

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Joseph Sargent,

Complainant

against

Docket #FIC 2021-0689

Members, Parks and Recreation Commission,
Town of Fairfield; and Parks and Recreation
Commission, Town of Fairfield,

Respondents

November 16, 2022

The above-captioned matter was heard as a contested case on July 19, 2022 and September 20, 2022, at which times 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 July 19 hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Spec. Sess.), as amended by §1 of Public Act No. 22-3. The September 20 hearing was an in-person proceeding.

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 November 23, 2021, the complainant requested that the respondents provide him with access to the following records:
 - a. All emails sent by any Parks and Recreation Department staff (hereinafter "Staff") to any Members of the Parks and Recreation Commission (hereinafter "Commission") for the time period between December 9, 2020 and January 1, 2021;
 - b. All emails exchanged by or between Member(s) of the Commission (hereinafter "Member(s)") . . . for the time period between December 9, 2020 and January 1, 2021 (limited to official town business);
 - c. All text messages exchanged between the Staff and any Member(s) for the time period between December 9, 2020 and January 1, 2021;

- d. All text messages exchanged between Member(s) . . . between December 9, 2020 and January 1, 2021 (limited to official town business);
- e. All records concerning phone calls (such as “phone log” or a bill) by Staff either through their desk phone or a mobile phone used for work purposes, and any Member(s);¹
- f. All records concerning phone calls (such as “phone log” or a bill) made by Member(s) to any other Member(s) between December 9, 2020 and January 1, 2021;
- g. All documents concerning and/or relating [to] instructions from the Fairfield Emergency Planning Team and/or any government officials to the Commission or its Staff concerning and/or related to the use of the Sherman Green in 2020;
- h. All emails sent by any Staff to Member(s) concerning and/or relating to an application by Joseph P. Sargent and/or the Knights of Columbus, to conduct a Christmas vigil on Sherman Green, dated on or about August 3, 2021 (hereinafter the “Application”);
- i. All emails exchanged by or between Member(s) concerning and/or relating to the Application;
- j. All text messages exchanged between the Staff and the Member(s) concerning or relating to the Application;
- k. All text messages exchanged between Member(s) concerning and/or relating to the Application;
- l. All records concerning phone calls (such as “phone log” or a bill) by Staff, either through their desk phone or a mobile phone used for work purposes, and any Member(s) between October 1, 2021 and October 22, 2021;
- m. All records concerning phone calls (such as “phone log” or a bill) made by Member(s) to any other Member(s) between October 1, 2021 and October 22, 2021;

¹ At the second hearing, the complainant clarified that this request should also be subject to the following timeframe: December 9, 2020 through January 1, 2021.

- n. All applications for events to be held as the Sherman Green since January 1, 2021 through the present, that have not been approved and/or were denied by the Commission;
- o. All documents and correspondence by and/or between the Staff and the Member(s) concerning and/or relating to the setting of agendas for the Commission since January 1, 2021 through the present;
- p. All agendas and minutes of the Executive Team of the Commission since December 1, 2020 through the present, which identified in an email sent by Anthony Calabrese to me on October 12, 2021 ("the Chair, Vice-chair, and Secretary of the Parks and Recreation Commission");
- q. Pictures taken of the Tree of Hope from July 2020 to the present; and
- r. Applications to place a sign or display before the Tree of Hope from July 2020 to the present.

3. By letter of complaint, dated December 8, 2021 and filed December 9, 2021, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with access to the records, described in paragraph 2, above.

4. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

5. Section 1-210(a), G.S., provides, in relevant part:

[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.

6. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

7. It is found that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

8. At the first contested case hearing, which took place on July 19, 2022, the complainant and the respondents jointly moved for a continuance of the scheduled hearing on the ground that the case was almost resolved, and that they did not believe that they would need a contested case hearing in this matter. The parties’ motion was granted.

9. The Commission received no notice from the parties that this matter had been resolved.

10. By Notice Dated August 30, 2022, the Commission scheduled a continued hearing.

11. It is found that, in late January 2022, the respondents provided the complainant with a first installment of responsive records. Thereafter, it is found that, in July 2022, the respondents provided the complainant with a second installment of responsive records.

12. Nonetheless, the complainant contended that the respondents had failed to provide any responsive records with regard to the requests set forth in paragraphs 2.e, 2.f, 2.g, 2.h, 2.i, 2.j, 2.m, 2.n, 2.o, and 2.r, above, and had failed to provide all responsive records to the requests set forth in paragraphs 2.l, and 2.p, above.

13. In addition, while the complainant conceded that he received one hundred or more responsive emails, he contended that approximately 16 of those emails contained attachments that he was unable to open.

14. Finally, the complainant contended that he did not believe that the respondents conducted a thorough search for responsive emails, because, for example, he received a responsive email that was sent from one member of the respondent commission to another member of the respondent commission, but such email was only provided to him once in the disclosure (that is, he did not receive the responsive email from both members).

15. The respondents did not bring a witness to testify at either hearing or submit any documents into evidence; rather, the respondents’ counsel represented that the respondents had hoped that they would be able to work this out with the complainant and that they were still willing to provide the remaining responsive records.

16. Based on the evidence produced by the complainant, it is found that that the respondents failed to disclose to the complainant all records responsive to the request.

17. Accordingly, it is concluded that the respondents violated the FOI Act by failing to provide all responsive records to the complainant.

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

1. The respondents shall undertake an additional search for records responsive to the requests set forth in paragraph 12 of the findings, above. The respondents shall forthwith provide to the complainant, free of charge, copies of all responsive records that are not subject to a mandatory exemption to disclosure. If, upon conducting an additional search, the respondents do not locate any responsive records for a particular request, the respondents shall provide an affidavit to the complainant from the person with direct knowledge of the records at issue and the search conducted that specifically addresses where they searched for responsive records, and which records they were unable to locate.
2. With regard to paragraph 13 of the findings, above, the respondents shall contact the complainant to ascertain which email attachments the complainant was unable to open. Upon receipt of said information from the complainant, including the identity of the sender and the recipient of the email, and the date and time when the email was sent and/or received, the respondents shall forthwith locate and provide copies of such attachments to the complainant, free of charge.
3. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 16, 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:

JOSEPH SARGENT, 1595 Black Rock Turnpike, Fairfield, CT 06825

MEMBERS, PARKS AND RECREATION COMMISSION, TOWN OF FAIRFIELD;
AND PARKS AND RECREATION COMMISSION, TOWN OF FAIRFIELD, c/o
Attorney James T. Baldwin, Coles Baldwin Kaiser & Creager, LLC, 1 Eliot Place, 3rd Floor,
Fairfield, CT 06824 and Attorney Catherine L. Creager, Coles Baldwin Kaiser & Creager,
LLC, 1 Eliot Place, Fairfield, CT 06824



Cynthia A. Cannata
Acting Clerk of the Commission