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Jay Dempsey,
Complainant(s)
against

Mayor, City of Groton; and City of Groton,
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0544

March 31, 2017

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, April 26, 2017.** At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission ***ON OR BEFORE March 13, 2017***. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed ***ON OR BEFORE March 13, 2017***. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed ***ON OR BEFORE March 13, 2017***, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Jay Dempsey
Attorney Bryan L. LeClerc
Attorney William S. Fish, Jr.

FIC# 2016-0544/Trans/wrbp/KKR//PSP/2017-03-31

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Jay Dempsey,

Complainant

against

Mayor, City of Groton; City of Groton; and Thames Valley Communications,

Respondents

Report of Hearing Officer

Docket #FIC 2016-0544

March 31, 2017

The above-captioned matter was heard as a contested case on October 12, 2016 and January 5, 2017, at which times the complainant, the respondent mayor and the respondent city (the "Groton respondents") appeared and presented testimony, exhibits and argument on the complaint. Thames Valley Communications ("TVC") also appeared at the hearing and moved to intervene in this matter; the hearing officer granted such motion. The case caption has been amended accordingly.

For purposes of hearing, this matter was consolidated with Docket #FIC 2016-0682, Jay Dempsey v. Mayor, City of Groton; City of Groton; and Thames Valley Communications ("2016-0682"). In this matter, the Commission takes administrative notice of the testimony and exhibits in 2016-0682.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The Groton respondents are public agencies, within the meaning of §1-200(1), G.S.

2. It is found that, from approximately 2008 until February 1, 2013, TVC was owned by Groton Utilities ("GU"), which, in turn, was a department of the respondent city. It is found that, in addition to television, internet and phone services, which services were provided by GU through TVC, GU also provided water and electricity to area residents during this time.

3. It is found that, pursuant to a purchase and sale agreement dated January 25, 2013, TVC was sold by GU to private investors. It is found that, even after the sale of TVC, GU continued to be owned by the respondent city and to provide water and electricity to its customers.

4. It is found that, since February 1, 2013, TVC has been a privately owned utility company providing television, internet and phone services, primarily in the communities of Groton, Mystic, and Stonington, Connecticut.

5. It is found that, by letter dated May 7, 2016, the complainant requested from the Groton respondents, a copy of the "independent auditor's reports of [TVC] from 2008-2012 and up to the time the company was sold" (the "requested records").

6. It is found that, in a letter to the complainant dated July 14, 2016, the Groton respondents claimed that the requested records are "trade secrets," which are exempt from disclosure, and on that ground, denied the request, described in paragraph 5, above.

7. By letter dated July 26, 2016, the complainant appealed to this Commission, alleging that the Groton respondents violated the Freedom of Information ("FOI") Act by withholding the requested records.

8. It is found that, upon receipt of the request, described in paragraph 5, above, the respondent mayor contacted TVC's vice president, George Laub, to notify the company of such request.

9. It is found that, in response to the notification, Mr. Laub, in a letter dated September 13, 2016, informed the respondent mayor of TVC's position that the requested records are confidential, and declined to consent to their disclosure.

10. Section 1-200(5), G.S., provides:

> "[p]ublic records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

11. Section 1-210(a), G.S., provides in relevant part that:

> [e]xcept 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 or . . . (3) receive a copy of such records in accordance with section 1-212.

12. Section 1-212(a), G.S., provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

13. It is found that the requested records are maintained by GU and that GU, as a department of the respondent city, is a public agency for purposes of the FOI Act. It is found that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

14. The hearing officer ordered the Groton respondents to submit the requested records for in camera inspection. Prior to the second hearing in this matter, the respondents provided a redacted copy of the requested records to the complainant, and submitted the unredacted version to the Commission for in camera inspection. It is found that the in camera records consist of TVC's audited financial statements for the years 2007 through 2012, and that only the redacted portions of such records remain at issue in this matter.

15. After careful inspection of the in camera records, it is found that the redactions contained therein consist of a detailed breakdown, by year, of TVC's revenues and expenses for the years 2007 through 2012.[1]

16. It is found that, during the time that TVC was owned by GU, the requested records were treated by the Groton respondents and TVC as confidential, and were never disclosed to the public. According to the Groton respondents and TVC, such information was exempt from disclosure during this period of time, pursuant to §§7-232a and 1-210(b)(5)(A), G.S.

17. Section 7-232a, G.S., provides that:

> [a] municipal utility established under this chapter, or a municipal electric or gas utility owned, leased, maintained, operated managed or controlled by any unit of local government under the general statutes or a special act, may withhold from public disclosure under the Freedom of Information Act...any commercially valuable, confidential, or proprietary information.

18. It is undisputed that during the time that TVC was owned by GU, TVC was a "municipal utility," for purposes of §7-232a, G.S. It is also concluded that GU itself is a "municipal utility," under §7-232a, G.S.

19. The Groton respondents and TVC argued, at the hearings in this matter, that because GU maintains the requested records, and GU is a "municipal utility," as defined in §7-232a, G.S., GU may withhold the redacted information because such information is "any commercially valuable, confidential, or proprietary information." According to the Groton

[1] In addition to the requested records, the respondents submitted certain other records that were not requested by the complainant. The Commission will not consider those other records herein.

respondents and TVC, the fact that the redacted information pertains to TVC, which it no longer owns, does not render the statute inapplicable.

20. In seeking to determine the meaning of statutory language, §1-2z, G.S., requires that the text of the statute itself, and its relationship to other statutes, be considered first. If the meaning of the text is "plain and unambiguous" and does not yield "unworkable" results, extratextual evidence of the meaning of the statute may not be considered. See Lieberman v. Aronow, 319 Conn. 748, 756-7 (2015). "The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted). Id.

21. The language of §7-232a, G.S., uses the term "any" to modify "commercially valuable, confidential, or proprietary information." The Supreme Court has interpreted the word "any" to mean "all or every" and has "presume[d] that the legislature, in using the word 'any' to modify [another] term…intended that term to be broad, rather than restrictive in scope." (Internal quotation marks omitted). Marciano v. Jimenez, 342 Conn. 70, 76 (2016), citing Gipson v. Commissioner of Correction, 257 Conn. 632 (2001). In addition, the Court has emphasized that statutes must be construed as written, and observed repeatedly that "the intent of the legislature…is to be found not in what the legislature meant to say but in the meaning of what it did say….It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is the function of the legislature." (Internal quotation marks omitted). Cruz v. Montanz, 294 Conn. 357, 370 (2009).

22. It is concluded that the language of §7-232a, G.S., is plain and unambiguous, and does not yield unworkable results.

23. Accordingly, it is concluded that the redacted information may be withheld, pursuant to §7-232a, G.S., if such information is "commercially valuable, confidential or proprietary information."

24. It is found that TVC competes directly with Comcast, Direct TV, Dish, and Frontier Communications. Mr. Laub testified at the hearing in this matter, that he considers the redacted financial information to be highly confidential and extremely commercially valuable to TVC's business, and that disclosure of this information that could then be obtained by TVC's competitors would, without question, cause direct and immediate harm to TVC's economic position. He provided several specific examples to explain and support his position. It is found that TVC has made intentional and effective efforts to limit access to the redacted financial information to TVC's four investors. It is found that no other privately owned cable, internet and phone company's itemized revenues and expenses are publically available.

25. At the hearing in this matter, the respondent mayor testified, and it is found, that even after GU sold TVC, the Groton respondents continued to consider the redacted information to be confidential and treated it as such. It is found that the Groton respondents have made intentional and effective efforts to keep such information confidential.

26. Based upon the credible testimony of both Mr. Laub and the respondent mayor, it is concluded that the financial information redacted in the in camera records is "commercially valuable, confidential or proprietary information," and it is therefore concluded that the redacted information is exempt from disclosure pursuant to §7-232a, G.S.

27. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the redacted information in the in camera records from the complainant.

28. Based upon the foregoing, the Commission need not consider the alternative claim that the redacted information also is a "trade secret," exempt from disclosure pursuant to §1-210(b)(5)(A), G.S.

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

1. The complaint is hereby dismissed.

Kathleen K. Ross
as Hearing Officer

FIC 2016-0544/hor/kkr/03312017