

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John Tsimbidaros,

Complainant

against

Docket #FIC 2021-0468

Director, Human Resources Department,
Town of Fairfield; Human Resources
Department, Town of Fairfield; and
Town of Fairfield,

Respondents

July 27, 2022

The above-captioned matter was heard as a contested case on April 20, 2022 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. It is found that by email dated August 9, 2021, the complainant requested that the respondents provide him with copies of Engineering Department time sheets from December 1, 2019 to August 6, 2021 and other payroll records, including a schedule of pay codes.
3. It is found that the respondents acknowledged the request described in paragraph 2, above, by return email on August 9, 2021. It is also found that, thereafter, the parties engaged in email correspondence regarding the request. It is further found that the respondents provided responsive records to the complainant by August 18, 2021.
4. By complaint filed with the Commission on August 18, 2021, the complainant appealed to the Commission and alleged that the respondents violated the FOI Act by providing "incomplete and obfuscated information" in response to the request 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 section 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 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 ... 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, to the extent that they exist and are maintained by the respondents, the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearing in this matter, the complainant testified that the only two issues remaining were the failure of the respondents to provide him with a copy of the schedule, or explanation, of the pay codes, as well as the validity of a December 2019 payroll page that was provided.

10. With respect to the pay codes schedule, it is found that the respondents do not maintain such record. It is well settled that the FOI Act does not require public agencies to create records in response to a records request. Accordingly, it is concluded that the respondents did not violate the FOI Act by failing to create a pay code schedule in response to the request described in paragraph 2, above.

11. With respect to the complainant’s allegation that the December 2019 payroll page is invalid, the complainant testified that the sheet differs from a copy of the same page which the complainant received in 2019 or early 2020.

12. It is found that, in 2019, or early 2020, the complainant, who was employed by the respondent town, received from his manager a copy of the payroll page, with several redactions regarding employees other than the complainant who were also listed on the page.

13. It is found that, well over a year later, when the complainant made the instant request to the respondents, he received a second copy of the payroll page that did not include the previous redactions but did include an additional notation. There is nothing in the record to suggest that the copy provided to the complainant pursuant to the request described in paragraph 2, above, was anything other than the original record maintained by the respondents, with an added notation.

14. It is found that the respondents promptly complied with the request described in paragraph 2, above.

15. Based on the entirety of the record and the specific facts and circumstances of this case, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S.

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 July 27, 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:

JOHN TSIMBIDAROS, P.O. Box 320482, Fairfield, CT 06825

**DIRECTOR, HUMAN RESOURCES DEPARTMENT, TOWN OF FAIRFIELD;
HUMAN RESOURCES DEPARTMENT, TOWN OF FAIRFIELD; AND TOWN OF
FAIRFIELD**, c/o Attorney James T. Baldwin, Coles Baldwin Kaiser & Creager, LLC, 1 Eliot
Place, 3rd Floor, Fairfield, CT 06824



Cynthia A. Cannata
Acting Clerk of the Commission