

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT  
18-20 Trinity Street Hartford, CT 06106  
Telephone: (860) 566-5682  
Toll-free (CT only): (866) 374-3617  
Fax: (860) 566-6474

Susan Kniep,

Complainant(s)

against

Notice of Meeting

Docket #FIC 2015-101

Executive Director, East Hartford Housing Authority,  
Town of East Hartford; and Housing Authority, Town of  
East Hartford,

Respondent(s)

December 22, 2015

Transmittal of Proposed Final Decision Dated December 22, 2015

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 dated December 22, 2015 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, January 13, 2016**. 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 December 30, 2015*. 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, the Commission requests that an **original and fourteen (14) copies** be filed *on or before December 30, 2015*. **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 **fifteen (15) copies** be filed *on or before December 30, 2015*, 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: Susan Kniep  
Ralph J. Alexander, Esq.

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Susan Kniep,

Complainant

against

Docket #FIC 2015-101

Executive Director, East Hartford  
Housing Authority, Town of East  
Hartford; and Housing Authority, Town  
of East Hartford,

Respondents

December <sup>22</sup>17, 2014

The above-captioned matter was scheduled to be heard as a contested case on July 15, 2015 at 1:00 p.m., at which time the respondents appeared with two witnesses and counsel, but the complainant failed to appear to prosecute this case. In a Report of Hearing Officer dated July 17, 2015, the hearing officer recommended that this complaint be dismissed for failure to prosecute. At its regular meeting of October 14, 2015, the complainant requested that this matter be reopened and scheduled again for a contested hearing. The Commission granted the complainant's request and reopened this matter.

This matter was then heard as a contested case on December 2, 2015 at 1:00 p.m., 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 the respondents conducted a regular meeting on January 21, 2015.
3. It is found that, on February 3, 2015, the complainant made a written request to the respondents to inspect and/or to receive copies of certain records related to the sale of a particular piece of property known as "King Court."
4. By e-mail filed on February 9, 2015, the complainant appealed to this Commission, alleging that the respondents failed to provide copies of certain records referenced in paragraph

3, above, and failed to post and make available to the public their meeting agenda and minutes for the January 21, 2015 regular meeting in a timely manner in violation of the Freedom of Information Act.

5. At the hearing in this matter, the complainant indicated that the only records at issue in this appeal were the following:

- (a) Check received and/or any other documentation which will confirm the date the money for the purchase of King Court was paid, the amount paid, who issued the check, to whom the check was issued, and who is currently in possession of the money;
- (b) Any agreements or communications, which Goodwin College and/or their representatives have with EHHA and/or East Hartford Affordable Homes Now, which would lend insight into any relationship established among you regarding King Court under its new owners; and
- (c) Any and all communications to and from the Attorney General's office, Attorney Alexander or anyone else regarding the payment for the purchase of King Court and the status of that payment.

6. Section 1-200(5), G.S., defines "public records or files" as:

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 1-210(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.

8. 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."

9. It is found that, to the extent that the records identified in paragraph 5, above, exist and are maintained by the respondents, such records are public records within the meaning of §§ 1-200(5) and 1-210(a), G.S., and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

10. It is found that on February 10, 2015, the respondents provided some responsive records in response to the request described in paragraph 5, above, asked for clarification with respect to the request described in paragraph 5(a), above and asserted that they did not maintain any responsive records as described in paragraph 5(b) and (c) in their possession.

11. It is further found that on February 27, 2015, the respondents provided copies of checks dated February 20, 2015 received from Attorney Ralph J. Alexander's IOLTA account, which checks represented the proceeds in the King Court sale. It is further found that the respondents hired Attorney Alexander to provide certain representation, including representation with respect to the sale of King Court.

12. At the hearing in this matter, the complainant contended that she has not been provided with all responsive records as described in paragraph 5, above, including certain responsive records that she claims are in the possession of Attorney Alexander.

13. The respondents' assert that all responsive records *in their possession* at the time of the complainant's request were provided to the complainant.

14. It is found that the respondents provided all responsive records as described in paragraph 5, above, that they maintain and in their possession to the complainant. However, it is further found that certain responsive records created and/or prepared in conjunction with the King Court sale exist, which records are in the possession of Attorney Alexander.

15. Respondents' counsel asserted that because he is a private attorney, that any records that are responsive to the request describe in paragraph 5, above, which are maintained by his firm are not subject to mandatory disclosure under the Freedom of Information Act.

16. This Commission has consistently held that public agencies cannot avoid disclosure of certain public records merely by avoiding physical possession of such records. First Selectmen, Town of Columbia v. State of Connecticut, Freedom of Information Commission and John M. Leahy, Docket No. CV 00-06501055, judicial district of New Britain, (November 28, 2000, Owens, J.)("a restrictive reading of the term 'public records' as defined by statute would simply allow municipalities to circumvent their statutory obligations relating to disclosure of 'public records' by simply delivering the records to their attorney. This cannot be countenanced"); Briggs v. Rolfe W. Wenner, Superintendent of Schools, Amity Regional School District No. 5, Docket No. FIC 2002-075 (July 10, 2002)(public agency was entitled to take possession of report that was maintained by its attorneys, which report was prepared for the benefit of public agency and paid for by such public agency and constituted a public record within the meaning of §1-200(5), G.S.); Eileen Miller v. Superintendent of Schools, Amity Regional School District No. 5, Docket No. FIC 2001-467 (August 14, 2002); George A. Athanson v. City and Town of Hartford and Assistant Corporation Counsel of the City and Town

of Hartford, Docket No. FIC 1978-071 (June 14, 1978). More precisely, in certain circumstances, public records are “maintained” by a public agency even if the public agency is not in immediate possession of such records by virtue of a third party hired to act in conjunction with the creation and/or preparation of those public records.

17. It is found that responsive records created and/or prepared in conjunction with the sale of King Court are owned by the respondents, even though such records are in the possession of Attorney Alexander, the attorney hired to represent them in the sale of King Court.

18. In the absence of any evidence to the contrary, it is also found that the respondents have the right to obtain possession of such records from Attorney Alexander.

19. Consequently, it is concluded that records prepared and/or created in conjunction with the sale of King Court are public records within the meaning of §§1-200(5) and 1-210(a), G.S., and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

20. It is concluded that respondents violated §§1-210(a) and 1-212(a), G.S. by failing to provide the complainant with all requested records, including responsive records that are in the possession of Attorney Alexander.<sup>1</sup>

21. With respect to the complainant’s claim that the respondents failed to post and make available to the public their meeting agenda and minutes for the January 21, 2015 regular meeting in accordance with the timelines set forth in the Freedom of Information Act, §1-225(c), G.S., provides, in relevant part, that:

The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business, and (2) in the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitown district or agency. For any such public agency of the state, such agenda shall be posted on the public agency’s and the Secretary of the State’s web sites.

22. Section 1-225(a), G.S., provides in relevant part that:

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<sup>1</sup>Despite Attorney Alexander’s contention that any records in his possession would be subject to a blanket attorney-client exemption in accordance with §1-210(b)(10), G.S., it is found that respondents provided no evidence to indicate that such records were in fact subject to such exemption. “The 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.” (Citations omitted.) *New Haven v. FOI Commission*, 205 Conn. 767, 776 (1988).

The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet website. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

23. It is found that while the respondents' had some technical issues that delayed the posting of the agenda and the minutes for the January 21, 2015 meeting, there is no requirement under the Freedom of Information act that a public agency of a political subdivision of the state post such agenda and minutes of a regular meeting on its Internet website.

24. It is found that the agenda for the January 21, 2015 meeting was made available on January 20, 2015 in accordance with the Freedom of Information Act. However, it is further found that the minutes for the January 21, 2015 meeting were not made available until February 4, 2015, which delay was caused, in part, by limited staffing due to inclement weather.

25. Despite the respondents' stated reasons for delay, it is concluded that the respondents violated §1-225(a), G.S., when they failed to make available to the public the minutes of their January 21, 2015 meeting within the time period set forth in the Freedom of Information Act.

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

1. The respondents shall coordinate with Attorney Alexander to obtain copies of all records that are responsive to the complainant's request as described in paragraph 5 of the findings, above, that are in his possession. Any records not claimed to be exempt by the respondents shall be provided to the complainant, free of charge within thirty (30) days of the Notice of Final Decision in this matter. If the respondents claim exemptions for any of the responsive records obtained from Attorney Alexander, they shall provide a privilege log identifying each of the records claimed to be exempt and the legal basis for each claimed exemption to the complainant. If the respondents fail to comply with the timeline set forth in this order, or the complainant takes issue with any of the claimed exemptions, the complainant may file an appeal with the Commission.

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

3. Henceforth, the respondents shall strictly comply with the requirements of §1-

225(a), G.S., by ensuring that their meeting minutes are available for timely public inspection.

A handwritten signature in black ink, appearing to read "Matthew Streeter", with a stylized flourish at the end.

Commissioner Matthew Streeter  
as Hearing Officer

FIC2015-101/MS/VB/12172015