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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

William Robinson and the Water Pollution  
Control Authority of Bridgeport,  
Complainant(s)

against

First Selectman, Town of Trumbull; Sewer  
Administrator, Town of Trumbull; and Town of  
Trumbull,

Respondent(s)

Notice of Rescheduled  
Commission Meeting

Docket #FIC 2012-408

September 16, 2014

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, September 24, 2014 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, November 19, 2014.**

Any brief, memorandum of law or request for additional time, as referenced in the September 12, 2014 Transmittal of Proposed Final Decision, must be received by the Commission on or before October 13, 2014.

By Order of the Freedom of  
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: John P. Casey, Esq. and Christopher J. Hug, Esq.  
Edward V. Walsh, Esq.

2014-09-16/FIC# 2012-408/ReschedTrans/wrbp/LFS//KKR

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William Robinson and the  
Water Pollution Control Authority of Bridgeport,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-408

First Selectman, Town of Trumbull; Sewer  
Administrator, Town of Trumbull; and Town of  
Trumbull,

Respondent(s)

September 12, 2014

## Transmittal of Proposed Final Decision dated September 12, 2014

In accordance with Sections 4-179 and 4-183(h) of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision September 12, 2014 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, September 24, 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 September 19, 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 September 19, 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 September 19, 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: John P. Casey, Esq.; Christopher J. Hug, Esq.;  
and Edward V. Walsh, Esq.

2014-09-12/FIC# 2012-408/Trans/wrbp/LFS//KKR

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer on  
Remand

William Robinson and the Water Pollution  
Control Authority of Bridgeport,

Complainants

against

Docket #FIC 2012-408

First Selectman, Town of Trumbull; Sewer  
Administrator, Town of Trumbull; and  
Town of Trumbull,

Respondents

September 12, 2014

The above-captioned matter was heard as a contested case on February 21, 2013, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

At the hearing in this matter, the respondents claimed that the requested records (as described in paragraph 2, below) were exempt from disclosure pursuant to §§1-210(b)(2), (4), (5), and 1-217, G.S. On May 8, 2013, the Commission adopted a final decision in this matter, which concluded that the respondents failed to prove any of the exemptions. The Commission ordered the respondents to disclose the records. Notice of such final decision was mailed to the parties on May 9, 2013.

The respondents filed an appeal of the final decision with the Superior Court on June 17, 2013. On appeal, the respondents raised two claims. First, they asserted that §1-210(b)(4), G.S., exempted the requested records as records of strategy or negotiation with respect to pending litigation. By order dated May 16, 2014, the Superior Court rejected the respondents' claim and affirmed that portion of the Commission's decision.

The respondents' second claim on appeal was that §1-210(b)(5), G.S., exempted the requested records as trade secrets. By order dated May 16, 2014, the Superior Court concluded that it was error for the Commission to find that the requested records did not constitute a customer list within the meaning of §1-210(b)(5), G.S. The Court reversed the Commission's decision and remanded this matter to the Commission for further proceedings on the issue of whether §1-210(b)(5), G.S., exempts the requested records trade secrets.

After consideration of the entire record, the following facts are found and conclusions of law are reached with respect to the respondents' claim that §1-210(b)(5), G.S., exempts the requested records from mandatory disclosure:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that on June 28, 2012, the complainants requested, “in electronic form, [a copy of] the database of Trumbull wastewater customers of the [respondents’] system, including names and addresses.”
3. By letter filed July 23, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the records they requested.
4. 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.
5. 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, ... or (3) receive a copy of such records in accordance with section 1-212.
6. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”
7. It is found that the respondents maintain the records requested by the complainants and it is concluded that such records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.
8. It is found that in 1997, the complainant Water Pollution Control Authority (“WPCA”) and the respondent town of Trumbull entered into an agreement by which the WPCA provided wastewater treatment services for approximately 9,600 properties in Trumbull and Trumbull paid a user charge to the WPCA. It is found that the WPCA is the only wastewater facility available for the 9,600 properties in Trumbull.
9. It is found that pursuant to the agreement, the WPCA assesses a negotiated “discounted” price for the Trumbull properties. It is found that the WPCA does not bill the Trumbull users directly; instead, it sends a bill for the total amount to Trumbull, which pays the

WPCA's bill and then collects fees from the 9,600 properties that use the WPCA facilities. It is found that Trumbull collects the "discounted" price set by the WPCA plus an additional amount that Trumbull applies to its own infrastructure maintenance.

10. It is found that on May 2, 2012, the WPCA sought to terminate the agreement effective June 30, 2012, and to negotiate a new agreement in its place. It is found that Trumbull objected to WPCA's plans, and that the dispute is currently in arbitration. It is found that during the arbitration, the WPCA continues to provide sewer treatment for the Trumbull properties and to bill Trumbull for such services.

11. It is found that Trumbull contracted with a third-party, Computil, to provide billing services to Trumbull. It is found that Trumbull's assistant tax collector enters on Computil's software the names and addresses of the property owners that use the WPCA's facilities. It is found that the assistant tax collector receives the names and addresses of the relevant property owners from the sewer department. It is found that Computil maintains the electronic database and uses it to generate billing.

12. It is found that to duplicate the electronic database, one would need to cross-reference and reconcile three separate paper files: one that contains more than 10,000 addresses of sewer laterals (the connection of the pipe coming to the property line), a second that contains approximately 9,600 addresses of properties that are actually connected to the laterals, and a third file containing the Grand List, used to determine current property ownership. It is found that Trumbull's sewer department compiled and updates that information and provides it to the assistant tax collector for entry into the Computil software system.

13. It is found that the complainants seek the Computil electronic database and not the underlying paper files. It is found that the database contains other information, such as billing history, but the complainants seek only the names and addresses.

14. Section 1-211(a), G.S., provides:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person ... if the agency can reasonably make any such copy or have any such copy made.

15. It is found that it would not be difficult to segregate the information that the complainants seek (the names and addresses) from the other information contained in the electronic database.

16. It is found that the respondents can reasonably make a copy of nonexempt data contained in the electronic records, within the meaning of §1-211(a), G.S.

17. For purposes of this Decision, “electronic database” hereinafter refers to the names and addresses of property owners that are the Trumbull wastewater users of the WPCA system, and not to billing history or other information.

18. It is found that the respondents object only to disclosure of the *electronic* database. It is found, as the respondents concede, that the paper records from which the database is compiled are open to public inspection and would be provided to the complainants were they to request the information in that form.

19. It is found that the respondents do not dispute that the electronic database is a public record of the respondents, but they claim it is exempt from disclosure § 1-210(b)(5), G.S.

20. Section 1-210(b)(5), G.S., provides in relevant part that nothing in the FOI Act shall be construed to require disclosure of:

(A) Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, or customer lists that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy[.]

21. The respondents claim the complainants can obtain economic value from disclosure of the electronic database because they would be able to direct bill the Trumbull users at full value, instead of receiving payment from the town of Trumbull at the discounted contract rate.

22. The respondents claim, in addition, that the electronic database is not readily ascertainable by proper means by the complainants because, although the database is compiled completely from public records, the database itself is not public and would be laborious and expensive for the complainants to compile.

23. A Connecticut Supreme Court case, Director, Department of Information Technology of the Town of Greenwich v. FOI Commission (“Director”), 274 Conn. 179 (2005), is instructive. In Director, the complainant requested a copy of all GIS data concerning orthography and, among other electronic records, structured query language server databases, which are “data compiled by the town for use in its tax assessment databases, which includes information about property ownership, assessed value, prior assessed value, and addresses.” *Id.*, 183, n.2.

24. The town denied the request. It contended, inter alia, that the requested records were exempt as a trade secret because the GIS database – including the structured query language server databases – “derives its economic value from not being available to members of the public ... who may use the information for their own economic gain.” Director, *supra*, 274 Conn. 194.

The FOI Commission found that the database was not a trade secret and ordered disclosure.

25. The Superior Court, too, rejected the town's assertion:

Despite the fact that [the] complainant could gain economic value from a copy of the GIS database, plaintiff's argument is without merit because a member of the public could request copies from individual departments and once assimilated gain the same economic value from their copies that complainant would from a copy of the GIS database... Open government is not promoted when the public is required to sift through voluminous documents in various departments and the municipality can counter this by push button automation.

Director, Department of Information Technology of the Town of Greenwich v. FOI Commission ("Director"), CV02-0519153, 2003 Conn. Super. LEXIS 3617, \*8 (January 2, 2004).

26. The Supreme Court affirmed:

In order to qualify for a trade secret exemption under §1-210(b)(5)(A), a substantial element of secrecy must exist, to the extent that there would be difficulty in acquiring the information except by the use of improper means... The requested GIS data in the present case, however, *is* readily available to the public, and, accordingly, it does not fall within the plain language of §1-210(b)(5)(A) as a trade secret. As the trial court noted, the GIS database is an electronic compilation of the records of many of the town's departments. Members of the public seeking the GIS data could obtain separate portions of the data from various town departments, where that data is available for disclosure. The requested GIS database simply is a convenient compilation of information that is already available to the public. The records therefore fail to meet the threshold test for trade secrets, that the information is not generally ascertainable by others." (Citation omitted; emphasis in original; internal quotation marks omitted.)

Director, *supra*, 274 Conn. 194.

27. It is found that the electronic database at issue in this case, as in Director, houses the town's assessment records. It is found that it is "merely a computerized compilation of each department's records. The public could inconveniently go to each department and request public data. The ... database is a convenience to the town so that all the departments' records can be accessed from one system. This convenience should also benefit the public." Director, *supra*, 2003 Super. LEXIS 3617 \*8.

28. It is found, in addition, that the respondents failed to prove that the complainants could gain economic value from access to the electronic database, as opposed to the paper files. It is found that economic value accrues pursuant to any contractual agreement, whether the WPCA continues to provide wastewater services, and whether the WPCA bills directly at a higher rate than the negotiated "discount" rate. It is found, moreover, that the same economic value from access would accrue to the WCPA if they compiled the user list manually from the paper records, as the WCPA stated that such a laborious and costly undertaking would most likely be passed on to the Trumbull users. Director, supra, 2003 Conn. Super. LEXIS 3617, \*8.

29. It is found that the respondents failed to prove that the electronic database of names and addresses of the Trumbull users is a trade secret.

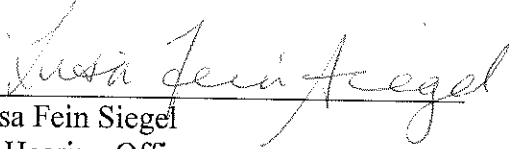
30. It is concluded, therefore, that §1-210(b)(5), G.S., does not exempt the requested records from disclosure, and the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to disclose such records to the complainants.

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 complainants with a copy of the electronic database described in paragraph 2 in the findings of fact. The respondents may redact from such records all information except the address of each property and the name and address of each property's owner.

2. The respondents may also redact the *residential* address of any property owner who has satisfied the requirements of §1-217, G.S., i.e., who has submitted a written request for nondisclosure to the respondents and provided his or her business address.

3. Henceforth, the respondents shall strictly comply with the provisions of §§1-210(a) and 1-212(a), G.S.

  
Lisa Fein Siegel  
as Hearing Officer