

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John DiIorio,

Complainant

against

Docket # FIC 2020-0231

Banking Committee, State of Connecticut,
General Assembly,

Respondents

June 23, 2021

The above-captioned matter was heard as a contested case on April 26, 2021, at which time the complainant and the respondents appeared, stipulated to certain facts, 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 telephonically.¹

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondent is a public agency within the meaning of §1-200(1), G.S.
2. By letter of complaint filed May 20, 2020,² the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records. Additionally, the complainant requested that the Commission consider the imposition of a civil penalty against the respondent.
3. It is found that, by email dated January 17, 2020, the complainant requested that the respondent provide him with copies of the following records:

- (a) For the period from January 1, 2009 – present, all communications between any Department of Banking employee, and any member of the Banking Commission or

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

its staff, relating to Public Act 17-38, also referred to as SB 906, "An Act Concerning Lead Generators of Residential Mortgage Loans." We are looking for all correspondence, including emails and text messages.

- (b) We make the same request for House Bill HB05490, also known as Public Act 18-173, and SB948, Public Act 09-209.

4. It is found that, by email dated January 22, 2020, the respondent, through Ms. Beth Waters of the Office of Legislative Management, acknowledged receipt of the complainant's request. In her message to the respondent, Ms. Waters made suggestions regarding the narrowing of the complainant's request.

5. It is found that Ms. Waters is the Executive Assistant to the Executive Director of the Office of Legislative Management, Mr. James Tamburro. It is further found that The Office of Legislative Management provides administrative and operational support for the Connecticut General Assembly. Additionally, it is found that neither Ms. Waters nor Mr. Tamburro were involved in conducting any of the searches for records, nor were either of them involved in reviewing records to determine responsiveness to the complainant's request.

6. It is found that the complainant revised his request on January 24, 2020, as follows:

- (a) I temporarily withdraw my request related to the 2009 bill [Public Act 09-209].
- (b) I have provided you with all banking committee legislators from 2014-2018. Please use that list for the banking committee member aspect of my request relating to Public Acts 17-38 and 18-173³.
- (c) For the 2017 bill [Public Act 17-38], I request all communications between Banking Committee members provided; and Matt Smith, Jorge Perez, Carmine Costa, Stacey Serrano, Richard Cortes, Daniel Landini, and any member of the Department's government relations and legislative affairs division. Time frame for this request is 2014-2017.
- (d) For the 2018 bill [Public Act 18-173], I request all communications between Banking Committee members provided; and Matt Smith, Jorge Perez, Carmine Costa, Stacey Serrano, Richard Cortes, Daniel Landini, and any member of the Department's government relations and

³ In a subsequent correspondence later on January 24, 2021, the complainant corrected the specific bill numbers: Public Act 18-173 Bill No. H05490; Public Act 17-38 Bill No. SB 906

legislative affairs division. Time frame of this request is 2017-2018.

- (e) For both the 2017 and 2018 bills, I request all letters, memos, testimony, and fiscal notes provided the Committee prior to passage of each bill. I also request all offered amendments for both bills.

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

8. 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.

9. 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.”

10. It is found that the records described in paragraphs 3 and 6, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

11. It is found that the complainant, having received no records or further response from the respondent, followed up by email dated February 18, 2020, asking if the respondent anticipated producing any responsive records soon.

12. It is found that by email dated February 20, 2020, Ms. Waters responded to the complainant that work was continuing, and she expected to be able to provide an update the following week.

13. It is found that Ms. Waters served as the primary point of contact for the complainant and as the coordinator of the respondent’s response to the complainant’s request for records from the Banking Committee. It is further found that Ms. Waters was not involved with the search for records or the review of such records, but would communicate with multiple staffers associated

directly with the Banking Committee to track the status and progress of the response to the complainant's request.

14. It is found that on March 6, 2020, Ms. Waters notified the complainant by email that she received a "stack of paper from someone working in the Banking Committee." Ms. Waters informed the complainant the records consisted of documents that were mostly accessible on-line through the General Assembly's website. It is found that such records were described as bill history and testimony. Additionally, it is found that Ms. Waters informed the complainant that regarding the communications part of the complainant's request, the search resulted in "around 700 emails" and that such emails were being reviewed. At hearing, Ms. Waters testified that the 700 records were not necessarily just emails but may also have included other records. Additionally, Ms. Waters testified that she did not know specifically who was reviewing the 700 records.

15. It is found that the complainant did not ever pick up the records referred to by Ms. Waters in her March 6, 2020, email. It is further found that the complainant gathered the referenced records through his own on-line search of the General Assembly's website.

16. It is found that in an email dated March 31, 2020, Ms. Waters informed the complainant that all FOI requests would take longer to fulfill, and that staff was not allowed into offices⁴.

17. In an email dated June 17, 2020, Ms. Waters informed the complainant that she would check with "those reviewing the emails" and provide the complainant with an update. In the same email, Ms. Waters clarified that the initial search was conducted by the IT department and the search returned 700 results as opposed to 700 emails. Ms. Waters explained in the email that such results are then reviewed for responsiveness to determine which are responsive to the complainant's request.

18. It is found that in response to the June 17, 2020, email described in paragraph 17, above, the complainant asked Ms. Waters to provide additional information regarding why certain records would be deemed not responsive to the request. Additionally, the complainant requested to know who the sender was and who the recipient was for any email deemed to be not responsive to the complainant's request.

19. It is found that in emails dated June 22, 2020, June 26, 2020, June 30, 2020, and July 10, 2020, the complainant asked Ms. Waters to provide him with the names of the attorneys who were in the process of reviewing the requested records. It is further found that Ms. Waters did not provide the complainant with any of the requested names.

20. It is found that on September 28, 2020, the respondent provided the complainant with approximately sixty (60) records responsive to the complainant's request. The respondent indicated that more records were forthcoming, and that the complainant's request remained active.

⁴ During the month of March 2020, in response to the COVID-19 pandemic, Governor Lamont issued a series of Executive Orders limiting access of employees and the public to all State office buildings.

21. It is found that in emails dated October 5, 8 and 22, 2020, November 11, 2020, December 8 and 27, 2020, January 12, 2021 and February 12, 2021, the complainant inquired as to the status of the remaining records. It is found that the complainant received no additional records during this time.

22. It is found that the respondent disclosed approximately thirty-three (33) records to the complainant on March 26, 2021, and twenty-nine (29) records on April 8, 2021. The records disclosed included both emails and email attachments.

23. It is found that as of the date of the hearing on this matter, the respondent disclosed close to one hundred (100) records in total.

24. The complainant contended that of the 700 records that were discovered during the initial search, far more records responsive to the request exist.

25. It is found that Ms. Waters and Mr. Tamburro could not testify as to the thoroughness of the search that was conducted, the parameters of the search conducted, or the reason why certain records were deemed to be not responsive to the complainant's request. Additionally, it is found that Ms. Waters and Mr. Tamburro could not testify as to whether individual Banking Committee members were queried as to the existence of responsive records contained within their paper or electronic files.

26. Therefore, it is concluded that the respondent failed to prove that it conducted a timely, diligent search for records responsive to the complainant's request nor could the respondent prove that all records responsive to the complainant's request were disclosed to the complainant. Accordingly, it is concluded that the respondent violated §1-212(a), G.S., as alleged by the complainant.

27. With regard to the complainant's allegation that the respondent's actions were not prompt, in Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated 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 consideration all of the factors presented by a particular request.

28. 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 requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

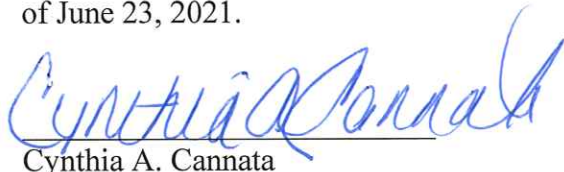
29. It is found that although the respondent faced a number of challenges during the COVID-19 pandemic, the respondent's disclosure of records on March 26 and April 8, 2021, fifteen months after the request was received, was not prompt. Therefore, it is concluded that the respondent violated the promptness provision of §1-212(a), G.S.

30. Based on the circumstances of this complaint, the Commission declines to consider the imposition of a civil penalty.

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

1. No later than 30 days after the rendering of this decision, the respondent shall conduct a thorough search for records responsive to the complainant's request.
2. The respondent shall direct a person or persons familiar with the search or searches conducted to prepare an affidavit or affidavits attesting to the location(s) searched and the results of such search(es). Such affidavits shall be provided to the complainant.
3. The respondent shall promptly disclose to the complainant any responsive records not previously disclosed and copies of such records shall be provided free of charge.
4. In the event any records responsive to the complainant's request are withheld, the respondent shall prepare a log describing the records withheld and identifying the exemption to disclosure being claimed.
5. Henceforth, the respondent 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 June 23, 2021.



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:

JOHN DIORIO, c/o Attorney Ann H. Rubin, Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06702

BANKING COMMITTEE, STATE OF CONNECTICUT, GENERAL ASSEMBLY, c/o Jim Tamburro, and Beth Waters, State of Connecticut, Office of Legislative Management, 300 Capitol Avenue, Room 5100, Hartford, CT 06106



Cynthia A. Cannata
Acting Clerk of the Commission