

DATE OF MEETING APRIL 23, 2018

AUTHORED BY SHEILA GURRIE, CORPORATE OFFICER & CITY CLERK

**SUBJECT FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY
ACT REQUESTS & STATISTICS**

OVERVIEW

Purpose of Report

To provide Council with an overview of the Freedom of Information and Protection of Privacy Act as it relates to the City of Nanaimo and to advise of the increase in requests under the Act.

Recommendation

That the Freedom of Information and Protection of Privacy Act Requests & Statistics report dated 2018-APR-23 be received for information.

DISCUSSION

The *Freedom of Information and Protection of Privacy Act* (the Act) came into effect in October, 1994. The Act applies to all public bodies, including the City of Nanaimo.

The Act's underlying principle is that all recorded information is available to the public, except for information that is subject to specific and limited exceptions to disclosure, as set out in the Act. The Act applies only to public bodies, which includes but is not limited to BC ministries and agencies, local governments, provincial crown corporations, and school boards. The Act strives to ensure that citizens are able to participate actively in a democracy by having the same access to information that the decision makers have, subject to legislative limits. Additionally, the Act allows individuals the right to have access to their own personal information and to verify the accuracy and reliability of that information.

Section 6(1) of the Act imposes a 'duty' upon the Head, designated by the local government body, to assist applicants; this section states: "The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately, and completely." The Head is responsible for interpreting and administering the Act and should be in a position to do this freely without the risk of interference. While section 73 provides liability protection for a local government, that protection is only where a public body or an official was acting in good faith.

Requests under the Act must be submitted in writing to the Legislative Services Department, either electronically or in person. The identity of an applicant is protected under the Act; the Head should only disclose an applicant's identity to those people in the organization that need to know it in order to complete the request.

Pursuant to Section 75 of the Act, and in conjunction with the City of Nanaimo’s “Freedom of Information and Protection of Privacy Bylaw 2006 No. 7024”, the City is authorized to charge a fee for the following services:

- (a) locating, retrieving and producing the record;
- (b) preparing the record for disclosure;
- (c) shipping and handling the record; and,
- (d) providing a copy of the record.

Schedule 1 of Regulation 155/2012, and Bylaw 7024 limit the fees that can be charged by a public body for services. Fees for individual members of the public must not exceed the fee limits set out in the regulation. The City of Nanaimo is not permitted to charge more than \$7.50 per ¼ hour after the first 3 hours spent searching for records.

Section 75 of the Act prohibits a public body from charging fees for providing the following services:

- Any services relating to the provision of an applicant’s own personal information;
- The first 3 hours spent locating and retrieving a record;
- The time spent severing information from a record.

The City of Nanaimo has had a steady increase of Freedom of Information requests over the last five years, peaking in 2016 with 263 requests. There is a wide range of requestors; including but not limited to individuals, businesses, media, lawyers, agents, insurance companies, and other public bodies. As metrics are not currently tracked, it is difficult to quantify the amount of time that is spent on FOI requests per day; however, it is estimated that 15-20 hours a day is spent working on FOI requests in the Legislative Services Department alone. Not included in this is time spent searching, locating, and retrieving records in other City departments. Fees charged do not cover the cost for the time of work required to process each request; there is no cost recovery.

Based on quarterly projections, the City is on track to total approximately 624 requests in 2018; for perspective, this would exceed 2017 totals for the City of Vancouver (2016 population 631,486) with 536 requests and the City of Surrey (2016 population 517,887) with 530 requests.

YEAR	TOTAL REQUESTS	% INCREASE
2013	109	N/A
2014	107	-1.84
2015	124	15.89
2016	263	112.10
2017	229	-12.93
2018 Q1	168	N/A
2018 (projected)	624	271.43

As of April 11, 2018, there are 3 instances where the same requestor has in excess of 10 requests: Requestor A, media, has 36 requests total to date; Requestor B, Individual, has 12 requests total to date; and Requestor C, Law Firm on behalf of clients, has 11 requests total to date. In 2017, there were 2 instances where the same requestor had in excess of 10 requests: Requestor A, Public Body, 20 requests total; Requestor B, Law Firm on behalf of clients, 24 requests total. In addition to the increase in volume of requests, the complexity of request has increased exponentially. Requests for information are more technical and detailed than previously seen.

In order to address the increase of volume and complexity of requests, in 2016 an FOI Claims & Records Clerk position was added to the Legislative Services Department. Responding to FOI requests is only a portion of their job duties.

Once staffing levels permit and resources are available, the Legislative Services Department anticipates posting responses to routine requests on the City website in order to proactively disclose information. It is estimated that approximately 25% to 30% of request responses will be posted on the City website. Not all responses can be published as they contain personal information about individual requestors.

SUMMARY POINTS

- The *Freedom of Information and Protection of Privacy Act* (the Act) is the provincial legislation that governs privacy matters for all public bodies in British Columbia.
- The City is authorized to charge fees for specific services as defined by the Act, however, there is no cost recovery.
- The City of Nanaimo has had a steady increase of Freedom of Information requests over the last five years.

Submitted by:

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