



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2013-525

Mayor, City of Bridgeport; and City of
Bridgeport,
Respondent(s)

May 16, 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, June 11, 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 30, 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 30, 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 30, 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: Ethan Book
Gregory M. Conte, Esq.

2014-05-16/FIC# 2013-525/Trans/wrbp/TCB//PSP

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Ethan Book,

Complainant

against

Docket #FIC 2013-525

Mayor, City of Bridgeport;
and City of Bridgeport,

Respondents

May 13, 2014

The above-captioned matter was heard as a contested case on February 19, 2014, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

At the conclusion of the hearing in this matter, pursuant to §1-21j-38 of the Regulations of Connecticut State Agencies, the hearing officer requested that the respondents submit, as after filed exhibits, an affidavit from the two members of the respondents' staff who conducted the search for the records at issue in this case. The complainant did not object. On February 27, 2014, the respondent submitted one exhibit which has been marked as follows:

Respondents' Exhibit 3: Affidavit of Shakira Simpson and the Affidavit of Margo Litz (although captioned affidavit of Shakira Simpson) both dated February 27, 2014 with attachments.

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 marked "received" by the respondents on August 13, 2013, the complainant made a request to the respondent Mayor for the following:

- a. "A copy of the City Council meeting minutes wherein there was approval for City membership in International Council on Local Environmental Initiatives (ICLEI);
- b. A copy of the initial membership agreement between the City of Bridgeport and ICLEI (hereinafter "agreement");
- c. That documentation which evidences the amount of annual dues for membership in ICLEI;
- d. A copy of a carbon emissions inventory which is known to have been completed during about 2008;
- e. A copy of the City Council meeting minutes wherein there was approval for City participation in the ICLEI Climate Resilience campaign; and
- f. A copy of the documentation which reflects the City's participation in the ICLEI Climate Resilience campaign."

3. It is found that by letter dated August 20, 2013, the respondents informed the complainant that his request had been received and was under review.

4. However, by letter date September 1, 2013, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with his request.

5. 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.

6. Section 1-206(a), G.S., provides in relevant part that:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request

is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

7. 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, (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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

8. 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. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy.”

9. It is found that the requested records, to the extent they exist, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. It is found that upon receipt of the Commission’s notice of a complaint, the respondents responded to the complainant’s request by letter dated November 18, 2013, as follows:

- a. “Matter did not go before City Council, document does not exist;
- b. Available upon receipt of payment (2 pages @ \$.50 per page);
- c. Available upon receipt of payment (1 page @ \$.50 per page);
- d. Report is available. The total cost of the document is \$77.00 (154 pages @ \$.50 per page). A \$25.00 deposit will be required before copying;
- e. Matter did not go before City Council, document does not exist; and

- f. Available upon receipt of payment (2 pages @ \$.50 per page).”

The respondents informed the complainant that upon receipt of payment, the documents would be forwarded to him.

11. It is found that by check dated November 22, 2013, the complainant submitted the required \$25.00 deposit for the Carbon Emission Report and the additional \$2.50 payment for the responsive records described in paragraphs 2b and 2f, above.

12. By letter dated November 22, 2013, the respondents provided the complainant with the records responsive to paragraphs 2b, 2c and 2f, above, which were two records totaling three pages even though he provided payment for five pages.

13. The complainant submitted payment for the balance of the requested records by check dated November 25, 2013, and was provided with a copy of Carbon Emissions inventory report.

14. At the hearing on this matter, the complainant contended that he was not provided with a copy of the agreement and that while he was eventually provided with responsive records, the respondents were still in violation of the FOI Act for failing to promptly comply with his request.

15. With respect to the complainant's request for the agreement, the respondents' counsel represented at the hearing on this matter, and it is found, that the respondents maintain one two-page record responsive to the complainant's request described in paragraphs 2b and 2f, above, even though the respondents' November 18, 2013 letter implies that there were two separate records responsive to those requests.

16. Consequently, the complainant was over charged by a dollar for a copy of the responsive records.

17. With respect to the complainant's contention that the respondents were not prompt in complying with his request, the Commission has held that the meaning of the word "promptly" is a particularly fact-based question. 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.

18. 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.

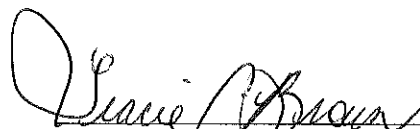
19. It is found that while there is evidence in the record that the respondents were without one of their more experienced staff members when it received the complainant's records request and that they had no reason to know that his request was time sensitive, there is no evidence in the record to explain:

- a. why the respondents did not begin work on the request until a week after it was received;
- b. why instructions on how to proceed with a search for the records were not followed for another week after the instructions were issued; or
- c. why there was almost a three month laps in any efforts to search for the records.

20. Consequently, it is found that the respondents unduly delayed complying with the complainant's request. Accordingly, it is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), 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 forthwith reimburse the complainant one dollar.
2. Henceforth, the respondents shall strictly comply with all the provisions of §§1-210(a) and 1-212(a), G.S.



Attorney Tracie C. Brown
as Hearing Officer