



THE CORPORATION OF THE CITY OF COURTENAY

## BRIEFING NOTE

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**To:** Council  
**From:** Manager of Legislative Services  
**Subject:** Changes to Privacy Legislation

**File No.:** 0580  
**Date:** February 22, 2023

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**PURPOSE:** To inform Council about recent changes to the Freedom of Information and Protection of Privacy Act (FOIPPA).

### EXECUTIVE SUMMARY:

FOIPPA regulates access to information and privacy for municipalities and other public bodies in BC. The Province made changes to FOIPPA in November 2021 without bringing the changes into force or providing detailed requirements. In December 2022, the Province notified public bodies that the changes were coming into force February 1, 2023 and provided further details. The City is now out of compliance with some aspects of FOIPPA, including the requirement to have a Privacy Management Plan (PMP). Staff will develop a PMP in 2023, that will identify the operational needs to implement the plan and the timeline anticipated to achieve full compliance.

### BACKGROUND and DISCUSSION:

The major changes to FOIPPA include the requirement to develop a PMP. S. 36.2 of the Act states that “the head of a public body must develop a privacy management program for the public body and must do so in accordance with the directions of the minister responsible for this Act”. This section was added in November 2021. The directions were provided in December 2022, and the program was required to be in force less than two months later, on February 1, 2023.

The directions provide that the PMP must include:

- The designation of a head of privacy, who is responsible for the PMP
- A process for completing and documenting PIAs
- A process for responding to privacy complaints
- A process for responding to privacy breaches
- Privacy education to ensure employees know their privacy obligations
- Privacy policies, privacy processes available to employees and the public
- Methods to inform service providers of their privacy obligations (education, contractual terms)
- A process for reviewing and updating the PMP

The requirements for PIAs were also updated. While PIAs were previously encouraged, they are now required for all new initiatives, and required before making a significant change to a previous initiative. An initiative is defined as “an enactment, system, project, program or activity”. The City has not historically conducted PIAs and the ability to do so based on the legislative requirements will be contemplated in the development of the PMP.

The PIA requirements, while designed with the laudable goal of improving citizen privacy, are aspirational and not achievable for most municipalities. Staff note that many municipalities in BC are not in compliance with both the new Privacy Management Program requirements or the more long-standing PIA expectations. Staff have added development of a PMP to the workplan for Legislative Services in 2023 and will return to Council with updates, and any recommended bylaws, policies and resources that may be required. In the development and operation of a PMP, staff will aim to balance high-priority privacy activities that protect the privacy of Courtenay residents and clients, with fiscal responsibility.

#### **FINANCIAL IMPLICATIONS:**

Any requests for additional staffing as identified through the development of the PMP will be brought forward through the 2024 budget process.

#### **ADMINISTRATIVE IMPLICATIONS:**

Privacy and information management is a core duty for Legislative Services and all staff. Activities related to FOIPPA include:

- Responding to requests for information (FOI requests) – Legislative Services
- Searching for and preparing records for FOI requests – all staff
- Responding to information incidents/privacy breaches – all staff, coordinated through Legislative Services and Information Technology
- Providing training to staff on records management, FOI and privacy – Legislative Services, all staff (no active training program, training provided on request)
- Development of privacy and information management policy – Legislative Services with program areas (requires attention)
- Coordination with service providers to inform them of their privacy obligations – Legislative Services with Purchasing (requires attention)
- Completing Privacy Impact Assessments – all staff, coordinated through Legislative Services (requires attention)

Legislative Services has a staff of three and is responsible for the following:

- Council meeting administration – agendas, minutes, presentations, meeting room preparation, correspondence, catering, procedural advice, coordination with delegations and guests
- Support for other meetings, e.g. Parcel Tax Review Panel, Public Hearings, committees and commissions
- Elections, referendums and alternative approval processes
- Access to information (FOI) requests
- Privacy management
- Records management
- Cemetery administration
- Corporate Services/Bylaw Division administrative support
- Related projects, including committee review, response to new Accessibility legislation, Council code of conduct, policy and bylaw development

The City has staff with the expertise to gain full compliance with FOIPPA but not the staff capacity. Staff are currently undertaking few records management and privacy management activities due to lack of capacity. While the City is responding to FOI requests, staff do not have the capacity to complete all requests in-house and are working with a contractor as needed.

**ASSET MANAGEMENT IMPLICATIONS:**

None

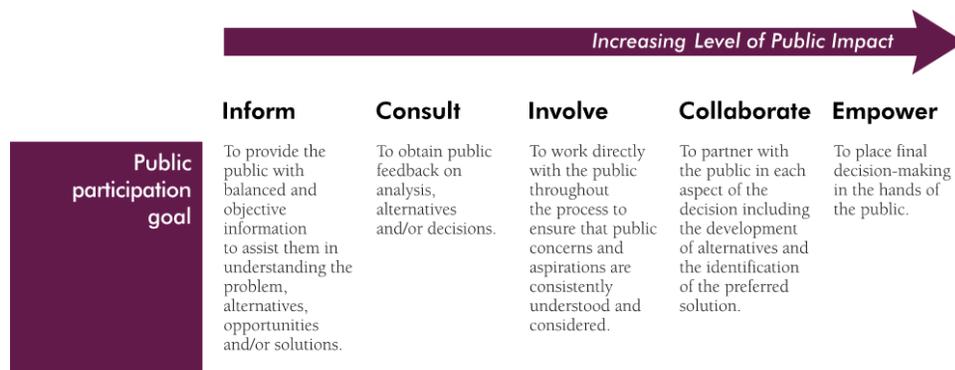
**STRATEGIC PRIORITIES REFERENCE:**

- Support and encourage initiatives to improve efficiencies
- Recognize staff capacity is a finite resource and support staff training and development
- Responsibly provide services at levels which the people we serve are willing to pay
- Support improving accessibility to all City services

- **AREA OF CONTROL:** The policy, works and programming matters that fall within Council's jurisdictional authority to act
- ▲ **AREA OF INFLUENCE:** Matters that fall within shared or agreed jurisdiction between Council and another government or party
- **AREA OF CONCERN:** Matters of interest that are outside Council's jurisdictional authority to act

**CITIZEN/PUBLIC ENGAGEMENT:**

Staff would inform the public based on the IAP2 Spectrum of Public Participation:



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