

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Anna Neumon,

Complainant

against

Docket #FIC 2016-0483

Dante Bartolomeo, Member,
State of Connecticut,
State Senate,

Respondent

April 26, 2017

The above-captioned matter was heard as a contested case on January 20, 2017, at which time the complainant and the respondent 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 respondent is a public agency within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated June 13, 2016, the complainant requested that the respondent, State Senator Dante Bartolomeo, provide her with a copy of "all information pertaining to persons who have responded to an invitation posted on the respondent's website," concerning an "e-newsletter sign-up." The complainant clarified that she was seeking all e-mail addresses, first names, last names, and towns for all persons who signed up for the respondent's electronic newsletter.
3. It is found that, within four business days, the respondent acknowledged the complainant's request, indicating that she would search for public records responsive to the request.
4. By letter dated June 30, 2016 and filed July 5, 2016, the complainant appealed to the Commission, alleging that the respondent violated the Freedom of Information Act ("FOI Act") by failing to provide her with a copy of the records described in paragraph 2, above.

5. 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.

6. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

7. 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.”

8. At the contested case hearing, the respondent’s counsel first contended that the complaint should be dismissed on jurisdictional grounds, as Senator Bartolomeo is no longer a state senator, having been defeated in the November 2016 election.

9. It is found that, at the time the respondent received the records request in this case, she was a sitting public official. It is further found that the respondent received the request because of her position as a member of the state senate. It is further found that approximately two hundred and five days passed between the date the request was received by the respondent and January 4, 2017, the date on which a new senator was sworn into office. It is therefore found that more than sufficient time existed for the respondent to disclose the requested records to the complainant while she continued to be a sitting state senator.

10. Moreover, it is found that members of the public do not lose their right to access public records merely because an individual is no longer a public official. See Chmurynski v. First Selectman, Town of Bozrah, Docket #FIC 2007-537 (May 14, 2008) (current first selectman ordered to retrieve all public records in the possession of former first selectman); Chapman v. Monika Thiel, Selectman, Town of New Fairfield, Docket #FIC 2011-307 (Feb. 2, 2012) (former selectman’s motion to dismiss case denied).

11. Accordingly, the respondent's motion to dismiss for lack of jurisdiction was denied.

12. The respondent next cited Advisory Opinion #90 in support of her position that the requested records are not public records and therefore should not have to be disclosed.

13. Advisory Opinion #90 clarified the extent to which the FOI Act applies to correspondence from constituents sent to members of the General Assembly. It concludes that correspondence received by a legislator that relates directly or indirectly to enacting legislation or making laws constitutes information relating to the public's business and, therefore, falls within the definition of a public record. The Opinion concludes, conversely, that correspondence relating to personal matters does not relate to the legislation or law-making, and therefore does not constitute a public record.

14. The respondent claimed that the requested records are not public records pursuant to §1-200(5), G.S., because the requested information does not relate to enacting legislation or making laws.

15. It is found, however, that the former senator's electronic newsletter was created by her as a way to communicate with the public on matters that relate to her efforts to enact legislation or make law. In fact, it is found that the newsletter was a convenient way for the former senator to share her legislative achievements and hopes with the public. As the respondent's counsel finally conceded at the contested case hearing, the newsletter was "a discussion of legislation that Senator Bartolomeo had worked on during that legislative session."

16. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

17. Finally, the respondent contended that the requested records should not be subject to disclosure because the complainant desires the records for political purposes and because a proviso on the former senator's website stated that the information gathered in response to the e-newsletter invitation would not be shared outside the senator's office.

18. First, a complainant's motive in making a request for public records is irrelevant to the determination of whether such records are subject to disclosure. See Chief of Police, Hartford Police Dep't v. FOIC, 252 Conn. 377, 387 (2000) (status or motive of the applicant for disclosure is irrelevant because the FOI Act vindicates the public's right to know, rather than the rights of an individual). Second, a public agency cannot promise to withhold a non-exempt public record. A public record must be disclosed upon request unless such record is exempt from disclosure pursuant to a state statute or federal law. See Conn. Gen. Stat. §1-210(a) ("Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency [must be disclosed]").

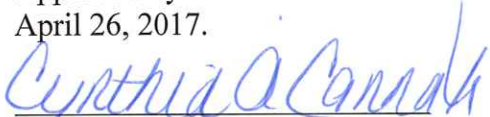
19. In this case, it is found that all of the information provided by the subscriber—that is, the subscriber’s name, address, town, and email address, was provided intentionally and voluntarily on a public agency’s website so that the subscriber could receive the respondent’s electronic newsletters. But cf. David Godbout v. Anthony Guglielmo and Kevin Witknos, as Members, State of Connecticut, Connecticut State Senate, Docket #FIC 2013-194 (Feb. 11, 2014) (finding that, in that case, email address was not provided intentionally and voluntarily, but instead appeared automatically upon the sending of an email).

20. It is concluded that the respondent violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when she refused to disclose the requested records to the complainant.

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

1. The respondent shall forthwith provide the complainant with a copy of the requested records, free of charge.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 26, 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:

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