

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jack Rua,

Complainant

against

Docket #FIC 2019-0380

Administrator, State of Connecticut,
Connecticut Teachers' Retirement
Board; and State of Connecticut,
Connecticut Teachers' Retirement
Board,

October 23, 2019

Respondents

The above-captioned matter was heard as a contested case on August 27, 2019, at which time the complainant 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 in a letter received by the respondents on June 14, 2019, the complainant requested access to the following records related to the February 13, 2019 Teachers' Retirement Board ("TRB") meeting at which the board voted to discontinue a certain voluntary savings account:
 - a. Document or emails from 1/1/2019 to 4/25/2019 identifying the person or agency generating the request to review the program and the circumstances as to why the program needed to be reviewed.
 - b. Documents from 1/1/2019 to 4/25/2019 identifying the reason(s) the program could no longer be continued and how this interpretation differs from the precedent that had been set.
 - c. Documents reviewed from 1/1/2019 through 4/25/2019 of the original interpretation of the pre-existing language that permitted rollovers to occur.

- d. Documentation from 1/1/2019 to 4/25/2019 on the legal compliance ruling of the program by the TRB attorney and by the state Attorney General's office.
- e. Documentation from 1/1/2019 to 4/25/2019 of other State Agencies involved in the review and decision to discontinue the program.
- f. Board of Director documentation of deliberations of the compliance issue not in the TRB board minutes from 1/1/2019 through 4/25/2019.

3. By email dated and filed June 25, 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.

4. Section 1-200(5), G.S., defines "public records or files" as follows:

Any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

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.

6. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

7. It is found that the records requested by the complainant, to the extent such records exist, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that the respondents provided records responsive to the complainant's request on August 13, 22, and 23, 2019. Additionally, the respondents engaged in correspondence with the complainant on August 20, 22, 23 and 26 in an effort to respond to a number of questions posed by the complainant.

9. It is found that the respondents redacted portions of a number of records and withheld the entirety of a number of records responsive to the complainant's request. The respondents claimed that such records or the redacted portions thereof are exempt from disclosure under certain provisions of the FOI Act.

10. At the conclusion of the hearing on this matter, the respondents were ordered to submit all of the records for which they are claiming exemption, in whole or in part, to the Commission for in camera review. The respondents were prepared to immediately comply with that order. The records submitted to the Commission for in camera review shall be referred to as IC-2019-0380-1 through IC-2019-0380-287.

11. The respondents contended that IC-2019-0380-1 through IC-2019-0380-61; and, IC-2019-0380-65 through IC-2019-0380-287 are exempt from disclosure pursuant to §1-210(b)(10), G.S., as such documents, or portions thereof, contain information protected by the attorney-client privilege. Additionally, the respondents contended that IC-2019-0380-62 through IC-2019-0380-64 contain personally identifiable information that included the social security numbers and dates of birth of employees and former employees and that such information is exempt from release pursuant to §1-210(b)(2), G.S.

12. Sections 1-210(b)(2), and 1-210(b)(10), G.S., state:

Nothing in the Freedom of Information Act shall be construed to require disclosure of: (2) Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy; (10) Records, ... or communications privileged by the attorney-client relationship, marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or any other privilege established by the common law or the general statutes, including any such records, tax returns, reports or communications that were created or made prior to the establishment of the applicable privilege under the common law or the general statutes.

13. It is found that while the complainant challenged the validity of the exemptions claimed under attorney-client privilege, §1-210(b)(10), G.S., he did not challenge the respondents' redactions on IC-2019-0380-62 through IC-2019-0380-64, made pursuant to §1-210(b)(2), G.S. Therefore, such redactions will not be further addressed in this report.

14. The applicability of the attorney-client exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

15. Section 52-146r(2)G.S., defines “confidential communications” as:

All oral and written communications transmitted in confidence between a public official or employee or a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice....

16. The Supreme Court has also stated that, “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, supra at 149.

17. It is found that documents for which only a portion thereof contained exempt language were released to the complainant with the exempt language redacted. Documents that the respondents deemed to be exempt in their entirety were withheld from the complainant.

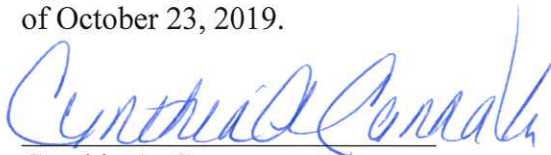
18. Based upon careful examination of the records submitted for in camera inspection, it is found that IC-2019-0380-1 through IC-2019-0380-287, which records were withheld in their entirety or redacted in part, with the exception of IC-2019-0380-62 through IC-2019-0380-64, are communications transmitted in confidence between an attorney for the respondents and employees and officials of the respondents relating to legal advice sought by the respondents or in furtherance of the rendition of such legal advice within the meaning of §§1-210(b)(10) and 52-146r(2), G.S. Additionally, it is found that no authorized representative of the respondents consented to waive the privilege of confidentiality of such records. Accordingly, it is found that such records or redacted parts thereof have been properly withheld from disclosure.

19. It is concluded, therefore, that the respondents did not violate the FOI Act, as alleged by 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 hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 23, 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:

JACK RUA, 23 Tall Timbers Drive, Farmington, CT 06032

ADMINISTRATOR, STATE OF CONNECTICUT, CONNECTICUT TEACHERS' RETIREMENT BOARD; AND STATE OF CONNECTICUT, CONNECTICUT TEACHERS' RETIREMENT BOARD, c/o Attorney Maria C. Rodriguez, Office of the Attorney General, 55 Elm Street, PO Box 120, Hartford, CT 06141-0120 and Attorney Krista O'Brien, Office of the Attorney General, 55 Elm Street, PO Box 120, Hartford, CT 06141-0120



Cynthia A. Cannata
Acting Clerk of the Commission