

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Final Decision

Jacques Parenteau,

Complainant

against

Docket #FIC 2018-0366

President, State of Connecticut,
University of Connecticut; and State of
Connecticut, University of Connecticut,

Respondents

May 8, 2019

The above-captioned matter was heard as a contested case on September 6, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with Docket #FIC 2018-0365, Jacques Parenteau v. President, State of Connecticut, University of Connecticut; and State of Connecticut, University of Connecticut.

At a meeting of the Commission on January 23, 2019, the Commission considered the hearing officer's proposed report dated December 10, 2018. The Commission also entertained legal argument from the respondents. At the conclusion of the January 23rd proceedings, the Commission voted to remand this matter to staff for further consideration.

After further consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that on June 21, 2018, the complainant requested a copy of "all public records ... concerning or relating to each and every infraction identified on the list of 120 NCAA ('National Collegiate Athletic Association') infractions attached hereto. . . ."
3. By email filed July 11, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of the requested records.
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, ...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:

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.

6. 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.”

7. It is found 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.

8. First, it is found that, while the complaint in this matter identifies a list of “120 NCAA infractions,” the Commission’s review of the list prepared by the complainant reveals that said list contains 117 NCAA infractions.

9. By the time of the September 6, 2018 contested case hearing, it is found that the respondents had only provided the complainant with two records. It is found that these two records were identified by the respondents as a “notice of allegations” and a “committee on infractions report from the NCAA.” It is found that both of these records concerned “a major infractions case as to the University back in 2011.” Accordingly, by the time of the contested case hearing, the respondents had provided the complainant with records pertaining to 1 out of the 117 NCAA infractions identified in the request. It is found that, at this time, the respondents had been in possession of the complainant’s request for records for 77 days.

10. It is also found that, at the time of the hearing, the respondents were in possession of records responsive to 94 of the remaining 116 infractions. The respondents’ witness testified that he was 80% finished with his review and redaction of these records.

11. The respondents provided no testimony from which the hearing officer could find that any part of the two records identified in paragraph 9, above, which had been disclosed to the complainant, were exempt from disclosure.

12. Additionally, the respondents provided no testimony from which the hearing officer could find that any part of the records responsive to the 94 additional infractions referred to in paragraph 10, above, was exempt from disclosure.¹

¹ The respondents mentioned that, with regard to their review of the responsive records, the only exemption to disclosure that they had encountered thus far was the Family Education Rights and Privacy

13. The respondents' witness testified that it was the respondents' plan to complete the review and redaction of the remaining 20% of the records responsive to the 94 infractions referred to in paragraph 10, above; gather, review and redact the records responsive to the remaining 22 infractions; and have all non-exempt responsive records disclosed to the complainant by mid-September.

14. Accordingly, the hearing officer issued a verbal order instructing the parties to report back to her on the status of disclosure by mid-September. With regard to the respondents' status report, the hearing officer ordered that they identify any exemptions to disclosure being claimed with regard to any responsive record. With regard to the complainant's status report, the hearing officer ordered that the report indicate whether he was satisfied with the respondents' disclosure. The hearing officer stated that she would hold off on writing her report until the end of September. Finally, the hearing officer indicated that, if the respondents were to make a full disclosure by the end of September, such compliance would be "reasonable" in her mind.

15. Thereafter, by email dated October 29, 2018, the hearing officer contacted the parties, stating the following:

At the end of the September 6, 2018 evidentiary hearing in the above-referenced matter, counsel for the respondents indicated that the respondents were in the process of redacting student information from the records responsive to the complainant's request. I believe counsel estimated that the redactions would be complete and full compliance would be made in late September. Please advise of the status of the request and, if compliance has been made, whether the complainant [chooses to withdraw his appeal].

16. It is found that, by status report dated October 31, 2018, the complainant responded to the hearing officer as follows:

Compliance has not been made—we have not received any communications regarding the [116] infractions (which was the subject of FIC#2018-366). We also need to resolve whether any documents were withheld based on exemptions as it is clear there were redactions. . . .

See Compl's Post Hearing Ex. B.

17. It is found that, by status report dated November 1, 2018, the respondents indicated that records responsive to 92 of the infractions had been disclosed. The respondents further indicated that, with regard to the disclosed records, they were claiming three exemptions to disclosure: §1-210(a), G.S.; §1-210(b)(11), G.S., and §1-210(b)(17), G.S. See Resp.'s Post

Act, 20 U.S.C. § 1232g (or "FERPA"). However, the respondents did not provide any specific testimony at the September 6th hearing with regard to such exemption.

Hearing Ex. 1.

18. It is found that, by November 1, 2018, the respondents had been in possession of the complainants' request for 133 days.

19. It is further found that, at this time, the respondents had failed to disclose any records with regard to the 24 remaining infractions.

20. With regard to promptness, this Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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 loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

21. Based on the facts and circumstances of this case, it is found that the respondents failed to prove that they provided records in a prompt manner.

22. It is therefore concluded that the respondents violated the FOI Act.

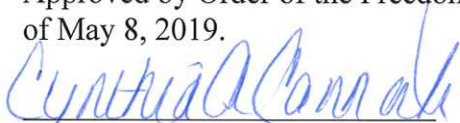
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. If they have not done so already, the respondents shall provide all responsive records, redacted in strict accordance with the claimed exemptions.

2. Once the request has been completely processed, the complainant may request that all records withheld in the context of the instant matter be disclosed to him, and that all records redacted in the context of the instant matter be disclosed to him without redaction. Anticipating that such a request will be met with a denial, the complainant should feel free to appeal such denial to the Commission, and, in the context of such appeal, the Commission can address all of the respondents' claims of exemption.

3. Henceforth, the respondents shall strictly comply with the requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 8, 2019.



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:

JACQUES PARENTEAU, c/o Attorney Claire M. Howard, Madsen, Prestley & Parenteau, LLC, 402 Asylum Street, Hartford, CT 06103

**PRESIDENT, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT;
AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT**, c/o Attorney Nathan LaVallee, University of Connecticut, Office of the General Counsel, 343 Mansfield Road, Unit 1177, Storrs, CT 06238



Cynthia A. Cannata
Acting Clerk of the Commission