

September 2, 2009

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 Sechelt Community Projects Incorporated (SCPI) to SCCA FOI Request to the District of Sechelt (DoS) of June 9, 2009.**

Dear Mr. Loukidelis,

Please find attached a copy of our Freedom of Information request to the District of Sechelt of June 9, 2009. This request was transferred to SCPI on July 2, 2009 (under *Section 11* of *FOIPPA*). The DoS acknowledges SCPI is a public body that is entirely owned by it and under its custody. We received a response from SCPI on August 14, 2009. Copies of all correspondence are attached.

We assert that SCPI failed to carry out its duty to assist us under *s. 6* of *FOIPPA*, and improperly severed information under *s.21*. Please accept this letter as our request for a review under *s.52* of *FOIPPA*.

Our information request related primarily to clarifications about financial statements that were presented to the public at SCPI's 2009 Annual General Meeting (audited statements attached), including information about wages, salaries, benefits, payments, etc., of SCPI staff or employees and information about contracts between SCPI and businesses owned by directors of SCPI.

In response to our request for these records, SCPI stated that they have no employees or staff. They also stated that virtually all operational, technical, supervisory, administrative and management activities are provided through one contract with Anik Consultants. SCPI maintains that Anik is an independent third-party contractor and that its records are therefore not open to the public. We submit that SCPI has control and/or custody of all SCPI-related records being held by Anik and therefore should provide the records we requested.

We also submit that the apparent contracting out of the entire management of SCPI to a third party is an attempt by the public body to circumvent their obligations under

*FOIPPA*. This is a position we believe to be in conflict with the purpose and letter of *FOIPPA* and numerous recent Orders by your office.

SCPI did provide a copy of the contract with Anik and its total dollar value in 2008 but severed the dollar values of the contract's fee schedule. SCPI cites *s.21(1)* of *FOIPPA* as a reason for severing these rates of payment being paid for various services. We submit that SCPI has erred in its interpretation of this section. As the Commissioner stated in Order F09-04:

1 [19] Many orders have held that s. 21(1) does not require access to be refused to contracts between public bodies and third parties.<sup>6</sup> It is clear that little, if any, of their contents will qualify under s. 21(1)(b), which is intended to capture immutable, confidential third-party business information and not negotiated contract terms. Nor will mere heightening of competition for future contracts be significant or undue harm under s. 21(1)(c).

Our request for information specifically asked about wages, benefits, etc., being paid to Mr. Kevin Davie who has consistently over the 3-year life of SCPI presented himself to the District of Sechelt, at all public venues and in correspondence, as SCPI's "Operations Manager". Mr. Davie is also the proprietor of Anik Consultants. There has never been an indication to the public, in public meetings or in any prior correspondence, of SCPI's special relationship with Anik or that Mr. Davie is an independent 3<sup>rd</sup> party. We submit that Mr. Davie is properly considered to be an employee of SCPI and that information about his benefits should be available to the public.

Furthermore, we submit that SCPI is able to produce the requested information. Mr. Davie's company has filed invoices with SCPI as required by the contract (attached) for all services rendered and these were in turn compiled into financial statements for the company's Annual General Meeting by SCPI's (or Anik's) accountants. We believe that any SCPI-related record with Anik Consultants is a record in the custody or control of SCPI and therefore responsive to our FOI request.

Our request also asked about contracts being let to companies owned by directors of SCPI. We have reason to believe that this did occur and the DoS specifically amended SCPI's articles of incorporation at the 2009 Annual General Meeting to preclude this from happening. SCPI states that it has no contracts with firms owned by directors, but says nothing about Anik or its subcontractors' contracts with firms owned by directors. We maintain that the question of directors' companies involvement with SCPI also related to Anik and other subcontractors to SCPI.

Another part of our request for public records related to the issue of raw log exports. We believe the public has a right to know if SCPI has engaged in this activity. SCPI says that it did not export raw logs out of Canada. However, SCPI asserts that all sales are managed by an independent third party contractor (Anik). We assert that all records relating to export of raw logs from SCPI, whether conducted directly or indirectly by SCPI, are responsive to our request and should have been released to us.

Finally, and most importantly, the entire operation of SCPI has been contracted out to a third party (Anik). SCPI has a duty to the public to assist in the retrieval of public records under *s.8* of the *Act*. If SCPI is not in possession of the requested records, it could have requested these records from Anik on our behalf. SCPI chose instead to use Anik to deny that it has custody or control of responsive records. As other recent orders have repeatedly held, a public body cannot contract itself out of its statutory obligations, and SCPI should not be allowed to do so in this case.

Please let us know if you require any additional information or clarification of this request for review.

Sincerely,

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

**Attached documents;**

Request for public records from the SCCA to the District of Sechelt, June 9, 2009

Letter from the District of Sechelt to the SCCA acknowledging receipt of the request, June 11, 2009

Letter from the District of Sechelt to the SCCA referring FOI request to SCPI, July 2, 2009

Letter from SCPI to the SCCA acknowledging receipt of SCCA FOI request, August 4, 2009

Letter from SCPI to SCCA releasing some records, August 14, 2009. These records include SCPI's contract with Anik and a letter from Kevin Davie, signed "Operations Manager".

SCPI audited financial statements from 2009 AGM