

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Lorraine Tirella,

Complainant

against

Docket #FIC 2016-0749

Chairman, Planning and Zoning
Commission, Town of Oxford; Planning
and Zoning Commission, Town of
Oxford; and Town of Oxford,

Respondents

April 26, 2017

The above-captioned matter was heard as a contested case on January 4, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with Docket #FIC 2016-0705; Lorraine Tirella v. Steven S. Macary, Zoning Enforcement Official, Town of Oxford; Chairman, Planning and Zoning Commission, Town of Oxford; Planning and Zoning Commission, Town of Oxford; and Town of Oxford.

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, on October 5, 2016, the complainant sent by email a request for “access to all Planning and Zoning emails pertaining to Haynes, Tom Haynes, Dominick Thomas, Oxford Towne Center, Quarry Walk and Goodwin from June 2013 to the present.”
3. It is found that, on October 14, 2016, the respondent zoning enforcement officer informed the complainant that the emails would be available the following week.
4. It is found that later on October 14, 2016, the ZEO informed the complainant that there were over 600 emails responsive to her request, and that the cost would be \$1 per page, or \$600.
5. It is found that the complainant replied that she sought only to view the emails and then decide which emails she wanted the respondents to provide to her.

6. It is found that the ZEO replied that he was mistaken as to the cost, that the cost was only 50 cents per page and that he would not allow the complainant to inspect his emails at his computer.

7. It is found that on October 18, 2016, the chairman of the respondents told the complainant that there were an estimated 1600 emails responsive to her request, and that the cost would be either \$1480 if the complainant wished to inspect paper copies, or \$1600, if the complainant wished to inspect the records in electronic form.

8. By letter filed October 24, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide access to the records she asked to inspect and by charging a fee to inspect such records. The complainant requested the imposition of a civil penalty.

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

10. 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, ... or (3) receive a copy of such records in accordance with section 1-212.

11. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

12. It is found 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.

13. Section 1-211(a), G.S., provides:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium

requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212.

14. Section 1-212, G.S., provides in relevant part:

(b) The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:

(1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection;

(2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested;

(3) The actual cost of the storage devices or media provided to the person making the request in complying with such request; and

(4) The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services. Notwithstanding any other provision of this section, the fee for any copy of the names of registered voters shall not exceed three cents per name delivered or the cost thereof to the public agency, as determined pursuant to this subsection, whichever is less. The Department of Administrative Services shall provide guidelines to agencies regarding the calculation of the fees charged for copies of computer-stored public records to ensure that such fees are reasonable and consistent among agencies.

- (c) A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more.

15. It is found that the chairman told the complainant that the two fee options he set out, either \$1480 or \$1600, were “what is required by the FOI statutes.” It is concluded, however, that the FOI Act does not require an agency to charge a fee for access to records; instead, it is concluded that the Act permits an agency to charge under certain circumstances set forth in §1-212, G.S.

16. The respondents’ witness testified that they use a web-based browser through gmail, that they have not installed Microsoft Outlook or similar software for archiving email and other electronic records, and that they do not have any IT staff. The respondents also testified that they do not seek to charge the complainant for their search of their gmail accounts for responsive records, but that they sought to recoup the cost of hiring an outside contractor to install software to be used to archive the responsive emails so that they would be separated from the respondents’ other, non-responsive, emails, and accessible to the complainant in a way that would not also permit unrestricted access to all of the respondents other emails.

17. Based on the testimony described in paragraph 16, above, it is found that to comply with the complainant’s request, the respondents would need to engage an outside professional electronic copying service in order to comply with the complainant’s request.

18. It is concluded, therefore, that §1-212(b)(2), G.S., permits (but does not require) the respondents to charge the complainant a fee equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services.

19. After consideration of the entire record in this case, the Commission declines to consider the imposition of civil penalties against the respondent.

20. In light of the ubiquity of email and other electronic records, the Commission strongly urges the respondents to install and use archiving software in order to avoid the need to charge prohibitive fees for access to records of the public’s business.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 26, 2017.



Cynthia A. Cannata
Acting Clerk of the Commission