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# Report

A SPECIAL REVIEW  
OF THE  
PROCEDURES RELATING TO THE  
RELEASE OF INMATE RECORDS  
CORRECTIONAL SERVICE OF CANADA

HV  
9506  
B9  
1980



**Bureau of  
Management Consulting**

**Supply and Services  
Canada**

**Bureau des  
conseillers en gestion**

**Approvisionnement et Services  
Canada**

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OF THE  
PROCEDURES RELATING TO THE  
RELEASE OF INMATE RECORDS  
CORRECTIONAL SERVICE OF CANADA

*Canada, Bureau of Management Consulting.*

## EXECUTIVE SUMMARY

In late December, 1979, the Commissioner of the Correctional Service of Canada (CSC) requested a special review of the procedures to process requests for access to personal data as provided for under Part IV of the Canadian Human Rights Act. Questions concerning the continuing long delays had been raised by the Privacy Commissioner and problems were arising among the privacy groups of the agencies within the Solicitor General's Department and the Deputy Solicitor General's (DSG) exemptions staff. The Bureau of Management Consulting was asked by the Inspector General of CSC in January, 1980 to undertake the study. It might be noted that several of the key managers within CSC have changed since this study began two months ago. These include the Deputy Commissioner Security, the Director of Privacy and Information Services and the Chief of Privacy.

Initial investigation revealed that access requests for some 630 individuals had not been satisfied, though by the end of February the number had fallen to 515 with the release of 109 sets of records in that month and only 22 new requests. (There remain slight discrepancies in the figures but a full verification is being completed internally). Of these 515, about 150 sets of records have yet to be received from the field. A further 160 had been processed and sent to the DSG's office, but were all returned during the month to ensure that a proper "marry-up" with National Parole Board (NPB), medical and old bulk files had been done.

The CSC privacy staff presently has the capability to process about 35-40 sets of records per week, but with assistance from NPB staff, which has recently been negotiated, this rate may be increased to 50 to 60 records per week, though absenteeism may reduce this figure by about 20%. An additional final reviewer to assist the Chief of Privacy will, however, be required. Given the existing backlog of records and rate of new applications, which averages about one per working day, the backlog could be cleared from CSC within about 3 months, if further problems do not develop. Records for approximately 320 individuals have been released in the last three months.

If this time period is acceptable, it would be preferable to adopt this approach rather than to recruit or

(ii)

second additional reviewers. Consistency in application of exemptions has been a major problem in the past and the problems of control of quality and consistency increase rapidly with increasing group size. The training of new, inexperienced reviewers would take a number of months, though it is believed that there are people within CSC who have had previous experience in Privacy Coordination and who might be seconded. Should a higher rate of throughput be achieved, it is likely that a bottleneck would again develop in the DSG's exemptions unit - they already had a backlog of 90 CSC files prior to returning them to CSC in mid-February.

The appointment of a new Chief of Privacy in CSC in January provided an opportunity for the establishment of more cordial relations with the DSG's staff, and to date these appear to have been maintained, though some animosities remain at other levels. Procedures acceptable to both groups have been developed to ensure adequate consultation on files, though they have yet to be tested since the forwarding of files to the DSG's office was temporarily suspended pending direction from the DSG on the treatment of police reports. Now, advice is being sought on the treatment of psychological information and the flow of files to the DSG's office remains minimal. This should be corrected immediately.

A number of other issues which are the subject of different interpretations by the various groups are identified in this report. With the exception of police reports, already mentioned, the use of medical exclusions under section 62 or the inconsistency in medical exemptions appears to cause the most concern. A formal review meeting of the Chiefs of Privacy Coordination, chaired perhaps by Mr. Shoemaker the Senior Assistant Deputy Minister, as was the case in a recent meeting on police reports, may provide the forum to highlight the issues and bring them to the DSG for direction.

The CSC Privacy Coordination Division has experienced morale problems over the last year or so, resulting in part from staffing and classification issues. A number of term employees were engaged in 1978, apparently on the understanding that their positions would be made indeterminate and at a PM 1 level, which would make them comparable to positions in other privacy groups. In the event, the positions were reclassified downwards to CR 4 level and were never made indeterminate. There was, however, a continuing history of poor communications between

the Division and Personnel since the inception of the unit in 1978. The situation appears to have now been resolved with the establishment of 14 indeterminate positions for April, 1980, including five AS 1 privacy analysts, though staffing actions have yet to be enacted. Careful consideration should be given before appointing all acting incumbents to their positions.

A further study of the responsibilities and activities of the records management and registry functions, including perhaps other records functions within CSC, should be conducted. There are evident personality problems within the present divisional arrangement which, while not significantly affecting the present processing of the records backlog, would seriously affect the on-going management of records within CSC. This may in fact become the major function of the Division, if the current low rate of requests for access to records is maintained.

#### SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

(The page numbers given after each recommendation indicate the page or pages on which the issue is discussed in the body of the report.)

1. *With a staff of 5 exemptions analysts, plus a senior exemptions analyst and additional full-time assistance from one and possibly two NPB exemptions analysts, the backlog of 550 sets of records could be cleared from CSC within 3 to 4 months. This would be preferable to expanding the size of the group to process the backlog more quickly. Increasing the size of the group would give rise to problems in achieving consistency in application of exemptions (a major issue at present). The training of new, inexperienced analysts would take a number of weeks and possibly months in any case. Further, the backlog would probably redevelop in the DSG's office. (Pages 8, 9 & 10)*
2. *Consideration should be given to replacing one of the existing analysts in CSC Privacy Coordination rather than appointing him to the new, indeterminate AS 1 position. Individuals with previous experience in the unit may be available within CSC, and individuals with field experience would be particularly desirable. (Page 19)*
3. *A second, final reviewer should be appointed on a temporary basis to assist the Chief of Privacy to review and approve the work of the analysts. The volume is too great for the Chief to handle alone, given his other duties. (Page 9)*

4. *The present retention of files in CSC pending direction on two specific issues from the DSG should be discontinued, and the flow of files to the DSG's office resumed. These points could be quickly dealt with through consultation once direction is received.*
5. *A weekly report on the status of outstanding requests should be submitted to the Deputy Commissioner, Security. Records should also be maintained of the number of requests by inmates for corrections to their files or re-submissions by institutions of processed files because of disagreement with the exemptions granted. (Page 8)*
6. *Cooperative relationships have been re-established between the DSG's exemptions unit and the CSC Chief of Privacy and new procedures have been adopted for addressing disagreements on exemptions between the two units. These involve the return of files to CSC together with detailed notes as opposed to oral consultation on the files. A review should be made of the effectiveness of this procedure within one month to six weeks. (Pages 14 & 15)*
7. *The Deputy Solicitor General has been requested to give direction on the treatment of police reports and of judges' reports, and advice is being sought on treatment of psychological reports. Formal responses are awaited. (Pages 12 & 13)*
8. *The DSG's exemptions unit, with the cooperation of the Agency privacy groups, should prepare new general guidelines on permitted exemptions based on recent interpretations and precedents, for the review and authorization of the Deputy Solicitor General. These should be widely distributed in the field. (Page 23)*
9. *A mechanism must be devised for bringing to the attention of senior management issues in dispute among the privacy groups. The introduction of periodic, formal meetings of Directors of Privacy, chaired possibly by the Senior Assistant Deputy Minister, may be the appropriate forum to achieve this. (Page 23)*
10. *A major area of dispute is in the application of medical exemptions. A meeting with the Director General of Medical Services did not succeed in resolving the issue and it is therefore recommended that this issue be addressed immediately by the above committee. (Pages 13 & 14)*
11. *The preparation of an inmate profile by institutional personnel, to be attached to files forwarded to Headquarters, should be reconsidered. It could help the exemptions analysts and the DSG in making marginal decisions. (Page 14)*

12. *A mechanism should be developed to permit field personnel to recommend exemptions on CSC material on NPB files prior to approval of exemptions by the DSG. They are presently unaware of the request for access until the files are returned to the institutions or parole offices for release to the requestor. (Page 16)*
13. *CSC Privacy must ensure that NPB are informed of denials of exemptions by the DSG of NPB material on CSC files. (Page 16)*
14. *Serious morale problems have existed within CSC Privacy Coordination, arising in part from irregular staffing practices and classification problems. They may be partly assuaged by the approval of 14 indeterminate positions, with analysts at the AS 1 level, as of April, 1980. Personnel (staffing) should be closely consulted before appointments are made to these positions to ensure that regulations are followed. (Pages 18 & 19)*
15. *The functions of privacy coordination, records management and forms management are highly interrelated and consolidating them under one director is logical. The scope of the responsibilities and functions of the records management unit, and, indeed, records management within the Service, should be examined in detail. The existing relationships between staff of this unit and the Director are not conducive to good records management within the Service. Two consultants are presently working on records management but report to the Director rather than to the Chief of Records Management. (Pages 20 & 21)*
16. *As the backlog of files is cleared, staff from the exemptions unit could be profitably transferred to Records Management. Close monitoring of files in the field is necessary to ensure that they do not evolve again into a voluminous, disordered state. (Page 21)*
17. *Finally, but most importantly, the Director of Privacy Coordination must monitor very closely the processing of files for exemptions and be prepared to act if the flow is below expectations. To date, this does not appear to be happening.*

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## I. INTRODUCTION

Part IV of the Canadian Human Rights Act, which permits inmates of federal institutions access, with certain exceptions, to their personal files, was implemented in March, 1978. The Correctional Service of Canada (CSC) and its companion agencies, the National Parole Board (NPB) and the Royal Canadian Mounted Police (RCMP), each established a privacy coordination division, comprising a privacy coordinator and support staff, to process any applications for access to files held in their respective information banks.

The privacy coordination division within CSC received a flood of applications in the first few months of 1978, resulting, inevitably, in a serious backlog in the processing of these applications. Under the Act, certain material could be exempted at the discretion of the Deputy Solicitor General and, thus, each file had to be carefully reviewed to determine if any information likely to be damaging to the inmate, to CSC staff or to third parties should be withheld. Files were voluminous and the review process very slow and painstaking. CSC was unable to meet the requirement under the Act that inmates be given access to these files within 60 days of their application for such access, leading to complaints by inmates to the Privacy Commissioner of the Canadian Human Rights Commission.

Following an investigation, the Privacy Commissioner agreed that some delay was unavoidable but accepted a CSC contention that a reorganization of the inmates' institutional files would largely resolve the problems. She agreed to delay any further action pending completion of this reorganization process, which was expected to be complete by August of 1979. In November, 1979, the delays were continuing and this led to a formal complaint to the Commissioner of the CSC by the Privacy Commissioner.

As noted previously, the Deputy Solicitor General is administratively responsible for approving all material to be exempted from the files and has established a small group within the Secretariat to advise him on the matter. Differing opinions appear to have arisen between this group and the CSC privacy coordination division as to what might be exempted, resulting in further delays in the processing of files.

As a result of these problems, the Bureau of Management Consulting was requested by the Inspector General of CSC to review the processes and organization for reviewing and releasing inmate records and to suggest ways in which they might be modified to overcome the existing delays while maintaining the quality of the product reaching the Deputy Solicitor General (DSG).

## II METHODOLOGY

In carrying out this study emphasis was given to the problems posed in eliminating the huge backlog of unanswered requests for access to files rather than to the on-going systems. While it is recognised that some changes are required in the control and flow of files, they are generally being addressed by CSC privacy staff and systems are being implemented. The basic problem appears to be elsewhere.

During the course of the study interviews were held with numerous members of the CSC Privacy Coordination Division, with the NPB Privacy Staff and the Exemptions Review Unit of the Office of the Deputy Solicitor General. In addition, the consultant attended parts of a 3-day review meeting with field staff concerned with inmate access to files and a presentation and discussion given by the Privacy Commissioner. A member of the Inspector General's staff and the Executive Assistant to the Deputy Solicitor General provided useful advice and guidance during the study.

When the study began in early January, 1980 the Division was in a state of flux, the Chief of Privacy having just left and a new one about to take his place. Relations with the DSG's exemptions group appeared to be at a low ebb with charges and counter charges over availability of staff for consultation on files. The conference with field staff mentioned above was anticipated and a number of changes were being made in process and control procedures. The Director of Privacy believed that the changes he was making would facilitate the processing of files and that the backlog would be largely cleared on schedule by the end of the fiscal year. After an initial investigation, the consultant agreed with the Director to monitor the situation for a short period to determine the impact of these changes before submitting a report. This paper is, therefore, being prepared approximately one month after these initial meetings.

A brief review will be made of the history of the Division, leading to an evaluation of the present status of unfulfilled requests.

The present problems preventing a rapid reduction in the backlog of files will be examined and, based upon the observed processing capabilities, projections made on what may be required to achieve the objective of eliminating the

backlog within a short period of time. Finally, a more general assessment relating particularly to staffing and morale problems within the Division will be presented.

### III REVIEW OF THE EXISTING FILE BACKLOG

#### A. WHY DID IT DEVELOP?

In the first ten months of operation following the effective date of Part IV of the Human Rights Act, the Privacy Coordination Division received in excess of 3500 requests for access to files in the then existing 12 institutional information banks. Some of these requests may have been duplicate requests and it is not known at this stage how many individuals this figure represented. Separate requests must be made for each bank to be accessed. It would appear that during this period 480 records were actually released to inmates and 1500 other final responses made, usually relating to totally exempt banks or to non-existent files.

The inmate files were very voluminous containing much out-of-date or duplicate material, and exemptions officers were processing less than one file per person-day. Also, since the impacts of releasing information to inmates were not predictable, the exemptions unit tended to be conservative and recommended exemptions for any material that might have any negative effects at all, resulting in a huge volume of exemptions. In addition, as a further safeguard, the files went through up to 5 review stages in the Division and a further review by the DSG's exemption unit staff. This naturally tended to reduce the output.

As a result, processing was not able to keep up with the rate of applications for access and backlogs developed, resulting in complaints by inmates to the Privacy Commissioner. At this point, it was decided that the problem could not be resolved without a severe purging and reorganization of the institutional files, and this action was supported by the Senior Management Committee and also by the Privacy Commissioner.

Accordingly, the Privacy Coordination Division organized a series of teams to visit each of the regions and systematically purge all the institutional files of irrelevant or duplicate material and to reorganize the remainder into five separate files; viz.: a security file, which would be totally exempt, a housekeeping file, which would be accessible to the inmate at the institution on request, and three other files, IDRIS, offender administration and medical, which would require review by the Privacy Coordination Division and approval of any

exemptions by the Deputy Solicitor General before release to the inmate.

Following two months of preparation, this process started in the Ontario and Quebec regions in early May, 1979 and gradually extended across the country. It is now largely completed. Processing of access requests for files under the old system virtually stopped early in 1979 and was not resumed until the purged files under the new 5-file had become available in June, 1979. The old files which had been processed, but were awaiting the DSG's signature were retrieved from his office and destroyed and the field were requested to send in the new, purged files. The inmates were kept informed of this change in information banks, but were not required to re-request their files if they had already done so under the former system.

#### B. EXISTING SITUATION

Following the file reorganization and the appointment of a new Chief of Privacy in September, 1979, the processing system within the Privacy Coordination Division was simplified. The initial review stage was eliminated, the exemptions analysts receiving the files directly from the registry, reviewing them and recommending exemptions.

If these officers identified potential medical exclusions they would mark the documents and pass the file to the medical officers for review. Similarly, if material belonging to the National Parole Board appeared on the file it would be marked and the file sent to the NPB Privacy Coordination Group for review. The latter would make recommendations for exemptions as necessary and return the file to CSC Privacy Coordination.

A final review of the file would be made by the CSC Chief of Privacy, who would sign the recommendations for exemption and forward the file, via the registry, to the DSG's exemptions review group. A full review of the files would again be made by this latter group and this has given rise to some delays and friction between the two groups as will be discussed in a later section.

#### 1. Record Backlog

Shortly after study began, an examination was made of the disposition of the files relating to outstanding requests for access to CSC inmate files. The table below

indicates this distribution as of February 1, 1980, in terms of requestors. Considerable confusion has arisen in the past over the statistics since in some instances the number of requests was quoted, in others the number of files requested, and in still other cases the number of individuals requesting files. Since one individual may request more than one file or submit more than one request for the same file, recording problems were almost inevitable. In this report the figures will be given for the number of individuals requesting files, i.e. requestors. Under the new 5-file system an individual requesting his IDRIS or Offender Administration file will automatically receive both, but special requests will be required for access to medical files. The security files are, of course, automatically exempt and the housekeeping files are open to the inmates at the institutions. In practice, few individuals request their medical files and, thus, while numbers are given in terms of individual requestors, the number of files will be approximately twice this figure.

	<u>Feb. 1, 1980</u> <u>No. of requestors</u>
Records not yet received from the field	183
Records in the initial review stage	116
Records in the NPB review stage	11
Records with the DSG	186
Records awaiting application of the exemptions	67
Records completed - individual's address unknown or other	<u>61</u> 624

Subsequent to this examination, however, all the files in the DSG's office were returned to CSC Privacy Coordination so that a "marry-up" could be made with NPB or medical files for the same individual, or with the bulk file processed under the old system, to ensure consistency in application of exemptions. The value of matching-up to the latter group appears dubious, since the application of exemptions currently is much more limited than under the previous system. Of course, we should not exempt material that was previously released to the inmate and is now in his possession. This may justify the complete re-matching with the previously released bulk files but it should not be a time consuming process. There appeared to be some misunderstanding on the part of CSC staff, and on mine, as to the number of files to be returned for reprocessing - it was expected that only 20 to 30 records would be returned not all 180.

Processing of files in CSC Privacy continued during the month, but none were forwarded to the Office of the Deputy Solicitor General, pending the latter's decision

on exemptions for certain important documents, especially police reports. It was believed that if the files were sent to the DSG there was a good possibility of their being returned. The current situation with the backlog is therefore as follows:

	<u>Feb. 29, 1980</u> <u>No. of requestors</u>
Records not yet received from the field	150
Records in the initial review stage	294
Records in the NPB of final review stage	45
Records with the DSG	12
Records awaiting application of the exemptions	0
Records completed - individuals address unknown or other	<u>14</u> 515

During the month, 60 records were received from the field but 22 new requests were also received. Of the outstanding 150 sets of records approximately half are in the Quebec Region and a special effort is being made to get them into Ottawa. 109 records were sent back to the inmates during the month, though an unknown number were returned from institutions, either because the inmates were requesting corrections or the institution was questioning the denial of exemptions. The number of such returns should be determined and routinely recorded.

## 2. Present Processing Capability

From discussions with a variety of people with experience in reviewing files for application of exemptions, the consensus emerges that an exemptions analyst should be able to process files for between 2 and 3 individuals per day, that is to say review up to 6 files per day. Generally, processing rates have been lower than this; for example, 55 files were processed in 30 person-days over a recent two week period, though 2 analysts managed to review 36 files, equivalent to 18 requestors, in 4 days last week.

CSC presently has four exemptions analysts, who should be able to review files for 35 to 40 individuals per week. In addition, arrangements have been made for one or possibility two exemptions analysts from the NPB Privacy staff to assist CSC in processing the backlog of files, potentially increasing the reviewing capability to files for 50-60 individuals per week. In addition, there is a senior exemptions analyst who, in addition to carrying out the initial review on some files, maintains control of the work

of other exemptions analysts and carries out a secondary review of a portion of the processed files, particularly those in the French language, thus relieving the Chief of this task. On average, given absenteeism, meetings and so on, between 40 and 50 requestors' files should be reviewed each week.

Until January, the Chief of Privacy would make a final review of all the files processed by the exemptions analysts and doctors, except medical files which are not subject to the DSG's approval, and sign all requests for exemptions before forwarding the files to the Office of the Deputy Solicitor General.

With the appointment of a new Chief of Privacy in late January and other changes in procedures, the forwarding of files to the DSG's office was temporarily suspended, the files being stored in the Division after initial processing. If the Chief of Privacy again chooses to review all files and sign off exemptions before releasing the files, a new bottleneck could be created. On the other hand, consistency in application of exemptions among the exemptions analysts has to be ensured. It would seem that two final reviewers are probably necessary to verify the work of the six analysts, particularly since the Chief of Privacy has a number of other duties, such as maintaining consultation with the DSG's exemptions unit and with the field personnel. The Director of the division may be able to assist in the process, but the temporary appointment of a second final reviewer would probably be a preferable solution.

Given this arrangement, the backlog of files for the 500 or so outstanding requestors could probably be cleared over a 3-month period, provided the rate of new requests remains at its present low level of approximately one per day. It should be remembered that files for about 180 of the 515 outstanding requestors have already been processed once within the division and sent to the DSG for signature. They were returned for "marry-up" against previously processed NPB, medical or old bulk files, though CSC believes that this had already largely been done. It may be, therefore, that these files could be processed more quickly. On the other hand, a number of files will probably give rise to certain contentious issues which will result in the files being returned to CSC from the DSG's office for a second review. CSC Privacy is also required to examine the CSC material on NPB files, resulting in an additional workload of 2 to 3 files per week - 80% or more of the material on most NPB files originates in CSC.

If the 3 to 4 month time period for clearing the backlog of files through the CSC Privacy Coordination

Division is not acceptable, it may be possible to find officers within CSC who have had previous experience in the exemptions unit and second them on a temporary basis. The training of newly recruited staff to operate at a satisfactory level would hardly be practical in the time period available - perhaps some institutional classification officers may adapt more quickly and would provide some field experience which the division presently lacks.

Overall, however, it would probably be preferable to operate with the present group, with the possible addition of a second final reviewing officer and possible replacement of an exemptions analyst. This assumes that the NPB staff will continue to assist the division in eliminating the backlog. Though this would extend the processing over a 3-4 month period, it may be acceptable to the Privacy Commissioner given the recent record of releases as set out in the table below.

	1979			1980	
	Oct.	Nov.	Dec.	Jan.	Feb.
Requestors given access	28	35	85	128	109
New requestors	17	11	11	26	22

What cannot be forecast at this stage is the increase in the level of complaints that might be anticipated given the volume of files being released, or the potential increase in the number of requests for access now that inmates see that others are receiving their files. Also, since many of the files being released have been at Headquarters for 6 to 9 months, inmates receiving them may re-request them to obtain the latest material, which is perhaps the most relevant to them. There is little evidence of any of these things happening at the moment.

Though this process would clear the files from CSC, it would, of course, put considerable pressure on the staff of the exemptions unit of the Deputy Solicitor General and on the Deputy Solicitor General himself, since he is responsible, under the Act, for signing all exemptions, except medical exemptions under section 62. The DSG's exemptions unit has three officers who handle RCMP and NPB files in addition to those of CSC. They attempt to ensure

consistency in application of the rules for exemption among the files of the three agencies and provide assistance and advice to the Deputy Solicitor General on applying Treasury Board guidelines for exemptions. As will be seen later, this has led to some conflict with other privacy groups.

With the temporary cessation in the flow of files from CSC, the unit has been able to clear its backlog of NPB files and RCMP files, and claim to be able to process files for up to 20 individuals per day. In the past it would seem that they have required, in their judgement, consultation on the majority of files submitted by NPB and CSC, though if better guidelines can be developed this may be less of a problem in the future.

#### IV. SOME OUTSTANDING ISSUES

The previous section examined some of the problems in the mechanics of processing files, but perhaps more serious problems arise in the interpretation of the Act and Treasury Board regulations, giving rise to delays in processing and releasing files. These differences have arisen at two levels; firstly between DSG exemptions staff and CSC and NPB staff and, secondly, between headquarters and field staff. The latter were discussed at length in the conference held with field representatives in mid-February and were summarized in the minutes of that conference, which appear as Appendix A to this report. They will not be itemized again here.

##### A. ISSUES RELATING TO CONTENT

As was indicated earlier in this report, exemptions were much more widely applied and granted in the early stages of the implementation of this Act, the staff of all groups understandably taking a very conservative approach to the release of any information which could give rise to negative reactions. Following a series of complaints from inmates and investigations by the staff of the Human Rights Commission, the number of exemptions applied was significantly reduced. Though a number of precedents have been set through the Deputy Solicitor General's acceptance or rejection of certain recommendations for exemptions, they have not yet been formalized in any way into guidelines. As a result, there is some confusion in the minds of CSC and NPB privacy coordination staff, and even more in the field, as to what type of exemptions are now acceptable. There is general agreement that guidelines are required and a first draft is expected from the Office of the DSG in the first week of April, 1980. In this brief study it was not possible for the consultant to investigate each of these issues, some requiring an understanding of institutional life, but a number of the more contentious ones can be highlighted.

##### 1. Police Reports

In 1978 and 1979, previous Solicitors General apparently gave assurances to the law enforcement agencies that their reports would be confidential and would not be released at all to the inmates. The Act, as it is now interpreted, would appear not to permit this total exemption and, indeed, in certain cases there may be an advantage in the inmate having the opinions of the police. In the recent past, CSC has had a tendency to leave in certain negative comments by

police officers without prior consultation and this has led to friction and, in part, to a drying up of information from police sources. There is a difference of opinion between the police forces and the DSG on exempting the names of co-accused and accomplices.

Consultation with the police forces prior to the decision on the exemptions is judged not to be practical because of the volume of files affected and the difficulty in knowing whom to contact in municipal forces. The issue has been presented to the DSG and a verbal agreement reached. A formal guideline is expected at the beginning of April. CSC has been withholding files from the DSG's office until instructions on the treatment of these reports are received. A further proposal that the police forces be asked at the time they provide the information what parts of it they consider too sensitive to be released has been made and a form has been developed to this effect. Guarantees cannot be given, however, that the information will not be released even if the police believe it is sensitive, but it may help the exemptions officers and the DSG in their decisions.

## 2. Judge's reports

There has been some discussion over which section of the Act should be used (54.a, 54.d(ii), 54.d(iii)) to exempt information in these reports. The issues have been spelled out and again a decision is expected early in April.

## 3. Medical Exclusions

This has been one of the more contentious issues between the DSG staff and CSC privacy staff and touches upon a variety of aspects. One recurrent problem, which has yet to be resolved, is the apparent use of a medical exclusion under section 62 of the Act to non-medical material. This often appears to arise where an institutional officer or parole officer abstracts material from a medical report to use in his own reports without it being a direct quotation. The material might still be exempted under other sections of the Act but must be judged on a case by case basis.

A second problem arises with exemptions to be applied to psychological reports. There is a tendency

on the part of the doctors within CSC privacy to exempt all this material, which appears to be at variance with certain field psychologists who suggest that, while raw test scores should be removed, the interpretation part of the report should remain. The spirit of the Act would certainly favour the latter approach but it will obviously depend on the character of the inmate too.

Consistency in application also seems to be a particular problem with medical and semi-medical exclusions.

In the past, it has been suggested that the institution prepare a profile of the inmate and attach it to the files sent to privacy coordination for review. It was felt that this would assist the exemptions officers to assess the likely sensitivity of certain information. They gain some insight from reading the inmate's file but a specific profile may be more useful and a proposed format was designed but never implemented. It would be worthwhile reviewing this approach again.

These problems are encountered quite frequently but there seems to be no mechanism for their resolution, as discussed below.

#### B. RELATIONSHIPS AMONG PRIVACY GROUPS

During the first year of operation the relationships between the DSG's exemptions unit and CSC Privacy Coordination appear to have been satisfactory, though files sent to the DSG's office from CSC often did not return for some months. NPB experienced similar problems, but also noted that files sent to CSC for review of their material might not be returned for 4 to 6 months. Perhaps in the initial stages of establishing the system, and given the volume of applications, this was unavoidable. The DSG was, nevertheless, granting most of the exemptions requested and conflict did not arise.

Following the purging of files and with the gradually developing policy of reducing the amount of exempt material, tensions did begin to arise between the CSC Privacy Coordination Division and the exemptions unit of the DSG in the fall of 1979. There was resentment on the part of the CSC staff that a group without any experience in the field and, moreover, classified at a lower level within the hierarchy, should be questioning their requests for exemptions. This was especially so where the DSG staff

questioned the legality of a medical exemption under section 62. A meeting with the Director General of Medical Services did not finally resolve the issue. On the other side, the DSG unit did appear to be over-zealous on occasion and was maybe by-passing channels of communication in directly contacting field staff within CSC. In addition, they seemed to be too willing to involve the Deputy Solicitor General in problems which perhaps could and should have been resolved at an operational level, for example the problems of consultation. It was indicative of the low ebb in relations in early January, 1980.

Further indications of the lack of communication were that files on which agreement had apparently been reached during one of the consultation periods were suddenly returned again to CSC for further review. Some files appeared to circulate a number of times at intervals of months, with new issues being raised by the DSG staff on each occasion. Since I did not see specific examples of this, it is difficult to determine if this was merely a perception or was in fact true - it is certainly illustrative of the state of relations between the groups.

With the departure of the Chief of Privacy from the Division in January and the appointment of a new Chief, the opportunity to re-establish a harmonious relationship was presented and to date this seems to be the case, though antagonisms continue to exist between other members of the two groups. Since no files have been forwarded to the DSG's office in this period, and all files held there have been returned to CSC, there has been no cause for discussion. Agreement has been reached that files containing recommendations for exemption with which the DSG staff do not agree will be returned to CSC with detailed notes explaining the DSG unit's position. The Chief of Privacy and the analyst will review these notes and make adjustments as they judge to be necessary. If the DSG staff still do not accept the recommendations then a meeting will be called to discuss the file. This approach was thought to be more suitable than immediate consultation, especially since it would provide useful feedback to the exemptions analyst in CSC and the detailed notes are prepared by the DSG staff in any case.

Overall, the DSG unit is serving a very useful function of trying to ensure consistency of application among the various agencies and providing a different perspective on the interpretation of the Act and TBS

regulations which, if not always correct, is valuable. Some tensions should perhaps be anticipated.

The NPB and CSC privacy groups have established good working relationships and cooperate effectively in reviewing each others files. The backlog of NPB files awaiting CSC review was entirely cleared in the November, 1979 to January, 1980 period. Some mechanism has to be put into place, however, to inform NPB when recommendations for exemptions that they have made on their material on CSC files are rejected by the DSG. Since the file is not returned to NPB they have no way of knowing what has been rejected. They do forward copies of denials of exemptions for CSC material on NPB files to CSC privacy.

As the meeting with the field representatives showed clearly, there is considerable discontent with the way their requests are handled at Headquarters. They are naturally reluctant to accept some of the interpretations of the Act since they are the ones who are most directly affected by release of certain information. A major complaint, however, was the changing nature of the exemptions accepted in Ottawa, such that they were never sure where they stood, plus the fact that explanations were often not provided as to why exemptions they had recommended knowing the inmate's character more thoroughly, were refused. CSC privacy staff indicated that the volume of exemptions recommended by the field was such that it was not practical to consult with them in each case when an exemption was to be refused, but no statistics were available for an outsider to pass judgement on this issue.

Field staff were informed that automatic exemption of material gathered prior to March, 1978 could not be granted. Also questioned was a directive, issued by the former Deputy Commissioner of Security, stating that they should not question any refusals to grant an exemption when the file was finally received back at the institution. This would seem to be unduly restrictive, since the field staff would not usually be given an opportunity to press their case in advance of a decision by the DSG.

One further procedure that should probably be adopted is a mechanism to allow field staff to comment on, or recommend exemptions on, CSC material on NPB files. At present they are not always aware of requests for these files and are generally not consulted.

Further details of issues raised by the field staff are given in the minutes of the conference, reproduced as Appendix A to this report.

## V. ORGANIZATION

The CSC Privacy Coordination Division now comprises three separate units, the privacy or exemptions unit, records management and forms management, the latter having been added in February, 1980. The division has varied widely in size during its two year existence, reaching a peak during the file purging exercise in the summer of 1979. Approximately 50 person-years will be used in the current fiscal year, though only a few individuals are in permanent positions, the remainder being term positions. There have been, and continue to be, serious morale problems in the division, some of the reasons for which will be outlined below.

### A. PRIVACY COORDINATION

This group formed the nucleus of the original division established in March, 1978 to implement the provisions with respect to inmates of Part IV of the new Canadian Human Rights Act. The director at the time brought in a number of people with varied backgrounds to review the files, trying to achieve some balance between field experience, legal knowledge and French language capability. Some of the new recruits were recent graduates in the social sciences brought in as administrative trainees and held against PM 1 positions. Unfortunately, it would appear that Personnel was largely by-passed in this process and promises were made to individuals which could not be kept. The people were recruited on the implicit understanding that positions would be made indeterminate but this never transpired. The exemptions analyst positions were tentatively classified at the PM 1 level based on data submitted by the director, but were subject to review by Classification. Other individuals were transferred at one level and held against positions at a higher level, which is not in accordance with Public Service guidelines. The stage was thus set for future problems.

A review of the classification of the positions in the division was made early in 1979, coming shortly after the present director took over his position. As a result, the exemptions analyst positions were downgraded from PM 1 to CR 4, effective April 1, 1979. However, the term positions had already been extended for a further 6 months at the PM 1 level (i.e. until September, 1979) before this reclassification was completed. As the PM 1 term positions expired in September, they were renewed as CR 4 term

positions, creating serious morale problems for the incumbents, especially since comparable positions in the NPB and DSG exemptions units had been classified at the PM or AS 1 levels. Certain individuals in fact left CSC privacy coordination to take up these latter positions.

The reverse situation also appears to have occurred, where a CR 2 was told she was doing a CR 4 job and was expecting the appropriate salary, though official appointments were never made or boards held to qualify the person. This has given rise to grievances. A similar situation seems to have arisen with the former Chief of Privacy, who was transferred to the Division as an AS 2 but was occupying an AS 4 position. Promises appear to have been made to individuals without Personnel being aware of what was happening. This has resulted in classification and staffing having to take action to regularise the situation after the fact; for example, by setting up acting CR 4 and AS 1 positions backdated to November, 1979 so that individuals in acting CR 2 and CR 4 positions respectively could be paid at the higher rates as promised.

The situation has been resolved for the coming fiscal year, with the establishment of permanent positions for the Chief of Privacy, AS 4, for a senior privacy analyst, AS 2, and five privacy analysts, AS 1s. In addition, positions for a senior clerk, CR 3, and two additional clerks, CR 2s, and two secretaries have been approved. It appears to be the intent of the director of the division to appoint the present incumbents to these positions, though there is doubt on the part of some individuals of the capabilities of one privacy analyst to actually perform the task adequately, (a second resigned of his own accord). The consultant is unable to assess this and the Chief of Privacy, being new to the position, is also probably unable to form a judgement at this stage. The senior analyst, while competent, is also a PSAC representative, which appears in the past to have made other demands on his time and energy. The Director of Privacy has indicated that this is no longer the case and my impression is that this is correct. He is also an AS 3, occupying what is now classed as an AS 2 position. In staffing these permanent analyst positions consideration should be given to obtaining someone with institutional or parole service experience - it would create more credibility with field personnel and would in itself be valuable. Legal experience, while useful particularly in dealing with letters from inmates' lawyers, would not appear to be essential.

Should the rate of applications for access to files continue at its present low rate, only one or perhaps two people would be required to process the files once the backlog is cleared. It is too early at this stage to project the likely course of events, but the situation should be clearer in two to three months now that a steady stream of files returning to inmates has been established. The person-years could probably be used very effectively in records management if not required in privacy.

B. RECORDS MANAGEMENT

When it became apparent that one of the chief problems preventing inmates gaining rapid access to their files was the state of the records themselves, it was decided to merge the Privacy Coordination and Records Management groups. This was done in April, 1979, though the head of each group reported at the time to the Director of Privacy and Information Systems. The Chief Records Officer, an AS 5, was then placed directly under the Director of Privacy Coordination and began the task of organizing for the implementation of the "5-file" system, though the Director seems to have retained control of the process.

Two consultants were hired on long term contracts to assist in the records and procedures area, but report to the Director rather than to the Chief of Records. There is a history of directives being issued and then countermanded by the other party or of actions being taken without communication, even where the second person would be affected. The lack of mutual respect is very evident and is destructive to the cohesion of the division.

Only one indeterminate person-year has been allocated to the unit, that of the Chief, though a few positions have been approved and classified. The Chief's position is classified as an AS 4, though the incumbent is now an AS 5, while there is one CR 3 and two CR 2 positions. The current Registrar, an AS 4, will be leaving the Division on April 1, 1980 and will not be replaced.

Again, should applications for access to records remain at the present level, there will be a need for only a minimal staff in Ottawa in the present registry and records processing functions. The unit does have, however, functional responsibility for records management in the field and if the gains achieved during the recent purging

and reorganization of files are to be maintained, close monitoring of and assistance to the field will be required. There is already evidence from files recently received that they are beginning to expand again. It is not within the scope of this review to examine in detail the records management system and, in any case, two consultants are already engaged in the activity. However, additional staff are probably going to be required to maintain records management policies and procedural guidelines and to monitor their implementation. The recent position paper dated January 16, 1980 and prepared by the Privacy Coordination Division deals with many of these issues.

The present records control procedures within the Division seem adequate, having been modified very recently, though weekly reporting of activity should be implemented. This is only partially in place at present. Appendix B illustrates the present form used to record the processing of inmate files.

The potential impact of the Freedom of Information Bill will not be considered in this report. A thorough review of the responsibilities, functions and staffing of the Records Management Unit is required.

#### C. FORMS MANAGEMENT

This group was added to the Privacy Coordination Division only in late February, 1980 and has not been examined in this study. They are to be engaged immediately in an exercise to rationalize and formalize the "bootleg" forms being used in the field in an attempt to maintain some conformity among regions and, indeed, among institutions.

The bringing together of the three groups under one director appears logical since the three areas are highly interrelated. Though privacy is the major function at present, if current trends continue it may well become a relatively minor activity of a reconstituted records management function. Other records functions, for example staff records at headquarters, are outside of the mandate of the records management unit at present.

## VI CONCLUSION AND RECOMMENDATIONS

This report has examined some of the problems preventing inmates or parolees gaining rapid access to their files and, through a brief review of the history of the division, has attempted to determine the underlying causes. Considerable amelioration of the position has been observed in recent months, with the release of records to in excess of 320 individuals in the last 3 months, (or at least the records have been returned to the institutions or parole offices). Nevertheless, a backlog of requests by 515 individuals remained unanswered at the end of February, 1980. Of these 515, the records for about 150 are still to be received from the field, approximately half of those from the Quebec region. Special efforts are being made to obtain these records.

Given the present processing capability of the CSC privacy coordination division, with some assistance from NPB privacy, and assuming that the rate of new requests remains at the present level of about one per day, the backlog of files could be cleared from CSC in about 3 months. This may require the temporary appointment of an additional final reviewer in CSC and possibly an additional analyst. It would be preferable to take this longer period rather than institute a crash program with additional exemptions analysts since the latter approach would give rise to control problems, especially the maintenance of consistency in application of exemptions. A number of indeterminate positions have been authorized within the privacy unit in the next fiscal year, but consideration should be given to appointing one or possibly two new officers, replacing one incumbent. Speedier processing in CSC would likely result in a bottleneck in the DSG's office.

The Deputy Commissioner Security should request that a weekly report of the status of files be submitted by the Division Director, so that prompt action may be taken should the processing fall behind schedule.

In the past, files appear to have circulated between CSC and the DSG's exemptions unit without resolution of contentious issues - indeed there appeared to be no mechanism for raising these issues to a higher level of management, and the poor level of communication between the two units exacerbated the problem. This appears to have been partly overcome by the appointment of a new Chief of Privacy, but antagonisms remain at other levels. Three

specific problem areas were identified in the report and it is understood that the DSG will be addressing two of these in the immediate future, partially as a result of meeting chaired by Mr. Shoemaker, the Senior Assistant Deputy Minister, and attended by members of the privacy groups of the various agencies. A regular, periodic formal meeting of this nature would help resolve issues and should be instituted. The CSC and NPB privacy staffs have requested that guidelines be issued by the DSG on the application of exemptions, incorporating the precedents established over the last few months. While these would undoubtedly be of great assistance they would not be a panacea - judgement will still be a major factor.

Procedures have been established for ensuring consultation among CSC, NPB and DSG groups at the operational level, and for the "marry-up" of NPB and CSC files, to ensure consistency in application of exemptions, prior to forwarding the files to the DSG's exemptions unit. These should avoid many of the delays in processing files which have occurred in the past.

Internal organizational and personnel problems are evident in the Records Management Unit within the Privacy Coordination Division. A thorough review, beyond the scope of this study, of the responsibilities, functions and staffing of this section is recommended. This should probably also be extended to cover other records management functions within CSC, and an appreciation of the potential impact of the proposed Freedom of Information Act.

Field staff still have a perception that the rules with regard to exemptions are changing daily. An attempt should be made to elaborate upon the present guidelines, particularly if and when further directions are issued by the DSG, and they should be circulated widely in the field. It is believed that the directive issued to institutions stating that they could not question the exemptions denied on files returned to the inmate should be modified. Also, mechanisms should be developed to give field staff the opportunity to comment on CSC material in NPB files prior to processing for exemptions. The development of an inmate profile, to be completed by institutional staff and attached to the records forwarded to Privacy Coordination, should be reconsidered. It could significantly assist in making marginal decisions.

The classification problems within the division have been largely resolved, but the staffing process still needs attention. Care should be taken in the future to ensure that Personnel is aware in advance of actions to be taken; they can be of assistance.

Much has been achieved over the past year, but the situation in the field will need careful monitoring to ensure that files do not return to their original disorderly state. Given that the volume of new requests remains low, the backlog should be cleared from CSC within 3-4 months and attention can then be given to the records management issues.

APPENDIX A

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## PRIVACY COORDINATION AND RECORDS MANAGEMENT

## CONFERENCE ON THE 5-RECORD SYSTEM AND

EXEMPTIONS FROM ACCESS

Objectives At least three representatives from each region and NHO staff met to discuss operational problems associated with the new 5-record system and to reduce uncertainty with regard to exemptions from access to those records.

Introduction The conference was convened by the A/DCS. The Chief, Records Management then attended to housekeeping items and tabled the first item for discussion, an interim agreement on the "Routing of Offender Records".

Agenda Item I: Routing of Offender Records

The Ontario Offender Records Procedures Manual was accepted, with minor amendments by all regions. It is PC & RM's intention to develop a national manual that will incorporate both this publication and the procedures manual developed by the Quebec Region, as well as the other related issues raised by the field as outlined below:

The national manual will be developed in full consultation with these two regions before it is issued to all participants for comments. PC & RM and the Ontario and Quebec RMA's and RCRM's will condense and incorporate suggested improvements before final printing.

Other Related Issues

- (a) Working files
- (b) accessibility of psychiatric/psychological data
- (c) federal/provincial transfers
- (d) security docket of Offender Administrative record
- (e) Housekeeping record
- (f) IDRIS record's informal accessibility
- (g) routing of Health Care and Security record
- (h) UAL's, Escapees, and Deportees

(a) Working Files

Field representatives voiced the unanimous opinion that they required their parole case files from the time of initial reception of the offender. They also opposed the marry-up of their files to the IDRIS and Offender Administrative records upon release of the offender on parole/mandatory supervision, believing that this would necessitate the recreation of their files on readmission of the offender beyond WED or on revocation/suspension of parole/MS; District Office personnel considered that the likelihood of this occurrence within 6 months of WED was high.

PC & RM responded that it was unaware of reasons for maintaining such files on long-term offenders and that, even when the district office was responsible for the initial reception process, it felt the associated paperwork should be forwarded to the ultimate, receiving institution. In this sense, the dis-

trict office was no different than a temporary "holding" institution or RRC (or RPC).

The field representatives were undeterred, PC & RM relented, and the definition of these files was discussed to ensure their use was both practical and legal. It was generally agreed that:

- (i) parole case, skeleton or dummy files be titled 'working files'

Contents

- (ii) working files would contain no originals (copies of reports received from outside sources to be considered originals) as these would be routed to the appropriate parent record (IDRIS, OA).

Use

- (iii) Use of working files must be "derivative", i.e., consistent with the purposes of original collection as described in the 1980 Index of Federal Information Banks (attached to the interim agreement, "Routing of Offender Records"). If decisions are reached using the files, those decisions must be recorded and forwarded to the parent records (IDRIS, Offender Admin.) Disclosure to third parties for administration purposes different than those described in the IDRIS and Offender Administration bank descriptions must be according to Appendix A of Chapter 415 of the Administrative Policy Manual (pre-conference handout).
- (iv) District Offices would create a working file upon initial reception. Any district offices, RRC's, RPC's or any temporary holding institutions shall inform the parent institution on creation of a working file to ensure their proper control and action on the movement of the offender; all offender information used for administrative purposes or even held with a potential for future administrative use is accessible to the offender.

Alternatives to the marry-up of the District Office working file with the offender's parent records on his release on parole/MS were presented by PC & RM. District Offices made it clear that their working files were the only reference they required to do their job and that they were not really interested in receiving the parent records at all, let alone in double filing on both these and their working file in the interest of retaining their working file.

While no clear vote was taken on the matter, the field generally voiced support for PC & RM's proposal that the parent records would indeed follow

the offender to the district office but that these records would be stored, and only the working files used until access (low volume of parolee requestors) or movement of the inmate occurs. In such cases, the parent records would be updated at one "sitting", thus precluding the requirement for daily double-filing.

Action Legal Advisor:

While this option appears to be both legal and practical, this procedure shall not be implemented until the Legal Advisor has ruled.

Field representatives indicated that, as most recidivists return within 6 months of reaching their WED, destruction of the working file prior to that date would be a false economy as most such files would soon need to be recreated. It was therefore agreed that pending Public Archives agreement to call in records every 6 months instead of quarterly as presently arranged, working files and parent records could be retained locally until 6 months after W.E.D. and if, by that point the offender had not recidivated, the parent records would be updated, the working file destroyed, and the parent records then forwarded to Public Archives.

Another point of discussion on which no decision was reached concerned the requirement that the district office creating a case preparation working file which is not the district office servicing the ultimate, receiving institution, would need to destroy its working file within a year, while ensuring its contents were routed to the "parent" records.

This would also hold true for community assessments. As per the Ontario "Records Procedure Manual", such working files would not be maintained longer than one year unless the offender is assigned to the creating district office.

Conclusion

The above was not discussed in an orderly fashion and Field Representatives are requested to comment on the entire proposal.

District offices and other CSC locations may create and maintain working files within these constraints pending approval indicated. Whether, and where working files should exist are ultimately Branch Head decisions.

The above working file rules will be simplified for inclusion in a national offender records management procedures manual (to be based on the Ontario & Quebec models) which will be issued to all participants for comments prior to final printing. Also to be included are the unresolved issues:

(b) Accessibility of Psychiatric/Psychological Data

District Directors noted that they required access to psychiatric informa-

tion to do their job effectively. A memo was tabled from the Acting Chief, Psychological Services, authorizing the distribution of psychological reports to district offices. District Directors noted that outside psychiatric assessments often were sought and provided to district offices often on the condition that CSC medical practitioners (and offenders) did not have access to them.

Action DCOP/DGMS

Concerns re accessibility by district offices to psychological and psychiatric data will be presented to DCOP & DGMS for resolution.

(c) Federal/Provincial Transfers

The Legal Advisor must be consulted for his opinion re who has the control or "ownership" of offender records in the following cases and which individuals have right of access under Part IV of CHRA:

- provincial offenders on federal parole
- federal offenders on provincial or private parole
- provincial offenders in federal institutions
- federal offenders in provincial institutions

Action: Legal Advisor

This information is required before the routing procedure can be developed.

(d) Security Docket of Offender Administrative Record

As per the Index description of the Offender Administration record (attached to interim agreement on "Routing of Offender Records"), a "Section 54" Security docket may form part of the Offender Administration record. During the administrative reviews, a portion of the bulk file was removed as "security" information. However, in that the greater proportion of those segregated forms, reports, etc. do not meet the criteria for inclusion in a Section 53 bank (totally exempt), it had to be "indexed" as either a separate information bank or a "docket" of Offender Administration. DCS/DCOP chose the latter.

Action: DCS, DCOP

The conference participants recommended that two dockets for Offender Administration were unnecessary, especially since they were usually retained at the records office (i.e., the Security docket was not retained by the IPSO). The matter will be put to DCS/DCOP for resolution. Proposed solution to be incorporated into procedures manual.

(e) Housekeeping Record

Action: Chief Records Management, DCOP

It was noted that total destruction of the Housekeeping record upon movement of the offender was not practical. It was recommended the procedures be amended to read "purge" of superfluous material, if Government Records Disposal Schedules do not prohibit.

Action: DGIE

DGIE must identify the contents and retention schedule of the Housekeeping record documents.

(f) IDRIS records Informal Accessibility

Action: DCOP

It was strongly recommended that the intent to render the IDRIS record informally accessible by the Spring, 1981 be delayed, at least until the field was presented with a workable conversion plan. This recommendation was made notwithstanding the new case management process.

(g) Routing of Health Care & Security (Section 53) Records

The proposed routing of the Health Care and Security records was discussed and objections made. It was recommended that:

Action: RMA's

Where a receiving institution does not employ an IPSO or Health Care Officer but is "serviced" by a nearby institution that does, the releasing institution will forward the records to that servicing institution. The regional representatives agreed to forward a list of such instances for incorporation to the procedures manual;

Action: DCOP, DGMS

Since "unserviced" minimum institutions and CCC's were faced with situations where their offenders require medical care, the Health Care record should be forwarded to these locations (in a sealed envelope if necessary). DCOP/DGMS to resolve issue.

Action: DCOP, DCS

A request was made that staff access to the IPSO file be improved, (the totally exempt, Section 53 bank), both at institutions where IPSO's are employed and at minimum institutions and CCC's. DCOP/DCS to address issue.

(h) UAL's, Escapees and Deportees

It was recommended that the records of such offenders be retained at the releasing institution indefinitely.

Agenda Item II: Forms

The lists of forms currently retained on the 5-record system in each region were assembled in chart form by PC & RM to indicate the discrepancies in forms placement across Canada. With a view to easing the administration of offender information until the national standardization of the contents of the 5-record system is effected, an interim agreement was jointly arrived at by conference members on the placement of existing forms, regardless of their official status.

Action: Regional Managers Administration

1. To ensure that the interim agreement is adhered to.
2. To coordinate the collection of all forms retained on the 5-record system for their region and;
  - a) list all non-official forms, i.e. those not listed in the Forms Catalogue distributed nationally by NHQ Technical Services \*; and
  - b) either discontinue their use or forward a copy of each form to NHQ Forms Management with the following information:
    - Office of Primary Interest (OPI)
    - Distribution
    - Useage (regular/exceptional)
    - Estimate of useful life
    - Those that are collection documents
    - Those that are externally-generated forms.

The importance of this first action step cannot be overemphasized. To rationalize and standardize the contents of the 5 records requires, first, an assessment of the "current situation". Forms Management, in consultation with Branch Heads and the field, will attempt to marry the unofficial forms system with the official one.

\* Mr. Ernie Hughes, Material and Services Procurement Officer at NHQ can be contacted at 593-5232 for information concerning the distribution of the Forms Catalogue if it cannot be readily located locally.

Agenda Item III - Exemptions from Access

While exemptions were discussed at some length during earlier sessions, field concerns were not formally addressed until Wednesday, p.m. The discussions carried on through the following morning.

In that strictly chronological minutes would create confusion, the below "action-oriented" format has been prepared.

i) Related Issues Introduced Earlier

During discussions on other agenda items (the 5-record system), a number of exemptions-related matters were introduced:

- a) the working file concept - offenders have the right to access personal information concerning them which is used or has a potential to be used for administrative purposes. Hence, upon access, mechanisms must be in place to ensure the accessed "parent" record contains any documentation also held in "working files". Note that this applies to any case preparation and community assessment paperwork held at district offices 1) not serving the institution where the offender seeking access is incarcerated or, 2) not currently supervising the offender. It also applies to RRC's, RPC's, RHQ's, NHQ and "previous" institutions/district offices.

Action: PC & RM, in concert with the Ontario/Quebec RMA,s and RCRM's, to ensure the CSC offender records management manual (to be developed based on the Ontario/Quebec models) clearly defines these constraints within which users of working files must operate.

- b) routing of W.E.D. records - records retained beyond W.E.D. are accessible to offenders unless specifically and permanently rendered "non-administrative" (e.g., research). If the field representation that parent records be retained at the responsible district office/institution for 6 months after W.E.D. is accepted, mechanisms must be in place to ensure timely access (and exemptions, without using Sub-section 54 (d)).

Action: Same as Item "i-a", for inclusion in a "Part II" records manual on privacy.

- c) informal access to IDRIS records by Spring, 1981 - the field made strong recommendations that this date be postponed, at least until a practical conversion plan is developed.

Action: DCOP.

- d) contents of the Section 53 Security record - there existed considerable confusion as to what information was eligible for placement in this record (commonly referred to as the IPSO file or DI 171 material).

Action: DCS.

- e) Ms. Hansen recommended that the police be publicly informed of the exemption status of their reports held by CSC.

Action: PC & RM to apprise the DSG of this recommendation.

- f) Precluding Exemptions

General consensus was reached that many problem-areas could be resolved if field staff were properly trained in the techniques designed to preclude exemptions. Pages 6-7 of PC & RM's Status Report refers.

Action: PC & RM to approach Staff Training and Development concerning such a training course.

- g) Purging Records (pre and post-access)

Considerable confusion on this issue led to the agreement that records will not be purged until further notice. Ch. 410 of the APM refers.

Action: PC & RM to seek clarification from Dominion Archivist and incorporate same to Offender Records Management Manual and any training course resulting from Item "f", above.

- h) The Legal Advisor must be consulted for his opinion re who has the control or "ownership" of offender records in the following cases and which individuals have right of access under Part IV of CHRA:

- provincial offenders on federal parole
- federal offenders on provincial or private parole
- provincial offenders in federal institutions
- federal offenders in provincial institutions

Action: PC & RM to incorporate advice to Offender Records Management Manual.

- ii) Introductory Remarks by Guest Speakers

- a) Nadine Levin - Special Assistant for Exemptions Review to the Deputy Solicitor General (DSG)

The DSG acts for the SG in deciding what information can be legally exempted from access. He has no vested interest or

bias and seeks to equally represent each of the department's three operational agencies (RCMP, CSC and NPB) as well as the Ministry Secretariat. His role is to ensure uniformity and consistency in the application of exemptions by following the Act, its regulations and Treasury Board directives (esp. Ch. 420 of the Administrative Policy Manual).

Regardless of which agency's record is accessed, the recommendation of the originating agency is sought concerning its documents. On the Exemptions Request form, the DSG has 5 options:

- 1) approve the recommendation;
- 2) refuse the recommendation;
- 3) refer the recommendation to the Ministry's Privacy Coordination Committee;
- 4) refer the recommendation to the Solicitor General;  
or
- 5) refer the recommendation to the Agency Head for review and resubmission.

b) Inger Hansen - Privacy Commissioner

Part IV of the Canadian Human Rights Act brought about a complete reversal of Federal Government policy - from one of secrecy to one of openness, subject to specific exemptions. Representations were made to Parliament on behalf of CSC and the exemption sub-sections, 54 (d) (i), (ii) and (iii) resulted.

The DSG (acting for the SG) is the decision-maker with regard to exemptions. Ms. Hansen's office is empowered to investigate complaints by offenders concerning delays and exemptions, but can only make recommendations to the SG. In making those recommendations, she tries to be sensitive to the needs of the individuals seeking access, as well as to those who are affected by the release of the information.

iii) Field Concerns

From the queries posed by the field representatives, it grew apparent that two courses of action should be pursued:

- a) seek changes in procedures (the mechanisms via which PC & RM provides access and processes exemptions);
- b) seek changes in policy (legislation, regulations, Treasury Board directives) or the application of that policy (by the DSG).

The rationale underlying this approach is one of time-frame. Many procedures can be changed immediately; a well-documented brief from the regions will probably be required to change policy or its application.

a) Amending PC & RM's Procedures

Exemptions Criteria

Field representatives expressed strong concerns about exemption criteria currently being used - that types of information exempted in the past were not being exempted now. They sought rationale for the new policy and a clear statement of the exemption criteria currently being applied.

In response, PC & RM noted that the initial exemptions process was a learning exercise - that Treasury Board directives were sketchy and fast-changing and, in concert with the very real concern about the repercussions of too liberal access, that errors were made on the side of caution.

While not the only cause, an informal investigation into the exemptions process by the Privacy Commissioner's office led to amendments in PC & RM's recommendations for exemptions. The DSG had also expressed concern.

Except for Sub-section 54 (d), it is unlikely that exemption criteria can be clarified beyond Ch. 420 of Treasury Board's Administrative Policy Manual. 54 (d) criteria were disseminated to the field (in Part II of the "Administrative Review Manual") but these, too, must be reassessed.

Action: PC & RM, in concert with NPB's privacy division, to seek clear exemption criteria from the DSG's office, with special emphasis on Sub-section 54 (d).

Receipt of Access Request - Field Input

Field representatives voiced the concern that all originator's of documents in accessed records were not provided the opportunity to input to the exemptions process, e.g., access to institutional and NPB records containing district office documents.

Action: On receipt of an access request, PC & RM forwards an "Owner Action" form to the appropriate location (for the most part, institutions). PC & RM agrees to c.c. the district office serving that institution if the field can guarantee turn-around within 8 calendar days.

Deferred: With respect to NPB access requests, the Chief, Privacy Coordination has agreed to approach NPB to discuss the recommendation.

### Returning Processed Records

A number of procedural issues were raised concerning the return of processed records, a package containing an envelope for release to the offender and one (exempted material) for insertion to the original record.

Field representatives noted that offenders could appeal exemption decisions to the Privacy Commissioner, whereas the field representatives had been told (by DCS memo) that they have no such recourse.

In response, PC & RM noted that processed records are not returned via "privileged mail" and, indeed, are addressed to the applicable Warden, District Director, etc.

Action: PC & RM will ensure the package for release to the offender is clearly marked and will be contained in a "Blue" file folder. PC & RM agrees to explain why it has rejected field recommendations (at least until clear criteria are disseminated).

Deferred: PC & RM will approach the DSG concerning explanations for rejected recommendations and "appeals" to his decisions. In the interim, field representatives should call Nigel Rodda (995-3466) when they strongly disagree with the DSG's decision.

### b) Amending Policy

Field representatives were highly critical of current exemptions policy. It was decided that a formal Brief should be prepared by the regions, documenting factual accounts of danger to individuals and other operational disruption and recommending corrective action.

Action: Preparation of the Brief would be the responsibility of the RMA,s (except Atlantic) and its format would reflect two possible purposes:

- to be presented by the Commissioner to the DSG for consideration. If it fell within the DSG's authority to act on the recommendations (i.e., he could legitimately amend his criteria re the application of exemptions), the process would stop there;
- if not, and if deemed appropriate by the Commissioner and the DSG, the Brief would be forwarded to Parliament and various central agencies as input to amending the privacy legislation and /or its associated regulations and directives (Chs. 410-425 of the Administrative Policy Manual);

The Brief should be geared to those instances where the release of information is causing problems, i.e.,

- 1) physical retaliation (e.g., the Quebec case);
- 2) drying up of third party sources (e.g., police);
- 3) refusal, by staff, to put valuable but sensitive information on paper (e.g., psychiatric reports);
- 4) other issues (to be identified).

As a starting point, points raised at the conference are summarized below.

1) Physical Retaliation

Sub-section 54 (d) (iii) authorizes exemptions where the release of information to current offenders might cause physical or other harm to any individual. Field representatives expressed strong concern that this sub-section was not being invoked to a degree sufficient to protect both staff and third parties. The case in the Quebec region, where a classification officer's life has been threatened, was produced as evidence.

This and any other examples of potential danger should be documented. For the interim, an offender's past record of or connection with violence should be noted by the field where exemptions under this sub-section are sought. Field staff making recommendations should key on information where PC & RM (and DSG) staff might not understand the implications of its release.

2) Drying up of third party sources

Sub-section 54 (d) (ii) authorizes exemptions from access to information originally obtained on a promise of confidentiality, expressed or implied. Field representatives felt this exemption sub-section should be applied to any sensitive information collected prior to March 1, 1978 (i.e., before rights of access). They queried the retroactivity of Part IV.

More forcefully still, field representatives questioned the release of police information (reports or quotations therefrom). They noted that the previous Privacy Coordinator had indeed promised the police confidentiality (during a speech) - that information provided by them is now proving to have been collected by CSC under false pretences.

In response, Mr. Levin and Ms. Hansen noted that there can be no guarantee of exemptions of information under Part IV as the Act confers upon the Minister a discretionary power to exempt - that unless the document or "piece" of information provided by third parties qualified for inclusion in the totally-exempt Section 53 bank (e.g., intelligence reports, informants), it had to be reviewed on a case-by-case basis.

PC & RM added that from March 1, 1980 on, Treasury Board requires that federal government employees give "statements to data sources", whether the source is first person or third party. Third party sources must be informed of the offender's rights of access. (Ch. 410 of the Administrative Policy Manual refers).

Cases where the potential or actual release of information to offenders caused third parties to withhold valuable information from CSC or other problems should be documented in the Brief (especially when field staff begin to give the aforementioned statements). In the interim, field staff recommending exemptions under this sub-section should demonstrate that the information would not have been provided under conditions other than confidentiality.

Information provided by provincial and municipal police may also be exempted under Sub-section 54 (a), where the release of information might be injurious to federal/provincial relations. But as is the case with Sub-section 54 (d) (ii), written agreement with the particular province is required before any guarantees re confidentiality can be given. Ms. Levin noted that previous attempts to reach such agreements had failed as the provinces considered Part IV - and intrusion to their jurisdiction (i.e., civil rights). An agreement, the provinces felt, would legitimize this intrusion.

3) Refusal by staff to put valuable but sensitive information on paper

Field representatives noted that the potential of an access request (and, hence, for retaliation or libel suits) was causing CSC staff to alter the manner by which they completed reports. Cases where psychiatrists were entering only "Seen" and the interview date were given as examples. The honesty and reliability of reports completed under these circumstances were questioned. It was noted that, more and more, staff members were being forced to rely on their memory to make decisions.

In response to queries concerning possible libel suits, Ms. Hansen noted that this is covered by civil law and CSC staff cannot be sued for providing opinions which are their duty to provide. It should also be noted that offenders have a right to correct what they believe to be false information, as well as to annotate their record where a requested correction is refused.

The Brief should document instances where CSC staff (and contract personnel) refuse to put information on paper for fear of retaliation. The implications of this information loss should be addressed. If anonymity is claimed, the information must be verifiable.

CONCLUSION:

The above is a hasty summary of the three major concerns expressed by the regional representatives about (the lack of) exemptions. The regions are free, of course, to address other issues in their Brief. It is stressed that the more factual the accounts of danger and disruption and the more reasonable the recommendations for corrective action, the greater the chances of successfully obtaining amendments to exemptions policy.

As there was insufficient time to review the forms placement on the Security record (this is the material included in the Offender Administrative record). it was agreed that the majority opinion on the placement of these forms would be acceptable. The attached graph has been modified accordingly. Please advise PC & RM if any corrections are required.

APPENDIX B

SURNAME

GIVEN NAMES

FPS

INMATE NO

D.O.B.

REQUEST DATE

REFERENCE NO.					
DATE RCV'D					
INITIAL REVIEW	IN				
	OUT				
MEDICAL REVIEW	IN				
	OUT				
NPB	IN				
	OUT				
FINAL REVIEW	IN				
	OUT				
TYPING	IN				
	OUT				
DPC REVIEW	IN				
	OUT				
DSG	IN				
	OUT				
EXEMPTIONS					
RELEASE					

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the release of inmate  
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