

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Bridgeport Fire Fighters Local 834,

Complainant

against

Docket #FIC 2019-0100

Chairman, Civil Service Commission,
City of Bridgeport; Civil Service
Commission, City of Bridgeport;
and City of Bridgeport,

Respondents

January 22, 2020

The above-captioned matter was heard as a contested case on October 7, 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. By letter dated February 12, 2019 and filed February 15, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by implementing an "examination review procedure" that violates the access to public records provisions contained in §1-210(a), G.S.
3. Section 1-210(a), G.S., provides, in relevant part, as follows:

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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection

or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located (Emphasis supplied).

4. At the contested case hearing, the complainant contended that the respondents had implemented rules limiting firefighters’ access to review their promotional examination records. The complainant further contended that there is Commission precedent from 1988 that holds that limitations concerning the amount of time or the number of times a firefighter may review his or her promotional examination records are void.

5. The respondents contended that, due to staffing levels, they must limit the amount and number of times that firefighters can review their promotional examination materials. In addition, the respondents contended that, because examination records are exempt, the Commission does not have jurisdiction over the access rules they create pertaining to such records. In the alternative, the respondents contended that, even if the Commission does have jurisdiction over the rules, the implemented limitations are reasonable and should not be disturbed.

6. It is found that, on November 13, 2018, the respondents issued a notice for competitive promotional examination # 2355 (the “2355 Notice”). It is found that the 2355 Notice provides, in relevant part, as follows:

The Civil Service Commission of the City of Bridgeport will hold a competitive promotional examination for Fire Captain at a date, time and location to be determined. Qualified candidates will be notified of the final details when confirmed.

...

SUBJECTS OF EXAMINATION: The 2019 promotional process for the position of Fire Captain in the Bridgeport Fire Department will follow an assessment-center system format. The examination will consist of a written examination and an oral examination, which will include multiple exercises, including a tactical fire simulation, in which candidates will be expected to role play the part of a Captain in the Bridgeport Fire Department. All parts of the assessment center will be video recorded. . .

...

EXAMINATION REVIEW PROCEDURE: Each candidate will have an opportunity to review his or her examination papers during the one-month period after the date of the announced results. The papers will be open to inspection during the period of 9:00 A.M. to 1:00 P.M., Monday through Friday. Every inspection period will be monitored by the staff of the Civil Service Office and no candidate will be allowed to copy examination questions or take any written material from the review room. The time allowed for review will be equal to the time allowed for taking the test. No candidate will be allowed more than two visits to review his or her papers. (Emphasis supplied).

7. It is found that, on February 6, 2019, the respondents issued a notice for competitive promotional examination # 2359 (the “2395 Notice”). It is found that the 2359 Notice concerned a promotional examination for a Fire Equipment Mechanic within the Bridgeport Fire Department. It is found that the 2359 Notice contained examination review procedures identical to those contained in the 2355 Notice.

8. It is found that the respondent Civil Service Commission has its own office, with regular business hours Monday through Friday, from 9 AM to 5 PM.

9. It is found that respondent Civil Service Commission allows a firefighter who has taken a promotion examination to come into the office to review his or her examination materials in order to ensure that the examination has been scored properly. It is found that such firefighter is allowed access to the written test, his or her answers thereto, the answer key as well as the assessment center video. It is found that this review process takes place for thirty days after the results of a promotion examination are posted and before a selection has been made.

10. It is found that a firefighter has 30 days to challenge the score given to his or her promotion examination. See Rule XVI of the Civil Service Commission, Time Limit to Bring Appeal (providing, in relevant part, “[n]o appeal, petition, or complaint by a citizen, employee or candidate authorized under Civil Service Provisions of the Charter of the City of Bridgeport . . . shall be brought but within 30 days from the date of when the act, incident and/or event is first sustained or discovered or in the exercise of reasonable care should have been discovered. . . .”).¹

11. With regard to the respondents’ jurisdictional argument, while the examination materials that the respondents permit the firefighters to review are arguably “[t]est questions, scoring keys and other examination data used to administer a . . . an examination for employment . . .” within the meaning of §1-210(b)(6), G.S, such exemption is permissive, not

¹ To be clear, the firefighters may continue to enter the respondent Civil Service Commission’s office to review their promotion examination materials after the thirty days following the posting of test results has run. However, given that appeals concerning scoring must be filed within thirty days of the posting of examination results, the complainant in this case is most concerned with the first thirty days following the posting of the results (or scoring) of a promotional examination.

mandatory.² Moreover, no exemptions to inspection have been invoked by the respondents with regard to the records at issue for this particular group of citizens, and thus exemptions to disclosure need not be considered in this case. Accordingly, the respondents' legal argument with regard to exemptions to disclosure is misplaced.

12. It is found that the records to which access is being granted are public records maintained by the respondents. It is also clear that, pursuant to §1-210(a), G.S., the complainant is challenging the limitations that respondents have placed on accessing these public records through the implementation of a rule or policy. See ¶¶ 6-7, above.

13. Accordingly, it is concluded that the Commission has jurisdiction over the complaint in this matter. See §1-205(d), G.S. ("The commission shall, subject to the provisions of the Freedom of Information Act, promptly review the alleged violation of said Freedom of Information Act and issue an order pertaining to the same. . . .").

14. With regard to precedent, in Patrick J. Shevlin and Local 834 IAFF v. Bridgeport Civil Service Commission, Docket #FIC 88-91 (July 13, 1988) ("Shevlin"), the Commission held that a regulation implemented by the Bridgeport Civil Service Commission that "limited the amount of time and the number of times the complainant [firefighters] could review their answer and results for the written portion of the examination" was void pursuant to §1-210(a) G.S.

15. Based on Shevlin, the complainant contends the respondents' access limitations with regard to time of day ([t]he papers will be open to inspection during the period of 9:00 A.M. to 1:00 P.M.); the amount of time ("[t]he time allowed for review will be equal to the time allowed for taking the test"); and number of times ("[n]o candidate will be allowed more than two visits to review his or her papers") are void. See ¶ 6, above.

16. The respondents contend that they simply do not have enough staff to allow the firefighters unlimited access to these examination materials throughout the entire business day.

17. Lisa Mastronunzio, the Civil Service Commission's Acting Personnel Examiner, appeared and testified at the contested case hearing on behalf of the respondents.

18. It is found that, generally, a promotional examination includes both a written and an oral examination. It is found that the oral examination, which is videotaped, can include an oral test, role playing and/or a physical assessment or component. It is found that, while the firefighters are allowed to review both the oral and the written components of the promotional examination, they must make an appointment to review the oral examination, as the respondent Commission only has two computers to dedicate to this review (the "appointment requirement").

² In their post-hearing brief, the respondents contend that the promotional examination materials are also exempt pursuant to §1-210(b)(b)(5), G.S., as trade secrets. Section 1-210(b)(5), G.S., is likewise a permissible exemption that has not been invoked by the respondents with regard to this group of citizens inspecting these particular records.

19. It is further found that the respondents require a staff member be present during a firefighter's review of promotional examination materials. Currently, it is found that the Civil Service Commission has a staff of five: the Personnel Director; the Acting Personnel Examiner; an Accounting Clerk; a Clerical Assistant and the Administrative Assistant/Clerk of the Civil Service Commission.

20. It is found that, in addition to overseeing promotional examinations, the staff of the respondent commission has a variety of duties, including overseeing hiring for the City of Bridgeport; overseeing medical testing; preparing for monthly meetings; dealing with appeals that are filed; and posting jobs.

21. It is found that, while the respondent Civil Service Commission's business hours are weekdays from 9 A.M. to 5 P.M., the respondents contended that they must limit promotional examination reviews to 9:00 A.M. to 1 P.M. so that they can ensure they have sufficient time to complete their other necessary responsibilities (the "office hours' limitation").

22. It is found that the respondents have also determined that it is sufficient to allow a candidate who has taken a promotional examination the same amount of time to review the examination materials as was slated to take the examination itself. For example, if the time allowed to complete the oral and written portions of a promotional examination is 2.5 hours, a candidate may have 2.5 hours only to review his or her examination materials (the "time limitation"). In addition, it is found that the respondents have determined that each candidate may only visit the respondent Civil Service Commission's office two times to review his or her examination materials. Thus, for example, if a candidate arrives to the Civil Service Commission's office to review his or her examination materials and can only spend 40 minutes reviewing the materials and then returns a second time and can only spend 30 minutes reviewing the materials, the candidate is prohibited from returning a third time to review the materials (the "sessions' limitation").

23. It is found that the requirement that the firefighters make an appointment in order to review the videotaped portion of the examination is a reasonable requirement, given that the respondents only have two computers to dedicate to such review. It is further found that the office hours' limitation is also reasonable, given that the respondents have organized their office to ensure that staff is available to supervise promotional examinations reviews during the first half of each business day.

24. It is found, however, that both the time limitation and the sessions' limitation unnecessarily conflict with and curtail the public's right to access public records as guaranteed by the FOI Act. In this regard, it is found that the respondents may not unilaterally determine how long an individual should need to review a public record, while simultaneously limiting such individual's ability to enter into the public agency itself to review the public record. If the respondent Civil Service Commission determines that it cannot manage the needs of individuals to access public records maintained in its office, it can always choose to maintain certain records at the office of the city clerk. See Woodmont, et al. v. FOI Comm'n, No. CV-064010811, 2007 WL 285117, at *5 (Conn. Super. Ct. Sept. 20, 2007) (holding that the FOI Act "requires access to public records during regular business hours at an agency's regular place of business or, if this is deemed to be too burdensome, the

agency many choose to locate [its] records at the office of the town clerk.”)

25. The Commission is not persuaded that it should deviate from its precedent in Shevlin. It is therefore concluded that the both the time limitation and the sessions’ limitation are void. It is further concluded that the respondents violated §1-210(a), G.S., by implementing such limitations.

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

1. Henceforth, the respondents shall strictly comply with §1-210(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 22, 2020.

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:

BRIDGEPORT FIRE FIGHTERS LOCAL 834, c/o Attorney Daniel Hunsberger, Maurer & Associates, PC, 871 Ethan Allen Highway, Suite 202, Ridgefield, CT 06877

CHAIRMAN, CIVIL SERVICE COMMISSION, CITY OF BRIDGEPORT; CIVIL SERVICE COMMISSION, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Dina Scalo, Office of the City Attorney, 999 Broad Street, Bridgeport, CT 06604

Cynthia A. Cannata
Acting Clerk of the Commission