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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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Marissa Lowthert,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-497

Warren Serenbetz, Chairman, Board of Finance, Town of
Wilton; Board of Finance, Town of Wilton; and Town of
Wilton,

Respondent(s)

May 27, 2015

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, June 10, 2015**. 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 June 8, 2015**. 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 June 8, 2015**. **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 **fifteen (15) copies** be filed **ON OR BEFORE June 8, 2015**, 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: Marissa Lowthert
Patricia C. Sullivan, Esq.

2015-05-27/FIC# 2014-497/Trans/wrbp/MS/TCB/CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Marissa Lowthert,

Complainant

against

Docket #FIC 2014-497

Warren Serenbetz, Chairman,
Board of Finance, Town of
Wilton; Board of Finance,
Town of Wilton; and Town
of Wilton,

Respondents

May 27, 2015

The above-captioned matter was heard as a contested case on April 7, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

By e-mail sent on March 30, 2015, and received on March 31, 2015, the complainant withdrew her request for a copy of certain records and attempted to add to her complaint additional allegations. By motion dated April 1, 2015, the respondents objected to the complainant's attempt to add allegations and moved to have the Town of Wilton removed as a named respondent in this matter. The parties argued on the objection and motion at the April 7, 2015 hearing after which the hearing officer sustained the respondents' objection and precluded the complainant from adding to her complaint any additional allegations that were not fairly raised in her original complaint, and denied the respondents' motion to have the Town of Wilton removed as a named respondent in this matter.

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 e-mail dated June 25, 2014, the complainant made a request to the respondent chairman for digital copies of public records related to: the board of finance's forensic audit of the "O'Toole" misappropriation; the board of finance's review of the adequacy of new controls, if any, implemented by WPS operations group following the "O'Toole"

misappropriation; and any new controls recommended or imposed by the board of finance as a result of the forensic audit.

3. The complainant's June 25, 2014 e-mail also include a request for the following records generated between January 22, 2014 "continuing up until the date of [the respondents'] response":

- a. Copies of any and all e-mails, briefings and/or reports provided to board of finance members by any person or on behalf of any 3rd party related to:
 - i. the O'Toole misappropriations;
 - ii. actions taken by the Wilton Public Schools Operations group, if any, to prevent reoccurrence following discovery of the extent of the O'Toole misappropriation;
- b. Copies of all e-mails between board of finance members about the O'Toole misappropriation between my January 22, 2014 request and the board of finance chairman's February 19, 2014 e-mail indicating the board of finance voted to conduct a very narrowly defined audit of specific transactions for a single year;
- c. Copies of any report submitted by the forensics auditor; and
- d. Copies of all invoices/bills from the auditor related to the forensic audit.

4. It is found that on June 30, 2014, the respondents provided the complainant with a very large packet of records responsive to her request which included e-mails, meeting notices and agendas, meeting minutes, budget reports, brainstorming records from an audit team, and completed questionnaires.

5. It is found that on July 3, 2014, the respondents provided the complainant with another packet of records responsive to her request which also included e-mails.

6. It is found that some of the records the respondents provided were redacted, but when the complainant raised the redactions as an issue, for the first time in her e-mail sent on March 30, 2015 to this Commission, the respondents provided the complainant with an unredacted copy of those records.¹

¹ It is found that the respondents redacted the name "O'Toole" from the responsive records pursuant to some term in the respondent town's employment separation agreement with Mr. O'Toole. It is also found that it is absolutely apparent that the redactions were the name "O'Toole" not only because he was the subject of the complainant's request, but some of the records that were redacted were her e-mails in which she included the name.

7. By e-mail dated and filed on July 25, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with her request. Specifically the complainant stated:

"On 6-25-14 Complainant requested all records related to the "O'Toole Misappropriation" special Audit by the Board of Finance. Documents have not been provided...As of the date of this complaint the Forensic audit has not been provided. The BOF [Board of Finance] has provided no documentation of the extent of misappropriation by O'Toole. Records requested by the BOF [Board of Finance] from the BOE [Board of Education] have not been provided to complainant. It now appears records are being intentionally withheld contrary to FOIA obligations."

8. In her complaint, the complainant requested the following remedies:

- a. immediate provision of all requested records without redactions;
- b. imposition of a civil penalty of the maximum allowed \$1000.00 against the respondent board for its failure to provide the requested records; and
- c. admonishment of the respondent chairman for, among other alleged misdeeds, violating the FOI Act.

9. 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.

10. 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, (2) copy such records in accordance with

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

11. 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.”

12. It is found that, to the extent that they exist and are maintained by the respondents, the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212, G.S.

13. Based upon a fair reading of the complaint, it is found that the complainant made only two allegations:

- a. that the respondents failed to provide her with the “O’Toole Misappropriation” Special Forensic Audit; and
- b. that records requested by the respondent board from the Board of Education have not been provided to her.

14. With respect to the allegation described in paragraph 13a, above, it is found that the respondent board did not conduct the forensic audit of the “O’Toole misappropriation” and consequently, there are no responsive records.

15. By e-mail sent on March 30, 2015, and received on March 31, 2015 and at the hearing on this matter, the complainant withdrew that portion of her records request. Accordingly, such allegation will not be addressed further herein.

16. With respect to the allegation described in paragraph 13b, above, it is found that the complainant gleaned from the records that were provided to her that the respondent board requested certain records from the Wilton Board of Education.

17. It is found that the records requested by the respondent board from the Wilton Board of Education were not provided to the respondent board at the time of the complainant’s request and had still not been provided to it at the time of the hearing on this matter.

18. Accordingly, it is found that the respondents do not maintain the records described in paragraph 13b, above.

19. Based on all the facts and circumstances of this case, the respondents have not violated the FOI Act as alleged by the complainant.

20. Consequently, the complainant’s request for remedies as listed in paragraph 8, above, will not be considered.

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

1. The complaint is hereby dismissed.

A handwritten signature in black ink, appearing to read "Matthew Streeter", written over a horizontal line.

Commissioner Matthew Streeter
as Hearing Officer