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

Director, State of Connecticut, Judicial Review Council; and State of Connecticut, Judicial Review Council,
Respondent(s)

Notice of Meeting

Docket #FIC 2012-227

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, lst 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
State of Connecticut, Judicial Review Council

8/3/2012/FIC# 2012-227/Trans/wrbp/KKR//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Edward Tuccio,

Complainant

against

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

Respondents

Report of Hearing Officer

Docket #FIC 2012-227

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 2012-177, 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 March 29, 2012, the complainant made a request to the respondents for "all answers and any and all information provided to the 'Board of Judicial Review' in response to my complaint dated March 6, 2012 from the following:

- Judge Susan Reynolds
- Judge William Lavery
- Judge Michael Maronich
- Judge Robin Pavia."

3. It is found that, by email dated April 3, 2012, the respondents informed the complainant that "pursuant to §51-51l(a) of the General Statutes, the investigation being conducted by the Judicial Review Council (JRC) to determine if probable cause exists is confidential. Therefore, I cannot advise of the actions taken in addressing your complaints or what if any communications are received by the Council. I have told you that if the investigation becomes open, pursuant to §51-51l(a) of the General Statutes, I will advise you of that fact.

Pursuant to §51-51l(b) of the General Statutes, upon the termination of the investigation, you will be advised of that fact and the results thereof."

4. By email dated and filed April 3, 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 51-51l, 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....
>
> (b) The Judicial Review Council shall, not later than three business days after the termination of such investigation, notify the complainant, if any, and the judge...that the investigation has been terminated and the results thereof.
>
> (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. It is found that the records described in paragraph 2, above, pertain to investigations of written complaints alleging conduct under section 51-51i, and that, as of the date of the request, described in paragraph 2, above, the JRC had not determined whether or not there was probable cause that conduct under section 51-51i had occurred. Accordingly, it is found that such records are confidential pursuant to §51-51l(a), G.S. See K. Joy Banach v. Executive Director, State of Connecticut, Judicial Review Council, Docket #FIC 2003-126 (December 10, 2003) (documents related to a complaint filed with JRC against a judge, including a copy of the judge's response to the complaint, and "minutes or comments of the council related to the...complaint against the judge" are exempt from disclosure pursuant to §51-51l, G.S.).

11. Based upon the foregoing, it is concluded that the records, described in paragraph 2, above, are exempt from disclosure.

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.

2. The Commission notes that the complainant's behavior during the hearing in this matter was aggressive and hostile toward both the hearing officer and the respondent. He is hereby on notice that, in accordance with §1-206(b)(2), G.S., such continued behavior may be

considered an abuse of the Commission's administrative process and may result in a decision by the executive director not to schedule future hearings.

Kathleen K. Ross
as Hearing Officer

FIC 2012-227/hor/kkr/08032012