

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Mike Savino and the Record-Journal,

Complainants

against

Docket #FIC 2018-0044

Commissioner, State of Connecticut,
Department of Economic and Community
Development; and State of Connecticut,
Department of Economic and Community
Development,

Respondents

October 24, 2018

The above-captioned matter was heard as a contested case on May 30, 2018, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The Commission grants the respondents' uncontested motion to supplement the record with after-filed exhibit "E," dated May 31, 2018.

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, on January 18, 2018, the complainants requested copies of "Connecticut's proposals for the Amazon HQ2 [second headquarters] bid proposal."
3. It is found that, on January 23, 2018, the respondents sent by email the web address link to a redacted version of the records that the complainants requested. The respondents informed the complainants that they withheld "the economic incentives" offered to Amazon "due to the competitive nature of the effort and the potential impact on future bids." The respondents cited §1-210(b)(5)(A), G.S., in support of their claim of exemption. The respondents claimed that the economic incentives were exempt also as preliminary drafts, pursuant to §1-210(b)(1), G.S.
4. By letter filed January 26, 2018, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with copies of all of the records they requested.
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, ... 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:

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, ... or (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), 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.

8. It is found that the records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. Section 1-210(b)(5)(A), G.S., provides that disclosure is not required of:

Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy[.]

10. The definition of "trade secret" in §1-210(b)(5)(A), G.S., "on its face, focuses exclusively on the nature and accessibility of the information, not on the status or characteristics of the entity creating and maintaining that information." University of Connecticut v. FOI Commission, 303 Conn. 724, 733-734 (2012). The information claimed to be a trade secret must "be of the kind included in the nonexhaustive list contained in the statute." Elm City Cheese Co., Inc. v. Federico, 251 Conn. 59, 70 (1999). In addition, "to qualify for a trade secret exemption under §1-210(b)(5)(A), a substantial element of secrecy must exist, to the extent that there would be difficulty in acquiring the information except by the use of improper means." (Citation omitted; internal quotation marks omitted.) Director, Dept. of Information Technology of Town of Greenwich v. FOI Commission, 274 Conn. 179, 194 (2005).

11. University of Connecticut v. FOI Commission, supra, 303 Conn. 737, established that a public agency may hold a trade secret for purposes of claiming the relevant exemption in response to a request for disclosure of public records.

12. Following the hearing in this matter, the respondents submitted records for in camera inspection. Such records shall be identified as IC-2018-0044-1 through IC-2018-0044-2.

13. As described publicly by the respondents, the in camera records contain the details of the economic incentives, such as tax relief and other financial benefits, offered by the state to Amazon in response to Amazon's RFP.

14. It is found that the information contained in IC-2018-0044-1 through IC-2018-0044-2 is "of the kind included in the nonexhaustive list contained in the statute." Elm City Cheese Co., Inc. v. Federico, supra, 251 Conn. 70.

15. It is found that at some point before the complainants' request for records in this case, Amazon notified the respondents that Connecticut was not a finalist in the RFP award process.

16. It is found that although the Amazon contract will not be awarded to Connecticut, the respondents have maintained strict confidentiality concerning the information contained in IC-2018-0044-1 through IC-2018-0044-2. It is found that only the respondent Commissioner, Deputy Commissioner, Project Manager, and the Governor know the contents of IC-2018-0044-1 through IC-2018-0044-2, and that the respondents marked the materials submitted to Amazon as confidential.

17. The complainants observed that many states that submitted responses to the Amazon RFP made their entire bids public, including the economic incentives offered. Nevertheless, it is found that the testimony in this case supports a finding that disclosure of the economic incentives offered by the respondents in their response to the Amazon RFP have been kept confidential because disclosure would disadvantage the state as it competes with other states for private business to remain in-state or relocate to Connecticut.

18. It is found that disclosure of the economic incentives detailed in IC-2018-0044-1 through IC-2018-0044-2 would reveal aspects of the state's economic development strategy, enable states to better their offers in their competition with Connecticut to attract and keep private business, and give an advantage to private businesses in future negotiations with the state for economic incentives.

19. It is found that although the state customarily discloses the final economic aid package provided to private businesses that agree to stay in or relocate to Connecticut, IC-2018-0044-1 through IC-2018-0044-2 reveal the state's initial offer in what would have ultimately resulted in a final negotiated aid package. It is found that the initial offer and the final economic aid package are similar in that they both demonstrate aspects of the state's economic development strategy, but disclosure of the final package does not reveal the initial offer, which can change significantly during negotiations.

20. It is found that IC-2018-0044-1 through IC-2018-0044-2 “derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use,” within the meaning of §1-210(b)(5)(A)(i), G.S.

21. It is also found that IC-2018-0044-1 through IC-2018-0044-2 “are the subject of efforts that are reasonable under the circumstances to maintain secrecy,” within the meaning of §1-210(b)(5)(A)(ii), G.S.

22. It is found, therefore, that IC-2018-0044-1 through IC-2018-0044-2 are exempt from mandatory disclosure as trade secrets, pursuant to §1-210(b)(5)(A), G.S.

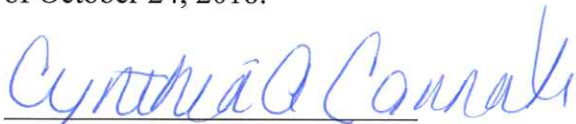
23. In light of the finding in paragraph 19, above, it is not necessary to determine whether IC-2018-0044-1 through IC-2018-0044-2 are exempt as preliminary drafts pursuant to §1-210(b)(1), G.S.

24. It is concluded, therefore, that the respondents did not violate the FOI Act as alleged.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 24, 2018.



Cynthia A. Cannata
Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

MIKE SAVINO AND THE RECORD-JOURNAL, 500 South Broad Street, Meriden, CT 06450

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT; AND STATE OF CONNECTICUT, DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, c/o Assistant Attorney General James Caley, Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120



Cynthia A. Cannata
Acting Clerk of the Commission