



## ADMINISTRATIVE REPORT

Report Date: February 4, 2016  
Contact: Barbara Van Fraassen  
Contact No.: 604.873.7999  
RTS No.: 11230  
VanRIMS No.: 08-2000-20  
Meeting Date: February 23, 2016

TO: Vancouver City Council  
FROM: City Clerk  
SUBJECT: Freedom of Information and Protection of Privacy By-law Amendments

### **RECOMMENDATION**

- A. THAT Council approve changes to the Freedom of Information and Protection of Privacy By-law to appoint a single Head reflecting the current City process and the practice of other municipalities, update the fee schedule to remove outdated items and remove unnecessary sections included in the provincial legislation, generally as set out in Appendix A of this report.
- B. THAT the Director of Legal Services be instructed to bring forward a by-law for consideration by Council generally in accordance with Appendix A.

### **REPORT SUMMARY**

The existing Freedom of Information and Protection of Privacy By-law was adopted by Council in 1994 and last updated in 2005.

Over the past ten years, the complexity and volume of FOI requests has grown significantly. In order to respond within the timeframes established under the *Freedom of Information and Protection of Privacy Act* (FIPPA), the City has modified the processes for fulfilling requests. Staff are now proposing amendments to the existing by-law to ensure compliance with FIPPA and accurately reflect department processes.

The existing By-law contains a number of sections listing the duties of the Head. The duties of the Head are actually contained in the provincial legislation. Listing the duties of the Head in the By-law is therefore unnecessary and of no legislative effect. Staff propose to remove the references to the duties of the Head as these duties are clearly set out in the governing provincial legislation.

### ***COUNCIL AUTHORITY/PREVIOUS DECISIONS***

There is no applicable Council Authority or previous decision relevant to this report.

### ***CITY MANAGER'S/GENERAL MANAGER'S COMMENTS***

The Acting City Manager RECOMMENDS approval of the foregoing.

### ***REPORT***

#### ***Background/Context***

##### **Provincial Legislation**

The *Freedom of Information and Protection of Privacy Act* requires that every municipality appoint a Head, which is a person responsible for making decisions under the Act and for ensuring compliance. The Act also permits the Head to delegate to another City employee the power to perform any duty or exercise any function of the Head under the Act, except for the authority to delegate.

It is generally accepted practice to appoint a single senior administrator, for example a City Manager or Deputy City Manager, as the Head and delegate authority to manage the day-to-day access to information and privacy program to the appropriate staff member within the organization.

The Head has a number of mandatory responsibilities under the Act which include the duty to:

- assist and respond to applicants who make requests for access (section 6);
- respond to an applicant's request for records within the statutory timelines (section 7);
- inform the applicant as to whether they are entitled to records requested (section 8);
- provide access to the records to which the applicant is entitled (section 9);
- handle any extensions to the time for responding to the request (section 10);
- exercise discretion to disclose or refuse to disclose certain information as set out in the Act (sections 12 to 22.1);
- give third party written notice (section 23);
- decide whether or not to give access to a record or part of a record after considering representations by a third party (section 24);
- disclose certain information, if it is in the public interest to do so (section 25);
- deal with requests to correct personal information (section 29);
- comply with any order from the Commissioner (section 59);
- make available, a directory that lists the personal information banks of the local government (section 69);
- make available, without a request for access, any manuals, instructions, guidelines, substantive rules or policy statements (section 70); and
- establish categories of records that are available to the public without a request for access (section 71).

## **Freedom of Information and Protection of Privacy By-law**

On December 13, 1994, the City's new Freedom of Information and Protection of Privacy By-law was approved by Council. The by-law essentially provided for the administration of the Freedom of Information and Protection of Privacy Act and complied with the requirements of the Provincial legislation.

The By-law designates a three person Head; the City Manager, City Clerk, and the Director of Legal Services. This designation has continued to present day.

### **Growth of FOI Requests**

Since 1994, public awareness of the Act and its application has increased. Over this same period, City procedures for processing access to information requests have adapted and changed to ensure statutory deadlines are met and full compliance with the Act is maintained.

Using FOI requests as an indicator, the number of formal access to information requests received yearly by the City since 1994 has increased by 6157 %, from 7 requests in 1994 to 431 requests in 2015.

### **Meeting Statutory Demands Through Changes in Roles and Processes**

In March 1997, a major change to the access to information process occurred when the City's first Manager of Information and Privacy was hired. The move from individual department processing and handling of access to information requests to a central Information and Privacy office, ensured consistency of the City's responses and consolidated the responsibility for compliance with the Act to one office. It also streamlined processing and handling so the City could manage the ever-increasing volume of access to information requests. The Head delegated authority to the Manager for day-to-day processing and management of access to information requests, while the Head, (three person), continued to review and approve all requests for release.

The increase in the total number of formal requests over the past twenty years is significant. As well, there has been a notable increase in the complexity, strategic importance and volume of responsive records (due in part to the move from hard copy to electronic records). The combined increases have greatly influenced the changes to the City's processing and handling of access to information requests.

Although FOI Head review process adaptations between 2009 and 2011 allowed the City to continue to meet statutory timelines for a majority of files; the required Head approval, (by the three person Head), for complex strategic files - which takes place at the end of the file review process - can have a significant impact on the turnaround time for these files. In fact, the Heads often have a very short timeline to review and approve the file release so statutory deadlines are met.

Based on the need to streamline the Head review process in order to ensure the City continues to meet all statutory deadlines, the key changes to the By-law recommend moving to a single Head, the City Manager, while the Director of Access to Information manages all delegated matters. Based on comparisons of processes to other municipalities of a similar size to

Vancouver; historical growth metrics of access to information requests and the need to maintain statutory deadlines, a single designated FOI Head is effective and sufficient.

### ***Strategic Analysis***

As indicated previously, the existing FOI By-law has not been amended since 2005. During that time, FOI requests have increased in number and complexity. The move from paper records to electronic records has increased the number of pages of potentially responsive records that must be searched, compiled and reviewed. Added to that, the three-person Head review process is causing a bottleneck and unnecessary strain at the end of the process in order to maintain statutory timelines for processing of requests.

Staff are proposing changes to the Freedom of Information and Protection of Privacy By-law to align the by-law with existing access to information practice and procedure.

The proposed draft by-law is attached as Appendix A.

Specifically, the following changes are proposed:

1. That the City Manager be appointed Head as allowed for under the *Freedom of Information and Protection of Privacy Act*.

The City Manager would replace the existing three-person Head. The City Manager has a strategic City-wide perspective and basic knowledge of FIPPA which is supportive of FOI processes and procedures. This is consistent with current FOI file review and approval processes.

2. That the FOI fee schedule of the by-law be updated.

The existing fee schedule requires updating as it includes some outdated references to technology. For example, the schedule specifies the charge for copying to a floppy disk and duplication of microfilm. See Schedule 1 of the proposed draft by-law.

3. That the by-law be revised to remove all sections of the by-law that are set out in the governing provincial legislation.

The existing by-law includes many sections that are actually set out in the *Freedom of Information and Protection of Privacy Act*. Many of these sections are out-of-date due to changes made to the provincial legislation.

### ***Implications/Related Issues/Risk (if applicable)***

#### ***Financial***

There are no financial implications.

### *Legal*

Amending the By-law as proposed would bring the By-law into line with the Provincial legislation.

### **CONCLUSION**

The existing Freedom of Information and Protection of Privacy By-law was adopted by Council in 1994 and last updated in 2005.

Over the past ten years, the complexity and volume of FOI requests has grown significantly. In order to respond within the timeframes established under the *Freedom of Information and Protection of Privacy Act*, the City has modified the processes for fulfilling requests. In addition, the existing By-law contains a number of sections listing the duties of the Head as set out in the provincial legislation. Listing the duties of the Head in the By-law is, therefore, unnecessary and of no legislative effect. The fee schedule is also being updated to remove outdated technology. The proposed amendments to the existing by-law will ensure compliance with FIPPA and accurately reflect department processes.

\* \* \* \* \*

## APPENDIX A

### Draft Freedom of Information and Protection of Privacy By-law

BY-LAW NO. \_\_\_\_\_

#### A By-law to Provide for the Administration of the Freedom of Information and Protection of Privacy Act for the City of Vancouver

Whereas in the Freedom of Information and Protection of Privacy Act, Section 77 requires that Council designate a person or group of persons as the "head" for the purposes of the Act, Section 66 of the Act authorizes the "head" to delegate to any person any duty, power or function of the head and section 13 of the Freedom of Information and Protection of Privacy Regulation sets out the maximum fees for services provided pursuant to the Act;

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. The name of this By-law, for reference, is the "Freedom of Information and Protection of Privacy By-law".
2. In this By-law:  
"Act" means the Freedom of Information and Protection of Privacy Act;  
"Head" means the person designated as the head of the public body for the purposes of the Act in accordance with Section 77 of the Act; and  
"Public body" means the City of Vancouver.
3. The City Manager is designated as the Head for the purposes of the Act.
4. The Head is authorized to delegate to any person any duty, power or function of the head, except that the delegation:  
(a) must be in writing;  
(b) may be subject to such conditions or restrictions as the head considers appropriate; and  
(c) must comply with Section 66 of the Act.
5. Fees must be in accordance with Schedule 1.
6. Council repeals By-law No. 7364.
7. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
8. This By-law is to come into force and take effect on the date of enactment.

ENACTED by Council this                      day of                      , 2016

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**Schedule 1**  
**Schedule of Fees**

Item	Description of Services	Management Fees
1	For applicants other than commercial applicants:	
	(a) for locating and retrieving a record	\$7.50 per 1/4 hour after the first 3 hours
	(b) for producing a record manually	\$7.50 per 1/4 hour
	(c) for producing a record from a machine readable record from a server or computer	\$7.50 per 1/4 hour for developing a computer program to produce the record
	(d) for preparing a record for disclosure and handling a record	\$7.50 per 1/4 hour
	(e) for shipping copies	actual costs of shipping method chosen by applicant
	(f) for copying records	
	(i) CDs and DVDs, recordable or rewritable	\$4 per disk
	(ii) microfiche or microfilm to paper duplication	\$0.50 per page (8.5" x 11")
	(iii) photographs	Digital file - \$17 per image
	(iv) ink jet, laser print or photocopy, black and white	\$0.25 per page (8.5" x 11", 8.5" x 14" or 11" x 17")
	(v) ink jet, laser print or photocopy, colour	\$1.65 per page (8.5" x 11", 8.5" x 14" or 11" x 17")
	(vi) scanned electronic copy of a paper record	\$0.10 per page
	(vii) slide duplication	Digital file - \$17 per image
2	For commercial applicants for each service listed in Item 1	the actual cost to the public body of providing that service

Note: In keeping with the City of Vancouver's Greenest City goals, the FOI office does not provide hard copies of responsive records unless there are exceptional circumstances. All responsive records are provided in electronic formats.