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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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Steven Ballok,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2014-136

John Salvatore, Chief, Police Department, Town of  
Monroe; Police Department, Town of Monroe; and Town  
of Monroe,

Respondent(s)

December 15, 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, January 14, 2015**. 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 January 2, 2015**. 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 January 2, 2015**. **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 January 2, 2015**, 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: Steven Ballok  
John Fracassini, Esq.

2014-12-15/FIC# 2014-136/Trans/wrbp/CPH/VDH/PSP

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Steven Ballok,

Complainant

against

Docket #FIC 2014-136

John Salvatore, Chief, Police  
Department, Town of Monroe;  
Police Department, Town of  
Monroe; and Town of Monroe

Respondents

December 1, 2014

The above-captioned matter was heard as a contested case on September 16, 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 February 10, 2014, the complainant sent the Chief of Police for the Town of Monroe (the "Chief of Police" or the "Chief") the following request:

I would like you to provide me with a copy of your response to my gun safety suggestions which you have distributed to the Board of Police Commissioners. You may use email, regular mail or make arrangements with me so that I may pick it up at your records office.

3. It is found that, by email dated February 11, 2014, the respondents acknowledged the complainant's request, but denied it. It is found that, at this time, the respondents informed the complainant that the Monroe Board of Police Commissioners ("Board of Police Commissioners" or the "board") was reviewing "the whole gun safety issue," and the document which was being requested was part of such review.

4. By letter dated March 5, 2014 and filed March 7, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act (“FOI Act”) by denying him access to public records. In addition, the complainant requested that the Commission consider the imposition of civil penalties again the respondents.

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 “[a]ny 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 from January 2013 through May 2013, the complainant, a former resident of the Town of Monroe, coordinated a group of local volunteers known as the “Monroe Four Freedom Project.” It is found that the Monroe Four Freedom Project engaged in a fundraising campaign for the Monroe Police Department with the goal of securing funds to purchase a Norman Rockwell print and to implement a gun safety program. It is found that the project’s fundraising campaign was approved by both the Monroe Police Department and its Board of Commissioners. It is found that that the Monroe Four Freedom Project raised more than \$7,400, with ninety percent of the money being earmarked for gun safety initiatives.

10. It is found that, subsequent to raising the money, and with five months having passed, the complainant and supporters of the Monroe Four Freedom Project, including those

who had contributed to the project financially, became concerned as they had not witnessed any monies being spent on gun safety measures. It is found that, at the November 20, 2013 meeting of the Board of Police Commissioners, the complainant orally offered some ideas on how to use the donations, and handed out a document to the board members, which listed seven recommendations on how to spend the money to implement firearm safety measures.

11. It is found that, on December 16, 2013, the Chairman of the Board of Police Commissioners sent the Chief of Police the following email:

We need to finalize a Department position on Mr. Ballick's (sic) points and move on. At tomorrow's meeting I want to have a response on each of the points raised at the last meeting. That way the Commission can consider what we are doing and decide if any further steps are appropriate. Of course we would look to you for guidance on those steps.

We need to emphasize for him what the Department is already doing and what, if anything, we will consider in the future.

As for the funds, his concerns about 'misuse' should be easy to address.

One final point. Since he is not a resident of Monroe, if he appears at one of our meetings and wants to participate in public participation, do I have to recognize him?

12. It is found that the Chief prepared a memorandum in response to the email set forth in paragraph 11, above. It is found that the memorandum, which was dated December 17, 2013, was addressed to the "Board of Police Commissioners," and contained the following subject line: "Response to Recommendations of Steven Ballock."

13. It is found that, at the January 15, 2014 regular meeting of the Board of Police Commissioners, the Chief distributed the memorandum to the members of the board.<sup>1</sup> It is found that this is the document that the complainant requested on February 10, 2014. (See ¶ 2, above).

14. It is found that the Chief's memorandum was considered by the board at its February 19, 2014 regular meeting. It is further found that, during the public participation portion of this meeting, the complainant addressed the fact that he had been denied the Chief's memorandum on February 11, 2014, even though the memorandum had been distributed to the board members on January 15, 2014. It is found that, in response to the

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<sup>1</sup> It is found that, while the Chief had planned to distribute the memorandum to the members of the Board of Police Commissioners at the December 17, 2013 regular meeting, inclement weather necessitated that the December meeting be cancelled.

complainant's comments, the Chairman of the Board of Police Commissioners responded that the memorandum was for the board to consider, not the complainant.

15. It is found that, sometime on or about March 20, 2014, the respondents disclosed the requested memorandum electronically as an attachment to the Board of Police Commissioners' February 19, 2014 regular meeting minutes. Accordingly, it is found that the complainant received the memorandum approximately thirty-eight days after he requested it. The complainant contends that this disclosure violated the promptness requirements of the FOI Act.

16. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; 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 loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

17. At the contested case hearing, the respondents seemed to contend that, while the complainant wanted the memorandum and claims that he was disappointed with having been denied a copy of it, he never raised these concerns at the March 19, 2014 regular meeting of the Board of Police Commissioners, even though he spoke during the public participation portion of the meeting. However, there is no requirement in the FOI Act that a requester of a public record, having had his request denied (or, in this case denied twice, see ¶¶ 3, 14), must continue to request the record or express his dissatisfaction with having the request denied.

18. The respondents next contend that the memorandum was exempt from disclosure pursuant to §1-210(b)(1), G.S.

19. Section 1-210(b)(1), G.S., provides, in relevant part, that the FOI Act shall not require mandatory disclosure of: "preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure...."

20. Section 1-210(e)(1), G.S., additionally, provides in pertinent part that:

[D]isclosure shall be required of (1) interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision .

prior to submission to or discussion among the members of such agency....

21. It is the respondents' position that the memorandum was a "preliminary draft" not subject to disclosure because, at the time of the complainant's request on February 10, 2014, while the memorandum had been distributed to the members of the Board of Police Commissioners, it had not been officially considered by the board in a public meeting, and second, when the memorandum was discussed at the board's February 19, 2014 meeting, the Chief "elaborated" on some of the information contained therein.

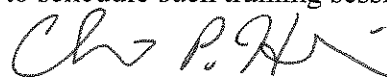
22. It is found that, while the Chief may fairly be considered a member of the Board of Police Commissioners' staff, the respondents have failed to prove that the memorandum was "subject to revisions prior to submission to or discussion among the members" of the Board of Police Commissioners. In this regard, it is found that the memorandum was clearly not subject to revision "prior to" its submission to the board because, at the time of the request, the memorandum had already been submitted to the board. It is further found that, given the urgent tone of the Chairman's December 16, 2013 email to the Chief, the Board of Police Commissioners was seeking a final and definitive response by the Chief, which response they planned to take up at the very next day's meeting. See ¶ 11, above. It is further found that the fact that the Chief presented additional information to the board at the time they considered the memorandum does not lead to the conclusion that the memorandum was subject to "revision." Finally, the law does not allow a public agency to withhold a final, public document from a requester simply because such document has not yet been considered (that is, reviewed or discussed) in a public meeting.

23. It is concluded that the respondents violated the FOI Act, as alleged in the complaint.

24. Because the Commission believes that the violation in this case stems from the respondents' misunderstanding of the law, rather than their willful violation of the law, the best remedy is to order the respondents to attend a FOI training session, rather than to impose civil penalties.

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

1. Henceforth, the respondents shall strictly comply with the provisions of §§1-210(a) and 1-212(a), G.S.
2. Forthwith, the respondents, or their designee, shall arrange for a FOI Act training session to be conducted by the staff of the FOI Commission. The respondents, or their designee, shall forthwith contact the FOI Commission to schedule such training session.



Commissioner Christopher P. Hankins  
as Hearing Officer