

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Lynnelle Jones,

Docket #FIC 2023-0357

Complainant

against

Senior Planner, Planning and Zoning
Department, City of Norwalk; Planning and
Zoning Department, City of Norwalk; and
City of Norwalk,

Respondents

June 26, 2024

The above-captioned matter was heard as a contested case on November 21, 2023, at which time 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 email dated May 23, 2023, the complainant submitted a Freedom of Information (“FOI”) request to the Deputy Corporation Counsel for the City of Norwalk with copy to the City of Norwalk Mayor as well as his then-Chief of Staff (hereinafter, the “Request”). It is found that in the Request, the complainant sought to review:

[Section A]

[A]ll records, correspondence, plans, plan review notes, any record of any review, and any questions or concerns regarding:

- (1) the filling of tidal wetlands between 2 & 2.5 Nathan Hale Drive,
- (2) the addition of two new outflows to LI Sound where the tidal swale previously existed,

(3) the addition of hundreds of feet of new drainage from fertilized lawns and roads, that I [i.e., the complainant] allege is not City drainage code minimal standards, not best practices,

(4) the addition of new storm drains connecting to new lawn and road drainage, including any study or engineering report that all this new drainage pipe, particularly pipes from lawns, would not result in increased drainage.

All Wilson Point, City, and State email, about any of the Nathan Hale Drive work I have questioned are requested.

[Section B]

Also requested:

(1) The names of the City and State departments and agencies and hosts of other organizations that vetted my concerns.

(2) Contacts at the City and State departments and agencies and host of other organizations that vetted my concerns.

(3) The name of contacts at any Federal department, agency, organization, that vetted my question about plan review and permits required for work in coastal flood zones.

3. It is found that the complainant included in her Request previous correspondence she received from the Mayor's then-Chief of Staff regarding her questions and concerns mentioned in Section B of her Request, described in paragraph 2, above. In such correspondence, the Mayor's then-Chief of staff stated:

I can assure you, however, that your concerns have been fully vetted by our office, multiple City and State departments and agencies and a host of other organizations. Each has found no malfeasance on the part of Wilson Point. I am sorry that you disagree with that assessment, but we have determined that there is no further investigation warranted.

4. It is found that on May 24, 2023, the Deputy Corporation Counsel responded to the complainant's Request directing her to work with the respondent Senior Planner of the City's Planning and Zoning Department (hereinafter, the "PZD Senior Planner") and the City's Health Department Liaison to the Shellfish Commission to "more specifically [identify] the requested records. . . [and] develop a plan by which [the complainant] will be able to review the requested records."

5. It is found that on May 25, 2023, the complainant sent a follow-up email to the Deputy Corporation Counsel regarding her Request. It is found that the complainant did not include the respondent PZD Senior Planner in that email.

6. It is found that on June 8, 2023, the complainant emailed the respondent PZD Senior Planner directly regarding her Request.

7. It is found that on June 12, 2023, the respondent PZD Senior Planner responded to the complainant stating: “[The Deputy Corporation Counsel] has sent along your request and after reviewing the items [in Section A of the Request], Planning and Zoning does not have these documents you have requested.” It is found that in her reply, the respondent PZD Senior Planner did not address Section B of the complainant’s Request.

8. By letter of complaint filed on July 10, 2023, the complainant appealed to this Commission alleging that the respondents violated the FOI Act by failing to provide copies of the records she requested as described in paragraph 2, above.

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 section 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, 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

11. 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.”

12. 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.

13. During the hearing, the complainant alleged that the respondents failed to provide her with all responsive records.

14. As set forth in paragraph 7, above, it is found that the respondent PZD Senior Planner informed the complainant that the respondents maintained no records responsive to the complainant’s Request.

15. It is found that the only evidence in the administrative record regarding the details and scope of the search conducted by the respondents prior to the complainant filing her complaint with the Commission is the respondent PZD Senior Planner's June 12, 2023 email described in paragraph 7, above, to the complainant addressing only Section A of the Request. It is found that the respondents did not provide any evidence regarding their search for records responsive to Section B of the Request.

16. It is found that on September 15, 2023, approximately two months after the complainant filed her complaint with the Commission, the Assistant Corporation Counsel for the City of Norwalk emailed the respondent PZD Senior Planner, among others¹, requesting that they conduct a supplemental search for records using the following terms:

- 2 & 2.5 Nathan Hale Drive AND
 - Drainage work and/or
 - Drainage permits and/or
 - CAM Review and/or
 - Coastal Area Management and/or
 - Tidal wetlands

17. Although the respondents used several search terms that directly reference specific areas of the complainant's Request, the respondents testified, and it is found that the ability of the search to pull responsive documents would depend on how the search was run and what type of search modifiers were used. For instance, the respondents testified that given the search terms that were used, the records including the phrase "tidal swale" could have been omitted depending on if the search used quotation marks around the phrase "tidal wetlands."

18. It is found that the respondents omitted certain keywords from the complainant's Request that could have pulled other records responsive to the Request. For instance, the search terms used by the respondents as set forth in paragraph 16, above, omit keywords from the complainant's Request such as: LI (or Long Island) Sound, fertilized, lawns, roads, drainage code, storm drain, drainage pipe, increased drainage. It is further found the respondents did not present any evidence explaining why certain search terms and/or keywords were omitted.

19. It is found that on October 24, 2023, as a result of the supplemental search described in paragraph 16, above, the respondents disclosed 5 pages of records to the complainant. It is found, however, that the respondents failed to present any evidence explaining why such records were not identified and disclosed as a result of their initial search.

20. It is found that the respondents failed to conduct a thorough and diligent search for records.

¹ The Commission notes that, in addition to the respondents, the Associate Corporation Counsel coordinated with several other agencies and officials of the City of Norwalk to conduct searches for such records based on the search terms identified in paragraph 16, above.

21. Accordingly, based on the evidence in the administrative record, it is found that the respondents failed to provide all responsive records.²

22. Therefore, it is concluded that the respondents violated §§ 1-210(a) and 1-212, G.S., by failing to provide responsive records.

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

1. Within 7 days of the notice of final decision in this matter, the respondents shall contact the complainant for the purposes of deriving a reasonable list of search terms and/or keywords for use in a supplemental search for records responsive to the complainant's Request. In determining which search terms and/or keywords to include, the respondents and the complainant shall refer *only* to the complainant's Request as described in paragraph 2 of the findings, above.

2. The respondents and the complainant shall work together in good faith to agree to a reasonable list of search terms and/or keywords by no later than July 31, 2024.

3. By no later than July 31, 2024, the respondents shall submit an affidavit to the Commission, via email at foi@ct.gov, with copy to the complainant, attesting that an agreement has been reached, and detailing the exact search terms and/or keywords to be used for the supplemental search as well as any search modifiers (e.g., quotation marks).

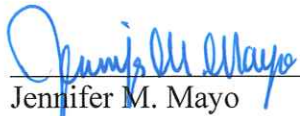
4. Within 7 days after reaching an agreement on the search terms and/or keywords to be used for the supplemental search, the respondents shall conduct a thorough and diligent supplemental search for the requested records using the search terms and/or keywords agreed to in paragraphs 1 and 2 of this order.

5. Within thirty days after conducting the supplemental search described in paragraph 3 of this order, above, the respondents shall: (i) disclose any responsive records to the complainant; and (ii) provide the complainant and the Commission an affidavit, attested to by a person with the requisite knowledge, identifying what, if any, records or portions thereof were withheld, and the basis for withholding such records or portions thereof. If no responsive records are located the respondents shall so state in the affidavit.

6. If the respondents fail to comply with any timelines set forth in the paragraphs above, or the complainant takes issue with any record, or portion thereof, withheld by the respondents, the complainant may file an appeal with the Commission and such appeal will be afforded expedited treatment.

² The Commission recognizes that through the efforts and coordination of the Assistant Corporation Counsel with the various agencies and officials of the City of Norwalk, the complainant has received over 1,000 pages of records that were located using the search terms identified in paragraph 16, above. Such agencies and officials are not parties to the above-captioned matter.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 26, 2024.



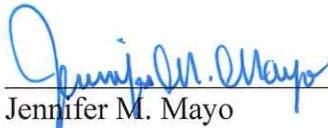
Jennifer M. Mayo
Acting Clerk of the Commission

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:

LYNNELLE JONES, 10 Point Road, Norwalk, CT 06854

SENIOR PLANNER, PLANNING AND ZONING DEPARTMENT, CITY OF NORWALK; PLANNING AND ZONING DEPARTMENT, CITY OF NORWALK; AND CITY OF NORWALK, c/o Attorney M. Jeffrey Spahr, Office of the Corporation Counsel, 125 East Avenue, PO Box 5125, Norwalk, CT 06856-5125



Jennifer M. Mayo
Acting Clerk of the Commission