



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2011-698

Laurie Hunt, Director, Legal Affairs Department,
Connecticut Resources Recovery Authority;
and Connecticut Resources Recovery
Authority,

Respondent(s)

July 19, 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: Michael Harrington, Esq.
Peter G. Boucher, Esq. and Daniel Krisch, Esq.

2012/07/19/FIC# 2011-698/Trans/wrbp/KKR//LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Harrington,

Complainant

against

Docket #FIC 2011-698

Laurie Hunt, Director, Legal Affairs
Department, Connecticut Resources
Recovery Authority; and Connecticut
Resources Recovery Authority;

Respondents

July 16, 2012

The above-captioned matter was heard as a contested case on June 6, 2012, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

At the hearing in this matter, the respondents moved to disqualify the law firm of Murtha Cullina from representing the initially named complainant, Tremont Public Advisors, claiming such representation violates the Rules of Professional Conduct. Such motion was denied by the hearing officer. Attorney Michael Harrington, of the law firm of Murtha Cullina, moved to correct the case caption to substitute himself as the complainant, in lieu of Tremont Public Advisors. Without objection from the respondents, the hearing officer amended the case caption to accurately reflect the identity of the complainant.

1. The respondents are public agencies, within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated November 21, 2011, the complainant requested from the respondents copies of:

(a) all communications between Tom Ritter and the CRRA staff and Board from 1/1/07 to present;

(b) all communications between Peter Boucher and the CRRA staff and Board from 1/1/09 to present;

(c) all communications between Lawrence Cafero and the CRRA staff and Board from 1/1/08 to present;

(d) all communications concerning the requests for bid for the municipal liaison contract since 1/1/06;

(e) all communications between Tom Kirk and the CRRA staff and Board concerning his sworn affidavit of 9/22/11 concerning an FOI request;

(f) copies of all bills from and payments made to Brown Rudnick (and any affiliated entity) for legal and municipal liaison services provided from 1/1/07 to present;

(g) copies of all documents and communications between the CRRA staff and Board concerning the 2011 municipal liaison RFP (including requests for an opinion from the Office of State Ethics);

(h) copies of all responses to bid for municipal liaison from 1/1/06 to the present;

(i) copies of CRRA's policies concerning procurement of legal and municipal liaison services;

(j) copies of CRRA's Board minutes regarding retention of municipal liaison services since 1/1/06;

3. It is found that, by letter dated November 22, 2011, the respondents acknowledged receipt of the request, described in paragraph 2, above, and informed the complainant that his request was being reviewed, that "it will take some additional time to accumulate the information," and that they would notify him when the "materials have been assembled and are ready to be picked up."

4. It is found that, by fax dated December 7, 2011, the complainant informed the respondents that he no longer wished to obtain copies of the requested records, but rather, would like the opportunity to inspect them "and select which documents we would like copied."

5. By letter of complaint, dated and filed December 22, 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, above. In addition, the complainant requested that the Commission impose a civil penalty against the respondents.

6. 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.

7. 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.

8. 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.”

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

10. It is found that, upon receipt of the request, described in paragraph 2, above, respondent Hunt immediately contacted her “IT” person and asked that he search for emails responsive to the requests described in paragraphs 2(a), (b) and (c), above. It is found that over 10,000 pages of records responsive to these requests were located. It is found that Attorney Hunt reviewed certain records responsive to the request, described in paragraph (2), above, and by letter dated February 7, 2012, the respondents provided to the complainant copies of records responsive to the requests described in paragraphs 2(c), 2(e), and 2(g), above (the February 7th letter). In the February 7th letter, Attorney Hunt also explained that such copies had been made prior to her receipt of the complainant’s December 7th letter, described in paragraph 4, above, and that information responsive to the requests described in paragraphs 2(g)(additional information), 2(i), and 2(j), was available on the CRRA website.

11. It is found that, by March 27, 2012, the respondents completed their review of the records responsive to the request described in paragraphs 2(d) and 2(h), and provided the complainant with the opportunity to inspect, and copy, such records.

12. It is found that, by March 27, 2012, the respondents had completed their review of the records, responsive to the request, described in paragraph 2(f), above, dated

from 1/1/07 through 6/30/09, and provided the complainant with the opportunity, at the end of March, to inspect and copy such records. It is further found that, as of the date of the hearing in this matter, the respondents had reviewed additional records, dated from 7/1/09 through 11/21/11, responsive to the request, described in paragraph 2(f), above, and determined that certain portions of such records were exempt from disclosure and would need to be redacted. It is found that such records had therefore not been provided to the complainant as of the date of the hearing.

13. It is found that Attorney Hunt began to review the emails responsive to the request, described in paragraphs 2(a), above, sometime around the end of March, 2012, but that the respondents had not, as of the date of the hearing, provided the complainant with any of those records.

14. It is found that Attorney Hunt did not review any of the records responsive to the request described in paragraph 2(b), above, because she had been told by "counsel" that such request was "on hold."

15. At the hearing in this matter, the complainant asserted that the response to his requests, described in paragraphs 2(a), 2(b) and 2(f), above, was not prompt.

16. With regard to the complainant's claim that the records described in paragraphs 2(a), 2(b) and 2(f), above, were not provided to him "promptly," the Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

17. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if

ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

18. It is found that Attorney Hunt is the director of legal services and the only “in house” attorney at CRRA. It is found that Attorney Hunt’s responsibilities at CRRA include advising the Board on various issues, coordinating the activities of outside counsel, reviewing all bid documents that go out and come into her office, supervising two individuals, including the legislative liaison, and reviewing and responding to all FOI requests. Attorney Hunt testified that she does not have staff available to her who can competently assist her with reviewing and responding to FOI requests. It is found, however, that CRRA has eight outside law firms that it contracts with to assist it with its legal matters. Attorney Hunt testified that the complainant’s FOI request is the largest, most extensive request she has received during her employment with CRRA.

19. It is found that, between December 7, 2011 and February 7, 2012, Attorney Hunt’s time was spent dealing with multiple contracts that were expiring and which required her attention, a power auction, issues with contractors, and inventory disputes. It is also found that Attorney Hunt stopped working on production of the records responsive to the request, described in paragraph 2, above, from approximately mid-February until approximately mid-March, 2012, over a dispute with the complainant over copying fees. It is further found that, due to personal reasons, Attorney Hunt was out of the office for most of the month of May, 2012.

20. Attorney Hunt testified at the hearing in this matter that she had “no idea” when she would have time to complete her response to the request described in paragraph 2, above, and therefore was unable, when asked, to provide a timetable for completion.

21. It is found that, while the respondents have made efforts to respond to the request, described in paragraph 2, above, it is found that they have not responded “quickly” and “without undue delay.” Indeed, even taking into account all of Attorney Hunt’s professional and personal circumstances during the relevant time period, it is found that the respondents have not made their response to the request one of their priorities, as required by the FOI Act.

22. Based upon the facts and circumstances of this case, it is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S., as alleged. However, the Commission declines to consider the complainant’s request to impose a civil penalty against the respondents.

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

1. The respondents shall, within 15 days of the date of the Final Decision, adopt a schedule for prompt completion of the response to the request, described in paragraph 2, above, and shall provide such schedule to the complainant.

2. Henceforth, the respondents shall strictly comply with the promptness provisions of §§1-210(a) and 1-212(a), G.S.

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

Kathleen K. Ross
as Hearing Officer

FIC 2011-689/hor/kkr/07162012