FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Andy Thibault, of the CT Examiner, and
Francisco Uranga, of the CT Examiner,

Complainants

against

Martha Shoemaker, First Selectwoman,
Board of Selectman, Town of Old Lyme;
Board of Selectmen, Town of Old Lyme,
and Town of Old Lyme,

Respondents

FINAL DECISION

Docket #FIC 2024-0409

June 25, 2025

The above-captioned matter was heard as a contested case on December 9, 2024 and April 21, 2025, at which times the complainants 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 and hand-delivered letter both dated June 24, 2024, the complainants requested that Respondent First Selectwoman Martha Shoemaker ("Respondent First Selectwoman") provide them with access to the following records:

a. Rosters of all town employees and volunteers [from] Jan. 1, 2024 to [the] present;

b. Rosters of Old Lyme Volunteer Ambulance Association [members from] Jan. 1, 2024 to [the] present;

c. Rosters of Old Lyme Volunteer Fire Department [members from] Jan. 1, 2024 to the present;

d. Any and all documents/records related to resignations including but not limited to letters, emails, phone logs, videos and voicemails in your possession or control [from]

Jan, 1, 2024 to the present;

e. Any and all documents/records *related to allegations of* hostile work environments, *sexually predatory behavior*, assaults or *harassment* including but not limited to letters, emails, phone logs, voicemails and videos in the possession or control of officials [from] Jan. 1, 2024 to the present; and

f. Any and all documents/records including but not limited to letters, emails, phone logs, videos and voicemails related to *sexual assault/harassment incidents, complaints* or criminal referrals [from] Jan. 1, 2024 to [the] present.

(Emphasis supplied).

3. It is found that, by letter dated June 25, 2024, the respondents acknowledged the complainants' request.

4. It is found that, on June 27, 2024, the respondents provided the complainants with a copy[1] of a roster responsive to the request set forth in paragraph 2.b, above.

5. It is found that, on July 1, 2024, the respondents provided the complainant with copies of certain records responsive to the requests in paragraphs 2.a, 2.c, and 2.d, above. It is further found that the respondents informed the complainants that they did not maintain any phone logs, voicemails, or videos related to any resignations received between January 1, 2024 and the date of the request.

6. By letter dated and filed July 17, 2024, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with a copy of all of the requested records and improperly redacted one record. The complainants also requested that the Commission impose a civil penalty against the Respondent First Selectwoman.

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,

[1] At the first contested case hearing, the complainants stated that, while they had requested access to the records set forth in paragraph 2, above, they had no issue with the fact that the respondents decided instead to provide them with copies of such records.

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

11. It is found that, on August 5, 2024, the respondents provided the complainants with certain phone logs responsive to the requests set forth in paragraphs 2.e and 2.f, above. It is further found that the respondents informed the complainants that with the disclosure of the phone logs they considered the complainants' request "fulfilled."

The First Contested Case Hearing on December 9, 2024

12. At the first contested case hearing, while the complainants conceded that they had received some records, they contended that: 1) not all rosters had been provided to them; 2) a particular letter[2] of resignation had been improperly redacted; and 3) the responsive phone logs had been provided to them in a manner that was not helpful.

13. The respondents contended that they acted promptly in gathering and providing all responsive records to the complainants.

14. With regard to the complainants' requests for rosters set forth in paragraphs 2.a, 2.b, and 2.c, above, it is found that what the complainants actually wanted was a roster from January 1, 2024 and a roster from June 24, 2024 (the date of the request), so that they could discern by comparing the rosters who resigned or was otherwise no longer employed or volunteering with the respondent town, the Old Lyme Volunteer Ambulance Association and the Old Lyme Fire Department.

15. While the Respondent First Selectwoman does not maintain the records of the Old Lyme Volunteer Ambulance Association ("Ambulance Association") or the Old Lyme Fire Department ("Fire Department"), it is found that she contacted both entities and requested that

[2] For clarity's sake, the Commission notes that, while it refers to a "resignation letter" the actual record was an email.

they provide her with any employee or volunteer rosters they maintained between the dates of January 1, 2024 and June 24, 2024. It is further found that the Respondent First Selectwoman provided the complainants with the rosters that she received from both entities. Because the Respondent First Selectwoman does not maintain such rosters, it is found that she had no duty to gather and provide such records to the complainants. See Lash v. Freedom of Info. Comm'n, 116 Conn. App. 171, 187 (2009) (holding that a public agency has the duty to maintain and disclose, upon request, the records in its possession, but that a public agency does not have a duty to maintain or make available the records of another public agency), aff'd in part and rev'd in part, 300 Conn. 511 (2011) (appellate court's order remanding the case to the Commission for further evidence was reversed). Nonetheless, the Commission appreciates the Respondent First Selectwoman's efforts to obtain the requested rosters and provide them to the complainants. It is concluded that, with regard to the requests set forth in paragraphs 2.b and 2.c, above, the respondents did not violate the disclosure provisions of §§ 1-210(a) or 1-212(a), G.S., as alleged in the complaint.

16. With regard to the request for rosters of town employees and volunteers set forth in paragraph 2.a, above, it is found that the Respondent First Selectwoman provided the complainants with a roster of such individuals as of January 1, 2024. While it was not clear from the request that the complainants also wanted a roster of current town employees and volunteers as of June 24, 2024 (so that they could discern workforce and/or volunteer attrition), it is found that, upon the request of the hearing officer and after the first contested case hearing, the Respondent First Selectwoman provided the complainants with the additional roster. It is concluded that, with regard to the request set forth in paragraph 2.a, above, the respondents did not violate the disclosure provisions of §§ 1-210(a) or 1-212(a), G.S., as alleged in the complaint.

17. With regard to the redactions to the letter of resignation referenced in paragraph 12, above, it is found that the Respondent First Selectwoman redacted the name and the email address of an individual who resigned amidst two investigations into allegations of sexual harassment. It is further found that both the Old Lyme Emergency Medical Service ("Old Lyme EMS") and the Department of Emergency Services and Public Protection[3] conducted investigations into such allegations. It is further found that the letter of resignation was simultaneously submitted to the Respondent First Selectwoman and the Chief of the Old Lyme EMS.

18. It is found that the Respondent First Selectwoman redacted the name and email address from the resignation letter because the state trooper assigned to the investigation informed her that such information should not be disclosed in the context of an ongoing investigation.

19. It is found that, in redacting the letter of resignation, the Respondent First Selectwoman relied on the provisions of §1-210(b)(3)(D), G.S., which provides that nothing in the FOI Act shall be construed to require the disclosure of:

[3] The Commission notes that the respondent town has a resident state trooper.

> Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of such records would not be in the public interest because it would result in the disclosure of: ... (D) information to be used in a prospective law enforcement action if prejudicial to such action....

20. It is found, however, that the letter of resignation is not a record of a law enforcement agency, which was compiled in connection with the detection or investigation of crime, within the meaning of §1-210(b)(3)(D), G.S., and therefore the redacted information is not exempt from disclosure pursuant to the provisions of §1-210(b)(3)(D), G.S.

21. After a discussion on the record at the hearing took place regarding the fact that §1-210(b)(3)(D), G.S., is a law enforcement exemption, the respondents then contended that the letter of resignation was properly redacted pursuant to §1-210(b)(2), G.S.

22. Section 1-210(b)(2), G.S., provides in relevant part that nothing in the FOI Act shall require disclosure of ". . . personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy . . . ."

23. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. Freedom of Info. Comm'n, 228 Conn. 158, 175 (1993). The claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that such information is highly offensive to a reasonable person.

24. Section 1-214, G.S., provides, in relevant part, that:

> (b)(1) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (A) each employee concerned....
>
> (b)(2) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files, and the agency reasonably believes that the disclosure of such records would not legally constitute an invasion of privacy, the agency shall first disclose the requested records to the

person making the request to inspect or copy such records and subsequently, within a reasonable time after such disclosure, make a reasonable attempt to send a written or an electronic copy of the request to inspect or copy such records, if applicable, or a brief description of such request, to each employee concerned and the collective bargaining representative, if any, of each employee concerned.

(b)(3) Nothing in this section shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy.

(c) A public agency which has provided notice under subdivision (1) of subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned or the employee's collective bargaining representative, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given. Each objection filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee or the employee's collective bargaining representative, under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. Upon the filing of an objection as provided in this subsection, the agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206. Failure to comply with a request to inspect or copy records under this section shall constitute a denial for the purposes of section 1-206. Notwithstanding any provision of this subsection or subsection (b) of section 1-206 to the contrary, if an employee's collective bargaining representative files a written objection under this subsection, the employee may subsequently approve the disclosure of the records requested by submitting a written notice to the public agency.

25. It is found that the respondents failed to prove that they "immediately" notified their former employee in writing that there was a request for access to his letter of resignation,

as required by §1-214(b)(1), G.S. In fact, the respondents provided no evidence as to when or how they provided notice to their former employee of the request at issue in this case.

26. It is further found that the respondents failed to prove that the former employee timely filed a written objection to the disclosure of his letter of resignation, pursuant to §1-214(c), G.S. In fact, the respondents did not enter the former employee's objection letter into evidence, nor did they proffer any testimony with regard to when or in what form they received an objection.

27. It is found that the letter of resignation constitutes a "personnel" or "similar" file within the meaning of §1-210(b)(2), G.S.

28. It is found that there is a legitimate public interest in the identity of a government employee who resigns amidst two sexual harassment investigations into his conduct.

29. It is further found that the respondents did not proffer any evidence by which it could be found that the former employee "took extraordinary measures to keep his email address out of the public domain." See Town of West Hartford, et al. v. Freedom of Info. Comm'n, et al., 218 Conn. 256, 258 (1991). In fact, it is found that the employee chose to submit the letter of resignation to the Respondent First Selectwoman and the Chief of the Old Lyme Emergency Medical Service by way of email, rather than by way U.S. mail or in person, thereby inserting his email address into the public records of two distinct public agencies. Finally, the respondents did not proffer any evidence as to why the disclosure of the email address in question would be highly offensive to a reasonable person.

30. It is found that the respondents failed to prove that disclosure of the letter of resignation without redactions would constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S.

31. It is therefore concluded that the respondents violated the disclosure provisions of §§ 1-210(a) and 1-212(a), G.S., when they declined to disclose the letter of resignation to the complainants without redactions.

32. With regard to the complainants' contention about the phone logs referenced in paragraph 12, above, it is found that the Respondent First Selectwoman did not maintain records of incoming and outgoing calls from her business phone; rather, she had to request such records from Comcast in order to provide such records to the complainants.

33. It is found that, on July 2, 2024, the Respondent First Selectwoman, with the assistance of her IT Coordinator, requested that Comcast provide her with all records of incoming and outgoing calls from her business phone between "1 January – 18 July, 2024, inclusive." See Ex. 5, at 5. It is further found that, on or about August 5, 2024, the Respondent First Selectwoman provided the complainants with 22 pages of incoming and outgoing calls from her business phone that occurred on: March 11, 2024 through March 15, 2024; March 18, 2024 through March 22, 2024; and March 25, 2024 through March 28, 2024

(the "business phone logs"). It is found that the 22 pages provided to the complainants listed approximately 1,200 individual calls.

34. It is also found that the Respondent First Selectwoman provided the complainants with a 1-page record containing a total of four incoming and outgoing calls from her personal cell phone, which occurred on March 18, 2024.

35. With regard to the disclosure of the business phone logs, the complainants contended that unless each of the approximately 1,213 calls concerned "allegations of hostile work environments, sexually predatory, assaults or harassment," see Request 2.e, above, or were related to "sexual assault, harassment incidents, complaints, or criminal referrals," see Request 2.f, above, the majority of the records disclosed to them were not responsive to their request (or, stated another way, the portion of records responsive to the request was buried somewhere within the records provided). The Commission agrees.

36. It is found that, while the Respondent First Selectwoman conducted a thorough search for her business phone logs, she failed to provide the complainants with only those records that were *responsive* to the requests set forth in paragraphs 2.e and 2.f, above.

37. At the request of the hearing officer and after the first contested case hearing, the Respondent First Selectwoman provided the complainants with her business phone logs again, with the records responsive to the requests set forth in paragraphs 2.e and 2.f, above, highlighted in yellow.

38. Based on the facts and circumstances of this case, it is found that the respondents' initial failure to provide the complainants with only those records that are responsive to the request did not violate the disclosure provisions of §§ 1-210(a) or 1-212(a), G.S. The respondents are cautioned that, in the future, the failure to segregate non-responsive records from responsive records could be deemed a violation of the disclosure provisions of §§ 1-210(a) or 1-212(a), G.S.

39. Finally, it is found that, at the time of the first contested case hearing, the Respondent First Selectwoman was in possession of two incident reports concerning allegations of sexual harassment. It is further found that, at the time of the first contested case hearing, the Respondent First Selectwoman had not provided such reports to the complainants. It is further found that the Respondent First Selectwoman was unable to testify with certainty as to when she received the incident reports.

40. At the conclusion of the first hearing, the hearing officer ordered the Respondent First Selectwoman to: 1) submit an affidavit averring that she came into possession of the incident reports after receiving the request in this case; or 2) provide the incident reports to the complainants. The hearing officer further informed the Respondent First Selectwoman that, if the incident reports were provided to the complainants with redactions, she would be required to submit unredacted reports to the Commission for in camera inspection.

41. The respondents conceded that, in the event that the Respondent First Selectwoman was in possession of the two incidents reports at the time she received the request set forth in paragraph 2, above, such records would be responsive to the requests set forth in paragraphs 2.e and 2.f, above. The respondents contended, however, that the reports would require redaction pursuant to §1-210(b)(2), G.S., and the Supreme Court's decision in Rocque v Freedom of Info. Comm'n, 225 Conn. 651 (2001) ("Rocque").

42. It is found that, by letter dated December 16, 2024, the Respondent First Selectwoman informed the hearing officer that, on December 9, 2024, the two incident reports had been provided to the complainants with redactions. Such letter along with the redacted incident reports, has been marked as Resp. Post-Hearing Ex. 8.

In Camera Submission

43. On February 11, 2025, the respondents submitted the records at issue to the Commission for in camera inspection. Such records are fairly described as one 2-page incident report and one 5-page incident report. Such records shall be identified as IC-2024-0409-1 through IC-2024-0409-7.

44. On the Index accompanying the in camera records, the respondents contended that the incident reports had been redacted pursuant to §1-210(b)(2), G.S., and Rocque, in order to protect the identity of the victim of the alleged sexual harassment as well as any sexually explicit information.

45. In addition to the provisions of §1-210(b)(2), G.S., and applicable law set forth in paragraphs 21 and 22, above, in Rocque, the Connecticut Supreme Court held that the identity of a sexual harassment complainant and sexually explicit or descriptive detail of the harassment within investigative records were not a legitimate matters of public concern because the disclosure of such information would do nothing to assist in the public's understanding or evaluation of a public agency's investigative process. The Court further held that disclosure of such information would be highly offensive to a reasonable person.

46. Upon careful in camera inspection, it is found that the redacted portions of the in camera records can be categorized as either the identity of a sexual harassment complainant or sexually explicit or descriptive information, within the meaning of Rocque. It is further found that the disclosure of such portions of the in camera records would constitute an invasion of personal privacy, within the meaning of §1-210(b)(2), G.S. Accordingly, it is concluded that the redacted portions of the in camera records are permissively exempt from disclosure by virtue of said provision. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) or 1-212(a), G.S., when they declined to disclose incident reports to the complainants without redactions.

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

47. On March 3, 2025, the Commission gave notice to the Respondent First Selectwoman that, pursuant to §1-206(b)(2), G.S., a continued hearing would convene on April

21, 2025, at which time the Commission would consider the imposition of a civil penalty against her. The hearing officer further informed the Respondent First Selectwoman that she would be afforded an opportunity to be heard under oath at the continued hearing.

48. Pursuant to an order from the hearing officer, the Respondent First Selectwoman appeared at the second contested case hearing and testified on behalf of herself and the other respondents.

49. At the civil penalty hearing, the Respondent First Selectwoman testified that she received one of the incident reports on March 18, 2024, and the other on March 19, 2024. It is further found that the Respondent First Selectwoman received the letter of resignation on March 19, 2024.

50. It is found that the Respondent First Selectwoman maintained the two incident reports at the time she received the request in this case, but she did not disclose the reports to the complainants in response to the request because they "didn't come to mind."

Promptness Analysis

51. With regard to whether the respondents have acted promptly in complying with the instant request, 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.

52. It is found that the fact that the Respondent First Selectwoman actually maintained the incident reports was discovered during the course of the first contested case hearing. It is further found that, had the complainants not appealed to the Commission, they likely would not have received the incident reports in response to their request.

53. It is further found that 168 days elapsed between the date the complainants made their request in this case and the date that they received the incident reports.

54. However, it is found that, subsequent to the instant request, the Respondent First Selectwoman implemented corrective measures to ensure that what happened in this case does not occur again. In this regard, it is found that the Respondent First Selectwoman established a more formal FOI request logging and tracking process. It is further found that the Respondent First Selectwoman assigned her executive administrator to be the point person on all FOI requests. In addition, it is found that the Respondent First Selectwoman signed up for yearly

FOI education training with the Commission's public education officer. It is further found that the respondents attended the first such education training on February 26, 2025. Finally, the respondents represented that, going forward, they will only consult with their counsel on legal matters such as exemptions to disclosure.

55. Notwithstanding the corrective measures referenced in paragraph 54, above, it is found that the respondents did not provide the complainants with the incident reports promptly, and it is concluded that the respondents violated the promptness requirements of §§1-210(a) and 1-212(a), G.S., with respect thereto.

Consideration of the Imposition of a Civil Penalty

56. As noted in paragraph 47, above, on March 3, 2025, the Commission informed the Respondent First Selectwoman that it would consider the imposition of a civil penalty against her.

57. 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]

58. As intimated in paragraphs 17 through 20, above, the Respondent First Selectwoman's primary reason for redacting the letter of resignation was based on a law enforcement exemption and the advice she received from a state trooper.

59. It is found that the Respondent First Selectwoman's decision to redact a letter of resignation based on the law enforcement exemption (which pertains to records compiled in connection with the detection or investigation of crime) was not reasonable.

60. Given the fact that the subject incident reports and the letter of resignation were received by the Respondent First Selectwoman at or around the same time, it is found that the Respondent First Selectwoman's failure to disclose the incident reports to the complainants in this case until December 9, 2024 was not reasonable.

61. It is therefore concluded that the complainants' right to prompt access to non-exempt responsive public records was denied by the respondents "without 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.

grounds," within the meaning of §1-206(b)(2), G.S., and a civil penalty is warranted.

62. It is found that the Respondent First Selectwoman is the individual directly responsible for the violations set forth in paragraphs 31 and 55, above.

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

1. The Respondent First Selectwoman Shoemaker 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 two hundred and fifty dollars ($250.00).

2. 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 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:

ANDY THIBAULT, OF THE CT EXAMINER; AND **FRANCISCO URANGA, OF THE CT EXAMINER**, 24B Lyme Street, Old Lyme, CT 06371

MARTHA SHOEMAKER, FIRST SELECTWOMAN, BOARD OF SELECTMEN, TOWN OF OLD LYME; **BOARD OF SELECTMEN, TOWN OF OLD LYME**; AND **TOWN OF OLD LYME**, c/o Attorney Kristi D. Kelly, Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, 2 Union Plaza, Suite 200, P.O. Box 1591, New London, CT 06320

Jennifer M. Mayo
Acting Clerk of the Commission

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