

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Matthew Waggner,

Complainant

against

Docket #FIC 2024-0403

Cathleen Simpson, Human Resources
Director, Human Resources Department,
Town of Fairfield; David Kelley, Information
Technology Director, Town of Fairfield;
Human Resources Department, Town of
Fairfield; Information Technology Department,
Town of Fairfield; and Town of Fairfield,

Respondents

June 11, 2025

The above-captioned matter was heard as a contested case on December 2, 2024, February 3, 2025, and April 16, 2025, at which times 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 September 18, 2023, the complainant requested that Human Resources (“HR”) Director Cathleen Simpson provide him with a copy of the following records: “...all footage on file from the ROV¹ office since 9/9/2023.” It is further found that no other individual was copied on the September 18 email.
3. It is found that, by email dated October 17, 2023, the complainant requested that HR Director Simpson provide him with a copy of the following records: “...the footage from the [ROV] office from 9/18 through today.” It is further found that the complainant copied Information Technology (“IT”) Director David Kelly on the October 17 email.
4. It is found that, by email dated November 20, 2023, the complainant requested that HR Director Simpson provide him with a copy of the following records: “...the footage from

¹ The Commission notes that “ROV” office is an acronym for the “Registrar of Voters” office.

the [ROV] office from October 18th through today.” It is found that the complainant also stated:

I am of course most interested in preserving the footage of the assault [that] was made by Pamela Ortiz on my person on the morning of 11/7, but I wish to ensure that all of these records are preserved against deletion/destruction.

It is further found that the complainant copied Information Technology (“IT”) Director David Kelly on the October 18 email.

5. It is found that, by email dated June 10, 2024, the Assistant HR Director informed the complainant that the respondents had a thumb drive for him containing video footage from the ROV office from September 18, 2023, between 1:50 pm and 3:00 pm.²

6. It is found that by email dated June 10, 2024, the complainant responded that he requested all footage from September 9, 2023 to November 20, 2023.

7. It is found that, by email dated June 14, 2024, the Assistant HR Director informed the complainant that the respondents no longer maintained the requested video footage because it had been overwritten.

8. It is found that, by email dated June 14, 2024, the complainant responded that it was his understanding that the video footage existed when he requested it. It is further found that the complainant inquired: “I’m curious what you think should be done in this situation.”

9. By email dated July 14, 2024 and filed July 15, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with a copy of any of the requested records.

10. 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.

11. Section 1-210(a), G.S., provides in relevant part that:

² The Commission notes that the respondents provided the complainant with the thumb drive in connection with an investigation the respondents conducted in connection with the allegations referenced in paragraph 4, above.

[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.

12. 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.”

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

14. It is found that the complainant is a Registrar of Voters in the Town of Fairfield.

15. IT Director Kelly appeared and testified at the second and the third contested case hearings.

16. It is found that, between September 18, 2023 and November 20, 2023, the complainant requested video footage from two cameras in the Registrar of Voters office for all hours during a 73-day period. See ¶¶ 2-4, above. It is further found that the video cameras from which the complainant requested the footage are part of the town hall building’s security system.

17. It is found that, when the complainant made the requests set forth in paragraph 2 through 4, above, the respondents had a policy providing that before IT Director Kelly could process a request as large as the one at issue in this case, he needed to get approval to do so from HR Director Simpson. It is further found that such a policy stemmed from the fact that, in order to preserve hundreds of hours of video footage from the computer system that the respondents were using at the time of the requests in this case, IT Director Kelly was required to shut down the building’s security system and he needed HR Director Simpson’s approval to do so. It is further found that, without shutting the security system down, the computer system in place at the time of the requests only retained the building’s security footage for a period of approximately three weeks, after which time the footage would be overwritten.

18. Based upon IT Director Kelly’s testimony, using the computer system in place at the time of the requests in this case, it is found that it took two hours of processing time to turn one hour of video footage into a one-hour readable video file. It is further found that, because the complainant requested 73 days of video footage from two security cameras, it would have taken IT Director Kelly approximately 292 days to process the requests set forth in paragraphs 2 through 4, above: 73 days x 24 hours = 1,752 hours x 2 cameras = 3504 hours of video

footage x 2 hours of processing time for each hour of video footage = 7008 hours ÷ 24 = 292 days.³

19. Despite the limitations of the respondents' computer system, it is found that, had the respondents begun to process a portion of the complainant's requests upon receipt (rather than shutting down the building's security system in order to preserve all of the requested footage), they would have been able to provide the complainant with 10 ½ days of the requested footage from one of the video cameras in the ROV's office or 5 ¼ hours of the requested footage from both of the video cameras in the ROV's office.

20. It is found that the complainant sent his first request only to HR Director Simpson. In accordance with the respondents' standard FOI policy, it is found that, upon receipt of the request, HR Director Simpson should have acknowledged the request and then forwarded it to the HR department's paralegal who, in turn, would have then forwarded the request to the IT Director Kelly for processing. It is found that HR Director Simpson did not acknowledge the first request or forward the request to the department's paralegal, nor did she take any other action with regard to such request.

21. It is found that upon receipt of the complainant's second and third requests, IT Director Kelly personally appeared in HR Director Simpson's office to inquire whether he should shut down the building's security system in order to preserve all of the requested video and/or determine how he should otherwise handle the complainant's requests. It is further found that HR Director Simpson responded that she would get in touch with him shortly with instructions on how to handle the requests. It is found, however, that HR Director Simpson did not communicate further with IT Director Kelly with regard to the complainant's second or third request.

22. It is further found that after 21 days elapsed from the respondents' receipt of the third request, *all* of the requested video footage was overwritten.

The Third Contested Case Hearing/Notice of Civil Penalty Hearing on April 16, 2025

23. On March 3, 2025, the hearing officer gave notice to HR Director Simpson that, pursuant to §1-206(b)(2), G.S., a continued hearing would convene on April 16, 2025, at which time the Commission would consider the imposition of a civil penalty against her. The hearing officer further informed HR Director Simpson that she would be given an opportunity to be heard under oath at the continued hearing.

24. Pursuant to an order from the hearing officer, HR Director Simpson appeared at the third contested case hearing and testified on behalf of herself and the other respondents.

³ In this regard, the Commission notes that, in response to a question posed by the hearing officer, the complainant confirmed that he did want 24 hours per day of footage for each of the 73 days, and not just footage during regular business hours.

25. HR Director Simpson testified that she “inadvertently” took no action with regard to the complainant’s first request.

26. HR Director Simpson further testified that, while she did not recall IT Director Kelly personally appearing in her office seeking instructions on whether to preserve the requested video footage or to process the requests in some manner, she conceded that she did not follow-up with the IT Director with regard to the requests. HR Director Simpson further testified that such failure was “an administrative oversight.”

Promptness Analysis

27. With regard to whether the respondents have acted promptly in complying with the instant requests, this Commission has previously opined that the word “promptly” in §1-210, G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request.” See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

28. In this case, it is found that the requested video footage existed at the time the complainant made his requests for copies of such records. It is further found that, because HR Director Simpson did not forward the complainant’s first request to IT Director Kelly for processing, the requested video footage was overwritten. It is further found that because HR Director Simpson did not follow up with IT Director Kelly’s request for direction on how to proceed with regard to the complainant’s second and third requests, the requested video footage was likewise overwritten.

29. Nonetheless, it is found that, subsequent to the video footage being overwritten in this case, the respondents took affirmative steps to ensure that a similar situation would not occur again. In this regard, it is found that the IT Director no longer requires the permission of HR Director Simpson to preserve or otherwise process a request for video footage from the town hall’s security system. Moreover, it is found that all department heads have been instructed to preserve records they maintain automatically upon receipt of a request for copies of such records. Also, it is found that the respondents purchased a new security/computer system that has seven times the hard drive space as the system that was in place at the time of the instant requests. Accordingly, with the new system, the respondents no longer have to choose between keeping the building’s security system up and running or preserving requested video footage. It is further found that, with the new system, the IT Director can isolate and preserve large requests for security video footage right on the system’s hard drive.

30. Notwithstanding the corrective measures discussed in paragraph 29, above, it is found that the respondents did not provide the complainant with public records promptly (or at all), and it is concluded that the respondents violated both the promptness and disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Consideration of the Imposition of a Civil Penalty

31. As noted in paragraph 23, above, the Commission, on its own accord, informed HR Director Simpson that it would consider the imposition of a civil penalty against her.

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

upon a 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.⁴

33. As found in paragraphs 20 and 28, above, HR Director Simpson should have acknowledged the complainant's first request and forwarded it along for processing and should have followed up with IT Director Kelly regarding how to handle the complainant's second and third requests.

34. It is found that HR Director Simpson is familiar with the requirements of the FOI Act and has been involved with processing FOI requests in the past.

35. It is found that HR Director Simpson's failure to take any action with regard to the complainant's first request for records was not reasonable.

36. It is further found that HR Director Simpson's failure to follow up with IT Director Kelly and provide him with the instructions he requested with regard to preserving and/or processing the complainant's second and third requests was not reasonable.

37. It is further found that the fact that the records which were maintained by the respondents at the time of the requests in this case were allowed to be overwritten in their entirety was not reasonable.

⁴ 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.

38. It is therefore concluded that the complainant's right to prompt access to non-exempt responsive public records was denied by the respondents "without reasonable grounds," within the meaning of §1-206(b)(2), G.S., and a civil penalty is warranted.

39. It is found that HR Director Simpson is the official directly responsible for the violations set forth in paragraph 30, above.

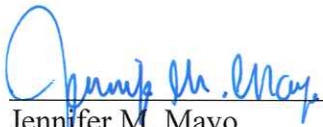
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. 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 a training session regarding the requirements of the FOI Act.

2. Respondent Human Resources Director Cathleen Simpson shall remit to the Commission, within forty-five (45) days of the date of the Notice of Final Decision in this matter, a civil penalty in the amount of one hundred dollars (\$100.00).

4. Henceforth, the respondents shall strictly comply with the promptness and disclosure 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 June 11, 2025.



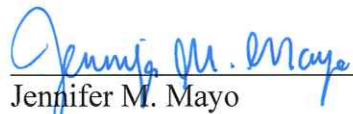
Jennifer M. Mayo
Acting Clerk of the Commission

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, 611 Old Post Road, Fairfield, CT 06824

CATHLEEN SIMPSON, HUMAN RESOURCES DIRECTOR, HUMAN RESOURCES DEPARTMENT, TOWN OF FAIRFIELD; DAVID KELLEY, INFORMATION TECHNOLOGY DIRECTOR, INFORMATION TECHNOLOGY DEPARTMENT, TOWN OF FAIRFIELD; HUMAN RESOURCES DEPARTMENT, TOWN OF FAIRFIELD; INFORMATION TECHNOLOGY DEPARTMENT, TOWN OF FAIRFIELD; AND TOWN OF FAIRFIELD, c/o Attorney Wilson Carroll, Cohen and Wolf, P.C., 1115 Broad Street, Bridgeport, CT 06604 and Attorney Philip C. Pires, Cohen and Wolf, P.C., 1115 Broad Street, Bridgeport, CT 06604



Jennifer M. Mayo
Acting Clerk of the Commission