

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION  
AFTER REMAND

Michael Aronow

Complainant

against

Docket #FIC 2015-127

Freedom of Information Officer, State of  
Connecticut, University of Connecticut  
Health Center; and State of Connecticut,  
University of Connecticut Health Center,

Respondents

August 14, 2019

The above-captioned matter was heard as a contested case on July 1, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. A Report of Hearing Officer, dated September 14, 2015, was issued to the parties, and a Final Decision was adopted by the Commission at its regular meeting of October 28, 2015.

The complainant appealed the Final Decision to the Superior Court, which dismissed such appeal in a Memorandum of Decision on Appeal, dated January 5, 2018. Aronow v. Freedom of Information Commission, judicial district of New Britain, Docket No. HHB-CV-15-5017072-S (January 5, 2018). The complainant then appealed to the Appellate Court, which reversed, in part, the Superior Court's judgment insofar as it upheld the Commission's finding that the complainant narrowed his request in the manner described in paragraph 11 of the Final Decision. Aronow v. Freedom of Information Commission, 189 Conn. App. 842 (2019). The case was remanded to the Commission with direction to order the health center respondents to comply in an expeditious manner with the complainant's original records request, as narrowed only by paragraph 10 of the Final Decision. Id. at 864.

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 on February 4, 2015, the complainant requested the following:
  - a. All emails received or sent by Dr. Jay R. Lieberman on his UCHC email account(s) from July 1, 2009 to the present;

- b. All Microsoft Word and PDF documents on Dr. Jay R. Lieberman's UCHC computer(s) created or modified from July 1, 2010 to the present; and
- c. A list of all emails and documents that you have obtained related to the above requests but were excluded and the reason they were excluded.

3. By letter filed February 17, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act by failing to provide him with copies of the records he requested.

4. Section 1-200(5), G.S., provides:

Public 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, ...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, ... 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 all 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.

8. It is found that the complainant's request, set forth in paragraph 2, above, is identical to a request he made to the respondents on August 19, 2013, and was the subject of the complainant's appeal to the Commission alleging failure to comply promptly. It is found that such appeal was dismissed for lack of subject matter jurisdiction (timeliness) on February 4, 2015. See Docket #FIC 2014-156, Michael Aronow v. Executive Vice President, State of Connecticut, University of Connecticut Health Center; and State of Connecticut, University of Connecticut Health Center (February 4, 2015).<sup>1</sup>

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<sup>1</sup> The complainant appealed this final decision to the Superior Court, which dismissed the case, finding that the matter was moot because, by then, the complainant had made an identical request

9. The Commission takes administrative notice of the findings of fact in Docket #FIC 2014-156, as the complainant, respondents, request for records, and allegation of lack of promptness are the same in both this case and Docket #FIC 2014-156.

10. In particular, the Commission found in Docket #FIC 2014-156 that “by email dated December 13, 2013, Dr. Scott Wetstone (‘Wetstone’) of the respondent Health Center, suggested to the complainant that, in light of the complainant’s other FOIA requests, a narrowed request would expedite disclosure [of the records requested on August 19, 2013].” Consequently, the complainant agreed to exclude “broadcast emails, journal articles, and research data.” Docket #FIC 2014-156, paragraph 4.

11. It is found that on June 30, 2014, the complainant asked Wetstone to release “whatever material you have collected to date as well as the subset of documents that meet the following search criteria ... between July 1, 2010 and August 14, 2012.” It is found that the complainant listed as search criteria his name and variations of his name, the words FOI and variations, and “HCAC, or “grievance” or “Appeals Committee,” and also excluded emails sent to his own email at the health center.

12. It is found that on July 25, 2014, Wetstone informed the complainant that he had found 191 responsive records, 52 of which required further study for redaction, and that he sent the other 139 records to the complainant by Dropbox in partial compliance with the first request.

13. It is found that the transmission by Dropbox did not work, and the complainant received only 17 readable records, whereupon he asked Wetstone to send the remaining ones by CD or email.

14. It is found that, as of the date of the hearing in this matter, the complainant still had not received the remaining 122 initial non-redacted records that the respondents were prepared to provide on July 25, 2014 (see paragraph 13, above), and that are responsive to the identical request in this matter.

15. The respondents contended that since leaving the employ of the University of Connecticut Health Center three years ago, “Dr. Aronow has filed 27 FOI requests, a number quickly dwarfed by their breadth and complexity.” Moreover, the respondents contended, the complainant’s “FOI requests overlap or mirror his OPH [Office of Public Hearings] discovery.” Respondents’ Memorandum of Law (July 31, 2015), pages 2-3.

16. The respondents testified, through affidavit, that a forensic search of Dr. Lieberman’s computer for documents in Word, Excel, Powerpoint and Adobe PDF, as well as emails, from January 1, 2009 through the search date of September 15, 2013, produced 47,300 documents. The respondents testified further, through affidavit, that based on the file size of the documents and emails, the 47,300 documents contain 824,500 pages.

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to the respondents, and had appealed the alleged denial of such request to the Commission. Such appeal to the Commission is the present matter. See Aronow v. Freedom of Information Commission, judicial district of New Britain, HHB-CV15-5016347S (June 18, 2015).

17. It is found that the estimate of 824,500 pages did not take into account the narrower request described in paragraph 10, above.

18. Based at least on the 122 records that respondents were prepared to provide to the complainant on July 25, 2014, in partial compliance with the first request, it is found that the respondents have failed to promptly comply with the complainant's request in this matter.

19. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.

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

1. In an expeditious manner, the respondents shall provide a copy of the records responsive to the request described in paragraphs 2.a, 2.b, and 2.c, of the findings of fact, above, narrowed only as described in paragraph 10 of the findings of fact, above.

2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 14, 2019.



Cynthia A. Cannata  
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:

**MICHAEL ARONOW**, Orthopedic Associates of Hartford, 85 Seymour Street, Suite 607, Hartford, CT 06106

**FREEDOM OF INFORMATION OFFICER, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER; AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER**, c/o Jeffrey M. Blumenthal, Esq., Assistant Attorney General, University of Connecticut Health Center, 263 Farmington Avenue, Farmington, CT 06030-3803



Cynthia A. Cannata  
Acting Clerk of the Commission