

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Mark Lee,

Complainant

against

Docket # FIC 2020-0371

Building Official, Office of Building  
Inspection and Enforcement, City of New  
Haven; Office of Building Inspection and  
Enforcement, City of New Haven; and City  
of New Haven,

Respondents

December 15, 2021

The above-captioned matter was heard as a contested case on August 18, 2021, at which time the complainant and the respondents appeared, stipulated to certain facts, 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 through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

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 email dated July 30, 2020, the complainant requested from the respondents copies of all plumbing permits applied for and approved, relating to a housing authority project in the City of New Haven, for the following street addresses:
  - (a) 5a-45b Daisy Street;
  - (b) 819 Sherman Parkway;
  - (c) 220-230 County Street; and
  - (d) 81-95b Liberty Street.

3. It is found that, by email dated July 31, 2020, the respondents acknowledged the complainant's request and inquired about the specific addresses in question. It is also found that, by email dated August 4, 2020, the respondents provided the complainant with instructions on how to review the requested records, described in paragraph 2, above, through the respondent's online portal and instructed the complainant to view such records there.

4. It is found that, by email dated August 4, 2020, the complainant informed the respondents that he did not have access to their online portal and reiterated his request to have the records provided to him via email. It is also found that, by email dated August 4, 2020, the respondents informed the complainant that they would provide the complainant with paper copies of the requested records at a cost of \$0.50 per page. They also informed the complainant that compliance with his request would take additional time due to limited building access as a result of the COVID-19 pandemic.

5. It is found that, by email dated August 4, 2020, the complainant declined the offer of paying for paper copies prior to reviewing the records and repeated his request that the respondents provide such records to him via email. It is also found that, by emails dated August 5, 2020 and August 6, 2020, the respondents twice more informed the complainant that he should view the requested records through their online portal.

6. By email, dated August 7, 2020<sup>1</sup>, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his records request.

7. It is found that on or around February 2, 2021 the respondents provided to the complainant all records responsive to the request, described in paragraph 2, above.

8. At the time of the request, §1-200(5), G.S., provided:

“[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.<sup>2</sup>

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

[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 (1) inspect such records promptly during regular office

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<sup>1</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date. On May 20, 2021, the Governor issued Executive Order 12B, thereby extending Executive Order 7M through Jun 30, 2021. Consequently, the Commission retains subject matter jurisdiction.

<sup>2</sup> Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

or business hours ... or (3) receive a copy of such records in accordance with section 1-212.

10. Section 1-211(a), G.S., provides, in relevant part that:

[a]ny public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. (Emphasis added).

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

12. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212, G.S.

13. At the hearing in this matter, the complainant testified that he tried to access the online portal multiple times, but he could not gain access. The complainant further testified that after receiving the August 6, 2020 email that instructed him once again to access the online portal, he did not hear back from the respondents for over six months, at which time, on or around February 2, 2021, they provided him with copies of the requested records.

14. The respondents acknowledged that there were technical issues with gaining external access to the online portal at the time the complainant was instructed to access the requested records through it, but that such issues were resolved by the Fall of 2020.

15. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word “promptly,” as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. As the court recognized in Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. HHB-CV-18-6047741 (July 20, 2020) \*6, a public agency should consider its obligations under the FOI Act as a “primary duty” of that agency, “on par with the [agency’s] other significant duties, or said another way, that the agency’s FOIA duty is not a second class duty.”

16. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

17. With regard to the factors listed above, it is found that the complainant did not indicate in his request that he needed the requested records by a particular date. It is also found that the requested records provided to the complainant on or around February 2, 2021, consist of approximately forty pages.

18. It is found that all of the requested records had been uploaded to the City of New Haven's online portal prior to the complainant's request, described in paragraph 2, above. It is therefore found that the respondents could have reasonably made a copy of the requested records and attached them to an email to the complainant, in accordance with §1-211(a), G.S.

19. At the hearing in this matter, the respondents' witness testified that although the City of New Haven's offices were closed for an extended period of time, due to the COVID-19 pandemic, and most employees were working remotely, he was physically in the office during regular work hours. The respondents' witness further testified that, although he was present in the office during regular work hours and responsible for complying with the complainant's records request, he delegated the complainant's request to another employee, who was working remotely at that time. Upon direct questioning by the hearing officer, the respondents' witness provided no explanation as to why the complainant did not receive his requested records until more than six months after making the initial request.

20. It is found, based on the foregoing, that although the respondents faced certain challenges during the COVID-19 pandemic, the respondents' disclosure of records on or around February 2, 2021, more than six months after the complainant's request was received, was not prompt.

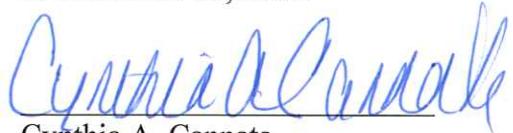
21. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the requested records to the complainant promptly.

22. Furthermore, based upon the particular facts and circumstances of this case, it is concluded that the respondents violated §1-211(a), G.S., by failing to provide computer stored records via email, as requested by the complainant.

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

1. Henceforth, the respondents shall strictly comply with the promptness provisions in §§1-210(a) and 1-212(a), G.S.
2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §1-211(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 15, 2021.



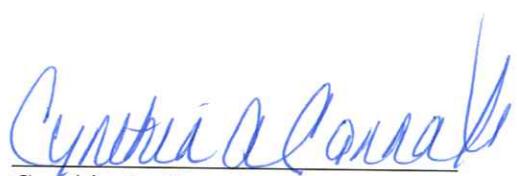
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

**MARK LEE**, 141 Norfolk Street, West Haven, CT 06516

**BUILDING OFFICIAL, OFFICE OF BUILDING INSPECTION AND ENFORCEMENT, CITY OF NEW HAVEN, OFFICE OF BUILDING INSPECTION AND ENFORCEMENT, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN**, c/o Attorney Catherine E. LaMarr, 165 Church Street, 4th Floor, New Haven, CT 06510



Cynthia A. Cannata  
Acting Clerk of the Commission