

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Boster,

Complainant

against

Docket #FIC 2018-0228

President, State of Connecticut,  
University of Connecticut; and  
State of Connecticut, University of  
Connecticut

March 27, 2019

Respondents

The above-captioned matter was heard as a contested case on October 23, 2018, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

The respondents submitted for in camera inspection the records described in paragraph 18, below.

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 of complaint filed on April 2, 2018, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his March 6, 2018 request for certain documents.
3. It is found that the complainant made a March 6, 2018 request to the respondents for, among other documents no longer at issue, “evidence that it was the AAUP [American Association of University Professors] that inserted section 10.3 Resort to Other Procedure into the UConn AAUP Collective Bargaining agreement ....”
4. Specifically, the complainant sought documents “that would serve to corroborate the testimony given by Attorney Bannister at the arbitration hearing for AAA # 01-15-002-7342: Grievance: *James Boster/Termination of Employment* conducted on October 7, 2015.
5. It is found that the respondents denied that portion of the complainant’s request on March 29, 2018.
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 "any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

9. It is concluded that the documents withheld from the plaintiff are public records within the meaning of §§1-200(5), 1-210(a), and 1-212, G.S.

10. The respondents contend that the records are exempt pursuant to §§1-210(b)(1) and 1-210(b)(9), G.S.

11. Section 1-210(b)(1), G.S., provides that disclosure is not required of:

Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure

12. Section 1-210(b)(1), G.S., requires the respondents to prove that they determined that the public interest in withholding records clearly outweighs the public interest in disclosure. "The statute's language strongly suggests that the agency may not abuse its discretion in making the decision to withhold disclosure. The agency must, therefore, indicate the reasons for its determination to withhold disclosure and those reasons must not be frivolous or patently unfounded." Van Norstrand v. Freedom of Info. Comm'n, 211 Conn. 339, 345 (1989).

13. In 1980, the Connecticut Supreme Court interpreted the phrase "preliminary drafts and notes" in the FOI Act. See Wilson v. FOIC, 181 Conn. 324 (1980) ("Wilson"). The Wilson court ruled that "preliminary drafts or notes reflect that aspect of an agency's function that precedes formal and informal decision making. . . . It is records of this preliminary, deliberative and predecisional process that . . . the exemption was meant to encompass." Wilson, 181 Conn. at 332. In addition, the Wilson court interpreted the phrase "preliminary drafts and notes" in the FOI Act as identical to the deliberative process privilege found in 5 U.S.C. §552(b)(5) of the federal Freedom of Information Act, with the exception that, under Connecticut's FOI Act, the public agency carried the additional burden to show that "the public interest in withholding such document clearly outweighs the public interest in disclosure." See Wilson, 181 Conn. at 333-340.

14. The year following Wilson, the Connecticut legislature adopted Public Act 81-431, which added to the FOI Act the language now codified in §1-210(e)(1). See ¶ 21, below.

15. It is found that with adoption of Public Act 81-431, the Connecticut Legislature made clear that the Connecticut FOI Act required more robust disclosure than is required by the deliberative process privilege permitted at the federal level. Accordingly, §1-210(b)(1), G.S., must be read in conjunction with §1-210(e)(1), G.S., which provides, in relevant part, as follows:

Notwithstanding the provisions of [§1-210(b)(1), G.S.], disclosure shall be required of:

(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.

16. Section 1-210(b)(9), G.S., provides in relevant part that nothing in the Freedom of Information Act shall be construed to require the disclosure of “records, reports and statements of strategy or negotiations with respect to collective bargaining.”

17. It is found that the withheld records are a draft, containing handwritten notes, of a collective bargaining agreement being negotiated in 1977.

18. It is found that the draft reflects the process of negotiation of the collective bargaining agreement.

19. It is further found that the respondents determined that the public interest in withholding the draft clearly outweighed the public interest in disclosure.

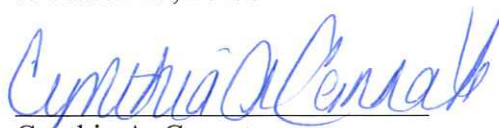
20. It is also found that the draft is not an interagency or intra-agency memorandum, letter, advisory opinion, recommendation or report, within the meaning of §1-210(e)(1), G.S.

21. It is therefore concluded that the draft contract language and notes are permissibly exempt from disclosure pursuant to both §§1-210(b)(1) and (b)(9), G.S., and that the respondents did not violate the FOI Act as alleged.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 27, 2019.



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:

**JAMES BOSTER**, 447 Zaicek Road, Ashford, CT 06278

**PRESIDENT, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT;  
AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT**, c/o Attorney  
Nathan LaVallee, Office of the General Counsel, 343 Mansfield Road, Unit 1177, Storrs, CT  
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Cynthia A. Cannata  
Acting Clerk of the Commission