

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

George Bartholomew,

Complainant

against

Docket #FIC 2016-0635

First Selectman, Town of
Washington; Board of
Selectmen, Town of
Washington; and Town of
Washington,

Respondents

March 22, 2017

The above-captioned matter was heard as a contested case on November 18, 2016, 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 letter dated August 29, 2016, the complainant made a request to the clerk of the respondent town for the following:
 - a. Copies of all public records pertaining to the Gilmore Girls Fan Fest scheduled in the Town of Washington, CT to take place from October 21-23, 2016 [including] any contracts signed between the Town and outside parties regarding this event as well as declarations from a bona fide insurer covering the necessary liabilities that may be incurred by the Town with regards to this event; and
 - b. Any agreements between all profit and not-for-profit businesses or organizations whose facilities may be contracted to be used, or potentially accessed, during this event.

3. By letter dated September 3, 2016, and filed on September 6, 2016, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his request for records and for denying the public access to meetings.

4. With respect to the complainant’s allegation that the respondents failed to comply with his records request, §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.

5. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

6. 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.”

7. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that by email dated September 2, 2016, the respondent First Selectman sent by attachment the only two records maintained by the respondents that were responsive to the complainant’s request, which records were captioned “Gilmore Factsheet” and “Agreement draft.”

9. It is found that the complainant acknowledged receipt of the records but contended that there must have been a signed contract, use permits, and insurance documents related to the event and that he should have been provided with those records in response to his request.

10. At the hearing on this matter, the respondent First Selectman testified credibly, and it is found, that the complainant was provided with all responsive records that existed at the time of his request. It is found that additional records (use permits and insurance documents) were created that are responsive to the complainant's request, but those records did not exist until mid-October, well after the complainant's August request.

11. In accordance with the FOI Act's definition of "public record," a requestor has the right to receive records "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," which means plainly that the record must actually exist. See §1-200(5), G.S. Records that do not exist cannot be "maintained or kept on file" by a public agency. See §1-210(a), G.S.; Jane Anastasio v. Ann Clark, Superintendent of Schools, Bristol Public Schools, et al., Docket #FIC 2002-288 (January 8, 2003)(no violation where requested record "was not created until after the filing of the complaint"); Lorraine Wilmot and Jim Coll v. H. Wayne Carver, II, Chief Medical Examiner, State of Connecticut, Office of the Chief Medical Examiner, Docket #FIC 1999-507 (April 26, 2000)("respondent was not required to comply with a request for records that did not exist at the time of the request"); Robert J. Symmes v. Charles Marino, Democratic Registrar of Voters, City of West Haven, Docket #FIC 2008-564 (March 25, 2009)(record that did not exist at the time of request was not maintained or kept on file by respondent).

12. It is found that because the use permits and insurance documents did not exist at the time of the complainant's request, the respondents were not required to provide them to the complainant.

13. It is concluded that the respondents did not violate the disclosure provisions of the FOI Act as alleged by the complainant.

14. With respect to the complainant's allegation that the respondents denied the public access to public meetings, it is found that there was no meeting of the respondent Board at which the event was discussed and voted on. It is found that the respondent first selectman, acting within the scope of his authority, spoke with the promoters for the Gilmore Girls Fan Fest and decided to allow the event to take place.

15. It found, however, that the complainant's contention is that there *should* have been a meeting at which the event was discussed and the public was afforded an opportunity to comment.

16. It is found that, in this regard, the complainant has not alleged a violation of the FOI Act.

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 March 22, 2017.



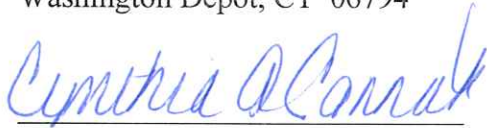
Cynthia A. Cannata
Acting Clerk of the Commission

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:

George Bartholomew
10 School Street
Washington, CT 06793

First Selectman, Town of Washington; Board
of Selectmen, Town of Washington; and
Town of Washington
2 Bryan Plaza
Washington Depot, CT 06794



Cynthia A. Cannata
Acting Clerk of the Commission