

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Davco Realty Group LLC,

Complainant

against

Docket #FIC 2024-0292

Town Manager, Town of Killingly;
and Town of Killingly,

Respondents

May 14, 2025

The above-captioned matter was heard as a contested case on September 13, 2024, at which time a representative for the complainant (hereinafter, the “complainant”) and respondents appeared and presented testimony, exhibits and argument on the complaint.

Pursuant to the Hearing Officer’s Order for Affidavit dated March 24, 2025, the respondents submitted an affidavit sworn to or attested by Mary Calorio, dated April 7, 2025, which shall be marked as Respondents’ Exhibit 6 (after filed).

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 March 14, 2024, the complainant submitted a request to the respondent Town Manager (the “March 14 request”) seeking the following records:

[Part 1]

[A] copy of all meeting agendas, minutes, and recordings of both Regular and Special Town Council Meetings for the period May 16, 2016 to present wherein the property at 11 Maple Street, Killingly, CT was discussed.

[Part 2]

[A] copy of all records pertaining to the demolition of 11 Maple Street, Killingly, CT.

[Part 3]

[A] copy of all records pertaining to the Town's payment to Mystic Air Quality Consultants, Inc. for work performed at 11 Maple Street, Killingly, CT in 2023, including Requests for Proposals, bid documents, and payment receipts [i.e., RFP documents].

[Part 4]

[A] copy of all records pertaining to the Town's payment to Donahue General Contractors, Inc. for work performed at 11 Maple Street, Killingly, CT in 2023, including Requests for Proposals, bid documents, and payment receipts.

[Part 5]

[A] copy of all records pertaining to the Town's payment to Kropp Environmental Contractors, Inc. for work performed at 11 Maple Street, Killingly, CT in 2023, including Requests for Proposals, bid documents, and payment receipts.

[Part 6]

[A] copy of all records pertaining to the Town's payment to Murtha Cullina, LLP, for legal services performed in the matter of Town of Killingly v. Davco Realty Group, LLC, NO.WWM-CV196016249-S.

[Part 7]

[A] copy of all records pertaining to the Town's payment to Halloran & Sage, LLP, for legal services performed in the matter of Town of Killingly v. Davco Realty Group, LLC, NO.WWM-CV196016249-S.¹

3. It is found that on March 15, 2024, the respondent Town Manager acknowledged the complainant's March 14 request, informing him that the respondents would begin compiling documents and would provide him with an estimated cost for copies of responsive records.

4. It is found that on March 27, 2024, the complainant followed up with the respondent Town Manager to determine the status of his request. On that same day, the respondent Town Manager informed the complainant that, because his request covered several years, it would take some time to provide a reasonable estimate for the cost to copy the records responsive to the March 14 request. However, the respondent Town Manager indicated that she anticipated having an estimate by the end of the following week.

¹ The complainant testified that he received records for Parts 6 and 7 of his request and was not disputing those portions of his request.

5. On April 8, 2024, the respondent Town Manager informed the complainant that based on their review of the records pulled as responsive to the March 14 request up to that point the estimated copy fee for such records was \$75.00. The complainant was instructed to mail a check to the Town's Finance Office, and was informed that staff would continue working on his request once payment was received.

6. It is found that: (i) on April 11, 2024, the complainant inquired as to whether he could remit payment via credit card; (ii) on April 17, 2024, the respondent Town Manager informed the complainant that they do not have the ability to accept credit card payments for copies of records and again instructed the complainant to mail a check to the Town's Finance Office; and (iii) on May 14, 2025, the respondents received such payment from the complainant.

7. By letter of complaint dated May 25, 2024, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act, by failing to provide all records responsive to his March 14 request.

8. It is found that on May 28, 2024, the respondents sent a packet of records to the complainant via certified mail, containing the records maintained by the respondents that were responsive to Parts 2 through 5 of the March 14 request. It is found that the packet of records was delivered to the complainant on May 30, 2024.

9. It is found that on July 2, 2024, the respondents sent the complainant a second packet of records containing the information relating to the respondents' payments made to Murtha Cullina, LLP, and Halloran & Sage, LLP, as requested in Parts 6 and 7 of his March 14 request. It is found that the complainant received the second packet of records on July 5, 2024.

10. It is found that on July 9, 2024, the complainant indicated that the respondents did not fulfill his March 14 request. On July 10, 2024, the respondents informed the complainant that they had provided him with all the records in their possession and inquired as to what information the complainant thought was missing. The complainant responded that Parts 1 through 5 of his March 14 requests remained unfulfilled.

11. It is found that on July 16, 2024, the respondent Town Manager indicated that she would look into whether any responsive records were not included in the prior two mailings sent to the complainant as described in paragraphs 8 and 9, above. The respondent Town Manager again inquired as to what records the complainant felt were not provided, to which the complainant indicated that Parts 1 through 5 of his March 14 request were not fulfilled in their entirety.

12. It is found that on July 17, 2024, the respondent Town Manager emailed the complainant concerning Parts 1 through 5 of his March 14 request, stating that: (i) the respondents did not maintain any records responsive to Part 1 of his request; (ii) 9 additional

records were identified as pertaining to Part 2 of his request, and were attached to that email²; and (iii) all records responsive to Parts 3, 4, and 5 of his request were provided.

13. 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.

14. 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.

15. 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.”

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

17. With respect to Part 1 of the March 14 request, it is found that the respondents reviewed all agendas, minutes, and recordings of the Regular and Special Town Council

² The respondents testified, and it is found, that after the complainant expressed concerns that not all responsive records had been provided in the two packets of records sent to him, they undertook an additional search to determine whether any other records could be identified. It is found that as part of that search the respondents contacted the Town’s Building and Planning and Zoning departments to see if they maintained any additional records that were not previously provided to the complainant, wherein they identified the 9 additional records that were sent to the complainant on July 17, 2024. It is found that the Town’s Building and Planning and Zoning departments are separate public agencies from the respondent Town Manager and maintain their own records. The respondents were not under any obligation to search the records of the Town’s Building and Planning and Zoning Departments, and thus the Commission does not have jurisdiction to consider the additional records provided to the complainant on July 17, 2024, in the context of this case. See Lash v. Freedom of Info. Comm’n, 300 Conn. 511, 521 n.7 (2011) (sustaining the Appellate Court’s determination that first selectman did not have duty to inquire with a separate public agency as to whether it had possession of any of the documents that requester had requested). The Commission notes that the complainant may make a request to the Town’s Building and/or Planning and Zoning departments for the same records he requested herein and may file a complaint with the Commission if he is not satisfied with the records provided to him in response to that request.

meetings from May 16, 2016, to the date of the request and found no records that pertained to the 11 Maple Street property.

18. Accordingly, it is found that the respondents did not maintain any records responsive to Part 1 of the March 14 request.

19. With respect to Parts 2, 3, 4, and 5 of the request, it is found that the respondents maintained *some* records responsive to those parts of the request because they had previously compiled the same records for a court filing. It is found that such records were included in the first packet of records sent to the complainant as described in paragraph 8, above.

20. The complainant alleges that RFP documents should have been included in response to Parts 2, 3, 4, and 5 of his March 14 request.

21. It is found, however, that the respondents did not utilize an RFP procedure (or similar competitive procurement procedure) for the work done at 11 Maple Street. It is found that the respondents utilized an emergency procurement provision in their procurement code to forego the typical RFP process.³

22. Accordingly, it is found that the respondents do not maintain RFP documents responsive to Parts 2, 3, 4, and 5 of the March 14 request.

23. Similarly, the complainant alleges that more detailed invoices or receipts should have been included with the first packet of records sent by the respondents as described in paragraph 8, above.

24. It is found that the respondents provided copies of a number of invoices and/or receipts from Mystic Air Quality Consultants, Inc., Donahue General Contractors, Inc., and Kropp Environmental Contractors, Inc., for the work performed at 11 Maple Street.

25. While the complainant may be dissatisfied with the level of detail contained in such invoices and/or receipts, the respondents testified, and it is found, that the invoices and/or receipts, mailed to the complainant on May 28, 2024 (as described in paragraph 8, above) represent all records maintained by the respondents that were responsive to those portions of the March 14 request.

26. Based on the facts and circumstances of this case, it is found that the respondents conducted a thorough, diligent, and reasonable search for records. Moreover, it is found that the respondents disclosed all records they maintained that were responsive to the March 14 request.

27. It is concluded, therefore, that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

Promptness

³Whether the respondents properly utilized the emergency procurement provision is outside of the Commission's purview. The Commission only makes such findings as it pertains to whether the respondents maintained RFP documents concerning the work performed at 11 Maple Street, at the time of the March 14 request.

28. The complainant alleges that the respondents were not prompt in providing him with records responsive to his March 14 request.

29. The Commission has held that the meaning of the word “promptly” is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (January 11, 1982), the Commission advised that the word “promptly,” as used in §1-210(a), G.S., means “quickly and without undue delay, taking into account all factors presented by a particular request.”

30. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requestor, if ascertainable; and the importance to the public of completing other agency business without the loss of personnel time involved in complying with the request. In addition, common sense and goodwill ought to be the guiding principles.

31. It is found that the complainant’s request covered a period of approximately eight years (i.e., from 2016-2024).

32. It is found that while the total pages of records disclosed to the complainant consisted of just over 150 pages of records, the respondents were required to search and review a significant number of records, many of which were archived – particularly with respect to Part 1 of the complainant’s request.

33. It is found that in May 2024, the respondents realized that it would take additional time to disclose all records responsive to the complainant’s request and opted to make a partial disclosure of the records they had compiled thus far, culminating in the first packet of records mailed to the complainant on May 28, 2024.

34. It is found that after mailing the first packet of records to the complainant, the respondents experienced some delay in continuing their search for records as the employee tasked with processing the request was out on leave for approximately two weeks. It is found that the respondent Town Manager did not assign another employee to process the request during this time because substantial progress had been made in searching for the remaining records and she wanted to avoid potentially duplicating efforts.

35. Additionally, the respondents testified, and it is found, that June is a particularly busy month as the Town was closing out finances for that fiscal year and preparing its budget for the next fiscal year. It is found that the employee tasked with processing the complainant’s request continued to do so during this time, albeit at a reduced capacity given her other obligations.

36. It is found that the complainant did not articulate a timeframe by which he needed the records. Moreover, as noted in paragraphs 5, 6, and 8, above, the respondents informed the complainant that the estimated cost for producing records was \$75.00 on April 8, 2024; however, the complainant did not remit payment for such records until May 14, 2024.

37. Based on the facts and circumstances of this case, it is found that the respondents acted promptly in providing the responsive records to the complainant.

38. Accordingly, it is concluded that the respondents did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 14, 2025.

/s/ Molly Steffes

Molly Steffes

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:

DAVCO REALTY GROUP LLC, c/o Glen Voccio, 57 Furlong Street, Cranston, R.I. 02920

TOWN MANAGER, TOWN OF KILLINGLY; AND TOWN OF KILLINGLY, c/o Attorney Kenneth R. Slater, Jr., Halloran & Sage LLP, 225 Asylum Street, Hartford, CT 06103

/s/ Molly Steffes

Molly Steffes

Acting Clerk of the Commission