



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Kym Martin,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-485

Director of Health Affairs Policy Planning, State
of Connecticut, Office of Health Center
Administration, University of Connecticut Health
Center; and State of Connecticut, Office of
Health Center Administration, University of
Connecticut Health Center,
Respondent(s)

April 15, 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, 1st 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
Acting Clerk of the Commission

Notice to: Kym Martin
Stephen J. Courtney, AAG

4/15/14/FIC# 2013-485/Trans/wrbp/CH/VDH/TCB

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Kim Martin,

Complainant

against

Docket #FIC 2013-485

Director of Health Affairs Policy Planning,
State of Connecticut, Office of Health
Center Administration, University of
Connecticut Health Center; and State
of Connecticut, Office of Health Center
Administration, University of Connecticut
Health Center,

Respondents

April 9, 2014

The above-captioned matter was heard as a contested case on February 10, 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. It is found that, in April 2013, the complainant requested copies of the following records:

All incident reports, written statements, e-mails, interviews, recordings, photographs, or video recordings collected obtained and used during the investigation that began in February 2013 through April 2013.

3. It is found that, by email dated May 9, 2013, the complainant renewed her request for the records described in paragraph 2, above. It is found that, at this time, the complainant reminded the respondents that this was her second request for these records. In addition, the complainant explained that she needed the requested records for an upcoming grievance hearing.

4. It is found that, by email dated August 2, 2013, the complainant inquired into the status of her request, indicating that she still had not received all of the statements or the investigatory interviews that she required.

5. It is found that, by email dated August 5, 2013, the respondents acknowledged the complainant's May 9, 2013 request. It is further found that the respondents informed the complainant that they realized that the complainant's April 2013 request had been misplaced, which is why they had not provided her with a written acknowledgement. It is further found that the respondents apologized for the administrative error, and indicated that they were now in the process of compiling the requested records. Finally, it is found that the respondents indicated that they would ask the human resources department to afford priority handling to this request.

6. By email dated August 7, 2013 and filed August 8, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her request for a copy of 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, (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.

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

11. At the contested case hearing, the complainant indicated that, because she had subsequently received the records, the only matter at issue in this case was promptness.

12. The 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 statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; 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.

13. It is found that the respondents first became aware that the complainant wanted a copy of the records described in paragraph 2, above, on or about August 5, 2013. It is further found that, when the respondents realized that a request was pending, the complainant had already been waiting for the records for months. It is further found that the respondents recognized this fact when they acknowledged the complainant's renewed request.

14. Thereafter, it is found that, on August 20, 2013, the respondents contacted the complainant telephonically to determine what records she had received and what records continued to be outstanding.¹

15. It is found that the complainant received the requested records from the respondents on November 27, 2013—that is, 114 days after the respondents acknowledged the complainant's May 9, 2013 renewed request, apologized for mishandling the original request, and indicated that they would afford the renewed request priority attention.

16. It is found that the respondents offered no evidence as to why they needed almost four months from the time they realized that they had mishandled the first request to provide the complainant with the records. It is further found that, while the respondents ultimately waived the fee for the records they provided to the complainant, it cannot be found that the respondents provided the complainant with prompt access to the

¹ It is found that, on or about August 2, 2013, while the complainant continued in her efforts to obtain the requested records from the respondents, she made a similar request for records to the Department of Correction ("DOC"). It is found that, while the DOC did not maintain all of the records, it provided the complainant with the records it did have in approximately eight days. Accordingly, when the respondents reached out to the complainant on August 20, 2013, the complainant had already received some of the records that she had been requesting from the respondents since April, 2013.

requested records--even after they realized that they had mishandled the complainant's original April 2013 request.

17. Consequently, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with copies of the requested records promptly.

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 of §§1-210(a) and 1-212(a), G.S.



Commissioner Christopher P. Hankins
as Hearing Officer