

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Laurel and Timothy Draper,

Complainants

against

Docket #FIC 2022-0148

First Selectman, Town of Bethel; Chair,  
Planning and Zoning Commission, Town of  
Bethel; Planning and Zoning Commission,  
Town of Bethel; and Town of Bethel,

Respondents

February 8, 2023

The above-captioned matter was heard as a contested case on August 16, 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 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, on March 9, 2022, the complainant made an oral request for a copy of the unedited video of the respondent Planning and Zoning Commission's March 8, 2022 meeting (the "unedited video").
3. It is found that, by email dated March 23, 2022, the respondents denied the complainant's request for the unedited video.
4. By letter of complaint, dated April 6, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the requested unedited video, 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. (Emphasis added.)

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 (1) inspect such records promptly during regular office or business hours, ... or (3) receive a copy of such records in accordance with section 1-212. (Emphasis added.)

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 on March 8, 2022, the respondent Planning and Zoning Commission (the “P&Z Commission”) held a meeting (the “March 8<sup>th</sup> meeting”), which permitted the public to attend the meeting in person and also provided remote access to the meeting through a Zoom link.<sup>1</sup>

9. It is found that during the March 8<sup>th</sup> meeting, Commissioner Kitty Grant announced a recess. It found that during such recess, Beth Cavagna, the Town Planner and Land Use Department Director, made certain negative comments about the complainant, Timothy Draper, to a member of her staff, in the presence of another member of the P&Z Commission. It also found that, although Grant had announced a recess, her microphone remained on, and the negative comments were recorded and heard by those individuals who were accessing the March 8<sup>th</sup> meeting remotely.

10. It is found that the respondents posted an edited version of the video recording of the March 8<sup>th</sup> meeting to the Town of Bethel’s YouTube website. It is found that such edited version excluded the recessed portion of the meeting, including the negative comments about Draper.

11. It is found that the requested unedited video is maintained and kept on file by the respondents’ IT Department.

12. At the hearing, and in their post-hearing brief, the respondents argued that the excluded portion of the video is not a public record within the definition of §1-200(5), G.S., because it does not relate to the conduct of the public’s business.

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<sup>1</sup> Zoom is a communication platform that allows users to connect with video, audio, phone and chat using an internet connection. See ZOOM, <https://zoom.us>, (last visited Dec. 20, 2022).

13. The complainants argued, on the other hand, that the P&Z Commission failed to properly recess the March 8<sup>th</sup> meeting, in violation of Robert's Rules of Order, and therefore, the comments were part of the P&Z Commission's meeting. The Commission notes that it does not have jurisdiction over Robert's Rules of Order. See Dept. of Public Safety v. Freedom of Information Commission, 103 Conn. App. 571, 577 (2007). Moreover, whether the meeting was properly recessed under Roberts Rules of Order is not relevant to a determination of whether the excluded portion of the video is a public record within the meaning of §§1-200(5) and 1-210(a), G.S.

14. With regard to the respondents' argument set forth in paragraph 12, above, it is found that, in her position as Town Planner and Land Use Department Director, Cavagna assists and advises the P&Z Commission in carrying out its official duties. As found in paragraph 9, above, Cavagna's comments were made to another staff member who assists the P&Z Commission and in the vicinity of one of the members of the P&Z Commission. It is found that such comments were made in the official meeting place of the March 8<sup>th</sup> meeting, and such comments were recorded by the respondents' own equipment. It is further found that Timothy Draper is a developer known to the P&Z Commission, who regularly appears before the P&Z Commission on land use matters.

15. Based upon the findings in paragraph 14, above, it is concluded that the excluded portion of the video contains information "relating to the conduct of the public's business ... retained by a public agency" within the meaning of §1-200(5), G.S.

16. It is therefore concluded that the excluded portion of the video constitutes a public record within the meaning of §§1-200(5) and 1-210(a), G.S.

17. In their post-hearing brief, the respondents claimed, alternatively, that the comments contained in the excluded portion of the video are exempt from disclosure pursuant to §1-210(b)(4), G.S.

18. Section 1-210(b)(4), G.S., provides that disclosure is not required of "[r]ecords pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled..."

19. The phrase "pending claims" as defined in §1-200(8) means:

[a] written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief is not granted.

20. The phrase "pending litigation" as defined in §1-200(9) means:

(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the

intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency's consideration of action to enforce or implement legal relief or a legal right.

21. The respondents argued that the complainants had threatened legal action against the respondents, and as part of the respondents' legal strategy to mitigate potential damages from possible future litigation, they withheld Cavagna's negative comments concerning Draper.

22. It is found, however, that Cavagna's comments, themselves, do not pertain to "strategy or negotiations" and, further, that such comments do not constitute a "pending claim" or "pending litigation", as those terms are defined in the FOI Act (see paragraphs 19 and 20, above). It is therefore found that Cavagna's comments do not pertain "to strategy or negotiations with respect to pending claims or pending litigation" within the meaning of §1-210(b)(4), G.S.<sup>2</sup>

23. It is therefore found that the excluded portion of the requested video is not exempt from disclosure pursuant to §1-210(b)(4), G.S.

24. Based upon all of the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide to the complainants a copy of the requested unedited video recording of the March 8<sup>th</sup> meeting.

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

1. Forthwith, the respondents shall provide a copy of the unedited video of the March 8<sup>th</sup> meeting to the complainants, free of charge.

2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 8, 2023.



Cynthia A. Cannata  
Acting Clerk of the Commission

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<sup>2</sup> The Commission notes that a desire to mitigate damages from potential litigation does not create an independent exemption from disclosure for what are otherwise public records.

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:

**LAUREL AND TIMOTHY DRAPER**, 48 Aunt Pattys Lane West, Bethel, CT 06801

**FIRST SELECTMAN, TOWN OF BETHEL; CHAIR, PLANNING AND ZONING COMMISSION, TOWN OF BETHEL; PLANNING AND ZONING COMMISSION, TOWN OF BETHEL; AND TOWN OF BETHEL**, c/o Attorney Martin J. Lawlor, 99 Greenwood Avenue, Bethel, CT 06801



Cynthia A. Cannata  
Acting Clerk of the Commission