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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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Mark Cugini,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-682

Town Clerk, Town of Colchester; and
Town of Colchester,
Respondent(s)

October 10, 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, November 14, 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 November 2, 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 November 2, 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 November 2, 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: Mark Cugini
Town Clerk, Town of Colchester
Town of Colchester, Kristine Barone

10/10/12/FIC# 2011-682/Trans/wrbp/CAL/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Mark Cugini,

Complainant

against

Docket #FIC 2011-682

Town Clerk,
Town of Colchester; and
Town of Colchester,

Respondents

October 9, 2012

The above-captioned matter was heard as contested case on October 5, 2012, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 letter dated December 7, 2011, the complainant made a request to the respondent town clerk for copies of the deed for the property at 20 Gem Drive, Colchester, CT (the "requested records" or sometimes the "requested deed"). This request renewed an identical request of November 4, 2011.
3. It is found that by letter dated December 9, 2011, the respondent town clerk acknowledged the complainant's requests for records.
4. By letter dated December 16, 2011 and filed with the Commission on December 19, 2011, the complainant appealed to the Commission, alleging that the respondents failed to provide the requested records and thereby violated the Freedom of Information Act ("FOIA").

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

“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 or certified copy of any public record.

7. It is found that the respondent town clerk spoke to three employees of the Department of Correction (“DOC”) concerning the complainant’s request, and on December 8, 2011, sent a facsimile to counselor J. Ilvento at the DOC seeking direction regarding the request.

8. It is found that counselor J. Ilvento at DOC requested that the respondent town clerk send a copy of the requested record to him and informed the respondent town clerk that he would present it to the complainant. The respondent town clerk then mailed the requested deed to counselor J. Ilvento at DOC.

9. It is found that the requested deed was not provided to the complainant in December 2011, but rather was offered to the complainant by DOC employees during September 2012. These actions do not appear to comply with paragraphs 3 and 4 of the stipulated settlement as ordered on December 15, 2010 in Connecticut DOC et al v. FOIC et al, Superior Court, Docket No. HHB-CV09-5014254-S. However, the failure of DOC employees to deliver the requested deed promptly was not within the control of the respondents.

10. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., because they provided the requested records promptly.

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.

A handwritten signature in black ink, appearing to read "Clifton A. Leonhardt", written over a horizontal line.

Clifton A. Leonhardt
as Hearing Officer

FIC2011-682/HOR/CAL/10092012