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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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Melissa Schlag

Complainant(s)

Notice of Meeting

against

Docket #FIC 2018-0254

First Selectman, Town of Haddam; and Town of Haddam

Respondent(s)

August 10, 2018

## 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 **2:00 p.m. on Wednesday, September 12, 2018**. 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 August 29, 2018**. 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 August 29, 2018**. **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 **fifteen (15) copies** be filed **ON OR BEFORE August 29, 2018** 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

Wendy R.B. Paradis  
Acting Clerk of the Commission

Notice to: Melissa Schlag  
Attorney Richard Carella

FIC# 2018-0254/IIRA/CPH/KKR/TAH/WRBP/2018-08-10

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Melissa Schlag,

Complainant

against

Docket #FIC 2018-0254

First Selectman, Town of Haddam;  
and Town of Haddam,

Respondents

August 8, 2018

The above-captioned matter was heard as a contested case on July 17, 2018, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Melissa Schlag v. First Selectman, Town of Haddam; and Town of Haddam, Docket #FIC 2018-0253.

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 dated and filed May 17, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide certain records to her.
3. It is found that the respondent first selectman unilaterally fired the town assessor on April 17, 2018, and immediately informed the complainant, who is a selectman in the town of Haddam, as well as the other selectman, that the assessor was “no longer employed by the town.” The first selectman also immediately consulted with the town’s labor attorney regarding what she should state publicly as to the reason for the termination. The attorney advised the first selectman to state publicly only that the assessor was fired for “willful misconduct.” It is found that, by emails dated April 17, 2018 and April 18, 2018, the complainant asked the first selectman whether the assessor was fired or quit, and the reasons for such firing or resignation. It is found that the first selectman did not respond to these emails.
4. It is found that, during an April 23, 2018 special meeting of the Board of Selectmen, a member of the public and the complainant each asked the first selectman for the reason for the assessor’s termination. It is found that the first selectman stated that the reason was “willful misconduct,” and that she would provide additional information at the next meeting of the board, scheduled for May 14, 2018.

5. It is found that, on May 2, 2018, the complainant sent the following email to the first selectman:

Lizz, please send me any correspondence/information on the Assessors [sic] dismissal. It is all public information and it should also be known by the selectmen at the very least. I shouldn't have to rely on rumors to get information in town. Furthermore, the attorney has nothing to say about the information being given to the public, anyone's personnel file is an open record with a few exceptions, like health documents/social security numbers. Or will you force me to come in and make an FOI request to view her file? Happy to do that if that is the only way I'll get information about this important issue. (Emphasis added).

6. It is found that the first selectman did not respond to the May 2 email.

7. At the hearing in this matter, the complainant argued that the May 2 email was a request for records made pursuant to the FOI Act and that the respondents' failure to comply with it violated the FOI Act. The first selectman testified that she did not consider the May 2 email to be a request for records under the FOI Act because (1) it seemed to her to be simply another "harassing" communication from the complainant, in that she believed she had already communicated to the complainant on several prior occasions that she would provide additional information concerning the assessor when she was able; and (2) the complainant stated in such email that the complainant would, in the future, request the records under the FOI Act. It is further found that the complainant did not follow through on her statement that she would make a request under the FOI Act if the first selectman did not respond to her May 2 email. Instead, the complainant filed the instant complaint with this Commission. Moreover, it is found that the personnel file of the assessor was at all times available for public inspection, but that the complainant never inspected such file.

8. Based on the specific facts and circumstances of this case, it is found that the May 2 request was not a request for records under the FOI Act.

9. Because there was no request made under the FOI Act, there was no denial of a right conferred by the FOI Act, and therefore the Commission lacks jurisdiction to consider the merits of the allegations in the complaint.<sup>1</sup>

10. At the hearing in this matter, the respondents argued that the complainant filed this appeal solely to harass them, and requested that the Commission impose a civil penalty against the complainant.

11. Section 1-206(b)(2), G.S., provides, in relevant part:

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<sup>1</sup> The Commission therefore need not consider the argument, raised by the respondents in their post-hearing brief, that the case is moot and must be dismissed.


[i]f the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against that person a civil penalty of not less than twenty dollars nor more than one thousand dollars. (Emphasis added).

12. In support of their argument, the respondents pointed to the uncontroverted evidence that the assessor's personnel file was, at all times, available for inspection by the complainant, both in her capacity as a selectman and in her capacity as a member of the public, but despite this, the complainant chose not to inspect such file. However, the complainant testified that she asked "a friend" to view the personnel file on her behalf, and that she was seeking records pertaining to the assessor's termination that might be maintained outside of the assessor's personnel file.

13. The respondents bear the burden of showing that harassment was the only motivation for filing an appeal, see e.g., Michael Sikowski v. Saul Nesselroth, Chairman, Board of Ethics, Town of Mansfield, et al., Docket #FIC 2011-178 (January 11, 2012), and it is found that the respondents failed meet their burden in this case. Accordingly, the respondents' request to impose a civil penalty against the complainant is denied.

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.



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Christopher P. Hankins  
as Hearing Officer