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FREEDOM OF INFORMATION



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David Godbout,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-376

Gayle Weinstein, First Selectman, Town of Weston;
Town of Weston; Commissioner, State of
Connecticut, Department of Emergency Services and
Public Protection; and State of Connecticut,
Department of Emergency Services and Public
Protection,

Respondent(s)

May 14, 2013

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, June 12, 2013**. 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 May 31, 2013**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE May 31, 2013**. **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 **fourteen (14) copies** be filed **ON OR BEFORE May 31, 2013**, 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: David Godbout
Patricia C. Sullivan, Esq.
Terrence M. O'Neill, AAG

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

David Godbout,

Complainant

against

Docket #FIC 2012-376

Gayle Weinstein, First Selectman, Town
of Weston; Commissioner, State of
Connecticut, Department of Emergency
Services and Public Protection; and State
of Connecticut, Department of Emergency
Services and Public Protection,

Respondents

May 10, 2013

The above-captioned matter was scheduled to be heard as a contested case on January 10, 2013, at which time the complainant and the respondent First Selectman appeared and stipulated to certain facts and presented testimony, exhibits and argument on the complaint. At that hearing, the respondent First Selectman entered into the record a copy of a letter from the Commissioner of the State of Connecticut Department of Emergency Services and Public Protection ("Commissioner"), directing that certain of the information requested by the complainant not be disclosed. The hearing was continued and, pursuant to §1-210(d), G.S., the Commissioner and the Department of Emergency Services and Public Protection (DESPP) were added as respondents in this matter, and the case caption was amended accordingly.

The continued hearing was held on March 21, 2013, at which time the complainant and all named 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. By letter dated and filed on July 12, 2012, the complainant appealed to this Commission, alleging that the respondent First Selectman violated the Freedom of Information ("FOI") Act by failing to comply with his June 21, 2012 request to inspect the following:

- a. "any and all documents related to the rifles noted in the police video attached to [his] FOIA request...Documents desired include, but are not limited to any type of board (selectman, finance, etc.) meeting in which these rifles were noted, any commission meeting in which these rifles were noted, any invoices, repair orders and invoices, any documents of written complaints or records/documents of verbal complaints from Weston town employees regarding all or any rifles, documents that would offer the reader the reason behind acquiring the rifles, any documents that may show the town transferring the rifles outside of the town's ownership, any and all training records regarding the rifles of town employees, all documents that show where monies were obtained to purchase the rifles (grant, free give-a-way from federal source, etc.), all documents that show the costs of the rifles, all documents that show any conditions related to the acquisition of the rifles, and other notes, emails, and other documents relating to the rifles, magazines for the rifles, and accessories;"
- b. "any and all documents related to the ballistic vests that are also displayed on the video and other referenced documents noted in [2a, above];"
- c. "any and all documents produced, received or relied upon in the completion of the FOIA request. This would include but is not exclusive to: emails, letters, notes, telephone records, and other documents relating to this FOIA request and its completion from the time frame of 13 JUN 12 through the date of this request being considered final (request completed and any administrative or judicial proceedings completed);"
- d. "any and all documents related to any rifle and handguns the town/city possesses that demonstrate the quality, make and model of the firearms;"
- e. "any documents relating to policy, orders, or other type of document in which demonstrates that the town/city requires rifles and other firearms are to be shielded from public view and documents that would require police department members or other town/city employees to take measures to prevent the public from obtaining, retaining, or sharing with others: videos,

pictures, or photographs of the police when they show their firearms and other weapons and equipment;”

f. “any documents relating to the finance committee and their approval of firearms, ballistic vests, and other police department equipment for the time period of Jan. 1, 2008 through June 1, 2010;” and

g. “any video, original or copies, of the video noted in [2a, above].”

The complainant requested that this Commission impose a civil penalty against the respondent First Selectman.

3. 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.

4. 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 . . . receive a copy of such records in accordance with section 1-212.

5. 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.”

6. It is found that the requested records, to the extent they exist, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

7. It is found that neither the respondent First Selectman nor the Town of Weston maintain the video described in paragraphs 2a and 2b, above.

8. It is found that the town of Weston’s FOI Officer (hereinafter “FOI Officer”) learned, and informed the complainant, that the video was not a town video but was produced and owned by a television station, but the complainant believes that the

respondent First Selectman has a duty under the FOI Act to view the video and provide the records he requested for his inspection.

9. It is found that after viewing the video online and several conversations with the complainant in which he clarified his request, the respondent First Selectman identified five records that would be responsive: certain meeting minutes; a firearms policy; a rifle policy; a Weston Police Department weapons inventory; and an invoice and sales order related to weapons. It is found that the respondent First Selectman maintains no other records responsive to the complainant's request.

10. It is found that the complainant was provided with the meeting minutes described in paragraph 9, above, to inspect and that those records are not at issue.

11. However, it is found that, pursuant to §1-210(b)(19), G.S., the respondent First Selectman contacted the respondent Commissioner via e-mail on September 12, 2012 to review the matter because she believed that disclosure of the records related to the video may result in a safety risk.

12. Section 1-210(b)(19), G.S., provides that "[n]othing in the Freedom of Information Act shall be construed to require disclosure of:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined ... by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency ... As used in this section, "government-owned or leased institution or facility" includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as defined in section 16-1, a water company, as defined in section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and "chief executive officer" includes, but is not limited to, an agency head, department head, executive director or chief executive officer.

13. Section 1-210(d), G.S., provides:

Whenever a public agency, except the Judicial Department or Legislative Department, receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection, as applicable, of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act and for information related to a water company, as defined in section 25-32a, the public agency shall promptly notify the water company before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency or after consultation with the chief executive officer of the applicable water company for information related to a water company, as defined in section 25-32a, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch state agency or the municipal, district or regional agency that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section, exclusively

14. It is found that, by letter dated January 9, 2013, the respondent Commissioner stated that he has reasonable grounds to believe that the release of some of the requested records may result in a safety risk. The Commissioner stated that "the disclosure of information with regard to the type and number of specialized weapons that are intended to subdue certain people in order to protect other members of the public, would allow those who may plan violent actions against the City and its residents to calculate how to defend against the City's protective measures, and/or the amount of force that would be necessary to overcome these protective measures."

15. It is found that the Commissioner directed the respondent First Selectman to redact the following:

- a. any information that would reveal any specific details regarding the weapons and their use, including but not limited to the types and numbers of weapons, and their locations and/or methods of storage;

- b. the Weston Police Department weapons inventory in its entirety; and
- c. any information that would reveal any specific details regarding the number or type of weapons possessed by the Town of Weston.

The Commissioner further directed that the respondent First Selectman may disclose the type and number of any handguns carried in a public manner by the Weston police force but that she should not disclose any detailed information on the tactical weapon(s), or related equipment to support the weapon(s) used in the video that is the subject of the complainant's request.

16. At the hearing in this matter, the complainant argued that the Commissioner's conclusion regarding a safety risk is erroneous because the video is allegedly available on-line via You Tube and at the library, and therefore the tactical weapons are publicly displayed and not secret. The complainant further argues that because the weapons are publicly displayed in the video, and nothing violent has happened as a result, there can be no safety risk in disclosing the records he requested.

17. Notwithstanding his argument, the complainant offered no evidence to counter the Commissioner's conclusion that he has reasonable belief that disclosure of the requested records may result in a safety risk to any person.

18. Based upon the foregoing, it is concluded that neither the respondent Commissioner nor the respondent DESPP violated the FOI Act by directing the respondent First Selectman to redact the records responsive to the complainant's request as described in paragraph 15, above.

19. At the hearing in this matter, the complainant also alleged that the respondent First Selectman was not prompt in her efforts to comply with his June 21, 2012 request or with the provision of §1-210(b)(19), G.S.

20. In this regard, it is found that the FOI Officer responded to the complainant's request in a June 25, 2012, letter directing the complainant to her prior responses to his requests dated June 13 and June 15, 2012, which requests were substantially the same as his June 21, 2012 request. It is found that she informed the complainant in person, by telephone, and by letter that she would not review the disc he provided because she is not permitted to use outside disks in town computers; that he needed to request specific records; that to comply with part of his request required research which the FOI Act did not require; and that some of the records he requested may be exempt from disclosure.

21. It is found that much of the complainant's request required the FOI Officer to review a video, analyze its content, and then exercise her discretion as to whether any of the records the town maintained fell within the scope of the complainant's request, and

therefore, it is concluded that the request required research which is not required by the FOI Act.

22. Furthermore, it is found that the respondent First Selectman and the FOI Officer made several good faith efforts to understand and promptly comply with the complainant's request, as described in paragraphs 9 and 10, above.

23. It is also found that the respondent First Selectman complied with the provisions of §1-210(b)(19), G.S., and contacted the respondent Commissioner promptly under the circumstances.


24. The complainant also alleged at the hearing that the respondent First Selectman's copying fee of fifty cents per page is in violation of the FOI Act.

25. It is found that this allegation is not within the scope of the complainant's July 12, 2012 complaint and will not be addressed herein.

26. Based on the foregoing, it is concluded that the respondent First Selectman did not violate the FOI Act as alleged by the complainant and that his request for a civil penalty will not be considered.

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.



Attorney Tracie C. Brown
as Hearing Officer