

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Collins and The Day,

Complainants

against

Docket #FIC 2019-0521

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

Respondents

July 22, 2020

The above-captioned matter was heard as a contested case on November 5, 2019, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint.

Immediately following the hearing, the hearing officer ordered the respondents to submit additional evidence. An affidavit was received and filed with the Commission on November 20, 2019. The affidavit has been marked as Respondents' After Filed Exhibit 1: Affidavit of Andrew Lavigne (one-page).

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 e-mail dated July 25, 2019, the complainants made a request to the respondents for "all records from the last six months, written and in email, among port authority employees and board members, pertaining to the job status of port authority employees Evan Matthews and Gerri Lewis, including discipline actions and or related matters."
3. It is found that by e-mail dated August 21, 2019, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with records responsive to his request.
4. Section 1-200(5), G.S., defines "public records or files" as follows:

Any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

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.

6. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

7. It is found that, to the extent the requested records exist, they are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. By Petition received and filed with the Commission on October 28, 2019, Gerri Lewis, whose personnel file is partially at issue in this matter, moved to intervene. By Notice dated October 29, 2019, such Petition was granted.

9. However, during the hearing, the complainants, respondents, and Ms. Lewis reached an agreement regarding the complainants' request for records pertaining to Ms. Lewis' job status, and the complainants therefore withdrew their appeal with respect to such records.

10. Consequently, the only issue for the Commission's review is whether the respondents have provided all records responsive to the complainants' request for "records from the last six months, written and in email, among port authority employees and board members, pertaining to the job status of port authority employee Evan Matthews ... including discipline actions and or related matters."

11. At the hearing, respondents' counsel appeared and represented that the respondents have provided the complainants with all responsive records, which consists of two documents. However, counsel to the respondents did not offer any evidence that the respondents conducted a search and provided all responsive records. The complainants dispute that all responsive records have been provided, particularly since Mr. Matthews is the former Executive Director of the respondent Port Authority.

12. Consequently, immediately following the hearing, the hearing officer issued an order to the respondents to submit evidence in the form of an affidavit from an individual with the requisite knowledge to explain what, if any, search was conducted by the respondents to provide records responsive to the complainants' request as set forth in paragraph 10, above. The hearing officer also advised the complainants that they may raise any objections to the affidavit and that any objections raised would be considered by the hearing officer.

13. On November 20, 2019, the respondents filed with the Commission an affidavit of Andrew Lavigne, the Manager of Business Development and Special Projects for the respondent Connecticut Port Authority, which has been marked as Respondents' After Filed Exhibit 1. The complainants did not raise any objections.

14. It is found that the respondents searched for responsive records, any responsive records were provided to counsel for review, and were subsequently provided to the complainants. It is further found that no responsive records were withheld by the respondents. Consequently, it is found that the respondents did not violate the FOI Act as alleged by the complainants.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 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:

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

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

FOR THE INTERVENORS

To: Attorney Thomas J. Riley, for the Intervenor(s) Geraldine Lewis



Cynthia A. Cannata
Acting Clerk of the Commission