# Town of New Lebanon

**Resolution #24, 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 Councilmember Rasmussen

Seconded by Councilmember Trainor

***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, the Freedom of Information Law Request he made for Town of New Lebanon records on Saturday, July 22, 2023 was overlooked by the Town Records Access Officer because she had also received from Mr. Muadin a number of other emails relating to requests he was making to the State of Massachusetts; 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 Muadin has not withdrawn his appeal; and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, on August 1, 2023, the Town Records Access Officer forwarded Mr. Muadin’s July 31, 2023 appeal email, along with her August 1, 2023 written acknowledgment of Mr. Muadin’s Freedom of Information Law request, to the New York State Committee on Open Government; 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, under the Freedom of Information Law, the Town Board is required to decide FOIL appeals within 10 business days of receipt; and

WHEREAS, taking into consideration the written acknowledgment of the Town Records Access Officer provided to Mr. Muadin on August 1, 2023, including her notification that she expected to provide a response on or before August 18, 2023, and the fact that Mr. Muadin’s Freedom of Information Law request was still being processed, a draft resolution was prepared for the Town Board’s consideration at its August 8, 2023 meeting and was posted on the Town website to decide Mr. Muadin’s FOIL appeal within the 10 business day time frame required under New York law; and

WHEREAS, on the morning of August 8, 2023, Mr. Muadin submitted an email to the New York State Committee on Open Government and the Town Board, submitting an addendum to his appeal, in which he attached 13 .pdf files; and

WHEREAS, such August 8, 2023 email addendum to his appeal, among other things, argued that it was improper for a draft resolution to decide Mr. Muadin’s FOIL appeal to have been prepared for consideration by the Town Board at its August 8, 2023 meeting; confirmed that he was not withdrawing his appeal; and expressly acknowledged that his Freedom of Information Law request is still being processed; and

WHEREAS, in response to Mr. Muadin’s August 8, 2023 email and attachments, the New York State Committee on Open Government responded as follows:

“For clarity sake, I would like to inform you that the Town of New Lebanon is under no statutory obligation to have a hearing regarding your Freedom of Information Law appeal. The Law requires that, within 10 business days of receipt of an appeal, the head or governing body of the agency or the individual designated by the head or governing body, must respond to your appeal. The Town’s Code, Section 45-8 indicates that the FOIL appeal officer is the Town Board. The Town Board may also designate an individual, other than the records access officer, to respond to the appeal.

In my opinion, there is nothing which would prohibit the Town Supervisor from drafting a resolution relating to your appeal for consideration by the full board at an open meeting. I have reviewed Supervisor Houghtling’s draft resolution and, in my opinion, the response is consistent with the Town’s obligations under the statute”; and

WHEREAS, in the afternoon of August 8, 2023, Mr. Muadin submitted another email to the New York State Committee on Open Government and the Town Board, acknowledging the response from the New York State Committee on Open Government and submitting a revised addendum to his appeal; and

WHEREAS, the Town Board has considered the statements of Mr. Muadin in his July 31, 2023 email in support of his appeal, his first August 8, 2023 email with attachments, and his second August 8, 2023 email; and

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

WHEREAS, the Town Board has also considered the written response of the New York State Committee on Open Government to Mr. Muadin’s first August 8, 2023 email;

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 overlooked because it was one in a series of other emails from the same individual, including copies of requests to a different government (the State of Massachusetts) for which the Town Records Access Officer bears no responsibility or authority to respond. Upon noticing the oversight, however, 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. In fact, the Town Records Access Officer has indicated to Mr. Muadin that he can expect a response to his FOIL Request on or before August 18, 2023, and therefore, his FOIL Request is still being processed. Accordingly, the appeal of Mr. Muadin sent on July 31, 2023, as supplemented by his two August 8, 2023 addenda, 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 Aye

 Councilmember Deborah Gordon Aye

 Supervisor Tistrya Houghtling Aye

 Councilmember Marianna Anthonisen Aye

 Councilmember Norman Rasmussen Aye

The Resolution, having been ***approved*** by a majority vote of the Town Board, was declared ***duly adopted***  by the Supervisor of the Town of New Lebanon.

Dated: August 8, 2023

Marcie Robertson

Town Clerk

Town of New Lebanon