

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Alice Sexton,

Complainant

against

Docket #FIC 2016-0416

Commissioner, State of Connecticut,
Department of Revenue Services; and
State of Connecticut, Department of
Revenue Services,

Respondents

May 24, 2017

The above-captioned matter was heard as a contested case on September 8, 2016, at which time all parties appeared, stipulated to certain facts and presented exhibits and argument on the complaint. The complainant presented testimony on the complaint; the respondents presented no testimonial evidence. On September 12, 2016, the respondents submitted for in camera inspection records consisting of three pages of spreadsheets responsive to the portion of the complainant's request described in paragraph 3.d(ii), below. Two pages are titled "Zip and City," and one is titled "Employee." Both are further described beginning at paragraph 16, below. On April 11, 2017, the hearing officer issued a proposed decision based upon his review of the entire record, including the in camera documents.

On April 28, 2017, the respondents filed a Memorandum of Clarification in Response to Proposed Final Decision (the "April 28 Memorandum"). In that Memorandum, the respondents for the first time offered factual explanations, albeit in the form of representations of counsel, concerning the meaning of the labels and abbreviations heading each column. The respondents' April 28 Memorandum also attached letters dated October 4, 2016, November 10, 2016, December 9, 2016, and January 6, 2017. All these letters postdated the September 8, 2016 evidentiary hearing. No party requested that the evidentiary hearing be reopened, and the attached letters are outside the evidentiary record.

On May 10, 2017, the date scheduled for the Commission to consider the Hearing Officer's Report, the hearing officer offered lengthy proposed amendments to that report, all based upon the arguments and representations of counsel made in their April 28 Memorandum. The Commission voted unanimously to adopt the amendments, reviewed the in camera records, and entertained argument from the parties. The respondents

requested a continuance of this matter, objecting to the lateness of submission of the proposed amendments, and to the correctness of the numbering, in the proposed amendments, of the columns of the in camera records.¹ The Commission tabled consideration of the report until its next regular meeting, and ordered the respondents to identify the alleged errors in the proposed amendments and provide written notice of those errors by the close of business May 11, 2017, which the respondents did. In their May 11, 2017 report to the Commission and to the hearing officer, the respondents reported incorrect numbering in paragraphs 38 through 65 of the amended Hearing Officer's Report, and questioned how the Commission could make findings of fact in the new paragraphs in the amendment based only upon the respondents' April 28, 2017 Memorandum. (The complainants also raised the issue of evidence, or lack thereof, at the May 10, 2017 meeting.)

By the issuance of this Second Report of Hearing Officer, the hearing officer withdraws his April 11, 2017 Report of Hearing Officer as originally proposed and as amended.

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 complaint filed June 6, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her requests for public records.
3. It is found that the complainants, by five emails dated May 1, 2016, requested the following:
 - a. "electronic copies of all emails sent between two employees of the respondent DRS [Department of Revenue Services], Michele Greaves and Dennis Haskell, from June 1, 2014 to the present"
 - b. "a copy of any and all discipline logs kept by the Department of Revenue Services Human Resources Office or Internal Audits, or other office, for all "browsing"² allegations since January 1, 2006"
 - c. "electronic copies of all emails sent between two employees of DRS, Jeanette Perez and David Burke, from December 1, 2015 to the present. This includes all emails sent by Ms. Perez to Mr. Burke where Mr. Burke is either on the TO, CC or BCC line, and vice versa"

¹ The columns of the in camera records were not numbered by the respondents. The hearing officer, after his incorrect numbering was brought to his attention, has subsequently penciled in numbers over the columns in the in camera records.

² "Browsing" is unauthorized inspection of tax return information.

d. (i) “copies of any and all procedures or policies which currently govern or specifically apply to the [‘DRS’] Internal Audit Division’s investigation of “browsing” incidents; and

(ii) “a copy of the *two* most recent reports used by the Department’s Internal Audit Division to identify any “browsing” incidents by employees, whether or not said reports have led to discipline of any employees” [emphasis in original]; and

e. “copies of any and all email and meeting requests between any or all of the following people for the period April 1, 2014 to the present that reference Cassandra Thompson *or* Denise Duda by name, either first, last or both. Jeanette Perez, Benjamin Alejandro, Vinnie (aka Vincent aka Vinny) Pinchera, Pam Doolin, and/or Denise Duda.” [Emphasis in original.]

4. It is found that the respondents acknowledged the request on May 6, 2016. The respondents indicated that the requests for emails would be very time consuming, and that several other prior FOI Act requests were pending before the respondents.

5. It is found that, on June 6, 2016, the respondents provided the complainants with records responsive to the requests described in paragraph 3.b and 3.d(i), above.

6. It is found that the respondents provided an additional update on July 5, 2016, regarding the request for emails, indicating that they were “continuing the process of obtaining access to and reviewing email folders of the several Department employees identified in your remaining requests for records.”

7. It is found that the respondents provided an additional update on August 5, 2016, in which they indicated that the respondents had “recently obtained access to the email folders of the numerous Department employees identified in your requests and [have] begun reviewing said folders for the records you have requested.”

8. As of the date of the hearing in this matter, no emails had been provided to the complainant.

9. On September 12, 2016, the respondents submitted to the Commission for an in camera inspection, three pages of records responsive to the portion of the complainants’ request, described in paragraph 3.d(ii), above, for the two most recent reports used to identify “browsing” incidents.

10. Section 1-200(5), G.S., provides:

“[P]ublic 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.

11. Section 1-210(a), G.S., provides in relevant part:

[e]xcept 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.

12. It is concluded that the requested records, to the extent they exist, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

13. Section §1-210(b)(10), G.S., provides that disclosure is not required of:

[r]ecords, tax returns, reports and statements exempted by federal law or the general statutes or communications privileged by the attorney-client relationship, marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or any other privilege established by the common law or the general statutes, including any such records, tax returns, reports or communications that were created or made prior to the establishment of the applicable privilege under the common law or the general statutes.

14. Section 12-15(a), G.S., prohibits the disclosure of “return information.”

15. Section 12-15(h)(2), G.S., defines “return information” to mean:

a taxpayer's identity, the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, tax underreportings, tax overreportings, or tax payments, whether the taxpayer's return was, is being, or will be examined or subjected to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the commissioner with respect to a return or with respect to

the determination of the existence, or possible existence, of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense. *"Return information" does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.* Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards or the disclosure of the identity of a confidential informant, whether or not a civil or criminal tax investigation has been undertaken or completed. [Emphasis added.]

16. It is found that the three pages of in camera records are copies of the two most recent reports used by the Department's Internal Audit Division to identify any "browsing" incidents by employees, and are responsive to the portion of the complainant's request described in paragraph 3.d(ii), above.

17. It is found that these reports are in the form of spreadsheets that are lightly annotated in handwriting.

18. It is found that two of the spreadsheets are titled "Zip and City," and the remaining spreadsheet is titled "Employee."³

19. It is found that the spreadsheets titled "Zip and City" are comprised of 37 columns of data, and each column contains a heading, as follows:

Column 1: CTL
Column 2: Source
Column 3: CountofEmp_ID
Column 4: Emp_ID
Column 5: Emp_First_Name
Column 6: Emp_Last_Name
Column 7: Emp_Street
Column 8: Loc_Descr
Column 9: Job_Descr
Column 10: FEIN
Column 11: TID
Column 12: Loc
Column 13: SSN
Column 14: ID_STAT_CD
Column 15: Case?
Column 16: STAX Case?

³ All of the information contained in the in camera records that is described in this paragraph and elsewhere in this report was been publicly disclosed in the respondents' April 28 memorandum.

Column 17: TDS Case?
Column 18: IAD Conclusion
Column 19: First_Name
Column 20: Last_Name
Column 21: Entity_Name
Column 22: Street
Column 23: Street 2
Column 24: City
Column 25: ST
Column 26: Zip
Column 27: Window_ID
Column 28: Window_Name
Column 29: Image_Name
Column 30: Period_End_Date
Column 31: Form_Type
Column 32: Tax_Year
Column 33: Tax_Type
Column 34: TPD_Year
Column 35: TPD_Category
Column 36: Date
Column 37: Time

20. It is found that the spreadsheet titled "Employee" is comprised of 26 columns of data, and each column contains a heading, as follows:

Column 1: CountOfEmp_ID
Column 2: Source
Column 3: Emp_ID
Column 4: Emp_First_Name
Column 5: Emp_Last_Name
Column 6: Loc_Descr
Column 7: Job_Descr
Column 8: SSN
Column 9: Case?
Column 10: IAD Conclusion
Column 11: First_Name
Column 12: Last_Name
Column 13: Status
Column 14: Hire_Date
Column 15: Term_Date
Column 16: Loc_Descr
Column 17: Job_Descr
Column 18: Window_ID
Column 19: Window_Name
Column 20: Image_Name
Column 21: Period_End_Date

Column 22: Form_Type
Column 23: Tax_Year
Column 24: Tax_Type
Column 25: Date
Column 26: Time

21. The meaning of some of the column headings may be inferred from the face of the in camera records. For example, “Emp_ID” is inferred to mean the state employee identification number of the employee being investigated for browsing. “Emp_First_Name” and “Emp_Last_Name” are inferred to mean the first and last name of that employee. “First_Name” and “Last_Name,” since they are not the employee’s first and last name, are inferred to mean the first and last name of the taxpayer whose return information was browsed.

22. On the other hand, the meaning of many of the column headings cannot be inferred from the face of the in camera records. For example, “Loc_Descr,” “Window_ID,” “Window_Name,” “Period_End_Date.” Although the respondents made representations of counsel in their April 28 Memorandum concerning the meaning of the column headings in both the in camera records, it is well settled that “representations of counsel are not evidence and are certainly not proof.” Martin v. Liberty Bank, 46 Conn. App. 559, 562 (1997); Cologne v. Westfarms Associates, 197 Conn. 141, 154 (1985); Baker v. Baker, 95 Conn. App. 826, 832 (2006); Irizarry v. Irizarry, 90 Conn. App. 340, 345 (2005); Prial v. Prial, 67 Conn. App. 7, 14 (2001); Tevolini v. Tevolini, 66 Conn. App. 16, 26 (2001); Constantine v. Schneider, 49 Conn. App. 378, 397 (1998). See Celentano v. Zoning Board of Appeals, 135 Conn. 16, 18 (1948). “Fairly stated, evidence legally is the means by which alleged matters of fact are properly submitted to the trier of fact for the purpose of proving a fact in issue. On the other hand, proof is the result or the effect of such evidence. ... [R]epresentations by counsel [are] not testimony, which, in turn, when given under oath or stipulated to, is a species of evidence.”

23. The respondents conceded that twelve of the 37 columns in the documents entitled “Zip and City” pertain to the employee being investigated:

Column 1: CTL
Column 2: Source
Column 3: CountofEmp_ID
Column 4: Emp_ID
Column 5: Emp_First_Name
Column 6: Emp_Last_Name
Column 7: Emp_Street
Column 8: Loc_Descr
Column 9: Job_Descr
Column 10: IAD Conclusion
Column 25: Date
Column 26: Time

24. The respondents contended that the remaining 25 columns in the documents entitled “Zip and City” pertain to the taxpayer:

- Column 10: FEIN
- Column 11: TID
- Column 12: Loc
- Column 13: SSN
- Column 14: ID_STAT_CD
- Column 15: Case?
- Column 16: STAX Case?
- Column 17: TDS Case?
- Column 19: First_Name
- Column 20: Last_Name
- Column 21: Entity_Name
- Column 22: Street
- Column 23: Street 2
- Column 24: City
- Column 25: ST
- Column 26: Zip
- Column 27: Window_ID
- Column 28: Window_Name
- Column 29: Image_Name
- Column 30: Period_End_Date
- Column 31: Form_Type
- Column 32: Tax_Year
- Column 33: Tax_Type
- Column 34: TPD_Year
- Column 35: TPD_Category

25. It is found, however, that of the 25 columns in the documents entitled “Zip and City” that the respondents contended pertain to the taxpayer, the respondents offered no evidence to prove that the following 15 columns identify, directly or indirectly, the taxpayer, or otherwise contain “return information” as defined in §12-15(h)(2), G.S.⁴

- Column 11: TID
- Column 12: Loc
- Column 14: ID_STAT_CD
- Column 15: Case?
- Column 16: STAX Case?

⁴ If the Commission accepted the respondents’ description of the column headed “TID” as factual, rather than a mere representation of counsel, then the Commission might conclude that the data in that column identifies taxpayers. However, the respondents offered no evidence of the meaning of the letters “TID,” and the Commission is unaware of any generally accepted meaning for “TID” of which the Commission could take administrative notice. See paragraph 22, above. Nonetheless, in consideration of the possibility that the information contained in the column headed TID may identify a taxpayer and that disclosure would result only from the respondents’ failure to prove the meaning of the data in this column, the order in this decision reflects the Commission’s discretionary decision not to order release of this information.

Column 17: TDS Case?
Column 27: Window_ID
Column 28: Window_Name
Column 29: Image_Name
Column 30: Period_End_Date
Column 31: Form_Type
Column 32: Tax_Year
Column 33: Tax_Type
Column 34: TPD_Year
Column 35: TPD_Category

26. Additionally, the respondents represented in their April 28 Memorandum that handwritten information on the document includes other return information, including the case number and start date of a specific audit of a specific taxpayer, as well as the name of the audit selection program under which that particular audit commenced, the type of audit performed, and the current status of said audit.

27. The meaning of the handwritten information cannot be determined from the face of the documents.

28. It is found that the respondents presented no evidence of the meaning of the handwritten information, and thus failed to prove that the handwritten information would identify, directly or indirectly, the taxpayer; or that the handwritten information was otherwise “return information” within the meaning of §12-15(h)(2).

29. However, it is also found that the handwritten information, which appears to be annotations subsequently added to the requested reports, does not fall within the complainants’ request for the reports themselves.

30. It is therefore concluded, based on the face of the in camera records and the absence of other evidence, that of the 37 columns in the documents entitled “Zip and City, only the following ten columns actually identify, directly or indirectly, the taxpayer, and therefore contain return information:

Column 10: FEIN⁵
Column 13: SSN⁶
Column 19: First_Name
Column 20: Last_Name
Column 21: Entity_Name
Column 22: Street

⁵ The Commission takes administrative notice of the fact that FEIN is an acronym for Federal Employer Identification Number. This is a nine-digit unique number assigned by the Internal Revenue Service to identify taxpayers that are required to file business tax returns.

⁶ It cannot be determined from the face of the in camera records whether this is the social security number of the employee or the taxpayer. However, if the Commission is mistaken in finding that column 13 is the taxpayer’s social security number, the Commission would still not order its disclosure, consistent with long-standing Commission precedent.

Column 23: Street 2
Column 24: City
Column 25: ST
Column 26: Zip⁷

31. With respect to the 26 columns in the in camera record titled “Employee,” the respondents contended that the following nine columns contain information about the taxpayer:

Column 8: SSN
Column 9: Case?
Column 11: First_Name
Column 12: Last_Name
Column 19: Window_Name
Column 21: Period_End_Date
Column 22: Form_Type
Column 23: Tax_Year
Column 24: Tax_Type

32. It is found, however, that of the nine columns in the documents entitled “Employee” that the respondents contended pertain to the taxpayer, the respondents offered no evidence to prove that the following six columns identify, directly or indirectly, the taxpayer, or otherwise contain “return information” as defined in §12-15(h)(2), G.S.:

Column 9: Case?
Column 19: Window_Name
Column 21: Period_End_Date
Column 22: Form_Type
Column 23: Tax_Year
Column 24: Tax_Type

33. It is therefore concluded, based on the face of the in camera records and the absence of other evidence, that of the 26 columns in the documents entitled “Employee” only the following three columns actually identify, directly or indirectly, the taxpayer, and therefore contain return information:

Column 8: SSN⁸
Column 11: First_Name
Column 12: Last_Name

⁷ While it cannot be determined definitively from the face of the in camera record that columns 19 through 26 identify the names and addresses of taxpayers, the identification of employees in columns 4 through 7 leads the Commission to infer that columns 19 through 26 identify taxpayers.

⁸ As is the case with column 13 of the document titled “Zip & City,” it cannot be determined from the face of the in camera records whether this is the social security number of the employee or the taxpayer. However, if the Commission is mistaken in finding that column 8 is the taxpayer’s social security number, the Commission would still not order its disclosure, consistent with long-standing Commission precedent.

34. Additionally, the respondents represented in their April 28 Memorandum that handwritten information on the document includes other return information, including the case number and start date of a specific audit of a specific taxpayer, as well as the name of the audit selection program under which that particular audit commenced, the type of audit performed, and the current status of said audit.

35. However, it is found that the respondents presented no evidence of the meaning of the handwritten information, and failed to prove that the handwritten information would identify, directly or indirectly, the taxpayer, or otherwise contain "return information" as defined in §12-15(h)(2), G.S.

36. However, it is also found that the handwritten information, which appears to be annotations subsequently added to the requested reports, does not fall within the complainant's request for the reports themselves.

37. Notwithstanding that the in camera records contain a mix of return information (13 columns of data) and non-return information (50 columns of data), the respondents contended, pursuant to Church of Scientology v. IRS, 484 U.S. 9 (1987), and the Commission's earlier cases construing §12-15(h)(2), G.S., that all the information in the requested spreadsheets is exempt from disclosure.

38. As cited in paragraph 15, above, §12-15(h)(2), broadly and extensively defines return information to include "a taxpayer's identity, the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, tax underreportings, tax overreportings, or tax payments, whether the taxpayer's return was, is being, or will be examined or subjected to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense."

39. Furthermore, it is well established that return information, even if all taxpayer identification is removed, remains return information not subject to mandatory disclosure. Peruta v. Commissioner of Revenue Services, Docket #FIC 2004-263 (citing Church of Scientology).

40. However, after providing a detailed explanation of confidential return information, §12-15(h)(2), G.S., continues: "Return information" does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer."

41. Thus, whether all the data contained in the spreadsheets sought by the complainant is exempt "return information" depends on whether the spreadsheets are "data in a form which cannot be associated with, or otherwise identify, directly or

indirectly, a particular taxpayer” within the meaning of §12-15(h)(2), G.S. Data in such a form is, pursuant to §12-15(h)(2), G.S., not return information.

42. In Church of Scientology, the United States Supreme Court construed the identical language in section 6103 of the Internal Revenue Code, 26. U.S.C., known as the Haskell Amendment. The Haskell Amendment was proposed by Senator Haskell of Colorado, and was adopted by a voice vote during the debate on the 1976 amendments to the Internal Revenue Code. Church of Scientology at 12.

43. In Church of Scientology, the Supreme Court concluded that the Haskell Amendment’s “in a form” phrase contemplates agency reformulation of return information into a statistical study or some other composite product, and not merely the deletion of the taxpayer’s name and other identifying data from records of return information.

44. Thus, the Court in Church of Scientology held that the Haskell Amendment did not permit the mere redaction of identifying names and information from copies of “all information relating to or containing the names of, Scientology, Church of Scientology, any specific Scientology church or entity identified by containing the words Scientology, Hubbard and/or Dianetics in their names, L. Ron Hubbard or Mary Sue Hubbard in the form of written record, correspondence, document, memorandum, form, computer tape, computer program or microfilm, which is contained in an extensive list of the [Internal Revenue Service’s] case files and data systems.” Church of Scientology at 11.

45. However, it is found that the complainant in this case has not sought a broad array of records in multiple formats and files, with only taxpayer identifying information redacted, as was the case in Church of Scientology. Rather, with respect to the request described in paragraph 3.d.ii, above, the complainants seeks only two records, comprised of three pages of spreadsheets, in which what appears on the face of the in camera records to be return information (such as taxpayer names, addresses and social security numbers) is displayed, along with information as to which the respondents offered no evidence to prove was return information.

46. It is found that information was compiled into spreadsheets in connection with the respondents’ investigation of incidents of browsing, and not in connection with the respondents’ examination of any taxpayer returns.

47. It is concluded that the spreadsheets are the respondents’ “reformulation of return information into a statistical study or some other composite product.”

48. It is therefore concluded that only the data contained in the 13 columns described in paragraphs 30 and 33, above, are return information within the meaning of §12-15(h)(2), G.S., because the data contained in those 13 columns is in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

49. The conclusion in paragraph 48, above, is not contradicted by previous Commission cases concerning §12-15(h)(2), G.S.

50. In Peruta v. Commissioner of Revenue Services, Docket #FIC 2004-163, the Commission concluded that reports of audits containing return information may not be disclosed even if all taxpayer identification is removed, citing Church of Scientology (holding that the language “data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer” was only intended to permit the continuation of the Internal Revenue Service’s practice of releasing statistical studies and compilations that do not identify particular taxpayers).

51. After careful review of the in camera records, it is found that they are audits of the Department’s employees’ access to taxpayer information, not audits of taxpayers, as in Peruta, above.

52. Moreover, it is concluded that the facts in Peruta did not support a finding that the requested reports of audits were the reformulation of return information into a statistical study or some other composite product.

53. In Jacobs v. Department of Revenue Services, Docket #FIC 2008-750, the Commission concluded that records that consisted almost entirely of information from and about petitioning taxpayers in support of their petitions for tax relief were clearly “return information” within the meaning of §12-15(h)(2), G.S., and therefore exempt from disclosure.

54. It is found that the in camera records do not consist almost entirely of information from and about taxpayers, as was the case in Jacobs. Rather, they contain only ten out of 37 (in the case of the “Zip & City” pages) and three out of 26 (in the case of the “Employee” page) columns of data that disclose a taxpayer's identity. None of the columns on either document were proven to contain data that disclose “the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, tax underreportings, tax overreportings, or tax payments, whether the taxpayer's return was, is being, or will be examined or subjected to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense” within the meaning of §12-15(h)(2), G.S.

55. Moreover, it is concluded that Jacobs did not address at all the issue of the reformulation of return information into a statistical study or some other composite product, which is the central issue concerning the in camera records in this case.

56. In Lenore v. Department of Revenue Services, Docket #FIC 2005-441, the complainant requested copies of correspondence between taxpayers and the Department relating to the application of Section 338(h)(1) of the Internal Revenue Code of 1986, as

amended, to certain Connecticut taxes. The Commission found that the correspondence contained taxpayers' identities, information indicating whether taxpayers' returns were or would be examined or subjected to other investigation or processing; the nature and source of taxpayers' incomes; and other data furnished to the respondent with respect to tax returns. The Commission concluded that the Department was not permitted to disclose such correspondence, even with the redaction of identifying information.

57. However, as was the case in Peruta and Jacobs, no claim was made that the data sought was the reformulation of return information into a statistical study or some other composite product.

58. Since neither Peruta, Jacobs, nor Lenore addressed the so-called Haskell Amendment language as applied to compilations or statistical studies of data, the results of those cases do not bear on the instant dispute.

59. It is therefore found that none of the data contained in the in camera records, with the exception of the thirteen columns described in paragraphs 30 and 33, above, was proven to be data which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, or is otherwise contain "return information" within the meaning of §12-15(h)(2), G.S.

60. Having concluded that the two spreadsheets are the respondents' "reformulation of return information into a statistical study or some other composite product," the remaining question is whether the spreadsheets contain easily redactable identifying information.

61. It is found that, with the exception of the handwritten annotations in one column of the in camera records, the data printed in the spreadsheet records is maintained in a computer storage system.

62. Section 1-211(a), G.S., provides:

[a]Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212.

63. It is found that the in camera records are comprised of 50 columns of nonexempt data and 13 columns of exempt data in the Department's computer storage system.

64. It is found that the columns described in paragraphs 30 and 33, above, could be redacted from the in camera records, and in that form would be precisely responsive to the portion of the complainant's request described in paragraph 3.d(ii), above, without containing any return information.

65. It is concluded that, with the columns described in paragraphs 30 and 33, above, redacted, the requested records are not comprised of "return information" within the meaning of §12-15(h)(2), G.S., and that the respondents violated §§1-210(a) and 1-211(a), G.S., by failing to disclose the spreadsheet records in redacted form.

66. With respect to the portion of the complainant's request described in paragraph 3.d(i), above, for "copies of any and all procedures or policies which currently govern or specifically apply to the Department of Revenue Services' Internal Audit Division's investigation of "browsing" incidents," it is found that the respondents provided a responsive memorandum (Complainant's Exhibit H).

67. It is found that the memorandum "documents the monthly process followed by the Internal Audit Division to review the audit transaction log activity; the research process used when a business purpose for an employee access can not initially be determined; and the administrative investigation process."

68. It is found that the memorandum is responsive to the portion of the complainant's request described in paragraph 3.d(i), above.

69. It is found that the memorandum alludes to "7 queries [that] are run against the monthly audit transaction log activity ..." and "[t]he results of the 7 queries [that] are reviewed for business purpose appropriateness."

70. The complainant contended that the results of the queries are "procedures or policies" responsive to the portion of her request described in paragraphs 3.d(i), above.

71. It is found, however, that the results of the queries are not "procedures or policies," but are data or information contained in reports produced as the result of following procedures.

72. It is therefore concluded that the queries referenced in the Exhibit H memorandum are not responsive to the complainant's request, and that the respondents did not violate the FOI Act by failing to produce them in response to the request.

73. The complainant maintains that the emails requested in paragraphs 3.a, 3.c, and 3.e, have not been provided promptly.

74. 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.

75. 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.

76. It is found that, despite repeated assurances in June and July 2016 that the Department was “in the process of” obtaining access to and reviewing the emails, the respondents had not accessed the email accounts until August 2016. No evidence was presented at the September hearing in this matter as to any progress made by the respondents in August or September, other than a representation by counsel that the respondents were “starting to review” the records.

77. It is found that, despite the respondents’ representations of counsel that they were “forthcoming” in their attempts to provide information in a prompt manner, the evidence does not support their claim that they were prompt.

78. The Commission takes administrative notice of the fact that production of emails is a computerized process that ordinarily does not take four months to begin.

79. It is found that no records had been provided to complainants for months after the records were requested. The Commission notes that the first portion of the complainant’s request was only for emails between two employees.

80. The respondents requested that the Commission take administrative notice of their move of offices, as a reason for the delay in compliance, which the hearing officer declined to do. The respondents were free to present evidence of that move, including when it occurred or how it affected to the respondents' ability to provide documents. There are no relevant facts that, "from their nature, are not properly the subject of testimony, or which are universally regarded as established by common notoriety." See "Judicial notice," Black's Law Dictionary.

81. It is concluded that none of the requested emails were provided promptly, and that the respondents thereby violated §§1-210(a) and 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. The respondents shall forthwith provide copies of the in camera records to the complainant.

2. In complying with paragraph 1 of this order, the respondents shall redact only the data in the columns described in paragraphs 30 and 33, above.

3. In complying with paragraph 1 of this order, the respondents may redact TID numbers.

4. The respondents shall, within 90 days of the issuance of the final decision in this matter, provide all the requested emails to the complainant.

5. In complying with paragraph 4 of this order, if the respondents in good faith believe that any records, or portions thereof, described in paragraphs 3.a, 3.c and 3.e of the findings, above, are exempt from disclosure pursuant to §12-15(h)(2), G.S., or attorney client privilege, they shall so inform the complainants within 90 days of the issuance of the final decision in this matter, and provide her with an index of such records, including a description of the record, the portion of the record claimed to be exempt, and the claimed exemption(s), which shall be deemed to be a denial of access to such records.

6. Thereafter, should the complainant file a complaint with the Commission regarding the records described in paragraph 5 of the order, above, such complaint shall receive priority assignment from the Commission.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 24, 2017.



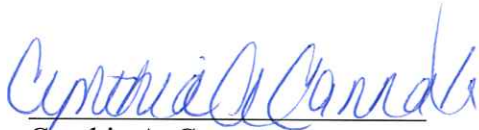
Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Alice Sexton
45 Hardin Lane
Glastonbury, CT 06033

Commissioner, State of Connecticut, Department of
Revenue Services; and State of Connecticut,
Department of Revenue Services
c/o Louis B. Bucari, Esq.
Shawn M. Sims, Esq.
Marilee A. Clark, Esq.
Erica C. McKenzie, Esq.
450 Columbus Blvd.
Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission