

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Marc Grenier, and 587 CT AVE
LLC,

Complainants

against

Docket # FIC 2022-0117

Tax Assessor, City of Norwalk; and
City of Norwalk

Respondents

October 26, 2022

The above-captioned matter was heard as a contested case on July 7, 2022, at which time 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 remotely, through the use of electronic equipment, pursuant to §149 of Public Act No. 21-2 (June Special Session), 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 October 14, 2021 (sent via electronic mail), in relevant part, the complainants requested from the respondent assessor, a copy of the following:

[a]ny and all correspondence, letters, electronic mail, notes, memoranda, ledgers, drawings, spreadsheets, appraisals, pictures or other documents or records in whatever form that same were created, delivered, retained, maintained, or otherwise stored concerning, relating to or otherwise and anyway connected to the taxation, valuation, and/or revaluation of real property located at 11 Belden Ave, Norwalk, Connecticut (PID 1743, Parcel 1-35-21-0) for the period January 1, 2017 up to and including April 10, 2019.

(hereinafter "requested records").

3. It is found that by email dated October 27, 2021, the complainants followed up with the respondent assessor checking in on the status of the request and stated that they had not received an acknowledgment, or any of the requested records, and asked that the respondent assessor advise them when the requested records might be provided.

4. It is found that by email dated October 27, 2021, the respondent assessor acknowledged receipt of the request and informed the complainants that he was in the process of reviewing it and conducting research to determine if he maintained responsive records, and if so, whether any might be exempt from disclosure.

5. It is found that by email dated December 6, 2021, the respondent assessor provided the complainants with a copy of the "Property Record Card for 11 Belden Avenue showing a full market value of \$4,264,910", and informed them that "all reports from Tyler Technologies, the revaluation firm, are available in the Assessing Department for inspection" and further, that copies of particular sections could be made available upon request after inspection by the complainants.

6. It is found that between February 4, 2022, and March 7, 2022, the complainants and the respondents communicated extensively, via email, about the request, and the response.

7. By letter of complaint, dated and filed with the Freedom of Information (FOI) Commission (Commission) on March 14, 2022, the complainants appealed, alleging that the respondents violated the FOI Act by failing to comply with their records request, described in paragraph 2, above.

8. 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.

9. 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.

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

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

12. It is found that the respondents’ Information Technology (“IT”) staff began searching for responsive records on or about February 17, 2022, and on March 3, 2022, provided the respondent assessor with an electronic folder containing the records located.

13. It is found that due to technical difficulties, the respondent assessor was unable to access the electronic folder until March 14, 2022, at which time he commenced reviewing the hundreds of emails contained therein. It is found that the respondent assessor concluded such review in late May 2022/ early June 2022.

14. It is found that on June 27 and June 29, 2022, the respondents provided the complainants with numerous emails responsive to the request.

15. At the hearing in this matter, the complainants contended that the respondents failed to promptly provide them with the records referenced in paragraph 14, above, and that the respondents only seriously began searching for such records in February 2022, some four months after their records request. The complainants also questioned whether all responsive records, except those claimed as attorney-client privileged¹, have in fact now been turned over, in light of the fact that the emails provided to them on June 27 and June 29, 2022, referenced in paragraph 14, above, were initially withheld due to the respondent assessor’s interpretation of the request. The respondents testified that there was never any intent to conceal any of the requested records.

16. Regarding the issue of promptness, the Commission has held that the meaning of the word “promptly” is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission opined that the word “promptly,” as used in the Act, means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Advisory Opinion provides that some of the factors to be considered are (i) the volume of records requested, (ii) the amount of personnel time necessary to address the request, (iii) the timeframe under which the requestor needs the information, (iv) the importance of the records to the requestor, (v) time constraints placed on the agency by other work, and (vi) the importance of other pressing work at the agency. Additionally, the Commission offered the following guidance:

[p]roviding such access is therefore a primary duty of all public agencies and should be considered as much a part of their mission as their other major functions. Although each agency must

¹ At the hearing in this matter, the complainants made clear that they do not take issue with certain records being withheld by the respondents pursuant to a claim of attorney-client privilege.

determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

17. Several Superior Court decisions have found the Commission's interpretation of the promptness standard reasonable. See Commissioner, Department of Emergency Services and Public Protection v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV-18-6047741-S (July 2, 2020, Cordani, J); Torlai v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV-16-5017450-S (November 27, 2017, Huddleston, J.); and Smith v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV-12-5015684-S (June 7, 2013, Cohn, J.).

18. It is found that the complainants' request was directed to the respondent assessor who was relatively new to Connecticut and unfamiliar with his obligations under the Connecticut FOI Act. He testified that he had previously worked in other states where he personally was not obligated to search for and provide public records to requesters. As a result, an earnest search for the most sought after of the requested records did not begin until mid-February 2022, after counsel for the respondents requested that the respondent assessor work with the IT staff. It is also found that the respondents were experiencing significant staff shortages and attending to numerous other duties and responsibilities. It is further found that the delay in providing the requested records was also due to the respondent assessor's very narrow interpretation of the request, which led to him not providing certain responsive emails to the complainants sooner. In addition, the delay was as a result of the time it took the respondent assessor to review the hundreds of emails generated by the IT staff search, and to determine if any were exempt prior to disclosing same to the complainants.

19. It is found that while the complainants did not provide a specific explanation of why the requested records were important to them, it should have been apparent to the respondents based on the complainants' repeated inquiries regarding the status of the response.

20. Upon consideration of all of the factors presented with regard to this particular request, it is found that the respondents failed to provide the records, described in paragraph 14, above, to the complainants promptly.

21. Consequently, it is concluded that the respondents violated the promptness requirements set forth in §§1-210(a) and 1-212(a), G.S.

22. With regard to the complainants' questioning whether the respondents have now provided all responsive records, except those claimed as attorney-client privileged², it is found that the respondents' IT staff conducted a thorough search for all responsive records. However, with regard to the respondent assessor's review of the records located by the IT staff, the

² See footnote 1.

respondents failed to prove that they have carefully reviewed such records and provided the complainants with all non-exempt records responsive to the request.

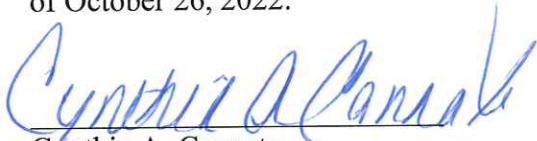
23. Consequently, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the complainants with all non-exempt responsive records.

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

1. Within 45 days of the Notice of the Final Decision in this matter, the respondents shall provide the complainants with an affidavit attesting that they have provided all non-exempt responsive records to the complainants.

2. Henceforth, the respondents shall strictly comply with the promptness and access 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:

MARC GRENIER AND 587 CT AVE LLC, DePanfilis & Vallerie LLC, 25 Belden Avenue, PO box 699, Norwalk, CT 06852

TAX ASSESSOR, CITY OF NORWALK; AND CITY OF NORWALK, c/o Attorney M. Jeffry Spahr, City of Norwalk, 125 East Avenue, PO Box 5125, Norwalk, CT 06856



Cynthia A. Cannata
Acting Clerk of the Commission