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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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Joseph Sargent,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-636

Michael Larobina and Burt Rosenberg, Office of
the City Attorney, City of Stamford; and City of
Stamford,

Respondent(s)

September 14, 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, October 10, 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 September 28, 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 September 28, 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 September 28, 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: Joseph Sargent
James M. Sconzo, Esq.
Burt Rosenberg, Esq.

9/14/2012/FIC# 2011-636/Trans/wrbp/VDH//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Joseph Sargent,

Complainant

against

Docket #FIC 2011-636

Michael Larobina and Burt Rosenberg,
Office of the City Attorney, City of
Stamford; and City of Stamford,

Respondents

September 14, 2012

The above-captioned matter was heard as a contested case on July 31, 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, by email dated November 15, 2011, the complainant made a request to the respondents for access to the following records:
 - a. Each FOIA request that has been made to any agency within the City of Stamford since 1-1-2010 through today, as well as all correspondence (including emails) between any City employee, officer and agency and the person who made the FOIA request, and
 - b. Any City policy, procedure, guidelines, protocols, rules or regulations concerning or relating to the City's responses to FOIA requests made by members of the public.
3. By letter dated November 21, 2011 and filed November 22, 2011, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for access described in

paragraph 2, above. In his complaint, the complainant requests that the Commission impose a civil penalty against the respondents and order them to attend a FOI training session.

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, to the extent that the respondents maintain the records described in paragraph 2, above, the records are “public records” and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

8. Prior to the contested case hearing, on July 5, 2011, the complainant withdrew his complaint as to Attorney Rosenberg. Thereafter, on July 24, 2011, the complainant sought to withdraw the partial withdrawal, based on the fact that he again believed that Attorney Rosenberg may have been the official within the respondent agencies that was responsible for denying his request for access to public records. By ordered dated July 26, 2012, the complainant’s request to withdraw the partial withdrawal was denied.

9. At the contested case hearing, the complainant clarified that his request was one seeking access to only those responsive records maintained by the respondents in the office of the city attorney, which he referred to in his complaint as the Corporation Counsel for

the City of Stamford, and not the entire City of Stamford.

10. The respondents contended at the contested case hearing that, upon reviewing the request, it was their understanding that the complainant was seeking access to the FOI requests received by the respondents between January 1, 2010 and November 15, 2011, the respondents' responses to such requests, as well as respondents' intra-agency communications concerning such requests. It is found that, while this is a possible reading of the request, it is also a misunderstanding which could have been resolved with one phone call or email communication to the complainant.

11. It is further found that both sides could have put some effort into communicating with each other about what was being sought, and the time needed to locate and compile the records. It is found that, assuming the respondents received the request for access in this case on November 15, 2011 (which is questionable because the request was emailed to the respondents on this day at 5:30 PM), the respondents had an obligation to acknowledge the request by November 22, 2011, (see § 1-206a, G.S.)--one day after the complainant had already mailed his complaint to the Commission. Accordingly, it is found that the hasty filing of the complaint in this case only served to catapult this case into a litigious posture.

12. Nonetheless, it is found that the complainant continues to desire access to the FOI requests received by the respondents between the dates outlined in paragraph 2.a, above, as well as the respondents' responses to such requests. It is found that the complainant is not seeking access to the records that were responsive to the FOI requests received by the respondents, nor is he seeking access to intra-agency communications about the requests. It is therefore concluded that the records responsive to the complainant's request in paragraph 2.a, above, are not exempt from disclosure.

13. It is further found that there are approximately 250 files containing records that are responsive to the complainant's request in paragraph 2.a, above, and that the respondents are going to have to review each of these files in order to segregate the responsive records. Finally, it is found that the respondents do not maintain records responsive to the complainant's request in paragraph 2.b, above.

14. With regard to promptness, it is found that, even if the respondents did not fully understand what the complainant was seeking, at the time of the contested case hearing, a total of 259 days had elapsed since time of the request, and the complainant had yet to receive access to any records. Consequently, it is concluded that the respondents violated the promptness requirements of the FOI Act. It is further concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by not providing the complainant with access to the records he requested.


15. With regard to the issue of civil penalties and FOI training, it is found that, based on the facts and circumstances of this case, no such order is merited. It is found that there were circumstances occurring within the Office of the Corporation Counsel that had to do with employees needing time out of the office, which circumstances could not have

been anticipated.

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

1. The respondents shall forthwith provide the complainant with copies of the records he requested access to, free of charge. The respondents may produce the records to the complainant on a rolling basis, making a production to the complainant once a week, over the course of two months.

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


Valicia Dee Harmon
as Hearing Officer