



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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E. Roger Williams,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2016-0470

Chairman, Charter Revision Commission, Town of New Canaan;  
David Hunt and Penelope Young, Members, Charter Revision  
Commission, Town of New Canaan; Charter Revision  
Commission, Town of New Canaan; and Town of New Canaan,  
Respondent(s)

April 20, 2017

### 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, May 10, 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 April 28, 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 April 28, 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 April 28, 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: Attorney Mark J. Sommaruga  
Attorney Duncan J. Forsyth

FIC# 2016-0470/Trans/wrbp/VRP//LFS/2017-04-20

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

E. Roger Williams,

Complainant

against

Docket #FIC 2016-0470

Chairman, Charter Revision Commission,  
Town of New Canaan; David Hunt and  
Penelope Young, Members, Charter  
Revision Commission, Town of New  
Canaan; Charter Revision Commission,  
Town of New Canaan; and Town of  
New Canaan,

Respondents

April 11, 2017

The above-captioned matter was heard as a contested case on October 11, 2016, at which times 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. By complaint filed June 29, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his May 31, 2016 request for unredacted interview notes.
3. It is found that the complainant made a May 31, 2016 request to the respondents for:
  - ... copies of all notes, emails, memorandums, recordings, minutes or other reports that pertain in any way to the interviews conducted by various members of the Charter Revision Commission with those individuals or boards or commissions as outlined in Exhibit 1 of the Appendix of the Draft Report of the Charter Revision Commission of the Town Council of the Town of New Canaan. This request includes the identification of the individuals for any and all specific comments, suggestions, or other forms of input on various aspects of the Commission's review process. It is my

understanding that Mr. Hunt have previously withheld the attribution of names of individuals associated with specific comments or input as part of the interview process on the basis that some or all of the individuals were promised confidentiality by Mr. Hunt, Ms. Young and possibly others.

...

4. It is found that the Town of New Canaan established a Charter Revision Commission (“CRC”) in September 2015.

5. It is found that the CRC formed subgroups of “study teams” to conduct interviews to meet with and interview members of various boards and commissions, town staff and members of the general public.

6. It is found that study team five consisted of the respondents Young and Hunt.

7. It is found that study team five interviewed about 45 current and former members of the Town Council, Board of Selectmen, Board of Education, and Board of Finance

8. It is found that the respondents Young and Hunt each took notes during these interviews.

9. It is found that Young and Hunt took notes as a memory aid.

10. It is found that the complainant was one of the individuals interviewed.

11. It is found that, after concluding the interviews, Young and Hunt drafted a six-page “Study Team Five Report,” consisting of the names of the people interviewed, and comments and suggestions by the interviewees, without attribution. (Complainant’s Exhibit A.)

12. It is found that Hunt and Young relied on their notes to draft their study team report.

13. It is found that each of the five study teams prepared one or more reports that were then used as the basis for discussion by the Charter Revision Commission as a whole.

14. It is found that Charter Revision Commission also held two public hearings in October 2015 and April 2016.

15. It is found that all of the study team reports, and all the notes associated with those reports, were posted on the town website on April 11, 2016.

16. It is found that Young and Hunt listed in the cover sheet to their notes all the full names of all individuals interviewed, but redacted the names from the notes themselves, so that specific comments and suggestions could not be attributed to particular individuals. (Exhibit C).

17. It is found that Young and Hunt did not provide the unredacted notes to the complainant following his May 31, 2016 request.

18. It is found that Hunt provided a small number emails to the complainant on June 28, 2016, containing comments and suggestions following up with individuals interviewed, or in lieu of a physical interview. The names of the individuals making the comments and suggestions again were redacted.

19. It is found that the information contained in the emails is of the same nature as the information contained in the notes of the interviews conducted when the interviewees were physically present.

20. It is found that, following the publication of the notes and the CRC's public meetings and hearings, the CRC prepared a Draft Report dated April 19, 2016 that was submitted to the New Canaan Town Council. (Respondents' Exhibit 1).

21. It is found that the Town Council then held its own public meetings and public hearings concerning the Draft Report.

22. It is found that the Town council sent the Draft Report back to the Charter Revision Commission with a request that certain technical revisions be made.

23. It is found that the Charter Revision Commission adopted the changes requested by the Town Council and produced a Final Report that was approved by the Town Council on July 20, 2016. (Respondents Exhibit 2).

24. 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.

25. 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.

26. 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.”

27. 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.

28. 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....

29. 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). 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.

30. The year following Wilson, the Connecticut legislature adopted Public Act 81-431, and added to the FOI Act the language now codified in §1-210(e)(1).

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

Notwithstanding the provisions of [§1-210(b)(1), G.S.], disclosure shall be required of:

Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies have been 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.

32. It is concluded that the notes taken by Hunt and Young, including the names that were redacted, and including the few emails that substituted for physical interviews, are all “notes” within the meaning of §1-210(b)(1), G.S.

33. It is also found that the respondents determined in good faith that the public interest in withholding the names from the notes clearly outweighed the public interest in disclosure. Specifically, it is found that the respondents weighed whether interviewees would be as candid if comments or suggestions were directly attributed to them, and what if any benefit there would accrue to the public from attributing comments or suggestions to specific individuals.


34. It is also concluded that the posting of the notes on the town’s website did not make them into something other than permissibly exempt notes that the respondents permissibly chose to publish.

35. It is also found that the notes are not interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies have been formulated, within the meaning of §1-210(e), G.S.

36. It is therefore concluded that the respondents did not violate the FOI Act by declining to provide their unredacted notes 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.



Victor R. Perpetua  
as Hearing Officer