

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Michael Bracken Jr.,

Complainant

against

Docket #FIC 2020-0464

Christopher Kervick, First Selectman, Town
of Windsor Locks, Board of Selectmen,
Town of Windsor Locks; and Town of
Windsor Locks,

Respondents

January 12, 2022

The above-captioned matter was heard as a contested case on September 29, 2021, 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 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 September 13, 2020, the complainant requested that the respondents provide him with copies of communications between the Connecticut Department of Transportation and the first selectman pertaining to a certain traffic control signal located in the Town of Windsor Locks.
3. It is found that the respondents did not provide to the complainant a written acknowledgement of his request.
4. By letter of complaint, dated September 22, 2020 and filed September 23, 2020², the complainant appealed to this Commission, alleging that the respondents violated the Freedom of

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

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 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, through June 30, 2021. Consequently, the Commission retains jurisdiction.

Information (“FOI”) Act by failing to provide the records, described in paragraph 2, above. The complainant requested the imposition of civil penalties against the respondents.

5. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.³

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

7. 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.”

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

9. The complainant testified, and it is found, that as of the date of the hearing in this matter, he had yet to receive any of the requested records from the respondents.

10. The first selectman testified that he conducted a search for records responsive to the complainant’s request and that he emailed such records to the town attorney on, or around, December 7, 2020. The first selectman further testified that after he sent the records to counsel, he believed he had fulfilled his obligations under the FOI Act.

11. Counsel for the respondents represented at the hearing that he emailed copies of the responsive records to the complainant on or about September 22, 2021, approximately ten months after he received them from the first selectman. No explanation for the delay was offered. Likewise, no credible evidence that the requested records were provided to the complainant was offered.

³ 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”.

12. 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.

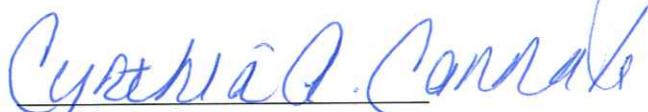
13. After consideration of the entire record in this case, the Commission in its discretion declines to consider the imposition of civil penalties against the respondents.

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

1. Within seven business days of the date of Notice of Final Decision, the respondents shall provide to the complainant, free of charge, a copy of the records described in paragraph 2 of the findings, above.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of January 12, 2022.



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:

MICHAEL BRACKEN JR., 12 Tinker Drive, Windsor Locks, CT 06096

CHRISTOPHER KERVICK, FIRST SELECTMAN, TOWN OF WINDSOR LOCKS; BOARD OF SELECTMEN, TOWN OF WINDSOR LOCKS; AND TOWN OF WINDSOR LOCKS, c/o Attorney Carl T. Landolina, Fahey & Landolina, 487 Spring Street, Windsor Locks, CT 06096



Cynthia A. Cannata
Acting Clerk of the Commission