

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Adam Osmond,

Complainant

against

Docket #FIC 2018-0363

Catherine Smith, Commissioner,
State of Connecticut, Department of
Economic and Community Development;
and State of Connecticut, Department of
Economic and Community Development,

Respondents

June 12, 2019

The above-captioned matter was heard as a contested case on October 17, 2018, 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, by email dated May 16, 2017, the complainant requested that the respondents provide him with access to and copies of the following records:
 - a. All emails sent or received by Kathy Woodward, including all attachments that are related to me or where my name is mentioned from 1/8/2016 to now;
 - b. All emails sent or received by Joyce Heriot, including all attachments that are related to me or where my name is mentioned from 1/8/2016 to now;
 - c. All emails sent or received by Susan Shellard, including all attachments that are related to me or where my name is mentioned from the beginning of time to now;

- d. All emails sent or received by Catherine Smith, including all attachments that are related to me or where my name is mentioned from 1/8/2016 to now;
- e. All emails sent or received by Joseph Olender including all attachments that are related to me or where my name is mentioned from the beginning of time to now;
- f. All text messages sent or received by Susan Shellard, Joyce Heriot, Kathy Woodward, Susan Smith or Joseph Olender while using state equipment or discussing state business on their equipment that are related to me in any way or where my name is mentioned from the beginning of time to now;
- g. All documents related to my step 1 and 2 grievance;
- h. All documents that Kathy Woodward brought into my Step 1 and Step 2 grievance meeting;
- i. All memos and notes that Joyce Heriot or Susan Shellard created in my meetings with them from 1/8/2016 to now including, but not limited [to], when Ms. Shellard called me a meeting [sic] about Yumi; and
- j. Any emails that Kathy Woodward sent or received from Rob after he left DECD.

3. It is found that, by email dated May 18, 2017, the respondents acknowledged the complainant's request and informed the complainant that the respondent department processes Freedom of Information ("FOI") requests in the order in which they are received¹, that they currently had 21 FOI requests pending, and that some of the pending requests were voluminous. With regard to the request set forth in paragraph 2.j, above, it is found that the respondents sought clarification from the complainant regarding the full name of the person identified as "Rob." It is further found that the respondents informed the complainant that they would distribute his request to all relevant staff members, and collect, review and assemble all responsive, non-exempt records. Finally, the respondents informed the complainant that they would contact him once they had determined the cost for the records.

4. It is found that, by email dated February 21, 2018, the respondents contacted the complainant to determine if he still wanted the requested records. It is further found that the respondents informed the complainant that they would have to review approximately 82,000 emails in response to his requests and they inquired whether the

¹ By the time of the contested case hearing, the respondents had modified their first-in-first-out policy of processing FOI requests, in that they now process the smaller requests upon receipt.

complainant might be willing to narrow any of the requests.²

5. It is found that, by email dated February 25, 2018, the complainant indicated that he would not narrow any of his requests. It is found that the complainant clarified that, in paragraph 2.f, above, he mistakenly requested records from “Susan Smith,” when he actually wanted records from “Catherine Smith” and that, in paragraph 2.j., above, when he indicated that he wanted the emails that Ms. Woodward sent to or received from “Rob” he was referring to “Robert Guzzo.”

6. It is found that, by email dated June 26, 2018, the complainant inquired about the status of his request.

7. It is found that, under cover of email dated June 29, 2018, the respondents provided the complainant with the records responsive to the requests set forth in paragraphs 2.h and 2.i, above. With respect to the requests set forth in paragraphs 2.e and 2.g, above, it is found that the respondents informed the complainant that Joseph Olender was not their employee and that they did not maintain any documents related to the complainant’s step 1 or step 2 grievances. The respondents suggested that the complainant seek records responsive to the requests set forth in paragraphs 2.e and 2.g, above, from the Department of Administrative Services Smart Unit, Office of Labor Relations and/or his own union representative. With respect to the request set forth in paragraph 2.f, above, the respondents informed the complainant that, after conducting an extensive search, they had determined that they did not maintain any records responsive to this request. Finally, with respect to the requests set forth in paragraphs 2.a, 2.b, 2.c, 2.d, and 2.j, above, the respondents informed the complainant that they had gathered some 8,200 emails, which they now had to review for exemptions, and that they were going to need some additional time to make these records available.

8. By letter dated June 9, 2018 and filed June 10, 2018, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with all of the responsive records. In addition, the complainant requested the imposition of a civil penalty.

9. 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.

² It is found that between May 18, 2017 and February 21, 2018, the complainant did not contact the respondents concerning the instant request, and specifically did not respond to the respondents’ request for clarification concerning the full name of the person identified as “Rob.”

10. 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.

11. 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.”

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

13. At the start of the contested case hearing, the complainant testified that he believed that he had received many, but not all, of the responsive records. The complainant challenged the redactions contained in three of the records disclosed to him. He further contended that the respondents failed to disclose records to him in a prompt manner.

14. It is found that the complainant received 1,000 pages of records responsive to the request set forth in paragraph 2.a, above; 5,960 pages of records responsive to the request set forth in paragraph 2.c, above; 769 pages of records responsive to the request set forth in paragraph 2.d, above; 96 pages of records responsive to the request set forth in paragraph 2.h, above; 14 page of records responsive to the request set forth in paragraph 2.i, above; and 3 pages of records responsive to the request set forth in paragraph 2.j, above. It is found that the respondents disclosed some of these records in an attachment to an email, and disclosed the remainder on CDs on the following dates: July 20, 2018, August 30, 2018 and October 9, 2018. It is found that the respondents did not charge the complainant for any of the records that they disclosed to him.

15. As of the date of the contested case hearing, it is found that the respondents possess an additional 15,593 pages of records responsive to the request set forth in paragraph 2.a, above, and 18,960 pages of records responsive to the request set forth in paragraph 2.b, above, which need to be reviewed, possibly redacted and disclosed to the complainant.

16. At the conclusion of the contested case hearing, the hearing officer ordered the respondents to submit the records at issue to the Commission for an in camera inspection. See ¶13, above.

17. On November 7, 2018, the respondents submitted the records to the Commission. The in camera records are fairly described as follows: a three-page loan

amortization report; a three-page loan maturity report; and a one-page document containing information on ten different loans. These seven pages shall be referred to as IC-2018-0363-1 through IC-2018-0363-7.

18. Lisa Bakanas, the respondents' Community Development Assistant Administrator and acting General Counsel, and Crystal Knight, the respondents' sole Paralegal Specialist, appeared and testified at the contested case hearing.

19. The respondents contended that the information that was redacted from IC-2018-0363-1 through IC-2018-0363-5 and IC-2018-0363-7 is exempt pursuant to Conn. §32-244(a)(13), G.S.

20. Section 32-244(a)(13), G.S., entitled "Applicability of Freedom of Information Act to data and other information re financial assistance," provides, in relevant part, as follows:

(a) All data and other information received by the Department of Economic and Community Development, Connecticut Innovations, Incorporated or any implementing agency, as defined in section 32-222, or any advisory board or committee of the department, corporation or agency, from any person in connection with an application for, or the provision of, financial assistance, which consists of the following, shall be deemed, for purposes of a public records request pursuant to the Freedom of Information Act. . . to be [trade secrets, or commercial or financial information given in confidence, not required by statute]: . . . (13) other commercial, credit or financial information with respect to the financial condition or business operations of an applicant for or recipient of financial assistance which is of a type not customarily made available to the public. (Emphasis supplied).

21. Based on a careful in camera inspection, it is found that the information redacted from IC-2018-0363-1 through IC-2018-0363-5 and IC-2018-0363-7 is "commercial, credit or financial information with respect to the financial condition or business operations of" applicants for or recipients of financial assistance from the respondent department and that such information "is . . . not customarily made available to the public." It is therefore found that such information is exempt from disclosure pursuant to Conn. Gen. Stat. §32-244(a)(13).

22. It is concluded that the respondents did not violate the FOI Act when they disclosed IC-2018-0363-1 through IC-2018-0363-5 and IC-2018-0363-7 to the complainant with redactions.

23. The respondents also contend that the information redacted from IC-2018-0363-6 is exempt from disclosure pursuant to §1-210(b)(1), G.S.

24. Section 1-210(b)(1), G.S., provides, in relevant part, that the FOI Act shall not require mandatory disclosure of:

preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure....

25. Section 1-210(e)(1), G.S., additionally provides in relevant part as follows:

(e) Notwithstanding the provisions of subdivisions (1) . . . of subsection (b) of this section, disclosure shall be required of:

Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency....

26. Based on a careful in camera inspection, it is found that the information redacted from IC-2018-0363-06 contains agency employees' electronic notes concerning specific loans, including loan payment and delinquency matters, and various matters employees journaled to themselves in order to keep track of follow-up tasks. It is found that such information is "preliminary drafts or notes," within the meaning of §1-210(b)(1), G.S. It is further found that the respondents determined that the public interest in withholding such information clearly outweighed the public interest in disclosure. Finally, it is found that information redacted from IC-2018-0363-6 is not "[i]nteragency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated," within the meaning of §1-210(e)(1), G.S.

27. It is concluded that the respondents did not violate the FOI Act when they disclosed IC-2018-0363-6 to the complainant with redactions.

28. With regard to promptness, this 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 records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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.

29. It is found that Ms. Knight, under the supervision Ms. Bakanas, is the person primarily responsible for responding to FOI requests, including contacting every person in the agency who she believes is or might be a custodian of responsive records, gathering such records, and reviewing such records for exempt material. It is further found that, once Ms. Knight has gathered and reviewed all responsive records and has determined which records are exempt or contain exempt information, she forwards her work to Ms. Bakanas for review.

30. It is found that, in December 2017, Ms. Knight was out on a medical leave for approximately two months. It is found that, during this time, Ms. Bakanas was the only individual processing FOI requests and she was able to dedicate approximately fifteen percent of her time to this task.

31. It is found that when Ms. Knight returned to work she dedicated (and continues to dedicate) eighty percent of her time to responding to FOI requests. It is further found that, on July 6, 2018, the respondent department hired a new attorney, who currently dedicates approximately sixty percent of his time to responding to FOI requests.

32. It is further found that, at the time the complainant issued the instant request, the respondents were working to resolve a backlog of 21 FOI requests, including several requests concerning the State's bid for the Amazon HQ2 Headquarters. It is found that many of the pending requests sought large numbers of records, including emails and attachments.

33. It is found that the process of gathering and reviewing the thousands of emails (and attachments) requested by the complainant in this case was very time intensive for the respondents. With regard to responsive records that were maintained on the respondents' computers, it is found that Ms. Knight was required to convert each responsive email and attachment that required redaction into a PDF format, as the respondents' redaction software required the conversion. With regard to those records that were no longer maintained on the respondents' computers, the respondents were required to request that the Department of Administrative Services' Bureau of Enterprise Systems and Technology (or "BEST") retrieve the records. The respondents in this case had no control over how long it took BEST to locate, restore and forward the emails and attachments to them.

34. Overall, it is found that the respondents are actively processing the remaining responsive records referred to in paragraph 15, above. It is further found that the respondents have committed to disclose these records to the complainant once a month on a rolling basis until the instant request is fully processed.

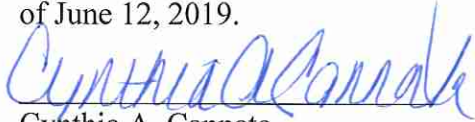
35. Based on the facts and circumstances of this case, it is found that the respondents promptly gathered, reviewed and disclosed responsive records to the complainant. It is further found that the respondents are committed to processing the instant request in a prompt manner until all non-exempt responsive records have been disclosed to the complainant.

36. Accordingly, it is concluded that the respondents did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 12, 2019.



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:

ADAM OSMOND, 14 Springwood Road, P.O. Box 1162, Farmington, CT 06034-1162

CATHERINE SMITH, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT; AND STATE OF CONNECTICUT, DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, c/o Attorney Amor C. Rosario, Office of the Attorney General, PO Box 120, Hartford, CT 06141-0120



Cynthia A. Cannata
Acting Clerk of the Commission