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FREEDOM OF INFORMATION

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Abraham Solomon,
Complainant(s)
against

Commissioner, State of Connecticut, Department of Public Health; and State of Connecticut, Department of Public Health,
Respondent(s)

Notice of Meeting

Docket #FIC 2013-466

April 2, 2014

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 14, 2014.** 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 May 2, 2014***. 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 May 2, 2014***. **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 **fourteen (14) copies** be filed ***ON OR BEFORE May 2, 2014***, 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

W. Paradis
Acting Clerk of the Commission

Notice to: Abraham Solomon
Daniel Shapiro, Esq.

2014-04-02/FIC# 2013-466/Trans/wrbp/VRP//GFD

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Abraham Solomon,

Complainant

against

Docket #FIC 2013-466

Commissioner, State of Connecticut,
Department of Public Health; and
State of Connecticut, Department of
Public Health,

Respondents

February 19, 2014

On February 4, 2014, the respondents moved to dismiss the above-captioned complaint on the grounds that the Commission lacked jurisdiction pursuant to §§1-206(b)(2) and/or 1-206(b)(4) because the complainant was not requesting documents in the possession of the respondents. The complainant requested that the motion not be granted without a hearing for reasons including the complainant's purchase of airline tickets to travel to the hearing from Florida, which request the hearing officer granted as a courtesy to the complainant. The above-captioned matter was consequently heard as a contested case on February 18, 2014, at which time 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. By letter of complaint filed July 29, 2013, the complainant appealed to the Commission, alleging that the respondents failed to comply with his request that the respondents contact the New York State Office of Professional Medical Conduct, obtain documents from that Office, and turn those documents over to the complainant.

3. It is found that, by letter dated June 26, 2013, the complainant requested from the respondents documents pertaining to the revocation in 2001 of his license to practice medicine in New York State.

4. It is found that the respondents used some documentation of the complainant's New York State license revocation to revoke his license to practice medicine in Connecticut in 2013.

5. The complainant takes issue with the fairness of the license revocation proceedings in Connecticut, objects to the use of only selected documentation by the respondents to revoke his license, and believes that the requested documents would support his position that his license was revoked improperly.

6. It is found that the documents used by the respondents in the Connecticut license revocation proceedings did not include the documents requested by the complainant, and that the respondents do not have possession of the requested documents.

7. The complainant nonetheless requests that the Commission order the respondents to obtain the requested documents from New York State officials and provide those documents to him.

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. (Emphasis supplied).

10. 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."

11. It is found that the requested documents were not prepared, owned, used, received, retained, maintained or kept on file by the respondents.

12. It is therefore concluded that the requested documents are not public records within the meaning of §§1-200(5) or 1-210(a), G.S.

13. The complainant believes that his discovery rights in the Connecticut license revocation proceedings have been violated, and that those proceedings were fundamentally unfair.

14. It is concluded, however, that the respondents did not deny the complainant copies of or access to public records, and that the respondents therefore did not violate the FOI Act.

15. At the hearing, the complainant sought to enlarge his complaint to encompass additional documents not alleged to have been requested or denied in the complainant's July 29, 2013 complaint or in any of the complainant's subsequent addendums to that complaint. No evidence was presented at the hearing that these additional documents had been requested from, or denied by, the respondents. The request to enlarge the complaint is therefore denied.

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.

Victor R. Perpetua
as Hearing Officer

FIC2013-466/HOR/VRP/02182014