

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Lynn Stanley,

Complainant

against

Docket # FIC 2022-0020

First Selectman, Office of the First  
Selectman, Town of East Windsor; Office of  
the First Selectman, Town of East Windsor;  
and Town of East Windsor,

Respondents

January 10, 2024

The above-captioned matter was heard as a contested case on May 4, 2023, June 15, 2023, and September 27, 2023, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. By order of the hearing officer, the hearing was reopened for purposes of taking additional evidence regarding the applicability of claimed exemptions. The reopened hearing was held on December 11, 2023, at which time the complainant and the respondents appeared, presented testimony and argument on the complaint.<sup>1</sup>

On October 11, 2023, pursuant to an order of the hearing officer, the respondents submitted one after-filed exhibit, which has been marked as Respondents' Exhibit 2: Affidavit of Attorney Joshua A. Hawks-Ladds.

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 November 14, 2022, the complainant requested that the respondents provide her with copies of:

[a] [A]ll documents, requests for proposals, estimates, invoices,  
bids or legal opinions related to and/or concerning the Town of

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<sup>1</sup> The caption has been amended to change "Town of East Windsor; First Selectman, Office of the First Selectman, Town of East Windsor; and Office of the First Selectman, Town of East Windsor" to "First Selectman, Office of the First Selectman, Town of East Windsor; Office of the First Selectman, Town of East Windsor; and Town of East Windsor."

East Windsor proposed Community Center referenced in the November 8, 2022, Referendum Question #2.

[b] [A]ll correspondence, communications, including emails, mailings, newspaper articles, social media posts, robo calls, and other electronic communication and documents related and/or concerning the proposed Community Center referenced in the November 8, 2022, Referendum Question #2.

The complainant requested that the respondents include the following:

the amount of time and money employees spent working on this project such as employee meetings, town meetings, date and time of meetings and discussions, meetings and discussions with the Scout Hall board of directors or members, all presentations and discussions (such as senior center events), telephone calls, robo calls, video preparation and presentations, door to door campaigning, and compensatory time provided to employees for the Town of East Windsor proposed Community Center referenced in the November 8, 2022, Referendum Question #2. (“November 14<sup>th</sup> request”).

3. It is found that by email sent on November 18, 2022, the respondents acknowledged the November 14<sup>th</sup> request.

4. It is found that the Executive Assistant to the respondent First Selectman, who is responsible for coordinating responses to records requests received by the respondents, followed her “usual procedure” and, after discussing the request with the First Selectman, forwarded the November 14<sup>th</sup> request to other town departments that they believed may also have responsive records, and requested that such departments conduct a search for such records.

5. It is found that on December 2, 2022, the complainant followed-up with the respondents regarding the status of the November 14<sup>th</sup> request.

6. It is found that on December 5, 2022, the respondents informed the complainant that they were processing the November 14<sup>th</sup> request.

7. It is found that on January 16, 2023, the complainant again followed-up with the respondents regarding the status of the November 14<sup>th</sup> request.

8. By letter of complaint received on January 23, 2023,<sup>2</sup> the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the November 14<sup>th</sup> request described in paragraph 2, above.

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<sup>2</sup> Although the complaint was stamped by the Commission as received and filed on January 24, 2023, the complaint was emailed to the Commission by the end of business day on January 23, 2023.

9. Section 1-200(5), G.S., provides:

“Public 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:

Except 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 the provisions of section 1-212.

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

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

13. It is found that by email sent on January 30, 2023, the respondents informed the complainant that they were in the process of compiling records responsive to the November 14<sup>th</sup> request. It is found that by email dated that same day, the complainant thanked the respondents for the update.

14. It is found that on March 21, 2023 the respondents wrote to the complainant describing her request as “vexatious” and stating that such “vexatious requests are exceedingly onerous for Town staff having to cull through and compile responsive information within the constraints of regular Town business hours.”<sup>3</sup> It is found that the respondents also informed the complainant that they had compiled approximately 1400 pages of records responsive to the November 14<sup>th</sup> request and requested a prepayment of \$700 for copies of such records. It is

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<sup>3</sup> The Commission cautions the respondents that the term “vexatious” is an express term that is utilized in §1-206(b)(6), G.S., and that such term should not be used lightly; the respondents are directed to the statutory provisions contained in §1-206(b)(6), G.S., and the Commission’s decisions with respect thereto for the interpretation of vexatious requester under the FOI Act.

found that the respondents also informed the complainant that, if she chose to review the records in person, the charge would be \$20 per visit.<sup>4</sup>

15. It is found that on or about March 30, 2023, the complainant reviewed the records, described in paragraph 14, above, at the East Windsor Town Hall. It is found that the complainant requested copies of certain records (consisting of 66 pages).

16. At the hearings in this matter and in her post-hearing briefs, the complainant maintained that the respondents violated the FOI Act by failing to provide her with all responsive records.

### Respondents' Jurisdictional Claims

17. The respondents first claim that the Commission lacks subject matter jurisdiction because the complainant did not file her complaint with the Commission within 30 days of when the November 14<sup>th</sup> request was deemed to be constructively denied pursuant to §1-206(a), G.S.

18. Section 1-206, G.S., provides in relevant part:

(a) Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request.... Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b)(1) Any person denied the right to inspect or copy records under section 1-210 ... or denied any other right conferred by the [FOI] Act may appeal therefrom to the [FOI] Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial....

19. In *City of Bridgeport v. FOI Commission*, 222 Conn. App. 17, 41-42 (2023), the Court concluded that “a denial of a request, either in fact or pursuant to [§1-206(a), G.S.], is an essential fact that goes to the merits of a complaint before the [C]ommission,” and “does not implicate the [C]ommission’s jurisdiction ....” Thus, whether the complainant’s request was deemed to be denied under §1-206(a), G.S., at the time the complaint was filed does not go to the Commission’s jurisdiction, but to the merits of whether the respondents violated the FOI Act.

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<sup>4</sup> Although the respondents ultimately did not impose such a charge on the complainant, 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.

20. Moreover, as found in paragraph 7, above, on January 16, 2023, the complainant contacted the respondents to check on the status of her request. It is found that, in response, the respondents neither provided the requested records nor denied the request within four business days of receiving such request. It is therefore found, pursuant to §1-206(a), G.S., that the respondents constructively denied the complainant's request on January 20, 2023.

21. It is further found that the complainant filed her complaint with the Commission three days later on January 23, 2023. It is therefore found that the notice of appeal in this matter was filed within 30 days after the denial of the records request.

22. The respondents next claim that the Commission's jurisdiction over the complaint in this matter is limited to whether the respondents "failed to respond" to the November 14<sup>th</sup> request, and that any claims regarding the "completeness" and "responsiveness" of their response are not properly before the Commission.

23. Pursuant to §1-210(a), G.S., the complainant had the right to promptly obtain a complete copy of all public records she requested. Necessarily implicit in that right, is the right to challenge limitations placed on such right, including, the withholding of responsive records.

24. It is found that as of January 23, 2023, the date of the filing of the complaint in this matter, the respondents had not yet provided the complainant with any responsive records, nor informed her that they would be withholding any records.

25. It is found that the respondents first informed the complainant and the Commission that they had withheld records which were publicly available and records which they claimed were exempt from disclosure at the hearings in this matter.

26. It is found that the complainant could not have alleged in her complaint, which was filed on January 23, 2023, that the respondents' production was incomplete or nonresponsive since the respondents provided the complainant with records only after the complaint was filed.

27. It is found that the scope of the complaint was not limited to whether the respondents had failed to respond to the request. Consequently, it is found that the Commission has jurisdiction to address the issues concerning the respondents' withholding of responsive records, including their claims of exemptions.<sup>5</sup>

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<sup>5</sup> See *City of Bridgeport v. FOI Commission*, 222 Conn. App. 17, 42 (2023), where the Appellate Court held that the complainant "had no obligation to amend his complaint to allege that the plaintiffs violated the act by redacting portions of the responsive records, as such a claim is encompassed within the allegation that the plaintiffs failed to comply with his request for *all* responsive records. Furthermore, because the plaintiffs bore the burden of proof as to any claimed exemption, they were not prejudiced by the commission's consideration of those exemptions as part of its consideration of Daley's complaint. This is particularly true in the present case, in which the hearing officer continued the hearing to another date to give the plaintiffs an opportunity to present evidence in support of their claimed exemptions." *Bridgeport v. FOIC*, at 29.

### Whether the Respondents Violated the Act

28. The respondents claim that they provided the complainant with all responsive records that they maintain and keep on file, except for records that are publicly available and records that they claim are exempt from disclosure. They also claim that they promptly provided to the complainant copies of the responsive records.

29. With respect to the respondents' claim that records were publicly available and therefore not provided, it is found that the complainant requested *copies* of all responsive records.

30. It is found that, at the time of the November 14<sup>th</sup> request, certain responsive records were publicly available on the official website for the Town of East Windsor and on the official Facebook page for the respondent First Selectman, including agendas, minutes, financial information, articles and social media postings made by the respondent First Selectman in his official capacity as the First Selectman. It is unclear from the administrative record what other responsive records were publicly available at that time and not provided to the complainant.

31. It is found that the respondents did not inform the complainant that responsive records were publicly available, nor direct the complainant at any time to the official town website and official Facebook page for the First Selectman.

32. It is found that the respondents failed to provide, or make available to the complainant, responsive records that were publicly available at the time of the November 14<sup>th</sup> request.<sup>6</sup>

33. It is therefore concluded that the respondents violated §§1-210(a) and 1-212, G.S., with respect to those responsive records that were publicly available at the time of the November 14<sup>th</sup> request, and not provided or made available to the complainant.

34. With respect to the respondents' claim that certain responsive records were exempt from disclosure, on October 27, 2023, pursuant to an order of the hearing officer, the respondents submitted unredacted copies of such records for in camera inspection, along with an in camera index. Such records were marked as IC-2023-0020-Record 1 (pages 1-10) through IC-2023-0020-Record 30 (pages 163-166).<sup>7</sup> On the in camera index, the respondents claimed that such records are exempt pursuant to §§1-210(b)(1), 1-210(b)(5) and/or 1-210(b)(10), G.S.

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<sup>6</sup> See Dorman v. Chairman, Board of Education, Glastonbury Public Schools, et. al.; Docket #FIC 2017-0219 (July 26, 2017), where the Commission found that the respondents did not violate the FOI Act when they directed the requestor to the website, informed her that all the requested information was posted on the website, and offered to send her the records if she could not find them on the website as directed.

<sup>7</sup> At the December 11, 2023 reopened hearing, the respondents testified that they were no longer claiming an exemption from disclosure for certain records and were prepared to provide unredacted copies of such records to the complainant. The complainant, however, continued to challenge the respondents' claims that such records were exempt from disclosure at the time of her November 14<sup>th</sup> request.

35. It is found that the following in camera records did not exist at the time of the November 14<sup>th</sup> request and therefore are not responsive and will not be further addressed herein: IC-2023-0020-Record 5 (pages 23-24), IC-2023-0020-Record 11 (pages 37-38), IC-2023-0020-Record 14 (pages 42-52), IC-2023-0020-Record 17 (pages 73-88) and IC-2023-0020-Record 29 (page 162).

36. The respondents claim that IC-2023-0020-Record 1 (pages 1-10), IC-2023-0020-Record 2 (pages 11-17), IC-2023-0020-Record 4 (pages 19-22)<sup>8</sup> and IC-2023-0020-Record 7 (page 26) are exempt from disclosure pursuant to §1-210(b)(10), G.S., which permits a public agency to withhold from disclosure records of “communications privileged by the attorney-client relationship.”

37. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” Id. at 149.

38. Section 52-146r(2), G.S., defines “confidential communications” as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

39. The Supreme Court has also stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, *supra*, at 149.

40. Based upon careful in camera inspection and testimony in the record, it is found that IC-2023-0020-Record 1 (pages 1-10), IC-2023-0020-Record 2 (pages 11-17), IC-2023-0020-Record 4 (pages 19-22) and IC-2023-0020-Record 7 (page 26) consist of written

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<sup>8</sup> On the in camera index, the respondents claimed that IC-2023-0020-Record 4 (pages 19-22) is exempt from disclosure pursuant to §1-210(b)(1), G.S., only. However, at the reopened hearing in this matter, they claimed that such record was also exempt from disclosure pursuant to §1-210(b)(10), G.S.

communications transmitted in confidence between counsel for the respondents and public officials. It is also found that such records relate to legal advice sought by the respondents or in furtherance of the rendition of such legal advice, within the meaning of §§1-210(b)(10) and 52-146r(2), G.S. It is further found that the respondents did not waive their claim of privilege with respect to such records.

41. It is therefore concluded that the in camera records, described in paragraph 36, above, are exempt from disclosure pursuant to §1-210(b)(10), G.S. It is further concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant.<sup>9</sup>

42. The respondents claim that the following in camera records are exempt from disclosure pursuant to §1-210(b)(1), G.S.: IC-2023-0020-Record 3 (page 18), IC-2023-0020-Record 6 (page 25), IC-2023-0020-Record 8 (pages 27-31), IC-2023-0020-Record 9 (pages 32-34), IC-2023-0020-Record 10 (pages 35-36), IC-2023-0020-Record 12 (page 39), IC-2023-0020-Record 13 (pages 40-41), IC-2023-0020-Record 15 (pages 53-57), IC-2023-0020-Record 16 (pages 58-72), IC-2023-0020-Record 18 (pages 89-91), IC-2023-0020-Record 19 (pages 92-98), IC-2023-0020-Record 20 (pages 99-126), IC-2023-0020-Record 21 (pages 127-129), IC-2023-0020-Record 22 (pages 130-132), IC-2023-0020-Record 23 (pages 133-136), IC-2023-0020-Record 24 (pages 137-139), IC-2023-0020-Record 25 (pages 140-141), IC-2023-0020-Record 26 (pages 142-150), IC-2023-0020-Record 27 (pages 151-154), IC-2023-0020-Record 28 (pages 155-161), and IC-2023-0020-Record 30 (pages 163-166).<sup>10</sup>

43. Section 1-210(b)(1), G.S., provides that disclosure is not required of “preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.”

44. The Connecticut Supreme Court ruled in Wilson v. Freedom of Information Commission, 181 Conn. 324, 332 (1980) (“Wilson”), that:

[w]e do not think the concept of preliminary, as opposed to final, should depend upon who generates the notes or drafts, or upon whether the actual documents are subject to further alteration....

Instead the term ‘preliminary drafts or notes’ relates to advisory opinions, recommendations, and deliberations

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<sup>9</sup> The respondents also claim that IC-2023-0020-Record 1 (pages 1-10), IC-2023-0020-Record 2 (pages 11-17), IC-2023-0020-Record 4 (pages 19-22) and IC-2023-0020-Record 7 (page 26) are exempt from disclosure pursuant to §1-210(b)(1), G.S. However, in light of the conclusion in paragraph 41, above, no further claims of exemption with respect to such records will be addressed herein.

<sup>10</sup> The respondents also claim that IC-2023-0020-Record 3 (page 18) and IC-2023-0020-Record 12 (page 39) are exempt from disclosure pursuant to §1-210(b)(5), G.S. However, in light of the conclusion in paragraph 56, below, no further claims of exemption with respect to such records will be addressed herein.



comprising part of the process by which government decisions and policies are formulated....

...[p]reliminary drafts or notes reflect that aspect of an agency's function that precedes formal and informal decision making. We believe that the legislature sought to protect the free and candid exchange of ideas, the uninhibited proposition and criticism of options that often precedes, and usually improves the quality of, governmental decisions. It is records of this preliminary, deliberative and predecisional process the exemption was meant to encompass.

45. The year following Wilson, the Connecticut General Assembly passed Public Act 81-431, which added to the FOI Act the language now codified in §1-210(e)(1), G.S. That provision, which narrowed the exemption for preliminary drafts or notes, provides in relevant part:

[n]otwithstanding [§1-210(b)(1)], disclosure shall be required of:

[i]nteragency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.... (emphasis added).

46. In Van Norstrand v. Freedom of Information Commission, 211 Conn. 339, 343 (1989) ("Van Norstrand"), the Supreme Court provided further guidance regarding "preliminary drafts." Citing the dictionary definition, the court stated that the term "preliminary" means "something that precedes or is introductory or preparatory," and "something that is preceding the main discourse or business." Id. According to the Court, "[b]y using the nearly synonymous words 'preliminary' and 'draft', the legislation makes it very evident that preparatory materials are not required to be disclosed." Id.

47. Accordingly, §§1-210(b)(1) and 1-210(e)(1), G.S., together, permit nondisclosure of records of an agency's preliminary, predecisional, deliberative process, provided that the agency has determined that the public interest in withholding the records clearly outweighs the public interest in disclosing them and provided further that such records are not interagency or intra-agency memoranda or letters, advisory opinions, recommendations or reports comprising part of the process by which governmental decisions and policies are formulated. See Shew v. Freedom of Information Commission, 245 Conn. 149, 164-166 (1998) ("Shew").

48. With regard to the “balancing test” required by §1-210(b)(1), G.S., it is well established that the responsibility for making the determination as to what is in the public interest is on the agency that maintains the records. See Van Norstrand at 345. The agency must indicate the reasons for its determination to withhold disclosure, which reasons may not be frivolous or patently unfounded. Id., citing Wilson at 339. See also People for Ethical Treatment of Animals, Inc. v. Freedom of Information Commission, 321 Conn. 805, 816-817 (2016). Thus, the only determination for the Commission to make is whether the reasons for nondisclosure given by the agency are frivolous or patently unfounded. See Lewin v. Freedom of Information Commission, 91 Conn. App. 521, 522-523 (2005); Coalition to Save Horsebarn Hill v. Freedom of Information Commission, 73 Conn. App. 89, 99 (2002).

49. Based upon careful in camera inspection and testimony in the record<sup>11</sup>, it is found that the following in camera records consist of email cover pages: IC-2023-0020-Record 8 (page 27), IC-2023-0020-Record 9 (page 32), IC-2023-0020-Record 13 (page 40), IC-2023-0020-Record 15 (page 53), IC-2023-0020-Record 16 (page 58), IC-2023-0020-Record 18 (page 89), IC-2023-0020-Record 19 (page 92), IC-2023-0020-Record 25 (page 140), and IC-2023-0020-Record 28 (page 155).

50. It is found that the in camera records described in paragraph 49, above, do not constitute “preliminary drafts or notes”, within the meaning of §1-210(b)(1), G.S. Accordingly, it is found that such records are not exempt from disclosure, and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant.

51. Based upon careful in camera inspection and testimony in the record, it is found that the following in camera records consist of draft budget documents, a draft executive summary, a draft lease, a draft powerpoint, draft design plans and prints, a draft electrical design plan, draft mechanical and plumbing design plans, draft architectural plans, or substantive emails:

IC-2023-0020-Record 3 (page 18), IC-2023-0020-Record 6 (page 25), IC-2023-0020-Record 8 (pages 28-31), IC-2023-0020-Record 9 (pages 33-34), IC-2023-0020-Record 10 (pages 35-36), IC-2023-0020-Record 12 (page 39), IC-2023-0020-Record 13 (page 41), IC-2023-0020-Record 15 (pages 54-57), IC-2023-0020-Record 16 (pages 59-72), IC-2023-0020-Record 18 (pages 90-91), IC-2023-0020-Record 19 (pages 93-98), IC-2023-0020-Record 20 (pages 99-126), IC-2023-0020-Record 21 (pages 127-129), IC-2023-0020-Record 22 (pages 130-132), IC-2023-0020-Record 23 (pages 133-136), IC-2023-0020-Record 24 (pages 137-139), IC-2023-0020-Record 25 (page 141), IC-2023-0020-Record 26 (pages 142-150), IC-2023-0020-Record 27 (pages 151-154), IC-2023-0020-Record 28 (pages 156-161), and IC-2023-0020-Record 30 (pages 163-166).

52. At the reopened hearing, the town attorney testified that the in camera records described in paragraph 51, above, relate to a highly contested and controversial project in the Town of East Windsor that would be going out to bid, if approved. The town attorney also testified that the disclosure of such records, which were incomplete and subject to change, would have negatively impacted bidding, and harmed the progress and scope of the project.

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<sup>11</sup> At the reopened hearing, the respondents described the in camera records referenced in paragraph 49, above, as nonsubstantive email transmittals.

53. It is found that the records described in paragraph 51, above, are “preliminary drafts or notes,” as such records are preparatory or predecisional.

54. It is found that the respondents conducted the required balancing test and determined that the public interest in withholding the records clearly outweighed the public interest in disclosure. It is also found that the balancing test was undertaken in good faith, and that the reasons for nondisclosure are not frivolous or patently unfounded.

55. It is also found that the records, described in paragraph 51, above, are not “[i]nteragency or intra-agency memoranda or letters, advisory opinions, recommendations or any report” that are required to be disclosed pursuant to §1-210(e), G.S.

56. Based upon the foregoing, it is concluded that the in camera records described in paragraph 51, above, are exempt from disclosure pursuant to §1-210(b)(1), G.S., and that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant.

57. It is found that the respondents provided the complainant with all responsive records that they maintained or kept on file, except for those records that were publicly available as described in paragraph 30, above, and those records that they claimed were exempt from disclosure as described in paragraph 34, above.

58. It is also found that, while the respondents reached out to other town departments, as described in paragraph 4, above, and thereafter facilitated the provision of those agencies’ responsive records to the complainant, they did not have a duty to maintain or make available the records of another public agency. See *Lash v. Freedom of Info. Comm’n*, 116 Conn. App. 171, 187 (2009) (“[the first selectman] has no duty to maintain or make available the records of the law department, just as the law department has no duty to maintain or disclose the records of the first selectman”), affirmed in part and reversed in part, 300 Conn. 511 (2011) (Appellate Court’s order remanding the case to the Commission for further evidence was reversed).

59. Finally, with respect to the complainant’s claim that the respondents failed to comply with her request promptly, the Commission has defined the word “promptly,” as used in §§1-210(a) and 1-212(a), G.S., to mean “quickly and without undue delay, taking into account all of the factors presented by a particular request .... [including]: the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requestor needs the information contained in the records; 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.” FOI Commission Advisory Opinion #51, *In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk* (Jan. 11, 1982).

60. The respondents testified, and it is found, that they immediately began processing the November 14<sup>th</sup> request, and that such process took a considerable amount of time. The respondents testified, and as already found in paragraphs 4 and 58, above, that the process

involved searching for and compiling records maintained and kept by the respondent First Selectman, and reaching out to and facilitating the provision of responsive records maintained and kept by other town departments.

61. The respondents testified, and it is found, that the November 14<sup>th</sup> request was filed during the holiday season, and at a time when staff responsible for processing records requests had scheduled days off. It is found that, in addition to their daily duties, the respondents were very busy with time-sensitive projects such as working on the annual Town budget and annual audit of Town finances.

62. The respondents also testified, and it is found, that although some records responsive to the November 14<sup>th</sup> request were compiled and available as early as December 2022, they waited to produce the records to the complainant until all records were compiled and reviewed by the Town attorney, rather than on a rolling basis. The respondents testified that due to the complainant's "litigious" approach, they wanted to ensure that the production of responsive records was "complete" and "comprehensive", and to avoid allegations that their response was "inconclusive" and that they were withholding records.

63. It is found that the complainant did not inform the respondents of the particular importance of the records, nor a specific timeframe by when she needed the records.


64. Based on the foregoing, and under the facts and circumstances of this case, it is found that the respondents acted quickly and without undue delay in responding to the complainant's November 14<sup>th</sup> request, except with respect to those responsive records that were publicly available at the time of the request. It is therefore concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S., but only with respect to those publicly available records.

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

1. Within 45 days of the Notice of Final Decision in this matter, the respondents shall provide the complainant with unredacted copies of the records identified in paragraphs 30 and 49, above, free of charge.

2. Henceforth, the respondents shall strictly comply with the disclosure and promptness 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 10, 2024.

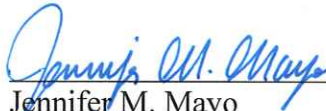
  
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Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**LYNN STANLEY**, c/o Attorney Keith Yagaloff, 1343 Sullivan Avenue, South Windsor, CT 06074

**FIRST SELECTMAN, OFFICE OF THE FIRST SELECTMAN, TOWN OF EAST WINDSOR; TOWN OF EAST WINDSOR; AND OFFICE OF THE FIRST SELECTMAN, TOWN OF EAST WINDSOR**, c/o Attorney Joshua A. Hawks-Ladds, Pullman & Comley, LLC, 90 State Huse Square, Hartford, CT 06103



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Jennifer M. Mayo  
Acting Clerk of the Commission