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Edward Peruta, and American News and Information Services Inc.
Complainant(s)
against

Eric Boone, CEO, Parking Authority, City of Hartford; Parking Authority, City of Hartford; and City of Hartford
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0592

July 19, 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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, August 9, 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 28, 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 28, 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 28, 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

Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Edward Peruta and American News and Information Services, Inc.
Attorney Cynthia Lauture

FIC# 2016-0592/ITRA/PSP//TAH/WRBP/2017-07-19

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Edward Peruta and
American News and
Information Services Inc.,

Complainants

against

Docket #FIC 2016-0592

Eric Boone, CEO, Parking Authority,
City of Hartford; Parking Authority,
City of Hartford; and City of Hartford,

Respondents

July 17, 2017

The above-captioned matter was heard as a contested case on July 13, 2017, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint. The case caption has been amended to more accurately identify the respondents in this matter.

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 August 18, 2016, the complainant Edward Peruta, on behalf of both complainants, spoke over the telephone with Eric Boone, the CEO for the City of Hartford's Parking Authority ("HPA"), and informed respondent Boone that he would be visiting the HPA to request prompt access to inspect computer-stored public records which document parking tickets issued by a certain Hartford Police Officer. It is found that Mr. Peruta wanted to visit the HPA and have direct access to the respondents' computer database to personally access such information. It is found that respondent Boone informed Mr. Peruta that he could not provide Mr. Peruta with direct access to such database as it was a protected database, and that Mr. Peruta would have to submit a request in writing for access to the information.

3. It is found that later that morning, Mr. Peruta visited the HPA and presented a written request to respondent Boone requesting "prompt access to inspect" the information described in paragraph 2, above, and specifying the name of the officer and the time period for which he sought access. It is found that Mr. Peruta wrote his records request prior to arriving at the HPA.

4. It is found that respondent Boone conducted a search for responsive information

utilizing the criteria identified by Mr. Peruta in his written request, described in paragraph 3, above, and, by 6:03 p.m., that same day, emailed the requested information to Mr. Peruta, at no charge.

5. The following day, by email received at 4:48 a.m., the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information Act ("FOI") Act. In their complaint, the complainants expressly stated that their "complaint is specific for the improper requirement that a request for access be made in writing, and the failure to provide the requested prompt access." The complainants requested the imposition of the maximum 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 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…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 requested by the complainants are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S.

10. At the hearing, Mr. Peruta, on behalf of the complainants, acknowledged that the respondents provided him with the requested information. However, he maintained that the respondents violated the FOI Act by failing to provide the requested information promptly and improperly requiring that the complainants place their request to inspect in writing. The complainants also argued that the respondents should have a computer terminal publically available so that information may be directly accessed by members of the public.

11. With respect to the issue of the availability of a computer terminal for members of the public, it is found that such argument was not fairly raised in the complaint. Accordingly, such argument shall not be further addressed herein.

12. With respect to the issue of promptness, the Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

13. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request. In addition, common sense and good will ought to be the guiding principles.

14. It is found that respondent Boone searched for and emailed Mr. Peruta with the requested information the same day that the request was made. It is found that the respondents provided the complainants with prompt access to the requested information. Accordingly, it is concluded that the respondents did not violate the promptness provisions contained in the FOI Act.

15. With respect to the issue of requiring the complainants' request to inspect to be made in writing, at the hearing, respondent Boone testified that the HPA does not have a general policy requiring that all requests to inspect and to obtain copies of public records be made in writing. He acknowledged that when he spoke to Mr. Peruta over the telephone he informed Mr. Peruta that a request for the requested information would have to be made in writing. He testified that a written request for the particular information requested was required for administrative purposes (*i.e.,* tracking the request and ensuring the accuracy of a response), and that the requested information was stored in a database protected by the Federal Drivers Privacy Protection Act. He testified that access to such database is very restricted and based on need.

16. It is found that Mr. Peruta did not specifically make a request for access during his conversation with respondent Boone. Rather, he simply informed respondent Boone that he would be visiting the HPA to request prompt access to inspect certain computer-stored public records. The Commission also notes that a requester cannot access public records over the telephone.

17. It is further found that when Mr. Peruta arrived at the HPA, as referenced in paragraph 3, above, he was not advised that if he did not put his request to inspect in writing, he would not be granted access to the requested records. Rather, Mr. Peruta arrived at the HPA

office with a written request already in hand, making the issue of whether a written request to inspect could be required as a condition of access, a moot point.

18. It is also found that, although Mr. Peruta was told incorrect information over the telephone by respondent Boone, such response was not a denial.

19. Under the specific facts and circumstances of this case, as set forth in paragraph 15 through 18, above, it is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

20. Further, based on the foregoing conclusion, the complainants' request for the imposition of a civil penalty need not be addressed.

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.

2. Although the Commission concluded that there was no violation in this case, the Commission urges the respondents to be mindful that a public agency may not require that a request to inspect public records be made in writing as a condition to gaining access to inspect such public records.

Paula S. Pearlman
As Hearing Officer

FIC2016-0592/HOR/PSP/07172017