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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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Tamara Lanier

Complainant(s)

Notice of Meeting

against

Docket #FIC 2016-0623

Director, Legal Services, State of Connecticut, Judicial Branch; and State of Connecticut, Judicial Branch

Respondent(s)

July 6, 2017

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, July 26, 2017**. 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 July 17, 2017**. 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 July 17, 2017**. **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 July 17, 2017** 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

Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Tamara Lanier
Attorney Martin R. Libbin

FIC# 2016-0623/ITRA/PSP//TCB/WRBP/2017-07-6

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Tamara Lanier,

Complainant

against

Docket #FIC 2016-0623

Director, Legal Services,
State of Connecticut, Judicial
Branch; and State of Connecticut,
Judicial Branch,

Respondents

June 30, 2017

The above-captioned matter was heard as a contested case on November 2, 2016, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

Subsequently, pursuant to an order of the hearing officer, the matter was reopened and heard on January 26, 2017, 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), G.S.
2. It is found that, by email dated August 2, 2016, the complainant made a request to the respondents for copies of the following records:

[a] The Applicant Resource Information Sheet (ARIS) for the Regional Manager Interviews that took place on or about November 2013 [;]

[b] The resumes of all interviewed candidates [for the Regional Manager position;]

[c] The Interview Evaluation Form for all interviewed candidates [for the Regional Manager position;]

[d] The Applicant Resource Information Sheet (ARIS) for the Adult Probation Officer Trainee Interviews hosted by Regional Manager Dorian Santoemma on or about May of 2014 [; and]

[e] The Interview Evaluation Form for the candidate Stephanie Corola.

3. It is found that, by email dated August 3, 2016, the respondent Legal Services Director acknowledged the complainant's August 2nd request described in paragraph 2, above, and informed her that he would review the documents and follow-up with a further response.

4. It is found that on August 23, 2016, the complainant emailed the respondents inquiring as to the status of her August 2nd request.

5. It is found that, by email dated August 30, 2016, the respondent Director informed the complainant that there were 25 pages of documents, consisting of two ARIS forms and the resumes of the applicants for the Regional Manager position, which were responsive to the August 2nd request, and could be provided to the complainant. The Director also informed the complainant that consistent with the Commission's decision in Docket #FIC 2013-064; Alireza Jamalipour v. Commissioner, State of Connecticut, Department of Transportation; and State of Connecticut, Department of Transportation, the ARIS forms were redacted to exclude the interview recommendation. In addition, the interview evaluation forms for all interviewed candidates for the Regional Manager position were withheld pursuant to §1-210(b)(6), G.S., as interpreted by the Court and the Commission in Docket #FIC 2008-525; David Glidden and the Connecticut State Employees Association v. Commissioner, State of Connecticut, Department of Environmental Protection, Human Resources Division; and State of Connecticut, Department of Environmental Protection, Human Resources Division (and cases cited therein). The home addresses of the applicants for the Regional Manager position (other than the complainant) were also redacted pursuant to §1-217, G.S.

6. It is found that the complainant declined acceptance of the 25 pages of documents, described in paragraph 5, above, as such documents would be redacted, and because other records were withheld in their entirety.

7. By email filed on August 30, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act ("FOI") Act by failing to comply with her August 2nd request, described in paragraph 2, above.

8. 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 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:

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

10. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

11. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

12. It is found that the respondents conducted interviews of the candidates qualified for the positions of Regional Manager and Adult Probation Officer Trainee, respectively. It is found that during such interviews, the respondents utilized an Interview Evaluation Form (“Evaluation Form”) to evaluate the candidates, and thereafter completed an Applicant Resources Information Sheet (“ARIS”).

13. On November 3, 2016, pursuant to an order of the hearing officer, the respondents submitted to the hearing officer, blank copies of an ARIS and Evaluation Form, which were marked as Respondents’ Exhibit 1.

14. It is found that each interviewer must complete an Evaluation Form for each candidate interviewed. It is found that the Evaluation Form consists of different sections that must be completed by the interviewer for each question asked during the interview. The interviewer must list the criteria used and questions asked. There is also a comment section in which the interviewer is expected to take notes based on an interviewee’s responses. The interviewer must also evaluate the interviewee’s response to each question as “Exceptional” “Acceptable” “Needs More Training or Experience” “Not Acceptable” or “Not Relevant for this Position.” After each question is evaluated, the interviewer must provide an “Overall Recommendation” (*i.e.*, “Highly Recommended” “Recommended” or “Not Recommended”). If the interviewed candidate is not recommended, the interviewer must provide the reasons for such determination.

15. It is found that the ARIS form instructs the panel chair to list, among other information, the names of all interviewed candidates and, in a column identified as “Interview Recommendation,” to provide the interview recommendation (*i.e.*, “HR - Highly Recommended” “R – Recommended” or “NR - Not Recommended”). The ARIS form also instructs the panel

chair to list, based on the interview results, all “Highly Recommended” candidates first; “Recommended” candidates next; and those candidates who were “Not Recommended” last.

16. After the January 26, 2017 hearing in this matter, pursuant to an order of the hearing officer, the respondents submitted 145 pages of unredacted documents to the Commission for in camera review, which are identified as IC-2016-0623-1 through IC-2016-0623-145.

17. On the in camera index, the respondents did not claim an exemption for IC-2016-0623-22 through 25, IC-2016-0623-27 through 31, IC-2016-0623-33 through 40, and IC-2016-0623-42 through 44. In addition, on the in camera index, the respondents represented that they had advised the complainant that she could get copies of such records on payment of the copy fees, but she declined. Because no exemption to disclosure was raised with regard to IC-2016-0623-22 through 25, IC-2016-0623-27 through 31, IC-2016-0623-33 through 40, and IC-2016-0623-42 through 44, such records should not have been submitted to the Commission for an in camera inspection. Therefore, IC-2016-0623-22 through 25, IC-2016-0623-27 through 31, IC-2016-0623-33 through 40, and IC-2016-0623-42 through 44, shall not be further addressed herein.

18. With respect to IC-2016-0623-21, IC-2016-0623-26, IC-2016-0623-32 and IC-2016-0623-41, the respondents, on the in camera index, described the only information claimed to be exempt from disclosure as home addresses and home telephone numbers. They claimed that such information is exempt pursuant to §§1-210(b)(2) and 1-217, G.S. In addition, on the in camera index, the respondents represented that they had advised the complainant that she could get copies of IC-2016-0623-21, IC-2016-0623-26, IC-2016-0623-32 and IC-2016-0623-41, with the addresses and telephone numbers redacted, and on payment of the copy fees, but she declined. At the hearings in this matter, the complainant testified that she was no longer challenging the redaction of such information. Accordingly, such records shall not be further addressed herein.

19. With respect to IC-2016-0623-1, IC-2016-0623-2 through 19, IC-2016-0623-20 and IC-2016-0623-45 through 145, the respondents claimed, on the in camera index, that such records, or portions thereof, were exempt from disclosure pursuant to §1-210(b)(6), G.S. The respondents also cited Docket #FIC 2013-064; Alireza Jamalipour v. Commissioner, State of Connecticut, Department of Transportation; and State of Connecticut, Department of Transportation, and cases cited therein. On the index, the respondents described the information that was being claimed to be exempt as:

IC-2016-0623-1 and IC-2016-0623-20: Column containing interview recommendation (other than for complainant); and

IC-2016-0623-2 through 19 and IC-2016-0623-45 through 145: Interview evaluation form in its entirety – questions, answers, rating for individual answers and overall rating.

20. With respect to the portions of IC-2016-0623-1 and IC-2016-0623-20, for which the respondents did not claim an exemption, the respondents represented, on the in camera index,

that they had advised the complainant that she could get copies of such information on payment of the copy fees, but she declined.

21. It is found that IC-2016-0623-1 and IC-2016-0623-20 consist of copies of ARIS forms which the respondents certified, on the in camera index, are copies of records at issue in this matter. In addition, as found in paragraphs 5 and 6, above, the respondents had previously informed the complainant that they could provide her with copies of the requested ARIS forms, with the interview recommendations redacted, but she declined. Accordingly, the portions of IC-2016-0623-1 and IC-2016-0623-20, for which the respondents did not claim an exemption, shall not be further addressed herein.

22. Section 1-210(b)(6), G.S., provides that “[n]othing in the Freedom of Information Act shall be construed to require disclosure of...[t]est questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations....”

23. In Washington v. Freedom of Information Commission, et. al., 25 Conn. L. Rptr. 334 (1999), the Superior Court concluded that, “[b]ased on the testimony at the FOIC hearing,” oral board panelists’ scoring sheets were “the equivalent of a scoring key” which is specifically exempted from disclosure under §1-210(b)(6), G.S.

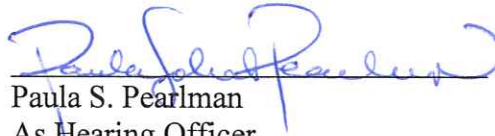
24. The Commission has interpreted Washington to mean that certain oral examination data for employment positions are exempt from disclosure pursuant to §1-210(b)(6), G.S. See Docket #FIC 2000-501, Randal Edgar et al. v. Paul Sequeira, Superintendent of Schools, Waterbury Public Schools (March 28, 2001)(scores assigned by interviewers to each candidate for the position of superintendent of schools constitute examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2001-006, Dennis Murray v. Director of Personnel, City of Hartford (April 11, 2001) (scoring sheets of each of oral board panelist for each candidate constitute examination data within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2003-377, Joseph R. Casey, Jr. v. Commissioner, State of Connecticut, Department of Correction (April 14, 2004) (forms containing questions asked by the interview panel, candidates’ responses, ratings given by the interview panel members and any comments made by such members constituted test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2008-525; David Glidden and the Connecticut State Employees Association v. Commissioner, State of Connecticut, Department of Environmental Protection, Human Resources Division; and State of Connecticut, Department of Environmental Protection, Human Resources Division (July 22, 2009) (interviewer notes, interview questions, and interview reports and recommendations for hiring/promotions constitute test questions, scoring keys and other examination data within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2009-123, Richard Malley v. Commissioner, State of Connecticut, Department of Environmental Protection; and State of Connecticut, Department of Environmental Protection (February 24, 2010) (DEP interviewer’s report and recommendations for hiring or promotion constitutes examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2013-064; Alireza Jamalipour v. Commissioner, State of Connecticut, Department of Transportation; and State of Connecticut, Department of

Transportation (September 25, 2013)(Commission concluded that recommendations for selection, or the explanation for the selection or non-selection of the candidates included in an Interview Selection Report were permissively exempt from disclosure pursuant to §1-210(b)(6), G.S.); and Docket# FIC 2014-197; George Winter v. Commissioner, State of Connecticut, Department of Motor Vehicles; and State of Connecticut, Department of Motor Vehicles (January 14, 2015) (oral interview questions, scores, rankings and the criteria used in development of the questions found to be test questions, scoring keys and other examination data used to administer an examination for employment.).

25. Based upon a careful review of the in camera records described in paragraph 19, above, it is found that such documents contain test questions, scoring keys and other examination data within the meaning of §1-210(b)(6), G.S. It is concluded that such in camera records are permissively exempt from disclosure pursuant to §1-210(b)(6), G.S. Accordingly, it is concluded that the respondents did not violate the FOI Act.

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

1. The complaint is hereby dismissed.


Paula S. Pearlman
As Hearing Officer