

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Alan Tuchmann,

Complainant

against

Docket #FIC 2023-0466

Administrator, Land Use Department,
City of Ansonia; Land Use Department,
City of Ansonia; Director, Economic
Development Department,
City of Ansonia; Economic Development
Department, City of Ansonia; and
City of Ansonia,

Respondents

August 28, 2024

The above-captioned matter was heard as a contested case on April 2, 2024, at which time the complainant and the respondents appeared and presented testimony, exhibits, and argument on the complaint. A continued hearing was held on May 21, 2024. The complainant and respondents appeared at the continued hearing and presented additional evidence 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 August 23, 2023, the complainant submitted two identical requests for records to the respondent Land Use Administrator and the respondent Economic Development Director (collectively, the "August 23 Requests"). In those requests, the complainant sought:

a copy of all written communication, including correspondence and emails, between, to and from, your office and Attorney Charles Willinger, Attorney James Lenex, West Main Ansonia, LLC, Yeladim, LLC, and Cynthia Lois Selmon, Trustee, from June 1, 2022, to April 10, 2023, regarding 1 West Main Street and 35 Main Street, Ansonia, CT 06401.

3. It is found that on August 24, 2023, the City of Ansonia, Corporation Counsel, on behalf of the respondents, acknowledged their receipt of the complainant's August 23 Requests, and informed the complainant that they are processing his requests and reviewing responsive records for potential exemptions.

4. By letter of complaint received and filed on September 11, 2023, the complainant appealed to this Commission alleging that the respondents had failed to disclose records responsive to his requests described in paragraph 2, above.¹

Respondents' Search for and Disclosure of Records

5. It is found that the respondent Land Use Administrator and respondent Economic Development Director commenced their search for responsive records within approximately two weeks of receiving the complainant's August 23 Requests.

6. It is found that each respondent was responsible for conducting their own search for responsive records which consisted of searching both their respective department's physical files as well as their email records.

7. It is found that with respect to the search conducted for email records, both respondents searched their respective mailboxes using the names of the individuals/entities and the addresses referenced in the complainant's August 23 Requests as keywords. It is found that where the respondents knew they did not have correspondence with an individual referenced in the complainant's August 23 Requests, they did not conduct a keyword search for that individual.

8. It is found that the respondents concluded their search for records on or about November 25, 2023, at which time they forwarded such records to the City's Corporation Counsel for review and disclosure.

9. It is found that on November 28, 2023, the respondents disclosed responsive records to the complainant consisting of 31 pages of email correspondence between the individuals referenced in the August 23 Requests (the "initial disclosure").

10. At the April 2, 2024 hearing, the complainant alleged that the respondents' initial disclosure described in paragraph 9, above, was incomplete because several documents either linked or referred to in such disclosure were not included. Specifically, the complainant alleged that he did not receive:

- a. the full correspondence contained in the May 19, 2022 email between Attorney James Lenex and the Economic Development Director sent at 6:09 pm (the "May 19 email").

¹ In his complaint, the complainant alleges that more than 57 days had passed since he initially made his requests. It is unclear how the complainant arrived at this conclusion, as the complainant made his requests on August 23, 2023, and he filed his complaint with this Commission on September 11, 2023.

- b. the contents of the link contained in the May 20, 2022 (10:04 am) email sent to the Economic Development Director (the “May 20 email”).
- c. The attachments included or referenced in the following emails: (i) the June 1, 2022 email sent to the Economic Development Director at 10:58 am (the “June 1 email”); (ii) the December 2, 2022 email correspondence between Attorney Willinger and the Economic Development Director (the “December 2 email”).
- d. The identities of the “potential buyers” noted in the June 1 email referenced in subparagraph c, above.
- e. Other communications related to the email sent by the Economic Development Director to Attorney Willinger on January 10, 2023, at 10:06 am (the “January 10 email”).
- f. Any emails or documents referenced in the April 13 correspondence between the Land Use Administrator, Corporation Counsel, and the Economic Development Director.
- g. The affidavit attached to the email by Attorney Willinger to the Economic Development Director on April 19, 2023, at 2:25 pm (the “April 19 email”).

11. It is found that the May 19 email referenced in paragraph 8(a), above, is part of an email thread beginning on May 19, 2022, at 6:09 pm and ending on May 20, 2022, at 9:41 am, the entirety of which was contained in the respondents’ initial disclosure.

12. Moreover, to the extent that the complainant seeks the correspondence to other individuals referenced in the May 19 email, it is found that such individuals were not named in the complainant’s August 23 Requests. It is concluded, therefore, that to the extent such records are maintained by the respondents, they are outside the scope of the complainant’s request and will not be considered by the Commission.

13. It is found that the linked/attached records referenced in paragraph 8(b) and (c), above, were not included in the respondents’ November 28 disclosure. It is found that the respondents inadvertently overlooked those linked/attached records when searching for and compiling responsive records.

14. It is found that the respondents first learned of this oversight at the April 2, 2024 hearing. However, the respondents identified:

- a. the linked record in the May 19 email as a draft version of a Conceptual Site Model Report.
- b. the linked record in the June 1 email as a final version of the “North End Economic Recovery Municipal Development Plan.”

- c. the attachments contained in the December 2 email as: (i) a Title Report for 1 West Main Street, Ansonia, Connecticut and 35 Main Street, Ansonia, Connecticut; and (ii) two letters from Connecticut State Marshal Authur J. Davies concerning those same properties.

15. It is found that approximately one month after the April 2, 2024 hearing, the respondents located the linked/attached records and mailed hard copies of the additional records to the complainant via certified mail. See Respondents' Exhibit 3.

16. It is found that, at the time of the May 21, 2024 continued hearing, the complainant was not aware of the respondents' supplemental disclosure of records described in paragraph 13, above.²

17. The respondents represented that they would provide the complainant with an electronic version of the supplemental disclosure at the conclusion of the May 21, 2024 continued hearing.

18. With regard to the allegation described in paragraph 8(d), above, it is found that the complainant did not request public records containing the names of the potential buyers referenced therein, but rather, asked the respondents to answer his questions concerning the identity of those individuals. The Commission has long concluded, and the court has affirmed, that a public agency has no duty to answer questions, only to provide access to, and copies of, public records under the Freedom of Information ("FOI") Act. See Kimberly Albright-Lazzari et al v. Colleen Murphy, Connecticut Freedom of Info. Comm'n et al, CV15014984S, 2011 WL 1886878, at *3 (Conn. Super. Ct. April 21, 2011).

19. It is found that the email described in paragraph 8(e), above, is part of an email thread containing correspondence occurring on January 10, 2022, between 10:06 am and 12:35 pm. There is no indication that the respondents excluded responsive records related to this email thread.

20. With respect to the additional records referenced in the April 13 email described in paragraph 8(f), above, it is found that such records consist of email communications between the Land Use Administrator and a state prosecutor.

21. It is found that the state prosecutor referenced in the April 13 email described in paragraph 8(f), above, was not one of the individuals specified in either of the complainant's August 23 Requests. It is concluded, therefore, that such a record does not reasonably fall within the scope of complainant's August 23 Requests and will not be considered by the Commission.

² The Commission takes administrative notice of the fact that as of May 7, 2024 the respondents' supplemental disclosure was unclaimed by the complainant and that on May 23, 2024, the mailed copy of the supplemental disclosure was marked as "Return to Sender" on May 23, 2024 at 8:50 am.

22. With respect to the affidavit attached to the April 19 email referenced in paragraph 8(g), above, it is found that such email fell outside of the date range specified in the complainant's August 23 Requests. It is concluded, therefore, that the affidavit attached to the April 19 email does not reasonably fall within the scope of the complainant's August 23 Requests.³

23. Accordingly, it is concluded that the respondents provided the complainant with all responsive records they maintained and did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

Promptness

24. The complainant also alleges that the respondents failed to promptly disclose records responsive to his request described in paragraph 2, above.

25. The Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (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 factors presented by a particular request."

26. 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 requestor, if ascertainable; and the importance to the public of completing other agency business without the loss of personnel time involved in complying with the request. In addition, common sense and goodwill ought to be the guiding principles.

27. It is found that the complainant's August 23 Requests were narrow and identified specific individuals, entities, and date ranges by which the respondents could focus their search efforts.

28. It is found that the respondents did not disclose any records to the complainant until November 28, 2023, over three months after the complainant made his requests.

29. While the respondents indicated that they had conducted a search of their physical files, it is found that most, if not all, of the records disclosed to the complainant on November 28, 2023, consisted of emails and amounted to 31 pages of records.

³ The Commission notes that the respondents provided the complainant with an electronic copy of the affidavit during the May 21, 2024 continued hearing.

30. It is found that the respondents' searches for electronic records consisted of keyword searches of their emails using the information provided in the complainant's requests.

31. Both respondents testified: (i) to the busy nature of their respective offices; (ii) that they serve in multiple roles for the City of Ansonia; (iii) they are responsible for searching for records when their respective offices receive FOI requests; and (iv) that given their job duties with the City and the scope of their workload in the fall of 2023, they were required to balance their time searching for responsive records with their other obligations. The respondent Economic Development Director also testified that she has one other individual working in her office, but that individual splits her time between other departments.

32. Nevertheless, considering the specificity of the complainant's requests, the limited number of responsive documents at issue, and the lack of any in-depth or otherwise onerous search for records, it is found that the respondents three-month delay in providing the complainant *any* records as part of their initial disclosure was not prompt under the circumstances.

33. Moreover, it is found that the respondents first became aware of missing attachments to emails that were responsive to the complainant's request at the April 2, 2024 hearing. While the respondents did eventually remedy their inadvertent omission of such attachments, they did not make a supplemental disclosure of records until approximately one month after the hearing, as indicated in paragraph 15, above.


34. It is found that after the April 2, 2024 hearing, the respondents were apprised of which attachments were missing and where to locate such attachments. It is found, therefore, that the respondents' one month delay in sending additional records was not prompt under the circumstances.

35. Accordingly, it is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

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) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 28, 2024.

A handwritten signature in blue ink, reading "Molly Steffes", is written over a horizontal line.

Molly Steffes
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:

ALAN TUCHMANN, P.O. Box 2984, New Haven, CT 06515

ADMINISTRATOR, LAND USE DEPARTMENT, CITY OF ANSONIA; LAND USE DEPARTMENT, CITY OF ANSONIA; DIRECTOR, ECONOMIC DEVELOPMENT DEPARTMENT, CITY OF ANSONIA; ECONOMIC DEVELOPMENT DEPARTMENT, CITY OF ANSONIA; AND CITY OF ANSONIA, c/o Attorney John P. Marini, Marino, Zabel & Schellenberg, PLLC, 657 Orange Center Road, Orange, CT 06477



Molly Steffes
Acting Clerk of the Commission