



# Memo

**TO:** Chair, Finance and Administration Committee

**FROM:** Chief Administrative Officer

**DATE:** November 9, 2020

**SUBJECT:** Office of the Information and Privacy Commissioner (OIPC) and Concerns of Mismanagement and Corruption

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A Freedom of Information request was issued by a complainant under the premise that there was wrongdoing in the way the Water Treatment Plant project was managed. The complainant has gone down several rabbit holes in a search of evidence to substantiate his baseless allegations and assertions. The Town and its officials, and particularly the CAO, have been the subject of incendiary claims that are both slanderous and accusatory. He had even gone to the Municipal Insurance Association in May, 2018 looking for assistance wherein in an email to that organization he wrote *"There has also been talk that the Town's CAO is knowingly abusing the Bylaw Enforcement process as a punitive tool to obtain compliance in matters not mandated by bylaws, and may be violating residents' Charter rights in the process."* He went on to state in the same email *"As a taxpayer and resident whose contributions go toward our Municipal insurance rates, I am very concerned that our rates may start going up as claims come in over time. Is there any recourse for citizens to demand responsible governance in this respect?"* Just when all hope seems to be lost walla up pops a juicy bait two years later - the new Water Treatment Plant and its apparent deficiencies. A twitter feed dated May 15<sup>th</sup>, 2020 reads the *"Town of Lake Cowichan is actively covering up mismanagement of its drinking water supply. The public are prohibited from addressing Council directly"*.

An email from the complainant followed soon after (as in my original response to the complainant, my answers are shown in red):

*"I require access to the following records, correspondence, certificates, and documentation. Each bulleted item is a separate request, to be fulfilled individually.*

- *The Interim Operating Permit issued for Lake Cowichan's Water Treatment Plant, as well as any accompanying guidelines and stipulations for its issuance. Note: You may view the permit and operating conditions at the office. We are in full compliance with the terms and conditions stipulated in that permit.*

- *All sample receipts, reports, and results relating to safety and quality tests for Lake Cowichan's potable water for the past twelve calendar months (including May 2020), including those for both regular testing and any additional testing undertaken. There have been no records that have caused any safety concerns other than the NTU readings when they went beyond 3 that resulted in Boil Water Advisories. If you want these records you need to stipulate exactly and clearly what it is you are seeking and dependent on staff time to access the required information there may be a need for you to make a prior payment before we can undertake any research.*
- *All correspondence with Island Health or its officers regarding the safety and quality of Lake Cowichan's potable water, especially those arising from any identified deficiencies in water quality, deficiencies in monitoring of Lake Cowichan's SCADA system, and/or the commission and operation of Lake Cowichan's Water Treatment Plant None reported.*
- *Any calendar of meetings for Mayor Peters and Councillor McGonigle during the month of May 2020 Not aware of any.*
- *Any correspondence and documentation regarding April or May 2020 meetings between Mayor Peters, Councillor McGonigle, and any officer or representative of Island Health You will have to contact Island Health directly for those as they may have been generated directly by Island Health.*
- *Any correspondence between Mayor Peters, Councillors McGonigle, Vomacka, Austin, Sandhu, and/or CAO Joseph Fernandez regarding the status of Lake Cowichan's Water Treatment Plant, or Lake Cowichan's water distribution facilities in general None other than reports provided at Committee/Council meetings and can be accessed on our website.*
- *Any documentation or correspondence regarding the purpose of, justification for, or execution of Watermain Flushing to be undertaken during the months of April and May 2020 Flushing is necessary to maintain water quality. Natural elements can degrade into sediment and can shield micro-organisms from the disinfecting power of chlorine; therefore, such sediment could contribute to the growth of micro-organisms within distribution mains. Flushing is done annually (April -May) to remove stale water and sediment and thus maintain our water at the highest quality standard possible."*

On the issue of flushing, it is very apparent that the writer showed his utter ignorance on water system issues when in a social media posting he wrote "*flushing was ordered by the CAO to obscure water quality issues resulting from the fact that WTP facility is not up and running*". The complainant barely knows the intricacies of what is involved in our water system operations or of any water system, for that matter. It appears that fearmongering and ignorance on the part of the complainant were designed to stoke fear in the public despite the fact the Town was well on its way to having its WTP commissioned by Island Health. The imagined charge that the drinking water was

substandard and cause for grave concern, where none should have existed, was simply designed to serve his own agenda.

Evidence gathering was simply based on the fact he had *"spoken to a number of Town staff to understand why the Superintendent was fired. Based on things that I've been told in confidence from those in the know, it was purely corruption on the part of the CAO and Council."* Ludicrous musings from someone just basing that conclusion *"on those in the know"* and hearing *"bits and pieces from people"*. Mere gossip and the rumour mill obviously are being treated as the "real thing". You arrive at a conclusion and then you seek evidence to justify the thesis!

In any case, the email issues referred to above were subsequently directed to the OIPC by the complainant. I had no problem providing access to information that the public have a right to ask for, contrary to the complainant's belief. He also demanded copies of emails and calendars of council members and the CAO. As I had no access to personal emails of council, I indicated that and the response from the complainant was *"As the Town's CAO, known to be involved in every step of every significant Town project, you are presumably able to locate and sever these records with reasonable effort, or could provide guidance to a subordinate in their doing so. I have also been told that you retain the duty of providing IT administration for the Town, and therefore must have the competence necessary to search file and email records, and export them to a suitable format."* Again, hearsay from not so reliable sources seems to be his modus operandi.

I had to seek the assistance of the IT consultants to get the information that was being sought. The cost to retrieve that information is \$672 which I felt the person seeking that information should have had a duty to pay for. I felt the complainant should have borne the full cost. The OIPC, however, felt differently and all I could recover from the complainant for this service was \$30 with the taxpayers picking up the difference. I have provided guidance, as per the quote provided, to the IT personnel on this matter but am still waiting for the results of that search. The complainant is in receipt of that quote and the requirements.

We understand from the complainant's social media postings that Island Health was providing the complainant the information he required by August 24<sup>th</sup>, 2020 with *"a full waiver of my fees"*. The results, he claimed would be *"illuminating"* given that the Environmental Health Officer has *"conducted an investigation of the town's drinking water supply"*. To date we know not the results of that supposed investigation that Island Health has conducted apparently unbeknownst to us! This is a case of transparent reporting gone awry; it would seem, if we are to believe the complainant. In the meantime, our WTP has been commissioned by Island Health.

The OIPC's written response to the complainant dated October 27<sup>th</sup>, 2020 reads:

*"In our conversation last week, you indicated that you have paid the fee and are now waiting for the Town's response."*

*Under my delegated authority to investigate and resolve complaints, I have concluded this investigation and have closed the file. If you have any questions, please call me at (250) 415-0571 or contact me by email at tmots@oipc.bc.ca".*

*Please note, now that you have paid the fee, I am waiting for the Town to provide you with its response to your original access request. Once it has met its duty under s. 6 of FIPPA, I will close OIPC File F20-83214."*

The investigations that the complainant keeps referring to simply deals with ensuring that he is in receipt of the information he was seeking and at the cost that was finally agreed to. The entire matter will be closed by the OIPC once the IT produces the documentation dealing with emails and calendars. The complainant will then have to conduct his own investigation to arrive at, what can only be surmised, his own skewed conclusion.

The complainant has continued to ramble incoherently and irrationally on diverse issues such as the Town getting an order from OIPC, the CAO having "a personal interest in the outcome of an election", to council voting themselves a raise, to even the subject of gossip that he so frequently relies on, and the District of Summerland being issued an order by the OIPC.

At the very least, he may have learned the significance of some biological terminology from the paperwork he has received from the Town thus far. Most importantly, the public perception is now they have a "go-to guy", if they want their grievances heard especially as the public are "*prohibited from addressing Council directly*" as is made in an outrageous charge by the complainant!

The Town's taxpayers cannot but be pleased that an aggrieved complainant has been able to expend tax dollars amounting to \$642, in this instance, just so he can complete his journey through the rabbit hole by virtue of the Freedom of Information request. Given that he was so concerned with increased insurance rates affecting him as a taxpayer, this is even the more baffling as he has cared not one iota about the use of public funds for his pet little project. The twisted saga to this chapter needs to end before more taxpayers' funds and staff time are expended on a road that may lead to nowhere.



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Joseph A. Fernandez