

**FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT**

In the Matter of a Complaint by

FINAL DECISION

Jeffrey Kerekes,

Complainant

against

Docket # FIC 2009-014

Controller, Department of Finance,
City of New Haven; and Department
of Finance, City of New Haven,

Respondents

July 22, 2009

The above-captioned matter was heard as a contested case on May 1, 2009, at which time the complainant and 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 email dated December 18, 2008, the complainant made a request to the respondents for “a copy of the 5 year financial projections you created in cooperation with the Budget Office and *briefly shared with me*, under the Freedom of Information Act.” (emphasis added).

3. It is found that, by email dated December 23, 2008, the respondent Controller acknowledged the complainant’s request for a copy of the record, described in paragraph 2, above, and informed the complainant that he “had passed it along to the Office of Management and Budget and [had] received the following reply, that ‘those records were preliminary drafts which the City has determined to be with held [sic]. An exception from release for records like these is provided in Conn Gen State Statute 1-210(b)(1).’”

4. By email dated and filed on January 5, 2009, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with a copy of the record, described in paragraph 2, above.

5. Section 1-200(5), G.S., defines “public records or files” as:

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.

6. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon

request, a plain or certified copy of any public record.”

8. It is found that at the April 25, 2008 meeting of the City of New Haven’s Financial Review and Audit Commission (FRAC), the complainant, who was a commissioner at the time, requested that the respondents create and make available a special report projecting the financial conditions of the City of New Haven for the next five years.

9. It is found that, in early July 2008, the City of New Haven’s Office of Management and Budget was assigned the task of creating a five-year report projecting the financial conditions of the City.

10. It is found that, on July 9, 2008, the complainant inspected a worksheet, prepared by the Office of Management and Budget, in response to the complainant’s request for a financial projections report, described in paragraph 8, above.

11. It is found that the worksheet, described in paragraph 10, above, was not intended to be a final statement of the future financial operations for the City, but rather a “work in progress.” At the hearing in this matter, the respondent Controller stated that such worksheet consisted of a great deal of assumptions and that he was uncomfortable having it recognized as an official document.

12. It is found that the Office of Management and Budget worked on the project, described in paragraph 8, above, for most of the summer in 2008.

13. It is found that several drafts of the financial projections report, described in paragraph 8, above, were generated since July 2008.

14. It is further found that the oldest version of such report in the respondents’ custody was created sometime in August 2008 and that the most recent version of the report in the respondents’ custody was created on October 15, 2008.

15. It is found that, by letter dated, April 30, 2009, the respondents provided the complainant with a copy of the October 15th version of the report, described in paragraph 14, above.

16. It is found that the respondents no longer maintain the version of the worksheet provided to the complainant in July 2008, as described in paragraphs 2 and 10, above.

17. It is found that the record, described in paragraphs 2 and 10, above, did not exist at the time of the request, described in paragraph 2, above.

18. Accordingly, it is found that, at the time of the complainant’s request, described in paragraph 2, above, the respondent did not maintain or keep on file a copy of the requested record.

19. It is concluded, therefore, that the respondent did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint, with respect to the request described in paragraph 2, above.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 22, 2009.

S. Wilson
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:

Jeffrey Kerekes
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Controller, Department of Finance,
City of New Haven; and Department
of Finance, City of New Haven
C/o Kathleen M. Foster
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165 Church Street
New Haven, CT 06510

S. Wilson
Acting Clerk of the Commission

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