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FREEDOM OF INFORMATION



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John Scott,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-727

Chief, Poquonnock Bridge Fire District; and Poquonnock
Bridge Fire District,
Respondent(s)

March 8, 2016

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, March 23, 2016**. 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 March 16, 2016**. 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 March 16, 2016**. **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 March 16, 2016**, 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: John Scott
Attorney Michael E. Satti

2016-03-08/FIC# 2015-727/Trans/wrbp/VDH//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

John Scott,

Complainant

against

Docket #FIC 2015-727

Chief, Poquonnock Bridge Fire
District; and Poquonnock Bridge
Fire District,

Respondents

March 8, 2016

The above-captioned matter was heard as a contested case on January 15, 2016, 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, by letter dated August 12, 2015, the complainant requested that the respondents provide him with access to (and, when indicated, copies of) the following records: “. . . all written and email communications with respect to the negotiation and procurement of property and casualty insurance for the August 1, 2015 to 2016 policy year for the Poquonnock Bridge Fire District.” It is found that the complainant clarified that his request should be construed to include the following records: “package policies, commercial automobile insurance, umbrella coverage, general liability insurance, professional liability coverages, building insurance, property insurance, and directors and officers’ liability coverage.” It is also found that the complainant explained that his request, which was directed to Susan Aguiar, as clerk of the Poquonnock Bridge Fire District (the “respondent district”), should be construed as seeking all electronic or written communication between Ms. Aguiar and the members of the respondent district, and all electronic or written communication between Ms. Aguiar and all insurance entities.
3. It is found that, by email dated August 24, 2015, the complainant inquired into the status of his August 12th request, asking that the respondents provide him with a time to come in and begin his review of certain documents. It is found that, by email dated August 28, 2015, Ms. Aguiar informed the complainant that the respondents should have some records ready for him within the next two weeks.

4. It is found that, by email dated September 30, 2015, the complainant corresponded with Ms. Aguiar, indicating that more than two weeks had passed and that he had not received any records. It is further found that the complainant again requested that the respondents provide him with a time when he could come in and begin to review records.

5. It is found that, by email dated October 3, 2015, the respondents' counsel corresponded with the complainant, indicating that all further communication should be directed to him. It is further found that, between October 3, 2015 and October 20, 2015, the complainant and the respondents' counsel corresponded several times about whether or not the requested records were exempt from public disclosure.

6. By letter dated October 24, 2015 and filed October 27, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the requested records described in paragraph 2, above.

7. 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.

8. 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.

9. 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."

10. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

11. It is found that complainant John Scott (the "complainant") is an insurance agent who has been providing property and casualty insurance to the respondent district for the

better part of twenty years.

12. It is found that the respondent district's insurance policies renew on August 1st of each year.

13. It is found that, for the policy period beginning August 1, 2015, the respondent district did not renew its insurance with the complainant's company; rather, the respondents elected to change its insurance broker and purchase insurance with a new company.

14. The complainant contends that, now that the respondent district has completed its process of selecting an insurance vendor and the new insurance policy is in place, the new insurance policy and any and all records concerning the procurement of such insurance, which may have been exempt during the selection, execution and/or negotiation processes, pursuant to §1-210(b)(24), G.S., are now available for public inspection.

15. Ironically, while respondents contended at the contested case hearing that the process that the respondent district used to purchase new property and casualty insurance did not involve the issuance of a request for proposals or the submission of bids—and, thus, by implication did not involve a process that would be subject to analysis pursuant to §1-210(b)(24), G.S.—they contended that portions of the responsive insurance policy are exempt pursuant to §1-210(b)(24), G.S. The respondents also contended at the contested case hearing that the quotes or prices contained within the insurance policy are exempt pursuant to §1-210(b)(5)(A), G.S., as the respondents' trade secret. Finally, in their index to in camera records, the respondents contended that portions of the insurance policy and portions of certain email communications¹ are partially exempt pursuant to §1-210(b)(5)(B), G.S., as commercial or financial information given in confidence.

16. On February 2, 2016, the respondents submitted the records at issue to the Commission for an in camera inspection. The in camera records, which may be referred to as IC-2015-727-1 through IC-2015-727-232 and IC-2015-727-233 through IC-2015-727-246 are fairly described as one two hundred and thirty-two page insurance policy and fourteen pages of email communications.

17. Section 1-210(b)(24), G.S., provides that nothing in the FOI Act shall be construed to require disclosure of:

Responses to any requests for proposals or bid solicitation issued by a public agency or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for

¹ At the contested case hearing, Ms. Aguiar testified that the only responsive record in the respondents' possession was the property and casualty insurance policy that the respondent district ultimately procured for the 2015 through 2016 policy year. However, based on the records that were submitted to the Commission for an in camera inspection, it is found that there were also fourteen pages of records responsive to the complainant's request for "all electronic or written communication between Ms. Aguiar and all insurance entities." See ¶ 2, above.

the award of such contract have ended, whichever occurs earlier, provided the chief executive officer of such public agency certifies that the public interest in the disclosure of such responses, record or file is outweighed by the public interest in the confidentiality of such responses, record or file.

18. It is found that, on or about August 1, 2015, Ms. Aguiar, who is both the respondent district's secretary and a board member, made a unilateral decision to purchase insurance with a company other than the complainant's company. It is further found that Ms. Aguiar then waited until the respondent district's next regularly scheduled meeting, which was the August 13, 2015 meeting, to report her selection to the respondent district. It is found that upon hearing from Ms. Aguiar at the August 13th meeting, the respondent district unanimously approved the secretary's selection. Accordingly, it is found that, upon the respondent district's approval of Ms. Aguiar's insurance selection, the process of procuring a property and casualty insurance for the district was completed.

19. It is found that the complainant made his initial request for records in this case on August 12th, but reaffirmed his continued desire for the records on August 24th. See ¶¶ 1-2, above.

20. Accordingly, it is concluded that the provisions of §1-210(b)(24), G.S., which apply to a request for records relating to a public agency's procurement process that has yet to be completed, are not applicable to the request for records in this case.

21. The respondents next claim that portions of the in camera records, particularly the sections that set forth or recite the quotes or prices of the insurance that the respondent district purchased, are exempt from disclosure as trade secrets.

22. Section 1-210(b)(5)(A), G.S., provides that nothing in the FOI Act shall be construed to require disclosure of:

Trade secrets, which for purposes of the [FOI] Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy

23. The definition of "trade secret" in §1-210(b)(5)(A), G.S., "on its face, focuses exclusively on the nature and accessibility of the information." Univ. of Connecticut v. FOIC, 303 Conn. 724, 733 (2012). "In order to qualify for a trade secret exemption of §1-210(b)(5)(A)[G.S.], a substantial element of secrecy must exist, to the extent that there

would be difficulty in acquiring the information except by the use of improper means.” Director, Dep’t of Info. Tech. of Town of Greenwich v. FOIC, 274 Conn. 179, 194 (2005).

24. In support of their claim of a trade secret exemption, the respondents called upon Ms. Aguiar to testify. It is found that, prior to working for the respondent district, Ms. Aguiar worked in the private sector as an insurance agent. Ms. Aguiar testified that, as a private sector insurance agent, she would never reveal a quote that she had given a client because to do so would affect the amount she should receive for such a policy from a subsequent purchaser, which, in turn, would affect her commission. Ironically, after testifying about what her practice was in the private sector, Ms. Aguiar testified, and it is found, that at the direction of the President of the respondent district’s board of directors, Ms. Aguiar disclosed to the complainant the amount that the respondent district paid for the property and casualty insurance at issue in this case.

25. Upon a careful review of the in camera records, it is found that the information that is claimed to be exempt as trade secrets are the general terms, and particularly the pricing, contained within the insurance policy and communication records. Specifically, it is found that the portions of the insurance policy and three lines of one page of the fourteen pages of communication records² claimed to be exempt are generalized descriptions of the types of coverages that the respondent district purchased along with the corresponding prices. It is found that, while such information might be valuable to a competitor seeking to do business with the respondent district, potential value, in and of itself, does not convert the pricing, which was provided by a private entity, into the respondent district’s trade secret. In addition, it is found that such information does not meet the statutory criteria set forth in §1-210(b)(5)(A), G.S., in that it is not secret, but rather is generally known or is readily ascertainable.

26. Accordingly, it is concluded that none of the in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(5)(A), G.S.

27. The respondents’ final contention is that the same portions of the in camera records for which they raised a trade secret exemption are also exempt from disclosure pursuant to §1-210(b)(5)(B), G.S.

28. Section 1-210(b)(5)(B), G.S., provides that nothing in the FOI Act shall be construed to require disclosure of “[c]ommercial or financial information given in confidence not required by statute.”

29. Connecticut appellate courts have not had an occasion to define “commercial or financial information given in confidence” as used in §1-210(b)(5)(B), G.S. However, the similar provision in the federal FOI Act exempts “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. §552 (b)(4).

² The respondents submitted fourteen pages of communication records between Ms. Aguiar and an insurance company to the Commission for an in camera inspection. However, in the index to the in camera records the respondents only claimed an exemption for three lines of one page—to wit, IC-2015-727-237 lines 7 through 8. Because no other exemptions to disclosure were raised with regard to the remaining thirteen pages, these records should not have been submitted to the Commission for an in camera inspection.

“Although our Freedom of Information Act does not derive from any model act or the federal Freedom of Information Act, other similar acts, because they are *in pari materia*,³ are interpretatively helpful, especially in understanding the necessary accommodation of the competing interests involved.” Wilson v. FOI Commission, 181 Conn. 324, 333 (1980). “Commercial” and “financial,” as used in the federal FOI Act, 5 U.S.C. 552, have been given their ordinary meanings. See Watkins v. U.S. Bureau of Customs and Border Protection, 643 F.3d 1189, 1194 (9th Cir. 2011); see also James Craven and the Norwich Bulletin v. Governor, State of Connecticut; and State of Connecticut, Office of the Governor, Docket #FIC 2011-152 (Mar. 14, 2012).

30. In Critical Mass Energy Project v. Nuclear Regulatory Comm’n, 975 F.2d 871, 873-74 (D.C. Cir. 1992), cert. denied, 507 U.S. 984 (1993), the Court of Appeals for the District of Columbia Circuit explained that the purpose of Exemption 4 is to protect a private entity’s commercial or financial information if disclosure of such information would either (1) impair the Government’s ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.

31. In addition, two Connecticut Superior Court decisions have ruled that commercial information “given in confidence” is exempt pursuant to §1-210(b)(5)(B), G.S., if such information is given under an express or implied assurance of confidentiality. See Dept. of Pub. Utilities, et al. v. FOIC, Docket No. CV 99-0498510-S, 2001 WL 79833 (Conn. Super. Ct. Jan. 12, 2001, at *4 (stating that “[t]he phrase ‘given in confidence,’ similar to the phrase in the federal law, ‘obtained from a person and . . . confidential,’ focuses on the person who provides the information”) (citations omitted); see also Chief of Staff v. FOIC, Docket No. CV 98-0492654-S, 1999 WL 643373, at *3 (Conn. Super. Ct. Aug. 12, 1999). “Whether the circumstances show an implied assurance of confidentiality is ordinarily a question of fact.” Id.

32. Based upon consideration of the above-cited case law, as well as a careful review of the in camera records, it is found that none of the in camera records, or portions thereof, contain the kind of information contemplated by §1-210(b)(5)(B), G.S. It is found that the respondents produced no evidence from which it could reasonably be determined that the insurance policy at issue was sold to the respondent district by a private insurance company under an express or implied assurance that the sale was “in confidence.” In fact, the respondents’ position that the in camera records are exempt from public disclosure runs contrary to the Commission’s long-standing position with regard to public spending generally and the disclosability of insurance policies particularly. See, e.g., DiNapoli v. Town Manager, Town of West Hartford, Docket #FIC 2009-012 (Aug. 12, 2009) (respondent violated the FOI Act for failing to allow the complainant access to the town’s current insurance policies, including liability policies); Thibault v. Paula Schwartz, Superintendent of Schools, Regional School District, #10, Docket #FIC 2007-458 (June 11, 2008) (respondent did not violate the FOI Act when the respondent made its current insurance policy promptly available for inspection and copying); and Misty Williams and Dawn Massey v. John Opie, First Selectman, Town of Branford, Docket #FIC 2014-543 (Nov. 9,

³ The Latin phrase *in pari materia* means “on the same subject; relating to the same matter.” Black’s Law Dictionary, 8th Ed. (1994).


2005) (respondent violated the FOI act by failing to promptly provide the complainants with a copy of all sections of the town's current liability insurance policy).

33. Accordingly, it is concluded that none of the in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(5)(B), G.S.

34. It is further concluded that the respondents violated the FOI Act by declining to disclose the requested records to the complainants.

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

1. The respondents shall promptly provide the complainant with an unredacted copy of the insurance policy and the communication records referred to in paragraph 16, of the findings, above, free of charge.



Valicia Dee Harmon
as Hearing Officer