

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Local 714, Council 4, AFSCME

Complainant(s)

Docket #FIC83-181

vs.

Director of Personnel &
Labor Relations, Dept. of
Administrative Services of
the State of Connecticut

March 14, 1984

The above captioned matter was scheduled for hearing November 18, 1983 at which time the parties appeared and presented evidence and argument on the complaint.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. On May 18, 1983, Audrey Eckert, acting on behalf of the membership of Local 714, AFSCME who were applicants for promotion to senior eligibility technician, requested access to documentation of evaluation, written or oral (notes) submitted to determine grades.
3. On May 25, 1983 the respondent allowed Eckert to inspect the standard and supplementary application forms and the exam factor review sheets, but denied access to certain other documents.
4. In addition, the respondent refused to allow copying of any documents except the application and supplemental application.
5. The respondent claimed that its refusal to allow copying was lawful because copying such material is prohibited by regulation of the personnel policy board, §5-225-1(3).
6. The respondent claimed further that since the matter in question was governed by §5-225, G.S., the Freedom of Information Commission lacked jurisdiction over the complaint.

7. §5-225 provides in relevant part that:

The paper markings and other items used in determining the final earned ratings, other than the questions and other materials constituting the test itself, shall be open to inspection by the candidate, subject to such regulations as may be issued by the Commissioner of Administrative Services

8. §1-19(a), G.S. provides in relevant part:

Except as otherwise provides 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 inspect such records promptly during regular office or business hours or to receive a copy of such records in accordance with the provisions of section 1-15.

9. §5-225, G.S. does not, explicitly or by implication, prohibit examinees from exercising their rights under the Freedom of Information Act to inspect or copy public records.

10. It is found therefore, that pursuant to section 1-21i(b) and section 1-21j(d) the Freedom of Information Commission does have jurisdiction over the instant complaint.

11. It is further found that an agency cannot, by regulation, supersede the mandate of a state statute.

12. Therefore, §5-225-1 of the Regulations of Connecticut State Agencies can only exempt the examination materials to the extent that such regulation does not deprive persons of rights granted under §1-19(a), G.S. or other state statute or federal law.

13. The documents sought by the complainant consist not of any written test but of an evaluation of job experience, performance, training and ratings of each candidate.

14. Withheld from inspection were forms designated R-2 which consisted of the scores given each applicant for promotion by members of the district committee.

15. Form R-2 shows the individual ratings given by each member of the district committee.

16. As part of the procedure to determine promotions a second form R-3 was prepared which summarized the scores as a "majority" score so that the individual ratings were not known.

17. The respondent allowed inspection of R-3.

18. The respondent argued that since the summary sheet R-3 was the document used to determine the final earned ratings, under §5-225, G.S. it was not required to disclose the R-2.

19. Public records are defined at section 1-18a(d), G.S. as

".....any recorded data nor 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."

20. It is found that Form R-2 is a public record within the meaning of both §1-19(a), G.S. and §1-18a(d), G.S.

21. Although §1-19(b)(1), G.S. permits an agency to withhold preliminary drafts and notes under certain specific circumstances that exemption is not applicable in this instance because §1-19(c)(1), G.S. requires disclosure of "any report comprising part of the process by which governmental decisions and policies are formulated."

22. It is concluded that Form R-2 is subject to disclosure under §1-19(c)(1), G.S.

23. It is further found that the respondent's claim that the Form R-2 is not subject to disclosure under §5-225, G.S. because it was not submitted to determine grades is without merit inasmuch as the form was submitted by members of the district committee and was used to determine the outcome of the evaluation for promotion.

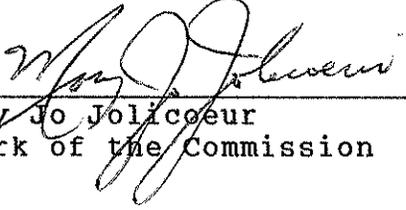
24. It is further found that §5-225, G.S. does not prohibit disclosure of Form R-2.

25. It is further found that the complainant is entitled to receive copies of, as well as to inspect, the records which it seeks under §1-19(a), G.S. and §1-15, G.S.

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

1. The respondent shall provide the complainant with opportunity to inspect and to copy the records which it seeks and which are described at paragraph 2.

Approved by order of the Freedom of Information Commission at its regular meeting of March 14, 1984.



Mary Jo Jolicœur
Clerk of the Commission