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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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Thomas White,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-157

City Attorney, Office of the City Attorney, City  
of Bridgeport; and Office of the City Attorney,  
City of Bridgeport,

Respondent(s)

October 1, 2013

Transmittal of Proposed Final Decision Dated September 30, 2013

In accordance with Sections 4-179 and 4-183(h) of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision dated September 30, 2013 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, October 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 October 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 ten (10) copies** be filed *on or before October 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 **eleven (11) copies** be filed *on or before October 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: Thomas White  
Thomas W. Bucci, Esq.  
Gregory M. Conte, Esq.

FIC#2012-157/OSC RTrans/wrbp/KKR/PSP/10/1/13

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FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer  
on Remand

Thomas White,

Complainant

against

Docket #FIC 2012-157

City Attorney, Office of City  
Attorney, City of Bridgeport; and  
Office of the City Attorney, City of  
Bridgeport,

Respondents

September 30, 2013

The above-captioned matter was heard as a contested case on August 30, 2012, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. On September 27, 2012, the Commission adopted a final decision in this matter. Notice of such final decision was mailed to the parties on October 2, 2012. The respondents filed an appeal of the final decision with the Superior Court on October 23, 2012. By order dated July 23, 2013, the Superior Court remanded this matter to the Freedom of Information ("FOI") Commission.

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. It is found that, by letter dated March 2, 2012, the complainant made a request to the respondents for all records related to a "letter dated September 14, 2010 from Attorney Michel Bayonne to Attorney Thomas Bucci" (the "September 14 letter").
3. It is found that, by letter dated March 6, 2012, the respondents informed the complainant that his request had been received and was being reviewed, and that they would contact him once the records had been compiled.
4. By email dated and filed March 16, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the request for records described in paragraph 2, above.
5. 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.

6. 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.

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

8. It is found that the records, described in paragraph 2, above, are public records, within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that the complainant, who was employed as the legislative services director for the City of Bridgeport, received the September 14, 2010 letter, informing him that the City Council intended to terminate his employment for cause, but offered to permit him to resign.

10. It is found that the respondents hired the law firm of Durant, Nichols, Houston, Hodgson & Cortese-Costa (“Durant Nichols”), to provide them with legal advice in connection with the intended dismissal of the complainant. It is found that Attorney Michel Bayonne of Durant Nichols, prepared a written legal opinion addressed to Mark Anastasi, City Attorney, dated May 5, 2010 (the “opinion”); and a Report of Investigation Prepared for the City of Bridgeport, City Council Leadership, dated May 26, 2010 (the “report”).

11. The respondents claim that both the opinion and the report, described in paragraph 10, above, are exempt from disclosure, pursuant to §1-210(b)(10), G.S., which permits an agency to withhold from disclosure records of “communications privileged by the attorney-client relationship.”

12. At the conclusion of the hearing, the respondents submitted the opinion and the report to the Commission for in camera inspection. The in camera records consist of a four-page

legal opinion, plus a fax cover sheet, and a four-page report, plus a cover page and table of contents page, for a total of 11 pages.

13. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” Id. at 149.

14. Section 52-146r(2), G.S., defines “confidential communications” as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

15. The Supreme Court has also stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, supra at 149. See also Shew v. Freedom of Information Commission, 245 Conn. 149 (1998).

16. In addition, in Shew, the sole issue on appeal was whether certain documents created by an attorney who had been retained by the town of Rocky Hill to conduct an investigation of the town’s police chief were subject to disclosure under the FOI act. See id. at 151. The Court held that the report at issue was exempt from mandatory public disclosure based upon the portion of §1-210(b)(10), G.S., which recites the attorney-client privilege. Id. at 160.

17. After careful inspection of the opinion, it is found that: (a) Attorney Bayonne was acting in a professional capacity for the respondents; (b) the communications were made by Attorney Bayonne to the city attorney in his capacity as such; (c) the communications relate to the legal advice sought by the respondents from Attorney Bayonne; and (d) the communications were made in confidence.

18. Accordingly, it is concluded that the opinion is an attorney-client privileged communication within the meaning of §1-210(b)(10), G.S.

19. After careful inspection of the report, it is found that, such report was created by Attorney Bayonne in furtherance of the legal advice the respondents requested from him. Specifically, as in Shew, it is found that: (a) Attorney Bayonne was acting in his capacity as an

attorney for the respondents; (b) that the communications contained in the report were made by Attorney Bayonne to the city council members; (c) the communications in the report relate to the legal advice sought by the respondents from Attorney Bayonne; and (d) the communications were made in confidence.

20. Accordingly, it is concluded that the report is an attorney-client privileged communication within the meaning of §1-210(b)(10), G.S.

21. Based upon the foregoing, it is concluded that the in camera records, described in paragraphs 10 and 12, above, are exempt from disclosure.

22. It is found that the respondents provided the complainant with copies of several emails between and among the complainant, and various members of the city council and the city's personnel director, all of which are dated December 2009 and January 2010. In addition, it is found that the respondents provided the complainant with a copy of a memorandum, dated January 19, 2010, to the acting personnel director, which purports to be from city council leadership.

23. At the hearing in this matter, the complainant stated that the records described in paragraph 22, above, are not responsive to his request, described in paragraph 2, above. Although the complainant acknowledged that the respondents never conducted any reviews of his performance during his employment with the city, and that thus there are no records regarding the same, he insisted that additional responsive records exist that have not been provided to him.

24. It is found that following the hearing in this matter, the respondents searched for additional records responsive to the complainant's request, but the search produced no additional records.

25. It is concluded that the respondents did not violate the FOI Act.

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

1. The complaint is dismissed.



Kathleen K. Ross  
as Hearing Officer