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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 2018-0253

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# 2018-0253/ITRA/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,

Complainants

against

Docket #FIC 2018-0253

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 2018-0254.

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 email dated April 27, 2018, the complainant requested from the respondents a copy of “all emails, communications, notes, and maps, etc., with regard to the tree cutting scheduled for Haddam by Eversource.”
3. It is found that, by email dated April 30, 2018, the respondents provided to the complainant a press release from Eversource entitled “Eversource Invests \$80 Million in Tree Trimming in Connecticut to Enhance Reliability for Customers—Work Scheduled Along More Than 4,000 Miles of Electric Lines Around the State.”
4. 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 fully comply with the request, described in paragraph 2, above.
5. Section 1-200(5), G.S., provides:

“[p]ublic 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.

6. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept 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 inspect such records promptly during regular office or business hours...or...receive a copy of such records in accordance with section 1-212.

7. 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.”

8. It is found that the records responsive to the request, described in paragraph 2, above, maintained or kept on file by the respondents at the time of the request, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearing in this matter, the respondents contended that they promptly provided all responsive records to the complainant. In their post-hearing brief, the respondents argued that, because they provided all responsive records, the complaint is moot, and therefore should be dismissed.

10. In support of their argument, the respondents cited Department of Public Safety v. Freedom of Information Commission, 103 Conn. App. 571, 587 (2007). In that case, the Commission issued a proposed final decision, but before a final decision was issued, the Department of Public Safety provided the records at issue to the requestor, who then withdrew her complaint. Despite the withdrawal of the complaint, the Commission issued the final decision on the merits. The Appellate Court ruled that, because the requestor withdrew her complaint, the case was moot, thereby depriving the Commission of jurisdiction to issue a final decision. The plaintiff in the present case did not withdraw her complaint; thus, the Department of Public Safety case is factually distinguishable from the present case.

11. The Commission consistently has ruled that a case is not moot by virtue of a public agency’s claim that it provided all responsive records to the requestor, because whether or not all responsive records have been provided is the factual question in dispute. See e.g., Elizabeth Seieroe Maurer v. Office of Corporation Counsel, City of Danbury; and City of Danbury, Docket #FIC 2014-042 (December 17, 2014); Keith Ainsworth v. Department of Public Works, City of New Haven, Docket #FIC 1996-164 (November 20, 1996); Senator William Curry, Jr.

v. Department of Environmental Protection of the State of Connecticut, Docket #FIC 81-2 (May 17, 1982).

12. It is therefore concluded that the present case is not moot.

13. At the hearing in this matter, the complainant insisted that the respondents must maintain additional responsive records that were not provided to her.

14. It is found, however, that the respondents provided to the complainant all records responsive to the request that they maintained at the time of the request.

15. It is therefore concluded that the respondents did not violate §§1-210(a) or 1-212(a), G.S., as alleged.

16. 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.

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

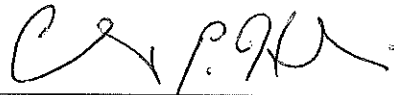
[i]f the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance 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.

18. In support of their argument, the respondents pointed to the complainant's own testimony that she had met directly with an Eversource representative regarding the tree cutting project, who told her there were no additional records pertaining to the project. On the other hand, the complainant also testified that a previous tree cutting project had taken place during the time that she was first selectman, and that the town maintained many other records pertaining to that project, such as procedures for road closures, notification to residents and where the wood would be stored. Therefore, according to the complainant, she believed there should be additional records pertaining to the current tree cutting project.

19. Based on the record in this matter, it is found that the complainant did not take this appeal frivolously, without reasonable grounds and solely for the purpose of harassing the respondents. 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

FIC 2018-0253/hor/kkr/08082018