



Freedom of Information and Protection of Privacy

Policy Manual

July 2011

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Chapter 1 – THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

The *Freedom of Information and Protection of Privacy Act* (the Act) represents the provincial government's legislative commitment to make British Columbia local governments more accountable to the public and to protect personal privacy. The Act has applied to local governments since November 1994.

The Act codifies the information management practices of "public bodies". In some cases, the Act dictates a new approach to the collection, use, and disclosure of information.

The Act gives individuals rights to access information held by local government and protects their privacy by placing restrictions on local governments when collecting or disclosing personal information. This means that there is a legislated set of rules governing what information can and cannot be released.

The Act does not replace other procedures for access or limited access to information – other than personal information – that is currently available to the public. Staff are expected to incorporate the concepts and procedures of the Act into their normal office service delivery.

What is "Freedom of Information"?

The Act establishes a process by which any person may request access to information contained in records held by the District of Summerland. An individual may also review information of a personal nature directly pertaining to that individual.

The general right of access to information is restricted by certain ***specified and limited exceptions***, necessary to protect a variety of needs of confidentiality, and the right of individuals to privacy.

The Act also creates a review mechanism whereby decisions relating to the disclosure or non-disclosure of information and other related issues, may be reviewed by the Information and Privacy Commissioner (a provincial appointee).

What is Protection of Privacy?

The Act protects personal privacy of individuals by restricting the collection, use and disclosure of personal information.

The District of Summerland may only collect personal information that it is expressly authorized to do so, where collection is related directly to and is necessary for an operating program, or is collected for the purposes of law enforcement. The information can be used only for the reasons it was obtained. The Act restricts multiple, inconsistent uses of information collected only once. **If personal information is not needed do not collect it.** The individual from whom the information is collected is entitled to know what the information will be used for, and under what authority.

Disclosure of personal information, even to other public bodies is strictly limited under the Act.

Personal information . . .

Means recorded information about an identifiable individual including but not limited to the following:

- 1) The individual's name, address or telephone number
- 2) The individual's race, national or ethnic origin, colour or religious or political beliefs or associations
- 3) The individual's age, sex, sexual orientation, marital status or family status
- 4) An identifying number, symbol or other particular assigned to the individual
- 5) The individual's fingerprints, blood type, or inheritable characteristic
- 6) Information about the individual's health care history, including a physical or mental disability
- 7) Information about the individual's education, financial, criminal or employment history
- 8) Anyone else's opinion about the individual (but not the identity of the opinion holder)
- 9) The individual's personal view or opinion, except if they are about someone else (you can know what was said about you but you can't necessarily know who said it)

Requests for Personal Information

The Act guarantees an individual the right to see his/her own personal information held by the District of Summerland. The Act also generally prevents persons from getting access to personal information about another individual without the individual's consent.

Requests for Correction of Personal Information

Incorrect information can have serious consequences for an individual. For example, incorrect personal information could result in the denial of benefits or government services or the refusal of employment.

Public bodies must make every reasonable effort to ensure that personal information in their custody is accurate and complete. If someone's personal information changes they may make a request to the public body to correct the information in their files. A public body must notify any individual or company to whom recorded information was disclosed within the preceding year, of the corrected personal information. This means that a careful record must be kept of individuals to whom recorded personal information is disclosed. **If the information is not needed, don't collect it.**

Applicants may request the correction of their personal information, either verbally or in writing.

What is a record?

A “record” by definition in the Act includes:

“ books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.”

This includes all memos, letters, reports, e-mails, maps, calendars. Post-it notes, annotations, doodles, etc. Any recorded information is a record, and may be subject to release. Embarrassment is not a valid reason for withholding disclosure.

The information contained in records could be produced by a public body or from other sources, such as third parties, service providers, or other public bodies.

Making a Request

Before a formal written request for a record is made it should be established that the record being searched for is not “routinely available”.

- **Routine requests** – this is information that is commonly available. A fee may be charged for this information, as set out in the Fees and Charges Bylaw or other applicable District Bylaw or policy. The request can be verbal and does not require the involvement of the FOI/POP Coordinator.
- **Information requests** – this information is generally routinely available but requires an information review of the records. This can also be a request for records that are not readily to hand, e.g. records stored in archive files. As with routine requests, applicable fees may be charged. These requests should be responded to within a time frame that is reasonable for the size of the request or the location of the records.
- **Formal requests** - are requests for records that are neither routinely available nor available through more informal procedures. Formal requests under FOI/POP must be made in writing. A form for this purpose is available, but a letter, fax, or e-mail is also acceptable. When necessary, front-line staff should assist an applicant in preparing a written request to help the applicant define their requests as specifically as possible. Formal requests are to be directed to

the FOI/POP Coordinator as soon as received, as there is a deadline for responding.

- **Duty to Assist** – Section 6(1) of the Act states “the head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.”

Note: Just because an applicant provides a request in writing, or states a wish to make a request for records pursuant to the Freedom of Information and Protection of Privacy Act, this does not make it a formal request. If the information is generally routinely provided, provide it!

Timelines

The Freedom of Information and Protection of Privacy Act requires generally that a response to the applicant be provided within thirty (30) business days of receipt of the request. Under certain specified circumstances, this deadline may be extended to up to an additional thirty (30) business days. The time limit for responding may be extended depending upon the volume of records requested or if more time is needed to consult with a third party.

Chapter 2 – ROUTINELY AVAILABLE INFORMATION

The following is a list of types of records routinely available. There may be a fee associated with providing these documents and many are available from the District's web site (www.summerland.ca). The fees are set out in Fees and Charges Bylaw available from the Administration Office.

Examples of Routinely Available Information:

Agreements

Annual Reports

Board of Variance minutes and Agendas

Brochures

Budgets

Building Plans (except interiors)

Bylaws

Corporate Policies

Council Advisory Committee and Commission Minutes and agendas from open meetings

Council agendas and minutes from Open Meetings

Issued Licenses and permits

Maps

Official Community Plans

Parcel Tax Roll Review Panel agendas and minutes

Staff reports supporting items on Council agendas (except from Closed Meetings)

Chapter 3 – FEES

Section 75 of the *Freedom of Information and Protection of Privacy Act* provides for fees to be charged for providing certain specified services. Regulation 323/93 section 7 sets maximum fees that public bodies can charge applicants for access to records through the Act. The District of Summerland has adopted this provincial fee schedule as Summerland's fees for access to information requests. The fees for FOIPOP requests are collected by the FOI Coordinator at the time of processing the information request.

The Act distinguishes between commercial and non-commercial applicants. A commercial applicant is defined as 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. Commercial applicants will pay the actual costs of providing the service.

The Act prohibits public bodies from charging applicants for access to his or her own personal information.

Summerland's Schedule of Maximum Fees includes the following fees for applicants (other than commercial applicants):

(a) for locating and retrieving a record	\$7.50 per ¼ hour after the first 3 hours
(b) for producing a record manually	\$7.50 per ¼ hour
(c) for producing a record from a machine readable record	\$16.50 per minute for cost of use of central Mainframe processor and all locally attached devices plus \$7.50 per ¼ hour for developing a computer program to produce the record
(d) for preparing a record for disclosure and handling a record	\$7.50 per ¼ hour
(e) for shipping copies	Actual costs of shipping method chosen by applicant
(f) for copying records	
Photocopies and computer printouts	\$.25 per page (legal or letter) \$.30 per page (11" x 17")
Floppy disks	\$10.00 per disk
Computer tapes	\$40.00 per taps up to 2400 feet
Microfiche	\$10.00 per microfiche
16 mm microfilm duplication	\$25.00 per roll
35 mm microfilm duplication	\$40.00 per roll
Microfilm to paper duplication	\$.50 per page
Photographs	\$5.00 to produce a negative \$12.00 for each 16" x 20" \$9.00 for each 11" x 14" \$4.00 for each 8" x 10" \$3.00 for each 5" x 7"
Plans	\$1.00 per square meter

Chapter 4 - CORPORATE POLICIES AND PROCEDURES

Standardized policies and procedures apply to records requested under the *Freedom of Information and Protection of Privacy Act* as outlined in this chapter by record type. These policies reflect provisions of the Act as well as the corporate/administrative policies of the District of Summerland. Please direct any questions regarding this information to the Corporate Officer.

Appraisals

Land appraisals commissioned or received by the District are not routinely available to the public. Requests for appraisals are to be forwarded to the FOI Coordinator for response.

Building Plans

Issued building permits are routinely available to any interested party. The application and supporting materials for the building permit are not routinely available and should ordinarily be subject to a formal FOI request. However, it is not uncommon for neighbours to be interested in developments within their neighbourhood and, within the limits of common sense; every effort should be made to provide them with information.

Where a request is made to view building plans, access should be provided to plans showing site layout and any exteriors. These plans may be viewed, but not copied as they are protected by copyright law. Copies of such plans will only be provided upon receipt of a written release from the owner or as part of an FOI request. The federal Copyright Act provides for the copying of copyright materials as part of an access request. However, copyright restrictions still apply to the use of the copied plan by the applicant, or by any other person. Any released plan must be stamped with the appropriate "Copyright Act Information" stamp.

For security reasons, the District will NOT make available those plans showing interiors of a building, unless there is express written permission from the owner.

Business Licenses

A business is not considered an individual and therefore does not have privacy rights. Most business license information is routinely available to the public. Copies of business licenses containing the following information can be viewed or copies provided upon request:

- The name of the person or company to whom the business license was issued
- The name and address of the business
- Type of business (or license description)

The business license must not disclose any additional person information supplied in support of the license application. Such personal information may include phone

number, or the applicant's home address (if different from the business address). Contacts, additional mailing addresses and remarks can only be released to the license holder. For home based businesses, the applicant's home address is considered public information because it is the location of the business.

Business license information that is routinely available may also be provided in printout form, for a fee.

Business license application information will be supplied to the Summerland Chamber of Economic Development and Tourism (SCEDT) as long as they are under contract to the District, and only when the license applicant has consented to the release of the information to SCEDT.

Cemetery Records

The District acknowledges that personal information collected by District is of value to relatives and to genealogical and historical researchers.

Copies of issued cemetery licenses, and burial permits are routinely available to the public. The following information can be routinely provided upon request:

- The name of the person to whom the license or permit was issued
- The date the license or permit was issued
- The location of the plot or grave
- The name of service provider (Funeral Home)
- The value of the license or permit

Requests for copies of cemetery licenses or permits for interments within the past twenty years that contain personal information supplied in support of the application must be forwarded to the FOI Coordinator.

For interments that occurred more than twenty years ago, all other information is considered part of the cemetery archives and may be made available in accordance with Section 35 (Disclosure for Research or Statistical Purpose) or Section 36 (Disclosure for Archival or Historical Purposes) of the *Freedom of Information and Protection of Privacy Act*. A signed research agreement may be required before access is granted.

Closed Meetings

The meetings of Council and Council Committees may be, in specific circumstances, held 'in camera' or 'closed' according to the *Community Charter*. Typically, matters relating to land, legal issues and human resources are held in closed meetings. Records relating to a closed meeting will not be released unless the matter has been discussed at length in an open meeting, or if the report or minutes have been in existence more than 15 years. (See Section 12(3) of the Freedom of Information and Protection of Privacy Act).

Comments on Planning Proposals

Notices for a planning or development proposal must be made available to the public prior to the application appearing before Council through such means as public hearings. Members of the public that object to proposals may submit their objection to the Corporate Officer before the applicable deadline.

If the planning process in question is governed by a section of the *Local Government Act* that authorizes public disclosure in relation to planning matters, staff may disclose personal information as required by the *Local Government Act*. Section 33.1 of the *Freedom of Information and Protection of Privacy Act* permits a public body to disclose personal information for the purpose of complying with an enactment of BC.

Complaints

The District receives several different types of complaints from members of the public. Many of the District's bylaw enforcement issues are a direct result of complaints lodged by individuals. Complainants are advised that their names and addresses will be kept confidential unless the release is required for legal action. This confidentiality is protected by Sections 15, 19, and 22 of the *Freedom of Information and Protection of Privacy Act*.

The person the complaint is about has the right to know the substance of the complaint, but NOT the identity of the individual who made the complaint. The requestor should be made aware that the complainant's identity will not be revealed. In the event of a bylaw complaint, the substance of a complaint may not be released until the investigation has been concluded. Requests for copies of complaints must be directed to the FOI Coordinator.

Contracts and Agreements

Generally speaking, most contracts or agreements signed by the Mayor and Corporate Officer or staff with any other party are available to the public.

Care must be taken to examine the wording and clauses of a contract to ensure that it does not reveal trade secrets, proprietary information or information which could possibly harm the business interests of a third party. Therefore, before releasing any contractual information staff must consult the FOI Coordinator.

Wherever possible, contracts awarded by the District should include a confidentiality clause stating the contract or agreement is subject to FOI and will be released upon request.

Council Records

It is the policy of the District that all 'non-confidential' Council records such as agendas for regular Council meetings, are available to the public.

- Council Meeting Agendas (Open Meetings) – Open meeting agendas and accompanying reports are posted on the District's website by 4:00 pm on the Thursday prior to the regularly scheduled meeting date.
- Council Meeting Minutes (Open Meetings) – Open meeting minutes are posted to the District's website by the end of business on the Wednesday following the adoption of the minutes, if adoption occurs at the regularly scheduled Monday meeting.
- Draft Council Meeting Minutes (Open Meetings) – Draft Council minutes are not official until they have been adopted by Council. The District will release paper copies of sections of 'draft' minutes relating to specific items on request, with those minutes to be stamped 'draft'. The requestor is to be advised that they are unofficial and subject to change by Council until adopted by Council.

Dog Licenses

Generally the public is asking for a pet owner's name, address and/or telephone number to reunite a lost pet with their owner. Staff should take the contact information for the person who has found the lost animal, and then staff contact the pet owner, giving them the information on the person who has found their pet. The pet owner is then able to contact the person who has their lost pet directly.

E-Mail

E-mail is considered a transitory type of record. It is the policy of the District that if the information contained in an e-mail message is of value and to be retained, it must be filed in the appropriate paper file with the records management system and/or filed electronically within the District's electronic records (civic or master district electronic file).

The same retention principles that apply to regular mail should apply to the disposal of e-mail. 'Junk' mail, for example, is disposed of on a regular basis. Some e-mail is more relevant to your professional activities and may be stored in an e-mail folder. Some e-mail contains significant statements about strategies or decisions, and must be saved either electronically in the relevant paper and/or electronic file.

The use of e-mail is growing at a tremendous rate. You can communicate with co-workers, with counterparts in other municipalities, with contacts in the provincial or federal governments and with the general public all via this too. It is very easy to exchange information. Therefore, it is very important that you think about what type of information you are sending, and what information you should retain.

Please note that when you are requested by the FOI Head or Coordinator to produce records in response to a request, it is expected that you will also include any e-mail records in your possession.

E-Mail – Personal

Employees may, on a limited basis, receive or send personal e-mails using the District's e-mail system. While this is not encouraged, the District acknowledges that it happens.

A 2011 court case in the City of Ottawa studied the issue of whether a municipal employee's personal e-mails which were sent and received using a workplace e-mail address but were completely unrelated to the employee's work, were subject to disclosure under the Ontario Freedom of Information and Protection of Privacy Act. This employee, in his spare time, was a volunteer for a non-profit society and stored his personal e-mails in the City's e-mail system but segregated them in a separate file folder. The Court determined that while the City had physical possession of the e-mails, there was no connection between the City and the e-mails in question and therefore these communications did not fall within the scope of the FOI POP legislation and did not have to be disclosed as part of an FOI request. The courts also noted that the employee's privacy rights could be affected by the disclosure of these e-mails to a third party.

While there is no guarantee that a similar decision would be made in BC, employees who are using a workplace e-mail for volunteer work, on their own time, should segregate such e-mails into a separate e-mail folder marked 'Personal'. Depending on the circumstances, this may protect such e-mails from disclosure under the *Freedom of Information and Protection of Privacy Act*.

Fire Incident Reports

The Fire Department is required by the *Fire Services Act* to conduct a general investigation into each fire in the District of Summerland that destroys or damages property or causes death. Requests for these reports and related records must be forwarded to the FOI Coordinator. Fire Incident Report Records may not be released until the investigation has been completed.

Requests for Fire Department reports that are prepared for and submitted to the provincial Fire Commissioner must be directed to the Office of the Fire Commissioner.

Fire Department Property Inspection Reports

Fire Department Property Inspection Reports can be routinely released to the property owner or to a third party with the written permission of the owner. If the person requesting the report does not have the owner's permission, a formal access to information request must be made.

Invoices from Lawyers

Requests for details of legal invoices must be forwarded to the FOI Coordinator. As the details may divulge the strategy or grounds in which a legal case is being based or disclose personal information, therefore must be treated as a formal FOI request. Individual or case specific invoices are considered privileged communication between the solicitor and the District and are usually withheld.

Licenses and Permits

Copies of issued building, electrical, mechanical, plumbing and any other permits or licenses providing a discretionary benefit are routinely available to the public, including the following property related information:

- The name of the person or company to whom the permit was issued
- The name and address of businesses connected with the permit, such as the name of a contractor or subcontractor
- The location that the work is being performed
- The value of construction
- Size of building and use of property

The permits should not disclose any additional personal information supplied in support of the permit application, such as:

- The phone number of the applicant
- The permit applicant's home address if it is different from the property to which the permit applies
- How long the owner has owned the property.

List of Licensed Businesses

A list of licensed businesses within the District of Summerland is considered public information. Businesses do not have privacy rights under the Act—only individuals do. The list may contain the following:

- Name and location of the company
- Names of principals or officers of the company
- Type of business and product(s) produced.

Personnel Information

Employees are entitled to view their employee file. A request in advance must be made to the Manager of Human Resources to arrange a time to review the records. Please note that as an employee you are entitled to see any comments made about you—that is your personal information—however the identity of the person making the comments may be withheld.

Information regarding a person's employment history is considered personal information and will not be disclosed to anyone but the employee unless express permission is gained first. This includes information regarding benefits paid to the employee. If a request for salary information is received, the requestor will be told of the salary range for that particular position without identifying any individual's specific salary unless express permission from the employee has been obtained first.

Verbal requests from outside agencies wanting to confirm whether a particular individual is currently employed at the District of Summerland should not be confirmed without the employee's consent.

Certain information pertaining to employment would be released upon request. This includes information about an employee's position, functions or remuneration or information about expenses incurred by a third party while travelling at the expense of the District of Summerland.

Police Investigations

Section 33.2(1) of the *Freedom of Information and Protection of Privacy Act* allows public bodies such as the District to disclose information to law enforcement bodies to assist in a specific investigation of a law enforcement matter. Staff can provide the requested information directly to the RCMP, provided that sufficient identification is supplied by the officer.

The District does not have jurisdiction over RCMP records and cannot transfer a request for RCMP records made under the BC *Freedom of Information and Protection of Privacy Act*. Requests for RCMP records must be directed to the RCMP, as they are a federal body subject to the federal *Access of Information Act* and the federal *Privacy Act*.

Property Information

Routine access to property files is granted upon request ONLY to the registered owner(s) or individuals who have obtained written permission from the registered owner(s) to access property files. All other requests to access property files must be treated as a formal FOI request.

RFP's – Requests for Proposals

All 'Requests for Proposals' should contain a statement advising that "All proposals received may be made publicly available, except information relating to unit pricing, confidential third party business information, and employment history of employees".

Recreation Registration Records

Information regarding an individual's program registration, membership and facility rentals are considered private and will only be released to the individual named on the record. In the case of minors, program registration and membership information will be released only to the custodial parent or guardian. All other requests for such information

should be forwarded to the FOI Coordinator. Written consent of the named individual must be provided to the FOI Coordinator to allow access to the information by a third party.

Site survey certificates

Site surveys are submitted to the District of Summerland as part of various application processes. Site survey Certificates are protected by copyright, but may be copied as part of an FOI request. Like building plans, copyright applies to the use of the released survey by the applicant or by any other third party. Any released copy of a survey must be stamped with the appropriate 'Copyright Act Information' stamp.

Surveys of the public

Results of surveys conducted by the District of Summerland or our agents are considered public information and should be routinely disclosed. Please note, however, that the survey forms themselves will likely contain personal information which would not be disclosed. Therefore, it is District policy not to release the completed forms routinely. An FOI request must be made if an applicant wishes to see the actual completed forms. A survey form must include an FOI POP statement informing the public why the information is being collected, under what authority, and for what purposes the personal information will be used for. This allows the individual discretion whether or not to participate and informs them what will happen with the information collected. Contact the Corporate Officer for examples of appropriate wording to be used for public surveys.

When conducting internet-based surveys, the personal information collected must reside on a server within Canada in accordance with section 30.1 of the Act.

Tenders

Tenders submitted to the District in response to a call for bids or proposals are routinely available to the public, with the exception of information regarding unit pricing. Unit pricing Information is considered proprietary information belonging to the third party. Release of that information could potentially harm the company's business interests, and is therefore withheld under section 21 of the Act. Requests for information on tenders should be referred to the FOI Coordinator.

All tender documents and advertisements for tenders shall include the following statement:

'The District of Summerland is subject to the provisions of the Freedom of Information and Protection of Privacy Act. As a result, while section 20 of the Act does offer some protection for third party business interests, the District cannot guarantee that any information provided to the District of Summerland can or will be held in confidence.'

Video Surveillance

The District of Summerland utilizes video surveillance to protect District assets, staff and the public. The images captured by surveillance cameras contain personal information and therefore shall not be subject to public viewing. Only authorized staff may view the recorded images.

In accordance with Section 33(2)(i) of the Act, the District of Summerland will disclose video surveillance records to the RCMP in response to a written request in relation to an active police investigation.

WorkSafeBC Investigations

WorkSafeBC administers the *Workers Compensation Act*, which provides WorkSafeBC investigators with the authority to request and obtain records necessary to complete an investigation without involvement of the FOI Coordinator. Staff can directly release information to the WorkSafeBC (WCB) investigator upon presentation of sufficient identification from the investigator.

Chapter 5 – FORMS, COLLECTING INFORMATION

The *Freedom of Information and Protection of Privacy Act* governs the collection, use, protection and retention of personal information. It is our duty to ensure that information collected is stored securely, is collected legitimately, is kept current and is used only for the purposes for which it is collected.

Information collected is to be used only for the purpose for which it is collected. For example, if you gather names, addresses, telephone number and opinions regarding the need for more campsites in Summerland, you cannot use that information for the purpose of marketing camping equipment.

Individuals must be advised of what the information being gathered is going to be used for, and what authority the local government had for collecting that information.

All forms must therefore contain a rider advising the applicant of the use of the information.

For example, the Request for Access to Records application form contains the rider “Personal information contained on this form is collected under the Freedom of Information and Protection of Privacy Act and will be used only for the purposes of responding to your request.”

As forms are redesigned or reprinted, they should be redesigned to provide the public with the necessary information as to their use.

Chapter 6 – PERSONAL INFORMATION DIRECTORY

The District of Summerland is required under section 69(6) of the *Freedom of Information and Protection of Privacy Act* to make available for inspection and copying by the public a Personal Information Directory. This Directory must list each personal information bank held by the municipality and list the following for each:

1. its title and location;
2. a description of the kind of personal information and the categories of individuals whose personal information is included;
3. the authority for collecting the personal information;
4. the purposes for which the personal information was obtained or compiled and the purposes for which it is used or disclosed; and
5. the categories of persons who use the personal information or to whom it is disclosed.

Contact the Corporate Officer for a list of personal information banks.