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FREEDOM OF INFORMATION



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Jeff Cohen and WNPR,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-107

Chief Operating Officer, City of Harford; Director of
Communications, City of Hartford; and City of Hartford,
Respondent(s)

September 25, 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, October 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 October 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 October 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 **fifteen (15) copies** be filed **ON OR BEFORE October 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: Jeff Cohen
Cynthia Lature, Esq.

2015-09-25/FIC# 2015-107/Trans/wrbp/KKR/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jeff Cohen and WNPR,

Complainants

against

Docket #FIC 2015-107

Chief Operating Officer, City of
Hartford; Director of Communications,
City of Hartford; and City of Hartford,

Respondents

September 16, 2015

The above-captioned matter was heard as a contested case on August 4, 2015, at which time the complainants and the respondents appeared 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 5, 2015, the complainants requested from the respondents copies of all signed agreements between the respondent city ("city") and DoNo Hartford LLC ("DoNo"), related to the development of a minor league baseball stadium and related facilities in the city's north downtown area (the "Project").
3. It is found that, by email dated February 5, 2015, the respondent chief operating officer ("COO") denied the request, described in paragraph 2, above, on the ground that the documents were being held "in escrow [by counsel] until all negotiations are resolved." By email to the complainants dated February 6, 2015, the COO further explained that "[h]olding documents in escrow means that they are not final and the agreement they embody are not in operation until the escrow is released. Therefore, these are similar to a draft, in that they may not be released if the escrow conditions are not met."
4. By letter dated February 9, 2015 and filed February 10, 2015, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with a copy of the Development Services Agreement ("Agreement") signed by the city and DoNo on February 4, 2015.
5. It is found that the respondents provided a copy of the Agreement to the media and to the complainants on March 10, 2015.

6. 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.

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

8. 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.”

9. It is found that the records, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that there are a total of 13 agreements pertaining to the Project, including the Agreement. It is found that city officials began signing such agreements in early February, 2015, and signed the last of them on or about March 10, 2015. It is found that the respondents did not disclose any of the signed agreements during this period of time, for the reasons described in paragraph 3, above.

11. At the hearing in this matter, the respondents did not cite any state statute or federal law as the basis for withholding the Agreement. Rather, the COO testified that the baseball stadium is the cornerstone of the Project, and that the city’s ability to finance the development of that stadium was “interwoven with” the private financial investment of DoNo in the Project and the revenues generated from such investment. He further testified that the city’s ability to enter into agreements with the baseball league and the baseball team was dependent upon the city entering into the development agreements with DoNo. According to the COO, the 13 agreements, referenced in paragraph 10, above, were all “interrelated,” such that no one agreement could “stand on its own.” The COO analogized the withholding of the agreements to a private real estate closing, in which the parties to the sale execute documents in advance of the closing, which documents are held “in escrow” by the lawyers until certain conditions are met.

12. At the hearing in this matter, the hearing officer ordered the respondents to submit a brief identifying the specific statutory exemption claimed as the basis for withholding the Agreement from the complainant until March 10th.

13. On August 28, 2015, the respondents submitted a brief, in which they claimed that the Agreement was exempt from disclosure at the time it was requested, pursuant to §1-210(b)(24), G.S.

14. Section 1-210(b)(24), G.S., provides that disclosure is not required of:

[r]esponses to any request for proposals [“(RFP)”] or bid solicitation issued by a public agency or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for the award of such contract have ended, whichever occurs earlier, provided the chief executive officer of such public agency certifies that the public interest in the disclosure of such responses, record or file is outweighed by the public interest in the confidentiality of such responses, record or file[.] (Emphasis added).

15. The respondents argued, in their brief, that the Agreement was exempt under §1-210(b)(24), G.S., at the time it was requested because it is a “record[] in connection with the DoNo RFP.” However, such argument ignores the fact that, at the time of the request, “negotiations for the award of such contract ha[d] ended,” and DoNo had been awarded such contract.¹

16. It is found that the Agreement was not exempt from disclosure, pursuant to §1-210(b)(24), G.S., at the time the complainants requested such record.

17. Based upon the foregoing, it is concluded that the respondents violated the disclosure requirements in §§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. Henceforth, the respondents shall strictly comply with the disclosure requirements in §§1-210(a) and 1-212(a), G.S.

¹ The brief included multiple “exhibits” that were not offered as evidence at the hearing in this matter. The hearing officer informed the parties to this matter, via email dated August 28, 2015, that the “exhibits” would not be considered.

A handwritten signature in cursive script, appearing to read "Kathleen K. Ross", written over a horizontal line.

Kathleen K. Ross
as Hearing Officer

FIC 2015-107/hor/kkr/09162015