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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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Michael Selvaggi,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-608

Molly Cole, Executive Director, State of Connecticut,
Connecticut Council on Developmental Disabilities; Cathleen
Adamczyk, Disability Policy Specialist, State of Connecticut,
Connecticut Council on Developmental Disabilities; and State of
Connecticut, Connecticut Council on Developmental Disabilities,
Respondent(s)

June 24, 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, July 24, 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 July 12, 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE July 12, 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 July 12, 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: Michael Selvaggi
Emily V. Melendez, Esq.

2013-06-24/FIC# 2012-608/Trans/wrbp/GFD//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Selvaggi,

Complainant

against

Docket #FIC 2012-608

Molly Cole, Executive Director, State of Connecticut, Connecticut Council on Developmental Disabilities; Cathleen Adamczyk, Disability Policy Specialist, State of Connecticut, Connecticut Council on Developmental Disabilities; and State of Connecticut, Council on Developmental Disabilities,

Respondents

June 13, 2013

The above-captioned matter was heard as a contested case on May 7, 2013, 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 September 25, 2012, the complainant requested that the respondents provide him with a copy of the attachments referenced in their 5-year strategic plan and the assurances required to be included in such plan under 42 U.S.C. §§15024 et seq. (hereinafter the "requested records").¹ The complainant specifically stated that the requested records were not included among the records provided to him by the respondents in response to a prior request for a copy of the respondents' 5-year strategic plan.

¹ As a condition to receiving assistance from the United States Department of Health and Human Services, the respondent council is required to prepare and submit a 5-year strategic state plan to the United States Secretary of Health and Human Services. See 42 U.S.C. §§15021 et seq. and 42 U.S.C. §§15024 et seq. In addition, 42 U.S.C. §§15024 et seq. outlines the requirements of a 5-year state plan that must be prepared and submitted to the United States Secretary of Health and Human Services under 42 U.S.C. §§15021 et seq.

3. It is found that the respondents forwarded the complainant's request to the Department of Developmental Services ("DDS"), which is the "designated State agency" that provides administrative support to the respondent council under 42 U.S.C. §15025 (d).² It is also found that among the various administrative support services provided to the respondents by DDS, is the service of administering the respondents' FOI requests.

4. It is found that even prior to the complainant's September 25, 2012 request, Joan Barnish, a staff member of the DDS responsible for administering FOI requests, was also assigned the role of administering the respondents' FOI requests.

5. It is found that, by letter dated September 25, 2012 to the complainant, Joan Barnish acknowledged receipt of the complainant's September 25, 2012 request for records and stated that the respondents were reviewing his request to determine if there were responsive records.

6. It is also found that, by emails dated October 3, 9, and 22, 2012, Joan Barnish attempted to inform the complainant that 41 pages of responsive records were available for copying or inspection, but the complainant had blocked her email address. Joan Barnish also stated the cost for copies of the responsive records, and explained the procedures for scheduling a time to inspect such records at DDS' offices.

7. By letter dated October 23, 2012 and filed with the Commission on October 24, 2012, the complainant alleged that the respondents violated the FOI Act by failing to provide him with a copy of the records described in paragraph 2, above. The complainant also requested the assessment of civil penalties against the respondents.

8. 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.

9. 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

² 42 U.S.C. §15025 (d) states, in relevant part, that "[e]ach State that receives assistance under this part shall designate a State agency that shall, on behalf of the State, provide support to the Council."

promptly during regular office or business hours . . . (3)
receive a copy of such records in accordance with section
1-212.

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

11. It is found that to the extent the respondents maintain the requested records, such records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

12. At the hearing on this matter, the complainant contended that the respondents have not provided him with a copy of the attachments referenced in the requested records and the assurances required to be included in such records under 42 U.S.C. §§15024(c). The complainant also contended that the executive director of the respondent council, Molly Cole, is "entrusted with exclusive control of the respondents' records" and therefore, Ms. Cole's failure to personally respond to his request is a denial under §1-206(b), G.S. The complainant further contended that Joan Barnish has no authority to respond to any of the complainant's FOI requests to the respondents since Joan Barnish is an employee of DDS and "not a paid staff member" of the respondent council.

13. As to the complainant's allegations that he was not provided with a copy of all of the attachments referenced in the requested records and the assurances required under federal law, it is found that the respondents made available to the complainant all responsive records which they maintain. It is also found that prior to the complainant's September 25, 2012 request, the respondent Cathleen Adamczyk emailed the complainant a link to an electronic copy of the 5-year plan, which contains all responsive records.

14. As to the complainant's claim that Molly Cole's failure to personally respond to his request is a denial under §1-206(b), G.S., it is concluded that nothing in the FOI Act prevents a public agency or official such as the respondent Molly Cole from delegating the responsibility of responding to a public records request.

15. With respect to the requested records, it is found that the respondents made numerous attempts to communicate with the complainant regarding his September 25, 2012 request.

16. It is found that the complainant blocked the email addresses of the respondent council's executive director, Molly Cole, and Joan Barnish, preventing them from communicating with the complainant about his September 25, 2012 request for records. It is also found that the complainant conceded that he reprogrammed his email settings to block any incoming emails from Molly Cole and Joan Barnish.

17. It is also found that the complainant continued to communicate with the respondent Cathleen Adamczyk about the respondents' alleged failure to comply with his

September 25, 2012 request, without informing the respondents that he had blocked the email addresses of Molly Cole and Joan Barnish, who were attempting to communicate with the complainant about such request.

18. It is found, therefore, that the respondents made reasonable efforts to respond to, and comply with, the complainant's September 25, 2012 request for records.

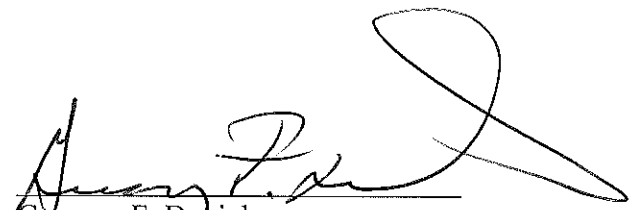
19. It is also found that the respondents did not deny the complainant's request to inspect or copy records, and promptly made all responsive records available for the complainant.

20. It is concluded, therefore, that the respondents did not violate the FOI Act as alleged by the complainant.

21. Consequently, the Commission declines to consider the complainant's request for civil penalties against the respondents.

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.


Gregory F. Daniels
as Hearing Officer