

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION
UPON REMAND

Kristin Norton,

Complainant

against

Docket #FIC 2021-0631

Town Manager, Town of South
Windsor; Office of the Town Manager,
Town of South Windsor; and Town of
South Windsor,

Respondents

April 12, 2023

The above-captioned matter was heard as a contested case on July 11, 2022, 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 Spec. Sess.), as amended by §1 of Public Act No. 22-3.

A Report of Hearing Officer, dated September 30, 2022, was considered by the Commission at its regular meeting of October 26, 2022, and unanimously adopted.

On December 9, 2022, the respondents appealed the Commission's Final Decision to the Superior Court. See Town Manager, Town of South Windsor, et al. v. Freedom of Info. Comm'n, et al., HHB-CV-22-6076410-S. In their appeal, the respondents contended for the first time that none of the email communications that were disclosed to the complainant with redactions and submitted to the Commission for in camera inspection were responsive to the underlying request for records (the "new argument raised on appeal"). By way of a joint motion, the parties requested that the Superior Court remand the matter back to the Commission for consideration of the new argument raised on appeal. The appeal and the joint motion have been marked as respondents' post-hearing exhibits 5 and 6, respectively. By Order dated February 24, 2023, the Superior Court remanded the case to the Commission for further consideration.

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 7, 2021, the complainant requested that the Town Manager provide her with copies of the following records:

For the period covering January 1, 2019 to the present, copies of all emails received from the law firms of (1) Updike, Kelly & Spellacy, P.C., (2) McGivney, Kluger & Cook, P.C., and (3) Halloran & Sage, P.C., that [in] any way relate to (1) Kristin Norton f/k/a Kristin Lanata, (2) 460 Miller Road, South Windsor, Connecticut, and which contain the word 'hoarder' or 'hoarders' or 'hoarder's.'

3. It is found that, by email dated October 15, 2021, the respondents acknowledged the request, and informed the complainant that the request was denied because the records were exempt from public disclosure.

4. By letter of complaint, dated November 4, 2022 and received November 5, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide her with copies of the records, described in paragraph 2, above.

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 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:

[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 the complainant came to believe that her name was included on a “list of hoarders” maintained by the town, and she therefore issued the request set forth in paragraph 2, above.

10. At the time of the contested case hearing, the respondents represented that the Town Manager had received three or four responsive emails from Updike, Kelly & Spellacy, PC. (“Updike”) and that these emails had been disclosed to the complainant. The respondents further represented that they had not yet searched for responsive emails received by the Town Manager from McGivney, Kluger & Cook, P.C. (“McGivney”) or Halloran & Sage, P.C. (“Halloran”). The respondents contended that any additional emails were likely to be exempt from disclosure pursuant to §§1-210(b)(4) (pending litigation), and 1-210(b)(10), G.S., (attorney client privilege).

11. In response, the complainant contended that, even if the additional emails are exempt in part from disclosure, the respondents should still be required to disclose the emails in redacted form such that only (1) the sender of the email; (2) the recipient of the email, (3) the date the email was sent, and (4) the word “hoarder” or “hoarders” or “hoarder’s” is disclosed.

12. At the conclusion of the contested case hearing, the undersigned hearing officer ordered the respondents to run a search for responsive emails received by the Town Manager from McGivney and Halloran and to report the results of said search in writing to the complainant and the hearing officer.

13. By email dated August 2, 2022, the respondents filed an email containing multiple attachments with the Commission and copied the same to the complainant. The email and attachments have been marked as respondents’ post-hearing Exhibit 4.

14. It is found that, following the contested case hearing, the Town Manager instructed the South Windsor IT department to run a search of all of his emails for those that contain the terms “hoarder” or “hoarders” from January 1, 2019 through October 15, 2021.

15. It is found that, as a result of the search, the respondents located nine emails totaling seventeen pages.

16. It is found that two of the emails were disclosed to the complainant with redactions; the remaining seven emails were disclosed to the complainant without redactions.

17. On August 25, 2022, the respondent submitted the two emails referred to in paragraph 16, above, to the Commission without redactions for in camera inspection. The two emails are fairly described as a 1-page email and a 2-page email.

18. In the index submitted with the in camera records, the respondents contended that the information redacted from the emails is exempt pursuant to §§1-210(b)(10) and 1-210(b)(4), G.S. In addition, in the context of the remand of the case from the Superior Court, the respondents contended that the in camera records they submitted in response to the hearing officer’s order referenced in paragraph 12, above, are outside the scope of the original request for

records.

19. Upon careful inspection of the in camera records following the court's remand in this matter, it is found that the emails submitted for in camera inspection were not received by the Town Manager from one of the three specified law firms or were outside of the timeframe specified in the original request. See ¶ 2, above.

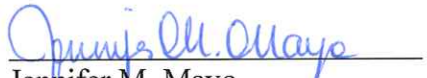
20. It is therefore concluded that the in camera records were not responsive to the request at issue in this case.

21. Accordingly, it is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by withholding portions of the in camera records from the complainant.

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 April 12, 2023.

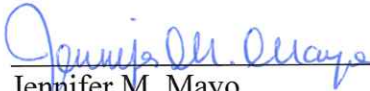

Jennifer M. Mayo
Acting Clerk of the Commission

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:

KRISTIN NORTON, c/o Attorney Edward C. Taiman, Jr., Sabia Taiman, LLC, 999 Asylum Avenue, Hartford, CT 06105

TOWN MANAGER, TOWN OF SOUTH WINDSOR; OFFICE OF THE TOWN MANAGER, TOWN OF SOUTH WINDSOR; AND TOWN OF SOUTH WINDSOR, c/o Attorney Richard Carella, Updike, Kelly & Spellacy, P.C., 179 Main Street, 100 Plaza Middlesex, 3rd Floor, Middletown, CT 06457



Jennifer M. Mayo
Acting Clerk of the Commission