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FREEDOM OF INFORMATION



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Suzanne Carlson and the
Manchester Journal Inquirer,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-535

Town Administrator, Town of Vernon;
and Town of Vernon,
Respondent(s)

May 1, 2012

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, May 23, 2012**. 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 May 11, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE May 11, 2012**. 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 **fourteen (14) copies** be filed **ON OR BEFORE May 11, 2012**, 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: Suzanne Carlson
Martin B. Burke, Esq.

5/1/12/FIC# 2011-535/Trans/wrbp/KKR//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Suzanne Carlson and the
Manchester Journal Inquirer,

Complainants

against

Docket #FIC 2011-535

Town Administrator, Town of
Vernon; and Town of Vernon,

Respondents

March 23, 2012

The above-captioned matter was heard as a contested case on February 2, 2012, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with, and the Commission takes administrative notice of, the evidence presented in, Docket #FIC 2011-503, Suzanne Carlson and the Manchester Journal Inquirer v. Town Administrator, Town of Vernon; and Town of Vernon; and Docket #FIC 2011-542, Suzanne Carlson and the Journal Inquirer v. Mayor, Town of Vernon; and Town of Vernon.

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, on September 30, 2011, the complainants made a verbal request to the respondents, at the town offices, to inspect a copy of an arbitration decision, dated September 23, 2011 (“decision”).
3. It is found that, the respondent town administrator (“town administrator”) asked the complainants to put their request in writing, and the complainants then wrote the request, described in paragraph 2, above, on a copy of a newspaper article, and left it with the town administrator. It is found that the newspaper article, dated September 30, 2011, reported that the decision had been released to the press “immediately” by the mayor of the town of Vernon.
4. By letter of complaint, dated and filed September 30, 2011, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the requests, described in paragraphs 2 and 3, above.
5. It is found that, by letter dated October 3, 2011, the respondents acknowledged the requests, described in paragraphs 2 and 3, above.

6. It is found that, by email dated October 14, 2011, the respondents provided the complainant with a digital copy of the requested record, at no cost to the complainant.

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 1-210(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 . . . (3) receive a copy of such records in accordance with section 1-212.

9. 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.”

10. It is found that the record described in paragraph 2, above, is a public record within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

11. At the hearing in this matter, the complainants argued that the respondents violated the FOI Act because they failed to provide prompt access to the requested record. According to the complainants, because a copy of the decision already had been provided to another reporter by the mayor, the respondents also should have made the decision available to them to inspect immediately, upon demand, at the town offices. The complainants also argued that, because they had requested to inspect the decision, and not receive a copy, the respondents violated the Act by requiring her to make her request in writing.

12. With respect to the general question of promptness, the meaning of the word “promptly” is a particularly fact-based question that has been previously addressed by the

FOI Commission. 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. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

13. At the hearing in this matter, the town administrator testified, and it is found, that the complainants made the requests, described in paragraphs 2 and 3, above, at the town offices, at 10:30 a.m., on the respondents’ busiest day of the month, during a time when they were under pressure to meet a 1:00 p.m. deadline to finalize their agenda for their monthly meeting. He further testified, and it is found, that he was not aware of the story that had been reported in the newspaper article, described in paragraph 3, above, until the complainants showed it to him, and that he did not have a copy of the decision. It is further found that, at the time of the requests, described in paragraphs 2 and 3 above, the responsibility of responding to FOI requests was being transferred from the former town administrator, who had resigned, to him, which caused some delay in responding to FOI requests.

14. Based upon the facts and circumstances of this case, it is found that the respondents responded to the requests, described in paragraphs 2 and 3, above, promptly.

15. It is therefore concluded that the respondents did not violate the promptness provisions of §§1-210(a) or 1-212(a), G.S.

16. With regard to the complainants’ claim that the respondents violated the FOI Act by requiring that they put their request in writing, it is found that the complainants offered no evidence at the hearing in this matter that the respondents made a written request a condition precedent to fulfillment of such request. According to the town administrator, at the time of the complainants’ verbal request, he wasn’t sure what the status of the arbitration was, so he asked the complainants to put her request in writing so he could inquire about it and get back to her.

17. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged.

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.

A handwritten signature in cursive script, reading "Kathleen K. Ross", written over a horizontal line.

Kathleen K. Ross
as Hearing Officer