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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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David LeBlanc,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-439

Chairman, Housing Authority, Town of  
Watertown; Executive Director, Housing  
Authority, Town of Watertown; and Housing  
Authority, Town of Watertown,  
Respondent(s)

May 2, 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 28, 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 May 14, 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 May 14, 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 May 14, 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  
Acting Clerk of the Commission

Notice to: David LeBlanc  
Franklin G. Pilicy, Esq.

2014-05-02/FIC# 2013-439/Trans/wrbp/VRP//TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by  
David LeBlanc,

Report of Hearing Officer

Complainant

against

Docket #FIC 2013-439

Patricia Norman, Executive Director,  
Housing Authority of the Town of Watertown;  
Chairman, Housing Authority, Town of  
Watertown; Executive Director, Housing  
Authority, Town of Watertown; and Housing  
Authority, Town of Watertown

Respondents

May 1, 2014

The above-captioned matter was heard as a contested case on March 17, 2014, at which time the complainant appeared and presented testimony, exhibits and argument on the complaint. The respondents failed to appear.

On September 18, 2013, six months before the hearing in this matter, the complainant amended his complaint in this matter to request the imposition of civil penalties against Patricia Norman, Executive Director, Housing Authority of the Town of Watertown. That amendment was copied to all the respondents, including Ms. Norman, and no party objected to the amendment. The caption of this case has therefore been amended to add her as a respondent.

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 letter of complaint filed July 18, 2013, the complainant appealed to the Commission, alleging, among other matters not pursued by the complainant at the hearing, that the respondents violated the Freedom of Information ("FOI") Act by denying him the right to inspect public documents, despite the complainant's two detailed written requests. The complainant requested, as relief, that the respondents be ordered to provide the documents for review, that the respondent Watertown Housing Authority (the "WHA") be required to attend a mandatory FOI training session, and that the respondent Housing Authority be instructed to abide by all FOI laws.
3. It is found that the complainant, by email dated July 11, 2013 to the respondent Executive Director, requested to review the following records:

- a. All bid documents opened by the Watertown Housing Authority at the July 10, 2013 meeting regarding the Landscaping and Snow Plowing Bid. "This is a request for all records contained in the sealed envelopes. This would include but is not limited to bids, references, equipment, list cover letter;"
- b. All pre-award communications between the Watertown Housing Authority and any and all prospective bidders regarding the Landscaping and Snow Plowing bid;
- c. All 'no quotes' received by the Watertown Housing Authority regarding the Landscaping and Snow Plowing Bid;
- d. All records sent or received by the Watertown Housing Authority regarding any and all newspaper advertisements for the Landscaping and Snow Plowing bid; and
- e. All records pertaining to the 2013 Watertown Housing Authority audit performed by Maletta & Co.

4. It is found that the complainant did not ask at that time for any copies to be made.

5. It is found that all of the requested records were discussed at the July 10, 2013 Watertown Housing Authority regular meeting, and were available to the respondents at that meeting.

6. Specifically, with request to paragraph 3.e, above, it is found that the complainant sought to review the documents contained in a white box left for the respondents by auditors at the WHA July 10, 2013 meeting.

7. It is found that the auditor, while making his presentation at the July 10, 2013 meeting, told the respondents that "I have something that I can leave with you .... It makes it a little easier to follow," and pointed to a white box on the meeting table that he stated he would leave with the respondents. It is found that the box was left on the table and later placed at the open seat to the left of the WHA administrative assistant while the auditors were leaving the meeting.

8. It is found that the box was approximately four inches deep with documents lying flat in the box.

9. It is found that by email dated July 15, 2013 the respondent Executive Director offered to make the requested documents available for review on Tuesday, July 16 or Wednesday July 17, and asked the complainant to let her know the time he planned to come into the office so that staff might be available to make any copies he requested.

10. It is found that the WHA office is open Monday through Friday 8:00 a.m. to 12:00 p.m.

11. It is found that the complainant had previously reviewed documents at the WHA office numerous times since May 2011, and had never been asked to make an appointment. It is further found that there had always been someone in the office during regular offices\ hours during all the times he visited the WHA office.

12. It is found that the complainant visited the WHA office on July 16, 2013. He was satisfied with the documents offered in response to his request as described in paragraph 3.a through 3.d, above, but believes that the documents offered in response to his request as described in paragraph 3.e, above, were not complete.

13. Specifically it is found that he informed Executive Director Norman by email dated July 17, 2013, that he wished to review all the contents of the white box described in paragraphs 6 and 7, above.

14. It is found that, by email dated July 18, 2013 to the complainant, the respondent Executive Director asserted that she had provided him "with all pertinent documents regarding the Auditor's Report."

15. It is found that the complainant, at the request of WHA Chairman Mark Raimo, met with the Chairman and WHA attorney Franklin Pilicy on July 22, 2013 to discuss the complainant's July 18, 2013 complaint in this matter.

16. It is found that, a week following the July 22 meeting, attorney Pilicy wrote the respondent Norman asking her to "fully comply with all requests for copies of Authority documents of any nature."

17. Having still not received the documents almost two months later, the complainant repeated his request to Norman at the WHA September 11, 2013 meeting.

18. It is found that the complainant, having waited another seven days after the September 11 meeting, emailed, on September 18, 2013, an amendment to his complaint with this Commission, requesting that a civil penalty be imposed against the respondent Norman. It is found that the email was copied to all parties, including Ms. Norman, and that no objection was received by the Commission to the amendment.

19. It is found that the respondent Norman, an hour and fifteen minutes after the complainant filed and served his request for civil penalties against her, emailed the complainant, and informed him that the records he had requested were now available for review.

20. It is found that the complainant arrived at the WHA offices a half hour after the email from Ms. Norman, and was handed a set of documents that Ms. Norman described as "this is what was in the white box."

21. It is found, based on the video recording of the meeting put into evidence by the complainant, that the box contained many more documents than the 30 pages that were provided to the complainant on September 18, 2013.

22. 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.

23. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

24. 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.”

25. It is found that the requested documents contained within the white box are public records within the meaning of §§1-200(5) and 1-210(a)(1), G.S.

26. The complainant first asserts that the documents were not provided promptly.

27. With respect to the general question of promptness, the meaning of the word “promptly” is a particularly fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) the Commission advised that the word “promptly” as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

28. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

29. It is found that a substantial number of documents were requested, but that at the time of, or shortly before, the request, the documents in the white box were all located together. It is therefore found that the number of documents requested was not an impediment to immediate delivery.

30. It is found that the time and personnel required to comply with the request was minimal, as the documents were all collected together in one box.

31. It is found that the complainant communicated to the respondents his immediate desire for the documents, asking for them only one day after they were provided to the respondents at a public meeting.

32. It is found that the respondents offered no evidence of time constraints they were under to complete other work.

33. It is found that the requested records were very important to the complainant.

34. It is found that the respondents offered no evidence of the importance to the public of completing other agency business without the loss of the personnel time involved in complying with the request.

35. It is concluded that the requested records in the white box were not provided promptly, and that the respondents thereby violated §1-210(a), G.S.

36. With regard to the completeness of the records provided to the complainant, it is found that the thirty pages provided to the complainant were not the entire contents of the white box.

37. It is therefore concluded that the respondents violated §1-210(a), G.S., by not providing the complainant with all of the requested records.

38. With respect to the complainant's request for the imposition of civil penalties, §1-206(b)(2), G.S., provides in relevant part:

... upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

39. The standard for when a violation is "without reasonable grounds" is analogous to the legal standard "without any substantial justification." Connecticut Department of Public Safety v. FOIC, et al., 1997 WL 537117 (Conn. Super.), affirmed, 247 Conn. 341 (1998). Similarly, the phrase "without reasonable justification" has been construed to mean "entirely unreasonable or without any basis in law or fact." Id., quoting Bursinkas v. Department of Social Services, 240 Conn. 141, 155 (1997).

40. It is found that the respondent Norman is the official directly responsible for the denial of the complainant's right to inspect public records promptly.

41. It is found that the respondent Norman was given an opportunity to be heard.

42. It is found that the respondent Norman provided no reasonable grounds for the violations described above.

43. It is further inferred from the facts on the record, including the failure of the respondent Norman to provide the records even after requested by her own counsel, that the respondent Norman lacked reasonable grounds to delay and withhold records from inspection by the complainant.

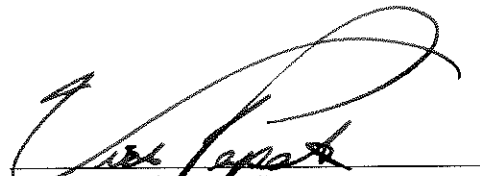
44. It is therefore concluded that the respondent Norman violated the FOI Act without reasonable grounds.

45. The Commission believes that a civil penalty would have a deterrent effect in this case. The Commission is specifically concerned that significant adverse consequences flow from unreasonable violations of the FOI Act in such basic areas as access to inspect public records that are already collected in one file and are of current relevance to an issue before the agency and of legitimate interest to a citizen.

46. With respect to the complainant's request that the respondents be required to attend an educational workshop, the Commission in its discretion declines to order such attendance, on the grounds that Ms. Norman was the sole source of the FOI Act violation in this case.

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

1. A civil penalty in the amount of \$100.00 is imposed against the respondent Norman.
2. The respondents shall forthwith make available to the complainant, for his inspection, the documents contained in the white box described in the findings above.



Attorney Victor R. Perpetua  
as Hearing Officer