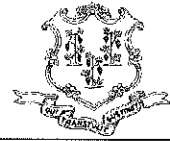


Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
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Dave Morton,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-325

First Selectman, Town of Westport; and
Town of Westport,
Respondent(s)

December 8, 2015

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, January 13, 2016**. 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 December 30, 2015**. 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 December 30, 2015**. **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 December 30, 2015**, 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: Dave Morton; Gregory Slate
Attorney Gail Kelly; Attorney Peter V. Gelderman

2015-12-08/FIC# 2015-325/Trans/wrbp/VB//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

David Morton,

Complainant

against

Docket #FIC 2015-325

First Selectman, Town of Westport; and
Town of Westport,

Respondents

November 12, 2015

The above-captioned matter was consolidated for hearing with Docket #FIC 2015-326; also captioned David Morton v. First Selectman, Town of Westport; and Town of Westport. Both matters were heard as contested cases on September 21, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.¹

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 4, 2015, the complainant made a written request to the respondents for certain records related to a piece of real estate owned by the town of Westport referred to as the Inn at Longshore (hereinafter referred to as "Longshore"). Specifically, the complainant requested the following records:
 - a. A copy of the valuation funded by the appropriation of \$19,000 to Town Attorney's Fees and Services Account (hereinafter "Longshore Valuation") Account. #1-101-01-10-170-100-310-0001 to conduct a valuation of Longshore and consult regarding the formulation of an RFP (hereinafter "Longshore RFP") approved at the February 1, 2006 Board of Finance meeting (hereinafter "Feb. BOF Meeting");

¹The Commission notes that the complainant provided authorization for Gregory Slate to represent his interests at the hearing in this matter. David Morton was not present at the hearing.

- b. A copy of any all records used to create the Longshore Valuation, including but not limited to financial statements, audited account statements, receipts, appraisals, and or correspondence;
- c. A copy of the Longshore RFP funding for which was approved at the Feb. BOF Meeting;
- d. A copy of any and all records related to the Longshore RFP, including but not limited to proposals, blueprints, letters, and or emails;
- e. Any and all emails sent or received by any email address “@westportct.gov” to and or from rorytagert@yahoo.com since February 1, 2015;
- f. Any and all emails sent or received by any email address “@westportct.gov” to and or from Skip.Lane@cushwake.com since February 1, 2015;
- g. Any and all emails sent or received by any email address “@westportct.gov” to and or from Adam.Klimek@cushwake.com since February 1, 2015;
- h. Any and all emails sent or received by any email address “@westportct.gov” to and or from marc@onthemarcevents.com since February 1, 2015;
- i. Any and all emails sent or received by any email address used by the Charlie Haberstroh, Chairman of the Parks Recreation Committee for the Town of Westport, to and or from the following email addresses:
 - rorytagert@yahoo.com;
 - Skip.Lane@cushwake.com;
 - Adam.Klimek@cushwake.com; and or
 - marc@onthemarcevents.com

since February 1, 2015 concerning the Town of Westport owned property at 260 South Compo Road.

3. It is found that, by letter dated April 6, 2015, the respondents acknowledged the complainant’s record requests described in paragraph 2, above, and informed him that they needed additional time to search for and review any responsive records, which would then be forthcoming.

4. It is found that on April 22, 2015, the respondents sought clarification with respect to the requests detailed in paragraph 2(e) through (h), above, as to whether the requests were to be limited to those records concerning “Town of Westport owned property at 260 South Compo Road,” in the same manner as the request described in paragraph 2(i), above, was limited.

5. It is found that, by letter dated April 24, 2015, the respondents notified the complainant that records responsive to his requests described in paragraph 2(a) and (i), above, were available. It is further found that in that April 24th letter, respondents informed the complainant that the requested record described in paragraph 2(c), above, did not exist; that there were no responsive records maintained by the respondents with respect to requests described in paragraph 2(b) and (d), above, and reminded the complainant that they were waiting for clarification regarding requests described in paragraph 2(e) through (h), above.

6. By e-mail dated May 7, 2015 and filed on May 8, 2015, the complainant appealed to this Commission, alleging that the respondents failed to provide copies of certain records referenced in paragraph 2, above, in violation of the Freedom of Information Act.

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 “[a]ny 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, to the extent that the records identified in paragraph 2, above, exist and are maintained by the respondents, such records are public records within the meaning of §§1-200(5) and 1-210(a), G.S., and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

11. At the hearing in this matter, the complainant conceded that he had received responsive records from the respondents, but contended that the respondents did not fully comply with any of the requests described in paragraph 2, above.

12. The respondents did not claim any exemption to disclosure. Rather, the respondents asserted at the hearing that they conducted a diligent search and provided all responsive records that they maintained to the complainant.

13. It is found that the respondents communicated frequently with the complainant in an effort to fully understand the scope of his request, and that responsive records were made available on several occasions, including on May 14, 2015.²

14. With respect to the request described in paragraph 2(a), above, for records related to the Longshore evaluation, it is found that the complainant was provided responsive records, including a Market Rent Analysis for the Inn at Longshore dated March 20, 2006, which were the only responsive records maintained by the respondents. No contrary evidence was presented at the hearing.

15. It is found that there were no responsive records maintained by the respondents with respect to the request described in paragraph 2(b), above, for records *used to create* the Longshore evaluation. Despite the complainant's assertion that comments were allegedly made during public meetings by the First Selectman referencing certain records related to a lease between the town of Westport and the tenant occupying the Longshore property, it is found that such public comments alone do not support the conclusion that additional records exist beyond those provided to the complainant, or that the respondents maintain any such additional records.

16. It is found that an outside consultant was retained to prepare the Longshore evaluation (also referred to as Market Rent Analysis), which is a public record within the meaning of §1-200(5), G.S., as it was prepared for the benefit of the respondents and paid for by the respondents. As stated in paragraph 14, above, the respondents provided a copy of the March 20, 2006 Market Rent Analysis to the complainant.³

17. With respect to the request described in paragraph 2(c) and (d) and, above, for records related to a 2006 Longshore Request for Proposal ("RFP"), it is found that the respondents did not maintain any responsive records because no such RFP existed. It is found that the complainant's only basis for asserting that such a RFP did exist is a reference to the proposed formulation of an RFP made at a February 1, 2006 Board of Finance meeting. It is further found that such reference alone, does not support the conclusion that additional records exist beyond those provided to the complainant, or that the respondents maintain any such additional records.

²The Commission notes that the parties exchanged several other communications between May 8, 2015 and May 12, 2015 that showed a willingness by the respondents to comply with the complainant's request. Those same communications also contained various assertions made by the complainant of noncompliance with the Freedom of Information Act regarding alleged redactions of certain electronic communications. However, those particular assertions were not raised at the hearing, and are therefore deemed abandoned and shall not be considered herein.

³There was no evidence presented at the hearing that the consultant maintained any additional records created and/or used in conjunction with its preparation of the Market Rent Analysis.

18. It is found that the respondents provided the complainant with all of the responsive records as described in paragraph 2(e) through 2(i), above, that they maintain, which included electronic communications between certain individuals. While the complainant asserted that certain electronic communications were withheld, no evidence was presented at the hearing to support that assertion.

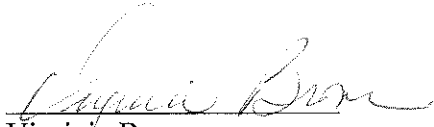
19. The respondents provided ample testimony regarding the scope of their search for responsive records, which included coordinated efforts with several departments in the town of Westport, including the Parks and Recreation department, Board of Education, the Finance department and the IT department, and it is found that the respondents provided the complainant with all responsive records as described in paragraph 2, above, which they maintain.

20. During the hearing, certain allegations were made regarding the respondents' actions in conjunction with a previous Freedom of Information complaint filed by the complainant in the present matter against the respondents (Docket #FIC 2015-023). However, such allegations were not fairly raised in the complaint. Accordingly, the Commission declines to make any findings related to that alleged conduct as it is immaterial to the issues brought forward in the complaint presently before the Commission.⁴

21. Consequently, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S.

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.


Virginia Brown
as Hearing Officer

FIC2015-325/HOR/VB/11122015

⁴The Commission takes administrative notice of that previous complaint (Docket #FIC 2015-023), only to note its lack of relevancy to the complaint presently before the Commission.