

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Chuck Aleksinas,

Complainant

against

Docket #FIC 2018-0301

Planning and Zoning Officer,
Town of Morris; and
Town of Morris,

Respondents

March 13, 2019

The above-captioned matter was heard as a contested case on August 10, 2018, at which time the complainant appeared, presented testimony, exhibits and argument on the complaint. The respondents did not appear at the hearing. Thereafter, the hearing was continued to September 17, 2019 and an order was issued requiring that the respondents appear at the continued hearing with Zoning Enforcement Officer Robert McIntosh. Again, the respondents failed to appear.

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 May 5, 2018, the complainant requested that the respondents provide him with a copy of the following records:
 - a. A copy of the approval letter, sent to the applicant [Mr. Aleksinas], including dated certified mail receipt required within 15 days of said approval. This approval pertains to P&Z application #17-29, 16 Litchfield Road;
 - b. All records and files pertaining to the application of #17-29, 16 Litchfield Road;
 - c. All taped recordings of the Planning and Zoning meetings and public hearings, regarding the application #17-29, 16 Litchfield Road, from November 1, 2017

through January 8, 2018. Tapes [should] be by official approved recorder, and not by personal devices of any kind; and

- d. Record of public notice published in the Waterbury Republican, stating application was approved.

3. It is found that the request referenced in paragraph 2, above, was sent to the respondents via certified mail. It is further found that the respondents received the request on May 7, 2018.

4. It is further found that, by text message dated June 4, 2018, the complainant contacted the interim Zoning Enforcement Officer (“ZEO”) Robert McIntosh to inquire about the status of his request. It is found that ZEO McIntosh did not respond to the complainant’s inquiry.

5. By email dated June 10, 2018 and filed June 11, 2018, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide him with copies of the requested records.

6. 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.

7. 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.

8. 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.”

9. 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.

10. It is found that, in November 2017, the complainant filed a commercial site plan application with the Planning and Zoning (“P&Z”) Commission. It is found that there were 4 public hearings on this application—two in November 2017 and two more in December 2017.

11. It is found that, at a fifth public hearing in January 2018, the P&Z Commission approved the complainant’s application.

12. According to the complainant, within 15 days of his application being approved, he was supposed to have received a certified approval letter and notice of the approval should have been published in the local newspaper. It is found that the complainant became concerned when 15 days came and went, and he did not receive a letter of approval and notice of the approval did not get published in the newspaper. It is found that, in order to move forward with his commercial business plans for the property, the complainant needed to confirm that the respondents had followed the formalities of the approval process.

13. It is found that, on March 1, 2018, the complainant went to the town clerk’s office and requested copies of the tape recordings of the five public hearings referred to in paragraphs 10 and 11, above. It is found that the clerk informed the complainant that she did not know where the recorder was and that the tapes of those meetings would be with the recorder, so she was not sure how to provide the complainant with the requested copies.

14. It is found that, on March 3, 2018, the complainant returned to the town clerk’s office and requested copies of the tape recordings of the five public hearings referred to in paragraphs 10 and 11, above. It is found that, on this occasion, the clerk informed the complainant that she had looked into copying tapes for the complainant, but was unsure how to actually burn a copy of the tapes onto a disc or other electronic device.

15. It is found that, on March 5, 2018, the complainant again went to the town clerk’s office and requested a copy of the tape recordings of the five public hearings referred to in paragraphs 10 and 11, above. It is found that, on this occasion, the assistant clerk informed the complainant that the town did not have the proper software to burn copies of the hearings onto discs, but that she was going to order the required software and then she would contact the complainant regarding his records request.

16. It is found that, on March 12, 2018, the complainant again went to the town clerk’s office and requested a copy of the tape recording of the five public hearings referred to in paragraphs 10 and 11, above. It is found that, on this occasion, the clerk informed the complainant that the town was in the process of purchasing the software needed to make the requested copies and, once the software was received, she would contact him regarding his

records request.

17. It is found that, on March 18, 2018, the complainant again went to the town clerk's office and requested a copy of the tape recordings of the five public hearings referred to in paragraphs 10 and 11, above. It is found that the clerk informed the complainant that the town was still in the processing of purchasing the required software to make the requested copies and that, when the town received the purchase, she would contact the complainant.

18. It is found that, by certified letter dated March 18, 2018, the complainant requested a copy of the tape recordings of the five public hearings referred to in paragraphs 10 and 11, above. It is found that the town clerk received this request on March 20th.

19. It is found that, on March 28, 2018, the complainant, having not received an acknowledgement, followed up in person with the clerk concerning his request. It is found that, once again, the clerk informed the complainant that she continued to be unable to make the requested copies.

20. It is found that, in April 2018, the complainant met with the First Selectman concerning the difficulty he was experiencing trying to obtain copies of the tape recordings of the five public hearings referred to in paragraphs 10 and 11, above. It is found that, at the conclusion of this meeting, the complainant was under the impression that the First Selectman was going to get to the bottom of the problem and see to it that the complainant received the requested copies.

21. It is found that, on May 3, 2018, the complainant texted ZEO McIntosh, requesting an appointment to discuss the difficulty he was having obtaining a copy of tape recordings of the public hearings referred to in paragraphs 10 and 11, above, and to obtain other paperwork concerning his approved application. It is found that ZEO McIntosh phoned the complainant on May 3rd and informed him that he would be calling him later that day to schedule an in-person meeting about this matter. It is found that ZEO McIntosh did not call the complainant back as promised.

22. It is found that, on May 5, 2018, the complainant issued the request at issue in this appeal. It is found that the complainant sent the May 5th request to the clerk and the clerk informed the complainant that she had forwarded the request to ZEO McIntosh.

23. It is found that, on May 10, 2018, the complainant met with ZEO McIntosh in his office. It is found that, at this time, ZEO McIntosh informed the complainant that he was in the process of gathering the paperwork responsive to request set forth in paragraph 2.b, above. In fact, it is further found that ZEO McIntosh showed the complainant a small pile of records that was sitting on his desk and indicated that the records were for him. It is further found that ZEO McIntosh informed the complainant that the clerk was also in the process of gathering additional paperwork responsive to the request set forth in paragraph 2.b, above. ZEO McIntosh informed the complainant that, when all of the records had been gathered, he would contact him and arrange for disclosure of the records.

24. It is found that, on June 4, 2018, the complainant texted ZEO McIntosh to follow up on the paperwork that ZEO McIntosh and the clerk had compiled for him, inquiring when he might receive such paperwork. In addition, it is found that the complainant requested an update with regard to his request for copies of the tape recordings of the five public hearings referred to in paragraphs 10 and 11, above.

25. It is found that that ZEO McIntosh did not respond to the complainant's text and, by letter dated June 10, 2018, the complainant appealed to the Commission.

26. Subsequently, on July 5, 2018, it is found that the complainant attended a public hearing of the P&Z Commission. It is found that the complainant spoke to ZEO McIntosh at this meeting about his request. It is found that, at this time, Mr. McIntosh informed the complainant that he had spent \$29.00 of his own money to obtain the software that would enable him to burn copies of the tape recordings of the public hearings referred to in paragraphs 10 and 11, above. It is found that ZEO McIntosh requested that the complainant give him one more week to compile all of the responsive records, including the copies of the five public hearings. When the complainant expressed doubt as to whether the public hearing tapes even existed, ZEO McIntosh invited the complainant to come to his office and listen to the tapes. It is found, however, that the complainant declined this offer, and instead reiterated his request for copies of these tapes.

27. It is found that, at the time of the August 10, 2018 contested case hearing, the complainant had not received one public record responsive to the request set forth in paragraph 2, above.

28. At the conclusion of the first hearing, the hearing officer had many questions for the respondents about how they handled the complainant's request and wanted to ascertain, under oath, the status the respondents' ability to make copies of the requested public hearing tapes. Accordingly, the hearing officer continued the contested case hearing to September 17, 2018, and ordered the respondents to produce ZEO Robert McIntosh to testify at such hearing.

29. Neither the respondents nor ZEO Robert McIntosh appeared at the continued hearing.

30. It is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with a copy of the requested records, including a copy of the requested public hearings tapes, in a prompt manner.

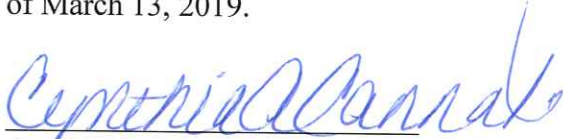
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Within fourteen days, the respondents shall provide to the complainant, free of charge, a copy of the requested records described in paragraph 2 of the findings, above.

2. Forthwith, the respondents, or their designee, shall arrange for a FOI training session to be conducted by the staff of the FOI Commission. The respondents, or their designee, shall forthwith contact the FOI Commission to schedule such training session.

3. Henceforth, the respondents shall strictly comply with the promptness requirements in §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 13, 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:

CHUCK ALEKSINAS, 17 Trotta Lane, Morris, CT 06763

PLANNING AND ZONING OFFICER, TOWN OF MORRIS; AND TOWN OF MORRIS, 3 East Street, Morris, CT 06763



Cynthia A. Cannata
Acting Clerk of the Commission