



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Torrey Townsend,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0565

Personnel Director, City of New Haven; and
City of New Haven,
Respondent(s)

May 3, 2017

Transmittal of Proposed Final Decision Dated April 28, 2017

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 dated April 28, 2017, 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 24, 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 May 12, 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 May 12, 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 May 12, 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: Torrey Townsend
Attorney Kathleen Foster

FIC# 2016-0565/Trans/wrbp/CMM/TCB/05-03-2017

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Second Report of Hearing Officer

Torrey Townsend,

Complainant

against

Docket #FIC 2016-0565

Personnel Director, City of
New Haven; and City of New Haven,

Respondents

April 28, 2017

The above-captioned matter was consolidated for purposes of hearing with Docket #FIC 2016-566, Torrey Townsend v. Personnel Director, City of New Haven; and City of New Haven, and was first scheduled to be heard as a contested case on September 20, 2016, at which time the complainant failed to appear. Attorney Kathleen K. Ross, who had been assigned as hearing officer issued a report of hearing officer, dismissing the appeal for failure to prosecute. At the October 26, 2016 Commission meeting, at which the report was considered, the complainant requested that the matter be reopened, and the Commission voted to grant the complainant's request. Thereafter, Attorney Colleen M. Murphy was designated as the hearing officer for the reopened hearing. The matter was then heard on January 9, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter to the respondent personnel director dated July 24, 2016, the complainant requested: "all scoring records for the test exam packet, the ethic(s) test and the memorization test for the 2013 New Haven firefighter test" (hereinafter "2013 firefighter exam" or "exam").
3. By letter dated August 2, 2016, the respondent personnel director advised the complainant that she could not identify what the complainant was seeking, since she had previously been provided with her own Reading Comprehension scores and score card and the results letter explaining the score for the 2013 firefighter exam. The respondent further advised the complainant that the remainder of her answers for the written exam were not scored since the complainant had not received a passing score on the Reading Comprehension section and that therefore, there were no additional scoring records to provide for any other portion of the exam. The respondent informed the complainant that she needed to clarify what she was looking for or the request would be considered denied.

4. By letter dated and filed August 5, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying her request for public records pertaining to the 2013 firefighter exam.

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

“Public 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.

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

Except 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, (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.

7. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is concluded that to the extent any records exist that are responsive to the complainant’s request, such records are public records within the meaning of §§1-205, 1-210(a), and 1-212(a), G.S.

9. It is found that the complainant has filed numerous requests for records similar to, or variations of, the request at issue in this matter, relating to the 2013 firefighter exam; and she has filed a number of complaints in connection therewith that have been disposed of by the Commission. See, Docket #FIC 2014-521, Townsend v. Director, Department of Human Resources, City of New Haven, et al., request for a copy of “test results for the position of firefighter” (then narrowed to seek the “bubble sheets” or “test answer grid”), case dismissed, following the conclusion that the bubble sheets constituted examination data used to administer...[an] examination for employment and as such are exempt under §1-210(b)(6); Docket #FIC 2015-246, Townsend v. Manager of Human Resources and Benefits, Department of Human Resources, City of New Haven et al., request for the “passing percentage” needed on the Reading Comprehension portion of the exam, case dismissed because no public record existed that reflected the “passing percentage” needed for that portion of the exam; Docket #FIC 2015-255, Townsend v. Manager of Human Resources and Benefits, Department of Human Resources,

City of New Haven, et al., request for “a copy of all my personal answer key cards” from the 2013 firefighter’s exam (“bubble sheets”), case dismissed, following the conclusion that the bubble sheets constituted examination data used to administer...[an] examination for employment and as such are exempt under §1-210(b)(6), G.S.; and Docket #FIC 2016-335, Manager, Human Resources and Benefits, Department of Human Resources, City of New Haven, et al., request for copy of all scoring records for the Reading Comprehension section of the 2013 firefighter exam, case dismissed after finding that although the respondents did not maintain the scoring for all individuals who had passed the Reading Comprehension portion of the exam, they had obtained them from the test consultant for the complainant and further that no record existed that converted the passing score on the Reading Comprehension test into a percentage of the questions answered correctly). The Commission takes administrative notice of the records and final decisions in the cases referenced above.

10. The respondents contend, and it is found, that they have provided the complainant with responsive records pertaining to the 2013 firefighter exam on numerous occasions; in addition, they have informed her, as they did following the request in this matter, that since the complainant did not receive a passing score on the Reading Comprehension part of the exam, which requirement constituted a “hurdle” that an applicant had to successfully cross in order for the remainder of the applicant’s test to be scored, no other scoring records existed.

11. It is found that neither the City nor the testing consultant maintain any additional scoring records pertaining to the complainant, relative to the 2013 firefighter exam, since the complainant did not pass the Reading Comprehension portion of the exam.

12. The tenor of the discussion among the complainant, respondents and the undersigned hearing officer throughout the hearing on this matter, was whether any additional scoring records for the 2013 firefighter exam existed for the complainant. Toward the conclusion of the hearing however, the complainant stated that she was not seeking records pertaining to her; rather she was seeking any additional scoring records for all applicants who passed the Reading Comprehension portion of the exam. She stated that she sought records that were similar to records provided to her by the respondents (after the respondents voluntarily obtained such records from the test consultant that administered the exam) regarding the Reading Comprehension segment, in connection with Docket #FIC 2016-335, Manager, Human Resources and Benefits, Department of Human Resources, City of New Haven, et al., only this time for the remaining segments of the written test.

13. Since the matter of access to the scoring records of other applicants who had passed the Reading Comprehension portion of the exam was not raised or clarified at the hearing on this matter until just before its conclusion, the issues of whether any such records exist, are maintained by the test consultant, and constitute “public records” were not fully addressed at the hearing. However, it is noted that even if the Commission were to find that such records exist, are maintained by the test consultant and constitute public records under the FOI Act, they would fall within the realm of Conn. Gen. Stat. §1-210(b)(6), G.S., which provides that disclosure is not required of “test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations” (as similarly

concluded in Docket #FIC 2014-521 and Docket #FIC 2015-255, with respect to bubble sheets and the answer grid).¹

14. The Commission notes, notwithstanding the findings in paragraphs 12 and 13 above, that the City of New Haven's web site contains an eligibility list, that consists of a composite score for the entire written and oral exam for all of the candidates who passed the Reading Comprehension portion of the 2013 firefighter exam (and who thereby made it over the hurdle), converted to a 100 point scale. In addition, the respondents provided the complainant with this list in response to previous freedom of information requests.

15. Under the facts and circumstances of this case, and having taken administrative notice of the many additional cases brought by the complainant involving requests for the same or similar records related to the 2013 firefighter exam, it is concluded that the respondents did not deny the complainant access to any records, in response to her July 24, 2016 request.

16. It is concluded therefore that the respondents did not violate the FOI Act, as alleged.

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.


Colleen M. Murphy
as Hearing Officer

FIC 2016-0565/HOR/CMM/042712017

¹ The Commission appreciates that the respondents, in the spirit of doing what was within their power to satisfy the complainant and in the hope of resolving this matter, indicated their willingness to ask the test consultant to generate a record for the complainant regarding the scores for the individuals who had passed the Reading Comprehension portion of the test and for whom the remainder of the exam was scored. If the respondents are willing to obtain such information for the complainant, the Commission lauds those efforts, which although not ordered or required, demonstrate their good faith in this case.