

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
John L. Carusone

FINAL DECISION

Complainant

Docket #FIC 85-1

against

June 26, 1985

Risk Manager, Assistant Town
Attorney and the Town of Hamden

Respondents

The above captioned matter was heard as a contested case on April 17, 1985 at which time the complainant and the respondent appeared, stipulated as to certain facts 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 within the meaning of §1-18a(a), G.S.

2. By letter filed with the Commission of January 2, 1985, the complainant alleged that he made a request for copies of public records which was denied by the respondent Risk Manager.

3. It is found that on December 1, 1984 the complainant made a written request to the respondent Risk Manager for copies of Hamden Public School Safety Inspection Reports for the years 1980-1981, 1983-1984 and 1984-1985.

4. It is found that the requested records are in the custody of the respondent Risk Manager and that the records are public records within the meaning of §§1-18a(d) and 1-19(a), G.S.

5. By letter dated December 14, 1984, the respondent Risk Manager, on the advice of the respondent Assistant Town Attorney, denied the complainant's request for records because the complainant is involved in a lawsuit against the Hamden Board of Education.

6. The respondents claimed that the subject records are exempt from disclosure pursuant to §1-19(b)(4), G.S.

7. The complainant is employed by the Hamden Board of Education and was formerly director of facilities for the Board of Education. The complainant is involved in federal civil rights suit against the Hamden Board of Education concerning the job reorganization.

8. When the respondent Risk Manager requested advice on the complainant's request for records, the respondent Assistant Town Attorney provided the advice without examining the records and without knowledge of whether the records were involved in the pending litigation.

9. The respondent Assistant Town Attorney advised the respondent Risk Manager to deny the request because of the pending litigation and to consult with the outside attorneys representing the Board of Education in the litigation but neither the respondent Risk Manager nor the Assistant Town Attorney contacted the outside attorneys.

10. It is concluded that the respondents have failed to prove the applicability of the exemption in §1-19(b)(4), G.S., because of the failure to present evidence that the records pertain to strategy or negotiations in the pending litigation.

11. It is concluded that by denying the complainant's request for records, the respondent Risk Manager violated §§1-15 and 1-19, G.S.

12. The respondent Assistant Town Attorney moved that he be dismissed as a respondent because he is not the custodian of the records.

13. The motion to dismiss is denied because of the respondent Assistant Town Attorney's role in advising the respondent Risk Manager, as described in paragraphs 8 and 9, above.

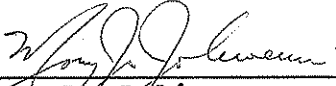
The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned complaint.

1. The respondent Risk Manager shall immediately provide the complainant with copies of the subject records, as described in paragraph 3, above.

2. The respondent Risk Manager is hereby warned that violations of the Freedom of Information Act without reasonable grounds may result in the imposition of civil penalties of not

less than twenty dollars nor more than one thousand dollars against the responsible official, pursuant to §1-21i, G.S.

Approved by order of the Freedom of Information Commission at its regular meeting of June 26, 1985.



Mary Jo Jolicœur
Clerk of the Commission