

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Lorraine Tirella,

Complainant

against

Docket #FIC 2017-0267

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

Respondents

April 9, 2018

The above-captioned matter was heard as a contested case on July 10 and August 15, 2017, at which times the complainant and the respondents appeared, stipulated to certain facts 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 respondent is a public agency within the meaning of §1-200(1), G.S.
2. By letter of complaint filed May 18, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her request for access to public records.
3. It is found that, by letter and email dated April 25, 2017, reiterating an earlier request, the complainant asked to view all emails regarding the respondent Planning and Zoning Commission ("P&ZC") during the week of March 1, 2014 through March 8, 2014.
4. It is found that, by email dated April 26, 2017, the respondent chairman of the P&ZC replied that the respondents had received the request and were working on collecting the responsive emails. The chairman explained that, since the respondents lacked the means for the complainant to view the emails in the P&ZC department, he was looking at ways to copy them electronically or print them for her.
5. It is found that, by letters dated April 27 and May 4, 2017, the complainant further requested that the respondents forward to her email address all emails regarding P&ZC enforcement during the weeks of March 9, 2014 through March 29, 2014.

6. It is found that, by letter dated May 22, 2017, the respondents indicated that they would incur a cost of \$21.50 in retrieving emails that were over three years old, and the respondents would proceed with the retrieval upon receipt of a check in that amount from the complainant.

7. It is found that the respondents' email system had changed since 2014, requiring them to engage technical assistance in order to retrieve 2014 emails.

8. It is found that, by letter sent on or about August 8, 2017, the respondent chairman informed the complainant that, after consultation with the First Selectman, the respondents would absorb the cost of retrieving the emails without payment by the complainant, and the records would be copied to a USB drive that the complainant could sign out of the P&ZC office without charge. The chairman further indicated that a USB drive containing the first set of emails from March 1 through 8, 2014 was currently available to her, and that the additional requested records would be copied to the drive when she returned it to the respondents.

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, 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.

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, (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.

11. Section 1-211(a), G.S., provides in relevant part:

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, if the agency can reasonably make such copy or have 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.

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 1-211(a), G.S.

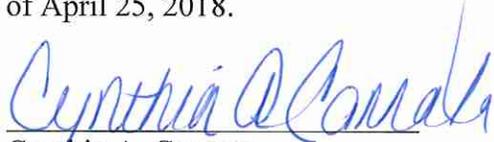
13. The crux of the complainant's argument is that she did not believe she should be required to pay to view the emails at issue. It is found that the respondents, some three months following the filing of the complaint, determined not to require her to pay for the cost of retrieving the emails. Moreover, the complainant did not raise the issue of payment in her complaint. The issue of payment therefore is not before the Commission.

14. It is found that the respondents offered no evidence that the records could not have been provided earlier than three and a half months after the request. It is therefore concluded that the respondents failed to prove that they provided the records "promptly" within the meaning of §1-210(a), G.S.

15. It is therefore concluded that the respondents violated the promptness provision of §1-210(a), G.S.

Under the facts and circumstances of this case, where a good faith dispute over who should bear the cost of providing records was ultimately resolved by the parties in favor of the complainant, no order is recommended on the basis of the record concerning the above-captioned matter.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 25, 2018.



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:

**LORRAINE TIRELLA**, 11 Larkey Road, Oxford, CT 06478

**ARNOLD JENSEN, CHAIRMAN, PLANNING AND ZONING COMMISSION, TOWN OF OXFORD; PLANNING AND ZONING COMMISSION, TOWN OF OXFORD; AND TOWN OF OXFORD**, c/o Attorney Kevin Condon, Condon & Savitt, 223 Wakelee Avenue, Ansonia, CT 06401-0570



Cynthia A. Cannata  
Acting Clerk of the Commission