

Politics

# FOI Agency, In Role Reversal, Opposes Disclosure Of Connected Lobbyist's Emails



The Connecticut Supreme Court in Hartford (Ronald DeRosa / Hartford Courant)



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Government Watch

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**I**n a reversal of its usual role, the state Freedom of Information Commission is fighting at the state **Supreme Court** against the disclosure of emails between former **Connecticut House** Speaker Thomas D. Ritter, now a politically connected lawyer-lobbyist, and the state's trash-management agency.

The high court will hear oral arguments Friday in a case centering on the claim that officials stretched the attorney-client privilege to improperly withhold what ought to be public information about behind-the-scenes government decision-making.

At issue are communications during Ritter's years of service to the Connecticut Resources Recovery Authority under a lucrative consulting contract to provide "general business advice" in a role as liaison with officials in scores of cities and towns.

"[T]here was no requirement for, or even a preference for, an attorney to perform" the duties under the contract, says a legal brief filed by attorney Michael Harrington, the appellant who brought the case to the high court in hopes of forcing disclosure of the emails.

He contends that the FOI Commission wrongly extended the attorney-client privilege to Ritter's communications even though they discuss normal business matters, not legitimately protected legal advice — because Ritter happens to be a lawyer.

This, Harrington said in a Friday interview, raises "the concern ... that a lobbyist who happens to be a lawyer can cloak his activities with an assertion of the attorney-client privilege." Harrington said that it's a legitimate concern even though Ritter's contract didn't call for him to act as the CRRA's lobbyist (and, in fact, the trash agency is barred by law from hiring an outside lobbying firm to influence public officials).

But the trash agency's attorney, Daniel J. Krisch of the Hartford firm Halloran & Sage, calls Harrington's argument "an attempt to generate smoke where there is no fire."

Krisch said that the FOI Commission was right in 2013 to deny Harrington's request that it order the CRRA to release mails that involved Ritter, or were sent or received by Ritter. The authority — which has been renamed the Materials Innovation and Recycling Authority — had released about 2,000 such Ritter-related emails to Harrington, but refused to disclose another 130, claiming they fell under the attorney-client privilege because they legitimately contained legal advice.

## **Exempt**

The state **Freedom of Information Act** exempts from public disclosure "communications privileged by the attorney-client relationship," Krisch said in a legal brief to the Supreme Court. "I think the most important thing to remember is that [the trash authority] didn't withhold documents wholesale," Krisch said in the Friday interview. "More than 2,000 emails [involving Ritter] were released. That's a lot of material."

It was only the relative few that were withheld, Krisch said, adding that "three sets of eyes" confirmed the trash agency's assessment that the withheld emails were rightly classified as privileged after carefully viewing them "in camera," or in secret. He was referring to examinations of the emails by an FOI Commission hearing officer, members of the FOI Commission itself, and, later, a Superior Court judge.

Harrington said it doesn't matter that most of the emails were released, if others were improperly withheld. "If there are 10 documents that should be disclosed, the fact that they gave me nine is meaningless," he said.

He wrote in his legal brief that the trash agency released a "log" of privileged emails it was withholding. He said that although he hasn't been allowed to see the actual emails, "many of the descriptions" contained in the log "suggest that the documents do not relate to the solicitation of or provision of legal advice. Rather, they suggest that CRRA was seeking general or lobbying advice."

Among examples he gave were emails about: "Discussion of News Articles" and "Discussion of a 'new CRRA Brochure.'"

And so, next Friday, Harrington will try to convince the justices that the trash agency and the FOIC wrongly categorized the disputed emails as privileged, and that a Superior Court judge was wrong in 2014 to adopt the same view in dismissing his appeal of the FOI Commission's decision.

Appearing in opposition will be Krisch and Paula Pearlman, staff attorney for the FOI Commission. The commission has formally adopted the arguments made by Krisch in his court filings, but has let Krisch carry the load in defending the 2013 decision.

### **'Ironic'**

The FOI Commission's executive director, Colleen Murphy, was asked Thursday if she saw any irony in her commission's prominent stance against disclosure, when it mostly rules in favor of making government records public.

"I guess you could look at it as ironic," Murphy said, "but I think it also demonstrates that the commission simply does its job ... of applying the law. And sometimes the law leads you to find that something's confidential."

Friday's Supreme Court showdown is the latest act in a drama over the CRRA's decision some four years ago to spurn a bid by the consulting firm of Matthew J. Hennessy — a longtime Democratic political operative from Hartford — for a three-year consulting contract to serve as municipal relations liaison with the 70 towns and cities that then sent their trash to the CRRA.

The contract, worth more than \$250,000, had been held for years by Ritter's firm, Brown Rudnick, and the firm again won the contract despite the new bid by Hennessy's firm, Tremont Public Advisors LLC.

Brown Rudnick provides both legal and lobbying services. It's an international law firm whose Hartford office is one of six in the U.S. Ritter — again, both a lawyer and registered lobbyist — leads the firm's "government relations practice" in Connecticut.

Harrington filed an anti-trust suit against the CRRA on behalf of Tremont in March 2013, seeking triple damages over the denial of the contract award. He requested the disputed emails in hopes of obtaining information that might help Hennessy's case. When he didn't get all the communications he'd requested, Harrington filed a lawsuit against the FOI Commission in Superior Court to try to overturn its 2013 decision.

When that decision went against him, he filed the appeal that comes up Friday at the high court.

Meanwhile, Tremont's original lawsuit is still pending in Hartford Superior Court, three years after it was filed, with a continuing battle of pre-trial motions. Although Ritter and Brown Rudnick figure heavily into the issues of the suit, neither is named as a defendant.

Ritter, a lifelong Hartford resident, has numerous political contacts and relationships at both the state and local levels, where he wields considerable influence. Among his public roles is his membership on the UConn Board of Trustees.

"Mr. Ritter was not engaged to provide legal services to the CRRA," Harrington wrote in his brief. "This fact was well understood by Mr. Ritter himself, who described his services on his invoices as 'General Business Advice.'" On the other hand, he noted, the trash agency has long had legal-services contracts with numerous outside law firms.

Harrington said that if the withholding of emails is upheld, "it will be an incentive to hire lobbyists who happen to be attorneys. I think it would be a curious situation where two people" — a lobbyist who is a lawyer and one who isn't — "are doing the same activities ... and one person's communications are privileged but the other's communications are not."

Harrington also is appealing the FOI Commission's refusal to order release of some emails involving lawyer Peter Boucher, who Krisch said had acted as the agency's "outside general counsel." Emails involving Boucher, like those involving Ritter, were reviewed "in camera" by the FOI Commission's staff attorney who conducted the hearing on the case, Kathleen Ross, who concluded that they met a four-part legal test for attorney-client privilege.

That test requires that privileged communications must relate to legal advice and must be made in confidence. Even though Ritter's contract wasn't as an adviser, the withheld emails amounted to privileged lawyer's advice in a couple of legal controversies, Ross found. The commission agreed when it voted unanimously to adopt her recommended decision.

## Decision Doubted

Harrington's legal brief cited doubts expressed by the commission's then-chairman, Owen Eagan, about Ross' conclusions before the 2013 vote. "I don't agree that every single one of them is subject to attorney-client privilege," Eagan said, but then he added that "I would not ... substitute my judgment" for Ross'. That and another commission member's comment meant that the panel "improperly substituted the judgment of the hearing officer in favor of its own," Harrington wrote.

But Krisch said in his brief that "even if Chairman Eagan's comment mattered in light of his subsequent vote to adopt, four other Commissioners expressed no disagreement with Attorney Ross and voted the same way."

Krisch added: "Although one Commissioner noted that he did not agree with the hearing officer as to 'every single one' of the withheld documents, his vote to adopt her report — and not that remark — is what counts."

Harrington's brief said that Ross, as the FOI hearing officer, had "found that Mr. Ritter and/or Mr. Boucher were merely copied on communications involving others, summarily concluding that the lobbyists were copied 'for the purpose of allowing [them] to respond to ongoing developments with legal advice.'

"In so doing, however, [Ross] made no finding that legal advice was requested or provided in any such communications," he wrote. "Finally, [Ross] never addressed the fact that a coworker of Mr. Ritter, Timothy Shea, who is also a lobbyist but is not an attorney, was copied on several of the withheld documents."

Krisch said that Harrington's broad arguments about lobbyists are a "red herring," noting that neither Ritter nor Boucher was retained as a lobbyist.

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