

# **REPORT**

## ***Office of the Chief Administrative Officer***

**To:** Mayor Johnstone and Members of Council  
**Date:** September 11, 2023

**From:** Lisa Spitale  
Chief Administrative Officer  
**File:** EDMS# 2313271

**Item #:** 2023-568

**Subject: Freedom of Information and Protection of Privacy Act Report for 2022**

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### **RECOMMENDATION**

THAT Council receive this report for information.

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### **PURPOSE**

To update Council on the City's compliance with the Freedom of Information and Protection of Privacy Act (FOIPPA).

### **BACKGROUND**

Under FOIPPA, the City is obliged to both provide access to City records upon request, subject to certain exceptions established under the Act, and protect the privacy of its employees, residents and customers.

FOIPPA requires the City to designate a head; this is done by Bylaw No. 7892, 2017 with the Chief Administrative Officer (CAO) being designated. The day to day running of the FOIPPA function is currently delegated to the Acting Records and Information Administrator. To support the head, the City has an administrative FOI committee composed of the CAO, the Manager of Legal Services and the Corporate Officer.

FOI and Privacy training is offered to all staff, and managers are encouraged to have staff attend. It is offered both in person and virtually. The next step is to make the training on demand by creating a video of the presentation. This will broaden the reach of the virtual training.

## **DISCUSSION**

### **Public Access Requests for City Records**

The City has worked hard over the years to increase the number of records that are routinely available to the public and that are available through the City Open Data website and at front counters throughout the City. Those that cannot follow this route are handled through a formal Freedom of Information (FOI) request.

In 2022, the City received eighty four (84) FOI requests, an increase of 9% from the last year but in line with the number of requests from 2019 and 2020.

**Table 1: Total number of FOI request the City received by year (2019 – 2022)**

<b>Year</b>	<b>Total number of FOI request</b>	<b>Change from previous year</b>
2022	84	9%
2021	77	-12.5%
2020	88	2 %
2019	86	-1%

Of these requests, fourteen (14) required more than one department to respond. The majority of the requests were for building permit records followed by administrative records.

**Table 2: Total number of FOI request broken down by responsive City department (2021 – 2022)**

<b>Responsive Department</b>	<b>No. of Requests in 2021</b>	<b>No. of Requests in 2022</b>
Animal Services	1	3
Business Licensing	-	3
Building permits and Inspection	13	14
Climate Action, Planning and Development	10	7
Communications	2	0
Engineering & Engineering Ops.	8	10
Finance	6	11
Fire and Rescue Services	15	13
Human Resources	2	2

IT	4	1
Integrated Services	19	5
Legislative Services	6	3
Mayor's Office	2	2
Office of the Chief Administrative Officer	3	11
Parks & Recreation	12	2

The increase in numbers can be largely attributed to a significant number of media requests.

**Table 3: Total number of FOI request broken down by category of requesters (2021 – 2022)**

Category of Requestors	No. of Requests in 2021	No. of Requests in 2022
Companies	9	10
Insurance Adjusters	8	4
Law Firms	18	10
Media	3	32
Public	38	24
Public Bodies	1	4
Union	0	0
<b>TOTAL REQUESTORS</b>	<b>77</b>	<b>84</b>

Compared to other similar Lower Mainland municipalities the City's has a high number of requests at 1.09 per 1,000 residents. The average in the region among similar municipalities is 0.68 per 1,000 residents.

The City issued seventeen (17) requests for payment as a result of FOI requests. This means that these requests took greater than three (3) hours to process or were requested by a commercial applicant. Although the City is able under the FOIPPA to charge a \$10 administrative fee for each FOI, in 2022 Council decided not to charge this fee.

As a result of these requests in 2022, 2342 electronic pages were released. No requests required paper documents.

In 2022, fourteen (14) requests were forwarded to the Office of the Information and Privacy Commissioner (OIPC). This compares to zero (0) in 2021 and two (2) in 2020. The reasons for forwarding the files to the OIPC were as follows:

- *Third party review* – on one (1) file the City's severing was questioned by a third party. This was resolved when the file was withdrawn by the applicant and no direction was given.
- *City requested OIPC review* – The City forwarded nine (9) requests for review under section 43 of FOIPPA as being frivolous and vexatious. As a result of the review, the City was allowed to disregard the requests.

- *Applicant requests an OIPC review* – Applicants for four (4) requests sent the City’s response for review by the OIPC. These four files are now in the inquiry stage with the OIPC.

Looking into 2023, the volume of requests has significantly reduced with staff expecting the number to return to pre-pandemic numbers of roughly sixty five (65) requests.

## **Protection of Privacy**

The City received seven (7) privacy breach notifications in 2022, each were formally investigated. Only one (1) of the breaches involved residents / client information and the information was recovered. The others were internal to the City due to misdirected emails. In these cases staff training followed.

An increasing volume of work in the privacy area is the creation of Privacy Impact Assessments (PIA). These are required each time the City implements a new process, initiative, system or updates to an existing one.

**Table 4: Total number of PIAs created (2019 – 2022)**

Year	2019	2020	2021	2022
No. PIAs	12	21	17	45

In 2022, forty five (45) Privacy Impact Assessments were drafted. Staff expect this number to double in 2023. With the changes to FOIPPA in 2021, Privacy Impact Assessments have become more complex as they will need to include risk-based assessments; the City template has been redrafted to reflect this. As the City moves to optimize processes by leveraging electronic tools, PIAs will increase in frequency and complexity.

## **Looking Ahead**

As a result of legislative changes in 2023 there is a need to review our current Privacy Management Program. The City adopted a Privacy Policy in 2019, carrying out privacy breach investigations and has a FOI and Privacy training program in place. However, staff expect that once the Provincial guidance on the latest changes is published, the City will need to make adjustments to comply with the new regulations. The City will continue to following its privacy breach protocol and, where appropriate, notify the OIPC.

## **SUSTAINABILITY IMPLICATIONS**

FOI responses were 100% electronic in 2022.

## **FINANCIAL IMPLICATIONS**

There is one full time staff member working on FOI and Privacy for the City. They are assisted in collecting records by staff members from all departments.

The Act, in some circumstances, allows the City to charge fees for processing requests. In 2022, sixty seven (67) out of eighty four (84) requests were processed without a fee being assessed. The City received \$1,918.07 in fees in 2022. These fees were charged to commercial applicants, those requesting fire reports and for large requests made by members of the public.

With the changes in the legislation and the increased number and complexity of PIAs, staff will be challenged to meet the demands of the work moving forward.

## **INTERDEPARTMENTAL LIAISON**

This report was written with input from the Manager, Legal Services and the Corporate Officer.

## **OPTIONS**

There are two options for Council's consideration:

1. That Council receive this report for information.
2. That Council provides other direction.

Staff recommend Option 1.

## **CONCLUSION**

The City of New Westminster is meeting its obligations under the Freedom of Information and Protection of Privacy Act. Staff continue focusing on being accountable for the safekeeping and responsible use of personal information in the City's custody and control.

## **APPROVALS**

This report was prepared by:  
Jacque Killawee, Records and Information Administrator

This report was reviewed by:  
Peter DeJong, Corporate Officer  
Craig MacFarlane, Manger Legal Services

This report was approved by:  
Lisa Spitale, Chief Administrative Officer