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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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Kevin Rennie,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-718

Executive Director, State of Connecticut, Office  
of Legislative Management; and State of  
Connecticut, Office of Legislative Management,  
Respondent(s)

July 19, 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, August 14, 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 August 2, 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE August 2, 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 August 2, 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: Steven L. Seligman, Esq.  
George J. Kelly, Jr., Esq.

7/19/13/FIC# 2012-718/Trans/wrbp/LFS//KKR

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Kevin Rennie,

Complainant

against

Docket #FIC 2012-718

Executive Director, State of Connecticut,  
Office of Legislative Management; and  
State of Connecticut, Office of Legislative  
Management,

Respondents

July 12, 2013

The above-captioned matter was heard as a contested case on July 3, 2013, 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. On December 5, 2012, the complainant requested a copy of "all subpoenas and requests for information served on the [respondent] Office of Legislative Management ('OLM') by federal officials since September 1, 2012."
3. On December 11, 2012, the respondent executive director confirmed receipt of the complainant's request and promised to "be in touch with [the complainant] when I have more information."
4. By letter filed December 27, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the copies of records he requested.
5. 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.

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 ... (3) receive a copy of such records in accordance with 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, facsimile, electronic 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 October 17, 2012 and November 14, 2012, the Federal Bureau of Investigation ("FBI") served a federal grand jury subpoena on the respondent executive director as the custodian of records for OLM.

10. It is found that identical letters (except for relevant dates) accompanied each subpoena, in which an Assistant U.S. Attorney stated:

This subpoena has been issued as part of a federal grand jury investigation into the possible commission of a felony. We ask that you do not disclose, directly or indirectly, the fact that you have received this subpoena or your response to it. Although you are not required to comply with this request, disclosure may interfere with the investigation.

11. It is found that on December 19, 2012, the Assistant U.S. Attorney who wrote the letters described in paragraph 10, above, wrote to the respondents' attorney, apparently in response to the attorney's inquiry about disclosure of the subpoenas. In the letter, the federal prosecutor reiterated his "request" that the respondents not disclose the subpoenas, "[a]lthough the State of Connecticut must make its own determination as to whether the requested information must be disclosed under the State's FOIA statute." The letter concluded, "As you know, the [respondents are] not required to comply with this Office's request."

12. It is found that the respondents chose not to disclose the subpoenas at that time.

13. It is found that on February 26, 2013, the Speaker of the House of Representatives of the State of Connecticut wrote to the U.S. Attorney for the State of Connecticut, in which he noted that the legislature had received several requests under the FOI Act for copies of all subpoenas and requests for information. The Speaker requested the U.S. Attorney's advice

whether “public disclosure of these documents would be prejudicial to the investigation referenced in your letters of October 17 and November 14, 2012.”

14. It is found that on March 14, 2013, the Assistant U.S. Attorney who authored the previous letters wrote again to the attorney for the respondents, in reply to the Speaker’s letter of February 26, 2013. It is found that the Assistant U.S. Attorney advised:

As a witness, the [respondent OLM] was not required to comply with our request. At this time, it now appears unlikely that disclosure of copies of the subpoenas themselves would interfere with this Office’s investigation... As has always been the case, [OLM] is not required to comply with this Office’s request.”<sup>1</sup>

15. It is found that on March 15, 2013, the respondent executive director of OLM provided copies of the two subpoenas to the complainant.

16. Although no one gave oral testimony for the respondents at the hearing in this matter, it is found, based on a reasonable inference, that the respondents chose not to comply with the FOI Act until the Assistant U.S. Attorney gave his approval.

17. It is found that while the Assistant U.S. Attorney stated his preference that the respondents not disclose anything about the subpoenas, he took great pains to emphasize that the respondents were not required to keep the subpoenas secret, and that the decision must be made under Connecticut law.

18. It is concluded that the issue of whether copies of federal grand jury subpoenas must be disclosed pursuant to the FOI Act was decided in the affirmative in a 2010 Superior Court case, Division of Criminal Justice, et al v. FOI Commission, et al, Superior Court, judicial district of New Britain, Docket #CV094020325S (February 25, 2010, Cohn, J.).

19. With respect to federal prosecutor’s assertion that disclosure of the subpoena “may tend” to interfere with an ongoing criminal investigation, §1-210(b)(3), G.S., provides in relevant part:

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

(3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the

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<sup>1</sup> The federal prosecutor also addressed disclosure of materials that were produced in response to the subpoenas, advising that while the Office renewed its request that no such disclosure be made, the Office also acknowledged that the respondents, as witnesses in the grand jury investigation, were not required to comply with the Office’s request for secrecy as to either the subpoenas themselves or the records produced in response to such subpoenas.

disclosure of ... (C) information to be used in a prospective law enforcement action if prejudicial to such action ...

20. Connecticut law has long settled that “[t]he burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested.” New Haven v. FOI Commission, 205 Conn. 767, 775 (1987).

21. It is found that the federal prosecutor’s cautions that disclosure “may tend to interfere” with an investigation were couched in the most generalized and conclusory terms in what appears to be “boilerplate” language about harm to an ongoing investigation.

22. It is found that the respondents failed to provide any evidence of prejudice to a prospective law enforcement action other than the prosecutor’s cursory letters requesting secrecy.

23. It is found that the respondents failed to prove that §1-210(b)(3), G.S., exempted the subpoenas from mandatory disclosure during the four months between the complainant’s request and his receipt of the subpoenas.

24. It is found that the respondents failed to provide the records in a prompt manner.

25. Accordingly, it is concluded that the respondents violated the promptness requirement of §§1-210(a) and 1-212(a), G.S.

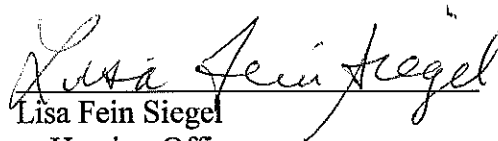
26. At the hearing in this matter the complainant requested the imposition of sanctions against the respondents. Section 1-206(b)(2), G.S., provides, in relevant part:

...upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

27. The Commission in its discretion declines to impose a civil penalty in this matter. The Commission notes that the respondents did provide the complainant with the records he requested, albeit not promptly.

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

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

  
Lisa Fein Siegel  
as Hearing Officer

FIC2012-718/HOR/LFS/07122013