

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

American Civil Liberties Union
Foundation of Connecticut

Complainant

against

Docket #FIC 2021-0230

Commissioner, State of
Connecticut, Department of
Administrative Services; State
of Connecticut, Department of
Administrative Services

Respondents

September 13, 2023

The above-captioned matter was heard as a contested case on June 28, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted remotely through the use of electronic equipment, pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3.

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 August 26, 2020, the complainant requested copies of the following (among other records no longer at issue):

[records] showing the instances in which, on or after January 1, 2015, the Department of Administrative Services has undertaken efforts to collect the costs of incarceration from any person pursuant to Conn. Gen. Stat. §§ 18-85a, -85b, or -85c. Your response should include – but not be limited to – the name of the person against whom collection was attempted, the method(s) of collection employed, the date on which collection was attempted, the dollar amount sought by the Department, and the dollar amount ultimately collected from the person....

Because [the Freedom of Information (“FOI”) Act] governs information recorded “by any … method,” Conn. Gen. Stat. § 1-200(5), your search for records should include electronic as well as tangible sources....

3. It is found that, by email dated February 8, 2021, the respondents provided the complainant with a copy of a one-page spreadsheet showing the total amount recovered by the respondents under §§18-85a, 18-85b, and 18-85c, G.S., during the fiscal years 2018-2019 and 2019-2020. It is further found that the respondents notified the complainant that they did not maintain any other records responsive to the request described in paragraph 2, above.

4. It is found that, by letter received and filed April 12, 2021, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide the requested records.¹

5. At the time of the request, §1-200(5), G.S., provided that:

“[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.²

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 . . . (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.”

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of § 1-206(b)(1) G.S., which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. This provision of Executive Order 7M, which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. In addition, although § 1-206(b) G.S. requires that an appeal be filed with the Commission within 30 days of an alleged violation, Executive Order 7M § 2(1) suspended such requirement for appeals filed between March 25, 2020 and April 19, 2021. Consequently, the Commission retains jurisdiction.

² The Commission notes that §1-200(5), G.S., was subsequently amended to include the term “videotaped.” See June Sp. Sess. Public Act 21-2, §147.

8. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. The Commission notes that §§18-85a, 18-85b, and 18-85c, G.S., (“cost of incarceration statutes”) provide that individuals incarcerated by the Department of Correction (“DOC”) are obligated to reimburse the state for the costs associated with their incarceration, and further grants the state a lien against their assets or estates under certain circumstances.

10. It is found that within the Department of Administrative Services (“DAS”) there is a Collection Services department which undertakes efforts to collect on liabilities owed to various state agencies, including those owed to the Department of Correction (“DOC”) under the cost of incarceration statutes referenced in paragraph 9, above.

11. At the hearing in this matter, the respondents contended that, in disclosing the record identified in paragraph 3, above, they complied with the complainant’s request set forth in paragraph 2, above. The respondents also contended that they could not provide any additional responsive records because their electronic database had been compromised, and therefore they were unable to retrieve from such database any data or information responsive to the request. The respondents also contended that any further search for the requested records would constitute “research” not required by the FOI Act. The complainant disputed each of these contentions.

12. With respect to the respondents’ contention that they were not obligated to provide the requested records because doing so would constitute research not required by the FOI Act, the respondents argued that their “records are not organized by the authorizing statute or legal authority upon which the collection activity is initiated,” and that, as a result, a search for the requested records would require them to “research, use discretion and apply analysis to determine whether the record was related to the specific statutes listed in the Complainant’s request.”

13. In *Wildin v. Freedom of Information Commission*, 56 Conn. App. 683 (2000), the Appellate Court held that a public agency is not required to conduct research when responding to a request for public records. The court explained that a request requires research if it does not properly identify the records sought, such that the public agency must conduct an analysis or exercise discretion to determine which records fall within the scope of the request. *Id.* at 686–87. In accordance with *Wildin*, the Commission has concluded that the FOI Act does not require a public agency to conduct legal research when responding to a records request. See *Antonio Ponvert III v. State of Connecticut, Office of the Attorney General*, Docket #FIC 2005-475 (September 27, 2006), and *Steven Edelman v. Department of Public Safety*, Docket #FIC 1998-197 (April 14, 1999).

14. It is found that the request described in paragraph 2, above, did not require the respondents to conduct legal research. Unlike the requests at issue in *Ponvert III* and *Edelman*, referenced in paragraph 13, above, the request at issue in this matter sought records that were readily identifiable and did not require the respondents to conduct an analysis or exercise discretion to determine whether the records were responsive to the request.

15. Contrary to the contentions of the respondents described in paragraph 11, above, at the hearing, the respondents' witnesses, the Director of Collection Services and the Assistant Director of Collection Services at the Department of Administrative Services, each testified about the respondents' collections efforts, and the various filing systems that the respondents maintain which may contain records responsive to the request identified in paragraph 2, above.

16. It is found, based on the testimony of the respondents' witnesses, that in addition to the fiscal year data already provided to the complainant and identified in paragraph 3, above, the respondents may also maintain records showing the total amount recovered under §§18-85a, 18-85b, and 18-85c, G.S., for the full time period identified in the complainant's request. Notwithstanding such testimony, the respondents failed to provide such records to the complainant.

17. It is further found, based on the testimony of the respondents' witnesses, that at least one member of the respondents' staff (identified as a "processing tech") regularly communicated via e-mail with the DOC regarding collection efforts under the cost of incarcerations statutes. Notwithstanding such testimony, the respondents failed to conduct a search of their e-mail communications in order to locate records responsive to the complainant's request.

18. It is further found, based on the testimony of the respondents' witnesses, that the respondents also maintain paper files pertaining to collection efforts under the cost of incarcerations statutes. It is further found that such files may contain letters issued by the respondents providing notices of lien, copies of checks received by the respondents for payment on such liens, various correspondence, notes and other records related to collection efforts. Notwithstanding such testimony, the respondents failed to conduct a search of such files in order to locate records responsive to the complainant's request.³

19. It is further found, based on the testimony of the respondents' witnesses, that, on or about March 2020, the respondents had undertaken efforts to digitize their paper files. It is further found that such electronic files include folders labeled "DOC" that may include records pertaining to the respondents' collection efforts under the cost of incarceration statutes. Notwithstanding such testimony, the respondents failed to conduct a search of such electronic filing system in order to locate records responsive to the complainant's request.

20. With respect to the contention that the respondents were unable to provide responsive records or information contained in their database, it is found that such database was subject to data loss, which occurred on June 21, 2021, and covered a period from January 27, 2021, through July 9, 2021. It is found that the respondents subsequently engaged in data recovery efforts. The respondents' witnesses testified that they were then "locked out" of the database and have not been able to access it, at the direction of IT professionals within their agency, due to their concern that doing so might result in additional data loss.

³ The Commission notes that the respondents' director of collections services testified that it would be burdensome to their agency to conduct a search of their paper files. However, it is well settled that a search for records that a public agency deems to be burdensome does not relieve it of its obligations under the FOI Act.

21. Notwithstanding the findings in paragraph 20, above, it is found that the respondents' data loss did not occur until June 21, 2021, nearly an entire year following the August 26, 2020 request at issue in this matter. It is found that the respondents failed to present evidence of their efforts to comply with the complainant's request in advance of the data loss described in paragraph 20, above. It is further found that the respondents failed to demonstrate that they made reasonable and diligent efforts to consult with their IT staff to assess whether responsive data, information or records maintained in the database could be accessed and provided to the complainant.

22. In light of the foregoing findings, it is found that the respondents failed to prove that they provided all records responsive to the request set forth in paragraph 2, above, to the complainant.⁴

23. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., 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. Forthwith, the respondents shall provide the complainant with a copy of the records described in paragraph 16 of the findings above, free of charge.

2. Forthwith, the respondents shall commence a search of their e-mail communications, as described in paragraph 17 of the findings above, to locate records responsive to the request described in paragraph 2 of the findings above. The respondents shall provide the complainant with copies of responsive records, free of charge, on a rolling basis, at least every 30 calendar days. The respondents shall complete their review and disclosure of all e-mails within 6 months of the date of the Notice of Final Decision in this matter. The parties are encouraged to work together to determine the priority of the search and production described herein.

3. Forthwith, the respondents shall commence a search of the paper and electronic/digital files described in paragraphs 18 and 19 of the findings, above, to locate records responsive to the request described in paragraph 2 of the findings, above. The respondents shall provide the complainant with copies of responsive records, free of charge, on a rolling basis, at least every 30 calendar days. The respondents shall complete their review and disclosure of all paper files within 6 months of the date of the Notice of Final Decision in this matter. The parties are encouraged to work together to determine the priority of the search and production described herein.

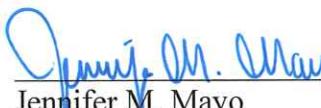
4. Forthwith, the respondents shall consult with their IT staff to determine whether it is feasible to search the electronic database for records responsive to the request described in

⁴ The Commission notes that the complainant also presented evidence that, in prior years, the respondents have provided the complainant, as well as the Yale Law School Arthur Liman Center for Public Interest Law, with copies of records responsive to similar requests. It is unclear to the Commission, therefore, why the respondents were unwilling to provide records to the complainant in this case.

paragraph 2 of the findings, above, without exposing the database to the risk of additional data loss. If, after such consultation, the respondents determine that such a search is feasible, the respondents shall conduct such search and provide the complainant copies of all responsive records, free of charge, within 60 days of the date of the Notice of Final Decision in this matter. If it is determined that such a search is not feasible, the respondents shall provide the complainant with an affidavit setting forth the determination in that regard, and the reasoning in support thereof.

5. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210 and 1-212, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 13, 2023.



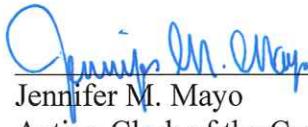
Jennifer M. Mayo
Acting Clerk of the Commission

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:

THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF CONNECTICUT, c/o Attorney Elana Bildner, American Civil Liberties Union of Connecticut, 765 Asylum Avenue, Hartford, CT 06105

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES; AND STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES, c/o Attorney Michael Barrera, Department of Administrative Services, 450 Columbus Avenue, Suite 1501, Hartford, CT 06103



Jennifer M. Mayo

Acting Clerk of the Commission