

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Kristen Festa,

Complainant

against

Docket #FIC 2019-0271

Executive Director, State of Connecticut,  
Office of Legislative Management; and  
State of Connecticut, Office of Legislative  
Management,

Respondents

February 26, 2020

The above-captioned matter was heard as a contested case on August 13, 2019, September 19, 2019, and October 11 and 23, 2019, 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 dated February 11, 2019, the complainant sent the respondents the following request for copies of records:

I would like . . . emails from certain legislators. I assume that I can only obtain emails from their CGA<sup>1</sup> email accounts, but if there is a way to access private emails communications and/or text messages that would be helpful and I would also like to formally request them. I would like access to everything from 2013 going forward from:

- a. Liz Linehan: Communications with Josh Elliott, Matt Ritter, Dan Fox, Peter Tercyak, Gary Turco, Commissioner Pino of DPH<sup>2</sup>, Former Commissioner Mullen, Mary Abrams, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned

---

<sup>1</sup> "CGA" is the acronym for the Connecticut General Assembly.

<sup>2</sup> "DPH" is the acronym for the Department of Public Health.

Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption” or “waiver”;

- b. Josh Elliott: Communications with Liz Linehan, Matt Ritter, Dan Fox, Peter Tercyak, Gary Turco, Commissioner Pino of DPH, Former DPH Commissioner Mullen, Mary Abrams, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption” or “waiver”;
- c. Matt Ritter: Communications with Josh Elliott, Liz Linehan, Dan Fox, Peter Tercyak, Gary Turco, Commissioner Pino of DPH, Former Commissioner Mullen, Mary Abrams, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption” or “waiver”;
- d. Dan Fox: Communications with Josh Elliott, Matt Ritter, Liz Linehan, Peter Tercyak, Commissioner Pino of DPH, Former Commissioner Mullen, Mary Abrams, Gary Turco, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption” or “waiver”;
- e. Peter Tercyak: Communications with Josh Elliott, Matt Ritter, Dan Fox, Liz Linehan, Gary Turco, Commissioner Pino of DPH, Former Commissioner Mullen, Mary Abrams, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical

exemption” or “waiver”;

- f. Commissioner Pino of DPH: Communications with Josh Elliott, Matt Ritter, Dan Fox, Peter Tercyak, Liz Linehan, Gary Turco, Former Commissioner Mullen, Mary Abrams, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption” or “waiver”;
- g. Former DPH Commissioner Mullen: Communications with Josh Elliott, Matt Ritter, Dan Fox, Peter Tercyak, Gary Turco, Commissioner Pino of DPH, Liz Linehan, Mary Abrams, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption” or “waiver”;
- h. Mary Abrams: Communications with Josh Elliott, Matt Ritter, Dan Fox, Peter Tercyak, Gary Turco, Commissioner Pino of DPH, Former Commissioner Mullen, Liz Linehan, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption” or “waiver”;
- i. Gary Turco: Communications with Josh Elliott, Matt Ritter, Dan Fox, Peter Tercyak, Liz Linehan, Commissioner Pino of DPH, Former Commissioner Mullen, Mary Abrams, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption” or “waiver”;
- j. Commissioner Raul Pino: Communications with Josh Elliott, Matt Ritter, Dan Fox, Peter Tercyak, Liz Linehan, Former Commissioner Mullen, Mary Abrams,

Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption” or “waiver”;<sup>3</sup>

- k. Former DPH Commissioner Jewel Mullen: Communications with Josh Elliott, Matt Ritter, Dan Fox, Peter Tercyak, Commissioner Pino of DPH, Liz Linehan, Mary Abrams, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption” or “waiver”;<sup>4</sup>

(Referred to as the “First Request”).

3. It is found that, later in the day on February 11, 2019, the complainant sent the respondents the following request for records:

I would like any and all emails (CGA accounts and private), texts and memos from the following state legislators and officials: Liz Linehan, Josh Elliott, Matt Ritter, Dan Fox, Peter Tercyak, Commissioner Pino, Former Commissioner Mullen, and Gary Turco with the terms “Brian Linehan” and “Boehringer Ingelheim.”

(Referred to as the “Supplemental Request”).

4. It is found that, by email dated February 14, 2019, Jim Tamburro, the Executive Director of the Office of Legislative Management, acknowledged the First Request and the Supplemental Request on behalf of the respondents.

5. It is found that, by email dated March 19, 2019, the complainant sent the respondents the following request for records:

I would like to request all emails from January 1, 2019 through today (March 19, 2019) between Representative Josh Elliott and Dorit Rubenstein Reiss, Paul Offit, David

---

<sup>3</sup> It is found that the request set forth in paragraph 2.j, above, is repetitive of the request set forth in paragraph 2.f, above (with the exception of “Gary Turco,” whose name appears only in the request set forth in paragraph 2.f, above).

<sup>4</sup> It is found that the request set forth in paragraph 2.k, above is repetitive of the request set forth in paragraph 2.g., above (with the exception of “Gary Turco,” whose name appears only in the request set forth in paragraph 2.g, above).

Gorski, Peter Hotez, Stanley Plotkin, Valerie Horsley, Sandra Carbonari, Linda Niccolai, Gene Shapiro, and Brett Lindenbach.

(Referred to as the “Second Request”).

6. It is found that, by email dated May 4, 2019, the complainant sent the respondents the following request for records:

- a. In addition to my two prior FOI requests, I am requesting all emails between Rep. Matt Ritter and Attorney General Tong, Governor Lamont, Dorit Rubenstein Reiss, Paul Offit, and California State Senator Richard Pan from 2015 to present;
- b. Also all emails between Rep. Elliott and Dorit Rubenstein Reiss, Paul Offit, and California State Senator Richard Pan from 2015 to present.

(Referred to as the “Third Request”).

7. By email dated May 8, 2019 and filed May 9, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act (“FOI Act”) by failing to provide her with copies of the records set forth in paragraphs 2, 3, 5 and 6, 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, by email dated May 13, 2019, Executive Director Tamburro communicated with the complainant, indicating that the respondents were working on all of the requests.

13. Thereafter, it is found that, by email dated June 3, 2019, Executive Director Tamburro informed the complainant that the respondents had run the queries set forth in the First Request, Supplemental Request, Second Request and Third Request. Executive Director Tamburro further explained that processing these requests resulted in over 10,000 responsive records, which now had to be reviewed. Based on these search results, Executive Director Tamburro asked the complainant to consider narrowing her requests.

14. It is found that, by email dated June 5, 2019, the complainant indicated that she would narrow the First Request and the Supplemental Request as follows:

I would like access to everything from 2013 going forward:

- a. Liz Linehan: Communications with Josh Elliott, Commissioner Pino of DPH, Former Commissioner Mullen, Mary Abrams, Chris Murphy, Richard Blumenthal, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, California State Senator Richard Pan and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “exemption”, “immunization”, “religious exemption”, non-medical exemption”, “waiver”, “Brian Linehan” and “Boehringer Ingelheim”;
- b. Josh Elliott: Communications with Liz Linehan, Matt Ritter, Commissioner Pino of DPH, Former Commissioner Mullen, Mary Abrams, Chris Murphy, Richard Blumenthal, Dannel Malloy, Ned Lamont, Dorit Rubenstein Reiss, California State Senator Richard Pan and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “immunization”, “exemption”, “religious exemption”, non-medical exemption”, “waiver”, “Brian Linehan” and “Boehringer Ingelheim”;
- c. Matt Ritter: Communications with Josh Elliott, Liz Linehan, Commissioner Pino of DPH, Former Commissioner Mullen, Mary Abrams, Chris Murphy, Richard Blumenthal, Dannel Malloy, Ned Lamont,

Dorit Rubenstein Reiss, California State Senator Richard Pan and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “immunization”, “exemption”, “religious exemption”, non-medical exemption”, “waiver”, “Brian Linehan” and “Boehringer Ingelheim”;

- d. Former Commissioner Pino of DPH: Communications with Josh Elliott, Matt Ritter, Liz Linehan, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “immunization”, “exemption”, “religious exemption”, non-medical exemption” and “waiver”;
- e. Former Commissioner Jewel Mullen: Communications with Josh Elliott, Matt Ritter, Liz Linehan, Dorit Rubenstein Reiss, and Paul Offit. Also, any communications with any other public officials containing the words: “vaccine”, “immunization”, “exemption”, “religious exemption”, non-medical exemption” and “waiver”;
- f. In addition, I would like all emails from January 1, 2019 through today between Representatives Elliott, Ritter, and Linehan with: Dorit Rubenstein Reiss, Paul Offit, David Gorski, Peter Hotez, Stanley Plotkin, Valerie Horsley, Sandra Carbonari, Linda Niccolai, Gene Shapiro, and Brett Lindenbach.

(Referred to as the “First Narrowed Request”).

15. It is found that, by email dated June 14, 2019, Executive Director Tamburro informed the complainant that the respondents’ information technology (“IT”) specialist had run the First Narrowed Request, the Second Request and the Third Request and these searches had resulted in over 6,000 responsive records. Executive Director Tamburro requested that the complainant consider narrowing these requests again.

16. It is found that, by email dated August 7, 2019, the complainant agreed to narrow the First Request and the Supplemental Request as follows:

Communications, electronic (including, but not limited to, text messages, emails, social media postings, and voicemail messages) or otherwise sent or received by Liz Linehan, Josh Elliott, Matt Ritter, Dan Fox, Peter Tercyak, Gary Turco, Jonathan Steinberg, Former DPH Commissioner Raul Pino, Former Commissioner Jewel Mullen, Mary Abrams, Chris Murphy, Richard Blumenthal, Rosa DeLauro, Dannel Malloy, and Ned Lamont containing the

terms: “vaccine”, “immunization”, “religious exemption”, “non-medical exemption”, non medical exemption (sic), “religious waiver”, “non-medical waiver”, and non medical waiver (sic). Also all communications between each of the individuals named above and the following individuals: Dorit Rubenstein Reiss, Paul Offit.

(Referred to as the “Second Narrowed Request”).<sup>5</sup>

17. Executive Director Tamburro appeared and testified at all of the contested case hearings on behalf of the respondents, while Attorney David C. Desjardins testified in addition to Executive Director Tamburro at the fourth contested case hearing on behalf of the respondents.

18. It is found that, approximately one week before the first contested case hearing, the respondents had run the searches set forth in the Second Narrowed Request and had also included the names “Brian Linehan” and “Boehringer Ingelheim” from the Supplemental Request. See ¶¶ 2-3, above. It is further found that the respondents had run the searches set forth in Second Request. See ¶ 5, above. It is found that the time frame used by the respondents in running these searches was January 1, 2013 through August 8, 2019. It is found that these searches yielded 121 responsive records, which, at the time of the first contested case hearing, still had to be reviewed for exemptions.

19. At the conclusion of the first contested case hearing, the respondents agreed to do the following: first, review the 121 records described in paragraph 18, above, for exemptions and, second, run the Third Request for records set forth in paragraph 6, above.<sup>6</sup>

20. It is found that, by the time of the second contested case hearing, the respondents had run the Third Request for records and the results of that search had produced a nominal amount of additional responsive records.

21. It is found that all of the requests in this case sought records from the members of the Connecticut General Assembly’s House Democratic Caucus. It is found that it is the respondents’ practice to have such records reviewed for exempt information by the House Democratic Caucus. Accordingly, it found that the respondents’ IT professional (who had conducted all of the various searches in this case) sent the responsive records to the House Democratic Caucus. It is found that the House Democratic Caucus was to review the responsive records, disclose all non-exempt records to the complainants, and report back to Executive Director Tamburro with regard to any claims of exemption. It is found that as of September 19, 2019—the date of the second contested case hearing—this process had not been completed.

---

<sup>5</sup> The Commission notes that the Second Narrowed Request did not contain a date range. Accordingly, the Second Narrowed Request was, in fact, a request for all of the listed individuals’ records, regardless of when the records were created, sent or received.

<sup>6</sup> It is found, and the parties agreed, that the time frame on the Third Request for records was January 1, 2015 through May 4, 2019.



22. At the time of the third contested case hearing, the review of the responsive records that was supposed to occur (and which is discussed in paragraph 21, above) had not yet been completed. Accordingly, the respondents were not prepared to testify with regard to claims of exemptions.

23. By Order dated October 11, 2019, the hearing officer issued an order for the respondents to appear at a continued contested case hearing with a witness prepared to testify on claims of exemption, and to submit the records claimed exempt from disclosure to the Commission for an in camera inspection.

24. On October 18, 2019, the respondents submitted the records claimed exempt from disclosure to the Commission for an in camera inspection. Such records shall be identified as IC-2019-0271-1 through IC-2019-0271-44.

25. The respondents contended that the in camera records are exempt in their entirety pursuant to §1-210(b)(1), G.S.

26. Section 1-210(b)(1), G.S., provides that nothing in the FOI Act should be construed to require the disclosure of “[p]reliminary drafts or notes provided that the public agency has determined that the public interest withholding such documents clearly outweighs the public interest in disclosure.”

27. In Wilson v. Freedom of Information Commission, 181 Conn. 324, 332 (1980) (Wilson), the Connecticut Supreme Court ruled that “preliminary drafts or notes reflect that aspect of an agency’s function that precedes formal and informal decision making. . . . It is records of this preliminary, deliberative and predecisional process that . . . the exemption was meant to encompass.”

28. The year following Wilson, the Connecticut legislature adopted Public Act 81-431, and added to the FOI Act the language now codified in §1-210(e)(1), G.S.

29. Accordingly, §1-210(b)(1), G.S., must be read in conjunction with §1-210(e)(1), G.S., which provides, in relevant part, as follows:

Notwithstanding the provisions of [§1-210(b)(1), G.S.], disclosure shall be required of:

Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies have been formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.

30. It is found that, following the third contested case hearing, all of the responsive records, other than the 44 pages of in camera records, were disclosed to the

complainant.

31. Based on a careful in camera inspection and on the testimony provided by the respondents at the fourth contested case hearing, it is found that the in camera records consist of draft meeting notices (with draft agendas), draft press statements, and draft legislation.

32. It is found that the in camera records are “preliminary drafts,” within the meaning of §1-210(b)(1), G.S.

33. With regard to draft meeting notices, the respondents testified and it is found that disclosing draft documents has the potential to interject confusion into the legislative process. It is found that the potential for public confusion, frustration and even chaos is heightened when various iterations of meeting agendas are disseminated, or meeting notices are issued before the schedules for such meetings are solidified.

34. With regard to the draft press statements and draft legislation, the respondents testified and it is found that disclosing preliminary drafts of this nature could have a chilling effect on the legislative process. In this regard, it is found that legislators may be less inclined to candidly share their ideas and express their positions if they know that such discussions, in the context of a preliminary draft, are subject to public disclosure. See Coalition to Save Horsebarn Hill v. FOI Comm’n, No CV-000499178, 2001 WL 893779, at \*4 (Conn. Super. Ct. July 11, 2001) (“By exempting preliminary drafts and notes from disclosure, the legislature sought to protect the free and candid exchange of ideas, the uninhibited proposition and criticism of options that often precedes, and usually improves the quality of, governmental decisions.” (Internal citations and quotation omitted), aff’d, 73 Conn. App. 89, 95 (2002).

35. Accordingly, it is found that the respondents have determined that the public interest in withholding such draft documents clearly outweighs the public interest in disclosure, within the meaning of §1-210(b)(1), G.S.

36. It is found that, while there are approximately ninety individuals comprising Connecticut’s House Democrats, the draft meeting notices (and draft agendas), draft press statements, and draft legislation were only shared amongst a small handful of democratic house members.

37. It is found that the draft documents are not interagency or intra-agency memoranda, letters, advisory opinions, recommendations or reports, and that such documents did not comprise part of the process by which governmental decisions and policies are formulated, within the meaning of §1-210(e)(1), G.S.

38. It is therefore concluded that the in camera records are permissibly exempt pursuant to §1-210(b)(1), G.S.

39. Finally, the complainant contended that the records were not provided to her promptly.

40. 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.

41. The respondents testified that they became confused with regard to which version of the requests was operative. Specifically, Attorney Desjardins testified that the House Democratic Caucus was under the impression that the search results from the First Request, the Supplemental Request, the Second Request and the Third Request, which yielded over 10,000 responsive records, was the version of the requests which needed to be processed and the House Democratic Caucus was diligently reviewing these records. Attorney Desjardins further testified that, it was not until the hearing officer issued the in camera order, the respondents realized that the requests had been narrowed and that there were only approximately 121 pages of records at issue.

42. It is found that, within five business days of the issuance of the in camera order, the respondents had disclosed all non-exempt records to the complainant, free of charge, and had also submitted the in camera records to the Commission.

43. Based on the fact that there were multiple, large requests for records in this case, some of which were issued on the very same day, on the fact that the versions of these requests changed multiple times, and on the fact that the legislative session was underway when these requests and modified requests issued, the Commission does not find that the respondents mistakenly processing the wrong (and largest) version of the operative requests was unreasonable.

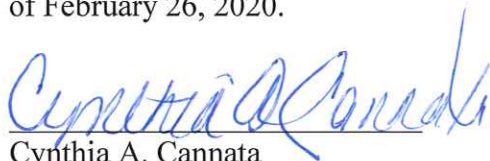
44. Therefore, based on the facts and circumstances of this case, it is concluded that the respondents promptly provided all non-exempt records to the complainant.

45. It is further concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 26, 2020.



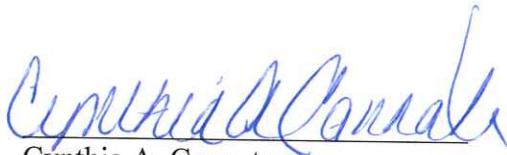
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

**KRISTEN FESTA**, c/o Attorney Brian D. Festa, 123 Farmington Avenue, Box 175, Bristol, CT 06010

**EXECUTIVE DIRECTOR, STATE OF CONNECTICUT, OFFICE OF LEGISLATIVE MANAGEMENT; AND STATE OF CONNECTICUT, OFFICE OF LEGISLATIVE MANAGEMENT**, 300 Capitol Avenue, Room 5100, Hartford, CT 06106



Cynthia A. Cannata  
Acting Clerk of the Commission