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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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Wolfgang Halbig,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-461

First Selectman, Town of Newtown; Chief, Police
Department, Town of Newtown; Police Department, Town
of Newtown; Town of Newtown; Chair, Board of
Education, Newtown Public Schools; and Board of
Education, Newtown Public Schools,
Respondent(s)

June 25, 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, July 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 July 3, 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 July 3, 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 July 3, 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: L. Kay Wilson, Esq.
Monte E. Frank, Esq.

2015-06-25/FIC# 2014-461/Trans/wrbp/MS/TCB/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Wolfgang Halbig,

Complainant

against

Docket #FIC 2014-461

First Selectman, Town of Newtown;
Chief, Police Department, Town of
Newtown; Police Department, Town
of Newtown; Town of Newtown;
Chair, Board of Education, Newtown
Public Schools; and Board of
Education, Newtown Public Schools,

Respondents

June 24, 2015

The above-captioned matter was heard as a contested case on April 23, and June 3, 2015, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

For purposes of hearing, the above-captioned matter was consolidated with Docket #FIC2014-823; Wolfgang Halbig v. Chief, Police Department, Town of Newtown; First Selectman, Town of Newtown; Town of Newtown; Chair, Board of Education, Newtown Public Schools; and Board of Education, Newtown Public Schools.

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 letters dated April 25, 2014, the complainant, through counsel, made three separate requests to each of the respondents, for certain records including:
 - a. certain records related to the Sandy Hook Elementary School Security System installed before December 14, 2012;

- b. certain records related to the porta potties ordered from Chatfield Porta Potties of Southbury, Connecticut; and
- c. a copy of the dash cam video from the vehicle of Newtown Police Officer Figola and from the vehicle of Newtown Police Lieutenant Sinko for December 14, 2012 from 6:00 a.m. through 6:00 p.m.

3. It is found that by letter dated May 2, 2014, counsel for the respondents informed the complainant that his request had been received and that the three agencies were compiling and reviewing records responsive to his request. It is found that, by that same letter, the respondents' counsel discouraged the complainant from appearing at the respondents' offices to inspect records until such time as a date and time had been agreed upon.

4. It is found that, by letter dated July 3, 2014, the complainant's counsel reiterated his request and asked that the respondents indicate clearly whether responsive records would be provided or if the requests were being denied.

5. It is found that, by letter dated July 9, 2014, the respondents' counsel provided a detailed written response and indicated that the responsive records, 38 in total, were available upon payment of the nineteen dollar copying fee.

6. It is found that, by letter dated July 17, 2014, the complainant, through counsel, appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to allow full and complete inspection and/or copying of the requested records within four business days of his request.

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

11. After taking evidence and hearing five and a half hours of testimony, over the course of two hearings, from both the respondents’ and complainant’s witnesses, it is found that the respondents have provided the complainant with all records responsive to his request maintained by the respondents respectively.

12. Specifically, it is found that the respondents provided the complainant with all the records they maintain regarding the installation of the security system at the Sandy Hook Elementary School and that there are no other responsive records; that no agency of the town ordered porta potties and, consequently, there are no records related to any porta potties ordered from Chatfield Porta Potties of Southbury, Connecticut; and that there is no dash cam video for Newtown Police Officer Figola because his vehicle did not have a dash cam video recorder on December 14, 2012.

13. At hearing on this matter, the complainant contended that he was not given a copy of the original dash cam video from Lieutenant Sinka’s vehicle since the video, when played, should have shown the date and time stamp. The complainant further contended that a copy of the same video obtained from by the Connecticut State Police shows such date and time stamp. The complainant indicated at the hearing that he wants a copy of the dash came video that shows the date and time stamp.

14. Notwithstanding the complainant’s contention in this regard, it is found that the respondent police department provided the complainant with a true copy of the dash cam video from Lieutenant Sinka’s vehicle.

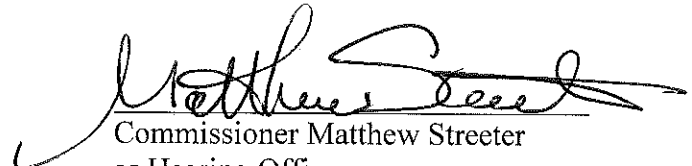
15. At the hearing on this matter, the complainant contended that the respondents’ compliance was not prompt but rather one of obfuscation, delay and denial, all in violation of the FOI Act.

16. It is found, however, that in this case, the respondents’ compliance was nothing more than methodical, deliberate and rigidly precise.

17. It is concluded that the respondents did not violate the FOI Act 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.



Commissioner Matthew Streeter
as Hearing Officer