

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Floriel Selenica,

Complainant

against

Docket #FIC 2019-0162

Chief, Fire Department,
Town of Watertown; and
Fire Department, Town of
Watertown,

Respondents

January 22, 2020

The above-captioned matter was heard as a contested case on May 30, 2019, 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, by letter dated February 14, 2019, the complainant requested to inspect “the Roll Call Sheets and the Master Log of Alarms for all the alarms (fire and medical) for the second quarter, from September 20, 2018 to December 12, 2018.” The complainant specified that he was not seeking access to any of Watertown Fire Department’s Emergency Medical Services (“EMS”) patient care reports.
3. It is found that, by letter dated February 20, 2019, the respondents denied the complainant’s request, indicating that the requested records contained Protected Health Information pursuant to the federal Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d, et seq. (“HIPAA”).
4. By letter dated and filed March 19, 2019, the complainant appealed to the Commission, alleging that the respondents had violated the FOI Act by failing to provide him with access to the responsive records.

5. 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.

6. 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.

7. 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.”

8. 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.

9. The complainant contended that the respondents should not have denied him access to the requested records.

10. It is found that the complainant was a volunteer firefighter in the respondent town. It is found that, each time a volunteer firefighter is called into the fire department for a fire or an emergency, he or she is paid a small stipend. The complaint contended that his payment for the calls he responded to from September 20, 2018 to December 12, 2018 was not correct. Accordingly, the complainant was seeking access to the records described in paragraph 2, above, to determine whether the respondent department’s call logs were accurate.

11. It is found that the respondents maintain two types of call logs—EMT logs pertaining to emergency calls and fire logs pertaining to fire emergencies.

12. It is found that, initially, the respondents denied the complainant access to both types of logs.

13. It is found that the respondents’ denial was based on the fact that the EMT logs contained medical information that they believed would be exempt pursuant to

HIPAA.

14. With regard to HIPAA, it is found that this statute was enacted to safeguard medical information and “to improve the efficiency and effectiveness of the health care system by facilitating the electronic exchange of information with respect to financial and administrative transactions carried out by health plans, health care clearinghouses, and health care providers.” See Standards of Privacy of Individually Identifiable Health Information, 67 Fed. Reg. 14776 (Mar. 27, 2002).

15. It is found that HIPAA applies to any entity that is: a health care provider that conducts certain transactions in electronic form; a health care clearinghouse; or a health plan. See 45 C.F.R. §160.103 (2010). It is found that an entity that is one or more of these types of entities is referred to as “a covered entity” in the Administrative Simplification regulations that govern HIPAA and are required to comply with those regulations. See 45 C.F.R. Parts 160, 162, and 164 (2010).

16. As an initial matter, it is found that the respondents are not covered entities required to comply with HIPAA regulations. The hearing officer notes that the respondents conceded at the contested case hearing that they are not covered entities pursuant to HIPAA.

17. It is found that, by letter dated May 28, 2019, the respondents informed the complainant that they would make the requested records available for his review.

18. It is found that, at the time of the May 30, 2019 contested case hearing, the complainant had not yet visited the respondent fire department to inspect the records.

19. With regard to the complainant’s contention that the respondents failed to allow him access to the requested records in a prompt manner, 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.

20. It is found that 103 days elapsed between the time the respondents received the complainant’s request and the time the respondents informed the complainant that he could review the requested records. It is found that it should not have taken the respondents this long to determine that the complainant was entitled to inspect the requested records. Moreover, even if the respondents mistakenly believed that they were required to protect the EMT logs pursuant to HIPAA, there was no reason for them to deny the complainant access to the fire logs, which do not contain any kind of medical information.

21. It is therefore concluded that the respondents violated the promptness requirements of §§1-210(a) and 1-212(a), G.S.

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.

2. The respondents shall work with the complainant to find a mutually convenient time for the complainant to review the requested records.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 22, 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:

FLORIEL SELENICA, 35 Viola Street, Oakville, CT 06779-1823

CHIEF, FIRE DEPARTMENT, TOWN OF WATERTOWN; AND FIRE DEPARTMENT, TOWN OF WATERTOWN, c/o Attorney Paul R. Jessell, PO Box 9, Watertown, CT 06795

Cynthia A. Cannata
Acting Clerk of the Commission