

Law's Response to Olympic BidCo Transparency and Accountability Exploration

Notice of Motion

Background:

On 2018 July 30, Council considered a Notice of Motion titled "Olympic BidCo Transparency and Accountability Exploration" (the "Notice of Motion"). The Notice of Motion directed Administration to explore options available to ensure that all government spending related to exploring, pursuing and hosting the 2026 Olympic and Paralympic Winter Games ("OPWG") was subject to the Freedom of Information and Protection of Privacy Act ("FOIP Act"). The Notice of Motion was referred to The City's Law and Legislative Services Department for a response.

Law's Analysis:

The FOIP Act applies to all records in the custody or under the control of a "public body" as that term is defined in the legislation. A corporation that is created or owned by The City and where The City can choose all of the corporation's members or officers (such as a wholly-owned subsidiary of The City) is considered to be a public body and is subject to the FOIP Act.

Calgary 2026 is the corporation responsible for preparing a potential bid for the 2026 OPWG should The City decide to submit a bid. The City is one of six members of Calgary 2026. The other members are the Government of Alberta, the Government of Canada, the Town of Canmore, the Canadian Olympic Committee, and the Canadian Paralympic Committee. The City has the ability to directly elect three out of a potential 21 Directors who constitute the Calgary 2026 Board of Directors. Calgary 2026's other members also each have the right to directly elect Directors.

Given the nature of the financial and other commitments made by the other Calgary 2026 members, it was not practical to incorporate Calgary 2026 as a wholly owned subsidiary of The City, or give The City sole control over Calgary 2026's governance structure. As The City does not have sole control over the governance or membership of Calgary 2026, Calgary 2026 does not meet the definition of a "public body" and is not subject to the FOIP Act. Calgary 2026 could only become subject to the Act if the Government of Alberta amended the definition of a "public body" in the Act to include organizations such as Calgary 2026.

FOIP attempts to strike a balance between the public's right to access information with a public body's need to protect sensitive information. Even if Calgary 2026 was subject to FOIP, it could withhold information in certain circumstances specifically identified in FOIP. In general, the type of information that may be withheld by a public body includes:

- the confidential business information of a third party;
- sensitive personal information;
- information that could harm intergovernmental relations;
- advice and recommendations made by a public body's staff;
- information that could prejudice the competitive position of the public body or interfere with negotiations;
- information that could be harmful to individual or public safety; and
- legally privileged information.

Law's Response to Olympic BidCo Transparency and Accountability Exploration

Notice of Motion

Calgary 2026's Response:

On 2018 August 9, City Manager Fielding advised the members of Calgary 2026's Board of Directors of the Notice of Motion as well as Council's interest in transparency regarding information held by Calgary 2026.

In response, the Board adopted a Transparency and Accountability Policy stating that it will release information to its stakeholders if such information will not harm the bid for the OPWG or cause harm to any third parties who have disclosed confidential or commercially sensitive information to Calgary 2026. A copy of Calgary 2026's Transparency and Accountability Policy is attached.

Although Calgary 2026 is not subject to FOIP, it is subject to the *Personal Information Protection Act* ("PIPA"). PIPA is Alberta's privacy law that applies to private sector organizations. As with FOIP, PIPA requires organizations to protect personal information and to provide individuals with a right to access their own personal information that may be held by that organization. PIPA does not grant individuals the right to request general, non-personal information that may be held by an organization. However, Calgary 2026's Transparency and Accountability Policy provides that Calgary 2026 will release information that will not harm the OPWG bid or any third parties who have provided confidential information to Calgary 2026.

Law's Response to Olympic BidCo Transparency and Accountability Exploration

Notice of Motion

Calgary 2026 Bid Corporation Transparency and Accountability Policy

Introduction

Calgary 2026 Bid Corporation (**Calgary 2026**) values its relationships with its members and government partners, its Indigenous partners, its donors, its volunteers and other stakeholders who partner with it to achieve its purposes, including the citizens of Alberta, Calgary, Canmore and surrounding areas and those areas which would be involved in the hosting of the 2026 Olympic and Paralympic Winter Games (the **Games**).

Calgary 2026 recognizes that transparency and accountability builds trust and helps build and maintain positive relationships with its various stakeholders.

Purpose

The purpose of this document is to enshrine and adopt the importance of transparency and accountability identified by Calgary 2026, and facilitate the development and implementation of measures by the Board of Directors (**Board**) and Management of Calgary 2026 to provide appropriate transparency and accountability.

Policy

1. Calgary 2026 must ensure it complies with its legal and contractual reporting obligations. They include, but are not limited to:
 - a. Adhering to all provisions set out in the Calgary 2026 Bylaw and Articles;
 - b. Preparing financial statements as required by law;
 - c. Reporting to government departments in accordance with the terms of grants and funding contracts;
 - d. Reporting to donors in accordance with the terms of any donations; and
 - e. Other legal and contractual reporting obligations which arise from time to time in Calgary 2026's normal course of business.
2. Voluntary disclosure of certain information allows all relevant decision-makers to be consulted in advance regarding the release of specified types of information and allows Calgary 2026 to meet its objectives of transparency and accountability.
3. The Corporation shall share the following information with its stakeholders:
 - a. Articles and By-Laws of the Corporation;
 - b. Mission, Vision and Values of the Corporation;
 - c. Board Terms of Reference, Committee Charters, Chair Position Descriptions;

Law's Response to Olympic BidCo Transparency and Accountability Exploration

Notice of Motion

- d. List of Members;
 - e. Names of Board Members and Committee members;
 - f. Policies of the Corporation;
 - g. Code of Conduct;
 - h. Bid Submission Timelines;
 - i. Audited Financial Statements; and
 - j. Other financial and other information that if released, would not negatively impact Calgary 2026's competitive bid nor cause harm to any third parties who have disclosed confidential or commercially sensitive information to Calgary 2026.
4. The type of information that would be broadly excluded from disclosure includes any information that is determined to contain confidential or sensitive information that would negatively impact any third party who has disclosed information or entered into negotiations with Calgary 2026, or information that would prejudice Calgary 2026's ability to put forward a competitive bid.
 5. In undertaking its function of reporting to all stakeholders, the Board must be mindful of Calgary 2026's privacy policy, underpinned by its privacy law obligations, and it must take care to act in the best interest of Calgary 2026.
 6. Deliberations of the Board and its Committees shall be dealt with in accordance with the confidentiality provisions set out in the Code of Conduct and the Directors' Conflict of Interest Declaration.

Personal Information Records

Calgary 2026 will collect, use, and disclose personal information and records in accordance with its privacy policy and applicable privacy law obligations including under the *Personal Information Protection Act* and obligations under applicable employment law and regulation.

Member and Donor Records

Calgary 2026 will deal with Member and Donor records in accordance with its privacy policy, applicable privacy law obligations and applicable fundraising legislation and regulations.

Access to Minutes of Member Meeting and the Members Register

Access to minutes of the meetings of Members and the Board of Directors, as well as to the Members Register, will be provided in accordance with the *Canada Not-for-profit Corporations Act* and may be made publically available on approval of the Board.