

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jim Haddadin,

Complainant

against

Docket #FIC 2024-0062

General Manager/Chief Executive Officer,
Greater Bridgeport Transit District; and
Greater Bridgeport Transit District,

Respondents

January 8, 2025

The above-captioned matter was heard as a contested case on July 19, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

On July 18, 2024, pursuant to an order of the hearing officer, Jim Haddadin was substituted as complainant in place of Bria Lloyd without objection.

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 December 1, 2023, the complainant's former colleague at Connecticut Public Broadcasting, Bria Lloyd, requested copies of the respondents' "correspondence with the Department of Justice [("DOJ")] regarding the DOJ's inquiry into Greater Bridgeport Transit's [American Disabilities Act of 1990 ("ADA")] compliance."
3. It is found that, by email dated December 19, 2023, the respondents acknowledged the December 1st request and informed Ms. Lloyd that "the gathering process ha[d] already begun."
4. It is found that, by email dated January 5, 2024, Ms. Lloyd again requested the records described in paragraph 2, above.
5. By letter of complaint, dated and filed January 30, 2024, Ms. Lloyd appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records, described in paragraph 2, above.
6. Section 1-200(5), G.S., provides:

“[p]ublic 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 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

[e]xcept 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 ... (3) receive a copy of such records in accordance with section 1-212.

8. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

9. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that, by letter dated July 11, 2024, the respondents informed Ms. Lloyd that they had located responsive records and were prepared to disclose such records to Ms. Lloyd with redactions. It is also found that the respondents informed Ms. Lloyd that certain redactions were made to responsive records due to an ongoing DOJ investigation, described in paragraph 18, below.

11. At the hearing on this matter, the parties stipulated that responsive records had been disclosed to the complainant with redactions and that the scope of the complaint had been narrowed. The complainant stated, and it is found, that the only issue before the Commission is whether the respondents had properly redacted certain responsive records, pursuant to §1-210(b)(4), G.S. The complainant argued that such records are routine correspondence and, as such, the redacted information is not exempt from disclosure pursuant to §1-210(b)(4), G.S.

12. The respondents argued that the redactions were properly made to the records at issue, described in paragraph 11, above, pursuant to §1-210(b)(4), G.S., because they pertain to strategy and negotiations with respect to a pending claim or pending litigation.

13. On July 25, 2024, pursuant to an order of the hearing officer, the respondents submitted to the Commission unredacted copies of the records at issue, described in paragraphs 11 and 12, above, for an in camera inspection, along with an in camera index.

14. On the in camera index, the respondents contended that the information redacted from the in camera records is exempt from disclosure pursuant to §1-210(b)(4), G.S., and described such redacted information as “Settlement Correspondence”.

15. Section 1-210(b)(4), G.S., provides that disclosure is not required of “[r]ecords pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled....”

16. The phrase “pending claims” as defined in §1-200(8), G.S., means:

[a] written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief is not granted.

17. The phrase “pending litigation” as defined in §1-200(9), G.S., means:

(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency's consideration of action to enforce or implement legal relief or a legal right.

18. It is found that, by letter dated December 10, 2021, the DOJ informed the respondents that a complaint had been filed against them for alleged violations of the ADA, and that the DOJ had opened an investigation against them (“investigation letter”). The investigation letter states, in relevant part:

[t]he ADA authorizes the [DOJ] to investigate alleged violations of Title II. 28 C.F.R. § 35.172. We are authorized to take appropriate action, including filing an enforcement action in U.S. district court, to enforce Title II if voluntary compliance is not achieved, and to seek injunctive relief and monetary damages. 28 C.F.R. § 35.174.

The Department of Justice would like to resolve this matter expeditiously and without resorting to litigation. We thus seek your cooperation in providing certain preliminary information. Please provide the following information, in writing, within 30 days of the date of this letter....

It is found that the investigation letter then lists various categories of information that the respondents were required to provide to the DOJ, in order to voluntarily comply with the investigation.

19. It is found that the investigation letter described in paragraph 18, above, is a written notice by the DOJ that sets forth a demand for legal relief or asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the respondents.

20. In a pre-hearing memorandum, and at the hearing on this matter, the respondents' attorney represented, and it is found, that the DOJ investigation described in paragraph 18, above, was still ongoing.

21. It is therefore concluded that, as of the contested case hearing on July 19, 2024, the respondents were party to a pending claim or pending litigation that had not been finally adjudicated or otherwise settled, within the meaning of §1-210(b)(4), G.S. See Board of Educ. of Town of Ridgefield v. FOI Commission, 217 Conn. 153, 162 (1991) (finding a "pending claim" where the complainant's demand letter to the public agency stated the desire to avoid litigation, but "the only way to avert that outcome, under the terms of the letter, was for the [public agency] essentially to capitulate").

22. The Supreme Court in Stamford v. FOI Commission, 241 Conn. 310 (1997), cited with approval the definitions in Webster's Third New International Dictionary of the words "strategy" and "negotiations" within the meaning of §1-210(b)(4), G.S.:

Strategy is defined as 'the art of *devising or employing plans or stratagems*.' [Emphasis in original] Negotiation is defined as 'the action or process of negotiating,' and negotiate is variously defined as: 'to communicate or confer with another so as to arrive at the settlement of some matter: meet with another so as to arrive through discussion at some kind of agreement or compromise about something'; 'to arrange for or bring about through conference and discussion: work out or arrive at or settle upon by meetings or agreements or compromises'; and 'to influence successfully in a desired way by discussions and agreements or compromises.'

Stamford v. FOI Commission, at 318.

23. With respect to the definition of "strategy", the court provided additional guidance in Bloomfield Educ. Ass'n v. Frahm, No. CV 93 0703802 S, 1993 WL 280109, aff'd, 35 Conn. App. 384, cert. denied, 231 Conn. 926 (1994) ("Bloomfield I"). There, the court stated that:

a report, record or statement of strategy would appear to be a recordation of plans or methods of proceeding to obtain a favorable outcome in the grievance resolution process. One would expect such records to be of an *internal* nature, i.e. designed to communicate information to another who stands on the same side of an issue as the author of the plan or method or strategy. Such

records might typically comprise discussion of different avenues of approach to a problem, an evaluation of likelihood of success, and a discussion of possible repercussions if a particular tack is followed.

Id. at *3 (emphasis in original).

24. Based upon a careful inspection of the in camera records identified in paragraph 13, above, it is found that such records consist of communications between the respondents, or their attorneys, and the DOJ, whereby the respondents provide answers to questions, explanations, data and other information to the DOJ, in an effort to voluntarily comply with the DOJ's investigation.

25. It is therefore found that the in camera records are not "internal in nature" and are not designed to communicate information to another who stands on the same side of an issue as the author. It is also found that the in camera records do not discuss different avenues of approach to a problem, evaluate the likelihood of success, or discuss possible repercussions if a particular tack is followed.

26. Based on the findings in paragraphs 24 and 25, above, it is concluded that the in camera records do not pertain to "strategy" with respect to the pending claim or pending litigation described in paragraph 21, above.

27. In Bloomfield I, the court also provided guidance with respect to the definition of "negotiations". There, the court stated that "the word 'negotiations' implies offers and counter-offers between the parties to narrow the gap between those parties." Id. at *4.

28. The Appellate Court provided further guidance in Bloomfield Educ. Ass'n v. Frahm, 35 Conn. App. 384, cert. denied, 231 Conn. 926 (1994) ("Bloomfield II"). There, in affirming the lower court's decision in Bloomfield I, the Appellate Court stated that:

'[n]egotiations is a broad term, not in all connotations a term of art, but in general it means the deliberation which takes place between the parties touching a *proposed agreement* ... the deliberation, discussion, or conference on the terms of a *proposed agreement*; a treating with another with a view to coming to terms.... Negotiations look to the future, and are preliminary discussions; the preliminaries of a business transaction....'

A key element of negotiations is the existence of an offer of possible settlement. In decisions concerning labor disputes, courts have described negotiations as the 'process of submission and consideration of *offers* until an acceptable offer is made, and accepted....'

Bloomfield II, at 390 (citations omitted; emphasis in original).

29. Based upon a careful in camera inspection, it is found that the in camera records do not consist of offers and counter-offers between the parties, or touch on a proposed agreement, or reveal the process of submission and consideration of offers until an acceptable offer is made and accepted. It is found, rather, that the in camera records reveal the respondents' attempts to voluntarily comply with the DOJ's investigation by answering specific questions and providing data.

30. Based upon the findings in paragraphs 24 and 29, above, it is concluded that the in camera records do not pertain to "negotiations" with respect to the pending claim or pending litigation described in paragraph 21, above.

31. It is therefore found that the in camera records identified in paragraph 13, above, are not exempt from disclosure pursuant to §1-210(b)(4), G.S., because they do not pertain to strategy and negotiations with respect to the pending claim or pending litigation described in paragraph 21, above.

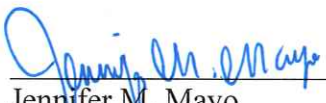
32. Consequently, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint, when they failed to disclose the redacted portions of the in camera records identified in paragraph 13, above.

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

1. Within seven (7) days of the date of the Notice of Final Decision in this matter, the respondents shall provide the complainant with unredacted copies of the in camera records described in paragraph 13 of the findings, above, free of charge.

2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 8, 2025.



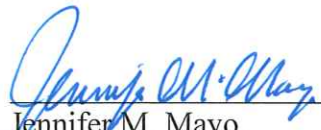
Jennifer M. Mayo
Acting Clerk of the Commission

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:

JIM HADDADIN, Connecticut Public, 1049 Asylum Avenue, Hartford, CT 06105-2411

GENERAL MANAGER/CHIEF EXECUTIVE OFFICER, GREATER BRIDGEPORT TRANSIT DISTRICT; AND GREATER BRIDGEPORT TRANSIT DISTRICT, c/o Attorney Patricia C. Sullivan and Attorney Emilio A. Estrella Teron, Cohen and Wolf, P.C., 1115 Broad Street, Bridgeport, CT 06604



Jennifer M. Mayo
Acting Clerk of the Commission