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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 2013-398

First Selectman, Town of Eastford; and
Town of Eastford,
Respondent(s)

January 14, 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 Tuesday, February 11, 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 January 30, 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 January 30, 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 January 30, 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: Darlene Chapdelaine
Eric Knapp, Esq.

1/14/14/FIC# 2013-398/Trans/wrbp/KKR//GFD

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 2013-398

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

Respondents

January 13, 2014

The above-captioned matter was heard as a contested case on December 12, 2013, at which time the complainant and the respondents appeared, 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 email dated and filed July 2, 2013, 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 was prevented from viewing files pertaining to two separate properties located in the town, as well as any files pertaining to all properties owned by an individual she identified to the respondents. Specifically, the complainant alleged that, during her visit to the town offices, the respondent first selectman grabbed records out of her hands, and further alleged that he "verbally attacked her" by yelling at her to "get out" of the building, swearing, "towering over her in a threatening manner," and cornering her in the office.

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....

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, on July 2, 2013, the complainant visited the town offices and made a request to the secretary of the inland wetlands commission to inspect the records described in paragraph 2, above. It is found that the complainant did not have an appointment to inspect the records, but that, at the time she arrived at the offices, there were no other people waiting for assistance.

7. It is found that, in response to the complainant's request to inspect, the secretary provided two files to her for inspection, and that the complainant began looking through them. It is found that the complainant also asked the secretary for copies of certain records. It is found that, while the complainant was inspecting the files, the secretary left the room, and informed the respondent first selectman that the complainant was on the premises and was seeking access to records. It is found that, after receiving this information, the first selectman instructed the secretary to permit the complainant to finish inspecting the two files that had already been provided to her, but also instructed her not to provide any additional files to the complainant for inspection because she had not made a *written* request to inspect. The first selectman also instructed the secretary to require the complainant to make all requests for copies in writing.

8. At the hearing in this matter, the complainant and the first selectman offered very different accounts of what happened next; for example, the first selectman denied that he raised his voice, cornered the complainant or used foul language. However, it is found that the first selectman then went to the office where the complainant was reviewing the files, told the complainant that she could not look at any files, and took the files from her before she was finished reviewing them.

9. It is further found, however, based upon the first selectman's own testimony, that he denied the complainant access to the records that had not yet been provided to the complainant to inspect because the complainant had failed to make a *written* request to inspect such records. The first selectman acknowledged that this requirement applies only to this complainant.

10. In Planning and Zoning Commission of the Town of Pomfret v. Freedom of Information Commission, 2011 Conn. App. LEXIS 417, the Appellate Court, interpreting the provisions of §1-212(a), G.S., held that requests for *copies* of public records must be in writing. However, this Commission has consistently held that a public agency may not require requests to *inspect* public records to be in writing. See, e.g. David M. DeFelice v. Director of Policy and Development of the City of Bridgeport, Docket #FIC 1988-399 (January 25, 1989); Patrick O'Hara v. Director, Human Resources, Town of Monroe, et al., Docket #FIC 2006-480 (June 13,

2007); Steven Ballock v. Director of Finance, Town of Monroe, et al., Docket #FIC 2012-355 (May 22, 2013).

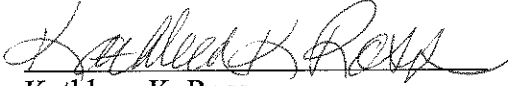
11. Accordingly, it is concluded that the respondents violated the FOI Act by refusing the complainant's request to inspect public records on the ground that such request was not in writing.

12. In addition, it is also found, with regard to the files that were initially provided to, but then taken away from, the complainant, that the respondents did not provide meaningful access to such records and such action therefore constituted a denial.

13. Accordingly, it is concluded that the respondents violated the FOI Act by denying the complainant access to the records described in paragraph 12, above.

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 access requirements of §§1-210(a) and 1-212(a), G.S.


Kathleen K. Ross
As Hearing Officer