

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jay Walshon,

Complainant

against

Docket #FIC 2019-0013

First Selectman, Town of Westport;
Parks and Recreation Director,
Town of Westport; and
Town of Westport,

Respondents

December 11, 2019

The above-captioned matter was heard as a contested case on May 29, 2019 and July 31, 2019, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, on November 8, 2018, the complainant sent Jennifer Fava, the Director of the Parks and Recreation Department, a request to answer the following three questions:
 - a. **Who exactly** changed the design concept of the South Beach restroom that was presented by our contracted experts?
 - b. **At what meeting** did this design change decision take place and who was in attendance?
 - c. **Why** was Mr. Lothrop's March 2015 design safety admonition to the P&R Commission and the public ignored?
(Emphasis in original).
3. Thereafter, by email dated November 26, 2018, the complainant sent Ms. Fava a request to answer the following four questions:

- a. **Who exactly** changed the design concept of the South Beach restroom that was presented to the public by our contracted experts Jim Lothrop and AKRF?
- b. **When exactly did that change occur?**
- c. **At what meeting did that change occur?**
- d. **Why** was Mr. Lothrop's March 2015 design safety admonition to the P&R Commission and the public ignored and why exactly did the design suddenly change?
(Emphasis in original).¹

4. It is found that, in a separate email dated November 26, 2018, the complainant sent Ms. Fava a request for records related to the questions set forth in paragraph 3, above, as follows:

In reference to the request for information that we just sent to you again, please provide all the documents associated with the requested information, including all minutes, communications and any other document regarding the requested information.

5. It is found that, on December 14, 2018, the complainant met with the First Selectman for the Town of Westport and suggested to the First Selectman that, because he had not received any records in response to his November 26th request and because the questions he had posed in his November 8th and November 26th requests had not been answered, he believed that the respondents had engaged in a secret meeting and changed the design of the South Beach restrooms project. The complainant contends that, because the First Selectman remained silent during the December 14th meeting, he is now convinced that in May 2016 the design of the South Beach restrooms was changed during a secret meeting.

6. The complainant further contends that the First Selectman stated in an email dated August 4, 2018 that "certain people he spoke with would be upset if the Parks and Recreation changed their proposal request [concerning the South Beach restrooms]" (the "statement").

7. It is found that, on or around November 26, 2018, the complainant requested that the First Selectman supply all records, documents and conversations relating to the

¹ While the complainant did not allege a violation of the FOI Act based on the fact that Ms. Fava did not answer the questions posed to her in paragraphs 2 and 3, above, the Commission notes for the sake of clarity that there is nothing in the FOI Act that requires a public official to answer questions, and, therefore, it is concluded that Ms. Fava did not violate the FOI Act by not answering such questions.

statement referred to in paragraph 6, above. It is found that, in an email dated December 17, 2018, the respondent First Selectman replied that he could not locate any responsive records.

8. Finally, the complainant contends that “the Parks and Recreation Commission exceeded its own limiting public appropriation request resolution [concerning the construction of the South Beach restrooms] by \$260,000.”

9. The complainant contends that he requested that the respondents provide “the documents that pertain to a Commission or Board that exceeds its limited spending resolution” and that he received no responsive record.

10. By letter dated and filed January 7, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act (“FOI Act”) by failing to provide him with copies of the records described in paragraphs 7 and 9, above, and by conducting a secret meeting sometime in May 2016.

11. With regard to the allegations concerning the alleged secret meeting referenced in paragraph 5, above, §1-200(2)(A), G.S., defines “meeting,” in relevant part, as follows:

[A]ny hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. . . .

12. Section 1-225(a), G.S., provides, in relevant part, that “[t]he meetings of all public agencies . . . shall be open to the public.”

13. Finally, §1-206(b)(1), G.S., provides, in relevant part, as follows:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held. . . .

14. Ms. Fava appeared and testified at the contested case hearing on behalf of the respondents.

15. It is found that, in and around 2014, the citizens of Westport had publicly commented on the lack of convenient restrooms at South Beach, which is part of a 29-acre park with an extensive sand beach along the shore of Long Island Sound.

16. It is found that, on or around June 18, 2014, the respondents issued the "Compo Beach Master Plan," which contained a conceptual design for the construction of one building to be erected on South Beach (the "restroom project"). It is found that the original restroom project envisioned one building that would include both men's restrooms and women's restrooms, as well as a family changing area.

17. It is found that, on or about August 11, 2016, the Town of Westport issued a Request for Proposals for the construction of the restroom project.

18. It is found that, on or around November 15, 2017, the Parks and Recreation Commission, having reviewed the proposals that were submitted in response to the Requests for Proposals, approved an actual design for construction of the rest room project. It is found that the selected design was one building containing three unisex bathrooms.

19. It is found that, between June 18, 2014 and November 13, 2018, the respondents, as well as other town agencies such as the Planning and Zoning Commission and the Representative Town Meeting, held at least 25 public meetings concerning the restroom project.

20. It is found that, at the time of the contested case hearing in this matter, the restroom project was fully completed.

21. It is found that there is no evidence that the named respondents ever engaged in a secret meeting with regard to any aspect of the restroom project.

22. Accordingly, it is concluded that the respondents did not violate the FOI Act in this regard, as alleged in the complaint.

23. With regard to the requests for records set forth in paragraph 7, above, it is found that the First Selectman searched his files for responsive records, including both his electronic and hardcopies files. It is found that the First Selectman did not find any records responsive to this request.

24. Accordingly, it is concluded that the First Selectman did not violate the FOI Act, as alleged in the complaint.

25. Finally, with regard to the request set forth in paragraph 9, above, while the complainant contends that he made a request for public records and directed such request

to Ms. Fava and/or the First Selectman, the evidence in this case reveals that the operative communication dated November 28, 2018 did not contain a request for records; rather, such communication, which was sent only to the Town of Westport's attorney, posed the following questions (amongst many others):

- a. **What is the actual specific procedure(s) that enables a board or commission to spend more money than what they publicly promised they would do and what they publicly resolved to limit themselves to?**
- b. **What is the procedure that must be adhered to?**
(Emphasis in original).

26. It is found that the town attorney replied that he believed that answering the complainant's questions would constitute research, which he was not required to perform.

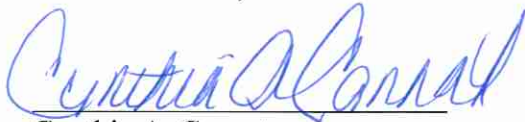
27. As previously stated, there is nothing in the FOI Act that requires a public official to answer questions. See, e.g., Sandra Staub, Esq. and the American Civil Liberties Union Foundation of Connecticut v. Chief, Police Dep't, City of Bridgeport, et al., Docket #FIC 2012-127 (Dec. 7, 2012).

28. Accordingly, it is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 11, 2019.




Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

JAY WALSHON, 67 Roseville Road, Westport, CT 06880

FIRST SELECTMAN, TOWN OF WESTPORT; PARKS AND RECREATION DIRECTOR, TOWN OF WESTPORT; AND TOWN OF WESTPORT, c/o Attorney Ira W. Bloom, and Attorney Nicholas R. Bamonte, Berchem Moses PC, 1221 Post Road East, Westport, CT 06880, and Attorney Eileen Lavigne Flug, Town of Westport, 110 Myrtle Avenue, Westport, CT 06880



Cynthia A. Cannata
Acting Clerk of the Commission