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FREEDOM OF INFORMATION



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Ellen Murray,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-440

Human Resources Department, Town of
Stratford; and Town of Stratford,
Respondent(s)

July 18, 2012

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, 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 fourteen (14) 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 **fourteen (14) 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: Ellen Murray
Michael S. Casey, Esq.

2012-07-18/FIC# 2011-440/Trans/wrbp/TCB//LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Ellen Murray,

Complainant

against

Docket #FIC 2011-440

Human Resources Department,
Town of Stratford; and Town
of Stratford,

Respondents

July 17, 2012

The above-captioned matter was heard as a contested case on February 29, 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. By letter dated August 19, 2011 and postmarked on August 20, 2011, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with her July 22, 2011 request.
3. 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.
4. 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.

5. It is found that the respondent town was seeking to hire a fire chief and hired CBG Strategies to conduct the search.

6. It is found that by letter dated July 22, 2011, the complainant requested copies of the following records:

- a. The cover letters, resumes, CV's and the list of all relevant certifications and contact information for all four chief applicants;
- b. Copy of criteria used and any scoring, notes, or any other information used to select candidates to be contacted for additional information and interviews; and
- c. The list of candidates who had moved on in the selection process as of the date of her request.

7. It is found that, by letter dated July 28, 2011, the respondents informed the complainant that her request had been received but that the records responsive to her request were "with CBG Strategies" and that "once the selection process has been concluded and the documents returned to the Town, [she] may again request copies...."

8. It is found that on August 12, 2011 the complainant reminded the respondents of her request and requested compliance.

9. It is found that notwithstanding the respondents' July 28, 2011 response and the town's written policy stating that all applications and resumes for employment positions were to be submitted to the town, the respondents did not maintain any of the records that were submitted by the applicants for the fire chief position.

10. It is found that pursuant to the contract with CBG Strategies, all applications and resumes were submitted directly to CBG Strategies and the town only had limited access to the records during the interviews of the four finalists.

11. It is found that the complainant was provided with the resume and application of the successful candidate at the hearing on this matter.

12. However, with respect to the other records requested by the complainant, it is found that the respondents requested copies of those records from CBG Strategies but the company denied that request stating that pursuant to the contract, CBS Strategies retained all records and other materials related to the search.

13. The complainant contended at the hearing, and on brief, that by conducting the town's search for a fire chief, CBG Strategies was the functional equivalent of a public agency because while it was not created by government, it performed a governmental function, it was funded by government, and there was government involvement. The complainant further contended that because CBG Strategies was the functional equivalent of a public agency, the records that were generated during the search for the fire chief, including those requested by her, are public records and should be disclosed.

14. The complainant also argued at the hearing in this matter, that the respondents should not be able to use a private company to conduct town business and then claim that because a private company has the records, they cannot be disclosed to her. The crux of her argument was that, notwithstanding that fact that the requested records are in the custody of CBG Strategies, the town should be able, and ought, to request and obtain a copy of them.

15. 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."

16. With respect to whether CBG Strategies is deemed to be the "functional equivalent" of a public agency within the meaning of §1-200(1)(B), G. S., the Supreme Court has adopted a "functional equivalent" test to determine whether an entity is a public agency. Board of Trustees of Woodstock Academy v. FOI Commission, 181 Conn. 544, 554 (1980) ("Woodstock"). Such test consists of the following four criteria: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government.

17. Subsequently, in Connecticut Humane Society v. FOI Commission, 281 Conn. 757, 761 (1991), the Supreme Court elaborated that all four factors set forth in Woodstock are not necessary for a finding of functional equivalence, but rather that "all relevant factors are to be considered cumulatively, with no single factor being essential or conclusive."

18. With respect to the first criterion, it is found that while as a matter of policy public agencies generally conduct their own searches for executive level employment positions, an employment search is not a public program or service traditionally administered or managed by the government like fire prevention, police protection, sanitation, or public health and education. It is found that CBG Strategies only provided

a service pursuant to contract and has no power to govern, to regulate or to make decisions affecting government. It is concluded, therefore, that employment searches conducted by CBG Strategies was not a government function within the meaning of Woodstock.

19. With respect to the second criterion, it is found that CBG Strategies is a consulting company that provides a variety of services to international, non-profit and government agencies, one of which is executive level employment searches. It is found that the funds received by CBG Strategies from the town was only payment for conducting the search for the fire chief pursuant to their contract for that service. Therefore, it is concluded that CBG Strategy is not funded by government.

20. With respect to the third criterion, it is found that the respondents were not involved in the administration or management of the search nor did they direct CBG Strategies on the manner in which it was conducted. It is found that the respondents' involvement was limited to possibly providing a set of criteria for CBG Strategies' use during the employment search and participation in the interviews of the four finalists, which involvement does not constitute government involvement or regulation within the meaning of Woodstock.

21. With respect to the fourth criterion, it is found CBG Strategies was not created by government.

22. It is concluded that, based on the totality of relevant criteria, CBG Strategies is not the functional equivalent of a public agency within the meaning of §1-200(1)(B), G.S., and is not subject to the jurisdiction of the Commission.

23. With respect to the complainant's argument described in paragraph 14, above, §1-218, G. S., provides:

Each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (1) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (2) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by the public agency pursuant to the Freedom of Information Act. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with the Freedom of Information Act. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206.


24. It is found that the contract for CBG Strategies was only \$11,505.24 and that therefore it was not in excess of two million five hundred thousand dollars.

25. Consequently, it is found that the provisions in §1-218, G.S., that require certain contracts between public agencies and private companies to provide that the public agency is entitled to receive a copy of records and files is not applicable in this case.

26. Based on the facts and circumstances of this case, it is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

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.



Attorney/Tracie C. Brown
as Hearing Officer