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Adam Osmond,
Complainant(s)
against

Commissioner, State of Connecticut, Department of Administrative Services; and State of Connecticut, Department of Administrative Services,
Respondent(s)

Notice of Meeting

Docket #FIC 2013--129

September 10, 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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, October 9, 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 September 27, 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, an **original and fourteen (14) copies** must be filed ***ON OR BEFORE September 27, 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 September 27, 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: Adam Osmond
Jeffrey Beckham, Esq.

9/10/13/FIC# 2013--129/Trans/wrbp/VRP//LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by | Report of Hearing Officer

Adam Osmond,

Complainant

against | Docket #FIC 2013-129

Commissioner, State of Connecticut, Department of Administrative Services; and State of Connecticut, Department of Administrative Services,

Respondents | August 27, 2013

The above-captioned matter was heard as a contested case on August 26, 2013, at which time the complainant and the respondents appeared 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. By emailed letter of complaint filed March 5, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying him access to and copies of some of the documents relating to the Fiscal Administrative Officer ("FAO") and Associate Accountant ("AA") positions he applied for.

3. It is found that by email dated December 16, 2012, the complainant requested, among other records no longer at issue, access to and copies of "the entire applications for … the person who was selected for the Fiscal Administrative Officer [position for] which I was interviewed …."

4. In his complaint, the complainant alleged that he had requested documents related to the FAO position on December 6, 2012; that he had requested documents relating to the AA position on December 26, 2012; and that he had been denied the employment applications for the successful applicants for both positions on February 5, 2013.

5. The only records at issue in this case are the employment applications for the successful applicants for the FAO and AA positions for which the complainant also applied, and it is found that the respondents denied the complainant access to or copies of those applications on February 5, 2012.

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, 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.

7. 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. (Emphasis added).

8. 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."

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

10. It is found that the respondents maintain completed applications for examination or employment (Form CT-HR-12), formerly known as the Form PLD-1, of individuals who applied for the FAO and AA positions. The respondents maintain that these records are exempt from disclosure pursuant to §5-525, G.S.

11. Section 5-225, G.S., provides, in relevant part:

> [a]ll persons competing in any examination shall be given written notice of their final earned ratings and the minimum earned rating necessary to pass the examination. Within thirty days of receipt of the final earned rating, a person may inspect his papers, markings, background profiles and other items used in determining the final earned ratings, other than examination questions and other materials constituting the examination, subject to such regulations as may be issued by the Commissioner of Administrative Services. Within thirty days of inspecting his papers, a

> person may, in writing, appeal to the Commissioner of Administrative Services the accuracy of his final earned rating, as based on the original examination paper or responses. The commissioner shall render a final decision on the person's appeal within thirty days thereafter and correct candidate lists as appropriate.

12. The respondents maintain that the issue in this matter is controlled by Personnel Director, Department of Income Maintenance v. FOIC, 214 Conn. 312 (1990); Miller v. Department of Labor, Docket #FIC 2012-203 (2013) (applications of individuals who applied for positions with Department of Labor exempt from disclosure pursuant to §5-225, G.S.), and Fisi v Department of Health and Addiction Services, Docket #FIC 1994-055 (1995) (job applications for director's position exempt from disclosure pursuant to §5-225, G.S.). The Commission also takes administrative notice of its records and files in Winkler and Administrative and Residual Employees Union v. Commissioner, State of Connecticut, Department of Administrative Services, Docket #FIC 2005-492 (2006).

13. In Winkler, the complainant requested "examination applications or PLD-1s" and all attachments submitted…for the Fiscal Administrative Manager 1 examination…" The Commission concluded such records were exempt from disclosure, under §5-225 G.S., as construed by the Supreme Court in Personnel Director, because the PLD-1 constitutes "recorded data used to determine promotions of state employees." See Personnel Director supra at 314. According to the Court in Personnel Director, under §5-225, G.S., such information may be disclosed only to the applicant who is the subject of such application or examination. Personnel Director, Id. at 316.

14. It is found that the applications requested by the complainant are now known as Form CT-HR-12, which has superseded the older form PLD-1.

15. It is concluded that the requested employment applications are exempt from mandatory disclosure pursuant to §5-225, G.S.

16. The Commission notes that resumes and job applications of individuals maintained by public agencies *other than state agencies* have been held by the Commission to be subject to disclosure to the public, but that §5-225, G.S., dictates a different conclusion for the job applications for state employment.

17. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complainant is dismissed.

Victor R. Perpetua
as Hearing Officer

FIC 2013-129/HOR/VRP/08262013