

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

David Markatos,

Complainant

against

Docket #FIC 2018-0148

Chairman, Planning and Zoning  
Commission, Town of New  
Canaan; Planning and Zoning  
Commission, Town of New  
Canaan; Town Planner, Town  
of New Canaan; and  
Town of New Canaan,

Respondents

December 19, 2018

The above-captioned matter was heard as a contested case on June 15, 2018, at which time the complainant 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 letter dated March 19, 2018, the complainant requested that the Town Clerk for the Town of New Canaan provide him with copies of the following:
  - a. A complete copy of all correspondence, documents and reports (whether in electronic or written form) submitted by or on behalf of the [Grace Farms] Foundation to the [Planning and Zoning] Commission and/or Town Planner that are responsive to conditions 91, 92, 93 and 94 of the 2017 [Approved Special Permit Application];
  - b. All cited violations (whether in electronic or written form) [against the Grace Farms Foundation]; and
  - c. All [Grace Farms Foundation] reporting documents.

3. It is found that, by email dated March 19, 2018, the Town Clerk acknowledged the complainant's request, and indicated the request had been forwarded to the respondents for processing.

4. By letter dated and filed September 12, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with complete copies of the records referenced 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. 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.

9. At the hearing in this matter, the complainant explained that his residential property abuts the Grace Farms Foundation's (the "Foundation") property. He further explained that the requested records concern the Planning and Zoning Commission's approval of an application to amend the Foundation's existing special permit, as well as records pertaining to certain enumerated conditions with which the Foundation must comply and records documenting Foundation violations.

10. Keisha Fink, the Interim Town Planner, appeared and provided testimony at the hearing.

11. It is found that, by the time of the hearing, the complainant's only contention was that, while he had all of the responsive records, the respondents had not promptly disclosed such records to him. It was his belief that the requested records are contained within a few easily accessible files. In the alternative, he contended that, if the records pertaining to the Foundation are not kept in an organized and easily accessible filing system, this is a fundamental failing that affects all citizens who might want to access these records and that the Commission should address the respondents' inadequate filing system.

12. With regard to the allegation that the records were not disclosed promptly, the Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; 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 loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

13. It is found that, on May 3, 2018, the respondents provided the complainant with a first installment of records. It is found that this first installment contained the bulk of the responsive records. Thereafter, it is found that, on May 8, 2018, the respondents provided the complainant with a second installment of records. Finally, it is found that, on May 9, 2018, the respondents provided the complainant with a third installment of records.

14. It is found that the respondents are involved in multiple legal matters involving the Foundation's property. For example, it is found that the respondents are fielding multiple FOI requests concerning the property and are involved in three lawsuits dealing with the property. It is found that, with regard to at least one of the lawsuits, the respondents have been working under a court ordered deadline to compile and authenticate various records pertaining to the Foundation by the date of the next court hearing.

15. With regard to the request in paragraph 2.a, above, it is found that, within the language of the Foundation's approved special permit are several "conditions" (or requirements) that the Foundation must adhere to. It is found that many of these conditions contain various reporting requirements. It is found that, condition 91 for example, states, as follows:

Grace Farms Foundation shall notify the Zoning Inspector in writing within five (5) business days of the receipt of any

complaint related to any activity (whether on-site or with regard to an off-site activity such as a shuttle bus) and outline the response/corrective measures taken to address that complaint. . . .

16. It is found that, interpreting the request set forth in paragraph 2.a, above, Ms. Fink believed that she was required to gather all records responsive to condition 91, (as well as conditions 92, 93 and 94) and this required her to search all hardcopy records, which was easily completed, but also required her to search her email, which was not completed so easily. It is found that Ms. Fink's broad interpretation of the request set forth in paragraph 2.a, above, was reasonable. It is further found that Ms. Fink did in fact conduct such a search.

17. It is further found that, with regard to the request set forth in paragraph 2.b, above, Ms. Fink believed that the complainant was requesting any complaints, whether submitted in written form or electronically, concerning the Foundation's property. It is found that Ms. Fink's broad interpretation of the request set forth in paragraph 2.b, above, was reasonable. As such, Ms. Fink reasonably understood that she was required to look through thousands of emails to see if the respondents had received "an electronic" or email complaint concerning the Foundation. It is found that Ms. Fink did in fact conduct such a search.

18. With respect to the request set forth in paragraph 2.c, above—that is "All [Grace Farms Foundation] reporting documents," the complainant testified that this was not supposed to be interpreted as a separate request for records, but rather a general phrase with which to refer to the requests in paragraphs 2.a and 2.b, above.

19. It is found, however, that the language set forth in paragraph 2.c, above, certainly seemed to be a separate request for records. It is found that the respondents interpreted the language set forth in paragraph 2.c, above, as an independent request for records and, given the fact that the Foundation has several "reporting requirements" under the special permit, pursuant to which it must report certain events to the respondents (such as, for example, the nature and size of the activities that occur on the property, and security incidents that occur on the property), such an interpretation was reasonable.

20. It is found that the respondents disclosed all of the records contained in each of the three installments to the complainant electronically and free of charge.

21. Based on the facts of this case, particularly on the various legal matters that the respondents were fielding as well as the broad search for responsive records that was conducted by Ms. Fink, it is found that the respondents promptly complied with the complainant's request in this case.

22. It is concluded that the respondents did not violate of the FOI Act, as alleged in the complaint.

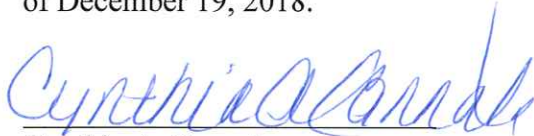
23. Finally, with regard to the contention that the respondents should have been able to disclose the requested records much more quickly, and, because they did not,

there is something inherently wrong with the way in which they are maintaining their public records, short of an allegation that the respondents somehow wrongfully disposed of a public record (which is not the case in the instant matter), or willfully failed to disclose or unjustly delayed the disclosure of a non-exempt public record (which is also not the case in the instant matter), the Commission will not intervene in the internal workings of how a public agency maintains its public records, or where in an agency's files such records are stored. See, e.g. Velky v. Katherin H. Campbell, First Selectman, Town of Woodbury, Docket #FIC 1996-110 (Nov. 20, 1996) (in response to complainant's allegation that a file "should have included" certain additional records, the Commission held as follows: "the Commission lacks jurisdiction to address the content or adequacy of the records maintained by the respondents").

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its special meeting of December 19, 2018.



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:

**DAVID MARKATOS**, 1328 Smith Ridge Road, New Canaan, CT 06840

**CHAIRMAN, PLANNING AND ZONING COMMISSION, TOWN OF NEW CANAAN; PLANNING AND ZONING COMMISSION, TOWN OF NEW CANAAN; TOWN PLANNER, TOWN OF NEW CANAAN; AND TOWN OF NEW CANAAN**, c/o Attorney Ira W. Bloom, Berchem Moses PC, 1221 Post Road East, Westport, CT 06880



Cynthia A. Cannata  
Acting Clerk of the Commission