



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Andy Thibault and the New Haven Register,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-336

Neil O'Leary, Mayor, City of Waterbury; and
City of Waterbury,
Respondent(s)

April 18, 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, May 8, 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 26, 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 26, 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 26, 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: Andy Thibault
Kevin J. Daly, Esq.

4/18/13/FIC# 2012-336/Trans/wrbp/LFS//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Andy Thibault and the New Haven Register,

Complainants

against

Docket #FIC 2012-336

Neil O'Leary, Mayor, City of Waterbury;
and City of Waterbury,

Respondents

April 18, 2013

The above-captioned matter was heard as a contested case on April 2, 2013, at which time the complainants 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 June 12, 2012, the complainants sent a letter to the respondents indicating his request to inspect "any and all documents ... regarding John G. Rowland ("Rowland") and his city-funded economic development job via the Greater Waterbury Chamber of Commerce."
3. It is found that the respondents acknowledged the complainants' request on June 13, 2012.
4. It is found that on June 19, 2012, June 29, 2012, and July 3, 2012, the respondents provided access to responsive records maintained in city offices.
5. By letter filed June 22, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with all of the records he requested. The complainant requested the imposition of civil penalties.
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 *and maintained by the respondents* are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. It is found that the Waterbury Regional Chamber of Commerce hired Rowland as a consultant in 2008 to promote the economic development of Waterbury. It is found that Rowland was a consultant until 2012.

11. It is found that the Board of Aldermen of the respondent City of Waterbury paid the Chamber \$100,000 each year to fund Rowland’s position, except for the final year, when the payment was halved because Rowland in 2010 began a second full-time job hosting an afternoon radio show.

12. It is found that when the respondent mayor took office in 2012, he received permission from the Board of Aldermen to bring the position of economic development coordinator in-house, and the Board of Aldermen transferred \$100,000 to the mayor’s office to fund the position.

13. The complainants contend that because public money funded Rowland’s position with the Chamber of Commerce, the Chamber’s records concerning his employment belong to the respondent City of Waterbury and the public has a right of access to such records. The complainants claim that the Chamber of Commerce is a public agency with respect to Rowland’s employment; alternatively, the complainants contend that the Chamber’s records pertaining to Rowland’s employment are records that the respondents have a right to receive.

14. Section 1-200(1), G.S., defines “public agency” as:

(A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission,

authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official ...; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or (C) Any "implementing agency", as defined in section 32-222.

15. Section 32-111, G.S., defines "implementing agency," as:

one of the following agencies designated by a municipality ...: (1) An economic development commission, redevelopment agency; sewer authority or sewer commission; public works commission; water authority or water commission; port authority or port commission or harbor authority or harbor commission; parking authority or parking commission; (2) a nonprofit development corporation; or (3) any other agency designated and authorized by a municipality to undertake a project and approved by the commissioner[.]

16. It is found that the Chamber of Commerce is a private organization. The complainants do not contend that the Chamber is the functional equivalent of a public agency, and it is so found. It is also found that the Chamber of Commerce is not an implementing agency within the meaning of §32-222, G.S.

17. It is concluded that the Waterbury Regional Chamber of Commerce is not a public agency within the meaning of 1-200(1)(A), (B), or (C), G.S.

18. Section 1-200(5), G.S., includes in its definition of public records those records that "a public agency is entitled to receive a copy by law or contract under section 1-218..."

19. Section 1-218, G.S., provides in relevant part:

Each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (1) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (2) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by the public agency pursuant to the Freedom of Information Act.

20. It is found that no statute entitles the respondents to receive a copy of the Chamber of Commerce's records concerning Rowland's employment, and that any contract pertaining to Rowland's work on behalf of the respondents was less than \$2.5 million.

21. It is concluded, therefore, that the Chamber of Commerce's records pertaining to Rowland's consulting work are not public records, despite the fact that the position was funded by taxpayer dollars.

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

1. The complaint is dismissed.



Lisa Fein Siegel
as Hearing Officer