



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 · www.state.ct.us/foi/ · email: foi@po.state.ct.us

Patricia Cofrancesco,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2014-098

Administrator, Water Pollution Control Commission, City  
of West Haven; Water Pollution Control Commission, City  
of West Haven; and City of West Haven,  
Respondent(s)

November 14, 2014

### 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, December 17, 2014**. 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 December 5, 2014**. 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 December 5, 2014**. **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 **fourteen (14) copies** be filed **ON OR BEFORE December 5, 2014**, 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: Patricia Cofrancesco  
Henry C. Szadkowski, Esq.

2014-11-14/FIC# 2014-098/Trans/wrbp/TCB//LFS

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Patricia Cofrancesco,

Complainant

against

Docket #FIC 2014-098

Administrator, Water Pollution  
Control Commission, City of  
West Haven; Water Pollution  
Control Commission, City of  
West Haven; and City of West  
Haven,

Respondents

October 29, 2014

The above-captioned matter was heard as a contested case on September 3, 2014, 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. By letter dated December 23, 2013, the complainant made a request to the respondents for copies of the following: "Any and all documents reflective of the overtime at your facility and/or an overtime list for calendar year 2013."
3. It is found that upon receiving the complainant's December 23, 2013 records request, the respondent administrator requested the records from a Mr. Anastasia Marnerakis who generates and maintains the requested records. It is found that Mr. Marnerakis compiled the records and that by letter dated January 30, 2014, the respondents provided the complainant with documents Mr. Marnerakis represented to the respondent administrator were responsive to the complainant's request.
4. It is also found that when the respondent administrator was informed by the complainant that certain months were missing and that the records provided were not copies of the original records, he asked Mr. Marnerakis about the missing records and

was told that all responsive records were provided, that there were no others, and that some may have been inadvertently thrown away or lost.

5. By letter dated February 12, 2014 and filed on February 18, 2014, the complainant appealed to this Commission alleging that the respondents had violated the Freedom of Information Act by failing to fully comply with her request. The complainant specifically alleged that:

- a. "the respondents' alleged compliance was missing documents for the months of December [of] 2012, and January, August, September, October, and November [of] 2013;" and
- b. that regarding "those documents that were provided, the same were redundant, confusing, and unintelligible, thereby calling into question their status as contemporaneous business records."

6. 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.

7. 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.

8. 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."

9. By way of background, it is found that pursuant to the contract between the AFSCME Local 1303-345 Union (hereinafter "the Union") and the respondent City of West Haven (hereinafter "the City"), Article 20 Section 4<sup>1</sup>, the distribution of any available overtime among the bargaining unit employees is solely within the purview of the Union president or his/her designee. It is found that the Union established the protocol for distributing overtime hours which is based in part on seniority, and is solely responsible for its implementation. It is found that the requested records are generated during the course of the Union president's, or his/designee's, implementation of the protocol for distributing overtime hours among the bargaining unit employees. (It is found that while the respondents have been involved in enforcing the protocol, they have done so only on a limited basis and as part of their duty to ensure that the city's employees are supervised in a fair and consistent manner.)

10. At the hearing on this matter, the respondents claimed that:

- a. there are no other records responsive to the complainant's request;
- b. even if more responsive records existed, the records are not public records within the meaning of §1-200(a), G.S., because they belong to the Union which is not a public agency; and
- c. they only obtained the records for the complainant in a spirit of good will and cooperation.

11. However, the complainant contended at the hearing that the respondents' claims are disingenuous and that because the records relate to the conduct of the public's business, were prepared and retained by a city employec, and involve the expenditure of tax dollars, they are public records within the meaning of §1-200(a), G.S.

12. It is found, however, that the City and the Union have lawfully negotiated the terms of their collective bargaining agreement which in relevant part places the distribution of any available overtime among the bargaining unit employees solely within the control of the Union. It is found that the Union developed the policy and procedure by which the overtime would be distributed which was approved by a vote of its members.

13. It is found that the authority to offer an overtime assignment to one person rather than another does not convey the power to govern, to regulate or to make decisions

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<sup>1</sup> Article 20 Section 4 of the collective bargaining agreement between AFSCME Local 1303-345 and the City of West Haven provides in relevant part "Supervisors shall notify the Union president or designee of all overtime assignments. The Union shall distribute the overtime as equitably as practicable among the bargaining unit employees holding the same job classification affected by the overtime assignment."

that affect the City, and therefore the Union, in exercising its contracted authority, is not performing a government function.<sup>2</sup>

14. It is also found that the City is not involved in the core implementation of the policy. It is found that the City has not used and has no reason to ever use the requested records or any other records generated during the course of the Union's implementation of the policy for assigning the overtime.

15. It is found that the requested records are generated by Mr. Marnerakis in his capacity as the Union president's designee and not in his capacity as a City employee and therefore it is found that the requested records belong to the Union.

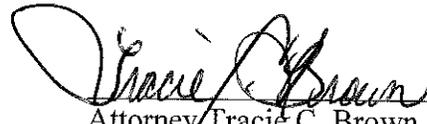
16. It is found that the Union is not a public agency.

17. It is found, therefore, that the respondents do not maintain the requested records and that such records are not public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

18. It is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

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.

  
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Attorney Tracie C. Brown  
as Hearing Officer

FIC2014-098/hor/tcb/20140918

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<sup>2</sup> Domestic Violence Services v. FOIC, 47 Conn. App. 466, 704 A.2d 827 (1998).