

exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only: (1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection; (2) an amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested; (3) the actual cost of the storage devices or media provided to the person making the request in complying with such request; and (4) the computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services....

14. It is found that respondent district does not employ an administrative staff and that it maintains its public records in an office separate from the office visited by the complainant as described in paragraph 2, above. It is also found that such separate office is locked during most business hours. It is further found that, as a consequence of such arrangement, the public records of the respondent district are only available for public inspection by appointment made through the respondent chairman.

15. It is found that the plans became a public record when presented at the meeting of the respondent district as more fully described in paragraph 2, above. It is further found that such public record is maintained by the engineer at his private office and is only available for public inspection by appointment made through the respondent chairman.

16. It is found that the respondents' records maintained as described in paragraphs 14 and 15, above, are neither kept and maintained at a "regular office or place of business", nor are they kept or maintained in an "accessible place," within the meaning of § 1-19(a), G.S.

17. It is therefore concluded that by failing to properly store all of their records in accordance with the FOI Act, the respondents violated § 1-19(a), G.S.

18. It is also concluded that by requiring the complainant to make an appointment prior to inspecting their public records, the respondents violated the provisions of § 1-19(a), G.S., in that they imposed conditions precedent to the inspection of public records.

19. It is also concluded that the respondents violated the promptness provisions of § 1-19(a), G.S., by failing to provide the complainant with copies of the minutes described in paragraph 4, above, within a reasonable time frame.

20. It is also found that the respondents did not violate the provisions of § 1-19(a), G.S., by failing to provide the complainant with a copy of the plans, since such failure arose from a misunderstanding at the meeting described in paragraph 3, above, and since the respondents have agreed to reproduce the plans upon the complainant's payment of the fee allowable under the provisions of § 1-15(b), G.S.

21. The Commission declines to impose a civil penalty under the facts and circumstances of this case.

A15

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall immediately establish a regular office or place of business where their records are accessible to the public during regular office or business hours, or, in the alternative, the respondents shall immediately turn over all such records to the Berlin town clerk's office in accordance with the provisions of § 1-19(a), G.S., and shall advise the Commission in writing when the chosen alternative has been accomplished.
2. Henceforth, the respondents shall strictly comply with all of the requirements of § 1-19(a), G.S.
3. The respondents shall post a copy of the final decision in this matter in the Berlin town hall in a public place for a period of thirty days.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 8, 1998.

Doris V. Luetjen
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:

Christina Berger
858 Chamberlain Highway
P.O. Box 7283
Kensington, CT 06037

Chairman, The Kensington Fire District Commission, Borough of Kensington; and The Kensington Fire District Commission, Borough of Kensington
c/o Robert Argazzi
460 New Britain Road
P.O. Box 2
Kensington, CT 06037

Doris V. Luetjen
Acting Clerk of the Commission
FIC1997-314/FD/tcg/04171998



Freedom of Information Commission
18-20 Trinity St.
Hartford, CT 06106

ref: Violations of open records law
C28 – First Selectman, Town of East Lyme

I have had numerous contacts with the first selectman of East Lyme, Mark Nickerson, business office located at 108 Pennsylvania Ave., Niantic, CT 06357.

I have filed several requests for record with various agencies of the town of East Lyme. In accordance with the appellate court decision, Lash v. FIC, 116 Conn.App 171, I have been filing requests with the various individual agencies that maintain the records.

The town has made it clear that they find this offensive and have demanded that I file all requests with the first selectman's office in contrary the the LASH decision. Instead I follow the LASH decision.

I have made no requests of records relating to the first selectman's office that I can recall.

Recently, I received a demand that to obtain access to records that I only requested to inspect that I must go to the first selectman's office by directive of the first selectman himself.

Of course, I file requests with the agency that has those records and some agencies have provided me access to records requested at the agency that maintains them and others I have not received access to records I requested to inspect. Some records I believe would take some time to provide while with other record requests the records should be almost immediately available.

With some record requests where I have not gotten access I have filed complaints with this commission but with many I have not.

There is a proposal to axtend a local water syatem to my community at great costs to those affected, including myself. Many residents have asked questions that could be answered via reviewing records and I have found a want to get those questions answered as well so many record requests have been in response to this local water extenstion and also of records of interest relating to records I have reviewed (many times one record request that provides responsive records leads to other record requests ~ its not unusual).

A17

On 16 MAR 16 I received the following from the first selectman:



Mark Nickerson Add to contacts 3/16/16
To: david.g

I apologize. Never in my life did I intend to "deliver" them to you at your residence...just "deliver" the information to you. Yes, this meeting will be at my office, at my desk. I can give you 1 hour to do it. If it takes longer than an hour, we can schedule a follow up appointment. I am available by appointment only. I had not heard from you so my schedule just got booked up a bit more. Here's what I have available:

Thursday at 10AM

Friday at 9AM or 1PM

Let me know as soon as possible, so that I may reserve an hour.

Mark C. Nickerson

First Selectman

Town of East Lyme, CT

860 691 4110

An email where it is shown the first selectman has clearly taken records away from other agencies that I have requested records from and who have collected the records that I wished to inspect.

And an email that demands that I make an appointment to inspect records responsive to various requests I have filed in which the records have been collected and are ready for review.

It is clear that although I wish to follow the LASH court decision and that I expect agencies to also follow and have told the first selectman that I do not want to deal with his office as the records I am requesting are not his agency's records that the first selectman has chosen to ignore the LASH decision and also the decisions of this commission noted in FIC Docket #s: 95-254, 97-314, 1997-134, and 2006-429 that clearly note that the first selectman cannot take on the role of being the "point of contact or disseminator of records" for other agencies nor can he demand that appointments be made to inspect records.

Indeed the first selectman has taken records from other agencies and hid them in his office, making them available only upon appointment.

These actions violate the rights of requestors to access to public records and of prompt access to records and creates a cause of action for the commission to hold a hearing upon.

Through other contact(s) with the first selectman related to the email shown above it was discovered that he has been holding records related to at least three (3) requests for records relating to other agencies of the town and will not let me know which requests that he is holding records relating to my specific record requests.


AIB

Nevertheless, it is known that he is holding records of other agencies hostage until I agree to a set appointment time with him, in violation of the Act ~ the Act does not allow pre-conditions related to a requester gaining access to public records(as the Act reads and as the commission has highlighted in other cases that have gone before it) and the first selectman does not have the legal authority to act as a point of providing records for the entire set of town agencies for record inspection activities of the members of the public's record requests not related to the agency of the first selectman's office.

Therefore, I seek a hearing on this matter and for all relief that the Act may provide.

There is no doubt that the records requested have been unduly delayed to this requester; I was at the town hall on various occasions and have not be able to access the records requested simply because the first selectman hides the records of other agencies in his office and then closes his office wherein the agencies of which records were requested were open and could have provided me access

Submitted by:



David Godbout
15 Cardinal Rd.
East Lyme, CT 06333
860-691-8053

A19

Freedom of Information Commission
18-20 Trinity St.
Hartford, CT 06106

17 MAR 16

ref: Record Denial – East Lyme Public Works Dept.
C26

On 16 MAR 16 I filed the following request to inspect records:

From: david g [mailto:d_godbout1@hotmail.com]
Sent: Wednesday, March 16, 2016 8:05 PM
To: Brad Kargl
Subject: Able to take 2nd look at the Water Ext. Project #17 (colton rd)

16 MAR 16

Dear Mr. Kargl,

I would like to re-examine the records relating to the Ext #17 of Colton Rd. that I previously examined.

Any problem making them available for an inspection on Friday ? About 11am or noon-ish?

David Godbout
860-691-8053

And on 17 MAR 16 I received the following response:

From: BKargl@eltonhall.com
to: d_godbout1@hotmail.com
Date: Thu, 17 Mar 2016 10:12:38 -0400
Subject: RE: Able to take 2nd look at the Water Ext. Project #17 (colton rd)

Dave:

No problem. These records can be made available for Friday. They will be included with the other records that I understand you will be looking at.

Thank you.

Brad Kargl

A21

Yet later in the day of the 17th I was told that I could only examine these records at the first selectman's office and that this would not be possible until he came back from vacation, without a date of when that might be.

Bkargl is Bradford Kargl of the Public Works Dept, for the town; he has previously provided me the records that I wish to look at again in the past.

It appears as if he had no issues allowing me to examine the records on the 18th of March and was willing and able to make these records available to me on the 18th of March.

However, the first selectman revoked the ability of me to review the records on the 18th of March for no good reason.

As such, the records will be unduly delayed for my inspection in violation of the Act.

Its quite clear that the town has implemented a policy that delays access to public records to the public, including me; of course such policies are void in accordance with the provisions of the Act.

These records are over 10 yrs old and kept in a folder at the public works dept., easily retrievable; there is not reason why a person cannot review these records immediately upon demand.

Submitted by:


David Godbout

15 Cardinal Rd.

East Lyme, CT 06333

860-691-8053

A22

Freedom of Information Commission
18-20 Trinity St.
Hartford, CT 06106

ref: Records Complaint
East Lyme Town Clerk
C16

10 MAR 16

I sought to inspect records at my Town Clerk office, records of the town clerk, on 10 MAR 16.

The physical street addresses of the person I sought records from is:

108 Pennsylvania Ave.
Niantic, CT 06357

This is a picture of the office of which I visited (taken from outside the office in a large foyer area of the town hall):



Pictured in the foreground is the town clerk, Lesley Blais. She denied me access to records.

A23

I asked to inspect records relating to a FOI Commission seminar taught by Mr. Thomas Hennick of the FOI Commission of a meeting that took place on 7 MAR 16 at about 2 pm [there was a second meeting on the same day but my verbal request made today did not include any records relating to that meeting].

I asked the town clerk if she attended the 2pm meeting on 7 MAR 16 and she answered in the affirmative. I then asked to see any records relating to that 2pm meeting; I highlighted that this would include any notes that she may have taken and inquired if there were any such records available. The town clerk answered in the affirmative and went to a yellow notepad and flipped through the pages, identified her notes that were responsive and handed the notepad to me with the responsive page noted.

Before I could inspect the record before me the town clerk began peppering me with questions.

The town clerk asked : Are you recording this contact?
To which I invoked my 5th amendment right not to answer.

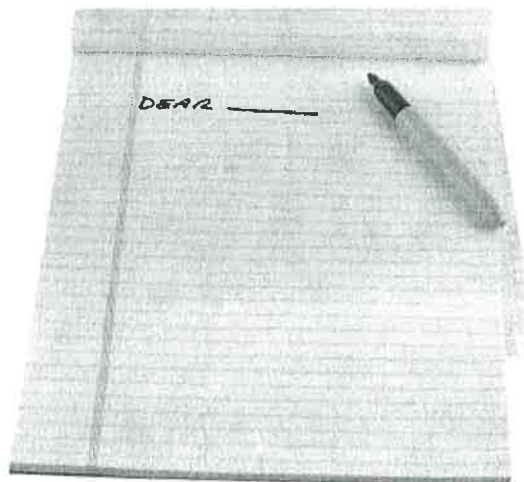
Then the clerk said that its a crime to record.

The clerk then re-inquired again: Are you recording this?
I replied: If you have a query to make I would need my legal consul present.

I invoked my right to legal representation prior to answering any probative questions. The right to have consul present during any government interrogation is part of the cornerstone guarantees of our due process rights as Americans.

The town clerk asked me to immediately leave because I refused to answer her inquires. I inquired what would happen if I did not and her answer was that she would call the police and I would be arrested. I told her that I did not have the opportunity to inspect the records that she identified and handed me...she acknowledged this but did not provide me access to the records. So I left without much fanfare.

To note there is a foyer just outside her offices and small conference rooms that were empty and other places that she could have allowed me to inspect the records; not that inspecting a page or two on a yellow notebook tablet, like this one:



A24

The inspection would have required no more significant office space more than the chair right in front of her desk (shown if the office pic above) which I was sitting on during my interaction with her anyway.

The commission has noted before that a requester cannot be subjected to a required set of interrogatories prior to gaining access to public records. Yet this is exactly what was demanded of me (and more).

I think that this was actually a scheme to keep town records from the public's eye concocted by the town and Thomas Hennick/FOI Commission on 7 MAR 16.

At best the town clerk simply denied me access to public records and that could be either a civil issue or both a criminal issue under our FOIA Act and at worst also violated 18 USC 242, Deprivation of rights under color of law, a federal crime. There certainly is probable cause for some if not all of these violations.


In addition, there is no law that would have made video recording this public office's activities and our first amendment rights clearly make this acceptable. And there are no laws in this state against recording face to face encounters either so under no set of circumstances should I have been prohibited from recording in any event. Its a moot point if I was or was not recording but its clear that the clerk had no reason to believe that I was.

In this case, there are records responsive to my request, the clerk gave me a few seconds to hold some of them but not the opportunity to review than without first answering a series of interrogatories and waiving my 5th, 1st, 14th Amendment rights as well as my common law rights.

I demand a hearing on this matter and would ask the commission to make the following:

- 1) order to produce all records of the clerk related to the 2pm 7MAR16 meeting including but not exclusive to, her notes on that yellow notepad.
- 2) civil penalties against the town clerk
- 3) recommendation that criminal charges be brought and contact the proper authorities relating to violations of a criminal nature as appropriate
- 4) other orders as deemed appropriate.

Submitted by:


David Godbout
15 Cardinal Rd.
East Lyme, CT 06333
860-691-8053

cc Lesley Blais (LBlais@eltownhall.com)

AZ5