

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Howard Lasser,

Complainant

against

Docket # FIC 2020-0153

Finance Director, Town of Brookfield; and
Town of Brookfield,

Respondents

February 24, 2021

The above-captioned matter was heard as a contested case on December 10, 2020, at which time the complainants 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 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. By letter of complaint filed March 30, 2020, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records.
3. It is found that by email dated February 23, 2020, and a subsequent email dated March 22, 2020, the complainant requested that the respondents provide him with a copy of the Excel² file used in preparation and presentation of the Town's annual budget.
4. Section 1-200(5), G.S., provides:

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

² Microsoft Excel is a spreadsheet program that features calculation, graphic tools, pivot tables, and macro programming language support for Windows and Mac operating systems. <https://docs.microsoft.com/en-us/office365/servicedescriptions/office-applications-service-description/office-applications>. (Accessed: December 10, 2020).

“[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.

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

6. Section 1-211(a) states in relevant part:

Any 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....

7. 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. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy.

8. It is found that the record described in paragraph 3, above, is a public record within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S. Additionally, it is found that the record requested is a record maintained in a computer storage system as contemplated by §1-211(a), G.S.

9. In an email dated February 24, 2020, the respondents denied the complainant's request for a copy of the actual Excel file but provided him with 22 pages of records in "pdf" format.³ At hearing, the respondents testified that such records included all of the data contained within the requested Excel file.

10. The respondents contended that §1-211(a), G.S., requires them to provide any nonexempt data contained within such computer-stored records on a medium requested by the complainant. The respondents further contended that such section does not require them to provide the requested data in a format or computer program requested by the complainant.

11. The respondents did not claim that any of the data sought by the complainant was exempt from disclosure, therefore it is found that the Excel file sought by the complainant constituted "nonexempt data" as contemplated by §1-211(a), G.S.

12. Additionally, the respondents contended that §1-212(a), G.S., gives the respondents the discretion to select the type of copy to be provided to the requestor. The respondents determined that the most secure way to provide the data sought by the complainant was to provide it electronically via email and that the data would be provided in "pdf" format. At hearing, the respondents explained that this would ensure the integrity and security of the data and reasonably prevent it from being altered or otherwise compromised.

13. Sections 1-211(a) and 1-212(a), G.S., allow the respondents to provide computer stored data on "paper, disk, tape or other electronic storage device or medium" as requested by the complainant. However, neither section refers to the format in which a computer stored record must be provided to a requestor.

14. At hearing, the respondents cited three prior appeals in which the Commission found that the FOI Act does not require a respondent to disclose records in a specific format or computer program requested by a complainant. The three appeals cited by the respondents are *Robert Fromer v. Daniel Esty, Commissioner, State of Connecticut, Department of Energy and Environmental Protection, et al.*, Docket #FIC 2012-158 (February 27, 2013) (Complainant requested record converted from .pdf to MS Word.); *Alan DiCara v. Town Manager, Town of Winchester, et al.*, Docket #FIC 2013-242 (March 26, 2014) (Complainant requested records in Excel format, but respondents did not use Excel to create the records.); and, *John Llewellyn v. Superintendent of Schools, Fairfield Public Schools, et al.*, Docket #FIC 2013-337 (April 9, 2014) (Requested records exported from Munis system to .pdf format). However, in all the cited cases, the requester asked the agency to convert the requested records from the format in which they were maintained by the respondents to another format.

15. It is found that the complainant's request in this matter is distinguished from the cited cases in that he did not ask the respondents to convert records into a specific format.

³ PDF stands for "portable document format". A computer file format for the transmission of a multimedia document that is not intended to be edited further and appears unaltered in most computer environments. <https://www.merriam-webster.com/dictionary/pdf>. (Accessed December 10, 2020).

Instead, the complainant requested the computer stored record (the Excel file) in the same computer readable format in which it was maintained by the respondents.

16. Ordering the disclosure of a computer stored record in its native format is not without precedent. In *Gregory Slate v. First Selectman, Town of Westport; and Town of Westport*, Docket# FIC 2016-734 (June 22, 2016), the Commission ordered the respondents to disclose a Microsoft Word document to the complainant in its native format (.docx) as requested by the complainant in that matter.

17. The respondents argued that while they shared the Excel file with other town officials, it is their policy not to publicly disclose executable files such as the requested Excel file. The respondents contended that to do so would allow a requestor to change and manipulate data and thus compromise the integrity of the disclosed data. However, §1-210, G.S., states that “Any agency rule or regulation or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.” Accordingly, it is found that the respondents’ policy diminishes or curtails the rights granted by the Act and is therefore void.

18. The complainant argued that the Excel file is a public record and that such record should be disclosed in its native format which will allow him to use his computer to sort, view and analyze the records in a meaningful way. The complainant further argued that the only way for him to know if all of the data contained in the Excel file was included in the .pdf records that were disclosed to him, is to have a copy of the Excel file, as requested.

19. “There is an ‘overarching policy’ underlying the Freedom of Information Act (FOIA) favoring the disclosure of public records. Our construction of the FOIA must be guided by the policy favoring disclosure and exceptions to disclosure must be narrowly construed.” *Superintendent of Police of City of Bridgeport v. Freedom of Info. Comm’n*, 222 Conn. 621, 626, (1992). It is found that the release of the requested Excel file in this instance is in keeping with the policy of the FOI Act and requires no additional effort by the respondents to convert or otherwise manipulate the requested files.

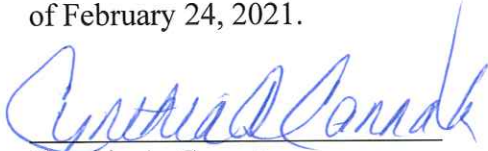
20. Our Supreme Court acknowledged the authority of the Commission to order records be released in a particular format when it wrote, “We agree with the proposition that, under some circumstances, the Commission has the discretion to redact exempt information from otherwise public records requested pursuant to the act, and that it can order a party to produce computerized nonexempt records in a format other than the format in which they are maintained by the public agency.” *Pictometry International Corporation v. Freedom of Information Commission*, 307 Conn. 648, 663 (2013). Therefore, it stands to reason that the Commission can order computerized records to be disclosed in the *same* format in which they are maintained.

21. The respondents failed to prove that the requested Excel file as maintained by the respondents is exempt from disclosure pursuant to any exemption provided within the FOI Act or other statute. Accordingly, it is concluded that the respondents violated the Act when they refused to disclose the requested file to the complainant.

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 requested Excel file, at no cost to the complainant.
2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a), 1-211(a), and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 24, 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:

HOWARD LASSER, 116 Tower Road, Brookfield, CT 06804

FINANCE DIRECTOR, TOWN OF BROOKFIELD; AND TOWN OF BROOKFIELD,
c/o Attorney Thomas W. Beecher, Collins Hannafin, P.C., 148 Deer Hill Avenue, Danbury, CT
06810



Cynthia A. Cannata
Acting Clerk of the Commission