

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Marli Rudko,

Complainant

against

Docket # FIC 2022-0292

Andreas Bisbikos, First Selectman, Town of
Colchester; and Town of Colchester,

Respondents

June 28, 2023

The above-captioned matter was heard as a contested case on March 24, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, 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 June 28, 2022, the complainant visited the respondents' office and made an oral request to inspect email correspondence between respondent First Selectman Andreas Bisbikos, Executive Assistant to the First Selectman Franchesca Brown, and Amy Domeika related to a records request that Ms. Domeika submitted to the respondents on May 2, 2022.
3. It is found that the respondents told the complainant that they could not fulfill her request at that time because the requested records were locked in the office of Ms. Brown, who was not in the office at that time.
4. It is found that, later in the afternoon on June 28, 2022, the complainant returned to the respondents' office and renewed her request to inspect the records described in paragraph 2, above. It is found that the respondents again told the complainant that they could not fulfill her request at that time because Ms. Brown still was not in the office.
5. It is found that, by email received and filed July 7, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her request to inspect the records described in paragraph 2, above. The complainant also requested that the Commission impose a civil penalty against the respondents.
6. 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.

7. Section 1-210(a), G.S., provides in relevant part that:

[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

8. It is found that, on June 29, 2022, the respondents notified the complainant by telephone that, going forward, she would be required to make all records requests through the town attorney.¹ It is found that, by email the same date, the respondents notified the town attorney of the complainant’s request.

9. It is found that the complainant emailed the town attorney on June 30, 2022, July 1, 2022, and August 8, 2022 to follow up on her request.

10. It is found that, on August 12, 2022, the town attorney emailed the complainant to confirm the scope and timeframe of her request. It is found that, in such email, the town attorney identified the incorrect date of the email correspondence that was the subject of the complainant’s request. It is also found that the complainant did not notify the town attorney of the error. It is found that the respondents conducted a search for records based on the incorrect date, and that the respondents did not locate any responsive records during such search.

11. It is found that, after conducting the search described in paragraph 10, above, the respondents did not notify the complainant that they believed there were no records responsive to her request, nor otherwise notify the complainant that they were no longer working on her request.

12. It is found that, on January 10, 2023 and January 24, 2023, the complainant returned to the respondents’ office and renewed her request to inspect the records described in paragraph 2, above. It is found that, on such dates, the respondents conducted additional searches using the

¹ The respondents testified that, sometime after the complainant left the respondents’ office on June 28, 2022, Ms. Brown filed an application for a civil protective order against the complainant. The respondents further testified that they temporarily required the complainant to make all records requests through the town attorney based on the advice of counsel. The complainant testified that, in September 2022, she resumed making records requests in person at the respondents’ office.

correct dates, and located records responsive to the complainant's request. It is found that the respondents provided the complainant with unredacted copies of such records.

13. At the hearing in this matter, the complainant acknowledged that the respondents provided her with copies of records responsive to her request, but claimed that there should be additional responsive records. The complainant also claimed that the respondents violated the FOI Act by failing to make the requested records available for inspection immediately at the time of her initial request, and by failing to provide her the opportunity to inspect such records promptly. The complainant again requested that the Commission impose a civil penalty against the respondents.

14. With respect to the complainant's claim that the respondents failed to provide her with the opportunity to inspect all responsive records, it is found that the respondents conducted a diligent search for records and located one responsive email thread. It is found that the respondents provided the complainant with a copy of the entire email thread, including attachments, and that the respondents did not redact or delete any information from such records.

15. Based on the foregoing, it is found that the respondents provided the complainant with all records responsive to the request described in paragraph 2, above. Accordingly, it is concluded that the respondents did not violate the disclosure provisions of §1-210(a), G.S.

16. With respect to the complainant's claim that the respondents violated the FOI Act by failing to make the requested records available for inspection immediately at the time of her initial request, it is well settled that the FOI Act does not require public agencies to make public records available for inspection immediately upon demand. *See Manusky v. Commissioner, State of Connecticut, Department of Education, et al.*, Docket #FIC 2016-0224 (November 16, 2016); *Smith v. Mitchell, Chairman, Greater Hartford Transit District, et al.*, Docket #FIC2014-184 (October 8, 2014); *Corriveau, Sr. v. Cheshire Town Planner*, Docket #FIC 1989-331 (March 28, 1990). Rather, pursuant to §1-210(a), G.S., public agencies are required to allow requesters the opportunity to inspect public records "promptly."

17. This Commission has defined the word "promptly," as used in §1-210(a), G.S., to mean "quickly and without undue delay, taking into account all of the factors presented by a particular request [including]: the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requestor needs the information contained in the records; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request." FOI Commission Advisory Opinion #51, *In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk* (Jan. 11, 1982). The Commission further explained:

In weighing these and other factors, common sense and good will ought to be the guiding principles. The Commission believes that if an agency politely explains to a person seeking access to records why immediate compliance is not possible, that person will most likely

understand and appreciate the agency's obligation to balance its duties as custodian of public records with its other duties. And as long as it appears to that person that the agency is not trying to unduly delay compliance, or impose unnecessary restrictions, he or she will most likely try to accommodate the agency. Indeed, it has been the Commission's experience that when an agency is sensitive to the needs of the requester, in most cases the agency is able to meet such person's essential requirements in a manner that also permits it to satisfactorily perform its other functions. In the final analysis, it is the Commission's opinion that this rule of reason and courtesy, if implemented, should eliminate the vast majority of potential conflicts between a citizen's right to timely access to public records, and an agency's duty to comply while processing other important business.

18. At the hearing in this matter, the respondents contended that any delay in complying with the request was the result of the miscommunication between the complainant and the town attorney, described in paragraph 10, above, regarding the timeframe of the request. The respondents further contended that they did not violate the promptness provision of §1-210(a), G.S., because they reasonably believed that there were no records responsive to the request.

19. However, it is found that the respondents presented no evidence that the town attorney contacted the complainant about her request until August 9, 2022, approximately 6 weeks after the complainant made her request. It is also found that the respondents presented no evidence that they made any effort to search for records responsive to the request until August 12, 2022. It is found that the respondents also presented no evidence to explain the reason for the delay in searching for responsive records.

20. In addition, it is found that the respondents' failure to notify the complainant that they believed there were no records responsive to her request, as described in paragraph 11, above, unnecessarily delayed the complainant's right to access the requested records.

21. Based on the foregoing, it is found that the respondents did not act quickly and without undue delay in complying with the request described in paragraph 2, above. Accordingly, it is concluded that the respondents violated the promptness provision in §1-210(a), G.S., by failing to provide the complainant with the opportunity to inspect the requested records promptly.

22. With respect to the complainant's request that the Commission impose a civil penalty against the respondents, the complainant testified that she believes that the respondents have engaged in a pattern of conduct intended to prevent her from accessing public records. However, based on a thorough examination of the record, and notwithstanding the conclusion in paragraph 21, above, the Commission declines to consider the imposition of a civil penalty in this case.

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

1. Henceforth, the respondents shall strictly comply with the promptness requirements of §1-210(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 28, 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:

MARLI RUDKO, 71 Jurach Road, Colchester, CT 06415

ANDREAS BISBIKOS, FIRST SELECTMAN, TOWN OF COLCHESTER; AND TOWN OF COLCHESTER, c/o Attorney Sarah Gleason, Shipman & Goodwin LLP, 300 Atlantic Street, 3rd Floor, Stamford, CT 06901



Jennifer M. Mayo
Acting Clerk of the Commission