

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Matthew Waggner,

Complainant

against

Docket #FIC 2024-0163

First Selectwoman, Town of Fairfield;
Chief of Staff, Town of Fairfield;
and Town of Fairfield,

Respondents

February 13, 2025

The above-captioned matter was heard as a contested case on July 15, 2024, 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 November 26, 2023, the complainant¹ requested the respondents² provide him with a copy of the following records:

...all records created, received, or maintained by you from January 1, 2022 through today pertaining to the Registrar of Voters Office, including all records that reference the names Waggner, Politi, Elworthy, or Lanese from those dates. I am requesting all paper and electronic records, emails, notes, recordings, calendar entries, text messages, messages within social media or other messaging applications, and voicemails, including those stored on town or personal devices used to conduct town business....

3. It is found that, by email dated November 26, 2023, the respondents informed the complainant that they were providing him with electronic links containing the responsive records from the following individuals' "personal technology devices": 1) Brenda Kupchick; 2) Cathleen Simpson; 3) Dave Kelley; 4) Frank Magneri; 5) Jackie Bertolone; 6) James Ryan; 7)

¹ The Commission notes that the complainant is a Registrar of Voters in the Town of Fairfield.

² The Commission notes that the complainant requested records from the outgoing First Selectwoman and her outgoing Chief of Staff on the day prior to such individuals' final day in office.

Jared Schmitt; 8) Peter Ritchey; 9) Robert Kalamaras; and 10) Thomas Bremer. It is further found that the respondents informed the complainant that they would continue processing his request for records maintained on the town's server.

4. It is found that, by email dated February 24, 2024, the complainant responded to the email referenced in paragraph 3, above, indicating that it appeared to him that the respondents had only provided him with electronic links to responsive records from the personal technology devices of: 1) Robert Kalmaras; 2) James Ryan; and 3) Dave Kelley, but had not provided him with any links to records from the other seven individuals identified in said paragraph. It is found that, by email dated February 27, 2024, the respondents confirmed that the complainant was correct. It is further found that the respondents indicated that they would continue to process the request with regard to all outstanding records.

5. By email dated and filed March 25, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with all requested records. Specifically, the complainant alleged the following:

Because I know that Brenda Kupchick (the former First Selectwoman) and Jackie Bertolone (the former First Selectwoman's Chief of Staff) used personal devices and accounts to conduct official business pertaining to my office, I am making an appeal concerning their denial of records from my request...."

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, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. At the hearing, the complainant contended that the respondents had failed to provide him with responsive records from the personal devices and accounts of the former First Selectwoman and the former First Selectwoman's Chief of Staff. It is found that the respondents submitted the affidavit of their human resources paralegal, in which the paralegal averred that she had inquired in writing with both the former First Selectwoman and the former Chief of Staff as to whether they maintained any records responsive to the request set forth in paragraph 2, above, and had been informed by both individuals that all of their responsive records would be located either on the town's server or in the Human Resources Department. The paralegal also averred that all responsive records that had been located had been provided to the complainant. The complainant countered that he was not satisfied with the paralegal's affidavit, as other individuals had disclosed their text messages to him and it was clear that such text messages were sent to and/or received from the former Chief of Staff's personal cell phone, but that the former Chief of Staff had failed to disclose these same text messages to him in the context of the instant request.

11. At the conclusion of the contested case hearing, the hearing officer ordered the respondents to obtain and submit affidavits from both the former First Selectwoman and her former Chief of Staff averring that they had searched their personal emails and other accounts from January 1, 2022 through November 26, 2023 for all records mentioning the following four names: 1) Waggner; 2) Politi; 3) Elworthy; and 4) Lanese.

12. On August 2, 2024, the respondents submitted the affidavits of the former First Selectwoman and her former Chief of Staff. Such affidavits have been marked as Respondents' after-filed Exhibits 2 and 3, respectively.

13. It is found that both the former First Selectwoman and her former Chief of Staff averred as follows:

- a. Upon receipt of the request set forth in paragraph 2, above, they conducted a search of their personal email accounts, and their messaging applications and social media accounts on their personal devices for any record containing the terms "Waggner," "Politi," "Elworthy," or "Lanese," for the date range of January 1, 2022, through November 26, 2023.
- b. The searches did not yield any responsive records or communications.
- c. In July 2024, they repeated the search described in paragraph 13.a, above, and once again their searches did not yield any responsive records or communications.

- d. It was their policy not to conduct official Town of Fairfield business utilizing personal email accounts, personal messaging applications, or personal social media accounts.
- e. To the extent that on a couple of occasions they did use their personal devices to send and/or receive messages, and certain responsive records were located on other individuals' devices, it is possible that they deleted such records from their personal devices.
- f. All records pertaining to their work as public officials would be located in the electronic files and emails on the town's server or with the Human Resources Department.

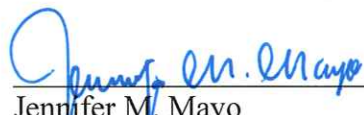
14. Based on the record in this case, it is found that the respondents conducted a thorough search for records responsive to the request set forth in paragraph 2, above, and disclosed all such records to the complainant, free of charge.

15. It is concluded therefore that the respondents did not violate the disclosure provisions set forth in §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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.
- 2. The Commission suggests that the respondents use their best efforts to not use personal devices to conduct public business, and, if they do use their personal devices to conduct such business, that they maintain such public records in accordance with the state's public records retention schedules.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 13, 2025.

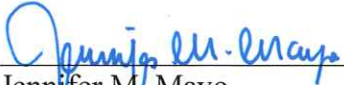

Jennifer M. Mayo
Acting Clerk of the Commission

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:

MATTHEW WAGGNER, c/o Attorney Jeffrey Zyjeski, Gaffney, Bennett and Associates, Inc., One Liberty Square, New Britain, CT 06051

FIRST SELECTMAN, TOWN OF FAIRFIELD; CHIEF OF STAFF, TOWN OF FAIRFIELD; AND TOWN OF FAIRFIELD c/o Attorney Philip C. Pires and Attorney Wilson T. Carroll, Cohen and Wolf, P.C., 1115 Broad Street, Bridgeport, CT 06604



Jennifer M. Mayo
Acting Clerk of the Commission