

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Kevin Dailey,

Complainant

against

Docket #FIC 2016-0593

Norman Cole, Land Use Bureau,
City of Stamford; Thomas Mills,
William Morris, David Stein,
Joanna Gwozdzowski and
Roseanne McManus, as members,
Zoning Board, City of Stamford;
Zoning Board, City of Stamford;
and City of Stamford,

Respondents

July 26, 2017

The above-captioned matter was heard as a contested case on December 12, 2016, and April 7, 2017, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The Strand/BRC Group LLC requested party status to which request the complainant objected. The Strand/BRC Group LLC was granted intervenor status over the complainant's objection.

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 letter dated August 18, 2016 and filed on August 19, 2016, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his request for records in violation of §§1-210 and 1-212, G.S., and for conducting an unnoticed meeting that was closed to the public in violation of §1-225(a), G.S.
3. It is found that the respondent Zoning Board (hereinafter "the Board") had received, and was conducting public hearings and meetings regarding seven applications related to certain changes in the General Development Plan for the Harbor Point

Development located in the south end of Stamford and the 14-acre boatyard, as required by the city's regulations and Connecticut State laws (hereinafter "the applications").

4. With respect to the complainant's records request, it is found that by email dated July 25, 2016, the complainant made a request for "any and all email communications starting from April 1, 2016 through July 7, 2016, that included any of the following persons: Mr. Cole, any Land Use Bureau personnel, Mr. Mills and any of the other Zoning Board Members, the applicant, and any city staff, that contains anything relating to the current BLT applications now being heard."

5. It is found that, after some communications between the complainant and the respondent city's Corporation Counsel (hereinafter "Corporation Counsel"), and after he filed his complaint in this matter, the complainant was provided with three compact discs on which were over 14,000 emails. It is found that one disc was provided on October 20, 2016, which contained 629 emails, and that two more discs were provided initially on November 21, 2016, and then again on December 6, 2016. It is found that one of those discs contained a little over 7,000 emails and the other disc contained a little over 6,000 emails.

6. At the December 12, 2016 hearing on this matter, the complainant contended that the respondents had violated the promptness provisions of §§1-210 and 1-212, G.S., by taking over three months to provide him with any records at all and by still having failed to provide him with all of the responsive records.

7. The respondents contended that they have promptly complied with the complainant's request given the fact that the emails requested span over three months and included the search of the email accounts of nine different individuals. The respondents also contended that, in addition, the IT department, which conducted the search, was in the process of complying with records requests for emails which were filed prior to the complainant's, and therefore, any delay in complying with the complainant's request, real or perceived, was reasonable.

8. 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.

9. 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 ... receive a copy of such records in accordance with section 1-212.

10. 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.”

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

12. It is found that the respondents’ initial response to the complainant’s request was by email dated July 26, 2016, in which Corporation Counsel explained to the complainant the scope of the search necessary to comply with his request and requested his patience.

13. It is found that, the complainant responded by email dated July 26, 2016 and expanded the scope of his request with the names of additional individuals whose emails he asked be searched including the mayor of Stamford, all members of the Corporation Counsel’s office and the Director of Economic Development (and subordinates) that have any connection with BLT and/or the current BLT applications. It is found that, in addition, the complainant requested that his records request be expedited on a priority basis.

14. It is found that by email dated July 29, 2016, the respondents informed the complainant that they had identified 41 terms that would be used to conduct the search for the records responsive to his request, and that in at least two emails, the complainant was asked by the respondents to narrow his request. It is found that the complainant, stating that “at the risk of the city appearing to hide something,” required that his request be complied with in its entirety.

15. It is found that by email dated September 20, 2016, the respondents informed the complainant that the search of the email archives was complete and that said search generated 46,201 emails some of which may not be “on topic” (e.g., BLT as part of a lunch order). It is found that, in that same email, the respondents indicated that a review of the emails for applicable exemptions would begin and that responsive records would be provided on a rolling basis. As stated in paragraph 4, above, it is found that one disk was provided on October 20, 2016, and that two more discs were provided on November 21, 2016, and then again on December 6, 2016. It is found that the respondents had devoted over 60 hours to conduct the review of the emails provided to the complainant at that point in time.

16. It is found that the requested records were extremely important to the complainant and were needed for the hearings in this matter because they were relevant to his meetings allegations.

17. It is also found that the complainant's records request was voluminous and the review process was time consuming.

18. It is found that, as of the April 7, 2017 hearing in this matter, the respondents had not provided the complainant with all responsive records, representing, through counsel, that they would continue to provide responsive records on a rolling basis as they were reviewed.

19. 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.

20. Weighing all the factors related to the request, it is found that the respondents have not unduly delayed compliance with the complainant's request in this case and it is concluded that they did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

21. With respect to the alleged secret meeting, it is found that, starting in 2015, the respondent zoning board held 21 public hearings regarding the applications described in paragraph 3, above. It is found that, at the conclusion of the public hearings, the Board properly noticed and held several public meetings at which it discussed and deliberated upon the applications. It is found that one of those meetings was held on July 25, 2015.

22. It is found that the complainant, together with his witnesses, expected the business of the July 25, 2015 meeting to be the discussion and deliberation upon the pros and cons of the proposal for the new boatyard presented during the public hearings, as a first step in the process to approve or deny the applications, pursuant to what was believed to have been the Board's past practice. It is found that instead, the Board discussed the conditions that the applicants would need to meet for approval of the applications, which the complainant believes should have been discussed only after there had been an initial decision to approve them. It is found that, consequently, the complainant believed that the Board had met at sometime between the last public hearing and the July 25, 2015 regular meeting to deliberate upon the pros and cons of the proposals, that they had already decided to approve the applications, and therefore had

moved to what he believed was the next step of the process - to discuss and approve the conditions for the construction of the boatyard.

23. At the hearings on this matter, the complainant and three other witnesses testified that during a break of the July 25, 2015 meeting, Board member David Stein was asked when “important decisions . . . on the applications” were made and they each testified that Mr. Stein stated that the Board had used emails to “discuss, deliberate and decide” the applications. The complainant’s contention was that Mr. Stein had confirmed that the Board had held an unnoticed meeting, via e-mail, to discuss and deliberate upon the pros and cons of the applications and decided to approve them.

24. In the complainant’s appeal to this Commission, he specifically alleged that a quorum of the Board, along with others, conducted secret meetings and or colluded through electronic or telephonic means, individually or collectively, through unnoticed communication out of the public eye, to discuss and deliberate upon the applications before it.

25. Section 1-200(2), G.S., provides in relevant part that:

“Meeting” means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power intended for the purpose of discussing matters relating to official business.

26. Section 1-210(a), G.S., provides in relevant part that “[e]ach such agency shall make, keep and maintain a record of the proceedings of its meetings.”

27. Section 1-225, G.S., provides in relevant part that:

(a) The meetings of all public agencies . . . shall be open to the public

(c) The agenda of the regular meeting of every public agency. . . shall be available to the public and shall be filed, not less than twenty-four hours before the meeting to which they refer, (1) in such agency’s regular office or place of business, and (2) . . . in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitown district or agency . . . Upon the affirmative vote of two-thirds of the members of a public

agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings

(d) Notice of each special meeting of every public agency... shall be given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof ...in the office of the clerk of such subdivision for any public agency of a political subdivision of the state.... The...clerk shall cause any notice received under this section to be posted in his office. Such notice shall be given not less than twenty-four hours prior to the time of the special meeting; provided, in case of emergency...any such special meeting may be held without complying with the foregoing requirement for the filing of notice but a copy of the minutes of every such emergency special meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the...the clerk of such political subdivision...not later than seventy-two hours following the holding of such meeting. The notice shall specify the time and place of the special meeting and the business to be transacted.

28. The respondents contended that no unnoticed meeting of the Board took place to discuss and/or deliberate upon the applications, either by email or any other means. The respondents offered the testimony of Mr. Stein to refute the complainant's, and his witnesses' testimony regarding the conversation that occurred during the break at the July 25, 2015 meeting of the Board. Mr. Stein testified, at the April 7, 2017 hearing on this matter, that he was asked when the board would be deliberating and voting. Mr. Stein testified that he responded by explaining that there were many issues with respect to the applications that had to be discussed, and that as the Board continued to discuss them, the proposed conditions kept changing and consequently, revision of the those conditions had to be made by staff. He testified that the Board members would receive the final conditions and then would determine if the proposed boatyard was sufficient. Mr. Stein testified that he was then asked by Mr. Loeb, one of the complainant's witnesses who testified at the April 7, 2017 hearing in this matter, how the members of the Board received the conditions that were being discussed and deliberated upon and that he responded that they had come by email.

29. In addition to the testimony of David Stein, the respondents also offered the testimony of Norman Cole, the former City of Stamford Land Use Bureau Chief now retired. Mr. Cole testified credibly as he explained the process undertaken by him and the Board with respect zoning applications generally and with respect to the applications, described in paragraph 3, above.

30. It is found that, upon receipt of any application, Mr. Cole reviewed it to ensure it was complete and then scheduled a public hearing for the application to be heard by the Board. It is found that he also drafted a staff report, which is an analysis of the applicable regulations, and an opinion as to whether the application conformed to the regulations. With respect to the applications, described in paragraph 3, above, the Board also received a report from an independent consultant who also reviewed the applications and regulations, and provided its opinion as to the applications conformity. It found that it was Mr. Cole's practice to provide the Board members with the materials for each meeting prior to each meeting so that they had time to review the material in preparation for their weekly meetings. It is found that the materials generally included agendas, draft minutes, staff reports, and consultant reports. He also drafted "certificates" which are draft decisions of the Board either approving, approving with conditions, or denying an application and provided those. It is found that he provided all the materials via email.

31. It is found that, after the Board discussed a draft certificate at either a public hearing or a public meeting, it either voted on the certificate as drafted or asked for revisions based on the discussion. It is found that, typically, when an application is simple, the Board deliberated on it at the public hearing, after the testimony, evidence, and comments were offered. It is found that the simplest applications were those for which no conditions were contemplated and therefore, not included in the draft certificate or any subsequent revisions, making it very easy for the Board to deliberate and vote on those applications immediately after the public hearing.

32. It is found that the applications for the boatyard were complex, the materials that needed to be reviewed were voluminous and that the issues that had to be addressed were extensive. It is found that, therefore, separate meetings were scheduled to discuss and deliberate upon the seven applications. Upon the recommendation of Mr. Cole, the Board addressed each application in order of the least complex to the most complex, and that the first application was addressed at the July 25, 2016 regular meeting. It is found that the only difference between prior application processes and the process for the applications for the boatyard was that it appeared to the complainant, and allegedly to many others in the audience, that the Board was discussing conditions without having first discussed whether this particular boatyard proposal, on its face, sufficiently met the needs of the community and was a good idea. It is found, however, that the chairman had determined that it was better to discuss the conditions first and then discuss the sufficiency of the proposed boatyard. It is further found that the Chairman reviewed his determination with the other board members at the July 7, 2016 meeting of the Board, and the board members concurred with his determination to proceed in such manner.

33. It is found, based upon the reliable, probative, and substantial evidence in the whole record, that the only emails that were transmitted with respect to the boatyard applications were between Mr. Cole and the chairman, and from Mr. Cole to the other Board members, and some, but not many, emails from Board members to just Mr. Cole. It is found that Mr. Cole, as is his practice, emailed the Board members before the July 25, 2016 meeting to provide them with the draft certificates which included multiple

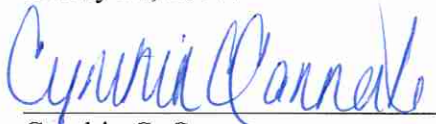
conditions for the approval of the applications and that no emails between or among the board members occurred.

34. Consequently, it is found that the Board did not conduct an unnoticed meeting, by email or by any other means, to discuss or deliberate over the boatyard applications, and it is therefore concluded that the respondents did not violate the meetings provisions of §1-225, G.S., of the FOI Act, as alleged by the complainant.

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

1. The complaint is hereby dismissed.

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



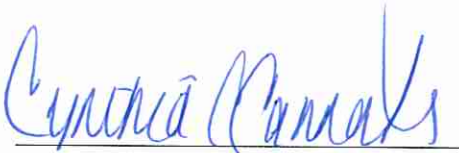
Cynthia C. Cannata
Acting Clerk of the Commission

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:

KEVIN DAILEY, 18 Oaklawn Avenue, Stamford, CT 06905

NORMAN COLE, LAND USE BUREAU, CITY OF STAMFORD; THOMAS MILLS, AS MEMBER, ZONING BOARD, CITY OF STAMFORD; WILLIAM MORRIS, AS MEMBER, ZONING BOARD, CITY OF STAMFORD; DAVID STEIN, AS MEMBER, ZONING BOARD, CITY OF STAMFORD; JOANNA GWOZDZIOWSKI, AS MEMBER, ZONING BOARD, CITY OF STAMFORD; ROSEANNE MCMANUS, AS MEMBER, ZONING BOARD, CITY OF STAMFORD; ZONING BOARD, CITY OF STAMFORD; AND CITY OF STAMFORD, c/o Attorney Burt Rosenberg and Attorney James V. Minor, PO Box 10152, Stamford, CT 06904; Attorney Amy E. Souchuns, Hurwitz, Sagarin, Slossberg & Knuff, LLC, 147 North Broad Street, Milford, CT 06460



Cynthia C. Cannata
Acting Clerk of the Commission