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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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Ohan Karagozian,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-701

Commissioner, State of Connecticut,  
Department of Labor; and State of Connecticut,  
Department of Labor,  
Respondent(s)

July 16, 2014


### 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, August 13, 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 August 1, 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 August 1, 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 August 1, 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  
  
Wendy Paradis  
Acting Clerk of the Commission

Notice to: Ohan Karagozian  
Krista D. O'Brien, Esq.

2014-07-16/FIC# 2013-701/Trans/wrbp/LFS//PSP

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ohan Karagozian,

Complainant

against

Docket #FIC 2013-701

Commissioner, State of Connecticut,  
Department of Labor; and State of  
Connecticut, Department of Labor,

Respondents

July 16, 2014

The above-captioned matter was heard as a contested case on June 9, 2014, 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 October 1, 2013, the complainant requested a copy of records “relating to my complaint and related issues to the Joint Enforcement Commission for Worker Misclassification to include, but not limited to, complaint docket numbers, investigation notes ..., dates of action taken (if any), etc.” It is found that the complainant also requested minutes of the October 1, 2013 meeting of the Joint Enforcement Commission for Worker Misclassification.
3. It is found that on November 5, 2013, the respondents provided responsive records, but withheld some records pursuant to §1-210(b)(1), G.S., and some pursuant to §31-254, G.S., and federal regulations concerning unemployment compensation; specifically, 20 CFR §603.4.
4. By letter filed November 8, 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 of the records he requested.
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, ... 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:

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

7. 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."

8. 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.

9. It is found that on March 11, 2014, after continuing communication between the complainant and the respondents, the respondents provided five additional pages to the complainant: unredacted handwritten notes by the Wage Enforcement Agent; typed notes by the Wage Enforcement Agent, with two lines redacted that refer to confidential information claimed to be exempt from disclosure pursuant to §31-254, G.S., and 20 CFR §603.4 (see paragraph 14, below); unredacted typed notes by the Wage Enforcement Agent; and draft minutes from the Joint Enforcement Commission on Employee Misclassification meeting of October 1, 2013.

10. It is found that, in response to the complainant's inquiry, the respondents also told the complainant in their letter of March 11, 2014 the names of the agency officials with decision-making authority in the investigation of the complainant's complaint with the respondents.

11. It is found that on May 29, 2014, the respondents supplemented their disclosures to the complainant with a single page of preliminary handwritten notes that had been omitted inadvertently from the notes provided to the complainant on March 11, 2014.

12. It is found that on March 13, 2014, after receiving the respondents' March 11, 2014 letter with attached records, the complainant again wrote to the respondents and said that he sought more than "written information," and demanded that the two decision-makers in the complainant's investigation "put in writing what's in their minds."

13. It is concluded that the FOI Act does not require a public agency to create records.

14. It is found that the respondents have provided every record in the wage file pertaining to the investigation of the complainant's complaint, with the exception of the two line redaction from the Agent's notes that the respondents claim is exempt pursuant to §31-254, G.S.

15. Section §31-254, G.S., provides:

(a)(1) Each employer, whether or not otherwise subject to this chapter, shall keep accurate records of employment as defined in subsection (a) of section 31-222, containing such information as the administrator may by regulation prescribe in order to effectuate the purposes of this chapter...*The administrator may require from any employer, whether or not otherwise subject to this chapter, any sworn or unsworn reports with respect to persons employed by him which are necessary for the effective administration of this chapter...* [I]nformation obtained shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employee's or the employer's identity[.] (Emphasis added.)

16. It is found that the confidentiality provisions of §31-254, G.S., applies only to information received from any employer about persons employed by him (or her).

17. It is found that the redacted information in this case indicates whether the respondents referred a matter to the Unemployment Insurance Tax Division.

18. It is found that the respondents failed to prove that such information is sworn or unsworn reports required from an employer, within the meaning of §31-254, G.S.

19. It is concluded, therefore, that §31-254, G.S., does not exempt the information from disclosure.

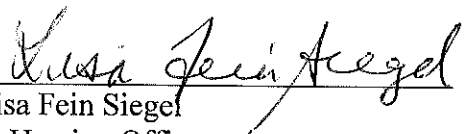
20. However, 20 CFR §603.4 requires the respondents to “[maintain] the confidentiality of any UC (unemployment compensation) information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars.”

21. It is found that the redacted records contain unemployment compensation information about an individual or an employer; that is, the redacted information would reveal whether an individual or employer had been referred to the Unemployment Insurance Tax Division.

22. It is found, therefore, that such information may not be disclosed, and it is concluded that the respondents did not violate the FOI Act by withholding such information.

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.

  
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Lisa Fein Siegel  
as Hearing Officer

FIC2013-701/HOR/LFS/07162014