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FREEDOM OF INFORMATION

Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 · www.state.ct.us/foi/ · email: foi@po.state.ct.us

Noelle Bates,
Complainant(s)

against

Director, Personnel Department, City of Bristol; Personnel Department, City of Bristol; and City of Bristol,
Respondent(s)

Notice of Rescheduled Commission Meeting

Docket #FIC 2015-855

August 15, 2016

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, August 10, 2016 at 2:00 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, Ist floor, Hartford, Connecticut, at **2:00 p.m.** on **Wednesday, September 14, 2016.**

Any brief, memorandum of law or request for additional time, as referenced in the July 6, 2016 Transmittal of Proposed Final Decision, must be received by the Commission on or before September 2, 2016.

By Order of the Freedom of Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Attorney Michael G. Tansley
Attorney Kenneth Weinstock and Attorney Daniel P. Murphy

2016-08-15/FIC# 2015-855/ReschedTrans/wrbp/LFS//CAL

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Noelle Bates,
Complainant(s)
against

Director, Personnel Department, City of Bristol;
Personnel Department, City of Bristol; and
City of Bristol,
Respondent(s)

Notice of Meeting

Docket #FIC 2015-855

July 6, 2016

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, August 10, 2016.** At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission ***ON OR BEFORE July 29, 2016***. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed ***ON OR BEFORE July 29, 2016***. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed ***ON OR BEFORE July 29, 2016***, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Attorney Michael G. Tansley
Attorney Kenneth Weinstock

FIC# 2015-855/Trans/wrbp/LFS//CAL/2016-07-06

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Noelle Bates,

Complainant

against

Director, Personnel Department, City of Bristol; Personnel Department, City of Bristol; and City of Bristol,

Respondents

Report of Hearing Officer

Docket #FIC 2015-855

June 21, 2016

The above-captioned matter was heard as a contested case on March 1, 2016, 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 on December 3, 2015, the complainant requested a copy of the respondent Personnel Director's "handwritten notes and any other written and/or printed documents you may have taken and/or received during your 'fact finding' investigation" of the mayor.

3. It is found that by letter dated December 4, 2015, the respondents denied the complainant's request for the Personnel Director's handwritten notes, claiming that such notes were exempt from disclosure.

4. By letter filed December 14, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of the requested records.

5. 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, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

> 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, ... or (3) receive a copy of such records in accordance with section 1-212.

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

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

9. The respondents claim that the Director's notes are exempt pursuant to §1-210(b)(1), G.S., which provides that "[n]othing in the Freedom of Information Act shall be construed to require disclosure of ... [p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure."

10. It is found that the respondent Director claimed the exemption for the requested records because she wants to encourage employees' candor, and she fears that disclosure of the contents of her conversations with employees might discourage employees from discussing sensitive matters with her. It is found that the respondents determined that the public interest in withholding the requested records clearly outweighed the public interest in disclosure, within the meaning of §1-210(b)(1), G.S.

11. It is found that the Personnel Director wrote her handwritten notes as she interviewed the complainant and another respondent employee. It is found that the purpose of the notes was to help the Director make an initial assessment about what was being reported and to help her "determine what course of action to take" as a result of the complainant's allegations. It is found that the notes were not incorporated into a final report or investigation, and that the notes have not been shared with anyone. It is found that the matter was later referred to an outside investigator.

12. In Shew v. Freedom of Information Commission, the Supreme Court ruled that "the concept of preliminary, as opposed to final, should [not] depend upon...whether the actual documents are subject to further alteration..." but rather "[p]reliminary drafts or notes reflect that aspect of the agency's function that precede formal and informed decision making.... It is records of this preliminary, deliberative and predecisional process that...the exemption was meant to encompass." Shew v. Freedom of Information Commission, 245 Conn. 149, 165 (1998), citing Wilson v. Freedom of Information Commission, 181 Conn. 324, 332 (1989).

13. Following the hearing in this matter, the respondents submitted the requested handwritten notes for in camera inspection. These records are hereby identified as IC-2015-855-1 through IC-2015-855-6.

14. Upon careful review of the in camera records, it is found that the requested notes were preparatory to her decision-making; the notes preceded the Director's formal and informed decision-making about what to do about the allegations against the mayor.

15. Accordingly, it is found that the requested notes are preliminary notes within the meaning of §1-210(b)(1), G.S.

16. Section 1-210(e), G.S., provides in relevant part:

> Notwithstanding the provisions of subdivisions (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[.]

17. It is found that the notes are not interagency or intra-agency memoranda or letters, advisory opinions, recommendations or a report, within the meaning of §1-210(e)(1), G.S.; therefore the disclosure provisions of §1-210(e)(1), G.S., are not applicable.

18. It is concluded that the records withheld from the complainant are permissibly exempt from disclosure pursuant to §1-210(b)(1), G.S., and the respondents did not violate the FOI Act as alleged.

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.

Lisa Fein Siegel
as Hearing Officer