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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Mike Brodinsky,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2014-290

Chairman, Public Utilities Commission, Town of Wallingford, Electric Division; and Public Utilities Commission, Town of Wallingford, Electric Division,  
Respondent(s)

April 1, 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 22, 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 April 10, 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 April 10, 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 **fifteen (15) copies** be filed **ON OR BEFORE April 10, 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: Mike Brodinsky  
Janis M. Small, Esq.

2015-04-01/FIC# 2014-290/Trans/wrbp/TCB//TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Mike Brodinsky,

Complainant

against

Docket #FIC 2014-290

Chairman, Public Utilities Commission,  
Town of Wallingford, Electrical Division;  
and Public Utilities Commission, Town of  
Wallingford, Electric Division,

Respondents

April 1, 2015

The above-captioned matter was heard as a contested case on December 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 March 3, 2014, the complainant made a request to the respondents for certain records including “copies of any document or writing or records that were sent to, or received from, CMEEC from December 1, 2013 through the time of your compliance with this request which is in any way related to, or arises out of, the contractual issues which are the subject of dispute resolution efforts.”
3. It is found that by letter dated April 29, 2014, the respondents provided the complainant with records responsive to his request. It is found, however, that some of the records responsive to the portion of his request specifically described in paragraph 2, above, were either redacted or entirely withheld. It is found that the withheld and redacted records are the only records at issue in this case.
4. By letter sent and filed via e-mail on May 12, 2014, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to fully comply with his records request.

"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.

6. 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.

7. 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."

8. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212, G.S.

9. It is found that during a July 24, 2013 meeting with representatives of Connecticut Municipal Electric Energy Cooperative's (hereinafter "CMEEC") and again in a letter dated September 12, 2013, the respondents identified several issues with respect to the manner in which CMEEC performed its duties under the contract for the supply of electrical power and energy to the town of Wallingford.

10. It is found that in the respondents' September 12, 2013 letter to CMEEC it stated that CMEEC's failure to address the issues "will lead to formal dispute resolution."

11. It is found that CMEEC did not address the issues identified by the respondents to their satisfaction and that the respondents initiated the dispute resolution process by letter dated December 13, 2013.

12. It is found that the dispute resolution process is governed by section 15 of the respondents' contract with CMEEC which requires that the parties first negotiate in good faith to resolve any differences that arise under the contract and further requires that each party "candidly set out in writing to the other its reason(s) for adopting a specific

conclusion or for selecting a particular course of action, together with the sequence of subordinate facts leading to the conclusion or course of action....”

13. At the hearing on this matter, and in their brief, the respondents claimed that the information that they redacted and the records they withheld are permissibly exempt from disclosure pursuant to §1-210(b)(4), G.S.

14. However, the complainant contended at the hearing, and in his brief, that the records and information are more akin to pleadings and answers in a civil action than strategy and negotiations within the meaning of §1-210(b)(4), G.S.

15. Section §1-210(b)(4), G.S., which provides that nothing in the FOI Act shall be construed to require the disclosure of:

Records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled....

16. Section 1-200(8), G.S., provides that:

“Pending claim” means a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted.

17. It is found that the respondents’ September 12, 2013 letter to CMEEEC constitutes a “pending claim” within the meaning of §§1-200(8), and 1-210(b)(4) G.S.

18. The respondents submitted the requested records to the Commission for an in-camera inspection, which records have been identified as in-camera record #s 2014-290-001 through 2014-290-039.

19. The respondents specifically claimed that §1-210(b)(4), G.S., exempts from mandatory disclosure the following: all of in camera records 2014-290-001 through 2014-290-007; in camera record 2014-290-008, lines 3 through 11 and lines 13 through 15; in camera record 2014-290-009, lines 10 through 16 and lines 23 through 36; in camera record 2014-290-010, lines 1 through 18, lines 21 through 29, and line 35; in camera record 2014-290-011, lines 1 through 5, lines 13 through 20, and lines 24 through 36; in camera record 2014-290-012, lines 1 through 5, lines 9 through 10, and lines 21 through 34; in camera record 2014-290-013, lines 7 through 13, lines 15 through 28; and all of in camera records 2014-290-014 through 2014-290-039.

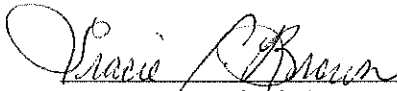
20. Based upon careful review of the in camera records described in paragraph 19, above, it is found that, at the time of the request, such records and information pertained to “strategy” and “negotiations” with respect to a pending claim to which the

respondents were a party within the meaning of §1-210(b)(4), G.S., and that they are permissibly exempt from mandatory disclosure pursuant to such provisions at the time of the complainants' request.

21. It is therefore concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

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.

  
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Attorney Tracie C. Brown  
as Hearing Officer