

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Paul Calebaugh,

Complainant

against

Docket #FIC 2022-0075

Town Clerk, Town of East Granby;
Registrar of Voters, Town of East
Granby; and Town of East Granby,

Respondents

January 25, 2023

The above-captioned matter was heard as a contested case on June 14, 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. After the contested case hearing, the case caption was amended to add the Registrar of Voters for the Town East Granby as a party respondent.¹

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 January 5, 2022, the complainant went to the respondent Town Clerk's office and requested that she provide him with a copy of a "Who Voted" report either in an Excel or text delimited format. It is found that, while the respondent Town Clerk attempted to provide the report to the complainant in one of the requested formats, she quickly realized that she did not have access to the part of the CVRS² that contained the information the complainant was requesting. It is found that the respondent Town Clerk suggested to the complainant that he go to the Registrar of Voters' office (the "respondent Registrar") and request that she download the report for him.
3. It is found that, also on January 5, 2022, the complainant went to the respondent Registrar's office and requested that she provide a copy of the report to him either in Excel or

¹ The Registrar of Voters appeared and testified at the contested case hearing on behalf of the respondents.

² "CVRS" is an acronym for the Connecticut Voter Registration System.

text delimited format. It is found that the respondent Registrar refused to download the report in either of the two specified formats.

4. It is found that, thereafter, by email dated January 5, 2022, the complainant sent the Town Clerk the following request for records:

Please have the Registrar generate me an Excel or text delimited file that contains the names/addresses/party designation o[f] who voted in the last Town election in November 2021, as I know these names have now been added to the CVRS system. There is an easy option to generate such a list in the registration system, that takes about ten seconds to perform the query and save it as a text or Excel file. I'll take either. I don't want a paper report. . . . You can email the file to me. Thanks!

5. It is found that, by email dated January 5, 2022, the respondent Town Clerk acknowledged the request, and informed the complainant that she would forward the request to the respondent Registrar, who would then contact the complainant as to when the request could be fulfilled.

6. It found that, by email dated January 11, 2022, the respondent Registrar emailed the complainant a copy of the requested record in PDF format.

7. It is found that, on January 11 and January 12, 2022, the parties corresponded several times about whether the respondents had an obligation to provide the requested record in one of the formats specified by the complainant. It is found that, in one such communication, the complainant informed the respondents that he was willing to pay the cost to have the record formatted as requested.

8. It is found that, by email dated January 18, 2022, the respondent Registrar sent the complainant the following email: "We have sent you a copy of the 'Who Voted' report in the format that was generated by our office. We do not have the report in the specific format you requested."

9. By email, dated and received February 17, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with a copy of the record in the format he requested, described in paragraph 4, above.

10. 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.

11. 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.

12. 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.”

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

14. The sole issue in the case is whether the respondents are obligated to provide the requested report in one of the formats requested by the complainant.

15. At the contested case hearing, the complainant contended that the respondent Registrar must provide him with a copy of the requested record in either an Excel or text delimited format because she is easily able to do so. The respondent Registrar contended that, because her office only downloads this particular report for use in her office in a PDF format, she is not obligated to download the report for the complainant in a different format.

16. Section 1-211(a), G.S., provides, in relevant part, as follows:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212. . . .

17. Section 1-212, G.S., provides, in relevant part, as follows:

- (a) Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy. . .

. . . .

- (b) The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:
 - (1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming necessary to provide the copy as requested
 - (2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested. . . .

18. It is found that §1-211(a), G.S., specifically covers the disclosure of computer-stored public records, while §1-212(a), G.S., covers the disclosure of public records that are not computer-stored, and allows public agencies some discretion to decide how they provide such records to the requester, including whether to provide such records electronically—that is, via email.

19. It is found that “paper, disk, tape and any other electronic storage device or medium,” as used in §1-211(a), G.S., are all methods of delivery of computer-stored public records that the requester may dictate; whereas “plain, facsimile, electronic or certified copy” are all methods of delivery of non-computer stored public records, pursuant to §1-212(a), G.S.

20. It is found that neither §1-211(a) or §1-212(a), G.S., by their plain language, address whether the requester has the right to dictate the format of the requested record.

21. In this case, it is found that the requested report is maintained in a computer storage system.

22. Pursuant to §1-212(b), G.S., when a requester desires a computer-stored public record in a particular format and the public agency does not maintain the record in such format, the public agency may either charge for the time it takes an agency employee to put the record in the requested format or, if the agency is unable to do so, it may pass on the cost of engaging an outside professional to format the record as requested by the requester.

23. Therefore, when §1-211(a), G.S., and §1-212(b), G.S., are read together, it is clear that, with regard to computer-stored public records, a requester may dictate the specific format of the record,³ and a public agency must provide the record in said format, if the agency can reasonably make such copy or have such copy made.

24. In this case, it is found that, although the respondent Registrar downloads the report at issue after every election for use in her office in a PDF format, she has the option to download the report in a text delimited format.

25. With regard to the download process, referred to in paragraph 24, above, it is found that, once the particular information fields in the CVRS are selected, and the download process to create the report is initiated, the system requests that the person generating the report choose whether he or she would like the report downloaded in a PDF format or in a text delimited format.

26. It is found that, although the respondent Registrar chooses not to download this particular report for use in her office in a text delimited format, such format is readily available; as such, it is further found that there was no need to “format” or “re-format” the requested report in this case in order to disclose it to the complainant as requested.

27. “There is an ‘overarching policy’ underlying the Freedom of Information Act (FOIA) favoring the disclosure of public records. . . Our construction of the FOIA must be guided by the policy favoring disclosure and exceptions to disclosure must be narrowly construed.” Superintendent of Police of City of Bridgeport v. Freedom of Info. Comm’n, 222 Conn. 621, 626 (1992).

³ To the extent that this Commission has previously held that §1-211(a), G.S., “does not...by any of its terms, obligate a public agency to provide a copy of a computer-stored public record in the computer format requested by a requester,” see, e.g. Fromer v. Comm’r, State of Connecticut, Dep’t of Pub. Safety, et al., Docket #FIC 2021-158 (Feb. 27, 2013), such holding fails to fully consider the implications of the provisions contained in §1-212(b), G.S., which provisions allow a requester to dictate the format of a computer-stored public record and control the fees a public agency may charge to provide such record in the requested format. Accordingly, any previous decision that did not fully analyze and integrate the provisions of §1-211(a), G.S., with the provisions of §1-212(b), G.S., is overruled.


28. In this case, it is found that the respondent Registrar could have easily provided the report to the complainant in a text delimited format.

29. It is therefore concluded that the respondent Registrar violated the disclosure provisions of the FOI Act when she declined to provide the report in the format specified by 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 as to the respondent Town Clerk.
2. The respondent Registrar shall forthwith provide the requested report to the complainant in a text delimited format, free of charge.
3. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§1-210(a), 1-211(a), and 1-212(a) and (b), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 25, 2023.



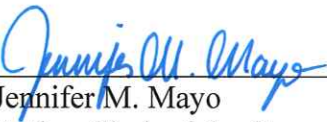
Jennifer M. Mayo
Acting Clerk of the Commission

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:

PAUL CALEBAUGH, 152 Turkey Hills Road, East Granby, CT 06026

TOWN CLERK, TOWN OF EAST GRANBY; AND TOWN OF EAST GRANBY, c/o
Attorney Scott R. Lingenfelter, Law Offices of Marc N. Needelman, 800 Cottage Grove
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Jennifer M. Mayo
Acting Clerk of the Commission