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Elizabeth Regan And
Rivereast News Bulletin
Complainant(s)

against

Town Manager, Town of East Hampton; and
Town of East Hampton
Respondent(s)

Notice of Meeting

Docket #FIC 2017-0741

May 21, 2018

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, lst floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, June 27, 2018.** 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 June 15, 2018.*** 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 June 15, 2018.*** **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 June 15, 2018*** 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 R.B. Paradis
Acting Clerk of the Commission

Notice to: Elizabeth Regan and Rivereast News Bulletin
Attorney Richard D. Carella

FIC# 2017-0741/ITRA/KKR//TAH/WRBP/2018-05-21

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Elizabeth Regan and Rivereast
News Bulletin,

Complainant

against

Docket #FIC 2017-0741

Town Manager, Town of East Hampton;
and Town of East Hampton,

Respondents

April 25, 2018

The above-captioned matter was heard as a contested case on March 26, 2018, at which time the complainants and the respondents appeared 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 November 20, 2017, the complainants requested an opportunity to view "all the ballots that were handcounted during the November 13 recount."

3. It is found that, by letter dated December 11, 2017, the respondents denied the request, described in paragraph 2, above, on the ground that the ballots are not public records subject to disclosure under the Freedom of Information (FOI) Act.

4. By email dated and filed December 14, 2017, the complainants appealed to this Commission, alleging that the respondents violated the FOI Act by failing to comply with their records request.

5. By motion dated and filed January 31, 2018, the respondents requested that the Commission dismiss the complaint without a hearing, pursuant to §1-206(b)(4), G.S. On February 16, 2018, the complainants filed a written objection to such motion.

6. In a ruling dated February 20, 2018, the hearing officer denied the motion to dismiss.

7. Section 1-200(5), G.S., provides:

> "[p]ublic 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.

8. Section 1-210(a), G.S., provides in relevant part that:

> [e]xcept 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 inspect such records promptly during regular office or business hours...or...receive a copy of such records in accordance with section 1-212. (Emphasis added).

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. The respondents argued that Romeo v. Veronica Musca, Republican Registrar of Voters, Town of Greenwich, et al., Docket #FIC 1997-394 (July 8, 1998), in which this Commission concluded that "public access to the records of elections and to the record contained in the vote register...are provided by statutes other than [1-210(a), G.S.]," controls the outcome of this instant case. In Romeo, the Commission concluded that the respondents did not violate the FOI Act by refusing to provide the complainant with access to the voting machines. The complainants argued that the Romeo decision does not control, because it involved a request for access to the voting machines, not a request to inspect paper ballots.

11. Although it is true that the complainant in Romeo did not request access to paper ballots, it is also true that the general statutes in effect then and now set forth very specifically the process by which records of elections, including paper ballots, must be secured, retained, and ultimately destroyed. See §§9-309, 9-310, 9-311, 9-311a and 9-311b, G.S.

12. Section 9-309, G.S., provides that after the election polls are closed, the moderator must immediately lock the voting tabulator and announce the vote totals, vote checkers must record the number of votes received, and the moderator must prepare a preliminary list from the vote totals for transmission to the Secretary of the State. Section 9-309, G.S., further provides that:

> [w]hile such announcement is being made, ample opportunity shall be given to any person lawfully present to

> compare the results so announced with the result totals provided by the tabulator and any necessary corrections shall then and there be made by the moderator, checkers and registrars or assistant registrars, after which the compartments of the voting tabulator shall be closed and locked. In canvassing, recording and announcing the result, the election officials shall be guided by any instructions furnished by the Secretary of the State.

13. Section 9-310, G.S., provides:

> [i]f it is determined that a recanvass is required pursuant to section 9-311 or 9-311a, immediately upon such determination the tabulators, write-in ballots, absentee ballots, moderators' returns and all other notes, worksheets or written materials used at the election shall be impounded at the direction of the Secretary of the State. Such package shall be preserved for one hundred eighty days after such election and may be opened and its contents examined in accordance with section 9-311 or upon an order of a court of competent jurisdiction. At the end of one hundred eighty days, unless otherwise ordered by the court, such package and its contents may be destroyed.

14. Section 9-311, G.S., provides that "all recanvassing procedures shall be open to the public," and further sets forth the specific procedures for unsealing the tabulator and paper ballots in order to conduct the recanvass.

15. With regard to the instant case, it is found that an election was held on November 7, 2017, in the Town of East Hampton, and that a recanvass was required due to a "close vote." See §9-311a, G.S. Such recanvass was held on November 13, 2017. It is found that, pursuant to §9-310, G.S., and according to the testimony of the respondents' witness, an attorney with the Secretary of the State's office, the paper ballots at issue were impounded at the direction of the Secretary of the State and may not be opened until the expiration of 180 days after the election or upon an order of the court. It is found that such 180 period had not expired as of the date of the hearing in this matter, nor had the complainant obtained a court order to disclose such records.

16. Based upon all of the foregoing, it is concluded that public access to the requested paper ballots is governed by the state elections statutes set forth herein, and that the respondents therefore did not violate the FOI Act by denying the complainant's request for access to inspect the paper ballots, described in paragraph 2, above.

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

1. The complaint is dismissed.

Kathleen K. Ross
as Hearing Officer

FIC 2017-0741/hor/kkr/04252018