

DFREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Stephen Roy,

Complainant

against

Docket #FIC 2018-0090

Town Manager, Town of Enfield;
and Town of Enfield,

Respondents

November 7, 2018

The above-captioned matter was heard as a contested case on July 24, 2018, 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. It is found that, by email dated January 21, 2018, the complainant requested that the respondents provide him with an opportunity to inspect or obtain copies of “records that pertain to the over illumination of Riverview Street,” as follows:
 - a. [A]ll email correspondence, or written correspondence that has the word ‘Riverview’ or ‘photometric’ or ‘light wash’ or ‘light-wash’ or ‘bright light’ or ‘lux’ or ‘lumen’ or ‘light intensity’ or ‘luminance’ for 100% of everyone in the town of Enfield’s email servers from January 13, 2017 until the date you run the query, and
 - b. [P]lease search for each person with the associated keyword. Here is a listing of all people I would like to search: Chodkowski, Shams, Petrucelli, O’Brien, Pacacha, Rachele, Poulin, Schumann, Drezek, Clark, Daigle, Osada, Neville, Kruzel, Cekala, Szewczak, Ciriello, Gahr, Finger, joneil@enfield.org, Shirley, Ramadan, NG6035@GilbaneCo.com,

llc.com.

Plus the following key words: + 'glass' or 'light' or 'stair' or 'as built' or 'exterior' or 'outside' or 'insurance' or 'light level' or 'watt' or 'spec' or 'intrusion' or 'intrude' or 'protrude' or 'insure.' Please run the query from January 13, 2017 until the date you run the query.¹

3. It is further found that the complainant requested that the respondents place all responsive records in a PST file and then disclose the file to him by way of a Dropbox link. It is further found that, while the complainant requested that the respondents contact him if the cost for the records exceeded \$1.00, he also 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, by email dated January 22, 2018, the respondents acknowledged the complainant's request, indicating that they had forwarded the request to the proper department for processing.

5. It is found that, by email dated February 4, 2018, the complainant contacted the respondents to inquire into the status of his request.

6. It is found that, by email dated February 5, 2018, the respondents, through Debra McCarthy, Executive Secretary to the Town Manager, informed the complainant that they had tried to run the request set forth in paragraph 2.a, above, several times, but each time the search failed. It is found that the respondents believed that these failures were a result of attempting to run the search terms through the entire Enfield server. It is found that the respondents requested that the complainant narrow this request.

7. In response, by email dated February 6, 2018, the complainant suggested that the respondents attempt to run each of the nine search terms separately through the Enfield server, and that the respondents allow him to speak to their IT personnel.

8. It is found that, by email dated February 8, 2018, the complainant again contacted the respondents to inquire into the status of his request.

9. It is found that, by email dated February 9, 2018, Ms. McCarthy informed the complainant that the respondents were looking into why, with regard to the request in paragraph 2.a, above, the searches kept failing. She indicated that the respondents appreciated the complainant's patience while they looked into the matter. Finally, Ms. McCarthy inquired

¹ The complainant gave the respondents an example of the search he wanted them to perform with regard to each of the specified names and email addresses, as follows: "For example, [with regard to Mr. Daigle, please run] Daigle + 'glass'; Daigle + 'light'; Daigle + 'stair'; Daigle + 'as built'; Daigle + 'exterior'; Daigle + 'outside'; Daigle + 'insurance'; Daigle + 'light level'; Daigle + 'watt'; Daigle + 'spec'; Daigle + 'intrusion'; Daigle + 'intrude'; Daigle + 'protrude'; and Daigle + 'insure.'" In addition, the complainant explained that he wanted each search to be run in the specified individual's email account (so, for example, the complainant wanted the respondents to run the example search set forth in this footnote only in "Daigle's" email account). With these clarifications, it is found that the respondents understood the parameters of this request, (see ¶¶ 12-13, below).

whether the complainant could tell her exactly what he was looking for so that she could quickly retrieve it.

10. It is found that, by email dated February 15, 2018, Ms. McCarthy informed the complainant that, because of the size of the request set forth in paragraph 2.a, above, additional attempts to run the query had again failed, and, unless the complainant narrowed the request, the respondents would not be able to process it.

11. It is found that, by email dated February 15, 2018, the complainant instructed the respondents to put the request in paragraph 2.a, above, aside, and to comply with the request set forth in paragraph 2.b, above.

12. By email dated, February 15, 2018, Ms. McCarthy informed the complainant that she did not understand the request set forth in paragraph 2.b, above, and asked him to clarify it.

13. In response, by email dated February 15, 2018, the complainant explained that he wanted each of the 21 names and three email addresses run with each of the 14 search terms, which would amount to 336 independent searches, and that these searches would need to be run through each individual's email account.

14. It is found that, by email dated February 20, 2018, the complainant provided the respondents with an electronic link to his Dropbox.

15. By email dated and filed February 22, 2018, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide him with the requested records. It is further found that the complainant requested the imposition of several civil remedies, including an order requiring a FOI Commissioner to supervise the Town of Enfield's Information Technology ("IT") Department when it conducted the searches necessary to obtain the requested records.

16. 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.

17. 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.

18. 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.”

19. It is found that the records requested by the complainant in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

20. At the hearing, the complainant represented that he resides in a single family home and his residence is adjacent to the Enfield High School (“EHS”). He further represented that EHS recently expanded and that, as a result, a multilevel structure containing crystal clear glass windows now faces his residence. The structure, which is 57.5 feet high and a mere 42 feet from his property, shines the equivalent of 107 100-watt-light bulbs on his home 24 hours a day, 7 days a week. The complainant represented that, despite an order from the Enfield Planning and Zoning Commission ordering EHS to stop illuminating his property, EHS continues to over-illuminate his property. It is found that the instant FOI request is the complainant’s attempt to understand the effort (or lack thereof) that the respondents have taken to address this over-illumination issue.

21. With regard to the request set forth in paragraph 2.a, above, despite the fact that the complainant instructed the respondents to set the request aside (*see* ¶ 11, above), at the hearing, the complainant contended that he never in fact withdrew this request. The complainant contended that he was quite sure that the request could be fulfilled because the respondents had previously fulfilled a request for him that was similar in size to the instant request without incident. Accordingly, the complainant was adamant in that he did not find it credible that this request was impossible to process.

22. With regard to the request set forth in paragraph 2.b, above, the complainant contended that the respondents failed to supply records responsive to the request pertaining to “joneil@enfield.org.” The complainant contended that the respondents must have emails responsive to this aspect of the request, as Mr. O’Neil is a town employee and a “key” person in the over-illumination situation.

23. The complainant further contended that, while neither NG6035@GilbaneCo.com nor jimg@scgroup-llc.com are town email addresses, he should have received some responsive emails that originated from town employees containing these email addresses.

24. With regard to the contention in paragraph 23, it is found that, based on the complainant’s explicit instruction on how the searches in paragraph 2.b, above, were to be run, (*see* footnote 1, above), the respondents were not able to run the search terms through

these email accounts because the accounts are not *town* accounts. Accordingly, it is concluded that the respondents did not violate the FOI Act by not running search terms through these two email accounts.

25. Finally, the complainant contended that the records that he did receive were not promptly provided to him.

26. Ms. McCarthy appeared and provided testimony at the contested case hearing.

27. Ms. McCarthy testified that the respondents' IT Department attempted to run the search set forth in paragraph 2.a, above, but the search failed. It is found, however, that, other than being able to testify that the search failed, Ms. McCarthy could not testify as to whether the respondents' IT Department attempted to run the search once or several times, or whether the department attempted to run each search term individually through the servers. The hearing officer notes that Ms. McCarthy testified that she believed the IT professionals attempted to run the search "every which way they could," but she could not testify to the specifics of such searches.

28. With regard to the request set forth in paragraph 2.b, above, is found that, on February 23, 2018, the respondents' IT Department ran a search for these records. It is found that this search resulted in 6067 email "hits," which were provided to Ms. McCarthy for review. It is found that Ms. McCarthy reviewed these emails for approximately one hour per week and that, on or about April 4, 2018, she provided the complainant with all responsive records.

29. In addition, Ms. McCarthy specifically testified that Mr. O'Neil's email address set forth in request 2.b, above,—that is, joneil@enfield.org--had been included in the search, but resulted in no responsive records.

30. At the conclusion of the hearing, the hearing officer needed clarification with respect to two matters: first, the hearing officer needed to know how the searches with respect to the request set forth in paragraph 2.a, above, were conducted and failed; and second, based on the complainant's persuasive insistence that a search of Mr. O'Neil's email account should have resulted in responsive records, the hearing officer wanted confirmation that this particular email address had been included in the search of names/emails set forth in paragraph 2.b, above. Accordingly, the hearing officer ordered the respondents to submit an affidavit from one of their IT professionals on these two issues.

31. On August 14, 2018, the respondents submitted the affidavit of Network Manager Carl Merrick. Mr. Merrick's affidavit has been marked as respondents' (post-hearing) exhibit 5.

32. It is found that, on February 2, 2018, using the search terms provided by the complainant, the respondents' IT Department ran a search through the respondents' servers in order to obtain records responsive to the request in paragraph 2.a, above. It is found that, while the search was successful, the attempt to download the file that resulted from the search failed.

33. It is further found that, on January 30, 2018, using the search terms provided by the complainant, the respondents' IT Department ran a search of each of the email accounts of the named individuals (with the exception of Mr. O'Neil's email account) in order to obtain records responsive to the request in paragraph 2.b, above. It is found that, while the search was successful, the attempt to download the file that resulted from the search failed.

34. It is found that, subsequent to the January 30th and February 2nd searches, the IT Department realized that the software it had tried to use to download the files was in the process of being replaced.

35. It is found that, on February 23, 2018, with the new software in place, the IT Department successfully reran the search and obtained the records responsive to the request set forth in paragraph 2.b, above. It is found that these are the records that were provided to Ms. McCarthy for review (and which have been disclosed to the complainant). See ¶28, above.

36. However, it is found that the email address joneil@enfield.org was unintentionally omitted from the February 23, 2018 search, and, at the time of the contested case hearing, had not been searched.

37. It is further found that, after having successfully run the February 23rd search, the IT Department unintentionally forgot to rerun the search to obtain records responsive to the request in paragraph 2.a, above. It is found that, at the time of the contested case hearing, this search had not been conducted.

38. It is found that, on August 3, 2018, the respondents' IT Department successfully reran the search and obtained the records responsive to the request set forth in paragraph 2.a, above.

39. It is found that, also on August 3, 2018, the respondents' IT Department successfully reran the search to obtain records responsive to the request set forth in paragraph 2.b, above, and this time ensured that the email account of Mr. O'Neil was included in the search.

40. It is found that, on or around August 9, 2018, all records responsive to both parts of the complainant's request were forwarded from the IT Department to Ms. McCarthy.

41. In the August 14, 2018 cover letter to Mr. Merrick's affidavit, counsel for the respondents represented that Ms. McCarthy would need approximately one more month—meaning up to and including September 14, 2018—to finish her review of the responsive records and provide the remaining responsive records to the complainant.

42. With regard to the allegation that the records were not 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.

43. Taking into account the fact that the complainant made his request on January 21, 2018 and will not receive the requested records until at least September 14, 2018, which is a total of seven months and twenty-four days; the fact that respondents provided the complainant with misinformation about the feasibility of performing the search to obtain the records responsive to the request set forth in paragraph 2.a, above; the fact that respondents provided the complainant with misinformation about having included Mr. O'Neil in the search which was run in response to the request set forth in in paragraph 2.b, above; and the fact that the search to obtain the records responsive to the entire request set forth in paragraph 2.a, above, and the search with regard to Mr. O'Neil's email were both overlooked for five months and twelve days, it is found that the respondents failed to comply promptly with the request.

44. It is therefore concluded that the respondents violated the promptness provisions §§1-210(a) and 1-212(a), G.S.

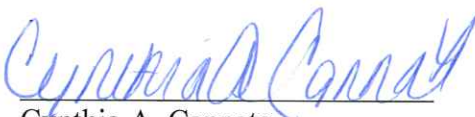
45. Finally, while the complainant requested that a variety of civil remedies be imposed in this case, it is found that the civil remedies imposed in paragraph 2 of the Order, below, are sufficient to address the violation that has been determined in the case.

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, within 15 days, provide the complainant with a copy of all non-exempt records they have gathered by delivering such records to the complainant in the form of a PST file (or files), which file (or files) shall be deposited into the complainant's electronic Dropbox. Furthermore, the respondents shall provide the PST file (or files) to the complainant free of charge.

Approved by Order of the Freedom of Information Commission at its special meeting of November 7, 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:

STEPHEN ROY, 20 Riverview Street, Enfield, CT 06082

TOWN MANAGER, TOWN OF ENFIELD; AND TOWN OF ENFIELD, c/o Attorney Maria S. Elsdon and Attorney Christopher W. Bromson, Town of Enfield, 820 Enfield Street, Enfield, CT



Cynthia A. Cannata
Acting Clerk of the Commission