

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Sarah Bollinger,

Complainant

against

Docket #FIC 2016-0819

First Selectman, Town of Somers; and
Town of Somers,

Respondents

May 24, 2017

The above-captioned matter was heard as a contested case on February 21, 2017, 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 letter of complaint filed November 21, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by destroying a public record after it was requested.
3. It is found that the Somers Board of Selectmen held a special meeting on November 21, 2011.
4. It is found that the meeting was recorded on audio tape.
5. It is found that the complainant first requested access to the audio tape shortly after the meeting in 2011.
6. It is found that, at that time, the respondents left the audio tape on the front desk for the complainant, but the complainant never picked it up.
7. It is found that the complainant re-requested the audio tape periodically after 2011 and was told by the respondents that the tape would be sent to her, but the tape was never delivered to or picked up by the complainant.

8. It is found that the complainant, on August 4, 2016, again requested the audio tape of the 2011 meeting, identifying it as a meeting “shortly after” November 2009 and “possibly as late as February 2011.”

9. It is found that the respondents received, on October 3, 2016, from the State of Connecticut Office of the Public Records Administrator, authorization to dispose of fourteen categories of records, including tapes of meetings from 2009 through 2015.

10. The complainant contended that the audiotape was disposed of pursuant to the Public Records Administrator’s authorization, after the request.

11. It is found, however, that although CD records covered by the authorization were disposed of on October 8, 2016, no audiotapes were disposed of at that time.

12. It is found that the audiotape was probably recorded over sometime between 2011 and the date of the complainant’s August 4, 2016 request, because the respondents did not believe they had to retain it.

13. 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.

14. 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 the provisions of section 1-212.

15. 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.”

16. It is concluded that, prior to its destruction, the requested audiotape was a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

17. It is found, however, that at the time of the complainant's request, the audiotape had already been destroyed.

18. It is therefore concluded that the respondents did not violate the FOI Act as alleged.

19. The Commission observes that the retention and disposition of public records is governed by the Public Records Administrator. The respondents are urged in the strongest terms to consult the Public Records Administrator before disposing of any public records, whether that disposition occurs by recording over an existing record, or otherwise; and whether or not the respondents believe particular records need to be retained.

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 May 24, 2017.



Cynthia A. 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:

Sarah Bollinger
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Somers, CT 06071

First Selectman, Town of Somers; and Town of Somers
c/o Carl T. Landolina, Esq.
Fahey & Landolina
487 Spring Street
Windsor Locks, CT 06096



Cynthia A. Cannata
Acting Clerk of the Commission