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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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Lamberto Lucarelli,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-552

Ethics Commission, Town of Old Saybrook; and
Town of Old Saybrook,
Respondent(s)

March 25, 2013

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, April 24, 2013**. 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 April 12, 2013**. 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 April 12, 2013**. 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 April 12, 2013**, 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: Lamberto Lucarelli
Michael E. Cronin, Jr., Esq.

2013-03-25/FIC# 2012-552/Trans/wrbp/LFS/TCB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Lamberto Lucarelli,

Complainant

against

Docket #FIC 2012-552

Ethics Commission, Town of Old
Saybrook; and Town of Old Saybrook,

Respondents

March 18, 2013

The above-captioned matter was heard as a contested case on February 26, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts 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 on October 2, 2012, the complainant sent an e-mail to the respondents requesting information pertaining to (a) the respondents' procedure and (b) ethics complaints that the complainant filed against various employees of the respondent town.
3. It is found that the respondents provided records to the complainant in satisfaction of his request described in paragraph 2.a, above.
4. With respect to the complainant's request described in paragraph 2.b, above, it is found that the respondents informed the complainant that they were barred by state law and town regulations from disclosing any such information.
5. By letter filed October 8, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the records he requested, including but not limited to the votes of each member of the respondent commission as to the ethics complaints that he filed.
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, ...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:

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: “Any 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 records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. Section 7-148h, G.S., in relevant part, provides:

(a) Any town ... may, by charter provision or ordinance, establish a ... commission ... to investigate allegations of unethical conduct ... levied against any official, officer or employee of such town ... The provisions of subsections (a) to (e), inclusive, of section 1-82a shall apply to allegations before any such agency of such conduct ... to an investigation of such allegations conducted prior to a probable cause finding, and to a finding of probable cause or no probable cause....

[Emphasis added.]

11. Section 1-82a, G.S., provides:

(a) Unless the commission makes a finding of probable cause, a complaint alleging a violation of this part shall be confidential except upon the request of the respondent. A commission evaluation of a possible violation of this part prior to the filing of a complaint by the commission shall be confidential except upon the request of the subject of the evaluation. If the evaluation is confidential, any information supplied to or received from the commission shall not be disclosed to any third party by a subject of the evaluation, a person contacted for the purpose of obtaining information or by a commission or staff member. No provision of this subsection shall prevent the Ethics Commission from reporting

the possible commission of a crime to the Chief State's Attorney or other prosecutorial authority.

(b) An investigation conducted prior to a probable cause finding shall be confidential except upon the request of the respondent. If the investigation is confidential, the allegations in the complaint and any information supplied to or received from the commission shall not be disclosed during the investigation to any third party by a complainant, respondent, witness, designated party, or commission or staff member.

(c) Not later than three business days after the termination of the investigation, the commission shall inform the complainant and the respondent of its finding and provide them a summary of its reasons for making that finding. The commission shall publish its finding upon the respondent's request and may also publish a summary of its reasons for making such finding.

(d) If the commission makes a finding of no probable cause, the complaint and the record of its investigation shall remain confidential, except upon the request of the respondent and except that some or all of the record may be used in subsequent proceedings. No complainant, respondent, witness, designated party, or commission or staff member shall disclose to any third party any information learned from the investigation, including knowledge of the existence of a complaint, which the disclosing party would not otherwise have known. If such a disclosure is made, the commission may, after consultation with the respondent if the respondent is not the source of the disclosure, publish its finding and a summary of its reasons therefor.

(e) The [Ethics] commission shall make public a finding of probable cause not later than five business days after the termination of the investigation. At such time the entire record of the investigation shall become public, except that the commission may postpone examination or release of such public records for a period not to exceed fourteen days for the purpose of reaching a stipulation agreement pursuant to subsection (c) of section 4-177.

(Emphasis added.)

12. It is found that the respondent commission made a finding of no probable cause in the six ethics complaints filed by the complainant.

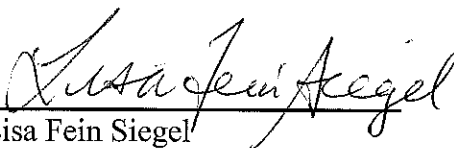
13. It is found, therefore, that §7-148h, G.S., operating through §1-210(a), G.S., prohibited the respondents from disclosing any of the records he requested concerning investigations or complaints.

14. It is found that such statutory prohibition against public disclosure includes the commission's votes. See, e.g., Jay Lewin v. Ethics Commission, Town of New Milford, Docket #FIC 2001-532 (November 13, 2002), paragraph 36: "It is also found that the respondent's vote in private on the issue of probable cause was permissible pursuant to the confidentiality provisions of §§7-148h and 1-82a, G.S."

15. The complainant cited ten previous decisions by the Commission to support his claim that the respondents must disclose the records he requested. Such decisions are not on point with this case, however, either because they predated Public Act 89-229, which made 1-82a, G.S., applicable to political subdivisions; or concerned access to meetings, not records; records in the custody of an agency other than an ethics commission; or records other than investigatory records of an ethics agency.

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.


Lisa Fein Siegel
as Hearing Officer