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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Mark Dumas,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-088

John Harkins, Mayor, Town of Stratford; Marc Dillon, Chief of Staff, Town of Stratford; Maurice McCarthy, Director, Department of Public Works, Town of Stratford; Chad Esposito, Superintendent of Parks, Town of Stratford; Dave Fuller, Chairman, Zoning Commission, Town of Stratford; Chris Silhavey, Chairman, Planning Commission, Town of Stratford; Gary Lorentson, Planning and Zoning Administrator, Town of Stratford; and Town of Stratford,  
Respondent(s)

October 26, 2015

### 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, November 18, 2015**. 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 November 6, 2015**. 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 November 6, 2015**. **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 November 6, 2015**, 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: Mark Dumas; Michael S. Casey, Esq.

2015-10-26/FIC# 2015-088/Trans/wrbp/VRP/VB

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FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Mark Dumas,

Complainant

against

Docket #FIC 2015-088

John Harkins, Mayor, Town of Stratford;  
Mark Dillon, Chief of Staff, Town of  
Stratford; Maurice McCarthy, Director,  
Department of Public Works, Town of  
Stratford; Chad Esposito, Superintendent  
of Parks, Town of Stratford; Dave Fuller,  
Chairman, Zoning Commission, Town of  
Stratford; Chris Silhavey, Chairman,  
Planning Commission, Town of Stratford;  
Gary Lorentson, Planning and Zoning  
Commission Administrator, Town of  
Stratford; and Town of Stratford,

Respondents

October 22, 2015

The above-captioned matter was heard as a contested case on June 26, 2015, 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 of complaint filed February 4, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his request to inspect, and copy if necessary, certain public records. The complainant requested the imposition of the maximum civil penalty against the individually named respondents.
3. It is found that the complainant, by email dated Sunday, January 11, 2015, requested from Town Attorney Tim Bishop, and the respondents Mayor Harkins,

Chairman Fuller, and Administrator Lorentson, to inspect, and copy if necessary, records regarding:

- a. Any proposed cellular phone towers or equipment to be installed in Longbrook Park.
- b. Any records regarding the deed or deed restriction for Longbrook Park.

4. It is found that the Town Attorney, by email dated January 12, 2015, informed the complainant:

There's a form for [FOI Act] requests available from the town clerk. There are a variety of reasons why we need to use the form including our own internal tracking purposes to ensure compliance with the [A]ct. *I doubt that there are any documents responsive to your request<sup>1</sup>* but will see what's out there. It would help if you use the form. Feel free to follow up with me directly. [Emphasis added.]

5. It is found that the complainant, also by email dated January 12, 2015, protested that there was no requirement that an FOI Act request be on an approved form, indicated that he would be agreeable to completing the form if attorney Bishop provided a copy, and requested that his original request be processed in the meantime.

6. It is found that by email dated the same day, Monday January 12, 2015, the complainant requested from the Town of Stratford Council Clerk an opportunity to inspect, and copy if necessary, any records regarding:

- a. Any proposed cellular phone towers or equipment to be installed in Longbrook Park.
- b. Any Town Council records, regarding any lease or other transaction for or regarding property or rights located within or abutting Longbrook Park with any telecommunications company.
- c. Any records regarding the deed or deed restrictions for Longbrook Park.

7. It is found that Town Attorney Bishop, by email also dated January 12, 2015 and in response to the complainant's email of that same day to the Council Clerk,

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<sup>1</sup> This assertion appears to be belied by attorney Bishop's involvement in contract negotiations regarding a structure lease for the At&T cellular tower at Longbrook Park. See, e.g., Exhibit J, Minutes of Stratford Town Council June 9, 2014 meeting, paragraph 5.3.3; Exhibit L.

informed the complainant that, “oddly enough<sup>2</sup>,” he had tracked down “a huge binder of info,” and invited the complainant to “come in and look at it or you can have copies at whatever the page rate is.”

8. It is found that the complainant went to the Town Attorney’s office and inspected the records that were made available to him. The only records made available to him at that time were a January 9, 2015 “Petition for Declaratory Ruling [concerning] Replacement and Expansion of Existing Light Pole Tower at Penders Field Longbrook Park, Stratford Connecticut,” a six-page document with approximately 90 pages of attachments.

9. It is found that the complainant, by email dated January 26, 2015 to Town Attorney Bishop and the respondents Harkins, Dillon, McCarthy, Esposito, Fuller, Silhavey and Lorentson, requested the opportunity to inspect, and copy if necessary, any records regarding:

- a. Any proposed cellular phone tower in Longbrook Park;
- b. Any internal town communications, including email, regarding any proposed cellular phone tower in Longbrook Park;
- c. Any minutes or agendas regarding any lease of town property or rights to New Cingular Wireless PCS, LLC (“AT&T”) since January 1, 2012;
- d. Any communications with New Cingular Wireless PCS, LLC (“AT&T”), SAI Communications, Pro Terra Design Group, LLC, Cuddy & Feder, LLP, or any of their agents or representatives since January 1, 2012;
- e. Any records provided to or provided from New Cingular Wireless PCS, LLC (“AT&T”), SAI Communications, Pro Terra Design Group, LLC, Cuddy & Feder, LLP, or any of their agents or representatives since January 1, 2012.

10. It is found that attorney Bishop, by email dated January 26, 2015, advised the complainant that the respondents “don’t respond to emailed FOIA requests,” that the respondents had a system in place to track requests, and that the individual respondents described in paragraph 9, above, “*are not going to respond to this request.*” [Emphasis added.] Attorney Bishop additionally stated:

If my indulging your initial request has caused any confusion I apologize but you have filed so many improperly emailed requests with so many people that we can’t track them in a centralized manner. If you would like to file the requests with the form and with the Town Clerk I’ll fast track it to get what we can as quickly as we can.

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<sup>2</sup> The reason for attorney Bishop’s purported surprise at finding any documents concerning the proposed cell tower are not apparent from the record.

11. It is found that the complainant responded by email the next day (January 27) that the respondents' procedure violated the FOI Act, that requests to inspect records do not need to be on an approved form, that his request was entirely proper both in form and in directing it to the specific officials to whom it was directed. The complainant cited, as support for his opinion, Docket #FIC 2006-433, *Jody Gemmel v. John Hodge, et al.*, and Docket #FIC 1995-36, *Christopher Hoffman v. Leon J. O'Connor, et al.*

12. It is found that, according to an email dated February 14, 2014 to the respondent McCarthy (Exhibit L) a "lease exhibit" was attached to that email, and the author of the email was "working on getting a lease over to you so you can have your Town Attorney review it." The "light pole replacement" that is the subject of this email appears to be the light pole that was to be replaced for the installation of a cellular tower. See Exhibits 1, 2 and 3. The attached "lease exhibit" (three drawings and a draft of a structure lease agreement between the town and New Cingular Wireless) were in the possession of the respondent McCarthy on February 14, 2014.

13. It is found that the email and attachment referenced in ¶12 are responsive to the complainant's request, but were not promptly provided by the respondents to the complainant, who obtained the email by other means.

14. It is found that, according to a memorandum from the Stratford Director of Public works to the Town Planner (Exhibits K and 2), schematics and a suggested contract for the installation for a cell phone tower at Longbrook Park were in the possession of the respondents McCarthy and Lorentson on March 6, 2014.

15. It is found that both the memorandum described in ¶14, above, and the documents referenced that memorandum, are responsive to the portion of the complainant's request described in ¶¶6.a, 9.a and 9.b, above, but were not promptly provided to the complainant by the respondents.

16. It is found that, according to the minutes of the Stratford Town Council's June 9, 2014 meeting, the Mayor was authorized to enter into a contract with AT&T concerning a structure lease at Longbrook for a cell tower. It is found that, according to the Minutes of the Stratford Town Council's February 9, 2015 meeting, a lease had been signed before that date regarding the Longbrook Park cell tower.

17. It is also found that the lease referenced in ¶12, above, is responsive to the portion of the complainant's January 12, 2015 request described in ¶6.b, above. It is also found that a signed lease existed no later than January 9, 2015 (two days before the complainant's earliest request for records), the date of the petition by New Cingular Wireless to the Connecticut Siting Council for a declaratory ruling concerning the replacement and expansion of an existing light pole tower at Longbrook Park. See Exhibit E.

18. It is found that no copy of the lease referenced in ¶12, above, in either executed or draft form, was promptly provided to the complainant.

19. It is found that by email dated February 12, 2015, an attorney Michael Casey advised the complainant that attorney Bishop had assigned the complainant's request to him, and asked the complainant to send him a copy of the complainant's requests, which the complainant did by email dated February 17, 2015.

20. It is found that by emails dated February 13 and 17, 2015 (see Exhibit H), the complainant resubmitted his requests to inspect public records, and reiterated his specific request to inspect the lease.

21. It is found that by email dated February 20, 2015, attorney Casey advised the complainant that Casey had been informed by Bishop that "the issue is you never requested the documents through the proper process.... It is unclear what department you are requesting the documents from." He attached a copy of the town's request form, and asked the complainant to fill it out, indicating that he would then follow up on the request.

22. It is found that the complainant, by email dated February 24, 2015, informed attorney Casey that the requests had been directed by name to the Mayor, his Chief of Staff, the Town Attorney, the Director of public Works, the Planning and Zoning Administrator, and the chairmen of the Planning Commission and Zoning Commission, in contradiction of attorney Casey's statement that it was "unclear what departments you are requesting the documents from." He reiterated his position that there was no reasonable ground under the FOI Act for the respondent to require that he submit a form prior to inspecting public records. "Even where copies are specifically requested, the Act's only requirement is that the request be in writing—not that the request be on an agency-approved form."

23. It is found that, aside from the Connecticut Siting Council petition for declaratory ruling provided on January 12, 2015, as described in ¶¶7 and 8, above, no additional documents were provided to the complainant until the eve of the hearing on this matter.

24. At the hearing, counsel for the respondents represented that he had assembled the requested documents for the complainant, had them with him on the day of the hearing in this matter, and had made them available to the complainant. However, it is found that the complainant was never provided with access to or a copy of the executed structure lease.

25. 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.

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

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.

27. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

28. The respondents made no claim that any of the requested records are exempt from mandatory disclosure.

29. The respondents also made no claim that the provision of records on the eve of the hearing in this matter was prompt.

30. The respondents also provided no evidence to prove that any of the individually named respondents had conducted a diligent search for the requested records.

31. The complainant maintains that the respondents impermissibly obstructed access to the requested records by insisting that the complainant first fill out the town's record request form.

32. It is well established that a requirement that a requester complete a written request form before being allowed to inspect requested records is an impermissible agency rule that diminishes and curtails the right to inspect records within the meaning of §1-210(a), G.S. *See, e.g.,* Docket #FIC 95-365, *Christopher Hoffman et al. v. Leon J. O'Connor et al.*; Docket #FIC 2006-433, *Jody Gemmell v. John Hodge et al.*

33. It is concluded that, even if the complainant's request to "inspect, and if necessary, copy" were construed as a request to copy, the written request made by the complainant was more than adequate to satisfy the requirements of §1-212(a), G.S., and requiring the requester to complete the agency's own form is also an impermissible agency rule that diminishes and curtails the right to obtain copies of public records within the meaning of §1-212(a), G.S.

34. It is concluded that the respondents violated the FOI Act by failing to provide access to inspect the requested records (other than the Siting Council petition) promptly on request, by delaying access to remaining documents because the complainant had not filled out the town's request form, by failing to provide a copy of the executed lease, and by failing to conduct a diligent search for any other records that fall within the scope of the complainant's request.

35. With respect to the complainant's request for the imposition of civil penalties, §1-206(b)(2), G.S., provides in relevant part:

... upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

36. The standard for when a violation is "without reasonable grounds" is analogous to the legal standard "without any substantial justification." *Connecticut Department of Public Safety v. FOIC, et al.*, 1997 WL 537117 (Conn. Super.), affirmed, 247 Conn. 341 (1998). Similarly, the phrase "without reasonable justification" has been construed to mean "entirely unreasonable or without any basis in law or fact." *Id.*, quoting *Bursinkas v. Department of Social Services*, 240 Conn. 141, 155 (1997). A finding of willful misconduct is not required in order to impose civil penalties. *O'Connell, et al. v. FOIC, et al.*, Superior Court, Judicial District of New London, Docket No. CV-97-0111859, Memorandum of Decision issued November 17, 1997 (DiPentima, J.), 20 Conn. L. Rptr 667, *aff'd*, 54 Conn. App. 373 1999). Rather, "all that is required for the FOIC to impose civil penalties in its discretion is a finding of no reasonable grounds for the violation." *Id.*

37. The only grounds cited by the respondents for their violations of the FOI Act is that it is easier to track requests if requesters use the form provided by the town.

38. It is concluded, however, that the ease of the town in tracking requests is not a reasonable basis for a violation of §1-210(a), G.S.

39. It is therefore concluded that the respondents' violations of the FOI Act were without reasonable grounds within the meaning of §1-206(b)(2), G.S.

40. The complainant asserts that the respondent Mayor delayed disclosure regarding the AT&T cell tower because of \$1,000 and \$750 contributions by an AT&T employee PAC to the Harkins for Mayor campaign.



41. However, there is insufficient evidence to connect these campaign contributions to any actions of the Mayor, and is no evidence that the Mayor was directly involved in Town's response to complainant's request, which appears to have been exclusively handled by the town attorneys assigned to the case.

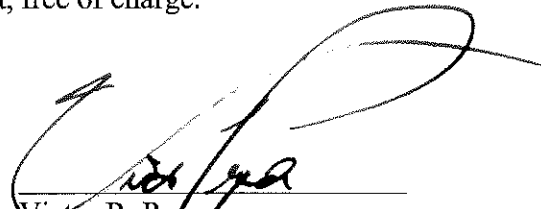
42. While the Commission would not ordinarily make findings about the culpability of individuals who are not respondents, it is necessary in this case to make findings concerning the Town Attorney in order to exclude the named respondents as custodians or officials directly responsible for the denial of the complainant's FOI Act rights.

43. Based upon the evidence produced at the hearing by the complainant, it is found that Town Attorney Bishop was the individual directly responsible for the denial of the complainant's rights described in ¶35, above. The Town Attorney initially expressed doubt about the existence of any of the requested records, notwithstanding that he had been involved in the cell tower matter for months before the request. The Town Attorney represented to the complainant that the other individually named respondents would not be responding to the request because of the complainant's refusal to complete the town's form as requested by the Town Attorney. The Town Attorney persisted in his position even when the complainant brought contrary law to his attention. After the Town Attorney delegated this matter to another attorney, he informed that attorney that the reason the records were not provided was that the complainant had not filled out the town's form. While most of the complainant's interactions following his request were with the Town Attorney, the complainant only named seven other individuals as respondents who should be subject to civil penalties. The complainant, for reasons of his own, did not name the Town Attorney as a respondent, or argue that the Town Attorney should be subject to a civil penalty. The Commission accordingly declines to further consider the imposition of civil penalties.

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

1. Each respondent shall forthwith diligently search for any records responsive to the complainant's requests, and provide any records found to the complainant, free of charge. Each respondent shall execute an affidavit detailing the performance of that search, and submit such affidavit to the Commission and to the complainant.

2. Specifically, the respondents shall forthwith provide a copy of the executed structure lease for the cell tower to the complainant, free of charge.



Victor R. Perpetua  
as Hearing Officer