



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106
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Anthony Price

Complainant(s)

Notice of Meeting

against

Docket #FIC 2021-0411

Chief Operating Officer and Chief Financial Officer,
Connecticut Innovations; and Connecticut Innovations
Respondent(s)

September 21, 2022

Transmittal of Proposed Final Decision

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 prepared by the hearing officer in the above-captioned matter.

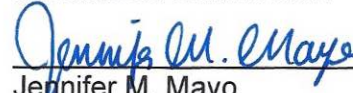
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in person at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, October 12, 2022.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. 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 September 30, 2022.** 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE September 30, 2022.** 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 September 30, 2022** 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



Jennifer M. Mayo
Acting Clerk of the Commission

Notice to: Anthony Price
Attorney Matthew D. Ritter
Attorney Christopher J. Cahill

FIC# 2021-0411/ITRA/CPH/KKR/MDR/JMM/2022-09-21

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Anthony Price,

Complainant

against

Docket #FIC 2021-0411

Chief Operating Officer and Chief
Financial Officer, Connecticut Innovations;
and Connecticut Innovations,

Respondents

September 21, 2022

The above-captioned matter was heard as a contested case on July 6, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The hearing was conducted remotely through the use of electronic equipment, pursuant to §149 of Public Act 21-2 (June Sp. Sess.), as amended by §1 of Public Act 22-3.

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 email dated December 1, 2020, the complainant requested from the respondents an electronic copy of the following records¹:
 - (a) list of all Connecticut Innovations (CI) investments from January 2010 through December 2020....;
 - (b) funds used to create Venture Clash along with all expenditures since inception and termination, including travel in and outside of the U.S. and other related expenses;
 - (c) list of committees, policies, and procedural documents related to how investments are made;
 - (d) reports provided to the State of Connecticut and CI Board of Directors related to assets under management and status of investments, including gains, losses and

¹ The complainant also requested certain other records from the respondents which were not the subject of the instant complaint.

- write-offs/-downs, over the above-mentioned 10-year period; and
- (e) documents related to annual return on investment for the portfolio.

3. It is found that, by email dated December 1, 2020, the respondents acknowledged the request, described in paragraph 2, above, and informed the complainant that they would work diligently and expeditiously to provide all requested information. By second email also dated December 1, 2020, the respondents further informed the complainant that they would immediately begin to locate the responsive records and provide them in digital format via email.

4. It is found that, on December 2, 2020, the complainant informed the respondents that he would accept the responsive records via his Dropbox² account, and by email dated December 4, 2020, the respondents provided responsive records to the complainant via Dropbox.

5. It is found that, by email dated December 21, 2020, the complainant inquired as to when he might receive the remainder of the responsive records, to which the respondents replied, by email that same day, that they would provide additional records “shortly.”

6. It is found that, by email dated December 31, 2020, the complainant again inquired as to when he might receive the remainder of the responsive records. It is found that, by email dated January 4, 2021, the respondents replied that on December 4, 2021, they provided 18,000 KB of documents to him, and asked him to identify which records he believed he had not received.

7. By email dated January 5, 2021, the complainant informed the respondents that he had not yet received “the document that tracks the return on investment for all investments during the covered period.” (See paragraph 2(e), above). The complainant clarified, in an email dated January 22, 2021, that he was seeking “the document (spreadsheet) that reports gains and losses for each individual investment”, rather than in the aggregate.

8. It is found that, by email dated January 26, 2021, the respondents informed the complainant that the information contained in the spreadsheet reflecting the gains and losses for each individual investment is a “trade secret” and therefore is exempt from disclosure pursuant to §1-210(b)(5)(A), G.S.

9. By email dated and filed February 24, 2021,³ the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying the request for the records, described in paragraph 2, above.

10. At the time of the request, §1-200(5), G.S., provided:

² Dropbox is a file hosting service, often referred to as a “cloud storage” service.

³ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

‘[p]ublic 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

11. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept 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 . . . (3) receive a copy of such records in accordance with section 1-212.

12. 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.”

13. It is found that the records, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

14. It is found that, upon receipt of the request described in paragraph 2, above, the respondents conducted a diligent and thorough search for responsive records, and promptly provided all responsive records they maintain to the complainant, except for the record described in paragraph 2(e), above, as more particularly described in paragraphs 7 and 8, above.

15. Section 1-210(b)(5)(A), G.S., provides that disclosure is not required of:

[t]rade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their

⁴ Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped”.

disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy...

16. The definition of “trade secret” in §1-210(b)(5)(A), G.S., mirrors the definition in the Connecticut Uniform Trade Secrets Act (“CUTSA”).⁵ See §35-51(d), G.S.

17. In addition to the two enumerated elements in the definition of “trade secret,” the information claimed to be a trade secret must also “be of the kind included in the nonexhaustive list contained in the statute.” Elm City Cheese Co., Inc. v. Federico, 251 Conn. 59, 70 (1999).

18. According to its website, the respondent Connecticut Innovations (“CI”) is “Connecticut’s strategic venture capital arm and is the leading source of financing and ongoing support for innovative, growing companies.” CI offers “equity investments, strategic guidance and introductions to valuable partners, [thereby]...enabl[ing] promising businesses to thrive.”

19. As set forth in §32-33, G.S., entitled “Legislative Finding”, the General Assembly determined:

...that there exists in the state a great and growing need for industrial and commercial development and activity to provide and maintain employment and tax revenues; that the creation of new technology-based businesses represents an important source of new jobs for the economy of the state; that it is essential for existing business and industry to innovate and adopt new state-of-the-art processes and techniques in order for such business and industry to expand, to create and retain employment and to better compete in the global marketplace; that the public and private sectors need to build partnerships that will foster a greater entrepreneurial climate in the state; that assistance and encouragement of industrial and commercial development to provide and maintain such employment and revenues is an important function of the state; that the ability to attract funds and provide financial assistance for basic research into potential new products and processes and for the conversion of such research into commercial products and new businesses is an important inducement to entrepreneurs and to industrial and commercial enterprises to begin operations, remain or locate in this state; that there exists in the state a serious shortage of seed venture capital to promote the development and exploitation of inventions and products; that this shortage has resulted and will result in a serious decrease in the development of new business enterprise and job opportunities in Connecticut; that there exists in the state a need for a uniform state policy on all

⁵ CUTSA creates a cause of action for misappropriation of trade secrets.

matters of science and technology; that there exists in the state a need for a coordinated, centralized clearinghouse to provide entrepreneurs with easy access to scientific research, technology information, technical assistance, financial capital and other resources for the creation and retention of new jobs and businesses; that there exists in the state a need to stimulate and provide services to industry that will advance the adoption and utilization of technology and achieve improvements in the quality of products and services; that there exists in the state a need to promote science, engineering, mathematics and other disciplines that are essential to technology development and application; and, further, that providing state financial assistance for the development of products, innovation and invention for industry in this state will assist in the creation of new products and industry in this state, resulting in increased employment and public revenues; and therefore the necessity in the public interest and for the public benefit and good for the provisions of this chapter is hereby declared as a matter of legislative determination. (Emphasis added).

20. In addition, in §32-23gg, G.S., entitled “Legislative Determination”, the General Assembly found and declared that:

there exists in this state a great and growing need for additional forms of state financial assistance for Connecticut’s manufacturing and other economic base firms to preserve and promote development and to create and maintain employment; that the availability of financial assistance is an important and increasingly critical consideration in the preservation and development of the state’s economy; that there exists a serious risk of plant closing and relocations out-of-state; that there exists a shortage of risk capital and other forms of financial assistance for business which has had and will continue to have a serious effect on the development and preservation of important business enterprises and employment in this state, and that therefore, it is necessary and in the public interest and for the public good that the provisions of sections 32-23hh to 32-23ll, inclusive, are hereby declared a matter of legislative determination.

21. The respondent Chief Operating Officer/Chief Financial Officer testified at the hearing in this matter, and it is found, that CI’s mission is to invest in privately held companies that are otherwise unable to obtain conventional financing, for the purpose of growing

Connecticut's economy in accordance with its statutorily stated mission. It is found that CI receives about 600 applications per year from privately held companies seeking financial assistance from the state, and from that pool selects approximately 60 companies per year in which to invest. It is found that, because the companies are privately held, the companies have no "market value"; therefore, initially, and on an annual basis, CI determines and assigns a value to each such company. It is found that the value assigned to each company is determined by CI based on a compilation of financial data submitted by each company (revenue, customer information and other operational information), and market research, all of which is independently analyzed by CI. It is found that the valuation assigned to each company by CI is the information claimed to be a trade secret (the "valuation").

22. Preliminarily, it is found that the valuation is a "compilation" of financial and commercial information and market data, which compilation falls into one of the specifically enumerated categories of information that may qualify as a "trade secret" in §1-210(b)(5)(B), G.S.

23. In determining whether information is a "trade secret", the following factors are to be considered:

the extent to which the information is known outside the business; (b) the extent to which the information is known by employees and others involved in the business; (c) the extent of measures taken by the employer to guard the secrecy of the information; (d) the value of the information to the employer and to his competitors; (e) the amount of effort or money expended by the employer in developing the information; and (f) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Town & Country House & Homes Service, Inc. v. Evans, 150 Conn 314 (1963).

24. With regard to whether the information is not generally known or readily ascertainable by proper means, it is found that the expectation in the industry regarding the submission of commercial or financial information to a public agency such as CI, is that such information will be held in confidence. Section 32-244(a), G.S., entitled "Applicability of Freedom of Information Act to data and other information re financial assistance," provides:

(a) [a]ll data and other information received by...Connecticut Innovations, Incorporated...from any person in connection with an application for, or the provision of, financial assistance, which consists of the following, shall be deemed, for purposes of a public records request pursuant to the Freedom of Information Act, as defined in section 1-200, made to Connecticut Innovations, Incorporated...to be information described in subdivision (5) of subsection (b) of section 1-210: (1) Actual trade

secrets or information that a person intends to become a trade secret, (2) material that a person intends to patent, (3) patented material, (4) marketing or business plans, (5) plans for new products or services, (6) reports of customer orders or sales or other documents that would disclose names and addresses of customers or potential customers, (7) information concerning the financial condition or personal affairs of any individual, (8) financial statements or projections, (9) sales or earnings forecasts, (10) capital or strategic plans, (11) information regarding research and development, (12) tax returns, or (13) other commercial, credit or financial information with respect to the financial condition or business operations of an applicant for or recipient of financial assistance which is of a type not customarily made available to the public.

(b) The enumeration in this section of particular types of data and information shall not be construed to limit the possible applicability of subdivision (5) of subsection (b) of section 1-210 to other data or information not so enumerated.

25. The COO/CFO testified, and it is found, that companies seeking investment from CI would not do so if they believed that their financial information would be shared publicly. It is found that the COO/CFO personally creates and keeps the spreadsheet containing the valuation, and that access to such spreadsheet by other CI employees is limited. It is found that discussions of the valuation of companies seeking financing from CI by CI's Board of Directors are held in executive session. It is also found that each CI employee is required to sign a confidentiality agreement that details the nature and type of information the company deems confidential, including financial information, and prohibiting the disclosure of such information.

26. Based on the foregoing, it is found that the valuation is not "generally known to" or "readily ascertainable by proper means" to others outside of CI.

27. With regard to the whether the valuation "derives independent economic value" from being secret, the COO/CFO testified that disclosure of the valuation would harm CI's, and ultimately the state's taxpayers', ability to generate economic growth in accordance with CI's mission, as directed by the legislature. The COO/CFO testified that the following example illustrates the point: assume CI has invested in a company that has been valued by CI at \$20 million. Thereafter, the company seeks additional investment from private investors based on its own valuation of the company at \$25 million. If CI were required to disclose its valuation of the company as \$5 million less than the value stated by the company, such disclosure by CI likely would discourage additional investment, resulting in the company's inability to raise funds, add jobs and otherwise expand its business. Such result would negatively impact CI's ability to fulfill its mission to grow the state's economy, and ultimately would negatively impact Connecticut taxpayers.

28. In Allco Renewable Energy Limited v. Freedom of Information Commission, 205 Conn. App. 144, 159-162 (2021), the appellate court concluded that an answer key, used to evaluate responses to RFPs for large-scale clean energy projects, was a “trade secret” even though the economic value from the secrecy of the answer key accrued to the ratepayers, not to the public agency itself. Similarly, in the present case, it is found that the primary economic value of the valuation accrues to the state and its taxpayers, in accordance with CI’s statutorily directed mission to grow the economy, and that such information derives economic value from being secret. Accordingly, it is found that the first prong of the trade secret exemption is satisfied.

29. With regard to the second prong, “whether, in a specific case, a party has made reasonable efforts to maintain the secrecy of a purported trade secret is by nature a highly fact-specific inquiry.” Elm City Cheese, at 80, citing Nationwide Mutual Ins. Co. v. Stenger, 695 F. Supp. 688, 691 (D. Conn. 1988). “What may be adequate under the peculiar facts of one case might be considered inadequate under the facts of another.” *Id.*

30. It is found that the respondents have made efforts that are reasonable under the circumstances to maintain the secrecy of the valuation, as described in paragraph 25, above. It is therefore found that the second prong of the trade secrets exemption has been satisfied.

31. Based on all of the foregoing, it is found that the valuation is a trade secret and therefore is exempt from disclosure pursuant to §1-210(b)(5)(B), G.S.

32. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S. by withholding the valuation from the complainant.

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

1. The complaint is dismissed.

/s/ Christopher P. Hankins
Commissioner Christopher P. Hankins
as Hearing Officer