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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Paul Wragg,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-708

Town Manager, Town of Groton; and  
Town of Groton,  
Respondent(s)

July 17, 2014

### 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, August 13, 2014**. 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 August 1, 2014**. 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 August 1, 2014**. **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 August 1, 2014**, 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

Wendy Paradis  
Acting Clerk of the Commission

Notice to: Paul Wragg  
Michael P. Carey, Esq.

2014-07-17/FIC# 2013-708/Trans/wrbp/PSP//LFS

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Paul Wragg,

Complainant

Docket # FIC 2013-708

against

Town Manager, Town of Groton;  
and Town of Groton,

Respondents

July 17, 2014

The above-captioned matter was heard as a contested case on May 30, 2014, at which time the complainant and 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 email dated October 21, 2013, the complainant made a request to the respondent Town Manager to inspect all public records created since January 1, 2013 related to:

[a] my correspondence with the town (yourself, Mike Murphy, Heather Somers) on the issue of private signs on public property[;] and  
[b] the enforcement of zoning regulations [regarding] signs on public property.

The complainant requested that the records include, but not be limited to, the following:

[a] All correspondence (emails, written letters, faxes, etc.) received or sent by any town employee/official, whether or not the correspondence was with another town employee/official;  
[b] Notes taken of any meetings, conversations or telephone calls [; and]  
[c] Other documents produced.

In addition, the complainant informed the Town Manager that “[t]o the extent that any of these records are in electronic form, it will be acceptable to receive copies by email...”

3. It is found that on or about October 21, 2013, the respondent Town Manager contacted the Town of Groton's Manager of Information Technology ("IT Manager") and requested that he perform a broad search for records responsive to the complainant's October 21<sup>st</sup> request described in paragraph 2, above. It is found that the IT Manager searched all town email accounts for the subject line containing the terms "private signs" and "signs on public" dated January 1, 2013 through October 21, 2013. In addition, it is found that the IT Manager located and compiled 170 pages of emails which were subsequently sent to the Town of Groton's attorney for review.

4. It is found that, by email dated October 24, 2013, the respondent Town Manager informed the complainant that the respondents were compiling the non-exempt records within the scope of the complainant's request and that he expected it would take another week to ten days to complete the process. The Town Manager also informed the complainant that he would advise the complainant as soon as the process of compiling the records was complete so that the complainant may either travel to the Groton Town Hall to inspect the records or if the complainant preferred, to receive copies of such records. The Town Manager also requested that the complainant advise him whether he would prefer to receive paper copies of the nonexempt records (at 50 cents per page) or electronically. It is found that the complainant did not contact the Town Manager again regarding his October 21<sup>st</sup> request until after the filing of his complaint with the Freedom of Information ("FOI") Commission.

5. It found that by late October 2013, without having received any response from the town attorney regarding the 170 pages of emails described in paragraph 3, above, the respondent Town Manager left such records on a file cabinet in the receptionist area of the Town Manager's office with the expectation that the complainant would come to the office to pick up the records. It is found that the Town Manager did not contact the complainant at this point in time regarding the availability of the records.

6. By email dated November 12, 2013, and filed on November 13, 2013, the complainant appealed to the Commission alleging that the respondent Town Manager violated the FOI Act by failing to promptly provide the complainant with copies of the records, described in paragraph 2, above. At the hearing, the complainant also requested the imposition of civil penalties against the Town Manager.

7. Section 1-200(5), G.S., defines "public records or files" as:

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.

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

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

10. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S.

11. It is found that, by email dated November 21, 2013, the complainant followed-up with the respondent Town Manager regarding the status of his October 21<sup>st</sup> request, described in paragraph 2, above. The complainant also informed the Town Manager that he had referred this matter to the FOI Commission.

12. It is found that, on December 18, 2013, the complainant emailed the respondent Town Manager regarding an issue relating to private signs on public property, and the Town of Groton’s zoning regulations and enforcement. It is found that later that day the Town Manager informed the complainant via email that the respondents had identified a total of 170 pages of emails that were responsive to the complainant’s October 21<sup>st</sup> request, and that copies of such emails would be provided to him upon receipt of \$85.00. The Town Manager requested that the complainant inform him of whether he would like copies of such records and that payment would be due at the time that he came to pick up the records.

13. It is found that, by a second email dated December 18, 2013, the complainant informed the respondent Town Manager that he would like the emails forwarded to him electronically and requested that the Town Manager advise him as to the cost, if any, of providing such records via email. The complainant also reminded the Town Manager that his October 21<sup>st</sup> request was not restricted to emails and requested that the Town Manager represent that all of the emails described in paragraph 12, above, constitute a full response to his request. In addition, the complainant requested that the Town Manager inform him if any of the responsive documents were not in electronic format so that he could arrange to collect paper copies of such documents.

14. It is found that, on or about December 20, 2013, the respondents’ IT Manager provided, via email, the complainant with the emails described in paragraphs 3 and 12, above. It is also found that the respondent Town Manager provided the complainant with a copy of a three-page document that the Town Manager obtained from the Mayor for the Town of Groton after the complainant’s October 21<sup>st</sup> request.

15. It is found that, by email dated December 22, 2013, the complainant informed the respondent Town Manager that the emails provided by the IT Manager could not in any way be considered the result of a good faith effort to respond to his October 21<sup>st</sup> request, and requested that the Town Manager provide him with a fuller, more accurate response without delay.

16. At the hearing, the complainant argued that the respondent Town Manager failed to fully and promptly respond to his October 21<sup>st</sup> request described in paragraph 2, above. The complainant claimed that many of the records provided to him by the Town Manager were duplicative and completely unrelated to his request. The complainant also claimed that he was aware of several documents that were not provided to him by the Town Manager. In addition, the complainant contended that his October 21<sup>st</sup> request was not restricted to records that were in the possession of the Town Manager, but included records that were in the possession of all town employees.

17. The respondent Town Manager testified that he interpreted the complainant's request to be for paper files concerning the enforcement of zoning regulations to raise signs on public property that are located in the Town Manager's office and for communications between the complainant and the individuals listed in the complainant's October 21<sup>st</sup> request, described in paragraph 2, above. The Town Manager further testified that, at the time of the complainant's request, there were no paper files concerning such zoning enforcement matters in the Town Manager's office, and requested that the IT Manager conduct a broad search of all email accounts in the town hall system as described in paragraph 3, above, for communications that were responsive to the complainant's request.

18. It is found that the respondent Town Manager's interpretation of the complainant's request as described in paragraph 17, above, was reasonable. It is further found that the Town Manager did not have a duty to inquire of other town departments, officials or employees as to whether they had possession of any documents that would be responsive to the complainant's request. See Lash v. Freedom of Information Commission, 116 Conn. App. 171, 187 (2009) (first selectman had no duty to maintain or make available the records of the town's law department, just as the law department had no duty to maintain or disclose the records of the first selectman).

19. It is found that the respondents provided the complainant with all documents that the respondent Town Manager maintained and kept on file at the time of the complainant's October 21<sup>st</sup> request that were responsive to such request.

20. With respect to whether the respondent Town Manager's response to the complainant's request was prompt, the Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

21. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.


22. The respondent Town Manager contended that any delay in responding to the complainant's October 21<sup>st</sup> request was due to the magnitude of his request and a misunderstanding by the parties as to the arrangements for picking up any records responsive to the request. The Town Manager testified that he believed that the arrangement between him and the complainant was for the complainant to pick-up the records at the Town Manager's office. In addition, the Town Manager testified that he did not recall receiving the complainant's November 21<sup>st</sup> email, described in paragraph 11, above. However, upon receiving the complainant's December 18<sup>th</sup> email described in paragraph 12, above, the Town Manager reasonably believed that there may have been a misunderstanding and that the complainant was still looking for a response to his records request. The Town Manager then requested that the IT Manager provide, as soon as possible, the complainant with electronic copies of the records that were compiled and available for pick-up two months earlier as described in paragraph 5, above.

23. It is found that, under the facts and circumstances of this case, the respondent Town Manager's provision of the requested records was prompt within the meaning of §§1-210(a) and 1-212(a), G.S.

24. It is concluded that the respondents did not violate the FOI Act in this matter. Accordingly, there is no need to consider the complainant's request for the imposition of civil penalties.

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.

  
Paula S. Pearlman  
as Hearing Officer