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# FREEDOM OF INFORMATION

Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 · www.state.ct.us/foi/ · email: foi@po.state.ct.us

Richard Swan,
Complainant(s)
against

Elsa Payne, Chairman, Water Pollution Control Authority, Town of Old Saybrook; and Water Pollution Control Authority, Town of Old Saybrook,
Respondent(s)

Notice of Meeting

Docket #FIC 2013-378

March 26, 2014

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, April 23, 2014.** 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 11, 2014***. 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 April 11, 2014***. **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 11, 2014***, 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

W. Paradis
Acting Clerk of the Commission

Notice to: Richard Swan
Henry J. Zaccardi, Esq.

2014-03-26/FIC# 2013-378/Trans/wrbp/CAL//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Richard Swan,

Complainant

against

Elsa Payne, Chairman, Water Pollution Control Authority, Town of Old Saybrook; and Water Pollution Control Authority, Town of Old Saybrook,

Respondents

Report of Hearing Officer

Docket #FIC 2013-378

March 13, 2014

The above-captioned matter was consolidated for hearing with Docket #FIC 2013-392; Richard Swan v. Chairman, Water Pollution Control Authority, Town of Old Saybrook; and Water Pollution Control Authority, Town of Old Saybrook. Both matters were heard as contested cases on December 2, 2013 and January 27, 2014, at which times the complainant and the respondents appeared, presenting testimony and argument on the complaint.

By letters dated March 25 and May 23, 2013, the complainant, based on twenty numbered items, requested an extensive array of records concerning a septic system improvement project that seemed likely to result in an assessment for the complainant substantially in excess of original estimates. By the date of the first hearing, the respondents had repeatedly met and corresponded in considerable detail with the complainant, as summarized in the January 13, 2014 affidavit of Melissa S. Lewis, on file as Respondents' Exhibit C. Notwithstanding the very limited administrative staff of the respondent Authority, the respondents had also provided a substantial quantity of records to the complainant, as reflected in Respondents' Exhibit B (held in a large ring, loose leaf binder).

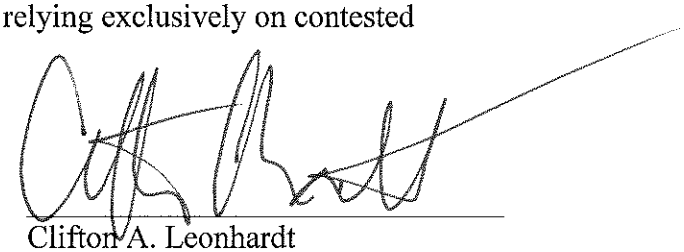
The December 2, 2013 hearing provided the complainant an opportunity to cross examine the respondents' witness concerning records not yet produced. Between hearings, the parties met again to continue working cooperatively concerning questions regarding the existence, identification and search for certain records, including some records beyond the scope of the original requests. The hearing officer also reviewed in camera records withheld from the complainant and confirmed the respondents' contention that the in camera records were exempt from mandatory disclosure pursuant to the attorney-client privilege.

By the January 27, 2014 hearing, the only remaining contested matter between the parties was the issue of public records on the personal computer of Eugene Evangelisti, who by the first hearing date had left the employment of the respondent Authority. The parties agreed that the First Selectman, Town of Old Saybrook, would write Mr. Evangelisti and request that he provide relevant emails to the respondents for production to the complainant. By email dated and filed with the Commission on February 21, 2014, the complainant stated that he received thirteen additional emails as a result of this process. Upon also receiving the written statement of Mr. Evangelisti that he believed that the complainant had all relevant emails from his personal computer, the complainant, by email dated and filed with the Commission on February 25, 2014, requested that his complaint in the above captioned matter be withdrawn.

The following orders by the Commission are hereby recommended on the basis of the record:

1. Based on the withdrawal of the complaint, the case is hereby dismissed.

2. The Commission commends both the complainant and the respondents on having worked cooperatively through the far flung records requests in this case in a manner that provided public records to the complainant much more quickly than would have resulted from relying exclusively on contested adjudication.



Clifton A. Leonhardt
as Hearing Officer

FIC2013-378/HOR/CAL/03132014