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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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Bradshaw Smith,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-184

Stephen Mitchell, Chairman, Greater Hartford
Transit District; and Greater Hartford Transit
District,

Respondent(s)

September 24, 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, October 8, 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 September 30, 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 September 30, 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 September 30, 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: Bradshaw Smith
Stephen Mitchell, Chairman, Greater Hartford Transit District
Greater Hartford Transit District

2014-09-24/FIC# 2014-184/Trans/wrbp/KKR/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Bradshaw Smith,

Complainant

against

Docket #FIC 2014-184

Stephen Mitchell, Chairman,
Greater Hartford Transit District; and
Greater Hartford Transit District,

Respondents

September 24, 2014

The above-captioned matter was heard as a contested case on September 16, 2014, at which time the complainant and the respondents appeared 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 and emailed on Thursday, March 20, 2014, the complainant requested from the respondents a copy of all documents “distributed, generated or used” during “an executive session [held on February 12, 2014] to review the performance and compensation of the executive director and...staff.”
3. By letter of complaint dated, March 26, 2014, but not filed until April 2, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to promptly comply with the request described in paragraph 2, above.
4. It is found that, on March 27, 2014, the respondents hand-delivered the records responsive to the request, described in paragraph 2, above, to the complainant.
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.”

7. It is found that the records described in paragraph 2, above, are public records within the meaning of §§1-210(a) and 1-212(a), G.S.

8. At the hearing in this matter, the complainant argued only that the respondents did not promptly provide him with a copy of the requested records because they failed to do so “within four business days” of his request.¹

9. It is well settled that the law does not require “immediate” access to records upon demand, but rather, permits a person the right to receive a copy of or inspect public records “promptly.” 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.

10. Moreover, and as a corollary to the foregoing, it is well settled that the law does not require a public agency to provide a copy, or to allow inspection of, public records “within four business days” of the request.

Rather, §1-206, G.S. . . . simply provides a requester with the ability to file an appeal in the event an agency fails to respond to the request. After four business days have elapsed, if no response is received from an agency, then such non-response is deemed a denial for purposes of triggering the requester’s right to file an appeal without having to wait indefinitely for a response that may never be forthcoming.

¹ This “four business day” reference is contained in §1-206(a), G.S., which provides: “[a]ny 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. . . . 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.”

Burton M. Weinstein v. Assistant Attorney General, State of Connecticut, Office of the Attorney General, et al., Docket #FIC 1999-494 (May 10, 2000); see e.g., Karen Osbrey and WINY Radio v. Board of Education, Putnam Public Schools, Docket #FIC 2008-536 (February 11, 2009).

11. It is found that only one staff member of the respondent Greater Hartford Transit District, Ms. Shotland, is responsible for responding to FOI requests. It is further found that Ms. Shotland did not see the complainant's request on Thursday, March 20th, the day it was emailed to the respondent Mitchell, and that she was out of the office on business the next day, Friday, March 21st. It is found that Ms. Shotland first saw the complainant's request on Monday, March 24th and immediately began to gather the records responsive to such request. It is found that, on Thursday, March 27th, such records were hand-delivered to the complainant.

12. It is found that, taking into consideration all the facts and circumstances of this case, there was no "undue delay" on the part of the respondents in responding to the complainant's request. Accordingly, it is found that the respondents provided the requested records promptly.

13. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

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.



Kathleen K. Ross
As Hearing Officer