

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Nancy Rossi,

Complainant

against

Docket #FIC 2016-0328

Republican Registrar of Voters and
Democratic Registrar of Voters,
Office of Registrar of Voters,
City of West Haven,

Respondents

March 22, 2017

The above-captioned matter was heard as a contested case on July 19, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The respondents also, pursuant to the hearing officer's order, submitted three after-filed exhibits: the City of West Haven February 22, 2005 Computer, E-mail and Internet policy (Respondents' Exhibit 1); the City of West Haven's November 15, 2012 reaffirmation of its February 22, 2005 policy (Respondents' Exhibit 2); and the City of West Haven's latest (2015) Information Technology and Internet Usage Policy (Respondents' Exhibit 3).

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 the complainant is a former member of the West Haven City Council.
3. It is found that the complainant made a March 31, 2016 request to the respondents for "access to review," among other records no longer at issue, "all emails received and sent from all Registrars, Deputy Registrars and Administrative Assistants from January 2011 to [the] present."
4. It is found that, by letter dated April 1, 2016, the respondent Republican Registrar of Voters, apparently acting on behalf of the City of West Haven Office of Registrar of Voters, denied the complainant's request to review emails, "on advice from Corporation Counsel."

5. It is found that the respondent Democratic Registrar of Voters initially offered the complainant access to review her own emails, although that offer was later rescinded.

6. It is found that the City of West Haven Office of Registrar of Voters consists of two registrars, two deputy registrars, and two administrative assistants.

7. It is found the Republican Registrar of voters has over 3,000 emails for the requested time period. No evidence was presented of the number of emails for the accounts of the other five officials.

8. By letter of complaint filed April 29, 2016, the complainant appealed to the Commission, alleging that the respondents Republican Registrar of Voters and City of West Haven Office of Registrar of Voters violated the Freedom of Information (“FOI”) Act by denying her April 1, 2016 request to them for access to review certain public records.

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, printed, photostated, photographed or recorded by any other method.

10. Section 1-210(a), G.S., provides in relevant part that:

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 . . . (3) receive a copy of such records in accordance with section 1-212.

11. 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.”

12. It is found that the respondents maintain the requested records, and that the records, with the exception of personal emails described in paragraph 25 of the findings, below, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

13. Section 1-211(a), G.S., provides:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, *properly identified*, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212, as amended by Public Act 11-150. [Emphasis added.]

14. It is found that the complainant has made previous requests for “access to review” public records, and has always, with one exception, been provided either paper copies, or electronic copies. The only exception was when the complainant reviewed a surveillance recording on town equipment.

15. It is found that both the complainant and the respondents have interpreted the complainant’s requests for “access to review” to mean that the complainant was asking to review copies.

16. It is additionally found that the City’s Information Technology Director has specifically provided emails by copying them to a file (after redaction, if any, by other officials) and providing that electronic file in the form of a disc to the requester, to be viewed on the requester’s own computer.

17. The respondents contended that the complainant requested access to, not copies of, the requested records, and that the complainant is not entitled to browse through thousands of public records, because doing so could bring official business to a halt.

18. It is found, however, that both the complainant and the respondents understood at the time of the request that the complainant would accept the records in whatever form the City chose to provide them, and was not expecting to access, inspect or review the files on town equipment.

19. The respondents additionally contended that the complainant’s request is overly broad, overly burdensome, and doesn’t properly identify the records sought.

20. Specifically, the respondents contended that it could take days to review thousands of emails to determine whether they contained personal or exempt information.

21. It is found that the only personal information discovered by the respondents to be contained in the requested emails was prescription drug information, and receipts for the purchase of personal goods.

22. The Commission takes administrative notice of the fact that use of governmental email is usually strictly restricted to governmental purposes, and that government emails therefore are presumptively public records. The use of governmental email accounts for prohibited purposes presumptively pertains to the conduct of the public's business, because of the use of governmental resources for employees' personal business, if prohibited, is a legitimate matter of public concern.

23. However, the respondents contended that the use of governmental email for such personal use is authorized by the City's information technology policy.

24. It is found that the City's information technology policy provides in relevant part:

Information technology and equipment is to be used for city business purposes and to increase the timeliness and effectiveness of city business communications. At the discretion of an employee's Department Head, an employee may use city information technology and equipment for private purposes, provided such use, including the value of the time spent, results in no incremental cost to the city or results in an incremental cost that is so small as to make accounting for it unreasonable or administratively impractical.

While employees may make personal use of city information technology and equipment during working hours, the amount of use is expected to be limited to incidental use or emergency situations. Excessive time spent on such personal activities during working hours will subject the employee to disciplinary action.

25. It is concluded that the content of emails permissively used for entirely personal purposes, such as for prescription drugs or other personal items, do not pertain to the conduct of the public's business.

26. With regard to the adequacy of the complainant's description of the emails sought, the respondents contended that the provision of §1-211(a), G.S., requiring that the

records be properly identified was not satisfied by the complainant's request for all emails to or from specific individuals within a specific time period.

27. It is found, however, that the records were sufficiently identified to make their production by respondents a simple matter.

28. It is therefore concluded that the requested records were "properly identified" within the meaning of §1-211(a), G.S.

29. The respondents additionally contended that the request was overly broad and burdensome.

30. It is found that it took approximately 45 minutes for the respondents to find and copy the first 3,000 emails.

31. It is also found the longest that it has taken the respondents in the past to burn 1,000 emails to a disk was one hour.

32. It is found that it would be a simple matter for the respondents to separate the purely personal emails from the emails concerned with governmental business.

33. It is also found that any difficulty in separating personal emails from governmental emails was a problem entirely of the respondents' own making, by permitting the use of governmental email accounts for private and personal use.

34. It is also found that that the respondents, other than making a conclusory and generalized claim that the emails might contain driver license information, or personnel records, or copies of disciplinary action, offered no evidence of the contents of any identified email in order to prove that any email was exempt from disclosure.

35. It is further found that, although the respondents presented testimony from the Information Technology Director about how long it would take *him* to read the requested records, the IT Director has not in the past been the person who reviewed emails for exemptions, but rather is the person who copies the files after someone else, such as the Town Attorney, has reviewed them for redaction.

36. It is additionally found that the respondents never communicated to the complainant that her request was too broad, or asked her to narrow it in any way.

37. It is concluded that the respondents violated §§1-210(a), and 1-211(a), G.S., by failing to provide the requested emails.

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

1. The respondents shall forthwith provide the complainant with copies of the requested records.

2. In complying with paragraph 1 of this order, the respondents may redact the contents of any purely personal email, such as prescription drug information or receipts for the purchase of personal goods; provided that the respondents shall redact neither the name of the employee who sent or received the email, nor the date of the email.

3. In complying with paragraph 1 of this order, the respondents may, consistent with the Commission's long-standing practice, redact any driver license number.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 22, 2017.



Cynthia A. Cannata
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:

Nancy Rossi
12 Robin Road
West Haven, CT 06516

Republican Registrar of Voters and Democratic Registrar
of Voters, Office of Registrar of Voters, City of West Haven
c/o Henry C. Szadkowski, Esq.
Office of the Corporation Counsel
355 Main Street
West Haven, CT 06516



Cynthia A. Cannata
Acting Clerk of the Commission