

From: **"Mochrie, Paul"**

To: **"Direct to Mayor and Council - DL"**

Date: 2024-07-19 10:45:20 AM

Subject: Reminder - Information management obligations

Attachments: **Onboarding Memo - 2022.pdf**

Good morning Mayor and Council,

This message is provided as a clarification and reminder of the obligations for elected officials relating to creating, managing and handling confidential information, including requirements of the Freedom of Information and Protection of Privacy Act (FIPPA). For reference, please see also the attached memo which summarizes the guidance provided as part of the orientation process for Council in 2022.

Background

The creation, management and control of records related to City corporate business are subject to the applicable City policies. There is significant risk to the City if a) the City does not effectively manage corporate records and b) employees, agents or elected officials create or copy corporate records such as email and word documents using personal devices or saving on portable hard drives. Risks include loss of information and time spent locating records for FOI requests or decision making. It is also a liability if confidential information (including legally privileged and personal information of citizens) is not handled appropriately which can result in privacy breaches, confidential information leaks, monetary penalties, and reputational damage.

Key articles:

- <https://globalnews.ca/news/10523523/government-by-gmail-doug-fords-chief-of-staff-private-email-use/>
- <https://www.cbc.ca/news/canada/calgary/city-calgary-class-action-93-million-privacy-breach-1.4321257>
- <https://www.cbc.ca/news/politics/class-action-student-loan-1.4462434>

Reminders

- Do not use a personal device for City business if you have been issued a City device. This includes the use of personal cell phones and laptops.
- Do not use a personal email address (private email that is not @vancouver.ca) for City business. This includes forwarding correspondence and government-related information to third parties or to your own personal email address, sending City related calendar invites to your personal electronic calendar, and saving City related documents in third party cloud based file storage systems such as Google Docs.

Recommendations & Next steps

- Refresh your understanding of FOI, Privacy and Records management responsibilities by reviewing the FAQs attached.
- Forward any city information to your city account and fully delete from your personal device(s) and personal email account(s).
- Contact Technology Services if you have any technical issues with your city-issued devices and/or connecting to a VPN.

References

- Code of Conduct Bylaw: <https://vancouver.ca/files/cov/code-of-conduct-by-law-no-12886-tab-1.pdf>
- Corporate Records and Information Management policy: <https://policy.vancouver.ca/ADMIN009.pdf>
- Privacy policy: <https://policy.vancouver.ca/ADMIN029.pdf>

- Technology Acceptable Use policy: <https://policy.vancouver.ca/ADMIN035.pdf>

Please contact Cobi Falconer, Director, Access to Information and Privacy at cobi.falconer@vancouver.ca with questions related to this matter.

Best,
Paul

Paul Mochrie (he/him)
City Manager
City of Vancouver



The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səliłwətał (Tseil-Waututh) Nations.

MEMORANDUM

November 9, 2022

TO: Rosemary Hagiwara, Acting City Clerk
Donnie Rosa, General Manager, Board of Parks and Recreation

CC: Leslie Tuerlings, Manager, Mayor and Council Support;
John Brodie, Acting Director of Strategic Operations & Board Relations

FROM: Cobi Falconer, Director, Access to Information and Privacy (ATIP)

SUBJECT: 2022 – Returning and New Elected Officials and Political Staff Onboarding

Access to Information and Privacy (ATIP) requires Elected Officials support staff* to ensure that all On-boarded Elected Officials and Political Staff City records are in compliance with FIPPA; the Corporate Records and Information Policy - ADMIN-009; and the Privacy Policy - ADMIN-029. *Staff responsible for assisting Elected Officials and Political Staff with on-boarding.

Training on **November 9, 2022** for Elected Officials.

Freedom of Information (FOI)

- FIPPA, is the legislative framework for information privacy rights in BC. Act used to release or withhold records.
- FIPPA applies to all City Business Records and processes, including the records of Elected Officials and Political Staff. FIPPA does not apply to personal or constituency records.
- Proactive disclosure of Memos to Mayor and Council, completed FOI requests, Mayor and Councillor calendars, in camera decisions and related reports, and OpenData.

Protection of Privacy

- Keeping city-collected personal information secure and confidential is the responsibility of all staff and elected officials.
- Risks of a privacy breach are reputational, penalties under FIPPA, civil suits.

Corporate Records Management

- Use city issued devices and systems to conduct city business.
- Corporate records provide evidence and need to be filed support staff; whereas, transitory records have a short-term value. Both types of records can be FOI'd.

Ombudsperson Complaints

- Office of the BC Ombudsperson is responsible for overseeing administrative fairness in public administration. ATIP Office handles all Ombudsperson complaints.

Brief and FAQs enclosed (handouts to elected officials).

Information Compliance Culture at the City of Vancouver: Onboarding Elected Officials & Political Staff - Brief

Background

In order to ensure all FOI requests are responded to in a comprehensive and efficient manner while personal privacy is protected, it is imperative that decisions are being captured and saved and that records are filed, managed and protected.

Support staff assisting elected officials and political staff are responsible for filing records into VanDocs (the City's centralized records management system) and assisting with FOI requests.

Audience

- Elected Officials, Political staff, and Support staff

What you need to know

- The city responds to all access to information (FOI) requests within legislated deadlines.
- City records include business related texts, photographs and emails sent to or received by a staff member from a non-city device.
- Any city record can be requested through the FOI process, and must be provided to the FOI Office within 5-7 business days (unless a different date agreed upon in advance).
- Names of FOI applicants are maintained as confidential and will not be shared.
- The FOI Office reviews the records for exemptions and exceptions and will notify you when they will be released.
- The FOI Office will coordinate any legal, subject matter expert, or City Manager reviews.
- All city records must be managed in a centralized approved records management system; VanDocs is the approved system for electronic records and **require filing by a support staff person.**

Your role

- **Do** appropriately create, collect, file and manage city records and information.
- **Do** document your decisions, including notes to file when there is a phone call or in person conversation.
- **Do** keep personal and constituency records separate from corporate records.
- **Do** protect personal, confidential, and sensitive information such as the contact information of a citizen who wrote to Council, in camera matters, and legal advice.
- **Do** contact privacy@vancouver.ca if a privacy incident has been detected – i.e. you sent an email containing personal information of a citizen in error to a third party.
- **Do not** use a personal device or system to collect and store city information - such as emails, texts or photographs. If you do (by mistake), forward the information to your city email account and delete on your device after sending.

Why this is important

- Following these policies are critical to our daily work and obligations to demonstrate transparency of decision making.
- Every elected official and political staff member are responsible for understanding and following policies and legislation related to city information.

Legislative compliance:

The City of Vancouver has an obligation to document its decisions and ensure these records are accessible for audits, FOI and other compliance requirements, as well as protect personal, confidential and sensitive information.

The City adheres to the following legislation and policies when creating, handling and managing city information:

References

Freedom of Information and Protection of Privacy Act
Freedom of Information and Protection of Privacy By-law No. 11451
Records Management By-law No. 9067

Related Policies

AE-028-01 Code of Conduct
ADMIN-009 Corporate Records and Information Management
ADMIN-029 Privacy Policy
ADMIN-035 Technology Acceptable Use

Questions

- Reach out to the ATIP Director, cobi.falconer@vancouver.ca if you have questions or concerns about a City process that doesn't align with our Privacy Policy, FIPPA, or the Corporate Records and Information Management Policy.
- Visit ATIP's webpage on Currents, <https://currents.vancouver.ca/About/Teams/City-Clerks/SitePages/access-to-information-and-privacy.aspx?web=1>

ATIP - Information Compliance Culture at the City of Vancouver & Park Board

Frequently asked questions (FAQs)

Access to Information and Privacy Division

1. Q. What is an “information compliance culture”?

A. Promoting and following city policies, procedures and best practices in creating, handling, managing, and protecting city information. Ensuring that City and Park Board decisions are clear and documented so that access is easy, efficient and understandable. Being aware that access to and protection of information is a right of citizens.

2. Q. What kind of training does ATIP do for creating general awareness of FOI, Privacy and handling Records?

A. ATIP offers all City and Park Board employees online training (20 minutes) and organization-wide training (85 minutes) on a quarterly basis (four times per year). Three awareness events that occur annually include: Right to Know Week (FOI), Privacy Awareness Week (Protection of Privacy), and Records at Work month (Corporate Records and Information Management).

Freedom of Information (FOI)

3. Q. I am too busy with work to respond to an FOI request.

A. The public has a right to request any records through the Freedom of Information process.

The city has a duty to assist by ensuring records are available and accessible when requested and adhere to legislated timelines. Elected Officials have a duty under the Code of Conduct to assist the city in good faith and without delay in responding to all requests for records through the Freedom of Information process.

If you happen to be away or on vacation, support staff will need to search and provide responsive records to an FOI request in the timeline stipulated, which is typically 5 business days.

4. Q. I need more time to respond to the FOI request for records.

A. The FOI Office requests receipt of your records in 5 business days depending on the size of the request. Meeting these deadlines is essential so that our office can respond to the applicant without delay.

5. Q. How do I know what records I provided will be released to the applicant?

A. The FOI Office has a robust review process. The FOI Office will review records and send any questions in advance or as a courtesy FYI to you before records are released.

6. Q. Can a citizen request texts or emails on my personal devices/accounts through an FOI request?

A. All records (including texts and emails) relating to city business can be requested through the Freedom of Information stream. The public does not have a right to request records on your personal accounts or devices that does not relate to city business.

7. Q. A citizen or third party has contacted me through my non-City device about city business, what do I do with that text or email?

A. The city requires that you avoid using a personal devices and accounts to conduct city business while acknowledging that there may be some occasional circumstances where this cannot be avoided (policy ADMIN-035, Technology Acceptable Use).

Any text or email relating to city business sent to a non-city device must immediately be forwarded to your city email address and deleted from your non-city account(s).

All emails sent relating to city business should be sent from your City devices only. Corresponding from non-city devices and systems will place these records within the scope of FIPPA and allow them to be requested.

8. Q. I just got FOI'd for all of my emails and texts from [insert date range] on my city device. I have personal photographs and emails on that device, do I have to give them to you?

A. If personal records on your city device are responsive to an FOI request, your personal records must be provided to our office. You cannot delete information AFTER you have received an FOI request. It is recommended to not use your city device for personal email or personal pictures.

9. Q. Does City of Vancouver charge an administration fee to make an FOI request?

A. No, the City does not charge any administration fee to make an FOI request. Charging an administration fee poses significant equity concerns as it may dissuade marginalized groups from making FOI requests.

10. Q. Can my work calendar be requested as an FOI?

A. No, your calendars are part of a pro-active release process that is published on a monthly basis (therefore outside of FIPPA scope). It is expected that any personal/non-city items in your calendar be set as "private" before submission to the ATIP Office.

11. Q. What else is proactively released?

A. Information that does not contain personal or third party sensitive or confidential information, such as completed FOI request packages, Memos to Mayor and Council, In camera decisions and related reports, Mayor and Councillor calendars, OpenData subsets, and key documents on project web pages of interest.

12. Q. I have an FOI request about my records, what should do I do?

A. Work with your support staff to collect and confirm records that are in scope of the request. Depending on the risk and complexity of the request, the file may go to Legal Services for review and subject matter experts before release. You will be notified in advance of the release.

13. Q. Am I able to know who the applicant is?

A. The applicant's name is considered confidential and will not be shared unless it is on a need to know basis (and if needed, we ask the applicant if it is ok to share their identity).

14. Q. What is the city's position on withholding records?

A. Public bodies must refer to FIPPA to make decisions – city's position is to be open and transparent. The expectation is that records exist on a matter and if they do not, a detailed reason must be provided.

15. Q. When can I share information from an in camera meeting?

A. Information from an in camera meeting is treated as confidential and may not be shared. The city has a robust quarterly proactive review and public release process for in camera decisions and related reports. There is also a process for fast tracking in camera decisions if time-sensitive. Questions related to whether the city has decided to release information from an in camera meeting may be directed to the City Clerk.

16. Q. What can I not say in an email?

A. You have the freedom to speak freely but it is recommended that you do not document anything unprofessional and/or personal in a business email. Any type of record you create, including email, can be requested and part of the records collection for an FOI request.

Protection of Privacy

17. Q. How does the City of Vancouver protect privacy?

A. The Freedom of Information and Protection of Privacy Act ("FIPPA") applies to all public bodies in British Columbia, including the City of Vancouver and Park Board. Public bodies must protect personal information from unauthorized collection, use and disclosure.

18. Q. What is personal information?

A. "Personal Information" is defined in FIPPA as "information about an identifiable individual", e.g. home address, marital status, email address, age, or medical history. Business contact information such as name, title and work email is NOT personal information.

19. Q. How should we collect and use personal information?

A. We are only authorized to disclose personal information to other City employees on a “need-to know” basis. Members of the public have the right to see their personal information, but, we don’t disclose personal information to third parties except in exceptional circumstances. Sharing personal information about a citizen (name, email, age, address, issue) to a third party would be investigated as a “privacy incident” to determine if it was a confirmed “privacy breach”.

20. Q. Can I forward a citizen’s correspondence to a third party about a particular matter?

A. No, as citizen emails likely contain personal information. Forwarding this information without written permission from the sender would likely be considered a privacy breach, and if identified, would require the city to conduct an investigation.

21. Q. I just sent email containing personal and/or confidential information to the wrong email address.

A. Immediately recall the message. If unsuccessful, contact privacy@vancouver.ca for next steps.

Corporate Records and Information Management

22. Q. Is email considered a record?

A. Yes, emails and attachments are considered records and must be saved if it contains business related information, (i.e. discussions, decisions). The definition of record under FIPPA: includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.

23. Q. What is a transitory record and do those types of records get FOI’d?

A. A transitory record is information that can be deleted when no longer useful. They are typically reference materials, circulars, newsletters, publications, lunch invitations, duplicates, some drafts (when there is a final document), and publicly available information (i.e. City Council agendas and minutes). These records can be requested and may be responsive to an FOI request if retained, for example, notes made on a copy of an in camera report.

24. Q. I get tons of email and I like keeping everything, is that ok? Where does it get filed?

A. It is your responsibility to know what records to keep and what to delete*. Transitory records should be routinely deleted. If you are unsure, it is better to keep. Emails that document city business will need to be kept and filed.

*Remember to keep constituency records and personal records separate from business records.

25. Q. I get rid of everything, in order to avoid FOI, is that ok?

A. It is your responsibility to know what records to keep and what to delete. It is considered a liability if you disposed of a record that should have been retained. Elected Officials under the Code of Conduct are required to retain records and other information in accordance with the procedures, standards, and guidelines established by the city, including the Records Management By-law No. 9067.

It is an offence under FIPPA to willfully conceal, destroy or alter any record to avoid complying with a request for access to the record*.

*A person who commits an offence under FIPPA is liable on conviction to a fine of up to \$50,000.

26. Q. Where do support staff file my corporate records to?

A. City has an Electronic Document and Records Management System (EDRMS) called VanDocs that is designed to manage physical and electronic records throughout their lifecycle as per the Records Management policy ADMIN-009. You will need to coordinate with your support staff to file records into the City's EDRMS.