

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Matt Gugliotti,

Complainant

against

Docket #FIC 2017-0641

Chief, Avon Volunteer Fire
Department; and Avon Volunteer
Fire Department,

Respondents

July 11, 2018

The above-captioned matter was heard as a contested case on February 23, 2018, 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 October 24, 2017 and filed on October 25, 2017, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly comply with his records request.
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 (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.

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 concluded that the requested records, to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

7. It is found that, by letter dated June 11, 2017, the complainant made a request to the respondents for a copy of the following records:

- a. any and all communications (written, electronic or otherwise) between Trick, Corrado, and Shillington for the past three months;
- b. Corrado’s drill and call attendance for the past 12 months, and a copy of all his training certificates;
- c. any and all FOI requests Trick cited in his wandering rant dated 6/6/17; and
- d. any and all contracts that the fire department has signed with Harrington, or his law firm, retaining him as counsel or as an advisor to the AVFD.

8. It is found that by letter dated September 28, 2017, the respondents acknowledged the complainant’s June 11, 2017 request. The respondents informed the complainant that they did not have any records responsive to his request.

9. At the hearing on this matter, and with respect to the complainant’s request described in paragraph 7a, above, the respondents contended that because the complainant prefaced his request by indicating that he was checking on the alleged “personal attack on [him] by Mr. Trick,” they limited their search to records that related to the complainant and an alleged attack on him by Trick.

10. At the hearing on this matter, the complainant explained that he wanted *all* of the emails between the three men during the period requested. The complainant also contended that his request was clear and that the respondents were simply playing word games in an attempt to obfuscate his request.

11. It is found that the respondents reasonably understood that the complainant's request was limited to those records that related to any alleged attack against the complainant by Trick created by either Trick, Corrado, or Shillington and it is found that they maintain no such records.

12. It is concluded that the respondents did not violate the disclosure provisions of §§1-210(a), or 1-212(a), G.S., in this regard.

13. With respect to the records described in paragraph 7b, above, it is found that those records were eventually provided to the complainant free of charge and the complainant indicated at the hearing on this matter that he considered that portion of his appeal to be "closed."

14. With respect to the complainant's request described in paragraph 7c, above, it is found that the respondents never received a records request pursuant to the FOI Act from Trick, and therefore, the respondents do not maintain such record.

15. It is concluded that the respondents did not violate the disclosure provisions of §§1-210(a), or 1-212(a), G.S., in this regard.

16. With respect to the complainant's request described in paragraph 7d, above, it is found that the respondents do not maintain any such record.

17. During the hearing, the complainant indicated that he was satisfied with the respondents' response to his request for the records described in paragraph 7d, above.

18. It is concluded that the respondents did not violate the disclosure provisions of §§1-210(a), or 1-212(a), G.S., in this regard.

19. With respect to the timeliness of the respondents' response to the complainant's request, §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." [Emphasis added]

20. 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. It is found that the respondents took over four months to respond to the complainant's request and originally stated in that September 28, 2017 letter of response that there were no responsive records. It is found that, later, at a November 13, 2017 meeting of the respondent department's Board of Directors, the complainant was informed that he could have met with Adam Corrado to obtain the records responsive to his request described in paragraph 7b, above. It is found that when he did not, he was provided with the responsive records under cover letter dated February 21, 2018, as described in paragraph 13, above.

23. Based upon the foregoing, it is concluded that the respondents, although volunteers with limited resources, failed to comply with the request, described in paragraph 7b, above, promptly.

24. The complainant also made a request on January 4, 2017, in which he requested certain records. The respondents, however, contended that the complainant's appeal with respect to that request was not filed within thirty days of the denial and therefore was not timely filed. The respondents asserted that the Commission lacks subject matter jurisdiction to adjudicate any claims made by the complainant with respect to that request.

25. Section 1-206, G.S., provides, in pertinent part that:

a) Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b)(1) Any person denied the right to inspect or copy records under section 1-210 or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said

commission. A notice of appeal shall be filed not later than thirty days after such denial....[Emphasis added].

26. It is found that pursuant to §1-206(b)(1), G.S., the complainant's request was deemed denied on January 8, 2017.

27. It is concluded that in order for the Commission to have jurisdiction over alleged violations related to the complainant's January 4, 2017 request, the complainant needed to file his appeal on or before February 8, 2017.

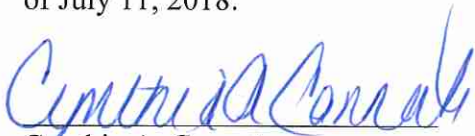
28. As stated in paragraph 2, above, the complainant's appeal was filed on October 25, 2017, and therefore, it is found that the complainant failed to file his complaint within thirty days after his request was deemed a denied.

29. Accordingly, it is concluded that the Commission lacks jurisdiction to adjudicate any alleged violations related to the complainant's January 4, 2017 request.

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 promptness requirements contained in §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 11, 2018.



Cynthia A. Cannata
Acting Clerk of the Commission

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:

MATT GUGLIOTTI, 111 Craigmere Circle, Avon, CT 06001

CHIEF, AVON VOLUNTEER FIRE DEPARTMENT; AND AVON VOLUNTEER FIRE DEPARTMENT, c/o Attorney Michael C. Harrington, LeClair Ryan, 755 Main Street, Suite 200, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission