



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Nancy Burton,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-486

Daniel Esty, Commissioner, State of  
Connecticut, Department of Energy and  
Environmental Protection; and State of  
Connecticut, Department of Energy and  
Environmental Protection,  
Respondent(s)

May 28, 2013

## 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, June 26, 2013**. 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 14, 2013**. 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 14, 2013**. 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 14, 2013**, 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: Nancy Burton  
Melinda M. Decker, Esq.  
Kenneth Collette, Esq.

5/28/13/FIC# 2012-486/Trans/wrbp/LFS//CAL

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Nancy Burton,

Complainant

against

Docket #FIC 2012-486

Daniel Esty, Commissioner, State of  
Connecticut, Department of Energy and  
Environmental Protection; and State of  
Connecticut, Department of Energy and  
Environmental Protection,

Respondents

May 22, 2013

The above-captioned matter was heard as a contested case on February 14, 2013. By inadvertence, the proceedings failed to record, requiring a second hearing on April 23, 2013, at which time the complainant and the respondents again appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

The complainant requested that the Commission issue a subpoena for the named respondent. The hearing officer denied such request because the testimony of the named respondent was not necessary for resolving the matter's material questions of fact.

The complainant stated at the hearing that she intended her appeal to be solely against the named respondent and not the Department of Energy and Environmental Protection ("DEEP"). Her statement is consistent with her letter of appeal to this Commission; accordingly, DEEP is hereby dismissed as respondent.

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 on August 23, 2012, the complainant sent an e-mail to the respondent commissioner requesting records pertaining to Dominion Nuclear Connecticut, Inc., and the Millstone Nuclear Power Station.
3. It is found that neither the respondent commissioner nor anyone from DEEP replied to the complainant's request by September 4, 2012.

4. By letter filed September 4, 2012, the complainant appealed to this Commission, alleging that the respondent violated the Freedom of Information ("FOI") Act by failing to provide her with the records she requested. The complainant requested the imposition of civil penalties against the commissioner.

5. 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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides, in relevant part:

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

7. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

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

9. It is found that the complainant sent her request by e-mail to the commissioner's personal agency e-mail address.

10. The respondent concedes, and it is found, that the commissioner timely received such e-mail.

11. The respondent also concedes, and it is found, that neither the Commissioner nor anyone from DEEP acknowledged the complainant's request or complied in any way prior to the complainant's appeal in September 2012.

12. It is found that DEEP's FOI administrator and liaison, who was appointed by the commissioner, learned of the complainant's request when she received the Notice of Appeal from this Commission, on October 4, 2012.

13. It is found that the respondent, through his FOI administrator, complied with the complainant's request at that time.

14. The respondent concedes, and it is found, that he should have complied with her request at the time that it was first made, in August 2012.

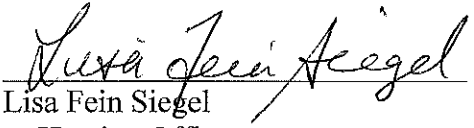
15. It is concluded that the respondent violated the FOI Act by failing to provide records to the complainant promptly.

16. It is found that, since August 2012, the respondents have established and reviewed protocols to ensure that electronic requests for public records do not get lost and that all officials and employees of DEEP, including the respondent commissioner, know established procedures for prompt compliance with FOI requests.

17. After consideration of the entire record in this case, the Commission declines to consider the imposition of civil penalties against the respondent.

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

1. Henceforth, the respondent shall comply promptly with the FOI Act.

  
Lisa Fein Siegel  
as Hearing Officer