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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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Board of Finance, Town of Morris,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-906

Treasurer, Town of Morris; and Town of Morris,
Respondent(s)

July 30, 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 26, 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 August 14, 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 August 14, 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 August 14, 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: Board of Finance, Town of Morris
Kenneth R. Slater, Jr., Esq.

2015-07-30/FIC# 2014-906/Trans/wrbp/TCB//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Board of Finance, Town of Morris,

Complainant

against

Docket #FIC 2014-906

Treasurer, Town of Morris;
and Town of Morris,

Respondents

July 29, 2015

On January 30, 2015, the respondents moved to dismiss the above-captioned matter pursuant to §1-206(b)(4), G.S., claiming that the Freedom of Information Commission lacks subject matter jurisdiction over the complaint. The complainant board filed an objection to the motion, dated February 6, 2015, on February 9, 2015.

By letter filed on February 27, 2015, the vice-chairman of the complainant board, Barbara Burch, moved for party status in the above-captioned matter. Originally, the Hearing Officer indicated that the motion would be addressed at the hearing, however, after review of the respondents' motion to dismiss and the notice of appeal, the motion for party status was denied by order of the FOI Commission on July 28, 2015.

Upon review of the respondents' motion and the complaint in this matter, the Commission hereby grants the respondents' motion to dismiss for the following reasons:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter filed on December 22, 2014, the complainant board appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with a request that it be provided with copies of certain public records.
3. Based on the complainant board's notice of appeal, it authorized its vice chairperson to file the appeal described in paragraph 2, above, on its behalf at its December 17, 2014 meeting.
4. Section 1-206(b)(4), G.S., provides that:

Notwithstanding any provision of this subsection to the contrary, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that the agency has not violated the Freedom of Information Act.

5. The respondents argued in their January 30, 2015 motion to dismiss that the FOI Act does not grant to government boards or agencies, such as the complainant board, the right to request records under the Act or file appeals with the FOI Commission. The respondents requested that the FOI Commission dismiss the appeal pursuant to §1-206(b)(4), G.S., contending that the Commission lacks jurisdiction over the appeal.

6. The complainant contended in its objection that notwithstanding the respondents' arguments to the contrary, it is a "person" under the FOI Act and therefore, the FOI Commission has subject matter jurisdiction over the complaint and the matter should be heard.

7. With respect to the complainant board's allegation described in paragraph 2, above, §1-210(a), G.S., provides in relevant part that:

"...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...." (emphasis added)

8. Section 1-206(b)(1), G.S., provides in relevant part:

"Any **person** denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission...." (emphasis added)

9. The FOI Act provides at §1-200(4), G.S., that "person" means natural person, partnership, corporation, limited liability company, association or society.

10. Section 1-21j-12(b) of the Regulations of Connecticut State Agencies use a broader definition of the term "person" which includes "any governmental subdivision." However, the narrower definition of the term "person" within the FOI Act is the

controlling definition. *See* Rose v. Freedom of Information Act Commission, 221 Conn. 217, 228 (fn15) (1992).

11. It is concluded that the FOI Act confers the right to take an appeal from the denial of the right to inspect or copy records under §1-210, G.S., only to a “person” as defined in §1-200(4), G.S.

12. It is found that the complainant board is not a person within the meaning of §1-200(4), G.S.

13. With respect to the complainant board’s allegation in paragraph 2, above, it is concluded, after examining the notice of appeal and construing all allegations most favorably to the complainant, that the respondents have not violated the FOI Act because the complainant board’s allegation does not constitute a denial of any right conferred by the FOI Act. The respondents’ motion to dismiss is therefore granted.

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.



Attorney Tracie C. Brown
as Hearing Officer