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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Nicholas Mercier,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-288

Mayor, City of New Britain; and  
City of New Britain,  
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: Nicholas Mercier  
Joseph E. Skelly, Sr., Esq.

December 3, 2013/FIC# 2013-288/Trans/wrbp/LFS//TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Nicholas Mercier,

Complainant

against

Docket #FIC 2013-288

Mayor, City of New Britain; and City of  
New Britain,

Respondents

November 8, 2013

The above-captioned matter was heard as a contested case on October 10, 2013, at which time the complainant 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. It is found that on April 15, 2013, the complainant made a request for copies of computer-stored records pertaining to the mayor's proposed budget for fiscal year 2014. It is found that the complainant requested that the respondents provide such copies of records by e-mail.
3. It is found that on May 2, 2013, the respondents provided the complainant with electronic copies of 32 pages of records.
4. It is found that on May 10, 2013, the respondents provided the complainant with electronic copies of 8 more pages of records.
5. It is found that the respondents informed the complainant that the remaining non-exempt records would be provided to him, by e-mail, upon payment of a fee of 50 cents per printed page.
6. By letter filed May 13, 2013, the complainant appealed to this Commission, alleging that the respondent UCHC violated the Freedom of Information ("FOI") Act by improperly charging him for copies of computer-stored records.
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, ...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:

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 ... (3) receive a copy of such records in accordance with section 1-212.

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. It is concluded 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.

11. Section 1-211(a), G.S., provides:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212, as amended by Public Act 11-150.

12. Section 1-212, G.S., provides in relevant part:

(b) The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:

(1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection;

(2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested;

(3) The actual cost of the storage devices or media provided to the person making the request in complying with such request; and

(4) The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services...

13. It is concluded that the respondents may recover their costs in providing the computer-stored records to the complainant only as provided in §1-212(b), G.S.

14. It is found that the requested records were stored in the digital files of several of the respondents' employees. It is found that the respondents printed out the responsive records in order to more easily examine the records for permissive exemptions and for the mayor to examine the records before disclosing them to the complainant.

15. It is found that the respondents' cost in providing the requested digital records was the hourly salary attributed to employees engaged in search and retrieval of the records, in review of the records for permissive exemptions, and in the mayor's examination of the records.

16. It is concluded that 1-212(b), G.S., did not permit the respondents to charge a fee for any such expenses.

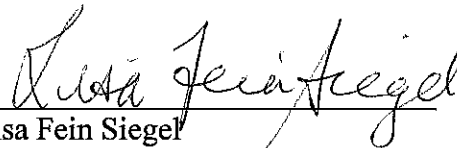
17. It is concluded, therefore, that the respondents violated §§1-211(a) and 1-212(b), G.S., by refusing to provide non-exempt computer-stored records to the complainant until he paid 50 cents per printed page.

18. It is concluded that the respondents violated §1-212(a), G.S., by failing to provide the non-exempt computer-stored records in a prompt manner.

19. It is found that the respondents subsequently provided all the records to the complainant by e-mail, without charge. It is found that the digital records were the equivalent of nearly 1,200 printed pages.

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

1. Henceforth, the respondents shall comply with §§1-211(a) and 1-212, G.S.

  
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Lisa Fein Siegel  
as Hearing Officer