

Presented To: Audit Committee

Presented: Tuesday, Nov 17, 2015

Report Date Tuesday, Nov 03, 2015

Type: Presentations

## For Information Only

### Report on Freedom of Information Request

#### Recommendation

For Information Only

#### Signed By

**Report Prepared By**

Vasu Balakrishnan

Interim Auditor General

*Digitally Signed Nov 3, 15*

**Auditor General**

Vasu Balakrishnan

Interim Auditor General

*Digitally Signed Nov 3, 15*



# Audit of Freedom of Information requests processing

By: Vasu Balakrishnan, Interim Auditor General

To: Audit Committee

November 04, 2015.

# Background – FOI Act principles

**1.** Information to be available to Public



**2a.** Exemption from access to be limited and specific.

**2b.** Decisions on disclosure should be reviewed independently of institution controlling the information.

**3.** Individuals right of access to personal information held by institutions about themselves recognized.

# Result of FOI Appeals to IPC\*

Number of appeals against decision of CGS for information requests to IPC:

7 in 2014

6 in 2015 (*As of June 5, 2015*)

Total : 13 Appeals



CGS decision upheld &/or appeals abandoned by applicants

by

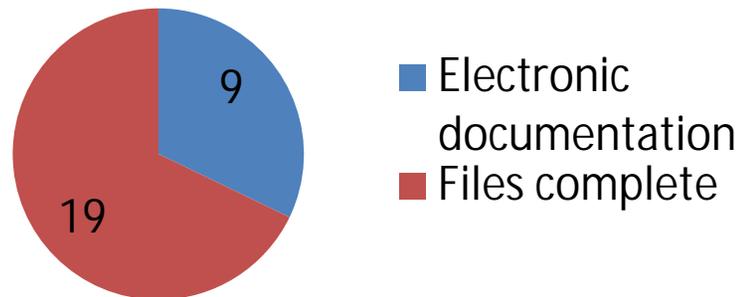
*\* Information Privacy Commissioner*

# Finding 1. Information request files

A typical information request file contains:

- Access request
- Acknowledgement of notice,
- Notice of decision and
- Proof of fees payment.

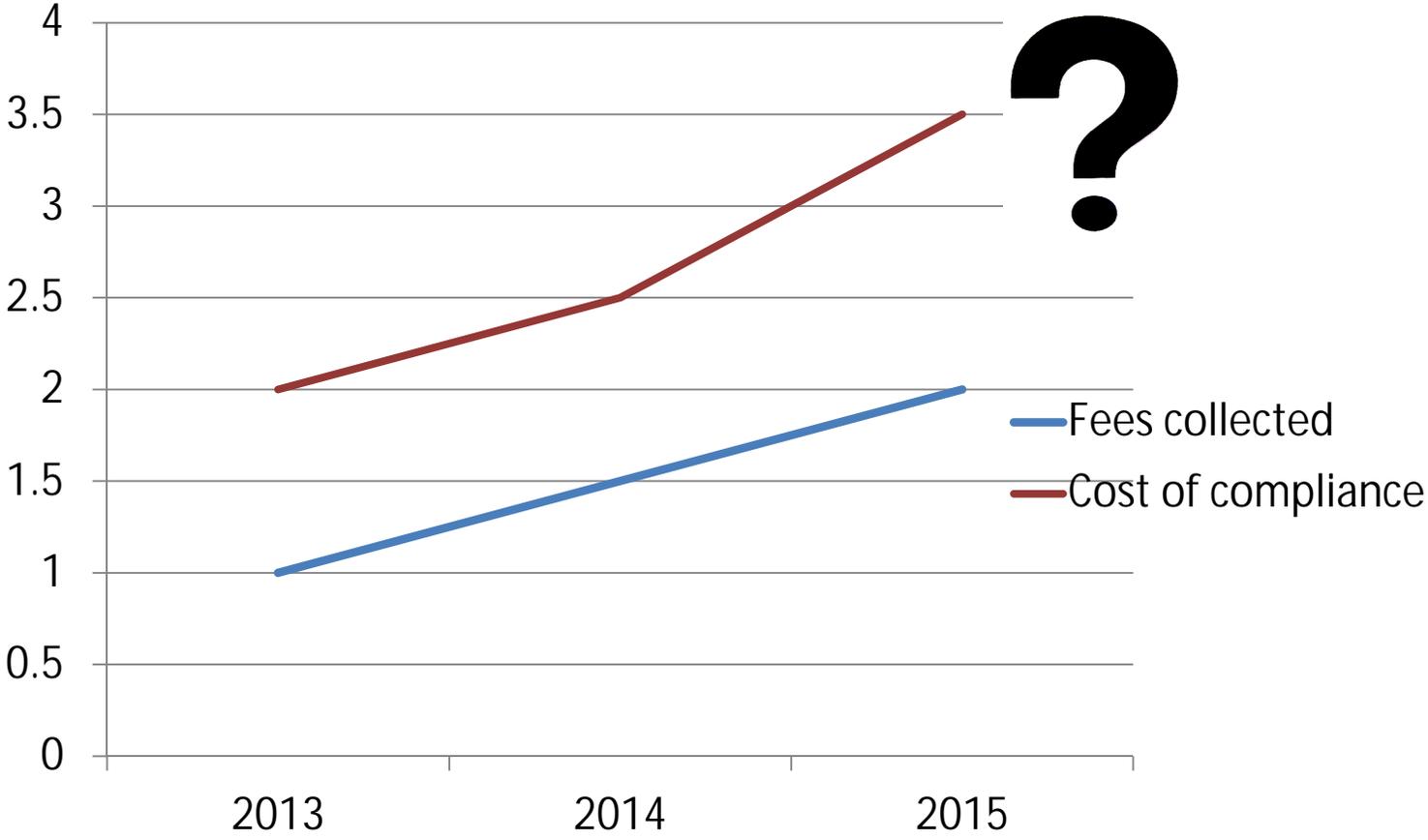
Hard copy files tested



Use checklist.

Record keeping is currently being transitioned to electronic format.

# Finding 2. Compliance cost unknown



# Finding 3. Other minor findings

1. A single instance of a tested sample of FOI request was erroneously categorized as 'redacted' and
2. An instance of failure to send a notice of interim decision when the fees for information request was likely to exceed \$ 100 was noted. This guideline provides an option to collect 50% of fees when the amount exceeds \$ 100.

# Freedom of Information requests processing

Questions?

---

# Freedom of Information

---

November 4 , 2015  
Final report

---



## **SUMMARY**

### **Objectives**

The objectives of this audit were:

- To assess if the existing system and controls to manage information requests received is adequate to mitigate the risk of non compliance for information requests received and protection of privacy and
- To identify areas, if any, for improvement based on a review of current operational practices.

### **Background**

The purpose of Municipal Freedom of Information and Protection of Privacy Act, 1990 (MFIPPA) which has been in effect since January 1st, 1991 is:

- a) To provide a right of access to information under the control of institutions in accordance with the principles that,
  - (i) Information should be available to the public,
  - (ii) Necessary exemptions from the right of access should be limited and specific, and
  - (iii) Decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
- (b) To protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information

A decision to deny access to information by a municipal government, agency, board or commission may be appealed to the Information and Privacy Commissioner/Ontario (IPC/O).

A review of the spreadsheet indicates a total of 13 appeals (7 in 2014 and 6 as of June 5<sup>th</sup>, 2015) were filed against the decision of the City with the Information Privacy Commissioner (IPC). The IPC confirmed City decision by either closing these appeals without issuing an order to comply against the City or the appeals were abandoned.

The City Clerk handles all information requests under the Freedom of Information and Protection of Privacy Act for the City of Greater Sudbury. In 2014 (an election year), the city received a total of 205 requests in comparison to the annual average of 166 received during the preceding three years, a 24% increase.

The following table is a summary of requests received and processed by CGS in 2014:

Requests received	Number of requests received	Completed during 2014	Completed within stipulated time limit of 30 days	% completed within the initial stipulated time limit of 30 days	% completed within the time limits permitted by the Act after notice of reasons to affected parties.
Personal information requests	21	20	20	100%	0%
General Requests	184	178	160	90%	10%
<b>Total</b>	<b>205*</b>	<b>198</b>	<b>180</b>	<b>91%</b>	<b>9%</b>

\* Difference of 7 requests (1+6) represents requests received late in 2014 that were either completed in early 2015 (3), abandoned (1) or appealed (3).

### Scope

The scope of the audit included information requests received, exchanges with various stakeholders and processes performed in relation to requests received during the period from January 1<sup>st</sup>, 2014, to June 5<sup>th</sup> 2015.

### Report Highlights

As indicated in the above table, the majority of requests received under the Municipal Freedom of Information and Protection of Privacy Act was promptly dealt with on a timely basis. However, the following issues were noted for improvement during the audit:

- The need to maintain a complete set of documentation and copies of all correspondence in individual files for every request received,
- The need to control information updates in the spread sheet that is used as a tracking file for annual reporting to Information and Privacy Commissioner of Ontario (IPC)
- The need to maintain costs incurred (or estimates) of compliance with the provisions of the MFIPPA.

This audit was conducted with cooperation and support from staff at all levels of Administrative and Clerk’s services.

### Interim Auditor General’s Opinion

This audit identified opportunities for improvement and cost of compliance by the City Clerk’s office in complying with Freedom of Information requests.

Vasu Balakrishnan  
Interim Auditor General

For further information regarding this report, please contact Vasu Balakrishnan at extension 4409 or via email at [vasu.balakrishnan@greatersudbury.ca](mailto:vasu.balakrishnan@greatersudbury.ca)

## **AUDIT REPORT**

### *1. Files maintenance for information requests*

CGS assigns a sequential number to every request received under the Municipal Freedom of Information and Protection of Privacy Act and maintains a physical file for every request received, where copies of all documents and correspondence exchanged are filed. Among these documents are the access requests, the acknowledgement notice, the notice of decision, the proof of fees payment and a notice of decision to the requestor outlining the City's response to the information request.

#### **Observation**

In 9 out of 28 sampled and tested requests that were received in 2014, some of the supporting documents such as proof of application fees payment, acknowledgement letter and notice of decision were not included in the file. This situation could hinder CGS ability to demonstrate compliance with the provisions of the FOI Act. Further, maintenance of a checklist of all supporting documentation would facilitate the process when responding to the IPC requests for information during appeals.

#### **Management Comment**

MFIPPA files are currently being transitioned to completely electronic, rather than paper, format for efficiency of access and ease in responding to email and telephone inquiries. At this time, most correspondence is maintained electronically by FOI file number and a paper copy can be generated quickly from the electronic copy, as required to respond to appeals.

Clerks Services agrees to introduction of checklists for complex files for ease in responding to the appeal process. Complex files are those with voluminous responsive records and/or that require application of multiple exemptions.

The Clerk's Services Department has amended process to ensure that copies of all payment receipts are filed with the corresponding request while the original receipt is retained with all other receipts issued by the department.

#### **Timing**

Implementation of checklist from January 2016

## 2. *Maintenance of the requests tracking spreadsheet*

### **Observation**

CGS maintains a spreadsheet of all the FOI requests received titled - “The tracking list” on a shared drive. This list is shared by authorized users in the City Clerk’s office and provides a current summary of all information relating to individual FOI request files. This spreadsheet forms the basis for annual reporting to the Information and Privacy Commissioner (IPC). During testing, we noted errors in 19 instances in the tracking list such as the status of the case, disposition of request, particulars about fee status and nature of exemption applied. 9 of the errors related to 2014 while the remaining 10 related to 2015. The error rate in 2015 was significantly higher at 11% as compared to 4% in 2014. Such errors in the summary spreadsheet will result in wrong statistics submitted to IPC. A system of checks and controls over this spreadsheet to verify updates by another individual could be introduced.

### **Management Comment**

The spreadsheet was introduced in 2012 as a methodology to track the voluminous and detailed information required for annual reporting to the IPC. The spreadsheet has been significantly amended twice since then to allow for better capture of data across more than 10,000 cells of information annually. In the past year there have been a number of changes in staff assigned to the FOI roles which may have contributed to the increased data entry errors in 2015. In the summer of 2015 the Deputy City Clerk initiated a weekly accuracy review.

### **Timing**

Completed.

## 3. *Fees charged*

On receipt of a FOI request, an estimate of fees payable by the requestor is made based on the provisions of the Act. This estimate of fees (referred to as schedule of fees) is attached to the notice of decision sent to the requestor for payment. This schedule of fees comprises fees for search time, record preparation time, photocopying, computer programming, and cost of diskettes/CD and prescribed in the Appendix A to the Act. The head of the institution may waive part or all of the fees depending on the circumstances and based on demonstrated financial hardship. The following is a summary of amount collected in 2014 and 2015:

<b>Item</b>	<b>2014</b>	<b>2015 (till June 5<sup>th</sup> )</b>
Number of requests received	205	94
Application fees collected	\$ 989	\$ 410
Fees collected	\$ 7,356.70	\$ 1,256.30
Value of information requests not picked up	\$ 5,627.05	\$ 1,191.50

### **Observation**

Currently no estimate of the actual costs to CGS of complying with information requests is being maintained. Tracking actual costs incurred would provide an idea of actual costs incurred and ways to reduce compliance costs.

An instance of excess charge due to a calculation error was noted for a request. The establishment of a review process within the Clerk's office would prevent these types of errors.

### **Management Comment**

FOI is a mandatory service as established in Legislation. As noted in the Audit findings, certain costs associated with the processing of each FOI request are charged back to the requestor at the rates established in the regulations under the Act and the requestor has to pay those costs prior to receiving any records responsive to the request.

There is no mechanism allowed under the legislation to recover the full costs of the FOI service and processes. Docketing of staff time associated with each step of each request would add complexity to record keeping without adding value in terms of being able to recover these costs. With limited staff, high volumes and legislated timelines, staffs always endeavour to work efficiently on these files.

The Deputy City Clerk reviews and signs every Notice of Decision letter before it is sent out. The instance mentioned above was a calculation error. The search time allocated to the file was 15 minutes which is charged at a rate of \$7.50/15 minutes and the requester was inadvertently charged \$15.00. The \$7.50 overpayment has since been refunded.

### **Timing**

No action proposed.

#### 4. Other issues

##### *a. Privacy maintenance by redaction*

Every FOI request received is analyzed to assess and determine the extent to which requested information may be provided in accordance with provisions of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). Result of the decision based on consultation with legal department for files with complex legal issues is recorded in a “Notice of Decision” and outlines the extent of access.

##### **Observation:**

The notice of decision for a case examined stated that a record was redacted under the provisions of s.14 (1). Inspection of the record indicated no evidence of redaction.

##### **Management Comment**

In this instance the Notice of Decision letter incorrectly stated that section 14(1) applied to part of the record. Upon inspection of the FOI file in question the record did not contain any personal information that was protected under the Act. A revised Notice of Decision has been issued, removing the reference to Section 14(1).

##### **Timing**

No action proposed.

##### *b. Notice of interim decision*

Whenever the estimated amount of fees for an information request is likely to exceed \$ 100, the Act provides an option to an institution of an interim decision be sent to the requestor with the fee estimate. The requestor has to pay half of this amount before processing the request.

##### **Observation**

In an instance of information request received in 2014, a notice of interim decision was not sent to the requestor where the fees were over 100 \$.

##### **Management Comment**

The IPC’s Guidelines for Government Institutions entitled Fees, Fee Estimates and Fee Waivers, states that where fees are anticipated to be over \$100, the institution **may** choose not to do all the work necessary to respond to the request, until a fee estimate has been provided and a deposit in the amount of 50% of the value has been paid.

In this instance, the fee estimate was moderately over the \$100 threshold and in the interests of better citizen service; the Notice of Decision was issued without the optional, interim step of collecting a deposit for 50% of the value of the file, before completing the work.

**Timing**

No action proposed.