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David Godbout,
Complainant(s)
against

Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection,
Respondent(s)

Notice of Meeting

Docket #FIC 2012-161

December 11, 2012

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, January 9, 2013.** 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 December 21, 2012.*** 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, the Commission requests that an **original and fourteen (14) copies** be filed ***ON OR BEFORE December 21, 2012.*** **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 **fourteen (14) copies** be filed ***ON OR BEFORE December 21, 2012,*** 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: David Godbout
Stephen R. Sarnoski, AAG

2012-12-11/FIC# 2012-161/Trans/wrbp/VRP//GFD

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by | Report of Hearing Officer

David Godbout,

Complainant

against | Docket #FIC 2012-161

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; and State of Connecticut,
Department of Emergency Services and
Public Protection,

Respondents | December 11, 2012

The above-captioned matter was heard as a contested case on September 4, 2012 at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

This matter was consolidated for hearing with Docket #FIC 2012-130, David Godbout v. City of Norwich et al., and Docket #FIC 2012-131, David Godbout v. City of Hartford 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 March 26, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for public records.

3. It is found that the complainant made a request on dated March 13, 2012 to the respondents to review and inspect "any documents related to any letters or directives issued by Commissioner Bradford as described by CGS 1-210(b)(19) and/or CGS 1-210(d) from the dates of 1 JAN 12 through 13 MAR 12, including such directives themselves."

4. It is found that the only documents withheld from the complainant are six pages, submitted to the Commission for an in camera inspection, that the respondents

claim are either privileged by the attorney-client relationship, pertain to strategy and negotiation with respect to pending claims and litigation, or are preliminary drafts or notes.

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. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

> 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.
> ...
>
> Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

7. It is concluded that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. Section 1-210(b)(10), G.S., provides that disclosure is not required of "communications privileged by the attorney-client relationship."

9. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. Maxwell v. FOI Commission, 260 Conn. 143 (2002). In Maxwell, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

10. Section 52-146r(2), G.S., defines "confidential communications" as:

> all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

11. The Supreme Court has also stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney." Maxwell, supra at 149.

12. After a careful review of the in camera records, it is found that pages 1 through 4 are written communications transmitted in confidence between the respondents' employees acting in the performance of their duties and within the scope of their employment and their attorneys relating to legal advice sought by those employees from those attorneys.

13. It is therefore concluded that the records described in paragraph 12, above, are exempt from disclosure pursuant to §1-210(b)(10), G.S.

14. After a careful review of the in camera records, it is also found that pages 5 and 6 are handwritten notes of oral communications between the respondents' employees acting in the performance of their duties and within the scope of their employment, and their attorneys, relating to legal advice sought by those employees from those attorneys.

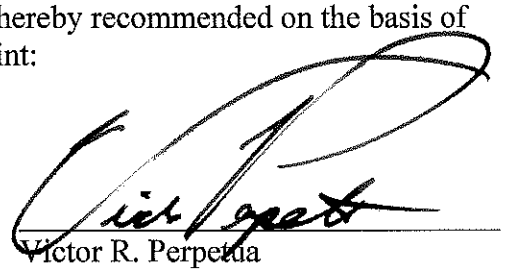
15. It is therefore concluded that the records described in paragraph 14, above, are exempt from disclosure pursuant to §1-210(b)(10), G.S.

16. Based upon the conclusions in paragraphs 13 and 15, above, it is unnecessary to consider the respondents' additional claims of exemption under §§1-210(b)(1) and (4), G.S.

17. It is therefore concluded that the respondents did not violate the FOI Act as alleged.

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

1. The complaint is dismissed.



Victor R. Perpetua
as Hearing Officer

FIC2012-161/HOR/VRP/12112012