



Investigation Report 25-01

Municipal disclosure of records

February 2025

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WHO WE ARE

Established in 1993, the Office of the Information and Privacy Commissioner provides independent oversight and enforcement of BC's access and privacy laws, including:

- The *Freedom of Information and Protection of Privacy Act* (FIPPA), which applies to over 2,900 public bodies, including ministries, local governments, schools, crown corporations, hospitals, municipal police forces, and more; and
- The *Personal Information Protection Act* (PIPA), which applies to any private sector organization (including businesses, charities, non-profits, and political parties) that collects, uses, and discloses the personal information of individuals in BC. PIPA also applies to any organization operating in BC that collects, uses, or discloses personal information of any individual inside or outside of BC.

Michael Harvey is BC's Information and Privacy Commissioner.

The Office of the Information and Privacy Commissioner for BC respectfully acknowledges that its offices are located on the traditional territories of the Lekwungen people of the Songhees and Esquimalt Nations.

As an Officer of the Legislature, the work of the Commissioner spans across British Columbia, and the OIPC acknowledges the territories of First Nations around BC and is grateful to carry out our work on these lands.



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COMMISSIONER'S MESSAGE



Our democracy depends on trust between governments at all levels – federal, provincial and municipal – and the people they serve. That trust is not a matter of faith and, in these increasingly polarized times, it's far from guaranteed.

Our access to information is at the heart of transparency and accountability. By making as much of the information they hold as available as possible, public bodies empower people to better understand the decisions that impact their lives, to ask questions, to take action – in other words to fully and meaningfully participate in our democracy. It's not about an administrative checkbox – it's about committing to a culture of transparency, one that is reflected in the design of every piece of legislation, policy or program.

We launched this investigation into BC municipalities' disclosure of records in response to concerns about how municipalities were handling their access to information obligations. Our team analyzed responses from municipalities across the province to questions about their record-handling practices, including their administration of the application fees, their

proactive disclosure practices, and the records they make available for purchase.

The picture that emerged was a patchwork of inconsistent approaches to records releases.

Some differences may be inevitable given the size and resources among municipalities in BC; however, there is a lack of consistency across the province in what types of records are made available proactively without an FOI request, made available for purchase, or through regular FOI processes. That inconsistency, particularly in determining what records should be made available for purchase, may contribute to a lack of trust in municipal government transparency.

There is an opportunity here for the provincial government to clearly define what records can be made available for purchase. In the meantime, I call on municipalities to carefully consider every record they hold, and carefully consider whether records should be released proactively as a matter of routine without an access to information request, through the freedom of information process, or made available for purchase.

“Our access to information is at the heart of transparency and accountability. By making as much of the information they hold as available as possible, public bodies empower people to better understand the decisions that impact their lives, to ask questions, to take action – in other words to fully and meaningfully participate in our democracy.”

This report also includes recommendations for municipalities to ensure that if they are charging an FOI application fee, that they are doing so fairly, without adding additional barriers to the process. The report also recommends that municipalities invest in training to educate staff of their obligations under FIPPA.

Why is it important that municipalities rethink their records practices, with a focus on accessibility and transparency? We need only look out our own front doors to answer that question. Municipal records tell the stories of the communities around us, from the development and zoning decisions that shape our neighbourhoods to the evolution and application of bylaws, to infrastructure planning and environmental assessments, and countless other services that impact our lives every day. I encourage municipalities to reflect on the findings of this report to strengthen their commitment to transparency and accountability as they carry out their vital work.

Michael Harvey
*Information and Privacy Commissioner
for British Columbia*



EXECUTIVE SUMMARY

There are 160 municipal governments in BC that manage public health, local roads, parks, libraries, waste disposal, fire protection, and make decisions that impact buildings and homes. As public bodies, municipalities are subject to the *Freedom of Information and Protection of Privacy Act* (FIPPA).

Municipalities must deliver transparent and accountable service to the public, which includes providing public access to municipal records.

Over the past few years, the OIPC has become increasingly interested in and concerned about how municipalities make records available to the public. To that end, the OIPC investigated municipal records disclosure under s. 42 of FIPPA.

The OIPC sent a survey to each municipality in BC, with questions about the three main methods for disclosure:

1. freedom of information (FOI) processes;
2. proactive disclosure; and
3. records made available for purchase.

The OIPC found that, while on the surface these methods for disclosure appear separate and distinct, there is some ambiguity in the legislation and overlap in how different municipalities disclose similar records. This has led to inconsistent disclosure practices among municipalities and unequal access to similar records in each of the three methods for disclosure.

First, regarding FOI processes, municipalities vary in the volume of FOI requests each received, whether and how they administer

the application fee for an FOI request, whether they waive the fee, and the fee payment options they make available. Further, 12 municipalities reported only allowing in-person or mail-in fee payments, preventing applicants from paying the application fee by telephone or on-line (such as by credit card or by e-transfer). This limits expediency and accessibility for applicants and may create a barrier to the right of access. All public bodies, including municipalities, that administer an application fee should have multiple fee payment options available.

Second, nearly a quarter of the municipal respondents reported that they do not proactively make records available to the public without an FOI request, as per the requirements under FIPPA s. 71. Upon further inspection, the OIPC found that every municipality does proactively disclose some records, and that the lack of staff awareness in this area is detrimental to public sector transparency and accountability. Staff training and awareness regarding FIPPA's routine release requirements at the municipal level is required.

Many municipalities established categories of records for proactive disclosure that were generally well documented, descriptive, and meaningful. However, other municipalities established categories, but these categories were overly broad, not descriptive, and less meaningful (such as simply categorizing records as "routine release").

Third, the investigation found inconsistencies across municipalities about whether and which records they make available for purchase, along with the costs of the records and whether obtaining a record for purchase still requires a formal request and

staff intervention. The lack of clear criteria has led to a broad and inconsistent application of this provision across BC and further guidance or definition on s. 3(5) is needed to address this issue.

This report makes three recommendations to municipal governments to address issues with fee payment options, staff training on routine disclosure and FOI processes, and publishing meaningful categories for routine disclosure. The fourth recommendation is directed toward the provincial government to establish clear criteria that would help municipalities, and other public bodies, determine which records should be provided for purchase as opposed to for proactive disclosure or regular FOI processes, along with associated costs.

While this report and most of the recommendations are directed toward municipal governments, other public bodies across BC should review this report and implement relevant recommendations.

*A full Summary of Recommendations can be found on **page 30** of the report.*

BACKGROUND

There are 160 municipal governments across BC that are, as public bodies, subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA).¹

Over the last five fiscal years (2019/20 to 2023/24), the Office of the Information and Privacy Commissioner (OIPC) opened 1,143 access related files involving municipalities including:

- 453 access related complaints²
- 386 requests for review³
- 168 requests for time extensions
- 88 third-party reviews
- 66 deemed refusals

As a result, the OIPC has become increasingly interested in and concerned about how municipalities make records available to the public. To that end, the OIPC conducted an investigation under FIPPA s. 42(1) that looked at the types of, and costs for, records that municipalities make available to the public through the regular freedom of information (FOI) process, proactive disclosure, or where records are made available for purchase.

A summary of the OIPC's concerns with each of these disclosure methods is as follows.

First, key to the OIPC's mandate is overseeing the functioning of FOI processes, investigating and resolving disputes, commenting on the implications for access to information of proposed programs or activities of public bodies, and informing the public about FIPPA.⁴ The OIPC has examined and published reports and guidance detailing concerns and recommendations for public bodies who charge an application fee, after amendments in 2021 came into force that allowed public bodies to charge a \$10 application fee for requests for general records.⁵ OIPC guidance and recommendations have pointed to:

- Clearly and promptly informing applications about the application fee.
- Ensuring time limits to respond to a request for records are appropriately counted.
- Having multiple payment options available to ensure expediency and accessibility, including options that permit applicant anonymity.
- Establishing policy on when the public body will charge or excuse the application fee.⁶

Second, the OIPC has examined issues pertaining to proactive disclosure and made several recommendations over the past 15 years and across nine reports for government and other public bodies to

1. While there are 161 municipalities, Shíshálh Nation Government District was excluded from the survey as FIPPA does not apply to the Shíshálh nation.

2. OIPC may investigate and resolve complaints pertaining to, for example a duty imposed by FIPPA, adequacy of search, time extension, or processing fees.

3. A person who makes an FOI request to a public body may ask the Commissioner to review the public body's decision, action, or failure to act, related to the FOI request.

4. FIPPA s. 42.

5. OIPC BC, *Access application fee six-month review*. <https://www.oipc.bc.ca/documents/investigation-reports/2578>; OIPC BC, *Review of Government's performance in responding to access requests*. <https://www.oipc.bc.ca/documents/special-reports/2746>; and OIPC BC, *Vancouver Coastal Health Authority's duty to assist*. <https://www.oipc.bc.ca/documents/audit-reports/2859>.

6. OIPC BC, *FIPPA and the application fee*. <https://www.oipc.bc.ca/documents/infographics/2857>.

establish and expand categories for proactive disclosure. However, concerns still exist.⁷

OIPC recommendations for public bodies have included:

- Establish categories of records for proactive disclosure, as required under FIPPA s. 71, and to expand those categories.
- Proactively disclose calendar information, reports and audits, contracts worth over \$10,000, records included in s. 13(2) of FIPPA (i.e., public polls, surveys, appraisals, economic forecasts, environmental impacts, and so on), travel and hospitality expenses, records relating to current events.
- Inform FOI applicants without delay when records are available without a request.
- For government to provide guidance and tools to help ministries identify and establish categories of records for routine release.

Third, the OIPC has received complaints related to municipal decisions to make records, such as fire incident reports, available for purchase. In response to the complaints about records for purchase across the lower mainland, past informal queries by the OIPC on this topic found a lack of consistency across the municipalities in how these types of records were disclosed, along with associated charges for disclosure.

Over the years, amendments to FIPPA have shifted how public bodies treat records available for purchase. Historically, records

for purchase were an exception to disclosure under FIPPA. With legislative amendments in 2011, records for purchase were exempt from FIPPA altogether. The difference being that, in the first instance, FIPPA applied but records could be withheld from an FOI request whereas, in the latter, FIPPA did not apply to such records at all. Removal from FIPPA meant that certain protections, such as the requirement to safeguard against unauthorized disclosure, did not apply.

Further legislative changes in 2021 amended this issue, bringing records for purchase back into FIPPA but keeping these records exempt from Part 2. This means that FIPPA requirements for the collection, use, and disclosure of personal information still apply to the content of records for purchase, even if such records cannot be accessed through an FOI request. Presently, however, what constitutes a record available for purchase is not clearly defined. This lack of clarity leads to continued inconsistencies in how public bodies treat records for purchase and creates potential for an overly broad application.

With the various concerns, reports, and recommendations in mind, the OIPC conducted a comparable provincewide survey of all municipalities with questions targeting categories of FOI processes including the administration of the application fee, proactive disclosure, and the records municipalities make available for purchase.

7. See, for example: OIPC BC, *It's About Time: Report Card on the Timeliness of Government's Access to Information Responses April 1, 2009-March 31, 2010*. <https://www.oipc.bc.ca/documents/special-reports/1203>; OIPC BC, *Six-month Check-up: Review of the Government's Timeliness in Responding to Media and Political Parties' Requests Aug 6, 2010 to Feb 5, 2011*. <https://www.oipc.bc.ca/documents/special-reports/1201>; OIPC BC, *Evaluating the Government of BC's Open Government Initiative*. <https://www.oipc.bc.ca/documents/investigation-reports/1476>. OIPC BC, *Section 71: Categories of records available without a request*. <https://www.oipc.bc.ca/documents/investigation-reports/2291>

METHODOLOGY

On September 11, 2024, the OIPC sent an online survey link to Chief Administrative Officers or other key personnel in all 160 municipalities across BC.⁸ The survey included a range of nine to 29 questions, depending on how participants responded to questions such as “Does your municipality currently charge an application fee to someone making an FOI request?”

Survey questions focused on municipalities’ FOI processes including the administration of the FOI application fee, proactive disclosure of records, and records made available for purchase. See the Appendix for a copy of the survey questions.

The survey was initially set to close September 27, 2024. However, at the request of some municipalities and to increase response rates, the OIPC kept the survey open an additional two weeks until October 11, 2024. At survey close, all but four of the 160 municipalities responded, resulting in a response rate of 97.5%.

8. Contact information for municipality staff was obtained from CivicInfo BC’s portal website. <https://www.civicinfo.bc.ca/municipalities?id=0>.

LEGISLATION

FOI and application fees

In November 2021, the Legislative Assembly of British Columbia amended FIPPA to permit, for the first time, public bodies to charge an application fee for access to general records. FIPPA s. 75 authorizes, but does not require, a public body to charge an application fee for a request for records made under s. 5, unless the records contain the applicant's own personal information.

The *Freedom of Information and Protection of Privacy Regulation* s. 13(2) sets the application fee at \$10. As discussed in OIPC's *Access application fee six-month review*, a public body cannot vary the amount of the fee – it can either charge the \$10 application fee or not charge the fee. If a public body decides to regularly charge an application fee for general requests, it can excuse the fee at any time.⁹

Proactive disclosure

The 2011 FIPPA amendments included a requirement for public bodies to create categories of records that are proactively disclosed to the public without an FOI request.¹⁰

Creating such categories and clearly communicating their existence to the public are critical components of meeting this statutory obligation.¹¹

9. OIPC BC, *Access application fee six-month review*. <https://www.oipc.bc.ca/documents/investigation-reports/2578>.

10. FIPPA s. 71.

11. OIPC BC, *Section 71: Categories of records available without a request*. <https://www.oipc.bc.ca/documents/investigation-reports/2291>.

FIPPA s. 75

A public body may require an applicant who makes an access request under s. 5 to pay a prescribed application fee. This does not apply to a request for the applicant's own personal information.

FIPPA s. 71(1)

The head of a public body must establish categories of records that are in the custody or under the control of the public body and are available to the public without a request for access under this Act.

FIPPA s. 3(5)

Part 2 does not apply to a record that is available for purchase by the public.

As noted in the OIPC's 2020 report on s. 71, to meet the obligations of this section, public bodies must:

- consider their record holdings;
- exercise discretion in terms of the head of the public body or a delegate selecting categories of records that can be made available without an access request and are meaningful in the overall context of the statute;
- document those categories in a fixed and reliable manner; and
- put in place a process to ensure that records are available without a formal access request.¹²

Records for purchase

Amendments to FIPPA have also been made pertaining to records available for purchase.








When FIPPA first came into force in 1993, records available for purchase were treated as an exception under FIPPA s. 20(1)(a). In 2011, s. 20(1)(a) was repealed to clarify that records available for purchase were outside of the scope of FIPPA. Further, in 2021, the Act was changed again to state that records made available for purchase were not excluded from FIPPA entirely but from Part 2 only. With this, public bodies are still required to protect any personal information contained in those records and are subject to OIPC oversight.

Public bodies may make records available for purchase where legal authority allows for a fee to be charged. For municipalities, the *Community Charter* s. 194¹³ authorizes charging fees for services provided by the municipality, use of municipal property, or exercising authority to regulate, prohibit or impose requirements. Municipalities must create bylaws that establish the application of fees, the rates, the terms and conditions for payment (including discounts, interest, and penalties), and provisions for refund of a fee.

12. OIPC BC, *Section 71: Categories of records available without a request*. <https://www.oipc.bc.ca/documents/investigation-reports/2291>.

13. *Community Charter* [SBC 2003] CHAPTER 26 See also *Vancouver Charter*, [SBC 1953] CHAPTER 55, s. 199.01.

Methods for municipal disclosure of records to the public

	FOI process	Proactive Disclosure	Records for Purchase
Is an FOI request required to get the records?			
Does FIPPA apply?			  *
What records are applicable?	All records of a public body (except records for purchase)	Established categories of records	As per <i>Community Charter</i> , <i>Vancouver Charter</i> , and applicable bylaws

* FIPPA applies - except Part 2

FINDINGS & RECOMMENDATIONS

FOI and application fees
Proactive disclosure
Records for purchase



FOI AND APPLICATION FEES

Resources dedicated to FOI

Roughly one-quarter of municipalities (43 or 28%) reported employing staff whose primary responsibility is to respond to FOI requests. Most reported having one or two staff primarily responsible for FOI, and less than 10 municipalities employ more than two staff.

Conversely, nearly three-quarters of municipalities (113 or 72%) stated they do not employ staff whose primary responsibility is to respond to FOI requests. In these cases, municipal staff in other primary roles, such as the Corporate Officer, Deputy Corporate Officer, or Chief Administrative Officer are responsible for FOI on behalf of the municipality.

All municipalities are required to adequately resource their FOI function to appropriately respond to requests within legislated time limits. Municipalities that receive few FOI requests likely do not require staff solely for the purpose of responding to such requests so long as they maintain capacity to meet FOI demands.

Volume of FOI requests received

Municipalities reported receiving 5,387 general FOI requests and 2,065 personal FOI requests¹⁴ from April 1, 2023 to March 31, 2024.

The OIPC organized municipalities into three categories (large, medium, and small) relative to their estimated population size¹⁵ and analyzed the volume of FOI of requests in each category. As expected, the volume of FOI requests received based on population size varied substantially. See Table 1.

Table 1 - FOI requests received by population size

	Large (Over 100,000)	Medium (10,000 to 99,999)	Small (Less than 10,000)
Number of municipalities	12	47	97
Number of FOI requests ¹⁶	3,270	2,980	1,247
Average FOI requests per municipality	273	63	13
Range of FOI requests per municipality	66 to 831	3 to 223	0 to 185

14. FOI requests are categorized as “general” records that do not contain an applicant’s own personal information, or as “personal” records, that contain the applicant’s own personal information.

15. CivicInfo BC, General Municipal Statistics (2022). <https://www.civicinfo.bc.ca/data?surveyid=550&type=ss&stext=population+&search-submit=>

16. *General and Personal* FOI requests combined.

Reminder

Municipalities should monitor and regularly review their FOI programs to ensure they are responding to FOI requests without delay and are meeting their duty to assist.

To operate an effective FOI program, it is important for each municipality to track the volume and details of FOI requests received, along with performance metrics. This will assist municipalities monitor:

- changes in volume and the nature of requests;
- applicant assistance;
- response times; and
- resources.

Application fees

Municipalities are permitted to charge an application fee for requests for records containing general information, but not for the applicant’s own personal information. FIPPA authorizes but does not *require* that municipalities charge the application fee for FOI requests for general records.

Roughly one-quarter of municipalities (27%) reported they currently charge an application fee. Combined, from April 1, 2023 to March 31, 2024, they collected more than \$3,600 in application fees. An additional 10% of municipalities reported they intend to charge an application fee in the future, 28% were undecided or unsure, and the remaining 35% of municipalities stated they do not intend to charge the fee. See Table 2.

	No. of municipalities	% of municipalities
Currently charge	42 ¹⁷	27%
Intend to charge	15	10%
Undecided/ unsure	34	28%
Do not intend to charge	65	35%

Public bodies exercise a level of discretion in deciding whether to charge an application fee. Of the 42 municipalities that charge an application fee, 24 reported they never waive the fee, and 17 reported they may waive the fee for one or more of the following reasons:¹⁸

- it could not locate any records requested by the applicant;
- the applicant is an Indigenous Governing Entity, non-profit or community organization;
- the request pertains to a homeowner’s insurance claim;
- disclosure of the requested records is in the public interest, or pertains to environment or public health and safety issues;
- the applicant is facing financial hardship; the records are routinely releasable;¹⁹ or
- processing the request would take less than three hours.

17. The 42 municipalities that charge an application fee can be found in the Appendix.

18. One municipality did not respond as to whether they waive an application fee.

19. While this was a reason provided by municipalities to waive the application, routinely released records are released without an FOI request and, therefore, are not subject to the application fee.

OIPC [Investigation Report F23-01: Access application fee six-month review](#) recommended that public bodies charging the application fee establish a policy outlining criteria for when they may waive or refund it. The report gave special consideration to the fee’s potential disproportionate impact on groups and individuals, when the public body knows early in the process that the request should be transferred to another public body, or other circumstances where fairness warrants it.

As this was a recommendation to all public bodies, municipalities that charge an application fee and have not yet established this type of policy, should do so immediately.

Application fee payment options

The 42 municipalities that charge an application fee detailed the payment options available to applicants. See Table 3.

Reminder

Municipalities should establish a policy outlining the circumstances for when they will charge or refund the application fee.

Table 3 -Frequency of application fee payment options²⁰

	In-person	Mail	Telephone	Online
Cash	41	20	-	-
Cheque	41	40	-	-
Money Order	22	21	-	-
Credit Card	22	-	9	18
Debit	9	-	-	-
E-transfer	-	-	-	19

20. In addition to the payment options and methods listed in Table 3, one municipality also reported that applicants could provide payment via a drop box at the municipal office, however, it was unclear which types of payment (for example cash or cheque) it accepted using this method.

All municipalities reported providing at least three payment options with cash, cheque, and credit card being the most common. Encouragingly, on average, municipalities provided at least six different payment options, and some individually provided 10 or more payment options.

Two OIPC reports, Investigation Report 23-01 and Audit Report 24-02, discussed how limited payment options can result in delays and barriers for applicants making FOI requests. The OIPC recommended that “[p]ublic bodies that administer an application fee should have multiple fee payment options available to ensure expediency and accessibility for all applicants. This should include an option that permits an applicant to maintain anonymity.”

The OIPC is encouraged to see that municipalities are providing multiple payment

options. However, there were 12 municipalities that do not provide an option for applicants to pay the application fee by telephone or online (such as credit card or e-transfer). The 12 municipalities are provided in the Appendix.

Online and digital payment options are commonplace and convenient, while limiting forms of payment to those that require applicants to make their way in person to the municipality, or to a mailbox, may create barriers to the right of access.

The OIPC further recommends that public bodies that administer an application fee have multiple fee payment options available to ensure expediency and accessibility for all applicants, including the ability for applicants to pay by telephone or online.

Recommendation 1

All public bodies, including municipalities, that administer an application fee should have fee payment options that allow applicants to pay by telephone or online and provide greater expediency and accessibility for all applicants.

PROACTIVE DISCLOSURE

Understanding proactive disclosure

Proactive disclosure is a type of routine release where records are publicly disclosed outside of a formal FOI request, with the records typically made available for the public to access (for example, records available on a municipality's website).²¹

The OIPC's investigation report: *Section 71: Categories of records available without a request* states that proactive disclosure of records by public bodies is the preferred means to achieve openness and transparency. It is less costly and time-consuming for individuals and public bodies. Further, current technology enables records to be published online quickly and at minimum expense while reducing barriers to access.²²

Municipal proactive disclosure

Over 75% of municipalities (118) reported they make records available to the public without an FOI request, while the remaining 24% of municipalities (38) reported that they do not. The OIPC reviewed the official websites for each municipality that reported it did not proactively make records available to the public, and found that, in all cases, those municipalities do in fact proactively release records to the public.

It is concerning that nearly a quarter of the municipal respondents are either unaware that their municipality routinely releases records or do not understand the requirements of s. 71. The result is that municipalities may fail to proactively release records intended for disclosure without a request. In turn, this may also generate additional FOI requests from the public (along with additional application fees that should not be charged).

This inconsistency indicates there is need for greater awareness and staff training regarding FIPPA's routine release requirements at the municipal level. While municipalities vary in geographical and population size, staffing, and budgets, their responsibilities under FIPPA remain the same. Staff knowledge on whether its municipality makes records available without an FOI request is rudimentary but can have substantial impact on the public's access to records. Simply put, it is not acceptable for municipal staff to be unaware of records their municipality should be proactively releasing. Municipalities need to ensure their staff are adequately trained in this area.

21. OIPC BC, *Section 71: Categories of records available without a request*. Page 4. <https://www.oipc.bc.ca/documents/investigation-reports/2291>.

22. Ibid.

Recommendation 2

Municipalities should provide mandatory routine training to all staff on:

- FIPPA and their responsibilities under the Act;
- Municipal routine disclosure and FOI policies and processes; and
- How and where to locate records available for routine disclosure.

Categories of records

Municipalities differ in the volume²³ and types of records each make available to the public without an FOI request. Most municipalities reported routinely releasing certain types of records, such as meeting agendas and minutes, along with other records identified in s. 97 of the Community Charter (e.g., bylaws, annual reports, financial statements, etc.). Some municipalities provided other categories of records that were less common, such as traffic camera footage.

The list below contains the 20 most common categories of records municipalities reported routinely releasing.

- | | | |
|------------------------------------|--|--|
| - Agendas & Minutes | - Job Descriptions, Classifications & Postings | - News Media, Newsletter & Proclamations |
| - Reports & Studies | - Zoning & Rezoning | - Advertising & Notices |
| - Bylaws | - Tenders, RFPS, Works & Service Agreements | - Official Community Plan |
| - Permits | - Business Licenses | - Plans |
| - Policies, Training & Development | - Elections | - Design Guidelines, Development Plans & Costs |
| - Property Taxes | - Financial Statements | - Mission Statement & Strategic Plan |
| - Budgets | - GIS Database & Mapping | |

23. From only a few to dozens of records.

Several municipalities reported using a checklist provided by the Local Government Management Association (LGMA)²⁴ to document the categories of records routinely released, while others developed their own lists of categories. The LGMA checklist allows municipalities to make note of which types of records should be routinely released or, alternatively, made available with an FOI request. The LGMA checklist does not, however, detail whether the routinely released records should be available for purchase – or for free as a proactive disclosure.

Many municipalities established categories of records that were generally well-documented, descriptive, and meaningful, while other municipalities reported they had not established any categories. In other circumstances, municipalities reported establishing categories, but these categories were overly broad, not descriptive, and less meaningful (such as simply categorizing records as “routine release”).

As mentioned above, FIPPA requires that the head of a public body establish categories of records that are in the custody or under the control of the public body and are available to the public without an FOI request. This is not optional – municipalities must establish these categories.

When establishing these categories, municipalities should carefully consider their records to determine which categories of proactive disclosure best serve the public.

24. *Appendix 2e: Sample List of Typical Records Produced by a Local Gov't*. Contained in *Freedom of Information and Protection of Privacy Act - Toolkit Fifth Edition 2022*. Retrieved from: <https://www.dawsoncreek.ca/en/our-government/resources/Documents/List-of-typical-records-produced-by-a-local-government-updated-2023.pdf>.

25. British Columbia, Legislative Assembly, Hansard, Vol 26 No. 5. (October 24, 2011) at 8336.

26. OIPC BC, *Section 71: Categories of records available without a request*. <https://www.oipc.bc.ca/documents/investigation-reports/2291>. Page 8.

27. OIPC BC, *Section 71: Categories of records available without a request*. <https://www.oipc.bc.ca/documents/investigation-reports/2291>. Pages 8-9.

The OIPC's investigation of *Section 71: Categories of records available without a request* states:

FIPPA promotes public sector accountability, and the categories of records established by public bodies should align with this objective. In terms of this section in particular, the Minister responsible for FIPPA said that the amendment required public bodies to “actually look at the kinds of records they have and make a determination about which of those will be proactively disclosed.”²⁵ It is not a matter of whether records will be released, but what records will be released after a public body head makes a determination.²⁶

That investigation goes on to say that, when establishing categories for records, a public body should:

- establish the record category in a documented form;
- ensure that the category includes a series or set of related records; and
- make the records within an established category available by proactively disclosing records or setting out how the records can be obtained without an FOI request.²⁷

Municipalities are strongly encouraged to read the s. 71 report, as it sets out the process and requirements for public bodies to comply with FIPPA's routine release requirements.

Echoing previous recommendations made to public bodies, municipalities must purposely and routinely consider their records, consider the types of requests repeatedly sought through FOI requests, and establish meaningful categories for routine release. Once established, these categories should be published and easily accessible to both the public and municipality staff.

Recommendation 3

Municipalities should publish meaningful categories for routine disclosure. This means that municipalities:

- regularly consider their records and establish meaningful categories for routine disclosure;
- publish the records in an easily accessible and highly visible location to the public; and
- ensure that staff direct people to the records without delay.

RECORDS FOR PURCHASE

Municipal records for purchase

Records for purchase is another type of routine release involving the disclosure of records outside of a formal FOI request. Roughly half of the municipalities (49%, 76) reported making records available for purchase by the public. Municipalities reported using bylaws to guide decisions around the types of records that are available for purchase instead of being made available through other means, such as FOI processes, along with a checklist (developed by LGMA or on their own) of routinely available records. Examples of common bylaws municipalities rely on to determine the records for purchase and associated costs included:

- Fees and Charges Bylaw or Rates Bylaw
- FOI Bylaw
- Fire Service Bylaw
- Building Bylaw
- Street and Traffic Bylaw
- Soil Removal Bylaw
- RCMP Municipal Service Fee Bylaw
- Records and Information Management Bylaw
- Life and Safety Bylaw
- Engineering Fees and Rates Bylaw
- Climate Action Planning and Development Fees and Rates Bylaw

In detailing decisions around making a record available for purchase, one municipality noted:

We use the fees and charges bylaw and have a specific amount for each type of record, which are for records that require staff time and resources to compile and have a dedicated process. For example, a comfort letter or other building records that require [multiple] departments to respond and compile in response to the requestor.

Another municipality stated:

Records that are frequently requested or require considerable resources to compile may be sold to promote efficiency and transparency, while more sensitive or less commonly sought records remain accessible through FOI processes to ensure proper oversight and public access.

Types of records

The types of records the 76 municipalities cited most often as available for purchase included:

- Property information (33%, 51)
- Tax certificates and searches (25%, 39)
- Printed bylaws (25%, 39)
- Maps (21%, 33)
- Planning documents (20%, 31)
- Administrative or financial records (17%, 27)
- Fire inspections, incident reports, or dispatch audio recordings (14%, 22)
- Council minutes and reports (13%, 21)
- Permits (11%, 17)
- Official Community Plan (<10%, 13)
- Traffic videos, count data, or reports (<10%, 11)
- Comfort letters (<10%, 10)
- Business licences (<10%, 7)

While different municipalities cited that they make the above records available for purchase, there appeared to be confusion and a lack of consistency across municipalities between the records provided for purchase as opposed to through other disclosure mechanisms. For instance, several municipalities noted that they did not charge for records unless the applicant requested a printed copy, which is technically charging a fee for printing permitted under s. 71(2) of FIPPA instead of a specific record for purchase detailed in FIPPA s. 3(5). As another example, 14% of municipalities reported making fire inspection and incident reports available for purchase, while others release these records without a fee (sometimes subject to an FOI request).

The OIPC has always considered records available for purchase to the public as a legitimate carve-out from Part 2 of FIPPA. However, based on survey results, the OIPC is concerned some municipalities' interpretation and application of the s. 3(5) exemption to certain records like fire investigation or incident reports may broaden the exception beyond its intended scope and meaning. Such reports are often released upon written request, though, prior to releasing, municipalities often must review for and sever personal information. This approach to releasing the records appears like an FOI response process, however without legislated oversight or rules regarding timelines and fees.

In 2011 when legislative changes relating to records for purchase were debated, the Minister at the time clarified that a record for purchase is something that is available without an access request. The Minister gave the example of "a book that is published by the Crown press" as being a record available for purchase.²⁸ Past orders have also cited records for purchase as:

- standard publishing programs (i.e., Crown publications, online publications)²⁹
- articles published in a law review³⁰
- digital maps³¹
- traffic accident report³²
- property information³³
- a Vancouver Police Department incident report³⁴
- land title records about registrable interests on title³⁵

28. Debates of the Legislative Assembly (Hansard). Volume 26, Number 2. October 20, 2011. <https://www.leg.bc.ca/hansard-content/Debates/39th4th/20111020am-Hansard-v26n2.htm#8245>.

29. OIPC BC, Order No. 51-1995, September 14, 1995. <https://www.oipc.bc.ca/orders/350>.

30. OIPC BC, Order No. 235-1998, May 12, 1998. <https://www.oipc.bc.ca/orders/471>.

31. OIPC BC, Order No. 91-1996, March 11, 1996. <https://www.oipc.bc.ca/documents/orders/225>.

32. OIPC BC, Order No. 02-48, October 8, 2002. <https://www.oipc.bc.ca/orders/713>.

33. OIPC BC, Order F21-05, February 1, 2021. <https://www.oipc.bc.ca/orders/3509>.

34. OIPC BC, Order F22-30, June 8, 2022. <https://www.oipc.bc.ca/documents/orders/2526>.

35. OIPC BC, Order F23-100, November 23, 2023. <https://www.oipc.bc.ca/documents/orders/2720>.

How to obtain records for purchase

In Order F24-74, Adjudicator Fedorak talked about how the OIPC determines whether records are available for purchase:

There are no previous orders that have established a test to determine whether records are considered to be available for purchase by the public for the purposes of s. 3(5)(a).

My observation is that the common characteristics of the findings in these orders is that there were established processes in place for the public to pay for and obtain these records online immediately without employees having to search for records, collate and produce them, as they would in responding to a request under FIPPA.³⁶

However, the 76 municipalities who make records available for purchase typically indicated that someone may obtain a record for purchase by making a request in writing via email, online form, letter mail or fax; or verbally in person or by telephone. Thirteen of the municipalities noted that individuals can obtain records for purchase online, however most noted that this involved a request or application form as opposed to an individual being able to obtain a record for purchase immediately without employees having to produce the record.

Considering inconsistencies across municipalities about whether and which records to make available for purchase, along with whether obtaining a record for purchase still requires a request and staff intervention, further guidance or definition on FIPPA s. 3(5) is needed. The absence of clear criteria has led to a broad application of this provision, and to inconsistencies across the province.

Recommendation 4

Government should establish clear criteria that would help public bodies determine whether a record should fall under the s. 3(5) exclusion.

Records for purchase fees

As noted, the fees for municipal records for purchase along with the terms and conditions for payment, including the potential for refund of a fee, are set by municipal bylaw. Applicable legislation such as the Community Charter, Vancouver Charter, and FIPPA are silent as to guidance for setting fees. However, according to BC Government information on local government finance:

A fee amount must not be excessive. Instead, the amount of a fee should be sufficient to recover costs of a service and ensure its future sustainability.³⁷

36. OIPC BC, Order F24-74, August 15, 2024. <https://www.oipc.bc.ca/documents/orders/2848>. Paras 13 and 15.

37. <https://www2.gov.bc.ca/gov/content/governments/local-governments/finance/fees-charges>.

Data collected on the survey relating to the fees charged was not conducive for reliable aggregation of the average fees across municipalities by type of record for purchase. In many instances, municipalities stated that the cost to purchase a record depended on printing fees (which can be charged in any of the methods for disclosure to public) and, in other cases, municipalities provided a range of costs per category of records. Some examples of the range of and average fees charged by municipalities are included in Table 4.

Table 4 -Examples of records for purchase fees		
Category of records for purchase	Range of fees charged	Average fee charged
Building Records Search (i.e., file requests or searches, title searches, property info requests)	\$10 to \$100	\$45.94
Administrative and Finance Records (i.e., reprints of invoices or utility notices, budget documents, statements of financial information)	\$5 to \$7.50	\$5.50
Printing fees, per page (including council minutes and agendas)	\$0.25-\$0.50	\$0.34
Official Community Plan	\$5 to \$100	\$32.50
Comfort Letters (single family, building only)	\$95 to \$225	\$159.13
Fire Inspection/Incident Report	\$40 to \$260	\$121.14

Records made available for purchase are not subject to Part 2 of FIPPA and, as such, are not subject to the FIPPA regulation that sets a schedule of maximum fees.³⁸ Municipalities should follow government’s direction that fees not be excessive and amounts should be set near a cost recovery price. Further, government has stated that fee determinations be made public if requested:

To ensure transparency, local governments must make available to the public, on request, a report showing how a fee was determined.³⁹

Even though municipalities have broad authority when establishing a fee structure, the fact that the fee rates (and time limits for disclosure) are left out of the relevant legislation (FIPPA and the Community Charter) can create a barrier to access. As well, as records for purchase are excluded from FIPPA Part 2, OIPC oversight of such disclosure to public is limited. The OIPC firmly supports government’s notion that municipalities and other local governments that make records available for purchase set fees based on reasonable expectations for cost recovery.

38. https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/155_2012#section13.

39. <https://www2.gov.bc.ca/gov/content/governments/local-governments/finance/fees-charges>.

CONCLUSION

The OIPC commenced this investigation to better understand the types and costs of records municipalities make available to the public through FOI processes, proactive disclosure, or records available for purchase. While on the surface these means to access records appear separate and distinct, closer examination reveals a degree of ambiguity in the legislation and overlap in the different methods for disclosing similar records across municipalities. This has created a patchwork of inconsistent disclosure practices among municipalities and unequal access for people living in BC to similar records.

The findings of this report highlight that there is more that municipal and provincial governments can do to improve access and strengthen access to information by the public. As public institutions, a key role for municipalities is to provide transparent and accountable service.

In fact, a recent resolution put forward by the federal, provincial, and territorial Information Commissioners and Ombuds across Canada pointed to transparency as a fundamental component of the daily operations of public bodies:

Transparency should be part of public bodies/institutions' daily operations – both in capturing and recording information as well as in making it proactively available, or available on demand. This ensures that transparency is integral to their daily activities at all levels, from senior management to frontline services.⁴⁰

Whether disclosing records through FOI, proactive disclosure, or records for purchase, municipalities have an obligation to make information accessible to the public.

This report found that municipalities vary in the volume of FOI requests received and also in whether and how they administer the application

40. <https://www.oipc.bc.ca/documents/infographics/2898>.

fee, whether they waive the fee, and the fee payment options they make available. The application fee should not be a barrier to access, and with current technologies, municipalities who choose to charge the fee should provide a telephone or online payment option.

A number of municipal respondents were unaware of the municipality's obligations under FIPPA s. 71 to publish meaningful categories of records that are available to the public without an FOI request. While each municipality does proactively disclose some records, the lack of staff awareness is detrimental to public sector transparency and accountability.

Further, the investigation found inconsistencies across municipalities about whether and which records to make available for purchase, along with the costs of the records and whether obtaining a record for purchase still requires a formal request and staff intervention. The absence of clear criteria has led to a broad application of this provision, and to inconsistencies across the province. It is clear that further guidance or definition on s. 3(5) is needed.

This report makes three recommendations to municipal governments to address the issues with fee payment options, staff training on routine disclosure and FOI processes, and publishing meaningful categories for routine disclosure. The fourth recommendation is directed toward the provincial government to establish clear criteria that would help municipalities, and other public bodies, determine which records should be provided for purchase as opposed to for proactive disclosure or regular FOI processes, along with the associated costs.

RECOMMENDATIONS

Recommendation 1: All public bodies, including municipalities, that administer an application fee should have fee payment options that allow applicants to pay by telephone or online and provide greater expediency and accessibility for all applicants.

Recommendation 2: Municipalities should provide mandatory routine training to all staff on:

- FIPPA and their responsibilities under the Act;
- Municipal routine disclosure and FOI policies and processes; and
- How and where to locate records available for routine disclosure.

Recommendation 3: Municipalities should publish meaningful categories for routine disclosure. This means that municipalities:

- regularly consider their records and establish meaningful categories for routine disclosure;
- publish the categories and records in an easily accessible and highly visible location to the public; and
- ensure that staff direct people to the records without delay.

Recommendation 4: Government should establish clear criteria that would help public bodies determine whether a record should fall under the s. 3(5) exclusion.

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APPENDIX

OIPC Municipal records disclosure survey
Municipalities that reported charging an application fee
Municipalities that reported only allowing in-person or mail-in application fee payments

APPENDIX 1

OIPC Municipal Records Disclosure Survey

OIPC Investigation F24-97698

The Office of the Information and Privacy Commissioner (OIPC) is conducting an investigation under the *Freedom of Information and Protection of Privacy Act* (FIPPA) into municipal governments' disclosure of records. This investigation includes a survey of all BC municipalities. Survey questions cover FOI requests for records, records made available for purchase, records available without a request, FOI application fees, and business contact information. This information is collected under s. 42(1) of FIPPA.

This survey should take approximately 20 minutes to complete. Please try to complete the survey in one session, as your responses will not be available for review if you discontinue and complete the survey later.

Please note that the survey will time out after one hour of inactivity. If this occurs, your responses will not be saved and you will have to restart the survey.

Questions

1. Please provide the full name of your municipality.

FOI Requests

2. Does your municipality employ staff whose primary responsibility is to respond to FOI requests?
 - Yes
 - No
3. *If Yes to Question 2.* How many staff does your municipality employ to respond to FOI requests? *Please only provide a numerical response to this question.*

4. *If No to Question 2.* What position(s) or job title(s) typically respond to FOI requests on behalf of your municipality?

5. How many requests for access to **general** and **personal** records under FIPPA did your municipality receive between April 1, 2023 to March 31, 2024?

Number of requests for *general records* _____

Number of requests for *personal records* _____

Records Available for Purchase

6. Does your municipality make records available for purchase by the public?

- Yes
- No

7. *If Yes to Question 6.* How does your municipality determine that a record is available for purchase, instead of being made available through other means, such as FOI processes?

8. *If Yes to Question 6.* How can someone request and purchase a “record available for purchase” from your municipality?

9. *If Yes to Question 6.* How many categories of records does your municipality have available for purchase.

10. *If Yes to Question 6.* Please list all categories of records that your municipality has available for purchase. For each category listed, please also provide the number of records available for purchase, the fee / fee range charged, and the number of records purchased between April 1, 2023 and March 31, 2024.

Category of records available for purchase	Number of records available in this category	Fee / fee range charged to purchase	Number of records purchased between April 1, 2023 and March 31, 2024
<i>Fill in the blank</i>			

11. *If Yes to Question 6.* Do you record how many “records available for purchase” were purchased by commercial applicants, such as law firms and insurance companies?

- Yes
- No

12. *If Yes to Question 11.* How many “records available for purchase” purchased between April 1, 2023 and March 31, 2024, were from commercial applicants, such as law firms and insurance companies? *Please only provide a numerical response to this question.*

13. *If Yes to Question 6.* Does your municipality restrict who can purchase certain “records available for purchase” (for example, are fire reports only provided to home or building owners)?

- Yes
- No

14. *If Yes to Question 6.* Does your municipality ever waive the fee(s) charged for records available for purchase?

- Yes
- No

15. *If Yes to Question 14.* In what circumstances does your municipality waive the fee(s) for records available for purchase?

16. *If Yes to Question 6.* Does your municipality have a bylaw and/or policy related to records available for purchase?

- Yes
- No

17. *If Yes to Question 16.* Please name the municipal bylaw and/or policy related to records available for purchase.

Records Available Without Request (i.e., Proactive Disclosure)

18. Does your municipality make records available to the public without an FOI request (s. 71 FIPPA)?

- Yes
- No

19. *If Yes to Question 18.* How many categories of records does your municipality make available to the public without an FOI request?

20. *If Yes to Question 18.* Please list all categories of records your municipality makes available to the public without an FOI request.

Category of records
<i>Fill in the blank</i>

21. *If Yes to Question 18.* How many records within all categories were available to the public without an FOI request, between April 1, 2023 and March 31, 2024?" *Please only provide a numerical response to this question.*

Application Fees

22. Does your municipality currently charge an application fee to someone making an FOI request?

- Yes
- No

23. *If Yes to Question 22.* What date did your municipality start charging an application fee?

24. *If No to Question 22.* Does your municipality intend to charge an application fee to someone making an FOI request in the future?

- Yes
- No
- Maybe/Other (please describe) _____

25. *If Yes to Question 22.* Please list all payment methods your municipality currently accepts from applicants seeking to pay an application fee. *Select all that apply.*

- Cash in-person
- Cash by mail
- Cheque in-person
- Cheque by mail
- Money Order in-person
- Money Order by mail
- Credit card in-person
- Credit card by telephone

- Credit card by online
- E-transfer
- Other (please describe) _____

26. *If Yes to Question 22.* Does your municipality ever waive an application fee?

- Yes
- No

27. *If Yes to Question 26.* In what circumstances does your municipality waive an application fee?

28. *If Yes to Question 22.* Please provide the total dollar amount that your municipality collected in application fees from between April 1, 2023 and March 31, 2024.

Contact information

29. Please provide contact information for someone within your municipality that the OIPC may reach out to for any follow-up questions or discussion.

Name _____

Position / Title _____

Telephone _____

Email _____

APPENDIX 2

Municipalities that reported charging an application fee

City of Burnaby	District of Vanderhoof
City of Campbell River	Resort Municipality of Whistler
City of Chilliwack	Sun Peaks Mountain Resort Municipality
City of Delta	Town of Oliver
City of Duncan	Town of Osoyoos
City of Enderby	Town of Port McNeill
City of Greenwood	Town of Princeton
City of Langford	Township of Esquimalt
City of Merritt	Village of Belcarra
City of Pitt Meadows	Village of Clinton
City of Quesnel	Village of Harrison Hot Springs
City of Revelstoke	Village of Lions Bay
City of White Rock	Village of Masset
District of Hope	Village of Montrose
District of Kent	Village of Nakusp
District of Lillooet	Village of New Denver
District of Logan Lake	Village of Port Clements
District of Port Hardy	Village of Radium Hot Springs
District of Summerland	Village of Salmo

APPENDIX 3

Municipalities that reported only allowing in-person or mail-in application fee payments

City of Enderby

City of Langford

City of Pitt Meadows

District of Hope

District of Logan Lake

Town of Princeton

Township of Esquimalt

Village of Harrison Hot Springs

Village of Lions Bay

Village of Montrose

Village of Salmo

Village of Sayward



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