

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Thomas Egan,

Complainant

against

Docket #FIC 2023-0471

Kurt Miller, Comptroller, Finance  
Department, City of Ansonia; Finance  
Department, City of Ansonia; and City of  
Ansonia,

Respondents

May 22, 2024

The above-captioned matter was heard as a contested case on February 22, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The Commission takes administrative notice of the evidence and testimony in Docket #FIC 2023-0277, Thomas Egan v. Comptroller, Office of the Comptroller, City of Ansonia, et al. (Final Decision pending).

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 24, 2023, the complainant visited the Office of the respondent Comptroller for the City of Ansonia (“Comptroller”) during normal business hours and made an oral request to immediately inspect certain records “relating to bills from June 22[,] 2023 for McDonalds/J.C. Foods check 303088.”
3. It is found that, on September 15, 2023, the complainant again visited the respondent Comptroller’s Office during normal business hours and made an oral request to immediately inspect “copies of the June 2023 card member bills held by the City Comptroller’s office.”
4. By letter of complaint, dated and filed September 15, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his right to promptly inspect the records described in paragraph 2, above. The complainant also requested the imposition of a civil penalty against the respondents.<sup>1</sup>

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<sup>1</sup> At the hearing on this matter, the complainant withdrew his request for a civil penalty against the respondents, and therefore, it will not be further addressed herein.

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:

[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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. (Emphasis added.)

7. 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.”

8. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, on August 24, 2023, the complainant visited the respondent Comptroller’s Office and requested to inspect the records described in paragraph 2, above. It is found that he spoke with the Assistant Comptroller, who denied his request and informed the complainant that he would not be permitted to inspect records until he submitted a written FOI request.

10. It is found that, on September 15, 2023, the complainant visited the respondent Comptroller’s Office and requested to inspect the records described in paragraph 3, above. It is found that he spoke with the respondent Comptroller, who denied his request and informed the complainant that he would not be permitted to inspect records until he submitted a written FOI request.

11. It is found that the complainant could not recall whether he contacted the Comptroller after August 24, 2023, to make an appointment to inspect the records described in paragraphs 2 and 3, above.

12. With regard to the complainant's claim that the denial of his requests to immediately inspect records, on August 14, 2023 and September 15, 2023, violated the FOI Act, it is well settled that the law does not require "immediate" access to records upon demand, but rather permits a person the right to receive a copy of or to inspect records "promptly." See Deanna Bouchard v. Andreas Bisbikos, First Selectman, Town of Colchester, et al., 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, to interrupt their work in order to immediately fulfill a request to inspect or copy records").

13. It is found that the Comptroller's Office is a small, three-person office that is responsible for a broad range of financial duties and responsibilities on behalf of the Town. It is also found that it would take time for the respondents to locate the requested records described in paragraphs 2 and 3, above, and provide such records for inspection.

14. It is therefore concluded, based on the facts and circumstances of this case, that the respondents did not violate the promptness provisions of the FOI Act by refusing to provide immediate inspection of the requested records on August 24, 2023 and September 15, 2023, and requiring the complainant to make an appointment to inspect such records.

15. It is also found, however, that the respondent Comptroller and Assistant Comptroller informed the complainant that he would not be permitted to inspect records or make an appointment to inspect records unless and until he filed a written FOI request.

16. At the hearing on this matter, the respondents' witnesses repeatedly testified, and the respondents' counsel repeatedly argued, that it is the respondent Town's position that all FOI requests, including requests to inspect records during regular business hours, must be made in writing.

17. It is found, based on the findings of fact in paragraphs 15 and 16, above, that the complainant was required to make his request to inspect records in writing and that the respondents have a general policy, or "agency rule", requiring that FOI requests to inspect records be made in writing.

18. In Planning & Zoning Comm'n of Town of Pomfret v. Freedom of Info. Comm'n, 130 Conn. App. 488, 457 (2011), the Appellate Court, interpreting the provisions of §1-212(a), G.S., held that requests for *copies* of public records must be in writing. However, the courts have recognized, and this Commission has long held, that a public agency may not require requests to *inspect* public records to be made in writing. See Sedensky v. Freedom of Info.


Comm'n, No. HHBCV136022849S, 2013 WL 6698055, at \*5; See also Darlene Chapdelaine v. First Selectman, Town of Eastford, et al., Docket #FIC 2013-398 (February 11, 2014); Steven Ballock v. Director of Finance, Town of Monroe, et al., Docket #FIC 2012-355 (May 22, 2013); Patrick O'Hara v. First Selectman, Town of Monroe, et al., Docket #FIC 2006-480 (June 13, 2007); and David M. DeFelize v. Director of Policy and Development of the City of Bridgeport, Docket #FIC 1988-399 (January 25, 1989).

19. Accordingly, it is concluded that the respondents violated the FOI Act by refusing the complainant's request to inspect public records on the ground that such request was not in writing. It is also concluded that any policy or "agency rule" of the respondents requiring that requests to inspect records be made in writing is void.

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 access requirements of §§1-210(a) and 1-212(a), G.S.
2. Within one week of the date of the Notice of Final Decision in this matter, the respondents shall contact the Commission's public education officer to schedule training on the FOI Act.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 22, 2024.


  
Molly E. 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:

**THOMAS EGAN**, c/o Attorney M. Leonard Caine, III, Caine & Caine, 246 East Main Street, Unit 3, Torrington, CT 06790

**KURT MILLER, COMPTROLLER, FINANCE DEPARTMENT, CITY OF ANSONIA; FINANCE 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

  
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Molly E. Steffes  
Acting Clerk of the Commission