



Date: November 21, 2003

TO: Board Members - Parks and Recreation
FROM: Finance Committee - Parks and Recreation
SUBJECT: By-law Addition

RECOMMENDATION

To receive the attached report for information prior to consideration of the Park Board By-law for administration of the Freedom of Information and Protection of Privacy Act.

POLICY

Until recently, the Park Board has not been subject to the Freedom of Information and Protection of Privacy Act. As a matter of Policy, however, the Board has always acted as through it is subject to this legislation.

BACKGROUND

The British Columbia *Freedom of Information and Protection of Privacy Act* (the “FOI Act”) was enacted in 1994. Its purpose is to make public bodies more accountable by giving the public a right of access to records, and to protect personal privacy by regulating the way that public bodies collect, use and disclose personal information. It also establishes an independent Information and Privacy Commissioner, who reviews decisions made under the Act.

Until recently, the Vancouver Park Board was not covered by the FOI Act. As a result of its special status as an elected park board – one of only two such bodies in the province – it needed to be explicitly designated as a public body in order to fall under the scope of the Act. The drafters of the legislation omitted the Park Board and as a result, it did not fall under the scope of the Act.

Although not formally subject to the FOI Act, the Park Board has been acting in the spirit of the Act since its inception in 1994. With the assistance of staff from the City of Vancouver, the Board has responded to numerous requests from the public. While the average number of requests received per year has remained stable at 20-25, the requests have become ever more complex and the number of records requested has increased. Various proposals have been made over the years to have the Board covered by the FOI Act. The issue has never been whether the Board should be covered, but how.

In 1995, the Commissioner of Information and Privacy Act sought to add the Park Board to Schedule 2 of the Act and was rejected by the Ministry of Municipal Affairs as they felt that the Board should be more appropriately be added to the definition of “local public body”. The Park Board concurred and petitioned to the Province to recognize its autonomy and independence from the Provincial government.

The main differences between Schedule 2 public bodies and local public bodies are:

(1) Schedule 2 bodies have more of a link to the provincial government than do local public bodies. Example of Schedule 2 organizations are health professions councils and labour relation boards.

(2) Local public bodies are independent of the provincial government and have more discretion to manage the implementation of the Act. Section 76.1 (1) of the Act recognizes the distinction of an elected board accountable to the citizens of Vancouver, grants the local public body the ability to delegate authority for functions under the Act and to set fees that may differ in some ways from those set in the Act. Local public bodies are not required to respond to requests for records of local elected officials that are not in the custody or control of the local public body. They can withhold draft bylaws or the substance of deliberations in the similar way to which Cabinet material is protected. Schedule 2 public bodies do not have these options. Staff have been working with staff of the Province to include the Board in the definition of “local government body” since 2002.

In 2002, after discussion with the Ministry of Municipal Affairs and the Office of the Information and Privacy Commissioner, the Board petitioned the government to amend the FOI Act to include Vancouver Board of Parks and Recreation in the definition of “local government body” (see attached correspondence). The Province passed the requested amendment in spring of 2003.

DISCUSSION

In order to comply with the FOI Act, we are required to enact a bylaw. As a local public body, the Board is subject to Section 77 of the Act, which reads as follows:

Power to make bylaws

77. A local public body, by bylaw or other legal instrument by which the local public body acts,

(a) must designate a person or group of persons as the head of the local public body for the purposes of this Act,

(b) may authorize any person to perform any duty or exercise any function under this Act of the person or group of persons designated as the head of the local public body, and

(c) may set any fees the local public body requires to be paid under section 75.

Attached to this report is a proposed by-law that brings us into compliance with section 77 of the FOI Act.

The head of a public body is the person, or group of persons, who is empowered to make decisions

under the FOI Act, including decisions to withhold information. The proposed by-law designates the General Manager as the head of the Park Board and designates the Director of Corporate Services as the “FOI Coordinator”, who is authorized to perform any duties or exercise any function of the head. Attached to the proposed by-law is a fee schedule outlining fees to be paid by an applicant who makes a request under Section 5 of the FOI Act. These fees are set at the same rates as those prescribed by the regulations to the FOI Act and are consistent with the fees set by the City of Vancouver under its *Freedom of Information and Protection of Privacy By-law*.

SUMMARY

The *Freedom of Information and Protection of Privacy Act* helps to promote transparent and accountable governance by balancing access to information and protection of privacy. The proposed addition to the Park Board bylaws is necessary for the administration of the FOI Act. The fees are set at the same rates as those set under the Act. The proposed by-law is consistent with the City’s *Freedom of Information and Protection of Privacy By-law*. The Finance Committee at its meeting of October 24, 2003 has reviewed the FOI requirements and endorses the enactment by the Board of a bylaw for administration of the FOI Act.

Prepared by:

Corporate Services
Board of Parks and Recreation
Vancouver B.C.