

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Ed Schwing,

Complainant

against

Docket #FIC 2016-0836

First Selectman, Town of Haddam;  
and Town of Haddam,

Respondents

October 11, 2017

The above-captioned matter was heard as a contested case on February 17, 2017, 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. By letter dated November 29, 2016 and filed on November 30, 2016, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his records request. The complainant also alleged that the respondents failed to properly notice on its agenda, or to take a two-thirds vote to add to the agenda, the discussion and vote on a contract between the respondent town and the company Homeland Towers.
3. With respect to the complainant’s allegation that the respondents failed to comply with his records request, it is found that by email dated October 26, 2016, the complainant made a request for the following:
  - a. all emails, correspondence, and meeting notes between Mr. Ray Vergati, Site Development Manager of the Homeland Tower, Danbury, Connecticut and First Selectman Lizz Milardo;
  - b. all emails, correspondence, and meeting notes between Mr. Chuck Regulbuto and/or Ms. Lin Allen, principals

of ESS [Energy Site Solutions], and First Selectman Lizz Milardo

- c. copies of all agreements between Homeland Towers, and their representative, with the First Selectman and/or the Town of Haddam; and
- d. a copy of Homeland Towers technical report on town cell tower sites being proposed.

4. 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.

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 concluded that, to the extent they exist, 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 October 26, 2016, the respondents acknowledged the complainant's request and informed him that, while there was no record responsive to the request described in paragraph 3c, above, they would begin to compile records responsive to his requests described in paragraphs 3a, 3b, and 3d, above.

9. It is found that by letter dated January 19, 2017, the respondents provided the complainant with seven pages of records responsive to his request, which included emails and handwritten meeting notes of the respondent first selectman.

10. At the hearing on this matter, the complainant contended that the respondents failed to promptly comply with his request and that their failure was deliberate. The complainant contended that in addition, the respondents failed to provide all of the responsive records.

11. The respondents contended at the hearing, and in their post hearing brief, that in July of 2016, the complainant had already been provided with a copy of the record responsive to his request described in paragraph 3b, above, when he made a similar records request on June 22, 2017. The respondents testified, at the hearing on this matter, that there were no other responsive records at the time of the complainant's October 26, 2016 request.

12. It is found that the record provided to the complainant in July of 2016 was a copy of the "Exclusive Site Management and Service Agreement" between the respondent town and ESS (hereinafter "the ESS agreement").

13. It is found that while it may have been reasonable to ask if the complainant wanted another copy of the ESS agreement, it was not reasonable to unilaterally determine that he did not and fail to provide a copy of the agreement again. The respondents should have asked the complainant if he wanted another copy.

14. It is also found that the records that were provided to the complainant in January were available at the time of the complainant's request because they were created between May 20, 2016 and October 25, 2016.

15. It is found, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to promptly provide the complainant with the records described in paragraphs 9 and 12, above, which records were the only records responsive to the complainant's request.

16. With respect to the complainant's allegation that the respondent first selectman failed to properly notice all of the business to be transacted at its November 2, 2016 meeting, §1-225(c), G.S., provides in relevant part that:

The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business, and (2) in the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of

the clerk of each municipal member of any multitown district or agency. For any such public agency of the state, such agenda shall be posted on the public agency's and the Secretary of the State's web sites. Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

17. It is found that the Board of Selectmen (hereinafter "the board") of the respondent town held a regular meeting on November 2, 2016, at which the board discussed and voted to approve a contract between the respondent town and Homeland Towers for the lease of town property for cell phone towers.<sup>1</sup>

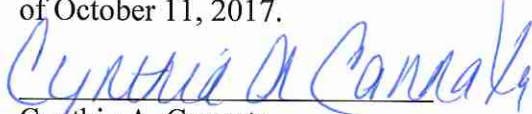
18. It is found that the discussion was not noticed on the agenda for the November 2, 2016 meeting but was discussed under the item of business noticed as "New Business." It is found, however, that the Board of Selectmen failed to vote to add the discussion to the agenda and, therefore, did not obtain an affirmative vote of two-thirds of the members of the Board of Selectmen present and voting, to consider and act upon the contract at that meeting as required by §1-225(c), G.S.

19. Consequently, it is concluded that the respondent First Selectman, as a member the Board of Selectmen, violated the provisions of §1-225(c), G.S., of the FOI Act by failing to obtain an affirmative vote of two-thirds of the members of the Board of Selectmen present and voting before considering and acting upon the contract at the November 2, 2016 regular meeting.

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

1. Henceforth, the respondents shall strictly comply with the provisions of §§1-210(a) and 1-212(a), G.S.
2. Henceforth, the respondent First Selectman shall strictly comply with the provisions of §1-225(c), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 11, 2017.



Cynthia A. Cannata  
Acting Clerk of the Commission

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<sup>1</sup> It is found that the contract between the respondent town and Homeland Tower did not become available until the morning of November 2, 2016 and, therefore, did not exist at the time of the complainant's request. It is found that, while the respondents technically were not required to provide that contract to the complainant in response to his October 26, 2016 request, it would have been more in the spirit of transparency had they provided the contract at least at the time they provided the emails to the complainant.

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:

**ED SCHWING**, 143 Church Hill Road, Haddam, CT 06438

**FIRST SELECTMAN, TOWN OF HADDAM; AND TOWN OF HADDAM**, c/o  
Attorney Richard D. Carella, Updike, Kelly & Spellacy, P.C., 100 Pearl Street,  
Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission