

City Clerk's Office Report to  
Regular Meeting of Council  
2015 September 28

ISC: UNRESTRICTED  
C2015-0609  
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## **SIMULTANEOUS RELEASE OF FOIP REQUESTS**

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### **EXECUTIVE SUMMARY**

To report to Council on the public release of records responsive to Freedom of Information and Protection of Privacy (FOIP) requests.

### **ADMINISTRATION RECOMMENDATION(S)**

That Council:

1. Direct Administration to prepare key policy statements for FOIP simultaneous disclosure and return to Council no later than May 2016; and
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.

### **PREVIOUS COUNCIL DIRECTION / POLICY**

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

"MOTION ARISING, Moved by Councillor Colley-Urquhart, Seconded by Councillor Chabot, 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 the Regular Meeting of Council held 2015 July 27, Council adopted the following request for deferral:

"ADOPT, Moved by Councillor Chabot, Seconded by Councillor Demong, that the Administration Recommendation contained in Report C2015-0470 be adopted, as follows: That Council approve Administration's request to defer the report to Council on the options for simultaneous disclosure of FOIP requests to the 2015 September 28 Regular Meeting of Council."

### **BACKGROUND**

#### **DEFINITIONS**

Simultaneous Disclosure (SD): the process by which a public body publicly releases records responsive to a FOIP request after providing the records to the FOIP Applicant.

Disclosure log: a document which provides a list of FOIP Requests that a public body has already processed under *The Act*.

Delay period: the time between the release of records requested under *The Act* to the Applicant and making the records publicly available.

### **INVESTIGATION: ALTERNATIVES AND ANALYSIS**

#### **RESEARCH**

Research undertaken included examination and consultation with jurisdictions where SD already occurs. Three jurisdictions were identified as having SD: British Columbia (B.C) Ferries, B.C. Information Access Operations, and all Public Bodies in Queensland, Australia. There is

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one main difference between B.C. and Queensland, SD is mandatory in Australia but not in B.C..

Following an announcement by former Premier Redford, Service Alberta is currently investigating creation of a policy for SD of provincial FOIP records with a built-in delay, however, a decision has not yet been reached.

**SD IN OTHER JURISDICTIONS**

Jurisdiction	Start Date	Delay Period	Return of Fees	Disclosure Log
City of Calgary	None	None	None	Yes
Province of Alberta	None	None	None	No
British Columbia Ferries	October 2010	Yes, following an investigation.	No	Yes
British Columbia Ministry of Technology, Innovation and Citizen's Services	July 2011	Yes	No	Yes
Queensland, Australia	July 2009	Yes	No	Yes

**POLICY CONSIDERATIONS:**

1. Delay period – the minimum delay period of the three jurisdictions above varies. Consideration of factors such as complexity, volume, content etc. must be completed before setting the delay period;
2. Fees – Fees may be assessed to an Applicant for a FOIP request. Consideration and analysis of these fees must be completed to determine if fees should be refunded.
3. Not all records responsive to FOIP requests can be released under SD, such as personal information contained in the records, some copyright material etc. An assessment of the type of records requested under FOIP, must be done prior to determining what records would be made available.

**Stakeholder Engagement, Research and Communication**

Consultations with the Office of the Information and Privacy Commissioner (OIPC), Service Alberta and the B.C. Ministry of Technology, Innovation and Citizen's Services have been conducted. Through these consultations the primary message was that significant time is required to address all aspects of the policy and procedures in relation to the legislation. This was particularly evident in the consultation with Jill Clayton, the Information and Privacy Commissioner of Alberta, and her staff.

**Strategic Alignment**

This report aligns with Council's priority of a well-run city: "Calgary's government is open, responsive, accountable and transparent, delivering excellent services at a fair price. We work with our government partners to ensure we have the tools we need" (Action Plan 2015-2018).

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### **Social, Environmental, Economic (External)**

No social, environmental or economic (external) impacts have been identified.

### **Financial Capacity**

#### **Current and Future Operating Budget:**

No financial impacts have been identified at this time. These will be identified in report of 2016 September.

#### **Current and Future Capital Budget:**

No impacts have been identified.

### **Risk Assessment**

#### **REASON(S) FOR RECOMMENDATION(S):**

- 1) By adopting SD, the public would benefit from a more open, transparent and accountable government while conducting business, a commitment made by the City of Calgary in Policy #CC039 – Transparency and Accountability Policy;
- 2) The development of key policy statements will take until May 2016. Administration needs to analyze the research in light of the knowledge and experience obtained through the consultations to develop the key statements for a smart policy; and
- 3) Administration needs until September 2016, to develop the criteria, procedures and resources required to implement simultaneous disclosure as it's important to have it right the first time. For example, an investigation into the B.C. Ferries' procedure to publicly post records at the same time as releasing them to the Applicant. They were directed by the B.C. Commissioner to follow a simultaneous disclosure procedure with a built in delay period and an appeal mechanism as best practice.