

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jill Vergara,

Complainant

against

Docket #FIC 2021-0172

Tree Warden, Town of Fairfield; and
Town of Fairfield,

Respondents

May 11, 2022

The above-captioned matter was heard as a contested case on November 24, 2021, at which time the complainant and the respondents appeared 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 email dated March 30, 2021, and filed March 31, 2021, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide proper notice of a March 22, 2021 public meeting conducted by the respondent Tree Warden.¹ Additionally, the complainant requested that all actions taken at the meeting be declared null and void and that a new meeting be ordered by this Commission.
3. It is found that the respondent Tree Warden held a public hearing on March 22, 2021 to receive input about the possible removal of four cherry trees located on Town of Fairfield ("Town") property and that such hearing constituted a special meeting under §1-225(d), G.S.
4. It is found that, on March 23, 2021, the complainant learned from another town resident, Jennifer Jacobsen, who testified at the hearing on this matter, that the hyperlink posted to the Town's website listed an incorrect date of March 19, 2021 for the hearing and that the notice posted to the Town's website listed an incorrect date of March 15, 2021.

¹ By the same email, the complainant also alleged that the respondent Town of Fairfield violated the FOI Act by failing to provide proper notice of a March 27, 2021 special meeting of the Town of Fairfield's Board of Finance. However, the complainant withdrew this portion of her appeal to the Commission prior to the hearing in this matter.

5. It is found that, on March 24, 2021, Ms. Jacobsen notified the respondents by email of the incorrect information described in paragraph 4, above, but received no response.

6. It is found that, by March 25, 2021, Ms. Jacobsen checked the Town's website again, and the incorrect dates posted on the hyperlink and the agenda had been corrected without acknowledgement of the previous errors. When the complainant learned this additional information from Ms. Jacobsen, she filed her March 30, 2021 complaint with the Commission.

7. Section 1-225(d), G.S., provides in relevant part:

[n]otice of each special meeting of every public agency ... shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available The notice shall specify the time and place of the special meeting and the business to be transacted.

8. It is found that the respondent Tree Warden originally scheduled the public hearing regarding the cherry trees for March 15, 2021.

9. It is found that the Town Clerk's office generated the notice for the March 15, 2021 public hearing, which was timely filed and posted by the Town Clerk on the Town's website. It is found that generating the notice for a special meeting is normally completed by the public agency holding such meeting and that such notice is then sent to the Town Clerk's office for posting on the Town's website.

10. It is found that the respondent Tree Warden asked the Town Clerk to generate the notice because he was unaccustomed to creating and posting agendas for special meetings and because it was only the second occasion in seven years that he held a hearing of that kind requiring compliance with the applicable statutory requirements.

11. It is found that, on March 11, 2021, the respondent Tree Warden emailed the Town Clerk's office and asked to cancel the March 15, 2021 public hearing and reschedule it for March 19, 2021. It is also found that, on March 15, 2021, the Tree Warden exchanged emails with an employee of the Town Clerk's office and confirmed that he was asking to update both the Town Calendar and the agenda to reflect the new date of March 19, 2021.

12. It is found that, on March 17, 2021, the respondent Tree Warden emailed the Town Clerk's office to again reschedule the March 19, 2021 public hearing to March 22, 2021, due to the forecasted inclement weather. It is also found that the respondent Tree Warden asked that the Town Calendar be changed to reflect the new date.

13. It is found that, in response to the Tree Warden's March 17, 2021 email, the Town Clerk's office updated the Town Calendar with the correct date of the hearing but, due to a clerical error, neglected to update the hyperlink on the Town's website and the notice itself.

14. It is found that the respondent Tree Warden believed the Town Clerk's office would update everything on the Town's website, along with the Town Calendar. It is also found that the respondent Tree Warden made every effort to comply with extensive, additional tree warden-specific notification requirements necessary for the removal of trees, under §23-59, G.S.

15. It is found that, on March 16, 2021, the respondent Tree Warden emailed all parties known to him to be interested in the proposed removal of the cherry trees, notifying them of the new date, time, and place of the hearing.² It is also found that an estimated thirty people attended the hearing and participated in it.

16. It is found that, although the respondent Tree Warden made a good faith effort to comply with the FOI Act, the notice posted to the Town's website did not properly specify the date of the public hearing.

17. It is therefore concluded that the respondents violated the notice provisions of §1-225(d), G.S., by failing to notice the correct date of the March 22, 2021 public hearing on the Town's website.

18. At the hearing in this matter, the complainant also alleged that the respondents destroyed public records when they removed the incorrectly dated notice from the Town's website and posted a new one with the correct date.

19. Although the complainant's allegation in paragraph 18, above, was not raised in the complaint, it is nonetheless found that there was no evidence offered to support the complainant's allegation that public records were destroyed. This Commission further notes that jurisdiction over the retention and destruction of public records rests with the State's Public Records Administrator.

20. With regard to the complainant's request that the actions at the public hearing be declared invalid and a new hearing be ordered by this Commission, the Commission declines to consider such relief, because: there is no indication that any member of the public relied on the posted notice to their detriment, including the complainant; there was significant, widespread notice to the public and interested parties pursuant to the statutory procedures regarding the removal of trees; and finally, the cherry trees that were the subject of the public hearing were removed on or about April 1, 2021.

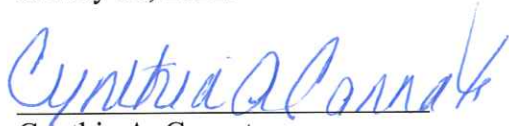
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Within 7 days of the date of the Notice of Final Decision in this matter, the respondents shall add clarifying language to the published notice on the Town's website for the public hearing, indicating that such notice has been corrected from its original form.

² The Tree Warden's email was sent to over one hundred individuals both in favor of, and in opposition to, removal of the cherry trees, who had previously sent written communication to the respondent Tree Warden, stating their respective interest in the subject.

2. Henceforth, the respondents shall strictly comply with the notice provisions of §1-225(d), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 11, 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:

JILL VERGARA, 271 Old Post Road, Fairfield, CT 06824

TREE WARDEN, 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