

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Gabriel Cohen, et al

Docket #FIC83-212

Complainant(s)

September 20, 1984

vs.

City of New Haven
Development Administrator

Respondent(s)

The above captioned matter was scheduled for hearing on January 17, 1984 before Commissioner Helen M. Loy. At that time the parties appeared and presented evidence. At that time David T. Chase was permitted to become a party to the proceedings.

Further hearings before Commissioner Loy were held January 20, 1984 and February 9, 1984. Before the evidentiary proceedings were concluded Commissioner Loy became ill and requested that the matter be assigned to another hearing officer.

On March 30, 1984 and April 13, 1984 further proceedings were heard before Commissioner Judith A. Lahey. The full record of the prior proceedings before Commissioner Loy was incorporated into the proceedings held before Commissioner Lahey.

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

1. By letter filed with the Commission on October 19, 1983 the complainant alleged that the development administrator of the City of New Haven denied him access to public records.

2. The development administrator claims he is not a public agency within the meaning of §1-18a(a), G.S.

3. The development administrator is on the staff of the Mayor of New Haven.

4. The development administrator is appointed pursuant to the New Haven City Charter which grants authority to the Mayor to appoint four coordinators in various fields "to aid the Mayor in carrying out said Mayor's duties as chief executive and administrative officer of the City of New Haven."

5. One of the tasks of the development administrator is to negotiate a proposal for government center which is financially feasible for the city.

6. If such a proposal is negotiated it must be presented to the Mayor for his approval and further action.

7. Adoption of the proposal will require the approval of various city agencies.

8. It is found that the development administrator is a public agency within the meaning of §1-18a(a), G.S.

9. By letter dated September 16, 1983 the complainant requested access to or copies of

"any letters, advisory opinions, recommendations or reports concerning the development administrator's plans for disposition of the Government Center site on Church Street filed between September 1, 1982 and the present date."

10. On September 21, 1983 the complainant's request was denied in part.

11. During the course of the hearings the respondent development administrator compiled two indices describing the nature of the documents withheld and stating the basis of his claim of exemption.

12. The indices contain several categories of documents which the respondent claims are exempt either as preliminary notes and drafts under §1-19(b)(1), G.S., as commercial or financial information given in confidence, not required by law and obtained from the public under §1-19(b)(5), G.S., as feasibility estimates and evaluations relative to the acquisition of property or to prospective public supply and construction contracts under §1-19(b)(7), G.S., or as records pertaining to strategy and negotiations with respect to pending claims and litigation under §1-19(b)(4), G.S.

13. The respondent claimed additionally that if a document was exempt under either §1-19(b)(1), G.S. or under §1-19(b)(7), G.S. that the document was exempted as a whole.

14. The complainant, after having an opportunity to examine the indices, limited his request to specific items.

15. The documents which are sought by the complainant were developed as a result of the negotiations between the respondent development administrator and David Chase after Chase was designated preferred developer for Government Center.

16. The documents track the negotiations between the respondent development administrator and Chase Enterprises.

17. The documents incorporate ideas generated by Chase enterprises as to design, financial, commercial and economic assumptions and projections, as well as costs and benefits resulting from its proposals for the development of Government Center.

18. The respondent claims that most of the documents withheld are exempt under §1-19(b)(1), G.S. which provides in relevant part that:

nothing in sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, shall be construed to require disclosure of (1) preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.

19. All of the documents claimed by the respondent to be exempt under §1-19(b)(1), G.S. were either reports or memoranda concerning the development of Government Center.

20. Section 1-19(c)

(c) Notwithstanding the provisions of subdivision (1) of subsection (b) of this section, disclosure shall be required of (1) interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.

21. It is found that the documents in issue are not exempt because the respondent failed to prove that the documents claimed to be exempt under §1-19(b)(1), G.S. did not comprise part of the process by which governmental decisions and policies are formulated.

22. The respondent further claimed that most of the documents withheld are exempt under §1-19(b)(7), G.S. which provides in relevant part that:

Nothing in sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, shall be construed to require disclosure of

(7) the contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts

23. Construction contracts were contemplated, within the totality of the undertaking involved in the development of Government Center.

24. It is found, however, that the language of §1-19(b)(7), G.S. does not exempt all appraisals, feasibility studies and estimates relative to the development of Government Center which was being negotiated with Chase Enterprises because the respondents failed to prove that all appraisals, feasibility studies and estimates pertained to the acquisition of property, public supply or construction contracts.

25. It is concluded therefore, that the respondent may withhold only those portions of the records in issue which are claimed to be exempt under §1-19(b)(7), G.S. which contain real estate appraisals, feasibility estimates, and evaluations relative to specific construction contracts.

27. §1-19(b)(5), G.S. exempts from disclosure "commercial or financial information given in confidence, not required by law and obtained from the public."

28. All of the records claimed by the respondents to be exempt under §1-19(b)(5), G.S. incorporate ideas generated by Chase Enterprises as to design, financial, commercial and economic assumptions and projections, as well as cost and benefit analyses resulting from its proposals for the development of Government Center which documents were received under a promise of confidentiality.

29. Disclosure of the material claimed to be exempt under §1-19(b)(5), G.S. provided to the development administrator by Chase Enterprises would put Chase Enterprises at a competitive disadvantage.

30. Disclosure of the material claimed to be exempt under §1-19(b)(5), G.S. and which was provided to the development administrator and his staff by Chase Enterprises would reduce the likelihood that the development administrator could obtain similar materials in the future from a developer.

31. It is concluded that to the extent that records claimed exempt under §1-19(b)(5), G.S. disclose design, financial, commercial and economic assumptions and projections as well as costs and benefits resulting from proposals for the development of Government Center generated by Chase Enterprises only, that information is exempt as "commercial or financial information given in confidence, not required by law and obtained from the public."

32. All of the material claimed to be exempt under §1-19(b)(5), G.S. was prepared jointly by the staff of the respondent and Chase Enterprises.

33. With respect to the jointly prepared documents the respondent failed to prove that the headings of the documents claimed exempt, including both titles and section headings, fall within the exemption for commercial and financial information.

34. The respondent development administrator also claims that the materials generated by his staff using Chase assumptions and other data cannot be separated from the confidential, commercial and financial data provided by Chase Enterprises.

35. It is found that some materials, in addition to the headings generated by the respondent's staff, which are contained in documents jointly prepared are not within the exemption at §1-19(b)(5), G.S. because they are not obtained from the public but rather reflect the work of the staff of the respondent development administrator.

36. It is found that insofar as the numbers and specific ideas which are contained in documents prepared by the staff of the respondent development administrator are derived from financial analyses and other data obtained from Chase, such derived data and financial analyses are exempt under §1-19(b)(5), G.S. and may be protected by deleting same from the requested records.

37. The respondent claimed that one document was exempt under 1-19(b)(4), G.S. as "records pertaining to strategy and negotiations with respect to pending claims and litigation to which the public agency is a party until litigation or claim has been finally adjudicated or otherwise settled."

38. The record claimed exempt under §1-19(b)(4), G.S. was an outline of outstanding issues regarding the final billing of an architect who had done some work on Government Center prior to the designation of Chase Enterprises as preferred developer.

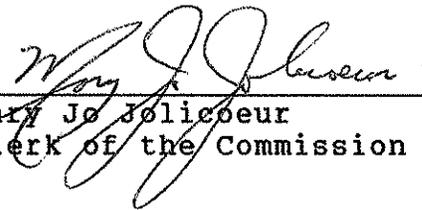
39. It is found that the outline in question is not a record pertaining to strategy and negotiation with respect to pending claims and litigation within the meaning of §1-19(b)(4), G.S.

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

1. The respondent development administrator shall disclose to the respondent the requested records, except that he may have masked or blocked from view those portions of the records which are found to be exempt herein.

2. The requested materials shall be provided to the complainant within two weeks of receipt of the final decision in this matter.

Approved by order of the Freedom of Information Commission at its special meeting of September 20, 1984.



Mary Jo Jolicœur
Clerk of the Commission