



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Cherlyn Poindexter and the New Haven
Management and Professional Union,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-459

Toni Harp, Mayor, City of New Haven;
Marcus Paca, Labor Relations,
City of New Haven; and City of New Haven,
Respondent(s)

February 4, 2016

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 9, 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 February 26, 2016**. 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 February 26, 2016**. **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 February 26, 2016**, 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: Cherlyn Poindexter and the New Haven Management and Professional Union
Kathleen Foster, Esq.

2016-02-04/FIC# 2015-459/Trans/wrbp/KKR/TCB

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Cherlyn Poindexter and the New Haven
Management and Professional Union,

Complainants

against

Docket #FIC 2015-459

Toni Harp, Mayor, City of New Haven;
Marcus Paca, Labor Relations, City of
New Haven; and City of New Haven,

Respondents

February 2, 2016

The above-captioned matter was heard as a contested case on November 9, 2015, and January 19, 2016, at which times the complainants 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 June 17, 2015, the complainants requested from the respondents "any and all communications (correspondence, memo, emails, invoices, report and investigational report) from and to Michael Dolan[,] to and from John Rose[,] and/or any other City of New Haven staff (Marcus, Matthew, etc....) regarding Nicole Jefferson and/or Commission on Equal Opportunity, CW1 and CW2;" and "any and all invoices for Michael Bayonne." The complainants also requested the imposition of a civil penalty against the named individual respondents.
3. It is found that, by email dated June 29, 2015, the respondents provided to the complainants some records responsive to the request, but claimed that "the remainder of the records that have been collected to date" are exempt from disclosure pursuant to the attorney/client privilege under §1-210(b)(10), G.S.
4. By letter dated and filed July 13, 2015, the complainants appealed the denial of the request for the records described in paragraph 2, above, to this Commission, alleging that such denial violated the Freedom of Information ("FOI") Act.
5. 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.

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

7. 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.”

8. It is found that the records, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, on October 6, 2015, the respondents provided to the complainants the records they previously claimed were exempt from disclosure pursuant to §1-210(b)(10), G.S. See paragraph 3, above.

10. It is found that, on November 9, 2015, counsel for the respondents contacted the city’s information technology department and requested that a search for emails responsive to the request, described in paragraph 2, above, be conducted. It is found that, at the November 9, 2015 hearing in this matter, counsel had copies of the emails, but did not provide them to the complainants at that time because she had not yet reviewed them.

11. It is found that, at some point later in November 2015, the respondents provided all emails they maintained that are responsive to the request, described in paragraph 2, above.

12. At the hearing in this matter, the complainants claimed that the respondents failed to comply with the request, described in paragraph 2, above, promptly. They also claimed that some of the emails that were provided to them had been edited.

13. With regard to the claim that the respondents failed to promptly comply with the request at issue, the Commission has held that the meaning of the word “promptly” is a

particularly fact-based question. 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.

14. 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.

15. In this case, it is found that although the respondents initially provided some records to the complainants in June 2015, they did not provide the remainder of the responsive records to them until October and November 2015. In fact, it is found that the respondents did not even begin to search for the remaining emails responsive to the request until November 9, 2015, the day of the first hearing in this matter.

16. The respondents offered no evidence at the hearing in this matter regarding any of the factors set forth in paragraph 14, above. On the other hand, the complainant Poindexter testified, and it is found, that as a union representative, she needed the requested records for purposes of defending certain matters in other venues on behalf of union members. It is found that the respondents and corporation counsel are familiar with Ms. Poindexter and her work on behalf of the union, and that therefore it may be reasonably inferred that they understood the importance of the records to the complainants.

17. Based upon the foregoing, it is concluded that the respondents failed to comply with the request, described in paragraph 2, above, promptly.

18. With regard to the claim that the respondents edited some of the emails that were provided to the complainants, it is found that such claim is unfounded.

19. The Commission declines to consider the request for the imposition of a civil penalty.

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 contained in §§1-210(a) and 1-212(a), G.S.

A handwritten signature in cursive script, appearing to read "Kathleen K. Ross".

Kathleen K. Ross
as Hearing Officer

FIC 2015-459/hor/kkr/02022016