

This information was released to the public on  
March 24, 2025.

**SPECIAL CLOSED COUNCIL MEETING**  
**FRIDAY, MARCH 21, 2025**

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**Disclosure of Memo Entitled “Council Members’ Access to Records & Information”**

That Council:

Direct staff to disclose to the public the City Manager’s confidential memo to Mayor and Council dated March 20, 2025, including the attached legal opinion entitled “Council Members – Access to Municipal Information”, by Don Lidstone, K.C. to the City Manager dated March 20, 2025; and

Direct staff to publicly disclose the resolution above.

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**TO: Mayor & Council**

**FROM: City Manager**

**DATE: March 20, 2025**

**FILE: 2400-01**

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**RE: Council Members' Access to Records & Information**

Please find attached a legal opinion from Lidstone & Company, dated March 20, 2025, regarding Council Members' access to records and other information held by the City of Surrey. This opinion addresses important considerations under the Freedom of Information and Protection of Privacy Act (FIPPA), the Community Charter, and the City's Code of Conduct Bylaw, as well as relevant decisions from the Office of the Information and Privacy Commissioner (OIPC).

### Key Points from the Legal Opinion

1. Access by Individual Council Members:
  - Individual council members do not have automatic, unfettered access to all City documents, particularly those that are privileged, confidential, or otherwise protected.
  - A council member's right to access City records, in those circumstances, is subject to the same processes and legal constraints as any member of the public.
2. Requests via FIPPA:
  - If a council member seeks records outside of a formal Council request, the Privacy Head (City Clerk) must apply the same filters and exemptions under FIPPA that would apply to any member of the public.
  - This ensures third-party privacy and confidentiality interests are protected, and helps the City avoid legal liabilities or fines under FIPPA.
3. Closed Meeting Materials:
  - Records that are confidential, privileged, or fall under closed meeting provisions (e.g., s. 90 of the Community Charter) must generally be reviewed and discussed by all of Council in a closed session.
  - Release of such records to the public requires a Council resolution and an assessment that disclosure would not breach FIPPA or create civil liability.
4. Obligations Under the Charter:
  - Section 153 of the Community Charter stipulates that council members must not interfere with, hinder, or obstruct City employees in exercising their duties—this includes the Privacy Head's role in applying FIPPA.

5. Fee Waivers:

- Council members may apply for fee waivers under s. 75(5) of FIPPA if the request pertains to a matter of public interest; however, being a council member alone does not automatically qualify for a waiver.

Please review the attached legal opinion in full to ensure you have a clear understanding of the requirements and constraints around accessing and disclosing municipal information. Our collective adherence to the applicable legislation and policies helps maintain the integrity of Council's processes and protects both the City and individual councillors from potential legal issues.

Thank you for your attention to this matter. If you have any questions or wish to discuss the implications of this opinion, please feel free to contact my office.



Rob Costanzo  
City Manager

[https://surreybc.sharepoint.com/sites/cmcitymanageradmin/departments/city manager/2025/03020143orc.docx](https://surreybc.sharepoint.com/sites/cmcitymanageradmin/departments/city%20manager/2025/03020143orc.docx)  
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Appendix "I" Lidstone & Company Memorandum dated March 20, 2025: "Council Members – Access to Municipal Information"

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## LIDSTONE & COMPANY BARRISTERS AND SOLICITORS

### MEMORANDUM

**TO:** Robert Costanzo, City Manager  
**FROM:** Don Lidstone, K.C.  
**DATE:** March 20, 2025  
**RE:** Council Members - Access to Municipal Information  
**FILE:** 10010 - 075

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To what extent do individual council members have direct access to records and other information of the City of Surrey?

#### SUMMARY

##### **(a) Council Members' Access to Municipal Records**

The legal right of a municipal council member, including a mayor, to access and use records or other municipal information is subject to the *Freedom of Information and Protection of Privacy Act* (FIPPA), the *Community Charter*, City's Code of Conduct Bylaw, and decisions of the Office of the Information and Privacy Commissioner (OIPC).

In my opinion, an individual council member has direct access to a City record by way of a council request to City staff. The record is provided to all council members. If the record is confidential or privileged, council should only receive and consider it in a closed meeting, subject to a Council resolution to release it to the public.

##### **(b) Individual Council Member's Direct Access to Records**

In addition, I think an individual council member may seek access to a record without asking council to access the record for all members - in such case, the member may request the Privacy Head to vet the record under the filters used by the City to protect third party interests and protect the City's legal position under FIPPA. This ensures all FIPPA statutory requirements and protocols are applied on each request and protects the City from fines and civil law suits.

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This is a controversial legal opinion, because individual council members often assume that as democratically elected representatives of the electors they can access and release to the public any records of their municipal corporation. In British Columbia and other jurisdictions, an individual council member does not have extraordinary rights of access to records protected from disclosure, beyond the rights of a member of the public, by virtue of being elected. Accordingly, while a council member is entitled to municipal information to fulfil their duties, access is subject to the protection and exception enactments of the applicable provincial government and the policies of the local government.

## LAW AND ANALYSIS

Council members may be directed to have their information requests processed under the FIPPA procedures and filters to ensure there is no breach of FIPPA, including whether the requested record is protected from disclosure by provincial law. A breach of FIPPA could result in the City being subject to fines or adverse OIPC rulings, as well as a duty to report the breach to the OIPC and any impacted third party. Due to a breach, the City could also suffer civil suits from impacted third parties.

OIPC commissioners have urged Privacy Heads to resist informal access requests from inside officials or employees that would bypass the statutory process. This is now the generally accepted practice in British Columbia, for the reasons underlined in the paragraph above. It is also consistent with this OIPC ruling regarding a White Rock councillor:

[OIPC Order F05-07, March 7, 2005  
<https://www.canlii.org/en/bc/bcipc/doc/2005/2005canlii11958/2005canlii11958.html?resultId=5464cf0cfa514e24a1161776ac9da23a&searchId=2025-03-18T10:32:50:885/8e7aa78db6f74e71b6da01174c647bf0&searchUrlHash=AAAAQBU4oCcV2hpdGUgcm9ja-KAnSBhbmOg4oCcZnJlZWRvbSBvZiBpbmZvcmlhdGlvbuKAnSBhbmOg4oCcZmVl4oCdIGFuZCDigJxjb3VuY2lsbG9y4oCdAAAAAAE> ].

If protected information is released, such sensitive information must be delivered to all of Council in a closed meeting under section 90 of the Charter. The legislation is intended to strike a balance between the public's right to know and persons' or corporations' protection of privacy. The FIPPA process not only protects third parties whose information is at stake, it also protects the applicant and FOI/Privacy Head, as well as the entire body, from complaints under FIPPA, or charges for unauthorized use or disclosure (Part 5.1 - Offences). Unauthorized use and disclosure are offences under FIPPA section 65.4.

In British Columbia and other jurisdictions such as Toronto, due to the need to act prudently when ascertaining if records are protected from disclosure under the Act, an individual council member has the same rights of access to City records as a member of the public. If a record is released to any individual council member after FIPPA vetting, that individual may disclose it to the public. This same right of disclosure applies to interest groups, opinion leaders, and the media. If, however, a requested record is protected under FIPPA as being privileged, confidential, or private, it can only go to all of council, at the request of council, whose members are subject to confidentiality under section 117 of the Charter and sections 40 through 43 of the Council Code of Conduct Bylaw. That said, under sections 8(1) and 117 of the Charter, a council can always resolve to release a record to the public after first ensuring this would not breach FIPPA or create a civil liability.

Sometimes, no one knows if a record is excluded from disclosure until the Privacy Head applies the legal filters that have developed over the years since the Act came into force in 1994.

Importantly, no elected or appointed official should ever attempt to interfere with the Privacy Head's objective analysis of the individual council member's request for the record. Under section 153 of the Charter, a council member must not interfere with, hinder or obstruct a municipal officer or employee in the exercise or performance of the officer's or employee's powers, duties or functions.

An individual Council member seeking records can request a fee waiver under section 75 (5) of FIPPA [if the request relates to a matter of public interest, including the environment or public health or safety]. In OIPC Order F05-07, however, the fact of being a member of the City's council was not enough to warrant the fee waiver, and the Adjudicator upheld the City's refusal to waive the fee, for lack of evidence as to there being a public interest and how the councillor would disseminate the records in such a way as to benefit the public. This case indicates the Commissioner's intention that requests for information should be treated similarly, regardless of the applicant's position.