



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2016-0682

Mayor, City of Groton; and City of Groton,
Respondent(s)

March 31, 2017

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, April 26, 2017**. 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 April 13, 2017**. 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 April 13, 2017**. **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 April 13, 2017**, 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: Jay Dempsey
Attorney Bryan L. LeClerc
Attorney William S. Fish

FIC# 2016-0682/Trans/wrbp/KKR//PSP/2017-03-31

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jay Dempsey,

Complainant

against

Docket #FIC 2016-0682

Mayor, City of Groton; City of
Groton; and Thames Valley
Communications,

Respondents

March 31, 2017

The above-captioned matter was heard as a contested case on January 5, 2017, at which time the complainant, the respondent mayor, and the respondent city (the "Groton respondents") appeared and presented testimony, exhibits and argument on the complaint. Thames Valley Communications ("TVC") also appeared at the hearing and moved to intervene in this matter; the hearing officer granted such motion. The case caption has been amended accordingly.

For purposes of hearing, this matter was consolidated with Docket #FIC 2016-0544, Jay Dempsey v. Mayor, City of Groton; City of Groton; and Thames Valley Communications ("2016-0544"). In this matter, the Commission takes administrative notice of the testimony and exhibits in 2016-0544.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The Groton respondents are public agencies, within the meaning of §1-200(1), G.S.
2. It is found that, from approximately 2008 until February 1, 2013, TVC was owned by Groton Utilities ("GU"), which, in turn, was a department of the respondent city. It is found that, in addition to television, internet and phone services, which services were provided by GU through TVC, GU also provided water and electricity to area residents during this time.
3. It is found that, pursuant to a purchase and sale agreement dated January 25, 2013 (the "agreement"), TVC was sold by GU to private investors. It is found that, even after the sale of TVC, GU continued to be owned by the respondent city and to provide water and electricity to its customers.

4. It is found that, since February 1, 2013, TVC has been a privately owned utility company providing television, internet and phone services, primarily in the communities of Groton, Mystic, and Stonington, Connecticut.

5. It is found that, by letter dated July 26, 2016, the complainant requested from the Groton respondents, a copy of the “executed purchase agreement relating to the sale of [TVC] [that was] previously owned by the City of Groton and/or Groton Utilities” (“agreement” or “requested record”).

6. It is found that, by letter dated July 31, 2016, the Groton respondents denied the request, claiming that the entire agreement is “confidential information,” containing “sensitive competitive information that would harm TVC if...released publically.”

7. It is found that, upon receipt of the request, described in paragraph 5, above, the respondent mayor contacted TVC’s vice president, George Laub, to notify the company of such request.

8. It is found that, in response to the notification, Mr. Laub, in a letter dated September 13, 2016, informed the respondent mayor of TVC’s position that the agreement is confidential, and declined to consent to its disclosure.

9. By letter dated September 26, 2016, the complainant appealed to this Commission, alleging that the Groton respondents violated the Freedom of Information (“FOI”) Act by withholding the requested record.

10. Section 1-200(5), G.S., provides:

“[p]ublic 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.

11. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept 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.

12. 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.”

13. It is found that the requested record, consisting of the agreement and the exhibits and schedules attached thereto, is maintained by GU and that GU, as a department of the respondent city, is a public agency for purposes of the FOI Act. It is found that the requested record is a public record within the meaning of §§1-200(5) and 1-210(a), G.S.

14. The hearing officer ordered the Groton respondents to submit the requested record for in camera inspection. On January 5, 2017, the Groton respondents submitted the requested record for in camera inspection, along with an index, and on such index, the Groton respondents indicated that the requested record is exempt from disclosure in its entirety, pursuant to §§7-232a and 1-210(b)(5)(A), G.S.

15. However, Mr. Laub, during his testimony at the hearing, conceded that certain portions of the agreement are not confidential. The hearing officer then ordered the respondents to resubmit the index, indicating the specific portions of the requested record they claim to be exempt from disclosure, along with the specific exemption(s) claimed for each such portion.

16. It is found that, by letter dated February 28, 2017, the respondents informed the hearing officer that, after further consideration, they no longer claimed that the agreement, and several of the attachments thereto, are exempt from disclosure, and that they had provided copies of those records to the complainant. The respondents further informed the hearing officer that, after discussions between them and the complainant, the complainant indicated that he would not pursue his complaint as it pertained to certain other attachments, specifically, schedules to the agreement consisting of TVC’s tax returns, descriptions of intellectual property and service warranties. With their February 28th letter, and based upon the complainant’s representation to the respondents, the respondents submitted certain attachments to the agreement for in camera record inspection, along with a revised index.¹

17. It is found that the in camera records consist of certain exhibits and schedules to the agreement; specifically: financial statements, transition service agreement, lease agreements, miscellaneous accounts receivable detail, customer data, list of contracts, insurance documents, list of TVC employees (names, salary and benefits), TVC working capital, inventory at closing, pre-closing liabilities, and subscriber levels (“in camera records”).

18. It is found that, during the time that TVC was owned by GU, the requested records were treated by the Groton respondents and TVC as confidential, and were never disclosed to the public. According to the Groton respondents and TVC, such information was exempt from disclosure during this period of time, pursuant to §§7-232a and 1-210(b)(5)(A), G.S.

¹ Thereafter, by letter dated March 7, 2017, the complainant did not deny that he had withdrawn that portion of the complaint pertaining to the tax returns, descriptions of intellectual property and service warranties, but attempted to reinstate that portion pertaining to the tax returns. However, based upon the complainant’s withdrawal and the respondents reliance thereon, the Commission will not consider those records herein.

19. Section 7-232a, G.S., provides that:

[a] municipal utility established under this chapter, or a municipal electric or gas utility owned, leased, maintained, operated managed or controlled by any unit of local government under the general statutes or a special act, may withhold from public disclosure under the Freedom of Information Act...any commercially valuable, confidential, or proprietary information.

20. It is undisputed that during the time that TVC was owned by GU, TVC was a “municipal utility,” for purposes of §7-232a, G.S. It is also concluded that GU itself is a “municipal utility,” under §7-232a, G.S.

21. The Groton respondents and TVC argued, at the hearing in this matter, that because GU maintains the requested record, and GU is a “municipal utility,” as defined in §7-232a, G.S., GU may withhold such record, or portions thereof, because such information is “any commercially valuable, confidential, or proprietary information.” According to the Groton respondents and TVC, the fact that some of the information pertains to TVC, and not to GU, does not render the statute inapplicable.

22. In seeking to determine the meaning of statutory language, §1-2z, G.S., requires that the text of the statute itself, and its relationship to other statutes, be considered first. If the meaning of the text is “plain and unambiguous” and does not yield “unworkable” results, extratextual evidence of the meaning of the statute may not be considered. See Lieberman v. Aronow, 319 Conn. 748, 756-7 (2015). “The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation.” (Internal quotation marks omitted). *Id.*

23. The language of §7-232a, G.S., uses the term “any” to modify “commercially valuable, confidential, or proprietary information.” The Supreme Court has interpreted the word “any” to mean “all or every” and has “presume[d] that the legislature, in using the word ‘any’ to modify [another] term...intended that term to be broad, rather than restrictive in scope.” (Internal quotation marks omitted). Marciano v. Jimenez, 342 Conn. 70, 76 (2016), citing Gipson v. Commissioner of Correction, 257 Conn. 632 (2001). In addition, the Court has emphasized that statutes must be construed as written, and observed repeatedly that “the intent of the legislature...is to be found not in what the legislature meant to say but in the meaning of what it did say...It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is the function of the legislature.” (Internal quotation marks omitted). Cruz v. Montanz, 294 Conn. 357, 370 (2009).

24. It is concluded that the language of §7-232a, G.S., is plain and unambiguous, and does not yield unworkable results.

25. Accordingly, it is concluded that the redacted information may be withheld, pursuant to §7-232a, G.S., if such information is “commercially valuable, confidential or proprietary information.”

26. It is found that TVC competes directly with Comcast, Direct TV, Dish, and Frontier Communications. Mr. Laub testified at the hearing in this matter, that he considers the information included in the in camera records to be highly confidential and extremely commercially valuable to TVC’s business, and that disclosure of this information that could then be obtained by TVC’s competitors would, without question, cause direct and immediate harm to TVC’s economic position. He provided several specific examples to explain and support his position. It is found that TVC has made intentional and effective efforts to limit access to the information to TVC’s four investors. It is found that no other privately owned cable, internet and phone company’s records of this nature are publically available.

27. At the hearing in this matter, the respondent mayor testified, and it is found, that even after GU sold TVC, the Groton respondents continued to consider the agreement and all attachments thereto to be confidential and treated them as such. It is found that the Groton respondents have made intentional and effective efforts to keep such information confidential.

28. After careful inspection of the in camera records, it is concluded that such records, or portions thereof, as indicated on the in camera index, are “commercially valuable, confidential or proprietary information.”

29. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the in camera records, or portions thereof, as indicated on the in camera index, from the complainant.

30. Based upon the foregoing, the Commission need not consider the Groton respondents’ and TVC’s claim that the information contained in the in camera records also is a “trade secret,” pursuant to §1-210(b)(5)(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 complaint is hereby dismissed.



Kathleen K. Ross
as Hearing Officer