

## REPORT TO THE GOVERNANCE AND FINANCE COMMITTEE MEETING OF WEDNESDAY, MARCH 6, 2019

### **SUBJECT**     *Freedom of Information and Protection of Privacy Act (FOIPPA)* 2018 Overview

### **ISSUE**

The purpose of this report is to update the Governance and Finance Committee on the number of Freedom of Information (FOI) requests received in 2018, along with some general statistics and information.

### **BACKGROUND**

The *Freedom of Information & Protection of Privacy Act* (the Act) requires all public bodies to be open, transparent and accountable. Access to information requests are made when an applicant requests records outside the scope of routinely available information.

The Capital Regional District (CRD) received 106 requests for the 2018 calendar year. Records were retrieved across all departments and are summarized under the following themes:

- **Regulatory & Legal** – Property files, bylaw enforcement & animal control files, cross connection audits;
- **Costs, Budgets & Performance** – Grants-in-aid awarded, Regional Growth Strategy budgets and costs, donations to Parkwatch, employee sick days, number of employees, staff training & development costs, Director expenses;
- **Data** – Parks & Trail Survey, Point in Time Count Survey, animal & dogs welfare statistics, GIS boundary info (shape files), SSI well water levels & consumption, SSI waste disposal intake at Hartland;
- **Projects** – Wastewater Treatment Project, electric vehicles, Hartland RFP, SAP Business Planning and Consolidation software implementation, SEAPARC;
- **Policy & Recommendations** – Placer Mining in the Leech Water Supply Area;
- **Law Enforcement** – Panorama Recreation Centre RCMP/Police investigations;
- **Consultations from other governments; federal, provincial & local public bodies.**

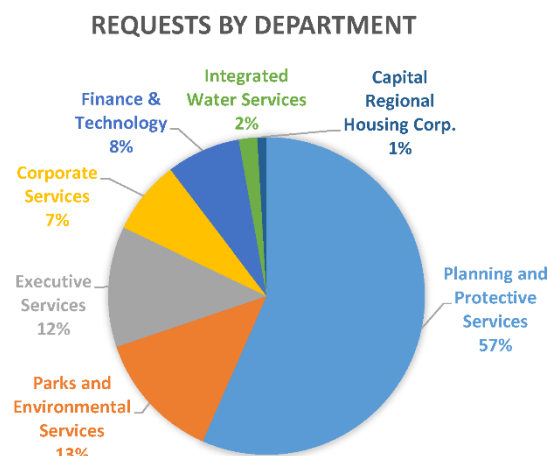
**Table 1** outlines the type of requestors and the number of requests made to the CRD.

Type of Requestor	Requests
Individuals	62
Law Firms	13
Associations & Special Interest Groups	10
Provincial Government	7
RCMP & Police	4
Businesses	3
Other Local Governments	3
Media	2
Federal Government	2



**Table 2** outlines the number of requests served to each CRD department and CRHC.

Requests by Department	Requests
Planning and Protective Services	60
Parks and Environmental Services	14
Executive Services	13
Corporate Services	8
Finance & Technology	8
Integrated Water Services	2
Capital Regional Housing Corp.	1



### 2018 & 2017 Comparison

Year	Requests	Pages Reviewed	Pages Released	Average Review	Average Release	30 Day Extension	OIPC Extension
2018	108 <sup>1</sup>	9,724 <sup>2</sup>	4,916 <sup>2</sup>	107 <sup>2</sup>	54 <sup>2</sup>	10	2
2017	82 <sup>3</sup>	14,377 <sup>3</sup>	5783 <sup>3</sup>	194 <sup>3</sup>	78 <sup>3</sup>	12	2

1. Two OIPC cases which concluded in 2018 were included in 2018 numbers for 108 requests in total.

2. In 2018, 17 requests did not produce any pages of records so pages released and averages reflect this (uses 91 instead of 108).

3. In 2017, 8 requests did not produce any pages of records so pages released and averages reflect this (uses 74 instead of 82).

### ALTERNATIVES

That the Governance and Finance Committee recommends to the Regional Board:

1. That the report be received for information.
2. That the report be referred back to staff for further review.

### DISCUSSION

*Two key trends in FOI requests to highlight for 2018 include:*

- Increased requests for property-related information creates challenges;
- Increased requests for CRD systems data and the duty to create records.

#### ***Increased requests for property-related information creates challenges***

Real estate sales and purchases continue to drive requests for property information from both the Building Inspection and Bylaw Enforcement divisions. In 2018, Information Services office received 27 property-related FOI requests, compared to 13 requests in 2017.

The Building Inspection division routinely provides a Building Permit Information Report for \$30 for any property within the Juan de Fuca, Salt Spring Island and Southern Golf Islands areas. This report outlines the permit information for a property, but does not include any violation-related information or personal information about the homeowner(s).

To access most property records currently requires filing an access to information request (FOI request). Property records contain personal information about the owners of the property for their period of ownership. The CRD is required to withhold and redact all personal information in

accordance with Section 22 of the Act, unless it receives written consent to disclose the personal information from the person(s) the personal information is about.

Permit records contain the personal information of owners, such as: title, name, telephone number and email address; while other records, such as those dealing with bylaw contraventions, typically contain more personal information. The CRD is required to review and redact any personal information it is not authorized to release and may withhold other information excepted from disclosure, depending on the records involved.

Building plans, surveys, and technical reports are copyright protected by the creator of the material. Section 32.1 of the federal *Copyright Act* allows the release of a copy of copyright protected materials under the *Freedom of Information and Protection of Privacy Act* (the Act) for research or private use of these materials; therefore, an FOI request is required for access to these records.

Public bodies have up to 30 business days to respond to FOI requests and can extend requests up to an additional 30 business days under certain circumstances; given the ongoing volume of FOI requests, the CRD often requires the full 30 business days to respond. This can present a challenge to realtors, prospective buyers and sellers of homes when sales are underway or pending.

Disclosure of permit records practices can differ greatly among local governments depending on their capacity to make the relevant portions of permit records, which do not contain personal information, routinely available (per section 71 of the Act). A growing trend is for local governments to make their permits available for public inspection online; in these cases, they have systems that allow the public to look up permit details electronically over the Internet. They are not providing a copy of the original permit record; the relevant permit information is collected in a database that can be queried and the personal information from the permit is not inputted into the system so there is no personal information involved. The CRD does not have a system like this in place currently but may want to consider this in future for proactive disclosure and improved public access to permit information.

### ***Increased requests for CRD systems data and the duty to create records***

Information captured in CRD information systems is not routinely available to the public but can be of public interest and inquiry. Section 6(2) of the Act states that a public body must create a record for an applicant if (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and (b) *creating the record would not unreasonably interfere with the operations of the public body*. [Emphasis added.]

Information Services did not disclose information under s.6(2)(b) for three requests received in 2018, as creating the records would require a significant amount of staff time to manually manipulating the CRD system data (reviewing, extracting, compiling, cleaning, verifying and formulating data into the requested records) into the requested format. One example of such a request was for average water levels for two Salt Spring Island wells for the years 2008-2018. Information Services offered to provide the applicant with the raw data export of annual well water readings from its SCADA system; but relied on section 6(2)(b) to not manipulate the data to create averages, as it would have taken multiple hours of staff time to produce. The well water level

readings ranged between 5,000 to 50,000 readings per year; a considerable amount of data to manually manipulate. Information Services advised the applicant that interpreting the raw data would likely require the assistance of a professional and the applicant chose to withdraw the request.

Looking forward, Information Services will continue to work with staff cross-departmentally to look for opportunities to improve the flexibility of system design and reporting to improve public access to its information, and where possible, to invest in creating records where there is high public interest and value. Working towards more proactive disclosure of difficult to access information, such as periodic reporting of system data, will ease the need for the public to request access under the Act.

### **IMPLICATIONS**

Information Services typically completes FOI requests within the allotted 30 business days provided under the Act. In 2018, 10 requests required an additional 30 business days to complete; two of which required further extensions granted by the OIPC. The OIPC grants time extensions to assist with processing exceptionally complex cases which involve large volumes of records to search or review, diverse record formats, third-party consultations and other complexities.

The shortest request was completed within a day and the longest request was completed in 80 business days. Over 230 staff were directly involved in collecting records to respond to FOI requests for 2018.

Information Services office intakes requests and corresponds/communicates with applicants, CRD staff, divisions and departments (including legal and risk management as required), third party businesses, other governments and public bodies and the OIPC as required. Information Services reviews, de-duplicates, redacts, copies/scans, prepares and sends records to applicants, researching OIPC orders and other relevant laws and regulations as required. It also works with Finance to generate and issue fee estimates and final invoices and collect payments. CRD staff are required to search, retrieve and produce records in response to requests and serve as subject matter experts.

Administering FOI requests is a legislative requirement and public service which has significant organizational impacts but generates little revenue, as there are few instances when charges can be successfully applied. Further, charging fees can be a barrier to access and applicants can request a fee waiver under the Act. Allowable fees are nominal compared to the actual cost of providing records and rates are set under the *Freedom of Information and Privacy Protection Regulation, BC Reg. 155/2012*. In 2018, a total of \$555.65 was collected for two requests.

### **CONCLUSION**

In 2018, the CRD received 106 requests for information compared to 82 in 2017, with a reduction in average pages released per request. Further, it is noted that approximately 50% of all pages received were duplication, which is common with larger FOI requests spanning individual and division/department filing systems.

In addition to information requests, the Manager of Information Services conducts mandatory FOIPPA training for all staff. In 2018, Information Services provided mandatory privacy training to

86 staff throughout the organization and significantly updated its approach to better incorporate managing records, including what information can be routinely destroyed versus what information must be filed into its recordkeeping systems, with a focus on better records management of emails and SharePoint records. Some additional department training on electronic records management in SharePoint was also held.

**RECOMMENDATION**

That the Governance and Finance Committee recommends to the Regional Board:

That the report be received for information.

Submitted by:	Sharon Byrch, Manager Information Services
Concurrence:	Kristen Morley, JD, General Manager, Corporate Services
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

SB/KM