

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Ryan Wenzel,

Complainant

against

Docket #FIC 2017-0273

Human Relations Office,
State of Connecticut,
University of Connecticut; and
State of Connecticut,
University of Connecticut,

Respondents

February 28, 2018

The above-captioned matter was heard as a contested case on July 10, 2017, 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. It is found that, by email dated May 12, 2017, the complainant requested that the respondents provide him with copies of the following:

. . . all pertinent emails and committee member notes regarding a job posting for the UCONN Library. Specifically, the job posting is for the Information Technology Support Coordinator, Job ID 2017329.

3. It is found that, by email dated May 12, 2017, the respondents acknowledged the complainant's request, and indicated that they were in the process of compiling responsive records. It is found that the respondents indicated that, once the responsive records were ready for disclosure, they would contact the complainant regarding the cost for the records and the best method of transferring the records to the complainant.

4. Subsequently, on May 17, 2017, it is found that the respondents communicated with the complainant, indicating that, because the job search was still underway, it was their position that the complainant's request was premature.

Accordingly, the respondents advised the complainant that he should wait for them to fill the position and then renew his request for records.

5. It is found that, in two separate emails both dated May 18, 2017, the complainant informed the respondents that he strongly disagreed that his request was in any way premature or that he was required to wait for the requested records.

6. By letter dated and filed May 18, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with a copy of the interviewers' notes referenced in paragraph 2, above.

7. Section 1-200(5), G.S., provides:

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

8. Section 1-210(a), G.S., provides in relevant part that:

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.

9. Section 1-212(a), G.S., provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

10. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

11. It is found that a four-member committee interviewed approximately thirty-eight candidates for an Information Technology Support Coordinator position, which is fairly described as a help-desk coordinator position. The complainant was one of the candidates who interviewed for this position, but ultimately was not offered the position. It is found that, during the interviews, some of the committee members took notes on the

particular interviewees.

12. It is found that, on or around June 20, 2017, the respondents provided the complainant with 32 pages of responsive records. It is found that the responsive records are fairly described as the job posting for the Information Technology Support Coordinator position, a spreadsheet concerning the interviewees, their qualifications, a brief summary of the interviews, as well as some emails among and between the respondents concerning the complainant's FOI request.

13. At the hearing, the complainant contended that the disclosure was incomplete, as it did not contain the individual committee members' notes and comments on the specific interviewees, which notes and comments were written by the committee members during the actual interviews. The complainant also contended that the respondents failed to disclose records promptly.

14. The respondents contended that the remaining records are exempt pursuant to §1-210(b)(1), G.S., (handwritten notes), and §1-210(b)(6), G.S., (actual test questions).

15. At the conclusion of the contested case hearing, the complainant moved to have the Commission conduct an in camera inspection of the requested records. The hearing officer granted the complainant's motion.

16. On July 28, 2017, the respondents lodged in camera records with the Commission. The in camera records consist of 78 pages. Such records shall be identified as IC-2017-0273-01 through IC-2017-0273-78.

17. Section 1-210(b)(1), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require disclosure of:

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....

18. In 1980, the Connecticut Supreme Court interpreted the phrase "preliminary drafts and notes" in the FOI Act. See Wilson v. FOIC, 181 Conn. 324 (1980) ("Wilson"). The Wilson court ruled that "preliminary drafts or notes reflect that aspect of an agency's function that precedes formal and informal decision making. . . . It is records of this preliminary, deliberative and predecisional process that . . . the exemption was meant to encompass." Wilson, 181 Conn. at 332. In addition, the Wilson court interpreted the phrase "preliminary drafts and notes" in the FOI Act as identical to the deliberative process privilege found in 5 U.S.C. §552(b)(5) of the federal Freedom of Information Act, with the exception that, under Connecticut's FOI Act, the public agency carried the additional burden to show that "the public interest in withholding such document clearly outweighs the public interest in disclosure." See Wilson, 181 Conn. at 333-340.

19. The year following Wilson, the Connecticut General Assembly adopted Public Act 81-431, which added to the FOI Act the language now codified in §1-210(e)(1). See ¶ 21, below.

20. It is found that with adoption of Public Act 81-431, the Connecticut General Assembly made clear that the Connecticut FOI Act required more robust disclosure than is required by the deliberative process privilege permitted at the federal level.

21. Accordingly, §1-210(b)(1), G.S., must be read in conjunction with §1-210(e)(1), G.S., which provides, in relevant part, as follows:

Notwithstanding the provisions of [§1-210(b)(1), G.S.], 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.

22. After a careful review of the in camera records, it is found that each of the in camera records contains committee members' notes as well as actual examination questions (which will be dealt with below). It is found that some of the committee members' notes are handwritten, while other members' notes are typed. It is found that all of the committee members' notes, whether handwritten or typed, are "notes," within the meaning of §1-210(b)(1), G.S., and that the respondents determined¹ that the public interest in withholding such notes clearly outweighed the public interest in disclosure.

23. It is further found that the committee members' notes are not interagency or intra-agency memoranda, letters, advisory opinions, recommendations or reports, within the meaning of §1-210(e)(1), G.S.

24. It is therefore concluded that such portions of the in camera records are permissibly exempt pursuant to §1-210(b)(1), G.S. It is further concluded that the respondents did not violate the FOI Act when they refused to disclose such portions of

¹ Specifically, the respondents determined that, in order to execute their roles thoroughly and to the best of their abilities, the committee members must be able to record their candid thoughts and assessments about each of the candidates. The respondents further determined that the committee members used their notes to engage in fruitful discussions about the various candidates when the interviews were completed. Implicitly, the respondents contended that public disclosure of the committee members' notes might have a chilling effect on the member's willingness to record their candid impressions going forward.

the in camera records to the complainant.

25. Next, §1-210(b)(6), G.S., provides that nothing in the FOI Act shall be construed to require disclosure of:

Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations.

26. In Washington v. FOIC, 25 Conn. L. Rptr. 334 (1999) (“Washington”), the Superior Court concluded that, “[b]ased on the testimony at the FOIC hearing,” oral board panelists’ scoring sheets were “the equivalent of a scoring key” which is specifically exempted from disclosure under §1-210(b)(6), G.S.

27. The Commission has previously interpreted Washington to mean that certain oral examination data were exempt from disclosure pursuant to §1-210(b)(6), G.S. See Casey v. Dep’t of Corr., Docket #FIC 2003-377 (Apr. 14, 2004) (forms containing questions asked by the interview panel, candidates’ responses, ratings given by the interview panel members and any comments made by such members constituted test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Randal Edgar et al. v. Waterbury Superintendent of Sch., Docket #FIC 2000-501 (Mar. 28, 2001) (scores assigned by interviewers to each candidate for the position of superintendent of schools constitute examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Scharf v. Ridgefield Police Comm’n, Docket #FIC 2000-649 (Apr. 25, 2001) (the numerical score given to each candidate by each panelist for every question asked constitutes examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.; and Murray v. Hartford Pers. Director, Docket #FIC 2001-006 (Apr. 11, 2001) (scoring sheets of each of the oral board panelists for each candidate constitute examination data within the meaning of §1-210(b)(6), G.S.).

28. After a careful in camera review, it is concluded that the remainder of the in camera records—that is, those parts of the in camera records other than the committee members’ notes—are actual test questions. It is found that such portions of the in camera records are permissibly exempt from disclosure pursuant to §1-210(b)(6), G.S. It is further concluded that the respondents did not violate the FOI Act when they refused to disclose such portions of the in camera records to the complainant.

29. Finally, with regard to promptness, the Commission has previously opined that the word “promptly” in §1-210, G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request.” See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if

immediate compliance is not possible, the agency should explain the circumstances to the requester.

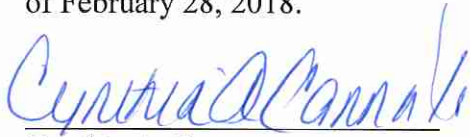
30. It is found that, when the respondents received the complainant's May 12th request, the search to fill the position was still ongoing and that they informed the complainant of this fact. It is found that the respondents offered the position to a candidate on June 16, 2017 and the position was accepted by the candidate on June 18, 2017. It is found that the responsive records were disclosed to the complainant just two days later.

31. Accordingly, based upon the facts and circumstances of this case, it is concluded that the respondents promptly provided the non-exempt, responsive records to the complainant.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 28, 2018.



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:

RYAN WENZEL, UCONN Library, 369 Fairfield Way #1005T, Storrs, CT 06269

HUMAN RELATIONS OFFICE, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT; AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT c/o Attorney Paul S. McCarthy, University Communications, 34 North Eagleville Road, U-3144, Storrs, CT 06269



Cynthia A. Cannata
Acting Clerk of the Commission