

Since 1975



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

Dan Barrett and the
American Civil Liberties Union of Connecticut,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0840

Town Attorney, Town of Enfield; Town Manager,
Town of Enfield; and Town of Enfield,
Respondent(s)

May 4, 2017

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, June 14, 2017**. 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 June 2, 2017**. 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 June 2, 2017**. **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 June 2, 2017**, 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: Attorney Dan Barrett
Attorney Maria S. Elsdon and
Attorney Christopher W. Bromson

FIC# 2016-0840/Trans/wrbp/LFSI/TCB/2017-05-04

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Dan Barrett and the American Civil
Liberties Union of Connecticut,

Complainants

against

Docket #FIC 2016-0840

Town Manager, Town of Enfield; and
Town of Enfield,

Respondents

May 2, 2017

The above-captioned matter was heard as a contested case on March 28, 2017, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2016-0791, Dan Barrett and the American Civil Liberties Union of Connecticut v. Town Manager, Town of Enfield; and Town of Enfield.

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 November 18, 2016, the complainants requested copies of “complete settlement agreements and/or releases resolving any suits by Zachary Trowbridge[.]”
3. It is found that on November 29, 2016, the respondent town attorney informed the complainants that the town did not possess the requested records.
4. By letter filed December 5, 2016, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide copies of the records they requested.
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. The respondents claim that the settlement records are not public records because they do not possession of the records.

9. It is found that the respondents' insurer retained and/or appointed an attorney to represent the respondent town in the federal lawsuit that resulted in the settlement records requested by the complainant.

10. It is found that such outside counsel entered an appearance in the federal suit on behalf of the town and certain town officials, who became the attorney's clients.

11. It is found that the town does not have physical possession of the requested records. It is found that the town believes that the outside counsel maintains such records. It is found that the respondents have not asked the outside counsel to provide such records to them so that they would be able to comply with the complainants' request.

12. In Thomas J. Londregan, New London Director of Law v. FOI Commission, 071894 CTSUP, 526105 and 529345, New London, J.D. (Teller, J.) (July 18, 1994), the city denied a request for copies of legal briefs and other records pertaining to ten cases in which the city was a party litigant and represented by outside counsel. Among other arguments, the city argued that because it did not have possession of the requested records, it could be required to comply with the FOI request. Rejecting that argument, the Court reasoned:

The client involved as the real party in interest in all of the requested litigation files is New London. It is well settled that clients are entitled to their files and papers upon payment or funding of security for outstanding fees... New London, therefore, ... is entitled to possession of the files, or at least copies thereof, upon demand. Hence, as [the city's] Director of Law, the plaintiff has the right to obtain possession of said files.

The plaintiff cannot evade the plain mandate of the FOIA by 'farming' the litigation files out to other counsel, as upon request, the plaintiff would be entitled to copies thereof. (Citation omitted.)

13. In this matter, it is concluded that because the respondent town is the client, the town is entitled to obtain possession of the requested records.

14. Moreover, as the complainants point out, §1.4(a)(4) of the Connecticut Rules of Professional Conduct requires an attorney to "promptly comply with reasonable requests for information" from a client, and Rule 1.16(d) requires an attorney to "surrender[] papers and property to which the client is entitled."

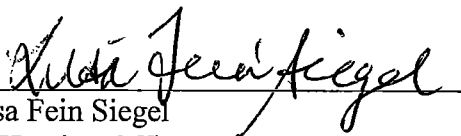
15. It is found that the requested records, albeit in the possession of outside counsel, are "owned" or "used" by the respondents within the meaning of §1-200(5), G.S. See also cases cited by the complainants in their post-hearing brief, such as Tribune-Review Publishing Co. v. Westmoreland County Housing Authority, 574 Pa. 661 (2003) (litigation settlement document prepared by private attorney for public agency's insurer on behalf of public agency is public record because within agency's control); Burnett v. County of Gloucester, 415 N.J. Super. 506 (2010) (litigation settlement document possessed by County's insurer or outside counsel is public record of County); Knightstown Banner v. Town of Knightstown, 838 N.E.2d 1127, 1133 (Ind. Ct. App. 2005) (private counsel retained by insurer to represent town "created, maintained, and retained" settlement agreement as public record during course of representation of client town); Journal/Sentinel, Inc. v. Sch. Bd. Of Sch. Dist. Of Shorewood, 186 Wis.2d 443, (1994)(affirming order for agency to furnish settlement agreement as public record held by outside counsel); and Providence Journal v. Silva, No. C.A. 87-1930, 1987 WL 859793, (R.I. Super. Ct. Oct. 28, 1987).

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

17. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the requested records to the complainant.

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

1. Forthwith, the respondents shall retrieve the requested records from their outside counsel and shall provide such records to the complainants, free of charge.
2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.


Lisa Fein Siegel
as Hearing Officer



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

Dan Barrett and the
American Civil Liberties Union of Connecticut,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0791

Town Manager, Town of Enfield; and Town of Enfield,
Respondent(s)

May 4, 2017

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, June 14, 2017**. 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 June 2, 2017**. 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 June 2, 2017**. **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 June 2, 2017**, 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: Attorney Dan Barrett
Attorney Maria S. Elsdon and
Attorney Christopher W. Bromson

FIC# 2016-0791/Trans/wrbp/LFS//PSP/2017-05-04

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Dan Barrett and the American Civil
Liberties Union of Connecticut,

Complainants

against

Docket #FIC 2016-0791

Town Manager, Town of Enfield; and
Town of Enfield,

Respondents

May 2, 2017

The above-captioned matter was heard as a contested case on March 28, 2017, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2016-0840, Dan Barrett and the American Civil Liberties Union of Connecticut v. Town Manager, Town of Enfield; and Town of Enfield.

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 October 4, 2016, the complainants requested copies of “complete settlement agreements and/or releases resolving any suits by Eric Avalos, and Ronnie and Frank Salas.”
3. It is found that on October 14, 2016, the respondent town manager informed the complainants that the town did not possess the requested records, and that their request had been forwarded to the outside counsel assigned to the cases by the town’s insurer.
4. By letter filed November 7, 2016, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide copies of the records they requested.
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. The respondents claim that the settlement records are not public records because they do not have possession of the records.

9. It is found that the respondents' insurer retained and/or appointed a private attorney to represent the respondent town in the federal lawsuit that resulted in the settlement records requested by the complainant.

10. It is found that such private outside counsel entered an appearance in the federal suit on behalf of the town and certain town officials, who became the attorney's clients.

11. It is found that the town does not have physical possession of the requested records. It is found that that the town believes that the outside counsel maintains such records. It is found that the respondents have not asked the outside counsel to provide such records to them so that they would be able to comply with the complainants' request.

12. In Thomas J. Londregan, New London Director of Law v. FOI Commission, 071894 CTSUP, 526105 and 529345, New London, J.D. (Teller, J.) (July 18, 1994), the city denied a request for copies of legal briefs and other records pertaining to ten cases in which the city was a party litigant and represented by outside counsel. Among other arguments, the city argued that because it did not have possession of the requested records, it could be required to comply with the FOI request. Rejecting that argument, the Court reasoned:

The client involved as the real party in interest in all of the requested litigation files is New London. It is well settled that clients are entitled to their files and papers upon payment or funding of security for outstanding fees... New London, therefore, ...is entitled to possession of the files, or at least copies thereof, upon demand. Hence, as [the city's] Director of Law, the plaintiff has the right to obtain possession of said files.

The plaintiff cannot evade the plain mandate of the FOIA by 'farming' the litigation files out to other counsel, as upon request, the plaintiff would be entitled to copies thereof. (Citation omitted.)

13. In this matter, it is concluded that because the respondent town in this matter is the client, the town is entitled to obtain possession of the requested records.

14. Moreover, as the complainants point out, §1.4(a)(4) of the Connecticut Rules of Professional Conduct requires an attorney to "promptly comply with reasonable requests for information" from a client, and Rule 1.16(d) requires an attorney to "surrender[] papers and property to which the client is entitled."

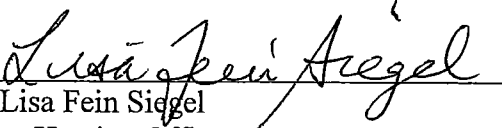
15. It is found that the requested records, albeit in the possession of outside counsel, are "owned" or "used" by the respondents within the meaning of §1-200(5), G.S. See also cases cited by the complainants in their post-hearing brief, such as Tribune-Review Publishing Co. v. Westmoreland County Housing Authority, 574 Pa. 661 (2003) (litigation settlement document prepared by private attorney for public agency's insurer on behalf of public agency is public record because within agency's control); Burnett v. County of Gloucester, 415 N.J. Super. 506 (2010) (litigation settlement document possessed by County's insurer or outside counsel is public record of County); Knightstown Banner v. Town of Knightstown, 838 N.E.2d 1127, 1133 (Ind. Ct. App. 2005) (private counsel retained by insurer to represent town "created, maintained, and retained" settlement agreement as public record during course of representation of client town); Journal/Sentinel, Inc. v. Sch. Bd. Of Sch. Dist. Of Shorewood, 186 Wis.2d 443, (1994)(affirming order for agency to furnish settlement agreement as public record held by outside counsel); and Providence Journal v. Silva, No. C.A. 87-1930, 1987 WL 859793, (R.I. Super. Ct. Oct. 28, 1987).

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

17. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the requested records to the complainant.

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

1. Forthwith, the respondents shall retrieve a copy of the requested records from their outside counsel and shall provide such records to the complainants, free of charge.
2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.


Lisa Fein Siegel
as Hearing Officer