



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

AUDIT & COMPLIANCE REPORT F18-02

City of White Rock
Duty to Assist

Michael McEvoy
Information and Privacy Commissioner
for British Columbia

November 22, 2018
CanLII Cite: 2018 BCIPC 52
Quicklaw Cite: [2018] B.C.I.P.C.D. No. 52

TABLE OF CONTENTS

Commissioner’s Message.....	2
Executive Summary.....	3
1 Background & Methodology	4
2 Legislation.....	6
3 Overview of White Rock’s Processes	9
4 Findings.....	12
5 Recommendations.....	21
6 Conclusion	21
7 Acknowledgements	22
8 Appendix A: Methodology.....	23

COMMISSIONER'S MESSAGE

The duty to assist citizens with requests to access records is an essential component of BC's *Freedom of Information and Protection of Privacy Act* (FIPPA). It is important that public bodies embrace this responsibility by responding openly, accurately and completely, and without delay to all requests.

For this report, my Audit & Compliance team assessed whether the City of White Rock is meeting its duty to assist applicants seeking access to information under FIPPA. White Rock has a large number of recurrent applicants; we address White Rock's approach to processing FOI requests by recurrent applicants in this report.

This audit found both strengths and weaknesses in White Rock's FOI program. We found examples of the City managing its FOI program in a way that is compliant with FIPPA.

However, there are still serious issues of concern. The most disconcerting is the rate at which the City is failing to meet mandatory timelines. I realize that a large number of White Rock's FOI requests come from recurrent applicants that may make more sophisticated and complex requests, but that does not excuse the City from its duty to respond within legislated timelines.

The access provisions in FIPPA are meant to be prescriptive; full compliance is a requirement not an aspirational goal. Public bodies need to ensure the proper resources are available to FOI departments to fulfil this duty.

In White Rock's case, with a modest level of additional resource support for its FOI program, combined with following the three recommendations set out, I'm confident the City can achieve full compliance.

My office will follow up in three months' time to assess White Rock's progress with the implementation of these recommendations.

Michael McEvoy
Information and Privacy Commissioner for BC
November 22, 2018

EXECUTIVE SUMMARY

The Audit & Compliance Program of the Office of the Information and Privacy Commissioner for BC (OIPC) assesses how effectively public bodies and private sector organizations protect personal information, and comply with access provisions under the *Freedom of Information and Protection of Privacy Act* (FIPPA) and the *Personal Information Protection Act* (PIPA).

The OIPC conducted this audit of the City of White Rock's (White Rock or City) freedom of information (FOI) program pursuant to s. 42 of FIPPA. In particular, the audit focused on whether White Rock has met their duty to assist FOI applicants under FIPPA. White Rock was selected for audit based on the high number of complaints and requests for review related to the City over the past five years in comparison to other municipalities. The majority of complaints submitted to the OIPC related to duties the City has under FIPPA, and whether they conducted an adequate search for records.

The objectives of this audit were to:

1. Determine whether White Rock's FOI processes comply with legislative requirements, OIPC guidelines, and White Rock's own FOI policies;
2. Identify any gaps or challenges in White Rock's management of FOI requests; and
3. Make recommendations to improve White Rock's FOI policies or practices.

Methodology for the audit included interviewing the White Rock's FOI manager, reviewing a sample of White Rock's 2016 and 2017 FOI requests, and reviewing corresponding OIPC files.

This audit revealed that White Rock conducted adequate searches for records, rarely applied fees, generally released records when available with little to no severing, and provided appropriate explanations when no responsive records were found and when denying access to records under a section of FIPPA.

However, the audit also found issues in 65% of sampled files. Most of the issues concern a failure to meet legislated timelines and missing documentation in White Rock files. The audit also found discrepancies in White Rock's response to recurrent applicants. The majority (65%) of the City's FOI requests stem from recurrent applicants who made five or more requests in either 2016 or 2017. However, White Rock still has a duty to respond to all requests within the legislated timelines.

Specifically, the audit found:

- White Rock failed to meet legislated timelines in 46% of sampled files;
- The City took an average of 38 days to respond to FOI requests overall;

- White Rock was more likely to fail to meet statutory timelines when responding to FOI requests by recurrent applicants compared to other applicants;
- In 2017, White Rock took an average of 22 days longer to respond to requests by recurrent applicants compared to other applicants;
- In 2017, White Rock took an average of 13 business days to forward requests to City departments to begin the search for records; and
- White Rock did not retain all relevant documentation in 26% of sampled files.

The report recommends that White Rock should:

1. Fully document all FOI requests, from the original request to the closing of the file;
2. Forward requests to departments to search for records as soon as possible; and
3. Respond to all FOI requests without delay and within legislated timelines.

Resource issues may impact the timing of White Rock's responses, and need to be addressed. Public bodies must provide sufficient resources to the FOI function to ensure they fulfil their legislated mandate. With small shifts in their FOI process, the White Rock can bring their program into compliance with FIPPA.

1 BACKGROUND & METHODOLOGY

The Office of the Information and Privacy Commissioner for BC (OIPC) established the Audit & Compliance Program to assess how effectively public bodies and private sector organizations protect personal information and comply with access provisions under FIPPA and PIPA.

OIPC Audit & Compliance reports identify areas where an entity may excel in addition to areas where they require improvements to comply with legislation and guidelines. They also serve the purpose of setting out the OIPC's general expectations for access to information and the protection of privacy compliance.

The OIPC conducted this audit of White Rock's FOI program pursuant to s. 42 of FIPPA. In particular, the audit focused on whether White Rock has met their duty to assist FOI applicants under FIPPA.

The OIPC selected White Rock's FOI program based on a review of OIPC complaint and request for review files. The OIPC has received over 100 complaints and requests for review related to White Rock over the past five years, making the City the second highest municipality in terms of the number of OIPC files. The majority of complaints relate to duties the City has under FIPPA and whether they conducted an adequate search for records responsive to an FOI request. OIPC records also indicate that 84% of the complaints and requests for review raised with the OIPC come from a small group of individuals.

1.1 Objectives, scope, and methodology

The objectives of this audit were to:

4. Determine whether White Rock's FOI processes comply with legislative requirements, OIPC guidelines, and White Rock's own FOI policies;
5. Identify any gaps or challenges in White Rock's management of FOI requests; and
6. Make recommendations to improve White Rock's FOI policies or practices.

Methodology for the audit included:

1. Interviewing White Rock's FOI manager;
2. Reviewing a statistically representative sample of White Rock's 2016 and 2017 FOI requests (n=155); and
3. Reviewing OIPC files that correspond with White Rock files opened in 2016 and 2017 (n=66).

In this audit, the OIPC considered how White Rock managed FOI requests from the start of the process to the ultimate completion of the file, including after the OIPC's involvement.

Therefore, this report will set out details relating to the principal aspects of s. 6 duty to assist. These include:

4. Receiving the request;
5. Searching for responsive records;
6. Responding to the applicant; and
7. Requests for review and complaints to the OIPC.

See Appendix A for more detail on the methodology.

2 LEGISLATION

To honour access rights under s. 6 of FIPPA, public bodies must respond openly, accurately and completely, and without delay. Public bodies must make every reasonable effort to assist applicants by clarifying the request, searching diligently and thoroughly for responsive records, and responding in a timely manner.¹

These provisions are central to FIPPA's key purpose of holding public bodies accountable.

2.1 Receiving the request

Section 5(1) of FIPPA requires an applicant to make a written request for records and provide sufficient detail to enable an employee of the public body to identify the records sought.

Once a public body receives a request for records, the public body should record the date it received the request, as the statutory timeline for the 30-day response begins the next day.² The public body should also obtain clarification of the parameters of a request from the applicant, if necessary.³

A public body, in accordance with s. 75 of FIPPA, may charge a fee to perform particular services when processing a request for records.⁴ If the public body requires a fee or deposit, the public body must provide a fee estimate to the applicant, at which point the statutory time limitation for the response is paused. The timeline recommences after the applicant pays the deposit or the public body waives the fee.⁵ The public body must use its discretion in determining whether to charge applicants a fee and must consider waiving fees if the applicant makes a written request. Reasons for requesting a fee waiver include an applicant's ability to pay, their assertion that the record relates to a matter of public interest, or "for any other reason it is fair to excuse the payment."⁶

¹ OIPC Investigation Report F15-03, *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* at p. 8, paras. 1 and 2 (<https://www.oipc.bc.ca/investigation-reports/1874>).

² An inadvertent error or miscalculation of the date for response does not excuse a public body from its statutory obligation to respond within 30 days (or longer, if an extension is warranted).

³ OIPC Investigation Report F15-03, *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* at p. 15, para. 4 (<https://www.oipc.bc.ca/investigation-reports/1874>). See also OIPC Order 00-33 at pp. 5 and 6 (<https://www.oipc.bc.ca/orders/605>).

⁴ Schedule 1 of the *Freedom of Information and Protection of Privacy Regulation*, B.C. Reg. 155/2012 provides a schedule of the maximum amount of fees that public bodies may charge for services.

⁵ FIPPA s. 7(4).

⁶ FIPPA s. 75(5). Please note that where the applicant makes a fee waiver request, the public body has 20 days to respond to the applicant. As well, the applicant may appeal the fee estimate to the OIPC for review, which will also extend the 30-day response time.

2.2 Searching for responsive records

After receiving and, if necessary, clarifying requests for records, public bodies must conduct a search for responsive records. Efforts in searching for records must conform to what a fair and reasonable person would expect the public body to do or consider acceptable.

To this end, public bodies should:

- Train and provide guidance to employees on the typical steps for searching for responsive records;
- Train employees on records management, records retention, and the appropriate storage of records;
- Adequately document decisions and understand the requirements for retention of particular records;⁷
- Maintain a record that includes a reasonably detailed description of what the public body did to search for responsive records;⁸ and
- Be able to describe potential sources of records, sources searched, sources not searched (and reasons for not doing so), and how much time staff spent searching for records.⁹

If no records are responsive to the request, the public body should always explain why this is the case to applicants or, if needed, to the OIPC.

2.3 Responding to the applicant

The final stage of an FOI request is the duty to respond without delay to each applicant openly, accurately and completely.

2.3.1 Responding without delay

Public bodies should make every reasonable effort to respond sooner than the required 30 business days under s. 7.¹⁰ Numerous OIPC orders have held that a public body that fails to

⁷ OIPC Investigation Report F15-03, *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* at p. 60 (<https://www.oipc.bc.ca/investigation-reports/1874>); see also the joint Press Release issued on January 25, 2016 by Canada's Information Commissioners, *Information Commissioners Call on Governments to Create a Duty to Document* (<https://www.oipc.bc.ca/announcements/1904>).

⁸ OIPC Investigation Report F15-03, *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* at p. 47, para. 7 (<https://www.oipc.bc.ca/investigation-reports/1874>).

⁹ OIPC Order 00-32 at p. 5 (<https://www.oipc.bc.ca/orders/603>).

¹⁰ OIPC Order 03-32 at para. 16 (<https://www.oipc.bc.ca/orders/782>). Note that a "day" constitutes a business day and does not include Saturdays, Sundays or public holidays: *Interpretation Act*, [RSBC 1996] c. 238 at ss. 25 and 29.

respond to an FOI request within the time required under FIPPA has not met its s. 6(1) duty to respond without delay.¹¹

If the public body cannot meet the deadline, it may take a 30-day extension if:

- They do not receive enough detail to identify a requested record;
- The request involves a large number of records and meeting the time limit would unreasonably interfere with the public body's operations;
- More time is needed to consult with a third party or other public body; or
- The applicant has consented to the extension.

Under s. 10(2), the public body may also seek an additional extension with the permission of the Commissioner.

When responding to requests for records, s. 8(1) requires public bodies to tell applicants:

- If they are entitled to access the record or part of the record;
- Where, when and how access will be given; and
- If access to the record or part of the record is refused, the reasons for refusal (including the section of FIPPA), contact information for an employee of the public body who can answer questions, and that the applicant may request a review by the OIPC.

2.3.2 Responding openly, accurately and completely

Part 2 of FIPPA (ss. 12 through 22.1) details the authority for public bodies to withhold certain information from applicants. Some of the exceptions are mandatory, in that the public body must withhold the information (for example, in s. 22 where disclosing the information would be an unreasonable invasion of a third party's personal privacy), and some are discretionary (for example, in s. 13, where a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister). FIPPA expects public bodies to conduct a line-by-line review of records and sever only information that meets these discretionary or mandatory exceptions.

Public bodies must also provide applicants with reasons for refusing records or portions of records and include the section of FIPPA that they based the refusal or severing. If the public body does not find records responsive to a request, the OIPC also expects them to provide a basic explanation to the applicant as to why no records were found.

¹¹ See, for example, OIPC Order 03-32 at para. 16 (<https://www.oipc.bc.ca/orders/782>); OIPC Order 01-47 at para. 28); and OIPC Order 02-40 at para. 9 (<https://www.oipc.bc.ca/orders/730>).

2.4 Requests for review and complaints to OIPC

If an individual is not satisfied with how a public body has handled their personal information or their response to a request for information, the individual can complain to or request a review by the OIPC. The OIPC may open a file to investigate the matter.

The OIPC has the authority to direct a public body to attempt to resolve the complaint if the complaint pertains to:

- 42(2) (a) a duty imposed under this Act has not been performed,
- (b) an extension of time for responding to a request is not in accordance with section 10 (1),
- (c) a fee required under this Act is inappropriate,
- (d) a correction of personal information requested under section 29 (1) has been refused without justification, and
- (e) personal information has been collected, used or disclosed in contravention of Part 3 by
 - (i) a public body or an employee, officer or director of a public body, or
 - (ii) an employee or associate of a service provider.

3 OVERVIEW OF WHITE ROCK'S PROCESSES

According to the White Rock bylaws, the City Clerk is the head of the public body for the purposes of administering FIPPA.¹² The bylaw also authorizes staff within the City Clerk's Office to perform any duty or exercise any function authorized or required under FIPPA.

White Rock employs four individuals in the City Clerk's Office with one position – Manager, Property, Risk and FOI (Manager) – responsible for managing requests for records under FIPPA. This responsibility accounts for roughly 65% percent of the Manager's time. The Manager anticipates receiving some part-time assistance from the Committee and FOI Clerk position. During the audit period White Rock hired a new person into this part-time role; however they were not yet available to assist the FOI function. Currently, when the Manager is on leave, the City Clerk may receive some requests but there is no one to process the request in the Manager's absence.

In addition to managing the FOI process, the Manager also provides risk management services and maintains claims information on behalf of the City.

White Rock routinely releases several categories of records without an FOI request.¹³ Some examples include:

¹² White Rock Freedom of Information Bylaw, 2010, Amendment No. 1, 2016, No. 2162. Section 3.

¹³ Section 71 of FIPPA requires the head of a public body to establish categories of records that are available to the public without an FIO request.

- Staff directory;
- Agendas and minutes for advisory committees, boards and commissions of council;
- Agendas and video recordings of open council and special committee meetings;
- Annual reports and statements of financial information;
- Strategic plans and activity-specific master plans;
- Information on City projects;
- Specific engineering reports;
- Approved bylaws;
- General claims information;
- General information on permits;
- Business licenses (not applications);
- Demographic data; and
- Tenders.

Applicants can request records like invoices, closed meeting agendas, emergency plans, audit reports, draft bylaws and other records that may contain personal information through White Rock's FOI process.

From 2016 to 2017, White Rock managed 253 requests for records. Requests by applicants who submitted five or more requests in either calendar year comprised 65% of White Rock's FOI requests. For analytic purposes, this report will refer to these applicants as "recurrent applicants".

3.1 Receiving the request

White Rock's municipal website has information on how to submit an FOI request and allows applicants to download and submit a fillable form or to provide their request in writing via email. If an applicant requests records from City staff outside of the standard FOI process, the staff member will forward the request to the FOI Manager for processing.

The Manager creates a file folder on the City's electronic server with an FOI tracking number, adds a copy of the request and any other relevant documentation into the folder, and updates the tracking document to include the new request. White Rock still maintains paper copies of key documents, so the Manager will also print the relevant information for physical storage. The Manager reported that, in past, there were some inconsistencies in record keeping, particularly for electronic records.

If the request is for records the City routinely releases or includes questions that may be answerable by City staff, the Manager may not record the inquiry as an FOI request.

The Manager sometimes sends an acknowledgement of receipt of the FOI request to the applicant, dependent on current workload.

3.2 Searching for responsive records

The process White Rock undertakes for searching for responsive records can differ depending on the types of records requested. If the Manager has access to the electronic records of a particular department, the Manager will search for records and then consult with department staff to ensure all relevant records are included. If the electronic records are not accessible, the Manager will send an email request to the relevant department staff containing a description of the records sought.

On occasion, the Manager may phone department staff to discuss a request or relevant records, or to follow-up on outstanding requests. In these cases, there may be no documentation of the request for staff to search, though staff will often send the records back to the Manager via email.

If the City of White Rock receives a number of FOI requests in short succession that impacts the same department, the Manager reported that he will sometimes spread out the timing of the searches. In addition, if a recurrent applicant makes repeated requests that impacts one department, the Manager may deal with those requests by interspersing the requests with other non-recurrent applicants.

White Rock has not provided formal FOI or records management training across department staff. However, it does have a records management program, with a policy and procedures manual on:

- Creation and organization of all records;
- Collection of all records
- Access to records;
- Disclosure of records;
- Maintenance of records;
- Retention of records;
- Security of records;
- Storage of records;
- Preservation of records; and
- Disposal of records.

In addition, the City has a policy on the management of email records that includes requirements for storage and retention of email, and a definition of what constitutes a transitory record.

3.3 Responding to the applicant

The Manager reviews the records to determine whether FIPPA authorizes or requires the severing of specific information prior to responding to the applicant. The Manager reported that responses to applicants may be sent later than the statutory timelines allow, stating that resource issues, the volume of files, and the search for records can impact the timeliness of FOI responses.

The Manager anticipates that certain internal City processes, such as changes in storage for email accounts, file management adjustments, and part-time assistance from the Committee and FOI Clerk, will aid in improving the timeliness of White Rock's FOI process and, in particular, their responses to applicants.

3.4 Requests for review and complaints to OIPC

If an applicant has requested a review or complained to the OIPC, the Manager will add the nature of the request or complaint into the tracking document, and if the OIPC has closed the file. The most common entries in the White Rock tracking document relating to OIPC files include reviews of the severing, investigations of the adequacy of the search or response to the applicant, and deemed refusals (occasions when applicants allege that statutory timelines have not been met).

4 FINDINGS

Findings presented in the report represent analysis of a random sample of White Rock's FOI requests from 2016 and 2017 (n=155) and OIPC investigative files (n=66). The analysis provides an accurate illustration of White Rock's FOI process during the sample period within a 5% margin of error.¹⁴ This means findings can be generalized from this report to all of White Rock's 2016 and 2017 FOI requests, give or take 5%, 19 times out of 20.

4.1 Receiving the request

4.1.1 Records requests

As noted, White Rock received 253 FOI requests during the sample period from 2016 to 2017. Examples of the types of records individuals request from White Rock include:

¹⁴ The margin of error may differ for analysis of each data point that included missing cases. See the Methodology section for further detail.

- Emails or other correspondence;
- Fire reports;
- Contracts or other agreements;
- Records related to water services;
- Invoices and fees; and
- Parkade or parking information.

4.1.2 Documentation

FOI staff store requests and information relating to the requests in electronic folders and in paper records. Typical documents contained in each electronic file folder included:

- Original requests;
- Acknowledgement letters;
- Communications with department staff to search for records and their replies;
- Copies of records;
- Response letters to applicants; and
- Communications with OIPC, if relevant.

The auditor found typical documentation or information missing in 26% of the sampled files. Examples included missing copies of original requests, occurrences where closed files had no information as to the reason for closure, and missing notices or letters provided by the OIPC. For example, one OIPC order permitted White Rock to not respond to several requests, however, the auditor found no notations in the respective files to show that the OIPC had opened an investigation, or that the OIPC order was the reason for closure of the White Rock files.

The Manager reported that record keeping in the FOI department has not always been thorough but that recent changes have improved overall retention.

RECOMMENDATION 1

White Rock should fully document all FOI requests, from the original request to the closing of the file and any complaint or review of the file.

4.1.3 Interpretation of requests

The auditor was satisfied that White Rock interpreted the request for records appropriately in 99% of the sampled files.

White Rock requested clarification from applicants on 10 occasions within the sample of files. The auditor agreed with the need for clarification in each instance.

White Rock sought clarification from applicants to:

- Aid in identifying records;
- Clarify whether the applicant was seeking a list containing the information or copies of the associated records; and
- Attempt to narrow the search.

The FOI Manager sent acknowledgement letters to applicants summarizing the request in 49% of sampled files. From 2016 to 2017, White Rock was twice as likely to send acknowledgement letters to recurrent applicants compared to non-recurrent applicants (68% and 32%, respectively). When White Rock did send an acknowledgement letter, it took an average of four business days to send the letter.

Acknowledgement letters are not required under FIPPA, but are useful to advise applicants that the public body has received and is processing the request. They also provide a written record confirming the public body's interpretation of the request.

4.2 Searching for responsive records

4.2.1 Requesting records from departments

Documentation in the sampled files showed that the Manager requested department staff to search records in 56% of files. As noted, the Manager reported that the FOI department can access records from some departments, so a request for department staff to perform the search is not always necessary.

In 2016, when the Manager did request department staff to search for responsive records, the Manager waited, on average, 9 business days, from the day of receiving the request, to ask for the search. In 2017, this increased to 13 business days. Also in 2017, nearly one-third (32%) of search requests made to departmental staff were not sent until at least three weeks had passed from the date White Rock received the request.

As discussed, the Manager reported that he may delay asking department staff to search for records if there are several requests in a short period of time that impact the same department. However, the date that department staff are asked to search for records responsive to an FOI

request impacts the overall timeline of the response to the applicant. FIPPA requires that public bodies make every reasonable effort to assist applicants and to respond without delay. In order to be compliant with FIPPA, the Manager should forward requests to department staff as soon as possible.

RECOMMENDATION 2

White Rock FOI staff should forward requests to departments to search for records as soon as possible.

4.2.2 *Receiving records from departments*

The Manager's search requests sent to departments did not typically contain a deadline for response. When asked to search for records, it took department staff an average of nine days to respond. The Manager followed up on requests if the department did not respond. This follow-up occurred, on average, 19 business days after the original department request to search for records. Again, the time that it takes department staff to respond to search requests also impacts the overall timeline of the response to the applicant and White Rock should reduce any delay.

4.2.3 *Adequacy of searches*

Department staff commonly sent records to the Manager in the form of pdf attachments in email, forwarded emails, Microsoft word documents, Microsoft excel spreadsheets, or jpg photos.

The auditor did not find issue with the search for records in 93% of sampled files.¹⁵ There were four occasions where the auditor noted the search to be inadequate. Reasons included:

- A large number of additional records found only after the OIPC became involved;
- No search conducted as staff believed all records would be severed;
- Responding to only a portion of the request; and
- Summary of records searched instead of the records themselves.

In each of these files, applicants complained to the OIPC and the OIPC investigated.

¹⁵ This finding is limited because the auditor did not review White Rock records outside of those included in the FOI file folder and some files did not have documentation relating to the search for records.

4.2.4 Fees

White Rock applied fees on 10 occasions across the sampled files. One file contained a large estimate, 191 hours for \$6,340. Excluding this one file, the average number of hours cited for the other estimates was 11 hours and the average fee \$320. During the interview, the Manager noted that White Rock generally does not apply fees, even for commercial applicants.

Applicants requested fee waivers on two occasions and, on both occasions, White Rock denied the waiver. The applicant in one of these files raised a fee complaint with the OIPC. The OIPC did not substantiate the complaint.

The auditor did not find fault with the way White Rock administered fees during the sample period.

4.3 Responding to the applicant

White Rock responded to applicants in 85% of sampled files. In 11% of sampled files, a response was not required as the OIPC authorized the City to disregard the request, the applicant abandoned the file after receiving a fee estimate, or the applicant withdrew their request. In the remaining 5%¹⁶ of sampled files, there was no record to indicate file closure or if the City sent a response to the applicant. See Table 1 for additional information.

TABLE 1: FOI RESPONSES		
Response Category	% of Response Letters Sent ¹⁷	% of Sample ¹⁸
Response Letter Sent		85%
<i>Records provided</i>	76%	
<i>No Responsive Records (including Partial)</i>	20%	
<i>Access Denied (including Partial)</i>	5%	
OIPC Authorized Non-response, Abandoned or Withdrawn		11%
No Documentation on Response		5%

4.3.1 Without Delay

White Rock failed to meet legislated timelines in 46% of responses to applicants. White Rock’s on-time rate of 54% is low when compared with other public bodies the OIPC has recently investigated. For example, similar OIPC audits and investigations showed considerably higher

¹⁶ Note: The total of these items adds to more than 100% due to rounding error.

¹⁷ Note: The total of these items adds to more than 100% as some releases were counted partially as a records release and partially under ‘no responsive records’ or ‘denied’.

¹⁸ The total of these items adds to more than 100% due to rounding error.

percentages of responses that met legislated timelines, for example; WorkSafeBC 94%, City of Vancouver 84%, and BC Government 80%.

Moreover, White Rock took an average of 38 days to respond to FOI requests. When White Rock failed to meet timelines, they sent the response an average of 16 business days *after* the legislated due date.

White Rock rarely applied provisions of FIPPA to extend the statutory deadlines. Of 155 sampled files, White Rock applied these provisions in only five instances. Three of these were under s. 10(1)(c) of FIPPA – the need to consult with a third party – and file documentation supported these extensions in all three cases. For the other two extensions, White Rock applied s. 10(1)(b) of FIPPA – large number of records requested or searched – and, in both of these cases, there was insufficient evidence for the auditor to conclude whether the extension was warranted.

In the cases of late responses, White Rock was one day late in 16% of responses and one week past the legislated date in 33% of responses. This means that, with little additional effort, White Rock could have provided these responses within legislated timelines. See Table 2 for additional information.

TABLE 2: AVERAGE TIME TO RESPOND TO FOI REQUESTS AFTER LEGISLATIVE DEADLINE 2016-2017	
Timeline	% of Late Responses
1 Day	16%
1 Week	17%
2 Weeks	29%
3 Weeks	10%
4 Weeks	7%
> 4 Weeks	21%
Total Late Responses	46% of Sample

When analyzed by recurrent applicants compared to other applicants, the auditor found that White Rock was more likely to respond to recurrent applicants after the statutory deadline had passed compared to other applicants.

On average, White Rock took 13 days longer to respond to recurrent applicants than other applicants. For sampled files from 2016 and 2017 combined, White Rock took 43 days on average to respond to recurrent applicants and 30 days for other applicants. The difference between responses to the two groups of applicants was an average of six days longer in 2016 but 22 days longer in 2017. Overall, White Rock was late with 32% of responses for recurrent applicants and 14% of responses to other applicants.

As noted earlier, the Manager reported that requests from recurrent applicants may be interspersed with requests from non-recurrent applicants, if the City receives a number of

requests that impact the same department. However, there could be other reasons for the delay in responding to recurrent applications, such as the nature or complexity of the FOI requests. Recurrent applicants may make complex FOI requests based on their knowledge and experience with the FOI process and the City's business processes. However, the audit was limited in scope and the auditor did not make a determination about the complexity of requests or other factors that may have impacted White Rock's timelines for responding to requests made by recurrent applicants. All the same, public bodies are required to respond to all FOI requests within the timelines legislated by FIPPA, regardless of the nature of the request or the requestor.

FIPPA requires compliance with mandatory timelines in all cases. Public bodies need to resource the FOI function accordingly to ensure they respond to all applicants within the legislated timelines.

RECOMMENDATION 3

White Rock should respond to all FOI requests without delay and within legislated timelines.

4.3.2 *Openly, Accurately and Completely*

Response letters

The auditor did not find issue with response letters to applicants. The sampled letters typically contained the necessary information, including:

- A summary of the request;
- If staff located responsive records;
- A description of reasons for severing or withholding information, including relevant sections of FIPPA;
- Contact information for the OIPC including a link to the OIPC website; and
- A statement that the applicant can seek review of the response with the OIPC.

Records provided for review and released

White Rock released records in whole or in part in 76% of responses to applicants.

Typically, White Rock's responsive records are small in terms of the number of pages. The auditor categorized the relative size of records based on the number of pages the FOI department collected for review. The average number of pages contained in records was 39 pages. See Table 3 for more information.

TABLE 3: SIZE OF RESPONSIVE RECORDS 2016-2017	
Size	% of Records Released
Small (<100 pages)	90%
Medium (100-499 pages)	9%
Large (>500 pages)	1%
Total Responses with Records	76% of Sample

In all but three cases, the FOI department released the same number of records to applicants as they collected, meaning that White Rock provided copies of all responsive records to applicants 97% of the time.

No responsive records and denying access to records

As noted in Table 1 above, White Rock found no responsive records in 20% of sampled files. Of these files, White Rock provided an explanation to applicants for the lack of records 89% of the time. In all cases, the explanations appeared appropriate and provided sufficient detail for applicants to understand why they found no responsive records. In the remaining 11% (3 files), the reason was not explained to the applicant and there was insufficient information in the file for the auditor to determine whether the reason was appropriate.

White Rock denied or partially denied access to requested records in 5% of sampled files that contained responses to applicants (7 files). Reasons given for withholding records in part or in full included:

- s. 12(3)(b): disclosure would reveal the substance of deliberations of *in camera* meetings;
- s. 14: disclosure would violate solicitor-client privilege;
- s. 20(1)(b): records to be released within 60 days;
- s. 21: disclosure could harm business interest of third party; and
- s. 22: disclosure would be an invasion of personal privacy.

Severing

After retrieving responsive records, the Manager reviews them to assess whether or not they contain information that FIPPA would authorize or require White Rock to sever. In 2016 and 2017, White Rock released 50% of records with no severing. White Rock typically severed portions of the other 50% of records they released under ss. 22 and 21.

Auditors found very minimal severing overall and no evidence of block severing¹⁹ in the sampled files. In three files (all from 2016), White Rock marked portions of records as “out of scope” despite orders from the OIPC citing that this is not an exception that authorizes public

¹⁹ Block severing is when, for example, entire paragraphs or pages are severed without conducting a line-by-line review to determine what portion of the records should be withheld under FIPPA’s exceptions.

bodies to withhold portions of records.²⁰ The auditor raised this topic during the interviews with the Manager, who noted that, since 2016, the City no longer withholds portions of records as out of scope.

4.4 Requests for review and complaints to OIPC

Applicants brought 19% of the sampled files (29 White Rock FOI requests) to the attention of the OIPC and, in turn, the OIPC opened 38 complaint, requests for review, and deemed refusal files. The numbers do not match because the OIPC may open more than one investigative file pertaining to different complaints about one White Rock FOI request.²¹

The auditor found issues with documentation of OIPC files in White Rock records – the City did not always note in their records that the OIPC opened a file(s), they did not track the OIPC file number in their tracking document, and the electronic files did not always contain a copy of the OIPC notices relating to an investigation.

Considering the full list of White Rock’s 253 FOI requests 2016 and 2017, the OIPC opened a total of 66 complaint, request for review, and deemed refusal files stemming from all.²² See Table 4 for details relating to the OIPC files.

TABLE 4: OIPC REVIEWS AND COMPLAINTS INVOLVING WHITE ROCK’S 2016-2017 FOI REQUESTS		
OIPC File Type	# of Files	% of Files
Complaint	30	45%
<i>Duty required by Act</i>	<i>17</i>	<i>57%</i>
<i>Adequate Search</i>	<i>10</i>	<i>33%</i>
<i>Fees</i>	<i>2</i>	<i>7%</i>
<i>Time Extension by PB</i>	<i>1</i>	<i>3%</i>
Request for Review	19	29%
<i>Partial/Severed Release</i>	<i>13</i>	<i>68%</i>
<i>Deny</i>	<i>6</i>	<i>32%</i>
Deemed Refusal	17	26%
Total OIPC Reviews & Complaints	66	100%

²⁰ See, for example, OIPC Order F15-23 and F15-24.

²¹ For example, the OIPC may receive a request for review relating to a White Rock FOI request while, at the same time, the applicant may also complain about the adequacy of the search if they think the City should have found more responsive records. The OIPC would open up a second file pertaining to the search. Operationally, both files would be assigned to the same OIPC investigator.

²² Note: this does not mean that the OIPC investigated 26% of White Rock’s files. As noted above, the numbers do not match because the OIPC may open more than one investigative file pertaining to one White Rock FOI request.

OIPC investigators resolved 47% of the requests for review during mediation, were still investigating 26% at the time of the audit, and sent 26% that they had not successfully mediated to inquiry for resolution.²³

By the time of the audit, White Rock had responded to the deemed refusals that applicants reported to the OIPC.

OIPC investigators have the delegated authority to resolve complaint files and few proceed to inquiry. For complaint files opened in 2016 and 2017, OIPC investigators resolved all complaints involving White Rock and none proceeded to inquiry.

5 RECOMMENDATIONS

RECOMMENDATION 1: White Rock should fully document all FOI requests, from the original request to the closing of the file.

RECOMMENDATION 2: White Rock FOI staff should forward requests to departments to search for records as soon as possible.

RECOMMENDATION 3: White Rock should respond to all FOI requests without delay and within legislated timelines.

6 CONCLUSION

This audit revealed that White Rock conducted adequate searches for records, rarely applied fees, generally released records when available with little to no severing, provided appropriate explanations when no responsive records were found and when denying access to records under a section of FIPPA.

However, overall, the auditor found issues in 65% of the sampled files. White Rock has serious issues to address relating to the failure to meet legislated timelines and a lack of fulsome documentation in the files:

- White Rock failed to meet legislated timelines in 46% of sampled files;
- White Rock took an average of 38 days to respond to FOI requests overall;
- In 2017, White Rock took an average of 22 days longer to respond to requests by recurrent applicants compared to other applicants;
- White Rock was more likely to fail to meet statutory timelines when responding to FOI requests by recurrent applicants compared to other applicants;

²³ Note: The total of these items adds to less than 100% due to rounding error.

- In 2017, White Rock took an average of 13 business days to forward requests to City departments to begin the search for records; and
- White Rock did not retain all relevant documentation in 26% of sampled files.

To address the issues raised in this report, the OIPC recommends that White Rock take immediate steps to ensure they respond to all FOI requests within the mandatory timeframe, retain necessary documentation in each file, and maintain sufficient resources to perform the FOI function.

With some small shifts in the way that White Rock manages its FOI function, the OIPC believes the City can bring their program into compliance with FIPPA to fully meet their duty to assist applicants in exercising their fundamental rights of access to information. With these changes, White Rock applicants may have faith that they will be treated fairly and equitably throughout the FOI process.

7 ACKNOWLEDGEMENTS

The City of White Rock and its staff cooperated fully with this investigation.

I would like to thank Tanya Allen, Audit Manager, who conducted the audit and drafted this report.

November 22, 2018

ORIGINAL SIGNED BY

Michael McEvoy
Information and Privacy Commissioner
for British Columbia

8 APPENDIX A: METHODOLOGY

The scope of this audit was to focus on the City of White Rock's compliance with the duty to assist provisions of FIPPA found mainly in Part 2, Division 1. Utilizing components of compliance assessment, operational audit, program evaluation, and process improvement methodologies, the audit included:

1. Interviewing White Rock's FOI manager;
2. Reviewing a statistically representative sample of White Rock's files (n=155); and
3. Reviewing OIPC files that correspond with White Rock files opened in 2016 and 2017 (n=66).

8.1 Background research

The auditors reviewed the following documents as background material for the report and to aid in planning the scope of this review:

- OIPC WorkSafeBC Management of Access and Privacy Requests and Complaints (2018);
- OIPC BC Government Timelines Report (2017);
- OIPC City of Vancouver Duty to Assist Audit (2016);
- Requested materials from the City of White Rock;
- Duty-related requests and complaints received by OIPC;
- OIPC orders involving White Rock; and
- Leading cases related to ss. 6 and 29 of FIPPA.

8.2 Review of policies and procedures

This portion of the review included an overview of White Rocks policies, procedures and other documentation to understand and report on their FOI processes.

The auditor reviewed the following materials:

- The City of White Rock's Organization Chart;
- The White Rock Access to Information Employee List;
- Bylaw 1922, which establishes the administrative structure of City of White Rock in relation to FIPPA and Bylaw 2162, to amend fees payable;
- City of White Rock Memorandum: Freedom of Information "Cheat Sheet" for City of White Rock Front Counters;

- City of White Rock Policy 107: Correspondence Received by the City (amended 2017); and
- Lists of White Rock's FOI requests from 2016 and 2017.

The auditor also used the materials collected during this portion of the review to create interview guides and checklists for reviewing FOI files.

8.3 Interview

The auditor had a preliminary discussion in June 2018 with White Rock's FOI Manager and conducted a follow-up interview in October.

The preliminary discussion focused on identifying documents and files for review, informing the audit of program files, and explaining the OIPC's audit process.

The interview guide included questions on:

- Workload;
- Process for records requests and releases;
- Timelines;
- Responses to applicants;
- Challenges and improvements that may be needed; and
- Procedural issues.

The auditor used information gleaned from the discussion and interview to develop a basic understanding of:

- White Rock's FOI program;
- How records are collected from departments; and
- Processes and decisions involved in the release of records.

OIPC examiners used information collected during the follow-up interview to clarify findings from the review of policies and procedures and the audit of program files.

8.4 Audit of files

The audit of FOI files:

- A random sample of White Rocks FOI request files (n=155); and
- A Review of OIPC files that corresponded with White Rock files opened in 2016 and 2017 (n=66).

In total, OIPC examiners reviewed 222 files for inclusion in the analysis for this report.

8.4.1 Request for records

Using standard statistical methods, the OIPC auditor selected a sample of 155 White Rock FOI request files that the Access to Information office received from 2016 through 2017. This size of sample, combined with the strongly positive results, provides for a point margin of error of 5% at a 95% confidence level, meaning that the sample selected for review provides an accurate representation of the overall population of access files within White Rock for the same timeframe, give or take 5%, 19 times out of 20.

The auditor reviewed White Rock's FOI requests in relation to 105 different points of data. Examples of these data points included:

- The number of FOI requests made each year by the same applicant;
- Subject of FOI request (e.g., fire reports, contracts and agreements, water services, invoices or fees, parking or parking information);
- Appropriateness of request interpretation;
- Dates (e.g., date request received, date due, extension dates, etc.);
- If personal email was requested and, if so, searched and provided;
- Reasons for occasions of no responsive records;
- If, on the surface, the search conducted was adequate;
- Fees, hours billed, fee waiver requests;
- Holds and extensions on files, including reasons for and relevant sections of FIPPA;
- Responses to applicants, including reasons for denying records, legislative sections applied; and
- Other issues that may be present in a file, such as lack of documentation.

The auditor then evaluated and cross tabulated these data points to establish findings for inclusion in the report and to create the interview guide for follow-up with White Rock's FOI Manager.

The auditors removed missing cases from each cross-tabulation. Missing cases included occasions where no data was available or based on exclusion criteria particular to a data point. As such, the auditors based report findings only on the valid cases for each data point. The margin of error may differ for analysis of each data point that included missing cases.

8.4.2 OIPC files

The auditor reviewed requests for review and complaints received by the OIPC to determine the ultimate completion of White Rock's files up to and including an OIPC inquiry.

The OIPC opened 66 request for review and complaint files from 2016 and 2017 related to White Rock. This included requests for review, complaints, and deemed refusals including, for example:

- Complaints about the adequacy of the search for records;
- Deemed refusals whereby the public body allegedly did not respond to an applicant within the statutory timelines;
- Requests to review the public body's decision to deny records altogether;
- Complaints about the public body not meeting a duty under s. 6 of FIPPA;
- Requests for review of exceptions used to sever records; and
- Complaints about time extensions taken by White Rock.

The auditor examiners then evaluated and cross tabulated relevant data points to establish additional findings for inclusion in the report and to compare findings with the audit of White Rock's FOI files.