

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Revised Report  
of Hearing Officer

Adam Osmond,

Complainant

against

Docket #FIC 2015-202

Catherine Smith, Commissioner,  
State of Connecticut, Department of  
Economic and Community Development;  
and State of Connecticut, Department of  
Economic and Community Development,

Respondents

February 17, 2016

The above-captioned matter was heard as a contested case on August 18 and September 14, 2015, at which times the complainant and the respondents appeared 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. By emailed letter of complaint filed March 5, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying him access to and copies of certain public records.
3. It is found that by email dated October 2, 2014, the complainant requested access to and copies of the following records:
  - a. CORE-CT Job Data transactions including all tabs for new hires or promotions from January 2011 to now for DECD [the Department of Economic and Community Development] and DOH [the Department of Housing];
  - b. Copies of any and all letters of offers of employment, promotions, increase in compensation, decrease in compensation from January 2011 to now for DECD and DOH.
  - c. All emails related to the hiring of the Associate Accountant position that I was interviewed at DECD OFA, specifically but not limited to the three people who were on the interview panel;

- d. All emails where Associate Accountant appears in the body of the subject emails sent or received by the three people who interviewed me for the Associate Accountant for the DECD OFA unit;
- e. The spreadsheet that shows all the applicants and their qualifications;
- f. All emails where Adam or Osmond or Associate Accountant appears in the body or the subject, sent or received by Irena Baj-Wright;
- g. The last two completed full Affirmative Action report for DECD;
- h. All documents and emails sent to anyone at the Attorney General's office that related to my CHRO complaint;
- i. All emails where Associate Accountant appears in the body or the subject, sent or received by the Commissioner or any one of her secretaries;
- j. All emails between Commissioner Catherine Smith and Martin Anderson between June 6, 2013 to now that are related to me;
- k. All emails between Commissioner Catherine Smith and Erin Choquette between June 6, 2013 to now that are related to me;
- l. All emails between Commissioner Catherine Smith's secretaries and Erin Choquette between June 6, 2013 to now that are related to me;
- m. All emails between Commissioner Catherine Smith's secretaries and Martin Anderson between June 6, 2013 and now that are related to me; and
- n. All documents sent or received from DAS that are related to me from June 6, 2013 to now.

4. It is found that the respondents acknowledged the October 2, 2014 request on the next day, informed the complainant that requests were handled in the order that they were received, and further informed the complainant that there were 26 outstanding FOI requests, many voluminous, that had been received before his request.

5. It is also found that the respondents' FOI officer promptly notified eight individuals within the respondent Department that they would be asked to provide responsive materials at a future date (not sooner than 90 days), when the complainant's request came to the front of the line.

6. It is found that the complainant renewed his request by inquiring into its status on December 1, 2014.

7. It is found that the respondents replied on December 3, 2014 that there were 22 FOI requests still ahead of the complainant's, and that the paralegal assigned to FOI requests was currently working on an emergency project that consisted of a request for over 6,000 pages that she was in the process of reviewing.

8. It is found that the complainant treated the December 3, 2014 reply as a denial of his renewed request, and indicated that he had no choice but to file a complaint; but did not do so at that time.

9. It is found that the complainant again renewed his request by inquiring into its status on February 25, 2015.

10. It is found that the respondents replied on February 26, 2015 that there were still 22 FOI requests ahead of the complainant's, but that they would do their best to get the materials to him as soon as possible.

11. It is found that, no records having been provided to the complainant for nearly five months following his October 2, 2014 request (and his renewed requests on December 1, 2014 and February 25, 2015), the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying him access to and copies of the requested records.

12. It is found that the complainant's request came to the front of the line on April 15, 2015. His request was forwarded to the custodians of the records, who provided the majority of records within one or two weeks, with the final installments provided for review by the respondents' paralegal by July of 2015. That review was completed at the end of July 2015, and final review was conducted by the respondents' General Counsel.

13. It is found that 416 pages were located and provided to the complainant in response to his request.

14. 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.

15. 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. (Emphasis added).

16. 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."

17. It is found that the requested records are public records, within the meaning of §§1-200(5) and 1-210(a), G.S.

18. Section 5-225, G.S., provides:

All persons competing in any examination shall be given written notice of their final earned ratings and the minimum earned rating necessary to pass the examination. Not later than thirty days after the issuance of the final earned rating, *a person who has not achieved a passing rating* may inspect his or her papers, markings, background profiles and other items used in determining the final earned ratings, other than examination questions and other materials constituting the examination, subject to such regulations as may be issued by the Commissioner of Administrative Services. Not later than ten days after inspecting his or her papers, a person may, in writing, appeal to the Commissioner of Administrative Services the accuracy of his or her final earned rating, as based on the original examination paper or responses. The commissioner shall render a final decision on the person's appeal within thirty days thereafter and correct candidate lists as appropriate. [Emphasis added.]

19. Section 1-210(b)(6), G.S., provides that disclosure is not required of: "Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations."

20. It is found that completed applications for examination or employment were attached to the emails and other communications requested by the complainant, and that these were withheld from the complainant. It is concluded, consistent with long Commission precedent, that these applications are exempt from disclosure pursuant to §5-525, G.S. See, e.g., Personnel Director, Department of Income Maintenance v. FOIC, 214 Conn. 312 (1990); Miller v. Department of Labor, Docket #FIC 2012-203 (2013) (applications of individuals who applied for positions with Department of Labor exempt from disclosure pursuant to §5-225, G.S.), and Fisi v. Department of Health and Addiction Services, Docket #FIC 1994-055 (1995) (job applications for director's position exempt from disclosure pursuant to §5-225, G.S.); Winkler and Administrative and Residual Employees Union v. Commissioner, State of Connecticut, Department of Administrative Services, Docket #FIC 2005-492 (2006). But see Docket #FIC 2014-389, Nsonsa Kisala v. Commissioner, State of Connecticut, Department of Public Health, et al., and Docket #FIC 2015-109, Barry Natale v. Commissioner, State of Connecticut, Department of Education et al. (distinguishing employment applications for which there was no minimum earned rating necessary to pass the examination, no examination, and no list of candidates taking the examination that included each applicant's final earned rating).

21. It is additionally found that the respondents withheld the interview notes of panelists who conducted employment interviews, consistent with Commission precedent construing §1-210(b)(6), G.S. See, e.g., Osmond v. DSS, Docket #FIC 2013-105; Casey v. DOC, Docket #FIC 2003-377; Washington v. FOIC, 25 Conn. L.Rptr. 334 (1999), 1999 WESTLAW 711509.

22. It is found that the respondents conducted a diligent search for the records requested by the complainant, and provided all the non-exempt records in their custody or control.

23. The complainant contends that the records were not provided promptly.

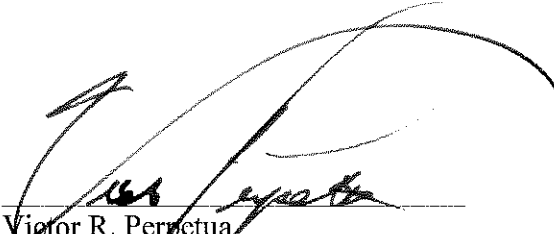
24. It is found, however, that based upon the scope of the complainant's request, the number of requests made before the complainant's, the magnitude of the requests made before the complainant's (a number of which numbered in the thousands of pages of records), and the personnel available to process FOI Act requests, that the respondents did not violate the promptness provisions of the FOI Act.

25. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complainant is dismissed.

2. As no evidence or argument was presented by either party concerning the possibility that some of the requested records may have included employment applications for which there was no minimum earned rating necessary to pass the examination, no examination, and no list of candidates taking the examination that included each applicant's final earned rating (see paragraph 20, above), no finding, conclusion or order is made with respect to the possibility of such records.



Victor R. Perpetua  
as Hearing Officer