

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Jacob Simkovitz,

Complainant

against

Docket # FIC 2025-0333

Robert Klem, Chief, Fire Department, Town
of Easton; Fire Department, Town of
Easton; Town Clerk, Town of Easton; and
Town of Easton,

Respondents

April 22, 2026

The above-captioned matter was heard as a contested case on January 23, 2026, at which time the complainant 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 dated March 6, 2025, the complainant requested that the Town Clerk and Chief Klem provide him with electronic copies of “[a]ny and all written communications relating to Freedom of Information [“FOI”] requests filed by [the complainant] to include all e-mails, text messages, meeting notes and similar records.” Additionally, the complainant’s request indicated that he preferred records to be provided to him electronically, via email.
3. It is found that, by email dated March 7, 2025 at 8:39 a.m., the respondent Town Clerk acknowledged the request and stated “[w]e do not have the information at the Town Clerk’s Office. Chief Klem will be able to assist you.”
4. It is found that, by email dated March 10, 2025, Chief Klem acknowledged the complainant’s request.
5. It is found that, by email dated March 28, 2025, Chief Klem informed the complainant that copies of the requested records were ready to be picked up at Town Hall, and that he believed there were 172 pages.¹

¹ It is found that 171 pages of records were provided to the complainant, in response to his request.

6. It is found that, by email dated April 11, 2025, the respondents emailed the complainant restating that the requested records were available for pick up, and inquired about the status of payment.

7. It is found that, by email dated April 11, 2025, the complainant asked “[w]hat fee are you assessing?”

8. It is found that, by email dated April 11, 2025, the respondents informed the complainant that the fee was \$85.50.

9. It is found that the respondents and complainant exchanged further emails on April 11, 2025, regarding the payment for and pickup of the responsive records, but ultimately, the complainant did not pick up the records on that day.

10. It is found that, by email dated April 20, 2025, the complainant informed the respondents that he had mailed payment for the records on April 14, 2025.

11. It is found that, by email dated April 21, 2025, the respondents emailed the complainant an electronic copy of the responsive records, after receiving his payment.

12. It is found that, by email dated April 21, 2025, the complainant wrote the following:

Primarily there are responsive message threads that I am part of that were not produced so I’m very confident these records do not reflect all of the requested records.
The request was blatantly delayed.
The law DOES NOT permit you to charge for electronic records which are electronic and requested electronically.

I would like to offer the town the opportunity to correct these issues but will be filing a complaint regarding this request and the one regarding the improper charges [. . .] on Friday [i.e. April 25, 2025] if this is not resolved.

13. By complaint dated May 3, 2025, and received May 7, 2025, the complainant appealed to the Commission alleging that the respondents violated the FOI Act by denying his request for the records described in paragraph 2, above. The complainant also requested that the Commission consider the imposition a civil penalty.

14. 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.

15. 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.

16. 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.”

17. It is concluded that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

18. The complainant contended that while he did receive copies of some responsive email records, he: (a) did not receive other records responsive to his request; (b) that he was improperly charged for those records that were provided; and (c) that the respondents failed to promptly provide the records that were produced.

19. With respect to the contention in paragraph 18(a), above, at the contested case hearing on this matter, the complainant testified, and it is found, that the only responsive records he received from the respondents were emails. The complainant also testified, and it is found, that he did not receive copies of any text messages, meeting notes or similar records.

20. The complainant further testified, and it is found, that he exchanged text messages with the First Selectman and also exchanged messages, through Facebook Messenger with Chief Klem, regarding his FOI requests, and at a minimum, he expected to receive copies of those messages.

21. The respondents testified that Chief Klem and the First Selectman searched their cellular telephones for responsive text messages but were not aware of any other town officials conducting a search for responsive records, including meeting notes or similar records.

22. It is found that the respondents failed to provide sufficient evidence regarding the nature and scope of the searches that were actually conducted. Therefore, it is found that the respondents failed to prove that they conducted a diligent and thorough search for all records responsive to the request described in paragraph 2, above.

23. Accordingly, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

24. With respect to the contention described in paragraph 18(b), above, regarding the fee charged; §1-212(a)(B), G.S., permits municipal public agencies to charge \$.50 per page for copies of public records.

25. However, §1-211(a), G.S., provides in relevant part that:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the [FOI] Act, a copy of any . . . [record], including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make such copy or have any such copy made.

26. Section 1-212, G.S., provides in relevant part, as follows:

(b) 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 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 function 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 device 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. . . .

27. With respect to the records provided to the complainant, the respondents' witness testified, and it is found, that Chief Klem provided responsive emails to her in hard copy, which she ultimately scanned and emailed to the complainant.

28. The Commission in Jessica Stedman v. Paul Vogel, Superintendent of Schools, Regional School District #1, et al., Docket #FIC 2018-0293 (February 13, 2019) ("Stedman") found that "the FOI Act does not permit a public agency to charge a fee for a copy of nonexempt

electronic record, when the requestor has asked that such record be provided electronically. The Commission takes administrative notice of the fact that there is no cost associated with transmitting a record electronically.”

29. It is found that despite the complainant’s request that the records be provided electronically, the respondents charged the complainant for the 171 pages of records, at a rate of 50 cents per page, consistent with the fees permitted for paper records. While §1-212(a)(B), G.S., permits a municipal agency to charge a per page fee of 50 cents for printed paper copies, charging the same fee for electronic copies is not permitted.

30. Based on the foregoing, it is concluded that the respondents violated the fee provisions of §§1-211 and 1-212, G.S.

31. Finally, with respect to the complainant’s contention that the respondents failed to provide him with the records promptly, the Commission has defined the word “promptly,” as used in §§1-210(a) and 1-212(a), G.S., to mean “quickly and without undue delay, taking into account all of the factors presented by a particular request.” See FOI Commission Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) (hereinafter “Advisory Opinion #51”).

32. Advisory Opinion #51 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 amount of personnel time necessary to comply with the request; the time by which the requestor 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 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.

33. Additionally, in Comm’r of Dept. of Emergency Servs. & Pub. Prot. v. Freedom of Info. Comm’n, No. HHBCV186047741, 2020 WL 5540637, at *3 (Conn. Super. Ct. July 2, 2020), the court explained that a public agency should consider its obligation under the FOI Act as a “primary duty” of that agency, “on par with the [agency’s] other significant duties, or said another way, that the agency’s FOIA duty is not a second-class duty.”

34. As found in paragraph 5, above, the respondents notified the complainant on March 28, 2025 that records were ready for pickup. However, it is also found that in that same email, Chief Klem asked the respondents’ Finance Director to verify the number of pages, which she did not do. It is further found that the complainant was not provided with a final page count or total payment amount at that time.

35. It is also found that the complainant and respondents did not communicate between March 28 and April 11, 2025.

36. As found in paragraph 11 above, the respondents provided the complainant with copies of the responsive records on April 21, 2025.

37. The respondents testified, and it is found, that the delay was due, at least in part, to other demands on the respondent agency, including budget planning and four other pending FOI requests. It is further found that the delay was also attributable to the respondents' refusal to release the records until they had received a payment from the complainant that is not permitted by the FOI Act.

38. Finally, as found in paragraph 22, above, the respondents failed to prove that they provided all copies of responsive records to the complainant.

39. Based on the foregoing, it is found that the respondents failed to promptly provide responsive records to the complainant "quickly" and without "undue delay."

40. Accordingly, it is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

41. The Commission takes administrative notice that in Jacob Simkovitz v. Chief, Fire Department, Town of Easton, et al., Docket #FIC 2024-0715 (November 19, 2025), the respondents were ordered to complete FOI training, as well as refund fees for electronic records improperly charged to the complainant.²

42. The Commission also takes administrative notice that in Jacob Simkovitz v. Chief, Fire Department, Town of Easton, et al., Docket #FIC 2025-0061 (January 14, 2026), the respondents were ordered to conduct a further search for records, strictly comply with the disclosure and promptness provisions of the Act and were warned that future violations of the disclosure and promptness provisions, especially after completion of the FOI Act training³, may result in imposition of a civil penalty.

43. Section 1-206(b)(2), G.S., provides the following, in relevant part:

[U]pon 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.

44. The standard for when a violation is "without reasonable grounds" is analogous to the legal standard "without any substantial justification." Connecticut Dept. of Pub. Safety v. Freedom of Info. Comm'n, Docket Nos. CV 960565902, CV 960565901 (Conn. Super. Ct. Aug. 25, 1997), affirmed, 247 Conn. 341 (1998). Similarly, the phrase "without reasonable justification" has been construed to mean "entirely unreasonable or without any basis in law or fact." *Id.*, quoting Bursinkas v. Dept. of Social Services, 240 Conn. 141, 155 (1997).

² The complainant testified that his request in this matter, described in paragraph 2, above, related to his request for records in advance of the hearing for Docket #FIC 2024-0715.

³ The Commission takes administrative notice that the respondents completed FOI Act training on March 6, 2026.

45. It is found that, at the time of the request in this matter, the respondents had not yet completed the ordered FOI Act training. The respondents' witness also testified, and it is found, that she is new to the FOI Act request process, and believed that she could charge \$.50 cents per page for electronic copies of the records requested and described in paragraph 2, above.

46. Based on the foregoing, it is concluded that the denials in this matter, described in paragraphs 23, 30 and 40, above, were not "without reasonable grounds" and the imposition of a civil penalty is not warranted.

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

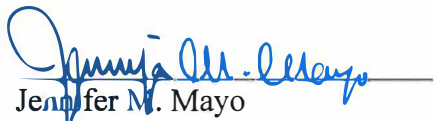
1. Within fourteen (14) days of the date of the Notice of Final Decision in this matter, the respondents shall refund the complainant the \$85.50 they improperly charged him for the records responsive to his request, described in paragraph 2 of the findings, above.

2. Within sixty (60) days of the date of the Notice of Final Decision in this matter, the respondents shall conduct a thorough search for records responsive to the request described in paragraph 2, above, and provide the complainant with copies of such records, free of charge, if located. The respondents shall also provide the complainant and Commission with an affidavit prepared by a person with requisite knowledge of the efforts taken regarding said search, detailing the scope and results of their search.

3. Henceforth, the respondents shall strictly comply with the fee provisions of §§1-211 and 1-212, G.S. and the disclosure and promptness provisions of §§1-211(a) and 1-212(a), G.S.

4. The respondents are on notice that future violations, especially after now having completed the FOI Act training may result in the imposition of a civil penalty.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 22, 2026.


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:

JACOB SIMKOVITZ, 180 Front Street, Unit 5C, Brooklyn, NY 11201

ROBERT KLEM, CHIEF, FIRE DEPARTMENT, TOWN OF EASTON; FIRE DEPARTMENT, TOWN OF EASTON; TOWN CLERK, TOWN OF EASTON; AND TOWN OF EASTON, 225 Center Road, Easton, CT 06612



Jennifer M. Mayo
Acting Clerk of the Commission