

DATE OF MEETING FEBRUARY 6, 2023

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SUBJECT IN-CAMERA REPORTING POLICY

OVERVIEW

Purpose of Report

Options to Release Closed Council Meeting Information

Recommendation

That Council repeal Council Policy COU-194 (Routine Release of In-Camera Agendas) and replace it with Council Policy COU-232 (Release of In-Camera Decisions) as attached to the February 6, 2023, report by the Deputy City Clerk.

BACKGROUND

The City ensures the openness and accessibility of public council meetings in various ways and interested members of the public who are unable to attend in person may view the meetings through Shaw, streamed live over the internet, or through the video archive on the City's website. Open meeting agenda materials are also posted on the City's website.

While the *Community Charter* (the *Charter*) specifies which materials may be considered at closed meetings, there isn't a formal process outlined in the *Charter* or *Local Government Act* for bringing matters out from closed meetings in a routine manner.

It should be noted that the requirement for confidentiality regarding closed meeting information varies greatly from item to item. Some decisions become a matter of course. For example, once a lease or land sale negotiation is finalized by the City, the *Charter* requires the proposed disposition of land to be advertised in public. Certain closed meeting information such as legal advice, third party personal information, negotiations, or labour relations may require confidentiality in perpetuity and may never be released. Other decisions arising from closed meetings may be released when they are no longer sensitive.

There are varying practices among local governments with respect to the process for release of closed meeting information. With the exception of Vancouver (who releases decisions and few reports with redactions), White Rock (who releases redacted in-camera decisions and reports six months after the fact) and Nanaimo, which has a formal policy, the vast majority operate on a case by case basis as outlined above, or by having a Rise and Report section on each open meeting agenda for both Council and Committee agendas where in-camera decisions can be released more quickly.

DISCUSSION

City of Nanaimo Policy History:

To assist local governments in complying with statutory requirements when fulfilling open meeting requirements, including what constitutes a meeting, Ms. Kim Carter, Ombudsperson at the time, and Mr. Bruce Clark, Manager of Investigations from the Office of the Ombudsperson made presentations to local governments in 2013 and introduced their publication entitled "Open Meetings: Best Practices Guide for Local Governments".

The Guide states that local governments should have a process in place to regularly review the decisions made in an in-camera meeting and when those decisions no longer undermine the reason for discussing the matter in closed, the decision should be released to the public. Based on that presentation, Council passed a motion at its 2013-FEB-04 Committee of the Whole meeting asking that Staff prepare a report, with options, that enabled Council to release "In-Camera" minutes that are no longer sensitive or confidential.

On 2013-MAY-13 Council received a report from the Assistant City Manager/General Manager, Corporate Services with an accompanying policy entitled "Routine Release of "In-Camera" Resolutions and Related Reports and Information." The Policy (see Attachment 1) stated that once the requirement for confidentiality had passed, meeting resolutions and related documentation would be reviewed and released on a quarterly basis.

On 2013-SEP-23, Council amended the policy to also include the release of who voted in favour and who voted in opposition.

Review Process by Staff:

In implementing the policy, the process for reviewing the decisions coming out of the in-camera meetings was relatively easy; however, the process for reviewing the in-camera staff reports and minutes was more challenging. This is due to the fact that all material must be viewed with the same lens as one would have when processing a complex Freedom of Information request. In addition to matters related to labour relations, Staff must be mindful not to inadvertently release any information that would violate the following sections of the *Freedom of Information and Protection of Privacy Act (FOIPPA)*:

- Section 12 - Cabinet and local public body confidences (i.e. revealing the substance of deliberations)
- Section 13 - Policy advice or recommendations (i.e. a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body)
- Section 14 - Legal Advice (solicitor client privilege)
- Section 15 - Disclosure harmful to law enforcement
- Section 16 - Disclosure harmful to intergovernmental relations or negotiations
- Section 17 - Disclosure harmful to the financial or economic interests of a public body
- Section 18 - Disclosure harmful to interests of an Indigenous people
- Section 19 - Disclosure harmful to individual or public safety
- Section 20 - Information that will be published or released within 60 days
- Section 21 - Disclosure harmful to business interests of a third party; and
- Section 22 - Disclosure harmful to personal privacy.

Also, in instances where information contains third party information, Section 23 of the FOIPPA states that written notice would have to be provided to that third party, the information identified that is proposed to be released, and that they be given 21 days to respond. From there, if the third-party refuses, they could ask for a review by the Privacy Commissioner. This can make the process challenging to track when and if the information can be released.

Some of the exceptions noted above do have time limits on the release of records. For example, disclosure rules no longer apply after 15 years for revealing the substance of deliberations under Section 12, or policy advice in Section 13 (10 years). There are also times where only partial information can be released. This means that a database of incomplete releasing of records must be tracked, along with the on-going work involved in reviewing staff reports and minutes for all in-camera Council and Committee meetings and on-going liaison with report authors to determine when the information can be released.

Review Process by Council:

Because Council must pass a procedural motion to consider reports in a closed meeting, legally they must also be approved by Council to release them. In practise, Council found the release process challenging as Staff were not always able to consistently review all the in-camera information and get it to Council on a quarterly basis. Also, Council was not involved in the day-to-day operations or may not have first-hand knowledge if an item had concluded (i.e. negotiations).

In order to keep the information fresher in Council's mind making it easier to determine whether the information could be released, Staff forward an amendment for Council's consideration on 2019-JULY-22 that would see the information reviewed by Staff and brought forward to Council monthly (see Attachment 2).

On-going Challenges

While the quarterly review of all information from the initial policy was challenging, the monthly review process requirement proved to be even more difficult for a variety of reasons. The pandemic hit shortly after the policy was amended and Legislative Services Staff had to focus their efforts on finding ways to support Council and Committee meetings, and Public Hearings electronically. Also due to staff turnover, there was minimal staff that had the necessary FOI expertise to review the material in addition to the on-going number of general FOI requests that had to be processed. When the policy was first considered in 2013, the thought was that by releasing more information on the website, it would decrease the number of FOI requests received; however, as noted below, with the exception of 2022, requests have tripled, and in some cases, increased four fold as noted below. This has contributed to the review backlog.

Year	Number of FOI Requests Received Since Policy was First Implemented
2013	109
2014	108
2015	124
2016	263
2017	229
2018	420
2019	313

2020	299
2021	302
2022	237

Having a policy and process for reviewing in-camera decisions is important for supporting transparency and governance excellence. However, the policy, in its current form, has been difficult to administer since it was implemented. For the reasons cited in the report, Staff is seeking Council's consideration for amending the Council policy so that Council decisions made in In-Camera Council and Committee meetings (other than those that can be released in a timely manner through the Rise and Report section on Council's agenda) be reviewed by Staff and presented to Council for release to the City's website on a bi-annual basis. (see Attachment 3).

OPTIONS

1. Option 1:

That Council repeal Council Policy COU-194 (Routine Release of In-Camera Agendas) and replace it with Council Policy COU-232 (Release of In-Camera Decisions) as attached to the February 6, 2023, report by the Deputy City Clerk.

Rationale for Option 1:

- Adhering to the policy deadline could be achieved with existing resources, even during times when staff resources are limited as those with the necessary expertise would have the time to review in-camera resolutions.
- A Rise and Report section was added as a heading to the In-Camera and Regular Council and Committee agendas – a process that was implemented on August 20, 2020. This gave Council the ability to determine immediately what resolutions could be released to the open meeting that evening or in the very near future and pass the necessary resolution (as required under Section 117 of the *Community Charter*) to authorize that release versus waiting for Staff to bring forward an in-camera release report. This method is used by most municipalities in B.C.
- Despite Staff being unable to accommodate a full-some report for releasing of past in-camera reports and minutes over the past year, the City has only received one FOI request for an in-camera topic. Therefore, a reduction in FOI requests has not been realized.
- A member of the public always has the option to request additional information through the FOIPPA process. This is the same review process that Staff would undertake under the existing policy.

2. Option 2:

That Council re-affirm the existing Council policy entitled COU-194 (Routine Release of In-Camera Agendas).

- Under this option, all closed meeting materials, including reports and minutes would continue to be reviewed on a monthly basis for consideration of disclosure.

- Dedicated staff resources with specific expertise in processing FOI requests is required to prepare the closed meeting information for review and disclosure on a monthly basis. This has not been achievable given the progressive number of general FOI requests received and the legal requirement under the FOIPPA to process those requests within 30 days of receipt of the request for information.
- Although Staff are required to identify the relevant closed meeting criteria within their Staff reports, together with a proposed course of action regarding how the information in the report should be released publicly, it is not always possible for report authors to make a determination on the disclosure of the information at the time of drafting. Also, report authors may also lack the necessary experience when applying the rationale for release. As such, Legislative Services staff still need to spend a great deal of time liaising with the report authors to determine whether the need for confidentiality is passed and to ensure the FOI legislation is viewed consistently and accurately.

SUMMARY POINTS

- The *Community Charter* specifies which materials may be considered at closed meetings but there isn't a formal process outlined in the *Charter* or *Local Government Act* for bringing matters out from closed meetings in a routine manner.
- The current Council Policy states that Staff must process and review in-camera reports and minutes for Council's consideration of release on a monthly basis.
- Minimal Staff have the necessary FOI processing expertise to review the comprehensive material on a monthly basis.
- A Rise and Report section has been added as a topic to the open and closed agendas so that information can be considered for release in a timely manner.
- Any resolutions that do not get released through the Rise and Report process would be reviewed and presented to Council for consideration of release on a bi-annual basis.

ATTACHMENT

Attachment 1 – 2013-MAY-13 – Routine Release of In-Camera Resolutions and Related Reports Policy
Attachment 2 – 2019-JUL-22- Routine Release of In-Camera Agendas Policy
Attachment 3 – Draft Routine Release of In-Camera Decisions Policy

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Concurrence by:

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