

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John Hodge,

Complainant

against

Docket #FIC 2017-0133

Phyllis Schaer, Chairperson,
Candlewood Lake Authority; and
Candlewood Lake Authority,

Respondents

August 23, 2017

The above-captioned matter was heard as a contested case on May 9, 2017, 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, by email dated December 8, 2016, the complainant requested from the respondents the opportunity to inspect “any and all communications [Larry Marsicano]¹ has had with any elected official in the past three years.”
3. It is found that, by email dated December 9, 2016, the respondent chairperson acknowledged the request, described in paragraph 2, above, and informed the complainant, who is a member of the lake authority board, that his request would be responded to “in a timely manner.” The chairperson continued:

However, I do question the merits and value of these ongoing request[s] for documentation. It seems to me that they are a deliberate attempt to obstruct and hinder the day to day operations of the CLA and are a very poor use of the limited resources we have at our disposal. There needs to be a value judgment here on what best serves the interests of your residents and enhances the services we provide for the protection of the water quality, recreational and environmental aspects of the lake. At a time when the Lake

¹Larry Marsicano is the lake authority’s executive director.

is facing so many complex issues, I would like the staff to better concentrate on finalizing our Regional Lake Task Force meeting schedule, agendas, arrange for consultants and/or guest speakers to be hosted at New Milford Town Hall....work out the Boat Decontamination Program and finalize a location and sufficient funding to operate...[and] ...our 2016 year end reports and transfer to our new Quick Books by year end....As a delegate appointed to your board, I had hoped you would use your considerable experience and skills in a more positive direction....

4. It is found that, having received no further response to his request, the complainant, by email dated February 8, 2017, again requested the records described in paragraph 2, above, this time clarifying that he was seeking the communications in all forms, including texts, emails, letters, and notes from phone calls.

5. By email dated and filed March 2, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him an opportunity to inspect the records, described in paragraph 2, above.

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

7. 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 inspect such records promptly during regular office or business hours...or (3) receive a copy of such records in accordance with section 1-212. (Emphasis added).

8. 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.” (Emphasis added).

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

10. It is found that, by letter dated April 6, 2017, the respondents informed the complainant that the records he requested were available for his review.

11. It is found that, on April 18, 2017, the complainant inspected the records, which consisted of emails, but did not include text messages, letters or notes. At the hearing in this matter, the complainant testified that he believed the respondents maintain additional responsive records that were not provided to him. He also claimed that the respondents failed to provide the opportunity to inspect the emails promptly.

12. With regard to the question of promptness, the Commission has held that the meaning of the word “promptly” is a particularly fact-based question. In 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), the Commission advised that the word “promptly,” as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

13. Advisory Opinion #51 further provides:

[t]he Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore a primary duty of all public agencies, and should be considered as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline. If agency personnel are involved in a high priority project, or one with an immediate or pressing deadline, a request for records should be weighed against that project for priority. Some of the factors that should be considered in this situation are: 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 requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request. (Emphasis added).

14. It is found that, upon receipt of the December 8th request, described in paragraph 2, above, the respondent chairperson forwarded such request to the lake authority's executive director for response. It is found that the executive director, whose emails were the subject of the request, immediately conducted a search on his laptop computer for all emails between himself and just one elected official, and that such search revealed approximately 200 emails. The executive director testified that this led him to conclude that the search for all responsive emails would be time consuming, and because he had many other tasks to attend to during January and February, he did not continue to search for responsive emails until sometime in March.

15. It is found that, on March 27, 2017, the executive director sent an email to all "past and present CEOs and Legislators of Candlewood Municipalities," informing them that the complainant had filed a complaint with the FOI Commission. The executive director summarized the complaint in his email, and then stated:

You should also be aware that this is becoming a pattern and very problematic: Mr. Hodge [the complainant] requested information under FOIA back on March 10, 2016, following a CLA board meeting. The information he requested then was the contact information for the other lake authorities in CT who I contacted after Senator McLachlan raised a bill to hold lake authorities to certain municipal standards. This bill was raised by the Senator following his conversations with Mr. Hodge;

[Also] First Selectman Susan Chapman also made a request under FOIA on a Sunday, November 13, 2016 to provide her an audio tape of our November 9, 2016 board meeting. She requested the audio tape on November 10, 2016, and was closed on Friday November 11, 2016, Veteran's Day [sic]. On Sunday, November 13, 2016, before I would have had the opportunity to send her the link to the audio on our next business day of November 14, 2016, I had received an email request from her under FOIA.

I will start compiling the literally 100s if not 1000s of pages of email correspondence with elected officials for the last three years and try my very best not to let this task impact other important initiatives like planning for the supplemental stocking of triploid grass carp.

16. It is found that, during January and February, the executive director was working on multiple tasks, including: preparing budget materials for fiscal year 2017/2018 for distribution to municipalities; working on a grant proposal pertaining to research on freshwater harmful algal blooms; planning for a regional lakes task force meeting; preparing written comments on a consultant's report pertaining to GIS and Digital Mapping Data; supervising an intern from

Western Connecticut State University; and preparing oral and written reports for upcoming board meetings

17. It is also found that the emails responsive to the request were not maintained on a server, but rather, were maintained only on the executive director's laptop computer. According to the executive director, therefore, only he, personally, could conduct the search. According to the executive director, retrieving the emails required a search of the sent and received mailboxes using his name and the name of each of the approximately 12 to 15 public officials with whom he communicated, and printing the retrieved emails. No exemption was claimed for any of the emails.

18. It is found that, in addition to the executive director, the respondent lake authority employs a full-time director of operations; director of education and outreach; and a part-time administrative coordinator.

19. It is found that the respondents do not maintain any responsive text messages, or notes. However, it is also found that the respondents failed to conduct a search for any letters that may be responsive to the request.

20. It is found that, at the time of the request, the respondents had little awareness or understanding of the requirements of, and obligations under, the FOI Act. Specifically, it is found that the respondents' reaction to the complainant's request, as set forth in paragraphs 3 and 15, above, demonstrated that the respondents failed to understand that "providing... access [to public records] is... a primary duty of all public agencies, and should be considered as much a part of their mission as their other major functions." It is found that complying with the complainant's request was not among the respondents' priorities, and that the executive director only resumed his search for responsive emails upon learning that a complaint had been filed with this Commission.

21. Based on the totality of the evidence presented in this matter, it is found that the respondents failed to promptly provide the emails for inspection by the complainant.

22. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.

23. The respondents informed the hearing officer that, between the filing of the complaint, and the hearing in this matter, they contacted the Commission's staff to obtain information regarding their obligations under the FOI Act, and attended a workshop conducted by the Commission's public information officer. The Commission commends the respondents for their effort.

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 conduct an additional search for any letters that may be responsive to the request, described in paragraph 2, of the findings, above.

2. If additional records are located, the respondents shall immediately provide a copy of such records to the complainant, free of charge. If no such records are located, the respondents shall promptly inform the complainant of this fact, in writing.

3. Henceforth, the respondents shall strictly comply with the 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 August 23, 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:

JOHN HODGE, 6 Charcoal Ridge Road West, New Fairfield, CT 06812

PHYLLIS SCHAER, CHAIRPERSON, CANDLEWOOD LAKE AUTHORITY; AND CANDLEWOOD LAKE AUTHORITY, PO Box 37, Sherman, CT 06784



Cynthia A. Cannata
Acting Clerk of the Commission