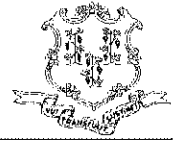




FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Cherlyn Poindexter and the New Haven
Management and Professional Union,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-514

Toni Harp, Mayor, City of New Haven; Marcus Paca,
Labor Relations, City of New Haven; Matthew Nemerson,
Economic Development Director, City of New Haven;
Juan Scott, Chair, Commission on Equal Opportunity; City
of New Haven; Chair, Commission on Equal Opportunity,
City of New Haven; and City of New Haven,
Respondent(s)

April 7, 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, April 27, 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 April 15, 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 April 15, 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 April 15, 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: Cherlyn Poindexter
Attorney Kathleen Foster

2016-04-07/FIC# 2015-514/Trans/wrbp/VRP//TCB

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Cherlyn Poindexter and
The New Haven Management and
Professional Union,

Complainants

against

Docket #FIC 2015-514

Toni Harp, Mayor, City of New Haven;
Marcus Paca, Labor Relations, City of
New Haven; Mathew Nemerson, Economic
Development Director, City of New Haven;
Juan Scott, Chair, Commission on Equal
Opportunity, City of New Haven; Chair,
Commission on Equal Opportunity, City of
New Haven; John Rose, Corporation Counsel,
City of New Haven; and City of New Haven,

Respondents

April 7, 2016

The above-captioned matter was heard as a contested case on December 9, 2015 and January 19, 2016, at which times the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2015-595, Cherlyn Poindexter et al. v. Toni Harp et al.

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 of complaint filed August 6, 2015, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act at the July 30, 2015 meeting of the Commission on Equal Opportunity. The complainants also alleged that the respondents destroyed public records. Additionally, the complainants sought the imposition of civil penalties against Mayor Toni Harp, Corporation Counsel John Rose, Deputy Director of Economic Development Marcus Paca, and Economic Development Director Marcus Paca.

3. Specifically, the complainants alleged:

- a. That a quorum wasn't present at the July 30, 2015 meeting;
- b. That the Commission on Equal Opportunity went into executive session to discuss an investigation of Nichole Jefferson, denying the request by Jefferson that the hearing be conducted openly;
- c. That the respondents did not allow Jefferson to speak;
- d. That the respondents willfully destroyed public records that had been requested by Jefferson's attorney.

4. It is found that the respondent Commission on Equal Opportunity convened a meeting on July 30, 2015 with four members present, believing that four members constituted a quorum of the seven-member board.

5. It is found that the purpose of the meeting was to discuss an investigation into the performance and employment of Nichole Jefferson, then Executive Director of the Commission on Equal Opportunities.

6. It is found that the respondent Rose caused a notice of the meeting to be delivered to Jefferson on July 28, 2015.

7. It is found that the complainants brought this appeal on behalf of Jefferson, a member of the complainant union.

8. It is found that an issue immediately rose during the meeting as to whether four or five members constituted a quorum.

9. It is found that the respondent Commission on Equal Opportunity convened in executive session. A report concerning the investigation of Jefferson was distributed to the Commission members by the respondent Rose, but Jefferson was not discussed in executive session, and the copies of the investigation report were returned to Rose. The respondents discussed the issue of how many members constituted a quorum.

10. It is found that Jefferson arrived at the meeting some time after it commenced, objected to the executive session, and said that she wanted to be heard.

11. With respect to the issue of the destruction of public records, the respondents stipulated that aged certified payroll records were shredded without receiving a disposal authorization from the office of the Public Records Administrator.

12. It is found that complainants, contemporaneously with the filing of this complaint, lodged a formal complaint concerning the destruction of records with the Public Records Administrator.

13. The complainants did not identify in their complaint any particular public records that had been requested, or allege that any request for public records had been made on any particular date, or denied on any particular date.

14. Section 1-225(a), G.S., provides in relevant part: "The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public."

15. Section 1-200(6), G.S., provides in relevant part:

“Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, *provided that such individual may require that discussion be held at an open meeting* ...; and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210. [Emphasis added]

16. Section 1-225(c), G.S., provides in relevant part:

The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

17. Section 1-240(a), G.S., provides:

Any person who wilfully, knowingly and with intent to do so, destroys, mutilates or otherwise disposes of any public record without the approval required under section 1-18 or unless pursuant to chapter 47 or 871, or who alters any public record, shall be guilty of a class A misdemeanor and each such occurrence shall constitute a separate offense.

18. With respect to the complainants’ allegation described in paragraph 3.a, above, that a quorum was not present at the meeting, it is concluded that the complainants have not alleged a violation of the FOI Act.

19. With respect to the complainants’ allegation described in paragraph 3.b., above, that the respondents went into executive session to discuss Jefferson’s performance, and did so over Jefferson’s request that the discussion be in public, it is found that the respondents did not discuss Jefferson’s performance in executive session as they had apparently intended (finding themselves without a quorum), and that Jefferson’s request that the discussion be in public is therefore moot.

20. With respect to the complainants’ allegation described in paragraph 3.c, above, that Jefferson was not given an opportunity to speak, it is concluded that the complainants have not alleged a violation of the FOI Act.

21. With respect to the complainants' allegation described in paragraph 3.d, above, that the respondents destroyed public records in violation of §1-240(a), G.S., it is concluded that §1-240(a), G.S., is a criminal statute, and that prosecution of criminal matters is vested with the Office of the State's Attorney. Moreover, it is additionally concluded that questions of improper or premature disposition of records is vested with the Office of the Public Records Administrator.

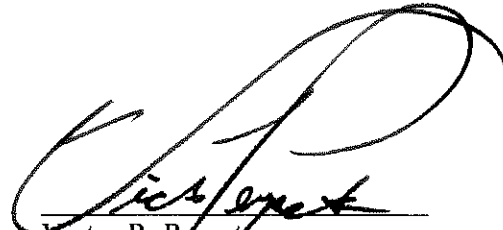
22. The Commission, therefore, in its discretion declines to conduct an inquiry into the alleged destruction of the respondents' records where no specific request for, or denial of, any identified records has been alleged.

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

24. Having found no violations of the FOI Act by the respondents in this matter, it is unnecessary to consider the imposition of the civil penalties requested.

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.



Victor R. Perpetua
as Hearing Officer