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FREEDOM OF INFORMATION



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Joseph Sargent,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-249

Joseph Capalbo, Corporation Counsel,
City of Stamford; Michael Scacco,
Fleet Manager, Fleet Maintenance,
City of Stamford; and City of Stamford,
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 26, 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 14, 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 14, 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 14, 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: Joseph Sargent
Chris Dellaselva, Esq.

2014-02-25/FIC# 2013-249/Trans/wrbp/VDH//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Joseph Sargent,

Complainant

against

Docket #FIC 2013-249

Joseph Capalbo, Corporation Counsel,
City of Stamford; Michael Scacco,
Fleet Manager, Fleet Maintenance,
City of Stamford; and City of Stamford,

Respondents

February 24, 2014

The above-captioned matter was scheduled to be heard as a contested case on October 17, 2013, at which time the complainant, and the respondent Corporation Counsel and the respondent City of Stamford appeared. At this time, it was determined that Fleet Manager Michael Scacco also should have been named as a respondent. The case was continued to give Mr. Scacco notice of this matter, and the case caption was amended to identify Mr. Scacco as a respondent.

Thereafter, this matter was heard as a contested case on November 26, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the matter was consolidated with Docket #FIC 2013-247; Joseph Sargent v. Joseph Capalbo, Corporation Counsel, City of Stamford; Michael Handler, Director of Administration, Office of Administration, City of Stamford; and City of Stamford; and Docket #FIC 2013-248; Joseph Sargent v. Joseph Capalbo, Corporation Counsel, City of Stamford; Emmet Hibson, Director, Human Resources Division, City of Stamford; and City of Stamford.

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 22, 2013, the complainant forwarded the following request for access to records to Corporation Counsel Joseph Capalbo, and

requested that he forward it on to Mr. Scacco¹:

- a. Produce all documents that support any claim(s) that Mr. Tarzia conducted a campaign that included a referral for a criminal investigation by the FBI, as described in an Ethics Complaint filed by Michael Scacco against Joseph Tarzia et al.;
- b. Produce all documents that support any claim(s) that . . . Mr. Kolenberg conducted a campaign that included a referral for a criminal investigation by the FBI, as described in an Ethics Complaint filed by Michael Scacco against Joseph Tarzia et al.;
- c. Produce all documents that support any claim(s) that Mr. Gabriele conducted a campaign that included a referral for a criminal investigation by the FBI, as described in an Ethics Complaint filed by Michael Scacco against Joseph Tarzia et al.;
- d. Produce all documents that support any claim(s) that Mr. Tarzia made a request for your personnel file, as described in an Ethics complaint filed by Michael Scacco against Joseph Tarzia et al.;
- e. Produce all documents that support any claim(s) that Mr. Kolenberg made a request for your personnel file, as described in an Ethics Complaint filed by Michael Scacco against Joseph Tarzia et al.;
- f. Produce all documents that support any claim(s) that Mr. Gabriele made a request for your personnel file, as described in an Ethics Complaint filed by Michael Scacco against Joseph Tarzia et al.;
- g. Produce all documents that support any claim(s) that Mr. Tarzia requested your mileage reports, as described in an Ethics Complaint filed by Michael Scacco against Joseph Tarzia et al.;
- h. Produce all documents that support any claim(s) that Mr. Kolenberg requested your mileage reports, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- i. Produce all documents that support any claim(s) that Mr. Gabriele requested your mileage reports, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- j. Produce all documents that support any claim(s) that Mr. Tarzia requested your Kronos time and attendance records, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- k. Produce all documents that support any claim(s) that Mr. Kolenberg requested your Kronos time and attendance records, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;

¹ Based on the complainant's testimony, it is found that the Office of the Corporation Counsel had previously directed the complainant to submit all of his FOI requests directly to the Office of the Corporation Counsel so that said office could forward the requests to the appropriate department or individual for a response. However, at the November 26, 2013 continued contested case hearing, the Office of the Corporation Counsel clarified that, going forward, the complainant should submit FOI requests directly to the public agency within the City of Stamford that he believes maintains responsive records.

- l. Produce all documents that support any claim(s) that Mr. Gabriele requested your Kronos time and attendance records, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- m. Produce all documents to support any claim(s) that Mr. Tarzia made requests about the purchase of new and used vehicles, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- n. Produce all documents to support any claim(s) that Mr. Kolenberg made requests about the purchase of new and used vehicles, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- o. Produce all documents that support any claim(s) that Mr. Gabriele made requests about the purchase of new and used vehicles, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- p. Produce all documents that support any claim(s) that Mr. Tarzia made requests about . . . auction procedures, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- q. Produce all documents that support any claim(s) that Mr. Kolenberg made requests about auction procedures, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- r. Produce all document that support any claim(s) that Mr. Tarzia made requests about . . . auction procedures, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- s. Produce all documents that support any claim(s) that Mr. Gabriele made requests of utilization of the maintenance facility, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- t. Produce all documents that support any claim(s) that Mr. Tarzia made requests of documentation of your use of a document shredder, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- u. Produce all documents that support any claim(s) that Mr. Kolenberg made requests of documentation of your use of a shredder, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- v. Produce all documents that support any claim(s) that Mr. Gabriele made requests of documentation of your use of a shredder, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- w. Produce the request by Mr. Fasoli of a detailed list of questions concerning 6 used snowplows. . . as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al. . . .;
- x. Produce the request for information concerning or relating to the used plows sought by the UE Local 222# 82, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- y. Produce the requests by Mr. Tarzia seeking “exactly the same information concerning the 6 used snowplows,” as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- z. Produce the continued requests by Mr. Tarzia seeking “the same information,” as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;

- aa. Produce the requests by Mr. Gabriel concerning the 6 used snowplows that was in the same format used by Mr. Fasoli, the Local 222, and Mr. Tarzia, as described in an Ethics Complaint by Michael Scacco against Joseph Tarzia et al.;
- bb. All documents that relate to and/or concern work orders for the work and/or service provided by James Fasoli with respect to truck number 120 from the month of July, 2009;
- cc. All invoices for the work and/or service provided by James Fasoli with respect to truck 120 from the month of July, 2009;
- dd. All documents sent by Michael Scacco to the City's Human Resources (aka Personnel Division) that relate to and/or concern any investigations into claims by Michael Scacco that relate to and/or concern his safety in the workplace and/or workplace violence;
- ee. All documents provided to Michael Scacco that were created by the City's Human Resources Division (aka Personnel Division) that relate to and/or concern any investigation into claims by Michael Scacco that relate to and/or concern his safety in the workplace and/or workplace violence, including notes of conversation and/or meeting between the staff of the Human Resources Division and any witnesses;
- ff. All documents sent by Michael Scacco to any City employee, any City Board, any third party or which was made available to the public under a Freedom Information Act request (including, but not limited to, emails sent from Mr. Scacco's City email address) that relate to and/or concern the treatment provided to James Fasoli by any psychologist, psychiatrist, and/or any remedial services provider;
- gg. All agreements, policies, handbooks, instructions, procedures, rules and/or regulations, in place since 2008 that relate to and/or concern maintaining the security and privacy of City employee's medical records and/or personal health information;
- hh. All documents that relate to and/or concern the termination of James Fasoli from his employment with the City of Stamford;
- ii. Any documents (including timesheets) showing the work or services provided by James Fasoli for July 10, 13, 14, 15, 17, 20 and 21, 2010;
- jj. Work orders and/or invoices that relate to the work and/or services provided by James Fasoli on July 10, 13, 14, 15, 17, 20 and 21, 2010;
- kk. All documents received by the City's Human Resources Division (aka Personnel Division) that relate to and/or concern any investigations into any potential warnings and/or discipline for James Fasoli that relate to and/or concern the work and/or services he provided for truck 120 in July of 2010;
- ll. All documents sent to Michael Scacco that were created by the City's Human Resources Division (aka Personnel Division) that relate to and/or concern any investigations into any potential warning and/or discipline for James Fasoli that relate to and/or concern the work and/or services he provided for truck 120 in July of 2010, including, but not limited to, notes taken during any conversation, hearing or meeting

- concerning the work provided by Mr. Fasoli, and any report from the investigation;
- mm. All documents Michael Scacco sent to the City's Human Resources Division (aka Personnel Division) that relate to and/or concern any investigations into any potential warning or discipline for James Fasoli that relate to or concern the work and/or services he provided for truck 340 in June of 2011, including, but not limited to, any photographs that relate to and/or concern truck 340;
 - nn. All documents sent to Michael Scacco that were created by the City's Human Resources Division (aka Personnel Division) that relate to and/or concern any investigations into any potential warning or discipline for James Fasoli that relate to and/or concern the work and/or services he provided for truck 340 in June of 2011, including, but not limited to, notes taken during any conversation, hearing or meeting concerning the work provided by Mr. Fasoli, and any report from the investigation;
 - oo. All documents that refer to, relate to, or reflect any internal investigations prepared as part of any of the Defendants' personnel practices pertaining to each and every grievance filed by James Fasoli, or claims of harassment suffered by James Fasoli, including, but not limited to those relating to:
 - i. Notes on the lunchroom white board pertaining to "whistleblowers" and "rats";
 - ii. Replica rats [which] were placed on the Plaintiff's toolbox;
 - iii. Replica rats displayed in the office of Michael Scacco;
 - iv. Involuntary transfers;
 - v. Complaints relating to references to the Plaintiff in disparaging ways over the City's two-way radio system;
 - vi. Complaints of emotional distress; and
 - pp. All documents relating to and/or concerning instructions and/or authorization from Tania Barnes' or Michael Scacco's supervisors to conduct a disciplinary hearing for and/or interview of and/or meeting with James Fasoli on or about March 21, 2011 at the Vehicle Maintenance Facility.

3. It is found that, by email dated March 26, 2013, the respondents acknowledged the complainant's request, and indicated that the request would be forwarded to the appropriate party and responded to accordingly.

4. It is found that, by email dated April 19, 2013, the complainant inquired about the status of his request with both Mr. Capalbo and Mr. Scacco, seeking to determine when he might expect to review the requested records.

5. By email dated and filed April 25, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for access the records described in paragraph 2, above. In his

appeal, the complainant requested that the Commission impose a civil penalty against respondents.

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, (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.

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 records described in paragraph 2, above, are “public records” and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

10. It is found that, subsequent to the filing of his appeal, and by email dated May 21, 2013, the complainant again inquired about the status of his request with both Mr. Capalbo and Mr. Scacco, seeking to determine when he might expect to receive access to the requested records.

11. It is found that the complainant did not receive a response to his May 21, 2013 email until approximately June 27, 2013, when counsel for the respondents filed an appearance in the instant matter.

12. Thereafter, it is found that, by email dated August 23, 2013, the complainant again inquired about the status of his request with counsel for the respondents, reminding him that he had yet to receive access to any of the records.

13. It is found that, by email dated September 11, 2013, the complainant again inquired about the status of his request with counsel for the respondents.

14. It is found that, sometime between September 11, 2013 and September 26, 2013, the complainant spoke with counsel for the respondents, at which time counsel for the respondents informed the complainant that Mr. Scacco's private attorney had advised Mr. Scacco not to provide the complainant with access to the requested records. Ironically, it is further found that, at this time, counsel for the respondents informed the complainant that the records at issue had already been sent to his office.

15. It is found that, by email dated September 26, 2013, the complainant clarified that counsel's assertion that the records had been sent to his office was erroneous, as the complainant had not received access to the any of the requested records.

16. It is found that, by email dated September 27, 2013, counsel for the respondents informed the complainant that he was meeting with Mr. Scacco to review his responses. It is found that, by a second email also dated September 27, 2013, counsel for the respondents informed the complainant that he was putting together a "draft response" regarding the FOI request. It is further found that counsel indicated that he believed that the complainant's request for access to records in paragraphs 2.bb through 2.pp, above, had already been provided to the complainant in connection with a previous litigation. It is found that, by a third email also dated September 27, 2013, counsel for the respondents forward his draft response to the complainant.

17. It is found that, between September 27, 2013 and October 3, 2013, the parties continued to communicate via email about the respondents' "draft response."

18. It is found that, on October 4, 2013, the respondents provided the complainant with 33 pages of responsive records, and, that, on October 15, 2013, the respondents provided the complainant with three additional pages of responsive records.

19. At the November 26, 2013 hearing, the complainant acknowledged that he had received access to the records identified in paragraphs 2.cc through 2.pp, above, in connection with discovery in a separate litigation, and, accordingly, he withdrew his request for access to these records. Accordingly, only the first twenty-eight requests—or those requests identified in paragraphs 2.a through 2.bb, above—are at issue in this case.

20. It is found that, at the end of March 2013, the Office of the Corporation Counsel forwarded the request at issue in this case to Mr. Scacco for a response.

21. It is found that Mr. Scacco is the Fleet Maintenance Manager for the City of Stamford.

22. It is found that, upon receipt of the request, Mr. Scacco reviewed it several times, and thereafter immediately contacted his private attorney, Lewis Chimes.

23. It is found that Mr. Scacco is currently a party in litigation involving the City of Stamford.

24. It is found that, during the end of March 2013, Mr. Scacco forwarded the request at issue to his private attorney. It is further found that Mr. Scacco believed that Attorney Chimes would “handle” the complainant’s request for access to public records for him.

25. It is found that, on March 28, 2013, Attorney Chimes raised exemptions to disclosure for all of the requested records with the Office of the Corporation Counsel, demanded that the records not be disclosed, and insisted that the Office of the Corporation Counsel instruct the complainant that his only avenue to access the requested public records was through discovery.

26. As the Office of the Corporation Counsel should be well aware, our Supreme Court has clarified that requests for copies of or access to public records must be determined by reference to the FOI act, “irrespective of whether [the same records] are or otherwise would be disclosable under the rules of state discovery.” See Chief of Police v. FOIC, 252 Conn. 377, 386 (1999). Moreover, our Supreme Court has further clarified that federal court discovery proceedings should not factor into the question of whether a public records is disclosable under FOI law: “We also conclude that questions of discovery under the Federal Rules of Civil Procedure are not what is meant by the phrase ‘otherwise provided by any federal law’ as used in §1-210(a).” Id. Thus, the provisions of the FOI Act and questions of discovery operate separately and independently of each other. Id. at 391, 396.

27. However, it also true that the respondents are not required to conduct research in order to respond to a FOI request. See Wildin v. FOIC, 56 Conn. App. 683, 746 A.2d 175 (1999). In Wildin, the Appellate Court concluded that a records request involves research if the respondents must exercise discretion to determine whether the records sought fall within the request. Id. at 687. Merely having to look in many places in order to gather responsive records, however, does not constitute research. In Wildin, the complainant requested “all correspondence...to or from the Mayor...and to or from the Town Attorney...from January 1, 1996 to the present.” Id. at 684-85. The Commission found that such records were located in at least fifty, and perhaps in over one hundred files, organized by subject matter, and concluded therefore that the respondents would need to conduct “research” in order to locate all such responsive records. Id. at 685. The trial court agreed, but the Appellate Court reversed, noting that the complainant had “specifically identified the records he sought, and there was no analysis required to search for the records.” Id. at 686. According to the Court, “a record request that is simply burdensome does not make that request one requiring research.” Id. at 687. While the respondents have not claimed that responding to the requests described in paragraphs 2.a through 2.bb, above, would constitute research, the Commission raises the distinction between searching for records, and researching so that it can factor into the ultimate order in this case.

28. It is found that, subsequent to Attorney Chimes' March 28, 2013 email, the Office of the Corporation Counsel permitted the request for access in this case to remain in Mr. Scacco's possession, perhaps even believing that Mr. Scacco would respond to the request. Based on his testimony, however, it is found that Mr. Scacco did "nothing" with regard to the request, until he was contacted by the Office of the Corporation Counsel some six months later.

29. It is further that, because Mr. Scacco believed that providing the complainant with access to the requested records would somehow conflict with a separate and distinct legal matter (or matters), he determined that he did not have to respond to this FOI request. It is further found that, as of March 28, 2013, the Office of the Corporation Counsel should have been aware that Mr. Scacco was not, of his own volition, going to respond to the complainant's request.

30. It is further found that, because it was apparent in Attorney Chimes' March 28, 2013 email that Mr. Scacco had a conflict with the instant request, the Office of the Corporation Counsel should not have relied on Mr. Scacco to gather the records at issue in this case promptly, or at all.

31. However, it is found that Mr. Scacco is the person who did gather the records, which were ultimately provided to the complainant in this case. It is found that he did so only after he instructed by counsel for the City of Stamford to do so, which occurred months after the request had been forwarded to him.

32. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

33. In this case, it is found that it took the respondents more than six months to provide the complainant with access to the requested records.

34. It is found that the complainant was not kept informed regarding how long it would take the respondents to gather the requested records, what the respondents' other pressing duties were, or how the Office of the Corporation Counsel was going to address the conflict of interest that Mr. Scacco had expressed with regard to the complainant's request. In this regard, it is found that the complainant had little confidence that he was

going to receive access to all of the records he requested.

35. Prior to the continued contested case hearing, the hearing officer issued an order directing the respondents to produce a witness at the November 26, 2013 hearing who could testify to certain aspects of the search for and review of responsive records.² The respondents produced Mr. Scacco to testify at the hearing.

36. It is found that Mr. Scacco could not remember whether, at the time he received the instant request, he was responding to other FOI requests. It is further found that it was not clear where Mr. Scacco searched in order to gather responsive records. Furthermore, it is found that Mr. Scacco turned some of the responsive records, particularly emails, over to his private attorney, and, thus, did not have access to them at the time he searched for records responsive to the request in this case. It should be noted that Mr. Scacco readily conceded during his testimony that "it was very possible" that his search for records did not locate all responsive records.

37. In addition, it is found that, at the time of instant request, Mr. Scacco was experiencing some very serious personal health issues, as well as some very sad family issues.

38. It is found that, while the Office of the Corporation Counsel did not invoke any exemptions to disclosure, it cannot be found that the search for responsive records in this case was sufficient, or that the records were gathered and provided to the complainant in a prompt manner.

39. So that there can be no doubt that the complainant has received access to all of the records that he requested, the Commission believes that a search for records responsive to the request in paragraphs 2.a through 2.bb, above, must be conducted again.

40. It is found that, prior to conducting such a search, the respondents should determine whether there are public records exclusively in the possession of Attorney Chimes and, if so, arrange for such records, or copies thereof, to be returned to the City of Stamford.

41. Finally, it is found that, once the City of Stamford is satisfied that all of its public records are in its possession, someone other than Mr. Scacco should be assigned the task of conducting a search for records responsive to the request outlined in paragraphs 2.a through 2.bb, above.

² For example, the October 28, 2013 Order stated, in relevant part, as follows: "The respondents shall produce a witness (or witnesses) who can testify when the complainant's request was received in the Office of Michael Scacco, Fleet Manager, Fleet Maintenance for the City of Stamford, and what process was followed upon receipt of the request. Such testimony must include when and where this office searched for and gathered records responsive to the request, who looked for such records, and the process that was followed once such records were collected. . . ."

42. Based on the foregoing, it is concluded that the respondents violated the disclosure provisions of the FOI Act.

43. Based on the facts and circumstances of this case, the Commission declines to consider the imposition of civil penalties. It is found that a second search for records is the appropriate remedy to rectify the violation in this case.

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


1. The respondents shall inquire with Attorney Chimes as to whether there are public records exclusively in his possession. If there are public records exclusively in Attorney Chimes' possession, the respondents shall arrange to have such records, or copies of such records, returned to them.

2. Thereafter, the respondents shall conduct a search for records responsive to the request in paragraphs 2.a through 2.bb, of the findings, and shall provide the complainant with access to any record located as a result of such search that the complainant has not already received.

3. To the extent that the respondents determine that responding to any request described in paragraphs 2.a through 2.bb, of the findings, requires them to exercise discretion to determine whether the records sought fall within such request, they shall only be required to notify the complainant of such fact in writing.

4. In the event that the respondents' search does not locate additional responsive records, they shall forthwith provide the complainant with an affidavit attesting to such fact.

5. Henceforth, the respondents shall strictly comply with the promptness requirements of §§1-210(a) and 1-212(a), G.S.


Valicia Dee Harmon
as Hearing Officer