

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Dennis Foran,

Complainant

against

Docket #FIC 2017-0026

First Selectman, Town of Andover;
and Town of Andover,

Respondents

December 13, 2017

The above-captioned matter was heard as a contested case on November 6, 2017, 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, filed and hand delivered on January 11, 2017, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to respond to, or deny in writing within four business days, his request for access to certain information and records.
3. It is found that by letter dated December 2, 2016, the complainant made a request to the respondents for certain records, the "categories" of which included contracts and emails.
4. It is found that the request was received by the respondents on December 5, 2016. It is found that as of January 11, 2017, the respondents had not responded to the complainant's request.
5. In this regard, §1-206, G.S., provides, in relevant part:
 - (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 wrongfully...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].

6. It is found that pursuant to §1-206(b)(1), G.S., the complainant's request was deemed denied on Friday, December 9, 2016.

7. At the hearing on this matter, the complainant contended that because the respondents' offices are closed on Fridays, such days should not be included in determining whether his complaint was filed within thirty days of the date of the denial.

8. It is found, however, that the provisions excluding the days that an agency is closed is applicable only when determining the time within which or by when a notice, agenda, record of votes or minutes of a special meeting or an emergency special meeting are required to be filed under §1-225, G.S.¹

9. It is concluded that all the days between December 9, 2016 and January 11, 2017 are to be included in determining the time within which, or by when, an appeal should be filed with this Commission when a person is denied the right to inspect or copy records under section 1-210 or wrongfully denied any other right conferred by the Freedom of Information Act.

10. It is concluded that in order for the Commission to have jurisdiction over this matter, the complainant needed to file his appeal on or before January 9, 2017.

¹ Section 1-225(g), G.S., provides that "[i]n determining the time within which or by when a notice, agenda, record of votes or minutes of a special meeting or an emergency special meeting are required to be filed under this section, Saturdays, Sundays, legal holidays and any day on which the office of the agency, the Secretary of the State or the clerk of the applicable political subdivision or the clerk of each municipal member of any multitown district or agency, as the case may be, is closed, shall be excluded."

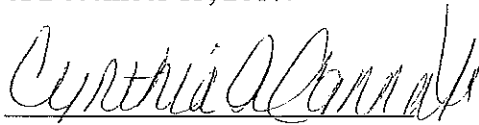
11. It is found that the complainant failed to file his complaint within thirty days after his request was denied.

12. Accordingly, it is concluded that the Commission lacks jurisdiction to adjudicate this case.

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 December 13, 2017.



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:

DENNIS FORAN, 143 Hebron Road, Andover, CT 06232

FIRST SELECTMAN, TOWN OF ANDOVER; AND TOWN OF ANDOVER,
c/o Attorney Dennis O'Brien, O'Brien and Johnson, Attorneys at Law, 120 Bolivia
Street, Willimantic, CT 06226



Cynthia A. Cannata
Acting Clerk of the Commission