



# FREEDOM OF INFORMATION

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

Notice of Meeting

Docket #FIC 2015-526

Commissioner, State of Connecticut, Department of  
Veterans Affairs; and State of Connecticut, Department of  
Veterans Affairs,  
Respondent(s)

February 2, 2016

## 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, March 9, 2016**. 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 February 26, 2016**. 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 February 26, 2016**. **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 February 26, 2016**, 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: Rakhmatulla Asatov  
Attorney Tanya Feliciano DeMattia

2016-02-02/FIC# 2015-526/Trans/wrbp/KKR//PSP

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Rakhmatulla Asatov,

Complainants

against

Docket #FIC 2015-526

Commissioner, State of Connecticut,  
Department of Veterans Affairs; and  
State of Connecticut, Department of  
Veterans Affairs,

Respondents

January 29, 2016

The above-captioned matter was heard as a contested case on November 5, 2015, at which time the complainant appeared and presented testimony, exhibits and argument on the complaint. Counsel for the respondents appeared at such hearing after the complainant's presentation, and stated that she had not received notice of the hearing and was not prepared to proceed. Although the Commission's records reflect that notice was delivered to counsel's office on October 22, 2015, the hearing officer continued the hearing. Another hearing was held on December 14, 2015, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

At the November 5, 2015 hearing, the complainant renewed a motion, dated August 30, 2015, to (1) strike the appearance of counsel for the respondents and (2) remove the Attorney General's Office ("OAG") as a party for lack of standing. The hearing officer denied such motion, because (1) the respondents unquestionably have the right to be represented by counsel and (2) the OAG was not named as a party to this matter.

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. It is found that the complainant applied to the respondent department for the position of Connecticut Careers Trainee with the target class of Veterans Services Officer, and that, by email dated July 27, 2015, the respondents informed him that he had not been selected for such position.
3. It is found that, by email, also dated July 27, 2015, the complainant requested that the respondents "make available non-exempted parts of the application packets of the individuals

[they]...interviewed and selected for the position [of Connecticut Careers Trainee with the target class of Veterans Services Officer].” The complainant clarified in his request that he was seeking all records received by the respondent department from individuals in response to the vacancy announcement. At the hearing in this matter, the complainant further clarified that he was seeking the CT-HR-12 forms, documents reflecting educational information and credentials and all other supporting documents (the “requested records”).

4. It is found that, by email, also dated July 27, 2015, the respondents acknowledged the request, described in paragraph 3, above, and informed the complainant that “the information will be sent to you as soon as possible.”

5. It is found that, by letter dated August 12, 2015, the respondents denied the request, described in paragraph 3, above, claiming such records are exempt from disclosure pursuant to §5-225, G.S.

6. By email dated and filed August 19, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request to inspect the records, described in paragraph 3, above.

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 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 records, described in paragraph 3, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. With regard to the claim that the records, described in paragraph 3, above, are exempt from disclosure pursuant to §5-225, G.S., that section provides:

All persons competing in any examination shall be given written notice of their final earned ratings and the minimum earned rating necessary to pass the examination. Not later than thirty days after the issuance of the final earned rating, a person who has not achieved a passing rating may inspect his or her papers, markings, background profiles and other items used in determining the final earned ratings, other than examination questions and other materials constituting the examination, subject to such regulations as may be issued by the Commissioner of Administrative Services. Not later than ten days after inspecting his or her papers, a person may, in writing, appeal to the Commissioner of Administrative Services the accuracy of his or her final earned rating, as based on the original examination paper or responses. The commissioner shall render a final decision on the person's appeal within thirty days thereafter and correct candidate lists as appropriate.

12. In Nsonsa Kisala v. Commissioner, State of Connecticut, Department of Public Health, et al., Docket #FIC 2014-389 (March 11, 2015); and Barry Natale v. Commissioner, State of Connecticut, Department of Education, et al., Docket #FIC 2015-109 (August 18, 2015), the Commission found that the CT-HR-12 form, entitled "Application for Examination or Employment," is used in the state's classified service as both an examination application and as an employment application. The Commission also drew a distinction between competitive positions, which require an examination, and non-competitive positions that do not require an examination, and concluded that because non-competitive positions do not require an examination, the CT-HR-12 and supporting documents are employment applications, which generally fall outside the scope of §5-225, G.S.

13. Significantly, however, the Commission concluded in Natale that, even if a position is non-competitive, and the CT-HR-12 and supporting documents therefore ordinarily would be considered employment applications, such records still may be considered examination applications for purposes of §5-225, G.S., if a non-traditional "examination" was administered. Under Natale, such non-traditional "examination" may consist of a review of professional credentials and experience, and an evaluation of certain skills, but must result in a "final earned rating" for each applicant. In addition, the agency must have established a "minimum earned rating necessary to pass the examination, and have compiled a list of candidates taking the "examination," together with their respective final earned rating.

14. It is found that the position, described in paragraph 2, above, is identified by the Department of Administrative Services as non-competitive. The respondents argued, however, at the hearing in this matter, that nonetheless, they administered a “de facto examination,” for this position, and that under Natale, the CT-HR-12 and supporting documents are examination applications for purposes of §5-225, G.S.

15. It is found that the respondents, in this case, did not establish a “minimum earned rating necessary to pass the examination;” did not conduct an evaluation that resulted in a “final earning rating” for each applicant; did not compile a list of candidates taking the examination that included each applicant’s final earned rating; and failed to prove that they otherwise administered a non-traditional “examination.”

16. Based upon the foregoing, it is concluded that the requested records are not examination applications for purposes of §5-225, G.S.

17. Accordingly it is concluded that the respondents violated the disclosure requirements in §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant.

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

1. The respondents shall, forthwith, provide the complainant with a copy of the requested records, free of charge.
2. Henceforth, the respondents shall strictly comply with the disclosure requirements in §§1-210(a) and 1-212(a), G.S.



Kathleen K. Ross  
as Hearing Officer