

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by                   FINAL DECISION  
Empire Energy Systems, Inc.                   Docket #FIC83-179  
Complainant(s)                   March 28, 1984

vs.

Bridgeport Housing Authority

Respondent(s)

The above captioned matter was scheduled for hearing on November 22, 1983 at which time the parties appeared and presented evidence and argument on the complaint. Thereafter the matter was reopened by the hearing officer and an additional hearing was scheduled for January 10, 1984.

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. By letter dated August 5, 1983 the complainant requested copies of the following documents:
  - a. All proposals received by the Bridgeport Housing Authority to perform energy audits on Father Panink Village, P.T. Barnum Apartments, Marina Village A & B, Fireside Apartments and Charles Green Apartment;
  - b. All correspondence from the Bridgeport Housing Authority to any person or corporation who submitted proposals to perform the energy audits referred to above;
  - c. All correspondence, memoranda of communications, inter-office correspondence or memoranda with any party concerning the submission of proposals to perform the above-referenced energy audits, the issuance of any work orders to perform the energy audits and the awarding of any contract to perform the energy audits;

d. Contract between the Bridgeport Housing Authority and Energy Auditors, Inc. to perform the energy audits;

e. The rules and/or regulations of the Bridgeport Housing Authority governing the solicitation of bids and the awarding of contracts.

3. On August 18, 1983 the respondent through its attorney refused to provide the complainant with copies of the requested records.

4. By letter dated August 19, 1983 the complainant filed a complaint with this commission.

5. On November 22, 1983 at the hearing on the above entitled matter the respondent presented the complainant with a stack of documents which it claimed would satisfy her request.

6. Thereafter the attorney for the complainant notified the hearing officer that the documents provided her did not satisfy the request and asked that the hearing be reopened.

7. Additional copies were provided to the complainant both prior to and after the hearing was reopened.

8. At the reopened hearing the respondent was unable to produce a proposal from Energy Auditors, Inc., the firm which had obtained a contract to perform an audit for the housing authority.

9. The respondent claimed that such proposal had never been made, that HUD had told the respondent to contract with Energy Auditors and that no proposal was necessary under the circumstances.

10. It is found that under the circumstances herein where a document does not exist or cannot be located in the files of the respondent that the agency cannot be compelled to produce it.

11. It is found, however, that the respondent by failing to produce the requested records promptly, violated the requirements of §1-15, G.S. to provide copies of its records "promptly upon request".

12. The complainant asked that a civil penalty be imposed upon the agency pursuant to §1-21i(b), G.S.

13. §1-21i(b), G.S. provides in relevant part:

The Commission, upon the finding that a denial of any right created by sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, was without reasonable grounds may, in its discretion, impose a civil penalty against the custodian or other official directly responsible for such denial of not less than twenty nor more than five hundred dollars, after such custodian or other official has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-177 to 4-184, inclusive.

14. The custodian or official responsible for the documents was the acting executive director of the agency, William Curtis.

15. Curtis was dismissed from his position as director prior to the date of the reopened hearing.

16. Curtis was subpoenaed to the hearing by the complainant but did not appear and could not be found.

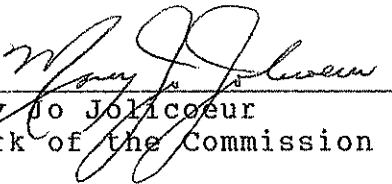
17. Under these circumstances consideration of the imposition of a civil penalty against Curtis by this Commission would be a useless action although Curtis may indeed deserve to have such a penalty imposed on him.

18. It is concluded therefore that this Commission should not consider the imposition of a civil penalty under these circumstances.

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

1. The respondent shall henceforth comply with §1-18, G.S.

Approved by order of the Freedom of Information Commission at its regular meeting of March 28, 1984.

  
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Mary Jo Jolicœur  
Clerk of the Commission