

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Nancy Griswold,

Complainant

against

Docket #FIC 2023-0543

Stacey Sefcik, Zoning Enforcement Officer
and Land Use Administrator, Building and
Land Use Department, Town of Thomaston;
Building and Land Use Department, Town
of Thomaston; and Town of Thomaston,

Respondents

October 9, 2024

The above-captioned matter was heard as a contested case on May 30, 2024 and September 6, 2024, at which times 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, by form dated September 6, 2022, the complainant requested copies of the following records:
 - (a) “Reports on Enforcement Activities from April 7, 2022 to present”;
 - (b) “Planning & Zoning Commission’s *Standard Zoning Enforcement Procedures*”;
 - (c) “[a]ll zoning complaints from 2007 to present, Stacey Stefciik’s spreadsheet prioritizing these complaints, and all emails related to these complaints”
3. It is found that, by email dated September 9, 2022, the respondent Zoning Enforcement Officer (“ZEO”) acknowledged the complainant’s request described in paragraph 2, above, and disclosed certain records responsive to the complainant’s requests described in paragraphs 2(a) and 2(b), above. It is also found that the respondent ZEO informed the complainant that it would be difficult and time-consuming to retrieve emails from old email accounts and instructed the complainant that if the complainant wished the respondents to proceed with the necessary work required to search for all responsive emails, the complainant

should confirm such request via email. It is further found that the respondent ZEO suggested to the complainant that, if the complainant wished pursue her request described in paragraph 2(c), above, the complainant should set up an appointment to inspect public records at the respondents' regular business office.

4. It is found that, by email dated October 21, 2022, the complainant narrowed her original request, described in paragraph 2(c), above. Specifically, the complainant wrote: "[a]t this time I do not intend to inspect any public records in person. However, in an effort to prioritize and refine any outstanding or future requests, I would like to request a copy of all emails [the respondent ZEO] ha[s] sent or received from February 2019 to present."

5. It is found that, by email dated October 25, 2022, the respondent ZEO acknowledged the complainant's request described in paragraph 4, above, and stated that it would take considerable time to review responsive emails for potential exemptions. It is also found that the respondent ZEO informed the complainant that "with the exception of emails...", certain records responsive to other requests, not at issue in this matter, were available for inspection at the respondents' regular business office and that the complainant had previously been offered the opportunity to inspect such records. It is also found that, in the October 25th email, the ZEO informed the complainant: "**[n]o one in this office will be making these copies for you; we are under no obligation to do so, we do not have the time to do so, and therefore we will NOT be doing so.**" (Emphasis in original.)

6. It is found that, by email dated October 18, 2023, the complainant requested a status update on her records request described in paragraph 4, above, submitted nearly one year prior.

7. It is found that, by email dated October 25, 2023, the respondent ZEO quoted a portion of her previous October 25, 2022 email, described in paragraph 5, above, detailing the considerable time it would take to review responsive emails. It is also found that the respondent ZEO, again, informed the complainant she had been offered the opportunity to inspect records at the respondents' regular business office and that the complainant had refused to do so.

8. By letter of complaint, dated and filed October 26, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records, described in paragraph 4, above. The complainant also requested the imposition of a civil penalty against the respondents.

9. 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.

10. 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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. (Emphasis added.)

11. 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.”

12. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

13. At the hearing in this matter, the complainant confirmed that the only records at issue in this matter are the emails described in paragraph 4, above, and alleged that the respondents failed to provide the requested records promptly.

14. In Advisory Opinion #51, In the Matter of 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 consideration all of the factors presented by a particular request. As the court recognized in Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. HHB-CV-18-6047741 (July 20, 2020) *6, a public agency should consider its obligations under the FOI Act as a “primary duty” of that agency, “on par with the [agency’s] other significant duties, or said another way, that the agency’s FOIA duty is not a second class duty.”

15. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: 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.

16. With regard to the factors listed above, it is found that the respondent ZEO, in her capacity as both the Zoning Enforcement Officer and the Land Use Officer, is primarily responsible for assisting multiple commissions and committees within the respondent Town of Thomaston (“town”), including the Planning and Zoning Commission, the Inland Wetlands and Watercourses Commission, the Conservation Committee, the Economic Development Commission, the Zoning Board of Appeals, and several active subcommittees (“committees”). It is also found that the respondent ZEO and the respondent Building and Land Use Department assist such committees in many respects, including acting as the point of contact for the public regarding such committees, helping the committees meet their responsibilities under state statute, providing legal notice, approving and denying applications, and attending the meetings of such committees. The ZEO also testified, and it is found, that many of her responsibilities have strict time constraints, including automatic approvals if action is not taken within the statutory time period. The ZEO further testified, and it is found, that the respondent Building and Land Use Department is a small office.

17. It is found that the volume of the requested records, described in paragraph 4, above, is high and that the respondent ZEO testified that the volume of such responsive emails is “unquantifiable”. The respondent ZEO also testified, however, and it is found, that she spent several hours one morning searching for responsive records and was able to locate approximately six months’ worth of responsive emails.¹ It is also found that, while the complainant did not specify the importance of the requested records to her, the complainant did follow-up with the respondents multiple times. It is further found that, when questioned by the hearing officer whether the respondent ZEO knew of the importance of the records to the complainant, the respondent ZEO responded that if the number of requests is indicative, then “I gather she wants them.”

18. It is found that, as of the continued hearing on September 6, 2024, two years had elapsed since the complainant’s initial request and nearly two years had passed since the complainant’s narrowed request on October 21, 2022. It is also found that no responsive emails have been disclosed to the complainant.

19. It is found that there is a significant history between the complainant and the respondents and that the complainant has made several FOI requests of the respondent ZEO. The respondent ZEO also testified that for a time the two parties seemed to work together amicably. It is also found, however, that such relationship is no longer amicable and that the processing of this FOI request became mired in the acrimonious relationship between the parties.

20. Based upon all of the foregoing, and in consideration of all of the factors presented, it is concluded that the respondents violated the promptness requirements in §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

21. At the hearings on this matter, the respondents argued multiple times that it is the town’s policy to direct the public to inspect records at the respondents’ regular business office.

¹ The Commission notes that the complainant’s request, described in paragraph 4, above, requested three years’ worth of emails. Consequently, the respondent ZEO should have been able to locate all responsive emails by spending several hours searching, over the course of six mornings.

It is found that, where a person requests a *copy* of a public record, the town's policy refusing to make copies and of requiring such person to inspect records at the respondents' regular place of business is in contravention of §1-212(a), G.S.

22. Accordingly, it is concluded that the respondents violated §1-212(a), G.S., by refusing to process the complainant's request for copies of public records on the ground that they had offered her the ability to inspect public records.

23. After consideration of the entire record, the Commission in its discretion declines to consider the imposition of a civil penalty.

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

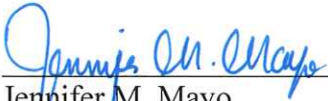
1. Within thirty (30) days of the date of the Notice of Final Decision in this matter, the respondents shall conduct a thorough search for records responsive to the request described in paragraph 4 of the findings, above, and provide copies of such records to the complainant free of charge.

2. The Commission notes that the respondents indicated, without providing any evidence, that the requested records may contain information that is exempt from disclosure pursuant to the attorney-client privilege, the federal Family Educational Rights and Privacy Act of 1974, and "other exemptions". In the event the respondents determine that the requested records, or portions thereof, are subject to mandatory exemptions to disclosure (as opposed to permissible exemptions set forth in §1-210(b), G.S., or similar statutes), they shall so inform the complainant, indicating what exemption(s) is applicable and may withhold such records or portions thereof, when complying with paragraph 1 of this order. If the complainant wishes to challenge the withheld records, or portions thereof, she may file a complaint with the Commission, which will be afforded expedited treatment. See §§1-21j-13 and 1-21j-29(b) of the Regulations of Connecticut State Agencies.

3. Any policy or "rule" of the respondents requiring a person to inspect public records, where such person requests copies of public records, is void.

4. 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 October 9, 2024.



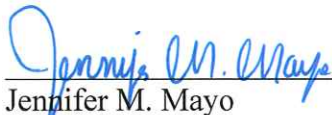
Jennifer M. Mayo
Acting Clerk of the Commission

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:

NANCY GRISWOLD, 24 Atwood Road, Thomaston, CT 06787

STACEY SEFCIK, ZONING ENFORCEMENT OFFICER AND LAND USE ADMINISTRATOR, BUILDING AND LAND USE DEPARTMENT, TOWN OF THOMASTON; BUILDING AND LAND USE DEPARTMENT, TOWN OF THOMASTON; AND TOWN OF THOMASTON, c/o Attorney Steven E. Byrne and Attorney Nicole L. Byrne, Law Offices of Byrne & Byrne, LLC, 270 Farmington Avenue, Suite 365, PO Box 1065, Farmington, CT 06034



Jennifer M. Mayo
Acting Clerk of the Commission