



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

George Bartholomew,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2016-0635

First Selectman, Town of Washington;  
Board of Selectmen, Town of Washington;  
and Town of Washington,  
Respondent(s)

February 23, 2017

## Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, March 22, 2017**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE March 10, 2017**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE March 10, 2017**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE March 10, 2017**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of  
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: George Bartholomew  
First Selectman, Town of Washington; Board of Selectmen, Town of Washington; and  
Town of Washington

FIC# 2016-0635/Trans/wrbp/TCB/TAH/2017-02-23

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

George Bartholomew,

Complainant

against

Docket #FIC 2016-0635

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

Respondents

February 1, 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 acknowledge 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 a "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.

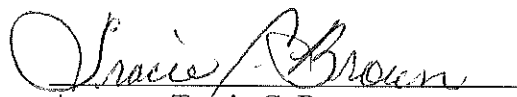
14. With respect to the complainant's allegation that the respondents denied the public access to public meetings, it is found that there was no meeting of the respondent Board at which the event was discussed and voted on. It is found that the respondent first selectman, acting within the scope of his 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.

A handwritten signature in cursive script, reading "Tracie C. Brown", written over a horizontal line.

Attorney Tracie C. Brown  
as Hearing Officer