

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Katherine Camara,

Complainant

against

Docket #FIC 2018-0646

Town Manager, Town of Watertown;
and Town of Watertown,

Respondents

August 14, 2019

The above-captioned matter was heard as a contested case on March 7, 2019, 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 October 26, 2018, the complainant requested that the respondents provide her with copies of the following records:
 - a. The investigative file for [the] complaint filed by Lori Sethi against Chief John Gavallas in August 2017, to include all correspondence, notes and memoranda (excluding the complaint itself) ; and
 - b. All billing of Town Attorney Paul Jessell for work performed on the investigation of the complaint filed by Lori Sethi against Chief John Gavallas.
3. It is found that, by letter dated November 2, 2018, the respondents acknowledged the request. With regard to the request set forth in paragraph 2.a, above, the respondents informed the complainant that, because certain individuals had failed to provide the Town Manager with certain requested information, the investigation had been suspended and, because the investigation had been suspended, the respondents contended that the records were exempt from disclosure. With regard to the request set forth in paragraph 2.b, above, the respondents informed the complainant that, because the request goes back several years, they

needed some additional time to assemble the records.

4. By letter dated filed November 9, 2018, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide her with all of the requested records.

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 records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

9. At the start of the hearing, the complainant indicated that the request set forth in paragraph 2.b, above, had been satisfied.

10. The respondents initially contended the records requested in paragraph 2.a, above, were exempt from disclosure pursuant to §1-210(b)(1), G.S., (preliminary drafts and notes), G.S. and §1-210(b)(3), G.S., (records of law enforcement the disclosure of which could compromise an ongoing investigation), G.S. However, shortly after the hearing began, the respondents withdrew their claim of exemption pursuant to §1-210(b)(3), G.S.

11. Section 1-210(b)(1), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require disclosure of:

Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure....

12. In 1980, the Connecticut Supreme Court interpreted the phrase “preliminary drafts and notes” in the FOI Act. See Wilson v. FOIC, 181 Conn. 324 (1980) (“Wilson”). The Wilson court ruled that “preliminary drafts or notes reflect that aspect of an agency’s function that precedes formal and informal decision making. . . . It is records of this preliminary, deliberative and predecisional process that . . . the exemption was meant to encompass.” Wilson, 181 Conn. at 332. In addition, the Wilson court interpreted the phrase “preliminary drafts and notes” in the FOI Act as identical to the deliberative process privilege found in 5 U.S.C. §552(b)(5) of the federal Freedom of Information Act, with the exception that, under Connecticut’s FOI Act, the public agency carried the additional burden to show that “the public interest in withholding such document clearly outweighs the public interest in disclosure.” See Wilson, 181 Conn. at 333-340.

13. The year following Wilson, the Connecticut legislature adopted Public Act 81-431, which added to the FOI Act the language now codified in §1-210(e)(1). See ¶ 46, below.

14. It is found that with adoption of Public Act 81-431, the Connecticut Legislature made clear that the Connecticut FOI Act required more robust disclosure than is required by the deliberative process privilege permitted at the federal level.

15. Accordingly, §1-210(b)(1), G.S., must be read in conjunction with §1-210(e)(1), G.S., which provides, in relevant part, as follows:

Notwithstanding the provisions of [§1-210(b)(1), G.S.], disclosure shall be required of:

(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.

16. It is found that, in January 2012, John Gavallas, Chief of Police for the Town of Watertown, met with town residents Mr. and Mrs. Sethi, to discuss United States citizenship matters with them. During such meeting, whether inadvertently or knowingly, Chief Gavallas signed an I-864 form, which form rendered him financially responsible for Mr. Sethi during his immigration application process. Thereafter, Chief Gavallas reported to the Town Manager that he had signed a form during his meeting with the Sethis, but that he had not signed an I-864 form. The Sethis contended that Chief Gavallas knowingly and willingly signed the I-864 form.

17. It is found that, thereafter, Town Manager Robert Scannell determined that the circumstances under which the I-864 form had been signed needed to be investigated.

18. In 2014, it is found that the United States Citizen's Immigration Service ("USCIS") denied Mr. Sethi's green card application.¹

19. In 2015, Mr. and Mrs. Sethi filed a civil lawsuit against Chief Gavallas. On or about March 2016, the Town's insurer, who defended the civil matter, filed a motion for summary judgment and the motion was granted.

20. Thereafter, in August 2017, Ms. Sethi filed a civilian complaint against Chief Gavallas with the respondents, in which she contended that Chief Cavallas was being less than forthright in his claim that he had inadvertently signed the I-864 form.

21. It is found that the complainant in this case wants copies of the records that the respondents compiled in connection with the civilian complaint investigation. It is found that the respondents maintain the responsive records in one investigative file.

22. At the hearing, the respondents contended that the public interest in withholding the records in the investigative file clearly outweighed the public interest in disclosure.

23. The respondents further contended that the records in this file should be considered draft documents because the investigation into the matters detailed above was commenced but never completed and had, in fact, been abandoned. They further contended that disclosure of the documents in the investigative file might compromise the investigation if the respondents ever decided to resurrect the investigation.

24. However, the respondents failed to provide any evidence to prove that any of the records contained in the investigative file were "drafts" within the meaning of §1-210(b)(1), G.S.

25. At the conclusion of the hearing, the complainant made a motion to have the hearing officer conduct an in camera inspection of the responsive records. The hearing officer granted the complainant's motion and the in camera records were ordered to be submitted to

¹ Subsequently, Mr. Sethi obtained a sponsor, submitted a new application to the USCIS and obtained his green card.

the Commission by April 5, 2019.

26. However, by email dated and received March 20, 2019, the respondents copied the Commission on a letter that they sent to the complainant. In the letter, the respondents inform the complainant that they had reconsidered their position and had decided to disclose the records in the investigative file to her. The respondents also inform the complainant that she could review the records in the investigative file and/or obtain copies of them.

27. Based on the respondents' March 20th filing, the hearing officer suspended the in camera order and ordered the respondents to file an affidavit, as follows:

. . . the respondents are ordered to file an affidavit by April 5, 2019. The affidavit should set forth what has been disclosed to the complainant. . . [and] if the respondents removed any records from the investigative file before the file was provide to the complainant, the affidavit should so state. . . .

28. On April 5, 2019, the respondents filed two affidavits: one from Town Manager Scannell, Jr. and the other from Paul R. Jessell, the Town Attorney.

29. Based on the affidavits, it is found that, on March 26, 2019, the respondents made the investigative file available to the complainant. It is further found that the respondents did not remove any records from the file (or redact any records in the file) before such file was made available to the complainant.

30. It is further found that the file contained the following records:

- a. a 49-page document and other documents, including the Memorandum of Decision on a Motion for Summary Judgment in the matter of Sethi v. Gavallas;
- b. a 17-page document, dated April 18, 2016, entitled, "Requested Investigation under Charter Section 311";
- c. a 13-page email correspondence between Robert Scannell and Katherine Camara, dated May 16, 2016 through June 8, 2016;
- d. a 9-page document containing two letters from Attorney Paul Jessell to the Town Council Chairman, and an October 17th memo from Robert Scannell on the requested investigation under Charter Section 311;
- e. an 11-page document containing email correspondence between John Gavallas and USCIS, and a complete I-864 form received by John Gavallas from USCIS;
- f. a 1-page FOI request, dated July 25, 2016, concerning legal bills in Sethi v. Gavallas;

- g. a 4-page document containing a November 2, 2016 email from Lori Sethi to Robert Scannell and The Waterbury Republican-American, with an attachment to Robert Scannell;
- h. a 1-page letter from Robert Scannell to Lori Sethi, dated December 5, 2016;
- i. a 1-page FOI request, dated December 22, 2016, for documents related to Sethi v. Gavallas;
- j. a 6-page document containing email correspondence regarding legal bills in the Sethi matter (with legal bills attached);
- k. an 8-page document, dated June 15, 2015, containing a Travelers Insurance letter accepting claim in defense of Sethi v. Gavallas and a reservation of rights;
- l. a 4-page document containing email correspondence between John Gavallas and Katherine Camera regarding policies and other questions concerning an I-864 form;
- m. a 1-page FOI request to Paul Jessell for all correspondence between his office and the insurance agent's office;
- n. a 1-page email between Robert Scannell and Katherine Camara, regarding a January 13, 2017 FOI request to the Town Manager;
- o. a 4-page email chain between Robert Scannell and Katherine Camara, from January 5 through January 13, 2017, regarding payments on a deductible for insurance defense in Sethi v. Gavallas;
- p. a 1-page email chain between Robert Scannell and Lori Sethi, dated September 8 and 13, 2017;
- q. a 1-page email between Robert Scannell and attorney Larry Lewis (who was to represent Lori Sethi), dated September 15, 2017;
- r. a 1-page email to Attorney Larry Lewis from Robert Scannell, dated September 18, 2017;
- s. a 3-page email chain regarding compliance with the January 13th FOI request, dated January 13 through January 23, 2017;
- t. a 1-page article from The Waterbury Republican-American, dated June 27, 2016;
- u. a 1-page email chain, dated August 24, 28, and 29, 2017, between Robert Scannell and Lori Sethi;
- v. a 1-page email from Lori Sethi to Robert Scannell, dated August 30, 2017;
- w. a 1-page document from Lori Sethi to Robert Scannell, dated September 8, 2017;

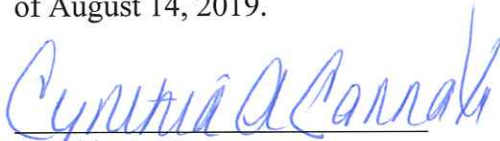
- x. a 2-page email from USCIS to Lisa Cattaneo (the Town Manager's secretary) regarding FOI request procedures;
- y. a 1-page email chain between Robert Scannell and Lori Sethi, dated January, 22, 23, and 27, 2018;
- z. an 8-page email chain between Katherine Camara, John Gavallas and Robert Scannell, dated March 31, 2017 through April 10, 2017;
- aa. a 1-page letter from John Gavallas, dated September 19, 2017, regarding release of information from USCIS;
- bb. a 5-page document, including a transmittal letter and a FOI request form to USCIS, dated September 20, 2017;
- cc. a 1-page letter, dated September 26, 2017, from USCIS denying FOI request;
- dd. a 5-page email chain between Paul Jessell and Robert Scannell, and a draft letter to Attorney Larry Lewis;
- ee. a 3-page email chain from Paul Jessell to Attorney Lewis, dated September 29, 2017;
- ff. a 2-page email to Attorney Lewis, dated October 5 and November 8, 2017;
- gg. a 1-page email from Lori Sethi to Robert Scannell, dated November 21, 2017;
- hh. a two-page email from Paul Jessell to Attorney Lewis, dated December 5, 2017, attaching an email from Lori Sethi to Robert Scannell;
- ii. a one-page email from Lori Sethi to Robert Scannell, dated January 11, 2018, regarding Attorney Lewis;
- jj. a 5-page email chain between Lori Sethi and Robert Scannell, dated January 12 through January 31, 2018, attaching a copy of Mr. Sethi's green card;
- kk. a 4-page letter to Lori Sethi from Robert Scannell, dated January 31, 2018, indicating that the investigation had been suspended;
- ll. a 1-page email from Lori Sethi to the Connecticut Chief of Police Association, dated February 5, 2018;
- mm. a 1-page email between Paul Jessell and Robert Scannell, dated February 8, 2018, regarding the sending of a January 18, 2018 letter;
- nn. a 1-page email from Robert Scannell to Lori Sethi, dated May 1, 2018;
- oo. a 1-page email chain between Lori Sethi and Robert Scannell, dated March 16 and 19, 2018;
- pp. a 1-page email chain between Robert Scannell and Lori Sethi, dated March 22 and 23, 2018;
- qq. a 4-page copy of a handwritten letter from Lori Sethi to USCIS;

- rr. a 2-page letter from Paul Jessell to Katherine Camara, dated November 2, 2018, with a copy of a letter written by Robert Scannell, dated January 31, 2018;
- ss. a 3-page letter from Paul Jessell to Katherine Camera, dated February 13, 2019, with two attachments; and
- tt. 3 pages of notes written by Robert Scannell.

31. It is found that, while the respondents contended at the contested case hearing that the records contained in the investigative file should be considered draft documents because the investigation into the matters involving the chief of police had never been completed, see ¶ 23, above, shortly after the hearing the respondents withdrew this argument by making all of the records available to the complainant.

Under the facts and circumstance of this case, no order by the Commission is hereby recommended.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 14, 2019.



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:

KATHERINE CAMARA, 31 Cottage Place, Oakville, CT 06779

TOWN MANAGER, TOWN OF WATERTOWN; AND TOWN OF WATERTOWN,
c/o Attorney Paul R. Jessell, Slavin, Stauffacher & Scott, LLC, PO Box 9, Watertown, CT
06795



Cynthia A. Cannata
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