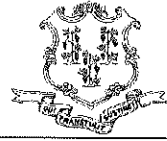


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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Suzanne Carlson and the Hartford Courant,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2014-240

Executive Director, East Hartford Housing  
Authority; and East Hartford Housing Authority,  
Respondent(s)

March 2, 2015

## Transmittal of Proposed Final Decision Dated February 27, 2015

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 dated February 27, 2015, 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, March 25, 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 March 13, 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 March 13, 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 March 13, 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: Suzanne Carlson  
Ralph J. Alexander, Esq.

2015-03-02/FIC# 2014-240/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

Suzanne Carlson and the Hartford Courant,

Complainants

against

Docket #FIC 2014-240

Executive Director, East Hartford Housing  
Authority; and East Hartford Housing  
Authority,

Respondents

February 27, 2015

The above-captioned matter was heard as a contested case on October 1, 2014, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. A Report of Hearing Officer was issued on January 30, 2015. At its regular meeting of February 25, 2015, the Commission voted to remand this matter to the Hearing Officer.

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 April 16, 2014, the complainants requested copies of records concerning "costs for [the respondents'] legal defense of all court actions related to former executive director Terrence Madigan." The complainants specifically requested records containing attorneys' names, billable hours submitted, itemized lists of the type of work performed, hourly rate charged, and total amount spent on the legal defense by the respondents and their insurance providers.
3. It is found that on April 17, 2014, the respondents denied the complainants' requests, explaining that the records requested by the complainants pertain to "matters relating to current pending claims and litigation."
4. By letter filed April 23, 2014, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with 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, ...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. At the hearing in this matter, the respondents submitted as an exhibit a redacted copy of an invoice package from the respondents' attorneys. The respondents also submitted an unredacted copy of the same records for an in camera inspection.

10. It is found that the requested records consist of 42 document packages, each with several pages. It is found that the records are copies of cover letters and attached invoices for professional services from May 31, 2008, through March 31, 2014, submitted to the respondents by their attorneys.

11. Upon careful examination of the in camera records, it is found that the respondents redacted the following information from each invoice: date of service, initials of attorney, details of service provided, hours and rate, and amount billed.

12. It is found that the respondents also included a cover sheet with each invoice package from which they redacted the total amount billed for the month.

13. The respondents claim the redacted portions of the requested records are exempt from disclosure pursuant to §§1-210(b)(1), 1-210(b)(4), and/or 1-210(b)(10), G.S. The respondents further claim that some portions of the records are outside the scope of the request.

14. Section 1-210(b)(1), G.S., provides:

Nothing in the Freedom of Information Act shall be construed to require 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[.]

15. It is found that the respondents submitted no evidence at all that the invoices and cover letters are preliminary drafts or notes.

16. Moreover, upon examination of the in camera records, it is found that the requested records do not constitute preliminary drafts or notes within the meaning of §1-210(b)(1), G.S., and it is concluded, therefore, that §1-210(b)(1), G.S., does not exempt the requested records from disclosure.

17. Turning next to the respondent's claim that the redacted portions of the requested records are exempt pursuant to the attorney/client privilege, §1-210(b)(10), G.S., permits the nondisclosure of "communications privileged by the attorney-client relationship...."

18. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

19. Section 52-146r(2), defines "confidential communications" as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

20. The Supreme Court has also stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney." Maxwell, supra, 260 Conn. 149.

21. In the context of an attorney's billing records, the Commission notes that it is generally accepted that an attorney billing statement and time records are protected by the attorney-client privilege only to the extent that they reveal litigation strategy and/or the nature of

the services performed. See Bruno v. Bruno, FA0540049006S, 2009 Conn. Super. LEXIS 1913, at \*3 (Conn. Super. Ct. July 10, 2009). “[T]he identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege.... However, . . . bills . . . and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law, fall within the privilege.” Id. at \*5.

22. After careful inspection of the billing records submitted in camera, it is found that within the billing records are detailed, dated entries describing in detail the nature of the work being performed. It is found that such entries within the billing records substantively describe a particular attorney’s legal activity, and thus “the specific nature of the services [being] provided [to a client].” Bruno, 2009 Conn. Super. LEXIS 1913, at \*3.

23. It is concluded that the information contained in the “details of the service provided” section of the billing records falls within the protection of the attorney-client privilege and is exempt from disclosure. It is therefore concluded that the respondents did not violate the FOI Act by redacting such information from the records provided to the complainants.

24. With respect to all other information responsive to the complainants’ request that is contained in the cover letters and invoices; i.e., date of service, initials of attorney, hours and rate, and amount billed, it is concluded that the attorney client privilege does not protect such information from disclosure.

25. The respondents also claim that such information is exempt pursuant to §1-210(b)(4), G.S., which provides that disclosure is not required of “records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled.”

26. Section 1-200(8), G.S., defines a pending claim as:

a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted.

27. Section 1-200(9), G.S., defines pending litigation as:

(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency's consideration of action to enforce or implement legal relief or a legal right.

27. It is found that in 2009, Madigan successfully sued the respondents for wrongful termination. It is also found that the respondents appealed the wrongful termination verdict to the Appellate Court. At the date of the hearing in this matter, the litigation in the Appellate Court was “pending” within the meaning of §1-210(b)(4), G.S., and not adjudicated or otherwise settled. It is found that Madigan filed a related lawsuit against the respondents’ attorney, but withdrew the matter pending resolution of the wrongful termination matter in the Appellate Court. It is found that the respondents reasonably believe that Madigan intends to reinstate his lawsuit against the respondents’ attorney if the wrongful termination verdict is upheld at the Appellate Court. It is found, therefore, that the second, related lawsuit is a pending claim within the meaning of §1-210(b)(4), G.S.

28. The respondents claim that the information not protected by the attorney-client privilege (date of service, initials of attorney, hours and rate, and amount billed) is exempt because it constitutes “strategy or negotiations” with respect to pending litigation.

29. Strategy is defined as “a careful plan or method and the art of devising or employing plans or stratagems toward a goal. ... Negotiations is a broad term ... but in general it means the deliberation which takes place between the parties touching a proposed agreement.” (Citations omitted; internal quotation marks omitted.) Bloomfield Education Association v. Frahm, 35 Conn. App. 384, 390, cert. denied, 231 Conn. 926 (1994).

30. The respondents rely on City of New Haven v. FOI Commission, 205 Conn. 767 (1988) as the basis for the redactions in the requested records. The records at issue in City of New Haven were invoices for legal services containing the name of the attorney or law firm submitting the invoice and the total amount of the invoice. The Commission concluded that the City failed to prove that either §1-210(b)(4), G.S., or the attorney/client privilege exempted the records from disclosure. The trial court sustained the city’s appeal, concluding that disclosure of the requested information would reveal the negotiating posture and strategy of the City. The trial court also held that the need for confidentiality during the pendency of litigation outweighed the public interest in access to such information. Id., 772.

31. However, the trial court’s decision in City of New Haven was reversed by the Supreme Court, which held that the City failed to prove “a premise for a correlation between the invoices and strategy and negotiations.” Id. 777. The Court concluded: “We need not, nor can we decide, on the basis of the state of the record before this court, whether invoices for legal services that bear only the name of the attorney or law firm and the amount of the billing might, under other circumstances, pertain to strategy and negotiations in pending litigation.” Id.

32. The respondents in this case claim that they established a premise for a correlation between the remaining information on the invoices (date of service, initials of attorney, hours and rate, and amount billed) and strategy and negotiations, as City of New Haven requires.

33. It is found, however, that the respondents did not provide evidence as to any claimed correlation.

34. It is concluded, therefore, that the date of service, initials of attorney, hours and rate, and amount billed do not constitute records of strategy and negotiations with respect to pending claims or pending litigation. It is concluded, therefore, that §1-210(b)(4), G.S., does not exempt such information from disclosure, and the respondents violated the provisions of §§1-210(a) and 1-212(a), G.S., by redacting such information from the records provided to the complainants.

35. The respondents claimed that some redacted information – generally the monthly invoice totals stated on the cover sheets – did not derive exclusively from the Madigan court actions. The respondents considered such information to be beyond the scope of the complainants' request. It is found, however, that the monthly totals are responsive to the complainants' request because they did derive, at least in part, from legal services provided on the Madigan court actions. It is concluded that §§1-210(a) and 1-212(a), G.S., require the respondents to disclose such records.

36. With respect to other records identified by the respondents as beyond the scope of the complainants' request, it is concluded that the respondents did not violate the FOI Act by withholding any such records that are not responsive in *any* manner to the complainants' request.


37. The respondents provided several copies of responsive records to the complainants at the hearing in this matter. It is found that such records were submitted to the court during the pending wrongful litigation in 2012, but the respondents nevertheless did not provide them to the complainants at the time of their request in April 2014.

38. It is found that the respondents failed to provide such records promptly, and 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 provide to the complainants free of charge copies of the requested records redacted as set forth in the findings of fact, above. Specifically, the respondents may redact the records described in paragraph 23 and 36 of the findings, above.

2. Henceforth, the respondents shall strictly comply with the promptness and disclosure requirements of §§1-210(a) and 1-212(a), G.S.

  
\_\_\_\_\_  
Lisa Fein Siegel  
as Hearing Officer