

February 2, 2011

Information and Privacy Commissioner
Office of the Information and Privacy Commissioner for BC
PO Box 9038, Stn Prov. Govt.
Victoria, BC V8W 9A4
FAX 250 387-1696

Re: Request for a review under s.52 of FOIPPA of the response of the Town of Gibsons on December 20, 2010, to the SCCA FOI Request of December 2, 2010.

Dear Ms. Elizabeth Denham,

Please find attached a copy of our Freedom of Information request to the Town of Gibsons dated December 2, 2010. Also attached is a letter from the Town of Gibsons (the Town) dated December 20, 2010 that we received on January 4, 2011.

Our FOI request relates to environmental studies commissioned by the Town for its Gospel Rock Neighbourhood Plan (GRNP) process. There is no dispute that the Town and its committees are public bodies within the meaning of the *Act*.

The Town responded thoroughly in an electronic format (as requested) to one of our three requests for records. In regard to the two remaining items, the Town explained in its letter of January 20 that it has never had actual possession of these records and never required submission of these records from the contractor and therefor does not have control or custody of these records and cannot provide them to us.

We base our appeal for a review of the Town's response to our request for records on the following item of our original FOI request;

Field notes, lists of identified plants, and/or any written notes or summaries submitted by biologist Suzanne Diamond to Paul van Poppelen for use in or in support of reports submitted to GR SSC or GR RWC [Gospel Rock Select Standing Committee or Gospel Rock Refinement Working Committee].

We maintain that the Town of Gibsons does have control and custody of these records for the following reasons:

1. The Town could have requested these records from the contractor at any time as there are no privacy or legislative reasons to the contrary;
2. Similar materials were previously released and made available on the Town's website including lists of identified plants, plant associations, polygon delineations, etc. (see End Note 1);
3. A field study was released as part of the Town's response to our FOI request (see End Note 2). This subcontracted report contains a similar level of detailed information to that which we have asked for in our FOI request for Suzanne Diamond's records.
4. The contractor and author of three papers completed for the GRNP process, Paul Van Poppelen, makes frequent references in the last two papers to the importance of subcontractor Suzanne Diamond's contributions (see End Note 3). Therefore it is reasonable to conclude that she did produce records of her contracted work. Given that these are acknowledged to be important records, they should be available to the public;
5. Authors Van Poppelen and Don Larson state in their final paper that "...the technical reports (where submitted as such) from the various subcontractors will be appended in full to the main report as reference material of greater detail than the final main report ." We assert that this statement is a commitment to provide the public with important and relevant records (see End Note 4) and that our request is consistent with this commitment.

In consideration of these factors, we assert that the Town's position that it does not have actual possession of the records is irrelevant to the issue of "control and custody" and that the Town does have a duty under *s6* of *FOIPPA* to assist us in retrieving these records.

Thank you for your consideration of our request for review.

Yours truly,

Daniel Bouman, Executive Director
Sunshine Coast Conservation Association
604 886-8325

Attached documents:

Request for public records from the SCCA and FoGRS to the Town of Gibson, December 2, 2011,

Letter from the Town of Gibsons to the SCCA and FoGRS releasing most of the requested public records and explaining the Town's position denying control or custody of some records, December 20, 2011,

Compact Disk (as requested) contains the requested records of email correspondence.

End Note 1

The first of P. van Poppelen's three Environmental papers is titled *Gospel Rock Neighbourhood Area Blocks 6 and 7: Environmental Assessment Study Final Report (Don Larson and Paul van Poppelen, 2007)*:

(<http://www.gibsons.ca/reports-open-houses-and-survey.html/> Environmental Assessment Study Final Report)

This study was published with two supporting papers; *Ecosystem mapping and Wildlife Habitat Assessment of the Gospel Rock Property near Gibsons, BC (Keystone Wildlife Research , 2007)*:

(<http://www.gibsons.ca/reports-open-houses-and-survey.html/> Ecosystem Mapping and Wildlife Habitat Report August 2007)

and *Plant and Vegetation Assessment of the Gospel Rock area, Gibsons, BC (Dr. Terry T. McIntosh, 2007)*:

(<http://www.gibsons.ca/reports-open-houses-and-survey.html/> Plant and Vegetation Assessment August 3, 2007)

Please note that both sub-contracted papers append very similar information to the information we have requested in our FOI request.

End Note 2

The study released in response to our FOI request is titled *DL 843, Block 7, PID 010-827-200 Foreshore Stand Structural Stage Evaluation (Michael Bowering, April 2010)*. It is on the CD released to us by the Town. Release of this subcontracted study shows that records similar to that which we requested in regard to Ms. Diamond's work, have already been released.

End Note 3

Mr. Van Poppelen's second paper for the GRNP process is titled *Gospel Rock Neighbourhood Plan Area: Ecosystem and Wildlife Area Use Classification (October 2009)*.

<http://www.gibsons.ca/reports-open-houses-and-survey.html> / Environmental Report
Paul van Poppelen November 4, 2009

This study makes frequent reference to the importance of Suzanne Diamond's work as a subcontractor. For example;

Page 1; "...we resurveyed the area with the assistance of a new and therefore independent (with respect to previous reports and discussions) botanist Suzanne Diamond PhD, to update and/or confirm existing and since-developed plant communities from the previous studies and compare the results with these studies..."

Page 4; "As described previously, the entire site where feasible or necessary, was re-surveyed by the botanist to this project, Suzanne Diamond PhD, and a plant collection for confirmation and if necessary later detailed examination made. The botanist included in her site survey areas that had not previously been examined at the same level of detail...The botanist undertook the surveys over a protracted period of time, revisiting certain areas multiple times..."

Page 19;

"We reviewed the existing data and information (where available) for the entire neighbourhood plan area and augmented this by an extensive field survey of the Plan Area. A new botanist [Suzanne Diamond], not used by any of the previous studies or studies participants was appointed for this project."

The third and final study from Mr. van Poppelen is titled *Gospel Rock Neighbourhood Plan Area: investigation into the area below Gower Point Road and the proposed continuity as a single ecosystem with the area and slopes above the road*, April 2010. This study is attached to the Gospel Rock Refinement Working Committee agenda package of May 18, 2010, page 26.

<http://www.gibsons.ca/images/stories/2010gospel/100518%20Agenda%20-%20%20Gospel%20Rock%20Refinement%20Working%20Committee%20Final.pdf>

"Acknowledgements

I would like to thank the following persons for their much valued and appreciated assistance... Suzanne Diamond PhD (field botanist)..."

Apparently, Suzanne Diamond is the most credentialed sub-contractor working on these reports. We believe the public has a right to view the records of her contribution.

End Note 4

This quote is taken from *Gospel Rock Neighbourhood Area Blocks 6 and 7: Environmental Assessment Study Final Report, 2007*, section 1.1, page 7 (see link in End Note 1). This was the first environmental assessment study completed near the beginning of the planning process. The commitment to making records available to the public is unequivocal.