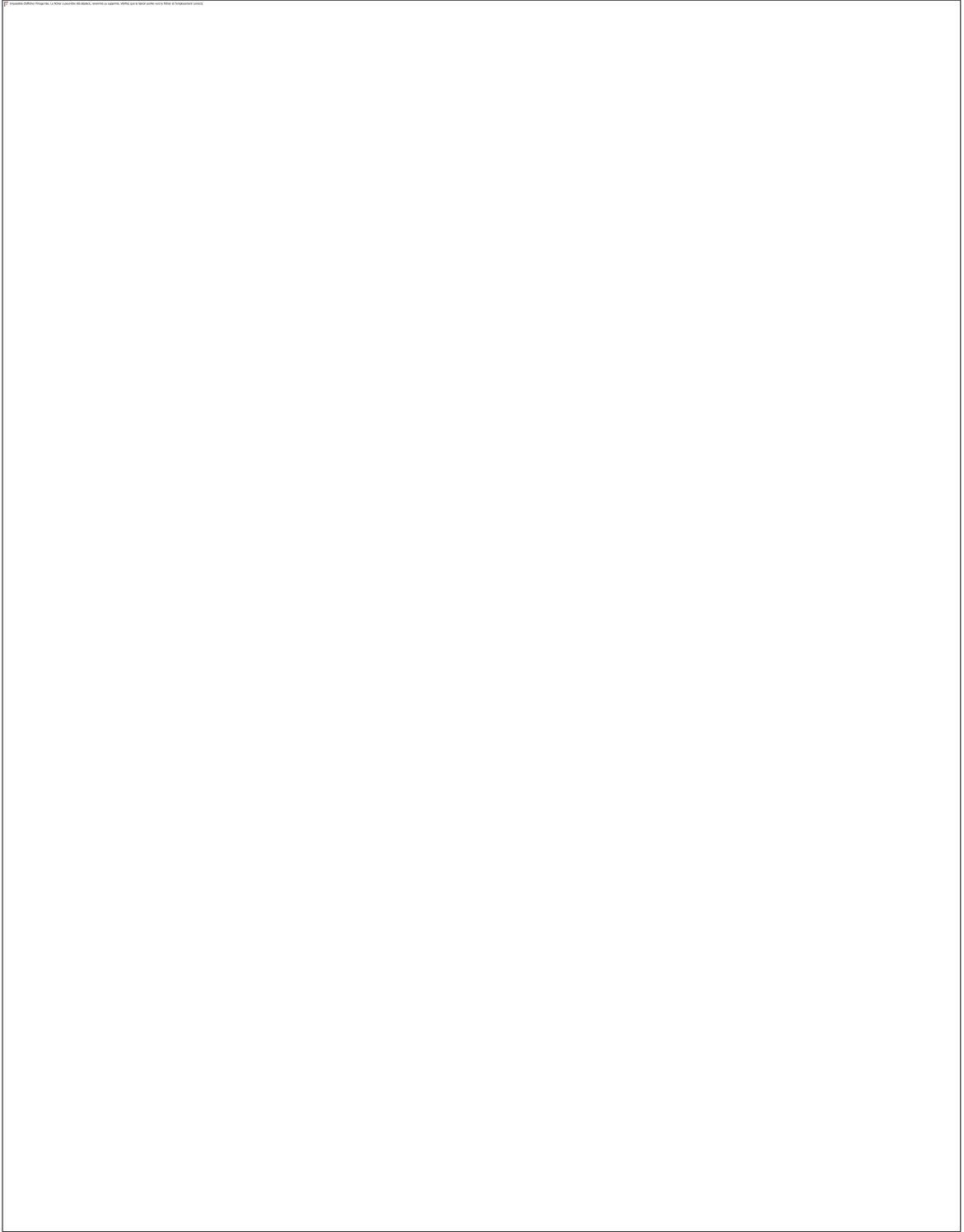


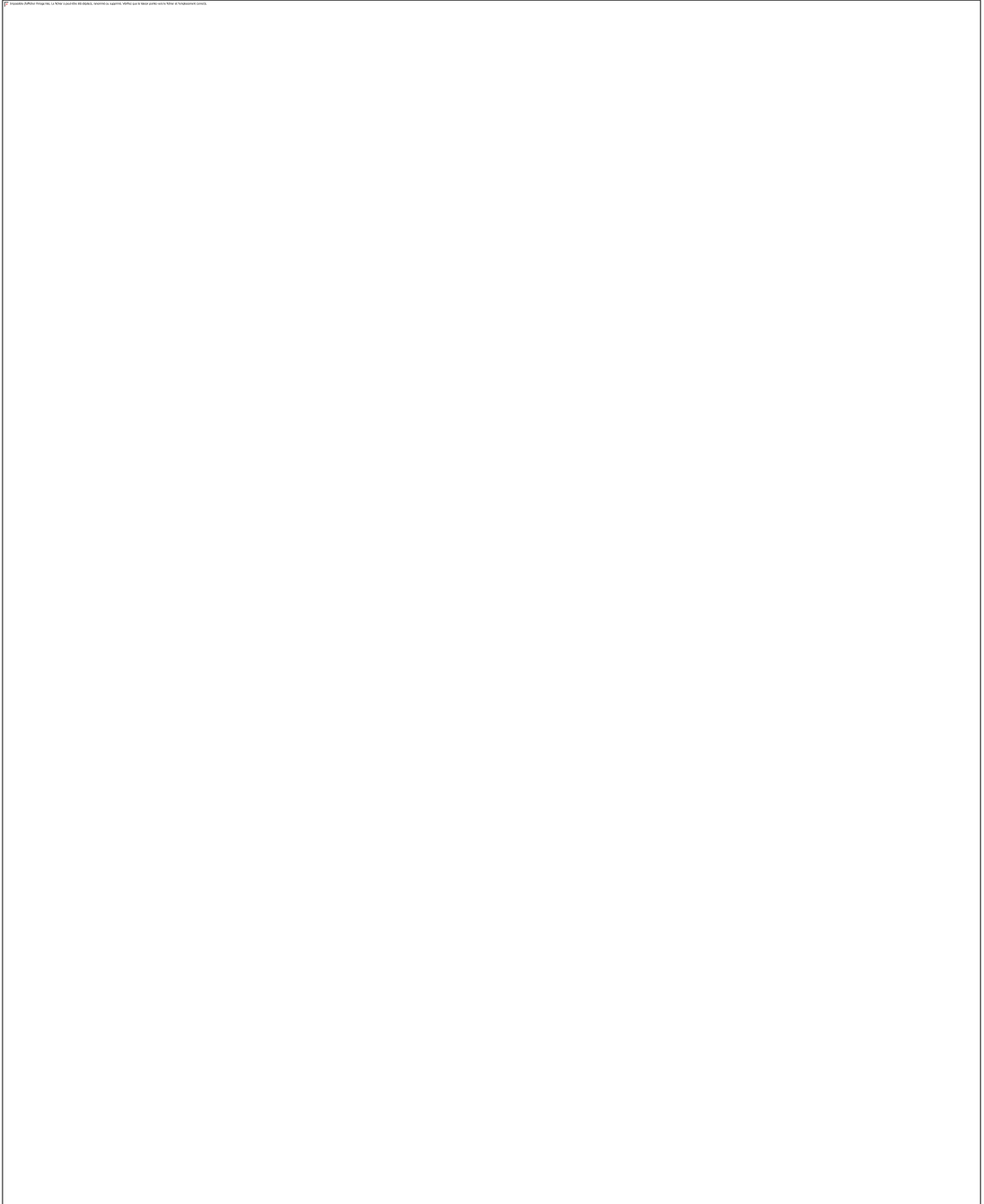


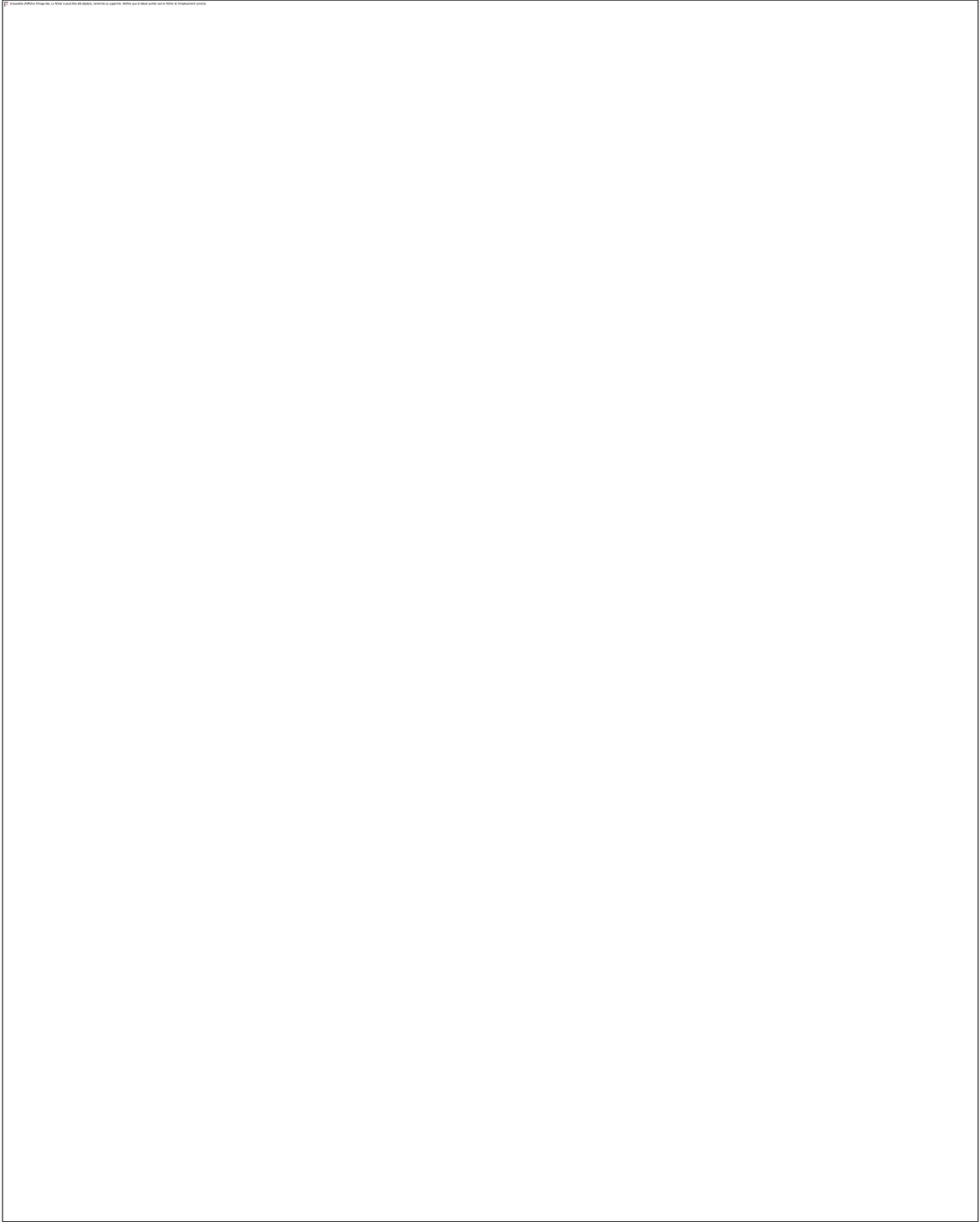
**Appendix B - Letter from the Secretary of Cabinet,
December 9, 1996**



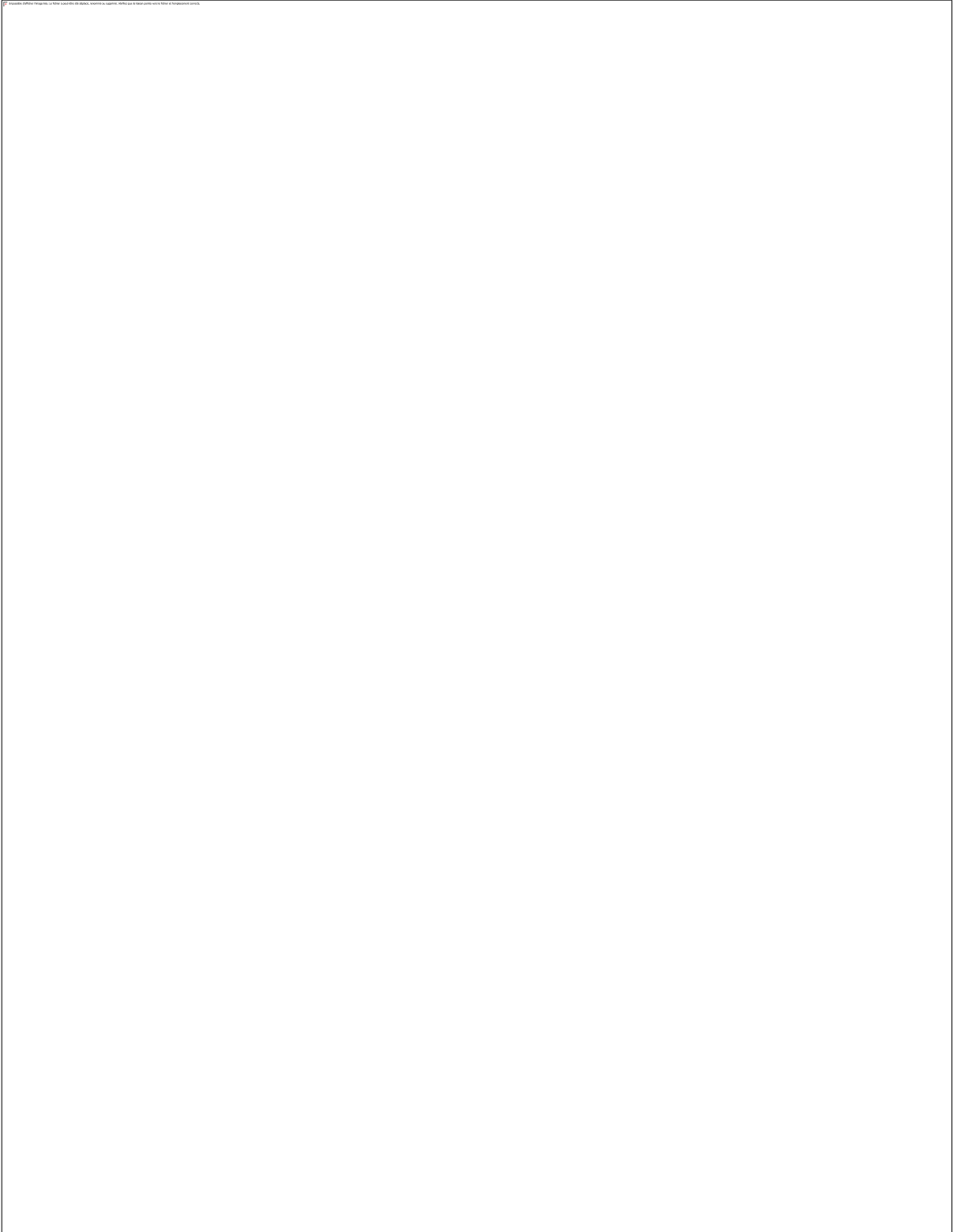
Appendix C - Application for Registration to The Specialist Retention Initiative (SRI); Extension of Enrollment to SRI



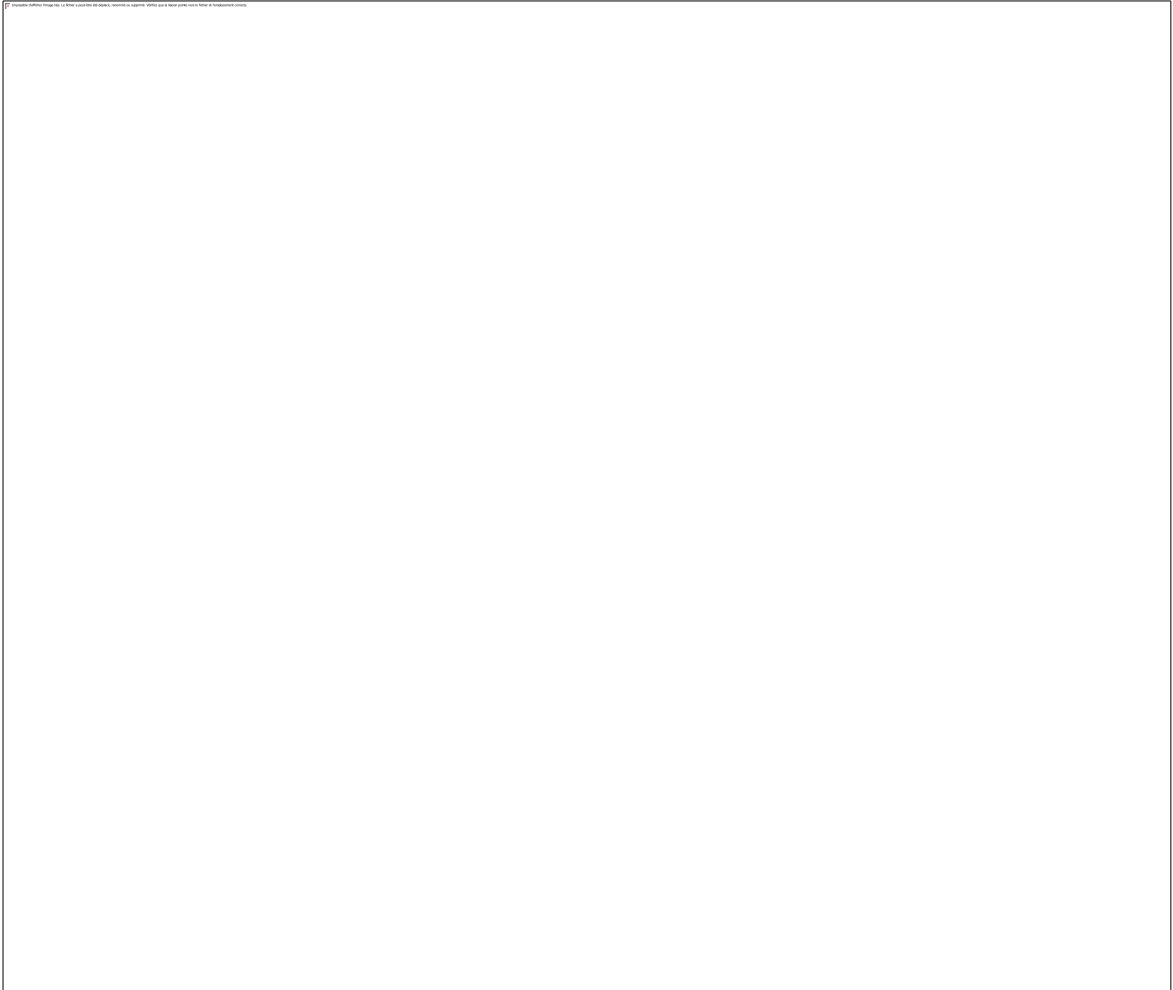




Appendix D - Agreement to Participate in SRI



**Appendix E - Ministry Freedom of Information and
Protection of Privacy Report, July 19, 1996**



Appendix F - Section 42 of the *Freedom of Information and Protection of Privacy Act*

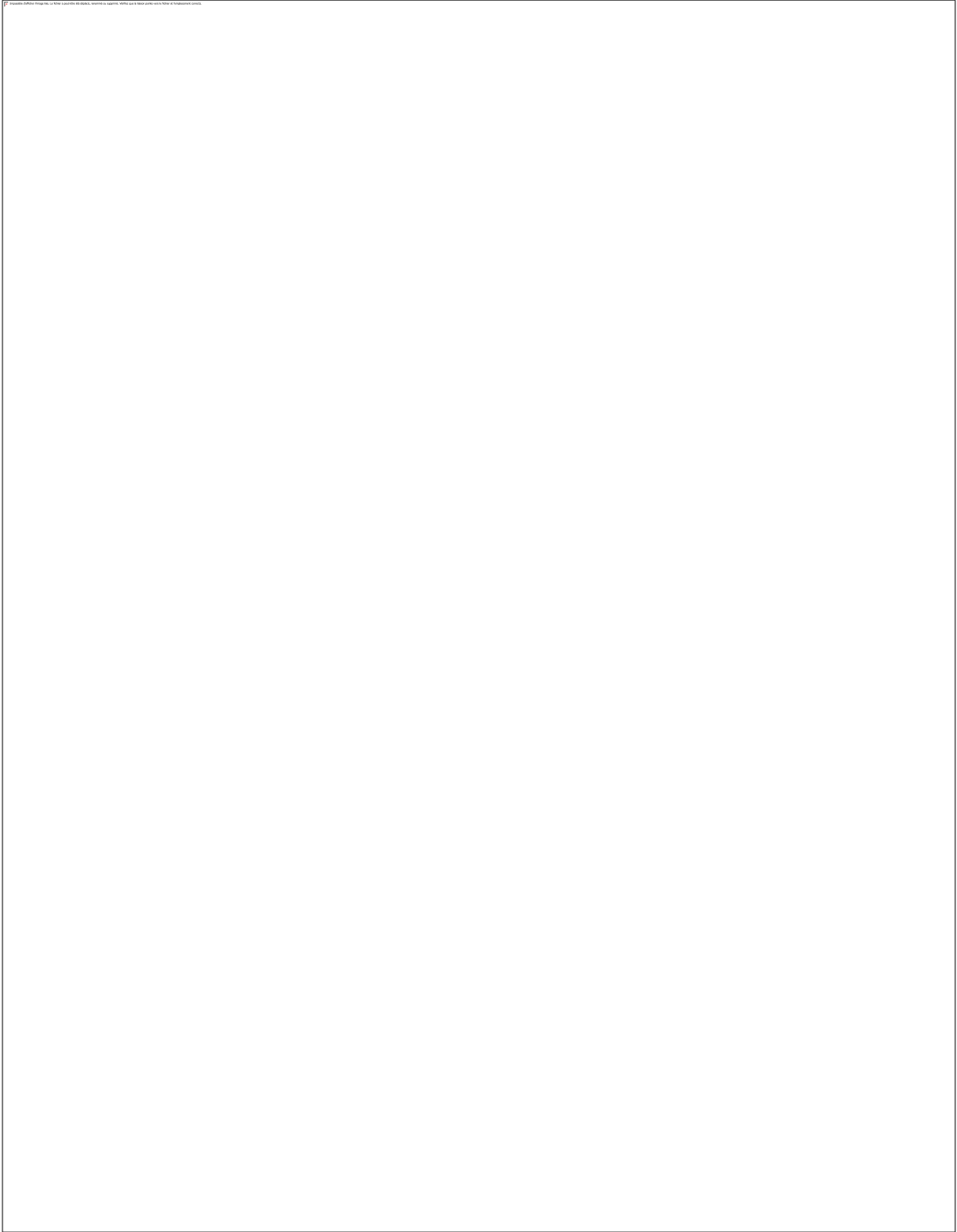
42. An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part II;
- (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
- (f) where disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent;
- (k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the next-of-kin or legal representative of the employee;
- (l) to the responsible minister;
- (m) to the Information and Privacy Commissioner; and
- (n) to the Government of Canada in order to facilitate the auditing of shared cost programs. R.S.O. 1990, c.F.31, s. 42.



Appendix G - Oath of Office and Secrecy



Appendix H - List of Individuals Interviewed in the Order Interviewed

Ministry of Health

- Brett James, Special Assistant - Communications, to the Minister of Health
- Jim Wilson, Minister of Health
- Margaret Mottershead, Deputy Minister
- Catherine Steele, Executive Assistant to the Minister of Health
- Mary Catherine Lindberg, Assistant Deputy Minister, Health Insurance and Related Programs/General Manager of OHIP
- Coralie Flory, Office Manager/Assistant to the Minister's Executive Assistant
- Bill Hawkins, Special Assistant - Legislative, to the Minister of Health
- Mona Wong, Co-ordinator, Freedom of Information and Protection of Privacy Office
- Brian Miller, Program Adviser, Freedom of Information and Protection of Privacy Office
- David Douglas, Program Adviser, Freedom of Information and Protection of Privacy Office
- Tariq Asmi, Special Assistant - Policy, to the Minister of Health
- Marsha Barnes, Director, Provider Services Branch (PSB)
- Gilbert Sharpe, Director, Legal Services Branch
- Lisa Graham, Acting Analyst (Freedom of Information & Privacy) (PSB)
- Susan Fitzpatrick, Acting Manager, Policy Development, Planning and Research (PSB)
- Gary Ollson, Manager and Medical Consultant, Monitoring and Control (PSB)
- Dave Ross, Communications Officer, Issues and Briefing, Communications and Information Branch

Non-Ministry

- Dr. William Hughes



Notes

1. In this report, the term "Minister's Office" is used to describe the ministerial staff. The physical office occupied by the Minister is referred to as "Wilson's office."
2. The column containing the dollar amounts was headed "Fiscal 95/6 Approx. Earnings." However, we learned that the actual amounts which appeared on the list reflected *total billings*, consisting of both professional *and* technical fees billed by specialists. We have chosen to use the term "billings" throughout the report instead of "earnings" since the latter tends to be associated with personal income.
3. It should be noted that the name of the top billing physician to OHIP may not necessarily appear on the SRI List. There are two reasons for this: First, while specialists approved for the SRI program are permitted to bill in excess of the set threshold, they may not necessarily do so. Second, it is possible for a physician to be the highest biller in the province yet not be enrolled in the SRI program.
4. All staff of the Minister's Office, including James, were required to sign an "Oath of Office and Secrecy" when hired, requiring in part that, "I will not disclose or give to any person any information or document that comes to my knowledge or into my possession by reason of my being a member of the Minister's staff" (See [Appendix G](#) for full text).