

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106
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Susan Haigh and Associated Press
Complainant(s)
against

Notice of Meeting

Docket #FIC 2021-0214

Governor, State of Connecticut, Office of the Governor;
and State of Connecticut, Office of the Governor
Respondent(s)

September 21, 2022

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.

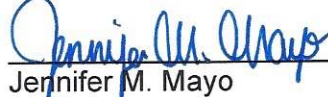
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in person at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, October 12, 2022.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. 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 September 30, 2022.** 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 September 30, 2022.** 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 **fifteen (15) copies** be filed **ON OR BEFORE September 30, 2022** 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



Jennifer M. Mayo
Acting Clerk of the Commission

Notice to: Susan Haigh
Assistant Attorney General Phillip Miller

FIC# 2021-0214/ITRA/BEH//MDR/JMM/2022-09-21

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Susan Haigh, and Associated Press,

Complainants

against

Docket # FIC 2021-0214

Governor, State of Connecticut, Office
of the Governor; and State of Connecticut,
Office of the Governor,

Respondents

September 16, 2022

The above-captioned matter was heard as a contested case on August 4, 2022, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic, and the state's response to it, the hearing was conducted remotely pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3.

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 dated May 21, 2020, the complainants in relevant part, requested that the respondents provide them with copies of:

[a]ll written or electronic communications pertaining to the 'coronavirus' or 'COVID-19' sent or received by the governor's office and the following individuals and entities between April 12 and the date this request is fulfilled:

Indra Nooyi, co-chair Reopen Connecticut Advisory Group

Dr. Albert Ko, co-chair Reopen Connecticut Advisory Group

Mashantucket Pequot Tribal Chairman Rodney Butler, member
Reopen Connecticut Advisory Group

Renee Coleman-Mitchell, (former) commissioner of the
Connecticut Department of Public Health

Deirdre Gifford, commissioner of the Department of Social Services

Jeffrey Flaks, CEO Hartford Healthcare

Marna Borgstrom, CEO Yale New Haven Health

the Connecticut Hospital Association

the Connecticut State Medical Association

the Connecticut Nurses Association

the Connecticut Business and Industry Association

the Connecticut chapter of the National Federation of Independent Business

the Connecticut Association of Health Care Facilities/ Connecticut Center for Assisted Living

the Connecticut Conference of Municipalities

the Connecticut Council of Small Towns

The Associated Press requests that copies of the above-referenced communications be provided in an electronic format. As this pertains to a matter of public health, the AP also requests that any potential fees associated with this request be waived. If the office nonetheless intends to charge a fee, please provide the AP with an estimate before fulfilling this request....

(hereinafter "requested records").

3. It is found that by email dated May 21, 2020, the respondents acknowledged receipt of the complainants' request, described in paragraph 2, above.

4. It is found that between August 5, 2020 and October 14, 2020, the complainants sent several emails to the respondents checking in on the status of the request, including one dated October 14, 2020, in which complainant Haigh indicated, "[I]'m sorry to be a pest about this, but I did make this request back on May 21 [2020] and I've been pretty patient, understanding the difficult circumstances. Any idea when I can expect to receive any documents?"

5. It is found that, by email dated January 9, 2021, the respondents provided the complainants with copies of some of the requested records stating, in relevant part: [S]ue, responsive docs to your COVID/coronavirus FOI request. Emails 1-150 of at (sic) roughly 1300

that I have reviewed so far and determined to be responsive. Will be sending you a second batch (151-300) shortly. Trying to resolve tech problems in converting about 1,000 to PDF. In addition to the ones I have reviewed, I have about 9000 emails remaining to review.”

6. It is found that by emails dated January 27, 2021 and April 15, 2021, the complainants again inquired as to the status of the request.

7. It is found that, in their April 15, 2021 email, the complainants expressed frustration after they learned that a later request made by the Hartford Courant (“Courant”), was fulfilled by the respondents, when the respondents had still not provided the complainants with all records responsive to their May 21, 2020 request. The complainants also indicated to the respondents, in the April 15, 2021 email, that they had not received “texts” in response to their FOI request, and that the Courant apparently had received “texts”.

8. By email, dated and filed on April 16, 2021¹, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide them with a copy of all of the requested records, described in paragraph 2, above.

9. Section 1-200(5), G.S., provides:

“[p]ublic 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, videotaped, printed, photostated, photographed or recorded by any other method.

10. Section 1-210(a), G.S., provides, in relevant part:

[e]xcept 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 ... (3) receive a copy of such records in accordance with section 1-212.

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending before the Commission on the issuance date and any appeal filed through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter. In addition, although §1-206(b)(1), G.S., requires that an appeal be filed with the Commission within 30 days of an alleged violation, Executive Order 7M (§2(2)) suspended such requirement for appeals filed between March 25, 2020, and April 19, 2021.

11. Section 1-212(a), G.S., in relevant part, further provides: [a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

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

13. It is found that, by email dated August 24, 2021, some fifteen months after the complainants’ request, the respondents, in relevant part, informed the complainants that:

[a]s you may recall, the search turned up more than 10,000 documents and I have provided about 1,300 to you already.

Of the remaining 8,600, I used the new software I told you about to apply some search terms likely to turn up emails related to reopening. That narrowed the potentially responsive docs to about 4,600, which I have been reviewing and making significant progress with, so I hope to have some more docs for you soon.

14. It is found that in early 2022, the respondents hired a new attorney who commenced working exclusively on the respondents’ FOI requests’ backlog soon after his arrival. It is found that such attorney, by email dated May 10, 2022, contacted the complainants stating, in relevant part:

[t]here have been many departures from the [Governor’s] office, and I have been brought on to assist with FOIA requests. I came across yours and would like to know whether you would like the request satisfied as is, or whether there was a way to narrow the search. Narrowing the search will assist me in getting you the information you need sooner. Please let me know within the next two weeks how you would like to proceed....

15. It is found that the complainants inadvertently missed the May 10, 2022 email and therefore, did not respond to it.

16. It is found that, upon receiving notice of the hearing in this matter, the respondents realized the complainants still wanted the requested records, and by email dated June 9, 2022, provided the complainants with an additional 4,286 records, and soon thereafter, two batches of text messages, responsive to the records request, described in paragraph 2, above. It is found that the respondents conducted a thorough search for responsive records and have provided copies of all non-exempt records they maintain to the complainants.²

² At the hearing in this matter, the complainants testified that they do not take issue with certain records being withheld by the respondents and claimed as exempt from disclosure.

17. At the hearing in this matter, the complainants argued that the respondents failed to provide copies of the requested records to them promptly, and further that no requester should have to wait two years to receive public records. According to the complainants, the requested records were important to a story of national import they were writing about the COVID-19 pandemic. The complainants testified that the story they wrote, ran a few months after their records request was sent to the respondents, without any reference to Connecticut, because Connecticut was one of approximately three states that did not provide a timely response to their request.

18. At the hearing in this matter, the respondents conceded that they failed to disclose copies of the requested records to the complainants promptly. The respondents testified that they were short staffed, and their priority and focus was addressing the overwhelming and numerous critical daily issues that arose for the state of Connecticut as a result of the pandemic. They further testified that they understand the importance of the FOI law and take their responsibility under the law seriously. It is found that the respondents revamped and streamlined the processing of FOI requests by hiring additional staff, identifying a point person to coordinate all responses to such requests, and purchasing updated software, which has improved searching capability and providing requesters with large attachments electronically.

19. However, it is concluded that the respondents violated the FOI Act by failing to provide the complainants 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 provisions of §§1-210(a) and 1-212(a), G.S.

/s/ Barbara E. Housen
Barbara E. Housen
As Hearing Officer