

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Leonard W. Gallagher,
Complainant

Report of Hearing Officer

against

Docket #FIC78-209

City and Town of Torrington;
and Corporation Counsel of the
City and Town of Torrington,
Respondents

December 13, 1978

The above captioned matter was heard as a contested case on December 6, 1978, at which time 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:

1. The respondents are public agencies within the meaning of §1-18a(a), G.S.
2. In April 1978 the board of public safety of the respondent town closed off a portion of Church Street between the Vogel and Wetmore Schools.
3. At the May 22, 1978 meeting of the board of councilmen of the respondent town the respondent corporation counsel distributed to the councilmen who were present a document described in the minutes of the board as a "brief" challenging the closing of a portion of Church Street."
4. The "brief" had been hand delivered to the respondent corporation counsel by a taxpayer of the respondent town.
5. The respondent corporation counsel did not remember who delivered the "brief".
6. The respondent corporation counsel utilized the "brief" to some extent when he drafted an opinion on the legality of the closing of Church Street in May 1978.
7. On October 3, 1978 the complainant requested a copy of the "brief" from the respondent corporation counsel identifying the document by referring to page 5 of the minutes of the board of councilmen for May 22, 1978.
8. On October 23, 1978 the complainant filed his appeal with this Commission alleging his rights under the Freedom of Information Act had been denied.

9. At hearing the respondent corporation counsel filed a motion to dismiss alleging that the Commission had failed to schedule a timely hearing within the twenty days required by §1-21i(b), G.S.

10. It is found that the language of §1-21i(b), G.S. which provides that the Freedom of Information Commission shall schedule a hearing within twenty days after receipt of the notice of the appeal is permissive and not mandatory.

11. The respondent corporation counsel alleged by way of defense that the "brief" was exempted from disclosure by §1-19(b)(1), G.S. as a preliminary draft or note with respect to which the councilmen determined that the public interest in non-disclosure outweighed the public interest in disclosure.

12. It is found that there was no evidence that the councilmen or the corporation counsel determined that the public interest in non-disclosure outweighed the public interest in disclosure.

13. It is further found that the "brief" is not preliminary note within the meaning of §1-19(b)(1), G.S. because it was discussed by and distributed to the councilmen at the meeting of May 22, 1978.

14. The respondent corporation counsel alleged by way of an additional defense that the brief was exempt from disclosure under §1-19(b)(4), G.S. as strategy and negotiations with respect to pending claims and litigation to which the public agency is a party.

15. On or about December 12, 1978 the mayor of the respondent town instituted an action seeking a declaratory judgment on the question of whether Church Street may be legally barricaded to vehicular traffic.

16. There was no evidence that the "brief" contained strategy and negotiations.

17. It is concluded that the requested document is not exempt from disclosure under §1-19(b)(4), G.S.

18. Finally the respondent corporation counsel alleged that the "brief" is exempted from disclosure under §1-19(b)(10), G.S. as communication privileged by the attorney-client relationship.

19. There was no testimony identifying the author of the "brief".


20. It is found that the author of the "brief" was not the respondent corporation counsel.

21. It is found that the document in question is not a communication privileged by the attorney-client relationship.

24. It is concluded that the "brief" is a public document within the meaning of §1-18a(d), G.S. and subject to the disclosure provisions of §1-15 and §1-19(a), G.S.


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

1. The motion to dismiss is hereby denied.
2. The respondent corporation counsel shall provide the complainant with a copy of the "brief" within one week of the date this Hearing Officer's Report is adopted as a final decision of the Freedom of Information Commission.



Commissioner Helen Loy
as Hearing Officer

Approved by order of the Freedom of Information Commission on January 10, 1979.



Leslie Ann McGuire
Acting Clerk of the Commission