

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Diana McManus,

Complainant

against

Docket #FIC 2021-0425

Mayor, City of West Haven; and  
City of West Haven,

Respondents

June 8, 2022

The above-captioned matter was heard as a contested case on April 19, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The hearing was conducted remotely through the use of electronic equipment, 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 June 24, 2021, the complainant requested from the respondents copies of the following records for the time period July 1, 2020 through June 30, 2021:
  - (a) any stipend payments...for all elected and appointed officials;
  - (b) all overtime for each department (the original budgeted amount and the amount spent through June 30, 2021);
  - (c) names of contractors hired to install fencing;
  - (d) invoices for services paid to contractors and outside vendors that have performed any maintenance or duty listed under the responsibility of the public works department;
  - (e) the annual contracted amount for the payroll service ADP and any costs incurred above that amount;

(f) listing of all upgrades and dollar amount associated with those upgrades for all union employees since December 2013.

3. It is found that the respondents received and acknowledged the request via email dated June 28, 2021. In such email, the respondents informed the complainant that the mayor does not maintain the records she requested, and that she should have directed her records request to the “keeper of the records”, which in this case was the finance department. Nonetheless, the respondents agreed to facilitate compliance with the request.

4. It is found that, on various dates between June 28, 2021, and the filing of the complaint in this matter, the complainant emailed the respondents to inquire as to the status of her records request. The respondents informed the complainant that the “keeper of the records” was continuing to work on it.

5. By email dated and filed August 4, 2021, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the requested records.

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 concluded that the records requested by the complainant are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that, by letter dated August 31, 2021, an attorney with the law firm of Lynch, Traub, Keefe & Errante, informed the complainant that the city had retained the law firm “in an effort to expedite a response to her FOI request.” The attorney further informed the complainant that the COVID-19 pandemic had created “unprecedented challenges” for the city but that the city “takes your [FOI] request seriously” and that he would be gathering the responsive records and providing them “in due course”.

11. It is found that, by letter dated October 22, 2021, the respondents provided to the complainant a copy of all records responsive to the request, set forth in paragraphs 2(a), (b), (c), (e), and (f), above. The complainant argued at the hearing the respondents failed to provide such records to her promptly.

12. With regard to the issue of promptness, the Commission has ruled that “promptness” is a particularly fact-based question, and that the word “promptly” in §1-212, G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request.” See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

13. It is found that, to the extent there was a delay in providing the requested records to the complainant, such delay was caused, in part, by the fact that the complainant directed her request to the mayor’s office, rather than to the finance department, which maintained such records. The respondent’s witness, a paralegal in the mayor’s office, testified that, because he was not familiar with the finance department’s records and how or where such records were maintained in that department, he had to rely on the finance director and deputy finance director to assist with locating responsive records. It is found that, just after the date of the request, both the finance director and the deputy finance director left their positions. Other department staff members who might have been able to assist with locating responsive records were on leave or had recently retired. It is also found that any delay was also caused, in part, by the Covid-19 pandemic.

14. Although the complainant argued that the respondents intentionally “stalled” her request, to the contrary, it is found that the respondents, although under no obligation to do so, attempted to facilitate compliance with the misdirected request, and further, attempted to mitigate any delay caused by the issues identified in paragraph 13, above, by hiring outside counsel to assist with responding to the request.

15. Based upon the foregoing, it is found that the respondents provided the responsive records to the complainant without “undue delay.”

16. It is therefore concluded that the respondents did not violate the promptness requirement in §1-212(a), G.S.

17. With respect to the request, described in paragraph 2(d), above, it is found that the respondents provided some of the invoices on the list (relating to payments for fencing). It is also found that, by letter dated January 14, 2022, the respondents sent the complainant a lengthy list of all invoices responsive to the request<sup>1</sup> organized by vendor name and in alphabetical order, and informed her that the invoices were not maintained electronically and therefore would need to be manually searched and “pulled” in order to copy them. Therefore, the respondents requested that the complainant review the list and indicate which invoices she would like to have copied.

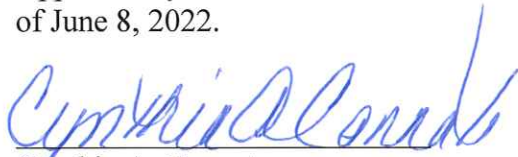
18. It is found that, as of the date of the hearing in this matter, some four months after she received the list of invoices from the respondents, the complainant had not identified the invoices she wanted copied. However, she further testified that she intended to do so. The complainant argued at the hearing that the respondents denied her the opportunity to inspect the invoices; however, upon questioning by the hearing officer, she conceded that she had not requested such opportunity.

19. Based upon the facts and circumstances of this case, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with regard to the request, described in paragraph 2(d), above.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 8, 2022.



Cynthia A. Cannata  
Acting Clerk of the Commission

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<sup>1</sup> The list consisted of approximately 37 pages and, in addition to the vendor’s name, included the check number, invoice number, description of the expense/purchase and the dollar amount.

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:

**DIANA MCMANUS**, 62 Hine Street, West Haven, CT 06516

**MAYOR, CITY OF WEST HAVEN; AND CITY OF WEST HAVEN**, c/o Attorney Michael A. Leone, Lynch, Traub, Keefe & Errante, P.C., 52 Trumbull Street, New Haven, CT 06510



Cynthia A. Cannata  
Acting Clerk of the Commission