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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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Theda Lambert,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-746

Director of Human Resources, Human
Resources Department, Town of New Fairfield;
Human Resources Department, Town of New
Fairfield; and Town of New Fairfield,
Respondent(s)

July 17, 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, August 13, 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 August 1, 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 August 1, 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 August 1, 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

Wendy Paradis
Acting Clerk of the Commission

Notice to: Theda Lambert
John F. Keating, Jr., Esq.

2014-07-17/FIC# 2013-746/Trans/wrbp/VDH/TCB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Theda Lambert,

Complainant,

against

Docket #FIC 2013-746

Director of Human Resources, Human
Resources Department, Town of New
Fairfield; Human Resources Department,
Town of New Fairfield; and Town of
New Fairfield,

Respondents

July 17, 2014

The above-captioned matter was heard as a contested case on June 24, 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, by email dated December 2, 2013, the complainant requested that the respondents provide her with copies of “applications for the Director of Finance position, [with] . . . personal information such as social security numbers [redacted].”
3. It is found that, by email dated December 3, 2013, the respondents denied the request, asserting that the requested records were applications submitted for an executive level position, and that such applications had been provided to a personnel search committee.
4. By letter dated and filed December 3, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act (“FOI Act”) by denying her copies of the requested records.
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 1-210(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.

7. 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. . . .

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

9. It is found that the respondents maintain the records described in paragraph 2, above, and it is therefore concluded that such records are “public records” and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

10. The respondents contend that the records described in paragraph 2, above, are exempt from mandatory disclosure pursuant to §1-213(b)(2), G.S., which provides in relevant part that:

Nothing in the Freedom of Information Act shall be deemed in any manner to . . . [r]equire disclosure of any record of a personnel search committee, which, because of name or other identifying information, would reveal the identity of an executive level employment candidate without the consent of such candidate.

11. Section 1-200(7), G.S., defines “personnel search committee,” as “a body appointed by a public agency, whose sole purpose is to recommend to the appointing agency a candidate or candidates for an executive-level position.”

12. The complainant contends, as follows: first, that there is no public record evidencing or memorializing that the respondents created a personnel search committee, and, second, that, when the complainant made her records request, she was informed by the respondents that there

was a personnel search committee comprised of one individual. The complainant also contends that a single person cannot constitute a personnel search committee.

13. It is found that, in 2013, the Town of New Fairfield needed to fill the Director of Finance position. It is also found that the First Selectman of New Fairfield is the hiring and appointing authority for the town.

14. It is found that the First Selectmen appointed the respondent Director as the only member of the "personnel search committee." It is found that, the respondent Director began preparing a vacancy notice, which described the position and the required qualifications.

15. It is found that, once the vacancy notice was completed by the respondent Director, it was reviewed by the First Selectman. Thereafter, it is found that the vacancy notice was posted.

16. At the time the vacancy notice was posted, it is found that the single-member "personnel search committee" comprised of only the respondent Director was expanded to include the First Selectman, and the Superintendent of Schools.

17. It is found that interested candidates submitted their application packages to the respondent Director, who then processed the application packages and forwarded them to the two other committee members. It is found that the respondent Director received and processed twenty application packages.

18. It is found that, once the application process ended, the three-member "personnel search committee" reviewed the twenty application packages and narrowed the application pool down to six candidates. It is found that one of the six candidates ultimately withdrew his application.

19. Thereafter, it is found that the three-member "personnel search committee" was expanded to a six-member "personnel search committee," consisting of the following individuals: the Town Treasurer; the Chairman of the Board of Finance; the First Selectman; a member of the Board of Selectman, an Auditor and the Superintendent of Schools. It is found that the purpose of this committee was to conduct interviews, select three finalists for second interviews, conduct a second round of interviews, and, thereafter, to rank the three finalists. It is found that this "personnel search committee" completed its tasks.

20. It is found that that the First Selectman offered the position to the candidate with the highest ranking. It is found that the candidate to whom the position was offered accepted the position. Thereafter, it is found that the First Selectman reported the applicant's acceptance of the position to the Board of Selectman and to all other interested boards with whom the new Director of Finance would interface.

21. It is found the "personnel search committee," in its various iterations, described in paragraphs 14, 16, and 19, above, functioned solely to seek out, interview and select a candidate for the position of Director of Finance.

22. It is found that the position of Director of Finance is an executive level employment position, within the meaning of §§1-200(7) and 1-213(b)(2), G.S.

23. It is found that the committee described in paragraphs 14, 16, and 19, above, is personnel search committee, within the meaning of §1-200(7), G.S.

24. It is found that the records described in paragraph 2, above, are records of a personnel search committee, with the meaning of §1-213(b)(2), G.S. It is further found that the respondents maintained the requested records in their capacity as members of a personnel search committee.

25. With regard to the complainant's contention that the fact that there is no public record of the creation of the personnel search committee invalidates the committee's legitimacy, there is no requirement that a public agency appoint the member or members of a personal search committee on the record of a public meeting, or that modifications of a personnel search committee be conducted in public. However, the respondents would be wise to consider making such appointments (and modifications) during open, public meetings so that there is a clear record of who has been appointed to such committees and by whom, and when such appointments occurred.

26. It is found that the records at issue, because of names or other identifying information, constitute records that would reveal the identifies of candidates for executive level employment within the meaning of §1-213(b)(2), G.S. It is also found that the respondents do not have the consent of any of the candidates to reveal their identities. In fact, it is found that all of the candidates who applied for the position of Director of Finance, but who were not selected for the position, objected to their identities being revealed.

27. Accordingly, it is concluded that, pursuant to §1-213(b)(2), G.S., the respondents are not required to disclose the records described in paragraph 2, above.

28. It is further concluded that the respondents did not violate the FOI Act by refusing to provide the complainant with the records described in paragraph 2, above.

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

1. The complaint is dismissed.



Valicia Dee Harmon
as Hearing Officer