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FREEDOM OF INFORMATION

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Roger Codding
Complainant(s)

against

Commissioner, State of Connecticut, Department of Administrative Services; and State of Connecticut, Department of Administrative Services
Respondent(s)

Notice of Meeting

Docket #FIC 2024-0368

May 5, 2025

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, May 14, 2025.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission ***ON OR BEFORE May 13, 2025.*** Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed ***ON OR BEFORE May 13, 2025.*** **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed ***ON OR BEFORE May 13, 2025*** and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

Jennifer M. Mayo
Acting Clerk of the Commission

Notice to: Roger Codding
Attorney Michael Barrera

FIC# 2024-0368/ITRA/MKS//NAS/JMM/2025-05-5

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

Report of Hearing Officer

Roger Codding,

Complainant

against

Docket # FIC 2024-0368

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

Respondents

April 30, 2025

The above-captioned matter was heard as a contested case on December 2, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, 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 June 7, 2024, the complainant requested that the respondents provide him with copies of the following:

> [a.] A list of the mobile phones used by the Commission on Human Rights and Opportunities (CHRO); list to include CHRO employee's name and mobile phone number.
>
> [b.] Mobile phone messages/texts sent and received from CHRO's mobile phone number 860-463-3592 for the last 12 months (from 6/1/2023 to 6/1/2024).

3. It is found that, by separate emails dated June 14, 2024 and June 20, 2024, the complainant followed up with the respondents, thereby renewing his June 7, 2024 request.

4. By complaint dated June 24, 2024 and received June 25, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him any of the records described in paragraph 2, above.

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, videotaped, 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 . . . (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 requested records, to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

Paragraph 2.a. Request

9. With respect to the request described in paragraph 2.a., above, the complainant contended, at the hearing on this matter, that although he received records responsive to his request, the respondents failed to provide him with such records promptly. The respondents disputed such claim.

10. With regard to promptness, the Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, *In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant* (January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means "quickly and without undue delay, taking into account all factors presented by a particular request."

11. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requestor, if ascertainable; and the importance to the public of completing other agency business without the loss of personnel time involved in complying with the request. In addition, common sense and goodwill ought to be the guiding principles.

12. At the hearing on this matter, the complainant testified, and it is found, that the

respondents did not provide him with any responsive records until October 29, 2024 and, at that time, they provided him with copies of Verizon cell phone invoices. The complainant further testified, and it is found, that such invoices generally are not responsive to either of his requests described in paragraph 2, above; however, such invoices included a list of CHRO employee's names and the mobile phone numbers assigned to each such respective CHRO employee. Thus, it is found that the respondents provided the complainant with the records responsive to the request described in paragraph 2.a., above, on October 29, 2024, which the complainant contends was not prompt.

13. At the hearing on this matter, the Unified Communication Manager for the Department of Administrative Services ("DAS") appeared on behalf of the respondents. He testified, and it is found, that he received the complainant's request on June 7, 2024, but he ignored it because he believed it was a "scam." He further testified, and it is found, that he had asked employees in his agency, including a DAS IT manager for advice and that he was told to ignore the email.[1]

14. It is found that the Unified Communication Manager also ignored the complainant's follow up emails described in paragraph 3, above, because he believed "it was a scam."

15. It is found that the respondents did not attempt to search for responsive records or to respond to the complainant's request until after the Commission provided the respondents notice of the complaint and counsel for DAS discussed the request with the Unified Communication Manager.

16. The Unified Communication Manager testified, and it is found, that he could not recall when he first spoke with counsel for DAS about the request. Therefore, the Commission takes administrative notice of the initial docketing letters that were mailed to the parties in this matter, which transmitted a copy of the complaint and the request to the respondents. Accordingly, it is found that the Commission sent notice of the pending complaint to the respondents on July 1, 2024, and that they, therefore, should have received notice of the complaint within a reasonable time thereafter.

17. It is found that 144 days elapsed from the date of the complainant's records request to the date he received records responsive to the request described in paragraph 2.a., above. It is further found that 120 days elapsed between July 1, 2024 (the date of the Commission's notice referenced in paragraph 16, above) and the date the complainant received such responsive records.

18. It is found that ignoring the request and assuming it was a scam was not a reasonable justification for the delay in this matter.

19. Under the facts and circumstances of this case, it is found that the respondents failed to provide the records to the complainant promptly.

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[1] Based upon the testimony at the hearing on this matter, it is found that the Unified Communication Manager did not consult with legal counsel when he received the complainant's records request, but that, going forward, he will do so when he receives such requests.

20. Accordingly, it is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

Paragraph 2.b. Request

21. At the hearing on this matter, the complainant contended that he received no records responsive to his request described in paragraph 2.b., above, and that he believed that the respondents maintained such records because they manage and issue the cell phones used by the CHRO employees. The respondents disputed such claims.

22. At the hearing on this matter, the Unified Communication Manager testified, and it is found, that:

a. the records requested in paragraph 2.b., above, generally are not of the type that would be maintained by the respondents;

b. DAS solely handles the billing and payments of cell phone bills for the CHRO, but the CHRO reimburses DAS for such costs and DAS has neither custody nor control over CHRO's text messages;

c. aside from cell phone invoices and bills, DAS does not maintain copies of text messages from cell phones used by employees of other agencies, including the CHRO; and

d. the requested text messages are substantive records of, and pertaining to, the CHRO and the respondents do not have authority to access such records.

23. The respondents also submitted into evidence, at the hearing on this matter, an affidavit executed by a DAS Information Technology Analyst 1, in which she averred, and it is found, that she performed a search for records responsive to the complainant's request; the respondents do not prepare, own or use the requested records; the respondents never received or retained the requested records; and they are not entitled by law nor contract to receive a copy of the requested records.[2]

24. It is found that DAS and the CHRO are distinct public agencies.[3] It is further found that the respondents' testimony that DAS does not maintain, own or have access to the requested text messages is credible, under the facts and circumstances of this case.

25. It is found that the respondents do not maintain records responsive to the request described in paragraph 2.b., above.

26. It is therefore concluded that the respondents did not violate the FOI Act with respect

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[2] The respondents also submitted into evidence an affidavit executed by the Unified Communication Manager substantially averring the same.

[3] "[O]ne public agency may not be held responsible for disclosing the public records in the custody of another public agency." *Lash v. Freedom of Info. Comm'n*, 116 Conn. App. 171, 188 (2009), *aff'd in part and reversed in part on other grounds*, 300 Conn. 511 (2011).

to the request described in paragraph 2.b., above, as alleged by the complainant.

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

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

/s/ Mary-Kate Smith
Mary-Kate Smith
as Hearing Officer

FIC# 2024-0368/HOR/MKS043025