



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
*for British Columbia*

Protecting privacy. Promoting transparency.

## **AUDIT & COMPLIANCE REPORT F16-01**

# **CITY OF VANCOUVER DUTY TO ASSIST**

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**Elizabeth Denham  
Information and Privacy Commissioner  
for British Columbia**

**June 23, 2016**

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## COMMISSIONER'S MESSAGE

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The right to protection of personal privacy by government agencies who hold our personal information and the right for us to access public records are imbedded in BC's *Freedom of Information and Protection of Privacy Act* ("FIPPA").

An essential component of FIPPA is the duty to assist citizens who seek to access records. Public bodies, including municipalities, must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely. Access to information is a public service just like any other program offered by a public body.

This compliance audit of the City of Vancouver's FOI program revealed a number of issues that I believe require immediate resolution. Specifically noted were inappropriate delays, failure to meet legislated timelines, missing documentation, incomplete responses, and adversarial communication with applicants.

Of particular concern to me is evidence that the City is treating media applicants differently than other applicants. The principle in FOI requests is that all applicants be treated equally, and should not be distinguished by their employment status. It is in the public interest to protect the ability of media applicants to identify issues, obtain records and disseminate information in a timely manner.

Additionally, the evidence of an adversarial relationship between some employees and applicants is troubling, since I believe this creates unnecessary barriers to the appropriate performance of the City's access to information program.

This report includes twelve recommendations for the City that, if implemented, will help to ensure its compliance with the legislated duty to assist under FIPPA and will aid in improving response times and communication with applicants.

I encourage other British Columbia municipalities to review the contents of this report and make improvements to their processes and procedures as appropriate.

### ORIGINAL SIGNED BY

Elizabeth Denham  
Information and Privacy Commissioner  
for British Columbia

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## EXECUTIVE SUMMARY

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The Office of the Information and Privacy Commissioner for BC (“OIPC”) established an Audit and Compliance Program to assess the extent to which public bodies and private sector organizations are protecting personal information and complying with access provisions under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) and the *Personal Information Protection Act* (“PIPA”).

The Commissioner decided to review a local government body because local governments have very direct interactions with citizens. The City of Vancouver’s (“City” or “Vancouver”) Access to Information (“ATI”) program was selected for review primarily for two reasons. As the largest municipality in British Columbia, each year it receives more access to information requests than any other local government, and it also has a large number of OIPC complaints and requests for review.

Utilizing components of compliance assessment, operational audit, program evaluation, and process improvement methodologies, this review included:

1. background research and written submissions from freedom of information (“FOI”) applicants and other interested individuals;
2. a review of policies and procedures relating to access to information;
3. interviews with Vancouver ATI staff;
4. file load comparison to other lower mainland municipalities;
5. an audit of a random sample of the requests for records received by the City of Vancouver between 2013 and 2015 (290 files);
6. a review of OIPC complaints and requests for review that were initiated during the same time frame (85 files); and
7. a review of additional requests for records received by the City of Vancouver relating to the corresponding OIPC files reviewed, as well as other files raised in written submissions (77 files).

The City received an average of nearly 400 requests each year during the 2013 to 2015 sample timeframe, which is the highest volume of requests for records received by any of the large lower mainland municipalities. Nearly 40% of the City’s requests for records were made by applicants who submitted 10 or more requests during the sample period, with one applicant in particular comprising just under one-third of the total requests. Individual requesters (*i.e.*, those acting on their own behalf) comprised the most common type of applicant (46%) and media applicants comprised the second most common group (38%).

Findings presented in the report are based on analysis of the 290 randomly sampled City files and review of the 85 OIPC files. These analyses provide an accurate representation of the City's requests for records processed during 2013 to 2015. As such, generalizations can be made from the random sample to all of the City's requests for records received during that same time period, with statistical accuracy of plus or minus 5%. These data sets also allowed for analysis of the City's management of FOI requests from the start of the process to the ultimate completion of the file after the OIPC's involvement.

Key findings fall into four main categories. These are the documentation of files and searches; the timing of responses; the content of responses; and communication with applicants. The findings are summarized below by category.

#### Documentation of files and searches:

- There were gaps in documentation within the City's electronic FOI request management files. Examiners found 14% of sampled files to be missing documents that would typically be included in an electronic FOI request management file. Examples of missing documents included notes indicating that a request for records had been withdrawn, copies of correspondence with third parties and final response letters to applicants.
- There was also a lack of documentation detailing searches for records and no evidence that ATI staff followed up with department staff regarding details of searches or to seek reasons why there may be no responsive records found. Without training, instruction or follow-up related to conducting searches, the City may not be able to ensure that adequate searches are taking place, nor will the City be able to respond sufficiently to the OIPC in the event of complaints about the adequacy of a search.

#### Timing of responses:

- The City met legislative timelines in 84% of the sampled files, and failed to meet legislated timelines in 16% of the files. In files that did meet timelines, examiners also found other delays. For example, there was no documentary evidence to justify over half of the extensions taken. In addition, in 33% of cases where the City took an extension it failed to meet the new deadline.
- The City was nearly four times more likely to fail to meet legislated timelines with media applicants compared to other applicants and was three times more likely to be late by only one day, which may suggest that the response could have been provided within legislated timelines.

- There appeared to be some misinterpretation of when 30-day response times begin. FIPPA requires that processing time for a request for records starts the day after a request is received and ends the day the response is provided, whereas the City did not start the processing time until after the request had been clarified.

#### Content of responses:

- The City released records or information to applicants in 70% of sampled files. In files where the City partially disclosed records to applicants, examiners identified occasions of block severing.
- Where the City did not release records or information, examiners found detail to be missing in some of the response letters to applicants. Of particular concern were occasions where the City failed to explain reasons for a failure to locate responsive records.
- The City rarely applied fees and, when it did, fee estimates appeared to comply with the *Freedom of Information and Protection of Privacy Regulation*. However, files did not contain an accurate accounting of the actual time City employees spent searching for records and processing the request.
- The City did not have clear policy on the use of personal email or personal devices to conduct City business. The City only searched personal email or devices when it was specifically requested by the applicant. Given that some of these requests produced records, it would appear that some officials and employees conduct City business using personal email or devices.

#### Communication with applicants:

- Examiners identified issues with the tone in communications with many applicants. For example, in 17% of the files where clarification was sought, communications were worded in an unhelpful manner. As well, in 15% of sampled files, the City's responses appeared curt and perfunctory. On occasion, the City did not respond to an applicant's query at all.

The key components of the overarching statutory duty to assist include the duty to make every reasonable effort to assist the applicant and the duty to respond to the applicant, without delay, openly, accurately and completely.

It is only when public bodies adhere to these requirements that applicants can fully exercise their right to information. In other words, citizens can only properly

exercise access rights when public bodies make every reasonable effort to assist them with clarifying the request, searching properly retained records and responding in an open, accurate and complete manner to access requests.<sup>1</sup>

This report includes several recommendations for the City to:

- improve response times for all applicants (particularly media applicants);
- fully document each step of the FOI process;
- review each record line by line when applying exceptions;
- provide mandatory and routine training to City staff on FOI processes and the duty to assist applicants;
- update training for ATI staff related to management of FOI requests;
- draft policy related to the use of personal email for business purposes;  
and
- communicate more openly with all applicants.

Implementation of the report recommendations will help to ensure that the City is in compliance with its legislative obligations and will aid in improving response times and communication with applicants.

## 1.0 INTRODUCTION

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The Office of the Information and Privacy Commissioner for BC (“OIPC”) established an Audit and Compliance Program to assess the extent to which public bodies and private sector organizations are protecting personal information and complying with access provisions under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) and the *Personal Information Protection Act* (“PIPA”).

The OIPC’s first two projects within the audit program focussed on the provincial government and BC health authorities. The Commissioner decided to review a local government body in this third project because local governments have very direct interactions with citizens. The City of Vancouver’s (“City” or “Vancouver”) Access to Information (“ATI”) program was selected for review primarily for two reasons. As the largest municipality in British Columbia, each year it receives more access to information requests than any other local government, and it also has a large number of OIPC complaints and requests for review.

In order to ensure citizens’ rights to access public records, a public body needs to have processes and procedures in place that facilitate the access process. This includes ensuring adequate records management; having a process in place for receiving requests for records; communicating with departments who will search for records; and responding to applicants with details regarding the process and the records sought.

Sections 4 through 11 of FIPPA detail the information rights of citizens and how to exercise them, along with the public body’s corresponding duty to assist applicants and the timelines and contents of responses. It is specifically the duty to assist that was selected for in-depth examination within this review of access rights.

### 1.1 Objectives, Scope and Methodology

This audit and compliance review, completed under the authority of s. 42 of FIPPA, focussed on the City’s compliance with the duty to assist provisions found in s. 6 of FIPPA. Assessment criteria and tools were built based on FIPPA obligations, OIPC guidance documents and Vancouver policies relating to the handling of access-related requests or complaints.



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The main objectives of this review were to:

- examine provincial legislation, OIPC guidelines and City policies and procedures relating to the management of and response to access requests;
- review compliance with the legislation, guidelines, policies and procedures;
- identify gaps or challenges involved in managing access requests; and
- make recommendations to strengthen the City's policies and practices.

Utilizing components of compliance assessment, operational audit, program evaluation, and process improvement methodologies, this review included:

1. background research and written submissions from freedom of information ("FOI") applicants and other interested individuals;
2. a review of policies and procedures relating to access to information;
3. interviews with Vancouver FOI staff;
4. file load comparison to other lower mainland municipalities;
5. an audit of a random sample of the requests for records received by the City of Vancouver between 2013 and 2015 (290 files);
6. a review of OIPC complaints and requests for review that were initiated during the same time frame (85 files); and
7. a review of additional requests for records received by the City of Vancouver relating to the corresponding OIPC files reviewed, as well as other files raised in written submissions (77 files).

See Appendix A for more detail regarding the methodology used for this review.

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## 2.0 DUTY TO ASSIST REQUIREMENTS IN FIPPA

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The Supreme Court of Canada has considered the general purpose of access legislation in several cases and has long affirmed that access laws are of fundamental importance:

The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.<sup>2</sup>

In order to understand the duty to assist provision in FIPPA, it is useful to first consider the general purposes of FIPPA, which are outlined in s. 2:

### Purposes of this Act

- 2(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
- (a) giving the public a right of access to records,
  - (b) giving individuals a right of access to... personal information about themselves,
  - (c) specifying limited exceptions to the rights of access...

Consistent with these legislative purposes, s. 6(1) of FIPPA outlines specific requirements that a public body must meet when an applicant makes a request for records:

### Duty to assist applicants

- 6(1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

If public bodies do not respond openly, accurately and completely, and without delay, access rights cannot be given their full meaning. Public bodies must make every reasonable effort to assist applicants. This includes clarifying the request where that is reasonably indicated, searching diligently and thoroughly among for responsive records, and responding in as timely a manner as practicable.<sup>3</sup>

The relationship between a public body and applicants should involve cooperation, not conflict. The applicant is seeking all responsive records they are entitled to under FIPPA and, as stated in s. 6 of FIPPA, the public body must use “every reasonable effort” to assist them.

OIPC Order No. 30-1995 cited with approval the provincial government's own guidance on what constitutes every reasonable effort:

Every reasonable effort is an effort which a fair and rational person would expect to be done or would find acceptable. The use of 'every' indicates that a public body's efforts are to be thorough and comprehensive and that it should explore all avenues...<sup>4</sup>

This means the public bodies must make every effort that is reasonable in the circumstances of each access request. This applies not just to searches for records, but extends to the timeliness, accuracy and completeness of responses.

The duty to assist is, in light of the openness and accountability goals of FIPPA, of central importance in meeting those goals. It does not impose a standard of perfection but it is a serious and meaningful legal duty. It is not merely aspirational.<sup>5</sup>

There are three principal stages of an access to information request and in this review OIPC examiners considered how the City dealt with each. These stages are:

1. Receiving the request;
2. Searching for responsive records; and
3. Responding to the applicant.

## **2.1 Step One: Receiving the Request**

Section 5(1) of FIPPA requires that an applicant ensure that their request for records is in writing and that sufficient detail is provided to enable an experienced employee of the public body, with reasonable effort, to identify the records sought.

Once a request for records has been provided to a public body, it is critical that the public body record the date that it received the request for records, as the statutory timeline for the 30-day response begins right away.<sup>6</sup>

Upon receiving the written request, the public body is obligated to obtain clarification of the parameters of a request from the applicant if that is necessary.<sup>7</sup> It is particularly important to clarify the request where a narrow interpretation of that request would deprive applicants of records they would otherwise receive.<sup>8</sup>

A public body may, in accordance with s. 75 of FIPPA, charge a fee to perform particular services when processing a request for records.<sup>9</sup> Regardless of the initial fee estimate or any fee waiver granted, public bodies cannot charge for more than the actual hours spent to locate, retrieve, produce or prepare a record for release.<sup>10</sup>

If a fee or deposit is required, the public body must provide a fee estimate to the applicant, at which point the statutory time limitation for the response is “frozen.” Time does not start running again until the deposit is paid or the fee is waived.<sup>11</sup> 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 afford the fee, their assertion that the record relates to a matter of public interest or “any other reason it is fair to excuse the payment.”<sup>12</sup>

## **2.2 Step Two: Searching for Responsive Records**

Public bodies must conduct a search for responsive records once the request has been received and, if necessary, clarified.

Numerous OIPC orders have dealt with the adequacy of a public body’s records search.<sup>13</sup> Again, efforts in searching for records must conform to what a fair and reasonable person would expect to be done or consider acceptable.

It is critical that employees are trained and receive guidance on the typical steps to follow when searching for responsive records. This includes where to search and how to search, particularly when searching electronic files they may not regularly use.<sup>14</sup> It is also important that employees are trained on the public body’s expectations regarding records management, records retention and the appropriate storage of records.

Public bodies should also consider the importance of documentation and the requirements for particular records to be retained, and should adjust their practices accordingly.<sup>15</sup> Public bodies should maintain a record that includes a reasonably detailed description of what was done to search for responsive records.<sup>16</sup>

When questioned about its search methods, a public body must be able to accurately describe the potential sources of records and identify those it searched, as well as identify any sources that it did not check (and provide reasons for not doing so). It should also be able to indicate how the searches were done and how much time its staff spent searching for the records.<sup>17</sup>

In the event there are no records responsive to the request, the public body should be able to explain to applicants or to the OIPC, if needed, why this is the case.

### 2.3 Step Three: Responding to the Applicant

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

The intent of s. 6(1) of FIPPA is to require public bodies to make every reasonable effort to respond sooner than the required 30 days under s. 7.<sup>18</sup> If the public body cannot meet this deadline, it may take a 30-day extension if one or more of the four circumstances outlined in s. 10 have been met:

#### Extending the time limit for responding

- 10(1) The head of a public body may extend the time for responding to a request for up to 30 days if one or more of the following apply:
- (a) the applicant does not give enough detail to enable the public body to identify a requested record;
  - (b) a large number of records are requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body;
  - (c) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to a requested record;
  - (d) the applicant has consented, in the prescribed manner, to the extension.

Under s. 10(2) the public body may also seek an extension longer than 30 days with the permission of the Commissioner.

Numerous orders have held that a public body that fails to respond to an access request within the time required under FIPPA has not met its s. 6(1) duty to respond without delay.<sup>19</sup> In other words, compliance with the time limits set out in s. 7 is a necessary condition of fulfilling the s. 6(1) duty to assist.

If it has not properly interpreted or clarified the request, or has not conducted a proper search, it would be improbable that a public body could meet legislated standards to respond openly, accurately and completely to the applicant.

Section 8 of FIPPA outlines the requirements for a public body's response to an applicant:

### **Contents of response**

- 8(1) In a response under section 7, the head of the public body must tell the applicant
- (a) whether or not the applicant is entitled to access to the record or to part of the record,
  - (b) if the applicant is entitled to access, where, when and how access will be given, and
  - (c) if access to the record or to part of the record is refused,
    - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,
    - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
    - (iii) that the applicant may ask for a review under section 53 or 63.

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). Public bodies are expected to conduct a line-by-line review of records in order to sever only information that meets these discretionary or mandatory exceptions.

The reasonable effort requirement runs throughout each aspect of the duty to assist, including the manner in which public bodies communicate with and respond to applicants throughout the request for information process. Applicants who make requests for a public body's records must have faith that they are being treated fairly and are receiving reasonable assistance from the public body in locating the records they are seeking.<sup>20</sup> Often, the only manner in which applicants can assess whether they are being treated fairly is through the public body's response to their request.

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## 3.0 OVERVIEW OF VANCOUVER FOI PROCESSES

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The City's ATI program has managed nearly 400 requests for records of varying complexity annually over the past three years. The City recently increased the staff complement within the program and currently has the full-time equivalent ("FTE") of approximately 3 employees that process the City's access to information requests.

The 3 FTEs include the following:

- **ATI Director** – This individual works approximately half-time on access to information. The Director's responsibilities include: leading communication with the heads of the various City departments, updating the FOI head on access requests, communicating with the OIPC, reviewing complaints and answering internal and external questions. The Director also may take the lead in the review of the more complex or sensitive access requests.
- **FOI Case Manager** – This individual works full-time on access to information. The Case Manager's responsibilities include: managing and tracking the processing of access requests, providing updates to the Director and reviewing non-routine communications to applicants and City departments. The Case Manager may also take the lead on reviews of complex or sensitive access requests.
- **FOI Analyst I and FOI Analyst II** – These two individuals both work approximately half-time on access to information. Their responsibilities include reviewing all but the most sensitive access to information requests and updating the FOI Case Manager.
- **FOI Clerk** – This individual works full-time on access to information. The Clerk's responsibilities include: logging access requests, managing the record request and receipt process from departments and providing daily updates to the Case Manager.

In addition to managing the ATI program, the Director is responsible for FOI-related communications and training with the Mayor, Council and City staff across all departments, including ATI.

The Director of ATI provided training to the City in 2013 via three workshops that covered the basics of clarifying the scope of an applicant's request, record collection from departments and compilation of responsive records, the basics of record review and severing, application of exceptions and exemptions, consistency of thought, use of redaction software and third party record

notification processes. In addition, the Director provides training on an as-needed basis as issues and topics arise.

For City employees outside of ATI, the City undertakes dedicated training sessions by request of the department heads. Training sessions largely consist of FIPPA basic and advanced training; although there has been more specific training in some departments regarding FIPPA and policy work, as well as the management of electronic records. According to the ATI Director, training is not mandatory but has been provided to some of the staff within each City department over the past few years.

City employees also receive training regarding the VanDocs program, which is the City's electronic records document management system. This training includes an introduction to record types and records management, as well as how to file, manage and search for documents in VanDocs. There is also a VanDocs "Records Keeping Fundamentals" course that provides City employees with an introduction to recordkeeping terminology, naming guidelines and records classification (mandatory for department records coordinators only).

### **3.1 Receiving Access Requests**

The FOI Clerk has primary responsibility for the City's intake of ATI requests. During intake, the FOI Clerk is responsible for assessing whether requests received should be treated as an access request or whether the information is already publicly available.

The FOI Clerk also reviews the request to determine whether the scope of the request is reasonable or overly broad and whether the request is sufficiently clear so that staff can determine what records the applicant is seeking. If the scope is broad or the request is not clear, the FOI Clerk may put the request on hold while it works with the applicant to narrow the scope of the request or to clarify it.

Once the FOI Clerk understands the records the applicant is seeking, the Clerk logs the access request and opens a file. At this point in time, the City works towards responding to applicants within the 30-day time period allowed under s. 7(1) of FIPPA.

### **3.2 Searching for Responsive Records**

The FOI Clerk next sends an email requisition for records to designates within the various City departments that are most likely to have records based on the nature of the access request. These department designates respond to the FOI



Clerk with either an estimate of how long they think it will take for them to process the request (if the time estimate is over three hours) or the records themselves. Department staff may also advise the City of other potential record holders.

Where the department's time estimate is long enough that FIPPA permits a fee, the FOI Clerk sends a fee estimate to the applicant and then places the access request on hold under s. 7(4) of FIPPA until a deposit (half of the fee) is paid, a requested fee waiver is approved or the applicant narrows the scope of the request.

Where the applicant pays the deposit, the FOI Clerk sends a letter to the applicant with a revised due date. Where the applicant requests the City waive a fee, the Case Manager makes a determination as to whether s. 75(5) of FIPPA should apply to excuse the applicant from having to pay all or part of the fee. If the City decides not to waive the fee, the FOI Clerk or Case Manager let the applicant know of the right to request that the OIPC review the City's determination under FIPPA.

Once the City's departments have provided potentially responsive records to the FOI Clerk, the Clerk provides the records to the FOI Case Manager to proceed with a review of the records.

### 3.3 Responding to the Applicant

After reviewing the nature of the request for records, the Case Manager decides who will process the request in accordance with the City's *FOI File Release Approval Process*.

This *FOI File Release Approval Process* is based on a decision matrix that the FOI Case Manager uses as a tool to classify each access request based on the nature of the request. This includes applying what may be subjective categorizations to the request. In the City's terms, staff will consider whether a request is routine or non-routine, the level of "strategic risk", the "complexity" of the request, whether the records contain sensitive or confidential information and whether the topic of the request has a media profile.

The City's decision matrix includes the following examples of the types of files that fit into classification levels 1 to 4:

- 1 = Routine (no "strategic risk", simple, no media profile): animal control records, business license information, or property inspection reports;

- 2 = Non-routine (minor “strategic risk”, minor complexity, minor media profile): building permit files and 3-1-1 call records;
- 3 = Non-routine (mid “strategic risk”, mid complexity, mid media profile): accident reports, non-controversial development permit files, and personnel files; and
- 4 = Non-routine (high “strategic risk”, high complexity, high media profile): controversial development permit files, mayor’s office records; travel claims; specific correspondence; and external legal firm requests.

The FOI Clerk may review and sever files classified as level 1. The two FOI Analysts can manage files classified as levels 1, 2 or 3. The FOI Case Manager can manage any file, regardless of classification. The Director manages files classified as level 4 and consults and collaborates on files as required.

The City applies the exceptions to disclosure set out in Part 2 of FIPPA before releasing records to the applicant. The City will also consult with third parties as needed who may have relevant input on records before the City reaches a decision on disclosure. This consultation may result in a delay of response to the applicant based on a time extension under s. 10(1) or the third party notification process under s. 23 of FIPPA.

The next step in the process is a “harms review” on files classified as 3 or 4. This includes such things as a further consultation with subject matter experts, the department responsible for the records, legal review and review by the City’s FOI heads (which, at the time of the review, was comprised of three persons: the City Clerk, the Director of Legal Services and the City Manager).

Once these individuals have completed their review, or if the Case Manager decides no review was necessary, the City responds to the applicant. ATI staff ensure they have severed any information they believe should be severed under Part 2 of FIPPA before sending the response. Once this has taken place, a draft of the response letter is prepared.

Approval to release is dependent on the classification of the file. The Director is the only person the City requires to sign-off on files classified as 1 or 2. The department’s Director or Manager who provided the records also signs-off files classified as 3. Finally, for files classified as 4, the General Manager(s), the Director of ATI, the City Clerk, the Director of Legal Services and the City Manager sign off on the file.

Once sign-off is complete, the FOI Case Manager and Director review all draft responses and the Director of ATI signs response letters. The City then sends

the response package to the applicant in electronic format and closes the file, subject to the applicant requesting a review by the OIPC.

### 3.4 Recent Changes

According to the Director of ATI, in 2014 the City began undertaking a review of FOI processes as part of its commitment to continuous improvement. Planning for the process review was initiated by the Director to provide “concrete evidence of need and support for several initiatives anecdotally identified as necessary to upgrade and streamline the FOI process.”<sup>21</sup> The ATI Director stated that the process review includes an examination of all FOI handling processes including intake, communications with departments and subject matter experts, and the approval process. The review was put on hold in late 2014 until additional resources were made available, which occurred in May 2015.

Some of the initiatives associated with the internal process review were underway and either complete or nearly complete before this review began.

These included:

- reclassification of an existing FOI Administrator position to an FOI Case Manager and hiring to fill that role;
- reviewing and amending the FOI By-law (approved by Council February 23, 2016) which reduced the number of positions designated as the head of the public body from three to one;
- documenting the FOI file release approval processes (the risk assessment process described earlier); and
- documenting all stages of the FOI request process for use in resourcing decisions, changes to processes, and in continuous improvement processes.

The following three major initiatives that were recommended within the FOI process review are still in process:

- updating the FOI Case Management System to: allow for better documentation within FOI files, reduce human error common to manual data entry, save time and resources, compile and report on more descriptive metrics, and improve the tracking of timelines through automated processes;

- adding a “live tracker” to the FOI release page on the City’s website where incoming records requests and the responsive records will be posted (provided that they do not contain personal information); and
- moving forward with additional proactive disclosure.

## 4.0 FILE REVIEW FINDINGS

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This section assesses the extent to which the City is complying with relevant sections of FIPPA, (as expressed through OIPC guidance documents, reports and orders) and the City's access related policies and practices.

Findings presented in the report are based on analysis of the 290 randomly sampled City files and review of the 85 OIPC files. These analyses provide an accurate representation of the City's requests for records processed during 2013 to 2015 (5% margin of error within sampled files).<sup>22</sup> As such, generalizations can be made from the random sample to all of the City's requests for records received during that same time period, plus or minus 5%.

These data sets also allowed for analysis of the City's management of FOI requests from the start of the process to the ultimate completion of the file after the OIPC's involvement.

The findings section also includes mention of written submissions. Submissions were received from applicants who had made several FOI requests to the City and filed complaints with the OIPC in relation to the City, as well as from others who had experience with the City's FOI process. Any claims or allegations made within submissions were only included in the report where there was sufficient evidence to support the allegation. See Appendix 1 for more information on the methodology used.

Findings are presented in terms of the three principal aspects of the s. 6 duty to assist:

1. Receiving the request;
2. Searching for responsive records; and
3. Responding to the applicant.

### 4.1 Receiving the Request

According to the ATI Director's February 2016 presentation to the Vancouver City Council, the City has received an average of nearly 400 requests for records each year since 2009. There are certain occasions where a significant number of requests may derive from recurrent applicants or significant events that have occurred, such as the 2011 Stanley Cup riot or municipal elections. Over this timeframe, the City has revised and streamlined its FOI process to what has been described above. The Director noted that program revisions were essential in order to keep up with the increase in requests.<sup>23</sup>

Materials reviewed for inclusion in this report confirm that the City did receive an average of nearly 400 requests each year during the 2013 to 2015 sample timeframe. See Table 1 for detail. Nearly 40% of the requests for records were made by applicants who submitted 10 or more requests during the sample period, with one applicant in particular comprising just under one-third of the total requests.

The sample of 290 files showed that individual requesters (*i.e.*, those acting on their own behalf) comprised the most common type of applicant (46%). Media applicants comprised the second most predominant group (38%).

The types of records requested included property-related records, financial agreements, records related to mayor and council, street or traffic records, animal control, development or license applications, and applicants' own personal information.

**Table 1: Comparison of Municipal Requests for Records Received 2013 to 2015**

Municipality	2013	2014	2015	FTEs	Avg Files per FTE in 2015
Vancouver	380	388	431	3.0	144
Surrey	314	327	352	1.2	293
Burnaby	169	166	199	1.3	153
Richmond	104	127	138	1.6	86
New Westminster	83	79	72	1.0	72
West Vancouver	81	103	103	1.5	69

### ***Missing documents***

ATI staff stored documents and records related to each request for records in an electronic file folder and within their information management system. Occasionally, ATI staff also created a paper file; however, paper files were not requested for this review as materials within electronic files were sufficient for analytical purposes.

The typical documents within the electronic file folders included:

- original requests;
- communications to clarify requests;
- acknowledgement letters containing statutory due dates for response;
- requests for departments to search for records and their replies;

- 
- fee estimates, fee waiver requests and responses to waiver requests;
  - communications with third parties or other consultations;
  - extension letters;
  - records (originals, working copies, and severed versions);
  - requests for review by department or FOI heads and their replies; and
  - response letters to applicants.

OIPC examiners found one or more of the typical documents missing in 14% of sampled files.

Some examples of missing documentation were: notes indicating that a request had been withdrawn and how this withdrawal was made, copies of correspondence or consultation with third parties or other public bodies when a s. 10(1)(c) extension had been applied, and copies of the final response letters provided to some applicants. While it is possible that withdrawal or consultation may have taken place by telephone, it is good practice to ensure that a written record is kept of access request withdrawals and of consultations. As well, copies of final response letters should always be retained in order to ensure adequate documentation.

### ***Interpretation of requests***

When communication was received from applicants, ATI staff reviewed the document to confirm that: it was a request for records, the request was clear enough to identify the records sought, and the records would be in the City's custody and control.

Across the sample, the vast majority of requests were for records in the custody and control of the City; while a small portion (4%) were properly re-routed to other public bodies.

In 20% of the sample, the City contacted the applicant to clarify the request. Some of the reasons for which the City sought clarification included further defining the request to identify the records sought, determining the timeframe of the records and, in some cases, reducing the scope of the request if it was considered overly broad.

Of the files where the City sought clarification, OIPC examiners found that communication in 17% of those files (10 files) was worded in an unhelpful manner. For example, the City told some applicants that their requests did not make sense or that further clarification was needed but provided no direction or

assistance to further identify the records sought. Responses such as these may dissuade an applicant from continuing to engage in the FOI process.

In one of these cases, the City initially refused to log the request because it had interpreted the request as one for information and not records. The OIPC determined that, although the applicant did not name specific records or indicate that they were seeking records at all, the request was such that the records sought could be identified and the City should have processed the request.<sup>24</sup>

In other instances, the City incorrectly noted that it was not obligated under s. 6(2)(b) of FIPPA to undertake a search if the time required to conduct the search was extremely high, such that it would interfere with the normal working of the department. However, this section only refers to the *creation* of a record and not the undertaking of a *search* for existing records. Therefore, s. 6(2)(b) cannot be used to refuse to undertake a search for requested records.

From 2013 to 2015, the OIPC received 13 complaints that resulted in OIPC investigators concluding that the City's interpretation of the request was inaccurate, too broad or too narrow. OIPC investigators found that the City should have done more to clarify the request with the applicant.

### ***Delayed start***

FIPPA requires that a public body respond to an applicant's request within 30 business days and that processing time for a request for records starts the day after a request is received and ends the day the response is provided.

However, the City started the 30-day response timeframe after it clarified and logged a request. Of the files where the City sought clarification, it took an average of 2.8 days to clarify requests prior to logging the files. In one case it took 24 days.

In some cases, department staff requested further clarification after requests had already been logged and forwarded to them to search for records. In these cases, the City adjusted the start date to the date that the request was clarified for department staff. Communications between the OIPC and the City on one file included an explanation of the delay in start date as follows:

It is City of Vancouver policy that we acknowledge all requests made under FIPPA within 24 hours, with the exception of holidays and weekends. Because of this, the initial acknowledgment can only provide the general information – once we have consulted with the department and if the request is not clear to them or is so broad in scope that a fee estimate may be required, we may correspond with an applicant requesting clarity and/or a narrowing of scope so we can undertake the



search without a fee estimate being issued. In many of those cases, as with this file, we may have ongoing correspondence with the applicant regarding a request for several weeks before reaching a point of clarity where the record search can begin. When we are at that point, we issue a revised acknowledgement email with the revised due date.<sup>25</sup>

This approach is not consistent with the timeline provisions set out in FIPPA. It is useful to review s. 7 (time limit for responding) along with the following sections of FIPPA:

- 4(1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.
- 5(1) To obtain access to a record, the applicant must make a written request that
  - (a) provides sufficient detail to enable an experienced employee of the public body, with a reasonable effort, to identify the records sought...
- 10(1) The head of a public body may extend the time for responding to a request for up to 30 days if one or more of the following apply:
  - (a) the applicant does not give enough detail to enable the public body to identify a requested record;

Under s. 4(1) of FIPPA, an applicant has a right to access records in the custody or under the control of a public body and, as set out in s. 5(1)(a), an applicant need only provide enough information to enable an experienced employee of a public body to identify, with reasonable effort, the records being sought.

As noted above, processing time for a request for records starts the day after a request is received and ends the day the response is provided.<sup>26</sup> This timeframe includes any additional time taken for authorized extensions. If a public body requires further information from the applicant in order to identify the records being sought and is, because of this, unable to meet its obligation to respond within 30 days of receiving the request, it can extend the 30-day time period pursuant to s. 10(1)(a) up to a maximum of an additional 30 days.<sup>27</sup> Certainly, by the time that a request has been logged and has made its way to the relevant department(s), any further need for clarification in order to identify a requested record should be incorporated under s. 10(1)(a).

## 4.2 Searching for Responsive Records

### ***Requesting records from departments***

After records requests were received and logged, ATI staff sent an email to the relevant departments formally requesting that they search for records. For each request, the email included the file number, a copy of the records request (provided in verbatim from the original request or the clarification email), the date responses were due from the departments and the format in which the records were to be provided. ATI staff also requested that department staff provide a time estimate if the time required to search and compile the records would be more than three hours.

In most cases, apart from the verbatim records request, ATI staff did not provide additional search terms or suggestions to departments for where to search for records.

ATI staff asked City departments to search for records in 82% of the sampled files. Reasons why ATI staff might not have requested records from departments included, for example, that ATI staff had direct access to the records, requests were transferred to other public bodies, or requests were abandoned. Where ATI staff requested records from departments, they did so within an average of two days of receiving the request. ATI staff provided departments with a deadline for responding that was an average of seven business days. Where requested to search for records, department staff did not respond by the due date 36% of time. In these cases, ATI staff followed up with the department, on average, within four days after the due date had passed.

### ***Receiving records from departments***

ATI staff received records from the departments in the form of forwarded emails or Portable Document Format (PDF), Microsoft Excel, or Microsoft Word documents attached to an email. They stored email communications with department staff, including the records received, in the electronic file folders.

In cases where records were received from the departments, department staff flagged concerns about the contents of the records 10% of the time (noting, for example, that some of the records contained the personal information of third parties or that the records were highly sensitive for other reasons). In these cases, the ATI staff or Director explained to the department staff that severing would be conducted according to the provisions of FIPPA. OIPC examiners did not find any issues with these communications.

### **Questionable fee estimates**

The City applied fees in 7% of the sampled files. Fees were only applied when individual departments indicated that the search would take longer than three hours, rather than calculating based on a cumulative total from across all departments included in the search. For example, if a request was sent to four departments and each department felt it would take two hours to conduct a search, fees would not have been applied even though the cumulative total across the public body would have been eight hours. As such, OIPC examiners believed that fees could have been applied more often but were not.

In three cases, the City estimated fees to be approximately \$10,000, and in one case charged a file retrieval fee of \$24.72. After removing these outliers, the average cost of fees applied was approximately \$400 and the average number of hours charged was 15 hours. The fees attached were administered in accordance with the rates outlined in s. 75 of FIPPA and s. 13 and Schedule I of the *Freedom of Information and Protection of Privacy Regulation*. Applicants requested fee waivers in four instances and the City approved the requests in two instances. In the third instance, the applicant narrowed the scope of the records request and the fees were eliminated.

OIPC examiners found that the fees charged were based on estimates without an accounting from department staff of the number of hours it actually took to locate, retrieve, produce or prepare a record. During interviews, ATI staff noted that they track their own time spent producing and preparing records, and that the hours included in fee estimates regarding ATI staff time end up being fewer than the actual time spent.

There were allegations in submissions to this review and in the media that the City had over-estimated the time it would take to search for records and charged excessive amounts to process requests. While OIPC examiners found that the City rarely attached fees to requests for records, where it did, there was evidence in some cases that it over-estimated the time required to process the request and, in at least one circumstance, charged a large amount.

For example, OIPC examiners noted that, in three specific circumstances, it was unclear how the City estimated the number of hours, as the response from departments showed fewer hours compared to what was included in the estimate the City sent to the applicant. While it is understandable that the estimate would increase once ATI staff time is factored in for preparing the documents, the difference between the time estimates was quite large.

Regarding those three files:

- In one file, the estimate sent to the applicant was 35 hours (minus three hours free as per s. 75(2)(a)) when internal communications indicated that departments estimated up to 20 hours to collect information and conduct analysis to create the relevant record. After the deposit was paid, there was internal discussion that the City was not under any obligation to create records. Subsequently the City refunded the fee deposit as available records were to be made public. In the end, the records did not meet the applicant's request and a complaint was made to and substantiated by the OIPC. In response to the complaint, more records were released to the applicant at no additional charge.
- In another, departments estimated 10 hours but the estimate sent to the applicant was 30 hours (minus three hours free). The applicant abandoned the request after receiving the fee estimate.
- In one file it was unclear how a fee estimate for 36 hours (minus three hours free) was created, considering available records showed that only one department provided a time estimate for five hours to compile records. In addition, the records forwarded for review and severing by the City comprised only 38 pages. The request was abandoned.

In one additional example, an OIPC complaint showed that an applicant received a fee estimate of approximately \$27,000. Records showed that the applicant had requested a fee waiver based on public interest. The City refused to waive the fees and attempted to have the scope of the request reduced in order to lower the fee. The applicant complained to the OIPC. The file was not successfully mediated and was forwarded for inquiry. During inquiry, the City reported that the search it had conducted was overly broad and that the fee estimate was higher than it should have been. In the end, the City waived all fees associated with the file and processed the access request. While the matter of the fee was resolved, the applicant had to wait a lengthy period of time before receiving records.

To conclude, the City did not charge fees in the majority of cases and could have done so more often. However, there were circumstances of unexplained discrepancies between department time estimates and what was later estimated or charged to applicants, with estimates issued to applicants being more in some cases than what departmental estimates suggested.

### ***Inadequacy of searches***

Due to the parameters of the file review being set to only materials collected within ATI electronic file folders (and not *all* City records), OIPC examiners could not confirm that adequate searches had or had not taken place. During the file

review, OIPC examiners noted that searches were adequate if, on the surface, it appeared that relevant or responsive records were included in the ATI file. OIPC examiners did find that a small portion of the sampled files (3%) lacked evidence to support the conclusion that an adequate search had been conducted.

In 13% of the sampled files, the department(s) replied that there were no records responsive to the request. Department staff explained the reasons for no records (for example, that they had not been created yet) in approximately two-thirds of those files. In the remaining third, the department staff did not provide a reason.

In files where OIPC examiners determined there was an inadequate search for records, and in files where departments reported that there were no responsive records and did not provide a reason, examiners found no evidence that ATI staff followed up with departments regarding the search.<sup>28</sup> Appropriate follow-up should be documented in the file and may include: inquiring as to the search conducted, the search terms used, the locations searched or possible reasons as to why there may be no responsive records.

Failing to follow up with departments where they have indicated that they cannot find responsive records can be problematic for several reasons including, but not limited to:

- responsive records may be missed in the search;
- department staff do not benefit from advice or recommendations on how or where to conduct records searches;
- ATI staff will not be able to ensure that appropriate terms, locations or types of files were searched by department staff; and
- the City will not have sufficient information to be able to provide applicants with a complete response to their records request.

During the 2013 to 2015 timeframe, the OIPC received 32 general complaints that the City had failed to meet its duties under s. 6 of FIPPA for a variety of reasons. Of those, 11 specifically related to the adequacy of the search for records.

In some cases, the City did not initiate the search for records until the applicant made a complaint to the OIPC. In a couple of these cases, the City did not conduct the search because it assumed that records, if they existed, would be withheld in their entirety under a FIPPA exception.

In one case, the City noted that there were no responsive records but it was then discovered during mediation that previous access requests by other applicants

regarding the same subject matter did yield relevant records, and the City subsequently located and disclosed these to the applicant.

As noted earlier, the City does not have mandatory training for all staff relating to records management, records retention, the FOI process generally and how to appropriately conduct searches for responsive records. Absent such training, it is even more important that the City provide instructions and follow up with department staff in order to ensure that searches are conducted properly.

### **4.3 Responding to the Applicant**

#### **4.3.1 Without Delay**

##### ***Average timeline for responding to access requests***

Within the sample of files, the City responded to access requests within an average of 28 business days from the day that it acknowledged the request. The City responded to nearly three quarters (71%) of requests within 30 business days after acknowledgement and to 90% of requests within 60 days.

However, these statistics count response times from the day after the City acknowledged the request and not the day after the request was received, as required by FIPPA. Therefore, if measured by statutory timelines, fewer responses would have been issued within the legislated 30 or 60-business day timeframe.

The timeframe for responses ranged from same-day to 169 days after the City acknowledged the request. These numbers include occasions where extensions were taken under ss. 10(1)(b) or (c) or with the approval of the OIPC. The City extended the time in 16% of the randomly sampled files.

##### ***Failure to respond within legislated timelines***

The City failed to respond within legislated timelines 16% of the time. The City was more likely to contravene the timelines in files where it had taken an extension compared to files where they had not (33% compared to 14%).

There were allegations in submissions to this review and in the media that the City delayed disclosing records by waiting to respond to applicants until after statutory deadlines passed and by taking unauthorized extensions.

While OIPC examiners were unable to make findings regarding the City's intent, the City provided two-thirds (64%) of late responses to applicants within five business days after the response was due. In some of these files there was

evidence to show that the late response may have been the result of waiting for the FOI or department head to sign-off on the release. Sign-offs need to be conducted within the statutory timeframe. The City provided the remaining third (36%) of late responses to applicants anywhere from within two weeks to two months after the responses were due.

From 2013 to 2015, the OIPC received 11 complaints that the City failed to meet the legislated timelines. For example, two applicants complained to the OIPC that the City failed to respond to requests for records within FIPPA timelines and that it then claimed that it required another 350 days to respond to the requests. These two complaints were joined and sent to inquiry. The City submitted that it required an additional 300 days to respond. The adjudicator found that the City breached ss. 6(1) and 7 of FIPPA and ordered it to respond to the requests for records within 30 days.<sup>29</sup>

### ***Delayed response within legislated timelines***

OIPC examiners found that there were a few occasions where, although the City responded to applicants within the legislated timelines, it nevertheless did not meet the s. 6 duty to respond without delay. Examples of occasions where a response may have been within legislated timelines but did not meet the duty to respond without delay included:

- there were no responsive records yet the response to the applicant was not sent until the due date;
- weeks passed from the date the City received records from the department(s) until it responded to the applicant even though records were able to be provided without severing;
- minimal severing from a small number of pages took one month to process, even without review by a department or FOI head; and
- there were no records or other indications supporting a time extension.

### ***Lack of evidence to justify time extensions***

As noted above, the City took a time extension in 16% of the randomly sampled files. The types of extensions were relatively evenly distributed across s. 10(1)(b) (large number of records) and s. 10(1)(c) (consultation with a third party or other public body) (51% and 56%, respectively, with 6 extensions citing both ss. 10(1)(b) and 10(1)(c)).

OIPC examiners determined that documentation to support extensions was lacking in some cases. For example, in a few circumstances, the City cited s. 10(1)(b) or s. 10(1)(c) where there were a seemingly small number of records

or where no documentation existed to show that consultation with a third party or another public body was necessary or had taken place. In some cases, the City added both s. 10(1)(b) and s. 10(1)(c) in the extension letter where it appeared only one of the reasons for extension was relevant.

In two cases where the City extended the timeline for response under s. 10(1)(b), additional OIPC extensions were sought and granted due to the number of records collected from departments being near or over 1,000 pages. However, OIPC examiners found that less than half (43%) of the files where the City took s. 10(1)(b) time extensions actually contained a large number (*i.e.*, over 500 pages) of records. As such, in 57% of the files there appeared to have been no justification for the City's extensions under s. 10(1)(b).

In circumstances where the City extended the timeline for response under s. 10(1)(c), OIPC examiners found that three-quarters (76%) of these files did not contain documentation to show that consultation with a third party or another public body had actually been conducted either within the original 30 days or the extended timeline.

A public body can only rely on s. 10(1)(c) to extend the time for responding when it is necessary to consult a third party or another public body to determine whether to give the applicant access to a requested record.<sup>30</sup> This section is clear: only consultations with another public body or a third party as defined in FIPPA are relevant. Section 10(1)(c) cannot be used to support an extension for consultation with City staff even if they work in another department or with the City's legal advisors.

Where the City took unauthorized extensions, the original deadline would still apply. In those cases, the City would fail to meet the legislated timelines.

Within the 16% of files where ss. 10(1)(b) or 10(1)(c) extensions had been applied (hence, allowing 60 business days for response), the City was still late in providing the response to applicants and contravened statutory timelines roughly one third of the time (33%). Within the extended files, the average response time to applicants was 63 days, with a median of 59 days. In addition, within these files, the City sent 71% of responses to applicants within five business days of the extended deadline. Taken together, this means that the City was more likely to use almost all of, or to go over, the additional 30-day extended timeline to provide the response to applicants.

As noted in the OIPC's 2008 timeliness report, public bodies should only take time extensions when there is a real basis to do so.<sup>31</sup> The ability for public bodies to apply extensions is a legal authority that must be used only where the facts permit. In addition, the s. 6 duty to respond without delay also applies to



occasions where an extension is taken by a public body. The 30-day extension is the maximum amount of time that a public body is permitted to take. Public bodies should only use the additional number of days required to consult or prepare their response and not use the full 30-day extension unless it is necessary to do so.

As it is the City's duty to make every reasonable effort to respond before the statutory deadline, the City has contravened legislated timelines on occasions where extensions were not warranted and where the time taken to respond during the extension was not necessary.

### ***Trends in timeline contraventions***

OIPC examiners found certain trends in the City's compliance with legislated timelines after analyzing the number of pages in responsive records, the level of "strategic risk" and "complexity" of the file as determined by the City, the type of records requested and the type of applicant.

OIPC examiners found that the larger the number of records collected to respond to the request, the greater the likelihood the City would miss legislated timelines for responding, even with additional time for extensions taken into account. However, having a large number of records to vet does not provide justification for failing to meet a duty under s. 6 of FIPPA. Public bodies ultimately have a duty to properly resource their FOI program in order to meet demand within legislated parameters.

OIPC examiners found that the City was twice as likely to contravene legislated timelines in files where the City deemed the request to be a higher "strategic risk" or greater "complexity".<sup>32</sup> The City also applied extensions in two-thirds (68%) of these files.

Similarly, OIPC examiners found that responses involving financial information or financial agreements were late 37% of the time compared to 13%, on average, across other requested subjects. In addition, the City took extensions for requests for financial information and agreements (as well as for an applicant's own personal information and requests for human resource information) twice as often as for other subjects.

There were allegations in submissions to this review and in the media that directions had been given to the City to disregard or delay responding to media requests, and that the City treated certain media applicants inequitably (with unnecessary delays, extensive severing and time extensions not supported by FIPPA).

During interviews, City staff denied treating media applicants differently or being instructed to do so. However, OIPC examiners discerned trends when analyzing by applicant type. For example, the City:

- was almost four times more likely to respond late to media applicants as compared to all other types of access applicants (30% and 8%, respectively);
- took extensions materially more often (25% for media applicants compared to 18% across the rest of the sample without media applicants);
- was over two-and-a-half times more likely to take an extension under s. 10(1)(c) (consultation with other public bodies or third parties) for requests by media applicants compared to requests by other applicants (82% and 30%, respectively);
- was three times more likely to have the file reviewed by a department or FOI head prior to responding to a media applicant compared to other applicants (24% and 8%, respectively); and
- was three times more likely to fail to meet the statutory deadline for requests by media applicants than for other requests by only one day, which may suggest that the response could have been provided within legislated timelines.

OIPC examiners also found that the City was far more likely to contravene statutory timelines in responses to requests from one particular media applicant compared to other media applicants (35% and 19%, respectively). In fact, when OIPC examiners removed files related to that particular media applicant from the entire sample population, the number of times where the City failed to meet legislated timelines dropped from 16% to 10%. Therefore, the City contravened legislated timelines related to this one particular applicant's files 35% of the time compared to 10% of all other files within the sample. However, the trends related to media applicants existed with or without considering the access requests made by this one applicant.

The former Commissioner stated, "delay can become a systemic barrier to the right of access – access delayed is often access denied."<sup>33</sup> This may be particularly true where there is delay or extensions involved in responding to media applicants, such that if the records are delayed there may no longer be a story worth publishing.

Given that the City has the same authority to extend timelines for requests from media applicants as for other applicants, OIPC examiners were not able to determine reasons as to why the City contravened legislated timelines

substantially more often with media applicants (and one media applicant in particular) than with other applicants.

This may have to do with the fact that the City applies a higher “strategic risk” and “complexity” rating to requests made by media applicants at the beginning of the response process. This means that requests from media applicants are subject to different approval processes. Similar to what was noted in the OIPC’s 2008 timeliness report, it is possible that the City’s identification of “strategic risk” levels and subsequent categorization of requests from media applicants has influenced the way that the City responds to media applicants. The use of sensitivity ratings to identify requests made by certain applicants such as media is inconsistent with FIPPA’s goals of openness and accountability if it results in delaying access simply because of the kind of requester involved.<sup>34</sup>

#### **4.3.2 Openly, Accurately and Completely**

##### ***Detail missing from response letters***

As noted earlier, s. 8(1) of FIPPA states that public bodies must inform the applicant:

- whether they are entitled to access the record or part of the record;
- where, when and how access will be given; and
- if access is refused, reasons for the refusal, contact information for the person within the public body who can answer the applicant's questions about the refusal, and that the applicant may ask for a review by the OIPC.

The City’s response letters generally met the requirements of s. 8. Responses provided typically included:

- the date the City received the request;
- a summary of the request;
- whether or not the City located responsive records;
- the sections used for severing;
- a link to FIPPA; and
- a statement that the applicant can seek review of the City’s response with the OIPC.

There were occasions where the City could have provided more information in the response letter. Some of these examples included providing an explanation of the search conducted, reasons why there may be no responsive records, and

why a response was not provided until after the due date. In addition, there were occasions where the City did not inform the applicant that they could seek a review by the OIPC.

### ***Records provided for review and released***

OIPC examiners categorized the relative size of a file based on the number of pages collected by the City for review. Within the sample of 290 files, 61% were deemed to be small (anywhere from one page of records to 200 pages), 7% medium (200 to 500 pages), 4% large (over 500 pages), and 27% did not contain records for a variety of reasons to be discussed below.<sup>35</sup>

The number of pages that ATI staff collected from departments can differ from the number provided to an applicant even if no severing takes place. Reasons for this may be, for example, that multiple copies of the same record were collected from different departments or individuals (such as emails sent to multiple individuals), that records provided to ATI staff were not actually responsive to the request, or that portions of records (such as reports) may already be publically available. In all, the City released records or information to applicants in 70% of randomly sampled files.

When comparing the number of pages of records the City collected to the number of pages released to applicants, OIPC examiners found that 85% of these files included the same number of records collected and released. A further 6% included less than a 10 page difference between records collected and released. The remaining 9% of files included occasions where there were 10 pages or greater difference between the number of records ATI staff collected versus the number that were released.

The City categorized files where it did not release records to applicants as follows:

- No records (15%);
- Abandoned/withdrawn (6%);
- Access denied (5%);
- Routinely available (4%); and
- Transferred (2%).

### ***Failure to explain reasons for no responsive records***

OIPC examiners found that, in 15% of sample files reviewed (43 files), the City informed applicants that no records were found that were responsive to their request. In a majority (65%) of these cases, they did not provide an explanation as to why there were no records.

As noted earlier, OIPC examiners did not find any evidence that ATI staff followed up with department staff in such cases, as there was no documentation of the search undertaken or the possible reasons why no records were found. During this same time period, the OIPC received 16 requests for review or complaints where the City had originally responded that it had not found responsive records. Of these 16 files, OIPC examiners determined that five complaints were partially or fully substantiated, while the remaining were withdrawn, mediated and resolved, or not substantiated.

Where departments or the City did provide reasons for not finding responsive records, some of these reasons included:

- a requested report had not yet been completed so the applicant was advised to re-submit their request at a later date;
- City staff provided an alternate service on a temporary basis in response to an emergency and no program records were created for that period;
- the requested record related to a service that the City does not perform;
- the request pertained to one unit within a multi-family dwelling but the City did not create records specific to individual units; and
- a named individual advised that the only text messages sent from a personal device during the requested time frame were personal messages.

OIPC examiners also found cases where department or ATI staff did not provide a reason for the lack of records in situations where it would be reasonable to assume that records existed. For example:

- in one case, the requested records related to a large project that had gained media attention and, thus, it did not seem likely that there were no records at all;
- in another, records existed but were not provided to the applicant until the OIPC became involved;
- in a third instance, the City narrowed the scope of the request throughout the process from all records (including agendas, minutes, reports and

- correspondence) to just correspondence records and then no responsive records were found; and
- in another case, the City originally told the applicant that there were responsive records and that third party consultations were being conducted but later responded that there were no responsive records and did not provide an explanation.

In addition, there was evidence in concluded OIPC review files and submissions to this review that, in some cases, certain City staff treated emails and other records as transitory even when they were not and subsequently deleted records.

As well, there was an allegation that City staff had been directed, on at least one occasion, to use different naming conventions when saving files pertaining to certain topics so that records could not be easily located if a search for responsive records was conducted.<sup>36</sup> This allegation was corroborated by two former employees who each independently provided this information.

While there is evidence to support this allegation, it was outside of the scope of this review for the OIPC to examine whether this occurred beyond this one occasion, or to make a finding here as to whether this, in fact, took place within the City. Were such a practice to exist, it would constitute a very serious matter as it would be difficult, to say the least, to square with the City's duties under FIPPA.

There may be justifiable reasons for a search to not reveal records responsive to the request. However, if the City does not provide applicants with reasons as to why no records were found, applicants may become suspicious and think that the City is purposefully withholding relevant records. This is especially the case in 12% of the no responsive record files where the City took time extensions under ss. 10(1)(b) or 10(1)(c). OIPC examiners noted that there was very little or no documentation to support reasons for extensions in these files.

### ***No policy on personal email***

Within the random sample of 290 records, OIPC examiners found only four occasions where applicants requested that personal email be included in a search for City records. In all four cases, ATI staff instructed the departments or individual staff to include personal email accounts in the search for records. In two files, the City released records to the applicant and, in the other two files; staff did not find responsive records. In one of these latter files, ATI staff did require the named individual to provide a clear confirmation that the personal device used during the specified time period was solely used for personal reasons.

However, unless personal email accounts or personal devices are directly specified in the FOI request, staff may not search for records contained within personal email or on personal devices.

There were also allegations in submissions to this review, and in the media, that City staff may use personal email addresses for City business. While it was beyond the scope of this review to examine the personal email accounts of City staff, given that some of the City's requests for records within personal email produced records, it is clear that some officials and employees conduct City business using personal email or personal devices.

OIPC examiners also considered whether there were policies in place relating to the use of personal email for conducting City business. The City provided policies related to personal use of City devices and City email, and directions that City information must not be removed and stored or used on home computers without appropriate protections. However, OIPC examiners did not find any mention within the written policies that directly or indirectly provided instruction to staff relating to the use of personal email for City business.

The use of personal email or personal devices does not remove or reduce the duty of a public body to search for records and produce those that are responsive. Department staff must search these locations where it would be reasonable to do so. It is also imperative that any staff member engaged in an FOI-related search for records document the search they conducted, the search terms used, the locations searched and, if applicable, reasons as to why there may be no responsive records. Staff must also be able to attest that they did not use their personal email or personal devices or, if these were used, that these locations were included in the search.

Once policy has been drafted regarding the City's expectations for use of personal email or personal devices for City business, the City should incorporate these expectations into mandatory staff training, along with any specific direction for conducting searches in these locations.

### ***Denying access to records***

ATI staff denied applicants access to the entirety of responsive records in five percent (5%) of randomly sampled files. In roughly half of those cases, it did not appear to OIPC examiners that ATI staff had requested or reviewed records before they determined that all records should be withheld.

Reasons provided for this included:

- citing s. 3(1)(h) records relating to a prosecution not yet completed;

- noting s. 3(1)(j) records available for purchase by the public;
- applying Part 2 exceptions:
  - s. 12(3)(a) and (b) local public body confidences,
  - s. 13(1) policy advice or recommendations,
  - s. 14 legal advice,
  - s. 15 disclosure harmful to law enforcement,
  - s. 16 disclosure harmful to intergovernmental relations,
  - s. 20 information that will be published or released within 60 days,
  - s. 21 disclosure harmful to the business interests of a third party, and
  - s. 22 disclosure harmful to personal privacy;
- referring the applicant to another City department for information;
- responding that a bidding process had yet to be completed; and
- telling an applicant that due to their participation in an RFP process they were precluded from using FIPPA to obtain access to records.

During the sample timeframe, the OIPC had received 14 requests for review regarding the City's decisions to deny applicants access to records. OIPC examiners reviewed 6 files.<sup>37</sup> Of these files, OIPC investigators were of the view that the reasons for denying access were not appropriate 50% of the time. In one file, after the applicant complained to the OIPC about the City denying access to the records under s. 14, OIPC investigators discovered that the City had not, at the time it denied access, initiated a search for records. The OIPC investigator requested that the City conduct the search, and then City staff found that there were actually no records responsive to the request.

OIPC examiners also noted that, where the City applied exceptions and denied access to records in their entirety, it was not immediately apparent that the records could not have been severed. No finding is made here that the City, in these cases, was in breach of FIPPA. However, it must be stated that under s. 4(2) of FIPPA, an applicant has the right of access to the remainder of a record if the excepted information can reasonably be severed.

In a previous order, former Commissioner Loukidelis emphasized that public bodies will, in the vast majority of cases, be able to reasonably sever protected portions and release unprotected portions of records.<sup>38</sup> He further noted that, although it may take considerable time and energy to carry out a careful analysis and conduct a line-by-line severing of a record, this is what s. 4(2) requires.<sup>39</sup> While there are instances where severing is not required, case law makes it clear that such instances are the exception and far from the rule.<sup>40</sup>



In one case, the City cited s. 3(1)(j) to assert that requested records were out of the scope of FIPPA because the records were available for purchase by the public. However, the records in question were only available for purchase if the applicant had permission from the owner to obtain the records. Records do not qualify as available for purchase by the public in these circumstances and, therefore, cannot be withheld under s. 3(1)(j) of FIPPA. Once the file was referred to the OIPC, the City revised its response, stating that the records were not out of scope and, instead, withheld them pursuant to ss. 15 and 21.

In another case, the applicant was a representative of a corporate entity that had submitted a bid in response to a request for proposal (“RFP”), which the City asserted included an irrevocable waiver of rights to obtain records. As such, the City maintained that the applicant was precluded from using FIPPA to obtain access to the requested records.<sup>41</sup> However, fundamental statutorily conferred rights under FIPPA cannot be waived contractually, and applicants are entitled to request access to records even if they have signed a waiver.<sup>42</sup>

### ***Application of exceptions***

After records are collected and compiled, the City is responsible for reviewing and making decisions regarding severing in accordance with Part 2 of FIPPA. In a few cases (10%), department staff provided suggestions or additional information with regard to why they thought particular information was sensitive or needed to be severed. In all responses to these suggestions, the City noted that they would take the suggestion into consideration but ultimately they would make decisions related to release or severing based on FIPPA.

Within the random sample, the City released records to the applicant in 70% of files. In roughly 40% of files where the City released records, it did not apply any exceptions. The remaining 60% comprised files where the City partially severed information under one or more exceptions before releasing records to applicants.

### ***Severing***

There were allegations in submissions to this review and in the media that the City extensively severed information from records when it was not supported by exceptions in FIPPA. It was not a function of this review to make findings as to whether exceptions were appropriately applied as these are matters for the OIPC’s review and adjudication processes.

However, OIPC examiners did review copies of original records the City received from departments, working copies of records detailing exceptions applied, and copies of final records sent to applicants, and were able to make some general observations in this regard.

OIPC examiners found frequent examples of block severing. 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. OIPC examiners identified block severing in 12% of all randomly sampled files with a partial disclosure of records, and in 25% of all OIPC request for review files.<sup>43</sup> Block severing may be appropriate in some circumstances; however, as noted earlier, s. 4(2) of FIPPA requires that the remainder of a record be provided to an applicant if the excepted information can reasonably be severed.

OIPC examiners reviewed 36 OIPC files from 2013 to 2015 where the City had partially severed information from responsive records. Of those 36 files, the City provided the applicant with more information or records 78% of the time. In one instance, the City released records during mediation and after an OIPC order. The City released additional information to applicants in:

- 61% of files during the mediation phase;
- 6% of files awaiting inquiry; and
- 17% of files after the inquiry process resulted in an order for release.<sup>44</sup>

The OIPC views further disclosure as positive at any stage of the FOI process, noting that this is not necessarily an indicator that the public body improperly withheld information in the first place.

### ***Conclusion of files through OIPC***

In total, the OIPC opened 198 files from 2013 to 2015 related to the City of Vancouver. This included, for example, requests for review, complaints, requests for information, requests for time extensions under s. 10 and reconsideration of previous files. Of these, 104 files comprised completed and closed requests for review and duty-related complaints. See Table 2 for information.

**Table 2: Resolution of Requests for Review and Complaints to OIPC**

<b>Type of Files</b>	<b># of Files</b>	<b>% of Files</b>
<b>Complaints</b>	<b>38</b>	<b>100%</b>
Partially or fully substantiated	16	42%
Not substantiated	15	39%
Withdrawn by applicant	6	16%
Forwarded to Inquiry	1	3%
<b>Request for Review</b>	<b>66</b>	<b>100%</b>
Resolved during mediation	42	64%
Forwarded to Inquiry	18	27%
Withdrawn by applicant	6	9%

OIPC investigators resolved two-thirds of the requests for review received during mediation and referred just over one quarter (27%) to inquiry for resolution (18 files). OIPC investigators have the delegated authority to resolve complaint files and, as such, generally very few are forwarded to inquiry. During the 2013 to 2015 timeframe, OIPC investigators forwarded one complaint file to inquiry.

Of the 19 files that proceeded to inquiry, five were resolved prior to the inquiry commencing, four were still open at the time of drafting this report, the applicant withdrew in one case, and nine files went through to completion of the inquiry process and OIPC adjudicators drafted orders. Of those nine orders, adjudicators confirmed the City's decision in one file and ordered the release of additional records or at least some further information from the records in eight files.<sup>45</sup>

### ***Tone of communication throughout the FOI process***

In addition to providing applicants with response letters detailing decisions regarding whether to release records, s. 6 also implies a duty to communicate with applicants, as necessary, throughout the FOI request and response process. This communication is vital in ensuring that public bodies make "every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely."

The City should respond promptly with information or explanation if applicants have questions, for example, about the processing of their file, when a response will be received (particularly if after the statutory deadline has passed), or why no responsive records were found.

In many cases the City did answer applicants' questions. However, on occasion, staff did not respond to an applicant's query at all. Furthermore, in other circumstances (15% of sampled files), OIPC examiners found that communications with applicants were curt and perfunctory or otherwise not constructive or open.

For example, in one case, an applicant made a request for several different sets of records. In the City's response letter, it inappropriately re-directed the applicant to contact a City department for two of the sets of records and, in two others, stated, solely: "Not understandable." The City had not attempted to clarify the request earlier with the applicant and did not explain what was not understandable about those sets of records.

In another example, an applicant requested an "expense report (including receipts and invoices)" for City staff attendance at a particular meeting. The City refused to treat this as an FOI request, stated that expense records were publically available and denied that any City staff had attended the meeting. The

applicant informed the City of the names of staff who attended and reiterated his request. The City replied that its response “was completely appropriate.” The applicant then accused the City of failing to comply with its duty to assist and requested the receipts and invoices a third time. In its response, the City stated again that it had responded appropriately but added: “So be it, we will proceed to acquire and review the receipts and invoices.”

In another file, the City responded that records would eventually be publicly released. When the applicant complained to the OIPC about the response, the City informed the OIPC that records did not actually exist in the format sought and that their response did not disclose this because they believed that the applicant was trying to “trap” the City into saying that no records existed, they “did not want to play his game” and, that due to their history with the applicant, they would not “go along” with what the applicant wanted. After OIPC involvement, the City ultimately informed the applicant that there were no responsive records.

This is consistent with allegations raised in submissions to this review and in the media that asserted the City treated some applicants less respectfully than others and would often not respond to their questions or reply to correspondence.

OIPC examiners recognize that some applicants also appeared adversarial because they used argumentative language, made accusations, or were otherwise intransigent in their communications.

The City did not improve matters in these cases by not being open and constructive in its responses. This is, at best, unhelpful to effective and efficient processing of requests and, at worst, creates a barrier that impedes or hinders processing. Both applicants and public bodies should be respectful and professional in their dealings but the onus is on public bodies to take the higher road in these matters.

## 5.0 DISCUSSION

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The City of Vancouver manages more FOI requests than any other lower mainland municipality. A portion of the City's requests are made by repeat applicants who are familiar with FOI processes. The City has formal processes governing how they manage FIPPA requests that have been streamlined over the past few years, along with a recent change in FOI heads and an updated municipal bylaw pertaining to FOI.

While OIPC examiners found some good practices within the City's FOI process, many files contained evidence that raised concern. Areas of concern included:

- documentation of files and searches;
- timing of responses;
- content of responses; and
- communication with applicants.

### 5.1 Documentation of files and searches

OIPC examiners found that 14% of the files examined were missing some standard documentation. While this does not necessarily have a direct impact on the service that the City delivers to applicants, it does hamper the ability of the OIPC to accurately assess, through audit or a complaint investigation, how the City handled those particular files.

Missing documentation is also particularly relevant with respect to complaints regarding the adequacy of searches. All City staff should be provided with mandatory training relating to records management, records retention, the FOI process generally, and how to appropriately conduct and document searches for responsive records.

It is essential, in cases where City staff are unable to locate records in response to requests, that staff adequately document the search for records. When department staff are unable to locate records, it is important to be able to accurately describe the search and provide applicants with an explanation for the absence of records. Providing a reasonable explanation as to why no records were found will help to maintain the trust of the applicant and can reduce the likelihood that they will complain to the OIPC or request a review of the City's response.

In cases where searches for records have not been adequately documented and where other information was missing, such as notes detailing an applicant's

withdrawal of their request, it is difficult for the City to show that it has met its duties under FIPPA.

**RECOMMENDATION 1:** The City of Vancouver should fully document requests for records. Case files should include:

- the original request,
- clarification of requests,
- the search for records,
- decisions related to severing,
- extensions and consultation processes,
- release approvals,
- final responses, and
- any other communication with applicants and recommendations or decisions made with regard to the processing of the request.

**RECOMMENDATION 2:** The City of Vancouver should fully document the steps undertaken to search for records, including:

- locations searched and methods used,
- locations not searched and the reasons why,
- departments' responses to the request from ATI staff, and
- explanations for occasions where no responsive records can be found.

**RECOMMENDATION 3:** The City of Vancouver should provide mandatory routine training to City staff on:

- records management,
- records retention,
- the purpose of FIPPA and their responsibilities under the Act,
- the City's request for records processes, and
- how to conduct and document searches for records.

## 5.2 Timing of Responses

Although the City appeared to meet legislated timelines for responding to requests in 84% of sampled files, the City's actual compliance rate is lower. This is because of issues related to the clarification of requests, lack of documentation to support extensions, and any unnecessary delay in files that met legislated timelines.

Examples of issues found with respect to clarifying requests included:

- There appeared to be confusion between ensuring a request meets s. 5 of FIPPA and utilization of s. 10(1)(a) if additional time is needed to clarify a request. In most cases, the City should open the request immediately and then, if they cannot meet the original deadlines for response due to time spent clarifying a request, they can apply an extension under s. 10(1)(a).
- OIPC examiners found that, in some cases, the City's attempts to clarify were worded in a way that might dissuade applicants from continuing in the FOI process. FIPPA does not require applicants to name the records they are seeking, and it is not helpful to simply state that a request is too vague without assisting applicants to further define the records sought.
- The City, in its attempts to narrow broad requests or clarify vague ones, misinterpreted s. 6(2) as permitting it to decline to process a request if the time estimated to search for records would unreasonably interfere with operations.

With regard to extensions taken, the review uncovered a number of cases where there was inadequate documentation to support the City's decision to extend timelines. This brings into question whether the City had the authority to extend timelines in those cases. In addition, the City still contravened statutory timelines in roughly one third of files where time extensions were taken.

Regarding responses to particular applicants, OIPC examiners found that the City failed to meet legislative timelines with requests from media applicants nearly four times more often than requests from other applicants. Given that the City has the same authority to extend timelines for requests from media applicants as for other applicants, there appears to be no reason as to why the nature of the applicant should affect the ability of the City to respond within the legislative timelines.

**RECOMMENDATION 4:** The City of Vancouver should open requests without delay unless the records sought cannot reasonably be identified.

**RECOMMENDATION 5:** The City of Vancouver should ensure that any extension taken is as short as possible and that there is sufficient reason to apply the extension.

**RECOMMENDATION 6:** The City of Vancouver should improve response times for all requests for records, especially with requests from media applicants, to ensure it responds without delay and within legislated timelines.

### 5.3 Content of Responses

OIPC examiners found occasions where content was missing in response letters to applicants. In particular, where no records were found that were responsive to the request, the City often did not explain the reason for a lack of records. As discussed above, providing applicants with a reasonable explanation as to why no records were found can help to maintain trust while a lack of explanation can erode it.

The requirement to respond openly, accurately and completely includes providing a reasonable explanation when a public body has been unable to locate records responsive to a request, especially in cases where it is reasonable to expect that records should exist. The Commissioner has previously determined that a brief statement regarding why the records do not exist is a logical component of the duty to assist.<sup>46</sup>

In addition, responding openly, accurately and completely involves retrieving all responsive records and reviewing them line by line. It also involves withholding from disclosure only information that, after a careful analysis and exercising statutory discretion where it exists, the public body determines falls within one of the exceptions to disclosure. Furthermore, it involves providing reasonable estimates of time spent searching and processing requests and only charging fees for the actual time spent executing these activities.

There were cases where the City withheld all of the requested records in their entirety. In some of these instances, file documentation indicated that the City applied an exception under Part 2 of FIPPA without retrieving or reviewing the records. In other instances, the City retrieved the records but applied block



severing rather than line by line severing. Without making a finding on this in relation to the City, it is noted that, while there are some situations where FIPPA does authorize public bodies to withhold records and pages in their entirety, a public body must be able to demonstrate that it has reviewed the records and carefully considered whether the particular exceptions to disclosure genuinely apply to each portion of the records.

Examiners discovered some instances where City staff failed to conduct an adequate search for records. One example was that staff only appeared to conduct a search for records in personal emails or on personal devices in cases where an applicant specifically requested these locations be searched. Given that some of these requests produced records, it is clear that some officials and employees conduct City business using personal email or personal devices.

In addition, the City does not have a policy on the use of personal email to conduct City business. Previous OIPC reports have demonstrated that use of personal email to conduct public body business is a poor records management practice.<sup>47</sup> In any case where they do not search personal email where it is reasonable to expect that records would exist, the City has failed to respond openly, accurately and completely.

With respect to the application of fees, the City rarely applied fees and, when it did, fee estimates appear to comply with the activities and maximum rates set out in the *Freedom of Information and Protection of Privacy Regulation*. However, files where fees were charged did not contain an accurate accounting of the actual time City employees spent searching for records and processing the request. If the actual time spent ends up being less than the original estimate, the City is obligated to reduce the fee invoiced.

In circumstances where fees were applied, it is unclear how the City could meet its duty in cases where complete and accurate documentation that reflects the actual time spent searching and preparing records for release is missing.

**RECOMMENDATION 7:** The City of Vancouver should apply exceptions on a limited and specific basis, line by line.

**RECOMMENDATION 8:** The City of Vancouver should treat records as out of scope only where explicitly delineated under s. 3 of FIPPA.

**RECOMMENDATION 9:** The City of Vancouver should develop rules that clearly define expectations surrounding use of personal devices and personal email to conduct City business or share or store City information.

**RECOMMENDATION 10:** The City of Vancouver should document actual time spent by department and the City to locate, retrieve, produce or prepare a record for release in circumstances where a fee is being applied.

#### 5.4 Communication with Applicants

While most of the correspondence with applicants contained the essential information required by FIPPA, OIPC examiners found examples of curt and perfunctory communication throughout the FOI process. The style of the correspondence with some applicants resembled that of parties engaged in litigation on opposing sides. FIPPA imposes a duty on every public body to make every reasonable effort to assist each applicant with every request.

In particular, the City's relationship with some media applicants appears strained. The media plays a unique role in disseminating information to the public and in making public bodies more accountable.<sup>48</sup> Therefore, it is in the public interest to protect the ability of media applicants to identify issues, obtain records and disseminate information in a timely manner.

Constructive communication is critical to developing a respectful working relationship between public bodies and applicants. The public body should not act as a gatekeeper of records but instead should be a conduit for providing an applicant with all of the information they are entitled to under FIPPA. Any practice that discourages applicants from making and pursuing access requests frustrates the purpose of the legislation. Building and maintaining more open communication with applicants would help the City to improve compliance with its duty to assist under s. 6 of FIPPA.

**RECOMMENDATION 11:** The City of Vancouver should provide updated training to all ATI staff related to the duty to assist applicants, including the management of requests for records and legislative provisions for: extension of time limits, fees, exemptions, exclusions, and third-party notifications.

**RECOMMENDATION 12:** The City of Vancouver should communicate more openly with each applicant and provide assistance throughout the entire request process.

## 6.0 RECOMMENDATIONS

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The heads of public bodies are responsible for ensuring that employees are aware of the legislative obligations and related policies and procedures. The following recommendations stem from the findings in this report. They comprise a mixture of best practices that, if implemented, will help Vancouver's City Manager ensure that the City is in compliance with its legislative obligations under s. 6 of FIPPA.

### **RECOMMENDATIONS: DOCUMENTATION OF FILES AND SEARCHING FOR RECORDS**

1. The City of Vancouver should fully document requests for records. Case files should include:
  - the original request,
  - clarification of requests,
  - the search for records,
  - decisions related to severing,
  - extensions and consultation processes,
  - release approvals,
  - final responses, and
  - any other communication with applicants and recommendations or decisions made with regard to the processing of the request.
2. The City of Vancouver should fully document the steps undertaken to search for records, including:
  - locations searched and methods used,
  - locations not searched and the reasons why,
  - departments' responses to the request from ATI staff, and
  - explanations for occasions where no responsive records can be found.
3. The City of Vancouver should provide mandatory routine training to City staff on:
  - records management,
  - records retention,
  - the purpose of FIPPA and their responsibilities under the Act,
  - the City's request for records processes, and
  - how to conduct and document searches for records.

**RECOMMENDATIONS: TIMING OF RESPONSES**

4. The City of Vancouver should open requests without delay unless the records sought cannot reasonably be identified.
5. The City of Vancouver should ensure that any extension taken is as short as possible and that there is sufficient reason to apply the extension.
6. The City of Vancouver should improve response times for all requests for records, especially with requests from media applicants, to ensure it responds without delay and within legislated timelines.

**RECOMMENDATIONS: CONTENT OF RESPONSES**

7. The City of Vancouver should apply exceptions on a limited and specific basis, line by line.
8. The City of Vancouver should treat records as out of scope only where explicitly delineated under s. 3 of FIPPA.
9. The City of Vancouver should develop rules that clearly define expectations surrounding use of personal devices and personal email to conduct City business or share or store City information.
10. The City of Vancouver should document actual time spent by department and the City to locate, retrieve, produce or prepare a record for release in circumstances where a fee is being applied.

**RECOMMENDATION: COMMUNICATION WITH APPLICANTS**

11. The City of Vancouver should provide updated training to all ATI staff related to the duty to assist applicants, including the management of requests for records and legislative provisions for: extension of time limits, fees, exemptions, exclusions, and third-party notifications.
12. The City of Vancouver should communicate more openly with each applicant and provide assistance throughout the entire request process.

## 7.0 CONCLUSION

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The duty to assist applicants is a central tenet of FIPPA and is essential for citizens to be able to exercise access rights. Public bodies must make every reasonable effort to assist with clarifying requests, searching for records, and responding without delay to each applicant in an open, accurate and complete manner.

In order to meet this duty, public bodies must ensure that there is appropriate communication with each applicant throughout the FOI request and response process. Building and maintaining open and constructive relationships that span the length of the request process is a critical component in a public body's access to information program.

Some serious issues were found during this review, including:

- failure to meet legislated timelines 16% of the time;
- no justification for some of the extensions taken and further non-compliance with statutory deadlines despite the extension;
- additional unnecessary delays in files that did meet legislated timelines, particularly with requests made by media applicants;
- missing documentation, with no accounting of how searches for records are being conducted;
- missing detail from some response letters to applicants, including explanations for occasions of no responsive records;
- no policy on use of personal devices or email to conduct City business; and
- curt and perfunctory communication with applicants.

This report includes several recommendations that will help to ensure that the City is in compliance with its legislative obligations. The recommendations point to the City:

- improving response times for all applicants, particularly media applicants;
- fully documenting each step of the FOI process;
- reviewing each record line by line when applying exceptions;
- providing mandatory and routine training to City staff on FOI processes and the duty to assist applicants;
- updating the training for ATI staff related to management of FOI requests;

- 
- drafting policy related to the use of personal email for business purposes; and
  - communicating more openly with all applicants.

The City has recently undergone a change in management and FOI head and is in the process of implementing new initiatives such as case management software, FOI releases and proactive disclosures. This presents the City with an opportunity to improve its relationship with and the quality of service to the public. Implementing the recommendations in this report will assist this process. Respectful communication is vital to ensuring that public bodies make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

In exercising their rights under FIPPA, applicants must have faith that they will be treated fairly and equitably throughout the process. The public body should not act as a gatekeeper of records but instead should be a conduit for providing applicants with the information they are entitled to under FIPPA. Building and maintaining open and constructive communication with applicants would help the City improve compliance with its legislated duty to assist. This report points to a need for City executive to lead a cultural shift that changes the dynamic with access applicants.

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## **8.0 ACKNOWLEDGEMENTS**

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The City of Vancouver and its staff cooperated fully with my office's investigation.

I would like to thank Tanya Allen, Senior Investigator, and Carol Whittome, Investigator, who conducted this audit and compliance review and contributed to this report.

June 23, 2016

### **ORIGINAL SIGNED BY**

Elizabeth Denham  
Information and Privacy Commissioner  
for British Columbia



## Appendix A: Methodology

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The scope of this compliance review was to focus on the City of Vancouver's compliance with duty to assist provisions found in section 6 of FIPPA. Utilizing components of compliance assessment; operational audit; program evaluation; and process improvement methodologies, the review included:

1. background research and written submissions from FOI applicants and other interested individuals;
2. a review of policies and procedures relating to access to information;
3. interviews with Vancouver ATI staff;
4. file load comparison to other lower mainland municipalities;
5. an audit of a random sample of the requests for records received by the City of Vancouver between 2013 and 2015 (290 files);
6. a review of OIPC complaints and requests for review that were initiated during the same time frame (85 files); and
7. a review of additional requests for records received by the City of Vancouver relating to the corresponding OIPC files reviewed, as well as other files raised in written submissions (77 files).

Assessment criteria and tools were built based on FIPPA obligations, OIPC guidance documents and orders, and Vancouver policies relating to the handling of access-related requests or complaints.

### Background Research and Written Submissions

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

- *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* (OIPC Investigation Report F15-03);
- *Implementing Investigation Report F15-03: Recommendations to the Government of British Columbia* (David Loukidelis December 2015);
- *Increase in No Responsive Records to General Access to Information Requests: Government of British Columbia* (OIPC Investigation Report F13-01);

- *A Step Backwards: Report Card on Government's Access to Information Responses April 1, 2013-March 31, 2014* (OIPC Special Report Sept 23, 2014);
- OIPC Investigation Report F08-01 (Ministry of Environment, Ministry of Forests and Range);
- OIPC Submissions to the Special Committee reviewing FIPPA;
- OIPC orders involving City of Vancouver; and
- Leading cases related to s. 6 FIPPA.

OIPC examiners requested written submissions from applicants who submitted ten or more access requests to the City and filed complaints with the OIPC during the 2013 to 2015 timeframe. Requests were sent in November 2015 and applicants responded in December 2015. The applicants were asked to share their experiences regarding Vancouver's FOI process and responses were pointed toward three questions:

1. Are there any specific issues that you believe the review team should focus on when examining Vancouver's compliance with the requirement to respond without delay to each applicant openly, accurately and completely?
2. How do you think Vancouver's ATI program compares to similar programs in other municipalities? Please explain based on your own experience.
3. What opportunities exist to improve ATI in Vancouver?

Additional submissions were received by the OIPC from other individuals who had experience with the City of Vancouver's FOI process and volunteered information for consideration in the review.

OIPC examiners used these submissions to provide background and context to the overall review; as well as to inform the questions to ask during interviews with program staff and the audit of program files. Any claims or allegations made within submissions were only included in the report where there was sufficient evidence to support them.

In addition, OIPC examiners reviewed allegations raised in the media that related to the processing of FOI requests. OIPC examiners did not use the allegations to guide the development of review methodology. Again, allegations raised in the media were only included in the report where sufficient evidence was found (through the other processes within the review) that support the allegation.

## REVIEW OF POLICIES AND PROCEDURES

This portion of the review included an overview of the City of Vancouver bylaws, policies, procedures and other documentation in order to understand and report on the FOI process.

The following materials were reviewed:

- City of Vancouver Records Management By-law No. 9067;
- policies on records management, ownership and retention of information, retention of email, use of mobile phones, and use of City IT equipment;
- communications related to email and server backups and use of personal email for business purposes;
- records retention schedules;
- organizational Charts on the ATI group, the City Clerk's Department, Office of the City Manager, and the overall City of Vancouver; and
- basic statistics and other information related to:
  - staff within the ATI group,
  - numbers of requests for access by type and by year (2013-2015), and
  - a description of the types of fields collected in a software tracking program or database relating to access or complaint files managed within the FOI program.

Materials collected during this portion of the review were also used to create interview guides and checklists for reviewing access files.

## INTERVIEWS

Preliminary and follow-up interviews were conducted with the City of Vancouver FOI Director and Case Manager. Interviews took place in January and April of 2016, the first was a group interview that lasted two and a half hours, and the second comprised individual interviews that lasted one hour each.

The interview guides included questions on:

- workload;
- the process for records requests and releases;
- timelines;

- media access requests;
- the content of responses; and
- challenges and improvements.

OIPC examiners used information gleaned from the preliminary interview to develop a basic understanding of:

- the ATI program;
- how records are collected from departments;
- processes and decisions involved in the release of records; and
- the types of documents that are available for reviewing access requests.

This interview was also useful for identifying documents and files for review, informing the audit of program files, and explaining the OIPC's review process.

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.

#### **FILE LOAD COMPARISON**

A small portion of the review included the collection and comparison of statistics from some of the City of Vancouver's large neighbouring municipalities. FOI Directors within the cities of Burnaby, Surrey, Richmond, New Westminster and West Vancouver were contacted by telephone and email in February 2016 with a request for:

- the total number of access to information requests (and complaints) received by the cities in 2013, 2014 and 2015;
- the total number of distinct applicants making requests in each of these years; and
- the number of full-time equivalent employees serving access to information functions within the City.

OIPC examiners used this information to form a simple comparison of the numbers and requests and the numbers of staff assigned to the FOI function in order to determine the relative workload that the City of Vancouver has compared to other jurisdictions.

## AUDIT OF FILES

The audit of files included:

- a random sample of City of Vancouver requests for records files (n=290);
- related requests for review and access-related complaints received by the OIPC from 2013 through 2015 (n=85); and
- a review of the City's request files selected to match OIPC files and other files mentioned in written submissions (77 files).

In total, OIPC examiners reviewed 452 files for inclusion in the analysis for this report.

### ***Random sample***

Using standard statistical methods, the OIPC examiners selected a sample of 290 City of Vancouver access request files that were completed between 2013 through to December 1, 2015. This size of sample provides a five percentage point margin of error at a 95% confidence level, meaning that the sample selected for review will provide an accurate representation of the overall population of access files within the City of Vancouver for the same timeframe, give or take five percent, 19 times out of 20. Comparison of key demographics between the sample and the population of files were conducted to ensure that the sample mirrored the overall population on variables such as year and applicant type.

OIPC examiners reviewed the City of Vancouver requests for records in relation to 84 different points of data. Examples of these data points included:

- applicant type (e.g., association, business, individual, lawyer, media);
- disposition of the file (e.g., disclosed in part, disclosed in full, abandoned, no records, in progress);
- subject of records request (e.g., animal control, financial, development/business license, property-related, human resources);
- appropriateness of request interpretation;
- dates (e.g., date request received, date due, extension dates, etc.);
- whether personal email was requested and, if so, searched and provided;
- reasons for occasions of no responsive records;
- whether, on the surface, a search was deemed adequate or not;

- fees, hours billed, fee waiver requests;
- holds and extensions on files, including reasons for and relevant sections of FIPPA;
- internal review and sign-off for files, if applicable;
- responses to applicants, including reasons for denying records, appropriateness of severing, legislative sections applied; and
- other issues that may be present in a file, such as lack of documentation.

OIPC examiners then evaluated and cross tabulated these data points to establish findings for inclusion in the report and also used them to create interview guides for follow-up interviews with City of Vancouver staff.

Missing cases were removed 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, report findings are based 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.

### ***OIPC files***

OIPC examiners reviewed requests for review and complaints received by the OIPC in order to determine the ultimate completion of the City's files up to and including an OIPC inquiry. As OIPC examiners reviewed every available and relevant OIPC file, along with its corresponding City file, from 2013 to 2015, these analyses provide an actual representation of how files were processed during that time frame.

In total the OIPC opened 198 files from 2013 to 2015 related to the City of Vancouver. This included requests for review, complaints, requests for information, requests for time extensions under s. 10, reconsideration of previous files and files deemed at intake to not be a reviewable issue. OIPC examiners only included completed and closed request for review files and access-related complaint files in the analysis. In the end, 85 files were included in this review.

The types of files included in the analysis were:

- complaints about the adequacy of the search for records;
- deemed refusals whereby the City allegedly did not respond to an applicant within the statutory timelines;
- requests to review the City's decision to deny records altogether;

- complaints about the City 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 the City.

Of the 85 OIPC files included in the review, 61% (or 52 files) were requests for the OIPC to review the City's decision and 39% (or 33 files) comprised complaints. See Table 3 below.

**Table 3: Types of Request for Review and Complaint Files**

Type of Files	# of Files	% of Files
<b>Request for Review Files</b>	<b>52</b>	
Partial/Severed Release	36	69%
Deny	9	17%
Deemed Refusal	6	12%
Scope	1	2%
<b>Complaint Files</b>	<b>33</b>	
Duty required by Act	21	64%
Adequate Search	11	33%
Fees	1	3%
<b>Total</b>	<b>85</b>	

OIPC examiners reviewed the OIPC files in relation to 30 different points of data. Examples of these data points included:

- investigator's views on the adequacy of search;
- reasons for occasions of no responsive records;
- the appropriateness of reasons for denying records;
- the appropriateness of severing based on legislative sections applied;
- whether a complaint was substantiated;
- inquiry results; and
- communication with applicants.

Analysis included the original OIPC investigator's opinion or decision, and the OIPC audit examiner's opinion where relevant. This review did not include analysis of any open files. OIPC examiners then evaluated and cross tabulated the data points to establish additional findings for inclusion in the report and to

compare findings to those found within the review of the random sample of the City of Vancouver files.

### ***Additional files***

After OIPC examiners conducted initial analysis of the random sample and the OIPC files, they decided to collect additional request for records files from the City of Vancouver that matched relevant OIPC files opened from 2013 to 2015. OIPC examiners also collected relevant City of Vancouver request for records files that had been raised as an issue within written submissions. In total, this added an additional 77 files to the analysis.

OIPC examiners reviewed the additional files using the same criteria utilized for the random sample. Review of these files allowed the OIPC examiners to further explore issues and themes that were found to be relevant within the original sample. However, analysis from this group of files was used as background to understand the issues and was not used as evidence to derive findings for inclusion in the report. These files were used occasionally in the body of the report to provide an example that illustrated a certain finding but were never included in statistical results.



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## Endnotes

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<sup>1</sup> 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>).

<sup>2</sup> *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 at para. 61. Although this statement was made by La Forest J. in dissent it was not on this point. As well, the Supreme Court has subsequently approved of these comments (see, for example, *H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General)*, 2006 SCC 13 at para. 68 and *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 at para. 81. See also *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 at para. 1.

<sup>3</sup> 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>).

<sup>4</sup> OIPC Order No. 30-1995 at p. 8 (<https://www.oipc.bc.ca/orders/415>), citing the BC Government's FOIPPA Policy & Procedures Manual, Section 6, Duty to Assist, Interpretation Note 1 (Subsection 6(1)).

<sup>5</sup> OIPC Investigation Report F15-03, *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* at p. 15, para. 3 (<https://www.oipc.bc.ca/investigation-reports/1874>). See also, for example, OIPC Order F07-12 at para. 12 (<https://www.oipc.bc.ca/orders/888>) and OIPC Order 00-32 at para. 3.2 (<https://www.oipc.bc.ca/orders/603>).

<sup>6</sup> 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).

<sup>7</sup> 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>).

<sup>8</sup> OIPC Investigation Report F15-03, *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* at p. 15, para. 5 (<https://www.oipc.bc.ca/investigation-reports/1874>).

<sup>9</sup> 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.

<sup>10</sup> OIPC Order 01-47 at para. 54 (<https://www.oipc.bc.ca/orders/649>).

<sup>11</sup> FIPPA s. 7(4).

<sup>12</sup> 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.

<sup>13</sup> See, for example, OIPC Order 00-15 (<https://www.oipc.bc.ca/orders/585>); OIPC Order 00-26 (<https://www.oipc.bc.ca/orders/578>); OIPC Order 00-32 (<https://www.oipc.bc.ca/orders/603>); and OIPC Order F07-12 (<https://www.oipc.bc.ca/orders/888>).

<sup>14</sup> Loukidelis, *Implementing Investigation Report F15-03 – December 2015* at p. 15, para. 1.

<sup>15</sup> 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>).

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<sup>16</sup> 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>).

<sup>17</sup> OIPC Order 00-32 at p. 5 (<https://www.oipc.bc.ca/orders/603>).

<sup>18</sup> 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.

<sup>19</sup> 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>).

<sup>20</sup> OIPC Investigation Report F13-01, *Increase in No Responsive Records to General Access to Information Requests: Government of British Columbia* at p. 27, para. 5 (<https://www.oipc.bc.ca/investigation-reports/1510>).

<sup>21</sup> Communication with the Director of Access to Information, received March 14, 2016.

<sup>22</sup> The margin of error may differ for analysis of each data point that included missing cases. See the Methodology section for further detail.

<sup>23</sup> February 24, 2016 presentation by the Director of AIT to the City of Vancouver Committee discussing changes to the City’s FOI Bylaw.

<sup>24</sup> OIPC email communication with City of Vancouver. December 11, 2014.

<sup>25</sup> Communication received by the OIPC from the City of Vancouver. October 15, 2014.

<sup>26</sup> OIPC Report, *Report Card on the Timeliness of Government’s Access to Information Responses, Report for April 1, 2010 – March 31, 2011* at p. 9 (<https://www.oipc.bc.ca/special-reports/1267>); and OIPC Special Report, *A Step Backwards: Report Card on Government’s Access to Information Responses* at p. 14 (<https://www.oipc.bc.ca/special-reports/1696>).

<sup>27</sup> OIPC Order No. 134-1996 at pp. 4 and 5 (<https://www.oipc.bc.ca/orders/447>).

<sup>28</sup> The City indicated that ATI staff are directed to follow-up with departments if no records are found and that this follow-up may not be documented in the file if conducted by telephone.

<sup>29</sup> OIPC Order F13-26 (<https://www.oipc.bc.ca/orders/1591>).

<sup>30</sup> FIPPA s. 10(1)(c) and Schedule 1, definitions for “third party” and “public body”. See also OIPC “Time Extension Requests Guidelines for Public Bodies” (<https://www.oipc.bc.ca/guidance-documents/1430>).

<sup>31</sup> OIPC Report, *Timeliness of Government’s Access to Information Responses, Report for Calendar Year 2008* at p. 12 (<https://www.oipc.bc.ca/special-reports/1266>).

<sup>32</sup> OIPC examiners counted the higher risk or greater complexity files based on files ATI staff sent to department or FOI heads for review prior to releasing records to an applicant, as determined by City staff using the City’s *FOI File Release Approval Process*.

<sup>33</sup> OIPC Investigation Report F08-01, *Ministry of Environment, Ministry of Forests and Range* at para. 15 (<https://www.oipc.bc.ca/investigation-reports/1235>) and OIPC Order F06-16 at para. 56 (<https://www.oipc.bc.ca/orders/848>).

<sup>34</sup> OIPC Report, *Timeliness of Government’s Access to Information Responses, Report for Calendar Year 2008* at pp. 20-21 (<https://www.oipc.bc.ca/special-reports/1266>).

<sup>35</sup> Please note, this does not add up to 100% due to rounding error.

<sup>36</sup> When presented with this allegation, the City stated that they could not adequately respond to this allegation in the absence of evidence. However, the OIPC received this information in confidence and, as such, did not provide further information to the City.

<sup>37</sup> While OIPC received 14 requests for review relating to denied access, OIPC examiners only reviewed 6 files for this report because the remaining 8 files were: still open and with investigators or adjudicators for resolution; abandoned; or resolved and closed at Intake.

<sup>38</sup> See OIPC Order No. 324-1999 at section 3.4 (<https://www.oipc.bc.ca/orders/1186>).

<sup>39</sup> See OIPC Order No. 324-1999 at section 3.4 (<https://www.oipc.bc.ca/orders/1186>).

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<sup>40</sup> See discussion of severing in Order F03-16, starting at para.42

(<https://www.oipc.bc.ca/orders/790>).

<sup>41</sup> The RFP condition in this case stated: “The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.”

<sup>42</sup> OIPC Order 00-47 at pp. 14 and 15 (<https://www.oipc.bc.ca/orders/598>).

<sup>43</sup> Note that in the OIPC file review, examiners were not able to review the actual records, as records are deleted after the OIPC file has been resolved. As such, examiners relied on the original OIPC investigator’s file notes and communications with the applicant or public body.

<sup>44</sup> These add up to more than 78% because, in one case, additional information was released both before mediation AND after an order was issued.

<sup>45</sup> OIPC Orders: F14-36 (<https://www.oipc.bc.ca/orders/1685>); F15-37

(<https://www.oipc.bc.ca/orders/1835>); F14-31 (<https://www.oipc.bc.ca/orders/1679>); F13-26

(<https://www.oipc.bc.ca/orders/1591>); F13-26 (<https://www.oipc.bc.ca/orders/1591>); F15-52

(<https://www.oipc.bc.ca/orders/1858>); F15-33 (<https://www.oipc.bc.ca/orders/1831>); F15-32

(<https://www.oipc.bc.ca/orders/1830>); and F15-65 (<https://www.oipc.bc.ca/orders/1889>).

<sup>46</sup> OIPC Investigation Report F13-01, *Increase in No Responsive Records to General Access to Information Requests: Government of British Columbia* at p. 19, para. 4

(<https://www.oipc.bc.ca/investigation-reports/1510>); and OIPC Special Report, *A Step Backwards: Report Card on Government's Access to Information Responses* at p. 30, para. 4

(<https://www.oipc.bc.ca/special-reports/1696>).

<sup>47</sup> OIPC Investigation Report F13-04, *Sharing of Personal Information as Part of the Draft Multicultural Strategic Outreach Plan: Government of British Columbia and the BC Liberal Party*

(<https://www.oipc.bc.ca/investigation-reports/1559>); and OIPC Guidance Document, *Use of Personal Email Accounts for Public Business* (<https://www.oipc.bc.ca/guidance-documents/1515>);

<sup>48</sup> OIPC Investigation Report F11-02, *Investigation into the Simultaneous Disclosure Practice of BC Ferries* at paras. 61-67 (<https://www.oipc.bc.ca/investigation-reports/1243>).