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FREEDOM OF INFORMATION

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Ohan Karagozian,
Complainant(s)
against

Board of Examiner's for Opticians, State of Connecticut, Department of Public Health; and State of Connecticut, Department of Public Health,
Respondent(s)

Notice of Meeting

Docket #FIC 2015-743

June 7, 2016

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, July 13, 2016.** 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 July 1, 2016***. 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 July 1, 2016***. **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 July 1, 2016***, 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: Ohan Karagozian
Attorney Kerry Colson

FIC# 2015-743/Trans/wrbp/VDH//TAH/2016-06-07

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Ohan Karagozian,

Complainant

against

Board of Examiners for Opticians, State of Connecticut, Department of Public Health; and State of Connecticut, Department of Public Health,

Respondents

Report of Hearing Officer

Docket #FIC 2015-743

June 1, 2016

The above-captioned matter was heard as a contested case on January 12, 2016, 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, by email dated September 24, 2015, the complainant requested that the respondents provide him with a copy of a tape recording of the respondent Board of Examiners for Opticians' (the "respondent board") regular meeting of September 22, 2015.

3. It is found that, by email dated October 8, 2015, the respondents acknowledged the request, but declined to provide a copy of the requested record to the complainant.

4. By letter dated and filed November 3, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with a copy of the requested record described in paragraph 2, above.

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, 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.

6. 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, (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.

7. 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."

8. It is found that, on September 22, 2015, the respondent board held a regular meeting. It is found that the complainant was in attendance at such meeting.

9. It is found that, during the September 22nd meeting, the board's chairman used a recording device to record the meeting. It is found that, after the meeting, the chairman used the tape recording to prepare meeting minutes.

10. It is found that the recording device used by the chairman was his own personal device. In this regard, it is found that the chairman purchased the recorder with his own money and was not reimbursed by the respondent board, nor by any other public agency, for such purchase.

11. It is found that, on October 8, 2015, in response to the complainant's September 24th request for a copy of the recording, the respondents provided the complainant with a copy of the minutes from the September 22nd meeting.

12. The complainant contends that this case should be controlled by Carolyn Massoni v. Katrina Manley, Recording Secretary, Town of Wallingford, et al., Docket #FIC 1989-130 (Oct. 11, 1989) ("Massoni"), in which this Commission ordered a tape recording that had been produced by the town's recording secretary to be copied and provided to the complainant. However, the administrative record in Massoni seems to indicate that the recording device at issue in that case was town property, and thus the recording produced by use of the device was also town property.

13. Because it is clear that the recording device at issue in this case is not public agency property, a case that provides better guidance is Jeffrey Burkitt, et al. v. Bd. of Aldermen, Town of Ansonia, Docket #FIC 1996-518 (Aug. 27, 1997) ("Burkitt"). In Burkitt,

this Commission held that a public official's use of a personal recording device does not transform the recording produced by such device into a public record: "a member of the respondent [board], on his own initiative, taped the meeting using his personal tape and tape recorder. . . . It is concluded that the tape . . . was not prepared, owned, used, received or retained by the respondent and therefore, is not a public record within the meaning of §[1-200(5)], G.S." It is worth noting that the tape in Burkitt, just like the tape in the instant matter, was used to create the minutes of the meeting that had been recorded.

14. It is concluded that the requested tape recording in this case is not a public record within the meaning of §1-200(5), G.S.

15. It is further concluded that the respondents did not violate the disclosure provisions of the FOI Act, when they declined to provide a copy of the recording to 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 hereby dismissed.

Valicia Dee Harmon

Valicia Dee Harmon
as Hearing Officer