

NO: R055

COUNCIL DATE: **April 27, 2015**

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **March 30, 2015**

FROM: **City Clerk**

FILE: **0625-20**

SUBJECT: **Canadian Anti-Spam Legislation (CASL) Compliance Policy**

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## RECOMMENDATION

The Legislative Services Division recommends that Council:

1. Receive this report as information;
2. Adopt “Canadian Anti-Spam Legislation (CASL) Compliance Policy”.

## POLICY CONSIDERATIONS

The purpose of this report is to obtain Council approval of a new Policy which outlines how the City can ensure compliance and minimize unsolicited commercial electronic messages (CEM) as well as to reduce electronic threats like phishing, malware and spyware.

## BACKGROUND

The Canadian Anti-Spam Legislation (CASL) legislation was enacted on January 2014, with the majority of the legislation coming into force on July 1, 2014. Full compliance must be achieved no later than July 1, 2017. This legislation is formally named “*Electronic Commerce Protection Regulations (CRTC) SOR/ 2012-36*” however is most commonly known and referred to as CASL.

CASL is designed to stop the sending of spam to Canadians by imposing strict rules that govern all commercial electronic messages (CEMs). This includes protecting Canadians from identity theft, attempts to acquire sensitive information such as usernames, passwords, and credit card details by masquerading as a trustworthy entity in an electronic communication (phishing), spreading malware, spyware etc.

This law applies any time a Canadian computer, and any other device (including mobile devices) capable of transmitting electronic mail is used to access any commercial electronic message (CEM), including e-mail, texts (SMS) and other digital channels.

The City of Surrey must comply with the Canadian Anti-Spam Legislation (CASL) by July 1, 2017, and as such, staff has drafted a Policy to ensure compliance is met, as required, and while in this transition, uphold the spirit and intent of this legislation.

This Policy outlines the strategy to ensure we meet the compliance requirement on time and minimize any unsolicited commercial electronic messages (CEM) sent during this transition.

Other than direct response to a received email communication, the City's electronic communications that are subject to this legislation are limited at this time. Currently, most of our electronic communications are sent only to those residents that we have an existing business relationship with. These communications can be categorized into three groups:

1. **Promotional** emails which deliver timely information on a specific program or service that a resident is or was recently enrolled in;
2. **Transactional** emails which provide customer information related to their specific transaction or interaction; and
3. **News and Update** emails which deliver to subscribers the news or updates on topic specific programs or services that they had requested.

During this transition period, for the purposes of CASL, these communications are considered as "implied consent" and are deemed to be CASL compliant UNTIL June 30, 2017. Consent is implied if:

- An existing business or non-business relationship already exists;
- If the recipient has "conspicuously published" their e-mail address, the publication is not accompanied by a statement that the recipient does not wish to receive unsolicited messages, and the message is relevant to the person's business, role, functions or duties;
- If the recipient has disclosed their e-mail address to the sender without indicating that they do not want to receive unsolicited messages and the message is relevant to the person's business, role, functions or duties.

We are in a transition period whereby the City may use the current database held with "implied consent" to request the required "express consent" to be in compliance with CASL's requirement effective July 1, 2017.

CASL identifies three general requirements to achieve "express consent" for sending a CEM to an electronic address. These are: (1) consent with evidence, (2) sender identification information and (3) an unsubscribe mechanism. We will be sending emails to those in our database that we have identified as having the required "implied consent" and request their "express consent" as outlined.

With "express consent" will enable the City to use email more widely for promoting our City programs, send notifications and implement various sections of the *Community Charter* which was amended in 2013 to allow for electronic transmission of certain notices and as supplementary notification on certain statutory requirements.

Section 94 (7) of the *Community Charter* has enabled municipalities to use email as a supplementary means of its statutory obligation for notifying the public and Section 232.1 of the *Charter* allows for property tax due date, tax notices and payment of property tax notifications.

Until the program is fully implemented and compliance is accomplished, staff is committed to uphold the spirit and intent of CASL to ensure that our citizens will only receive information with regard to City initiatives that they want to receive.

## **Conclusion**

The Canadian Anti-Spam Legislation (CASL) Compliance Policy is designed to transition our existing held and new email based contacts collected by the City of Surrey toward meeting the July 1, 2017 CASL compliance deadline.

Jane Sullivan  
City Clerk  
Appendix I: CASL Policy

	<h1>City of Surrey</h1> <h1>Policy</h1> <p style="text-align: right;">No. R-27</p>
<p><b>Policy Title:</b></p> <p><b>Approval Date:</b></p> <p><b>Revision Date:</b></p> <p><b>Department:</b></p>	<p><b>Canadian Anti-Spam Legislation (CASL) Compliance Policy</b></p>    <p><b>Legislative Services</b></p>

## Policy Statement

The Canadian Anti-Spam Legislation (CASL) legislation was enacted on January 2014, with the majority of the legislation coming into force on July 1, 2014. Full compliance must be achieved no later than July 1, 2017. This legislation is formally named “*Electronic Commerce Protection Regulations (CRTC) SOR/ 2012-36*” however is most commonly known and referred to as CASL.

This Policy outlines the strategy to ensure we meet the compliance requirement on time and minimize any unsolicited commercial electronic messages (CEM) during this transition.

### 1. Intent

This law applies any time a Canadian computer, and any other device (including mobile devices) capable of transmitting electronic mail is used to access any commercial electronic message (CEM), including e-mail, texts (SMS) and other digital channels.

The City of Surrey is committed to comply with the Canadian Anti-Spam Legislation (CASL), and as such, this Policy shall ensure compliance is met, as required by July 1, 2017, and while in this transition, uphold the spirit and intent of this legislation.

### 2. Definitions

**Commercial Electronic Message (CEM):** is any message sent to an electronic account, e.g. an email, a text message, or an instant message related to commercial activity.

**Commercial Activity:** Any particular transaction related to advertising or promoting goods or services, providing a business investment opportunity, or directing a recipient to a location, telephone number, contact information or web page which is considered to have a commercial purpose.

This policy is subject to any specific provisions of the Local Government Act, or other relevant legislation or Union agreement.

**Corporate Records Bylaw, 2010, No. 17002:** The bylaw: references the powers granted through the *Community Charter* and *FIPPA*; recognizes the public's right to access records; authorizes the existing corporate records system; and defines compliance requirements for staff.

**Existing business relationship:** means that the sender and recipient have engaged in business together within the previous two years from the date the message is sent. This could mean that the recipient has purchased a service or entered into a written contract within the past two years. If the recipient makes another purchase etc., the two year clock resets.

**Express (opt-in) Consent:** means that the recipient has given the sender direct permission to communicate with them: and have taken an affirmative action to opt-in. To meet this requirement the individual can actively check a box if consent is being collected on paper form or click the confirmation link sent to recipient's email when subscribing on-line to indicate his or her consent.

**Existing non-business relationship:** a relationship that exists from the recipient's activities as a donor or volunteer for a registered charity, political party or political candidate, a member of club, association or voluntary organization.

**Implied consent:** CEM communications are considered as having "implied consent" and are deemed to be CASL compliant UNTIL June 30, 2017. Consent is implied if:

- An existing business or non-business relationship already exists;
- If the recipient has "conspicuously published" their e-mail address, the publication is not accompanied by a statement that the recipient does not wish to receive unsolicited messages, and the message is relevant to the person's business, role, functions or duties;
- If the recipient has disclosed their e-mail address to the sender without indicating that they do not want to receive unsolicited messages and the message is relevant to the person's business, role, functions or duties.

### 3. Responsibilities

The following are general requirements that **must** be contained in a commercial electronic message (CEM) to be sent an electronic address of those residents that we have an existing business relationship with or those that are identified as having received "implied consent" to:

#### 1) Obtaining consent must be an affirmative action

The recipient has given the sender direct permission to communicate with them: and have taken an affirmative action to opt-in. To meet this requirement the individual can actively check a box if consent is being obtained in paper form or click on the Confirmation Link sent to the recipient's email address if subscribing electronically (on-line) to indicate his or her express consent.

#### 2) Electronic origin must be clear (Who)

Electronic messages must be very clear in the message who the message is originating from and who is collecting any related data.

3) **Electronic origin must be clear (Where)**

Electronic messages must include a physical mailing address and one additional way to contact the sender (i.e. e-mail, phone number, etc.). The contact information must remain valid for at least 60 days after the message has been sent.

4) **Identify Referrals**

When electronic messages have been sent based on a referral or on behalf of another organization, that person or organization must be clearly identified and stated in the message.

5) **Ability to withdraw consent**

All requests for consent must also include a statement that a person can withdraw their consent at any time.

6) **Unsubscribe mechanism**

Electronic messages must have a working unsubscribe mechanism. When someone requests to be unsubscribed, that request must be processed within 10 business days.

The City Clerk shall evaluate email list management best practices and address how CASL unsubscribe principles will be maintained.

Business Areas shall ensure that consent (written and electronic) is tracked and these records are stored securely and retained for three years after last communication as per *Corporate Records Bylaw, 2010, No. 17002*.

The requirements and obligations for obtaining express consent under CASL are separate and distinct obligations, and differ from the requirements for obtaining consent under FOIPPA.

City of Surrey managers shall ensure staff understand and adhere to the City of Surrey CASL policy and procedures.

All known or suspected CASL breaches require immediate remedial action and must be reported to the City Clerk.