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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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Mary Beth Litrico,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-471

President, Eighth Utilities District, Town of Manchester;
and Eighth Utilities District, Town of Manchester,
Respondent(s)

February 3, 2014

Corrected 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 Tuesday, February 11, 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 February 7, 2014**. 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 February 7, 2014**. **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 February 7, 2014**, 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: Mary Beth Litrico
John D. LaBelle, Jr., Esq.

1/6/14/FIC# 2013-471/Trans/wrbp/TCB/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Mary Beth Litrico,

Complainant

against

Docket #FIC 2013-471

President, Eighth Utilities District,
Town of Manchester; and Eighth
Utilities District, Town of Manchester,

Respondents

December 23, 2013

The above-captioned matter was heard as a contested case on November 7, 2013 at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For the purpose of hearing, the above-captioned matter was consolidated with Docket #FIC 2013-350; Mary Beth Litrico v. President, Eighth Utilities District, Town of Manchester; and Eighth Utilities District, Town of Manchester.

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 July 29, 2013, the complainant made a request to the respondents for access to inspect "the voters' lists from the 2012 and 2013 Annual Meeting of the Electorate; specifically, the lists that were used by your tellers to check off those in attendance." It is found that the complainant specifically asked that she be permitted access on August 1, 2013.
3. By letter dated August 1, 2013 and filed on August 2, 2013, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly provide her with access to inspect public records.
4. 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.

5. 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... Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

6. It is found that the requested records are public records within the meaning of §§1-200(5), and 1-210(a), G.S.

7. It is found that the complainant arrived at the respondents' office on August 1, 2013 during regular office hours and, after paying her taxes, requested to inspect the requested records. It is found, however, that the complainant was referred by a staff member to an e-mail that was sent to the complainant on July 30, 2013 in which the respondent president asked her to come on a different day to inspect the records. It is found that the staff member and the complainant debated whether or not the complainant should be given access to inspect the requested records at that time for 15 minutes. It is found that no other member of the public was in the respondents' office during that time. It is found that the complainant was not provided access to inspect the records at that time.

8. It is found that the respondent president responded to the complainant's July 29, 2013 request via e-mail dated July 30, 2013. She informed the complainant that access to inspect the requested records could not be provided on August 1, 2013 and suggested August 2, and August 5, 2013 in the alternative. It is found, however, that the complainant did not learn of the e-mail until after she arrived at the respondents' offices on August 1, 2013.

9. It is found that the complainant was given access to inspect the requested records on August 2, 2013.

10. At the hearing on this matter, the complainant contended that the time used to debate whether she should be permitted to inspect the records could have been used to actually allow her to inspect them. She contended that she knew what she was looking for and that it would have taken no more than five minutes; a fact she explained on August 1, 2013 and which later proved to be accurate when she was permitted to inspect the records on August 2, 2013. She contended that the delay was unreasonable.

11. The respondents contended that because August 1, 2013 was expected to be a very busy day in their office, they asked the complainant to come on another date. The respondents also contended that even though there was no other person in the office at the time the complainant was there, they had no way of knowing when another customer would have arrived and need to be assisted; therefore, the complainant was asked to come back another day.

12. With respect to the timeliness of the respondents' compliance, the meaning of the word "promptly" is a fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) the Commission advised that the word "promptly" as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority.

13. The advisory opinion describes some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

14. As found in paragraph 7, above, no other member of the public was in the respondents' office during the fifteen minutes that the complainant was there on August 1, 2013.

15. It is found that the requested records were readily available in the respondents' office and that the staff was familiar with them and their location.

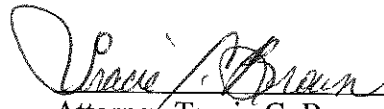
16. It is found that there is nothing in the record that shows that the staff was working on anything that could not have been set aside to provide the requested records and monitor the complainant while she took less than five minutes to inspect them.

17. Based on the findings in paragraphs 14, 15, and 16, above, it is found that the respondents unduly delayed compliance with the complainant's records request.

18. Consequently, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to promptly provide the complainant with access to inspect the requested records on August 1, 2013.

19. Notwithstanding the conclusion in paragraph 18, above, the Commission empathizes with the respondents and acknowledges that it can be difficult to balance the obligations of the FOI Act and its other duties, especially with limited staff.

Based on the record in this matter, no order is recommended.



Attorney Tracie C. Brown
as Hearing Officer