

NO: R108

COUNCIL DATE: July 13, 2020

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **July 8, 2020**

FROM: **General Manager, Corporate Services**

FILE: **3900-30**

SUBJECT: **Amendments to Freedom of Information By-law, 1999, No. 13662 and Surrey Fee-Setting By-law, 2001, No. 14577**

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## RECOMMENDATION

The Corporate Services Department recommends that Council:

1. Receive this report for information;
2. Approve amendments to *Freedom of Information By-law, 1999, No. 13662*, as documented in Appendix “I” of this report;
3. Approve amendments to *Surrey Fee-Setting By-law, 2001, No. 14577*, as documented in Appendix “II” of this report; and
4. Authorize the City Clerk to bring forward the necessary amendment bylaws for the required readings.

## INTENT

The purpose of this report is two-fold:

1. To seek Council’s approval to amend *Freedom of Information By-law, 1999, No. 13662* (the “FOI Bylaw”) to accurately reflect the City’s staff titles and functional responsibilities; and
2. To seek Council approval for amendments relating to records access fees as follows:
  - a. Remove fees related to FOI requests from to the *Surrey Fee Setting By-law, 2001, No. 14577* (the “Fee Setting Bylaw”) and insert these fees in the FOI Bylaw; and
  - b. to Insert a new fee in the Surrey Fee Setting Bylaw for routine requests for attendance records at Surrey facilities

## DISCUSSION

The FOI Bylaw was first adopted in March 1999, and since then it has received several amendments to coincide with the *Freedom of Information and Protection of Privacy Act, RSBC 1996, Chapter 165* (the “Act”). This report proposes a number of additional changes to ensure that

the FOI Bylaw is aligned with the Act and accurately reflects staff titles and processes and the administration of fees as follows:

### **Staff Titles**

Since the FOI bylaw was first enacted in 1999 there have been many changes to the titles of staff performing FOI related functions. However, the FOI Bylaw has not been amended to reflect those changes. The proposed changes to the FOI Bylaw as reflected in this report ensures that the FOI Bylaw is up to date with the appropriate staff titles.

### **Functional Responsibilities**

The City is required under the Act to have in place a bylaw in force to designate a person as the Head of the municipality (“the Head”) for the purposes of the Act. The bylaw may also authorize any person to perform duties or functions under the Head. With regards to the City of Surrey, the Head has always been the City Clerk.

Presently, the FOI Bylaw states that the Head is responsible for boards, commissions, and committees. However, while the Head (City Clerk) is responsible for the Board of Variance, the Head (City Clerk) is not the individual responsible for the records of the Surrey Library Board. In Surrey’s case, the Chief Librarian is the Head of the Library Board for FOI purposes.

Similarly, the new Surrey Police Board will designate an individual to act as the Head for FOI purposes as it pertains to the Surrey Police Board.

Based on the above, this report reflects amendments to the FOI Bylaw to clarify that the City Clerk is solely the Head with respect to the handling of FOI requests as it pertains City business and the Board of Variance.

### **Fees**

This report proposes amendments to FOI Bylaw and the Fee-Setting Bylaw as follows:

a) Amendment to FOI Bylaw:

Presently, the FOI Bylaw does not contain the fees applicable to FOI related requests as prescribed under the Act. These fees are presently contained under Fee-Setting Bylaw. This presents challenges as the Fee-Setting Bylaw is amended annually and increases are automatically applied across all fees which inadvertently increases the fees associated with FOI requests. Fee associated with FOI requests can only be increased as allowed under the Act. Moving these fees under the FOI Bylaw will ensure that they are not inadvertently increased. In addition, these fees are dependent on definitions that are contained within the FOI Bylaw (and not the Fee Setting Bylaw). Accordingly, moving these fees under the FOI Bylaw will ensure proper alignment.

b) Amendment to Fee-Setting Bylaw:

One of the common requests that the City receives is for attendance records at City facilities. These requests are typically related to personal injury claims where, for example, Law firms are required to prove attendance or non-attendance of their clients at City recreational facilities. To-date, the City has been providing these records at no cost.

The Act allow a municipality to establish its own administrative fees for routinely available records, such as attendance records. The City has never applied a fee for processing these types of requests. To this end, an amendment is being proposed to the Fee-Setting Bylaw to establish a flat fee of \$150 per request (2020) to recover the City administrative costs relating to these requests. This fee is subject to the annual budgetary increases and would therefore be best situated within the Fee-Setting Bylaw.

### **Legal Services Review**

The City's Legal Services Division has reviewed the proposed amendments contained in this report and has no concerns.

### **SUSTAINABILITY CONSIDERATIONS**

The proposed bylaw amendments support the objectives of the City's Sustainability Charter 2.0. In particular, this work relates to the Sustainability Charter 2.0 theme of Inclusion. Specifically, the proposed bylaw amendments support the following Desired Outcome ("DO"):

- Community Pride and Engagement DO21: All residents have opportunities to be meaningfully engaged in civic issues and to contribute to community life.

### **CONCLUSION**

It is recommended that Council approve the text amendments to the *Freedom of Information By-law, 1999, No. 13662* and the *Surrey Fee-Setting By-law, 2001, No. 14577* as contained in this report.

Rob Costanzo  
General Manager, Corporate Services

Appendix "I": Proposed Amendments to *Freedom of Information By-law, 1999, No. 13662*

Appendix "II": Proposed Amendments to *Surrey Fee-Setting By-law, 2001, No. 14577*

Appendix "III": Proposed Amendments to *Freedom of Information By-law, 1999, No. 13662* shown marked in red

Proposed Amendments to  
Freedom of Information By-law, 1999, No. 13662, as amended

**Amendments to Part 3, Administration**

Delete Section 3(2) and replace it with:

“The Records and Privacy Manager is designated as the Coordinator.”

Delete Section 3(3) and replace it with:

“For the purposes of the Act, the Head and the Information and Privacy Coordinator shall act in their respective capacities for the Board of Variance, and for all Commissions and Committees of the City.”

**Amendments to Part 4, Powers of the Information and Privacy Coordinators**

In the title of Part 4, delete “Coordinators” and insert “Coordinator”.

In Section 4, insert the words “Information and Privacy” before the word “Coordinator”.

**Amendments to Part 5, Fees**

In Section 5, delete the words "the fees set out in Surrey Fee-Setting Bylaw, 2001, No. 14577" and replace them with the words "the fees set out in Schedule A".

**Amendment to Schedules**

Add Schedule A as shown on the following page:

Schedule A  
Surrey Freedom of Information By-law

**Fees – Applicants Other Than Commercial Applicants**

<u>Services Provided</u>	<u>Fee</u>
1. Locating and retrieving a record	\$7.50 per ¼ hour or the actual cost of staff time, whichever is greater (Note: the first 3 hours are free of charge)
2. Preparing a record for disclosure	\$7.50 per ¼ hour
3. Shipping copies of a record	actual cost of shipping method chosen by applicant
4. Copying format:	
Black and white electronic copy or photocopy of a record	\$0.25 per page (8.5" x 11", 8.5" x 14" or 11" x 17")
Colour electronic copy or photocopy of a record	\$1.65 per page (8.5" x 11", 8.5" x 14" or 11" x 17")
DVD/CD	\$4.00 per disk, plus per page costs as specified in (d)(i) to (iv)

**Fees – Commercial Applicants**

For each service listed above, the cost will be the actual cost of providing that service.

**Routine Release Records**

The above fees do not apply to records routinely available for release. In the case of routine release records, the applicable administrative fees apply.

All fees are subject to applicable taxes.

Proposed Amendments to  
Surrey Fee-Setting By-law, 2001, No. 14577, as amended

**Amendments to Schedule K**

Delete and replace Schedule K as follows:

Schedule K

Surrey Fee-Setting By-law

Pursuant to Section 194 of the “Community Charter” there is hereby levied a fee for administrative services provided as follows:

<u>Services Provided</u>	<u>Fee</u>
1. Copies of attendance records for City recreation facilities with the written consent of the attendee	\$150.00

All fees are subject to applicable taxes.

CITY OF SURREY

BY-LAW NO. 13662

A by-law for the administration of the Freedom of Information and  
Protection of Privacy Act.

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**As amended by: 17316; 01/10/11; 18364, 01/12/15; 19437, 12/18/17**

THIS IS A CONSOLIDATED BY-LAW PREPARED BY THE CITY OF SURREY FOR CONVENIENCE ONLY. THE CITY DOES NOT WARRANT THAT THE INFORMATION CONTAINED IN THIS CONSOLIDATION IS CURRENT. IT IS THE RESPONSIBILITY OF THE PERSON USING THIS CONSOLIDATION TO ENSURE THAT IT ACCURATELY REFLECTS CURRENT BY-LAW PROVISIONS.

WHEREAS, the Freedom of Information and Protection of Privacy Act, RSBC 1996, Chapter 165, as amended, requires that a municipality by by-law:

- (a) must designate a person or group of persons as the head of the municipality for the purposes of the Act;
- (b) may authorize any person to perform any duty or exercise any function under the Act as Head of the municipality; and
- (c) may set any fees the municipality requires to be paid for providing the services described in Section 75 of the Act.

NOW, THEREFORE, the Council of the City of Surrey, in open meeting assembled, ENACTS AS FOLLOWS:

Title

- 1. This By-law be cited for all purposes as the "Freedom of Information By-law, 1999, No. 13662."

Definitions and Interpretation

- 2. (1) The definitions contained in Part I of the Act shall apply to this By-law except where the context requires otherwise.

(2) In this By-law:

"Act" means the Freedom of Information and Protection of Privacy Act, RSBC 1996, Chapter 165, as amended.

"Commercial Applicant" means a person who makes a request for access to a record to obtain information for use in connection with a trade, business, profession or other venture for profit.

"Coordinator" means the person designated in Section 3 (2) of this By-law as the Information and Privacy Coordinator.

"Council" means the Council of the City of Surrey.

"Head" means the person designated under Section 3 (1) of this By-law as the Head.

"City" means the City of Surrey.

"Request" means a request under Section 5 of the Act.

"Records " includes book, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.

### Administration

3. (1) The City Clerk is designated as the Head for the purposes of Act and is bound to uphold the spirit and intent of the Act.

(2) ~~The Freedom of Information Analyst is designated as the Information Coordinator. The Records Manager is designated as the Privacy Coordinator. The Records and Privacy Manager is designated as the Coordinator.~~

(3) ~~For the purposes of the Act, the Head and the Coordinator shall act in their respective capacities for all Boards, Commissions and Committees of the City. For the purposes of the Act, the Head and the Information and Privacy Coordinator shall act in their respective capacities for the Board of Variance, and for all Commissions and Committees of the City.~~

### Powers of the Information and Privacy Coordinators

4. The Head may delegate any of the Head's duties under the Act to the Information and Privacy Coordinator.



Fees

5. An applicant making a request shall pay to the City ~~the fees set out in Surrey Fee-Setting Bylaw, 2001, No. 14577~~ the fees set out in Schedule A for the purposes of:
- (a) locating and retrieving a record;
  - (b) preparing a record for disclosure;
  - (c) shipping and handling a record; and
  - (d) providing a copy of a record.

Repeals

6. "Freedom of Information By-law, 1994, No. 12500" is hereby repealed.

PASSED THREE READINGS on the 22nd day of February, 1999.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 1st day of March, 1999.

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"D.W. McCALLUM" MAYOR

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"D.B. KENNY" CLERK

[https://surreybc-my.sharepoint.com/personal/seh\\_surrey\\_ca/documents/desktop/e\\_agenda/appendix ii bylaw 13662 with proposed changes.docx?clerk%3Aby-laws%2Fbylaw-library%2Fregulatory%2Freg-13662.docx](https://surreybc-my.sharepoint.com/personal/seh_surrey_ca/documents/desktop/e_agenda/appendix%20ii%20bylaw%2013662%20with%20proposed%20changes.docx?clerk%3Aby-laws%2Fbylaw-library%2Fregulatory%2Freg-13662.docx)

**Schedule A**

**Fees – Applicants Other Than Commercial Applicants**

<u>Services Provided</u>	<u>Fee</u>
1. <u>Locating and retrieving a record</u>	<u>\$7.50 per ¼ hour or the actual cost of staff time, whichever is greater (Note: the first 3 hours are free of charge)</u>
2. <u>Preparing a record for disclosure</u>	<u>\$7.50 per ¼ hour</u>
3. <u>Shipping copies of a record</u>	<u>Actual cost of shipping method chosen by applicant</u>
4. <u>Copying format:</u>	
<u>Black and white electronic copy or photocopy of a record</u>	<u>\$0.25 per page (8.5" x 11", 8.5" x 14", or 11" x 17")</u>
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