

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Paul Kowalski,

Complainant

against

Docket #FIC 2020-0262

City of New Haven,

Respondent

June 8, 2022

The above-captioned matter was heard as a contested case on April 19, 2021, June 16, 2021, and July 27, 2021, at which times complainant and the respondent 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 April 19 and June 16 hearings were conducted telephonically¹ and the July 27 hearing was conducted remotely².

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. It is found that, by email dated April 21, 2020, the complainant requested that the respondent provide him with copies of the following records:
 - a. [A]ny and all grievances and MPPs³ filed on behalf of Mr. Paul Kowalski which may be on file with Labor Relations, Human Resources, Corporation Counsel or Community Services Administration, in addition to Mr. Kowalski's personnel file;
 - b. [N]otes, files, emails or any other documents to/from Mayor Harp, John Rose, Dakibu Muley, Malinda

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

² Section 149 of Public Act 21-2 (June Sp. Sess.) authorized remote meetings through April 30, 2022.

³ When the hearing officer asked the complainant what "MPP" stood for, he replied that "it is a formal complaint [filed by the Union alleging] that a grievance was not addressed."

Figuroa, Byron Kennedy and all attorneys, both working for the City of New Haven internally and under contract, regarding Paul Kowalski, lead paint, lead paint poisoning and/or the New Haven Health Department; and

- c. [A]ny and all complaints, files and reports regarding Mr. Paul Kowalski from Human Resources, Labor Relations, Community Services Administration, [the] Mayor's Office and the Health Department.

3. It is found that, by email dated April 22, 2020, the respondent acknowledged the complainant's request.

4. It is found that, by email dated June 3, 2020, the complainant inquired into the status of his request.

5. By letter dated and filed June 12, 2020⁴, the complainant appealed to this Commission, alleging that the respondent had violated the Freedom of Information ("FOI") Act by failing to provide him with responsive records.

6. At the time of the request, §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 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.⁵

7. 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

⁴ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal with 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, through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

⁵ Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped.”

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.

8. 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.”

9. 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.

10. It is found that, on or about September 11, 2020, the parties held a telephonic conference to clarify and narrow the request.

11. It is further found that, between September 14, 2020 and September 21, 2020, the complainant and the respondent communicated regarding clarification and narrowing of the request set forth in paragraph 2, above.

12. At the first contested case hearing, the complainant represented that the request set forth in paragraph 2.a, above, was satisfied.

13. With regard to the request set forth in paragraph 2.b, above, the complainant contended that the respondent had not provided all responsive emails. He further contended that he was missing certain emails that were referenced within emails that he had received as well as attachments to emails (the “missing emails and attachments”).

14. With regard to the request set forth in paragraph 2.c, above, the complainant contended that, although the request had not specifically requested emails, he believed that he should have received two emails responsive to this request. Specifically, the complainant contended that he should have received an email between Dakibu Muley and himself, which summarized a 2017 meeting involving both parties⁶ (the “first missing email”), and he should have received an email containing “a note to the file” drafted by Mr. Muley on or about June 28, 2019 (the “second missing email”).

15. The respondent contended that it worked diligently to understand and satisfy the complainant’s request and that it had disclosed as many non-exempt responsive records to the complainant as quickly as it could.

16. With regard to the request set forth in paragraph 2.b, above, it is found that, by the date of the first contested case hearing, the city had gathered and disclosed all hardcopy records to the complainant. It is further found that, by the date of the first contested case hearing, the respondent had disclosed to the complainant all responsive emails from the accounts of Mayor Harp, Mr. Muley, Ms. Figueroa and Mr. Kennedy.

⁶ The complainant clarified that he had received this email in the past but felt that he should have received it again in the context of this FOI request.

17. With respect to John Rose's emails, it is found that the respondent conducted a search which resulted in approximately 2,000 emails, many of which, at the time of the first contested case hearing had not been disclosed and still needed to be reviewed for potential exemptions. The Commission takes administrative notice of the fact that John Rose is an attorney, who has held the position of Corporation Counsel for the City New Haven.

18. With respect to the request set forth in paragraph 2.c, above, it found that, by the date of the first contested case hearing in this matter, the city had disclosed responsive records to the complainant on a rolling basis. It is further found that the "second missing email" was contained in one of those disclosures. However, the city represented that it would provide another copy of such email to the complainant. It is also found that the city became aware of the "first missing email" just days before the first contested case hearing and it represented that this email would be disclosed to the complainant. Finally, it is found that the city represented that, with the disclosure of these two emails, the request set forth in paragraph 2.c, above, would be fully satisfied as it did not maintain any additional responsive records.⁷

19. At the conclusion of the first contested case hearing, the hearing officer issued the following orders: Prior to the continued contested case hearing, 1) the complainant was to provide the respondent with a list of the "missing emails and attachments," which list should include the date and to and from sections of each missing email and/or missing attachment, (see ¶ 13, above); 2) upon receipt of said list, and the respondent was to disclose said records to the complainant; 3) the respondent was to disclose the "first missing email" and the "second missing email" to the complainant, (see ¶ 14, above); and 4) the respondent was to use its best efforts to review and disclose to the complainant all of Attorney Rose's non-exempt responsive emails within the following five weeks, (see ¶ 17, above).

20. With respect to the request set forth in paragraph 2.b, above, it is found that, on June 15, 2021, the respondent delivered all of Attorney Rose's non-exempt emails consisting of 1832 pages, to the complainant's home in a box.⁸ It is further found that the only emails that were not disclosed to the complainant were those that the respondent claimed were attorney-client privileged. The complainant indicated that he was not challenging this claim of exemption.

⁷ The respondent's witness testified at the first contested case hearing that, other than two draft documents that counsel prepared for the director of labor relations, which concerned the complainant's job performance and the lead paint litigation, and which contained counsel's impressions and legal advice, no records responsive to the request set forth in paragraph 2.c, above, had been withheld. The complainant did not challenge the non-disclosure of these two documents.

⁸ It is found that the box was contained in a bag and that the bag inadvertently also contained some trash. Once the respondent learned that the records had been delivered to the complainant in this manner, the city apologized to the complainant and, thereafter, emailed to the complainant another copy of the 1832 pages of responsive records.

21. With respect to the “missing emails and attachments” responsive to the request described in paragraph 2.b, above, it is found that the respondent contacted the complainant multiple times by email to obtain the required list, (see ¶ 19, above), but the complainant never responded to these communications.

22. It is therefore found that the respondent complied with the request set forth in paragraph 2.b, above, to the best of its ability. To the extent that the complainant believes that he is missing any emails or attachments, he is free to issue a new FOI request to the respondent.⁹

23. It is found that, by the time of the July 27, 2021 continued contested case hearing,¹⁰ the respondent had disclosed the “first missing email” and the “second missing email” to the complainant, which emails were responsive to the request described in paragraph 2.c, above.

24. Accordingly, it is found that the respondent fully complied with the request set forth in paragraph 2.c, above.

25. Finally, the complainant contended that the records he received were not disclosed to him promptly. This Commission has previously opined that the word “promptly” in §1-210, G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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 loss of the personnel time involved in complying with the request.” See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

26. It is found that the request in this case was quite complicated in that it required searches of multiple individuals’ emails and hardcopy records. It is further found that the electronic record searches involved multiple search terms. It is found that the respondent worked diligently in this case to understand and clarify the request, and to gather, review, and disclose the requested records. Additionally, it is found that the respondent’s efforts to fulfill this request were frustrated by restrictions that were imposed on the city because of the COVID-19 pandemic. In this regard, it is found that the software the city needed to search for, review, and redact responsive emails was maintained in the city’s office and the city’s offices were, and, at the time of the hearings in this matter, continued to be, closed. It is found that, in order to access the required

⁹ The Commission notes that, at the July 27 continued hearing, the respondent represented that if the complainant were to identify the emails and/or attachments, the respondent would search for and disclose said records to the complainant.

¹⁰ The continued contested case hearing was originally scheduled for June 16, 2021. While this hearing was opened, the hearing could not go forward due to connectivity issues.

software, the city's counsel had to schedule a day or a half a day (as permitted) to go into the city's offices to use the technology. It is also found that, shortly before receiving the instant request, the respondent received a large FOI request for electronic records. It is further found that it is the respondent's practice to respond to FOI requests in the order in which they are received.

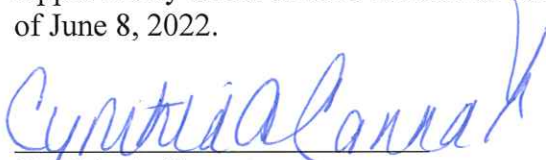
27. Based on the facts and circumstances of this case, it is found that the respondent promptly disclosed the requested records.

28. It is concluded that the respondent did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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 June 8, 2022.



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:

PAUL KOWALSKI, 38 Hillside Avenue, New Haven, CT 06512

CITY OF NEW HAVEN, c/o Attorney Patricia King, Corporation Counsel, 165 Church Street, New Haven, CT 06511



Cynthia A. Cannata
Acting Clerk of the Commission