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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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Darlene Chapdelaine,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-569

First Selectman, Town of Eastford; and Town of
Eastford,

Respondent(s)

June 27, 2013

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, July 24, 2013**. 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 July 12, 2013**. 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 July 12, 2013**. **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 July 12, 2013**, 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: Darlene Chapdelaine
Eric Knapp, Esq.

6/27/13/FIC# 2012-569/Trans/wrbp/VRP/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Darlene Chapdelaine,

Complainant

against

Docket #FIC 2012-569

First Selectman, Town of Eastford; and
Town of Eastford,

Respondents

June 25, 2013

The above-captioned matter was heard as a contested case on March 11, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The hearing officer granted leave to the complainant to offer after-filed exhibits that she had not brought to the hearing.

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 on October 16, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide her with an opportunity to inspect particular files during the normal course of business. Specifically, the complainant alleged that she had been prevented from viewing the following files:

a. Three years of the "payable & other files on the company "Woodstock Villager" a newspaper whom they do business with regularly;

b. Three years of the "Chronicle" and other files on the company "The Chronicle" a newspaper whom they do business with I have been advised; and

c. The payable "Register" for the Town of Eastford for the last three years.

3. Section 1-200(5), G.S., defines "public records" as follows:

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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

4. 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.

5. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

6. It is found that the Town of Eastford maintains relatively limited office hours. Many town offices are open two days per week, and the town Building Official's hours are limited to two hours per week, with inspections of records of records available "by request."

7. It is found that the respondents provided copies of records requested to be inspected by the complainant on or about October 15, 2012, in the form of paper copies of the invoices from the publisher of the two newspapers that printed the town's legal notices; a printout of a list of the checks written for those notices; and a CD-ROM containing a report in PDF format of the checks written by the town from January 2009 through November 2012.

8. At the hearing, the respondents offered into evidence, but not to the complainant, a CD-ROM, in Excel format, of the town's check register from 2004 through 2013. Unlike the PDF report provided to the complainant, this CD-ROM contains additional information such as check numbers, indications of electronic fund transfers and other undefined codes ("ADP," "FLEX," "TRP," "eftps," and so forth), and the town's general accounts fund from which the funds were debited (e.g., education, salaries, fuel, telephone, copier, buildings and grounds, and so forth).

9. It is found that the CD-ROM of the town's check register described in paragraph 8, above, is responsive to the portion of the complainant's request described in paragraph 2.c, above, but that the respondents violated the FOI Act by not promptly providing it to the complainant.

10. The complainant maintains that the records provided to her were not complete, because they did not contain certain records. For example, the complainant maintains that an invoice and check for a published legal notice should have attached to it a copy of the legal notice itself. The complainant testified that, in her experience, such legal notices would be contained in the land use file associated with the notice.

11. It is found, however, that the complainant's request was directed at the respondent first selectman, that his files (which are separate from the land use files) did not contain a copy

of the legal notice, and that he provided the complainant with all the records in his custody that were within the scope of her request.

12. The complainant also maintains that she was denied the right to inspect the requested records, and that she did not want copies of everything she asked to inspect, only of certain later-to-be-specified records. The complainant further maintains that she should be able to visit the Eastford town offices at any time during regular office or business hours, and be able to inspect any and all non-exempt records maintained there.

13. The respondents maintain that they have limited office space, maintain records that may mix exempt and non-exempt information, and have no obligation to provide access to records for inspection until the complainant describes what she wants with some degree of reasonable particularity. Specifically, the respondents maintain that medical or personnel information might be mixed in with financial and land-use records.

14. It is found that the respondents offered no evidence to prove that the predominantly financial and land-use records sought by the complainant would contain information that is exempt from disclosure.

15. It is found, however, that the complainant was not prejudiced in this case by receiving copies of all the files she asked to inspect. Although the town requested payment in the amount of \$59.50 for the 119 pages of copies, there is no evidence either that payment was tendered, or that the records were withheld until payment was tendered.

16. It is also found that the complainant never asked to inspect any particular land use files that might contain the legal notices she sought, although it appears that her interest was in one particular parcel that she either owns or had contracted to purchase, which parcel was subject to inland wetlands enforcement proceedings by the town. See, e.g., Yorgensen v. Chapdelaine, Docket No. WWM CV 11 6003791S, Superior Court of Connecticut, Judicial District of Windham, Memorandum of Decision dated December 12, 2011 (Vacchelli, J.).

17. It is also found that the complainant never directed her request to the individuals who maintain particular land use records that the complainant seeks to inspect, e.g., the Chairman of the Eastford Inland Wetlands and Watercourses Commission, or the Eastford Town Planner/Inland Wetlands and Watercourses Agent, both of whom were parties to the land use litigation brought by the complainant against the town.

18. It is therefore found that some of the obstacles encountered by the complainant in her effort to inspect public records were self-imposed.

19. The complainant nonetheless maintains that she was not given a reasonable opportunity to inspect the respondents' records during regular office or business hours.

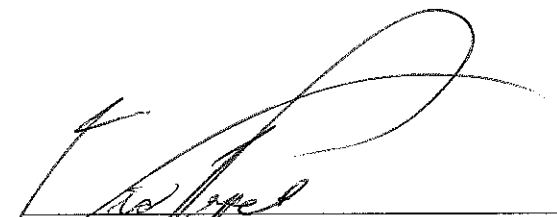
20. The respondents maintain that they should not be required to permit the complainant to search three years of financial records, amounting to thousands of invoices and checks, because such an endeavor would constitute "research" under the FOI Act.

21. While the Commission has ruled on occasion that public agencies are not required to conduct research on behalf of complainants, it has never ruled that requesters may not conduct such research themselves.

22. It is therefore concluded that the respondents violated the FOI Act by failing to permit the complainant to inspect copies of public records.

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

1. The respondents shall, if requested by the complainant, permit the complainant to inspect the originals of the copies of public records she was provided.
2. The Commission notes it does not consider it acceptable for the town to seek to collect payment for such copies that it provided in lieu of access to the originals of such records.
3. Henceforth the respondents shall strictly comply with the access to public records provisions contained in §1-210(a)(1), G.S.



Victor R. Perpetua
as Hearing Officer