

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Collins and the
New London Day,

Complainants

against

Docket #FIC 2019-0584

Chairman, State of Connecticut,
Connecticut Port Authority; and
State of Connecticut,
Connecticut Port Authority,

Respondents

March 11, 2020

The above-captioned matter was heard as a contested case on December 9, 2019, at which time the complainant appeared and presented testimony and argument on the complaint. Counsel for the respondents appeared without a witness.

A Report of Hearing Officer, dated December 13, 2019, was considered, but not adopted by the Commission during its regular meeting of January 22, 2020.

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 August 21, 2019, the complainants requested from the respondents “all correspondence, written and by email, from or to Loren Dealy Mahler or anyone from her firm to or from anyone at the port authority [and] ... all reports and documents submitted to the authority by Mahler or her firm or anyone in her firm.”
3. It is found that, in two separate emails, each dated August 22, 2019, the respondents acknowledged the request, described in paragraph 2, above, and informed the complainant that they “were in the process of” reviewing it and would provide a written response “as soon as possible.”
4. By email dated September 20, 2019, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the requested records.

5. 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, printed, photostated, photographed or recorded by any other method.

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

[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 (1) inspect such records promptly during regular office or business hours...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 concluded that the records requested by the complainants are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. The complainant testified, and it is found, that as of the date of the hearing in this matter, almost four months after the date of the request, the respondents had not provided any of the requested records.

10. Counsel for the respondents represented at the hearing that the respondents conducted a search for the requested records and located thousands of potentially responsive emails. Counsel also made representations as to why, almost four months after the request was made, the respondents had not provided any responsive records to the complainants. No claim of exemption was made. No representative of the port authority appeared at the hearing to testify as to why no responsive records had been provided to date, what efforts were being made to provide them, or the timeframe by which they would be provided. Counsel made no representation as to when the requested records would be provided. The complainant Collins stated that certain representations made by counsel were not accurate.

11. Based upon the foregoing, it is found that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the requested records to the complainants.

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

1. Within seven (7) days of the date of the notice of final decision in this matter, the respondents shall adopt a schedule for prompt and complete compliance with the request, described in paragraph 2 of the findings above, and provide a copy of such schedule to the complainants.

2. The respondents shall complete such compliance not later than 90 days of the date of the notice of the final decision in this matter. If the respondents claim exemptions for any of the responsive records, they shall provide to the complainants a privilege log identifying each of the records claimed to be exempt and the legal basis for each claimed exemption. Any records not claimed to be exempt from disclosure shall be provided to the complainants on a rolling basis, free of charge. If the respondents fail to comply with the schedule, described in paragraph 1 of the order, above, or the complainants contest any of the claimed exemptions, the complainants may file an appeal with the Commission and such appeal will be afforded expedited treatment.

3. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S. The Commission admonishes the respondents for their failure to provide any responsive records to the complainants during the period from the date of the request to the date of the hearing in this matter.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 11, 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:

DAVID COLLINS, AND THE NEW LONDON DAY, 47 Eugene O'Neill Drive, P.O. Box 1231, New London, CT 06320

**CHAIRMAN, STATE OF CONNECTICUT, CONNECTICUT PORT AUTHORITY;
AND STATE OF CONNECTICUT, CONNECTICUT PORT AUTHORITY**, c/o
Attorney Keisha S. Palmer, Robinson & Cole LLP, 280 Trumbull Street, Hartford, CT 06103
and Attorney Christopher J. Hug, and Attorney Melanie P. Dykas, Robinson & Cole LLP,
280 Trumbull Street, Hartford, CT 06103-3597

Cynthia A. Cannata
Acting Clerk of the Commission