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# FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2011-615

Director, Housing Authority, Town of Mansfield;  
and Housing Authority, Town of Mansfield,  
Respondent(s)

July 18, 2012

Transmittal of Second Proposed Final Decision dated July 16, 2012,

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 July 16, 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 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: James Findley  
Barbara S. McGrath, Esq.

2012-07-18/FIC# 2011-615/Trans/wrbp/KKR//PSP

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Second Report of  
Hearing Officer

James Findley,

Complainant

against

Docket #FIC 2011-615

Director, Housing Authority,  
Town of Mansfield, and Housing  
Authority, Town of Mansfield,

Respondents

July 16, 2012

The above-captioned matter was heard as a contested case on February 23, 2012, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

1. The respondents are public agencies, within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated October 1, 2011, the complainant requested from the respondents copies of:
  - (a) written "telephone logs" compiled by Director Rebecca Fields during the time period from January 1, 2011 through September 30, 2011; and
  - (b) Wrights Village numbered "maintenance request" tickets compiled by the MHA office during the time period from January 1, 2011 through April 30, 2011.
3. It is found that, by letter dated October 6, 2011, the respondents informed the complainant that "the documents you requested are ready for your review" and that if he required "copies of any of the documents, the cost is .50 per page."
4. It is found that, on October 12, 2011, the complainant obtained the records, described in paragraphs 2(a) and 2(b), above, from the respondents, but upon review, discovered that the respondents had redacted certain information from such records. By letter dated October 24, 2011, the complainant informed the respondents that the redactions were not acceptable to him, and again, requested unredacted copies of the records, described in paragraphs 2(a) and 2(b), above.

5. It is found that, by letter dated October 31, 2011, the respondents informed the complainant that they would provide him with an unredacted copy of the record, described in paragraph 2(b), above, but would not provide him with an unredacted copy of the record, described in paragraph 2(a), above.

6. By letter of complaint, dated November 9, 2011 and filed November 10, 2011, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the request for records described in paragraph 2(a), above.

7. It is found that the complainant received an unredacted copy of the record, described in paragraph 2(b), above, on November 21, 2011.

8. 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.

9. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

10. 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.”

11. At the hearing in this matter, the respondent director argued that the record, described in paragraph 2(a), above, is not a public record, because it is not an “official telephone log,” required to be kept by her employer, but rather, is a list of notes concerning her work that she uses daily to “jog her memory” (the list). For example, it is found that the respondent director used the list to jot down the name of a tenant of the

housing authority and that the tenant had called to report that the sink in his apartment was leaking. It is further found that the respondent director would then use that note on the list to help her remember to call a plumber for that tenant. It is found that the respondent director used a "check-mark" system to indicate when a certain task on the list had been completed. Based upon the testimony of the respondent director, it is found that all of the notes on the list pertain to her job, and that none of the notes on the list pertain to personal matters of the respondent director.

12. It is found that the record described in paragraph 2(a), above, is a public record within the meaning of §§1-200(5), 1-210(a) and 1-212(a).

13. Based upon the testimony of the respondent director, it is found that the redactions, described in paragraph 4, above, consist of the last names of individuals residing at the housing authority with whom the complainant had contact during a given day.

14. Post-hearing, counsel for the respondents, who was not present at the hearing in this matter, filed a brief on behalf of the respondents in which she characterized the list as "personal notes...that assist [the respondent director] in her day-to-day activity" and pertain to the respondent director's personal affairs, such as reminders of her own doctor, veterinarian, car appointments, etc. However, such statements by counsel regarding the nature of the notes are directly contradicted by the testimony of the respondent director, as noted in paragraph 11, above.

15. Respondents' counsel further asserted, in her brief, that the list "often include[s] confidential personal information pertaining to...[existing tenants and prospective tenants], some of whom are in tenuous and sometimes dangerous home situations." However, after careful review of the list, and, based upon the testimony of the respondent director at the hearing in this matter, it is found that counsel's statement that the list contains "confidential personal information," is without merit.

16. Next, counsel argued, in her brief, that the list, in its entirety, is exempt from disclosure pursuant to §1-210(b)(1), G.S.

17. Section 1-210, G.S., states in relevant parts:

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of:

1) Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure;

....

(e) Notwithstanding the provisions of subdivisions (1) and (16) of subsection (b) of this section, disclosure shall be required of:

(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency....

18. In Strillacci v. FOI Commission, superior court, judicial district of Hartford-New Britain at New Britain, Docket No. CV084018120, \*7 (April 20, 2009) (2009 Conn. Super. LEXIS 1046), the superior court upheld the Commission's decision that a list containing notes jotted down as a memory aide by the Chief of Police, consisting of his own thoughts, interpretations, and comments about lawsuits filed against him and the officers in his department, was a "note" within the meaning of §1-210(b)(1), G.S., but that such note was not preliminary, and therefore must be disclosed. Citing Shew v. Freedom of Information Commission, 245 Conn. 149, 165 (1998), the court explained that a document is "preliminary" if it "precedes formal and informed decision making...It is records of this preliminary, deliberative and predecisional process that we conclude the exemption was meant to encompass." In addition, as our Supreme Court has stated, a "preliminary" record is one containing "data not required or germane to the eventual purpose for which [it] was undertaken and it was therefore modified to excise the material that was irrelevant to its...purpose." Van Norstrand v. Freedom of Information Commission, 211 Conn. 339, 343 (1989).

19. In the present case, as in Strillacci, it is found that the list is a completed document used by the respondent director in the course of her public duties. The document was not expected to be modified nor did it contain information not "required or germane" to its ultimate purpose. Accordingly, it is found that the list, described in paragraph 2(a), above, is not preliminary, and therefore, is not exempt from disclosure pursuant to §1-210(b)(1), G.S.

20. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by redacting the list.

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

1. Forthwith, the respondents shall provide the complainant with an unredacted copy of the record, described in paragraph 2(a), above.

A handwritten signature in cursive script, appearing to read "Kathleen K. Ross", written over a horizontal line.

Kathleen K. Ross  
as Hearing Officer

FIC 2011-615/hor/kkr/06162012