

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Gregg and Jennifer Haythorn,

Complainants

against

Docket # FIC 2021-0619

Town Administrator, Town of
Weston,

Respondent

October 12, 2022

The above-captioned matter was heard as a contested case on August 2, 2022, at which time the complainants and the respondent 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 remotely pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3. The case caption has been amended to accurately identify the respondent.

After consideration of the entire record, the following facts are found, and conclusions of law are reached:

1. The respondent is a public agency within the meaning of §1-200(1), G.S.
2. It is found that, by email dated September 23, 2021, the complainants requested from the respondent¹:
 - (a) a copy of the forwarded email from you [in connection with the complainants' records request in FIC docket # 2021-0039] to multiple town and board officials;
 - (b) the emails documenting receipt by each BOF² board member and town official;
 - (c) copy of any email or other electronic or written reply to your forward of our email by officials and board members, as well as a copy of all subsequent emails, text messages, and other written and electronic notes and communications regarding your forward by email

¹ The records request at issue in this case was directed only to the respondent, not to the Chairman of the Board of Finance, or the Board of Finance.

² BOF is an acronym for Board of Finance.

of our records request, as well as the search and production process for all pertinent records;

(d) access to all phone records for you and the 7 sitting Weston BOF members for the date range 1-17-21 and 1-20-21, as well as for all other Weston town officials;

(e) a list of the phone numbers from which you placed town of Weston and Weston Board-related official calls; and

(f) access to any electronic or handwritten notes which you made to record the representations of board and town officials in this matter that no Weston official or board member was in possession of a single, pertinent public record (other than the 1 record you produced on behalf of Chairman Ezzes).

(hereinafter “requested records”)

3. It is found that by email dated September 27, 2021, the respondent acknowledged receipt of the complainants’ request.

4. By letter of complaint dated October 25, 2021, and filed on October 28, 2021, the complainants appealed to the Commission, alleging that the respondent violated the Freedom of Information (“FOI”) Act by failing to provide them with the requested records, and specifically with “all pertinent documents and records corroborating ... [the town administrator’s] statements under oath...pertaining to the 1-17-21 reelection of BOF Chair Ezzes....”

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 . . . (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 exist, are public records within the meaning of §§1-200(5), and 1-210(a), G.S.

9. At the hearing in this matter, the complainants clarified that the records they were seeking were the communications that occurred between the respondent and the members of the Board of Finance. They specifically contended that during a September 21, 2021 hearing in Docket #FIC 2021- 0039, Gregg and Jenn Haythorn v. Chairman, Town of Weston; Town Administrator, Town of Weston; and Town of Weston, (Final Decision, March 23, 2022, dismissing the Complaint) (hereinafter “FIC 2021-0039”), the respondent testified about certain email communications between himself and Weston town officials, regarding the January 14, 2021 election of the Chairman and Vice Chairman to the Weston Board of Finance, and that therefore, the respondent should maintain records responsive to their request, described in paragraph 2, above.

10. The respondent appeared at the hearing in this matter and testified on his own behalf. He testified that he did not communicate via email or text, with Weston town officials about the January 14, 2021 election. He also denied that he testified in FIC 2021- 0039 about communicating with the individuals in question via email. He further testified that all his communications were either in person or on the telephone.

11. With regard to the request for records, described in paragraph 2(a), 2(b), and 2(c) above, it is found that, although the respondent did not believe he had any responsive emails, upon receipt of the request, he nevertheless searched his emails, and determined that he did not maintain any responsive emails.

12. With regard to the request for records, described in paragraph 2(d), above, it is found that the respondent conducted a search and located a phone bill of his town-issued cell phone for the period in question, and determined that such bill did not contain any information regarding who he called, or from whom he received calls. The respondent testified that the phone bill did not identify the telephone numbers of calls made or received. Therefore, it is found that the phone bill was not responsive to the request. It is further found that the respondent does not maintain any other responsive records.

13. With regard to the request for records, described in paragraph 2(e), above, it is found that the respondent does not maintain a list of phone numbers, responsive to such request.

14. With regard to the request for records, described in paragraph 2(f), above, it is found that the respondent does not maintain electronic or handwritten notes, responsive to the request.

15. At the hearing in this matter, the complainants argued that this complaint was also brought against the Chairman, Board of Finance, and the Board of Finance, and that in the past the respondent forwarded their records requests to the Board of Finance but did not do so in this

case. The complainants argued further that the respondent had a duty to disclose responsive records maintained by the Board of Finance and other town officials. However, even if such records existed, the respondent had no such duty. See Lash v. Freedom of Information Commission, 116 Conn. App. 171, 187 (2009) (first selectman, as chief executive officer with supervision over all town departments, had no duty to maintain or make available public records of other town departments, each of which was a separate and distinct public agency).

16. Accordingly, it is concluded that the respondent did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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 October 12, 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:

GREGG AND JENNIFER HAYTHORN, 6 Winthrop Hill, Weston, CT 06883

TOWN ADMINISTRATOR, TOWN OF WESTON; CHAIRMAN, BOARD OF FINANCE, TOWN OF WESTON; BOARD OF FINANCE, TOWN OF WESTON; AND TOWN OF WESTON, c/o Attorney Ira W. Bloom, Berchem Moses P.C., 1221 Post Road East, Westport, CT 06880 and Attorney Nicholas R. Bamonte, Berchem Moses PC, 1221 Post Road East, Westport, CT 06880



Cynthia A. Cannata
Acting Clerk of the Commission