

**Submission of the Vancouver Island Strata Owners Association (VISOA)
to the Special Committee to Review the Freedom of Information and
Protection of Privacy Act (FIPPA)**

Victoria, February 3, 2010

Since 1973, the VISOA has represented the interests of thousands of strata owners on Vancouver Island (and increasingly on the mainland) and has done so independent of government and the real estate industry. Our association is not supported financially by either the real estate industry or government. None of our volunteer Directors is an “at pleasure” appointee to any government board. All Directors are elected at an annual general meeting of the association’s membership.

In British Columbia there are over 460,000 condominiums or strata property units. In Victoria and the lower mainland over one-half of all properties are condos or strata properties. These units are part of communities with “**mini governments**” that lack the transparency and accountability mechanisms in place for other governments.

Our concerns regarding “freedom of information” are as follows:

1. Strata owners are frequently and unlawfully denied access to information to which they are entitled under sections 35 and 36 of the Strata Property Act. Many denials are based on frivolous or misleading references to BC’s “privacy” legislation, often by strata management licensees who should know better. Such denials impede transparency and accountability in strata corporations and make a strata owner’s property interest vulnerable to abuse or outright dishonesty by members of strata councils or by strata management licensees.
2. The Commissioner appointed under section 37 (or 39) of the FIPPA lacks direction to support strata owner access to strata information under either the PIPA or the FIPPA. This means there is no accessible enforcement mechanism for “freedom of information” for strata owners under any BC statute. Furthermore, the Commissioner’s recently released guidelines for strata corporations and strata management licensees do not even mention section 18 (1) (o) of the PIPA. This omission can be reasonably attributed to the failure of the Office of the Information and Privacy Commissioner to adequately balance a strata owner’s statutory right to information against the power of a strata council or strata management licensee to conceal information.
3. Inflated Ministry estimates of costs for granting a request under the FIPPA inhibits citizen requests for information that affects their property. The Ministry of Transportation and Infrastructure is responsible for approval of bare land strata subdivisions under the Bare Land Strata Regulation. At present the Ministry uses a private and closed door process that excludes strata owners from its review and approval of new phases of an existing bare land strata plan in which those owners reside. Under this process the Ministry can and has ignored the rights of strata owners resulting in some serious legal errors that later had to be corrected. The experience has made some strata owners more vigilant in seeking information from the Ministry. However, the Ministry appears to be impeding access to such information through the use of inflated cost estimates. (For example, in response to one request from a strata owner the Ministry estimated a cost of

over \$7000 to provide a few pieces of correspondence and phase approval documents for a strata plan. The strata owner pursued the matter and obtained the information for the actual cost of only \$180.) Such a case creates the perception that the Ministry is using inflated cost estimates to “scare off” requests under the FIPPA in order to maintain complete secrecy of its interactions with strata developers.

Recommendations:

1. That strata owners be provided with enforceable freedom of information from strata corporations similar, but simplified, to that available to the public from “local public bodies” (e.g. Real Estate Council) as listed under Schedule 3 of the FIPPA.
2. That the OIPC be required to maintain a fair and balanced approach in protecting “freedom of information” for strata owners.
3. That the Ministry of Transportation and Infrastructure be deterred from providing grossly inflated cost estimates in response to requests under the FIPPA.

Respectfully submitted:

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