

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

William Dunn,

Complainant

against

Docket #FIC 2018-0262

Mayor, Town of Plymouth;
and Town of Plymouth,

Respondents

November 14, 2018

The above-captioned matter was heard as a contested case on August 17, 2018 and September 20, 2018, at which times 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. It is found that, by letter dated April 3, 2018, the complainant requested that Mayor David Merchant provide him with copies of the following:
 - a. Any and all public records from 2011 to 2017 that are related to the Town of Plymouth's one-day purchase and sale in April 2017, of real property located at 5 South Street for extending the Plymouth Fire Company firehouse. The records request includes (but is not limited to) the following:
 - i. Real estate contracts (including drafts); real estate conveyance forms (including HUD forms and drafts); and land records (including drafts);
 - ii. Banking transaction statement (including wire transfers, checks or money orders);
 - iii. Any and all documents of "the original plan" for the purchase of all of 5 South Street as

- cited by Mayor Merchant to the Republican-American on or around 8/17/17;
- iv. Any and all legal memoranda, notes, research, opinions and forms (including any communication to/from the Town Attorney);
 - v. Letters or other written communications (including but not limited to government officials, town employees, Mark Goodwin or residents);
 - vi. Any and all e-mails to any party (including but not limited to government officials, Mark Goodwin, town residents or town employees);
 - vii. Any and all text messages to any party (including government officials, Mark Goodwin, town residents or town employees);
 - viii. Telephone logs (including but not limited to landline, cellular and wifi) of calls to/from any party (including but not limited to town officers, Mark Goodwin, town residents or town employees); and
- b. Any and all public records from 2001 to 2017 that are related to the Town of Plymouth's sale in January 2015, of real property located at 367 South Main Street and 370 South Main Street (hereinafter "the Properties) to Inland Intermodal LLC, Conn. Business ID #1163384, which deal was brokered by its sister company Inland Fuel Terminal Inc., Conn. Business ID #0023396 (collectively hereinafter "Inland Companies"), and placing of said property on the Grand List. The records requested include (but are not limited to) the following:
- i. Real estate contracts (including drafts); real estate conveyance forms (including HUD forms and drafts); and land records (including drafts);
 - ii. Banking transaction statement (including wire transfers, checks or money orders);
 - iii. Any and all legal memoranda, notes, research, opinions, templates and instructions (including any communication to/from the Town Attorney);
 - iv. Letters or other written communication (including but not limited to government officials, Inland Companies, town residents or town employees);
 - v. Any and all e-mails to any party (including but not limited to government officials, Inland

- Companies, town residents or town employees);
- vi. Any and all text messages to any party (including government officials, Inland Companies, town residents or town employees);
 - vii. Telephone logs (including but not limited to landline, cellular, and wifi) of calls to/from any party (including but not limited to town officers, Inland Companies, town residents or town employees).

3. It is further found that the complainant requested that the respondents deliver the records to him by email. Finally, the complainant requested that the respondents waive all fees, as he believed that the disclosure of the records was in the public interest.

4. It is found that the respondents mailed a certified acknowledgement letter concerning the request to the complainant, which letter was returned to the respondents several times before being delivered, as no one was available to sign for the mailing.

5. It is found that, on May 5, 2018, the respondents disclosed 22 pages of hard copy records to the complainant.

6. By letter dated May 18, 2018 and filed May 23, 2018, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with complete copies of the records referenced in paragraph 2, above.

7. 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.

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, (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.

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 the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

11. At the first contested case hearing, the complainant testified that he received 22 pages of responsive records from the respondents, free of charge. The complainant contended that these records were only partially responsive to the request set forth in paragraph 2.a, above. He further contended that he received no responsive records in response to the request described in paragraph 2.b, above.

12. It is found that, by letter dated July 13, 2018, the respondents informed the complainant that they had gathered 183 more pages of responsive records and that, upon the payment of \$91.50, they would disclose these records to the complainant.

13. In response, the complainant contended that he had requested that the records be delivered to him via email, and, as such, he should not have to pay a per page cost for these records. In addition, he contended that, even with the disclosure of 183 additional pages, given the scope of his request, he believed that there should be many more responsive records.

14. Because the complainant challenged the sufficiency of the disclosure, and because the respondent appeared at the first hearing solely through counsel, the hearing was continued to allow the respondents to appear with a witness who could testify to the search for responsive records in this case.

15. Christie Arena, the Interim Town Assessor, appeared and provided testimony at the continued contested case hearing. It is found that Patricia Hale, the Executive Assistant to the Mayor, is the individual who searched for and gathered the records that have been disclosed and offered to the complainant in this case. For personal reasons, however, Ms. Hale was unable to appear at the continued hearing. It is found that, prior to appearing at the continued hearing, Ms. Arena spoke to Ms. Hale so that she could accurately explain how Ms. Hale conducted her search for responsive records.

16. It is found that, when the respondents received the April 3, 2018 request, Ms. Hale searched Mayor Merchant’s emails for responsive electronic records. In this regard, it is found that Ms. Hale ran specific search terms, such as “Inland Fuels” and “South Main Street,” through the Mayor’s email to locate responsive records. It is further found that Ms. Hale searched through all of the files in the Mayor’s office for responsive, hardcopy records. It is found that, when Ms. Hale concluded her search and had not located many responsive records, she went to the Town Clerk’s office to gather additional records for the complainant. It is found that the records that Ms. Hale

retrieved from the Town Clerk's office were made part of the 22 pages that were disclosed to the complainant on May 5, 2018. (See ¶5, above).

17. In addition, it is found that the package of 183 records includes both electronic and hardcopy records responsive to the request set forth in paragraph 2.b, above. It is found that Ms. Hale retrieved these records by searching the Mayor's email and the files in the Mayor's office. It further found that she contacted the town's attorney and gathered some additional records from him.

18. It is found that the respondents conducted a thorough search for responsive records in this case.

19. With regard to the complainant's contention that he should have received all of the responsive records electronically, §1-212(a), G.S., covers, generally, the method by which a public agency may choose, in its discretion, to provide a copy of a public record to a requester. See §1-212(a), G.S. ("... The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy. . . ."). Accordingly, with regard to hardcopy (or paper) records the agency has discretion to choose, within the limitations set forth in §1-212(a), G.S., how to deliver the records to the requester. If the agency chooses to deliver paper copies to the requester, the agency may charge a per page fee for such records.

20. It is found, however, that §1-211(a), G.S., specifically covers the disclosure of computer stored public records. This section provides, in relevant part, as follows:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. . . . (Emphasis supplied).

21. It is found that the package containing 183 records is comprised of 115 pages of records that were originally maintained as electronic records and 68 pages of records that were maintained as hardcopy records.

22. The respondents failed to prove that they are unable to deliver the electronic records to the complainant via email. Accordingly, it is found that the electronic records in the package should have been sent to the complainant's email address.

23. With regard to whether the records in the case have been disclosed promptly, the Commission has previously opined that the word "promptly" in §1-210, G.S., means

"quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; 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 loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

24. It is found that, at the time of the continued contested case hearing, 170 days had passed since the complainant had requested public records and the respondents had yet to disclose the electronic records to the complainant.

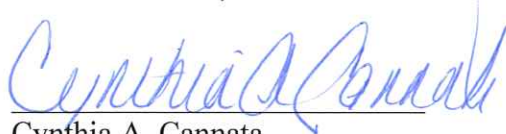
25. It is found that the respondents failed to disclose the responsive electronic records promptly (and wrongfully attempted to have the complainant pay a per page fee for such records).

26. It is, therefore, concluded that the respondents violated the promptness provisions of §§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. Henceforth, the respondents shall strictly comply with the promptness requirements of §§1-210(a) and 1-212(a), G.S.
2. The respondents shall forthwith disclose the package containing 183 pages of records to the complainant, free of charge.
3. The respondent mayor shall, within thirty days of the date of the Notice of Final Decision in this matter, contact the Commission to schedule a training session to be conducted by Commission staff and to be attended by the mayor and the mayor's staff. Such session shall be open to the public and the respondents' counsel is strongly encouraged to attend as well.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 14, 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:

WILLIAM DUNN, 19 Carriage Drive, Terryville, CT 06786

MAYOR, TOWN OF PLYMOUTH; AND TOWN OF PLYMOUTH, c/o Attorney William Hamzy, The Hamzy Law Firm, 140 Farmington Avenue, Bristol, CT 06010



Cynthia A. Cannata
Acting Clerk of the Commission