

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Thomas Goldenberg,

Complainant

against

Docket #FIC 2023-0167

Corporation Counsel, Office of the
Corporation Counsel, City of New Haven;
Office of the Corporation Counsel, City of
New Haven; and City of New Haven,

Respondents

February 28, 2024

The above-captioned matter was heard as a contested case on September 21, 2023, at which time the complainant and the respondents appeared 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 email dated March 5, 2023, the complainant requested copies of the following records: “[a]ny government emails mentioning methadone, methadone clinic, APT, Lynn Madden, or officials from APT”.¹
3. It is found that, by email dated March 7, 2023, the respondents acknowledged the complainant’s request, described in paragraph 2, above, and asked him to provide e-mail addresses or names of the City of New Haven officials he was requesting responsive records from and a timeframe for such records. It is also found that, by the same email, the respondents forwarded the records request to employees of the New Haven Health Department (“NHHD”) and the New Haven Information Technology Department (“IT”). It is further found that, by such email, the respondents instructed employees of NHHD and IT to conduct a diligent search for responsive records and forward any such responsive records directly to the complainant.
4. It is found that, by email dated March 13, 2023, the Director of Health at the NHHD responded to the complainant directly and informed him that she did not have any responsive records.

¹ “APT” refers to the APT Foundation, which provides treatment and recovery for those who live with substance use disorders and/or mental health. See www.aptfoundation.org

5. It is found that, by email dated March 13, 2023, the complainant clarified that he was requesting all records responsive to his request described in paragraph 2, above, from 2013 through the date of such request. It is also found that, by the same email, the complainant specified that his request should not be limited to NHHD and that the respondents should search for responsive records from Dr. Dalal and other members of the leadership at the City of New Haven's Community Services Administration ("CSA"), in particular. It is further found, however, that the complainant did not provide email addresses or name any additional City of New Haven officials, as requested by the respondents in their March 7th email, described in paragraph 2, above.

6. By email dated and filed April 12, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the requested records.

7. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

[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.

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

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

11. It is found that neither the respondent Corporation Counsel for the City of New Haven nor the respondent Office of the Corporation Counsel for the City of New Haven maintain the requested records described in paragraphs 2 and 5, above.

12. It is found that the requested records described in paragraphs 2 and 5, above, are maintained or kept on file by various departments within the City of New Haven, such as NHHD, IT, and CSA. It is also found that each of these departments is itself a public agency. It is further found that the respondent Office of the Corporation Counsel is distinct from any other public agency within the City of New Haven.

13. In Lash v. Freedom of Information Commission, 116 Conn. App. 171 (2009), the Appellate Court held that a public agency has the duty to maintain and disclose, upon request, the records in its possession, but that public agency does not have the duty to maintain or make available the records of another public agency. See Lash v. Freedom of Info. Comm'n, 116 Conn. App. 171, 187 (2009) (“[the first selectman] has no duty to maintain or make available the records of the law department, just as the law department has no duty to maintain or disclose the records of the first selectman”), affirmed in part and reversed in part, 300 Conn. 511 (2011) (appellate court’s order remanding the case to the Commission for further evidence was reversed). See also Docket #FIC 2021-0393; Patricia King, Office of Corporation Counsel, City of New Haven; and Office of Corporation Counsel, City of New Haven (May 11, 2022).

14. Accordingly, it is concluded that the respondents were only required to provide the complainant with responsive records that they maintain, and as set forth in paragraph 11, above, the respondents maintain no such responsive records.

15. It is found, however, that in response to the complainant’s request, the respondents contacted other departments within the City of New Haven that they believed might maintain the requested records and asked those departments to conduct a search for such records.

16. It is found that, on or around August 14, 2023, the respondents also worked with the complainant to narrow his request to responsive emails for fifteen named individuals.² It is also found that, as of the date of the hearing in this matter, the respondents had obtained all responsive records from other departments and provided all responsive records for four of the fifteen named individuals to the complainant, totaling approximately two hundred pages. The respondents further testified, and it is found, that, due to the nature of the search terms described in paragraph 2, above, and the responsive timeline described in paragraph 5, above, the respondent Corporation Counsel reviewed thousands of non-responsive records from IT, in order to identify responsive records.

17. It is found that, at the time of the hearing on this matter, the respondents also indicated a willingness to continue to review potentially responsive records and to provide responsive records to the complainant. The Commission encourages the respondents to do so.

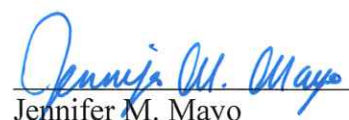
18. It is therefore concluded that the respondents did not violate the FOI Act, as alleged by the complainant.

² The Commission notes that although there was a five-month delay between the complainant’s initial request in March 2023, and the respondents’ actions in August 2023, for the reasons set forth in paragraph 14, above, the named respondents in this matter are not the proper respondents for purposes of a “promptness” inquiry.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 28, 2024.



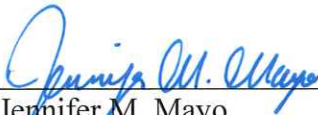
Jennifer M. Mayo
Acting Clerk of the Commission

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:

THOMAS GOLDENBERG, 324 Nicoll Street, New Haven, CT 06511

CORPORATION COUNSEL, OFFICE OF THE CORPORATION COUNSEL, CITY OF NEW HAVEN; OFFICE OF CORPORATION COUNSEL, CITY OF NEW HAVEN, Connecticut Financial Center, 165 Church St # 441, New Haven, CT 06510; **AND CITY OF NEW HAVEN**, 165 Church St, New Haven, CT 06510



Jennifer M. Mayo
Acting Clerk of the Commission