

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Michael Dinan and the NewCanaanite.com,

Complainants

against

Docket # FIC 2020-0299

First Selectman, Town of New Canaan; and  
Town of New Canaan,

Respondents

October 8, 2025

The above-captioned matter was heard as a contested case on June 7, 2021, at which time the complainants and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.<sup>1</sup>

Immediately following the hearing, the hearing officer ordered the respondents to submit to the Commission a copy of the agenda and minutes for the June 9, 2020 regular meeting of the Town of New Canaan Board of Finance. Such copies were filed and have been admitted as follows:

Respondents' Exhibit 1 (after-filed): Town of New Canaan Board of Finance Regular Meeting Agenda, dated June 9, 2020; and

Respondents' Exhibit 2 (after-filed): Board of Finance Regular Meeting Minutes, dated June 9, 2020.

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 June 15, 2020, the complainants requested that the respondents provide a copy of the memorandum of understanding (hereinafter, "MOU") "discussed at the June 9, 2020 [Town of New Canaan] Board of Finance meeting."

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<sup>1</sup> On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

3. It is found that, by email dated June 15, 2020, the respondents acknowledged the complainants' request. However, it is found that, by email dated July 1, 2020, the respondents denied the request, and explained, in relevant part, that "the Town has determined that this [record] was a preliminary draft, and the public interest in withholding this [record] clearly outweighs the public interest in disclosure."

4. By complaint filed July 2, 2020, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying the request described in paragraph 2, above.<sup>2</sup>

5. At the time of the request, §1-200(5), G.S., provided:

"[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, printed, photostated, photographed or recorded by any other method.<sup>3</sup>

6. Section 1-210(a), G.S., provides, 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 ... (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides in relevant part: "[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 record described in paragraph 2, above, is a public record within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearing on this matter, the respondents contended that the record described in paragraph 2, above, is exempt from disclosure pursuant to §§1-210(b)(1) and 1-210(e)(1), G.S. The complainants disputed this contention.

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<sup>2</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, through June 30, 2021. Consequently, the Commission retains jurisdiction.

<sup>3</sup> Section 1-200(5), G.S., was subsequently amended to include the term "videotaped." See Public Act 21-2, §147 (June Sp. Sess.).

10. Immediately following the hearing, the hearing officer ordered the respondents to submit a copy of the record described in paragraph 2, above, to the Commission for in camera inspection. Such record was submitted on June 24, 2021, and shall hereinafter be described as IC-2020-0299-01 through IC-2020-0299-20 (the “in camera record”).

11. Section 1-210(b)(1), G.S., provides that “[n]othing in the [FOI] Act shall be construed to require the disclosure of: ... [p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure....”

12. In Wilson v. Freedom of Info. Comm’n, 181 Conn. 324, 332 (1980) (“Wilson”), the Supreme Court explained that:

[w]e do not think the concept of preliminary, as opposed to final, should depend upon who generates the notes or drafts, or upon whether the actual documents are subject to further alteration....

Instead the term ‘preliminary drafts or notes’ relates to advisory opinions, recommendations, and deliberations comprising part of the process by which government decisions and policies are formulated....Such notes are predecisional. They do not in and of themselves affect agency policy, structure or function...

Instead, preliminary drafts or notes reflect that aspect of an agency’s function that precedes formal and informed decision making. We believe that the legislature sought to protect the free and candid exchange of ideas, the uninhibited proposition and criticism of options that often precedes, and usually improves the quality of, governmental decisions. It is records of this preliminary, deliberative and predecisional process the exemption was meant to encompass.

13. With regard to the “balancing test” required by §1-210(b)(1), G.S., it is well established that the responsibility for making the determination as to what is in the public interest is on the agency that maintains the records. Van Norstrand v. Freedom of Info. Comm’n, 211 Conn. 339, 345 (1989). The agency must have considered in good faith the effect of disclosure and indicated the reasons for its determination to withhold disclosure, which reasons may not be frivolous or patently unfounded. *Id.* Thus, the only determination for the Commission to make is whether the reasons for nondisclosure given by the agency are frivolous or patently unfounded. Lewin v. Freedom of Info. Comm’n, 91 Conn. App. 521, 522-523 (2005).

14. The year following Wilson, the Connecticut General Assembly passed Public Act 81-431, which added to the FOI Act the language now codified in §1-210(e)(1), G.S. That provision, which narrowed the exemption for preliminary drafts or notes, provides in relevant part:

[n]otwithstanding [§1-210(b)(1)], disclosure shall be required of:

[i]nteragency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.... (Emphasis added.)

15. It is found that, in the years preceding 2020, the New Canaan Library, Inc. (“Library”) began fundraising for a potential construction project involving its library building.<sup>4</sup>

16. It is found that on or about January 2020, the Library presented its plan for the construction project to the Town of New Canaan, and requested that the town contribute financially to the project.

17. It is found that the respondent First Selectman, on behalf of the Town of New Canaan, and Library representatives began negotiating the terms of an MOU between the Town of New Canaan and the Library related to the construction project.

18. It is found that the Board of Finance sought an update on the status of the MOU. It is found that, thereafter, review and discussion of the MOU was placed on the agenda of the June 9, 2020 regular meeting of the Board of Finance. It is found that, two days before the June 9, 2020, regular meeting of the Board of Finance, a copy of the MOU, as drafted at that time, was provided to the members of the Board of Finance.

19. It is found that the agenda for the June 9, 2020, regular meeting of the Board of Finance provides the following agenda item:

**Memorandum of Understanding (MOU) with New Canaan Library** – Review and discussion of preliminary draft of Library MOU. (30 minutes – Chris Lebris and Neil Budnick).

20. It is found that Chris Lebris and Neil Budnick were two members of the Board of Finance who, because of their unique knowledge about the Library, were tasked with assisting the First Selectman on the drafting of the MOU.

21. It is further found that the minutes of the June 9, 2020, Board of Finance meeting reflect the following discussion, in relevant part, regarding the MOU:

Mr. Lebris indicated that this is an introduction to the MOU for the Board of Finance. He then led the discussion presenting an update

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<sup>4</sup> The Commission notes that it has already determined that the New Canaan Public Library is not a public agency, under §1-200(1)(A), G.S.; an implementing agency, under §1-200(1)(C), G.S.; or the “functional equivalent” of a public agency, under §1-200(1)(B), G.S. See Andrea Sandor v. New Canaan Library, Inc., Docket #FIC 2020-0098 (Mar. 23, 2022) (“Sandor”). In Sandor, the Commission found that the Library is a non-profit tax-exempt organization that operates a public library for the benefit of the residents of the town and the general public.

of the background and process for creating the MOU with the Library. He noted that there has been input from various sources including the Town Council and the general public. He added that there are still some open questions and areas to be resolved. Mr. Lebris asked the Board members to review the draft MOU and provide any thoughts or comments to him before the next Board meeting in July, adding that there is still a lot of work to be done.

22. At the hearing on this matter, the complainants introduced a transcript of the June 9, 2020 regular meeting of the Board of Finance, and such transcript was admitted into evidence without objection.

23. It is found that at the commencement of the Board of Finance meeting, the Chairman made the following announcement:

[T]here was some misinformation that ... this was a public hearing on the library. It is not. It is not a public hearing on the library or the MOU ... we are seeing the MOU for the first time tonight. We're not voting on the MOU. We're not voting on funding. We're not voting on the library....

24. It is found that in transitioning to a discussion of the Library and MOU, the Chairman gave the following introduction:

The Board of Finance "has not seen ... or gotten an update yet on the MOU ... [T]his will be the first time we'll have a discussion around it ... [A]s the Board of Finance has stated ... any funding approvals are conditional on having a MOU ... in place and signed and approved ... and ... that's just down the road ... a bit."

25. It is also found that the Chairman stated that he was not sure when the Board of Finance would have a "final draft" for consideration or when the Board of Finance would take a vote on any relevant business concerning the provision of a grant to the Library.

26. It is found that the Chairman requested that Mr. Lebris and Mr. Budnick provide the Board of Finance with an update on "where the MOU stands."

27. It is found that Mr. Lebris summarized the evolution of the MOU. It is found that such record was described as a document prepared by the respondent First Selectman; Mr. Lebris and Mr. Budnick were "asked to be advisors" to the respondent First Selectman on the MOU; some members of the Town Council had also provided feedback; and that the MOU was "negotiated to some extent" with the Library. It is found that Mr. Lebris described the aforementioned events as resulting in the "first...complete draft" of the MOU, but immediately clarified that the draft was "not complete" and that there were "some open issues."

28. It is found that Mr. Lebris described the open issues as including "questions around governance," parking and needing input from the Planning and Zoning Commission; the "1913 building" and its preservation; as well as open financing issues. It is also found that Mr. Lebris

described next steps as needing to gather more data from the Library and making presentations to the Town Council and the Planning and Zoning Commission.

29. It is found that Mr. Lebris requested that members of the Board of Finance review the MOU and provide their “thoughts and comments” so that they may be incorporated into “a new draft of the document to be discussed” at a later Board of Finance meeting.

30. It is found that Mr. Budnick agreed with Mr. Lebris’ summary, adding that their presentation was “an introduction,” that there remained “a lot to be done,” and that the “plans are not final for the library.”

31. It is found that, later in the meeting, a different member of the Board of Finance asked about the allocation of funds from the Town to the Library, as described in the MOU. It is found that Mr. Lebris replied and explained the language as drafted, but further clarified that such language was “likely to change.”

32. It is found that, in the months following the June 9, 2020 regular meeting of the Board of Finance, the respondent First Selectman and Library representatives continued to make revisions to the terms of the MOU. It is found that, at the time of the June 7, 2021, hearing on this matter, the MOU in question had not yet been finalized and approved by the Town of New Canaan and the Library.

33. Based on the foregoing and a careful, in camera inspection, it is found that the in camera record constitutes a “preliminary draft” within the meaning of §1-210(b)(1), G.S., in that such record constitutes part of the deliberative process by which government decisions and policies are formulated, is predecisional, and does not in and of itself affect agency policy, structure or function.

34. It is further found that the respondents conducted the balancing test and determined that the public interest in withholding the in camera record clearly outweighed the public interest in disclosure of such record. The respondents sought to avoid any chilling effect on the candid discussion of the specific terms of the MOU, to protect the Town of New Canaan’s negotiating position, and to avoid misleading the public about the preliminary terms of the draft MOU by disclosing it.

35. It is found that the balancing test was undertaken in good faith, and that the reasons for nondisclosure were not frivolous or patently unfounded.

36. With respect to §1-210(e)(1), G.S., in Coal. to Save Horsebarn Hill v. Freedom of Info. Comm’n, the issue presented was whether the public agency violated the FOI Act by failing to disclose drafts of a proposed agreement between the University of Connecticut and a private pharmaceutical company. The Superior Court and Appellate Court agreed with the Commission that the drafts of the agreement constituted “preliminary drafts” within the meaning of §1-210(b)(1), G.S. Coal. to Save Horsebarn Hill v. Freedom of Info. Comm’n, No. CV000499178, 2001 WL 893779, at \*2, aff’d, 73 Conn. App. 89, 101 (2002), cert. denied, 262 Conn. 932 (2003).

37. With respect to the applicability of §1-210(e)(1), G.S., however, the court concluded that the Commission erred in applying §1-210(e)(1), G.S., to the facts of the case. Coal. to Save Horsebarn Hill, 2001 WL 893779, at \*2 n. 4. The court explained that because the draft agreements were not “interagency or intra-agency memoranda, letters, advisory opinions, recommendations or reports,” that §1-210(e)(1), G.S., was “simply inapplicable ... the negotiations were neither between members of different state agencies (interagency) nor between members of the same state agency (intra-agency). Instead, the agreements were between a public agency and a private corporation.” (Emphasis added.) Id.<sup>5</sup>

38. With respect to the present matter, it is found that the in camera record constitutes a draft agreement between two parties: the Town of New Canaan and the Library. Based on the foregoing legal framework, it is found that the in camera record does not constitute interagency or intra-agency memoranda or letters, advisory opinions, recommendations or a report, within the meaning of §1-210(e)(1), G.S., and therefore, the disclosure provisions of §1-210(e)(1), G.S., are not applicable. Consequently, the in camera record is not subject to the mandatory disclosure requirements of §1-210(e)(1), G.S.<sup>6</sup>

39. The complainants also contended that the MOU should be ordered disclosed because it was discussed during the June 9, 2020 regular meeting of the Board of Finance. The complainants relied upon David Markatos v. Town Planner, Town of New Canaan; and Town of New Canaan, Docket #FIC 2017-0551 (June 27, 2018).

40. In Markatos, the complainant requested that the respondents provide him with a copy of a “draft special permit approval.” The respondents in that matter delayed two months before disclosing a copy to the complainant. The Commission concluded that the respondents violated the promptness requirements of the FOI Act in delaying disclosure. In so concluding, the Commission also found that the draft special permit approval was discussed in detail at a

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<sup>5</sup> See also Ann Rubin v. First Selectman, Town of East Windsor; and Town of East Windsor, Docket #FIC 2017-0306 (May 9, 2018) (records reflecting the negotiation of terms of an agreement between the the Town of East Windsor and the Mohegan Tribes of Indians and the Mashantucket Pequot Indian Tribe did not constitute interagency or intra-agency memoranda or letters, advisory opinions, recommendations or a report, within the meaning of §1-210(e)(1), G.S., and therefore, the disclosure requirements of §1-210(e)(1), G.S., were not applicable); and Robert Young v. First Selectman, Town of New Canaan; and Town of New Canaan, Docket #FIC 2017-0290 (April 25, 2018) (unexecuted contracts between a public agency and private entities were not interagency or intra-agency records, within the meaning of §1-210(e)(1), G.S., and therefore, the disclosure requirements of §1-210(e)(1), G.S., were not applicable).

<sup>6</sup> The Commission notes that it also considered whether the in camera record in this matter is akin to the records that the Appellate Court determined were required to be disclosed, pursuant to §1-210(e)(1), G.S., in Lindquist v. Freedom of Info. Comm'n, 203 Conn. App. 512 (2021) (“Lindquist”). There, the court concluded that certain comments and ratings by committee members (i.e., “recommendations”) that were shared with a dean of the University of Connecticut were subject to mandatory disclosure in accordance with §1-210(e)(1), G.S. The court reasoned that such comments and ratings were not “preliminary” in nature, relying on the fact that they were the final comments and ratings by each committee member, delivered to the dean, no longer subject to revision, and utilized by the dean. Here, unlike the comments and ratings in Lindquist, the in camera record was not final and was subject to revision by several Town of New Canaan agencies, including the Board of Finance, Town Council, and the Planning and Zoning Commission, before the Town of New Canaan (by its First Selectman) could enter into an agreement with the Library. For these reasons, in addition to those set forth in paragraph 38, above, the in camera record is not subject to mandatory disclosure pursuant to §1-210(e)(1), G.S.

meeting of the Planning and Zoning Commission, that those detailed discussions led to a revised draft, and that there was no reason for the delay in disclosure in light of such circumstances.


41. The complainants' reliance on Markatos, is misplaced, as the only issue addressed by the Commission in that matter was whether the respondents violated the promptness requirements of the FOI Act. The Commission did not address whether discussion of a draft document at a public meeting constituted a waiver of the right to claim an exemption, nor did the Commission consider whether the draft special permit approval was exempt from disclosure pursuant to §1-210(b)(1), G.S., or mandatory disclosure pursuant to §1-210(e)(1), G.S. Additionally the record in this case does not support a finding that the in camera record was discussed in detail during the June 9, 2020 regular meeting of the Board of Finance, as was the case in Markatos, and that those discussions resulted in a revised MOU.

42. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 8, 2025.

  
Molly Steves  
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:

**MICHAEL DINAN AND THE NEWCANAANITE.COM**, P.O. Box 531, New Canaan, CT 06840

**FIRST SELECTMAN, TOWN OF NEW CANAAN; AND TOWN OF NEW CANAAN**, c/o Attorney Ira W. Bloom and Attorney Nicholas R. Bamonte, Berchem Moses PC, 1221 Post Road East, Westport, CT 06880

  
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Molly Steffes  
Acting Clerk of the Commission