

Since 1975



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

Josephine S. Miller,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-203

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

December 7, 2012

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, January 9, 2013**. 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 December 17, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE December 17, 2012**. **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 **fourteen (14) copies** be filed **ON OR BEFORE December 17, 2012**, 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: Josephine S. Miller
Krista D. O'Brien, Esq.

2012-12-07/FIC# 2012-203/Trans/wrbp/KKR/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Josephine S. Miller,

Complainant

against

Docket #FIC 2012-203

Commissioner, State of Connecticut,
Department of Labor; and State of
Connecticut, Department of Labor,

Respondents

November 29, 2012

The above-captioned matter was heard as a contested case on October 2, 2012, at which time 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), G.S.
2. It is found that, by letter dated March 12, 2012, the complainant requested:

(a) the job posting or vacancy notice for any Connecticut Career Trainee positions with the Connecticut Department of Labor from September 1, 2011 to present;

(b) application, resume and/or curriculum vitae for any individual who applied for a Connecticut Career Trainee position with the Connecticut Department of Labor from September 1, 2011 to present;

(c) interview questions, interview notes, and/or responses to interview questions by any individual who applied for a Connecticut Career Trainee position with the Connecticut Department of Labor from September 1, 2011 to present;

(d) any documents that show any successful candidate who applied for and was hired into any

Connecticut Career Trainee position from September 1, 2011 to present.

3. It is found that, by email dated March 15, 2012, the respondents informed the complainant that they had received her request, were reviewing it to determine whether the agency maintained responsive records and, if so, whether such records were exempt from disclosure.

4. It is found that, by letter dated March 26, 2012, the respondents provided the complainant with records responsive to the request described in paragraph 2(a) and 2(d), above. However, it is further found that the respondents withheld records responsive to the request, described in paragraphs 2(b) and 2(c), above, claiming such records are exempt from disclosure pursuant to §§1-210(b)(6), G.S., and 5-525, G.S.

5. By email dated and filed April 5, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the request for records, described in paragraph 2, above.

6. 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.

7. 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 . . . (3) receive a copy of such records in accordance with section 1-212. (Emphasis added).

8. 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.”

9. It is found that the records responsive to the request, described in paragraph 2, above, are public records, within the meaning of §§1-200(5) and 1-210(a), G.S.

10. At the hearing in this matter, the complainant stated that she was satisfied with the response to the request, described in paragraphs 2(a) and 2(d), above, and that she wished to withdraw her complaint as it pertains to those requests, and to the request described in paragraph 2(c), above. Accordingly, only the records described in paragraph 2(b), above, shall be further considered herein. In addition, the complainant stated that she was not seeking the names, addresses, phone numbers or social security numbers of any applicants.

11. It is found that the respondents maintain cover letters, completed applications for examination or employment (Form CT-HR-12), formerly known as the Form PLD-1, and resumes, of individuals who applied for a Connecticut Career Trainee position with the respondent department between September 1, 2011 and the date of the request in this matter. The respondents claimed, at the hearing in this matter, that these records are exempt from disclosure pursuant to §5-525, G.S., and Director, Retirement and Benefits Services Division, Office of the Comptroller v. FOIC, 256 Conn. 764 (2001).¹

12. Section 5-225, G.S., provides, in relevant part:

[a]ll 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. Within thirty days of receipt of the final earned rating, a person may inspect his 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. Within thirty days of inspecting his papers, a person may, in writing, appeal to the Commissioner of Administrative Services the accuracy of his 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.

13. In their brief filed post-hearing, the respondents argued that the issue in this matter is controlled by Personnel Director, Department of Income Maintenance v. FOIC, 214 Conn. 312 (1990), and Winkler and Administrative and Residual Employees Union v. Commissioner, State of Connecticut, Department of Administrative Services, Docket #FIC 2005-492 (2006).

14. In Winkler, the complainant requested “examination applications or PLD-1s” and all attachments submitted...for the Fiscal Administrative Manager 1 examination...” The Commission concluded such records were exempt from disclosure, under §5-225 G.S., as

¹ At issue in Director was whether the disclosure of the home addresses of certain state employees would constitute an invasion of privacy under §1-210(b)(2). G.S.

construed by the Supreme Court in Personnel Director, because the PLD-1s constituted “recorded data used to determine promotions of state employees.” See Personnel Director supra at 314. According to the Court in Personnel Director, under §5-225, G.S., such information may be disclosed only to the applicant who is the subject of such application or examination. Personnel Director, Id. at 316.

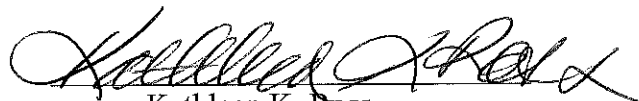
15. Accordingly, it is found that the records, described in paragraph 2(d), above, are exempt from mandatory disclosure pursuant to §5-225, G.S.

16. The Commission notes that resumes and job applications of individuals maintained by public agencies *other than state agencies* have been held by the Commission to be subject to disclosure to the public.

17. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complainant is dismissed.



Kathleen K. Ross
as Hearing Officer