

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Frank Bell,

Complainant

against

Docket # FIC 2022-0218

Inspector, Health Department, City of New
Britain; Health Department, City of New
Britain; and City of New Britain,

Respondents

January 25, 2022

The above-captioned matter was heard as a contested case on October 11, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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 or about March 31, 2022, the complainant filed a complaint with the respondent health department alleging that the property owner of 23 Carlson Street, New Britain was in violation of the city's health code with respect to the 2nd and 3rd floors. The complainant resided at the 3rd floor as of the date of the hearing in this matter.
3. It is found that the respondent health department's supervising sanitarian (hereinafter "sanitarian") inspected the 3rd floor on April 1, 2022, and subsequently issued the property owner a Notice of Violation regarding the 3rd floor. The Notice specified violations and a timeline for correcting such violations.
4. It is found that by email dated May 2, 2022, the complainant requested from the respondent health department a copy of the records pertaining to the April 1, 2022 inspection conducted at the complainant's 3rd floor apartment as well as the 2nd floor (hereinafter "request one").
5. It is found that by email dated May 2, 2022, the complainant sent a follow up email to the respondent health department requesting the pictures the inspectors took of the 2nd floor "unit and porches" (hereinafter "request two").

6. It is found that by email dated May 2, 2022, the respondents acknowledged receipt of request one and request two, described in paragraphs 4 and 5, above.

7. It is found that by email dated May 3, 2022, the respondents informed the complainant that the city had not yet completed its final inspection report, and that once completed, the requested records would be provided to him at a cost of fifty cents per page.

8. It is found that by text dated May 9, 2022, the complainant followed up with the sanitarian and again asked to be provided with the records responsive to request one and request two.

9. It is found that by email dated May 10, 2022, the respondents provided the complainant with 20 pages of records, and informed him that such records were responsive to his request one and request two, and that the cost was \$10.00, i.e., 20 pages at fifty cents per page.

10. By letter of complaint, dated and filed with the Freedom of Information (FOI) Commission (Commission) on May 18, 2022, the complainant appealed, alleging that the respondents violated the FOI Act by:

(a) failing to provide him with records pertaining to the inspection conducted of the 2nd floor apartment, and the 2nd floor front porch, including the notice of violation letter and pictures;

(b) charging him for copies of “unclear, unnecessary, irrelevant, duplicative and frivolous” photos;

(c) refusing to explain why he was being required to obtain records from the office of the Corporation Counsel instead of directly from the fire marshals’ office, building department and the respondent health department; and

(d) telling him that all requests for records must be made under the FOI Act despite the fact that he had been able to previously request records without having to specifically make a FOI Act request.

11. 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.

12. 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.

13. 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.”

14. It is concluded that the requested records, to the extent they exist, are “public records” within the meaning of §§ 1-200(5) and 1-210(a), G.S.

15. At the hearing in this matter, the complainant clarified that the only outstanding issue to be addressed in this complaint is the allegation, described in paragraph 10 (a), above, that the respondents failed to provide him with records and pictures pertaining to the inspection conducted of the 2nd floor violated the FOI Act.

16. The complainant contended that he was not provided with all responsive records, including, the Notice of Violation and photos pertaining to the 2nd floor inspection. He further contended that such records must exist because he was informed that an inspection of the 2nd floor would be conducted. He further contended that such records do exist and are being withheld from him.

17. At the hearing in this matter, the sanitarian testified that he did not conduct an inspection of the 2nd floor apartment and therefore no records, other than those already provided to the complainant, and referenced in paragraph 9, above, exist. The sanitarian testified that he followed up with the property owner after receiving the complainant’s health department complaint, referenced in paragraph 2, above, and determined that no inspection was necessary because the property owner acknowledged the 2nd floor problems flagged by the complainant, and agreed to correct those 2nd floor problems. The sanitarian further testified that because the property owner agreed to address all the 2nd floor problems, no notice of violation was issued at that time, but that if the property owner failed to remedy the problems, he could be issued a notice of violation in the future, and the city could also commence enforcement actions against him.

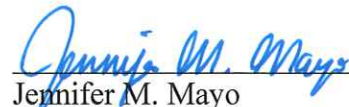
18. Based upon the credible testimony of the sanitarian, it is found that the respondent health department conducted a thorough search of its records, and that the records provided to the complainant on May 10, 2022, referenced in paragraph 9, above, comprise all records that they maintain that are responsive to such request.

19. Consequently, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged.

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 January 25, 2023.



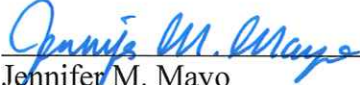
Jennifer M. Mayo
Acting Clerk of the Commission

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:

FRANK BELL, 23 Carlson Street, New Britain, CT 06051

INSPECTOR, HEALTH DEPARTMENT, CITY OF NEW BRITAIN; HEALTH DEPARTMENT, CITY OF NEW BRITAIN; AND CITY OF NEW BRITAIN, c/o Attorney John F. Diakun, Corporation Counsel, City of New Britain, 27 West Main Street, New Britain, CT 06051



Jennifer M. Mayo
Acting Clerk of the Commission