

**FREEDOM OF INFORMATION COMMISSION
STATE OF CONNECTICUT**

18-20 Trinity Street, Suite 100
Hartford, Connecticut 06106

Craig Minor

Complainant(s)

against

Mayor, City of Bristol; and City of Bristol

Respondent(s)

Notice of Rescheduled
Commission Meeting

Docket #FIC 2015-880

August 11, 2016

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, August 24, 2016 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, September 14, 2016.**

Any brief, memorandum of law or request for additional time, as referenced in the August 1, 2016 Transmittal of Proposed Final Decision, should be received by the Commission on or before September 2, 2016.

By Order of the Freedom of Information Commission

W. Paradis,
Acting Clerk of the Commission

Notice to:

Craig Minor

Attorney Thomas W. Conlin

Attorney John C. King

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Craig Minor,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-880

Mayor, City of Bristol; and City of Bristol,
Respondent(s)

August 1, 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, August 24, 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 August 12, 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 August 12, 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 August 12, 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
Acting Clerk of the Commission

Notice to: Craig Minor
Attorney Thomas W. Conlin
Attorney John C. King

FIC# 2015-880/Trans/wrbp/KKR//TAH/2016-08-01

0020 FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Craig Minor,

Complainant

against

Docket #FIC 2015-880

Mayor, City of Bristol; and
City of Bristol,

Respondents

July 18, 2016

The above-captioned matter was heard as a contested case on April 12, 2016, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

In their post-hearing brief, the respondents contended that the complaint, alleging that the respondents improperly denied the complainant's request to inspect a record they maintain, should be dismissed because the complainant obtained a copy of such record from a third party. Although the respondents, at the hearing in this matter, continued to claim that such record is exempt from disclosure, and had not, at the time of the hearing, permitted the complainant to inspect such record, they nonetheless argued that "there is no longer a controversy between the parties," and that the Commission therefore lacks jurisdiction to adjudicate such complaint.

It is concluded that the issue raised in the complaint is whether or not the respondents' alleged denial of the complainant's right to inspect the record violated the disclosure provisions of the Freedom of Information ("FOI") Act, and that such issue is not rendered moot by virtue of the fact that the complainant obtained such record from a third party. See e.g., Michael Daly v. Joan Ellis, Administrator, State of Connecticut, Department of Correction, Freedom of Information Office, Docket #FIC 2007-162 (February 13, 2008); Judith G. Freeman v. State of Connecticut, General Assembly, Legislative Commissioner's Office, Docket #FIC 2005-575 (June 28, 2006); Wilson Campos and Ismael Vasuez v. State of Connecticut, Department of Correction, Docket #FIC 90-485 (October 23, 1991); Thomas A. DeRiemer v. Employees' Review Board, Personnel Division, State of Connecticut, Department of Administrative Services, Docket #FIC 89-112 (January 10, 1990); Richard Lindquist v. Chairman, Department of Pathology, University of Connecticut Health Center, Docket #FIC 89-94 (March 14, 1990). Accordingly, it is concluded that the Commission has jurisdiction over 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), G.S.

2. It is found that, during 2015, the respondent mayor and the president of Bristol Hospital (“hospital”) engaged in verbal discussions related to the purchase by the hospital of a portion of a certain parcel of land owned by the city, known as Depot Square, on which land the hospital proposed to build a new medical arts facility (“property”). It is found that, at some point in the discussions, the respondent mayor requested that the hospital provide to the city a written “letter of intent” setting forth the proposed terms and conditions of the hospital’s purchase of the property. It is found that, by letter dated December 4, 2015, the hospital submitted such proposal (“letter of intent”) to the city.

3. It is found that, by email, dated December 20, 2015, the complainant requested from the respondent mayor, the opportunity to inspect the letter of intent, described in paragraph 2, above.

4. It is found that, by email dated December 21, 2015, the respondents’ counsel denied the request, stating that the letter of intent is a “preliminary draft and cannot be provided.”

5. By email dated December 21, 2015, the complainant appealed to this Commission alleging that the respondents violated the FOI Act by denying his request to inspect the letter of intent, described in paragraph 2, above.

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 (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.

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. 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 concluded that the letter of intent, described in paragraph 2, above, is a public record, within the meaning of §§1-200(5) and 1-210(a), G.S.

10. At the hearing in this matter, the complainant challenged the respondents’ contention that the letter of intent is a “preliminary draft,” within the meaning of §1-210(b)(1), G.S.

11. Section 1-210(b)(1), G.S., provides that disclosure shall not be required of “[p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.”

12. In Van Norstrand v. Freedom of Information Comm’n, 211 Conn. 339 (1989), the Court observed that “preliminary,” means “something that precedes or is introductory or preparatory,” and a “draft” is a “preliminary outline of a plan, document or drawing.” *Id.* at 343. Citing to its decision in Wilson v. Freedom of Information Comm’n, 181 Conn. 324 (1980), the Court opined that:

preliminary drafts or notes reflect that aspect of the agency’s function that precedes formal and informed decisionmaking.” We believe that the legislature, [in enacting the “preliminary drafts or notes” exemption], sought to protect the free and candid exchange of ideas, the uninhibited proposition and criticism of options that often precedes, and usually improves the quality of, governmental decisions. It is this preliminary, deliberative and predecisional process that we conclude the exemption was meant to encompass. Van Norstrand at 344.

The courts also have observed that “[a] preliminary document is one containing ‘data not required or germane to the eventual purpose for which it was undertaken and it was thereafter modified to excise the material that was irrelevant to its...purpose.’” Strillacci v. Freedom of Information Comm’n, No. CV-084018120-S, 2009 WL 1334821, at *2 (New Britain Superior Court, April 20, 2009), citing Van Norstrand at 343.

13. Prior to the hearing in this matter, a copy of the letter of intent was obtained by the complainant from a city council member and admitted as an exhibit in this matter. The first paragraph of the letter of intent states: “[t]his letter of intent sets forth the proposed terms and conditions for a transaction whereby the [hospital]...will purchase certain real property from the [c]ity....Upon execution of this letter of intent, the Parties will proceed promptly, in good faith, to negotiate, prepare and execute a definitive agreement for the purchase and sale of the Property...containing the terms set forth therein and other terms and conditions upon which the Parties may agree....” It is found that the letter of intent was signed by president of the hospital.

14. It is found that, after receiving the letter of intent, counsel for the respondents continued to negotiate certain terms relating to the sale of the property with counsel for the hospital, and counsel for the respondents discussed those negotiations with members of the council in executive session.¹


15. It is found that, by letter dated January 6, 2016, the respondents provided to the complainant a copy of a revised letter of intent, dated December 30, 2015, pertaining to the sale of the property, signed by both the mayor and the president of the hospital. It is found that the December 30 letter of intent, which the respondents characterized as “the finalized letter of intent,” contains some terms that are different from the terms contained in the letter of intent dated December 4th.

16. It is found that, although the letter of intent apparently served as the basis for further negotiations between the parties, it was a final document, in that it was signed by the president of the hospital. Accordingly, it is concluded that the letter of intent, described in paragraph 2, above, was not a preliminary draft, under §1-210(b)(1), G.S., at the time it was requested.

17. Based upon the foregoing, it is concluded that the respondents violated the disclosure requirements in §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of the letter of intent to the complainant at the time it was requested.

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

1. Forthwith, the respondents shall provide to the complainant a copy of the letter of intent, described in paragraph 2, above, free of charge.
2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.


Kathleen K. Ross
as Hearing Officer

FIC 2015-880/hor/kkr/07182016

¹ The complainant did not allege that the executive session was held for an improper purpose.