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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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Geoffrey Woods,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-286

Chief Building Official, Building Department,
Town of Fairfield; Building Department, Town of
Fairfield; Director of Health, Health Department,
Town of Fairfield; and Health Department,
Town of Fairfield,

Respondent(s)

December 3, 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, January 8, 2014**. 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 December 13, 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 December 13, 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 December 13, 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: Geoffrey Woods
Stanton H. Lesser, Esq.

12/3/13/FIC# 2013-286/Trans/wrbp/CH/KKR/TAH

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Geoffrey Woods,

Complainant

against

Docket #FIC 2013-286

Chief Building Official, Building Department,
Town of Fairfield; Building Department,
Town of Fairfield; Director of Health, Health
Department, Town of Fairfield; and Health
Department, Town of Fairfield,

Respondents

October 17, 2013

The above-captioned matter was heard as a contested case on October 1, 2013, 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. It is found that, by two emails each dated March 26, 2013, the complainant requested from the respondent building official and from the respondent health department director, copies of certain records “generated or materialized...from January 1, 2001 through the present day”¹ pertaining to certain properties located in the town of Fairfield (“the properties”). Specifically, the complainant requested from each respondent:

- (a) all documents relating to the corporation known as “Kalax” and/or its subcontractors;
- (b) any documents relating to Kris/Chris/Krester Krook or Krook and/or his subcontractors and any associated legal representation;
- (c) any documents written by yourself, your officers or your offices to other departments of the Town of Fairfield, the State Building Department, and/or offices external of the State system;
- (d) any documents relating to legal representation...;

¹ For records pertaining to one of the properties, the complainant limited his request to records dated from January 2007 through “the present date.”

- (e) any documents relating to but not limited to Engineering, Conservation, Surveying, and Health;
- (f) any documents relating to my person, to my wife, or the name(s) of 'Geoffrey Woods' 'Woods' or 'Virginia Fingelly.'

3. It is found that the requests, described in paragraph 2, above, were forwarded to the town's FOI compliance officer, Attorney Eileen Kennelly, who coordinated and participated in the search for responsive records. It is found that the search for such records consisted of, in part, an electronic search of the town's servers for emails, including deleted emails, using appropriate search terms.

4. It is found that the email search, described in paragraph 3, above, revealed approximately 3,200 emails, 1,000 of which were required to be reviewed by Attorney Kennelly to determine if they were responsive to the requests. It is found that the respondents provided the complainant with a total of 1,600 responsive emails on three CDs in March, April and June, 2013.

5. It is found that the respondents also conducted a manual and electronic search for documents, other than emails, maintained in both the building department and the health department. It is found that the search revealed numerous responsive records, that the respondents invited the complainant to view the files maintained with respect to each property containing many of these records, and that the complainant did so on at least two occasions.

6. It is found that, in numerous emails in April, the respondents informed the complainant that they had conducted searches for responsive records and that all responsive records, other than emails, had been provided or made available to him to view. It is further found that, during the month of April, the complainant repeatedly emailed the Attorney Kennelly to question her specifically about the results of the searches, suggesting that there were additional records that had not been provided, and suggesting that she conduct additional searches. Moreover, it is found that, in these emails, the complainant requested additional records,² and asked Attorney Kennelly to answer questions such as "do either department enjoy [sic] expense accounts, and does the town issue credit/debit cards to either;" "is there a policy in the town departments relating to dress code?;" and "does any policy exist with regard to inter-department relations?"

7. It is found that the Attorney Kennelly, in an effort to understand and satisfy the complainant's requests, met with the complainant 5 or 6 times, patiently and courteously responded to the complainant in writing, conducted the additional searches requested by the complainant and answered his questions.

² Some of the additional records the complainant requested included phone records and invoices, which were maintained by the town's finance department. Although not the subject of this appeal, it is noted that Attorney Kennelly graciously searched for, and provided, these records to the complainant, in addition to working on the response to the requests at issue in this matter.

8. It is found that the complainant, by separate emails each dated April 25, 2013 to the respondent building official and the respondent director of health, reiterated the requests, described in paragraph 2, above, stating his belief that additional responsive records exist that the respondents had failed to provide to him. In his April 25th emails, the complainant requested additional records.

9. By email dated May 8, 2013 and filed May 13, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to fully comply with the requests for records, described in paragraphs 2 and 8, above.

10. 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.

11. 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.

12. 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.”

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

14. It is found that, in response to the April 25th requests, described in paragraph 8, above, the respondents promptly conducted a thorough and diligent search for the additional records requested by the complainant, which search required the respondents to manually search for records, some 40 years old, archived in a basement. Attorney Kennelly, through emails to the complainant, kept the complainant informed of the status of such searches while they were

ongoing, and verified, again, for the complainant, that all records responsive to the March 26th requests, described in paragraph 2, above, had been provided.

15. It is found that the respondents conducted a thorough and diligent search for records responsive to the requests described in paragraphs 2 and 8, above. At the hearing in this matter, Attorney Kennelly testified, and it is found, that all records responsive to such requests maintained by the respondents have been provided to the complainant, with the exception of a few emails, which they claimed are exempt from disclosure by the attorney-client privilege. The respondents provided such emails to the Commission for in camera inspection.

16. It is found that the in camera records consist of seven (7) emails between Attorneys Richard Saxl and Sands Cleary; between Attorney Stanton Lesser and Eileen Kennelly; and between Eileen Kennelly and Sands Cleary. With regard to the respondents' claim that the requested records are protected by the attorney-client privilege, 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.

17. 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...

18. As our Supreme Court has stated, a four part test must be applied to determine whether communications are privileged: "(1) the attorney must be acting in a professional capacity for the agency; (2) the communications must be made to the attorney by current employees or officials of the agency; (3) the communications must relate to the legal advice sought by the agency from the attorney, and (4) the communications must be made in confidence." Lash v. Freedom of Information Commission, 300 Conn. 511, 516 (2011), citing Shew v. Freedom of Information Commission, 245 Conn. 149, 159 (1998).

19. After careful inspection of the in camera records, it is found that Attorneys Saxl and Lesser were acting as legal counsel for the Town of Monroe; that the emails at issue were between Attorneys Saxl and Lesser and current town officials; that the emails relate to legal advice sought by the town from Attorneys Saxl and Lesser; and that the communications were made in confidence. With regard to the email between Attorney Eileen Kennelly and Sands

Clearly, it is found, after careful inspection, that, under the facts and circumstances of this particular exchange, Attorney Kennelly was acting as legal counsel for the town and that the email was between Attorney Kennelly and a current town official, relates to legal advice sought by the town from Attorney Kennelly, and was made in confidence.

20. Accordingly, it is concluded that in camera records are protected by the attorney-client privilege and that the respondents did not violate the FOI Act by withholding the in camera records from the complainant.

21. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act 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 dismissed.



Commissioner Christopher P. Hankins
as Hearing Officer