

Since 1975



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

Elisabeth Seieroe Maurer,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-042

Office of Corporation Counsel, City of Danbury; and City
of Danbury,
Respondent(s)

November 26, 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, December 17, 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 5, 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 December 5, 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 December 5, 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: Elisabeth Seieroe Maurer
Johanna G. Zelman, Esq.

2014-11-26/FIC# 2014-042/Trans/wrbp/KKR/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Elisabeth Seieroe Maurer,

Complainant

against

Docket #FIC 2014-042

Office of Corporation Counsel,
City of Danbury; and City of Danbury,

Respondents

November 26, 2014

The above-captioned matter was heard as a contested case on November 10, 2014, 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. By letter dated January 15, 2014, and filed January 21, 2014, the complainant appealed to this Commission, alleging that the respondents failed to comply with paragraph 3 of the order of this Commission in Docket #FIC 2011-370, Elisabeth Seieroe Maurer v. Office of Corporation Counsel, City of Danbury; and City of Danbury (June 13, 2012) (“Maurer 1”), that the respondents “forthwith search for and provide the complainant with copies of all records responsive to the request described in paragraph 2[c] of the findings, above” (the “order”). The order further states that the respondents “may redact portions of such records consistent with the findings, above.”

3. The records requested by the complainant, and which were the subject of the order in Maurer 1 were:

all reports dated between January 1, 2005 and January 1, 2010, related to medical evaluations or IMEs performed by [30 specified] medical providers in connection with pension, sick leave or injury requests or applications by any Danbury city employee.

In Maurer 1, the respondents did not conduct a search for the records responsive to this request, claiming that to do so would be unreasonably burdensome. The Commission, in that case,

concluded that the respondents violated the FOI Act by failing to search for and provide the complainant with such records, rejecting the respondents' defense that a search deemed by a public agency to be overly burdensome need not be undertaken.

4. Also at issue in Maurer 1 was the complainant's request for two other categories of records. The Commission concluded, after in camera inspection, that some of these records were exempt from disclosure in their entirety pursuant to §§1-210(b)(10) and 1-210(b)(2), G.S. The Commission also concluded, however, that the respondents violated the FOI Act by withholding entire records from the complainant pursuant to §1-210(b)(2), G.S., because their disclosure, with redaction of certain medical information (specific medications, specific medical diagnoses and procedures), would not constitute an invasion of privacy under §1-210(b)(2), G.S.

5. The respondents appealed the decision in Maurer 1 to the superior court, claiming that the Commission erred in concluding that (a) they improperly withheld or redacted certain records pursuant to §1-210(b)(2), G.S., and (b) they violated the FOI Act by failing to conduct a search for records responsive to the request, described in paragraph 3, above. Neither the respondents nor the complainant appealed that portion of the decision in Maurer 1 as it pertained to §1-210(b)(10), G.S.

6. In a Memorandum of Decision, dated August 23, 2013, the superior court dismissed the appeal, upholding the Commission's decision, with the exception of six records which the court found the Commission had inadvertently not addressed in the final decision, and 13 records which the court found were improperly ordered disclosed by the Commission because they contained "descriptive information about events or their effects on the employee which are highly personal and sensitive." See Office of Corporation Counsel of the City of Danbury and City of Danbury v. Freedom of Information Commission, et al., docket no. HHB-CV-12-6017045-S (judicial district of New Britain, August 23, 2013), Vacchelli, J.

7. It is found that the respondents began their search for the records at issue in this case (described in paragraph 3, above), in September 2013, after the expiration of the time to appeal the court's decision (the "search"). It is found that, by letter dated September 26, 2013, the respondents informed the complainant that, because the search for such records would be time-consuming, it would likely not be completed until March 31, 2014, at the earliest. The respondents further informed the complainant that they would inform her if more time was needed to complete the search beyond March 31st.¹ The respondents also indicated that they believed that some of the responsive records, or portions thereof, would be exempt from disclosure pursuant to §§1-210(b)(10) and/or 1-210(b)(2), G.S., in accordance with the Commission's decision in Maurer 1 and the superior court's decision. It is found that the respondents also contacted 65 individuals who are the subject of the medical records at issue, and inquired as to whether they objected to disclosure. It is found that 63 of these individuals filed written objections to the disclosure of their records on the ground that such disclosure would constitute an invasion of their personal privacy.

¹ With their September 26, 2013 letter, the respondents also provided the complainant with copies of the records they were ordered to disclose in their entirety, or with redactions, in accordance with paragraphs 1 and 2 of the order in Maurer 1, and the superior court's decision. Such records, described in paragraph 4 of the findings, above, are not at issue in the present case.

8. It is found that, by letter dated October 11, 2013, the complainant responded that the March 31st date for compliance with the order was “completely unacceptable,” and informed the respondents that she believed they had waived any right to claim any exemption for any records located in the search.

9. As noted in paragraph 1, above, the complainant filed the instant appeal with this Commission, in January 21, 2014, alleging non-compliance with the order.

10. It is found that, by letter dated March 31, 2014, the respondents informed the complainant that although the search was ongoing, they would need an additional 60 days to complete it.

11. It is found that, by letter dated May 14, 2014, the respondents informed the complainant that the search was complete and that 313 pages of responsive records were located. It is found that the complainant picked up copies of such records on May 21, 2014. It is further found that the respondents withheld certain records in their entirety and redacted portions of certain other records, claiming such records, or portions thereof, were exempt from disclosure pursuant to §§1-210(b)(10) and/or 1-210(b)(2), G.S.

12. On October 28, 2014, the respondents filed a motion to dismiss the instant appeal on the ground that they had provided all responsive records in accordance with the order in Maurer 1, and that therefore, such appeal was moot.

13. In a response to the motion to dismiss, dated October 29, 2014, and filed with this Commission on October 30, 2014, the complainant argued that the present appeal was not moot because, although the respondents had provided her with 313 pages of records responsive to the request (see paragraph 3, above), they had not complied with the order because they failed to provide her with *all* records responsive to the request. In addition, the complainant claimed that the respondents made improper redactions to some of the records.

14. At the hearing in this matter, the respondents renewed their motion to dismiss the complaint, and the hearing officer denied such motion, stating that whether or not all responsive records had been provided to the complainant in accordance with the order in Maurer 1 is a factual question that is in dispute.

15. The respondents then moved to dismiss the complaint on the ground that the complainant’s very recent claims that certain records were improperly withheld or redacted, are outside the scope of such complaint and were untimely made. Such motion was denied by the hearing officer.

16. The complainant argued, at the hearing in this matter, that the order does not permit the respondents to withhold any of the in camera records in their entirety because the order provides only that the respondents “*may redact portions* of such records consistent with the findings, above.” However, it is found that the complainant’s reading of the order is too narrow, and disregards the analysis, findings and conclusions made by the Commission in

Maurer 1 as to the claims that certain records were exempt in their entirety pursuant §§1-210(b)(10) and 1-210(b)(2), G.S.

17. The complainant also argued at the hearing that the respondents, by claiming exemptions for the records at issue in this case, have improperly attempted to “relitigate” claims or issues that properly should have been adjudicated in Maurer 1.

18. In Maurer 1, this Commission specifically identified which types of records, or portions thereof, were, and were not, exempt from disclosure pursuant to §§1-210(b)(10) and 1-210(b)(2), G.S. Moreover, it is found that the records at issue in the present case are identical in nature and type to the records that were at issue in Maurer 1.² It is further found that the respondents, in attempting to comply with the order in Maurer 1, appropriately and in good faith, used the findings and conclusions in Maurer 1 and the superior court’s decision to make judgments and determinations as to whether or not the records at issue in this case were exempt from disclosure. This does not constitute relitigation of claims or issues.

19. At the conclusion of the hearing in this matter the respondents submitted the records at issue in this case, some of which were withheld from the complainant in their entirety, and others of which were redacted, to the Commission for in camera inspection. Such records shall be referred to herein as IC-2014-042-001 through IC-2014-042-283.

20. After careful inspection of the in camera records, it is found that those records that were withheld in their entirety pursuant to §1-210(b)(10), G.S., specifically IC-2014-042-001 through 211, are exempt from disclosure in accordance with the findings and conclusions of this Commission in Maurer 1 and §1-210(b)(10), G.S.

21. After careful inspection of the remainder of the in camera records, it is found that the portions of those records that were redacted pursuant to §1-210(b)(2), G.S., specifically IC-2014-042-212 through 283, are exempt from disclosure in accordance with the findings and conclusions of this Commission in Maurer 1, the superior court’s decision and §1-210(b)(2), G.S.

22. The complainant also claimed that the respondents failed to comply with the order in a timely manner.

23. Based on the testimony of Assistant Corporation Counsel Dianne Rosemark, on behalf of the respondents, it is found that the search for the records at issue was time-consuming and labor intensive, in that approximately 1800 employee files, contained in four different city departments had to be reviewed and that the request was for records created over a five year period. It is found that the respondents conducted a diligent and thorough search for responsive records, and that such search took four employees of the city approximately six months to complete. It is also found that, just as the respondents were beginning their search for these records, they received another multi-part FOI request, dated September 16, 2013, from the

² Such as medical and treatment notes, diagnostic, lab and x-ray reports, physical examination reports, independent medical examination reports, work capacity reports and hospital records.

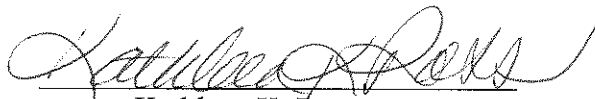
complainant. It is found that, by letter dated October 28, 2013, the respondents contacted the complainant and requested that she prioritize her requests, but that the complainant failed to respond to such inquiry. Moreover, the Commission notes that the complainant, after receiving the records at issue from the respondents in May 2014, waited until the end of October 2014, approximately one week before the hearing in this matter, to notify the respondents of her claim that certain records had been improperly withheld or redacted.

24. Based upon all of the foregoing findings, it is concluded that the respondents provided the complainant with all non-exempt records responsive to the request, described in paragraph 3, above, and that they did so “forthwith,” as required by the order.

25. It is further concluded that the respondents did not violate the FOI Act as alleged.

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.



Kathleen K. Ross
as Hearing Officer