

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

JP Hernandez and American
Dream Clean,

Complainants

against

Docket #FIC 2019-0042

Commissioner, State of Connecticut,
Department of Administrative Services;
and State of Connecticut, Department of
Administrative Services,

Respondents

November 13, 2019

The above-captioned matter was heard as a contested case on May 16, 2019, at which time the complainants 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 email dated January 7, 2019, the complainants requested that the respondents provide them with copies of the following records related to Department of Administrative Service's ("DAS") bid #18PSZ0236:
 - a. Other bidders' proposals;
 - b. Communications between other bidders and government officials;
 - c. Communications between and amongst government officials;
 - d. Minutes of any meetings;

- e. Memoranda or other documents prepared by government officials;
- f. Notes prepared by government officials, including evaluations by committee members; and
- g. Scoring records regarding the proposals.

3. It is found that, by emails dated January 7, 2019, the respondents acknowledged the complainants' request, but denied it on the grounds that the contract had not been awarded.

4. By email dated and filed January 24, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the requested records.

5. 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.

6. 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.

7. 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."

8. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. At the contested case hearing, the complainants contended that, because DAS's invitation to bid ("ITB") with regard to bid #18PSZ0236 had been withdrawn and a new and somewhat modified contract solicitation process had commenced, the exemption that DAS claimed with requested records was inappropriate.

10. The respondents contended that, at the time of the request in this case, the requested records were exempt from disclosure pursuant to §1-210(b)(24), G.S., because, while the respondents had not selected a vendor for bid #18PSZ0236 and had subsequently commenced a new contract solicitation process, the basic services for which they were soliciting bids remained the same.

11. Section 1-210(b)(24), G.S., provides that nothing in the FOI Act shall require disclosure of:

Responses to any request for proposals or bid solicitation issued by a public agency or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for the award of such contract have ended, whichever occurs earlier, provided the chief executive officer of such public agency certifies that the public interest in the disclosure of such responses, record or file is outweighed by the public interest in the confidentiality of such responses, record or file. . . .

12. Carol Wilson, the Director of Procurement for DAS, appeared and testified at the contested case hearing.

13. It is found that the contract at issue in this case was a contract to provide custodial services to two State of Connecticut buildings located at 24-28 Wolcott Hill Road, in Wethersfield, Connecticut (the "property"). It is found that the complainant's company was the incumbent provider of custodial services for the property. It is found that the contract that the complainant's company had with the State was set to expire on January 31, 2019.

14. It is found that, on or around November 14, 2018, the respondents commenced an ITB process for custodial services at the property. It is found that, despite having received bids, the respondent issued a "No Award Notice," and did not select a vendor.

15. Thereafter, on or around January 20, 2019, the respondents decide to utilize the Request for Proposal ("RFP") method to award the contract for the custodial services at the property. It is found that the RFP concerned the provision of the same custodial service for the property but included some new specifications.

16. It is found that, on January 7, 2019, while the contract process was still open, the complainant made the instant request for records.

17. It is found that the contract for custodial services for the property was executed on March 15, 2019.

18. It is found that, when the respondents realized that they needed to include some new specifications in the contract to accommodate the client agency, DAS's software automatically generated a new solicitation number. It is found, however, that the ITB and RFP were part of the same award process for one specific contract (that is, the provision of custodial services at the property).

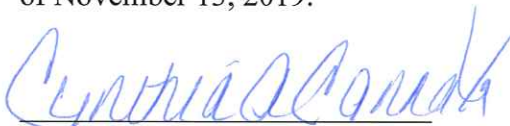
19. Because the contract was not executed until March 15, 2019, it is concluded that the requested records were exempt from disclosure on January 7, 2019, pursuant to the provisions of §1-210(b)(24), G.S.¹

20. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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 November 13, 2019.



Cynthia A. Cannata
Acting Clerk of the Commission

¹ The Commission notes that, once the contract was executed, the respondents gathered the requested records and, on April 3, 2019, produced such records to the complainants.

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:

JP HERNANDEZ, AND AMERICAN DREAM CLEAN

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES; AND STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES, c/o Attorney Erin Chocquette, 450 Columbus Boulevard, Suite 1501, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission