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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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Daniel Novak,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-067

Chief, Police Department, Town of Manchester;
and Police Department, Town of Manchester,
Respondent(s)

October 24, 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, November 13, 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 November 1, 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 November 1, 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 November 1, 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: Daniel Novak
Timothy P. O'Neill, Esq.

10/24/13/FIC# 2013-067/Trans/wrbp/MS/PSP/GFD

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Daniel Novak,

Complainant

Docket # FIC 2013-067

against

Chief, Police Department,
Town of Manchester; and
Police Department,
Town of Manchester,

Respondents

October 16, 2013

The above-captioned matter was heard as a contested case on July 30, 2013, at which time the complainant and 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. It is found that the complainant made a request to the respondents for a copy of case report M201212126 concerning a November 18, 2012 incident at Bob's Discount Furniture Store in Manchester.
3. It is found that, by letter dated February 4, 2013, the respondents informed the complainant that they could provide him with a redacted copy of the report, described in paragraph 2, above, and requested that he remit \$4.00. The respondents also informed the complainant that they redacted the identities of witnesses pursuant to §1-210(b)(3)(A), G.S. Subsequently, the respondents provided the complainant with a copy of the report with the identities of witnesses redacted.
4. By letter dated February 6, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with all records responsive to his request.

5. Section 1-200(5), G.S., defines “public records or files” as:

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 “any 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 requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. At the hearing, the complainant testified that he needed the identities of the witnesses in order to file a legal action for defamation of character. The complainant also testified that he agreed that the redactions, described in paragraph 3, above, were permissible by law.¹ Based on the complainant’s statements in agreement with their legal argument and the applicability of the §1-210(b)(3)(A), G.S., exemption to the records at issue, the respondents moved to dismiss this matter. The hearing officer informed the parties that he would take the motion under consideration. Under the facts and circumstances of this case, the motion is hereby denied.

10. The respondents nonetheless maintained that, irrespective of the complainant’s concession, the redactions, described in paragraph 3, above, were permissible pursuant to §1-210(b)(3)(A), G.S.

11. Section 1-210(b)(3), G.S., exempts, in relevant part:

Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records

¹ Notably, although the complainant agreed with the respondents’ position, he testified that, for purposes of his defamation suit, the fact that he would now have to go through a lengthy discovery process in order to get the same information that is at issue in this matter is impractical and contrary to common sense.

would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known....

12. It is found that the records, described in paragraph 2, above, were compiled in connection with the detection or investigation of crime. It is further found that the records are exempt from mandatory disclosure because they contain the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known.

13. It is concluded that the respondents did not violate the FOI Act as alleged in this matter.

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.


Commissioner Matthew Streeter
as Hearing Officer