

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Robert Clarke Castelle,

Complainant

against

Docket # FIC 2020-0531

Town Manager, Town of Newington; and
Town of Newington,

Respondents

November 16, 2022

The above-captioned matter was heard as a contested case on January 20, 2022, 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 through the use of electronic equipment, pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3.

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 having become aware that a public hearing and a regular town council meeting were scheduled for the evening of October 13, 2020, the complainant on October 13, 2020 (during the day), orally requested from the respondent town manager, a copy of the Purchase and Sale Agreement for property owned by the town of Newington, located at 690 Cedar Street, Newington, Connecticut (hereinafter "requested record" or "Agreement"). It is found that the sale of the property was an item to be addressed at both the public hearing and the town council meeting.
3. It is found that on October 13, 2020, the respondent town manager orally denied the complainant's request, described in paragraph 2, above.
4. It is found that by email dated October 14, 2020, the complainant requested from the respondents a copy of the Agreement "as signed by the buyer" for the property.
5. It is found that by email dated October 14, 2020, the respondents acknowledged receipt of the October 14 request but denied it, stating that the town council had not yet completed the authorization to sell the property. It is further found that, by email dated October

15, 2020 to the complainant, the town attorney also denied the request, indicating that the Agreement could not be provided until “executed by both the buyer and seller.”

6. By letter of complaint, dated October 16, 2020, and filed with the Freedom of Information (FOI) Commission (Commission) on October 19, 2020¹, the complainant appealed, alleging that the respondents violated the FOI Act by failing to provide him with a copy of the Agreement, described in paragraphs 2 and 4, above.

7. At the hearing in this matter, the complainant clarified that the sole issue in this matter is that the respondents failed to provide him a copy of the Agreement promptly.

8. It is found that the respondents provided the complainant with a copy of the Agreement on or about October 20, 2020. It is found that such date was after the town council approved the sale, and the town manager had executed the Agreement. It is further found that such date was after the opportunity for public input had passed.²

9. 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, videotaped, printed, photostated, photographed or recorded by any other method.

10. 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.

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

¹ 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 before the Commission on the issuance date and any appeal filed through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

² The town council held a public hearing on October 13, 2020, a regular meeting immediately after, and a special meeting on October 15, 2020, during which public comment regarding the sale was permitted.

12. It is concluded that the requested record is a “public record” within the meaning of §§ 1-200(5) and 1-210(a), G.S.

13. At the hearing in this matter, the respondents failed to cite to any federal law or state statute that permitted them to withhold the Agreement until October 20, 2020. Their only argument was that FOI “regulations” permitted them to do so.

14. It is found that prior to the hearing in this matter, the respondents provided the complainant with the following reasons for withholding the Agreement: (i) the Agreement was exempt from disclosure pursuant to §1-200(6)(D), G.S., (ii) the town council had not yet completed the authorization to sell the property, and (iii) the Agreement had not yet been executed by both the buyer and seller.

15. With respect to the §1-200(6)(D), G.S., claim, such provision states the following purpose that a public agency may convene in executive session to discuss:

[t]he selection of a site or the lease, sale or purchase of real estate by ... a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned. [Emphasis added.]

16. The respondents’ reliance on §1-200(6)(d), G.S., is misplaced because such provision does not provide an exemption to withhold a public record. Rather, it permits a public agency (for a limited period of time) to discuss in an executive session, the sale of property, when to have the discussion in public would adversely impact the price. Here, no executive session discussion was at issue, and it is found that the purchase price, the name of the purchaser, and the potential use of the property was information publicly disclosed by the respondents during the October 13, 2022 regular town council meeting.

17. With regard to the two other reasons given to the complainant for withholding the Agreement (i.e., the town council had not yet completed the authorization to sell the property, and the Agreement had not yet been executed by both the buyer and seller), it is found that the respondents failed to prove that the Agreement was exempt from disclosure pursuant to the FOI Act or any federal law or other state statute, at the time of the request and until October 20, 2020

18. Regarding the issue of promptness, the Commission has held that the meaning of the word “promptly” is a particularly fact-based question. 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 opined that the word “promptly,” as used in the Act, means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Advisory Opinion provides that some of the factors to be considered are (i) the volume of records requested, (ii) the amount

of personnel time necessary to address the request, (iii) the timeframe under which the requestor needs the information, (iv) the importance of the records to the requestor, (v) time constraints placed on the agency by other work, and (vi) the importance of other pressing work at the agency. Additionally, the Commission offered the following guidance:

[p]roviding such access is therefore a primary duty of all public agencies and should be considered as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

19. Several Superior Court decisions have found the Commission's interpretation of the promptness standard reasonable. See Commissioner, Department of Emergency Services and Public Protection v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV-18-6047741-S (July 2, 2020, Cordani, J); Torlai v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV-16-5017450-S (November 27, 2017, Huddleston, J.); and Smith v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV-12-5015684-S (June 7, 2013, Cohn, J.).

20. It is found that the respondents maintained the Agreement, and that it was readily retrievable and could have been made available to the complainant on October 13, 2020, or soon thereafter. It is also found that the complainant had expressed to the respondents that the Agreement was of importance to him because he wanted to be timely informed of the details in order to provide public comment prior to finalization of the Agreement.

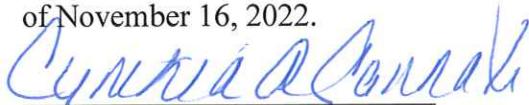
21. Upon consideration of all of the factors presented with regard to this particular request, it is found that the respondents failed to provide the Agreement to the complainant promptly.

22. Consequently, it is concluded that the respondents violated the promptness requirements set forth in §§1-210(a) and 1-212(a), G.S.

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 of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting
of November 16, 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:

ROBERT CLARKE CASTELLE, c/o Attorney John M. Kelly, Giffith & Kelly, LLC, 66 Cedar Street, Ste. 208, Newington, CT 06111

TOWN MANAGER, TOWN OF NEWINGTON; AND TOWN OF NEWINGTON, c/o Attorney Benjamin Ancona, Jr., Law Office of Benjamin Ancona, Jr., 39 East Cedar Street, Suite 8, Newington, CT 06111



Cynthia A. Cannata
Acting Clerk of the Commission