

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Shawn Murphy,

Complainant

against

Docket #FIC 2018-0214

Michael Urgo, First Selectman, Town of
North Stonington; and Town of North
Stonington,

Respondents

November 14, 2018

The above-captioned matter was heard as a contested case on June 25, 2018, 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, on April 12, 2018, the complainant requested copies of the following records pertaining to the respondents' budget for FY18/19 [Fiscal Year 2018/2019]:
 - [a.] A copy of each department, board, commission, committee, and organization FY 18/19 budget request as initially submitted and/or revised, along with any backup justification provided.
 - [b.] A copy of the FY18/19 budget calculation spreadsheet used for all general government employees which includes salaries/wages, pension contributions, social security, insurance, medical, and dental.
 - [c.] A copy of the calculations compiled for renovations of the current NSVFC [North Stonington Volunteer Fire Company] building for recreation, voting and any other proposed use.
 - [d.] A copy of the proposed FY18/19 budget for utilities, maintenance, and repairs for the NSVFC building.

[e.] A copy of the highway department project plan provided by Steve Holliday upon his departure.

[f.] A copy of the audio recording from the Board of Selectmen meeting of 2/22/2018.

3. It is found that, on April 17, 2018, the respondent First Selectman replied by email to the complainant: "We should be able to provide this in less than 5 business days. I will reach out when we have everything together for you."

4. It is found that, on or about April 26, 2018, the respondent provided records in satisfaction of the complainant's request described in paragraph 2.d and f, above. It is further found that the respondents withheld the remainder of the records, claiming that the records were exempt as preliminary drafts, pursuant to §1-210(b)(1), G.S.

5. By letter filed May 2, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of all of the records he requested. The complainant requested the imposition of a civil penalty.

6. 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, ... 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:

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

8. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

9. It is found that the respondents do not maintain any records responsive to the complainant's request described in paragraph 2.c, above.

10. It is found that the remaining records requested by the complainants, as described in paragraph 2.a, 2.b, and 2.e, above, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

11. Section 1-210(b)(1), G.S., provides that mandatory disclosure is not required of “[p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure[.]”

12. It is found that on or before June 5, 2018, the respondents provided all of the remaining responsive records in satisfaction of the complainant’s request, with the exception of the budget request by the Board of Selectmen. At the hearing in this matter, the respondents agreed to provide such records.

13. It is found that the complainant sought the records in order to make an informed decision about the town’s budget prior to the town budget referendum on June 4, 2018. It is found, therefore, that the respondents’ production of such records on or shortly before June 5 prevented the complainant from using the records as he intended.

14. It is found that all of the requested records are departmental and third party budget requests, with backup support for the requests, budget calculation spreadsheet showing salaries, wages and benefits of the respondents’ employees, and a highway department project plan provided to the respondents.

15. It is found that although the requested records may have been submitted to the respondents while the final proposed budget was still in draft form, the requested records themselves are not preliminary drafts within the meaning of §1-210(b)(1), G.S.

16. It is found that the requested records should have been available to the complainant and other members of the public well in advance of the budget town meeting. The respondents failed to provide the requested records in a prompt and timely manner.

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

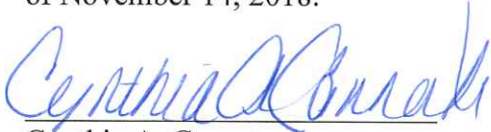
18. After consideration of the entire record in this case, the Commission declines to consider the imposition of civil penalties against the respondent First Selectman, because he was new to the job and indicated that henceforth he would follow the Commission’s guidance.

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

1. If they have not yet done so, the respondents forthwith shall provide to the complainant, free of charge, the Board of Selectmen budget requests and backup justification, as promised at the hearing in this matter.

2. 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 November 14, 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:

SHAWN MURPHY, 23 Kingswood Drive, North Stonington, CT 06359

MICHAEL URGO, FIRST SELECTMAN, TOWN OF NORTH STONINGTON; AND TOWN OF NORTH STONINGTON, c/o Attorney Robert Avena, Avena & Kepple, LLC, 20 South Anguilla Road, PO Box 1445, Pawcatuck, CT 06379



Cynthia A. Cannata
Acting Clerk of the Commission