

Limited transparency

DAVID BROADLAND

At Victoria City Hall, the truth doesn't come cheap. Or fast.

Back in October, Victoria City councillor Marianne Alto brought forward a couple of motions introducing the concepts of “Open Data” and “Open Government” to the battered-down-tight City of Victoria.

Coming as it did just before the civic election, Alto's proposal was seen by some as an attempt to pull the rug out from under the new electoral organization Open Victoria.

I'm concerned about her proposal for other reasons. Firstly, it may create a public perception that the City has become more transparent without actually creating any greater access to the kind of information that defines transparency—the City's internal communications that show how and why decisions are being made and who is making them.

My second concern about Alto's open data proposal is that it will inevitably consume precious City resources, and that's likely to put even more financial pressure on the City's already under-funded Freedom of Information office. According to City spokesperson Katie Josephson, that office has no dedicated full-time staff. I'll come back to the City's minute capacity for responding to FOI requests, but first let's consider the substance of Alto's initiative.

Her proposal took the form of two motions—both passed in votes on October 13. Her first motion laid out a number of “principles” that she says would “guide future actions taken in our efforts to operate the most open and transparent civic government possible.”

These principles included that “All public data should be made available.” She defined “public data” as “data that is not subject to legal or otherwise valid privacy, security or privilege limitations.” Other principles included timeliness (“Data is made available as quickly as possible to preserve the value of the data.”) and hinted at little or no cost (“Data is available to anyone, with no requirement of registration.”).

Her second motion outlined steps that could be taken to make more data available to citizens. That included getting City staff to “report back” on the costs associated with her proposal.

So how is that going?

In terms of timing, Alto told me, “Some of the work that will start to enable open data



Marianne Alto

processes will soon be seen with the unveiling of the new City website. The timing and costs for implementing other open data initiatives will be part of our budget and priority-setting discussions in the coming weeks.”

Alto listed the kind of information other open data communities have made available, including “GPS enabled Parks and Rec applications that show the location of nearby facilities,” “Parking location applications,” “Real time transit data applications that tell you where your bus is, not just when it is supposed to arrive,” “Trash Collection reminder that alerts you to type of collection happening on a given day,” “Event applications that showcase local events, in the community and at City Hall” and “311 Connect applications that allow users to submit directly to 311 issues such as potholes, downed power lines, broken swings or other concerns.”

Alto also proposes that councillor's votes on motions at council be recorded and that the City begins “broadcasting live video streaming (and archiving) of council meetings.”

With steps like these, she says, residents “will benefit from a more open, responsive, easy relationship with their local government.”

But is there anything in Alto's proposal that will provide greater access to the record of how and why decisions are being made—the communications involving City staff?

Her October 13 council motion hinted there might be, as it proposed to “Release automat-

ically all reports submitted to council that do not require confidentiality—if it could be subject to an FOI request, release it and let people know that it is available.”

But when I asked Alto about her proposal's relationship to the provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA), she said, “It does not anticipate interfering with current FOI practices—although if undertaken well the operation of open data systems will, I think, eventually diminish the need for FOI requests.”

Alto's hope is based on an optimistic premise: That introduction of open data to City Hall will, over time, change the culture there from being predominantly suspicious of public scrutiny and input to open acceptance of the public's right to both scrutinize information and influence decisions.

But it could be a long journey. And there's a strong possibility Alto's proposal will only create an even larger wall of white noise around City Hall and even greater opacity. In the meantime, a “Trash Collection reminder” alert seems to be a very low bar to set for the City.

AS I MENTIONED EARLIER, a mechanism for the City to share information with citizens already exists. That's the *Freedom of Information and Protection of Privacy Act*. The City is obligated by provincial law to provide information if someone requests it. It's very simple to make an FOI request: you send the City an email or letter that outlines the information you want—and 30 working days later, you receive it. But that's assuming the City has a genuine commitment to transparency. Its actions throw this assumption into question.

For one thing, in comparison with its exceedingly well-fed sister, the City's communications office, the FOI office is being starved to death. Currently, the communications office employs 6.5 full-time staff with an annual payroll of \$409,000. A guesstimate for the FOI office—there are no full-time staff—would be \$70,000.

As well, the City is perfectly willing to play every FIPPA loophole possible in order to delay or prevent release of information it's not keen on you having. To illustrate the City's current lack of commitment to transparency, I'll walk

you through the history of an FOI request I made last August.

In late July last year, I noticed that work that was supposed to have started on the Johnson Street Bridge project hadn't begun. After reviewing documents obtained from the City through an earlier FOI request, it seemed likely the proposed relocation of a Telus duct, which crosses the seabed in the way of the new bridge alignment, had triggered a federal environmental assessment. The site is well known to be highly contaminated with many dangerous industrial-strength toxins present in the seabed. *Focus* had first brought this issue to public attention in early 2010. Now we wanted to know if an environmental assessment had been triggered, and if so, what were the implications for the \$80 million project? We knew if we asked the City directly through their communications office we would be told "Everything is fine. On budget. On schedule."

Indeed, there was no public indication from the City anything was amiss. One could surmise that with a civic election looming, a delay of the bridge project—or an environmental assessment and the possibility of a public hearing—would be seen as problematic.

So on August 31, *Focus* filed a request for the communications between the City and Telus regarding the duct relocation. The City was required by FIPPA to produce this information within 30 working days, which meant we should have it well before the election.

But on October 4 the City informed us they were extending the time for responding to our request to November 25, just after the civic election. On November 1, the City informed us the information would cost \$1070 and asked us for half that amount as a deposit. I wrote back and told them their fee was outrageous.

On November 3 they wrote back and told me that, in any case, they needed to seek Telus' approval before releasing the information we were seeking. Four days after the civic election, the City reminded me of the \$1070 fee and wanted to know if I planned to pay it or request a fee waiver. I immediately requested a waiver.

On December 18, 109 calendar days and one civic election after filing the request for

information, we received a letter from Robert Woodland, the City's Director for Legislative & Regulatory Services, who denied our request for a fee waiver.

Woodland is required to base his decision on whether our request meets one or more criteria around "public interest." One of those criteria is "whether the subject of our request relates to the environment, public health or safety." Another is "whether the dissemination or use of the information in the records will disclose an environmental or public health or safety concern..." Woodland decided the information we were requesting didn't meet these standards.

But after filing our request for information back in August, we learned through Transport Canada that relocating the Telus duct had indeed triggered an Environmental Assessment under the *Canadian Environmental Assessment Act (CEAA)*, and this delayed the bridge project. Subsequently, Transport Canada placed specific restrictions on the relocation project to protect the environment. For instance their assessment stipulated: "Transport Canada also requires that the proponent installs a sediment curtain around the area to be trenched to ensure suspended sediments are contained within the immediate project area."

It's noteworthy that Transport Canada *would* have held a public hearing as part of their environmental assessment but *didn't* because they hadn't received any public expression of concern. No wonder. Nobody knew.

Given all that, Woodland's conclusion that our request for records didn't meet either of the public interest criteria related to environmental concerns seems baffling. I requested an explanation from him for this story but did not receive a response. We also never got the correspondence we were seeking because of the steep fee.

I HAPPENED TO BE AT THE BRIDGE SITE the other day and watched as crews were working on the relocation of the Telus duct. It came as a shock when I realized the work was being done without the sediment curtains stipulated by Transport Canada in their environmental assessment. The City's Josephson confirmed the work was done without sedi-



CUSTOM HOMES
RENOVATIONS
LANDSCAPES

250 381 8700
www.landeca.ca

LANDECA™

ment curtains. Josephson informed *Focus* an “environmental monitor” was on the site and any decision not to use a sediment curtain would have been made “under their guidance.” After prompting, Josephson identified the “environmental monitor” as an employee of MMM Group, the engineering company overseeing the bridge project for the City.

Now you might be thinking, “No curtains. Big deal. The harbour is a cesspool anyway. What’s a little more lead in the water column?” And maybe you don’t care about the difference between Benz(o)fluoranthene and Benzo(k)fluoranthene, both of which were present in the dredged area at concentrations over 10 times what would qualify it as a “contaminated site” under BC Contaminated Sites Regulation Guidelines. But the City is not just endangering the harbour’s health, it is putting at risk \$21 million in federal funding. The Build Canada funding requires the City to “comply with all conditions arising out of an [Environmental Assessment] ... Failure to comply with the conditions, the implementation of any mitigation measures and any follow up program may be a cause for default...”

The City appears to have left itself open to the federal government saying, “Go suck Benz(o)fluoranthene” when the mayor goes to Ottawa to collect the \$21 million.

Had the City been more open about the environmental assessment, its citizens would have understood the issue and therefore been willing to accept the additional cost and time that using those sediment curtains would have entailed. But now the City’s sneaky behaviour may end up costing taxpayers \$21 million. There’s proof that transparency can *save* money.

OUR BATTLE WITH THE CITY to get information about the Telus duct relocation, and other similar brushes with their FIPPA office, have left this reporter with the impression that a little reform there might yield a lot of transparency, a goal the City itself says it wants to achieve. So I corresponded recently with two of the City’s new councillors about how the response to our request for information about the Telus duct was handled. I told them that demanding such a high fee was sure to discourage legitimate inquiry by media in Victoria and asked them if they would support a re-examination of the City’s FIPPA procedures and policies.

“Yes, I support a re-examination of this,” wrote councillor Lisa Helps. “I think the City administration’s (and by this I mean council and City staff) process is the citizens’ process



PHOTO: TONY BOUNSALL

Lisa Helps

and should ultimately serve citizens and the greater good. This re-examination could be part of the Customer Service Review (I would prefer it be called Citizens Service Review) which is currently underway to determine how the City administration is currently serving the public.”

Councillor Ben Isitt also supports re-examining the City’s FIPPA process: “I believe strongly in the public’s right to know and believe the City should adopt a narrow reading of statutory grounds for delaying or denying FIPPA request[s].”

I asked Helps and Isitt if they would support processing FIPPA requests at no cost for media.

“If, as you say, stories are not getting out because the FIPPA costs associated with them are too high, this troubles me,” Helps wrote. “The incentive then needs to go to the City administration—come up with a set fee (ideally through engagement with citizens and the media) for FIPPA requests and then charge that fee regardless of the request.”

Isitt had a slightly different take. “I would support the waiving of fees for FIPPA requests from the media, with a proviso that costs could be imposed on a cost-recovery basis if, in Council’s judgement (as determined in an open meeting), the volume of requests from an individual media organization posed an unreasonable burden on City resources.”

Both Helps and Isitt see the City’s communications staff as part of the solution for improving the response to FOI requests.

“I think it would be worthwhile for the City to determine whether existing resources in the Communications and Legislative Services departments can be deployed more effectively to allow for the timely and free processing of FOI requests,” Isitt wrote. “Perhaps existing communications staff could assist with the review and release of materials. If new funds are allocated by council, I believe that the timely, less costly release of FOI requests



PHOTO: TONY BOUNSALL

Ben Isitt

should take priority over more general public relations work.”

Helps agreed. “I would support the communications department being empowered to provide quicker, less costly responses to FOI requests, again, derived at by some predictable and consistent formula. We could do away with some of the cheer-leady things that sometimes come out of the department and allocate resources to get information about important decisions into the public realm.”

I wondered if councillors Helps and Isitt had thought out what benefits to the community could be gained from providing greater access to information the City possesses. They had. “I could write a whole essay on this,” Helps enthused. “The benefits are innumerable; the greatest benefit is that providing citizens with greater access to information builds trust between the City administration and the City’s citizens. In my mind there is far too great a gap right now and part of that gap is because of the perceived and real closed-ness at City Hall. I think the fact that an electoral organization formed in the last election called Open Victoria is very telling in this regard. Another benefit is that if citizens are provided with information and engaged in decisions, the decisions we come to, together, will be more resilient decisions because they will have the input and support of citizens from the get go.”

Isitt, too, believes respecting the public’s “right to know” will produce better decision making. “When the public is excluded, either from meetings or from accessing important documents, council is more likely to make decisions based on incomplete information and inadequate consideration of important issues. Openness and access to information are core elements of the full debate necessary for effective democratic governance.”

Exactly. Over to you, City Hall.

David Broadland is the publisher of *Focus*.