

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Elisabeth Maurer,

Complainant

against

Docket #FIC 2019-0600

Office of Legal Affairs, City of
Stamford; and City of Stamford,

Respondents

March 9, 2022

The above-captioned matter was heard as a contested case on August 24, 2020, October 16, 2020, December 16, 2020, March 12, 2021, and July 26, 2021, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearings were conducted through the use of electronic equipment (remotely) pursuant to the Governor's Executive Order 7B (Mar. 14, 2020), which suspended the requirement to conduct public meetings in person, and pursuant to §149 of Public Act 21-2 (June Sp. Sess.).

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 August 27, 2019, the complainant requested that the respondents provide her with copies of the following records:
 - a. As to the Fire Commission:
 - i. All documents, including minutes, guidelines, sample questions provided to or created by the Fire Commission regarding the testing, interviewing, and hiring for positions within the Stamford Fire Department between 2005 and the date of the City's response. . . . ;
 - ii. All eligibility lists, without regard to whether it is identified as preliminary, final or

certified, provided to the Fire Commission between 2005 and the date of the City's response;

- iii. All complaints, letters, or other communications to the Fire Commission concerning the scoring, administration, or validity of entry-level and/or promotional tests between 2005 and the date of the City's response;

b. As to the Police Commission:

- i. All documents, including minutes, guidelines, sample questions provided to or created by the Police Commission regarding the testing, interviewing, and hiring for positions within the Stamford Police Department between 2005 and the date of the City's response. . . . ;
- ii. All eligibility lists, without regard to whether it is identified as preliminary, final or certified, provided to the Police Commission between 2005 and the date of the City's response;
- iii. All complaints, letters, or other communications to the Police Commission concerning the scoring, administration, or validity of entry-level and/or promotional tests between 2005 and the date of the City's response;

c. As to the Personnel Commission:

- i. All complaints, letters, appeals or other communications to the Personnel Commission concerning the scoring, administration, or validity of entry-level and/or promotional tests for positions with the SFD¹ and SPD² between 2005 and the date of the City's response;

¹ While not stated in the request, the Commission assumes that "SFD" is the complainant's acronym for the Stamford Fire Department.

² While not stated in the request, the Commission assumes that "SPD" is the complainant's acronym for the Stamford Police Department.

- ii. The minutes of the Personnel Commission meetings discussing changes to the Classified Service Rules since 1986, regarding:
 - 1. Banding;
 - 2. Number of candidates provided to an appointing authority for consideration;
 - 3. Rounding of test scores, preference points, or final scores to whole numbers;

- d. As to Legal Affairs and/or Human Resources:
 - i. All Requests for Proposals, proposals and/or responses to Requests for Proposals, whether formal or informal, for monitoring services, vetting training, scoring, development of and/or administration of selection processes for positions within the SFD and/or SPD between 2005 and the date of the City's response;
 - ii. All eligibility lists, without regard to whether it is identified as preliminary, final or certified, created or modified by Legal Affairs and/or Human Resources personnel for positions within the SFD and/or the SPD between 2005 and the date of the City's response;
 - iii. All complaints concerning the validity of the tests administered for positions within the SFD and/or the SPD between 2005 and the date of the City's response;
 - iv. The Civil Service Rules in effect on the following dates:
 - 1. July 2, 1950;
 - 2. September 2, 1953;
 - 3. March 8, 1978;
 - 4. June 29, 1978;
 - 5. January 2, 1980;
 - 6. May 23, 1980;
 - 7. August 27, 1982;
 - 8. September 23, 1983;
 - 9. April 27, 1984;

10. February 20, 1987;
 11. June 22, 1988; and
 12. April 23, 2008;
- v. All documents/communications between the City of Stamford and Morris and McDaniel³ regarding the execution of monitoring services, vetting training, development of and/or administration of selection processes for positions within the SFD and/or SPD between 2005 and the date of the City's response, including but not limited to all reports, appraisals, scores, or other documents enumerated in RFP 692, Scope of Services, Sections 1-11 and the resulting contract;
- e. As to the Board of Representatives:
- i. The minutes of the Board of Representative meetings, including committees and/or commissions thereof ("BOR meetings"), during which selection and promotional processes within the classified service was discussed between 2005 and the date of the City's response;
 - ii. All documents provided to and minutes of BOR meetings regarding "banding" and "rounding" of scores on entry level and promotional tests between 2005 and the date of the City's response;
 - iii. All documents provide to and minutes of BOR meetings regarding the hiring of Morris and McDaniel for entry level and promotional testing within the SFD and/or SPS between 2005 and the date of the City's response;
 - iv. The minutes of meetings of the Board of Representatives and/or any Committee or Commission considering Charter revisions related to changes in the process and procedure utilized in entry level hiring and promotions within the classified service between 1975 and the date of the City's

³ Morris & McDaniel, Inc. is a management consulting firm retained by the City of Stamford.

response;

- v. A copy of Charter Referendum questions approved by the Board of Representatives between 1975 and the date of the City's response; and
- vi. All documents including but not limited to presentations by and/or opinions of the Corporation Counsel, opinions of outside counsel, presentations by and/or opinions of Human Resources or Personnel representatives, provided to the Board of Representatives while considering changes to the Personnel, Classified Service, Civil Service, and Merit-based provisions of the City Charter between January 1, 1975 and the date of the City's response.

3. It is found that, by email dated September 3, 2019, the respondents acknowledged the request.

4. By letter dated and filed September 26 2019⁴, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide her with copies of the requested records.

5. At the time of the request, §1-200(5), G.S., provided:

“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.⁵

⁴ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

⁵ Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped.”

6. 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.

7. 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.”

8. It is found that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

9. At the start of the second contested case hearing, the complainants indicated that she was only pursuing the complaint with regard to the request for records set forth in paragraphs 2.d.i; 2.d.ii; 2.d.v, above. The complainant contended that, with regard to these sections of the request, she had not received all responsive records.

10. The respondents contended that they had done an exhaustive search for records in response to a very complicated request for records and, by December 16, 2020, had disclosed well over 6,000 pages of records to the complainant.

11. Because the complainant was particularly concerned with records that were referenced within the records that had been disclosed to her in response to the instant request, at the request of the hearing officer the complainant agreed to produce a list of the records she believed remained outstanding.

12. It is found that, on or about October 23, 2020, the complainant produced a list of the records that she believed remained outstanding. Such list was marked as complainant’s Exhibit 12.

13. It is found that, in response to Exhibit 12, the respondents disclosed two additional batches of responsive records to the complainant. In total, it is found that the respondents disclosed 11,138 pages of records to the complainant.

14. At the conclusion of the fourth contested case hearing, the complainant indicated that the only records at issue in this case were the records listed on Exhibit 12 that had not been disclosed to her. The respondents claimed that such records were exempt from disclosure and the hearing officer ordered the respondents to submit such records for in camera inspection.

15. The respondents submitted the records to the Commission for in camera inspection. The records are fairly described as four pages of emails, one four-page letter, and two one-page memorandums. The in camera records shall be referred to herein as IC-2019-0600-EML-001329; IC-2019-0600-EML-001330; IC-2019-0600-EML-001332a; IC-2019-0600-EML-001332b; IC-2019-0600-EML-001332c; IC-2019-0600-EML-001332d; IC-2019-0600-EML-001446; IC-2019-0600-EML-001685; IC-2019-0600-EML-001723 and IC-2019-0600-EML-001731.⁶

16. The respondents contended that all of the in camera records, with the exception of IC-2019-0600-EML-001446, are exempt from disclosure in their entirety pursuant to §1-210(b)(9), G.S. With regard to IC-2019-0600-EML-001446, the respondents contended that first four lines in the body of this email are exempt from disclosure pursuant to §1-210(b)(9), G.S.

17. Section 1-210(b)(9), G.S., provides that the nothing in the FOI Act shall be construed to require the disclosure of: “[r]ecords, reports and statements of strategy or negotiations with respect to collective bargaining.”

18. Strategy and negotiations have been long been defined by Connecticut courts as follows:

[i]n our relevant statutes the words ‘negotiation’ and ‘strategy’ are used together. As used, each is expected to occur in some form of meeting. Negotiation suggests that the adversary will be present. One cannot negotiate with oneself. But strategy, regardless of whose definition we use, involves planning by one side only. ‘Strategy[,] careful, cleverly devised plan or series of maneuvers for attaining a specific goal or result.’ ‘Word Menu’, Stephen Glazier, 1992.

Waterbury Tchrs. Ass'n v. FOI Comm'n, No. CV93 070 42 66, 1993 WL 242117, at *5 (Conn. Super. Ct. June 11, 1993).

19. After careful in camera inspection, it is found that the in camera records, or portions thereof, identified in paragraphs 15 and 16, above, reveal strategy and/or negotiations with respect to collective bargaining and, therefore, such records are permissibly exempt from disclosure.⁷

20. Finally, with regard to whether the respondents disclosed the responsive records promptly, this Commission has previously opined that the word “promptly” in §1-210, G.S.,

⁶ The Commission notes that the “EML-number” references to the in camera records in paragraph 15, above, are the bates stamp references that are contained on the lower right corner of the records.

⁷ The Commission notes that, with respect to in camera records IC-2016-0600-EML-001332a through IC-2016-0600-EML-001332d, the respondents raised two additional claims of exemption. Because the Commission has determined that these records are exempt from disclosure pursuant to §1-210(b)(9), G.S., the additional claims of exemption are not addressed in this decision.

means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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 Comm'n 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.

21. It is found that the request at issue in this case was quite complicated, in that it sought records from five different public agencies within the City of Stamford. It is found that the request was further complicated in that the timeframes of many of the requests spanned some fourteen years and, in some instances, the complainant requested copies of records created almost 70 years ago. It is found that multiple attorneys and paralegals spent approximately 300 hours searching for, reviewing, and disclosing responsive records in this case. In addition, it is found that many other staff members, including Fire Chiefs, the Chief of Police, the Town Clerk, Information Technology Specialists, and the Administrative Managers for the Police Commission, the Board of Representatives, and the Personnel Commission, as well as numerous other clerical employees, spent well over 200 hours searching for records to fulfill this request. Finally, it is found that the City of Stamford also engaged outside counsel to assist it in responding to the request. It is found that outside counsel spent an additional 200 hours reviewing responsive records, redacting such records, and preparing for the contested case hearings.

22. It is therefore found that the respondents promptly provided the responsive records to the complainant.

23. Accordingly, it is concluded that the respondents did not violate the provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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 March 9, 2022.



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:

ELISABETH MAURER, Maurer & Associates, PC, 26 Catoonah Street, #1099, Ridgefield, CT 06877

OFFICE OF LEGAL AFFAIRS, CITY OF STAMFORD; AND CITY OF STAMFORD, c/o Attorney Zachary D. Schurin, Pullman & Comley, LLC, 90 State House Square, Hartford, CT 06103-3702



Cynthia A. Cannata
Acting Clerk of the Commission