

Since 1975



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

Geoffrey Woods,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-339

Commissioner, State of Connecticut,
Department of Administrative Services,
Construction Services; and State of
Connecticut, Department of Administrative
Services, Construction Services,
Respondent(s)

February 4, 2014

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, February 26, 2014**. 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 February 11, 2014**. 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 February 11, 2014**. **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 February 11, 2014**, 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: Geoffrey Woods
Devin Kopetz, Esq.

2014-02-04/FIC# 2013-339/Trans/wrbp/TCB//TAH

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Geoffrey Woods,

Complainant

against

Docket #FIC 2013-339

Commissioner, State of Connecticut,
Department of Administrative Services,
Construction Services; and State of
Connecticut, Department of Administrative
Services, Construction Services,

Respondents

February 4, 2014

The above-captioned matter was heard as a contested case on October 16, 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. It is found that by e-mail dated March 26, 2013 and again on April 25, 2013, the complainant requested that the respondents provided him with five specified categories of records.
3. By letter dated June 4, 2013, and received on June 6, 2013, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with all records responsive to his request.
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, 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.

5. 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.

6. 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. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy.”

7. It is found that the requested 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 on or about May 6, 2013 the respondents provided the complainant with 966 records responsive records of which the complainant only retained 42 and sent the rest back to the respondents.

9. It is found that while there was some disagreement about whether one category of records was provided on May 6, 2013, at the time of the hearing on this matter, the complainant was able to confirm that he had been provided with the records that fell within the scope of that portion of his request.

10. It is found, however, that the respondents withheld some of the responsive records from disclosure claiming they were exempt pursuant to §1-210(b)(1), G.S., as preliminary drafts or notes, and/or §1-210(b)(10), G.S., as attorney-client privileged communications.

11. At the hearing on this matter, the respondents submitted an unredacted copy of the records described in paragraph 10, above, to the Commission for an in camera inspection (hereinafter the “in camera records”). Such in camera records shall be identified as follows:

IC-2013-339-A
IC-2013-339-B-1
IC-2013-339-B-2
IC-2013-339-B-3
IC-2013-339-C-1

IC-2013-339-C-2
IC-2013-339-C-3
IC-2013-339-D-1
IC-2013-339-D-2
IC-2013-339-D-3
IC-2013-339-E-1
IC-2013-339-E-2
IC-2013-339-F-1
IC-2013-339-F-2
IC-2013-339-F-3
IC-2013-339-F-4

12. With respect to the respondents' claim that some of the records are exempt from disclosure pursuant to §1-210(b)(1), G.S., that statute provides in relevant part that nothing in the FOI Act shall the 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;

13. Section 1-210(e), G.S., provides that:

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....

14. The respondents specifically claim that the following are exempt from disclosure pursuant to §1-210(b)(1), G.S.:

IC-2013-339-A in its entirety;
IC-2013-339-B2 in its entirety;
IC-2013-339-B3 in its entirety;
IC-2013-339-C2 page 1 lines 1-30;
IC-2013-339-D1 pages 1 - 2;
IC-2013-339-D2 pages 1 and 2 line 37;
IC-2013-339-D3 pages 1-2;
IC-2013-339-E1 page 1;
IC-2013-339-E2 page 1 lines 1-29;
IC-2013-339-F2 page 1 and 2 line 4; and

IC-2013-339-F3 in its entirety.

15. Upon careful examination of the records described in paragraph 13, above, it is found that those records are preliminary drafts prepared by staff subject to revision prior to submission to or discussion among officials of the respondent Department of Administrative Services, Construction Services with decision-making authority, within the meaning of §1-210(e)(1), G.S., and are exempt from mandatory disclosure.

16. It is found that the respondents determined that the public interest in withholding the records described in paragraph 13, above, clearly outweighed the public interest in disclosure.

17. With respect to the respondents claim that some of the records are exempt from disclosure pursuant to §1-210(b)(10), G.S., that statute provides in relevant part that nothing in the FOI Act shall require the disclosure of:

Records, tax returns, reports and statements exempted by federal law or the general statutes or communications privileged by the attorney-client relationship, marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or any other privilege established by the common law or the general statutes, including any such records, tax returns, reports or communications that were created or made prior to the establishment of the applicable privilege under the common law or the general statutes....

18. Established Connecticut law defining the attorney-client privilege governs the applicability of the exemption contained in §1-210(b)(10), G.S. Such law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, 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. 32.

19. 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....

20. 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.

21. The respondents specifically claim that the following are exempt from disclosure pursuant to §1-210(b)(10), G.S.:

IC-2013-339-B-1;
IC-2013-339-C1 page 1 lines 1-21;
IC-2013-339-C3;
IC-2013-339-F1; and
IC-2013-339-F4.

22. It is found that the requested records relate to the respondents seeking and receiving legal advice.

23. It is also found that the communications between the respondents and their attorney were transmitted in confidence and relate to legal advice sought by the respondents, acting in the performance of their duties, from their attorney.

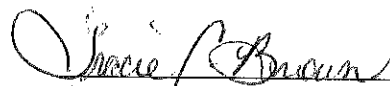
24. Upon careful examination of the records identified in paragraph 20, above, it is found that they are either communications transmitted in confidence between attorneys for the respondents and employees and officials of the respondent DAS relating to legal advice sought by DAS employees and officials, or are records prepared by DAS attorneys in furtherance of the rendition of such legal advice, within the meaning of §52-146r(2), G.S.

25. Consequently, it is found that the in camera records identified in paragraph 20, above, are permissibly exempt from disclosure under the FOI Act.

26. Based on the findings in paragraphs 15 and 24, it is concluded that the respondents did not violate the FOI Act by withholding the in camera records.

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

1. The complaint is hereby dismissed.



Attorney Tracie C. Brown
as Hearing Officer