

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

R. John Farnham,
Complainant(s)

against

Town Manager, Town of Rocky Hill; and Town
of Rocky Hill,

Respondent(s)

Notice of Rescheduled
Commission Meeting

Docket #FIC 2011-404

May 17, 2012

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, May 9, 2012 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, June 13, 2012.**

Any brief, memorandum of law or request for additional time, as referenced in the April 13, 2012 Transmittal of Proposed Final Decision, should be received by the Commission on or before June 1, 2012.

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: R. John Farnham
Morris R. Borea, Esq.

2012-05-17/FIC# 2011-404/ReschedTrans/wrbp/CAL/TAH

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

R. John Farnham,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-404

Town Manager, Town of Rocky Hill; and
Town of Rocky Hill,
Respondent(s)

April 13, 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, May 9, 2012**. 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 27, 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 April 27, 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 April 27, 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: R. John Farnham
Morris R. Borea, Esq.

4/13/12/FIC# 2011-404/Trans/wrbp/CAL//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

R. John Farnham,

Complainant

against

Docket # FIC 2011-404

Town Manager, Town of Rocky Hill;
and Town of Rocky Hill,

Respondents

November 28, 2011

The above captioned matter was heard as a contested case on October 17, 2011, at which time the complainant 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)(A), G.S.
2. It is found that by email dated July 7, 2011, the complainant made a request to the respondents for access to all communications by any person concerning "Parcel 16" from June 10, 2011 to the "date of compliance" with the request (the "requested records").
3. It is found that by letter dated July 8, 2011, the respondents acknowledged the complainant's request.
4. It is found that, by letter dated August 4, 2011 and filed with the Commission on August 8, 2011, the complainant appealed to the Commission, alleging that the failure of the respondents to provide the requested records violated the Freedom of Information Act ("FOIA").
5. 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.

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

7. It is found that the respondent Town Manager sent an email to all relevant department heads on July 7, 2011, directing them to search for the requested records and provide them to her as soon as possible. The respondent Town Manager was on vacation from July 8, 2011 until July 18, 2011. By email dated July 22, 2011, the respondent Town Manager asked the complainant to contact her assistant in order to schedule a review of the requested records. On August 2, 2011, the complainant reviewed approximately fifty pages of records and wrote a letter to the respondent Town Manager stating that he believed the records provided were incomplete and requesting a meeting with the respondent Town Manager.

8. It is found that the respondent Town Manager was broadly responsive to the complainant, entering into an email exchange concerning zoning issues involving the placement of signs and landscape planting. Moreover, the relevant signs were relocated on several occasions. The respondent Town Manager did not, however, schedule a meeting with the complainant as he requested.

9. It is found that the respondents and their counsel performed a diligent search for records created by July 7, 2011 and provided all requested records created by July 7, 2011 to the complainant for his review on August 2, 2011.

10. At the hearing, the complainant focused on the fact that his request was for relevant records up to the “date of compliance”. The complainant specifically questioned whether any meeting on or about July 22, 2011 that the respondent Town Manager may have conducted with the town Fire Marshall and the town Highway Superintendent resulted in the creation of records. The respondent Town Manager was cooperative, offering to do a search to see if she maintained any notes to herself, which would be in shorthand, as a reminder for appropriate follow up action. At the request of the hearing officer, the respondent Town Manager filed a late filed exhibit, by letter dated October 19, 2011, stating that she had searched her files and determined that she does not maintain any notes taken during any telephone conversation with the town Fire Marshall or the town Highway Superintendent during the period from June 2, 2011 through August 6, 2011.

11. At the hearing, the complainant also specifically noted that requested records were not provided for the period from the date of the request, July 7, 2011, to the date of the records inspection, August 2, 2011. Following some discussion at the hearing about providing those records, the respondent Town Manager, by letter dated October 24, 2011, provided the complainant with copies of the requested records dated from July 7, 2011 to August 2, 2011. A copy of the letter, with the attached records, was also entered into evidence as a late filed exhibit.

12. It is concluded that the respondents had no legal obligation "to provide the complainant with records not yet in existence at the time of [his] request". Docket #FIC 1996-221; Rita M. Pacheco v. Parks and Recreation Commission, City of Torrington; Docket #FIC 2005-332; Stephen Whitaker v. Boris Hutorin, Director, Department of Information Technology, Town of Greenwich. Therefore, the respondents did not violate §§1-210(a) and 1-212(a), G.S., by initially overlooking the aspect of the request to search for requested records that were created after July 7, 2011, but before the "date of compliance" with the request.

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.



Clifton A. Leonhardt
as Hearing Officer