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FREEDOM OF INFORMATION



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Wolfgang Halbig,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-823

Chief, Police Department, Town of Newtown; First
Selectman, Town of Newtown; Town of Newtown; Chair,
Board of Education, Newtown Public Schools; and
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# 2014-823/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 2014-823

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,

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 #FIC2014-461; Wolfgang Halbig v. 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.

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 October 29, 2014, the complainant made three separate but identical requests to each of the respondents for the following:
 - a. Sandy Hook Elementary School Maintenance work orders.
 - i. “Copies of all maintenance work orders submitting by the School Principal Dawn Hochsprung or her designee to the school

district maintenance department (facilities) for any repairs, new classroom doors or painting from July 1, 2012 through Dec 13, 2012;”

- ii. “Copies signed by principal or designee showing the date of completion of the repairs together with time stamps showing job completion;”
- b. Copies of all e-mails to and from school principal Dawn Hochsprung and her assistant.
 - i. “Copies of all e-mails to and from School Principal Dawn Hochsprung and her assistant school principal from the period of May 1, 2012 through December 13, 2012, to the following school district departments:
 - a. human resources;
 - b. finance department;
 - c. maintenance department;
 - d. staff development;
 - e. assistant school superintendent;
 - f. school superintendent;
 - g. food services provider;
 - h. school district transportation provider;
 - i. curriculum department.”

3. By letter dated November 7, 2014 and filed on November 12, 2014, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by “formally denying the request through their designated counsel by failing to allow full and complete inspection, copying, and/or supplying copies of the requested materials within (4) days of the request, thereby constituting a denial pursuant to Conn. Gen. Stat. §1-206(a).”

4. 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.

5. 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.

6. 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.”

7. 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.

8. It is found that, by letter dated November 3, 2014, the respondents, through counsel, responded to the complainant’s request and informed him, in part, that his October 29, 2014 request was identical to his July 29, 2014 request which had already been responded to by their letter dated September 3, 2014.

9. With respect to the September 3, 2014 letter, it is found that the respondents, through counsel, informed the complainant that the respondents maintained 45 records responsive to the complainant’s request described in paragraph 2(a)(i), above, and that they would be provided upon payment of the copying fee.

10. It is found that, by that same letter, the respondents, through counsel, also informed the complainant that the town had no records responsive to the request described in paragraph 2(a)(ii), above.

11. It is found that the respondents’ counsel also informed the complainant that his request described in paragraph 2(b)(i), above, was vague, overly broad, and that it was not a request for “specific documents and would require research and analysis not required under the FOI Act.” It is found that the respondents’ counsel expected the complainant’s counsel to clarify that portion of his request and make a request for specific records.

12. It is found that at the time of the April 23, 2015 hearing on this matter, the complainant had not responded to the respondents’ September 3 or the November 3, 2014 letters – meaning he neither submitted the fee for the copies or addressed the respondents’ claim that a portion of the request was vague, overly broad, was not for specific documents and required research.

13. It is found that, by e-mail dated May 7, 2015, and by other communications between the complainant's counsel and the respondents' counsel, the respondents received the clarification they sought and provided the complainant with records responsive to his request described in paragraph 2(b)(i), above.

14. In this regard, it is found that there was no assistant school principal from the period of May 1, 2012 through December 13, 2012 and that, consequently, there are no records responsive to that portion of the complainant's request described in paragraph 2b, above. It is also found that there was no staff development department from the period of May 1, 2012 through December 13, 2012 and that, consequently, there are no records responsive to that portion of the complainant's request described in paragraph 2b(i)(d), above.

15. After five and a half hours of testimony, heard over the course of two hearings, from both the complainant's and the respondents' witnesses, it is found that the complainant has been provided with all records responsive to his October 29, 2014 requests maintained by the respondents.

16. 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.

17. At the hearings on this matter, the respondents contended that the complainant's request described in paragraph 2(b)(i), above, was unclear because the request included positions and departments that did not exist and that it was unclear if the complainant was seeking emails between maintenance personnel and the principal or between the maintenance department and the principal. The respondents contended that they were, therefore, justified in waiting to comply with that portion of the complainant's request until they received clarification.

18. In addressing the respondents' contentions described in paragraphs 11 and 17, above, we are guided by the Appellate Court's decision in Wilden v. Freedom of Information Commission, 56 Conn. App. 683, 687 (2000) in which that Court concluded that a records request involves research if the public agency must exercise discretion to determine whether the records sought fall within the request. The Court concluded that a request does not require research when a requestor specifically identifies the records sought, and there is no analysis required to search for the records." Id. at 686. The Appellate Court also concluded that "a records request that is simply burdensome does not make that request one requiring research." Id. at 687.

19. The Superior Court has also concluded that a burdensome request does not relieve a public agency from its obligations to comply with that request under the FOI Act. Office of Corporation Counsel of the City of Danbury v. Freedom of Information Commission, Superior Court, Judicial District of New Britain at New Britain, Docket No. CV126017045 (2013), citing Wilden v. Freedom of Information Commission, 56 Conn. App. 683 (2000).

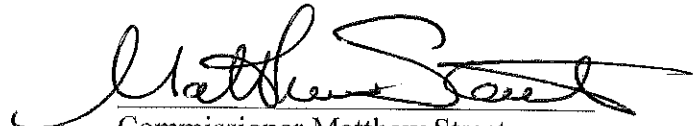
20. It is found that the complainant's request described in paragraph 2(b)(i), above, was voluminous due to its breadth, making it burdensome for the respondents to effectuate compliance. However, as stated above, the respondents were not relieved from their obligation to promptly comply with the request pursuant to §§1-210(a) and 1-212(a), G.S.

21. It is also found that based on a reasonable reading of the request described in paragraph 2(b)(i), above, it is found that the request is clearly for specific records – e-mails between specifically identified individuals and a list of specifically identified departments. It is found that the request is not vague or unclear and specifically identified the records sought. It is found that the respondents were not required to exercise discretion or analysis to search for those records.

22. It is concluded, therefore, that that portion of the complainant's request did not require research and that the respondents violated §§1-210(a) and 1-212(a), G.S., for failing to promptly comply with that portion of the complainant's request.

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 strictly comply with the promptness provisions of §§1-210(a) and 1-212(a).



Commissioner Matthew Streeter
as Hearing Officer