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Robert Howell,
Complainant(s)
against

State of Connecticut, Office of the Chief State's Attorney, Division of Criminal Justice; Commissioner, State of Connecticut, Department of Labor; and State of Connecticut, Department of Labor,
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0210

September 30, 2016

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, October 26, 2016.** 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 October 14, 2016.*** 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 October 14, 2016.*** **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 **fifteen (15) copies** be filed ***ON OR BEFORE October 14, 2016***, 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

W. Paradis
Acting Clerk of the Commission

Notice to: Robert Howell
Attorney Brian Austin, Jr.
Attorney Krista D. O'Brien

FIC# 2016-0210/Trans/wrbp/KKR//LFS/2016-09-30

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by | Report of Hearing Officer

Robert Howell,

Complainant

against | Docket #FIC 2016-0210

Commissioner, State of Connecticut, Department of Labor; and State of Connecticut, Department of Labor,

Respondents | July 20, 2016

The above-captioned matter was heard as a contested case on June 16, 2016, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

By letter dated June 8, 2016, the complainant withdrew that portion of his complaint against the Office of the Chief State's Attorney only. The Commission takes administrative notice of such letter, and the case caption has been amended accordingly.

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 letter dated June 30, 2015, the complainant informed the respondents' Benefit Payment Control Unit ("BPCU") that Maura Majeski and Randall Sabia "may have committed unemployment fraud."

3. It is found that, by letter dated January 12, 2016, the complainant requested from the respondents "documents regarding the [BPCU's] [f]raud [i]nvestigation conducted on Maura T. Majeski and Randall Sabia that arose from my June 30, 2015 letter to the BPCU." It is found that, specifically, the complainant was seeking a copy of records such as determination letters, questionnaires, final decisions and appeals records.

4. It is found that the complainant, having received no response to his January 12th letter, renewed his request by letter dated February 3, 2016.

5. It is found that, by letters dated February 3 and February 9, 2016, the respondents denied the complainant's request stating that "the results of any investigation that may or may

not have been conducted pursuant to your complaint are confidential under state and federal law."

6. It is found that, by letter dated February 16, 2016, the complainant again requested from the respondents the records described in paragraph 3, above. It is found that the respondents failed to respond to the February 16th renewed request within four business days and it is concluded that such failure to respond constituted a constructive denial of such request.

7. By letter dated March 14, 2016, and filed March 16, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying the requests, described in paragraphs 3 and 6, above.

8. Section 1-200(5), G.S., provides:

> "[p]ublic 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.

9. Section 1-210(a), G.S., provides in relevant part that:

> [e]xcept 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 . . . (3) receive a copy of such records in accordance with section 1-212. (Emphasis added).

10. 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."

11. According to the respondents' witnesses, when a "tip," such as the complainant's June 30 letter, is received, it is investigated by the department, which investigation may include a review of the department's records and surveillance of the individual in question. After an investigation is concluded, a "predetermination letter," setting forth the findings of the investigator, is sent to the individual in question. The individual may, within 14 days of the

predetermination letter, respond to such letter in writing objecting to the findings or may request a hearing.[1] After any such hearing, a decision is issued by the administrator.[2]

12. A decision of the administrator may be appealed to the Employment Security Appeals Division within the respondent department, which division is comprised of the referee section and the board of review. The referee section conducts a hearing on any appeal and renders a decision, which decision may be appealed to the board of review. The board of review's decision may then be appealed to the superior court.

13. At the hearing in this matter, the respondents claimed that federal and state law require confidentiality of the entire process described in paragraph 11, above, as well as all records created during such process, including the determination letters, questionnaires, and final decisions (the "requested records"), and that federal and state law thus provide an exception under §1-210(a), G.S., to the general rule of disclosure under the FOI Act.

14. The respondents acknowledged, however, that the confidentiality requirements contained in federal and state law do not apply to appeals records, except for social security numbers contained in such records, and that appeals hearings (see paragraph 12, above) are open to the public. It is found that the respondents do not maintain any appeals records responsive to the requests, described in paragraphs 3 and 6, above.

15. With regard to the respondents' claim that state law, specifically §31-254, G.S., requires non-disclosure of the requested records, that statute provides, in relevant part:

> (a)(1) Each employer...shall keep accurate records of employment as defined in subsection (a) of section 31-222, containing such information as the administrator may by regulation prescribe in order to effectuate the purposes of this chapter. Such records shall be open to, and available for, inspection and copying by the administrator or his authorized representatives at any reasonable time and as often as may be necessary. The administrator may require from any employer, whether or not otherwise subject to this chapter, any sworn or unsworn reports with respect to persons employed by him which are necessary for the effective administration of this chapter. Except as provided in subdivision (2) of this subsection and subsection (g) of this section, information obtained shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any

[1] If the individual does not respond to the predetermination letter within 14 days, the department issues a final decision, based on the findings of the investigator, which decision may be appealed. The individual also may choose not to contest an adverse finding and make arrangements with the department to repay any overpayments.

[2] Commissioner and administrator are used interchangeably in the statutes and regulations.

> manner revealing the employee's or the employer's identity, but any claimant at a hearing before a commissioner shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee of the administrator, or any other public employee, who violates any provision of this section shall be fined not more than two hundred dollars or imprisoned not more than six months or both and shall be dismissed from the service....(Emphasis added).

16. Based upon the plain language of §31-254, G.S., it is concluded that the respondents may not publish or disclose information obtained from an employer to the public if such publication or disclosure would reveal the identities of an employee or employer. Conversely, it is concluded that §31-254, G.S., permits publication or disclosure of such information if such publication or disclosure is made in a manner that does not reveal the identities of an employee or employer. Such interpretation is consistent with the federal government's directive to the states seeking federal funding for administration of their state UC programs, to keep confidential the "name or any identifying particular about any individual or any past or present employing unit," and [information] which could foreseeably be combined with other publicly available information to reveal any such particulars." See 42 U.S.C. §503(a) [Section 303 of the Social Security Act]; and 20 CFR §603.4(b).

17. Accordingly, it is concluded that any responsive records maintained by the respondents are not exempt from disclosure in their entirety pursuant to §31-254, G.S., as claimed by the respondents, if such records could be disclosed in a manner that does not reveal the identities of the employee or employer.

18. The respondents argued, at the hearing in this matter, that to disclose any records pursuant to the requests, described in paragraphs 3 and 6, above, or to even confirm or deny the existence of such records, would reveal the identities of the employees at issue. Ordinarily, in camera inspection of records claimed to be exempt from disclosure is necessary in order to determine the validity of such argument. However, because the requests, described in paragraphs 3 and 6, above, identified the employees who would be the subject of any records responsive to such requests, it is concluded that such requests are "targeted requests," and that it therefore would be impossible for the respondents to comply with such requests without identifying employees or employers, even if such records were redacted. See Richard Burgess and Connecticut Carry, Inc. v. Reuben Bradford, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection et al., Docket #FIC 2012-251 (January 23, 2013); Orlando Rinaldini v. Commissioner, State of Connecticut, Department of Consumer Protection et al., Docket #FIC 2009-701 (June 23, 2010).

19. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by failing to comply with the requests, described in paragraphs 3 and 6, above. It is further concluded, based upon the foregoing, that the Commission need not consider the respondents' claim that the requested records are entirely exempt from disclosure under federal law.

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.

Kathleen K. Ross
as Hearing Officer

FIC 2016-0210/hor/kkr/07202016