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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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David Sherwood,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-889

Director, Division of Planning, Department of
Development Services, City of Hartford; Division of
Planning, Department of Development Services, City of
Hartford; and City of Hartford,
Respondent(s)

July 20, 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, August 12, 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 July 31, 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 July 31, 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 July 31, 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: David Sherwood
Cynthia Lauture, Esq.

2015-07-20/FIC# 2014-889/Trans/wrbp/CPH/KKR/TCB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

David Sherwood,

Complainant

against

Docket #FIC 2014-889

Director, Division of Planning,
Department of Development
Services, City of Hartford; and
Division of Planning, Department of
Development Services, City of
Hartford; and City of Hartford,

Respondents

June 15, 2015

The above-captioned matter was heard as a contested case on June 4, 2015, 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. It is found that, by letter dated December 2, 2014, the complainant requested copies of “all documents...relating to or referring to [a certain]...application...¹ including without limitation applications, permits, certificates, maps, plans, surveys, photographs, memoranda, correspondence, electronic mail, telephone notes and meeting minutes.”

3. It is found that the complainant attached to the December 2, 2014 letter, a copy of a public hearing notice on the application, which notice had been published in the Hartford Courant on November 28, 2014. It is found that the notice stated that the Planning and Zoning Commission would hold a public hearing on the application on December 9, 2014 (the “hearing”).

¹ The application was described in the December 2, 2014 letter as “[z]oning Map Change on the following: 255, 460, 510, 519, 524, and 530 Farmington Avenue from a B-3 to a B-4 zoning district in accordance with the Plan of Conservation and Development, One City, One Plan. Applicant – City of Hartford Planning and Zoning Commission” (the “application”).

4. It is found that, by letter dated December 4, 2014, the respondents acknowledged the request, described in paragraph 2, above, and informed the complainant that they had “begun the search for responsive documents and once we have identified the documents you requested...you will be notified.”

5. By letter dated December 10, 2014, the complainant appealed to this Commission, claiming that the respondents violated the FOI Act by failing to comply with his December 2, 2014 request.

6. It is found that, by email dated February 3, 2014, the respondents provided the complainant with the records responsive to the December 2, 2014 request.

7. At the hearing in this matter, the complainant contended that the respondents should have provided the requested records to him prior to the hearing on December 9th, and that because they did not do so, they failed to provide such records “promptly.”

8. 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.

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

10. 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.” (Emphasis added).

11. It is found that the records responsive to the request, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

12. With regard to the question of promptness, the Commission has held that the meaning of the word “promptly” is a particularly fact-based question. 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.

13. The advisory opinion goes on to describe 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. It found that the complainant is an attorney and that he was retained by the Pamela Corporation to represent its interests at the hearing.

15. It is found that the complainant hand-delivered the letter, described in paragraph 2, above, to the respondents on December 2, 2014. It is found that such letter did not inform the respondents that the requested records were needed in order to prepare for the hearing on December 9th, and it is further found the complainant did not verbally inform the individual to whom he handed the letter that he needed the requested records prior to the hearing.

16. The respondent’s witness, an administrative assistant in the respondent division, testified, and it is found, that she received the request, described in paragraph 2, above, on January 20, 2015, from the individual in the office assigned to respond to FOI requests, and was asked by this individual to compile the responsive records and provide copies to the complainant. It is found that, at the time the witness was given this task, she was working on preparing the minutes of the hearing. The witness further testified, and it is found, that during the period of time in which the request was pending, the office was inundated with applications for permits, the workload in the office was “tremendous” and that staffing in the office had been reduced by half, from twelve to six employees. It is found that the witness compiled the requested records, scanned them, and emailed them to the complainant on February 3, 2015.

17. The Commission notes that the December 2nd request was not limited to documents in the file pertaining to the application which documents would have been immediately available and accessible, such as the application itself, maps, and summaries of the proposal prepared by staff. Rather, it is found that the request encompassed records, including emails, telephone notes, and minutes pertaining to the application that would not have been previously compiled in preparation for the hearing and immediately available upon request. In fact, it is found that some of the records responsive to the request, such as the minutes of the hearing, did not exist at the time of the request. The Commission further notes that the complainant did not request to inspect the file at the time he hand delivered his December 2, 2014 letter. Based upon all of the foregoing findings of fact, it is further found that the respondents did not know,

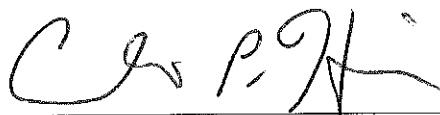
and did not have reason to believe, that the complainant needed the requested records prior to the hearing.

18. Accordingly, based upon the particular facts and circumstances of this case, it is concluded that the respondents did not violate the promptness provisions contained in the FOI Act, by failing to provide the requested records prior to the December 9th hearing.

19. However, the respondents conceded at the hearing in this matter, and it is found, that they should have provided the requested records to the complainant sooner than February 3, 2015. It is concluded that the respondents' failure to do so violated the promptness provisions contained in the FOI Act.

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

1. Forthwith, the respondents shall strictly comply with the promptness provisions in §§1-210(a) and 1-212(a), G.S.



Christopher P. Hankins
as Hearing Officer