

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Mary K. Katz

FINAL DECISION

Complainant

Docket #FIC84-208

against

July 24, 1985

Town Clerk of Windsor and
Deputy Town Clerk of Windsor

Respondents

The above captioned matter was heard as a contested case on January 22, 1985 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:

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. By complaint dated October 16, 1984 the complainant allege that the respondent deputy town clerk had failed to provide her with certified copies in accordance with §1-15, G.S., and that the respondent had imposed an impermissible condition limiting access to those copies by asking whether the complainant wanted the certified copies for her lawsuit.
3. The complainant made it clear at the hearing that her complaint was not directed against the respondent town clerk but rather at the respondent deputy town clerk.
4. On October 15, 1984, the complainant handed the deputy town clerk a list containing dates and page numbers of minutes of the Windsor Town Council.
5. The list was captioned "Buy Certified Copies."
6. The complainant asked the deputy town clerk to make copies when she could.
7. The respondent deputy clerk asked the complainant whether she wanted the certified copies for her lawsuit.

8. The complainant did not answer the question directly.
9. The respondent deputy clerk then indicated that she would have to check with the town attorney regarding whether she could make the copies available.
10. The complainant then left the office and took her list with her.
11. By letter dated October 17, 1984, the attorney representing the town in its litigation with the complainant agreed to provide the complainant with the requested records.
12. The response of the town attorney provided in part:

The Town will produce to you the documents requested at the Town Clerk's office. We request, however, that you advise us as lawyers for the Town when you wish to have documents produced by the Town that relate to the litigation so that we will be aware of your requests and can respond thereto and be aware of your contacts with Town employees and officials so we can monitor them if we choose.
13. The complainant did not return to the town clerk's office to give the respondent deputy clerk an opportunity to provide the requested copies.
14. §1-15 provides in relevant part that "(a)ny person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record".
15. The failure of the respondent deputy clerk to produce the requested copies immediately was due to her understanding that records connected with a lawsuit which the complainant was pursuing against the town of Windsor had to be reviewed by the attorney.
16. Once the attorney had agreed to provide the records on October 17, 1984 the failure of the respondent deputy clerk to provide the copies was due entirely to the lack of cooperation of the complainant.
17. It is found that the term "promptly" in §1-15, G.S. means quickly and without undue delay, taking into account all the factors presented by a particular request.
18. It is further found that the respondent deputy clerk would have been willing to provide the complainant with the requested copies on or after October 17, 1984.
19. It is concluded that the respondent deputy clerk did not

violate the requirement of §1-15, G.S. that records be provided "promptly".

20. It is found that nothing in §1-15 et seq., G.S., permits a public agency to require that a person perform any precondition or answer any question in order to receive copies of public records, except that the statutory fees for such records must be paid if required by the public agency.

21. However, under that facts of this case, the respondent deputy town clerk was not imposing a precondition when she asked whether the records were for the complainant's lawsuit, rather she was trying to determine whether the records could be made immediately available or whether the request should be reviewed by the attorney.

22. It is concluded, therefore, that the question regarding intended use of the records, because it did not require an answer, was not an illegal precondition.

23. The respondents requested that the commission impose a civil penalty upon the complainant because her insistence on pursuing this appeal is without reasonable grounds and is solely for the purpose of harassing them.

24. It is found that the the controversy which gave rise to this complaint has a long history.

25. It is concluded that the complainant did not file the complaint solely to harass the respondent deputy clerk and that a civil penalty is not warranted.

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

1. The complaint is hereby dismissed.

2. The Commission urges that this decision not be read as approving the "request" of the attorney for Windsor quoted at paragraph 12 herein, that the complainant contact the lawyers for the town if she desires documents which relate to the litigation. The Commission is unaware of any authority for such a request in the Freedom of Information Act and finds no basis in the law for treating the complainant's request of access to records as

different from that of any other person simply because she is a party to litigation which involves the town of Windsor.

Approved by order of the Freedom of Information Commission at its regular meeting of July 24, 1985.



Mary Jo Jolicœur
Clerk of the Commission