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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Eugene Driscoll and the  
Valley Independent Sentinel,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-050

Board of Alderman, Town of Derby; and Town  
of Derby,

Respondent(s)

August 14, 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, September 11, 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 30, 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 30, 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 30, 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: Eugene Driscoll  
Joseph J. Coppola, Esq.

8/14/13/FIC# 2013-050/Trans/wrbp/VRP//TCB

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report Of Hearing Officer

Eugene Driscoll and the  
Valley Independent Sentinel,

Complainants

against

Docket #FIC 2013-050

Board of Aldermen,  
Town of Derby; and  
Town of Derby,

Respondents

July 8, 2013

The above-captioned matter was heard as a contested case on July 1, 2013, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The respondents submitted the record at issue in this case for an in camera inspection.

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 of complaint filed February 4, 2013, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their request for a certain report prepared by the Derby Corporation Counsel.
3. It is found that the complainant made a January 30, 2013 request for "[t]he 'report regarding tax office matter,' as listed on the agenda of the Jan. 24, 2013 meeting of the Derby Board of Aldermen."
4. It is found that the respondents, through counsel, denied the request by letter dated February 2, 2013, claiming that the requested report was exempt from disclosure pursuant to §1-210(b)(1), G.S., as a communication privileged by the attorney-client relationship.
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, 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.

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 (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.

7. Section 1-212(a) 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.”

8. It is concluded that the requested report is a public record within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. It is found that the requested report concerns an investigation, conducted by Corporation Counsel, of the mishandling of cash, deletion of data regarding cash payments, and suspension of tax billing statements in the Tax Collector's office by an employee who was ultimately separated from her employment.

10. It is found that the requested report relates to legal advice by the Corporation Counsel to the respondents as to how to resolve issues surrounding the mishandling of cash in the Tax Collector's office, including whether to file a complaint with the police department, and how resolve issues surrounding the employment rights of the employee accused of misconduct. It is further found that the respondents found just cause to terminate the employee, and that the employee ultimately agreed to voluntarily resign, reimburse the town \$9,000, and waive any claims against the town.

11. The respondents contend that the requested report is exempt from disclosure under §1-210(b)(10), G.S., as “communications privileged by the attorney-client relationship.”

12. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. Maxwell v. FOI Commission, 260 Conn. 143 (2002). In Maxwell, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” Id. at 149.

13. Section 52-146r(2), G.S., defines “confidential communications” as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

14. The Supreme Court has also stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, supra at 149.

15. It is found that the requested report relates to legal advice sought by the respondents concerning the terminated employee, and that it was transmitted in confidence between public officials or employees of a public agency and corporation counsel.

16. The complainant contends that the privilege was waived, based upon a newspaper report of a statement made by an administrator in the Derby Mayor’s office that disclosure of the report “would have given people a blueprint of how to go about manipulating data.”

17. It is found, however, that the single statement by the administrator in the Mayor’s office is not enough evidence from which to draw an inference that the administrator had personal knowledge of the report, or that if the report was in fact disclosed to her as an administrator in the Mayor’s office, that the privilege between the respondents and their Corporation Counsel was breached and thereby waived.

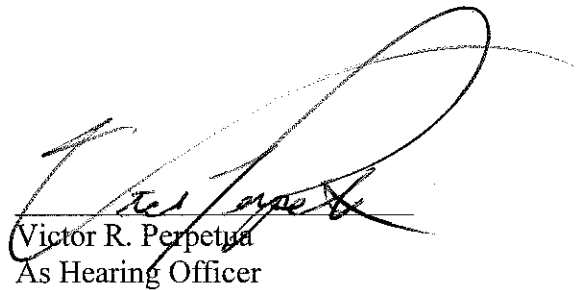
18. While the report concerns principally factual matters investigated by Corporation Counsel, and is not purely a legal opinion, it nonetheless relates to legal advice concerning the disposition of the issues raised by the employee misconduct, and is squarely within the scope of the privilege as defined in Shew v. Freedom of Information Commission, 245 Conn. 149 (1998) (records created by attorney as part of an

investigation that resulted in the termination of town employee are privileged where information communicated to the attorney by other town employees was needed to supply a basis for legal advice concerning compliance with legalities involved in the possible termination of the town employee).

19. It is therefore concluded that the withheld report is exempt from mandatory disclosure by virtue of §1-210(b)(10), G.S., and that the respondents did not violate the FOI Act as alleged.

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

1. The complaint is dismissed.



Victor R. Perpetua  
As Hearing Officer