

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Caryn Dickau,

Complainant

against

Docket #FIC 2017-0386

Executive Director, State of Connecticut;  
University of Connecticut Health Center;  
and State of Connecticut, University of  
Connecticut Health Center,

Respondents

May 9, 2018

The above-captioned matter was heard as a contested case on October 3, 2017 and December 28, 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 email sent shortly before June 13, 2017, the complainant requested that the respondents provide her with copies of the following records:
  - a. The State of Connecticut, federal and Medicare use of force regulations;
  - b. Valid radiology testing documents [for Lorette Buckland]<sup>1</sup>;
  - c. Code Strong records for Lorette Buckland; and
  - d. (1) Any complaints, lawsuits, arrests and convictions reported that were filed/made against UCONN Health and/or their staff members over the past five years for assault, battery, neglect, elder abuse, forced testing,

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<sup>1</sup> Mrs. Lorette Buckland is the complainant's mother.

over testing, forced medication, coercion, Code Strong, intimidation, harassment, sexual misconduct, restraint or isolation; and

(2) Any type of complaint, lawsuit or arrest reported about Nurse Shannon Zarge and any complaints from any other employees made against Shannon Zarge for improper conduct or violations of regulations (you may redact names as is necessary for privacy concerns).

3. It is found that, by email dated June 13, 2017, the respondents' Freedom of Information Officer, Attorney Scott Simpson, replied to each section of the complainant's request, as follows:

- a. I have provided all records that I can locate at our agency. Please be aware that the FOI Act does not require any public agency to conduct research on behalf of a requester;
- b. I have provided to you all records that we maintain. I will, however, raise this issue with our staff;
- c. I have provided to you all records that we maintain. No records have been withheld for any reason; and
- d. (1) I will investigate whether we have records relating to this request; and  
  
(2) We have no documented disciplinary records relating to Ms. Zarge.

4. Thereafter, it is found that, by email dated June 22, 2017, the complainant corresponded with the respondents. It is found that the complainant again requested the records described in paragraphs 2.a, 2.c, 2.d.1 and 2.d.2, above. It is further found that with regard to request 2.d.2, above, the complainant expanded the request to include the following: "any records of compliance and ethics complaints or violation records for any of the nurses that attended to the care of Lorette Buckland. . . ." It is further found that, with regard to four pages of records that had been disclosed to her with redactions, the complainant requested that the respondents either provide an explanation for the redactions or re-disclose the pages without redactions.<sup>2</sup>

5. Finally, it is found that, by email dated June 28, 2017, the complainant made a request for a copy of the following additional record: a recording of a telephone conversation that she had on June 28, 2017 with a University of Connecticut Health Center ("UCONN") police sergeant.

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<sup>2</sup> The complainant also indicated that the last name of the nurse she referred to in paragraph 2.d.2, above, was actually spelled "Zarger."

6. It is found that, on June 30, 2017, Attorney Simpson, on behalf of the respondents, acknowledged the complainant's request for this particular telephone conversation.

7. By email dated July 11, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide her with with copies of the records described in paragraph 2.b, 2.c, 2.d.1 and 2.d.2, above, as well as the four pages of records that had been disclosed with redactions, (see ¶ 4, above), and the records pertaining to the telephone conversation, (see ¶ 5, above). Accordingly, the Commission will address these requests, but will not address the request described in paragraph 2.a, above.

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 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.

10. 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."

11. 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.

12. It is found that, on March 26, 2016, the complainant's mother received medical treatment at UCONN. It is found that the complainant's mother informed the complainant that, at some point during her treatment, she was "assaulted" by UCONN's staff when she refused to undergo a medical procedure. It is found that, prior to issuing the requests for records at issue this case, the complainant received information from the respondents explaining that, during her mother's March 26, 2016 treatment, UCONN

medical staff called what is referred to as a “code strong.”<sup>3</sup> It is found that, subsequent to realizing that a code strong has been called for her mother, the complainant issued the requests for records set forth in paragraphs 2.b, 2.c, 2.d.1, 2.d.2, 4 and 5, above. The complainant contended that, despite the multiple disclosures of records that the respondents have provided to her, there should be more responsive records, including some kind of “code strong” report.

13. Attorney Simpson appeared and testified for the respondents at both contested case hearings.

14. Based on Attorney Simpson’s testimony, it is found that, on February 21, 2017, the complainant made an initial request for records concerning the events surrounding her mother’s March 26, 2016 medical procedure. It is found that, on March 30, 2017, the respondents gathered and disclosed 92 pages to the complainant. It is found that within this first disclosure there were four redacted pages.

15. It is found that, on April 10, 2017, the complainant made a second request for records. It is found that this second request focused on Mrs. Buckland’s medical/radiological records. It is found that the respondents fulfilled this second request in four installments. Specifically, it is found that, on May 3, 2017, the respondents forwarded the complainant a disc containing all of her mother’s radiology images and related medical information. It is found that, on May 17, 2017, the respondents forwarded the complainant a one-page document concerning the code strong that was called. And, it is found that, on May 24, 2017, the respondents forwarded the complainant the respondent health center’s code strong policy. It is further found that, subsequent to the May 24<sup>th</sup> disclosure, the respondents scanned and emailed the complainant all remaining medical records in the file that they maintained on her mother. It is found that this last disclosure was comprised of over 500 pages and had to be emailed to the complainant via four separate emails.

16. Thereafter, it is found that the complainant issued the requests referred to in paragraphs 2, 3, 4 and 5, above.

17. With regard to the contention that the respondents should have more records responsive to the request for “valid radiology testing documents,” as set forth in paragraph 2.b, above, it is found that the respondents do not maintain any additional, responsive records. In this regard, it is found that, in gathering these records, the respondents conducted a thorough search for all of Mrs. Buckland’s medical records. Specifically, it is found that the respondents’ search included a search of its Picture Archiving and Communications system or “PACS” system. The respondents’ PACS system holds all of their radiology records, including MRI and CT Scans, and related hardcopy radiology records. It is found that, in gathering the responsive PACS records, the respondents worked with Susan Pagon, Operations Manager for Diagnostic Imaging. In addition, the respondents gathered 500 pages, referred to in paragraph 15, above, from their Health Information Management System or “HIM” system. It is found that, in gathering the responsive HIM records, the respondents worked with Elena Albini, former Director of

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<sup>3</sup> “Code strong” is generally understood to be a policy that governs the restraint of a patient when, in the estimation of the clinical staff, such restraint is required.

Health Information Management. It is found that the HIM system contains the remainder of Ms. Buckland's medical record on file with UCONN—that is, the HIM system contains everything other than the radiology records, which are contained in the PACS system. Finally, it is found that the respondents searched the emails<sup>4</sup> and hard drives<sup>5</sup> of two former employees who were charged with investigating the allegations that arose from Ms. Buckland's March 26<sup>th</sup> medical procedure at the hospital (and the code strong specifically), as well as the email and hard drive of a Labor Relations Specialist within UCONN's Human Resources Department.

18. With regard to the contention that the respondents should have more records responsive to the request for "code strong records," as set forth in paragraph 2.c, above, it is found that the respondents do not maintain any additional, responsive code strong records. In this regard, it is found that the respondents searched their HIM system. It is found that this search uncovered UCONN's code strong policy. It is further found that the respondents inquired with Liz Grala, Nurse Manager for Psychiatry. It is found that Nurse Grala is UCONN's repository for code strong documents. It is found this inquiry led to the discovery of the one-page document that concerned the particular code strong that was called for Mrs. Buckland. It is found that these records were sent out to the complainant in May 2017. See ¶ 15, above.

19. It is found, thereafter, that the respondents received the requests at issue in this case. In response to the new requests, it is found that the respondents again searched for responsive code strong records. It is found that they again searched their HIM system. It is further found that the respondents also checked with Nurse Grala again. It is further found that the respondents also checked with UCONN's Public Safety Department; Office of Compliance and Ethics; and Chief of Staff's Office. It found that these subsequent searches did not unearth any additional, responsive code strong records.

20. With regard to the complainant's request for a copy of a telephone conversation she had with a UCONN police sergeant, it is found that the respondents checked with UCONN's Public Safety Department, but were not able to find this particular recording. However, in attempting to locate this particular record, it is found that the respondents determined that the complainant actually spoke with the Chief of Police of UCONN's Public Safety Department. It is found that the Chief's telephone line is not a recorded line.

21. With regard to the complainant's request for records evidencing complaints, lawsuits or arrests (and convictions) in the past five years concerning certain criminal acts, as set forth in paragraph 2.d.1, above, it is found that, at the time of the first contested case hearing, the respondents had disclosed eight pages of records to the complainant. It is found that these records were unearthed in UCONN's Labor Relations Department and

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<sup>4</sup> It is found that, in conducting the email searches, the respondents searched for the following specific search terms: Buckland, LB, and Lorette B. They also conducted a search using Mrs. Buckland's specific patient number.

<sup>5</sup> It is found that, in conducting the hard drive searches, the respondents searched for the following specific terms: Buckland, Trista, Maxson, Lucco and Torres. The respondents explained that Trista Maxson is a radiology technician at UCONN and that employee Lucco and employee Torres are "providers" within UCONN's radiology department.

concerned employees filing complaints against other employees regarding one or more of the specific acts enumerated in the request. The respondents testified, and it is found, that they also searched for responsive records in the Office of the General Counsel, and in the Office of Compliance and Ethics. It is found that no additional, responsive records were discovered.

22. At the hearing, the complainant explained that she was seeking formal litigation documents as well as employees filing complaints against their coworkers for abuse and other ethical violations, and patients filing complaints for the way in which they had been treated at UCONN. In this regard it is found that, subsequent to the contested case hearings, the respondents conducted another search for patient complaints and, after redacting patient names, the respondents disclosed 287 pages of patient complaint records to the complainant. Finally, it is found that, subsequent to the contested case hearings, the respondents had their outside counsel search records that would fall within the parameters of the request set forth in paragraph 2.d.1, above. It is found that outside counsel's search did not unearth any responsive records.<sup>6</sup>

23. With regard to the complainant's requests for records evidencing complaints, lawsuits or arrests concerning Nurse Zarger specifically, as set forth in paragraph 2.d.2, above, or complaints against any of the nurses or staff who attended to her mother on March 26<sup>th</sup>, as set forth in paragraph 4, above, it is found that the respondents searched for responsive records in their Labor Relations Department, Human Resources Department, Office of Compliance and Ethics and Public Safety Department. It is found that none of these searches unearthed any disciplinary or complaint records concerning Nurse Zarger or the other listed nurses or staff listed in the request set forth in paragraph 2.d.2, above, or the expanded request set forth in paragraph 4, above.

24. With regard to the pages that were disclosed with redactions, the respondents contended that the redacted information is exempt from public disclosure pursuant to §1-210(b)(10), G.S. (attorney client privilege). Originally, the complainant contended that there were four pages disclosed to her with redactions; however, in the end, six pages in total were disclosed to the complainant with redactions.

25. On January 10, 2018, the respondents submitted the six pages at issue to the Commission without redactions for an in camera inspection. Such records shall be referred to as IC-2017-0386-001 through IC-2017-0386-006.

26. Section 1-210(b)(10), G.S., permits an agency to withhold from disclosure records of "communications privileged by the attorney-client relationship."

27. 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 well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court

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<sup>6</sup> It is found that, with regard to the request for lawsuits filed against UCONN, the respondents also searched the Judicial Branch Website and the United States District Court's PACER system (that is, the federal courts' case tracking system), as well as consulted with staff at UCONN's Risk Management Department and an assistant attorney general who has been at UCONN for several years. None of these searches or consultations unearthed any additional responsive records.

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.

28. 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. . . .

29. The Supreme Court has also stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, supra at 149.

30. After a careful review of the in camera records, it is found that the redacted portions of the following in camera records evidence substantive communications that occurred between a public agency client and the agency’s attorneys: IC-2017-0386-001; IC-2017-0386-003; and IC-2017-0386-005.<sup>7</sup> It is further found that such portions evidence written communications transmitted in confidence between counsel and public officials or other employees acting within the scope of their employment with the respondent agency. It is further found that such portions relate to legal advice sought by the public officials and/or employees of the public agency from their attorneys, and received by the public officials and employees from said attorneys. Finally, it is found that the respondents did not waive the privilege.

31. It is concluded that the redacted portions of the in camera records referred to in paragraph 30, above, fall within the protection of the attorney-client privilege and are exempt from disclosure pursuant to §1-210(b)(10), G.S.

32. However, it is concluded that the redacted portions IC-2017-0386-002 and IC-2017-0386-006<sup>8</sup> do not contain confidential legal advice, and therefore such portions are not exempt from disclosure pursuant to §1-210(b)(10), G.S., and must be disclosed. It is further concluded that the respondents violated the disclosure provisions §§1-210(a) and 1-212(a), G.S., by denying the complainant’s request for an unredacted copy of these records.

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<sup>7</sup> For ease of reference, the redacted versions of these three pages are stamped 000017; 000027 and 00084, respectively. The redacted versions have been disclosed.

<sup>8</sup> For ease of reference, the redacted versions of these two pages are stamped 00018 and 00085, respectively. The redacted versions have been disclosed.

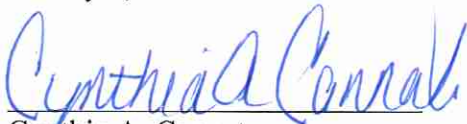
33. Finally, it concluded that the respondents failed to prove that the redacted portion of IC-2017-0386-004<sup>9</sup> is a communication between a public agency client and an attorney and that such communication concerns confidential, legal advice. Accordingly, it is concluded that the respondents violated the disclosure provisions §§1-210(a) and 1-212(a), G.S., by denying the complainant's request for an unredacted copy of this record.

34. Nonetheless, the respondent did an outstanding job in responding to the various requests for records in this case. The Commission understands that the complainant believes that the respondents should have more responsive records. However, what the Commission can fairly require any public agency to do is to produce all responsive records that exist at the time a request is made and to conduct a thorough search in doing so. Based on the evidence in this case, it is found that the respondents conducted a thorough search for records. Moreover, the Commission notes that the respondents disclosed records in a variety of formats in this case—hard copy records, discs and emails containing scanned records. The Commission further notes that the respondents did not charge the complainant for any of the records it disclosed. The Commission commends the respondents on their exceptional good will and generosity in this case.

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

1. The respondents shall forthwith provide the complainant with an unredacted copy of the records referred to in paragraphs 32 and 33 of the findings, above, free of charge.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 9, 2018.



Cynthia A. Cannata  
Acting Clerk of the Commission

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<sup>9</sup> For ease of reference, the redacted version of this page is stamped 00039. The redacted version has been disclosed.



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:

**CARYN DICKAU**, PO Box 5797, Santa Barbara, CA 93150

**EXECUTIVE DIRECTOR, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER; AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER**, c/o Assistant Attorney General Jeffrey M. Blumenthal, University of Connecticut Health Center, 263 Farmington Avenue, Suite AG093, Farmington, CT 06030



Cynthia A. Cannata  
Acting Clerk of the Commission