

**FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT**

In the Matter of a Complaint by

FINAL DECISION

Margaret Miner and the Rivers
Alliance of Connecticut,

Complainants

against

Docket #FIC 2011-005

Water and Sewer Department, Town
of Wallingford,

Respondent

December 14, 2011

The above-captioned matter was heard as a contested case on October 19, 2011, and December 5, 2011, at which times the complainants and the respondent Water and Sewer Department appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

The Commissioner of the State of Connecticut, Department of Emergency Management and Homeland Security and the State of Connecticut, Department of Emergency Management and Homeland Security requested and were made interveners in this matter. [\[1\]](#)

This Commission takes administrative notice of the record in docket #FIC 2010-311, Margaret Miner and the Rivers Alliance of Connecticut v. Commissioner, State of Connecticut, Department of Public Works; State of Connecticut, Department of Public Works; and Town of Wallingford.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondent Water and Sewer Department is a public agency within the meaning of §1-200(1), G.S.
2. It is found that by letter dated November 1, 2010, the complainants made a request to the respondent Water and Sewer Department for a copy of the town of Wallingford's "Surface Water Safe Yield Analysis" report (hereinafter "report").
3. It is found that by letter dated November 5, 2010, the respondent Water and Sewer Department informed the complainants that it was in the process of preparing a copy of the report and would forward it to the complainants once the appropriate redactions had been approved.
4. It is found that a redacted copy of the report was made available to the complainants as early as December 29, 2010 and was offered to her on at least one other occasion thereafter. It is found that the complainant Miner inspected the report and because she determined that it was not useful to complainants in the redacted form, she declined to accept it.
5. It is found, however, that by e-mail dated and filed on January 3, 2011, the complainants filed an appeal with this Commission, alleging that the respondent Water and Sewer Department violated the Freedom of Information (hereinafter "FOI") Act by failing to comply with their request for an unredacted copy of the report. At the hearing on this matter, the complainants additionally alleged that the redacted report was not provided promptly.

6. 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.

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 . . . 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 the report is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. It is found that, between November 5, 2010 and July 11, 2011, the complainants and the respondent Water and Sewer Department continued to correspond, and even met, regarding the complainants’ request.

11. It is found that, during that same time period and pursuant to §1-210(d), G.S., the respondent Water and Sewer Department consulted with the Commissioner of DEMHS regarding the disclosure of the report. It is found that the Commissioner of DEMHS reviewed the report in redacted and unredacted forms. It is found that in conjunction with his review of the report, the Commissioner also reviewed articles and other sources on protecting water supply systems.

12. It is found that the Commissioner believed that disclosure of an unredacted copy of the report may result in a safety risk, including a risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to or contained in, such institution or facility. It is found that by letter dated May 27, 2011, he directed the respondent Water and Sewer Department to withhold the unredacted report from the complainants and only provide the report in redacted form.

13. It is found that the complainants accepted a redacted copy of the report on July 11, 2011.

14. The respondent submitted an unredacted copy of the report for in-camera review. Such records are hereby identified as IC-2011-005-1 through IC-2010-005-83 and were carefully reviewed.

15. It is found that the report details the town’s surface water supply and it calculates the amount of water that can be expected to be consumed under certain conditions. It is found that the report also includes information regarding sources of water supply, how those sources are connected to each other, and the volumes of water in storage. The report also discloses the names of the reservoirs that are used for drinking water, which information is not in the public domain.

16. It is found that the report was developed for the respondent Water and Sewer Department’s water division and its use. It is found that while the results of the report were shared during certain public hearings, the report has not been disclosed to anyone except for the complainants in redacted form.

17. It is also found that the report includes information that was the subject of disclosure in docket #FIC 2010-311, Margaret Miner and the Rivers Alliance of Connecticut v. Commissioner, State of Connecticut, Department of Public Works; State of Connecticut, Department of Public Works; and Town of Wallingford. It is found that the respondent Water and Sewer Department redacted the report pursuant to §1-210(b)(19), G.S., and in accordance with the redactions that were permitted by this Commission in that case.

18. Section 1-210(b)(19), G.S., provides in relevant part that nothing in the FOI Act shall be construed to require disclosure of:^[2]

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency; (B) by the Chief Court Administrator with respect to records concerning the Judicial Department; and (C) by the executive director of the Joint Committee on Legislative Management, with respect to records concerning the Legislative Department. As used in this section, “government-owned or leased institution or facility” includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as

defined in section 16-1, a water company, as defined in section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and "chief executive officer" includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to:

- (i) Security manuals or reports;
- (ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;
- (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed;
- (iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (v) Internal security audits of government-owned or leased institutions or facilities;
- (vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (vii) Logs or other documents that contain information on the movement or assignment of security personnel;
- (viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and
- (ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply.

19. Section 1-210(d), G.S., states in relevant part:

(d) Whenever a public agency... receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify... the Commissioner of Emergency Services and Public Protection ...of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act... If the commissioner, after consultation with the chief executive officer of the applicable agency... believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person...

20. It is found that the respondent Water and Sewer Department is "a municipal utility that furnishes...water service" within the meaning of §1-210(b)(19), G.S., and that therefore, the respondent Water and Sewer Department is a "government-owned or leased... facility..." It is also found that the report includes "water supply plans" within the meaning of §1-210(b)(19)(ix), G.S.

21. Pursuant to §1-21j-38, Regulations of Connecticut State Agencies, the Commission, on its own motion, admits as evidence the detailed testimony given by the Legal Director, Department of Public Works; the Chief of the Drinking Water Section, Department of Public Health; the Director of the Statewide Security Unit, Department of Public Works; and the Manager of Health Safety and Security, United Water Company, at the March 22, 2011 hearing in docket #FIC 2010-311, Margaret Miner and the Rivers Alliance of Connecticut v. Commissioner, State of Connecticut, Department of Public Works; State of Connecticut, Department of Public Works; and Town of Wallingford.

22. Based upon the detailed testimony described above and as previously found by this Commission in Miner v. DPW, above, it is found that the threats to water systems in the United States are real and not widely understood. Because water systems are dispersed and often lack real time security monitoring, they are vulnerable to biological, chemical and physical disruption. Water tanks, containing "finished water", are a particular point of vulnerability. Explosives, arsenic, cyanide, DDT, and electronic measures can be used as the means of attack. Such attacks are considered most likely to come from domestic extremists, trained in the United States. In recent decades, there have been 193 such attacks in North America. The United States Congress addressed threats to water systems with the Public Health, Security and Bioterrorism Act, which required the federal EPA to perform vulnerability assessments of water systems.

23. As also previously found by this Commission in Miner v. DPW, above, with respect to threats to water systems in Connecticut, it is found that there have not been any attacks, but that there have been three incidents in the last ten years that required investigation by the FBI, the federal Department of Homeland Security, or the Connecticut Water Emergency Response Team. The firewalls of computerized water control systems have been subject to episodes of disruption and remain subject to attack. Investigations of incidents and appropriate responses, like draining a water tank, are themselves costly.

24. With respect to the report and the redactions made to it, it is found that the respondent Water and Sewer Department and the Commissioner of DEMHS, after review of the report, determined that disclosure of “information that identifies and/or assists in determining the location of sources of drinking water supply, that describes the manner in which the Water Division operates its sources of supply, and technical information relating to the volumes of sources of supply” may result in a safety risk because with such information “an individual or entity seeking to cause harm to a water system would be aided by the ability to identify the locations of facilities or sources of supply, methods of operation, and quantities of water to be contaminated.”

25. It is found that in an effort to protect against the safety risk described in paragraph 24, above, but to also disclose as much information in the report as possible, the respondent Water and Sewer Department has only redacted the names of the sources of water supply, maps depicting and naming sources of water supply, and water storage data. It is found that while the names of reservoirs are publicly known, it is not publically known which reservoir is used as a source for drinking water, the volumes of water of those reservoirs or how they are respectively operated or connected to each other.

26. It is found that the Commissioner of DEMHS had reasonable grounds to believe that disclosure of such information may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility within the meaning of §1-210(b)(19), G.S.

27. It is concluded therefore that the redacted information is exempt from mandatory disclosure pursuant to §1-210(b)(19), G.S., and that the respondent Water and Sewer Department did not violate §§1-210(a) and 1-212(a), G.S., by withholding the complete report and providing the complainants with a redacted copy.

28. It is found that while the Commissioner of DEMHS took almost seven months to perform his review and issue an official determination regarding the disclosure of the report, the respondent Water and Sewer Department provided access to the redacted report promptly within the meaning of §1-212(a), G.S. It is concluded therefore that the respondent Water and Sewer Department did not violate the FOI Act in that regard.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 14, 2011.

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:

Margaret Miner and the Rivers Alliance of Connecticut
7 West Street
P.O. Box 1797
Litchfield, CT 06759

Water and Sewer Department, Town of Wallingford; and
Town of Wallingford
c/o Janis M. Small
Town Attorney
45 South Main Street
Wallingford, CT 06492

Intervenor: Peter J. Boynton, Deputy Commissioner, Department of
Emergency Management & Homeland Security
c/o Steven R. Strom, Esq.
Assistant Attorney General
110 Sherman Street
Hartford, CT 06105

Cynthia A. Cannata
Acting Clerk of the Commission

FIC/2011-005/FD/cac/12/16/2011

[1] As of July 1, 2011, the Department of Emergency Management and Homeland Security dissolved and merged into the newly-created Department of Emergency Services and Public Protection.

[2] As of July 1, 2011, the language in §§1-210(b)(19) and 1-210(d), G.S., was amended pursuant to P.A. 11-51, §§44, 134; P.A. 11-242, §§37, 38.