

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Martin Rutt,

Complainant

against

Docket # FIC 2023-0404

Land Use Inspector, Land Use Department,  
Town of Prospect; Land Use Department,  
Town of Prospect; and Town of Prospect,

Respondents

July 24, 2024

The above-captioned matter was heard as a contested case on January 29, 2024 and February 26, 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 letter dated July 21, 2023, the complainant emailed and hand-delivered to the respondents a request to:
  - (a) “[A]rrange an appointment to review any and all public documents maintained by the Prospect Land Use Offices for all and any special Permit Land Use or any other Land Use Applications as well as all and any Land Use Enforcement actions concerning the real property located at 111 Waterbury Road, Prospect, CT from January 1, 2018 to date” and
  - (b) “[I]nspect and examine any and all records concerning said property at 111 Waterbury Road on file in the Prospect Land Use Offices” from January 1, 2018 through the date of the request.

It is also found that the complainant notified the respondents that he intended to request copies or to scan certain records following inspection, and that he would pay the requested fee.

3. It is found that, by email dated July 24, 2023, the respondents acknowledged the complainant’s request.

4. It is found that, in response to the July 24, 2023, email acknowledging the request, by email dated July 31, 2023, the complainant inquired further about potential dates to inspect the records described in paragraph 2, above.

5. By letter of complaint filed August 11, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with access to the records described in paragraph 2, above. At the hearing, the complainant requested that the Commission issue a civil penalty against the respondents.

6. Section 1-200(5), G.S., provides that:

“[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, or ... (3) receive a copy of such records in accordance with section 1-212.

8. 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.”

9. It is concluded that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that on or about November 13, 2023, the respondents’ counsel contacted the complainant and notified him that records responsive to the request described in paragraph 2, above, were available for inspection. It is found that on or about November 17, 2023, the complainant met with one of the respondents’ attorneys and inspected over 1200 pages of records. It is also found that the complainant identified approximately 1000 pages of records that he wished to obtain copies of, and that copies of such records were made for the complainant and provided to him on or about December 5, 2023.

11. It is also found that, on or about December 15, 2023, the respondents notified the complainant that additional records responsive to the request described in paragraph 2, above, were available for inspection, and that on or about December 22, 2023, the complainant inspected approximately 1200 additional pages of responsive records. It is also found that on or about December 28, 2023, the complainant received copies of over 300 pages of such records from the respondents.

12. At the hearing, the complainant contended that he was primarily concerned with the delay in making the records described in paragraph 2, above, available for inspection, but that he also believed that the respondents had not made all responsive records available for such inspection. The respondents disputed these contentions.

13. With respect to the complainant's contention that the respondents failed to provide him with the opportunity to inspect all records responsive to the request described in paragraph 2, above, it is found that the respondents conducted a reasonable and diligent search and located all records responsive to the request described in paragraph 2, above, that they maintained.

14. Accordingly, it is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged.

15. With respect to the complainant's contention that the respondents failed to comply with his request to inspect the records described in paragraph 2, above, promptly, the 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). 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, the court recognized that 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."

16. It is also well settled that the law does not require "immediate" access to records upon demand, but rather permits a person the right to inspect records "promptly." See *Egan v. Comptroller, Office of the Comptroller, City of Ansonia, et al.*, Docket #FIC 2023-0277 (April 25, 2024); *Deanna Bouchard v. Andreas Bisbikos*, Docket #FIC 2022-0199 (March 22, 2023); *Anne Manusky v. Commissioner, State of Connecticut, Department of Education, et al.*, Docket #FIC 2016-0224 (November 16, 2016); see also *Bradshaw Smith v. Stephen Mitchell, Chairman, Greater Hartford Transit District, et al.*, Docket #FIC 2014-184 (October 8, 2014); *Suzanne Carlson and the Journal Inquirer v. Mayor, Town of Vernon, et al.*, Docket #FIC 2011-542 (May 23, 2012) ("nothing in the FOI Act requires employees of a public agency, or public officials,

necessarily, to interrupt their work in order to immediately fulfill a request to inspect or copy records”).

17. Throughout the hearing and in his complaint, the complainant contended that he and another town resident, Patricia Dyer, have repeatedly requested access to the records described in paragraph 2, above, beginning in November 2022.<sup>1</sup> It is found, however, based on the evidence presented, that the first time the complainant made the request described in paragraph 2, above, was July 21, 2023.

18. It is found that the request described in paragraph 2, above, did not include any time by which the complainant needed access to the records, nor did it address their importance to the complainant. However, it is evident from the surrounding facts and circumstances that the respondents knew, or should have known, that the requested records were highly important to the complainant, and that he wished to inspect such records as quickly as possible.

19. As already found, the respondents acknowledged the complainant’s request on July 24, 2023. It is also found that, immediately thereafter, the respondents sought guidance from the FOI Commission’s Director of Education and Communications on compliance with requests to inspect records.

20. It is found that the respondent Land Use Inspector is the person primarily responsible for responding to FOI requests for the Land Use Office as well as three other Town of Prospect (the “town”) commissions: the Planning and Zoning Commission, the Zoning Board of Appeals, and the Inland Wetlands Commission. It is found that the Land Use Inspector also serves as staff to the aforementioned three commissions, fulfilling a variety of responsibilities. It is further found that, among her routine duties, the Land Use Inspector is responsible for reviewing and processing zoning applications, responding to zoning compliance issues, reviewing of applications for site plans and conducting site inspections, and performing enforcement related duties. It is also found that, between July and December 2023, the respondent Land Use Inspector was involved in several time-consuming projects, such as the town’s conservation and development plan and its affordable housing plan. It is also found that the respondent Land Use Inspector was engaged in training commission members and supporting the town with respect to pending land use appeals. It is also found that the Land Use Inspector is engaged daily in communications with the public regarding various land use topics.

21. It is also found that the Land Use Office has only two employees (including the respondent Land Use Inspector), and that each employee works thirty hours per week for the town. It is found that the second Land Use Office employee provides staff support to other town offices, in addition to the Land Use Office.

22. It is found that the request described in paragraph 2, above, encompasses a broad scope of records for a more than five-year period, and that responsive records are not maintained in one file. It is found that the respondent Land Use Inspector, in conjunction with counsel, prepared a two-page list of broad categories of records which they believed were responsive to

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<sup>1</sup> The Commission notes that Ms. Dyer did not make the request described in paragraph 2, above; was not named a complainant; and did not appear at either hearing in this matter.

the request described in paragraph 2, above, and thereafter commenced a search of their physical files for such records.

23. It is also found that records responsive to the request described in paragraph 2, above, included email communications and attachments that were stored electronically, and that the respondents required the assistance of information technology ("IT") staff in order to search, locate and print copies of such records for the complainant's inspection. It is also found that the IT professional required several weeks to search for, print, and compile all of the responsive emails and attachments. It is also found that such search commenced during the summer and continued into the fall.

24. It is also found that due to the small number of staff employed by the Land Use Office and their competing duties, the respondents solicited the assistance of their counsel, requesting that she supervise the complainant for the two inspection dates described in paragraphs 10 and 11, above. It is also found that counsel made herself available on two occasions to supervise the inspection of the records responsive to the request described in paragraph 2, above, and to make copies of certain records available to the complainant, as described in paragraphs 10 and 11, above.

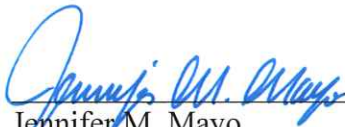
25. Based upon all of the foregoing, and in consideration of all of the evidence presented, it is concluded that, the respondents did not violate the promptness requirements in §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

26. Because the respondents did not violate the disclosure and promptness requirements of the FOI Act, consideration of the imposition of a civil penalty is not warranted.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 24, 2024.

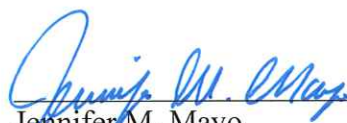
  
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**MARTIN RUTT**, 108 Cook Road, Prospect, CT 06712

**LAND USE INSPECTOR, LAND USE DEPARTMENT, TOWN OF PROSPECT; LAND USE DEPARTMENT, TOWN OF PROSPECT; AND TOWN OF PROSPECT**, c/o Attorney David S. Hardy, Carmody Torrance Sandak & Hennessey LLP, 195 Church Street, PO Box 1950, New Haven, CT 06509-1950

  
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Jennifer M. Mayo  
Acting Clerk of the Commission