

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Russell Zimmerlin,

Complainant

against

Docket #FIC 2016-0609

Mayor, City of New Britain;
and City of New Britain,

Respondents

May 24, 2017

The above-captioned matter was heard as a contested case on February 6, 2017 and March 31, 2017, at which times 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 letter dated August 4, 2016, the complainant requested that the respondents provide him with copies of the following records:
 - a. All complaints against Erin Stewart and the responses to those complaints from November 5, 2013 until the present;¹
 - b. All complaints regarding discrimination of any type including, but not limited to, Age, Physical Disability, Ancestry, Race, Color, Religious Creed, Familial Status, Learning Disability, Mental Illness/Disability, Mental Retardation, National Origin, Ethnicity, Nationality, or Alienage made against any worker in the Mayor's office or against the Mayoral office from November 5, 2013 until the present; and

¹ The Commission notes, and it was explained at the contested case hearing, that the end date for each of the three requests in this case was the date of the records request itself—that is, August 4, 2016.

- c. All communications to or from any worker in the Mayor's office including, but not limited to, emails, text messages, internal memoranda, and other documents regarding Alfred Mayo from November 5, 2013 until the present date. . . .

3. By letter dated and filed August 25, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with copies of the records described in paragraph 2, above.

4. 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.

5. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

6. 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."

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

8. At the first contested case hearing, the respondents testified that they provided all responsive records to the complainant on August 18, 2016. It is found that the responsive records consisted of four pages of emails responsive to the request in paragraph 2.c, above. It is found that the four pages of emails were accompanied by the affidavit of Mayor Erin E. Stewart. In her affidavit, Mayor Stewart averred that the four pages of emails provided to the complainant represented all of the correspondence that she has in her possession concerning Mr. Alfred Mayo.

9. The respondents contended that they had no records responsive to either the requests in paragraph 2.a, or 2.b, above.

10. In response, the complainant contended that it was not credible that the respondents had no additional responsive records and he questioned the sufficiency of the respondents' search. Because the respondents were unable to provide evidence with regard to the scope of their search for records responsive to the requests in paragraph 2, above, the hearing was continued.

11. At the continued contested case hearing, the respondents produced Elba Mercado, the respondent city's Human Rights Affirmative Action Officer and Fair Rent Administrator, and Kim Jehning, the Mayor's Director of Constituent Services.

12. Ms. Mercado testified, and it is found, that, if a complaint of discrimination was filed in any manner against or with any of the respondents, it would be filed with her department, which is the Department of Human Rights and Opportunities (the "department"). After reviewing the request in paragraph 2.b, above, including the relevant timeframe of the request, it is found that Ms. Mercado searched her department's email system and computers generally for responsive records. It is further found that Ms. Mercado also searched through hardcopy records for records that would be responsive to the request in paragraph 2.b, above. It is found that Ms. Mercado's search yielded no responsive records.

13. In addition, Ms. Jehning testified, and it is found, that, if a complaint was filed in any manner against Mayor Stewart, it would be referred to Ms. Jehning for handling. After reviewing the request in paragraph 2.a, above, including the relevant timeframe of the request, it is found that Ms. Jehning searched the Mayor's office for responsive records. It is found that Ms. Jehning's search included an email search as well as a general computer search. It is further found that Ms. Jehning's search also included a search through hardcopy records. It is found that Ms. Jehning's search yielded no responsive records.

14. The Commission finds that the respondents conducted a thorough search for responsive records.

15. It is further found that, other than the four pages of emails referred to in paragraph 8, above, the respondents do not maintain responsive records.

16. Accordingly, 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 complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 24, 2017.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

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Mayor, City of New Britain;
and City of New Britain
c/o Joseph E. Skelly, Jr., Esq.
Corporation Counsel
27 West Main Street
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Cynthia A. Cannata
Acting Clerk of the Commission