

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Mark Sevetz,

Complainant

against

Docket # FIC 2023-0067

First Selectman, Board of Selectmen, Town
of Hartland; Board of Selectmen, Town of
Hartland; and Town of Hartland,

Respondents

February 14, 2024

The above-captioned matter was heard as a contested case on June 8, 2023, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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 January 19, 2023, addressed to the First Selectwoman of the Town of Hartland (“First Selectwoman”) and the Second Selectman of the Town of Hartland (“Second Selectman”), the complainant requested the following:

[I]nformation under [the Freedom of Information Act], daily job records, timesheets, and pay rates for Highway Dept employees including Scott Levan. This would be for the last 30 days. Also, any written policies for when crews are called out for snow or other after hour's needs. Who makes the decision as when to plow or just apply sand and if the employees were ever given any formal training. I would also like an explanation as to why 3 town employees are needed to watch for over 2 hours while Eversource and Asplundh work on a tree with wires down and who makes this decision. Who is in daily control of the Town crew if Scott is not there? Is there a ‘foreman’ assigned in his absence?

3. It is found that, by email dated January 19, 2023, the First Selectwoman requested that the complainant submit his request on a specific town Freedom of Information (“FOI”) form, which she attached to the email (the “FOI Form”).

4. It is found that, on January 23, 2023, the First Selectwoman emailed the complainant indicating that she had not received a reply to her email dated January 19, 2023, and stated:

We have been using this form and it has become our policy in all of our Offices to do so. Let me know if there is a problem or if you need assistance.

5. It is found that, on January 23, 2023, the complainant emailed the First Selectwoman stating that he had completed the FOI Form and sent it to the respondents as an adobe shared document at approximately 11:15 AM on January 19, 2023.

6. It is found that, by email dated January 23, 2023, the First Selectwoman responded to the complainant stating that she had not received the completed FOI Form and asked the complainant to resend it.

7. It is found that, also by email dated January 23, 2023, the complainant asked the First Selectwoman to “[p]lease also show [him] where in State Statute or regulation this form is required.”

8. It is found that, also by email dated January 23, 2023, the complainant resent the completed FOI Form to the First Selectwoman, in which he indicated that he was seeking the following:

Daily job reports showing what tasks each employee were assigned for the day. Timesheets for each employee including rates of pay for the last 30 days. This would include Scott Levan acting road foreman. Any written policies on after hours callouts and who makes such decisions. Policies on road closures and number of employees dispatched with decision maker[.]

On the FOI Form, the complainant also stated: “Copies not needed but ability to view all requested information will be[.]” [Emphasis added.]

9. It is found that, by email dated January 24, 2023, the First Selectwoman confirmed that she had received the completed FOI Form and stated the following:

I will gather any information I have and will forward your request to the Treasurer, Board of Finance, DPW and the Second and Third Selectmen. As soon [as] we all gather the information you requested, I will schedule a "zoom" meeting to address your FOI request. Since your information request is large and very time consuming for us to gather, I will reply back to you, via email, with possible meeting dates for you to choose from.

10. By letter of complaint, dated February 19, 2023, and filed February 21, 2023, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by denying his right of prompt access to the information described in paragraphs 2 and 8, above.

11. 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.

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

13. 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.”

14. It is concluded that the requested records, to the extent they exist, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

15. It is found that, by email to the First Selectwoman dated February 27, 2023, the complainant informed her that “[a] formal complaint has been filed with FOI for failure to disclose requested information as set forth in the FOI regulations and State Statutes[.]”

16. It is found that, by email dated February 27, 2023, the First Selectwoman responded to the complainant as follows:

[W]e have been gathering the information - which is quite extensive and must be gathered by multiple employees as it is located in different areas/buildings. Once we have "everything" we told you we would reach out to you with some dates for a meeting. This was, again, discussed at our

regular monthly BOS¹ meeting on the 14th of February. I'm sorry we couldn't respond to your request immediately, but as you know, this is one of our busiest times of the year and further, there are very few of us. I was out with a death in the family. Please respond as to how you want us to continue with your request. [Emphasis in original.]

17. It is found that, when the First Selectwoman did not receive a response to her February 27, 2023 email, she followed up with the complainant, on March 1, 2023. It is found that the complainant then responded, on March 4, 2023, as follows:

All records/information is supposed to be stored at Town Hall by State Law and Regulations, not in scattered locations. Anyone should be able to walk in to Town Hall and request the information and have it provided. Over a month passed without any response from the Town. ... I still want to examine the requested documents in my original request in person during regular business hours[.]

18. It is found that, on March 6, 2023, the First Selectwoman replied to the complainant's March 4, 2023 email as follows:

[Y]ou have requested payroll information and time cards for employees that work at a different building. Also, your "month" included 2 holidays and a bereavement time for me. We all have our regular duties that must be handled within their own important time limits, so your request was handled as fast as we could, in addition to our regular duties. I have now made copies for you of the items you requested, minus the personal information, i.e. social security numbers and other information that must be protected. Since the specific payroll information had to [be] located, and sorted from the rest, it is not possible for you to "view" the information on our computer. Copies of the request had to be made. There are 16 copies at the rate of 50 cents each for a total of \$8.00. As soon as I receive your payment, I will schedule a meeting for you to go over your requested information.² I will invite the employees that you

¹ "BOS" refers to the Board of Selectmen for the Town of Hartland.

² Although the respondents ultimately did not impose such a charge on the complainant before scheduling the meeting, the Commission cautions the respondents that the imposition of such a charge to inspect or review public records is not authorized under the FOI Act, unless the respondents were required to make copies in order to redact information that is mandatorily exempt from disclosure. See Kozlowski v. Freedom of Info. Comm., No. CV 960556965, 1997 WL 435860, at *3 (Conn. Super. July 29, 1997)(holding that, when a request to inspect public records requires a public agency to make copies of records in order to redact information that may not be legally disclosed, then such agency may charge the requestor for the cost of the copies).

have requested information about as well as their supervisors, as we are speaking about personnel issues/questions. We can do our meeting within regular business hours as you request.

19. It is found that the First Selectwoman sent an additional email to the complainant on March 9, 2023 informing him as follows:

The BOS will decide upon a date for our FOI meeting with you at our Regular Monthly Meeting scheduled for 3/13. Once we decide on the best date for all, I will post an agenda for same. In advance of our meeting, please let us know what dates and times are best for you and we will see which one fits everyone's schedule. I will reach out to all the employees whose information you have requested so that they can decide to be present/or not, as well as anyone else you mentioned in your FOI request. Please make payment, in advance, for the information you requested (16 pages at 50 cents each - total is \$8.00). If you don't want the actual copies and only want to discuss them, please let me know. Thank you for your patience.

20. It is found that the complainant emailed the First Selectwoman on March 11, 2023, with the following protest:

I do not want a BOS meeting/agenda circus. Per State regulations I want to be able to come in to Town Hall by myself and be handed the information to review and then decide if I want copies. You are attempting to make a routine request for information into a method of intimidation and ridiculous delays. ...

21. It is found that, on March 13, 2023, the First Selectwoman sent an email to the complainant responding to his March 11th email which stated in relevant part:

[Y]our FOI request involves employees and their information. The employees involved are invited to be present. Payroll is computerized so you cannot view it and decide what copies you want. Sensitive/personal information must be removed so we must make the copies beforehand.... Since the Board of Selectmen is involved in your request, and since we must have a meeting and an agenda when we are officially present together, we will have a meeting --- either in person or zoom. What you deem as "ridiculous" delays are quite a bit of extra work for us and we try to gather your information as fast as we can as we try to complete our everyday requirements and

schedules. I personally do not consider any of your FOI requests routine. This is NOT a denial of your request - none of your FOI requests have ever been denied, rather, I am answering it in what I feel is the best way to protect employees and everyone involved. We will send you several dates/times to choose.

22. It is found that, on March 15, 2023, the First Selectwoman emailed the complainant notifying him that the Board of Selectmen for the Town of Hartland (“BOS”) was planning to discuss the complainant’s requests on March 29, 2023, at 3:30 PM, and she inquired whether that was a good date for the complainant.

23. It is found that, on March 20, 2023 and March 22, 2023, the First Selectwoman followed up with the complainant via email regarding the BOS special meeting scheduled for March 29, 2023.

24. It is found that, on March 22, 2023, the BOS, posted a notice and agenda for a special meeting scheduled for March 29, 2023 at 3:30 PM, which included “FOI Information Request from Mr. Mark Sevetz,” as the sole agenda item.

25. It is found that, on March 29, 2023, at 2:09 PM, the complainant emailed the First Selectwoman and informed her that he would “not be ‘appearing’ before the BOS to review documents that should be promptly offered for review without delay and foolish agendas.”

26. It is found that, on March 29, 2023 at 3:30 PM, the BOS met and discussed the complainant’s requests, described in paragraphs 2 and 8, above. It is also found that copies of the responsive records that existed were made available for review at such meeting. It is further found that several employees whose records were the subject of the request attended such meeting, but the complainant did not.

27. It is found that, by email dated April 3, 2023, the First Selectwoman informed the complainant of the following:

We held our FOI Meeting in relation to your FOI request on 3/29/2023 within Town Hall Office hours as you requested. All involved were present and the information was presented and explained. You did not attend. The information is still available for you should you wish to view it. Please let me know if this is your wish and if so, please call me, as I have the paperwork. Copies will cost 50 cents per page.

28. At the hearing in this matter, the complainant questioned the need for the FOI Form, and he contended that the respondents failed to promptly provide him access to the records described in paragraphs 2 and 8, above, and that a BOS meeting to discuss his FOI requests was intimidating, confrontational and unnecessary.

29. With respect to the respondents' FOI Form, it is well established that a requirement that a requester complete a written request form before being allowed to inspect requested records is an impermissible agency rule that diminishes and curtails the right to inspect records within the meaning of §1-210(a), G.S. See, e.g., Jody Gemmell v. John Hodge et al., Docket #FIC 2006-433 (August 22, 2007); Christopher Hoffman et al. v. Leon J. O'Connor et al. Docket #FIC 95-365 (September 11, 1996). It is found, however, that the complainant's initial request for "information," described in paragraph 2, above, did not specify whether he wanted to inspect records or wanted copies.³

30. To the extent that the complainant's initial request for "information" described in paragraph 2, above, may be construed as a request for copies of records, as opposed to a request to inspect records, an agency may request, but not mandate, that a person requesting copies of public records complete a form prepared by the agency.

31. At the hearing, the respondents' witness, the First Selectwoman, testified, and it is found, that the respondent town began using the FOI Form approximately six months prior to the complainant's request. However, she contended that the respondents do not mandate that the FOI Form be completed as a precondition to receiving or reviewing records.

32. Despite the respondents' contention that they did not mandate the use of the FOI Form, it is found that the First Selectwoman informed the complainant that it was the Town's policy that the FOI Form be completed, that she followed up with the complainant to complete the FOI Form, and that she did not begin the search for responsive records until she received the completed FOI Form.

33. It is concluded that, under the facts and circumstances of this case, the respondents' implementation of, or reliance on, their policy that the complainant complete the FOI Form constituted a precondition on the right of access and, thus, technically violated §1-210(a), G.S. It is also concluded, however, that such policy did not itself result in a substantial delay. Additionally, the First Selectwoman testified, and it is found, that because the complainant's responses on the FOI Form he submitted on January 23rd, described in paragraph 8, above, did not exactly match the complainant's initial email request submitted on January 19, 2023, described in paragraph 2, above, the respondents searched for records responsive to both.

34. With respect to the issue of promptness, it is well settled that the law does not require "immediate" access to records upon demand, but rather permits a person the right to inspect records "promptly." See, Anne Manusky v. Commissioner, State of Connecticut, Department of Education, et al., Docket #FIC 2016-0224 (November 16, 2016); Suzanne Carlson and the Journal Inquirer v. Mayor, Town of Vernon, et al., Docket #FIC 2011-542 (May 23, 2012) ("nothing in the FOI Act requires employees of a public agency, or public officials, necessarily to interrupt their work in order to immediately fulfill a request to inspect or copy records").

35. 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

³ It is found that the complainant did not specify that he was seeking to inspect records (not copies) until he completed the FOI Form, as described in paragraph 8, above.

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.

36. 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.

37. It is found that the complainant did not inform the respondents of a time by which he needed to review the records, nor their importance. It is further found that, as of the date of the hearing in this matter, the complainant had not inspected the requested records after they were ultimately made available for his review, nor had he requested copies of the responsive records.

38. With respect to the search for records and the accompanying delay, the First Selectwoman testified, and it is found, as follows:

- a. She spearheaded the search for the records described in paragraphs 2 and 8, above, however many of the records were kept and maintained by different offices, within the Town of Hartland;
- b. She contacted the other departments involved and coordinated with them to search for and collect the records and this process took time because all of the Town employees have multiple functions, and the Town of Hartland is a small town with a skeletal staff;
- c. February is a very busy month for the respondents because the budget is due to the Town of Hartland Board of Finance in February;
- d. The Town of Hartland Treasurer (“Treasurer”) maintained payroll records responsive to the complainant’s requests, which required her to review different computer screens to capture the responsive information, to print the information and to redact social security numbers and other personally identifying information within the employee records;⁴
- e. During the time that the respondents were searching for and collecting the records, the respondent town offices were closed for two days in honor of two state holidays, the First Selectwoman was out on

⁴ At the hearing, the complainant acknowledged that he was not seeking home addresses, social security numbers or personal information.

bereavement leave due to a death in the family and the Treasurer was out on vacation.

39. It is found that there was a total of sixteen pages of responsive records and, thus, the number of responsive records was not voluminous.

40. It is found that the respondents had assembled the requested records by March 6, 2023, but did not allow the complainant to review the records until the BOS special meeting on March 29, 2023.

41. It is found that the respondent town has three selectpersons in total and that two selectpersons constitute a quorum of the BOS.

42. The First Selectwoman testified, and it is found, that the First Selectwoman was concerned that if she conferenced with the Second Selectman regarding the complainant's requests, such conference would constitute a "meeting," within the meaning of §1-200(2), G.S. and, thus, such meeting would need to be open to the public and to comply with the notice and minutes requirements of §1-225, G.S.

43. Although it is found that it was not unreasonable for the First Selectwoman to believe that a public meeting of the BOS was necessary for the First Selectwoman and the Second Selectman to discuss the complainant's requests, described in paragraphs 2 and 8, above, it is found that the complainant's requests had been discussed at certain BOS regular meetings, prior to March 29, 2023. It is further found that, as of March 6, 2023, the respondents already had searched for and gathered the responsive records, twenty-three days in advance of the BOS special meeting held on March 29, 2023.⁵

44. With respect to the respondents' contention that one of the purposes of the March 29th BOS special meeting was to provide the employees, whose personnel records were requested to be inspected, an opportunity to be heard, it is found that the respondents did not claim that any of the responsive records were exempt from disclosure pursuant to §1-210(b)(2), G.S.⁶

45. It is found that even if certain of the requested records constituted a "personnel" or "similar" file within the meaning of §1-210(b)(2), G.S., the respondents did not contend or prove that disclosure of such records would invade the subject employees' privacy. It is further found that the respondents failed to prove that the FOI Act required the respondents to provide

⁵ The Commission notes, although not raised in the complaint, that requiring the complainant to attend, and inspect public records at, a BOS special meeting also constitutes a precondition on the right of access granted by §1-210(a), G.S.

⁶Section 1-210(b)(2), G.S., provides that nothing in the FOI Act shall be construed to require the disclosure of "[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy." See also §§1-214 and 1-206(b)(1), G.S., regarding the procedures respondents and employees are required to follow with respect to a claimed exemption for personnel files under §1-210(b)(2). It is found that the respondents failed to prove such procedures were followed in this case.

employees an opportunity to comment before making the responsive records available to the complainant for inspection.

46. It is found that, to the extent that one of the purposes of the BOS March 29th special meeting was to allow town employees and members of the BOS to answer the complainant's questions set forth in his requests described in paragraphs 2 and 8, above, as well as to describe the respondent town policies that were not maintained in writing, the respondents could nonetheless have made the responsive records available for inspection to the complainant in advance of such meeting.⁷

47. It is found that, even if scheduling issues combined with the First Selectwoman's and the Treasurer's workloads, as described in paragraph 38, above, justified the delay in searching for and gathering the records, the respondents' failure to allow the complainant to inspect the records when they were available on March 6, 2023, and the requirement of an additional BOS meeting on March 29, 2023 prior to making such records available for inspection, constituted an undue delay.

48. It is found that, under the facts and circumstances of this case, the respondents unduly delayed the complainant's right to inspect the responsive records.

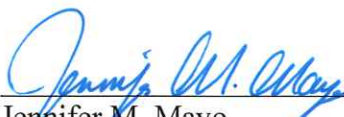
49. Accordingly, it is concluded that the respondents violated the promptness requirements in §1-210(a), G.S.

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 and access requirements of §1-210(a), G.S.

2. Although the Commission has concluded that the respondents violated the promptness provisions of §1-210(a), G.S., in light of the time and resources the respondents expended in compiling the responsive records during a very busy time of the year for them, the Commission suggests to the complainant that, if he has not done so already, he arrange a time to inspect the responsive records at the respondents' offices during regular business hours, as a demonstration of good faith in this matter.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 14, 2024.



Jennifer M. Mayo
Acting Clerk of the Commission

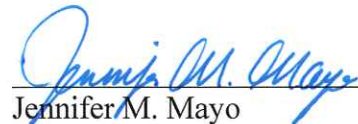
⁷ The Commission notes that the FOI Act does not require public agencies to answer questions; however, §1-210(a), G.S., provides, in relevant part, that "every person shall have the right to ... inspect [public] records promptly"

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 SEVETZ, 30 Walnut Hill Road, East Hartland, CT 06027

FIRST SELECTMAN, BOARD OF SELECTMEN, TOWN OF HARTLAND; BOARD OF SELECTMEN, TOWN OF HARTLAND; AND TOWN OF HARTLAND, c/o Attorney Nicholas P. Vegliante, Cohn Birnbaum & Shea PC, City Place II, 185 Asylum Street, 15th floor, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission