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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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George Winter,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-197

Commissioner, State of Connecticut, Department of Motor
Vehicles; and State of Connecticut, Department of Motor
Vehicles,

Respondent(s)

December 19, 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: George Winter c/o Frank Canace, Esq.
Michelle C.H. Givens, Esq.

2014-12-19/FIC# 2014-197/Trans/wrbp/LFS//GFD

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

George Winter,

Complainant

against

Docket #FIC 2014-197

Commissioner, State of Connecticut,
Department of Motor Vehicles; and State
of Connecticut, Department of Motor
Vehicles,

Respondents

October 6, 2014

The above-captioned matter was heard as a contested case on September 17, 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 February 18, 2014, the complainant requested a copy of records related to a certain Motor Vehicles Sergeants Examination.
3. It is found that on March 11, 2014, the respondents provided some of the requested records, but withheld records pertaining to the oral interviews conducted as part of the assessment process.
4. By letter filed April 7, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with all of the records he requested.
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, ... 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:

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.

7. 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."

8. It is concluded that the records requested by the complainant 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 complainant requested records of the oral interview questions, the scores and rankings, and the criteria used in development of the questions.

10. The respondents claim that §1-210(b)(6), G.S., exempts the requested records from disclosure.

11. Section 1-210(b)(6), G.S., provides that nothing in the FOI Act shall be construed to require the disclosure of:

Test questions, scoring keys and other examination data used to administer ... [an] examination for employment ...[.]

12. The respondents claim that the oral interview was part of the motor vehicle sergeants examination, and that the requested records are test questions, scoring keys, and other examination data used to administer an examination for employment, within the meaning of §1-201(b)(6), G.S.

13. It is found that the Department of Administrative Services announced an "Agency Promotional Examination" for Motor Vehicle Sergeant with the Department of Motor Vehicles, with a closing date of May 11, 2012.

14. It is found that the announcement stated that the "Experience and Training" part of the examination would be weighted 100%. It is found that the announcement instructs the applicant to complete the relevant "examination application ([form] CT-HR-12)" detailing how the applicant meets the minimum experience and training requirements set forth elsewhere in the announcement. It is found that the announcement states: "This material will constitute the examination for this class."

15. It is found that the respondents conducted oral interviews of many applicants who satisfied the “Experience and Training” requirements. It is found that the respondents included the oral interview in their overall assessment of the applicants and subsequent ranking of their performance.

16. The complainant contends, however, that because the announcement stated that the written “examination application” described in paragraph 14, above, was weighted 100% and constituted the examination, the oral interview portion of the assessment process was not part of an “examination for employment” within the meaning of §1-210(b)(6), G.S.

17. It is concluded that while the complainant’s argument, if correct, may mean that the oral interviews conducted by the respondents were not properly part of the motor vehicle sergeants examination for purposes of applicants’ final scores, it does not necessarily follow that the oral interviews were not an “examination for employment” within the meaning of §1-210(b)(6), G.S.

18. “Even when construing statutory language narrowly...we cannot ignore the plain meaning of the words of the statute.” Board of Education of the Town of Ridgefield v. FOI Commission, 217 Conn. 153, 160 (1991).

19. The State Personnel Act, §5-196(11), G.S., defines “examination” as “an assessment device or technique yielding scores or ratings designed to determine the fitness of candidates for positions allocated to a specified class, occupational group or career progression level.”

20. Webster’s Third New International Dictionary, Unabridged (1993) defines examination as “an exercise or a series of exercises designed to examine progress or test qualifications; ...a test given to a candidate for a certificate or a position and concerned typically with problems to be solved, skills to be demonstrated, or tasks to be performed.”

21. The Commission has interpreted §1-210(b)(6), G.S., to apply to oral examination data for employment positions even where there is no formal examination. See, for example, Docket #2013-064; Alireza Jamalipour v. Commissioner, State of Connecticut, Department of Transportation; and State of Connecticut, Department of Transportation (Sept. 25, 2013) (interview selection report for employment position posted for Transportation Supervising Engineer in the Bridge and Safety Evaluation Unit); Docket #FIC 2009-519; Kosinski v. Commissioner, State of Connecticut, Department of Education; and State of Connecticut, Department of Education (June 23, 2010) (records pertaining to evaluation and appointment of per diem hearing officers as per solicitation of applications); Docket #FIC 2009-123; Richard Malley v. Commissioner, State of Connecticut, Department of Environmental Protection; and State of Connecticut, Department of Environmental Protection (Feb. 24, 2010) (interview questions for posted position of storekeeper); Docket #FIC 2000-501, Randal Edgar et al. v. Waterbury Superintendent of Schools (scores assigned by interviewers to each candidate for the position of superintendent of schools).

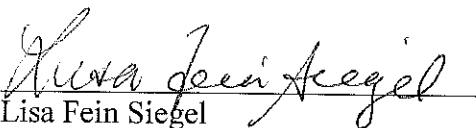
22. It is found that the phrase “examination for employment” in §1-210(b)(6), G.S., encompasses the oral interviews at issue in this matter. It is also found that the requested records

are test questions, scoring keys and other examination data used to administer an examination for employment, within the meaning of §1-210(b)(6), G.S.

23. It is concluded, therefore, that §1-210(b)(6), G.S., exempts the records from mandatory disclosure, and that the respondents did not violate the FOI Act by withholding such records from the complainant.

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.


Lisa Fein Siegel
as Hearing Officer