

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

NOTICE OF FINAL DECISION

Mark Dumas,

Complainant

against

Docket #FIC 2015-600

Louis DeCilio, Registrar of Voters,
Town of Stratford; Richard Marcone,
Registrar of Voters, Town of Stratford;
and Town of Stratford,

Respondents

August 26, 2016

TO: Mark Dumas; Attorney Bryan L. LeClerc, for the respondents.

This will serve as notice of the Final Decision of the Freedom of Information Commission in the above matter as provided by §4-183(c), G.S. The Commission adopted the Final Decision in the above-captioned case at its regular meeting of August 24, 2016.

By Order of the Freedom of
Information Commission



Cynthia A. Cannata
Acting Clerk of the Commission

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August 24, 2016

The above-captioned matter was heard as a contested case on March 2, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

A Report of Hearing Officer was issued on June 9, 2016. At its regular meeting of July 13, 2016, the Commission considered the Report of Hearing Officer and unanimously voted to continue the matter after having instructed the hearing officer to review the administrative record and amend the report.

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 August 31, 2015, the complainant made the following request:

“Pursuant to the Connecticut Freedom of Information Act, Conn. Gen. Stat. §1-200, et seq., and as otherwise required or permitted by law, I am requesting an electronic copy of the following records:

1. The current voter registration information/data for voters in Town Council District 2.

...If there is any confusion regarding this request, I am simply requesting an updated version of the file that was emailed to me in

January of this year by your office. A copy of the January 2015 file is attached.”

3. By letter dated September 11, 2015 and filed on September 14, 2015, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request. The complainant requested the imposition of a civil penalty against the respondent mayor.

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

8. It is found that, in January 2015, the respondent Registrar, Louis DeCilio, created an excel spreadsheet which included certain voter registration information for all registered voters in District 2 of the town of Stratford (hereinafter “the spreadsheet”). It is found that Mr. DeCilio created the spreadsheet pursuant to a discussion with the complainant during which the complainant identified the specific voter registration information he wanted included in the spreadsheet. It is found that the complainant was informed by Mr. DeCilio that a document with specific information he wanted had to be created. It is found that Mr. DeCilio created the spreadsheet using two different data files from the Centralized Voter Registration System maintained by the Secretary of the State and provided the spreadsheet to the complainant electronically.

9. It is found that the spreadsheet was not required to be created, is not a document that is ordinarily created and maintained by the respondents, and did not exist prior to its creation by the registrar of voters in January 2015. Rather, as stated above, the spreadsheet was created by Mr. DeCilio, specifically for the complainant, to accommodate his request for the information included therein. It is also found that the spreadsheet has never been provided to any other person and has never been updated.

10. It is found that an updated version of the spreadsheet does not exist and therefore, there is no record responsive to the complainant's August 31, 2015 request.

11. At the hearing on this matter, however, the complainant contended that the respondents' claim that he was not provided with the updated voter registration information because *the spreadsheet* had not been updated is disingenuous because:

- a. his request was not for the spreadsheet but rather was for the current voter registration information/data for voters in Town Council District 2;
- b. he never received a call from the respondents stating that an updated spreadsheet did not exist;
- c. based on the definition of a public record found in §1-200(1), G.S., which defines a public record as any record used by a public agency, the respondents should have provided him with an electronic copy of the data files from the Secretary of the States' Centralized Voter Registration System used to create the spreadsheet; and
- d. the true reason for the respondents' failure to comply with his request was that the respondent registrar was trying to place the complainant at a disadvantage as a result of his allegedly unpopular decision to run against the endorsed party candidate in the election for Town Council.

12. With respect to the complainant's contention found in paragraph 11.a, above, it is found that a reasonable reading of the complainant's entire request is that he was seeking updated version of the spreadsheet because he specifically identified the record he sought as "the file that was emailed to [him] in January of this year by your office." It is found that the complainant additionally sent a copy of the electronic file that was provided to him in January 2015, further identifying the specific record he was requesting, and which the respondents recognized as the spreadsheet described in paragraphs 8 through 10, above.

13. Furthermore, it is found that the complainant evaded questions during the hearing regarding what he intended by the portion of his request which stated "...If there

is any confusion regarding this request, I am simply requesting an updated version of the file that was emailed to me in January of this year by your office. A copy of the January 2015 file is attached,” and thereby failed to explain or otherwise account for that statement in his August 31, 2015 email.

14. It is found that the complainant’s claim, at the hearing, that his August 31, 2015 email was not a request for an updated version of the spreadsheet described in paragraphs 8 through 10, above, is disingenuous and not credible. It is further found that the complainant unequivocally narrowed his August 31, 2015 request to an updated version of the spreadsheet, described in paragraphs 8 through 10, above.

15. As found in paragraph 10, above, an updated version of the spreadsheet does not exist, and it is concluded, therefore, that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

16. With respect to the complainant’s contention, found in paragraph 11.b, above, it is found that, notwithstanding the complainant’s testimony to the contrary, Mr. DeCilio contacted the complainant regarding his request and left a message on the complainant’s voicemail asking that the complainant return his call. It is found, however, that the complainant did not respond. In support of the above finding, the respondents testified, and it is found, that on another occasion regarding a different request for records related to voter information, Mr. DeCilio sent the complainant a text message, using the same telephone number at which he left the voicemail mentioned, above, asking that the complainant contact him, and again the complainant did not respond.

17. It is found, therefore, that respondents made a good faith effort to contact the complainant to clarify his August 31, 2015 request, and to inform him of the nature of the spreadsheet that he requested.

18. With respect to the complainant’s contention found in paragraph 11.c, above, it is found that the respondent Registrar of Voters and the Secretary of the State are separate and distinct public agencies and that the data files within the Secretary of the State’s Centralized Voter Registration System are not kept on file by, or in the custody of, the respondent Registrar of Voters but, rather, are maintained by the Secretary of the State.

19. It is concluded, therefore, that the respondent Registrar of Voters has no duty to maintain or make available the records of the Secretary of the State and did not violate the disclosure provisions of §§1-210(a) or 1-212(a), G.S., by failing to provide the complainant with an electronic copy of the data files. *See Lash v. Freedom of Information Commission*, 116 Conn App. 171; 976 A.2d 739 (2009), *aff’d*, 300 Conn. 511, 14 A.3d 998 (2011); and Docket #FIC 1996-556, *Chikara v. Governor, State of Connecticut* (August 27, 1997).

20. With respect to the complainant’s contention, found in paragraph 11.d, above, this Commission will make no findings in this regard since it has already been found that

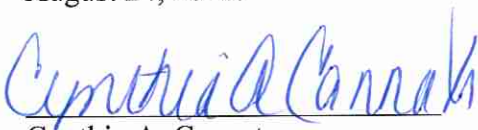
the requested record does not exist and further has been concluded that the respondents did not violate the disclosure provisions of the FOI Act.

21. Based on the findings and conclusions, above, there is no basis on which to impose civil penalties in this matter.

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 August 24, 2016.



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:

Mark Dumas
167 Cherry Street, #107
Milford, CT 06460

Louis DeCilio, Registrar of Voters, Town of Stratford;
Richard Marcone, Registrar of Voters, Town of Stratford;
and Town of Stratford
c/o Bryan L. LeClerc, Esq.
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, CT 06460



Cynthia A. Cannata
Acting Clerk of the Commission