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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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Robert Willis,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-298

Director, Park and Recreation Department,
Town of Woodbury; and Park and Recreation
Department, Town of Woodbury,
Respondent(s)

December 5, 2013

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, January 8, 2014**. 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 December 13, 2013**. 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE December 13, 2013**. **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 December 13, 2013**, 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: Robert Willis
Paul R. Jessell, Esq.

12/5/13/FIC# 2013-298/Trans/wrbp/CAL//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Robert Willis,

Complainant

against

Docket # FIC 2013-298

Director, Park and Recreation
Department, Town of Woodbury; and
Park and Recreation Department, Town
of Woodbury,

Respondents

December 5, 2013

The above captioned matter was heard as a contested case on November 6, 2013, at which time the complainant and the respondents appeared 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)(A), G.S.
2. It is found that by letter dated September 19, 2012, addressed to the First Selectman, Town of Woodbury, the complainant requested copies of all records maintained by Parks and Recreation Director, Jenifer Miller, including electronic records in her office email account, JMiller@WoodburyCT.Org, and her personal email account, "GPCJen@aol.com", which records reference as subject matter: the complainant, "the Boca summer soccer program and the fall Park and Rec soccer program" (the "requested records").
3. It is found that by letter dated September 25, 2012, the respondents acknowledged the request, confirming receipt of the September 19, 2012 letter and stating that the respondent Director would "make every effort to comply with your request..." Shortly afterwards, the First Selectman, Town of Woodbury, forwarded an electronic disc to the complainant which included approximately twenty to thirty emails within the scope of the complainant's request from the office email account, "JMiller@WoodburyCT.Org".
4. It is found that by letter dated May 6, 2013, again addressed to the First Selectman, Town of Woodbury, the complainant renewed his request dated September

19, 2012. At the hearing, the respondent Director testified that the First Selectman forwarded the May 6, 2013 letter to her.

5. It is found that, by letter dated May 13, 2013 and filed with the Commission on May 14, 2013, the complainant appealed to the Commission, alleging that the respondents had not complied with the Freedom of Information Act ("FOIA").

6. At the hearing, the complainant introduced evidence concerning a conflict of interest proceeding in the Town of Woodbury wherein he was the target of the complaint. He alleged that the complaint had been filed by associates of the respondent Director. The complainant argued that the conflict of interest proceeding warranted as relief in this case that the respondent Director's personal computer, with the account "GPCJen@aol.com", should be audited, and also that civil penalties should be imposed on the respondent Director. He requested both of these remedies.

7. 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.

8. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

9. It is concluded that the requested records are "public records" within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

10. It is found that the respondent Director almost without exception used her office email account, "JMiller@WoodburyCT.Org", for her town duties. It is found that the respondent Director was a highly credible witness who, prior to the present case, had not had substantial experience with the FOIA. Indeed, she testified that, following the filing of the complaint, she initially misunderstood that she would be required to disclose all her personal emails in her personal email account, "GPCJen@aol.com".

11. It is also found that on July 31, 2012, the respondent Director wrote an email to Brittany Emin of Challenger Sports, requesting an insurance certificate, commenting with some personal characterizations on the effort "to discredit [the respondent Director's] choice of soccer organization" and including the sentence: "This email is my private email, and I would prefer to keep this between you and I." The respondent Director wrote this email from her personal laptop while she experienced a travel delay at the airport prior to an international flight at the beginning of a vacation.

12. It is further found that the respondent Director's July 31, 2012 email to Brittany Emin was in the public domain and the complainant had a copy of it by March 19, 2013, when a hearing was scheduled on the conflict of interest proceeding discussed at paragraph 6, above.

13. It is also found that, by letter dated June 25, 2013, the First Selectman, Town of Woodbury, informed the complainant that he had the respondent Director's reply concerning her search for the requested records and that the complainant could "stop by my office at your convenience to pick up the documents." The complainant testified that he did not receive the June 25, 2013 letter, although there was detailed testimony from the personal assistant to the First Selectman that the letter was properly mailed. In any case, the letter was subsequently provided to the complainant with the respondent Director's July 31, 2012 email to Brittany Emin and other attachments.

14. It is also found that the attachments to the First Selectman's letter of June 25, 2013 included a memorandum dated June 12, 2013 from the respondent Director to the First Selectman which stated that she had completed her search for the requested records. At the hearing, the respondent Director acknowledged that she had not rushed to complete the task of searching through her personal emails. It is found that, by June 12, 2013, the respondent Director did complete a diligent, if belated, search for public records in her personal email account, "GPCJen@aol.com".

15. It is also found that by email dated August 1, 2012, Brittany Emin responded to the respondent Director's personal email account, "GPCJen@aol.com", with a brief email attaching an insurance certificate. This email was not provided to the complainant with the First Selectman's June 25, 2013 letter. The respondent Director testified that because she had received the relevant insurance certificate by separate email on her office email account, "JMiller@WoodburyCT.Org", she had deleted this August 1, 2012 email immediately following initial review. Also by email dated August 1, 2012 to the respondent Director's office email account, "JMiller@WoodburyCT.Org", David

McCarthy, President of the WBYS soccer organization, included in a brief email the question: "Checking your other email?"

16. It is found that, for a very brief period while on vacation, the respondent Director did utilize her personal email account, "GPCJen@aol.com", for her town business. There was, however, no evidence whatsoever that this practice was continuing or sustained.

17. At the hearing, the respondents stipulated that the production of the respondent Director's July 31, 2012 email to Brittany Emin had not been prompt.

18. It is concluded that the respondent Director's email dated July 31, 2012 to Brittany Emin of Challenger Sports is a public record and that the respondents technically violated §§1-210(a) and 1-212(a), G.S., by failing to promptly provide a copy of the respondent Director's single email dated July 31, 2012. Brittany Emin's single email response dated August 1, 2012 to the respondent Director was also a public record and the respondent Director failed to provide it to the complainant because the respondent Director had deleted it from her personal account, "GPCJen@aol.com".

19. Section 1-206(b)(2), G.S., provides:

In any appeal to the Freedom of Information Commission under subdivision (1) of this subsection or subsection (c) of this section, the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act. (emphasis added)

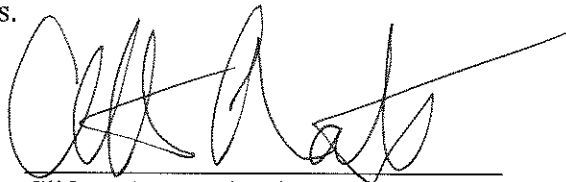
20. While the complainant offered to pay for the technical work of restoring deleted emails to the respondent Director's personal email account, "GPCJen@aol.com", the Commission considers the nature of the public duties of a recreation director of a suburban town and the fact that there was no evidence whatsoever that the respondent Director had a continuing practice of utilizing her personal email account, "GPCJen@aol.com", for her town business. Indeed, there is only evidence of two emails, a request and the response the very next day, that were public records in the respondent Director's personal email account, GPCJen@aol.com. Based on these facts and circumstances of this case, it is found that an audit of this personal email account is not "appropriate".

21. The Commission, in its discretion, declines to order an audit of the respondent Director's personal email account, "GPCJen@aol.com". Because the same reasoning applies to the request for civil penalties, the Commission declines to schedule an additional hearing concerning civil penalties.

22. At the hearing, the respondent Director acknowledged that she now understands the hazards involved with using personal email accounts for public business.

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, in response to records requests, promptly provide all non-exempt public records.

A handwritten signature in black ink, appearing to read 'Clifton A. Leonhardt', written over a horizontal line.

Clifton A. Leonhardt
as Hearing Officer