

Since 1975



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Hector Gonzalez,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2011-632

Commissioner, State of Connecticut,  
Department of Administrative Services,  
Respondent(s)

June 21, 2012

## 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, July 11, 2012**. 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 June 29, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE June 29, 2012**. 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 **fourteen (14) copies** be filed **ON OR BEFORE June 29, 2012**, 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: Hector Gonzalez  
Jeffrey R. Beckham, Esq.  
Holly Bray, AAG

6/21/12/FIC# 2011-632/Trans/wrbp/TCB/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Hector Gonzalez,

Complainant

against

Docket #FIC 2011-632

Commissioner, State of Connecticut,  
Department of Administrative Services,

Respondent

June 14, 2012

The above-captioned matter was heard as a contested case on March 20, 2012 at which time the complainant and the respondent 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 respondent is a public agency within the meaning of §1-200(1), G.S.
2. It is found that by e-mails dated September 7 and November 9, 2011, the complainant made requests to the University of Connecticut (hereinafter "UCONN") for its police department's daily schedule for specified days in 2011, and the bid schedule for October 2011 through January 2012.
3. It is found that by letter dated and filed on November 21, 2011, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his request for records.
4. It is found that this Commission named the Assistant Director, Office of Audit, Compliance and Ethics, University of Connecticut; and Office of Audit, Compliance and Ethics, University of Connecticut (hereinafter "UCONN") as respondents and issued a "Notice of Hearing and Order to Show" to the parties dated February 8, 2012.
5. It is found that by motion dated February 23, 2012 and filed on February 24, 2012, UCONN moved to dismiss the complaint against it citing §1-210(b)(19)(vii) and (d), G.S.

6. Section 1-210(b)(19)(vii), G.S., provides in relevant part that nothing in the FOI Act shall be construed to require the disclosure of:

Records when there are reasonable grounds to believe disclosure *may* result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility ... Such reasonable grounds shall be determined ... by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency ... Such records include, but are not limited to:

...

(vii) Logs or other documents that contain information on the movement or assignment of security personnel.... [emphasis added]

7. Section 1-210(d), G.S., provides in relevant part that:

Whenever a public agency ... receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services ... of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act ... If the commissioner, after consultation with the chief executive officer of the applicable agency ... believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person.

8. Section 1-210(d), G.S., also provides that:

In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section such

appeal shall be against the chief executive officer of the executive branch state agency ... that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section, exclusively...[emphasis added]

9. It is found that pursuant to §1-210(d), G.S., UCONN notified the respondent by letter dated November 29, 2011, of the complainant's September 7 and November 9, 2011 requests and provided the Commissioner with a copy of the records that were responsive to the requests.

10. It is found that, after consultation with UCONN, the respondent, by letter dated January 20, 2012, informed the university that there "are reasonable grounds to believe that disclosure of the requested records may result in the safety risk to persons or property" and directed UCONN to "withhold, or redact accordingly," the requested records.

11. It is found that, pursuant to the directive described in paragraph 10, above, UCONN withheld the requested records from the complainant.

12. Based on the facts and circumstances described in paragraphs 9 through 11, above, UCONN's motion to dismiss, described in paragraph 4, above, was granted. Further, pursuant to §1-210(d), G.S., this Commission issued a second "Notice of Hearing and Order to Show," dated February 29, 2012, naming as the respondent the Commissioner, State of Connecticut, Department of Administrative Services.

13. With respect to the requested records, §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.

14. 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.

15. 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.”

16. 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.

17. At the hearing on this matter, the complainant testified, and it is found, that, in general, the daily schedule contains information given to officers during roll call and discloses which officers are off duty. It is also found that, in general, the bid schedule is a four month schedule that discloses which officers will be off duty during those months and which officers are assigned to work together.

18. At the hearing on this matter, the respondent’s witness testified, and it is found, that the requested records also disclose the shift schedule, shift hours, which officers are assigned to each shift, and handwritten notes regarding assignments and equipment that may be assigned to an officer.

19. It is found that the requested records are logs or other documents that contain information on the movement or assignment of security personnel within the meaning of §1-210(b)(19)(iiv), G.S.

20. The complainant contended at the hearing that there are no reasonable grounds to believe that disclosure of the requested records may result in a safety risk, including the risk of harm to any person because: (1) since the records he has requested are old schedules they have very little value to a person with criminal intent; (2) he and other officers had been given copies in the past; and (3) the information is obtainable from various other sources.

21. The respondent contended at the hearing and in his brief, that there is enough information in the requested records to establish a pattern of the movement or assignment of UCONN’s security personnel, and that such information would be useful to persons with criminal intent because it could help them plan criminal acts in a way to avoid detection and apprehension.

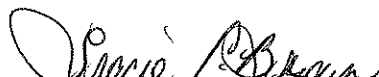
22. At the hearing on this matter, the respondent submitted an un-redacted copy of the requested records for in camera inspection which have been identified as in camera record #s IC2011-632-001 through IC2011-632-010.

23. After careful review of the in camera records, it is found that the respondent had reasonable grounds to believe that disclosure of the requested records may result in a safety risk, including the risk of harm to any person within the meaning of §1-210(b)(19), G.S.

24. Consequently, it is concluded that the requested records are permissibly exempt from the disclosure provisions of §§1-210 and 1-212, G.S., and that the respondent did not violate the disclosure provisions of the FOI Act, 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 hereby dismissed.

  
\_\_\_\_\_  
Attorney Tracie C. Brown  
as Hearing Officer