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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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Pam Pinto & Bruce Pinto,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-714

First Selectman, Town of Thomaston; and
Town of Thomaston,
Respondent(s)

August 14, 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, September 11, 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 August 30, 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE August 30, 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 August 30, 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: Pam Pinto and Bruce Pinto
Anthony F. DiPentima, Esq.

8/14/13/FIC# 2012-714/Trans/wrbp/VRP//VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Pam Pinto and Bruce Pinto,

Complainants,

against

Docket #FIC 2012-714

First Selectman, Town of Thomaston; and
Town of Thomaston,

Respondents

August 5, 2013

The above-captioned matter was heard as a contested case on May 13, 2013, at which time the complainants and the respondents appeared, stipulated to certain facts 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 December 26, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their request for copies of records pertaining to an upgrade in the town's wireless communications system.
3. It is found that the Thomaston Communication Committee, which was formed to make recommendations concerning an upgrade in the town's wireless communications system, held its first organizational meeting on September 29, 2011.
4. It is found that Communication Committee met again on October 6, 2011 to conduct a site visit to the Chapel Street Police Department to view the current communication equipment; and further met on December 1, 2011, February 9, 2012, April 5, 2012, May 3, 2012, June 17, 2012 and August 6, 2012.
5. It is found that the complainants requested minutes of the meetings of the Communication Committee, which the respondent provided, with the exception of the October 6, 2011 site visit, for which no minutes had been created.
6. Based upon information contained in the minutes provided to them, the complainants then requested, by five letters all dated December 17, 2012, any records pertaining to any matters discussed in those meetings. For example, the complainants

requested, with regard to the Communication Committee's December 1, 2011 meeting, any records pertaining to:

- A) "Overview given by Jim Campbell on current status of project – Project Name? – indicated in item 1.1
- B) "Repeater site info – indicated in item 1.1
- C) "Potential sites – Nystrom and Kennedy Dr. – indicated in item 1.1
- D) "Existing towers on North St Plymouth, Mt. Tobe Rd. Plymouth, Sheffield Rd. Waterbury and High Street Extension Thomaston – indicated in item 1.1
- E) "Motorola review of all locations regarding which sites will achieve goal of 95+% area coverage – indicated in item 1.1
- F) "What is the area coverage? – indicated in item 1.1
- G) "Recommendation by George Seabourne regarding town-owned property on Doug Road as potential site – indicated in item 1.1
- H) "Jim Campbell follow-up submission communication – please provide – indicated in item 1.1
- I) "Siting Council height restrictions and/or approval regarding towers – please provide results – indicated in item 1.1
- J) "Ken Koval recommended the use of Town Hall Clock Tower – please provide request – indicated in item 1.2
- K) "What are the available frequencies – indicated in item 1.3
- L) "Please provide any and all consent letters of request – indicated in item 1.3
- M) "Other tower site shelters – please provide info – indicated in item 1.3 #3
- N) "Equipment Inventory requested by Jim Campbell – Please provide – indicated in item 1.3 #4
- O) "Multi-Band Radios – Who agreed as indicated in item 5. Of the 12/1/11 Communication Committee Minutes? indicated in item 1.3 #5
- P) "Content of Board of Finance update which was submitted on December 13, 2011, as indicated in item 1.3#6 – please provide"

The complainants made similar requests with respect to each of the Communication Committee meetings, and also requested minutes of an October 27, 2011 meeting, which had not in fact occurred.

7. 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.

8. 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, (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. (Emphasis supplied).

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

10. Section 1-225(a), G.S., provides in relevant part: “Each public agency shall make, keep and maintain a record of the proceedings of its meetings.”

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. It is found that the Communication Committee failed to create minutes of its October 6, 2012 site visit. However, the complaint in this matter did not name the Communication Committee as a respondent, and did not allege a failure to create minutes as a violation of the FOI Act. Therefore, no legal conclusions are reached concerning the absence of minutes of the Communication Committee’s October 6, 2012 site visit, although this Commission recommends that the respondent First Selectman communicate concerning this omission to the chair or recording secretary of the Communication Committee.

13. It is found that Thomaston Chief of Police is the custodian of the records of the communications system upgrade project, other than maps in the custody of the Planning and Zoning Commission, and that the respondent First Selectman delegated to the Chief the responsibility of responding to the complainants’ request.

14. It is found that the Chief conducted a diligent search for records responsive to the complainants' request, and provided 172 pages of documentation to the complainants on January 11, 2013.

15. It is found that documentation does not exist regarding every matter that was discussed at the meetings of the Communication Committee, and that the only record not provided to the complainants as of the date of this hearing was a letter from an historical commission regarding the placement of radio transmission antennas on an historic site. The respondent agreed to provide this record to the complainants.

16. It is found that the only portions of the requested records not provided to the complainants were a small number of redactions that the Chief of Police believed were either proprietary engineering details, or redactions that the Chief believed might compromise public safety.

17. With respect to proprietary engineering details, §1-210(b)(5), G.S., provides that disclosure is not required of:

(A) Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy; and

(B) Commercial or financial information given in confidence, not required by statute

18. With respect to compromising public safety, §1-210(19), G.S., provides that disclosure is not required of:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be

determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency; (B) by the Chief Court Administrator with respect to records concerning the Judicial Department; and (C) by the executive director of the Joint Committee on Legislative Management, with respect to records concerning the Legislative Department. As used in this section, "government-owned or leased institution or facility" includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as defined in section 16-1, a water company, as defined in section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and "chief executive officer" includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to:

- (i) Security manuals or reports;
- (ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;
- (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed;
- (iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (v) Internal security audits of government-owned or leased institutions or facilities;
- (vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information

relating to security or other records otherwise exempt from disclosure under this subdivision;

(vii) Logs or other documents that contain information on the movement or assignment of security personnel;

(viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and

(ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply

19. Section 1-210(d), G.S., further provides:

Whenever a public agency, except the Judicial Department or Legislative Department, receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection, as applicable, of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act and for information related to a water company, as defined in section 25-32a, the public agency shall promptly notify the water company before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency or after consultation with the chief executive officer of the applicable water company for information related to a water company, as defined in section 25-32a, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the

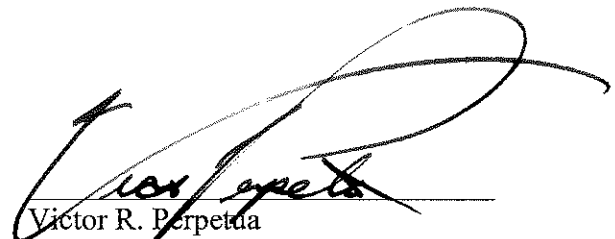
commissioner may direct the agency to withhold such record from such person. In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch state agency or the municipal, district or regional agency that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section, exclusively, or, in the case of records concerning Judicial Department facilities, the Chief Court Administrator or, in the case of records concerning the Legislative Department, the executive director of the Joint Committee on Legislative Management.

20. Although the respondents did not notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection of the complainants' request for records, the complainants acknowledged at the hearing that they were not seeking the kinds of records arguably exempt under either §§1-210(b)(19) or 1-210(b)(5), G.S.

21. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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.



Victor R. Perpetta
as Hearing Officer