

Freedom of Information Commission
of the State of Connecticut

For Henry

In the Matter of a Complaint by)
The Bristol Press, Complainant) Report of Hearing Officer
against) Docket #FIC75-20
Bristol Health Department) December 16, 1975
Armando W. Ciccarelli, M.D.)
Respondents)
Leone's Restaurant, Inc.)
Associated Restaurants of Connecticut, Inc.)
City of Hartford,)
Intervenors)

The above-captioned matter was heard as a contested case on December 4, 1975, at which the complainant, respondents and intervenors appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the evidence the following facts are found:

1. The respondent is a public agency, as it is the Health Department of the City of Bristol. Individual respondent is the Health Director for said City.
2. On October 21, 1975, complainant requested that respondent furnish "all records compiled over the past year" by respondent's restaurant inspectors.
3. On November 4, 1975, the corporation counsel of the City of Bristol wrote respondent recommending denial of the request on the ground that it was "too general."
4. Subsequent to the appeal to this commission filed on November 14, 1975, complainant narrowed its request to Connecticut Department of Health Form EHS-106. This form is used by respondent's inspectors in restaurant inspections, pursuant to Conn. Gen. Stat. 19-13 and health regulation 19-13-B42.

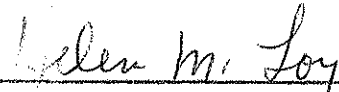
5. The respondent mistakenly responded to this request with blank copies of this form.
6. Respondent subsequently tendered copies and/or inspection of all forms EHS-106 in its custody except those forms prepared by the inspectors for a period of two weeks after the initial inspection visit. This tender of compliance was based upon the inspection system more fully explained below.
7. Connecticut Department of Health Regulation 19-13B42(s) requires restaurant inspections every three months and prescribes that Form EHS-106 be used by City health inspectors.
8. The Health Department regulation 19-13B42 at section (t) sets forth a series of enforcement provisions. Subsections (t)(1) and 4 indicate that a restaurant which scores 80 or above and receives no "4" demerits is required to correct within a specified time the deficiencies noted by the inspector. Restaurants rarely fall into this class in Bristol. The more usual situation set forth in (t)(1) occurs when the rating is below 80, or one or more "4" demerits exist. Here the restaurant is directed to correct its deficiencies and a re-inspection is held within two weeks. After the two weeks, if the restaurant is still in violation, the Health Department will close the establishment.
9. The disclosure of the partially administered Form EHS-106 during the two-week period could lead to a lack of good faith effort in remedying the restaurant's demerits.

10. Subsection t(3) of the regulation allows the Health Director to take immediate action to direct correction within a period of time or face closure. Comm. Gen. Stat. 19-13 also provides for a fine of \$100 and/or three months imprisonment for violations of the health code.
11. Subsection t(5) of the regulation allows the regulated establishment at any time to ask for a re-inspection to improve upon the rating. Subsection t(6) allows an establishment to appeal within 48 hours from any order of the Health Department officials.
12. When the two-week period for re-inspection has passed, Form EHS-106 would show the original defects and the subsequent corrections.
13. The Commission, in weighing equities under the Act, must consider the public's right to know as its primary goal.
14. The complainant's initial request was in the nature of a general inquiry. When the respondent indicated the means under which the request could be narrowed and the complainant thus renewed its request, respondent should have responded to the extent provided by law with the requested information.

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

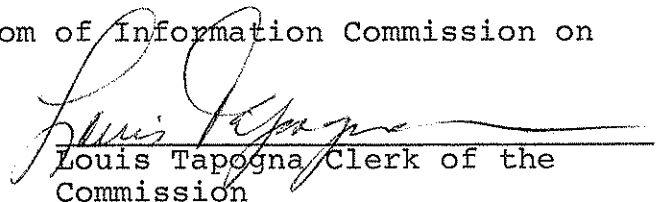
1. If the restaurant is not scheduled for re-inspection (see #8 above) Form EHS-106 must be made available to complainant at once. Any forms no longer current (outside of the three-month period) must also be made available.

2. The respondent may delay during, but not after the two-week period, compliance with disclosure Form EHS-106 where it finds that the restaurant is due to be re-inspected. It is the opinion of the Commission that during this two-week period the form contains preliminary material, the disclosure of which is not in the public interest. Such disclosure would interfere with respondent's effort to cause the restaurant to correct defects, with the 48 hour appellate rights of the restaurant under Subsection t(6) and with the re-inspection rights under Subsection t(5).
3. Should the respondent order the restaurant immediately closed under Subsection t(3), the form would become a public record at that time.



Commissioner Helen Lby
as Hearing Officer

Approved by order of the Freedom of Information Commission on
December 23, 1975.



Louis Tapogna, Clerk of the
Commission