

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Matthew Olson,

Complainant

against

Docket #FIC 2020-0308

City Attorney, City of Stamford;
and City of Stamford,

Respondents

June 8, 2022

The above-captioned matter was heard as a contested case on September 30, 2021, and November 18, 2021, at which times 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 hearings were conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

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 3, 2020, and addressed to Attorney Kathryn Emmett, Director of Legal Affairs and Corporation Counsel for the respondent City, the complainant requested from the respondents an opportunity to inspect or obtain copies of:

all records related to the Legal Affairs Department's activities. If possible, I would like access to all non-exempt records in your matter management system (MMS), or whatever mechanism your department uses to manage legal matters. Specifically, I would like to view all records related to matters in which your department is currently engaged or recently completed, including timekeeping, expenses, and non-exempt work product. This request is limited to activities performed by your department in calendar year 2019. In addition, I would like to view all governance documents for your department, including mission statements, policies, procedures, rules of engagement, etc. ("June 3rd request").
3. It is found that by email dated June 15, 2020, Attorney Michael Toma, Assistant Corporation Counsel for the respondent City of Stamford, informed the complainant that his June

3rd request was “voluminous in nature” and that complying with this “extremely broad and unlimited request” would require countless hours to organize and review tens of thousands of pages of documents. It is found that Attorney Toma also informed the complainant that without any narrowing of the June 3rd request it would take at least six months before the respondents would be able to provide any records.

4. It is found that by email dated June 15, 2020, the complainant informed Attorney Toma that he would eliminate “work product” from his June 3rd request, and would send an updated request by separate email. It is also found that the complainant stated “[y]ou know what I’m looking for. How the heck do 8-9 attorneys [for the City of Stamford] burn through \$35 million a year? I’d like access to your matter management system, expenses, billing, governance documents.”

5. It is found that by email dated June 16, 2020, and addressed to Attorney Emmett, the complainant requested that the respondents disregard his June 3rd request, and attached the following request:

I am requesting an opportunity to inspect or obtain copies of all records related to the Legal Affairs Department’s activities. If possible, I would like access to all non-exempt records in your matter management system (MMS), or whatever mechanism your department uses to manage legal matters. Specifically, I would like to view all records related to matters in which your department is currently engaged or recently completed, including timekeeping, expenses, budgets, and bills. This request is limited to activities performed by your department in calendar year 2019. In addition, I would like to view all governance documents for your department, including operating budgets, mission statements, policies, procedures, rules of engagement, etc. (“June 16th request”).

6. It is found that by email dated June 17, 2020, Attorney Toma informed the complainant that his June 16th request was “broad” and “voluminous in nature” and that without any narrowing of such request it would take many months, perhaps no sooner than the end of calendar year 2020, before the respondents would be able to provide any records. In addition, it is found that by letter dated June 17, 2020, Attorney Emmett informed the complainant that the Office of Legal Affairs included both the Law Department and the Department of Human Resources, and that the complainant was mistaken that the Office of Legal Affairs’ budget was as much as \$35,000,000.

7. It is found that by email dated June 18, 2020, and addressed to Attorney Toma, the complainant explained that the June 16th request “only seeks basic information about matters, as well as financial records.... [T]here is nothing privileged or exempt about the existence of matters, basic information about said matters, and the cost to taxpayers related to said matters.... The goal of this request is to answer the question I asked you in Hartford regarding Legal Affairs’ accountability...what are you doing with \$35 million dollars a year?”

8. By email received on July 7, 2020,¹ the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him records responsive to his June 16th request, described in paragraph 5, above.

9. 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.²

10. 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 (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.

11. 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.”

12. It is found 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), 1-210(a) and 1-212(a), G.S.

13. It is found that by email dated July 10, 2020, Attorney Toma provided the complainant with records responsive to the portion of the June 16th request for “governance documents”, “operating budgets”, “mission statements”, “procedures”, “policies” and “rules of engagement.” It is found that such portion of the request is not at issue and therefore will not be further addressed herein.

¹ 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.

² 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”.

14. It is found that on or about July 21, 2020, in a Response to Petition for Relief from Vexatious Requester, which was filed in a separate matter before the Commission (PRVR #3; City of Stamford v. Matthew Olson), the complainant in responding to allegations concerning the June 3rd and June 16th requests stated:

[w]hile [the complainant's] request reasonably cites 'Legal Affairs,' the nature of the request clearly relates to what the [respondent City] calls the 'Law Department' within 'Legal Affairs'.... [In addition,] [t]he [complainant] seeks to understand how much litigation the [respondent City] engages, how many damages it pays and how much it spends on outside counsel.³

15. It is found that subsequent to July 21, 2020, the respondents provided the complainant with the following: a list of case files from state and federal court databases; a print-out of the damages paid by the respondent City on legal claims in Fiscal Year 2018-2019; records showing the respondent City's outside counsel expenses in Fiscal Year 2018-2019 and Fiscal Year 2019-2020; pages from the Fiscal Year 2018-2019 budget book relating to the Department of Legal Affairs; and a link to legal opinions rendered by the respondents' Law Department and made available on a City of Stamford website.

16. At the hearings and in his post-hearing brief, the complainant contended that the respondents failed to provide him with all records responsive to his June 16th request including billing and timekeeping records contained in the respondents' matter management system, and that he attempted to clarify his request to the respondents.

17. The respondents contended that they acted reasonably and produced records that they believed were responsive to the June 16th request. They contended that such request was broad and vague, and required the use of judgement and discretion to decide whether or not a record "relates to" activities of the Legal Affairs Department, and what work performed qualified as "activities". The respondents argued that the complainant's position at the hearings on what additional records should have been produced was "muddled and inconsistent", and contended that any broader reading of the June 16th request to include all records in the Law Department's matter management system would render the request unworkable.

18. At the hearings, Attorney Emmett testified that she understood the June 16th request to be for every record, including communications, stored in the respondents' matter management system. Nonetheless, she also testified that the complainant's response to the PRVR, described in paragraph 14, above, "informed" her understanding of what the complainant was seeking, and that she made efforts to produce records that she believed were responsive to the June 16th request. Attorney Emmett testified that she believed that the respondents complied with such request when she produced the records described in paragraph 15, above, and that she did not understand what additional records were being sought by the complainant.

19. It is found that the respondents' Law Department utilizes a matter management

³ In the Petition for Relief from Vexatious Requester, the City of Stamford was named as the "petitioner", and the complainant was named as the "respondent."

system (CityLaw) to track cases and other matters. It is found that thousands of records, including, but not limited to emails and other communications, are stored within the matter management system. It is found that such system is akin to a traditional “filing cabinet”.

20. It is found that, at the hearings, the complainant’s explanation of what records he believed should have been produced in response to the June 16th request, was at times confusing. Nevertheless, it is also found that the June 16th request on its face specified that, among other records, the complainant sought “bills” and “timekeeping” records maintained in the respondents’ matter management system.

21. It is found that it is unclear from the record as to whether bills and timekeeping records are stored in or can be generated from the respondents’ matter management system and whether such records, if they exist, can be produced for a particular timeframe.

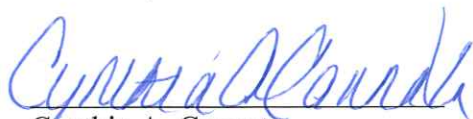
22. It is found that the records described in paragraph 15, above, were responsive to the June 16th request. It is found, however, that the respondents failed to conduct a search for bills and timekeeping records. It is further found that the respondents failed to prove that they provided the complainant with copies of such records. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., with respect to the requests for bills and timekeeping records.

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

1. Forthwith, the respondents shall provide an affidavit as to whether bills and timekeeping records are stored in or can be generated from the respondents’ matter management system. If bills and timekeeping records are stored in or can be generated from the matter management system, the respondents shall conduct a search for the requested bills and timekeeping records for calendar year 2019. If the respondents locate such records, they shall provide copies of such records to the complainant, free of charge. If the respondents claim exemptions for any of the responsive records, they shall provide a privilege log to the complainant identifying each of the records claimed to be exempt and the legal basis for each claimed exemption. If the respondents do not locate the requested records, they shall provide the complainant with an affidavit detailing the results of their search including the individual(s) who conducted the search.

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 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:

MATTHEW OLSON, 73 Mill Road, Stamford, CT 06903

CITY ATTORNEY, CITY OF STAMFORD; AND CITY OF STAMFORD, c/o Attorney Michael S Toma, City of Stamford, Office of Corporation Counsel, 888 Washington Boulevard, 9th Floor, Stamford, CT 06901



Cynthia A. Cannata
Acting Clerk of the Commission