

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Brendan O'Rourke,

Complainant

against

Docket #FIC 2019-0597

Board of Representatives,
City of Stamford; and
City of Stamford,

Respondents

July 14, 2021

The above-captioned matter was heard as a contested case on January 9, 2020 and May 13, 2021, at which times the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The January 9, 2020 contested case hearing was an in-person hearing, conducted at the Commission's Hartford offices. However, due to the COVID-19 pandemic and the state's response to it, the May 13, 2021 contested case hearing was conducted remotely.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 July 8, 2019, the complainants requested that the respondents provide him with copies of the following records:
 - a. Any and all communications (including but not limited to email correspondence and text messages) between any members of the Stamford Board of Representatives and any person relating to Stamford Master Plan amendment application number MP-432;
 - b. Any and all communications (including but not limited to email correspondence and text messages) between any member of the Stamford Board of Representatives

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

and any person relating to Stamford Master Plan application number MP-433;

- c. Any and all communications (including but not limited to email correspondence and text messages) between any members of the Stamford Board of Representatives and any person relating to properties commonly known as 707 Pacific Street, 5, 9, 17, 21, 23, 25, 29, 39, and 41 Woodland Avenue; and 796 Atlantic Street in Stamford (the “Properties”);
- d. Any and all communications (including but not limited to email correspondence and text messages) between any members of the Stamford Board of Representatives and any person relating to Building and Land Technology, its affiliates, subsidiaries, and related entities, or the Harbor Point Development in the South End of Stamford;
- e. Any and all communications (including but not limited to email correspondence and text messages) between any members of the Stamford Board of Representatives and any person relating to the protest petition dated January 18, 2019, submitted by Susan Halpern, Vice President of the South End Neighborhood Revitalization Zone;
- f. Any and all communications (including but not limited to email correspondence and text messages) between any members of the Stamford Board of Representatives and any person relating to Stamford Land Use-Urban Redevelopment Committee file number LU30.025;
- g. Any and all communications (including but not limited to email correspondence and text messages) between any members of the Stamford Board of Representatives and any person relating to Stamford Land Use-Urban Redevelopment Committee file number LU30.026;
- h. Any and all communications (including but not limited to email correspondence and text messages) between any members of the Stamford Board of Representatives and any person relating to Stamford Land Use-Urban Redevelopment Committee file number LU30.027;
- i. Any and all communications (including but not limited to email correspondence and text messages) between

any members of the Stamford Board of Representatives and any person relating to Stamford Land Use-Urban Redevelopment Committee file number LU30.028;

- j. Any and all documents showing the identities of any members of the Stamford Board of Representatives who accessed the Planning Board's file pertaining to application number MP-432;
- k. Any and all documents showing the identities of any members of the Stamford Board of Representatives who accessed the Planning Board's file pertaining to application number MP-433;
- l. Any and all documents (including notes) prepared by any member of the Stamford Board of Representatives relating to application number MP-432 or MP-433;
- m. Any and all documents (including notes) prepared by any member of the Stamford Board of Representatives relating to the Properties, including but not limited to any change in the density of housing permitted by the Master Plan on the Properties;
- n. Any and all documents and communications relating to the alleged "new information" purportedly received by Nina Sherwood as referenced at the February 4, 2019 Board of Representatives meeting; and
- o. Any and all attendance sheets, lists of attendees, or notes referencing attendees at any caucus meeting held by any members of the Stamford Board of Representatives relating to the protest petition dated January 18, 2019, submitted by Susan Halpern, Vice President of the South End Neighborhood Revitalization Zone.

3. With regard to the request set forth in paragraph 2, above, it is found that the complainant specified that the relevant time period for all subparts of the request was January 1, 2017 through July 8, 2019 (which amounts to a time frame of two years, six months and seven days). It is found that the complainant also specified that the respondents should understand the request as seeking copies of all responsive emails and text messages from the Board members' business accounts as well as from their personal accounts.

4. It is found that the Stamford Board of Representatives is comprised of forty board members.

5. It is found that, by letter dated July 8, 2019, the respondents acknowledged the request, indicating that, if the complainant had a particular deadline for which the records were required, he should communicate this to the respondents.

6. It is found that, on August 7, 2019 and on September 11, 2019, the respondents disclosed responsive records to the complainant.

7. By letter dated and filed September 25, 2019,² the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with access to the requested records.

8. 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.

9. 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 (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

10. 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.”

11. It is found that the records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and, to the extent such records exist, must

² 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, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction over this matter.

be disclosed unless they are exempt from disclosure.

12. In the appeal and at the first contested case hearing, the complainant contended that, despite the two disclosures of records he received from the respondents, he was appealing the Board's failure to produce text messages generally as well as the Boards' failure to produce emails from Board Member Nina Sherwood's and Board Member Terry Adams' personal email accounts. The complainant further contended that at a January 29, 2019 Board of Operations Committee Meeting, Ms. Sherwood can be seen texting multiple times and, that if these text messages concerned board business, such records were public records within the meaning of §1-200(5), G.S., and should have been disclosed. Finally, the complainant contended that public records that were disclosed to him from a state representative revealed that both Ms. Sherwood and Mr. Adams had personal emails accounts.

13. Ms. Sherwood appeared at the first contested case hearing and testified on behalf of the respondents. Valerie T. Rosenson, Legislative Officer of the Board of Representatives, appeared at the second contested case hearing and testified on behalf of the respondents.

14. It is found that, upon receiving the request, Ms. Sherwood searched her personal emails and text messages accounts *twice* for responsive records. It is found that, in conducting these searches, Ms. Sherwood searched a series of search terms, including the following: "MP-432"; "MP-433"; "Building and Land Technology"; "Southend"; "Harbor Point Development"; "Planning Board"; "LU30.025"; "LU30.026"; "LU.30.027"; "LU.30.028"; "Masterplan"; and "New Information". It is found that Ms. Sherwood also searched every street name mentioned in the request and as well as for communications from particular people. Ms. Sherwood testified that she believed that she ran additional search terms as well, which she could not recall at that moment.

15. Based on Ms. Sherwood's testimony, it is found that she does not use her personal email or text messages accounts to conduct city business. It is further found that Ms. Sherwood's searches did not unearth any responsive records.

16. Nonetheless, it is found that the complainant was concerned that the search terms that Ms. Sherwood (and the other board members) had used to search their personal accounts were not sufficient to capture all of the records that the complainant was seeking. The complainant requested that the respondents provide her with a complete list of all terms the 40 board members had used to search their personal accounts.³ The complainant also requested an opportunity to review such list and then to have the respondents conduct additional searches using the search terms that he proposed.

17. At the conclusion of the first contested case hearing, the hearing officer ordered the respondents to provide the complainant with a complete list of all the search terms the board members had used to search their personal accounts. The hearing officer then ordered the complainant, after reviewing the list, to send respondents a list of search terms he wanted the board members to run through their personal accounts. The hearing officer ordered the

³ It is found that the searches of the board members' business email accounts for responsive records were conducted by the City's IT professionals.

respondents to have all 40 board members run those search terms through their personal accounts and to disclose all non-exempt public records to the complainant before the continued contested case hearing.

18. It is found that, by email January 15, 2020, the respondents sent the complainant a list of the search terms that the board members had run through their personal accounts. It is found that, in addition to the terms that Ms. Sherwood had testified about, the list included the following terms and subjects: “the protest petition dated January 18, 2019”; documents relating to the “change in density of housing permitted by the Master Plan”; and documents relating to “a caucus meeting relating to the January 18, 2019 protest petition.”

19. It is found that, by email dated January 29, 2020, the complainant provided the respondents his list of additional search terms, as follows:

- a. MP-432 → search both with and without the dash (-);
- b. MP-433 → search both with and without the dash (-);
- c. Building and Land Technology;
- d. BLT;
- e. BRC;
- f. Harbor Point;
- g. South end;
- h. Southend;
- i. Strand;
- j. Woodland;
- k. Walter Wheeler;
- l. 796 Atlantic;
- m. 707 Pacific;
- n. Feinberg;
- o. Category 5;
- p. Cat. 5;
- q. Category 9;
- r. Cat. 9;
- s. Halpern;
- t. Revitalization;
- u. NRZ;
- v. LU30.026;
- w. LU30.025;
- x. LU30.027;
- y. LU30.028;
- z. O30.024;
- aa. Density;
- bb. Height;
- cc. Stories;
- dd. Apartments;
- ee. Developer;
- ff. Appeal;
- gg. Zoning;

hh. Building permit;
ii. Building permit fees;
jj. Historic District;
kk. Local historic district;
ll. Zoning Board;
mm. Master Plan;
nn. B&S;
oo. Petition;
pp. Tomas;
qq. McCauley;
rr. Barney;
ss. Quigley;
tt. Katchko;
uu. Suehrn1@optonline.net;
vv. regcal@aol.com;
ww. McCauleyeliz3@yahoo.com;
xx. Pjquigley8@gmail.com;
yy. bobkatchko@yahoo.com;
zz. sheilabarney@optonline.net;
aaa. Eyes of Steel;
bbb. DavidMichel174@gmail.com;
ccc. Michel;
ddd. Blessing; and
eee. Planning Board.

20. It is found that, on February 4, 2020, Ms. Rosenson disseminated the search terms set forth in paragraph 19, above, to the board members, with the direction that they run these terms through their personal accounts and then provide all responsive records to Ms. Rosenson by February 28, 2020.

21. It is found that, prior to the second contested case hearing, the respondents disclosed to the complainant all of the records located by the board members' searches. It is found that these records were disclosed either on a flash drive and in hard copy.

22. The complainant contended that there should be more responsive records, particularly text messages from Ms. Sherwood's use of her cell phone during the January 29, 2019 Board of Operations Committee Meeting.

23. However, to make such a finding, the Commission would have to discount Ms. Sherwood's testimony that she does not use her cell phone for city business. (See ¶ 15, above). It is found that Ms. Sherwood was forthright and candid when she testified. Accordingly, the Commission finds her testimony credible.

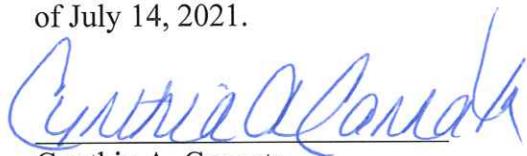
24. It is found that the respondents conducted a thorough search for records and disclosed all responsive records, without redactions, to the complainant, free of charge.

25. It is therefore 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 July 14, 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:

BRENDAN O'ROURKE, c/o Attorney Heather Spaide, Zeldes, Needle & Cooper PC, 1000 Lafayette Boulevard, 7th Floor, Bridgeport, CT 06901

BOARD OF REPRESENTATIVES, CITY OF STAMFORD; AND CITY OF STAMFORD, c/o Attorney Michael S. Toma, City of Stamford, Office of Corporation Counsel, 888 Washington Boulevard, 9th Floor, Stamford, CT 06901



Cynthia A. Cannata
Acting Clerk of the Commission