

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
William J. Corvo,

FINAL DECISION

Complainant

Docket #FIC84-87

against

October 10, 1984

Bar Examining Committee of  
the State of Connecticut,

Respondent

The above captioned matter was heard as a contested case on July 24, 1984 at which time the complainant and the respondent appeared and presented testimony, exhibits 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. By letter dated May 14, 1984 the complainant made a request of the respondent for the following information relating to the Bar Examination administered on July 27 and July 28, 1983:

- a) a list of the persons who read, scored or graded the essay answers,
- b) a list of all "independent readers" used by the respondent for such exam,
- c) a list of "readers, graders or scorers for each of the 12 essay questions,"
- d) the criteria used to determine the competency of the respondent's examiners, readers and scorers,
- e) the review procedure used to determine the competency of examiners,
- f) the respondent's definition of what constitutes "a totally unresponsive answer,"
- g) the total number of 0's, 1's, 2's, 3's, 4's and 5's given on the essay questions,
- h) the standard deviation of both Part A and Part B scores,
- i) the average of Part A and Part B scores,
- j) guidelines as to conditions under which the bar examination answers may be graded,

- k) names of individuals who select examiners for the Bar Examination,
- l) names of the monitors of the examination,
- m) the criteria for determining that the number 264 "qualifies an individual to practice law in the State of Connecticut, its purpose and meaning as established in any rules or guidelines which the Bar Examining Committee may have promulgated."
- n) the criteria for using the numbers 254 and 274 "as numbers which automatically require a rereading" of essay answers by an independent reader.

3. By letter dated May 17, 1984 the respondent provided the complainant with responses to paragraphs 2(h) and 2(i), above, and responded to paragraph 2(k) by indicating that judges of the Superior Court choose examiners. The remainder of the complainant's request was denied.

4. By letter of complaint filed with the Commission on May 22, 1984 the complainant appealed the partial denial of his request.

5. At hearing, the respondent claimed that the information requested is exempted from disclosure by §1-19(b)(6), G.S.

6. It is found that none of the information requested is either a "test question, "a scoring key," or "examination data used to administer" the bar examination.

7. It is therefore concluded that the information requested is not exempted from disclosure by §1-19(b)(6), G.S.

8. In a memorandum filed subsequent to the hearing in this matter the respondent raised a claim that the Commission lacks jurisdiction over the complainant's complaint "since the Superior Court has the exclusive power to regulate the practice of law in this state. . . and the Commission cannot intrude upon the judicial power of the constitutional court without violating the separation of powers guaranteed by the Constitution of Connecticut."

9. §1-21j(d), G.S. provides that the Freedom of Information Commission shall,

subject to the provisions of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, promptly review the alleged violation of said sections and issue an order pertaining to the same. Said commission shall have the power to investigate all alleged violations of said sections. . .

10. The respondent's claim that the complainant's complaint to this Commission is an appeal of the respondent's decision with respect to the complainant's bar examination results is without grounds.

11. Because the issue before this Commission is whether public records were improperly withheld, and not whether the respondent acted properly in scoring the complainant's bar examination, the respondent's claim that this Commission lacks jurisdiction to hear the complaint is without merit.

12. The respondent further claimed that the information in question is exempted from disclosure by §1-19(b)(10), G.S. because "[u]nder federal law, the respondents are not required to discuss examination papers with failing applicants nor is the petitioner entitled to see his examination to compare it with others. The petitioner is requesting data which he is not entitled to receive, and which the respondents are not compelled to reveal as a matter of federal law."

13. The authority relied upon by the respondent deals with the substantive appeal processes available to bar candidates, not with disclosure of public records. The respondent has failed to cite any federal law which exempts the records in question from disclosure.

14. It is therefore concluded that the records in question are not exempted from disclosure by §1-19(b)(10), G.S.

15. At hearing, the complainant claimed that the respondent's response to paragraphs 2(h) and 2(i) had been inaccurate and unsatisfactory. The respondent, which had rounded off the numbers before releasing them to the complainant, has agreed to provide the complainant with the figures extended to four decimal places.

16. At hearing the respondent indicated that it had in its records documents such as those described at paragraphs 2(a), 2(j) and 2(k), above.

17. With respect to paragraph 2(g), it is found that no record exists which reflects that information. To respond to that portion of the complainant's request the respondent would have to conduct an analysis of its records and compile data to create a record which, under the Freedom of Information Act, it is not required to do.

18. With respect to paragraph 2(l), it is found that no list of monitors exists. However, testimony from a representative of the respondent indicated that the names were recorded in the files of the respondent and were, in fact, accessible.

19. With respect to paragraphs 2(m) and (n), above, it is found that statistical studies exist which are responsive to the complainant's inquiries.

20. It was not made clear at hearing whether the information described at paragraphs 2(b) through (f), above, exists in recorded form in the files of the respondent.

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

1. The respondent shall forthwith provide the complainant with copies of the records containing the information described at paragraphs 2(a), (h), (i), (j), (k), (l), (m) and (n), above.

2. The respondent shall forthwith provide the complainant with whatever records it may have in its files which reflect the information described at paragraphs 2(b) through (e), above.

Approved by order of the Freedom of Information Commission at its regular meeting of October 10, 1984.

  
Mary Jo Jolicoeur  
Clerk of the Commission