

**TOWN OF NEW LEBANON  
RESOLUTION #\_\_\_\_, 2023  
DECISION ON FREEDOM OF INFORMATION LAW APPEAL (M. MUADIN, JULY 31, 2023)  
AUGUST 8, 2023**

At a regular meeting of the New Lebanon Town Board, held on the 8th day of August 2023, the following Resolution was proposed and seconded:

Resolution by \_\_\_\_\_  
Seconded by \_\_\_\_\_

***DECISION ON FREEDOM OF INFORMATION LAW APPEAL (M. MUADIN, JULY 31, 2023)***

WHEREAS, on the evening of Saturday, July 22, 2023, Michael Muadin submitted a Freedom of Information Law Request to the Town of New Lebanon Records Access Officer seeking 17 categories of documents and information relating to a certain flood event occurring on or about June 28 and/or 29, 2023; and

WHEREAS, in addition to such Freedom of Information Law Request, Mr. Muadin had also sent to the Town Clerk a copy of several similar requests that he made to the State of Massachusetts; and

WHEREAS, because of Mr. Muadin's sending of several emails relating to requests he was making to the State of Massachusetts, the Freedom of Information Law Request he made for Town of New Lebanon records on Saturday, July 22, 2023 was overlooked by the Records Access Officer; and

WHEREAS, on July 31, 2023, Mr. Muadin determined to take an appeal from what he viewed as a constructive denial of his request, given that he had not received a response from the Town Records Access Officer; and

WHEREAS, on August 1, 2023, the Town Records Access Officer recognized that among the various emails from Mr. Muadin, one had included the subject Freedom of Information Law request; and

WHEREAS, on August 1, 2023, the Town Records Access Officer sent correspondence to Mr. Muadin acknowledging receipt of the subject Freedom of Information Law Request, explaining that the request had initially been overlooked and providing the reason why it was overlooked, and providing a date of August 18, 2023 as the date by which Mr. Muadin could expect a response to the subject Freedom of Information Law Request; and

WHEREAS, notwithstanding the Town Records Access Officer's acknowledgment, Mr. Muadin has not withdrawn his appeal; and

WHEREAS, under local law, the Town Board is currently designated as the body to determine appeals regarding a denial of access to records under the Freedom of Information Law; and

WHEREAS, the Town Board has considered the statements of Mr. Muadin in his July 31, 2023 email in support of his appeal; and

WHEREAS, the Town Board has considered the explanation of the Town Records Access Officer and the immediate acknowledgement the Town Records Access Officer sent upon recognizing the oversight; and

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. The recital clauses set forth above are expressly incorporated herein.
2. Mr. Muadin's appeal is hereby decided as follows: Although the Records Access Officer did not appear to provide a response within five business days, such failure to respond was clearly an oversight. The Records Access Officer did not purposely ignore the request. Rather, the request was lost in a flurry of other

emails from the same individual, many of which were merely copies of requests to a different government (the State of Massachusetts) for which the Records Access Officer bears no responsibility or authority to respond. Upon noticing the oversight, the Records Access Officer immediately acknowledged the request and indicated that she expected to provide a response by August 18, 2023, which in this Board's view is a reasonable period of time, particularly in light of the complexity and volume of the request. Despite that acknowledgment, Mr. Muadin has not withdrawn the appeal. Substantively, the Records Access Officer has not actually denied access to any records as of today, and simultaneously, any so-called constructive denial based on not providing an acknowledgment of the request is now moot in light of the acknowledgment actually sent on August 1, 2023. Accordingly, the appeal of Mr. Muadin sent on July 31, 2023 is hereby denied in its entirety as both premature and moot.

3. The Town Supervisor is hereby authorized and directed to transmit a letter to Mr. Muadin, with a copy to the New York State Committee on Open Government, setting forth this decision, along with a copy of this Resolution, within the time set for decision on appeals under the Freedom of Information Law.

Upon the question of the foregoing Resolution, the following Town Board Members voted "Aye" or "Nay" for said Resolution:

Roll Call Vote:

Councilmember John Trainor	_____
Councilmember Deborah Gordon	_____
Supervisor Tistrya Houghtling	_____
Councilmember Marianna Anthonisen	_____
Councilmember Norman Rasmussen	_____

The Resolution, having been **approved/not approved** by a majority vote of the Town Board, was declared **duly adopted/not duly adopted** by the Supervisor of the Town of New Lebanon.

Dated: August 8, 2023

Marcie Robertson  
Town Clerk  
Town of New Lebanon