

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Naimah Shabazz,

Complainant,

Docket # FIC 2019-0190

against

Office of the Corporation Counsel,
City of Hartford; Human Resources
Department, City of Hartford; and
City of Hartford,

Respondents

February 13, 2020

The above-captioned matter was heard as a contested case on July 29, 2019, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. At the hearing, the respondents requested that the Commission amend the case caption to include the Human Resources Department for the City of Hartford as a respondent. Without objection from the complainant, such request is hereby granted and the case caption amended accordingly.

On December 11, 2019, a Report of Hearing Officer was issued. Such report was scheduled to be considered by the Commission at its regular meeting of January 22, 2020, at which time the Commission tabled the matter.

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 27, 2019, and addressed directly to the City of Hartford's Office of Corporation Counsel, the complainant requested that the respondents provide her with the following:
 - A. Copy of any and all (but not limited to) correspondence, reports, inquiries, literature, emails, invoices to and from the City of Hartford beginning January 1, 2015 in reference to the below named businesses:
 1. Secova
 2. Secova Inc.

3. Secova Service Center
4. Secova eServices, Inc.
5. Secova Outsourcing Solutions, Inc.
6. Secova USA, Inc.
7. UltraLink, Inc.
8. iBenefits Holdings Inc.
9. Secova Inc. 401K
10. Secova Services Inc. 401K Plan
11. Empact EBS Inc.

- B. Copy of all contracts of the Hartford Board of Education that have been amended to add, and/or include, the City of Hartford from January 1, 2015. (“February 27th request).

3. It is found that the Hartford Board of Education (“BOE”) hired and signed a contract with Secova, Inc., to do an audit of health insurance benefits for Hartford public school employees. It is found that the City of Hartford also had Secova, Inc., conduct a similar audit of the City’s public employees’ benefits. It is found that the City did not sign a contract with Secova, Inc., but, as testified by the respondents at the hearing, just “piggy backed” off of the BOE’s contract with Secova, Inc.

4. By letter dated March 28, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with prompt access to the records requested in her February 27th request.

5. Section 1-200(5), G.S., defines “public records or files” as:

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

9. It is found that upon receiving the complainant’s February 27th request, Attorney Cynthia Lauture, the respondents’ Assistant Corporation Counsel, forwarded such request to the respondent Human Resources (“HR”) Department to be processed. It is found that the HR Department serves as the keeper of records for all Secova-related files, and was therefore the appropriate department charged with processing such request.

10. It is found that the HR Department, working in conjunction with Attorney Lauture, requested that the City’s IT Department conduct a search for emails responsive to the February 27th request. It is found that such initial search generated over 5,000 emails. It is found that, in April 2019, Attorney Lauture reached out to the complainant regarding the volume of emails generated and the possibility of narrowing the February 27th request. It is found that, based on her conversation with the complainant, Attorney Lauture believed that the complainant sought any emails that showed who within the City would have the authority to enter into a contract with Secova, Inc. Based on this understanding, Attorney Lauture requested that the IT Department conduct a second search for emails utilizing the names of those individuals who she thought would have the authority to enter into a contract with a third-party vendor on behalf of the City. Attorney Lauture specifically identified the Mayor, Chief of Staff, HR Director, Assistant HR Director and Benefits Director. It is found that the second search generated approximately 1,472 emails. At the time of the hearing, the respondents had reviewed more than half of such emails to determine whether they were responsive, and whether any information contained therein was exempt from disclosure.

11. The respondents’ interim Assistant HR Director contended however that the respondents had yet to provide the complainant with responsive records given the high volume of emails generated, the high employee turnover in the HR Department, and other HR-related functions for which she is responsible.

12. At the hearing, the complainant acknowledged that she had narrowed her request, as described in paragraph 10, above, but that she herself had not identified specific individuals whose emails she sought, and was seeking records from the City’s HR Department, Finance Department, City Council and Town Clerk’s Office.

13. With respect to the respondent Office of the Corporation Counsel’s response to the February 27th request, it is found that such agency to whom the request was addressed did not maintain or keep on file the requested records, within the meaning of §1-210(a), G.S. Nevertheless, Corporation Counsel, upon receipt of the February 27th request, forwarded such request to the HR Department. At the hearing, Corporation Counsel also represented that the respondents would forward such request to the other City departments identified by the complainant, as described in paragraph 12, above. Accordingly, it is concluded that the Office of the Corporation Counsel did not violate the FOI Act.

14. With respect to the respondent HR Department's response to the February 17th request, 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.

15. It is found that the respondent HR Department made a good faith effort to locate and retrieve records that were responsive to the complainant's February 27th request. With regard to production, however, it is found that, at the time of the July 29th hearing in this matter, the Department had yet to provide the complainant with any records responsive to such request. Accordingly, it is found that the HR Department failed to provide the requested records in a prompt manner. Under the facts and circumstances of this case, it is concluded that the HR Department violated the FOI Act.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint against the respondent Office of the Corporation Counsel is hereby dismissed.
2. The respondent Human Resources Department is hereby ordered to provide the complainant with copies of any records responsive to the February 27th request on a rolling basis until all responsive records have been provided.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 13, 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:

NAIMAH SHABAZZ, PO Box 4271, Hartford, CT 06147

OFFICE OF THE CORPORATION COUNSEL, CITY OF HARTFORD; HUMAN RESOURCES DEPARTMENT, CITY OF HARTFORD; AND CITY OF HARTFORD,
c/o Attorney Lori Mizerak, City of Hartford, Office of the Corporation Counsel, 550 Main Street, Suite 210, Hartford, CT 06103

Cynthia A. Cannata
Acting Clerk of the Commission