Minute No. 563
Report – Executive Policy Committee – June 11, 2014

Item No. 6 Open Government Initiative - Improvements to the Freedom of Information and Protection of Privacy Act Process

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the report submitted by the external consultants in Appendix A be received as information.

2. That the Winnipeg Public Service be directed to implement a new process regarding how the Freedom of Information and Protection of Privacy Act (FIPPA) requirements are met at City of Winnipeg based upon the consultant's report, looking to establish a partially centralized model, that would deal with the most pressing FIPPA issues facing the City and would support the work of departments in dealing with their FIPPA needs.

3. That the Winnipeg Public Service ensure that new processes implemented for FIPPA focus on the concepts of openness and transparency in providing government data, while ensuring privacy and security of data for citizens and businesses, in keeping with the Open Data Initiatives adopted by Council.

4. That the Winnipeg Public Service be directed to post the text of FIPPA requests received on the City of Winnipeg website in keeping with the concepts of Open Government / Open Data, as is currently done by the Provincial Government.

5. That staff resources dedicated to the FIPPA process be increased including the creation of two (2) additional positions dedicated to responding to FIPPA requests on behalf of the City.

6. That the 2014 City Clerk's Operating Budget be adjusted by adding $101,347 as an additional appropriation as shown in the attached financial impact statement to allow creation of the centralized unit for July 1, 2014, and that the budget adjustments for future years be included in the 2015 budget process.

7. That the Freedom of Information and Protection of By-law No. 7272/98 be amended to set the Chief Administrative Officer (CAO) as the head of the local public body for all administrative departments reporting to the CAO.

Report – Executive Policy Committee – June 11, 2014

COUNCIL DECISION (continued):

8. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – June 11, 2014

DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,
That the recommendation of the Executive Policy Committee be adopted.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 11, 2014, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

Further on June 11, 2014, the Executive Policy Committee received from David Sanders a communication dated June 11, 2014 in support of the Open Government Initiative - Improvements to the Freedom of Information and Protection of Privacy Act Process.

ADMINISTRATIVE REPORT

Title: **Open Government Initiative: Improvements to the Freedom of Information and Protection of Privacy Act Process**

Critical Path: **Executive Policy Committee – Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Lemoine	R. Kachur	M. Ruta	D. Joshi

RECOMMENDATIONS

1. That report submitted by the external consultants in Appendix A be received as information.

2. That the Public Service be directed to implement a new process regarding how the Freedom of Information and Protection of Privacy Act (FIPPA) requirements are met at City of Winnipeg based upon the consultant's report, looking to establish a partially centralized model, that would deal with the most pressing FIPPA issues facing the City and would support the work of departments in dealing with their FIPPA needs.

3. That the Public Service ensure that new processes implemented for FIPPA focus on the concepts of openness and transparency in providing government data, while ensuring privacy and security of data for citizens and businesses, in keeping with the Open Data Initiatives adopted by Council.

4. That the Public Service be directed to post the text of FIPPA requests received on the City of Winnipeg website in keeping with the concepts of Open Government / Open Data, as is currently done by the Provincial Government.

5. That staff resources dedicated to the FIPPA process be increased including the creation of two (2) additional positions dedicated to responding to FIPPA requests on behalf of the City.

6. That the 2014 City Clerk's Operating Budget be adjusted by adding $101,347 as an additional appropriation as shown in the attached financial impact statement to allow creation of the centralized unit for July 1, 2014, and that the budget adjustments for future years be included in the 2015 budget process.

7. That the Freedom of Information and Protection of By-law No. 7272/98 be amended to set the Chief Administrative Officer (CAO) as the head of the local public body for all administrative departments reporting to the CAO.

8. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

EXECUTIVE SUMMARY

It is recommended that the City of Winnipeg public service create a new policy and process with regard to handling of requests received under the Freedom of Information and Protection of Privacy Act (FIPPA) as well as all other aspects of the FIPPA legislation. This policy will mimic the language used in the Act, to ensure compliance with all requirements of the legislation.

The main focus of the changes to the FIPPA is to ensure open and transparent access to City of Winnipeg data, while maintaining privacy and security of data for citizens and businesses. This is in keeping with the Open Data Initiative adopted by Council on March 20, 2013. The Open Data Initiative is currently being developed by the public service. The new FIPPA process will dovetail with that initiative and ensure the fair and equitable release of data requested and protection of privacy.

Since its inception, the FIPPA process at the City of Winnipeg has been fully decentralized, with each department responsible all aspects of the FIPPA process. While the consultant recommends a 4 person unit and a move towards a fully centralized unit taking responsibility for all aspects of FIPPA process, it is recommended that the City create a smaller unit in the short term, and move towards a more fully centralized unit and process in the future.

The new FIPPA unit would be located in the City Clerk's Department, and would take on the role of being responsible for the overall FIPPA process. This new unit will be ideally positioned to ensure that the required consistency needed to meet the legislation is being applied to all aspects of the FIPPA process. It will eliminate the need for a true FIPPA expert in each department which currently exists, by providing that expertise centrally. It will simplify and reduce the overall workload involved in responding by being able to quickly identify duplicate requests, requests for public information and frivolous and vexatious requests and deal with these early on in the process. It will develop standard processes for creating estimates as the first step in responding to FIPPA requests and ensure chargebacks to cover the cost of responding to complex requests (FIPPA allows a chargeback of $30 per hour of search and preparation time required over and above the first 2 hours of effort per request). The new unit will work directly with departmental FIPPA coordinators to provide training and ensure responses being provided by Departments meet all internal and legislative standards. As well, the unit will coordinate and / or respond directly to the most complex and / or multi-departmental requests. The new unit will work directly with all departments including the Winnipeg Police Service. The WPS will continue to work independently on requests of an investigative nature, as is similar to other jurisdictions.

Finally it is recommended that section 1(1) of the Freedom of Information and Protection of Privacy By-law 7272/98 be amended to delete the reference to Department Head's being the head of the local body for their departments and substituting the CAO. This will further ensure consistency and efficiency in all aspects of the FIPPA process.

REASON FOR THE REPORT

To ensure the City is most effectively and efficiently meeting the rapidly increasing demands of the FIPPA process, ensuring that legislative requirements are met and that citizen access to information held by the City is ensured, while ensuring all privacy provisions are met.

Increases in the departmental staff establishments require approval by Council.

Amendments to By-laws require the approval of Council.

IMPLICATIONS OF THE RECOMMENDATIONS

Responsibility for the FIPPA process will go from a decentralized process managed by each individual department to a partially centralized process, providing expertise, education and service to each Department. This is in keeping with the model of most major Canadian cities and is in keeping with the legislative framework initially established under FIPPA.

HISTORY & DISCUSSION

The City of Winnipeg and other public bodies in Manitoba are bound by *The Freedom of Information and Protection of Privacy Act* to provide information requested through the Act. Requests received under this Act have increased dramatically over the last few years and are expected to continue to increase as can be seen by the table below, with almost 900 FIPPA requests received by the City in 2013 and a projected total of over 1,000 for 2014 based upon the City having received 278 request through the first quarter of the year.

FIPPA Requests Received by the City of Winnipeg	
Year	# of Requests
2006	234
2007	183
2008	244
2009	209
2010	360
2011	620
2012	802
2013	867
2014 (to March 31)	278

The exponential increase in requests has resulted in the City struggling to ensure legislative compliance with the Act, with the current system of administering FIPPA requests becoming a large burden on virtually all City Departments.

A survey of Departmental staff / other costs for 2012 in regards to the FIPPA function is below:

2012 Yearly Costs – FIPPA	
Department(s)	**Estimated Costs**
Audit / Assessment and Taxation / Corporate Finance / Corporate Support Services / SOAs	40,000.00
Fire Paramedic / Transit / Water & Waste	93,000.00
CAO	24,000.00
Community Services	25,000.00
Public Works	40,000.00
Legal Services	40,000.00
City Clerk's	110,000.00
Planning, Property & Development	118,000.00
Winnipeg Police Services	325,000.00
Total	**815,000.00**

The majority of these costs represent salary dollars spent by departmental representatives in responding to FIPPA requests. In almost all cases, other than the Winnipeg Police Services, FIPPA responses are responded to by employees who have been assigned this task in addition to their other regular duties, rather than by staff dedicated to the function. This results in inconsistencies in responding to FIPPA requests across the organization, puts the City at risk of not fully complying with access and privacy legislations and results in substantial efforts and costs due to inefficiencies.

The City of Winnipeg has a long history of ensuring open and accessible government. In April 1984, City Council established an Ad Hoc Committee, consisting of members of Council, to review the City's policy on access to information. The deliberations of that Ad Hoc Committee resulted in a request being made to the Province of Manitoba to enact amendments to The City of Winnipeg Act to allow the City to enact a bylaw relating to access. The Act was amended in 1990.

On September 27, 1995, Council passed the Access to Information By-law 6420/94, creating a system for citizens to formally request information from the City, when such information was not able to be obtained by simply placing a verbal request.

On August 31, 1998, the provisions of *The Freedom of Information and Protection of Privacy Act* came into effect for the City of Winnipeg, replacing the Access to Information system created by the City.

On September 9, 1998, the City passed By-law 7272/98, designating City of Winnipeg Departmental Directors as the heads of the local public body, responsible to respond to FIPPA

requests, for their particular department. This model was based upon the Province of Manitoba model, where each separate department was responsible for FIPPA requests.

In February 2012, the Manitoba Ombudsman released a report entitled *"2011 Access Practices Assessment of The City of Winnipeg"* after undertaking a review of FIPPA practices in each of the City departments. The report used a numerical rating scale and scored the City at 79% in terms of compliance with the FIPPA legislation. While this was a positive score, it does underlie that the City is struggling to comply with several mandatory sections of the legislation. The report did emphasize that staff were doing their best to comply noting,

> "FIPPA staff as well as other City staff routinely go beyond the requirements of the Act to assist applicants in obtaining the information they are seeking and regularly provide related information or referral information if actual records do not exist despite the extra time and effort this may take."

However the report also noted that problems did exist, most notably with the distributed model that the City had established. While the report noted that the system was working, it did require each department to have staff who were essentially experts in FIPPA. It also noted that for most departments, the FIPPA duties made up only 10% or less of the total responsibilities for those staff assigned. The report recommended that,

> "In our view, amalgamating FIPPA responsibilities within one location or unit at the corporate level is worth considering. A dedicated FIPPA unit could assume responsibility not only for day-to-day FIPPA matters, but also for training and resources and the development of policies. The unit could be structured to be aided and supported by Coordinators in terms of record searches and considerations related to the access decision."

Duboff, Edwards, Haight & Schachter Law Corporation, one of Manitoba's leading private sector experts on FIPPA, was engaged and produced a report, attached as Appendix A, to respond to the Manitoba Ombudsman Report and to review and make recommendations on how to improve service to the public and better ensure the City's compliance under FIPPA.

The consultant's report recognizes that the current distributed FIPPA model is inefficient and requires many separate areas of expertise spread all across the administration. While this may have worked with small levels of FIPPA requests, the rapidly increasing number of requests received currently by the City has caused other services to suffer in many departments in order to simply respond at the minimal required level to FIPPA requests.

The consultant's report provides detailed recommendations and steps for changing how the FIPPA process is undertaken at the City. It recommends following best practices from other municipalities in Canada who follow similar FIPPA legislation. The report recognizes that most major jurisdictions make use of a centralized model with a dedicated unit assigned to the FIPPA process.

Recommendations made by the consultant include establishing a centralized unit to undertake the majority of tasks involved with FIPPA, including:

a) accepting all applications for information and all dealings with applicants;
b) evaluating applications and providing initial estimates to produce the requested information;
c) work with Departmental Record Managers when necessary to help retrieve / identify data for release;
d) work with Departmental FIPPA coordinators to prepare the data for release including the severing of personal and other information
e) create and send out the responses to all applications and;
f) deal with the Ombudsman to assist in resolving any complaints that may be filed.

The consultant's report recommends that the Winnipeg Police Service continue to operate separately for all FIPPA requests that are "investigative" in nature, similar to other Canadian jurisdictions.

The table below shows the number of staff assigned by comparison jurisdictions to the FIPPA process and the number of FIPPA requests dealt with.
(note: for all 3 cities examined, Police are treated as a separate unit with their own staff responsible for FIPPA. The number of requests received by Police is noted).

Comparison Jurisdictions			
Jurisdiction	**# of Requests Received (2011)**	**Staff in Central FIPPA unit**	**# of Additional FIPPA requests received by Police**
Vancouver	410	4	1,500
Edmonton	153	4	265
Toronto	2,386	8	4,862
Province of Manitoba	2,292	5 (plus 22 Departmental FIPPA coordinators)	N/A

It is recommended that the City of Winnipeg public service create a new policy with regard to handling of requests received under the Freedom of Information and Protection of Privacy Act. This policy will mimic the language used in the Act, to ensure compliance with all requirements of the legislation.

Rather than moving towards the fully centralized model with 4 full time personnel, it is recommended that the City undertake the creation of a small unit, comprised of two FIPPA experts located in the City Clerk's Department, to take on the role of being responsible for the overall FIPPA process. This new unit will be ideally positioned to ensure that the required consistency needed to meet the legislation is being applied to

all aspects of the FIPPA process. It will eliminate the need for a true FIPPA expert in each department which currently exists, by providing that expertise centrally. It will simplify and reduce the overall workload involved in responding by being able to quickly identify duplicate requests, requests for public information and frivolous and vexatious requests and deal with these early on in the process. The new unit will work directly with department FIPPA coordinators to provide training and ensure responses being provided by Departments meet all internal and legislative standards. As well, the unit will coordinate and / or respond directly to the most complex and / or multi-departmental requests.

Since its inception, the FIPPA process at the City of Winnipeg has been fully decentralized, with each department responsible all aspects of the FIPPA process. While the consultant recommends a 4 person unit and a move towards a fully centralized unit taking responsibility for all aspects of FIPPA process, it is recommended that the City create the smaller unit in the short term to improve the overall system and work in conjunction with other initiatives such as the Open Data, and move towards a more fully centralized unit and process in the future.

The City Clerk's Department would continue to be responsible for intake of all FIPPA requests as well as creation of an improved database of responses to create better consistency and efficiency in responding to requests of the same nature. The database will also assist in ensuring that legislative timelines associated with all requests are met. The Department will also be responsible for improving both an internal and external website regarding FIPPA and other communication vehicles as well as for training of Departmental record coordinators and other staff requiring involvement with FIPPA.

FIPPA requests of an "investigative" nature related to Winnipeg Police Service will continue to be dealt with fully by the Police Service, within the centralized unit model. This is consistent with all the other Canadian cities examined. The Winnipeg Police Service Coordinator will work in consultation with the Unit to determine whether the FIPPA Request is of an "investigative" or "administrative" nature.

Appendix B contains further descriptions of duties for the FIPPA Officer / FIPPA Workers of the new centralized unit.

A change to the FIPPA process to move from a fully decentralized model to having the overall FIPPA process overseen and managed centrally will improve consistency for the public in terms of the responses, ensure more statutory compliance with the Act and ease the burden on Departments by reducing the need for FIPPA experts in each department. While there is an additional cost to establishing this model, it will reduce the overall collective effort being expended by City staff overall on the FIPPA process by making the process much more efficient and effective.

The new process and centralized model will support the Open Data Initiative adopted by Council on March 20, 2013. This process is a similar concept to other Open Government processes in place at many other local governments such as Calgary and Toronto, as well as Provincial Governments such as Ontario. The main tenet of Open

government is to make government data open and transparent to all while respecting the privacy and security of the data. As FIPPA is the formal process for requesting data from the City that is not already public, creating an efficient, effective and consistent FIPPA system controlled centrally will ensure that openness and transparency are the focus.

The Provincial Government currently provides text of FIPPA requests received through their website at http://www.gov.mb.ca/chc/fippa/disclosure.html. The City can also begin to release this data on its website. This would be consistent with providing open and transparent access to data and be consistent with the Open Data Initiative currently under development by the public service.

This new model will also allow the City to make more consistent and effective use of areas of the FIPPA legislation such as charging back for the effort of responding to requests. The Act requires that each request received be allowed 2 hours of "free time" for search and preparation, but that the City may charge $30 per hour for complex requests requiring more effort. Many departments struggle in compiling estimates for the cost of responding to requests and issuing these as part of a response, and as such in many instances no estimate is sent out for fear of being seen as unwilling to comply with requests. This is a first step envisioned in the FIPPA legislation. A centralized unit will be better positioned to ensure a consistent, fair approach to chargebacks, ensuring a fairer disposition for applicants and allowing the City to gather charge back an equitable amount for its services in this area.

The current Freedom of Information and Protection of Privacy By-law 7272/98 entrenches each department as being responsible for FIPPA requests related to records controlled by their areas. Section 1(1) of the by-law currently names each Department Head as the head of the local public body for their area. This section of the by-law should be amended to name the CAO as the head of the local public body for FIPPA for all departments reporting to him. This will further ensure consistency and efficiency in the FIPPA process by centralizing responsibility.

FINANCIAL IMPACT

Financial Impact Statement — Date: June 5, 2014

Project Name: — **First Year of Program** 2014

Freedom of Information and Protection of Privacy Act Process at the City of Winnipeg

	2014	2015	2016	2017	2018
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 101,347	$ 207,460	$ 211,572	$ 215,753	$ 219,918
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 101,347	$ 207,460	$ 211,572	$ 215,753	$ 219,918
Less: Existing Budget Amounts		-	-	-	-
Net Budget Adjustment Required	$ 101,347	$ 207,460	$ 211,572	$ 215,753	$ 219,918

Additional Comments:

1. Direct costs represents salary and benefits for 2 positions:
   1 WAPSO Level IV Officer
   1 WAPSO Level II FIPPA Worker

2. The other expenditures were estimated at 5% of 2015 Permanent salaries.

3. Assumes a hiring date of July 1, 2014, includes 2% increase in salary costs per year and estimated benefits costs at 16% of salaries.

original signed by
F. Dela Cruz
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

In preparing this report there was consultation with:

Office of the CAO

Legal Services

SUBMITTED BY

Department – City Clerk's Department
Prepared by: M. Lemoine
Date: May 30, 2014

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Appendix A – FIPPA Report

REPORT OF THE CITY OF WINNIPEG FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA) WORKING GROUP

Re: Audit Report of the Manitoba Ombudsman

Report prepared by:

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File No. 290490-1201

February 19, 2013

REPORT OF THE CITY OF WINNIPEG FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA) WORKING GROUP

Re: Audit Report of the Manitoba Ombudsman of February 2012

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1.0 INTRODUCTION AND OVERVIEW

1.1 *The Freedom of Information and Protection of Privacy Act,* CCSM c.F175 ("FIPPA")

FIPPA was proclaimed in effect for the City of Winnipeg (the "City") on August 31, 1998. FIPPA applies to all departments and agencies of the Province of Manitoba, local governments as well as school divisions, universities, community colleges, regional health authorities and hospitals.

FIPPA includes provisions dealing with access to information held by governments and other public bodies as well as the privacy of personal information held by public bodies.

The provisions of FIPPA dealing with the right to access information are based on the principle that governments and other public institutions are accountable to citizens for their policies and actions. The balance between openness and confidentiality is achieved by providing for mandatory and discretionary exceptions to the release of certain categories of records. These exceptions are defined within FIPPA and are intended to recognize that certain types of decision making and transactions must be kept in confidence. The practice of severing involves removing information that falls within a defined exception from the information to be released and provides a means of disclosing as much information as possible while maintaining necessary confidentiality.

The City is treated as one local government body under FIPPA including the Winnipeg Police Service ("WPS"). By way of contrast each department and/or branch of the executive government of the Province of Manitoba is dealt with separately and many other Canadian cities deal with their police services separately. The consequences of the City being considered as one body under FIPPA is that it is the City as a whole, rather than each department, that is responsible for the receipt of FIPPA requests and compilation and release of all responses.

All provinces within Canada have legislation similar to FIPPA. Accordingly, there are numerous other jurisdictions, including other Canadian cities, whose experience and current processes and practices are available to be reviewed and

assessed when comparing the experience of the City under FIPPA and developing best processes and practices.

1.2 Current FIPPA Processes and Practices

Applications for access to information ("FIPPA Requests") are received centrally at the City Clerk's Office. Individuals seeking to complete a FIPPA Request are required to provide the City Clerk's Office with a completed Request for Information form.

The City Clerk's Office determines the appropriate City department(s) to process and respond to the FIPPA request and forwards it to the designated FIPPA Coordinator within those department(s). Each City department has a FIPPA Coordinator.

Bylaw No. 7272/98 (passed by Council September 9, 1998) appoints the City Clerk as the Access and Privacy Coordinator for the City. The Bylaw also designates the Director of each department of the City as the "head of the local public body for the City of Winnipeg for their department" and the CAO, City Clerk, Mayor's Chief-of-Staff and City Auditor as "the head of the local public body for the City of Winnipeg for their administrative units" for the purposes of FIPPA.

Once a FIPPA Request has been forwarded to a City department the City Clerk's Office as well as the Legal Department are available for consultation and advice. However, responsibility for responding is left with each department. That is, the structure established by the Bylaw, and the practice, is that each department carries out its FIPPA responsibilities independently and each Director and/or head of administrative unit within the City is legally authorized and required to respond.

Although the practice varies between departments there is no required coordination or even communication between them and/or the City Clerk's Office prior to the release of a response.

In summary, the City does not have a centralized coordinating body responsible for the processing, research and release of information nor is there a process in place to ensure responses are compliant under FIPPA and/or reflect a consistent interpretation of the application of FIPPA across the departments.

1.3 Recent Experience With Respect to FIPPA Requests

The Working Group reviewed the volume of FIPPA Requests going back to 2006. Until approximately 2009 the volume remained relatively static: between a low of 183 (2007) to a high of 244 (2008). However, in 2010 the City received 360 FIPPA Requests, in 2011 620 and in 2012 the projected number is 840 (772 have been received as at December 1, 2012) (see chart below)

FIPPA Requests Received by the City of Winnipeg

Year	# of Requests
2006	234
2007	183
2008	244
2009	209
2010	360
2011	620
2012 (Projected)***	840

***** 772** FIPPA Requests received as of December 1, 2012

Approximately one-half (1/2) of the FIPPA Requests received by the City are directed to WPS. This pattern has remained relatively consistent.

In addition to the rapid and substantial increase in the number of FIPPA Requests since 2010 the Working Group noted that the number requiring significant expenditure of time compiling, assessing and organizing the information requested had also increased. These "complex" FIPPA Requests often require significant consultation between several departments as well as assistance from the City Clerk's Office and/or the Legal Department in interpreting and applying provisions of FIPPA to a defined body of information.

A review of FIPPA Requests made in 2011 (620) reveals that out of an average of approximately 52 per month approximately 12 qualified as "complex".

In summary, it is evident that the volume of FIPPA Requests has increased dramatically since 2010 and the number which require significant expenditure of time and resources and/or involvement by more than one department has also increased. This situation has placed a significant strain on the City Clerk's Office as well as the departmental FIPPA Coordinators. Additionally, consistency in interpretation and application of the provisions of FIPPA has suffered.

1.4 The Audit Report of the Manitoba Ombudsman

The Audit Report of the Manitoba Ombudsman of February 2012 (the "Report") contained twenty-one (21) specific recommendations broken down on a department-by-department basis. A total of nine (9) departments and/or administrative units within the City were referenced in these recommendations. However, only five (5) types of recommendations were and all of these dealt with identified shortcomings in the handling of a particular application or applications by a particular department. The Report did <u>not</u> assess the correctness of any FIPPA Request response.

(It is important to note that the Report did <u>not</u> review or reference the FIPPA activities of WPS. WPS was the subject of a separate audit report of the Manitoba Ombudsman of June 2012 which found that WPS' performance in respect of handling FIPPA requests was "extremely good". No recommendations were made for improvement.)

In addition to the specific recommendations the Report contained the following general observations and/or recommendations (excerpted):

1.4.1 **Staff –** "FIPPA staff as well as other City staff routinely go beyond the requirements of the Act to assist applicants in obtaining the information they are seeking and regularly provide related information or referral to information if actual records do not exist despite the extra time and effort this may take. This occurs in an environment where FIPPA is one of many job responsibilities and time to respond to requests competes with other priorities, where requests are increasingly complex and where the volume of requests can be high and in some departments escalating without a corresponding increase in resources." [page 7]

1.4.2 **Structure –** "The City's model prescribes multiple persons as heads. Effectively, this means that departments carry out their FIPPA responsibilities independently." [page 8]

"Some coordinators suggested that a model with a central dedicated 'go-to' FIPPA position (or positions) with full FIPPA responsibilities, has potential to be a more effective scheme or structure." [page 8]

"In our view, amalgamating FIPPA responsibilities within one location or unit at the corporate level is worth considering. A dedicated FIPPA unit could assume responsibility not only for day-to-day FIPPA matters, but also for training and resources and the development of policies. The unit could be structured to be aided and supported by coordinators in terms of records searches and considerations related to the access decision." [page 8].

1.4.3 **Training and Resources –** "Training and resources are essential components of an effective and efficient FIPPA structure. Although the City has FIPPA programs in place and there have been some ad hoc information sharing sessions for coordinators in the past introducing different levels of ongoing training and easy access to electronic information resources would more effectively support the FIPPA work done by all staff, especially FIPPA coordinators" [page 8]

1.4.4 **Website –** "Many files that were reviewed for the audit contain requests for publically available records. To reduce the number of FIPPA requests for publically available records and information some minor modifications to the City's website especially on the home page would be helpful to make it clearer and easier for the public to find out how to get information on an informal basis rather than through the formal (and more time consuming for the public and for the City) FIPPA process. Also, publically posting a FIPPA disclosure log of requests that have been completed (with outcomes or dispositions of access decisions) would be a positive act of disclosure initiative." [page 9]

2.0 FIPPA STRUCTURES IN OTHER JURISDICTIONS

The Working Group consulted with appropriate personnel at the Cities of Edmonton, Toronto and Vancouver regarding their practices and processes in dealing with the equivalent of FIPPA Requests. The Working Group also consulted with the Province of Manitoba.

2.1 City of Edmonton

Edmonton received 153 requests in 2010 (an additional 265 requests were directed to the police service).

Similar to Winnipeg the City Clerk's Office receives requests and distributes them to the appropriate department(s) for identification and collection of the information requested and production of draft responses. The information is then returned to the City Clerk's Office within a stipulated timeframe. The City Clerk's Office employs four (4) staff members dedicated solely to handling these requests. This group reviews and issues all responses.

This group also provides training to all city personnel and acts as a resource centre to all departments on an ongoing basis.

2.2 City of Toronto

Toronto received 2,386 requests in 2011 (an additional 4862 requests were directed to the police service).

Toronto has a separate Access and Privacy Unit with eight (8) staff members. The unit is responsible for receiving and distributing all requests, supporting all departments in responding to those requests, ensuring that all timelines are met and finalizing and issuing all responses.

2.3 City of Vancouver

Vancouver received 410 requests in 2011 (approximately 1500 additional requests were directed to the police service).

The City Clerk's Office employs four (4) staff members dedicated to receiving and distributing all requests, supporting all departments in responding to those requests, ensuring that all timelines are met and finalizing and issuing all responses.

This group also provides training to all city personnel and acts as a resource centre to all departments on an ongoing basis.

2.4 Province of Manitoba

The Province of Manitoba received 2,292 FIPPA Requests in 2010.

As indicated earlier, each department and/or branch within the Province of Manitoba is treated as a separate and distinct public body under FIPPA. Each has a dedicated staff member who serves as FIPPA Coordinator and whose duties include receiving and responding to all FIPPA Requests involving that department and/or branch. When a FIPPA Request requires information from more than one governmental department and/or branch the Information and Privacy Policy Secretariat becomes

involved. The Secretariat has a staff of five (5). The Secretariat has the following additional functions:

- Legislative and policy analysis relating to FIPPA and public sector best practices in information access and privacy.
- Consulting, coordinating and supporting services to departments, government agencies and local bodies related to FIPPA.
- Corporate communication regarding FIPPA, access to information and privacy protection.
- Providing "Help Desk" services to the public regarding FIPPA-related inquiries.
- Ongoing training across departments and/or branches and legal advice regarding FIPPA Request responses.

3.0 WORKING GROUP RECOMMENDATIONS

3.1 Creation of a FIPPA Unit – the Working Group recommends creation of a FIPPA unit within the City Administration (the "Unit").

3.1.1 Subject to special considerations with respect to FIPPA Requests involving WPS (see 3.3 below) the Unit would have the following responsibilities:

- Ensuring that all FIPPA Requests were processed and responded to in full compliance with FIPPA.
- Ensuring consistency across departments in all aspects of processing and responding to FIPPA requests including but not limited to the interpretation and application of FIPPA, the charging of fees as allowable under FIPPA, the content and timing of responses and establishing communication protocols across departments to ensure awareness of FIPPA Requests and responses on an ongoing basis.
- Providing ongoing training to City personnel.
- Ensuring appropriate and accurate communication of information through publications as well as on the City's website.

3.1.2 The Working Group recommends the Unit be resourced with one (1) Manager (the "FIPPA Manager"). It is further recommended that the FIPPA Manager be supported by a minimum of three (3) Officers (depending on experience the number may increase) reporting to the FIPPA Manager.

3.1.3 The Working Group recommends that the Unit be designated the first point of contact for members of the public as well as all City personnel with respect to FIPPA Requests and/or general FIPPA information.

Further, the Unit would assume responsibility for ongoing training as well as the development of resources and guidelines for both internal use and public distribution.

3.1.4 The Working Group recommends that the Unit produce a comprehensive FIPPA Manual and train FIPPA Coordinators within each department in its use.

3.1.5 The Working Group recommends that the Unit produce training modules designed to provide relatively short (half-day) training programs for a broad range of City personnel as well as those for lengthier and more intense training for department heads, senior managers and FIPPA Coordinators.

3.2 Proposed FIPPA Process

3.2.1 FIPPA Requests would continue to be received centrally at the City Clerk's Office and would be forwarded immediately to the Unit for processing. The Unit would be responsible for initial identification of the department(s) likely to be involved in responding to the FIPPA Request and forwarding it to the FIPPA Coordinator(s). The Unit would conduct an initial assessment of the type and scope of information needed to be collected pursuant to a FIPPA Request and communicate the results of this review to the appropriate FIPPA Coordinator(s). For those FIPPA Requests directed to WPS a separate and distinct process (see 3.3 below) from that set out below would follow.

3.2.2 The Unit would monitor all FIPPA Requests on an ongoing basis and maintain contact with the appropriate FIPPA Coordinator(s) to ensure all necessary searches and collection of information was being completed in a timely manner.

3.2.3 The Unit would provide advice on fees that may be charged to the Applicant and if fees are to be charged would forward the appropriate correspondence to the Applicant.

3.2.4 The Unit would assess the need for any extension of time for providing a response as allowable under FIPPA and would forward the appropriate correspondence to the Applicant.

3.2.5 The Unit would initiate and coordinate any contact with the Legal Department as necessary with respect to any FIPPA Request.

3.2.6 The FIPPA Coordinator(s) would provide the Unit with all information obtained through searches of departmental records within the scope of the identified search parameters and within the timeframe stipulated. The FIPPA Coordinator(s) in conjunction with the department heads would

also advise the Unit of any exceptions they viewed as applicable and identify portion(s) proposed to be severed.

3.2.7 The Unit would review all information provided in response to a FIPPA Request by a department for completeness. As well, the Unit would review any and all suggested exceptions to ensure the proper and consistent application of FIPPA.

3.2.8 The Unit would issue all responses to FIPPA Requests.

3.2.9 The Unit would handle all appeals of FIPPA Request responses.

3.2.10 The Unit would circulate to all FIPPA Coordinators and department heads a weekly listing of FIPPA Requests received during the preceding week as well as the initial identification of the department(s) involved. Department Coordinators and department heads would be responsible for reviewing the weekly lists and advising if their department had information falling within the scope of the FIPPA Request if not already identified.

3.2.11 Prior to the Unit releasing a FIPPA Request response a copy of the response and/or a summary of its contents where appropriate would be circulated to all FIPPA Coordinators and department heads for final comments if any as well as to ensure awareness across departments of the information being released.

3.2.12 The Unit would be responsible for proper collection and maintenance of the official file related to each FIPPA Request. Official files would contain a checklist which would be completed by the Unit during processing and responding to the FIPPA Request. Any original documentation would be returned to the department from which it was received.

3.3 Winnipeg Police Service (WPS) – FIPPA Requests involving WPS information will necessarily continue to be handled in a different manner than requests for information from other City departments. This is because of the unique confidentiality requirements of much of the information requested from WPS. For WPS FIPPA Requests of an "investigative" nature, WPS, rather than the Unit, will need to respond. This is similar to the process utilized in other cities examined. The FIPPA Unit, as described below, will continue to accept all FIPPA Requests and will be copied on and track the final result of all FIPPA Requests responded to by WPS. The detailed process for dealing with WPS FIPPA Requests is recommended as follows:

3.3.1 The WPS FIPPA Coordinator in consultation with the Unit would determine:

3.3.1.1 What, if any, other departments were likely to be involved in responding to the FIPPA Request; and

3.3.1.2 Whether the FIPPA Request was of an "investigative" or "administrative" nature.

3.3.2 FIPPA Requests of an investigative nature are those requesting access to information within the possession and control of WPS and specific to a particular incident and/or investigation. (According to WPS approximately 90% of the FIPPA Requests dealt with by WPS are of an investigative nature.)

3.3.3 FIPPA Requests of an administrative nature are those not related to a particular incident or matter, or not entirely so, but related in whole or in part to the administrative activities of WPS and/or other departments in addition to WPS.

3.3.4 FIPPA Requests to WPS of an investigative nature would continue to be processed, including issuing a response and handling any appeals, by the WPS FIPPA Coordinator. A copy of all responses and/or a summary of contents where appropriate would be forwarded to the Unit for circulation to all FIPPA Coordinators and department heads.

3.3.5 FIPPA Requests to WPS of an administrative nature would be dealt with jointly by the Unit and the WPS FIPPA Coordinator. Consultation would ensure that all such requests were handled in an appropriate and timely fashion. Responses and appeals would be subject to consultation to determine which body was more appropriate to deal with it. Responses to requests would be circulated to all FIPPA Coordinators and department heads for final comments, if any, as well as to ensure awareness across departments of the information being released.

3.3.6 The Unit would be responsible for proper collection and maintenance of the official file related to each FIPPA Request to WPS of an administrative nature and the WPS FIPPA Coordinator would be responsible for the official file related to those of an investigative nature.

3.3.7 The Unit and WPS FIPPA Coordinator would need to continue to work cooperatively in respect of all FIPPA Requests. The handling of FIPPA Requests to WPS of an investigative nature would not change substantively.

3.4 Implementation Timeline – The Working Group is hopeful that its report will be considered by the Executive Policy Committee within three (3) months of the issuance of this Report. In the event the Working Group's recommendations are approved along with the Administrative Report which will accompany this report, the Working Group anticipates the following go-forward work schedule from date of approval:

3.4.1 Select and hire an individual for the position of Manager of the FIPPA Unit within two (2) months.

3.4.2 Select and hire individuals for the three (3) Officer positions within three (3) months with the assistance of the Manager.

3.4.3 Working with the Manager prepare and conduct two types of training sessions; shorter session(s) for a broad range of City personnel and longer session(s) for FIPPA Coordinators, department heads and senior managers. These sessions would utilize a new City FIPPA Manual. It is anticipated these sessions would take place within three (3) – five (5) months.

3.4.4 The Manager and the Officers would implement the new practices and process at the earliest opportunity. Timing of this would be dependent on completion of the hiring and training processes. It is anticipated that the new process would be fully operational within approximately six (6) months.

Appendix B – Job Duties – FIPPA Officer

The FIPPA Officer, located in the Freedom of Information and Protection of Privacy Services branch will develop and implement information access programs as well as policies and procedures that improve how the City manages information. Responsibility areas will include public access to information both through the Freedom of Information and Protection of Privacy Act (FIPPA) and outside of the Act as well as protection of personal privacy concerns and compliance with legislation including FIPPA and the Personal Health Information Act. (PHIA).

- Manages the process of responding to requests for City information, including understanding the context of requests for information and assessing the City-wide implications of access decisions.

- Provides advice to senior management, Council and the public on appropriate access to information methodologies, including legislative authority and limitations pertaining to the City's collection, use and disclosure of personal information, often involving sensitive or controversial issues.

- Makes independent assessments and recommendations regarding the disclosure of City information, consulting with affected business areas and Legal Services

- Manages, motivates and trains unit staff, fostering effective teamwork, high standards of work quality and organizational performance, continuous learning and encouraging innovation in others.

- Manages investigations of privacy breaches and complaints against the City.

- Maintains dotted line relationships and works closely with FIPPA unit officers in the Winnipeg Police Services and City Clerk's.

- Represents the City when access decisions are appealed or privacy complaints are made to the Manitoba Ombudsman, coordinating the City's written representations through the appeal and mediation processes with appropriate representation from other City officials, e.g., the City Solicitor.

- Provides operational input and develops training curriculum, and partners on the delivery of training and compliance materials to Departmental records staff.

- Develops effective information access processes, policies and procedures, including collaborating in the identification, development, and communication of information policy priorities, e.g., supporting the development of divisional information management liaison roles and proactive disclosure initiatives.

- Promotes open government objectives through planning and development of new and innovative approaches to public access and personal privacy in the context of FIPPA and PHIA compliance and protection of City interest.

- Supports evaluation of privacy impacts and legislative requirements on existing and proposed operating programs and initiatives that collect, use or disclose personal and proprietary information.

Appendix B – Job Duties – FIPPA Worker

Reporting to the FIPPA Officer, the FIPPA Workers, located in the Freedom of Information and Protection of Privacy Services branch, will process and respond to Freedom of Information and Protection of Privacy (FIPPA) requests received by the City and assist City Departments in developing procedures for managing records to ensure they are easily accessible and available to the public and City administrators when required.

- Manages the process of accepting requests for City information and populates the database to ensure proper tracking.

- Assesses requests to determine appropriate strategy for requests including identifying whether request is for records already publically available, requests for which information has been previously released and requests which require estimates.

- Communicates requests to departmental staff and works with them, if required, to ensure departments are aware of sensitive requests and that discovery of records related to the request takes place once estimates are paid for.

- Helps to develop estimates, using standard methodologies, as part of the response for information requested through FIPPA requests to applicants

- Assists applicants in completing FIPPA requests, providing information about records controlled by the City and information available through other sources than FIPPA Requests such as the City of Winnipeg website

- Ensures that time lines and all other statutory requirements of FIPPA and all other relevant legislation are followed and met.

- Coordinates multi-departmental requests, ensuring that relevant departmental staff and departments heads are aware of information being requested and provided

- Assists Departments in developing responses to FIPPA requests, ensuring that appropriate exemptions are applied consistently, ensuring fair and balanced access to City records to all citizens

- Reviews all responses being provided by the City to FIPPA requests to ensure all internal and legislative requirements are being met and providing feedback to departmental FIPPA coordinators.

- Develops responses to complex and / or multi-Departmental FIPPA requests as required / appropriate based on the records provided by departments, ensuring that appropriate exemptions are applied consistently, ensuring fair and balanced access to City records to all citizens

- Providing briefing notes and other information regarding access and records requests to the manager, senior staff and communications staff as appropriate

- Works with Departmental records staff and the City Records Manager providing training and guidance in terms of the access process as well as assistance in managing departmental records so that they can meet standards of open government and the City's Records Management By-law.