

REPORT

Office of the Chief Administrative Officer

To: Mayor Cote and Members of Council **Date:** March 7, 2022

From: Lisa Spitale
Chief Administrative Officer **File:** EDMS# 2021087

Item #: 2022-158

Subject: **Freedom of Information and Protection of Privacy Act Report for 2021**

RECOMMENDATION

THAT Council endorse staff's recommendation not to charge an Administrative Fee;
and

THAT Council receive this report for information.

PURPOSE

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

On November 25, 2021 significant amendments to FOIPPA were approved. Most of the amendments to the Act have already taken effect with a select few coming into force at a later date, and to give more time for public bodies to develop implementation plans. All amendments are anticipated to come into force the end of 2022.

Key changes to the Act are:

- Requirements that public bodies have a Privacy Management Program;
- Updates to FOIPPA's data-residency provisions allowing public bodies to house data outside of Canada following a consideration process;

- Increased penalties for offences and new additional offences for evading FOI;
- Requirement to report privacy breaches to the Office of the Information & Privacy Commissioner of BC;
- An opinion to charge a \$10 application fee for non-personal FOI request;
- Enabling more information sharing with indigenous peoples; and
- Adding Indigenous cultural protections.

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. All other public access request for City records are handled through a formal FOI request. This year the City received 77 FOI requests, a decrease of 12.5% from the last two years.

Table 1: Total number of FOI request the City received by year (2019 – 2021)

Year	Total number of FOI request	Change from previous year
2021	77	-12.5%
2020	88	2 %
2019	86	-1%
2018	87	32%

Of these requests, 15 fall into more than one department having responsive records. The majority of the requests were for Bylaw and Licensing records. There was a decrease in the public requesting Fire and Rescue Services and Animal Services records from last year.

Table 2: Total number of FOI request broken down by responsive City department (2020 – 2021)

Responsive Department	No. of Requests in 2021	No. of Requests in 2020
Administration	3	3
Animal Services	1	6
Bylaw & Licensing	19	7
Building permits and Inspection	13	17
Communications	2	0
Engineering & Engineering Ops.	8	6
Finance	6	6
Fire and Rescue Services	15	20

Planning	10	11
Human Resources	2	5
IT	4	0
Legislative Services	6	4
Mayor's Office	2	3
Parks & Recreation	12	15

There was a decrease in the number of requests from the public and law firms, and an increase of requests made by companies.

Table 3: Total number of FOI request broken down by category of requesters (2020 – 2021)

Category of Requestors	No. of Requests in 2021	No. of Requests in 2020
Companies	9	2
Insurance Adjusters	8	6
Law Firms	18	28
Media	3	2
Public	38	50
Public Bodies	1	0
Union	0	0
TOTAL REQUESTORS	77	88

Compared to other municipalities, the City's number of FOI requests per year is low. Some municipalities have seen an increase of 25 to 40 % increase during the pandemic, while others, like our City, have seen a decrease.

This year, the time it took for City staff to process a standard request was between 1 to 3 hours, whereas the complex requests took anywhere from 10 to 40 hours. This estimate includes: time for staff in various departments to locate and retrieve the records; for the FOIPPA team to evaluate each request; to liaise with the appropriate department(s); review and sever the records; and to respond to the applicant.

As a result of these requests in 2021, 4029 electronic pages were released. Only one request was responded to with paper documents, 25 pages in total. This year no requests were forwarded to the Office of the Information and Privacy Commissioner (OIPC). This compares to two in 2020 and two in 2019. The City currently has one case pending with the OIPC which was opened in 2020.

There has been a change in the overall volume of Freedom of Information requests in the City, in comparison to past years. However, it is not believed this will be a long term trend. The volume of the requests were on track to be the same as 2020 until October when only one request was received compared to the seven expected.

In conclusion, the City's FOI volume remains constant and is one of the regional lowest due to the City's commitment to transparency.

Review of FOIPPA 2021 Amendment Changes that Effect Current City Practices

As a result of the 2021 amendments to FOIPPA, the City will need to adapt and build on its existing robust FOIPPA compliance system.

The biggest change to the existing FOIPPA compliance system is the update to the data residency provisions, which now allows personal information to be disclosed outside Canada. Previously, it required personal information to be stored and accessed only in Canada, except under limited circumstances which created barriers to the use of technologies. Now, public bodies must complete an additional risk based assessment when sensitive personal information might be stored and disclosed outside Canada. The Province is expected to provide guidance on this but the City, in conjunction with several other municipalities, are working with lawyers and our Human Resources and IT department to develop a risk assessment tool. It is expected to be in place by the end of 2022.

There will be 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 is published, the City will need to make adjustments to refresh and comply with the new regulations. The City will continue to following its privacy breach protocol and will include notifying the OIPC moving forward.

Application Fee

The Province now allows public bodies to charge a non-refundable \$10 application fee for non-personal FOI request. Access to personal information is free under the Act. The application fee would be paid before a request would be processed. The application fee applies to all applicants, thus media are required to pay a fee for each request. The application fee was requested by several municipalities and the Provincial Government as a tool to reduce the number of requests received. It was hoped that individuals and organizations, who put in many requests, often vexatious, would be deterred from making as many requests.

The fee has been implemented by the Province and several municipalities - Pitt Meadows, Surrey and the City's Police Department. However, several municipalities are not implementing the fee at this time and do not see the benefit - for example, the City of Vancouver. They do not believe it will reduce requests and feel it will add an administrative burden on staff.

Staff in the FOIPPA team have considered the implications for implementing the administrative fee. The analysis used in developing staff's recommendation to Council considered the following points:

- Based on the current number of FOI requests the money raised by the fee would be in the range of \$770 to \$870 per year. This would just cover the costs of staff time to implement the fee;
- The City has few repeat FOI applicants as a result of its transparent information practices;
- The majority of the applicants request information to resolve legal issues or personal issues;
- Staff work with many individuals who come from equity seeking groups who are looking for information to support legal or personal resolution on issues. Currently they are able to access the information since it is free. The imposition of a \$10 fee may mean that the information they need is outside of their reach;
- The fee has complexities in its application; and
- The City can at any time revisit the implementation of the fee.

After careful analysis of the points above, it is recommended that the City not charge an application fee. This will ensure that the fee is not a barrier to access and maintains the City's support for transparent government.

Protection of Privacy

Currently all FOI and Privacy training is still being offered virtually to staff instead of in-person. Virtual training has strengthened and broadened the training program offered by being more accessible. It now allows auxiliary staff and consultants who previously could not attend in-person training sessions to receive training.

The City received four possible privacy breach notifications in 2021, each were formally investigated. Following the investigation, three were found to not be a privacy breach and the fourth which was quickly resolved, concerned internal information with no impact on residents.

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 updated to an existing one. In 2021, twenty-one Privacy Impact Assessments were drafted. Staff expect this number to double in 2022. With the changes to FOIPPA in 2021, Privacy Impact Assessments will become more complex as they will need to include the risk-based assessments. PIAs will need to leverage the technical expertise of IT staff in order to fully understand the new and complex security systems and storage methods being utilized in this area. As such, the FOIPPA team is working to ensure that the City has appropriate and sufficient tools and resources(s) to fulsomely evaluate security risk and vulnerability across all systems.

The City is not aware of a corporate-wide privacy breach to date and still continues to put in place different privacy processes to mitigate any risk. Some of these processes include developing a privacy training session that focuses on Privacy Impact Assessments, making all Privacy related resources easily accessible online for staff;

and updating the PIA process to reflect the new requirements resulting from the FOIPPA amendment changes.

SUSTAINABILITY IMPLICATIONS

The FOIPPA team has been focusing on making FOI requests as streamlined and paperless as possible. Staff are no longer providing records in paper to the FOIPPA team for review. All video and large files are now being transferred through the City secure file sharing platform which has resulted in the discontinued use of DVD's and USB's. In 2021, over 97% of the requests have been received, processed and provided electronically with resulting environmental and financial savings.

FINANCIAL IMPLICATIONS

The Act, in some circumstances, allows the City of charge fees for processing requests. The 61 out of 77 of requests in 2021 were processed without a fee being assessed. The City received \$2,488.30 in fees in 2021. These fees were charged to commercial applicants, those requesting fire reports and for large requests made by members of the public.

Moving into 2022, the City will need to look in allocating resources to help finish developing, implementing and monitoring the City's Privacy Management Program. With the new data residency provisions the amount of staff time required to a completed PIA and to carry out a risk evaluation will increase based on the complexity of the project. The FOIPPA Team will need to work with each department and make sure all current practices are in line with the City Privacy Management Policy and carry out privacy audits.

INTERDEPARTMENTAL LIAISON

This report was written with input from the Manager of Legal Services, Director of Human Resources & IT and Acting Chief Information Officer.

OPTIONS

1. That Council endorse staff's recommendation to not charge an Administrative Fee and
2. That Council receive this report for information.
3. That Council provides other direction.

Staff recommends Option 1 and 2.

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. Staff recommend not implementing the new administrative fee. Implementation of the amendments to FOIPPA will result in strengthening of the current Privacy Management Program and will enable the City to keep pace with new technologies and provide the services its residents expect.

APPROVALS

This report was prepared by:

Brooke Holtz, FOI and Privacy Coordinator

This report was reviewed by:

Jacque Killawee, City Clerk

This report was approved by:

Lisa Spitale, Chief Administrative Officer