

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Charles Setaro,

Complainant

against

Docket # FIC 2024-0394

Tax Collector, Department of Finance,
City of Danbury; Department of Finance,
City of Danbury; and City of Danbury,

Respondents

June 25, 2025

The above-captioned matter was heard as a contested case on February 10, 2025, at which time the complainant and the respondents appeared 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 May 15, 2024, the complainant submitted to the respondents a request for electronic copies of each of the following records and, alternatively, the opportunity to inspect in-person any items not available in electronic format:
 - (a) Documents, “certificate of tax freeze” or other equivalent documentation that Assessor provides to Tax Collector to satisfy the requirement of City Ordinance Sec. 44-53 Tax Freeze for Elderly Homeowners section (d) [footnote omitted]. Include name, unique ID, property address, any calculations, tax reductions etc.. Timeframe: 2017-2019 inclusive (hereinafter “tax freeze certificate request”).
 - (b) Document (application, copies of) that satisfies the notification to the Tax Collector from the Assessor as described in City Ordinance Sec. 44-53 sec (b)(4) [footnote omitted] Timeframe: 2019-2020 (hereinafter “tax freeze application request”).¹
3. It is found that, by email dated May 20, 2024, the respondents acknowledged the complainant’s request.

¹ The Commission notes that the complainant had also submitted two additional requests to the respondents on May 15, 2024; however, such requests are not addressed herein because the complainant stated on the record that they were no longer at issue.

4. It is found that, by email dated June 10, 2024, the respondents informed the complainant that they did not maintain any records responsive to his request “as tax bills are generated through a software program.”

5. By email, dated and filed July 9, 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 all records responsive to his request.

6. Section 1-200(5), G.S., provides as follows:

“[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 the following 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.

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. Section 1-211(a), G.S., provides the following in relevant part:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of the nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212 ...

10. In turn, §1-212(b), G.S., provides the following:

The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:

(a) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection;

(b) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested;

(c) The actual cost of the storage devices or media provided to the person making the request in complying with such request; and

(d) The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services

11. It is concluded that the requested records, 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.

Tax Freeze Certificate Request

12. It is found that the respondents maintain records responsive to the complainant's tax freeze certificate request in a "computer storage system" within the meaning of §§1-211(a) and 1-212(b), G.S.

13. Based upon the testimony of the respondent tax collector, it is found that the respondents' computer storage system, Quality Data Services ("QDS"), consists of a software program that contains an individual account for each taxpayer in the respondent city. It is found that, among other data, QDS contains information inputted by the city's tax assessor, such as total amounts of assessments, exemptions, and adjustments for each taxpayer. It is further found that the respondent tax collector is able to view such data within QDS.

14. It is found that the respondent tax collector is personally unable to generate a report using QDS software that contains data responsive to the complainant's tax freeze certificate request.

15. It is found that, for the respondent tax collector to locate the data responsive to the complainant's tax freeze certificate request, he would have to manually open in QDS the individual accounts of tens of thousands of taxpayers for three tax years because the software creates a new record for each taxpayer when a new real estate bill generates each year. It is found that the tax collector would have to use either the name, address, or unique parcel ID number to look up each taxpayer's account. It is further found that the tax collector would then have to open the electronic record for each taxpayer each year to determine whether the taxpayer qualified for a tax exemption that year. It is found that the QDS software initially displays the number of exemptions for which a taxpayer qualifies, and the tax collector would then have to click through "about three other pages" to see what type of exemption it was (e.g., Tax Freeze for Elderly Homeowners).

16. The respondents contend that, to properly respond to the complainant's tax freeze certificate request, the tax collector would have to manually extract data from QDS and "build" a responsive record. The respondents further contend that public agencies are not required by the FOI Act to create such a record and, therefore, they do not maintain records responsive to such request.

17. Our Supreme Court has held that, pursuant to §§1-211(a) and 1-212(b), G.S., if a public agency cannot comply with a records request because it does not have the technological capability to separate exempt from nonexempt data, such request still falls within the scope of the FOI Act. Hartford Courant Co. v. Freedom of Information Commission, 261 Conn. 86, 94 (2002) ("Courant"). "[Section] 1-211(a) places the burden on the public agency to demonstrate that it cannot reasonably make the copy requested." Id. at 94. Accordingly, the disclosing agency must comply with the request by either developing a program or contracting with an outside entity to develop a program, provided that the requester is willing to cover the associated cost. Id. at 94-95. See also Maier v. Freedom of Information Commission, et al., 192 Conn. 310, 316 (1984).²

18. It is found that, under the Supreme Court's ruling in Courant, the respondents are not excused from complying with the complainant's tax freeze certificate request simply because the responsive data is located in a computer storage system. It is further found that, under Courant, the respondents must comply with the complainant's request by either developing a program to make an electronic copy of the responsive data maintained in QDS or by contracting with an outside entity to develop such a program, provided that the complainant is willing to cover the associated cost.

19. It is found that, prior to the contested case hearing, the respondents consulted with a QDS customer representative about whether the software could generate a report responsive to the complainant's tax freeze certificate request. It is found that, based upon such consultation, the respondent tax collector concluded that such an option did not appear to exist.

² The Commission notes that the Appellate Court recently reaffirmed Courant and Maier in Town of Greenwich v. FOI Commission, 226 Conn. App. 40, cert. denied, 349 Conn. 924 (2024).

20. It is further found, however, that as of the date of the contested case hearing, the respondents had not consulted with such software company or any other information technology professionals to determine whether a program could be written to generate an electronic record responsive to the complainant's tax freeze certificate request.

21. Accordingly, it is concluded that the respondents failed to prove that they cannot reasonably make or have an electronic copy made of the data responsive to the complainant's tax freeze certificate request described in paragraph 2(a), above, within the meaning of §1-211(a), G.S.³

22. It is also found that the respondents did not offer any evidence regarding the feasibility of the complainant inspecting the data responsive to his tax freeze certificate request during regular office or business hours, which the complainant requested as an alternative to his request for a copy.

23. Therefore, it is further concluded that the respondents violated §1-210(a)(1), G.S., by failing to allow the complainant to inspect, during normal business hours, the data responsive to his tax freeze certificate request described in paragraph 2(a), above.

Tax Freeze Application Request

24. Regarding the complainant's tax freeze application request, it is found that the complainant based his belief that the respondents maintain responsive records upon Danbury City Ordinance Sec. 44-53 (b)(4), which states the following in relevant part:

[Tax Freeze for Elderly Homeowners] Applications must be filed with the assessor's office between February 1 and May 15 in the year following the list year with respect to which benefits are claimed hereunder, in triplicate, one (1) copy going to the taxpayer, **one (1) to the tax collector** and one (1) to the assessor. (Emphasis added.)

25. It is found, based on the respondent tax collector's testimony, that the respondents do not maintain any physical copies of the applications described in paragraph 24, above, despite the requirements of City Ordinance Sec. 44-53(b)(4). It is further found that the respondents do not participate in the intake of such applications.

26. It is found, based on the tax collector's testimony, that the respondents cannot access the applications described in paragraph 24, above, in electronic form in QDS.

³ Given the findings in paragraphs 12-15 and 19, above, the Commission notes that if the QDS computer storage system was acquired by the respondents on or after July 1, 1992, it may not be in compliance with §1-211(c), G.S., if the respondents failed to consider prior to acquiring it "whether such ... system adequately provides for the rights of the public under the Freedom of Information Act **at the least cost possible** to the agency and to persons entitled to access to nonexempt public records under the Freedom of Information Act." (Emphasis added.)

27. Based on the testimony described in paragraphs 25 and 26, above, it is found that the respondents do not maintain records responsive to the complainant's tax freeze application request.

28. Therefore, it is concluded that the respondents did not violate §§1-210(a) or 1-212(a), G.S., by failing to provide the complainant with records responsive to his tax freeze application request described in paragraph 2(b), above.

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

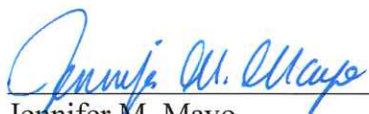
1. Within 30 days of the date of the Notice of Final Decision in this matter, the respondents shall investigate the propriety and feasibility of retrieving from the respondents' QDS computer-based storage system any records responsive to the complainant's tax freeze certificate request described in paragraph 2(a), above. In doing so, the respondents shall consult with QDS representatives and at least one other information technology entity, in accordance with §1-212(b), G.S., in order to comply with this order.

2. If a consulted entity is able to perform the retrieval described in paragraph 1 of this order, the respondents shall provide the complainant with an accurate estimate of the costs associated with compliance with his request. The respondents shall provide such estimates to the complainant within 5 business days of their receipt. If the complainant agrees, the respondents may pass the cost of producing such records on to the complainant, in accordance with §1-212(b), G.S. If the complainant does not agree to assume such costs, the respondents shall not be required to retrieve the responsive records.

3. If neither of the consulted entities can perform the retrieval described in paragraph 1 of this order, within 60 days of the date of the Notice of Final Decision in this matter the respondents shall provide the complainant with an affidavit averring (a) that such retrieval was not feasible and the reasoning in support thereof and (b) whether or not it is feasible for the complainant to inspect the responsive data in QDS during the respondents' regular office or business hours and the reasoning in support thereof.

4. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§1-210(a), 1-211(a), and 1-212(b), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 25, 2025.

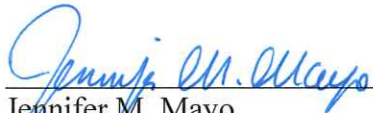

Jennifer M. Mayo
Acting Clerk of the Commission

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:

CHARLES SETARO, 27 Deer Hill Avenue, Danbury, CT 06810

**TAX COLLECTOR, DEPARTMENT OF FINANCE, CITY OF DANBURY;
DEPARTMENT OF FINANCE, CITY OF DANBURY; AND CITY OF DANBURY**, c/o
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Jennifer M. Mayo
Acting Clerk of the Commission