

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Robert Lee,

Complainant

against

Docket # FIC 2023-0132

Mayor, City of Derby; and City of Derby,

Respondents

February 28, 2024

The above-captioned matter was heard as a contested case on August 17, 2023, at which time the complainant appeared, but the respondents failed to appear. The complainant presented testimony, exhibits, and argument on the complaint.

By motion received and filed September 11, 2023, the respondents requested that the Commission reopen the hearing or, in the alternative, accept an affidavit as an after-filed exhibit. On September 13, 2023, pursuant to the order of the Hearing Officer, the respondents' motion was denied.¹

On January 24, 2024, upon reconsideration by the Hearing Officer, the respondents were ordered to submit an affidavit detailing the steps they took, if any, to search for and provide the complainant with records responsive to his request.

On February 7, 2024, the respondents submitted an affidavit in response to the order of the Hearing Officer. Such affidavit has been marked as Respondents' Exhibit 1 (after-filed).

After consideration of the entire record, the following facts are found and conclusions of law are reached:

¹ The Commission notes that, before the Hearing Officer opened the hearing, the Acting Clerk of the Commission contacted the respondents' counsel to inquire whether the respondents intended to appear. The respondents' counsel informed the Acting Clerk that he was not aware that the hearing had been scheduled. Prior to the hearing, the Acting Clerk confirmed that the Notice of Hearing had been delivered to the respondents' counsel through Certified Mail.

After the Hearing Officer opened the hearing, the respondents' counsel called the Acting Clerk again and represented that he could be at the hearing within 30 minutes. The Hearing Officer went off the record to allow the respondents' counsel the opportunity to appear. However, shortly before the 30 minutes was set to expire, the respondents' counsel called back and notified the Acting Clerk that he would not be appearing. Finally, after the hearing resumed, the respondents' counsel again called the Acting Clerk to ask if he could appear remotely. The respondents' counsel never filed a motion to postpone the hearing or to conduct the hearing remotely. Additionally, the respondents did not file the motion to reopen the hearing until more than 3 weeks after the August 17, 2023 contested case hearing.

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that by email dated March 15, 2023, the complainant requested that the respondents provide him with electronic copies of the following records:

- (a) Any and all correspondence including – but not limited to – letters, proposals, emails, text messages, etc. between Quality Data employees and/or representatives of same and Derby staff – Mayor Richard Dzieken, Walter Mayhew, Jamie Wilson and Nancy Balsys from January 1, 2022 until March 15, 2023;
- (b) Any and all correspondence including – but not limited to – letters, proposals, email, notes, text messages between Derby staff – Mayor Richard Dzieken, Walter Mayhew, Jamie Wilson and Nancy Balsys referencing/mentioning Gemni/R. Walsh Associates (collectively or individually) from January 1, 2022 until March 15, 2023;
- (c) Any and all correspondence including – but not limited to – letters, proposals, email, notes, text messages among Derby staff – Mayor Richard Dzieken, Walter Mayhew, Jamie Wilson and Nancy Balsys referencing/mentioning Quality Data System (QDS) (collectively or individually) from January 1, 2022 until March 15, 2023.

3. It is found that by email dated March 23, 2023, the respondents notified the complainant that their counsel had “instructed [the respondents] to get a quote from [their] IT vendor for the document retrieval you requested.” It is further found that the respondents attached a copy of a quote from Apex Technology Group (“Apex”) for “archive retrieval,” totaling \$720.00. It is found that the respondents notified the complainant that payment of the amount stated in the quote was “a pre-requisite to conducting the document retrieval which will commence once the check is received and cleared.”

4. It is found that by email dated March 27, 2023, the complainant objected to the respondents’ requirement that he pay the cost of archive retrieval prior to the respondents conducting any search for responsive records. It is further found that the respondents replied to the complainant’s email the same day, notifying the complainant that the cost was imposed at the direction of their counsel.

5. By email filed March 27, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying the request described in paragraph 2, above.

6. 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.

7. 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.

8. 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.”

9. It is concluded that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. At the hearing in this matter, the complainant testified, and it is found, that the respondents have not provided him with any records responsive to his request. It is further found that the respondents have not provided the complainant with any explanation for their failure to comply with his request, other than the complainant’s refusal to pay the \$720.00 charge for archive retrieval services, described in paragraphs 3 and 4, above.

11. In response to the January 24, 2024 order of the Hearing Officer described on page 1, above, the respondents submitted an affidavit of the current Mayor of the City of Derby, who was elected and sworn into office after the date of the contested case hearing.² In such affidavit, the Mayor averred that he was not given any information about this matter during his transition into office, and that he had only recently learned of the request at issue. The Mayor further averred that the respondents were in the process of searching for responsive records, that they had instructed Apex to search for and retrieve any documents that were stored electronically, and that they would provide any responsive records to the complainant at no cost.

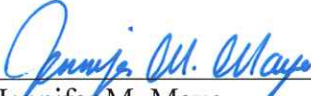
12. Based on the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by denying the complainant’s request for the records described in paragraph 2, above.

² Shortly before the respondents submitted the affidavit of the Mayor, described in paragraph 11, above, new counsel filed an appearance in lieu of counsel that represented the respondents at the time of the request and the contested case hearing.

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

1. If they have not already done so, within 30 days of the Notice of Final Decision in this matter, the respondents shall conduct a thorough search for all records responsive to the complainant's request, and provide the complainant with copies of such records, free of charge.
2. In complying with paragraph 1 of this order, the respondents may only withhold responsive records, or portions thereof, that are mandatorily exempt from disclosure. The respondents shall not withhold any responsive records based on any permissive exemption.
3. 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 February 28, 2024.



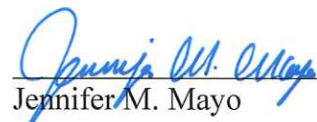
Jennifer M. Mayo
Acting Clerk of the Commission

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 LEE, 16 Egret Drive, Palm Coast, FL. 32137

MAYOR, CITY OF DERBY; AND CITY OF DERBY, c/o Attorney Bryan L. LeClerc,
Berchem Moses PC, 75 Broad Street, Milford, CT 06460



Jennifer M. Mayo
Acting Clerk of the Commission