

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jessica Gernat,

Complainant

against

Docket # FIC 2024-0323

First Selectman, Town of Oxford; and Town
of Oxford,

Respondents

May 28, 2025

The above-captioned matter was heard as a contested case on October 8, 2024, 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 letter dated May 18, 2024, the complainant sent the following request to the respondents:

I am requesting an opportunity to **view and obtain** digital copies of both indoor and outdoor town hall camera footage from May 14, 2024 and May 15, 2024 between the hours of 6AM and 7PM. I am specifically requesting any footage that includes views of the outdoor parking lot areas and walkways, the indoor hallways, and views that include the selectman's office and zoning department offices ("requested footage")

I can make myself available for **viewing these records during your normal business hours and understand if there is a fee for searching and copying the records.** If it helps your office to bulk upload, feel free to provide more footage and I can search through for the days I am interested in viewing. (Emphasis added.)

3. It is found that on May 20, 2024, counsel for the respondents informed the complainant that the respondents' security company was working on "retrieving and securing" the requested footage and that "at this time the company has not advised the Town of the final cost of the retrieval."
4. By email dated and filed on June 6, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by

failing to allow her to inspect the requested footage and instead retaining an outside firm to capture the footage at a cost.

5. Section 1-200(5), G.S., provides the following:

“[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.

6. 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.

7. 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.”

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

9. Regarding the complainant’s request to inspect the requested footage, it is found that the complainant’s May 18, 2024 request, described in paragraph 2, above, clearly states her desire to view the footage in the town hall during normal business hours.

10. It is found that any footage of Oxford town hall captured by surveillance cameras can only be viewed in town hall during normal business hours on two computers. One such computer is located at the desk of the first selectman’s executive assistant (“executive assistant”), and the other is in the town clerk’s office.

11. It is found that, for the complainant to be able to view the footage on the computer in the first selectman’s office, the complainant would have to sit at the executive assistant’s desk. The executive assistant testified that the complainant would have to occupy the desk for “many hours” to view the two days’ worth of requested footage, which would not be feasible because she would not be able to work at her desk.

12. It is found that the respondents did not offer any evidence regarding the feasibility of the complainant viewing the footage on the computer in the town clerk's office.

13. The Commission has held that nothing in the FOI Act requires an agency to permit access to floors or offices in its building and that such access is not inherent in the right to prompt access to inspect copies of public records. See Peruta v. Bradford, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, et al., Docket #FIC 2013-463 (May 28, 2014).

14. It is found, however, that although the FOI Act does not require the respondents to allow a complainant to occupy employee desks inside the town hall offices, this does not negate the respondents' duty to provide alternate means for records inspection during normal business hours.

15. It is found that the respondents did not offer any evidence regarding the feasibility of the complainant inspecting the requested footage on an alternate computer in town hall following its retrieval from the two computers described in paragraph 10, above.

16. It is found that at no point prior to the October 8, 2024 contested case hearing did the respondents communicate to the complainant any reason as to why it would not be feasible for her to inspect the requested footage on the computers in the offices of the first selectman and town clerk, nor did the respondents offer the complainant an opportunity to view the requested footage at any other location in the town hall following its retrieval.

17. Accordingly, it is concluded that the respondents violated §1-210(a)(1), G.S., by failing to allow the complainant to inspect the requested footage during normal business hours.

18. With respect to the copying fee charged by the respondents to the complainant for the requested footage, it is found that on July 8, 2024, the respondents informed the complainant via email that copies of the requested footage were available for pickup and instructed her to "bring a check in the amount of \$213.59 made out to the Town of Oxford. This covers the costs associated with pulling the footage and providing the necessary thumb drive."

19. It is found that at no time, during either correspondence with the complainant or at the contested case hearing, did the respondents invoke any statutory justification for the fee charged to the complainant described in paragraph 18, above. It is further found that the respondents did not provide the complainant with any invoices or receipts to explain such fee until the day of the contested case hearing.

20. 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....

21. 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:

- (1) 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;
- (2) 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;
- (3) The actual cost of the storage devices or media **provided to the person making the request** in complying with such request; and
- (4) 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 (Emphasis added.)

22. It is found that the respondents maintained the requested footage on a computer storage system within the meaning of §§1-211(a) and 1-212(b), G.S. It is further found that such system retains footage for only ten days after recording.

23. It is found that neither the executive assistant nor the town clerk, on whose computers the requested footage was stored, possessed the knowledge or expertise needed to make copies of the requested footage.

24. It is found that the respondents did not offer any evidence, however, to indicate that they investigated whether any other town hall employee or information technology specialist employed by the town possessed the knowledge or expertise to make copies of the requested footage prior to engaging the services of the town's surveillance system vendor ("vendor") at a cost.¹

25. It is found that the respondents arrived at the fee of \$213.59 by using the vendor's invoice to the respondents for the technician's services and supplies (\$187.00), plus the cost of one flash drive purchased from Amazon.com (\$26.59).

26. It is found that the vendor's invoice for \$187.00 accounted for a discounted service call (\$65.00), plus three hours of technician service time (\$60.00), plus the cost of three thumb flash drives (\$62.00).

27. In light of the foregoing, it is found that the respondents failed to prove that retaining the vendor's services at a cost was "necessary" to provide the complainant copies of the requested footage.

28. It is therefore concluded that the respondents violated §1-212(b)(2), G.S., by charging a \$125.00 fee equal to the cost of the vendor's service call and service time, described in paragraph 26, above.

29. It is found that, of the four flash drives purchased by the respondents as described in paragraphs 25 and 26, above, the respondents intended to provide only one flash drive to the complainant. It is further found that the respondents intended to keep the remaining thumb drives to retain copies of the footage for themselves. At the contested case hearing, the executive assistant acknowledged that the respondents had erred by attempting to pass on the cost of three additional flash drives to the complainant.

30. Accordingly, it is further concluded that the respondents violated §1-212(b)(3), G.S., by charging the complainant \$62.00 for three thumb drives that they did not intend to provide to her.

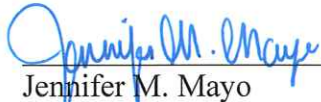
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

¹ Given the findings in paragraphs 22 to 26, above, the Commission notes that the respondents' computer storage system that houses the requested footage at issue may not be in compliance with §1-211(b), G.S., if there is a contractual relationship between the managing vendor and the respondents that "impairs the right of the public under the Freedom of Information Act to inspect or copy the agency's nonexempt public records ... stored on a device or medium used in connection with, a computer system owned, leased or otherwise used by the agency in the course of its governmental functions." Likewise, if such 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.)

1. The respondents shall provide a digital copy of the requested footage to the complainant forthwith, free of charge.

2. 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 May 28, 2025.



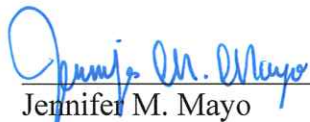
Jennifer M. Mayo
Acting Clerk of the Commission

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:

JESSICA GERNAT, 145 Coppermine Road, Oxford, CT 06478

FIRST SELECTMAN, TOWN OF OXFORD; AND TOWN OF OXFORD, c/o Attorney Kevin W. Condon, Condon & Savitt P.C., 223 Wakelee Ave, PO Box 570, Ansonia, CT 06401-0570



Jennifer M. Mayo
Acting Clerk of the Commission