

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Michael Winkler,

FINAL DECISION

Complainant

Docket #FIC83-134

against

January 9, 1984

Department of Administrative
Services, Personnel Division,
of the State of Connecticut,

Respondent

The above captioned matter was heard as a contested case on September 15, 1983 at which time the complainant and the respondent appeared and presented testimony, exhibits, and argument on the complaint.

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

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. On or about November 24, 1983 an examination for the position of senior eligibility technician was announced by the respondent, which examination consisted of an assessment by an examination committee of candidates' job performance, work experience and training as reflected in the candidates' applications. Ratings on five factors by the candidates' immediate supervisors were also considered in determining final earned ratings.
3. By letter dated May 30, 1983 the complainant made a request of the respondent for the following documents with respect to such examination: the conversion table, the rating sheets summarizing his scores on each factor of the exam, his answer papers, an evaluation score sheet completed by Mr. Ken Derrick, and all papers, markings and other items used in determining the complainant's final earned rating.
4. By letter of complaint filed with the Commission on July 1, 1983 the complainant alleged that he had received no response to his May 30, 1983 request.
5. At hearing the respondent moved to strike the complaint on the ground that it failed to state a claim upon which relief could be granted as a matter of law, which motion is hereby denied.

6. By letter dated September 7, 1983 the respondent informed the complainant that he could review the requested materials if he would agree in writing "to obey the agency's regulation prohibiting copying," § 5-225-1 of the Regulations of Connecticut State Agencies. The complainant had, in fact, been allowed to inspect, but not copy, the conversion table, final rating scores and his applications prior to the filing of his complaint.

7. It is found that due to the nature of the examination, no document fitting the description "answer papers" exists.

8. The respondent claims that because § 5-225, G.S. provides specifically for the right to inspect and does not mention copying, it must be interpreted as prohibiting copying.

9. The respondent also claims that the requested material is exempted from disclosure by §1-19(b)(6), G.S., and that the requested material is not a public record or file within the meaning of §1-18a(d), G.S.

10. § 5-225, G.S., provides with respect to tests administered by the respondent, that

The papers, markings and other items used in determining the final earned ratings, other than the questions and other materials constituting the test itself, shall be open to inspection by the candidate, subject to such regulations as may be issued by the Commissioner of Administrative Services.

11. § 5-225, G.S. does not, explicitly or by implication, prohibit examinees from exercising their rights under the Freedom of Information Act to request copies of their papers, markings, and other such documents.

12. It is further found that an agency cannot, by regulation, supersede the mandate of a state statute.

13. Therefore, § 5-225-1 of the Regulations of Connecticut State Agencies can only exempt the examination materials to the extent that such regulation does not conflict with §1-19(a), G. S., other state statute or federal law.

14. It is found that the records compiled by the respondent as part of the senior eligibility technician examination are recorded data used to determine promotions of state employees. Such records, therefore, relate to the conduct of the public's business.

15. It is therefore concluded that the records in question are public records or files within the meaning of §1-18a(d), G.S.

16. It is found that because the examination consists of an evaluation of job experience, performance, training and ratings supplied by an employee's superiors, the data requested could not be characterized as test questions, scoring keys or other examination data used to administer the exam.

17. However, to the extent that disclosure of the records requested might reveal test questions, scoring keys or other examination data used to administer the eligibility technician examination such information is exempted from disclosure by §1-19(b)(6), G.S.

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

1. The respondent shall forthwith provide the complainant with access to inspect and copy the documents which he has already been shown and to have access to inspect and copy the examination committee's rating form which lists the scores of each examiner.

2. The respondent may mask or delete from the records provided information exempted from disclosure by §1-19(b)(6), G.S.

Approved by order of the Freedom of Information Commission at its regular meeting of December 28, 1983.



Mary Jo Jolicœur
Clerk of the Commission