

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Eugene Driscoll, and The Valley  
Independent Sentinel,

Complainants

against

Docket #FIC 2021-0671

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

Respondents

October 26, 2022

The above-captioned matter was heard as a contested case on March 24, 2022 and June 27, 2022, at which times the complainants 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 Spec. Sess.), as amended by §1 of Public Act No. 22-3.

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 9, 2021, the complainants requested that the Mayor of West Haven provide them with copies of the following records: "all communications, invoices, and records of payment to Kara Rochelle from West Haven, as mentioned in The Hartford Courant [on] Nov. 9, 2021."
3. By email, dated and received November 26, 2021, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with copies of 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.

7. 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.”

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

9. It is found that, on the evening of March 23, 2022, which was the evening preceding the first contested case hearing, the respondents disclosed 38 pages of records to the complainants.

10. At the first contested case hearing, the complainants contended that there should be more responsive records—particularly, an invoice from Kara Rochelle for \$5,000.00 dated May 31, 2021; a record containing a description of the scope of the work to be performed by Ms. Rochelle; and emails or other records from Michael DiMassa, the person who selected Ms. Rochelle to be a consultant on a city project. The complainants also wanted the respondents to inform them who was selected as the consultant on a \$180,000.00 fire study. The complainants further contended that the records they received on March 23, 2021, were not provided to them promptly.

11. It is found that Ms. Rochelle was hired as a consultant regarding the future construction of the Allington Fire House. It is further found that Ms. Rochelle was to consult for 50 hours at a rate of \$100.00 per hour. It is further found that Ms. Rochelle invoiced the City of West Haven \$5,000.00, indicating that she worked 50 hours.

12. It is found that, after the first hearing on this matter, on or around April 5, 2022, the respondents subsequently provided the complainants with Ms. Rochelle’s invoice for \$5,000.00. In addition, even though they were not obligated to do so under the FOI Act, it is found that the respondents answered the complainants’ question, providing them with the name of the entity that was selected as the consultant for the fire study.

13. It is further found that the respondents were unable to locate any additional responsive records after searching for them again following the first hearing in this matter.

14. It is concluded that the respondents ultimately provided all responsive records to the complainants.

15. Nonetheless, it is found that it took the respondents 134 days from the date of the request to disclosure of the 38 pages referred to in paragraph 9, above, to the complainants, and it took the respondents 147 days from the date of the request to disclose Ms. Rochelle's invoice referred to in paragraph 12, above, to the complainants. See ¶¶ 2, 9, 12. The Commission must determine if such disclosure was "prompt" under the FOI Act.

16. The Commission has previously opined that the word "promptly" in §1-210, 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.

17. The respondents testified that both the COVID-19 pandemic and staff turnovers contributed to their delayed response.

18. It is found that the request in this case was clear and straightforward. It is further found that, once the respondents turned their attention to the request, they were able to provide the requested records to the complainants in very short order.

19. Under the facts and circumstances of this case, even taking the respondents' reasons for the delay into consideration, it is found that the respondents' provision of responsive records to the complainants was not prompt.

20. Accordingly, it is concluded that the respondents violated the promptness provisions of §§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. Henceforth, the respondents shall strictly comply with the promptness provisions of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 26, 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:

**EUGENE DRISCOLL AND THE VALLEY INDEPENDENT SENTINEL**, 246  
Hawthorne Avenue, Derby, CT 06418

**MAYOR, CITY OF WEST HAVEN; AND CITY OF WEST HAVEN**, c/o Attorney Lee Kennedy Tiernan, Office of the Corporation Counsel, 355 Main Street, 3rd Floor, West Haven, CT 06516; and Attorney Michael A. Leone, Lynch, Traub, Keefe & Errante, 52 Trumbull Street, PO Box 1612, New Haven, CT 06510



Cynthia A. Cannata  
Acting Clerk of the Commission