



**CITY OF VANCOUVER**  
**INTERNAL AUDIT REPORT**  
*Freedom of Information Follow-up*  
*Audit*

**Distribution:**

Audit Committee  
KPMG External Auditors

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**EXECUTIVE SUMMARY**

May 25, 2020

The Freedom of Information (FOI) audit was initiated to provide reasonable independent assurance that the City complies with FOI regulatory requirements, and the related internal controls and business processes are adequate and effective, thereby enabling the public with timely and meaningful access to information.

Of the 12 recommendations made in the Office of the Information & Privacy Commissioner's June 2016 report, 10 were found to be complete with no non-compliance issues noted. For the other two recommendations, some improvements have been made, however, they are not yet complete. Management has agreed to implement additional process improvements that will address these items.

The more significant findings and recommendations are:

**E.1 Formally roll-out Access to Information online training to all City staff**

Management will continue to work with City Learn/HR to have the online FOI, Privacy and Records Management training module rolled out to all City staff, including tracking and reporting of course completion to track compliance.

**E.2 Ensure adequate management review and supporting documentation for fees charged**

Management has committed to implement a process for documented review of fee calculations to ensure the accuracy of the fee based on retained supporting documentation.

Findings and recommendations have been discussed with management and their responses have been incorporated in this report.

A blue ink signature of Tony Hui.

Tony Hui, CPA, CA, CRMA  
Chief of Internal Audit

A blue ink signature of Carmen Fuellbrandt.

Carmen Fuellbrandt, CPA, CMA, CIA, CRMA  
Senior Internal Auditor

## **A. BACKGROUND**

### *Freedom of Information and Protection of Privacy Act*

BC's Freedom of Information and Protection of Privacy Act, (FIPPA or the Act), sets out the rights of individuals with respect to access to information and protection of personal information, as they relate to the public sector.

FIPPA Section 6.1 describes a public body's duty to assist applicants:

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.

Other key sections of FIPPA with respect to FOI processes cover the following:

*Response timelines* - Under FIPPA, the time limit for a public body's response to a request is 30 business days from the receipt of the request. This time limit may be extended for several reasons, set out in the Act. Most frequently a large number of records must be searched and compiled or a third party or another public body must be consulted regarding disclosure.

*Exceptions and Exemptions* – There are various situations for which an exception or an exemption to disclosure of information would apply whereby a public body may or must refuse to disclose information, for example if the records contain personal, third party, or City confidential information.

*Fees* – A public body may charge a fee to the applicant for the service of locating and preparing a record. However, a fee is not charged for the first three hours of time spent and does not apply to a request for an applicant's own personal information.

A request for review can be made to the Office of the Information & Privacy Commissioner (OIPC) in the event of a dispute or complaint regarding a public body's handling of a request for information.

### *City of Vancouver Access to Information & Privacy Division*

Freedom of Information (FOI) requests at the City of Vancouver are managed by the Access to Information & Privacy (ATIP) division. As reported in the ATIP division's 2018 annual report, there has been a steady increase in the number of FOI requests received over the past five years. The 2019 annual report was not yet available at the time of this audit.

Key metrics for the ATIP division as published in the annual reports, are as follows:

<b>Metric</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Number of FOI Requests</b>	<b>503</b>	<b>537</b>	<b>665</b>
<b>Total Number of Pages of Records Released</b>	<b>58,184</b>	<b>60,473</b>	<b>36,685</b>
<b>Average Response Time</b>	<b>20 days</b>	<b>23 days</b>	<b>22 days</b>

<b>(business days)</b>			
<b>Number of OIPC Reviews</b>	<b>14</b>	<b>23</b>	<b>22</b>
<b>OIPC Reviews as % of Total Requests</b>	<b>2.7%</b>	<b>4.2%</b>	<b>3.3%</b>

### 2016 OIPC Review of City FOI Process

In 2016 the Office of the Information & Privacy Commissioner conducted a review of the City's FOI processes and issued a report – Audit and Compliance Report F16-01: City of Vancouver Duty to Assist, dated June 23, 2016.

This report made recommendations focused on ensuring the City's compliance with the duty to assist under FIPPA. The recommendations covered various aspects of the City's FOI processes including:

- Documentation of files and searching for records;
- Timing of responses;
- Content of responses; and
- Communication with applicants.

Appendix A contains a complete list of the 12 recommendations made by the OIPC.

## **B. SCOPE**

The current audit objective was to provide reasonable independent assurance that the City complies with FOI regulatory requirements, and the related internal controls and business processes are adequate and effective, thereby enabling the public with timely and meaningful access to information.

This audit also specifically examined the status of action items pertaining to the 12 recommendations outlined by the Office of the Information & Privacy Commissioner's report published June 2016.

Our work included:

- Interviews with management in the Access to Information & Privacy division;
- Review of policy and procedures, and process documentation relating to FOI processes;
- Review of a sample of FOI case files covering the years 2018 and 2019;
- Review of FOI case files that were referred to the OIPC for review during 2019; and
- Review of a sample of FOI case files that involved charging a fee to the applicant.

The audit is not designed to detect fraud. Accordingly there should be no such reliance.

## **C. CONCLUSION**

In our opinion, internal controls over the City's Freedom of Information processes are adequate and generally comply with FIPPA requirements, with some improvements required. Of the 12 recommendations made in the Office of the Information & Privacy Commissioner's June 2016 report, 10 were found to be complete with no non-compliance issues noted. For the other two recommendations, some improvements have been made, however, they are not yet complete: 1. A staff training program has been developed, and will be rolled out to all City staff on a mandatory basis; 2. Improvements can also be made on the review and documentation supporting actual time spent on FOI requests that involve a fee.

Findings and recommendations have been discussed with management and their responses have been incorporated in this report.

## D. RISK ANALYSIS

The potential significant risks considered if controls were not in place are:

- City FOI processes may not comply with Freedom of Information and Protection of Privacy Act requirements;
- Citizens' access to information may not be timely or may be otherwise impeded;
- Fees charged to applicants may not be accurate or supported by documentation of time spent on the FOI request; and
- City staff may not have sufficient knowledge of FOI requirements thereby impacting the City's compliance efforts.

## E. AUDIT ISSUES, RECOMMENDATIONS AND MANAGEMENT RESPONSES

### E.1 Formally roll-out Access to Information online training to all City staff

The OIPC recommended that the City provide mandatory routine training to City staff on FOI matters such as records management, records retention, the purpose of FIPPA and their responsibilities under the Act (Recommendation #3).

In addition to customized, departmental training, an online training course, "Access to Information and Protection of Privacy - FOI, Privacy and City Records" has been developed and is available on the City's online training library, CityLearn. Contents of the course cover the FOI process, records management and privacy, as prescribed by the OIPC recommendation.

Additionally, the Access to Information & Privacy internal website serves as a reference to City staff and provides an overview of the legislation, the role and responsibilities of City staff under FIPPA, and various aspects of records management.

While the online course is currently included as part of the onboarding requirements for all new City staff, it has not been rolled-out to existing staff to date. Management reports that this is in part due to some upcoming system changes for both the City's internal website and CityLearn itself. Currently, ATIP management also requires all staff attending customized, department specific training to complete the online training course prior to the training session.

***E.1.1 The Director, Access to Information and Privacy will continue to work with City Learn, Human Resources to ensure the Access to Information and Protection of Privacy online training module is formally rolled out to all City staff. Completion of the course should be a mandatory requirement and should be tracked to monitor compliance with this requirement. This should be completed by March 31, 2021.***

#### **Management Response:**

*Please check one:*

☒ Agree with the findings

☐ Disagree with the findings

*Please check one:*

☒ Agree with the recommendations

☐ Disagree with the recommendations

### *Management Action Plan:*

*Management notes they will work with City Learn to achieve this recommendation. Delivery of courses and general roll out to all City staff is managed through City Learn/Human Resources. ATIP received a promise in 2019 from the Chief Human Resources Officer that the Access to Information, Privacy and Records Management Online Basic Training module will be rolled out to all City staff as required training as soon as the new CityLearn System is in place. The CityLearn system also tracks compliance.*

## **E.2 Ensure adequate management review and supporting documentation for fees charged**

Once an FOI request is received, a time estimate request is sent to the department responsible to provide the records. If the time to search for and prepare the records is estimated to be greater than three hours, the City may charge a fee to the applicant. In these cases, a fee estimate will be sent, including the estimated hours involved and the resulting fee amount. The applicant is required to pay a 50% deposit based on the fee estimate in order to have the request proceed.

Once the record search and compilation has been completed, departments report back the *actual hours* spent on this part of the FOI request to the FOI Office. This figure is then used to review the initial fee estimate and update the final invoice for the applicant. The fee is charged at \$7.50 per quarter hour, with the first three hours free as per the FIPPA Regulation.

The OIPC recommended that the City document actual time spent to locate, retrieve, produce or prepare a record for release in circumstances where a fee is being applied (Recommendation #10). The Report also stated OIPC "examiners believed that fees could have been applied more often but were not."

From a review of a sample of FOI requests that involved fees, fee amounts were found to be accurately calculated according to the time reports provided to the ATIP office. However, it was also noted that there was no documented review of the calculations.

Additionally, for two of the requests reviewed, there was insufficient documentation retained on file to support the actual hours spent to fulfill the request and the amount that was invoiced to the applicant. Departments reported actual time spent, but this differed from the actual amount that was invoiced.

***E.2.1 The Director, Access to Information and Privacy should establish a process to document review of fee calculations. This should include ensuring that a record of actual time spent on the FOI request, as reported by the department, is retained. This should be completed by December 31, 2020.***

### ***Management Response:***

*Please check one:*

☒ Agree with the findings

☐ Disagree with the findings

*Please check one:*

☒ Agree with the recommendations

☐ Disagree with the recommendations

## **E.3 Acquire and implement a robust FOI tracking and reporting system**

The ATIP department uses a legacy Access database tool internally called the FOI Tracker. Information in the tracker is generally updated by the FOI Intake Clerk, who records FOI requests

as they are received, including all pertinent information such as the file number, the date the request was received, and the nature of the request.

The tracker contains only a limited reporting ability; most metrics cannot be generated directly from the tracker. To produce the metrics that comprise the information in the ATIP annual report, a separate metrics database is maintained.

Management noted during the audit that maintaining these two systems, both of which are dependent on manual data entry, is not efficient and is prone to risk of error. For example, in obtaining a listing of FOI files that involved a request for OIPC review, it was discovered that some files were incorrectly classified in the tracker as involving a review.

***E.3.1 The Director, Access to Information and Privacy, should continue to promote the acquisition and implementation of an FOI Case Management system through the Technology Services department. This should be completed by December 31, 2021.***

**Management Response:**

*Please check one:*

☒ Agree with the findings

☐ Disagree with the findings

*Please check one:*

☒ Agree with the recommendations

☐ Disagree with the recommendations

*ATIP Director has promoted the acquisition of an FOI Case Management system since 2011 and began formally asking for an FOI Case Management System in 2013.*

*TS has undertaken two initiatives in conjunction with ATIP to review the available FOI Case Management Systems, once in 2014-2015 and again in 2019. Formal decisions were made as to the system that would be purchased both times, but the acquisition did not go ahead due to TS resourcing issues.*

*The system purchase, installation and implementation is entirely dependent on TS budget and resource allocation, therefore, the ATIP Director can only continue to request a system be purchased, all other aspects of the purchase and implementation are dependent on TS budget and TS assigned resources to install and implement.*



**APPENDIX A: Recommendations from OIPC Report: "Audit and Compliance Report F16 01: City of Vancouver Duty to Assist, June 23, 2016"**

**Documentation of files and searches**

**Recommendation 1:** The City of Vancouver should fully document requests for records. Case files should include: the original request, clarification of requests, the search for records, decisions related to severing, extensions and consultation processes, release approvals, final responses, and any other communication with applicants and recommendations or decisions made with regard to the processing of the request.

**Recommendation 2:** The City of Vancouver should fully document the steps undertaken to search for records, including: locations searched and methods used, locations not searched and the reasons why, departments' responses to the request from ATI staff, and explanations for occasions where no responsive records can be found.

**Recommendation 3:** The City of Vancouver should provide mandatory routine training to City staff on: records management, records retention, the purpose of FIPPA and their responsibilities under the Act, the City's request for records processes, and how to conduct and document searches for records.

**Timing of responses**

**Recommendation 4:** The City of Vancouver should open requests without delay unless the records sought cannot reasonably be identified.

**Recommendation 5:** The City of Vancouver should ensure that any extension taken is as short as possible and that there is sufficient reason to apply the extension.

**Recommendation 6:** The City of Vancouver should improve response times for all requests for records, especially with requests from media applicants, to ensure it responds without delay and within legislated timelines.

**Content of responses**

**Recommendation 7:** The City of Vancouver should apply exceptions on a limited and specific basis, line by line.

**Recommendation 8:** The City of Vancouver should treat records as out of scope only where explicitly delineated under s. 3 of FIPPA.

**Recommendation 9:** The City of Vancouver should develop rules that clearly define expectations surrounding use of personal devices and personal email to conduct City business or share or store City information.

**Recommendation 10:** The City of Vancouver should document 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.

**Communication with applicants**

**Recommendation 11:** The City of Vancouver should provide updated training to all ATI staff related to the duty to assist applicants, including the management of requests for records and legislative provisions for: extension of time limits, fees, exemptions, exclusions, and third-party notifications.

**Recommendation 12:** The City of Vancouver should communicate more openly with each applicant and provide assistance throughout the entire request process.