

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

David Markatos,

Complainant

against

Docket #FIC 2017-0551

Town Planner, Town of New Canaan;
and Town of New Canaan,

Respondents

June 27, 2018

The above-captioned matter was heard as a contested case on November 16, 2017, 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 September 5, 2017 the complainant requested that the New Canaan Town Clerk provide him with copies of the following:

A draft special permit approval of approximately 15 pages (and any revisions/amendments thereto), which record was discussed in detail at the August 29, 2017 regular meeting of the Planning and Zoning Commission.

3. It is found that, by email dated September 6, 2017, the Town Clerk acknowledged the complainant's request, and indicated the request had been forwarded to "the appropriate departments." It is found that the Town Clerk forwarded the request to the respondents.

4. By letter dated and filed September 12, 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 a copy of the record referenced 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, (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.

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

9. At the hearing in this matter, the complainant explained that the request in this case was for a 15-page draft special permit approval created in response to an application for a special permit. The complainant further explained that he received the requested record on November 7, 2017. The complainant clarified that the issue in this case is when the record should have been disclosed to him. The complainant contended that he should have received a copy of this record when he requested it on September 5th, as the Planning and Zoning (“P&Z”) Commission had already convened in a public meeting and discussed the record in detail, and the record was readily available to the respondents.

10. In addition, the complainant contended that, because this is the second time that the respondents have failed to disclose records pertaining to a special permit application after such records had been discussed at a public meeting, the respondents have adopted “an illegal practice” of withholding this particular type of public record. This allegation was not fairly raised in the complaint and, therefore, will not be further addressed.

11. 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.

12. It is found that, on or before August 29, 2017, the record in question was distributed to the members of the P&Z Commission. It is further found that, at its August 29, 2017 regular meeting, the P&Z Commission discussed the requested record in detail (the "draft approval"). It is found that this is the document that the complainant requested on September 5, 2017. See ¶ 2, above.

13. It is found that, based on the discussion that occurred during the August 29th meeting, the P&Z Commission made multiple revisions to the draft approval (the "revised draft"). It is also found that, during this time, the respondents' attorney was communicating with the complainant's attorney in connection with a matter related to the special use permit. It is found that the complainant's attorney also wanted a copy of the 15-page draft approval, referred to in paragraph 9, above. It is found that the respondents offered the complainant's attorney a copy of the revised draft, and that this version of the document was acceptable to the complainant's attorney.

14. It is found, however, that the revised draft was not the record that the complainant wanted or requested.

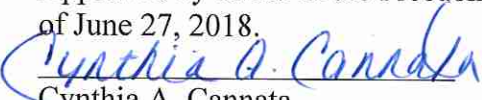
15. It is found that, because the draft approval had been discussed in public on August 29th, there is no reason why, when the complainant requested this record on September 5th, he should have had to wait over two months to receive such record.

16. It is concluded that the respondents violated the promptness provisions of the FOI Act, as alleged in the complaint.

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 of the FOI Act.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 27, 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:

DAVID MARKATOS, 1328 Smith Ridge Road, New Canaan, CT 06840

TOWN PLANNER, TOWN OF NEW CANAAN; AND TOWN OF NEW CANAAN,
c/o Attorney Ira W. Bloom, Berchem Moses P.C., 1221 Post Road East, Westport, CT
06880

A handwritten signature in blue ink, reading "Cynthia A. Cannata", written over a horizontal line.

Cynthia A. Cannata
Acting Clerk of the Commission