Mike Savino And the Record-Journal  
Complainant(s)  

against  

Commissioner, State of Connecticut, Department of  
Economic and Community Development; and State of  
Connecticut, Department of Economic and Community  
Development  

Respondent(s)  

Notice of Meeting  
Docket #FIC 2018-0044  

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 2:00 p.m. on Wednesday, October 24, 2018. 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 October 15, 2018. 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 October 15, 2018. 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 October 15, 2018 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

[Signature]

Wendy R. B. Paradis
Acting Clerk of the Commission

Notice to: Mike Savino and the Record-Journal
Assistant Attorney General James Caley

FIC# 2018-0044/TRA/MS/LFS/"AH/WRBP/2018-10-3
FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Mike Savino and the Record-Journal,
Complainants

against

Commissioner, State of Connecticut,
Department of Economic and Community
Development; and State of Connecticut,
Department of Economic and Community
Development,

Respondents

Report of Hearing Officer

Docket #FIC 2018-0044

September 14, 2018

The above-mentioned matter was heard as a contested case on May 30, 2018, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The Commission grants the respondents’ uncontested motion to supplement the record with after-filed exhibit “E,” dated May 31, 2018.

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 January 18, 2018, the complainants requested copies of “Connecticut’s proposals for the Amazon HQ2 [second headquarters] bid proposal.”

3. It is found that on January 23, 2018, the respondents sent by email the web address link to a redacted version of the records that the complainants requested. The respondents informed the complainants that they withheld “the economic incentives” offered to Amazon “due to the competitive nature of the effort and the potential impact on future bids.” The respondents cited §1-210(b)(5)(A), G.S., in support of their claim of exemption. The respondents claimed that the economic incentives were exempt also as preliminary drafts, pursuant to §1-210(b)(1), G.S.

4. By letter filed January 26, 2018, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide them with copies of all 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. It is found that the records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. Section 1-210(b)(5)(A), G.S., provides that disclosure is not required of:

Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy[.]

10. The definition of “trade secret” in §1-210(b)(5)(A), G.S., “on its face, focuses exclusively on the nature and accessibility of the information, not on the status or characteristics of the entity creating and maintaining that information.” University of Connecticut v. FOI Commission, 303 Conn. 724, 733-734 (2012). The information claimed to be a trade secret must “be of the kind included in the nonexhaustive list contained in the statute.” Elm City Cheese Co., Inc. v. Federico, 251 Conn. 59, 70 (1999). In addition, “to qualify for a trade secret exemption under §1-210(b)(5)(A), a substantial element of secrecy must exist, to the extent that there would be difficulty in acquiring the information except by the use of improper means.” (Citation omitted; internal quotation marks omitted.) Director, Dept. of Information Technology of Town of Greenwich v. FOI Commission, 274 Conn. 179, 194 (2005).
11. University of Connecticut v. FOI Commission, supra, 303 Conn. 737, established that a public agency may hold a trade secret for purposes of claiming the relevant exemption in response to a request for disclosure of public records.

12. Following the hearing in this matter, the respondents submitted records for in camera inspection. Such records shall be identified as IC-2018-0044-1 through IC-2018-0044-2.

13. As described publicly by the respondents, the in camera records contain the details of the economic incentives, such as tax relief and other financial benefits, offered by the state to Amazon in response to Amazon’s RFP.

14. It is found that the information contained in IC-2018-0044-1 through IC-2018-0044-2 is “of the kind included in the nonexhaustive list contained in the statute.” Elm City Cheese Co., Inc. v. Federico, supra, 251 Conn. 70.

15. It is found that at some point before the complainants’ request for records in this case, Amazon notified the respondents that Connecticut was not a finalist in the RFP award process.

16. It is found that although the Amazon contract will not be awarded to Connecticut, the respondents have maintained strict confidentiality concerning the information contained in IC-2018-0044-1 through IC-2018-0044-2. It is found that only the respondent Commissioner, Deputy Commissioner, Project Manager, and the Governor know the contents of IC-2018-0044-1 through IC-2018-0044-2, and that the respondents marked the materials submitted to Amazon as confidential.

17. The complainants observed that many states that submitted responses to the Amazon RFP made their entire bids public, including the economic incentives offered. Nevertheless, it is found that the testimony in this case supports a finding that disclosure of the economic incentives offered by the respondents in their response to the Amazon RFP have been kept confidential because disclosure would disadvantage the state as it competes with other states for private business to remain in-state or relocate to Connecticut.

18. It is found that disclosure of the economic incentives detailed in IC-2018-0044-1 through IC-2018-0044-2 would reveal aspects of the state’s economic development strategy, enable states to better their offers in their competition with Connecticut to attract and keep private business, and give an advantage to private businesses in future negotiations with the state for economic incentives.

19. It is found that although the state customarily discloses the final economic aid package provided to private businesses that agree to stay in or relocate to Connecticut, IC-2018-0044-1 through IC-2018-0044-2 reveal the state’s initial offer in what would have ultimately resulted in a final negotiated aid package. It is found that the initial offer and the final economic aid package are similar in that they both demonstrate aspects of the state’s economic development strategy, but disclosure of the final package does not reveal the initial offer, which can change significantly during negotiations.
20. It is found that IC-2018-0044-1 through IC-2018-0044-2 "derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use," within the meaning of §1-210(b)(5)(A)(i), G.S.

21. It is also found that IC-2018-0044-1 through IC-2018-0044-2 "are the subject of efforts that are reasonable under the circumstances to maintain secrecy," within the meaning of §1-210(b)(5)(A)(ii), G.S.

22. It is found, therefore, that IC-2018-0044-1 through IC-2018-0044-2 are exempt from mandatory disclosure as trade secrets, pursuant to §1-210(b)(5)(A), G.S.

23. In light of the finding in paragraph 19, above, it is not necessary to determine whether IC-2018-0044-1 through IC-2018-0044-2 are exempt as preliminary drafts pursuant to §1-210(b)(1), G.S.

24. It is concluded, therefore, that the respondents did not violate the FOI Act as alleged.

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

1. The complaint is dismissed.

[Signature]
Commissioner Matthew Streeter
as Hearing Officer