

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

In the Matter of a Complaint by

FINAL DECISION

Margaret Miner and the  
Rivers Alliance of Connecticut,

Complainants

against

Docket #FIC 2010-311

Commissioner, State of Connecticut,  
Department of Public Works;  
State of Connecticut, Department of  
Public Works; and Town of Wallingford,

Respondents

April 27, 2011

The above-captioned matter was consolidated for hearing with Docket #FIC 2010-466; Margaret Miner and the Rivers Alliance of Connecticut v. Commissioner, State of Connecticut, Department of Public Works; and State of Connecticut, Department of Public Works.

On October 5, 2010, a motion to dismiss was granted as to Commissioner, State of Connecticut, Department of Public Health; and State of Connecticut, Department of Public Health. In accord with the requirements of §1-210(d), G.S., the respondents Commissioner of Public Works, State of Connecticut, Department of Public Works and State of Connecticut, Department of Public Works (the “Department of Public Works respondents”) were joined as parties. Subsequently, motions were granted by the Town of Wallingford to be joined as a party and by United Water Connecticut Inc. to be joined as an intervenor. The case caption above has been amended and restated.

On March 2, 2011, the Department of Public Works respondents filed a motion to dismiss the complaint, claiming the Freedom of Information Commission (“Commission”) did not have jurisdiction in this case. By order dated March 7, 2011, the Commission denied the motion.

The above-captioned matter was heard as a contested case at consolidated hearings on February 25 and March 22, 2011. At both hearings, the complainants, the respondents, and the intervenor appeared 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 (but not the intervenor United Water Company Inc.) are public agencies within the meaning of §1-200 (1)(A), G.S.
2. By letter dated April 20, 2010, the complainants made a request to the Commissioner, Department of Public Health, for records including the water supply plans for: a) the Heritage Village Water Company; and b) the Town of Wallingford (the “requested records” or sometimes “the records”). The April 20, 2010 letter essentially renewed earlier requests dated January 19 and February 11, 2010.
3. By letter dated February 16, 2010, the Chief, Regulatory Services Branch, Department of Public Health had acknowledged the complainants’ January 19, 2010 request, describing the review process set forth in §1-210(d), G.S., and stating that “this process takes some time to complete.”
4. By letter dated May 11, 2010 and filed with the Commission on May 14, 2010, the complainants appealed to the Commission, alleging that the Department of Public Health had “not responded conclusively to several requests for information”.
5. It is found that, by letter dated August 27, 2010, the Department of Public Health provided the complainants with redacted copies of the requested records. The redactions to the requested records are what is at issue in this case.
6. On March 9, 2011, the Department of Public Works respondents submitted an unredacted set and the redacted set (as provided to the complainants) of 958 records for an in camera inspection. These records were accompanied by an extremely

detailed in camera index (a twenty-five page index for the Town of Wallingford Water Supply Plan, a ten page index for the Heritage Village Water Company Water Supply Plan, and a one page index for a record herein referred to as Future Sources of Supply). An in camera inspection of each of the 958 pages has been performed, with a review of the unredacted and the redacted copies of each page placed side by side. In conformance with the index prepared by the Department of Public Works respondents, such records are hereby identified as Town of Wallingford Water Supply Plan IC-2010-311-1 through IC-2010-311-583, Heritage Village Water Company Water Supply Plan IC-2010-311-1 through IC-2010-311-374, and Future Sources of Supply IC-2010-311-1.

7. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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.

...

Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record.

8. Section 1-210(b), G.S., states in relevant part:

Nothing in the Freedom of Information Act shall be construed to require disclosure of:

.....

(19) Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Public Works, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Management and Homeland Security, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency; (B) by the Chief Court Administrator with respect to records concerning the Judicial Department; and (C) by the executive director of the Joint Committee on Legislative Management, with respect to records concerning the Legislative Department. As used in this section, "government-owned or leased institution or facility" includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as defined in section 16-1, a water company, as defined in section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and "chief executive officer" includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to:

...

(viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and

(ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply; (emphasis added)

9. Section 1-210(d), G.S., states in relevant part:

(d) Whenever a public agency, except the Judicial Department or Legislative Department, receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Public Works or the Commissioner of Emergency Management and Homeland Security, as applicable, of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act and for information related to a water company, as defined in section 25-32a, the public agency shall promptly notify the water company before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency or after consultation

with the chief executive officer of the applicable water company for information related to a water company, as defined in section 25-32a, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch state agency or the municipal, district or regional agency that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section, exclusively, or, in the case of records concerning Judicial Department facilities, the Chief Court Administrator or, in the case of records concerning the Legislative Department, the executive director of the Joint Committee on Legislative Management. (emphasis added)

10. It is found that the Town of Wallingford Water Supply Plan IC-2010-311-558 through IC-2010-311-583 are copies of legal agreements that do not include subject matters detailed in §1-210(b)(19), G.S. The Department of Public Works respondents acknowledged that these pages are not exempt with their notation on the relevant page of the in camera record index stating: “left out of copy provided to requestor-should be included in unredacted form”. At the March 22, 2011 hearing, the Department of Public Works respondents agreed to mail Town of Wallingford Water Supply Plan IC-2010-311-558 through IC-2010-311-583 to the complainants within seven days following the hearing.

11. Based upon detailed testimony at the March 22, 2011 hearing by the Legal Director, Department of Public Works; the Chief of the Drinking Water Section, Department of Public Health; the Director of the Statewide Security Unit, Department of Public Works; and the Manager of Health Safety and Security, United Water Company, the Commission can make findings concerning threats to water systems in the United States generally, in Connecticut in particular, and concerning disclosure of the redactions in the requested records provided to the complainants.

12. With reference to threats to water systems in the United States generally, it is found that the threats are real and not widely understood. Because water systems are dispersed and often lack real time security monitoring, they are vulnerable to biological, chemical and physical disruption. Water tanks, containing “finished water”, are a particular point of vulnerability. Explosives, arsenic, cyanide, DDT, and electronic measures can be used as the means of attack. Such attacks are considered most likely to come from domestic extremists, trained in the United States. In recent decades, there have been 193 such attacks in North America, including an attack in Harrisburg, Pennsylvania in the late 1990s. The United States Congress addressed threats to water systems with the Public Health, Security and Bioterrorism Act, which required the federal EPA to perform vulnerability assessments of water systems.

13. With reference to threats to water systems in Connecticut in particular, it is found that there have not been any attacks, but that there have been three incidents in the last ten years that required investigation by the FBI, the federal Department of Homeland Security, or the Connecticut Water Emergency Response Team. The firewalls of computerized water control systems have been subject to episodes of disruption and remain subject to attack. Investigations of incidents and appropriate responses, like draining a water tank, are themselves costly.

14. It is found that a water supply plan is a description of an entire water system, including all of the facilities of a given water company. A security manager for a water company uses the water supply plan to perform a vulnerability assessment, and an aggressor could be expected to do likewise.

15. With reference to the redaction process used for the requested records, the Chief of the Drinking Water Section, Department of Public Health (with one other staff member) performed the first draft of the redactions, using as her model the redactions made in response to earlier requests for water supply plans (the New Britain Water Supply Plan and the Valley Water Supply Plan). The Chief of the Drinking Water Section, Department of Public Health testified that she suggested redactions based upon the categories specifically enumerated at §1-210(b)(19)(viii) and (ix), G.S., but did not check the records against information publicly available on the internet. Subsequently, the Legal Director, Department of Public Works; the Director of the Statewide Security Unit, Department of Public Works; and the Manager of Health Safety and Security, United Water Company reviewed the draft redactions. All of these individuals had knowledge of technical literature concerning threats to the security of water systems.

16. It is found that the in camera records are water supply plans, one of the six categories of records specifically enumerated at §1-210(b)(19)(ix), G.S. However, it is noted that §1-210(b)(19)(ix), G.S., expressly states that only “the portions of water supply plans” are exempt “that contain or reveal information the disclosure of which may result in a security risk to a water company” (emphasis added).

17. More specifically, it is found that, except as noted in paragraph 10 above, the redactions to Town of Wallingford Water Supply Plan IC-2010-311-1 through IC-2010-311-490, Heritage Village Water Company Water Supply Plan IC-2010-311-1 through IC-2010-311-277, and Future Sources of Supply IC-2010-311-1 all contain information in one of the five other categories set forth at §1-210(b)(19)(ix), G.S., namely: 1) materials that depict or specifically describe critical water company operating

facilities, collection and distribution systems or sources of supply; 2) technical specifications; 3) inspection reports; 4) vulnerability assessments and risk management plans; and 5) operational plans.

18. It is also found that Town of Wallingford Water Supply Plan IC-2010-311-491 through IC-2010-311-557, and Heritage Village Water Company Water Supply Plan IC-2010-311-278 through IC-2010-311-374, are emergency plans or response and recovery plans, as set forth at §1-210(b)(19)(viii), G.S.

19. It is further found that the requested records contain a level of technical description concerning water facilities that far exceeds information available on the internet or that can be derived from ready visual inspection. For example, a reservoir may be marked as such on Google Earth or may be visible from a highway. But only the water supply plan would indicate that a given reservoir was in active use or where its physical intake points are located.

20. It is also found that the requested records reflect a very painstaking effort to withhold information sparingly. While occasionally entire pages are withheld, most withheld information is in the form of line by line, word by word redactions of the locations, types and capacities of specific facilities. Maps, many photographs and technical specifications of facilities have been redacted. Only in the case of emergency plans are entire sections withheld.

21. For example, it is found that the redactions do not withhold information concerning occasional instances of environmental contamination. At least certain environmentally sensitive information concerning water diversion permits is disclosed. Nor do the redactions block disclosure of needed repairs, even though the names of specific facilities are withheld.

22. It is concluded that the Heritage Village Water Company is “a water company, as defined at Section 25-32a,” and the Town of Wallingford, Water and Sewer Division is “a municipal utility that furnishes... water service”, both as set forth at §1-210(b)(19), G.S. Therefore, for purposes of §1-210(b)(19), G.S., the facilities of the Heritage Village Water Company and the Town of Wallingford, Water and Sewer Division are defined to be “government-owned or leased... facility[ies]”. It is also concluded that the requested records are “water supply plans submitted pursuant to Section 25-32d”, as set forth at §1-210(b)(19)(ix), G.S.

23. It is further concluded that the General Assembly established the standard as being whether “there are reasonable grounds to believe disclosure may result in a safety risk...” (emphasis added). Section 1-210(b)(19), G.S.

24. With reference to the redactions of the requested records, it is concluded that the respondent Commissioner of Public Works, State of Connecticut, Department of Public Works did have “reasonable grounds to believe that disclosure of such records may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility...”, as set forth at §1-210(b)(19), G.S.

25. It is finally concluded that, except as noted at paragraph 10 above, the redactions of the requested records are exempt from mandatory disclosure pursuant to §1-210(b)(19), G.S. This result tracks the general guidance of §1-210(b)(19)(ix), G.S., that “portions of water supply plans” may be exempt. The Department of Public Works respondents did not violate §§1-210(a) and 1-212(a), G.S., when they directed the Department of Public Health to make the redactions contained in the records provided to the complainants.

26. The Commission understands that §1-210(b)(19), G.S., in general, and subsection (ix) of §1-210(b)(19), G.S., in particular, restrict the complainants’ ability to review water company plans. At the March 22, 2011 hearing, the complainants stated their concern that United Water Company might be seeking to profit from selling water outside its service area, at the expense of desirable stream flow levels. If the complainants feel that the exemption at §1-210(b)(19), G.S., denies them information needed to evaluate their legitimate environmental concerns, the complainants may seek a remedy in the General Assembly.

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 April 27, 2011.

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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:

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**Intervener**

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