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FREEDOM OF INFORMATION



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William Robinson and the Water Pollution
Control Authority of Bridgeport,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-408

First Selectman, Town of Trumbull; Sewer
Administrator, Town of Trumbull; and Town of
Trumbull,

Respondent(s)

April 10, 2013

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, May 8, 2013**. 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 April 26, 2013**. 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 April 26, 2013**. **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 April 26, 2013**, 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: John P. Casey, Esq. and Christopher J. Hug, Esq.
Edward V. Walsh, Esq.

4/10/13/FIC# 2012-408/Trans/wrbp/LFS//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

William Robinson and the Water Pollution
Control Authority of Bridgeport,

Complainants

against

Docket #FIC 2012-408

First Selectman, Town of Trumbull; Sewer
Administrator, Town of Trumbull; and
Town of Trumbull,

Respondents

March 25, 2013

The above-captioned matter was heard as a contested case on February 21, 2013, at which time the complainants 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 June 28, 2012, the complainants requested a copy of the "electronic database of Trumbull wastewater customers of the [Water Pollution Control Authority ("WPCA")].
3. By letter filed July 23, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records they requested.
4. 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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.
5. 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 (1) inspect such records promptly during regular office or business hours, ... or (3) receive a copy of such records in accordance with section 1-212.

6. 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."

7. It is found that the respondents maintain the records requested by the complainants and it is concluded that such records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that in 1997, the WPCA and the town of Trumbull ("Trumbull") entered into an agreement by which the WPCA provided wastewater treatment services for approximately 9,600 properties in Trumbull and Trumbull paid a user charge to the WPCA. It is found that the WPCA is the only wastewater facility available for the 9,600 properties in Trumbull.

9. It is found that on May 2, 2012, the WPCA sought to terminate the agreement effective June 30, 2012, and to negotiate a new agreement in its place. It is found that Trumbull objected to WPCA's plan, and that the dispute is currently in arbitration.

10. With respect to the complainants' request for the electronic database of the Trumbull properties that use the WPCA services, the complainants seek only a list of the properties' and owners' addresses that are connected to the WPCA wastewater system. At the hearing in this matter, the complainants stated that they do not seek any other information in the database, such as billing history.

11. The respondents claim the database is exempt from disclosure pursuant to four exemptions in the FOI Act: §§1-210(b)(2), 1-210(b)(4), 1-210(b)(5)(A), and 1-217, G.S.

12. Section 1-210(b)(2), G.S., permits the exemption of "[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy[.]"

13. It is found that the requested records are not personnel, medical or similar files within the meaning of §1-210(b)(2), G.S., and it is therefore concluded that §1-210(b)(2), G.S., does not exempt such records from disclosure.

14. Section 1-210(b)(4), G.S., permits an agency to withhold from disclosure "[r]ecords pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled[.]"

15. The respondents claim the names and addresses on the database pertain to strategy and negotiations with respect to their dispute with the WPCA. In particular, the respondents assert that the WPCA seeks the database in order to bill Trumbull residents directly, instead of receiving payment from the town of Trumbull, as had been the practice under the 1997 contract. It is found that Trumbull filed an injunction with the American Arbitration Association to prohibit the WPCA from billing the Trumbull users directly.

16. The Connecticut Supreme Court has long held that “whether records are disclosable under the act does not depend in any way on the status or motive of the applicant for disclosure, because the act vindicates the public’s right to know, rather than the rights of any individual.” (Citation omitted.) Chief of Police, Hartford Police Department v. Freedom of Information Commission, 252 Conn. 377, 387 (2000).

17. The Supreme Court has stated, in City of Stamford v. Freedom of Information Commission, 241 Conn. 310, 318 (1997):

Strategy is defined as the art of devising or employing plans or stratagems. Negotiation is defined as the action or process of negotiating, and negotiate is variously defined as: to communicate or confer with another so as to arrive at the settlement of some matter; meet with another so as to arrive through discussion at some kind of agreement or compromise about something; work out or arrive at or settle upon by meetings or agreements or compromises; and to influence successfully in a desired way by discussions and agreements or compromises.”

18. It is found that Trumbull’s strategy and negotiating posture is to prevent the WPCA from being able to directly bill Trumbull users. It is found, however, that the list of names and addresses in the database is neutral information on its face and neither reveals nor pertains to Trumbull’s strategy of preventing direct billing by the WPCA from. See East Lyme Teachers Association v. Freedom of Information Commission, judicial district of Hartford – New Britain, at Hartford, Docket No. CV970571973, (June 5, 1998) *12 (school principal’s response to grievant’s statement “cannot be characterized as a negotiation for settlement or tactical purposes. It is an informational response.”); Joanne Avoletta v. Board of Education, Torrington Public Schools; Docket #FIC 2005-604 (July 26, 2006) (photos and test results for school’s HVAC systems do not pertain to strategy or negotiation with respect to pending litigation against respondent); Duane Tompkins v. Mayor, City of Groton; and City of Groton; Docket #FIC 2008-453 (June 10, 2009) (dollar amounts in accounts for legal and fire safety consultants do not pertain to strategy or negotiations with respect to pending arbitration); William Kaempffer v. Police Department, City of New Haven; and James Sorrentino; Docket #FIC 1998-372 (June 9, 1999) (personnel file of named respondent does not pertain to strategy or negotiation with respect to pending administrative action by named respondent police department against the named respondent); Kauffman and the Hartford Courant v. Chief of Police, Southington Police Department, Docket #FIC1995-059 (February 14, 1996) (discipline notices, extension of

probation, and evaluation report contained in personnel record are not statements of strategy, although it may have been party's strategy to use such records in the course of negotiations.).

Also, cf. City of Stamford v. Freedom of Information Commission, 241 Conn. 318 (investigative report pertained to strategy and negotiation where purpose of report was to determine whether municipal funds were improperly spent and, if so, to assess prospects for recovery or for settlement of litigation); Mark Sebastian v. First Selectman, Town of North Stonington; Docket #FIC 20021-058 (November 14, 2001) (portions of bills describing work performed, including names of consultants, researchers, and expert witnesses constitute records pertaining to strategy with respect to pending litigation); Terminex International Company L.P. v. Commissioner, State of Connecticut, Department of Environmental Protection; Docket #FIC 2001-213 (August 22, 2001) (affidavits about complainant's regulatory compliance history pertain to strategy in pending administrative proceeding because they reveal choices and decisions made by respondents and counsel in presentation of complainant's compliance history information).

19. It is found that the records requested by the complainants do not pertain to strategy or negotiations with respect to pending litigation, and it is concluded that §1-210(b)(4), G.S., does not exempt the records from disclosure.

20. The respondents also claim that §1-210(b)(5)(A), G.S., exempts the records from disclosure.

21. Section 1-210(b)(5)(A), G.S., provides that nothing in the FOI Act shall be construed to require disclosure of:

trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, or customer lists that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy[.]

22. The respondents claim that the database of Trumbull users of the Bridgeport WPCA is a "customer list."

23. A "customer list" is a list of buyers from a company that the company maintains in order to continue the business relationship and promote customer loyalty. <http://www.allbusiness.com/glossaries/customer-list/4965330-1.html>; <http://financial-dictionary.thefreedictionary.com/Customer+List>, accessed March 19, 2013.

24. It is found that Trumbull purchases the wastewater services of WPCA and so is a customer of the WPCA, and it is found that the Trumbull property owners that use the WPCA

are, through Trumbull, also customers of the WPCA. It is found, however, that the Trumbull users of the WPCA are property owners in and governed by Trumbull, but they are *not* customers of Trumbull. It is further found that Trumbull does not maintain the list of WPCA users in order to promote loyalty to the town's services, especially in light of the fact that the town itself is unable to provide wastewater service to such properties. It is found that the WPCA and Trumbull are not competitors with respect to wastewater service; indeed, the WPCA provides a service that the respondents are unable to provide themselves.

25. It is found that the requested records are not a customer list of the respondents.

26. It is also found that the records do not contain trade secrets within the meaning of §1-210(b)(5)(A), G.S.

27. It is concluded, therefore, that §1-210(b)(5)(A), G.S., does not exempt the requested records from disclosure.

28. Finally, the respondents claim that §1-217, G.S., prohibits disclosure of the requested records.

29. Section 1-217, G.S., provides in relevant part:

(a) No public agency may disclose, under the Freedom of Information Act, from its personnel, medical or similar files, the residential address of any of the following persons employed by such public agency:

(1) A federal court judge, federal court magistrate, judge of the Superior Court, Appellate Court or Supreme Court of the state, or family support magistrate;

(2) A sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection or a sworn law enforcement officer within the Department of Environmental Protection;

(3) An employee of the Department of Correction;

(4) An attorney-at-law who represents or has represented the state in a criminal prosecution;

(5) An attorney-at-law who is or has been employed by the Public Defender Services Division or a social worker who is employed by the Public Defender Services Division;

(6) An inspector employed by the Division of Criminal Justice;

(7) A firefighter;

(8) An employee of the Department of Children and Families;

(9) A member or employee of the Board of Pardons and Paroles;

(10) An employee of the judicial branch;

(11) An employee of the department of Mental Health and Addiction Services who provides direct care to patients; or

(12) A member or employee of the Commission on Human Rights and Opportunities.

...

(c) (1) Except as provided in subsections (a) and (d) of this section, no public agency may disclose the residential address of any person listed in subsection (a) of this section from any record described in subdivision (2) of this subsection that is requested in accordance with the provisions of said subdivision, regardless of whether such person is an employee of the public agency, provided such person has (A) submitted a written request for the nondisclosure of the person's residential address to the public agency, and (B) furnished his or her business address to the public agency.

(2) Any public agency that receives a request for a record subject to disclosure under this chapter where such request ... (B) is for an existing list that is derived from a readily accessible electronic database, shall make a reasonable effort to redact the residential address of any person who has requested that his or her address be kept confidential under subdivision (1) of this subsection prior to the release of such list ...

30. It is concluded that §1-217, G.S., prohibits the disclosure of the residential addresses of certain government employees from a readily accessible electronic database only where the protected employee has submitted a written request for nondisclosure to the public agency *and* has provided his or her business address to the public agency.

31. It is found that the electronic database requested by the complainants contains a list of properties and their owners. It is found that the respondents provided no evidence as to which of the properties are residences, and of those, which are the residences of any person protected by §1-217(a), G.S. Moreover, it is found that the respondents provided no evidence that any protected person submitted to the respondents a written request for nondisclosure and provided his or her business address.

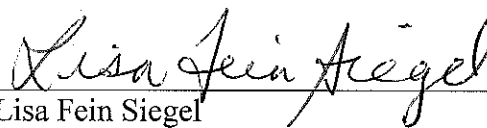
32. It is concluded, therefore, that §1-217, G.S., does not prohibit disclosure of the requested records.

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 complainants with a copy of the electronic database described in paragraph 2 in the findings of fact. The respondents may redact from such records all information except the address of each property and the name and address of each property's owner.

2. The respondents may also redact the *residential* address of any property owner who has satisfied the requirements of §1-217, G.S., i.e., who has submitted a written request for nondisclosure to the respondents and provided his or her business address.

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


Lisa Fein Siegel
as Hearing Officer