

NO: R042

COUNCIL DATE: April 3, 2023

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **March 30, 2023**

FROM: **General Manager, Corporate Services**

FILE: **4250-01**

SUBJECT: **Freedom of Information and Protection of Privacy Update**

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## RECOMMENDATION

The Corporate Services Department recommends that Council:

1. Receive this report for information; and
2. Support the \$10.00 application fee for Freedom of Information (“FOI”); or
3. Direct staff to eliminate the \$10.00 FOI application fee; and
4. Bring forward the necessary bylaw amendments for Council's approval.

## INTENT

The purpose of this report is to provide Council with an update on FOI requests since implementing the \$10.00 non-refundable application fee in early 2022, and to seek Council direction to either continue or discontinue administering this fee.

## BACKGROUND

On November 25, 2021, Provincial legislation was amended to provide local governments the option to charge a prescribed application fee for records requested under section 5 (Appendix “II”) of the *Freedom of Information and Protection of Privacy Act* (“FOIPPA”). On January 13, 2022, Council authorized staff to bring forward a bylaw amendment to its Freedom of Information By-law, 1999, No. 13662 (Appendix “I”) to implement a non-refundable \$10.00 application fee for FOI requests in line with the prescribed application fee under section 75(1)(a) (Appendix “II”) of FOIPPA. The application fee was intended to reinforce the spirit and intent of FOIPPA by encouraging FOI applicants to be focused and purposeful when making requests.

## DISCUSSION

The City's Legislative Services Division manages formal requests for information, and all aspects of the City's privacy and personal information protection obligations under FOIPPA. Many FOI requests received by the City are of a non-personal and very broad nature requiring significant communication between staff and the FOI applicant. The intent of the application fee is to encourage FOI applicants to make clearer FOI requests. To this end, staff have found that charging the \$10.00 FOI application fee has encouraged more purposeful requests for non-personal information, which reinforces the spirit of FOIPPA.

The City does not charge a fee to Indigenous Governing Entities as defined in FOIPPA, nor is a fee applied when applicants submit requests for their own personal information or in cases where the information requested is readily available on the City website.

Number of FOI Requests

The City receives and processes a significant number of FOI requests each year. In 2022, the year the \$10 fee was imposed, the City experienced a 17% decrease in the overall number of FOI requests received compared to 2021. As per Table 1 below, the \$10 fee was required for only 33% of the total FOI requests received in 2022, resulting in a nominal revenue of \$1,520.00.

**Table 1: City of Surrey FOI Requests 2020 to 2022**

Category	2020	2021	2022	2022 (Paid)	% of Customers Charged
Associations	4	5	9	5	56%
Businesses	49	39	55	23	42%
Government Agencies	31	38	23	1	4%
Insurance Companies	59	51	52	3	6%
Journalists/Media	36	30	13	13	100%
Law Enforcement	60	61	23	0	0%
Law Firms	81	75	76	44	58%
Private Citizens	217	246	180	59	33%
Realtors	11	14	34	4	12%
<b>Total FOI Requests:</b>	<b>548</b>	<b>559</b>	<b>465</b>	<b>152</b>	<b>33%</b>

In 2022, journalists/media were the only category of applicants that were required to pay the \$10 application fee for 100% of all requests submitted. In this case, the \$10 fee requirement has resulted in a significant drop of duplicate requests and requests for information made by journalists/media that, in the past, often did not result in a published media article.

To date, staff has received only one complaint related to the \$10.00 FOI Application fee. The complaint was made by another local public body.

**Legal Services Review**

This report has been reviewed by Legal Services.

**CONCLUSION**

Based on the above discussion, it is recommended that Council either continue its support of the \$10.00 FOI application fee, or direct staff to eliminate this fee.

Rob Costanzo  
 General Manager, Corporate Services

Appendix “I” - Freedom of Information By-law, 1999, No. 13662  
 Appendix “II” - Section 5 and Section 75 of FOIPPA

CITY OF SURREY

BY-LAW NO. 13662

A by-law for the administration of the Freedom of Information and  
Protection of Privacy Act.

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**As amended by: 17316; 01/10/11; 18364, 01/12/15; 19437, 12/18/17; 20116, 07/27/20; 20559, 02/14/22**

THIS IS A CONSOLIDATED BY-LAW PREPARED BY THE CITY OF SURREY FOR  
CONVENIENCE ONLY. THE CITY DOES NOT WARRANT THAT THE  
INFORMATION CONTAINED IN THIS CONSOLIDATION IS CURRENT. IT IS  
THE RESPONSIBILITY OF THE PERSON USING THIS CONSOLIDATION TO  
ENSURE THAT IT ACCURATELY REFLECTS CURRENT BY-LAW PROVISIONS.

WHEREAS, the Freedom of Information and Protection of Privacy Act, RSBC 1996, Chapter 165, as  
amended, requires that a municipality by by-law:

- (a) must designate a person or group of persons as the head of the municipality for the  
purposes of the Act;
- (b) may authorize any person to perform any duty or exercise any function under the Act as  
Head of the municipality; and
- (c) may set any fees the municipality requires to be paid for providing the services described  
in Section 75 of the Act.

NOW, THEREFORE, the Council of the City of Surrey, in open meeting assembled, ENACTS AS  
FOLLOWS:

Title

- 1. This By-law be cited for all purposes as the "Freedom of Information By-law, 1999,  
No. 13662."

Definitions and Interpretation

- 2. (1) The definitions contained in the Act shall apply to this By-law except where the  
context requires otherwise.

(2) In this By-law:

"Act" means the Freedom of Information and Protection of Privacy Act, RSBC 1996, Chapter 165, as amended.

"Commercial Applicant" means a person who makes a request for access to a record to obtain information for use in connection with a trade, business, profession or other venture for profit.

"Coordinator" means the person designated in Section 3(2) of this By-law as the Information and Privacy Coordinator.

"Council" means the Council of the City of Surrey.

"Head" means the person designated under Section 3(1) of this By-law as the Head.

"City" means the City of Surrey.

"Request" means a request under Section 5 of the Act.

"Records " 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.

#### Administration

3. (1) The City Clerk is designated as the Head for the purposes of the Act and is bound to uphold the spirit and intent of the Act.
- (2) The Records and Privacy Manager is designated as the Information and Privacy Coordinator.
- (3) For the purposes of the Act, the Head and the Coordinator shall act in their respective capacities for the Board of Variance, and for all Commissions and Committees of the City.

#### Powers of the Coordinator

4. The Head may delegate any of the Head's duties under the Act to the Coordinator.

#### Fees

5. (1) An applicant making a request shall pay to the City a non refundable application

fee as set out in Schedule A.

- (2) The application fee in Section 5(1) does not apply to a request for the applicant's own personal information.
6. (1) An applicant making a request shall pay to the City the fees set out in Schedule A for the purposes of:
    - (a) locating, retrieving, and producing a record;
    - (b) preparing a record for disclosure;
    - (c) shipping and handling a record; and
    - (d) providing a copy of a record.
  - (2) The service fees in Section 6(1) do not apply to a request for the applicant's own personal information.

Repeal

7. "Freedom of Information By-law, 1994, No. 12500" is hereby repealed.

PASSED THREE READINGS on the 22nd day of February, 1999.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 1st day of March, 1999.

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"D.W. McCALLUM" MAYOR

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"D.B. KENNY" CLERK

**Schedule A**

**Fees – Applicants Other Than Commercial Applicants**

<u>Section</u>	<u>Services Provided</u>	<u>Fee</u>
5(1)	Application fee	\$10.00 (non-refundable)
6(1)(a)	Locating, retrieving and producing a record	\$7.50 per ¼ hour or the actual cost of staff time, whichever is greater (Note: the first 3 hours are free of charge)
6(1)(b)	Preparing a record for disclosure	\$7.50 per ¼ hour
6(1)(c)	Shipping and handling a record	Actual cost of shipping method chosen by applicant
6(1)(d)	Copying format:	
	Black and white electronic copy or photocopy of a record	\$0.25 per page (8.5" x 11", 8.5" x 14", or 11" x 17")
	Colour electronic copy or photocopy of a record	\$1.65 per page (8.5" x 11", 8.5" x 14", or 11" x 17")
	DVD/CD	\$4.00 per disk

**Fees – Commercial Applicants**

For each service listed above, the cost will be the actual cost of providing that service, in addition to the non-refundable application fee of \$10.00.

**Routine Release Records**

The above fees do not apply to records routinely available for release. In the case of routine release records, the applicable administrative fees apply.

All fees are subject to applicable taxes.

## APPENDIX “II”

### How to make a request

- (SUB) 5. (1) To obtain access to a record, the applicant must make a written request that  
Apr 11/02  
(AM)  
Nov 25/21
- (a) provides enough detail to enable an experienced employee of the public body, with a reasonable effort, to identify the record sought,
  - (b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, and
  - (c) is submitted to the public body that the applicant believes has custody or control of the record.
- (2) The applicant may ask for a copy of the record or ask to examine the record.  
1992-61-5; 2002-13-1; 2021-39-3.

### (SUB) Fees

Nov 25/21

75. (1) The head of a public body may require an applicant who makes a request under section 5 to pay to the public body the following:
- (a) a prescribed application fee;
  - (b) prescribed fees for the following services:
    - (i) locating and retrieving the record;
    - (ii) producing the record;
    - (iii) preparing the record for disclosure, except for time spent severing information from the record;
    - (iv) shipping and handling the record;
    - (v) providing a copy of the record.
- (2) Subsection (1) (b) (i) does not apply to the first 3 hours spent on a request.
- (3) Subsection (1) does not apply to a request for the applicant's own personal information.
- (4) If an applicant is required to pay fees for services under subsection (1) (b), the head of the public body
- (a) must give the applicant a written estimate of the total fees before providing the services, and
  - (b) may require the applicant to pay a deposit in an amount set by the head of the public body.
- (5) If the head of a public body receives an applicant's written request to excuse payment of all or part of the fees required under subsection (1) (b), the head of the public body may excuse payment, if, in the head of the public body's opinion,
- (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
  - (b) the record relates to a matter of public interest, including the environment or public health or safety.
- (6) The head of a public body must respond to a request under subsection (5) in writing and within 20 days after receiving the request.
- (7) The fees that prescribed categories of applicants are required to pay for services under subsection (1) (b) may differ from the fees other applicants are required to pay for the services but may not be greater than the actual costs of the services.  
2021-39-43.