

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

William Marsh,

Complainant

against

Docket # FIC 2024-0426

First Selectman, Board of Selectmen, Town  
of Windsor Locks; Board of Selectmen,  
Town of Windsor Locks; and Town of  
Windsor Locks,

Respondents

July 9, 2025

The above-captioned matter was heard as a contested case on April 8, 2025, 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 letter dated June 27, 2024, the complainant requested that the respondents provide him with “a list of all incoming calls” to the respondent First Selectman between June 1, 2024 and June 11, 2024 (among other records no longer at issue).
3. It is found that the respondents acknowledged the complainant’s request by email on July 1, 2024.
4. It is found that, also by email dated July 1, 2024, the respondents’ attorney replied, stating: “the First Selectman does not keep a phone log. I will follow up with the town to see if any third party might keep a list and whether that [third party] is in possession of the [sic] any such document.”
5. It is found that, by email dated July 11, 2024, the respondents offered to provide the complainant with “intrastate toll calls and other long-distance calls from the town’s phone bill,” but the complainant declined, explaining that such information was not responsive to his request.
6. By letter of complaint filed July 24, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for the records described in paragraph 2, above.

7. 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.

8. 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.

9. 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.”

10. It is concluded that, to the extent the records described in paragraph 2, above, exist and are maintained by the respondents, they are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. At the hearing on this matter, the respondents contended that they do not maintain any records responsive to the request described in paragraph 2, above. The complainant disputed the respondents’ contention and submitted to the hearing officer a copy of a prior request for similar records that the complainant had made to the former First Selectman (“First Selectman Harrington”), and a copy of a portion of the responsive records that the former First Selectman had provided to him in response to his prior request.

12. It is found that, by letter dated August 14, 2022, the complainant requested that former First Selectman Harrington provide him with “a list of all incoming calls” to the Town Planner from June 2022 through August 14, 2022. It is found that on the following day, former First Selectman Harrington provided the complainant with a copy of a log of incoming and outgoing calls (the “August 2022 Log”) in response to the request.<sup>1</sup>

13. At the hearing on this matter, the current first selectman (“respondent First Selectman Storms”) appeared and testified. Respondent First Selectman Storms testified, and it is found, that he does not maintain a log of his incoming phone calls at the town’s offices.

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<sup>1</sup> The complainant testified that former First Selectman Harrington provided him with a lengthy Excel spreadsheet of approximately 10-12 pages, consisting of two and a half months of data.

14. The respondents' Assistant Finance Director also appeared and testified at the hearing. It is found that the Assistant Finance Director has helped the town with its Information Technology ("IT") needs, as needed, but that he had only served in this capacity for approximately six months. The Commission notes that the respondents provided no testimony regarding the scope of the Assistant Finance Director's IT-related responsibilities, nor did they provide testimony regarding his professional background, education, or experience with IT or compliance with records requests like the request described in paragraph 2, above.

15. It is found that the Assistant Finance Director reviewed the respondents' Cox Business monthly telephone provider bill and concluded that it did not provide all of the information sought by the complainant, as described in paragraph 2, above. The Commission notes that the respondents offered no testimony that they contacted Cox Business for assistance with complying with the complainant's request.

16. It is also found that the respondents' accounts payable clerk contacted IP Genie, the vendor that provides the respondents with telephones. It is found that, by email dated July 10, 2024, the clerk emailed "IPGenieInvoicing" and asked "[i]s there a report or a way to determine the incoming and outgoing phone calls for each admin phone on our bill? Please advise or direct us to a right person to help us with this." It is found that the respondents did not receive a written response to the accounts payable clerk's email to "IPGenieInvoicing."

17. It is found that, thereafter, the Assistant Finance Director called IPGenie and was advised by a representative that the respondents could not obtain a log of incoming and/or outgoing phone numbers for any of the respondents' phones. The Commission notes that the respondents offered no evidence regarding the job title, responsibilities, expertise, and/or knowledge of the person(s) spoken to at IPGenie, nor the basis for the conclusion that such records do not exist. It is found that the Assistant Finance Director did not discuss the request with anyone other than the respondents' attorney, the accounts payable clerk, and the IP Genie representative.

18. In a post-hearing brief, the respondents argued that the records described in paragraph 2, above, do not constitute public records because such records are not "prepared, owned, used, received or retained by a public agency." The respondents further argued that, only once the August 2022 Log came into the possession of former First Selectman Harrington, did it become a public record, and that the respondents were under no obligation to obtain a "nonpublic record" and provide it to the complainant in response to the request described in paragraph 2, above.

19. The respondents' contention, as described in paragraph 18, above, is essentially that, because the records described in paragraph 2, above, are not in their physical possession, they are not public records, and they have no obligation to provide a requester with records that they do not physically possess. Such contention has already been rejected by the Commission and our courts. See *First Selectman, Town of Columbia v. Freedom of Info. Comm'n*, Superior Court, judicial district of New Britain, Docket No. 00 0501055, 2000 WL 1862558 (Nov. 28, 2000), *Londregan v. Freedom of Info. Comm'n*, Superior Court, judicial district of New London, Docket Nos. 52 61 05, 52 93 45, 1994 WL 385951 (July 13, 1994), and Docket #FIC 2015-323, *Renee LaMark Muir v. Chief, Police Department, City of Hartford; Police Department, City of*

*Hartford; and City of Hartford* (Jan. 13, 2016)(finding argument that agency is not in the physical possession of records, and therefore that it need not produce records, unavailing). See also Docket #FIC 2023-0632, *Cushman v. Hartford Police Department, et al.*, (Nov. 20, 2024) (ordering the police department to request that the State's Attorney's Cold Case Unit return the police department's records in order for the respondents to comply with a request for records); and Docket #FIC 2015-749, *Laurene Boulton v. Mayor, City of Derby; and City of Derby* (July 27, 2016) (respondents violated the FOI Act by failing to contact outside vendor to obtain copies of records responsive to the request and failing to provide copies of such records to the complainant).

20. In each of the aforementioned cases, there was no dispute regarding the existence of the records at issue. However, in this case, based on the findings in paragraphs 14 through 17, above, and the lack of evidence noted therein, it is found that the respondents failed to prove that they conducted a reasonable and diligent search for records responsive to the request described in paragraph 2, above. Accordingly, it is found that the respondents failed to prove that such records do not exist and are not maintained by the respondents.

21. It is therefore concluded that the respondents violated the FOI Act as alleged in the complaint.

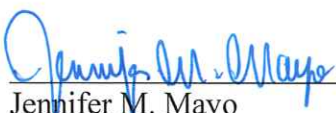
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Within seven (7) days of the date of the Notice of Final Decision in this matter, the respondents shall commence a search for records responsive to the request described in paragraph 2, above. The respondents shall make reasonable and diligent efforts to contact IT professionals for their telephone and telephone service providers, Cox Business and IPGenie, for assistance with compliance with this order. Within thirty (30) days of the date of the Notice of Final Decision in this matter, the respondents shall provide the complainant with a copy of all responsive records that are located, free of charge.

2. If the respondents are unable to retrieve copies of responsive records, the respondents shall provide the complainant with an affidavit detailing their efforts to comply with the order described in paragraph 1, above. Such affidavit shall identify the IT professionals for the telephone and telephone service providers with whom the respondents communicated by title, explain their determination, and how the IT professionals arrived at such determination.

3. Henceforth, the respondents shall strictly comply with the disclosure requirements of the FOI Act.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 9, 2025.

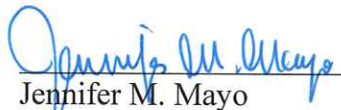
  
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**WILLIAM MARSH**, 10 Schoephoester Road, #4201, Windsor Locks, CT 06096

**FIRST SELECTMAN, BOARD OF SELECTMEN, TOWN OF WINDSOR LOCKS;  
BOARD OF SELECTMEN, TOWN OF WINDSOR LOCKS; AND TOWN OF WINDSOR  
LOCKS**, c/o Attorney Carl T. Landolina, Fahey & Landolina, 487 Spring Street, Windsor  
Locks, CT 06096

  
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Jennifer M. Mayo  
Acting Clerk of the Commission