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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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Richard Boccaccio,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-478

First Selectman, Town of Westbrook; and Town
of Westbrook,
Respondent(s)

May 14, 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, June 12, 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 May 31, 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 May 31, 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 May 31, 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: Richard Boccaccio
John S. Bennet, Esq.

2013-05-14/FIC# 2012-478/Trans/wrbp/TCB//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Richard Boccacio,

Complainant

against

Docket #FIC 2012-478

First Selectman, Town of Westbrook;
and Town of Westbrook,

Respondents

May 7, 2013

The above-captioned matter was heard as a contested case on October 4, 2012 at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. At the request of the complainant, the Commission takes administrative notice of its decision in Docket #FIC 1989-142, Regina Link v. First Selectman, Town of Easton.

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 by letter dated August 1, 2012, the complainant made a request to the respondents for certain records including "updated loss runs property, liability (general, public officials, BOE) and workers compensation."
3. By e-mail dated and filed on August 9, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his request.
4. 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.

5. 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 . . . receive a copy of such records in accordance with section 1-212.

6. 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.”

7. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that the respondents provided the complainant with a redacted version of the records responsive to his request.

9. It is found that the responsive records include information that describes the medical condition(s) of town employees and that the respondents redacted that information. It is found that the respondents also redacted the names of the employees but those redactions are not at issue in this matter.

10. At the hearing on this matter, the complainant objected to the redactions of the alleged “medical conditions” claiming that the information pertains to claimed injuries which information was not sensitive medical information.

11. Section 1-210(b)(2), G.S., provides that nothing in the FOI Act shall require the disclosure of “personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy....”

12. Section 1-214, G.S., provides in relevant part that :

(b)Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned, provided such notice shall not be required to be in writing where impractical due to the large number of

employees concerned and (2) the collective bargaining representative, if any, of each employee concerned. Nothing herein shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy.

(c) A public agency which has provided notice under subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned or the employee's collective bargaining representative, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given. Each objection filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee or the employee's collective bargaining representative, under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. Upon the filing of an objection as provided in this subsection, the agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206....

13. It is found that the medical information contained in the responsive records constitute medical files or similar files within the meaning of §1-210(b)(2), G.S., and that the respondents reasonably believed that disclosure of the information would legally constitute an invasion of privacy.

14. It is found that by letter dated January 10, 2013, the 33 subject town employees and their collective bargaining representatives were notified of the complainant's request.

15. It is found that only the collective bargaining representative of 9 of the subject employees submitted a written objection to the disclosure of the medical information. It is found that no other employees submitted a written objection to the disclosure of the medical information.

16. It is found, however, that the letter of objection was not a form prescribed by the respondents and it did not consist of a statement that to the best of his knowledge, information and belief there was good ground to support the objection and that the objection was not interposed for delay, as required by §1-214(c), G.S.

17. It is therefore concluded that the respondents did not properly invoke the mandatory stay from disclosure provided under §1-214(c), G.S.

18. It is further found that the respondents failed to prove that the requested records are exempt from disclosure under §1-210(b)(2), G.S.

19. It is therefore concluded that the respondents violated §1-210(a), G.S., by failing to promptly provide the complainant with an unredacted copy of the responsive records.

20. The complainant also claimed that information was missing.

21. With respect to the information the complainant stated was missing, it is found that the information the complainant seeks is simply formatted on the records differently than the complainant seems to have expected.

22. It is also found that the respondents have provided the complainant with all records responsive to his request that it maintains and that there are no other records.

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

1. The respondents shall provide the complainant with an unredacted copy of the responsive records.

2. Henceforth, the respondents shall strictly comply with the provisions of §§1-210(a), 1-212(a), and 1-214(c), G.S.



Attorney Tracie C. Brown
as Hearing Officer