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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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Richard Burgess and Connecticut Carry Inc.,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-225

Diana Urban, Member, State of Connecticut,
Connecticut General Assembly,
Respondent(s)

December 19, 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, January 23, 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 January 11, 2013**. 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 January 11, 2013**. 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 January 11, 2013**, 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: Richard Burgess
Philip Miller, AAG

12/19/12/FIC# 2012-225/Trans/wrbp/KKR/PSP/CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Richard Burgess and
Connecticut Carry Inc.,

Complainants

Docket # FIC 2012-225

against

Diana Urban, Member,
State of Connecticut,
Connecticut General Assembly,

Respondent

December 19, 2012

The above-captioned matter was heard as a contested case on November 7, 2012, at which time the complainants and the respondent appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

At the hearing, the complainants renewed a request for postponement of the hearing, which was previously denied on November 1, 2012. The hearing officer denied the request on the record.

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

1. The respondent is a public agency within the meaning of §1-200(1), G.S.
2. It is found that, by email dated March 21, 2012, the complainants made a request to the respondent for access to:

the correspondence referenced in your emails to Rich Burgess via email address connecticutcarry@gmail.com on 3/9/2012 (1:44PM) and 3/14/2012 (3:16PM) where you indicate that there is correspondence between yourself and: 'The Police Chief's Association' 'the Police Department' [and] 'the High School.'

This pertains to any and all correspondence where they 'requested that we do a bill' or where 'the bill was brought to my Committee.'

It is further found that the information requested related to House Bill 5220, *An Act Concerning Look-A-Like Firearms*, proposed during the 2012 legislative session.

3. It is found that on March 28, 2012, there were a series of email exchanges between the complainants and the respondent. The complainants renewed and provided some clarification regarding the request, described in paragraph 2, above. The respondent provided some information to the complainants and stated that she would also check her emails.

4. It is found that subsequent to March 28th, the respondent forwarded the request, described in paragraph 2, above, to Attorney Christy Scott, legal counsel for the State of Connecticut House Democrats, seeking advice on how to proceed with the complainants' request.

5. It is found that Attorney Scott advised the respondent and the respondent's aide to conduct a broad search for any records, including, but not limited to, email correspondence that they believed may be responsive to the request, described in paragraph 2, above. It is found that the respondent and her aide provided Attorney Scott with approximately a dozen records. It is found that Attorney Scott reviewed such records and determined that none of the records were responsive to the request, described in paragraph 2, above.

6. It is found that, by letter dated April 5, 2012, Attorney Scott, on behalf of the respondent, informed the complainants that there were no documents responsive to their request. In addition, she informed the complainants that "to the extent that a request or proposal concerning House Bill 5220 may have been received by the respondent during a private meeting, telephone conversation or other...oral conversation, such conversation would not generate a recorded document susceptible to disclosure pursuant to the Freedom of Information ("FOI") Act."

7. By letter dated April 20, 2012, and filed April 24, 2012, the complainants appealed to this Commission, alleging that the respondent violated the FOI Act by failing to provide them with copies of the requested records, described in paragraph 2, above. The complainants also requested that the Commission impose a civil penalty against the respondent.

8. Section 1-200(5), G.S., defines "public records or files" as:

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.

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

10. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

11. It is found that the records requested by the complainants, to the extent that they exist, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

12. At the hearing in this matter, the complainants claimed that the respondent maintains records responsive to the request, described in paragraph 2, above, that she failed to provide to them. As evidence of this, the complainant Burgess produced a letter, dated January 20, 2012, from the Town of Stonington Police Chief, to the respondent, in which the Police Chief requested that the respondent consider enacting legislation pertaining to look-a-like firearms. It is found that such letter was obtained by the complainants pursuant to a records request made to the Stonington Police Department. The complainants also argued that Attorney Scott improperly narrowed the complainants’ request.

13. At the hearing in this matter, Attorney Scott testified that she understood the complainants’ request to be a request for any correspondence between Representative Urban and the Connecticut Police Chiefs’ Association, the Stonington Police Department or Stonington High School, in which any of these organizations requested that a bill be raised and presented to the Select Committee on Children. Attorney Scott agreed that January 20th letter, described in paragraph 12, above, fell within the scope of the request, described in paragraph 2, above.

14. It is found that Attorney Scott’s reasonably interpreted the request, described in paragraph 2, above.

15. It is found that, at the time of the complainants’ request, described in paragraph 2, above, the respondent did not have a copy of the record described in paragraph 12, above. However, it is further found that, sometime thereafter, Attorney Scott was provided a courtesy copy of such letter by the Stonington Police Chief on or about the time that the Police Chief provided a copy of such letter to the complainants, pursuant to their records request. Subsequent to receiving a copy of the January 20th letter, Attorney Scott contacted the respondent and inquired whether she had a copy of such letter. It is found that the respondent and her aide conducted a thorough search of the relevant files and could not locate the letter.

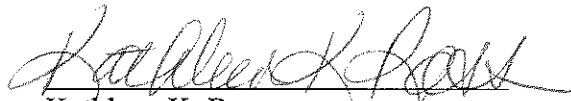
16. It is found that the respondent provided the complainants with all records she maintained, at the time of the request, described in paragraph 2, above, responsive to such request.

17. It is concluded, therefore, that the respondent did not violate the FOI Act as alleged in the complaint.

18. Based upon the foregoing, the Commission need not address the issue of civil penalties.

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