

Haddam 29 November, 2016

To the FOIA Commission

From: Ed Schwing 143 Church Hill Road Haddam, CT 06438 860-345-2730, Complainant.

Respondent: Mrs. Lizz Milardo, Haddam First Selectman, 30 Field Park Drive Haddam CT 06438

Complaint:

On October 26 2016, in anticipation of a town meeting that was to be held in November regarding the subject of cell towers, I requested from First Selectman Lizz Milardo via email to review the following:

1. All emails, correspondence, meeting notes between Mr. Ray Vergati, Site Development Manager of Homeland Towers, Danbury, Connecticut and First Selectman Lizz Milardo
2. All emails, correspondence, meeting notes between Mr. Chuck Regulbuto and/or Ms Lin Allen, principals of ESS, and First Selectman Lizz Milardo
3. Copies of all agreements between Homeland Towers and their representative with the First Selectman and/or Town of Haddam.
4. Copy of Homeland Towers technical report on town cell tower sites being proposed.

I received an acknowledgment from Mrs. Milardo indicating she would get me items 1, 2 and 4 but that she did not have the final draft of item 3 yet (see attachment 1: email Mrs Milardo to Ed Schwing.)

At the time this complaint is being lodged, I still have not received or been able to review items 1, 2, or 4.

*This is contrary to FOIA Sec. 1-210: Access to public records. (a) 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 ...or (3) receive a copy of such records in accordance with section 1-212.*

As for item 3, while it was in draft format on October 26 according to Mrs. Milardo, it turns out that a week later on November 2, unbeknownst to me the contract was finalized and approved by all three Selectmen.

That approval was done at a board of selectmen meeting which I would have attended had the agenda specifically mentioned the cell tower town meeting/contract would be a subject at the meeting. But, as can be seen in attachment 2 (BOS agenda November 2, 2016), it did not.

However the cell tower subject was brought up and discussed at length and finally put to a vote, but without first obtaining a 2/3 vote of the BOS to add it to the agenda in violation of Sec 1-225 (c) (see attachment 3: Published minutes and motions BOS meeting November 2, 2016, pages 1, 3 & 4)

As a result of that BOS meeting, on November 10, a public notice was published in the Middletown Press (see attachment 4: Public Notice of Town Meeting.) As indicated in the notice, I went to the town clerk's office and reviewed the resolutions on file. I asked to see copies of the contract referenced in the resolution, but was told they were none and all they had were the resolutions to be voted on.

I fact I did not become aware that the contract had been finalized until I attended the town meeting on November 17 where copies of the signed contract were finally made available to the public.

At that point, as a voter, it was too late for me to make an educated decision on how to vote. Having been deprived of information prior to the meeting, I could not vote for or against and I told the moderator to log in my abstention.

I am also the editor of the Haddam Bulletin, a monthly newspaper in Haddam. Because of the lack of information prior to the meeting and missing items 1,2 and 4 above, I was not able to meet a deadline for an article reporting on the cell tower contract and town meeting.

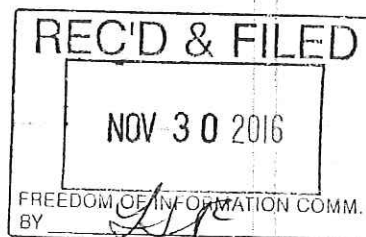
FOI Commission Advisory Opinion # 51 is pertinent to this case and public officials should be reminded of one of their primary duty under the FOI Act.

*The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore a primary duty of all public agencies, and should be considered as much a part of their mission as their other major functions.*

The same advisory clarifies and gives further guidelines regarding the definition of "promptly" spelling out some of the factors to be considered in fulfilling the request in a timely fashion namely: "the time by which the requestor needs the information contained in the records; and "the importance of the records to the requester, if ascertainable";

Mrs. Milardo was certainly aware that my request was tied to her decision to hold a town meeting in November to approve the cell tower contract. She knew that I wanted to see the requested items as well as the contract as soon as it was finalized if possible, but certainly before the town meeting.

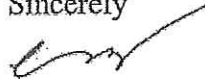
PAGE 2 OF 3



It is also no secret that Mrs. Milardo is not a fan of our publication. In fact she is on the record saying that she will not collaborate or provide answers or comments to our publication (see attachment 5: Emails between Mrs. Milardo & Alan Aronow)

While she did reply within the four-day window, the fact that she did not bother to let me know the final contact was available for review and that I have not received or been allowed to review any of the remaining items so far, seems to be an unduly delay of compliance and in the process an infringement on my rights under the FOIA.

Sincerely



Ed Schwing

