



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2015-140

Freedom of Information Officer, State of Connecticut,
University of Connecticut Health Center; and State of
Connecticut, University of Connecticut Health Center,
Respondent(s)

December 7, 2015

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, January 13, 2016**. 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 December 30, 2015**. 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 December 30, 2015**. **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 December 30, 2015**, 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: Michael Aronow
Jeffrey M. Blumenthal, Esq.

2015-12-07/FIC# 2015-140/Trans/wrbp/VRP//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Aronow,

Complainant

against

Docket #FIC 2015-140

Freedom of Information Officer,
State of Connecticut, University of
Connecticut Health Center; and
State of Connecticut, University of
Connecticut Health Center,

Respondents

December 2, 2015

The above-captioned matter was heard as a contested case on July 20 and November 23, 2015, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2015-132, Aronow v. University of Connecticut Health Center et al., and Docket #FIC 2015-141, Aronow v. University of Connecticut Health Center et al.

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. By letter of complaint filed February 20, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his requests for certain public records.
3. It is found that the complainant made a February 4, 2015 request for emails created, received or sent by Erika Ivanov at the respondent Health Center that mentioned the first year medical student anatomy of the extremities course from July 1, 2014 to December 31, 2013.
4. It is found that the complainant's February 4, 2015 request repeated a portion of a previous request he had made thirteen months earlier, on December 23, 2013. That 2013 request had resulted in a complaint to, and final decision by, the Commission in Docket #FIC2014-157, Aronow v. UConn Health Center ("Aronow I"). That complaint

was dismissed because it was not filed within 30 days of the alleged denial. An appeal to the Superior Court followed, Docket No. HHB-CV-15-5016347-S, Aronow v. FOIC. The Superior Court matter was then dismissed as moot because the complaint in this matter had already been scheduled for hearing, and it and the cases consolidated with this matter raise the same issues of records access.

5. It is found that the respondents compiled and reviewed most of the records responsive to the December 23, 2013 request no later than February 2015, around the time of the decision in Aronow I.

6. It is found that the respondents and the complainant reached a settlement of a separate but related complaint in Docket #FIC 2014-219, Aronow v. UConn Health Center et al., also in February 2015. That settlement included an agreement as to the “search protocol” that would be followed when Dr. Aronow requested email records from the respondents.

7. It is found that the agreed-upon “search protocol” involved such common-sense procedures as: searching all the folders in an email account (including archived and deleted folders); and searching the hard drive of the computer of the individual whose emails were being searched, using the so-called “start” button at the bottom-left corner of the display screen (on a computer running Windows).

8. It is found that the complainant inquired about the status of the search for the records requested in this case on April 7, 2015, and received no reply.

9. It is found that the respondents, although they had already compiled most of the requested emails for Aronow I, decided to conduct a completely new search pursuant to the “search protocol.”

10. It is found that the respondents did not provide any already located emails while they were conducting their new search.

11. It is found that the respondents did not begin their new search, by forwarding the request to the custodian of the requested emails, until mid-June of 2015, nearly four months after the request.

12. It is found that no requested records were provided to the complainant until the hearing in this matter on July 20, 2015.

13. It is found that a few pages of responsive records were withheld from the records provided on July 20, 2015, on the grounds that they were exempt from disclosure.

14. Following the July 20, 2015 hearing, the respondents submitted the withheld records to the Commission for an in camera inspection, at the request of the complainant. A hearing was conducted on November 23, 2015 to permit the respondents to offer additional evidence and argument concerning the withheld records, and to permit the

complainant to offer additional evidence and argument concerning the completeness of the records provided, and the promptness of that provision of records.

15. It is found, however, that the respondents inadvertently disclosed the withheld records to the complainant before the November 23, 2015 hearing, by attaching them to an email to the complainant containing the index to the in camera records.

16. It is therefore found that the complainant has in fact received the records that the respondents intended to withhold.

17. 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.

18. 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, (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.

19. 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.”

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

21. Three issues are presented: first, whether any claimed exemption to the inadvertently disclosed records is now moot; second, whether the respondents conducted a reasonable search for the requested records; and third, whether the records were provided promptly.

22. The respondents maintain that the issue of their claimed exemption to the inadvertently disclosed records is not moot.

23. It is found, however, that, the complainant having indisputably received the records from the respondents, however inadvertently, there is no practical relief that the Commission can order, and that the respondents' claimed exemptions are academic.

24. It is therefore concluded that the issue of the respondents' claimed exemptions to the inadvertently disclosed records is moot.

25. With respect to the completeness of the records provided to the complainant, it is found that the respondents conducted a reasonably diligent search for the requested records. At the November 23, 2015 hearing, the complainant maintained that everyone's time would be better served on matters other than the adequacy of the respondents' search in this case. The Commission entirely agrees.

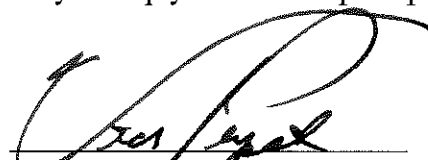
26. With respect to the promptness of the provision of records, the respondent Freedom of Information Officer maintains that he needed to consult with his attorney about the agreed-upon "search protocol" before searching for the records a second time; that he had other pending FOI requests to process, including other requests by the complainant; that he needed to review the applicability of claimed exemptions with his attorney; that he had a variety of other time-sensitive duties; that his administrative assistant left her position in February and for two months he had no administrative assistant; and that he was on vacation for two weeks.

27. The Commission accepts at face value the competing demands on the Freedom of Information Officer's time. Nonetheless, most of the requested records had already been compiled at the time of the request in this matter (in response to the earlier, nearly identical request). Moreover, the complainant's renewed request was not even submitted to the custodians of the records until nearly four months after the request was made. Additionally, no records whatsoever were provided until the eve of the hearing.

28. Taking into consideration all the facts and circumstances of this case, it is concluded that the records were not provided promptly, and that the respondents consequently violated the promptness provision of §1-212(a), G.S..

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

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


Victor R. Perpetua
as Hearing Officer