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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Karen Sulich,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2011-599

Brian Sear, First Selectman, Town of  
Canterbury; and Town of Canterbury,  
Respondent(s)

June 21, 2012

### Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, July 11, 2012**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE June 29, 2012**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE June 29, 2012**. PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE June 29, 2012**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of  
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Lloyd L. Anderson, Esq.  
Brian Sear, First Selectman  
Town of Canterbury

6/21/12/FIC# 2011-599/Trans/wrbp/KKR/TCB

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Karen Sulich,

Complainant

against

Docket #FIC 2011-599

Brian Sear, First Selectman,  
Town of Canterbury; and  
Town of Canterbury,

Respondents

June 21, 2012

The above-captioned matter was heard as a contested case on May 15, 2012, 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, on October 18, 2011, the complainant made a written request to the respondents for a copy of "any correspondence (email, letters, etc.) between the First Selectman Brian Sear, Selectman Lee Wrigley & Town Lawyer with the Siting Council, Friends of the Quinebaug, Robert Noiseax, Steve Orloski and PRE between July 1, 2011 to present."
3. It is found that, by letter dated October 20, 2011, the respondents provided copies of "the documents applicable to [the complainant's] recent FOI request."
4. By letter of complaint, dated and filed October 26, 2011, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to fully comply with the request for records described in paragraph 2, above.
5. Section 1-200(5), G.S., provides:

"Public 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.

6. Section 1-210(a), G.S., provides in relevant part that:

Except 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 . . . (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 found that the records, described in paragraph 2, above, are public records, within the meaning of §1-200(5), G.S.

9. At the hearing in this matter, the complainant stated that she obtained, from other sources, copies of documents, including emails, dated September 12, 13, and 13, 2011, and a petition, that fell within the scope of her request, but were not provided to her by the respondents.

10. The respondent first selectman testified that he provided to the complainant copies of all records he believed were responsive to the request, but did not provide the emails, or disclose their existence, because he believed such emails were “confidential” at the time of the request. He further testified that he did not provide the petition, because he believed it did not fall within the scope of the request, described in paragraph 2, above.

11. It is found that the respondents did not offer any evidence, at the hearing in this matter, to support their assertion that the emails, described in paragraph 9, above, were confidential at the time of the request, described in paragraph 2, above. At the hearing in this matter, the respondent first selectman ultimately agreed to provide the complainant with copies of the emails.

12. It is found that the emails, described in paragraph 9, above, fall within the scope of the request, described in paragraph 2, above.

13. It is concluded that the respondents violated the §§1-210(a) and 1-212(a), G.S., by failing to provide the emails, described in paragraph 9, above, to the complainant.

14. With regard to the petition, described in paragraph 9, above, it is found that the respondent first selectmen reasonably believed that the petition did not fall within the scope of the request, described in paragraph 2, above.

15. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of the petition, described in paragraph 9, above, to the complainant.

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

1. Forthwith, the respondents shall provide copies of the emails described in paragraph 9, above, at no charge, if they have not already done so.

2. The Commission advises the respondents that it is fundamental that a public agency has a duty to disclose that it maintains records responsive to a request, even if the agency believes such records are exempt from disclosure.



Kathleen K. Ross  
as Hearing Officer