

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Martin Rutt and Patricia L. Dyer,

Complainants

against

Docket #FIC 2023-0151

Land Use Inspector, Town of Prospect; and  
Town of Prospect,

Respondents

January 24, 2024

The above-captioned matter was heard as a contested case on July 18, 2023, at which time the complainants and the respondents appeared, stipulated to certain facts 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 oral request on or around November 21, 2022, Patricia Dyer (“Dyer”) requested copies of a zoning application related to 111 Waterbury Road in Prospect, Connecticut (the “property”); and that, by handwritten letter dated February 17, 2023, Martin Rutt (“Rutt”) requested “a copy of the plot plan submitted to the Town of Prospect regarding the ‘change of land use’ from Ryan’s Masonry” for the property.<sup>1</sup> It is also found that, by email dated February 18, 2023, Rutt followed-up on his February 17<sup>th</sup> request and requested copies of the “approved engineered plot plan and approved zoning application for Ryan Masonry” for the property.
3. It is found that, by email dated February 21, 2023, the respondents acknowledged the complainants’ requests and informed Rutt that he would be contacted when all responsive records were available.
4. It is found that, by email dated March 6, 2023, Rutt informed the respondents that he intended to visit the Land Use Office the next day to obtain copies of the requested records,

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<sup>1</sup> In his February 17<sup>th</sup> request, Rutt also asked specific questions of the Land Use Inspector. The Commission has long concluded, and the court has affirmed, that a public agency has no duty to create documents it does not already maintain or to answer questions under the Freedom of Information Act. See Kimberly Albright-Lazzari et al v. Colleen Murphy, Connecticut Freedom of Information Commission et al, CV105014984S, 2011 WL 1886878, at \*3 (Conn. Super. Ct. April 21, 2011).

described in paragraph 2, above. It is also found that, by email dated the same day, the respondents informed Rutt that the records were not ready for pickup and that they would contact him when all responsive records were available.

5. By letter of complaint, dated and filed April 6, 2023, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to promptly provide the records, 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 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:

[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: “[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 requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that, by email dated May 4, 2023, the respondents informed the complainants that copies of the requested records were available for pickup and that the complainants could collect such records from the Land Use Office at a cost of \$156.00.<sup>2</sup>

11. It is found that on May 5, 2023, the complainants picked up the records described in paragraph 10, above, from the Land Use Office, and that such records totaled approximately forty-eight pages.

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<sup>2</sup> The Commission notes that, although the respondents were under no obligation to answer questions posed by the complainants, the respondents included records in this disclosure that answered the complainants’ questions referenced in footnote 1, above.

12. At the hearing on this matter, the complainants alleged that the respondents failed to provide the requested records promptly.<sup>3</sup> The complainants also requested, for the first time, the imposition of a civil penalty against the respondents.

13. 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 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. As the court recognized in Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. HHB-CV-18-6047741 (July 20, 2020) \*6, a public agency should consider its obligations under the FOI Act as a “primary duty” of that agency, “on par with the [agency’s] other significant duties, or said another way, that the agency’s FOIA duty is not a second class duty.”

14. 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.

15. With regard to the factors listed above, it is found that, although the complainants did not specifically indicate in their written requests that they needed the requested records by a particular date, it is evident from the surrounding facts and circumstances that the respondents knew, or should have known, that the requested records were highly important to the complainants and that they needed such records as quickly as possible.

16. It is found that the respondent Land Use Inspector is the person primarily responsible for responding to the complainants’ FOI requests. It is also found that the Land Use Office has one additional part-time employee, and that both employees work thirty hours per week for the Town of Prospect (the “town”). It is further found that, among her routine duties, the Land Use Inspector is responsible for reviewing and processing zoning applications, responding to zoning compliance issues, assisting the Planning and Zoning Commission, the Zoning Board of Appeals and the Inland Wetlands Commission, and conducting site inspections.

17. It is found that, between the time that the respondents processed the complainants’ requests on February 17, 2023, through the time that the records described in paragraphs 10 and 11, above, were made available to the complainants on May 4, 2023, the respondent Land Use Inspector had significant other agency business that was highly important to the public, and much of which, had considerable time constraints attached thereto. Specifically, it is found that the Land Use Inspector was assisting the town with the process of updating its Municipal Plan of Conservation and Development, as required by §8-23, G.S., and its Affordable Housing Plan,

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<sup>3</sup> At the hearing in this matter, the complainants alleged additional violations of the FOI Act that were outside the scope of the complaint, and therefore, such allegations will not be further addressed herein.

dealing with the controversial relocation of a firearms shooting range in town, and digitizing all paper files in the Land Use Office.<sup>4</sup>

18. The respondent Land Use Inspector testified, and it is found, that it was uniquely difficult to locate files during the time period described in paragraph 17, above, due to the reorganization of the Land Use Office's filing system, in conjunction with the ongoing digitization of land use records. It is also found, however, that the respondents' apparent lack of organization, regarding their maintenance of public records, does not excuse an undue delay in locating such records and is not a defense to a claim that responsive records were not provided promptly.

19. The respondent Land Use Inspector testified, and it is found, that her office tried to commit one hour per week to FOI issues during the time period described in paragraph 17, above. The Land Use Inspector also testified, and it is found, that her office had fulfilled three FOI requests during such time period. The Land Use Inspector further testified, and it is found, that she spent approximately five to ten hours, in total, responding to the complainants' requests and an additional two to five hours per week dealing with Dyer's related property dispute outside of the FOI process. The Land Use Inspector also testified, and it is found, that during this same time period, the Land Use Office's map scanner, which produces copies of requested property maps, became corrupted, resulting in significant delays.

20. Based upon all of the foregoing, and in consideration of all of the factors presented, it is concluded that, with respect to the records provided, as described in paragraphs 10 and 11, above, the respondents did not violate the promptness requirements in §§1-210(a) and 1-212(a), G.S., as alleged by the complainants.

21. However, at the hearing on this matter, the respondents entered into evidence, six pages of additional records, which have been marked as Respondents' Exhibit 6: Land Use Office Records that the Complainants Allege they did not Receive. It is found that, included in Respondents' Exhibit 6, is a Special Permit Application for the property, which was also responsive to the complainants' requests.

22. The respondent Land Use Inspector testified that she intended to include the records described in paragraph 21, above, with the records provided to the complainants on May 5, 2023, but could not confirm that she had done so.

23. However, the complainants credibly testified that they did not receive copies of the records comprising Respondents' Exhibit 6 until they were provided to them at the July 18, 2023 hearing on this matter.

24. It is found, based upon the testimony referenced in paragraphs 22 and 23, above, that the records described in paragraph 21, above, were not provided to the complainants until July

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<sup>4</sup> The Commission notes that there are also significant time constraints involved in the Land Use Inspector's routine work for the Planning and Zoning Commission and the Zoning Board of Appeals.

18, 2023; and, it is concluded, therefore, that, with respect to such records, the respondents violated the promptness requirements of §§1-210(a) and 1-212(a), G.S.<sup>5</sup>

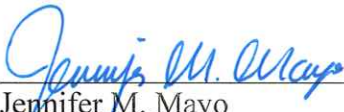
25. After consideration of the entire record in this matter, the Commission, in its discretion, declines to consider the imposition of civil penalties against the respondents.

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

1. Henceforth, the respondents shall strictly comply with the promptness provisions in §§1-210(a) and 1-212(a), G.S.

2. The complainants are cautioned that, in accordance with §§1-206(b)(3)(C) and 1-206(b)(3)(D), G.S., the Commission may consider the nature, content and language of verbal communications made to any official of any agency by the person(s) taking an appeal to the Commission and/or a history of disruption of the Commission's administrative process in declining to schedule a future contested case hearing.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 24, 2024.

  
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Jennifer M. Mayo  
Acting Clerk of the Commission

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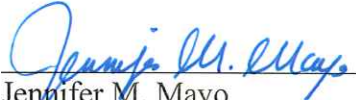
<sup>5</sup> Although the Commission concludes that the respondents violated the FOI Act in the present matter, it notes that the complainants' behavior during the contested case hearing process was disrespectful, disruptive and, generally, lacking in decorum, with respect to the undersigned hearing officer and the respondents. See paragraph 2 of the order, above.

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:

**MARTIN J. RUTT**, 108 Cook Road, Prospect, CT. 06712; **AND PATRICIA L. DYER**, 113 Waterbury Road, Prospect, CT 06712

**LAND USE INSPECTOR, TOWN OF PROSPECT; AND TOWN OF PROSPECT**, c/o Attorney David S Hardy, Carmody Torrance Sandak & Hennessey LLP, 195 Church Street, New Haven, CT 06510

  
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Jennifer M. Mayo  
Acting Clerk of the Commission