FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by FINAL DECISION

Alex Wood, Doreen Guarino, Will Healey and the Manchester Journal Inquirer,

Complainant

against Docket #FIC 2016-0738

Town Manager, Town of Enfield; and Town of Enfield

Respondents September 13, 2017

The above-captioned matter was heard as a contested case on February 15, 2017, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the above-captioned case was consolidated with Docket #FIC2016-0863, Alex Wood, Doreen Guarino, Will Healey and the Manchester Journal Inquirer v. Town Manager, Town of Enfield; and Town of Enfield.

The parties requested that the Commission take administrative notice of the record and case file in Docket #FIC2016-0700, Alex Wood, Doreen Guarino, Will Healey and the Manchester Journal Inquirer v. Town Manager, Town of Enfield; and Town of Enfield. The request is granted.

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 dated October 20, 2016, the complainants appealed to this Commission alleging that the respondents violated the disclosure provisions of the Freedom of Information ("FOI") Act by failing to obtain and provide records responsive to their records request.

3. 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.

4. 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....

5. 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."

6. It is found that, at all times relevant to this matter, the respondent town was contracted with the Connecticut Interlocal Risk Management Agency (hereinafter "CIRMA") to insure its interest. It is found that, the respondent town became a party defendant in a federal lawsuit alleging excessive use of force by its police officers. It is found that CIRMA retained and/or appointed James N. Tallberg, a private attorney, as counsel for the cases. It is found that CIRMA and Attorney Tallberg assessed the risk and advised that the respondent town attempt to settle the cases after which the town council voted to consent to CIRMA settling the cases.

7. It is found that Attorney Tallberg entered an appearance in the federal suit on behalf of the town and certain town official and employees, and proceeded to represent and provide legal counsel to them.

8. It is found that by letter dated September 8, 2016, the complainants made the following request:

> We request the opportunity to inspect ...[a]ny document(s) containing the following information that is/are in the possession of the Town of Enfield (town), any employee or agency of the town, any attorney representing the town, or any insurance carrier or other entity responsible for paying judgements or settlements of lawsuits against the town including but not limited to the Connecticut Interlocal Risk Management Agency (CIRMA):

- The terms of any settlement agreement, including but not limited to the dollar amount of the settlement, in a lawsuit filed by Eric Avalos against the town and several of its employees or former employees, which was litigated in Unites States District Court of the District of Connecticut, where it was assigned docket number 3:15-cv-00902-VAB;

- The terms of any settlement agreement, including but not limited to the dollar amount of the settlement, in a lawsuit filed by Frank Salas against the town and several of its employees or former employees, which was litigated in United States District Court of the District of Connecticut, where it was assigned docket number 3:14-cv-01883-WWE, a docket number that later also encompassed the consolidated lawsuit filed by Ronnie Salas;

- The terms of any settlement agreement, including but not limited to the dollar amount of the settlement, in a lawsuit filed by Ronnie Salas against the town and several of its employees or former employees, which was litigated in United States District Court of the District of Connecticut, where it was assigned docket number 3:14-cv-01895-WWE, and later consolidated with the lawsuit filed by Frank Salas under docket number 3:14-cv-01883-WWE;

- The amounts paid toward each of the above-described settlements by the town; the insurance carrier or other entity responsible for paying judgments or settlements of lawsuits against the town, including but not limited to CIRMA; and/or any other person or entity; and

- All attorneys' fees and other litigation expenses paid by the town; the insurance carrier or other entity responsible for paying judgments or settlements of lawsuits against the town, including but not limited to CIRMA; and/or any other person or entity in each of the above described cases and in the lawsuit filed by Mark Maher against the town, the Enfield Police Department, and several

> employees or former employees of those entities, which was litigated in United States District Court for the District of Connecticut, where it was assigned docket number 3:15-cv-00414-WWE.

9. It is found that, by letter dated October 14, 2016, the respondents informed the complainants that they conducted a search for responsive records and found no records responsive to their records request. It is found that, by that same letter, the respondents informed the complainants that the town does not maintain the records of Attorney Tallberg or CIRMA.[1]

10. It is found that the respondents do not physically keep any records responsive to the complainants' request within their offices.

11. At the hearing on this matter, the complainants contended that Attorney Tallberg and CIRMA are agents of the respondent town, and that the town is required, pursuant to the FOI Act, to request and disclose public records in the possession of its agents. The complainants cited Docket #FIC 2004-071, Alexander Wood and The Manchester Journal-Inquirer v. Alexander Aponte, Corporation Counsel, City of Hartford Aponte as their authority.

12. The respondents contended at the hearing, and in their memorandum of law, that the requested records are not public records within the meaning of §1-200, G.S., and that the complainants' "agency argument" is not applicable because it was CIRMA that hired Attorney Tallberg and he works for CIRMA, not the respondent town.

13. With respect to the records maintained by Attorney Tallberg, in the case of Thomas J. Londregan, New London Director of Law v. FOI Commission, 071894 CTSUP, 526105 and 529345, New London, J.D. (Teller, J.) (July 18, 1994), the city denied a request for copies of legal briefs, and other records pertaining to ten cases in which the city was a party litigant and represented by outside counsel. Among other arguments, the city argued that because it did not have possession of the requested records, it could be required to comply with the FOI request. Rejecting that argument, the Court reasoned:

> The client involved as the real party in interest in all of the requested litigation files is New London. It is well settled that clients are entitled to their files and papers upon payment or funding of security for outstanding fees... New London, therefore, ...is entitled to possession of the files, or at least copies thereof, upon demand. Hence, as [the city's] Director of Law, the plaintiff has the right to obtain possession of said files.

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[1] It is found that the town paid its deductible which was the only money it paid with respect to the lawsuits and that the record of that payment was provided to the complainants.

> The plaintiff cannot evade the plain mandate of the FOIA by 'farming' the litigation files out to other counsel, as upon request, the plaintiff would be entitled to copies thereof. (Citation omitted.)

14. It is found that the respondent town was a client of Attorney Tallberg in the subject federal lawsuits.

15. It is concluded, therefore, that the town is entitled to possession of the requested records.

16. Moreover, §1.4(a)(4) of the Connecticut Rules of Professional Conduct requires an attorney to "promptly comply with reasonable requests for information" from a client, and Rule 1.16(d) requires an attorney to "surrender papers and property to which the client is entitled."

17. It is found that the requested records, albeit in the possession of outside counsel, are "owned" or "used" by the respondents within the meaning of §1-200(5), G.S. See also, Tribune-Review Publishing Co. v. Westmoreland County Housing Authority, 574 Pa. 661 (2003) (litigation settlement document prepared by private attorney for public agency's insurer on behalf of public agency is public record because within agency's control); Burnett v. County of Gloucester, 415 N.J.Super. 506 (2010) (litigation settlement document possessed by County's insurer or outside counsel is public record of County), Knightstown Banner v. Town of Knightstown, 838 N.E.2d 1127, 1133 (Ind. Ct. App. 2005) (private counsel retained by insurer to represent town "created, maintained, and retained" settlement agreement as public record during course of representation of client town); and Journal/Sentinel, Inc. v. Sch. Bd. Of Sch. Dist. Of Shorewood, 186 Wis.2d 443, (1994) (affirming order for agency to furnish settlement agreement as public record held by outside counsel).

18. It is found, therefore, that the requested records are public records of the respondents, within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

19. The respondents also contended that because §7-479h, G.S., specifically exempts CIRMA from the FOI Act, neither this Commission nor the Courts can compel the production of CIRMA records or the records of counsel appointed and paid by CIRMA.

20. With respect to the records maintained by CIRMA, §7-479a, G.S., defines an interlocal risk management agency as "an association formed by two or more local public agencies for the development, and administration of an interlocal risk management program, an interlocal public liability, automobile and property risk management pool, an interlocal workers' compensation risk management pool, or an interlocal excess risk management pool."

21. It is found that CIRMA is an interlocal risk management agency within the meaning of §7-479a, G.S.

22. Section 7-479h, G.S., provides that "[t]he meetings, minutes and records of an interlocal risk management agency pertaining to claims shall not be subject to sections 1-201, 1-202, 1-205, 1-206, 1-210, 1-211, 1-213 to 1-217, inclusive, 1-225 to 1-232, inclusive, 1-240, 1-241 and 19a-342."

23. The respondents contended that §7-479a, G.S., applies to CIRMA records, wherever located. The Commission does not agree.

24. If the legislature had intended to exclude the records of interlocal risk management agencies from disclosure wherever they are located, it could have expressly done so. For instance, certain records maintained by the Department of Children and Families ("DCF") are confidential within DCF, and also wherever else they are located.[2] Similarly, with respect to the reports of examinations (autopsy reports) conducted by the Chief Medical Examiner, the statute governing those records expressly provides that such reports can only be made available to the public through the Office of the Chief Medical Examiner, and in accordance with this section, section 1-210 and the regulations of the commission [Commission on Medicolegal Investigations].[3]

25. Our courts have stated that ''[when] a statute, with reference to one subject, contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed.'' (Internal quotation marks omitted.) M. DeMatteo Construction Co. v. New London, 236 Conn. 710, 717, 674 A.2d 845 (1996). This tenet of statutory construction ensures that ''statutes [are] construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant, and that every sentence, phrase and clause is presumed to have a purpose.'' Hopkins v. Pac, 180 Conn. 474, 476, 429 A.2d 952 (1980).

26. It is concluded that the application of §7-479h, G.S., is limited to the interlocal risk management agencies themselves, and requests made directly to them. It is further concluded that such statute does not preclude towns, such as the respondent town, from obtaining records related to the management and administration of that town's risks, and providing those records to the public.

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[2] Section 17-28(b), G.S., provides, in relevant part, that "[n]otwithstanding the provisions of [the FOI Act], records maintained by [DCF] shall be confidential and shall not be disclosed." Section 17a-101k, G.S., provides, in relevant part, that the Commissioner of DCF shall maintain a registry of his or her findings of abuse or neglect of children... and that the "information contained in the registry and any other information relative to child abuse, wherever located, shall be confidential, subject to such statutes and regulations governing their use and access as shall conform to the requirements of the federal law or regulations."

[3] Section 19a-411(b), G.S., provides in relevant part that the report of examinations conducted by the Chief Medical Examiner, Deputy Chief Medical Examiner, an associate medical examiner or an authorized assistant medical examiner, and of the autopsy and other scientific findings may be made available to the public only through the Office of the Chief Medical Examiner, and in accordance with this section, section 1-210 and the regulations of the commission [Commission on Medicolegal Investigations]. [Emphasis added].

27. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to obtain the requested records from Attorney Tallberg, and provide such records to the complainants.

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

1. Forthwith, the respondents shall retrieve a copy of the requested records from their outside counsel and shall provide such records to the complainants, free of charge.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of September 13, 2017.

Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

ALEX WOOD, DOREEN GUARINO, WILL HEALEY, AND THE MANCHESTER JOURNAL INQUIRER, 306 Progress Drive, Manchester, CT 06045

TOWN MANAGER, TOWN OF ENFIELD; AND TOWN OF ENFIELD c/o Attorney Christopher W. Bromson, Enfield Town Attorney, 820 Enfield Street, Enfield, CT 06082

Cynthia A. Cannata
Acting Clerk of the Commission

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