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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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Lawrence DePillo

Complainant(s)

against

Office of the Corporation Counsel,
City of Waterbury; and City of Waterbury
Respondent(s)

Notice of Rescheduled
Commission Meeting

Docket #FIC 2013-156

November 6, 2013

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, November 13, 2013 at 2 p.m.

The Commission will consider the case at its **special meeting** to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, December 18, 2013.**

Any brief, memorandum of law or request for additional time, as referenced in the October 25, 2013 Transmittal of Proposed Final Decision, must be received by the Commission on or before November 29, 2013.

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Lawrence DePillo
Kevin J. Daly, Esq.

11/6/13/FIC# 2013-156/ReschedTrans/wrbp/CAL/TAH



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Lawrence DePillo,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-156

Office of the Corporation Counsel, City of
Waterbury; and City of Waterbury,
Respondent(s)

October 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, November 13, 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 November 1, 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 November 1, 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 November 1, 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: Lawrence DePillo
Kevin J. Daly, Esq.

10/25/13/FIC# 2013-156/Trans/wrbp/CAL/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Lawrence DePillo,

Complainant

against

Docket #FIC 2013-156

Office of the Corporation Counsel,
City of Waterbury; and City of Waterbury,

Respondents

October 15, 2013

The above-captioned matter was heard as a contested case on August 19, 2013 and September 30, 2013 at which times 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. It is found that, by letter dated March 8, 2013, the complainant made a request to the respondents to inspect all records concerning “the property known as the Waterbury Bird Sanctuary off Plank Road and gifted to the City of Waterbury by the Goss Family” (the “requested records”).
3. By email dated and filed March 15, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act (“FOIA”) by failing to provide certain requested records and providing others with addresses redacted.
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 (1) inspect such records promptly during regular office or business hours . . . (3) 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 records, described in paragraph 2, above, are public records, within the meaning of §§1-200(5) and 1-210(a), G.S.

8. It is found that following the August 19, 2013 hearing, the parties resolved their issues concerning letters to the heirs of the Goss family which had previously been disclosed to the complainant with the inside addresses of the recipients redacted. These records are no longer part of this case.

9. In response to the request of the hearing officer at the August 19, 2013 hearing, the respondents submitted for an in camera inspection the remaining requested records which the respondents claimed to be exempt, together with a detailed explanatory index. Such records are hereby identified as IC-2013-156-1 through IC-2013-156-87.

10. The respondents claim that all of the in camera records are exempt from disclosure, pursuant to §1-210(b)(10), G.S., which permits an agency to withhold from disclosure records of “communications privileged by the attorney-client relationship.” (Respondents additionally claim IC-2013-156-37 through IC-2013-156-40 to be exempt pursuant to §1-210(b)(7), G.S., and claim IC-2013-156-54 through IC-2013-156-65 to be exempt pursuant to §1-210(b)(1), G.S.)

11. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” Id. at 149.

12. Section 52-146r(2), G.S., defines “confidential communications” as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the

government attorney in furtherance of the rendition of such legal advice. . . .

13. The Supreme Court has also stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, supra at 149.

14. Based upon a review of the in camera records with the index, it is found that Craig Sullivan, Linda Wihbey, and Dawn Desantis were attorneys in professional relationships with their public agency clients, the Waterbury Development Corporation as agent for the Education Department, and the Education Department, City of Waterbury. It is also found that Joe Kelly was an investigator working in the Office of the Corporation Counsel and that Nancy DiLorenzo was a paralegal working in the Office of the Corporation Counsel. Both of these individuals prepared some of the in camera records under the supervision of attorneys in the office, usually Dawn Desantis.

15. It is also found that IC-2013-156-1 through IC-2013-156-87 are all records of communications transmitted in confidence between public employees in performance of their duties and a government attorney relating to legal advice. As discussed generally by the parties at the public hearing, the Waterbury Development Corporation was considering the possibility that a bird sanctuary might become the site for a public school and the Corporation Counsel was asked to consider this possibility. A few records that were attachments to a letter from the client to an attorney are records that are otherwise publicly available, such as a map (IC-2013-156-6), a record of the probate court (IC-2013-156-7), and a deed (IC-2013-156-8 to 10). However, these records are part of the statement of facts concerning which advice is being sought and are “inextricably linked to the giving of legal advice”. Shew v. Freedom of Information Commission, 245 Conn. 149, 162 (1998). The attorney-client privilege protects disclosures “necessary to obtain informed legal advice. . . .” Ullmann v. State, 230 Conn. 698, 713 (1994). While the attachments are publicly available among many other records in other public agencies, there has been no disclosure of specifically which records formed the basis of the request for informed legal advice concerning a possible quiet title action.

16. It is further found that on or about April 10, 2013 Paul Guidone, the chief operating officer of the Education Department, City of Waterbury, distributed approximately seventy five copies of a fifteen page document entitled “Waterbury Public Schools/East End Elementary School” to attendees at a public hearing. This document is identical to in camera records, IC-2013-156-31 through IC-2013-156-44, except that the in camera records do not include the very last page that was part of Mr. Guidone’s handout at the public hearing. The distribution of the handout on or about April 10, 2013 was intentional, not inadvertent, and was performed under the direct supervision of a senior manager of the client, Education Department, City of Waterbury.

17. It is concluded, however, that, no waiver of the attorney-client privilege pursuant to §1-210(b)(10), G.S., occurred prior to April 10, 2013.

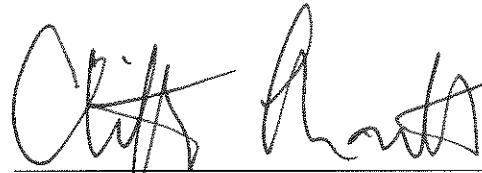
18. It is also concluded that, at the time of the request on March 8, 2013 through to the date of the complaint on March 15, 2013, the in camera records IC-2013-156-1 through IC-2013-156-87 were exempt from mandatory disclosure pursuant to §1-210(b)(10), G.S. Olsen v. Accessory Controls and Equipment Corporation, 254 Conn. 145 (2000); State of Connecticut v. Beth Ann Carpenter, 2001 Conn. Super. LEXIS 3307 (2001).

19. Based upon the foregoing, it is unnecessary for the Commission to adjudicate the claims of exemption pursuant to §1-210(b)(7), G.S., and §1-210(b)(1), G.S.

20. It is concluded that the respondents did not violate the disclosure requirements of §§1-210(a) and 1-212(a), G.S., when they declined to provide IC-2013-156-1 through IC-2013-156-87 to the complainant.

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.



Clifton A. Leonhardt
as Hearing Officer