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**To:** "Direct to Mayor and Council - DL" <CCDTMACDL@vancouver.ca>  
**Date:** 6/21/2016 10:02:05 AM  
**Subject:** CONFIDENTIAL: OIPC report  
**Attachments:** [OIPC Audit - Letter to Commissioner - 06-21-16.pdf](#)

Greetings Mayor and Council:

The City has received a draft report from the Information and Privacy Commissioner detailing the outcomes of the audit conducted by her office pursuant to the *Freedom of Information and Protection of Privacy Act* (FOIPPA). The audit was focused on compliance with the City's duty as a public body to assist applicants seeking disclosure of information. This obligation is set out in Section 6(1) of FOIPPA:

6(1) 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 OIPC's audit comprised a review of 290 randomly-selected sample of the 1,199 FOI requests processed by the City over the period 2013-2015. The audit also considered reviewed 85 files that were referred by applicants to the OIPC for review during this period.

The report sets out 11 specific recommendations to address opportunities for improvement in respect of the four general themes:

- Documentation of files and searches
- Timing of responses
- Content of responses
- Communication with applicants

The OIPC's report was provided to the City on June 17 on an embargoed basis, along with a request for a formal response within 2 business days. That response was submitted on June 21 and is attached for your information. We understand the Commissioner intends to release the report to the public on June 23. **Because the report is embargoed, the content in the attached letter and this email remain confidential until June 23<sup>d</sup>. Please don't share this information until then.** The City's response accepts all 11 recommendations and confirms a commitment to report back to the OIPC on implementation progress by December 20, 2016.

The City receives approximately 400 FOI requests annually and our staff work diligently to ensure we are responding to those requests in a manner that is timely and otherwise compliant with the City's statutory obligations. We take those obligations very seriously. This audit has identified gaps and opportunities to improve our administrative processes and I am committed to acting on the recommendations of the OIPC. As you are aware, in an attempt to better serve the public and the media, we are also working diligently to proactively post more information online that currently requires and FOI requests. We will continue to post more information online in the months ahead.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me or Paul Mochrie.

Sadhu

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OFFICE OF THE CITY MANAGER  
Sadhu Johnston, City Manager

June 21, 2016

Commissioner Elizabeth Denham  
Office of the Information and Privacy Commissioner for British Columbia  
PO Box 9038 Stn. Prov. Govt.  
Victoria, BC V8W 9A4

Dear Ms. Denham,

**RE: Audit and Compliance Report F16-01  
City of Vancouver: Duty to Assist**

I am writing to confirm receipt of the above-referenced report from your office. I would like to thank you for the time and resources that went into the review and for your staff's professionalism throughout this process. I acknowledge the challenge of conducting a review of this scope and appreciate the opportunity to respond to the findings and recommendations. The City has reviewed the report and is committed to implementing all of the recommendations.

The City takes very seriously its obligations under the *Freedom of Information and Protection of Privacy Act*. Beyond mere compliance, the City acknowledges the critical value of timely and meaningful access to information and is committed to supporting that access for members of the public.

The City processed approximately 1,200 access requests over the review period and has made significant effort to ensure that our access to information process is robust. Nevertheless, we welcome the opportunity to have participated in the OIPC's compliance review as we continue to look for ways to further improve our internal processes.

In particular, we recognize the value of proactive disclosure and have been working to enhance the information that is available to the public as a matter of routine. Recent changes include the following:

- The City is now publicly posting all completed FOI requests (subject to a minimum 48 hour delay period for the benefit of the Applicant) from January 2016 onwards, excluding requests that contain personal information. The first release contains approximately 80 request files from January to May 2016. Moving forward, files

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will be posted monthly. The next release will include requests completed in June, 2016 and will be posted during the first week of August, 2016.

- The City has reviewed records released between 2011 and 2015 and posted more than 50 FOI releases on matters of broad interest from this period.
- The City's Open Data website now contains 149 data sets including the recent addition of an Annual Remuneration Report for all City of Vancouver staff who earn more than \$75,000 per year.
- Implementation of a new data visualization function for Council voting records that will enable the public to easily see how individual Council members voted at past Council meetings.

The City is committed to implementing all of the recommendations set out in the report. Our responses to the review findings and each recommendation are outlined below. As requested, the City will provide a status update on its efforts to your office by the end of this calendar year.

#### **Documentation of files and searches:**

The City acknowledges that detailed record keeping is essential to ensure public confidence in its access to information program. The City further acknowledges that the report identified some gaps in its record keeping practices and it is committed to filling those gaps. The City wishes to note, however, that the review was limited to electronic files and that some additional documentation may exist in paper files. This is an important point as many of the serious issues identified in the report relate to a lack of documentation rather than any specific finding that the City was in breach of *FOIPPA*.

Many of the documents identified as missing relate to matters regularly conducted over the telephone such as follow up with department staff where records were not located, discussions with applicants on revising or withdrawing requests and consultations with third parties or other public bodies. Where kept, notes detailing record searches and telephone conversations are usually found in paper files as it is currently difficult to track these notes electronically.

The City is planning to implement a new FOI Case management system which will make it easier to electronically link notes to particular case files. The new case management system will complete the move from paper to fully electronic FOI processing and all associated process and tracking documents will be maintained in the associated electronic file. The City has allocated capital funding for the new case management system although the timeline for completion has not yet been finalized pending prioritization of the technical resources required to support the project.

### **Recommendations 1 and 2:**

The City agrees that it should fully document requests for records and steps undertaken to search for records. While the City is already doing this in most cases, the City will review its practices regarding the documentation of record searches and will take steps to ensure better documentation of telephone communications with department staff, applicants and third parties.

### **Recommendation 3:**

The City agrees to implement a program of mandatory routine training, with a focus on City employees who regularly create or maintain City records. Of the approximately 7500 individuals employed with the City, there are many, including most of our outside operations and labouring workforce, who have little or no responsibilities for creating, maintaining or searching records. In fact, many of those employees do not even have City-managed email accounts. For employees that do create, maintain and/or retrieve records, the City is committed to providing training to those employees at a level that is appropriate to their record keeping responsibilities. The City is currently creating an online training program on FOI, privacy and records management and its legal department has begun providing regular training sessions on the requirements of *FOIPPA* to staff in the access to information department.

### **Timing of Responses:**

The City is committed to improving its response times to requests and appreciates the additional data in the report which will assist in its ongoing efforts to improve in this area, particularly in regards to facilitating access to media. The City recently amended the by-law to reduce the FOI head to the City Manager in an effort to provide a more efficient sign-off process with the aim of achieving response time targets.

The City denies that it has taken an extension on the basis of section 10(1)(c) in a situation where it did not engage in consultations with third parties or other public bodies and notes that these consultations are regularly conducted over the telephone.

### **Recommendation 4:**

The City agrees that it should open requests without delay once records can reasonably be identified. The City appreciates the report's guidance on when the 30 day response times begin in circumstances where clarification of the request is necessary and will revise its practices to reflect this guidance.

**Recommendation 5:**

The City agrees that any extension taken should be as short as possible and should only be applied as appropriate. The City appreciates the report's guidance on the interpretation of section 10(1). We note, however, that that absence of documentation in the electronic file does not necessarily indicate that extensions were taken inappropriately.

**Recommendation 6:**

The City acknowledges that it can improve response times for all applicants and will continue to strive to do so. In particular, the City takes seriously the concern regarding requests from media and will continue to seek ways to facilitate timely responses to media applicants.

**Content of Responses**

The City is committed to improving its responses to applicants and ensuring that its actions in applying exceptions and levying fees are in accordance with the requirements of *FOIPPA*.

**Recommendations 7 and 8:**

The City agrees to continue to apply exceptions and treat records as out of scope in accordance with the legal requirements of *FOIPPA*. The City notes that its legal department has begun providing regular training sessions to ATI staff on the scope and application of exceptions under *FOIPPA*.

**Recommendation 9:**

The City agrees to review and revise its policies to clarify that personal email should not be used to conduct City business or share or store City information. The City notes that this is the current policy and that this expectation has been set out in training sessions for employees. However, we agree that formal policy documents should reflect this expectation more clearly.

**Recommendation 10:**

The City agrees to examine ways to improve documentation of record searches to clearly specify actual time spent by department and the City to locate, retrieve, produce or prepare a record for release in circumstances where a fee is being applied. The City recognizes that current documentation practices vary across departments and the City will make efforts to standardize search forms and provide training to departments as necessary.

### **Communication with Applicants:**

The City is committed to communicating with applicants in an open and forthright manner and providing assistance in clarifying and reformulating requests to ensure applicants are able to obtain the records they are looking for.

#### **Recommendation 11:**

The City agrees to provide updated training to staff as outlined above.

#### **Recommendation 12:**

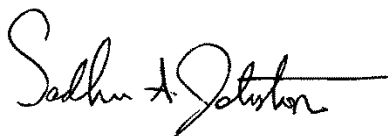
The City agrees to review and refine its standard communication with applicants to increase the use of plain language and include more information to assist applicants in obtaining the records they are looking for in a timely manner.

### **Allegation of impropriety**

The City is concerned about the allegation on page 38 of the report “that City staff had been directed, on at least one occasion, to use different naming conventions when saving files pertaining to certain topics so that records could not be easily located if a search for responsive records was conducted.” While we acknowledge that the report does not actually include any finding as to whether this actually occurred, the City takes the allegation seriously as such practice would be entirely inconsistent with policy and the expectations generally communicated to staff. If your office is in a position to provide any further information to permit an investigation into this matter, the City is prepared to pursue such investigation and, if substantiated, take appropriate action.

In closing, I want to thank you again for your well-considered recommendations and for this opportunity to respond. I would like to assure you that the City will endeavour to address each of your recommendations in a timely way.

Yours sincerely,



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