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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Mark Steiner,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0160

Commissioner, State of Connecticut,
Department of Energy and Environmental Protection;
and State of Connecticut, Department of Energy and
Environmental Protection,
Respondent(s)

December 28, 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, January 25, 2017**. 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 January 13, 2017**. 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 January 13, 2017**. **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 January 13, 2017**, 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: Mark Steiner
State of Connecticut, Department of Energy and Environmental Protection, c/o Mary Lou Kramer

FIC# 2016-0160/Trans/wrbp/VRP//LFS/2016-12-28

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Mark Steiner,

Complainant

against

Docket #FIC 2016-0160

Commissioner, State of Connecticut, Department
of Energy and Environmental Protection; and
State of Connecticut, Department of Energy and
Environmental Protection,

Respondents

December 28, 2016

The above-captioned matter was heard as a contested case on May 27, 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)(A), G.S.
2. By letter of complaint filed February 19, 2016, the complainant appealed to the Commission, alleging that the respondents failed to comply with his request for copies of records pertaining to a contract between the respondent Department of Energy and Environmental Protection ("DEEP") and PKP Consulting/CBRE Hotels ("PKP/CBRE").
3. It is found that DEEP engaged PKP/CBRE in September of 2015 to conduct a feasibility study for the redevelopment of four buildings at Seaside State Park in Waterford for park lodging use.¹
4. It is found that the contract between DEEP and PKP/CBRE contemplated certain documentation that the complainant began seeking in October of 2015.

¹ Seaside Regional Center ("Seaside"), property now owned by the state, was built in the 1930's as the first institution for the heliotropic treatment of children suffering from tuberculosis. It later housed developmentally disabled people until it closed in 1996. Governor Malloy announced the state's intention to make Seaside a state park in 2014. Before that time, the complainant had been the state's preferred developer on the property for roughly 15 years. The state subsequently terminated its contract to sell Seaside to the complainant.

5. It is found that the documents at issue are:
 - a. Notes and writings associated with an initial project meeting between the parties;
 - b. A draft report contractually due within six weeks of the project meeting;
 - c. Notes regarding a meeting contractually scheduled to be held within seven weeks of the project meeting;
 - d. The final version of the feasibility study;
 - e. Any formal written amendment to the contract required for extensions to the final date of the contract period and changes to the terms and conditions of the contract;
 - f. Documentation of the decision to suspend or terminate the contract.
6. It is found that the respondents began providing documents to the complainant in 2015 and continued providing documents through January 21, 2016.
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:

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 the provisions of section 1-212.
9. 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.”

10. It is concluded 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.

11. Section 1-210(b)(1), G.S., provides that disclosure is not required 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

12. Section 1-210(b)(7), G.S., provides that disclosure is not required of:

[t]he 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, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision.

13. With respect to the records described in paragraph 5, above, it is found that the only records withheld from the complainant are two pages of notes of a meeting between the parties, a draft of the feasibility study, and four pages of redactions from the feasibility study.

14. The respondents submitted a copy of the completed feasibility study to the Commission for an in camera inspection.

15. With respect to the draft of the feasibility study, and the meeting notes, the respondents maintain that those records are exempt from disclosure pursuant to §1-210(b)(1), G.S.

16. It is found that the requested draft feasibility study is a “draft” within the meaning of §1-210(b)(1), G.S., and that the respondents determined that the public interest in withholding the document clearly outweighed the public interest in disclosure during the time that the draft was being studied by the respondents. It is also found that the respondents subsequently determined that, once the final feasibility study was completed, that the public interest in withholding the draft no longer outweighed the public interest in disclosing it, and that the respondents then provided the draft to the respondent.

17. It is found that the meeting notes are “notes” within the meaning of §1-210(b)(1), G.S., and that the respondents determined that the public interest in withholding the notes clearly outweighed the public interest in disclosing them.

18. It is therefore concluded that the respondents did not violate §1-210(a), G.S., by withholding the meeting notes, and withholding the draft feasibility study before the final study was released.

19. With respect to the redactions to the feasibility study, the respondents maintain that those redactions are exempt pursuant to §1-210(b)(7), G.S.

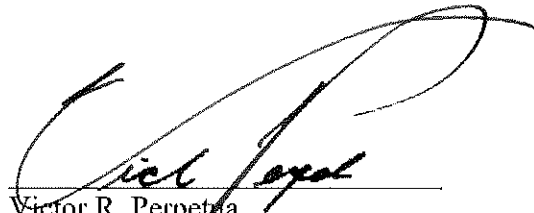
20. It is found that the feasibility study consists of feasibility estimates and evaluations made for the respondents relative to a prospective public supply or construction contract, and that not all proceedings or transactions have been terminated or abandoned with respect to that project (i.e., a contract for the restoration of the buildings on the Seaside property for use as lodging at the park).

21. It is found that the limited redactions from the feasibility study, consisting of only four pages, are permissibly exempt from disclosure pursuant to §1-210(b)(7), G.S.

22. It is therefore concluded that 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.



Victor R. Perpetua
as Hearing Officer