

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Nicholas Tella,

Complainant

against

Docket # FIC 2023-0109

Erika Wienceski, First Selectwoman, Board of Selectmen, Town of Willington; Board of Selectmen, Town of Willington; Chair, School Building Committee, Willington Public Schools, Town of Willington; School Building Committee, Willington Public Schools, Town of Willington; Willington Public Schools, Town of Willington; Chair, Board of Finance, Town of Willington; Board of Finance, Town of Willington; and Town of Willington,

Respondents

March 13, 2024

The above-captioned matter was originally scheduled to be heard as a contested case on June 21, 2023. At the request of the respondents and over the objection of the complainant, the contested case was postponed to July 19, 2023, at which time the respondents' attorney appeared, but the complainant did not appear. Subsequently on July 19, 2023, the complainant filed a motion to reopen the hearing, stating that he had had a time-sensitive work obligation that prevented him from attending the hearing on that date.

On July 27, 2023, the hearing officer granted the complainant's motion to reopen, dated July 19, 2023. On August 7, 2023, the respondents filed a motion for reconsideration/objection to the July 27, 2023 ruling reopening the case. On August 11, 2023, the motion for reconsideration/objection to the July 27, 2023 ruling was denied/overruled.

Upon order of the hearing officer, dated September 5, 2023, a reopened hearing was scheduled for October 4, 2023, which was then postponed, at the request of the respondents, to October 11, 2023, at which time the complainant and respondents' attorney appeared. The complainant testified and presented evidence during the hearing on October 11, 2023; however, the respondents did not bring a witness and provided no testimony.

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 February 16, 2023, the complainant personally delivered two letters to the administrative assistant for the First Selectwoman for the Town of Willington (“First Selectwoman”) and for the Board of Selectmen for the Town of Willington (“BOS”).¹ It is found that the first such letter (hereinafter referred to as “First Request”) was not addressed to any specific person or public agency but was labeled at the top “FOIA Request.” It is found that the First Request sought “[a]ll emails from SBC² members, BOF³ members, and property owners that relate to the property selected (Erika's family)⁴ for the new school. This includes the use of government or personal emails that were used to discuss such property[.]”

3. It is found that, also on February 16, 2023, the complainant hand-delivered to the administrative assistant for the First Selectwoman and the BOS a second letter (hereinafter referred to as “Second Request”), which also was not addressed to any specific person or public agency and was labeled at the top “FOIA Request.” The Second Request requested the following records:

[a.] All emails that contain Erika Wiczenski⁵ and Michael Makuch in either the to or from sections. This means any emails that they either sent or received (including emails they were CC'd in) when it comes to the property located at the intersection of Adamec Road and Glass Factory Road involving the construction of the new school being proposed with approximately 65 acres.

[b.] All emails between Erika Wiczenski and Michael Makuch mentioning anything related to the Board of Selectman position and Michael's appointment to such position.

[c.] The full excel worksheet in regards to showing mill rate impact that was proposed on 2/15/2022, showing the formulas and numbers used to calculate mill rate impact. Read-only electronic copy is good enough.

[d.] Email communication between any member of the SBC and the town lawyer giving advice regarding the legal and ethical impact in selecting Erika's family property along

¹ At the hearing the complainant testified that the administrative assistant, to whom he handed his requests, was the First Selectwoman's administrative assistant. At a different point in the hearing, the complainant testified that the administrative assistant worked for the Board of Selectmen for the Town of Willington. The respondents offered no evidence nor testimony to the contrary. The Commission takes administrative notice that the administrative assistant's name and contact information is listed under the words “Board Members” on the BOS website. See <https://www.willingtonct.gov/board-selectmen>.

² It is found that “SBC” refers to the School Building Committee for the Town of Willington.

³ It is found that “BOF” refers to the Board of Finance for the Town of Willington.

⁴ It is found that “Erika” refers to Erika Wiczenski, who, at the time of the requests described in paragraphs 2 and 3, above, was the First Selectwoman for the Town of Willington.

⁵ See footnote 4 above.

with any advice in regards to Erika excusing herself from the process.

[e.] Email communications in selecting James Marshall as a Board of Finance member and communications to his appointment to School Building Committee.

[f.] Email communications from Stephanie Summers to the SBC going back the last three months.

4. It is found that, by email dated February 23, 2023, the First Selectwoman acknowledged the complainant's requests, described in paragraphs 2 and 3, above, stating: "Your FOIA request was received and we are in [the] process of complying. Due to the voluminous request[,] we will need time to complete [it,] unless you are willing to narrow your scope. Once complete[,] this office will contact you directly."

5. By email dated March 15, 2023, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act as follows:

On February 16th 2023[,] I had submitted two FOIA requests to the Board of Selectmen. They related to communications within the town's School Building Committee and Board of Finance members. I was concerned that they would not be filled before the town's meeting for the March 14th town meeting and vote for the new school on March 28th. I found out that my concern was valid as a School Building Committee member had stated to me that they were never made aware of the FOIA request till March 9th. The First Selectwomen Erika Wieneski failed to notify board members of such committees in a reasonable time. I believe she did this to delay the release of information that is in those emails and wanted to release them after the voting happened for the proposed new school, which would be built on her family property that she has advocated for as the First Selectwomen and School Building Committee member.

I would like to have the communications that were requested be completed promptly due to the sensitivity of the time. Due to this being her second time holding back communications during important topics that are going on in our town[,] I am respectfully requesting a fine of \$250 for her actions in delaying information to the general public that is important to people voting on the school.

I am unable to find the documents with the received stamp on them, but I did talk to the town on March 14th, and they

did state that the requests were received and they are filed in case an official stamped copy is needed. I will include an email from Erika acknowledging that the FOIA "was received" and they were "in process of complying". That email was sent to me on February 23rd, and again one of the board members stated to me they didn't know about this request till March 9th. Which was a purposeful delay in my opinion based on the fact that she does not like that I am looking into this matter, being she is contributing in getting her family paid for land for a new school. I have also attached the FOIA requests that don't have the stamped date of received on, but town hall says they have them on file in the Board of Selectman office.⁶

6. 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.

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

8. 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.”

9. It is concluded that the requested records, to the extent that they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. At the hearing in this matter, the respondents re-raised their objection to the reopening of the contested case hearing, which objection the hearing officer overruled.

⁶ The Commission notes that the complainant attached to his March 15, 2023 email complaint a copy of the two records requests described in paragraphs 2 and 3, above.

11. At the hearing, the respondents contended, through their attorney, that although the complainant submitted his requests to the Office of the First Selectwoman, the complainant sought records *solely* maintained by the Town of Willington's School Building Committee ("SBC") and the Board of Finance ("BOF"), not records maintained by any of the other respondents. The respondents further alleged that the "gravamen" and *sole* claim of the complaint was that the First Selectwoman failed to promptly forward the requests to the SBC and the BOF.⁷ The respondents' attorney also claimed that the SBC and the BOF were separate, independent public agencies, and that the First Selectwoman had no legal obligation to forward the requests to such agencies.⁸ The respondents also claimed that any claim that the BOS or the First Selectwoman should have searched the records maintained or kept by them and provided responsive records to the complainant was beyond the scope of the complaint.

12. At the hearing in this matter, the complainant testified, and it is found, that he hand-delivered the requests described in paragraphs 2 and 3, above, to the administrative assistant for the First Selectwoman and the BOS. He also testified, and it is found, that the First Selectwoman confirmed, via email, that she received his requests and stated "we are in [the] process of complying." The complainant further testified, and it is found, that he was seeking records likely maintained by the First Selectwoman, the SBC, and the BOF. However, it is found that the complainant does not necessarily have knowledge of the specific public agencies that maintain the records he requested.

13. It is found that as of the time of the hearing in this matter on October 11, 2023, none of the respondents had provided any responsive records to the complainant.

Scope of the Complaint

14. It is found that the respondents' argument that the scope of the complaint was limited solely to a claim that the First Selectwoman improperly failed to promptly forward the complainant's records requests to the SBC and the BOF is unavailing.

15. Our Supreme Court has made clear that "[a]s a practical matter, the FOIA is used repeatedly by members of the public who are unschooled in technical, legalistic language distinctions." Perkins v. Freedom of Information Commission, 228 Conn. 158, 167 (1993) ("Perkins"). The Supreme Court, in disagreeing with the trial court in Perkins, also said: "[T]he trial court ... relied on distinctions that are overly formal and legalistic in light of the public policy expressed by the FOIA. The overarching legislative policy of the FOIA is one that favors 'the open conduct of government and free public access to government records.' ... As we have repeatedly noted, '[o]ur construction of the FOIA must be guided by the policy favoring

⁷ The Commission notes that, during the hearing, the respondents' attorney objected to the hearing officer providing a copy of the complaint described in paragraph 5, above, to the complainant while the respondents' attorney cross-examined the complainant regarding his allegations set forth in the complaint. It is found that the contested case hearing process is not a game of blindman's bluff and is supposed to be a fair contest with the basic issues and facts disclosed to the fullest practicable extent. It is therefore found that the hearing officer properly allowed the complainant to review the allegations set forth in his complaint while being cross-examined on such allegations.

⁸The respondents rely on Lash v. Freedom of Information Commission, 116 Conn. App. 171 (2009), reversed in part on other grounds, 300 Conn. 511 (2011).

disclosure...." Perkins at 166-167 (citations omitted).

16. It is found that although the complaint, in part, alleges that the First Selectwoman failed to promptly notify the members of the SBC and the BOF of the complainant's requests, that claim is not the sole basis for the complaint. Based upon a broad reading of the complaint as a whole, which is set forth verbatim in paragraph 5, above, it is found that the complainant referenced in the complaint, and attached to the complaint copies of, the February 16, 2023 requests described in paragraphs 2 and 3, above. It is also found that the complaint alleged that the complainant was seeking the communications that were requested in his February 16, 2023 requests.

17. Accordingly, it is found that the complaint is not limited solely to a claim concerning the First Selectwoman's alleged failure to promptly forward the complainant's February 16, 2023 requests to the SBC and the BOF.

18. Rather, it is found that the complaint, which must be interpreted broadly and as understood by a layman, fairly alleges that the complainant submitted two requests for records, which he attached to the complaint, and that he has not received any records responsive to such requests. It is further found that the complaint also requests that the Commission order the requested records be disclosed.

Records Maintained or Kept by the First Selectwoman

19. As found in paragraphs 2, 3, and 12, above, the complainant hand-delivered his February 16, 2023 requests to the administrative assistant who assisted both the First Selectwoman and the BOS.

20. It is found that, at the time of the complainant's requests, the Town of Willington had a three-member board of selectmen as a legislative body and the First Selectwoman was both a member of that body and the town's chief administrative officer.

21. The complainant testified, without dispute, and it is found, that the First Selectwoman was a member of the SBC in addition to the BOS.

22. As found in paragraph 4, above, the First Selectwoman acknowledged the February 16, 2023 requests, stating "we are in [the] process of complying. ... Once complete this office will contact you directly."

23. With respect to the respondents' claim that the complainant was seeking records *solely* maintained by the SBC and BOF, and not those of the First Selectwoman, it is found that the respondents failed to provide any evidence as to which public agencies maintained the requested records. It is further found that the First Selectwoman was a party to several of the requested communications and was referenced in several of the requests.

24. It is found that many, if not all, of the requested records are records that could be maintained or kept by the First Selectwoman.

25. Accordingly, it is found that the First Selectwoman was responsible for searching her records for any records responsive to the February 16, 2023 requests and providing copies of any such records to the complainant.

26. It is found that the respondents provided no evidence that the First Selectwoman searched for records responsive to the February 16, 2023 requests, nor any evidence that she did not maintain or keep any such records.

27. It is concluded, therefore, that the respondent First Selectwoman violated §§1-210(a) and 1-212(a), G.S., by failing to search for and promptly provide records described in paragraphs 2 and 3, above.

Records Maintained or Kept by the BOS

28. As found in paragraphs 2, 3, and 12, above, the complainant delivered his February 16, 2023 requests to the administrative assistant for the BOS.

29. As found in paragraph 4, above, the First Selectwoman acknowledged the complainant's requests, and stated "we are in [the] process of complying."

30. It is found that the First Selectwoman, who is a member of the BOS, was a party to several of the requested communications and, at least, one of the requests mentioned a BOS board position.

31. It is found that the complainant requested records that could be maintained or kept by the BOS.

32. Accordingly, it is found that the BOS was responsible for searching its records for any records responsive to the February 16, 2023 requests and providing copies of any such records to the complainant.

33. It is found that the respondents provided no evidence that the BOS searched for records responsive to the February 16, 2023 requests, nor any evidence that it did not maintain any of such records.

34. It is concluded, therefore, that the respondent BOS violated §§1-210(a) and 1-212(a), G.S., by failing to search for and promptly provide records described in paragraphs 2 and 3, above.

Records Maintained or Kept by the SBC Chair, the SBC, the BOF Chair, the BOF and the Willington Public Schools

35. It is found that the complainant requested records that might have been maintained or kept by the Chair of the SBC, the SBC, the Chair of the BOF, the BOF and the Willington Public Schools.

36. It is found, however, that the complainant's requests described in paragraphs 2 and 3,

above, were not specifically addressed, nor delivered, to the Chair of the SBC, the SBC, the Chair of the BOF, the BOF and the Willington Public Schools. Rather, as found in paragraphs 2, 3, and 12 above, the complainant delivered his February 16, 2023 requests to the administrative assistant for the First Selectwoman and the BOS. It is further found that the complainant alleged in his complaint that he submitted his requests to the BOS.

37. It is concluded that the following respondents, the Chair of the SBC, the SBC, the Chair of the BOF, the BOF and the Willington Public Schools did not violate the FOI Act because the complainant did not submit the records requests described in paragraphs 2 and 3, above, to these respondent public agencies.

38. It is found that, under the FOI Act, neither the First Selectwoman nor the BOS had a duty to retrieve records of other city agencies in response to a public records request. See Lash v. Freedom of Information Commission, 116 Conn. App. 171, 187 (2009) (as distinct agencies, the first selectman had no duty to maintain or make available the records of the town's law department, and the law department had no duty to maintain or make available the records of the first selectman); Ethan Book v. Mayor, City of Bridgeport, et al., Docket #FIC 2018-0401 (finding that the respondents were not legally bound to go to the City Clerk and collect that agency's land records in order to fulfill a FOI Act request made to the Mayor's Office in reliance upon the decision in Lash).

39. Accordingly, it is concluded that the First Selectwoman and the BOS did not violate the FOI Act by failing to provide copies of records in the custody of, and maintained by, other public agencies within the Town of Willington, such as the SBC or the BOF.

40. The Commission declines to consider the imposition of civil penalties based upon the facts and circumstances of this case.


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

1. The complaint is dismissed as to the following respondents: Chair, School Building Committee, Willington Public Schools, Town of Willington; School Building Committee, Willington Public Schools, Town of Willington; Willington Public Schools, Town of Willington; Chair, Board of Finance, Town of Willington; and Board of Finance, Town of Willington.

2. Within fifteen days of the Notice of Final Decision in this matter, the First Selectwoman and the Board of Selectmen shall undertake a diligent search for the records described in paragraphs 2 and 3 of the findings, above, and provide copies of any responsive records to the complainant, free of charge. If such respondents do not locate any records responsive to the complainant's requests, each such respondent shall provide the complainant with an affidavit describing their search as well as detailing the results of their search.

3. Henceforth, the First Selectwoman and the Board of Selectmen shall comply with all the 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 March 13, 2024.



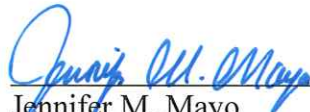
Jennifer M. Mayo
Acting Clerk of the Commission

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:

NICHOLAS TELLA, 49 Mirtl Road, Willington, CT 06279

ERIKA WIENCESKI, FIRST SELECTWOMAN, BOARD OF SELECTMEN, TOWN OF WILLINGTON; BOARD OF SELECTMEN, TOWN OF WILLINGTON; CHAIR, SCHOOL BUILDING COMMITTEE, WILLINGTON PUBLIC SCHOOLS, TOWN OF WILLINGTON; SCHOOL BUILDING COMMITTEE, WILLINGTON PUBLIC SCHOOLS, TOWN OF WILLINGTON; WILLINGTON PUBLIC SCHOOLS, TOWN OF WILLINGTON; CHAIR, BOARD OF FINANCE, TOWN OF WILLINGTON; BOARD OF FINANCE, TOWN OF WILLINGTON; AND TOWN OF WILLINGTON, c/o Attorney Ryan A. O'Donnell and Attorney Zachary D. Schurin, Pullman & Comley, LLC, 90 State House Square, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission