

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Companions and Homemakers, Inc.,

Complainant

against

Docket #FIC 2020-0300

Commissioner,  
State of Connecticut, Office  
of Policy and Management;  
and State of Connecticut, Office  
of Policy and Management,

Respondents

January 26, 2022

The above-captioned matter was heard as a contested case on June 11, 2021, at which time both 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 remotely.<sup>1</sup>

On October 27, 2021, pursuant to an order of the hearing officer, the complainant submitted, without objection, an after-filed exhibit, which has been marked as Complainant's Exhibit C (after-filed): Email dated June 7, 2020, from Attorney Acevedo to Respondents (with attachments).

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 January 29, 2020, the complainant, through counsel, made a request to the respondents for copies of:

[m]emoranda, electronic correspondence, voice-recordings, letters, circulars, bulletins, and any other writing generated in 2017, 2018,

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

and 2019 concerning proposed legislation to restrict ‘**non-competes**’ provisions in home care agency contracts.

If you deny this request in part or in its entirety, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

3. It is found that, by separate email dated January 29, 2020, the complainant, through counsel, made a similar request to the respondents for copies of:

[m]emoranda, electronic correspondence, voice-recordings, letters, circulars, bulletins, and any other writing generated in 2017, 2018, and 2019 concerning proposed legislation to restrict ‘**no-hire**’ provisions in home care agency contracts with consumers.

If you deny this request in part or in its entirety, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.<sup>2</sup>

4. It is found that, by email dated January 30, 2020, the respondents acknowledged the January 29<sup>th</sup> requests, and informed the complainant that they were “canvassing this agency for any responsive documents that are not exempt from disclosure.”

5. It is found that, approximately four months later, by email dated June 7, 2020, the complainant requested that the respondents “advise if you intend to comply with the enclosed requests.” It is found that copies of the January 29<sup>th</sup> requests were attached to such email.

6. By letter of complaint emailed July 2, 2020, and filed July 6, 2020,<sup>3</sup> the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the January 29<sup>th</sup> requests.

7. At the time of the requests, section 1-200(5), G.S., provided:

‘[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

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<sup>2</sup> The records requests described in paragraphs 2 and 3, above, shall be collectively referred to herein as “the January 29<sup>th</sup> requests.”

<sup>3</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. 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. Consequently, the Commission retains subject matter jurisdiction.

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.<sup>4</sup>

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 “any 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 requested records are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

11. At the hearing and in their post-hearing brief, the respondents contended that the complaint should be dismissed for lack of subject matter jurisdiction. The respondents argued that the complainant failed to timely file the complaint with the Commission, and that the appeal was moot as responsive records had been provided to the complainant.

12. With respect to the respondents’ claim that the complainant failed to timely file the complaint, §1-206, G.S., provides, in relevant part:

(a) Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b)(1) Any person denied the right to inspect or copy records under section 1-210 ... or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom

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<sup>4</sup> Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial.... [Emphasis added].

13. In addition, our Supreme Court has held that the FOI Act “does not bar successive requests, nor does it bar successive denials, nor does it require an appeal within thirty days of the denial of any particular request.” Board of Education v. Freedom of Information Comm’n, 208 Conn. 442, 451(1988); see also Sedensky v. Freedom of Information Comm’n, No. HHB-CV13-6022849S, 2013 WL 6698055 (Conn. Super. Ct. 2013); Town of West Hartford v. Freedom of Information Comm’n, 218 Conn. 256 (1991). Such a rigid requirement “would frustrate the ‘strong legislative policy in favor of the open conduct of government and free public access to government records.’ Wilson v. Freedom of Information Comm’n, [181 Conn. 324, 328, 435 A.2d 353 (1980)].” Id.

14. It is found that the complainant renewed the January 29<sup>th</sup> requests on June 7, 2020. It is found that four business days from the date of such renewed request was June 11, 2020. Accordingly, it is found that such request was constructively denied, by operation of §1-206(a), G.S., on June 11, 2020.

15. It is found that the notice of appeal in this matter was filed less than thirty days after the alleged denial, within the meaning of §1-206(b), G.S.

16. With respect to the respondents’ claim that the complainant’s appeal is moot, it is found that at the time the complaint was filed, on July 6, 2020, the respondents had yet to provide any responsive records to the complainant. It is also found that, by email dated July 9, 2020, after the filing of the complaint, the respondents provided the complainant with 153 pages of records consisting of emails that were responsive to the January 29<sup>th</sup> requests. It is found that fourteen pages of such records contained redactions.

17. Because the issue herein is whether *all* responsive records, or portions thereof, were provided to the complainant, it is found that this case is not moot.

18. Accordingly, it is concluded that the Commission has subject matter jurisdiction over the complaint.

19. At the hearing and in its post-hearing brief, the complainant maintained that the respondents failed to provide all records responsive to the January 29<sup>th</sup> requests, and that they failed to prove that the redacted records were exempt from disclosure.<sup>5</sup>

20. At the hearing, the respondents testified that they provided all responsive records

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<sup>5</sup> In its post-hearing brief, the complainant also alleged that the respondents violated the FOI Act by failing to (1) provide responsive records promptly and (2) specify the legal basis (i.e., specific exemptions) for its denial of a records request at the time of the denial. It is found that such allegations were not fairly raised in the complaint, nor at the hearing, and therefore the Commission lacks jurisdiction to address such allegations.

except for portions of such records which they claimed were “non-responsive” to the January 29<sup>th</sup> requests, and therefore need not be disclosed to the complainant in connection with this matter. The respondents did not claim that such records were exempt from disclosure.

21. The respondents testified that they redacted “non-responsive” information from the records and that such redactions consisted of information concerning legislative matters and nursing home rates, state Medicaid refund payments, Husky B changes, union issues concerning payment periods by fiduciaries, and/or a meeting between the Governor and a lobbyist. The complainant acknowledged that such matters would not be responsive to the January 29<sup>th</sup> requests.

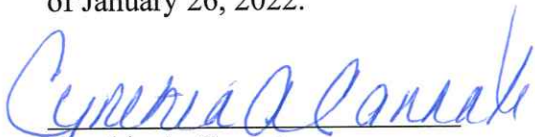
22. Based on credible testimony provided by the respondents at the hearing, it is found that the redactions do not concern proposed legislation to restrict “non-compete”/“no-hire” provisions in home care agency contracts. It is therefore found that such redacted information is non-responsive to the January 29<sup>th</sup> requests and need not be disclosed to the complainant in connection with this matter.<sup>6</sup>

23. Accordingly, the respondents did not violate the FOI Act when they withheld the redacted records or portions thereof from the complainant.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 26, 2022.



Cynthia A. Cannata  
Acting Clerk of the Commission

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<sup>6</sup> At the hearing and in its post-hearing brief, the complainant requested that the hearing officer conduct an in camera inspection of the records at issue. Given the credible testimony provided by the respondents, and the findings and conclusions in paragraphs 20, 21 and 22, above, such request is hereby denied.

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:

**COMPANIONS AND HOMEMAKERS, INC.**, c/o Attorney J. Martin Acevedo, 613 New Britain Avenue, Farmington, CT 06032

**COMMISSIONER, STATE OF CONNECTICUT, OFFICE OF POLICY AND MANAGEMENT; AND STATE OF CONNECTICUT, OFFICE OF POLICY AND MANAGEMENT**, c/o Gareth Bye, 450 Capitol Avenue, Hartford, CT 06106



Cynthia A. Cannata  
Acting Clerk of the Commission