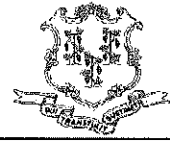


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FREEDOM OF INFORMATION



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Ethan Fry and the Valley Independent Sentinel,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-408

Mayor, Town of Ansonia; and Town of Ansonia,
Respondent(s)

March 19, 2015

Transmittal of Proposed Final Decision

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 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, April 8, 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 March 27, 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 March 27, 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 March 27, 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: Ethan Fry
Christopher J. Sugar, Esq.

2015-03-19/FIC# 2014-408/Trans/wrbp/CAL//LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ethan Fry and The Valley Independent
Sentinel,

Complainants

against

Docket #FIC 2014-408

Mayor, Town of Ansonia; and
Town of Ansonia,

Respondents

March 5, 2015

The above-captioned matter was heard as a contested case on January 20, 2015, at which time the complainants and the respondents appeared 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. It is found that, by email dated June 20, 2014, the complainants requested that the respondents provide them with copies of: a) the personnel file of James Tanner, a former zoning enforcement official in the town; and b) “the settlement agreement between the city and Tanner to resolve the complaint he filed against the city [sic] March 27, 2014 with the state of Connecticut’s Board of Labor Relations”.
3. It is found that the respondents provided the personnel file of Mr. Tanner to the complainants, except for the settlement agreement described at paragraph 2b), above.
4. By email dated and filed on June 27, 2014, the complainants appealed to this Commission, alleging that the respondents failed to disclose the settlement agreement and thereby violated of the Freedom of Information Act (“FOIA”).
5. Section 1-210(a), G.S., provides, in relevant part:

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 ...or (3) receive a copy of such records in accordance with section 1-212.

6. Section 1-212(a)(1), G.S., provides in relevant part that:

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy.

7. It is found that the settlement agreement is a public record within the meaning of §§1-210(a) and 1-212(a), G.S.

8. At the hearing, the respondents stated that the settlement agreement contained a provision wherein the parties agreed not to disclose the terms of the agreement, unless ordered to do so by an "appropriate legal authority". Moreover, because the settlement agreement was exclusively maintained in Mr. Tanner's personnel file, and the respondents stated that they believed that disclosure of the settlement agreement would constitute an invasion of Mr. Tanner's privacy, the respondents provided Mr. Tanner's attorney an opportunity to object to disclosure of the settlement agreement and also provided notice of this Commission's hearing. Finally, respondents stated that, because Mr. Tanner was not a member of a collective bargaining unit, notice was not provided to any collective bargaining representative.

9. It is found that, by email dated January 8, 2015, Mr. Tanner's attorney, Frank Burke, did object on behalf of his client to disclosure of the settlement agreement, stating to the respondents that the "agreement specifies it will not be released unless ordered by legal authority." However, neither attorney Burke nor Mr. Tanner appeared at this Commission's hearing.

10. Following the close of the hearing in this matter, the respondents submitted the settlement agreement to the Commission for an in camera inspection. The settlement agreement is two pages, hereby designated: IC 2014-408-1 and 2.

11. In Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993), the Supreme Court set forth the test for an invasion of personal privacy, necessary to establish the exemption at §1-210(b)(2), G.S. The claimant must first establish that the records in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not

pertain to legitimate matters of public concern, and second, that such information is highly offensive to a reasonable person.

12. It is found that IC-2014-408-1 and IC-2014-408-2 are "personnel files" or "similar files" within the meaning of §1-210(b)(2), G.S. Connecticut Alcohol and Drug Abuse Commission v. FOIC, 233 Conn. 28 (1995).

13. Based on the in camera inspection, it is found that IC-2014-408-1 and IC-2014-408-2 do pertain to legitimate matters of public concern and that disclosure of these records would not be highly offensive to a reasonable person.

14. Based upon the findings at paragraphs 13, it is concluded that the disclosure of IC-2014-408-1 and IC-2014-408-2 would not invade the privacy of Mr. Tanner, and that such records are not exempt from mandatory disclosure pursuant to §1-210(b)(2), G.S.

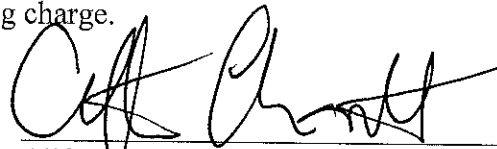
15. This Commission has on numerous previous occasions ruled, when addressing the issue of the disclosure of settlement agreements entered into by public agencies, that such agencies may not contract away the public's right to know under the FOIA by including a provision prohibiting any party to the agreement from disclosing its terms. Docket #FIC 2006-687, Michel Mennesson v. Managing Attorney, State of Connecticut, Office of Protection and Advocacy for Persons with Disabilities; Docket #FIC 2006-299, Ted Mann and the New London Day v. Director of Law, City of New London; Docket #FIC 2001-530, David Critchell and Waterbury Republican-American v. Corporation Counsel, City of Torrington, and Docket #FIC 94-063, Carol L. Panke v. Bloomfield Town Manager.

16. Moreover, in this case, as in Docket #FIC 2006-299 cited immediately above, the confidentiality clause contained in the settlement agreement specifically recognizes that the parties may be required to disclose such agreement if ordered by an appropriate legal authority.

17. It is therefore concluded that the confidentiality agreement does not supersede the FOIA and that the failure of the respondents to promptly disclose the settlement agreement constituted a violation of §§1-210(a) and 1-212(a), G.S.

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

1. The respondents shall provide a copy of the settlement agreement to the complainants forthwith, with no copying charge.



Clifton A. Leonhardt
as Hearing Officer