



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106  
Toll free (CT only): (866) 374-3617 Tel: (860) 566-5682 Fax: (860) 566-6474 • www.ct.gov/foi • email: foi@ct.gov

Keith Massimino

Complainant(s)

Notice of Meeting

against

Docket #FIC 2023-0358

Vincent Testa, Town Councilor, Town of Wallingford; and  
Town of Wallingford

Respondent(s)

May 28, 2024

### Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

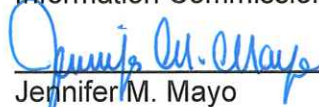
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, June 26, 2024.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE June 14, 2024.** Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE June 14, 2024.** **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE June 14, 2024** and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of  
Information Commission



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Jennifer M. Mayo  
Acting Clerk of the Commission

Notice to: Attorney Keith Massimino  
Attorney Janis M. Small

FIC# 2023-0358/ITRA/CZH//RB/JMM/2024-05-28

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Keith Massimino,

Complainant

against

Docket #FIC 2023-0358

Vincent Testa, Town Councilor, Town of  
Wallingford; and Town of Wallingford,

Respondents

May 24, 2024

The above-captioned matter was heard as a contested case on March 1, 2024, 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 email dated June 20, 2023, the complainant requested copies of the respondent Vincent Testa's ("Councilman Testa") comments that he posted to the Facebook page, "Wallingford News and Information" ("Facebook page"), on or around June 8, 2023. It is also found that, in his June 20<sup>th</sup> request, the complainant acknowledged that prior to his request, Councilman Testa had deleted such Facebook posts.

3. It is found that, by email dated June 20, 2023, Councilman Testa responded to the complainant's request and informed him that he had attempted multiple times to retrieve the deleted Facebook posts but was unsuccessful.

4. By letter of complaint, dated and filed July 11, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records, described in paragraph 2, above.

5. Section 1-200(5), G.S., provides:

"[p]ublic 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 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

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

7. Section 1-212(a), G.S., provides, in relevant part: “[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 Councilman Testa and the complainant are both members of the Facebook page. It is also found that the Facebook page is a privately run social media page that is not officially affiliated with, or controlled by, Councilman Testa, the Town Council or the respondent Town of Wallingford (“town”). It is further found that, while the Facebook page has no official affiliation with the town, the Administrator for the Facebook page is Jason Zandri, who was a member of the Town Council at the time of the complainant’s request. It is further found that, in order to become members of the Facebook page, participants must answer a series of questions, and members can then use the Facebook page to review local news and activities and exchange opinions on issues related to the town.

9. It is found that, on June 6, 2023, the Facebook page Administrator posted a hyperlink to a news article to the Facebook page that announced Councilman Testa and another member of the Town Council had filed paperwork to run for Mayor of Wallingford. It is also found that the complainant responded to such Facebook post, questioning whether Councilman Testa should be the next mayor.

10. It is found that, beginning on or around June 8, 2023, Councilman Testa and the complainant exchanged in back-and-forth posts on the Facebook page, regarding issues related to Councilman Testa’s performance and voting record as a member of the Town Council, his opinions on issues and his potential candidacy for mayor of the town. It is also found that Councilman Testa posted such comments on his own behalf, based on his own personal opinions, without any official connection to the Town Council or direction from the Town Council to engage on the Facebook page.

11. It is found that, shortly after his exchange with the complainant on the Facebook page, Councilman Testa deleted multiple comments he had posted responding to various comments and questions posted by the complainant. It is also found that such posts were deleted prior the complainant’s records request. It is further found that, prior to the complainant’s

request, Councilman Testa twice attempted to retrieve the deleted Facebook posts from Facebook Community Support but was unsuccessful in restoring the deleted Facebook posts.

12. At the hearing on this matter, the complainant acknowledged that the Facebook posts were deleted prior to his request and that such Facebook posts could not be retrieved by Councilman Testa. The complainant argued, however, that a determination of the Commission that such Facebook posts are public records within the meaning of §§1-200(5) and 1-210(a), G.S., would help to protect against the deletion of similar such “public records” in the future.

13. It is found, however, based upon the findings in paragraph 11, above, that at the time of the complainant’s request, described in paragraph 2, above, no responsive records were maintained or kept on file by the respondents, and the Commission declines to make a determination as to whether the social media posts were or were not public records at the time they were posted to the Facebook page.<sup>1</sup> See Morrin v. Freedom of Information Comm’n, No. CV176038625, 2019 WL 4060477, at \*6 (holding that the Commission was not required “to decide a novel and difficult issue such as whether and under what circumstances, if any, the social media posts of a state employee, made on his own time and his own electronic devices, constitute public records when that decision will have no practical effect for the member of the public requesting those records.”)

14. It is concluded, therefore, that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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.

  
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C. Zack Hyde  
as Hearing Officer

FIC2023-0358/HOR/CZH/05/24/2024

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<sup>1</sup> The Commission notes that jurisdiction over the retention and destruction of public records rests with the State’s Public Records Administrator. See Dept. of Public Safety v. Freedom of Information Comm’n, 103 Conn. App. 571, 577 (2007) (the Commission is a creature of statute with limited jurisdiction; it can only administer and enforce the provisions set forth in the FOI Act).