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# FREEDOM OF INFORMATION



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Joseph Sargent,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-247

Joseph Capalbo, Corporation Counsel, City of  
Stamford; Michael E. Handler, Director of  
Administration, Office of Administration, City of  
Stamford; and City of Stamford,  
Respondent(s)

February 25, 2014

### 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, March 26, 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 March 14, 2014**. 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 March 14, 2014**. **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 March 14, 2014**, 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  
Chris Dellaselva, Esq.

2014-02-25/FIC# 2013-247/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 2013-247

Joseph Capalbo, Corporation Counsel,  
City of Stamford; Michael E. Handler,  
Director of Administration, Office of  
Administration, City of Stamford; and  
City of Stamford,

Respondents

February 24, 2014

The above-captioned matter was scheduled to be heard as a contested case on October 17, 2013, at which time the complainant, and the respondent Corporation Counsel and the respondent City of Stamford appeared. At this time, it was determined that the Director of Administration, Michael E. Handler, also should have been named as a respondent. The case was continued to give Mr. Handler notice of this matter, and the case caption was amended to identify Mr. Handler as a respondent.

Thereafter, this matter was heard as a contested case on November 26, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the matter was consolidated with Docket #FIC 2013-248; Joseph Sargent v. Joseph Capalbo, Corporation Counsel, City of Stamford; Emmet Hibson, Director, Human Resources Division, City of Stamford; and City of Stamford; and Docket #FIC 2013-249; Joseph Sargent v. Joseph Capalbo, Corporation Counsel, City of Stamford; Michael Scacco, Fleet Manager, Fleet Maintenance, City of Stamford; and City of Stamford.

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 22, 2013, the complainant forwarded the following request for access to records to Corporation Counsel Joseph Capalbo, and

requested that he forward it on to Mr. Hander<sup>1</sup>:

- a. All document[s] relating to and/or concerning any accounting or data entries (including but not limited to any spreadsheet or written compilations of data, including the data entries inputted to the City's HTE system) for the "Parking Meter Collection Fund" (as that term was used by the City's Director of Operation, Ernest Orgera, in his deposition on January 21, 2013) from 2001 to the present that concern and/or relate to any monies deposited into the Parking Meter Collection Fund from the proceeds from any sale of scrap metal and/or city equipment by any City agency or department;
- b. For the time period 2005 to the present, produce any document, spreadsheet and/or written compilations of data that collects or compiles data with respect to the sale of surplus or scrap metal by any City agency or department to any third party, including Rubino Brother and/or LaJoies Auto and Scrap. For purpose of this request, please produce all documents that include any of the following data:
  - i. The date of the sale,
  - ii. The vendor it was sold to,
  - iii. The weight of metal sold,
  - iv. The form of metals (i.e., scrap metals, snow plows, vehicles, etc.),
  - v. The nature of the metal (ferrous or non-ferrous),
  - vi. The price charged per ton,
  - vii. The department or agency the scrap metal or surplus came from,
  - viii. The date that the request for sale was submitted to the Purchasing Agent, and
  - ix. The date that the Purchasing Agent authorized the sale;
- c. For the period of 2005 to the present[,] please produce copies of the data entries into the City's HTE system for Revenue Code: 01302143691022 – Recycling-MISC. (Mixed Metals);
- d. All documents reviewed by the Office of Administration in calculating any financial projections that concern and/or relate to the revenue from the sale of surplus city equipment and/or scrap metal for the fiscal years 2009, 2010, 2011, 2012, and 2013;
- e. All documents created by the Office of Administration in calculating any financial projections that concern and/or relate to the revenue from

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<sup>1</sup> Based on the complainant's testimony, it is found that the Office of the Corporation Counsel had previously directed the complainant to submit all of his FOI requests directly to the Office of the Corporation Counsel so that said office could forward the requests to the appropriate department or individual for a response. However, at the November 26, 2013 continued contested case hearing, the Office of the Corporation Counsel clarified that, going forward, the complainant should submit FOI requests directly to the public agency within the City of Stamford that he believes maintains responsive records.

the sale of surplus city equipment and/or scrap metal for the fiscal years 2009, 2010, 2011, 2012, and 2013;

- f. The receipts for the sale of metals by the City to LaJoies Auto and Scrap on or about April 8, 2010;
- g. All documents that relate to or concern the purchase of light poles or traffic poles by or for the benefit of the City from 2001 to the present, including purchase orders, receipts, payment records;
- h. All records that relate to replacement of light poles or traffic poles in the City from 2001 to the present, including purchase orders, receipts, and payment records; and
- i. All records that relate to sale of light poles or traffic poles in the City that were replaced since 2001 to the present, including purchase orders, receipts, payment records, and compliance with the City's purchasing ordinance with respect to the sale of City assets.

3. It is found that, by email dated March 26, 2013, the respondents acknowledged the complainant's request, and indicated that the request would be forwarded to the appropriate party and responded to accordingly.

4. It is found that, by email dated April 19, 2013, the complainant inquired about the status of his request with both Mr. Capalbo and Mr. Handler, seeking to determine when he might expect to review the requested records.

5. By email dated and filed April 25, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for access the records described in paragraph 2, above. In his appeal, the complainant requested that the Commission impose a civil penalty against the respondents.

6. 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.

7. 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.

8. 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.”

9. It is found that the records described in paragraph 2, above, 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.

10. It is found that, subsequent to the filing of his appeal, and by email dated May 21, 2013, the complainant again inquired about the status of his request with both Mr. Capalbo and Mr. Handler, seeking to determine when he might expect to review the requested records.

11. It is found that the complainant did not receive a response to his May 21, 2013 email.

12. Thereafter, it is found that, by email dated August 23, 2013, the complainant again inquired about the status of his request with counsel for the respondents, reminding him that he had yet to receive access to any of the records.

13. It is found that, by email dated September 16, 2013, counsel for the respondents informed the complainant that the requested records had been mailed out to him that day.

14. It is found that, on September 19, 2013, the complainant received a package containing 97 pages of records (not counting copies of the request itself, or copies of email communications between the parties).

15. At the hearing, the complainant indicated that he was satisfied with records provided to him in response to his request described in paragraphs 2.b through 2.g, above. However, he was concerned with the sufficiency of the respondent’s search with regard to his request described in paragraph 2.a, 2.h and 2.i, above.

16. It is found that, along with the responsive records, the respondents created a summary in which they restated each request, provided their interpretation of the request, and indicated the results of their search for responsive records. (Referred to hereinafter as the “Summary”).

17. With respect to his request described in 2.a, above, the complainant was concerned with the fact that the respondents’ Summary indicated that there were no records responsive to the request, but also indicated that the complainant could come in to

the respondent's Office of Administration and access an electronic records system in order to review the records, as follows:

**Interpretation of the Request:** . . . HTE entries to the account for the time period specified number in the hundreds—possibly thousands—and it is not readily apparent whether any of the monies deposited come from scrap metal or City Equipment.

**Document(s) supplied:** None. Requester may view HTE system by appointment during business hours. Any HTE screens of interest may be printed out at a cost of \_\_ per page. (Emphasis in original; blank space in original).

18. With respect to his request described in paragraphs 2.h and 2.i, above, the complainant was concerned with the fact that that respondents' Summary indicated the following:

**Interpretation of the Request:** Documents that relate to the purchase, replacement, or sale of light poles or traffic police from 2001- present.

**Document(s) supplied:** 44 pages: Documents related to light poles. 5 pages: Documents related to traffic poles. (Emphasis in original).

19. It is the complainant's position that there should have been more records responsive to his request described in paragraphs 2.h and 2.i, above, which should have been made available for his review.

20. Prior to the continued contested case hearing, the hearing officer issued an order directing the respondents to produce a witness at the November 26, 2013 hearing who could testify to certain aspects of the search for and review of responsive records.<sup>2</sup> The respondents produced Mr. Handler to testify at the hearing.

21. It is found that, on March 26, 2013, Mr. Handler received the complainant's request from Mr. Capalbo's office. It is found that Mr. Handler reviewed the request in order to determine which individuals in his department would be best suited to gather responsive records. It is further found that Mr. Handler solicited the assistance of his executive secretary and an individual from the Department of the Office of Policy and Management (which is a department within Mr. Handler's office) to help gather responsive records. It is further found that, while Mr. Handler's executive secretary reported back to him, providing him with the responsive records which were gathered, Mr. Handler was unable to testify when the records were gathered, how long the process took, or with whom his executive secretary actually dealt in order to locate the records.

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<sup>2</sup> For example, the October 28, 2013 Order stated, in relevant part, as follows: "The respondents shall produce a witness (or witnesses) who can testify when the complainant's request was received in the Office of Michael E. Handler, Director of Administration for the City of Stamford, and what process was followed upon receipt of the request. Such testimony must include when and where this office searched for and gathered records responsive to the request, who looked for such records, and the process that was followed once such records were collected. . . ."

22. Nonetheless, it is found that Mr. Handler determined that all of the records responsive to the request in paragraph 2.a, above, were maintained on an electronic records system called the HTE system.

23. It is found that, on June 20, 2013, Mr. Handler forwarded the records that he had been gathered to the Office of the Corporation Counsel. It is further found that, at this time, Mr. Handler informed the Office of the Corporation Counsel via the Summary that the complainant should be informed that he was welcome to come into Mr. Handler's office to review the records on the HTE system.

24. With regard to the request described in paragraphs 2.h and 2.i, above, it is found that the Office of Policy and Management initially searched for responsive records. However, it is found that, when the Office of Policy and Management could not locate any responsive records, it forwarded these two items of the request to the members of the Engineering Bureau for a response. It is found that the Engineering Bureau is an agency distinct from the Office of Administration.

25. Based on the testimony solicited during the hearing, however, it is found that the records responsive to the request described in paragraphs 2.h and 2.i, above, are also contained on the HTE system within the Office of Administration. It is found that this information was not shared with the complainant until the time of the November 26, 2013 continued contested case hearing.

26. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

27. It is found that it took Mr. Handler and his office approximately 86 days to gather and forward the responsive records to the Office of the Corporation Counsel. It is found that it took the Office of the Corporation Counsel an additional 88 days to provide the records to the complainant and inform him of Mr. Handler's offer with regard to the records responsive to the request described in paragraph 2.a (see ¶ 23, above).

28. It is found that Mr. Handler is the Chief Financial Officer for the respondent city. It is further found that, at the time this request was being processed, Mr. Handler's office was dealing with budget and bond issues, amongst others. It is further found that the instant FOI request was not the only public records case that Mr. Handler's office was fulfilling at the time his office gathered the responsive records in this case.

29. With regard to the Office of the Corporation Counsel, it is found that such office had several FOI requests pending on or around June 20, 2013, when Mr. Handler forwarded the responsive records to the office for review. It is further found that said office had many legal matters pending at the time of the instant FOI request.

30. It is found, however, that the responsive records provided to the Office of the Corporation Counsel by Mr. Handler were not so numerous or complicated that it should have required almost three months to review them.

31. It is found that, while the Office of the Corporation Counsel did not withhold any of the requested records from the complainant, it violated §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with copies of the requested records and inform him of Mr. Handler's offer promptly. It is further found that, while it was acceptable for Mr. Handler to invite the complainant into his office to review the HTE system in an effort to avoid printing out non-responsive records, it is found that the offer to review these records should have been made directly to the complainant, instead of being forwarded to the Office of the Corporation Counsel.

32. Consequently, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with prompt access to inspect the requested records.

33. Based on the facts and circumstances of this case, the Commission declines to consider the imposition of civil penalties

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

1. The respondents shall provide the complainant with access to the HTE system maintained in the Office of Administration, and permit him to copy and/or print, free of charge, any record in such system that is responsive to paragraphs 2.a, 2.h and 2.i of the FOI Request, set forth in the findings, above.

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