

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

John Tartaglia and PR Arrow LLC,

Complainants

against

Docket #FIC 2017-0752

Town Manager, Town of Wethersfield;  
and Town of Wethersfield,

Respondents

July 25, 2018

The above-captioned matter was heard as a contested case on May 2, 2018, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

By email to the Commission, received and filed on April 27, 2018, the complainants submitted a request asking that this Commission issue subpoenas to compel the appearance of: Mr. Jeff Bridges, the respondent Town Manager; Mr. John Bradley, the Town Attorney for the respondent town; and Mr. Peter Gillespie, Director of the respondent town's department of Planning and Economic Development. By email received and filed on April 27, 2018, the respondents objected to the complainants' request and indicated that Mr. Peter Gillespie would attend the hearing voluntarily. At the hearing on this matter, the hearing officer heard argument on the request and after hearing all the testimony and upon review of the exhibits, the complainants' request for subpoenas is hereby denied.

In addition, the complainants objected to the law firm Rome McGuigan, P.C., representing the respondents on the grounds that the firm has an irreconcilable conflict of interest. That objection was filed and received with this Commission on February 22, 2018. The hearing officer heard argument from the parties on the objection and the objection was overruled at the hearing on this matter.

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 December 18, 2017 and filed on December 19, 2017, the complainants appealed to this Commission alleging that the respondents violated the

Freedom of Information (“FOI”) Act by failing to comply with their November 8, 2017 records request. The complainants specifically alleged that the respondents violated the FOI Act by their “refusal/denial” of the records requested in numbers 1, 3, and 4 of their November 8, 2017 letter (described in paragraph 7a, 7c and 7d, below).

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 found 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 e-mail dated November 8, 2017, the complainants made a request directed to the respondent town, and every department and employee of the respondent town, for the following records:

- a. “all records of any town agency, department, commission or board, including, but not limited to, the Planning and Zoning Commission, the Zoning Board of Appeals, the town Building Department, the town Zoning Enforcement Officer, the Director of Planning and Development, or any other town agency and

employee, relating to or concerning any meeting, proceeding, hearing, deliberation, decision, investigation or enforcement action or proceeding, or any citation, any notice of violation, any application, any approval or any denial of approval concerning or otherwise relating to Wethersfield Zoning Regulation Sec. 3.5.5, from November 4, 2004 until today;”

- b. “all records of any town agency, department, commission or board, including, but not limited to, the Planning and Zoning Commission, the Zoning Board of Appeals, the town Building Department, the town Zoning Enforcement Officer, the director of Planning and Development, or any other town agency and employee, relating to or concerning any meeting, proceeding, or any citation, any notice of violation, any application, any approval or any denial of approval concerning or otherwise relating to Wethersfield Zoning Regulation Sec. 5.2.H.5, from November 4, 2004 until today;”
- c. “all records of billing, payment, invoices, canceled checks, check register or journal entries, deliberations, meetings or approval of or denial of any payment of, money payable to the law firm of Rome McGuignan, or any other law firm concerning or relating to the lawsuit entitled ‘Justin LaFountain and the Town of Wethersfield vs. PR Arrow LLC,’ Superior Court, Hartford County, HHD-CV-16-6065738-S (hereinafter “the lawsuit”);”
- d. “all records of billing, payment, invoice, canceled checks, check register or journal entries, deliberations, meetings or approvals of or denial of any payment of, money payable to the law firm of Rome McGuignan, for any matter from January 1, 2015 to today.”

8. It is found that by letter dated December 4, 2017, the respondents’ Town Attorney, John Bradley, responded to the complainants’ request as follows:

- a. with respect to the complainants’ request described in paragraph 7a, above, the letter stated that the complainants’ request was overly broad and burdensome and is not a request for identifiable records. It stated that the request required research which the town is not obligated to do under the FOI

Act. It also stated that “. . . the Town does not have an electronic database or other computerized records management system for zoning records which can be searched for records maintained by the various departments to which your FOIA request is directed.” The complainant was asked to narrow his request to records pertaining to a particular property because the town maintains such records by property address;

- b. with respect to the complainants’ request described in paragraph 7b, above, the complainants were informed that the only records responsive to that portion of their request are those records that pertain to their own property at 61 Arrow Road. The complainants were asked to inform the respondents if they wanted a copy of such records;
- c. with respect to the complainants’ request described in paragraph 7c, above, the complainant was informed that the respondents do not maintain records of “canceled checks, check register[s], or journal entries, deliberations, meetings, or approvals of or denial[s] of money payable to the law firm of Rome McGuigan, P.C., or any other law firm concerning the lawsuit. With respect to billing records and invoices concerning that lawsuit, the complainants were informed that such records dating from December 29, 2015 through May 4, 2017 were already provided and that such records dating from May 5, 2017 through December 4, 2017 were provided as an attachment to the response letter;
- d. with respect to the complainants’ request described in paragraph 7d, above, the letter reminded the complainants that a four-page printout showing all of the payments made by the town to the law firm of Rome McGuigan, P.C., had already been provided but that the town has records responsive to their request and that once those records were reviewed for confidential or privileged communications and redacted, the complainants would be advised of the pages and copying costs.

9. It is found that by the time of the hearing in this matter, the respondents had provided the complainants with records responsive to each of the four requests described in paragraph 7, above.

10. At the hearing on this matter, the complainants narrowed the issues with respect to their complaint to the following:

- a. whether the respondents' failure to produce a retainer agreement between the respondent town and the law firm of Rome McGuigan, P.C., that specifically outlined the scope of their representation and the basis or rate of the fee and expenses for which the client will be responsible for the lawsuit was in violation of the disclosure requirements of the FOI Act; and
- b. whether Attorney Bradley's mischaracterization of the manner in which the respondent town's zoning records were maintained contributed to the respondent town's failure to promptly comply with their records request and thereby constituted a violation of the FOI Act.

11. With respect to the issue described in paragraph 10a, above, Rule 1.5(b) of the Rules of Professional Conduct provides that "the scope of the representation, the basis or rate of the fee and expenses for which the client will be responsible, shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation, *except when the lawyer will charge a regularly represented client on the same basis or rate.*" [Emphasis Added]

12. It is found that Rome McGuigan, P.C., regularly represents the respondent town and that the respondent town, therefore, does not maintain a retainer agreement in the form described in paragraph 10a, above. Furthermore, it is concluded that the town is not required to create such a retainer agreement under the FOI Act.

13. It is found that, nonetheless, the respondent town provided the complainants with records that disclose the agreement between the respondent town and Rome McGuigan, P.C., which records included the respondent town's RFP for Town Attorney, the competitive bids received by the town from other attorneys, the proposal for legal services as Town Attorney from Rome McGuigan, P.C., and two appointment letters.

14. With respect to the issue described in paragraph 10b, above, it is found that, notwithstanding Attorney Bradley's representation in the December 4, 2017 letter, the records responsive to the complainants' request described in paragraph 7a, above, are maintained electronically. It is also found that the respondents, after deciding on a list of search terms, conducted an electronic search of the relevant records maintained by the town and provided the complainants with records responsive to that portion of their request.

15. In this regard, the complainants contended that Attorney Bradley's misrepresentation was negligent, willful, and inaccurate and lead to the respondent town's delayed compliance with their request.

16. At the hearing on this matter, the respondent town reiterated its contention that the complainant's request described in paragraph 7a, above, required research. The respondents contended that they conducted the research necessary to comply with the complainants request even though they were not required to do so by the FOI Act. The respondents further contended that because they did not have to provide any records to the complainants, the alleged inaccuracy of Attorney Bradley's representation as to the manner in which the records are maintained is immaterial.

17. In Wildin v. Freedom of Information Commission, 56 Conn. App. 683, 687 (2000), the Appellate Court concluded that a records request involves research if the respondents must exercise discretion to determine whether the records sought fall within the request. In Wildin, the complainant requested "all correspondence...to or from the Mayor...and to or from the Town Attorney...from January 1, 1996 to the present." Id. at 684-85. The Commission found that such records were located in at least fifty, and perhaps in over one hundred files, organized by subject matter, and concluded therefore that the respondents would need to conduct "research" in order to locate all such responsive records. Id. at 685. The trial court agreed, but the Appellate Court reversed, noting that the complainant had "specifically identified the records he sought, and there was no analysis required to search for the records." Id. at 686. According to the Court, "a record request that is simply burdensome does not make that request one requiring research." Id. at 687.

18. It is found that the complainants' request was for records "relating to or concerning" a broad category of records. It is found that although the respondents used search terms to compile potentially responsive records, deciding which search terms required the exercise of discretion was just the starting point for contemporary electronic research. The respondent town was thereafter required to analyze and exercise discretion to determine whether the records preliminarily located would satisfy the complainants' request. The analysis and use of discretion exercised by the respondent town is what the Appellate Court in Wildin defined as research. Id. at 686-87.

19. It is found that the complainants' request required the respondent town to conduct research and that therefore, the respondents were not required to comply with the complainants' request at all under the FOI Act. It is also found that, consequently, the promptness provisions of §§1-210(a) and 1-212(a), G.S., are not applicable in this case and that it is not material whether any delay in the respondents' good faith efforts to provide the complainants with responsive records resulted from the mischaracterization of the manner in which responsive records were maintained.

20. It is concluded that the respondents did not violate the FOI Act as alleged by the complainants.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 25, 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:

**JOHN TARTAGLIA AND PR ARROW LLC**, P.O. Box 1076, Ridgefield, CT 06877

**TOWN MANAGER, TOWN OF WETHERSFIELD; AND TOWN OF WETHERSFIELD**, c/o Attorney John W. Bradley, Jr., Rome McGuigan, P.C., One State Street, Hartford, CT 06103 and Attorney Nathan C. Favreau, Rome McGuigan, P.C., One State Street, 21st Floor, Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission