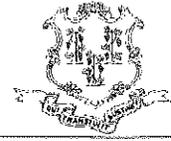


Since 1975



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

Laurene Boulton,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-749

Mayor, City of Derby; and City of Derby,
Respondent(s)

July 1, 2016

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, July 27, 2016**. 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 July 15, 2016**. 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 July 15, 2016**. **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 July 15, 2016**, 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: Laurene Boulton
Attorney Francis A. Teodosio

FIC# 2015-749/Trans/wrbp/VRP/TAH/2016-07-01

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Laurene Boulton,

Complainant

against

Docket #FIC 2015-749

Mayor, City of Derby; and
City of Derby,

Respondents

June 28, 2016

The above-captioned matter was heard as a contested case on January 20, 2016, 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 of complaint filed November 4, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with her October 21, 2015 request to the respondents for certain electronic data related to the termination of her employment.
3. It is found that the complainant made an October 21, 2015 request to the respondents for:

... all email correspondences received, sent, and previous deleted emails dated from June 1, 2014 through today, October 21, 2015. I request this information be obtained from the following email accounts or computer servers hosting the accounts of City employees: Mayor Anita Duggata, Mayor’s Assistant Henry Domurad, and Building Secretary Lisa Narowski.

I further request a copy of any files or investigations related to my previous employment. I request that this

information be placed in a digital format readable in word document.

4. It is found that the complainant's employment with the respondent City was terminated on March 3, 2015.

5. It is found that the complainant is seeking records relating to her termination.

6. It is also found that the city and the complainant were involved in litigation concerning her grievance of her termination, and her application for unemployment, in the period following her termination.

7. It is also found that the respondents provided everything in their files concerning the complainant's termination on two occasions during the litigation between the parties.

8. It is found that on November 18, 2015 the respondents also provided 44 pages of emails responsive to the complainant's request for correspondence.

9. It is found that the respondents did not provide copies of the attachments to the emails that were given to the complainant, and did not search for deleted emails because doing so would require contacting an outside vendor, thereby incurring hourly costs.

10. 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.

11. 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.

12. 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.”

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

14. Section 1-211(a), G.S., provides:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212, as amended by Public Act 11-150.

15. Section 1-212(b), G.S., provides in relevant part:

The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:

- (1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection;
- (2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services,

if such service is necessary to provide the copying as requested;

- (3) The actual cost of the storage devices or media provided to the person making the request in complying with such request; and
- (4) The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services.

16. It is found that the respondents conducted a diligent search for the requested records, and provided all records responsive to the request, except for the attachments and deleted emails referenced in paragraph 9, above.

17. It is concluded that, although the respondents did not intend to withhold any records from the complainant, they nonetheless violated §1-210(a), G.S., by failing to provide the records described in paragraph 9, above.

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

- 1. The respondents shall forthwith provide the complainant with copies of the records described in paragraph 9 of the findings, above.
- 2. In complying with paragraph 1 of the order, the respondents may charge to the complainant any costs chargeable pursuant to §1-212(b), G.S.



Victor R. Perpetua
As Hearing Officer