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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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Suzanne Carlson and the  
Manchester Journal Inquirer,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2011-503

Town Administrator, Town of Vernon;  
and Town of Vernon,  
Respondent(s)

May 1, 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, May 23, 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 May 11, 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 May 11, 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 May 11, 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: Suzanne Carlson  
Martin B. Burke, Esq.

5/1/12/FIC# 2011-503/Trans/wrbp/KKR/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Suzanne Carlson and the  
Manchester Journal Inquirer,

Complainants

against

Docket #FIC 2011-503

Town Administrator, Town of  
Vernon; and Town of Vernon,

Respondents

March 23, 2012

The above-captioned matter was heard as a contested case on February 2, 2012, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with, and the Commission takes administrative notice of, the evidence presented in Docket #FIC 2011-535, Suzanne Carlson and the Manchester Journal Inquirer v. Town Administrator, Town of Vernon; and Town of Vernon; and Docket #FIC 2011-542, Suzanne Carlson and the Journal Inquirer v. Mayor, Town of Vernon; and Town of Vernon.

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, on September 19, 2011, the complainant made a verbal request to the respondents to inspect the application and resume of Andrew Marchese, the town zoning enforcement officer.
3. It is found that, without reviewing the records, described in paragraph 2, above, the respondents denied the request to inspect, stating to the complainant that they must first notify Mr. Marchese of the request, in order to give him the opportunity to object to the disclosure of the records.
4. By letter of complaint, dated and filed September 19, 2011, the complainants 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.

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), 1-210(a) and 1-212(a), G.S.

9. Section 1-214(b), G.S., provides, in relevant part:

[w]henever a public agency receives a request to inspect or copy records contained in any of its employees’ personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned and (2) the collective bargaining representative, if any, of each employee concerned. Nothing herein shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy (emphasis added).

10. It is found that the respondents provided notice to Mr. Marchese of the request, described in paragraph 2, above. It is further found that Mr. Marchese did not object to the disclosure of such records.

11. It is found that the respondents provided a copy of the requested records, described in paragraph 2, above, to the complainant, on December 23, 2011, with Mr. Marchese's social security and driver's license numbers redacted.

12. At the hearing in this matter, the respondents conceded, and it is found, that the denial of the request, described in paragraph 2, above, constituted a violation of §1-214, G.S., in that they failed to conduct a review of the requested records to determine whether they had a reasonable belief that disclosure of such records would constitute an invasion of personal privacy, prior to notifying Mr. Marchese of the request.

13. At the hearing in this matter, the complainant also argued that the respondents failed to provide the requested records to her promptly. According to the complainant, the respondents should have provided her with the opportunity to inspect the requested records immediately, upon demand.

14. With respect to the general question of promptness, the meaning of the word "promptly" is a particularly fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) the Commission advised that the word "promptly" as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

15. It is found that the respondents' violation of §1-214, G.S., unnecessarily delayed the complainant's access to the records. Although it is found that the respondents are not necessarily required under the Act to respond immediately to the complainant's verbal requests for records upon demand, it is also found that a three month delay in providing access to the requested records, under the facts and circumstances of this case, is not prompt.

16. Based upon the foregoing, it is concluded that the respondents violated §§1-214, 1-210(a) and 1-212(a), G.S.

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

1. Henceforth, the respondents shall strictly comply with §§1-214, 1-210(a) and 1-212(a), G.S.

A handwritten signature in cursive script, reading "Kathleen K. Ross", written over a horizontal line.

Kathleen K. Ross  
as Hearing Officer