

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Kenneth Cast,

Complainant

against

Docket #FIC 2017-0751

First Selectman, Town of Morris;
and Town of Morris,

Respondents

August 22, 2018

The above-captioned matter was heard as a contested case on May 2, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2017-0758, Kenneth Cast v. Treasurer, Town of Morris; and Town of Morris.

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 December 6, 2017, the complainant went to the First Selectman's Office and requested access to "any quotes, purchase orders or invoices for work performed or to be performed on [a particular ambulance] at Quiet Zone Auto Repair in Bantam, Connecticut."
3. By letter dated December 18, 2017 and filed December 19, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with access to the records described in paragraph 2, above.
4. 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.

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, on December 6, 2017, the complainant went to the Treasurer’s office and requested access to the records described in paragraph 2, above. It is found that the Treasurer informed the complainant that the records had not been delivered to her yet, and that they were located in the First Selectman’s office.

9. It is found that on this same day the complainant went to the First Selectman’s office and requested access to the records. It is found that the First Selectman’s administrative assistant told him that the records were in the First Selectman’s Office, but that the First Selectman was in his office in a meeting. It is found that the administrative assistant assured the complainant that she would get the records and then contact him.

10. It is found that the First Selectman’s administrative assistant did not contact the complainant; instead, on December 7, 2017, the complainant called the First Selectman’s office to inquire about the records. It is found that the administrative assistant told the complainant that she still did not have the records in her possession. It is found that, approximately one week later, the administrative assistant contacted the complainant to tell him that the records he was seeking were now on file with the Treasurer’s office. In addition, it is found that the administrative assistant informed the complainant that, whether or not he wanted access to or copies of the records, his request would have to be in writing. Finally, it is found that the administrative assistant passed the telephone to the First Selectman who reiterated that all requests had to be in writing.

11. It is found that, on or around December 20, 2017, the complainant made a written request for the records from the Treasurer and, on or about, December 21, 2017, the complainant received a notice from the Treasurer that the requested copies were now

available at a cost of \$3.50.

12. The complainant contended that the First Selectman and his assistant intentionally tried to deny the complainant access to the requested records.

13. While there is insufficient evidence in the administrative record to find that the events described above were intentional, it is found that the actions of the First Selectman and his staff led to the complainant's request not being fulfilled promptly.

14. The 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 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.

15. The First Selectman contended that he was not aware of the complainant's request for access to the records until the following day, at which time, he no longer had the records. He further contended that his administrative assistant failed to inform him that the complainant had stopped in and requested such access. The First Selectman also contended that, when a person requests a public record from his administrative assistant, it is unreasonable for such person to believe that he or she has made a request for public records from him. Finally, the First Selectman offers the following suggestion: "I would suggest that in the future, Mr. Cast submit his requests in writing and make an appointment to either view the material requested or to pick up the material requested when ready. Mr. Cast cannot expect to walk into a place of business with no forewarning and demand the information to be delivered immediately."

16. The FOI Act contemplates that citizens will walk into the offices of public officials requesting to inspect public records and that, when possible, such requests will be complied with immediately. See ¶ 5, above (stating, in relevant part, that every person shall have the right to inspect public records promptly during regular office or business hours).

17. In this case, it is found that, at some time on December 6, 2017, the records to which the complainant wanted access were in the possession of the First Selectman. It is found that it was reasonable for the complainant to rely on the First Selectman's administrative assistant's assurance that she would gather the records and then contact him. It is further found that, because the request was not handled promptly (or at all), the records were forwarded by the First Selectman to another office after the complainant's request had been made. It is further found that the complainant was then required to return to the Treasurer's office. Finally, it is found that, despite the First Selectman's contention, is not permissible under the FOI Act to demand that a citizen, who is simply

seeking to review a public record, put his request in writing. See ¶ 6, above.

18. It is concluded that the respondents violated the promptness provisions of the FOI Act.

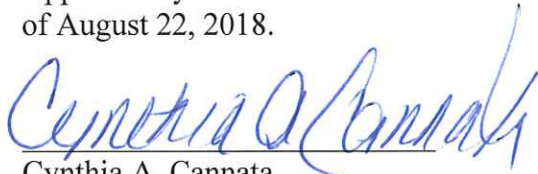
19. Based on the evidence adduced at the contested case hearing, it is clear that the respondents are struggling with requirements of the FOI Act. It is concluded that the respondents are in need of a FOI training session and one is so ordered.

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

1. Henceforth, the respondents shall strictly comply with the promptness provisions contained in §§1-210(a) and 1-212(a), G.S.

2. Forthwith, the respondents, or their designee, shall arrange for an FOI Act training session to be conducted by the staff of the FOI Commission. The respondents, or their designee, shall forthwith contact the FOI Commission to schedule such training session.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 22, 2018.



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:

KENNETH CAST, 36 Sean Meadow Drive, Morris, CT 06763

FIRST SELECTMAN, TOWN OF MORRIS; AND TOWN OF MORRIS, 3 East Street, Morris, CT 06763



Cynthia A. Cannata
Acting Clerk of the Commission