



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Steven DeBow,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-207

Acting Chief Information Officer,  
Metro Hartford Information Services; and  
Metro Hartford Information Services,  
Respondent(s)

February 25, 2014

## 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, March 12, 2014**. 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 March 4, 2014**. 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 March 4, 2014**. **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 **fourteen (14) copies** be filed **ON OR BEFORE March 4, 2014**, 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: Steven DeBow  
Cynthia Lauture, Esq.

2014-02-25/FIC# 2013-207/Trans/wrbp/KKR/LFS

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Steven DeBow,

Complainant

against

Docket #FIC 2013-207

Acting Chief Information Officer,  
Metro Hartford Information Services; and  
Metro Hartford Information Services,

Respondents

February 24, 2014

The above-captioned matter was heard as a contested case on August 21, December 16, 2013, and January 16, 2014, at which times the complainant and the respondents 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 are public agencies, within the meaning of §1-200(1), G.S.
2. It is found that, by email dated March 18, 2013, the complainant requested copies, on CD-ROM or flash drive, of the following records:
  - (a) All emails, letters and memos between Diane Georgantas and Oscar Padua from date of hire to present;
  - (b) All records, including emails, that mention or refer to both Diane Georgantas and Oscar Padua in a personal or non-work relationship from date of hire to present; and,
  - (c) All voice mail communications and text messages between Diane Georgantas and Oscar Padua from date of hire to present (together, the "requested records").
3. It is found that, by email dated March 19, 2013, the respondents acknowledged receipt of the request, described in paragraph 2, above, and informed the complainant that they would conduct a search for records responsive to his request, but that because his request was "extensive" it would "take considerable time" to compile and review such records. The

respondents further informed the complainant, and it is found, that they do not maintain any records responsive to the request described in paragraph 2(c), above.

4. By email dated and filed April 8, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the requests for records, described in paragraph 2, above.

5. By email to the complainant dated April 8, 2013, the respondents reiterated that the request, described in paragraph 2, above, had not been denied, and that they were working on fulfilling it. The respondents further informed the complainant that it was estimated that it would take a minimum of three weeks to complete compliance with the request.

6. 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.

7. 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.

8. 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.”

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

10. It is found that, as of the final hearing in this matter, the complainant had not received any records in response to the request, described in paragraph 2, above.

11. It is found that, upon receipt of the request, described in paragraph 2, above, the respondents conducted a search for all responsive records.

12. With regard to the search for emails, it is found that the respondents searched the archived emails of the Hartford Public Schools, using “Diane Georgantas and Oscar Padua” (hereinafter “Diane and Oscar”) as search terms in the sender and recipient lines, and in the body of the emails. It is found that such search resulted in 72,000 emails. It is found that the respondents did not break down the 72,000 emails into those that were responsive to the request described in paragraph 2(a), above (e.g. emails between Diane and Oscar), and those that were responsive to the request described in paragraph 2(b), above (e.g., emails about Diane and Oscar in a non-work relationship). It is found, instead, that the 72,000 emails were copied onto several CD-ROMs and sent to corporation counsel, in May, 2013, for a determination as to whether any of these records were exempt from disclosure under the Federal Educational Rights and Privacy Act (“FERPA”), or another statute.

13. It is found that Alexandra Lombardi, associate counsel in corporation counsel’s office, reviewed, as of the date of the first hearing in this matter, several, but not all, of the CDs containing the emails, described in paragraph 12, above, and that each CD contained approximately 20,000 emails. It is found that a large number of the emails reviewed contained confidential student information, and that none reviewed was responsive to the request. It is also found that, in an effort to speed up the review process, Attorney Lombardi asked another attorney in the office to assist with the review of the emails. It is found that, prior to the first hearing in this matter, the attorneys involved in reviewing the emails devoted a few hours each week to reviewing the emails. It is also found, however, that after the first hearing in this matter, no further review of the emails contained on the CDs was conducted by corporation counsel.

14. During the hearings in this matter, the complainant expressed dissatisfaction with not having received any responsive records, and with the search terms used by the respondents in conducting the search for responsive emails. It is found that, in response, in October 2013, some five months after the emails on CDs were sent to corporation counsel for review, the respondents conducted another, more narrowly tailored search for such emails about Diane and Oscar in a non-work relationship. It is found that the respondents used 30 different words synonymous with the term “love affair” in addition to the individuals’ names in this search.<sup>1</sup> It is found that such search generated 1,000 emails, which emails included, for example, the word “sex” used in the context of an inquiry about a person’s gender. It is found that, after excluding such non-responsive emails, there were 180 potentially responsive emails containing those search terms. Upon review of these emails, the respondents determined that all 180 emails were emails sent by the complainant to the respondents inquiring about the status of his FOI requests in this, and in other matters.

15. Based upon the foregoing, it is found that the respondents do not maintain emails about Diane and Oscar in a non-work relationship, responsive to the request described in paragraph 2(b), above.

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<sup>1</sup> Some of the 30 terms used in the search include: adultery, sex, affair, fling, infidelity, relationship, tryst, and hanky-panky.”

16. With regard to the remaining emails (e.g. those between Diane and Oscar), potentially responsive to the request described in paragraph 2(a), above (see paragraph 12 above), it is found that the respondents offered no evidence that they reviewed such emails after Attorney Lombardi terminated her review of them (see paragraph 13, above), or that they provided them to the complainant.

17. With regard to records *other than emails* between Diane and Oscar, responsive to the request described in paragraph 2(a), above, it is found that the respondents searched three servers for such records using the names "Diane and Oscar" as search terms. It is found that such search revealed 12,000 documents consisting of word documents, PDF documents and excel spreadsheets. It is found that the respondents offered no evidence that these records were reviewed by them, sent to corporation counsel for review, or provided to the complainant.

18. With regard to records *other than emails* about Diane and Oscar in a non-work relationship, responsive to the request described in paragraph 2(b), above, it is found that the respondents conducted a search for such records, and that such search resulted in 3,700 potentially responsive records. It is found that these 3,700 records were then copied, without review, by the respondents, onto CD-ROMs and sent to corporation counsel in May, 2013, for a determination as to whether any of these records were exempt from disclosure under FERPA, or another statute. It is further found, however, that the respondents offered no evidence at the hearing in this matter that corporation counsel reviewed such records or provided them to the complainant.

19. At the final hearing in this matter, however, the respondents took the position that it is too burdensome for them to resume their manual review of the remaining records potentially responsive to the requests described in paragraphs 2(a) and 2(b), above. (See paragraphs 16, 17, and 18, above).

20. Contrary to the respondents' position, the fact that a request is "burdensome" does not relieve the respondents from their obligations under the FOI Act. Apostle Immigrant Services and St. Rose of Lima Church v. Leonard Gallo, Chief, Police Department, Town of East Haven, et al., Docket #FIC 2009-665 (April 28, 2010); Backman v. Sullivan, Commissioner, State of Connecticut, Department of Transportation, Docket #200-401 (November 8, 2000); See also, Wilden v. FOIC, 56 Conn. App. 683, 687 (2000) (agency not required to conduct research, but not excused from complying with "burdensome" request).

21. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with copies of emails and other records between Diane and Oscar, responsive to the request described in paragraph 2(a), and records *other than emails* about Diane and Oscar, responsive to the request described in paragraph 2(b), above. However, it is also concluded that the respondents did not violate the FOI Act with regard to the request for emails about Diane and Oscar in a non-work relationship, responsive to the request, described in paragraphs 2(b), above, or the request described in paragraph 2(c), above.

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 resume their review of the emails and non-email records potentially responsive to the requests described in paragraph 2(a) and 2(b), above, and provide to the complainant a copy of any responsive non-exempt records identified through such review, free of charge.

A handwritten signature in black ink, appearing to read 'Kathleen K. Ross', written over a horizontal line.

Kathleen K. Ross  
as Hearing Officer

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