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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106
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Matthew Hennessy
Complainant(s)
against

Notice of Meeting
Docket #FIC 2020-0604

Tom Kirk, President, Materials Innovation and Recycling Authority; Laurie Hunt, Director of Legal Services, Materials Innovation and Recycling Authority; and Materials Innovation and Recycling Authority
Respondent(s)

March 14, 2024

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.

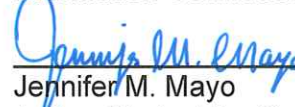
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, March 27, 2024.**

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 March 20, 2024.*** 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 March 20, 2024.*** **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 March 20, 2024*** 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: Attorney Michael C. Harrington
Attorney Proloy K. Das
Attorney Michael C. Collins
Materials Innovation and Recycling Authority

FIC# 2020-0604/ITRA/VDH//PSP/JMM/2024-03-14

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Matthew Hennessy,

Complainant

against

Docket #FIC 2020-0604

Tom Kirk, President, Materials
Innovation and Recycling Authority;
Laurie Hunt, Director of Legal
Services, Materials Innovation and
Recycling Authority; and Materials
Innovation and Recycling Authority,

Respondents

March 11, 2024

The above-captioned matter was heard as a contested case on August 29, 2023 and October 23, 2023, at which times the complainant and the respondents appeared 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 October 29, 2020, the complainant requested that the respondents provide him with an opportunity to inspect or obtain copies of the following records:

...all emails to, or from, Tom Kirk, Laurie Hunt and Don Stein from 11/1/19 to the present that indicate/reference the specific items discussed in any executive session held by the MIRA Board and its subcommittees.

3. It is found that, by email dated November 1, 2020, respondent Attorney Hunt acknowledged the complainant's request. It is further found that, in the acknowledgement, respondent Attorney Hunt stated the following:

We are searching our records for the requested documents, and we will be back to you shortly regarding production. The charge for copies, if any, is (\$.50/page).

4. By letter of complaint, dated and filed November 25, 2020,¹ the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with access to the records, described in paragraph 2, above. In his complaint, the complainant specifically references that the respondents stated he would have to pay \$.50 per page for copies of responsive records. See ¶ 3, above. The complainant also requested that the Commission consider the imposition of a civil penalty against both respondent Kirk and respondent Attorney Hunt.

5. Section 1-200(5), G.S., provides:

“[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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.²

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

[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 (1) inspect such records promptly during regular office or business hours, ... or (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the first contested case hearing, the complainant contended that the principal issue in this case stems from the respondents’ acknowledgment letter in which the respondents state that the charge for copies of responsive records would be \$.50 per page. See ¶ 3, above. The

¹ 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 with 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.

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

complainant also contended that he was under the impression that there were five hundred pages of records responsive to his request.

10. Section 1-212(a) provides, in relevant part:

[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. . . . The fee for any copy provided in accordance with the Freedom of Information Act:

(A) By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official. . . shall not exceed twenty-five cents per page; and

(B) By all other public agencies, as defined in section 1-200, shall not exceed fifty cents per page. . . .
(Emphasis supplied).

11. It is found that this Commission has previously determined that the respondent Materials Innovation and Recycling Authority (“MIRA”) is “an authority. . . of the state” for purposes of §1-212(a)(A), G.S. Therefore, MIRA may charge a copying fee of \$.25 per page for public records under the statute. See Hennessy v. Materials Innovation and Recycling Authority, et al., Docket # FIC 2020-0281 (June 22, 2022).

12. In fact, the respondents conceded at the first contested case hearing in this matter that the appropriate per page fee relevant to MIRA is \$.25 per page, and that respondent Attorney Hunt’s statement that the fee for such records was \$.50 per page was an inadvertent error.³

13. It is found that, by letter dated December 5, 2020, respondent Attorney Hunt notified the complainant that there were three pages of records responsive to his request and she attached such pages to the December 5 letter. It is found that the three pages referenced matters that were discussed in an executive session. In addition, respondent Attorney Hunt informed the complainant that there were also an additional fifty-one pages that referenced matters that “might be or were expected (when written) to be considered in a future executive session—but may or may not actually have been discussed.” Respondent Attorney Hunt stated that, if the complainant wanted copies of the fifty-one pages, the cost would be \$25.50 (or \$.50 per page).

14. Based upon the testimony of respondent Attorney Hunt, it is found that only three pages of records were responsive to the complainant’s request. It is further found that such pages dealt with matters that were planned to be discussed and were discussed in executive session. It is further found that such pages were provided to the complainant free of charge.

³ Respondent Attorney Hunt appeared and testified at the continued contested case hearing.

15. It is further found that, subsequent to the issuance of the December 5 letter, there was no further communication between the parties concerning the additional fifty-one pages of records—that is, the complainant did not request to inspect such records, did not indicate to the respondents that he wanted copies of such records, and did not inform respondent Attorney Hunt that the appropriate charge should be \$.25 per page. It is further found that respondent Attorney Hunt did not recall ever informing the complainant that there were five hundred pages of records responsive to his request.

16. Finally, it is found that respondent Attorney Hunt admitted that she made a second inadvertent error when she informed the complainant that the additional fifty-one pages of records would be provided to the complainant at the cost of \$.50 per page.

17. It is concluded that the respondents technically violated the provisions of §1-212(a), G.S., when they informed the complainant that he would be charged \$.50 per page to obtain copies of public records from MIRA.

18. Based on the fact that the respondents admitted that they made an inadvertent error with regard to the per page fee for copies of records, the Commission declines to consider the imposition of civil penalties.

Based on the facts and circumstances of this case, no order by the Commission is hereby recommended.



Valicia Dee Harmon
as Hearing Officer