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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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Steven Ballok,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-355

Director of Finance, Town of Monroe; and Town
of Monroe,

Respondent(s)

May 1, 2013

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 22, 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 May 10, 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 May 10, 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 May 10, 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: Steven Ballok
John P. Fracassini, Esq.

2013-05-01/FIC# 2012-355/Trans/wrbp/VRP//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Steven Ballok,

Complainant

against

Docket #FIC 2012-355

Director of Finance, Town of Monroe; and
Town of Monroe,

Respondents

May 1, 2013

The above-captioned matter was heard as a contested case on December 3, 2012, 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), G.S.
2. By letter of complaint filed June 29, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying him prompt access to public records.
3. It is found that the complainant visited the office of the respondent Director of Finance on Friday June 8, 2012, and made an oral request to inspect all of Town Attorney Fracassini's invoices for legal services rendered from the dates November 2009 to the date of his request.
4. It is found that, because the respondent Director of Finance believed the 2009 and 2010 invoices were stored one floor below, and because the more recent invoices could not be immediately located, the respondent Director of Finance agreed to make the requested invoices available for inspection on the following Tuesday, June 12, 2012.
5. It is found, however, that the respondent Director of Finance then emailed the complainant a couple of hours later on Friday June 8, 2012, stating that Town Attorney Fracassini had met with him and instructed him that the complainant should put his request to inspect the invoices in writing and direct it to the office of the First Selectman.

6. It is found that the complainant objected to these preconditions to his access to the records by email on June 10, 2012, and re-asserted his attention to visit the offices of the respondent Finance Director on June 12, 2012 to inspect the requested invoices.

7. It is found that the respondent Finance Director responded by email on June 11, 2012, again referring the complainant to the First Selectman and the Town Attorney, and asserting that the requested invoices contained "confidential information which must be left out," and stating the he was "not about to deliver information to you after the conversation I had with [the Town Attorney] on Friday, nor will anyone else from my office."

8. It is found that on September 11, 2012, three months after his request, the complainant was informed by the office of the First Selectman that the requested invoices were available for review. Because the respondent Finance Director had indicated in June that the invoices contained confidential information, the complainant then inquired whether information had been redacted from the invoices. The Town Attorney wrote the complainant on October 12, 2012, stating that there were no redactions, and the complainant ultimately inspected the records on November 13, 2012.

9. 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.

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

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

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

12. The complainant maintains that the records were not provided promptly, and that the respondents have a history of delaying access to records by requiring requests to inspect records to be put in writing, and by requiring that all such requests be made to the office of the First Selectman, citing O'Hara v. First Selectman, Town of Monroe et al., Docket #FIC 2006-480 ("O'Hara").

13. In O'Hara, the Commission concluded that the First Selectman and the Director of Human Resources (neither of whom is a respondent in this case) had violated the FOI Act by requiring that a request to inspect public records be put in writing, and requiring that the request be made to the First Selectman.

14. The respondents maintain that the prior First Selectman established an unwritten procedure to have each department head consult with the First Selectman to determine whether records concerned matters that were in litigation. However, it is found that the respondent Director of Finance did not follow that procedure, did not determine whether the records concerned matters that were in litigation, and in fact never asserted the possibility of litigation as a specific reason for denying access. It was not consultation with the First Selectman's office that that impeded access, but the requirement that the complainant himself redirect his request to that office.

15. It is found that the respondent Director of Finance, after consultation with the town Attorney, delayed the complainant's access due to claims that the invoices contained confidential information. However, it is found that the actual invoices contain only general descriptions of legal services, number of hours billed, and total amounts due, and that such information is not exempt from disclosure. *Maxwell v. FOIC*, Docket No. CV 99-0497390-S, Superior Court, J.D. of New Britain, Memorandum of Decision dated February 15, 2001, (Weise, J.); *affirmed*, *Maxwell v. Freedom of Info. Com'n*, 260 Conn. 143 (2002). Additionally, it is found that the respondents presented no evidence to prove that any substantial time had been spent by anyone reviewing the invoices to determine whether they contained confidential information. Indeed, it appears from the face of the invoices that the Town Attorney has wisely chosen to omit any confidential information from the invoices that he submits to the town.

16. It is therefore concluded that the respondents Director of Finance and Town of Monroe violated the FOI Act in this case by failing to provide prompt access to inspect public records, by requiring that a request to inspect public records be put in writing, and by requiring that the request be made to the First Selectman.

17. Finally, the complainant asserts that he was never given access to review all of the records he asked to inspect. Specifically, he maintains that no invoices after February 29, 2012 were made available, and that invoices dated January 31, 2010, April 26, 2010 and June 29, 2010 were "not original town documents but rather copies and were not time stamped in received by the Office of First Selectman and or the Department of finance as were all other documents."

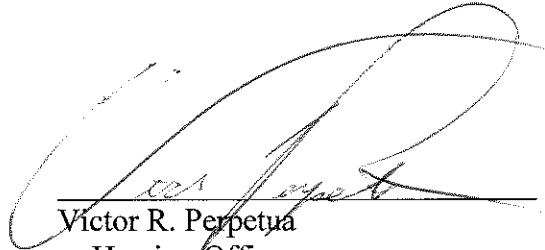
18. No evidence was presented at the hearing to prove whether the respondents maintain originals of the copies of the invoices that the complainant inspected. It is concluded, however, that the respondents violated the FOI Act by failing to provide access to inspect invoices after February 29, 2012.

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

1. The respondents shall forthwith provide the complainant with access to inspect the requested invoices for the time period March 1, 2012 through the date of his June 8, 2012 request.

2. The respondents shall forthwith conduct a diligent search for the original invoices dated January 31, 2010, April 26, 2010 and June 29, 2010, and provide the originals for the complainant's inspection, if they exist.

3. Henceforth the respondents shall strictly comply with the inspection and promptness requirements of §1-210(a), G.S. Specifically, the respondents shall not require any individual to submit a request to inspect public records in writing, nor require that any request to inspect or copy public records by made to the First Selectman. Any such failure to comply with the inspection provisions of the FOI Act in the future, including not just the respondent Finance Director but also the Town of Monroe, may be viewed by the Commission as grounds for the imposition of a civil penalty.



Victor R. Perpetua
as Hearing Officer