

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Alexander Wood, Will Healey,  
Doreen Guarino and the Manchester  
Journal Inquirer,

Complainants

against

Docket #FIC 2017-0098

Town Attorney, Town of Enfield;  
and Town of Enfield,

Respondents

December 13, 2017

The above-captioned matter was heard as a contested case on May 3, 2017, at which time the complainants 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 letter dated February 15, 2017, the complainants appealed to this Commission alleging that the respondents violated the disclosure provisions of the Freedom of Information ("FOI") Act by failing to provide records responsive to their records request described in paragraph 7, below.<sup>1</sup>

3. 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

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<sup>1</sup> In their post-hearing brief, the complainants noted, without objection from the respondents, that "[t]here appears to have been an error in the docketing of this case," and that "[a]s stated in the letter of complaint, or notice of appeal, dated February 15, 2017, the request at issue was denied by Town Attorney Christopher Bromson." (Complainant Wood's Post-Hearing Brief, p.1). The Commission notes that the First Selectman was not named as a respondent in this complaint and finds that the records request was made to Attorney Bromson, the Town Attorney for the Town of Enfield, and not the First Selectman for the Town of Enfield. Therefore, the case caption has been revised to reflect the proper parties in this matter.

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.

4. 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....

5. 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.”

6. It is found that, at all times relevant to this matter, the respondent Town contracted with the Connecticut Interlocal Risk Management Agency (hereinafter “CIRMA”) to insure its interest. It is found that the respondent Town became a party defendant in several federal lawsuits alleging excessive use of force by its police officers. It found that CIRMA retained and/or appointed outside counsel, including James N. Tallberg, Patrick D. Allen, and Kateryna Lagun, to represent and provide legal counsel to the respondent Town in the federal lawsuits. It is found that such outside counsel entered appearances in the federal suits on behalf of the Town and certain town officials and employees, and proceeded to represent and provide legal counsel to them. It is found that CIRMA and Attorney Tallberg advised the respondent Town to attempt to settle the federal lawsuits after which the Town Council voted to provide its consent to CIRMA to settle such cases.

7. It is found that by letter dated January 19, 2017, and addressed to Attorney Bromson, the complainants requested:

the opportunity to inspect any documents containing the following information that are in the possession of the Town of Enfield (town), any employee or agency of the town, any attorney representing the town, or any insurance carrier or other entity responsible for paying judgments or settlements of lawsuits against the town, including but not limited to the Connecticut Interlocal Risk Management Agency (CIRMA):

- The terms of the settlement agreements, including but not limited to the dollar amount of the settlements, in separate lawsuits filed by **Barbara Crowley** and **Christopher McDaniel** against the town and several of its employees or former employees, which were litigated in United States

District Court for the District of Connecticut, where they were assigned docket numbers 3:14-cv-01903-MPS and 3:15-cv-01710-JAM, respectively.

- The amounts paid toward the settlements of each of the two above-referenced lawsuits by the town; the insurance carrier or other entity responsible for paying judgments or settlements of lawsuits against the town, including but not limited to CIRMA; and/or any other person or entity.
- All attorneys' fees and other litigation expenses paid by the town; the insurance carrier or other entity responsible for paying judgments or settlements of lawsuits against the town, including but not limited to CIRMA; and/or any other person or entity in the two above-referenced lawsuits. [Emphasis in original] ["January 19<sup>th</sup> request"].

8. It is found that by letter dated January 20, 2017, Attorney Bromson informed the complainants that their January 19<sup>th</sup> request was forwarded to the appropriate departments for review, and that they would be notified upon completion of the review.

9. It is found that by letter dated March 20, 2017, Attorney Bromson informed the complainants that the respondents conducted a search for responsive records, and the Town did not have any documents that contain the terms of the settlement agreements in the Crowley and McDaniel lawsuits. Attorney Bromson also informed the complainants that the Town does not maintain the records of Attorney Tallberg or CIRMA. In addition, Attorney Bromson provided the complainants with redacted copies of financial spreadsheets showing the amount the Town paid as its deductible in the Crowley and McDaniel lawsuits, among other lawsuits.

10. At the hearing on this matter and in their post-hearing brief, the complainants acknowledged that the financial spreadsheets, described in paragraph 9, above, were responsive, in part, to a portion of their January 19<sup>th</sup> request concerning the amount the Town paid as its deductible in the Crowley lawsuit. The complainants contended however that the respondents did not provide them with similar information concerning the McDaniel lawsuit. In addition, the complainants contended that the outside counsel and CIRMA are agents of the respondent Town, and that the Town is required, pursuant to the FOI Act, to request and disclose public records in the possession of its agents that are responsive to the complainants' January 19<sup>th</sup> request.

11. The respondents contended at the hearing and in their memorandum of law, that the only records responsive to the complainant's request that are in the Town's possession are the financial spreadsheets, described in paragraph 9, above, which Attorney Bromson obtained from the Town's Finance Department, and already provided to the complainants. The respondents also contended that the remainder of the requested records are not "public records" within the meaning of §1-200, G.S.

12. The Commission takes administrative notice of Docket #FIC 2016-0700, Alex

Wood, Doreen Guarino, Will Healey and the Manchester Journal Inquirer v. Town Manager, Town of Enfield; and Town of Enfield (September 13, 2017); Docket #FIC 2016-0738, Alex Wood, Doreen Guarino, Will Healey and the Manchester Journal Inquirer v. Town Manager, Town of Enfield; and Town of Enfield (September 13, 2017); and Docket #FIC 2016-0863, Alexander Wood, Will Healey, Doreen Guarino and the Manchester Journal Inquirer v. Town Manager, Town of Enfield; and Town of Enfield (September 13, 2017).

13. It is found that, except for the financial spreadsheets described in paragraphs 9 and 11, above, the respondents do not physically keep any records responsive to the complainants' request within their offices.

14. With respect to the records maintained by Attorneys Tallberg, Allen and Lagun, in the case of Thomas J. Londregan, New London Director of Law v. FOI Commission, 071894 CTSUP, 526105 and 529345, New London, J.D. (Teller, J.) (July 18, 1994), the city denied a request for copies of legal briefs and other records pertaining to ten cases in which the city was a party litigant and represented by outside counsel. Among other arguments, the city argued that because it did not have possession of the requested records, it could not be required to comply with the FOI request. Rejecting that argument, the Court reasoned:

The client involved as the real party in interest in all of the requested litigation files is New London. It is well settled that clients are entitled to their files and papers upon payment or funding of security for outstanding fees... New London, therefore,...is entitled to possession of the files, or at least copies thereof, upon demand. Hence, as [the city's] Director of Law, the plaintiff has the right to obtain possession of said files.

The plaintiff cannot evade the plain mandate of the FOIA by 'farming' the litigation files out to other counsel, as upon request, the plaintiff would be entitled to copies thereof. (Citation omitted.)

15. It is found that the respondent Town was a client of Attorneys Tallberg, Allen and Lagun in the subject federal lawsuits, respectively.

16. Moreover, §1.4(a)(4) of the Connecticut Rules of Professional Conduct requires an attorney to "promptly comply with reasonable requests for information" from a client, and Rule 1.16(d) requires an attorney to "surrender[] papers and property to which the client is entitled."

17. It is concluded, therefore, that the respondent Town is entitled to possession of the requested records.

18. It is found that the requested records, albeit in the possession of outside counsel, are "owned" or "used" by the respondent Town within the meaning of §1-200(5), G.S. See also Tribune-Review Publishing Co. v. Westmoreland County Housing Authority, 574 Pa. 661 (2003) (litigation settlement document prepared by private attorney for public agency's insurer on behalf of public agency is public record because within agency's control); Burnett v. County of

Gloucester, 415 N.J.Super. 506 (2010) (litigation settlement document possessed by County's insurer or outside counsel is public record of County); Knightstown Banner, LLC v. Town of Knightstown, et. al., 838 N.E.2d 1127, 1133 (Ind. Ct. App. 2005) (private counsel retained by insurer to represent town "created, maintained, and retained" settlement agreement as public record during course of representation of client town); and Journal/Sentinel, Inc. v. Sch. Bd. of Sch. Dist. of Shorewood, 186 Wis.2d 443 (1994) (affirming order for agency to furnish settlement agreement as public record held by outside counsel).

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

20. The respondents also contended that because §7-479h, G.S., specifically exempts CIRMA from the FOI Act, neither this Commission nor the courts can compel the production of CIRMA records or the records of counsel appointed and paid by CIRMA.

21. With respect to the records maintained by CIRMA, §7-479a, G.S., defines an "interlocal risk management agency" as "an association formed by two or more local public agencies for the development and administration of an interlocal risk management program, an interlocal public liability, automobile and property risk management pool, an interlocal workers' compensation risk management pool, or an interlocal excess risk management pool."

22. It is found that CIRMA is an interlocal risk management agency within the meaning of §7-479a, G.S.

23. Section 7-479h, G.S., provides that "[t]he meetings, minutes and records of an interlocal risk management agency pertaining to claims shall not be subject to sections 1-201, 1-202, 1-205, 1-206, 1-210, 1-211, 1-213 to 1-217, inclusive, 1-225 to 1-232, inclusive, 1-240, 1-241 and 19a-342."

24. The respondents contended that §7-479a, G.S., applies to CIRMA records, wherever located. The Commission does not agree.

25. Our courts have stated that "[when] a statute, with reference to one subject, contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed. . . ." (Internal quotation marks omitted.) M. DeMatteo Construction Co. v. City of New London, 236 Conn. 710, 717, 674 A.2d 845 (1996). This tenet of statutory construction ensures that "statutes [are] construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant, and that every sentence, phrase and clause is presumed to have a purpose." Hopkins v. Pac, 180 Conn. 474, 476, 429 A.2d 952 (1980).

26. It is concluded that the application of §7-479h, G.S., is limited to the interlocal risk management agencies themselves, and requests made directly to them. It is further concluded that such statute does not preclude towns, such as the respondent Town, from obtaining records related to the management and administration of that town's risks, and providing those records to the public.

27. The respondents also cited to §1-214a, G.S.,<sup>2</sup> which makes termination, suspension or separation agreements, containing certain confidentiality provisions, subject to disclosure, and contended that “the Legislature has *not* similarly mandated that documents reflecting settlement sums paid by a municipality’s insurer are automatically subject to disclosure.” (Emphasis in original) (Respondents’ memorandum of law, p.5).

28. It is found that there is no evidence in the record of any agreement containing confidentiality provisions, nor of the Legislature’s intent to exempt from disclosure the settlement sums paid by a municipality’s insurer.

29. In addition, the respondents argued that there is a “practical reason” for withholding the requested records “until after the conclusion of all related litigation.” (Respondents’ memorandum of law, p.6). According to the respondents, if disclosure was required, “the Town’s ability to negotiate valid claims and contest specious claims would be severely compromised.” Id.

30. It is concluded that the respondents’ policy argument described in paragraph 29, above, is unsupported by the facts of this case, and furthermore fails to state a claim of exemption to the disclosure requirements under FOI Act.

31. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to obtain the requested records from Attorneys Tallberg, Allen and Lagun, and provide such records to the complainants.

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

1. Forthwith, the respondents shall retrieve a copy of the requested records from their outside counsel and shall provide such records to the complainants, free of charge.
2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

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<sup>2</sup> Section 1-214a, as passed by P.A. 06-132, provides:

Any agreement entered into by any public agency, as defined in section 1-200, with an employee or personal services contractor providing for the termination, suspension or separation from employment of such employee or the termination or suspension of the provision of personal services by such contractor, as the case may be, that contains a confidentiality provision that prohibits or restricts such public agency from disclosing the existence of the agreement or the cause or causes for such termination, suspension or separation including, but not limited to, alleged or substantiated sexual abuse, sexual harassment, sexual exploitation or sexual assault by such employee or contractor, shall be subject to public disclosure under this chapter.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 13, 2017.

A handwritten signature in cursive script, reading "Cynthia A. Cannata".

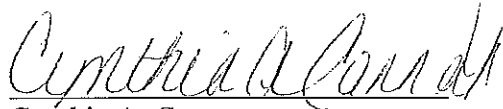
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

**ALEXANDER WOOD, WILL HEALEY, AND THE MANCHESTER JOURNAL INQUIRER**, 306 Progress Drive, PO Box 510, Manchester, CT 06045

**TOWN ATTORNEY, TOWN OF ENFIELD; AND TOWN OF ENFIELD**, c/o Attorneys Christopher W. Bromson and Maria S. Elsdon, Town of Enfield, 820 Enfield Street, Enfield, CT 06082



Cynthia A. Cannata  
Acting Clerk of the Commission