

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Nancy Griswold,

Complainant

against

Docket #FIC 2024-0019

Zoning Enforcement Officer, Building and Land Use Department, Town of Thomaston; Building and Land Use Department, Town of Thomaston; and Town of Thomaston,

Respondents

January 8, 2025

The above-captioned matter was heard as a contested case on June 20, 2024, August 8, 2024, and November 5, 2024, at which times the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint.¹

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 December 12, 2023 the complainant submitted a request for records seeking the following: (i) “copies of any and all cease-and-desist orders that were issued against nonresidential property owners for allegedly operating a ‘junk yard’ in violation of state laws or the town zoning regulations since the town zoning regulations were first adopted on May 9, 1971;” and (ii) “copies of any and all informational notices that were sent to 130 South Main Street (The Dover Benedict Group LLC), 505 South Main Street (Our Savior Lutheran Church), 196 East Main Street (Fletcher), and 54 Atwood Road (Lisa Tucker).”²

¹ The Commission takes administrative notice of the administrative record and final decision in Docket #FIC 2023-0543, Nancy Griswold v. Stacey Sefcik, Zoning Enforcement Officer and Land Use Administrator, Building and Land Use Department, Town of Thomaston et al. (October 9, 2024) (hereinafter, Docket #FIC 2023-0543).

² Hereinafter, parts (i) and (ii) of the complainant’s December 12 request shall be referred to as Part 1 or Part 2 of the complainant’s December 12 request, respectively.

3. It is found that upon receiving the complainant's December 12 request, the respondent Zoning Enforcement Officer ("ZEO") forwarded the request to the respondents' counsel for the purpose of responding to the complainant.

4. It is found that on December 18, 2023, the respondents, via counsel, responded to the complainant indicating that "[t]he documents you have requested have been the subject of earlier Freedom of Information [("FOI")] requests from you to Stacey Sefcik as well as the Town of Thomaston. Your brother Joseph Watley has also made similar FOIA requests. The response is the same as for those prior requests. You should contact my office to arrange a time that is convenient to you for when you can inspect and make copies³ of responsive records that are not otherwise excepted or exempt from disclosure pursuant to the Connecticut Freedom of Information Act and/or other relevant law."⁴

5. By letter of complaint filed and received on January 11, 2024, the complainant appealed to this Commission alleging that the respondents violated the FOI Act by failing to comply with her December 12 request described in paragraph 2, above. In her complaint, the complainant also alleged that "the respondent is engaging in a practice or pattern of conduct that constitutes an obstruction of the complainant's rights conferred by the FOI Act[,] and requested that the Commission impose a civil penalty on the respondents for such violations.

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 (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*

³ Based on the language of the respondents' December 18 reply to the complainant, it appears that the respondents expected the complainant to make her own copies of the requested records.

⁴ Hereinafter, the December 18 response.

diminishes or curtails in any way the rights granted by this subsection shall be void.” (Emphasis added.)

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.” (Emphasis added.)

9. It is concluded that the requested records described in paragraph 2, above, 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.

Sufficiency of Notice

10. In their post-hearing brief, the respondents for the first time asserted that “notice to the respondent was insufficient as the complainant improperly sent her December 12, 2024 request to the Thomaston Town Clerk, rather than directly to the named respondent.” The respondents claimed that although the complainant’s December 12 request was addressed to the respondent ZEO, it was delivered to the Town Clerk.

11. As the respondents failed to raise their insufficient notice claim in any of the three hearings on this matter, there is no evidence in the record concerning the proper delivery address for letters to the respondent ZEO. Accordingly, the Commission takes administrative notice of the following information that is published on the Town of Thomaston’s website: (i) the ZEO is part of the “staff” serving the respondents’ Planning and Zoning Commission; and (ii) the address for the Planning and Zoning Commission is Thomaston Town Hall, 158 Main Street, Thomaston, CT 06787.⁵

12. It is found that the complainant addressed her December 12 request as follows:

Stacey M. Sefcik⁶
Zoning Enforcement Officer
Town of Thomaston
158 Main St.
Thomaston, CT 06787

13. It is found that the complainant sent her December 12 request to the exact address published on the Town of Thomaston’s Planning and Zoning Commission website.

14. The Commission notes that the address for the “Building Department” is 158 Main Street, Building & Land Use Office – 3rd Floor, Thomaston, CT 06787. However, upon review of the publicly available information on the Town of Thomaston’s website, it is found that, unlike

⁵ See TOWN OF THOMASTON, PLANNING AND ZONING COMMISSION <https://www.thomastonct.org/entities/planning-zoning-commission> (accessed 11/27/2024).

⁶ At the time the complainant made her December 12 request, Stacey Sefcik was the Zoning Enforcement Officer. However, Ms. Sefcik left her employment with the Town of Thomaston after the first continued hearing, but before the second continued hearing in this matter.

with the Planning and Zoning Commission, the ZEO is not identified as a staff member for the Building Department.⁷

15. Accordingly, it is found, based on the publicly available information published by the respondents, that the respondents had sufficient notice that records requests, addressed to the ZEO, may be sent to 158 Main Street, Thomaston, CT 06787.

Respondents' Response to the December 12 Records Request

16. As found in paragraphs 3 and 4, above, upon receipt of the complainant's December 12 request: (i) the respondent ZEO forwarded the request to counsel; and (ii) respondents' counsel informed the complainant, via letter, that the complainant should contact their office to arrange a time wherein she could inspect and make her own copies of the records she requested.

17. The respondents maintain that, because of the scope of the complainant's December 12 request, other requests submitted by the complainant, and the multiple other job duties of the respondent ZEO, requiring the complainant to inspect the records in person and make copies herself, "did not deny [her] prompt access to the requested records under the circumstances."

18. The respondents made a similar argument concerning a separate request made by the complainant to the ZEO in Docket #FIC 2023-0543 (Final Decision dated October 9, 2024). In that case, the respondent ZEO replied to the complainant's records request indicating that "certain records . . . were available for inspection at the respondent's regular business address and that the complainant had previously been offered the opportunity to inspect such records. . . . [Moreover], the ZEO informed the complainant: '[n]o one in this office will be making these copies for you; we are under no obligation to do so, we do not have the time to do so, and therefore we will NOT be doing so.'" See Docket #FIC 2023-0543, ¶5 (Emphasis in original.)

19. In Docket #FIC 2023-0543, the Commission stated that "[a]t the hearings on this matter, the respondents argued multiple times that it is the town's policy to direct the public to inspect records at the respondents' regular business office. It is found that, where a person requests a *copy* of a public record, the town's policy refusing to make copies and of requiring such person to inspect records at the respondents' regular place of business is in contravention of §1-212(a), G.S. Accordingly, it is concluded that the respondents violated §1-212(a), G.S., by refusing to process the complainant's request for copies of public records on the ground that they have offered her the ability to inspect public records." See Docket #FIC 2023-0543, ¶¶ 21 and 22 (Emphasis in original.)

20. Further, in Docket #FIC 2023-0543, the Commission ordered that "[a]ny policy or 'rule' of the respondents requiring a person to inspect public records, where such person requests copies of public records is void." See Docket #FIC 2023-0543, ¶3 of Order.

⁷ TOWN OF THOMASTON, BUILDING DEPARTMENT <https://www.thomastonct.org/entities/building-department> (accessed 11/29/2024).

21. In the instant matter, it is found that the respondents refused again to process the complainant's records request on the grounds that they had offered her an opportunity to inspect such records in person.⁸

22. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by refusing to process the complainant's request for copies of public records on the grounds that they had offered her the ability to inspect public records.

Civil Penalty

23. As noted in paragraph 5, above, the complainant requests that the Commission impose a civil penalty on the respondents.

24. Section 1-206(b)(2), G.S., provides, in relevant part:

upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at the hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than five thousand dollars.⁹

25. As found in paragraphs 3 and 4, above, upon receipt of the complainant's December 12 request, the respondent ZEO forwarded the request to counsel, who then informed the complainant that if she wanted access to the requested records, she would need to inspect such records in person and copy them herself.

26. The respondents maintain that they acted reasonably under the circumstances, because the ZEO "was tasked with balancing the statutory deadlines and requirements of five different commissions as well as the [c]omplainant's large request at issue here and her other nine other large requests, all of which the [r]espondent is making efforts to comply with."

27. The circumstances cited by the respondents in paragraph 26, above, are relevant when considering the promptness of an agency's response to a records request. If the respondents began processing the complainant's December 12 request upon receipt, then such factors *could potentially* explain or justify a *reasonable* delay in the production of such records. However, as

⁸ While the respondents began to process Part 2 of the complainant's December 12 request, they had only done so the day before the second continued hearing in this matter – 328 days after the complainant submitted her request. The Commission notes that based on the representations made by the respondents' counsel in their November 20, 2024 "Notice of Compliance," the respondents have provided the complainant with all responsive records they maintain with respect to Part 2 of the complainant's December 12 request. There was no indication at any part of the hearings on this matter that the respondents had begun processing Part 1 of the complainant's December 12 request.

⁹ The Commission notes that, pursuant to Public Act 23-200, §1-206(b)(2), G.S., was amended to increase the maximum civil penalty authorized under the FOI Act from \$1,000 to \$5,000.

found in paragraph 21, above, the respondents refused to process the complainant's December 12 request, and instead sought to shift their obligations to search for and provide copies of public records to the complainant.

28. Sections 1-210(a) and 1-212, G.S., permit a requestor to either inspect public records in person, or receive copies of such records. Moreover, once a requestor has elected to receive copies of public records, the public agency that maintains such records is obligated to provide such copies to the requestor. Neither §1-210(a) nor §1-212(a), G.S., permits public agencies that receive a written request for copies of records to nevertheless require in person inspection of such records.

29. It is concluded, based on the facts and circumstances of this case, that the respondents' denial of the complainant's right to receive copies of records upon submission of a written request was "without reasonable grounds" within the meaning of §1-206(b)(2), G.S.

30. While the imposition of a civil penalty is warranted in this case, the Commission, in its discretion, declines to impose such a penalty, as the custodian of such records, the respondent ZEO, is no longer employed with the respondents.

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

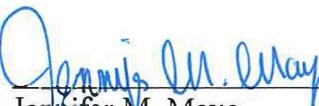
1. Within ninety (90) days of the date of the Notice of Final Decision in this matter, the respondents shall: (i) conduct a thorough and diligent search for records responsive to Part 1 of the complainant's December 12 request (i.e., copies of any and all cease-and-desist orders that were issued against nonresidential property owners for allegedly operating a 'junk yard' in violation of state laws or the town zoning regulations since the town zoning regulations were first adopted on May 9, 1971); and (ii) disclose any responsive records located as a result of such search to the complainant, unredacted and free of charge.

2. Within fourteen (14) days 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 regarding the requirements of the FOI Act. The Commission strongly encourages the respondents' counsel to attend such training.

3. The Commission notes that in Docket #FIC 2023-0543, the Commission declared void any policy or rule of the respondents requiring a person to inspect public records where such person requested copies of such records. The respondents shall immediately cease operating under any such policy, rule, or requirement.

4. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 8, 2025.



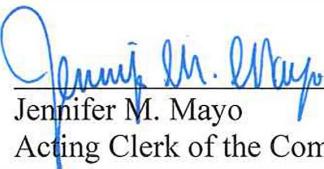
Jennifer M. Mayo
Acting Clerk of the Commission

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:

NANCY GRISWOLD, 24 Atwood Road, Thomaston, CT 06787

ZONING ENFORCEMENT OFFICER, BUILDING AND LAND USE DEPARTMENT, TOWN OF THOMASTON; BUILDING AND LAND USE DEPARTMENT, TOWN OF THOMASTON; AND TOWN OF THOMASTON, c/o Attorney Steven E. Byrne and Attorney Nicole L. Byrne, Byrne & Byrne LLC, 270 Farmington Ave., Suite 365, P.O. Box 1065, Farmington, CT 06034



Jennifer M. Mayo

Acting Clerk of the Commission