

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Halina Trelski,

Complainant

against

Docket #FIC 2016-0240

President, State of Connecticut,
Middlesex Community College;
and State of Connecticut,
Middlesex Community College,

Respondents

December 7, 2016

The above-captioned matter was heard as a contested case on June 21, 2016, 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 March 16, 2016, the complainant requested that the respondents provide her with copies of the following records: 1) any and all letters, including electronic letters, that Middlesex Community College, the President of Middlesex Community College, the Director of Financial Aid of Middlesex Community College, the Registrar of Middlesex Community College, or any Dean of Middlesex Community College received between February 1, 2016 and March 16, 2016 from anyone regarding the complainant; and 2) any and all letters, including electronic letters, that Middlesex Community College, the President of Middlesex Community College, the Director of Financial Aid of Middlesex Community College, the Registrar of Middlesex Community College, or any Dean of Middlesex Community College sent between February 1, 2016 and March 16, 2016 to anyone regarding the complainant.
3. By email dated and filed March 23, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide her with copies of the requested records described in paragraph 2, above.

4. 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.

5. 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.

6. 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.”

7. 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.

8. At the contested case hearing, the complainant contended that the respondents were violating her FOI rights by failing to provide her with copies of the records she requested.

9. Jason Ebbeling, the Executive Director of the Student Success Center for the Connecticut State Colleges and Universities (“CSCU”), appeared and testified at the contested case hearing. It is found that Mr. Ebbeling generally responds to student complaints as they come through the college and university system.

10. It is found that, in December 2015, the President of Middlesex Community College contacted Mr. Ebbeling and requested that he assume responsibility for responding to the complainant’s FOI requests. It is found that the President explained to Mr. Ebbeling that the complainant had issued a series of FOI requests, which had been causing a great amount of work for her staff. It is found that the President sought Mr. Ebbeling’s assistance in resolving these requests.

11. It is found that, on March 16, 2016, the respondents received the request for records described in paragraph 2, above, as well as an additional request for records (the

“second request”) from the complainant. It is found that the complainant’s second request identified Mr. Ebbeling directly and, as such, Mr. Ebbeling thought that it would be better to have a colleague respond to that request.

12. It is found that Mr. Ebbeling contacted a colleague and explained that the complainant had issued two FOI requests on March 16th and that the second request pertained to him directly. It is found that Mr. Ebbeling requested his colleague’s assistance in responding to the second request. It is found that the colleague agreed to handle the second request, and responded to Mr. Ebbeling something to the effect of, “I will handle the requests.”

13. It is found that, based on this exchange, Mr. Ebbeling thought that his colleague was going to respond to both requests; however, the colleague only responded to the complainant’s second request.

14. At the time of the contested case hearing, the respondents readily acknowledged that there had been a miscommunication and that they were in the process of gathering and providing the responsive records to the complainant.

15. Subsequent to the contested case hearing, the complainant filed multiple motions, indicating that she had received some responsive records, but contending that she should have received more responsive records. In her motions, the complainant requested that the hearing officer reopen the contested case hearing and issue subpoenas to various individuals at the respondent College. The complainant’s motions were denied.

16. Instead, by Order dated July 18, 2016, the hearing officer ordered the respondents to submit an affidavit with regard to the search they conducted and the records that they ultimately disclosed to the complainant. The respondents were further instructed as follows:

In the affidavit, which should be copied to the complainant, the respondents must describe the scope of their search; whether their search included both electronic and hardcopy records; whether they redacted any record before disclosing the record to the complainant; and whether they withheld any responsive record in its entirety. If the respondents did redact or withhold a record, they should identify the legal basis for such action.

17. On July 29, 2016, the respondents submitted two affidavits: the affidavit of Michael Kozlowski, the Director of Strategic Initiatives for CSCU, and the affidavit of Ernestine Yuille Weaver, Counsel for CSCU.

18. It is found that Mr. Kozlowski’s search for responsive records included both hard copy records maintained in paper files, and electronic records stored on the respondents’ computers and servers. It is further found that Mr. Kozlowski enlisted the assistance of an assistant to the President to search for responsive hard copy and electronically stored records within the respondent College. It is found that neither Mr. Kozlowski’s nor the assistant’s

search efforts resulted in the unearthing of any responsive records.

19. It is found that Ms. Weaver's search efforts were focused on emails. It is found that Ms. Weaver, working with the CSCU Information Technology Department, conducted a search of all of the Middlesex Community College mailboxes and pulled any email from such mailboxes that contained the keywords "Halina Trelski," "Halina," or "Trelski." It is found that, when Ms. Weaver received the results of the search, she printed each record that contained a keyword. It is further found that Ms. Weaver reviewed the printed results, removed duplicates, and forwarded the responsive emails to Mr. Kozlowski without redactions.

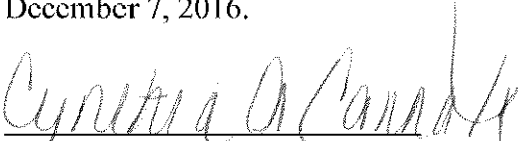
20. Finally, it is found that, on June 24, 2016, Mr. Kozlowski, through his assistant, sent the responsive emails to the complainant without redactions.

21. It is found that the respondents' initial failure to respond to the request set forth in paragraph 2, above, was the result of a simple miscommunication. It is further found, however, that the respondents completely rectified such miscommunication by providing the complainant with all of the responsive records free of charge. Nevertheless, it is concluded that the respondents inadvertently violated the promptness provisions of the FOI Act.

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

1. No order is recommended.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 7, 2016.

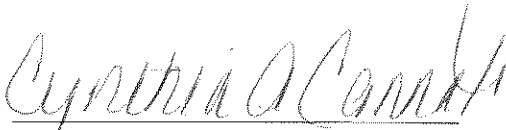

Cynthia A. Cannata
Acting Clerk of the Commission

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:

Halina Trelski
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and State of Connecticut, Middlesex Community College
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Cynthia A. Cannata
Acting Clerk of the Commission