

CCM 2010 Convention & Exposition
FOI Update
Municipal Law & Liability Update Session

Noiseux v. Board of Directors, Connecticut Clean Energy Fund; FIC2009-254 – 1/13/10

FOIC found that meeting was not “open to the public” when respondent accommodated overflow crowd in two conference rooms located within the same building as the meeting. Respondent connected the overflow rooms to the meeting room by a speakerphone that provided an audio feed, but no video feed, from the respondent’s meeting.

Cole v. Office of Assessor, Town of Sharon; FIC 2009-244 – 3/10/10

Decision involves “trade secrets” exception to disclosure [§ 1-210(b)(5)]. Complainant requested all records for the 2008 revaluation concerning “all vacant land sales used in determining market land values”; “all land value data and supporting assumptions used in any regression analysis for land market valuations” and all records concerning “market sales data and analyses used to create the land valuation pricing chart”. In conducting the revaluation, the Town’s appraisal company used software that was protected by a confidentiality agreement. The Commission found that the requested records, although public records, were exempt because they were included in the “Installed Software” that had economic value from not being generally known and because the appraisal company took reasonable efforts to maintain the secrecy of the “Installed Software”.

Malley v. Comm., State of Connecticut, Department of Environmental Protection; FIC 2009-123 – 2/24/10

Respondent Department conducted an interview process for hiring to fill a vacancy. Commission held that 1) drafts of and actual interview questions used; 2) handwritten interview notes and 3) interviewer’s draft and final report and recommendations for hiring/promotion were each exempt under § 1-210(b)(6), which exempts “test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment . . .”

Kosinski v. Comm., State of CT, Dept. of Education; FIC 2009-176 – 2/16/10

Scoring sheets detailing the evaluation of resumes, references and writing samples using five specified criteria, which evaluations were conducted to screen nineteen applicants to determine who would be interviewed for a position, were not exempt under § 1-210(b)(6).

Germain v. Town Clerk, Town of Manchester; FIC 2009-145 – 1/13/10

A flatbed scanner is not a “hand held scanner” for purposes of copying land records in accordance with § 1-212(g), which was added in 2002 stating that any “individual may copy a public record through the use of a hand-held scanner.”

Duffee v. State of Connecticut Commission on Culture and Tourism; FIC 2009-049 – 1/13/10

Complainant requested an item by item breakdown for each of four grants of the money budgeted by each grant for nine separate art forms. Respondent did not maintain grant information by art form and it would have to create such record by searching through the final reports of several hundred grantees. However, the respondent's Executive Director testified that she believed she knew which records would have been responsive to the request but that she was not going to frame the request for him or tell him what he should be requesting. Therefore, the FOI Commission found that the respondent violated the disclosure provisions by failing to provide the records responsive to the request.

Wanda Smith and Nelson Leon v. State of CT Lottery Corporation; FIC 2007-228 – 1/13/10

Complainant Smith requested e-mails which respondent thereafter compiled and advised Complainant that the cost included \$557.59 for IT personnel costs for formatting and programming functions necessary to produce the copies requested. C G S § 1-212(b) authorizes the public agency to charge for formatting and programming charges. Thereafter, complainant Leon made a request for the same records and the respondent refused disclosure until the IT costs were paid. Commission found that the reason that the formatting and programming was necessary was due to the manner in which respondent altered the e-mails in order to store them. The formatting and programming were necessary to allow respondent to even read the e-mails to provide the ones requested by complainant. Therefore, the Commission found that all fees related to these activities were wholly unreasonable and must be borne by respondent.

Edelman v. Berk, FIC 2010-241 – 9/22/10

Respondents are attorneys at private law firm retained by insurance company to represent town in lawsuit brought by complainant against town officials. Private attorneys and law firm are not "public agencies, the functional equivalent of public agencies, or implementing agencies" as defined by statute. Therefore, private law firm's refusal to respond to complainant's far reaching request to inspect six categories of records concerning complainant and issues relating to the building code was not a violation of the Act.

Kauffman v. Roberts, FIC 2009-751 – 9/22/10

Complainant requested to review any documentation used by police department to compile a memo "detailing gang activity in Hartford, specifically, increased gang activity within the city's middle schools". Respondent denied the request on grounds that the documents constitute sensitive police intelligence and/or relate to ongoing investigations. At issue were "notes written by school resource officers concerning gang activity at schools; completed Field Interview Cards; notes of HPD containing intelligence information; printouts from various websites depicting gang members and gang information; printouts from law enforcement bulletins containing gang information." Commission held that these records were exempt under § 1-210(b)(3)(D).

Conway v. Town of Orange Police Department; FIC 2009-695 – 7/28/10

Complainant requested entire personnel file of a police officer. Respondent agreed to provide some information but as to remainder it claimed that the officer had a “sensitive” and “unusual assignment” and that disclosure would place the personal safety of the officer at risk. Complainant, who was an attorney, contended that his review of unsealed arrest warrant affidavits in the offices of various Court Clerks tended to disclose the nature of the officer’s “sensitive” and “unusual” assignment. Commission found that records were exempt drawing a distinction between counsel being able to draw his own inferences based upon his review of public records and disclosure of specific records that confirmed a certain “sensitive” and “unusual” assignment.

Inmate Requests:

Sylvia v. State of CT Dept. of Environmental Protection; FIC 2008-584 – 8/12/09; Salaman v. City fo New Haven Police Dept.; FIC 2008-057 – 11/12/08; Stevenson v. Micklus; FIC 2008-683 – 9/9/09

Respondent violates the “promptness” requirement of §§ 1-210 and 1-212 by providing non-exempt records to the Department of Correction instead of providing them directly to the inmate. In Sylvia, inmate made request on 8/26/08; respondent submitted records to Dept. of Correction (DOC) under § 1-210 (c) on 10/28/08 and relied on DOC to forward to inmate any records it deemed appropriate; DOC provided all records to inmate on 11/20/08. Commission found that *Dept. of Environmental Protection*, not *DOC*, violated promptness provisions.