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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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Raymond Ostasiewski,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-018

Commissioner, State of Connecticut,
Department of Revenue Services; and State of
Connecticut, Department of Revenue Services,
Respondent(s)

September 24, 2014

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, October 8, 2014**. 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 October 1, 2014**. 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 October 1, 2014**. 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 October 1, 2014**, 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: Raymond Ostasiewski
Louis P. Bucari, Esq.

2014-09-24/FIC# 2014-018/Trans/wrbp/LFS//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Raymond Ostasiewski,

Complainant

against

Docket #FIC 2014-018

Commissioner, State of Connecticut,
Department of Revenue Services; and
State of Connecticut, Department of
Revenue Services,

Respondents

September 23, 2014

The above-captioned matter was heard as a contested case on July 24, 2014, 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 on September 30, October 1, and October 2, 2013, the complainant requested copies of emails sent by and to five named individuals for either a one week or a four day period in September 2013. It is found that the complainant also requested records related to the interviewing and hiring process for a vacant position with the respondents.
3. It is found that on November 20, December 12, December 13, December 16, 2013, the complainant communicated with the respondents about his requests. It is found that the respondents provided no records during that time, and assured the complainant that they were making "every effort to comply" with the request.
4. By letter filed January 6, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the records he requested.
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 ... (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 complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. It is found that on September 5, 2013, the complainant learned that he did not receive two promotional opportunities in his department. It is found that the complainant believed that he had 180 days from September 5, 2013 to file a complaint with the Commission on Human Rights and Opportunities ("CHRO").

10. It is found that the complainant filed the requests that are the subject of this matter in order to gather records that he believed would be pertinent to his claim of age discrimination.

11. It is found that on October 3, 2013, the attorney for the respondents who was assigned to comply with the complainant's request acknowledged the request and informed the complainant that the respondents were "currently compiling records it deems to be responsive to your requests."

12. It is found that on October 16, the complainant asked the attorney for the status of his requests and asked that he provide records as they became available.

13. It is found that the respondents' attorney replied to the complainant on October 31, 2013, and informed him that he was continuing to collect and review responsive records.

14. It is found that the complainant subsequently asked the respondents several times about the status of his requests, as described in paragraph 3, above, but the received no records during this time.

15. It is found that the complainant filed his complaint with the CHRO on January 23, 2014, without the benefit of reviewing any of the records he had requested in late September and the first days of October, 2013.

16. It is found that on March 27, 2014, the respondents filed an answer to the complainant's CHRO complaint. It is found that the respondents still had not provided any records to the complainant at this time in response to his requests for records, but he did receive some of the records through the respondents' answer to the CHRO complaint.

17. It is found that the respondents provided records to the complainant in response to his requests on April 16, 2014, *two hundred days* after the respondents acknowledged his requests on October 3, 2013.

18. It is found that the respondents withheld some of the records requested pursuant to exemptions, but the complainant's problem with the respondents' compliance was its lack of promptness.

19. It is found that the attorney assigned to comply with the complainant's request did not gain access, through the respondents Information Services Division, to the employee email accounts until October 23, 2013.

20. It is found that the attorney reviewed the emails and created a draft response explaining what records the respondents would provide and citing exemptions and relevant case law. It is found that the attorney gave the response for the General Counsel's review. It is found that when the General Counsel reviewed the report sometime after November 8, 2013, he deemed it to be "lacking in many respects" and in need of additional work. It is found that, in particular, not all responsive emails had been provided for review.

21. It is found that the respondent attorney then communicated again with Information Services for access to the additional emails, and he was granted access to such emails on January 10, 2014.

22. It is found that the attorney then drafted a second response, which he provided to the General Counsel for review on February 20, 2014.

23. It is found that the April 16, 2014 response to the complainant included the emails and all records that the respondents believed were not exempt from disclosure.

24. It is found that upon review of the emails, the complainant noticed that at least one was missing, because another email specifically called for a response and no response was provided in the records he received. It is found that the complainant informed the respondents of this issue on July 8, 2014, and the respondents finally provided that e-mail on July 21, 2014.

25. It is found that although the complainant requested emails for a small window of very recent time -- i.e., just seven days three weeks prior to the request -- some of the employees had already archived, deleted, or moved their emails into various files. The respondents claimed that such behavior made their job of retrieval much more difficult.

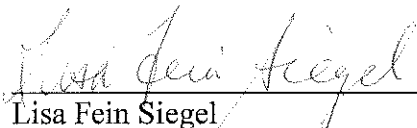
26. Nevertheless, it is found that the respondents' compliance more than six months after the complainant's relatively simple request for e-mails was far from prompt. It is concluded that the respondents violated §§1-210(a), and 1-212(a), G.S.

27. It is found that although the complainant does not challenge the respondents' claim of exemption for service ratings, interview questions and answers, and scoring keys, as has been interpreted by case law and, in turn, the Commission, the complainant suggested, reasonably, that it would have been better for the respondents to have told him much earlier than they did that such information was exempt from disclosure.

28. While the Commission does not believe, and the complainant did not contend, that the respondents acted in bad faith, the Commission is sympathetic to the complainant's assertion that the respondents' conduct in responding to his request for records was inconsiderate, stressful, and even obstructive, though not intentionally so.

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

1. Henceforth, the respondents shall strictly comply with the promptness requirements of §§1-210(a), and 1-212(a), G.S.
2. The Commission strongly urges the respondents to make sure all their employees understand the record retention requirements for emails and other public records.



Lisa Fein Siegel
as Hearing Officer