

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Brennan,

Complainant

against

Docket #FIC 2020-0587

Joseph Kusiak, Assessor,
Town of Seymour; Assessor's
Office, Town of Seymour; and
AnnMarie Drugonis, First
Selectwoman, Town of Seymour,

Respondents

January 26, 2022

The above-captioned matter was heard as a contested case on October 22, 2021, at which time both 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. It is found that by letter dated October 13, 2020, the complainant made a records request to the respondents. Such request stated:

[T]his document is a formal request for the Seymour Assessor, Joseph E. Kusiak, to provide me with documentation of the following:

[Item #1] Specific reason(s) for 'Seymour's' termination of my property, 124 Bungay Rd., Seymour, CT, farm classification effective/retroactive 10/1/20.

[Item #2] A list, names and addresses, of all properties with farm classification in Seymour, CT, on 9/30/20.

[Item #3] A list, names and addresses, of all properties in Seymour, CT, that had farm classification terminated on 10/1/20.

[Item #4] Document all Seymour, CT 'farm classification' requirements; that are not included in the State of CT requirements.

[Item #5] Document entity(ies) that have authority to over-turn Seymour Assessor's termination of 'farm classification'. [Emphasis added]. ("October 13th request").¹

3. It is found that by letter dated October 19, 2020, the respondent Town Assessor responded to the October 13th request as follows:

[Item #1] Reason stated in 10/6/2020 letter sent to you.

[Item #2] A list of all farms is filed with the Town Clerk.

[Item #3] Said list will be filed 1/29/2021 with the Town Clerk.

[Item #4] There are none.

[Item #5] That would be stated on the [11/2/2020]² increase notice.

4. By letter of complaint received on November 13, 2020,³ the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his October 13th request. The complainant also requested the imposition of civil penalties.

5. At the time of the request, section 1-200(5), G.S., provided:

'[p]ublic records or files' means any recorded data or information relating to the conduct of the public's business prepared, owned,

¹ It is found that the October 13th request was addressed to the "Town of Seymour's Assessor, Deputy First Selectman and Board of Selectmen." It is found, however, that such request was directed to and sought records maintained by the respondent Town Assessor, only.

² It is found that although the October 19, 2020 letter referenced an "10/1/2020 increase notice", the actual date of such notice was November 2, 2020.

³ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M, which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission retains subject matter jurisdiction.

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.⁴

6. 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.

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 requested records, to the extent they are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. At the hearing, the complainant contended that the respondent Town Assessor failed to provide him with all records responsive to Items ## 1, 2, 3 and 5 of the October 13th request. The complainant testified that Item #4 of such request was no longer at issue. Accordingly, Item #4 will not be further addressed herein.

10. With respect to Items ## 1 and 5 of the October 13th request, it is found that such requests were requests for answers to questions, not requests for records. It is found that although the respondent Town Assessor is not required to answer questions under the FOI Act, he nonetheless informed the complainant that the information that he sought in Items ## 1 and 5 of such request was contained in the October 6, 2020 letter, and November 2, 2020 increase notice, respectively, as described in paragraph 3, above. It is found that copies of such letter and increase notice had been previously provided to the complainant.

11. With respect to Items ## 2 and 3 of the October 13th request, the respondent Town Assessor testified, and it is found, that, at the time of the October 13th request, he did not maintain any lists responsive to Items ## 2 and 3 of such request.

12. It is found that, sometime after October 19, 2020, although not required to do so, the respondent Town Assessor manually created a record that contained information responsive to Items ## 1, 2 and 3 of the October 13th request. It is also found that the respondent provided a copy of such record to the complainant.

⁴ Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

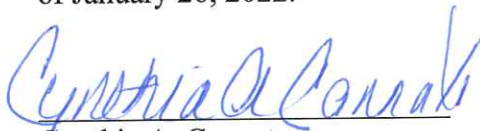
13. Based on the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

14. Because the respondents did not violate the FOI Act, the Commission need not consider the complainant's request for a civil penalty.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 26, 2022.



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:

JAMES BRENNAN, 124 Bungay Road, Seymour, CT 06483

JOSEPH KUSIAK, ASSESSOR, TOWN OF SEYMOUR; ASSESSOR'S OFFICE, TOWN OF SEYMOUR; AND ANNMARIE DRUGONIS, FIRST SELECTWOMAN, TOWN OF SEYMOUR, c/o Attorney Bryan L. LeClerc, Berchem Moses P.C., 75 Broad Street, Milford, CT 06460



Cynthia A. Cannata
Acting Clerk of the Commission