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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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Rich Saluga,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-866

Chairperson, Board of Ethics, Town of Brookfield; Board
of Ethics, Town of Brookfield; and Town of Brookfield,
Respondent(s)

September 21, 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, October 14, 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 October 2, 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 October 2, 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 October 2, 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: Rich Saluga
Thomas V. Beecher, Esq.

2015-09-21/FIC# 2014-866/Trans/wrbp/LFS//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Rich Saluga,

Complainant

against

Docket #FIC 2014-866

Chairperson, Board of Ethics, Town of
Brookfield; Board of Ethics, Town of
Brookfield; and Town of Brookfield,

Respondents

September 21, 2015

The above-captioned matter was heard as a contested case on September 4, 2015, 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 filed November 25, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by:
 - a. failing to have minutes of three meetings available for inspection;
 - b. failing to provide records concerning ethics complaint C-2014-11; and
 - c. failing to provide records documenting expenditures for legal advice.
3. With respect to the complaint concerning minutes, described in paragraph 2.a, above, §1-225(a), G.S., provides in relevant part:

Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection ... Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

4. It is found that on November 3, 2014, the complainant went to the respondents' town clerk's office to inspect minutes for several of the respondents' 2014 meetings.

5. It is found that personnel in the Clerk's office provided minutes for all but three meetings, but were unable to locate minutes for those three meetings.

6. It is found that the respondents' recording secretary timely filed minutes of such meetings after each meeting occurred. It is found, therefore, that the *respondents* did not fail to make the minutes available for inspection.

7. It is found that the respondents provided copies of the missing minutes to the complainant on November 10, 2014.

8. It is concluded that the respondents did not violate §1-225(a), G.S., as alleged.

9. With respect to the complainant's request for records pertaining to the respondents' investigation of ethics case number C-2014-11, §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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

10. 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.

11. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

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

13. In addition, §7-148h(a), G.S., provides, in relevant part:

Any town, city, district, . . . or borough may, by charter provision or ordinance, establish a board, commission, council, committee or

other agency to investigate allegations of unethical conduct, corrupting influence or illegal activities levied against any official, officer or employee of such town, city, district or borough. The provisions of subsections (a) to (e), inclusive, of section 1-82a shall apply to allegations before any such agency of such conduct, influence or activities, to an investigation of such allegations conducted prior to a probable cause finding, and to a finding of probable cause or no probable cause. . .

14. Section 1-82a(a), G.S., provides, in relevant part:

Unless a judge trial referee makes a finding of probable cause, a complaint alleging a violation of this part . . . shall be confidential except upon the request of the respondent. An evaluation of a possible violation of this part. . . by the Office of State Ethics prior to the filing of a complaint shall be confidential except upon the request of the subject of the evaluation. If the evaluation is confidential, any information supplied to or received from the Office of State Ethics shall not be disclosed to any third party by a subject of the evaluation, a person contacted for the purpose of obtaining information or by the ethics enforcement officer or staff of the Office of State Ethics. . . .

15. It is found that, pursuant to §7-148h(a), G.S., the respondent Board was established to investigate complaints alleging ethics violations. It is found that §1-82a (a), G.S., requires the Board of Ethics to keep all ethics complaints confidential until it determines that the allegations are supported by probable cause.

16. It is found that the respondents initially found probable cause to sustain the allegations in C-2014-11, but upon consultation with their attorney, soon realized they were mistaken and rescinded their finding.

17. The respondents submitted no evidence of a request for non-confidentiality by the subject of the evaluation, within the meaning of §1-82a(a), G.S.

18. Moreover, it is concluded that the respondents' mistaken finding of probable cause did not lift the confidentiality attached to the complaint and to information concerning the Board's evaluation.

19. It is found that the records requested by the complainant contain information supplied to or received from the respondents concerning the evaluation, within the meaning of §1-82a(a), G.S.

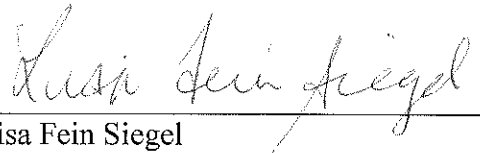
20. It is concluded that §1-210(a), G.S., prohibits disclosure of such records.

21. With respect to the complainant's request for records concerning the respondents' expenditures for legal advice, it is found that the respondents do not maintain any records responsive to the request.

22. It is found that the Finance Office does maintain such records, and subsequently provided them to the complainant, redacted to protect privileged information.

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

1. The complaint is dismissed.



Lisa Fein Siegel
as Hearing Officer