



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Jimmie Griffin,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-908

Board of Aldermen, City of Waterbury; and City of
Waterbury,

Respondent(s)

July 30, 2015

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 26, 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 August 14, 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 August 14, 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 **fifteen (15) copies** be filed **ON OR BEFORE August 14, 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: Jimmie Griffin
Kevin J. Daly, Jr., Esq.

2015-07-30/FIC# 2014-908/Trans/wrbp/PSP//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jimmie Griffin,

Complainant

Docket # FIC 2014-908

against

Board of Aldermen,
City of Waterbury; and
City of Waterbury,

Respondents

July 30, 2015

The above-captioned matter was heard as a contested case on June 9, 2015, at which time the complainant and 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 or about August 25, 2014, the Charter Revision Commission of the City of Waterbury issued a Final Report proposing amendments to the City of Waterbury's Charter, including a proposed change regarding the City of Waterbury's Board of Aldermen to be elected by district. It is found that, among other requirements, the Final Report required the Board of Aldermen to appoint a District Reapportionment Commission (hereinafter "the District Commission") to determine five voting districts. It is further found that the Final Report was subsequently accepted by the City's electorate at a November 2014 referendum.
3. It is found that the Board of Aldermen held a meeting on November 24, 2014. It is found that prior to such meeting the respondent majority leader submitted to the Board a list of residents who were chosen by both the majority and minority leaders to serve on the District Commission. It is found that at the November 24th meeting, the Board voted, in public, to approve such list of eligible residents, including those residents chosen to serve as chairman and vice-chairman.
4. It is found that on December 1, 2014, the complainant made a written request to the respondents for certain records relating to the selection of the District Reapportionment Commission by the Board. The complainant requested the following:

[a] Copies of each email received following...your public announcement in search of candidates [;]

[b] A copy of any written instructions on procedures used to interview candidates [;]

[c] Any minutes of meetings that took place concerning the appointments to the District Commission [;]

[d] Any meetings with community leaders about certain commission appointments [; and]

[e] Minutes of any meeting where Mayor Neil O'Leary was given the approval to name a Chairman of the Commission as a member of the Executive Offices and announce it publically in the Waterbury Republican [.]

It is found that the complainant's December 1st request was addressed directly to the Board's majority and minority leaders and received by the City Clerk for the City of Waterbury. It is found that, among other duties outlined in the City's Charter, the City Clerk must serve as the clerk for the Board of Aldermen and its committees and must maintain all records created by the Board of Aldermen, Charter Revision Commission and any other board or commission.

5. By email dated December 22, 2014, the complainant appealed to the Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the complainant with copies of the records, described in paragraph 4, above.

6. Section 1-200(5), G.S., defines "public records or files" as:

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.

7. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

8. Section 1-2 12(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.”

9. It is found that the records requested by the complainant, to the extent that they exist, are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S.

10. It is found that, by letter dated December 23, 2014, the Office of the Corporation Counsel for the City of Waterbury acknowledged the complainant’s December 1st request, described in paragraph 4, above. It is found that the respondents informed the complainant that they did not have records responsive to his requests described in paragraphs 4[a], 4[b] and 4[e], above. It is also found that the respondents provided the complainant with copies of minutes for the November 24th Board of Aldermen meeting in response to his request described in paragraph 4[c], above. In addition, the respondents advised the complainant that the FOI Act does not require the City to answer questions and therefore no response was required to his request described in paragraph 4[d], above.

11. With respect to the complainant’s request described in paragraph 4[a], above, at the hearing in this matter and in their post-hearing brief, the respondents maintained that they do not have any emails responsive to such request. It is found that, after receiving the complainant’s records request, the City’s Corporation Counsel contacted the respondent aldermen regarding such request and was informed that the aldermen had received numerous inquiries from constituents about serving on the District Commission, but no inquiries were received via email.

12. The complainant contends that the respondents should have had, at a minimum, two emails (dated November 13, 2014 and November 18, 2014, respectively), which he had sent to the respondent majority and minority leaders and were responsive to his request. The respondents argued, however, that one of the email addresses may have been inaccurate and that the other email account may have belonged to an alderman’s spouse.

13. It is found that on November 13th and November 18th, the complainant emailed the respondent majority and minority leaders, among other individuals, regarding appointments to the District Commission. It is found that the complainant used the following email addresses: tpicjr2000@yahoo.com and dacpvc@comcast.net. It is found that the City of Waterbury’s official website posts the majority leader’s email address as tpicjr2000@yahoo.com and the minority leader’s email address as dacpvc@comcast.net.¹ It is found that there is no evidence in the record that the complainant’s November 13th and November 18th emails failed to be delivered to the aldermen.

14. In their post-hearing brief, the respondents also raised for the first time the argument

¹ The Commission takes administrative notice of the email addresses provided for members of the Board of Aldermen posted on the City of Waterbury’s website. See <http://www.waterburyct.org/>.

that the aldermen were not required to respond to the complainant's request because such request was *delivered* to the City Clerk's Office who only has control and possession over records in his office.² According to the respondents, although the City Clerk serves as the clerk to, and maintains records of, the Board of Aldermen, the City Clerk does not have access to nor is he obligated to obtain emails from private email accounts owned by aldermen or their spouses. However, regardless of the delivery to the City Clerk's Office, the complainant's request was *addressed directly* to the respondent aldermen, Corporation Counsel inquired of the respondents whether they had responsive documents, and the respondents informed Corporation Counsel that there were no responsive emails.

15. It is found that the respondents failed to perform a diligent search for emails responsive to the complainant's request described in paragraph 4[a], above. It is concluded that by failing to provide the records described in paragraphs 12 and 13, above, the respondents violated the FOI Act.

16. With respect to the complainant's request described in paragraph 4[b], above, it is found that the Final Report, described in paragraph 1, above, set forth written procedures and standards pertaining to the selection and appointment of candidates to the District Commission (e.g., District Commission would be comprised of eight electors with no more than four members from any one party selected by the majority and minority leaders of the Board of Aldermen). It is found, however, that there were no written instructions on procedures to *interview* candidates for such Commission. It is therefore found that there were no records responsive to the complainant's request described in paragraph 4[b], above. Accordingly, it is concluded that the respondents did not violate the disclosure provisions of the FOI Act with respect to such request.

17. With respect to the complainant's request described in paragraph 4[c], above, it is found that the Board of Aldermen was the only public agency or official authorized to appoint members to the District Commission. It is also found that the Board voted on the appointment of the District Commission members as described in paragraph 3, above. In addition, it is found that, although the complainant believes that there should have been more meetings, the November 24th meeting was the only meeting regarding the appointments to the District Commission. It is therefore found that the only responsive documents were the minutes of the November 24th meeting which were provided by the respondents to the complainant. It is concluded that the respondents did not violate the disclosure provisions of the FOI Act with respect to the complainant's request described in paragraph 4[c], above.

18. With respect to the complainant's request described in paragraph 4[d], above, it is


² The respondents rely on James A. Lash, First Selectman of the Town of Greenwich, et. al. v. Freedom of Information Commission, et.al., 116 Conn. App. 171 (2009), reversed in part on other grounds, 300 Conn. 511 (2011). The issue in Lash, however, was not whether *delivery* was made to the appropriate public agency or individual, but whether the first selectman, *to whom* the request was *made*, had a duty to inquire of the town law department as to whether it had possession of any documents that would be responsive to the records request.

found that such request was a request for answers to a question, not a request for records. It is concluded as a matter of law that because the FOI Act does not require a public agency to provide answers to questions or to create records in response to a request, those portions of the complainant's request that sought answers to questions or would have required the respondents to create records for the complainant did not allege a violation of the Act. Further, at the hearing, the complainant acknowledged that the respondents' response to such request was correct.

19. With respect to the complainant's request described in paragraph 4[e], above, it is found that the majority and minority members of the Board of Aldermen chose the Chairman of the District Commission who was then approved by the Board of Aldermen. It is also found that no meeting occurred at which the Mayor was authorized to name or select the Chairman. It is therefore found that there were no meeting minutes responsive to the complainant's request described in paragraph 4[e], above. Accordingly, it is concluded that the respondents did not violate the disclosure provisions of the FOI Act with respect to such request.

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 undertake a diligent search for the records described in paragraph 4[a] of the findings, above, and provide copies of any responsive records to the complainant, free of charge. If the respondents do not locate any records responsive to the complainant's request, including the emails described in paragraphs 12 and 13 of the findings, above, the respondents shall provide the complainant with an affidavit detailing the results of their search.
2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §1-210(a), G.S.


Paula S. Pearlman
as Hearing Officer