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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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Guy Sullivan,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-010

Chairman, State of Connecticut, Connecticut
Council on Developmental Disabilities; and
State of Connecticut, Connecticut Council on
Developmental Disabilities,
Respondent(s)

October 23, 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, November 14, 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 November 2, 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 November 2, 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 November 2, 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: Guy Sullivan
Jane D. Cumerford, AAG

10/23/12/FIC# 2012-010/Trans/wrbp/SDL/GFD/CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Guy Sullivan,

Complainant

against

Docket #FIC 2012-010

Chairman, State of Connecticut,
Connecticut Council on Developmental
Disabilities; and State of Connecticut,
Connecticut Council on Developmental
Disabilities,

Respondents

October ~~10~~¹⁷, 2012

The above-captioned matter was heard as a contested case on July 18, 2012, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the above captioned matter was consolidated with Docket #FIC 2011-640, Guy Sullivan v. Frank Reed, Acting Chairman, Connecticut Council on Developmental Disabilities; Molly Cole, Executive Director, State of Connecticut, Connecticut Council on Developmental Disabilities; Membership Committee, State of Connecticut, Connecticut Council on Developmental Disabilities; and State of Connecticut, Connecticut Council on Developmental Disabilities.

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 letter of complaint, dated January 4, 2011 and filed on January 6, 2011, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying the complainant access to the requested records described in paragraphs 3, 5 and 7, below. The complainant also alleged that the respondents and/or committees of the respondents violated the FOI Act by holding secret meetings and failing to maintain and post notices, agendas and minutes of such secret meetings. The complainant further alleged that the respondents denied him the right to videotape a public meeting of the respondent council. In his complaint, the complainant requested that the commission order the production of all responsive records, including missing records, and that the commission "conclude all such meetings and resultant decisions declared null and void." The complainant also requested an award of all fees

pursuant to 5 U.S.C. § 552(a)(4)(E) as well as civil penalties against all named respondents.

3. It is found that, by letter and by email dated October 27, 2011, the complainant requested the following:

- a. "to inspect the minutes and agendas of all meetings of the Connecticut Council on Developmental Disabilities, all Committees, sub-committees, task forces and ad-hoc committees of the Council between the time period of January 1st, 2007 and November 1st, 2011" including "any and all written correspondence and phone logs to or from Mr. David King;" and
- b. "to inspect and copy all emails [between the period of October 1st, 2010 and November 1st, 2011,] that were sent to/sent from, any of the following individuals by their proper names or whatever nickname or alias may have been used:"
 - i. Edward Preneta
 - ii. Frank Reed
 - iii. Anita Tremarche
 - iv. Margaret Cohan
 - v. Sarah Newell
 - vi. Gerald (Gerry) Daley
 - vii. Molly Cole
 - viii. James Welsh
 - ix. Kathryn DuPree
 - x. Alvin Wilson
 - xi. Natalie Wagner
 - xii. Thomas Hennick
 - xiii. Clifton Leonhardt
 - xiv. Ms. Cordula
 - xv. Maryann Lombardi
 - xvi. Mary-Ann Langton
 - xvii. Candace Low
 - xviii. William Knight
 - xix. Gretchen Knauff
 - xx. Sheryl Matney

The complainant stated that he would bring his own hand-held scanner and electronic storage device to copy hard copies and email records, respectively. The complainant also stated that the requested records were necessary for him to do his due diligence as a council member, therefore, he should be allowed to inspect and copy such records at no cost on November 1, 3 or 7, 2011 at 9:30 a.m.

4. It is found that, by letter dated October 28, 2011, the respondents' director acknowledged the complainant's request, described in paragraph 3, above, but also asked the complainant for clarification of such request. The respondents' director also stated that she would not be available to provide the complainant with access to responsive records on November 1, 2011.

5. It is found that, by letter dated October 31, 2011, the complainant clarified his request by stating that he was requesting to "inspect all agendas and minutes of all committees, subcommittees, task-forces, and ad-hoc committees" of the respondent council, including "any and all meetings held by the Council if a meeting was held under an alias other than those delineated above." The complainant also modified his original request described in paragraph 3.a., above, to include records dating back to January 1, 2005 (hereinafter "meeting records"). The complainant further renewed his request for the email records described in paragraph 3.b., above.

6. It is found that, by letter dated November 2, 2011, the respondents' director informed the complainant that his records request was still being processed. It is also found that the respondents' director indicated that minutes, agendas and related documents of the respondent council's meetings, committee minutes and printed emails that included communications to and from Molly Cole dated from July 1, 2011 through November 1, 2011 and Mary Langton, were available for inspection on November 14, 16, 17 or 18, 2011, at their offices. The respondents' director further stated that they were "continuing to search both hard copy and electronic files for any ad hoc committee meeting minutes, task forces or other subcommittee meeting minutes/agendas/documents." In addition, the respondents' director stated that she requested the restoration of responsive emails through the Department of Information Technology ("DOIT"), who agreed to keep the respondents apprised of the time required to restore email records from their email system.

7. It is found that, by letter dated November 3, 2011, the complainant modified his original request described in paragraph 3.b., above, to include email records through November 15, 2011 (hereinafter "email records"). It is also found that, in such letter, the complainant stated that the respondents violated the promptness requirements of the FOI Act by delaying and denying prompt access to responsive records when they proposed alternative dates to inspect responsive records.

8. It is found that, by letters dated November 4, 8 and 9, 2011, the respondents' director updated the complainant on the status of his request, the cost to copy responsive records and the possible dates the complainant could visit the respondents' offices to inspect such records. It is also found that the respondents' director stated that she had contacted DOIT again regarding the restoration of requested emails and that she was not delaying or denying the complainant access to responsive records.

9. It is found that on December 8, 2011, the respondents provided the complainant with access to responsive records at the respondents' offices. It is also found that the complainant was permitted to inspect and copy responsive hard copy documents

maintained by the respondents at their offices, including printed emails which included communications to/from Molly Cole dated from July 1, 2011 through November 1, 2011, and all requested e-mail communications to/from Mary Langton, as described in paragraphs 3.a., 3.b.vii. and 3.b.xvi., above. It is further found that the respondents withheld specific records deemed attorney-client privileged that were left by the former director, Edward Preneta.

10. 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.

11. 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.

12. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record.”

13. It is found that the records requested by the complainant and described in paragraphs 3, 5 and 7, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

14. At the hearing on this matter, the complainant stated that he wished to withdraw the portion of his complaint concerning the allegations that the respondents denied him the right to videotape a public meeting of the respondent council. However, the complainant is pursuing his complaint with regards to the allegations that the respondents failed to promptly provide him with all responsive records described in paragraphs 3, 5 and 7, above. The complainant is also pursuing his claim that the respondents and/or committees of the respondents held secret meetings and failed to maintain and post notices, agendas and minutes of such secret meetings.

15. With respect to the email records described in paragraphs 3.b. and 7, above, the complainant contended that the respondents denied him prompt access to the email records and that the respondents have failed to provide a satisfactory reason for knowingly and willfully delaying a response to his request for the remaining email records. The complainant specifically contended that he has yet to obtain the email records of Molly Cole dated prior to July 1, 2011 and all responsive email records of the prior director, Edward Preneta, who retired on June 30, 2011. The complainant also had not received email records of Margaret Cohan.

16. At the time of the hearing, the respondents contended that on December 8, 2011, they had provided the complainant with all responsive email records that were in their offices and were not deemed attorney-client privileged. The respondents also contended that the process for responding to requests for computer-stored email records of staff that are not readily retrievable at their offices from an electronic or hard copy file, including the emails related to the complainant's request, is extraordinarily time-consuming and burdensome, since it requires that DOIT search and restore computer-stored email records from back-up copies for later review by the respondents' staff. The respondents further contended that any delay in providing the complainant with the remaining email records was due to DOIT's estimate of one and one half (1.5) years to complete the restoration process and limited staffing to review the emails once they were restored by DOIT. In addition, the respondents contended that portions of the complainant's request for emails pertain to records not maintained by the respondents or by DOIT on behalf of the respondents.

17. It is found that the respondents do not maintain their computer-storage email system, and must rely on DOIT for the restoration of email accounts not readily retrievable at their offices from an electronic or hard copy file.

18. It is found that Edward Preneta, the respondents' former director, routinely deleted emails prior to retiring as director on June 30, 2011. It is also found that DOIT had to perform restorations from daily back-ups of Edward Preneta's email inbox folder and portions of his sent folder, in order to respond to the complainant's request for email records, which DOIT estimated would take up to one and one half (1.5) years to complete because of its workload. In addition, it is found that the respondents do not maintain Molly Cole's email records prior to July 1, 2011, since she was employed by the University of Connecticut during that period.

19. It is found that the respondents do not maintain or keep on file the records described in paragraphs 3.b.v., 3.b.vi., 3.b.viii., 3.b.ix., 3.b.x., 3.b.xi., 3.b.xii., 3.b.xiii., 3.b.xiv., 3.b.xvii., 3.b.xix. and 3.b.xx., above, since they are not employees of the respondents. It also further found that the respondents were not able to locate any responsive email records of Margaret Cohan, described in paragraph 3.b.iv., above.

20. It is found that, at the time of hearing on this matter, the respondents had provided the complainant with all responsive email records maintained or kept on file at

their offices except for portions of records they claimed were attorney-client privileged, and records being restored by DOIT from Edward Preneta's email inbox folder.

21. Based on the facts and circumstances of this case, it is found that the respondents reasonably attempted to provide the complainant with the email records that he sought. It is also found that the respondents have repeatedly assured the complainant that they would promptly provide him with Edward Preneta's remaining email records once the restoration and review process was completed.

22. Accordingly, it is concluded that the respondents did not violate the promptness requirements of §§1-210(a) and 1-212(a), G.S., with respect to the requested email records.

23. With respect to the complainant's claim that the respondents and/or committees of the respondents held secret meetings and failed to maintain and post notices, agendas and minutes of such secret meetings, §1-200(2), G.S., provides in relevant part that:

“Meeting” means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power intended for the purpose of discussing matters relating to official business.

24. Section 1-210(a), G.S., provides in relevant part that “[e]ach such agency shall make, keep and maintain a record of the proceedings of its meetings.”

25. Section 1-225, G. S., provides in relevant part that:

(a) the meetings of all public agencies . . . shall be open to the public

(c) The agenda of the regular meeting of every public agency. . . shall be available to the public and shall be filed, not less than twenty-four hours before the meeting to which they refer, (1) in such agency's regular office or place of business, and (2) . . . in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitown district or agency . . . Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not

included in such filed agendas may be considered and acted upon at such meetings

(d) Notice of each special meeting of every public agency... shall be given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof ...in the office of the clerk of such subdivision for any public agency of a political subdivision of the state.... The...clerk shall cause any notice received under this section to be posted in his office. Such notice shall be given not less than twenty-four hours prior to the time of the special meeting; provided, in case of emergency...any such special meeting may be held without complying with the foregoing requirement for the filing of notice but a copy of the minutes of every such emergency special meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the...the clerk of such political subdivision...not later than seventy-two hours following the holding of such meeting. The notice shall specify the time and place of the special meeting and the business to be transacted.

26. At the hearing in this matter and in his complaint, the complainant contended that the following committees of the respondents held secret meetings and failed to maintain and post notices, agendas and minutes of such secret meetings:

- a. Mothers From Hell 2 Connecticut Committee
- b. Personal Assistant Committee
- c. Medical Safeguards Committee
- d. Powerfest Committee
- e. By-Laws Committee
- f. Transition Committee
- g. Housing Task Force Committee
- h. Legislative Planning and Policy Committee
- i. Rapid Response Team Committee

The complainant did not allege specific dates the respondents held such secret meetings in his complaint.

27. The Commission takes administrative notice of its decision in Docket #FIC 2011-227; Guy R. Sullivan v. Anita Tremarche and Frank Reed, Transition Committee, State of Connecticut, Council on Developmental Disabilities, and Transition Committee, State of Connecticut, Council on Developmental Disabilities ("Docket #FIC 2011-227"). That decision concluded that proceedings of the council's Transition Committee were meetings within the meaning of §1-200(2), G.S., and that the Transition Committee

violated the meeting provisions of §1-225, G.S., when it failed to post its agendas and comply with the notice and minutes requirements of the FOI Act.

28. At the hearing in this matter, the respondents acknowledged the Commission's order in Docket #FIC 2011-227, and contended that they have complied with such order with respect to the Transition Committee records. The respondents also contended that they had provided the complainant with the agendas and minutes for the By-Laws and Legislative Planning and Policy Committees, which are also available on their website. The respondents contended, however, that there are no Mothers From Hell 2, Personal Assistant, Medical Safeguards, Powerfest, Housing Taskforce and Rapid Response Team Committees, as alleged in the complainant's complaint.

29. It is found that the respondents' director provided the complainant with minutes recreated by council members' notes as such records were provided to her in compliance with Docket #FIC 2011-227. Based on the respondents' director's credible testimony, the following is found with respect to each committee:

- a. The Mothers From Hell 2 Connecticut Committee does not exist.
- b. The Personal Assistant Committee does not exist.
- c. The Medical Safeguards Committee does not exist, but the respondent council funds a Medical Safeguards project.
- d. The Powerfest Committee does not exist, but Powerfest was an initiative of the respondent council several years ago.
- e. The respondents provided the complainant with all responsive records of the By-Laws Committee.
- f. The respondents provided the complainant with all responsive records of the Transition Committee.
- g. The Housing Task Force Committee does not exist. However, a work group of council members exist, who acted on housing task force matters during council meetings. All work done by the group was done at public council meetings and was reflected in the council's agendas and minutes.
- h. The respondents provided the complainant with all responsive records of the Legislative Planning and Policy Committee.
- i. The Rapid Response Team Committee does not exist. However, a work group of council members was created for the purpose of responding to the legislature, but the group no longer exist. All rapid response team work was done at the Legislative Planning and Policy Committee meetings and was reflected in the Legislative Planning and Policy Committee's agendas

and minutes. All records pertaining to the actions of the rapid response group were provided to the complainant.

30. It is found that the respondents' director, upon starting as director of the council on July 1, 2011, was immersed in uncompleted projects left by the prior director. It is also found that her inadvertent failure or delay in complying with the notice, minutes, and meetings requirements of the FOI Act was in part due to the respondent council's staff shortage and her immersion in the task of completing an outstanding five-year plan for submission in Washington.

31. It is therefore found that the respondents' director promptly provided the complainant with all of the records requested by the complainant as described in paragraphs 3.a. and 5, above.

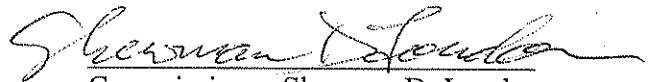
32. With regard to the allegations in paragraphs 3.a. and 5, above, it is found that the respondents did not conceal their meetings or conduct their meetings in secret.

33. Based on the foregoing, it is concluded that the respondents did not violate §1-225(a) and (d), G.S., in that regard.

34. Based upon the absence of an FOIA violation in this case, the Commission has no reason to consider any of the forms of relief requested 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.


Commissioner Sherman D. London
as Hearing Officer