

NO: R160

COUNCIL DATE: November 9, 2020

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **November 4, 2020**

FROM: **General Manager, Corporate Services
General Manager, Policing Transition**

FILE: **7400-01**

SUBJECT: **Information Ownership and Records Management**

RECOMMENDATION

The Corporate Services and Policing Transition Departments recommends that Mayor and Council:

1. Receive this report for information;
2. Authorize the Mayor and City Clerk to execute the Information Ownership and Transfer of Interest Agreement substantially in the form attached as Appendix "I", subject to approval of the Agreement by the Surrey Police Board; and
3. Authorize the agreement to be forwarded to the Surrey Police Board for their approval.

INTENT

This report outlines an agreement between the City of Surrey ("the City") and the Surrey Police Board ("the Board") to transfer ownership of applicable work product from the City to the Board to ensure those records are under the ownership and control of the appropriate party and that requests for access to those records are handled in a timely and responsive manner.

BACKGROUND

In November 2018, the City created a policing transition project team that undertook (and continues to undertake) work intended for the use and benefit of the Board to support the Board and the establishment of the Surrey Police Service ("SPS"). That work product is currently retained by the City.

Effective July 6, 2020, by Provincial Order-in-Council, the Board was established and thereupon empowered under the *BC Police Act* [RSPC 1996] ("the *Police Act*") to establish a municipal police service. The Board, through its Executive Director, began to meet its statutory mandate and to comply with its obligations under the *Police Act*, including maintaining records of the Board separate and apart from records of the City.

With the inter-relationship among City, the Board and the SPS, and recognizing the preparatory and preliminary work proactively undertaken by the City to advance the project for itself and the Board, it is important to ensure the use and ownership of the work product is documented to enable each party to own and control its own documents and use the work product. As the City, the Board and the SPS are each subject to the *Freedom of Information and Protection of Privacy Act* (“FOIPPA”), each party must meet its FOIPPA obligations with respect to documents in their control and to conduct themselves with the required transparency, while also respecting the confidentiality and sensitivity of some of the documents which are, or will come into, their possession.

DISCUSSION

The City currently maintains records with respect to the project comprised of:

- Its existing arrangements for policing and law enforcement, its request to the Province for approval for a municipal police department, and for exercising its rights and comply with its own legal obligations (the “City Records”); and
- The work product created to support and assist the Board in meeting its mandate under the *Police Act*, including the creation of the SPS (the “Board Records”), which include:
 - *Pre-Board establishment records* - created by the City which, had the Board existed at the relevant time, would have been created at the direction of the Board; and
 - *Post-Board establishment records* - created by the City in furtherance of, or to support and assist the Board with, Board related matters.

With the establishment of the Board, it is timely to ensure the Board has ownership of, and control over, the Board Records, with appropriate confidentiality obligations. Those records must also be accessible to the City, permitting the City to use, reference and adapt the principles, concepts and practices contained in those records for its own purposes. As a result, an Information Ownership and Transfer Agreement (“the agreement”) (Appendix “I”) has been developed to allow each party control over its own records. The agreement ensures that there is certainty regarding responsibility for responding to access requests under FOIPPA and enables more effective management of, and timely response to, those requests. The agreement would also permit the City to leverage the time, effort, costs, research and other work and resources expended by the City by using the work product for the City’s own purposes.

The City has a well-established Freedom of Information process and will continue to receive and handle requests that relate to the City’s role in the policing transition and records existing prior to the date of creation of the Board, including the pre-existing Board Records. Going forward, the Board will manage requests that directly concern or relate to the Board matters or Board members and any Board Records developed by the City for the Board on or after July 6, 2020.

The Police Board’s Freedom of Information Committee, currently a committee of the whole, will oversee FOI requests and, through the Executive Director, ensure the Board is compliant with FOIPPA.

SUSTAINABILITY CONSIDERATIONS

The work of the Policing Transition Department supports the objectives of the City's Sustainability Charter 2.0. In particular, this project supports the Sustainability Charter 2.0 theme of Public Safety. Specifically, this project supports the following Strategic Direction ("SD"):

- Public Safety SD3: Ensure programs, policies and initiatives exist along the public safety continuum, and support the entire community.

CONCLUSION

An agreement is required to address the ownership, control and use of Board Records and to implement processes for appropriate document management and public disclosure of those records. The attached agreement provides for the necessary document management and disclosure processes for both the Board and the City.



Rob Costanzo
General Manager, Corporate Services



Terry Waterhouse
General Manager, Policing Transition

Appendix "I" - Information Ownership and Transfer Agreement

DRAFT

INFORMATION OWNERSHIP AND TRANSFER AGREEMENT

THIS AGREEMENT, made effective as of July 6, 2020

BETWEEN:

CITY OF SURREY (the "City")

AND:

SURREY POLICE BOARD (the "Police Board")

WHEREAS:

- A. The Police Board, established effective July 6, 2020 (the "**Commencement Date**") under the *Police Act* [RSBC 1996] Chapter 367 (the "**Police Act**"), has a statutory obligation to create a municipal police department to provide policing and law enforcement in the city of Surrey.
- B. The City, in preparation for the establishment of the Police Board, and to assist and support the Police Board to meet its statutory obligations, has undertaken preliminary work intended to be for, and on behalf of, the Police Board.
- C. The parties enter into this Agreement to document the transfer of ownership of the records created by the City as part of the preliminary work undertaken by the City, to document the City's obligations and continuing rights with respect to those records and any future work product created by the City for, and on behalf of, the Police Board, and to provide direction for responding to requests for access to records under the *Freedom of Information and Protection of Privacy Act* ("**FOIPPA**").

NOW THEREFORE in consideration of the sum of \$1.00 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties), the parties hereby covenant and agree as follows:

1.0 Ownership of Records

- 1.1 *Definition of Work Product.* For the purposes of this agreement, "**Work Product**" means the documents, drawings, photographs, letters, papers and any other record on which information is recorded or stored by graphic, electronic, mechanical or other means (whether fully or partially completed) developed by, or on behalf of, or for, or at the request of, the City, whether existing prior to the establishment of the Police Board or developed, amended or updated thereafter, related to:
 - (a) the administration and operation of the Police Board; or
 - (b) the activity of the creation of the municipal police department;
 and which by their nature, scope, purpose or otherwise would have been developed or created by, or on behalf of, or for, or at the request of, the Police Board or the Surrey Police Service (the "**SPS**") had the Police Board or the SPS been in existence at the relevant time.
- 1.2 *Ownership and Control.* The parties hereby acknowledge and agree the Police Board owns and controls all right, title and interest in and to all Work Product, whether existing prior to the Commencement Date or developed, amended or updated thereafter. The City does hereby assign

and transfer the Work Product to the Police Board, including the intellectual property rights therein, and the City hereby waives any moral rights it may have in the Work Product.

- 1.3 *Effect of Ongoing Support.* The parties acknowledge the City may provide ongoing support and assistance to the Police Board and hereby confirm the records created by the City as part of that support and assistance fall into and form part of the Work Product.
- 1.4 *No Representations or Warranties.* The City makes no representations or warranties, express or implied, as to the accuracy or completeness of the Work Product, and shall not have any liability or responsibility relating to the Work Product or for any decisions made by the Police Board or SPS in reliance thereon.
- 1.5 *Retention Work Product.* Despite the transfer of ownership of the Work Product hereunder, the City is entitled to retain copies of the Work Product for archival purposes and to comply with applicable laws, provided that, subject to sections 1.6 (*Use of Work Product*) and 4.2 (*Requests for Disclosure*), such Work Product shall be subject to the confidentiality obligations of this Agreement for so long as it is so retained.
- 1.6 *Use of Work Product.* The Police Board acknowledges the Work Product was developed, in whole or in part, through the skills, expertise, knowledge and resources of City personnel, contractors and consultants and encompasses topics, principles, methodologies, frameworks, deliverables and other outcomes having applicability across a spectrum of organizational structures and functional areas. Accordingly, the Police Board agrees the City may use the Work Product, and any of the learned knowledge acquired in the course of developing the Work Product, for the City's own purposes. The resulting work product shall belong to the City and not owned by, or attributable in any way to, the Police Board or the SPS, despite any similarity to the Work Product, and the Police Board will not have any rights in or to that resulting work product.

2.0 Access to, and Transfer of, Records

- 2.1 *Retention of Records.* The parties acknowledge the transfer of the Work Product by the City to the Police Board may be a significant undertaking of extended duration requiring diligence and resource allocation and continuity. Despite the Work Product continuing to be stored with the City, the City acknowledges and agrees such Work Product is, and remains, the property, and under the care and control, of the Police Board and, except as otherwise provided herein, the City does not acquire or have any rights or interest in or to the Work Product, or ownership or control of the Work Product, as a result of thereof.
- 2.2 *Transfer of Records.* The City shall use commercially reasonable efforts to promptly transfer the Work Product to a secure drive or site with controlled and restricted access or otherwise establish protocols and processes to demarcate the Work Product as owned by the Police Board. Upon the City being advised or becoming aware the Police Board has secured its own information management infrastructure and data centre, the City will promptly and securely deliver over the Work Product to the Police Board or directly transfer the Work Product to such data centre.
- 2.3 *Access to Records.* Until the City has delivered over the Work Product to the Police Board, the City shall ensure the Police Board and its designated representatives have access to, and control

of, the Work Product as and when required, and shall be entitled to access and use the City's information management infrastructure and data centre to use and manage the Work Product.

3.0 Confidentiality

3.1 *Confidential Information.* The Work Product is the confidential information of the Police Board and not the City. The parties acknowledge the Work Product, in whole or in part, contains or may contain policy advice and recommendations, public body confidences, legal advice, business, technical or other proprietary information and/or information whose disclosure may be harmful to law enforcement or inter-governmental relations or negotiations, or harmful to an individual, public safety or personal privacy. The City acknowledges and agrees unauthorized use or disclosure of the Work Product may cause irreparable harm to the Police Board and others.

3.2 *Confidentiality Obligations.* Except as required by law or permitted by this Agreement, the City will keep the Work Product strictly confidential, and will not, without the prior express written consent of the Police Board, publish, release, disclose or permit to be disclosed the Work Product to any person or corporation, except on a "need to know" basis as required for the City to perform or complete any work to assist and support the Police Board as requested and provided such person or corporation is bound by confidentiality obligations.

4.0 Freedom of Information

4.1 *FOIPPA.* The parties acknowledge they are both subject to FOIPPA and this Agreement and the information contained in it may be subject to disclosure under FOIPPA subject to certain exceptions set out in FOIPPA.

4.2 *Requests for Disclosure.* If either party receives a request for access to a record pursuant to section 5 of FOIPPA and that request may include a record forming part of the Work Product, subject to and in compliance with FOIPPA, such request will be handled in the following manner:

- (a) *Pre-Commencement Date Records* – Since, at the relevant time, the City was the first to produce or obtain the record, and the record was, at the relevant time, in the City's care and custody, the City will be responsible for handling any request for disclosure of records created prior to the Commencement Date, including:
 - (i) responding to the requestor;
 - (ii) having regard to, and complying with, section 11 of FOIPPA (*Transferring a request*) as applicable, including transfer to the Police Board for any post-Commencement Date records captured by the request; and
 - (iii) providing to the Police Board notice of the request, and details of the Work Product subject to disclosure, to enable the Police Board to prevent disclosure, if necessary, to the extent permissible by FOIPPA
- (b) *Post-Commencement Date Records* – Since, at the relevant time, the record was produced by or for the Police Board, and despite the record being located on the City's servers or in the City's document management system is owned by and in the custody and control of the Police Board, the Police Board will be responsible for handling the request with respect to records created on or after the Commencement Date, including:
 - (i) responding to the requestor; and

- (ii) having regard to, and complying with, section 11 of *FOIPPA (Transferring a request)* as applicable, including transfer to the City for any pre-Commencement Date records captured by the request, subject to the City providing to the Police Board details of the Work Product subject to disclosure, to enable the Police Board to prevent disclosure, if necessary, to the extent permissible by FOIPPA.

5.0 General

- 5.1 *Information Sharing.* Recognizing the continuing relationship between the parties and the mutual benefits realized by the parties through the sharing of information related to policies, procedures and practices, in the spirit of collaboration, cooperation and support, the parties will endeavor to regularly exchange updates and revisions to the Work Product and the resulting records derived from the use of the Work Product, as the case may be, as may be applicable to the business and operations of the other party, subject to limits on disclosure in accordance with applicable laws.
- 5.2 *No Agency.* Nothing contained in this Agreement will be construed or deemed to authorize one party to act as agent for the other, and neither party will contract, agree or make any commitment, representation or warranty which binds the other party, or otherwise do any act in the name of, or purport to act on behalf of, the other party.
- 5.3 *Counterparts.* This Agreement may be executed electronically and in counterparts, all of which taken together will constitute one single agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date first above written.

CITY OF SURREY

SURREY POLICE BOARD

Name:
Title:

Name:
Title:

Name:
Title: