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The Information and Privacy Commissioner for British Columbia
4th Floor, 947 Fort Street
Victoria, BC

By email to info@oipc.bc.ca

Complaint against the Capital Regional District
Their FOI # 0580.20/15-042

Background

The Capital Regional District owns Island View Beach Regional Park in the District of Central Saanich.

For the last 5 years the CRD has been providing information to the public and the CRD Board in support of the CRD's intention to create a new park management plan for Island View Beach Regional Park.

The information provided by the CRD, both to the CRD Board and the public, has been consistently wrong in material respects over these years to a degree and frequency that makes it difficult to believe these could be accidental. As some examples:

September 2011: Senior CRD park staff made a series of materially inaccurate statements to the Regional Parks Committee as reasons why CRD Parks could not or should not clean the mosquito drainage ditches at Island View Beach <http://www.friendsofislandviewbeach.com/october-2-2011-letter-to-crd.html>

January 2013: The CRD held a "public information" session in which the bulk of the information shown to the public was materially incomplete or inaccurate.
<http://www.friendsofislandviewbeach.com/2013-january-public-session.html>

September 2013: The CRD released a draft interim management plan to the public that contained exaggerated and misleading claims to a degree and of a frequency that must border on being a serious misrepresentation. Considering the resources of the CRD and that it took them two years to produce that plan, it is hard to believe those false statements could have been accidental.
<http://www.friendsofislandviewbeach.com/misleading-claims.html>

For a detailed list over time see <http://www.friendsofislandviewbeach.com/role-of-staff.html>

November 2013 The CRD was obliged to withdraw the 2013 draft interim management plan because of the many false statements in it.

In May 2014 the CRD approved a new approach intended to regain public confidence, where the first step was to:

Provide factual technical and scientific information about the natural environment found in the park

- *Regional geographic setting*
- *Natural features of the Park:*
 - *Ecosystems*
 - *Terrain, hydrology*
 - ***Species at risk (flora and fauna)***

(Agenda page 32 <https://www.crd.bc.ca/docs/default-source/crd-document-library/committeedocuments/regionalparkscommittee/20140521/2014-05-21rpcagenda.pdf?sfvrsn=6>)

In January 2015 the CRD posted on their web site what was supposed to have been the “*factual technical and scientific information about the natural environment found in the park*”.

In this the CRD claimed there are 9 species at risk “**confirmed resident**” at Island View Beach Regional Park”.

- <https://www.crd.bc.ca/docs/default-source/parks-pdf/sarfactsheetivb.pdf?sfvrsn=2>
- page 14 at <http://issuu.com/capitalregionaldistrict/docs/ivbnep-species?e=2590922/10796110>

On January 21, 2015 a presentation was made by members of the public to the CRD Regional Parks Committee putting them on notice that the CRD material was inaccurate again, and **urging the CRD Parks Committee to postpone public hearings for a month so that the CRD material could be checked and that only accurate information be put before the public.** The CRD Regional Parks Committee refused to postpone the public meetings so the CRD material could be checked.

On January 26, 2015 members of the CRD made a presentation to the Central Saanich Parks and Recreation Committee, and the Central Saanich Councillors passed a resolution:

*That the Parks & Recreation Committee recommend that Council suggest that the Capital Regional District (CRD) provide references on the CRD’s website for scientific information on the current development of a new Island View Beach Park Plan and further, **that if the CRD is unable to provide references for the data provided that they commission a study by an independent firm regarding the validity of the facts.***

<http://www.centalsaanich.ca/Assets/Central+Saanich/Minutes/Parks+Facilities/2015/15Jan26+Parks+Ctee+Minutes.pdf>

On February 18, 2015 the CRD emailed Central Saanich what they said were references, but what they sent contained nothing to support their claims there are nine species at risk confirmed resident at Island View Beach Regional Park. Further, the “references” they sent contained almost no links to the claimed references and no way of finding those papers, and no page numbers if the reader ever managed to find the paper referred to. What the CRD sent to Central Saanich was not the references Central Saanich had clearly asked for. See CRD letter of February 18, 2015 attached.

To my knowledge, the CRD commissioned only one scientific study of Island View Beach Regional Park between May 2014, when they were instructed to proceed with the environmental review, and January

2015 when they posted their claims on their web site. That study was by Matt Fairbarns of Aruncus Consulting who reported to the CRD in July 2014. The references given by the CRD to Central Saanich Council made mention of this study but did not provide access to it. In fact, not only did the CRD not give online access to the Fairbarns report, but initially they had suppressed it and it only came to light because I had seen Mr. Fairbarns working in the park last year and so I knew to ask the CRD for a copy of his report. Why did the CRD suppress the Fairbarns report? Perhaps because it challenged the existence of two of the plant species claimed by the CRD to be “confirmed resident” in the park.

“The report of Fleshy Jaumea is suspect – there is no precise information confirming its presence at Island View Beach and there is little or no suitable habitat within the regional park. It is known to occur in adjacent lands but the report for Island View Beach is probably a mapping error created by the vague nature of old records. American Glehnia is also known from adjacent lands but neither has been reported from Island View Beach Regional Park.”

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http://www.friendsofislandviewbeach.com/uploads/2/4/3/5/24351508/island_view_beach_ca_missonia_and_lathyrus_survey_2014.pdf

In February 2015 the Friends of Island View Beach had a series of email communications with the CRD. They reminded the CRD that the environmental report was to be *“factual technical and scientific information about the natural environment found in the park”*, and they asked the CRD to provide references that confirmed the existence of certain of the species claimed by the CRD to be “confirmed resident” in the park. Despite repeated requests, the CRD refused to provide this information, instead telling the FOIVB to seek this information themselves. This was one of the emails by the FOIVB to the CRD:

Fof IvBeach <friendsofislandviewbeach@gmail.com>

to Todd , Susan, Mike, Lynn,
Good morning Todd

I think it important we refocus on the purpose of the CRD environmental presentation. It was to provide a factual, technical and scientific assessment of the environment at Island View Beach Regional Park - as it is now - to become a basis for moving forward with a new park management plan.

I see you have now added a "References" part to the CRD web site at <https://www.crd.bc.ca/project/other-projects-initiatives/island-view-beach-management-plan>. Would it have been too hard to have let us know?

But looking through these new references, none give support to your claim that the Common Nighthawk, the Fleshy Jaumea, the American Glehnia, or the Sand-Verbena moth, are resident in Island View Beach Regional Park. Instead we are left with your position that you were told this by the BC CDC but that you can't give us this information because you promised not to tell. With respect Todd, this is not factual, technical or scientific.

You tell us to contact the CDC and try to get the information ourselves from them, but it is you making this claim, not us, and the onus of proving your claim is on you. As you know, there have been many mistakes and misrepresentations by the CRD in the past about the environment at IVBRP and our role here is simply to fact check the claims made by the CRD.

We ask once more - please give us references that can be checked, to support your claim that the Common Nighthawk, the Fleshy Jaumea, the American Glehnia, and the Sand-Verbena moth, are resident now in Island View Beach Regional Park.

Thank you.

Jason
for the Friends of Island View Beach.

On July 10, 2015 I wrote to the CRD expressing concern about their environmental presentation and said in part:

1. *The "9 species at risk" CRD Parks say are **"known to be resident or breeding in the park"** include:*

- Sand Verbena moth
- Common night hawk
- Fleshy Jaumea
- American Glehnia

What "factual, technical and scientific" information do you have to confirm these 4 species are resident or breeding in the park? I have looked through the references cited by the CRD and been unable to find evidence these are resident or breeding in the park- in fact the material I have seen suggests they are not present. I have previously repeatedly asked Todd Golumbia for this information and was not given it. Will you please provide me with this.

See letter attached.

On July 15, 2015 the CRD replied saying in part:

*In your email below, you ask for information about SAR from Step 1 of the planning process as a prerequisite to contributing to Step 2. We do not believe that this information is necessary to participate in Step 2, and **we are not providing you with any additional information about SAR.*** [Note: SAR = species at risk]

The CRD email went on to say:

*CRD Regional Parks Committee Chair, Susan Brice, sent you a letter on March 30, 2015 answering similar FOIVB requests for this information; in her letter, Chair Brice states that she is satisfied with the information presented in Step 1 (see attached letter), but also encouraged you to come forward if you had additional information that was counter to what was presented. However, **Chair Brice requested that this information be prepared or endorsed by a registered professional biologist in the Province of BC who has expertise in ecosystem and species protection and management.** We have not received any such information from FOIVB to date.*

All we had asked of the CRD was for references to support the claims made by the CRD that certain species at risk were "confirmed resident" at Island View Beach Regional Park. It was the CRD who made

the claims, and they were doing so under the direction that their work was to be “*factual technical and scientific information about the natural environment found in the park*”. **The onus is on the CRD to prove the claims they make, not for the public to have to disprove them.**

On July 16, 2015, the day after the CRD refused to provide references to support their claims, I made an FOI request to the CRD:

At <https://www.crd.bc.ca/docs/default-source/parks-pdf/sarfactsheetivb.pdf?sfvrsn=2> the CRD identifies 9 species that it says are “confirmed resident species” in Island View Beach Regional Park. These include the Common Nighthawk, the Fleshy Jaumea, the American Glehnia, and the Sand-Verbena moth.

I would like:

- copies of the records that led to this determination for each of these 4 species
- copies of the emails, both internal and external, that discuss these
- copies of working papers and drafts that refer to these

Thank you.

By letter dated July 31, 2015 (but post marked August 4th and received by me on August 10th), the CRD informed me that they would **charge me \$1,165** to provide references to support their claims, **citing 24 hours work and 1,600 pages of records!**

This cost is clearly intended to obstruct my request for information.

I did not ask for an “after the event” treatise on these species, I asked only for the records that lead the CRD to make the claim in January 2015 that were certain species at risk “confirmed resident” in Island View Beach Regional Park.

If the CRD had used the standard of *factual technical and scientific* when making the claim those species were confirmed resident in the park, then they would have had that information available at their finger tips in electronic format, and that is what they should have sent me. It would have taken minutes, not hours, to comply with the FOI request, nor would there have been any photocopying.

The biologist for CRD Parks informed me in February 2015 that the information on some of these species we questioned had come from the Conservation Data Centre. That information would all have been in electronic format, accessible in minutes and with nothing to photocopy.

I also challenge the CRD claim that there are 1,600 pages of records. Again I point out I only asked for the records that lead them to make the determination in January 2015 that these species are confirmed resident at the park, and, to the current time, copies of the emails, both internal and external, that discuss these, and copies of working papers and drafts that refer to these. The Fairbarns report in July 2014 was extensive and complete, yet is only 12 pages. The CRD claim there are 1,600 pages involved in my FOI request is a fabrication intended to thwart the FOI.

http://www.friendsofislandviewbeach.com/uploads/2/4/3/5/24351508/island_view_beach_camissonia_and_lathyrus_survey_2014.pdf

I ask that you investigate all the questionable claims made by the CRD reported here, including the proposed charges for complying with the FOI request.

Is the public entitled to a reasonable expectation that information given to it by the Capital Regional District will be complete and accurate?

A serious question of public policy arises from the long history of the misinformation given by the CRD to the public and the CRD Board about Island View Beach Regional Park, and I hope you will address this:

Is the public entitled to a reasonable expectation that information given to it by the Capital Regional District will be complete and accurate?

Thank you.

Jason Austin