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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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Jafar Razmi,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-634

Chief Officer, Office of Audit, Compliance and Ethics,  
State of Connecticut, University of Connecticut; and Office  
of Audit, Compliance and Ethics, State of Connecticut,  
University of Connecticut,  
Respondent(s)

April 19, 2016

## 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, May 11, 2016**. 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 April 29, 2016**. 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 April 29, 2016**. **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 **fifteen (15) copies** be filed **ON OR BEFORE April 29, 2016**, 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: Jafar Razmi  
Assistant Attorney General Holly J. Bray

2016-04-19/FIC# 2015-634/Trans/wrbp/KKR//TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jafar Razmi,

Complainant

against

Docket #FIC 2015-634

Chief Officer, Office of Audit,  
Compliance and Ethics, State of  
Connecticut, University of  
Connecticut; and Office of Audit,  
Compliance and Ethics, State of  
Connecticut, University of  
Connecticut,

Respondents

March 31, 2016

The above-captioned matter was heard as a contested case on December 17, 2015, and February 11, 2016, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. After the February 11<sup>th</sup> hearing, the respondents submitted nine affidavits to the Commission and, pursuant to §1-21j-38, of the Regulations of Connecticut State Agencies, such affidavits have been marked as Respondents' Exhibit 11 (after-filed).

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 letter dated May 19, 2015, the complainant requested from the respondents "communications in all forms, including letters, notes, petitions, emails, and/or reprimand letters to and from (and including copy to) Mun Choi, Kazem Kazerounian, Baki Cetegen, Sally Reis, Diane Van Scoter, Amvrossios C. Bagtzoglou, Michael Accorsi, Daniel Burkey and Nancy Fitzpatrick Meyers, with reference to Jafar Razmi, between 12/18/2012 and 5/19/2015."
3. It is found that, by letter dated May 19, 2015, the respondents acknowledged the request, described in paragraph 2, above, informed the complainant that the process of compiling and reviewing responsive records had begun, and that they would contact him to discuss the cost for the copies and to arrange delivery.

4. It is found that the university's compliance and public information specialist ("specialist") forwarded the request, described in paragraph 2, above, to an individual in the university's IT department, with instructions for that person to conduct a search of the university's servers, including the separate servers for the university's School of Engineering. It is found that the specialist informed the IT department that the search should include the terms "Jafar," and "Jafar Razmi." It is found that the specialist did not request that each of the individuals identified in paragraph 2, above, conduct a search of their own computers for electronic files and emails, or for paper records responsive to the request.

5. It is found that, during the months of June, July, August and September, the complainant, having received no records from the respondents, emailed the specialist on multiple dates to inquire as to when he could expect to receive such records. The specialist replied, on June 9 and July 8, 2015, that she was "continuing to process his request."

6. By email dated September 23, 2015 and filed September 24, 2015, 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, described in paragraph 2, above.

7. 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.

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

9. 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."

10. It is found that, to the extent the respondents maintain the records, described in paragraph 2, above, such records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that, by email dated October 9, 2015, the specialist informed the complainant that she anticipated having the responsive records available for him that day, and inquired whether he would prefer to pick them up or have them mailed to him. The respondents informed the complainant that they were waiving the “standard fee for processing” the documents, and that 15 pages of records were withheld pursuant to §§1-210(b)(1), 1-210(b)(4),<sup>1</sup> and 1-210(b)(10), G.S. In addition, the respondents informed the complainant that they had redacted student names pursuant to §§1-210(b)(11), and 1-210(b)(17), G.S.<sup>2</sup> It is found that the respondents emailed responsive records to the complainant on October 12, 2015.

12. At the December 17<sup>th</sup> hearing in this matter, the respondents claimed that they had provided all records responsive to the request, described in paragraph 2, above, and that they had performed a thorough search for such records. The complainant, however, asserted that the respondents had not provided him with all responsive records, and in support of that assertion, produced several emails and a letter that fell within the scope of the request but were not provided to him. The respondents speculated that perhaps those emails had been deleted from the servers; however, after further questioning by the hearing officer, the respondents acknowledged that they had failed to conduct a search for emails and other electronic files on the computers of each of the individuals identified in paragraph 2, above, and had failed to conduct a search for all other responsive records, including paper records, maintained by each such individual in his or her office.

13. At the December 17<sup>th</sup> hearing, the respondents stated that they would conduct an additional search for responsive records, and the hearing officer continued the hearing for that purpose.

14. At the February 11<sup>th</sup> hearing, the respondents testified, and it is found, that they conducted an additional search for records responsive to the request, which search consisted of contacting each of the nine individuals listed in paragraph 2, above, and requesting that each individual search for all records in his or her possession, both electronic and paper, that reference the complainant during the relevant time period, including all records maintained on any university issued device, server or mobile device, or any personal device if such records relate to university business and the complainant. It is found that each of the nine individuals conducted such search and responded to the university’s FOI coordinator, stating either that he or she maintained no responsive records, or by providing responsive records.

15. However, the complainant asserted at the February 11<sup>th</sup> hearing, that the respondents maintain additional responsive records that were not provided to him.

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<sup>1</sup> Although the respondents initially claimed certain responsive records were exempt pursuant to §1-210(b)(4), G.S., they did not claim such exemption at the hearing or on the index to the in camera records.

<sup>2</sup> At the hearing in this matter, the complainant stated that he was not contesting the redaction of student names and other identifiers.

16. Thereafter, the respondents submitted an affidavit from each of the nine individuals referenced in paragraphs 2 and 14, above. In such affidavits, each individual attested that he or she conducted a thorough search, as described in paragraph 14, above, for responsive records, and that they provided any such records to the respondents' FOI request coordinator. Each individual further attested that he or she did not delete or otherwise dispose of any record that would have been responsive to the request, described in paragraph 2, above. It is found that the respondents provided the records that were located as a result of the search, described in paragraph 14, above, to the complainant.

17. Based upon the foregoing, it is found that the respondents provided all records responsive to the request, described in paragraph 2, above, that they maintained at the time of the searches, described in paragraphs 4, 5 and 14, above, and for which they did not claim an exemption, to the complainant.

18. However, it is found that the respondents' failure initially to conduct a thorough and diligent search for records, and their failure to provide responsive records to the complainant on a rolling basis, resulted in a delay in providing such records to the complainant.

19. As noted in paragraphs 8 and 9, above, the FOI Act requires that public records must be promptly provided on request. "Promptly," as that term is used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982). Some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request. *Id.*

20. It is found that the respondents knew or should have known of the importance to the records to the complainant, in view of the fact that the complainant's employment contract with the university was not renewed in 2015, and the fact that the complainant had made it known to university officials that he believed he had been improperly terminated. It is found that the complainant informed the specialist that he needed such records "as soon as possible." Although the specialist testified that the university receives approximately 400 FOI requests each year, and had received "two or three" very large requests that were in progress around the same time as the complainant's request; that during the summer of 2015, she was out of the office for two weeks and worked "limited time" for an additional three weeks, due to a medical issue; and that she has many other duties in addition to responding to FOI requests, she offered no explanation as to why she failed, initially to conduct a thorough and diligent search for responsive records maintained by the individuals identified in the request. Moreover, it is found that had the specialist provided records to the complainant on a rolling basis, rather than waiting until she received and reviewed what she believed to be all responsive records from the IT

department before sending them to the complainant, the complainant would have received at least some of the requested records sooner.

21. Based upon the facts and circumstances of this case, it is concluded that the respondents failed to promptly comply with the complainant's request, as required by §§ 1-210(a) and 1-212(a), G.S.

22. With regard to the records claimed to be exempt from disclosure, the respondents submitted such records to the Commission for in camera inspection. Such records consist of emails and other records described on the index to the in camera records as "draft" letters, reports, and notes, and shall be referred to herein as IC 2015-634-001 through IC 2015-634-040.

23. With regard to the respondents' claim that IC 2015-634-001 through 016 are protected by the attorney-client privilege, the applicability of the exemption contained in § 1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002), and in that case, the Supreme Court stated that § 52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

24. Section 52-146r(2), G.S., defines "confidential communications" as:

All oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice...

25. As our Supreme Court has stated, a four part test must be applied to determine whether communications are privileged: "(1) the attorney must be acting in a professional capacity for the agency; (2) the communications must be made to the attorney by current employees or officials of the agency; (3) the communications must relate to the legal advice sought by the agency from the attorney, and (4) the communications must be made in confidence." Lash v. Freedom of Information Commission, 300 Conn. 511, 516 (2011), citing Shew v. Freedom of Information Commission, 245 Conn. 149, 159 (1998).

26. After careful inspection of IC 2015-634-001 through 016, it is found that such records are emails between Attorney Michael Eagan and several university officials. It is found that Attorney Michael Eagan was acting as legal counsel for the university; that the communications at issue were between Attorney Eagan and university officials; that the communications relate to legal advice sought by the university officials from Attorney Eagan;

and that the communications were clearly marked as “Privileged and Confidential Communication[s]” and thus made in confidence.

27. Based upon the foregoing, it is concluded that IC 2015-634-001 through 016 are communications protected by the attorney-client privilege, and that therefore, the respondents did not violate the FOI Act by withholding such records from the complainant.

28. With regard to the respondents’ claim that IC 2015-634-017 through 040 are exempt from disclosure pursuant to §1-210(b)(1), G.S., that provision states that disclosure is not required of “preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.” Notwithstanding the provisions of §1-210(b)(1), G.S., disclosure is required of “[i]nteragency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated....”

29. After careful inspection of IC 2015-634-017 through 040, it is found that such records are “preliminary drafts,” within the meaning of §1-210(b)(1), G.S., and that the respondents determined that the public interest in withholding these documents was clearly outweighed by the public interest in disclosure of such records. It is further found that such determination was “made in good faith,” and that the reasons given were “not frivolous or patently unfounded.” Van Norstrand v. Freedom of Information Comm’n, 211 Conn. 339, 345 (1989).

30. Moreover, it is found that the records, described in paragraph 29, above, are not “[i]nteragency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated,” within the meaning of §1-210(e), G.S., and therefore are not required to be disclosed under that statute.

31. Based upon the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding IC 2015-634-017 through 040 from the complainant.

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 in §§1-210(a) and 1-212(a), G.S.



Kathleen K. Ross  
as Hearing Officer