



Gibsons Alliance of Business and Community Society

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Tuesday, May 31, 2016

Information and Privacy Commissioner
Office of the Information and Privacy Commissioner
for British Columbia
PO Box 9038 Stn. Prov. Govt
4th Floor, 947 Fort Street
Victoria, BC V8W 9A4

Dear Commissioner Elizabeth Denham:

Re: The final response of December 1, 2015 of Selina Williams, Corporate Officer, Town of Gibsons to deny a fee waiver request from the Gibsons Alliance of Business and Community (GABC) in the matter of FOI #2015-07-Benson.

Please accept this letter as our request for a review of the fees assessed against our Freedom of Information request. We have paid this fee under protest and have previously asked the Town of Gibsons to reconsider our application for a fee waiver.

The following documents are attached:

1. Our original FOI request of August 25, 2015
2. The Town of Gibsons Fee Estimate of September 17, 2016
3. GABC fee waiver application letter October 7, 2015
4. GABC email (Benson) to OIPC on October 22, 2015, requesting assistance
5. GABC FOI Fee Waiver Request to OIPC re: FOIs 2015-06,07,08
6. OIPC reply of October 22, 2016 (page 1)
7. OIPC reply of October 22, 2016 (page 2)
8. GABC (S. Senger) letter of complaint to Town of Gibsons (S. Williams) of November 15, 23016
9. Town of Gibsons (S. Williams) final response to GABC complaints of December 1, 2015.

Also attached as end notes are links to published materials which describe the controversial nature of the issues about which we are seeking release of public records.

On the main issue of whether or not a fee waiver should be granted, we first assert that the GABC cannot afford to pay the associated costs. We are a non-profit society of public interest volunteers that have no grants, bequeaths, or major donations. The GABC has no regular income other than membership fees (\$5/yr). We do not have paid staff and have no financial or vested interests in the issues that come before the public in this region or before the Council of the Town of Gibsons.

We provide free services to the public. These services involve publicizing and informing the public about issues of governance and sustainability. Our activities involve, for example, monitoring local government meetings and communicating to the public about civic affairs. (see End Note 1; Mission Statement of the GABC)

The fact that we were able to pay (under protest) the fees assessed against our FOI request should not be used as evidence of ability to pay. The fact is that we raised the money thru appeal to the public at public events, on the streets and by canvassing door-to-door. We also borrowed from individuals and board members on the condition that we would return funds if our fee waiver appeal was successful. The issue of the Gibsons Marina sub-lease renegotiation is a current issue and not one that could wait for months or longer for a fee waiver dispute to be resolved. Consequently, we undertook extraordinary measures to raise the required funds and get information about this negotiation released to the public. (see End Note 2-GABC publications)

Controversy over the Gibsons Marina sub-lease renegotiation has been a feature of life in our community for at least the last four years. Initially, the controversy involved public concern about the condition of the facility, the public's perceived lack of access to moorage and the lack of ample financial return to the Town. Public meetings were held. Town staff recorded these concerns. In the end, the Town failed to win concessions on any of these issues from the sublease holders and the issue went to arbitration. (see End Notes 2 and 3)

In the arbitration process following the failure of negotiations, the Town was found to be unreasonable on all the major points subject to arbitration. The Town had to pay for the entire cost of arbitration and its own costs of representation as well; a loss estimated at approximately \$200,000. As anyone would appreciate, such a loss is controversial.

A copy of the arbitrator's decision became public thru our FOI request. In this decision we learned that the marina sublease holders had made an offer to the Town of approximately \$200,000 over the sublease term, in addition to the annual "rent paid" under the former sub-lease. We submit that is this a highly controversial outcome that indicates that the Town lost \$400,000 in costs and future revenues. (See End Note 3; GABC published articles – Town of Gibsons Lost \$200,000 Over Failed Marina Arbitration)

The arbitrators decision also sheds new light on the relationship between the marina sublease and the George Hotel and Residences Project (ie, "the George"). The George is easily the most controversial real estate development project ever to be proposed in Gibson or anywhere else on the Sunshine Coast. Controversy about it has been raging ever since the proposal was submitted to the Town in 2013. It is still not entirely approved. (see End Note 4; the George and/or Gibsons Marina in the main stream media).

According to FOI released records, the Town tried to make the marina sublease holders concede to give up part of their marina and sublease to the George proponents in the event the hotel is built. Subsequently two members of the Gibsons 2011-2014 Council publically stated that Council had never been informed about this negotiating position. (see End Note 3; GABC News #93) This is a highly controversial outcome of the FOI request as it clearly shows that the Town tried to provide a benefit to a new private business, at the expense of an existing Town business, without the knowledge or informed consent of Town Council. How could this possibly not be controversial? We submit that there is sufficient controversy to warrant a waiver of fees. (Arbitrator's determination available on request).

FOI documents revealed the Town of Gibsons secretly granted permission to the George developer to mortgage town assets at Gibsons Marina. This fact was kept hidden from members of council and the Town's Director of Finance. GABC distilled this story through an intensive review of FOI documents and pieced together email correspondence between the Town of Gibsons, BC Ministry of Forests Lands and Natural Resource Operations (FLNRO), the George developer Klaus Fuerniss and Fuerniss' lender CIBC. (See End Note 4; GABC published articles – The Struggle for \$3 Million.)

We believe that our FOI request is not frivolous or vexatious. The released information is sensational and deeply troubling. However, the Town's Mayor and staff describe this request, and various other FOI requests, as a nuisance and an attempt to swamp the Town's administration. Clearly, the information released in this FOI is proof that the request itself is about critical information that should have been available to the public or all members of Council and is therefore not frivolous or vexatious. (see End Note 4; Critical information not released to the public).

Our efforts are about bringing public records to the public and to all members of Council. Clearly, we have succeeded in this task in several important particulars (see End Note 4). Is it fair to ask us to pay for making records public that never should have been kept from the public (and from some members of Council) to begin with?

Mayor and staff, and sometimes Council as a whole, of the Town have, of their own volition, undertaken numerous avoidable steps that have fostered suspicion and distrust in the community. These steps include suspension of the opportunity to appear as a delegation to Council about aspects of the George development (a violation of the Procedure Bylaw); obstructing Council members' privilege of asking questions of delegations; treating those appearing as a delegation or asking question during Inquiry in a derogatory rude or dismissive manner; refusing to allow correspondence to "Mayor and Council" to appear in the agenda; withholding correspondence to Council from regulatory officials; removing from the agenda most Inquiry opportunities; refusing to answer questions during an inquiry section of an agenda. And finally of note, institutionalizing many of the above procedures in a new Procedures Bylaw (2016).

These avoidable measures have contributed to an apprehension of “regulatory capture” (to borrow a phrase from the BC Auditor General) in which the Town serves the interests of the developer and not those of the whole community. Citizens have responded in the few ways that they can. Freedom of Information requests are one such response.

Thank you for your consideration of our request for a review of the Town’s denial of our fee waiver application.

Sincerely,

Suzanne Senger
President, Gibsons Alliance of Business and Community Society ~ GABC
www.gibsonsalliance.com

End Note 1; Mission statement of the GABC

Gibsons Alliance of Business and Community Society is an inclusive coalition of community members and business people working together for the long-term social, environmental, economic, and cultural vitality of Gibsons. To this end, we work with other citizens to educate, inform, and support local leaders and groups in making the best decisions possible on issues of public interest.

www.gibsonsalliance.ca

End Note 2; GABC Publications about the Marina sub-lease and/or the George

- <http://gibsonsalliance.ca/news/93-town-of-gibsons-lost-200-000-over-failed-arbitration>
- <http://gibsonsalliance.ca/news/103-private-mortgage-on-public-property-not-disclosed-to-the-public>
- <http://gibsonsalliance.ca/news/95-accessing-information-at-the-town-of-gibsons>
- <http://gibsonsalliance.ca/news/67-property-owner-to-take-town-of-gibsons-to-court-over-marina>
- <http://gibsonsalliance.ca/2-uncategorised/52-gibsons-could-lose-its-marina-to-the-george>
- <http://gibsonsalliance.ca/news/54-mayor-rowe-waves-off-concerns-and-processes-around-gibsons-marina-and-the-george>

End Note 3; Gibsons Marina and the George in the media

Coverage of the public hearing for rezoning the George:

<http://www.cbc.ca/news/canada/british-columbia/gibsons-split-over-proposed-hotel-and-condo-development-1.3254287>

Post Public Hearing coverage:

<http://www.cbc.ca/news/canada/british-columbia/the-george-waterfront-development-gets-rezoning-from-gibsons-1.3260215>

Gibsons seeking comment on lease June 23, 2012

<http://www.coastreporter.net/news/local-news/gibsons-seeking-comment-on-lease-1.996481>

ToG press release November 19, 2013

Arbitrator upholds current formulas as the basis for rent that Gibsons Marina pays
Town of Gibsons

<http://www.gibsons.ca/include/get.php?nodeid=115>

Feb 4, 2015 New leaseholder for Gibsons Marina?

<https://www.gibsonspage.ca/2015/02/new-leaseholder-for-gibsons-marina/>

George developer buying Gibsons Marina

February 11, 2015

<http://www.thelocalweekly.ca/george-developer-buying-gibsons-marina/>

End Note 4; Critical information that should have been public, remained secret until GABC retrieved it through FOI. Three key examples from FOI 2015-07:

In 2012 the renewal of a 30 year lease agreement for Gibsons Marina was under negotiation with the owner/operator Gibsons Marine Hotel Inc. (GMHI) and the Town of Gibsons. Negotiations went sour and ended up in arbitration. Throughout the process, the Town of Gibsons Chief Administrative Officer (CAO), Emanuel Machado, led Gibsons Councillors to believe that the GMHI owners were being difficult to deal with. Machado reported that the only unresolved issue was that GMHI refused to agree to reasonable lease/rents to the Town. However, FOI 2015-07 documents reveal a different story. In fact, the owner/operator of Gibsons Marina (Gibsons Marine Hotel Inc. GMHI) tried to negotiate with the Town in good faith for over a year. Rather than agree to reasonable terms, the Town tried to force GMHI to insert a clause into their lease that would authorize the Town to remove a portion of their water lot if a proposed hotel/conference centre were proceeded. The George Hotel and Residences project, pre-application, submitted to the town in 2012, required a portion of the marina (A-Dock), in order to be economically viable. GMHI refused to give up A-Dock and the matter went to arbitration. Arbitration hearings took place in Vancouver in May and July 31, 2013.

In the end, the arbitrator did not agree with any of the Town's arguments. The Town paid all of the legal costs and arbitration fees. **None of this was ever disclosed to Gibsons Councillors or the public. Read the full story [here](#).**

In 2014, the George Hotel and Residences developer, Klaus Fuerniss, made an offer to buy Gibsons Marine Hotel Holdings Inc. for \$3.5 million. GMHI agreed. Fuerniss incorporated a new company to purchase the GMHI assets, called Marine Hotel Holdings Inc. (MHHL). The Town's water lease with the province restricts the Town from encumbering the lease and restricts the province from dealing with sub tenants. However, in the week leading up to the close of the sale of GMHI to MHHL, the Town's lawyers and staff, together with Fuerniss' lawyers, CIBC's lawyer and the Ministry of FLNRO worked a deal to grant MHHL permission to secure a mortgage against the GMHI holdings. The mortgage encumbers the titles to publicly owned lands and contravenes the lease agreement the Town holds for the marina water lot, with the Ministry of FLNRO. FOI documents reveal that all parties were aware of this. **This information was never disclosed to Gibsons Council or the public. Read the full story [here](#).**

After the information re: the MHHL mortgage came to light through FOI 2015-07, the Ministry of FLNRO officially revoked their consent-to-mortgage. Yet, Gibsons Marina still maintains a \$3 million mortgage, according to Land Title Office records as of February 9, 2016. There is no record of CAO Machado having notified Klaus Fuerniss of the revoked consent to mortgage. A Release and Indemnity Agreement protects the Town from financial liability in case of default. However, in the event of a default on the mortgage, the lender can sell the Marina assets to the highest (or lowest) bidder. **This issue has never been discussed at council, nor has it ever been disclosed to the public except through GABC. Gibsons Mayor Wayne Rowe and the CAO Emanuel Machado simply refuse to answer any questions on these issues.**