



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 · www.state.ct.us/foi/ · email: foi@po.state.ct.us

Alan DiCara,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-242

Town Manager, Town of Winchester; and
Town of Winchester,
Respondent(s)

February 3, 2014

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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, February 26, 2014**. 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 February 11, 2014**. 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 February 11, 2014**. 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 **fourteen (14) copies** be filed **ON OR BEFORE February 11, 2014**, 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

W. Paradis

Acting Clerk of the Commission

Notice to: Alan DiCara
Dale L. Martin, Town Manager, Town of Winchester
Town of Winchester

2/3/14/FIC# 2013-242/Trans/wrbp/VRP/CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Alan DiCara,

Complainant

against

Docket #FIC 2013-242

Town Manager, Town of Winchester; and
Town of Winchester

Respondents

January 30, 2014

The above-captioned matter was heard as a contested case on October 28, 2013 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 e-mail filed on April 19, 2013, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his request for records to be provided in a particular computerized format.
3. It is found that the complainant made an April 18, 2013 request for an electronic copy of the proposed 2013-2014 budget in a Microsoft Excel format in lieu of the PDF format the town made available.
4. It is found that the respondent Town Manager replied on April 18, 2013 that Town did not use Excel to create the budget worksheets, and that the software currently used by the town was not convertible to Excel.
5. 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.

6. 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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

7. Section 1-211, G.S., provides in relevant part that:

- (a) [a]ny 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....
- (b) The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:
 - (1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not

including search or retrieval costs except as provided in subdivision (4) of this subsection;

8. 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. 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.”

9. It is found that the requested record is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. It is found that the requested budget is made available to the public by the respondents in PDF format.

11. It is also found that the requested record is a computer-stored public record within the meaning of §1-211, G.S.

12. The sole issue in this case is whether the complainant is entitled to receive the proposed budget in the Excel computer format he requested.

13. It is found that §1-212(a), G.S., covers, generally, the methods by which a public agency may choose, in its discretion, to provide a public record to a requester.

14. It is found that §1-211(a), G.S., specifically covers computer stored public records.

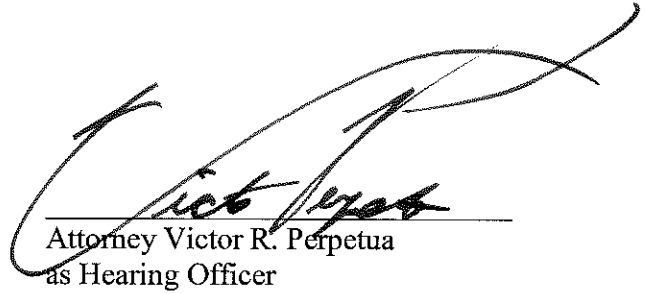
15. It is found that paper, disks, tapes, and electronic storage devices or mediums, are all methods of delivery within the meaning of §1-211(a), G.S., while PDF and Excel format are two proprietary electronic document formats, among several, used to physically arrange data, characters, fields, records, and files for document use and delivery.

16. Section 1-211(a), G.S., only provides the requester with the option to request a specific method of delivery of nonexempt computer stored data and that the public agency is required to use the method of delivery requested if it reasonably can do so or have it done (e.g., have the data copied or burned to a disk by some other agency). Section 1-211(a), G.S., does not, however, by any of its terms, obligate a public agency to provide a copy of computer stored public record in the computer format requested by a requester. See Fromer v. Esty, Docket #FIC 2012-158.

17. It is found that the respondents are not required by the FOI Act to provide the data in the Excel format requested and it is concluded that the respondents did not violate the FOI Act by denying the complainant’s request.

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.



Attorney Victor R. Perpetua
as Hearing Officer

FIC2013-242/HOR/VRP/01302014