

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Richard Kosinski,

Complainant

against

Docket #FIC 2019-0367

First Selectman, Town of Oxford;
Finance Department, Town of Oxford;
And Town of Oxford,

Respondents

September 25, 2019

The above-captioned matter was heard as a contested case on August 20, 2019, at which time the complainant and the respondents appeared 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, by letter dated June 3, 2019, the complainant requested from the respondents access to records pertaining to the positions of nonunion employees or officials of the town, specifically:
 - (a) Assigned salary of each said position since January 1, 2016;
 - (b) Required or expected number of weekly hours worked for each said position since January 1, 2016;
 - (c) Available assigned salary of each comparable position in other Connecticut municipalities since January 1, 2016;
 - (d) Connecticut Conference of Municipalities (CCM) 2017-2018 Municipal Salary Survey; and
 - (e) Adjusted Equalized New Grand List Per Capita (AENGLC) and AENGLC Rank for the 169 Connecticut Towns for 2017-2018 and thereafter.
3. It is found that the respondents received the complainant's written request on June 5, 2019, and by letter dated June 6, 2019, the first selectman acknowledged receipt of such request and informed the complainant that it was being forwarded to town counsel. It is found that the town's finance director, James Hliva, was tasked with responding to the request.

4. It is found that Mr. Hliva acknowledged the complainant's request by email dated June 5, 2019, and advised the complainant that the salary information he requested was available on the town's website; that the salary survey was available from CCM; and that the AENGLC rankings of the town was done by the state Office of Policy and Management and that the equalized grand list for the town was available on the town's website under the 2018 audit.

5. It is found that, by letter dated June 18, 2019, counsel informed the complainant that Mr. Hliva would notify him of the availability of records responsive to the request described in paragraphs 2(a) and (b), above, and denied the request for records responsive to the request described in paragraphs (c) and (d), above. As to the request for records responsive to the request described in paragraph 2(e), above, counsel informed the complainant that such request had been forwarded to the town assessor and upon its availability the complainant would be contacted.

6. By letter dated June 20, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by denying the request, described in paragraph 2, above.

7. Section 1-200(5), G.S., provides:

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method. (Emphasis added).

8. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect such records promptly during regular office or business hours...or...receive a copy of such records in accordance with section 1-212.

9. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

10. It is found that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. With regard to the request, described in paragraph 2(a), above, it is found that the complainant responded to Mr. Hliva that the salary information available on the town's website was not the information he was seeking; rather, he was seeking the salary information broken down by full-time and part-time employees. It is found that the town did not maintain a list or other single document with this information at the time of the request. It is found that Mr. Hliva created a new record for the complainant, with the information broken down by full-time and part-time employees. It is found that such record was provided to the complainant on July 10, 2019.

12. With regard to the request, described in paragraph 2(b), above, it is found that the respondents did not maintain a list or other single document indicating the number of hours each employee is expected to work. However, it is found that, by reviewing employee personnel files as well as specific lines in the town budget, Mr. Hliva created a new record for the complainant containing the information he was seeking. It is found that such record was provided to the complainant on July 30, 2019.

13. At the hearing in this matter, the complainant stated that he was satisfied with the records that were provided, but contended that the respondents failed to provide the records described in paragraphs 11 and 12 to him by "the statutory deadline," and that therefore the respondents violated the FOI Act.

14. Under the FOI Act, records must be provided to a requester "promptly." See §§1-210(a) and 1-212(a), G.S. The Commission has previously opined that the word "promptly" means "quickly and without undue delay, taking into account all of the factors presented by a particular request ... [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the record; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982).

15. It is found that, during month of June 2019, while the request was pending, Mr. Hliva was working to complete two projects: an audit of the high school in conjunction with the state Department of Administrative Services' School Facilities Unit; and working with the Federal Emergency Management Administration (FEMA) regarding the tornado disaster that occurred in the town in May 2018, each of which had a June 30 deadline.

16. It is found that the complainant offered no evidence that he had informed the respondents that he needed the requested records by a certain date.

17. Based upon the foregoing, it is found that the respondents provided the records described in paragraphs 11 and 12, above, to the complainant promptly.

18. It is concluded that the respondents did not violate §§1-210(a) or 1-212(a), G.S., with respect to the request described in paragraphs 2(a) and 2(b), above.

19. At the hearing in this matter, the complainant insisted that the respondents had conducted their own salary survey, and that therefore, they must maintain more records than just the CCM 2017-2018 Municipal Salary Survey. However, it is found that the respondents maintain only one record responsive to the request described in paragraphs 2(c) and 2(d), above, consisting of the CCM 2017-2018 Municipal Salary Survey. Mr. Hliva testified that he believed the survey was confidential because the first page of the document was marked "For Municipal Use Only," and therefore denied the complainant access to the survey. The respondents offered no other justification for withholding the survey.

20. It is found that a marking on a document indicating that it is for municipal use only is not an exemption to disclosure under the FOI Act. It is further found that the respondents failed to prove that the survey is exempt from disclosure. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such record from the complainant.

21. With regard to the record responsive to the request, described in paragraph 2(e), above, Mr. Hliva testified that he initially conducted a search for such record in the place where it typically would be located, and did not find it. After learning that the respondents did, in fact, maintain the record, he found that an assistant tax assessor, who is relatively new to her position, had placed the record in her desk drawer, rather than in the file where it belonged. It is found that, as of the date of the hearing in this matter, the respondents had not provided a copy of this record to the complainant.

22. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with access to the record responsive to the request described in paragraph 2(e), above.

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

1. Forthwith, the respondents shall provide a copy of the CCM 2017-2018 Municipal Salary Survey, as well as a copy of the record described in paragraph 2(e) of the findings, above, to the complainant, free of charge.

2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 25, 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:

RICHARD KOSINSKI, 40 Manitoak Drive, Oxford, CT 06478

FIRST SELECTMAN, TOWN OF OXFORD; FINANCE DEPARTMENT, TOWN OF OXFORD; AND TOWN OF OXFORD, c/o Attorney Kevin W. Condon, PO Box 570, Ansonia, CT 06401-0570



Cynthia A. Cannata
Acting Clerk of the Commission