

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Noelle Bates,

Complainant

against

Docket #FIC 2015-855

Director, Personnel Department, City of
Bristol; Personnel Department, City of
Bristol; and City of Bristol,

Respondents

November 16, 2016

The above-captioned matter was heard as a contested case on March 1, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

The hearing officer issued a Report of Hearing Officer on June 21, 2016. The Freedom of Information (“FOI”) Commission considered such report at its regular meeting of September 14, 2016, at which time they voted to table the matter for reconsideration by the hearing officer.

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 on December 3, 2015, the complainant requested a copy of the respondent Personnel Director’s “handwritten notes and any other written and/or printed documents you may have taken and/or received during your ‘fact finding’ investigation” of the mayor.
3. It is found that by letter dated December 4, 2015, the respondents denied the complainant’s request for the Personnel Director’s handwritten notes, claiming that such notes were exempt from disclosure.
4. By letter filed December 14, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide copies of the requested records.
5. 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, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides, in relevant part:

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.

7. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

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

9. The respondents claim that the Director's notes are exempt pursuant to §1-210(b)(1), G.S., which provides that "[n]othing in the Freedom of Information Act shall be construed to require disclosure of ... [p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure."

10. It is found that the respondent Director claimed the exemption for the requested records because she wants to encourage employees' candor, and she fears that disclosure of the contents of her conversations with employees might discourage employees from discussing sensitive matters with her. It is found that the respondents determined that the public interest in withholding the requested records clearly outweighed the public interest in disclosure, within the meaning of §1-210(b)(1), G.S.

11. It is found that the Personnel Director wrote her handwritten notes as she interviewed the complainant and another respondent employee. It is found that the purpose of the notes was to help the Director make an initial assessment about what was being reported and to help her "determine what course of action to take" as a result of the complainant's allegations. It is found that the notes were not incorporated into a final report or investigation, and that the notes have not been shared with anyone.

12. In Shew v. Freedom of Information Commission, the Supreme Court concluded that "the legislation makes it very evident that preparatory materials are not required to be disclosed...Furthermore, the concept of preliminary, as opposed to final, should [not] depend

upon...whether the actual documents are subject to further alteration...It is records of this preliminary, deliberative and predecisional process that...the exemption was meant to encompass.” (Citations omitted; quotation marks omitted.) Shew v. Freedom of Information Commission, 245 Conn. 149, 165 (1998).

13. Following the hearing in this matter, the respondents submitted the requested handwritten notes for in camera inspection. These records are hereby identified as IC-2015-855-1 through IC-2015-855-6.

14. Upon careful review of the in camera records, it is found that the requested handwritten notes were preparatory to the Personnel Director’s decision-making about what steps to take, if any, with respect to the allegations against the mayor.

15. Accordingly, it is found that the requested records are preliminary notes within the meaning of §1-210(b)(1), G.S.

16. Section 1-210(e), G.S., provides in relevant part:

Notwithstanding the provisions of subdivisions (1) ... of subsection (b) of this section, disclosure shall be required of:

(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency[.]

17. It is found that the notes are not interagency or intra-agency memoranda or letters, advisory opinions, recommendations or a report, within the meaning of §1-210(e)(1), G.S.; therefore the disclosure provisions of §1-210(e)(1), G.S., are not applicable.

18. It is concluded that the records withheld from the complainant are permissibly exempt from disclosure pursuant to §1-210(b)(1), G.S., and 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.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 16, 2016.



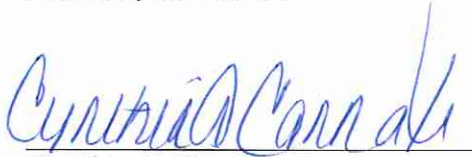
Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

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