

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Rachel Baird,

Complainant

against

Docket # FIC 2022-0145

Mayor, Town of Wethersfield; Town  
Manager, Town of Wethersfield; and Town  
of Wethersfield,

Respondents

March 22, 2023

The above-captioned matter was heard as a contested case on August 31, 2022 and December 13, 2022, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the August 31, 2022 hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

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 separate letter, each dated June 18, 2021, the complainant requested from the respondents, through their attorney,<sup>1</sup> the opportunity to inspect text messages (among other records no longer at issue) sent to and from Town Manager Gary Evans and each of the following individuals:
  - (a) Sergeant Luis Gonzalez (from April 20, 2019 through the date of the request);
  - (b) Lieutenant Donald Crabtree (from April 20, 2019 through the date of the request);  
and
  - (c) Lieutenant Michael Connolly (from April 20, 2020 through the date of the request).<sup>2</sup>

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<sup>1</sup> The hearing officer notes that the complainant testified that she directed all of her communications regarding the Town of Wethersfield to the respondents' attorney, at his request.

<sup>2</sup> At the hearing, the complainant clarified that she specifically sought text messages related to proceedings to terminate the chief of police for the Town of Wethersfield ("Town").

3. It is found that on or about March 2022, the respondents provided records responsive to the request set forth in paragraph 2, above.

4. By complaint filed April 1, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying her prompt access to the records identified 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 section 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 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, . . . or (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides in relevant part that “[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 records described in paragraph 2, above, to the extent such records exist and are maintained, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearing, the complainant contended that the respondents failed to provide all records responsive to the request identified in paragraph 2, above. The respondents disputed this contention.

10. With respect to the respondent Mayor, it is found that the Mayor was not a party to the requested text messages identified in paragraph 2, above, and therefore did not maintain any records responsive to the complainant’s request. It is further found that the mayor had no duty or obligation to retrieve public records which may be maintained by other town officials or departments. See James A. Lash, First Selectman of the Town of Greenwich, et al. v. FOI Commission, et al., 116 Conn. App. 171, 187 (2009) (“Lash”) (as distinct agencies, the first selectman had no duty to maintain or make available the records of the town’s law department,

and the law department had no duty to maintain or make available the records of the first selectman).

11. In light of the foregoing, it is found that the respondent Mayor did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

12. With respect to the remaining respondents, it is found that the respondent Town Manager (“Evans”) was responsible for responding to the June 18, 2021 requests identified in paragraph 2, above. It is found that Evans resigned as town manager, effective September 30, 2021, but nevertheless agreed to assist the Town with its transition to an interim town manager, Bonnie Therrien (“Therrien”).

13. It is found that on or about October 2021, Evans conducted a search for and provided the respondents with some responsive records, including text messages from both his personal and town-issued cell phone. It is further found that, on or about March 2022, the respondents provided 154 pages of text messages to the complainant.

14. It is found that on or about May 2022, Evans provided additional responsive text messages to the respondents, and on or about July 2022, the respondents provided 2,686 pages of text messages to the complainant.

15. Although it is found that the respondents provided the complainant with copies of all text messages that were maintained by Evans and responsive to the request identified in paragraph 2, above, the complainant argued that the respondents violated the FOI Act because they did not provide copies of those same text messages maintained by each individual officer. However, such argument is unavailing. The complainant did not request such text messages from the police department, and under Lash, the respondents had no duty to make the police departments records available to the complainant.

16. Nevertheless, on or about January 2022, the respondents requested from the officers all text messages maintained on the officers’ personal and business cell phones, and thereafter learned that such officers had already deleted text messages from their personal devices. Therefore, no additional copies of text messages responsive to the complainant’s request, identified in paragraph 2, above, exist.<sup>3</sup> Although the complainant decried the destruction of public records at the hearing in this matter, the retention and destruction of public records falls under the jurisdiction of the Public Records Administrator, not the Commission.

17. In light of the foregoing, it is found that the respondents Town and Town Manager did not violate the disclosure provisions in §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

18. With respect to the complainant’s contention that the respondents failed to provide access to such records promptly, the Commission has previously opined that the meaning of the word “promptly” is a particularly fact-based question. In Advisory Opinion #51, In the Matter of

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<sup>3</sup> The hearing officer notes that, upon learning of this practice, the Town implemented a town-wide mobile device use policy that requires all work-related communications be limited to work phones and records of such communications be retained.

a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word “promptly” as used in §1-210(a), G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request.” The advisory opinion goes on to describe some of the factors that should be considered, including: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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.

19. It is found that during the time of the complainant’s pending request, there were numerous outstanding requests for records pending with the respondents, including at least 20 filed by the complainant. In addition, it is found that during this time the Town was transitioning from Evans as town manager to a new town manager.

20. In addition, it is found that, although Evans provided the Town with a thumb drive containing text messages in October 2021, the respondents did not become aware that such records had been provided until several months later. It is further found that when the Town discovered the thumb drive and attempted to review its contents, the Town realized that the files could not be opened, and therefore asked Evans to provide another thumb drive containing the records. It is found that these issues contributed to the delay in disclosure of responsive records.

21. It is found that delay in disclosure of responsive records was also caused by Evans’ initial, unreasonably narrow the construction of the complainant’s request.

22. Taking into consideration all of the factors presented, it is concluded that the respondents failed to provide the records described in paragraph 2, above, to the complainant promptly.

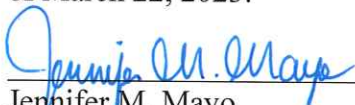
23. Accordingly, it is therefore concluded that the respondents Town and Town Manager violated the promptness provisions in §§1-210(a) and 1-212(a), G.S., under the facts of this case.

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

1. Henceforth, the respondents Town and Town Manager shall strictly comply with the promptness provisions in §§1-210(a) and 1-212(a), G.S.

2. The complaint is dismissed against the respondent Mayor.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 22, 2023.

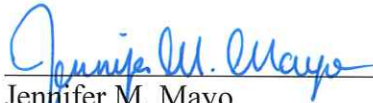
  
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Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**RACHEL BAIRD**, 2234 Silas Deane Highway, Suite 2, Rocky Hill, CT 06067

**MAYOR, TOWN OF WETHERSFIELD; TOWN MANAGER, TOWN OF WETHERSFIELD; AND TOWN OF WETHERSFIELD**, c/o Attorney Kenneth R. Slater, Jr., Halloran Sage LLP, 225 Asylum Street, Hartford, CT 06103

  
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Jennifer M. Mayo  
Acting Clerk of the Commission