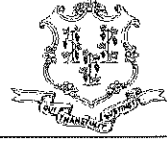


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FREEDOM OF INFORMATION



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Patricia Cofrancesco,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-098

Administrator, Water Pollution Control
Commission, City of West Haven; Water
Pollution Control Commission, City of West
Haven; and City of West Haven,
Respondent(s)

January 2, 2015

Transmittal of Proposed Final Decision Dated December 31, 2014

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision dated December 31, 2014, prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, January 28, 2015**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission *on or before January 14, 2015*. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed *on or before January 14, 2015*. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed *on or before January 14, 2015* and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Patricia Cofrancesco
Henry C. Szadkowski, Esq.

2015-01-02/FIC# 2014-098/Trans/wrbp/TCB/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Revised Report of
Hearing Officer

Patricia Cofrancesco,

Complainant

against

Docket #FIC 2014-098

Administrator, Water Pollution
Control Commission, City of
West Haven; Water Pollution
Control Commission, City of
West Haven; and City of West
Haven,

Respondents

December 31, 2014

The above-captioned matter was heard as a contested case on September 3, 2014, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter dated December 23, 2013, the complainant made a request to the respondents for copies of the following: "Any and all documents reflective of the overtime at your facility and/or an overtime list for calendar year 2013."
3. It is found that the complainant was specifically seeking records that reflected the manner in which overtime hours were distributed among union employees by the union president, or his designee, pursuant to their contract.
4. It is found that upon receiving the complainant's December 23, 2013 records request, the respondent administrator requested the records from a Mr. Anastasia Marnerakis who generates and maintains the requested records. It is found that Mr. Marnerakis compiled the records and that by letter dated January 30, 2014, the

respondents provided the complainant with the documents that Mr. Marnerakis claimed were responsive to the complainant's request.

5. It is also found that when the respondent administrator was informed by the complainant that certain months were missing and that the records provided were not copies of the original records, he asked Mr. Marnerakis about the missing records and was told that all responsive records were provided, that there were no others, and that some may have been inadvertently thrown away or lost.

6. By letter dated February 12, 2014 and filed on February 18, 2014, the complainant appealed to this Commission alleging that the respondents had violated the Freedom of Information ("FOI") Act by failing to fully comply with her request. The complainant specifically alleged that:

- a. "the respondents' alleged compliance was missing documents for the months of December [of] 2012, and January, August, September, October, and November [of] 2013;" and
- b. that regarding "those documents that were provided, the same were redundant, confusing, and unintelligible, thereby calling into question their status as contemporaneous business records."

7. Section 1-200(5), G.S., provides:

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

8. Section 1-210(a), G.S., provides in relevant part that:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

9. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

10. By way of background, it is found that pursuant to the contract between the AFSCME Local 1303-345 Union (hereinafter “the Union”) and the respondent City of West Haven (hereinafter “the City”), Article 20 Section 4¹, the distribution of any available overtime among the bargaining unit employees is solely within the purview of the Union president or his/her designee. It is found that the Union established the protocol for distributing overtime hours which is based in part on seniority, and is solely responsible for its implementation. It is found that the requested records are generated during the course of the Union president’s, or his/designee’s, implementation of the protocol for distributing overtime hours among the bargaining unit employees.

11. At the hearing on this matter, the respondents claimed that:

- a. there are no other records responsive to the complainant’s request;
- b. even if more responsive records existed, the records are not public records within the meaning of §1-200(a), G.S., because they belong to the Union which is not a public agency; and
- c. they only obtained the records for the complainant in a spirit of good will and cooperation.

12. However, the complainant contended at the hearing that the respondents’ claims are disingenuous and that because the records relate to the conduct of the public’s business, were prepared and retained by a city employee, and involve the expenditure of tax dollars, they are public records within the meaning of §1-200(a), G.S.

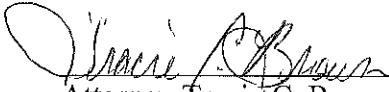
13. However, the respondent administrator testified credibly, and it is found, that the complainant was provided with all the records responsive to her request that exist and that any other records that may have existed have either been destroyed or lost. It is found that there are no other records.

¹ Article 20 Section 4 of the collective bargaining agreement between AFSCME Local 1303-345 and the City of West Haven provides in relevant part “Supervisors shall notify the Union president or designee of all overtime assignments. The Union shall distribute the overtime as equitably as practicable among the bargaining unit employees holding the same job classification affected by the overtime assignment.”

14. Therefore, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.²

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.



Attorney Tracie C. Brown
as Hearing Officer

FIC2014-098/hor/tcb/201412/30

² Since no practical relief can be granted to the complainant, it is unnecessary to, and the Commission will not, address whether the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212, G.S.