

**REPORT TO GOVERNANCE COMMITTEE
MEETING OF WEDNESDAY, FEBRUARY 02, 2022**

SUBJECT **Cost Recovery Options and Cost Allocations for Freedom of Information (FOI) Requests**

ISSUE SUMMARY

The CRD Board directed staff to provide a follow-up report on cost recovery options and cost allocations for Freedom of Information (FOI) requests.

BACKGROUND

At the February 3, 2021 meeting, the Governance Committee received report 21-111, "*Freedom of Information and Protection of Privacy Act (FIPPA) 2020 Overview*" for information and recommendation to the CRD Board. Discussion ensued on various aspects of the report, including:

- volume of building inspection requests;
- commercial FOI requests;
- future online access for property information;
- digitization of records;
- policy of general disclosure;
- cost allocations;
- current fees for FOI requests.

At its February 10, 2021 meeting, the Capital Regional District (CRD) Board approved the following Motion from the Governance and Finance Committee:

That the Freedom of Information and Protection of Privacy Act (FIPPA) 2020 Overview report be received for information.

That staff be directed to provide a follow-up report on cost recovery options and cost allocations for Freedom of Information requests in 9 months.

On November 25, 2021 changes were enacted to FIPPA and its regulation to enable public bodies to impose an application fee of up to \$10 on certain FOI requests to help manage the scope of broad-reaching requests.

ALTERNATIVES

Alternative 1

The Governance Committee recommends to the Capital Regional District Board:

1. That staff be directed to amend Bylaw No. 3945, "*Freedom of Information and Protection of Privacy*" to include a \$10 application fee for general FOI requests in accordance with the *Freedom of Information and Protection of Privacy Act* and the *Freedom of Information and Protection of Privacy Regulation*;
2. That staff be directed to further investigate and establish appropriate categories of building

and property records which are available to the public without a FOI request in accordance with section 71 of the *Freedom of Information and Protection of Privacy Act* and the *Copyright Act*, including setting prescribed fees for providing copies of available records; and,

3. That staff report back with proposed amendments to Bylaw No. 3741, “*Building Regulation Bylaw No. 5, 2010*” to include a list of routinely available records and their associated fees.

Alternative 2

That this report be referred back to staff for additional information.

IMPLICATIONS

Relevant Legislation and Changes to the Freedom of Information and Protection of Privacy Act

As a guiding principle of the *Freedom of Information and Protection of Privacy Act* (referred to herein as the “Act”, or the “FOIPP Act”), fees are viewed as a barrier to information access. Section 75 of the Act deals with fee matters. It sets out which services can or cannot be charged for FOI requests, establishes a 3-hour “free” threshold for time spent by a public body locating and retrieving records for a request and excepts fees for a request for an applicant’s own information. Section 13 of the *Freedom of Information and Protection of Privacy Regulation* (referred to herein as the “Regulation” or the “FOIPP Regulation”) sets out the prescribed maximum fees which can be charged. Further, the Act provides the head of a public body the discretion to waive fees for financial hardship, or when records are deemed of public interest, or for any other reason deemed fair. Complaints arising from fee matters are dealt with by the Office of the Privacy Commissioner (OIPC).

On November 25, 2021 amendments were made to the Act and Regulation to include for the first time the ability to impose a \$10 application fee for general FOI requests. The amended Regulation has not been published at the time of writing this report; however, the Ministry of Citizens’ Services has published that the application fee is not applicable to “personal FOI requests” which, “continue to be without a cost.”¹

The rationale of charging application fees for general FOI requests is to try and limit broad-reaching requests to a more narrowed focus which is more relevant and manageable for a public body to respond to. The application fee is non-refundable and is not subject to fee waiver requests or complaints to the OIPC under the Act, though a public body may at its discretion determine not to charge application fees to any persons or entities where it has reasonably determined the fees are a barrier to access. For example, the Province has determined not to charge fees for Indigenous Governing Entities.

Section 71 of the Act requires public bodies to establish categories of records which can be routinely released outside of the FOI request process and allows the public body to charge a fee for providing a copy of a record disclosed under this section. The fees are not legislated and can be set by the public body but must be reasonable and without substantive mark up. Any established categories of records for routine release containing personal information must only

¹ https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/services-policies-for-government/information-management-technology/information-privacy/resources/2021-amendments/foippa_amendments_application_fee.pdf

be disclosed as authorized under the Act or severed from the record prior to disclosure.

Section 32.1 of the federal *Copyright Act* allows the release of a copy of copyright protected materials under the FOIPP Act, for research or private use. Due to the copyright implications, these records cannot be made publicly accessible (i.e. published online for open access).

Current Disclosure Practices for Building and Property Records and Fees for Personal Information

Currently, access to building and property records held by the Building Inspection division is done through the FOI request process when requests are made for records that contain personal information for any individuals other than the requestor (i.e. previous owners), or for copyright protected records, such as building plans, surveys and technical reports. Building Inspection staff routinely release certain records, including copies of permits, that only contain the requestor's own personal information, or contain no personal information (i.e. commercial building permits).

Financial and Administrative Implications and Cost-Recovery Options for FOI Request Processing by the Privacy and Information Division

In 2021, the Privacy and Information division received 239 FOI requests of which 154 were for building and property information (roughly 64% of FOI requests.) A total of 12 fee estimates were issued for requests that required more than 3 hours of staff time, resulting in \$626.40 in revenue.

Administering fees for FOI requests is somewhat administratively burdensome. The Privacy and Information division is not set up to administer point-of-sales types of transactions, or invoicing. Staff manually generate fee estimate letters which must be sent to requestors within 20 business days after receiving a request. Once a requestor responds they agree to pay the fees, an invoice request is submitted to Financial Services for processing and issuing. Financial Services' staff send the requestor an email (or letter) with the invoice and payment options. Payment options include cheque, credit-card (by telephone) or online payment through a bank. For online payment, the requestor must set up a specific CRD account assigned for FOI payment, even for one-time transactions.

Under the Act, FOI processing is put on hold until fee matters are resolved; the statutory deadline for responding to a request is adjusted accordingly based on the number of business days delayed.

Introducing a \$10 application fee will increase the processing time for FOI requests, as there is no real-time transaction system in place to support direct payment and confirmation of payment. Further, FOI requests are not currently tracked based on whether a request is for personal information about the requestor (fee exempt), or general (subject to the application fee). A reasonable estimate, based on the FOI requests received for 2021, is that roughly 30% of requests could be charged the \$10 fee, yielding approximately \$700.00 in additional revenues. While this is not material in terms of offsetting costs of providing FOI processing services, staff would like to proceed with implementing the application fee to reduce the number of broad-reaching requests we receive. Unlike the fee estimate process, which happens after a request is initiated, the application fees can be communicated on the FOI request form and through communications on the CRD public website, so applicants for general FOI requests should expect to pay fees before any work is done on processing their request.

Cost Recovery for Building Inspection Records

The best option for reducing costs associated with processing FOI requests for building and property information, is to determine which records can be routinely released by the Building Inspection division under section 71 of the Act, and establish appropriate fees and privacy practices that meet the CRD's legal obligations under the FOIPP Act and Regulations and the *Copyright Act*. Staff anticipate that building permits, inspection notes and other information from building and property records may be routinely releasable under section 71 of the Act, with no redactions or minimal redactions of basic personal information. This would reduce the volume of pages of building and property records processed by staff and will likely reduce the overall number of FOI requests. Any revenues would be collected by Building Services and provide some cost-recovery for staff time spent providing records.

Not all building and property records will qualify to be released under section 71, and many reports such as those compiled in the course of an investigation, financial information, or correspondence with homeowners will still need to be processed as FOI requests by Information and Privacy staff. Prior to reporting back with proposed bylaw changes, staff will need to further investigate and establish appropriate categories of building and property records which are available to the public without a FOI request in accordance with section 71 of the *FOIPP Act* and the *Copyright Act*, including setting prescribed fees for providing copies and applying redactions in accordance with legal advice.

Alignment with Existing Bylaws

Bylaw No. 3945, "*Freedom of Information and Protection of Privacy Bylaw No. 1, 2014*" sets out the maximum fees allowed for FOI requests in Schedule A; these fees are derived from section 13 of the FOIPP Regulation. This bylaw will require amending before the new \$10 application fee could be implemented.

Bylaw No. 3741, "*Building Regulation Bylaw No. 5, 2010*" ("Building Regulation") will need to be amended with a new fee schedule before any new fees for documents can be implemented.

CONCLUSION

The CRD Board requested a follow-up report on cost recovery options and cost allocations for Freedom of Information (FOI) requests. Recent changes to the Act and Regulations have enabled public bodies to impose an application fee of up to \$10 for an FOI request. While the revenue generated from the imposition of the fee will be nominal, staff expect it will be a useful tool to manage the scope of broad-reaching requests. For building inspection and property records, staff will undertake an analysis to create categories of routinely releasable records that may be provided to applicants outside the FOI process for a prescribed fee. Further work and due diligence are needed before it is advisable that the CRD update its Building Regulation bylaw to introduce new fees for processing requests for building and property records outside of the FOI process, to ensure CRD can continue to meet its obligations under the Act to protect any personal information in those records.

RECOMMENDATION

The Governance Committee recommends to the Capital Regional District Board:

1. That staff be directed to amend Bylaw No. 3945, "*Freedom of Information and Protection of Privacy*" to include a \$10 application fee for general FOI requests in accordance with the *Freedom of Information and Protection of Privacy Act* and the *Freedom of Information and Protection of Privacy Regulation*;
2. That staff be directed to further investigate and establish appropriate categories of building and property records which are available to the public without a FOI request in accordance with section 71 of the *Freedom of Information and Protection of Privacy Act* and the *Copyright Act*, including setting prescribed fees for providing copies of available records; and,
3. That staff report back with proposed amendments to Bylaw No. 3741, "*Building Regulation Bylaw No. 5, 2010*" to include a list of routinely available records and their associated fees.

Submitted by:	Sharon Byrch, Manager, Information Services
Concurrence:	Kristen Morley, J.D., General Manager, Corporate Services & Corporate Officer
Concurrence:	Kevin Lorette, P. Eng., MBA, General Manager, Planning & Protective Services
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

ATTACHMENT(S)

Appendix A: Bylaw 3945, "Freedom of Informtion and Protection of Privacy Bylaw No. 1, 2014"