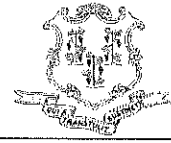


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FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2013-530

Commissioner, Department of Human
Resources, Town of West Haven; and
Department of Human Resources, Town of
West Haven,

Respondent(s)

May 7, 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: Nancy Rossi
Peter C. Barrett, Esq.

2014-05-07/FIC# 2013-530/Trans/wrbp/LFS//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Nancy Rossi,

Complainant

against

Docket #FIC 2013-530

Commissioner, Department of Human
Resources, Town of West Haven; and
Department of Human Resources, Town of
West Haven,

Respondents

April 21, 2013

The above-captioned matter was heard as a contested case on April 11, 2014, at which time the complainant and the 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 on August 8, 2013, the complainant requested to inspect the personnel file of Clifford Blackwood, except for medical information and social security numbers.
3. It is found that upon receipt of the complainant's request, the respondents notified Mr. Blackwood of the request.
4. It is found that on August 12, 2013, Mr. Blackwood stated in writing that he objected to disclosure of his personnel file. It is found that the respondents then informed the complainant that, due to Mr. Blackwood's objection, they were unable to disclose the records until ordered to do so by the Freedom of Information ("FOI") Commission.
5. By letter filed September 5, 2013, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide her with the records she requested.
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, ...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:

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.

8. It is concluded that the records requested by the complainants are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. Section 1-210(b)(2), G.S., provides in relevant part that nothing in the FOI Act shall require the disclosure of "personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy. . . ."

10. Section 1-214(b), G.S., provides in relevant part:

Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned . . . and (2) the collective bargaining representative, if any, of each employee concerned. Nothing herein shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy. (Emphasis added.)

11. Section 1-214(c), G.S. provides in relevant part:

A public agency which has provided notice under subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned ... within seven business days from the receipt by the employee ... Each objection filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee ... under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. Upon the filing of an objection as provided in this

subsection, the agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206.

12. It is found that, as described in paragraph 3, above, upon receipt of the complainant's request, the respondents notified the employee, Mr. Blackwood, who lodged an objection to disclosure, and the respondents consequently refused to disclose the requested records, as required by §1-214(c), G.S.

13. It is found that Mr. Blackwood's written objection failed to conform to the requirements of §1-214(c), G.S., in that it was not signed under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay.

14. In addition, it is found that prior to notifying Mr. Blackwood of the complainant's request, the respondents did not review the records to assess whether it was reasonable to believe that disclosure of such records would legally constitute an invasion of privacy.

15. It is therefore found that the respondents failed to prove that they had a reasonable belief that the disclosure of Mr. Blackwood's personnel file would legally constitute an invasion of his privacy, as required by §1-214(b), G.S.

16. It is concluded that the respondents violated §1-214(b), G.S., by failing to review the requested records, prior to notifying Mr. Blackwood, to determine whether it was reasonable to believe that disclosure would constitute an invasion of privacy failure to adhere to the procedure set forth in §1-214(b), G.S.

17. It is found that the respondents no longer employ Mr. Blackwood.

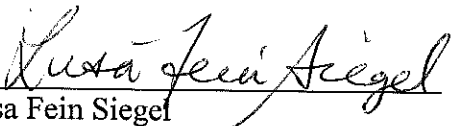
18. It is found that the respondents twice attempted to notify Mr. Blackwood by certified mail of the complainant's appeal to the Commission, without success. It is also found that Mr. Blackwood did not move to intervene in this matter.

19. At the hearing in this matter, the respondents stated that they do not believe that disclosure of the personnel records would constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S.

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

1. The respondents shall permit the complainant to inspect the personnel file of Clifford Blackwood, except for medical information and social security numbers.

2. Henceforth, the respondents shall strictly comply with the requirements of §§1-210(a), and 1-214(b), G.S.



Lisa Fein Siegel
as Hearing Officer

FIC2013-530HOR/LFS/04212014