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City Refuses to Disclose Documents Requested Under Freedom of Information Act Community Association Asks “What is the City Hiding?”

Vancouver, BC – July 15, 2014

The City of Vancouver continues to withhold documents, requested in December 2013 under the Freedom of Information act, regarding the land swap, rezoning and redevelopment of 1099 Richards and 508 Helmcken. 144 days later, and one day after the Community Association of New Yaletown filed and served its Judicial Review Application to set aside the rezoning, the City finally released a portion of the requested records. The released records were heavily redacted. Now, more than 6 months after the original request, ***the City continues to intentionally withhold over 90% of the documents identified in this request.***

FOIPPA requires delivery of records requested under the Act within 30 business days.

“Our request was a simple request for emails,” said Jon Green, President of the Community Association of New Yaletown. “Anyone can search their email in seconds. The City appears to be intentionally delaying delivery of the records. What is the City hiding?”

The City’s repeated delays and continued refusal to deliver the requested documents are not isolated incidents. The newspaper industry association Newspapers Canada, in its National Freedom of Information Audit, recently gave the City of Vancouver a mark of “C” for extent of information disclosed, and an “F” for speed of responses.

“While I respect the role that confidentiality plays in good government, secrecy undermines it,” said Kerry Corlett, a CANY member. “The City of Vancouver intentionally withheld crucial information from the public, including the January 2013 Land Exchange Contract between the City and Brenhill. This information should have been disclosed at the open houses and public hearings. Based on the City’s continued refusal to provide full disclosure under FOI legislation, one can only draw the conclusion that the City has something to hide.”

Mr. Green’s FOI Request was for:

“All email correspondence between Brian Jackson, Penny Ballem, Mike Magee, Michael Flannigan and Kent Munro with regards to the 508 Helmcken rezoning and/or the 1099 Richards rezoning from August 1, 2012 to December 13, 2013.”

The FOI request relates to the Community Association of New Yaletown's quest to stop the developments at 508 Helmcken and 1099 Richards. These buildings were approved by the City over the objections of 90% of area residents, in violation of numerous bylaws and the Vancouver Charter, and through a process that repeatedly breached legal standards of procedural fairness, according to the amended legal Petition filed July 3, 2014 in BC Supreme Court.

"We now know that the City entered into a Land Exchange Contract with a developer 6 months before the public hearing," added CANY President Green. "This contract and other related agreements were kept secret and intentionally withheld from the public at the public hearing. The entire hearing was a sham. The public didn't stand a chance. Now the City is withholding documents detailing these secret deals. The City continues to use secrecy as a weapon."

By email dated March 12, 2013, the City replied regarding the FOI request, advising that it had over "9000 pages of responsive records". Yet after 3 months of delays past the legal due date, the City released just 85 pages. Of those 85 pages released on May 6, 2014, City officials blanked out a total of roughly 29 pages.

The redacted FOI documents can be viewed at <http://www.newyaletown.ca/wp-content/uploads/2014/05/CANY-FOI-1-Info-Requested-2013-377-res.pdf>.

On May 20, May 23, and again on June 2, 2014, Mr. Green inquired as to why only 1% of the responsive records were delivered. Receiving no reply from the City to any of his emails, on June 3 Mr. Green once again submitted a complaint to the OIPC requesting an inquiry into the City's refusal to deliver the bulk of the requested documents.

On June 4, Barbara Van Fraassen, the City's Director of Access to Information finally replied to Mr. Green, falsely claiming that "Your request keyed on/revolved around Michael Flanigan's correspondence with a set of named parties" and that this reduced the number of respondent pages.

Despite Ms. Van Fraassen's false claims, the FOI request clearly lists five City employees equally, not just Michael Flanigan, who is no longer employed by the City and now works for BC Housing. Michael Flanigan left the City within a month of the City approving the two developments around which the FOI request centres.

Mr. Green sent numerous emails to the City requesting the missing requested documents, re-documenting the initial request and even quoting Ms. Van Fraassen's correspondence listing the 5 individuals involved. The City remained silent, and refused to deliver the emails involving Brian Jackson, Penny Balem, Mike Magee and Kent Munro.

Finally on June 27 the City replied, suggesting that since the matter was subject to an inquiry by the OIPC, it did not have to provide documents until the complaint was resolved. Mr. Green immediately replied demanding delivery of the missing records but the City continues to withhold the documents.

The City has not replied since, and continues to be in violation of the Freedom of Information act.

CANY's legal claims are scheduled for a 4-day hearing commencing on August 25, 2014. CANY is asking the Court to set aside Council's decision to rezone 508 Helmcken and to declare the Land Exchange Contract unenforceable.

If built, these developments will prevent the planned expansion of Emery Barnes Park to occupy the full block, as had been previously planned and budgeted.

Hundreds of residents have signed CANY's Change.org petition online at <https://www.change.org/petitions/the-city-of-vancouver-save-emery-barnes-park-and-vancouver-s-green-space> and are donating towards legal fees and following updates on the case at www.newyaletown.ca.

A detailed chronology follows:

- On December 13, 2013, the FOI request was submitted to the City.
- The City initially set its own due date for delivery on January 30—the maximum allowed by law.
- On February 4, responding to a query about its non-delivery, the City set itself a new due date for delivery on March 17, 2014.
- On March 18, responding to a query about this second non-delivery, the City told Mr. Green that there were over 8,500 respondent documents and that they “expected” to deliver the requested information by April 30, 2014.
- On March 21, Mr. Green submitted a formal Request for Review to the BC Office of the Information and Privacy Commissioner, seeking an inquiry into for the multiple delays.
- On March 31, an OIPC officer told Mr. Green that the City was claiming it would now take an additional 400 business days to deliver the documents. Citing the City's highly unusual call for significant further delay, the OIPC fast-tracked its inquiry into the matter.
- On May 6, the Community Association of New Yaletown filed its Petition in BC Supreme Court seeking to halt the developments at 508 Helmcken and 1099 Richards, alleging violations of City bylaws, the Vancouver Charter, and violations of procedural fairness.
- Within hours of being served notice of Court action, the City notified Mr. Green that the requested information was suddenly now available. Mr. Green paid for and collected the documents from City Hall the following day—144 days after the

- initial request and 96 days after the initial due date that the City had set. The documents supplied by the City contained only 85 heavily redacted pages, not the 8500+ pages previously indicated by Ms. Van Fraassen.
- On May 20, May 23, and again on June 2, Mr. Green repeatedly sought an explanation for the non-delivery of roughly 99% of the respondent documents.
 - On June 3, 2014, Mr. Green again contacted the OIPC to request a review of the City's withholding the remaining documents.
 - On June 4, the City falsely claimed that the FOI request centred on one individual, Michael Flanigan.
 - On June 13, June 20 and again on June 27, Mr. Green documented the full scope of the FOI request, quoting the City's own correspondence mentioning the 5 individuals involved, and demanding delivery of the missing documents.
 - On June 27, the City finally replied, only to ask if the matter was under investigation by the OIPC.
 - On June 27, Mr. Green asked again for immediate delivery of the documents.
 - No response from the City has been received since June 27.
 - On July 3, CANY filed its amended Petition in BC Supreme Court.

Background

508 Helmcken is situated at the northeast corner of Emery Barnes Park, in the centre of the mixed-income New Yaletown neighbourhood of downtown Vancouver. The City-owned land is currently the site of Jubilee House social housing. The City had previously planned and budgeted to extend the park to occupy the entire block after Jubilee House was replaced.

The approved development, if built, will permanently prevent the park from occupying the entire block as previously planned. On that site would instead be a 36-storey for-profit development, the densest residential building in the city. The planned tower massively exceeds neighbourhood plan bylaws:

- over 4.5 times as tall as allowed in the Downtown Official Development Plan,
- over 5.5 times as dense, and
- twice as close to the sidewalks and lanes as is required by law.

Approved plans call for a private school to move into the new building and use the park's public playground.

The tower was approved via a series of breaches of procedural fairness, and in disregard of overwhelming (90%) neighbourhood opposition.

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