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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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Patrick Egan,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2014-726

Chief, Fire Department, City of New Haven; Fire  
Department, City of New Haven; Chairman, Fire  
Commission, City of New Haven; Fire Commission, City  
of New Haven; and City of New Haven,  
Respondent(s)

August 20, 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, September 9, 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 28, 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 28, 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 28, 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: Lawrence C. Sgrignari, Esq.  
Kathleen Foster, Esq.  
Jarad M. Lucan, Esq.

2015-08-20/FIC# 2014-726/Trans/wrbp/VRP/TAH

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Patrick Egan,

Complainant

against

Docket #FIC 2014-726

Chief, Fire Department, City of  
New Haven; Fire Department,  
City of New Haven; Chairman,  
Fire Commission, City of New  
Haven; Fire Commission, City of  
New Haven; and City of New Haven,

Respondents

August 20, 2015

The above-captioned matter was heard as a contested case on August 17, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2014-660, Patrick Egan v. Chairman, Board of Fire Commissioners, City of New Haven et al.

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. By letter of complaint filed October 28, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his requests for certain public records.
3. It is found that the complainant, then an assistant Fire Chief in New Haven, was put on administrative leave on September 22, 2014.
4. It is found that the respondent Fire Commission held a meeting on September 30, 2014, which is the subject of Docket #FIC 2014-660, Patrick Egan v. Chairman, Board of Fire Commissioners, City of New Haven et al. The Commission takes administrative notice of its record and files in that case.

5. It is found that the complainant made an October 6, 2014 request to the respondent Chief for the following records:

- a. All documents received by you or the Department from any individual or entity which relate to the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan;
- b. All documents prepared by you which relate to the performance, evaluation and/or conduct of assistant Fire Chief Patrick Egan;
- c. All emails to or from you or any other Department Administrator (whether received or sent from a City or personal email account) which relate to the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan;
- d. All text messages to or from you or any other Department Administrator (whether received or sent from a City or personal cellular account) which relate to the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan;
- e. Each and every document in your possession which supports your recommendation for terminating the employment of Mr. Egan, as set forth in your letter dated September 22, 2014;
- f. A complete copy of Mr. Egan's personnel file.

6. It is found that the complainant also made an October 6, 2014 request to the New Haven Board of Fire Commissioners for:

- a. All documents received by the Commission from any individual or entity which relate to the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan;
- b. All documents prepared by Chief Allyn Wright which relate to the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan;
- c. All emails to or from any member of the Fire Commission (whether received or sent from a City or personal email account) which relate to the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan;
- d. All text messages to or from any member of the Fire Commission (whether received or sent from a City or personal cellular account) which relate to the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan;

- e. The tape recording of each and every meeting of the Commission (including but not limited to the meeting of September 30, 2014) at which meeting the Commission considered the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan;
- f. The agenda of each and every meeting of the Commission (including but not limited to the meeting of September 30, 2014) at which meeting the Commission considered the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan; and
- g. The minutes of each and every meeting of the Commission (including but not limited to the meeting of September 30, 2014) at which meeting the Commission considered the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan.

7. It is found that the respondent Board replied to the request on October 28, 2014, and the respondent Chief replied on October 30, providing the requested personnel file only.

8. It is found that the respondents contacted the complainant in February 2015 to inform him that the records had been compiled and were available to be reviewed.

9. It is found that the complainant reviewed the records on three occasions in April of 2015.

10. It is found that the respondents did not offer access to the tape recording of the September 30, 2014 meeting until June of 2015, and did not provide a copy until the date of hearing on this matter.

11. 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.

12. 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, (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.

13. It is concluded that the requested records, to the extent they exist, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

14. The complainant maintains that the respondents have not fully complied with his requests. First, the complainant maintains that no text messages or emails sent from personal accounts were provided. Second, the complainant maintains that letters discussed by and in the custody of the respondent Board's Chairman at the September 30, 2014 meeting have not been produced. Third, the complainant maintains that redactions of six of the emails provided to him are not proper. Finally, the complainant maintains that provision of a copy of the tape recording of the September 30, 2014 meeting on the day of the hearing in his matter was not prompt.

15. With respect to the requested text messages, and emails sent from private email accounts, the respondents deny that such records exist, and the complainant offered no evidence to suggest that such records do in fact exist.

16. With respect to the letters discussed by and in the custody of the respondent Board's Chairman at the September 30, 2014 meeting, it is found that those records existed at the time of the September 30, 2014 meeting, and have not been provided to the complainant. It is found that those letters contained criticisms of the investigation and firing of firefighter Aaron Brantley, and about discriminatory practices within the New Haven Fire Department. It is found that the complainant was the subject of complaints about his role in the firing of Brantley, and was accused of discriminatory practices, and that the letters are reasonably within the scope of the complainant's requests for records relating to the performance, evaluation or conduct of the complainant. It is found that one of the letters was received from the Greater New Haven NAACP, and another was received from the New Haven Board of Alderman. The parties did not present clear evidence concerning the number of letters held by the Chairman at the time of the meeting, but the comments of those present at the September 30, 2014 meeting suggest that other letters were submitted. The respondents offered no evidence that any of the letters do not currently exist and are not in the custody of the respondent Chairman or cannot be obtained by him from their original sources.

17. With respect to the redactions, it is found that six emails were essentially redacted in full. Those six emails were submitted, without redaction, for an in camera inspection. It is found that the six emails are not responsive to the complainant's request, because they are not "to or from any member of the Fire Commission ... which relate to the performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan" or "to or from [the Chief] or any other Department Administrator ... which relate to the

performance, evaluation and/or conduct of Assistant Fire Chief Patrick Egan” as requested by the complainant (see paragraphs 3.c and 4.c, above). The six emails are between lawyers for the respondents and relate to legal strategy.

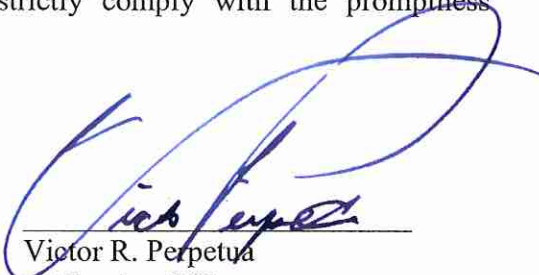
18. With respect to the provision of the copy of the tape recording of the September 30, 2014 meeting in August of 2015, the respondents offered no evidence to justify the delay in providing this record, and it is concluded that such provision was not prompt within the meaning of §§1-210 and 1-212, G.S.

19. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide copies of the letters in the custody of and discussed by the Chairman of the respondent Board at the September 30, 2014 meeting, and by failing to promptly provide a copy of the tape recording of that meeting.

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

1. The respondent Chairman shall forthwith provide to the complainant, free of charge, copies of all letters received by the Chairman of the respondent Board and referenced by him or members of the public speaking at the September 30, 2014 meeting.

2. Henceforth, the respondents shall strictly comply with the promptness requirements of §1-212, G.S.



Victor R. Perpetua  
as Hearing Officer