

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Ackert,

Complainant

against

Docket #FIC 2025-0176

Chair, Zoning Commission,  
Borough of Newtown; and  
Zoning Commission, Borough  
of Newtown,

Respondents

March 11, 2026

The above-captioned matter was heard as a contested case on July 23, 2025, at which time the complainant and respondents appeared and presented testimony, exhibits and arguments 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 8, 2025, the complainant requested that the respondents provide him with a copy of the following records:

...the audio recordings for each of the public hearings [from September, October and November of 2024] and each of the first two deliberation meetings [from December 2024 and January 2025] on the Castle Hill Cluster home special exception application.<sup>1</sup>

3. It is found that, by email dated March 14, 2025, the respondents denied the request, claiming that the requested recordings were exempt from disclosure as preliminary drafts and notes pursuant to the provisions of §1-210(b)(1), G.S.

4. It is found that, by email dated March 14, 2025, the complainant replied to the respondents' denial, encouraging the respondents not to destroy the requested audio recordings so

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<sup>1</sup> Specifically, it is found that the complainant requested a copy of the audio recordings of the respondent zoning commission's public hearings that occurred on September 18, 2024, October 16, 2024, and November 20, 2024, and of the respondent zoning commission's public meetings that occurred on December 11, 2024 and January 15, 2025.

that the Commission could rule upon the respondents' claim of exemption.

5. It is found that, by email dated March 14, 2025, the respondents reiterated their claim of exemption and sent the complainant a link to the written meeting minutes that corresponded to the hearings and meetings referenced in paragraph 2, above.

6. By letter of complaint, dated and filed March 14, 2025, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for a copy of the audio recordings referenced in paragraph 2, above.

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, videotaped, printed, photostated, photographed or recorded by any other method.

8. 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.

9. 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.” (Emphasis added).

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 May 9, 2025, two months after the complainant’s request, the respondents provided the complainant with a copy of the five requested audio recordings referenced in paragraph 2, above.

12. At the hearing on this matter, the complainant contended that the respondents violated his right under the FOI Act to prompt access to non-exempt public records.

13. The respondents contended that, although they provided the complainant with a copy of the requested audio recordings, they acted within their rights when they initially denied the complainant’s request because such records are permissively exempt pursuant to the provisions of §1-210(b)(1), G.S. The respondents further contended that, because they ultimately provided the

complainant with a copy of the requested audio recordings, the complaint referenced in paragraph 6, above, is moot.

14. It is found that, on February 19, 2025, the respondent zoning commission held a public meeting during which time it considered, and voted to conditionally approve, a developer's application for a special permit exception to build approximately 117 cluster homes<sup>2</sup> and forgo the normal density calculations, in exchange for setting aside a certain amount of open space.

15. It is found that the complainant requested the audio recordings of the public hearings and meetings referenced in paragraph 2, above, because he believed that such records contained the respondents' substantive public discussions and deliberations concerning the application, which preceded the respondents' conditional approval of the developer's application on February 19, 2025.

16. It is found that the clerk of the respondent zoning commission attended the hearings and meetings referenced in paragraph 2, above, and recorded such proceedings in order to create official meeting minutes for the respondent zoning commission. It is further found that the clerk recorded such proceedings on her personal cell phone.

17. It is found that, following the respondents' approval of the developer's application, two separate administrative appeals were filed with the superior court challenging the approval of the developer's application and/or the conditions attached thereto. It is found that the first appeal was filed on March 18, 2025, and the second on March 25, 2025.

18. It is found that, after the administrative appeals referenced in paragraph 17, above, were filed, the respondents transcribed the audio recordings referenced in paragraph 2, above, and filed the transcripts with the Superior Court as part of the administrative record in the underlying administrative zoning matter.

19. With regard to the exemption claimed in this case, §1-210(b)(1), G.S., provides that nothing in the FOI Act shall be construed to require the disclosure of:

[p]reliminary drafts or notes provided the public agency had determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.

20. The respondents contended that the audio recordings of the hearings and meetings referenced in paragraph 2, above, constitute preliminary drafts of the meeting minutes that were created by the respondents' clerk. However, to the contrary, it is found that such records are separate, final public records in and of themselves.<sup>3</sup>

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<sup>2</sup> The Commission notes that "cluster homes" are a type of high-density residential development where single-family detached homes or small groups of houses are built close together.

<sup>3</sup> The Commission notes that, pursuant to the provisions of §1-200(5), G.S., which defines what are "public records or files," not only did the respondents "retain" the requested audio records for months, they also "used" such records in preparing the transcripts that formed part of the administrative record, which was filed with the Superior Court. See ¶¶ 2, 7, 17, 18, above. Moreover, because *the respondents* retained and used the

21. Moreover, even if the requested records could be characterized as preliminary drafts, it is further found that the respondents failed to prove that the public interest in withholding such records clearly outweighs the public interest in disclosure.

22. Accordingly, it is concluded that the requested audio recordings are not exempt from disclosure pursuant to the provisions of §1-210(b)(1), G.S.

23. Next, the respondents cite *Dep't of Pub. Safety v. Freedom of Info. Comm'n*, 103 Conn. App. 571 (2007) ("*Public Safety*") for the proposition that once they provided the complainant with the requested audio recordings, an actual controversy no longer existed and thus the complaint filed with the Commission became moot.

24. In *Public Safety*, the complainant withdrew her complaint after a proposed final decision had issued, but before the Commission issued a final decision. The Appellate Court held that the Commission could not issue a final decision on the matter because the complainant had requested that the Commission take no further action on her complaint. See *Public Safety*, 103 Conn. App. at 589.

25. In this case, unlike in *Public Safety*, the complainant made no such request of the Commission. In fact, it is found that the complainant expressly objected to the initial denial of access and raised a promptness claim at the hearing on this matter.

26. Section 1-212(a), G.S., makes clear that every requester is entitled to prompt access to copies of non-exempt public records. See ¶ 9, above.

27. Moreover, it is found that the complainant could not have alleged in his complaint, which was filed on March 14, 2025, that the respondents failed to provide him with the requested audio recordings promptly, because at such time the respondents had failed to provide him any of the requested records and had, in fact, denied his request for such records in its entirety on at least two separate occasions. See ¶¶ 3, 5, 11, above.

28. Accordingly, based on the facts and circumstances of this case, it is found that the complainant timely raised the promptness issue at the July 23, 2025 hearing on this matter.

29. Consequently, it is concluded that the Commission has jurisdiction to address the promptness issue.

30. With regard to whether the respondents have acted promptly in complying with the 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 statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; 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

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requested audio recordings for their own purposes, it is found that the fact that the clerk used her personal cell phone to record the proceedings referenced in paragraph 2, above, is irrelevant to the analysis in this case.

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.

31. It is found that the respondents provided the complainant with the requested audio recordings 62 days after he had made his request in this case. *See* ¶¶ 2, 11, above.

32. It is further found that, on March 27, 2025, the respondents provided the audio recordings referenced in paragraph 2, above, to a different requester who had made a request similar to the request made by the complainant in this case. The Commission notes that the respondents provided the complainant in this case with the audio recordings 43 days after providing such records to the other requester.

33. The respondents addressed the discrepancy referenced in paragraph 32, above, by stating that they misunderstood the complainant's relationship with the other requester and believed that the complainant had received the requested records on March 27, 2025.

34. It is found that the request in this case was clear, straightforward and not overly broad. It is further found that, once the respondents decided to provide the complainant with the requested audio recordings, they were able to do so in very short order.

35. Even taking the respondents' reasons for the delay into consideration, it is found that the respondents failed to provide the requested records to the complainant promptly.

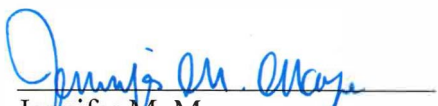
36. Accordingly, it is concluded that the respondents violated the promptness requirements of §§1-210(a) and 1-212(a), G.S.

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

1. Within fourteen (14) days of the Notice of Final Decision in this matter, the respondents shall contact the Commission's Public Education Officer to schedule a training session regarding the requirements of the FOI Act.

2. Henceforth, the respondents shall strictly comply with the promptness 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 March 11, 2026.

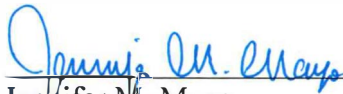
  
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**DAVID ACKERT**, 6 Cider Mill Road, Sandy Hook, CT 06482

**CHAIR, ZONING COMMISSION, BOROUGH OF NEWTOWN; ZONING COMMISSION, BOROUGH OF NEWTOWN; AND BOROUGH OF NEWTOWN**, c/o Attorney Portia M. Baudisch, Pullman & Comley, LLC, 850 Main Street, P.O. Box 7006, Bridgeport, CT 06601-7006



Jennifer M. Mayo  
Acting Clerk of the Commission