

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

George Schober,

Complainant

against

Docket # FIC 2020-0125

First Selectman, Town of Suffield; Board of
Selectmen, Town of Suffield; and Town of
Suffield,

Respondents

April 14, 2021

The above-captioned matter was heard as a contested case on November 23, 2020, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.¹

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. By letter of complaint filed March 11, 2020, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request to inspect certain public records.²
3. It is found that by letter dated February 5, 2020, the complainant requested that the respondents allow him to inspect the following records:
 - (a) Each and every email and all other correspondence (letters, memoranda, etc.) and all notes and/or other documentation including all drafts, and any applications and accompanying documents, which mention or relate to, directly or indirectly to the application of Hickory Street Partners, LLC for an affordable housing development under Connecticut General Statute §8-30g on the north side of Hickory Street in the Town of

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

Suffield, sent by or received, directly or as a courtesy copy or as a blind courtesy copy, whether sent by U.S. Mail, overnight delivery, hand delivery or whether sent from a Town of Suffield computer or a personal computer, and whether to or from a Town of Suffield email account or a personal email account by or from the following: Melissa M. Mack, First Selectwoman, Town of Suffield; the Town of Suffield Board of Selectmen (as an entity, collectively, and/or individually); the Town of Suffield Planning and Zoning Commission and all Commission Members (as an entity, collectively, and/or individually); William Hawkins, Town Planner, Town of Suffield; Keith Morris, Director of Conservation, Town of Suffield; Gerald Turbet, Town Engineer, Town of Suffield, and/or any of the preceding individual's and/or the Town of Suffield Board of Selectmen's and/or Planning and Zoning Commission's agents from January 1, 2018, through the date of this request.

4. 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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

[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 (1) inspect such records promptly during regular office or business hours . . . (3) receive a copy of such records in accordance with section 1-212.

6. 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.”

7. It is found that the records described in paragraph 3, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. Along with a letter dated February 28, 2020, the respondents provided the complainant with copies of 115 pages of records responsive to his request. Among the records provided, one record contained a redaction. Additionally, the respondents withheld a number of records claiming such records were exempt from disclosure pursuant to the attorney-client privilege as provided by §1-210(b)(10), G.S.

9. Section 1-210(b)(10), G.S., states in relevant part:

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of:

(10) Records, tax returns, reports and statements exempted by federal law or the general statutes or communications privileged by the attorney-client relationship...

10. On November 23, 2020, the hearing officer ordered the respondents to submit all the records claimed exempt from disclosure to the Commission for an in camera inspection. The respondents complied with such order and submitted the records for in camera inspection on December 11, 2020. The in camera records will be referred to as IC2020-0125-001 through IC2020-0125-038. On the in camera index, the respondents claimed that all the records submitted were exempt from disclosure pursuant to §1-210(b)(10), G.S., the attorney-client privilege.

11. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” Id. at 149.

12. Section 52-146r(2), G.S., defines “confidential communications” as:

[A]ll oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

13. The Supreme Court has also stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the

attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, supra at 149.

14. After careful inspection of the in camera records, it is found that the following records are written confidential communications between a public official or employee and an attorney, made in the course of the professional relationship, and relate to legal advice sought by the agency: IC2020-0125-002; IC2020-0125-006; IC2020-0125-014; IC2020-0125-015 and 016; IC2020-0125-018 through 021; IC2020-0125-023; IC2020-0125-024; IC2020-0125-025; the bottom 18 lines of IC2020-0125-026; IC2020-0125-027; IC2020-0125-034; IC2020-0125-035; and the first two lines of IC2020-0125-036.

15. It is found that the in camera records not listed in paragraph 14, above, are not exempt from disclosure. It is noted that IC2020-0125-013 is a copy of a partially redacted record that has been entered as evidence in this matter and has already been provided to the complainant. Additionally, it is noted that because the in camera records are printed emails, many include a standard but lengthy wire fraud alert and attorney-client privilege warning after the signature block of the attorney. While such alert and warning notices are not exempt from disclosure, such notices are not responsive to the complainant’s request. Therefore, it is concluded that the respondents did not violate the Act when they failed to disclose them. The following in camera records consist entirely of such alert and warning notices: IC2020-0125-007 through 010; IC2020-0125-017; IC2020-0125-032; and all but the first two lines of IC2020-0125-036; and IC2020-0125-037.

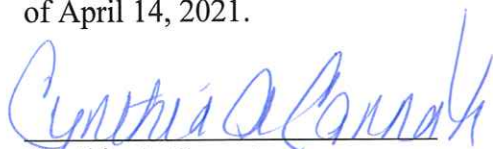
16. It is found that the following records are not exempt from disclosure pursuant to the attorney-client privilege as set forth in §1-210(b)(10), G.S.: IC2020-0125-001; IC2020-0125-003 through 005; IC2020-0125-011 and 012; IC2020-0125-022; IC2020-0125-026 all except the bottom 18 lines; IC2020-0125-028 through 031; IC2020-0125-033; and IC2020-0125-038.

17. Accordingly, it is concluded that the respondents violated the FOI Act when they failed to disclose the records described in paragraph 16, above.

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

1. The respondents shall provide to the complainant copies of the records described in paragraph 16, above, at no charge.
2. Henceforth, the respondents shall strictly comply with the disclosure requirements of the Act.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 14, 2021.



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:

GEORGE SCHOBER, Attorney at Law, 352 Billings Road, P.O. Box 597, Somers, CT 06071

FIRST SELECTMAN, TOWN OF SUFFIELD; BOARD OF SELECTMEN, TOWN OF SUFFIELD; AND TOWN OF SUFFIELD, c/o Attorney Derek E. Donnelly, Blackburn & Donnelly, LLC, 2 Concorde Way, Suite 3C, P.O. Box 608, Windsor Locks, CT 06096 and c/o Attorney Sharon Baldwin, Blackburn & Donnelly, LLC, 2 Concorde Way, Suite 3C, P.O. Box 608, Windsor Locks, CT 06096



Cynthia A. Cannata
Acting Clerk of the Commission