



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2012-177

Director, State of Connecticut, Judicial Review
Council; and State of Connecticut, Judicial
Review Council,

Respondent(s)

August 3, 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, August 22, 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 August 10, 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 August 10, 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 August 10, 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: Edward Tuccio
Director, State of Connecticut, Judicial Review Council and
State of Connecticut, Judicial Review Council

2012-08-03/FIC# 2012-177/Trans/wrbp/KKR/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Edward Tuccio,

Complainant

against

Docket #FIC 2012-177

Director, State of Connecticut,
Judicial Review Council; and
State of Connecticut, Judicial
Review Council,

Respondents

August 3, 2012

The above-captioned matter was heard as a contested case on July 9, 2012, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2012-227, Edward Tuccio v. Director, State of Connecticut, Judicial Review Council; and State of Connecticut, Judicial Review Council.

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 April 20, 2012, the complainant made a request to the respondents for “[m]eeting minutes from 4-17-2012 meeting, attendees of meeting, stamped, everything you have regarding this meeting. I am requesting transparency.”
3. It is found that, by email dated April 24, 2012, the respondents informed the complainant that “the minutes of the April 2012 meeting of the Judicial Review Council will be confidential pursuant to Section 51-511(a) of the General Statutes. They are not available under FOI.”
4. By email dated and filed April 30, 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.
5. 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.

6. 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).

7. 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.”

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

9. Section 51-511, G.S., provides in relevant part that:

“(a)...the Judicial Review Council shall investigate every written complaint brought before it alleging conduct under section 51-51i, and may initiate an investigation of any judge...if (1) the council has reason to believe conduct under section 51-51i has occurred or (2) previous complaints indicate a pattern of behavior which would lead to a reasonable belief that conduct under section 51-51i has occurred....Any investigation to determine whether or not there is probable cause that conduct under section 51-51i has occurred shall be confidential and any individual called by the council for the purpose of providing information shall not disclose his knowledge of such investigation to a third party prior to the decision of the council on whether probable cause exists, unless the respondent requests that such investigation and disclosure be open, provided information known or obtained independently of any such investigation shall not be confidential....

(c) If a preliminary investigation indicates that probable cause exists that the judge...is guilty of conduct under section 51-51i, the council shall hold a hearing concerning the conduct or complaint.

All hearings held pursuant to this subsection shall be open....The council shall make a record of all proceedings pursuant to this subsection. The council shall not later than thirty days after the close of such hearing publish its findings together with a memorandum of its reasons therefor.”

(Emphasis added).

10. At the hearing in this matter, the respondent director testified that minutes of the meetings of the respondent Judicial Review Council (JRC) are confidential pursuant to §51-511(a), G.S., because they contain discussion and information pertaining to the investigation of complaints brought before the JRC. Specifically, with regard to the minutes of the April 17, 2012 meeting, it is found that, as of the date of the request, described in paragraph 2, above, no finding of probable cause had been made by the JRC with regard to the investigations discussed at such meeting.

11. Relying on K. Joy Banach v. Executive Director, State of Connecticut, Judicial Review Council, Docket #FIC 2003-126 (December 10, 2003), the respondent director argued, at the hearing in this matter, that §51-511(a), G.S., exempts the record, described in paragraph 2, above, in its entirety. In Banach, the complainant requested from the JRC, all documents related to a complaint she had filed with the JRC against a judge, including a copy of the judge’s response to her complaint, telephone logs of communications between the judge and the JRC, and “minutes or comments of the council related to the...complaint against the judge.” The Commission dismissed the complaint without a hearing, concluding that the requested records were exempt from disclosure pursuant to §51-511, G.S.

12. On July 17, 2012, the Hearing Officer ordered the respondents to submit the record, described in paragraph 2, above, to the Commission for in camera inspection, and on July 25, 2012, the respondents complied with such order. It is found that the in camera record is the minutes of the April 18, 2012 meeting of the JRC, consisting of a total of six pages, five of which are entitled “Substantive Minutes” and one of which is entitled “Administrative Minutes.” The in camera record shall be identified herein as IC 2012-177-01 through 2012-177-06.

13. After careful review of the in camera record, it is found that only the following portions¹ of such record are exempt from disclosure pursuant to §51-511(a), G.S.:

IC 2012-177-001: lines 20 through 30 – all
IC 2012-177-002: lines 5 through 34 – all
IC 2012-177-003: lines 5 through 36 – all
IC 2012-177-004: lines 5 through 25 – all

14. The Commission notes that the present case is distinguishable from Banach in that the requested record, described in paragraph 2, above, seeks the minutes in their entirety, rather

¹ The respondents submitted the in camera records without providing specific line references. The hearing officer therefore supplied line references, in pencil, on the in camera record, in an effort to avoid confusion regarding the permitted redactions.

than, as Banach, only that portion of the minutes pertaining to the investigation of the complaint required to be kept confidential pursuant to §51-511, G.S.

15. Based upon the foregoing, it is concluded that the respondents violated the FOI Act by withholding the record, described in paragraph 2, above, in its entirety, from the complainant.

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

1. Forthwith, the respondents shall provide a copy of the minutes of the April 18, 2012 meeting, at no cost.

2. In complying with paragraph 1 of the order, above, the respondents may redact only that portion of the minutes found to be exempt from disclosure, as described in paragraph 13, above.

3. Henceforth, the respondents shall strictly comply with the provisions of §§1-210(a) and 1-212(a), G.S.



Kathleen K. Ross
as Hearing Officer