

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
John A. McManus,

Complainant

Report of Hearing Officer

against

Docket #FIC79-175

City and Town of New Britain;
and Personnel Director of the
City and Town of New Britain,
Respondents

December 19, 1979

The above captioned matter was heard as a contested case on November 27, 1979, at which time the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found:

1. The respondents are public agencies as defined by §1-18a(a), G.S.
2. By letter of complaint filed with this Commission on August 20, 1979, the complainant alleged that the respondents had not complied with a prior order of the Commission in docket #FIC79-28, entitled In the Matter of a Complaint by John A. McManus against the City and Town of New Britain; and Personnel Director of the City and Town of New Britain.
3. The aforesaid order of the Commission required that the respondents provide the complainant with a copy of a cover sheet of a certain examination for employment relating to the position of Director of Public Works.
4. The cover sheet in question was received by the respondent from the International Personnel Management Association (hereinafter "IPMA") on or before October, 1978.
5. The exam in question was taken by the complainant in October, 1978.
6. The respondents did provide the complainant with a cover sheet of an examination for employment relating to the position of Director of Public Works received from IPMA.
7. However, such cover sheet related to an examination for said position administered by the respondents some time in January, 1979.
8. The cover sheet that was provided is not the cover sheet that was the subject of the complainant's original request and the subsequent order of this Commission in docket #FIC79-28.

9. The sole question to be determined therefore is whether the respondents have wilfully refused to comply with the prior order of the Commission in docket #FIC79-28.

10. The respondent director, Mr. Walter McCusker, provided the complainant with the wrong document through an innocent mistake.

11. The document that was ordered disclosed in docket #79-28 either did not exist in Mr. McCusker's files at the time of the hearing in said matter or was accidentally returned to IPMA subsequent to the time of the hearing therein.

12. The complainant concedes that Mr. McCusker has not deliberately and wilfully withheld the subject document.

13. It is therefore found that the respondent director, Mr. McCusker, has not wilfully refused to comply with a prior order of this Commission.

14. There is some reason to believe at this time, although it has not been proven, that the former personnel director, Mr. Alfred Pettinelli, may have deliberately returned the subject document to IPMA subsequent to the complainant's request.

15. Further, the former personnel director may have retained a copy of such public record in his personal residence.

16. The former personnel director was the custodian of such public record at the time of the complainant's original request culminating in a hearing in docket #FIC79-28.

17. Mr. Pettinelli is therefore the custodian of the record directly responsible in the event of a wilful denial under §1-21i(d), G.S.

18. The parties hereto have notified the Commission that Mr. Pettinelli temporarily resides out of state, at an unknown address.

19. Jurisdiction over this matter will therefore be retained in the event that the complainant notifies this Commission of Mr. Pettinelli's presence in this state coupled with a written notice of his intention to press the present claim against Mr. Pettinelli, the real party in interest.

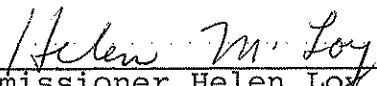
The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned complaint:

1. The complaint is hereby dismissed. This order of dismissal is without prejudice as against Mr. Pettinelli. In this regard, the complainant may file his complaint against Mr. Pettinelli in accordance with finding #19 hereinabove.

2. Mr. McCusker shall make a written request for the return of the subject material from IPMA, by certified mail. Said request shall be made on or before February 10, 1980.


3. Mr. McCusker shall provide the complainant, and the Commission, with copies of the written request referred to in par. 2 of this Order, together with the certified receipt from IPMA.

4. In the event that IPMA voluntarily returns the subject material to the respondents, both the complainant and the Commission shall be notified, in writing, within five business days thereof and a copy of the same provided to the complainant free of charge.



Commissioner Helen Loy
as Hearing Officer

Approved by Order of the Freedom of Information Commission
at its regular meeting of January 9, 1980.



Leslie Ann McGuire
Clerk of the Commission