

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Michael Boucher,

Complainant

against

Docket #FIC 2018-0116

Mayor, City of Groton; and
City of Groton,

Respondents

November 14, 2018

The above-captioned matter was heard as a contested case on May 21, 2018, 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 January 31, 2018, the complainant requested that the respondents provide him with an opportunity to view and copy the following: “the report by Mr. Edwards who was hired by the City of Groton and/or Groton Utilities to investigate the Kentucky Derby Trips and other possible ethics violations by GU staff and GU Commission members.”
3. It is found that, by letter dated January 31, 2018, the respondents acknowledged the complainant’s request, indicating that they were processing the request and that they would contact the complainant once they had determined the number of responsive records and the associated cost.
4. It is found that, by letter dated February 15, 2018, the respondents contacted the complainant to inform him that the records were ready for his inspection in the Office of the City Clerk or, if he preferred, he could obtain a copy of the 447 pages of responsive records at a cost of \$223.50 or could scan the records at a cost of \$20.00.

5. It is found that, on February 22, 2018, the complainant submitted a \$20.00 payment to the respondents to scan the responsive records.

6. By email dated and filed March 7, 2018, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by redacting some of the pages in the responsive records. The complainant attached eight redacted pages to his complaint.

7. 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.

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.

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.”

10. It is found that the records requested by the complainants in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

11. The respondents contended that they disclosed all responsive records, with the exception of fourteen records, to the complainant. The respondents contended that these fourteen records are exempt pursuant to §1-210(b)(10), G.S., because they contain attorney-client privileged information.

12. At the conclusion of the contested case hearing, the complainant moved to have the Commission conduct an in camera inspection of the fourteen pages. The hearing officer

granted the complainant's motion.

13. On May 21, 2018, the respondents lodged in camera records with the Commission. Such records shall be identified as follows: IC-2018-0116-01; IC-2018-0116-02; IC-2018-0116-03; IC-2018-0116-04; IC-2018-0116-05; IC-2018-0116-06a; IC-2018-0116-06b; IC-2018-0116-06c; IC-2018-0116-07; IC-2018-0116-08; IC-2018-0116-09; IC-2018-0116-10; IC-2018-0116-11; IC-2018-0116-12; IC-2018-0116-13; and IC-2018-0116-14.

14. In relevant part, §1-210(b)(10), G.S., permits the nondisclosure of "communications privileged by the attorney-client relationship. . . ."

15. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That 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.

16. 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. . . .

17. The Supreme Court has 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.

18. After a careful inspection of the in camera records, it is found that the following records, or portions thereof, are exempt from disclosure pursuant to the attorney-client privilege: IC-2018-0116-02 (entire document); IC-2018-0116-03 (entire document); IC-2018-0116-04 (entire document); IC-2018-0116-05 (entire document); IC-2018-0116-06a through IC-2018-0116-06c (entire document); IC-2018-0116-07 (entire document); IC-2018-0116-09 (lines 31 and 32); IC-2018-0116-10 (lines 10 through 13, and lines 29 and 30); IC-2018-0116-11 (lines 1 through 6); IC-2018-0116-12 (line 6); and IC-2018-0116-14 (lines 5 through 8).

19. It is further found that the records, or portions thereof, identified in paragraph 18, above, contain a request for legal advice by the respondents to their attorney or the actual

legal advice that the respondents received from their attorney. It is further found that the respondents were acting within the scope of their duties with regard to current agency business when they sought and/or received this advice. It is further found that the communications were made in confidence. It is further found that the respondents did not waive their attorney-client privilege.

20. Accordingly, it is concluded that the respondents did not violate the FOI Act when they denied the complainant copies of such records.

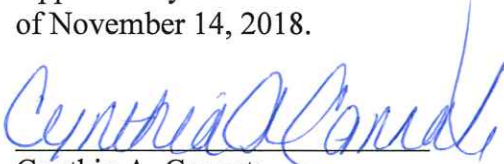
21. However, it is found that the respondents failed to prove that the following records, or portions thereof, constitute records containing communications written in confidence between a public agency and a government attorney relating to legal advice sought by the public agency or provided by such attorney, or records prepared by the attorney in furtherance of the rendition of such legal advice, within the meaning of §52-146r(2), G.S.: IC-2018-0116-01 (entire document); IC-2018-0116-08 (line 28, which was the only redacted portion of the document); and IC-2018-0116-13 (entire document).

22. It is therefore concluded that the respondents violated the disclosure provisions §§1-210(a) and 1-212(a), G.S., by denying the complainant's request for a copy of the records and the portion of one record, as indicated in paragraph 21, above.

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

1. The respondents shall forthwith provide the complainant with a copy of the two records and the portion of one record, as indicated in paragraph 21 of the findings, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 14, 2018.



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:

MICHAEL BOUCHER, 16 Hillside Avenue, Groton, CT 06340

MAYOR, CITY OF GROTON; AND CITY OF GROTON, c/o Attorney Bryan L. LeClerc, Berchem Moses P.C., 75 Broad Street, Milford, CT 06460



Cynthia A. Cannata
Acting Clerk of the Commission