

The Corporation of the District of North Cowichan

Bylaw No. 2617

A Bylaw for the Administration of The Freedom of Information
and Protection of Privacy Act

**This bylaw is consolidated under section 139 of the *Community Charter*
and is printed by authority of the corporate officer.**

Pursuant to section 139 (3) of the *Community Charter*, "a printed document purporting (a) to be a copy of a bylaw consolidated under this section, and (b) to be printed by authority of the corporate officer is proof, in the absence of evidence to the contrary, of the original bylaw, of all bylaws amending it and of the fact of adoption of the original and all amending bylaws."

| Amendment Bylaw | Effective Date |
|-----------------|----------------|
| 2877 | MAR 20, 1996 |
| 3297 | AUG 15, 2007 |
| 3470 | MAY 16, 2012 |
| 3548 | JUL 16, 2014 |

WHEREAS, under section 76.1 of the Freedom of Information and Protection of Privacy Act, a local government:

- (a) must designate a person or group of persons as the head of the municipality for the purposes of the Freedom of Information and Protection of Privacy Act; and
- (b) may authorize any person to perform any duty or exercise any function under the Freedom of Information and Protection of Privacy Act of the person or group of persons designated as the head of the municipality, and
- (c) may set any fees the local public body requires to be paid under section 75 of the Freedom of Information and Protection of Privacy Act.

NOW, THEREFORE, the Council of the Corporation of the District of North Cowichan in open meeting assembled enacts as follows:

1. This Bylaw may be cited for all purposes as the "Freedom of Information Bylaw 1994", No. 2617.

2. Definitions and Interpretations

2.1 The definitions contained in Schedule 1 of the Act shall apply to this bylaw except where the context requires otherwise.

2.2 In this bylaw:

"Act" means the *Freedom of Information and Protection of Privacy Act*, Stats B.C. 1992, c.61.

"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 as the Information and Privacy Coordinator.

"Council" means the Council of the Municipality.

"Head" means the person or group of persons designated as the Head of the municipality under section 3 of this Bylaw.

"Municipality" means the Corporation of the District of North Cowichan.

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

3. Administration

BL 3297

3.1 The Chief Administrative Officer is designated as the Head for the purposes of the *Freedom of Information and Protection of Privacy Act*.

3.2 The duties and Functions of Head which remain those of the Head are set out for reference in Appendix 1.

BL 3548

3.3 The Council hereby designates the Director of Corporate Services to be the Information and Privacy Coordinator.

4. Powers of Coordinator

The Council hereby authorizes the Coordinator to perform the following duties or exercise the following functions of the Head under the Act:

4.1 Responding to Requests

- (1) The duty to create a record from a machine readable record in the custody or under the control of the municipality using its normal computer hardware and software and technical expertise if creating the record would not unreasonably interfere with the operations of the municipality;
- (2) The power to respond to a request except where the Head has the discretion under the Act to determine whether a record shall be released or withheld from disclosure.
- (3) The power to respond to a request after the Head has made a decision regarding the disclosure or non-disclosure of a record.
- (4) The power to refuse in a response to confirm or deny the existence of:
 - (a) a record containing information described in section 15 of the Act (information harmful to law enforcement), or
 - (b) a record containing personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of that party's personal privacy.
- (5) The duty to:
 - (a) provide an applicant with a copy of a record or part of a record with a response where the record can reasonably be reproduced, or

- (b) to give reasons for the delay in providing the record.

4.2 **Extension of Time**

- (1) The power to extend the time for responding to a request for up to 30 days.
- (2) The power to apply to the Information and Privacy Commissioner for a longer time period for response to a request where:
 - (a) the applicant does not give enough detail to enable the municipality to identify a requested record,
 - (b) a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the municipality,
 - (c) more time is needed to consult with a third party or other public body before the Head can decide whether or not to give the applicant access to a requested record, or,
 - (d) a third party asks for a review under section 52(2) or 62(2) of the Act.
- (3) The power to tell the applicant the reason for an extension, when a response can be expected and that the applicant may complain about the extension under section 42(2)(b) or 60(1)(a) of the Act where the time for a response to a request has been extended under section 10(1) of the Act.

4.3 **Transfer Request**

- (1) The power to transfer a request and, if necessary, the records to another public body if:
 - (a) the record was produced by or for the other public body,
 - (b) the other public body was the first to obtain the record, or
 - (c) the record is in the custody or under the control of the other public body.
- (2) The power to notify the applicant of the transfer.

4.4 **Information to be Released Within 60 Days**

- (1) The power to refuse to disclose information that is available for purchase by the public under section 20(1)(a) of the Act.
- (2) The power to notify an applicant of the publication or release of information that the Head has refused to disclose under section 20(1)(b) of the Act on the basis that the information is to be published or released to the public, within 60 days after the applicant's request is received.

4.5 **Business Interests**

- (1) The power to refuse to disclose to an applicant information:

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
 - (b) that is supplied, implicitly or explicitly, in confidence, and
 - (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.
- (2) The duty to refuse to disclose to an applicant information that was collected on a tax return or gathered for the purpose of determining tax liability or collecting a tax.
- (3) The duty set out in paragraphs (1) and (2) is subject to section 21(3) of the Act which provides that the duty to refuse disclosure does not apply if a third party consents to the disclosure or the information is in a record that is in the custody or control of the British Columbia Archives and Records Service or the archives of a public body and that has been in existence for 50 or more years.

4.6 **Notification**

- (1) The power to notify a third party that the municipality intends to give access to a record that the Coordinator has reason to believe contains information that might be excepted from disclosure under section 21 (information harmful to business interests of a third party) or section 22 (information harmful to personal privacy) of the Act.
- (2) The power give a notice under section 23(1.2) of the Act where the Coordinator does not intend to give access to a record that contains information excepted from disclosure under section 21 (information harmful to business interests of a third party) or section 22 (information harmful to personal privacy) of the Act.
- (3) The power to give written notice of the decision whether or not to give access to a record that the Coordinator has reason to believe contains information that might be excepted from disclosure under section 21 or 22 of the Act to the applicant and a third party.

4.7 **Public Interest**

The power to disclose information in accordance with section 25 of the Act to the public, to an affected group of people or to an applicant:

- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
- (b) the disclosure of which is, for any other reason, clearly in the public interest.

4.8 **Information Protection**

- (1) The power to protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.
- (2) The duty to refuse to disclose information to an applicant if the disclosure is prohibited or restricted by or under another Act.

4.9 **Commissioner's Orders**

The power to comply with an order of the Information and Privacy Commissioner.

5. **Fees**

BL 3470

An applicant making a request shall pay to the municipality the fees prescribed as the maximum fees that may be established under the *Freedom of Information and Protection of Privacy Act* for the purpose of:

- (a) locating, retrieving and producing the record;
- (b) preparing the record for disclosure;
- (c) shipping and handling the record;
- (d) providing a copy of the record.

Received First Reading on the 7th day of December, 1994.

Received Second Reading on the 7th day of December, 1994.

Received Third Reading on the 7th day of December, 1994.

Adopted on the 21st day of December, 1994.

M. O. Ruttan, Municipal Clerk

H.R. Hollett, Mayor

APPENDIX 1

1. The duty to assist applicant [Act s. 6(1)].
2. The power to refuse to disclose to an applicant information that would reveal:
3.
 - (a) a draft of a resolution, bylaw or other legal instrument by which the local public body acts or a draft of a private bill, or
 - (b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public [Act s. 12.1].
4. The power to refuse to disclose information that would reveal advice or recommendations developed by or for a public body [Act s. 13].
5. The power to refuse to disclose information subject to solicitor/client privilege [Act s. 14].
6. The power to refuse to disclose information if the disclosure could reasonably be expected to harm a law enforcement matter or that would have any of the other results set out in section 15 of the Act.
7. The power to refuse to disclose information if the disclosure could reasonably be expected to be harmful to intergovernmental relations or negotiations in accordance with section 16 of the Act.
8. The power to refuse to disclose information which could reasonably be expected to harm the financial or economic interests of a local public body or the government of British Columbia or the ability of that government to manage the economy including the matters set out in section 17(1) of the Act.
9. The Power to refuse to disclose research information under section 17(1.1) of the Act, if the disclosure could reasonably be expected to deprive the researcher of priority of publication.
10. The power to refuse to disclose information if the disclosure could reasonably be expected to result in damage to or interfere with the conservation of any of the things referred to in section 18 of the Act (heritage sites, endangered species, etc).
11. The power to refuse to disclose information, including personal information about an applicant, where the disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health or interfere with public safety under section 19(1) of the Act.
12. The power to refuse to disclose to an applicant personal information about the applicant if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health under section 19(2) of the Act.
13. The power to refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy under section 22 of the Act.
14. The duty to make a decision and to give written notice of a decision under section 24 of the Act.
15. The duty to make available to the public manuals, instructions, or guidelines issued to the offices or employees of the public body or substantive rules or policy statements adopted by the public body in accordance with section 70 of the Act.

- 16.** The power to prescribe categories of records that are in the custody or under the control of the public body and that are available to the public on demand without request for access under the Act, to require persons who ask for a copy of an available record to pay a fee to the public body in accordance with section 71 of the Act.
- 17.** The power to excuse an applicant from paying all or part of a fee if, in the Head's opinion, the applicant cannot afford the payment or for any other reason it is fair to excuse payment where the record relates to a matter of public interest, including the environment or public health or safety [Act s. 75(5)].

SCHEDULE "A"

BL 3470 Repealed.