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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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Marshall Segar,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-097

Chief, Police Department, City of New London;  
and Police Department, City of New London,  
Respondent(s)

November 19, 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, December 12, 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 November 30, 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 November 30, 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 November 30, 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: Marshall Segar  
Brian K. Estep, Esq.

11/19/12/FIC# 2012-097/Trans/wrbp/VRP/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Marshall Segar,

Complainant

against

Docket #FIC 2012-097

Chief, Police Department,  
City of New London; and  
Police Department, City of New London,

Respondents

November 16, 2012

The above-captioned matter was heard as a contested case on August 6, 2012, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

The respondents submitted a copy of the audio recording that is a subject of this 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. By letter of complaint filed February 17, 2012, the complainant appealed to the Commission, alleging that the respondents denied his February 7, 2012 request for audio recordings and written attendance records of a New London Police Department staff meeting held on January 11, 2012..
3. It is found that, by email dated February 7, 2012, the complainant requested:

A copy of the audio tape of the January 2011 supervisor staff meeting conducted by Chief Ackley, in which she allegedly made comments concerning the separation of service of myself, Michael Lacey and William Dittman. I am requesting only that particular portion of the tape, no other recorded information need be provided. In addition, I am requesting the sign-in roster from that meeting or any/all records of attendance.

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:

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)(1), G.S., provides in relevant part: “Any 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 requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

8. The respondents maintain that the requested records are not subject to disclosure because they are records of a staff meeting that was not open to the public pursuant to §1-200(2) and 1-225, G.S.

9. However, it is concluded that, while the meeting itself may not have been open to the public, there is no exemption in the FOI Act for records made of or concerning a non-public meeting. See, e.g., Docket #FIC 1998-354, Deborah J. Petersen and The Hartford Courant v. Building Department Investigative Committee of the city of New Britain Common Council (ordering disclosure of audio recording of executive session).

10. After an in camera review of the requested audio recording, it is found that it does not contain the remarks alleged by the complainant.


11. It is therefore concluded that the respondents did not violate the FOI Act by declining to produce the requested audio recording.

12. With respect to the requested attendance logs, the respondents raised no objection to the disclosure of such record, if it exists.

13. It is concluded that the respondents violated the FOI Act by neither providing the requested attendance log, or making any inquiry into whether it existed.

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 conduct a diligent search for any record showing attendance at the January 11, 2012 staff meeting, and forthwith provide any such record to the complainant, free of charge.



Victor R. Perpetua  
as Hearing Officer