

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Thomas J. Hobin, Jr. (NAGE),

Report of Hearing Officer

Complainant

against

Town of Orange,

Docket #FIC81-174

Respondent

October 26, 1982

The above captioned matter was heard as a contested case on May 10, 1982 at which time the complainant and the respondent appeared and presented testimony, exhibits, and argument on the complaint.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.

2. On September 4, 1981, the Pace Consulting Group submitted a report to the personnel council of the respondent, which report compared non-union positions in the respondent town with similar positions in surrounding towns and cities.

3. The report referred to in paragraph 2, above, consisted of job descriptions, salary ranges, fringe benefit listings and personnel policy recommendations.

4. By letter dated September 21, 1981, the complainant made a request of the respondent for the so-called Pace report.

5. Following a series of conversations between the complainant and the respondent, the complainant's request was denied.

6. The complainant filed an appeal of such denial with the Commission on October 20, 1981, pursuant to §1-21i(b), G.S.

7. The respondent claims that the personnel council is not a public agency and that documents in its possession are not public records.

8. The membership of the personnel council is composed of the superintendent of schools, the chairman of the board of police commissioners, the director of finance, the director of public works, and the chairman of the board of education of the respondent town.

9. The personnel council was organized in January, 1968 by the first selectman, at the suggestion of the superintendent of schools.

10. The purpose of the personnel council is to coordinate negotiations with the unions representing employees of the respondent, and to act as an advisory body regarding the wages, hours and working conditions of various employee groups within the respondent town.

11. It is found that representation of those agencies whose members currently participate in the personnel council is maintained on a regular, although informal, basis.

12. It is found that the Pace report was commissioned at the request of the personnel council, and that the board of selectmen of the respondent town approved the payment of the respondent's funds for such report.

13. It is found that the consulting group reported directly to the personnel council, which, in turn, reported to the board of selectmen.

14. It is found that the personnel council is the functional equivalent of a public agency for the following reasons:

- a) The personnel council performs the important governmental function of acting as an oversight body regarding personnel matters within the respondent's government.
- b) Although the personnel council has no direct funding, it has access to town monies through application to the board of selectmen.
- c) All members of the personnel council are town officials, and their membership is designed to enhance the ability of the town government to function efficiently with regard to personnel matters.
- d) The personnel council was created at the request of the first selectman, and continues to exist by virtue of the consent of the boards represented on the personnel council.

15. It is therefore concluded that the personnel council is a public agency within the meaning of §1-18a(a), G.S.

16. It is therefore concluded that the Pace report is a public record or file within the meaning of §1-18a(d), G.S.

17. The respondent claims that at the time of the complainant's request, the Pace report was a preliminary draft, subject to revision.

18. The respondent claims that the personnel council made a determination, pursuant to §1-19(b)(1), G.S., that due to the sensitive personnel matters involved, the public interest in withholding the report outweighed the public interest in disclosure.

19. It is found that after the Pace report was submitted to the personnel council on September 4, 1981, errors were detected which required two revisions of the report prior to the submittal of the report to the board of selectmen on November 17, 1981.

20. It is found that although the documents submitted to the personnel council on September 4, 1981 were subsequently revised, they represented the completed report of the consulting group as of that date and were by no means preliminary drafts or notes.

21. It is therefore concluded that the report in question is not exempted from disclosure by §1-19(b)(1), G.S.

22. The respondent further claims that the document in question reflects strategy regarding collective bargaining and is therefore exempted from disclosure by §1-19(b)(9), G.S.

23. It is found that after the filing of a union's petition for representation of a group of supervisory employees in April, 1981, the board of selectmen authorized the personnel council to hire a consulting group.

24. It is found, however, that the union representing supervisory employees of the respondent was not certified until November 12, 1981.

25. It is therefore found that at the time the Pace report was commissioned, there existed no union with which the respondent might have been engaged in collective bargaining.

26. It is further found that the respondent failed to prove by any credible evidence that the requested documents were records, reports or statements of either strategy or negotiations with respect to collective bargaining, within the meaning of §1-19(b)(9), G.S.

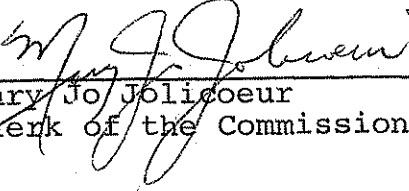
27. It is therefore concluded that the requested documents are subject to disclosure pursuant to §1-15 and §1-19, G.S.

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

1. The respondent shall forthwith provide the complainant with a copy of the report described in paragraphs two and three of the findings, above.

  
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Commissioner Donald W. Friedman  
as Hearing Officer

Approved by order of the Freedom of Information Commission  
at its special meeting of November 17, 1982.

  
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Mary Jo Jolicœur  
Clerk of the Commission