

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

Priscilla Dickman,
Complainant(s)

against

Director, State of Connecticut, Health Affairs
Planning, Department of Community Medicine
and Health Care, University of Connecticut
Health Center; and State of Connecticut,
University of Connecticut Health Center,
Respondent(s)

Notice of Rescheduled
Commission Meeting

Docket #FIC 2013-345

April 8, 2014

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, April 9, 2014 at 2:00 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, April 23, 2014.**

Any brief, memorandum of law or request for additional time, as referenced in the March 14, 2014 Transmittal of Proposed Final Decision, must be received by the Commission on or before April 11, 2014.

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Priscilla Dickman
Stephen J. Courtney, AAG

4/8/2014/FIC# 2013-345/ReschedTrans/wrbp/LFS//PSP

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

Priscilla Dickman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-345

Director, State of Connecticut, Health Affairs
Planning, Department of Community Medicine
and Health Care, University of Connecticut
Health Center; and State of Connecticut,
University of Connecticut Health Center,
Respondent(s)

March 14, 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, April 9, 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 28, 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 28, 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 28, 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: Priscilla Dickman
Stephen J. Courtney, AAG

3/14/14/FIC# 2013-345/Trans/wrbp/LFS//PSP

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Priscilla Dickman,

Complainant

against

Docket #FIC 2013-345

Director, State of Connecticut, Health
Affairs Planning, Department of
Community Medicine and Health Care,
University of Connecticut Health Center;
and State of Connecticut, University of
Connecticut Health Center,

Respondents

March 13, 2014

The above-captioned matter was heard as a contested case on January 21, 2014, 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. It is found that on May 31, 2013, the complainant requested copies of six years of e-mails of three employees of the respondents.
3. By letter filed June 7, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide her with the records she requested.

4. 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.

5. 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 ... (3) receive a copy of such records in accordance with section 1-212.

6. 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.”

7. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that the complainant and the respondents have been engaged in a records request-and-response dance for several years, relating to the complainant’s employment with the respondents. It is found that the complainant has made 35 requests for records from the respondents, and the respondents have provided many copies of records to her.

9. It is found that the complainant initially made the request that is the subject of this appeal in August 2012.

10. It is found that the respondents did provide a few records in response to the complainant’s request, but despite its promise to continue to do so, has not provided anything to the complainant since January 2013, over one year ago.

11. The complainant asserts that such a delay violates the promptness requirements of §1-212(a), G.S.

12. It is found that the respondents’ FOI officer considers the complainant’s pending request for records to be his “lowest order of business,” and claims that the year-long and open-ended delay in completing the complainant’s request is appropriate and timely.

13. It is found that, although the complainant made the initial request that is the subject of this appeal in 2012, she previously requested the e-mails of one of the three employees, Anthony Borda (“Borda”) on October 12, 2009. Such request became the subject of an appeal to and final decision of the Commission: Priscilla Dickman v. Director of Health Affairs Policy Planning, State of Connecticut, University of Connecticut Health Center, Office of Health Center Administration; and State of Connecticut, University of Connecticut Health Center; Docket #FIC 2009-673. The Commission takes administrative notice of such decision.

14. It is found that Borda no longer worked for the respondents at the time of the complainant’s request. It is found that the respondents searched Borda’s computer and hard copy files for records with the complainant’s first or last name, but found no responsive records. It is found that, based on such testimony, the Commission concluded that the respondents did not

violate the FOI Act. Dickman v. Director of Health Affairs Policy Planning, Docket #FIC 2009-673, *supra*.

15. However, it is found that in 2012, the complainant discovered that the respondents' information technology department maintained a "snapshot" of the electronic records on the computer of an employee at the time of termination of employment.

16. It is found that the complainant brought the existence of "snapshots" to the attention of the respondents' FOI officer in late August 2012, and made another request for copies of Borda's e-mails, as initially requested in 2009, described in paragraph 13, above. It is found that the complainant also requested the e-mails of two other employees ("Kowalski" and "Conderino"), that contain her names or one of several search terms ("confidential," "investigation," ethics," "travel", "jewelry," "workers compensation," "fraud," or "pension"). It is found that the complainant asked for e-mails from 2004 to 2010.

17. It is found that two months later, on November 8, 2012, the FOI officer informed the complainant that he asked the attorney general's office to review her request and advise how to handle it.

18. It is found that on December 20, 2012, the FOI officer informed the complainant that he searched the "snapshot" of Borda's e-mails with the search terms suggested by the complainant, and retrieved approximately 800 e-mails responsive to the complainant's request, including approximately 110 attachments. It is found that the FOI officer informed the complainant that all the records would need to be reviewed for possible redactions; he suggested that the complainant prioritize which category of e-mails she would prefer to have reviewed (e.g. "fraud" – contained in 10 e-mails, or "investigation" – contained in 50 e-mails).

19. It is found that on December 21, 2012, the complainant prioritized the categories for the FOI officer's first review; first were e-mails containing the terms "fraud," "investigation," or "worker's compensation."

20. It is found that on January 17, 2013, the FOI officer informed the complainant that he had 263 pages of responsive records and a privilege log of claimed exemptions for her inspection. It is found that the complainant inspected the records and received copies of 14 pages, for which she was charged 25 cents per page.

21. It is found that the FOI officer concluded his January 17, 2013 letter to the complainant with the promise that he "will now dig into the next batch of documents and we will continue to provide them to you on a rolling basis."

22. It is found that on January 24, 2013, the FOI officer informed the complainant that he was moving on to a review of the Borda e-mails containing the fourth search term on the complainant's prioritized list: "confidential." It is found that the officer informed the complainant that there were 500 responsive records, including 29 attachments, and that printed out, the stack of records was 2.5 inches high. It is found that several Borda e-mails containing other search terms remained to be reviewed for redactions, and it is also found that

the e-mails of the other two employees (Kowalski and Conderino) had yet to be reviewed by the respondents.

23. It is found that on February 20, 2013, the FOI officer told the complainant in response to her inquiry that he hoped to review the next set of records by the following week.

24. It is found, however, that the respondents have provided *no* additional records responsive to the complainant's request since January 2013.

25. Nevertheless, the respondents claim that their response to the complainant has been prompt, in light of the amount of effort required to search and review the records and the low probability of value to the complainant. The FOI officer stated that he needs to balance other requests for records and his other duties against complying with the complainant's outstanding request.

26. With respect to the general question of promptness, the meaning of the word "promptly" is a particularly fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) the Commission advised that the word "promptly" as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

27. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

28. The respondents claim, reasonably, that reviewing a multi-inch stack of records for exemptions, some of which are mandatory, is arduous and time-consuming. The respondents also claim, reasonably, that the resources of the FOI Office are spread thin, and attention to the complainant's requests necessarily means less attention to other requests for records.

29. The complainant contends that she has cooperated with the respondents in prioritizing the search terms and waiting for the respondents' production of records that she claims to need for a related workers compensation hearing. The complainant also points out that while the respondents may be irritated by her persistent and sometimes overlapping requests, it was her persistence that led to her discovery that responsive Borda emails did exist (see paragraphs 15 -18, above).

30. It is found that the respondents have ceased to comply quickly and without undue delay with the complainant's request in this matter. Indeed, it is found that the respondents have ceased to comply at all since January 2013.

31. It is concluded, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S.

32. Section 1-206(b)(2), G.S., provides:

[U]pon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

33. It is found that the respondents' failure to provide *any* records to the complainant in response to this request for over one year is tantamount to a denial of the complainant's right of access, notwithstanding that review of the records is painstaking and slow work.

34. Moreover, it is found that the FOI officer's decision to relegate the complainant's request to the lowest order of business and to provide not even one responsive record in over a year was without reasonable justification, especially in light of his promise in February 2013 to proceed with review of additional records.

35. The Commission, in its discretion, however, declines at this point to impose a civil penalty against the respondents' FOI officer. Instead, the Commission may reconsider the imposition of a penalty if the respondents fail to comply with the Commission's orders, below.

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 review records responsive to the complainant's request and shall provide access to at least some of the records, redacted as appropriate, within four weeks of the final decision in this matter. The respondents shall continue to review and provide responsive records to the complainant in a timely matter and without undue delay.

2. The respondents shall provide all responsive records to the complainant within 16 weeks of the issuance of the final decision in this matter.

3. Henceforth, the respondents shall comply with §§1-210(a) and 1-212(a), G.S.


Lisa Fein Siegel
as Hearing Officer