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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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David Godbout,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-203

Commissioner, State of Connecticut, Department  
of Emergency Services and Public Protection; and  
State of Connecticut, Department of Emergency  
Services and Public Protection,  
Respondent(s)

March 13, 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, March 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 March 21, 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 March 21, 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 March 21, 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: David Godbout  
Commissioner, State of Connecticut, Department of Emergency Services and Public Protection;  
and State of Connecticut, Department of Emergency Services and Public Protection

3/13/14/FIC# 2013-203/Trans/wrbp/TCB//CAL

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

David Godbout,

Complainant

against

Docket #FIC 2013-203

Commissioner, State of Connecticut,  
Department of Emergency Services  
and Public Protection; and State of  
Connecticut, Department of Emergency  
Services and Public Protection,

Respondents

March 13, 2014

The above-captioned matter was heard as a contested case on March 10, 2014, 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 letter dated June 12, 2012, the complainant made a request to the Town of Weston for certain records (hereinafter "June 12, 2012 request"). It is found that the records were submitted to the respondent commissioner for review pursuant to §1-210(d), G.S., which provides in relevant part that:

Whenever a public agency, except the Judicial Department or Legislative Department, receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection, as applicable, of such request, in the manner prescribed by such commissioner, before

complying with the request as required by the Freedom of Information Act and for information related to a water company, as defined in section 25-32a, the public agency shall promptly notify the water company before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency or after consultation with the chief executive officer of the applicable water company for information related to a water company, as defined in section 25-32a, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person.

3. It is found that in a letter dated January 9, 2013, to Attorney Patricia Sullivan, Town Attorney for the Town of Weston, the respondent Commissioner concluded that there were reasonable grounds to believe that disclosure of some of the records requested in the complainant's June 12, 2012 request may result in a safety risk. It is found that the letter also made reference to a meeting between a member of the respondent commissioner's legal staff and Attorney Sullivan.

4. Thereafter, by letter dated March 6, 2013, the complainant made a request to the respondents as follows:

a. "Review of all the records in respect to Weston and any records related to a review under CGS Sec. 1-210(d) in respect to DESPP...records would include but are not exclusive to...:

records relating to or regarding any meeting(s) being planned, cancelled, occurred, etc.[:]

[t]elephone records that memorialize any activity[:]

[w]ritten or electronic records relating to the subject matter[:]

[a]nd any other records."

and

b. "Records relating to the printer that was used to create the directive letter that was signed by the

commissioner. This would include, but not exclusive to: invoices for the device, warranty cards for the device, manuals for the device, etc.” or in the alternative the “make, model, serial #, [and] date of manufacture.”

5. By letter dated April 4, 2013, and filed on April 5, 2013, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (FOI) Act by only partially complying with his March 6, 2013 records request.

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 1-206(a), G.S., provides in relevant part that:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

8. 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, (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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

9. 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.”

10. It is found that the requested records, to the extent they exist, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

11. With respect to the complainant’s request described in paragraphs 2a, above, it is found that the respondents provided him with e-mail correspondence which records are, and the complainant accepted as, responsive to his request.

12. It is found that there are no other records responsive to the complainant’s request described in paragraph 2a, above.

13. However, at the hearing on this matter, the complainant contended that he should have also been provided with any of the respondent department’s telephone bills that reflect the telephone calls made to arrange the meeting referenced in the January 9, 2013, described in paragraph 3, above.

14. It is found that the complainant specifically requested “...telephone records that memorialize any activity...” which request, even in the context of the rest of his March 6, 2013, letter is unclear.

15. Nonetheless, it is found that a reasonable reading of that portion of the complainant’s request is that he is asking for any voicemail recordings related to respondent commissioner’s review of the records responsive to his June 12, 2012, request.

16. However, §1-213(b)(3), G.S., provides that “nothing in the FOI Act shall be deemed in any manner to require any public agency to transcribe the content of any voice mail message and retain such record for any period of time.”

17. It is also found that respondent department's telephone bills are not within the scope of a reasonable reading of the complainant's request.

18. With respect to the complainant's request described in paragraph 2b, above, it is found that the respondents complied, however, the complainant contended at the hearing on this matter that their compliance was not prompt and thereby in violation of the FOI Act.

19. 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.

20. 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.

21. It is found that the respondents provided the complainant with the requested information on the printer in an e-mail which stated the following:

“David, I just realized that you did not get the info you requested on the printer used to create the directive letter in the Weston matter. I think this is the same info that has been provided to you in connection with other requests....”

22. At the hearing on this matter, the complainant contended that the respondents deliberately delayed providing the requested information for the printers to preclude him from having it in time for certain proceedings.

23. It is found that there is no evidence in the administrative record of this case that the respondents were informed of the time by which the complainant needed the requested records.

24. It is also found that the respondents have previously provided the same or similar information to the complainant and believed that he already had the information he requested in paragraph 2b, above, pursuant to another request.


25. Consequently, it is found that the respondents did not unduly delay providing the complainant with the information requested in paragraph 2b, above.

26. Based on all the facts and circumstances in this case, it is concluded that the respondents did not violate any of the disclosure provisions of §§1-210(a) or 1-212(a), G.S., with respect to any portion of his March 6, 2013 request.

27. At the hearing on this matter, the complainant requested that a civil penalty be imposed against the respondent commissioner. Such request will not be considered.

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.

  
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Attorney Tracie C. Brown  
as Hearing Officer