



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Priscilla Dickman,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2010-092

Director, Health Affairs Policy Planning, Department of  
Community Medicine and Health Care, State of  
Connecticut, University of Connecticut Health Center; and  
State of Connecticut, University of Connecticut Health  
Center,

Respondent(s)

July 18, 2012

## Transmittal of Proposed Final Decision July 12, 2012

In accordance with Section 4-179 and 4-181a of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision July 12, 2012, 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, August 8, 2012**. 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 July 27, 2012*. 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, the Commission requests that an **original and ten (10) copies** be filed *on or before July 27, 2012*. **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 **eleven (11) copies** be filed *on or before July 27, 2012*, 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: Priscilla Dickman  
Donald R. Green, Esq.

2012-07-18/FIC# 2010-092/Trans/wrbp/LFS

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FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer on  
Remand

Priscilla Dickman,

Complainant

against

Docket #FIC 2010-092

Director, Health Affairs Policy Planning,  
Department of Community Medicine and  
Health Care, State of Connecticut,  
University of Connecticut Health Center;  
and State of Connecticut, University of  
Connecticut Health Center,

Respondents

July 12, 2012

The above-captioned matter was heard as a contested case on October 7, 2010, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

On December 15, 2010, the Commission adopted the final decision in this matter. Notice of such final decision was mailed to the parties on December 22, 2010. The respondents filed an appeal of such final decision with the Superior Court on February 3, 2011.

On February 27, 2012, the Court issued its Memorandum of Decision, which affirmed the Commission's final decision as to all of the records requested by the complainant, except four records that the respondents had submitted for in camera review, IC-2010-092-44, -45, -46, and -50. The Court issued no ruling on those four records and ordered further briefing.

By order dated April 2, 2012, the Court granted the respondents' motion for remand to the FOI Commission to hear evidence regarding the attorney-client privilege exemption pertaining to IC-2010-092-44, -45, -46, and -50.

Such hearing on remand was held on July 9, 2012, 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. It is found that on February 2, 2010, the complainant made a written request to the respondents for all e-mails that referenced the complainant, sent or received by three named individuals from May 2004 through January 28, 2010.

3. It is found that on February 5, 2010 the respondents acknowledged the complainant's request; however, the complainant did not receive the letter until after February 10, 2010.

4. By letter filed on February 10, 2010, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to respond to her request, described in paragraph 2, above.

5. Section 1-200(5), G.S., in relevant part, defines "public records" as follows:

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...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:

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 inspect such records promptly during regular office or business hours or to receive a copy of such records in accordance with the provisions of 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 or certified copy of any public record."

8. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. It is found that on April 6, 2010 the respondents provided 141 pages of records, some with redactions.

10. It is found that, upon the request of the complainant in August, 2010, the respondents narrowed the redactions and disclosed more information from the 141 pages.

11. At the conclusion of the hearing in this matter, the respondents submitted an unredacted copy of the records described in paragraph 9, above, for in camera inspection, which records are hereby identified as IC-2010-092-1 through IC-2010-092-52.

12. With respect to all the records submitted for in camera review, except IC-2010-092-44, -45, -46, and -50, the Commission takes administrative notice of its final decision in this matter, dated December 15, 2010. The Commission also takes administrative notice of the Superior Court's Memorandum of Decision, dated February 27, 2012, affirming the Commission's final decision and dismissing the respondents' appeal with respect to all records submitted for in camera review, except IC-2010-092-44, -45, -46, and -50.

13. With respect to IC-2010-092-44, -45, -46, and -50, the respondents claim that §1-210(b)(10), G.S., exempts from disclosure portions of each of record, as described on the Index to In Camera Records submitted on July 9, 2012.

14. Section 1-210(b)(10), G.S., provides that mandatory disclosure is not required of "communications privileged by the attorney-client relationship...."

15. Established Connecticut law defining the attorney-client privilege governs the applicability of the exemption contained in §1-210(b)(10), G.S. Such law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id., at 149.

16. Section 52-146r(2), G.S., defines "confidential communications" as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

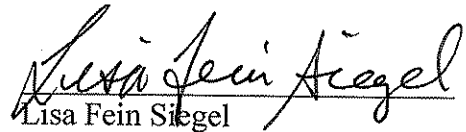
17. The Supreme Court has also stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney." Maxwell, supra at 149.

18. Upon careful examination of the records claimed to be exempt pursuant to §1-210(b)(10), G.S., it is found that such records are communications transmitted in confidence between an attorney for the respondents and employees and officials of the respondents relating to legal advice sought by the respondents' employees and officials, within the meaning of §52-146r(2), G.S.

19. It is concluded that the information redacted from IC-2010-092-44, -45, -46, and -50, as referenced in paragraph 13, above, constitutes communications privileged by the attorney-client relationship within the meaning of §1-210(b)(10), G.S. It is concluded, therefore, that such records are exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents did not violate the FOI Act by withholding such records from disclosure.

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 as to the records referenced as IC-2010-092-44, -45, -46, and -50, in the findings of fact, above.

  
Lisa Fein Siegel  
as Hearing Officer