

**TO:** CITY MANAGER 2003 July 25  
**FROM:** CITY SOLICITOR  
**SUBJECT:** **THE OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER'S MUNICIPAL BYLAW INVESTIGATION**  
**PURPOSE:** To recommend a response to the Office of the Information and Privacy  
Commissioner's invitation for comments on the Municipal Bylaw Investigation.

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**RECOMMENDATION(S):**

1. **THAT** the City advise the Office of the Information and Privacy Commissioner for British Columbia that the power of Local Governments to mandate the collection of personal information by bylaw where necessary in the exercise of their business regulation powers should not be curtailed, for the reasons discussed in this report;
2. **THAT** a copy of this report be forwarded to the Office of the Information and Privacy Commissioner for British Columbia.

**REPORT**

At its open meeting of July 7, 2003 Council received an item of correspondence (Item J, City Manager's Report No. 19) from the Office of the Information and Privacy Commissioner for British Columbia regarding the Commissioner's Municipal Bylaw Investigation.

The Commissioner advised that his Office was investigating what it perceived as a growing trend by B.C. Local Governments to enact bylaws requiring private businesses to collect personal information from customers or employees and to make that information available to Police and bylaw enforcement coordinators. In particular, bylaws regulating pawnshops, adult entertainment services and mail box rentals were singled out as often requiring the collection of such information.

The Commissioner indicated that, in his view, these were essentially surveillance databases of personal information that have the potential to be invasive and discriminatory. He invited the comments of the City on this issue.

Section 2 of the *Local Government Act* provides, in part:

“The purposes of a local government include

- (a) providing good government for its community.
- (d) fostering the current and future economic, social and environmental well-being of its community.”

Part 20 of the *Local Government Act* gives Council the power, by bylaw, to “regulate businesses, business activities and persons engaged in business.”

In the exercise of those powers for those purposes Council has enacted a number of bylaws regulating different businesses and the activities of businesses for the well-being of the community.

In particular, the City has three bylaws that appear to fall within the area of concern expressed by the Commissioner’s Office:

- BURNABY ADULT SERVICE BUSINESS REGULATION BYLAW
- BURNABY POST BOX RENTAL AGENCY AND MALL DROP SERVICE REGULATION BYLAW
- BURNABY SECOND-HAND DEALERS REGULATION BYLAW

The Adult Service Business Regulation Bylaw was enacted in 2001, in part in response to recommendations from the City’s Task Force on the Sexual Exploitation and Prostitution and Youth, which concluded that there were safety and health risks to minors employed in certain adult-oriented classes of business in Burnaby.

This bylaw prohibits certain defined adult-oriented businesses from employing, or permitting on their business premises, any person under the age of 19 years. To enhance the enforceability of these prohibitions, business owners are required to verify the age of persons entering onto their business premises by production of photographic identification and, in the case of employees, to maintain a written record of the name, address and age of each employee. This record must be made available for inspection by the Police and Licence Inspection Staff.

The Post Box Rental Agency Bylaw was enacted in 1996 in response to Police and Staff investigations that showed that post box rental businesses and mail drop services in Burnaby were being used by other businesses and individuals who were carrying on fraudulent or dishonest mail order activities. With a rented post box or mail drop service of the intermediary business, the victims of these dishonest mail order schemes, and the Police, are unable to locate the sources of these schemes by tracing their mail back.

This Bylaw requires the operators of these post box rental and mail drop businesses to maintain an accurate written record of their customers and, in the case of a corporate customer, to include in that record the name and address of at least one natural person authorized to represent that customer, verified by the production of photographic identification. These records must be made available for inspection to the Police and Licence Inspection Staff.

Not only do these bylaw requirements enable the Police and Staff to trace these mail order businesses through the intermediary post box rental and mail drop businesses, but they act as a deterrent to such businesses operating in Burnaby.

The Second-hand Dealers Regulation Bylaw was enacted in 1924. It regulates not only the business of dealers in second-hand goods, but that of pawnbrokers as well. From the time of its enactment this bylaw has required the business owners to keep a written record identifying the goods purchased or pawned as well as the name and address of each person who sold or pawned the goods to the business, to make those records available for inspection by the Police and, on a weekly basis, submit the records for the preceding week to the Police. The bylaw was amended in 1998 to require business owners to verify the identity of the person selling or pawning goods through the production of photographic identification.

Second-hand goods and pawnbroker businesses are, and it would seem historically have been, used as a means of disposing of stolen property. Again, requiring the business operators to maintain written records that describe the goods and the names and addresses of the persons from whom they acquired those goods assists the Police in identifying and recovering stolen goods, returning those goods to their owners, and identifying and prosecuting those involved in the theft.

Part of the mandate of the Office of the Information and Privacy Commissioner is the protection of the privacy of the individual, which necessarily includes minimizing the collection and maintenance of information about private individuals by governments and governmental agencies.

The bylaws in question were enacted for the protection of the community as a whole as part of the City's mandate to provide for the well-being of the community.

These are two legitimate but competing interests that must be balanced in these circumstances.

In balancing these interests, if it is Staff's view that bylaw requirements should be permitted to stand:

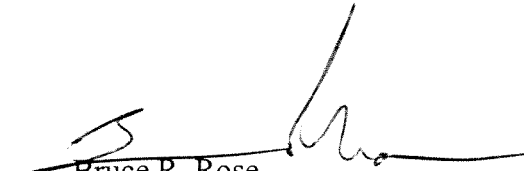
- the bylaws are limited to specific confined business activities, rather than being of broad application
- the three classes of business activities dealt with are, in two cases, ones identified as having a high degree of or risk of involvement with dishonest or fraudulent activity, and the other where the safety and health of a vulnerable class of the community is at risk
- not having a requirement to identify and record the particulars of the identity of the individual would render these bylaws toothless and ineffective
- in each instance the individual will know that their personal information will be recorded and will have a choice of whether they wish to proceed with the activity for which the information will be recorded, or not.

It is also noted that under the *BC Freedom of Information and Privacy Act*, law enforcement is a purpose for which personal information may be collected and used. This recognizes that the protection of the public must to some extent and in some instances outweigh the privacy interest of the individual.

The City of Burnaby has not used its bylaw powers to unnecessarily mandate the keeping of personal information databases. It has done so in limited instances in response to clearly identified community problems, and in each case where the collection and maintenance of that personal information is integral to the enforcement of the bylaw and the purpose for which it was enacted.

The City has exercised its powers in this regard sparingly and reasonably. To Staff's knowledge other local governments have as well. It may be that the perceived trend of an increase in bylaws of this nature is reflective of a changing society, the increased use of the postal service to carry out fraudulent activities for example, and the needs of communities to protect themselves from the harmful aspects of these changes.

In Staff's view, it would not be in the interests of the City, other local governments or the public generally to have this power curtailed.



Bruce R. Rose  
City Solicitor

BRR:et

Copy: Deputy City Manager  
Director Finance  
Chief Licence Inspector  
OIC, RCMP  
Records & Information Administrator