

File No.: 04-1000-20-2022-249

July 29, 2022

s.22(1)

Dear s.22(1)

Re: Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")

I am responding to your request of May 9, 2022 under the *Freedom of Information and Protection of Privacy Act, (the Act)*, for:

- 1) **Complaints received through 3-1-1 regarding street preaching. Date range: January 1, 2020 to May 8, 2022;**
- 2) **City of Vancouver policies and guidelines relating to street preaching. Date range: January 1, 2020 to May 8, 2022.**

All responsive records are attached. Some information in the records has been severed, (blacked out), under s.22(1) of the Act. You can read or download this section here: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00

Please note, the Licence Office confirmed there are no policies or guidelines specific to "street preaching," and the City's 3-1-1 Contact Centre confirmed that the public is instructed to contact VPD to report this type of complaint.

Additionally, a report went to Council February 24, 2021 with recommendations to regulate the use of amplified sound devices on public property; the recommendations were not adopted and staff were asked to report back. The report back was via memo (included in the responsive records package). The staff report and presentation can be found here (item 1): <https://council.vancouver.ca/20210224/cfsc20210224ag.htm>.

Lastly, the actual number of hours required to fulfil the search and compilation of the records was less than originally estimated. We received your initial deposit of \$116.25 on June 22, 2022. The final outstanding balance of \$3.75 will be waived.

Under section 52 of the Act, and within 30 business days of receipt of this letter, you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your FOI request by writing to: Office of the Information & Privacy Commissioner, info@oipc.bc.ca or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number (#04-1000-20-2022-249); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

[Signed by Cobi Falconer]

Cobi Falconer, MAS, MLIS, CIPP/C
Director, Access to Information & Privacy
cobi.falconer@vancouver.ca
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If you have any questions, please email us at foi@vancouver.ca and we will respond to you as soon as possible. Or you can call the FOI Case Manager at 604-871-6584.

Encl. (Response Package)

:kt

Signs (Other)

Case number: 101013856382

Case created: 2020-03-15, 02:04:00 PM

Channel: Phone

Incident Location

Address: 58 W HASTINGS ST, Vancouver, V6B 1G6

Address2:

Location name:

Original Address:

Request Details

- Type of request:**
Complaint
- Type of issue:**
Signs (Other)
- If Other, provide details:**
vending and busking
- Describe details:**
The caller states someone with a loud speaker is preaching within the city lot at 58 W Hasting st. This person is loud and is preaching against other religions. Furthermore, people are also vending on the city sidewalk at this location. They are vending throughout the sidewalk on the block and pedestrians with wheelchairs would have difficulty getting through.
- (Don't ask just record - Did caller indicate they want a call back?):**
Yes

Additional Details

Contact Details

Name: s.22(1)

Address:

Address2:

Phone: s.22(1)

Alt. Phone:

Email:

Preferred contact method: Phone

Case Notes

Photo

- no picture -

Any web links (URLs) in this case have been altered so that they cannot be opened, as a security measure to protect against malicious links. If you believe a link to be safe please replace the "hxxp" at the beginning with "http" and open in a browser window. If you're unsure if the link is safe to open and you need to open it, please contact the Service Desk.

MEMORANDUM

May 21, 2021

TO: Mayor and Council

CC: Paul Mochrie, City Manager
Karen Levitt, Deputy City Manager
Katrina Leckovic, City Clerk
Lynda Graves, Administration Services Manager, City Manager's Office
Maria Pontikis, Director, Civic Engagement and Communications
Anita Zaenker, Chief of Staff, Mayor's Office
Neil Monckton, Chief of Staff, Mayor's Office
Alvin Singh, Communications Director, Mayor's Office
Jessie Adcock, General Manager of Development, Building and Licensing
Lon LaClaire, General Manager of Engineering Services
Iain Dixon, Assistant Director, Legal Services
Saul Schwebs, Chief Building Official
Jason High, Staff Sergeant, Vancouver Police Department

FROM: Acting Chief Licence Inspector, the Deputy General Manager of Engineering Services and the Deputy Chief of Vancouver Police Department

SUBJECT: Enhanced Enforcement of Amplification Devices – Report Back RTS no. 14157

Introduction

On February 24, 2021, staff proposed amendments to the Noise Control By-law, Street and Traffic By-law and Ticket Offence By-law to enhance enforcement tools for disturbances caused by the use of sound amplification devices on public property¹. City Council referred the report back to staff, requesting consideration of:

1. The ability for a field permit system and conditions to support and permit spontaneous and amplified protest;
2. Including language and limits on speech identified in the criminal code in relation to treason, sedition, blasphemous and defamatory libel, disruption of religious worship, hate propaganda, spreading false news, public mischief, obscenity, indecency and

¹ <https://council.vancouver.ca/20210224/documents/cfsc1.pdf>

other forms; and notwithstanding jurisdiction how this criminal code context can inform unreasonable disturbances to peace and comfort defined in Section 3 of Noise Control By-law No. 6555, whether by amplified device or otherwise; and communicating this information on public-facing City information around noise complaints; and

3. The capacity for enforcement, including factors that may contribute to the timeliness of response for anticipated complaints².

City staff and Vancouver Police Department considered the items outlined above and provide responses to each of the items below.

1. Field Permit System

The public space and street use permitting process is designed to help plan and manage the use of public space, primarily for the purposes of preventing scheduling conflicts, providing advanced engagement with community stakeholders, and for many events managing risk and liability for the City. A spontaneous permitting process would not serve this function well.

Additionally, the City does not issue permits for any form of protests, demonstrations, or rallies. Protest organizers who request a permit are informed that the City does not issue permits for protests and are referred to the Vancouver Police Department to discuss their planned actions. The VPD also does not issue permits for protests. The VPD requests that anyone planning a protest or rally notify VPD in advance so the VPD can plan accordingly and provide sufficient resources for a safe event.

Information regarding how to obtain a permit and permit conditions for events held in public spaces and information on permit conditions is available on the website at Vancouver.ca or by contacting 311. Staff will review 311 scripts and Vancouver.ca pages to ensure complete information about by-law requirements is available for the event organizers and the community and appropriate contact information is available for reporting potential by-law violations or concerns.

2. Enforcement of Public Speech Content on Public Property

Section 2(b) of the Canadian *Charter of Rights and Freedoms* guarantees the right to freedom of expression. Expression has been interpreted widely by the Courts and includes speech and advertising. However, no rights in Canada are absolute and it is open to government to limit a person's freedom of expression rights if there is a compelling reason to do so.

Canadian courts have seen non-commercial speech as the form of expression deserving of the most stringent protections. The Criminal Code limits such speech as follows:

² <https://council.vancouver.ca/20210224/documents/cfsc20210224min.pdf>

318 (1) Every person who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) In this section, genocide means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

(a) killing members of the group; or

(b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

(4) In this section, identifiable group means any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.

319 (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

These sections of the Criminal Code have been extensively litigated and have been found to be reasonable limits on Canadians Section 2(b) Freedom of Expression rights. There are no other restrictions on the non-commercial content of speech in Canadian law.

The City of Vancouver is bound by the Canadian Charter of Rights and Freedoms and may only exercise those powers given to it by the Vancouver Charter. The Vancouver Charter does not give the City the power to regulate the content of speech within Vancouver.

3. Enforcement of Noise Complaints

Private Property Enforcement

Property Use Inspectors (PUIs) carry out the investigation and enforcement of noise complaints. They use an escalating enforcement approach, as they first attempt to gain voluntary compliance by providing information and education regarding the Noise Control By-law. If this approach is not successful, they may issue an education letter, a Municipal Ticket Information

and/or initiate long form prosecution through the City Prosecutor's office. The City may refer a complaint to VPD if there is a public safety concern or if a complaint requires immediate attention outside of standard City operating hours (e.g. Monday – Friday, 8:30am-4:30pm).

Public Right of Way Enforcement

Street Use Management staff carry out investigations and enforcement of noise complaints related to activities in public spaces within the street right of way, like street entertainment (busking) and street festivals, which are regulated through the Street and Traffic By-law. Similar to PUIs, staff use an escalating enforcement approach to noise complaints. If outreach and education regarding noise complaint are not effective, staff may issue an education letter, a Municipal Ticket Information and/or initiate long form prosecution through the City Prosecutor's office.

Vancouver Police Department

When a citizen calls the Police to report a noise complaint (sometimes referred to as a disturbance), an E-Comm 911 call taker will assess it first. Based on the facts and circumstances received from the complainant, the call taker is responsible for assigning an appropriate call type and priority. Typically, noise complaints/disturbance calls are categorized as a Priority-3 response. These are non-urgent routine service-related calls that do not require an officer immediately but need investigation, mediation or intervention.

Conclusion

The intent of the by-law amendments proposed in the report presented to Council on February 24, 2021 was to enhance enforcement against use of an amplification device in public spaces. The Vancouver Charter does not give the City the power to regulate the content of speech within Vancouver but we can regulate noise levels. Staff considered a field permit for spontaneous events and protests and does not consider it to be an effective tool to regulate complaints regarding sound level. Also, the City does not issue permits for any form of protests, demonstrations, or rallies. City staff and VPD will continue to use the existing tools and escalating enforcement approach to respond to any noise complaints in public spaces, which can be further strengthened as outlined in the above-mentioned report.

If you have any questions about the content of this memorandum, please contact Sarah Hicks or Margaret Wittgens. For questions to Vancouver Police Department, please contact Staff Sergeant Jason High at Jason.High@vpd.ca.



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