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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
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Darrell Stancuna,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0100

Commissioner, State of Connecticut, Department of
Correction; and State of Connecticut, Department of
Correction,

Respondent(s)

October 7, 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, November 16, 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 November 4, 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 November 4, 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 November 4, 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: Darrell Stancuna
Attorney James Neil
cc: Craig Washington

FIC# 2016-0100/Trans/wrbp/VB//VDH/2016-10-07

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Proposed Final Decision

Darrell Stancuna,

Complainant

against

Docket #FIC 2016-0100

Commissioner, State of Connecticut,
Department of Correction; and State of
Connecticut, Department of Correction,

Respondents

October 7, 2016

The above-captioned matter was heard as a contested case on May 3, 2016, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. On September 14, 2016, the Commission voted to have staff prepare a proposed final decision, based on the administrative record.

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 March 24, 2015, the complainant made a written request to the respondents for copies of “the emails of...[Maria Guglielmi, Lori Kolakoswki and Jose Feliciano] from the month of October [2014] to present with anything regarding myself in them.” It is further found that the complainant also made requests of the respondents for records related to an investigation and a grievance, which requests are not at issue in this complaint.
3. It is found that sometime in June of 2015, the respondents sent by regular mail records that were responsive to the request described in paragraph 2, above, to the complainant. It is found that the respondents did not hear further from the complainant for several months regarding the request for emails described in paragraph 2, above, and that, therefore, they presumed that such request was fulfilled. However, it is also found that the complainant never received such records in the mail.
4. It is found that, by email dated September 28, 2015, six months after the request for emails described in paragraph 2, above, the complainant inquired about the status of his request for the investigation records, and also requested “previous requested emails between human resources Maria Guglielmi and Michael Tuthill that were requested in March 2015.” The

Commission notes that such request does not precisely duplicate the March 2015 request described in paragraph 2, above, and that it narrows such request to emails only between two individuals.

5. It is found that, subsequent to the September 28, 2015 email described in paragraph 4, above, the complainant and the respondents' FOI officer engaged in several undocumented verbal conversations regarding the complainant's request, and that such request changed from the initial request regarding three individuals, and a time frame of October 2014 to March 2015, to a request regarding only the emails of Maria Guglielmi, with a time frame of March 2013 to March 2015. At the hearing, there was conflicting testimony regarding the scope of the subject matter of the requested Guglielmi emails; the complainant testified that he requested all of Ms. Guglielmi's emails, and the respondents' witness testified that the request was only for emails which referenced the complainant. After weighing the evidence, it is found that the request was broadened with respect to time frame, but narrowed with respect to the scope; i.e., only Guglielmi emails referencing the complainant.

6. It is found that the respondents conducted a second search for responsive records, and by email dated January 26, 2016, the respondents notified the complainant that records responsive to his modified request for emails, as described in paragraph 5, above, were available for pickup. It is further found that the complainant personally retrieved such records on the same day, and that the complainant and the respondents' FOI officer engaged in a conversation wherein the complainant was informed that due to the passage of time, emails may have been deleted in the normal course of business.

7. It is found that the complainant determined that the records he retrieved were not responsive to his request, in that they post-dated the March 2015 time frame described in paragraph 5, above, and so informed the respondents, by email dated January 26, 2016. By such email, under the subject heading "Guglielmi emails," the complainant again seemed to narrow and change the scope of the request, stating that he "had requested the emails for Guglielmi and Tuthill to go back 2 years from March 1, 2015." The complainant sent a separate email on such day, under the subject heading "Guglielmi/Tuthill emails," thanking the respondents, and asking for the emails that were deleted.

8. It is found that the following day, January 27, 2016, the complainant again emailed the respondents, under the subject heading "Guglielmi emails," asking for the dates of the emails that Guglielmi had deleted, and also stating: "please provide me all of Guglielmi emails as originally requested back in March 2015 by me All of Guglielmi's emails from March 2013-March 2015. Please provide the periods of time that she deleted her emails. This is very important information that I've been requesting since March 2015 and received from you emails from March 2015 to August 2015..."

9. Based upon the facts and circumstances of this case, and a fair reading of the request described in paragraph 8, above, in its totality and in its context, it is found that such request seeks the Guglielmi emails referencing the complainant, from March 2013 to March 2015, as described in paragraph 5, above, despite the inclusion of the phrase "all of Guglielmi's emails."

Should the complainant indeed seek all of Ms. Guglielmi's emails in their entirety for a two year period, he is free to clearly and succinctly request such records from the respondents.

10. By letter dated February 3, 2016 and filed on February 4, 2016, the complainant appealed to this Commission, alleging that the respondents failed to respond to his January 26 and 27 emails, and also asking that the Commission determine several issues, which were presented in the form of questions, including why his request as described in paragraph 2, above, had not be fulfilled. The complainant only included the January 27, 2016 email described in paragraph 7, above, with his complaint. At the hearing, the complainant for the first time requested the imposition of a civil penalty in this matter.

11. Section 1-200(5), G.S., defines "public records or files" as:

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.

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

13. 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."

14. It is found that, to the extent that the respondents maintain responsive records, such records are public records within the meaning of §§1-200(5) and 1-210(a), G.S., and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

15. To the extent that the complaint in this matter can be read to relate to the initial request described in paragraph 2, above, it is concluded that the complainant abandoned such request in the course of the communications between the parties, and that the respondents cannot fairly be held responsible for the fulfillment of such request at this point, based on the facts and circumstances of this case. Accordingly, such allegation shall not be further addressed herein. Should the complainant still seek those original records, he is free to request them again.

16. To the extent that the complainant seeks responses to his various questions or explanations of the actions of the respondents, it is concluded that the FOI Act does not require that public agencies answer questions; it only requires the production of public records. Accordingly, such allegations shall not be further addressed herein.

17. With respect to the records described in paragraph 5, above, and again in paragraphs 8 and 9, above, which are the only records remaining at issue, it is found that the respondents conducted a thorough search for such records in January 2016, including a search of all retrievable deleted emails of Ms. Guglielmi, and could not locate any responsive records, although the respondents did locate records from a later time period, and provided such records to the complainant.

18. The Commission takes administrative notice of the state's Electronic Mail Records Management Policy, which the respondents referenced at the hearing. It is found that under the policy, which was established in accordance with the state's Public Records Retention Policy issued by the State Library, deleted emails are only available for recovery for a period of 150 days from date of deletion. It is further found that the respondents' emails are not kept on servers of the respondents, but rather on servers maintained and controlled by the Department of Administrative Services.

19. It is found that the respondents do not maintain any requested emails of Ms. Guglielmi which reference the complainant for the period March 2013 to March 2015.

20. Consequently, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged. Therefore, there is no basis upon which to impose a civil penalty in this matter.

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

1. The complaint is hereby dismissed.