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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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Ken Dixon and Hearst Connecticut
Newspapers,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-577

Chief Audit and Compliance Officer, State of
Connecticut, University of Connecticut, Office of
Audit, Compliance and Ethics; and State of
Connecticut, University of Connecticut, Office of
Audit, Compliance and Ethics,
Respondent(s)

June 20, 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, July 11, 2012**. 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 June 29, 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 June 29, 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 June 29, 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: Ken Dixon
Holly Bray, Esq.

6/20/12/FIC# 2011-577/Trans/wrbp/VDH/LFS

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Ken Dixon and
Hearst Connecticut Newspapers,

Complainants

against

Docket #FIC 2011-577

Chief Audit and Compliance Officer,
State of Connecticut, University of
Connecticut, Office of Audit,
Compliance and Ethics; and
State of Connecticut, University of
Connecticut, Office of Audit,
Compliance and Ethics,

Respondents

June 20, 2012

The above-captioned matter was heard as a contested case on May 15, 2012, at which time the complainants 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, by email dated September 19, 2011, the complainants made a request to the respondents for access to the following records: "copies of any e-mail, memos and letters written over the last thirty days, between President Herbst and members of the UCONN Athletic Department, on the subject of UConn's athletic conference affiliation."
3. By email dated October 14, 2011 and filed October 17, 2011, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their request for access to records.
4. 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.

5. 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.

6. 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.”

7. It is found that the respondents maintain the records described in paragraph 2, above, and it is therefore concluded that such records are “public records” within the meaning of §§1-210(a) and 1-212(a), G.S.

8. It is found that, by letter dated October 21, 2011, the respondents corresponded with the complainants to inform them that they were still in the process of reviewing the responsive records for exempt information, and to state further that, given the nature of the request, the respondents expected that some portion of the responsive records would likely be exempt from disclosure pursuant to §1-210(b)(24), G.S., or §1-210(b)(5), G.S.

9. It is found that, under cover of letter dated January 4, 2012, the respondents provided the complainants with 23 pages of records free of charge. In addition, it is found that the respondents informed the complainants that they were withholding an additional 32 pages of records pursuant to §1-210(b)(5), G.S.

10. At the hearing on this matter, the respondents explained that, while they had claimed an exemption to disclosure for the 32 pages of records pursuant to §1-210(b)(5), G.S., upon further review they determined that these records were in fact not responsive to the complainants’ request for access, in that these records were not communications between President Hebst and UConn’s Athletic Department.

11. It is found that the 32 pages of records referred to in paragraph 9, above, were records that were provided to the President's chief of staff when she attended an out-of-state meeting concerning UConn's present athletic conference affiliation and potential athletic conference realignment. It is further found that these records do not fall within the scope of the complainants' request.

12. It is found that the complainants did not contest the fact that, based on the evidence that the respondents presented at the contested case hearing, the 32 pages referred to in paragraph 9, above, did not fall within the scope of their request and they agreed to make a new request for access to these particular records.

13. Finally, it is found that, other than the 23 pages of records, referred to in paragraph 9, above, which were provided to the complainants, the respondents do not have any other records responsive to the complainants' request.

14. Based on the foregoing, it is concluded that the respondents did not violate the provisions of §1-210(a), G.S., in this matter.

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.



Valicia Dee Harmon
as Hearing Officer