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FREEDOM OF INFORMATION



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Jon Wilson,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-631

President, Stony Creek Association; and
Stony Creek Association,
Respondent(s)

June 18, 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 June 26, 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 June 26, 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 June 26, 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: Jon Wilson
Timothy J. Lee, Esq.

2015-06-18/FIC# 2014-631/Trans/wrbp/CAL/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jon Wilson,

Complainant

against

Docket # FIC 2014-631

President, Stony Creek Association; and
Stony Creek Association

Respondents

June 18, 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 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)(A), G.S.
2. It is found that by letter dated and transmitted by email on September 16, 2014, the complainant made a request to the respondents for copies of fourteen categories of records concerning a proposal to permit the Legacy Theatre property to operate as a theatre.
3. It is found that, by email also dated September 16, 2014, the respondent President acknowledged the request, stating that it had been forwarded to counsel.
4. It is further found that, by letter dated September 19, 2014, counsel for the respondents attempted to provide an itemized response for each of the fourteen categories of records requested. Respondents claimed that there were no records that were responsive to many requests, that some records had been produced, and that certain records were exempt from disclosure because they "relate[] to pending claims and litigation". In response to one category of request, counsel's September 19, 2014 letter enclosed a copy of the bylaws of the respondent Association.
5. At the hearing, the complainant testified that he did not receive the respondents' September 19, 2014 letter, notwithstanding the respondents' rejoinder that it was mailed first class mail. The complainant testified that he received the September 19, 2014 letter for the first time when it was retransmitted to him as an email attachment on November 19, 2014.

6. It is found that, by letter dated and filed September 29, 2014, the complainant appealed to the Commission, alleging that the failure of the respondents to provide the requested records violated the Freedom of Information Act ("FOIA"). By letter dated and filed November 14, 2014, the complainant amended his complaint, requesting the imposition of civil penalties.

7. At the hearings, the categories of records from the September 16, 2014 records request that remained contested were items 7, 8 and 13. These requests were:

"7. [a]ny documents or records...showing (or suggesting) that [certain individuals] qualify as 'aggrieved'..."

8. [a]ny documents or records...showing (or suggesting) that [certain individuals] do not qualify as 'aggrieved'..."

13. [t]he list of names and email addresses of Stony Creek Association members...."

8. 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.

9. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

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

11. Section 1-210(b)(4), G.S., permits an agency to withhold “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.”

12. It is found that, on or about July 31, 2014, the Branford zoning enforcement officer gave administrative approval to allow the theatre in question to operate and the respondent Association appealed this decision to the Branford Zoning Board of Appeals. After the Zoning Board of Appeals denied the appeal, the respondent Association filed an appeal in Superior Court dated December 9, 2014. The Superior Court appeal remained pending as of the last hearing date at the Commission.

13. It is also found that counsel for the respondents interviewed several residents of Stony Creek, who, by virtue of such residency, are members of the Stony Creek Association. Counsel took notes concerning his conversations which concerned use of the relevant property as a theatre and the impact such use would have on those residents. These notes pertain to the appeal of the approval given by the Branford zoning enforcement officer to allow the theatre to operate.

14. It is further found that, except for the notes discussed at paragraph 13, immediately above, the respondents maintain no other records documenting the real or estimated damages to the four individuals named in the respondent Association’s appeal to Superior Court.

15. It is also found that the email addresses of the Stony Creek Association members were not, in fact, provided to the complainant until November 25, 2014. Therefore, the assertion in the respondents’ September 19, 2014 letter (see paragraph 4 above) was not correct that the records which the complainant requested at item 13 of his September 16, 2014 letter had been provided.

16. It is concluded that the respondent Association was a party to a claim when it appealed to the Branford Zoning Board of Appeals, and that the notes of the respondents’ counsel were records of strategy pertaining to the pending claim. Counsel’s notes concerning his conversations with members of the respondent Association are therefore exempt from mandatory disclosure pursuant to §1-210(b)(4), G.S.

17. It is concluded that the complainant was provided all non-exempt public records that are maintained by the respondents and are within the scope of the complainant’s September 16, 2014 request. However, it is also concluded that the email addresses provided to the complainant on November 25, 2014 were not provided promptly, in violation of §§1-210(a) and 1-212(a), G.S.

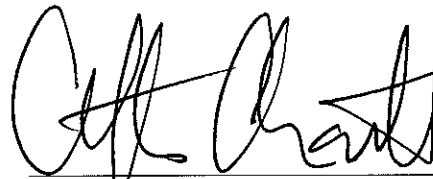
18. It is finally concluded that there are no grounds for the imposition of civil penalties.

19. During the hearings, there was testimony that the respondent President has been maintaining at his regular place of business all records concerning the respondent Association created since 2010. Earlier records of the respondent Association are available for public access at the public library, which maintains regular office hours. The complaint did not allege that the respondent Association's records were not maintained in an accessible place. However, at the June 3, 2015 hearing, the hearing officer reviewed the requirements of §1-210, G.S., in this regard and the respondents indicated that they would take appropriate remedial action.

20. Also during the June 3, 2015 hearing, there was testimony that the respondent President uses his business email account ("dbullard@bullardfinancial.com") for the business of the respondent Association. The respondent President, who is a financial adviser, also testified credibly that federal securities law prohibits his disclosure of the financial information of his clients. Therefore, the result of the comingling of public and private emails is to require either a violation of the FOIA right to inspect public records or, apparently, a violation of federal securities law. While again the complaint did not allege a violation of the right to inspect, the hearing officer reviewed relevant FOIA law with the respondents. In this instance as well, the respondents indicated that they would take appropriate remedial action.

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

1. Henceforth, the respondents shall provide requested non-exempt public records promptly upon request.

A handwritten signature in black ink, appearing to read 'Clifton A. Leonhardt', written over a horizontal line.

Clifton A. Leonhardt
as Hearing Officer