

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by)
Bernice M. Rosenthal and Jon K.)
Rosenthal,) Report of Hearing Officer
Complainants)
) Docket #FIC78-91
against) ~~July~~ **August 8**, 1978
)
Town of North Stonington, the)
Zoning Board of Appeals of)
North Stonington, and the)
Chairman of the Zoning Board)
of Appeals of North Stonington,)
Respondents)

The above captioned matter was heard as a contested case on June 21, 1978, at which time complainants and the respondents appeared and presented testimony, exhibits, and argument on the complaint.

After consideration of the entire record the following facts are found:

1. The respondents are public agencies within the meaning of §1-18(a), G.S.

2. On April 11, 1978 the respondent board made a tape recording of a matter involving an appeal of the complainants herein from a decision of the zoning enforcement officer and, in addition, their request for a variance.

3. The respondent board has no regular place of business; it kept the tape recording in a locked file on the second floor of the town hall.

4. There is no one regularly available in the town hall to provide members of the public with access to the records of the respondent board, nor is there space in the town clerk's office in which to file any records of the respondent board.

5. By letter dated April 12, 1978 the complainant Jon Rosenthal requested access to all records of the aforesaid hearing.

6. On May 3, 1978 after certain negotiations the respondents denied the complainants access to the tapes.

7. By letter filed with the Commission on May 12, 1978 the complainants alleged violation of their rights under §1-19(a), G.S., claiming (1) that the respondents failed to maintain the tapes in a proper or accessible place and (2) denial of their right to inspect or copy public records.

8. Subsequently, the request for records was narrowed to a request to copy and listen to the tape recording of the April 11 hearing.

9. It is found the tapes are public records within the meaning of §1-18a(d), G.S.

10. It is found the respondent board violated the requirements of §1-19(a), G.S., by failing to place the requested records in the custody of the town clerk.

11. The respondents claimed they had complied with the requirements of the Freedom of Information Act by offering the complainants a transcript of the taped proceedings if the complainants would pay the costs thereof.

12. It is found that while §1-15, G.S., permits a public agency to charge the actual cost of transcription where transcription of a stenographic or taped record is requested, §1-15, G.S., does not operate to deprive the complainant of their right to inspect or copy public records under §1-19(a), G.S.

13. It is concluded that the respondents did not comply with the requirements of the Freedom of Information Act by offering to supply a transcript upon payment of costs by the complainants.

14. The respondents alleged that their refusal was justified because the appeal of the matter which was documented by the tapes was imminent and therefore that the respondents were required by §8-7a and §8-8, G.S., to protect the integrity of the tapes.

15. The respondents further claimed that because they lacked staffing to safeguard the integrity of the tapes they could not give the complainants access to the tapes.

16. It is found that nothing in §1-15, §1-18a, §1-19 to §1-19b inclusive, and §1-21 to §1-21k inclusive, G.S., provides an exemption from the general requirement of disclosure of public records which permits the respondents to avoid their duty to provide public access to public records on the basis of understaffing or administrative inconvenience.

17. §8-7a, G.S., requires that evidence at hearings before zoning boards of appeals be recorded, but contains no requirement that a zoning board of appeals protect the record of its hearings by denying public access.

18. §8-8, G.S., sets forth procedures for appeals of decisions of zoning boards of appeals; however, the section contains no requirement that a zoning board of appeals protect the records of its hearings by denying public access.

19. It is found that §8-7a and §8-8, G.S., do not require the respondent board to deny the complainants' access to the tape recording of the April 11, 1978 hearing in order to protect the integrity of the record.

20. It is concluded that the complainants have a right to inspect or copy the requested records under §1-19(a), G.S.

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

1. The respondents shall forthwith provide the complainants with an opportunity to listen to and copy the tape recording of the April 11, 1978 hearing.

2. The respondents shall forthwith make an arrangement with the town clerk under which the clerk shall have custody of the records of the respondent board and shall make those records available to the public during the business hours of the office of the town clerk.

3. The commission recognizes that strict compliance with the language of §1-19(a), G.S., which requires that records of a town agency which has no place of business of its own be kept in the office of the town clerk may be impossible in this case because the town clerk's office has no additional space. If this is in fact the case, the requirements of the statute may be satisfied by placing the records in the custody of the clerk in the same building in which the clerk has his or her office so that the clerk can give members of the public who request access an opportunity to inspect or copy the records.



Commissioner Judith A. Lahey

as Hearing Officer

Approved by order of the Freedom of Information Commission on August 23, 1978.



Charlene G. Arnold
Clerk of the Commission