

**COUNCIL POLICY STATEMENTS ON SIMULTANEOUS DISCLOSURE OF RESPONSES TO
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY (FOIP) REQUESTS**

EXECUTIVE SUMMARY

To provide to Council draft Key Policy Statements for a Simultaneous Disclosure Policy of responses to FOIP Requests, and to direct the City Clerk and the City Solicitor to collaborate on the development of the Council Policy.

CITY CLERK'S RECOMMENDATIONS

1. That Council receive this report and the draft Key Council Policy Statements contained in this report, for information; and
2. That the City Clerk and City Solicitor collaborate on the development of a Council Policy with respect to Simultaneous Disclosure (or Proactive Disclosure) publicly, of responses to Freedom of Information and Protection of Privacy Requests, as discussed in this report, and report back to Council through the Priorities and Finance Committee (PFC) no later than March 2017.

PREVIOUS COUNCIL DIRECTION / POLICY

At its Regular Meeting held 2015 April 27, Council adopted the following motion arising:

“ that with respect to Report C2015-0350, the Deputy City Clerk/Returning Officer be requested to report back to Council on the options of releasing all final FOIP documents simultaneously and publicly, no later than 2015 July.”

At its Regular Meeting held 2015 July 27, Council adopted the Recommendation contained in C2015-0470 which requested deferral of the report to the 2015 September 28 Regular Meeting of Council.

At its Regular Meeting held 2015 September 28, Council adopted the Recommendations contained in Report C2015-0609 as follows:

1. Direct Administration to prepare key policy statements for FOIP simultaneous disclosure and return to Council no later than May 2016;
2. Direct Administration to report to Council no later than September 2016 with a Council policy, criteria, procedures and resources required to implement simultaneous disclosure for January 2017; and
3. And further, that Mayor Nenshi be requested to ask the Provincial Government to expedite a decision on simultaneous FOIP disclosure.”

At its Regular Meeting held 2016 May 16, Council adopted the Recommendations contained in Report C2016-0260 as follows:

1. That Council approve the request to defer the report to Council on key policy statements for a Council Policy on Simultaneous Disclosure until the 2016 September 26 Regular Meeting of Council;
2. That Council approve the request to defer the report on the Council Policy on Simultaneous Disclosure from 2016 September 26 to no later than March 2017; and

COUNCIL POLICY STATEMENTS ON SIMULTANEOUS DISCLOSURE OF RESPONSES TO FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY (FOIP) REQUESTS

3. That Council approve the request to defer the implementation of the subsequent Council Policy to no later than September 2017.”

BACKGROUND

Proactive Disclosure of records responsive to FOIP Requests contributes to a culture of transparency and accountability and entails making the records disclosed to FOIP Applicants publicly available.

New Council policies are developed to support and communicate The City of Calgary (The City) priorities, respond to social/economic/political changes, and to introduce new initiatives, programs, and services. Council may identify a municipal issue, objective or priority, and direct the development of a new Council policy or a review and amendment to an existing Council policy. Any Standing Policy Committee, the Priorities and Finance Committee, Legislative Governance Task Force, the City Manager, the General Managers, the City Auditor's Office, Office of the Mayor and Office of the Councillors may recommend to Council that a new Council policy, or an amendment to an existing Council policy, is required. Council policies are amended from time to time to ensure alignment with current Council priorities, initiatives, and practices, as well as with legislation and regulations.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

The City Clerk's FOIP Office currently publishes a description of the FOIP Requests received, however, the details of the information provided to FOIP Applicants is not published. Simultaneous Disclosure suggests providing the response to the Applicant and, at the same time, make the response publicly available. Simultaneous Disclosure is a concept that supports transparency and the public's access to information. The City would be the first municipality in Alberta to implement such a policy in the absence of direction from the Province of Alberta's Office of the Information and Privacy Commissioner (OIPC). 'Simultaneous' disclosure comes with considerable risk which must be weighed against 'proactive' disclosure which presents less risk to the Corporation and individuals involved.

In consultation with The City's Law Department, it is recommended that the term 'Proactive Disclosure' be used rather than 'simultaneous' disclosure. Proactive Disclosure is the practice of making information available to the public without the necessity of a formal FOIP Request. The Province's purpose in enacting the FOIP legislation was to balance the need for openness and transparency with ensuring that unreasonable invasions of personal privacy or other confidential business information are avoided and this objective must be in the forefront of Council's deliberations as they consider simultaneous disclosure.

The public disclosure of responses to FOIP Requests requires consideration of several important factors and should not be implemented without in depth research and analysis in conjunction with Law. Some of the major factors that have been identified are:

- Consideration of a delay period for review between release of records to the Applicant and making those records public. A delay period fulfills one of the purposes of the FOIP Act which is to promote transparency. In some cases, there is an incentive for the

COUNCIL POLICY STATEMENTS ON SIMULTANEOUS DISCLOSURE OF RESPONSES TO FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY (FOIP) REQUESTS

Applicant to receive the response first, before it becomes publicly available. Making the response publicly available at the same time it is released to the applicant could remove this incentive for applicants to make FOIP requests and result in less transparency. In other cases, a delay period gives the applicant the opportunity to review the response and identify any information the applicant believes should not be released to the general public. The British Columbia (B.C.) Information and Privacy Commissioner recommended a minimum 24 hour delay. Law recommends that should a policy be adopted, an appropriate time-frame be set for Public release beyond 24 hours, after the disclosure of information to the applicant. The appropriate timeframe is yet to be determined following legal review but indications are 72 hours to a week would be more appropriate;

- Ensuring there is nothing posted publicly that would identify individuals, e.g. names or other descriptors or situations that could lead to identifying an individual;
- Ensuring there is nothing posted publicly that would disclose confidential business information of third parties that The City would otherwise be required to withhold under FOIP s.16;
- Determining the length of time responses are posted publicly;
and
- Determining the various information technology aspects of posting responses to Calgary.ca, e.g. Development of a web page; provision of links; full search capability; removal process, and appropriate format to ensure that the responses are directly accessible from Calgary.ca.

Council requested the FOIP Office to bring forward key Council policy statements to the 2016 September 26 Regular Meeting of Council. The following have been prepared as draft statements only until the Council policy is fully before Council in March 2017.

DRAFT KEY POLICY STATEMENTS:

- The City strives to be transparent and accountable and seeks ways to increase openness to demonstrate commitment to these objectives (through proactive disclosure).
- Records released in response to general information FOIP requests will be published on Calgary.ca
- Record release will be undertaken in such a way that will meet The City's obligations under *The Freedom of Information and Protection of Privacy Act (the Act)* to balance openness with the necessity to protect personal and confidential business information of third parties.
- As the Act requires a balance between openness and protecting necessary third party information, all records will be reviewed prior to publishing publicly on Calgary.ca and the necessary third party information removed.

COUNCIL POLICY STATEMENTS ON SIMULTANEOUS DISCLOSURE OF RESPONSES TO FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY (FOIP) REQUESTS

It is recommended that the Policy be directed to Council, through the new mandate of the Priorities and Finance Committee, for fulsome review and discussion, rather than directly to City Council due to the complexities involved with such implementation of such a Policy.

Stakeholder Engagement, Research and Communication

The City Clerk's FOIP Office is currently engaged in an organizational review and a new role of Manager, Freedom of Information and Protection of Privacy has been established. A competition is currently underway to fill this role. Availability of resources to dedicate to the research and development of a policy for Simultaneous Disclosure has been challenging due to the increased intake of FOIP access requests; change of management and staff; and training of new hires, hence the request to Council to defer delivery of a Council Policy. Due to the complexities of the topic that have emerged during the initial research phase to date and consultation with the Law Department, it is recommended that the FOIP Office engage further with the Law Department for consultations prior to a Council Policy being brought forward to Council in 2017 March.

Recent consultations with Service Alberta and the OIPC Alberta reveal that Government of Alberta (GOA) departments have not yet followed the direction of the GOA on "simultaneous" disclosure, and could not give a date for implementation of such a program. The Commissioner's Office has advised that it is deemed necessary to consult more broadly to determine the impacts of simultaneous disclosure on members of the public.

Research has shown that it is important to take appropriate time to consider all factors carefully before committing to engaging in "simultaneous" disclosure. Failure to consider all factors could lead to mistakes in releasing inappropriate information. This situation occurred with B.C. Ferries and led to an extensive investigation and recommendations by the B.C. Office of Information and Privacy Commissioner. B.C. Ferries was publicly criticised for their actions regarding simultaneous disclosure.

Strategic Alignment

"Simultaneous" disclosure or alternatively Proactive Disclosure is in line with Council Policy (CC039): Transparency and Accountability Policy, and with the Action Plan 2015-2018, W7.2 Promote public access to information and strengthen The City's culture of proactive disclosure.

Social, Environmental, Economic (External)

The social impacts of making public the responses and records provided to FOIP Applicants to FOIP requests will lead to a better informed public, and will contribute to a culture of openness at The City. However, both the applicant's and third parties' personal information and confidential business information must be protected. No environmental impacts have been identified.

Financial Capacity

Current and Future Operating Budget:

There will be an impact to the current and future Operating Budget for the City Clerk's FOIP Office should 'simultaneous' or proactive disclosure of FOIP Requests be implemented.

**COUNCIL POLICY STATEMENTS ON SIMULTANEOUS DISCLOSURE OF RESPONSES TO
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY (FOIP) REQUESTS**

Additional staff will be required in order to do due diligence prior to release of information to the public on Calgary.ca. Consultations and review by the Law Department of information prior to release will very likely be required. Additional resourcing requirements for both business units to support such an initiative will be determined, and reported in conjunction with the return of the Council Policy.

Current and Future Capital Budget:

There will be an impact to the current and future Capital Budget for the City Clerk's FOIP Office. New technology must be either implemented or current technology upgraded to provide for information to be made publicly available, and then removed from the website depending on the timeframe built into the policy. The budget will be determined and reported in conjunction with the return of the Council Policy.

Risk Assessment

The major risk with a Policy of this complexity is not taking all necessary factors into account when formulating the policy and procedure and inadvertently releasing personal information or confidential business information to the public.

Disclosure of third party personal or business information could result in complaints to and investigations by the OIPC of Alberta, leading to reputational harm to The City and potential litigation. It could also result in The City breaching contractual obligations it may have with vendors, suppliers and other businesses to keep sensitive business information as confidential. It is essential that the Law Department be engaged in the development of this Council Policy. And both Law and City Clerk's would need to examine the resource and funding implications required in order to fully implement a Policy in 2017 September.

REASON(S) FOR RECOMMENDATION(S):

There is risk associated with Calgary being the first Public Body in Alberta to implement and provide 'simultaneous' or proactive disclosure. More consultation is required as there is lack of direction from the Office of the Information and Privacy Commissioner (OIPC) of Alberta. The suggested draft Key Policy Statements above, are derived from the B.C. OIPC Investigation Report on the B.C. Ferries process. City Clerk's and Law are not aware of any other municipalities considering 'simultaneous' disclosure. The Province considered 'simultaneous' disclosure the last General Election when The Honourable Premier Prentice announced to the media that the Province of Alberta would begin 'simultaneous' disclosure. It is our understanding there is a Committee made up of several governmental departments who meet regularly on this topic, but no Policy or procedure has been put in place, and no projected date for this has been announced.

ATTACHMENT

None