

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Chris Noe,

Complainant

against

Docket #FIC 2019-0736

Director, Department of Public Works,
Town of Darien; Department of Public
Works, Town of Darien; Town of Darien;
Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; and State of Connecticut,
Department of Emergency Services and
Public Protection,

Respondents

November 18, 2020

The above-captioned matter was heard as a contested case on October 13, 2020, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.¹

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 November 1, 2019, the complainant requested from the respondent Department of Public Works ("DPW"), a copy of "the most current sewer map for the town of Darien."
3. It is found that, by email dated November 4, 2019, the respondent director of DPW ("director") acknowledged receipt of the request, described in paragraph 2, above, and informed the complainant that "an inquiry will be made to the State of Connecticut Commissioner of Emergency Services and Public Protection as to the propriety of disclosing this information."
4. It is found that, on or about November 14, 2019, the director sent a letter to the respondent Department of Emergency Services and Public Protection ("department") informing

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

the department that DPW had received a request for a copy of the Overall Map of the Town of Darien Sanitary Sewer System, and expressing concern about disclosing this information. The director noted in the letter that state statute requires consultation with the Commissioner of DESPP (“Commissioner”) regarding disclosure of information which may pose a potential safety risk, and he requested such consultation.

5. It is found that, on December 10, 2019, the complainant visited the offices of DPW and renewed his request for the sewer map. It is found that the DPW employee in the office “made it quite clear [that he] would not be getting this map.”

6. By letter dated December 10, 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.

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. Section 1-210(b)(19), G.S., provides, in relevant part, that disclosure is not required of:

[r]ecords when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility...Such reasonable grounds shall be determined...by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency....As used in this section...chief executive officer” includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to:

- (i) Security manuals or reports;
- (ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;
- (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system may be disclosed;
- (iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (v) Internal security audits of government-owned or leased institutions or facilities;
- (vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (vii) Logs or other documents that contain information on the movement or assignment of security personnel; and
- (viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official....

12. It is found that, by letter dated December 27, 2019, the Commissioner informed the director that, after consultation with the director, he had determined that there are reasonable grounds to believe that disclosure of the requested sewer map, which reveals “specific information regarding municipal infrastructure, including the locations of all fourteen (14) pumping stations, as well as the underwater force main crossings to the City of Stamford”, may result in a safety risk, particularly a risk of harm to persons or facilities under Connecticut General Statutes §1-210(b)(19).

13. It is found that, in reaching his determination, the Commissioner looked to prior safety risk assessments conducted by the department or its predecessor agency related to disclosure of records that reveal the locations of water or sewer systems. In particular, in 2011, after a safety risk assessment, the town of Wallingford was directed by the then Commissioner not to disclose information containing the details of the town’s water system; and in 2008, the town of Greenwich was directed by the then Commissioner to withhold GIS data that included specific locations of certain facilities, including sewer lines.

14. In addition, it is found that the respondent Commissioner considered the federal Environmental Protection Agency’s website pertaining to Water Infrastructure Resilience and Incident Response, which provides: “Drinking water distributions systems are also increasingly vulnerable to interruption in service from a terrorist attack and industrial accident, an extreme weather event, and aging water infrastructure....These vulnerabilities, from source water to waste water systems, present challenges in maintaining good water quality and in ensuring water is available for vital uses.”

15. Further, it is found that the respondent Commissioner considered the language of Connecticut General Statutes §25-32d(e), which provides that certain records, including maps which identify specific locations of water and sewage treatment facilities or pump stations, filed with a public agency by a water company, are confidential and not subject to disclosure under the FOI Act. After such consideration, the Commissioner concluded that withholding the requested sewer map is consistent with that statute.

16. It is found that the Commissioner, having made the determination that there are reasonable grounds to believe that disclosure of the requested sewer map may result in a safety risk, under §1-210(b)(19), G.S., then directed DPW to withhold disclosure of such map.

17. The complainant argued, at the hearing in this matter, that he is entitled to a copy of the sewer map because such map was posted on the door at the DPW offices on the day he requested a copy of the map. It is found, however, that the map that was posted on the door was dated January 2013, and did not contain several pieces of information that are included in the current map. It is further found that, although the complainant stated at the hearing that he was seeking a copy of the map that was posted on the door, his written request, as noted in paragraph 2, above, indicates that he was seeking the “current map”.

18. The complainant also argued that he should be entitled to a copy of the sewer map because he is a “contractor” who poses no risk of harm, and that he needs the map for work ongoing at his own property and for other projects he may be involved with in the future.

19. However, our Supreme Court has held that “when the [FOI] Act provides that an agency other than the [FOI] Commission must determine whether records fall within a particular exemption...the agency has broad discretion to make that determination, and the [FOI] Commission must give deference to that determination...unless [it] is frivolous or patently unfounded, or not arrived at in good faith”. People for the Ethical Treatment of Animals, Inc. v. Freedom of Information Commission, 321 Conn. 805, 817-820 (2016) (“PETA”), citing Van Norstrand v. Freedom of Information Commission, 211 Conn. 339 (1989).

20. Moreover, “[1-210(b)(19), G.S.] imposes no requirement, that in making its assessment, the department may only consider evidence of previous instances in which persons were subject to threats or violence as the result of similar disclosures. The statute also does not require that there must be a clear safety risk to justify nondisclosure or that the safety risk must outweigh the public interest in disclosure.” *Id.* at 818.

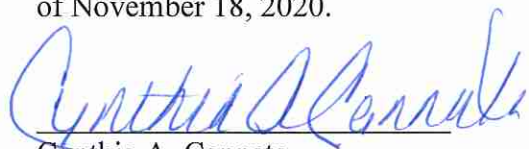
21. It is found that the determination made by the Commissioner in his December 27, 2019 letter was not frivolous or patently unfounded; moreover, there is no indication in the record that such determination was not arrived at in good faith. Therefore, this Commission must defer to the Commissioner’s determination that there are reasonable grounds to believe that disclosure of the requested sewer map may result in a safety risk, particularly a risk of harm to persons or facilities under Connecticut General Statutes §1-210(b)(19).

22. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the record, described in paragraph 2, above, from the complainant.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 18, 2020.



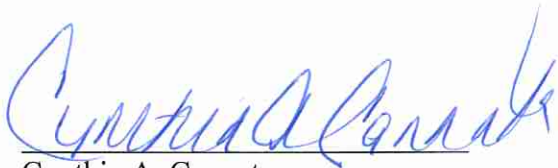
Cynthia A. Cannata
Acting Clerk of the Commission

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:

CHRIS NOE, 242 Old Kings Hwy S, Darien, CT 06820

DIRECTOR, DEPARTMENT OF PUBLIC WORKS, TOWN OF DARIEN; DEPARTMENT OF PUBLIC WORKS, TOWN OF DARIEN; TOWN OF DARIEN, c/o Attorney John Wayne Fox, Curtis, Brinckerhoff & Barrett, P.C., 666 Summer Street, Stamford, CT 06901; **COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION**, c/o Attorney Douglas Sauve, Dept. of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457



Cynthia A. Cannata
Acting Clerk of the Commission