



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Lauren Cragg,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-452

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

April 23, 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: Lauren Cragg
John W. Bradley, Jr., Esq.

2014-04-23/FIC# 2013-452/Trans/wrbp/MS/PSP/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Lauren Cragg,

Complainant

Docket # FIC 2013-452

against

First Selectman, Town of Marlborough; and
Town of Marlborough,

Respondents

April 23, 2014

The above-captioned matter was heard as a contested case on January 14, 2014 at which time the complainant and respondents appeared, stipulated to certain facts 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 May 22, 2013, the complainant made a written request to the respondents for copies of:

[a] A copy of any and all statements/opinions from the Town Attorney- James Bradley – explaining the status of the Amended Budget Vote on May 13, 2013[;]

[b] A copy of any and all statements/opinions regarding the Amended Budget vote from [t]he Town's Bond Council [;]

[c] A copy of the billing records for all attorneys working for the town, from 1/1/2013 through 5/22/2013 [; and]

[d] A copy of all emails between yourself and Evelyn Godbout, Chairman of the Board of Finance from 1/1/2013 through 5/22/2013.

3. It is found that, by letter dated May 28, 2013, the respondents informed the complainant that they would comply with her request for copies of the requested legal bills from attorneys working for the Town and for copies of emails between the First Selectman and the Chairman of the Board of Finance. However, the respondents asserted that the legal opinions themselves are privileged communications exempt from disclosure pursuant to §1-210(b)(10), G.S. They also advised that they would need additional time to gather the requested records and expected to have the billing records and emails ready for the complainant by the following Monday.

4. It is found that, by letter dated June 4, 2013, the respondents notified the complainant that 57 pages of documents including unredacted billing records and emails between the First Selectman and the Chairman of the Board of Finance were available for pick-up with the Town Clerk upon payment of \$28.50.

5. It is found that, by letter dated June 22, 2013, the complainant informed the respondents that she picked up the documents described in paragraphs 3 and 4, above, and that some billing records were missing for May 2013. In addition, she reiterated her request for the legal opinions described in paragraph 2, above.

6. It is found that, by letter dated June 26, 2013, the respondents informed the complainant that they had yet to receive billing records for May 2013 and would make copies available to the complainant with privileged information redacted once they were in receipt of the bills. In addition, the respondents claimed that the requested legal opinion is a privileged communication exempt from disclosure under the Freedom of Information (“FOI”) Act. It is further found that the legal opinion referenced in the respondent’s June 26th letter is the only record responsive to the complainant’s requests for legal opinions described in paragraph 2, above.

7. It is found that, by letter dated July 3, 2013, the respondents notified the complainant that an additional nine pages of documents were available for pick-up upon payment of \$4.50. It is further found that such documents were copies of redacted billing records.

8. By email dated July 23, 2013, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide her with all records responsive to her records request described in paragraph 2, above.

9. Section 1-200(5), G.S., defines “public records or files” as:

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.

10. 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.

11. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

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

13. At the conclusion of the hearing, the respondents submitted to the Commission for in camera review the following: four sets of redacted and unredacted copies of billing records (totaling eight pages each) and three unredacted copies of a two-page legal opinion.

14. The respondents claim that the redacted portion of the billing records and legal opinion, described in paragraph 13, above, 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.”

15. 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.

16. 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. . . .

17. 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.

18. In the context of an attorney’s billing records, the Commission notes that it is generally accepted that an attorney billing statement and time records are protected by the attorney-client privilege only to the extent that they reveal litigation strategy and/or the nature of the services performed. See Bruno v. Bruno, FA0540049006S, 2009 Conn. Super. LEXIS 1913, at *3 (Conn. Super. Ct. July 10, 2009). “[T]he identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege. . . . However, . . . bills . . . and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law, fall within the privilege.” Id. at *5; see also New Haven v. FOIC, et al., 4 Conn. App. 216, 220, 493 A.2d 283, 285 (1985) (trial court found, after conducting an in camera review of the billing records, that there was nothing in such records to suggest they came within the purview of the attorney-client privilege).

19. After careful inspection of the billing records submitted in camera, it is found that within the billing records are detailed, dated entries describing the nature of the work being performed, including, but not limited to, the focus of legal research. It is found that such entries within the billing records substantively describe a particular attorney’s legal activity, and thus “the specific nature of the services [being] provided [to a client].” Bruno, 2009 Conn. Super. LEXIS 1913, at *3. It is concluded that the information contained in the descriptive section of the billing records falls within the protection of the attorney-client privilege and is exempt from disclosure. It is therefore concluded that the respondents did not violate the FOI Act by disclosing the billing records to the complainant in redacted form.

20. With regard to the legal opinion, the complainant argues that the respondents waived the attorney-client privilege with respect to such opinion because the respondent First Selectman disclosed the substance of the legal opinion at a Board of Finance Meeting on May 16, 2013.

21. It is found that the respondent First Selectman requested a legal opinion from the town attorney regarding the vote taken on the budget at the May 13, 2013 Annual Town Meeting. It is found that a copy of the legal opinion was provided only to the respondent First Selectman.

22. It is found that on May 16, 2013, the respondent First Selectman appeared before the Board of Finance at a public meeting. It is also found that during her presentation the First Selectman referred to and discussed the legal opinion provided by, and her conversations with, legal counsel pertaining to the approval of the budget vote on May 13, 2013. It is further found that the First Selectman, at times, paraphrased the advice that was provided to her by counsel, and at other times, used the exact language written by counsel in the legal opinion.

23. It is found that the legal opinion is a written communication transmitted in confidence between counsel and public officials or other employees acting within the scope of their employment with the respondent agency. It is further found that the records relate to legal


advice sought by the public agency from its attorney, received by the public officials acting on behalf of the agency from its attorney.

24. It is further found, however, that the respondents waived the attorney-privilege during the course of the First Selectman's presentation to the Board of Finance at its May 16th meeting. See Docket #FIC 1993-194; Timothy J. Riordan v. Superintendent, Orange Public Schools and Orange Board of Education (respondents waived the attorney-client privilege by reading portions of a letter prepared by counsel during the course of a public meeting).

25. It is therefore concluded that the legal opinion is not exempt from disclosure pursuant to §1-210(b)(10), G.S., and the respondents violated the provisions of §1-210(b)(a), G.S., by failing to provide the complainant with a copy of the legal opinion.

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

1. Forthwith, the respondents shall provide the complainant with copies of the legal opinion, described in paragraph 13, above.



Commissioner Matthew Streeter
as Hearing Officer