

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Daniel Dunn,

Complainant

against

Docket # FIC 2023-0570

Lauren Garrett, Mayor, Town of Hamden;
and Town of Hamden,

Respondents

August 28, 2024

The above-captioned matter was heard as a contested case on April 23, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint.

Following the contested case hearing, pursuant to the order of the hearing officer, the parties submitted the following documents, which have been marked as after-filed exhibits:

Respondents' Exhibit 6 (after-filed): Affidavit of Susan Gruen, Esq., dated May 7, 2024, with attachments

Respondents' Exhibit 7 (after-filed): Affidavit of Pedro Rodrigues, dated May 10, 2024, with attachments

Complainant's Exhibit L (after-filed): Affidavit of Daniel Dunn, dated July 19, 2024

Complainant's Exhibit M (after-filed): Ethics complaint submitted to the Town of Hamden by Daniel Dunn and related correspondence

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 letter dated October 24, 2023, the complainant requested that the respondents provide him with the opportunity to inspect or, in the alternative, provide him with copies of, the following records:
 - (a) Any and all memorandum, bulletins or adopted written policies laying out the policies the Hamden Police Department ["Department"], or any of its employees or agents, are to follow in publishing and in unpublishing/deleting social media messages (i.e. posts to the Department's official Facebook page);

- (b) Any and all memorandum, bulletins or adopted written policies laying out the policies the Hamden Police Department, or any of its employees or agents, are to follow in cataloging and deleting/destroying social media data (i.e. posts and comments on the Department's official Facebook page);
- (c) Any and all memorandum, bulletins or adopted written policies laying out the policies the Hamden Police Department, or any of its employees or agents, are to follow in deciding who and to what extent people outside the department (i.e. members of the general public) may interact/comment or otherwise post messages [on the] Department's official Facebook page including what policies and procedures are to be followed when deciding to limit a person's interaction upon the Department's official Facebook page and how the Department ensures due process in limiting public discourse upon its Facebook page (i.e. what appeal process exists);
- (d) All records of all posts ever deleted from the Hamden Police Department's official Facebook page;
- (e) Images of all posts ever deleted from the Hamden Police Department's official Facebook page;
- (f) All records of all comments ever deleted from the Hamden Police Department's official Facebook page;
- (g) Images of all comments ever deleted from the Hamden Police Department's official Facebook page;
- (h) All records of Facebook users who have ever had their access to or permission to comment upon posts on the Hamden Police Department's official Facebook page limited or denied;
- (i) All records of notice provided by the Department to Facebook users who have had their access to or permission to comment upon posts on the Hamden Police Department's official Facebook page limited or denied;
- (j) All records tending to show that an advisement of the right to appeal or of the procedures to appeal the Department's decisions to limit or deny a Facebook user access to or permission to comment upon posts on the Hamden Police Department's official Facebook page has been given, posted or advertised in any way.

3. It is found that by email dated October 26, 2023, the respondents acknowledged the complainant's request.

4. By letter of complaint filed November 13, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the request described 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 . . . (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 concluded that the records described in paragraph 2, above, to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that by email dated November 17, 2023, the respondents notified the complainant that they were working on his request and expected to provide him with a response the following week.

10. It is found that by email dated November 24, 2023, the respondents provided the complainant with the following records (“November 24 Production”): (a) the Department’s social media policy, General Order no. 004-11, responsive to the request described in paragraphs 2(a) through (c), above; (2) four screenshots of comments and posts that had been deleted from the Department’s Facebook page, responsive to the requests described in paragraphs 2(e) and (g), above; and (3) five screenshots reflecting Facebook users who had been blocked from the Department’s Facebook page, responsive to the request described in paragraph 2(h), above. It is further found that the respondents notified the complainant that they were continuing to work on his request.

11. It is found that by email dated November 24, 2023, the complainant inquired whether the records described in paragraph 10, above, constituted the full scope of records responsive to the request. It is found that the respondents replied to such email the same day, again notifying the complainant that they were continuing to work on the request and would “keep [the complainant] informed if there are additional records or if there are no additional records.”

12. It is found that by email dated December 28, 2023, the respondents provided the complainant with four additional General Orders responsive to the requests described in paragraphs 2(a) and 2(b), above (“December 28 Production”). It is further found that the respondents notified the complainant that other than the records described in paragraph 10, above, the respondents did not maintain any additional responsive records.

13. However, it is found that when the respondents sent the December 28 Production, the respondents inadvertently failed to attach certain records that were referenced in the accompanying cover letter. It is found that by email dated March 11, 2024, the respondents notified the complainant of such oversight, and re-sent the December 28 Production in full, including the missing attachments. It is found that such attachments were comprised of eight pages of internal correspondence concerning the Department’s social media practices and procedures.

Respondents’ Alleged Failure to Retain Records

14. At the hearing in this matter, the complainant claimed that the respondents violated the FOI Act by failing to provide him with certain records responsive to the requests described in paragraphs 2(e) through (g), above, that were deleted prior to the request at issue. Specifically, the complainant contended that the respondents improperly failed to retain records of all posts and comments that were deleted from the Department’s Facebook page in violation of the Record Retention Schedule published by the Public Records Administrator pursuant to §§1-18 and 11-8 through 11-8b, G.S., and that such failure constituted a denial of his request for such records. The complainant acknowledged that the Commission repeatedly has concluded that it lacks jurisdiction over such claims, but contended that the Commission should reconsider such precedent.

15. As an administrative agency, the Commission is a “tribunal[] of limited jurisdiction” and “must act strictly within its statutory authority.... It cannot modify, abridge or otherwise change the statutory provisions, under which it acquires authority unless the statutes expressly grant it that power.” *Albright-Lazzari v. FOI Commission*, 136 Conn. App. 76, 82 n.4 (2012).

16. The present case involves a claimed denial of the complainant’s right to access public records. As noted in paragraph 6, above, pursuant to §1-210(a), G.S., unless a state statute or federal law provides otherwise, the public has the right to inspect, copy, or receive copies of “all records **maintained or kept on file** by any public agency.” (Emphasis added.) Thus, §1-210(a), G.S., grants the public the right to access non-exempt public records that are “maintained or kept on file” by a public agency.

17. Based on the plain language of §1-210(a), G.S., the Commission has long recognized that it generally does not have jurisdiction over matters relating to the retention and destruction

of public records. See, e.g., *Schoenhorn v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, et al.*, Docket #FIC 2022-0598, ¶13 (Oct. 11, 2023); *Montoya v. Superintendent of Schools, Westport Public Schools, et al.*, Docket #FIC 2019-0607, ¶17 (June 23, 2021); *Cushman v. Director, Central Communications, City of Middletown, et al.*, Docket #FIC 2019-0719, ¶22 (Nov. 18, 2020); *Connolly v. Mayor, City of Hartford, et al.*, Docket #FIC 1997-397, ¶12 (April 8, 1998); *Bahramian v. City and Town of Meriden, et al.*, Docket #FIC 1979-220, ¶6 (Feb. 26, 1980). Rather, authority over such matters rests with the Public Records Administrator, pursuant to §§1-18 and 11-8 through 11-8b, G.S., and with the Office of the State’s Attorney, pursuant to §1-240, G.S. The complainant did not identify any provision of the FOI Act that would support his contention that the Commission should reconsider such precedent.

18. The Commission has recognized that where an agency destroys or deletes a public record *after* receiving a request, such destruction constitutes a denial of the request. See, e.g., *Dunn v. Chief, Police Department, Town of Hamden, et al.*, Docket #FIC 2022-0167 (April 12, 2023).¹ In the present case, however, the complainant did not claim that the respondents deleted any of the posts and comments after receiving his request.²

19. Accordingly, it is concluded that the respondents did not violate the FOI Act by failing to retain records of posts and comments that were deleted from the Department’s Facebook page prior to the date of the request at issue.

Promptness

20. The complainant further claimed that the respondents failed to comply with his request promptly. The complainant contended that the requested records were relevant to an ethics complaint that he filed around the same time as the records request, and that the respondents failed to provide him with such records until after the ethics complaint was considered by the Hamden Board of Ethics.

21. The Commission has defined the word “promptly,” as used in §§1-210(a) and 1-212(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

¹ In Docket #FIC 2022-0167, referenced in paragraph 18, above, the Commission concluded that the Department violated the FOI Act by destroying a public record after the complainant had requested a copy of it. In the present matter, the complainant noted that after the decision in Docket #FIC 2022-0167, the Town enacted an ordinance aimed at preventing such issues in the future. To the extent the complainant claimed that the respondents violated such ordinance by failing to retain the records at issue in this case, the Commission lacks jurisdiction over such matters.

² The Commission also notes that nothing in the record suggests that the respondents intentionally failed to retain the records in question. To the contrary, the respondents testified credibly that they believed that any deleted posts or comments would remain accessible in their Facebook account, and that they learned only after receiving the request at issue that such deleted posts and comments are only available for a limited time, after which they are permanently erased. The respondents further testified that they attempted to contact Facebook to regain access to the deleted posts and comments, but that such attempts went unanswered.

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).

22. It is found that although the complainant’s request contained 10 separate subparts, such request was not especially voluminous or overly burdensome. Rather, it is found that the complainant essentially sought three categories of records: the Department’s written policies and procedures concerning the use and management of its social media accounts (paragraphs 2(a) through (c)); records related to deleted posts and blocked users from the Department’s official Facebook page (paragraphs 2(d) through (h)); and records related to any due process rights afforded to Facebook users affected by the decision to delete posts or block users from the Department’s official Facebook page (paragraphs 2(i) through (j)).

23. It is found that the respondents provided the complainant with a total of 56 pages of records responsive to his request. It is further found that 39 of the 56 pages consisted of the Department’s General Orders, described in paragraphs 10 and 12, above. It is found that such records are readily available and would not have required an extensive or time-consuming search. It is found, however, that the respondents did not provide the complainant with the majority of the responsive General Orders until December 28, 2023, more than 9 weeks after receiving the request. It is also found that the respondents did not present any evidence to explain the reason for the delay in providing the General Orders.

24. With respect to the eight pages of internal correspondence described in paragraph 13, above, it is found that the respondents did not commence their search for such records until December 7, 2023. It is further found that the respondents did not present any evidence to explain the reason for the delay in commencing such search. In addition, as noted in paragraph 13, above, because the respondents inadvertently failed to include the internal correspondence in the December 28 Production, the respondents did not provide the complainant with such records until March 11, 2024.

25. It is further found that the respondents did not present any evidence that they were dealing with other pressing matters at the time of the request or that they were under any specific time constraints that would have contributed to a delay in complying with the complainant’s request.

26. It is also found that on October 23, 2023—the day before the complainant submitted the request described in paragraph 2, above—the complainant submitted a complaint to the respondents alleging that the Department engaged in a practice of deleting comments from its official Facebook page that were critical of the Department, allegedly in violation of Department policies and the Town’s Code of Ethics. It is found that the records requested by the complainant were relevant to the ethics complaint.

27. It is found that the ethics complaint described in paragraph 26, above, was considered at the regular meeting of the Hamden Board of Ethics on December 19, 2023. It is

further found that the respondents did not provide the complainant with the majority of the responsive records until just over one week later, on December 28, 2023.

28. Based on the foregoing, and considering all of the facts and circumstances of this case, it is found that the respondents failed to prove that they complied with the complainant's request promptly. It is therefore concluded that the respondents violated the promptness requirements set forth in §§1-210(a) and 1-212(a), G.S.

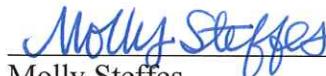
Civil Penalty

29. After consideration of the entire record in this matter, the Commission in its discretion declines to consider the imposition of a civil penalty against the respondents.

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 provisions 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.



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:

DANIEL DUNN, c/o Attorney Joseph Sastre, The Law Office of Joseph R. Sastre, LLC, 852 Plainville Avenue, Farmington, CT 06032

LAUREN GARRETT, MAYOR, TOWN OF HAMDEN; AND TOWN OF HAMDEN, c/o Attorney Byran L. LeClerc, Berchem Moses P.C., 75 Broad Street, Milford, CT 06460

Molly Steffes
Molly Steffes
Acting Clerk of the Commission