

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Michael Bauer,

Complainant

against

Docket # FIC 2021-0020

City Attorney, Office of the City Attorney,
City of Bridgeport; Office of the City
Attorney, City of Bridgeport; and City of
Bridgeport,

Respondents

October 27, 2021

The above-captioned matter was heard as a contested case on July 22, 2021, 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 through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

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 January 13, 2021, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records.
3. It is found that, by letter dated December 14, 2020, the complainant requested that the respondents provide him with a copy of "the current list of reassessment values issued by Municipal Valuation (Munival) and sent to property owners within the city of Bridgeport, through the Tax Assessor's office." The complainant specifically requested the following data fields: Parcel ID or map lot block number; property address; owner name; prior grand list value; and 2020 proposed valuation.
4. It is found that Municipal Valuation Services, LLC, also known as Munival, is a company designated by the respondents to perform a revaluation of real property within the city of Bridgeport as required by statute.¹ Additionally, it is found that the work conducted by Munival is directed and supervised by the Assessor for the City of Bridgeport.

¹ See §12-62(b)(1), G.S.

5. It is found that Munival conducts assessments of real property throughout the city of Bridgeport and stores the newly assessed values in an electronic or computerized database along with the name of the property owner and the previously assessed value of the property. It is further found, that the data is used to create notices that are mailed to each property owner informing them of the newly assessed value. Such notice also informs the property owner of their right to schedule an informal hearing with Munival if the property owner disagrees with the new assessment. Depending on the outcome of the informal hearing, Munival may adjust the new assessment.

6. 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, videotaped, printed, photostated, photographed or recorded by any other method.

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

10. Section 1-211, G.S., provides that:

[a]ny public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. Except as otherwise provided by state statute, the cost for

providing a copy of such data shall be in accordance with the provisions of section 1-212.

11. It is found that the specific data fields requested by the complainant and described in paragraph 3, above, existed as electronically stored data within a computerized database used while conducting the reevaluation of property. It is concluded that such data constituted computer stored data pursuant to §1-211, G.S.

12. It is found that the respondents denied the complainant's request on December 16, 2020. The respondents contended that because the newly assessed value of a property may be revised, the responsive records constituted preliminary drafts or notes and are therefore exempt from disclosure pursuant to §1-210(b)(1), G.S.

13. Section 1-210(b)(1), G.S., provides that disclosure is not required 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."

14. The Connecticut Supreme Court ruled in Wilson v. Freedom of Information Commission, 181 Conn. 324, 332 (1980) ("Wilson"), that:

[w]e do not think the concept of preliminary, as opposed to final, should depend upon who generates the notes or drafts, or upon whether the actual documents are subject to further alteration....

Instead the term 'preliminary drafts or notes' relates to advisory opinions, recommendations, and deliberations comprising part of the process by which government decisions and policies are formulated....

...[p]reliminary drafts or notes reflect that aspect of an agency's function that precedes formal and informal decision making. We believe that the legislature sought to protect the free and candid exchange of ideas, the uninhibited proposition and criticism of options that often precedes, and usually improves the quality of, governmental decisions. It is records of this preliminary, deliberative and predecisional process the exemption was meant to encompass.

15. The year following Wilson, the Connecticut General Assembly passed Public Act 81-431, which added to the FOI Act the language now codified in Conn. Gen. Stat. §1-210(e)(1). That provision, which narrowed the exemption for preliminary drafts or notes, provides in relevant part:

[n]otwithstanding [§1-210(b)(1)], disclosure shall be required of:

[i]nteragency 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.... (emphasis added).

16. In Van Norstrand v. Freedom of Information Commission, 211 Conn. 339, 343 (1989) (“Van Norstrand”), the Supreme Court provided further guidance regarding “preliminary drafts”. Citing the dictionary definition, the court stated that the term “preliminary” means “something that precedes or is introductory or preparatory”, and “describes something that is preceding the main discourse or business.” Id. According to the Court, “[b]y using the nearly synonymous words ‘preliminary’ and ‘draft’, the legislation makes it very evident that preparatory materials are not required to be disclosed”. Id.

17. Accordingly, Conn. Gen. Stat. §§1-210(b)(1) and 1-210(e)(1), G.S., together, permit nondisclosure of records of an agency’s preliminary, predecisional, deliberative process, provided that the agency has determined that the public interest in withholding the records clearly outweighs the public interest in disclosing them and provided further that such records are not interagency or intra-agency memoranda or letters, advisory opinions, recommendations or reports. See Shew v. Freedom of Information Commission, 245 Conn. 149, 164-166 (1998).

18. With regard to the “balancing test” required by §1-210(b)(1), G.S., it is well established that the responsibility for making the determination as to what is in the public interest is on the agency that maintains the records. See Van Norstrand at 345. The agency must have considered in good faith the effect of disclosure, and indicated the reasons for its determination to withhold disclosure, which reasons may not be frivolous or patently unfounded. Id., citing Wilson at 339. See also People for Ethical Treatment of Animals, Inc. v. Freedom of Information Commission, 321 Conn. 805, 816-817 (2016). Thus, the only determination for the FOIC to make is whether the reasons for nondisclosure given by the agency are frivolous or patently unfounded. See Lewin v. Freedom of Information Commission, 91 Conn. App. 521, 522-523 (2005); Coalition to Save Horsebarn Hill v. Freedom of Information Commission, 73 Conn. App. 89, 99 (2002).

19. It is found that the respondents failed to prove that the newly assessed property values constituted “preliminary drafts or notes” and are therefore exempt from disclosure pursuant to §1-210(b)(1), G.S. It is found that such data bears none of the indicia of a “preliminary draft.” In Wilson, supra, the court described preliminary drafts and notes as “relating to advisory opinions, recommendations, and deliberations comprising part of the process by which government decisions and policies are formulated....” At the hearing, the witness testified that the only reason he did not release the new values was because they were not yet deemed final. The court’s interpretation of “preliminary drafts” does not include as a criterion the possibility that upon proper appeal, the records may change.

20. Even assuming, however, that such data constituted a preliminary draft, it is found that the respondents failed to prove that the public interest in withholding such records clearly outweighed the public interest in disclosure.

21. At the hearing, respondents characterized the request as only a request for a "list" and contended that they were not obligated to create a "list" if one did not already exist. However, such argument fails to acknowledge the remainder of the request which cited a request for specific data "fields." Additionally, at the hearing, the respondents' witness testified that if he had received a request for copies of the notices sent to each property owner, he would not have objected to disclosing them.

22. Although the court has concluded that the FOI Act does not require a respondent to create records that do not exist, it is found that the complainant did not ask the respondents to simply produce a list, but to instead provide an electronic file containing specific data fields. See Albright-Lazzari v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV10-5014984-S (April 21, 2011, Cohn, J.) It is further found that such data fields constituted electronically stored data and that such data was not exempt from disclosure as contended by the respondents. It is therefore concluded that the respondents violated §§1-210(a), 1-211, and 1-212(a), G.S., when they failed to provide the complainant with the requested records.

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

1. Forthwith, the respondents shall provide the complainant with a copy of the records described in paragraph 3, above, at no charge.
2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a), 1-211, and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 27, 2021.



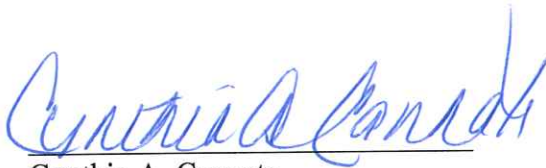
Cynthia A. Cannata
Acting Clerk of the Commission

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:

MICHAEL BAUER, c/o Attorney Wendy Estela, Aeton Law Partners, LLC, 311 Centerpoint Drive, Middletown, CT 06457

CITY ATTORNEY, OFFICE OF THE CITY ATTORNEY, CITY OF BRIDGEPORT; OFFICE OF THE CITY ATTORNEY, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Dina A. Scalò, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission