

July 15, 2020

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In Memoriam  
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Colleen M. Murphy, Executive Director  
Freedom of Information Commission  
18-20 Trinity Street  
Hartford, Connecticut 06106

Re: *Vexatious requester petition*

Dear Ms. Murphy:

Please consider this to be the Town of Groton's petition under Connecticut General Statutes Section 1-206(b)(5) for relief from a vexatious requester. This petition alleges that the information herein demonstrates facts and circumstances sufficient for an administrative finding that the conduct and activities of Thomas W. Potter, of 154 Walker Hill Road, Groton, Connecticut, fully satisfy the necessary statutory elements.

This petition is verified by John Burt, Town Manager for the Town of Groton, in his official capacity, and, in addition, is filed by him on behalf of the numerous agencies and departments of the Town that have been dealing with Mr. Potter. These include the Town's Planning Department, the Building Department, and the Assessor's office. Attached to this petition is Mr. Burt's sworn statement, as required by the above-referenced statute.

This petition consists of (a) this petition, (b) a 79-page digest of Mr. Potter's requests for documents and information through June 22, 2020, and (c) the actual requests and some of the many responses given to Mr. Potter. We have omitted most of the responses, for reasons of volume and because many of the responsive records are large documents, numerous, and have been repetitive. The requests and responses in item (c) consist of seven (7) volumes. Communications protected by the attorney-client privilege were redacted from the email chains. Due to the fact that Mr. Potter has been submitting written requests for information on a daily basis, with sometimes

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up to four, multi-page written requests on one day, for reasons of expediency the volumes or materials end with June 22, 2020.<sup>1</sup> We will be supplementing this petition with an additional volume, as the requests have continued at their now blistering pace. His requests are submitted 98% of the time by email.

Whether or not one works forward or backward when reviewing the digest and the materials in the volumes, one will easily see that Mr. Potter's interest in obtaining information from the Town's public agencies began in an ordinary way in 2011. His requests, mostly typical, were at that time sufficiently spaced such that the various staff persons responding were able to review the requests, determine what documents were being sought, and respond, without it detracting from other municipal business. However, sometime in 2015 Mr. Potter grew fixated on a two-family residence in his neighborhood that was owned and used by a charitable organization legally as a house that offered religious guidance to its residents as they recovered from disabling experiences. At this time, the tenor of the requests changed from mere and ordinary inquiry to suspicion and accusation, colored often by insolence and insult against the person responding.

Some early examples:

- "Your answer to my first question is not responsive. As the designated Building and Zoning Official for the Town of Groton, I would expect a clear, straight-forward answer instead of something that cannot be interpreted by a reasonable person." October 27, 2015.
- "I want clear, straight-forward answers to these questions. As soon as you have provided these answers, I will stop sending you emails. Until then, I expect you to act responsibly to my inquiries. Part of my taxes pay part of your salary." October 29, 2015.
- "Moreover, your latest email actually exudes an overt sense that you are very much in favor of approving the variance requested by COH. That is disturbing, since it also suggests the possible lack of impartiality on your part." November 18, 2015.
- "Someone screwed up, or someone covered up facts that allowed this so-called charitable organization to avoid paying property taxes on a portion of its property that was not used for one or more of its stated purposes because that portion of the property was not in compliance with the current fire code standards. This appears to be some kind of collusion by a Town Official, and if it is, then it must

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<sup>1</sup> There is one later, of July 8, 2020.

be fully investigated; not merely 'shoved up the table' as the saying goes." January 2, 2016.

- "I want a written statement from the Town Attorney that states she has reviewed this CGS and concurs with your opinion. Lacking such a statement, I will engage the services of an Attorney, and bring suit against the Town of Groton, Tax Assessor's Office, for failure to enforce the Connecticut General Statutes." January 8, 2016.
- "You wonder why I get upset with Town Officials when I ask for something very specific and they respond with something completely unrelated to the subject I was requesting. You know darn good and well what I referring to when I sent my earlier email to you. That seems to be a common thread among many of the people that are running this Town." February 10, 2016.
- "Therefore, in accordance with your Job Description I respectfully request you to answer all the questions I have posed in my emails to you because it's part of your job. \* \* \* I have read the Connecticut General Statutes, Chapter 14 – Freedom of information Act, and I understand the fees to be charged for any copies of documents that you will provide. However, the time either of you spend on answers to my questions is not reimbursable to the Town because this is just part of your job, nothing more and nothing less." March 30, 2016.

At one point, on or about January 20, 2016, the then-Town Manager, Mark Oefinger, penned a letter to Mr. Potter reminding him that his letters should not insult the municipal employees but should be appropriate citizen requests for public records. He said Town personnel "will not be responding in substance to future email correspondences regarding the tax status of 120 Walker Hill Road or to email correspondence otherwise berating/disparaging Town personnel."

As you review the materials from this and later periods, the employees of the Town worked diligently to provide Mr. Potter with response. It was, and remains, a difficult task for the employees, because Mr. Potter does not request an identified document for the most part. Instead, he phrases his requests as one who seeks answers to leading questions in a deposition. For example, he will write that he seeks documents that "explain" a process, a decision, a deed, or a tax assessment; he will ask for a document that was "used" by someone in forming a decision; he will seek "information" that "supports" a square foot calculation. Some small examples of such regular language in his requests:

- "Please provide access to a specific Connecticut General Statute that contains clear and compelling evidence to support your decision." April 18, 2016.

- "Please provide evidential documents to substantiate that you performed an independent review of this Contract and Amendments to determine if FHM was in full and complete compliance with the Zoning Regulations." April 30, 2016
- See email dated July 5, 2016 for a lengthy one.
- A good example is one of several similar paragraphs in an October 18, 2016: He wants "[w]ritten evidence of inspection reports or reports that document your visit(s), or visits by an employee of your department, to the property located at 120 Walker Hill Road, that were intended to independently observe the actual use of the property. All such reports should indicate if the visits were announced or unannounced; the date of the visits; the time of the visits; the number of persons located at the premises at the time of your visit; the number of persons who were referral clients being furnished temporary housing; and the number of persons who were present and providing Bible studies."

Naturally, the Town employee is left by this kind of request either to request of Mr. Potter that he narrow his request, which history indicates will generate back automatic and immediate insult or thick sarcasm, guess at what might satisfy Mr. Potter, or conclude that Mr. Potter is actually asking for research to be conducted. Because these are omnibus requests spanning pages, it is extremely time consuming and distracting for staff.

After a decision by a Town board rejecting his claim that the charitable organization was operating illegally, there was a brief reprieve from his requests. His efforts had failed to compel the Town to violate federal law and close down the religious-based charity.

But Mr. Potter's activity came back with super force and frequency early this year. In fact, nearly 50% of the materials submitted with this petition are from February through June, 2020. These are found in Volume 7. These 2020 requests arrived, and continue to arrive, rapid fire, sometimes four a day. Like some of the longer ones from 2015-2016, many are several pages long, with narratives and numerous requests that are vaguely stated. After the pandemic occurred, Mr. Potter prefaced each request with a lengthy form and dictatorial paragraph that he cuts and pastes,<sup>2</sup> and ends each with one

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<sup>2</sup> "In accordance with Connecticut General Statutes (CGS), Chapter 14 - Freedom of Information Act (FOIA), I request that all the documents pertaining to any and all of the following matters be made available for my inspection and/or copying as the case may be. In view of the fact that the Town Hall is currently closed in terms of access by the general public, and is staffed with only essential persons, and as a result of mandates issued to comply with the Governor of the State of Connecticut concerning the Coronavirus, I will make an appointment to meet you on a predetermined date and time at the main entrance to (i) inspect the records related to my FOIA Request: (ii) identify which documents I would like copied; (III) write a personal check payable to

of two cut and paste paragraphs, which, among other things, seeks “agreement” that his announced terms and conditions satisfy the requirements of the FOIA or “reminds” the recipient of Mr. Potter’s take on the statutory obligations.<sup>3</sup> Nearly all responses by staff are insufficient in Mr. Potter’s opinion; when documents are provided to Mr. Potter, his response – usually made within a couple of hours –is often that the employee’s response is inadequate or “does not comply.” And then, he repeats his request.

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the Town of Groton for the number of pages I requested at the stipulated cost of \$.50 a page; (iv) wait outside the main entrance for you or your designated representative to return with my copies. Of course, these arrangements are only temporary, and are in recognition of the words stated in Section 1-210 of Chapter 14, which stipulate that “..... 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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. .... .” Your agreement with this arrangement will place you in compliance with the irrefutable intent of CGS Chapter 14 - FOIA, and, at the same time, maintain the temporary protocol you have taken to comply with the actions mandated by the Governor of the State of Connecticut.”

<sup>3</sup> One is:

“Please acknowledge receipt of this FOIA Request, and indicate your concurrence or nonconcurrence with the arrangements indicated in the opening paragraph of my request. If you do not concur with these suggested arrangements for access to the requested documents, please explain the reasons why you do not concur, and what alternatives you suggest to ensure that you are in full compliance with the CGS. This is not a question; it is your indication of exactly how you will comply with all the requirements to provide access to and copies of public records that are clearly set forth in CGS Chapter 14 - FOIA, and the method to be used because you have implemented temporary arrangements for access to these public records during modified “business” hours.”

The other is:

“I am obliged to remind you of the requirement stated in CGS Chapter 14 - Section 1-206 which reads in pertinent part that;

“ ..... (a) Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing within four business days of such request, .... .”

Please acknowledge receipt of this FOIA Request. In the event that the public records I have requested are physically located at the Town Hall Annex, please advise accordingly.”

His requests usually are not short, or easy to evaluate. Mr. Potter often quotes statements he finds in documents and news articles as a contextual preface to his presenting a series of requests. This increases the numbers of pages of each request, which are single spaced. For purposes of making a considered response accurately, a town staff member is forced then to take the time to visit the original document to determine if the quoted statements are correctly quoted and in context, before evaluating if there is an existing public record. Often, the staff member will seek legal advice. This practice of reciting parts of documents or news reports offers Mr. Potter the opportunity to frame largely argumentative questions, which are for the most part unhelpful and vexing.

Worse, documents that Town staff provide to Mr. Potter form fertile grounds for more and more of these types of requests, meaning his requests grow not only vertically, but horizontally. As one reads Mr. Potter's emails and the requests, one cannot help but form the belief that Mr. Potter is less interested in obtaining documents than he is in trapping a town employee in a mistake, in creating opportunity to degrade a person, or in elevating his own sense of importance.

Mr. Potter is mean even when no record exists at all. For example, only recently a staff member informed him that some invoices going back to 2011 no longer exist. Mr. Potter's reply – sent less than 20 minutes afterward – was to toss innuendo and veiled threats of statutory violation: "Your response does not comply with my FOIA Request, dated June 11, 2020 \* \* \*. Your response to Number 1.b. indicates that you have destroyed the requested invoices for the period from 1/01/2011 to 6/30/2016. In view of this disclosure, please provide access to the documents received from the State of Connecticut that authorized the destruction of these public records, and your compliance with the authorization." July 8, 2020 email. See end of Volume 7. Mr. Potter, who holds himself out to be an expert on document retention, is easily charged with knowledge that the record retention schedule for invoices is three years. His only purpose left then is shake up the Town's staff.

Where the tenor started downhill in 2015, it took a nose dive in 2020. For example, in a May 5, 2020 email at 8:14 in the morning he accuses a town official of being "very unprofessional and unbusinesslesslike" due to the fact that he was told it would take time to respond to one of his requests; calling such "delay" "disdainful," the very next day, to vex the employee, he attached a copy of a dictionary definition of the word "disdain" to another email. In fact, he will often attach dictionary definitions of common words as an effort to insult and degrade the staff person. In other situations where he is informed it will take a reasonable time to respond, Mr. Potter is petulant and insulting; On June 15

he wrote "I await your timely response. Even though your Job Description does not define a normal turn-around time, one can reasonably expect such a response to be both prompt and factual." On the same day, he sent another email writing "You are damn right \* \* \*. Remember a previous e-mail? You can't have you [sic] cake and eat it too. Some people might say that it's time to travel on; that just might be some good advice. I'm not stopping until 'the sun don't shine'". Obviously, these are not sincere requests for public records; the vulgar language is unnecessary and Mr. Potter is on an admitted mission to vex the town officials with FOI requests "until the sun don't shine."

Examples are all over the Volumes. A few:

- "You have a bad habit of ignoring the facts." – June 16, 2020
- "Also, you have not bothered to answer the questions in my e-mail of June 15m [sic] 2020 about the Town Council Meeting on August 7, 2018." – June 16, 2020.
- "Good afternoon John. That explanation is not adequate. \* \* \* I may be 82 years old but I am not stupid, so don't insult my intelligence. I know a "snow job" when I see one, and I am certainly sure that you do too." February 21, 2020 1:50 p.m. This represents the typical interchange a staff member will have with Mr. Potter. His statement here was made after the employee answered Mr. Potter's leading question of: "Would you please explain why the general public was not given the opportunity to address specific questions or concerns to the representatives of the DonMar Development Corporation at the meeting last night?" The employee answered by email: "Hello. In terms of questions, people were free to meet with the developer, architect, engineer, and town staff after the presentation to ask questions. Many took advantage of that. If you have other specific questions on the project, please feel free to reach out to [info@seelyschool.com](mailto:info@seelyschool.com)."

One will see that the June 15 email referred to in the second bullet item immediately above, was sent in the afternoon; the June 16, 2020 email accusing the employee of not "bothering" to answer questions was sent at 6:53 the next morning. In other words, Mr. Potter is feigning complaint that his email was not answered in little more than 12 hours. Again, on June 16, 2020, he was busy that morning: Another email at 7:21 am:

"That suggests foul play on the part of someone who was responsible for providing the necessary information to the Town Council Committee of the Whole members before the meeting. That condition is sometimes referred as 'a reckless disregard for the truth.' Sad, but true."

There are other concerns about Mr. Potter's activities. The Town has been endeavoring to market and develop municipal properties that have fallen into disuse, including old school buildings. In one case, one of the properties is in Mr. Potter's neighborhood and when an optionee began conducting due diligence Mr. Potter walked within the construction site to conduct investigations to satisfy his personal curiosities, and this caused safety and liability concerns among the private contractors. Considering the possibility of harm to Mr. Potter and other members of the public, the contractor erected a fence around the work area. This dissatisfied Mr. Potter. Recently, the police were in the process of apprehending a suspect in the area and Mr. Potter wrote

"It would be a lot easier for the police to apprehend a suspect if that stupid "spite" temporary fence was not there and they didn't have to climb over it.

He then added this:

I am compelled to take matters into my own hands to ensure the safety and well-being of the Seely neighborhood. That must fall outside the duties and responsibilities of a Town Official."

The Town does not know what Mr. Potter plans to do, but the Town is obviously concerned when a citizen announces he will attempt to take the law into his "own hands."

The Town has spent several thousands of dollars in attorney time gaining legal assistance in dealing with Mr. Potter. His constant requests are seriously interfering with the orderly operation of the Town's departments. They are distraction, a staff drain, and with his insolence and insults, they shake-up staff and demoralize because there does not appear to be a remedy; there is not only no stop to it, but there is acceleration. It is impossible to estimate the amount of staff time and its value which has been devoted to Mr. Potter, but the amount is substantial and it steals good and valuable time from staff responding to the legitimate needs of the other inhabitants of the Town. Despite the Town's numerous efforts to have Mr. Potter understand that there are other citizens who are seeking information, and most recently to understand the limitations placed upon staff due to the COVID-19 pandemic closures, Mr. Potter refers to those as "excuses;" as can be seen from the above, he instead considers them to have an obligation to respond to him as part of their "job description." As a result, his repetitive requests hamper the Town's ability to respond to the requests of other persons, and detract from the efficiencies of the ordinary business conducted at the Town's offices and departments.



It will be impossible to count the number of separate document requests he has made, due to the fact that more than 90% of the emails contain multiple requests which are compound, some of which are later "re-stated." Many ask for interpretations and research. There are, however, at least a hundred and fifty since February of this year alone.

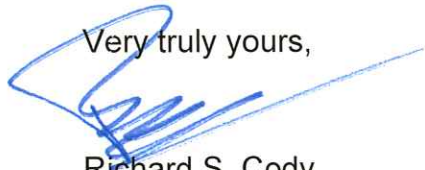
Further, what the Town is submitting with this petition is not the full number of requests he has made. Many have gone directly to other staff email addresses and departments. It would be impossible to track them all down. Kindly consider these to be the majority of the ones that have reached the desks of the Assessor, the Town Manager, and the Building and Planning Department.

In determining a vexatious requester, one of the considerations under Section 1-206(b)(5) is the number of complaints filed by the requester with the FOIA. Here, there is one. We believe that upon a review of these materials you will appreciate the constant efforts by town staff, over years of time, to conciliate and respond to Mr. Potter. From this, one can conclude that the lack of complaints to the Commission by Mr. Potter is a direct result of the consistent, good faith and time-consuming efforts that have been made by the Town's staff to answer and deal with his obsessions, which have now reached an impossible condition and have become unmanageable.

The Town respectfully asks that you determine, within the meaning of Section 1-206(b)(5) that the Town's petition warrants a hearing before the Commission. The Town seeks an appropriate order commensurate with the conduct described, including an order that the Town, its agents and departments do not have to comply with Mr. Potter's future requests for one year.

The Town thanks you for your consideration.

Very truly yours,



Richard S. Cody  
Suisman, Shapiro  
Town Attorneys

Encs.

Cc: Thomas W. Potter