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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

Robert Fromer,
Complainant(s)

against

Daniel Esty, Commissioner, State of Connecticut, Department of Energy and Environmental Protection; Jamie Young, Administrative and Legislative Advisor, State of Connecticut, Department of Energy and Environmental Protection; Janice DeShais, Director of Adjudications, State of Connecticut, Department of Energy and Environmental Protection; and State of Connecticut, Department of Energy and Environmental Protection,

Respondent(s)

Notice of Rescheduled
Commission Meeting

Docket #FIC 2012-158

February 5, 2013

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, February 13, 2013 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, February 27, 2013.**

Any brief, memorandum of law or request for additional time, as referenced in the January 15, 2013 Transmittal of Proposed Final Decision, should be received by the Commission on or before February 15, 2013.

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Robert Fromer
Melinda Decker, Esq.

2013-02-05/FIC# 2012-158/ReschedTrans/wrbp/TCB//PSP

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Robert Fromer,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-158

Daniel Esty, Commissioner, State of Connecticut,
Department of Energy and Environmental Protection;
Jamie Young, Administrative and Legislative Advisor,
State of Connecticut, Department of Energy and
Environmental Protection; Janice DeShais, Director of
Adjudications, State of Connecticut, Department of
Energy and Environmental Protection; and State of
Connecticut, Department of Energy and Environmental
Protection,

Respondent(s)

January 15, 2013

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, February 13, 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 February 1, 2013**. 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 February 1, 2013**. 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 February 1, 2013**, 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.**

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By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Robert Fromer
Melinda Decker, Esq.

1/15/2013/ #FIC2012-158/wrbp/TCB/PSP

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Robert Fromer,

Complainant

against

Docket #FIC 2012-158

Daniel Esty, Commissioner, State of Connecticut, Department of Energy and Environmental Protection; Jamie Young, Administrative and Legislative Advisor, State of Connecticut, Department of Energy and Environmental Protection; Janice DeShais, Director of Adjudications, State of Connecticut, Department of Energy and Environmental Protection; and State of Connecticut, Department of Energy and Environmental Protection

Respondents

January 14, 2013

The above-captioned matter was heard as a contested case on August 14, 2012, 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. It is found that the complainant was an intervening party in an administrative hearing before the respondent department concerning the Connecticut Department of Transportation and its application for a certain permit.
3. It is found that a Proposed Final Decision was issued by the hearing officer, the respondent Janice DeShais, on January 31, 2012 and that a copy was provided to the complainant via e-mail in portable document format ("PDF") and a paper copy was mailed to him.

4. It is found that on February 1, 2012 and March 2, 2012 the complainant made requests to the respondents for the Proposed Final Decision in Microsoft Word ("Word") format and that his requests were denied on March 5, and 19, 2012.

5. It is found that on March 16, 2012, a Final Decision on the matter was issued by the respondent department and the complainant was provided with a copy of that decision via e-mail in PDF and a paper copy was mailed to him.

6. It is found that on March 20, 2012, the complainant requested that the respondents provide the Final Decision in Word format and that his request was denied on March 21, 2012.

7. By letter dated and filed on March 21, 2012, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his requests described in paragraphs 4 and 6, above. The complainant also requested the imposition of civil penalties against all named respondents.

8. 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.

9. 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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

10. Section 1-211, G.S., provides in relevant part that:

(a) [a]ny public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly

identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made....

(b) The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:

(1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection;

11. 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. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy.”

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

13. It is found that the Proposed Final Decision and the Final Decision are comprised of several components including the hearing officer’s conclusion and the Deputy Commissioner’s conclusion, which conclusions were originally created in Word format. It is found, however, that what constitutes the Proposed Final Decision and the Final Decision were created and maintained by the respondents in PDF.

14. It is also found that the requested records are computer-stored public records within the meaning of §1-211, G.S.

15. At the hearing on this matter and in his brief, the complainant argued that the respondents treated the requested records as non-public records; failed to prove an exemption for the Word formatted documents; created a de facto exemption; issued a directive that conflicts with the FOI Act; and used the fear of alteration as a reason for denying his request which is not a permissible exemption to the disclosure of public records under the FOI Act. He also argued that §1-211(a), G.S., requires a public agency to provide a copy of any non-exempt data

contained in such records as requested by the person if the agency can reasonably make such copy or have such copy made and that "as requested" includes any format requested.

16. At the hearing on this matter and in their brief, the respondents argued that they have not violated the disclosure requirements of the FOI Act because: the provisions in §1-211, G.S., do not require the respondents to convert the records from the electronic format in which they were stored into another format; the documents do not exist in the format that the complainant requested; they have already provided the complainant with full access to the requested records free of charge; and finally, because conversion of the original record from PDF to Word would jeopardize the security and integrity of the record in that the conversion would be imperfect and provide an inaccurate representation of the original document.

17. It is found that the sole issue in this case is whether the complainant is entitled to receive the Proposed Final Decision and the Final Decision in the computer format he requested.

18. It is found that §1-212(a), G.S., covers, generally, the methods by which a public agency may choose, in its discretion, to provide a public record to a requester.

19. It is found that §1-211(a), G.S., specifically covers computer stored public records.

20. It is found that paper, disks, tapes, and electronic storage devices or mediums, are all methods of delivery within the meaning of §1-211(a), G.S., while PDF and Word format are two proprietary electronic document formats, among several, used to physically arrange data, characters, fields, records, and files for document use and delivery.

21. Notwithstanding the complainant's contention, §1-211(a), G.S., only provides the requester with the option to request a specific method of delivery of nonexempt computer stored data and that the public agency is required to use the method of delivery requested if it reasonably can do so or have it done (e.g., have the data copied or burned to a disk by some other agency). Section 1-211(a), G.S., does not, however, by any of its terms, obligate a public agency to provide a copy of computer stored public record in the computer format requested by a requester.

22. It is found that while the complainant is entitled pursuant to §1-211(a), G.S., to request that a copy of the Proposed Final Decision and the Final Decision be provided to him at his electronic mail address, the respondents are not required by the FOI Act to provide the data in the format requested and it is concluded that the respondents did not violate the FOI Act by denying the complainant's requests.

23. Furthermore, it is found that in order to convert the decisions from PDF to Word format, conversion software is generally required. It is found that the respondents do not own such conversion software and it would not be reasonable to require the respondents to purchase the software for this apparently rare request.


24. It is also found that while it is possible to perform the conversion by copying the text from the PDF document and pasting it into a Word document, this can only be done if the PDF

software used to create the records was one that could read documents as text as well as an image. However, this method of conversion would require time-consuming formatting and editing to insure an accurate conversion. It is found that it would be unreasonable to require the respondents to perform those functions particularly in this case because the complainant has already converted the decisions himself.

25. Based upon the foregoing findings and conclusions, there is no basis upon which to consider the complainant's request for civil penalties.

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

1. The complaint is hereby dismissed.



Attorney Tracie C. Brown
as Hearing Officer